

Alert to Licensees –

New Legal Requirement for the Self-Reporting by Real Estate Licensees of Felony Charges, Convictions of Any Felony or Misdemeanor, and Any Disciplinary Actions Taken by Another Licensing Authority

By Wayne Bell, Chief Counsel

On January 1, 2012, a new section was added to the California Real Estate Law which mandates the reporting by real estate licensees of certain events to the Department of Real Estate (DRE).

This requirement, which provides the DRE with a new and important enforcement tool, is contained in section 10186.2 of the CA Business and Professions Code (Code).

That section compels, in subsection (a)(1), a real estate licensee to submit a report of any of the following to the DRE:

- “(A) The bringing of an indictment or information charging a felony against the licensee.
- (B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.
- (C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.”

The law requires that **any such report is to be made in writing¹ within 30 days “of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action”** (subsection (a)(1)(2)), and that failure to make such a written report shall constitute a cause for discipline.

It is the failure to report that violates the new law. It should be underscored that the Legislature created this section (via California Senate Bill 706 – 2011 [Senator Price]) as a “new tool” to enhance the DRE’s Enforcement operation and efforts.

It was provided so that there would be self-reporting (in writing) by licensees and the department could thus become aware of and track the felony charges and the disciplinary case(s) with respect to (A) and (C) above, and determine if the conviction reported in (B) above is a basis for disciplinary action.

Before January 1, 2012, the only self-reporting requirements for department licensees were imposed under Commissioner's Regulation 2930 (Number 19) on restricted licensees relative to arrests.

¹ The DRE has developed form RE 238 – Indictment, Conviction, and Disciplinary Action Notification – for the purpose of this reporting. However, any form of written communication will meet the notification requirement.

Under the new law, the requirements for self-reporting are broadened and apply to all real estate licensees.

Focusing on the clear language of section 10186.2 of the Code, the language of subsection (a)(1)(B) is wide and inclusive in its scope, and the requirement to report *any* felony or misdemeanor conviction within the relevant 30 day window(s) does *not* permit a licensee to exclude or fail to report what he or she considers minor, insignificant, or non-substantially related convictions. “Any” clearly includes “any”, “every”, and “all” misdemeanor and felony convictions, including those following the entry of a “no contest” plea. The statutory language does not contain any carve outs, limitations, exemptions, or exceptions.

Turning to subsections (a)(1)(A) and (C), there does *not* have to be a conviction for the reporting of (A), and there does *not* have to be final discipline imposed for the report to be made under (C).

In fact, a plain reading of (C) suggests that if disciplinary action has been “taken”, which includes the bringing or commencement of disciplinary charges, such as where there has been the filing of a pleading such as an Accusation by a licensing authority, that action must be reported within 30 days even if the licensee believes or concludes the action has no merit and even if the action is ultimately unsuccessfully prosecuted by the licensing authority.

Moreover, and importantly, the plain language of section 10186.2 (a)(1)(C) referring to “any disciplinary action” means that the discipline does *not* have to rise to the level of discipline under 10177 (f); namely, suspension or revocation. If the Legislature had wanted a higher level, it could have imposed the same.

To reiterate, “*Any disciplinary action taken*” against a licensee (again meaning filed, initiated, and/or completed) must be reported to the DRE within the relevant 30 day window. If it is not, the department has the power to discipline the licensee for a violation of 10186.2.

Obviously, this does beg the question as to what is a “disciplinary action” by another licensing entity or authority. In the absence of an action seeking or imposing what is universally or obviously deemed to be “discipline”, a licensee will need to determine what is interpreted to be discipline and disciplinary action by the other licensing entity or authority. And if the action is actually or deemed to be “disciplinary”, the licensee must report the same to the DRE in writing within the applicable 30 day window or face discipline by the department.

If you have any questions regarding the new reporting requirement under the Real Estate Law, please contact any office of the DRE.

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