

## Fictitious Business Names “DBA”s

### **What does a real estate broker have to do to operate under a DBA?**

The DBA must be registered with the county recorder, and then submitted to the DRE for approval. DRE form 282 gives instructions on how to do the paperwork.

### **Can the DRE deny approval of a DBA?**

Yes, they can. Approval is not automatic. The DRE may deny approval if the DBA is: 1) misleading or would constitute false advertising 2) implies a partnership or corporation when there is none 3) includes the name of a real estate salesperson (or a broker associate) 4) is the name formerly used by a licensee whose license has since been revoked or 5) contains the word or designation “bank,” “banker,” “trust,” “trustee,” “trust company,” “insurance” or “assurance,” “escrow,” or “savings.” There are other reasons as well.

### **Can a sales agent use a DBA without their broker’s approval?**

No. Its use must be approved by the broker.

### **Does obtaining a DBA create a business entity?**

No. A sole proprietor who obtains a DBA is still a sole proprietor. To obtain the liability protection of a corporation, it would be necessary to first establish a corporation through the Secretary of State, and then have its status as a broker approved by the DRE.

### **Once I select and record a fictitious business name and have it approved by the DRE, will that give me the sole right to use the name?**

No. Recording a DBA and obtaining approval by the DRE does not create a trademark right. Another company may already have rights to the name. When the DRE approves a DBA, it is primarily reviewing the name for compliance with DRE regulations and not to grant trademark rights or determine if the name or a similar name is being used by other persons or entities.

### **Well then how do I choose a name to ensure that the DBA has trademark protection?**

First, you must choose a name that is minimally unique and non-generic. Not all names can be used to create a trademark right. And some names have potential to provide stronger trademark protection than others. Secondly you should choose a name that is not confusingly similar to a name currently in use. To determine this, you must do a search, and the first place to start is the DRE’s website where you can scan all DRE licensed real estate names. This will generally show if anyone else is using your desired name.

Once the name is chosen, the trademark right can be established in a number of ways including registration with the California Secretary of State, registration with the United States Patent and Trademark Office, or through using a name within a geographic area.

**WARNING:** For navigating through this complex subject, C.A.R. recommends that you consult with an attorney.

### **Can a sales person own a DBA?**

Yes, A salesperson may maintain the ownership and use of a DBA when that salesperson works under a broker by contract and subject to the broker’s rules and policies. See C.A.R. Form SOFBN.

### **I want to use the name “The Smith Team.” Do I need to obtain a DBA?**

No. There are special rules for the use of “team,” “associates,” or “group” names which save you the hassle of recording a DBA and having it approved. But you must adhere strictly to the team name rules.