



SEA LINES

Information Letter

DATE: *February, 2010*

TO: *Yacht and Ship Brokers & Salespeople*

FROM: *Department of Boating and Waterways*

SUBJECTS:
DBW New Hires
Issues and Updates
Contacts

New Investigator

The Department of Boating and Waterways (DBW) is happy to announce the addition of Marinda Isley to our investigative staff. Marinda has been with DBW for 15 years performing duties ranging from preparing department contracts to administering the 'For Hire Operator' program to licensing yacht sales staff. Marinda has gained a vast knowledge of the Yacht & Ship program through her work with the licensing unit and will be an asset to the enforcement staff. She can be reached at (916) 263-8182 or by e-mail at misley@dbw.ca.gov.

New Licensing Administrator for Salespersons

DBW's Yacht & Ship Licensing Unit would also like to welcome Steve Fielding. As our new licensing administrator for salespersons, Steve will be filling the position recently held by Marinda Isley. You may contact him at (916) 263-8196 or sfielding@dbw.ca.gov. He came to DBW from the State Department of Developmental Services.

DBW Directory

In an effort to improve and expedite operations, DBW has recently upgraded its Yacht & Ship Program database. The new technology, in producing a more efficient licensing and enforcement process, caused some unforeseen delays in converting the on-line broker salesperson directory, which have now been corrected. We will continue working to ensure the directory contains the most current and accurate information.

Possible Delays

DBW would also like to remind licensees that they may experience reductions of services due to state mandated furloughs. Licensees may experience delays in processing applications and may not have immediate access to licensing or enforcement staff.

Please be patient and staff will return your calls and e-mails as workload permits. Always review the DBW Web site before contacting the Yacht & Ship Unit; the site has been designed to address many of your concerns and may alleviate the need for a phone call. Fees are also listed on the Web site.

Bond Verification

Effective October 1, 2009, brokers will be requested to submit verification of current bond with their license renewal/ reinstatement form, pursuant to Harbors and Navigation Code 730(a) which requires that they maintain a current bond in the amount of fifteen thousand dollars (\$15,000). Brokers will also be required to make available a current copy of their bond verification as an element of the inspection process.

A broker who continues to list boats once issued a Notice of Suspension for failure to maintain a surety bond, will be considered in violation of Section 724(c) which prohibits a licensee from performing any action for which a license is required, after notification of license suspension.

BROKERS SURETY BOND

- Bond Notices - Cancellations and expirations notices are sent out by the insurance company; DBW will contact the broker if a notice is received. It is the brokers' responsibility to reinstate the bond in a timely manner and to always ensure they maintain an active surety bond. Salesperson licenses will become invalid if the brokers license is suspended due to bond expiration or suspension.
- Bond Reinstatement Notice - Should a bond become inactive, proof of reinstatement must be mailed to DBW by the broker or the insurance company pursuant to H&N Code Section 730(c). Please fax or mail a copy of your bond reinstatement notice to ensure your license remains active.
- Action on Bond - Brokers must submit a new bond within 15 days of any action taken against a current surety bond if recovery was made on the bond pursuant to H&N Code Section 730(c).

Brokers Change of Address or Change of Brokerage

Recently, DBW has experienced an increase in the number of brokers who have failed to notify the department of an address or brokerage change. Although sales persons are required to return their licenses to the department when they relocate, brokers continue to renew their license and not inform us of their current status.

Be advised that DBW must have current information on file at all times pursuant to Section 735 of the Harbors & Navigation Code. Brokers who accept a position at a brokerage as an associate broker must notify department immediately.

Update on Disciplinary Actions

DBW continues to work with local law enforcement and the Attorney General's Office to take administrative action against the licenses of brokers found guilty by a criminal or civil court of crimes which defraud the public. We will use our resources to ensure that these brokers will no longer be allowed to take advantage of the boat buying public. We hope our continued efforts and enforcement actions will help to restore and maintain public trust in the brokerage industry.

Industry and the public will be updated on the outcome of all DBW disciplinary actions on our Web site once information becomes public.

