



Real Estate Bulletin

DEPARTMENT OF REAL ESTATE

Summer 2021

Vol. 80, No. 2

P.4 Update on Real Estate Exams | P.5 Trust Fund Audit Best Practices | P.7 California Housing Laws



**Real Estate Commissioner
Douglas R. McCauley**

Commissioner's Update

As we enter the peak season of summer, a number of hot topics come to mind. First and foremost is that the real estate profession will be losing a tremendous advocate and leader with the retirement later this year of Joel Singer, CEO of the California Association of Realtors. Joel has influenced many notable facets of real estate and the loss of his contributions will leave a deep void. DRE wishes Joel a very happy retirement and we hope he will remain connected in some way.

We know that the hot real estate market brings challenges for our licensees, and DRE feels that dynamic as well. Our team works hard to process initial applications to get people into the marketplace and renewals to keep licensees working. Though our resources for this important work have been static for some time, the state budget that Governor Gavin Newsom just signed provides DRE new positions for our Call Center. This will allow us to be more efficient in responding to inquiries, as well as improve processing times by eliminating the need to shift staff to Call Center duties during high volume periods.

Even with these resources, we encourage you to take advantage of our eLicensing system for many of your license needs. We are excited about adding more online services in the coming months, and we constantly seek out other improvements to better deliver the service you deserve.

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DRE Updates Position on Use of Electronic Signatures

The Department of Real Estate (DRE) has updated its interpretation on the use of electronic signatures for documents where signatures are required by law.

California Real Estate Law identifies several transaction documents that require the signatures of the parties and/or the broker. Among these are: 1) the Mortgage Loan Disclosure Statement (MLDS) in connection with a loan application (BPC section 10240); and 2) a Lender/Purchaser Disclosure Statement (LPDS) in connection with a private money loan transaction (BPC section 10232.4). The underlying concern with electronic signatures is the potential for fraud. However, current technology allows for secure and safe electronic transactions and signatures that meet or exceed California's legal threshold.

Previously, DRE interpreted Civil Code section 1633.3(b) to preclude the use of electronic signatures



on both the MLDS and the LPDS. We have now re-evaluated our prior interpretation. In light of technological advancements and current industry trends toward less face-to-face contact, DRE has concluded that electronic signatures, including those on the MLDS and LPDS, are legally enforceable under the Real Estate Law. It is, however, important to note that DRE's new interpretation does not in any way affect or lessen the legal obligations and duties an agent owes to their client.

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REAL ESTATE BULLETIN

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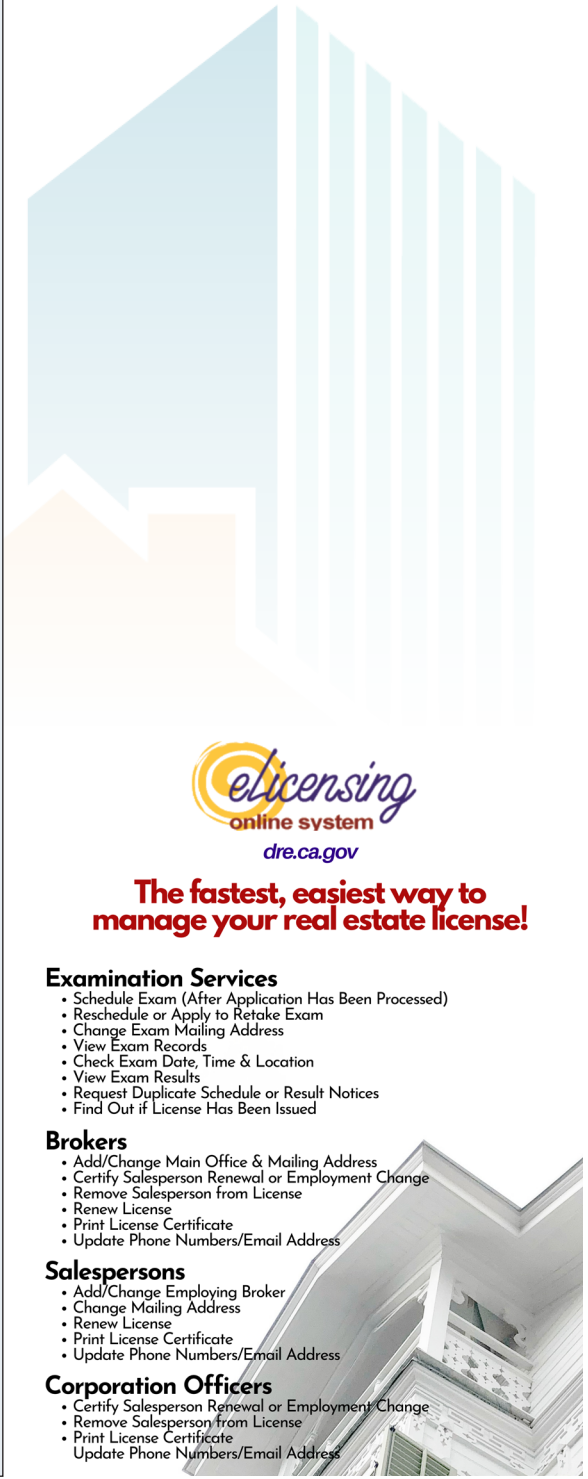
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- Find Out if License Has Been Issued

