

AB 2884 REGULATIONS: RESULTING ADOPTED TEXT

EFFECTIVE APRIL 1, 2022

Article 1. General Provisions

**§ 2705. General Definitions and Short Form References.**

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases and short form references appearing in this Chapter shall have meanings as ascribed herein.

(a) "Advertising." Any written or printed communication, or oral communication made in accordance with a text or outline that has been reduced to written form, which is published for the purpose of inducing persons to purchase or use a product or service.

(b) "Applicant." Any person applying to the Department of Real Estate for a license, permit, public report or other entitlement.

(c) "Department," "DRE," "Bureau" or "CalBRE." The Department of Real Estate of the State of California.

(d) "Code." The Business and Professions Code.

(e) "Commissioner." The Real Estate Commissioner of the State of California.

(f) "Examination." Any examination to qualify for any license issued under authority of the Real Estate Law.

(g) "License." Any license issued under authority of the Real Estate Law.

(h) "Permit." Any authorization or entitlement issued by the commissioner to engage in a transaction or course of conduct for which a permit is required under the Real Estate Law or Subdivided Lands Law.

(i) "Public Report." A report issued by the Commissioner under authority of Section 11018 of the Code.

(j) "Real Estate Law." Part 1 of Division 4 of the Code (Section 10000 *et seq.*).

(k) "Subdivision Interests." Lots, parcels, units, undivided interest shares, time-share estates or time-share uses subject to regulation under the provisions of Chapter 1, Part 2, Division 4 of the Code.

(l) "Subdivision Law" or "Subdivided Lands Law." Chapter 1 of Part 2 of Division 4 of the Code (Section 11000 *et seq.*).

(m) "Common Interests." Property owned or controlled by, and/or services furnished to, owners, lessees or persons having the exclusive right to the use of subdivision interests, by an association comprising the separate owners of said interests in those subdivisions enumerated in Section 11004.5 of the Code.

(n) "Responsible broker." The real estate broker responsible for the exercise of control and supervision of real estate salespersons under Section 10159.2, or a licensee subject to discipline under subdivision (h) of Section 10177 for failure to supervise activity requiring a real estate license. The supervision of a salesperson required under this part or any other law is limited to regulatory compliance and consumer protection.

(o) "Retain" or "retention." The relationship between a responsible broker and a licensee who is either an independent contractor affiliated with, or an employee of, a broker to perform activities that require a license and are performed under a broker's supervision. However, the word "retain" will also have its common meaning when used outside the context of the relationship between a broker and subsidiary licensee, as when referring to retention of records.

Note: Authority cited: Sections 10080 and 11001, Business and Professions Code.  
Reference: Sections 10015.1, 10018.01, 10159.2, 10177, and 11000, Business and Professions Code.

#### Article 4. Brokers

##### **§ 2724. Minimum Requirements for Supervision Under Section 10131.01.**

A broker may delegate the responsibility and authority to supervise and control the activities of nonlicensed persons acting under Section 10131.01:

(a) To a real estate broker acting in the capacity of a salesperson to the responsible broker and who has entered into a written agreement relating thereto with the responsible broker.

(b) To a real estate salesperson licensed to the broker if the salesperson has accumulated at least two years full-time experience as a salesperson licensee during the immediately preceding five-year period and has entered into a written agreement with the broker with respect to the delegation of responsibility.

Note: Authority cited: Sections 10080 and 10131.01, Business and Professions Code.  
Reference: Section 10131.01, Business and Professions Code.

##### **§ 2725. Broker Supervision.**

A responsible broker shall exercise reasonable supervision over the activities of their salespersons or broker associates acting in the capacity of a salesperson. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

(a) Transactions requiring a real estate license.

(b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.

(c) Filing, storage and maintenance of such documents.

(d) The handling of trust funds.

(e) Advertising of any service for which a license is required.

(f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.

(g) Regular and consistent reports of licensed activities of salespersons or broker associates acting in the capacity of a salesperson.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons or broker associates acting in the capacity of a salesperson retained and the number and location of branch offices.

A responsible broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A responsible broker may use the services of associate brokers and salespersons to assist in administering the provisions of this section so long as the responsible broker does not relinquish overall responsibility for supervision of the acts of salespersons or broker associates acting in the capacity of a salesperson retained by the responsible broker.

