

**INITIAL STATEMENT OF REASONS
PROPOSED AMENDMENT TO TITLE 10, CHAPTER 6
SECTIONS 2715, 2728.5, and 2752, "BROKER ASSOCIATES TRACKING"**

This regulations proposal amends Sections 2715, 2728.5, and 2752 of the Regulations of the Real Estate Commissioner (California Code of Regulations, Title 10, Chapter 6) ("the Regulations") to implement and clarify the requirements of Section 10161.8 of the Business and Professions Code ("the Code").

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR
CIRCUMSTANCE THAT THIS AMENDMENT IS INTENDED TO ADDRESS**

Prior to the adoption of AB 2330 (Ridley-Thomas) in 2016, Section 10161.8 of the Code required a written notification from a real estate broker to CalBRE upon the broker's hiring or termination of a real estate salesperson. Under the Real Estate Law (Business and Professions Code, section 10000 et seq.), a salesperson cannot act as a licensee unless employed or retained by a licensed broker. (See section 10132 of the Code.) The notifications required by Section 10161.8 serve to ensure that CalBRE (and through CalBRE, the public) have notice of an employed status that satisfies this requirement. Notably, a salesperson may only work for one broker at a time.

Many persons licensed as brokers choose to enter agreements to work as a salesperson for other brokers, and this is allowed by the Real Estate Law and the Civil Code. However, each licensed broker is fully licensed; unlike a salesperson, a broker need not work for anyone in order to engage in activity requiring a real estate license, nor is he or she limited to working for just one broker at a time. Because of this fact, prior to the adoption of AB 2330, there was no parallel requirement where two real estate brokers enter into, or terminate, an agreement for one broker to work as a salesperson for another broker.

AB 2330 amended Section 10161.8 of the Code, with a delayed implementation date of January 1, 2018. At that time, the revised Section 10161.8 will require a broker to notify CalBRE when that broker hires or terminates another broker to act as a salesperson.

The Regulations include an existing section, Section 2752, that specifies how a broker may notify CalBRE when hiring or terminating a salesperson. In order to implement the requirements of the revised Section 10161.8 of the Code, CalBRE proposes to amend this existing regulation to reflect the minimum requirements for written notification when another broker hires or terminates either a salesperson or a broker acting as a salesperson. The requirement for reporting is imposed by the statute, not this

regulations proposal. This proposal only addresses the minimum information and format requirement for such statutorily-required reports.

While addressing the subject of a broker acting as salesperson for another broker, CalBRE notes that the Regulations also include two sections that already address “brokers acting as a salesperson” – Sections 2715 and 2728.5. Both of these sections include language or expressions that are out of date, so CalBRE is also including non-substantive changes to the text of those sections to correct these issues. Finally, CalBRE noted that Section 2728.5 lacked a complete “Note” comment following the text of the regulation itself; there were no statutory sections referenced as being the statutes implemented, explained, or clarified by Section 2728.5. CalBRE’s proposal corrects that oversight.

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

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. CalBRE drafted the proposed amendments to be consistent with the existing process for tracking a broker’s employment of a salesperson, with corresponding and consistent timelines for prompt reporting.

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 revisions to Sections 2715 and 27285 (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

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. This revision provides a corresponding minimum requirement for brokers acting as salespersons under an agreement. The information is included in the regulatory location already used by brokers who retain other licensees to act as salespersons.

ALTERNATIVES CONSIDERED

- ***Repeal the regulation and let the statute stand alone.*** As expressed to CalBRE's staff by licensees, the wording of the statute is confusing to some readers. The regulation has proven to be a clearer alternative. Rather than abandon this alternative expression of the law, CalBRE seeks to update the regulation to be consistent with the revised statute.
- ***Leave the regulation as currently stated.*** Given the update to the statute, it is not acceptable to retain regulatory rules that no longer reflect the statute's requirements.

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

CalBRE has conducted an Economic Impact Assessment, and that assessment is relied upon in reaching the following results. *CalBRE notes that the regulation merely expresses the minimum information required to satisfy the new statutory reporting requirement, rather than imposing that reporting requirement.*

- The proposal does not affect the creation or elimination of jobs available within the State of California. The underlying statute requires reporting of employment relationships, but there is no reason to anticipate that such reporting will either create or eliminate real estate jobs, or have any other substantial economic impact.

- The proposal does not affect the creation of new business or the elimination of existing businesses within the State of California. As above, there is no reason to anticipate that the statute's reporting requirement will impact business opportunities, either positively or negatively.
- The proposal does not affect the expansion of businesses currently doing business within the State of California. This determination is based on the same rationale as the determinations above.
- The proposal will benefit the health and welfare of California residents through improved consumer and enforcement information regarding employment relationships between real estate licensees. To the degree that the reporting requirement simplifies the burden on licensees to report and, as a result, encourages compliance with the reporting requirement, consumers in California may have greater confidence in the licensing information offered to the public by CalBRE. The likely value of such a possible, modest impact is minimal, however.
- The proposal 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. As stated above, the underlying statute requires reporting of employment relationships, but there is no reason to anticipate that such minimal reporting would present any meaningful economic impact on the affected licensees. Both in-state and out-of-state businesses are required to be licensed and comply with the reporting requirement, if applicable. Thus, there would be no disadvantage for California businesses.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Commissioner did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the amendment of these regulation sections.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The alternatives to this proposal are described above, along with the reasons why the selected option is preferred. The Commissioner finds that the alternatives considered would not be more effective in carrying out the purpose of the proposed regulation through establishment of a clear and minimally burdensome filing standard and would be as effective and less burdensome to affected private persons than the proposed regulation amendment.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The alternatives to this regulation proposal are described above, along with the reasons why the selected option is preferred. Because the substantive change within the proposed amendment merely expresses the minimum information needed to satisfy the statutory reporting requirement, the regulation itself does not create an adverse economic impact on the small businesses within CalBRE's licensee community.

DETERMINATION REGARDING USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT

The proposed regulation does not include any requirement that a specific technology or equipment be used by any affected party.