



Real Estate Bulletin

Real Estate MATTERS!

Help Wanted: Eyes and Ears in Local Areas Around the State

A Guide to Filing Complaints with the DRE

By William E. Moran, Assistant Commissioner, Enforcement

The Department of Real Estate (“DRE”) encourages members of the real estate industry and the general public to help by acting as our eyes and ears and report wrongful conduct when it occurs in your local areas. The DRE currently has five offices and limited staff to cover the state. This prohibits us from having a physical presence in all locations. As a result, the DRE relies heavily on tips and complaints from both the industry and the public to notify us of issues in the marketplace. Real estate licensees who practice in local markets are often aware of Real Estate Law violations long before the information reaches DRE staff.

The question is often asked as to whether the DRE will accept anonymous complaints. While the DRE will definitely accept anonymous complaints reporting problem transactions and issues in the marketplace, it is especially important that the information provided by the anonymous complainant is well documented and that valid sources for corroborating witnesses are included. Without proper documentation and corroborating witnesses, the DRE cannot analyze the legitimacy of the complaint or develop sufficient evidence to support a case for disciplinary action.

It may help to know that complainants in DRE investigations are always kept confidential until such time as a formal disciplinary action is filed, and if a request is made, the DRE will be especially guarded with respect to the source who initiated an investigation. This should help to alleviate concern that a respondent will immediately be

told who filed a complaint. All the same, once an action is filed, respondents do have the right to discover the evidence against them as a matter of due process, and this does include the information filed by the initial complainant.

In the end, the DRE needs admissible evidence to prevail at a hearing. This includes documentation and witness testimony. The latter is oftentimes crucial. If the anonymous complainant is an essential witness to a transaction and is unwilling to testify at an administrative hearing, the DRE will not be able to successfully prosecute an administrative action.

When filing a complaint, it is important to understand that the burden of proof necessary to sustain a license disciplinary action rests with the DRE. Prior to filing a disciplinary action, the DRE must have clear and convincing evidence that a violation of the Real Estate Law has occurred. This can only be accomplished through admissible documentation and corroborating witnesses. It is also imperative to the DRE’s ability to successfully prosecute a case that the victim in a transaction is willing to come forth and testify.

Disciplinary hearings are presided over by an Administrative Law Judge who is employed by a state agency independent of the DRE. The hearings are conducted in a manner similar to court trials, but without a jury. At the hearing, the DRE has the burden of proving the charges contained in the



pleadings and usually does so by calling witnesses and presenting documents into evidence. After the hearing is concluded, the Administrative Law Judge prepares a proposed decision which is sent to the Real Estate Commissioner for consideration and final decision. In the event a respondent disagrees with the outcome of a hearing, a writ of mandate can be filed in Superior Court where a review of the proceeding will take place.

In order to provide the DRE with sufficient information to initiate an investigation, complaints should be well documented so that investigators will have sufficient information and leads for follow through. In preparing a complaint, information should be summarized in a chronological manner using these guidelines:

- ❖ Tell us *what* happened or what the circumstances are that require investigation. Start from the

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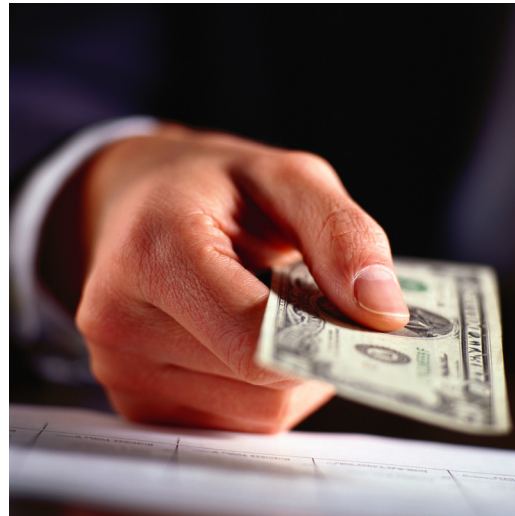
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Ban on Advance Fees for Loan Modifications Now Permanent

In October of 2009, pursuant to Senate Bill 94, it became illegal for any person, including lawyers, real estate licensees, corporations, companies, partnerships, or any other licensed or unlicensed person or party, to demand, charge, or collect any advance, up-front, or retainer fee, or any other type of prepayment compensation for loan modification work or services, or any other form of mortgage loan forbearance, involving 1 to 4 residential units. The provisions of Senate Bill 94 were due to sunset on January 1, 2013.

However, with the recent signing of Assembly Bill 1950, the sunset provisions of Senate Bill 94 will be repealed, making the ban on the collection of advance fees for loan modification and forbearance services permanent. To read or obtain a copy of Assembly Bill 1950, visit www.leginfo.ca.gov.




Complaints Continued from page 1

beginning and describe the events as they occurred, or the situation that requires investigation. If it involves a real estate transaction, be specific as to **what** was said and **who** said it.

