



Real Estate Bulletin

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS • BUREAU OF REAL ESTATE

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Wayne S. Bell
Commissioner

Commissioner's Message

A Couple of Thoughts Regarding Regulatory Oversight; Real Estate Licensure in California Hits the "Century" Mark; Interesting Facts About the Earliest Real Estate Commissioners; and Some Suggestions on "Repetition in Threes" for Practitioners

It has been and continues to be an honor to serve as the state's Real Estate Commissioner and the chief officer of the California Bureau of Real Estate (CalBRE). The employees at CalBRE, the work that they do, the mission and vision they and we collectively have for public service and regulatory oversight, and the desire to serve, all combine to make CalBRE a superb consumer services and protection agency. And the people in the real estate and building industries with whom we regularly interact make our service especially rewarding. As regulators, we want to – in addition to providing the public protection that is at the core of our laws -- assist, encourage, and provide whatever support services we can to the earnest, law-abiding, ethical, capable, and knowledgeable licensees (and the other persons we oversee who share those same attributes), and to take appropriate action against those who are transgressors. It is my view that CalBRE must enforce the law to the fullest extent for the benefit of the public, and also for the benefit of those who are licensed and regulated by CalBRE.

On the horizon is a special CalBRE working group I am contemplating for our Enforcement Programs (which consist of our Legal, Enforcement and Audit sections). The working group will have recurring meetings and discuss and examine (i) the effectiveness of our enforcement efforts, (ii) our proactive and focused field work, (iii) public engagement and outreach work, (iv) best investigative and evidence-gathering practices, and (v) the types and the scope of real estate and mortgage fraud uncovered during investigations, disclosed through reports, or otherwise made known to CalBRE.

As I mentioned in the last *Bulletin*, real estate licensure commenced in California in 1917. It was the first such law of substance in the United States (or "of any real account" to quote Judson Bradway of Michigan [he was involved in crafting Michigan's real estate license law] from his commentary on page 6 of the September 1919 edition of the *National Real Estate Journal*). In 1917 (one century ago amazingly), what was known as the "State Real Estate Commissioner Act" went into effect on July 31. The legislation which was the foundation for that Act was promoted and sponsored by predecessors of the California Association of Realtors, who believed that licensure, real estate education, and the reasonable regulation of those persons engaged in the business of real estate would benefit consumers and help promote and maintain higher ethical and professional standards. In an article in the *San Bernardino County Sun*, dated July 7, 1917, under the headline "Now They Are Realtors," it



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COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 1)

reads: “New legislation affecting the business of buying and selling real estate brings a new name with it, to-wit: realtors, as descriptive of the people engaged in the business. Likewise, it will possibly eliminate that class of dealers who have been characterized as curb-stone brokers...” And in a *Los Angeles Times* piece dated June 17, 1917, and entitled “New Law Sounds the Knell of the Realty Shark Here,” the secondary headline says “Crooks Must Go, Says Head of the Local Board.”

Before turning to the substance of my Message, I wanted to share with you a few captivating tidbits about the earliest (pre-Great Depression) Real Estate Commissioners, care of some excellent research done by Shane McLatchey, my colleague at CalBRE, in his off duty time. If you have a more in depth interest in our early Commissioners, you can find the biographical information uncovered and collected by Shane in the history of CalBRE on our website.

Freeman H. Bloodgood was the first Commissioner. He was born on July 17, 1867, in Cedar Rapids, Iowa, and studied at Upper Iowa University and Harvard before pursuing a law degree at the University of Southern California College of Law. He was admitted to the Bar in January 1909, and practiced law until his election to the California State Assembly in 1912. In 1913, Mr. Bloodgood was selected by Governor Hiram Johnson as a member of the State Board of Control. Thereafter, Governor William Stephens officially appointed Bloodgood as Real Estate Commissioner on or about July 14, 1917. In an announcement of the appointment, Governor Stephens said: “I have selected Mr. Bloodgood for the reason that he is singularly fitted to administer this new act,” and added that Bloodgood had a “breadth of experience and understanding of public

