



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

Memorandum For Real Estate Professionals Doing Business in Morro Bay

Date: March 5, 2015

Subject: Business Licensing Requirements for Real Estate Transactions

1. **Purpose.** The purpose of this communication is to provide formal direction regarding Morro Bay's business license requirements and how those affect real estate professionals - both those based in Morro Bay and those outside the City. The primary purpose of this is to provide clarity on how to "get healthy" in the environment of Morro Bay's ongoing business license compliance audit.
2. **Legality.** While we understand there is some dissatisfaction with Morro Bay enforcing our business license requirements through a 4-year back-audit, Morro Bay staff and attorneys have reviewed our code and we are confident the code and audit, particularly with respect to the real estate community, are legal and appropriate. That includes some of the concerns we have fielded with respect to proportionality, retroactivity, multiple taxation and agent licensing.
3. **Broker Coordination and Input.** On March 2, 2015, the Morro Bay City Manager, Attorney and Tax Collector had a positive and productive meeting with a broad representation of SLO County Real Estate professionals including Morro Bay, SLO and South County Brokerage owners, Incorporated Broker-Associates, Agents and a Real Estate Association Executive. Several of those professionals were invited to review this letter and provide feedback that we incorporated to make this communication as helpful as possible.
4. **Licensing Requirements.** This letter is not exhaustive, but we are hopeful it will answer 95%+ of the questions about implementation of the Morro Bay Municipal Code. Those include: 1) distinction of Brokers vs broker-associates / agents / salespeople; 2) requirements for in-town and out-of-town real estate professionals, and, 3) Morro Bay's limited-time amnesty from penalties.

a. Brokers vs. Broker-Associates / Agents / Salespersons:

- 1) For the purposes of this letter: "agent" refers to a Broker-Associate, Agent or Salesperson directly associated with a Licensed Brokerage; and "broker" refers to a Licensed Brokerage that is a business of record associated with various Broker-Associates, Agents or Salespeople. That is: "broker" = i.e. Prudential Real Estate or John Doe licensed and acting as a broker, while "agent" = John Doe who is a broker-associate, agent or salesperson supervised/associated with a "broker".
- 2) The City of Morro Bay recognizes agents must operate under the auspices of a broker – they cannot operate independently. However, most agents file a Schedule C (Business Income / Loss) on their taxes and, therefore, from a tax standpoint they are doing business as an agent working with a broker.
- 3) In general, agents are not taxed as a "full business" requiring a \$137 business license. They are generally taxed at the \$33 rate similar to the "employee rate" for other entities conducting business in Morro Bay.
- 4) In general, agents must have approval from their broker to obtain a Morro Bay business license. (Licenses already issued to agents without broker approval will remain valid until expiration.)
- 5) Generally, if a broker-associate is incorporated and if that corporation is the entity doing business through the individual broker-associate who incorporated that entity, and if that

broker–associate corporation does not conduct other business in Morro Bay, then that corporation would pay a \$32 tax as an agent and that individual would not require a separate business license.

b. California Licensed Real Estate Brokers based in Morro Bay:

- 1) Morro Bay business licenses run on a year-to-year basis (expires 1 year from date of issue) and all businesses based in Morro Bay are required to have a current business license at all times.
- 2) To obtain a Morro Bay business license, brokers pay the full \$137 business license tax, pay a \$23 tax per W2 employee, and pay a \$33 tax per agent for the agent's business license.
- 3) Morro Bay Brokers are required to list associated agents by name. They are not required to list W2 employees by name – those are normally calculated by FTE – full time equivalents.

c. California Licensed Real Estate Brokers not based in Morro Bay. For out-of-town brokers, a Morro Bay business license is required at the time a transaction is conducted in Morro Bay.

