

BAR ORDER IMPLEMENTATION REGULATIONS

AMEND ARTICLE 4 TO READ:

Article 4. Brokers.

Section 2725.5. Broker Responsibility Regarding Debarred Persons

Business and Professions Code Section 10087 authorizes the Commissioner to debar licensed or unlicensed persons from any position of employment with, or management or control of, a real estate business. Such debarred persons are further prohibited by Section 10087 from participating in any business activity of a real estate salesperson or a real estate broker and from engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business.

A broker is responsible for screening his or her employees, both licensed and unlicensed, and regular business associates engaging in any real estate-related business activity on the broker's premises, for compliance with Section 10087. Such broker responsibility includes, but is not limited to, quarterly review of the Department's online listing of debarred persons and of the listing of disciplinary actions published in the Department's quarterly bulletin. A broker who becomes aware of violations of Section 10087 is responsible for reporting such violations to the Department.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10087, Business and Professions Code.

AMEND ARTICLE 18.7 TO READ:

Article 18.7

2930. Standard Proposed Decision Language.

The following language, terms and conditions will be used, as appropriate, in Proposed Decisions and Decisions of the Commissioner in administrative adjudications conducted pursuant to sections 11500, et seq. of the Government Code:

[subsections 1 through 19 unchanged]

20. Order of Debarment

Pursuant to Section 10087 of the Business and Professions Code, Respondent _____ is hereby barred and prohibited for a period of thirty-six (36) months from the effective date of this order from performing any of the following activities in the State of California:

- (a) Participating in any capacity to further the business activity of a real estate salesperson or real estate broker, or engaging in any business activity involving real estate that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Business & Professions Code;
- (b) Participating in any activity for which a real estate salesperson or a real estate broker license is required;
- (c) Engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business which requires a real estate license;
- (d) Participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company; and
- (e) Holding any position of employment, management, control, or ownership, as a real estate broker, a real estate salesperson, or an unlicensed person, in any business involving any of the activities mentioned in subparagraphs (a) through (d) above.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10087, 10148, and 10153.4, Business and Professions Code; and Section 11425.50, Government Code.

ADOPT ARTICLE 20 AND SECTIONS 2960, 2961, 2962, AND 2963, TO READ:

Article 20. Suspension and Bar Orders.

Section 2960. General Definitions and Short Form References.

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases and short form references appearing in this Article shall have meanings as ascribed herein.

- (a) “Bar” – to prohibit or exclude from.
- (b) “Business activities” – include, but are not limited to, all real estate business functions, activity requiring a real estate license, any clerical activity (i.e., typing, filing, copying, reception, telephone communications), mailroom activity, customer service, telemarketing, marketing, advertising, soliciting, processing transactions, bookkeeping, accounting, computer activities, counseling, advising, planning, supervising or overseeing, making referrals, interviewing, intake, entertaining clients, notary, credit report checking, any consulting services, any project management, and any activity as an independent contractor.
- (c) “Business activities of a finance lender” – any business activity set out in subsection (b) performed for any lender, including, but not limited to, a finance lender, residential

mortgage lender, bank and/or other institutional lender, credit union, private lender, or hard money lender, whether or not the loan is secured by an interest in real property.

- (d) “Date of a notice of intention” – the date the notice of intention was mailed or served.
- (e) “Employment, management or control” – 1) Employment - employment as an employee or independent contractor; 2) Management - holding a position which requires or allows the supervision or management of the tasks performed by employees and/or independent contractors; 3) Control - holding a position in a corporation as a director, officer, or shareholder owning or controlling more than ten percent of the shares of the corporation.
- (f) “In the public interest” – for the common or general welfare of the public.
- (g) “Material damage to the public” – significant, not minor or inconsequential, harm or loss to any member of the public.
- (h) “On the premises” – a particular physical location and/or place of business including, but not limited to, a building or part of a building, store, shop, apartment, house, hotel room, restaurant, condominium, mobile home, trailer, motor home, fifth wheel, automobile, boat, yacht, airliner, airplane, or private or commuter jet.
- (i) “Participating” – taking part in or sharing in any of the business activities referred to in subsection (b).
- (j) “Reasonably related” – related to a moderately sufficient extent or degree; less than substantially related.
- (k) “Suspend” – to temporarily prohibit or exclude from.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10087, Business and Professions Code.

Section 2961. Grounds for Issuing an Order of Suspension or Debarment.

An order of suspension or debarment pursuant to Section 10087 may be based upon a finding by the Commissioner of one or more of the following grounds:

- (a) The suspension or bar is in the public interest and the person subject to suspension or bar has committed or caused a violation of Division 4 (Sections 10000 through 11288) of the Code or a rule or order of the Commissioner and the violation was known or should have been known by the person committing or causing the violation.
- (b) The suspension or bar is in the public interest and the person subject to suspension or bar has committed or caused a violation of Division 4 (Sections 10000 through 11288) of the Code or a rule or order of the Commissioner and the violation has caused material damage to the public.

- (c) The person subject to suspension or bar has been convicted of or pleaded nolo contendere to any crime involving dishonesty, fraud, or deceit, or any other crime reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.
- (d) The person subject to suspension or bar has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10087, Business and Professions Code.

Section 2962. Effect of Receipt of Notice of Intention to Issue Order.

A person who is the subject of a notice of intention to issue an order of suspension or debarment under Section 10087 of the Business and Professions Code is, immediately upon receipt of the notice, prohibited from engaging in any business activity involving real estate, within the State of California, that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Code. This prohibition is subject to no exceptions. The prohibition will remain in place until lifted via due process or until the expiration of the period of time set out in the subsequent suspension or bar order.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10087, Business and Professions Code.

Section 2963. Effect of Issuance of Order.

An order of debarment is not a form of discipline that substitutes for another type of discipline under the Real Estate Law. Rather, the order of debarment is an additional level of consumer protection. Debarment is imposed against a licensee, disciplined licensee, or unlicensed person where the Department has identified a higher risk to the public and to the real estate industry, necessitating the separation of the debarred individual from all practice and practitioners of real estate, as described in (a) through (e), below.

Upon adoption of an order of debarment, any person who is the subject of the order is, for the period of time stated in the order, prohibited from:

- (a) Engaging in any business activity involving real estate that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Business & Professions Code;

- (b) Participating in any activity for which a real estate salesperson or a real estate broker license is required;
- (c) Engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business which requires a real estate license;
- (d) Participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company; and
- (e) Holding any position of employment, management, control, or ownership, as a real estate broker, a real estate salesperson, or an unlicensed person, in any business involving any of the activities mentioned in subparagraphs (a) through (d) above.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10087, Business and Professions Code.