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.; its 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.

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 a real estate licensee. 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.

License examinations require a fee of $60 per salesperson applicant and $95 per broker applicant. Exam passage rates average 56% for salespersons and 48% for brokers (including retakes). Effective August 1, 1998, the fees for original or renewal salesperson and broker licenses are $165 and $210, respectively. Original licensees are fingerprinted at a cost of $32, and license renewal is required every four years.

Currently, there are approximately 300,000 California real estate licensees.

In sales, or leases exceeding one year in length, of any new residential subdivisions consisting of five or more lots or units, DRE protects the public by requiring 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) the report 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.

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 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.

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

**Major Projects**

**Responding to Court Ruling, Commissioner Permits Use of Arbitration to Resolve Construction Defect Disputes**

Effective July 15, 1998, new DRE regulations now permit condominium builders to insert binding arbitration clauses into sales agreements, requiring purchasers and homeowners associations to submit to arbitration rather than go to court over construction defect claims.

The new rules stem from a lawsuit brought by the building industry against DRE. San Diego-based Barratt American, Inc. sought to build an attached housing project in Oceanside and to sell the units under contracts requiring binding arbitration in the event of a dispute over faulty construction. Barratt submitted the project documents to DRE, which
rejected the proposed arbitration clause in the sale agreement. Barratt—joined by other builders, the California Building Industry Association, and the Home Builders Association of Northern California—filed a petition for writ of mandate in San Francisco Superior Court, asking the court to require DRE to approve the project and the proposed sales contract.

On June 20, 1997, the court ruled in favor of the home builders. In Barratt American, Inc. et al. v. Real Estate Commissioner, No. 984374 (1997), the court reversed DRE’s ruling and determined that condominium builders must be permitted to include mandatory, binding arbitration provisions in sales agreements. The court rejected DRE’s argument that Code of Civil Procedure section 1298.7 prohibits the arbitration of patent and latent construction defect claims, finding that section 1298.7 “does not limit the kinds of disputes that parties to a real estate contract can agree to arbitrate, or prohibit the inclusion of mandatory arbitration agreements generally in subdivided land sales agreements, declaration of covenants, conditions and restrictions, or any other written instrument submitted to the DRE in connection with an application for a subdivision public report.”

In accordance with the ruling, the Commissioner published a December 1997 notice of his intent to amend section 2792.21, Title 10 of the CCR, which sets forth the restrictions which may be imposed upon the governing body of a subdivision homeowners’ association. As then drafted, the section did not allow for the use of mandatory arbitration of disputes between subdividers and homeowners associations or homeowners. To implement the Barratt ruling, the Commissioner proposed to amend section 2792.21 to permit subdividers to insert a contractual provision requiring the arbitration of a dispute or claim between a homeowner and a subdivider in a sale agreement or in the development’s covenants, conditions, and restrictions.

The proposed changes also set forth minimum standards for the operation of an arbitration program. These minimum standards must be guaranteed by any contractual provision requiring arbitration. The arbitration must be conducted in accordance with the following procedures (among others): (1) the subdivider must advance the fees necessary to initiate the arbitration; (2) the arbitration must be administered by a neutral and impartial person; (3) the arbitrator must be appointed within a specified period of time, which in no event shall be more than sixty days from the administrator’s receipt of a written request from a party to arbitrate the claim or dispute; (4) the venue of the arbitration must be in the county in which the subdivision is located, unless the parties agree to some other location; (5) the arbitration must be conducted in accordance with rules and procedures which are reasonable and fair to the parties; (6) the arbitration must be concluded in a prompt and timely fashion; and (7) the arbitrator must be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the arbitration; the parties may authorize the limitation or prohibition of punitive damages. The proposed regulations also state that arbitrations governed by the rules and procedures of the American Arbitration Association or JAMS/ENDISPUTE are deemed to comply with the above requirements.

Following a public hearing on these proposed changes in February 1998, DRE submitted the proposed rules to the Office of Administrative Law (OAL) for approval. On April 30, OAL rejected them for failure to comply with the clarity requirement of the Administrative Procedure Act and for incorrect procedure. DRE then decided to restructure the regulations; instead of adding its arbitration provisions to existing section 2792.21, DRE moved all of its proposed regulations pertaining to arbitration into new section 2791.8, Title 10 of the CCR, entitled “Alternative Dispute Resolution.” On May 19, DRE published the modified version of its proposed regulations for a 15-day comment period; thereafter, it adopted the regulatory changes and submitted them to OAL, which approved them on June 15, 1998. The new rules became effective on July 15.

