

California Department of Real Estate

Sunset Report – Attachment A

DRE Administrative Manuals





STATE OF CALIFORNIA
Department of Real Estate

Licensing Policies and Procedures Manual

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POWERPOINT PRESENTATION

Introduction

The mission of the California Department of Real Estate (DRE) is to safeguard and promote the public interests in REAL ESTATE MATTERS through licensure, regulation, education and enforcement.

The California Legislature enacted the nation's first real estate license law in 1917. Providing for the licensing and regulation of real estate licensees, this law continues to serve as a model for similar legislation in many other states. DRE continues to enjoy a nationwide reputation as a leader in real estate licensing and regulation.

The purpose of the license law is to regulate those who engage in the real estate business as agents. This is accomplished through licensing. Applicants for licensure must be truthful and honest, and must demonstrate basic knowledge by written examination pursuant to Business and Professions (B&P) Code Section 10153.

A license can be revoked or suspended or an application for licensure denied for a violation of real estate law. An unlicensed person who acts as a real estate broker or salesperson violates the Real Estate Law and is guilty of a misdemeanor. (B&P §10130 and 10139).

DRE issues several different types of licenses:

- Individual Real Estate Broker
- Real Estate Corporation Officer
- Real Estate Corporation
- Real Estate Salesperson
- Prepaid Rental Listing Service (PRLS)

DRE also issues these types of license addendums:

- Mortgage Loan Originator (MLO) License Endorsement
- Branch Office
- Restricted

Applications for all examinations and licenses must be made on the appropriate forms furnished by DRE and must be accompanied by the appropriate fee. Pursuant to B&P §10207, no part of any examination or license fee is refundable. It is deemed earned by DRE upon receipt.

Applicants for an original license must qualify for, take and pass a written examination before a license can be granted. The examination requirement does not apply in the case of a PRLS applicant.

An examination shall not ordinarily be administered to a person who has a license or the right to the issuance of a license of the class for which the examination is to be given (Regulation 2761.5).



All applicants for any real estate license or PRLS license must submit evidence that fingerprints have been taken by submitting a completed Live Scan Service Request (RE 237) form. No licenses will be issued until the fingerprint results have been received by DRE from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

An original or renewal license may not be issued to any individual who has not provided a social security number or individual taxpayer identification number. This requirement applies to real estate broker and officer licenses, real estate salesperson licenses, prepaid rental listing licenses, and existing mineral, oil, and gas licenses. All corporations must provide a federal tax identification number pursuant to B&P §494.5(d).

Licenses are issued for a period of four years. Branch office licenses are issued for a period of up to four years. PRLS licenses are issued for a period of two years. MLO license endorsements expire December 31st of each year and must be renewed annually. All original and renewal license applications are subject to a review process to check for child support obligors and the top 500 tax delinquencies.



All license and license endorsement certificates with the exception of PRLS or MOG can be printed online using the eLicensing system.

All real estate licenses may be renewed every four years from date of issuance upon submission of the proper renewal application, payment of the required fee and evidence of completion of the required continuing education courses. Renewal rights do not apply when a license has been restricted as part of a disciplinary proceeding.

Renewal applications must be postmarked prior to midnight of the expiration date of the current license to avoid a lapse in licensure and avoid payment of a late renewal fee. B&P §10201 allows a licensee to renew on a late basis two years past the expiration date provided all renewal requirements are submitted. Late renewal applications must be postmarked prior to midnight of the last day of the two-year renewal grace period, exactly two years from the license expiration date, to avoid loss of license renewal rights and to avoid the need to requalify through examination.

Continuing education requirements for all active real estate licensees as a prerequisite for renewal became effective January 1, 1981 (B&P §10170, et seq.). Continuing education is not required to renew a MOG broker license or PRLS license.

Salespersons Renewing for the First Time

Real estate salespersons that qualified by passing the examination and/or submitted a license application on or after 10/1/2007, and are renewing an original license for the first time, must complete 45 clock hours of DRE-approved continuing education consisting of:

- Five separate three-hour courses in the following subjects: Ethics, Agency, Trust Fund Handling, Fair Housing, and Risk Management;
- A minimum of 18 clock hours of consumer protection courses; and
- The remaining clock hours required to complete the 45 hours of continuing education may be related to either consumer service or consumer protection courses.

Brokers Renewing for the First Time

Real estate brokers renewing an original license for the first time must complete 45 clock hours of DRE-approved continuing education consisting of:

- Six separate three-hour courses in the following subjects: Ethics, Agency, Trust Fund Handling, Fair Housing, Risk Management, and Management and Supervision; and
- A minimum of 18 clock hours of consumer protection courses; and
- The remaining clock hours required to complete the 45 hours of continuing education may be related to either consumer service or consumer protection.

Salespersons and Brokers - Second and Subsequent Renewals

For subsequent renewals, all real estate brokers and salespersons must complete 45 clock hours of DRE-approved continuing education consisting of:

- **Either** 18 hours of continuing education courses in the following subjects: Ethics, Agency, Trust Fund Handling, Fair Housing, Risk Management, and Management and Supervision **OR** one eight-hour survey course that covers the six mandatory subjects (Ethics, Agency, Trust Fund Handling, Fair Housing, Risk Management, and Management and Supervision); and
- At least 18 clock hours of consumer protection courses; and
- The remaining clock hours required to complete the 45 hours of continuing education may be related to either consumer service or consumer protection courses.

Salespersons that renew their license and then obtain a broker's license, all renewals for the broker license are considered a subsequent renewal.

Exemptions from Continuing Education

B&P §10170.8 allows for an exemption from the continuing education requirements for a licensee who is 70 years of age or older, and has been continuously licensed in "good standing" in California for 30 years. Commissioner's Regulation 3012.3 defines "good standing" as a license that has not been suspended, revoked, or restricted as a result of disciplinary action, and one that has been renewed on time or within the two year grace period.

Extensions for Completing Continuing Education

A licensee who has submitted in good faith evidence of continuing education that they believe would qualify for the renewal of the license, but the evidence does not meet the standards for renewal, are eligible for a 90-day extension. This extension may be granted to allow the licensee to submit additional evidence of compliance.

Chapter 1 -Broker Individual

(Applicable Business and Professions Code Sections - 10131, 10131.1, 10131.2, 10131.3, 10131.4, 10131.45, 10131.6, 10162, 10163, 10164, 10177 10201.6, and 10207, Commissioner's Regulations 2720 and 2731)

1.1 Broker license applicants must be 18 years of age. All applicants must be honest and truthful, and completion of a fingerprinting background check is required. Examination applications submitted in anticipation of meeting the age requirement at a future date will be accepted. Applicants may not apply for the broker examination if they currently have a renewal right for that type of license. Residency in the state of California is not required.

Applicants (including members of the California State Bar), must have two years full-time experience as a licensed real estate salesperson within the preceding five years, OR hold a degree from a 4 year college or university of which the course of study included a major or minor in real estate, OR have equivalent experience. All applicants, with the exception of active members of the California State Bar, must successfully complete college-level courses in Legal Aspects of Real Estate, Real Estate Practice, Real Estate Finance, Real Estate Appraisal, Economics or Accounting and three of the following:

- Advanced Legal Aspects of Real Estate
- Advanced Real Estate Finance
- Advanced Real Estate Appraisal
- Business Law
- Escrows
- Real Estate Principles
- Property Management
- Real Estate Office Administration
- Mortgage Loan Brokering and Lending
- Computer Applications in Real Estate
- Common Interest Developments



If an applicant completes both Accounting and Economics, only two more courses from the courses listed above would be needed, for a total of eight completed courses.

Each college-level course must be a minimum of three semester-units or four quarter-units. The courses must be completed prior to being scheduled for an examination. Copies of official transcripts are generally acceptable evidence of completed courses. A transcript of another course, submitted as an equivalent course of study in lieu of a statutory course, must be accompanied by an official course or catalog description from the year the course was taken in order to be evaluated.

Broker qualification courses must be completed at an institution of higher learning accredited by the Western Association of Schools and Colleges or by a comparable regional accrediting agency recognized by the United States Department of Education, or by a private real estate school, which has had its courses approved by the California Real Estate Commissioner.

Courses completed through foreign institutions of higher learning must be evaluated by a foreign credentials evaluation service approved by DRE. Refer to the Examination Applicant Foreign Education Information (RE 223) form.

- 1.2** Application for examination may be made by submitting the Broker Examination Application (RE 400B) form accompanied by the appropriate fee, (Refer to appendix A for fees), and supporting documents setting forth the experience and education qualifications.

Application for examination may also be made by submitting the Broker Examination/License Application (RE 436) form accompanied by the appropriate fee, (Refer to Appendix A for fees), and by submitting the supporting documents setting forth the education and experience qualifications, and evidence of completion of live scan fingerprinting form.

All applications are valid for two years from the date DRE receives the application. Expired applications will require the applicant to re-submit the application, application fee and experience documentation.

- 1.3** Broker applicants must submit evidence of two years of full time experience as a salesperson, within the five-year period preceding the date the application is submitted, or equivalent experience. A four-year degree used in lieu of the two years of licensed experience must include a course of study which included a major or minor in real estate.

The Commissioner has the authority to advise applicants of sufficiency of equivalent experience. Applicants must submit claims or, if in doubt, may apply for a salesperson license to gain more actual experience. Claims may be based on combination of equivalent and salesperson experience.

- 1.4** Applications for re-examination may be made on the Broker Examination Result Notice (RE 418B) form, the Broker Examination Change Application (RE 415B) form, using the eLicensing online system, or by calling our Virtual Contact Center (VCC) system and rescheduling by telephone, provided the appropriate re-examination fee has been submitted. (Refer to appendix A for fees).

- 1.5** Requests to reschedule the date, time or location of an examination may be made online using the eLicensing system, or by calling the VCC system and rescheduling over the telephone, provided the proper rescheduling fee has been submitted. (Refer to appendix A for fees). Requests may also be made on the Broker Examination Schedule Notice (RE 401B) form or Broker Examination Change (RE 415B) form.

- 1.6** All fees paid by applicants will be held for two years and are not refundable, regardless of whether the applicant qualifies for the exam. Pursuant to B&P §10207, fees are deemed earned by DRE upon receipt.



- 1.7** The broker examination format consists of 200 multiple-choice questions and is four hours in length. Current examination content can be found on the Examination Description (RE 425) form. To pass the examination, applicants must achieve a score of 75%. Since the examination is qualifying in nature, examinees who pass are not informed of their final score. Those who do not pass may immediately apply to re-take the exam. There is no waiting period or limit to the number of times an examinee may take the examination within their two-year application timeframe.

- 1.8** In compliance with Americans with Disability Act (ADA), Public Law 101-336, DRE provides “reasonable accommodations” for examinees with disabilities. Information about this process can be found on the Reasonable Accommodations Request for Examination (RE 413) form.

- 1.9** When an applicant passes the broker examination, they are notified and are sent the Broker License Application (RE 200) form. The applicant may then apply for the four-year license, remitting the license fee together with the RE 200 form within one year of the date they passed the examination, unless the applicant has submitted the combo exam/license application. (Refer to appendix A for fees).



All license applicants must submit a completed Live Scan Service Request (RE 237) form. All applicants must provide a social security number or individual taxpayer identification number.

If a combo application was not submitted, the original license application and fee must be either postmarked or hand-delivered to any DRE office prior to midnight on the day of the one-year examination passing anniversary pursuant to B&P §10201.6. For example, if the examination was taken and passed on December 12, 2012, the original license application must be postmarked or hand-delivered no later than midnight on December 12, 2013.

If the last day to apply for an original license falls on a Saturday, Sunday or holiday, an application with an envelope postmarked by the U.S. Post Office on the following working day will be considered filed timely. A hand-delivered application filed at any district office following a Saturday, Sunday, or holiday application deadline will also be considered to be filed timely.

- 1.10** B&P §115.4 requires DRE to expedite the licensure process for an applicant who was honorably discharged from the United States Armed Forces. All exam, exam/license combined and license applications contain the following questions to determine an applicant's eligibility to be expedited (1) Are you currently serving in the U.S. Military, (2) Have you previously served in the U.S. Military, and (3) If yes, were you honorably discharged.

In order to obtain expedited processing, applicants must submit a copy of their U.S. DD Form 214, NGB-22 form, or Honorable Discharge certificate to confirm their condition of discharge, along with the application, supporting qualification documents, and fee. There is a separate post office box for handling expedited military applications: Department of Real Estate, PO Box 137014, Sacramento, CA 95813-7014, Attn: Expedited Military Processing.

- 1.11** B&P §115.5 requires DRE to expedite the licensure process for an applicant who holds a license in the same profession or vocation in another jurisdiction and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

Applicants for a real estate license wishing to have their applications expedited pursuant to this statute must submit, to the attention of the "Licensing Examination Manager", the proper application, qualifications and fees, along with evidence of items 1 and 2 below:

- Supplies evidence that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and,
- Holds a current real estate license in another state, district, or territory of the United States.

- 1.12** Broker Renewal - The four-year license is renewable without examination upon submittal of the Broker Renewal Application (RE 208) form, payment of the appropriate renewal fee, and a completed Continuing Education Course Verification (RE 251) form showing evidence of completion of continuing education requirements. (Refer to appendix A for fees).

B&P §10177 allows DRE to delay the renewal of a real estate license until the results of any pending disciplinary actions against that license are final, or until the licensee voluntarily surrenders his or her license, whichever is earlier. DRE can only delay the renewal of a license if the application for renewal was submitted prior to the expiration date of the current license. When a renewal of a license is delayed, the expiration date of the current license is extended and the licensee may continue to perform licensed activities while their renewal application is under review. Licensees who are currently affiliated with a broker or corporation may want to notify their responsible broker or corporate designated officer that their application for renewal is being delayed.

The application for license renewal, appropriate renewal fee, and evidence of completion of continuing education requirements must be postmarked prior to midnight of the expiration date of the current license to avoid a lapse in licensure and payment of an added late renewal fee. All continuing education courses must be completed prior to the expiration date of the license. (Refer to appendix A for fees).

If the last day to apply for a license renewal falls on a Saturday, Sunday or holiday, an application with an envelope postmarked by the U.S. Post Office on the following working day will be considered filed timely. A hand-delivered application filed at any district office on any day following a Saturday, Sunday, or holiday application deadline will also be considered to be filed timely.



Broker licensees can use the eLicensing system to renew their license on time up to midnight on the last day of their expiration date by submitting the renewal fee, and entering evidence of completion of the required continuing education courses. (Refer to appendix A for fees).

- 1.13** Broker Late Renewal - After expiration, a four-year license may be renewed within two years from date of expiration by filing the renewal application, together with continuing education requirements and the appropriate late renewal fee pursuant to B&P §10201. (Refer to appendix A for fees).

In the case of a late renewal application, all continuing education courses must be completed within the four years immediately preceding the date the application is submitted. Two years after a license expires, all license rights lapse, and the individual must qualify through the examination process before they can again be licensed.

Broker licensees can use the eLicensing system to renew their license on a late basis up to midnight on the last day of their two-year grace period by submitting the late renewal fee, and entering evidence of completion of the required continuing education courses



If an individual holds an expired broker license and a valid corporation officer license, the individual broker license may be reinstated by submitting evidence of completion of continuing education, the Broker License Application (RE 200) form, and the broker license fee. The individual broker license could be issued, in that case, beyond the expiration of the broker license's two-year late renewal grace period, as long as renewal rights are maintained for the officer license.

- 1.14** Fictitious Business Names (Refer to Chapter 9)
- 1.15** Broker's Main Office - For a broker to conduct activities requiring a license, a physical main office location must be provided pursuant to B&P §10162. The main office address must be in California, and cannot be a PO Box. Brokers can change a main office address by submitting the Broker Change Application (RE 204) form or by using the eLicensing system.
- 1.16** Out of State Residency - A Consent to Service of Process (RE 234) form must be filed by a broker if the broker indicates they are residing out of state. A broker wishing to remain active in California must maintain an office in California. An out of state resident holding a broker license who does not maintain an office in California must also submit a completed Out of State Broker Acknowledgement (RE 235) form, along with the Consent to Service of Process (RE 234) form.
- 1.17** Broker's Branch Office - Should a broker wish to conduct licensed activities at another location other than the main office, the broker can request a branch office license for the additional location(s) (B&P §10163). Branch offices must be located in California and must be a physical location. A branch office license will not be issued to a PO Box.

Brokers may add or cancel branch office licenses by submitting the Branch Office Application (RE 203) form. The cancellation of a branch office will not affect the main license or the licenses of salesperson affiliated with the broker.

Branch Office licenses issued to a broker will expire simultaneously with the broker's license and must be renewed at the time the broker's license is being renewed.

- 1.18** Branch/Division Managers - Pursuant to B&P §10164, a responsible broker or corporate designated broker officer may appoint a licensee as a manager of a branch office or division of the responsible broker's or responsible corporate designated broker officer's real estate business and delegate to the appointed manager the responsibility to oversee day-to-day operations, supervise the licensed activities of licensees, and supervise clerical staff employed in the branch office or division. Branch or division managers cannot sign licensing documents on behalf of the broker.

Salespersons must have two years full time real estate experience within the preceding five years in order to be appointed as a branch or division manager. In all cases, in order to be eligible to be appointed a branch or division manager, the licensee must not hold a restricted license, nor can the licensee have been the subject of an order of debarment.

Branch or Division manager appointments or cancellations may be made by submitting the Branch/Division Manager Appointment (RE 242) form.

- 1.19** Mailing address changes require that a broker submit a completed RE 204 form. All mailings from DRE and for list subscribers will use this address. Brokers may also use the eLicensing system to change their mailing address.
- 1.20** Personal name change requests require a broker submit a completed Broker Change Application (RE 204) form, indicating the change of personal name. Name change requests must include documentation to substantiate the name change, such as a copy of a court order, driver's license, and divorce decree or marriage license.
- 1.21** Broker-Associates - Whenever a broker acting as a salesperson (i.e. a broker-associate) affiliates with another real estate broker or corporation, the responsible broker shall immediately notify the Commissioner of this arrangement in writing. Additionally, whenever the affiliation of a broker-associate is terminated, the responsible broker shall immediately notify the Commissioner in writing. (B&P §10083.2 and §10161.8)

The Broker-Associate Affiliation Notification (RE 215) form is to be used for the sole purpose of notifying DRE of a broker-associate/responsible broker affiliation or termination.

Chapter 2 -Corporations

(Applicable Business and Professions Code Sections - 10158, 10159, 10159.2, 10164, 10207, and 10211. Commissioner's Regulations 2740, 2742, 2743 and 2746)

- 2.1 B&P §10211 allows a license to be issued to a corporation and entitles one officer, on behalf of the corporation, to engage in the business of real estate as a broker-officer without payment of any further fee. This officer is to be designated in the corporation application and must have qualified by previously passing the broker license examination. If the designated officer does not hold an individual broker license, then all acts of the designated officer under such a license must be performed on behalf of the corporation.
- 2.2 Any other additional officer acting on behalf of the corporation as a broker-officer must be qualified and licensed as an officer and pay the appropriate fee, depending on the status of the broker-officer. (Refer to appendix A for fees).
- 2.3 An applicant for an original broker-officer license for a domestic corporation shall submit a Corporation License Application (RE 201) form, the appropriate license fee, a Certificate of Status (Domestic Corporation) executed by the California Secretary of State no more than 30 days before the date of mailing or delivering the application to the headquarters office of DRE, or a copy of the Articles of Incorporation as filed with the Secretary of State not more than six months before the date of mailing or delivering the application to DRE. (Refer to appendix A for fees).



An applicant for an original broker-officer license for a foreign corporation shall submit a Corporation License Application (RE 201) form, the appropriate license fee, and a Certificate of Qualification or a Certificate of Good Standing (Foreign Corporation) executed by the California Secretary of State no more than 30 days before the date of mailing or delivering the application to DRE or a copy of the Articles of Incorporation as filed with the Secretary of State not more than six months before the date of mailing or delivering the application to DRE. (Refer to appendix A for fees).

- 2.4 All new corporation license applications must include a properly completed Corporation Background Statement (RE 212) form if the designated broker officer indicates that such form is required on the application pursuant to Commissioner's Regulation 2746.

Regulation 2746 requires the designated officer who obtains the original corporation license to file an RE 212 for any director, chief executive officer, president, first level vice presidents, secretary, chief financial officer and subordinate officers with responsibility for forming policy of the corporation and all natural persons owning or controlling more than ten percent of its shares, if such a person has been subject of any of the items enumerated in the regulation. If none of the officers have been a subject of any of the items enumerated in the regulation, then an RE 212 is not needed. In all instances, the broker-officer must complete and sign the certification in Part III of this application.

Each time there is a change in the information of a person whose background statement is on file with DRE, a revised RE 212 form and a corporation resolution stating current officers, directors and shareholders, must be submitted. If a person is added to the corporation whose background statement is required, a new RE 212 form must be submitted.

The submittal of an incomplete corporation background statement could delay the issuance of the license. Failure to either:

- Submit the required form(s) or;
- Respond to DRE's request for additional information, may *result in* the denial of an original license or lead to disciplinary action being taken against an existing license.

2.5 Only the designated broker-officer of a corporation may be replaced by another qualified broker during the licensed period with no fee required. This broker receives the time remaining on the designated officer license. The new broker-officer is required to submit a completed Corporation License Application (RE 201) form. The resigning broker-officer must submit a personally signed resignation or the corporation can submit a sealed resolution of the board, which includes the date of resignation. If the corporation wishes to remain continuously licensed, the resignation and RE 201 form must be received simultaneously. The change in designated officers will become effective the date the documents are received or a future date.

When an existing corporation license is expired and a qualified broker with a current individual license desires to become the designated officer of the corporation and renew that license within the two-year grace period, a Corporation License Application (RE 201) form, and a late renewal fee would be required.

2.6 Any licensed officer may cancel their corporation broker-officer license upon written request. If there is only one licensed officer of the corporation, the corporation is also cancelled. When the corporation is cancelled, all salespersons and broker-associates affiliated with the corporation will be terminated, all DBA's and branch licenses will be cancelled, and all branch and division manager appointments will be cancelled.

2.7 Licensed officers of a corporation may change titles (i.e. President, Vice President) without notifying DRE, but must hold an officer title with the corporation.

2.8 Corporation Main Office or Mailing Address changes - To change a corporation main office or mailing address, a licensed officer must submit a completed Corporation Change Application (RE 204A) form, giving the new address. License certificates with the new address may be printed online using the eLicensing system.

2.9 Corporation Branch Office License - Licensed officer must submit completed Branch Office Application (RE 203) form.

2.10 Branch/Division Managers - Pursuant to B&P §10164, a responsible broker or corporate designated broker officer may appoint a licensee as a manager of a branch office or division of the responsible broker's or responsible corporate designated broker officer's real estate business and delegate to the appointed manager the responsibility to oversee day-to-day operations, supervise the licensed activities of licensees, and supervise clerical staff employed in the branch office or division.

Salespersons must have two years full time real estate experience within the preceding five years in order to be appointed as a branch or division manager. In all cases, in order to be eligible to be appointed a branch or division manager, the licensee must not hold a restricted license, nor can the licensee have been the subject of an order of debarment.

Branch or Division manager appointments or cancellations may be made by submitting the Branch/Division Manager Appointment (RE 242) form.

- 2.11** Corporation Name Change - A licensed officer must submit a completed Corporation Change Application (RE 204A) form and a copy of the amended Articles of Incorporation with the endorsed/ filed stamp from the California Secretary of State's Office. A re-filed fictitious business name statement may be required to reflect any fictitious names used under the new corporation name. License certificates with the new corporation name may be printed online using the eLicensing system.
- 2.12** Suspended by Secretary of State or Franchise Tax Board - If the designated officer indicates on the renewal application that the corporation is not in good standing with the Secretary of State's office, or during the processing of a substitution of officers, or upon the receipt of either a "Certificate of Filing and Suspension" from the Secretary of State, or a form letter advising DRE that the corporation has been suspended by the Franchise Tax Board, the Business Support or Renewal Section will contact the licensee for evidence of compliance. If the licensee does not provide evidence of compliance, the application is forwarded to the Flag section, which will set up a suspense file, notify the appropriate district office, and flag the licensing records.
- 2.13** A corporate broker-officer who is simultaneously licensed as an individual broker will not be required to submit evidence of compliance with continuing education requirements when renewing or obtaining a new corporate broker license. A licensed real estate broker who is licensed only as an officer of a corporation(s) will not be eligible for the renewal of such license(s), nor for the issuance of a license in an individual capacity, or as an officer of a corporation, without submitting evidence of compliance with continuing education requirements, pursuant to B&P §10171.5. Thus, if a corporate broker-officer does not have a current individual license, the broker will be required to submit evidence of compliance with continuing education requirements before ANY ORIGINAL OR RENEWAL license can be issued.



Licensed officers can use the eLicensing system to renew their license on time up to midnight on the last day of their expiration date by submitting the renewal fee, and entering evidence of completion of the required continuing education courses (if required). (Refer to appendix A for fees). In order to use eLicensing for this renewal, the corporation and broker-officer must be in a "licensed" status, wherein a main office address is active. A broker-officer must be renewed within 90 days of the expiration date of the broker-officer license.

- 2.14** Assignment of Supervisory Responsibility - B&P §10159.2 permits the assignment of supervisory duties to licensed broker-officers, other than the designated officer, pursuant to B&P §10211, by resolution of the Board of Directors. The Certification of Assignment of Supervisory Responsibility (RE 210) form is required to be filed with DRE along with a copy of the resolution adopted by the Board of Directors. This form is not to be used if the corporation has only one licensed broker-officer.

- 2.15** In the event of death or incapacity of a sole designated officer, a corporation may operate as a licensee without interruption under its existing license if a notice of the death or incapacity and a Corporation Change Application (RE 204A) and/or Corporation License Application (RE 201) for a new designated officer is postmarked or filed with the Department before midnight of the 10th business day after the event.

Chapter 3 – Salesperson Individual

(Applicable Business and Professions Code Sections - 10132, 10177, 10201, and 10207. Commissioner's Regulations 2750, 2752, and 2753)

- 3.1** Salesperson license applicants must be 18 years of age. All applicants must be honest and truthful, and completion of a fingerprinting background check is required. Examination applications submitted in anticipation of meeting the age requirement at a future date will be accepted. Applicants may not apply for the salesperson examination if they currently have a renewal right for that type of license.

Salesperson applicants are required to complete college-level courses in Real Estate Principles, Real Estate Practice, and one other course selected from the following:

- Real Estate Finance
- Real Estate Appraisal
- Legal Aspects of Real Estate
- Accounting
- Economics
- Business Law
- Escrows
- Property Management
- Real Estate Office Administration
- Mortgage Loan Brokering and Lending
- Computer Applications in Real Estate
- Common Interest Developments



Each college-level course must be a minimum of three semester-units or four quarter-units. The courses must be completed prior to being scheduled for an examination. Copies of official transcripts are generally acceptable evidence of completed courses. A transcript of another course, submitted as an equivalent course of study in lieu of a statutory course, must be accompanied by an official course or catalog description in order to be evaluated from the year the course was taken in order to be evaluated.

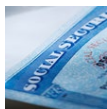
Salesperson qualification courses must be completed at an institution of higher learning accredited by the Western Association of Schools and Colleges or by a comparable regional accrediting agency recognized by the United States Department of Education, or by a private real estate school, which has had its courses approved by the California Real Estate Commissioner.

Courses completed through foreign institutions of higher learning must be evaluated by a foreign credentials evaluation service approved by DRE. (Refer to Examination Applicant Foreign Education Information (RE 223) form.

- 3.2** Application for examination may be made by submitting the Salesperson Examination Application (RE 400A) form accompanied by the appropriate fee, (Refer to Appendix A for fees), along with evidence of completion of courses in Real Estate Principles, Real Estate Practice and one more course from the list of approved electives. (Refer to subsection 3.1 for list of courses).

Application for examination may also be made by submitting the Salesperson Exam/License Application (RE 435) form accompanied by the appropriate fee, (Refer to Appendix A for fees), along with evidence of completion of courses in Real Estate Principles, Real Estate Practice and one more course from the list of approved electives, and evidence of completion of live scan fingerprinting form. (Refer to subsection 3.1 for list of courses).

- 3.3 Application for re-examination may be made on the Salesperson Examination Result (RE 418A) form, or by using the eLicensing online system, or by calling our VCC system and rescheduling by telephone, and paying the appropriate re-examination fee. (Refer to appendix A for fees).
- 3.4 Requests to reschedule the date, time or location of an examination may be made online using the eLicensing system, or by calling the VCC system and rescheduling over the telephone, and paying the proper rescheduling fee has been submitted. (Refer to appendix A for fees). Requests may also be made on the Salesperson Examination Schedule Notice (RE 401A) form or on the Salesperson Examination Change (RE 415A) form.
- 3.5 All fees paid by applicants will be held for two years and are not refundable, regardless of whether the applicant qualifies for the exam. Pursuant to B&P §10207, fees are deemed earned by DRE upon receipt.
- 3.6 The salesperson examination format consists of 150 multiple-choice questions and is three hours in length. Current examination content can be found on the Examination Description (RE 425) form. To pass the examination, applicants must achieve a score of 70%. Since the examination is qualifying in nature, examinees who pass are not informed of their final score. Those who do not pass may immediately apply to re-take the exam. There is no waiting period or limit to the number of times an examinee may take the examination within their two-year application timeframe.
- 3.7 In compliance with Americans with Disability Act (ADA), Public Law 101-336, DRE provides “reasonable accommodations” for examinees with disabilities. Information about this process can be found on the Reasonable Accommodations Request for Examination (RE 413) form.
- 3.8 When an applicant passes the salesperson examination, they are notified and are sent the Salesperson License Application (RE 202) form. The applicant may then apply for the four-year license, remitting the license fee together with the RE 202 form within one year of the date they passed the examination, unless the applicant has submitted the combo exam/license application. (Refer to appendix A for fees).



All license applicants must submit a completed Live Scan Service Request (RE 237) form, and must provide a social security number or individual taxpayer identification number.

If a combo application was not submitted, the original license application and fee must be either postmarked or hand-delivered to any DRE office prior to midnight on the day of the one-year examination passing anniversary. For example, if the examination was taken and passed on December 12, 2012, the original license application must be postmarked or hand-delivered no later than midnight on December 12, 2013.

If the last day to apply for an original license falls on a Saturday, Sunday or holiday, an application with an envelope postmarked by the U.S. Post Office on the following working day will be considered filed timely. A hand-delivered application filed at any district office following a Saturday, Sunday, or holiday application deadline will also be considered to be filed timely.

If the salesperson applicant wishes to perform licensed activities upon the issuance of the license, the application must be signed by the responsible broker. However, if the applicant does not intend to immediately perform licensed activities, the application may be submitted without a responsible broker's signature, and the license is issued on a non-working basis. The license will then be issued on a "No Broker Affiliation" (NBA) status.

- 3.9** B&P §115.4 requires DRE to expedite the licensure process for an applicant who was honorably discharged from the United States Armed Forces. All exam, exam/license combined and license applications contain the following questions to determine an applicant's eligibility to be expedited (1) Are you currently serving in the U.S. Military, (2) Have you previously served in the U.S. Military, and (3) If yes, were you honorably discharged.

In order to obtain expedited processing, applicants must submit a copy of their U.S. DD Form 214, NGB-22 form, or Honorable Discharge certificate to confirm their condition of discharge, along with the application, supporting qualification documents, and fee. There is a separate post office box for handling expedited military applications: Department of Real Estate, PO Box 137014, Sacramento, CA 95813-7014, Attn: Expedited Military Processing.

- 3.10** B&P §115.5 requires DRE to expedite the licensure process for an applicant who holds a license in the same profession or vocation in another jurisdiction and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

Applicants for a real estate license wishing to have their applications expedited pursuant to this statute must submit, to the attention of the "Licensing Examination Manager", the proper application, qualifications and fees, along with evidence of items 1 and 2 below:

- Supplies evidence that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and,
- Holds a current real estate license in another state, district, or territory of the United States.

- 3.11** Salesperson Renewal - The four-year license is renewable without examination upon submittal of the Salesperson Renewal Application (RE 209), payment of the appropriate renewal fee, and a completed Continuing Education Course Verification (RE 251) form showing evidence of completion of continuing education requirements. (Refer to appendix A for fees).

B&P §10177 allows DRE to delay the renewal of a real estate license until the results of any pending disciplinary actions against that license are final, or until the licensee voluntarily surrenders his or her license, whichever is earlier. DRE can only delay the renewal of a license if the application for renewal was submitted prior to the expiration date of the current license. When a renewal of a license is delayed, the expiration date of the current license is extended

and the licensee may continue to perform licensed activities while their renewal application is under review. Licensees who are currently affiliated with a broker or corporation may want to notify their responsible broker or corporate designated officer that their application for renewal is being delayed.

The application for license renewal, appropriate renewal fee, and evidence of completion of continuing education requirements must be postmarked prior to midnight of the expiration date of the current license to avoid a lapse in licensure and payment of an added late renewal fee. All continuing education courses must be completed within the four-year period immediately preceding the expiration date of the license. (Refer to appendix A for fees).



Salesperson licensees can use the eLicensing system to renew their license on time up to midnight on the last day of their expiration date by submitting the renewal fee, and entering evidence of completion of the required continuing education courses. (Refer to appendix A for fees).

- 3.12** Salesperson Late Renewal - After expiration, a four-year license may be renewed within two years from date of expiration by filing the renewal application, together with continuing education requirements and the appropriate late renewal fee, pursuant to B&P §10201. (Refer to appendix A for fees).

In the case of a late renewal application, all continuing education courses must be completed within the four years immediately preceding the date the application is submitted. Two years after a license expires, all license rights lapse, and the individual must qualify through the examination process before they can again be licensed.

Salesperson licensees can use the eLicensing system to renew their license on a late basis up to midnight on the last day of their two-year grace period by submitting the late renewal fee, and entering evidence of completion of the required continuing education courses



- 3.13** Affiliation - A salesperson may only be affiliated with one broker or corporation at a time.
- 3.14** A Salesperson must be affiliated with a broker or corporation in order to conduct activities that require a license. The salesperson can be active in business on behalf of a broker or a corporation only, not on their own account.
- 3.15** A Salesperson cannot be issued a fictitious business name; but may operate under a fictitious business name issued to their broker. The broker's fictitious business name will not appear on the salesperson's license.
- 3.16** The license certificate of a real estate salesperson shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. Pursuant to Regulation 2753, even though licenses are retained at the broker's principal office, salespersons may work from broker's branch offices.
- 3.17** When a salesperson changes responsible brokers, both their former responsible broker and their new responsible broker must immediately notify the Commissioner in writing. Notification of affiliation by a new responsible broker must be submitted within five days. A Salesperson Change Application (RE 214) form must be completed by the broker and salesperson and submitted to DRE. Changes of affiliation may also be completed online using the eLicensing system.

Affiliation changes can also be made when a salesperson transfers to a new broker when renewing their license. The new responsible broker signs the renewal form and the change is made effective on the received date of the renewal application, provided the renewal is submitted prior to the license expiration date.

If a salesperson applicant requests a change of brokers before the original license is issued, they need to fill out a new original license application and submit it with a letter of explanation.

3.18 Salesperson Mailing Address - To change a mailing address, a completed Salesperson Change



Application (RE 214) form, must be submitted. There is no fee or responsible broker signature required for a change of mailing address. All mailings from DRE will be addressed to the mailing address on record. Mailing addresses are public information and are available on a list format to the general public. Changes of mailing address may also be completed online using the eLicensing system.

3.19 Personal name change requests require a salesperson submit a completed Salesperson Change Application (RE 214) form, indicating the change of personal name. Name change requests must include documentation to substantiate the name change, such as a copy of a court order, driver's license, and divorce decree or marriage license.

Chapter 4 – Restricted Licenses

(Applicable Business and Professions Code Sections - 10156.2, 10156.6, 10156.7, 10156.8, 10186, 10209.5, and 10214.5 and Commissioner's Regulations 2716.1 and Administrative Procedure Act Section 11522)

- 4.1 A restricted license is a “probationary” type license which does not confer any property right nor any right of renewal. It can be granted after a denial of an application or revocation of an unrestricted license. A restricted license is treated as a separate and distinct license and is issued for a four-year term or in the case of an MLO endorsement, issued on an annual basis. Applicants for a restricted license must complete and submit an original license application along with the appropriate license fee. Decisions may require completion of continuing education (CE) requirements and/or the Professional Responsibility (PR) Examination, or other specified terms and conditions. (refer to Appendix A for fees).
- 4.2 The Commissioner's Order (the Order) providing for licensure can impose restrictions by term; affiliation to a particular broker; conditions to be observed in exercise of the privilege granted such as detailed reports of transactions; attendance at AA meetings, filing of a surety bond or other terms and conditions.
- 4.3 When a license is revoked and a restricted license is subsequently granted, typically additional examination requirements are not required unless specified in the Order.
- 4.4 When a license is denied and a restricted license is granted, a second examination is not required unless specifically stated in the Order. The applicant must have passed the statutory required license examination prior to applying for the plenary license.
- 4.5 The Prospective Responsible Broker Certification (RE 552) form is used and completed by responsible brokers in cases where the decision granting a restricted license carries a provision that the responsible broker must read the decision and closely supervise the performance of the restricted licensee's activities for which a license is required.
- 4.6 Examination - Where an unrestricted license is granted predicated upon passing a written examination, as specified in the Order, the applicant is entitled to unlimited re-examinations (the same as original applicants) unless the Order specifies a limitation in the number or times the examination can be taken or the amount of time. The applicant must submit the appropriate examination application and the current examination fee (Refer to Appendix A for fees).
- Additionally, the applicant is not required to present educational qualifications unless stipulated in the Order.
- 4.7 License application fees for restricted licenses are the same as for plenary licenses. (Refer to Appendix A for fees). No additional fees are required to process restricted license changes.
- 4.8 A holder of a restricted license does not have renewal rights but may apply for continuation unless suspended or revoked, pursuant to B&P §10156.7. The renewal application form must be used. Restricted licensees do not have access to use the eLicensing system.

- 4.9** The Commissioner may suspend a restricted license, by Order, until a determination is made after a formal hearing.
- When a restricted license is to be suspended pending a hearing, the accusation shall be served at the same time as the Order of Suspension.
 - Order of Suspension shall contain, among other required terms, statements to the effect that:
 - a. Accusation against licensee has been prepared;
 - b. Date of hearing on Accusation will be set and licensee notified at earliest possible time.
 - A copy of the Accusation may be served on the licensee at the same time the Order of Suspension is delivered to them.

- 4.10** Removing Restrictions - Whether a restricted license is issued after revocation or denial, an Order is issued in most cases to provide that a restriction be removed. An applicant must submit a full fee for an unrestricted license together with an original application. Applicants may be required to meet continuing education (CE) requirements.

In order for a licensee to Petition for Removal of Restrictions, the Order must be read to determine if the licensee is eligible to petition. If so, the licensee must submit a Petition Application (RE 506) form, along with the petition fee, a completed Live Scan Service Request (RE 237) form, completed no earlier than 30 days before the date of mailing or delivering the petition application to DRE, and may submit letters of recommendation to support the petition. (Refer to Appendix A for fees),

- 4.11** In order for a person to Petition for Reinstatement of a real estate license which has been revoked, at least one year must have elapsed from the effective date of the revocation, unless otherwise specified in the Order of Revocation (Administrative Procedure Act §11522). The individual must file a Petition Application (RE 506) form, the petition fee, a completed Live Scan Service Request (RE 237) form, completed no earlier than 30 days before the date of mailing or delivering the petition application to DRE, and may submit letters of recommendation in support of the petition. (Refer to Appendix A for fees)

If a Petition for Reinstatement has been denied with a Right to a Restricted Salesperson License, the applicant must submit the salesperson license fee, a Salesperson License Application (RE 202) form, and comply with any other requirement set forth in the Order, such as qualify by examination, complete the Prospective Responsible Broker Certification (RE 552) form, continuing education, etc. If the applicant must qualify by examination, they must submit a fee, and a Salesperson Examination Application (RE 400A) form in order to be scheduled for an examination. (Refer to Appendix A for fees)

If a Petition for Reinstatement has been denied with a Right to a Restricted Broker License, the applicant must submit the broker license fee, the Broker License Application (RE 200) form and comply with any other requirement provided in the Order, such as qualify by examination, etc. If an applicant must qualify by examination, they must submit the appropriate exam fee, and the Broker Examination Application (RE 400B) form in order to be scheduled for an examination. (Refer to Appendix A for fees)

If a Petition for Reinstatement has been granted or a Petition for Removal of Restrictions has been granted, the broker must submit a Broker License Application (RE 200) form together with the broker license fee. The salesperson must submit a Salesperson License Application (RE 202) form with the salesperson license fee. The applicant may be required to meet the continuing education requirements. If the order requires qualifying by examination, the applicant should submit the application for examination and the required examination fee in order to be scheduled. (Refer to Appendix A for fees)

- 4.12** Monetary Costs Associated with Monitoring Restricted Licensees - Pursuant to B&P §10186, following an administrative proceeding, or in connection with a stipulation, the Commissioner can require the restricted licensee to pay the monetary costs associated with monitoring the licensed activities conducted by and pursuant to the restricted license or restricted MLO license endorsement.
- 4.13** Petition for removal of license discipline information from DRE's website - Pursuant to B&P §10083.2, current licensees can file a petition with DRE's Enforcement program for the removal of license discipline information from DRE's website. In order to qualify for this type of petition, the following is required: the petitioner must be a current licensee; at least 10 years from the effective date of the discipline to be removed must have passed; a Petition Application (RE 506R) form; a completed Live Scan Service Request (RE 237) form, completed no earlier than 30 days before the date of mailing or delivering the petition application to DRE; and the petition fee. (Refer to Appendix A for fees)

A single petition may be used to request the removal of multiple instances of discipline, as long as each one is eligible for removal. The following actions listed on DRE's public license lookup are considered discipline and may be eligible for removal: Revoked, Restricted, Surrendered, Suspended (if done so by Disciplinary Order, Decision, or Stipulation and Agreement), Public Reapproval, as well as Desist and Refrain and BAR Orders.

Individuals who would like to petition for removal of discipline information, but are not current licensees, must first regain their licensed status. If a license has expired for more than two years, a prospective petitioner must first successfully re-apply for their real estate license following standard application guidelines. If a license has been revoked or surrendered, a prospective petitioner must submit a petition for reinstatement. The petition for reinstatement may be submitted concurrently with the petition for removal of discipline information and only a single fee is required. In this circumstance, discipline information will only be eligible for removal from the public website if both petitions are granted and the petitioner successfully completes all steps necessary to regain their license.

It should be noted that approval of this type of petition only removes the license discipline information from the public license look up page accessed from DRE's website. As a matter of public record, discipline information can still be accessed by contacting DRE or by filing a Public Records Act (PRA) request. The Licensing program is responsible for executing the Orders and removing the disciplinary comments from the website.

Chapter 5–Mineral, Oil and Gas Broker License

(Applicable Business and Professions Code Sections - 10500 through 10580)

- 5.1 Effective January 1, 1994, issuance of new mineral, oil, and gas (MOG) broker licenses was discontinued as a result of SB 1002 (Craven). MOG activities, as defined in the above listed B&P code sections, can be performed by currently licensed MOG brokers (individual or corporate), or by licensed real estate brokers.

Currently licensed MOG brokers (individual or corporate) may apply for license renewal. As of this writing, there are currently 4 remaining MOG brokers.



MOG permits are no longer issued following the passage of SB 1002.

- 5.2 The licensing renewal procedures are basically the same as set forth in the Brokers-Individual and Corporation sections of this manual. The more notable exceptions are as follows:

- The broker or corporation forms may be amended in writing at the top of the forms to reflect that they are MOG applications;
- Continuing education requirements do not apply to a MOG renewal;
- A real estate salesperson cannot be licensed to a MOG broker.

Chapter 6—Prepaid Rental Listing Service (PRLS)

(Applicable Business and Professions Code Sections - 10167 through 10167.1, 1016.95, Commissioner's Regulations 2851 through 2853)

- 6.1** A PRLS licensee is in the business of supplying prospective tenants with listings of residential real property for tenancy while collecting a fee at the same time or in advance of when the listings are supplied; negotiation of the rental of property is not a part of this activity.

There are no examination requirements to obtain a PRLS license. A PRLS license is issued for two years, and can be renewed. An individual or a corporation may obtain a PRLS license.



A licensed real estate broker may conduct PRLS activities and is exempt from PRLS licensing requirements. However, such an individual must have a written contract approved by DRE (Section 6.9) and may need to add a fictitious name (Chapter 8) and/or a branch office license (Chapter 1, Section 1.13) to their current license if the broker plans to use any name or location other than they are presently licensed to use.

The broker may conduct PRLS activities at any of their licensed office locations. However, the activities must be conducted under the broker's immediate supervision, or under the supervision of a licensed salesperson affiliated with and acting on behalf of the broker.

- 6.2** Individual or corporation PRLS license applicants must complete and submit a PRLS Individual License Application (RE 271) form or a PRLS Corporation License Application (RE 272) form, along with a completed Surety Bond (RE 270) form or a completed Cash Deposit Security (RE 275) form and the required application fee (Refer to Appendix A for fees).
- 6.3** Fingerprints - A completed Live Scan Service Request (RE 237) form must be submitted by all original PRLS individual license applicants. For an original PRLS corporation license, each officer, director, or shareholder owning 25% or more of the stock in the corporation must also submit one completed RE 237 form.
- 6.4** Bond - A properly executed bond in the amount of \$10,000.00 must be submitted along with a completed Surety Bond (RE 270) form for each PRLS location. The bond must reflect the exact address of the location for which the bond is issued. A Power of Attorney Statement and notarized Surety Acknowledgment must be included with the bond if the bond is signed by an attorney-in-fact for the surety company. A cash deposit in the amount of \$10,000 may also be used in place of a bond.

For an individual license, the bond must name the license applicant as the principal. For a corporation license, the bond must name the corporation as the principal. A fictitious business name may not be included with the principal designation on the bond.

Bonds must be maintained in force at all times at all locations where PRLS activities are conducted. If a bond cancellation notice is received from the surety company, the licensee is advised by Sacramento PRLS desk to file a new bond before the effective date of cancellation. If a new bond or bond reinstatement notice is not received on or before that date, the license for that location is cancelled. To reinstate the license for that location, the licensee must resubmit the necessary license application(s) with a proper bond.

- 6.5** Changes - A completed PRLS Corporation & Officer Change Application (RE 267) form must be submitted by a licensed officer in order to effect any changes to an existing PRLS corporation license. Fees are not required for changes to existing PRLS individual or corporation licenses, however a \$15 fee will be charged for a duplicate license certificate.

Whenever a change is being made which affects the surety bond, such as the name or address, a properly executed Surety Rider must be submitted to amend the information contained on the original bond. If the rider is signed by an attorney in fact for the surety company, a Power of Attorney Statement and a notarized Surety Acknowledgment must be submitted along with the rider.

- 6.6** License Renewal Requirements - As a courtesy, approximately 60 days prior to the expiration of a PRLS license, the licensee is sent a Form Letter 204 that advises of the pending expiration of the license. However, it is still the responsibility of the licensee to renew the license in a timely manner, even if the Form Letter 204 is not received.

Each licensee is required to submit a PRLS Individual Renewal Application (RE 261) form or PRLS Officer Renewal Application (RE 255) form and fee before a new two-year license will be issued. The PRLS bond must continue to be in full force and effect at the same location. A new bond is not required to renew the license. To remain continuously licensed, these requirements must be properly filed prior to the expiration of the existing license.

- 6.7** Designated Agent - A Designated Agent is a separate defined term from a corporation "Designated Officer".

Business at each PRLS location must be conducted under the immediate supervision of the licensee or a designated agent. The name of the designated agent for each location must be provided before a license will be issued. No individual (including the PRLS licensee) can simultaneously be the designated agent at more than one location.



Individuals identified as designated agents must complete and submit a PRLS Designated Agent Application (RE 256) form, along with a completed Live Scan Service Request (RE 237) form, and proof of legal presence.

- 6.8** Out-of-State Applicants - Every applicant for a PRLS license, who is residing outside of California, whether on a temporary or permanent basis, must file an Irrevocable Consent to Service (RE 263) form.

- 6.9** Contracts - PRLS license applicants must file written contracts with DRE before conducting PRLS licensed activities. Copies of the proposed contracts must be submitted to the Sacramento District Office, Attention: Mark Tutera. Copies of the PRLS applications will be sent to the appropriate Enforcement District Office Manager for review prior to the issuance of the PRLS license. Enforcement District Office managers will review the application to determine if there are any active investigations involving the PRLS applicant. A license will not be issued until a contract and application has been approved and verification of approval has been received by the Licensing PRLS desk.

A real estate broker conducting PRLS activities under the broker license must also follow this procedure. Any modifications of a contract previously filed with DRE (including a change in name or business address) must also be filed with our Sacramento Office prior to use.

Chapter 7 – Mortgage Loan Originator License Endorsement

(Applicable Business and Professions Code Sections - 10166.01, 10166.02, 10166.03, 10166.04, 10166.05, 10166.051, 10166.06, 10166.07, 10166.08, 10166.09, 10166.10, Commissioner's Regulations 2758.1, 2758.2, 2758.3, 2758.4, and 2758.5)

7.1 Pursuant to B&P §10166.01, a mortgage loan originator (MLO) is an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain.



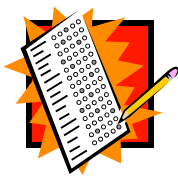
7.2 Applicants for a MLO license endorsement are required to complete 20 hours of pre-license education per B&P §10166.06, including the following specific areas:

- Three hours of federal law and regulations;
- Three hours of ethics, including fraud, consumer protection, and fair lending issues;
- Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Pre-license education must be completed through a NMLS approved provider. The pre-license education requirement does not have to be completed before taking either the National or State examination components.

7.3 MLO license endorsement applicants are required to pass the National Test with Uniform State Content written test developed by NMLS and administered by an approved test provider. As required by the SAFE Act, the test is designed to adequately measure an individual's knowledge and comprehension in appropriate areas, to include:

- Ethics;
- Federal law and regulation pertaining to mortgage origination;
- State law and regulation pertaining to mortgage origination;
- Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.



A MLO license endorsement applicant wishing to satisfy the SAFE test requirements for licensure must pass the National Test with Uniform State Content with a test score of not less than 75 percent. MLO license applicants wishing to seek licensure in more than one state or jurisdiction may, depending on the state's particular testing requirements, need to pass a unique State Component test in each of those states.

7.4 Applicant's for a MLO license endorsement are required to submit a set of fingerprints through the NMLS. Although DRE licensees were required to submit fingerprints before their real estate license was issued, a new set of fingerprints must be obtained based on the provisions of the SAFE Act.

The SAFE Act prohibits the licensing of an MLO under any of the following conditions:

- If the applicant has ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, or convicted of any felony in the seven-year period before filing an application for an endorsement.
- If an applicant has ever had a mortgage loan originator license revoked in any governmental jurisdiction.
- If an applicant has demonstrated a lack of financial responsibility by showing disregard in the management of his or her own financial condition.

A \$39 fee will be charged when the criminal background check is authorized through NMLS.

Specific fingerprinting locations have been established throughout California. Applicants will be directed to the closest location based on their zip code. Depending on the applicant's address and the distance to the nearest NMLS fingerprint vendor location, an applicant may be given the option through the system to obtain a kit to have their fingerprints taken with an ink-based method at another authorized agency. There will be an additional charge of \$10.00 for the kit plus an additional charge for the authorized agency to take the fingerprints.

Fingerprints are automatically processed with results reported back to NMLS and available to DRE. If the FBI determines that the prints are illegible, the licensee will receive a NMLS system notification email and be required to request and pay for a new criminal background check, based on current NMLS policies.

- 7.5 Applicants for a MLO license endorsement are required to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently. To satisfy this requirement the applicant must authorize the NMLS to obtain a credit report from a credit reporting agency. This step must be completed as part of the on-line application process through NMLS.
- 7.6 Licensed salespersons and brokers working as a broker associate for another broker or corporation, who conduct residential mortgage loan activities, are required to complete an MU4 Individual filing. This form enables the NMLS system to capture and store criminal background-check information, enables the credit report to be authorized, and stores education and testing requirement compliance information.
- 7.7 Licensed Brokers working as sole proprietors or designated officers of licensed corporations, who conduct residential mortgage loan activities, in addition to filing a MU4 Individual Filing must also file a MU1 Company Filing through NMLS.
- 7.8 The NMLS renewal application filing period begins each year on November 1st and ends December 31st. MLO license endorsements are issued annually and expire December 31st of each year. MLO license endorsements which were approved for issuance on or after November 1st will expire on December 31st of the following year.



Current renewal requirements for an Individual MLO license endorsement includes a renewal request/attestation filed electronically through NMLS, the appropriate renewal fees, and filing evidence of completion of 8 hours of continuing education (CE). CE must be taken through a course provider approved through NMLS.

Nothing precludes a DRE approved CE provider from creating a course that meets all the NMLS requirements as well as the DRE requirements for CE credit, qualifying and approving the course under NMLS and also DRE, and then offering the course to licensees. Since it may take as long as seven (7) days for a CE course provider to report a course completion into NMLS, MLOs are strongly encouraged not to wait until the final days of the renewal period to try to complete CE or they may be prevented from submitting an on-time renewal.

Renewal requirements for a Real Estate Corporation Company MLO license endorsement includes a renewal request/attestation filed by the licensed designated broker-officer electronically through NMLS, and the payment of the appropriate renewal fees. The licensed designated broker-officer must complete 8 hours of NMLS approved CE and submit an individual renewal request/attestation through NMLS. This individual renewal request/attestation should be submitted prior to the filing of the corporation renewal request/attestation.

- 7.9** Licensees who have been issued a MLO license endorsement are required to maintain the same current license information on file with DRE and with NMLS. This information includes the licensee's name, the licensee's main office, fictitious business names and branch office locations that are being used for MLO activities.

Chapter 8 – Fictitious Business Names (DBAs)

(Applicable Business and Professions Code Section - 10159.5, 10159.6, 10159.717910, 17910.5, 17913, and 17917. Commissioner's Regulation 2731)

- 8.1** The Real Estate Law requires that a fictitious business name must appear on a broker or corporation officer license before the name can be used in conducting activities for which a real estate license is required. Refer to B&P §10159.5.
- 8.2** Whether a name is “fictitious” is a legal question; DRE is guided by general laws.
- Under the provisions of B&P §17910 et seq., a business name which does not include the surname of the individual or a name that suggests the existence of additional owners is fictitious.
 - A partnership or other association of persons that does not include the surname of each particular partner or suggests the existence of additional owners is fictitious.
 - In the case of a corporation, any name other than the corporate name as stated in the Articles of Incorporation is considered fictitious.
 - A name that suggests the existence of additional owners and/or includes such words as “Company”, “and Company”, “and Son”, “and Sons”, “and Associates”, “Brothers” are considered fictitious.
 - Nicknames such as Jim for James and Bob for Robert, etc., are not considered fictitious.
- 8.3** In order to acquire a fictitious name (individual or corporation); a Fictitious Business Name Statement (FBNS) must first be filed in the county in which the main office is located. (Refer to B&P §17910 et seq.). More complete information relating to the requirements to file a FBNS is available from any county clerk’s office. For an individual broker license, the broker applicant must be named as a registrant on the FBNS. For a corporation license, the corporation must be named as a registrant. Please refer to Fictitious Business Name Information (RE 282) form for additional information.
- 8.4** To add a fictitious name to the license of an individual broker, a filed copy of the FBNS (not more than 5 years old) and a completed Broker Change Application (RE 204) form must be submitted. To delete a fictitious name appearing on the license of an individual broker, a RE 204 must be completed and submitted. The same procedure is required for a corporation license, with the exception that Corporation Change Application (RE 204A) form is required. A new license certificate can be printed online for each request to add or delete a fictitious name.
- 8.5** If the name requested appears to be misleading or would constitute false advertising, incorrectly implies a partnership or corporation when either does not exist, includes the name of a salesperson and does not include the name of a broker, constitutes a violation of the provisions of B&P §17910, 17910.5, 17913 or 17917, or is the name formerly used by a revoked licensee, the Commissioner may refuse to issue the license pursuant to Commissioner’s Regulation 2731.

8.6 Policy is to question fictitious names that contain the following words or designations:

- “National”, “Federal”, “United States”, “U.S.”, “USA”, “Reserve” or “Deposit Insurance”, may be in violation of Title 18, U.S.C., Section 709. The licensee must provide a signed statement that they are aware of the provisions set forth in the Code and that the DBA will not be used in violation of this section of law.
- “Bank”, “Banker(s)”, “Banking”, “Banc”, “Banco”, “Banque”, “Savings”, Savings loans”, “Trust”, or “Trustee” requires written authorization from the California Department of Business Oversight (DBO).
- “Insurance”, “Assurance” or “Surety” requires an explanation from the applicant/licensee as to the meaning or use of such DBA, in addition to staff checking the California Department of Insurance website to confirm whether or not an applicant/licensee is licensed.
- Any wording such as “Real Estate School” must be verified that the entity has approved courses with DRE through the Education Sponsor lookup in EIS.
- “Escrow” requires the phrase, “a non-independent broker escrow” per Real Estate Commissioner’s Regulation 2731(c)(1).
- “Law Office”, “Lawyer” or “Attorney” – Check State Bar Website. If the applicant/licensee’s name is not listed, write for a copy of current bar card.
- “Notary” – The licensee must provide a copy of their Notary license.
- “Appraiser”, “Appraisal” – The licensee must provide a copy of their Appraiser license.
- Initials – Initials or Name in a DBA that is not obviously the broker’s requires a signed statement indicating that the initials or name are not that of a salesperson. If a statement is received from the licensee stating the initials or name is not that of a salesperson then it is okay to add the DBA.

8.7 Fictitious Business Names (DBAs) that should be denied:

- “NMLS”, “DRE”, “BRE”, and “CalBRE”. These names are inherently misleading to the public.
- A DBA which includes the name or initials of a salesperson. However, a DBA which includes a salesperson’s name and/or initials may be added if the broker’s last name also appears as part of the DBA.
- Names that imply a corporation, “Corp”, “Corporation”, “Inc.”, “Incorporation”, “Bancorp”, and “Ltd.” A corporation requesting a DBA with the same exact name cannot be added as it is already licensed, and therefore, is not considered fictitious. They may refile the FBNS with the county clerk and request the name without the “Inc.”, “Corp.”, etc.
- Names which imply a Limited Liability Company (LLC).
- Names which imply a Multiple Listing Service or “MLS”.
- Names that were formerly used by a licensee who has since been revoked are subject to managerial review.
- Names which include Housing & Urban Development (HUD).
- Names that are personal names (i.e. Jane Doe, as the person is not fictitious); however, a personal name can be part of a DBA, i.e. Jane Doe Realty and is a valid DBA, assuming it follows the non-salesperson rules.
- Governmental or military acronyms.

8.8 Salesperson owned DBA's - A responsible broker *may*, by contract, permit a salesperson to do all of the following:

- File an application on behalf of the broker with a county clerk to obtain a fictitious business name,
- Deliver to DRE an application, signed by the broker, requesting DRE's approval to use a county approved fictitious business name to be identified with the broker's license number, and
- Pay for and maintain ownership of such fictitious business name that may be used subject to the control of the broker.

