



Courtside *Newsletter*

California Legislature Enacts Further Clarification as to the Use of Fictitious Business



BY: JOHN V. GIARDINELLI, ATTORNEY AT LAW
CASEY MCINTOSH, PARALEGAL

The California State Legislature has recently clarified that true Team Names are not fictitious business names (FBNs) for purposes of submitting a certified copy of the fictitious business name statement along with an application to the California Bureau of Real Estate (CalBRE) and revised the definition of the “responsible broker’s identity.” With “Team Names” becoming a more complicated feature in the past few years, the Legislature agreed revisions to the way FBNs were being used in real estate were not only appropriate but also an urgent necessity. The Legislation was backed by both the CalBRE and C.A.R and became effective immediately on July 16, 2015 upon being signed into law.

It is important to note that the above requirement only applies if the Team Name meets all the criteria of a Team Name as defined in SB 146 (i.e. name used by two or more real estate licensees, name includes a surname of one of the licensees in conjunction with the words “Team,” “Group,” or “Associates,” and does not include any terms such as broker or brokerage as to lead the public to believe the team is a brokerage or offering real estate brokerage services). All other names being used will more than likely be considered a FBN and a real estate licensee must file a certified copy of the FBN statement with his/her application for a license.

If a real estate licensee wants to use a FBN, the licensee must comply with Business and Professions Code Section 10159.5, which requires the licensee to file a certified copy of his/her FBN, along with the application signed by the responsible broker, to the CalBRE. Business and Professions Code Section 10159.5 also requires the FBN statement to be filed with the county clerk in the county or counties where the FBN will be used and requires the statement be filed with the permission of a responsible broker, a.k.a. “the broker responsible for the exercise of control and supervision of salespersons...” (Business and Professions Code Section 10159.7(a)(4)). Thereafter, a certified copy of the statement will be delivered to the CalBRE with a real

estate license application signed by the responsible broker, requesting CalBRE’s approval to use a county-approved FBN. The FBN will be identified with the responsible broker’s name and license number, and will be subject to the control of the responsible broker.

This law also revised the definition of “responsible broker’s identity.” Business and Professions Code Section 10159.7(a)(1) now defines the “responsible broker’s identity” to mean “a name and the associated license identification number 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.” This does not include a FBN or a Team Name.

It is important to remember that Senate Bill 146 addresses the advertising and solicitation materials used by the salesperson in marketing with a FBN or a Team Name. When using a FBN, all marketing materials “including business cards, print or electronic media and ‘for sale’ signage, shall include the responsible broker’s identity in a manner equally as prominent as the fictitious business name,” as well as the name and license number of the salesperson who is using the fictitious business name. Furthermore, advertising and solicitation materials cannot contain terms that imply the existence of an entity that is independent of the responsible broker. When using a Team Name, all marketing materials “including business cards, print or electronic media and ‘for sale’ signage, shall include the Team Name, the name and license number of at least one of the licensed members of the team, as well as the responsible broker’s identity.

Should you have any questions about this new law or your compliance with it, please contact your local REALTOR® association or qualified legal counsel for advice.

New Continuing Education Requirement for Real Estate Brokers

BY: JOHN V. GIARDINELLI, ATTORNEY AT LAW
CASEY MCINTOSH, PARALEGAL

In mid-July, Governor Brown signed Assembly Bill 345 into law, thus enacting a new requirement for real estate brokers' continuing education. Current law requires a real estate broker to renew his or her license every four years. Pursuant to Section 10170.5 of the Business & Professions Code, within that 4-year period, the broker must complete 45 clock hours of education, including:

- A 3-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.
- A 3-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.
- A 3-hour course in trust fund accounting and handling.
- A 3-hour course in fair housing.
- A 3-hour course in risk management that shall include, but need not be limited to, principles, practices, and procedures calculated to avoid errors and omissions in the practice of real estate licensed activities.
- Not less than 18 hours of courses or programs related to consumer protection, including but not limited to: forms of real estate financing..., land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act.

With the new law, effective January 1, 2016, brokers will now be required to complete a 3-hour course "in the management of real estate offices and supervision of real estate licensed activities."

The California Association of REALTORS® backed this bill, stating, "Since the California Bureau of Real Estate can hold a manager accountable for failure to supervise, C.A.R. believes it important that a real estate broker understand how to properly manage real estate offices, salespersons, and broker associates, in order to minimize risk for all parties involved."

Should you have any questions or concerns about this continuing education requirement, or where to find courses once the law goes into effect, contact your local REALTOR® association or qualified legal counsel for advice.

October Calendar

Brown Bag

Date: October 16, 2015

Time: 11:30 a.m. – 1:00 p.m.

Location: Southwest Riverside County Association of REALTORS® – Hemet

Contact SRCAR for more info!

www.srcar.org

RPA

Date: October 29, 2015

Time: 9:00 a.m. – 1:00 p.m.

Location: Pacific West Association of REALTORS® - Anaheim

Contact PWR for more info!

www.pwr.net

Property Management

Date: October 30, 2015

Time: 9:00 a.m. – 1:00 p.m.

Location: Tri-Counties Association of REALTORS®

Contact Tri-Counties for more info!

www.tricorealtors.com

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