



# Real Estate Bulletin

Real Estate MATTERS!

## Are you compliant with the Mortgage Loan Originator (MLO) license endorsement requirements?

Effective January 1, 2011, the provisions of the Federal SAFE Act and California Senate Bill 36 require that those performing mortgage loan origination (MLO) activities for 1-4 unit residential properties have a MLO license endorsement. DRE has issued over 23,000 MLO license endorsements to licensees to date. DRE records indicate that many licensees may not be in compliance with all of the requirements. Several Business and Professions Code (B&P) sections and Commissioner's Regulations specifically address MLO compliance with real estate laws and regulations.

### *RE-866 — Online Notification to DRE Regarding Residential Mortgage Loan Origination Activity*

B&P Code Section 10166.02(a) requires that all brokers and salespersons who make, arrange, or service loans secured by real property containing one to four residential units notify the Department within 30 days of commencing that activity. Compliance is achieved by completing DRE's online form RE 866. If you have notified DRE on the RE 866 that you are performing MLO activities, and you do not have a MLO license endorsement, you are in violation of B&P §10166.02. You must update your RE 866 if you are no longer performing residential loan origination or negotiation activities. Amending your

RE 866 filing to reflect your current status will assure compliance with B&P §10166.02(a).

### *Frequently Asked Questions Regarding Cancellation/ Updating the RE 866 Filing*

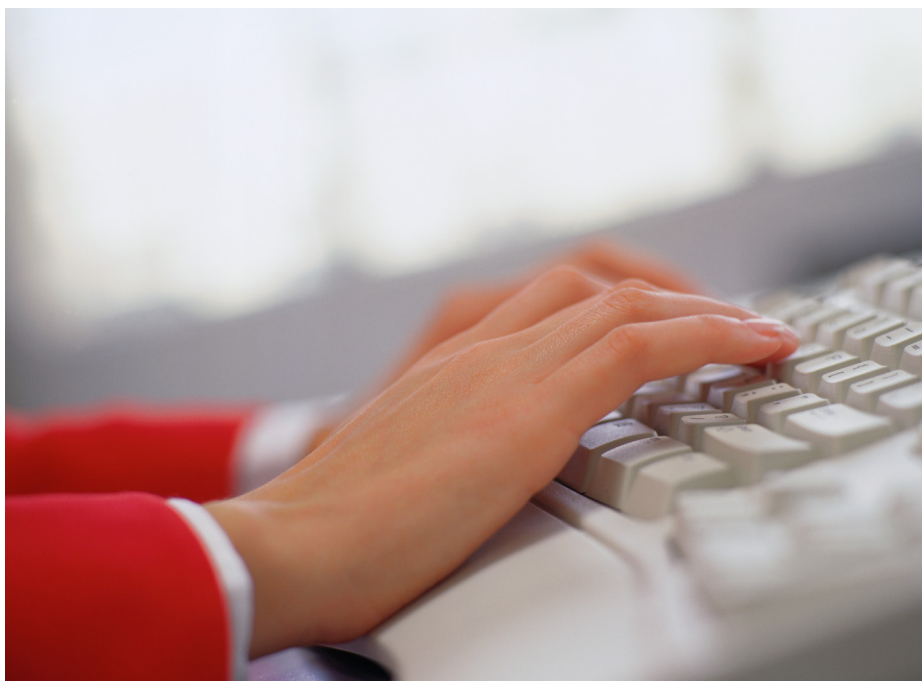
The Department receives many inquiries regarding those licensees who wish to cancel or update their previously filed RE 866. The following are examples of situations in which the RE 866 should be cancelled:

- Those who are performing residential loan origination retail activities as an employee of a national bank or credit union.
- Those conducting residential mortgage loan activities utilizing

their Department of Corporations license exclusively.

- Those who wish to continue in the real estate industry without conducting any further residential mortgage loan activities.
- Those who have not completed all requirements necessary to obtain their MLO license endorsement through NMLS and need to cancel or update the RE 866 filing to reflect their current activities.
- Those who have decided to "leave" the residential mortgage loan origination field in order to pursue other (non-residential) real estate loan endeavors or endeavors completely outside the arena of real estate.

