



Real Estate Bulletin

Real Estate MATTERS!

Case Study: Short Sale Shenanigans Result in License Surrender and Jail Time

It has unfortunately become all too common in short sale transactions for real estate licensees to engage in unethical and illegal conduct in order to increase their compensation. In the process, they take advantage of the unsuspecting public.

One recent example involved a real estate salesperson who, after an extensive investigation by the California Department of Real Estate (DRE) and the Office of the California Attorney General (AG), pled guilty to felony grand theft and conspiracy to commit grand theft, stemming from his actions in short sale transactions.

The salesperson defrauded the sellers, the buyers, and the lenders. In at least two transactions, he accepted listing agreements to sell distressed real property through short sales. Pursuant to the listing agreements, the licensee contracted with the respective sellers to receive a commission not to exceed 7% of the sale price. In each transaction, the respective lenders expressly stated that they would not agree to permit a commission greater than 6% of the sale price.

After receiving the purchase offers on these properties, the licensee presented the buyers with a written agreement entitled "S S Buyer Fee Agreement" demanding compensation be paid to his wholly-owned Nevada corporation for negotiating short sale terms with the lenders. The fee for purportedly negotiating the short sale on behalf of the buyers was 3% of the purchase price. He coerced the buyers into signing the "S S Buyer Fee Agreement" by representing

to them that he would not present their purchase offer unless they signed the agreement. In short, he obtained the buyers' "cooperation" through extortion.

At the close of the escrows, the licensee received the fees he demanded, which in one case was \$19,950 and in the second case was a lesser fee of \$5,000. At no time did he disclose to either the lenders or to the sellers that he received these fees.


The DRE filed an action against the licensee accusing him, among other things, of receiving illegal secret profits in two separate short sale transactions. The case was referred to the AG's Mortgage Fraud Strike Force, established by Attorney General Kamala Harris in May 2011 to investigate and prosecute mortgage fraud. On December 28, 2011, the AG filed felony charges against the licensee for defrauding his principals in the short sale transactions.

On April 18, 2012, the licensee pled guilty to two counts of grand theft and one count of conspiracy to commit grand theft, stemming from the transactions. As part of the plea, he was required to surrender his real estate license, serve 90 days in jail, pay restitution of approximately \$25,000, and was placed on formal probation for three years.

There are many bad actors in the real estate marketplace who are not concerned with the consuming public or the professionalism of the real estate industry. It is gratifying to report that, more than any time in the past,



prosecutors are joining with the DRE to ensure that unscrupulous individuals engaged in short sale and other forms of fraud face the full force of the law for their conduct.

Given current market conditions and the large number of financially distressed homeowners, the potential for short sale fraud is huge. Short sale fraud takes many forms, and all forms have a deleterious effect on the market. To help combat short sale fraud, the DRE has issued several Consumer Alerts to help educate consumers and real estate licensees alike to avoid short sale scams. The Alerts are posted on the DRE's Web site at: <http://www.dre.ca.gov/Consumers/ConsumerAlerts.html>. 

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Failing to File NMLS Call Reports Will Result in the Denial of MLO Renewal


This is an advisory to company Mortgage Loan Originator (MLO) endorsees (MLO brokers, including corporations, who have approved MU1 filings). As required by Business and Professions Code Section 10166.08 and the Nationwide Mortgage Licensing System and Registry (NMLS), real estate brokers - including corporations - who have approved MU1 filings, are required to submit reports regarding their mortgage loan activities and the condition of their businesses. These reports are often referred to as the NMLS Call Reports and are required to be filed quarterly.

Failing to submit these reports will result in the delay and/or denial of the renewal of the company's MLO license endorsement. Brokers are reminded that when a company does not have an approved MLO license endorsement, they will not be able to sponsor the brokers and salespersons they employ. Reinstating a sponsorship relationship may further delay an MLO renewal approval.

