



# Real Estate Bulletin

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS • BUREAU OF REAL ESTATE

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Wayne S. Bell  
*Commissioner*

## *Commissioner's Message*

### Some Basic Thoughts on Closing the Knowledge and Skill 'Competency Gap' Among Real Estate Licensees

In its 2015 "Definitive Analysis of Negative Game Changers Emerging in Real Estate" (DANGER Report), the National Association of Realtors refers to a very large real estate licensee "knowledge and competency gap from the most to the least". In the discussion in the DANGER Report under a section entitled "Masses of Marginal Agents Destroy Reputation", it states that "[t]he delta between great real estate service and poor real estate service has simply become too large, due to the unacceptably low entry requirements to become a real estate agent". Some additional attention is focused on the number of hours of instruction required to become a licensed real estate agent, and a prescription offered was to "raise the bar" relative to "agent knowledge".

In traveling throughout California and having the privilege and opportunity to meet and talk with real estate licensees, I hear agreement (mostly based on anecdote) with the conclusion that there is a knowledge and skill competency gap, and the notion that a number of real estate licensees have not been sufficiently educated and trained, but there is no consensus with regard to the proper cure or remedies.

I want to share some basic thoughts on the assertions regarding a knowledge and competency gap, and the entry requirements to licensure, and the two remedies (from a larger group) that I hear advanced by a few licensees somewhat regularly. Those proposed fixes are to (1) require more substantively complex classes and hours of instruction before an individual is able to take a real estate license examination, and to (2) make the license examinations more challenging and difficult to pass.

After discussing the above, I will share a few ideas on how the "gap" can be narrowed or closed.

#### **More Challenging Pre-Licensure Coursework and Hours of Instruction**

The purpose of the California licensing requirements is to protect the public from unknowledgeable, unskilled, and dishonest individuals.

With respect to knowledge and skills, the current requirements for coursework for real estate brokers and salespersons are statutory mandates. They start at section 10153.2 of the California Business and Professions Code, and were enacted by the California legislature, with input from organized real estate.

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**REAL ESTATE BULLETIN**

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**COMMISSIONER'S MESSAGE  
(CONTINUED FROM PAGE 1)**

The pre-licensure real estate courses required for license applicants cover a variety of topics, including real estate practice, real estate principles, legal aspects of real estate, real estate appraisal, real estate financing, and real estate economics or accounting. Then there are experience requirements (or equivalency) applicable to broker applicants.

Those requirements reflect that all real estate licensees must have a basic or core knowledge and understanding concerning California real estate matters and services.

The coursework (and the examinations – which will be discussed below) is relevant to real estate practice – and its fundamentals – mostly in a generic sense, and that is because there are a number of specific real estate practice sectors. In addition to residential real estate, there are those who specialize in commercial real estate, industrial real estate, agricultural real estate, oil and gas, property management, and other real estate sectors.

The dimensions of competence are many, and they evolve depending on what work is performed by licensees. Extra and specialized knowledge is no doubt required for the various specialty real estate practice areas, and completion of focused or targeted education is and will be required for successful practice in those areas.

Clearly defining and measuring knowledge and skill competence is

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## COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 2)

imperfect in the real practice world. In addition to the required core or foundational pre-licensure education coursework in real estate, there are “specialty” and specialization training competencies, and workplace (actual practice setting) competencies and workplace readiness issues. The latter includes (or may include) skills in the areas of information technology, client service and satisfaction, communications, interpersonal abilities, negotiations and facilitation, motivation, and resource allocation. Moreover, it necessitates workplace-based learning.

In the 2015 DANGER Report prepared and issued by the National Association of Realtors, it also states (at page 20) that “...becoming a cosmetologist requires an average of 372 hours. [Note: in California even more hours are required to acquire a license as a cosmetologist.] But to become a licensed real estate agent requires an average of only 70 hours with the lowest state requirement being 13 hours”.

In order to successfully complete the pre-licensure coursework in California, the number of hours of instruction will vary among those wishing to become salespersons or brokers. But the aggregate number of hours and time needed to complete those fields of study is not insignificant.

