

# Navigating Your Risks: A Three-Part Interview with Veronica Kilpatrick from the Department of Real Estate

## Part One: Real Estate Advertising

Understanding and following the rules regarding the display of license numbers, the use of fictitious business names, and the acceptable form for team names will help you avoid both minor misunderstandings and more costly violations.

By **Tiffany Gardner Wood**  
RISK MANAGER

During the Orange County REALTORS® REXPO on September 9, I had an opportunity to interview **Veronica Kilpatrick**, who was representing the Department of Real Estate (DRE) at that event. Veronica received her Bachelor of Arts from the University of California, Los Angeles, and her Master of Public Administration from the University of Southern California. She has been with the DRE since 2007 and currently serves as the District Manager and Southern California Government, Public Interest, and Law Enforcement Liaison. In this capacity, she is responsible for supporting the Department's mission to safeguard and promote the public interests in real estate matters through licensure,



**Veronica Kilpatrick** (left) and **Tiffany Gardner Wood** at Orange County REALTORS® REXPO Event.

regulation, education, and enforcement in this geographic jurisdiction. During the interview, Veronica answered questions about real estate advertising, Department audits, and discipline removal. This article, the first in a three-part series, deals exclusively with real estate advertising.

### What are the most common violations you see in real estate advertising?

Salespersons failing to display their license number and/or their responsible broker's identity (Business and Professions Code Section 10140.6, Regulation 2773) and brokers failing to review or approve advertising, websites, and social media.

### What information is a real estate licensee required to include on an open house or for sale sign?

The licensee's name and eight-digit license number as well as the responsible broker's name, or both the responsible broker's name and license number, must be displayed on open house and for sale signs.

- The broker's name must be as prominent as the salesperson's name, and the font of the license number can be no smaller than the smallest font on the sign.
- This law does not apply to for sale, rent, lease, open house, and directional signs that display only the responsible broker's identity and do not identify or reference an associate broker or a licensee. (**Note:** This exception does not apply if a team name or salesperson-owned DBA is being used or if the advertising and solicitation materials are related to government lands.)

### What marketing materials are considered to be a first point of contact?

First-point-of-contact materials include business cards, stationery, flyers, television ads, print ads (newspapers, periodicals, etc.), electronic media ads (internet, radio, cinema, video, audio, etc.), brochures, leaflets, mail (both regular and email), and for sale, rent, lease, open house, and directional signs.

### What requirements apply to these materials?

The licensee's name and eight-digit license number, as well as the responsible broker's name, must appear on these materials. Including the broker's license number is optional. The font of the license number can be no smaller than the smallest font on the sign.

### How might a licensee comply with the first-point-of-contact requirements on social media sites?

Licensees can comply with this requirement by including their license number and responsible broker's name or both the responsible broker's name and license number on these materials.

### What is a fictitious business name?

A fictitious business name is a name that a person (or entity) uses to conduct business which is different from his, her, or its legal or licensed name.

### With what government departments or agencies must a fictitious business name be registered?

A real estate broker must register the Fictitious Business Name Statement with the County Clerk in the county in which the broker's main office is located and then license the fictitious business name with the Department of Real Estate as a DBA (Doing Business As). The DBA must appear on the broker's license and be registered with the Department of Real Estate before its use.

### Are some forms of fictitious business name prohibited?

Yes, a fictitious business name containing the term "escrow" or any term which implies that escrow services are provided is prohibited. In these instances, the fictitious business name will not be issued or renewed by the

Department of Real Estate unless the fictitious business name itself includes the words “a non-independent broker escrow.”

### **Under what circumstances might the DRE fail to approve a fictitious business name and/or prevent a real estate licensee from using it?**

Regulation 2731(c) indicates that the Commissioner may refuse to issue a license bearing a fictitious business name to a broker if the fictitious name (1) is misleading or would constitute false advertising, (2) implies a partnership or corporation when a partnership or corporation does not exist in fact, (3) includes the name of a real estate salesperson, (4) constitutes a violation of the provisions of Sections 17910, 17910.5, 17913 or 17917 of the Business and Professions Code, or (5) is the name formerly used by a licensee whose license has since been revoked.

In addition, a license may not be issued or renewed with a fictitious business name containing the term “escrow,” or any name which implies that escrow services are provided, unless the fictitious business name includes the words “a non-independent broker escrow” following the name. Licensees who have been or are issued a license with a fictitious business name with the term “escrow,” or any term which implies that escrow services are provided, must include the words “a non-independent broker escrow” in any advertising, signs, or electronic promotional material.