Brokers

- Add/Change Main Office & Mailing Address
- Certify Salesperson Renewal or Employment Change
- Remove Salesperson from License
- Renew License
- Print License Certificate
- Update Phone Numbers/Email Address

Salespersons

- Add/Change Employing Broker
- Change Mailing Address
- Renew License
- Print License Certificate
- Update Phone Numbers/Email Address

Corporation Officers

- Certify Salesperson Renewal or Employment Change
- Remove Salesperson from License
- Print License Certificate
- Update Phone Numbers/Email Address

COMMISSIONER'S UPDATE (CONTINUED FROM PAGE 1)

Technology is integral to the profession, and has been for some time. I remember running MLS reports with my dial-up modem and hearing the buzz of my dot-matrix printer. How far we have come. Whether it is virtual showings, electronic signatures, or data to drive your work, the impacts are robust and changing at lightning speed.

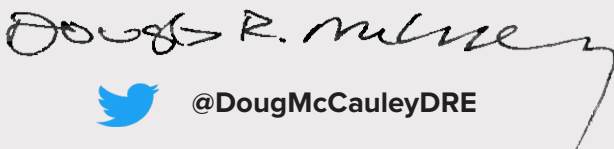



This will allow us to be more efficient in responding to inquiries, as well as improve processing times by eliminating the need to shift staff to Call Center duties during high volume periods.



With the advances in the various platforms in the industry, if a regulator does not understand the dynamics of the marketplace, it cannot adapt to effectively protect consumers. This is why DRE will be convening a “roundtable” that includes representatives from key tech platforms to better understand how these new technologies fit into the business you conduct. As you know, my enforcement philosophy is to educate before we discipline and this event will offer an important opportunity to collaborate to help resolve any potential compliance issues while still best serving consumers.

With this message, I am rounding out my first year as Commissioner. I have had the opportunity and pleasure to virtually “visit” with nearly 75 local associations, and am deeply appreciative of the input and support I have received. Ultimately, DRE and the profession want the same thing: a fair and balanced marketplace. I am confident that our continued partnership will be invaluable in maintaining our progress toward meeting that goal. ■


 @DougMcCauleyDRE

DRE UPDATES POSITION ON USE OF ELECTRONIC SIGNATURES (CONTINUED FROM PAGE 1)

Since a real estate agent is in a fiduciary relationship with their client, the agent must place the client's interest above those of anyone else, including their own. Before a client signs any real estate transaction document, the agent is obligated to explain the document to the client and the significance of the client's signature. If a client does not understand a document or needs legal advice, the agent should advise the client to seek the advice of an attorney.

For additional information see “Fiduciary Duty and Electronic Transactions” on page 8 of the Spring 2021 Real Estate Bulletin on DRE's website. ■



Notice to Mortgage Loan Brokers

The Department of Real Estate (DRE) has seen an increasing number of applications for mortgage loan originator license endorsements from people without a real estate license, which is a requirement. As a result, DRE has issued Notices of Intent to Deny to these applicants and has been pursuing formal denial of these applications.

