



Real Estate Bulletin

DEPARTMENT OF REAL ESTATE

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Common Misconceptions About Senior Housing

The purpose of this article is to highlight some common misunderstandings among the general public, including some subdividers, regarding senior citizen housing developments (i.e., “55+” housing). As a real estate licensee, you may come across one or more of these misunderstandings in connection with your representation of a buyer or seller of a home in this type of an age-restricted (or senior) community.

By way of background, both federal and state laws generally prohibit housing discrimination on the basis of age and other distinguishing characteristics such as gender, race, and religion; this body of law in California is referred to as the Unruh Act. However, both federal and state laws do allow for the creation and marketing of homes exclusively for older persons in certain communities generally referred to as “senior housing” or “senior citizen housing developments.” (The marketing term that may be used by subdividers is “active-adult” or “lifestyle” communities [the use of the term “adult” in characterizing these developments is discouraged at the federal level]). In California, the law requires that at least one of the occupants of a home in these communities must be a “Qualifying Resident” or “Senior Citizen,” i.e., a person who is 55 years of age or older. However, there is more to the law than simply this and, as the law can be complex, the following misunderstandings may arise:



MYTH You must be at least 55 years old to buy a home in the community.

The law does not care who buys the home or who is on title. The law is only concerned with who resides in the home. This means that the children or grandchildren of a 55+ parent or grandparent can buy the home (and be solely listed on the recorded deed) as long as the 55+ parent or grandparent, or other age-qualified individual, is the actual person who resides in the home.

MYTH Every person who resides in the home must be at least 55 years old.

California law allows other persons to permanently reside in the home (other than mobile homes [see below]) who are younger than 55 years old; each of these younger persons is called a “Qualified Permanent Resident” or “QPR.” For example, the spouse or cohabitant of the 55+ Qualifying Resident can be younger than 55 years old. Also, a younger person who occupies a room in a home (such as a friend, other relative, or someone who is renting a room) can reside in the home as long as that younger person is at least 45 and at least one 55+ Qualifying Resident also resides there.

MYTH If the spouse or cohabitant is younger than 55 years old then they must be at least 45 years of age to reside in the home.

The spouse or cohabitant can be of any age. So the thirty-something-year-old who marries or cohabitates with the 55+ Qualifying Resident can reside in the home without restriction as a QPR.

MYTH As long as 80 percent of the homes in the community are occupied by at least one person who is 55 years of age or older, then the remaining 20 percent of the homes in the development can be occupied by underage families with children.

There has been much debate regarding whether 20 percent of the homes can be a “set aside” for occupancy by underage

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COMMON MISCONCEPTIONS ABOUT SENIOR HOUSING (CONTINUED FROM PAGE 1)

families with children. When considering the applicable federal and state laws together, the answer to this question is an emphatic “no.” Federal law requires that to qualify as senior housing at least 80 percent of the homes must be occupied by at least one person who is 55 years of age or older. Next, the preamble to the applicable federal regulations on senior housing states, “There is no requirement that the remaining 20 percent of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older.” Note that California law requires that certain underage persons be allowed to occupy homes in a senior citizen housing development (this does not include homes in mobile home communities [see below]). Further note that California law makes no reference to an 80 percent “minimum floor” or “safe harbor” at all. However, state law does provide for preemption by federal law in some cases. Accordingly, so as not to endanger the status of the community as a senior citizen housing development under California law, the 20 percent arising from the 80/20 provision in federal law should be regarded under state law as applying to those homes where the underage surviving spouse, cohabitant, or other individual who qualifies as a QPR remains in the home after the 55+ Qualifying Resident no longer permanently resides there rather than as a “set aside” for underage families with children. Moreover, if the percentage of nonsenior

occupied homes approaches 20 percent, then the senior community may begin to deny occupancies to underage persons in order to maintain the federally-mandated 80 percent senior-occupancy requirement.

A failure to follow both federal and state laws could cause a senior community to lose its status as such under the law.

Please carefully note that mobile home communities are exempt from the Unruh Act provisions in state law concerning senior citizen housing developments, but they are subject to the senior housing provisions in federal law. Accordingly, the foregoing information relating to California law does not apply to a mobile home community unless it has expressly adopted the provisions for senior citizen housing developments as set forth in the Unruh Act.