### **What is the difference between a fictitious business name and a team name?**

A fictitious business name is a name that a person (or entity) uses to conduct business that is something other than his, her, or its legal name. It must be registered in the county of the broker’s main office and appear on the broker’s license prior to use.

A team name is a statutorily created term that is described in Business and Professions Code Section 10159.7. It means a professional identity or brand name used by a salesperson and one or more other real estate licensees for the provision of real estate services. A team name is not required to appear on the responsible broker’s license.

### **When using a team name in advertising, what must a real estate licensee include?**

A team name must include the surname of at least one member of the team, in conjunction with the word “group,” “team,” or “associates.”

### **What additional requirements apply to the team name?**

In addition to the above, advertising and solicitation materials must include both the team name and the surname and license number of at least one of the licensed members of the team, and the responsible broker’s name must also be displayed in a conspicuous and prominent manner.

### **What form must a team name take?**

A team name must include the surname of at least one member of the team, in conjunction with the word “group,” “team,” or “associates.” Examples include The Smith Group, The Brown Team, or The Jones Associates.

Carefully reading and following the rules that govern first-point-of contact advertising, the display of license numbers, the use of fictitious business names, and the acceptable form for team names will help you avoid both minor misunderstandings and more costly violations. Watch for the next article in this three-part series, which will tell you what to expect during a DRE audit and how to be better prepared for one. ■

# Navigating Your Risks:

## A Three-Part Interview with Veronica Kilpatrick from the Department of Real Estate

### Part Two: Audits

If you are a broker, preparation for an audit by the Department of Real Estate (DRE) is one way to ensure that your policies and practices are in compliance with Real Estate Law and with the Commissioner's Regulations so that following them will enable you to avoid the most common violations.

By **Tiffany Gardner Wood**  
RISK MANAGER

**D**uring the Orange County REALTORS® REspo in September 2019, I had an opportunity to interview **Veronica Kilpatrick**, who was representing the Department of Real Estate (DRE) at that event. Veronica received her Bachelor of Arts from the University of California, Los Angeles, and her Master of Public Administration from the University of Southern California. She has been with the DRE since 2007 and currently serves as the District Manager and Southern California Government, Public Interest, and Law Enforcement Liaison. In this capacity, she is responsible for supporting the Department's mission to safeguard and promote the public interests in real estate matters through licensure, regulation, education, and enforcement in this geographic jurisdiction. Veronica answered questions about real estate advertising, Department audits, and discipline removal. This article, the second in a three-part series, deals exclusively with audits conducted by the Department of Real Estate.

#### **Who can be audited by the Department of Real Estate?**

Real estate brokers and real estate corporations.

#### **What is the purpose of an audit?**

The purpose of an audit is to protect the public by determining if a broker is in compliance with the provisions of the Real Estate Law and the Commissioner's Regulations, especially those related to the handling of trust funds.

#### **What are the types of audits?**

The first type is an investigative audit, which is an audit related to a complaint or is a follow-up to some previous disciplinary action or report. The second type of audit is a proactive routine audit. The subjects of these audits are often brokers who handle a large volume of trust funds.

## What happens during a typical audit?

When contacted by a DRE auditor, a broker will be asked, at a minimum, to provide for review the following books and records relating to a specific period of time:

- Bank statements for all trust fund accounts used in connection with real estate or mortgage brokerage activities,
- Trust fund records of receipts and disbursements and separate records for each beneficiary,
- Cancelled checks and deposit slips for these trust accounts,
- Broker-salesperson relationship agreements, and
- Transaction files.

Failing to provide the requested information may be grounds for disciplinary action.

Depending on the size of the company and the number of accounts and transaction files to be reviewed, an examination may last anywhere from a day or two to several weeks. At the conclusion of the audit, the auditor will conduct an exit interview with the broker to discuss the findings. The violations discovered (if any) will dictate what happens next.

If technical violations are discovered, the broker may be told to correct them. Minor violations may result in a corrective action letter that will outline specific violations and instruct the broker to correct them.

If the violations are serious, a referral to the DRE Enforcement Section will be made to initiate formal action. The formal action may consist of a Desist and Refrain Order, which requires the broker to cease a practice that is contrary to the Real Estate Law, or an accusation against the licensee, which may lead to revocation of the license.