California is in the upper echelon regarding hours required. 135 clock hours of pre-licensure education are required for salespersons, and 360 clock hours of pre-licensure education are required for brokers.

Additionally, candidates for a real estate broker license must demonstrate that they have two years of active engagement as a licensed real estate salesperson, or comparable experience, or specialized education, in order to qualify.

Before moving on to a discussion of real estate license examinations, a quick mention should be made of the recent U.S. Supreme Court case titled “North Carolina State Board of Dental Examiners v. Federal Trade Commission” (No. 13-534), and its potential effect

on the establishment by a State regulatory agency of minimum hour requirements for trades and occupations. The discussion below applies to all State regulatory bodies where a controlling number of the body’s decision-makers are active market participants in the occupation or trade the body regulates. While the California Bureau of Real Estate is not such a body, and the decision would not have any direct applicability to the bureau, the ruling and policy set forth by the Court is instructive.

In the case, the U.S. Supreme Court held that the North Carolina State Board of Dental Examiners was a State agency operated by a majority of industry participants (which was deemed akin to a private trade association vested by the State with regulatory authority), and some of its actions were ruled to be anticompetitive rather than consumer protection-oriented.

The issue going forward – with respect to State regulations and requirements which limit entry into occupations or trades – will be whether those regulations are anticompetitive and protectionist (imposed unjustifiably and/or unreasonably to exclude or restrain competition), or necessary to protect the public.

## Making License Examinations More Challenging and Difficult to Pass

We have come a long way from the early days of licensure when there was simply a licensee registration system. The early laws were changed to require examinations, and the examinations have continued to evolve and become more advanced.

The proposal to develop more “challenging” examinations which are more difficult to pass would suggest that the California examinations for real estate brokers and salespersons no longer measure minimum or foundational levels of necessary real estate content, and that the examinations are “too easy to pass”.

The examinations now given to license applicants assess whether the applicants demonstrate a foundational level of information and understanding of the required



### COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 3)

real estate coursework so that the public is protected from uninformed practitioners.

Both the real estate salesperson and real estate broker examinations test applicants on the core knowledge required by the law, and even broader knowledge. The coverage of the examinations is set forth in section 10153 of the California Business and Professions Code.

The former Department of Real Estate and current Bureau of Real Estate (CalBRE) have expended considerable effort to make the examinations now given more relevant to current real estate practice and services, and have collaborated with and used testing experts and subject matter experts to validate our examinations and to develop examinations which test for foundational competencies.

CalBRE does not establish a minimum or maximum percentage passing rate. Rather, the examinations given and the applicants' successes on those examinations set the rates of passage. During fiscal years 2012/2013, 2013-2014, and 2014-2015, CalBRE's examination statistics show an "average" range of between 42-45 percent passage rate for broker examinees, and an "average" range of between 49-60 percent pass rate for salesperson examinees.

Those percentages do not evidence – nor do they support the assertion – that the licensure examinations are "too easy to pass".

### Narrowing/Closing the Gap

At a minimum, real estate licensees must represent their principals competently and within the bounds of the law.

The coursework and entry-level licensure testing cover real estate fundamentals, including salient portions of the Real Estate Law.

If there is a knowledge or skill competency gap that can be addressed through statutory changes to State law (that would be applicable to pre-licensure coursework and to continuing education requirements), or through the licensure examinations, organized real estate should proffer observed, pragmatic, detailed, clear, constructive,

and practical information, data and objective evaluations about the gap and the proposed remedial statutory and examination solutions as a starting point for review, study, discussion, and further action.

Obviously, gaps of various kinds can be ameliorated and/or filled. If there is a core educational competency that is untaught, an educational component can be designed to intervene and fill that need.

In a similar vein, practice skill gaps can be bridged or closed through appropriate practical skills trainings.

### Practical Skills and Specialized Real Estate Knowledge

Studying and book learning (and learning the fundamentals of real estate) alone does not teach real estate salespersons or brokers how to conduct a real estate practice or to provide day-to-day real estate services. Many of those individuals who pass the real estate license test do not know where they will be performing licensed services, or if they will work for a small or large brokerage. Added to that, they may end up focusing on a real estate specialty or subject area that was not addressed in the fundamentals they studied and/or were tested on for licensure. Moreover, the way that real estate services are offered and conducted may be specific to the broker (and the broker's salespersons and associates) or the standards used in a particular brokerage.

