Department of Real Estate

Acting Commissioner: John R. Liberator ♦ (916) 227-0782 ♦ (213) 897-3399 ♦
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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.; 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 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 committees 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. On March 22, DRE moved its Los Angeles office to 320 West Fourth Street, Suite 350, Los Angeles, CA 90013-1105. The main telephone numbers remain the same (general information is (213) 897-3399 and subdivision information is (213) 897-3908).

MAJOR PROJECTS

Acting Commissioner Issues Petition Decision

On February 3, Frederick Whitney petitioned DRE to amend section 2792.3, Title 10 of the CCR, which governs bonds posted by subdividers to secure the faithful performance of a commitment by the subdivider to complete common facilities and common area improvements. Under this section, a suit or action on this type of bond must be filed within two years after the latest completion date set forth in the "Planned Construction Statement" unless a valid extension is agreed upon. Whitney objected to the two-year limitations period as being too short, pointing out that some time may elapse before control of the homeowners' association is transferred from the subdivider to the homeowners, such that the two-year limitations period may expire before the association is in a posi-
tion to make a claim on the bond. Among other remedies, Whitney suggested that the limitations period should begin to run when a non-subdivider homeowner knows or should know of the existence of the bond.

On March 4, Acting Commissioner Liberator responded that DRE filed its annual rulemaking calendar with the Office of Administrative Law by January 30, 1999, as required by Government Code section 11017.6. Pursuant to Executive Order W-144-97, "state agencies shall not issue new regulations unless they are first published in the annual Regulatory Overview and Rulemaking Calendar," except in certain specified circumstances not applicable here. Thus, Liberator denied Whitney's petition on grounds that the suggested change was not in the 1999 calendar. However, Liberator stated that DRE would keep the request on file in the event that an opportunity should occur which would allow DRE to address the proposed change this year, and that the Department would consider the request for inclusion in DRE's rulemaking calendar for 2000.

**DRE Upgrades Computer Systems**

On April 26, DRE completed Phase I of its Enterprise Information Systems project, the goal of which is to migrate DRE's existing data processing activities from outdated stand-alone systems to a Y2K compliant enterprise solution providing organization-wide office automation services, client-server database applications, and automated image storage and retrieval. With the completion of Phase I, DRE converted to new programs for examination scheduling, grading, and continuing education course validation. Phase II will address remaining issues and include new or enhanced systems for DRE's subdivision, enforcement, legal, and recovery divisions; at this writing, Phase II is scheduled for completion this fall.

**LEGISLATION**

**AB 248 (Tolakson).** Pursuant to AB 1195 (Tolakson) (Chapter 65, Statutes of 1998), sellers of real property and their agents must provide buyers with a Natural Hazard Disclosure Statement, indicating whether the property is located in any of six natural hazard zones. While three of these six hazard zones were already subject to disclosure (earthquake fault zones, seismic hazard zones, and wildlife fire areas), AB 1195 added three more hazard zones (special flood hazard areas designated by the Federal Emergency Management Agency, dam inundation zones, and very high fire hazard severity zones), and consolidated the six disclosures onto one disclosure form. [16:1 CRLR 175] As introduced February 1, AB 248 would reorganize these provisions and make technical changes with respect to Natural Hazard Disclosure Statements. [A. H&CD]

**AB 1316 (Correa),** as introduced February 26, would allow a real estate licensee who is owed a commission pursuant to services performed in connection with securing a tenant for a commercial lease to demand submission of the dispute to arbitration within 30 days of the date of the demand for the commission. The bill’s requirements would apply only to claims for unpaid commissions that exceed the jurisdiction of the small claims court and do not exceed the sum of $50,000. The limitation of amount applies to the amount of commission payable and not received, not to the total value of a contract. [A. Jud]

**AB 432 (Leach).** Business and Professions Code section 10236.4 requires licensed real estate brokers, in any advertisement soliciting borrowers or potential investors, to disclose in those advertisements, among other things, the license information telephone number established by DRE. As introduced February 12, this bill would repeal that particular disclosure requirement.