Note: Authority cited: Sections 10080 and 10170.4, Business and Professions Code. Reference: Section 10177(h), Business and Professions Code.

### **§ 2725.5. Broker Responsibility Regarding Debarred Persons.**

Business and Professions Code Section 10087 authorizes the Commissioner to debar licensed or unlicensed persons from any position of employment with, or management or control of, a real estate business. Such debarred persons are further prohibited by Section 10087 from participating in any business activity of a real estate salesperson or a real estate broker and from engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business.

A responsible broker is responsible for screening the broker's retained staff and employees, both licensed and unlicensed, for compliance with Section 10087. A responsible broker is responsible for screening regular business associates engaging in any real estate-related business activity on the responsible broker's premises, for compliance with Section 10087. Such broker responsibility includes, but is not limited to, quarterly review of the Department's online listing of debarred persons and of the listing of disciplinary actions published in the Department's quarterly bulletin. A responsible broker who becomes aware of violations of Section 10087 is responsible for reporting such violations to the Department.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10087, Business and Professions Code.

### **§ 2729. Record Retention.**

(a) A real estate broker may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, trust records and other documents executed by the broker or obtained by the broker in connection with any transaction for which a real estate broker license is required, provided the following requirements are satisfied:

(1) The electronic image storage shall be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record.

- (2) The stored document or record is made or preserved as part of and in the regular course of business.
  - (3) The original record from which the stored document or record was copied was made or prepared by the broker or the broker's retained staff or employees at or near the time of the act, condition or event reflected in the record.
  - (4) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.
  - (5) The electronic image storage system contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.
  - (6) Records copied and stored under this section shall be retained for three years pursuant to Section 10148 of the Code.
- (b) A broker will maintain at the broker's office a means of viewing copies of documents or records stored pursuant to this section. A broker shall provide, at the broker's expense, a paper copy of any document or record requested by the Department.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10148, Business and Professions Code.

## Article 7. Salespersons

### **§ 2752. Notice of Change of Responsible Broker.**

- (a) Whenever a real estate salesperson or real estate broker is retained by a responsible broker, the responsible broker shall notify the Commissioner of that fact within five days. This notification shall be given on a form prepared by the Department and shall be signed by the responsible broker and the salesperson or broker retained to act as a salesperson. The form of notification shall provide for the furnishing of at least the following information:
- (1) Name and business address of the responsible broker.
  - (2) Mailing address of the salesperson or broker acting as a salesperson, if different from the responsible broker's business address.
  - (3) Date when the salesperson or broker acting as a salesperson entered a written retention agreement with the responsible broker.
  - (4) Certification by the salesperson that he or she has complied with the provisions of Section 10161.8(d) of the Business and Professions Code.
  - (5) When a salesperson is entering a retention agreement, the name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.

(6) When a salesperson is entering a retention agreement, certification by the salesperson that the predecessor responsible broker has notice of the termination of the prior relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor responsible broker to give notice of the termination of the broker/salesperson contract relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the Commissioner not more than ten days following such termination.

(b) A responsible broker that is involved in a contract to retain another broker to act in the capacity of a salesperson must give notice of the termination of that broker/broker contract relationship as required by Section 10161.8(b) of the Business and Professions Code by mailing such notice to the Commissioner not more than ten days following such termination.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10161.8, Business and Professions Code.

### **§ 2753. Retention of Salesperson's License Certificate.**

*[Section 2753 repealed by this adopted proposal.]*

### **§ 2756. Salesperson Performance of Mortgage Loan Origination.**

A salesperson must obtain and be maintaining a mortgage loan originator license endorsement and be retained by a licensed real estate broker who has obtained and is maintaining a mortgage loan originator license endorsement to perform acts for which a mortgage loan originator license endorsement is required.

Note: Authority cited: Sections 10080 and 10166.17, Business and Professions Code. Reference: Sections 10132, 10166.01(b), 10166.02, 10166.07(a), 10166.11(a), 10166.11(b) and 10166.12(a), Business and Professions Code.