- ❖ Tell us **who** was present during these conversations or acts.
- ❖ Tell us **when** and **where** these conversations/acts took place.

When submitting a complaint, remember that documentary evidence is especially important! Therefore, legible photocopies of all documents relating to the transaction, such as listings, offers, deposit receipts, notes and trust deeds, correspondence, copies of the front and back of checks, escrow documents, advertising, etc., should be attached to the written complaint.

The DRE is serious about its mission to protect the public in real estate transactions through a well-balanced enforcement program. In carrying out its mission, the DRE welcomes the support of industry professionals and the general public in identifying problem transactions and licensee misconduct. Following the guidelines presented in this article when submitting complaints will greatly assist the DRE in creating a safe marketplace for consumers and industry professionals alike.

Violations of Real Estate “Ethics” Rules Alone Do Not Form the Basis for Discipline Against Licensees: There Must Be Identifiable “Unlawful” Conduct

By Wayne S. Bell, Chief Counsel

On many occasions the Department of Real Estate (“Department”) receives calls from individuals who want to report “unethical” behavior or ethics violations by real estate licensees in order to start the disciplinary process.

While a violation of a rule of ethics may be appalling and inexcusable, and wholly unacceptable business conduct, the Department can only take disciplinary action and impose penalties against licenses based on violations of the California Real Estate Law, including the Regulations of the Real Estate Commissioner.

The Law and Ethics Rules

The law can broadly be described as formal rules of conduct prescribed by the Legislature, the Courts and/or by administrative regulations.

In the case of real estate licensees, the law pertaining to practice is primarily set forth in the Real Estate Law and Commissioner’s Regulations, has as its main purpose the protection of the public, and there are penalties for breaches of the law. The penalties include criminal and administrative sanctions, and the latter are enforced by the Real Estate Commissioner and the Department.

Ethics rules are primarily principles, guidelines, and criteria for conduct which are intended to elevate standards of competence and ethical behavior. In the realm of real estate licensure, those real estate practitioners who are also Realtors® are committed to comply with a well developed “Code of Ethics and Standards of Practice” (“Ethics Code”). The Ethics Code was created to help govern the behavior of Realtor® members and to increase the level of competence and standards of practice among Realtors®.

Although a Realtors® association cannot discipline a member’s license to practice in California, unethical members can be punished by an association in a number of ways, from a letter of warning or reprimand all the way to an expulsion and fines.

Those real estate licensees who are not Realtors® may perform their duties ethically (with or without a formal code of ethics), and may or may not follow some ethical guidelines, but are not bound by the Realtors® Ethics Code, although the law is fully applicable to their practice and conduct, just as it is to those licensees who are Realtors®.

Before moving on, the point to be reiterated here is that “ethical codes and guidelines” are not meant to be used for - and are not grounds for - administrative discipline by the

Department. Only unlawful acts form the basis for such discipline, and an unethical act is not necessarily unlawful (although it might be).

Some Confusion on this Issue May Have Arisen Due to Prior Commissioner Regulation(s)

Prior to its repeal after 1996, Commissioner’s Regulation 2785 did have lengthy guidelines pertaining to a “Code of Ethics and Professional Conduct”, and that title might have caused readers who did not closely read all of the regulation to incorrectly conclude, believe or assume that the Ethics Code was made a part of the Real Estate Law.

However, the version repealed, like a prior version, broke down the regulation into “unlawful conduct” versus “Professional”/“ethical conduct”.

With regard to the latter, the 1996 Real Estate Law book set forth suggestions ... “to encourage real estate licensees to maintain a high level of ethics and professionalism in their business practices when performing acts for which a real estate license is required”.

The regulation then specifically noted that the “[suggestions [for ethical and professional conduct] are not intended as statements of duties imposed by law nor as grounds for disciplinary action by the Department of Real Estate, but as suggestions for elevating the professionalism of real estate licensees”.

Complaints Made to the Department Should Contain All of the Relevant Facts and the Focus for Reporting Violations Should be on the Real Estate Law and Commissioner’s Regulations


As stated above, in pursuing discipline against a real estate licensee, the Department must direct its attention to acts that are unlawful (or illegal) under the Real Estate Law and Commissioner’s Regulations, and not on “unethical” conduct. However, it is acknowledged and seemingly a truism that much unethical behavior might also rise to the level of illegality, and unethical acts might be against the law. Yet that is not always the case.

For the purposes of licensee discipline, the punishable act must be unlawful. Thus, to the extent a complainant is able, he or she should focus on violations of the law in lodging a complaint.

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Ethics Rules Continued from page 3

To identify the most frequent violations used by the Department for discipline, the following key below is provided for the reader's/user's ease of reference and use in filing complaints with the Department. After reviewing the wide variety of "law" violations listed below, it will become obvious that almost all (if not all) of them are also "ethical violations". However, it is because discipline can only be imposed for unlawful conduct that it is best for complaints to include all of the relevant facts and be phrased in terms of violations of the law and not violations of the Ethics Code or some other "unethical" conduct.

