



Courtside *Newsletter*

New Laws Affecting REALTORS®

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The California Legislature has enacted several new laws that may affect REALTORS® and their practices over the next two years. This month's *Courtside Newsletter* provides an overview of those laws and their potential impact.

Uniform Advertising – Assembly Bill 1650 [Effective January 1, 2018]

Under current real estate law, any solicitation materials published, circulated, or distributed by a real estate licensee performing an activity for which a real estate license is required must contain a disclosure to the effect that a real estate license is required for the activity. Furthermore, a licensee is also required to include his or her license number (and unique identifier for mortgage loan originators) on such materials that are intended to be a “first point of contact with consumers” and on real property purchase transactions in which he or she is acting as an agent.

In an attempt to create uniform standards across a variety of advertising mediums, Assembly Bill 1650 will amend Business & Professions Code § 10140.6. Effective January 1, 2018, a real estate licensee will also be required to disclose the responsible broker's identity in addition to the licensee's name and license number. (Again, if the licensee is a mortgage loan originator, the unique identifier must also be listed.) As defined in B&P § 10159.7, “responsible broker's identity” means the name under which the broker is licensed by the California Bureau of Real Estate (CalBRE). The inclusion of the responsible broker's identification number is optional.

“Solicitation materials” are materials intended to be the first point of contact with the consumer. The definition of such materials will also be redefined to include:

- business cards;
- stationary;
- advertising flyers;
- advertisements on television, in print, or electronic media;
- “for sale,” rent, lease, “open house,” and directional signs; and

- “other materials designed to solicit the creation of a professional relationship with a consumer.”

An exception to this rule is if the “for sale,” rent, lease, “open house,” and directional signs do either of the following:

1. Display the responsible broker's identity without reference to an associate broker or license; or,
2. Display no licensee information (i.e. a generic sign).

A “reference” to an agent would be anything that names an agent in any way. It is important to note that a sign displaying no licensee information would likely be a violation of the National Association of REALTORS® (NAR) Code of Ethics Standard of Practice 12-5. (SOP 12-5 states that any advertising materials must disclose the name of the REALTOR®'s firm in a “reasonable and readily apparent manner.”)

This piece of legislation is considered to be the most important law affecting agents this session, and provides a year for all agents to become compliant.

Team Names – Senate Bill 710 [Effective August 28, 2016]

SB 710 amended Business & Professions Code § 10159.7 immediately to redefine the meaning of “responsible broker's identity.” Previously, it had been defined as “a name and the associated license identification number under which the responsible broker is currently licensed and conducts business in general or is a substantial division of the real estate firm” (emphasis added). The Code will be amended to define it as the name or both the name and associated license identification number.

Per the California Association of REALTORS® (C.A.R.), this amendment now allows for only the responsible broker's name to be displayed in all team name and agent-owned DBA advertising. Displaying the broker's license number is optional. The team name and broker name must still remain equally prominent on all advertisements and first point of contact materials.

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CalBRE Website Licensee Information – Assembly Bill 2330 [Effective January 1, 2018]

Currently, the CalBRE lists information regarding the status of every license issued by the Bureau pertaining to “brokers” and “salespersons.” Brokers are also required to immediately notify the Bureau when a salesperson enters into or is terminated from employment with the broker. AB 2330 will amend Business & Professions Code § 10083.2 to require CalBRE to include whether the licensee is an associate licensee. Per Civil Code § 2079.13, and associate licensee is a real estate broker or salesperson who is “either licensed under a broker or has entered into a written contract with a broker to act as the broker’s agent...and to function under the broker’s supervision...” The new statute will also require CalBRE to include whether the associate licensee is also a broker (i.e. a broker-associate), and to include information regarding the responsible broker under whom the associate licensee is acting. Responsible brokers will also be required to inform CalBRE if a broker-associate is engaged in or terminated from employment, as requirement that was missing from the previous law. This law will go into effect on January 1, 2018.

Disciplinary Action Records on CalBRE Profile – Assembly Bill 1807 [Effective January 1, 2018]

Any disciplinary action reported on a licensee’s profile on the CalBRE’s website is currently slated to remain there indefinitely. However, AB 1807 will amend Business & Professions Code § 10083.2 to allow licensees to petition CalBRE to remove the disciplinary action from the public profile. Per AB 1807, the petition will be accompanied by a fine, which will go into the Real Estate Fund, and could only be submitted at least 10 years after the violation was initially posted to CalBRE’s website. In the petition, the licensee must provide both justification for the removal and evidence of rehabilitation, which will indicate that the posting is no longer required to prevent a risk to someone utilizing the licensee in his or her capacity as a real estate agent. Review and granting of a petition is at CalBRE’s discretion, and CalBRE will also take into consideration other violations that could present a risk to the public that have arisen since the posting of the violation. There is no guarantee that the violation will be removed from the website following the submission of a petition. Licensees may begin submitting petitions January 1, 2018.

Death of Occupant Disclosure – Assembly Bill 73 [Effective September 25, 2016]

Prior to enacting AB 73, existing law merely stated that no cause of action would arise against a real property owner or agent or agent of a transferee for failure to disclose to the transferee that a death occurred upon the property or that an occupant had or died from Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus. Under AB 73, Civil

Code § 1710.2 was amended to clarify that the owner of a real property, his or her agent, or the agent of a transferee of a property is not required to disclose an occupant’s death on the real property if that death occurred more than three (3) years prior to the date of the offer to purchase, lease or rent the real property. Furthermore, the owner, his or her agent, or the agent of the transferee is not required to disclose that an occupant of the property was living with HIV or died from AIDS-related complications.

It should be noted that the three-years rule is not hard and fast. If a real property is particularly stigmatized and the value of the property is affected by a death that took place more than three years prior to the transaction, such a fact should be disclosed. For example, in the 1983 case of *Reed v. King* (145 Cal. App. 3d 261) the fact that the house was the site of a gruesome murder involving a woman and her four children ten years prior was a fact that affected the value of the home and should have been disclosed to the buyer. (It was not, hence the litigation.)

Additionally, if an occupant died from AIDS-related complications within the three years prior to the transaction, the law does not preclude the disclosure of the death. However, the owner and/or agent would not specify the manner of death, simply that it occurred on the property. An owner and/or agent is also not precluded from intentional misrepresentation. If a potential transferee asks if an occupant died on the property and the owner and/or agent has knowledge that a death occurred, he or she must answer truthfully. The C.A.R. Seller Property Questionnaire (SPQ) and the Exempt Seller Disclosure (ESD) forms cover disclosures.

This law took effect immediately on September 25, 2016, “in order to protect HIV and AIDS patients and the HIV/AIDS community from discrimination in real property transactions that may otherwise impose severe emotional distress...” Under federal law, people with HIV/AIDS are considered handicapped and protected from discrimination under the Fair Housing Act. The California Association of REALTORS® offers a Legal Q&A entitled “Disclosure of Death and AIDS” for further information regarding this topic and how it affects REALTORS®.

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In an effort at brevity, not all new laws are covered here. As always, we encourage you to seek qualified legal counsel should you have any questions or concerns regarding the law and how it affects your real estate practice.

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