



Real Estate Bulletin

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS • BUREAU OF REAL ESTATE

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Commissioner's Message

By Wayne S. Bell, Real Estate Commissioner

I hope when you receive this edition of the *Real Estate Bulletin* you are also enjoying a wonderful summer in our beautiful State. When I travel around California by plane and car (in order to make presentations, to meet with employees in our offices, and to perform outreach), I am always reminded of – and deeply pleased by – the spectacular scenery and geographic diversity of the State. I also marvel at the sheer size of California, and think about how important land use, real estate development, real estate finance, and real estate transactions all are for the economic health of the State.

Wayne S. Bell
Commissioner

As the State's real estate regulator, charged with promoting and safeguarding the public interests in real estate matters through education, licensure, regulation, and enforcement, we at the California Department of Real Estate (we will become a stand-alone department again as of July 1st via a Senate bill signed by Governor Brown) continue to invite and ask you to share any ideas you have regarding what we can do to (i) improve our services, (ii) positively shape the new Department (DRE), (iii) add public value, (iv) be helpful to you, (v) promote a law abiding and competent real estate marketplace, and (vi) be more relevant in serving and protecting consumers.

In addition to seeking input from you, we also seek information from multiple sources - including real estate regulators and policymakers in other states and jurisdictions - about licensing, disciplinary processes and decisions, pre-licensure and continuing education requirements, best practices, enforcement efforts, and "bad practice" trends impacting multiple jurisdictions that need to be addressed. During the month of April, I attended a meeting of the Association of Real Estate License Law Officials. The Association was founded in 1930 to facilitate the exchange of information and cooperation among and between real estate regulators. I had the opportunity to speak with and obtain interesting facts, figures, and viewpoints from regulators from around the United States and Canada, as well as to present information on California real estate issues and challenges at a special meeting of such real estate officials from western States. Moreover, I presented commentary and information on real estate regulatory and practice issues at a Real Estate Best Practices Roundtable. The gathering was truly an invaluable opportunity to both obtain and to share information with other real estate license law officials.

What was quite interesting, and what I want to share with you in this Message, is how much greater the consumer protections are in California than they are in some jurisdictions. For example, California has a robust and nicely functioning Consumer Recovery Fund. That fund pays money, up to statutory maximums, to consumer victims of intentional fraud by real estate licensees in the course of licensed activities. Since 1964, our consumer fund has paid out to consumers over \$60,000,000. In some States, there is no recovery fund at all. In one western State and in some other jurisdictions, there is no licensure or regulatory program covering property managers. Thus, in those jurisdictions, anyone can manage properties and collect rents without any regulatory oversight. The question that presents itself there is who protects the lessee and lessor (or renter and landlord) consumers in those States, and who safeguards the clients' trust funds? In still other States, there is no regulation of the ubiquitous and expanding use of real estate "teams".

Also of interest is that in other jurisdictions, brokers do not have the breadth of practice freedom enjoyed in California. In those States, "broker associates" (or "associate brokers") - those brokers who work under the license of another broker - are treated just like salespersons in that such broker associates cannot operate elsewhere as a broker. Stated a bit differently, the associates can only

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COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 1)

perform real estate licensed work for the broker they are associated with, and nowhere else. In California, brokers can operate as broker associates for one or more brokers (unless they have agreed to work for only one by contract) and as independent brokers. There are no statutory restrictions or limitations on where brokers perform their licensed activities. Another anomaly I found of interest was in the stated unwillingness of some States to take any regulatory action when real estate licensees complain about other licensees. The concept is that such complaints do not involve consumer harm. In California, we will investigate - and take disciplinary action for - any violations of the Real Estate Law and consumer harm caused by the complained of practices.

