

Department of Real Estate

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The Department of Real Estate (DRE) is established in the Business, Transportation and Housing Agency pursuant to Business and Professions Code section 10000 *et seq.*; DRE's regulations appear in Chapter 6, Title 10 of the California Code of Regulations (CCR). DRE's primary objective is to protect the public interest in regard to the handling of real estate transactions and the offering of subdivided lands and real property securities by DRE licensees. To this end, DRE has established a standard of knowledge—measured by a written examination—for licensing real estate agents, and a minimum criterion of affirmative disclosure for qualifying subdivided lands offerings. DRE also works to increase consumer awareness and collaterally assists the real estate industry in expanding its standards and increasing its level of professional ethics and responsibility.

The Real Estate Commissioner, who heads the Department, is appointed by the Governor. The commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with real estate licensees. The commissioner is authorized to issue licenses; promulgate regulations which have the force of law; and revoke or suspend licenses for violations of those regulations, the Real Estate Law, or other applicable laws. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings per year. The commissioner receives additional advice from specialized committees in the areas of education and research, mortgage lending, subdivisions, and commercial business brokerage. Various subcommittees also provide advisory input.

DRE primarily regulates two aspects of the real estate industry: licensees (salespersons and brokers) and subdivisions. Pursuant to Business and Professions Code section 10167 *et seq.*, DRE also licenses "prepaid rental listing services" which supply prospective tenants with listings of residential real properties for tenancy under an arrangement where the prospective tenants are required to pay a fee in advance of, or contemporaneously with, the supplying of listings. Certified real estate appraisers are not regulated by DRE, but by the separate Office of Real Estate Appraisers within the Business, Transportation and Housing Agency.

A person must obtain a real estate license to engage in the real estate business and act in the capacity of, advertise, or assume to act as a real estate broker or salesperson within California. Before a salesperson license applicant for real estate salesperson may obtain a license, he/she must fulfill certain real estate education requirements and pass a real es-

tate examination. Exam passage rates average 56% for salespersons and 48% for brokers (including retakes). In most cases, a broker applicant, in addition to fulfilling the required real estate education, must have two years of real estate experience before applying for the exam. Broker and salesperson licenses are issued for a four-year period. In general, both types of licenses may be renewed by submitting the appropriate fee and application, and evidence of completion of 45 hours of DRE-approved continuing education courses. Currently, there are approximately 300,000 real estate licensees in California.

DRE also enforces the Subdivided Lands Act, the purpose of which is to ensure that subdividers of real property deliver to the buyer what was agreed to at the time of sale. The law covers most standard land subdivisions and various types of common interest developments, time-shares, certain undivided interest developments, and out-of-state time-share subdivisions offered for sale in California. Before real property which has been subdivided can be marketed in California, the subdivider must obtain a "public report" from the DRE. Prior to the issuance of a public report, the subdivider must file an application along with supporting documents with respect to representations made in the application. In sales (or leases exceeding one year in length) of any new residential subdivisions consisting of five or more lots or units, DRE requires that a prospective purchaser or tenant be given a copy of the public report. The public report serves two functions aimed at protecting purchasers (or tenants with leases exceeding one year) of subdivision interests: (1) it discloses material facts relating to title, encumbrances, and related information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivider fails to comply with any provision of the Subdivided Lands Act.

DRE's Enforcement and Audit sections investigate complaints regarding alleged violations of the Real Estate Law, the Department's regulations, or other applicable laws. If a complaint is supported by evidence, the commissioner may revoke, suspend, or deny a real estate license. The commissioner may also issue desist and refrain orders to stop activities that are in violation of these laws. Violations may result in civil injunctions, criminal prosecutions, or substantial fines.

The Department regularly publishes three bulletins to educate its licensees. *Real Estate Bulletin*, which is circulated quarterly to all current licensees, contains information on legislative and regulatory changes, commentaries, and advice; in addition, it lists the names of licensees who have been disciplined for violating regulations or laws. *Mortgage Loan Bulletin* is published twice yearly and circulated to

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licensees engaged in mortgage lending activities. Finally, *Subdivision Industry Bulletin* is published annually for title companies and persons involved in the building industry. DRE also publishes numerous books, brochures, and videos relating to licensee activities, duties and responsibilities, market information, taxes, financing, and investment information.

The revenue necessary to operate DRE is derived from fees charged for real estate licenses, subdivision public reports, and various other permits issued by DRE. In addition to its operating funds, DRE also maintains the Real Estate Recovery Account; currently, 12% of all license fees collected by DRE are credited to this account. Under certain conditions, when a consumer obtains a civil judgment against a real estate licensee as a result of fraud, misrepresentation, deceit, or conversion of trust funds by a licensee while acting as an agent in the transaction, that person may seek reimbursement from the Recovery Account for actual and direct loss (up to a statutory maximum).

