

TITLE 10. CALIFORNIA BUREAU OF REAL ESTATE

BROKER ASSOCIATES: REPORTING OF CONTRACTUAL RELATIONSHIPS BETWEEN REAL ESTATE BROKERS

NOTICE IS HEREBY GIVEN

The Commissioner ("Commissioner") of the Bureau of Real Estate ("CalBRE") proposes to amend Sections 2715, 2728.5, and 2752 of the Regulations of the Real Estate Commissioner (Title 10, Chapter 6 of the California Code of Regulations) ("the Regulations") after considering all comments, objections, and recommendations regarding the proposed action. Publication of this notice commences a 45-day public comment period.

AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code ("the Code") authorizes the Commissioner to adopt regulations that are reasonably necessary for the enforcement of the provisions of the Real Estate Law (Code Sections 10000 et. seq.). This proposal amends Sections 2715, 2728.5, and 2752 of the Regulations in conformance with the recent amendment of Section 10161.8 of the Code, to implement, interpret, and make specific the revised statute. The amendments also correct non-substantive issues with the existing Regulations.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalBRE at the contact listed below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner addressed as follows:

Regular Mail

Bureau of Real Estate
Attn: Daniel E. Kehew, Sacramento Legal Office
P.O. Box 137007
Sacramento, CA 95813-7007

Electronic Mail

BRERegs@dre.ca.gov

Facsimile

(916) 263-8767

Comments may be submitted until 5:00 p.m., Monday, April 2, 2018.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW – SUMMARY OF CHANGE IN REGULATION

The underlying statute, Section 10161.8 of the Code, is intended to allow consumers, industry members, and CalBRE to have ready information (via CalBRE's records, database, and website) regarding the employment relationship between licensees. The present language of Section 2752 specifies the minimum data necessary for an adequate written notification from a responsible broker to CalBRE where a salesperson is hired or terminated. On January 1, 2018, pursuant to the amendment of Section 10161.8 by AB 2330 (Ridley-Thomas), employment relationships between responsible brokers (also sometimes referred to as "employing brokers") and broker associates (those who act as a salesperson for another broker) will be required. This revision provides a corresponding minimum requirement for reporting of broker-to-broker relationships. The information is included in the regulatory location already used by brokers who retain other licensees to act as salespersons.

DETERMINATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commissioner has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect brokers contracting to do licensed work for other brokers, the Commissioner has concluded that these are the only State of California regulations relating to the subject.

PURPOSE, BENEFITS, AND GOALS OF THIS AMENDMENT

Among other provisions, the adoption of AB 2330 in 2016 created a new reporting requirement regarding certain contractual relationships between real estate brokers. This requirement parallels an existing reporting requirement regarding contractual relationships between brokers and salespersons. The sponsor of the legislation, referring to this provision of AB 2330, stated:

"This bill will close an important deficiency in existing law by identifying who a real estate broker is working for when that broker is not acting under his or her own license. Existing provisions, such as the Homeowner's Bill of Rights, already require transparency in other areas of real estate transactions. [This bill] makes sure that consumers always have access to information that affects one of the biggest purchases of their lifetime."¹

¹ AB 2330 was sponsored by the California Association of Realtors. This quote appears in the Assembly Floor Analysis, published August 24, 2016. All of the legislative analysis documents relating to AB 2330 are presently published online at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2330

The proposed amendment of Section 2752 of the Regulations serves to implement the new provisions within Section 10161.8 of the Code, offering clear instruction to brokers regarding the information required for written notification of hiring/termination of other brokers to act as salespersons. The proposed revisions to Sections 2715 and 2728.5 (which also relate to brokers acting as salespersons under agreement to another broker) correct archaic language within those sections and a missing statutory reference note.

NECESSITY OF THIS AMENDMENT

As stated above, the adoption of AB 2330 in 2016 created a new reporting requirement regarding certain contractual relationships between real estate brokers, parallel to an existing reporting requirement regarding contractual relationships between brokers and salespersons. This regulation is needed to implement the new reporting requirement. Other changes are included to correct minor, non-substantial issues in existing, related regulations.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date CalBRE adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from the Sacramento offices of CalBRE. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. These documents are also available at CalBRE's website at www.bre.ca.gov. As required by the Administrative Procedure Act, CalBRE's Sacramento Legal Office maintains the rulemaking file. The rulemaking file is available for public inspection at the Bureau of Real Estate, 1651 Exposition Boulevard, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative he considered, or that has otherwise been identified and brought to the attention of CalBRE, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT (Pursuant to Government Code Section 11346.3(b))

The Commissioner has prepared an Economic Impact Assessment in the Initial Statement of Reasons and has reached the following results:

- The proposal does not affect the creation or elimination of the number of jobs available within the State of California. The proposal only implements a change in statute.
- The proposal does not affect the creation of new businesses or the elimination of existing businesses within the State of California.
- The proposal does not affect the expansion of businesses currently doing business within the State of California.
- The proposal will benefit the health and welfare of California residents through improved consumer and enforcement information regarding employment relationships between real estate licensees.

INITIAL DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Will have no fiscal impact on the Bureau of Real Estate. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost nor impose a mandate (nondiscretionary cost or savings) on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. (Statements of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost or savings to any state agency as well as federal funding to the state. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Commissioner is not aware of any cost impacts that a representative private

person or business would necessarily incur in reasonable compliance with the proposed action; any new impacts are the result of the change in statute being implemented.

EFFECT ON SMALL BUSINESS

The Commissioner has determined that there is no fiscal impact to small businesses resulting from this proposed regulatory amendment because the amendments serve only to implement the statutory standard, rather than impose a substantial change in that standard.

CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 263-8681, or via email at BRERegs@dre.ca.gov. The backup contact person is Stephen Lerner at (916) 263-8704.

Dated: February 16, 2018
Sacramento, California



Daniel E. Kehew
Real Estate Counsel
Sacramento Legal Office