The final point I want to make in this Message is that while real estate practice is an ever-changing environment, two of the most basic rules for licensees are and remain unchanged for purposes of consumer protection. The most fundamental rule is that a client's interest must take precedence over a licensee's interest. This notion is embedded in what is known as an agent's "fiduciary" duty. The second, and also fundamental rule, is that brokers must supervise and oversee the activities of the salespersons and broker associates who work under them. However, we continue to see brokers who abuse their license privilege by acting as "ghost" or "shadow" brokers (also referred to by us as "rent-a-brokers" or "brokers for lease"). Those brokers provide very little or no supervision, or simply (and unlawfully) "rent" or "lease" the use of their broker license to salespersons who in turn operate a real estate practice without any broker supervision as if they were real estate brokers. Such "ghost" brokers put themselves, their salespersons, and the public, at great risk.

In our next Bulletin, I will write more about the requirements of broker supervision. Also, I - or one of my colleagues - will address the need for licensees to provide written disclosures about whom they represent in a real estate transaction.

In the meantime, please enjoy your summer!

Demystifying Reporting Requirements

CalBRE frequently receives calls from anxious brokers who “just found out” about a CalBRE reporting requirement. The callers typically indicate that they have never heard of the requirement, have not been filing the given report for years, and want to know what they need to do to become compliant.

Although keeping up with new requirements can be difficult, brokers do need to stay informed about reporting requirements, as ignorance of the law is not an excuse, and does not remove a broker’s responsibility for timely filing of all required reports.

This article seeks to explain various reporting requirements, who must file the reports, and when they are due.

Escrow Activity Report, RE 890

Brokers who are performing escrows under an exemption from the Escrow Law, commonly known as “broker-controlled escrows,” must submit an annual report if engaging in escrow activities for five or more transactions in a calendar year or if the escrow activities equal or exceed \$1 million in a calendar year. The report is due within 60 days of the end of the calendar year in which the broker met the threshold of escrow activities. The report is submitted online through the CalBRE website.

MLO-Related Reports

The enactment of the SAFE Act not only brought about new mortgage licensing requirements, but also new reporting requirements. These reports include the Mortgage Loan Activity Notification (RE 866), Mortgage Call Report (MCR), and Business Activity Report (BAR) (RE 881).

- **Mortgage Loan Activity Notification, RE 866**

The RE 866 must be electronically submitted to CalBRE through its website if a licensee is using his or her real estate license to perform residential mortgage loan activities for properties of one to four units. Residential mortgage loan activities include lending, servicing, and brokering. The RE 866 must be submitted within 30 days of commencing residential mortgage loan activity and must reflect the types of mortgage loan activities being conducted. Every licensed real estate corporation, broker, and salesperson licensee that performs residential mortgage loan activity must submit the RE 866.

- **Mortgage Call Report (MCR)**

The MCR must be submitted electronically to the NMLS by mortgage loan originator (MLO) companies, which may include a sole proprietor brokerage or real estate corporation. It must be submitted within 45 days after each calendar quarter. Reports of financial condition for the company must also be submitted either quarterly or annually depending on whether the company is approved by Fannie Mae, Ginnie Mae, or Freddie Mac. The MCRs must be filed for any time period in which the company MLO endorsement is in an active “Approved” status. For example, if a company’s MLO endorsement was “Approved” from Jan. 1 through Feb. 1, and then became “Approved-Inactive” from Feb. 1 through the end of the year, the first quarter MCR and the annual MCR for that year must be submitted.

- **Business Activity Report (BAR), RE 881**

The BAR is submitted electronically to CalBRE through the CalBRE website by real estate brokers and corporations who make, arrange, or service one or more loans for residential one- to four-unit properties in a calendar year. It must be submitted within 90 days of the end of the broker’s fiscal year.

Residential Mortgage Loan Report, RE 857 (Lenders)

This report is required under the Health and Safety Code under a law commonly called the Holden Act. It is similar to the Federal Home Mortgage Disclosure Act (HMDA) report, but is submitted to the state. It must be filed by brokers who are lenders that regularly make loans on one- to four-unit residential real property, have total assets of \$10 million or less, and who do not already meet the requirements of and file HMDA reports. The report is due by March 31 of each calendar year and is submitted to CalBRE by mail.

