

*Alert to Real Estate Licensees and Others Who Solicit, Offer, and Manage “Short-Term” Residential Rentals as Agents for Another or Third Parties:*

The Importance of Knowing -- and the Pitfalls of Failing to Strictly Follow -- the Laws and Rules Pertaining to the “Transient Occupancies” Exemption to the Real Estate Licensing Law

By Wayne Bell, California Real Estate Commissioner

This Alert has been written because the California Bureau of Real Estate (“CalBRE”) has been informed and/or discovered that there are unlicensed persons who are performing real estate activities in the nature of property management services under the false façade of the “short-term” residential rental exemption to the real estate licensing law.

The California Real Estate Law provides, in pertinent part (at section 10131 of the California Business and Professions Code), that a "real estate broker" license is required for "a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

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(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants,... or collects rents from real property, or improvements thereon,..."

The activities listed above are generally thought of as the business and practice of property management. However, there is no “property manager” or “property management” license in the State of California. Therefore, it is the activities of the property manager which either compel the need for a real estate license or which exempt the manager of such properties from such a need.

So unless there is an applicable exemption (to be discussed below), any person who manages real property in California (whether private homes, a residential apartment complex, or any other type of real property) and does any one or more of those acts, functions and/or activities identified in section 10131 (b) (leasing, renting, offers places for rent, collects payments, negotiates regarding leases, and so forth), on behalf of another, such as an owner or other third party, for compensation, or with the expectation of compensation, must have a California real estate broker license

To be clear, a real estate salesperson can perform those acts, but only if the salesperson's work is supervised, overseen and directed by his or her real estate broker of record. That clearly means that a real estate "salesperson" cannot perform those "property management" functions which require a real estate license without the supervision and oversight of a broker, and without working under the license of real estate broker.

That also means that there can be no "independent" real estate salesperson property managers if the services provided include any one or more of those acts and activities identified in section 10131 of the Business and Professions Code (Code).

#### "Transient Occupancies" Exemption to the Real Estate License Requirement -

The Real Estate Law provides and/or allows for some specific and narrow statutory exemptions from the requirement that only a real estate licensee (a real estate broker or a real estate salesperson working under the supervision of a broker) can perform those property management functions listed in the Code. For instance, real property owners do not need a license when managing their own property or properties, since they are not performing acts as an agent on behalf of "another or others" for or in expectation of receiving compensation.

Turning now to the statutory licensing exemption for "transient occupancies", *the Real Estate Law* (in section 10131.01 (a) of the Code) *specifically makes subdivision (b) of section 10131 of the Code* (quoted in part earlier in this alert) *not applicable to "any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies [defined in the Civil Code, but requiring the stay/rental to not exceed 30 days]...in a dwelling unit in a common interest development [defined in the Civil Code], in a dwelling unit in an apartment building or complex, or in a single-family home"*.

Three points need to be made here:

First, while the Code refers to "transient occupancies", the language that is most often used with reference to such occupancies refers to "short term rentals" and "vacation rentals". As mentioned above, the maximum time period of such rentals cannot exceed 30 days.

Second, the exemption refers to those who handle transient occupancies as agents on behalf of “another or others”. It does not refer to what is commonly described as VRBOs or vacation rentals by owner (s).

Third, many cities impose a transient occupancy tax for a person staying 30 days or less in hotels, motels, and similar lodgings, including mobile homes. The tax must be collected and properly accounted for. Issues involving the failure to pay transient occupancy taxes are handled by the relevant localities, and those persons who have the responsibility therefor who fail to comply with that responsibility are often prosecuted.

It is important to note that the statutory exemption identified above is narrowly constructed and not applicable to and will be disallowed for a person who either use it or attempts to use it for the purpose of evading or avoiding California’s real estate licensing laws, which include important consumer protections relative to trust fund handling, licensing and quality standards, and competent and trustworthy practices.

CalBRE will carefully investigate claims of exemption to ascertain their applicability, and will consider any knowing or intentional attempt(s) to evade the Real Estate Law as “aggravation” in any action brought by CalBRE.

For instance, the Bureau will investigate cases where an unlicensed person, or a real estate salesperson who is not properly associated with and employed by a licensed broker, has entered into a “short-term rental” agreement with a property owner in order to circumvent the Real Estate Law and to perform licensed “property management” acts without the benefit of a real estate broker license.

An example of this would occur where the rental is really for a period of greater than 30 days ( *i.e.*, not for 30 or fewer days). Rather, it is for a longer period of time, but the paperwork and payments are structured in a way to make it look like a “short-term rental” which meets the exemption.

*CalBRE invites complaints against those who are violating the short-term rental exemption to the Real Estate Law and, in particular, those persons who are unlicensed and who seek to solicit, offer, and manage residential rentals as agents for another or third parties for periods of time greater than 30 days.*

*The evasion and/or circumvention of the licensing laws is cause for administrative discipline by the Real Estate Commissioner/Department. Furthermore, any person who, or entity which, is engaged in the unlicensed and unlawful practice of real estate in California may also be subject to criminal sanctions and punishment, and CalBRE will refer appropriate cases to criminal prosecutors.*

Conclusion -

Property management in California, to the extent it involves any of the real estate licensed activities and functions identified in the Real Estate Law (such as leasing or renting, offering to lease or rent, solicitations of listings of places to rent, solicitations of prospective tenants, collections of rents, and negotiations for leases), and if being performed as an agent of a property owner for or in expectation of compensation, is a regulated activity in this State and requires a California real estate broker license unless a specific and narrow exemption(s) clearly applies. A salesperson working under the supervision and control of a broker of record, as noted above, may engage in such property management activities.

The exemption to the Real Estate Law (and its licensing, trust fund accounting, and other rules) for short-term residential rentals on behalf or another or others for 30 or fewer days will be strictly enforced.

In exercising its licensing, regulatory and disciplinary functions, and in enforcing the Real Estate Law with respect to property management services in the State of California, CalBRE will continue to make protection of the public its highest priority.

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Endnote: This alert includes material and analysis from an article written by Wayne Bell and Summer Bakotich entitled "Real Property Management in California: The Broker Licensure Requirement and a Discussion of Applicable Exemptions", and which appeared in Real Estate Bulletin 6 (Pub. of the California Department of Real Estate, Winter 2012).