The basic premise is that pre-licensure education and the examination(s) covers the knowledge and skills generic to the real estate industry. Beyond that is the knowledge and skills specific to real estate sectors or specialties. Then there is the knowledge and skills specific to real estate brokerages/entities.

A pervasive and systematic "training and education" culture throughout the industry would be a stellar starting point.

Some concepts come to mind when I think of developing and imparting useful or innovative practical skills trainings or education about specialized real estate knowledge in a real world setting:

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## Common Interest Developments Require Special Care by Agents

There are many aspects of ownership in a common interest development that cannot be observed from an inspection of the property but that may be just as relevant to ownership and use as the physical condition of the property. This is particularly true with respect to the “governing instruments” for common interest subdivisions. For the reasons set forth below, most buyers should be advised to carefully read these documents and to discuss with an attorney or accountant any questions they may have about the documents’ meaning and content.

### Documents for the buyer (Civil Code section 4525)

A seller of a lot/unit in a common interest development is required to furnish the buyer with copies of the following documents as soon as practicable before transfer of title to the lot/unit:

1. A copy of the governing documents of the common interest development, including any operating rules, and including a copy of the association’s articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.
2. A statement relative to the enforceability of any age restriction that does not comply with Civil Code section 51.3.
3. A copy of the most recent documents distributed pursuant to Article 7 (commencing with Civil Code section 5300) of Chapter 6.
4. Financial statements relative to the association’s budget, reserve account, and assessments, including the current regular and special (if any) assessments and fees; approved, but not yet due, changes in the regular and special assessments and fees; and any delinquent assessments and related charges that may become a lien on the unit being sold.
5. A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Civil Code section 5855 that sets forth any alleged violation of the governing documents.

6. A copy of the preliminary list of defects provided to each member of the association pursuant to Civil Code section 6000, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Civil Code section 6100.
7. A copy of the latest information provided for in Civil Code section 6100.
8. Any change in the association’s current regular and special assessments and fees that have been approved by the association’s board of directors but have not become due and payable as of the date disclosure is provided.
9. If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition.
10. If requested by the buyer, a copy of the minutes of board meetings, excluding meetings held in executive session, conducted over the previous 12 months that were approved by the board.

### Advice for Buyers/Licensees

It is essential that a buyer carefully examine these documents, especially the CC&Rs, association rules, and any architectural guidelines, prior to purchasing a lot/unit in a common interest subdivision. Any one of

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### COMMON INTEREST DEVELOPMENTS REQUIRE SPECIAL CARE BY AGENTS (CONTINUED FROM PAGE 5)

these documents may reveal to the buyer what may be considered material facts associated with the property. These are items that may not be material in the sense of affecting the value of a lot/unit, but they may be extremely important to a purchaser's future plans for using the lot/unit.

An age restriction provision is an example of a material fact for the buyer to look for in the use restrictions. Buyers should also be looking for restrictions on types of vehicles allowed, or whether there are restrictions on pets, architectural design, fence height, and location and other limitations, such as parking or working on cars in the driveway. These restrictions are found in many governing documents. In some instances, there are restrictions on such ordinary matters as the color one can use to paint the exterior of a house or even the shade of drapes.

Although many of these provisions are ostensibly designed to protect the value of the property, they may nevertheless be of a kind that may push the wrong button and cause an otherwise reasonable person to become quite assertive and aggressive, even to the point of filing a lawsuit. Issues such as a prohibition on pets or limiting the number or size of pets are frequent sources of conflict between owners and/or owners and the association. Many owners become quite passionate about the enforcement of such rules.

When reviewing CC&Rs, a buyer should look for a right of first refusal, which may vest in the owners' association. Litigation could arise if a prospective purchaser, who has been led to believe his offer has been accepted, is later told that the party holding the first purchase right has decided to act upon it.