Government Land Applicant Report

This report is required for licensees who assist others in filing applications for the purchase or lease of government-owned lands. The report must include the names and addresses of all people assisted and the amount of compensation received from each person. The report is submitted in paper form to CalBRE and is due within 10 days after the end of each calendar quarter.



DEMYSTIFYING REPORTING REQUIREMENTS (CONTINUED FROM PAGE 3)

Private Money “Threshold” and “Multi-Lender” Reports

Brokers who, in a 12-month period, negotiate 10 or more private money loans or note transactions in an aggregate of more than \$1 million must file quarterly trust fund status reports, annual CPA reports, and annual business activity reports. Brokers who negotiate or service multi-lender transactions must notify CalBRE of the initiation of that activity. In addition, if that broker meets the statutory level of multi-lender loan servicing activity, that broker must file quarterly CPA reports in addition to the annual CPA reports and annual business activity reports.

As the reporting requirements for threshold (and multi-lender) brokers are extensive, this article does not delve

into the requirements in detail. Brokers are encouraged to review the Threshold MLB Information, RE 4633, for a detailed chart of what reports are required and when.

Below is a chart detailing the reporting information.

Brokers should take note that failure to file reports may result in an examination of the broker’s books and records, disciplinary action against the licensees (including citations), and administrative penalties for each day a report is late. Licensees who have not filed reports applicable to their activities are encouraged to submit the required reports as soon as possible and are further encouraged to set reminders for themselves with the due dates of those reports.

Further information about the various reports can be found on the CalBRE website at www.calbre.ca.gov.

	What are the applicable statutes?	Who must file reports?	What information is required?	When are the reports due?	How are the reports submitted?
Escrow Activity Report (EAR), RE 890	Business and Professions Code (BPC) §10141.6	Broker sole proprietors and corporations performing five or more broker-controlled escrows or whose escrow activities are \$1 million or more	Broker-controlled escrow activity	60 days after the end of the calendar year	Electronically via the CalBRE website
Mortgage Loan Activity Notification, RE 866	BPC §10166.02	All licensees performing residential mortgage loan activities	Types of mortgage loan activities performed	Within 30 days of commencing the activity	Electronically via the CalBRE website
Business Activity Report (BAR), RE 881	BPC §10166.07	Broker sole proprietors and corporations performing residential mortgage loan activities	Loan activity	90 days after the end of the broker’s fiscal year	Electronically via the CalBRE website
Mortgage Call Report	BPC §10166.08	Company MLO endorsees in “approved” statuses	Loan activity and financial condition	Loan activity—45 days after the end of each calendar quarter; financial condition—45 days after the end of each calendar quarter if approved by Fannie Mae, Ginnie Mae, or Freddie Mac, or 90 days after the end of the company’s fiscal year if not approved	Electronically via the NMLS website
Government Land Applicant Report	BPC §10143.5	Licensees who assist others in filing applications for purchase or lease of government lands	Applicant information	10 days after the end of each calendar quarter	Paper form
Private Money “Threshold” and “Multi-Lender” Reports	BPC §10232 et seq., BPC §10238 et seq.	Brokers who broker or service private money loan or note transactions and meet the statutory threshold of activity	Loan activity, trust fund information	Varies, see Threshold MLB Information, form RE 4633	Paper forms, except the Business Activity Report, which is submitted electronically via the CalBRE website
Residential Mortgage Loan Report, RE 857	Health & Safety Code §35800 et seq.	Lenders who are licensed as brokers who regularly make loans on one- to four-unit residential real property, who have total assets of \$10 million or less, and who do not already file Federal HMDA reports	Loan information	By March 31	Paper form

Trust Fund Handling, Designation, and Signatories

What is the most common violation found during CalBRE audits? If you guessed trust fund shortages, you are correct. CalBRE auditors discover more violations under the Real Estate Law related to trust fund shortages than any other violations. CalBRE's Audit section examines various types of business activities involving real estate brokers. Real estate brokers performing activities requiring a license under Business and Professions Code (BPC) section 10145(a)(1) who accept funds from others are required to place those funds into one of the following three: (1) a neutral escrow depository; (2) the hands of the broker's principal; or (3) a trust fund account maintained by the broker in California. This article will focus on trust fund account requirements only.