Note: By policy, prior to DRE adding a salesperson owned fictitious business name to a broker's license record, the salesperson owning the fictitious business name **must** be affiliated with that broker.

Brokers and salespersons will use Add/Cancel Salesperson Owned Fictitious Business Name (RE 247) form to add and/or cancel *salesperson* owned fictitious business names.

When processing an application to add a "salesperson" owned fictitious business name, as identified above, the fictitious business name must satisfy all of the "DBA Checklist" and "Registrant Requirements". Additionally, a "salesperson" owned fictitious business name will **not** be added to a salesperson's license records.

When DRE receives an RE 247 and the registrant is **not** either the salesperson or broker associate, and instead lists the responsible broker's name, a letter should be sent to the responsible broker (citing B&P 17903) confirming that they are the actual owner of the DBA. Should the responsible broker respond that they own the DBA then a RE 204 would be required to add the DBA to the broker's license.



Advertising and solicitation materials, including print or electronic media and "for sale" signage, containing a "salesperson owned fictitious business name" must include the name and license number of the salesperson who is using the fictitious business name as well as the responsible broker's identity, as specified.

"Responsible broker's identity" is defined as a name and the associated license identification number under which the responsible broker is currently licensed by DRE and conducts business in general or is a substantial division of the real estate firm.

8.9 Team Names - AB 2018 and SB 146 defines a "team name" as a professional identity or brand name used by a salesperson, and one or more other real estate licensees, for the provision of real estate licensed services. The bill specifies that the use of a "team name", as defined above, does **not** constitute a fictitious business name and would **not** require a separate license if all of the following exist:

- The name is used by two or more real estate licensees who work together to provide licensed real estate services, or who represent themselves to the public as being a part of a team, group, or association to provide those services,

- The name includes the *surname* (last name) of at least one of the licensee members of the team, group, or association in conjunction with the term “associates”, “group”, or “team”, and
- The name does **not** include any term or terms, such as “real estate broker”, “real estate brokerage”, “broker”, or “brokerage” or any other term that would lead a member of the public to believe that the team is offering real estate brokerage services, which imply or suggest the existence of a real estate entity independent of a responsible broker.
- When a “team name” is used in advertising and solicitation materials, including print or electronic media and “for sale” signage, it must (1) include, and display in a conspicuous and prominent manner, the “team name” and the name and license number of at least one of the licensed members of the team, (2) the responsible broker’s identity, as specified, and (3) not contain terms that imply the existence of a real estate entity independent of the responsible broker.



Please note that Licensing will **not** add “team names”, as identified above, that do not include a broker’s surname (last name), to a broker’s license record as a fictitious business name.

Chapter 9 – Broker Offices

(Applicable Business and Professions Code Section - 10162, 10163 and Commissioner's Regulation 2715)

9.1 If a broker conducts licensed activities, they must maintain a main office in California. The broker may utilize a personal residence for this purpose. A broker may hold a license, but indicate that they are not conducting licensed activities on either a Renewal Application or Change Application for Broker Licensees (RE 204). In this case, the license will reflect a "No Business Address" (NBA) status.

If a broker resides out-of-state, a Consent to Service (RE 234) form must be filed. If the broker does not maintain a main office to conduct licensed activities in California, an Out-of-State Broker Acknowledgment (RE 235) must also be filed. An out-of-state resident broker who maintains an office in California is not required to file an RE 235.

9.2 Place of Business - The place of business of a broker licensee is defined in B&P §10162. It does not include places such as a post office box, telephone answering service, use of a single desk by more than one person not associated together as licensees in a single organization, or any location where the broker does not in fact and in practice engage in personal consultations with their clients.

9.3 Room Numbers - If a broker's office is in an office building, a room or suite number must be given, otherwise the broker could move around within the building.

9.4 The license of a broker and any salesperson(s) affiliated with the broker must be retained in broker's main office and be available for inspection even if the salesperson works full time in a branch office pursuant to Regulation 2753.

9.5 Subdivision Tract Offices. Model homes in tracts are considered branch offices if deposits are taken, contracts are entered into and sales are made. "Tract Office (or Tract Number), such as Golden Gate Subdivision, San Bruno, 94066" is a sufficient address and permits branch office license to be moved around in tract without changing address. If there is a definite tract office building then a specific address should be used. If model home is simply for display and business is not transacted there, no branch office license for model home is required. (Section 10163)



9.6 A license is required for each additional location where a broker maintains place of business in the state of California. Branch Office Application (RE 203) form is necessary for broker to apply for a branch office license (Section 10163). All branch offices will be issued new license certificates, which can be printed online using eLicensing. The Commissioner may determine whether or not licensee is doing brokerage business from a particular location. A branch office license retained at branch location permits full operation at that location.

9.7 Real estate broker members of a partnership (formed by written agreement) may operate from the branch office of the partnership without obtaining individual branch office licenses, providing one member of the partnership obtains a branch office license at said location.

9.8 To change a broker's main office or mailing address, the broker must send a completed Broker Change Application (RE 204) form giving their new address. Salesperson licenses are not affected by the broker's change of main office address unless that address is also the salesperson's mailing address. If a salesperson wishes to change their mailing address, they will be required to submit a Salesperson Change Application (RE 214) form. New license certificates reflecting the current address can be printed online using the eLicensing system.



9.9 To add or cancel a branch office, the broker must send in a completed Branch Office Application (RE 203) form. Branch office addresses cannot be changed. The old branch address must be cancelled and a new branch office location added. The broker can print new branch license certificates online using the eLicensing system. Cancelling a branch office does not affect the main office address or the license(s) of salespersons affiliated with the broker.

Chapter 10 – Other License Status Changes

(Applicable Business and Professions Code Section - 10161.5, 10161.8, 10460, 10461, and 10462, and 10463, Commissioner's Regulation 2710)

- 10.1** As of January 1, 1981, the laws regarding the issuance of inactive real estate licenses were repealed for broker and salesperson licenses.
- 10.2** When a licensee dies, their license certificate should be returned to DRE together with a letter providing the date of death, if known. Licensing will change the license status to deceased in EIS. The actual date of death will be used when a broker dies to determine the cancellation date for the salespeople affiliated with the broker. Licensing will attempt to obtain the date of death in order to cancel the salesperson(s), if it is not provided.
- 10.3** To reinstate a non-working license to active status, a salesperson must complete and submit a Salesperson Change Application (RE 214) form, have it signed by their new affiliated broker and send it to DRE, or they make complete this change using the eLicensing system. The effective date of this reinstatement is the date the application is received by DRE or if processed online, the effective date is the date the broker acknowledges the change. The salesperson can print a new license certificate online using the eLicensing system.
- 10.4** B&P §10161.5 provides that when the holder of a real estate broker or salesperson license is required to relinquish that license to assume an office in local, state or federal government; they may place the license under government service, which protects the current status of the license.

Licensed activities may not be performed when the license is under government service.

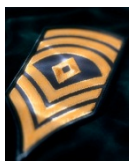
To place a license on government service, a written request is required from the licensee with a letter from the employing agency stating possession of the license is in conflict with their duties and the date such employment commenced. The license must be valid at the time of request. No fee is required.

Reinstatement from government service when the license has not expired will require a letter from the agency setting forth the date of termination and completed Broker Change Application (RE 204) form in the case of a broker or completed Salesperson Change Application (RE 214) form in the case of a salesperson. These items must be filed within six months from the termination of employment. If the license has expired, a letter is required from the agency along with the appropriate renewal application, evidence of completion of continuing education on a properly completed Continuing Education Course Verification (RE 251) form, and current renewal fee within six months from the termination of employment. (Refer to Appendix A for fees).

If the license has expired for two years or longer, an original license application, current license fee, and evidence of completion of 45-hour continuing education requirement must be submitted along with the letter from the agency, within six months from the termination of employment.

If the applicant has not completed the continuing education requirement, they may submit the other required items within the proper time frame and a 90-day temporary license will be granted for the purpose of submitting proper evidence of continuing education. Refer to B&P §10171.4.

- 10.5** B&P §10460 provides that when the holder of a real estate broker or salesperson license has entered the military service of the United States, they may place the license under military service, which protects the current status of the license for a period of seven years. Military licensee” refers to a person who, while holding a license or license endorsement under the Real Estate Law, entered the military service of the United States and notifies the commissioner of that fact within six months of such entry.



“Persons in the military service of the United States” includes the following persons and no others: all members of the United States Army, the United States Navy, the United States Air Force, the Marine Corps, the Merchant Marine in time of war, the Coast Guard, the National Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

Placement under these sections requires documentary proof of date of induction so that a determination can be made that applicant was licensed at the time of entry.

- 10.6** A military licensee shall not be required to renew his or her license or license endorsement until the beginning of the license or license endorsement period which first commences (a) after his or her again engaging in business, or (b) after one year following termination of military service, whichever is the earlier.
- 10.7** A military licensee shall not be entitled to the privileges if they receive a dishonorable discharge from the military service of the United States or if they voluntarily remain in the military service for more than seven years from the date of notification to the commissioner.
- 10.8** Limitations as to when reinstatement must be requested are:
- Within a year after release from service, or
 - When licensee returns to real estate business, whichever is earlier.

An applicant who would qualify as a “military licensee” under these sections, except for failure to notify the Commissioner of their entry into military service, may still apply for reinstatement pursuant to B&P §10463.

Reinstatement from military service requires proof of honorable discharge (normally discharge orders are acceptable) along with the appropriate renewal application and evidence of completion of continuing education on a properly completed Continuing Education Course Verification (RE 251) form. These items must be submitted within the limitations, as identified above.

If the applicant’s license has expired for two years or longer, an original license application must be filed in place of a renewal application.

If the applicant has not completed the continuing education requirement, they may submit the other required items within the proper time frame and a 90-day temporary license will be granted for the purpose of submitting proper evidence of continuing education pursuant to B&P §10171.4.

If application for placement under these sections did not occur while applicant was in the military, proof of date of induction must be included with application for reinstatement.

- 10.9** No fee is required to place a license on “military service”.

Chapter 11 – Child Support Obligor

(Applicable Family Code Section – 17520, Commissioner’s Regulation 2716.5)

11.1 In accordance with Section 17520 of the Family Code, DRE is precluded from issuing or renewing a full term license if the applicant or licensee is on a list of persons (obligors) who have not complied with a court order to provide child support payments. Information concerning such individuals is provided to DRE by the Department of Child Support Services (DCSS). DCSS receives the information from the local child support agency of each county in California.

11.2 A 150-day temporary license may be issued to an otherwise qualified (all requirements have been completed/submitted) applicant who is on the list of child support obligors. The applicant will be advised that the license applied for cannot be issued unless a release is received from DCSS during the 150-day temporary license period and a \$95 administrative fee pursuant to Commissioner’s Regulation 2716.5.

If DRE does not receive an appropriate release directly from DCSS within the 150-day period for the licensee, all license rights cease. Only one 150-day temporary license may be issued in a four-year period. License fees submitted are not refundable. In order to be issued another license, all applicable statutory licensing provisions must be met and another licensing fee would have to be submitted. Renewal applicants may have to submit a late renewal fee.


11.3 DRE is provided with a supplemental list of obligors, which identifies individuals who are over four months delinquent in child support payments and who will be matched against DRE's total license population. If there is a match of an existing licensee, and the licensee is not due for license renewal for at least six months, the licensee will be advised that the license will be suspended if the delinquency is not cleared within 150 days. The suspension will remain in effect until a release is received directly from DCSS for the licensee and a \$95 administrative fee.

11.4 Once a month, DRE checks the DCSS revocation file against licensees that have been previously matched. If any current licenses are matched, they are sent a notice of intent to suspension in 30 days if a release is not received. If a release is not obtained within 30 days, their license(s) is suspended pursuant to Section 17520 of the Family Code.

11.5 A fee will be assessed on any license applicants or existing licensees who are identified on the child support obligor list or supplemental list and who receive a 150-day temporary license or a notice that they have been identified on the supplemental child support obligor list. This fee must be paid before a Temporary 150-day license or a suspended license is released, or any applications submitted by the licensee are processed. (Refer to Appendix A for fees).

Chapter 12 – Top 500 Tax Delinquent List

(Applicable Business and Profession Code Section - 494.5)

- 12.1** Pursuant to B&P §494.5, DRE is required to deny an application for licensure and to suspend the license of any applicant or licensee who has outstanding tax obligations due to the Franchise Tax Board (FTB) or the California Department of Tax and Fee Administration (CDTFA) and appears on either the FTB or CDTFA's certified lists of top 500 tax delinquencies over \$100,000. Under this provision, all applicants for licensure must provide a social security number or individual taxpayer identification number or in the case of a corporation, a Federal Taxpayer identification number.
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- 12.2** Once it has been determined that an applicant or a licensee is on a certified list, the applicant or licensee has 90 days from the issuance of a preliminary notice of withholding/suspension to either satisfy all outstanding tax obligations or enter into a payment installment program with the FTB or CDTFA. Any such person who fails to come into compliance will have their license denied or suspended until DRE receives a release from the FTB or CDTFA. The form requesting a release will be included with the preliminary notice of withholding/suspension.
- 12.3** A 90-day temporary license may be issued to an otherwise qualified applicant who is on the list of the top 500 tax delinquencies over \$100,000. The applicant will be advised with a 90-day notice of withholding that the license they applied for cannot be issued unless a release is obtained from either the FTB or CDTFA during the 90-day temporary license period. If no such notice is received from the FTB or CDTFA, the license will be denied. Only one 90-day temporary license will be issued.
- 12.4** FTB will provide their list of the top 500 in April and October of each year. CDTFA provides a list every quarter (February, May, August and November).

Chapter 13 – List of Licensees and/or Applicants for Examination

13.1 DRE offers non-confidential examinee and licensee information including name, mailing address, and other license information in electronic format on DRE’s website. Complete details regarding data contained on these lists is available on the Examinee/Licensee Data File Definition (RE 776) form. Listed below are the current types of lists available:

- Examinee List (Updated Weekly on Monday)
- MLO List (Updated Weekly on Monday)
- Broker Associates List (Updated Weekly on Monday)
- Licensee List ZIP (Updated Weekly on Monday)
- New Licensees List (Updated Weekly on Monday)



13.2 The exam applicant list, “Examinee List,” contains the names and addresses of applicants for the salesperson and broker real examinations. Pursuant to Civil Code Section 1798.61(b), the examinee list may only be used for the sole purpose of providing informational materials relating to available professional education materials or courses.

13.3 The Mortgage Loan Originator License Endorsement list, “MLO List,” contains the names, mailing addresses, real estate license number taken from DRE records, NMLS Unique Identifier, NMLS license type, and NMLS status. This list contains only those licensees whose MLO license endorsements are in an “approved” or “approved-inactive” status as reflected on the NMLS Consumer Access website.

13.4 The “Broker Associates List” contains the names of brokers affiliated with other brokers or corporations working in the capacity of a salesperson, called a “broker-associate”. The list includes the broker associate’s name, license number, and mailing address, and the responsible broker/corporation name’s, license number, and mailing address.

13.5 The “Licensee List Zip” contains the names of existing licensees along with their mailing addresses, and other license information of current licensees. The file also contains the responsible broker’s ID, if applicable, for salespersons, the corporation ID for officers, and the designated officer’s ID for corporations.

13.6 The “New Licensees List” contains the same information as 13.5 above for original licensees issued during a specific period.

Chapter 14 – Certified License History, Public Records Act (PRA) Requests, and Subpoenas

(Applicable Civil Code Section - 1798 et seq., Government Code Sections 6250, 11015.5, 11019.9)

- 14.1** Certified License History for other states - Contains the date the examination was passed, and a history of the preceding five year license period (unless otherwise requested), state seal, signature of custodian of record, any disciplinary action taken, current license status, date first licensed and expiration date.

Certified License History for general or legal purposes - Contains a detailed history of the preceding five-year period (unless otherwise requested), state seal, signature of custodian of record, and disciplinary action taken, date first licensed and expiration date.

- Statutory course information is not maintained on record and cannot be verified.
- Some states require the license certification be mailed directly to them. This should be verified prior to completing the “mailing address” section on the Certified License History Request (RE 293) form.

To obtain a certified license history, the requester must complete a Certified License History Request (RE 293) form and include the appropriate fee. (Refer to Appendix A for fees).

DRE’s Legal and Enforcement Sections and other Governmental Agencies request certified license histories as part of their investigation and to be used in hearings.

- 14.2** Public Records maintained by DRE are available for inspection and/or copying pursuant to the following procedures:

- Requests for public records may be made orally or in writing. DRE may refuse to disclose any records that are exempt from disclosure under the Public Records Act, or other state or federal law.
- Public records will be made available for inspection on reasonable notice during the regular business hours of DRE. DRE functions shall not be suspended to permit inspection of records where the records are reasonably required by DRE personnel in the performance of their duties. If a request requires review of numerous records, a mutually agreeable time will normally be established for their inspection.
- Requests for public records must be sufficiently descriptive to enable DRE to identify, locate and retrieve the records. DRE is entitled to a reasonable period of time to locate the records, if not readily accessible, and to determine whether they must first be reviewed, and possibly redacted, in order to protect confidential or exempt material from improper disclosure.

In order to preserve the integrity of the public records, inspection is permitted only in DRE offices and in the presence of DRE personnel. Upon completion of the inspection, the requested records shall be returned to DRE in the same condition as they were received. Persons inspecting public records shall not destroy, deface or alter the records, and shall not remove them from the DRE office.

Copies of the requested public records will be provided at a charge not to exceed DRE's direct costs of duplication. Payment of the duplication charge shall be required before DRE copies the records.

Public records include any written communication containing information pertaining to the conduct of DRE's business that is prepared, owned or retained by DRE (Refer to Public Records Access Guidelines RE 103), regardless of physical form or characteristic. As an example, the following records maintained by DRE are public records and will be made available for inspection as described above:

- Formal action files - All documents in formal action files including Orders and Decisions by or in the name of the Real Estate Commissioner, the Proposed Decision of the Administrative Law Judge, pleadings, and all exhibits received into evidence or marked for identification.
- In-state subdivided lands - All forms and documents required to be furnished by the applicant for the issuance of a Public Report for the offering of in-state subdivided lands.
- Out-of-state subdivided lands - All forms and documents required to be furnished by the applicant for the issuance of a Permit for the offering of out-of-state subdivided lands, except those documents which contain information on the price and terms under which the land in question was acquired or is to be acquired by the applicant.
- Recovery fund - All forms and documents required to be furnished by a person claiming to be aggrieved in connection with a claim against the Real Estate Recovery Fund.
- Licensee & license applicants - The name and fictitious business name, if any, of a licensee, the business address of a licensee, the license identification number of the license currently held by a licensee, the names of all licensed officers of a corporate licensee, and the name and business address of the responsible broker or corporation of a real estate salesperson.

Electronic records - Unless prohibited by law, if DRE has information that constitutes an identifiable public record that is not exempt from disclosure and is in an electronic format, it shall make that information available in an electronic format upon request pursuant to Section 6253.9 of the Government Code. When DRE must compile records or extract information from an electronic record or undertake programming to satisfy a request, the requestor may be required to bear the cost.

A copy of these guidelines are posted in a conspicuous place in each DRE office, and are available free of charge to any person requesting such.

- 14.3** The California Public Records Act is contained in Government Code Section 6250 et seq. The AGPA/Lead in Flag will review received subpoenas for compliance. A subpoena must have a Notice to Consumer or Proof of Service addressed to the licensee. Most subpoenas contain a statement that the records are to be produced by a specified date and time, but not sooner than twenty days after the issuance of the subpoena, or fifteen days after service, whichever date is later. The production date must be in compliance with that statement.

A subpoena transmittal sheet must be completed for each subpoena. Most subpoenas need a seven-day letter sent to the licensee to allow the licensee the opportunity to quash the subpoena. The seven-day letter is not required if it is another governmental agency that submitted the subpoena. The subpoena is then routed to the technician in Flag for processing. There are processing fees associated with handling subpoena requests.

Chapter 15 – Dishonored Checks

- 15.1 Whenever an applicant or licensee submits payment, and that payment has been dishonored by the bank, DRE's Fiscal Section receives a notice of the dishonored payment (either check or disputed credit card charge notices). Occasionally dishonored payments are also received for certified history requests, support obligor fees, photocopy requests, and pocket card payments.
- 15.2 Fiscal enters information concerning the dishonored check in EIS. A flag is created for either an examination or license record. The flag prevents future examination scheduling for the applicant or will prevent the examination results to be delivered if the examinee has already been scheduled. Any future license application processing will also be prevented without authorized security, which is assigned to specific Licensing staff.

Fiscal then sends a copy of the check or disputed charge letter to the appropriate Licensing supervisor for the application type, who verifies that the mailing address and application information are correct.

- 15.3 Once the debtor information is verified, an initial letter which requests a replacement fee plus a dishonored payment fee is automatically generated in Fiscal. Fiscal mails the initial letter to the debtor and forwards a copy to the appropriate Licensing supervisor.

The Licensing supervisor writes a letter to any existing responsible brokers/corporations of licensees who have the dishonored payment on file, notifying them of their affiliate licensee's bad check status along with a cc to the licensee.

- The copy of the check and/or disputed charge letter and the initial letter are placed in a file by the appropriate supervisor along with any unprocessed applications.
- When a response to the initial letter is received, Fiscal advises the appropriate Licensing staff and the dishonored check flag is cleared from the applicant's EIS record.
- If a response is not received within twenty days, a second payment-request letter is sent by Fiscal to the applicant. The letter advises an examination applicant that the entire amount owed must still be remitted, that future examinations will not be scheduled, and that any future license applications will not be processed.

License applicants are given the following information:

- If the applicant has been issued an original license, that license will be voided. The applicant will be sent a void notice informing them their license has been voided and the entire amount owed must still be remitted.
- If the applicant wishes to apply for a new license, a new application and fee must be filed and will be accepted only if the original amount owed has been remitted.
- For an original license, if a year has passed from the date the applicant applied for their examination, the applicant will be required to requalify through the examination process.
- For a renewal applicant, a late renewal fee is required or if the two-year late renewal grace period has elapsed, the applicant must requalify through the examination process. Continuing education courses, which are more than four years old from the date the new application is submitted, must be recompleted.

- 15.4 Fiscal forwards a copy of the second letter to the appropriate Licensing supervisor. The Licensing supervisor sends a copy of the second letter to any existing responsible brokers/corporations of the licensees. The copy of the second letter and any letters to responsible brokers are placed in the bad check file by the appropriate Licensing supervisor.
- 15.5 Within approximately 30 days, the final letter is issued by Fiscal and mailed to the debtor. The letter states that the dishonored payment account information is being forwarded to the Franchise Tax Board for collection. A copy of the final letter is sent to the appropriate Licensing supervisor.

For dishonored payments submitted with original license applications, steps are taken to void the license record. A copy of the final letter and the void status is forwarded to the responsible broker/corporation, with a copy to the licensee (debtor).

Renewal applications are held by the appropriate Licensing supervisor for approximately 30 more days and then are sent to be imaged unprocessed with the bad check correspondence. The record is changed back to expired if the expiration date has passed and then are sent to be imaged unprocessed with the bad check correspondence.

Checks are not imaged and are confidentially destroyed.

Licensing will not accept changes except for affiliation discontinuance. These applications are submitted to the appropriate Licensing supervisor for processing. All other change applications received for the licensee or applicant are not processed until the fees have been paid.

SUBDIVISION MANUAL



Thomas R. Hensley

Thomas R. Hensley, Assistant Commissioner, Subdivisions

March 1993

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(Revised August 1995)

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Subdivision Manual



JURISDICTION, ETC.

Sections 0001 - 0099

STATUTORY REFERENCES FOR DEFINITIONS AND TYPES OF SUBDIVISIONS - JURISDICTION OVER OFFERING BY BANKRUPT DEVELOPER***Statutory references***

Unless otherwise noted, statutory references in this manual are to the Business and Professions Code.

The general definition of "subdivision" is found in Section 11000. A subdivision is considered "standard" unless it is one of the following:

Community Apartment - Sections 11004 and 11004.5 and Section 1351(d) of the Civil Code.

Condominium - Section 11004.5 and Sections 783 and 1351(f) of the Civil Code.

Land Project - Section 11000.5.

Planned Development - Sections 11003, 11004.5 and Section 1351(k) of the Civil Code.

Stock Cooperative - Sections 11003.2, 11004.5 and Section 1351(m) of the Civil Code.

Undivided Interests - Section 11000.1.

Time Shares - Sections 11000, 11003.5 and 11004.5.

Limited Equity Housing Cooperatives - Sections 11003.4 and 11004.5.

Subdivider in bankruptcy

DRE has consistently taken the position that a bankrupt company selling subdivision lots in California as part of the bankruptcy proceeding must also comply with the Subdivided Lands Law by obtaining a subdivision public report for the marketing of the lots. In 1977, DRE intervened in bankruptcy case BK74-11136-RF (In re South Park Land and Livestock Co., Inc.) in the United States District Court, Central District of California, on this very issue. In that case, the court held that the bankrupt developer had to comply with state law before offering the subdivision lots for sale in California.

Deputies should require a court order authorizing the sale of the subdivision interests and disclose the bankruptcy in the public report. If the court will not issue an order authorizing the sale until there is a specific contract, we can issue a conditional public report authorizing the applicant to enter into binding contracts, but not to close escrow. After there are existing contracts, the matter can be presented to bankruptcy court for action.

EXEMPTIONS

Statutory references

See Sections 11010.3, 11010.4, 11010.6 and 11010.8.

Exemption from public report: in-state subdivisions sold exclusively out-of-state

In the event of an inquiry about our requirements for an in-state subdivision which is to be sold exclusively out-of-state, no public report is required. However, the subdivider must file the same questionnaire and furnish the same documentation as he would ordinarily be required to furnish if a public report was to be issued.

If the subdivision is a land project, all provisions of law relative to land projects must be followed, including the 14-day rescission right.

All such filings will be processed by the Subdivisions Technical Section (Sacramento).

Pursuant to AG Opinion 65/314, we will enforce this policy by Desist and Refrain Orders if the subdivider fails to comply.

DEFINITION AND EXAMPLE OF DIVISION FOR FINANCING:

One single parcel of land is owned by an individual. A prospective purchaser agrees to purchase the property but in the agreement divides the parcel by legal description into five or more parcels. A precise dollar value is placed on each parcel described. The purchaser further agrees to give back five or more separate promissory notes secured by five or more deeds of trust on the respective parcels as described. This would constitute a subdivision under Section 11000. It is a division of land for the purpose of financing.

The Department of Real Estate (DRE) would then require from the grantor a statement setting forth the following:

Name of grantor.

Location of property.

Acreage of property.

Number of separate notes created and a description of the land securing each of the notes.

Upon receipt of this information DRE should notify the grantor that the notes constitute real property securities and that a permit must be obtained from the DRE to sell these notes to the public. DRE will also put the grantee on notice that if it is grantee's intention to sell the parcels as described in the deed to him, he is required to comply with Section 11010. (See Section 10237.1 for definition of real property security.)

MINERAL, OIL, AND GAS SUBDIVISIONS

Early History

Between 1933 and 1943 over 500 MOG subdivisions were filed with the DRE, mostly on California Lands. No filings have been accepted or reports written by the DRE since 1943.

MOG Applications

The questionnaire and application for in-state filings is RE 652. Out-of-state filings will be made on RE 632. All such filings will be received and processed by the Subdivisions Technical Section in Sacramento.

As in all subdivision offerings, there must be a showing that the subdivision interests can be used for the purpose for which they are offered. Of critical importance to an MOG subdivision is evidence of the existence of minerals, oil or gas in the area and/or evidence of actual production. A geological report on the subdivision is crucial, as are the professional qualifications of the geologist making the report.

Oil Royalties

A landowner's royalty is an interest in the production from the land retained by the landowner when he/she executes a lease. Overriding royalties are interests over and above the landowner's royalty. Such royalties, or fractional interests in them, may be offered for sale. These royalties are considered securities subject to the jurisdiction of the Corporations Commissioner and are not processed as subdivisions.

MOG Surface Entry Rights

It is highly unusual to find mineral, oil and gas reservations coupled with a right of surface entry. This situation has arisen, however, from time to time.

If the subdivision is a residential offering, we should try to obtain one of the following for both residential and common area lots:

evidence local zoning prohibits surface entry; or,

title company endorsement (C.T.L.A. 122) that would insure against such entry.

One or the other of the above would be sufficient and certainly better than just noting it in the public report.

The worksheets for standard and common interest filings include a note to be in the public report if mineral, oil and gas rights include surface entry rights.

This "warning" note concerning surface entry does not have to be included in the public report if we have received a letter from the city or county stating local zoning prohibits surface entry for the subdivision.

TIME SHARE OFFERINGS AND STOCK COOPERATIVE PROJECTS

Time shares

See the DRE Time Share Manual. For information pertaining to any time share project, contact the Subdivisions Technical Section in Sacramento.

Stock cooperative projects - requirement for contract between cooperative corporation and seller - issuance of public report to purchasing cooperative corporation.

A preliminary or final subdivision public report will be issued to the cooperative corporation alone or the authorized agent or sponsor of the cooperative corporation. The basis for issuing to the cooperative corporation would be that the cooperative corporation had an enforceable purchase contract or recorded option (usually conditional upon meeting a presale goal of a certain amount of subscribers) with the owner/seller. The cooperative corporation must also apply for the public report with the knowledge and written authorization of the seller or master lessor of the project.

The application for the public report may be accepted from the owner/seller/lessor of the project but the format of the application must specify that the owner/seller/lessor is making the application on behalf of the cooperative corporation which will issue the memberships and the instruments establishing appurtenant rights of exclusive occupancy to residential units.

Prior to processing the application, the applicant must furnish a detailed statement as to the proposed method of financing the sales or leases of subdivision interests to purchasers or lessees and provide copies of all instruments to be issued to or entered into with purchasers of subdivision interests including financing instruments showing the percentage of down payment required and terms of the financing. If there are existing encumbrances on the project, the developer must describe how this will be handled [see Regulation 2792.14 and Section 11018.5(c)] and a cash flow description of how purchasers' money will be distributed. All sample documents including trust deed, note, escrow instructions, purchase agreement and membership agreement must be submitted with information consistent with the developer's written plan.

In any event, prior to issuance of a preliminary or conditional final or final public report, DRE must be assured that there is an enforceable contract or option agreement between the seller of the project and the cooperative corporation. In most cases, we require the option (or memorandum of option) be recorded.

LEASES THE ISSUE OF REMAINDER

Leases

Section 11000 defines a subdivision to include divisions for the purpose of sale or lease or financing. It has always been DRE's interpretation that the leases offered must be for a term in excess of one year in order to bring the offering under the Subdivided Lands Law. This has long been DRE's policy in regard to single family dwellings, condominiums, etc. Note that leases of apartments in an apartment building do not constitute a subdivision under Section 11000 unless the offering is in a community apartment project.

Lease with option to purchase

This interpretation is applicable only to a straight lease, not to a lease with an option to purchase. We consider an offering of five or more lots, parcels or units of real property under a lease of any duration, with an option to purchase, to be subject to the Subdivided Lands Law unless otherwise expressly exempted under some provision of the law.

Leases in mobilehome parks.

Offerings of leases of real property in a mobilehome park that are subject to the provisions of the Subdivided Lands Law are those with a term of longer than five years, offered as a mandatory requirement and prerequisite to tenancy.

The issue of remainder

Four or fewer parcels of less than 160 acres each are proposed to be offered for sale or lease and the remainder of the property is offered for sale or lease only as 160-acre or larger parcels by government survey description. No filing/public report is required.

However, if there is an intention on the part of the owner to sell any portion of the remainder of the property as one or more parcels of less than 160 acres or by other than a government survey description (regardless of the size of the parcel) and the proposed division will result in the sale or lease or offer to sell or lease parcels, any five or more of which are either (1) less than 160 acres each, or (2) more than 160 acres each, but described other than by government survey, the owner must obtain a subdivision public report before offering any portion of the property for sale or lease.

**COMMUNITY APARTMENT/STOCK COOPERATIVE - ESTABLISHMENT; WINDMILL FARMS;
BOAT SLIP MARINAS; PARKING LOT CONDOMINIUMS*****Community apartment/stock cooperative - establishment***

In the case of Alder v. Elphick, the appellate court held that in order to establish a valid community apartment project the right to exclusive occupancy must be specified in the deed granting the purchaser an undivided interest in the underlying land. Presumably this same principal would apply to a stock cooperative except that the right to exclusive occupancy would have to appear in the lease or conveying instrument. Deputies should be aware of this requirement when reviewing both community apartment projects and stock cooperatives.

Windmill farms

A so-called windmill farm consists of wind energy conversion machinery, known as a wind plant, and generally the sublease of a small parcel of real property by the seller of the wind plant.

The question of whether or not a subdivision public report is necessary for the offering of windmill farm interests depends upon the zoning of the property. If zoned "agricultural", the exemption from the Subdivided Lands Law (Section 11010.3) would not be applicable.

While the subleasing of these small parcels is certainly not a classic subdivision offering, the division of a leasehold interest into five or more subleasehold interests falls within the definition of subdivision in Section 11000. The only exemption that could apply is in Section 11010.3: the sale or lease of expressly zoned industrial subdivisions which are limited in use to industrial purposes and expressly zoned commercial subdivisions which are limited in use to commercial purposes.

Boat slip marina subdivisions

DRE will issue public reports on such projects if they are part of an offering that includes property that could be used for residential purposes. All others of this type will be considered outside our jurisdiction.

Parking lot condominiums

If a condominium is constructed and restricted to such storage purposes, DRE will waive jurisdiction.

AGRICULTURAL OFFERINGS; WILLIAMSON ACT

Subdividers offering lots or parcels for agricultural use may be required to submit evidence from professional agriculturalists such as County Agricultural Agents, Professors of Agriculture from California State Universities and others. The evidence must relate to the use for which the property is offered.

In addition to evidence that the land is suitable to raise certain crops or trees, if the property is offered for commercial/agricultural use (purchasers should profit from farming the land) the subdivider must submit a feasibility report concerning costs and expenses of raising and harvesting the crops, the market for such crops and probability of profits. The feasibility report must be prepared by a qualified person or organization that is a disinterested party to the sale of the subdivision parcels.

In those cases where such property is being offered for investment use and purchasers enter into an investment contract, the offering must be qualified with the Department of Corporations and the Securities and Exchange Commission. If these agencies have approved the property for investment purposes, then a copy of the final prospectus or report may be all that DRE will need as evidence that the land may be used for commercial/agricultural purposes.

If the offering is for residential/agricultural where the primary use is residential and agriculture is only secondary, we do not need a feasibility report. Such an offering may be a "hobby farm or ranch" with no reasonable expectation of profit from raising any crops or livestock.

The offering may be land that is zoned as agricultural but only offered as "acreage" or "raw land" and not advertised as being usable for raising crops. In this case subdividers would not be required to submit any evidence that the land is suitable for crops.

Williamson Act

On occasion, an application for a public report will be made on all or part of land which is or was subject to restricted use for agricultural purposes under a Williamson Act contract. On occasion, local governments will permit a "compatible use" division of Williamson Act contract land into large parcels which can be used for combined residential and agricultural purposes. DRE's only concern is to ensure that local government has permitted the division as being compatible with the restricted use permitted under a Williamson Act contract. Once we confirm such a compatible use, the matter will be noted in our public report.

If the proposed "compatible use" cannot be confirmed, we will hold up issuance of a public report until the matter is resolved, since the subdivider must be able to show that the land can be used for the stated purpose.

EXEMPT SUBDIVISIONS

Subdivisions exempt from the public report requirement are:

standard subdivisions of less than five lots;

condominiums, stock cooperatives, limited equity housing cooperatives, community apartments, and related conversions of less than five units;

planned developments consisting of four residential lots and one common area lot, and *condominium projects* consisting of four units and one separate common area lot (only four interests to be sold);

commercial and industrial subdivisions expressly zoned for those purposes; (Section 11010.3) [If the subdivision contains some commercial units and there are restrictive covenants which prohibit residential use and the covenant is irrevocable by the owners, then the commercial units would be exempt and a public report covering those units would not be required. Otherwise, the commercial lots, not being in an expressly zoned commercial subdivision, should be treated the same as the other lots in the subdivision for application and public report purposes. They should be included in the application, be subject to lot fees, and be included in the public report.]

standard subdivisions within the city limits with completed residential structures and with all other improvements necessary to occupancy or with financial arrangements determined to be adequate by the city to assure completion of such improvements; (Section 11010.4) [However, if the owner, subdivider, or agent chooses to use a method of purchase money handling other than a neutral escrow depository as set forth in Section 11013.2(a) or 11013.4(a), DRE's express written approval is required before offering any interest for sale or lease. See RE 600, 600-A, 600-B. **Further, DRE will accept** a filing on a subdivision that would be exempt under Section 11010.4 provided the developer insists that we accept the filing and fee and states in writing that the filing is made voluntarily and not as a requirement of law or DRE.]

subdivisions developed and offered to the public by public agencies, per Section 11010.6.

OFFERINGS EXEMPT FROM TREATMENT AS A SUBDIVISION

Refer to Sections 11000, and 11004.6 (Time Shares). The following will also apply:

Division of Remaining Portion of Subdivider's Land

Where a person has subdivided a portion of his land and has obtained a public report, no new subdivision is created and no new or amended report is required when he sells or leases the remaining portion in less than five lots. However, if it appears that at the time of the subdivision of the first portion the person had the intent to also subdivide and sell the remaining portion, the sale or lease of the remaining portion would be part of the original subdivision and an amended public report or, if the original report had expired, a public report covering the remaining portion alone would be required.

Purchase Money Deed of Trust with Release Clauses

A blanket purchase money deed of trust with release clauses does not fall within the purview of Section 11000 as "subdivision for financing". No filing is required under Section 11010.1.

Purchase of five or more lots

Such a purchase does not necessarily create a subdivision. The location of the lots to one another must be considered. After inspection, the Commissioner will make the determination. (See Regulation 2803.)

TYPES OF PUBLIC REPORTS

Preliminary Public Report

(See instructions on RE Form 603.) A preliminary public report will be issued after receipt of the completed RE Forms 603-A and 603-B and the typed report (See RE Forms 603-C and 603-D). RE Form 603-A specifies the minimum documents required for issuance of a preliminary public report.

All reservation deposits must be impounded in a neutral escrow depository. There are no exceptions. See Regulation 2795(b)(3)(C) concerning interest-bearing accounts. See also RE Forms 612 and 612A. (Bonds cannot be used as an alternative to impounding due to a requirement for immediate refund of a reservation deposit if requested by a party to the reservation agreement.)

Conditional Final Public Report

A conditional public report may be issued if the requirements of Section 11018.12 are met. A request for a conditional public report may be made on RE 624, 628 or 635 along with the request for a final or amended/renewed public report. If the applicant has a pending 624, 628 or 635 application, a conditional may be requested by letter submitted along with the fee and supporting documents. Requests for renewal or amendment of conditional reports should be made on RE 635. Refer to RE 605 for the filing fee.

Conditional reports allow the subdivider to enter into binding contracts and open escrows. No escrow can close, funds released and title conveyed until a final public report has been issued. The term of the conditional report shall not exceed six months and may be renewed for one additional six-month term if the Department determines that the requirements for issuance of a final public report are likely to be satisfied during the renewal term.

The conditional public report will not be issued unless the applicant submits information and documents establishing the material elements of the setup of the offering to be made under authority of the conditional public report which include:

1. A statement designating any requirements, inadequacies or deficiencies in the application which the applicant expects to remain uncorrected when the conditional public report is issued and setting forth the reasons why the applicant expects unsatisfied requirements or uncorrected inadequacies or deficiencies to remain when the conditional public report is issued.
2. An exemplar sales or lease agreement to be used in any transaction conducted under authority of the conditional public report which provides:
 - a. As a condition of the sale or lease that no escrow will close, funds will not be released from escrow and the interest contracted for will not be conveyed until a current final public report for the subdivision is furnished to the purchaser.
 - b. For the return of the entire sum of money paid or advanced by the purchaser (including amounts for options/upgrades) if the final public report for the subdivision has not been issued within six months of the date of the issuance of the conditional public report or the purchaser or lessee is dissatisfied with the final public report because of a change pursuant to Section 11012.
3. An exemplar of escrow instructions to be used in any transaction conducted under authority of the conditional public report which includes at least the following:
 - a. The name and address of the escrow depository.
 - b. A description of the nature of the transaction.
 - c. Provisions ensuring compliance with Section 11013.2(a).

- d. Provisions ensuring that no escrow will close, funds will not be released from escrow and the interest contracted for will not be conveyed until a current final public report is furnished to the purchaser or lessee.
4. Information and documents demonstrating that reasonable arrangements have been made to assure completion of the subdivision and all off site improvements included in the offering.
5. Information and documents demonstrating that the applicant has complied with Section 11018.5(a)(2) for the subdivision.

A conditional public report will not be issued until either one of the following conditions are met:

1. All deficiencies and substantive inadequacies in the documents which are required to make the application substantially complete have been corrected (except budget deficiencies that do not significantly impact the ability of the Department to determine that the budget is adequate — the deputy should discuss any budget deficiencies with the budget reviewer to determine budget impacts), the material elements of the setup of the offering have been established, and all requirements for issuance of a final public report set forth in the regulations have been satisfied except for one or more of the following requirements:
 - a. A final map has not been recorded.
 - b. CC&Rs have not been recorded.
 - c. A current preliminary report from a licensed title company issued after filing of the final map and recording of the CC&Rs covering all subdivision interests to be included in the final public report has not been provided.
 - d. A condominium plan has not been recorded.
 - e. A declaration of annexation has not been recorded.
 - f. A recorded subordination of existing liens to the CC&Rs or declaration of annexation, or escrow instructions to effect recordation prior to the first sale are lacking.
 - g. Filed articles of incorporation are lacking.
2. The public report application is qualitatively complete except for one or more uncorrected deficiencies or inadequacies or unsatisfied requirements which the Commissioner determines are likely to be corrected or satisfied during the term of the conditional public report.

Written notice of the decision to deny issuance of a conditional public report will be mailed to the applicant within five business days after the Department determines that the application for the final public report is complete except for those items designated by the applicant that will remain uncorrected or unsatisfied under a conditional public report.

If a project is subject to HUD/OCRA requirements as indicated by the applicant in the application and a conditional public report is being considered, it should be noted that HUD/OCRA has advised the Department that sales of a HUD/OCRA project under the authority of a conditional public report would be unlawful. Also, if a conditional public report is issued for such a project, it would be without the HUD/OCRA certification.

Interim Public Report

The interim public report is similar to a preliminary public report in that it permits the subdivider to take reservations prior to issuance of an amended or renewed public report. However, unlike the preliminary report, the interim report can be used only after a final public report has been issued.

Under the interim report process, reservation funds must be impounded in a neutral escrow depository pursuant to RE Forms 612 and 612A. As is the case with preliminary public reports, these instruments do not constitute binding contracts. The forms have been modified for use with either a preliminary or an interim public report.

The request for an interim public report is made on RE Form 635 in conjunction with a request for an amended or renewed public report. The filing fee for an interim public report must be submitted in addition to the normal amendment or renewal filing fee at the time the application is filed.

The interim report will consist of one page (RE 618J), which is to be attached to the front of the last public report issued for the project. The Interim public report will show an expiration date of one year from the date of issuance. The interim report will be prepared by the Subdivision Section's Central Control Unit.

Limited Term Public Report (subdivider as optionee)

DRE may issue a preliminary, interim, final or amended public report reflecting the subdivider as an optionee, provided we have:

1. Compliance with the same code sections and regulations required of any subdivider.
2. The subdivider's purchase agreement; or, acquisition escrow instructions; or, a copy of the executed option agreement. It must be a bona fide option, not simply a letter of intent.
3. A preliminary title report reflecting the condition of title of the interests which are subject to the application for the public report. If an option agreement is used, the title report should show the optionee (subdivider) as having either:
 - taken title to at least one lot in the subdivision per the option agreement; or,
 - recorded the option agreement (or a memorandum of option).

Because an option is a blanket encumbrance, the subdivider must agree to comply with Section 11013.2 until the option is exercised and the interest bargained for is delivered to the purchaser.

To prevent the purchaser's funds from being tied up for an unreasonable length of time, some time limit (no later than the expiration of the time in which the subdivider has to acquire the lots/units) should be established in which the subdivider must acquire title to the lots/units which is subject to the purchase contract or return all money to the purchaser. Regardless of whether the subdivider has acquired title to the subject lots/units, all monies must be returned to the purchaser if escrow has not closed within a specified period of time, ordinarily not to exceed one year unless extended as mutually agreed upon by the parties.

The purchase contract and buyer's escrow instructions should include a provision that if the subdivider does not obtain title to the subject lots/units prior to the expiration of the option, or any extension thereof, all purchase money will be returned to the purchaser.

The public report for a "standard" offering will cover all of the lots/units covered by the application and option arrangements regardless of various deadline dates in which the subdivider must acquire title (rolling option).

The public report for a "common interest" offering will cover all of the lots/units which are 1) covered by the application, 2) included in the option arrangements, and 3) covered by a security posted in compliance with Regulation 2792.9 (applies to lots/units which are owned or optioned).

When a final public report is issued showing the subdivider as an optionee, a special note should be placed in the report under "Title" explaining the conditions under which the subdivider may acquire title. The

purchase money handling section will also require special wording to reflect that funds are to be returned to the purchaser if the option is not exercised within a specified time limit. The following is a sample note:

At the time of issuance of this public report, title to the lots/units is vested in _____. The subdivider has entered into an option agreement to purchase the lots/units covered by this public report. If the subdivider has not exercised the option within the term of the public report, you may request that your money be refunded.

The public report should have an expiration date of no later than the expiration of the option agreement (not to exceed five years). If the option agreement provides for various deadlines in which the subdivider must take title to the lots/units (rolling option), the public report expiration date will match the furthest date for acquisition of the lots/units to be covered by the report (refer to the above information regarding the conditions for public report coverage), but not to exceed five years. If the term of the public report will be less than 5 years (renewal) or less than the current expiration date (amendment), page 1 of the public report should identify the report as "Limited Term" above the type of offering (e.g. Standard).

If the subdivider takes title to some or all of the lots/units prior to the expiration date of the public report, it is not necessary to amend the public report unless other material changes have occurred.

If less than a full term public report was issued and the subdivider takes title to all of the lots/units prior to the option expiring, the public report will be extended for the balance of the five-year period (renewal) or the current expiration date (amendment) without a fee if DRE is notified in writing and evidence of title submitted. A no-fee amendment should be set up and the public report assigned a new Axx file number.

If the subdivider is not going to exercise the option and take title to all of the lots/units prior to the option's expiration, but is able to extend or renew the option for additional time, a renewed public report may be requested to extend the public report expiration date upon submittal of an amendment application, renewal fee and evidence of the extension. The renewed public report will be assigned a new Axx file number. In such a case, the purchasers whose funds have been held in escrow must be offered a full refund after they are furnished a copy of the renewed public report reflecting the extension of time for the subdivider to exercise the option.

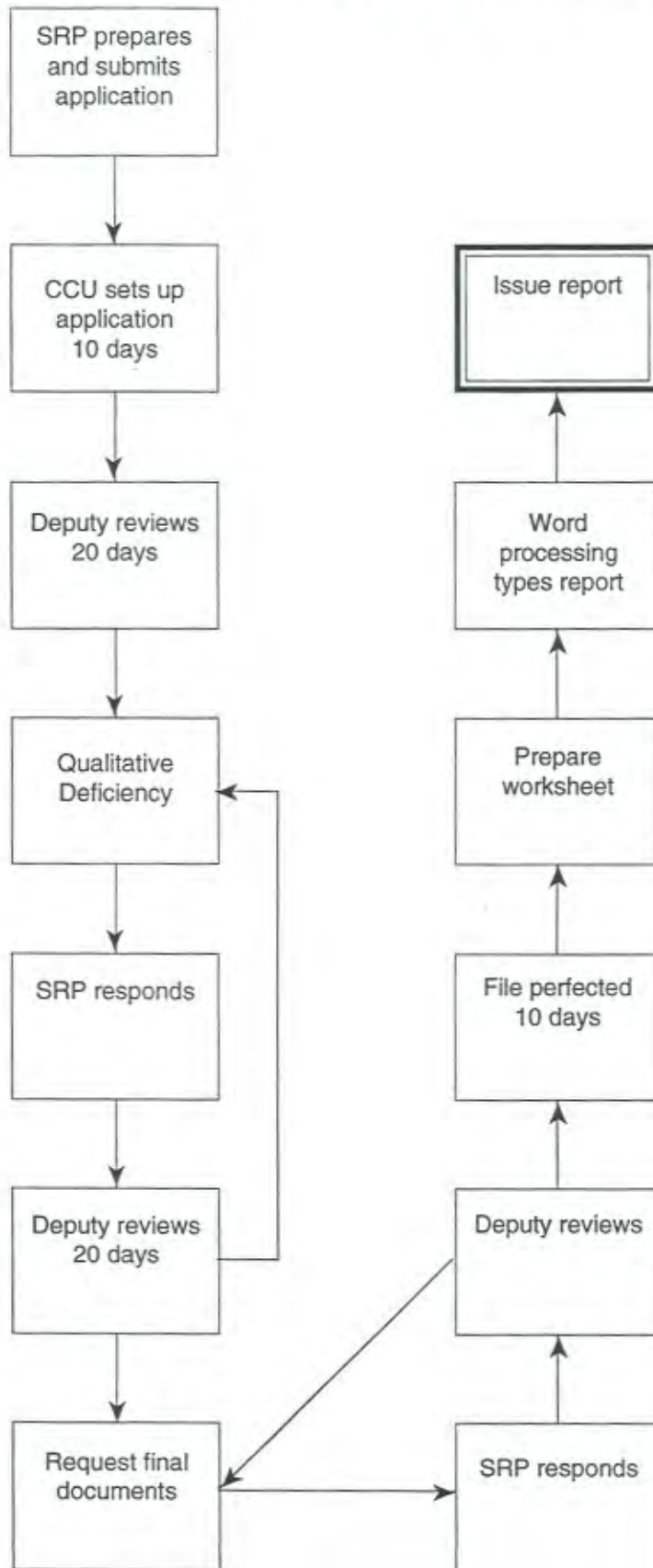
DRE may issue a preliminary public report to the optionee on a subdivision which had previously qualified for a final public report when the optionee cannot meet all conditions for the issuance of a final public report. The term of the preliminary public report will be one year regardless of the expiration date of the option.

PREPARATION, TYPING OF PUBLIC REPORTS/PERMITS BY SUBDIVIDERS AND THEIR REPRESENTATIVES

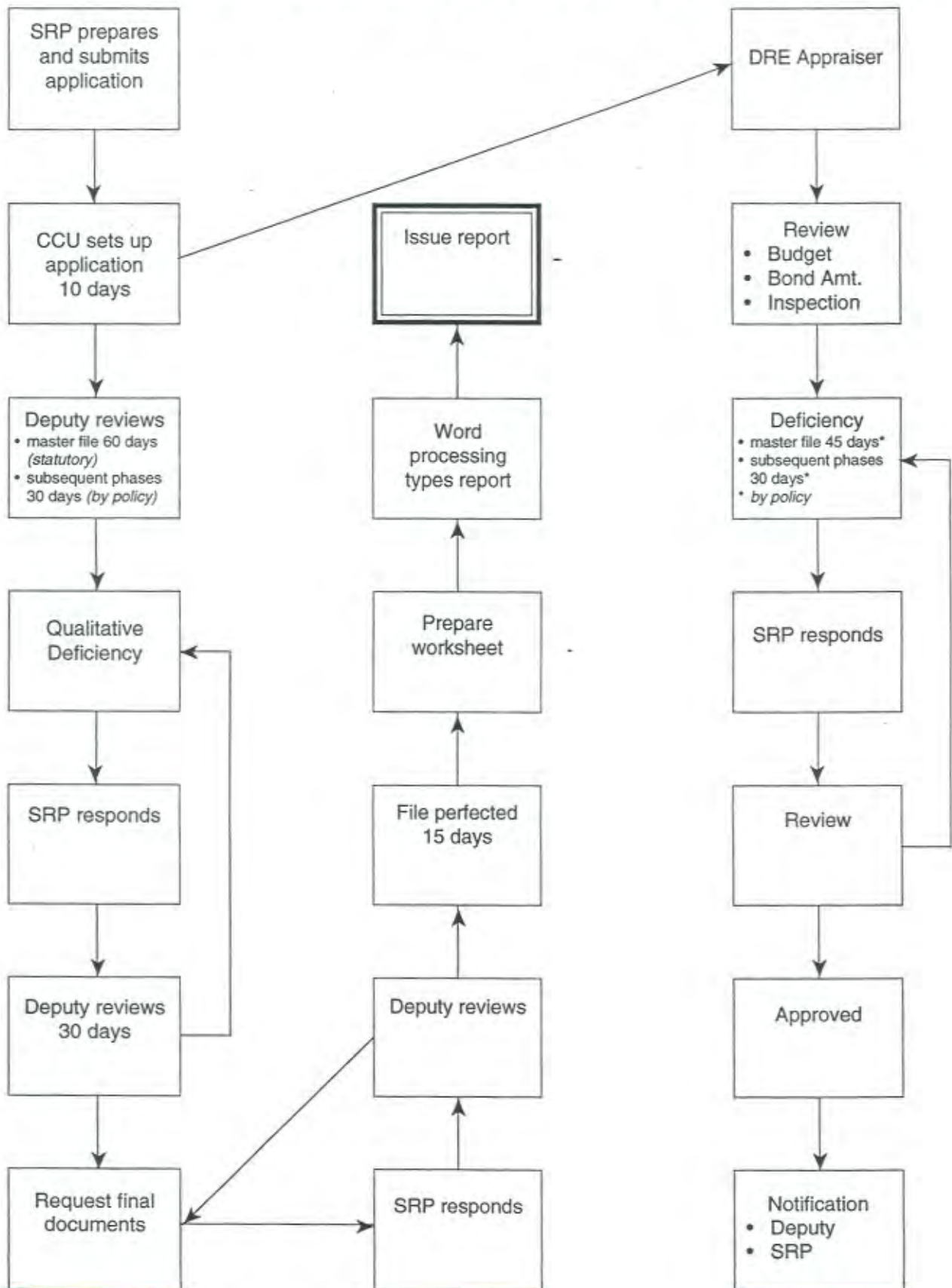
To assist in the expeditious processing of public reports (and permits on out-of-state projects), DRE may allow those who have demonstrated proper expertise to type a sample report/permit and submit it to DRE for review by the deputy to whom the file is assigned. This is a privilege that may be revoked by at any time without cause if the Managing Deputy Commissioner in charge of the section believes it to be in the best interest of the public, DRE, or the subdivider.

Deputies must review such documents very carefully for accuracy and full disclosure before accepting them and actually issuing the report/permit by having an effective date (and amendment date, if applicable) and expiration date placed on the report/permit. Under no circumstances will the subdividers or their representatives be allowed to place these effective dates on the sample public reports/permits they submit. If such documents are dated when received, notify the subdivider or SRP in writing that the report is rejected and that if any sales had been made on or subsequent to the date on the report/permit, those sales were illegal. The subdivider should then be requested to rescind the transactions and refund all purchase monies taken prior to the actual date of issuance of the public report/permit. (See RE 635A for the exception.)

STANDARD FILING PROCESSING TIME FRAMES



COMMON INTEREST FILING PROCESSING TIME FRAMES



Subdivision Manual



FEES, FORMS, ETC.

Sections 0100 - 0199

FILING FEES

The basic filing fee for a common interest development is \$1700 and a standard is \$600. In addition to the basic charge, a \$10 per lot or per interest fee must accompany the application. The maximum filing fee for common interest (\$7,600) and standard (\$4,100) developments applies to each application for a public report or permit.

If an application is made to amend a public report or permit which proposes to include additional subdivision interests (not part of the original public report/permit) a \$10 per lot or per interest fee must accompany the amendment fee and application, notwithstanding the fact that the maximum fee was paid when the original application was filed. The foregoing applies only to those situations in which the amendment procedure is valid and a new original filing is not required.

Government Code Sections 13142 and 13143 govern the refund or denial of refund of fees. As a general rule, Section 13142 does not authorize a refund after the state agency has made an examination, inspection or filing. Section 13143 authorizes refunds due to errors. Check these code sections when in doubt.

Section 11011(d) states in effect that all subdivision fees are deemed earned upon receipt. No part of any fee is refundable unless the Commissioner determines it was paid as the result of a mistake or inadvertence.

Application for change of document under Section 11018.7. Filing fee is \$20.00.

Out-of-state subdivisions. See RE 605.

Mineral, oil and gas subdivisions. Filing fee is \$150.00.

Conditional public reports. See Section 11011 (b)(4)&(5).

Fees for Phased and Multiple Map Filings

When a subdivider files a questionnaire and requests a subdivision public report based on an approved master plan map proposed to be developed via various maps, charge basic filing fee and lot fee for each tract map or phase upon which an application for a final public report is made.

Example: If a separate map and condominium plan cover a single phase of the development and the application is for a final public report on a single phase, charge a basic filing fee and the unit fees. Requests for final public reports on subsequent maps or phases must be accompanied by a basic filing fee for each public report, lot fees, and a new application.

Special Situations

In the case where one condominium plan covers two (or more) separate lots whether on one or two (or more) recorded maps, charge fees as follows:

Developer applies for one public report: e.g., two 12-unit phases in overall development of 24 units. Charge one basic filing fee plus the fee for 24 units.

Developer applies for two public reports: e.g., two 12-unit phases in overall development of 24 units. Charge separate basic filing fees for each phase plus the fee for 12 units in each phase. Set up two files.

In the case where two condominium plans cover two separate lots, whether on one or two recorded maps, charge fees as follows:

Developer applies for one public report. Since the Department will issue only one public report covering both condominium plans on, for example, one 24-unit project, we will charge only one basic filing fee plus the unit fees for the 24 units. (Applications for separate public reports would, of course, involve a separate filing and fee for each project.)

Overall preliminary public reports covering more than one map will still be issued when requested. A single preliminary report will be issued on the lots/units to be covered in the future by two or more final reports. We will issue a "short-form" overall preliminary report. Charge the basic filing fee for the initial filing and lot/unit fees for the total overall development. Charge a full basic filing fee for each subsequent filing on the additional phases.

Fees for Phased One Map Developments

Each tract map can ordinarily be divided into "phases". DRE is entitled to charge subdivision filing fees based on the number of final public reports to be issued in the development.

EXAMPLE: A 100-lot, one-map, planned development is to include two 50-lot phases. Charge the basic fee and lot fees for each 50-lot phase for which a final public report is to be issued.

Although discouraged and difficult to process, we can occasionally qualify a single-lot condominium project to be phased. In this case, all increments/sub-phases of one-lot condominiums shall require an original notice of intention, questionnaire and the appropriate filing fee. We will then issue a final report for each of the phases. A separate application (RE 624) is to be used for each such phase. However, most of the documents may be used to establish a "master file" with the first phase.