Company MLO endorsees should have received emails from NMLS alerting them of delinquencies in Mortgage Call Report filings. These licensees will have also received a similar email from the DRE with a caution that company MLO endorsees who have not submitted one or more of the required Mortgage Call Reports in 2012 will be subject to the denial of their 2013 company MLO renewals until such time as the delinquent reports are filed.

To avoid risk of delay or denial of a company MLO endorsement renewal for 2013, all delinquent Mortgage Call Reports must be submitted as soon as possible. Companies can determine which reports are delinquent by going into their NMLS record to review their filings. Remember that even if the MLO endorsement has been inactive, mortgage call reports will still be required and must be submitted. Mortgage Call Reports can be submitted even if they report no activity. The Financial Condition portion of the Mortgage Call Report must be submitted even when there has been no mortgage loan activity.

Sample Mortgage Call Reports are located at the NMLS Web site at: <http://mortgage.nationwidelicencingsystem.org/slr/common/mcr/Pages/default.aspx>.

Additional information is available on the Department's Web site at www.dre.ca.gov or by calling the Mortgage Loan Activities section at (916) 227-0770. 



Alert to Licensees — New Legal Requirement for the Self-Reporting of Felony Charges, Convictions of Any Felony or Misdemeanor, and Any Disciplinary Actions Taken by Another Licensing Authority

By Wayne Bell, Chief Counsel

On January 1, 2012, a new section was added to the California Real Estate Law which mandates the reporting by real estate licensees of certain events to the Department of Real Estate (DRE).

This requirement, which provides the DRE with a new and important enforcement tool, is contained in section 10186.2 of the CA Business and Professions Code (B&P).

That section compels, in subsection (a)(1), a real estate licensee to submit a report of any of the following to the DRE:

“(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.”

The DRE has developed form RE 238 – Indictment, Conviction, and Disciplinary Action Notification – for the purpose of this reporting. However, any form of written communication will meet the notification requirement. Any notification of an indictment, conviction, or other disciplinary action should be mailed to:

Department of Real Estate
P.O. Box 187000
Sacramento, CA 95818-7000

The law requires that **any such report is to be made in writing within 30 days “of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action”** (subsection (a)(1)(2)), and that failure to make such a written report shall constitute a cause for discipline.

It is the failure to report that violates the new law. It should be underscored that the Legislature created this section (via California Senate Bill 706 – 2011 [Senator Price]) as a “new tool” to enhance the DRE’s Enforcement operation and efforts.

It was provided so that there would be self-reporting (in writing) by licensees and the department could thus become aware of and track the felony charges and the disciplinary case(s) with respect to (A) and (C) above, and determine if the conviction reported in (B) above is a basis for disciplinary action.

Before January 1, 2012, the only self-reporting requirements for department licensees were imposed under Commissioner’s Regulation 2930 (Number 19) on restricted licensees relative to arrests.

Under the new law, the requirements for self-reporting are broadened and apply to all real estate licensees.

Focusing on the clear language of section 10186.2 of the Code, the language of subsection (a)(1)(B) is wide and inclusive in its scope, and the requirement to report *any* felony or misdemeanor conviction within the relevant 30 day window(s) does *not* permit a licensee to exclude or fail to report what he or she considers minor, insignificant, or non-substantially related convictions. “Any” clearly includes “any”, “every”, and “all” misdemeanor and felony convictions, including those following the entry of a “no contest” plea. The statutory language does not contain any carve outs, limitations, exemptions, or exceptions.

Turning to subsections (a)(1)(A) and (C), there does *not* have to be a conviction for the reporting of (A), and there does *not* have to be final discipline imposed for the report to be made under (C).

In fact, a plain reading of (C) suggests that if disciplinary action has been “taken”, which includes the bringing or commencement of disciplinary charges, such as where there has been the filing of a pleading such as an Accusation by a licensing authority, that action must be reported within 30 days even if the licensee believes or concludes the action has no merit and even if the action is ultimately unsuccessfully prosecuted by the licensing authority.

Moreover, and importantly, the plain language of section 10186.2 (a)(1)(C) referring to “any disciplinary action” means that the discipline does *not* have to rise to the level of discipline under 10177 (f); namely, suspension or revocation. If the Legislature had wanted a higher level, it could have imposed the same.