The Audit section focuses their resources on real estate brokers that are required to deposit funds into trust accounts. The law is very specific as to the requirements of how a real estate broker is to designate a trust account. Despite this, it is still the second most common violation found during CalBRE audits.

Commissioner's Regulation (Regulation) 2832 requires a real estate broker who has opened a trust account to have that account in the name of the broker as trustee, or in a fictitious name if the broker is the holder of a license bearing that name, as trustee, at a bank or other financial institution. Abbreviations or acronyms should not be used in place of the word trustee.

In most situations, trust funds received by a broker or the broker's salesperson should be deposited no later than three business days after receipt. The exception to this requirement is when the real estate broker is performing broker-controlled escrows. If the real estate broker maintains a trust account for broker-controlled escrows, those funds must be deposited no later than the next business day after receipt.

Most trust accounts reviewed by CalBRE auditors are accounts with multiple beneficiaries, and thus, are not allowed to earn interest. With certain conditions, real estate trust accounts that have a single beneficiary/principal or a real estate broker when acting as agent for a financial institution as beneficiary of a loan and meet all the requirements contained in BPC section 10145(d), or Regulation 2830.1, may earn interest.



Another frequent violation found by CalBRE auditors is real estate brokers having improper signatories on a trust account. According to BPC section 10145(a)(2) and Regulation 2834, withdrawals may be made from a trust account only upon the signature of the real estate broker or the designated officer through whom the corporation is licensed under BPC sections 10158 or 10211. In addition, if the real estate broker or officer has authorized in writing any of the following persons, they may also sign on the trust account:

- A real estate salesperson licensed to the broker.
- Another broker with a written agreement under Regulation 2726.
- An unlicensed employee of the broker, if the broker has fidelity bond or insurance coverage equal to at least the maximum amount of the trust funds the unlicensed employee has access to at any time.

The bonds or insurance providing coverage must protect the broker from intentional wrongful acts committed by the employee. Bonds and insurance may be written with a deductible of up to 5 percent of the coverage amount, and if applicable, the broker shall provide evidence of financial responsibility.

Brokers who handle trust funds are encouraged to review the resources available on CalBRE's website at www.calbre.ca.gov such as the **Trust Account Reconciliation** presentation, **Trust Funds booklet (RE 13)**, and **Opening a Real Estate Broker Trust Account** guide.



Help Us Help You—Tips to Avoid Unnecessary Processing Delays and Ensuring Timely Licensing Transactions

By Jeff Oboyski, Licensing Manager

CalBRE's Licensing Program receives approximately 30,000 calls each month, many of which are from either exam/license applicants or licensees inquiring as to the status of an application they recently submitted to CalBRE. Whether the caller is an applicant applying for the real estate exam for the first time or a real estate broker who is attempting to add a fictitious business name to his or her broker's license, most callers just want to know (1) that CalBRE has received their application and/or (2) how long it will be until their application is processed? Below are suggestions to utilize when attempting to submit an application, confirming CalBRE has received your paperwork, or just putting yourself in the best position to avoid any unnecessary processing delays.

- Use **eLicensing** to expedite the processing of your licensing transaction. Through eLicensing, among other things, you can schedule salesperson and broker examinations, confirm if your license has been issued, print a license certificate, change your mailing address, make broker main office address changes, change employing brokers or salespeople, renew salesperson/broker licenses, and update contact information (email address and phone numbers). You must be **registered** with CalBRE to perform eLicensing transactions. For first-time exam applicants, your application must be processed to use eLicensing. Prior to using eLicensing, you may also want to look at the "**FAQs – eLicensing System.**"
- Submit your application and fee only once. Submitting multiple applications will delay processing of your application and exam scheduling.
- To find out if your application has been received by CalBRE, check your bank statement or credit card statement to see if your fee has been processed. It will be helpful to know this information should you need to contact us.