Advertising Disclosures

Numerous complaints, regarding advertisements on Craigs List, E-Bay and other on-line sources, have been submitted to DBW. Be advised that all advertisements placed on-line by a broker MUST comply with the conditions contained in CCR Section 7602 which requires *"Advertising of any service for which a license is required under the provisions of the Yacht & Ship Brokers Act shall disclose the name of the business as shown on the required license."* **This condition applies to the initial ad and is not satisfied if the broker is being identified only in the link.**

Ethics & The Law

Although the Yacht Brokers Act contains no specific language relating to a brokers' ethical responsibility, we do investigate all complaints received. Complaints involving ethics often lack documentation and cannot be tied to specific violations of law; however, we attempt to resolve disputes as often as we are able. Some commonly received complaints involve the following:

- Brokers or salespeople accepting a commission before their client, the seller, is paid the proceeds of the sale
- Brokers continuing to advertise after the listing has been cancelled
- Sales staff soliciting clients from a former employer (brokerage); often before the original exclusive listing has expired
- Brokers buying boats from non-profit organizations then selling them at inflated prices
- Brokers advertising a commission percentage not in accordance with industry standards
- Brokers who complain of violations which allegedly occurred during a co-op transaction for which they failed to execute a 'co-op agreement'
- A brokers' failure to disclose obvious repair or warranty issues
- Allegations of unfair treatment when broker represents both the sellers and buyers (dual representation)

Record Retention

DBW has received inquiries regarding the length of time records must be retained by a broker. Pursuant to Harbors & Navigation Code Section 731.1, *A licensed broker should retain, for four years, copies of all listings, deposit receipts, canceled checks, trust records and other documents executed or obtained by the broker in connection with a transaction for which a brokers license is required.* Such records and documents may be requested by DBW staff during a routine inspection or during an investigation.

Retaining Disputed Funds in Trust Accounts

Many brokers have expressed concerns regarding incidents involving disputed funds held in their trust account. Specifically brokers question how to manage disputes when they are instructed by their client NOT to return a deposit. Although a specified time limit for retention of disputed deposit funds is not clearly defined by law, the DBW requires brokers to retain said funds in their trust accounts until the dispute is resolved to the satisfaction of both parties.

If the sellers and buyers cannot come to an agreement concerning disbursement of a deposit, the broker may wish to consult an attorney regarding an *Interpleader Action*. An *Interpleader Action* is an equitable remedy employed when two or more parties seek ownership of money or property held by a third party; as with a brokers escrow account.

Commission or Contract Disputes

Complaints regarding salesperson or broker to broker commissions are not within the jurisdiction of DBW. The Department of Labor has procedures and remedies to address employee commission disputes.

Disputes alleging a breach of contract are dependant upon any possible arbitration conditions contained in said contract. The Harbors and Navigation Code does not allow DBW the authority to investigate commission issues, civil actions or contract disputes.

Inspection Schedule

Yacht & Ship investigators have set new inspection goals for 2010. The investigative staff attempts to visit and inspect brokerages a minimum of every two to three years. Brokers may be contacted in advance; however, inspections may be performed at random and unscheduled. The inspection will include, but is not limited to, the following issues:

- Salesperson agreements and license status
- Verification of current bond
- Listing Agreements
- Pending transactions
- Closed transactions
- Trust account structure and activity relating to transactions

We continue to be proactive in our goal to promote a cooperative relationship with brokers throughout California. Inspections are an opportunity for the department to meet with industry and industry's opportunity to discuss issues of concern regarding compliance standards, clarifications of law and unlicensed activity.

If there are any items which you would like to see addressed in a future edition of Sea Lines, please contact Gina Ebling at gebaling@dbw.ca.gov.

For further information, please contact our toll free number at (888) 326-2822 or individual staff at:

Brokers Licensing: Fahim Buksh at fbuksh@dbw.ca.gov or (916) 263-8197
Sales Licensing: Steve Fielding at sfielding@dbw.ca.gov or (916) 263-8196
Investigations: Gina Ebling at gebaling@dbw.ca.gov or (916) 263-8195
Marinda Isley at misley@dbw.ca.gov or (916) 263-8182