A careful review of the governing documents by a buyer is also important so that he or she can learn about the duties and responsibilities of ownership within the development. For example, who is responsible for internal and external maintenance of a unit? And who has the responsibility to maintain insurance for certain components of a unit? Further, the financial documents pertaining to the operation and maintenance of the

common area may include important information relative to future assessment obligations.

When a buyer has questions about any of these documents, a licensee should refer the buyer to an attorney or other professional, or perhaps a member of the board of directors of the association. It is not advisable for licensees to take on the responsibility of interpreting legal or accounting documents.

### Lawsuits

In these days when many persons are filing lawsuits to protect their rights, it is important for the buyer to find out whether or not the association is involved in a lawsuit, or whether a lawsuit involving the association, or a seller's interest, is imminent or contemplated. A lawsuit may have a negative effect on ownership. For example, if reserves have been used, or are being used, to pay litigation costs, that expenditure could result in the imposition of a special assessment at some time in the future. A lawsuit may also make it difficult to refinance or sell a lot/unit, particularly if the lawsuit involves an allegation of construction defects.

How does a buyer find out about lawsuits? Many common interest developments have newsletters, which discuss such controversies. In any event, a buyer may want to consider talking to a member of the board of directors, as well as the managing agent for the development, to get a better picture of past and future ownership experience and expectations for the development.

### Professional Advice Recommended

An agent should not just settle for providing a buyer with advice following a physical inspection of a lot/unit in a common interest development. An agent should also advise the buyer to carefully review the management documents and to seek legal or other professional advice, if and when necessary, for answers to questions pertaining to the governing instruments or financial statements. This advice may help avoid future misunderstandings between a licensee and a buyer about the expectations associated with the purchase of a lot/unit in a common interest development.

## Trust Fund Accounting Software: Purchase of New Accounting Software Program Will Not, in Itself, Cure Your Accounting Problems

Real estate brokers must understand the trust fund recordkeeping requirements of the Real Estate Law and Regulations of the Real Estate Commissioner, and then determine whether they can comply with these laws and regulations through use of a software accounting product under consideration.

Often, real estate brokers who have been found to have trust fund recordkeeping violations will explain to a California Bureau of Real Estate (CalBRE) representative or testify in an administrative hearing that they thought that their use of a modern software accounting system would keep them in compliance with trust fund accounting requirements—namely, Commissioners Regulations 2831, 2831.1, and 2831.2. Furthermore, a broker with trust fund recordkeeping violations may state in a hearing that those recordkeeping violations were cured because the broker has purchased a new software accounting system.

Although there are trust fund accounting software systems that are capable of producing accounting records and reports that comply with Commissioners Regulations 2831, 2831.1, and 2831.2, a real estate licensee must know how to properly use the software to effect compliance. Auditors at the CalBRE have seen numerous cases where brokers purchase an accounting software system but don't know how to properly utilize it. *In fact, in most cases where a broker has a trust fund accounting software system and records and/or reports are not in compliance, it is usually a lack of knowledge or lack of software expertise that leads to the violations.*

Commissioner's Regulation 2831 requires the broker to maintain, in columnar form, a record of all trust funds received and deposited by the broker. This record functions as a glorified checkbook record for the trust account, accounting for all funds that flow in

and out of the trust account. At a minimum, *all of the following information* must be indicated in columnar form in chronological order:

- date funds were received;
- name of payee or payor;
- amount received;
- date of deposit;
- amount paid out;
- check number and date; and
- the daily running balance of the trust account.

If any of these columns are not present, then there is a violation of Regulation 2831.

Commissioner's Regulation 2831.1 requires the broker to maintain, in columnar form, a separate record of trust funds for each beneficiary or transaction accounting for all funds that have been deposited into a trust account. This record identifies which beneficiary has funds in the trust account. This record must indicate *all of the following information* in chronological order and in columnar form:

- date of deposit;
- amount of deposit;
- name of payee or payor;
- check number, date, and amount;
- if applicable, dates and amounts of interest earned and credited to the account; and
- running balance of the separate record after each transaction on any date.

If any of these columns are not present, then there is a violation of Regulation 2831.