This bill is sponsored by the California Association of Mortgage Brokers (CAMB), which contends that the purpose of the bill is to resolve the problem of consumers confusing the required DRE telephone number with the broker’s number. The consequence of the confusion, the sponsor states, is that “questions regarding the details of a potential loan are, in many cases, being erroneously addressed to [the] Department, adding inappropriately to their workload.” CAMB asserts that “the deletion of the number does not diminish the level of disclosure to the consumer. The license information number continues to be required on the first disclosure document provided the potential borrower before going forward with the transaction.” Although DRE affirms that consumers sometimes mistake the DRE license information number for brokers’ numbers, noting that it gets approximately 10–15 such calls per week, it has not taken a position on this bill. [S. F&IT]

**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 April 7, 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 653 (Hertzberg),** as amended April 22, would repeal 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 California 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 it permits them to make or broker residential mortgage loans (one to four units), or service residential mortgage loans. According to both DOC and DRE, the licensing and regulation of mortgage bankers is confusing and "overlap" exists. At present, 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 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. This bill, sponsored by the California Mortgage Bankers Association, would repeal the 5% limitation on brokered loans and effectively repeal the "requirement" that mortgage bankers be dually licensed by DOC and DRE.

AB 653 would also amend a provision in Financial Code section 50707 which sunsets the provisions that permit mortgage bankers to operate under DOC jurisdiction (Financial Code section 50700 et seq.) on June 30, 2001; AB 653 would extend the sunset date to June 30, 2006. [A. Appr]

AB 935 (Brewer). Under existing law, a person acting as a principal or agent in this state may not sell, lease, or offer for sale or lease lots or parcels in a subdivision situated outside of this state but within the United States, except as specified. This limitation does not apply to specified time-share projects, estates, or uses. Existing law also 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 Real Estate Commissioner to regulate, investigate, and report to the public regarding specified transactions pursuant to these provisions. As amended April 12, this bill would impose additional requirements, including disclosure requirements, on the exemption for time-share projects, estates, or uses; revise the definition of the term "multisite time-share project" to include nonpriority and priority multisite time-share projects, and require that nonpriority multisite time-share projects be subject to the registration and filing requirements of these provisions; authorize specified alternative requirements for subdividers who register and file an application for a public report for time-share projects and priority multisite time-share projects; and exempt from those provisions subdividers who lease, sell, or offer for lease or sale, a time-share interest to any person who has previously acquired a time-share interest from that subdivider.

Existing law requires the Real Estate Commissioner to regulate the sale, lease, and the offering for sale or lease of lots or parcels in time-share projects, qualified resort vacation clubs, and multisite time-share projects, which include structural dwelling units and are situated, in part, outside the state or the United States, and provides that any willful or knowing act in violation of these provisions is punishable as a felony or a misdemeanor. Existing law also prohibits certain time-share transactions with respect to these lots or parcels, imposes a civil remedy, and authorizes the Commissioner to prescribe filing fees in connection with these transactions. AB 935 would repeal these provisions. [A. LGov]

LITIGATION

In Pacific Preferred Properties v. Moss, 71 Cal. App. 4th 1456 (Apr. 29, 1999), the Third District Court of Appeal determined that a prevailing party in a real estate transaction lawsuit was entitled to attorneys' fees against a broker based on a provision in the real estate purchase contract.

In this case, a real estate purchase agreement contained a provision entitling the "prevailing party" in any legal action, proceeding, or arbitration arising out of the transaction to reasonable attorneys' fees and costs. This provision expressly applied to the buyer, seller, and brokers named in the agreement. The agreement primarily addressed the purchase and sale obligations of the buyer and seller, and included a component largely addressed to the commission agreement between the seller and the broker. The agreement included several references to the broker in the "buy-sell" component of the document. Furthermore, the agreement's attorneys' fees provision clearly included the broker within the scope of its benefit provisions and its performance obligations.

In a suit where the seller was the "prevailing party" and requested attorneys' fees from the broker, the broker contended that there was no written agreement between it and the seller regarding attorneys' fees. Applying the law of formation of contracts, the court found that the attorneys' fees provision applied to the named broker, stating that "[w]hen a broker supplies a contract document to the buyer and seller containing a clause of this kind, the broker manifests an intention to pay attorneys' fees in ensuing litigation if the broker does not prevail." When the buyer and seller execute that document, they manifest their assent to the attorneys' fees provision. Under such circumstances, there is a "triatumprate contract" for attorneys' fees among the buyer, seller, and broker; therefore, the seller could enforce the attorneys' fees provision against the named broker.