Please ensure that prospective affiliates and employees only apply for a mortgage loan originator license endorsement from DRE if they have a California real estate license. Otherwise, these applicants will be subject to formal regulatory action, which will have ramifications going forward, including having to disclose this action on any future applications.

For additional information, please see DRE's advisory related to loan originators. ■

Update on Administration of Real Estate Exams

The COVID-19 pandemic has affected how business is transacted, from spending significantly less time in a brick-and-mortar office setting and conducting meetings virtually to showing homes to potential buyers one family at a time. At the Department of Real Estate (DRE) the greatest impact of the pandemic has been on our ability to administer licensing exams.

DRE exam centers were closed twice due to Stay-at-Home orders, most recently between December 7, 2020 and January 26, 2021, which affected thousands of examinees. In response, DRE embraced innovation, developed strategies, and deployed multiple resources to ensure that, even under these most challenging conditions, we would be able to administer exams at an unprecedented level once we could safely reopen.

As a result of these efforts, today DRE is administering more examinations than prior to the pandemic, all while adhering to safety protocols that only allow 50 percent capacity at exam centers. For example, in May 2019, pre-pandemic, DRE administered 3,956 individual examinations, compared to 5,570 during May 2021, a 41 percent increase.

DRE achieved these increased numbers by opening additional examination sessions throughout the state, including evening and Saturday sessions at the three largest exam locations in Sacramento, Los Angeles, and San Diego, as well as creating an “auxiliary” exam center (an additional 23 seats) at its Sacramento headquarters.

To schedule an exam, please utilize eLicensing on DRE’s website to view real time availability and scheduling options. DRE remains committed to providing examinees with the most efficient, safe, and secure testing experience. ■

Agency Relationships in Subdivision Sales

Like in any real estate-related transaction, agency relationships in subdivision sales, and the clear disclosure of and consent to those relationships, are important factors in ensuring consumer protection.

Agency and fiduciary duties are not limited or determined simply by what a document states, or by what agents call themselves (e.g., “builder’s agent,” “buyer’s agent,” or “referring agent”) or by what the compensation is called (e.g., “referral fee” or “commission”). Rather, agency relationships and fiduciary duties are determined by the facts and circumstances, such as representations made to parties or their conduct.

Determinations of when agency begins and ends are fact-specific and based on careful case-by-case analyses. For example, if a prospective buyer walks into a subdivision with their own agent who then signs a simple referral document, agency between these two parties may have ended at that moment. However, the buyer’s agent may have made representations to the buyer and/or behaved in a manner that would lead to a continuation of agency.

The circumstances also matter in determining whether or not the builders’ agent is also the buyer’s agent. Typically, the builders’ agent only intends to represent the seller/builder; however, the agent may have made representations to the buyer or acted in a manner that creates an agency relationship with the buyer. If a broker becomes a dual agent, the parties must know about and consent to that change.

Real estate licensees representing developers in subdivisions must ensure that agency relationships are clearly delineated and disclosed. ■



Trust Fund Audit Issues and Best Practices

The Department of Real Estate's (DRE) Audit Section audits real estate brokers to determine if they are in compliance with the Real Estate Law and the Commissioner's Regulations, including, but not limited to, the handling of trust funds. Unfortunately, too often brokers fail to adhere to DRE's trust fund handling requirements and, as a result, can face disciplinary action.

The DRE Reference Book defines trust funds as "...money or other things of value that are received by a broker or salesperson on behalf of a principal or any other person, and which are held for the benefit of others in the performance of any acts for which a real estate license is required."

In fiscal year 2019-20, DRE's Audit Section completed 533 audits, of which 69 percent found recordkeeping violations and 31 percent found trust fund shortages.

Below are three of the most common issues that auditors come across along with best practices to avoid them.

1. Trust Fund Recordkeeping

A broker must maintain a record of all trust funds received and disbursed, called the "control record". They must also maintain a separate record of trust funds for each beneficiary or transaction accounting for all funds that have been deposited in the trust account (Commissioner's Regulation §2831 and §2831.1).

For both records, the following information must be shown in columnar form in chronological order:

- Date funds were received
- Amount received
- Date of deposit
- Amount paid out, check number, and date
- Daily balances

Records can be kept either manually or digitally, using various software trust fund accounting programs specific to different types of real estate activity. Brokers should ensure that they maintain accurate and complete control records and separate beneficiary records.