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COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 2)

service” which would “equip him most favorably for the post he will assume...” In late July or early August, 1917, Commissioner Bloodgood opened an office in the State Capitol building. At some point after assuming his new position, Mr. Bloodgood stated, “The sentiment among the people generally is practically unanimous in favor of this new license law and it is safe to say that all of the reliable real estate dealers and salesmen in the State heartily endorse the measure. The assurance to the people throughout the United States that, upon coming to California, they will receive a square deal in relation to real estate transactions, will doubtless be received with favorable acclaim.”

The second Commissioner was Ray L. Riley, who served from 1919 until July 1921, when he was appointed State Controller (where he served following successive elections until 1936/1937). After his service as State Controller, Mr. Riley was appointed to the Railroad Commission, on which he served until 1944. He also ran unsuccessfully for the United States Senate. In an official biography, it notes that Riley was co-author of the Riley-Stewart Amendment, which changed the concept of taxation in California. Mr. Riley was born in Vicksburg, Michigan, on July 20, 1874, and came to California in 1907, where he first engaged in the pharmaceutical business. Fascinatingly, Riley’s father served in the 20th Michigan Infantry for the Union Army in the Civil War, and his paternal 2nd great-grandfather served in the Revolutionary War.

The third Commissioner was Edwin T. Keiser, who served in that position from 1921 until 1925. He was born on June 29, 1875, in Woodford County, Illinois, graduated from Mt. Morris College, and came to California in 1898, locating in La Verne. He later moved to Pomona, where he was engaged in the fruit business. In a history of Pomona Valley, California, it states that Mr. Keiser represented the Citrus Union and the Fay Fruit Company, and took a position as a field agent for the California Fruit Growers Association. He also received an appointment as sales tax administrator for Los Angeles County, and was a past president of the Pomona Valley Real Estate Board, as well as of the Associated Realty Boards of Los Angeles County.

John R. Gabbert was the fourth Commissioner. He was born in Carroll, Iowa, on June 5, 1881, and was brought to Southern California when he was two years of age. His 2nd great-grandfather fought in the Revolutionary War and was at the surrender of Cornwallis. He attended the University of California and graduated from their College of Commerce in 1907. While at Cal, he was editor of the *Daily Californian*. After leaving the university, Mr. Gabbert bought the *Oxnard Courier*. He sold the *Courier* in 1912, and moved to Riverside, where he acquired an interest (and later a full interest with his father) in the *Riverside Enterprise*. There he continued as the editor and publisher of the *Enterprise*. Gabbert was involved with both politics and public affairs, and served as president of the Riverside Rotary Club and the Chamber of Commerce, as well as a member of the State Board of Equalization. He was Real Estate Commissioner from 1925 to 1927.

The fifth, and last Commissioner I will mention, was Stephen R. Barnson, who was born in Iceland on October 7, 1879. His original last name was “Bjarnson.” He came to Springville, Utah, with his parents and enlisted in the Utah Light Artillery in 1898. He saw active duty in the Spanish-American War and the Philippine-American War. He was honorably discharged on August 16, 1899, at the Presidio in San Francisco. He served two terms as president of the San Diego Realty Board from 1923 to 1924, and was twice the vice-president of the California Real Estate Association (a predecessor of the California Association of Realtors). He was appointed Commissioner by Governor Clement Young in 1927 and resigned his post in 1931.

Shifting now to a discussion about “repetition in threes,” it has been said by many writers and thinkers that things, concepts, and ideas which are presented in “threes” are more easily remembered. Just “Google” the terms “Things in Threes” or the “Rule of Three” and see all of the information that is presented.

That is no doubt why real estate licensees often use the advice and caution of “disclose, disclose, disclose,”

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COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 3)

and tell clients the importance of the rule of “location, location, location.” In the area of home sales and the need for greater production, I would offer the critical “threes” of “supply, supply, supply.” I would also propose that the following “trio” repetitions would be good to always remember in dealing with clients:

“Add value, add value, add value.” (This is a trio I repeat and use, and try to achieve, as Commissioner.)