To reiterate, “*Any disciplinary action taken*” against a licensee (again meaning filed, initiated, and/or completed) must be reported to the DRE within the relevant 30 day window. If it is not, the department has the power to discipline the licensee for a violation of 10186.2.

Obviously, this does beg the question as to what is a “disciplinary action” by another licensing entity or authority. In the absence of an action seeking or imposing what is universally or obviously deemed to be “discipline”, a licensee will need to determine what is interpreted to be discipline and disciplinary action by the other licensing entity or authority. And if the action is actually or deemed to be “disciplinary”, the licensee must report the same to the DRE in writing within the applicable 30 day window or face discipline by the department.

If you have any questions regarding the new reporting requirement under the Real Estate Law, please contact any office of the DRE. 

Trust Account Reconciliation – More Than a Bank Reconciliation!

It's the end of the month – Do you know where your trust funds are?

At first glance, a look at the title of Commissioner's Regulation 2831.2 – "Trust Account Reconciliation" – will lead many to think the regulation requires a periodic reconciliation of accounting records to the bank statement. Not so! While a broker who maintains a trust account might be considered negligent for failing to reconcile trust account records to the trust account bank statements on a regular basis, this regulation requires a monthly internal reconciliation of accounting records.

Specifically, on a monthly basis, the balance of the Record of All Trust Funds Received and Disbursed (required by Regulation 2831 – a record also known as the Control Record) is to be reconciled to the balances of the Separate Records For Each Beneficiary or Transaction (required by Regulation 2831.1 – records also known as Separate Records or Beneficiary Records). As mentioned in Regulations 2831 and 2831.1, these records can be maintained manually in columnar form, or electronically on computer if in accordance with generally accepted accounting principles and containing the required Regulation 2831(a) and 2831.1(a) content. Examples of electronic records in accordance with generally accepted accounting principles are records that consist of a cash receipts journal, cash disbursements journal, general ledger and subsidiary ledgers.

What this means is, a broker who maintains a trust account with activity during the month must perform two reconciliations in order to properly account for trust funds. The first reconciliation, required by Regulation 2831.2, is performed monthly to ensure that the accounting records are in agreement as of the same date – that the balance of the Control Record agrees with the total of the balances of the Separate Records. If the two totals do not agree, the cause of the difference should be located and explained. Performance of this reconciliation is a good way to find errors in the accounting records each month. An acceptable reconciliation report is shown in Figure 1.

Whether generated manually or by computer, a real estate broker must maintain these monthly reconciliation reports for a period of three years.

The second reconciliation is the reconciliation of the trust account records to the bank statement as of the same date as the first reconciliation. While not specifically required by law, this reconciliation is critical in order to determine whether there is a trust fund shortage or overage. This reconciliation consists of taking the bank statement balance, adjusting that balance for outstanding checks, deposits in transit and other reconciling items, and comparing that balance (adjusted bank balance) to the balance of the Control Record and the total balances of the Separate Records.

If all goes well, these two reconciliations will show that the adjusted bank balance (amount of money available in the bank) equals the Total of the Separate Records and the Balance per Record of All Trust Funds Received. If the adjusted bank balance does not equal the balances of the accounting records, there may be a trust fund shortage or overage, and action must be taken to correct the imbalance.

The lack of understanding of Commissioner's Regulation 2831.2 is widespread. During the fiscal year ended June 30, 2012, 23% of DRE audits conducted found a violation of Regulation 2831.2. Of course, the percentage is much higher for brokers who handled trust funds. For example, in property management audits closed in the same time period, 42% of brokers were found to be in violation of Regulation 2831.2. At the end of the DRE audit process, many brokers admit that they didn't know that they were required to reconcile their accounting records internally. Many brokers admit to just performing a bank reconciliation.