- Prior to mailing in an application, double-check your responses on the application and ensure all questions have been fully answered. Approximately 40 percent of all applications received by CalBRE include one or more deficiencies, which need to be addressed prior to the application being processed.
- Go to our website and review the "**Current Application Processing Timeframes.**" These processing timeframes are updated on a weekly basis and provide the most up-to-date information as to the received date of the applications we are currently processing.
- If you still need to speak with someone in the Licensing Program, it is recommended that prior to doing so, you have your examination or license identification number available, a copy of the information you previously submitted to CalBRE for reference, and a copy of the deficiency letter from CalBRE, if applicable.

We in CalBRE's Licensing section know your time is valuable and want to do everything we can to make sure your application is processed in a timely manner. By making an effort to incorporate one or more of the suggestions above, you are putting yourself in the best position to have your transaction processed quickly. Should you still have additional questions, do not hesitate to call us at (877) 373-4542.

Mixed-Use Subdivisions: The Development and Application Process

Mixed-use subdivisions, combining commercial and residential land uses in one common-interest development, are gaining in popularity in urban areas. Mitigating discord between commercial and residential mixed-use owners requires proper planning and design and an effective homeowners association.

A subdivider applies for a subdivision public report for every subdivision of five or more units in which at least one unit is residential. The Bureau of Real Estate reviews the application and the management documents for legal requirements and fairness.

Since there are different development standards for commercial and residential uses, the design and planning of the subdivision begins with the local government entitlement process. At that time, the local government will determine which commercial uses are appropriate for that development. Local jurisdictions often prefer a retail use rather than a restaurant use because noise and parking problems can be more easily mitigated.

Parking issues will be resolved during the review process. The amount of required commercial parking will be determined by the type of commercial use. Local governments use a parking space formula based on the type of commercial use and the square footage of commercial space to be occupied. Residential parking is calculated by the number of condominium units in the subdivision.

After design, planning, and other local entitlement issues (such as the hours of operation of the commercial use) are resolved, the CCRs and other governing documents of the subdivision can be drafted based on the decisions made during the local review process. Properly designed

homeowners associations help facilitate the differing interests and goals of both residential and commercial owners. The method selected for structuring the mixed-use governing documents should complement the design of the development. Properly prepared governing documents should allocate voting powers fairly between commercial and residential owners. To avoid domination by one form of land use over the other, the documents should guarantee that the minority interest would have a proper level of control on the board of directors.

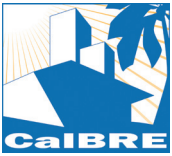
There are two methods generally used for structuring governing documents to fairly deal with shared space issues between residential and commercial owners. In the first method, governing documents may establish one homeowners association with CCRs creating rules for joint and separate ownership of commercial and residential property. In the second method, governing documents could provide for separate owners associations, linked by shared-use agreements detailing policies and procedures for management and operation of the commercial and residential interests. Issues concerning maintenance, repairs, and replacement of common facilities and use of shared spaces would be controlled either by a single set of CCRs or by shared-use agreements.

One association could be more appropriate for the management of a single structure mixed-use development. Increased interaction between residential and commercial owners in a single structure mixed-use subdivision renders a greater need for increased control over those types of developments.

A carefully formed homeowners association can establish workable rules governing the conduct and operation of the association and prevent many problems. Properly created mixed-use developments will enable housing consumers to enjoy alternative housing options with conveniences that are lacking in many single-family detached housing communities.

New Mortgage Loan Activities Fax Number

Please be advised that the Mortgage Loan Activities (MLA) fax number has changed to (916) 263-8641. Any faxes sent to the former MLA fax number will still be received by the bureau, but there will be a delay in delivery to MLA staff.



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