

TITLE 10. CALIFORNIA BUREAU OF REAL ESTATE

FIRST POINT OF CONTACT SOLICITATIONS: UPDATE TO COMPORT WITH STATUTORY AMENDMENT

NOTICE IS HEREBY GIVEN

The Commissioner ("Commissioner") of the Bureau of Real Estate ("CalBRE") proposes to amend Sections 2773 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 Section 2773 of the Regulations in conformance with the recent amendment of Section 10140.6 of the Code, to implement, interpret, and make specific the revised statute.

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

Section 10140.6 of the Code includes a requirement for license ID numbers to appear on certain advertisements that are viewed as the “first point of contact” between real estate licensees and consumers. The statutory language is seen as confusing by some licensees and other readers, so a clearer restatement was included within Section 2773 of the Regulations. With the update of the statutory requirement in Section 10140.6 via AB 1650 (Frazier, Chapter 142, Statutes of 2016), effective January 1, 2018, some advertising channels that were previously exempted from the license ID number requirement are now included. The sponsor of the measure offered this explanation:

"Current law has created confusion about what identity information is required to be included on real estate advertising materials. Existing law varies greatly depending on the type of advertisement (i.e. 'for sale' signs, print and electronic media, business cards, brochures, etc.) and the name being used by the licensee (i.e. given name, nickname, team name, etc.). This bill will require a licensee conducting advertising of any kind to also include their California Bureau of Real Estate (CalBRE) license number and responsible broker's identity. 'Open house' and directional signs *without a reference to agent name or branding* would be exempt from this requirement. Creating a uniform advertising standard for real estate licensees would alleviate the existing competing standards and would serve to create more transparency for consumers in the market place."¹ (Emphasis added.)

Of greatest impact, the new statute requires license ID numbers to appear in print advertisements, electronic media advertisements, and specified “for sale,” “for rent,” “for lease,” open house, and directional signage (except those signs without any name or branding). The terms appearing in Section 2773’s clarifying restatement of Section 10140.6 of the Code must be updated to comport with the revised statute.

DETERMINATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commissioner has determined that this proposed regulation is not

¹ AB 1650 was sponsored by the California Association of Realtors. This quote appears in the Assembly Floor Analysis, published July 29, 2016. All of the legislative analysis documents relating to AB 1650 are presently published online at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1650

inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect the license ID requirement for such advertising materials, the Commissioner has concluded that Section 2773 is the only State of California regulation relating to the subject.

PURPOSE, BENEFITS, AND GOALS OF THIS AMENDMENT

As with the initial adoption of this regulation, the regulation serves to implement the underlying statute using language that is clearer than the statute itself. Given the change to the standard within the statute, the regulation must also be changed to comport with its statutory basis.

NECESSITY OF THIS AMENDMENT

Given the amendment to the underlying statute, the present language of the regulation is no longer consistent with statutory requirements and must be amended or eliminated. Elimination of the regulation, however, would negate its value in clarifying the statute.

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 and any documents relied upon in making the proposal 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 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 by implementing the underlying statute using language that is clearer than the statute itself, ensuring accurate consumer identification of a licensee soliciting real estate work.

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