**Limitations on DRE Licenses for Aliens**

Effective August 1, 1998, new section 2718, Title 10 of the CCR, limits the availability of DRE licenses and other “public benefits” to people lawfully residing in the United States. DRE adopted section 2718 to implement the provisions of the 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The federal law limits the eligibility of certain aliens for “public benefits,” including state-issued licenses. Proposed section 2718 sets forth specific conditions under which aliens are eligible for a new or renewal DRE license under the provisions of PRWORA. The regulation applies to applicants for all DRE licenses (including an original real estate broker license, a real estate broker officer license, a real estate salesperson license, a prepaid rental listing service license, a mineral, oil, and gas broker license, and the renewal of any of these licenses) and to payments from DRE’s Real Estate Recovery Account.

Section 2718 requires proof of legal presence in the United States from all applicants for a new or renewal license (including existing licensees). Applicants may present a birth certificate, a United States passport (except limited passports which are issued for periods of less than five years), a report of birth abroad of a U.S. citizen (FS-240) (issued by the U.S. State Department to U.S. citizens), or other specified documents indicating lawful residence in the United States. For United States citizens and permanent resident aliens, the documentation need be presented only once; once DRE’s records reflect that an individual has permanent status in the United States, it will not require documentation upon license renewal. However, for resident aliens who do not have permanent status, the license will be renewed only for the period of the temporary legal status or until the next license renewal, whichever is shorter. With respect to applicants for payments from the Real Estate Recovery Account, DRE must receive evidence of legal presence before it will grant a claim.

**DRE Reduces License and Filing Fees**

Effective August 1, the Department amended sections 2716 and 2790.1, Title 10 of the CCR, to reduce many of its licensing and filing fees. Under Business and Professions
Code section 10226, DRE was able to adopt these regulatory amendments without going through the public rulemaking process.

Under the amendments to section 2716, the license fee for a real estate broker under Business and Professions Code section 10210 is $210; the license fee for a real estate salesperson under section 10215 is $165; the salesperson license fee for an applicant qualifying under section 10153.4 who has not satisfied all of the educational requirements prior to issuance of the license is $190; the late license renewal fee under section 10201 is $315 for a real estate broker or restricted real estate broker, and $247 for a salesperson or restricted salesperson; the license fee for a restricted real estate broker under section 10209.5 is $210; and the license fee for a restricted real estate salesperson license under 10214.5 is $165.

Under the amendments to section 2790.1, the filing fee for a conditional public report is $500; the fee for a preliminary public report (or interpublic report) is $500; the fee for a renewal public report is $550; the fee for an original final public report (common interest) is $1,650 plus $10 for each subdivision interest to be offered; the fee for an original final public report (standard) is $550 plus $10 for each subdivision interest to be offered; and the fee for filing an amended public report is $400 plus $10 for each subdivision interest to be offered under the amended public report for which a fee has not been previously paid.

Other DRE Regulatory Changes

Effective August 30, a series of regulatory changes in a variety of areas became effective. The following changes were published by the Commissioner in March 1998, were the subject of a public hearing on April 30, and were approved by OAL on July 31:

• DRE adopted new section 2770, Title 10 of the CCR, which restricts the Internet advertising of services for which a real estate license is required.

DRE also amended section 2832(a), to clarify that a broker may establish a trust account in the broker’s licensed fictitious business name.

• The Department amended sections 3005, 3006, 3007.3, 3011.1, and 3011.4, all of which referred to testing requirements for continuing education (CE) courses. AB 447 (Kuykendall) (Chapter 232, Statutes of 1997) amended Business and Professions Code section 10170.4 to eliminate the testing requirement for all CE courses except correspondence or home study educational programs. DRE amended its regulations to conform them to AB 447.

• DRE amended section 3009, which sets the fee for DRE’s review and approval of CE courses at $500. That fee was adopted when courses were required to be at least three hours long. Recent regulatory changes have allowed CE courses to be less than three hours in duration. DRE amended section 3009 to require a $500 approval fee for CE courses which are at least three hours long, and to set a $350 approval fee for courses less than three hours long.