### TRUST FUND ACCOUNTING SOFTWARE (CONTINUED FROM PAGE 7)

A real estate broker putting together a trust fund accounting/recordkeeping system needs to *understand* what is required by Regulations 2831, 2831.1, and 2831.2. Be sure to understand Regulations 2831 and 2831.1 and the listed components that must be in each of these required records. On the CalBRE website find and watch the PowerPoint presentation describing the Regulation 2831.2-required reconciliation, which is more than a reconciliation to a bank statement (see the PowerPoint at [www.dre.ca.gov/files/ppt/TrustAccountReconciliation.ppsx](http://www.dre.ca.gov/files/ppt/TrustAccountReconciliation.ppsx)).

If you decide to pursue use of a trust fund accounting software program and have determined which business features you need the system to have, narrow down the list of software systems you are interested in and have the software vendors demonstrate how their respective systems provide the required content of Regulations 2831, 2831.1, and 2831.2. *Be certain you understand how a trust fund accounting software system meets each of the Regulation 2831, 2831.1, and 2831.2 requirements before choosing the system as the one you will use.*

Finally, it is critical that a broker/designated officer really understands the workings of the trust fund accounting software system chosen. Frequently, audit cases with large shortages due to embezzlement or other causes are found in offices where the responsible broker has effectively delegated all accounting oversight responsibilities to the person who is performing the accounting entry work—in other words, where there is no separation of duties. Such real estate operations often lack a system for monitoring compliance with trust fund accounting policies, rules, procedures, and systems, in violation of the requirements of broker supervision in Commissioner's Regulation 2725.

Taking the proper steps to research and evaluate a trust fund accounting software program for compliance with trust fund accounting requirements, understanding the workings of the trust fund accounting software system chosen, and monitoring compliance thereafter will ensure the protection of client's funds and protect a broker from license disciplinary action.

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### COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 4)

1. Mentorship programs; on-the-job training.
2. Video instruction programs, and Web-based training modules.
3. More robust supervision -- and education/training -- of real estate salespersons by those brokers who have associated those salespersons.
4. Clinical-type training programs to cover those things necessary beyond the fundamentals (such as transactional and facilitation skills).
5. Trainings on the component tasks which need to be performed to carry out particular real estate services.
6. Practice checklists.
7. Continual training, education, and development strategies.

8. Imparting the rules of ethics, and how they would be applicable in everyday situations.

As I have traveled across California and talked with and listened to real estate licensees, I have been deeply impressed by the passion I have heard expressed for the real estate industry, as well as the commitment of licensees to serving the industry, the public, and their communities.

CalBRE and I want to build on the important work of our predecessors, and those in organized real estate, and we are ready, willing, and able to continue and advance the dialogue on knowledge and skills competencies, professionalism, and helping to improve the real estate industry.



## Administrative Hearings: Burden of Proof and Degree of Proof

By Stephen M. Lerner, Assistant Commissioner for Legal Affairs

Licenses facing disciplinary action and their counsel (if any) should familiarize themselves with the applicable burden of proof and degree of proof. Both doctrines are present during administrative hearings and, if properly applied, these doctrines serve to protect the licensee's due process rights. If not properly applied, however, a licensee's rights may be violated.

Before describing these doctrines, it is important to identify the participants who will be present at an administrative hearing. At most hearings, the participants include the complainant, respondent, and Administrative Law Judge. The complainant is the government agency, in this case the California Bureau of Real Estate (Bureau), that filed the charging documents and seeks to deny, revoke, restrict, or otherwise discipline a licensee. Charging documents may take the form of a Statement of Issues if the respondent is a license applicant, or an Accusation if the respondent is a licensee. The respondent is the individual or entity that has applied for or possesses a license. The judge is the neutral third party who presides over the hearing and issues the proposed decision addressing whether or not the relevant party has met his, her, or its burden of proof. In addition to the principals, others present at a hearing may include legal counsel for one or both of the parties, witnesses, and a court reporter tasked with transcribing the testimony at the hearing.

