

SB 1219-Real Estate Licensees

Provisions

- Defines *business broker* as a real estate broker acting as intermediary between sellers and/or buyers, in the sale and/or purchase of businesses where real property sale and/or lease is either a direct or incidental part of the transaction. Conforms all pertinent statutory language.
- Requires license applicants to ADRE obtain a valid fingerprint clearance card issued by DPS and replaces and repeals corresponding provisions that require a full set of fingerprints, a criminal background check and the corresponding fee submitted to ADRE. This includes salespersons, brokers, entity, Public Report, and educators (schools and instructors). All licensees must continue to abide with the regulation which requires “10 day notice to ADRE of all convictions”.
- Prohibits ADRE from issuing a license to an original applicant before receiving a valid fingerprint clearance card.
- Mandates ADRE suspend any license when the fingerprint clearance card information is determined to be invalid unless the applicant submits a new, valid fingerprint clearance card within 10 days after notification by ADRE.
- Decreases the valid time period for a license renewal from four years to two years and further decreases from 48 to 24 credit hours the continuing education requirement.
- Permits an active licensee to request ADRE cancel the license if both of the following apply:
 - The licensee is not currently under investigation by ADRE.
 - ADRE has not begun any disciplinary proceedings against the licensee.
- After ADRE commences disciplinary proceedings, authorizes a licensee to voluntarily surrender the license provided it is within 10 days before the disciplinary hearing. Upon surrender, prohibits ADRE from ever issuing a license to the person again.
- Permits the managing entity of a Timeshare to pay a Finder’s Fee and increases the credit or nonmonetary compensation from \$600 to \$1,000 per 12-month period.
- **Effective date: 7/29/2010**

SB 1136- Subdividers; public reports; internet advertisement

Provisions

1. Requires a subdivider to include a disclosure stating that a public report is available on the ADRE’s website in a print advertisement in a magazine or newspaper or on an internet advertisement, which advertises a specific lot or parcel.

2. Requires the disclosure to state, “a public report is available at the State Real Estate Department’s website.”
3. Makes technical and conforming changes.
4. **Effective date - July 29, 2010**

SB 1176- Apartment Referrals; Finder Fee

Provisions

- Will increase the statutory limit for referral fees by \$100 and allow apartment managers and owners to credit a tenant’s monthly rent up to \$200 for a maximum five times in a 12-month period. Previously, apartment managers were limited to a maximum \$100 credit.
- Establishes that the ADRE may suspend or revoke the licensee’s license or impose a civil penalty of \$1,000 for each violation of the finder fee section of statutes.
- **Effective date July 29, 2010**

SB 1351

Appraisal Management Companies

SB 1351 outlines requirements and regulations for appraisal management companies (AMCs) and independent appraisers.

Provisions

Registration

- Prohibits a person from engaging in business as an AMC without first obtaining registration from the Board.
- Requires a person who wishes to obtain registration to file a written application on a prescribed form and pay a fee to the Board.
- Stipulates that the amount of the registration fee will be determined by the Board and outlines the required information to be included with the registration.
- Specifies that an initial registration is valid for one year from the date issued and renewals are valid for two years.
- Requires each person applying for registration to complete and execute an irrevocable consent to service of process form.
- Requires an AMC to show proof of a \$20,000 surety bond.
- Provides exemptions for certain persons and entities from AMC regulations.

AMCs

- Prohibits a person who has had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered from owning an AMC; however, the Board may waive this by appeal.
- Requires the AMC to designate one controlling person who will be the main contact for communication between the Board and the AMC.
- Stipulates that each person that owns, is an officer or controlling person of or has financial interest in an AMC must:
 - Be of good moral character.
 - Submit to a background investigation.
 - Certify to the Board that their license or certificate has not been refused, denied, canceled, revoked or voluntarily surrendered.
- Requires any employee or person working on behalf of an AMC, who is responsible for selecting independent appraisers, to be appropriately trained and qualified.
- Prohibits an AMC from entering into a contract with an independent appraiser unless that person is licensed and in good standing with the Board.

