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Electronic Communications And Team Names: What The DRE Now Expects

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Maintaining and retaining documents obtained or executed by a licensee in connection with a transaction for which a license is required is part of the real estate law.

For some time, the DRE has taken the position that this includes maintaining and retaining electronic communications, including emails, texts, tweets, etc. In its spring Real Estate Bulletin, the DRE has put its position on this issue in writing. The bulletin provides, "It is the Department's position that failing to maintain electronic communications that are created as part of licensed activity is in violation of the record-keeping provisions. To ensure compliance in this electronic age, every licensed California real estate broker should have written office policies and procedures setting forth how electronic communications that are created, sent, or received in connection with an act with which a license is required will be maintained and made available for inspection."

The rationale for this position is to increase the ability of licensees to demonstrate compliance with the real estate law. The DRE bulletin states, "Electronic communications often hold the key to proving whether a licensee disclosed a material fact or provided a required disclosure, and retaining and maintaining these important communications may reduce a broker's need to defend against unwarranted allegations."

Now that the DRE's position on this subject is in writing, it is important for each of us to establish or review office policies in this regard and to establish a procedure for maintaining not only emails but also texts, tweets, and any other form of electronic communication. From my experience, maintaining and retaining

emails is far more commonplace than doing so for texts, tweets, etc. Learning how to preserve these communications in a format, written or otherwise, that is part of the broker's file is something that we are going to have to accomplish if we are to meet the DRE's expectations in this regard.

The spring DRE bulletin also covered the subject of the use of team names in advertisements and marketing materials. Examples of team names include "The Smith Team," "The Brown & Smith Team," "The Robert Brown & Sarah Smith Team," or "The John Doe Group, John Doe & Associates." These types of team names are often included on for-sale signs, billboards, business cards, promotional flyers, emails, and brochures.

To the extent that these team names are fictitious business names, they must comply with any laws and regulations regarding the use of fictitious business names. In the past, the DRE would not issue a fictitious business name to a licensed broker if it included the name of the salesperson employed by that broker unless the employing broker's name was also included in the fictitious business name or, in this instance, in the team name.

The DRE has modified its position on this subject and will now generally approve fictitious business name requests, including requests for team names, that are submitted by brokers and that include the names of salespersons but do not include the broker's name and the team name under the following conditions: (1) the fictitious business name has been filed with the County clerk for the county where the main broker's office is located, (2) the salespersons whose names are included in the fictitious business name or team name are currently employed by the broker submitting the request, and (3) the fictitious business name submitted for issuance includes the terms "team," "associates," or "group" or any other term implying an existence of a team, as deemed appropriate by the DRE.

Finally, even if the above conditions are met, where a fictitious business name contains the name of a real estate salesperson and is used in any advertising (either print or electronic), on a for-sale sign, or in any other first point of contact material, there must be a prominent disclosure of the name and real estate license identification number of the employing broker, as well as the license identification number of the salesperson.

The foregoing are just two of the topics covered in the most recent DRE bulletin. Check out the bulletin itself for other subjects that may be of interest.



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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