“Follow the golden rule, follow the golden rule, follow the golden rule.” (The “golden rule” being that one should treat people the way that he/she would want to be treated.)

“Put the client’s interests first, put the client’s interest first, put the client’s interest first.” (This is the heart of fiduciary duty.)

“Comply with the law and the rules of ethics, comply with the law and the rules of ethics, comply with the law and the rules of ethics.”

“Professionalism, professionalism, professionalism.”

(The point in the last two “threes” is that ethics, legal compliance, and professionalism are a state of mind, and a method of practice. They are not things that can simply be imparted through a course or seminar.)

In ending, I want to express my appreciation for the opportunity to be the Real Estate Commissioner, and to thank you for your continuing support of the efforts of CalBRE to enhance and improve regulatory oversight in California, and to continue to improve. Also, thanks for reading this Message. Those of us at CalBRE hope you enjoy and find value in the *Real Estate Bulletin*.

Missing Our E-mails?

If you are not receiving e mails from the California Bureau of Real Estate (Bureau), you may want to check your e mail account settings:

- **Spam or junk folder:** Check your spam or junk folder to see if the Bureau’s e mail was incorrectly marked as spam. E mails from the Bureau will be sent from either of these e mail addresses: **webmaster@dre.ca.gov** or **dre_no_reply@dre.ca.gov**.
- **Blocked address:** Check to see if our e mail address was added to your blocked e mail list.
- **E mail filters:** Check your filters to see if the e mail could have been moved to another folder.

The Bureau may not have your current e mail in our system. You can check your e mail address using the Bureau’s eLicensing System.

What Documents Are Required During a CalBRE Audit?

The California Bureau of Real Estate's (CalBRE's) Audit section is charged with examining various types of real estate business activities involving real estate brokers and subdividers. These activities include resale, property management, mortgage loan, broker escrow, and subdivisions. The primary focus of a CalBRE audit is to ensure trust funds are handled properly by both licensees and subdividers and in accordance with the real estate and subdivided lands laws.

This article focuses on these activities, as well as their trust fund-handling requirements and the specific documents required during a CalBRE audit. Since the trust fund record-keeping requirements are the same for each of the activities, the following are the trust fund records required in an audit:

Regulation 2831: Record of Trust Funds Received and Paid Out

This regulation requires every broker to keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, will set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

This regulation also requires the maintenance of cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles provided that such journals, records, or systems contain the above elements and those elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Regulation 2831.2.

Regulation 2831.1: Separate Record for Each Beneficiary or Transaction

This regulation requires a broker to keep a separate record for each beneficiary or transaction, accounting for all funds that have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record will include information sufficient to identify the transaction and the parties to the transaction. Each record will set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

This regulation also allows the maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, provided that such ledgers, records, or systems contain the above elements and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Regulation 2831.2.

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WHAT DOCUMENTS ARE REQUIRED DURING A CALBRE AUDIT? (CONTINUED FROM PAGE 5)

Regulation 2831.2: Trust Account Reconciliation

This regulation requires a broker to take the balance of all the separate beneficiary records maintained pursuant to the provisions of Regulation 2831.1 and reconcile them with the record of all trust funds received and disbursed required by Regulation 2831, at least once a month, except in those months when the bank account did not have any activity. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries, or transactions.