## Article 7.5. Mortgage Loan Originator License Endorsement

### **§ 2758.5. Application, Electronic Signature, and License Changes.**

(a) An application to obtain a mortgage loan originator license endorsement or to change licensing information on an existing mortgage loan originator license endorsement must be filed using the procedures and electronic system maintained by the Nationwide Mortgage Licensing System and Registry. An applicant shall sign and attest to the information provided in the application through the electronic signature function of the system.

(b) A real estate licensee who has been issued a license endorsement is required to maintain the same current license information on file with the Department and with the Nationwide Mortgage Licensing System and Registry, including licensee name, licensee main office and mailing address. License information regarding a licensee's fictitious

business names and branch office locations that are used for mortgage loan origination activities must also be provided contemporaneously by the licensee to both the Department and Nationwide Mortgage Licensing System and Registry.

(c) Where a licensed real estate salesperson acts as a mortgage loan originator and holds a mortgage loan originator license endorsement, notice of retention or retention change for that salesperson that is required to be submitted to the Department under the provisions of the Real Estate Law and the Regulations of the Commissioner must also be filed electronically using the Nationwide Mortgage Licensing System and Registry.

(d) Brokers who retain broker associates to conduct mortgage loan originator activities must provide employment sponsorship information to the Nationwide Mortgage Licensing System and Registry within five (5) days of the commencement of employment. Termination of a broker/broker associate retention relationship must be reported to the Nationwide Mortgage Licensing System and Registry within five (5) days of the termination.

Note: Authority cited: Sections 10080 and 10166.17, Business and Professions Code. Reference: Sections 10150(d), 10151(e) and 10161.8, Business and Professions Code.

#### Article 18. Contracts, Writings and Other Documents

##### **§ 2903. Disclosure By Person or Entity Acting in a Transaction as Both Agent in a Sale, Lease, or Exchange and as an Arranger of Financing.**

When a corporate real estate broker, individual real estate broker, or real estate broker or salesperson retained by a corporate or individual real estate broker (hereinafter each of the foregoing licensees will be referred to as "Real Estate Licensee") who is acting as an agent in connection with a sale, lease or exchange of real property undertakes to arrange financing with respect to the transaction, or where a Real Estate Licensee who is arranging financing in connection with a sale, lease or exchange of real property undertakes to act as a real estate agent with respect to the transaction, the Real Estate Licensee shall, within twenty-four (24) hours of the undertaking (through which the Real Estate Licensee will have dual roles as a real estate agent and an arranger of financing), make a written disclosure of those roles to all parties to the sale, lease, or exchange, and any related loan or financing transaction. Where the Real Estate Licensee is a real estate salesperson retained by a corporate or individual real estate broker, the written disclosure must be made by the real estate broker who retains the salesperson. The written disclosure made by the Real Estate Licensee shall include an acknowledgement of receipt, which acknowledgment must be signed by all parties to the transaction.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10177.6, Business and Professions Code.

### **§ 2905. Pest Control Documentation.**

In a real estate transaction subject to the provisions of Section 1099 of the Civil Code, the real estate broker acting as agent for the seller in the transaction shall effect delivery of the inspection report, certification and the notice of work completed, if any, to the buyer in accordance with said section.

If more than one real estate broker licensee is acting as an agent of the seller in the transaction, the broker who has obtained the offer made by the buyer shall effect delivery of the required documents to the buyer unless the seller has given written directions to another real estate broker licensee acting as agent of the seller in the transaction to effect delivery.

If the agent cannot obtain the required documents to deliver to the buyer and does not have written assurance from the buyer that all of said documents have been received, the agent shall advise the buyer in writing of the buyer's rights under Section 1099.

The broker shall maintain a record of the action taken to effect compliance with this regulation in accordance with Section 10148 of the Business and Professions Code.

Note: Authority cited: Sections 10080 and 10131.6, Business and Professions Code.  
Reference: Section 10148, Business and Professions Code.

## Article 21. Advance Fee Agreements

### **§ 2970. Advance Fee Materials.**

(a) A person who proposes to collect an advance fee as defined in Section 10026 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.

(b) Material used in advertising, promoting, soliciting and negotiating an advance fee agreement shall not be approved if it:

(1) Includes any representation which is false, misleading or deceptive.

(2) Does not set forth a specific, complete description of the services to be rendered for the advance fee.