DRE is headquartered in Sacramento, and maintains branch offices in Oakland, Fresno, Los Angeles, and San Diego.

MAJOR PROJECTS

DRE Reduces Licensing Fees Again

On July 14, DRE amended sections 2716, 2790.1, and 2805.1, Title 10 of the CCR, to lower certain licensing fees in compliance with Business and Professions Code section 10226. These amendments are exempt from review by the Office of Administrative Law (OAL). These reductions, which became effective on August 1, mark the second consecutive year in which DRE has reduced its real estate licensing fees. [16:1 CRLR 173-74] According to the Department, these fee reductions can be attributed primarily to the return of approximately \$7.3 million to DRE from the state's general fund; in the early 1990s, these funds were improperly transferred from the Real Estate Fund to the general fund to help resolve the state's overall budget deficit. [12:4 CRLR 1] DRE anticipates that within the next two fiscal years it will receive an additional repayment of approximately \$2.3 million, which will complete the return of those funds.

Pursuant to Business and Professions Code section 10226, the commissioner is required to reduce licensing fees if, as of June 30 of any fiscal year, the balance of funds in the Real Estate Fund is greater than 50% of the Department's authorized budget for the following year. The commissioner must reduce fees to reasonably ensure that as of June 30 of the next fiscal year, the balance of funds in the Real Estate Fund will not exceed 50% of the Department's budget for that year.

As a result of the improved economy, ongoing cost savings measures, and the return of the previously-transferred reserves, the Department reduced licensing fees and its subdivision filing fees in order to maintain its reserve level within the statutory limit. DRE anticipates there will be further fluctuations in the licensing fee schedule over the next few years due to the expected repayment of the remainder of the previously-transferred reserves. When all of the reserves are returned and DRE's revenue stream stabilizes, the Department intends to pursue a fee structure that can be maintained on a more permanent basis.

Under the amendments to section 2716, the current fee for a new (original) real estate broker license is \$110; the fee for a new real estate salesperson license (original) is \$65; the licensing fee for a real estate salesperson who has not satisfied all of

the educational requirements prior to the issuance of the license is \$90; the renewal fee for a broker license is \$110; the renewal fee for a real estate salesperson license is \$65; the licensing fee for late renewal of a broker license is \$165; and the licensing fee for late renewal of a salesperson license is \$97. An additional \$32 fingerprint processing fee is required if an applicant has never before been licensed by DRE, or if an applicant's license expired more than two years ago.

Among other things, DRE's amendments to section 2790.1 and 2805.1 provide that the standard subdivision filing fee is \$450; the common interest subdivision filing fee is \$1,550; the time-share (in- and out-of-state) filing fee is \$1,550; the fee for an original preliminary or interim public report is \$500; the fee for renewal of a preliminary or interim public report is \$450; the filing fee for an original conditional public report is \$500; and the fee for renewal of a conditional public report is \$450.

Other DRE Regulatory Changes

On June 18, DRE published notice of its intent to adopt new section 2729, repeal sections 2850 and 2851.2, and amend sections 2710, 2715, 2718, 2790.2, 2790.4, 2790.5, 2792, 2810.1, 2814, 2930, 3002, 3003, and 3100, Title 10 of the CCR. Most of these regulatory changes are technical clean-up changes. Among other things, the changes have the following effects:

- Prior to DRE's adoption of new section 2729, the Department's regulations did address the storage of real estate documents and records through the use of optical image storage systems. Section 2729 permits the use of such systems and establishes performance standards for their use.

- Amended section 2710 adds 30 days to the timeframe in which to apply for renewal of a real estate license. The regulation now states that the renewal application must be submitted to DRE not more than 90 days before the expiration of the license to be renewed.

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• Amended section 2715 provides that every broker who is acting in the capacity of a salesperson to another broker under a written agreement shall maintain on file with the commissioner the address of the business location where he/she expects to conduct most of the activities for which a license is required and his/her current mailing address.

• Section 2718 limits the availability of DRE licenses and other “public benefits” to people lawfully residing in the United States. [16:1 CRLR 173] DRE amended section 2718 to conform with federal law and correct a typographical error.

• Section 2930 contains standard language used in DRE disciplinary orders. SB 1554 (Kopp) (Chapter 641, Statutes of 1998) amended Business and Professions Code section 10148 to authorize the commissioner to charge broker licensees for

the cost of “any audit” of the broker’s trust fund if the results of the audit indicate that the broker violated applicable law. [16:1 CRLR 175] DRE amended section 2930 to—among other things—authorize the commissioner to charge a respondent in a trust fund violation matter for the audit which led to the disciplinary ac-

tion and for any subsequent audit to determine whether the respondent has corrected the trust fund violation(s).