2. Trust Fund Reconciliation

Brokers must perform the required monthly trust account reconciliation, comparing the sum of the separate beneficiary records to the balance on the control record, to determine if the trust account is in balance (Commissioner's Regulation §2831.2).

An unbalanced trust account may show either a trust fund shortage, when there are not enough funds to cover the trust fund liabilities, or an unexplained overage, where there are funds in a broker's trust account that exceed the aggregate trust fund liability and where the broker is unable to determine their ownership.

A broker may keep up to \$200 of their money in the trust account to pay for service charges or fees assessed against the account by the bank. These funds must be accounted for with a separate record in the same manner as the beneficiaries.

In addition, a broker should perform a separate bank reconciliation, comparing the control record to the bank statement as of a specific cut-off date (usually end of the month), to establish how much money is available in the trust account.

The broker is required to maintain a record of the trust account reconciliation showing:

- Name of the bank account and account number
- Date of the reconciliation
- Name of the principals, beneficiaries or their account numbers
- Amount of trust funds held by each of the aforementioned entities

Reconciliations can be done either manually or digitally, using various software trust fund accounting programs. Also, DRE's website has a step-by-step demonstration on how to reconcile a trust account.

Brokers should ensure that any employees or bookkeepers involved in the trust fund accounting process are aware of the monthly reconciliation

(CONTINUED ON PAGE 6)

**TRUST FUND AUDIT ISSUES AND BEST PRACTICES
(CONTINUED FROM PAGE 5)**

requirement, and it should also be mentioned in the broker's policy and procedures manual.

3. Trust Fund Shortage

A trust fund discrepancy of any kind is a serious violation of Real Estate Law. A trust fund shortage occurs when there are insufficient funds in the trust account to cover the total of all the separate beneficiary records (also called liabilities).

If a disbursement will reduce the balance of the funds in the account to an amount less than the existing trust fund liabilities, the broker must obtain written consent from every owner of the trust funds prior to making the disbursement (Commissioner's Regulation §2832.1). In fiscal year 2019-20, DRE Audits found over \$5 million in trust fund shortages.

To reduce the likelihood of a trust fund shortage, DRE suggests the following best practices:

- Perform the required monthly reconciliation
- Have controls and procedures in place for the collection, deposit, and disbursement of trust funds
- Separate the job duties of those who collect and deposit trust funds from those authorized to make disbursements
- Establish a policy that all trust account disbursements over a certain dollar amount must be approved by either the broker or a designated supervisor
- Establish policies to prevent trust fund disbursements with insufficient balances
- Establish procedures to review the monthly reconciliation performed by staff or conduct spot checks of the trust account

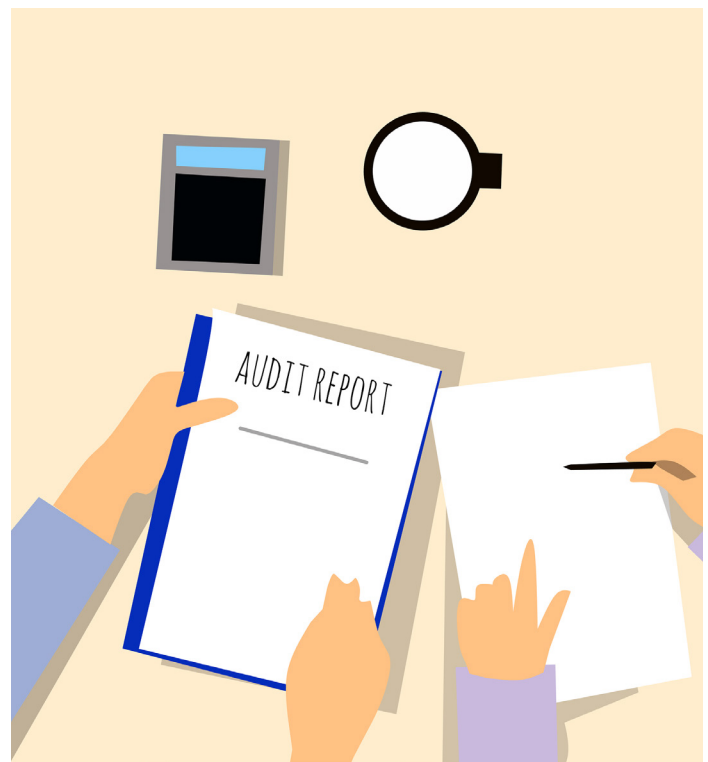
Additional Resources on Best Practices

DRE's website offers the following resources:

- Real Estate Law Book
- Real Estate Reference Book
- Mortgage Loan Broker Compliance Evaluation Manual and Checklist

- Broker Compliance Evaluation Manual
- Broker Self-Evaluation
- Trust Fund Guide (includes sample of DRE required recordkeeping forms)
- Ten Most Common Violations Found in DRE Audits
- Notification on Opening a Real Estate Trust Account

Being proactive in complying with trust fund recordkeeping requirements and striving to become more knowledgeable about those requirements will help to ensure the success of a broker's real estate business while also protecting the public. ■



Vaccinate All 58

Click here to see a brief message from Commissioner McCauley about the importance of getting vaccinated to help end the COVID-19 pandemic. Vaccines are safe, effective, and free. You can also visit www.vaccinateall58.com to learn more about when you can get vaccinated, how to get vaccinated, how vaccines work, what to expect after vaccination, and other vaccine-related information. ■

California Anti-Discrimination Housing Laws

As part of its commitment to the principles of fair housing, the Department of Real Estate wants to remind licensees about the important California laws intended to address housing discrimination.

Prohibitions on Housing Discrimination

Many California laws relate to prohibiting discriminatory housing practices, among them the three primary laws discussed below: 1) the Unruh Civil Rights Act; 2) the Fair Employment and Housing Act; and 3) the Holden Act. Additionally, portions of the Real Estate Law identify prohibited practices. Though not discussed in this advisory, federal anti-discrimination laws also prohibit discriminatory housing practices.

Discrimination in housing is illegal if it is based on race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, military or veteran status, familial status (such as households with children under age 18), source of income, disability (mental and physical), medical condition, genetic information, age (with the exception of senior-only housing), citizenship, primary language, or immigration status.

Some of these protected characteristics are further defined by statute. For example, the definition of “sex” includes pregnancy, childbirth, or medical conditions related to either of these conditions. Additionally, definitions for some protected characteristics include the perception that the persons have one or more of these characteristics or that they are associated with a person who has or is perceived to have any of these characteristics.

Unruh Civil Rights Act

While the language of the Unruh Civil Rights Acts (beginning with section 51 of the Civil Code) specifically outlaws discrimination in housing and public accommodations (businesses) based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, the California Supreme Court has

held that protections under the Unruh Act are not necessarily restricted to these characteristics. The Unruh Act is meant to cover all arbitrary and intentional discrimination by a business establishment, including in housing and lending transactions, on the basis of personal characteristics.

California Fair Employment and Housing Act (FEHA)

The California Fair Employment and Housing Act (beginning with section 12900 of the Government Code) primarily applies to any owner of a housing accommodation, which includes a lessee, sublessee, assignee, managing agent, real estate broker or salesperson, or anyone with a legal or equitable right of ownership, or possession, or the right to rent or lease housing accommodations. This act also created the California Department of Fair Employment and Housing (DFEH), which is charged with enforcing the state’s civil rights laws.

DRE licensees are included within the definition of “owner,” which encompasses almost anyone who can affect the transfer of interest in real property that can be used for residential purposes. FEHA covers real estate-related transactions, including residential mortgage lending, residential mortgage brokering, selling residential real property, and brokering residential real property. Additionally, FEHA imposes liability for practices that have discriminatory effects or impacts, even when those practices are not motivated by discriminatory intent.

Holden Act

The Holden Act prohibits discrimination related to housing financing (beginning with section 35800 of the Health and Safety Code). Within this Act are additional requirements that licensees who provide financing services post a fair lending notice within public view and also provide a copy of that notice to financing applicants.

California Real Estate Law

California Real Estate Law describes several prohibited practices (Commissioner’s Regulation 2780).