For questions or instructions on filing a complaint with the Department, please refer to www.dre.ca.gov/Consumers/FileComplaint.html, or call any office of the Department and ask to speak with the Enforcement unit. 

California Real Estate Law and Commissioner's Regulations

CALIFORNIA BUSINESS AND PROFESSIONS CODE (The Real Estate Law)

480(a)(3) Performance of act which would have been grounds for disciplinary action
 490 Substantially related criminal conviction
 10130 Acting without license
 10137 Unlawful employment or payment of compensation
 10145 Trust fund handling
 10145(a) Trust fund handling
 10145(d) Violation of interest bearing trust account requirements
 10145(c) Failure by salesperson to deliver trust funds to broker
 10148 Failure to retain records and make available for inspection
 10159.2 Failure by designated officer to supervise licensed acts of corporation
 10159.5 Failure to obtain license with fictitious business name
 10160 Failure to maintain salesperson licenses in possession of broker
 10161.8 Failure of broker to notify Commissioner of salesperson employment
 10162 Failure to maintain a place of business
 10165 Failure to comply with specified B&P code sections
 10176(a) Making any substantial misrepresentation
 10176(b) Making false promise
 10176(c) Continued & flagrant course of misrepresentations through salespersons
 10176(d) Failure to disclose dual agency
 10176(e) Commingling trust funds with brokers funds
 10176(f) Exclusive listing agreements without definite termination date
 10176(g) Secret profit or undisclosed compensation
 10176(h) Secret profit under option agreement
 10176(i) Fraud or dishonest dealing in licensed capacity
 10177(a) Procuring a real estate license by misrepresentation or material false statement
 10177(b) Conviction of crime
 10177(c) False advertisement
 10177(d) Violation of real estate law or regulations
 10177(e) Willfully using term "Realtor" or any trade name or insignia of membership in any real estate organization of which licensee is not a member
 10177(f) Conduct that would have warranted denial of a license
 10177(g) Negligence or incompetence in performing licensed acts
 10177(h) Failure to supervise salespersons or licensed acts of corporation
 10177(i) Improper use of governmental employment giving access to confidential records
 10177(j) Fraud or dishonest dealing as principal

10177(k) Violation of restricted license condition
 10177.5 Civil fraud judgment based on licensed acts
 10231.2 Failure to give self-dealing notice
 10234 Failure by broker negotiating mortgage loan to record or cause trust deed to be recorded
 10235.5 Lender purchaser disclosure violation
 10238(1) Failure of RPS dealer to file annual report
 10238(a) Failure of broker to notify Commissioner within 30 days of 1st mortgage transaction or of any material change in required notice
 10238(d) Illegal sale of promotional notes
 10238(f) Violation of restriction to sell notes in excess of 10 to qualified persons
 10238(g) Sale of notes with illegal terms
 10240 Failure to provide mortgage loan disclosure statement
 10241 Improper mortgage loan disclosure statement
 11022 False advertising in subdivision sales

COMMISSIONER'S REGULATIONS

2715 Licensee's failure to maintain current business or mailing address with DRE
 2725 Failure of broker to exercise reasonable supervision over the activities of his or her salespersons
 2726 Failure to have broker-salesperson agreements
 2731 Unauthorized use of fictitious business name
 2740 Performing licensed acts by corporation without a designated officer
 2753 Broker's failure to retain salesperson's license at main office or return license at termination of employment
 2831 Failure to keep proper trust fund records
 2831.1 Inadequate separate trust fund beneficiary records
 2831.2 Failure to reconcile trust account
 2832 Failure to comply with trust fund handling provisions
 2832(a) Failure of broker to place trust funds into hands of owner, into neutral escrow depository or trust fund account within three business days of receipt
 2832(d) Failure of broker holding trust funds contingent on offer of acceptance to properly place funds within three days of acceptance
 2832(e) Failure of broker acting as escrow holder to deposit trust funds in trust account by next business day following receipt
 2832.1 Failure to obtain permission to reduce trust fund balance in a multiple beneficiary account
 2834 Trust account withdrawals by unauthorized or unbonded person
 2835 Retention of broker funds in trust accounts
 2840 Failure to give approved borrower disclosure
 2950 Violation of broker-controlled escrow requirements
 2950(d) Failure of broker handling escrows to maintain records and accounts
 2950(h) Failure to disclose interest in the agency holding the escrow
 2951 Improper record keeping for broker handled escrows

Real Estate Agents Lead the Way to Keep Your Home California

Provided by CalHFA

When a homeowner starts to struggle with their mortgage payments, they often don't know where to turn. Concerns about scam artists and a general mistrust of banks and lenders dissuade some homeowners from looking for help. That's where licensed real estate agents come in. At Keep Your Home California, we've found that the first person distressed homeowners often turn to is their real estate agent.

As a trusted source for advice and assistance, you can help homeowners find out more about Keep Your Home California and the many ways the programs can help families avoid foreclosure, reduce their mortgage payments, and stay in their home for years to come.