In addition to the above trust fund record-keeping requirements, the following additional documents are required:

- Bank statements for all trust fund or operating accounts (Business & Professions [B&P] Code Section 10148)
- Front and back copies of cancelled checks (B&P Code Section 10148)
- Deposit slips (B&P Code Section 10148)
- Cash receipt records (B&P Code Section 10148)
- Cash disbursement records (B&P Code Section 10148)
- General ledgers (B&P Code Section 10148)
- Transaction files (B&P Code Section 10148)
- Salesperson and broker licenses (Regulation 2753)
- Broker-salesperson relationship agreements (Regulation 2726)
- Corporate records (if applicable)
- Advance fee documents (B&P Code Sections 10085 and 10146; Regulation 2972)

Resales

A broker performing resale activities would also be required to provide the following documents:

- Listing agreements (B&P Code Section 10148)
- Purchase agreements and all associated disclosures (B&P Code Section 10148)
- Earnest money deposit records (if handled by agent) (Regulation 2831 (a)(6))
- Pest control documentation (Regulation 2905)

Property Management

A broker performing property management activities would also be required to provide the following documents:

- Lease agreements (B&P Code Section 10148)
- Property management agreements (B&P Code Section 10148)
- Screening fee documents (Civil Code Section 1950.6)
- Maintenance records (B&P Code Section 10148)

Mortgage Lending

A broker performing mortgage lending activities would also be required to provide the following documents:

- Borrower loan files (B&P Code Section 10148)
- Lender files (B&P Code Section 10148)
- Servicing agreements (B&P Code Sections 10233 and 10238 (k))
- Investor questionnaire/suitability statements (B&P Code Section 10232.45)
- Purchaser net worth statements (B&P Code Sections 10232.3 and 10238(f)(1))
- Broker self-dealing statements (B&P Code Section 10231.2)

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WHAT DOCUMENTS ARE REQUIRED DURING A CALBRE AUDIT? (CONTINUED FROM PAGE 6)

- Mortgage loan disclosure statements (B&P Code Section 10240)
- Lender purchaser disclosure statement (B&P Code Section 10232.4)
- Trust fund status reports (B&P Code Section 10232.25)
- Annual trust account review (B&P Code Sections 10232.2(a) and 10238 (o))
- Annual business activity report (B&P Code Sections 10232.2 (c) and 10238 (p))
- Quarterly multilender trust account reports (B&P Code Section 10238 (k)(3))
- Predatory lending documents (Financial Code [FC] 4970)
- High cost loan documents (FC 4995)
- Fair Lending Notice (Health and Safety Code Section 35800)
- Advance fee documents (B&P Code Sections 10085.5 and 10085.6; Regulation 2972)

A broker performing broker escrow activities would also be required to provide the following:

- Escrow files (Regulation 2950 and 2951; FC 17403.4)
- Escrow Activity Report (B&P Code Section 10141.6)

In addition to the above documents, auditors will ask a broker to obtain a copy of the signature cards for all accounts maintaining trust funds.

The above documents should not be considered an all-inclusive list, but rather guidelines as to what is required to be provided during most audits. Prior to getting that call from CalBRE, a broker can perform his or her own self-evaluation to determine if their business is in compliance.

To assist licensees with compliance, CalBRE has three resource guides available on its website (www.calbre.ca.gov/Licensees/BusinessResources.html):

- *Broker Compliance Evaluation Manual*
- *Broker Self-Evaluation*
- *Mortgage Loan Broker Compliance Manual and Checklist*

In addition, the presentation document *Trust Account Reconciliation: The Why, What, and How To* is available on the CalBRE website at www.calbre.ca.gov/files/ppt/TrustAccountReconciliation.ppsx.



Thinking of Becoming a Real Estate Broker?

By Shelly Wilson, Licensing Manager, Exams and Education

If you are considering becoming a real estate broker, here are some helpful tips to guide prospective licensees through the examination application process and submission of qualification documentation to the California Bureau of Real Estate (CalBRE).

As a matter of background, the real estate broker license examination requirements are set by statute in Sections 10150.6 and 10153.2 of the Business and Professions (B&P) Code and consist of a two-tiered prerequisite: education and experience. The Real Estate Law requires broker applicants to successfully complete eight college-level courses and have two years of full-time licensed salesperson experience within the last five years, with a few exemptions that will be identified later in this article.