• Applicants for DRE licensure must satisfy specified educational requirements or “an equivalent course of study” under Business and Professions Code section 10153.5; providers offering those courses must obtain the approval of the commissioner. As amended, section 3003 sets forth the procedure for obtaining reinstatement of equivalent course approval if the commissioner has withdrawn approval for that course.

• Section 3100 defines several terms used in the Department’s statutes and regulations governing the Real Estate Recovery Account established in Business and Professions Code sections 10450.6 and 10470 *et seq.* When a member of the public obtains a civil judgment against a real estate licensee as a result of fraud, misrepresentation, deceit, or conversion of trust funds on the part of a licensee acting as an agent in the transaction, that person may seek reimbursement from the Recovery Account for actual and direct loss up to a statutory maximum under certain conditions. The amendments to section

3001 revise the definition of the term “final judgment” to include a judgment, arbitration award, or criminal restitution order for which the period for appeal has expired, enforcement of which is not barred by the order of any court or by any statutory provision, and which has not been nullified or ren-

dered void by any court order or statutory provision. The amendments also revise the definition of the term “county in which a judgment was rendered” to mean the county within California in which the court issuing the judgment or restitution order sits or, if the claim is based on an arbitration award, the county in which the arbitration was conducted, or in which the claimant resides.

DRE held a public hearing on the proposed changes on August 5. Thereafter, the Commissioner adopted the proposed changes. OAL approved them on October 26, and they become effective on November 25.

Flat Fees, Retainers, and Advance Fees

In the Fall 1999 issue of its *Real Estate Bulletin*, DRE noted that it has seen a proliferation of real estate brokers offer-

ing “flat fee” or “fee for service”-type programs; under such programs, a broker usually offers certain services in exchange for an up-front flat fee or charges a separate up-front fee for each service offered. Typical of the services offered are inputting a property into the multiple listing service, advertising property on the Internet, providing signs, supplying forms, providing a market analysis, holding an open house, preparing fliers, and placing advertisements in the newspaper or other print medium. Some brokers offer a reduced commission in exchange for advance payment for these services.

DRE warned licensees that “a fee collected up front for services...is an advance fee as defined in Business and Professions Code section 10026. Before collecting an advance fee, a broker must, pursuant to Business and Professions Code section 10085, obtain the Department’s approval of the agreement and other advance fee materials. Each broker collecting an advance fee must obtain approval of the agreement that he/she intends to use.” DRE cannot issue a “blanket approval” of an advance fee agreement, as services to be provided and circumstances vary. Further, there are no vendors of bona fide “preapproved” agreements. A broker wishing to charge an advance fee must submit to DRE an advance fee contract that contains the following essential elements: (1) the agreement must be in contract form, with spaces for dating and execution by broker and principal; (2) the agreement must be

in at least 10-point type; (3) it must obligate the principal to pay, at a specified time, a specified advance fee; (4) it must obligate the broker to deposit the advance fee into a trust account and provide the principal with the verified accountings required by Business and Professions Code section 10146;

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(5) it must obligate the broker to use the advance fee to fund specified services for the principal's benefit; (6) it must allocate estimated portions of the advance fee to each of the services the broker agrees to provide; and (7) it must obligate the broker to complete the advance fee services by a specified date.

DRE License Status Now Online

Pursuant to Government Code section 11018.5, DRE was required—on or before January 1, 1999—to provide on the Internet information regarding the status of every license issued by the Department, including information relative to suspensions and revocations of licenses and other related enforcement action taken against persons, businesses, or facilities subject to licensure or regulation by DRE. Section 11018.5 also requires DRE to disclose on the Internet licensee information that is in compliance with the Department's public record access guidelines.

DRE's website now includes a "License Status" option, through which the public can access licensee information such as license type, mailing address, license identification number, expiration date, license status, and disciplinary actions (if any). In addition, DRE's website now includes information on persons and businesses found to be conducting real estate activities without a license. Consumers without access to a computer may access the same information via the DRE Licensing Section's Interactive Voice Response System at (916) 227-0931.

LEGISLATION

AB 248 (Torlakson) is a clean-up bill to AB 1195 (Torlakson) (Chapter 65, Statutes of 1998), which requires sellers of real property and their agents to provide buyers with a Natural Hazard Disclosure Statement indicating whether the property is located in any of six natural hazard zones. [16:1 CRLR 175-76] As amended September 1, AB 248 creates a separate statutory section for the Natural Hazard Disclosure Statement, removing it from the statutory section dealing with the Transfer Disclosure Statement; it also makes other technical and substantive changes to the Natural Hazard Disclosure Statement to clarify existing law (see agency report on BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS for related discussion). AB 248 was signed by the Governor on October 8 (Chapter 876, Statutes of 1999).