Real Estate Loans: Multiple Lender Transactions

AB 754 (Kuykendall) (Chapter 392, Statutes of 1997) added section 10229 to the Business and Professions Code and transferred the state’s regulatory program for multiple lender transactions from the Department of Corporations (DOC) to DRE effective January 1, 1998. Prior to AB 754, when a mortgage broker was the agent for the sale of multiple notes secured by the same piece of property, the transaction was considered a “sale of securities” regulated by DOC; under section 260.105.30, Title 10 of the CCR, it was the subject of an exemption to DOC’s securities qualification requirement. AB 754 transferred the whole regulatory program to DRE; under AB 754, any mortgage broker involved in loan transactions secured by real property where the investors number ten or less, but more than one, must notify DRE of the engagement in “multi-lender” activity. A special notification form is required and, over the course of the broker’s fiscal year thereafter, certain reports are required. Section 10229 is very detailed, and DRE urges mortgage brokers to review it carefully before becoming involved in multi-lender transactions.

DRE Website

DRE maintains a website which makes available to licensees and the general public the latest DRE news, consumer information, licensee status inquiries, and information about obtaining and renewing DRE licenses. The website also provides the current editions of the Real Estate Bulletin, Mortgage Loan Broker Bulletin and Subdivision Industry Bulletin, and several consumer publications.

Legislation

AB 1770 (Kuykendall), as amended July 7, revises the circumstances under which the Commissioner may revoke or suspend the license of a real estate corporation for violations committed by its employees, agents, officers, directors, or stockholders. Existing law specifies that the Commissioner may suspend or revoke the license of a corporate real estate broker if any officer (including the corporation’s broker/officer), director, or person owning 10% or more of the stock of the corporation has engaged in certain behavior (e.g., fraud, misrepresentation, negligence), except if that person has been “completely disassociated” from any affiliation or ownership
of the corporation; AB 1770 specifies that the disassociation of the offending person from the corporation is not an exception to the Commissioner's authority against the corporate license unless the corporate person acted individually and not on behalf of the corporation. DRE sponsored AB 1770 in response to *Amvest Mortgage Corporation v. Antt*, 58 Cal. App. 4th 1239, a 1997 decision in which the First District Court of Appeal held that a corporation could not be disciplined despite the mishandling of trust funds because the corporation's designated broker/officer who committed the offense had been removed and disassociated from the corporation subsequent to the illegal acts. According to DRE, AB 1770 clarifies that exoneration of the corporation for its disassociation of the offending officer applies only if the corporation itself has not been guilty of violations of the Real Estate Law.

AB 1770 also makes technical changes to the existing exceptions to DRE's continuing education requirements for license renewal; and deletes certain fees prescribed for the administration of the law governing subdivided lands and public reports thereon from the statutory list of fees which the Commissioner may reduce by regulation under certain circumstances. AB 1770 was signed by the Governor on September 15 (Chapter 507, Statutes of 1998).

**SB 1554 (Kopp)**, as amended on August 17, enacts several statutory changes intended to enhance consumer protection in secured real estate transactions involving licensed real estate brokers, agents, or salespersons.

Under existing law, a real estate broker who is negotiating a loan to be secured by a lien on real property or on a business opportunity, or negotiating the sale of a real property sales contract or promissory note secured directly or collaterally by a lien on real property, must provide the prospective lender or the prospective purchaser, as the case may be, with a disclosure statement that includes the estimated fair market value of the securing property, and—if that estimate is based upon an appraisal—certain information regarding the appraisal and the appraiser. SB 1554 instead requires that the disclosure statement include the estimated fair market value of the securing property as determined by an appraisal, and requires the real estate broker to provide a copy of that appraisal to the lender or purchaser. However, the bill authorizes lenders or purchasers to waive this requirement, in which case the real estate broker is required to provide the broker's written estimated fair market value of the securing property, including the objective data upon which the broker's estimate is based. This bill also requires the broker to provide to the prospective lender or purchaser the option to apply to purchase a title insurance policy or an endorsement to an existing title insurance policy covering the real property, and to provide a copy of a written loan application and a credit report, as applicable.

Under existing law, any real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract must have a written authorization from the borrower or lender or holder of the contract. SB 1554 instead requires the real estate licensee, in this regard, to (1) have a written authorization from the borrower, the lender, or the owner of the note or contract that is included within the terms of a written servicing agreement satisfying specified requirements, (2) provide the lender or the owner of the note or contract with specified accountings of the note or contract, and (3) provide to the lender or the owner of the note or contract written notification of the recording of a notice of default, the recording of a notice of trustee's sale, the receipt of any payment constituting an amount greater than or equal to five monthly payments, together with a request for partial or total reconveyance of the real property, or the delinquency of any installment or other obligation over 30 days.