The Keep Your Home California Web site, www.KeepYourHomeCalifornia.org, is an excellent place to find answers to any questions about the programs – for you and for your clients. The Spanish language site is www.ConservaTuCasaCalifornia.org.

A six-minute “Welcome” video on the homepages of both sites offers a general overview of the programs and explains how to apply, which can easily be done over the phone by calling 888.954.KEEP (5337).

If you would like a few suggestions for how to describe the programs to your clients, here are a few “talking points”:

Background

Eighteen states including California were designated by the US Treasury as “hardest hit” because they are struggling with unemployment rates at or above the national average along with steep home price declines.

California was allocated nearly \$2 billion in federal funding and created four separate programs to help California families struggling to pay their mortgages.

Homeowners should know that they will never be asked to pay a fee to participate in Keep Your Home California.

Programs

Unemployment Mortgage Assistance

Mortgage payment assistance of up to \$3,000 per month for as long as nine months, for unemployed homeowners who are collecting benefits from California's Employment Development Department (EDD).

Mortgage Reinstatement Assistance Program

For homeowners who suffered a financial hardship, have

recovered, but have fallen behind on their mortgage payments due to the hardship. If the homeowner is now in a position to make their monthly payments going forward, they may qualify for up to \$25,000 to help them catch up on the past due amount.

Principal Reduction Program

Homeowners who are suffering from a financial hardship and owe more than their home is worth can qualify for financial assistance to help pay down the principal balance of a mortgage loan. Up to \$100,000 in principal reduction is available to help homeowners obtain a more affordable, sustainable monthly payment.

Transition Assistance Program

For homeowners who have simply run out of options and are not able to remain in the homes. If they agree to a short sale or deed-in-lieu of foreclosure, up to \$5,000 is available to help smooth the transition to other housing.

Basic Eligibility:

The homeowner's mortgage servicer must be participating in the program they are interested in. A list of participating servicers is located at www.KeepYourHomeCalifornia.org/participating.htm.

Homeowners must also:

- ❖ Be suffering from a documented, economic hardship
- ❖ Meet low to moderate income limits. A county-by-county list is available at www.KeepYourHomeCalifornia.org/eligibility.htm
- ❖ Own and occupy the home as the primary residence in California
- ❖ Owe less than \$729,750 on the first mortgage
- ❖ Not be in an active bankruptcy

Other eligibility requirements can be found on the Keep Your Home California Web site.

In spite of intense marketing, outreach, and advertising for Keep Your Home California, there are still many homeowners who desperately need our help, but are unaware of the tremendous, free mortgage assistance we can provide.

We know you worked hard to help your clients find their homes; now you can help them keep it, with Keep Your Home California. 🏠



To Apply, Call Toll Free
888-954-KEEP(5337)
 Mon-Fri 7am-7pm and Sat 9am-3pm





CALHFA MORTGAGE ASSISTANCE CORPORATION

Real Property Management in California: The Broker Licensure Requirement and a Discussion of Applicable Exemptions

By: Wayne S. Bell, Chief Counsel, and Summer B. Bakotich, Special Investigator

The California Real Estate Law does not define real property management (“property management”), and the stand-alone activity of managing property is not included in the law’s list of real estate “licensed” activities.

But the business and practice of property management can and certainly does include a very wide variety of activities, including renting and leasing, marketing of properties and units, solicitations for tenants, negotiations with tenants, the collection of rents, the eviction of tenants who fail to pay their rent or otherwise fall short in complying with their rental obligations, physical maintenance of the property and improvements, and administrative and financial management.

The purpose of this article is to discuss the broker licensure requirement for property management activities in California, and applicable exemptions.

Licensure Analysis -- Focus Must Be on the Acts, Activities and Functions

It is the actions and activities of the property manager that either compel the need for a real estate license or exempt the manager from such a need.

The starting point for any analysis as to whether a license is required under the Real Estate Law begins with §10131 of the California Business and Professions Code (“Code”).

It provides, in relevant part, that a “real estate broker” license is required for “a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do **one or more of the following acts** for another or others:

(b) **Leases or rents or offers to lease or rent, or places for rent,**

or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

(d) ***** collects payments for borrowers or lenders...in connection with loans secured directly or collaterally by liens on real property ...” (Emphasis added).**

Thus, any person who manages real property in California (whether a residential apartment complex, a shopping center, an office building, an industrial park, or any other type of real property) and does **any one or more of those acts, functions and/or activities identified in Section 10131**, on behalf of another, such as an owner or other third party, for compensation, or with the expectation of compensation, must have a California real estate broker license.

Stated a bit differently, it is not the “management” of property per se that mandates the need to have a real estate license, but the “real estate” activities and acts which are regulated by the California Real Estate Law.

The Requirement is for a Real Estate “Broker” License

The law is clear that a *broker* license is required to do the acts set forth in Section of 10131 of the Code.

However, a real estate salesperson can perform those acts, but *only* if the salesperson’s work is supervised, overseen and directed by his or her real estate broker of record.

