



Real Estate Bulletin

Real Estate MATTERS!

MESSAGE FROM COMMISSIONER DAVI



This New Year brings a change in Administration and the hope of better times for us all. I know I heard these same excited words expressed a year ago as we said goodbye to 2009. With 2010 now behind us, I would encourage all of you in the real estate profession to take a brief moment to pause, catch your breath, look back on the past 24 months and say, "I've made it!"

California's real estate market is not out of the woods by any means as the marketplace still reels from thousands of foreclosures, short sales, and the yet unknown effects of our struggling economy. But, you have survived what we all recognize as the single largest real estate and economic downturn since the great depression.

2011 is an opportunity for us all to reflect on the past and to plot out a strategy for the future. Like anything in life, it's best to have a plan and the coming of the New Year is a great opportunity to put new plans into action. It's just like the

old adage, "If you don't know where you are going, you will probably get there."

For me, I welcome 2011 as a year of new adventures. I will leave my post some time in 2011. It seems natural for me to take my own advice and pause and reflect on my last 6 years as your Real Estate Commissioner. There are many accomplishments of which I am proud: having been a part of beginning with the implementation of Electronic Exams to the successful conversion to the Mortgage Loan Originator Endorsement License for real estate licensees who engage in mortgage lending activities. Also, DRE has now in place, for the first time, a five year strategic plan developed in concert with all the staff to guide the department into the future. We have improved regulations regarding CE course requirements and expanded CE compliance reviews. Last year I was even able to realize my dream with the successful launch of the DRE Financial Literacy Program. DRE continues its forward thinking and outside the box ingenuity with the recent

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CalHFA gives first-time homebuyers an attractive option

CalHFA is pleased to announce a new 30-year mortgage, insured by the Federal Housing Administration. According to CalHFA, this is the CalHFA's flagship mortgage loan product to get them back in business, and being offered to first-time homebuyers. In addition, CalHFA has made some improvements to the California Homebuyer's Downpayment Assistance Program (CHDAP) that makes it even more attractive

The CalHFA FHA mortgage is, at first look, simple enough: a 30-year loan with a fixed rate. It stands out for two reasons, though. One, it carries a below market interest rate, the result of ongoing bond negotiations between CalHFA and the US Treasury.

Two, when combined with CalHFA's CHDAP or AHPP (Affordable Housing Partnership Plan) programs, the rate may drop even lower, currently giving a 0.125% break for CHDAP and 0.25% break for AHPP.

They have also made some changes to the underwriting and documentation requirements for CHDAP, so its standards conform to the standards of the first mortgage. CHDAP now only requires a 1% buyer contribution instead of the previous 3%.

In addition, the School Facility Fee Down Payment Assistance Program has returned. This program gives a conditional grant to purchasers of newly constructed homes in California, to be used for down payment, closing

costs, upgrades, or any other aspect of the purchase. The grant averages about \$5,000, and if the qualified buyer stays in the property for three years, it does not need to be repaid.

CalHFA continues to be dedicated to safe, responsible lending. A FHA loan requires a 620 credit score, and every borrower must undergo homebuyer counseling.

This FHA loan product, along with their down payment programs, represents a new beginning for CalHFA as they move forward after the extremely challenging events of the past few years. With powerful products like these, CalHFA is poised to open doors for new homebuyers, and fund possibilities for the future once again. 🏠

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What are Your Continuing Education Requirements?

Numerous changes to the education requirements for both pre-license qualifications and continuing education (CE) have occurred since 2007.


The requirements for salespersons that are renewing for their first time depend upon when they passed their examination and applied for their license. On October 1, 2007, the issuance of conditional licenses was eliminated. Licensees who passed the salesperson examination and submitted a license application prior to October 1, 2007 can satisfy their CE requirement by completing five mandatory three-hour courses, including Ethics, Agency, Fair Housing and Trust Fund Handling, and Risk Management. However, licensees who either passed their examination or submitted their license application on or after October 1, 2007, must complete the full 45 hours of CE, including the five mandatory three-hour courses, 18 hours in consumer protection and the remaining hours may consist of courses in either the consumer service or consumer protection categories.