(3) Does not set forth the total amount of the advance fee along with the date on which the fee shall become due and payable.

(4) Contains any provision which purports to relieve or exempt the person collecting the advance fee from an obligation to fulfill verbal commitments and representations made by retained broker associates, retained salespersons, employees and agents of the person contracting for the advance fee.

(5) Contains any provision which purports to give a guarantee that the real property or business opportunity in question will be purchased, leased or exchanged or that a loan secured by real property will be obtained as a result of the services rendered by the person collecting the advance fee.

(6) Does not set forth a definite date for full performance of the services promised under the advance fee agreement.

(c) Not less than 10-point type shall be used in advance fee agreements.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10026 and 10085, Business and Professions Code.

## Article 25. Continuing Education Requirements

### **§ 3007.3. Final Examination Rules.**

A final examination is required for all continuing education courses. Sponsors shall establish the following final examination rules for approved offerings that are to be observed by all offering participants:

(a) The final examination shall provide the means by which a sponsor determines whether a participant has successfully completed the offering. The sponsor shall take steps to protect the integrity of the examination by controlling access to the exam by the participant and to prevent cheating in an examination.

(b) The examination shall not be taken by participants until completion of the instructional portion of the offering to which the examination applies.

(c) Participants taking a correspondence offering or package of offerings shall be limited to completion of final examinations for a maximum of fifteen (15) credit hours during any one 24 hour period. A participant shall not be granted access to additional segments of the final examination for offerings or a package of offerings that exceed fifteen (15) credit hours until the appropriate 24-hour period has lapsed.

(d) The minimum number of questions required on a final examination consisting only of multiple choice, true/false and/or fill-in the blank questions shall be:

- (1) 1 credit hour - 5 questions
- (2) 2 credit hours - 10 questions
- (3) 3-5 credit hours - 15 questions
- (4) 6-8 credit hours - 20 questions
- (5) 9-11 credit hours - 25 questions
- (6) 12-14 credit hours - 30 questions
- (7) 15-18 credit hours - 40 questions
- (8) 19-23 credit hours - 50 questions
- (9) 24-27 credit hours - 60 questions
- (10) 28-31 credit hours - 70 questions
- (11) 32-35 credit hours - 80 questions
- (12) 36-39 credit hours - 90 questions
- (13) 40 credit hours and over - 100 questions

- (e) A final examination consisting only of multiple choice, true/false and/or fill-in the blank questions shall be limited to a maximum of 10% true/false questions.
- (f) Time calculations for a final examination consisting of multiple choice, true/false and/or fill-in the blank questions will be allowed a maximum amount of one (1) minute per each such question.
- (g) Final examinations may be administered as open or closed book but must be consistent for all participants. If open book examinations are administered, the participant may only refer to the instructional material approved for the course.
- (h) Final examinations for a correspondence course may be administered by a proctor designated by the Sponsor who is not related by blood, marriage, domestic partnership, or any other relationship, i.e. future responsible broker, to the participant taking the examination which might reasonably influence them from properly administering the exam. The proctor must certify in writing that they have complied with all examination rules during the administration of the examination.
- (i) Final examinations for a correspondence course may be administered via the internet provided the integrity of the final examination is protected by restricting access to one-time, cannot be printable or downloadable, and must time-out after the maximum amount of time authorized for completion has lapsed.
- (j) Participants taking a correspondence course must have access to the course materials for the approved number of credit hours for that correspondence course prior to completion of the final examination.
- (1) For a correspondence course that uses static print or static print delivered in electronic media, such as CD, DVD, audio/video cassette or internet download when not administered via the internet, a maximum of eight (8) hours reading time per day shall be utilized in calculating the number of days that must lapse from the time the participant has had access to the course material until the examination can be accessed.
- (2) For a correspondence course administered via the internet, a participant must spend the requisite number of hours navigating through the content and completing the incremental assessments prior to being granted access to the final examination.
- (k) An offering may include a provision for one retaking of the final examination by a participant who failed the original examination provided the questions in the re-examination are different questions than those asked in the original final examination. A participant who fails the re-examination has failed the course and receives no credit from that course. Such a participant is not barred from re-enrolling and attempting completion of the same course, but must re-complete the credit hours and pass the final examination to receive credit for the course.
- (l) Questions used in a final examination shall not duplicate any more than 10% of questions used in any other quiz or examination utilized during the presentation of the course.
- (m) Participants shall not take possession of the final examination outside of the controlled environment under which the examination is administered.