This bill also authorizes the Real Estate Commissioner to conduct certain audits of brokers, and makes changes regarding when the broker must pay for the costs of those and similar audits. It also increases certain reporting requirements of brokers and makes certain other changes to the disclosure requirements of brokers.

Existing law prescribes certain requirements, known as "multi-lender" requirements, on real estate brokers with respect to the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property that is equivalent to a series transaction (see MAJOR PROJECTS). These requirements include certain maximum "loan to value" percentages by property type. SB 1554 makes certain changes regarding the calculation and applicability of these "loan to value" percentages, and increases the maximum "loan to value" percentages for certain single-family residentially zoned lots or parcels.

Existing law establishes in the Real Estate Fund the Recovery Account, which funds DRE's Real Estate Recovery Program; the purpose of the Program is to compensate victims of intentional fraud committed by real estate licensees. When an aggrieved person obtains a final judgment or an arbitration award against a real estate licensee based upon the licensee's fraud, misrepresentation, or deceit, made with intent to defraud, or the licensee's conversion of trust funds arising directly out of any transaction in which the licensee performed acts for which his/her license was required, the aggrieved person may file an application with DRE for payment from the Recovery Account of the amount unpaid in the judgment which represents an actual and direct loss to the claimant in the transaction. The Recovery Account is funded by crediting approximately 12% of real estate license fees, unless the balance in the Recovery Account is at least $3,000,000. SB 1554 provides for the crediting of fees to the Recovery Account unless the balance is at least $3,500,000, operative July 1, 2000. It also authorizes payments from the Recovery Account with respect to any such transaction in which the defendant real estate licensee performed acts for which "a" real estate license was required (see LITIGATION). It permits recovery based upon a judgment against a salesperson only in specified instances.

SB 1554 was signed by the Governor on September 20 (Chapter 641, Statutes of 1998).

**AB 1195 (Torlakson)**, as amended May 21, requires a property seller and the seller's agent to notify the buyer if the property is located in a 100-year flood plain, a dam inundation...
area, or very high fire hazard severity zone. The bill also creates a Natural Hazard Disclosure Statement on which these disclosures, and three required under current law, must be made; included on the form is a warning that the hazards may limit the owner’s ability to develop the property, obtain insurance, or receive assistance after a disaster. AB 1195 also requires local jurisdictions to post a notice stating where dam inundation, very high fire hazard severity zone, and wildland fire area maps are located. AB 1195 was signed by the Governor on June 9 (Chapter 65, Statutes of 1998).

AB 1203 (Kuykendall), as amended March 18, amends Business and Professions Code section 10234 to allow California commercial mortgage bankers (who are DRE licensees) to continue the practice of “table funding” commercial transactions.

“Table funding” describes a loan where the trust deed is made in the name of the broker instead of the actual lender. One party brings the funds “to the table” and actually is the ultimate lender or investor, while another party negotiates, services, and closes the loan in its name and appears as the lender, though actually acting more as a loan broker. Typically, the loan is then transferred to the party that provided the loan funds.

In 1997, DRE interpreted section 10234 to prohibit, among other things, a DRE licensee who negotiates loans secured by real property from closing the loan and naming itself as the lender while using the funds of a third party. The California Association of Mortgage Bankers Association (CAMB) objected, arguing that the “table funding” of commercial transactions “is an important long-standing practice that facilitates the flow of critically needed capital into California.” DRE suggested to CAMB that, if it disagreed with DRE’s interpretation, it should sponsor legislation to amend section 10234.

Thus, CAMB sponsored AB 1203, which permits “table funding” but limits its use to commercial transactions. AB 1203 provides that a trust deed may be recorded in the name of the real estate broker negotiating the loan if (1) the lenders or purchasers are certain governmental or financial institutions or other specified persons or entities; (2) the trust deed is recorded with the county recorder of the county in which the property is located; and (3) the real property securing the loan is not a dwelling or unimproved real property. AB 1203 was signed by the Governor on April 29 (Chapter 26, Statutes of 1998).

AB 1855 (Oller) revises Business and Professions Code section 10236.1 to permit real estate brokers to give incentives to prospective borrowers.