Independent Appraisers

- Requires each AMC to annually certify to the Board that it:
 - Has a system in place to verify that a person being added to the appraiser panel (panel) holds a license or certificate in good standing.
 - Has a system in place to review the quality of real property appraisals performed by independent appraisers.
 - Maintains a detailed record of each service request and the name of the independent appraiser that performs the real property appraisal. The AMC must maintain a detailed record for the same amount of time that an appraiser is required to maintain an appraisal record for the real property.
 - Has a system in place to train persons who select individual appraisers for real property service.
- Stipulates that the AMC cannot prohibit the appraiser from reporting, in the appraisal report, the fee paid.
- Prohibits any employee of an AMC from influencing the development, reporting or review of an appraisal through any specified manner.
- Specifies that the appraisal fee may not be based on the predetermined value of the property or the amount of the transaction price.

- Allows an AMC to request that an independent appraiser either provide additional information about the basis for a valuation or correct objective factual errors in an appraisal report.
- Requires the AMC to pay the independent appraiser within 45 days after the appraiser transmits the completed appraisal or valuation study, except in cases of breach of contract or substandard performance of services.
- Prohibits the AMC from altering a completed appraisal report submitted by an independent appraiser, including removing the appraiser's signature, and using an appraisal report for any other purpose than the intended use as stated in the report.

Adjudication of Disputes

- Prohibits an AMC from removing an independent appraiser from its panel or refusing to assign the appraiser requests for services without notifying the appraiser in writing. This does not apply to the first 60 days the appraiser is added to the AMC's panel.
- Permits an appraiser that is removed from the panel for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice or violation of state licensing standards to file a complaint with the Board for a review of the AMC's decision.
- Stipulates that the Board may not make any determination regarding the nature of the business relationship between the appraiser and the AMC that is unrelated to the specific actions.
- Requires the Board to adjudicate the complaint within a reasonable time.
- States that if the Board determines that an appraiser did not commit a violation as specified above, the Board must order that the appraiser be added to the panel of the AMC subject of the complaint without prejudice.
- Directs the Board to furnish the AMC with all written documentation and investigation records that support the findings.
- Allows the Board to censure an AMC, conditionally or unconditionally suspend or revoke any registration or impose civil penalties of \$15,000 per violation if, in the Board's opinion, an AMC has performed any of the following acts:
 - Committing a violation of AMC statutes.
 - Violating a rule adopted by the Board.
 - Knowingly making any false representation of material act.
 - Withholding any information from the Board that, if submitted, would have rendered the applicant ineligible for AMC registration.
 - Violating the Federal Financial Institutions Reform, Recovery and Enforcement Act.
- Allows the Board to conduct disciplinary proceedings.
- Stipulates that before the Board takes any action as described above, it must notify the registrant in writing of any charges made at least 45 days prior to the date set for the hearing and afford the registrant an opportunity to be heard.
- Requires the written notice to be satisfied by personal service on the controlling person of the registrant for service of process or by sending the notice by certified mail to the address on file with the Board.

- Requires the hearing to be at a time and place prescribed by the Board. Asserts that a reasonable request for a delay of a hearing cannot exceed 90 days.
- Allows the Board to make findings of fact and directs it to deliver the findings to the registrant charged with a violation.

Miscellaneous

- Directs the Board to adopt rules necessary to implement the provisions, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with AMC regulations and rules requiring a surety bond to be posted with each application.
- Contains numerous definitions.
- **Effective date 7/29/2010**

HB2345

Signs; Homeowner Associations; Condominiums)

HB 2345 stipulates that HOAs cannot prohibit or regulate temporary open house signs, a unit owner's for sale sign, an owner's agent's for lease sign or open house hours for property that is for sale or lease.

