



Information Letter

DATE: *February, 2007*

TO: *Licensed Yacht and Ship Brokers*

FROM: *Gina Ebling, Associate Boating Administrator
Department of Boating and Waterways*

SUBJECTS:

- 1) Topics Discussed at Legal Seminar*
 - 2) Continuation of Examinations in San Diego*
 - 3) DBW Broker/Salesperson exam revision status*
 - 4) Bonds 5) Broker -vs- Broker*
 - 6) Presenting Offers*
- REMINDERS**

Please note, future editions of this Information Letter will be published on the DBW web site and will no longer be mailed to individual brokers. An alert will be added to the home page announcing new editions of the Information Letter. We are currently compiling a list of e-mail addresses and may, in the future, send the Information Letters electronically.

The Department would like to thank the CYBA for inviting us to present information at the November 2006 Legal Seminar in Corona Del Mar. If you were unable to attend the seminar, we are providing a summary of the DBW issues discussed.

The Department's Role as Regulators

Our role as state regulators is to maintain consumer protection and sustain a working relationship with industry associations, brokers and salespeople in order to insure compliance of the laws, rules and regulations under jurisdiction of the Department. We hope industry members will continue to contact us with questions or any concerns regarding a transaction or issue of law. In order to accomplish our goal, we will continue to further educate California consumers and work with brokers and salespeople to ensure a competitive marketplace and compliance with law. A key factor in maintaining compliance is our performance of routine inspections of brokerages throughout the state. The components of our inspections and investigations were discussed at the seminar as summarized below.

1. Topics Discussed at Legal Seminar

Site Inspections

As a courtesy, the Department makes every effort to notify brokers before an inspection is conducted, however, sometimes it may be necessary to conduct an unannounced inspection. Before an inspection is conducted, the Department will review the licensing and complaint history of the brokerage to determine if any existing issues, past violations or problems areas should be addressed during the inspection.

During an inspection, the Department will review listing agreements, as well as, pending and closed files for compliance with law. The following issues will also be addressed:

- All licenses are current and displayed in view;
- All Broker-Salesperson Relationship Agreements are valid and current;
- Compare advertisements to authorized listing agreements;
- Listing agreements should be either *Open or Exclusive* and should include vessel identification, required signatures and, if *Exclusive*, a beginning/ending date.
- Offers to purchase should include a description of the vessel, including document or registration numbers, all details relating to the amount of sale, deposits and contingencies;
- Final transaction files should include copies of closing statements for both buyer and seller including itemized charges and credits. Closing statements should be signed by a broker indicating review and approval;
- Trust accounts are reviewed to determine actual deposit/withdrawal dates and accuracy of ledger records;
- Evidence of four-year retention of records as required by law.

When violations are detected, possible disciplinary action is based on the situation and dependent on the following:

1. Nature of violation
2. Severity of violation
3. Impact of violation on the consumer
4. Repetition of the offense
5. History of past complaints

Investigative Process

Investigations are performed when complaints are received by the Department. We will attempt to determine the facts of the complaint by interviewing both the complainant and the broker(s) involved. A broker will be notified that a complaint has been filed and requested to be available for a meeting with a Department investigator. The steps taken to investigate a complaint may include the following:

- Request information;
- Review the complaint to verify jurisdiction;
- Notify broker that a complaint has been received;
- Contact all parties involved in the transaction if additional information is needed;
- Request, from broker, copies of listing agreements, purchase contracts and closing documents;
- Contact broker by phone and arrange an appointment to discuss the case;
- Interview complainant and respondent broker; obtain statements;
- Evaluate the evidence;
- Determine if there is sufficient evidence to support the alleged violations.

Once a violation is determined the Department will take appropriate disciplinary action and notify parties of findings and subsequent proceedings. Keep in mind that adjudicated actions are reportable to the public.

2. Continuation of Exam Site in San Diego

Good news for our applicants in the San Diego area. The San Diego exam site will continue to accommodate San Diego broker and salesperson applicants for the time being. As long as we continue to receive a significant number of applicants from the area, we will continue to offer the exam at this location. The **San Diego** location is in the **State Building, 1350 Front Street, Room TBA**. Unless otherwise stipulated by the applicant, individuals in San Diego County will be scheduled to test at the San Diego location.