Brokers who renew for the first time must complete the 45 hour CE requirement consisting of the five mandatory courses and 18 hours of courses in the consumer protection category. The remaining hours may consist of courses in either the consumer service or consumer protection categories.

All brokers and salespersons who are renewing for a second or subsequent time must complete the 45 hour CE requirement consisting of a six-hour survey course which covers the topics of Ethics, Agency, Fair Housing, and Trust Fund Handling (or separate three-hour courses for each topic), a separate three-hour course in Risk Management, and 18 hours of courses in the consumer protection category. The remaining hours needed to complete the 45 hour CE requirement may consist of courses in either the consumer service or consumer protection categories.

If your license expires on or after June 30, 2011, and you are renewing for a second or subsequent time, you will have the option to complete a eight-hour combined survey course in order to cover the mandatory three-hour courses in Ethics, Agency, Fair Housing, Trust Fund Handling, and Risk Management.

If you are still uncertain which combinations of courses are needed for your renewal, you can verify what your specific requirements are by calling DRE's toll free voice response system at 1-877-DRE-4LIC (1-877-373-4542). The system is designed to allow licensees who log into the system to obtain specific information about their license directly from the DRE database, including the CE requirements applicable to their license type and status. The renewal requirements are available on the DRE Web site at www.dre.ca.gov and the renewal process may be completed on-line up to 90 days prior to your license expiration date. Also, renewal applications are typically sent approximately 90 days prior to license expiration dates and include information about the CE requirements that must be submitted.

If you expect to complete your CE requirement by correspondence course, you are cautioned not to wait too long since you are limited to the completion of final examinations for offerings or a package of offerings that total a maximum of fifteen credit hours during any one 24-hour period. In other words, for the completion of a 45-hour package, you will need an additional three days to complete all the final examinations. 

Supervising restricted real estate salespersons

There are numerous and varied reasons why a person may be issued a restricted Real Estate Salesperson (RRES) license. They may have been convicted of a crime; they may have made misrepresentations and/or acted negligently/incompetently on their real estate business dealings; they may have continued to conduct licensed activities after their plenary license had expired, or they may have operated in a broker capacity without first having obtained their broker license, to name a few.

Let's discuss a fictitious person with a RRES license who makes an application to work for your real estate company. Circumstances were that this salesperson had a habit of presenting purchase contracts which misrepresented the receipt of deposit monies. Although the deposit funds were collected by the agent, they were collected a day after the offer was prepared and presented, usually after it was accepted. As such, the Department initiated disciplinary action against the salesperson for violating California Business and Professions Code Section 10176 (a) – Misrepresentation. After the hearing process, it was determined that the agent's license should be revoked and issued a restricted real estate salesperson license. A restricted license allows the individual an opportunity to redeem him/herself under the auspices of a real estate broker. This RRES now desires to work for you.

As a condition of employment, you, as the prospective employing broker, are required to complete the RE 552 form, in which you certify that you have read the Decision of the Real Estate Commissioner outlining the basis under which this licensee was disciplined. In addition, you promise to ensure that all transactional documents which the RRES licensee prepares will be reviewed and you will otherwise exercise "close supervision"

over the licensed activity of that applicant.

Before the broker can consider the parameters leading to "close supervision" of the RRES, the broker should first of all become thoroughly familiar with the reasons for the licensee's discipline. Once familiar, the broker should discuss the issues with the applicant and come to an understanding that while the broker is placed in a greater burden of responsibility, the broker is also extending the opportunity for the restricted licensee to exhibit evidence of rehabilitation which will be required at a later date should the individual seek to petition for a plenary license. The employing broker should ensure that his or her current supervising rules, policies, and procedures, are modified and/or amended for the supervision of this RRES in order to comply with the "close supervision" conditions of employment.

As the employing broker of a RRES, you may decide to institute supplementary steps for the RRES in regards to his or her real estate activities, such as, requiring the RRES to not only complete the office trust-fund log but perhaps an additional transactional and trust fund journal that is exclusive to the office manager and the broker. Perhaps a copy of the first page of the purchase contract along with a copy of the deposit check may need to be approved by the office manager/broker prior to presentation as a means by which to ensure that purchase contracts were accompanied with actual deposit funds. These additional steps will be recognized as efforts on the part of the employing broker to exercise "close supervision".

