

SECTION 1 – General Business Practices

A. Is the broker properly licensed?

Correct Procedure:

A California real estate broker license is required in order to perform mortgage loan activities in California. In addition, in order to perform residential mortgage loan origination activities, mortgage loan originator endorsements to the real estate broker are required.

It should be noted there are other licenses that allow mortgage loan brokering under a limited set of circumstances such as the California Finance Lenders license and the California Residential Mortgage Lending license. For information about these licenses, contact the California Department of Business Oversight.

Reference: Sections 10016, 10130, 10131, 10131.1, 10166.02

B. Are the broker's salespersons and broker-associates properly licensed?

Correct Procedure:

All persons performing activities requiring a real estate license - which include soliciting or negotiating loans secured by real property or a business opportunity for compensation - must hold a valid real estate license. In addition, an approved mortgage loan originator endorsement to the real estate license is required in order to perform residential mortgage loan origination activities.

The broker should have some procedure in place to monitor the expiration dates of the licenses of all retained salespersons and broker-associates. Standard broker and salesperson licenses expire four years after issuance; mortgage loan originator license endorsements expire every December 31.

Once a license has expired, the licensee cannot perform licensed activity until the license has been renewed. The late renewal period simply allows the licensee to renew on a late basis; it does not allow the licensee to conduct licensed activity during the late renewal period.

It is unlawful for any broker to retain or compensate, directly or indirectly, any person for performing licensed activity unless that person is a broker or a salesperson licensed to the broker. In addition, it is unlawful for any broker to retain or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator endorsement is required if that licensee does not hold a mortgage loan originator license endorsement. A salesperson may not accept compensation for licensed activity nor pay compensation for licensed activity except through the broker under whom he is at the time licensed. It is a misdemeanor punishable by a fine of \$100 for each offense for any person, whether obligor, escrow holder, or otherwise, to pay or deliver to anyone compensation for performing any licensed acts who is not a licensed real estate broker at the time such compensation is earned.

A broker may employ non-licensed persons to assist in meeting the broker's obligations to his customers in residential mortgage loan transactions as defined in Financial Code Section 50003, where the lender is an institutional lender, provided the employee does not participate in any negotiations occurring between the principals. The broker must exercise reasonable direction, control, and supervision over the activities of non-licensed persons, withhold income taxes, and provide workers compensation insurance and unemployment insurance. Non-licensed persons may only be employed at a location licensed to the broker and perform those activities specifically described in Regulation 2841.

Reference: Sections 10015.3, 10016, 10130, 10131, 10133.1, 10137, 10138, 10139, 10166.02; Regulations 2756, 2841

C. Does the broker notify the Department of Real Estate upon the hiring and termination of salespersons and broker-associates?

Correct Procedure:

A broker shall notify the commissioner within five days of a salesperson or broker-associate's affiliation via a licensing change form signed by the broker and the salesperson, or broker-associate, or via the Department's eLicensing system at www.dre.ca.gov. The notice should include a certification by the salesperson or broker-associate that the predecessor broker has notice of the termination of the relationship, or the predecessor broker may

give notice of the termination of the relationship if the change form is mailed to the commissioner not more than 10 days following such termination.

Changes in affiliation must also be filed electronically through the Nationwide Mortgage Licensing System and Registry (NMLS) for salespersons and broker-associates who hold mortgage loan originator license endorsements.

Reference: Section 10161.8; Regulations 2752, 2758.5

D. Does the broker retain copies of all documents?

Correct Procedure:

A broker must retain copies of all documents related to transactions, trust accounts, and other documents executed or obtained by him in connection with any transaction for which a broker's license is required for a period of three years. The retention period shall run from the date of the closing of the transaction or from the date of the loan application if the transaction is not consummated. After reasonable notice, the books, accounts, and records shall be made available for audit, examination, inspection, and copying by a Department representative during regular business hours.

Three documents require retention for four years: self-dealing statements (Section 10231.2), investor qualification statements for a private money loan (Sections 10232.3(b) and 10238(f)), and the information used to determine investor suitability for private-money loans, which may include the Investor Questionnaire, RE 870 (Section 10232.45).

Files may be stored electronically or digitally if the broker complies with the requirements described in Regulations 2729 and 2729.5. The broker must make the files available to the Department and must be willing to provide copies of the files. The files must be stored in a "write once, read many" mode that cannot be erased or overwritten.

Reference: Section 10148, 10231.2(b), 10232.3(b), 10232.45, 10238(f), Regulations 2729, 2729.5

E. Does the broker have a license for each business location?

Correct Procedure:

A broker is authorized to conduct business only at the address listed on the real estate license. If the broker maintains more than one place of business within the State, the broker must apply for and procure an additional license for each branch office so maintained. In addition, if a broker is performing residential mortgage loan origination activities from a branch office, the broker must have a branch office license endorsement.

Reference: Section 10163, Regulation 2758.5

F. Is the broker using a licensed fictitious name?

Correct Procedure:

A broker shall not use a fictitious name in the conduct of any activity requiring a real estate license unless the broker first obtains a real estate license bearing the fictitious name. A fictitious business name is frequently referred to as a "dba" (doing business as). If the broker conducts residential mortgage loan origination activities, the broker's NMLS record must reflect all fictitious business names used to conduct those activities.

Reference: Section 10159.5; Regulations 2731, 2758.5

G. Do independent contractor processors and underwriters of residential mortgage loan transactions have a mortgage loan originator license endorsement?

Correct Procedure:

All independent contractor loan processors and loan underwriters must have mortgage loan originator license endorsements in conjunction with their real estate broker license.

Reference: Section 10166.02, 10166.03