



Licensee Alert

Issued March 2017

Supplemental Disciplinary Advisory to Real Estate Salespersons Who Mislead Consumers into Falsely Believing that They are Brokers -- and a Concurrent Caution to the “[Ir]responsible” Brokers Who Permit or Support Such Practices

By Wayne S. Bell, California Real Estate Commissioner and
Mark Tutera, Special Investigator

In September 2015, the California Bureau of Real Estate (CalBRE) issued an advisory which was captioned “Disciplinary Warning to Real Estate Salespersons Who Act, Conduct Themselves, and/or Advertise as ‘Independent’ Real Estate Professionals -- and a Simultaneous Caution to Brokers Who Allow or Support Such Practices”.

<http://www.calbre.ca.gov/files/pdf/adv/Independent%20Real%20Estate%20Professionals.pdf>

Licensees of CalBRE are well advised to review that prior advisory since we continue to see some of the same bad practices identified in that writing.

This discipline “advisory” is being issued as a supplement to that prior warning since CalBRE has taken notice of the use by some real estate salespersons of names and designations (and attendant Internet and marketing materials) that suggest to the public - and mislead consumers into falsely believing - that such salespersons are real estate brokers.

A scenario that we have repeatedly seen is the use by a salesperson (who for this illustration we will identify as John Doe) of a fictitious business name that would lead members of the public to incorrectly believe that the business is operated and managed by a real estate broker. In this example, salesperson Doe conducts business using the name Doe Real Estate. Doe advertises using that business name, and the advertisements are connected to, or accompanied by, a webpage and other materials that extol the virtues of Doe Real Estate. The public would not think that Doe is a salesperson who must be supervised by another, and would most certainly conclude that Doe Real Estate is a real estate broker or brokerage. And the above practices are unlawful.

In addition to the above, many salespersons continue to brand and identify themselves as “independent” real estate practitioners, and they practice and advertise as such. Unless those salespersons are operating as “teams”, in full compliance with the California laws and rules pertaining to teams (*e.g.*, the disclosure of I.D numbers and the name of responsible broker, and the surname of at least one of the licensee members of the team along with the use of the terms “team”, “group” or associates” with regard to the team), that is unlawful as well.

Further, and depending on the specific language employed with respect to the name(s) and designation(s) used by the real estate salespersons, there might be a violation of the law relative to the use of fictitious names. Please see the prior guidance given by CalBRE on the proper use and licensing of fictitious names.

As was also stated in the prior warning, under California law, with its two-tiered licensing system, real estate salespersons cannot provide - or advertise that they can provide - real estate services independently of their responsible brokers.

Likewise, salespersons must be associated or affiliated with, and be reasonably supervised by (which supervision includes broker review of the advertising used by the broker's salesperson or salespersons pursuant to Commissioner's Regulation 2725(e)) a responsible broker in order to engage in real estate licensed activities in California. The law provides no exceptions.

CalBRE will take appropriate disciplinary action (including the imposition of significant fines, and - where appropriate - the revocation of licensure) against real estate salespersons who engage in the unlawful activities discussed above, and against real estate brokers who permit their salespersons to engage in such activities.

#####