With respect to these doctrines, the burden of proof refers to the party (again either the complainant or respondent depending upon the circumstances) with the duty to introduce enough evidence on an issue to prove or disprove a disputed fact. Generally, but not always, the party asserting the claim or making the charges has the burden of proof (*Schaffer v. West* [2005] 546 US 49, 126). This is the case when the Bureau attempts to discipline a licensee (*Hughes v. Board of Architecture Examiners* [1998] 17 Cal.4th 763, 789 fn. 9). However, exceptions to this rule include situations where the respondent has applied

for a license, asserts an affirmative defense, attempts to prove rehabilitation, or seeks reinstatement of a license following disciplinary action.

In situations where the respondent has applied for a license, the respondent carries the burden of proof to show that he, she, or it meets the requirements for the issuance of the license (*Southern California Jockey Club, Inc. v. California Horse Racing Board* [1950] 36 Cal.2d 167, 177). The same is true for affirmative defenses and attempts to prove rehabilitation since the respondent is the party asserting the defense or establishing that he, she, or it has been rehabilitated and typically is in possession of the evidence substantiating the defense or rehabilitation (*Whetstone v. Board of Dental Examiners* [1927] 87 Cal.App. 156, 164; *Feinstein v. State Bar* [1952] 39 Cal.2d 541, 546). The respondent also carries the burden of proof when the respondent seeks to reinstate his, her, or its license or remove restrictions following disciplinary action. In fact, the person seeking reinstatement or removal of restrictions following disciplinary action is required to present stronger proof of his, her, or its present honesty and integrity than one seeking admission for the first time whose character has never been in question (*Tardiff v. State Bar* [1980] 27 Cal.3d 395, 403). Once the respondent meets his, her, or its burden of proof, the burden going forward shifts to the complainant to rebut the respondent's evidence (*In re Glass* [2014] 58 Cal.4th 500, 520; *Anderson v. Board of Dental Examiners* [1915] 27 Cal.App. 336, 338).

The degree of proof, sometimes referred to as the standard of proof, refers to the quantity of evidence that the party with the burden of proof needs to present in order to prevail at the administrative hearing. The standard of proof used in most cases is a preponderance of the evidence standard, which requires the party with the burden of proof to present stronger evidence, however slight the edge may be, than the other party. That is the standard applied in cases where persons have applied for a real estate



## 2015 Legislative Update

October 11, 2015, marked the last day for the Governor to sign bills passed by the Legislature in 2015, the first year of the two-year legislative session. According to the Governor's Office, 808 bills were signed in 2015. The following legislative summaries are of recently signed bills that affect real estate licensees and subdividers, and are intended to alert you to pertinent changes to the law. You are encouraged to consult the statutes for complete information. Copies of the bills can be obtained online at <http://leginfo.legislature.ca.gov>. The name appearing after the bill number is the name of the author. All statutes are effective January 1, 2016, unless otherwise noted.

### **Assembly Bill 345 (Frazier, Chapter 68, Statutes of 2015) Continuing Education: Management and Supervision**

This bill requires real estate brokers licensed by the Bureau of Real Estate (CalBRE) to complete a three-hour course in the management of real estate offices and supervision of real estate-licensed activities prior to renewal of their license. This bill also allows salespersons to complete a continuing education course to better understand how to be effectively supervised by a broker or branch manager.

### **AB 607 (Dodd, Chapter 216, Statutes of 2015) Authority to Make Trust Account Withdrawal**

This bill codifies existing regulations (10 California Code of Regulations 2834) pertaining to CalBRE to authorize unlicensed employees of a licensed broker, typically accountants and bookkeepers, to make trust fund withdrawals. This bill modifies these provisions by clarifying the conditions of the withdrawals and specifying fidelity bonds held by brokers can have a deductible of up to 5 percent of the total bond amount when there is evidence of the broker's financial responsibility sufficient to cover a loss subject to the deductible.

### **AB 661 (Mathis, Chapter 76, Statutes of 2015) Clarification of County Transfer Fee Applicability**

This bill clarifies existing law by specifying which real estate instruments or documents pertaining to the sale or transfer of property are or are not subject to a \$10, per document, county fee to fund the county's Real Estate Fraud Prosecution Trust Fund.