It is important that the broker/designated officer not fully rely on employees to maintain trust accounts without a system of supervision and an understanding of the accounting and reconciliation process and requirements (see Fall 2011 Real Estate Bulletin Article – Brokers: Be Vigilant About Your Trust Accounts). As explained in that bulletin article, failure to be actively involved in the trust fund handling and accounting process can result in substantial trust fund shortages. It is important that a broker understand and review accounting transactions and ensure that both Trust Account Reconciliations are performed.

For more information on proper trust fund handling, please review the Department of Real Estate's RE 13, entitled [Trust Funds](http://www.dre.ca.gov), which is located at www.dre.ca.gov.

Reconciliation Report	
Bank Account Name:	
Bank Account Number:	
Date:	
Balances Per Separate Beneficiary Records:	
Principal (or property) A.....	\$XX.XX
Principal (or property) B.....	XX.XX
Principal (or property) C.....	XX.XX
Principal (or property) D.....	XX.XX
Etc.....	XX.XX
Etc.....	XX.XX
Etc.....	XX.XX
Etc.....	XX.XX
Total of Separate Beneficiary Records.....	XXX.XX
Balance per Record of All Trust Funds Received.....	XXX.XX
Difference (if any, must be fully explained).....	\$XX.XX
<p><i>Note: the Balance per Record of All Trust Funds Received and the Total of Separate Beneficiary Records should be compared to the Adjusted Bank Balance (reconciled bank statement balance) as of the same date.</i></p>	

Figure 1

New Business Activity Reporting Requirement

What is the Business Activity Report (BAR)?

In addition to the Mortgage Call Reports discussed in an earlier article, the passage of Senate Bill 36 (SB 36) resulted in a new reporting requirement for mortgage brokers. SB 36 added Business and Professions Code (B&P) Section 10166.07 which calls for the filing of an annual report of business activity.

Who files the BAR?

Mortgage loan brokers who make, arrange or service residential loans as described in B&P §10166.07(a) must file the BAR. These are the same brokers who should have filed the Mortgage Loan Activity Notification, RE 866.

If a broker is conducting mortgage loan business as a sole proprietor company, the broker must complete and submit the BAR.

If mortgage loan business is being performed by a licensed real estate corporation, the corporation's designated officer must complete and submit the BAR.

Real estate salespersons and broker associates are not required to complete the BAR; their activities will be reported by the employing broker who oversaw their activities.

When and where should brokers file?

The BAR is due 90 days after the end of the broker's fiscal year. It is an online report and is located on the DRE Web site: www.dre.ca.gov.

The BAR is available for downloading and review on the DRE Web site, but cannot be completed or submitted until after the fiscal year ending December 31, 2012.

Parts A and B of the BAR

There are two sections of the BAR. Part A fulfills the reporting requirement described in B&P §10166.07. Threshold and/or Multi-Lender brokers who have been using the paper version of the RE 881 to report their business activities will be required to complete Part B of the online BAR beginning January 1, 2013.

If a broker does private money mortgage loan activities and meets the threshold or multi-lender criteria, but has not yet registered as a Threshold and/or Multi-Lender, the broker will be required to submit the notification form to the DRE first. The RE 853 is used for threshold notification, and the RE 860 is submitted for multi-lender notification. These forms are submitted by mailing them to the following address:

Department of Real Estate
Mortgage Loan Section
P. O. Box 187000
Sacramento, CA 95818-7000

TIP #1

Brokers should not wait until it is time to file the BAR before downloading a copy. Reviewing the report will allow brokers to determine what data should be collected throughout the year.

TIP #2

When entering loan activity data:

- Enter zero if no entry; do not leave blank*
- Round principal amount to nearest dollar (no cents)
- Round to 3 decimal points any entries for interest rate

*Upon saving information, blanks will auto-populate into zeroes. Make sure to check all entries prior to final submission.

TIP #3


Hover over or "click" on the footnotes in the BAR to access the definitions.

Brokers who currently report as Threshold and/or Multi-Lenders and whose fiscal years end prior to December 31, 2012 should continue to file the paper RE 881. Those brokers whose fiscal years end December 31, 2012 and later will file the online BAR.