That clearly means that **a real estate “salesperson” cannot perform those “property management” functions**

which require a real estate license without the supervision and oversight of a broker, and without working under the license of a real estate broker.

This is a fundamental tenet of the Real Estate Law and must be underscored. Further, salespersons can only accept compensation for licensed activities from their broker. (See §10137 of the Code).

Thus, there can be no “independent” real estate salesperson property managers if the services provided include any one or more of those acts and activities identified in §10131 of the Code.

Applicable Exemptions to the License Requirement

The Real Estate Law provides and/or allows for some specific and narrow statutory exemptions from the requirement that only a real estate licensee (a real estate broker or a real estate salesperson working under the supervision of a broker) can perform those property management functions listed in the Code. For instance, real property owners do not need a license when managing their own property or properties, since they are not performing acts as an agent on behalf of “another or others” for or in expectation of receiving compensation.

Moving now to the **statutory licensing exemptions**, the Real Estate Law states that the “acts described in [s]ection 10131 are not acts for which a real estate license is required if performed by”:

1. An attorney at law who renders legal services to a client. (§10133 (a) (3) of the Code). This narrow exemption merely exempts those acts by a lawyer which amount to “legal services”. A lawyer who is engaged in the business of a real estate broker or salesperson

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- (as opposed to the practice of law) would not be eligible for this exemption.
2. A regular officer of a corporation or a general partner of a partnership with respect to real property owned or leased (or in connection with the proposed purchase or leasing) by the corporation or partnership, *if the acts are not performed by the officer or partner in expectation of special (over and above his or her ordinary) compensation.* (§10133 (a)(1) of the Code).
 3. A trustee for the beneficiary of a deed of trust when selling under authority of that deed of trust. (§10133 (a)(5) of the Code).
 4. A receiver, trustee in bankruptcy or other person acting under order of a court of competent jurisdiction. (§10133 (a)(4) of the Code).
 5. A person holding a duly executed power of attorney from the owner of the real property with respect to which the acts are performed. (§10133 (a)(2) of the Code). A power of attorney is a legal document which delegates authority from one person to another, and grants the right to act on the maker's behalf to an agent.

It is important to note that *the statutory exemptions identified above are not applicable to and will be disallowed for a person who either uses them or attempts to use them for the purpose of evading or avoiding California's real estate licensing laws, which include important consumer protections relative to trust fund handling, licensing and quality standards, and competent and trustworthy practice.*

The California Department of Real Estate ("Department") will carefully investigate claims of exemptions to ascertain their applicability, and will consider any knowing or intentional attempt(s) to evade the Real Estate Law as "aggravation" in any action

brought by the Department. For example, the Department often investigates cases where an unlicensed person, or a real estate salesperson who is not properly associated with and employed by a licensed broker, has entered into a "power of attorney" agreement with a property owner in order to circumvent the Real Estate Law and to perform licensed "property management" acts without the benefit of a real estate broker license. The evasion of the licensing laws is cause for administrative discipline by the Real Estate Commissioner/Department. Furthermore, any person who, or entity which, is engaged in the unlicensed and unlawful practice of real estate in California may also be subject to criminal sanctions and punishment, and the Department will refer appropriate cases to criminal prosecutors.

In addition to the exemptions from the real estate licensing laws set forth above, the Real Estate Law (in **Section 10131.01 (a) of the Code**) specifically makes subdivision (b) of §10131 of the Code (quoted earlier in this article) not applicable to (1) certain resident managers and their employees, to (2) certain transient rentals and occupancies, and to (3) certain employees of licensed and broker supervised property management firms retained to manage a "residential apartment building or complex or court" and who are performing under the supervision and control of a broker of record who is also an employee of that property management firm or a salesperson licensed to the broker. With regard to the latter carve out for employees of property management firms, if such employees meet certain minimal requirements, and if properly supervised, they can:

- (A) Show rental units and common areas to prospective tenants.
- (B) Provide or accept preprinted rental applications, or respond

to inquiries from a prospective tenant concerning the completion of the application.

- (C) Accept deposits or fees for credit checks or administrative costs and accept security deposits and rents.
- (D) Provide information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.
- (E) Accept signed leases and rental agreements from prospective tenants.

A Special Note About "Resident Managers"

As previously mentioned, there is an exemption for "resident managers" under §10131.01(a)(1) of the Code which exempts such individuals from licensure by the Department. However, because a "resident manager" is not defined under the Real Estate Law, the Department often receives inquiries from the public about the employment of resident managers. Specifically, the following questions are frequently asked:

- i.) What is a resident manager?
- ii.) When is a resident manager required under California law?
- iii.) Under which conditions, if any, would an "on-site" or "resident manager" ever need a real estate license in order to manage an apartment building, complex or court on behalf of a third party?

The Real Estate Law does not set forth the requirements or conditions under which an "on-site" or "resident" manager be employed by a property owner or third party to manage a residential apartment building, complex or court. Instead, it only exempts a "resident manager" from licensure when a "resident manager" is performing activities that fall under §10131(b) of the Code.