Provisions

- Stipulates that with respect to real estate for sale or lease in the condominium or planned community, an HOA cannot prohibit or regulate the following:
 - Temporary open house signs or a unit owner's for sale sign.
 - An owner's agent's for lease sign, unless an HOA's documents prohibit or restrict leasing of a unit.
 - Open house hours.
- Allows the HOA to prohibit open house signs on common areas.
- Prohibits the HOA from requiring particular open house, for sale and for lease signs or regulating these signs as long as they are not larger than industry standard size.
- States that the HOA cannot limit open house hours for real estate that is for sale or lease in the condominium or planned community, however, the HOA can prohibit an open house from being held before 8 am or after 6 pm.
- **Effective Date: 7/29/2010**

HB 2689-Realtors; Education; Requirements

Provisions

- Requires the Commissioner of ADRE to determine, by rule, the content of the CE courses, which may include the Commissioner's current topics, including short sales.

- Defines *short sale*.
- Contains a **delayed effective date of December 31, 2010**.

HB 2768-Real Property Transfer Fee Covenants

HB 2768 provides that any provision in a declaration, covenant or other document relating to real property in this state is not enforceable or binding under certain conditions and provides exemptions.

Provisions

- States that any provision in a declaration, covenant or other document relating to real property in this state is not enforceable or binding against the real property or any subsequent owner or other claimant if it claims to both:
 - Bind successors in title to the specified real property.
 - Obligate the transferee or transferor of all or part of the property to pay a fee or other charge to a declarant or third party on the transfer of an interest in the property or in considering permitting such a transfer.
- Clarifies that regularly scheduled fees or charges shall not be considered payable on transfer of an interest *if* the fees or charges will be paid by the property owner regardless of a property transfer and *even* if the obligation to pay does not commence until the builder or developer first conveys the property to a retail purchaser.
- Declares that a transfer fee provision, whether recorded or not, is not enforceable and does not create a lien right. Any lien claiming to arise out of an unenforceable provision, pursuant to statute, is not enforceable and is invalid.
- Allows for the following exemptions:
 - Any provision of a purchase contract, option, mortgage, security agreement, real property listing agreement or other agreement that compels one party to pay the other party as full or partial consideration for the agreement or for a waiver of rights under the agreement if the amount to be paid is either:
 - A loan assumption fee or similar that is charged by a lender that holds a lien on the property.
 - A fee or commission paid to a licensed real estate broker for brokerage services provided in connection to the transfer of the property.
 - Any provision in a deed, memorandum or other document recorded for the purpose of providing record notice of an agreement for a loan assumption fee.
 - Any provision of a document that requires payment of a fee or charge to an association to be used for the exclusive purpose authorized in the document *if both* the following apply:

- The fee being charged touches and concerns the land.
- No portion of the charge or fee is required to be passed through to a third party or declarant designated or identifiable by description in the document or another document that is referenced in the document *unless* the third party is authorized to manage real property within the association.
- Any rent, reimbursement, charge, fee or other amount that is paid by a lessee to a lessor under a lease, including any fees payable to the lessor for the purpose of consenting to an assignment, sublease, encumbrance or transfer of the lease.
- Any consideration allocated to the holder of an option to purchase an interest in the real property or to the holder of a right of first offer or first refusal to purchase an interest in the real property who also paid for waiving, releasing or not exercising the right or option on transfer of the property to another person.
- Any fee, charge, assessment, dues, contribution or other amount relating to the purchase or transfer of a club membership concerning the real property owner by the transferor.
- Any fee or charge that is imposed by a document and that is payable to a nonprofit organization for the sole purpose of supporting recreational activities within the association.
- Any fee, assessment, tax or other charge imposed by a governmental authority agreeable to pertinent ordinances, regulations or laws.
- Any consideration payable by the transferee to the transferor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the transferee based on any subsequent appreciation, development or sale of the property.
- States that a transfer fee covenant or other document prescribed by statute or a lien claiming to secure payment under a transfer fee covenant or document prescribed by statute that is executed after the effective date of this Act is not enforceable or binding.
- Declares that a transfer fee covenant or other document prescribed in statute that is executed before the effective date of this Act is not to be implied as enforceable or valid.
- Defines *association* and *transfer*
- Provides a legislative findings and intent clause. **Effective Date: 7/29/2010**