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**STATE OF CALIFORNIA**

Edmund G. Brown Jr., Governor

**Business, Transportation and Housing Agency**

Traci Stevens, Acting Secretary

**Department of Real Estate**

Barbara J. Bigby, Acting Real Estate Commissioner

**Administration**

Barbara Bigby, Acting Real Estate Commissioner

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Sandra Knau, Managing DC IV, Licensing &amp; Exams

Jeff Oboyski, Managing DC III, Licensing

Joe Carrillo, Managing DC IV, Law Enforcement Coordinator

Sylvia Yrilligen, Managing DC III, Mortgage Loan Activities

Shelly Harkins, Managing DC III, Education and Research

**Real Estate Bulletin**

Thomas L. Pool, Editor

Rosa Arellano, Publications Deputy

Jenny Brinlee, Production Editor

**NORTHERN ENFORCEMENT AREA—DISTRICT OFFICES**

Phil Ihde, Managing Deputy Commissioner IV

**FRESNO DISTRICT OFFICE**

Luke Martin, Managing Deputy Commissioner III

2550 Mariposa Mall, Suite 3070, Fresno, 93721-2273

Consumer Information ..... 559-445-5009

**OAKLAND DISTRICT OFFICE**

Ed Haberer, Managing Deputy Commissioner III

1515 Clay Street, Suite 702, Oakland, 94612-1462

Consumer Information ..... 510-622-2552

**SACRAMENTO DISTRICT OFFICE**

Tricia Sommers, Managing Deputy Commissioner III

2201 Broadway, Sacramento

Mailing Address: P.O. Box 187000, Sacramento, 95818-7000

Consumer Information ..... 916-227-0864

**SOUTHERN ENFORCEMENT AREA—DISTRICT OFFICES****LOS ANGELES REGION NORTH**

Phil Ihde, Managing Deputy Commissioner IV

Robin Trujillo, Managing Deputy Commissioner III

320 W. 4th Street, Suite 350, Los Angeles, 90013-1105

Consumer Information ..... 213-620-2072

**LOS ANGELES REGION SOUTH AND BILINGUAL OUTREACH & ADVOCACY**

Dolores Weeks, Managing Deputy Commissioner IV

Maria Suarez, Managing Deputy Commissioner III

320 W. 4th Street, Suite 350, Los Angeles, 90013-1105

Consumer Information ..... 213-620-2072

Spanish Language Consumer Assistance ..... 213-576-6878

**SAN DIEGO DISTRICT OFFICE**

Joseph Aiu, Managing Deputy Commissioner III

1350 Front Street, Suite 1063, San Diego, 92101-3687

Consumer Information ..... 619-525-4192

**SUBDIVISIONS NORTH—SACRAMENTO DISTRICT OFFICE**

Wes Jigour, Managing Deputy Commissioner III

2201 Broadway, Sacramento

Mailing Address: P.O. Box 187005, Sacramento, 95818-7005

Consumer Information ..... 916-227-0813

**SUBDIVISIONS SOUTH—LOS ANGELES DISTRICT OFFICE**

Robert Cummings, Managing DC III, Subdivisions

Angele Chemsian, Managing DC III, Budget Review

320 W. 4th Street, Suite 350, Los Angeles, 90013-1105

Consumer Information ..... 213-576-6983

## Trust fund handling in an electronic age

More and more, real estate brokers are taking advantage of the electronic disbursement options made available to them from their bank or other financial institution. These options are also available for the trust fund accounts used by a broker. If done properly, trust funds can be paid out from a trust fund account via electronic disbursements. Not only must a broker comply with Business and Professions Code (B&P) §10145 and Commissioner's Regulation 2834, but it is important that the broker know that there are many *caveats and steps that need to be taken* in order to assure that there is proper authorization for, documentation of, and protections in place for electronic disbursements.

An electronic disbursement includes such processes as wire transfers and electronic funds transfers (EFTs). A wire transfer is an individual transaction set up between one entity and another, typically with funds transferred from one bank account to another. Wire transfers may be more costly and are usually used for large transactions. An EFT is a transfer of funds initiated through an electronic terminal, telephone, computer, or other means authorizing a financial institution to debit or credit an account. An EFT is often a very cost effective means of distributing funds. In the United States, the Automated Clearing House (ACH) is the primary means through which EFTs take place.

### Who Can Disburse Funds Electronically?

The requirements of Commissioner's Regulation 2834 apply whether a disbursement is made using a paper check or electronically. Disbursements may be made from a trust fund account of an individual broker only by the broker or one or more of the following persons if specifically authorized in writing by the broker:

- a salesperson licensed to the broker;
- a person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker; or
- an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

Likewise, withdrawals may be made from the trust fund account of a corporate broker only by an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code or one of the persons enumerated in the points above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

### Policy and Procedures

Long-established internal control practices, such as written policies and procedures, authorizations, segregation of duties, and monitoring are *vital* important in the electronic disbursement process. Supervisory oversight is especially critical to assure that trust funds are not embezzled and are accounted for properly.