To summarize, a separate final public report can be issued for each phase if requested. Also, one final report can cover several phases on a map. Only one map is usually involved in a final public report. If two (or more) maps are to be covered by one final public report, we charge one basic filing fee plus lot fees, if:

the same developer owns or controls the entire project;

governing instruments (if any) will be applicable to the entire project;

in the case of a common interest subdivision, assessments shall commence for all lots/units covered by the public report upon the sale of the first lot/unit.

Examples

The following examples illustrate how different structuring of maps and phases can cause a wide disparity in the filing fees to be charged.

Example 1: A single planned development tract of 3,000 lots. A single filing will be made on the entire tract and one final public report will be issued on the entire 3,000 lots.

The basic filing fee would be \$1,700 plus \$10 per lot. This would total \$31,700 unless we had established a \$7,600 maximum.

Example 2: A multiple-map planned development subdivision with one final map recorded covering 500 lots and with 5 tentative maps approved covering a total of 1,500 additional lots (300 lots in each of these 5 subdivisions for a total of 2,000 lots in the overall development).

The subdivider files for a final public report on the tract that has a recorded map. Subdivider asks for an overall preliminary public report on the 2,000 lots included on the 6 maps.

The Department would charge a basic filing fee of \$1,700 for the tract with the recorded map for which the subdivider is applying for a final public report, plus \$10 for each lot in the overall development. We are entitled to charge \$20,000 in lot fees. Total cost to the subdivider at this stage is \$21,700 plus \$500 for the overall preliminary public report. In the future, the subdivider may file for a final public report on each of the remaining 5 maps if he chooses, and pay a \$1,700 basic filing fee for each subdivision. By the time the subdivider has paid for final public reports on the 6 maps, he will have paid \$30,700 including lot fees and preliminary public report fee.

Example 3: The facts are the same as Example No. 2 above, but the subdivider will market the maps in two phases each. DRE will still charge the same lot fees and only \$500 for the overall preliminary public report, but we would receive twelve \$1,700 basic filing fees because the subdivider would be applying for a final public report on each phase. The subdivider's total cost for filing fees would be \$40,900, much more than the \$7,600 maximum for the single tract of 3,000 lots discussed in Example No. 1 above.

OTHER FEES AND CHARGES - CONFIDENTIAL DOCUMENTS

Subdividers, attorneys, purchasers and others may request to inspect documents or make copies of them. We must make available:

All documents in formal hearing files, including initial pleadings, proposed decision (after adoption or rejection) and all exhibits received in evidence or marked for identification.

All documents and records in subdivision files, except:

- Intra-office memoranda
- Inter-office memoranda
- Inter-agency communications
- Information from out-of-state subdividers relative to price and terms under which land was acquired.

All documents and records in real property securities permit files, except:

- Intra-office memoranda and reports
- Inter-office memoranda and reports
- Inter-agency reports
- Applicant background checks, rap sheets, arrest reports, etc.

Requests to inspect a large number of files or other volume requests which would interfere with or disrupt the normal work routine of a section or office should be cleared through the Managing Deputy Commissioner III.

If copies of the above records are requested, the following fees will be charged:

*Note: Requesters should be advised of **estimated** charges prior to fulfilling the request. (Use RE 356B.)*

1. Available Documents (no charge for 10 or less pages or a copy of the most recent public report)
 - Per page fee 10¢

Note: If the requester requires more than 50 pages, they should consider providing a copy service or be billed as provided by this policy.
2. Certified Photocopy
 - Per request \$5
3. Subpoenaed Documents
 - Per page fee 10¢
 - Per page fee (from microfilm) 20¢
 - Clerical costs \$16/hour
(minimum \$4 for 1/4 hour or fraction thereof)
 - Other actual costs
5. New Subdivisions Filings List \$25 per month

EXCEPTION: No charge to government agencies which request copies for official purposes. If amount of copying requested would adversely impact DRE operations, we will seek a mitigating arrangement (e.g., the requesting agency comes to DRE and makes the copies on our machine).

ABANDONED SUBDIVISION FILE - FEE - PROCEDURES

Abandoned subdivision files should be retained in the office for one year after abandonment and should be retained in the State Records Center for an additional five years.

The following will be used as criteria to establish that the fee will no longer be credited to the subdivider:

- a letter in the file from the subdivider or authorized agent indicating that they do not plan to complete the project;
- the time for extension of the tentative map under the provisions of the Subdivision Map Act has expired and we have not received a Notice of Extension of Time from the planning commission after a reasonable period has elapsed;
- a filing and fee are received on the same tract and property from a different developer and an assignment of fee to the new developer by the old developer has not been made.

Delay beyond subdivider's control

If we are advised by the subdivider that he is delayed by litigation or anticipates a delay due to a circumstance beyond his control (e.g. a sewer connection moratorium), the filing should not be abandoned.

Inactivating memo and exceptions

The memo inactivating a file should be signed by a Managing Deputy Commissioner and should set out the reason for inactivating the file. There are, of course, exceptions in the above procedure and the cancellation memo should then advise that the fee is to be credited otherwise. Exceptions could include the following:

The subdivider is required to file a new tract map for correction purposes and there is not a major change in set-up. (This occurred in Long Beach, where the size of houses required more ground area and streets were narrowed by three feet. No major change in set-up occurred which would require a new filing.)

A fee has been paid in connection with an overall tentative map and there will be several final maps with different tract numbers.

Regulation 2804. Abandoning Application for Public Report

The Commissioner may abandon an application for a final, conditional, amended, or renewed public report if:

- (1) The data required by Section 11010 has not been furnished within three (3) years from the date a Notice of Intention was filed; and
- (2) Six (6) months have elapsed since a Deficiency Notice has been issued and the deficiencies have not been corrected by the applicant; and
- (3) The term of any one-year extension of time in which to complete the application has elapsed.

Preliminary Public Report (Amendment of Regulation 2804 to include preliminary public report applications is pending.)

A preliminary public report application may be abandoned if:

Pending Application

- (1) The data required by the preliminary public report applications (RE 603 and RE 601) has not been furnished within three (3) years from the date the application was filed; and
- (2) Six (6) months have elapsed since a Deficiency Notice has been issued and the deficiencies have not been corrected by the applicant; and

(3) The term of any one-year extension of time in which to complete the application has elapsed.

OR

Preliminary Public Report Expired

Three (3) years have elapsed since expiration of the preliminary public report and no final public report application has been filed.

Procedure for Abandonment

Ninety (90) days prior to abandoning an application, the "First Notice of Abandonment" section of RE Form 667 should be completed and the form mailed to applicant and applicant's designated representative.

If no response is received within sixty (60) days after mailing the RE Form 667, the "Second Notice of Abandonment" section of a new RE Form 667 should be completed and the form mailed to both parties to notify them that the application will be abandoned in thirty (30) days.

Mail RE Form 667-B to applicant and a copy to the applicant's designated representative after file has been abandoned.

The Commissioner may grant a one-year extension in order to allow the applicant to complete the application if the petition is received prior to the expiration of the thirty (30) day notice period. The petition must set forth reasons of hardship or justifiable extenuating circumstances explaining why the file has been inactive. Written notice of the decision to grant or deny the petition will be sent to the applicant and the applicant's designated representative within thirty (30) calendar days after receipt of the petition. The Commissioner may grant one or more one-year extensions, provided that the application has not been abandoned.

When a file has been abandoned, the fee will be regarded as earned. If the developer wishes to reactivate the file, he should be advised to submit a new application, supporting documentation, and a new filing fee.

APPLICATION FORMS (QUESTIONNAIRES)

Notice of Intention (RE 627 and 627-A) - refer to Section 11010.

Notice of Intention and Statement by Purchaser of Five or More Lots or Units. (RE 635). Sent to such purchasers after DRE receives notice of such purchase by the subdivider.

Standard Subdivision Questionnaire (RE 628). Use for all standard subdivisions. Not acceptable for community apartment projects, condominiums, planned developments, stock cooperatives, limited equity housing cooperatives (LEHCs) or out-of-state subdivisions.

Common Interest Subdivision Questionnaire. (Condominiums, Community Apartment Projects, Planned Development) (RE 624). Not acceptable for standard subdivisions, stock cooperatives, LEHC or out-of-state subdivisions.

Stock Cooperative Questionnaire (RE 658). Use for stock cooperatives and LEHC only.

Out-of-State Subdivision Questionnaire (RE 626) and *Out-of-State Accessible Urban Subdivision Questionnaire* (RE 626E). The applicant should be directed to forward the completed questionnaire and filing fee to the Subdivisions Technical Section.

Mineral, Oil and Gas Questionnaire (RE 652). Refer to the mineral, oil and gas section of this operating manual before advising subdivider or accepting filing. Completed questionnaire and fee may be filed with any DRE office. However, advise subdivider that the filing will be forwarded to the Subdivisions Technical Section for processing

Notice of Intention to Sell Undivided Interests (RE 676). Refer to Section 11000.1 and Regulation 2792.1. The completed form and fee may be filed with any DRE office. However, advise subdivider that the filing will be forwarded to the Subdivisions Technical Section for processing.

Time Share Questionnaires. RE 668, 668-A and 668-C (out-of-state projects). Processed by the Subdivisions Technical Section.

Applications for changes of documentation under Section 11018.7 (RE 633).

Refer to the most recent subdivision forms list for a complete and up to date listing of applications and application instructions.

RE 627A-To be used for qualified community apartment or stock cooperative projects converting to condominiums. This form may also be used in cases where the conversion project will be a planned development.

Form 657-To be used for all Master Planned Community filings. This form is primarily intended to permit DRE to review and approve master governing instruments affecting the entire development prior to the sale of parcels to merchant builders. The Subdivisions Compliance Manager will review documents and issue a "no public report" letter. A "no public report" letter will be issued by the Assistant Commissioner, Subdivisions, or his designee, when the applicant informs us that no fewer than five subdivision interests (bulk sales) will be sold to any merchant builder.

All perfected Notice of Intention files are to be forwarded to the Assistant Commissioner, Subdivisions with a transmittal summarizing the offering and including appropriate recommendations.

***Waiver of Submission of a Completed Questionnaire Per Section 11010(c).* (RE 627, 627A and 657)**

RE 627-This general notice of intention form is to be used when the particular circumstances justify a waiver of the filing of a full questionnaire, but a "short form" public report is to be issued. The following examples are merely illustrative of use of this form and should not be construed as all encompassing:

A landowner has divided his land and sold four parcels and now desires to sell his remaining holdings.

A Farmers Home Administration Project filing made pursuant to Section 2790.4 of the Commissioner's Regulations.

There may be other circumstances which, in the judgment of the reviewing deputy and his/her manager, suggest that issuance of a "short form" public report will adequately protect prospective purchasers or lessees.

MASTER FILES FOR PHASED FILINGS

Master filings on subdivisions that will have two or more phases to be filed separately will be acceptable.

Purpose

This means that some of the documents submitted with the application for the public report on the first phase (or tract) may also be applicable to the next phase. If so, then it would not be necessary to submit another similar or duplicate document when the subdivider submits his application for a public report on the next phase.

Must be requested with first phase

To take advantage of the master filing procedure, the subdivider or his representative must request it at the time of the filing on the first phase. He should at that time submit the master documents that would apply to all subsequent phases of the development. The subdivider must specify which documents will apply to all phases.

Suitable documents

In most cases the following documents would be suitable for a master file:

- Certificate of Qualification, Consent to Service (RE 608) for out-of-state subdividers
- RE 612 and RE 612A (Reservation Deposit Handling Agreement)
- Advertising and promotional materials
- Leases affecting title
- Coastal Zone Permit or exemption
- Uses, zoning, hazards, airports, nuclear power plants
- Fire service letter
- *Health Department letter for individual sewer systems
- Soils, filled ground and geological information
- *Department of Corporations Mutual Water Company Permit to issue shares
- P.U.C. approval for a public utility water company
- *Water supplier letter
- *Well drillers estimate and Health Department letter
- *Utility services (gas, electric, telephone)
- Financial arrangements for off-site improvements
- Flood report
- Taxes, special districts and special assessment districts
- Street construction and maintenance
- Real property sales contracts
- Evidence of compliance with CEQA
- Sample grant deed
- Sample leases
- Tract map
- Plot plan
- Vicinity map
- Sales program agreement with HOA
- RE 648, 616B, 616C
- Articles of Incorporation/Association and Bylaws
- Existing and proposed CC&Rs
- Authorization to sign documents.

*These master documents are normally good for one year only.

There are cases when for one reason or another some of these documents could not be made applicable to all of the phases of the overall development. At the time of submission, this should be determined and the subdivider notified so we can prevent misunderstandings when future phases are filed. (See also SPRAG and Page 1 of Part II of RE 624.)

NON-RESIDENT SUBDIVIDER - ADDITIONAL REQUIREMENTS

If the applicant is a non-California resident, RE 608 is the agreement to allow the California Secretary of State to take legal action (make service of process), if necessary. The purpose of the form is to prevent non-residents from taking refuge from California justice by virtue of their non-resident status. If RE Form 608 is executed out-of-state, it must be notarized.

Non-resident corporations must submit a Certificate of Qualification in addition to RE 608B. The Certificate of Qualification must bear the Secretary of State's Seal.

The Consent To Service Of Process forms are:

- RE 608 - Individual
- RE 608A - Partnership
- RE 608B - Corporation
- RE 608C - Out-of-State Trustee

Subdivision Manual



TITLE

Sections 0200 - 0299

TITLE

The procedures detailed below apply to all types of subdivision filings.

Evidence of title required

A preliminary title report signed by an authorized employee of the title company, title insurance policy or other similar evidence of title is required for preliminary and final subdivision public reports. For final public report, evidence of title must bear date subsequent to the date of recordation of the map.

Current information

Title information must be "current"; i.e., brought to a date within ninety (90) days of the submission of the final document necessary to complete the filing. Title information previously filed by the subdivider may be brought current by a title letter signed by a title officer.

True party in interest

The subdivision report will be issued in the name of the true party in interest (owner of beneficial interest) even though title may be in the name of a trustee under an irrevocable trust agreement. Facts concerning title being held in trust and name of trustee may be set forth in body of public report in "Title" paragraph. If title evidence submitted does not show title in the subdivider, one of the following must be submitted:

a new preliminary report or title letter showing title vested in the subdivider;

a notarized statement or statements signed by all those in title who did not sign the subdivision questionnaire, joining in the filing and agreeing to be bound by the representations made therein;

if title is in trust or in a holding agreement, a copy of the trust or holding agreement. (Analyze the agreement to ascertain that the subdivider has the beneficial interest in the land to be subdivided.)

Statement regarding condition of title

Under Section 11010(b)(4), the subdivider must file "a true statement of the condition of the title to the land, particularly including all encumbrances thereon". The following form of note in preliminary reports will satisfy this requirement:

Note 1: No known matters otherwise appropriate to be shown have been deleted from this report, which is not a policy of title insurance, but a report to facilitate the issuance of a policy of title insurance.

For purposes of policy issuance, items _____ may be eliminated on the basis of an indemnity agreement or other agreement satisfactory to the company as insurer.

DRE will accept preliminary reports with this note, with the expectation and understanding that such reports are a true statement of the condition of title to the land, including all encumbrances thereon. Preliminary reports which do not contain this note will be rejected.

Encumbrances

DRE is also concerned with those preliminary reports which contain a list of items constituting blanket encumbrances which may be eliminated on the basis of indemnity agreements or other agreements.

Title insurance companies sometimes include a statement in the preliminary report such as:

Items _____ may (or will) be eliminated on the basis of an indemnity agreement or other agreement satisfactory to the company as insurer.

Such statements, when included in preliminary reports, indicate that the company may (or will) "insure around" such encumbrances and title policies will be issued before the blanket encumbrances are either paid or releases have been obtained for the sold lots/units. However, the purpose of Sections 11013.1 and 11013.2 is to guarantee that each purchaser of a subdivision interest will receive the interest free and clear of any blanket encumbrance. It is the responsibility of the Department to determine that this will be done.

Compliance with Section 11013.2

In order that we can be assured that we have compliance with Section 11013.2, we must be sure releases from blanket encumbrances are effective before the escrows are closed. We will therefore require that the following clause be included in escrow instructions to be used in all subdivisions:

This escrow shall not close, funds shall not be released and title shall not be conveyed to purchaser until all of the following conditions have been met:

The lot/unit has been released from any and all blanket encumbrances, as defined by Section 11013 of the Business and Professions Code, or the purchaser has been provided with a policy of title insurance insuring the purchaser against loss by reason of such blanket encumbrances as appeared in the preliminary report issued by _____ dated _____ which has been filed with the DRE by seller in connection with the application for a subdivision final public report on the subject property.

The statutory period for recordation of all mechanics lien claims against the lot or unit has expired, or the purchaser has been provided a policy of title insurance with an endorsement insuring against mechanics liens.

Accordingly, it will be necessary that the company handling the escrow have a copy of a preliminary report that is identical to the report furnished to DRE.

It would not be necessary to use the above procedure and identical escrow instructions if the preliminary report contains the standardized "Note 1" above with a second paragraph that states:

For purposes of policy issuance, no items may be eliminated on the basis of an indemnity agreement or other agreement satisfactory to the company as insurer.

Subdivision Manual



PHYSICAL ASPECTS

Sections 0300 - 0399

HAZARDS AFFECTING VALUE AND USE

If the subdivider has answered "no" to the question concerning the existence of hazardous conditions near the subdivision, that response may be accepted in the absence of authoritative information establishing that there is a hazard affecting the project. The determination that a use or condition poses a risk to health or property sufficient to constitute a hazard may stigmatize a project and adversely affect its value. The Department's employees are not ordinarily qualified to decide whether a use or condition constitutes a hazard. Such a conclusion should usually be based on an authoritative determination by a qualified public officer, by a declaration of legislative or executive policy, or the like. For example, the fact that significant quantities of toxic materials are used in a nearby integrated circuit factory would ordinarily be a "use" to be disclosed, and not a "hazard" absent a determination by local, state or federal authorities that the use is "hazardous". Unless local or state health officers determine that the condition is "hazardous", the fact a project is within the vector radius of mosquitos breeding in a nearby waterfowl refuge would be a "use" to be disclosed, even though there may be substantial scientific opinion that the mosquitos pose a risk to health, and that a residential project is incompatible with a neighboring waterfowl refuge. On the other hand, we now know that mineral conditions in the water supply which produced "blue water" could be hazardous. We should refer to such a condition as a "hazard" any time it occurs, unless it has been shown that the condition poses no significant risk.

Airports (Refer to RE Form 602 or RE Form 660)

When information is received from inspecting appraisers or Deputy Commissioners regarding airports that are part of the offering, the Division of Aeronautics should be contacted to determine if the airport will be operated legally.

Where an airport is part of the offering, the report should not be issued until we receive clearance from the Division of Aeronautics, Department of Transportation.

Appropriate information concerning the airport and other hazards (as shown in RE Form 602 should be placed in the public report).

Toxic Waste

DRE is very concerned that public reports adequately disclose the existence of "hazards" near subdivision projects. Of special concern is the proliferation of toxic and/or solid waste dumps being discovered near subdivision lands.

All subdivision filings in which the subdivider has answered "yes" to the question concerning the existence of hazardous conditions near the subdivision shall be reported by the processing deputy to the Real Estate Manager I. A separate record will be kept by the manager identifying each subdivision and the type of hazard in the vicinity. The manager will request that the appropriate senior appraiser have a site inspection made of the subdivision for the purpose of reporting: his or her perception as to the probable effects of the hazard on the subdivision; the estimated distance of the hazard site from the subdivision; and any other information learned that would be material to a prospective purchaser. A report of the appraiser's findings shall be sent to the manager who requested the site inspection.

The deputy processing the particular file shall continue to obtain all pertinent information concerning the hazard from the appropriate sources: e.g., Department of Toxic Substances Control, local government, county records (as to any litigation), etc.

In contacting the Department of Toxic Substances Control concerning hazardous waste property, the deputy should make certain that he or she obtains total information as to any administrative, criminal or civil action pursued by that agency pursuant to Hazardous Waste Disposal Land Use Act, Section 25220, et seq. of the Health and Safety Code.

As a matter of public policy, DRE does not believe it is possible for a seller to completely release himself or herself from liability for the cost of cleaning up any hazardous or toxic material contained in the underlying land. The obligation for such cleanup costs is established by state and federal law (California Health and Safety Code Section 25310 and 42 USC, Section 9601, et seq.). It is the Department's opinion that any attempt to transfer responsibility would be a potential fraud or misrepresentation to the purchasers of the underlying land and as such would be grounds for denial of a public report

under the provisions of Section 11018(b). In other words, the Department would object to the use of a release clause in light of the fact that the federal and state statutes already specify who will be liable for cleanup costs.

Lead-Based Paint

Effective September 6, 1996, the federal Real Estate Disclosure and Notification Rule requires sellers of more than 4 residential units (either multi- or single family) built prior to 1978 to provide certain disclosures and written materials to prospective buyers and provide an opportunity for the buyer to conduct a lead-based paint risk assessment prior to being obligated under a purchase contract. These requirements do not apply to properties sold at a foreclosure sale and housing designated for the elderly. It is expected that condominium conversions will be mainly affected.

Federal law requires that the purchase contract include an addendum containing certain seller disclosures, purchaser's acknowledgment of receipt of the disclosures, and confirmation that purchaser has received or waived the opportunity to conduct a lead-based paint risk assessment. A sample disclosure form is included in the new statutes which may be used as the contract addendum. DRE should assure that the proposed purchase contracts submitted with subdivision applications covering pre-1978 residential structures include the required addendum, and that the addendum does not conflict with contract terms, especially purchase money handling provisions.

In addition, the following note is to be included in all public reports covering residential structures built prior to 1978 as disclosed in the public report application, except for properties sold at a foreclosure sale and housing designated for the elderly.

HAZARDS: Pursuant to the federal Real Estate Disclosure and Notification Rule (24 CFR Part 35 and 40 CFR Part 765), the seller is required to disclose to prospective buyers that this property may contain lead-based paint and/or lead-based paint hazards as well as provide as an attachment to your purchase contract certain written materials as mandated by current law. The seller is required to offer all prospective buyers an opportunity to conduct a risk assessment for lead-based paint and lead-based paint hazards prior to being obligated under a purchase contract. This risk assessment may be waived by written agreement between buyer and seller. For more information, you should contact the local office of the Environmental Protection Agency.

FIRE PROTECTION

If the subdivision is not or will not be serviced by fire hydrants (either existing or to be installed) or if the fire protection agency is either a volunteer fire department, the California State Division of Forestry or the U.S. Forest Service, the developer must submit a letter from the fire protection agency stating what protection will be provided, including charges or special conditions, if any, and what fire hazards exist within the subdivision and surrounding area.

Lack of fire protection will be noted in the public report. (Deputies should carefully review the subdivider's answers to other questions (i.e., availability of utilities, sewage disposal, etc.) if the application notes the offering is for residential purposes. The offering may actually be a raw land offering.)

Subdivisions served by fire hydrants, a paid public fire fighting agency, and with a fire station within 5 miles are normally exempt from the need of a fire letter. Occasionally, there are exceptions to this. Each subdivision office will notify its staff of these exceptions.

If a fire letter is required, the public report will contain a statement concerning fire protection. The public report should include a statement of any exceptions or contingencies relating to fire protection. Ordinarily, the statement of the fire protection agency as to exceptions or contingencies should be quoted, unless of excessive length, in which case it may be summarized.

STATE RESPONSIBILITY AREAS: If the reply to question 10.C in the application under Fire Protection is "YES", the following note should be included in the Public Report under FIRE PROTECTION in addition to any other disclosures deemed appropriate for a particular project.

FIRE PROTECTION

STATE RESPONSIBILITY AREA. This project is located within a State Responsibility Area. In such an area, the state has primary financial responsibility for preventing and suppressing fire, unless this responsibility is assumed by the county. See Public Resources Code (PRC) Section 4125. Pursuant to PRC Section 4291, you are required to do all the following: 1) maintain a firebreak around any structure by removing all flammable vegetation and other combustible growth to the nearer of the property line or a distance of 30 feet (or 100 feet if required due to extra-hazardous conditions); 2) remove that portion of any tree which extends within 10 feet of the outlet of any chimney or stovepipe; 3) maintain free of dead or dying wood any tree adjacent to or overhanging any building; 4) maintain the roof of any structure free of leaves, needles or other dead vegetative growth; 5) provide and maintain a screen over the outlet of every chimney or stovepipe that is attached to any fireplace, stove, or other device that burns any solid or liquid fuel. These requirements may be exempted or varied only by the responsible fire protection agency. For more information, you should contact the fire protection agency.

SEWAGE DISPOSAL - SANITATION

The public report must contain pertinent information such as whether the sewers have been installed or are to be installed and any costs that the purchasers may be required to pay for: installation of sewers; extension of sewers to the house or other structure; monthly service charges; and, if charges are significant, assessment for outfall sewerage.

Public sewers

If the subdivision questionnaire is completely filled out and states that public sewers are available, no further information is required.

No public sewers

If public sewers are not available, the subdivider must submit a letter from the local health authority stating what sewage disposal methods will be permitted.

Dry sewers

Occasionally, dry sewers will be installed. In such cases, obtain from the subdivider the information necessary to complete the following paragraph to be included in the public report: "Dry public sewers (mains and laterals installed, but not connected to the public sewer outfall) will be installed and the costs included in the sale price of the lots. Temporary cesspools are to be used for sewage disposal until connection to and use of the public sewers is completed. When sewers are connected to the public sewer outfall (^) subdivider, (^) purchaser will be required to pay the cost of back-filling the temporary cesspool."

Private sewer company

Private sewer companies are under the jurisdiction of the Public Utilities Commission. If the subdivider indicates that a private sewer company will supply sewage disposal, request that the subdivider submit a letter from such company verifying that the system is installed or financial arrangements have been made to install and clearance has been received from the Public Utilities Commission.

Septic tank or other individual system

If the purchaser must install a septic tank or similar individual system on his/her lot, a letter from the local health authority must be submitted which states septic tanks or other individual system is the acceptable method of sewage disposal for this subdivision; that each and every lot is suitable for the installation of a septic tank or other individual system; and a permit would be issued if, at the date of the letter, an application for a permit is made in compliance with local permit requirements.

If the letter from the local health authority does not reference each and every lot as being suitable for the proposed sewage disposal system, the sample escrow instructions and the sample sales agreement must provide that no sale will be closed until the purchaser has receive a written opinion, satisfactory to the purchaser, from the local health authority, a registered civil engineer or geologist that the lot/parcel is suitable for the installation of a septic tank or other individual system and a permit would be issued if, at the date of the opinion, an application for a permit is made in compliance with local permit requirements.

If water supply is to be by individual wells, we also will require a statement from the local health authority that both the individual sewage disposal system and the private wells to be used for drinking water will be permitted on every lot or parcel being offered for sale or the sales contract and escrow instructions must provide that no sale will be closed until the purchaser has received evidence that both the well and the sewage disposal system will be permitted on the lot.

EARTHQUAKE FAULTS AND SEISMIC HAZARDS

Alquist-Priolo Earthquake Fault Zoning Act

California Public Resources Code, Division 2, Chapter 7.5 is applicable to any project defined in Section 2621.6(a)(1) upon issuance of the official earthquake fault zones maps to affected local jurisdictions, but does not apply to any development or structure in existence prior to May 4, 1975.* Geologic reports are required to be obtained by cities/counties for all projects approved by them after May 4, 1975 unless they find no undue hazards in which case they may waive the geology report with the approval of the State Geologist.

If a subdivision was approved by the city/county authorities after May 4, 1975, the geologic report will have either been obtained or waived for all lots in the subdivision. Due to the fact that real estate licensees (or the seller if no licensee is involved) are required to advise all purchasers that the property is located in a delineated earthquake fault zone, DRE will also advise purchasers of this fact in the public report.

Special note for project within earthquake fault zone

Every public report with subdivision interests within an earthquake fault zone will include the following special note:

LOTS NUMBERED _____ ARE SITUATED IN AN EARTHQUAKE FAULT ZONE WHICH MEANS THE CITY/COUNTY MAY HAVE REQUIRED, PRIOR TO APPROVAL OF THE PROJECT, A GEOLOGIC REPORT DEFINING AND DELINEATING ANY HAZARD OF SURFACE FAULT RUPTURE. PURCHASERS SHOULD CONSULT THE GEOLOGIC FINDINGS OF THE CITY/COUNTY BEFORE ENTERING INTO A CONTRACT TO PURCHASE.

Vacant lot offerings

In addition, vacant lot offerings may have additional information contained in the special note. Purchasers may be required to do special things (i.e., get a geology report, construct buildings to special standards, etc.) in order to utilize/construct anything on their lot. If the subdivider reveals facts of this nature in response to our question in the application, this additional information should also be contained in our public report.

Vacant lots created prior to May, 1975

There is a potential danger involving applications wherein the subdivision interests (usually a tract map) were created prior to May, 1975, and vacant lots are being offered. The subdivision interests are legal subdivisions but the subdivision may not have been reviewed per the Alquist-Priolo Act when it was created. Nonetheless, the Alquist-Priolo Act allows local building departments to deny issuance of building permits if the subdivision interest is too close to an active fault line. Thus, while the lot is legal, a buyer might not be able to utilize it for some purposes (e.g., single-family residential).

If the subdivider's response in the questionnaire reveals it may be impossible to get a building permit and the offering includes vacant lots for single-family residential use, the DRE may have to deny issuance of the public report (per Section 11018) unless the subdivider changes the "intended use" to a non-residential use, such as a raw land offering. Deputies renewing public reports on vacant lot subdivision offerings where the original application came in prior to May, 1975 should review the filing to ascertain if the offering involves an intended use of single-family residences. If so, have we ever asked the subdivider if any of the lots are in an earthquake fault zone? If we have not ascertained an answer to that question, we should ask for an answer in a deficiency letter.

*Except for an alteration or addition to such a structure if the value of the alteration or addition exceeds 50 percent of the value of the structure.

Seismic Hazards Mapping Act

The Seismic Hazards Mapping Act was passed by the Legislature in 1990 following the Loma Prieta earthquake in October of 1989. The act directs cities, counties and state agencies to use the maps in their land use planning and permitting processes (reference: Seismic Hazards Mapping Act; Public Resources Code §§2690-2699.6). The maps depict areas within affected cities and counties that require a site-specific investigation for earthquake-triggered landslides and/or potential liquefaction prior to permitting most urban developments. Local governments are responsible for implementing the requirements of the Seismic Hazards Mapping Act. The first official maps were released in April 1997 by the State Geologist through the Division of Mines and Geology.

Owners of real property within an official seismic hazard zone, or their agents, must disclose to any prospective purchaser the fact that the property is located within a seismic hazard zone, if the maps, or information contained in the maps, are reasonably available. The Act requires the county recorder, county assessor, and county planning commission to post notices in their offices and other appropriate sites identifying the location of any seismic hazard zone maps in that county. Also, the county recorder must record the receipt of maps as part of the public record.

Special note for subdivision located within seismic hazard zone

A seller of real property located within a seismic hazard zone must disclose that information to prospective purchasers. This is in addition to the Alquist-Priolo Earthquake Fault Zoning Act disclosure requirements. The following note shall be included in the public report when the subdivider has indicated in the application that the property lies within a seismic hazard zone (the appropriate box should be selected on the worksheet):

THE SUBDIVIDER HAS ADVISED THAT THIS SUBDIVISION IS
 THAT LOTS NUMBERED _____ ARE SITU-
ATED IN A SEISMIC HAZARD ZONE AS DEFINED BY THE SEISMIC
HAZARDS MAPPING ACT (PUBLIC RESOURCES CODE §§2690-2699.6).
YOU SHOULD CONTACT THE SUBDIVIDER FOR MORE INFORMATION
BEFORE ENTERING INTO A CONTRACT TO PURCHASE.

CHAPTER 70, UNIFORM BUILDING CODE

The Uniform Building Code, Chapter 70, allows local building departments to develop procedures to eliminate or minimize structural damage due to earthquakes, landslides, erosion, etc. This code section is not related to the Alquist-Priolo Act, which deals with geologic hazard special studies zones. In prior years, DRE considered some areas relatively safe against any of the possibilities of trouble envisioned by Chapter 70 and which permitted local building officials to impose higher building standards. In those areas where there was risk, the subdividers were basically given the option of inserting a special note in their public report or submitting proof they had received building permits and/or constructed any improvements to standards that met or exceeded the provisions of Chapter 70.

Almost no one ever elected to submit proof that they had met or exceeded Chapter 70 standards. In a few cases, subdividers did submit what they thought was proof. As a result, DRE found itself trying to judge local building codes. Since DRE has no jurisdiction over building code laws, we found it difficult to make the necessary judgments as to whether a local building department had requirements that met or exceeded Chapter 70 standards. Then, we were advised that areas previously regarded as non-risk couldn't be regarded as such any longer. As a result, it was determined a special note would be inserted in all public reports. Basically, we advise all buyers to research the matter for themselves. The special note we presently use is as follows:

THE UNIFORM BUILDING CODE, CHAPTER 70, PROVIDES FOR LOCAL BUILDING OFFICIALS TO EXERCISE PREVENTIVE MEASURES DURING GRADING TO ELIMINATE OR MINIMIZE DAMAGE FROM GEOLOGIC HAZARDS SUCH AS LANDSLIDES, FAULT MOVEMENTS, EARTHQUAKE SHAKING, RAPID EROSION OR SUBSIDENCE. THIS SUBDIVISION IS LOCATED IN AN AREA WHERE SOME OF THESE HAZARDS MAY EXIST. SOME CALIFORNIA COUNTIES AND CITIES HAVE ADOPTED ORDINANCES THAT MAY OR MAY NOT BE AS EFFECTIVE IN THE CONTROL OF GRADING AND SITE PREPARATION.

PURCHASERS MAY DISCUSS WITH THE DEVELOPER, THE DEVELOPER'S ENGINEER, THE ENGINEERING GEOLOGIST AND THE LOCAL BUILDING OFFICIALS TO DETERMINE IF THE ABOVE MENTIONED HAZARDS HAVE BEEN CONSIDERED AND IF THERE HAS BEEN ADEQUATE COMPLIANCE WITH CHAPTER 70 OR AN EQUIVALENT OR MORE STRINGENT GRADING ORDINANCE DURING THE CONSTRUCTION OF THIS SUBDIVISION.

WATER DOCUMENTS

Basic Requirement for Residential Use

If lots are being offered for residential use, the developer must show that a source of potable domestic water either is available or will be available [Section 11018(f)]. If the water system is installed, the developer must submit verification that the system has been completed and paid for and a letter from the water supplier stating that ample water for normal use and fire protection, if any, is available and will be furnished on demand without exception to each and every lot. DRE will not accept a water supplier who is not a regulated supplier or unit of government.

PUC's Prior Approval

The Public Utilities Commission has named certain water supply companies that have an adequate water supply and the means to develop additional supplies if needed for all subdivisions that can reasonably be expected to be developed within their service areas. These companies should all be named in your current RE 628 and 624. If you have a letter from any of these companies that assures you the developer has made financial arrangements for the installation of water service to the project and that ample water will be available to service all lots/units in the subdivision, you may proceed to issue a final public report without obtaining confirmation from the PUC.

Other Public Water Companies

If water is to be furnished by any other public utility water company, the developer must furnish one verified or certified copy of "Water Supply Supplemental Questionnaire for Other Than Publicly Owned or Mutual System" to the Public Utilities Commission, State Building, San Francisco, CA 94102, and then submit confirmation of the Public Utilities Commission's approval to DRE.

Mutual Water Company

A mutual water company must be established when two or more lots will be served by a single water source which is not maintained by a regulated entity. Effective January 1, 1998, the Department of Real Estate assumed jurisdiction from the Department of Corporations (DOC) over mutual water companies formed on or after January 1, 1998 to provide water service to subdivisions. DOC will only issue new or renewed water permits to sell shares in mutual water companies which were formed prior to January 1, 1998. The changes to the Corporations Code which became effective January 1, 1998 provide that the subdivider may elect to apply for a current water permit from DOC if the mutual water company was originally formed prior to January 1, 1998 or submit to DRE's jurisdiction and comply as indicated below. The subdivider cannot offer shares in a mutual water company without either a valid permit from DOC or documenting the public report application with the information required by the new statutes.

If the water supplier is a mutual water company which was formed prior to January 1, 1998, the developer must comply with either 1 or 2 below. If the water supplier is a mutual water company to be formed on or after January 1, 1998, the developer must comply with 2 below.

- 1) Submit a copy of the current permit to issue shares granted by the Department of Corporations.
- 2) Submit all of the following:
 - Executed RE 699B Mutual Water Company Certification.
 - A copy of the certificate of the Director of Public Health as required by 116300 to 116385 of the Health and Safety Code.
 - A copy of the statement signed either by the engineer who prepared the engineer's report pursuant to Section 14312(a)(7) of the Corporations Code or a person employed or acting on behalf of public agency or other independent qualified person, that the water supply and distribution system

has been examined and tested and operates in accordance with the design standards of Chapter 2, Part 7 of Division 3, Title 1 of the Corporations Code.

NOTE: For purposes of compliance with this item, a statement from the subdivider as an "independent qualified person" is not acceptable. The statement must be from a licensed or regulated person or entity authorized to perform the examination and testing needed.

- Evidence of completion of the water supply and distribution system servicing all lots to be covered by the public report.

NOTE: Section 11018.5(a)(2) is not applicable. DRE is flexible as to the form of evidence deemed acceptable. The subdivider's statement that "all of the water supply and distribution facilities serving the interests to be covered by the public report are complete" is acceptable.

Include in the public report any costs the purchaser will be required to pay for stock in the mutual water company.

Private Water Companies

The Public Utilities Commission has jurisdiction over private water companies. If the subdivider indicates that a private water company will supply water, as an enclosure to the first letter forward PUC Form 615-4 and request that it be completed along with a private water company letter showing that the system is installed or financial arrangements have been made to install same.

If the water system is not completed, the developer must furnish evidence showing: (1) That adequate financial arrangements have been made to insure completion, and (2) the completion date. Some private water companies may not be within PUC jurisdiction and will require a complete investigation by DRE before the public report can be issued.

Types of Districts Which May Supply Water

The following types of districts may be formed to supply water. Generally, the indicated requirements will apply in addition to the applicable provisions above. (See also SPRAG, Item 14.0.)

Community Services District - Evidence that district is established and that tract is within the district. Require evidence that there is an adequate supply of potable water, and that the distribution system is complete, or some guarantee of installation of the distribution system. Obtain amount of bonded indebtedness and include in public report.

Irrigation District - Letter from local health authorities or from the State Department of Public Health indicating that the water is potable. Letter from district indicating that financial arrangements have been completed and that water will be supplied to each lot or parcel in the tract.

County Water District - Letter from the district stating that the subdivision is within the district and that arrangements have been made for the installation of the distribution system. If the system is to be put in under a bond issue, require evidence of the sale of the bonds and amount. If general obligation bonds make tax rate excessive, show rate in public report.

State Water District - Letter from the district stating that the tract is within the district and stating whether district has its own tax collector who will levy assessments under separate billing of the district. If district has its own tax collector, obtain pertinent details and include a general statement in the public report. If district is to be financed by a bond issue, require evidence of the sale of bonds.

Individual Wells

If individual wells are proposed for water supply, the developer must submit: (1) a California licensed well driller's estimated cost for drilling and casing a well; (2) cost of a pressure pump and system; (3) depth at

which water may be found; (4) letter from local health authority stating that individual wells will be permitted and that water is potable and the type of sewage disposal system permissible with wells on the size of lot proposed. When we cannot get a letter from the Health Department stating that water is potable, we will accept a well driller's letter which states that he has drilled on the property or in the vicinity and has found a source of potable water. We will also require that a provision similar to the one for septic systems be added to the purchase agreement and/or escrow instructions.

NOTE: If there is doubt as to sufficiency, a geologist's report as to the availability of underground water may be required in addition to the licensed well driller's estimate in order to insure that sufficient water will be available for each of the parcels offered, assuming that all parcels will be occupied in the future with wells drilled upon each.

No Water

In some cases, individual wells are not suitable as the source of water supply, or water wells for individual parcels are not permitted by local health authorities or are not feasible because water rights are reserved from the individual parcels. But there must be a water supply if the lots are to be sold for residential, commercial, industrial, recreational or agricultural purposes. If the subdivider states the lots will be sold only as raw land and there is no present or foreseeable use, we will require information from the subdivider which will disclose the cost of installing a water system to each lot to be offered for sale.

UTILITIES

Connection charge only

Letters from electric, gas and telephone companies will not be required if existing facilities are adjacent to the tract and the subdivider states that the purchaser or lessee will not be required to pay any costs for the installation of utilities except for the normal connection charge, if any.

Purchaser must pay for installation or extension

If the statement of the subdivider in the questionnaire indicates that purchaser will be required to pay for the installation or extension of any utilities within the tract, obtain a letter from each of the utilities to which such statement applies estimating the cost of bringing service to the tract.

Rural, vacant lot subdivision

For a rural, vacant lot type subdivision secure, in addition, an estimate of the cost to extend utility service to the farthest lot in the tract from existing facilities if this is available. If not available, obtain letter from utility stating why such information is not available.

In response to requests for estimates of cost of extension of service, many utilities will simply provide copies of their printed rate sheets as filed with the State Public Utilities Commission. Ordinarily, deputies are not qualified to interpret such rate sheets and should request a specific estimate from the utility. If unable to include actual cost in the public report, make reference to the utility rate sheet.

Utility not available

If service is not available from a public utility company, the developer must explain by separate letter how lot purchasers may obtain substitute service and at what cost. If substantial, this may result in the project being a raw land type offering.

SCHOOLS

Information with application

Section 11010(11) requires the following information regarding schools to be included in the application for a public report:

- a statement from (each) school district that tells the location of every school serving the subdivision; or,
- documentation that a statement to that effect was asked of the governing body of the school district; or,
- the name, address and phone number of the school district if, at the time the application is qualitatively and substantially complete, a statement from the school district has not been provided.

Public report disclosure

As a general rule, there is no need to disclose the entire letter submitted by the school district, only the name and address of the schools (if available) and the school district. However, if it is deemed appropriate additional information may be included regarding the schools, busing, desegregation and other similar issues. Comments regarding funding arrangements for schools should not be included. If there are any special school taxes or assessments, that information should be placed in either the TAXES or ASSESSMENTS portion of the public report.

If information has not been received from the school district, we will not hold up issuance, but will include the name, address and phone number of the school district in the public report.

Information received after public report issued

If we receive information from the school district after we issue the public report, the information should be reviewed. If, in the opinion of the deputy and his/her manager, the information is material, we should amend the public report on our own motion.

FLOOD AND DRAINAGE***No statewide procedure***

No statewide procedure is applicable due to variations in the scope and nature of flood control activities in different localities. If not covered by a master geographic letter, the following guidelines apply:

Flood control district

If the tract lies within a flood control district, obtain letter from that district. If letter from flood control district indicates that a supplemental report should be obtained from another agency, request that subdivider obtain such report.

No flood control district

If no flood control district, obtain letter on flood hazard from the city or county engineer or Department of Public Works.

Letters from district and city engineer

In some areas, such as Los Angeles County and Orange County, letters from both the flood control district and the city engineer are required if the land is located within a municipality.

Letter after map approval

San Diego and Orange Counties do not issue flood letters until after the final subdivision map is approved. Applications from subdivisions in these counties may be considered to be "substantially complete" without such letters being submitted with initial filing material.

No flood letter available

If no flood letter is available from the above offices or agencies, request that the subdivider's engineer submit a report on flood and drainage conditions.

Substantial threat of flood

If reports indicate a substantial threat of flood hazard, a special note should be placed at the beginning of the public report. In extreme cases of potential flood hazard, advise the subdivider that the affected lots will be deleted from the public report unless a favorable flood hazard report is submitted. Subdivider may amend the public report to add such lots when evidence is submitted that the hazardous condition has been eliminated.

Rural areas

For subdivisions in rural areas, recorded maps should be examined to determine if drainage easements or flood hazard areas are designated.

Drains/storm sewers at purchasers' expense

If artificial drains or storm sewers are to be installed at the lot purchasers' expense, the report should so note.

STREETS AND ROADS

If available, check field inspection report for adequate vehicular access.

No access; access only by 4wd

If there is either no legal or vehicular access, the commissioner can refuse to issue the public report. Access attained only by use of four-wheel drive vehicles should be special noted in the public report.

Not public or accepted

If streets bounding the tract and access streets are not public streets, the subdivider must submit an explanation, and if necessary, evidence showing how purchasers will have legal access to the tract and to their lots.

If the streets within the tract have been dedicated but not accepted for public use and maintenance, determine what provisions have been made for their maintenance.

Private (or dedicated but rejected)

If streets are private (or dedicated but rejected for public use and maintenance), the subdivider must furnish:

a statement describing lot purchasers' rights of ingress and egress;

a letter from a California registered engineer listing the standards (width, surfacing, etc.) to which roads have been or will be constructed and giving an estimate of annual cost per lineal foot for maintenance and cost to bring them to county standards;

evidence that adequate financial arrangements have been made to insure completion;

a letter describing any provision which has been made for repair and maintenance of the streets. If none has been made and repair and maintenance will be the responsibility and expense of lot owners, the subdivider should so state.

Road maintenance agreement

DRE recommends that subdividers record a road maintenance agreement as part of the CC&Rs for the development when the streets are private. This recorded agreement cannot be required as a condition of obtaining a subdivision public report. Nevertheless, subdividers will generally agree to this procedure when asked to do so.

Sample language for the agreement (to be included in CC&Rs) could be as follows:

It is hereby agreed and declared that each lot shall bear an equal share of any and all costs required for maintenance and repairs of the roads within said subdivision under the terms and conditions as set forth herein.

Said roads described above shall be used by all owners of property within the subdivision bounding thereon for ingress, egress and/or utilities.

The right of way created by said easements shall be maintained in a good, passable condition under all traffic and weather conditions.

Repairs on said private roads shall be required when the majority of the owners of properties reach an agreement in writing that repairs are needed. Pursuant to said agreement, such owners shall obtain three bids from licensed contractors and shall accept the lowest of said three bids and shall then initiate the repairs of said roads with each owner bearing his pro rata share of the costs thereof, regardless of whether or not such owner(s) shall have concurred with said agreement.

Every owner of property who shall cause or allow in any manner said private roads to be used, traversed, or altered by vehicular traffic or otherwise, thereby causing damage to the surface thereof as may be determined by a majority of the owners of property bounding thereon, shall bear as his sole responsibility the costs and expenses of repairing such damage.

If a dissenting owner shall not pay his pro rata share of costs and expense immediately upon receiving his bill for the same, the remaining owners shall be entitled without further notice to institute legal action for the collection of funds advanced on behalf of such dissenting owner in accordance with the provisions of California Civil Code Section 845, and shall be entitled to recover in such action, in addition to the funds advanced, interest thereon at the current prime rate of interest until paid, and all costs and disbursements of such action, including such sum or sums as the court may fix as and for reasonable attorney's fees.

Common area

If streets or roads are common area to be maintained by an association of lot owners, the restrictions and budget must include the proper authority and funding.

NOTE: Streets or roads are not considered common areas if the purchaser owns to the middle of the street or road and each purchaser has an easement of travel in common with other lot purchasers over such easements.

Common easements - no maintenance

If the subdivider represents that purchasers will have common easements for roadway purposes and a management association is not formed to provide a vehicle for maintenance, and the subdivider represents that no maintenance fund will be provided, the following special note must be included in the public report:

The roads within this subdivision are private. No provision for their repair and maintenance has been made by the developer. All repair and maintenance of these private roads will be your responsibility, individually and collectively, proportionately to the use of the road easement by you.

If you and your neighbor cannot agree on pro rata shares, or upon the need or extent of repair and maintenance, it may be necessary for you to appeal to the proper Superior Court for the appointment of an impartial arbitrator, or for the determination of the court, as to the pro rata shares. (Reference: Civil Code Section 845)

Maintenance fund in escrow

If the subdivider represents that roads will be maintained from funds escrowed for this purpose, the term of the arrangements should be no less than the longest term contemplated under the selling agreement between the subdivider and the prospective purchasers, and in no case less than five years. Also, the escrowed fund should be arranged in such a manner that any surplus at the end of the contract period will remain for the use of purchasers to continue the maintenance program.

Access over national forest land

DRE does not consider a road or street on national forest land as constituting adequate access to a subdivision unless:

such a road is part of a public agency (usually county) road system; or,

the subdivider has obtained a right-of-way and road use permit from the Forest Service for use of all lot purchasers; and,

special arrangements with the Forest Service have been made such as establishing a homeowners' association for the subdivision to comply with the permit conditions and to maintain the roads.

(If the road is classified by the United States Forest Service as a "Forest Development Road", it is not necessary to obtain the road use permit.)

Evidence that one or more of the above conditions have been met should be submitted by the subdivider if a forest service road is involved. Always obtain copies of any permits and determine that the homeowners' association and/or developer can comply with all conditions.

SUBDIVISIONS LOCATED IN FREEWAY ROUTES; LAKE/RESERVOIR - PERMIT FROM STATE WATER RESOURCES CONTROL BOARD***Subdivision in freeway route***

Occasionally, a subdivision is located in the path of a proposed freeway. Part or all of the subdivision would be subject to future condemnation by the State. If there is adequate disclosure in the public report, DRE cannot sustain a denial on the basis of the freeway taking over all or part of the subdivision.

Deputies must obtain as much information as possible concerning the proposed freeway construction and the public report must contain adequate disclosure.

Prior to the issuance of such public report, the complete file and rough draft public report should be submitted to the Assistant Commissioner, Subdivisions for review prior to issuance.

Lake, etc.

If a subdivision offering includes a lake or reservoir supplied by the underflow of a surface stream or formed by damming a surface stream, the subdivider shall be required to furnish a copy of the permit from the State Water Resources Control Board or a statement from the Board that a permit is not required.

It should be noted that a permit is not required if an underground water supply (not the underflow of a surface stream) is used to form the lake or reservoir.

MASTER GEOGRAPHIC LETTERS

Subdividers are required to state in the application what off-site improvements will be in the subdivision (streets, water, sewers, etc.) and to give us evidence that the off-site improvements are either completed or financial arrangements have been made for completion.

Purpose

In lieu of requiring the submission of bonds or other evidence of financial arrangements, we have received master geographic letters (MGLs) from many cities and counties telling us what off-site improvements are required and what financial arrangements are required prior to the approval of a final subdivision map. Deputies processing subdivision applications may refer to these letters for verification of information contained in the applications. Care should be taken as to what is specifically covered by any particular letter and that the letter is appropriate for a particular subdivision.

Having an MGL on file expedites the issuance of the final subdivision public report and may reduce the number of inquiries to your offices by individual subdividers.

Filing/Expiration

Each subdivision office will maintain a file of MGLs and an alphabetic listing of the letters indicating the expiration date and what is covered by each letter. All letters should expire on the third May 31 after the year of receipt (unless a shorter term is stipulated by the city or county), making it easier to remind the cities and counties to renew their letters. In any event, care is to be taken to obtain renewal of expiring letters.

Applicability

An MGL is only applicable for subdivision tract maps and not parcel maps, certificates of compliance or when a map is waived by the local jurisdiction.

In order to use the MGL, it is necessary for the MGL to have been in effect at the time the tract map was conditionally approved by the city or county. A current MGL on file may not be sufficient if the conditions of approval occurred in the past. Also, the date the map is actually recorded is not to be used in applying the MGL date.

In addition, the MGL must specifically cover the item in question: i.e., in order for the MGL to apply to water service, the water supplier must be the city or county which executed the MGL in effect at the time the map was conditionally approved. If the water supplier is not the city or county which executed the MGL, the MGL is not applicable and a water will-serve letter must be submitted by the water supplier.

Subdivision Manual



DISTRICTS

Sections 0400 - 0499

DISTRICTS TO FINANCE FACILITIES AND SERVICES***Maintenance, services and construction - authority***

Landscape Lighting Act of 1972
Mello-Roos Community Facilities Act of 1982
Improvement Act of 1911
Municipal Improvement Act of 1915
Improvement Bond Act of 1915
Redevelopment Agency Participation

Landscape lighting district/county service area

If the questionnaires indicate the district is a landscape lighting districts (LLD) or a county service area (CSA), we will solicit the following information:

- name and function of the LLD or CSA;
- name of the administrating agency of the district;
- amount of assessment for current tax year and if not currently assessed, the anticipated assessment;
- completed RE 624-C if the district or agency has authorized ability to float bonds but has not yet done so.

Upon receipt of the above information, disclosure would be included in the public report as indicated in the worksheet.

Community facilities district

If the questionnaire indicates there is a community facilities district (Mello-Roos), we will request the following information:

- name of district;
- copy of the Notice of Special Tax Lien (Notice);
- statement as to whether the Notice will be provided.

The worksheets for public reports indicate the disclosure to be used after obtaining this information.

Special district/special assessment district

If the project is within a special district or special assessment district, we will request the following:

- name and function of the district;
- whether or not the district has been fully funded. If not then we will request completion of RE Form 624-C;
- the current tax rate for the district.

If the district has not been fully funded, this may cause an increase in the current tax rate as the district obtains additional obligations to be passed on to the property owners. This is why we must obtain additional information via RE Form 624-C.

Current wording in the questionnaires should provide adequate disclosure for these districts.

The 624-C questionnaires are only required to be submitted if the special districts, special assessment districts and (rarely) county service areas have authorized but unissued bonds.

LLDs and CSAs rarely issue bonds and thus it is unlikely a 624-C will be needed for these.

Subdivision Manual



PURCHASE \$, SALES DOCS

Sections 0500 - 0599

PURCHASE MONEY HANDLING

Definitions and pertinent statutes/regulations

Section 11013 - Blanket Encumbrance defined. **NOTE:** Taxes and assessments levied by public authorities are not considered to be blanket encumbrances. See Section 11013.3.

Section 11013.1 - Unconditional Release Clause defined.

Section 11013.2 and Regulation 2791.9 - purchase money handling under blanket encumbrance without unconditional release clause.

Section 11013.4 and Regulation 2791.9 - purchase money handling when there is no blanket encumbrance.

Unconditional release clause

Many subdividers believe the usual release clause found in trust deeds and mortgages complies with Section 11013.1. These clauses are not acceptable because they are not unconditional and do not provide for the delivery of title or other interest contracted for even if the lender does not actually receive the release consideration. In lieu of an unconditional release clause in the trust deed or supplementary agreement, the subdivider must comply with Section 11013.2.

Use of release agreement in lieu of proper release of blanket encumbrance prior to close of escrow

Regulation 2791.1(b)(2) provides that as an alternative to obtaining releases from all blanket encumbrances prior to close of escrow, a release agreement (RE 643M) may be deposited with escrow pursuant to Section 11013.2(d) in order to assure that releases will be obtained from all blanket encumbrances sometime in the future. The release agreement option may be used in connection with any other subsection of 11013.2. It is not necessary that the release agreement be submitted to the DRE, nor is it necessary that the purchase contract, buyer's escrow instructions or the public report make reference to the release agreement alternative.

Applicable statutes

If the property is or will be subject to a blanket encumbrance (deeds, trust deeds, and mortgages), Sections 11013.2(a), 11013.2(c) or 11013.2(d) will normally apply.

If the property is not or will not be subject to a blanket encumbrance (deeds, trust deeds, and mortgages), Sections 11013.4(a), 11013.4(b) or 11013.4(f) will normally apply.

Applicable RE forms

600.....	Bond to secure advance payment (single project) (11013.2c, 11013.4b)
600 A.....	Blanket bond (multiple projects) (11013.2c, 11013.4b)
600 A-1.....	Instructions for use of a blanket bond
600 B.....	Use under Section 11010.4 B&P (no Public Report)
600 C.....	Purchase money handling (Supplemental Questionnaire)
600 D.....	Purchase money security transmittal between deputy and bond coordinator
600 E.....	Receipt for purchase money security between bond coordinator and deputy
600 G.....	Purchase money information
600 H.....	Purchase money declaration and instructions to escrow (must accompany all purchase money security devices)
600 I.....	Purchase money letter of credit (11013.2d, 11013.4f)
600 J.....	Purchase money set-aside letter (11013.2d, 11013.4f)
643 M.....	Unconditional Release Covenant (2791.1)

Purchase money handling - impounds
Acceptable Escrows - Regulation 2791.4

Bond alternative - Sections 11013.2(c) and 11013.4(b)
Amount of Bond - Regulation 2791.2

The original bond and RE 600H are filed in the Subdivisions Office South. If the original bond or RE 600H is submitted with the file, a copy shall be placed in the file and the original forwarded to the purchase money coordinator with RE 600D as a cover sheet.

If the bond amount is increased or decreased, a copy of the rider will be placed in the file containing the copy of the original bond. The original rider shall be forwarded to the Subdivisions Office South with RE 600D as a cover sheet.

It is the responsibility of the purchase money coordinator to review all original purchase money bonds, riders and cancellation notices for acceptability, sign the RE 600H as depository and return a copy of the signed 600H to the subdivider.

In response to any RE 600D transmittal from staff, the purchase money coordinator shall confirm the receipt of an acceptable bond or rider by returning RE 600E transmittal to the deputy to be placed in the subdivision file. Prior to the issuance of any public report wherein a new purchase money bond has been posted or a rider received either changing the principal name or subdivision(s) covered as in the case of an RE 600 bond, the deputy shall confirm that the new bond or rider is acceptable either by receipt of the RE 600E transmittal, phone call to the purchase money coordinator, or verification that the bond has been entered either as effective or reflecting the changes in the bond database on the computer.

All bond cancellation notices received with public report applications shall be forwarded to the purchase money coordinator along with RE 600D.

Alternative security device arrangements - Sections 11013.2(d) and 11013.4(f)

An acceptable security device alternative may be a letter of credit (RE 600I) or set-aside letter (RE 600J) accompanied by the purchase money declaration (RE 600H). Under either arrangement, if the property is subject to a blanket encumbrance, compliance will be under Section 11013.2(d). If there is no blanket encumbrance, compliance will be under Section 11013.4(f). The public report should reflect the applicable code section under the Purchase Money Handling section.

As with bonds, the original instruments are filed in the Subdivisions Office South. Handling of the original instruments should be the same as for bonds.

If other than DRE forms are proposed for purchase money security devices, the instruments will be subject to review and approval on a file-by-file basis by the assigned deputy after consulting his/her manager.

Security covering more than one subdivision

It is the responsibility of the subdivider to inform the Department of the subdivisions covered by a single security device (RE 600A, 600I or 600J), and to provide a written notice of subdivisions being added and/or deleted from coverage (refer to RE 600G for details). If the public report application indicates that the security covers multiple subdivisions and is already on file, the deputy should confirm that the security is still in effect by accessing the computer database and confirming the records. In addition, the deputy should confirm with the purchase money coordinator that the Department's records indicate that the subdivider has provided notice of the subject project being covered by the security, unless a copy of the notice has been included in the application. If the original notice is included in the file, retain a copy and forward the original to the purchase money coordinator. If there is no record of the subdivider's notice on file with DRE, the deputy should request the written notice from the subdivider but should not hold up issuance of the public report for that item.

Impounds under a lease with option to purchase agreement

When a lease with option to purchase agreement is used, all the money that is designated to be applied towards the purchase price, whether it is a portion of the rent or other funds, is purchase money. The subdivider must impound all of the purchase money under the provisions of Section 11013.2(a) or 11013.4(a) and Regulation 2791.4.

