

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 710(Galgiani) – As Amended June 9, 2016

NOTE: This bill adds an urgency clause.

SENATE VOTE: 39-0 [vote not reflective of this bill version]

SUBJECT: Real estate licensees: fictitious business names: team names

SUMMARY: Corrects a drafting error that requires the listing of a company name and a responsible broker's license number on all team advertising and instead requires only one or the other to be listed.

EXISTING LAW:

- 1) Defines a "real estate broker" as a person who, among other things, sells, buys, or rents real property for another for compensation. (Business and Professions Code (BPC) Sections 10131-10131.6)
- 2) Defines a "real estate salesperson" as a natural person who is employed by a licensed real estate broker to perform any act of a real estate broker for compensation. (BPC Sections 10017, 10132)
- 3) Defines a "fictitious business name" (FBN) as a name used for business, including real estate, which does not include the surname of the business owners or suggest the existence of other owners. (BPC Sections 10159.7(a)(2), 17900)
- 4) Defines "team name" as a professional identity or brand name used by a salesperson, and one or more other real estate licensees, to provide real estate services. (BPC Section 10159.7(a)(5))
- 5) Defines "responsible broker" as the broker responsible for the supervision of licensed salespersons. (BPC Section 10159.7(a)(4))
- 6) Defines "responsible broker's identity" as a name under which the responsible broker operates or conducts business which may include a sole proprietorship or business entity name. (BPC Section 10159.7(a)(1))
- 7) Requires a person using a FBN to file a FBN statement with the county clerk. (BPC Section 17910)
- 8) Authorizes the use of a FBN for acts requiring a real estate license if the California Bureau of Real Estate (CalBRE) has approved the FBN under an additional license. (BPC Sections 10159.5(a), 10159.7(a)(2))
- 9) Requires advertising materials using an authorized FBN to display the responsible broker's identity as prominently as the FBN. (BPC Section 10159.5(d))

- 10) Provides that the use of a team name does not require a separate FBN license. (BPC § 10159.7(a)(5))
- 11) Provides that a team name is not a FBN if: (BPC § 10159.7(a)(5))
- a) The name is used by two or more real estate licensees who work together to provide licensed real estate services, or who represent themselves to the public as being a part of a team, group, or association to provide those services;
 - b) The name includes the surname of at least one of the licensee members of the team, group, or association in conjunction with the term “associates,” “group,” or “team”; and,
 - c) The name does not include any term or terms, such as “real estate broker,” “real estate brokerage,” “broker,” or “brokerage” or any other term that would lead a member of the public to believe that the team is offering real estate brokerage services independent of a licensed broker.

THIS BILL:

- 1) Makes technical and clarifying changes to existing real estate FBN and team name provisions.
- 2) Corrects a drafting error that requires the listing of a company name and a responsible broker’s license number on all “team” advertising and instead requires only one or the other to be listed.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the California Association of Realtors (CAR). This bill corrects a drafting error that requires the listing of a company name and a responsible broker’s license number on all team advertising and instead requires only one or the other to be listed.

According to the author, “While AB 2018 [(Bocanegra), Chapter 892, Statutes of 2014] resolved some ambiguity by statutorily defining how a salesperson with their broker’s permission can use a FBN, and clarified that ‘team names’ are not required to be registered with [CalBRE], SB 146 [(Galgiani) Chapter 129, Statute of 2015] made it clear that the law regarding ‘team names’ was applied consistently at all levels of government. [This bill] seeks to simply correct a drafting error in that law which requires the listing of a company name and a responsible broker’s license number on all ‘team’ advertising. This bill would require one or the other to be listed, but not both in order to avoid including duplicative information on these advertisements.”

Background. A FBN is a statutorily defined “fake name” that a person uses when conducting business if the person does not wish to use a real name. In California, the registration of FBNs is meant, “to protect those dealing with individuals or partnerships doing business under fictitious names, and... designed to make available to the public the identities of persons doing business under the fictitious name” (BPC § 17900(a)(1)).

Many real estate salespersons work together in teams and use a team name, e.g. “The Smith Team.” Before AB 2018 (Bocanegra), Chapter 892, Statutes of 2014, many team names could

have been considered a FBN and been required by counties to register that team name as a FBN. AB 2018 established statutorily prescribed team advertising requirements and requires real estate licensees conducting any advertising, including print or electric media and for sale signs, who use a team name to include the licensee's name and license number in a conspicuous manner. The statute further requires the responsible broker's identity (or company name) to be displayed as "prominently and conspicuously" as the team name in all advertising. In 2015, SB 146 (Galgiani), Chapter 129, Statutes of 2015 clarified that a real estate team name is not a FBN under state law and does not require registration with CalBRE, so it does not require registration of that name with the county.

It is unclear if consumers could be confused by a common name such as "The Smith Team" due to the potential prevalence of that name. However, the CAR maintains that the inclusion of the individual's licensee number in these advertisements, as required by BPC Section 10159.6, should alleviate most of the confusion. While not all team names will be unique, most can be attributed to a responsible broker if the consumer chooses to search for information relevant to a particular team name on the CalBRE website, and should not lead to confusion.

Consumers will continue to be able to locate the licensee's responsible broker by searching either the individual's license number listed on the team advertisement or by looking up the responsible broker's identity (i.e. company name) which must be displayed on the team advertising.

Current Related Legislation. SB 1196 (Hill) of the current Legislative Session, extends the sunset date for the Bureau of Real Estate and Bureau of Real Estate Appraisers, among other things, and makes other technical changes. *STATUS: This bill is pending in the Assembly Committee on Business and Professions.*

Prior Related Legislation. SB 146 (Galgiani), Chapter 129, Statutes of 2015, clarified existing law on real estate team names and fictitious business names (FBN) and narrowed the definition of a FBN's "responsible broker's identity" to the name used by the responsible broker to operate or conduct business in general for the real estate firm.

AB 2018 (Bocanegra), Chapter 892, Statutes of 2014, established statutorily prescribed team advertising requirements.

ARGUMENTS IN SUPPORT:

The California Association of Realtors writes in support, "[This bill] seeks to correct a drafting error that requires the listing of a company name and a responsible broker's license number on all team advertising. This bill would require one or the other to be listed, but not both, as the inadvertently created standard under SB 146 is unnecessarily burdensome and duplicative."

REGISTERED SUPPORT:

California Association of Realtors (sponsor)

REGISTERED OPPOSITION:

None on file.