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Considerations for Salespersons Operating Under Team Names

By Laurel Champion

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The use of sales team names or fictitious business names in advertisements and marketing materials has become a standard practice amongst real estate professionals in California. To avoid problems with claims for commissions resulting from transactions involving salespersons operating under a fictitious business name, agents need to understand the law and regulations governing such transactions.

Any lawful claim for a commission must be based on a valid written listing agreement, among other requirements. (California Civil Code § 1624(a)(4).) To be valid, all listing contracts and other contracts for compensation for services requiring a license must be made in the name of the licensed broker, and compensation for such services may only be paid to a licensed real estate broker. **Rosenbaum v. Rosenbaum** (1967) 257 Cal. App. 2d 193, 198-199 (the agreement "must be one naming the broker. Such a writing may describe the property and the percentage of commission which will be paid upon the sale, but if it does not name the broker to whom the commission will be paid, it is unenforceable"); see also **Morrill v. Barneson** (1939) 30 Cal.App.2d 598, 599-603; **Augustine v. Trucco** (1954) 124 Cal.App.2d 229, 238; Cal. Bus. & Prof. Code § 10138. To recover a commission, "a broker must plead and prove that he was duly licensed at the time his cause of action arose." **Phillippe v. Shapell** (1987) 43 Cal.3d 1247, 1267; Cal. Bus. & Prof. Code § 10136.

While a real estate broker can do business under a fictitious name, the license must be issued in that name. Title 10 C.C.R. § 2731; Cal. Bus. & Prof. Code § 10159.5; see also **2 Miller & Starr, Cal. Real Estate (3rd Ed. 2011, Supp.2013)**, §4:19. Accordingly, a listing agreement is only valid if it is made in the

name of a licensed broker.

The Department of Real Estate's approval of a fictitious business name is governed in part by Business and Professions Code Section 10159.5 and the Real Estate Commissioner's Regulation 2731. To gain Department approval, brokers submitting fictitious business names must file the fictitious business name with the county clerk in the county in which the broker's main office is located, be sure that the salesperson whose name is included in the fictitious business name is currently employed by the broker applying for the fictitious business name, and ensure that the fictitious business name submitted for issuance includes the terms "associates," "team," "group," or any other term that implies an existence of a team.

Remember, too, that if a fictitious business name is used in advertising or marketing materials that could be considered a first point of contact material, that name must be prominently displayed along with the license identification numbers of the employing broker and salesperson.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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