In another instance, the RRES license was issued because the salesperson forgot to renew their license on time and continued to conduct licensed acts. The employing broker of this RRES may institute a call-up system



to ensure that the RRES has completed the continuing education courses on schedule and has filed the renewal application on time. The call-up date should be well before the expiration of RRES's license. In the event that the continuing education is not completed and the license is not renewed, the licensee will automatically be denied authority to execute purchase contracts, denied continued access to the Multiple Listing Service and will not be allowed to solicit new business. These steps shall be taken to ensure that no licensed acts are conducted after the expiration of their license should he/she fail to comply with the broker's policies, rules and procedures. There are a host of other measures that may be implemented to ensure close supervision and these measures should align with the basis of the disciplinary action brought against the RRES.

If the broker and the RRES come to an understanding that their business arrangement is a means by which the broker can come to expect the highest level of professionalism, then the RRES will have the opportunity to reinstate to a non-restricted license status as supported by the testimony of their employing broker. In this way, both parties enjoy a win-win relationship. 🏠

Subdivisions news

Before a subdivision can be marketed in California, the subdivider must obtain a Subdivision Public Report (California project), permit (out-of-state timeshare) or confirmation of their registration (non-California project located within the United States) from the Department of Real Estate (DRE). The public report/permit discloses to prospective purchasers pertinent information about the subdivision. Prior to issuance of a public report or permit, the subdivider must submit evidence to the DRE that adequate financial arrangements have been made for completion.

Through the public report process, DRE oversees the creation of new standard, common interest and timeshare developments. To protect purchasers from fraud and misrepresentation in subdivision sales, DRE maintains uniform minimum statewide standards for site suitability, financing of improvements and facilities, sales agreements, purchase money handling, the release of blanket encumbrances, and vital disclosures concerning

the availability of fire protection, water supply and quality, vehicular access, latent natural hazards, reservations of mineral rights and easements, and community association assessments. The DRE's subdivision program also seeks to ensure that the intricate arrangements required for managing common interest developments, including association budgets and governing instruments, are established in a way which balances the needs of the builder with those of purchasers.

Statistics

The DRE received 1484 applications for a Final Subdivision Public Report in fiscal year 2009/10. This was an increase of 17.6% compared to the previous fiscal year total of 1262. To put these numbers in perspective, over the last 20 years, the highest number of filings received occurred in 2005/06 (4510) and lowest in 2008/09 (1262). We are still well below our average of 3,000 files per year.

Amended Subdivision Public Report applications declined 26.8% in FY 2009/10, while Renewed Subdivision Public Report applications rose 52.3%. These numbers reflect changing market patterns. Generally, subdividers are not breaking ground on brand new projects, but rather completing those impacted by the real estate downturn. Many of these projects were bank-owned properties sold to subsequent subdividers.


Subdivision Section staffing has been reduced commensurate with the drop in subdivision filings. We have been able to avoid layoffs by shifting staff members to other



sections throughout the Department where workload has increased. This is advantageous because we keep experienced personnel employed, it may expand their promotional opportunities and it provides staff who can contribute once subdivision activities increase.

Future Plans

The Subdivision section's efforts moving forward are ambitious but fully achievable. We will spearhead a newly formed Housing Committee to enhance our core principles that promote public protection while supporting economic growth. We will utilize technology to enhance productivity and service to the public. We will partner with state and federal agencies to address issues of mutual concern aimed at improving consumer protection.

Further, we acknowledge the importance of enhancing efforts to educate consumers on the home-buying/selling process as well as to increase their awareness of inappropriate actions and real estate fraud. We will explore methods to increase exposure of critical information to consumers, including the distribution of electronic and print media, as well as the expansion of consumer educational materials posted on the DRE's Web site. In short, we will transform the Subdivision program into a complete and contemporary advocate for housing interests in California. 



Real estate publications

Ordering information

DRE publications are available:

On the Internet — All DRE publications are available free of charge on the DRE Web site at www.dre.ca.gov.

In person from District Offices — Complete Parts A, B, and C (if appropriate). Offices are located in Sacramento, Los Angeles, Oakland, Fresno, and San Diego.

