

PRLS CONTRACT INFORMATION

RE 268 (Rev. 10/20)

GENERAL INFORMATION

- California Business and Professions Code (B&P Code) Section 10167.9(c) provides the Department of Real Estate with the authority to review proposed Prepaid Rental Listing Service (PRLS) contracts *before* they are actually negotiated with members of the public by a real estate broker or PRLS licensee. The Department shall withhold the issuance or renewal of a license until the Department has approved the contract(s).
- It should also be noted that Section 10167.9(c) requires that *any modification* of a form previously filed with the Department, including a change in the name or business address of the licensee, shall also be filed prior to use. A change in the name or business address of the licensee includes the *addition* of a branch office.
- The elements which must appear in PRLS agreements are found throughout the various subdivisions of California B&P Code Sections 10167.9 and 10167.10. Many, but not necessarily all, of the various subdivisions and Department policies concerning same are detailed below.
- If you have questions please contact the Sacramento office at: Department of Real Estate, ATTN: PRLS UNIT, P.O. Box 137017, Sacramento CA 95813-7017. Telephone: (877) 373-4542.

Name and Address

Section 10167.9(a)(1) requires inclusion of the name and the license number of the licensee, the addresses and telephone numbers of the principal office or location of the licensee and of the location, or branch office of a real estate broker, providing the listing to the prospective tenant.

The *name* of a licensee can be that of either an individual or corporate real estate broker or PRLS licensee, but inclusion of a fictitious business name alone is insufficient.

If a licensee engages in PRLS activities at more than one location, all contracts utilized at offices other than that which is designated as the main office must also include the address and telephone number for that main office. One acceptable method employed by many licensees is the use of one contract form which includes the addresses and telephone numbers of every location at which they do business (generally including some method for designating the particular location at which an individual client contracted).

As to real estate brokers, the requirement for including his/her main office address and telephone number is applicable even if PRLS activities are not conducted there.

Receipt of Fee

Section 10167.9(a)(2) requires that the contract make acknowledgment of receipt of the fee, including the amount. As to the actual amount, many licensees include a blank for entering in the figure at the time of contract negotiation to allow for a later increase in fees.

Description of Service

Section 10167.9(a)(3) provides that the contract must include a description of the service to be performed by the licensee, including significant conditions, restrictions, and limitations where applicable. These include, but are not limited to, the methods of delivery of the listings, hours of operation, or

types of other services required to be purchased to obtain the listings.

Tenant's Specifications

Section 10167.9(a)(4), subdivisions (A) through (E), mandates the solicitation of the prospective tenant's specifications for the rental property.

Section 10167.9(a)(4)(A) requires that a client designate the type of structure desired, including but not limited to, detached single family home, apartment, or duplex. At a minimum, a PRLS contract must include individual blanks for each of the types of properties named; nothing prevents a licensee from expanding upon subject categories.

Section 10167.9(a)(4)(B) allows a client to indicate his/her desired location by commonly-accepted residential area name, by designation of boundary streets, or by any other manner affording a reasonable means of identifying locations acceptable to the prospective tenant.

Section 10167.9(a)(4)(C) provides that the licensee must determine in the contract whether *furnished* or *unfurnished* accommodations are desired.

Section 10167.9(a)(4)(D) requires the licensee to obtain information in the contract concerning number of bedrooms required.

Section 10167.9(a)(4)(E) allows the client to designate the maximum acceptable monthly rental. Generally, contracts which only include designation of various ranges of rental prices (such as between \$400 and \$500, between \$800 and \$900, etc.) will not be acceptable unless the client is also given the opportunity to specify some intermediate maximum such as, say, \$450, \$575, \$850, \$975, or any other specific maximum.

Contract Expiration Date

Section 10167.9(a)(5) requires inclusion of the actual contract expiration date, which shall not be later than 90 days from the date of execution of the contract. Reference alone to a contract period of 60 or 90 days (or any other period of time) will not be acceptable; some provision must be made for indicating the specific date of expiration at the time an individual contract is negotiated. Furthermore, any agreement which proposes to provide service for a period longer than 90 days exceeds the statutory limit; generally, the only manner in which to provide service for a longer period is to have the client enter into a second agreement after the expiration of the first. Clients cannot be required to waive any refund rights which may be owing under the terms of the first contract.

Signature of PRLS Licensee ...

Section 10167.9(a)(7) requires that a PRLS contract make provision for the inclusion of the signature and printed full name of the licensee or of the designated agent, real estate salesperson, or employee acting on behalf of the licensee. The signature of any person, including any signature required by the terms of the contract to be provided by the prospective tenant, may be provided in any electronic form that provides a reasonable method of indicating the individual whose signature is required authorized the contract to be signed in that electronic form.

Small Claims Remedy

Section 10167.9(a)(8) requires notice of the Small Claims Remedy available to clients under Section 10167.10(f). Regulation 2853 of the Real Estate Commissioner sets forth the specific text of the required notice:

“You may bring a small claims court action against the licensee for his/her refusal to make a refund on your demand of all or part of the fee paid by you under this contract. If the court finds that the licensee has acted in bad faith in refusing to make the refund, the court has the authority to award you up to one thousand dollars (\$1,000) in addition to damages actually sustained by you.”

Regulation 2853 requires that this notice appear in **bold face type** immediately *below* the three paragraphs of the refund language in Section 10167.10(c).

Optional Services

Section 10167.9(a)(9) requires a clause in bold face type clearly stating that the purchase of any goods and services other than the provision of listings of residential real properties for tenancy is optional. All contracts for other services must be submitted to the Department for review also.

Refund Language

Section 10167.10(c) sets forth the specific refund language which must appear in PRLS contracts utilized by those who have been issued and function under a PRLS license. The words “right to refund” must immediately precede the refund language itself and be in full caps, 12-point type or larger, and be in boldface or italics.

Section 10167.10(c) provides that the specific refund provisions as drafted by the Legislature must be included unless different language shall have been approved in writing by the Department prior to (its) use. A contract must be submitted in compliance with Sections 10167.9 and 10167.10, and the appropriate refund clauses should be adopted as appearing in the Statute. It is not possible to predict in advance whether a particular revision of those clauses will be found to be statutorily acceptable.

Effective January 2001, the required refund provisions require prospective tenants to submit reasonable documentation of their new rental or that they did not move, such as a lease, rental agreement or utility bill to be eligible for a partial refund. It notifies them that if they are unable to locate or provide the documentation, they have the option to fill out a written form provided by the licensee and signed by the tenants under penalty of perjury to attest that they did not obtain a rental through the licensee's service during the contract period.

Refund Exemption

Section 10167.10(d) (an often overlooked requirement) provides that if rental information is purchased for other than personal use or the use of a designated person, the refund requirements will not be applicable; the contract must include information to such effect. In this regard, most PRLS contracts therefore include the following clause: “A person who purchases rental information for purposes other than that of locating a rental unit for personal use or the use of a designated person shall not be entitled to the return of any part of the fee paid to the agent.”