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SB-146 Real estate licensees: fictitious business names: team names. (2015-2016)

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Senate Bill No. 146

CHAPTER 129

An act to amend Sections 10159.5, 10159.6, and 10159.7 of the Business and Professions Code, relating to real estate licensees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 16, 2015. Filed with Secretary of State July 16, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 146, Galgiani. Real estate licensees: fictitious business names: team names.

Existing law provides for the licensure and regulation of real estate brokers and real estate salespersons by the Bureau of Real Estate headed by the Real Estate Commissioner. Existing law requires an applicant who desires to have his or her license issued under a fictitious business name to file with his or her application a certified copy of his or her fictitious business name statement. Existing law authorizes a responsible broker, as defined, by contract, to permit a salesperson to apply for a fictitious business name with the appropriate county, and to maintain ownership of a fictitious business name. Existing law defines a team name and provides, for purposes of the provisions described above, that a team name is not a fictitious business name if specified criteria apply.

This bill would provide that a team name is also not a fictitious business name for purposes of any other law or for purposes of filing a fictitious business name statement with an application as described above when the criteria apply. This bill would make technical and clarifying changes to the provisions described above.

Existing law requires advertising and solicitation materials using a fictitious business name or that contain a team name to display the responsible broker's identity, as provided. Existing law defines "responsible broker's identity" to mean the name under which the responsible broker operates or conducts business.

This bill would revise the definition of "responsible broker's identity" to mean 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 and that does not include a fictitious business name or a team name, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10159.5 of the Business and Professions Code is amended to read:

10159.5. (a) (1) Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

(2) A responsible broker may, by contract, permit a salesperson to do all of the following:

(A) File an application on behalf of a responsible broker with a county clerk to obtain a fictitious business name.

(B) Deliver to the bureau an application, signed by the responsible broker, requesting the bureau's approval to use a county approved fictitious business name that shall be identified with the responsible broker's license number.

(C) Pay for any fees associated with filing an application with a county or the bureau to obtain or use a fictitious business name.

(D) Maintain ownership of a fictitious business name, as defined in paragraph (2) of subdivision (a) of Section 10159.7, that may be used subject to the control of the responsible broker.

(b) (1) A salesperson using a fictitious business name authorized by subdivision (a), shall use that name only as permitted by his or her responsible broker.

(2) This section does not change a real estate broker's duties under this division to supervise a salesperson.

(c) A person applying to a county for a fictitious business name pursuant to subdivision (a) may file his or her application in the county or counties where the fictitious business name will be used.

(d) Advertising and solicitation materials, including business cards, print or electronic media and "for sale" signage, using a fictitious business name obtained in accordance with paragraph (2) of subdivision (a) shall include the responsible broker's identity, as defined in paragraph (1) of subdivision (a) of Section 10159.7, in a manner equally as prominent as the fictitious business name.

(e) Notwithstanding subdivision (b) of Section 10140.6, advertising and solicitation materials, including print or electronic media and "for sale" signage, containing a fictitious business name obtained in accordance with paragraph (2) of subdivision (a) shall include the name and license number of the salesperson who is using the fictitious business name.

(f) Notwithstanding Section 10185, a violation of this section is not a misdemeanor.

SEC. 2. Section 10159.6 of the Business and Professions Code is amended to read:

10159.6. All of the following apply to use of a team name, as defined in paragraph (5) of subdivision (a) of Section 10159.7:

(a) Notwithstanding subdivision (b) of Section 10140.6, advertising and solicitation materials that contain a team name, including print or electronic media and "for sale" signage, shall include, and display in a conspicuous and prominent manner, the team name and the name and license number of at least one of the licensed members of the team.

(b) The responsible broker's identity, as defined in paragraph (1) of subdivision (a) of Section 10159.7, shall be displayed as prominently and conspicuously as the team name in all advertising and solicitation materials.

(c) The advertising and solicitation materials shall not contain terms that imply the existence of a real estate entity independent of the responsible broker.

(d) Notwithstanding Section 10185, a violation of this section is not a misdemeanor.

SEC. 3. Section 10159.7 of the Business and Professions Code is amended to read:

10159.7. (a) For the purposes of this article, the following definitions shall apply:

(1) "Responsible broker's identity" means a name and the associated license identification number under which the responsible broker is currently licensed by the bureau and conducts business in general or is a substantial division of the real estate firm. Responsible broker's identity does not include a fictitious business name obtained pursuant to paragraph (2) of subdivision (a) of Section 10159.5 or the use of a team name pursuant to Section 10159.6.

(2) "Fictitious business name" means a professional identity or brand name under which activity requiring a real estate license is conducted and the use of which is subject to approval by the bureau pursuant to Section 10159.5.

(3) "Ownership of a fictitious business name" means the right to use, renew, and control the use of a fictitious business name obtained in accordance with Section 10159.5.

(4) "Responsible broker" means the broker responsible for the exercise of control and supervision of salespersons under Section 10159.2, or a licensee subject to discipline under subdivision (h) of Section 10177 for failure to supervise activity requiring a real estate license. The supervision of a salesperson required under this part or any other law is limited to regulatory compliance and consumer protection.

(5) "Team name" means a professional identity or brand name used by a salesperson, and one or more other real estate licensees, for the provision of real estate licensed services. Notwithstanding any other law, the use of a team name does not require that a separate license be issued for that name pursuant to Section 10159.5. A team name does not constitute a fictitious business name for purposes of this part or any other law or for purposes of filing a fictitious business name statement with an application as required by subdivision (a) of Section 10159.5 if all of the following apply:

(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."

(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, that imply or suggest the existence of a real estate entity independent of a responsible broker.

(b) Nothing in this section changes a real estate broker's duties under this division to supervise a salesperson.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the law regarding "team names" is applied consistently at the state and local level and that a "team name" does not constitute a fictitious business name for purposes of any law, it is necessary that this act take effect immediately.