The Real Estate Law specifies eight college-level courses must be completed, including five required courses and three electives. All courses must be completed through either (1) a college or university accredited by the Western Association of Schools and Colleges or any other regional accrediting agency recognized by the U.S. Department of Education, or (2) a private vocational school whose courses have been approved by the Real Estate Commissioner. Acceptable proof of completed courses includes official transcripts for courses taken through colleges and universities, and course completion certificates for courses taken through private vocational schools. Applicants who provide proof that they are a current member of the State Bar of California are exempt from completing prelicensure education.

The requirement of having licensed experience can be categorized into two types: licensed experience and equivalent experience. When attempting to qualify under licensed experience, one of the biggest misunderstandings among salespersons is that by simply holding a license for two years, they will qualify, when in fact this is not the case. The Real Estate Law specifies that a salesperson must have been actively engaged in real estate activities for two out of the last five years from the date the broker application is submitted. This experience is documented by completing and submitting the

CalBRE **Employment Verification (RE 226)** form, and requires one form for each employing broker. RE 226 is completed and certified under penalty of perjury by the salesperson and employing broker. If the broker is unavailable for signature, then the salesperson must have two individuals in a related professional capacity who are not related to the salesperson by blood or marriage attest to the activities with that specific broker by completing and signing the CalBRE **Employment Certification (RE 228)** form, which requires one form per certifier.

When documenting equivalent experience, it is recommended that the applicant provide CalBRE with as much information as possible to assist with making a sound determination that the prior experience meets the requirements under the law. This is done by using the CalBRE **Equivalent Experience Verification (RE 227)** form, along with submitting supplemental information; e.g., W-2 forms, 1099s, employment contracts, license certifications, etc. The RE 227 must be certified under penalty of perjury by the applicant and two individuals in a related professional capacity not related to the applicant by blood or marriage who can attest to the activities. One form should be used for each employer.

Acceptable equivalent experience may include experience as an escrow or title officer; a loan officer in a capacity directly related to the financing or conveying of real property; a subdivider, contractor, or speculative builder, during which time applicant performed comprehensive duties relating to the purchase, finance, development, and sale or lease of real property; a real property appraiser; and a real estate licensee from another state; and experience meeting certain real estate license exemptions covered in the B&P Codes. Other types of real estate-related experience may be considered, provided that it satisfies the intent of the law. It should be noted, however, that claims for equivalency by unlicensed persons for activities that require a real estate license will not be considered. Furthermore, CalBRE may conduct further inquiries when evaluating claimed experience.

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What You Need to Know When Applying for a Fictitious Business Name With CalBRE

By Jeff Oboyski, Licensing Manager

A lot of work, effort, and time go into choosing, filing, and applying for a fictitious business name before it can be added to your real estate license. To avoid unintended application processing delays, or even the denial of a fictitious business name, make sure you properly follow all the steps necessary before filing your fictitious business name with the county recorder's office and mailing your application to the California Bureau of Real Estate (CalBRE).

Generally, the first step in the process is deciding on the fictitious business name itself. When making this determination, you are going to want to avoid a name that:

- Is misleading or would constitute false advertising
- Implies a partnership or corporation when one does not exist
- Includes the name of a real estate salesperson (or a broker associate—a broker working in the capacity of a salesperson for another broker or corporation)
- Constitutes a violation of the provisions of Business and Professions (B&P) Code Sections 17910, 17910.5, 17913, or 17917, or
- Was formerly used by a licensee whose license has since been revoked (see Commissioner's Regulation 2731). One way to confirm if a fictitious business name was previously used by a revoked licensee is to do a search on CalBRE's Public License Information Web page (www2.dre.ca.gov/PublicASP/pplinfo.asp) by entering the proposed fictitious business name in the field titled "Licensee/Company Name."

If CalBRE determines that the fictitious business name you are proposing violates one or more of the provisions set forth above, your fictitious business name will likely be denied.