(n) A violation of a final examination rule by the sponsor or the sponsor's representative administering the examination shall constitute grounds for denial or withdrawal of approval of the offering.

(o) To pass the examination, a participant must achieve a percentage score of 70 percent or more.

(p) Time involved in the final examination process may be included in establishing "clock-hours" for the offering.

Note: Authority cited: Sections 10080 and 10170.4, Business and Professions Code.  
Reference: Section 10170.4, Business and Professions Code.

## Article 26. Recovery Account

### **§ 3102. Substantially Complete Application.**

Except as provided in Section 3101 of these regulations, an application for payment from the Recovery Account is "substantially complete" within the meaning of Section 10471.2(b) of the Code if it contains all of the documents and information enumerated below:

(a) Proof that the judgment debtor was served with the Notice and Application.

(b) A copy of the judgment showing it to be a final judgment as defined in this article, and any findings of facts, conclusions of law, jury verdicts, jury special verdicts, statements of decisions, memorandum decisions, or any other indication by the court or jury, as the case may be, of its decision and the reasons for the decision. If the original judgment was appealed, copies of the appellate decision and remittitur.

(c) Copies of the original complaint, answer, cross-complaints, answers to cross-complaints, and all amendments or other subsequent versions of any of those documents.

(d) Copies of any pre-trial or post-trial briefs or settlement conference statements.

(e) A listing of all depositions and interrogatories taken in the underlying action, describing the party or parties taking the deposition or proounding the interrogatories, the deponent or person responding to interrogatories, and all persons present at any deposition.

(f) Copies of any demurrers or motions for summary judgment, supporting documents, and rulings thereon.

(g) Copies of all documents reflecting the terms of the underlying transaction, including for example offers, counteroffers, escrow instructions, closing statements, deeds, notes and deeds of trust.

(h) A detailed narrative description by the claimant under penalty of perjury of all the facts of the underlying transaction, including how the claimant was damaged by the judgment debtors, and the roles of all other persons involved in the transaction (such as other brokers or salespersons, sellers and buyers).

(i) A description by the claimant of the basis for each element of damages.

(j) If the only judgment debtor was a salesperson, a statement as to why the responsible broker was not either sued or taken to judgment.

(k) If any codefendants were dismissed from the underlying lawsuit, a statement of the reason for dismissal as to each such codefendant.

(l) A list of the names of any witnesses who testified at the underlying trial and the present or last known addresses of the witnesses to the extent known by the claimant.

(m) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the assets of the judgment debtor and the assets of all other persons liable to the claimant in the transaction which assets may be liable to be sold or applied to the losses suffered by the claimants, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to the losses suffered by the claimant.

(n) If the claimant claimed any loss related to the transaction as a deduction on the claimant's tax return or returns, a description of the amount of the tax benefit derived therefrom.

(o) A statement whether the judgment debtor is known to have filed bankruptcy. If so, a statement whether the claimant was named as a creditor in the bankruptcy, filed a claim in the bankruptcy, and pursued an adversary complaint to have the debt determined to be nondischargeable. If the judgment debtor filed bankruptcy and the claimant failed to take any of the foregoing actions, a statement as to why the claimant failed to take such actions.

(p) Abstracts of judgment bearing evidence of having been recorded in the county or counties in which the judgment debtor may possibly have assets.

(q) If any of the above items are not included in the initial application, or are requested in a deficiency letter and not supplied, a statement under penalty of perjury that the claimant has made a diligent effort to locate and produce the items but has been unable to locate them or has found that they do not exist.

(r) All documents or copies of documents submitted to meet the requirements of this section must be clear and legible.

(s) Certification by the claimant that all documents submitted are true and correct copies of the originals, and if such documents purport to be copies of documents filed in court, that they are true and correct copies of the originals filed with the court.

Note: Authority cited: Sections 10080 and 10471.2, Business and Professions Code.  
Reference: Section 10471.2, Business and Professions Code.