The law which requires an owner of
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an apartment building or hotel to have a manager reside at and manage the premises is found in Title 25, Division 1, Chapter 1, Sub-Chapter 1, Article 5, Section 42 of the California Code of Regulations. That section illustrates those instances when a resident manager is required:

A manager, janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments, and of every hotel in which there are 12 or more guest rooms, in the event that the owner of an apartment house or hotel does not reside upon said premises. Only one caretaker would be required for all structures under one ownership and on one contiguous parcel of land. If the owner does not reside upon the premises of any apartment house in which there are more than four but less than 16 apartments, a notice stating the owner's name and address, or the name and address of the owner's agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.

This legal rule, along with other regulations governing residential use, maintenance and occupancy for existing buildings, falls under the California State Housing Law ("State Housing Law") and is administered by the California Department of Housing and Community Development ("HCD"). The enforcement of the State Housing Law is handled by HCD and/or local city, county, and/or city and county jurisdictions. Any questions or issues (or complaints) regarding the State Housing Law should be directed to HCD at (916) 445-4782, or through its website at www.hcd.ca.gov, and/or your local city and county building, planning and health departments. For additional authorities, see Sections 17003.5, 17921, 50061.5 and 50559, California Health and Safety Code. Reference: Sections 17910-17995,

California Health and Safety Code.

Turning back to the Real Estate Law, if a property manager is not an exempt "resident manager" of (i) an apartment building, apartment complex, or court as described under §10131.01(a) of the Code (which exemption includes employees of that manager), or is (ii) not exempt under any of the other applicable exemptions discussed above, and that manager – and any of his or her employees – is performing any real estate activities described under 10131(b) of the Code, then a real estate license is required. As stated above, that person(s) must either be a licensed real estate broker, a real estate salesperson employed by a licensed real estate broker, or an employee of a licensed and broker supervised property management firm subject to 10131.01(a)(3) of the Code.

Conclusion

Property management in California, to the extent it involves any of the real estate licensed activities and functions identified in §10131 of the Real Estate Law, and if being performed as an agent of a property owner for or in expectation of compensation, is a regulated activity in this State and requires a California real estate broker license unless a specific and narrow exemption(s) clearly applies.

Of course, as noted above, a salesperson working under the supervision and control of a broker of record may engage in such property management activities.

In exercising its licensing, regulatory and disciplinary functions, and in enforcing the Real Estate Law with respect to property management services in the State of California, the Department of Real Estate will continue to make protection of the public its highest priority.

Endnotes

Trust Fund Handling - Earlier in this article, it was noted that an important consumer protection of the State's


licensing law is trust fund handling. While other Department publications have discussed in detail the importance of trust fund handling in connection with property management and some relevant issues relating to that topic, it is important to reiterate that any property manager whose activities are subject to licensure under the Real Estate Law must handle all trust funds in full compliance with the law (see Sections 10145 and 10146 of the Code and/or Article 15, "Trust Fund Accounts", of the Real Estate Commissioner's Regulations).

With respect to the issue of "resident managers", it is important to mention that there are several laws and regulations which involve, regulate, and/or enforce the "employment" of resident managers in California. Those laws and regulations include, but are not limited to, the ones that can be found in the California Civil and Labor Codes, and they are beyond the scope of this article. If you have specific legal questions or concerns regarding the employment of "resident" or "on-site" managers, please direct them to a licensed California attorney and/or tax professional, as well as to the appropriate local, county, State or federal agencies which regulate this area.

Additional Information

For more information regarding property management, please refer to the following resources:

- Department Reference Book, <http://www.dre.ca.gov/files/pdf/refbook/ref22.pdf>
- Department Real Estate Bulletin, Summer 2008 <http://www.dre.ca.gov/files/pdf/reb/rebsummer08.pdf>

Research Completion Date - The authors completed their review of the laws and regulations discussed and/or cited in this article as of October 17, 2012. 

2012 Legislative Summary

As in years past, the continued downturn in the real estate market resulted in the signing of several bills that greatly expanded consumer protections in real estate and mortgage transactions, and increased the authority of the DRE to help the Department safeguard the public interests in real estate matters. The following brief legislative summaries are of bills that affect real estate licensees and subdividers. These summaries are intended to alert you to pertinent changes to the law. You are encouraged to consult the statutes for complete information. Copies of the bills can be obtained online at <http://www.leginfo.ca.gov/bilinfo.html>. Please note that “SB” refers to a Senate Bill and “AB” to an Assembly Bill. The name appearing after the bill number is the name of the author. All statutes are effective January 1, 2013 unless otherwise noted.

AB 278 Assembly Member Eng (D – Monterey Park). **Mortgages and deeds of trust: foreclosure.**

Existing law prescribes foreclosure procedures that a residential mortgage lender must follow upon a borrower’s breach of a loan obligation. Such procedures include requiring the lender to make contact with the borrower to evaluate alternatives to foreclosure prior to recording a notice of default. Existing law also requires a recorded notice of default to include a declaration that the lender has contacted or attempted with due diligence to contact the borrower.