Lease with option to purchase agreements must be reviewed carefully to determine the amount of initial and monthly payments, rent or otherwise, that is to be credited as purchase money if and when the option is exercised. The subdivider must be informed of his obligation to impound purchase money.

In some cases where a lease with option to purchase agreement is used, all the money paid by the lessee to the subdivider/lessor is applied towards rent and not credited to the purchase price. In these cases, none of the funds need to be impounded since they have been earned as rent by the subdivider/lessor.

The actual consideration for the option belongs to the subdivider and does not need to be impounded, unless otherwise agreed to in the option agreement. If the option consideration is to be credited towards the purchase price, it also must be impounded.

In some cases, the subdivider will allow the purchaser to move into the home prior to the close of escrow. The rental or occupancy agreement should be reviewed to determine if any of the rent is being applied towards the purchase price. If so, that amount must be impounded.

Broker trust account

A real estate broker may not act as an escrow agent in a sales transaction subject to the Subdivided Lands Law if the escrow involves the sale of a lot or parcel that is subject to a blanket encumbrance without an unconditional release clause. Escrow depositories acceptable to the Real Estate Commissioner under Section 11013.2 are enumerated in Regulation 2791.4.

If the subdivided lot, parcel or unit is not subject to a blanket encumbrance, then Section 11013.4 applies and the receipt and disposition of trust funds may be handled through a trust account, including the trust account of a real estate broker. The Real Estate Commissioner, however, will not ordinarily approve a trust account as a depository under Section 11013.4 if it is not the trust account of a neutral entity.

SALES/CONVEYANCE FORMS - GENERAL

Must be completed in sample form.

Sample deed will ordinarily refer to the Declaration of Restrictions, if any. Also, if mineral rights are reserved, the deed should so state.

Subdivider must use the forms submitted in making the offering. If different forms are to be used, subdivider must submit copies of such documents, completed in sample form. Dollar amounts, monthly payments, interest rates, the way title will be taken (joint tenancy, etc.), are not considered material to the completion of the sample forms. If subdivider will take back a second deed of trust, a sample of trust deed and note must be submitted. Amendment of final report may be required.

REAL PROPERTY SALES CONTRACT

If a real property sales contract is to be used, review for compliance with Section 11200.

Requirements per Regulation 2791.9

If a subdivider proposes to sell subdivision interests using real property sales contracts as defined in Section 10029, Regulation 2791.9 requires the following:

conveyance of the real property or subdivided interests to a trustee acceptable to the Commissioner;

recording of the conveyance to the trustee;

the following provisions in the trust agreement:

an express statement that the trustee has been approved to act in that capacity by the Real Estate Commissioner;

an express statement that the appointment of any successor trustee is subject to approval of the Real Estate Commissioner;

an express statement prohibiting any amendment of the trust agreement directly or indirectly affecting the interests of a vendee without the prior written approval of the Real Estate Commissioner;

a covenant by the trustee to continue in that capacity until a successor trustee acceptable to the Real Estate Commissioner has assumed the position;

an express statement that designates vendees as beneficiaries.

[Note: An "acceptable trustee" (per Section 107 of the Financial Code) is a trust company or a commercial bank which is authorized to engage in the trust business or the trust department of a title insurance company authorized to engage in the trust business by the Superintendent of Banks. In exceptional circumstances, the Commissioner may approve a trustee other than the entities set forth in Section 107 of the Financial Code.]

If there is no blanket encumbrance

If the subdivision is not subject to a blanket encumbrance, there must be (1) an express provision for the vendee to make payments under the contract to the trustee, and (2) an express provision authorizing the trustee to make disbursements under the contract as follows:

debt service, taxes, assessments, insurance premiums and any other periodic payments related to the ownership and use of the subdivision interest that the vendee is obligated to make under terms of the sales contract;

[Note: Compliance should be explicit as to the payees, the purpose of such payments and, if practicable, show the disbursement schedule of such payments. It is not sufficient simply to recite in general the obligation to make disbursements.]

payment to the subdivider from the balance of purchase money remaining after the trustee has paid or set aside funds to make the disbursements indicated above;

If there is a blanket encumbrance

If the subdivision is subject to a blanket encumbrance, there must be an express statement by the trustee that all of the purchase money of a vendee will be held by the trustee in an interest-bearing account for the benefit of the vendee until the subdivision interest of the vendee is released from any blanket encumbrance.

There may be a provision for disbursement of the purchase money or disbursement of funds as liquidated damages to the contract vendor, or for his account upon the submission of a certificate under penalty of perjury to the trustee that the contract vendee has defaulted under the terms of the contract, and submission of proof there had been an independent

determination of such default by a court of law or arbitration.

There shall be a provision for refund on demand by the vendee of the entire sum of purchase money paid if the subdivision interest has not been released from the blanket encumbrance within a specified period of time determined by the Real Estate Commissioner to be reasonable in the circumstances.

[Note: As part of the review of the documentation submitted, the due date of any monetary blanket encumbrance should be examined to determine the remaining period of payments, and thus the reasonableness of the time period in which a release can be effected.]

Default

Regardless as to whether or not the property is subject to a blanket encumbrance, Sections 11013.2(a) and 11013.4(a) specify that in the event of a default under a contract to purchase a subdivision interest, the purchase money that has been held in trust or in an escrow depository shall be returned to the prospective purchaser unless a different determination is made as to the disposition of the money. The DRE has always construed the "determination" referred to in Sections 11013.2 and 11013.4 to be that of a court of law or, if the parties have so provided in the contract, that of an arbitrator. The "determination" may not be that of the subdivider or his agent.

Accordingly, a contract of sale may provide for any one of the following remedies should the vendor allege that the vendee has defaulted:

judicial foreclosure pursuant to Code of Civil Procedure Section 725a et. seq.;

the exercise of a power of sale pursuant to Civil Code Sections 2920 and 2932;

a procedure in substantive conformance with Regulation 2791(c), with appropriate modifications (i.e., substituting the trustee for the escrow holder.

Civil Code (CC) requirements to be contained in or prohibited in real property sales contracts in general

All installment contracts must contain a statement of the number of years to complete payment in accordance with the terms of the contract. (CC 2985.5)

The contract must include the basis upon which the tax estimate is made. (CC 2985.5)

[NOTE: If the contract makes no representations as to the amount of impounds required for tax purposes, or does not make an estimate of the taxes, it will not be necessary that the contract contain a statement of the basis upon which the tax estimate is made.]

When the contract provides for the sale of a lot or lots in a subdivision which is improved with a dwelling of four or fewer family units, it cannot limit or prohibit the prepayment of all or any part of the contract price during the term of the contract and any waiver or the limitation is void and unenforceable. (CC 2985.6)

When an unimproved parcel is sold by installment sales contract and the parcel resulted from a land division after January 1, 1978, the contract must contain certain statements required by statute regarding compliance with the subdivision laws. (CC 2985.51)

[Note: This extensive disclosure provision can be found in the "Excerpts from Civil Code" portion of DRE's Real Estate Law.]

Liquidated damages

If the vendor intends to seek liquidated damages (not to exceed 3% of the purchase price), the liquidated damages procedures under Regulation 2791(c) must be followed. The trustee is to be substituted for the escrow holder.

Trust agreements

See Regulation 2791.9. This applies whether Section 11013.2 or 11013.4 is applicable.

Authorized trustee - See Regulation 2791.6.

Special Considerations

In the event completion bond is furnished under Section 11013.4(d), the amount is to be established in accordance with Regulation 2791.3, and is to be approved by DRE appraiser before deputy is to notify developer of the acceptance of same.

Specific "record maintenance" is mandated by Regulation 2791.8.

Purchase money disbursements are to be handled in accordance with Regulation 2791.

PURCHASE CONTRACT/SALES AGREEMENT/DEPOSIT RECEIPT***Complete in sample form***

The sales agreement contains the terms and conditions of a binding contract between a buyer and seller of real property and must be completed in sample form to show the substance of a typical sales transaction.

Important references

Sections 11010(b)(5) and 11200 and Commissioner's Regulations 2791 and 2792(a).

Elements of review

Provisions of Regulation 2791(a) - refund of deposit.

Liquidated damages clause must conform to Civil Code Sections 1675 - 1681 and Regulation 2791(c).

Any disbursements and charges against purchase money must be enumerated and estimated, per Regulation 2791(b)(1) and (2).

Unreasonable provisions in conditions of sale.

Description of interest to be conveyed.

Applicant's signature certifying that the sales agreement used will conform to the exemplar submitted.

Specifics for liquidated damages clause

Any disbursement of purchase money from escrow to the seller or the buyer must be treated as liquidated damages. The only exception to this would be a disbursement to consummate the transaction.

Civil Code Sections 1675, 1676, 1677 and 1678 are referenced in Regulation 2791(c)(1). The specific requirements in these clauses are designed to ensure fairness to the consumer. The following items in that law are of critical importance:

The clause must be set forth in 10-point bold type or contrasting red 8-point bold type.

The clause must include a space for the initials of both buyer and seller.

Liquidated damages may consist of an amount not in excess of all of the purchase money advanced by the purchaser toward the purchase of the interest contracted for.

Subdividers who include liquidated damages provisions in their deposit receipts may use the following sample language:

If Buyer fails to complete the purchase of the property because of a default by Buyer, Seller may pursue any remedy in law or equity that it may have against Buyer on account of the default; provided, however, that by placing their initials here, Buyer _____ and Seller _____ agree that:

- a. \$_____, an amount not to exceed the money remitted by Buyer under the terms of the Contract for acquisition of the subdivision interest (Purchase Money Deposit), shall constitute liquidated damages payable to Seller if Buyer fails to complete the purchase of the property because of a default by Buyer.
- b. The payment of such liquidated damages to Seller shall constitute the exclusive remedy of Seller on account of any default by Buyer.
- c. Liquidated damages shall be payable to Seller out of Buyer's Purchase Money Deposit according to the following procedures:

- (1) The Seller shall give written notice ("Seller's notice and demand") by registered or certified mail or personal delivery, or by any other means authorized for service by Code of Civil Procedure Section 116.340, to escrow holder and to Buyer that Buyer is in default under the Contract and that Seller is demanding that escrow holder remit \$_____ from the Purchase Money Deposit to Seller as liquidated damages unless, within 20 days, Buyer gives escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages ("Buyer's objection").
- (2) If Buyer fails to give escrow holder Buyer's objection within the 20-day period: (A) escrow holder shall promptly remit the amount demanded to Seller; and (B) Seller is released from any obligation to sell the property to Buyer.
- (3) If Buyer gives escrow holder Buyer's objection within the 20-day period, then the determination as to whether Seller is entitled to the disbursement of Purchase Money as liquidated damages, and every other cause of action that has arisen between Buyer and Seller under the Contract, shall be submitted to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association subject to each of the following:
 - (i) Any fee to initiate the arbitration shall be paid by the Seller, provided that the arbitration costs and fees, including any initiation fee, ultimately shall be borne as determined by the arbitrator.
 - (ii) The venue of the arbitration proceeding shall be in the county in which the property is located unless the parties agree to a different location.
 - (iii) The arbitrator shall be appointed within 60 days of the administrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of Section 1297.121 of the Code of Civil Procedure shall apply. The arbitrator may be challenged for any of the grounds listed therein or in Section 1297.124.
 - (iv) The arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the arbitration. [Optional - The arbitrator shall not have the authority to award punitive damages.]
 - (v) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Seller may agree to indemnify and hold escrow holder harmless from any claim by Buyer arising out of any distributions made by escrow holder in accordance with, and pursuant to, these procedures.

NOTE: Contract provisions which address the manner in which the seller shall give the 20-day notice to buyer per Regulation 2791(c)(4)(A) and (c)(5) may specify any one of the options, rather than all, included in the sample language provided in c.(1) above.

NOTE: Civil Code Section 1675(d) provides that if the amount actually paid pursuant to the liquidated damages provision exceeds 3 percent of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable as liquidated damages. However, it is not required that contracts include language pertaining thereto.

Disbursement for some closing costs; regulation 2791(b)

The sales agreement may provide for payments to be made out of purchase money to third parties for:

- credit reports
- escrow services
- preliminary title reports
- appraisals
- loan processing services

If the sales agreement provides for any such payments, it also must include:

a statement specifically enumerating the items to be charged against purchase money; and,

the subdivider's estimate of the total amount of the costs that may be charged against purchase money. (The sample contract need not show exact figures. Zeroes should be placed in the blanks following each enumerated item calling for a dollar figure.)

Third party charges

Regulation 2791(b) simply allows disbursements out of purchase money to pay third parties for the specified necessary reports and services provided in the transaction. It is not the intent of the regulation that the funds disbursed for the third party charges not be returned to a non-defaulting buyer. If it is the seller who is unable to perform according to the terms of the contract, the seller should bear these expenses, not the buyer. If, however, the seller contends that it is the buyer who has breached the contract, then the seller must resort to the procedure set forth in subdivision (c) of Regulation 2791.

If the seller has not delivered the interest contracted for pursuant to the terms of the contract, seller should immediately deliver funds to escrow equal to all purchase money paid by buyer, including the third party charges disbursed by the escrow holder.

Prompt return of buyer's funds; Regulation 2791(a)

The purchaser is to receive a full refund of all purchase money, including subsection 2791(b) third-party disbursements, within 15 days after the date for close of escrow set forth in the sales contract or some later date of closing mutually agreed upon by the buyer and the subdivider, except for funds withheld based on the seller's claim for liquidated damages. Disposition of the funds subjected to a claim for liquidated damages is to be determined by a court or arbitrator or pursuant to a procedure for disbursement of those funds to the seller as liquidated damages if the buyer fails to timely object to the seller's demand on escrow for the disbursement of such funds.

Optional extras

A similar procedure shall be followed for the installation of options which the purchaser desires for his individual subdivision interest. If escrow does not close and buyer is not in default, all purchase money paid into escrow, including the cost of any options, must be returned. If buyer defaults, deposits for options and extras are deemed to be purchase money and thus subject to distribution as liquidated damages.

[Note: The buyer and subdivider may enter into a separate contract for such optional extras, but the amount paid by the buyer must be handled in accordance with the above provisions.]

These provisions are not applicable if the buyer enters into a separate contract for optional extras with a third party contractor who is in no way associated with the subdivider.

Alternative dispute resolution provisions

Alternative means of dispute resolution includes any procedure used to resolve issues in controversy such as arbitration, mediation and judicial reference.

Provisions in purchase contracts requiring binding arbitration of disputes between an association and the subdivider or the subdivider and an owner, including construction defect and liquidated damages claims, must comply with Regulation 2791.8(a). Contractual provisions requiring judicial reference must only comply with subsection (d) of 2791.8 and not include unfair features. For example, the costs of judicial reference should be borne as the referee determines and not equally between the parties, as judicial reference can be expensive. In addition, contractual language which merely references this regulation by number or includes the content verbatim is not considered in compliance with the intent of the regulation.

NOTE: Regulation 2791.8 does not apply to mediation provisions, nor to disputes between parties other than the subdivider and an association or the subdivider and an owner.

Regulation 2791.8 includes special arrangements for provisions requiring arbitration pursuant to the Commercial Arbitration Rules of AAA or the Streamlined or Comprehensive Rules and Regulations of JAMS/ENDISPUTE. However, the Department has determined that the provisions requiring binding arbitration under these rules of AAA and JAMS/ENDISPUTE will not satisfy the requirements of 2791.8(a) unless special language is added to the arbitration provision in the contract addressing the requirements of subsections (a)(1), (3), (4) and (8). AAA's rules allow for a "written agreement to vary procedures" and the rules of JAMS/ENDISPUTE provide for "party-agreed procedures".

Subsection (c) of 2791.8 requires that if other than the Commercial Arbitration Rules of AAA or the Streamlined or Comprehensive Rules and Regulations of JAMS/ENDISPUTE are to be used, a copy must be submitted with the public report application. The deputy should forward a copy of the rules and the sample contract to the Assistant Commissioner through the supervisory channels for review and comment. However, it has determined that AAA's Construction Industry Dispute Resolution Procedures should be treated the same as AAA's Commercial Arbitration Rules for purposes of assuring compliance with Regulation 2791.8.

Regulation 2791.8 should also be applied to any dispute resolution provision requiring arbitration or judicial reference contained in any addendum or document included as part of the purchase contract, as long as the dispute is regarding an agreement or promise between the subdivider and a purchaser. This regulation does not apply to disputes between other parties, such as an association and an owner. Third party documents are not subject to our ADR regulation (e.g., home warranty referenced in the contract but offered by a third party).

Notice of arbitration provisions

Code of Civil Procedure Section 1298 requires that specific notice be included whenever a binding arbitration clause appears in any contract, including a deposit receipt, to convey real property. (This law also applies to listing agreements between principals and real estate agents.)

If the provision for binding arbitration is included in a printed contract, it shall be set out in at least 10-point bold type or in contrasting red in at least 8-point bold type. In the case of a typewritten contract, the provision is to be set out in capital letters.

The statutory notice may either precede or follow the arbitration provision and be set out either in at least 10-point bold type or in contrasting red print in at least 8-point bold type. If the notice is included in a typed contract, it must be in capital letters.

The notice explains that the parties to the contract are agreeing to have any disputes decided by neutral arbitration and that they are giving up any right to have the dispute litigated in a court or jury trial as well as rights to discovery and appeal unless these rights are specifically included in the arbitration of disputes provision. The parties must also initial their acknowledgement of the contents of the notice.

All contracts which include a binding arbitration provision must include the required notice in the prescribed format.

Price increase provisions

Provisions in purchase contracts which give the subdivider an unlimited unilateral right to increase the purchase price are unacceptable.

Tie-in arrangements

When a developer sells a vacant lot to a purchaser with an agreement that the purchaser must use the developer or a subsidiary of the developer as the contractor, DRE takes the position that the developer is

selling a lot and house package. All monies paid by the purchaser for construction are purchase monies and must be impounded until the home is completed and legal title delivered to the purchaser free and clear of liens and encumbrances.

Where applicable, B&P Code Sections 11013.4(d) and 11013.4(e) each provide an alternative to the impound requirement in situations where the developer proposes to require the purchaser to use a particular contractor to build a home on a vacant lot after escrow closes on the lot. Section 11013.4(d) requires the use of payment and performance bonds, and Section 11013.4(e) requires the use of approved construction disbursement arrangements. But these subsections both include the following proviso:

"... the provisions of this subdivision apply only to an owner, subdivider, or agent who proposes to sell or lease the lots or parcels with improvements thereon in the nature of residential structures."

We interpret this to mean that these subdivisions of Section 11013.4 are inapplicable unless the public report applicant is both vendor and contractor.

The sales agreement and construction contract to be used for arrangements under Section 11013.4(e) should have the following features:

1. Sales Agreement: The contract is for the sale of a vacant lot that is warranted to be suitable as the site of a dwelling house. Seller may not disclaim that warranty. Sale is contingent upon Buyer obtaining construction financing.
2. Construction contract:
 - (a) Buyer is without obligation if Buyer determines prior to close of escrow on the vacant lot that Buyer is unable to obtain construction financing. Buyer is without obligation unless escrow closes on the vacant lot and Buyer receives title insurance insuring lien free title.
 - (b) Construction may not commence until after close of escrow on the lot. A time for commencement and completion of construction is specified. Subdivider must reimburse Buyer for construction loan carrying costs incurred because of delays caused by Subdivider, Subdivider's agents or employees, or those claiming by or through Subdivider.
 - (c) The Contract Price is to be paid to Subdivider in stages as construction proceeds. All payments are to be from a construction account. Disbursements are to be controlled by a state or federally regulated bank or savings and loan (the Disbursement Agent) administering a loan originated by the institution. The loan must be secured by a first deed of trust encumbering the subject property. The construction account may include funds advanced by Buyer toward costs of construction. The construction account must be in an amount which suffices - taking into account Buyer's advances, initial loan funds, and amounts the lender may have agreed to advance if necessary - to assure completion of construction.
 - (d) There is a ten-installment disbursement schedule, with 10% of each installment retained to be disbursed as an eleventh installment.
 - (e) No disbursement is to be made until: (1) Subdivider has provided the Disbursement Agent with a declaration identifying all labor and materials used in the construction to be covered by the disbursement, and with lien releases covering the labor and materials; and (2) the Disbursement Agent has inspected the site and determined that the work is completed.
 - (f) The next-to-last disbursement will not be made until the Buyer has inspected the site, determined that the project is quantitatively complete, and authorized the disbursement. The

final disbursement will not be made until: (1) the Buyer has inspected the site, determined that the project is qualitatively complete except for minor items (\$100 or less each), and authorized the disbursement; (2) either the Buyer or the construction lender has received a mechanic's lien endorsement; and, (3) the project has passed local government inspection.

Option to repurchase (anti-speculation provisions)

Deputies should review purchase agreements for any option to repurchase the lot/unit by the subdivider. The repurchase option usually gives the subdivider the right (but not the obligation) to repurchase the lot/unit from the buyer (Optionor) if the buyer desires to transfer the lot/unit within a specified time period, usually one (1) year (no more than 18 months) from the close of escrow. The following transfers should be exempt:

a transfer resulting from the death of Optionor;

a transfer to the spouse of Optionor;

a transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such decree;

a transfer to a revocable intervivos trust in which Optionor is the sole life beneficiary;

a transfer by mortgage or deed of trust to secure the performance of an obligation; which transfer will be released and reconveyed upon the completion of performance;

a transfer where (1) at the time of transfer Optionor is occupying the residence as Optionor's principal place of residence and (2) the transfer is necessary to facilitate Optionor's relocation of his principal place of residence to accommodate a mandatory job transfer required by Optionor's employer.

If the purchase agreement will be recorded, there should be provisions requiring the person granted the option to execute a duly acknowledged release immediately after the option has expired. Otherwise, a quiet title action would be required to remove this cloud if the lot/unit was later resold.

The final public report should special note the repurchase option. The following sample language may be used as a special note, but should be modified as necessary to reflect the factual conditions:

There is an addendum to the purchase contract which is an option to repurchase. The addendum must be executed by each buyer of property in this project. The repurchase option gives the seller the right (but not the obligation) to repurchase the property from the buyer if the buyer transfers the property or executes a contract to transfer the property within the one (1) year period following the close of the buyer's escrow. The repurchase option gives the seller the benefit of unrealized appreciation of the property. Certain transfers which are exempt from the repurchase option are described in the option itself. You should read the repurchase option carefully.

Clauses imposing charges against purchasers

Purchase agreements and/or escrow instructions may provide for additional charges against purchasers based upon a delay in the performance of the contract. The charge in some instances is imposed automatically and in other instances on the basis of an alleged default by the buyer.

The following provision is an example of an automatic charge:

Escrow holder is hereby authorized and instructed to debit the Buyer and credit the Seller carrying charges at the rate of \$36.11 per day from ten (10) working days after the Final Inspection has been made to the date Buyer's loan funds are disbursed by Buyer's lender.

The following provision is an example of a charge resulting from the buyer failing to close escrow:

CLOSING. After Buyer's loan application has been approved, this sale shall close within five (5) days after notice to Buyer that the home will be ready for occupancy. Following such notice, the failure of Buyer to close for any reason shall constitute a breach of this Agreement; provided, however, upon Buyer's written request Seller may at its discretion agree to delay the closing in consideration of Buyer's payment of \$150 per day. This additional charge will allow a maximum extension of thirty (30) days from the date of the original notice by Seller.

In reviewing agreements containing similar provisions, the deputy should inform the SRP that such contingency charges serve to increase the purchase price and their sample contracts and/or escrow instructions must be formatted in such a fashion as to disclose that the dollar amount agreed to as the purchase price may change if the event triggering the added charge occurs. That is to say, the place in which the numerical purchase price is set forth must also indicate the charge per day contemplated and the purpose of such contingent charge. This added provision may incorporate by reference the provision in the sales agreement describing the basis for the charge, but also must include the per day amount applicable.

A special note should be included in the public report describing in detail the contingent charge and identifying it as a part of the purchase price.

Should there be an alleged default, any such charges must be made subject to the liquidated damages provisions, if any, included in the contract.

Waiver of causes of action (i.e., specific performance)

The contract may make buyer's failure to object to a claim against liquidated damages a waiver of specific performance if the subdivider's demand for liquidated damages has been served in the manner prescribed by Code of Civil Procedure Section 116.340 [Regulation 2791(c)(5)]. The contract cannot require the buyer to waive specific performance in order to object to the seller's claim for liquidated damages. In addition, if a buyer's default under the contract results in the buyer's failure to purchase the property, the seller may be relieved of the obligation to sell the property to buyer (waiver of specific performance) only if liquidated damages provisions will not apply (either due to lack of any such provisions in the contract or the liquidated damages provisions are not elected by the buyer) coupled with the 2791(a) requirement that all purchase money is to be returned to buyer within 15 days following the failure to close on time as specified in the contract.

REVIEW AND STATEWIDE APPROVAL OF DEPOSIT RECEIPTS/PURCHASE AGREEMENTS

DRE has a program whereby it approves deposit receipt forms for statewide use. The program is designed for those developers whose subdivision operations are extensive.

The procedures for the review and statewide approval of deposit receipts and purchase agreements will be coordinated by the Technical Section. All requests should be received through the Technical Section, logged and numbered, and forwarded to the Subdivision Legal Counsel in the Technical Section. The Subdivision Legal Counsel will correspond directly with the developer or his representative with respect to deficiencies in the documents. However, once the deposit receipt/purchase agreement has been approved for statewide use, the Subdivision Legal Counsel will forward a copy of the approval letter to the developer or his representative with the approved document to the Real Estate Manager IIIs in Sacramento and Los Angeles. When the developer submits a preapproved sales agreement with future applications for a public report, a copy of the Subdivision Legal Counsel approval letter should be attached to the preapproved sales agreement. The Subdivision Legal Counsel will provide the necessary instruction to the developer relative to the use of the statewide-approved document with public report applications.

TIME LIMITATION ON LEGAL RIGHT TO SUE - CONSTRUCTION DEFECTS

Ordinarily, it is not against public policy to waive the defense of the statute of limitations, either at the time of entering into an agreement or thereafter while the statute is running.

However, where a particular statute of limitation is designed to promote the public welfare and must be construed as declarative of the State's public policy, its benefits cannot be waived.

Unfortunately, we are unable to find any legal authority stating that the waiver of statute of limitations by contract for claims arising from defective design or construction would be against the State's public policy.

However, before approving such a time limitation, the developer should submit the following:

A statement as to whether the execution of such a document is a condition to a purchaser buying a subdivided interest in subdivisions owned or controlled by the developer.

An opinion from the developer's legal counsel that the waiver of rights by buyers under a "Time Limitation on Legal Right to Sue" is not against the State's public policy.

Special note

Assuming the above items are supplied as requested, we should prominently special note the impact of a buyer executing the waiver instrument. The special note should also contain a disclaimer as to DRE's having any involvement in matters relating to construction defects. Such a special note might read as follows:

The subdivider advises that, as a condition to your purchase, you will be required to sign a contract which purports to limit the period of time in which you and/or the homeowner's association must file a lawsuit to sue the developer for claims arising from defective design or construction of your condominium unit or the common area of the condominium project. The contract by which you waive the benefits of longer periods to file such a lawsuit is entitled "Time Limitation on Legal Right to Sue".

DRE cannot offer an opinion as to whether or not the contract would be enforceable by a court of law.

Other than this disclosure of the content of the said contract, the DRE has no involvement in questions pertaining to the quality of construction of improvements in a subdivision.

You should consider seeking the advice of private legal counsel before signing the contract limiting the time period in which you may sue the developer for alleged design and construction defects.

Please note this suggested special note contemplates that the developer requires purchasers to sign this agreement as a condition of sale. Whether or not this is an actual fact should be ascertained.

**LEASES
AND****ALL CASH SALE/NO BLANKET ENCUMBRANCE [SECTION 11013.4(E)] - ESCROW INSTRUCTIONS*****Leases***

If the interest to be conveyed is a sublease or lease assignment, subdivider must submit a copy of the sublease or lease assignment and a copy of the master lease, together with a statement that he will deliver to the purchaser a copy of the original lease and all subsequent modifications, extensions and assignments upon which the interest to be conveyed is based.

Sale - all cash/no blanket encumbrance

The following is a list of requirements to utilize the procedures set forth in Section 11013.4(e) in the sale of interests in a subdivision not subject to a blanket encumbrance in which the buyer pays all cash:

The escrow instructions shall include a provision that no funds will be released from escrow until seller furnishes bonds for the benefit of buyer covering the faithful performance of the construction contract and the payment of all obligations arising thereunder.

The escrow must agree that at least 10 days before the date for each progress payment, seller shall submit to escrow an itemized application for payment substantiating seller's rights to payment. Substantiation will include copies of receipts of paid bills or certified copies thereof, and an affidavit (signed by seller under penalty of perjury) that such paid bills cover labor actually performed or materials actually used in the construction of the home.

Escrow must also acknowledge that issuance of the payment will constitute a representation by escrow to the buyer, based on (1) the observations at the site by escrow and (2) the date of the application for the progress payment, that the work has progressed to the point indicated and that the seller is entitled to the payment in the amount certified. Escrow may use a reliable agent to do the site inspections such as a home inspection service.

The other provisions of Section 11013.4(a), (b), (c) and (d) can also be utilized if the subdivider prefers.

Subdivision Manual



MAPS

Sections 0600 - 0699

SUBDIVISION MAPS - IMPORTANT ITEMS

Tentative map, approved by county, is acceptable for preliminary reports. Upon receipt of *recorded map*, tentative maps should be removed from the file and destroyed unless they contain information pertinent to the subdivision report and such information is not included on the final map.

Important items on recorded map

Examine carefully the title sheet of the recorded map and any "NOTES" listed on the map sheets for items to be included in the public report. Especially note the following:

1. city or county acceptance certificate. (Determine if roads and streets within the tract have been dedicated and accepted for public use and maintenance or if they are private streets. Note the same information relative to dedication and acceptance of drainage easements, if any. Dedication may also involve future streets or alleys, drainage easements, and other easements or rights-of-way and dedication of access right from lots adjoining streets.)
2. reservation of mineral, oil or gas rights; (Check to determine whether the use of the surface of the land for drilling is prohibited by local law.)
3. evidence of easements, railroad or public utility rights-of-way, watercourses and other features which may affect land use;
4. legal access to each lot; [if not, the Commissioner may deny the public report pursuant to Section 11018(f).]
5. lots of a size or shape not in conformity with the majority of the lots in the subdivision; (Investigation of such lots may reveal undisclosed common areas or land uses not compatible with the remainder of the subdivision.)
6. statement that proposed land use is not contrary to local ordinances. See Section 11010(g). (Statement is required for uses other than residential, including all subdivisions containing common areas or facilities and for all cooperative apartment and condominium projects.)
7. hazards such as fire zones, flood areas, earthquake or seismic areas in and around the subdivision.
8. unbuildable portions of residential lots, setbacks or limited building pad areas.
9. references to additional maps to be recorded, such as Environmental Constraints Sheets.

Map recording information

If all documents needed to perfect a public report application are submitted, except for a copy of the recorded map containing the recording information and County Recorder's signature, and any delays would cause a hardship on the subdivider, we will accept a copy of the map which contains all signatures except for the County Recorder's along with a signed certification by the subdivider or subdivider's agent verifying:

- 1) that it is a true and correct copy of the map as recorded; and,
- 2) the recording information.

If the subdivider's agent provides the certification, be sure the public report file contains a statement from the subdivider that the agent is authorized to make representations to the Department of Real Estate for public report application purposes on behalf of the subdivider.

CONDOMINIUM MAP WAIVER (SINGLE PARCEL)

Ordinarily, an approved tentative map is required for a substantially complete subdivision application, per Regulation 2792(a)(5). However, Government Code Section 66428 allows local agencies to adopt ordinances to provide procedures for waiving the requirements for a parcel map. The ordinance may also include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel.

If a city or county has adopted such an ordinance wherein they will waive a tentative final map for a condominium project located on a single parcel, the subdivider will not be required to submit an "approved tentative subdivision map" as required by Regulation 2792(a)(5) to have a substantially complete application.

If the subdivider does not submit the approved tentative map, he must submit substantiation that the local ordinance allows the waiver of the map.

**OLD GRID MAP SUBDIVISIONS - SUITABILITY FOR RESIDENTIAL USE; RAW LAND
SUBDIVISIONS ON OLD GRID MAPS*****Old grid maps - residential use***

Old map subdivisions are maps recorded before the Subdivision Map Act was effective in 1937. When such subdivisions are offered for residential use, particular attention should be directed to the items normally considered by local authorities under the currently effective Subdivision Map Act. Master Geographic Letters do not apply to the old map subdivisions.

Deputies must obtain all available information from local authorities concerning such subdivisions. Water, sewage, roads, flood and drainage, grading and erosion, utility services, ingress and egress, proper survey, and lot sizes must all be closely examined to determine actual suitability for residential use. In many cases deputies may find a "raw land" public report is the only practical alternative to an outright denial of a public report.

As these old maps are prior to the 1970 effective date of the California Environmental Quality Act (CEQA), compliance with CEQA will not be required.

Raw land subdivisions on old grid maps

When applications are received for raw land public reports on pre-1937 grid maps, we will require:

an estimate of the cost to survey and stake all lots in the subdivision;

an estimate of the cost to survey out an individual lot;

that the developer either stake the corners of each "block" of lots within the subdivision or supply adequate financial arrangements for this surveying of blocks of lots. Such financial arrangements involve the depositing of adequate funds into a neutral escrow depository along with a contract for the survey and instructions to pay for the said survey and have it completed within two years after the issuance of the public report.

This policy applies to original filings and to applications for amendments or renewal of public reports issued as a result of original filings made after May 30, 1975.

PARCEL MAP WAIVERS - DRE REQUIREMENTS

At least one county (Fresno) has adopted ordinances providing for waivers of parcel maps when the subdivision is for agricultural financing or each parcel is 40 acres or larger and/or other specified conditions as set forth in the ordinance.

DRE requirements

Whenever city or county ordinances waive parcel maps in situations where DRE would ordinarily request that maps be furnished, the following are required:

findings by Board of Supervisors or Planning Commission made pursuant to Government Code Section 66428;

a preliminary title report containing a legal description of each parcel;

an assessor's map, a surveyor's map, or a U.S. geological survey map; (If none of these are available, have the subdivider's engineer draft an informal map which will delineate each parcel, appropriate easements for access and the easements of record as shown on the title policy.)

evidence of compliance with the California Environmental Quality Act (CEQA) unless the map waiver was prior to CEQA (1970). (We do not believe the city or county can escape their environmental review responsibilities by adopting an ordinance to waive maps.)

Subdivision Manual



COMPLETION, BUDGETS, CON- VEYANCE OF COMMON AREA

Sections 0700 - 0799

COMPLETION OF COMMON AREAS AND FACILITIES - GENERAL INFORMATION AND DISCUSSION OF VIABLE INTENT

In general, common-interest subdivision processing includes additional elements not required in standard filings. These include the completion and conveyance of the common areas as required by Section 11018.5 and Regulation 2792.15. Reasonable arrangements regarding these two elements must be completed prior to issuance of a final public report. Common area completion and conveyance are separate concepts which need not occur simultaneously and should be processed as distinct requirements. Common areas are either to be owned by the purchasers as tenants in common or in fee by a legal entity such as a homeowners' association or by a combination of the two ownership forms. The ownership of the common areas will have some effect upon the manner in which the principles of completion and conveyance are processed.

Not a proper subject for buyer's escrow instructions

Escrow instructions between a homeowners' association and the subdivider should not be required to be referenced in buyer's escrow instructions. A buyer's escrow with a subdivider should not include conditions involving a different set of parties that have their own escrow instructions. The following are typical examples that **should not** be required to be included in the buyer's escrow instructions:

reference to a bond or other security device posted pursuant to Regulation 2792.9 or under a subsidy program per Regulation 2729.10;

information referencing bonds or other security devices having been posted to complete common areas or off-site improvements; (This includes completion bonds posted with the city/county.)

references to conveyance of common areas to an association, if separate escrow instructions will or have been submitted for conveyance of the common areas.

If any of the above are included in buyer's escrow instructions, it is not required that the provision(s) be deleted.

Financial Arrangements For Completion

Section 11018.5(a)(1) and 11018.5(a)(2) require that the applicant for a common interest subdivision public report show "reasonable arrangements" for completion of the entire project. The purpose is to give some assurance to the consumer that the project will be built as represented by the developer. Compliance may be effected per any of the provisions of Section 11018.5(a)(2). If Subsection "A" or "C" or "E" of Section 11018.5(a)(2) is chosen, the management documents must include the provisions of Regulation 2792.4.

Phased projects - Regulation 2792.4

For phased projects, it is recommended that the provisions of Regulation 2792.4 always be included in the CC&Rs regardless of the completion guarantee method chosen for Phase I. Inclusion of these provisions allows the subdivider to maintain flexibility as to completion guarantee options for subsequent phases with no need to amend the CC&Rs to add to the 2792.4 provisions at a later date.

Viable Intent - Section 11018.5(a)(1)

Evidence of "viable intent" will only be required in condominium and cluster planned developments. Normally, a lender's commitment letter is submitted. Other options for meeting this requirement are:

letter from construction lender indicating sufficient funds available;

copy of trust deed and/or note indicating encumbrance is for "construction";

title report indicating property subject to a construction loan;

evidence of sufficient construction having been accomplished (a very subjective determination usually made by the appraiser);

letter from lending institution indicating a sufficient line of credit for construction;

evidence (balance sheet prepared by an accounting firm, Form 10-K filed with the SEC, etc.) that sufficient funds are available to the developer from his own resources;

security device posted such as completion bond or letter of credit covering the project (does not apply to the RE 621 procedure).

ASSURING COMPLETION OF COMMON FACILITIES - SECTION 11018.5(A)(2)(A)-(C), (E)

Before a public report can be issued on a common interest subdivision, the applicant must show secure assurances that the common areas will be completed. This requirement protects the consumer from buying an interest in a subdivision that might never be completed as represented. The options are:

Notice of Completion

A Notice of Completion for the entire project is the most conclusive evidence that this requirement is met. The Notice:

- must be signed by the owner authorizing the work;
- must cover/describe the property under review;
- should cover all common area improvements (or renovations in a conversion project);
- must be recorded.

The public report will simply disclose that the entire project is completed.

If the project is a condominium or cluster planned development, it will be necessary to comply with the "viable intent" requirements per Section 11018.5(a)(1). Refer to Policy 0700.

Bond - Section 11018.5(a)(2)(A); Letter of Credit/Set-Aside Letter - Section 11018.5(a)(2)(E)

If the developer elects to post a security device, the bond or other financial arrangement must be in an amount sufficient to cover the completion of the residential structure common area and the outside common areas within the subdivision for which the public report is to be issued. A Planned Construction Statement (RE 611A) identifying and describing the common facilities, estimated completion dates and costs to complete must be submitted along with the subdivider's statement regarding the percent of completion (RE 611C). The Budget Review Unit will review these documents and provide the assigned deputy with the acceptable dollar amount of the security to be posted.

Regulation 2792.3 prescribes the form of a bond to be used. The bond form has been reproduced as RE 611. The deputy should verify that the surety issuing the bond is licensed to issue surety bonds in California per the Department of Insurance (each Subdivision office should have available a current Department of Insurance list of authorized sureties). Letters of credit and set-aside letters are also an acceptable form of security device and should comply with the provisions in forms RE 611D and RE 629. Generally, only federally regulated lenders will be approved as the issuing entity for letters of credit and set-aside letters. Other lenders may be approved by a manager. RE 611A must be attached to and made a part of the security device.

If a project has been partially completed, the security need only be in an amount necessary to complete all of the common area improvements plus any funds necessary to cover any of the improvements that have been completed, but not paid for. Pursuant to the instructions on RE 611A, a determination on the form of evidence required to verify completion shall be conducted by the Budget Review Unit when reviewing the Planned Construction Statements.

If the project is a condominium or if it is a planned development which contains attached "cluster" type construction or includes any common areas to be constructed, the amount of the security must either cover all improvements and cluster residential structures not completed at the time of issuance of the public report or the subdivider must provide other methods of guaranteeing completion using the other alternatives.

Because the governing body of the association may be under the control of the subdivider during the early stages of development, provisions for enforcement of the security under Regulation 2792.4 must be included in the CC&Rs.

The original security device should be held by a neutral escrow depository pursuant to accompanying security agreement and escrow instructions (RE 613). A copy of the security device and RE 613 will be maintained in the subdivision file.

Escrow Instructions - Section 11018.5(a)(2)(B)

If the subdivider elects (B), all purchase money must be impounded in neutral escrow depository until all common area improvements have been completed and all applicable lien periods have expired.

If the project is a condominium, the subdivider should include appropriate compliance wording in the buyer's escrow instructions, such as:

This escrow shall not close, funds shall not be released from escrow, and title shall not be conveyed to the purchaser, until all the following conditions have been met:

All common facilities on Common Area Lot No(s) _____ of Tract No. _____ including structures containing a total of _____ residential units have been completed as evidenced by a Notice of Completion being recorded (as defined in Civil Code Section 3093) covering all the foregoing units, lots and improvements. And,

The statutory period for recordation of all mechanic's lien claims has expired, or the purchasers and the homeowners' association are provided policies of title insurance in an amount not less than the cost of the completed improvements, with endorsements insuring against mechanic's liens.

Even if the project is complete, the above language should be included in the escrow instructions to protect the purchaser from possible mechanic's liens.

If the project is a "cluster" type planned development, the subdivider should include appropriate compliance wording in the buyer's escrow instructions, such as:

This escrow shall not close, funds shall not be released from escrow, and title shall not be conveyed to the purchaser, until all the following conditions have been met:

The cluster residential structure on lot no. ____ has been completed, as evidenced by a Notice of Completion (as defined in Civil Code Section 3093) being recorded covering all lots in this particular cluster (Lots Nos. _____ of Tract No. _____). Cluster residential structures are located on the following groups of lots in this subdivision:

Lot Nos. _____; Lot Nos. _____; (etc.) And,

All common facilities and improvements on Common Area Lot No(s) _____ of Tract No. _____ have been completed, as evidenced by a Notice of Completion (as defined in Civil Code Section 3093) being recorded covering all the foregoing improvements. And,

The statutory period for recordation of all mechanic's lien claims has expired, or the purchasers and the homeowners' association are provided policies of title insurance in an amount not less than the cost of the completed improvements, with endorsements insuring against mechanic's liens.

Even if the project is complete, the above language should be included in the escrow instructions to protect the purchaser from possible mechanic's liens.

If the project is a "non-cluster housing" type planned development (all houses are separate, detached structures), the subdivider should include appropriate compliance wording in the buyer's escrow instructions, such as:

This escrow shall not close, funds shall not be released from escrow, and title shall not be conveyed to the purchaser, until all the following conditions have been met:

All common facilities and the improvements on Common Area Lot No(s). _____ of Tract No. _____ have been completed, as evidenced by a Notice of Completion (as defined in Civil Code Section 3093) being recorded covering all the foregoing improvements. And,

The statutory period for recordation of all mechanic's lien claims has expired, or, the purchasers and the homeowners' association are provided policies of title insurance in an amount not less than the cost of the completed improvements, with endorsements insuring against mechanic's liens.

Even if the project is complete, the above language should be included in the escrow instructions to protect the purchaser from possible mechanic's liens.

RE 621 Procedure

The RE 621 procedure gives the subdivider the flexibility of switching from escrow instructions (which prevent the closing of escrows until the total project has been completed and is free of all liens), to an alternative method (bond, etc.) of compliance with Section 11018.5(a)(2) without obtaining an amended final public report. After a final subdivision public report has been issued, the RE 621 provides that escrows cannot close until the common facilities are completed free and clear of liens and encumbrances or until a bond (or other security) along with a planned construction statement and RE 621A are deposited in escrow. The security (bond, etc.) and attendant documents should guarantee completion of the common areas and facilities that remain incomplete as of the date of submittal of the RE 621A security and planned construction statement to DRE. In a cluster planned development or condominium project, the security should include the remaining uncompleted residential units unless a Notice of Completion is required in accordance with other escrow instructions. The bond or other security and completed RE 621A and 621C should be furnished at least **45 days** prior to intended close of any escrows to allow DRE enough time for review and approval of the security amount.

Cash Deposit - Section 11018.5(a)(2)(C)

If the subdivider elects (C), an amount sufficient to cover the costs of construction must be deposited in a neutral escrow depository to be disbursed as progress payments as construction of the project is completed. The Budget Review Unit should make the determination of the amount considered sufficient for completion of the common area improvements.

Specially drafted escrow instructions will be required to accompany the cash deposit to be posted under this section. RE 613 is not written to accommodate a cash deposit subject to disbursements as progress payments. Deputies should consult with a manager if this alternative is selected.

Provisions for Regulation 2792.4 should be included in the CC&Rs.

City/County Completion Bond - Section 11018.5(a)(2)(E)

Occasionally, a subdivider may have been required by a city/county to post a bond for completion of both off-site and on-site (common area) improvements. DRE may accept such a bond as assurance for completion of the common area improvements provided that the city/county either adds the homeowners' association as co-obligee to the bond or they provide a letter to DRE acknowledging that each common area improvement listed on the RE 624-A is covered under their bond and further agrees to call the bond to complete the improvements, if the subdivider fails to do so.

SINGLE LOT PHASED CONDOMINIUM - SECTION 11018.5(A)(2)(D)

If the subdivider elects (D), he may furnish a bond assuring lien-free completion of common area improvements not located in a residential structure and impound funds in escrow for the purchase of a condominium unit until the particular residential building in which the purchaser's unit is located has been completed.

This section allows phasing of a single lot condominium project. Due to the uncertainty of completion of all the residential units planned for such projects, combined with the undivided interest ownership in the incomplete project by purchasers of units in the first completed building, there can be many serious problems for those purchasers. Recognizing that there can be different methods of complying with the statute, DRE must retain some flexibility in our policies and procedures. The following are acceptable components of compliance:

Literal compliance

The applicant must comply literally with Section 11018.5(a)(2)(D) of the Business and Professions Code. The subdivider must submit the bonds, title insurance and escrow instructions required by the statute.

Title insurance endorsement

Since there is a likelihood that any mechanics' lien arising out of a later phase of construction would be recorded against the entire common area of the project, the subdivider must submit a copy of a proposed (title insurance) endorsement which insures against any mechanic's liens that may be incurred as a result of construction in this phase and any future phases of the project, whether the construction is performed by the present subdivider or any successor in interest.

The title insurance endorsement would insure the individual owners and the homeowners' association against any statutory lien for labor or materials attaching to the estate or interest arising out of any future construction provided the construction is to complete the improvements as shown in the condominium plan (or plans) recorded on the property as of the date of the policy.

HOA's Notice of Nonresponsibility

Within ten days after the association has obtained knowledge of any construction of any condominium building in any subsequent phase of the project, it shall be required to post a Notice of Nonresponsibility containing the information required under Civil Code §3094 in some conspicuous place on the site.

If such protection against possible future mechanic's liens is not available for any reason, a final public report will not be issued on a phased single-lot condominium project, unless compliance with the provisions of Section 11018.5 (a)(2)(A), (B), (C), or (E) is effected for all phases of the condominium project.

If the project will be a phased, single-lot condominium project and all the residential units will be completed or guaranteed for completion by a bond or other security, the following wording is acceptable in escrow instructions:

This escrow shall not close, funds shall not be released from escrow, and title shall not be conveyed to the purchaser, until all the following conditions have been met:

All common facilities included in the project outside the residential structures and all common facilities and residential units located in (Building #1, #2, etc.), on Lot# _____ of Tract# _____ have been completed as evidence by a Notice of Completion (as defined in Civil Code Section 3093), being recorded covering all the foregoing units, lots and improvements. And,

The statutory period for recordation of all mechanic's liens has expired, or the purchasers and the homeowners' association are provided policies of title insurance insuring against mechanic's liens. And,

Each purchaser and the homeowners' association have title insurance which contains the following endorsement:

The company hereby insures the insured against loss which said insured shall sustain by reason of any statutory lien for labor or materials attaching to said interest or estate, arising out of any work of improvement on the land under construction or completed at the date hereof or arising from any future construction provided the

construction is to complete the improvements as shown in the condominium plan recorded on the property as of the date of this policy, whether the construction is performed by the present subdivider or any successor in interest.

One public report for entire project

If the subdivider requests that a final public report cover the total project, the subdivider must present evidence that he has the financial ability to complete all structures in the project containing residential units. If a loan commitment is the method of compliance, it must be a firm commitment that can at least provide for funding to construct the subsequent buildings after the construction and sale of units in the previously constructed buildings. In other words, the lender may wait until the first building is built and the residential units are sold before being obligated to provide funds for the construction of the second and subsequent residential buildings.

If the subdivider requests that a final subdivision public report cover the total project, the subdivider must then specify the anticipated completion dates for each building that will contain residential units. This is in addition to the completion dates for other common areas that may be covered by a bond. These dates will be included in the final public report and the subdivider's failure to complete the buildings within the time frames will constitute a material change requiring an amended public report before sales in the project may resume.

Subdividers should be cautioned to allow themselves plenty of time to complete these buildings, taking into consideration weather conditions, strikes, etc. When the completion dates have arrived and the buildings are not completed, DRE will expect sales to stop until an amended public report can be issued. The issuance of the amended public report would not be automatic. The developer must demonstrate his intent and ability to complete the remaining buildings before being allowed an amended public report with a new completion date. This may mean a re-evaluation of the application. Also, the subdivider must specify a reasonable date for completion of the total project including residential structures.

Liability policy required

Regardless of the method chosen by the subdivider for completion of the project, we must still require the standard million dollar liability policy to protect the homeowner association during future construction.

Separate filing/fee for each "phase"

If the subdivider chooses to "phase" by obtaining a final and then amended public reports on a "building by building" basis, DRE will require an original notice of intention questionnaire and the appropriate filing fee for each increment/subphase. We will then issue a final report for each increment/subphase.

Completion dates in public report

In the case where we issue public reports only on this "one phase per building" basis, we will require estimated building completion dates to be placed in the original final public report. These completion dates must be for the total project as well as the first building.

Standard note re lack of assurance of total completion

In the public reports, we will use our standard note, "There is no assurance that the total project will be completed as proposed.", regardless of whether the subdivider obtains one final public report on the total project or a final and then amended reports on the "phases" beginning with the first building and the outside common area.

Budget/assessment considerations

Where a final public report will cover the entire project, the DRE will have the subdivider submit budgets for each remaining portion of the project or "phase" represented by completion of additional residential buildings. The subdivider must pay assessments equal to those paid by resident owners including required reserves and costs of maintaining all common areas in the project, including the completed residential structure, with the exception of paying assessments for utilities such as gas and electricity, garbage service, etc. serving the residential structure after he has sold all his units in the constructed building(s). This is fair since the subdivider will still own interests in the common areas in the total project including the first building after all of the units in that structure are sold.

EXAMPLE: A 100-unit project with 5 buildings of 20 units each. The budget for the first residential building and outside common areas is \$100 per unit per month (PUPM) x 100 units = \$10,000. Resident owners pay \$100 PUPM and subdivider pays \$100 PUPM for all interests he still owns in the overall project. As a unit is sold, he is no longer obligated to pay the "variable common costs" that could be attributed to occupancy of a unit, such as heat, lights, air conditioning, garbage pick-up.

When building number two is complete and added to the existing project, the overall budget increases by \$40 PUPM x 100 units = \$4,000. This covers the additional expenses for building number two. The total budget would then be \$140 PUPM x 100 units = \$14,000. The developer pays the full \$140 for each unbuilt unit or each built but unsold unit.

If developer requests the final public report for the entire project, every condominium unit on the lot that is complete or is to be completed will be assessed whether or not the subdivider requests assessments to cover only sales of units in the first building. (See above paragraph which provides for "phasing" of the budget.)

Voting re subdivider's failure to pay assessments

When the developer requests the final public report for the entire project, the declaration of CC&Rs shall contain provisions that will cause votes controlled by the developer, either as a member of the board of directors or as an owner of units, to be excluded whenever it is necessary for the association to hold an election to determine whether or not to file liens on the subdivider's remaining interests in the project or to enforce a maintenance bond or subsidy bond due to subdivider's failure to pay assessments to the association. The declaration would provide that this restriction on the subdivider's voting power be in effect only as long as the subdivider controls the majority of the votes on the Board of Directors or as an owner of units when voting on association matters.

Completion requirements impact developer's voting rights

In connection with the situation where the subdivider will obtain a final public report on the total project but will be building and selling less than all of the residential structures in the project, DRE will allow the votes the subdivider holds for the unbuilt units to be in effect for so long as he meets his projected final date of completion for the total project, including residential units. This completion date must be reasonable. The CC&Rs must provide for him to lose his majority vote (if he still has a majority at that time) in the project if the project is not completed and notices of completion filed by the critical completion date.

Building by building "phasing"

There will probably be several requests by subdividers to restrict the coverage of the final public report to the units in the first building. The subdivider will attempt this "phasing" on a "building by building" plan because he wishes to escape paying any assessments whatsoever on the remaining unbuilt units. DRE will agree to issue a final public report which is restricted to sales in the first building; however, since the purchasers of units in the first building will be obtaining undivided interests in the total lot (on which common area improvements other than residential buildings are either complete or bonded for completion), the assessment structure would be abnormally high since all costs for maintenance of all common areas would fall upon the owners of units in the first building. In this case, the subdivider would not be paying assessments on the unbuilt units and would not be allowed the vote of the unbuilt units. Regardless of the subdivider's inability to vote on association business, we must allow the standard provisions in the CC&Rs which allow the subdivider to enter upon association owned property for the purpose of further construction.

There may be acceptable variations

There may be some variations on the above procedures that would also be acceptable. Such variations should be cleared with the manager in charge of the district office subdivision section.

Provisions for Regulation 2792.4 should be included in the CC&Rs.

POLICIES PERTAINING TO CONDOMINIUM CONVERSIONS

Adequate financial arrangements must be made to assure completion of any renovations and/or additions to the project. Items to be submitted are:

- copies of the original notice of completion of the project and subsequent additions or modifications;
- adequate maps or drawings to identify any proposed structural additions or alterations to the project including rearrangement of the boundaries of the units, additions to the recreational amenities, etc.;
- if escrows will close prior to completion of all additions, alterations, or renovations of the project, an inventory of the work to be performed, and the scheduled costs thereof, and evidence of financial arrangements;
- if the RE 639 filed by the developer reflects structural defects, or the appraiser's physical inspection indicates need, reports from engineers or other qualified experts in the field for such things as the foundation, structure, roof, paving, mechanical components of the building (elevators, heating and air conditioning, electrical, plumbing, etc.) and recreational amenities, and structural pest control.

Note: DRE no longer requires soils, filled ground and geological reports. We will, however, request in the application that the developer provide us with the name and address of the public agency where information concerning soil conditions, filled ground or geologic hazards for the project will be available. We will then disclose in the public report the location where this information can be found and any hazards existing as shown on the questionnaire. If no such report is on file, due to the age of the building, and no report is available from the soils engineer or geologist at this late date, such information will be stated in the final public report.)

Deputies and appraisers who review condo conversion filings should comply with the following:

“As Is” Sales

Deputies who review condominium conversion sales agreements should be instructed to cite as deficient any “as is” clause contained in such an agreement. Condo conversion sales disclosures mandated under existing law and DRE procedures appear adequate. But “as is” clauses should not be permitted in condo conversion sales agreements.

Note: An applicant for a public report authorizing the sale of standing inventory consisting of previously-rented condominium units (“condominium conversion units”) must submit the sales agreement proposed for use in the transaction. These sales agreements occasionally contain a provision stating that the seller is selling the property “as is” or “in its present state and condition” or words to that effect. It is intended that such a provision will relieve the seller from liability for the failure to disclose a material defect in the property which is not known to the buyer. However, even under circumstances that are most favorable to seller, such a clause can have only a very limited effect. A provision that ostensibly requires the buyer to accept the property “as is” means, at the very most, that the buyer accepts the property *in the condition which is visible or observable by the buyer*. In other words, the burden is shifted to buyer to rely on his own visual inspection of the property. But for sales conducted under authority of a public report, the “as is” clause cannot even have that meaning. The developer of the condominium project owes a fiduciary duty to the buyer. He may be held liable for failing to disclose defects that could be discovered by a reasonable inspection. Under DRE's procedures, the seller is required to submit a statement reciting the history of the improvements to the property, inspection reports covering each of the major structural components, a summary of the information available to the applicant regarding structural defects, a statement of any renovation work to be completed prior to close or escrow, and financial guarantees to secure completion of any renovation work to be finished after close of escrow. Also, Civil Code Section 1134 requires the seller of condominium conversion units to disclose all structural defects to the buyer or provide a written disclaimer of knowledge. The public report applicant must also submit review copies of proposed disclosures to be provided buyers in accordance with Civil Code Section 1134. If the assigned appraiser feels that there may be a structural problem, the appraiser will request that the subdivider provide a report from a structural engineer to determine the extent of the problem. During the appraiser's inspection, the appraiser verifies the information the subdivider has submitted to determine if there are any inconsistencies. The DRE deputy reviews the material submitted by the applicant for information that may be placed in the public report and makes sure that the escrow instructions

require that the CC 1134 disclosure be delivered to the buyer before close. Under these conditions, seller cannot shift the burden to buyer to rely on buyer's own inspection. Therefore, the suggestion, through use of an "as is" clause, that the buyer must rely on his own inspection could—and ordinarily would—be so misleading as to create grounds for denial under Section 11018(b) of the Code.

Documentation of "Like New" Condition

If components of the project that deal with the association budget (common area) are being represented to have been refurbished to a "like new" condition, verification of this needs to be obtained. For example, if the carpet in the rec facility is being shown as "like new", then either the contract for the replacement of the carpet or the date of purchase of the carpet needs to be appended to the budget to substantiate the reserve calculation.

Reserve Analysis Format

All reserve components identified by a third party inspection must be included in the budget even if they are not covered by the DRE HOA Cost Manual. Thus, we will allow the listing of additional reserve components in the budget worksheet. This procedure will preclude developers from omitting components and indicating that as long as they follow the Cost Manual they are meeting the minimum DRE standards. Also, the appraisers should not do a reserve study or analysis as defined under the Davis-Stirling Act for the developer. If this data is missing and necessary to complete a review, the appraiser should ask for it. If unavailable, a special note should be placed in the public report.

Deficit Reserve Contract

The appraiser reviewing a budget submitted in connection with an application for a public report authorizing the sale of condominium conversion units should cite as deficient any reserve deficit funding arrangements that do not include a written contract between the subdivider and the owners association that specifies in sufficiently certain terms the rights of the parties and includes appropriate provision for enforcement of the respective obligations (e.g., amount of payment and due dates). A reciprocal attorneys fee provision and accrual of interest on unpaid amounts are basic requisites for the contract.

Occupancy 75 feet above ground floor

If the building being converted has residential occupancy at an elevation of 75 feet above the ground floor, or such lower floor with entry openings, evidence of full compliance with Health and Safety Code Section 13217 must be obtained from the local fire authority.

Elevators

Buildings of lesser height than 75 feet with an elevator or elevators having a travel of 50 feet or more must provide evidence of compliance with Title 8 of the California Code of Regulations from the Department of Occupational Safety and Health.

