

Date of Hearing: January 9, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 749 (Irwin) – As Amended January 3, 2018

SUBJECT: Real estate.

SUMMARY: Updates existing real estate laws to clarify terminology and reflect current practice in the field of real estate. Extends the authority of the Real Estate Commissioner to revoke a license that was issued in error or by mistake. Defines “salesperson” as a person retained by a real estate broker. Defines “retained” as the relationship between a broker and real estate licensee to perform real estate activities. Defines “responsible broker” as a broker responsible for the control of salespersons. Requires licensees to notify the commissioner whenever a licensee affiliates with or is retained by a real estate broker or terminates that agreement, in a manner specified by the commissioner. Allows for the copy of a contract to be delivered in print or via electronic means as soon as practicable and allows for the use of E-licenses. Clarifies the complaints that may be filed against a licensee and what must be reported to the commissioner. Authorizes a corporation, in the event of the death of the sole designated broker-officer, to continue operating and engaging in real estate business if notice is provided to the Bureau of Real Estate (BRE) within 10 days. The bill is paired with AB 1289, referred to the Committee on Judiciary, and the bills will only go into effect if the companion bill is also enacted.

EXISTING LAW:

- 1) Establishes the Bureau of Real Estate (BRE) under the Department of Consumer Affairs (DCA) to regulate Real Estate within the State of California. Defines relevant terminology. (Business and Professions Code (BPC) Section 10000 et seq.)
- 2) Defines “Real estate broker.” (BPC Section 10015)
- 3) Defines “Real estate salesperson” as a person licensed under Chapter 3 of this part. (BPC Section 10016)
- 4) Establishes the usage of “advance fee” as a fee that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license before that service is fully completed and sets exclusions that may not be included. (BPC Section 10026)
- 5) Defines “listing.” (BPC Section 10027)
- 6) Allows the commissioner to require any and all materials used in obtaining advance fee agreements to be submitted to him or her at least 10 calendar days before they are used. (BPC Section 10085)
- 7) Establishes the exclusions of the term “Real estate broker.” (BPC Section 10131.01)
- 8) Defines “Real estate salesperson.” (BPC Section 10132)
- 9) Prohibits the employment or compensation of an unlicensed person and sets the standards for discipline. (BPC Section 10137)

- 10) Requires a copy of a signed agreement to be provided to the person signing it at the time of signing. (BPC Section 10142)
- 11) Requires that corporations that receive a license to engage in real estate business shall obtain additional licenses for its additional officers. (BPC Section 10158)
- 12) Stipulates that licensed officers of a corporation may only act on the behalf of the corporation. (BPC Section 10159)
- 13) Allows the use of a team name but stipulates that the responsible broker's identity be prominently displayed on the sign and on all advertising and solicitation materials. (BPC Section 10159.6)
- 14) Requires employers of licensed real estate brokers to maintain physical copies of all employee licenses for possible inspection of the commissioner or his representative. (BPC Section 10160)
- 15) Requires that whenever a salesman starts working for a broker, the broker shall notify the commissioner in writing. (BPC Section 10161.8)
- 16) Allows an employing broker to appoint a licensee as branch manager. (BPC Section 10164)
- 17) Authorizes the commissioner, or their representative, to investigate licensees and potentially revoke or suspend a license. (BPC Section 10176)
- 18) Requires a licensee to report indictments, criminal charges, disciplinary action, or convictions to the bureau. (BPC Section 10186.2)
- 19) Prohibits a mineral, oil, and gas broker or a real estate broker from employing an unlicensed person to do the work of a mineral, oil, and gas broker. (BPC Section 10509)

THIS BILL:

- 20) Defines "salesperson" as a person retained by a licensed real estate broker.
- 21) Defines "retained" as the relationship between a broker and the real estate licensee who is an independent contractor affiliated with, or an employee of, a broker to perform real estate activities subject to a broker's supervision.
- 22) Defines "seller," "listing licensee," "seller's licensee," "buyer," "buyer's licensee," "real property," "residential property," commercial real property," "sell, sale, or sold," "dual broker," "dual licensee," "appraiser," "promotional listing," exclusive rights to sell listing," and "open listing."
- 23) Authorizes a corporation, in the event of the death or incapacity of a sole designated broker-officer, to operate continuously under its existing license if notice and an application is provided to the bureau within 10 days.
- 24) Requires a real estate licensee to immediately notify the commissioner whenever a licensee affiliates or is retained by a real estate broker, if that agreement is terminated, or if the licensee acquires a new business address.

- 25) Allows the copy of any contract pertaining to services or transactions, signed by any person that must be delivered either in print or electronic record, as soon as practicable after obtaining the signature.
- 26) Eliminates the requirement that the real estate broker maintain paper licenses for salespersons and allows for electronic record keeping.
- 27) Clarifies that licensees must report indictments, criminal complaints, or information charging a felony against the licensee.
- 28) Authorizes the commissioner to suspend or revoke a license that was issued in error or mistake.
- 29) Includes other technical changes and code cleanup provisions.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the **California Association of Realtors**. According to the author, “AB 749 updates the Real Estate Law that not been revised to reflect current law and practices in many decades. The bill will provide greater clarity for consumers and practitioners regarding definitions and existing practices. Additionally, it clarifies the authority of the Bureau of Real Estate with regard to revoking a license, and the circumstances under which licensees are required to notify the Bureau, as well as what should happen upon the death or incapacity of a sole broker-officer.”