This bill, among other things:

- Prohibits the practice of “dual tracking” where a person is negotiating a loan modification with his or her servicer, and the servicer forecloses during the loan modification negotiations;
- Requires servicers to assign a single point of contact (SPOC) to a borrower upon the borrower’s written request;
- Creates a carve-out from certain provisions for individuals and entities that foreclose upon less than 175 loans per year;
- Allows for a private right of action and civil penalties for willful violations of the bill’s provisions.

AB 1511 Assembly Member Bradford (D – Inglewood). **Disclosures: gas transmission pipelines.**

Existing law requires that specified material facts about residential real property be disclosed to a potential buyer prior to close of escrow, including potential hazards. This bill requires that a notice be placed in every residential real estate purchase contract regarding the potential existence of gas or hazardous liquid transmission pipelines near the subject property.

AB 1718 Assembly Member Hill (D – South San Francisco). **Real estate broker licenses.**

Existing law prescribes the qualifications for licensure as a real estate salesperson or broker and provides for the regulation of licensed individuals and entities. Existing law requires an applicant for a real estate broker license to have two years’ experience as a licensed salesperson. Existing law also allows the Department of Real Estate (DRE) to treat any four-year degree from an accredited institution as equivalent to the required two years’ real estate experience. This bill provides that only a degree from a four year college or university with a major or minor in real estate can be considered as equivalent to two years’ experience.

AB 1950 Assembly Member Davis (D – Los Angeles). **Loan modifications: advance fees.**

Existing law prohibits a real estate licensee or any person from demanding or accepting advance fees in money or other compensation for residential loan modification services; a violation is a public offense carrying a punishment of fine, imprisonment, or both. These provisions sunset on January 1, 2013. This bill deletes those sunset dates as they relate to licensees or any person, making the ban on collection of advance fees permanent.

Existing law makes it unlawful for any person to engage in the business of a real estate salesperson or broker without a license. This bill expands the scope of that prohibition to make it unlawful for a person to engage in the business of a mortgage loan originator without a license endorsement. Existing law also provides a statute of limitations of one year for violations of



Legislative Summary Continued from page 9

certain sections of the Business and Professions Code pertaining to advance fees for loan modifications. This bill extends the statute of limitations for such misdemeanor violations to three years.

AB 2010 Assembly Member Bonilla (D – Concord). **Reverse mortgages: counseling.**

Existing law defines reverse mortgages and imposes certain requirements on their origination, including a requirement that a prospective borrower obtain financial counseling before obtaining a reverse mortgage loan. This bill requires that counseling take place in person, rather than telephonically, unless the prospective borrower elects to receive the counseling in another manner.

AB 2273 Assembly Member Wieckowski (D – Fremont). **Common interest developments.**

Existing law defines and regulates common interest developments (CIDs). Existing law also prescribes procedures that must be followed when a residential property is foreclosed upon. This bill requires that a trustee's sale of property located in a CID be recorded within 30 days after the date of a trustee's sale.

Existing law also permits a CID association to record a request that a mortgagee (lender), trustee, or other person authorized to record a notice of default provide the association with a copy of any trustee's deed upon a sale of a separate interest in that CID. This bill requires the mortgagee, trustee, or other authorized person to mail the requested information within 15 business days after the trustee's deed is recorded.

AB 2314 Assembly Member Carter (D – Rialto). **Real property: blight.**

Existing law requires the legal owner of vacant, foreclosed residential property to maintain that

property or be subject to civil fines that can be levied by a governmental entity of \$1,000 per day. This provision will sunset on January 1, 2013. This bill deletes the sunset date of that provision, making it permanent. Existing law also permits an enforcement agency to bring an action under the Health and Safety Code to prevent, restrain, correct or abate blight or nuisance. Such enforcement agency may also go to court to seek a receivership. This bill also prohibits an enforcement action if a person is in the process of abating a violation, except in specified circumstances.

AB 2610 Assembly Member Skinner (D – Berkeley). **Tenants: foreclosure and unlawful detainer.**

Existing state law requires a trustee or authorized agent, when posting a notice of sale on property subject to a foreclosure, to also post a notice for the resident(s) that alerts the resident(s) that foreclosure procedures are underway. The required language in the notice currently provides that the tenant must be given a new lease or an eviction with 60 days notice. Existing federal law requires that a tenant under a bona fide lease, as defined, be given 90 days notice by a successor owner when a home has been foreclosed, unless the new owner will occupy the property as his or her primary residence.