By mail — Photocopy or remove this page from your Bulletin. Complete Parts A, B, and C (if appropriate). Mail it with the proper fee to:

Department of Real Estate
Book Orders
P.O. Box 187006
Sacramento, CA 95818-7006

By fax — Complete Parts A, B, and C. Fax form to (916) 227-0361.

By phone — Have credit card information ready, then call Book Order desk at (916) 227-0852.

Acceptable payment methods

- Personal check, cashier's check or money order should be made payable to: Department of Real Estate.
- VISA, MasterCard, and American Express credit cards may be used to purchase DRE publications.
- Cash is acceptable only if purchasing in person and only if it's the exact amount of purchase.

California sales tax

Use 8.25% tax rate, unless your county uses a higher rate. For a list

of county tax rates, go to the Board of Equalization's Web site at www.boe.ca.gov. Requests and fees will be returned if the appropriate sales tax is not included.

Miscellaneous information

- Publications noted as free are limited to one copy; DRE grants requestor permission to reproduce these publications for complimentary distribution only.
- Prices are subject to change.
- Orders received with incorrect payments will be returned.
- All sales are final — no refunds.
- Allow 4–6 weeks for delivery.
- Volume discounts are available. Call DRE at (916) 227-0852 prior to ordering.

PUBLICATION ORDER

RE #	Publication Title	Price	Quantity	Your Cost
Law and Reference Material				
1	Reference Book — A Real Estate Guide (Rev. 2010- available January 5th, 2011)	\$20.00		
2	Real Estate Law (book & CD set)	\$25.00		
6	Disclosures in Real Property Transactions	\$10.00		
8	Operating Cost Manual For Homeowners' Associations	\$10.00		
9	Subdivision Public Report Application Guide (SPRAG)	\$10.00		
25	Reserve Study Guidelines for Homeowner Association Budgets	\$10.00		
Free Brochures — Individual copies only (Check box.) (Also available at www.dre.ca.gov)				
4	Instructions to License Applicants			Subtotal _____
13	Trust Funds			– Discount _____
34	A Guide for Residents Purchasing Their Mobilehome Park			Subtotal _____
35	Trust Deed Investments – What You Should Know!!			+ CA Tax* _____
35A	Using the Services of a Mortgage Broker			(Tax rate used* _____ %)
39	Living in a California Common Interest Development			
51	A Consumer Guide to Filing Real Estate Complaints			
52	Reverse Mortgages — Is One Right for You?			TOTAL \$ _____
DRE USE ONLY — DATE SENT				

PART B

PURCHASER INFORMATION

NAME OF PURCHASER — TYPE OR PRINT CLEARLY IN INK	LICENSE OR EXAM ID#
STREET ADDRESS OR POST OFFICE BOX, CITY, STATE, ZIP CODE	

PART C

CREDIT CARD INFORMATION

TO PURCHASE PUBLICATION(S) BY CREDIT CARD, COMPLETE THE FOLLOWING:			DRE USE ONLY
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SIGNATURE OF CARDHOLDER		DATE	APPROVAL # — DRE USE ONLY
»		TELEPHONE NUMBER	REFERENCE # — DRE USE ONLY
PRINTED NAME OF CARDHOLDER			

Bills of interest to DRE

September 30, 2010 marked the end of the two year legislative session. In 2009, 948 bills made it to the Governor's desk of which 694 were signed and 254 were vetoed. In 2010, 726 bills were signed and 298 were vetoed. All told, for the two-year session, 1,972 bills made it out of the legislature, 1,420 were signed and 552 were vetoed. For a complete list of all bills acted upon this year visit: <http://gov.ca.gov>.

The following brief legislative summaries are of legislation signed from the 2009/2010 session that affects real estate licensees and subdividers. These summaries 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 on-line at <http://www.leginfo.ca.gov/bilinfo.html>. Please note that "SB" refers to a Senate Bill and "AB" to an Assembly Bill and the Chapter number refers to sequence that the bill was filed with the Secretary of State. The name appearing after the bill number is the name of the author. All statutes are effective January 1, 2011 unless otherwise noted.