Notice to tenants

Copies of the written notice of intention to convert and notice of tenant's first refusal right as provided under Government Code Section 66427.1 must be furnished by the applicant.

Discounts for tenants

When it is determined that the "conversion" will have two price ranges, one for tenants and another for nontenants, obtain the price list to assure that the "lower" prices represented to tenants are actually discounted from the prices charged to the public.

If tenants must vacate for renovation

If there will be a period of renovation when tenants (possible future owners) must vacate the building, the deputy should obtain information about the time lapse, whether temporary facilities are to be provided, whether there is a relocation fee, etc., for inclusion in the preliminary public report.

Undivided interests

Conversions involving the sales of undivided interests such as time shares add another dimension to the appraiser's review procedures. This will include furniture, appliances, individual heating and air conditioning units, carpets, drapes, and tax burden in addition to the higher level of management which may be necessary in such projects. This type of filing

will be handled as a time share filing.

RE 639 information

Deputies processing applications on condominium or stock cooperative conversions should always review RE 639 for information that may be placed in the public report.

Deputies should determine whether the offering is to include renovations to the interiors of the units. If the subdivider asserts that renovations will be made, the deputy must obtain evidence, in the form of a provision in the sample escrow instructions, that any renovation(s) to a unit will be completed prior to the close of escrow on the sale of that unit and that all lien periods will have expired. The renovation(s) must be described in the instructions. In essence, a necessary condition for the close of an individual escrow would be the completion of the renovation(s) within that unit only, not all of the units. Be careful to review that the component being renovated is not common to all units (e.g., the roof), as this requires protection from future mechanic's liens.

Renovation example - a new stove

The subdivider maintains that he will install new stoves in all of the units. The deputy should require that the buyer's sample escrow instructions include a provision stating that escrow will not close on the sale of an individual unit until a new stove is installed in that unit.

Statement re defects - Civil Code 1134

Civil Code Section 1134 requires the owner or subdivider (or his agent) of a unit in a condominium conversion project to deliver to the prospective buyer either a written statement listing all substantial defects or malfunctions in the major systems, as defined, in the unit and common areas, or a written statement disclaiming knowledge thereof. Deputies should obtain sample copies of these statements prior to issuance. Deputies should also insure that escrow instructions provide that escrows will not close nor will funds be released from impound until the purchaser has acknowledged receipt of either a statement listing all substantial defects or malfunctions or a statement of disclaimer and required rescission periods have expired pursuant to Civil Code Section 1134.

CONVERSION BY INDIVIDUAL OWNERS OF COMMUNITY APARTMENTS, STOCK COOPERATIVES TO CONDOMINIUMS

There are instances where individual owners of community apartments or memberships in stock cooperatives find that it would be to their advantage to convert their project to a condominium project. A final public report must have been issued and given to each original purchaser of the community apartment or cooperative memberships. Such projects must meet the following criteria:

A final public report was issued for the subject community apartment or stock cooperative project that is to be converted to condominiums, provided that the community apartment or stock cooperative came within the jurisdiction of the Commissioner when it was first established. (Note: Prior to 1965, permits authorizing the sale of shares in a stock cooperative were issued by the Corporations Commissioner. No public report was required during that period.)

There is an existing recorded subdivision map or the project meets the provisions set forth in Sections 66412 and 66452.10 of the Government Code.

All of the current tenants in common or members will be the new condominium owners and the units they currently occupy will be the units they will own and occupy after the conversion.

No money will change hands - just conveyancing documents.

After conversion to condominiums, the individually owned units will not be subject to any blanket encumbrance.

The conversion will not result in the creation of additional condominium units.

The original subdivider or any successor to the original subdivider holds no present interest in the real property to be converted. In other words, the original subdivision has sold out.

Evidence of approval of the conversion by the owners, per Government Code Section 66452.10.

If waiver appropriate, issue short form public report. See RE 627 and 627-A.

Note: This policy will not be applicable to limited equity housing cooperatives that are attempting to convert to condominiums.

REVIEW OF BUDGET - PDS AND CONDOS AND AMENDMENTS/RENEWALS***Appraiser's Role***

The Subdivision Deputy Commissioner is responsible for requiring that the subdivider submit a budget for operation and maintenance of common areas. Review of the budget is assigned to an appraiser or deputy in the Budget Review Unit who will ordinarily check plans and specifications for construction of the common areas and facilities, and possibly inspect the site. Budget estimates submitted by the subdivider will be reviewed by the Budget Review Unit and a determination made as to the accuracy of the figures. For more detail see the Appraisal Manual.

Updating a Budget More Than 18 Months Old

In the event eighteen months expires from the date the budget estimate is accepted by DRE until the public report is ready to be issued or, in the case of an incremental phased subdivision, eighteen months expires from budget acceptance until a public report on a subsequent phase is ready to be issued, DRE will determine if the budget estimate is still acceptable. If the budget is revised, a corrected, updated budget estimate must be placed in the final subdivision public report.

Assessment Delinquencies

If the subdivider is delinquent in the payment of assessments (including assessments owed by the same subdivider in prior phases), we will require that the subdivider pay the delinquent assessments prior to the issuance of the public report. If the subdivider is in a financial situation that precludes payment of delinquent assessments prior to issuance of the pending public report, we occasionally allow for payment to the association out of future escrows and will place a special note in the public report. The payment may be made out of escrow upon the first closing, spread out as individual escrows close over a period of time (the balance due by a date certain may also be imposed) or the DRE may require that a certain number of escrows close simultaneously (presale) in order to accumulate sufficient funds to cover the debt in one payment. In any event, all requests to defer payment of the delinquency until after the issuance of the public report must be approved by the Office Manager. If the subdivider claims offsets, the budget review staff will review the claim, obtain input from the association and provide comments to the assigned deputy.

If the delinquent assessments are owed by a different subdivider, normally the issue is resolved by placing a special note in the public report. However, if the deficit is substantial (approximately 25% or more of the annual budget -- Regulation 2800(p) defines a material change as the failure to pay three months of assessments), it would not normally be considered reasonable to issue a public report unless the delinquency is cured by payment in full by the current applicant, a special assessment imposed against all owners to cover the shortage, or the budget is increased to cover the delinquency. Any pending application wherein there is a substantial deficit in assessment payments not owed by the applicant should be referred to the Assistant Commissioner, Subdivisions for a determination on what special conditions, if any, will be required to cover the delinquency.

Deficient Reserves - Amendment/Renewal Applications

If, at the time of amendment or renewal under any circumstances, the Budget Review Unit finds that reserve amounts are deficient, try to get the budget increased to cover the deficiency or have the subdivider fund the deficient amount prior to issuance of the amended and/or renewed public report. If the subdivider is not in control and cannot or will not accomplish this, add a special note in the public report to disclose the possibility of a large increase or special assessment to be imposed in the future. See also "Assessment Delinquencies" above.

Proration of Assessments - Section 2792.16(b)

When there are differences of 10% or more in the level of common services provided to lots/units within the same subdivision, the regulation allows differential assessments but does not require them. When there is more than a 20% difference in the level of common services provided to lots/units within the same subdivision, DRE will require the assessments to be prorated according to the differences in common services provided. In other words, more than a 20% variance in value of common services indicates the ordinary equal assessments are not equitable among owners. This policy is to be enforced by the budget review staff as well as subdivision deputies.

ELECTIVE ASSESSMENT PROCEDURES

1. RANGE OF ASSESSMENTS

Defined: Range of Assessments is a method or procedure used for setting up an assessment/budgeting program for large projects with multiple builders. The estimated range is established for the project through review of the proposed assessment program from start-up to built-out. The range is useful for projects with multiple product types and is limited to no more than a 100% differential from the lowest (best case) to highest (worst case) assessment in the project; possibly less, depending on the impact to the association and members. The minimum size of a project for use of this procedure is 200 lots/units unless it falls within the definition of a Master Planned Community.

A Range of Assessments can be "stepped", usually down, as the assessments decline towards built-out. The number of "steps" or ranges established for a project would normally be limited to two and consist of no less than 10 phases each. Any exceptions to these criteria would be considered on a case by case basis.

Procedure: Assuming the project meets the aforementioned criteria, a budget should be prepared which includes the following:

1. The normal documents required in a Duplicate Budget Package other than a completed RE 623 - Budget Worksheet for all phases.
2. A completed RE 623 for the worst case budget. The worst case budget consists of the phase with the most amenities or expenses supported by the fewest number of lots/units. Reasonableness must be used as a criterion when making the determination and the review as to worst case. Example: a future phase with large areas of exterior landscaping and a few lots that hasn't or won't be mapped for 3 years down the road may be reasonably excluded as worst case. Most of the time the worst case is Phase 1.
3. A completed RE 623 for the best case budget. The same reasonableness criterion should be used here as in number 2 above. Most of the time the best case budget is the built-out budget.
4. A spreadsheet delineating the phase numbers and lot/unit count across the top of the page and the individual budget line items down the left side of the page. The columns for each phase would include the cost per lot/unit per month for each line item listed. A minimum of the first 10 phases or those proposed to be built within the first 3 years plus built-out, whichever is more, must be completed on the spreadsheet(s) submitted for review.

If the lowest (best case) and/or highest (worst case) assessment does not fall within the minimum number of phases required for review, the spreadsheet(s) must be completed to the point of their inclusion. The same holds true for advertised recreation facilities and/or amenities that will come on line at a later date, past the minimum submittal. Spreadsheets covering all of the phases to be included within the range are preferred because they help simplify the review process. With the spreadsheet(s) filled in, the reviewer can verify that a proper determination for the best and worst case was identified for the project.

5. A RE 624A must be completed for each phase submitted for review. It is preferable if they are included as part of the spreadsheet(s) but may be submitted on separate forms.

Once approved for use by the Supervising Appraiser, the budgets are reviewed by staff for accuracy, quality and to make sure they meet our minimum cost manual guidelines. After acceptance, a completed report (RE 660C) is sent to the Deputy. In addition to the normal information included in the report, it would include:

1. The amounts for the range of assessments as determined by the best case and worst case budgets including their respective reserve amounts.
2. The maintenance bond amount computation. Since the exact assessment per lot/unit per month is unknown at the time, the bond is computed differently. The high end or worst case assessment amount times (X) the number of lots/units times (X) 6 months is used to compute the bond amount. There are exceptions to this procedure as noted later.

Additional Information: There are some additional procedures and conditions needed to insure consistency of processing for this assessment program. They are:

1. Special disclosure wording should be used in the Public Report. The disclosure must include a statement that says: "The Subdivider must provide you with a copy of the budget prior to the close of escrow which shows the exact amount of the monthly assessment that you will be charged." Variations or similar wording is acceptable. This disclosure and the requirement are a condition of using the Range of Assessment procedure. As a form of guarantee, the escrow instructions in Southern California and deposit receipt in Northern California could indicate that a copy of the budget will be handed to the purchaser prior to the close of escrow.
2. As noted previously, there may be instances when a spread or difference (as a percentage) between the high and low ends of the range is too large and may be unacceptable. The impact the assessment has on the association as a whole as well as to the individual will be used as a guide in making this determination. Example: a range of \$10.00 - \$20.00 does not have any impact on a purchaser and would be accepted; \$175.00 - \$350.00 may not, even though both represent a 100% difference.
3. Once the homeowners' association is established and "in control", maintenance bonds may be computed based upon the existing or current budget. The HOA or their representative must submit a letter with the budget attesting to the fact that this is the budget currently being used. Also, the budget must be desk reviewed by staff, the bond amount computed and a report forwarded to the Deputy handling the file.
4. The assessment amounts for this procedure, like other budget reviews, are deemed adequate for 18 months after acceptance. If all of the phases were not included on the spreadsheets with the initial application, the next 10 or what will be completed within 3 years should be filed when the budget is in for review. A copy of the current operating budget should be included with each application for a Public Report. Also, if the assessment noted in the Public Report falls below the low end of the range or above the high end of the range, a re-submittal must be made for review and acceptance of the new range.
5. After initial review and acceptance, a three-ring binder should be provided by the Subdivider or agent so that copies can be kept of each budget that is generated for use at the project and given to the buyer. As these budgets are forwarded to the Department at close of escrow for each phase, they are checked to see that they fall within the range and are current. The Subdivider(s) or agent(s) responsible for generating the subsequent phase budget(s) for the buyer(s) should submit a copy to the Department's Budget Review Section. No budget reviews are required of the different builders for changes in phasing sequence.

2. FIXED ASSESSMENTS

Defined: This procedure or budgeting technique is used to fix the total per lot/unit per month assessment in a phased project at the same amount for all or most phases. This is normally workable in conjunction with some

larger Planned Developments that have consistent and/or minimal common areas in each phase, causing the assessments to be almost identical before applying this procedure.

Procedure: Using this technique calls for adjusting the contingency line item on the budget up or down so that the bottom line of each budget for every phase has the same total per lot/unit per month. No pre-approval or extra data is needed for reviewing or using this procedure. The only conditions for use are: that any adjustments made to the actual contingency amount have to be minimal, no more than 7% of the budget; no negative contingencies in the budget; and, that this procedure cannot be combined with the range or level assessment procedure.

In lieu of providing RE 623s for every phase, the RE 623 for Phase 1 plus the built-out budget along with spreadsheets for the intermediate phases can be submitted for review. The spreadsheet should delineate the phase numbers and lot/unit count across the top of the page and the individual budget line items down the left side of the page. The columns for each phase would include the cost per lot/unit per month for each line item listed. Completed RE 624As must be submitted for each phase, as part of the spreadsheet or on individual form.

After acceptance, a completed report (RE 660C) is sent to the Deputy. In addition to the normal information included in the report, it would include:

1. The amount of the fixed assessment for the number of phases under review, including a range of the reserve amounts.
2. The maintenance bond amount for all of the phases subject to the fixed assessment will be computed using the same cost per lot/unit per month times (X) the number of lots/units in the phase times (X) 6 months.

3. LEVEL ASSESSMENT PROCEDURE

Defined: The Level Assessment procedure is a method or procedure used for setting up an assessment/budgeting program for large projects with one or more Subdividers. Generally, the level assessment selected falls within a range of the actual assessments, which are both above and below the level amount. Also, the level amount can be "stepped", usually down, as the assessments decline towards built-out.

The estimated level assessment or assessments are established for the project through review of the proposed assessment program generally from start-up to built-out. The established level assessment amount can not be more than 15% above or below the actual estimated assessment for any given phase. Any "step" in the level assessment must include a minimum of 3 phases. The minimum size of a project for use of the procedure is 100 lots/units with 10 or more phases.

By definition, there will be phases where the established level amount is less than the estimated actual expenses or budget. For that reason and in order for this procedure to be viable, some surplus funding of the operating account is necessary in the initial phases of the project. During the life of the Level Assessment Procedure, the cumulative operating surplus, combined with actual assessments, should not drop below 3 months of funding, or 10% of the current monthly budget, whichever is higher. Any exceptions to these criteria would be considered on a case by case basis.

Procedure: Assuming the project meets the aforementioned criteria, a budget should be prepared which includes the following:

1. A level assessment chart with the following column headings across the top of the page: Phase number, Estimated Closing date (or sales month), Level Assessment, Monthly Budget-Level, Computed

Assessment, Monthly Budget-Computed, Monthly Surplus/(Deficit), Cumulative Surplus/(Deficit). Additional headings may be added to the chart based on the preference of the budget preparer. Both the Level Assessment and Computed (actual) Assessment should be shown as a cost per lot/unit per month. The monthly Surplus/(Deficit) is calculated as the difference between the monthly level assessment revenue and the monthly computed (actual) assessment revenue. It should be noted that the number of months between phases needs to be considered when calculating the Cumulative Surplus/(Deficit) amount.

2. The normal documents required in a Duplicate Budget Package other than a completed RE 623 - Budget Worksheet for all phases. Only a completed RE 623 for Phase 1 and the built-out budget is necessary.
3. A spreadsheet delineating the phase numbers and unit count across the top of the page and the individual budget line items down the left side of the page. The columns for each phase would include the cost per unit per month for each line item listed. A minimum of the first 10 phases and/or those proposed to be built within the first 3 years plus built-out, whichever is more, must be completed on the spreadsheet(s) submitted for review. Spreadsheets covering all of the phases to be included within the level assessment program are preferred because they help simplify the review process.
4. A completed RE 624A must be completed for each phase submitted for review. It is preferable if they are included as part of the spreadsheet(s) but may be submitted on separate forms.

Additional Information: There are some additional procedures and conditions needed to insure consistency of processing for this assessment program. They are:

1. If more than one level assessment amount is projected for use during this assessment program, the actual phase or date the new assessment will become effective may differ from the proposed phase or date. After acceptance, as long as the existing criteria were followed [i.e., there is at least three months' surplus funding (see "Defined" above); three or more phases for any level; and, the new assessment amount to be used was previously accepted], the change to the new assessment can be made at a different date or phase without requiring a budget review by the Department.

For the type of change noted above, an informational letter should be submitted to the Budget Review Section from the Subdivider, his agent or property management company. The letter should indicate the date and phase number when the change will take place, the new assessment amount and the total amount of surplus in the operating account. It should be noted that if there is a material change under an existing Public Report, an amendment disclosing the new assessment amount may be required.

2. In order to facilitate the proper use of and account for the Cumulative Surplus under the Level Assessment procedure, the following needs to be incorporated into the association management documents under Duties and Responsibilities of the Board of Directors (Board):

The Board shall set up and follow fiscal controls which must be adhered to as long as the Level Assessment budgeting program is in effect, that include but are not limited to the following:

A separate account shall be set up to house the Cumulative Surplus Fund Account.

Restrictions on the use of the Cumulative Surplus Fund Account will be stated so that the account funding shall only be used for the funding of the regular assessments in a given fiscal year.

Require that the association's annual audit include a review or test of the Level Assessment Program to ensure that adequate regular assessments are being collected.

3. The assessment amounts for this procedure, like other budget reviews, are deemed adequate for 18 months after acceptance. If all of the phases were not included on the spreadsheets with the initial application, the next 10 or what will be completed within 3 years should be filed when the budget is in for review. No budget reviews are required of the builder(s) for changes in phasing sequence for budgets within the same assessment level. Also, if the current assessment falls below or above the assessment(s) noted in the Public Report or a material change occurs, a re-submittal must be made for review and acceptance of the new level amount(s). Refer back to item 1 under "Additional Information" for more details.

Once approved for use by the Supervising Appraiser, the budgets are reviewed by staff for accuracy, quality and to make sure they meet our minimum cost manual guidelines. After acceptance, a completed report (RE 660C) is sent to the Deputy. In addition to the normal information included in the report, it would include:

1. The amounts for the level assessment(s) for the number of phases under review including a range of the reserve amounts.
2. The maintenance bond amount for all of the phases subject to the level assessment will be computed using the same cost per lot/unit per month times (X) the number of lots/units in the phase times (X) 6 months.

CONSOLIDATION OF PHASED COMMON INTEREST SUBDIVISIONS UNDER ONE FINAL PUBLIC REPORT

It is sometimes possible to issue one final public report to cover multiple phases under one overall public report. The setup must be reasonable in all respects and financial arrangements must be adequate to guarantee completion of each phase of the project (including residential units if it is a condominium or cluster housing planned development).

Planned development

All of the following conditions must be met if an overall final subdivision public report is to be issued for a planned development with multiple phases:

a recorded map covering each parcel to be included under the public report;

governing instruments for all owners associations shall be applicable to all lots shown on the overall public report;

only one type of common interest subdivision can be included in the filing (e.g., planned development and condominium cannot be included in the same overall public report);

all common areas covered by the report must be transferred to the homeowners' association(s) prior to conveyance of the first lot, as per Regulation 2792.15(a) or there must be some other acceptable guarantee of conveyance; and,

regular assessments in all phases shall commence on the date of the first conveyance of a subdivision interest under authority of a public report or on the first day of the month following the first conveyance of a subdivision interest. [However, any phase which does not include a structural improvement for human occupancy may be exempted from payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly related to such structural improvements. See Regulation 2792.16(c).]

Condominium

The conditions for an overall report for a phased condominium project would include all the criteria of the planned development project and the following:

recording of a condominium plan for all units encompassed by the public report; and,

no single structure split into more than one phase.

This policy is based on the provisions of Regulation 2792.16(f) which provides that, "Regular assessments against the subdivision interests in a phase of a multi-phase subdivision or against all subdivision interests in a single-phase subdivision shall commence on the date of the first conveyance of a subdivision interest in that phase under the authority of a public report or on the first day of the month following the first conveyance of a subdivision interest in the phase." (emphasis added) If a public report covers more than one phase, assessments on all interests under the authority of that public report must commence upon the sale of the first subdivision interest.

EXEMPTIONS FROM PORTIONS OF ASSESSMENTS

Amount attributable to unbuilt structures

In some cases, it is not reasonable for either the subdivider or the individual owners to pay assessments which are directly attributable to structural improvements which have not as yet been constructed.

Regulation 2792.16(c) provides that the subdivider and other owners of a subdivision interest which does not include a structural improvement for human occupancy may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but shall not necessarily be limited to:

- roof replacement;
- exterior maintenance;
- walkway and carport lighting
- refuse disposal;
- cable television; and,
- domestic water supplied to living units.

Duration of exemption

Any exemption from the payment of assessments attributed to dwelling units shall be in effect only until the earliest of the following events:

- a Notice of Completion of the structural improvements has been recorded;
- occupation or use of the dwelling unit; or,
- completion of all elements of the residential structures which the association is obliged to maintain.

Amount attributable to unbuilt common facility

It also does not make sense for either the subdivider or individual owners to pay assessments for maintenance of, for example, a swimming pool or tennis court that is not scheduled for completion until considerable time after issuance of a public report. Regulation 2792.16(c) also addresses this issue of allowing an exemption in the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. Any exemption from the payment of assessments attributable to common facilities shall be in effect only until the earliest of the following events:

- a Notice of Completion of the common facility has been recorded, or
- the common facility has been placed into use.

SUBSIDIZATION BY THE DEVELOPER - REGULATION 2792.10

Occasionally, a Subdivider will propose a subsidy program for all or a portion of the operational and maintenance costs for the common areas and facilities. In other words, he will agree to pay all or part of the regular assessments for a certain period of time on all lots/units, not just those attributable to unsold lots/units for which he is liable absent an agreement to subsidize. The Subdivider may also provide goods and services to the association or a combination of goods, services and cash.

There is nothing objectionable about a subsidy program if it is properly implemented. FINANCIAL ARRANGEMENTS TO ASSURE THE ABILITY OF THE SUBDIVIDER TO PERFORM WILL ALWAYS BE REQUIRED PURSUANT TO SECTION 11018(i). A subsidy security device posted by a Subdivider pursuant to Regulation 2792.10 is not the same as a "maintenance security device" posted under Regulation 2792.9, though it may be possible to combine the two obligations into a single undertaking or security device, even though both obligations have differing expiration criteria. Even if the Subdivider furnishes a security device for an acceptable subsidy agreement, security is also required to insure payment of assessments pursuant to Regulation 2792.9 upon termination of the subsidy. Therefore, if one security device will cover both subsidy and assessment obligations, it must be in the amount necessary to cover both obligations and cannot be released until both obligations are satisfied.

The Subdivider's subsidy agreement with the homeowners' association must be carefully analyzed to assure that it is binding upon the Subdivider for all — or a specified portion of — the operational and maintenance costs for a specified period of time. All owners, including the Subdivider, should be relieved from paying that portion of the assessments being subsidized. A date of termination of the subsidy must be included in the agreement.

If the Subdivider elects to subsidize any or all of the cost for the operation and maintenance of the common areas or facilities, money for the reserves and certain administrative costs must be readily available to the association for the unexpected.

The adequacy of the undertaking or security device must be determined by a close analysis of the budget submitted. A proper budget is as important where there is a subsidy program as where none exists. The subsidy agreement must guarantee that all budget items for reserves for replacement or major repair are funded. With few exceptions, the subsidy program must provide for the monthly (or as frequently as assessments are due for all owners) payment by the Subdivider to the homeowners' association, for both that portion of the assessments not covered by the subsidy, including regular payments by the Subdivider to the reserve fund account, and the subsidy payment. In addition, the Subdivider must submit a monthly accounting to the association and if the subsidy is other than cash, it shall also contain a description and valuation of the goods and services furnished per the agreement. The association should at all times be in the position of control with respect to disbursing and accounting for funds to defray costs attributable to operation, maintenance and repairs.

Deputies and Appraisers who review subsidy agreements (often erroneously referred to as maintenance agreements if goods and services are provided) are to consider the following:

- Clarity of Expression — Cite as deficient any subsidy agreement that is so ambiguous or unintelligible that the material terms are uncertain.

Note: Deputies and Appraisers who review subsidy agreements should be instructed to defer to the draftsman on matters of style or format (such as use of a "definition page"), but obviously it isn't reasonable to burden the community association with an incomprehensible contract. Regulation 2792.10(a)(1) authorizes the Department to regulate in detail both the form and content of the subsidy agreement.

- Identity of Security Device — If other than RE forms are used for the security agreement, escrow instructions and security device, cite as deficient any subsidy agreement wherein the Subdivider failed to make reasonable arrangements for identifying the bond or other security device securing the Subdivider's subsidy agreement, the escrow or other entity holding the original security device, and any escrow instructions or other documents relating to the security.
- Monthly Accounting — Cite as deficient any subsidy agreement that does not specify that the charges and credits involved in calculating the amount of the subsidy payable from time to time (e.g., monthly) will be on a cash basis.
- Annual Accounting — Cite as deficient any subsidy agreement that does not specify that the overall accounting for the subsidy agreement is to be on an accrual basis.
- Time for Performing Reciprocal Obligations — Cite as deficient agreements that unreasonably allocate the time for performing reciprocal obligations. (For example, should there be any moneys due by either party, payment would be due within a specified period, such as 45 days. In this way, we would ensure that both parties are reimbursed for appropriate and necessary funds in a timely fashion.)

It is important that purchasers comprehend the effect upon their assessments when subsidies are discontinued. We will include this information in the public report under "Maintenance and Operational Expenses." The most common types of subsidy agreements used are:

- Cash Subsidy — The Subdivider agrees to pay cash to the homeowners' association to "buy-down" or reduce the monthly assessments for all of the owners for a specified term. The amount of the security is computed by taking the cash paid for each lot/unit per month and multiplying it by the number of lots/units and then multiplying that number by the term (in months) of the agreement.
- Goods and Services Subsidy — Instead of cash, the Subdivider agrees to provide service(s) and/or goods to maintain one or more of the required items shown in the association budget; at no cost to any of the owners for a specified term. Thus, the assessments for all of the owners are reduced by the cost of the service(s) provided as shown in the association's budget. The amount of the security is computed the same way as a cash subsidy once the total cost of the goods and/or services on a per lot/unit per month basis is determined.
- Cash/Services Subsidy and Maintenance Agreement — Occasionally, a Subdivider may wish to provide some maintenance at no reduction in assessments and combine this with a cash or services subsidy. For the maintenance portion, the Subdivider does not pay assessments on the item(s) maintained for the lots/units he owns, but the homeowners will continue to pay for those items. Any savings realized through the Subdivider's maintenance efforts must be shared with all of the homeowners. Any additional cost for the maintenance should be borne by the Subdivider.

The subsidy portion of the agreement will follow either or both of the terms defined under Cash Subsidy and/or Goods and Services Subsidy. The amount of the security is computed by combining the cost(s) of the maintenance item(s), as shown in the association budget, with the subsidized amount, both as a total cost per lot/unit per month. The total cost is multiplied times the number of lots/units times the term (in months) of the agreement. If the existing or proposed 2792.9 bond exceeds the total cost of the maintenance portion of the agreement, the security only needs to be computed for the subsidized portion of the agreement.

- Deficit Subsidy — Deficit subsidies contemplate that purchasers will pay their regular assessments (including reserves) and the developer will pick up all remaining operating and maintenance expenses including reserves (the deficit). The regular assessment used in the agreement is based on some future phase or the built-out assessment. Under the agreement, the developer pays no assessments for the interests

owned. Typically, deficit subsidies are used only for Time Share projects, but exceptions have been made to this policy. If it is used for another type of subdivision, all owners, including the developer, must pay the reduced assessment for all lots or units owned that are subject to assessments. This type of subsidy may be combined with a maintenance agreement. Since the deficit amount is unknown, the security is computed as one half of the annual budget of the phase or built-out budget used in the agreement.

- **Deficit Subsidy — Matching Income to Expenses —** The income sources to determine the amount of the subsidy that is necessary should be limited to assessments and interest earned. All other potential sources of income should not be part of the deficit subsidy agreement as this other income typically off-sets expenditures that are not necessarily part of the specific budget process. (For example, if rental income for renting out a recreational facility is to be used to off-set the amount of the developer subsidy, yet the amount of the rental income is designed to off-set additional security, utilities, or cleaning for the use of the recreational facility, it creates a financial hardship for the association.)
- **Deficit Subsidy — Defining Maximum Amount —** Many documents contain a restriction that the subsidy cannot exceed the budget on a line item by line item basis. (For example: if landscape maintenance exceeded the budgeted amount in a particular month, the excess would not be used to compute the deficit subsidy.) This restricts the association's cash flow, benefits the developer and creates an unrealistic financial condition for the association. Therefore, this provision should not be allowed in subsidy agreements.

Disclosures in the public report

The public report for any subdivision that incorporates a subsidization program should include the following disclosures:

- a brief description of the nature, extent and duration of the subsidy and the device whereby this commitment is secured;
- estimate of monthly assessments per unit necessary to meet the revenue requirements for maintenance and operation of the common areas if there was no operational subsidization by the Subdivider;
- information from which a prospective purchaser of average intelligence will be able to calculate his monetary obligations for maintenance and operation of the common areas upon expiration of the subsidization agreement or the Subdivider's inability to carry out the agreement for any reason; and,
- since subsidies sometimes pertain to proposed future increments of the development and continuance of the subsidy may be contingent upon or may terminate upon annexation of a subsequent phase, a statement to the effect that the Subdivider is under no legal obligation to annex additional increments to the original development. Prospective purchasers should not, therefore, rely upon anticipated future development and annexation when making a decision with respect to purchase of a unit.

DRE forms available — but not mandatory

All security devices posted in compliance with Regulation 2792.10(a) must be accompanied by a security agreement and escrow instructions in addition to the subsidy agreement. DRE has developed the following RE forms which industry may use when complying with 2792.10(a).

RE 643E Subsidy Security Agreement and Instructions to Escrow Depository - 2792.10
RE 643K Surety Bond - 2792.10
RE 688 Set-Aside Letter - 2792.10
RE 643L Irrevocable Standby Letter of Credit - 2792.10

If DRE forms will not be used, proforma instruments should be submitted for prior review and approval. Deputies should assure that the terms do not conflict between the instruments and that a form of security agreement, escrow instructions and security device are used which complies with the regulation and concepts of the DRE forms. If the Subdivider uses only one of the DRE security forms; it is equally important to assure that the language contained in any instrument in which a DRE form is not used does not conflict with the DRE form used and the subsidy agreement. For example, if the Subdivider executes RE 643E but submits a bond using other than RE 643K, the deputy should assure that the bond language does not conflict with RE 643E. If DRE forms are used, deputies should assure that the forms are fully and accurately completed.

When deputies review bond language in which RE 643K is not used, it is important to assure that the "condition of the bond" (the part of the bond that identifies the main obligations and the surety's promise with respect to it) states the circumstance on which the liability of the surety arises or the thing or event on which the liability of the surety is contingent. An example of acceptable language would be: "The condition of this bond is such that if the Principal shall promptly and faithfully perform the contract identified above, then this obligation shall be null and void; otherwise it shall remain in full force and effect." In addition, the dispute resolution provisions should not conflict with the language included in RE 643E and bonds should not include thirty-day cancellation provisions. Lastly, deputies should verify that the surety issuing the bond is licensed to issue surety bonds in California per the Department of Insurance. (Each Subdivision office should have available a current Department of Insurance list of authorized sureties.)

“START-UP” FUNDS FOR HOMEOWNERS’ ASSOCIATION

In some cases, a deputy may find in the proposed restrictions and/or escrow instructions the subdivider of a planned development or condominium project providing for a portion of the purchase price of lots or units to be set aside in some manner and added to the homeowners’ association account as “start-up” funds. This is generally called “Capital Contribution” and is not a prepayment of the periodic assessment obligation.

Applicable to all interests/time limit

With the exception of certain stock cooperative projects, such funding is not required but may be encouraged by DRE personnel. In any case where “start-up” funds are to be collected, every lot/unit must be subject to such assessments, including units unsold at the time that the assessment is levied. In the event such funds are to be paid by the developer from a portion of the proceeds of the sales, then our Regulation 2792.10 concerning subsidies will be applicable. The fees must be paid whether or not all lots are sold. A time limit of six months will be allowed for payment of all “start-up” funds to be subsidized by the developer.

Charged to purchasers and unsold interests

If the subdivider charges each purchaser a specific amount which is designated in the sales agreement as “start-up fee” to be paid to the homeowners’ association, then the subdivider must arrange to have a like amount paid to the homeowners’ association for each unsold unit existing in the subdivision. This must be paid to the association within six months from the date the first purchaser’s fee is collected for the benefit of the homeowners’ association. If the developer has not sold all his lots/units within this six month period, he may place the correct fee for each such unsold unit in the homeowners’ association’ account and arrange through appropriate escrow instructions for reimbursement to himself from the additional “start-up” fund fees to be collected from purchasers.

Financial guarantee

The subdivider must furnish a bond and appropriate escrow instructions under Regulation 2792.9 to guarantee that he will pay the “start-up” funds for each lot/unit within the said six month period, unless he chooses to place the total amount of “start-up” funds for each lot/unit in the account of the homeowners’ association as of the date of the closing of the first sale of the first lot/unit. If this flat sum is paid to the homeowners’ association at the beginning, the subdivider should provide in each sales agreement that the amount being paid by the purchaser toward the “start-up” fund is being returned to the subdivider at close of escrow as reimbursement to the developer for the amount already paid to the homeowners’ association for that lot/unit.

Another acceptable alternative is to include in the escrow instructions a provision that before the first escrow closes proof has been provided the escrow holder that seller has deposited to the account of the association the entire amount of funds to be collected and seller shall be entitled to reimbursement of said capital contribution at the close of each escrow.

Disclosure in public report

The procedure elected by the applicant should also be disclosed briefly in the public report in a format similar to the following:

“Start Up” Money: (Initial Capital Contribution). In addition to assessments, purchasers must make an Initial Capital Contribution to the association in order for the association to have sufficient “start-up” funds for operating the common areas. To ensure the early availability of such funds, the subdivider will have advanced \$3,000.00, representing a \$100.00 Capital Contribution for each subdivision unit, and deposited that amount in the account of the association. Prior to the close of escrow, each purchaser must deposit \$100.00 into escrow for each unit purchased. This amount will be reimbursed to the subdivider upon the close of each individual escrow. The amount represents the purchaser’s Initial Capital Contribution, and is not a prepayment of assessments or part of the purchase price of the unit. This arrangement is set forth in the escrow instructions.

METHODS FOR CONVEYANCE OF COMMON AREA

Documents pertaining to insuring common areas will be conveyed to a Homeowners Association may be submitted as a "Final Document" item.

Free and clear/prior to issuance of public report

In some cases the developer may be able to convey the common area and facilities to the owners' association free of any blanket encumbrance prior to the issuance of the public report. This will usually be feasible only where the common areas are part of the second or subsequent phase of an incremental development for which a public report is being requested.

In these cases, care should be taken to obviate the possibility that mechanic's lien claims will be filed against common areas after conveyance to the owners' association. This can be accomplished (1) by delaying issuance of the public report until expiration of the statutory period for filing of lien claims after the recordation of a Notice of Completion (60 days) or (2) by the issuance of a policy of title insurance to the owners' association with an endorsement against unrecorded liens.

Deed and irrevocable instructions to escrow

In most instances, conveyance of the common area to an owners' association prior to the issuance of a public report is impractical and the conveyance of title in trust for the benefit of the owners' association is unnecessarily costly and cumbersome. Delivery by the developer to the impound depository of an executed and notarized grant deed conveying common areas to the owners' association along with executed irrevocable escrow instructions is an acceptable alternative to a conveyance of the property in trust. The escrow instructions must provide that no purchaser's funds are to be released from impound unless and until:

- the deed to common areas is recorded and delivered to the owners' association prior to or concurrent with the conveyance of title of a subdivision interest to the purchaser thereof;

- conveyance of the common area to the association is free of all liens and encumbrances, and a policy of title insurance is issued showing title encumbrances, and including an endorsement against future liens if the statutory period for mechanic's and materialmen's liens has not expired.

Extensive common areas/conveyance to trustee

If the common areas included in the offering (i.e., advertised from the beginning) is so extensive that the developer cannot reasonably be expected to complete the improvement work for several months or years after the issuance of the original public report, the common areas and facilities should be conveyed to a trustee approved by the Commissioner with the property held in trust for the benefit of the owners' association and the members thereof. The trust must be irrevocable and must provide for the conveyance of the common areas and facilities, free and clear of encumbrances, to the homeowners' association prior to or concurrent with the closing of the sale of 60% of the subdivision interests, or within a period not to exceed three years from the issuance of the public report, whichever occurs first in time. Until there is a conveyance of common areas and facilities to the owners' association, the subdivider bears the full responsibility for maintenance and operation of these facilities. Regulation 2792.15(a)

If the subdivision interests are to be sold on real property sales contracts, the procedure outlined above may not be utilized because conveyance of individual subdivision interests would be delayed more than one year.

Trust agreements will ordinarily be reviewed for sufficiency by DRE's Legal Section.

MEANS WHEREBY OWNERS ACQUIRE AN INTEREST IN COMMON AREA:***Planned developments***

Although purchasers may be conveyed an undivided fractional interest, conveyance of title to common areas and facilities to an owners' association is the preferred method for the vesting of ownership rights to be enjoyed in common by the individual owners of subdivision interests in a planned development. When title to common areas and facilities is held by an owners' association, no problems are encountered as the number of owners of subdivision interests increases or decreases. This consideration is particularly important with respect to the incremental development of common-interest subdivisions. Every effort should be made to persuade developers to create incorporated owners' association for the purpose of holding title to common areas as well as for the management and operation of the common areas and facilities.

Condominiums

In order to qualify as a statutory condominium under the definition of Sections 783 and 1351 of the Civil Code, it is necessary to convey at least some of the common area to purchasers as tenants in common rather than to an owners' association. Section 1351(f) states:

"A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easement for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property."

There is nothing, however, that demands that all common areas and facilities which are not a part of the residential structures be conveyed to the purchasers as tenants in common. For example, a condominium offering could provide (1) a separate interest in space, (2) an undivided interest in common in the residential structure, and (3) conveyance of common areas and facilities other than the residential structure to an association of owners. This is preferable from a number of standpoints to a conveyance of a separate interest in space and an undivided interest in common in all of the common area.

Dirtless condominium

A condominium unit can also consist of a separate interest in a properly defined space and an undivided interest in a building or a portion of a building without having to include an undivided interest in the underlying dirt. [Civil Code §§783, 1351(f)] Thus, it is possible to have a condominium project where the underlying dirt is owned by one group of owners (for example, the commercial unit owners), and the space above a certain level, defined on the condominium map or plan, owned by another group of individuals (the residential unit owners)

When the tentative and/or final maps have already been approved and/or filed, and the subdivision is not broken down into separate lots for each phase that the developer would like to use for marketing purposes, the "dirtless condominium" approach can be used to phase the project. Under this method the condominium plan describes each building envelope as a separate three-dimensional space. The units are then described within those building envelopes. Each unit owner receives an undivided interest in a building envelope (which does not include any land, or "dirt") as well as title to the unit airspace. All of the land in the project, including the land underneath the buildings is conveyed to the association. If the developer wishes to phase a project which occupies a single lot on a recorded subdivision map, the declaration will have to provide for conveyance of the entire lot to the owners' association in the first phase, but the first phase can consist of less than all of the building envelopes. A number of the building envelopes can be designated for a future phase or phases. The deed to the association of the underlying land must, of course, contain a reservation of the title to the building envelopes, as well as easements for ingress, egress, and support.

Plandominium

Where the tentative subdivision map has not yet been approved, the attorney has an opportunity to meet with the engineer and the client and see that the subdivision map is submitted in such a way that each separate building or cluster of buildings is included within a separate lot actually designated as a lot or a building lot on the subdivision map. The condominium plan can then be filed later as a separate document, and undivided interests can be conveyed in the building lots. This is sometimes called the "plandominium" method of phasing a condominium project because it combines aspects of condominiums and planned developments. The buyer of a condominium receives title to his unit plus an undivided interest in the building in which his unit is located plus the lot upon which that building is situated or the land underneath the perimeter of the building. The owners' association receives fee title to all the rest of the land in the project. The project can then be divided into as many phases as there are building lots in the project. Each separate building (and the lot which it occupies) will be owned only by the owners of units within that building, which makes more practical sense than having all owners own undivided interests in all buildings. The association membership can expand as phases are added. Cross-easements over the recreational open space or common area are not required because it is owned by the association, to which all owners belong. Reciprocal easements for ingress and egress should be reserved and granted over the open space areas of the condominium building lot.

Incremental condominium/undivided interests

If a developer is insistent upon a plan for an incremental condominium development that calls for all of the common area to be held by owners as tenants in common (undivided interests), there are at least two possible ways in which this can be accomplished. The most important consideration in determining whether such a plan is reasonable is whether or not the interest conveyed will be insured as a condominium interest. If we have assurance that a title insurance company will insure the interest as a condominium interest, then either of the following arrangements will normally be acceptable.

1. Purchasers in each phase/increment of the development may be conveyed undivided interests based on the ultimate number of units which are anticipated to share the common areas. The subdivider shall convey title to the undivided interests representing the undeveloped stages to the homeowners' association in trust to hold for the benefit of the purchasers who will eventually share in the fee title to the common area.
2. As an alternative, we will allow the "reciprocal easements" method. In this case, the purchasers would own the proportional undivided interest in the common area according to the number of lots or units in the phase/increment where their lot or unit was located. Reciprocal easement rights for the use of the common area will be granted to them, as well as the purchasers of lots or units in subsequent phases/increments. In this manner, there would be no dilution of interests. This method is the "cleanest" in that no trust arrangement is required and no dilution of interest occurs. It is currently the most popular and accepted method.

Summary statement re alternative arrangements

DRE will accept alternative arrangements for conveyance of fee title to the common areas so long as they are reasonable and the title insurance company will insure the interests conveyed and to be conveyed.

CC&Rs should set forth method

For any method, appropriate wording should be included in the CC&Rs providing for the method of conveying fee title to the common areas to the homeowners' association or to the individual lot or unit purchasers.

If HOA is unincorporated

Where the homeowners' association is not incorporated, the conveyance may be to its board of directors or trustees. The deputy should make every effort to convince the developer to incorporate the homeowners' association even though incorporation of such an association is not required by law.

APPLICATION OF REGULATION 2792.9 IN SINGLE PHASE AND PHASED DEVELOPMENTS

Under Regulation 2792.9, the developer must post a bond or other acceptable security to guarantee payment of six months' operating expenses and reserves. The regulation requires security for all lots/units covered by the final public report. In order that the homeowners' association receives adequate protection while attempting to keep subdivider's bonding cost to a minimum, the following applies to the posting of securities for single phase and multi phase offerings:

Single phase/first phase of a multi-phase

The amount of the security device shall be six (6) months' regular assessments for all of the lots/units in that phase. The security device may be exonerated when 80% of the lots/units owned by the subdivider in that phase have been conveyed to another builder or public member (or leased if that is the marketing plan as evidenced by the subdivision file) if the subdivider is not then delinquent in the payment of regular and special assessments which have been levied by the association for those interests owned by the subdivider.

Subsequent phase of a multi-phase development

The amount of the security device shall be six (6) months' regular assessments for all of the lots/units in the annexed phase. The security device may be exonerated when 80% of all of the lots/units owned by the subdivider in that phase which are covered by a final public report have been conveyed (or leased if that is the marketing plan) and the subdivider is not delinquent in the payment of assessments.

Example: A 100 lot first phase of a planned development with projected annual assessments of \$1000 per lot per year.

This would require a security of \$50,000 to be maintained in effect until 80 of the lots owned by the subdivider were conveyed. If 80 lots were conveyed before the second phase was annexed to the subdivision, the security could be exonerated and a new security would have to be posted before issuance of a public report for the second phase.

The second phase of the subdivision contains 50 lots with projected annual assessments of \$800 per lot. The amount of the security would be \$20,000 and it would have to remain in effect until 80% of the 50 lots in phase two had been conveyed.

If 80% of the lots in phase one had not been sold at the time that phase two was annexed, the \$50,000 bond already posted could be increased by only \$10,000 (50% of the total projected assessments of 150 lots times \$800 per year) but would have to remain in force until 80% of the lots in the first phase and 80% of the lots in the second phase had been conveyed. It could be exonerated at that time if the subdivider is not then delinquent. Separate security agreements (RE 643) would be required for each phase, although only one security device covers the obligations for both phases.

Separate bonds for each phase

In addition to the method mentioned above, the subdivider may post securities for each phase of the development. In this case, separate securities submitted for a two-phase project such as the above example would be in the amounts of \$50,000 and \$20,000. As in the previous example, the exoneration of the securities would be based on the conveyance of 80% of the lots in the phase for which the security was posted.

Simultaneous closings to meet the 80% requirement

The alternative to a bond or other security would be to have the subdivider arrange for simultaneous closing of sufficient escrows in each phase of the development to meet the 80% closing requirements for all interests covered by the final public report such as is set forth in Section 2792.9(a)(1).

Amending for purchaser of five or more lots/units

The following pertains to the administration of Regulation 2792.9(a) when amending public reports for a purchaser of five or more lots/units. The regulation requires a security from any subdivider, either the original or a successor in interest of five or more lots/units until 80% of the subdivision interests covered by the final public report have been conveyed (or leased if that is the marketing plan as evidenced by the subdivision file).

Our main concern is protection of the association by assuring that assessments attributed to interests owned by subdividers are paid. This protection expires after 80% of the lots/units covered by each final public report are conveyed. After the 80% sell out, the association still has a "hammer" due to the power to file and foreclose liens on any property where the owner has not paid the association.

Example 1 — 100 lot planned development — annual assessments total \$100,000.

Original subdivider posted a bond and RE 643 in the amount of \$50,000. Original subdivider then conveys 50 lots to individual resident owners and conveys the remaining 50 lots to a "successor in interest." DRE would require that the successor post a new bond (or other security) to guarantee six months' assessment payments on the 50 lots prior to the issuance of a final public report to the successor-owner.

Example 2 — same subdivision — same assessments.

Original subdivider filed the \$50,000 bond and conveyed 80 lots to individuals and the remaining 20 lots to another subdivider (successor in interest) and then asked the association to release his bond. We would agree that the association should release the bond if the original subdivider was current in his assessment payments. We would still require a new bond or other security from the successor-owner of 20 lots prior to the issuance of a final public report to the successor-owner. In addition, the association has its lien-filing and enforcement powers.

DRE forms available - but not mandatory

If the subdivider elects to post a security in compliance with Regulation 2792.9(a), it must be accompanied by a security agreement and escrow instructions. DRE has developed the following RE forms which industry may use when complying with 2792.9(a).

RE 643 Assessment Security Agreement and Instructions to Escrow Depository - 2792.9

RE 643J Surety Bond - 2792.9

RE 688A Set-Aside Letter - 2792.9

RE 643I Irrevocable Standby Letter of Credit - 2792.9

If DRE forms will not be used, proforma instruments should be submitted for prior review and approval. Deputies should assure that the terms do not conflict between the instruments and that a form of security agreement, escrow instructions and security device are used which complies with the regulation and concepts of the DRE forms. If the subdivider uses only one of the DRE security forms, it is equally important to assure that the language contained in any instrument in which a DRE form is not used does not conflict with the DRE form used. For example, if the subdivider executes RE 643 but submits a bond using other than RE 643J, the deputy should assure that the bond language does not conflict with RE 643.

If DRE forms are used, deputies should assure that the forms are fully and accurately completed. For instance, Recital A on page 1 of RE 643 provides for a description of the subdivision to be inserted. This description should only include the property subject to the public report to be issued. It serves to define the term "Subdivision" throughout the form, which becomes critical when the escrow holder receives requests for release of the security or claims against the security.

When deputies review bond language in which RE 643J is not used, it is important to assure that the "condition of the bond" (the part of the bond that identifies the main obligations and the surety's promise with respect to it) states the circumstance on which the liability of the surety arises or the thing or event on which the liability of the surety is contingent. An example of acceptable language would be: "The condition of this bond is such that if the Principal shall promptly and faithfully perform the contract identified above, then this obligation shall be null and void; otherwise it shall remain in full force and effect." In addition, the dispute resolution provisions should not conflict with the language included in RE 643 and bonds should not include thirty-day cancellation provisions. Lastly, deputies should verify that the surety issuing the bond is licensed to issue surety bonds in California per the Department of Insurance. (Each Subdivision office should have available a current Department of Insurance list of authorized sureties.)

If HOA will not sign RE 643

There may be instances where the subdivider claims he is unable to obtain the signature of the homeowners' association on the security agreement/escrow instructions which will accompany the security device. This may occur on a subsequent phase of a project or when a new subdivider is taking over the project. The existing association sometimes refuses to sign the form because of a dispute they may have.

Deputies should obtain the signatures of the escrow and the subdivider along with a statement from the subdivider that they were not successful in obtaining the association's signature. A security being posted at this point has no bearing on existing disputes the HOA may have nor can DRE be a party to a dispute over an existing security posted per 2792.9. When we obtain a new 2792.9 security device, we are in essence looking to protect the HOA as to future behavior of the subdivider, which has no relevance to the past.

**CORPORATIONS COMMISSIONER CLEARANCE - PRIVATE CLUBS
PRIVATELY OWNED AND OPERATED AMENITIES IN SUBDIVISION OFFERINGS - SECTION
11018(e)**

Shares transferable without transfer of lot

The Corporations Commissioner may have jurisdiction over a nonprofit corporation or association in which the shares or certificates of membership are transferable without transfer of the separately owned lots or parcels.

Therefore, before we issue a subdivision public report where the interest in the common facilities or private clubs, represented by shares of stock or certificates of membership, is transferable without transferring the separately owned lot or parcel, we will require the subdivider to submit either a copy of a permit or a "no jurisdiction" letter from the Corporations Commissioner.

Privately owned and operated amenities in subdivision offerings - Section 11018(e)

Privately owned recreational facilities which are not part of the subdivision (not common area or future common area), but are part of the offering, come within the purview of Section 11018(e), although most other subdivision laws and regulations are not applicable. To provide safeguards for purchasers of parcels or units in such subdivisions, we will require the following:

(1) Evidence that reasonable arrangements have been made to assure completion of the private facilities. [Section 11018.5(a)(1)] The reasonable arrangements may be in any one of the following forms:

- (a) a letter from the construction lender indicating sufficient funds are available;
- (b) a copy of a trust deed and/or note indicating the encumbrance is for construction purposes in a sufficient amount;
- (c) a title report indicating the property is subject to a construction loan;
- (d) evidence of sufficient construction having already been completed for the facilities;
- (e) a letter from a lending institution indicating a sufficient line of credit for construction purposes has been granted;
- (f) sufficient funds are available to the developer from his own resources (This may be shown by furnishing a balance sheet prepared by an accounting firm, or by 10-K filed with S.E.C., etc.);
- (g) any other arrangements deemed acceptable to the Department.

(2) In addition to (1) above, if it will be represented that purchasers will receive use rights in the private facilities coupled with their purchase of a lot, unit or interest, the following also applies:

Evidence that the use arrangements for the facilities are sufficient to insure buyer's rights. [Regulations 2799.1(4) and (5)] The evidence may be in the form of a long-term lease, use agreement or non-exclusive easement agreement.

The following exemplify, but do not limit, items that may be considered if applicable:

- (a) lender subordination to the use arrangements
- (b) identification of the rights and limitations for use including when use rights begin and terminate
- (c) identification of user fees and acceptable increases
- (d) identification of who is responsible for maintenance and all costs related thereto
- (e) liability insurance coverage
- (f) dispute resolution provisions
- (g) prohibitions against changes in use of the facilities during the term of use arrangements.

MIXED USE DEVELOPMENT

A mixed use type project for this purpose involves apartment units or commercial areas within the same master association as residential lots or units. Commercial areas typically share roadway, parking, landscape areas, and apartment units recreational facilities with lot or unit owners. These guidelines do not address mixed use developments located in a single structure such as a high-rise.

Apartment Interests

Except as provided in Regulation 2792.16(b), monthly assessments should be equally applied against apartment units and residential lots or units. If the subdivider can demonstrate a rationale for a different ratio, an exception to the 1:1 ratio may be permitted. Such a request should be detailed in writing to the Department.

If the primary purpose of the assessments is to maintain recreational facilities to be used by the tenants and P.U.D. or condominium owners, the assessment burden should be shared equally (a 1:1 ratio). However, if the primary purpose of the assessments is to maintain passive use facilities such as slope areas or landscaping, then the assessments are split on a valuation ratio. The value of an apartment unit to a P.U.D. lot or condominium is determined and this ratio is used to determine the approximate split of assessment obligation. The result may be that 1.5 or 2 apartment units will pay the amount of assessment paid by one condominium unit. If there are both active and passive facilities, the assessment split will be a merger of the above formulas depending on the amount of assessments attributable to each type of facility.

Commercial or Industrial Areas

Generally, commercial areas do not contribute assessments for active facilities which they do not use, such as swimming pools, etc. If their invitees will use active facilities, a formula is created by estimating the number of guests relative to the number of lots or units. This issue commonly occurs relative to use of a guard gate or roadway.

For passive type facilities, a ratio of assessment obligations is obtained by comparing the square footage of the commercial areas to the residential areas.

Depending on the circumstances of the project, the ratio of assessment contribution may be recalculated upon annexation of additional phases.

Voting rights should be in the same proportion as payment of assessments. No special rights for positions on the board of directors should be given to commercial or apartment owners other than what may be obtained under Regulation 2792.19.

It should be taken into consideration that for many mixed use developments, the developer has the option of keeping apartment or commercial areas out of the master association, thus possibly escaping responsibility for assessments for passive slope areas, etc. Thus, it would be beneficial to future homeowners to make the proportion of assessment obligations as reasonable as possible in order to encourage the apartment/commercial areas to be a part of the association.

Subdivision Manual



MMDs, CC&Rs, INSPECTIONS

Sections 0800 - 0899

MASTER MANAGEMENT DOCUMENTS (MMDS)***Expiration***

All MMDs expire annually (December 31).

MMD reviews

Generally, only the underlined changes on an approved MMD require review. However, DRE has an obligation to the public to correct a valid error in the MMDs. In order to ensure that the correction is valid, any change to an MMD (other than red-lined changes) will have to be approved by the deputy's immediate manager and also the Manager III. After it is agreed that the correction is valid, a note will be placed in the MMD file that on this date the attached MMD was reviewed and corrected. This will avoid additional deficiencies going out. Also, any deputy who receives an MMD that has been reviewed as described above will not have to re-review the MMD.

MMD/deed in lieu of foreclosure provision

It has always been the policy of DRE that a deed in lieu of foreclosure does not extinguish prior assessment liens. Some of our MMD documents have been approved with this provision under the guise that it is a federal requirement. Although the feds allow for this provision, they do not require it. We do not allow it.

Deputies should be aware of our policy concerning deed in lieu of foreclosure when performing legal reviews. Many times you will see the phrase stating that a deed in lieu of foreclosure extinguishes prior assessment liens. However, you may also see the phrase that states, "... or any other remedy ..." This phrase may allow for extinguishment of assessment liens by deed in lieu, so you must be alert that if this phrase is used by itself, it is acceptable only if it is followed by a statement excluding extinguishment of assessment liens by deed in lieu.

If you discover either of these provisions in your MMDs, you will have to inform the attorney that the MMD will have to be amended in accordance with procedures.

COVENANTS, CONDITIONS & RESTRICTIONS (CC&Rs)

If subdivider states in the questionnaire that he will impose CC&Rs (restrictions), or submits with the filing a copy of restrictions to be recorded, a copy of such restrictions bearing recording data must be filed with DRE prior to issuance of the final report.

NOTE: Restrictions for a common interest subdivision should not be recorded until reviewed by the assigned deputy. Before a final public report can be issued, evidence of recording must be submitted. If the amount of initial assessments for maintenance, reserves, etc., for common area is mentioned in CC&Rs, then the CC&Rs should not be recorded until budget review is completed and the budget accepted.

DRE authority

DRE authority in the administration of the Subdivided Lands Law is restricted to approving proposed governing instruments as "reasonable arrangements" as a prerequisite to issuance of the public report. Regulation 2792.8(b) identifies those regulations that constitute the standards by which DRE judges the governing instruments for the subdivision, but do not constitute substantive requirements in themselves, contrary to the views of many owners' associations and attorneys. Once the public report has been issued, DRE has continuing jurisdiction only to the extent that Section 11018.7 is applicable to a proposed change in the governing instruments.

Items to be noted in public report

Subdivider must file copies of all recorded restrictions set forth in the title report. Read all restrictions carefully and note those provisions which should be included in the final report. Provisions which should be noted are those that are unusual or which affect occupancy or use, such as:

Reversionary clauses materially affect the interest of the purchaser, especially in regard to financing, if they are in fact enforceable. The effect of such clauses should be considered carefully, and in doubtful cases should be submitted for legal review in order that the final report reflect the true effect of such clauses.

Architectural control provisions may be more comprehensive and stringent than the provisions set out in the standard worksheet. Modify standard wording if necessary to state that architectural control extends to fences and walls, to landscaping or to other aspects of land use. If a significant fee is required for review of plans, state current fee.

Occupancy restrictions may limit occupancy in terms of the number of persons per bedroom, if the number is reasonable based on the floor space of a particular unit. City of Santa Barbara v. Adamson (1980) 27 C. 3d 123, City of Chula Vista v. Pagard (1981) 115 C.A. 3d 785 and Park Redlands Covenant Control Committee v. Simon (1986) 181 C.A.3d 87.

Age restrictions should be reviewed for compliance with Section 11010.05, Sections 51, 51.2, 51.3, 51.4 of the Civil Code and the Fair Housing Amendments Act of 1988 ("Act"), as amended per the enactment of the Housing For Older Persons Act of 1995, which prohibits discrimination based on age unless the development qualifies as "housing for older persons." The requirements to qualify as "housing for older persons" are set forth in the special note below. The "Act" appears to override any exception under Civil Code 798.76 for mobilehome parks. Thus, mobilehome subdivisions would have to meet the same requirements for "housing for older persons."

The following special note should be included in all filings with age restrictions:

[Deputies should develop a lead-in to the special note that describes the particular age restriction (i.e. section number of the CC&Rs, minimum age, etc.).]

Age Restrictions: Under the Fair Housing Amendment Act of 1988, as amended by the Housing For Older Persons Act of 1995, the validity of age restrictions in residential developments depends on whether the development qualifies as "housing for older persons." If the age restriction is set at age 62, the housing will qualify if the housing is intended for, and solely occupied by, persons 62 years of age or older. If the age restriction is set at age 55, as is the case in this project, the following requirements must be satisfied:

- (1) The development must be intended and operated for occupancy by persons 55 years of age or older;
- (2) The development must have policies and procedures that demonstrate that the housing is intended to be occupied by at least one person who is 55 years of age or older;
- (3) Of the occupied units, 80 percent must be actually occupied by at least one person 55 years of age or older; and
- (4) The development must comply with HUD rules relating to the verification of occupancy and the development's policies and procedures.

