



BUSINESS LICENSE TAX REQUIREMENTS FOR REAL ESTATE AGENTS & BROKERS

FREQUENTLY ASKED QUESTIONS

I've never heard of this before. Is this a new requirement?

The Azusa business license requirement is not new; in fact, it has existed since 1937.

Why hasn't anyone told me about this before? How come other agents in my office do not have licenses or have not received these notices?

The City's Municipal Code (A.M.C. §18-5) has always required a business license. This is not a new requirement nor a change in City policy. The City is diligent in sending courtesy notices. If someone does not receive a notification, that does not mean they are not required to obtain a business license. If a colleague has not yet been notified, it is an indication that the City is not yet aware of them. In fact, if a person/entity does not apply for a business license and they are identified in the future, with a credible source of discovery, they will be liable for all back taxes and penalties.

I am already licensed by the State of California. Why is the City asking me to get a license?

The license you hold, issued by the California Bureau of Real Estate (formerly the Department of Real Estate) is a *State* regulatory license. A City business license represents a *local* tax payment and regulatory function.

My broker already has a City business license. Don't I operate under their "umbrella"?

Your broker may have a City of Azusa business license, which has a provision for covering W2 employees. Unless your broker pays you as a W2 employee rather than a 1099 Independent Contractor, her/his business license cannot and does not cover you.

I have to work under a broker. Why is the City requiring a separate business license from me?

While California real estate law, for regulatory purposes, defines a salesperson to be an employee of a broker, it does not speak to employment for taxation purposes. Real estate law requires a written agreement between the salesperson and the broker to define their relationship for tax purposes, as well as to define the way the salesperson reports income to the Franchise Tax Board and IRS - whether the salesperson will be an employee or an independent contractor. If the written contract with your broker defines the relationship as being that of "employer and employee" and you report income to the Franchise Tax Board and the IRS as a W2 employee, then you are an employee and not a separate business. Otherwise, as an "independent contractor", you are considered a separate business and require a business license.

Why does the City think I'm a "business?" I work for a broker and use a desk at his office.

State law requires the City to use the way in which a taxpayer reported income to the Franchise Tax Board to determine whether the taxpayer acted as an employee of a broker, or rendered services as an independent contractor/separate business entity.

What specific laws require the City to treat real estate professionals as a separate "business" that must obtain their own business license?

State law (Calif. Business and Professions Code §16300) prohibits cities and counties from imposing local business license tax on employees. In the case of a dispute between a taxpayer and the City as to whether the taxpayer is an employee or independent contractor/separate business, the City must defer to how the taxpayer reported income to the Franchise Tax Board.

Real estate law says I am an employee and not a separate business. Why are you calling me a separate "business" when I have to work under a broker?

Under California real estate Law (Calif. Business and Professions Code §10032), brokers and salespersons may define their relationship, for tax purposes, as either an "independent contractor" or as "employer and employee". It also states this relationship shall have no effect on either the brokers' or agents' regulatory obligations to the public. In other words, real estate law distinguishes the regulatory requirements of California real estate professionals from local tax structures. For tax purposes, real estate salespersons who are independent contractors are required to maintain a separate business license.

Does every real estate salesperson in the City need a license?

No. Any person employed as a 1099 independent contractor who works in the City must get a business license. Therefore, all agents retained as 1099 independent contractors by their brokers who are based in, sell property in, or otherwise work in the City must have their own City business license. Those agents who are "employees" of a real estate broker (and who report their income as such (W2)) are not required to have their own City business license.