## What are the most common violations you have noticed during audits?

The most common violations found during audits involve the following Business and Professions Code (B&P) sections and DRE Regulations:

### B&P Code Section 10140.6/Regulation 2773

– **Disclosure of Licensed Status and License Number** and, if a mortgage loan originator, the unique identification number assigned to the licensee by the Nationwide Mortgage Licensing System and Registry on all solicitation materials intended to be the first point of contact with consumers on real property purchases.

**B&P Code Section 10159.5/Regulation 2731 – Use of False or Fictitious Name.** The exception to this is a “team name” as defined in B&P 10159.7(a)(3).

**Regulation 2831 – Trust Fund Records to Be Maintained,** which includes the date received, name of payee/payor, amount received, date of deposit, amount paid out, check number and date, and daily running balance.

**Regulation 2831.1 – Separate Record for Each Beneficiary or Transaction**

**Regulation 2831.2 – Trust Account Reconciliation.** Accounting records must be reconciled at least once a month except when the account did not have any activity.

**Regulation 2832.1 – Trust Fund Handling for Multiple Beneficiaries (Trust Fund Shortages).**

The balance of the bank account is less than the total trust fund liability of the broker to all owners of the funds; and there was no written authorization from all the owners of the trust funds prior to the disbursement that caused the shortfall.

**B&P Code Section 10145/Regulation 2832 – Trust Fund Handling.** Within three days of receipt of trust funds, the broker must deposit the trust funds into a trust account held in the broker’s name or broker’s dba as trustee. If the broker is performing transactions under the exemptions from the Escrow Law (Section 17000 et seq. of the Financial Code) and performing acts for which a real estate license is required, then the trust funds must be deposited not later than one business day after receipt into the broker’s trust account.



**B&P Code Section 10145/Regulation**

**2834 – Trust Account Withdrawals** can be made from the trust account of the broker only by the signature of the broker or officer of the corporation, or one or more of the following:

- a real estate salesperson licensed to the broker,
- a broker associate, or
- an unlicensed employee of the broker, if the broker has a fidelity bond or insurance coverage equal to at least the maximum amount of the trust funds to which the unlicensed employee has access at any time.

**B&P Code Section 10145/10176(e)/**

**Regulation 2835 – Commingling.** A broker shall not commingle his or her own money or property with that of others he or she receives or holds.

**B&P Code Section 10159.2/Regulation 2725 –**

**Broker Supervision.** A broker must exercise reasonable supervision over the activities of salespersons and broker associates.

For additional information about these violations, refer to the handout titled “Ten Most Common Violations in DRE Audits,” which can be found on the Department of Real Estate website [www.dre.ca.gov](http://www.dre.ca.gov).

**The DRE says that a broker must provide “reasonable supervision” for licensees. In this context, what does the term “reasonable supervision” mean?**

A broker must exercise reasonable supervision over the activities of salespersons and broker associates. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures, and systems to review, oversee, inspect, and manage some or all of the following activities:

- transactions requiring a real estate license;
- documents that may have a material effect

Self-auditing and proactively instituting best practices and policies to manage compliance could help you avoid these most common violations. Watch for the next article in this three-part series, which focuses on the public posting of disciplinary actions and the process for having them removed. ■

on the rights or obligations of a party to the transaction;

- filing, storage, and maintenance of such documents;
- the handling of trust funds;
- advertising of any service for which a license is required;
- familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination; and
- regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures, and systems must take into consideration the number of salespersons and broker associates retained and the number and location of branch offices.

A broker must establish a system for monitoring compliance with these policies, rules, procedures, and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons and broker associates licensed to the broker.

A broker may appoint a licensee as a manager of a branch office or division of the broker’s real estate business and delegate to that manager responsibility to oversee and supervise operations and licensed activities. An appointment of a branch or division manager must include a written contract whereby the manager accepts the delegated responsibilities.

**What is the best way for a broker to prepare for an audit by the DRE?**

A broker can prepare for a DRE audit by using the Broker Compliance Evaluation Manual and Broker Self Evaluation (Form RE 540), both of which are posted on the DRE website. The DRE also has a Trust Account Reconciliation (Regulation 2831.2) PowerPoint presentation that is very helpful.

