



Preventing Problems: Take the Time to Review and Explain

DRE often receives complaints from consumers who were involved in a real estate or related transaction and claim that either a required disclosure was not made or later discover a material issue after closing. Many of these complaints share the same features:

- The salesperson or broker was helpful up to the time escrow was opened; afterward, however, the salesperson or broker stopped communicating.
- Disclosures and documents were sent electronically.
- The client didn't read the disclosures and documents.
- The client signed documents on a cell phone or tablet.
- The salesperson or broker did not review or explain the disclosures and documents for the client.

While many things in real estate practice have changed over the years, a broker's responsibility – and by extension the responsibility of an affiliated salesperson or broker-associate – has not changed.

As an agent, a broker has legal and fiduciary duties to their client. These duties include exercising the utmost care, integrity, honesty, and loyalty, and “explaining” what should be disclosed, as well as the significance

and consequences of disclosures. The agent must also “counsel” their client, including either conducting or recommending any required inquiries, so that the client can make an informed and considered decision to buy, sell, lease, exchange, borrow, or lend.

California law also imposes duties on the agent with respect to the other principal to the transaction. For example, there are certain duties that the seller's agent owes to a buyer and the buyer's agent owes to a seller. These duties include, but are not limited to, the exercise of reasonable skill and care, the obligation to act honestly and fairly and in good faith, and the duty to disclose to the broker all facts that are either known or should be known and that materially affect the value, desirability, or, implicitly, the intended use of the property. Please note that additional duties arise if someone is acting as a dual agent for both the buyer and seller.

It's important that licensees remember their fiduciary duties to their clients and their duties to the other parties involved in any real estate and related transactions. Taking the time with your client to review and explain each step in the process, as well as the required disclosures and other relevant paperwork, can help make the process go more smoothly for everyone involved. ■

The Important Role of Enforcement in Regulating California's Real Estate Industry

As a licensing and regulatory agency with consumer protection as its primary mission, the Department of Real Estate (DRE) is responsible for enforcing California's Real Estate Law and Subdivided Lands Law.

With this authority, DRE can deny a license to an applicant if they do not meet the requirements for licensure and discipline a license for proven violations of California law. DRE's discipline may range from license revocation for more serious violations to public reproof, issuing a corrective action letter, or issuing citations and fines for less significant violations. DRE also may issue Desist and Refrain Orders to stop activities that violate Real Estate Law or Subdivided Lands Law and issue Bar Orders for the most egregious offenses to prohibit a person or entity from engaging in real estate activities for up to three years.

DRE enforces these laws to achieve maximum protection for real estate consumers, while exercising impartiality and fairness toward both the consumer and the industry. Many of DRE's enforcement actions originate as consumer complaints.

DRE posts on its website [summaries of the most serious enforcement actions](#) taken against licensees, as well as [other disciplinary actions](#). ■