**CALIFORNIA ANTI-DISCRIMINATION HOUSING LAWS (CONTINUED FROM PAGE 7)**

The following are some of the prohibited practices listed in the regulation:

- Refusing to negotiate the sale, rental, or financing of a property.
- Refusing to show, rent, sell, or finance a property, provide information about a property, or steering a person away from a property.
- Discriminating in soliciting or negotiating the sale or purchase of property, in loan servicing, or in soliciting or negotiating mortgage loans.
- Discriminating in the terms, conditions, or privileges of sale, rental, or financing the purchase of property.
- Representing to any person that property is not available for inspection, sale, or rental when such property is in fact available.
- Processing an application more slowly or otherwise acting to delay or avoid the sale, rental, or financing of the purchase of property.
- Refusing or failing to cooperate with or assist another real estate licensee in negotiating the sale, rental, or financing the purchase of property.
- Soliciting sales, rentals, or listings of real estate from any person, but not from another person within the same area because of differences in a protected characteristic.
- Providing information or advice to any person concerning the desirability of particular property or area that is different from information or advice given to any other person.
- Making or publishing any notice or advertisement concerning the sale, rental, or financing of the purchase of property that indicates any preference, limitation, or discrimination.
- Quoting or charging someone a price, rent, or cleaning or security deposit for a particular property that is different from the price, rent or security deposit quoted or charged to any other person because of a difference in a protected characteristic.
- Making any effort to instruct or encourage licensees

to engage in any discriminatory act in violation of a federal or state fair housing law.

In addition, panic selling is specifically highlighted as a prohibited practice (Business and Professions Code section 10177(l) and Commissioner's Regulation 2781). Panic selling involves soliciting the sale or lease of a residential property because of the loss of value, increase in crime, or decline in the quality of schools due to the presence or prospective entry into the neighborhood of a person of a protected characteristic.

As a part of reasonable supervision requirements, brokers must familiarize employees, affiliated licensees, and staff with the requirements of federal and state laws related to prohibiting discrimination (Business and Professions Code section 10177(h) and Commissioner's Regulation 2725).

Department of Real Estate

DRE takes complaints about discrimination very seriously. We investigate complaints of discriminatory practices and will pursue disciplinary action against licenses, when appropriate. Additionally, the DFEH enforces and prosecutes violations of FEHA and the Unruh Act. The U.S. Department of Housing and Urban Development investigates complaints related to discrimination under the federal Fair Housing Act and other civil rights violations in housing and community development programs. All of these agencies refer complaints to one another to make certain that all appropriate actions are considered and pursued.

Licensees should become familiar with all aspects of the fair housing laws that prohibit discrimination in housing and are strongly encouraged to advise their clients about the requirements of these laws. Additionally, regardless of instructions or requests received from their clients, licensees may not engage in, participate in, or assist any person to engage or participate in a discriminatory housing practice. Good faith participation in advancing a client's demands that are discriminatory under FEHA is not a defense to civil or administrative liability or to a DRE license disciplinary proceeding.

DRE remains committed to educating licensees and the public about fair housing law requirements, enforcing violations when they occur, and working with licensees to reduce discrimination in housing. ■

State of California Expands COVID-19 Rent Relief Program

The State of California has made a new commitment to COVID-19 rent relief for both landlords and tenants.

On June 28, 2021, Governor Gavin Newsom signed legislation to extend the State's eviction moratorium through September 30, 2021. Assembly Bill (AB) 832 also covers rent debt for low-income Californians that have suffered economic hardship due to the pandemic.

AB 832 significantly increases cash assistance to low-income tenants and small landlords under the state's \$5.2 billion rent relief program, the largest and most comprehensive COVID rental protection and rent relief program of any state in the nation. The bill increases the value of reimbursement for income-qualified candidates to 100 percent of past-due rent, as well as prospective rent payments for a limited time, depending on your qualifying date, along with utility bills.

AB 832 also allows tenants to access rental funds directly if their landlord chooses not to participate, and ensures that landlords can receive compensation even if their otherwise income-qualified tenants have already vacated a unit.

Landlords are encouraged to apply to the State program online through housingiskey.com. Once the landlord application is submitted, the system will send an email to the renter(s) asking him/her/them to start the associated tenant application and provide documentation to establish identity, residency, income, and any utility assistance needs not provided in the landlord application. If the renter does not have an email address, a call center representative will reach out to him/her/them.