Background.

The California Bureau of Real Estate. The California Legislature enacted the first law requiring the licensure of real estate professionals in 1917. This law, the first of its type in the nation, was the subject of several legal challenges, ultimately being upheld by the California Supreme Court in 1919. Since then, the real estate code in California has undergone numerous changes resulting in the creation of various government entities charged with protecting Californians from fraud and abuse while engaged in real estate transactions. The predecessor of the BRE, the California Department of Real Estate, was transitioned to a bureau within the DCA in 2013. Appointed by the Governor, the Real Estate Commissioner functions as chief of the BRE and is responsible for administering and enforcing real estate law. This includes issuing regulations and managing the 329 civil service employees supporting the mission of the BRE. The licensing population of the BRE was in excess of 402,000 in 2016, including, 265,645 licensed salespersons and 136,232 licensed brokers.

Update of real estate code. In recent years, there have been a number of bills enacted that have made substantive changes to real estate law, however none have been a wholesale update of the underlying statute. This bill seeks to eliminate antiquated terminology and requirements in existing real estate law. To this end, it defines a number of terms that have become commonly used in the real estate sector and provides technical cleanup, such as the adjustment of some gender pronouns from the masculine to “his or her.” Additionally the bill recognizes the use of online record keeping and allows the transmission of licenses or contracts via electronic means.

There are also a number of changes to mandatory reporting requirements. Most notably, the bill clarifies the type of criminal complaints that must be reported. Current law requires a licensee to report the “bringing of an indictment or information charging a felony against a licensee.” The failure to report the filed pleadings is punishable by a fine and imprisonment (BPC §10185). This bill would amend the language to require a licensee to report the “bringing of an indictment or information, or the filing of a criminal complaint, charging a felony against a licensee.” As worded, the bill makes the failure to report the filing of a criminal complaint charging a felony also punishable by fine or imprisonment. The bill also clarifies a number of other mandatory notifications to the commissioner, including whenever a licensee joins or leaves a brokerage, if the sole designated broker-officer of a corporation dies, and authorizes the commissioner to suspend or revoke a license issued in error.

The emergence of technology as an essential component of real estate practice is largely ignored by current statute. Not only is much more information available to consumers through websites and online services, but licensees are increasingly networked with one another and no longer use as much paper documentation as in the past. The recognition of technology solutions for record keeping and the transmission of contracts are necessary improvements to existing law that have already been included in the practice acts of other entities under the jurisdiction of the DCA.

In a number of instances, this bill provides technical and clarifying changes to statute by moving definitions to compile relevant definitions in the same section, or to change terms to more consumer friendly language like “buyer” and “seller.”

The BRE has not taken a formal position on the bill but has provided technical assistance.

Current Related Legislation. AB 1289 (Arambula) of the current Legislative Session, seeks to make similarly technical and clarifying changes relevant to the practice of real estate, similar to AB 749, but in the Civil code under the jurisdiction of the Committee on Judiciary. This bill is coupled with AB 749 and neither can be enacted into law without the passage of the other.

STATUS: This bill was referred to the Assembly Committee on Judiciary in 2017 but was not heard in the committee due to an author pull.

Prior Related Legislation. AB 685 (Irwin) Chapter 177, Statutes of 2016, required the bureau to deny a license to an applicant with an unpaid fine, and authorized the bureau to sanction a licensee for the surrender of another license and revoke a license issued in error. The bill also required a licensee to report the filing of a criminal complaint charging a felony against the licensee and makes other technical changes.

SB 875 (Price), Chapter 380, Statutes of 2012, among other things, authorized the BRE to use additional procedures when denying a license and deleted an obsolete provision dealing with the issuing of conditional licenses.

SB 706 (Price), Chapter 712, Statutes of 2011, made enforcement enhancements to the Department of Real Estate (DRE) and the Office of Real Estate Appraisers (OREA); transferred OREA into DRE; required DRE to appoint a Real Estate Advisory Commission; required licensing boards to post information about licensees on the Internet, as specified; and made updating and conforming changes.

ARGUMENTS IN SUPPORT:

California Association of Realtors (sponsor): “The California Association of Realtors is the SPONSOR of your Assembly Bill 749 which updates the Real Estate Law that has not been revised to reflect current law and practices in decades. AB 749 will provide greater clarity for consumers and practitioners regarding definitions and existing practices.”

ARGUMENTS IN OPPOSITION:

None on File.

POLICY ISSUE FOR CONSIDERATION:

While real estate law is antiquated in several ways, most notably in its ignorance of modern technology, it is important to consider the implications of making changes to existing law in the especially high stakes world of real estate law. The author should work with the opponents of this bill, especially those concerned with consumer rights, to ensure that any such changes do not result in harm to consumers.

REGISTERED SUPPORT:

California Association of Realtors (sponsor)

REGISTERED OPPOSITION:

None on file

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