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## New enforcement program

The DRE has initiated the Enforcement Advocacy Program which attempts to resolve simple disputes or minor issues between consumers and licensees or subdividers as a potential alternative to setting up formal investigations into such matters. The program includes advocates from the Enforcement, Subdivisions, and Mortgage Loan Activities sections.

The mission of the Advocacy Program is to respond quickly and informally to concerns of consumers and members of the real estate industry by serving as an informal mediator or facilitator to resolve conflicts and/or to mitigate or prevent Real Estate Law violations. Over the last 7 months, the program has proven effective in resolving disputes, and in reducing workloads by addressing issues up front as opposed to at the conclusion of a lengthy investigative process.

Many of the issues that advocates work to resolve involve a breakdown in communication between licensees and their principals. It is important to note that, in many of these instances, advocates endeavor to reestablish and facilitate communication, thus solving the issue. The types of cases that have

been handled through the Advocacy Program have included small monetary disputes where there did not appear to be a violation of the Real Estate Law. Examples of issues that have been handled through the Advocacy Program are as follows:

- ❖ Consumers who needed copies of their documents and had been unable to secure a response.
- ❖ Consumers who needed assistance in contacting their agent or broker on a current transaction.
- ❖ Consumers who needed information that they had not been able to obtain from their agent for escrow, lenders, or inspectors.
- ❖ Consumers questioning commission demands by agents (inside and outside of escrow).
- ❖ Consumers trying to cancel transactions or loans.
- ❖ Consumers who wanted to know where their earnest money was.
- ❖ Consumers who were asked to sign documents or do something they did not understand or did not feel is appropriate.
- ❖ Consumers having difficulty with a subdivider.
- ❖ Consumers having homeowner

association issues while DRE still has jurisdiction over a subdivider.

- ❖ Consumers having trouble with timeshare operators.
- ❖ Tenants who were being evicted following foreclosure without being provided the appropriate 90-day notice period.
- ❖ Short sale transaction disputes where one of the agents involved were demanding terms or provisions that were questionable or potentially unlawful. While the DRE cannot interfere with an ongoing transaction, we can place a call to the licensee to discuss possible consequences of proceeding.
- ❖ Licensees questioning whether offers have been presented to sellers, or to lenders in REO transactions.
- ❖ Consumers requesting return of illegally-collected advance fee payments.

The telephone numbers for the Advocacy Program are as follows:

### Enforcement:

Fresno: (559) 445-5009  
 Los Angeles: (213) 620-6858  
 Oakland: (510) 622-2525  
 Sacramento: (916) 227-0864  
 San Diego: (619) 525-4190

### Mortgage Loan Activities Unit:

(916) 227-0942

### Subdivisions:

Subdivisions Northern Region

(916) 227-0813

Subdivisions Southern Region:

(213) 576-6938

It is important to note that the DRE may not have the remedies and ability to compel cooperation. All the same, we have experienced a great amount of cooperation from licensees when working to resolve simple disputes. If the Advocacy Program can be of service to you, please do not hesitate to contact an advocacy deputy in the district office nearest to you. 🏠





## Electronic Trust Fund Handling Continued from page 2

Before you begin making electronic disbursements, it is advisable to create detailed policy and procedures to spell out:

- who is authorized to initiate electronic disbursements;
- how electronic disbursements will be approved by the broker;
- who will send electronic disbursements if they are not automated; and
- who will account for these transactions and reconcile accounting documentation related to electronic transactions (of course, the requirements of Commissioner's Regulations 2831, 2831.1 and 2831.2 apply).

In order to establish a recurring bill payment from the trust account on behalf of a client (e.g., mortgage payment), policies should be in place that include, but are not limited to, obtaining authorization from the client, direction of the broker for initiating the process, and an approval process that will prevent incurring of negative balances.

Proper segregation of duties is especially critical for electronic transactions. Proper segregation of duties reduces the chance that one person could be in a position both to commit a wrongdoing and to conceal it. At least two individuals should be involved in an electronic distribution. If possible, the authorization and transmitting functions should be separated and the recording function should also be assigned to someone who does not have either approval or transmitting duties.

For non-recurring bill payment, access to the electronic disbursement

function should be controlled and its use should be authorized and actively monitored due to the ease with which transfers can be made. Safeguards for initiating an EFT or wire transfer could include, but are not limited to:

- having a callback provision in your electronic or wire instructions that requires the bank to call someone other than the person initiating the transaction;


### *Proper segregation of duties is especially critical for electronic transactions.*

- using a restricted password to authorize the bank to make a transfer;
- hand delivering a letter of authorization to the bank with the transfer instructions; and
- having a policy with the bank that limits recipients of wire transfers.