### **AB 807 (Stone, Chapter 634, Statutes of 2015) Clarification Regarding Private Transfer Fee Requirements**

This bill makes technical clarifications to the Civil Code's definition of a "transfer fee," as established by AB 980 (Calderon, Chapter 689, Statutes of 2007), and requires all transfer fee documentation to be recorded on a single document.

### **AB 905 (Gaines, Chapter 88, Statutes of 2015) VOTA Submissions in Electronic Format**

This bill allows public reports and disclosures to purchasers required by the Vacation Ownership and Time-share Act (VOTA) to be provided in a digital format at the discretion of the purchaser. This bill also makes a technical amendment in Civil Code section 2079.6 to clarify the exemption from certain reports by brokers licensed by CalBRE as related to VOTA.

### **Senate Bill 146 (Galgiani, Chapter 129, Statutes of 2015) Clarification on Team Name Usage**

This bill provides technical clean-up to AB 2018 (Bocanegra, Chapter 892, Statutes of 2014), which specifies that "team names," are not "fictitious business names," and are therefore not required to be registered with CalBRE. This bill clarifies that team names are not required to be registered with the county in which the team operates, defines

## ADMINISTRATIVE HEARINGS (CONTINUED FROM PAGE 9)

license. If the party with the burden of proof presents stronger evidence or evidence that has more convincing force than the evidence opposed to it, that party should prevail under a preponderance of the evidence standard. In certain cases, however, a higher degree of proof may be required. For instance, in proceedings involving professional licenses, the evidentiary standard is the clear and convincing proof to a reasonable certainty standard (*The Grubb Co., Inc. v. Dept. of Real Estate* [2011] 194 Cal.App.4th 1494, 1502). Real estate licenses are deemed to be professional licenses because licensees are tested for minimum competency, are subject to continuing educational requirements, and owe fiduciary duties to their principals. Because a professional license is deemed a vested right that provides an individual with opportunities for professional employment, the courts have required licensing agencies to use this heightened standard when disciplining professional licensees (*Ettinger v. Board of Med. Quality Assur.* [1982] 135 Cal.App.3d 853, 857). This heightened standard requires that the evidence be “so clear as to leave no substantial doubt [and] must be sufficiently strong to command the unhesitating assent of every reasonable mind.” (*In re David C.* [1984] 152 Cal.App.3d 1189, 1208)

The difference between the preponderance of the evidence standard and the clear and convincing proof to a reasonable certainty standard is best explained by the following illustration. Imagine the scales of justice. The party carrying the burden of proof under a preponderance of the evidence standard need only present enough evidence, no matter how small, to tip the scales slightly in its favor. Unlike the preponderance of the evidence standard, though, the party carrying the burden of proof under the heightened standard of clear and convincing proof must present enough evidence to tip the scales noticeably in its favor. In other words, the difference between the two standards comes down to the amount of evidence required to be presented by the party carrying the burden of proof.

By knowing the applicable burden of proof and degree of proof, licensees and their counsel will be better positioned to assure that the party with the burden of proof meets its burden and presents sufficient evidence in support of his, her, or its position at the hearing.

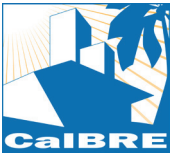
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## 2015 LEGISLATIVE UPDATE (CONTINUED FROM PAGE 10)

a “responsible broker’s identity,” and makes other nonsubstantive and conforming amendments. Designated as an “urgency” measure, the amendments went into effect on July 16, 2015.

### **SB 647 (Morrell, Chapter 263, Statutes of 2015) Dual Agency Disclosure: Commercial Transactions**

This bill makes several technical amendments to statutes following the enactment of SB 978 (Vargas, Chapter 669, Statutes of 2012). (SB 978 of 2012 made changes to the Real Estate Law and Corporations Code with respect to investor protections and “hard money” lending by threshold brokers.) SB 647 adds an additional property category with an associated loan-to-value ratio, modifies investor reporting requirements, and deletes a Department of Business Oversight reporting requirement. This bill also deletes the requirement that threshold brokers obtain annual questionnaires from investors, and instead, replaces that obligation with one which requires the broker to obtain questionnaires at least two business days, but not more than one year, prior to completing an investment, among other technical changes.



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