Currently, there is no procedure in place for a pre-determination that a project, whether existing or proposed, qualifies as "housing for older persons" under the Federal requirements. If it is ultimately determined that the project does not qualify, the age restrictions would not be enforceable. The owners would have the option of either eliminating the age restrictions (in which case the development would be open to residents of all age levels), or taking whatever corrective measures may be necessary to meet the Federal requirements.

The following provisions should be accepted as reasonable for age restricted projects as long as there is compliance with the above requirements:

- May restrict permanent occupancy only to qualifying residents/qualified permanent residents per Civil Code Section 51.3.
- May restrict sales to qualifying residents/qualified permanent residents.
- Termination of age restrictions requires super-majority consent of owners.

The following provisions should not be considered reasonable for age restricted projects:

- Prohibitions on rights to inherit property regardless of the age restrictions.
- Restrictions on owner voting rights.

Age restrictions in condominium and stock cooperative conversions

Section 66427.1 of the Subdivision Map Act requires the tenants of an apartment being converted to a condominium or stock cooperative unit to be given the right for at least 90 days from the date of issuance of the public report to purchase the unit. Due to this clear legislative intent, our policy is to require that provisions in the CC&Rs that impose occupancy restrictions based upon age for condominium units converted from apartments must include a "grandfather clause" that exempts from the age restrictions tenants who purchase the units they are occupying.

The Unruh Act would permit a qualifying resident under 45 in a subdivision which has a 62 years or older age restriction. Thus, the subdivision might not be eligible for the automatic exemption. (Note the transition requirements.) Also, because of the Unruh exemption for qualified permanent residents, it may be difficult to qualify for the 80% requirement under federal law.

Temporary residency provisions/limitations in projects with age restrictions should be reviewed for compliance with Civil Code Section 51.3(e), which indicates:

The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 45 years of age for periods of time, not less than 60 days in any year, which are specified in the covenants, conditions, and restrictions or other documents or written policy.

Dormant Homeowners' Association

If as a condition of the county approval there are provisions in the restrictions for the creation of a dormant association for the purposes of owning and maintaining common area and services presently under the control of a County Service Area, DRE will require the subdivision be filed as a planned development. We need to identify what services are covered, the dollar amount to be assessed each lot owner, and which lots or units are affected by the County Service Area. The management documents should be designed to cover the creation, if necessary, of an HOA in the future. No budget will be required. The following is a sample special note for this situation:

This project is within a master project which is a common interest subdivision of the type referred to as a planned development. The master project will contain open space, parks and similar areas which initially will be maintained by Riverside County Services Area No. 143 and owned by Riverside County. The Board of Supervisors of Riverside County may, if it determines it is in the public interest to do so, convey these areas to the California Oaks Master Association. This association will be dormant and unincorporated until such time as title to these areas are conveyed to it. Concurrently with its receipt of title to these areas, the association will become incorporated and will become active, and will then have the right to levy assessments against your lot.

The county may accept title to the open space, parks and similar areas subject to a future interest held by the association instead of merely accepting fee simple absolute title as described above. If the county does accept title to these areas subject to a future interest held by the association, the future interest of the association will vest upon a determination by the Board of Supervisors of Riverside County that it is in the public interest for title to so vest. Thereafter, the county will hold no interest in these areas. In this event, title to these areas will completely vest in the association upon a determination by the Board of Supervisors of Riverside County that it is in the public interest for title to so vest. The Board of Supervisors must hold a public hearing prior to its decision to convey title to these areas to the association or its decision that any future interest held by the association in these areas should vest.

CC&R provisions required by local government may include those which purport to preclude members of an association from amending any CC&Rs which "affect the public interest" without the approval of local government. Such a provision is simply too broad. It is simply an easy way of avoiding the problem of sitting down and spelling out the specific provisions of CC&Rs in which the city feels that there is a legitimate public interest. With such a provision, the association would always be in doubt as to when it was necessary to go to the city for approval of an amendment of the CC&Rs.

Provisions which provide a device by which the city retains certain controls over the repair, maintenance and cleanliness of common area owned by common interest subdivision owners' associations are reasonable. First and foremost, it should not force the association to seek city approval in order to manage its own affairs. It should simply say that by contract between the association and the city, the city has certain powers to insist that the common area be properly maintained and to undertake repair or maintenance itself at the expense of the association if the association does not properly discharge its duties. If, on the other hand, the provisions of the CC&Rs require that the association obtain approval from city government to manage its own affairs under some vague, subjective standard, we should not approve.

Civil Code Section 714.5 prohibits an outright ban on manufactured housing in the CC&Rs. However, the CC&Rs may have design and review standards that are incompatible with manufactured housing, including mobilehomes.

Construction defects

We should not issue a public report for a subdivision offering containing CC&R provisions which purport to hold a developer harmless from construction defects for the following reasons:

1. Numerous case decisions have held California builders of subdivisions strictly liable in court for construction defects and the damages resulting therefrom. Therefore, permitting such provisions to remain in CC&Rs would mislead purchasers as to their rights.
2. Section 1354 of the Civil Code requires the covenants and restrictions in the declaration of a common interest development to be enforceable equitable servitudes that inure to the benefit and bind all owners of separate interests in the project. Such provisions do not constitute equitable servitudes and are not appropriate for CC&Rs.

Alternative dispute resolution provisions

Alternative means of dispute resolution include any procedure used to resolve issues in controversy such as arbitration, mediation and judicial reference.

Provisions in CC&Rs requiring binding arbitration of disputes between an association and the subdivider or the subdivider and an owner, including construction defect and liquidated damages claims, must comply with Regulation 2791.8(a). Provisions requiring judicial reference must only comply with subsection (d) of 2791.8 and not include unfair features. For example, the costs of judicial reference should be borne as the referee determines and not equally between the parties, as judicial reference can be expensive. In addition, language which merely references this regulation by number or includes the content verbatim is not considered in compliance with the intent of the regulation.

NOTE: Regulation 2791.8 does not apply to mediation provisions, nor to disputes between parties other than the subdivider and an association or the subdivider and an owner.

Regulation 2791.8 includes special arrangements for provisions requiring arbitration pursuant to the Commercial Arbitration Rules of AAA or the Streamlined or Comprehensive Rules and Regulations of JAMS/ENDISPUTE. However, the Department has determined that the provisions requiring binding arbitration under these rules of AAA and JAMS/ENDISPUTE will not satisfy the requirements of 2791.8(a) unless special language is added to the arbitration provision in the CC&Rs addressing the requirements of subsections (a)(1), (3), (4) and (8). AAA's rules allow for a "written agreement to vary procedures" and the rules of JAMS/ENDISPUTE provide for "party-agreed procedures."

Subsection (c) of 2791.8 requires that if other than the Commercial Arbitration Rules of AAA or the Streamlined or Comprehensive Rules and Regulations of JAMS/ENDISPUTE are to be used, a copy must be submitted with the public report application. The deputy should forward a copy of the rules and the sample contract to the Assistant Commissioner through the supervisory channels for review and comment. However, it has been determined that AAA's Construction Industry Dispute Resolution Procedures should be treated the same as AAA's Commercial Arbitration Rules for purposes of assuring compliance with Regulation 2791.8.

Updating CC&Rs when no sales have occurred (amendments/renewals)

In the case of amendments, we should encourage the subdivider to update the CC&Rs, Bylaws and Articles of Incorporation to comply with current laws and regulations. However, in a renewal filing we will make the update mandatory.

CC&RS - ANNEXATION***Effective annexation provisions in documents?***

When reviewing the CC&Rs in the initial phase of a multi-phase development, the subdivision deputy must determine if the procedures outlined in the CC&Rs are adequate to comply with Regulation 2792.27. Deputies reviewing the document that was recorded or is to be recorded to effect the actual annexation of a subsequent phase must examine it closely to see if it contains language that may act as an amendment to the original CC&Rs. Does this annexation document comply with the intent of Regulation 2792.27? Check the original CC&Rs for this determination. Annexation documents could be either a Declaration of Annexation, Amendment to the CC&Rs or Supplemental CC&Rs.

Within time limit? If not, vote required

Has the time limit for annexation expired? If so, it will be necessary for the developer to obtain a vote of the owners to annex this phase. The final subdivision public report will not be issued until DRE has evidence that the homeowners' association followed the proper procedures and voted to allow the annexation. (In nearly all cases the developer is very careful about this and handles the annexation within the time limit.)

Description of property

Under Regulation 2792.27, DRE does not require that the property to be annexed under the general development plan be described by other than in a general fashion. Tract numbers or metes and bounds descriptions are not absolutely necessary at that point.

Often, the property to be annexed is described in metes and bounds when the original phase is filed with DRE. If such property is described in metes and bounds, the annexation of subsequent tracts purportedly within the annexable property requires substantiation from a title insurance company that the property to be annexed is in fact a part of the annexable property described originally in the CC&Rs. If the property to be annexed was described by tract or lot description in the annexation documents, it must conform to that description.

Necessary documentation

Prior to issuing a final public report, DRE should have in its file either a recorded annexation document or a copy of irrevocable escrow instructions with the unrecorded annexation document attached, to be recorded concurrently with, or before, the first escrow is closed in the annexed property. In addition, evidence of subordination to the annexation document must be submitted.

Where application is made for a public report for a subsequent phase to be annexed to an existing development, the recordation of the annexation instrument may also be deferred under escrow instructions so that: (1) annexation, (2) the first conveyance of a subdivision interest in the annexed phase, and (3) recordation of the conveyance of common areas all take place simultaneously. The recordation of the annexation instrument should not ordinarily be allowed to be deferred for more than six months after issuance of the public report for that phase of the development.

Annexation - phases/voting

Subdivision (a) of Regulation 2792.7 states: "Provisions in the CC&Rs to effect the annexation of real property to the existing subdivision shall require the vote or written assent of not less than 66-2/3% of the total votes residing in association members other than the subdivider unless the proposed annexation is in substantial conformance with a detailed plan of phased development submitted to the Commissioner with the application for a public report for the first phase of the subdivision".

Thus, if the developer submits a detailed plan for annexing property, he has a conditional right to unilaterally annex. The conditions (among others) include an identification of the land and total number of units then contemplated in the overall subdivision, and the annexation must be accomplished within three years of the date of issuance of the original public report for each phase.

Occasionally, a disagreement may arise concerning the necessity for a continuing vote of an owners' association to annex subsequent phases after the three year deadline has been missed for one phase.

Each public report discloses to purchasers the expected size of the development so when they vote in the affirmative to

permit the addition of a phase that failed to meet the deadline they are tacitly voting for the status quo. The regulation, which should be contained in the project's CC&Rs, once again becomes operative.

Our policy is that once a phase is validly annexed through a vote of the membership, all parts of the regulation should be reactivated.

Therefore, all a deputy will have to check for is that the annexation of the new phase will be accomplished prior to the third anniversary of the issuance of the original public report for the immediately preceding phase.

The crucial point is that there is no change in the intent of the overall development plan that was disclosed to purchasers in each issued public report.

**CC&RS - DEANNEXATION
SLOPE EASEMENTS AND EASEMENTS FOR MAINTENANCE OF ESTABLISHED DRAINAGE
PATTERNS**

Review of proposed deannexation provisions

Neither the law nor the regulations, including Regulation 2792.27, prohibit provisions for unilateral deannexation in the CC&Rs. However, if deannexation language was not included in the CC&Rs initially, the subdivider may not be able to deannex a phase without a vote of the membership. This vote may be required even if no escrows have closed in the phase proposed to be deannexed.

Because of the need to include deannexation language in CC&Rs, many drafters are including the right of a developer to unilaterally deannex a phase from the development. Deannexation rights by a developer are only acceptable if all the following conditions are included in the CC&Rs:

1. A Notice of Deletion of Territory is recorded in the same manner as the applicable Notice of Addition was recorded.
2. Declarant has not exercised any association vote with respect to any portion of such phase of development.
3. Assessments have not commenced on any portion of the phase.
4. No escrows have closed in any portion of the phase.

If these conditions are not met, a vote of the membership would be necessary to deannex a phase, along with compliance with Section 11018.7.

Slope easements and easements for maintenance of established drainage patterns

Such provisions are generally required by a government entity and hence appear in recorded deed restrictions. Occasionally they are found in the general restrictions recorded by the subdivider. The essence of such restrictions should be stated in the public report. Other easements and rights-of-way may be included in the restrictions. Such limitations on land use often do not appear on the recorded map or in the title report because the restrictions are recorded at a later date. Accordingly, care must be exercised to ensure that such provisions are noted and included in the final report.

CC&RS - DISCIPLINING OF HOA MEMBERS***Provision For "acceleration" of assessments***

Provisions for acceleration of assessments provide that if the owner defaults upon payment of any of his assessments the total amount of the balance of the yearly assessment will become due and payable. This means that if the owner was delinquent two months in his assessments he would have to pay up ten additional months to prevent the homeowners' association from filing a lien, charging him with a full year's assessments being due and payable.

Such clauses are unreasonable and are not acceptable for inclusion in declarations of restrictions being reviewed by DRE. A homeowners' association has several remedies that are outlined in current laws and regulations and "acceleration" of assessments is not one of the approved remedies.

Notice of non-compliance

Restrictions may be drafted in an attempt to escape the limitations of Regulation 2792.26(c) by using a so-called "Notice of Non-Compliance". Governing instruments are not acceptable if they include provisions for the association to record such a document which would successfully cloud the title to the property, thereby causing it to be the functional equivalent to a lien.

The recorded "Notice of Non-Compliance" is a functional equivalent to a lien and DRE should not allow it to be used.

Disciplining members by monetary penalty

A monetary penalty may be characterized as an assessment (usually referred to in CC&Rs as a reimbursement assessment) in those cases in which enforcement for non-payment is through either a court judgment or arbitration decision. However, there can be no covenant, in such cases, that purports to give the owners' association the right to file a notice of delinquent assessment (pursuant to Section 1367 of the Civil Code) for non-payment of such monetary penalty.

A notice of delinquent assessment pursuant to Section 1367 of the Civil Code only applies to a regular or special assessment and any late charges, reasonable costs of collection and interest. Consequently, a monetary penalty may only be characterized as an assessment [provided the notice and hearing requirements of regulation 2792.26(b) are followed] when the enforcement route is either by judgement of a court or a decision arising out of arbitration. There can be no lien created by simply filing a notice of delinquency pursuant to Section 1367 of the Civil Code.

In other words, the lien to enforce a monetary penalty pursuant to subdivision (c) of Regulation 2792.26 does not arise until there has been a court judgment or an arbitration decision vaildating the monetary penalty. Of course, if the enforcement route is through a power of sale (Sections 2924, 2924(b) and 2924(c) of the Civil Code) the monetary penalty may not be characterized as nor treated in the governing instruments as an assessment which may become a lien.

CC&RS - PROVISIONS REQUIRING INDIVIDUAL OWNERS TO CARRY LIABILITY INSURANCE SUBORDINATION - SECTION 11018.5(C)

Provisions requiring individual owners to carry liability insurance

Screen CC&Rs and Bylaws carefully to determine if insurance requirements are reasonable. We do not consider reasonable a requirement that individual lot/unit owners be required to carry personal liability insurance on their lot/unit unless the units are for commercial use. (We sometimes find combination residential/commercial use in condominium projects.) A blanket policy on the common area carried by the homeowners' association is acceptable and desirable.

Subordination

Subordination is a means to protect the homeowners' association in cases of foreclosure by a lien holder. For example, without subordination a construction lender who has recorded a monetary encumbrance prior to recordation of the CC&Rs and any person subsequently acquiring title could take possession of unsold units in the development without being bound by the CC&Rs, including assessment payment obligations. Subordination ensures that foreclosure will not jeopardize the operation of the HOA.

Subordination is an agreement by the holder of an encumbrance against real property to permit his/her claim to take an inferior position to later encumbrances against that property. In this instance the later encumbrance is the CC&Rs.

The various methods by which subordination may be demonstrated are:

a copy of a title report covering all lots/units in the subdivision and showing the deed(s) of trust subordinate to the CC&Rs by virtue of the recordation of a subordination agreement(s);

executed subordination agreement(s), bearing evidence of recordation;

recorded Declaration of Restrictions including subordination signed by the beneficiary of each encumbrance recorded prior to the CC&Rs;

copy of signed subordination agreement(s) to be recorded and executed irrevocable instructions stating that no escrows will close until the attached subordination agreement(s) is(are) first recorded;

copy of escrow instructions that contain a clause stating that no escrow will close until the escrow holder has received written notice from a title company that it will issue a title insurance policy that ensures that all monetary encumbrances, excluding taxes and bonded indebtedness, are subordinated to the Declaration of Restrictions, accompanied by a letter from the title company stating that it will issue such a policy;

escrow instructions providing that no escrow will close until escrow holder has received written notice from a title insurance company that each and every encumbrance, including without limitation, any mortgage or deed of trust, filed of record prior to the time of recording of the CC&Rs has been either (i) fully reconveyed or (ii) expressly subordinated to the CC&Rs;

a copy of escrow instructions that contain a clause stating that no escrow shall close until the escrow holder has received written notice from a title insurance company that it will issue a title insurance policy that insures all encumbrances are subordinate to the CC&Rs, accompanied by a letter from the title company stating that it will issue such a policy.

Subordination - subsequent phases/maps

For subsequent phases of a phased project or for subsequent maps of a multiple-map project, there must be subordination to the CC&Rs. That is, there must be subordination to whatever document accomplishes annexation.

GUIDELINES FOR MASTER PLANNED DEVELOPMENTS

Regulation 2792.32 vests in the Commissioner the discretion to accept arrangements other than those prescribed by Regulations 2792.15 to 2792.29, inclusive, when reviewing provisions in the governing instruments pertaining to a master planned development.

These guidelines reflect substantial input from members of the common interest development industry, and are intended as a precursor to the future adoption of formal regulations pertaining to master planned developments.

- (a) A "Master Planned Development" is a development which ordinarily satisfies all of the following criteria:
- (1) The development is or will be a planned development subdivision within the meaning of subdivision (k) of Section 1351 of the Civil Code.
 - (2) The development consists of, will generally consist of, or is proposed to consist of both (a) approximately five hundred (500) or more separate residential interests, and (b) one or more subdivisions, including planned developments, community apartment projects, condominium projects, stock cooperatives, time-share projects, or other residential, recreational, commercial, or mixed residential/non-residential projects.
 - (3) The Master Planned Development shall be managed by a community association ("Master Association") that is responsible for the maintenance and operation of areas and/or facilities affecting the Master Planned Development and enforcement of use restrictions pertaining to the Master Planned Development.
 - (4) The Master Planned Development is or will be developed in two or more phases.

Provided, however, the subdivider may demonstrate from specific facts and circumstances that a development that does not satisfy the criteria set forth in this subsection (a) should nonetheless be treated as a Master Planned Development.

- (b) Recognizing that control by the subdivider over the governing body serving a residential common interest development and over the architectural control committee serving the development is ordinarily necessary until a reasonable portion of the project has been completed, in order to fulfill the expectations of the subdivider and the purchasers, the governing instruments for a Master Association shall substantially conform to the applicable standards prescribed in subsections (c) through (g), inclusive, below.
- (c) **SUBDIVIDER'S MEMBERSHIP VOTING RIGHTS:** The governing instruments for a Master Association may include provisions for two classes of membership as defined in Section 2792.18(b). For such a Master Association, Class B membership shall be automatically converted to Class A membership and Class B membership shall thereafter cease to exist on the first to occur of the following:
- (1) When seventy-five percent of the separate residential interests proposed for the overall Master Planned Development have been conveyed to Class A members;
 - (2) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or
 - (3) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.
- (d) **DELEGATE VOTING:** The governing instruments for a Master Association may include provisions for establishing a geographical area in the Master Planned Development for one or more delegates to represent the collective voting power of the members residing in such residential or mixed residential/non-residential projects within the Master Planned Development. Arrangements in the governing instruments for the exercise of the voting power of the Master Association by delegates selected by each delegate district shall conform to the following criteria:
- (1) The governing instruments must establish a procedure for the selection of delegates, for defining delegate districts, and for determining the number of votes that may be cast by a delegate.
 - (2) There shall be at least one delegate and one alternate for each delegate district.
 - (3) In any meeting of the members of the Master Association, the votes of members residing in a delegate district shall be cast by delegates selected to represent that delegate district.

- (4) The duties of the delegates shall be prescribed in the governing instruments.
- (e) **QUORUM FOR MEMBERSHIP MEETINGS:** The quorum for an adjourned meeting of the members of the Master Association, as described in Section 2792.17(e)(2) of these Regulations, may be set by the governing instruments at a percentage less than that prescribed for the regular meeting, but it shall not be less than 15 percent of the total voting power of the Master Association.
- (f) **GOVERNING BODY MEMBERSHIP:**
- (1) The governing instruments may include provision for the election of a majority of the governing body of the Master Association by the subdivider under a Class C vote or similar device. For such a Master Association, this arrangement shall irreversibly terminate on the first to occur of the following:
 - (A) When seventy-five percent of the separate residential interests proposed for the overall Master Planned Development have been conveyed to Class A members;
 - (B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or
 - (C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.
 - (2) The governing instruments may include provision for the election of twenty percent of the members of the board of directors of the Master Association by the subdivider until the first to occur of the following:
 - (A) When ninety percent of the subdivision interests in the overall development have been conveyed to Class A members;
 - (B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or
 - (C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.
- (g) **ARCHITECTURAL CONTROL:** Members appointed to the Architectural Control Committee by the governing body or by the subdivider need not be members of the Master Association. The governing instruments may include provision for the election of a majority of the Architectural Control Committee of the Master Association by the subdivider. This arrangement shall irreversibly terminate on the first to occur of the following:
 - (1) When ninety percent of the separate interests proposed for the overall Master Planned Development have been conveyed to Class A members; or
 - (2) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report.
- (h) **ADDITIONAL ASSOCIATIONS:** If any residential structure or other major special benefit facility or amenity will be constructed or provided within the Master Planned Development and commonly maintained or operated for the use or benefit of some but not all of the homeowners within the Master Planned Development, ordinarily one or more separate homeowners associations shall be established under arrangements substantially satisfying the requirements of Sections 2792.4, 2792.8(a), and 2792.15 to 2792.26, inclusive, of these Regulations to maintain the residential structure or to maintain and operate the major special benefit facility or amenity and to enforce any obligation or commitment, and any bond or other arrangement securing such obligation or commitment, relating to the residential structure or major special benefit facility or amenity.
- (i) Notwithstanding the foregoing, the subdivider may present to the Commissioner specific facts and circumstances relating to a Master Planned Development that demonstrate the need for alternative arrangements, satisfactory to the Commissioner, from those provisions set forth in subsections (c) through (h) above.

JOINT MAINTENANCE AGREEMENT

Regulation 2792.15 requires reasonable arrangements for the transfer of common area and facilities to the homeowners' association.

The terms "Joint Maintenance Agreement", "Joint Use Agreement", or "Shared Use Agreement" (collectively "Joint Maintenance Agreements") refer to a contract between a community association and the owner(s) of adjoining land located outside the boundaries of the development, covering the use, management, maintenance, operation and/or control of community, recreational or other facilities included in a common interest offering.

Joint Maintenance Agreements are commonly used:

1. In a phased common interest development, where the subdivider proposes to reserve easements over the common area for ingress, egress and/or use of common facilities for the benefit of future phase owners.
2. In the phased conversion of an apartment project to condominiums, where the subdivider proposes to reserve easements over the common area for the benefit of tenants occupying unconverted apartments, and/or to allow use of the common facilities by the tenants.
3. Where two adjoining associations are to share responsibility for landscaping, roads or recreation facilities.
4. Where adjoining commercial property, such as a private golf club, is to share roads and responsibility for landscaping with the owners' association.

Variations between different types of these contracts make it difficult to set out specific requirements applicable to every situation. As a general matter, however, every joint maintenance agreement should:

1. Identify the parties to the agreement. (CC&Rs should be checked to determine whether the governing body has authority to enter into such an agreement.)
2. Describe the land to be affected by the agreement. Any agreement creating easements or covenants binding successive owners must be recorded. Easements should specify the scope of the use rights, and state whether the right includes the right to repair or maintain easement areas.
3. Describe common amenities to be shared or used.
4. Specify the rights of the parties with respect to access to and the beneficial use and enjoyment of the subject areas and facilities.
5. Allocate management, maintenance, and repair responsibilities among the parties, including maintenance standards and schedules. The allocation of maintenance responsibilities should specify whether "maintenance" includes repair, replacement or enhancement. Insurance should always be included. Subordination and mechanic's lien protections should be considered in order to prevent a party from allowing the agreement to be squeezed out by foreclosure.
6. Establish decision making procedures. The contract should indicate which party will decide what maintenance contracts are entered into, and decide whether costs are to be increased or decreased. Usually, the party or association responsible for the maintenance makes the primary decisions.

7. Allocate financial obligations among the parties. The agreement should include all line items that cover shared areas and/or amenities. The allocation should be clear and equitable. The appraiser/deputy must determine the reasonableness of any expense allocation, as well as the amounts needed.
8. Specify methods of collection. Ideally, the contract should provide lien rights for enforcement of financial obligations. Usually, however, each party is permitted to lien its own members but cannot lien the other party. The mechanism for commencement of assessment obligations for each of the parties should be checked. (Note: CC&Rs for the community association should be checked to determine whether the term "assessment" as defined includes contributions toward use agreement expenses.)
9. Establish methods of enforcement. For example, if the party with primary responsibility fails to perform necessary maintenance or repairs, the contract should authorize another party to complete the work after giving notice, and then receive reimbursement.
10. Establish dispute resolution procedures, such as mediation, nonbinding arbitration, or binding arbitration where Code of Civil Procedure Section 1298.7 is inapplicable.
11. Prescribe the term and the conditions for termination of the agreement. The agreement may be for a definite or indefinite term. In phased common interest offerings, the contract should automatically terminate upon the commencement of assessments by the association against the lots/units affected by the agreement.
12. Define the rights and duties of the parties upon condemnation or destruction of the common facilities to be shared or used.
13. Include provisions for amendment of any of the terms of the agreement.

Deputies and managers should work closely together in determining when a joint maintenance agreement is a necessary ingredient to protect purchasers in a phased common interest development. Certainly, such an agreement is not needed where individual phases are capable of standing alone. For example, if subsequent phases are not dependent on access through the first phase, but have an independent means of access, then, barring other considerations, a joint maintenance agreement would not ordinarily be necessary.

INSPECTIONS - SECTION 11014

Inspections should not be scheduled until after receipt of the substantially complete application. Standard subdivision inspections are discretionary with the Managing Deputy Commissioner in Charge.

Certain common interest subdivisions may be scheduled for inspection after receipt of a substantially complete application or substantially complete duplicate budget package.

Types of Common Interest Subdivisions To Be Inspected

1. Condominium conversions
2. Condominium or attached projects that have been rentals for 5 years or more and are to be sold to the public
3. In-state time share projects
4. Projects which either a Manager III or Assistant Commissioner determines it is necessary to inspect in order to resolve a problem

Inspection of Common Interest Subdivisions

Any proposed common interest subdivision listed above is to be physically inspected except when an appraiser or deputy is satisfied in his own mind that he can fill out the subdivision inspection report completely and accurately based upon his knowledge of the area where the proposed subdivision will be located. This special situation will apply, for the most part, to projects where the DRE deemed it not necessary to inspect the subdivision and subsequent units of incremental developments where an actual inspection of the site took place in connection with the first phase of the development. These inspections are ordinarily handled by the DRE Budget Review Unit since such inspection is part of the budget review procedure.

Sources of Information

Some sources of information concerning hazards, nuisances, etc. in the vicinity of the proposed subdivision are: a routine inspection conducted for types 1 through 3 above; answers of the applicant in the questionnaire concerning hazards, zoning and other physical features of the proposed subdivision; and local planning department personnel.

Inspection When Hazard Involved

Depending upon the serious nature of the hazard, the Manager III or Assistant Commissioner may initiate an inspection.

The Budget Review Unit will provide a report to the party initiating the inspection regarding the following:

- probable effects (if known) of the hazard on the residents of the subdivision;
- estimated distance of hazard from subdivision; and
- any other information that is material to a purchaser.

Pertinent information resulting from an inspection should be included in the public report.

Form for Inspection Reports

Use inventory, appraisal and inspection report (RE 660) for both standard and common interest subdivisions.

SUBORDINATION - STANDARD SUBDIVISIONS

In common interest subdivisions, CC&Rs must be superior to any prior encumbrance recorded against the subdivision which will survive the first closing of an escrow in the subdivision. This subordination is required pursuant to B & P Code Section 11018.5(c).

In order to ensure that any CC&Rs in a standard subdivision will not be affected by a prior lien holder foreclosing, the subordination requirement described above will now be applicable by policy to all standard subdivisions for which there will be recorded CC&Rs.

Procedures for complying are outlined in the SPRAG manual under Document 48A & B. It should be remembered that any encumbrance, whether or not a blanket lien, must be subordinated if recorded prior to the CC&Rs and if the encumbrance will survive the first closing of an escrow in the subdivision.

Subdivision Manual



HUD/OCRA

Sections 0900 - 0999

HUD/OCRA PROJECTS

Federal jurisdiction

Federal laws also govern certain subdivision offerings. These offerings consist of vacant lots and/or lots improved with residential structures where said structures won't be completed for several years (usually more than two years). The subdivision offerings can be as low as 25 interests, but they usually are 100 or more lots. However, while we have explained the general concepts under which some subdivision offerings fall within the jurisdiction of federal laws, Deputies are not to explain these conditions to a subdivider or any member of the public.

HUD/OCRA

The federal agency responsible for enforcement of these laws is Housing and Urban Development; specifically, their Office of Consumer & Regulatory Affairs, Interstate Land Sales/RESPA Division. The name of this agency is usually more commonly known as HUD/OCRA. Some people still use this office's old name and/or initials: Office of Interstate Land Sales Registration Division (ILSRD).

California certified

California has been certified by HUD/OCRA pursuant to Section 1409 of the Interstate Land Sales Full Disclosure Act. This means that California subdividers who are subject to the jurisdiction of HUD will now satisfy HUD/OCRA's requirements with very little more than qualifying for a California final public report. However, some minor modifications to documents must be made and DRE must make some minor modifications to the format of our public report as well as how we transmit it to the subdivider. The modifications of the documents and public report are as follows:

The public report we issue will contain a notation that it is a HUD filing. DRE does this by inserting HUD/OCRA at the top of the right side of page 1 of the public report.

The sample deposit receipt and promissory note (if any) must contain the rescission wording prescribed by HUD.

The public report we issue contains the same HUD rescission wording that is contained in the sample deposit receipt and promissory note (if any). This is done under "SPECIAL NOTES" in our Public report.

HUD/OCRA prohibits a subdivider from representing that roads, water, sewer, gas or electric service or recreational amenities will be provided or completed by the subdivider without stipulating in the contract of sale or lease that such services or amenities will be provided or completed. Thus, if the subdivider or its representative advertises it will provide roads (for example) in the subdivision, or indicates in the public report that it will provide roads, or shows a purchaser a master plan and indicates that the subdivider is providing the road system shown on the plan, there must be a road completion covenant in the contract.

The contractual obligation may be conditioned, but only upon grounds that are legally supportable as impossibility of performance defenses in the jurisdiction where the subdivision is located. Such defenses usually include Acts of God, strikes and material shortages, all of which are outside the control of the subdivider.

In creating these contractual obligations, the subdivider may include either a specific provision in the contract or incorporate by reference the entire public report in which the obligation is set forth. If incorporation of the public report is preferred, the effective date of the public report being referenced must be specified in the contract.

The purpose of this requirement of federal law is to give the purchaser/lessee a private right of action when promises are not kept.

Representations must be included as contract obligations even when the facilities or amenities are planned as part of a future section of the subdivision and not a part of the present offering.

If any services or amenities will be completed by another entity, and the developer has an identity of interest with that entity, the developer must be obligated for the services or amenities in the contract.

Any amendment, regardless of the time since issuance of the final public report, requires all cost estimates set forth in the public report to be updated.

In all sales subject to the registration requirements of HUD/OCRA, the purchaser or lessee has an unconditional seven (7) day rescission right, provided that the final public report is received before the signing of the contract. If the final public report is received after the signing of the contract, a two-year rescission period is afforded the lot purchaser.

Describing federal rescission rights

Deputies should include a statement in every HUD/OCRA report concerning rescission rights. This should be set forth at the top of page 2 of standard subdivision public reports, and at the top of page 3 of common interest subdivision public reports.

The following language should be used in describing the federal rescission rights in the public report and on the face or signature page above all signatures in all forms of contracts or agreements and promissory notes to be used in the selling or leasing of lots:

IF YOU RECEIVED THE FINAL PUBLIC REPORT PRIOR TO SIGNING A CONTRACT OR AGREEMENT, YOU MAY CANCEL YOUR CONTRACT OR AGREEMENT BY GIVING NOTICE TO THE SELLER ANY TIME BEFORE MIDNIGHT OF THE SEVENTH DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE THE FINAL PUBLIC REPORT BEFORE YOU SIGNED A CONTRACT OR AGREEMENT, YOU MAY CANCEL THE CONTRACT OR AGREEMENT ANY TIME WITHIN TWO YEARS FROM THE DATE OF SIGNING.

The rescission provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

Purchase documents

The subdivider is to deliver a warranty deed (or its equivalent) free and clear of liens and encumbrances to the purchaser within 180 days of the signing of the contract. OR

If a deed will not be delivered within 180 days of the signing of the contract, the contract must contain the following provisions:

a legally sufficient and recordable lot description;

a provision that the seller will give the purchaser written notification of purchaser's default and the opportunity to have at least 20 days from the receipt of notice to correct the default; and,

a provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default after 15% of the purchase price has been paid, excluding interest owed, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15% of the purchase price or the amount of the seller's actual damages whichever is the greater.

If the developer advises DRE, or it is otherwise determined, that a deed will not be delivered within 180 days of the signing of the contract and if the above contract provisions are not included in the contract, the following or similar language should be used in place of any other federal rescission language:

UNDER FEDERAL LAW YOU MAY CANCEL YOUR CONTRACT OR AGREEMENT OF SALE ANY TIME WITHIN TWO YEARS FROM THE DATE OF SIGNING.

Public report issuance

Along with all issued HUD public reports, DRE will provide the subdivider with a blank HUD Fact Sheet (RE 614D) and letter (RE 614C) advising of the requirement to file with HUD. A copy of RE 614C is sent to HUD/OCRA by DRE.

Pursuant to California's certification agreement, a California subdivision may satisfy the registration requirements of the Interstate Land Sales Full Disclosure Act by filing a copy of the California Final Public Report, DRE form RE 614C, a completed HUD Fact Sheet (RE 614D) and the appropriate fee in lieu of the federal Statement of Record. A California subdivision will be considered registered with HUD upon OCRA's receipt of the items specified.

Refer questions to HUD

DRE only enforces and interprets specific code sections of law as outlined in Section 10050. Deputies should not attempt to explain or interpret the federal law. Subdividers should be referred to HUD if they have any questions.

Question responses on application

While a Deputy should not attempt to explain the law, that does not mean a deputy can't question a subdivider's answer in our application and/or a document submitted. For example, if the application showed it was for a 150 vacant lot subdivision and the subdivider answered our HUD question noting he was not going to file with HUD/OCRA, a deputy might question that answer and ask the subdivider to verify it.

Subdivision Manual



WORKSHEETS, ETC.

Sections 1000 - 1099

WORKSHEETS USED TO PREPARE PUBLIC REPORTS; SPECIAL NOTES***Worksheets***

RE Form 622A - common interest subdivision
RE Form 622B - time share
RE Form 622E - standard subdivision
RE Form 636A - stock cooperative
RE Form 636B - limited-equity housing cooperative

Special Notes

A number of required special notes have been set forth in RE Form 622C. In addition, the following will apply:

More Than One Use

Multiple uses in one subdivision should always be special noted in the public report.

Example: Lot Nos. 1 through 10 for single-family residential use; Lot Nos. 11 through 20 for multi-family use only.

Pre-Sale Requirement

Always special note the pre-sale requirement in common interest and undivided interest subdivision public reports, regardless of the prescribed pre-sale percentage. "Pre-sale" means the subdivider will not close escrows until that percentage of the units, lots, or interests have been sold.

Unusual Conditions

The public report should disclose any unusual conditions to be imposed on purchasers, or conditions which may affect the use or value of the property. This information may be found in the conditions for map approval. The public report should not list all the conditions of map approval, only the unusual conditions.

Examples include:

- fire protection provisions requiring that owners clear brush up to a certain distance from the residence and/or restrictions on landscaping;
- requirements to install sprinkler systems in the home for fire protection; and
- out of the ordinary maintenance obligations (even if that maintenance is typical for the area).

AMENDED AND RENEWED PUBLIC REPORTS AMENDED REPORT - MATERIAL CHANGES

Amended and renewed public reports

When a subdivision public report is amended within one year of its expiration date, the report may be updated and renewed for an additional five year period from the date of the amended public report upon request of the subdivider and completion of the application and payment of the renewal fees. The choice is the developer's since renewal fees are substantially higher than amendment fees.

Renewal of public reports before the expiration date

Public reports may be renewed before the expiration date if the applicant submits additional information to update report disclosures and file documentation to assure that early renewal would not cause problems for purchasers (Regulation 2795.3).

Material changes

See Section 11012 and Regulations 2800 and 2801.5

As a guide in judging what material changes require amendment of a public report, you should refer to Regulation 2800.

Any change which would result in the public report or the questionnaire not reflecting the true facts of the subdivision offering may be considered a material change. If such change results in the subdivision public report not stating the true facts or not truly representing the offering because of omission of important facts, the public report should be amended.

Dates on public reports

In addition to the dates of original issuance, renewal (if applicable), and expiration, a public report will include the date of its amendment.

Pre-1963 public reports

An amendment request on a public report issued prior to 1963 will normally be considered a new filing and a complete new application must be made. The Manager- In-Charge may permit an amendment to an existing public report if there has been substantial compliance with the new laws.

Budget review

If the subdivider indicates in the RE 635 that there has been a material change to the budget or 18 months have elapsed since the last review, a budget review is needed. The deputy must send a request (RE 681) with the appropriate budget information. Pages 12 and 13 of RE 635 Part 1 explain what information is required for an adequate budget review.

Subdividers will be required to submit a Duplicate Budget Package (DBP) with all amendment/renewal filings when there is a material change to the budget.

If a subdivider needs information as to the contents of the DBP, refer the subdivider to Pages 12 and 13 of RE 635 Part 1.

Expedited amendment application (RE 635 A)

Completed and signed RE 635 A (Notice of Change/ Application for Amended Report) submitted with copies of all required documents will automatically become effective in 7 days if application is delivered and in 10 days if application is mailed, unless DRE disapproves the amended public report.

When RE 635 must be used

RE 635 must be used if any of the following applies:

- a budget review is necessary;

applicant is a person other than the person to whom the original (or previously amended) public report was issued; (See note below regarding "Change of Ownership" exception.)

a material change in homeowners' association budget;

a proposed amendment to the governing instruments for common interest subdivisions for which the consent of the Commissioner to permit a vote of owners is required under Section 11018.7;

the public report has expired or was issued prior to May 5, 1962;

the offering is, or is to be, registered with HUD, Interstate Land Sales Registration Division;

the subdivision is a land project or raw land subdivision;

use of real property sales contracts, all inclusive deeds of trust, balloon payments, subsidized interest and loan payments, "creative financing" plans, "affordable housing" plans, equity sharing, or other unusual financing provisions/programs.

Change of ownership

An Expedited Amendment Application (RE 635A) may be used for change of ownership in standard subdivisions offered with completed residential structures provided the following exhibits are submitted:

a current title report which shows title vested in the new owner;

an exemplar deposit receipt/agreement to purchase signed by new owner;

an exemplar grant deed signed by the new owner;

exemplar escrow instructions signed by new owner and escrow holder; and,

a completed RE 600C, Purchase Money Handling (Supplemental Questionnaire).

NOTE: Merchant builders who purchase one or more vacant lots from the subdivider with the intention of reselling such lots to the public completed with residential structures, may avail themselves of the expedited process. Upon submission of the above items and a completed RE 635A, DRE may issue an amended public report covering the lot or lots currently owned, or subject to a binding contract between the subdivider and the merchant builder, and any other lots that may be acquired in the future by the merchant builder from the subdivider during the term of the public report. Absent the merchant builder having fee title to at least one lot at the time of application, evidence of future vesting must also be furnished. Such evidence can be either in the form of a binding purchase contract or escrow documents for the purchase of at least one lot by the merchant builder from the subdivider.

AMENDED REPORTS - INSTITUTIONS LISTED IN SECTION 11010.5 - RE 635

When a bank, life insurance company, industrial loan company, credit union or savings and loan association (hereinafter, the institution) acquires title to lots in a subdivision through any foreclosure action or by deed in lieu of foreclosure, and there is a material change other than a change in ownership, an amended subdivision public report is required for those lots to which the institution is acquiring title and for any additional lots to which it may acquire title in the future. The following are required:

RE Form 635 - Statement by Purchaser of Five or More Lots.

Proper fee for an amended public report.

If applicable, a letter from the institution certifying that all additional lots to which it contemplates acquiring title within the subdivision will be free and clear of all blanket encumbrances and will be sold in conformity with the substance of the required amended public report. The letter will also contain the institution's agreement to notify us of the lots subsequently acquired.

Preliminary title report. If the institution submits a preliminary title report for only one or a few of the lots indicated in its Statement by Purchaser of Five or More Lots, we will require that the institution also submit a letter to the effect that other lots presently owned by the institution or those to which it may acquire title are or will be subject to the same encumbrances (except as to easements); the amount due on taxes, and assessments; and that there will be no blanket encumbrances. The lots to which the institution has acquired title and the additional lots to which it may acquire title need not be listed in the public report, but the following special note should be used:

ALL LOTS OWNED BY (NAME OF INSTITUTION) AND ALL ADDITIONAL LOTS TO WHICH IT CONTEMPLATES OBTAINING TITLE WILL BE SOLD IN CONFORMITY WITH THE SUBSTANCE OF THIS REPORT.

If the regulated institution, usually a savings and loan association, does not notify us that additional lots will be foreclosed upon, then we will list the lots in the public report.

INSTITUTIONS LISTED IN SECTION 11010.5 - NO AMENDMENT NECESSARY - RE 618E

If an institution listed in Section 11010.5 (bank life insurance company, industrial loan company, credit union, or savings and loan association) informs DRE within 30 days of acquisition of title through foreclosure or deed in lieu of foreclosure and advises DRE that there are to be no material changes (other than change of ownership), we will issue an RE Form 618E. The RE Form 618E will be attached to the existing public report and it will be issued free of charge. It is not necessary for the foreclosing institution to complete an RE Form 635. However, we will require a letter signed by an officer of the foreclosing institution, listing the lots being foreclosed and a statement indicating that:

the institution is familiar with the contents and representations made in connection with the subdivision offering as filed with DRE;

the lots will not be sold subject to any blanket encumbrance;

any additional lots acquired in the subdivision will not be sold subject to any blanket encumbrance;

and that, other than the name change, there have been no material changes to the offering as set forth in Commissioner's Regulation 2800.

In addition, we will need a copy of the subdivision public report the institution will give to prospective purchasers, along with a statement that all lots/units will be sold in conformance with said public report. For common interest subdivisions, we will also need evidence of compliance with Regulation 2792.9.

SCATTERED LOTS/UNITS***Amended public report - scattered lots in a land project***

When a purchaser buys five or more lots in a land project, an amended public report is required prior to sale, even if the purchaser becomes the owner of less than five in any one tract. Example: Land project consisting of three maps. Three public reports issued. Purchaser buys two lots in Tract #1, three lots in Tract #2, four lots in Tract #3, for a total of nine lots. Public reports on all tracts should be amended. The reason for this policy is our position that the purchaser owns and is offering parcels within one land project rather than in three subdivisions. This is consistent with the intent of the Legislature to offer maximum protection to all purchasers of lots in land projects.

Scattered parcels for sale in California (whether or not in a land project) - Regulation 2803 and 20 Cal 3rd 10-People vs. Pacific Land Research Company, Footnote 13

An offering of parcels of real property is not per se exempt from DRE's jurisdiction because the parcels are not contiguous. The physical touching of these parcels is not essential to "contiguity" as that term is defined in Webster or Black. One of the accepted definitions of "contiguous" in both Black and Webster is "near, though not in contact".

There is a doctrine of constructive contiguity which is applied in cases involving condemnation. There is every reason to believe that in the appropriate circumstances, the courts would adopt a comparable doctrine applicable to our enforcement of the Subdivided Lands Law or the Out-of-State Land Promotion Law. The Pacific Land Research case confirms that the Commissioner has authority under Regulation 2803 to determine if parcels that are not contiguous are closely enough grouped to be considered a subdivision.

Determining DRE's jurisdiction

Many factors must be considered in reaching a decision concerning DRE's jurisdiction over scattered parcels of real property. The physical relationship of the parcels being offered is a major consideration. The existence of a "common promotional plan" is another factor, but it must be broken into its components, such as:

- the relationship of the offerors;
- the nature of the marketing program;
- ownership of other land in the area that may be offered in the future; and,
- other factors that may indicate the offeror's true objective is to evade the subdivision law.

In determining whether an offering of scattered parcels is within DRE's jurisdiction, we must look at all relevant factors. Any person seeking a determination with respect to our jurisdiction over a scattered parcel offering should furnish:

- all pertinent details, including a map identifying all of the parcels of land within the county or within a radius of a predetermined number of miles from the specific parcels which are the subject of the inquiry; and,
- the location of other parcels owned by the entity making the inquiry or by an affiliated entity. This is particularly important in connection with out-of-state offerings because if we grant an exemption for an offering of a few scattered parcels, there is always the possibility that the promoter will use that exemption as a means to push the sales of other parcels owned by him (or parcels that he may acquire in the future for purposes of sale, within the same general area.

Scattered parcels or units throughout a phased common interest subdivision***Example requiring amended public report:***

A purchaser bought four lots in each phase of a three-phase planned development (3 recorded tract maps). The purchase was made directly from the subdivider for the purpose of offering the 12 lots for resale to the public. The purchaser had title to the total of 12 lots simultaneously. Although the development consisted of three separate tract maps, the subsequent phases were annexed to previous phases and all were served with one homeowners' association.

Under these circumstances, the purchaser is a subdivider and must obtain an amended public report before offering any of the 12 lots for resale.

If the purchaser had bought the 12 parcels from separate individuals, an amended public report would not be necessary. See Regulation 2801.5.

Application of Regulation 2803

If the application for a public report includes lots/units that are not contiguous to each other, DRE has the authority to determine the parcels, lots, etc., that may be covered by a single public report.

Subdivision Manual



SECTION 11018.7

Sections 1100 - 1199

SECTION 11018.7 - APPLICABILITY***Timing***

Section 11018.7 is applicable immediately after issuance of final public report, whether or not any sales have been closed.

Applicable documentation

Section 11018.7 is activated only when there is to be an amendment, alteration, modification, or revocation in or to documents by which interests of the types described in Sections 11000.1 and 11004.5 will be or are transferred or controlled. Absent documentary changes, Section 11018.7 has no application. Manager III's have the authority to determine materiality of the change.

Materiality

The documentary changes must materially change rights of an owner as to his ownership, possession or use, either directly or as a member of an association of owners. In the absence of a formal application under Section 11018.7, DRE personnel will advise the public that a particular proposed change does need not be submitted to the Commissioner only when positive that such an alteration in the subject matter of the affected document would never materially change the rights of an owner.

The above considerations are applicable to Section 11018.7, not Section 11012.

Example situations

Situation 1: public report issued, offers accepted (escrows may be open), sales not completed.

At this point, there is no management body made up of lot or unit purchasers. Use the amended report fee and procedure. It is not necessary to have an RE Form 633 and fee filed. The documentation for the amendment shall provide for return of all purchasers' funds and rescission of existing contracts unless the purchasers approve the amended public report.

Situation 2: some lots or parcels have been sold; subdivider or his successor in interest still controls at least 1/4 of votes that may be cast to affect a change.

Subdivider must file RE Form 633 and fee. Section 11018.7 procedure to be followed. If the amendment to the documents requires an amended public report, the amendment fee and procedures should also be followed.

Situation 3: subdivider has sold out tract.

No amendment to the public report required, but subdivider will be advised he must obtain amended report if parcels are re-acquired and offered for sale.

SECTION 11018.7 - PROCEDURES

Refer to Regulation 2793 for procedures and content of application.

Source of application

Section 11018.7 applications may be received from individuals, the homeowners' association or the subdivider. If such applications are received from persons other than the subdivider, forward a letter to the subdivider requesting his representations. If it appears to the that the change in the setup of the subdivision offering will result in a material change under Section 11018.7, and if the subdivision is not sold out, this letter should inform the subdivider of DRE's determination that an amended public report would be necessary if the change is approved by owners or members.

Form/fee/file

Applications for changes of documentation under Section 11018.7 shall be made on RE Form 633. The filing fee for such an application is \$20.00. Refer to Regulation 2793 for documents to be submitted by applicant as well as the procedures to be followed. A separate file should be set up for the 11018.7 application and documents, cross-referenced to the subdivision file.

Application logged in and assigned

On receipt of a completed application and filing fee, the Manager in Charge shall confirm that the Commissioner has jurisdiction and, having so determined, will then have the application logged in and assigned.

Subdivision Compliance Manager

All such applications should be assigned to the Subdivision Compliance Manager. Processing must be as expeditious as possible. Within ten working days after receiving the application and/or the required documents and other items received as a result of the deficiency letter, the manager should begin working on the file.

Procedures

The Subdivision Compliance Manager will:

- (1) determine the adequacy of notice of the proposed change to owners and other interested parties whose approval will be required. Ideally, the notice should recite: the language proposed to be changed and its location in the particular management documents; the language of the proposed change; and, the reasons for the change and its effect on owners. Notices which are slanted towards soliciting votes in a certain way should be rejected and modified before approval.
- (2) identify all subdivisions which will be affected by the proposed change. Review all applicable subdivision files to determine the effect the proposed change will have on each subdivision.
- (3) review and include in the Section 11018.7 application file all other documentation and such other material information that has come to DRE's attention.
- (4) submit the completed file to the Subdivision Legal Counsel, along with a narrative summary of the application which shall include:

reference to each of the items set forth under Subdivision (a), (1)-(5) of Regulation 2793.

a specific reference approving: the language of the notice to the persons eligible to vote on the change; the method used in giving such notice; evidence that the notice was, in fact, given (i.e., declaration of mailing); the time period for receiving objections; whether or not any objections were received; and, if objections were received, the substance of such objections.

such other material information that has come to DRE's attention.

a recommendation for issuance of the Consent Order (unless grounds for denial exist).

if applicable, the facts and evidence to support denial of the application.

Subdivision Legal Counsel

The Subdivision Legal Counsel shall submit to the Assistant Commissioner, Subdivisions, a cover memorandum indicating that he has reviewed the application file and stating his recommendation for issuance or denial of the Commissioner's Consent. The transmittal shall also make an express reference to the inclusion of "Exhibits" as follows:

- fully executed RE Form 633 and amendments thereto, if any;
- the documents set forth in Regulation 2793(a),(b), (c), (d) (if applicable), and (e).
- the legal analysis of the proposed changes and the draft order of consent or denial.

When the file is submitted to Sacramento for review, it should include copies of all documents received or sent in connection with the application, including correspondence with the applicant or the applicant's attorney and all public reports on the affected subdivisions.

Waiting period for objections - hearing

Normally, action on the application will be withheld for a period of not less than fifteen (15) days after mailing or publication of notice to owners to permit the registering of objections to the proposed change. The application should be placed on call-up for further processing after the expiration of the fifteen (15) days. If sufficient objections are registered by the subdivider or by an affected owner or owners, the Subdivision Compliance Manager, in conjunction with the Subdivision Legal Counsel, will recommend whether or not a hearing should be held. If it is determined that a hearing should be held, it will be held by the Assistant Commissioner, Subdivisions and he will notify the interested parties of the time and place of the hearing. After the hearing and after a determination to recommend the granting or denial of the consent, a formal order will be prepared for the signature of the Commissioner.

Notification - amendment of public report

The Commissioner's Order will be returned, along with the Section 11018.7 application file, to the Manager in Charge of the appropriate subdivision office. The application file will then be made a part of the subdivision file. The Manager in Charge of the section will then handle the notification to the applicant of the Commissioner's Order and follow through with any amended public report requirements, etc.

After the change is effective

If the order signed by the Commissioner consents to submission of the proposed change to the owners or members for their vote, the Managing Deputy Commissioner III in charge of the subdivision section shall include in the letter transmitting the order to the applicant a request to be notified if and when the change of documentation becomes effective. Upon receipt of notification that the change has become effective, with a copy of the documentation incorporating the change, the following action shall be taken by the Manager III:

- incorporation of the substance of the change in the files of all subdivisions to which the change applies or the cross referencing of all affected subdivision files to the Section 11018.7 file; and,
- if a material change in the setup of the subdivision is involved, institution of appropriate steps toward issuance of an amended subdivision public report.

Filing system/cross-referencing

A separate filing system shall be maintained in each district office for Section 11018.7 proceedings which have been concluded and each file shall be cross-referenced to the file for the subdivision to which the change is applicable.

Processing delays

Most Section 11018.7 applications take more than 90 days to process. Much of this time is consumed by delays. If substantial delays are the fault of the applicant and this has caused the processing to take more than 90 days, the Subdivision Compliance Manager has the discretion to determine that a new application is necessary.

De-annexation of lots/units

If DRE has issued a final public report on the annexed property and there have been sales resulting in closed escrows, we would not allow it to be unilaterally de-annexed by the subdivider without compliance with Section 11018.7. If, on the other hand, there have been sales but escrows have not closed, we would not require compliance with Section 11018.7 in connection with a de-annexation. If the de-annexation caused a need to amend the public report, the purchasers who have open escrows should be offered the right to rescind and should receive the amended public report prior to close of escrow.

Where escrows have closed, the 11018.7 application must be carefully scrutinized for a determination as to the reasonableness of the setup if the de-annexation is allowed. A thorough budget review is normally necessary, comparing current budgets to future budgets as they would be after such a change is effective.

The budgetary effect on the owners should always be included as part of the notice to owners that is required to be furnished by the applicant.

The appraiser should also inspect the subdivision and make recommendations and comments concerning the effects of such changes on the viability of the remaining project.

In cases of this type, it would not be unusual to involve the Appraisal Section, Legal Section, and possibly the Enforcement Section prior to determining whether the Commissioner's consent should be issued to allow de-annexation to go to a vote of the owners. In most such cases we are allowing something to be undone that was required originally prior to our issuance of a public report.

Routing of the file

After the file has been received by the Subdivision Legal Counsel, it will either be forwarded to the Assistant Commissioner, Subdivisions, or returned to the Subdivision Compliance Manager for additional information. If the file is complete when received by the Subdivision Legal Counsel, it will be forwarded to the Assistant Commissioner, Subdivisions. If the file is not returned to the Subdivision Compliance Manager for further handling, it will then be forwarded to the Commissioner for signature.

With the exception of a desist and refrain order, there is normally no other subdivision action that requires as much review as an 11018.7 application because a formal order will be issued by the Commissioner as is required by law.

Changes for FNMA, FHLMC, FHA, or VA financing - exempt

Changes to documents required to obtain FNMA, FHLMC, FHA or VA financing are normally considered exempt from Section 11018.7 by policy. The Managing Deputy Commissioner III should examine such changes and make the determination as to materiality.

Subdivision Manual



DENIAL, VIOLATIONS

Sections 1200 - 1299

BASIS FOR DENIAL OF PUBLIC REPORT

Statutory references

Refer to Sections 11018, 11018.5, and 11018.7.

Right to Hearing - Objection to Denial - Refer to Section 11018.3.

Substantial grounds/ample review

Denial of a final subdivision public report must be made upon substantial grounds and ample DRE review. Applicants are afforded ample hearing opportunity and DRE's administrative process does not preclude a civil court challenge by an applicant not satisfied by an official DRE denial, hearing, and review.

"Confidentiality" until decision/official order

As the steps to an enforceable denial are several and deliberate, deputies should not make statements regarding possible, probable, or impending denial of a final subdivision public report until the decision is actually made and a copy of an official order is placed in the subdivision file.

SUBDIVISION VIOLATIONS***Penalty provisions***

Refer to Sections 10176, 10177, 10185, 10238.2, 10238.6, 11019, 11020, 11022, and 11023.

Compliance filings

Occasionally, a subdivider who has sold one or more lots in a subdivision without first having obtained a public report will propose that the Commissioner issue a public report in order that the subdivider may then tender such report to purchasers and obtain their receipts in an attempt to cure defects in the original offering.

Such filings will not be accepted. Reports are issued only on those lots to which subdivider can show current title. Filings will be accepted on such lots, even though they may be fewer than five in number if the entire project, including those lots illegally sold, constitutes a subdivision.

When such illegal sales have been made, DRE may issue a desist and refrain order and, if the violation is flagrant, prosecution should be considered. The file should be referred to the appropriate district office for investigation so that a desist and refrain order can be issued against the subdivider. If these cases were not sent to Enforcement, there would be no penalty to the subdivider for violating our law.

Statute of limitations - Sections 10101 and 11021.

To have an actionable accusation against a licensee, the sale or lease described in Sections 10101 and 11021 should have occurred within three years of the date disciplinary action is filed. If classed as a misdemeanor (criminal) violation, the cause of action should have occurred within one year prior to filing with the district attorney; if a felony, three years. For any type of civil action, such as injunction, review case with the Legal Section for appropriate time involved in statutes of limitation.

False public reports - refer to Section 11020

It is a crime to make issue, publish or deliver or transfer as true and genuine any subdivision public report which is false, forged, altered or counterfeit or to participate in the making, issuance, delivery or publication of a subdivision public report which is forged, false, altered or counterfeit. It is a crime punishable by a fine not to exceed \$10,000 or by imprisonment in state prison or county jail not exceeding one year, or by both fine and imprisonment. The penalty is not exclusive and an injured party may seek any other penalty, relief, or remedy the law provides.

Subdivision Manual



OUT-OF-STATES

Sections 1300 - 1399

OUT-OF-STATE SUBDIVISIONS - HISTORY - PERTINENT STATUTES - EXEMPTION FOR FOREIGN SUBDIVISIONS - FAIR, JUST AND EQUITABLE CONCEPT***History - Pertinent Statutes***

Prior to September 20, 1963, the sale or offering for sale of land, whether such land was located in-state or out-of-state, was treated the same by the real estate law. Article 7 contains Section 10249 by which the sale or offer for sale or lease of lots or parcels in a subdivision situated outside the state is regulated.

In addition to making the sale or offering for sale of out-of-state lands subject to certain sections of the Subdivided Lands Law, Article 8 provides that such lands also are subject to the provisions of Article 6, Chapter 3, Part 1, Division 4 (Real Property Securities Law), Sections 10237.1 et. seq., "insofar as applicable". This then makes the sale or offering for sale of out-of-state subdivided lands in California a real property security offering.