Because the majority of senior communities today are 55+ housing, this article pertains to this type of housing only (as opposed to, for example, housing for persons who are 62 years of age or older). Also, this article is not intended to cover all provisions of the law applicable to 55+ housing including those provisions relating to temporary or permanent occupancy by disabled nonseniors. Therefore, as always, legal counsel should be consulted to confirm those particular provisions of the law that apply to a specific senior community where you may be representing a buyer or seller. ■





What is Considered an On-Time License Renewal Submission?

For the purposes of complying with Business and Professions Code section 10156.2, which allows for continued operation upon the proper submittal of a license renewal application, the following items are required to be filed (postmarked) before midnight of the last day of the period for which a previous license was issued:

- 1 Appropriate renewal application for license type.
- 2 Applicable renewal fee (See **RE 206**).
- 3 Good faith evidence of compliance with continuing education requirements pursuant to Business and Professions Code section 10170.

Only licensees who submit all three of the above requirements are considered an “on-time renewal” and are permitted to continue to operate under his or her existing license after its specific expiration date, if not previously suspended or revoked, unless notified otherwise by the Department of Real Estate.

As always, the Department highly encourages licensees to not wait until the last minute to renew. Broker and salesperson licensees can use the Department’s eLicensing system to renew their license. All licensees may mail in the renewal application package as early as 90 days prior to the license expiration date. ■



NAR Changes Ethics Course Requirements

The National Association of REALTORS® (NAR) recently changed the requirement for REALTORS® to complete Code of Ethics training to a biennial requirement (every two years). The first biennial cycle began Jan. 1, 2017, and ended Dec. 31, 2018.

Since this change, DRE has received numerous calls from licensees asking if the salesperson and broker continuing education (CE) requirements have also changed. The answer is no. Licensees have also asked if the NAR Code of Ethics course will count for their CE requirements towards renewing their real estate license. Please be advised that CE credit will not be given for this type of course unless the specific course has been approved by DRE. ■

Technology and Supervision in the Real Estate Industry

By Jeff Oboyski, Assistant Commissioner, Enforcement

Increasingly, nearly all industries are relying more heavily on new technology to efficiently and effectively transact business, and this is certainly the case in real estate, where technology continues to reshape the way business is conducted.

Real estate traditionally was considered a brick-and-mortar business where agents would spend hours in their responsible broker's office researching listings for potential clients, preparing and reviewing contracts and addendums, or even attending regularly scheduled office meetings with other agents to discuss real estate trends and marketing strategies. Agents are now able to access much of this information, as well as participate in meetings, without stepping foot into a real estate office. In fact, as a result of having digital tools like online listings, mobile applications, virtual tours, and e-sign documents, licensees and consumers alike can view a listing from the comfort of their own home, discuss the terms of a contract through electronic messages, and get an idea of the value of a home with just a few clicks of a button.

Furthermore, as the use of technology in the real estate industry continues to increase, the models used by practitioners in the industry to offer services to

consumers continue to evolve. Recently, we have seen the introduction of what has been commonly referred to as "virtual brokerages." Virtual brokerages often describe themselves as online, discount brokerages that offer low cost or flat fee commissions, as well as innovative technologies. It has been suggested that because of technological advances offered by virtual brokerages, such as cloud-based software applications and office environments, there is no longer a need for a physical office to conduct business.



Although there is no statute in the real estate law that specifically prohibits "virtual brokerages" in California, licensees who engage in such a business model when offering real estate services should be aware they must make sure they continue to comply with all the applicable real estate laws and regulations. One of the provisions of the law, specifically Business and Professions Code section 10162, states that every licensed real estate broker shall have and maintain a definite place of business in California that serves as his or her office for the transaction of business.

This is the place where the Department of Real Estate can meet with a broker to review documents and records, including those maintained electronically, and serve a subpoena duces tecum. This "place of business" requirement means that a brokerage cannot be fully virtual in California.