AB 1762 by Assembly member Mary Hayashi (D-Hayward) (Chapter 85) — **Real estate; advance fees.**

Current law places restrictions on, and in some cases prohibits, a real estate licensee's ability to collect advance fees for services that require a license. Real estate brokers wanting to collect advance fees must have their advance fee contract approved by the DRE prior to its use. This bill clarifies that the term "advance fee" does not include monies charged or collected for certain services requiring a license including security and screening fees and fees charged or collected for the purpose of advertising or earned for a specific service under a "limited service" contract.

AB 2325 by Assembly member Ted Lieu (D-Torrance)(Chapter 596) — **Mortgage foreclosure consultants: loan audits.**

Existing law requires foreclosure consultants to register with the Department of Justice (DOJ), prior to providing foreclosure consultant services. Existing law prohibits foreclosure consultants from claiming, demanding, charging, collecting, or receiving any compensation before fully completing the services for which the foreclosure consultant was contracted to perform. This bill provides that foreclosure consultant services also include the arranging or attempting to arrange an audit of any obligation secured by a lien on a residence in foreclosure. This bill specifies that any individual performing "forensic loan audits" is subject to existing laws governing foreclosure consultants,

including the prohibition against collecting up-front fees prior to performing all services. The bill continues to exempt lawyers, mortgage brokers, lenders, and others licensed and operating under the financial code or business and professions code from the Foreclosure Consultant law.

SB 931 by Senator Denise Moreno Ducheny (D-San Diego)(Chapter 701) — **Mortgages: deficiency judgments.**

Given the State's current economic and housing crisis, many distressed homeowners are opting to pursue short-sale transactions, rather than walking away from their home and letting the property fall into foreclosure. Pursuant to existing law, borrowers (homeowners) who proceed with the short-sale option, may be subject to a deficiency judgment requiring them to pay the difference between the amount financed and the agreed upon selling price after the transaction has closed. This bill prohibits a lender from pursuing a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than four units in any case in which the property is sold for less than the amount owed with written consent from the lender. Once the lender provides written consent for the short-sale of the property, the borrower is released from the obligation to pay the first-lien holder the remaining balance of the loan in the future. This bill does not prohibit the holder of the first deed of trust or first mortgage to seek damages and use existing rights and remedies against the borrower or any third party if that person either committed fraud with respect to the sale of the property or purposely damaged the property that secures the loan. The provisions of the bill do not apply if the trustor or mortgagor is a corporation or political subdivision of the state.

SB 1128 by Senator Mark DeSaulnier (D-Concord) (Chapter 322) — **Common interest developments: governance.**

Existing law requires that an owner of a separate interest in a common interest development (CID) provide certain items to a prospective purchaser prior to transfer of title, and prohibits an association, community service organization (CSO), or similar entity, as defined, from imposing or collecting any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and a specified charge for providing certain information upon request. This bill allows a non-profit entity that provides services to a CID under a declaration of trust, if it received transfer fees prior to January 1, 2004, to continue to charge transfer fees to

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the purchasers of units within the CID to which it provides services. The bill also clarifies that such entities are subject to the open records provisions of the Davis-Stirling Act.

SB 1137 by Committee on Banking, Finance and Insurance(Chapter 287) — Mortgage lending: SAFE ACT.

This bill makes technical changes to the statutes enacted last year, pursuant to the passage of SB 36 (Calderon, Chapter 160, Statutes 2009), to ensure that California conforms with the provisions of the Secure and Fair Enforcement for the Mortgage Licensing Act of 2008 (SAFE Act). Specifically, this bill makes it unlawful for a real estate broker to employ or compensate any licensee for engaging in any activity for which a mortgage loan originator (MLO) license endorsement is required if that licensee does not hold a MLO license endorsement. Furthermore, this bill makes it a crime for any person to act as a MLO without a license endorsement or to advertise that he/she is a real estate salesperson or MLO without having a license or license endorsement. Additionally, this bill provides that the penalties for a licensee failing to notify the Commissioner that he/she is performing mortgage loan activities, or who has failed to obtain a MLO endorsement would also extend to licensed salespersons. The bill also authorizes the Commissioner to deny, suspend, revoke, restrict, condition, or decline to renew a MLO license endorsement, or take other actions, after notice and opportunity for a hearing, under specified conditions. Finally, the bill removes loan servicing from the definition of “mortgage loan originator” as it was never the intent of the federal SAFE Act to include servicing as MLO activity.