Statutory Provisions governing out-of-state subdivisions are set forth in Section 2806 of the Regulations.

Exemption for foreign subdivisions/disclaimer

With one exception, subdivisions located outside the United States are not subject to the provisions of Sections 10249 or 11000. The only type of foreign subdivision that is subject to the permit requirement is a timeshare project which consists of, or will consist of, 2 or more distinct geographic locations.

Any printed material, advertising or invitation disseminated in this state and relating to the sale or offer of an exempt foreign subdivision must, pursuant to Section 10249.9, include the following disclaimer in at least 10-point type:

WARNING: THE CALIFORNIA DEPARTMENT OF REAL ESTATE HAS NOT EXAMINED THIS OFFERING, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE COUNTRY WHERE THIS SUBDIVISION IS SITUATED.

If the offer is not initially made in writing, the disclaimer shall be received by the offeree in writing prior to any visit to a location, sales presentation, or contact with the offeror or a representative of the offeror. [Section 10249.9(b)]

Any agreement or contract to purchase or lease presented to a California resident in California must include the disclaimer in 10-point type at the top of the first page of the agreement or contract and must be initialed by the California resident. [Section 10249.9(c)]

While DRE has no statutory authority to enforce the provisions of Section 10249.9, each deputy should be aware of its substance.

Fair, just and equitable concept

The Commissioner must make a determination that the offering is "fair, just, and equitable" before a permit can be issued. This includes making a determination that the sales price for each offered lot or unit is a "fair" price. (Sales prices are not considered for Accessible Urban Subdivisions or Qualified Vacation Resort Club filings.) DRE conclusions regarding the fairness of price will be based upon a review of the independent appraisal report and on the inspection of the subdivision by a DRE appraiser.

OUT-OF-STATE SUBDIVISIONS - APPRAISALS

Every applicant for a permit for an out-of-state subdivision, with the exception of an Accessible Urban Subdivision (Section 10249.11) and a Qualified Resort Vacation Club (Section 10260) must furnish a current appraisal of the subdivision interests.

All appraisals shall conform, insofar as applicable, to the Uniform Standards of Professional Appraisal Practice (USPAP) as last adopted by the Appraisal Standards Board of the Appraisal Foundation. A DRE supervising appraiser shall review the appraisal report to ascertain whether the report conforms to the USPAP.

Contents of appraisal

All appraisals for out-of-state subdivisions should include the cost and market approach, and, where applicable, the income approach. The appraisal should include, but not be limited to, the following:

photographs of the land, lots, improvements (if any) and the surrounding area;

full details on all comparables, including source of the information, description and location of the property, together with a detailed explanation as to why the particular property should or should not be considered a comparable;

details of the acquisition, including:

- amount of the purchase price
- terms of the purchase
- date of the purchase
- other specific facts concerning the purchase;

a digest of the statements or comments of interested local officials or other knowledgeable parties;

full explanation and documentation of the basis for determination of value;

comparables determined by listings in the particular area;

evidence that the property can be used for the purpose for which it is being offered, such as residential, residential-income, commercial, industrial, limited-seasonal recreational, etc.

Appraiser Qualifications

The appraiser must have satisfied the requirements for certification in a state or territory whose criteria for certification as a real estate appraiser currently meets the minimum criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation. OR,

If the state or territory in which the out-of-state subdivision offering is located does not have in place a suitable examination that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation, the Commissioner shall determine from the appraiser's statement as to his or her educational background and appraisal experience, with particular reference to the type of subdivision offering assigned for appraisal, whether or not the appraiser is qualified.

Appraiser's employment and certification

The appraiser shall be engaged directly by the subdivider or the subdivider's agent, and shall certify: that the appraiser has no past or present, direct or indirect interest (financial or otherwise) in the property, nor is such an interest contemplated to be acquired in the future; and that the appraisal assignment was not based on a requested minimum valuation, a specific valuation or the issuance of the California permit.

OUT-OF-STATE SUBDIVISIONS - DRE INSPECTION***Paid for by developer***

The developer must pay for the DRE inspection. Normally, the amount is based on round trip air fare, auto rental, and actual necessary subsistence for each day used in travel and inspection of the property.

Close scrutiny of appraisals for vacant lots/timeshares in 2+ locations

DRE may perform a more in-depth examination and require additional documentation to evaluate the appraiser's logic, reasoning, judgement, and analysis in arriving at a conclusion regarding the reasonableness of the market value reported for vacant lot or timeshare projects which include 2 or more distinct geographic locations.

Log of time, mileage, etc.

In addition to the above, a memo should be submitted that includes a log showing the time, the areas covered, and the mileage traveled in completing the inspection.

Travel outside continental U.S. - Std. 257/257C

If required to travel outside the continental limits of the U.S. (i.e. to Alaska, Hawaii or any foreign country), the appraiser must complete a Request for Approval of Out-of-State Travel on Forms Std. 257 and Std. 257C (available from DRE accounting office). The procedure for receiving approval takes at least 30 days.

Inspection package/priority

Within 3 working days of the deputy's receipt of the filing, the duplicate budget package, subdivider's price list, appraisal report, etc., shall be forwarded to the supervising appraiser. The supervising appraiser and deputy shall confer as to the most appropriate time for actual site inspection to occur. Priority of site inspection will be based on (in this order):

- offerings containing existing inventory;
- developments which have substantially completed construction;
- offerings in which there exist no obvious grounds for denial of a permit.

Deputy advises subdivider or SRP of amount of inspection fee

After the supervising appraiser or the appraiser who has been assigned the inspection determines the cost of the inspection, that appraiser will relay that information to the deputy. The deputy will be responsible for conveying to the subdivider or the SRP the amount of the inspection fee.

OUT-OF-STATE - ACCESSIBLE URBAN SUBDIVISIONS***Criteria***

An accessible urban subdivision (AUS) means a subdivision which meets the following criteria:

situated within a Metropolitan Statistical Area as identified by the United States Office of Management and Budget, which area is situated within the United States and within 200 miles of a boundary of this state;

all lots or parcels to be offered for residential use will be sold or offered for sale with all improvements completed that are necessary to occupancy after addition of a completed residential structure (or with such structure already completed), or with financial arrangements for those improvements determined to be adequate by the city or other appropriate governmental jurisdiction.

Points of difference from other out-of-state filings

An AUS filing differs from all other out-of-state filings as follows:

processed under statutory time frames (Section 10249.7); and,

qualifies for a preliminary permit.

OUT-OF-STATES - REQUIREMENTS AND PROCEDURES

Out-of-state subdivision filings must meet the in-state requirements as applicable. (Refer to Regulations 2806 and 2792.) In addition, the following will apply:

Location of processing

All filings are processed at Sacramento Subdivisions North (Technical Section).

Term of permit

Subdivisions which qualify are issued a permit for a term of one year.

Fair price

The Commissioner must make a determination that the offering is "fair, just, and equitable" before a permit can be issued. This includes making a determination that the sales price for each offered lot or unit is a "fair" price. (Sales prices are not considered for AUS filings.)

Developer's costs

The developer must submit the cost of acquisition, development, and administration, promotional and selling expense on RE Form 626B.

Price list/improvement bonds

The developer must submit a list showing his proposed sales price for each lot or unit to be offered. If the purchaser must assume payment of improvement bonds, the amount of assessment for each lot or unit must also be given.

Developer's bond

The developer must file a \$10,000 bond per Section 10237.8.

Non-resident developer

If applicant is a non-California resident organized under the law of another state or other nation, it must submit a Certificate of Qualification issued by the Secretary of State and, if a corporation, submit RE Form 608 for the transaction of business in California. Every non-resident subdivider shall file an irrevocable consent to service, per Section 11007.

Permit to sell by situs jurisdiction

If the city, county, state or other political jurisdiction in which the subdivided land proposed to be offered in California is located has denied, refused or issued a permit to sell (regardless of the exact term used) said land, the subdivider must submit a copy of any such authorization to sell, lease or advertise which has been issued, or a copy of the denial, if denied or refused.

Postal authorities

Clearance must be received from the postal authorities before a permit is issued.

Advertising

The initial advertising should be filed with the permit application/questionnaire. The person who processed the application will make the basic review of the advertising in light of the representations made in the application. That review, together with a copy of the permit and the initial advertising, will be forwarded to the Subdivision North Section, Subdivision Advertising Review. Thereafter, additional proposed advertising may be filed directly with that Sacramento Section ten (10) working days prior to use. Proposed advertising for review should be filed with sufficient lead time before proposed publication for review and possible correspondence regarding objections and resubmission of requested revisions. Advertising submittals are filed in separate folders by name of project. (Refer to Sections 10237.7, 17537, 17537.1, 17537.2 and 17539.1 and Regulation 2799.1.)

Taxes, assessments, charges

If contract-vendee (purchaser) is responsible for payment of taxes, assessments and charges against purchased lot or unit, subdivider must submit an explanation of arrangements made to assure that contract-vendee receives the bill from the appropriate agency.

If contract vendor (seller) or any other party is directly responsible to county or other governmental agency for payment of taxes, assessments, and charges against purchased lots or units, subdivider must submit an explanation of arrangements made to assure contract-vendee of receiving the receipted/paid tax bill; or

If receipted bill will not be forwarded to contract-vendee, arrangements should be made to assure contract-vendee that taxes, assessments and charges have been or will, in fact, be paid.

Completion of improvements

Improvements such as roads, water, sewer, electricity, etc. should be completed within one year of date of issuance of the permit, except that if climatic conditions or physical construction problems render a one-year completion schedule impractical, a longer period may be approved upon a showing of necessity, but in no event longer than 18 months. Access roads to the subdivision must be completed before permit is issued.

Road maintenance

If roads are not maintained by city or county, a management body or association must be formed for purposes of maintaining the roads, establishing voting rights, assessments, quorums, notices, meeting dates and other rules governing the management body.

The subdivider must escrow funds or post a bond in an amount sufficient to maintain the roadways until 80% of the lots or units have been sold. The amount of the bond or cash deposit should be equal to an engineer's estimate of the cost of five (5) years' road maintenance.

On-site improvements

If the offering of an out-of-state subdivider includes any proposed on-site development or improvement, such as lot grading, filled ground, drainage, wells or any form of shelter or residential structure, the subdivider must demonstrate that adequate financial arrangements have been made for their completion.

Deposit receipt/note

The deposit receipt shall provide for return of funds to buyer within 15 days if escrow does not close on the date (or extended date) set forth in the contract. See Regulation 2791.

If the promissory note has a clause relating to attorneys' fees, it must provide that such fees shall be awarded to the prevailing party in any suit in connection with the note.

**OUT-OF-STATES - APPROVAL OF PERMITS; PRELIMINARY PERMITS; TERM OF PERMIT;
AMENDMENTS; RENEWALS*****Recommending approval/contents of cover memo***

All out-of-state permits are approved by the Commissioner or his delagee. Amended and renewed permits are approved by a Deputy Commissioner III or a higher classification. The package to the above party shall contain sufficient information to completely inform him/her concerning all material aspects of the filing and shall include a cover memorandum or letter with recommendations and details regarding the following:

- intended use;
- price list (except AUS filings);
- DRE inspection and developer appraisal (except AUS filings);
- brief statement concerning amenities and aspects of project;
- statement concerning clearance by postal authorities;
- purchase money impounding;
- copy of public report for situs state; and,
- DRE budget approval, if applicable.

Preliminary permits

Preliminary permits are not issued for out-of-state subdivisions except AUS filings.

Term of permit

The term of a permit is 12 months. Before the end of such period, the applicant must apply for a renewal of the permit or it expires.

Amendments

The subdivider must update all information as necessary. The expiration date remains the same. The applicant pays only the amendment fee.

Renewals

The developer must bring all information current. Verification of completion of facilities and status of all required financial guarantees is ascertained. The renewal application will include statements regarding withdrawals from transactions. Inquiry to be made of applicant if withdrawals over 10% of inventory. If the project is a common interest development and the budget has changed, a "desk review" of the financial statements by the DRE appraiser may be necessary. The applicant pays only the renewal fee. The permit is renewed for a one-year term.

OUT-OF-STATES - IMPOUNDING***Impact of completion; successful/phased development***

If the project is not completed prior to the issuance of a permit, all purchasers' funds must be impounded in California until the project is completed and lien periods have expired. If the units and facilities have been completed or if a phased filing for an on-going successful development is involved, consideration may be given to impounding purchasers' funds in an out-of-state neutral escrow depository such as a national bank or title insurance company if the subdivider can offer satisfactory evidence that the out-of-state depository is as safe as a California title insurance company or bank escrow subject to Trustee and RE Form 626D.

Subdivisions located outside USA

If the development is located outside of the United States, all purchasers' funds must be impounded in California.

Trust accounts

To satisfy Section 11013.4(a), purchasers' funds may be held in a trust account in California. This may be the trust account of the subdivider or real estate broker, provided the account is designated as such by the bank holding the account.

OUT OF STATES - LAND PROJECTS - RESCISSION - WITHDRAWALS

Each out-of-state permit for a land project should contain the following conditions, per Sections 11028 and 11029:

Rescission

Purchasers have the right to rescind any agreement or contract to purchase land referred to in the permit within a given period of time. The subdivider is required to disclose this rescission right by attaching an explanation of the rescission procedure to the permit. (Regulation 2819.6; RE Form 677 C)

Withdrawals

The subdivider shall submit a report on or before the 10th day of each calendar quarter listing the names and addresses of all persons who had agreed to purchase a lot or parcel in the subdivision and who subsequently had withdrawn or attempted to withdraw from the agreement either by formal notification to the subdivider, by failure to make payments for a period of 90 days or more after the due date thereof, by claim or rescission, or otherwise.

OUT-OF-STATES - COMPLAINTS, FORMAL ACTIONS AND SECTION 11018.7 APPLICABILITY***Complaints***

Subdivisions North will not normally become involved in policing out-of-state subdivisions. When a complaint is received concerning an out-of-state subdivision, an Enforcement deputy and the deputy who processed the file may, on occasion, handle the complaint if it requires only routine correspondence. Normally, if it is a matter justifying the setting up of a regular complaint procedure with the usual follow-up investigative procedure, the matter will be forwarded to the Northern or Southern Enforcement Area for assignment.

Formal actions - notification of Subdivisions Technical Section

Whenever a formal action of any type is initiated against an out-of-state subdivision, or relating thereto, the Sacramento, Subdivisions North Technical Section shall be notified by the office instituting the formal action.

Section 11018.7 - Applicability

Section 11018.7 is applicable as described elsewhere in this manual. However, the changes to documents may be handled by the amended permit procedure instead of following the procedures outlined by Regulation 2793 if all sales to date were made to out-of-state purchasers.

If there is at least one owner that is a "California purchaser", Section 11018.7 is to be applied as outlined in Regulation 2793.

OUT-OF-STATE SUBDIVISIONS - REAL PROPERTY SALES CONTRACTS***Impound provisions***

Where interests in out-of-state subdivisions are sold under real property sales contracts, the impound provisions set forth elsewhere in this manual will apply. See Regulation 2791.9.

Mutuality of attorneys' fees

If a real property sales contract has a clause governing attorneys' fees, it must provide that attorneys' fees shall be awarded to the prevailing party in any suit in connection with the contract of sale. (This also applies to deposit receipts.)

Record title - last preliminary report

A real property sales contract shall provide that the seller agrees to convey title subject to:

matters shown in the preliminary title report dated _____ (insert date of preliminary report last received by DRE prior to issuance of permit, or amended permit);

any amendment lawfully made to the declaration of covenants, conditions and restrictions, if any;

real property taxes which became a lien after the date of the preliminary title report;

matters done by the buyer.

Payment of taxes

If the buyer is to pay the real property taxes, the real property sales contract must obligate the seller to deposit and maintain in a neutral escrow an appropriate portion of the buyer's payment for the payment of the buyer's share of such taxes, along with irrevocable instructions to the escrow or trustee to carry out the payment.

Liquidated damages/arbitration

If the real property sales contract (or deposit receipt) contains a liquidated damages clause and arbitration of disputes provision, such items must be fair, just and equitable. See Regulation 2791. The following wording should be used and set out either in at least 10-point bold type or in contrasting red print in at least 8-point bold type:

If buyer fails to complete the purchase of the property by reason of a default of buyer, seller shall be released from its obligation to sell the property to buyer, and seller may pursue any remedy in law or equity that it may have against buyer on account of the default; provided, however, that by placing their initials here Buyer _____ and seller _____ agree that:

seller shall retain as liquidated damages the deposit actually paid or three percent (3%) of the purchase price, whichever is less (but not to exceed the limitation imposed in connection with VA financing, if applicable); and

the payment of such liquidated damages to seller shall constitute the exclusive remedy of seller on account of the default of buyer; and

liquidated damages shall be payable to seller out of buyer's deposits toward purchase of the property, according to the procedures set forth below.

At any time after the date provided herein for the close of escrow, or any extended date for closing, seller may give written notice to escrow holder and to buyer by registered or certified mail, of seller's determination that buyer is in default under this purchase agreement, and escrow holder shall, after expiration of twenty (20) days from the date of buyer's receipt of the notice, remit the aforesaid liquidated damages to seller and the balance of the deposit to buyer, unless within said twenty (20) days, buyer gives written instructions to escrow holder not to remit funds to seller.

Arbitration of Disputes

If buyer gives such written instructions to escrow holder, the controversy and the disposition of the deposit shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

If the controversy is referred to arbitration, any fee to initiate arbitration shall be paid by seller, but the cost of arbitration shall ultimately be borne as determined by the arbitrator(s).

Seller agrees to indemnify and hold the escrow holder harmless from any claims made by the buyer arising out of any distributions made by the escrow holder in accordance with and pursuant to the provisions of this section.

Notice: By initialling in the space below you are agreeing to have any dispute arising out of the matters included in the "Arbitration of Disputes" provision decided by neutral arbitration as provided by California Law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialling in the space below you are giving up your judicial rights to discovery and appeal unless those rights are specifically included in the "Arbitration of Disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to the arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "Arbitration of Disputes" provision to neutral arbitration.

Buyer's initials _____ Seller's initials _____

State of California
Department of Real Estate

The Great Seal of the State of California is a circular emblem. It features a central figure, Minerva, holding a grizzly bear's paw. The seal is surrounded by the text "GREAT SEAL OF THE STATE OF CALIFORNIA" and "EUREKA" at the top. The word "CALIFORNIA" is written at the bottom of the seal.

TIME-SHARE MANUAL
Guidelines for Processing
Time-Share Plan Applications
for Public Report

Subdivisions - Technical Section



November 2008

TIME-SHARE MANUAL

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THE CALIFORNIA REGULATORY PROCESS FOR TIME-SHARE OFFERINGS

Types of Time-share Plans Regulated by the DRE

The California Department of Real Estate (DRE) regulates the initial setup and sale of all California and out-of-state time-share plans, that are offered for sale in California.

Definitions - Time-Share Plan, Estate, Use and Time-Share Interests

Definitions of the different types of time-share plans are found in the Real Estate Law as follows:

- Time-share plan defined – Business and Professions Code Section 11212(z)
- Time-share estate defined – Business and Professions Code Section 11212(x) (1)
- Time-share use defined – Business and Professions Code Section 11212(x)(2)
- Single site time-share plan defined – Business and Professions Code Section 11212(z)(1)
- Multisite time-share plan defined – Business and Professions Code Section 11212(z)(2)
- Specific time-share interest defined – Business and Professions Code Section 11212(z)(2)(A)
- Nonspecific time-share plan interest defined – Business and Professions Code Section 11212(z)(2)(B)

Department Responsibility

The Time-share Act of 2004 charges the Real Estate Commissioner with the responsibility of assuring that purchasers of time-shares interests receive everything for which they bargained. A Time-share Plan Conditional or Final Public Report must be issued and a copy given to each purchaser prior to the execution of a sales contract for a sale of a time-share. A copy of this report must also be given to any member of the public who requests one. The Time-share Final Plan Public Report is issued only after the developers comply with the provisions of all the applicable laws and regulations.

Exemption From Corporation Code 25100(f) Defined

Pursuant to Business and Professions Code Section 11218, a time-share interest in a time-share plan that satisfies all the requirements of the Time-share Act of 2004 shall be deemed an interest in subdivided lands or a subdivision for the purposes of subdivision (f) of Section 25100 of the Corporations Code. Their sale may be exempt from qualification unless the offer is coupled with an investment contract, including such features as a mandatory rental pool. This means that in practically all time-share sales, the transactions can be handled by real estate licensees. No securities license is usually necessary. However, if investment contracts are being sold in connection with a time-share, a securities license may also be necessary. Developers and their marketers should check with the Corporations Commissioner for clarification.

History – Time-Share

The Subdivided Lands Act was amended effective January 1, 1981, to include time-share estates and time-share uses; however, the Department had jurisdiction prior to that date over time-share estates. In fact, the Department had issued Public Reports on 26 time-share projects before 1981. The first time-share Public Report was issued on *The Brockway Springs of Tahoe Condominiums* when the Public Report was amended on June 30, 1972, to accommodate 1/11 interests in the remaining condominiums.

Time-share use offerings in hotels, motels and apartment houses were exempt from our jurisdiction before January 1, 1981. After the law was changed to give the Department jurisdiction over these offerings, it was also modified to allow a “compliance grace period.” This meant that if the previously exempt projects made timely filings with the Department of Real Estate for Public Reports, they could continue their sales programs until Final Public Reports could be issued. This also mandated that the Department had to allow sales to continue unless we were able to prove that continued sales would result in a dangerous situation for the time-share purchasers. There were 26 “compliance grace period”

applications. Some obtained Public Reports and others have voluntarily suspended sales, have abandoned their filings or have had their application denied by the Department.

Since January 2005, time-shares have not been regulated under the Subdivided Lands Law. Rather, a separate chapter of the Business and Professions Code, the Vacation Ownership and Time-Share Act of 2004 (Business and Professions Code Sections 11210 et seq.), was created for the regulation of the time-shares. This had several implications that change the way DRE processes applications for time-share public reports that is much different from how public reports subject to the Subdivided Lands Law are processed. Some key differences:

- The developer is entitled to purchase monies following the seven-day cancellation period if the time-share interest is free and clear of blanket encumbrances and the project is completed or the developer has posted a bond to assure completion (Sections 11243 and 11244 of the Business & Professions Code).
- If a CPA employed by the developer or an independent CPA certifies the time-share association budget as prescribed by Section 11240(f), the DRE will not review the budget. All time-share budgets must be certified, but the budget may be examined by DRE to confirm the accuracy of the certification if the budget is not certified by an independent CPA, a CPA employed by the developer or an individual or entity acceptable to the Commissioner to conduct the review.
- There are no reasonableness arrangements applicable to management documents for time-share plans. Sections 11265 through 11275 set forth the provisions to be included in management documents. For the most part, there is no room for discretion from those provisions of the statutes. There are no regulatory arrangements for reasonableness comparable to Sections 11018.5(d) or (e) of the Business & Professions Code.
- The time-share instruments shall be in compliance with applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between the affirmative standards of the laws of the situs state and the requirements set forth in the Time-share Act, the law of the situs state shall control.
- Time-share plans are exempt from certain portions of the Common Interest Development Act, commencing with Section 1350 of the Civil Code as specified in Code Sections 11211.7(a) and (b) of the Time-share Act of 2004
- Time-share purchase contracts must include information as prescribed by Code Section 11238(d) of the Time-share Act of 2004.
- The only statutory time frame for processing final public report applications is the requirement that DRE has 60 days from the date of receipt of an application for a public report to provide a list of deficiencies to the developer.
- Preliminary, conditional and final public reports may be issued for both in-state and out-of-state time-share plans.
- It is mandated by Section 11234 of the Business & Professions Code that the developer prepare the public report and that the public report include the specific disclosures as required by that statute. DRE does not prepare time-share public reports. Developers and SRPs should be directed

to the DRE website for forms RE 622H, RE 622I, RE 622J-1, RE 622J-2 and RE 622J-3 for instructions for preparation of time-share public reports.

The regulatory process for approving Public Reports for time-share plans is complex, cumbersome and expensive. Only the most highly trained Subdivisions Deputies are assigned to handle them. The legal fees for setting up the Trust, the Declaration and the Bylaws can be substantial.

JURISDICTION

A time-share plan may take one of two basic forms:

A “Single site time-share plan”, defined in Section 11212(z)(1) of the Code is the right to use accommodations at a single time-share property.

A “Multisite time-share plan includes either (1) or (2) below:

(1) a “Specific time-share interest” which is the right to use accommodations at a specific time-share property, together with use rights in accommodations at one or more other component sites created by or acquired through the time-share plan’s reservations system (Section 11212(z)(2)(A) of the Code). Regulation 2805.9 includes requirements that there be a priority reservation right written into the time-share plan documents to allow the purchaser of a time-share interest to a period of time (not less than 60 days) during which he or she will be permitted to reserve occupancy in the specific site without competition for space by owners of interests in other component sites, together with the right, on a non-priority basis, to reserve accommodations in component sites.

(2) a “Nonspecific time-share interest” which is the right to use accommodations at more than one component site created by or acquired through the time-share plan’s reservations system, but including no specific right to use any particular accommodations (Section 11212(z)(2)(B) of the Code). This means that purchasers compete for the right to use and occupy accommodations in any of the component sites with every other purchaser of a time-share interest in the time-share plan.

“Accommodations” means any apartment, condominium, unit in a stock cooperative, cabin, lodge, hotel room, or other private or commercial structure that has toilet facilities, available under applicable law for use and occupancy as a residence. Accommodation also means any unit or berth on a commercial passenger ship (Section 11212(a) of the Code).

A time-share plan is subject to the jurisdiction of DRE and requires a public report if the time-share plan consists of 11 or more time-share interests, has a term of more than three years and where the purchaser’s total financial obligation will be more than \$3,000 during the term of the time-share plan (See Regulation 2805, which defines “Developer” and Section 11211.5(b) regarding exemptions from the Time-share Act of 2004.)

Purchasers of 11 or more time-share interests in a Time-Share Plan

If a time-share owners’ association or anyone else acquires 11 or more time-share interests from the original recipient of a Public Report or from someone who succeeded to the interest of the original recipient of a public report, the association or anyone else needs a Public Report before they may offer time-share interests for sale (see Regulation Section 2805).

An owners' association may acquire inventory from individual time-share owners through foreclosure or in lieu of foreclosure. As long as that inventory does not include 11 or more time-share interests that someone acquired from the original recipient of a Public Report or its successor-in-interest, the association would not need a Public Report before marketing those interests. There may be occasions when an association has acquired inventory consisting of more than 11 time-share interests from the original recipient of the Public Report or its successor-in-interest and other inventory from individuals. The association would then need a Public Report only for those 11 or more time-share interests it acquired from the original recipient of the Public Report or its successor-in-interest.

An owners' association would be required to apply for a Public Report if a Public Report for the time-share project was never issued, the project consists of 11 or more time-share interests and the association intends to make sales in California. This may occur with respect to both in-state and out-of-state projects. In this case the source of the interests the association acquired is of no importance. A Public Report is required in any event.

Inducement to Out-of State Solicitation

If a California resident is solicited by any written or oral communication, except as provided in Section 11217 of the Code, from a source outside the State of California with the intent to induce that resident to attend a time-share plan sales presentation, and that time-share plan consists of 11 or more interests, then that time-share plan is subject to regulation under the Time-share Act of 2004.

Advertising

California law does not require that time-share advertising material be approved prior to use, whether the project is in or out-of-state. Regulation 2811 contains the specific advertising standards that must be adhered to by time-share developers within the meaning of Section 11245 of the Code..

Refer also to Sections 11245, 11283, 17500, 17537, 17537.1, 17537.2 and 17539.1 of the Business and Professions Code. Violations of advertising regulations are submitted to DRE Enforcement. Desist and Refrain Orders may be issued to control false, untrue or misleading advertising.

APPLICATION FORMS

- **Real Estate Form 668 – Timeshare Plan Instructions.** The instructions contained in this form are to be followed by all applicants. This form lists most Department of Real Estate forms that may be needed in filing for a Time-Share Plan Public Report.
- **Real Estate Form 668A –Notice of Intention Time-Share.** This Application is to be completed and submitted by all applicants for specific time-share interests in single-site or multi-site time-share plans.
- **Real Estate Form 668B. .Notice of Intention (Non-Specific Time-Share).** This Application is to be completed and submitted by all applicants for non-specific time-share interests. A separate RE668B must be submitted and fee paid for each location of a multi-site plan that include a non-specific time-share interest and which is not currently covered by a California public report.

- **Real Estate Form 635C – Public Report Amendment/Renewal Application (Time-Share). This Application is used to amend or renew a Time-Share Public Report. A separate 635C must be completed and fee paid for each single-site time-share plan or each location of a multi-site time-share plan that includes non specific time-share interests subject to amendment or renewal.**

Master File Documents

In order to avoid having to submit duplicate documents when a developer is submitting multiple applications if, for example, the time-share plan includes multiple phases, the RE 668A provides for the designation of a file as a “master file.” Documents that DRE considers “master file” documents are referred to in the RE 668A and the developer by its answers to specific questions indicates whether documents submitted are to be master file documents.

SUBDIVISION MAP ACT

The creation of undivided interests in a single parcel of real estate does not constitute a subdivision under the California Subdivision Map Act. However, the Vacation Ownership and Time-Share Act of 2004 may be applicable. Because of this, usually no new map is required by local government regardless of the type (use or estate) of time-share plan.

If the developer is creating an underlying project in California, such as a standard lot subdivision or a common interest development as defined in the Davis-Stirling Common Interest Development Act, simultaneously with the time-share project, he would be required to comply with the Subdivision Map Act for this underlying subdivision.

If the time-share plan is located out-of-state, the subdivision may be subject to local jurisdictional requirements comparable to California’s Subdivision Map Act. The reviewing Deputy should ask for a copy of the recorded map and all applicable maps enumerated below. The maps should be reviewed carefully because different states and localities often have standards for map approvals that are much different from that of California. If the developer states that there is no subdivision map requirement for that jurisdiction the Deputy should request authoritative support for such an assertion from the appropriate government agency, an attorney’s opinion letter or copy of the subdivision laws for that jurisdiction.

The Deputy should ask for a copy of the situs state’s subdivision laws in any event as it may become important in evaluating compliance with California regulatory standards.

Maps to be Submitted

- **Recorded Map - A copy of the map referenced in the legal description, as shown on the Title Report, must be submitted prior to issuance of the Public Report.**
- **Condominium Plan - If a condominium project is being converted to time-share use, or a condominium project is simultaneously being created, a copy of the recorded condominium plan must be submitted prior to issuance of a Public Report.**

- **Plot Plan - A large scale, legible plot plan (site plan) showing all improvements, including location of recreational amenities and boundaries of future phases, if any. In certain cases, the map itself may serve as a plot plan.**
- **Floor Plan - This is applicable to hotels or motels and should reflect the dimensions for units. Include room number and other pertinent information which appropriately describe the unit layout.**
- **Vicinity Map - The developer should always submit a large scale, legible vicinity map showing the location of approaches to the subdivision and identifying "landmarks" to help locate the subdivision.**

DEVELOPER MAINTENANCE AND ASSESSMENT EXPENSE OBLIGATION

Reference: Security for Developer's Obligations as an Owner of Time-Share Interests. (Section 11241)

Bond, Letter of Credit, or Cash Deposit

The security shall not exceed the lesser of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to the Time-Share Act of 2004.

COMMON AREA – COMPLETION AND CONVEYANCE

Completion and conveyance of the common areas is required by Business and Professions Code Sections 11230(completion) and 11254 (conveyance). Arrangements regarding these two elements must be completed prior to issuance of a Final Public Report. Common area completion and conveyance are separate concepts which need not occur simultaneously and should be processed as distinct requirements by the Deputy. Common areas are either to be owned by the purchasers as tenants in common or in fee by a legal entity such as a homeowners' association or corporation or by a combination of the two ownership forms. The ownership of the common areas will have some effect upon the manner in which the principles of completion and conveyance are processed. Personal property, such as furnishings of the accommodations, should be considered part of the common area improvements when considering completion arrangements. Any provision having to do with assuring completion of common area improvements should also expressly cover financial arrangements under Section 11230 for furnishing of the accommodations and conveying the accommodations to the time-share owners association (see Conveyance of Personal Property on Page 23).

Improvements Completed before Public Reports are Issued

If the applicant presents evidence that all improvements have been completed or will be completed before the Public Report is issued, we need only the assurance that improvements will be conveyed to purchasers or the homeowners' association lien-free. This can be accomplished by insisting upon escrow instructions that prohibit the impound depository from releasing any purchaser's funds from the impound until the time-share interest has been conveyed lien-free to the purchaser or that alternative arrangements for lien-free conveyance of the common area are made in compliance with Section 11244 of the Code.

If the developer completes all improvements before a public report is issued, provides evidence of completion to DRE, and there are no blanket encumbrances, then purchase monies may be disbursed to the developer following the seven-day cancellation period (Section 11243(b) of the Code).

Escrow Instructions Clause – Arrangements for a California Time-share Plan

Escrow instructions containing a clause substantially along the following lines should suffice for this purpose:

"All funds deposited by the purchaser of a time-share interest shall be held in escrow until the project is completed and title free and clear of any blanket encumbrance has been conveyed to the purchaser."

In addition to the above described conditions, escrow shall not close until:

"The expiration of the statutory period for the recordation of all mechanic's lien claims following the recordation of a valid Notice of Completion as defined in Section 3093 of the Civil Code."

Mechanic Lien Endorsement – Title Policy

If the developer has provided that each purchaser of a time-share interest shall receive a policy of title insurance with an endorsement against any possible future liens, a purchaser's funds may be released from impound – without regard to the time for filing of mechanic's lien claims – when the developer is able to convey title to the time-share interest free and clear of any blanket encumbrance of record.

The above procedure constitutes compliance under Sections 11230(b) and 11243(b) either if all development and improvement work will be completed prior to issuance of the Final Public Report or prior to closing of individual sale escrows.

Completed Improvements in an Out-of-State Project

Often, out-of-state jurisdictions do not issue Notices of Completion or any comparable document. Lacking Notices of Completion, evidence of completion may be had by Certificates of Occupancy, statements from licensed architects, a Certificates of Substantial Completion or an inspection by the State Fire Marshal designee or an equivalent public inspection safety inspection agency in the applicable jurisdiction. Photographs are not to be construed as satisfactory evidence of completion although they may be considered as supporting the documentation mentioned above. It may require the Deputy with the assistance of the Managing Deputy Commissioner III and Legal counsel to review applicable subdivision laws from the situs state.

Improvements not Completed Before a Public Report is Issued

If all improvements comprising the residential-structure common areas as well as the improvements to the separate or outside common areas, will not be completed prior to the issuance of a Public Report, the developer must comply with Sections 11230 and 11243(b) of the Business and Professions Code.

Compliance with Section 11230(a)

If the developer elects (a), the bond or other financial arrangement must be in an amount sufficient to cover the completion of the residential-structure common area and the outside common areas within the subdivision for which the Public Report is to be issued. Personal property should also be considered.

Compliance with Section 11230(b)

If the developer elects to assure completion through compliance with (b), appropriate instructions to the impound depository shall be required. See the *Escrow Instructions Clauses* section above for the appropriate escrow instruction language. That language may not be functional for some out-of-state projects, so alternative language will need to be evaluated for purposes of compliance with the statute.

Compliance with Section 11230(d)

DRE may approve an alternative plan for completion such as a procedure akin to the “RE 621” procedure that gives the developer the flexibility of switching from escrow instructions (which prevent the closing of escrows until the total project has been completed and is free of all liens), to a bond under Section 11230(a) to assure completion without obtaining an amended public report. After the final public report is issued, the RE 621 provides that escrows cannot close until the common area improvements are completed free and clear of encumbrances or until a bond, along with a planned construction statement and a RE 621A are deposited in escrow. The bond and attendant documents should guarantee completion of the common area and facilities that remain incomplete as of the date of submittal of the RE 621A security and the planned construction statement to DRE. If the time-share property is located outside California, the RE 621 may need to be tailored to accommodate the laws of the situs state. The Deputy should review the document to ascertain that the alternative document to the RE 621 is adequate.

Owners’ Association or Trustee

In some cases, the developer may be able to convey the common area and facilities to the owners’ association or, when required, a trustee, free of any blanket encumbrances prior to the issuance of the Public Report. When title to common areas and facilities is held by an owners’ association or trustee, no problems are encountered as the number of owners of time-share interests’ increases or decreases. This consideration is particularly important with respect to the phased development of time-share plans.

In these cases, care should be taken to eliminate the possibility that mechanic’s lien claims will be filed against common areas after conveyance to the owners’ association or trustee. This can be accomplished by:

- (1) delaying issuance of the Public Report until expiration of the statutory period for filing of lien claims after the recordation of a Notice of Completion (60-days); or
- (2) the issuance of a policy of title insurance to the owners’ association or trustee with an endorsement against unrecorded liens.

If the time-share plan is not in California, different arrangements may be necessary to accomplish this purpose.

Purchasers as Tenants in Common

The developer may convey some or all of the common area to purchasers as tenants in common rather than to an owners’ association. If the unit being time-shared is a condominium, it is necessary to convey at least some of the common area to purchasers as tenants in common, rather than to an owners’ association, in order to qualify as a statutory California condominium under the definition of Section 783 of the Civil Code or, most likely, in order to qualify a time-share condominium located in another state as a statutory condominium under that state’s condominium statutes. It may be necessary to review the situs state’s condominium statutes if necessary.

Variations

There is nothing, however, that demands that common areas and facilities be conveyed to the purchasers as tenants in common or deeded to a homeowners’ association. In fact, either method or a combination of methods may be used.

Examples:

- (1) A condominium offering could provide:
 - A separate interest in space;
 - An undivided interest in common in the residential structure; and
 - Conveyance of common areas and facilities other than the residential structure to the association.

- (2) An apartment house or hotel conversion could provide:
 - Undivided interests in common to the entire project.

Conveyance to Trustee

There may be a few instances where development in the common areas included in the offering, i.e., advertised from the beginning, is so extensive that the developer cannot reasonably be expected to complete the improvement work for several months or years after the issuance of the original Public Report. In these cases, the common areas and facilities should be bonded for lien-free completion and should be conveyed to a trustee approved by the Commissioner with the property held in trust for the benefit of the owners' association and the members thereof. As a general rule of thumb, the trust must be irrevocable and must provide for the conveyance of the common areas and facilities, free and clear of encumbrance, to the homeowners' association. (Code Section 11254)

Private Facilities Included in the Offering

Time-share offerings are often associated with hotel resorts with private recreational or other supporting facilities where the sponsor desires to make the recreational or other supporting facilities available to the time-share owners, but retain fee title to said facilities. This arrangement can be accomplished by conveyance of an easement or license to the time-share association. The Deputy should refer to the guidelines for private facilities. The use of a license or easement arrangement should be limited to supporting facilities.

ASSESSMENTS PAYABLE BY OWNERS OF TIME-SHARE PROJECT INTERESTS – SECTION 11265

Section 11265 requires that all interests in a time-share plan for which a Public Report has been issued are interests subject to the payment of regular and special assessments. The Deputy should determine from the form RE 668A how many of the projected interests are to be offered for sale under authority of the Public Report as a preliminary step to reviewing the file documents.

All accommodations in a time-share plan that are to be dedicated to timesharing and to be covered by a Public Report must be subject to assessments.

Declaration of Dedication, Importance of

The Deputy should read the Restrictions (often called Declaration of Dedication, Declaration of CC&Rs, etc.) that relates to assessment obligations and procedures. Many form RE 668A and RE 668B applications state that the Public Report is to cover all of the potential interests in the resort, but the proposed Restrictions may state that Declarant, for each time-share interest owned and each purchaser, for each such interest owned, covenant to pay assessments. It is crucial to locate in the Restrictions the definition of a time-share interest since usually only interests in some of the accommodations or units are designated as such. The remaining accommodations or units are normally designated as non-dedicated. The improper result is that the sponsor is only obligated by the document to pay assessments on unsold interests in time-share interest units and does not pay assessments on interests in accommodations or units not dedicated to time-sharing.

A good method for avoiding this problem is to require the sponsor to covenant in the assessment article to pay assessments on "x" interests ("x" = the interests to be covered by the Public Report) less interests sold to purchasers.

BUDGET REVIEW

The deputy must obtain a current budget certification from the developer. An independent budget review/acceptance from the DRE Budget Review Unit pursuant to Section 11240(g) and Regulation 2807.4 may also be necessary if the budget certification does not meet the standards set forth in Section 11240(f).

Pursuant to 11240(f), the Commissioner may accept a certification from the following without DRE budget review: (1) an independent public accountant, (2) a certified public accountant, who is an employee of the developer, or (3) at the discretion of the Commissioner, another qualified individual or entity. Form RE699D has been developed to grant approval of such qualified individual or entity to prepare and certify time-share budgets.

The following "Budget Review" information, in part, covers areas commonly reviewed by the Budget Review Unit (BRU). This information is not-intended to apply to budgets certified pursuant to Section 11240(f):

Category I: "Scope of the Offering"

The RE 668A, RE 668B, or RE 635C is reviewed to determine the following: whether the project is a single-site or multi-site, in-state or out-of-state (country), units covered, type of units, intervals or points, club concept, use versus fee, number of interests covered, mixed use, inventory, existing association, completion arrangements, third-party contractual obligations, subsidy arrangement, and management obligation. Finally, depending on whether it exists or is to be built, whether utilities are available or to be charged to the association.

Category II: "Site Inspection"

Ordinarily, if it is an in-state project, an on-site inspection is scheduled. The reviewer determines when and how the inspection is done. The inspection could be done before or after an in-house desk review is completed; however, in either case, the initial review should incorporate the on-site inspection findings.

An on-site inspection is performed in the same manner as a common interest subdivision, with the exception that the unit interiors are inspected, as well as shared use facilities. Particular attention is paid to projects that have a mixed use because of the potential of over burdening the association through cost sharing. For example, a converted hotel with dedicated units, when inspected, may indicate that hotel usage far exceeds the proportionate costs placed on the association and contractual obligation arising from the shared use favors the commercial area, as opposed to the association.

Category III: "Budget Analysis"

The initial budget review follows the same procedure as a regular common interest development project (RE 623). However, because the association's obligation extends into the interior of the units, particular attention is placed on the project's inventory (i.e. furnishing contracts, inventory-per-unit, interior construction, etc.). Further, shared use is reviewed (e.g. dedicated units versus others) and its contractual obligations. Also, many projects are multi-tiered and may involve three or more associations maintaining/sharing costs.

An existing project requires additional review procedures, although similar to all common interest reviews. For example, a financial review is conducted, which includes the association's financial status, adequacy of the reserves, and inventory (points or interests).

Under either situation, the proposed budget or the adopted budget is reviewed "item-by-item" to ensure that the charges are reasonable and verified by actual contractual obligations (or proposed contracts). In addition, the contracts are reviewed to ensure that the provisions that impact the association are reasonable, not subject to the sponsor's exclusive control, and in compliance with the appropriate regulations.

Category IV: "Contractual Obligation with the Declarations"

A review of any contractual obligation (e.g. management contract, deficit subsidy agreement, shared costs, lease arrangement, telephone agreements, reservation agreements, etc.) usually is done in tandem with the budget (RE 623) review. In addition, the Declaration sections that cover the association's obligations and the sponsor's obligations are reviewed to ensure that budget concerns are adequately addressed. This would include rental provisions with association reimbursements, timeframe for rental use, and compliance with the appropriate regulations.

Category V: "Security Arrangements"

There would be several areas that may require some form of financial security arrangement, all of which are reviewed by the Budget Review Unit. For example, completion arrangements (may require a site inspection); deficit subsidy agreement (done with the budget review); cash-down subsidy arrangement (done with the budgets); shared cost agreement (done with the budget); fiduciary obligations and any other type of agreement that the sponsor promises to perform.

Recap and Problem Watch List

In general, due to the nature of a time-share project (i.e. highly technical, extremely numbers orientated, and the fact that the sponsor contracts to manage), it usually requires a case-by-case analysis. For example, points conversion and allocation of assessments-to-points, etc. are additional areas of concern. Granted, as indicated above, the approach and procedure are not unlike a common interest subdivision; however, it is the "bundle of obligations" that may impact the association that a reviewer should be most concerned with when reviewing a time-share project.

The following is a watch list of issues relative to a time-share project of which the Budget Review Unit should be aware. Most items simply warrant special note language in the public report:

- (1) Designating units as "live-in quarters" or "sales office" to benefit the marketing program without implementing cost sharing agreement.
- (2) Failure to provide financial accountability.
- (3) Failure to conduct foreclosure sales pursuant to the Declarations (notice and open to the public).
- (4) Failure to provide reimbursement to the association pursuant to the foreclosure sale (delinquent assessments and costs).
- (5) Failure to provide the defaulted interest's owner with the balance of the foreclosure sales proceeds (above and beyond association amounts).
- (6) Failure to provide complete financials. (expenditure, income, year-to-date and profit and loss statements).

- (7) Failure to maintain financial records pursuant to the management agreement and the Declarations.
- (8) Submitted inaccurate DRE forms (failing to notify of changes).
- (9) Securing unauthorized association expenditures contrary to the Declarations (i.e. car lease, maintenance, fees).
- (10) Payments to third-party service providers without appropriate contracts (maid and maintenance service).
- (11) Charging the association with personal costs (insurance and property tax for adjoining property).
- (12) Assumption of association foreclosed interests.
- (13) Revising DRE-reviewed documents and agreements, such as management contracts, without notice and subsequent review by the DRE.
- (14) Expenditure of association reserve funds for non-reserve items. While typically permitted under the legal documents, a special note should be considered.
- (15) Expenditure of association funds to enhance the sponsor's interests (maid's unit, golf membership and camping club).
- (16) Inadequate records of association meetings and voting irregularities (proxy person not in attendance).
- (17) Failure to establish association operating and reserve accounts.
- (18) Failure to secure fidelity insurance or bonds in compliance with Section 11267(a)(9)
- (19) Failure to secure errors and omissions insurance coverage for the managing entity
- (20) Commingled association funds with personal funds.
- (21) Failure to establish contractual obligations with third-parties pursuant to the Declarations and the Regulations (car lease, soda machine, washer and dryer).
- (22) Receipt of management fees in excess of contractual limitations.
- (23) Charging the association for services that were not provided (accounting, audits).

Vacant Unit Budgets

By analogy to the "vacant lot" budgets permitted under Regulation 2792.16(c) for other types of common interest subdivisions, as a matter of policy, it is permissible for the time-share Restrictions to exempt the developer of a time-share project from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of units which are part of the project (units subject to the time-share Restrictions) but not built, or if built, not renovated or otherwise subject to occupancy.

Desk Clerk Expense

The budgeted management expense may include the services of a desk clerk, who has the duty to check in and out time-share owners. Given that the non-completed or non-renovated units are not subject to occupancy, the desk clerk's salary should be allocable for payment solely to time-share purchasers, and not to the developer. If the developer is not prohibited from renting non-completed or non-renovated units, the developer should not be exempt from sharing in the cost of the desk clerk's salary.

Developer Allocated Expense

Some items of expense are more reasonably allocated to the developer for payment. For example, if the developer's renovation or building program causes the common areas to require more frequent recurring maintenance and clean up, the vacant unit budget should allocate the maintenance person's salary disproportionately, with the developer paying more of this expense per interest owned than does a purchaser.

Other items of fixed expenses, such as real property taxes, reasonably would be shared equally by the developer and purchaser per interest.

The final result of summarizing all such expenses as allocable to purchasers or the developer or both will probably be a lesser cost per interest owned to the developer than to the purchaser. Since the developer will realize that these costs accurately reflect its true carrying costs of the units if they were not part of the time-share project, it will be more likely to include all of the contemplated units in the project from the beginning. The temptation to phase will be reduced, thus avoiding mechanic's lien risks inherent in phasing a one-lot project undergoing construction or renovation; and the association will obtain more control over the project and will be better capitalized.

SUBSIDIZATION OF ASSOCIATION EXPENSES BY SPONSOR - SECTIONS 11241 AND 11242

Buy Down Subsidy Agreement (Code Section 11242)

Under a traditional subsidy agreement a developer may elect to decrease, for a specific time, the purchasers' annual assessments by subsidizing or paying to the association in money all or part of the expenses of the association.

Financial arrangements to assure the ability of the developer to perform will always be required pursuant to Business and Professions Code Section 11242. The bond or other assurance should be accompanied by escrow instructions to the bond/assurance holder. The instructions should provide that the security device should not be released or exonerated until escrow holder receives notice from the association that the developer has faithfully performed under the subsidization contract (Code Section 11242.1).

Subsidization Contract

The subsidization contract should be carefully reviewed. It should provide for the monthly payment of the buy down subsidy by the developer to the association. The subsidy sum should be clearly set forth. If the developer intends to render services or supply goods to the association, the contract should specify in detail the methods to be used in valuing the goods and services (Code Section 11242).

If the developer or an affiliated entity is actually supplying goods or services to the association pursuant to the contract, the developer still must pay the agreed value of these goods/services to the association on a monthly basis even though the association will then write the developer a check for such

goods/services out of an association account. The association should at all times be in a position to control the disbursing and accounting for funds to defray costs attributable to operation and maintenance.

Any subsidy contract submitted should assure that the developer contributes to the association a sum allocable to reserves for replacement and major repairs for each unsold interest.

Deficit Subsidy Agreements (Code Section 11241)

The developer may, as an alternative to paying full assessments for unsold interests, enter into a subsidy agreement with the association to pay any shortfalls between expenses incurred and assessments collected from other owners. The subsidy program must include provisions for accumulations for reserves for replacement and major maintenance of the time-share property in accordance with accepted property management practices and the transfer of the reserve fund to the association at the termination of the subsidy program. An expanded explanation regarding the developer's contribution to reserves is found below.

Subsidy Payments

The contract should be scrutinized for any provision which limits the developer's subsidy obligation to the per-interest assessment paid by purchasers. Such provisions are reasonable only if purchasers share equally with the developer any savings under the subsidy program.

The contract should provide that non developer owners shall not be subject to special assessments during the term of the contract with the exception of special assessments for the construction of common area facilities which are both not part of the original offering by the developer and are consented to by the membership of the association.

Developer's Contributions to Association Reserves

The contract should also provide for the developer's contribution to the association's reserves. The agreement should provide that the sponsor pays reserves for each unsold interest in an amount equal to the amount shown in the association budget allocated to reserves for each interest. Certain fixed cost reserves, such as those for roof replacement, should be shared by the developer and other owners of units in the project. However, reserves for replacement of furniture existing only in renovated units is reasonably allocable only to owners of interests in renovated units.

Contract Termination Date

The contract termination date is usually not specific; however, the agreement must contain some type of provision that would activate the termination in order that duration not be indefinite. Normally, it is terminable upon 30 days notice to the association, provided that prior to such termination the developer obtain a Code Section 11241 bond and upon such termination begin payment of full assessments. Occasionally, in the alternative, it terminates upon the sale of 80% of the interests or a date certain, whichever is first. If 80% of the interests are sold, it is not necessary under Section 11241 to obtain a replacement Section 11241 bond for the existing bond to secure the deficit subsidy agreement. In such case, the developer is obligated to pay assessments on the remaining (20%) unsold units, but is no longer required to bond for the obligation. If it terminates before 80% are sold, the agreement must provide for a bond to secure the developers payment of assessments to be substituted for the deficit subsidy bond.

The amount of the deficit subsidy bond may be the lesser 50% of the annual time-share plan budget or 100% of the assessments attributed to the total amount of total unsold time-share interests owned by the developer and covered by a public report.

If the developer has submitted a certified budget in which DRE will not perform a budget review, the Deputy should ask the developer to submit a statement calculating how it arrived at the amount of the deficit subsidy bond submitted and the Deputy should review the statement to determine that the amount of the deficit subsidy bond is consistent based on the time-share plan budget. If the time-share plan budget is reviewed by the DRE Budget Review Unit, the budget reviewer should review the subsidy agreement and the bond amount for adequacy.

When This Type of Subsidy Is Not Permitted

If the time-share units are part of a condominium, planned development or other Common Interest Development, a “Deficit Subsidy” will not be permitted for the master association. This type of subsidy shall only be made available for the time-share association.

Deficit Subsidy – Budget Review Considerations (Applicable only if DRE Reviews Budget)

Since the developer’s obligation under a Deficit Subsidy Agreement (DSA) would have a significant impact on the association’s ability to meet its financial obligation, the Budget Review Unit should review the DSA so that they may add their input over those areas that will affect the association.

It is incumbent upon the Budget Review Unit to determine what method the developer will utilize in order to calculate the deficiency amount. Since it is to the benefit of the developer to apply any source of revenue generated to offset its deficit payment obligation, the only revenue(s) allowable should be limited to assessments and interest. The reasoning is that all other generated revenue should be set aside for the purpose for which it was generated in the first place (i.e. revenue from renting the recreation facility should be earmarked to offset acceleration of its wear-and-tear). Also, the developer’s obligation should not be limited to either line-by-line costs or assessments that should have been collected.

In addition, there should be a provision that covers the association’s obligation to provide monthly accounting with a yearly reconciliation. Both of these requirements will ensure that funds will be available to cover any association obligations and the yearly reconciliation would apprise the association whether its assessments are either too high or too low, based on the amount of subsidy paid by the developer.

Finally, there should be a provision(s) that covers the developer’s security obligation, and whether the DSA should be amended or accepting an amendment with the original attached. For example, both are somewhat linked together for the following reasons. Ordinarily, the security obligation is based on the lesser of 50% of the annual association budget or 100 percent of the assessments attributed to the total amount of unsold timeshare interests; however, should the association elect to change the annual budget it would effect the security amount. As to the amendment to the DSA, it’s not unusual for the developer to submit only the amendment to the DSA, which covers only the provisions being amended. Since projects may extend into 50+ amended filings, it is extremely difficult to determine whether the amendment satisfies the DRE’s current policies or the B&P Code. Therefore, both documents should be physically linked.

Public Report Disclosures for Subsidy Programs

Although the Time-Share Act under Code Section 11234 does not mandate a disclosure regarding a subsidization program, the Deputy should request that the Public Report for any time-share project which incorporates a subsidization program should include appropriate disclosures.

ESCROW REQUIREMENTS – SECTIONS 11243 AND 11244

Section 11243 provides that the developer shall comply with the following escrow requirements:

(a) A developer of a time-share plan shall deposit into an escrow account in an acceptable escrow depository 100 percent of all funds that are received during the purchaser's rescission period. An acceptable escrow depository includes, when qualified to do business in this state, escrow agents licensed by the Commissioner of Corporations, banks, trust companies, savings and loan associations, title insurers, and underwritten title companies. The deposit of these funds shall be evidenced by an executed escrow agreement between the escrow agent and the developer, that shall include provisions that state the following:

(1) Funds may be disbursed to the developer by the escrow agent from the escrow account only after expiration of the purchaser's rescission period and in accordance with the purchase contract, subject to subdivision (b).

(2) If a prospective purchaser properly cancels the purchase contract pursuant to its terms, the funds shall be paid to the prospective purchaser or paid to the developer if the prospective purchaser's funds have been previously refunded by the developer.

(b) If a developer contracts to sell a time-share interest and the construction of any property in which the time-share interest is located has not been completed, the developer, upon expiration of the rescission period, shall continue to maintain in an escrow account all funds received by or on behalf of the developer from the prospective purchaser under his or her purchase contract. The commissioner shall establish, by regulation, the types of documentation which shall be required for evidence of completion, including, but not limited to, a certificate of occupancy, a certificate of substantial completion, or an inspection by the State Fire Marshal designee or an equivalent public safety inspection agency in the applicable jurisdiction. Unless the developer submits financial assurances, in accordance with subdivision (c), funds shall not be released from escrow until a certificate of occupancy, or its equivalent, has been obtained and the rescission period has passed, and the time-share interest can be transferred free and clear of blanket encumbrances, including mechanics' liens. Funds to be released from escrow shall be released as follows:

(1) If a prospective purchaser properly cancels the purchase contract pursuant to its terms, the funds shall be paid to the prospective purchaser or paid to the developer if the prospective purchaser's funds have been previously refunded by the developer.

(2) If a prospective purchaser defaults in the performance of the prospective purchaser's obligations under the purchase contract, the funds shall be paid to the developer.

(3) If the funds of a prospective purchaser have not been previously disbursed in accordance with the provisions of this subdivision, they may be disbursed to the developer by the escrow agent upon the issuance of acceptable evidence of completion of construction.

(c) In lieu of the provisions in subdivisions (a) and (b), the commissioner may accept from the developer a surety bond, escrow bond, irrevocable letter of credit, or other financial assurance or arrangement acceptable to the commissioner. Any acceptable financial assurance shall be in an amount equal to or in excess of the lesser of (1) the funds that would otherwise be placed in escrow, or (2) in an amount equal to the cost to complete the incomplete property in which the time-share interest is located. However, in no event shall the amount be less than the amount of funds that would otherwise be placed in escrow pursuant to paragraph (1) of subdivision (a).

(d) The developer shall provide escrow account information to the commissioner and shall execute in writing an authorization consenting to an audit or examination of the account by the commissioner on forms provided by the commissioner. The developer shall comply with the reconciliation and records requirements established by regulation by the commissioner. The developer shall make documents related to the escrow account or escrow obligation available to the commissioner upon the department's request. The escrow agent shall maintain any disputed funds in the escrow account until either of the following occurs:

- (1) Receipt of written direction agreed to by signature of all parties.
- (2) Deposit of the funds with a court of competent jurisdiction in which a civil action regarding the funds has been filed.

Section 11244 further defines escrow and purchase money handling as follows:

(a) Excluding any encumbrance placed against the purchaser's time-share interest securing the purchaser's payment of purchase money financing for the purchase, the developer shall not be entitled to the release of any funds escrowed under Section 11243 with respect to each time-share interest and any other property or rights to property appurtenant to the time-share interest, including any amenities represented to the purchaser as being part of the time-share plan, until the developer has provided satisfactory evidence to the commissioner of one of the following:

(1) The time-share interest, including, but not limited to, a time-share interest in any component sites of a nonspecific time-share interest multisite time-share plan, together with any other property or rights to property appurtenant to the time-share interest, including any amenities represented to the purchaser as being part of the time-share plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights.

(2) The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the time-share plan, has recorded a subordination and notice to creditors document in the appropriate public records of the jurisdiction in which the time-share interest is located. The subordination document shall expressly and effectively provide that the interest holder's right, lien, or encumbrance shall not adversely affect, and shall be subordinate to, the rights of the owners of the time-share interests in the time-share plan regardless of the date of purchase, from and after the effective date of the subordination document.

(3) The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the time-share plan, has transferred the subject accommodations, amenities, or all use rights in the amenities to a nonprofit organization or owners' association to be held for the use and benefit of the owners of the time-share plan, which shall act as a fiduciary to the purchasers, the developer has transferred control of the entity to the owners or does not exercise its voting rights in the entity with respect to the subject accommodations or amenities. Prior to the transfer, any lien or other encumbrance against the accommodation or facility shall be made subject to a subordination and notice to creditors' instrument pursuant to paragraph (2).

(4) Alternative arrangements have been made which are adequate to protect the rights of the purchasers of the time-share interests and approved by the commissioner.