3. DBW Broker/Salesperson Exam Revision Project Status

The Department is continuing its cooperative project with qualified industry subject matter experts to revise the existing broker and salesperson exams. Revised exams are expected to be administered for a "trial period" beginning in March of 2007. Study materials have been revised to accommodate the new exams. The Department may experience delays in reporting scores during the trial period, due to extensive analysis of exam results. Please be patient with licensing staff.

4. Bonding Issues

Brokers who maintain collateral with a surety company should be aware of the conditions of the contract before signing. The Department has recently been requested by a broker, to assist with the early release of collateral by officially releasing the surety company of any "prior or future liability". The Department cannot legally order the release of liability of a surety company. In order to maintain consumer protection, and remain within our jurisdiction, we cannot intervene with a surety company on behalf of a broker.

5. Broker -vs- Broker

Department investigators receive numerous calls *from* brokers *about* brokers. Complainants seldom follow up with written complaints. An official complaint will not be initiated without a written complaint form and supporting documents. Because of possible statements which may be required for administrative actions, complainants **cannot** remain anonymous. All legitimate complaints are taken seriously; however, please make sure you can substantiate your complaint with evidence or supporting documentation.

The law requires the Department to prove all violations of the Yacht and Ship Brokers Act by clear and convincing evidence. This burden of proof is higher than that required to prevail in a civil lawsuit. The Department is also not able to prove a violation where documentary evidence of a violation is directly contradicted by other documentary evidence.

If you have a legitimate concern involving the business practices of another broker, and do not wish to file a formal complaint, we are always available to discuss the issue. Depending on the nature and severity of the allegation, the Department may take action as necessary.

6. Presenting Offers

Brokers continue to have issues regarding presenting offers to the seller. We understand the world is now automated and you can conceivably receive simultaneous offers; so we ask that you continue to adhere to the following practices:

- Pursuant to California Code of Regulations Section 7623, you are required to present all offers until the transaction is completed, unless expressly instructed by the principal to **not** present any further offers (it would benefit you to have this in writing).
- After an offer is accepted, you are still required to present offers to the seller until the sale is completed, unless otherwise advised by the seller not to present offers.
- You should advise the principal that if the first offer is accepted and they back out of the deal to accept another offer, they may be liable for a civil lawsuit for breach of contract.
- You should consider a written addendum stating the second offer would only be accepted contingent to the first offer defaulting.
- Having a fiduciary duty to disclose all relevant facts during a transaction, it is strongly suggested that you disclose to any co-op broker the fact that there are multiple offers.

REMINDERS

Downloading Renewal/Reinstatement/Transfer Documents

For your convenience, broker and salespersons renewal/reinstatement/transfer documents are available on-line. These forms can be downloaded via our department website. The link is www.dbw.ca.gov. To retrieve these documents click on DBW Programs ~ (located on the left side of the screen), then click on Yacht and Ship Licensing Program.

Fees, exam schedules and general information is also available on the website. Salespeople should check the site and contact your broker with questions or concerns before contacting licensing staff.

Change of Address

Brokers moving to a new location must immediately file a change of address with DBW licensing staff. Simply send a letter requesting records be updated with the new address and enclose the current license. A new license will be issued and mailed to the new address.

Requesting Applications and Receiving a Salesperson License

Only a licensed broker of record may request a salesperson application package from the Department. The package, which includes study materials, will be mailed to the broker's address of record and should be immediately forwarded to the applicant to complete and submit with appropriate fees. The Department then has ten days, from date of receipt, to process the application and schedule the exam ~ please **do not call** requesting status within this time period.

Once the salesperson has successfully completed the exam, a license will be issued and mailed to the broker's address. Please refrain from contacting licensing staff regarding the results of the exam; results will be mailed promptly. Upon receipt, the salesperson's license should be displayed at the brokerage and the pocket license presented to the salesperson.

If there are any items of interest to the industry which you would like to see addressed in a future edition of this Information Letter, please contact Gina Ebling at gebbling@dbw.ca.gov or (916) 263-8195.

For licensing information, please contact:

Brokers: Fahim Buksh at fbuksh@dbw.ca.gov or (916) 263-8197

Sales: Marinda Isley at misley@dbw.ca.gov or (916) 263-8196