Lead Committee: Transaction and Regulatory Committee
Level of Government Committee: Legislative Committee

12/15/2013

BRE REGULATION OF TEAM NAMES

THE QUESTION

Should C.A.R. sponsor legislation to clarify the Bureau of Real Estate (BRE) regulation of team names?

ACTION REQUIRED?

Optional.

POSSIBLE POSITIONS

1. Sponsor legislation to permit the use of Team Names provided the Team Name is accompanied by the licensee's BRE license number, and it is no more prominent on "first contact" materials than the broker's name and license number.
2. Urge the BRE to adopt regulations utilizing the parameters outlined in option one, but not sponsor legislation.
3. Other.
4. Take no action.

DISCUSSION

The BRE is empowered to regulate team names under its general authority to regulate business conduct and avoid illegal or misleading behavior. Business and Professions Code §10159.5 also requires that any corporate real estate name attempting to utilize a fictitious business name demonstrate that the name has been appropriately filed with the county clerk. Historically, the BRE

has accepted as a company name any such fictitious business name that is not false or misleading. Examples of false or misleading names that will not be accepted are those that contain terms like "escrow" or "MLS," as those are deemed to be inherently misleading.

The Proposed New Rule. In the Spring 2013 Real Estate Bulletin, an article entitled "The Department to Issue Fictitious Business Names that Include the Names of Salespersons and 'Team Names'" explained that the BRE was contemplating regulations that would permit salespersons to work under team names if the names were bona fide fictitious names and registered by the employing broker at the local government. The proposed policy is actually a relaxing of previously more restrictive policies that would prohibit the creation of any "team" identity by salespersons since it might imply that the salesperson in question is working under his or her own authority and not that of the employing broker.

However, the article's suggestion that the requirement that the new fictitious name must be registered as such at the county, and that the registration be done by the employing broker, and that the name be controlled by the broker and not the salesperson, has led to considerable discussion. On the one hand, the salesperson may be concerned that a team name is his or her "brand" identity and, as a result, he or she may be reluctant to have the asset controlled by another. On the other hand, employers and office managers, even if they are comfortable with salespersons developing an independent “brand” identity, may be concerned with the administrative burdens of actually filing and supervising the fictitious names.

The core issue for the BRE consists of ensuring that salespersons do not hold themselves out to the public as something they are not; namely, an entity legally entitled to practice real estate without the control of the employing broker.

What about other advertising by salespersons? An issue largely lost in the discussions of the team name issue is the fact that the BRE does not contend that advertising by a salesperson that includes the salesperson's name and license number, and the identification of the employing broker, is anything other than advertising. Conceptually, even if the term "team" is used, this kind of holding out or advertising is really not a fictitious business name at all. Of course, advertising cannot be affirmatively misleading, but the BRE has no requirement to pre-approve advertising other than the rare advance fee situation.

A Possible Legislative Solution. It may be that the BRE can clarify by regulation that salespersons advertising in the above manner is allowable and that only a limited category of fictitious names needs to be approved in the relatively cumbersome method described in the article. However, given

the complexity and confusion of the issue, both the BRE and licensees may be more comfortable if the law provided explicit direction for both alternatives. Given the time frames for crafting and approving regulations, it may in fact be faster to address the issue with legislation rather than regulation.

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