

Kimball, Tirey & St. John LLP

Real Estate Professionals' Law Gets a Clean-Up for 2019

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On the heels of re-establishing the California Department of Real Estate ("DRE"), Governor Brown recently signed into legislation AB 1289 and AB 2884 to clean up laws affecting California real estate professionals. As discussed below, outdated statutes have been removed, while others have been injected with clarity and plain language. This new law (referred to by its sponsor, the California Association of Realtors, as "clean-up" legislation), becomes effective January 1, 2019, and includes some of the following:

- 1) Independent Contractor Relationship Further Clarified: While applicable law has long allowed for brokers and their salespersons and broker-associates to engage in independent contractor relationships per Business & Professions Code § 10032, the new legislation brings a dose of clarity via the following:
 - a. "Retain" and "retention" have replaced previous references to "employment" "employers" and "employ."
 - b. "Responsible broker" has replaced "employing broker."
 - c. Business & Professions Code § 10010.5 clarifies that a broker has a duty to supervise regardless of whether a salesperson or broker-associate is an employee or independent contractor.
- 2) Eliminates Outdated Licensing Issues:
 - a. A broker no longer has to maintain physical possession of a salesperson's license.
 - b. A salesperson no longer has to mark out their old broker and write in their new one on their physical license.
 - c. A licensee no longer has to mark out their old address and write in their new one on their physical license.
- 3) Greater Use of E-Licensing: The shift continues towards the use of less paper forms, with an expanded role for the e-licensing system. However, certain items will still be required to be submitted in writing, such as:
 - a. A broker who wishes to cancel their main office address to place their license in a "no business address" status. RE 204 must still be used for this.
 - b. A salesperson who wishes to terminate their affiliation with a broker to place their license in a "no broker affiliation" status. RE 214 must still be used for this.
- 4) Grace Period When Broker of Record/Designated Officer Passes Away or Becomes Incapacitated: Presently, the applicable law does not allow a corporate broker to perform licensed activity in the event of death or incapacity of its broker of record/designated officer.
 - a. Currently, if a broker of record/designated officer dies or is no longer able to perform his/her duties and requirements (such as supervision and oversight), the corporate broker would be in violation of the Real Estate Law if it continues to conduct licensed activity.

- b. Under the clean-up law, a corporate broker may lawfully continue to operate in these circumstances as long as a new broker of record/designated officer application is filed with the DRE within 10 days.
- 5) Broker of Record/Designated Officer Licensing: The new legislation clarifies that a broker of record/designated officer must have either passed the broker license examination and be qualified to obtain a broker license OR be currently licensed as a broker. Thus, an individual broker license does not have to be active in order to act as a broker of record and designated officer for a corporate broker.

The new legislation does NOT change a broker's, agent's or broker-associate's duties to principals (i.e., fiduciary, disclosure, other duties and obligations), nor does it change a brokers duty to supervise and oversee the licensed activity of his/her salespersons and broker-associates.

There are additional matters that are clarified under the new law, such as terminology, guidance on dual agency and confidential information, real estate sales and purchase disclosures, as well as several others. All licensees should review the new legislation carefully, as they are intended to make compliance and licensing more practical for the industry.

Compliance Assistance Offered by Kimball, Tirey & St. John:

- KTS attorneys have expertise to assist clients with DRE compliance. Information about these services is available at http://ClientPortal.kts-law.com/resource_library/docs/Articles/Services_DRECompliance.pdf.
- KTS offers Proactive Audit Services for DRE compliance. A description of the services is available at https://ClientPortal.kts-law.com/resource_library/docs/Articles/ProactiveAuditServices.pdf.

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