TECHNOLOGY AND SUPERVISION IN THE REAL ESTATE INDUSTRY (CONTINUED FROM PAGE 5)



Furthermore, the more virtual a business becomes, the greater the scope and complexity of a supervisory system of oversight is needed to ensure compliance. Commissioner's Regulation 2725 provides a broker shall exercise reasonable supervision over the activities of his or her salespersons and must establish policies, procedures, and systems to review, oversee, and manage such activities, and have in place a system for monitoring compliance with such policies, rules, procedures and systems. With a virtual file/document review system, a broker would need to have policies, procedures, and systems that demonstrate how transactions and documents and files are to be reviewed remotely. On top of that, a broker would then need to demonstrate through documentation that such policies, procedures, and systems are functioning, and that specific transactions/files have been reviewed. It is possible to review transactions, documents, and files remotely, and document such review and the supervisory instructions/actions that were given.

Please remember that the Department's highest priority is consumer protection. As industry's use of technology continues to evolve, it is important that licensees continue to comply with the Real Estate Law, including licensed real estate brokers having systems in place to ensure proper supervision. Proper supervision is critical whether a broker is working within a traditional brick-and-mortar model or under a newly emerging virtual brokerage technology model.

For more information about the Department of Real Estate, including recent news and alerts, please check out our website at www.dre.ca.gov. ■

Caution About Mortgage Fraud

Most of us remember what happened to the world economy a little over 10 years ago. We also might remember some of the causes leading up to the crash. We saw poorly underwritten mortgage loans that created opportunities for fraudsters to submit loans to federal financial institutions with straw borrowers, fake income and employment documents, and more. Those bad loans were bundled, securitized, and sold on the secondary market. There was the resulting mortgage meltdown and worldwide recession, when fraudsters took advantage of consumers through loan modification and foreclosure scams.

Now, in 2019, the Department is beginning to see a slight increase in the number of complaints about mortgage fraud, where loan documents are being forged and falsified and being submitted to federal financial institutions. Lenders are catching the bad loans and reporting the frauds to their appropriate regulating agencies, but sometimes only after the loans have been sold on the secondary market. The Department is also still receiving some complaints about scammers who are taking advance fees from borrowers for loan modification and foreclosure forbearance services; many of these complaints are coming from out-of-state consumers, in spite of state and federal laws prohibiting such advance fees. In the private money industry, the Department is receiving complaints related to investor interests not being recorded, funds being taken and not properly invested, and more.



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CAUTION ABOUT MORTGAGE FRAUD (CONTINUED FROM PAGE 6)

The Department takes complaints about fraud very seriously, and accordingly conducts investigations of real estate law violations by real estate licensees and unlicensed persons to pursue disciplinary and regulatory action. In addition to our own investigations, the Department works with local, state, and federal law enforcement to pursue criminal action.

If you are aware of any real estate or loan fraud, please report it to the department at (877) 373-4542 or file a complaint using the **online complaint system**. Updates on disciplinary actions taken against real estate licensees can be received through the **Department's RSS feed**. ■

What to Do if You've Received a Request for Continuing Education Records

In the spring 2017 edition of the Real Estate Bulletin, we highlighted how the Education and Research section upholds the Department of Real Estate's (DRE) mission of safeguarding and promoting the public interests in real estate matters through licensure, regulation, education, and enforcement, by reviewing the reported continuing education records of licensees. This is a friendly reminder that, pursuant to Commissioner's Regulation 3013, licensees are required to respond to the request for continuing education records.

As part of a licensee's renewal, continuing education courses are certified as completed by the licensee on either the Continuing Education Course Verification (RE 251) form or through DRE's eLicensing system. As part of this review process, licensees are randomly selected and sent a letter requesting that they submit copies of the continuing education course completion certificates, pursuant to Commissioner's Regulation 3013. This regulation provides that the applicant, upon request of DRE, must submit certificates of attendance or certified copies thereof from sponsors of approved offerings to substantiate information provided by the applicant. A licensee who fails to provide DRE with course completion certificates, as required, may be subject to a fine or potential disciplinary action.

This request is compulsory and therefore, it is very important for licensees to respond to these letters to

avoid a possible fine or potential disciplinary action. It is suggested that licensees retain copies of all course completion certificates for up to five years so they can respond quickly if requested by DRE to provide substantiation. If certificates are misplaced, licensees should contact the course provider for a duplicate certificate, as the course provider is required to maintain a record of attendance or registration and final examination grade of each participant for a period of five years.

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Email us at editor@dre.ca.gov.

