



# THE REGULATORS

## INFORMATION NEWSLETTER

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VOL.1

### AHOY THERE!

Hello and welcome to the First Edition of “The Regulators Information Newsletter!” We are excited to share some of our information and concerns, both inside and outside of the office, with you. From here on out, please check our website quarterly for all further editions of “The Regulators Information Newsletters” at <http://dbw.ca.gov/YnS/Yacht.aspx>.

Allow us to introduce ourselves! Acting Deputy Director, Col. Chris Conlin, USMC (Ret.), Boating Operations Chief, Ramona Fernandez, Licensing Enforcement Administrator Marinda Isley, Licensing Enforcement Administrator, Anneka Barkey, Licensing Administrator for Salespersons, Fahim Buksh, and Licensing Administrator for Brokers, Monique Cabral. Please feel free to reach out to us should you have any questions, concerns, or you just want to say hi!

### BOND CONTINUATION NOTICE REQUEST

If a current bond continuation certificate (or a new valid bond) is not received in this office by 11:59 PM on the bond expiration date, your broker’s license will be suspended.

Pursuant to Harbors and Navigation Code 730 (a): –  
“Before any broker’s license shall be issued or renewed by the department for any applicant, the applicant shall

*procure, file, and maintain with the department a good and sufficient bond in the amount of fifteen thousand dollars (\$15,000) with a corporate surety duly licensed to do business within the State of California, and conditioned that the applicant shall not practice any fraud or deceit or make any fraudulent or grossly negligent representations that will cause a monetary loss to any person for whom the broker acts under this article.”*

A Notice of Suspension will be mailed to the **brokerage**. Once the Division receives the current bond continuation certificate, the license will be placed on “active” status as of that date. In addition to submitting the current continuation certificate, the broker must return paper license to the Division. Once the license is received by this office, an amended license will be issued showing the license effective date as the date the current bond continuation certificate was actually received by the Division. If this means brokers must complete their bond renewal process early with their insurance companies in order to get the paperwork to our office in time, then that is what must be done in order to prevent a lapse in license coverage.

## **BROKER'S CHANGE OF ADDRESS OR CHANGE OF BROKERAGE**

DBW is experiencing an increase of brokerages failing to notify the Division of an address or brokerage change. The Division must have current information on file at all times pursuant to Section 735 of the Harbors and Navigation Code.

Brokerage change of address notifications must be in writing, and sent to the Division in the form of an email, facsimile, or letter.

Brokerage changes include, but are not limited to: salespeople transferring to another brokerage, brokers who accept a position to work for another brokerage under a broker to broker agreement, newly established branches, and brokerage closure/retirement.

## **SALESPERSON LICENSING REMINDERS**

**Salesperson Transfers:** When a salesperson transfers to another brokerage or is no longer sponsored by the broker he or she is licensed under, that salesperson's license MUST be returned to DBW by the sponsoring broker immediately with the exact date of the salesperson's termination. If the Division does not receive the current salesperson's license, the request for license transfer will be placed on pending status until the current salesperson's license is mailed to our office. Salespeople are not legally authorized to possess the paper license themselves at any time.

Pursuant to Harbors and Navigation Code 735 (c): *"Every salesman's license shall remain in the control of the broker by whom the salesman is employed until the license is canceled or until he leaves the employment of the broker. Immediately upon the salesman's withdrawal from the employment of the broker, such broker shall return such salesman's license to the department for cancellation and shall notify the department of the exact date of termination."*

**New Salesperson Applications:** All applications for a new salesperson's license must be signed and dated by the broker under whom the salesperson is being employed. The application must be completed in its entirety before being mailed to the Division. All new applications must include the "Request for Live-Scan Service Background" form in order to be complete. Salesperson applications will not be processed and shall

be deemed incomplete unless all of the requested information has been received by the Division.

## **PRIVATE LABEL SEARCH ENGINE (PLS)**

The Division of Boating and Waterways has stated that brokers in California who advertise boats on a website that uses a Private Label Search system are less likely to be found in violation of the Harbors and Navigation Code if they do the following for each boat they advertise using the PLS system:

- 1) The listing broker is clearly and prominently identified in the ad,
- 2) A prominent disclosure is made in the ad that states:
 

*"THIS BOAT IS SUBJECT TO AN EXCLUSIVE LISTING AGREEMENT WITH THE BROKER LISTED ABOVE AND IS NOT OFFERED FOR SALE BY \_\_\_\_\_ (Name of advertising broker). (Name of broker) is merely providing this information in an effort to represent you as a buyer in the purchase of this vessel."*
- 3) The advertising website that the broker uses should offer an opt-out to any brokerage that does not want their exclusive listings appearing on other brokerage websites or in other broker's web advertisements. Brokers should email a request to the advertising website, which should then exempt any of your brokerage's inventory from showing in a PLS search on another broker's website.

