

NOTICE OF RULEMAKING PROPOSAL
CALIFORNIA DEPARTMENT OF REAL ESTATE
IMPLEMENTATION OF AB 2992 (2024) REGARDING BUYER-BROKER
REPRESENTATION AGREEMENTS
TITLE 10, CHAPTER 6
PROPOSED ARTICLE 18.1, SECTIONS 2908.1, 2908.2, AND 2908.3

NOTICE IS HEREBY GIVEN

The Real Estate Commissioner and the Department of Real Estate (collectively "DRE"), proposes adoption of Article 18.1, Sections 2908.1, 2908.2, and 2908.3 of the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 ("the Regulations"), after considering all comments, objections and recommendations regarding this proposed action. Publication of this notice commences a 45-day public comment period.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or that person's duly authorized representative, submits a written request for a public hearing to the DRE, 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 that person's authorized representative, may submit written comments relevant to this proposed regulatory action to DRE addressed as follows:

Regular Mail

Department of Real Estate
Attn: Dea Franck, Sacramento Legal Office
651 Bannon Street, Suite 507
Sacramento, CA 95811

Electronic Mail

DRE.RegComments@dre.ca.gov

Comments may be submitted until August 12, 2025.

AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code ("Bus. & Prof. Code") authorizes DRE to adopt regulations that are reasonably necessary for the enforcement of the provisions of the Real Estate Law (Bus. & Prof. Code sections 10000 et seq.). The proposed Sections 2908.1 and 2908.2 of the Regulations implement, interpret, and/or make specific Section 1670.50 of the Civil Code as adopted as Section 2 of the larger AB 2992 (Stephanie Nguyen, Chapter 516, Statutes of 2024) ("Section 1670.50") and Section 2079.13 of the Civil Code as amended as Section 3 of the larger AB 2992 ("Section 2079.13"). The proposed Section 2908.3 also implements, interprets, and/or makes specific both Sections 1670.50 and 2079.13 as well as Section 10131 of the Business and Professions Code as amended by AB 2992.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW – SUMMARY OF PROPOSED REGULATIONS

Over the last several years, the United States Department of Justice and attorneys representing buyers and sellers of real estate filed numerous lawsuits against the National Association of REALTORS® ("NAR"), a number of state and local realtor associations, multiple listing services ("MLSs"), and various national real estate brokerages (collectively "Real Estate Defendants") alleging that the Real Estate Defendants engaged in anti-competitive activities in violation of federal antitrust laws ("NAR Lawsuits"). In March 2024, NAR entered into a settlement agreement with the seller plaintiffs to settle the seller-side class action lawsuits against the Real Estate Defendants ("NAR Settlement"). NAR Settlement provided, among other things, that no later than August 1, 2024, all principal brokers or brokerage firms participating in a multiple listing service and working with a buyer must enter into a written agreement before the buyer tours any home.

This California Association of Realtors' sponsored AB 2992 as a result of the NAR Lawsuits and in light of the changing landscape of the real estate industry when it comes to broker compensation, specifically brokers who represent real estate buyers. While California currently requires that a written listing agreement be executed between sellers of real property and a listing agent, California did not require a written agency agreement between buyers and their agents prior to the passage of AB 2992. AB 2992 provides, among other things, a definition of a "buyer-broker representation agreement", details minimum required terms and conditions for such agreements, provides term length and renewal limitations for said agreements, and identifies the type of real estate licensed activities requiring a signed buyer-broker representation agreement. Beginning January 1, 2025, AB 2992 requires, among other things, that buyer-broker representation agreements be executed between a buyer's agent and a buyer "as soon as practicable, but no later than the execution of the buyer's offer to purchase real property."

The three sections of the proposed Article 18.1 will:

- Clarify the maximum length of the initial term and any optional renewal term of a buyer-broker representation agreement and the conditions upon which those terms commence.
- Makes expressly clear that the maximum initial and renewal term lengths set forth in the statute do not apply to buyer-broker representation agreements between real estate brokers and corporations, limited liability companies, and partnerships.
- Makes expressly clear the statutory prohibition that buyer-broker representation agreements cannot renew automatically and that such renewals need to be effectuated via a writing that is signed by the parties.
- Clarify the timing of and creates a rebuttable presumption as to when it would be initially practicable for a buyer's agent to enter into a buyer-broker representation agreement with a buyer as contemplated in the statute.
- Makes expressly clear that a buyer-broker representation agreement is only required if a real estate broker is performing services for or on behalf of a buyer of real property or an interest in real property for which a real estate license is required.