This bill changes state law so the required tenant notice would inform the tenant(s)/resident(s) that they may either be given a 90-day eviction notice or a new lease by the new owner. The notice further provides that the new owner of the property is required to honor the existing lease and that the resident may therefore have the right to stay in the home for more than 90 days. The bill requires the Department of Consumer Affairs to make translations of the tenant notice available for use by lenders. The bill also clarifies that a tenant or subtenant of a foreclosed property in an unlawful detainer action is allowed to file a prejudgment claim of right to possession, or to object to enforcement of a judgment for possession, whether or not the tenant or subtenant was served with a prejudgment claim of right to possession. Finally, the bill amends the Code of Civil Procedure to provide that a tenant under a month-to-month lease must be given 90 days written notice to quit when the property is sold in foreclosure and that tenants having possession under a residential



Legislative Summary Continued from page 10

lease shall have the right to possession until the end of the lease term.

SB 825 Senator Corbett (D – San Leandro)

Residential tenancies: foreclosures.

Existing law requires a new owner of a tenant occupied residential property, who obtained the property through foreclosure, to include with any notice of termination of tenancy a form that explains the tenant's rights and obligations with respect to the tenancy. The notice provision would sunset on January 1, 2013.

This bill extends the sunset date to December 31, 2019.

SB 875 by Senator Price (D – Los Angeles). **Real estate licensees.**

Existing law provides for the screening, licensure, and regulation of real estate salespersons and brokers. This bill, among other things:

- ❖ Allows the DRE to proceed with the denial of a license application by notice without first having to file and serve a formal Statement of Issues under the Administrative Procedure Act. An applicant who receives a notice of license denial may request a hearing to contest the denial;
- ❖ Prohibits any person subject to a bar order from participating in any examination for licensure;
- ❖ Allows the Real Estate Commissioner to require new fingerprints for every licensee who petitions to have a restriction removed or penalty reduced; and
- ❖ Permits the Real Estate Commissioner to take administrative action against a person who cheats on or subverts a licensing examination and to bar the person from taking the real estate exam again for up to three years.

SB 900 Senator Leno (San Francisco)

Mortgages and deeds of trust: foreclosure.

This bill is identical to AB 278. (See above.)

SB 978 Senator Vargas (D – San Diego). **Hard money loans.**

Existing state and federal law defines and regulates the issuance of securities in California, which includes so-called "hard money" or non-institutional mortgage lending in which private investors fund the loans. Existing state law provides for certain exemptions from qualification for a permit to issue a security.

This bill expands investor protections in both the Corporations Code and the Business and Professions Code for hard money real estate loan investments. This bill also prevents investors from investing more than a certain percentage of their wealth and matching their investments to their risk tolerance.

SB 1055 Senator Lieu (D – Torrance). **Landlord and tenant: payments.**

Existing law regulates landlord-tenant relations in the leasing of residential real property. Existing law also prohibits a landlord or landlord's agent from solely requiring cash as an exclusive form of payment of rent or security deposit. This bill requires a landlord to offer forms of payment other than cash or electronic transfer, except in specified circumstances.

SB 1069 Senator Corbett (D – San Leandro)

Deficiency judgments.

Existing law prohibits a lender from pursuing a deficiency judgment, as defined, against a borrower upon the breach of a home loan obligation. This bill extends anti-deficiency protections to a "purchase money mortgage," as defined, that has been refinanced, except to the extent that a lender advances new principal (cash-out) that exceeds the original purchase money loan balance.

SB 1191 Senator Simitian (D – Palo Alto).

Landlord-tenant relations: disclosure of notice of default.

Existing law prescribes procedures that must be followed when a lender seeks to foreclose on a residential property, and prescribes certain protections for tenants of foreclosed properties. This bill requires every landlord who offers a residential lease and has received a notice of default to disclose the notice of default in writing to any prospective tenant. The bill also provides a remedy in the event of a landlord's failure to disclose the notice of default. The provisions of this bill sunset on January 1, 2018.

SB 1342 Senator Emmerson (R – Riverside).

Counties: recording: real estate instruments.

Existing law provides for a recording fee for a "real estate instrument", as defined, of up to \$3 to be collected by a county recorder, if adopted by a county board of supervisors, and paid into a Real Estate Fraud Prosecution Trust Fund. This fund is required by statute to be used for local police and prosecutors to combat real estate and mortgage fraud. This bill increases the maximum recording fee that a county can charge to \$10. The bill also expands the definition of "real estate instrument" to include certain documents, as specified. Finally, this bill provides that a portion of the increased recording fee may be retained by a county recorder for its own fraud prevention program. 🏠



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2013 Law Book

Each year, the Department's Real Estate Law book is updated to reflect changes in laws and regulations.

The 2013 Real Estate Law book will be available online free of charge on January 1, 2013. The print version, which includes a CD copy, will be available for purchase in mid to late January 2013.

This important reference for licensees contains:

- The Real Estate Law (from the Business and Professions Code);
- The Real Estate Commissioner's Regulations (from the California Code of Regulations);



- Portions of the Administrative Procedure Act (from the Government Code); and
- Pertinent excerpts from various California Codes.

The cost will be \$25, plus tax. **Orders will be accepted after January 1, 2013.** Use [RE 350 - Publications Request](#) form, which is available online at www.dre.ca.gov.



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