After choosing your fictitious business name, the next step is filing the name at the appropriate county recorder's office. Fictitious business name statements

must be filed in the county where the broker's or corporation's main office is located, and must include information that business is being conducted at the broker's or corporation's main office location as it appears on CalBRE records. This, of course, does not preclude a broker or corporation from subsequently filing the fictitious business name statement in other counties from which it will be used.

Also, if a fictitious business name is being added to a broker's license, the fictitious business name statement should reflect that business is being conducted by an "individual," and if it is being added to a corporation's license, that such business is being conducted by a "corporation." Furthermore, the registered owner, as listed on the fictitious business name statement, must identify either the broker or corporation, depending on which type of real estate license the fictitious business name is being added to.

Other things to check before submitting your application for a fictitious business name to CalBRE is making sure your CalBRE application includes original signatures, the first and any subsequent pages of the fictitious business name statement include a "filed" stamp from the appropriate county recorder's office, and the fictitious business name statement is not more than 5 years old.

Fictitious business names may only be added to broker or corporation licenses. In January 2015, Assembly Bill 2018 (Bocanegra) was implemented to allow for salesperson-owned fictitious business names (see B&P Code Section 10159.5). All of the requirements set forth above also apply to salesperson-owned fictitious business names, with a couple of exceptions. When filing a salesperson-owned fictitious business name with the county, the fictitious business name statement must identify the salesperson as the registered owner and that business is being conducted by an individual. This does not preclude, however, the salesperson from also including their employing broker or corporation

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FAQS: Team Names

These frequently asked questions (FAQs) provide up-to-date information following the latest changes to the Real Estate Law concerning “team names.” The California Bureau of Real Estate (Bureau) issued Advisories in 2014 and 2015, and here are details following the signing of Senate Bill 710 into law in August 2016.

Q. What is a team name?

A. 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.

Q. What must a team name include?

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

Q. Am I allowed to use the word “brokerage” in my team name?

A. No. Use of the words “broker,” “real estate brokerage,” “real estate broker,” or any other term that would lead a member of the public to believe the team is offering real estate brokerage services or suggest the existence of a real estate entity independent of the responsible broker is not allowed.

Q. Is a team name considered a fictitious business name?

A. Under the Real Estate Law, the use of team name is not considered a fictitious business name; therefore, no paperwork needs to be submitted to the Bureau to use a team name.

Q. Can I use the words “realty” or “real estate” as part of my team name?

A. Because the law does not prohibit such words, the answer is yes, provided you include the surname of at least one team member and the words “group,” “team,” or “associates.” For example, the “Smith Real Estate Team” would be allowed as an acceptable team name.

Q. I am a salesperson. Do I need to include my license number on my team name advertising?

A. Advertising and solicitation materials must include in a conspicuous and prominent manner the team name and the surname and license number of at **least one member** of the licensed members of the team.

Q. Do I need to include my responsible broker’s license number on my team name advertising?

A. It depends.* Current law requires that you must include your responsible broker’s name in your advertising or you can include both your broker’s name and license identification number. In all instances, the responsible broker’s identity must be displayed as prominently and conspicuously as the team name in all advertising and solicitation materials.

Q. I know I have to display my responsible broker’s identity in my team name advertising prominently and conspicuously. Can you give me an example of what that means?

A. Yes.* As an example, if the font size on your team name advertising is in a 12-point font, then your responsible broker’s name should be in an equal or greater font size.

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*Disclosure requirements for mortgage advertising are extensive, even if a team name is used. For more information, review the Bureau information sheet *License Disclosure Requirements for Mortgage Advertising* available at www.calbre.ca.gov.

THINKING OF BECOMING A REAL ESTATE BROKER? (CONTINUED FROM PAGE 8)

The only exemption to the experience requirement is for applicants who have a degree from a four-year college or university, with a major or minor in real estate. Proof of the degree earned must be provided on official college or university transcripts.