Note: Part B is required to be completed by Threshold and/or Multi-Lender brokers and replaces the paper RE 881 form that was completed prior to the inception of the BAR report.

Completing the BAR

The BAR will be completed and submitted online only. It will include an instruction page to assist brokers with completing the report, as well as footnotes that will provide clarification. To access the report, brokers will enter their DRE license number, birth date and last four digits of their social security number. There will be opportunities to save entries for later completion if brokers cannot complete the entire report at once. Brokers will electronically certify to the accuracy of the BAR when they are ready to submit the report. Brokers will be able to print a copy of the report and will also be able to access their previously filed BAR report until the subsequent BAR filing.

A sample report can be previewed at the following link: http://www.dre.ca.gov/files/pdf/forms/re881_preview.pdf. Additional information about the Business Activity Report is available at the Department's Web site and by contacting the Mortgage Loan Activities section at (916) 227-0770. 


New Requirements for Broker Exam Applicants

Law Requires Broker Exam Applicants Who Seek to Use a College Degree in Lieu of Salesperson Experience to Have Obtained a Degree With a Major or Minor in Real Estate

On August 27, 2012, the Governor signed [AB 1718](#) (Hill, Chapter 193, Statutes of 2012) which amends Section 10150.6 of the Business & Professions Code (B&P) changing the requirements to obtain a real estate broker's license. Current law allows a real estate broker exam applicant to replace the two years full time salesperson experience with a four year college degree in any course of study as a long the degree was earned from an accredited institution. AB 1718, which becomes effective January 1, 2013, requires that the four year college degree must be in a course of study that resulted in a major or minor in real estate in order for the degree to replace the two years of experience. Therefore, beginning January 1, 2013, degrees consisting of majors or minors in areas other than real estate will no

longer qualify for the waiver of the requirement to have two years of full time work as a licensed salesperson in order to qualify for the broker exam.

Original broker examination and broker exam/license combination applications postmarked or submitted in person to any Department of Real Estate office on or after January 1, 2013, will be subject to the new requirements set forth in AB 1718. Additionally, an applicant who applies for the broker exam on or after January 1, 2013, and who uses a degree with a major or minor in real estate to satisfy the two years full-time salesperson experience requirement is still required to submit evidence that they have successfully completed the eight real estate courses required pursuant to B&P §10153.2. In order to accommodate a possible influx of broker exam applicants prior

to January 1, 2013, the Department plans to make more test dates available for broker exam applicants on an as-needed basis. Broker applicants who submit either an application for the broker exam or a broker exam/license combination application on or before December 31, 2012, and who use a four year degree in lieu of the two years licensed salesperson experience must provide documentation substantiating that they successfully completed their degree, in a concentration other than real estate, and also completed the eight statutory required real estate courses on or before December 31, 2012. Frequently asked questions (FAQs) have also been posted on the Department's Web site at www.dre.ca.gov that address common questions the Department has been receiving in response to the signing of AB 1718. 


New! Escrow Activity Reporting

Effective July 1, 2012, brokers who meet a threshold of broker-controlled escrow activities must report their escrow volume to the DRE.

This requirement was put into place by Senate Bill 53 in Business and Professions Code Section 10141.6. It applies to brokers who engage in escrow activities - pursuant to an exemption from the Escrow Law - for five or more transactions or whose escrow activities exceed one million dollars in a calendar year.

Within 60 days after the end of the calendar year in which this activity threshold was met, these brokers must report the number of escrows conducted and the dollar volume escrowed for that year.

Broker escrow activity reports must be filed electronically through the DRE Web site. Please watch the DRE News Flash for updates on the availability of the report.

Questions about the escrow activity reporting should be directed to the Mortgage Loan Activities Section at (916) 227-0770. 





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Examinations.....	877-373-4542

CALIFORNIA RELAY TELEPHONE SERVICE

(For the deaf and hearing impaired)

From TDD phone.....	1-800-735-2929
From voice phone.....	1-800-735-2922

Real Estate Bulletin

FALL 2012

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