



Licensee Alert

Issued 9/1/2015

Disciplinary Warning to Real Estate Salespersons Who Act, Conduct Themselves, and/or Advertise as "Independent" Real Estate Professionals -- and a Simultaneous Caution to Brokers Who Allow or Support Such Practices

By Wayne S. Bell, California Real Estate Commissioner

The California Bureau of Real Estate has taken notice of – and will take appropriate disciplinary action against -- the unlawful practice(s) of some real estate salespersons who act, conduct themselves, and advertise as “independent” real estate professionals.

Under California law, with its two-tiered licensing system, real estate salespersons cannot provide – or advertise that they can provide -- real estate services independently of their responsible brokers. Moreover, salespersons must be associated or affiliated with a responsible broker in order to engage in real estate licensed activities in this State.

Stated a bit differently, salespersons are legally dependent on their responsible, supervising brokers, and salespersons who are engaged in an independent real estate practice (either unaffiliated with a broker, or working independently and without the knowledge of their broker of record) are doing so in an unlawful and unlicensed manner.

CaIBRE has received a number of reports of salespersons who are conducting property management businesses without any broker affiliation or supervision. Such activity is a crime.

Also, it is evident that a number of salespersons have branded themselves as independent real estate practitioners, and they practice and advertise as such. That is unlawful as well, and the advertisements in connection therewith are false and misleading to the public. Furthermore, and depending on the language used with respect to the “branding”, there might be a violation of the law relative to the use of fictitious names. Please see the prior guidance given by CaIBRE on the use of fictitious names.

This communication is written as a warning to those real estate salespersons, and all other salespersons, who provide real estate services – for which a license is required -- without being affiliated with and supervised by a broker.

If a salesperson wants to act and advertise as an independent or freelance real estate licensee in California, he or she must become a real estate broker. There are no exceptions.

Finally, it has been reported to CalBRE, although it has not been verified, that some brokers are assisting associated salespersons with some of the practices above. In this regard, CalBRE has been told that some brokers are helping salespersons with “independent branding” and the advertising related to that branding.

This notice will serve as a warning to any such brokers that they (the brokers) have a legal obligation to reasonably supervise the licensed activities of their affiliated salespersons, and remain accountable and are responsible for the work requiring a license performed by those salespersons.

As part and parcel of the supervision mandate, brokers have the obligation to establish policies, rules, procedures, and systems to “review, oversee, inspect and manage” the advertising by their associated salespersons of any services for which a real estate license is required.

The boundaries of licensed practice by real estate salespersons must not be crossed, and the responsibilities of brokers relative to supervision, oversight and legal compliance regarding associated salespersons must be followed. Failure in either respect may lead to license disciplinary action and/or criminal prosecution.

#####

Issued on September 1, 2015