Failure to establish controls could result in a trust fund shortage, such as was found on a recent mortgage loan/broker escrow audit. A designated

officer, who was not a signatory on the trust account and not active in supervising the business, learned from the DRE auditor that the corporation had a minimum trust fund shortage of over \$33,700 due in large part to online transfers to the business owner and the business owner's brother from escrow funds. The licenses of the corporation and designated officer were revoked.

Brokers should also be aware that, depending on the transaction flow, the use of a third party service intermediary provider may not meet the trust fund handling requirements of B&P Code §10145(a)(1). (See [Summer 2004 Real Estate Bulletin](#))

If done properly, electronic disbursements can be a time and money-saving process, but the process requires strong supervisory oversight, controls and record keeping. It can be a nightmare for a broker, ripe with danger of substantial loss of trust funds and/or loss of accounting controls, if the broker is not fully involved and does not have policies in place. 



## Publications update

The DRE is excited to announce that there are several newly-revised publications as well as many Consumer Alerts on our Web site, [www.dre.ca.gov](http://www.dre.ca.gov).

### Revised Publications

[Sources of Home Loans](#) provides information on how to find a lender and lists the right questions for consumers to ask when applying for a home loan. It also contains valuable information about different housing assistance programs offered by all levels of government, including special programs that consumers may not know about.

A [Consumer Guide to Filing Real Estate Complaints](#) gives an overview of the DRE complaint process, Enforcement contact information, and clarifies what the Department has jurisdiction over versus when a consumer would need to contact an attorney.

A [Consumer Guide to Mortgage-Related Complaints](#) is a detailed booklet in Q&A format that provides basic information about loan servicers, lenders, mortgage brokers, and lists contact information for all government agencies that regulate these loan providers. For example, the booklet demonstrates to the reader that if the name of their lender has the word “National” in it, or “N.A.,” then that lender would be regulated by the Federal Office of the Comptroller of the Currency. By reading this booklet, consumers can find out who regulates their lender or servicer and they can prevent a headache caused by not knowing whom to call, or by making many phone calls to no avail.

The [Subdivision Public Report Application Guide \(SPRAG\)](#) is a comprehensive booklet developed to assist subdividers and agents who prepare Notices of Intention for subdivision public reports. It is designed to streamline the process to obtain a public report for both the applicant and the DRE.



### Consumer Alerts

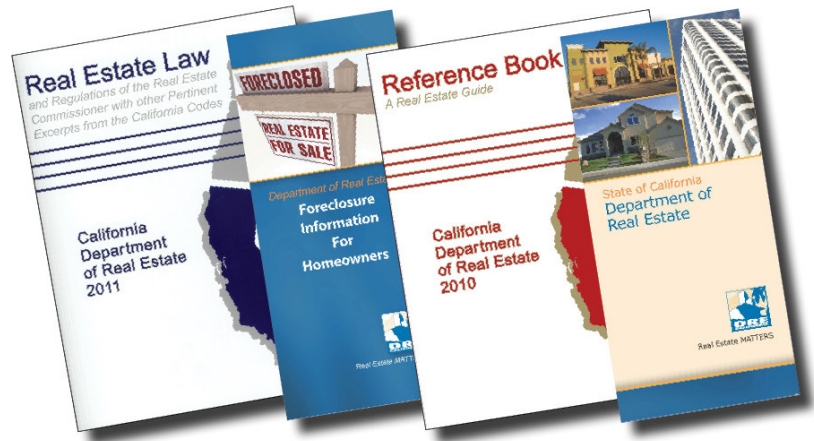
Over the past several years, DRE has been taking a proactive approach to fighting real estate fraud by issuing consumer alerts when a new scam becomes prevalent, thereby trying to prevent problems before they occur. All of the below Consumer Alerts are available online in English, Spanish, and Chinese.