Existing law generally permits non-real estate licensees or lenders to offer gifts or premiums to prospective borrowers as an inducement for making a loan, but—prior to AB 1855—section 10236.1 prohibited a licensed real estate broker or agent from advertising or offering to give to a prospective purchaser, borrower, or lender any premium, gift, or other object of value as an inducement for making a loan or purchasing a promissory note secured by a lien on real property or a real property sales contract. AB 1855 eliminates the prohibition against real estate licensees (brokers and agents) providing a prospective borrower with any gift or object of value as an inducement for making a real estate loan. The prohibition against inducements with respect to prospective purchasers and lenders remains intact.

AB 1855 was sponsored by CAMB to enable mortgage loan brokers to offer inducements (i.e., frequent flyer miles, pens, calendars, and other items of value) to potential customers. According to Assemblymember Oller, almost 80% of California home mortgages are made by real estate brokers and, while non-DRE licensees (such as banks and other lenders) may offer their potential customers gifts and other financial inducements to make a loan, competing mortgage loan brokers were prohibited from doing the same. CAMB contends that this bill encourages real estate licensees to compete for business based upon reduced costs and other inducements offered to customers and that consumers will inevitably benefit from these changes. AB 1855 was signed by the Governor on July 9 (Chapter 126, Statutes of 1998).

SB 1989 (Polanco), as amended July 27, adds section 2079.10a to the Civil Code, to require DRE licensees to include in their required disclosures a notice detailing how real property purchasers or Lessors can access information related to registered sex offenders.

In 1996, the legislature enacted AB 1562 (Alby), which launched “Megan’s Law” in California to fulfill the requirements of federal law. Among other things, AB 1562 expanded and clarified the type of information provided by the “900” telephone number that the state Department of Justice (DOJ) has been operating. In addition to the “900” telephone system, it also provided that DOJ would create and make accessible a CD-ROM or other electronic medium system available to specified law enforcement agencies for public viewing. Under these two systems, members of the public who pay the cost and follow certain rules can determine whether a specific individual must register as a sex offender. However, neither the 900 telephone number nor the CD-ROM provides an offender’s precise address; they may only provide the zip code and community of residence.

SB 1989 requires that written leases and rental agreements for residential real property and contracts for sale of residential real property entered into on or after July 1, 1999, contain a specified notice regarding the database maintained by law enforcement authorities. This bill provides that, upon delivery of the notice, the lessor, seller, or broker is not required to provide additional information regarding the proximity of registered sex offenders, and that a registered sex offender may not bring any cause of action against the disclosing party.

SB 1989 was sponsored by the California Association of Realtors (CAR), which believes that the bill eliminates ambiguity under existing law as to a real estate broker’s or salesperson’s duty to disclose information regarding registered sex offenders. The sponsor also asserted that this bill ensures that all homebuyers will know about Megan’s Law and have uniform and consistent access to the critical information made available by it. SB 1989 was signed by the Governor on September 20 (Chapter 645, Statutes of 1998).
The Davises were interested in purchasing a home and used Charles Harris as their purported broker. In this capacity, Harris accepted a $3,000 deposit and a $25,000 down payment on the house. But Harris was a DRE-licensed real estate salesperson, not a broker. He falsely represented to the Davises that he was a broker, and gave them a fictitious business card stating that he was a broker. Harris then converted the Davises’ money to his own use, never returning any of it to the Davises. The Davises filed suit against Harris, and were awarded a default judgment. They applied to DRE for funds from the Recovery Account, a special fund established to compensate individuals defrauded by real estate licensees. DRE denied recovery. The Davises filed suit, and the trial court awarded payment of $20,000 from the Recovery Account. DRE appealed.

On appeal, the Second District focused on DRE’s argument that a 1985 amendment to Business and Professions Code section 10471 precludes recovery for the Davises. As amended, section 10471 reads: “When an aggrieved person obtains...a final judgment in a court of competent jurisdiction...against a defendant based upon the defendant’s fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds arising directly out of any transaction not in violation of section 10137 or 10138 in which the defendant, while licensed under this part, performed acts for which that license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Department of Real Estate for payment from the Recovery Account....” DRE emphasized that the words “that license” were amended into the statute in 1985, replacing the phrase “a license.” DRE argued that by changing the word “a” to “that,” the legislature limited recovery to transactions which fall within the purview of the specific license held by the malefactor; in this case, there was no dispute that Harris acted outside the scope of his license as a salesperson.