SB 1149 by Senator Ellen Corbett (D-San Leandro) (Chapter 641) — Residential tenancies: foreclosure.

In response to California’s recent foreclosure crisis the

Governor signed SB 1137 (Perata, Chapter 69, Statutes of 2008), which requires that tenants receive 60-days notice before they may be evicted after the rental unit in which they are living is foreclosed upon. Additionally, Congress passed S. 896, Public Law 111-22, which included the “Protecting Tenants at Foreclosure Act of 2009”, which generally requires a successor in interest in a property subject to foreclosure to provide tenants with a 90-day notice to vacate and, with limited exceptions, to honor the tenant’s lease until the end of the lease term.

This bill requires that tenants who are living in foreclosed homes be given notice of their rights and responsibilities under these state and federal laws by requiring a cover sheet be attached to any eviction notice served within one year of a foreclosure sale. The cover sheet delineates the laws and rights a tenant may have in cases where the property he or she occupies is foreclosed upon. The provisions of this bill sunset on January 1st, 2013.

SB 1427 by Assembly member Curren Price (D-Inglewood) (Chapter 527) — Foreclosures: property maintenance.

One result of the foreclosure crisis has been an increase in the number of distressed properties that sit empty and inadequately maintained. SB 1137 (Perata, 2008) requires until January 1, 2013, among other things, a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. Furthermore, SB 1137 authorizes a governmental agency to impose a civil fine of up to \$1,000 per day for failure to maintain a foreclosed property. Existing law, however, specifies that these provisions do not preempt any local ordinance.

This bill requires a local or state governmental entity, prior to imposing a fine or penalty for failure to maintain a vacant property that is subject to a notice of default (NOD), that is purchased at a foreclosure sale, or that is acquired through foreclosure, to provide the owner of that property with a notice of the violation and an opportunity to correct the violation. The bill also specifies that this notice requirement would not apply if the governmental entity determines that a specific condition of the property threatens public health or safety. The bill provides that the costs of nuisance abatement measures taken by a governmental entity with regard to property, as identified above, must not exceed the actual and reasonable costs of nuisance abatement. The bill also prohibits a governmental entity from imposing an assessment or lien unless the costs that constitute the assessment or lien have been adopted by the elected officials of that entity at a public hearing. 🏠



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introduction of the Advocacy Program. This program is geared to intervene early in the complaint process to enable a potential return of victim's monies before it is absconded with or to prevent unlawful acts from escalating. After only three months of operation, the Advocacy Program has already recovered over one half of a million dollars for consumers.

However, the single thing that I am most pleased to have orchestrated is the transition of the Department from an agency that did only what it was statutorily required to do, to a regulator that boldly steps beyond the typical government mold and aggressively pursues mortgage loan fraud not only through increased enforcement but through consumer awareness and consumer protection.

DRE has led the charge to put an end to illegal advance fee charges and unlawful foreclosure avoidance scams. DRE has provided numerous consumer alerts that have been duplicated, redistributed and published by other entities. DRE has begun to be a dedicated resource which coordinates with other law enforcement

agencies so that we can be sure once a "bad guy" is on our radar they are also subject to any applicable criminal penalties that can also be imposed. This was accomplished through the tireless efforts of the entire workforce at DRE.

As I said at the onset, now is a good time to take a moment and reflect on what we've all endured and then look forward to better times, which we all know one can achieve with a good plan, tenacity and good old hard work. I am reminded of one of my favorite quotes from Abraham Lincoln; when he lost one of his early political bids for elective office but wanted to try again. His friends were encouraging him to wait before he ran again but Lincoln said "Good things may come to those who wait, but only the things left by those who hustled". So keep this in mind as you contemplate your year ahead.

In closing, I have truly enjoyed being your Commissioner these last six years, and I consider it one of the greatest honors I have ever had bestowed upon me. I won't say good bye; I will say farewell! 🏠

Real Estate Bulletin

WINTER 2010

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