Of current interest are:

- [Fraud Warning Regarding Lawsuit Marketers Requesting Upfront Fees for so-called “Mass Joinder” or Class Litigation Promising Extraordinary Home Mortgage Relief](#) (March 2011)
- [Consumer Alert: What You Can Do to Protect Yourself from Getting Ripped Off in Real Estate and Home Loan Relief Scams](#) (February 2011)
- [New Federal Rule Outlaws Advance Fees and False Claims, and Requires Clear Disclosures, Regarding Mortgage Assistance Relief \(including Loan Modification, Short Sale, and Deed-in-Lieu of Foreclosure\) Services](#) (February 2011)
- [Consumer Alert - Beware of Imposter Landlords](#) (November 2010)
- [Update to DRE Consumer Alert Regarding Forensic Loan Audits – New State Legislation Requires Auditor Registration with the California Department of Justice and Maintenance of a Bond; Violation is a Crime](#) (October 2010)
- [Consumer and Industry Warning: False and Misleading Designations and Claims of Special Expertise, Certifications and/or Credentials](#) (October 2010)
- [“Cash for Keys” – Information for Consumers and DRE Licensees](#) (September 2010)

### Really Simple Syndication (RSS) Feed

Subscribe to the DRE’s “News Flash” RSS feed to get DRE news, including the latest publications and consumer alerts, delivered directly to your email or desktop. Look for the RSS logo,  on the home page or visit [http://www.dre.ca.gov/gen\\_rss.html](http://www.dre.ca.gov/gen_rss.html) for instructions on how to subscribe. 






## License renewal reminder

Most licensees are aware that real estate is a cyclical business. In slower economic times, individuals may allow their real estate license expire with the intention of renewing it on a late basis when business conditions improve sometime during the two-year late renewal period.

Licensees are cautioned to keep track of when their licenses expire and to make arrangements to file for renewal before the date of expiration. The filing of the renewal requires the submittal of a renewal application, proof of continuing education compliance, and the renewal fee.

For brokers and salespersons, a good way to ensure that their renewal is submitted timely is to renew online using DRE's eLicensing renewal process. Licensees must have completed all continuing education (CE) requirements, which must be entered into the eLicensing validation process. eLicensing renewals can be initiated if the licensee's status is "Licensed", "Licensed-NBA", or "Expired". All other license statuses will require the renewal application and fee be mailed or delivered directly to DRE.

eLicensing renewal transactions will be accepted for late renewals as long as the licensee maintains a renewal right, meaning that the licensee is within two years of the license expiration date, and are in one of the acceptable license statuses. eLicensing renewal transactions are considered to be late at midnight of the expiration date, even if the transaction is in process at that time or the system is unavailable. Payment must be submitted in order for the eLicensing renewal to be complete. Once the licensee has completed the process, a new four-year license certificate will be issued and sent to the mailing address of record.

By personally making sure that the renewal application is timely filed, licensees will retain the ability to conduct licensed activities and avoid the risk of possible late fees or even disciplinary action for unlicensed activity. 

## MLO License Endorsement Continued from page 1

In order for licensees to cancel or amend their RE 866 notification, they should access the [RE 866 form](#) found on the DRE's Web site at [www.dre.ca.gov](http://www.dre.ca.gov) under the "MLO" tab. At this location, instructions, FAQ's and a corresponding link will allow you the option to "cancel" or "update" your previously submitted RE 866.


### NMLS Credit Report Authorization

B&P Code §10166.04(a)(2) requires that all applicants obtaining an endorsement authorize a credit report through the Nationwide Mortgage Licensing System (NMLS). Failure to authorize the credit report may delay the 2012 renewal of your MLO endorsement if not authorized by December 31, 2011.

### No Discrepancies Between DRE Records and NMLS Records are Permitted

Commissioner's Regulation 2758.5 states a real estate licensee who has been issued an endorsement must maintain the same identifying information with the DRE and NMLS. This includes the licensee name, all associated fictitious business names, the licensee main office address, any branch office locations and the current mailing addresses. Remember, that any discrepancies (or necessary updates) between DRE records and NMLS must be properly corrected *before* any residential mortgage loan activities can be performed.

### NMLS Continuing Education Courses and MLO Renewal Dates

Finally, with the renewal period for your MLO license endorsements fast approaching, remember that renewal requires completion of 8 hours of NMLS-approved continuing education and payment of appropriate fees before December 31, 2011. Furthermore, the renewal period for your 2012 MLO license endorsement and related sponsorship is November 1, 2011 through December 31, 2011. Details regarding the 2012 MLO License Endorsement renewal process will be discussed in upcoming DRE bulletin articles and on the DRE's Web site. 







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CALIFORNIA DEPARTMENT OF REAL ESTATE  
P.O. Box 187000  
Sacramento, California 95818-7000

### Contact Us:

#### DEPARTMENT OF REAL ESTATE—PRINCIPAL OFFICE

We're located at: 2201 Broadway, Sacramento, 95818-2500  
Mailing Address: P.O. Box 187000, Sacramento, 95818-7000

#### Primary Telephone Numbers

Consumer Information.....	916-227-0864
Mortgage Loan Activities .....	916-227-0770
General Licensing Information ...	877-373-4542
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

SUMMER 2011

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