Whether submitting licensed experience or equivalent experience, take care in providing detailed and fully documented information on these forms as this is key to avoiding unnecessary processing delays. Additionally, keep in mind that the burden of proof to provide information sufficient for CalBRE to make a determination that the requirements are met rests with the applicant. Therefore, it is recommended that those unsure whether they qualify should apply for the broker examination (a \$95 fee) versus the combination broker examination and license application (a \$395 fee), as the application and license fees submitted to CalBRE are nonrefundable pursuant to B&P Code Section 10207.

For more information about becoming a real estate license broker, visit CalBRE's website at www.calbre.ca.gov. If you have additional questions about broker requirements, contact CalBRE's Licensing and Examination Unit at (877) 373-4542.

APPLYING FOR A FICTITIOUS BUSINESS NAME WITH CALBRE (CONTINUED FROM PAGE 9)

as a registered owner as well. A salesperson attempting to add a salesperson-owned fictitious business name to either their employing broker's or corporation's license should use the form **Add/Cancel Salesperson Owned Fictitious Business Name (RE 247)**, which must be signed by both the salesperson and employing broker/broker officer. The form can be found on the CalBRE website, www.calbre.ca.gov.

Knowing CalBRE's licensing requirements before applying for a fictitious business name to be added to a license can reduce the likelihood that a deficiency letter will be sent in response to incomplete or incorrect information in the application. Licensees are also encouraged to review the **Fictitious Business Name Information (RE 282)** document, which also can be accessed from CalBRE's website, www.calbre.ca.gov. Furthermore, a "team name," as defined by B&P Code Section 10159.7, is not a fictitious business name required to be filed with CalBRE. When using a "team name," licensees must ensure compliance with the advertising requirements set forth in B&P Code Section 10159.6.

For more information, please call CalBRE's Licensing program at (877) 373-4542.

FAQS: TEAM NAMES (CONTINUED FROM PAGE 10)

Q. What do you mean by the term "responsible broker identity?"

A. Business and Professions Code Section 10159.7 (a)(1) defines the term "responsible broker identity" to mean "the name under which the responsible broker is currently licensed by the Bureau and conducts business in general or is a substantial division of the real estate firm, or both the name and the associated license identification number." This Section excludes from a responsible broker's identity fictitious business names obtained pursuant to paragraph (2) of subdivision (a) of Section 10159.5 or the use of a team name pursuant to Section 10159.6.

Q. I am working as a broker associate for another broker. Can I advertise and operate on behalf of a team name?

A. Yes. If you are a broker working in the capacity of a salesperson for another broker or corporation, you can advertise and operate on behalf of a team name as long as all of the team name requirements have been met.

Q. Can real estate brokers who operate as brokers and not broker associates use a team name?

A. No. Brokers who operate as brokers and not broker associates are precluded from using a team name as defined in Business and Professions Code Section 10159.7(a)(5). Instead, they would be required to file and obtain a fictitious business name pursuant to Business and Professions Code Section 10159.5.



Criteria for Rehabilitation Update

By Stephen M. Lerner, Assistant Commissioner for Legal Affairs, and Daniel E. Kehew, Staff Counsel

The California Bureau of Real Estate (CalBRE) recently revised its regulations pertaining to rehabilitation criteria. Found in Title 10, Chapter 6, of the California Code of Regulations (i.e., Section 2911 for license applicants and Section 2912 for former or existing licensees), the revised regulations improve the criteria used by the Real Estate Commissioner (Commissioner) to evaluate new license applications and petitions for reinstatement of revoked/restricted licenses of individuals with criminal convictions or other wrongdoing. The revised regulations will take effect on July 1, 2017.

The rehabilitation criteria play a key role in CalBRE's efforts to protect California real estate consumers. In evaluating new license applications and petitions for reinstatement of revoked/restricted licenses of individuals with criminal records, the Commissioner uses the rehabilitation criteria in assessing whether the granting or reinstating of a license will pose a risk of harm to the public. The criteria identify factors that serve as strong indicators of a person's capacity to behave well in the future, atone for his or her wrongdoing, and rebuild the trust of his or her community.

