



**Advisory and Guidance to Licensees Regarding Senate Bill 510 (2011),
Effective July 1, 2012, Pertaining to the Appointment by Real Estate Brokers
of Branch Office or Division Managers**

In 2011, the California Legislature passed and the Governor signed Senate [Bill 510](#) (“SB 510”), adding sections 10164 and 10165 to the California Business and Professions Code (“the Code”). The provisions of these Code sections *take effect July 1, 2012*.

The essence of these sections permit a real estate broker or the designated officer of a corporate real estate broker (hereafter referred to collectively as “Broker”), to appoint a real estate licensee as a branch office or division manager (“branch manager”) who will (1) take and have responsibility for the oversight and supervision of day-to-day operations of licensed activities in the branch or division real estate office and (2) be subject to potential sanctions and discipline from the California Department of Real Estate (“DRE”) for failure to properly supervise the activities of licensees which require a real estate license.

A real estate licensee cannot qualify to be a branch manager if he or she 1) holds a restricted license; 2) is or has been subject to a bar order; or 3) is a salesperson with less than two years of full-time real estate experience within five years preceding the appointment.

If such an appointment is made under the terms of the new law, it must be in writing and the DRE must be notified at the time the appointment is made and terminated.

Several questions have been posed by members of the real estate industry regarding this new law.

The following questions and answers are intended to provide guidance from the DRE:

1. Does a Broker have to appoint a branch manager as allowed under section 10164 of the Code?

No. Such an appointment is entirely optional under the new law.

2. May a Broker appoint a branch manager as he or she has done historically and not be bound by the terms of the new law?

Yes.

The Broker continues to have the authority to appoint a branch manager under DRE Regulations 2724 and 2725. However, if there is not an appointment and delegation under the new law, the Broker is solely liable for failure to supervise all licensed activities conducted by the brokerage.

Thus, the Broker must establish policies, rules, procedures and systems that establish how the Broker will personally review, oversee, inspect and manage all licensed activities of the brokerage.

3. If a Broker does appoint a branch manager, and the appointment is made in writing, will the appointment be subject to sections 10164 and 10165 of the Code?

It depends on the mutual intent and understanding of the Broker and the appointed branch manager. A branch manager's appointment will only fall under the provisions of the newly enacted Code sections if both the Broker and branch manager agree.

In order to make the appointment subject to the new Code sections, the appointment must be in writing, the branch manager must agree to accept the delegated responsibility in a written contract, and the DRE needs to be notified on an approved form. Please see the discussion of "Upcoming Licensing Changes" in the Summer 2012 Real Estate Bulletin.

While the new law requires a written contract (and though there was and is no such requirement under the DRE Regulations), it is arguably a prudent practice to use a written agreement for any appointment of a branch manager, whether under the new law or not.

4. If a branch manager is appointed subject to the provisions of sections 10164 and 10165 of the Code, may the DRE impose discipline on the branch manager's real estate license for the failure to properly supervise?

Yes.

Conversely, if a branch manager is not appointed pursuant to the new law, he or she would not be subject to DRE discipline for failure to supervise, and the Broker would remain exclusively liable for the supervision of all licensed activities conducted by the brokerage operation.

5. If a branch manager is appointed subject to the provisions of sections 10164 and 10165, may the DRE still impose discipline on the Broker's real estate license for the activity or activities of salespersons or broker-associates that the branch manager was supposed to supervise?

Yes.

The Broker is not relieved of his or her ultimate responsibility to supervise all licensed activities conducted under the Broker's name by appointing a branch manager under sections 10164 and 10165 of the Code.

However, in assessing whether the Broker's license should be disciplined, the DRE will consider whether the Broker has established adequate policies, rules, procedures and systems to review, oversee, supervise, inspect and manage licensed activities for a brokerage of the size, geographic reach and scope of licensed activities of the Broker.

The appointment of a branch manager subject to sections 10164 and 10165 is a relevant factor the DRE will consider in evaluating the sufficiency of the Broker's policies, rules, procedures and systems, and it can help to diffuse the Broker's responsibilities.

6. Since the Broker continues to have the responsibility to perform adequate supervision of the licensees working under him or her, why is the new law beneficial?

The new law is intended and expected to result in better supervision and more accountability to the public.

If there is an appointment and supervisorial delegation under the new law, there are license disciplinary consequences to the branch manager. Therefore, in a brokerage with multiple divisions or branch offices, an appointment of branch managers under the new law will arguably better enable the Broker to "manage the branch managers" while allowing the branch managers to "manage the line level sales agents" who report to him or her at the branches or division offices.