AB 653 (Hertzberg), as amended August 16, repeals Financial Code section 50704, which currently limits the number of loans that a residential mortgage lender licensed by the Department of Corporations (DOC) may broker to an amount up to 5% of its mortgage lending business. This limitation was enacted in 1996 as part of a new law known as the Cali-

fornia Residential Mortgage Lending Act (RMLA), administered by DOC. Prior to that time, mortgage bankers were licensed by DRE. Mortgage bankers are now licensed by DOC under the RMLA, and the statute permits them to make or broker residential mortgage loans (one to four units), or service residential mortgage loans. A mortgage banker who wants to operate as a residential mortgage lender (RML) is permitted to loan its own money to borrowers, or broker and obtain loans for borrowers. When a mortgage banker brokers loans, the maximum allowed under section 50704 is not more than 5% of the total loans made during the first year of operation under the RMLA. Thereafter, the percentage level may not exceed the greater of 5%, or 10% less the percentage level of brokerage services done in the prior year. Individuals working as mortgage bankers, or for mortgage banking companies, also may be licensed by DRE as real estate brokers. When operating with a DRE license, a mortgage banker is not subject to the above RML brokered loan percentage limitations. AB 653, sponsored by the California Mortgage Bankers Association, repeals section 50704 and its 5% limitation on brokered loans and effectively repeals the "requirement" that mortgage bankers be dually licensed by DOC and DRE.

AB 653 also amends a provision in Financial Code section 50707 which sunsets the provisions permitting mortgage bankers to operate under DOC jurisdiction (Financial Code section 50700 *et seq.*) on June 30, 2001; AB 653 extends the sunset date to June 30, 2005, and requires the Secretary of the Business, Transportation and Housing Agency to report to the legislature on the extension of this program by December 31, 2002.

Finally, AB 653 amends Business and Professions Code section 10133.1 to exclude from the definition of "real estate broker" persons who are employed by a real estate broker who, on behalf of the broker, assist the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, where the lender is an institutional lender, provided the employee does not participate in any negotiations between the principals. The bill requires a broker to exercise reasonable super-

vision and control over the activities of these unlicensed employees. The Governor signed AB 653 on September 16 (Chapter 407, Statutes of 1999).

AB 432 (Leach) amends Business and Professions Code section 10236.4 to repeal a provision requiring licensed real estate brokers, in connection with any advertisements soliciting borrowers or potential investors, to disclose DRE's license information telephone number in those advertisements.

This bill is sponsored by the California Association of Mortgage Brokers, which contends that the measure is necessary to prevent consumers from confusing the required DRE telephone number with the broker's telephone number. Ac-

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ording to the Association, questions regarding the details of a potential loan are, in many cases, being erroneously addressed to DRE, adding inappropriately to its workload. The Association also asserts that the deletion of the number does not diminish the level of disclosure to the consumer, as the broker's license information number must be included on the first disclosure document provided to the potential borrower before going on with the transaction. Although DRE confirmed that approximately ten to fifteen consumers mistake DRE's license information number for brokers' numbers each week, the Department did not take a position on the bill. AB 432 was signed by the Governor on June 28 (Chapter 41, Statutes of 1999).

AB 935 (Brewer). Existing law requires any person who intends to offer subdivided lands within this state for sale or lease to register and file an application for a public report with DRE and authorizes the commissioner to regulate, investigate, and report to the public regarding specified transactions pursuant to these provisions. As amended September 10, this bill would authorize the commissioner to include or prepare specified disclosure statements in a permit or public report on a single-site time-share project associated with other component resorts through a reservation system and pertaining to the effect of the reservation system on the purchase of an interest in the project. The bill would also revise the definition of the term "single-site time-share project" as it applies to these provisions, impose additional requirements on a single-site time-share project if the use of a reservation sys-

tem is mandatory, and provide that the use of a reservation system shall not be deemed to guarantee a right to use or occupy accommodations or facilities at more than the site where the interest is purchased. [A. LGov]

AB 1219 (Kuehl). Existing law requires a subdivision developer to provide the Real Estate Commissioner with a statement of the provisions made for public utilities, including water, electricity, gas, telephone, and sewerage. As amended in April 1999, this bill would require a subdivision developer proposing a "large land use project" to include in its notice of intention a statement regarding the availability of water, following a water supply assessment that has been completed by the public water agency that would serve the subdivision. Under the bill, a "large land use project" would include a proposed residential development of more than 500 dwelling units; a shopping center employing more than 1,000 persons or having more than 500,000 square feet; a commercial building housing more than 1,000 persons or having more than 250,000 square feet; a hotel with more than 500 rooms; an industrial, manufacturing, or processing plant or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet; or a mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500-dwelling-unit project. [A. LGov]

AB 1316 (Correa), as amended August 16, is no longer specifically applicable to DRE or its licensees.