- 1) Definition of Transaction:
 - Seller's Agent: A business license is required when a Morro Bay property is listed.
 - Buyer's Agent: A business license is required before a sale closes. (No business license is required to make an offer, only at the time a sale closes.)
- 2) For the first transaction in Morro Bay:
 - The broker must obtain a business license and pay the \$137 annual tax for the brokerage and a \$33 tax for the agent, if an agent was involved in the transaction.
 - The Broker may obtain the business licenses (listing the agent involved), or, the agent may obtain the licenses with permission of the broker. Permission can simply be the broker's signature at the appropriate place on the form. A license will be issued to both the broker and the agent.
 - This can be done through the mail or in person at City Hall, Business Licensing, 595 Harbor St, Morro Bay.
- 3) Additional Transactions:
 - If the broker has an additional transaction in Morro Bay while their business license is still valid, then no additional tax is required for the Brokerage.
 - If another agent working under that broker has a transaction in Morro Bay while the broker's Morro Bay business license is valid then the broker does not require another \$137 license, but the agent does require a license and the \$33 tax for that previously unlicensed agent must be paid.
 - When an out-of-town broker's business license expires there is no requirement to renew until the next time that broker chooses to conduct business in Morro Bay.
 - If an agent's license has not expired, then when the broker renews its license, no additional tax is due for that agent until that agent's license expires and again only if that agent transacts business in Morro Bay after that expiration date.

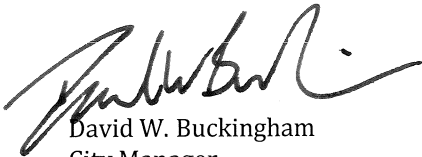
d. Licensing Requirement Summary:

- 1) In all cases a broker, in-town or out-of-town, must have a business license (\$137 tax) to conduct business in Morro Bay.

- 2) The out-of-town broker is not conducting business in Morro Bay until a listing is made or, as a buyer's agent, a sale closes.
- 3) The business license tax for agents and employees of Morro Bay brokers must be paid when the broker obtains / renews their annual business license.
- 4) The business license tax for the agents(s) of out-of-town brokers who conduct a transaction in Morro Bay must be paid at the time the transaction occurs.
- 5) Agents will be listed by name on each broker's business license application to prevent double taxing of agents of out-of-town brokers.

e. Morro Bay Limited Time Amnesty

- 1) The Morro Bay City Council implemented a limited time amnesty from penalties. That amnesty expires end of business day, on March 13, 2015
 - 2) The end date for the amnesty is part of the Morro Bay Municipal Code. It, therefore, cannot be changed without a 1 ½ - 2 month process actually changing that Code section. That is unlikely to happen.
 - 3) The Morro Bay Tax collector (Director of Administrative Services) has the authority to waive penalties on a case-by-case basis.
 - 4) The City of Morro Bay appreciates a number of real estate professionals may not get this communication about Morro Bay business license requirements in time to take advantage of the limited-time amnesty from penalties.
 - 5) As stated above, the Tax Collector has the authority to waive penalties on a case-by-case basis at any time and will consider doing so in the 30 days following the expiration of the amnesty, especially for members of the real estate profession who demonstrate they took quick action to "get healthy" with the City of Morro Bay very soon after receiving this communication clarifying the business licensing requirements for real estate professionals.
5. **Application.** Attached to this letter is a simplified business license "back tax" payment and amnesty request form for the real estate community.
- a. This single form can be used by out-of-town brokers to pay business license taxes both for the broker, and for multiple agents, for the four years of the ongoing audit.
 - b. For assistance completing the form, please contact Jamie Boucher at 772-6294, jboucher@morro-bay.ca.us or visit City Hall at 595 Harbor Street, Morro Bay.
 - c. Any broker (or agent with broker permission) who completes this form to the best of their ability, and mails or scans the form to the City of Morro Bay by March 13, 2015, will be automatically eligible for amnesty from all penalties, even if the final details and payment are not completed until after the amnesty period expires.
6. **Good Faith Efforts.** Thank you for your patience as we work with many brokers and agents, and other businesses, during this very busy period for our business license staff. We acknowledge we may not be able to return phone calls or emails as quickly as we would like and, thus, acknowledge some who are making a good faith effort to "get healthy" may not be able to complete the licensing process before the amnesty expires. As noted in above, any business entity that scans or mails an application form clearly listing the business name, address, accurate phone number and the year(s) for which amnesty is requested will be provided amnesty from penalties assuming a continued good faith effort to complete the business license transaction with the City of Morro Bay.



David W. Buckingham
City Manager
City of Morro Bay