Anticipated Benefits of the Proposed Regulations

AB 2992 requires, among other things, that the maximum length of the initial term and any renewal term of a buyer-broker representation agreement is three months from the date the agreement was made. Proposed Section 2908.1(a) clarifies the maximum length of the initial term and any optional renewal term of a buyer-broker representation agreement be 90 calendar days and clarifies the conditions upon which those terms commence. Combined together, these parameters will result in there being one consistent, standard term length for all buyer-broker representation agreements executed in California that can be easily calculated and subject to one interpretation. As a result, there will be a decreased likelihood of contractual disputes regarding the term lengths of buyer-broker representation agreements resulting in the decreased likelihood of litigation and the increased likelihood of smoother real estate transactions.

Proposed Section 2908.1(b) makes it expressly clear that the maximum initial and renewal term lengths set forth in AB 2992 do not apply to buyer-broker representation agreements between real estate brokers and corporations, limited liability companies, and partnerships; the benefit of this language is to make clear and eliminate any possible confusion as to whether the maximum three-month term limitation for the initial term of the agreement and any

renewal term applies to buyer-broker representation agreements between real estate brokers and corporations, limited liability companies, or partnerships; it does not.

Proposed Section 2908.1(c) makes it expressly clear that AB 2992's prohibition that buyer-broker representation agreements cannot renew automatically and proposed Section 2908.1(d) reiterates AB 2992's requirement that such renewals need to be effectuated in writing and signed by the parties; this proposed language is necessary so that a reader of Section 2908.1 can read this regulation in its totality and understand all of the buyer-broker representation agreement renewal limitations and requirements and not have to read the regulation in conjunction with the underlying statute to get to the same result.

Proposed Section 2908.2 clarifies the timing of and creates a rebuttable presumption as to when it would be initially practicable for a buyer's agent to enter into a buyer-broker representation agreement with a buyer as contemplated in AB 2992. Specifically, proposed Section 2908.2 provides that it is "practicable for a buyer's agent to obtain a signed buyer-broker representation agreement before the buyer's agent shows a buyer a property in person or virtually." The NAR Settlement uses the touring of a house as the deadline by which a written buyer agency agreement must be signed. Many California real estate licensees are members of NAR, so it is beneficial to try to align what action by a broker would trigger the requirement of a signed buyer-broker representation agreement, i.e., before the buyer's agent shows a buyer a property in person or virtually, with the NAR Settlement to the extent that the underlying statute would allow.

Proposed Section 2908.3 makes it expressly clear that brokers only need signed buyer-broker representation agreements in place when providing services to buyers related to real estate sales transactions as those terms are defined in Civil Code section 7029.13 for which a real estate license is required pursuant to Business and Professions Code section 10131(a). This language is beneficial for both consumers and the real estate industry because it eliminates any confusion as to when buyer-broker representation agreements are statutorily required. Without such clarification brokers and individuals, such as prospective lessees, may think that such agreements are required under AB 2992 when they are not, which could lead to unnecessary administrative burdens and a delay in services to be provided.

Whether Proposed Regulations are Inconsistent or Incompatible with Existing State Regulations

After conducting a review for any related regulations, DRE has determined that there are no other regulations concerning the subject of buyer-broker representation agreements. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

DRE has made the following determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: DRE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The DRE concludes that it is: (1) unlikely that this regulation proposal ("proposal") will eliminate any jobs for real estate licensees or associated professions; (2) unlikely that this proposal will create jobs; (3) unlikely that this proposal will create new businesses of any sort; (4) unlikely that this proposal will eliminate any existing businesses; (5) unlikely that this proposal will result in the expansion of businesses currently doing business in the state; (6) will benefit the health and welfare of California residents by promoting industry transparency and helping to ensure smoother real estate transactions by minimizing the risk of misunderstandings and disputes between buyers and real estate licensees; and (7) not expected that this proposal will affect worker safety or the state's environment.

SMALL BUSINESS DETERMINATION

The DRE has determined that there will be very minimal fiscal impact on small businesses resulting from this regulation proposal aside from the incidental, *de minimus* administrative cost of obtaining and retaining signed buyer-broker representation agreements as required by AB 2992 and the proposed regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DRE must determine that no reasonable alternative considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which this regulatory 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.

DRE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning this action may be directed to Dea Franck at (916) 737-4497, or via email at DRE.RegComments@dre.ca.gov. The backup contact person is Stephen Lerner at (916) 737-4293.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

DRE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its headquarters office: 651 Bannon Street, Suite 507, Sacramento, California. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Form 400 under which the package was submitted to the Office of Administrative Law for publication. Copies may be obtained by contacting Dea Franck at the mailing address and/or email address listed on the first page of this notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, DRE may adopt the proposed regulations substantially as described in this notice. If DRE makes modifications that are sufficiently related to the originally proposed text, DRE will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before DRE adopts the regulation as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated above. DRE will accept written comments on the modified regulation for 15 days after the date on which they are made available.

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 below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice, the initial statement of reasons, and the text of the regulations in underline and strikeout can be accessed through DRE's website at www.dre.ca.gov.