## **OUT-OF-STATE ADDRESSES ON BROKER'S LICENSES**

If you are a licensed broker in the state of California and you received a broker's license with an out-of-state mailing address from DBW Licensing, you will have 30-60 days to provide the Division with a mailing address associated with your brokerage within the State of California. The Division will no longer issue a broker's license with an out-of-state address. It is the responsibility of the broker to ensure he/she has a California mailing address to receive mail if licensed by this state.

Pursuant to Harbors and Navigation Code 735: - *"Every broker shall maintain a definite place of business in this state as his principal office and may establish other branch offices throughout the state. Every broker*

*maintaining more than one place of business within this state shall procure an additional license for every branch office maintained by him. Every broker shall keep the department informed at all times of the address of his principal and branch offices and any changes of address."*

## **ENFORCEMENT CONCERNS CORNER**

**Definite Place of Business:** Enforcement has noticed an ongoing issue with several brokers regarding brokers failing to establish and designate a definite place of business.

Pursuant to California Code of Regulations, Title 14, 7616: – *"A definite place of business shall mean premises owned, rented, or leased by the broker which premises shall be locatable at a street address or road intersection and/or slip number, if applicable. A post office box and/or telephone number shall not be considered a definite place of business."*

**Trust Account:** Enforcement has encountered several brokers failing to not have a trust account in place while licensed in the state of California. Brokers are statutorily required to have a non-interest bearing trust account in place in order to do brokerage business in California.

Pursuant to Harbors and Navigation Code 714: – *"A licensed broker who accepts funds from others in connection with any transaction subject to this article who does not, as soon as possible, place those funds into a neutral escrow depository, shall place the funds into a trust fund account maintained by the broker in some bank or organized depository and shall retain all the funds in the account until the broker makes a disbursement of the funds in accordance with written instruction from the person entrusting the money. The written instruction shall also set forth specific purposes for which the broker may use money deposited with him or her. If the broker wishes to use money from the deposit for a purpose not included in the written instructions, the broker shall first obtain the written consent of the person entrusting the money specifically authorizing the use proposed by the broker for the money. The broker's written consent may be given to the broker by a letter or facsimile. A separate record shall be maintained of all monies received subject this section and shall further indicate the disposition thereof. Any funds received by a licensed person shall be delivered by the salesperson to the broker under whom the salesperson is at the time licensed."*

**Unlicensed Activity:** Enforcement has identified and fined several brokers for having unlicensed salespersons doing brokerage business without a license. It is the broker's legal responsibility to ensure that anyone selling boats under their brokerage is licensed at all times.

Pursuant to Harbors and Navigation Code 712: – *"No licensed broker shall employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this article who is not a licensed broker or salesman licensed under the broker employing or compensating him or her, except that a licensed broker may pay a commission to a broker of another state or country."*

**Limited Liability Company (LLC):** The Division is in the process of identifying any brokerages licensed as a limited liability company (LLC). If you were issued an LLC brokerage license under the Division of Boating and Waterways, please contact Licensing at (916) 327-1847.

Pursuant to Harbors and Navigation Code 729.5: – *"Any limited liability company licensed by the Division as a yacht broker on July 1, 2001, in order to continue to be licensed after that date, shall apply to the Division in the form of an individual, partnership, or corporation for a broker's license on or before the expiration date of its existing license."*

**Written Authorizations:** If there are any changes to your listing agreements (i.e. gross listing price or term of listing) you must have written authorization from your Seller to make those changes. The Division accepts written authorizations in the form of a fax, email, or scanned document. Enforcement requires that a paper copy of the written authorization to be placed in the file.

**Certificate of Convenience:** The Division has discovered that brokers have passed away without the Division receiving official notification of that fact. The Division requests that all brokers designate a person to continue to conduct the brokerage business for a period of 90 days after the broker's death. Upon a broker's death, a copy of the Death Certificate must be immediately provided to DBW's Licensing unit.

Pursuant to Harbors and Navigation Code 727: – *"The Division may issue a certificate of convenience to the executor or administrator of the estate of a deceased broker, or if no executor or administrator has been appointed, until a certified copy of an order making such*

*appointment is filed with the Division, to the widow or other heir otherwise entitled to conduct the business of the deceased, permitting such person to act as a broker in the conduct of the business of the estate for a period of 90 days from and after the date of death pending, but not later than, disposal of the business unless such person qualifies by examination for and obtains a permanent broker's license. The Department may extend the certificate of convenience beyond the 90 days on the showing of a just and reasonable cause."*

**Branch Offices:** If you are conducting business out of a location other than your principal office, you are required to have a branch office license for each branch office location. Any and all brokers and salespersons associated with the branch office location shall prominently display their license at this branch office location.

Brokers are also required to display any and all licenses associated with the brokerage at their principal office.

Pursuant to California Code of Regulations, Title 14, 7617 (a): - *"Any broker who regularly transacts business at a location other than his established principal office, or who employs other brokers or salesmen to do so shall be deemed to be maintaining a branch office at such location. (b) A temporary exhibit of less than 3 weeks duration at a county or state fair or an organized boat or sport show shall not be deemed a branch office."*

**Have a question or concern?** Please feel free to contact us!

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