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## **Part Three:** Removing Disciplinary Action from the Public Record

The DRE posts online violations of real estate law, some criminal convictions, and family support obligations. As of March 2019, it is possible for brokers and agents to petition to have certain disciplinary actions removed from the public record.

● **By Tiffany Gardner Wood**  
Risk Manager

During the Orange County REALTORS® RE expo in September 2019, I had an opportunity to interview **Veronica Kilpatrick**, who was representing the Department of Real Estate (DRE) at that event. Veronica received her Bachelor of Arts from the University of California, Los Angeles, and her Master of Public Administration from the University of Southern California. She has been with the DRE since 2007 and currently serves as the District Manager and Southern California Government, Public Interest, and Law Enforcement Liaison. In this capacity, she is responsible for supporting the Department's mission to safeguard and promote the public interests in real estate matters through licensure, regulation, education, and enforcement in this geographic jurisdiction. Veronica answered questions about real estate advertising, Department audits, and discipline removal. This article, the third and final one in a three-part series, deals exclusively with removing disciplinary action from the public record.

## What sorts of violations might cause a disciplinary action to be posted on a real estate license?

- Violations of Real Estate Law which result in a suspension, restriction, revocation, public reproof, Desist and Refrain Order, or Bar Orders.
- Some criminal convictions which result in restriction, revocation, or Bar Orders.
- Administrative Actions or Investigations that result in the voluntary surrender of a license.
- Licenses suspended under the provisions of Section 17520 of the Family Code (Support Obligations) and/or the provisions of Section 11350.6 of the Welfare and Institutions Code (Support Obligations).

## Once a disciplinary action has been posted, is it possible to have it removed from the public record?

Prior to January 1, 2018, the DRE lacked the statutory authority to remove license discipline history from its website. With the enactment of AB 2330 (Ridley-Thomas), the Legislature granted the DRE effective March 7, 2019, the authority to remove license history information from its website. Pursuant to Regulation 2915 of Title 10 Chapter 6 of the California Code of Regulations and its accompanying regulations, the DRE may remove license history information from its website if (a) the Commissioner finds that the licensee no longer represents a credible risk to California real estate consumers; (b) the licensee's license history is more than ten years old; (c) the licensee's license is in good standing; and (d) the licensee tenders the requisite petition fee.

## What must a real estate licensee do to have a posted disciplinary action removed?

The licensee must have a license in good standing; more than ten years must have passed since the licensee's disciplinary history was posted on the DRE's website; and the licensee must tender the requisite petition fee of \$1,275 and submit a petition to remove discipline history, including submitting a set of classifiable fingerprints using a Live Scan Service Request form (RE 237). The reference to "good standing" means that the licensee must have a plenary or unrestricted license. If the licensee has a revoked or restricted license and wants to remove his or her disciplinary history from the DRE's website, he or she will need to petition to reinstate the revoked license or remove the restriction on the restricted license. Licensees seeking to obtain a plenary license and remove discipline history from the DRE's website may submit both petitions concurrently and need tender only a single petition fee of \$1,275 for both petitions.



### Who is eligible to request removal?

Licensees who are ten years from the effective date of their discipline can apply by submitting the Petition Application, the fee, and their fingerprints. For a complete description of the review criteria and processing requirements, see Business and Professions Code Section 10083.2 and Regulation 2915 along with the relevant rehabilitation criteria described in Regulations 2911 and 2912.

### What is the process for requesting and obtaining removal?

To assist licensees, the DRE has prepared a Petition Application form (RE 506E) that contains all the required information. Licensees are encouraged to use this form and to submit it to the Department with the fee and a Live Scan Service Request form (RE 237).

### What criteria for rehabilitation apply where a petitioner seeks removal of discipline information stemming from a Statement of Issues or where the petitioner's license discipline stems from an original application for a license?

In these instances, the criteria for rehabilitation set forth in Section 2911 of these Regulations will apply. The criteria for rehabilitation set forth in Section 2912 of these Regulations will apply where a petitioner seeks removal of discipline information from the Department's website stemming from an Accusation, surrender of a license, or other discipline actions ordered by the Commissioner except for a Statement of Issues.

### What additional items must a petitioner submit to the Department?

**(1)** A list of petitioner's criminal convictions since the date of the most recent Department-imposed license discipline for which the petitioner seeks removal from the website, including information that identifies the date of the court action and the court and jurisdiction where the conviction occurred.