A recent court case *Singh v. Davi* (211 Cal. App. 4th 141 [2012]) pointed out the need to improve earlier versions of the rehabilitation criteria to better protect real estate consumers. For years, CalBRE argued that the rehabilitation evidence offered should be proportionate to the seriousness of the crimes or other wrongdoing. In other words, the more serious the wrongdoing, the more substantial the rehabilitation evidence should be. The *Singh* decision found that earlier versions of the rehabilitation criteria did not explicitly require applicants or licensees to offer more substantial rehabilitation evidence when they engaged in more serious conduct. By failing to include such explicit language in earlier versions of the rehabilitation criteria, CalBRE was forced to treat all applicants

or licensees similarly irrespective of differences in the nature and severity of their wrongful conduct. Previously, CalBRE required all applicants or licensees to offer the same degree of rehabilitation evidence even where one person was convicted of a minor crime and another person was convicted of a major crime, such as fraud or forgery. The new rehabilitation criteria corrects this irregularity and will require that applicants or licensees offer rehabilitation evidence proportionate to their wrongful conduct.

Another change to earlier versions of the rehabilitation criteria involves restitution. Too often, applicants and licensees have claimed that they would have returned "ill-gotten gains" to the harmed party, but they could not find that party. The new rehabilitation criteria ensure that applicants and licensees will not retain funds that belong to a harmed party, even where that harmed party cannot be located. Under the new rehabilitation criteria, applicants and licensees will be expected to transfer monies and property belonging to another to the state of California via escheat so that the state may assist in locating the harmed party and returning monies to him or her.

Rehabilitation criteria have also changed in regard to the expungement of criminal convictions. Petitioning the court to expunge a criminal conviction is another indicator that the applicant or licensee has taken steps toward rehabilitation. Earlier versions of the rehabilitation criteria limited the use of expungement as rehabilitation to instances where the conviction resulted from immoral or antisocial acts. The new rehabilitation criteria eliminate that limitation to ensure that all expungements are given proper consideration by the Commissioner in deciding whether to grant or reinstate a real estate license.

The final change to earlier versions of the rehabilitation criteria pertains to license applicants only and involves a statutory update for mortgage loan originators.

(Continued on page 13)

CRITERIA FOR REHABILITATION UPDATE (CONTINUED FROM PAGE 12)

Originally, the federally imposed special licensing requirements for “mortgage loan originator license endorsements” to a real estate license offered no consideration of rehabilitation where certain felonies appeared on an applicant’s record. Under recent legislative enactments by the California Legislature, certain felonies may be considered if the conviction has been expunged or pardoned. The new rehabilitation criteria for applicants reflect this legislative change.

As applicants and licensees attempt to demonstrate their rehabilitation, it is important to remember that the rehabilitation criteria do not function as a “scorecard.” There is no specific number or combination of factors that applicants and licensees need to demonstrate for the Commissioner to grant new license applications and petitions for reinstatement of revoked/restricted licenses. Instead, CalBRE encourages applicants and licensees to

demonstrate rehabilitation by presenting evidence of as many factors as possible. To the extent practicable, CalBRE also encourages applicants and licensees to present evidence of rehabilitation that occurred after their incarceration or probation has concluded. Such evidence may be more probative of rehabilitation because the applicant or licensee is no longer under the scrutiny of correctional authorities where they are expected to behave in exemplary fashion. Lastly, although testimonial evidence is permissible by itself, CalBRE encourages applicants and licensees to corroborate their testimonial evidence, especially self-serving testimonial statements, with documentary or additional testimonial evidence from family members, friends, and community members familiar with the applicant’s or licensee’s earlier problems and subsequent rehabilitation.

For all the latest
real estate information
for consumers,
licensees, examinees,
and developers,
visit the CalBRE website.

www.calbre.ca.gov



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We'd like to hear from you!
E-mail us at Editor@dre.ca.gov.