A renter may also apply without the assistance of the landlord, in which case the landlord will be notified and asked to sign-off on and participate in the renter's application process. Even where a renter elects to apply for assistance directly, the State must attempt to pay the landlord first.

For an overview on the expanded rental relief program visit: https://housing.ca.gov/covid_rr/program_overview.html. ■

How Real Estate Agents Can Help Protect Consumers

For consumers involved in a real estate transaction, real estate licensees are an invaluable resource, not only as the agents who represent them in the transaction itself, but also as someone their clients trust to give advice and provide resources. This can range from referrals about which escrow company to use to which structural engineer to hire to perform an inspection.

As with Real Estate Law, the laws that govern the licensure of other professions are vast and varied. While real estate licensees are not expected to be experts in the licensing laws of other professions, they are expected to fulfill their fiduciary duties to their clients when making referrals to other professionals.

To protect your clients, consider the following before making a referral:

- Review resource and contact lists frequently to ensure that the service providers are appropriately licensed and have not been disciplined.
- Most licensing and regulatory agencies have resources on their websites, including information on what types of activity constitutes licensed and unlicensed activity, online license look-up functions, regulatory action information, and more.

(CONTINUED ON PAGE 10)





HOW REAL ESTATE AGENTS CAN HELP PROTECT CONSUMERS (CONTINUED FROM PAGE 9)

- Be aware that performing acts that require a license without being licensed is often a violation of the law.
- As with a real estate licensee, most licensed professionals will have had to pass examinations, undergo background investigations, and more prior to being issued a license.
- In some professions, licensees are required to have bonding or insurance.
- Licensees are subject to strict laws and regulations, and are typically interested in adhering to those to avoid regulatory action that may affect their license status.
- Buyer's agents should carefully review reports and seller's disclosures with buyers to determine if additional inspections are needed, and by what professional service provider.
- If unsure about whether or not to refer a client to a professional service, such as an architect or attorney, real estate licensees should consult with their brokers and counsel.

Remember that dealing with unlicensed persons can be risky and costly to both consumers and real estate licensees. Ensuring that service providers are appropriately licensed can help make sure clients are adequately protected. ■

Reminder About Client Referrals to Household Movers

Real estate agents often refer clients to household movers. But when doing so, agents may unknowingly be breaking the law and putting others at risk.

To protect consumers, the Household Movers Act requires that those who transport household goods over California's public roads for compensation be licensed by the Bureau of Household Goods and Services (Bureau). The law also prevents anyone from aiding and abetting a household mover in violating the Household Movers Act (Bus. & Prof. Code sections 19237 & 19278). Consequently, referring a client to an unlicensed mover is against the law and is considered a misdemeanor.

Doing business with an unlicensed mover can lead to substantial financial consumer harm. This can range from delayed delivery, missing or damaged items, and in the most serious cases, belongings that are held until the consumer agrees to pay more money. In some instances, consumers pay double or triple the initial agreed upon price only to never again see their belongings. Many of these movers deliver the household goods after the Bureau intervenes, however, the consumer must pursue civil remedies to recover any extra money paid to the mover.

It's also important to be aware that any person or business that provides moving services for compensation, even if they present themselves as operating a different type of business, must be licensed. This includes restoration companies and storage delivery companies. For more information about who must be licensed, please see the Bureau's publication "Moving Household Goods – Who Is Required to Hold A Permit?"

While investigating unlicensed household mover cases, the Bureau has found that many consumers received referrals from Department of Real Estate licensees. This puts you and your clients at risk.

To ensure that any household mover you refer is properly licensed, use the Bureau's license lookup.

If you have any questions about the permitting requirements related to movers or how to protect yourself or your clients from unscrupulous household movers, visit the Bureau of Household Goods and Services website or call (916) 999-2041. ■

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Use water wisely and save \$\$\$.**



1 lawn watering
=
16 loads

**Make the change to California
native plants and use less water.**



SaveOurWater.com



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For all the latest real estate information for consumers, licensees, examinees, and developers, visit the DRE website and follow us on Facebook and Twitter.

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We'd like to hear from you!



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