**(A)** "Conviction" includes all state, commonwealth, and possession, federal, military, and foreign convictions. "Conviction" includes a verdict of guilty by judge or jury or a plea of guilty, of nolo contendere, or of no contest. A petitioner must disclose all convictions whether the plea or verdict was set aside, the conviction against the petitioner was dismissed or expunged, or the petitioner was pardoned.

**(B)** For the purposes of this petition process, "conviction" does not include convictions for infractions or convictions under Section 11357(b), (c), (d), or (e) of the Health and Safety Code, or under Section 11360(b) of the Health and Safety Code, if more than two years have passed since the date of the conviction.

**(2)** A list of all petitioner's professional license discipline since the date that the Department imposed the most recent license discipline action for which the petitioner seeks removal from the website. Disclosed license discipline must include surrender of a license whether or not an investigation was pending, whether in California or elsewhere. Each item on this list must include the date of discipline, the license type, and the jurisdiction in which the discipline was ordered.

**(3)** A list of all criminal, civil, or license discipline actions currently pending against petitioner, including the jurisdiction in which the action is pending.

**(4)** A signed attestation by the petitioner that petitioner certifies (or declares) under penalty of perjury under the laws of the State of California that the information provided as part of the petition is true and correct.

## What must the petitioner submit before the Department considers the petition complete?

Before the Department considers the petition complete, the petitioner must submit the following items:

**(1)** A fee in the amount of \$1,275.00 with each petition. This petition fee is deemed earned by the Department upon receipt and is not refundable. A petitioner may petition concurrently, when eligible, for reinstatement of a license, or for removal of restrictions from a license, without additional charge. A petitioner may request removal of more than one eligible discipline action from the website with a single petition, without additional charge.

**(2)** A petitioner, or a broker-officer of a corporate petitioner, who resides in California must submit a completed copy of a Live Scan Service Request, Form RE 237 (Rev. 7/18), hereby incorporated by reference, completed not earlier than thirty days before the date of submission of the petition to the Department.

**(3)** Evidence of rehabilitation to the Commissioner indicating that the posting of discipline is no longer needed to prevent a credible risk to members of the public. A petitioner may provide with the petition copies of any documentary evidence that supports petitioner's claims regarding rehabilitation, including, but not limited to, documentation evidencing expungement of criminal convictions and documentation of completed restitution, if applicable.

## In evaluating a petition, what does the Commissioner take into consideration other than violations that present a credible risk to the members of the public since the posting of discipline requested for removal?

When assessing the credible risk to members of the public utilizing licensed activity by the petitioner, the Commissioner takes into consideration any evidence gathered from an investigation that reflects on petitioner's propensity to honestly and to fairly engage in activities requiring a real estate license.

For purposes of this subsection, a "credible risk" may exist if any of the following circumstances apply:

- Petitioner is currently registered pursuant to the provisions of Section 290 of the Penal Code.
- Petitioner is currently on probation or parole.
- Petitioner's license is currently subject to restrictions, and a concurrent petition to remove those restrictions is not granted.
- There is any professional license discipline on petitioner's Department record that is based on an offense that resulted in harm to a client or other consumer in a real estate transaction.
- Petitioner does not make himself or herself reasonably available for interview by the Department investigator in the course of the petition investigation.
- Petitioner has not reimbursed the Department for payments made from the Consumer Recovery Account associated with a claim filed wherein the petitioner was the judgment debtor.

## What happens if the Commissioner grants the petition for removal of discipline?

If the Commissioner grants the petition, the Commissioner will order removal of the eligible discipline item or items from the licensee's entry in the Public License Information feature on the website.

## What happens if the Commissioner denies the petition for removal of discipline?

If the Commissioner denies the petition for removal of discipline from the Public License Information website feature, the entry on the website remains unchanged and the petitioner may not submit a new petition for its removal for a minimum of one year from the effective date of the denial.

## If the licensee submits a petition and the petition is denied, is the petition fee refundable?

No, the petition fee is not refundable. This fee is deemed earned by the Department upon receipt and not refundable or transferable and does not guarantee approval of petition.

This article is the third in a three-part series based on an interview with **Veronica Kilpatrick**. Part one, titled "Real Estate Advertising," appeared in the November/December 2019 issue of *OC REALTOR*® on pages 42–45. Part two, titled "Audits," appeared in the January/February 2020 issue on pages on pages 36–39.