(b) Nothing in this section shall prevent a developer from accessing any escrow funds if the developer has complied with subdivision (c) of Section 11243.

(c) The developer shall notify the commissioner of the extent to which an accommodation may become subject to a tax or other lien arising out of claims against other purchasers in the same time-share plan. The commissioner may require the developer to notify a prospective purchaser of any such potential tax or lien that would materially and adversely affect the prospective purchaser.

Acceptable Escrow Depositories

The escrow depository for the sale of multi-site time-share project interests must be an acceptable California escrow company pursuant to Regulation 2807.2.

An out-of-state escrow depository may be used provided that a California affiliate is willing to stand in the shoes of the out-of-state affiliate with regard to purchase money protections for California purchasers. Most title/escrow companies active in timeshares process their escrow through a central, national timeshare division.

PERSONAL PROPERTY

Personal property may include furniture, appliances, window treatments, floor treatments, linen package, dishes and utensils, boats, automobiles, skis and other properties exclusive of buildings and grounds. The personal property should be considered common area and regulated under Section 11230. The personal property may be conveyed or leased to the association or conveyed by fractional interests to the interest owners. Such property may also be conveyed to an acceptable trustee whose duty would be to retain title to the property for benefit of the interest owners and to protect the property against third party claims.

Conveyance of Personal Property

There should be provisions for assuring purchasers receiving use of personal property prior to issuance of the Public Report or prior to close of the first escrow with appropriate assurances of conveyance or other adequate means of assuring use, free of liens and encumbrances. Adequate financial arrangements for purchase and placement of the property in the project must be provided in compliance with Section 11230. Personal property can be leased or financed provided there is adequate non-disturbance language stating that so long as the association is current in the lease/loan payments, the lessor/lender shall not repossess the personal property, regardless of whether the developer is in default under any loan covenants with the lessor/lender.

Personal Property Conveyed Outright to an Association

When personal property is conveyed outright to the association, the event is effected by a bill of sale. The escrow instructions should include a provision requiring delivery of the bill of sale which includes, as an exhibit, the inventory of personal property, to the association prior to the close of escrow of the first sale. In order that escrow can verify that the inventory attached to the bill of sale is correct, a proper inventory should be attached to the escrow instructions and referred therein. The escrow must also state that the personal property will be delivered to the association and the personal property placed in the dedicated units or appropriate location for use prior to close of escrow.

Personal Property Leased to an Association

In all cases the Subdivisions Deputy or the Budget Review Deputy, if there is a budget review, should be certain that lease payments are properly included in the association budget. The escrow instructions should include a provision which requires delivery of the lease to the association and the installation of the leased property to the project prior to closing of the first escrow. Unless financially secured, personal property shall be installed prior to the first close of escrow.

Free and Clear Conveyance of Personal Property

To insure free and clear conveyance of the personal property, the escrow instructions should include a provision which requires that prior to close of escrow, a U.C.C.-3 Form will be issued by the Secretary of State to the association indicating that there are no financing statements on file naming the developer

and/or lessor. A financing statement (U.C.C.-1) is a document filed with the Secretary of State by a creditor declaring security interests against an individual or entity for specific types or items of property.

If such a proposal is made, the sponsor should provide written support for the arrangement, which includes the reasons for not proposing to convey the personal property outright to the association. The Deputy should disapprove the arrangement if the developer fails to demonstrate that, pursuant to Section 11229(b)(5), that it has failed to make a showing that the parcel can be used for the purpose for which offered by failing to demonstrate that purchasers will have assured of the personal property.

RENTAL OF UNITS - SECTION 11245(b)

For any time-share plan in which the managing entity is an affiliate of the developer, neither the developer nor the managing entity shall, during any applicable priority reservation period, hold out for rental to the public on a given day, developer owned or controlled time-share periods in a number greater than the total number of time-share periods owned or controlled by the developer in a particular season, multiplied by a fraction wherein the numerator is the number of time-share periods owned or controlled by the developer in that particular season, and the denominator is the total number or time-share periods in that particular season. For example, if the developer owns or controls 1,000 time-share periods in a particular season, out of a total of 4,000 time-share periods available during that season, then the developer may not hold out for rental to the public during any applicable priority reservation period, more than 250 time-share periods on a given day during that season ($1,000 \times 1,000/4,000=250$). The number of time-share interests permitted to be rented under this subdivision shall be in addition to any time-share interests that the developer may have the right to rent or use by virtue of having acquired those rights from another owner. The developer or managing entity may, at any time, rent any inventory transferred to the developer or managing entity by another owner in exchange for hotel accommodations, future use rights, or other considerations. For any use or rental by a developer of time-share interests owned or controlled by the developer, the developer shall reimburse the association for any increased expenses for housekeeping services that exceed the amount allocated in the assessment for maintenance for the use or rental.

MANAGEMENT AGREEMENT (CODE SECTION 11267)

The time-share instruments (Bylaws or Declaration of Dedication) shall require the employment of a managing entity for the time-share plan or component site pursuant to a written management agreement.

The management agreement shall include the provisions enumerated in Code Section 11267. Sometimes, the developer recites the required provisions of the management agreement in the Declaration. While this is not objectionable, it does not excuse the requirement for submission of a copy of the executed management agreement between the association and selected managing agent prior to issuance of the Public Report (Regulations 2809.1 and 2809.3).

Compensation to Manager

Usually management agreements provide for compensation of the managing agent to be measured by a specified percentage of the maintenance and operation expenses.

Error by Managing Agent and/or Monetary Compensation to Damaged Owner. [Section 11251(c)(7)]

If, due to the error or negligence of the association or the managing agent, a dwelling unit cannot be made available for the period of use to which an owner is entitled by schedule or under a reservation system, the association is obligated to provide such owner with compensating use periods or money. This duty should be set forth in the Declaration.

FIDELITY BOND – SECTION 11267(a)(9)

The time-share instruments shall require the employment of a managing entity for the time-share plan or component site pursuant to a written management agreement that shall include the following provisions:

A requirement that the managing entity provide a policy for fidelity insurance or bond for the activities of the managing entity, payable to the association, which shall be in an amount no less than the sum of the largest amount of funds expected to be held or controlled by the managing entity at any time during the year, pursuant to the budget. The commissioner may provide a reduction in the insurance policy or bond amounts required by this paragraph.

MIXED COMMERCIAL AND TIME-SHARE PROJECT

Dwelling units to be dedicated to time-sharing use may be situated within a facility which includes dwelling units which will be utilized as rentals and/or a restaurant, bar, stores or other commercial establishments.

When the project is a time-share estate offering in which the project includes commercial establishments, it is necessary to determine whether those establishments will become conveyed to time-share interest owners or the association. The developer may attempt to retain ownership of these businesses under the theory that ownership of such profit-making enterprises by a non-profit incorporated association would constitute a security requiring registration with the Department of Corporations. The fact that a time-share estate purchaser may derive a pro rata monetary benefit from rental payments by the lessee of a commercial adjunct to the time-share project probably does not create a security out of the time-share estate being sold. Unless an investment contract is offered in the sale, it is doubtful that ownership of a business by an association of interest owners would constitute a security if the income to the association is incidental.

If qualification of the project with the Department of Corporations or the SEC is necessary, a Public Report must not be issued without evidence of a prospectus from the Department of Corporations/SEC, or a written opinion of counsel or a written statement from the Department of Corporations that the project does not require registration. If the project is still in the planning stages, you should implore the sponsor to segregate the commercial facilities and the property containing the time-share dwelling units through a lot split or other means.

If the developer is unable to facilitate such a lot split, and the time-share interest owners (or the HOA) will have a proprietary interest in the commercial facility, it would normally be considered reasonable for the association to operate the business if the profits are nominal as there would be no securities issued.

If however, the developer presents evidence from the Department of Corporations or the SEC stating that this type of an offering would be considered a security or if the non-profit status of the association would be jeopardized in operating such an enterprise, alternative arrangements for operation of the business should be made. For example, provisions may be made within the management documents to

prohibit the association from engaging in such activities. Other than such a prohibition, the only other reasonable alternative would be a long-term agreement (i.e., lease) between the association and a third party so that the latter would be obligated to maintain and operate the facility. This type of agreement must not benefit the commercial operator to the detriment of the association. It must be remembered that this is property owned, directly or indirectly, by time-share interest owners; thence, some of the benefits derived from the commercial operation should inure to the owners. The primary benefit to the owners would be rent paid by the operator to the association which would be used to defer a portion of the association's operating expenses. As long as the amount of the rent is "nominal" (for example, \$1.00 per time-share interest per month), and is utilized exclusively to offset costs, the Department of Corporations probably would not question the association's non-profit status. As with any dwelling unit that has not been dedicated to time-share use, the reviewing Deputy should ascertain whether the operator is properly obligated to maintain the interior of the facility and to pay, to the association, its proportionate share of monies (apart from the rent described above) in order to maintain the common or public areas. This type of an agreement should be reviewed by both a staff attorney in addition to the Deputy.

Equitable Allocation of Operating Costs

In a project wherein there are commercial units and/or other commercial facilities that share the use of common areas or facilities with the time-share unit owners, the Declaration of Dedication must provide for provisions for equitable allocation between the time-share project and the commercial operation of costs of management and operation incurred for the joint benefit of the time-share project and the commercial facility. The developer must covenant, through the Declaration of Dedication, to allocate such costs by a mechanism as required by Section 11251(a)(12) of the Business & Professions Code.

If the time-share budget is not reviewable by DRE, the Deputy should confirm that the certified time-share budget includes provisions for sharing costs between the commercial owners/operators and the timeshare owners. If the budget is reviewed by the DRE Budget Review Section, the adequacy of the procedures for allocating costs, including the expense allocations will normally be evaluated by the Budget Review Deputy. If the DRE Budget Review Section is reviewing the budget, the following are essential ingredients of the allocation schedule:

Square Footage Allocation Method

The allocation of expenses is typically based on the square footage of the commercial facilities in relation to the total project. Alternative methods of allocating expenses should be considered provided such allocation is fair and reasonable.

Property Taxes – Commercial Property

The developer must pay the property taxes for the commercial property. If the tax bill for the entire property is delivered to the association, the developer must agree to pay his proportionate share for the commercial facility. The agreement should spell out the developer's liability for increase in the property taxes due to the existence of the commercial facility.

Utilities and Services

The developer must be responsible for all costs of utilities and services to the commercial facility or the undedicated dwelling units.

Liability Insurance

The developer *must* obtain a policy of liability insurance insuring the association against any liability arising out of ownership, use or occupancy due to personal injuries or death. A policy of hazard insurance in amount equal to at least 80% of the full replacement value of the structures should be obtained in which the association should be named as an additional insured.

Separate Book and Records – Commercial

There must be provisions requiring separate books and records for the commercial operation.

Reciprocal Easements

The Declaration must include provisions for reciprocal easements between time-share units and commercial facilities if the nature of the project deems cross-use rights necessary.

It is important that the Deputy observe, if the time-share plan property is an out-of-state property, the provisions of Section 11251(b), which provides that if there is a conflict with the requirements of the requirements set forth in Section 11251 and the provisions of the laws of the situs state, the laws of the situs state shall control. That means that DRE cannot compel the developer to change the provisions of the Declaration in this instance.

CONTRACTS AND LIQUIDATED DAMAGES

Contracts

Section 11256 defines specific terms required to be included in the contracts used by a developer in the sale of time-share interests, including prompt return of purchase money to a non-defaulting buyer, and allowable purchase money disbursements.

Contracts for the sale of time-share plan interests that contain provisions for liquidated damages due to default by purchaser must also contain provisions that comply with Section 11256.

Anti-Deficiency Judgment

The Department has taken the position that the anti-deficiency judgment provisions of the Code of Civil Procedure, Section 580(b), are applicable to sales of time-share interests. Each such contract or financing instrument should contain a statement where the subdivider declares he will not seek a deficiency judgment in the event of a default by a purchaser.

RESCISSION RIGHTS

In accordance with the provisions of Section 11238 of the Business and Professions Code, a purchaser of a time-share interest, incidental benefit or any right under an exchange program has the right to cancel the purchase contract if person who has made an offer to purchase a time-share interest shall have the right to rescind any contract resulting from the acceptance of the offer within seven calendar days after the receipt of the public report or the execution of the purchase contract, whichever is later.

Rescission Rights Notice

To inform a person of his or her right to cancellation, the developer shall attach to the face page of every copy of a Subdivision Public Report given to a prospective purchaser the notice as set forth in Code Section 11239. In addition, a "special note" describing these rescission rights is to be shown on every Public Report where the subdivision is a time-share plan. See form RE 615 for the language which is to constitute the "special note."

The contract for the purchase of a time-share interest must also include immediately prior to the space reserved for the purchaser's signature, a disclosure, in conspicuous type, a notice of cancellation as prescribed in Code Section 11238(d)(7).

HUD/Interstate Land Jurisdiction

If the project is subject to HUD/Interstate Land jurisdiction, the Public Report should include any extra rescission rights that are provided by federal law.

Out-of-State Projects

In the case of out-of-state projects, the California cancellation rights will apply regardless of any rights of cancellation in effect where the project is located.

TRUSTS – SECTIONS 11254, 11255 AND REGULATION 2807.3

Section 11254 requires that title to each accommodation in any time-share use plan and in those time-share estate plans that are subject to monetary encumbrances be conveyed to a trustee or an association. (See comments under *Subordination* for exceptions.)

Any time dwelling units in a time-share project are conveyed to a trustee under a trust agreement, the Deputy must ensure compliance with all provisions of Sections 11254 and 11255.

Trust Agreement

In a typical time-share trust agreement, the developer is the trustor, a bank is the trustee, the holders of the underlying encumbrances are the primary beneficiaries; the developer is the secondary beneficiary, and the owners' association is a third party beneficiary if not a party.

Trust for Time-Share Use Projects

When the property is a time-share use project that is not subject to blanket encumbrances, the trust is essentially a passive one, and must include the provisions listed in Section 11255(d).

DRE Legal Review

All trust agreements in time-share projects are to be reviewed by the Department's Legal staff. The Deputy assigned to the file must also review the trust. Particular attention should be paid to the following provisions when and/or if required to be part of the trust:

Transfer Prior to Close of Escrow

All property to be conveyed to a trustee must be transferred to the trust prior to the closing of the escrow for the first sale of a time-share interest in the accommodation in accordance with Sections 11254 and 11255.

Whenever title is to be transferred to a trustee pursuant to Sections 11254 and/or 11255, evidence of the conveyance must be submitted as part of the filing prior to issuance of a Final Public Report.

Termination of Trust

A trust for a time-share use plan may not terminate before the termination of all of the use rights; a time-share estate trust may terminate at any time after the blanket monetary encumbrances have been paid off.

Deposits to Trust

Ensure the provisions of the trust instrument clearly spell out the requirements and the procedures for insuring that adequate funds, contracts and/or promissory notes are deposited into the trust by the developer as funds are disbursed or notes and contracts paid off.

Acceptable Trustees

Refer to Section 11255 and Regulation 2807.3 for acceptable trustees.

SUBORDINATION

If a time-share interest is subject to a blanket encumbrance, the developer may not release purchase monies escrowed under Code Section 11243 until, in compliance with Code Section 11244(a), the timeshare interest, including a time-share interest in any component sites of a nonspecific time-share interest multisite timeshare plan, or any other property or rights to property appurtenant to the time-share interest, including amenities that are represented as part of the time-share plan are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights.

If the property in which the time-share interest is appurtenant to, or property rights, or any amenities represented as being part of the time-share plan, are subject to a blanket encumbrance, purchase monies may be released from escrow if , in accordance with Code Section 11244(a)(2), subordination is recorded that provides that the lien-holder's right, lien or encumbrance shall not adversely affect, and shall be subordinate to the time-share interests.

Alternatively, purchase monies may be released from escrow under Code Section 11244(a)(3), if the developer, owner of the underlying fee, or any person having an interest in a blanket lien or encumbrance against the time-share interest or appurtenant property or property rights, including represented amenities, has transferred the accommodations, amenities or all use rights to the amenities to a nonprofit organization or association to be held for the use and benefit of time-share interest owners, to act as fiduciary to the purchasers. The developer must either transfer control of the entity to the owners or there must be provisions prohibiting the developer from exercising its voting rights in the entity with respect to the property or amenities. Prior to transfer, subordination must be made as required in Code Section 11244(a)(2).

Alternative arrangements for satisfying the provisions of Code Section 11244 may be evaluated by the Deputy to determine if they adequately protect the rights of purchasers.

If the developer has posted a purchase money bond pursuant to Code Section 11243(c), the developer may access purchase monies notwithstanding the provisions of Code Section 11244 as provided in Code Section 11244(b).

If releases from the blanket encumbrance(s) and/or lender subordination are not available, Section 11255(d) provides that each of the accommodations in a time-share estate project that is subject to a blanket encumbrance be conveyed to a trustee acceptable to the Department prior to the closing of the escrow for the first sale of a time-share estate which entitles the purchaser to occupy the unit in question.

LOCAL ORDINANCES

Some local governmental authorities have enacted ordinances that impose restrictions and conditions for compliance prior to permitting the dedication of accommodations to time-sharing.

Developer Compliance

If, in the RE 668A, the developer indicates the local jurisdiction prohibits or has imposed conditions for dedication of accommodations to time-shares, the developer must furnish, in accordance with Code Section 11226(e), a copy of the Permit or other entitlement for time-share use from the local governmental agency prior to issuance of a Public Report. For purpose built time-share projects, the consent of the local authorities can often be found in the conditions of map approval.

COASTAL COMMISSION

The California Coastal Commission, on January 24, 1980, voted unanimously to "assert jurisdiction" over the conversion of hotels and motels in California's Coastal Zone to time-share projects. They have also asserted jurisdiction over the implementation of time-share conversions in other properties, such as condominiums.

The Coastal Commission's position on time-share projects is supported by a 1980 California Court of Appeals decision on Cal Coastal Commission v. Quantam Investment Corporation (113cal.ap.3rd579) in which an apartment project was being converted to a stock cooperative. Sponsors with projects in the California Coastal Zone fall into one of two categories and must comply as indicated:

- (1) **New Construction** – Submit copy of Permit or Exemption from the Coastal Commission.
- (2) **Conversion** – Submit copy of letter notifying the Coastal Commission of the sponsor's intent to dedicate units to time-sharing.

INVENTORY CONTROL

The Time-share Act of 2004 in Code Section 11250 provides that time-share plans shall maintain a one-to-one purchaser to accommodation ratio, meaning the ratio of the number of purchasers eligible to use the accommodations of a time-share plan on a given night to the number of accommodations available for use within, such that the total number of purchasers eligible to use the accommodations of the time-share plan during a given calendar year never exceeds the total number of accommodations available for use in the time-share plan during that year. Satisfaction of that inventory control requirement is found in the provisions of Code Section 11246. In an application of a public report, whether the application is for an amendment or renewal of a public report or with the initial submittal of an application for a public report, in which the developer agrees to provide title insurance, DRE will require the title insurer to provide a statement to the DRE that it will insure the time-share interests to be conveyed to purchasers as legally described in the grant deed submitted to DRE by the developer and that it will insure the use rights either described in the grant deed(s), declaration of dedication or both.

Certain title companies will monitor the sale of intervals in time-share estate projects and issue DRE acceptable preliminary title reports that define the underlying real property, as well as the unsold time-share intervals. Inventory control for time-share use projects can be more difficult to track without recorded deeds of conveyance for reference.

In the most basic time-share offering where all the intervals are identical, e.g. one week, one room size and one season, an interval identification system could be established simply by sequentially numbering the intervals from one to the total number of intervals in the project. The total number of intervals in the project would equal the number of dwelling units multiplied by the number of weeks. Unfortunately, time-share interval identification systems are rarely as simple as this hypothetical time-share offering.

Most time-share offerings include a variety of different interval types to satisfy different consumer demands.

If the time-share project will include more than one type of interval, such as room size, season, etc., the time-share declaration must clearly define the system of identifying each type of time-share interval to be sold. Typically, this is done by assigning each interval a unique number that is defined in the declaration and listed on the deed or contract given to the purchaser. This will enable the sales to be identified by interval number that can be used in monitoring sales within each type of interval, as well as the total interval sales number.

The developer may propose to control the sales of inventory by listing only the fractional undivided interests in the project on the deed or contract without using an interval number linked to the numbering system defined in the time-share declaration. In a project where different interval types or seasons are being sold, the fractional interest being conveyed for the use of a one bedroom unit may be the same as the fractional interest conveyed for a two or three bedroom unit. Similarly, the fractional interest appurtenant to a premium season may be the same as the fractional interest appurtenant to a low season interval. To allow proper sales monitoring and prevent over selling within a particular unit type or season, it is critical to distinguish between the unit types being sold with unique interval numbers. Often the interval identification number will be comprised of a series of numbers, such as the dwelling unit number, week number, and season designation number.

Inventory control in time-share estate project can be monitored by inspecting the recorded conveyance deeds in the public record, provided the proper interval identification system has been established in the time-share declaration, as discussed above, and properly noted in each deed of conveyance.

For time-share plans in which time-share estate interests will be offered for sale and the developer will not provide title insurance or time-share plans in which time-share use interests will be offered for sale, and time-share interests were sold prior to the issuance of the public report, DRE will require the developer to submit a certification by either a title company or a Certified Public Accountant that the inventory control system, described in Business & Professions Code Section 11226(c),(6), functions in accordance with the description set forth in that section. The certification must be dated not more than three months prior to the submittal of the public report application. Code Section 11246 requires the certification to be based on a random sampling of transactions performed within six months preceding the date of the application.

TITLE

To satisfy the requirements of Section 11229(b)(2) of the Business and Professions Code, time-share Public Report applicants must provide evidence of the ability "...to deliver title or other interest contracted for". Typically, evidence of title for time-share projects is provided in the form of a preliminary title report with the DRE special note, as is provided with other types of subdivisions.

Time-share use offerings require title be protected in trust, as further discussed herein under *Trusts*.

In time-share estate offerings the purchaser receives a right of occupancy in a time-share project which is coupled with an estate in the real property. If the time-share project is divided into equal occupancy rights coupled with equal estates in real property, as in the basic hypothetical example given under *Inventory Control* herein, the purchasers use rights would always be accurately defined by his fractional fee interest in the property. In this example the title evidence required from a Public Report applicant need only to define the applicants undivided fractional fee interest in the real property, because the right of occupancy always equals the estate in real property. The same title evidence requirements would

apply to a points based time-share estate project wherein the purchasers use rights is defined by his undivided fractional fee interest in the property and the fractional fee interest is made up of the number of points purchased, divided by the total number of points in the project.

As explained under *Inventory Control*, time-share estate offerings are often divided into equal estates in real property coupled with unequal rights of occupancy. For example, the purchaser of a one bedroom low season unit may receive the same undivided fractional fee interest in the project as the purchaser of a three bedroom premium season unit. Therefore, it is critical that the title evidence requirement for this type of time-share estate offering include, in addition to the fractional fee interest in the project, an exact definition of all the use rights that are coupled with the fee estate in real property. The title insurance company will provide an additional exhibit to the title report that list the intervals owned by the applicant, provided the interval identification and inventory control system has been adequately defined in the time-share declaration.

MULTI-SITE TIME-SHARE PLANS

Multi-site time-share plans are defined in Business and Professions Code Section 11212(z)(2) as either:

(A) A “specific time-share interest,” which is the right to use accommodations at a specific time-share property, together with use rights in accommodations at one or more other component sites created by or acquired through the time-share plan’s reservation system.

(B) A “non-specific time-share interest,” which is the right to use accommodations at more than one component site created by or acquired through the time-share plan’s reservation system, but including no specific right to use any particular accommodations.

“Specific time-share interest” multi-site time-share plans and “non-specific time-share interest” plans are treated differently in how DRE processes public report applications.

“Specific Time-Share Interest” Multi-Site Time-Share Plan Applications

At the time the initial application is made, a RE 668A must be completed and for only the component site in which the purchaser has a priority right reserve use and occupancy of accommodations at a specific component site on a priority basis. The developer is not required to submit an application for any of the other component sites in the time-share plan.

Mandatory Reservation Systems – “Specific Time-Share Interest” Multi-Site Time-Share Plans

This type of time-share plan is affiliated by means of a contract or membership agreement through a mandatory reservation system with other time-share projects or resorts and time-share purchasers of interests in the specific component site receive, on a priority basis, the use or occupancy of accommodations at that site and it is subject to all the regulatory requirements of a single site time-share plan.

The reservation system documents that are established for the purpose of administering reservations among owners of interests for the component time-share projects or resorts affiliated through the contract or membership agreement are not subject to DRE regulation. However, there must be provisions in those documents for disaffiliation from the reservation system affiliation agreement and for limitation on costs assessed to time-share owners in the specific component site.

Regulations Section 2805.9 expands the definition of “the right to use accommodations at a specific time-share property” used in Section 11212(z)(2)(A) to mean a priority right of not less than sixty days to reserve accommodations at the specific time-share property without competing with owners of time-share interests at other time-share properties that are part of the time-share plan. The document(s) for reserving accommodations at the specific time-share property must include a provision requiring a time period of not less than sixty days during which owners in the specific time-share property may make a reservation prior to the time period in which other persons may make reservations at that site.

Public Reports-“Specific Time-Share Interest” Multi-Site Time-Share Plans

The public report must include all disclosures required for single-site time-share plans as enumerated in Code Section 11234(a) in addition to disclosures described in Code Section 11234(b) designed expressly for “specific time-share interest” in multi-site time-share plans. Code Section 11234(b) include requirements for specific disclosures about each of the component sites, the management entity for the reservations system, the fees payable to the operator of the reservation system by purchasers, among other required disclosures. The developer may include these disclosures in the body of the report or attached to the report as exhibits.

Code Section 11226(g) consists of two matters which require developer certification. The developer is required in the RE 668A to certify that purchasers have contractual or membership rights to use accommodations at all component sites and that, if those component sites are subject to blanket encumbrances, the blanket encumbrances will be subordinate to those rights (Code Section 11226(g)(1). The developer must also certify that a certificate of occupancy has been issued with respect to the accommodations at each affiliated site or that adequate provisions exist for completion of all promised improvements for component site accommodations. Under Code Section 11226(g)(2), for any accommodations for which adequate provisions for completion do not exist, the public report must disclose, in conspicuous type, that the accommodations may not be built, provided that a developer’s failure to build the accommodations shall not relieve the developer of any obligations created by the certification made pursuant to this code section

The disclosure in the Public Report concerning this kind of project should be clear that there are no assurances regarding the ability to reserve accommodations in the component resorts and that there are no assurances that the mandatory reservation system will continue to exist.

“Non Specific Time-Share Interest” Multi-Site Time-Share Plan Applications

RE 668B is required for a *non-specific time-share interests* in a *multi-site time-share plan* as defined in B&P Code Section 11212(z)(2)(B).

A separate RE 668B must be completed and fee paid for each location of a multi-site plan that includes a non-specific time-share interest and which is not currently covered by a California public report.

The RE 668A is not applicable to this type of Time-share Plan. Because the documents for the reservations system and organizational documents for the operation of this type of time-share plan and documents to be utilized for the purchase and marketing of individual interests will be applicable to all component sites, those documents should be submitted with one of the initial RE 668Bs. The file that includes that application will be designated the “Primary” Application, which is similar to a Master File. All other applications for component sites are referred to as “Secondary” applications. The instructions for completing a Primary and Secondary application is included in the instructions and the body of the RE 668B.

How a “Specific Time-Share Interest” and “Non-Specific Time-Share Interest” Multi-Site Time-Share Plans Work

Purchasers of time-share interests in a multi-site time-share plan may be conveyed either a time-share estate or a time-share use. Multi-site time-share plans in which time-share estate interests are conveyed are rare. If the interest conveyed is a time-share estate, the purchaser would receive a deeded interest in one of the component sites. For purposes of his or her rights to use and occupy dwelling units in the multi-site time-share plan, the deeded interest conveyed to that purchaser would have no meaning. That purchaser would not have any superior right to use and occupy dwelling units in the site in which he or she received a deeded interest over and above other owners of interests in the multi-site time-share plan.

“Non Specific Time-Share Interest” multi-site time-share plans more commonly involve the sale of right-to-use interest wherein the terms of the purchase and conveyance are included in the purchase agreement. The purchase agreement will describe the basic nature of the reservation right the purchaser receives. The purchase agreement might state the purchaser has the right to use any unit of a certain type every year or only during a certain time of year. The purchase agreement also may involve the assignment of points, which is another way to determine the value of the reservation rights purchased. The more points one purchases, the greater flexibility that purchaser has in making reservations to use dwelling units in the component sites. Refer to *Time-Share Points Programs* for more information on this topic.

The component sites may include entire subdivisions, selected individual dwelling units in pre-existing time-share projects or in other types of subdivisions or it may be merely involve a few fractional interests in an existing time-share project unrelated to the multi-site time-share project.

There is usually bifurcated management for time-share plans. An “administrative” management agreement, which is a contract between the managing agent and the owners’ association for the multi-site time-share plan, administers the reservation system and performs other duties as established in that contract for the purpose of operating the multi-site time-share plan. Then there is the “on-site” manager, which performs maintenance and operational duties with respect to the individual component sites. On occasion, the management agreement may encompass both administrative and on-site management duties. Any management agreement must be reviewed by the Subdivisions Deputy for compliance with Code Section 11267.

Review of Governing Documents

Each component site’s governing documents should be reviewed carefully for compliance with Code Sections 11233 and 11234 as well as Article 3 and Article 4 of Chapter 2 the Vacation Ownership and Time-Share Act of 2004. Often, multi-site time-share plan governing documents for out-of-state subdivisions are drafted to meet the situs state’s laws and regulations because the project originates in another state. If the component site is located in California and is burdened by an underlying common interest subdivision, a completed RE 648 must be submitted by the sponsor.

If there are provisions of governing documents for either the time-share project documents or the component site common interest subdivision documents that do not meet California regulatory requirements, the developer should provide either authoritative legal support for those provisions (such as copies of the situs state’s statutes or regulations that require the provisions) or other justification for the contrary provisions. It may be helpful under certain circumstances to request that the SRP submit copies of the situs states’ statutes to confirm whether certain provisions are mandated.

It is important that the Deputy take notice of the provisions under Code Sections 11251 and under certain subdivisions of Article 4, Management and Governance, Code Sections 11265 through 11275, allowing governing and managements documents not to include specific provisions of those Code Sections if the laws of the situs state conflict with those specific provisions. They include Section 11265(Assessment requirements), Section 11267 (Provisions for management agreements), 11272 (Information, including financial statements, to be given to time-share interests owners) and Section 11273 (Records to be made available to time-share interest owners).

Documents for Out-of-State Component Sites

Because out-of-state subdivision requirements do not often include subdivision requirements comparable to the Subdivision Map Act of California, and because the situs state may have limited regulations regarding such subdivisions, the Department may be the only regulatory agency with any subdivision review duties involving some component sites. See *Subdivision Map Act* earlier in this manual for a discussion on out-of-state subdivision maps.

There are out-of-state jurisdictions that do not have title systems similar to that of California. In those cases, preliminary title reports comparable to California's title report may not be available. Another form of title report may be submitted or an attorney's opinion of title may be provided. These "alternative" forms of assurance of title should be examined closely for validity and completeness. If the Deputy is not certain of the validity or the substance of the title document it should be referred to the Legal Section for review.

If the component site is in a foreign country, the title document should be referred to the Legal Section for review. If the language of that country is not English, both the copies of the original documents for the subdivision and English translations of those documents should be provided. These documents might include governing documents and any other documents having to do with the subdivision. The title documents should be referred to the Legal Section for review. If the Deputy is satisfied as to the validity of the English translations, the Deputy may review the documents without the assistance of Legal counsel. If the Deputy has any questions regarding the validity or meaning of the documents, those questions should be referred to the Legal Section.

EXCHANGE PROGRAMS – SECTION 11216

Pursuant to Section 11216 an exchange program is not a part of a time-share plan offering and, except as provided in this section and Section 11238, shall not be subject to either the Vacation Timeshare Ownership Act or the regulations of the commissioner. The Developer is required to make specific disclosures about the exchange program as specified in Section 11216.

The Department developed the following exchange program note, as listed in the Timeshare Plan Disclosures (Part 1) – RE622I, which is to be included in Public Reports on all time-share projects that are affiliated with exchange programs:

“This time-share project may be affiliated with one or more exchange programs whereby time-share owners may voluntarily exchange the right to use and occupy accommodations and facilities in this project with accommodations in other projects. Exchange programs are not subject to Department of Real Estate laws and regulations. Therefore, the Department of Real Estate has not evaluated any exchange program(s) included in this offering. There is no guarantee that this project will remain affiliated with any particular exchange program. Since exchange programs are unregulated, the Department recommends prospective purchasers use discretion in evaluating exchange programs offered in conjunction with time-share offerings.”

EXIT, SAMPLER, OR SHORT TERM PRODUCTS

Time-share developers may choose to offer to prospective purchasers, who do not initially purchase a time-share interest, an opportunity to purchase a short term right to use the time-share project with the understanding that all payments can be credited towards the future purchase of a time-share interval. These types of marketing programs are often referred to as *exit programs*, *sampler programs*, or *short term programs*.

A short-term product is defined in Section 11212(v) as the right to use accommodations on a one-time or recurring basis for a period or periods not to exceed 30 days per stay and for a term of 3 years or less, and that includes an agreement that all or a portion of the proceeds paid by the purchaser for the short-term product will be applied or credited against the price of the future purchase of a time-share interest and that the price will be locked-in at that time.

Code Section 11235 establishes the specific regulatory requirements for short-term products. They include the requirement that there be in the purchase contract for a short-term product, a disclosure that the purchaser has the right to rescind the contract within 7 days following the date the contract was first made, or a later date as provided for in the contract. The developer is also required to disclose to the purchaser, clearly and conspicuously, in writing, specific information about the short-term product described in that code section. The developer may impound purchase money in escrow until the rescission period ends, post a bond to secure the return of purchase monies in an amount determined by the commissioner or make alternative arrangements satisfactory to the commissioner to secure the obligation to return purchase money funds.

POINTS-BASED TIME-SHARE PLANS – SECTIONS 11233 AND 11250

Point systems are structures for flexible use whereby the value of the use right of a time-share interest owner is expressed in terms of points rather than in increments of time.

The product sold to a purchaser may consist of a time-share estate or time-share use not coupled with an estate in real property. The value of the reservation right is entirely a function of the number of points the purchaser receives at the time of purchase. The number of points conveyed to a purchaser is typically shown in the purchase agreement. Sometimes, they may be denoted in the Grant Deed, if the offering is an estate offering. Regardless of the number of points purchased, that number does not change unless the time-share owner purchases more points at a later time.

Point valuations for each unit-type, season or portion of the year, and each resort, if the offering is a multi-site time-share project, should be established in the recorded Declaration for the project. Section 11250 requires the timeshare plan maintain a one-to-one purchaser to accommodation ratio. The Deputy should inquire about how point values are calculated, whether additional points may be purchased in the future and how those additional points may be purchased. The Deputy should be certain that the number of points to be offered for sale is consistent with the total number of points assigned by the developer to the property as shown in the Declaration. The Deputy should also ascertain whether the number of points assigned by the developer to each element of the offering (type of unit, time of year, resort, etc.) works logically in the context of the total offering.

The developer is required by Section 11233 to provide the following information and assurances on timeshare point systems:

(a) Whether additional points may be acquired by purchase or otherwise, in the future and the manner in which future purchases of points may be made.

- (b) The transferability of points to other persons, other years or other time-share plans.
- (c) A copy of the then-current point value use directory, along with rules and procedures for changes by the developer or the association in the manner in which point values may be used.
- (1) No change exceeding 10 percent per annum in the manner in which point values may be used may be made without the assent of at least 25 percent of the voting power of the association other than the developer.
- (2) No time-share interest owner shall be prevented from using a time-share plan as a result of changes in the manner in which point values may be used.
- (3) In the event point values are changed or adjusted, no time-share owner shall be prevented from using his or her home resort in the same manner as was provided for under the original purchase contract.
- (d) Any limitations or restrictions upon the use of point values.
- (e) A description of an inventory control system that will ensure compliance with Section 11250.

The Deputy should require the submittal of a detailed statement from escrow depository also explaining its inventory control procedures.

INCIDENTAL BENEFITS

Incidental Benefits are defined in Section 11212(m) of the Business and Professions Code as an accommodation, product, service, discount, or other benefit, other than an exchange program, which is offered prior to the end of the rescission period set forth in Code Section 11238, the continuing availability of which is limited to a term of not more than 3 years, subject to renewal or extension. The term shall not include the use of the accommodation, product, service, discount, or other benefit on a free or discounted one-time basis.

Under Code Section 11237, if a purchaser of a time-share interest in a time-share plan is offered the opportunity to acquire an incidental benefit in connection with the sale of a time-share interest, the developer shall provide the purchaser with a disclosure statement containing all of the following information:

- (1) A general description of the incidental benefit, including the terms and conditions governing the use of the incidental benefit.
- (2) A statement that the continued availability of the incidental benefit is not necessary for the use and enjoyment of the purchaser's use of any accommodation of the time-share plan.
- (3) A statement that the purchaser's use of or participation in the incidental benefit is completely voluntary, and payment of any fee or other cost associated with the incidental benefit is required only upon that use or participation.
- (4) A listing of the fees, if any, that the purchaser will be required to pay to use the incidental benefit.
- (5) A statement that no costs of acquisition, operation, maintenance, or repair of the incidental benefit shall be passed on to purchasers of time-share interests in the time-share plan as a common expense of the time-share plan.

A developer shall include in its initial application for registration, a description of any incidental benefits which may be used by the developer. The developer may, but shall not be required to describe the incidental benefits in the public report for the time-share plan.

The incidental benefit disclosure is not required to be filed with the commissioner prior to the use of the disclosure. However, the commissioner may request and review the records of the developer to ensure that the incidental benefit disclosure required by this section has been given to purchasers and to ensure that the statements required to be made in the disclosure are accurate as to the operation of each incidental benefit offered by the developer. The developer shall deliver the records to the commissioner within 10 business days of the commissioner's request.

The developer is also asked, through the application (RE 668A and RE 668B), to describe each Incidental Benefit to be offered. The Public Report will include a generic disclosure regarding the fact that the developer may offer incidental benefits. Disclosures regarding Incidental Benefits should be included as explained in RE 622I.

PUBLIC REPORT – SECTION 11234

The developer is REQUIRED by section 11234 to submit a pre-typed public report as part of the Notice of Intention. The public report may, but need not, have exhibits other than the budget. If governing documents, including the management agreement, are not attached as exhibits, they must be handed out separately to each purchaser. Detailed instructions for preparation of the public report can be found in Time-Share Public Report Preparation – RE622H. Forms RE622I, RE622J-1, RE622J-2 and RE622J-3 provide time-share disclosures for use in developing the public report language.

Department of Real Estate Procurement Policies & Procedures Manual

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Introduction – Purpose of the Procurement Manual

The Procurement Manual provides information, policies, and high-level procedures for the Department of Real Estate (DRE) Procurement Buyers as it relates to procuring goods and services. Procurement staff involved in purchasing activities are required to be knowledgeable of these policies and procedures as a condition of the Department of General Services (DGS) delegated purchasing authority.

Listed below are the Programs responsible for the following purchases:

- Business Services Office (BSO) - Non-Information Technology (Non-IT) goods and services
- Information Technology Division (ITD) - Information Technology (IT) goods and services

The DGS, Consolidated State Contracting Manual (SCM), Volume 2, is referenced throughout this manual. The Consolidated SCM and State Administrative Manual (SAM) are also available on the DGS website. DRE is transacting in the Financial Information System for California (FI\$Cal) and should reference the Consolidated SCM, Volume 2.

A. Purchasing Authority

The DGS, Purchasing Authority Unit (PAU) determines the appropriate dollar thresholds for State departments, which are tied to various acquisition methods ranging from simple to complex and high-risk. This is a factor for assigning the varied dollar thresholds.

Once a department's purchasing authority has been approved a Purchasing Authority Approval Letter (PAAL) is issued that explains the specific authority dollar threshold granted (these figures vary by State departments). A copy of DRE's PAAL can be found on DRE's [Doing Business with the DRE](#) page and exclude the cost of sales and use tax (except the SB/DVBE Option), postage, finance and handling charges, as well as most instances of shipping charges.

DRE Purchasing staff who are responsible for performing any procurement-related functions will have the necessary training, resource manuals and materials to conduct procurement activities in compliance with all DGS procurement requirements, rules and regulations governing the purchase of goods and services. The DRE's ability to triennially renew its purchasing authority is dependent upon strict adherence to this policy.

The DRE must submit a Purchasing Authority change Request (PACR) within 30 days when:

- Designating a new Procurement & Contracting Officer (PCO).
- Changing any of the PCO's information.
- Designating a new Purchasing Authority Contact (PAC).
- Changing any of the PAC's information.
- A Secondary Department designates a new PCO or any of their PCO information changes.

For more information see Consolidated SCM, Vol. 2, Chapter 100, Section 100.8.

B. Exclusions

Below is a list of activities outside the scope of DRE’s purchasing authority, as authorized by the DGS, Procurement Division (PD).

Activity	Basis for Exclusion
Non-IT Goods valued at \$100.00 or less	Defined in PCC Section 10308 departments have the statutory authority to purchase non-IT goods valued at \$100 or less without DGS, PD oversight.

C. Purchasing Authority within the Department

The below table is the current procurement delegation by category and dollar threshold for DRE. It illustrates the purchasing authority options available when planning to satisfy the needs of the DRE. Dollar thresholds identified in this table exclude sales and use tax, finance charges, postage, and handling charges. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as Freight On Board (FOB) Origin, Freight Collect, or FOB Destination.

** Dollar Thresholds Noted Below Shall Be Applied Per Transaction **				
Acquisition Method		IT	Non-IT	Non-IT Services
Competitive				
1	Formal	\$0	\$0	-
2	Informal	\$100,000.00	\$50,000.00	-
3	SB/DVBE Option	\$249,999.99	\$249,999.99	-

Non-Competitively Bid (NCB) (Contracts as a result of an approved NCB/Special Category Request (SCR) Justification or exempt from competition by law/policy)				
4	NCB Contract (as a result of an approved NCB or SCR Justification)	\$100,000.00	\$50,000.00	-
Acquisition Method		IT	Non-IT	Non-IT Services
Non-Competitively Bid (NCB) (Contracts as a result of an approved NCB/Special Category Request (SCR) Justification or exempt from competition by law/policy)				
Exempt by Law:				
5	Community Based Rehabilitation Program	-	Unlimited	-
6	Emergency Contracts	Unlimited	Unlimited	-
7	Interagency Agreement (IAA) – Limited to \$50,000 if IAA with CSU or UC	\$1,000,000.00	-	-
8	Public Entities (another state, local government, Federal government, or other public entities – see SCM for definition)	\$100,000.00	\$50,000.00	-
9	IT IAA with Department of Technology (Data Center Services)	Unlimited	-	-
10	Prison Industry Authority (PIA)	-	Unlimited	-
11	Other (buyer must indicate law)	\$100,000.00	\$50,000.00	-
Exempt by Policy				
12	Fair and Reasonable	\$9,999.99	\$9,999.99	-
13	Other (buyer must indicate policy)	\$100,000.00	\$50,000.00	-
14	Emergency Contract (non-natural disaster)	\$100,000.00	\$50,000.00	-
15	Proprietary Software	\$100,000	-	-
16	Proprietary Maintenance	\$100,000	-	-
17	Proprietary Subscription, Publications and Technical Manuals	-	\$50,000.00	-

Leveraged Procurement Agreements (Requiring further competition within the category [i.e., obtaining offers, etc.] – refer to individual LPA user instructions)				
18	1122 Procurement Program (GSA Component)	-	\$0.00	-
Leveraged Procurement Agreements (Requiring further competition within the category [i.e., obtaining offers, etc.] – refer to individual LPA user instructions)				
19	CMAS	\$500,000.00	\$100,000.00	\$250,000.00*
20	Cooperative Agreements	\$1,500,000.00	\$500,000.00	\$500,000.00
21	Master Agreements	\$1,500,000.00	\$500,000.00	\$500,000.00
22	Software Licensing Program	\$2,000,000.00	-	-
23	State Price Schedules	\$25,000.00	\$25,000.00	-
Acquisition Method		IT	Non-IT	Non-IT Services
Leveraged Procurement Agreements (No further competition required – refer to individual LPA user instructions)				
24	Cooperative Agreements	Unlimited	Unlimited	Unlimited
25	Master Agreements	Unlimited	Unlimited	Unlimited
26	Statewide Contract Orders	Unlimited	Unlimited	-
Acquisition Method		IT	Non-IT	Non-IT Services
Pre-Procurement Requirement				
27	Non-Competitively Bid (NCB) Justification	\$25,000	\$25,000	-
28	Limited to Brand (LTB Justification)	\$25,000	\$25,000	-

*CMAS Non-IT Service orders above \$50,000 must be approved by DGS, PD prior to award (SCM, Vol 2, Chapter 6).

Procurement tasks are handled by the DRE's Business Services Office (BSO) and Information Technology Division (ITD).

DRE Staff Name	DRE Position	Role
Shelly Wilson	Assistant Commissioner, Administrative Services	Procurement and Contracting Officer
Larsen Aster	Information Technology Manager I	Purchasing Authority Contact (IT)
Joe McAuley	Staff Services Manager I	Purchasing Authority Contact. (Non-IT)
Van Nguyen	Information Technology Associate	IT Procurement Buyer, SB/DVBE Advocate

Shelly Espinoza	Associate Governmental Program Analyst	Non-IT Buyer (Services)
Raul Mejia	Staff Services Analyst	Non-IT Buyer (Goods)
Vacant	Staff Services Analyst	Non-IT Buyer (Goods)
Phillip Cagle	Office Technician	Non-IT Buyer (Goods)
Gabriel Jacobo	Business Services Assistant	Non-IT Buyer (Office Supplies under \$15,000)

Each program within DRE establishes criteria and determines who may request and approve orders for goods, equipment and furniture within their respective area based on need and approval by BSO or ITS. Only authorized management may sign purchase documents on behalf of the DRE. DRE is transacting in FI\$Cal. FI\$Cal is designed to workflow the documents to the different assigned approvers' roles (no actual signatures); however, DRE has continued to process/sign hard copies of the purchase documents outside the system.

Each CAL-Card holder has a dollar threshold limit based on their Program's business needs.

D. Procuring for Another Department

Not applicable. The DRE only procures on behalf of the DRE.

E. Signature Authority

The DRE's Commissioner has delegated signature authority to designate members of the Business Services Office and Information Technology Section to sign purchase documents in accordance with SAM section 1208, Authorization of Agreements.

The below chart is a listing for Signature Authority for FI\$Cal: PO Approvers 1, 2, 3 & 4 within the FI\$Cal System.

SIGNATURE AUTHORITY DRE CONTRACT APPROVERS				
Description	Approver Name, Title	Approver Contact Email Address	Approver Contact Phone Number	Threshold
DRE Contracts, IA's (Account Payables) Std. 213	Joe McAuley, BSO Manager	Joe.mcauley@dre.ca.gov	916-576-8104	up to \$100,000
	Larsen Aster, IT Manager	Larsen.aster@dre.ca.gov	916-576-5553	Up to \$499,999
	Shelly Wilson, CEA	Shelly.wilson@dre.ca.gov	916-576-5350	\$500,000 to \$999,999
	Marcus McCarther, Chief Deputy Commissioner	Marcus.mccarther@dre.ca.gov	916-573-8775	\$1,000,000 and up
	Stephen Lerner, Chief Legal Counsel	Stephen.Lerner@dre.ca.gov	916-576-8849	ALL
DRE Contracts, IA's (Account Payables) Std. 215	Andy Lam, Budget Analyst	Andy.lam@dre.ca.gov	916-576-5760	ALL
NCB Form	Stephen Lerner, Chief Legal Counsel	Stephen.lerner@dre.ca.gov	916-576-8849	ALL

WORKFLOW (SIGNATURE) AUTHORITY

IT/NON-IT PO APPROVERS WITHIN THE FISCAL SYSTEM			
PO Approver 1 (Non-IT)	Approver Contact Email Address	Approver Contact Phone Number	PO Approver 1 Dollar Threshold
Joe McAuley, SSMI	Joe.mcauley@dre.ca.gov	(916) 576-8104	All
PO Approver 1 (IT Procurements)	Approver Contact Email Address	Approver Contact Phone Number	PO Approver 1 Dollar Threshold
Larsen Aster, ITMI	larsen.aster@dre.ca.gov	(916) 576-5553	All
PO Approver 2	Approver Contact Email Address	Approver Contact Phone Number	PO Approver 2 Dollar Threshold
Calvin McGee II, CIO	Calvin McGee@dre.ca.gov	(916) 576-5751	All
PO Approver 3 (Budgets)	Approver Contact Email Address	Approver Contact Phone Number	PO Approver 3 Dollar Threshold
Andy Lam, Budget Analyst	Andy.lam@dre.ca.gov	(916) 576-5760	All
PO Approver 4 (Admin)	Approver Contact Email Address	Approver Contact Phone Number	PO Approver 4 Dollar Threshold
Shelly Wilson	Shelly.wilson@dre.ca.gov	(916) 576-5350	\$50,000 and over
Chika Sunquist	Chika.Sunquist@dre.ca.gov	(916) 576-8100	All

F. Certificate of Compliance with State IT Policy

A certification signed by DRE’s Chief Information Officer, Calvin McGee II, or his designee of compliance with state IT policies, is required for all IT procurements in support of a development effort valued at \$5,000 or more. Development efforts are activities or costs associated with the analysis, design, programming, staff training, data conversion, acquisition or implementation of new information technology applications as defined in SAM Section 4819.2. This includes the procurement of hardware, software, services, and Interagency Agreements.

The signed [Certification of Compliance with IT Policies \(SIMM 71B\)](#) must be uploaded into FI\$Cal and retained within the procurement file. For purchases over DRE’s delegated purchasing authority or \$1 million (whichever is lower), the Certification of Compliance must be approved by the Agency Information Officer.

A certification is not required for:

- Procurements for less than \$5,000;
- Procurements limited only to maintenance services;
- Procurements in support of previously approved efforts. See SAM section 4819.40*.

- Procurement of services to conduct a feasibility study, provided the services are limited to supporting or conducting the feasibility study; and
- Procurements of excluded activities as described in SAM section 4819.32*.

***NOTE:** The buyer will document the procurement file when the IT expenditure is exempt from SAM 4819, as well as document how the exclusions identified in SAM 4819.32 will be supported.

For IT transactions valued at less than \$5,000, DRE must provide documentation or justification as to how the acquisition was authorized and retain the documentation within the procurement file.

Acceptable forms of documentation include:

- Approved PAL document from the CDT for non-delegated projects.
- Approved PAL signed by the commissioner, deputy commissioner or commissioner's designee for department delegated projects.
- A statement in the procurement file documenting that the purchase is in accordance with the DMCP as addressed in Budget Letter 04-26.
- PIER approval letter, in support of a previously approved effort.

G. Desktop Mobile Computing Policy (DMCP) and Coordinator

In accordance with SAM section 4989, the DRE has submitted an acceptable Disaster Recovery Plan, maintained compliance with state IT security provisions as defined in SAM sections 4800 & 5300-5399 and has appropriate usage guidelines for desktop and mobile computing goods. Because of this the DRE has been granted delegated authority to acquire desktop and mobile computer goods under the DMCP.

Purchases that can be made using the delegated authority granted under the DMCP include items such as:

- Personal digital assistants (PDA)
- Local area networks
- Laptop computers
- Peripheral equipment (e.g., printers)
- Other equipment and software used to perform daily business transactions
- Software typically purchased and installed on a standard desktop or mobile computer such as:

- Word processing
- Spreadsheets
- Desktop database
- Other non-modifiable commercial-off-the-shelf (COTS)

In accordance with SAM Section 4989.2, the following activities are excluded from the DMCP and must be justified in accordance with SAM sections 4819.3 – 4819.42:

- IT Projects,
- Budget Actions,
- Specialized or single-purpose systems,
- Infrastructure or platform migration, and
- Wide Area Networks.

Purchases acquired under the DMCP for desktop and mobile computing equipment must include, within the procurement file, sufficient justification to support that the purchase was conducted in accordance with established hardware, software and security standards for desktop and mobile computing. A statement of fact must be included for each purchase executed under the authority of the DMCP. The documentation supporting the purchase must be uploaded in FI\$Cal.

The Chief Information Officer over DRE's Information Technology Division, Calvin McGee II, is the designated DMCP Coordinator for the DRE. The DMCP Coordinator facilitates the development of the IT Standards for the department and provides oversight and final approval of any departmental IT hardware refresh such as PCs, PDAs, printers, etc.

The responsibilities of DRE's DMCP Coordinator include:

- Maintaining current specification for the department's desktop and mobile computing commodity standard.
- Assisting in the completion and review of any DMCP documents if required by the DRE's policies and procedures.
- Coordinating the acquisition of desktop and mobile computing commodities.
- Informing desktop and mobile computing users of available training and technical support capabilities.
- Maintaining continuing liaison with DRE's IT management to ensure that:
 - proposed desktop and mobile computing applications are consistent with the DRE's established information management strategy and IT infrastructure, and

- desktop and mobile computing configurations can support the implementation of other DRE's applications.

Purchases of mobile computing devices for existing staff which result in a net increase to the inventory of desktop or mobile computing assets must be approved by the California Department of Technology (CDT), as outlined in SIMM 47. Acquisitions which replace existing equipment or support increases in staffing do not require approval.

H. Procurements Exceeding Purchasing Thresholds

DRE may not execute/release a(n):

- Non-Competitively Bid (NCB),
- Invitation for Bid (IFB),
- Request for Proposal (RFP),
- Request for Quote (RFQ),
- Request for Offer (RFO), nor

any other type of contract that exceeds the departments approved purchasing authority.

Exceptions and options include:

- Emergency contracts (natural disaster) as defined by PCC 1102 (definition of an emergency),
- 10340 (process/procedures),
- 10302 (Non-IT Goods),
- 12102 (IT Goods/Services), and
- 12102.1 (IT Goods/Services- IT Project).

Goods and Services that are not available through:

- the Surplus Property Program,
- California Prison Industry Authority (CalPIA),
- California Multiple Award Schedule (CMAS),
- State Price Schedules,
- Statewide Contracts,
- Master Services Agreements (MSA), and
- and exceeds the DRE's purchasing authority.

are competitively bid by the DGS, PD (except for when using the Small Business/Disabled Veterans Business Enterprise (SB/DVBE) Option, per G.C. section 14838.5, which is capped at \$249,999.99) and requires a Purchase Estimate (PE) (Std. 66) to be completed.

The Purchase Estimate bid process is designed to meet agencies' unique program needs, assure competition, and meet all state bidding requirements. DGS-PD services include solicitation preparation, including specification development and/or review, solicitation mailing and any required addenda, bid evaluation, and other related activities.

An acquisition request that requires processing as a Purchase Estimate (PE) will be prepared for submittal to DGS-PD via Fi\$Cal by the BSO or ITS Buyer.

For the procedures, go to: [https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Submit-a-Fi\\$Cal-Requisition-to-One-Time-Acquisitions](https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Submit-a-Fi$Cal-Requisition-to-One-Time-Acquisitions)

Using the IT or Non-IT Preparation and Submission Checklist, gather all applicable documents and approvals (e.g., descriptive information, supporting documents, specifications, etc.).

For non-IT goods ONLY:

- complete the Procurement Details Worksheet.
- Submit Procurement Details Worksheet.
- Follow procedures "Create a Requisition to submit to DGS OTA".
- Add an ad hoc approver into the Requisition approval path or your Requisition will not be received.

The processing time for a Purchase Estimate Request (PER) processed through the DGS-PD averages six (6) to nine (9) months, plus delivery time.

Additionally, the following purchases cannot be made with delegated purchasing authority.

- Passenger Vehicles and mobile equipment, as defined in SAM 4110;
- Soft Body Armor (when not purchased from a Statewide Contract, see SCM, Vol. 2, Section 6.C1.8); and
- Alcoholic beverages

Instead, the DGS-PD requires such purchases to be placed on a Purchase Estimate for submittal to DGS-PD:

Exceptions for higher purchasing authority can be requested on a case-by-case basis. Increases to purchasing authority dollar thresholds can be submitted any time for certain Transaction Based Increase Requests and not more frequently than annually for General Increase Requests.

A Purchasing Authority Increase Request (PAIR) must be sent to the Purchasing Authority Unit (PAU). Requests must not exceed maximum dollar thresholds noted in the [Consolidated State Contracting Manual, Volume 2, 100.2](#).

Chapter 2 – Procurement Roles, Responsibilities and Ethics

A. Separation of Duties

The DRE procurement process has been divided into several segregated groups to reduce risk and fraud in the department. Therefore, requesters, approvers and receivers must always be mindful to maintain sufficient separation of duties when ordering. Approvals of any request or PO must be made by a level higher than the individual preparing the request or PO.

Example: In FI\$Cal, it is required to have one-person role mapped as the requester and another person role mapped as the receiver (blind receiving) to ensure what the requester ordered was received/documentated by another person.

There is no one person that should control more than one of the following key aspects:

- Conducting the procurement,
- Approving purchase documents,
- Acknowledging and receiving goods and services,
- Approving invoices; and,
- Preparing payments.

Procurements are conducted by Buyers. Approving purchase documents is conducted by their respective manager, the Accounts Payable Officer, the Budget Officer, and Legal Office, if applicable.

Receipt of non-IT goods is mostly centralized, however, there are a few instances where the products are shipped directly to satellite locations. Invoices for non-IT goods are approved by the BSO and are validated and signed by both the person who received the product and the Program's budget liaison.

Receipt of IT goods is mostly centralized; however, there are a few instances where the products are shipped directly to satellite locations. The IT goods are delivered to ITD for receipt validation and processing in both the Asset Management spreadsheet, as well as in FI\$Cal. Invoices for IT goods are validated for intake, receipt and completing of the order before being signed for approval by the Buyer(s) in the ITD. Invoices for IT services are validated against services rendered by the program's contract manager and approved by the program's budget liaison.

B. Roles and Responsibilities

The Assistant Commissioner – Licensing and Administration, Shelly Wilson is the assigned Procurement and Contracting Officer (PCO), as designated by DGS-PD. The PCO is responsible and accountable for all procurement activities conducted under the approved purchasing authority. The BSO and ITD strive to secure purchases and contract services that are legally sound, maximize the State's purchasing power, and adequately meet business needs. Purchasing staff are charged with continuous assessment of business processes with an eye for opportunity to strengthen and/or improve procedures. They are expected and encouraged to communicate observations and make recommendations for innovative solutions.

DRE's BSO and ITD have been delegated responsibility and direct accountability for DRE's purchases and service contracts and are responsible to:

1. Develop written policies, procedures, and control mechanisms that ensure the DRE's contracting and purchasing activities comply with applicable provisions of law and regulations.
2. Develop and administer a review and approval process that ensures purchases meet the needs of our clients, promote competitive bidding, and protect the interests of DRE.
3. Direct the training and development of staff on various aspects of the purchasing process. Assess the needs of purchasing staff and the staff of DRE's Programs to ensure that the training materials are adequate, comprehensive, and up to date.
4. Maintain and working liaison with DGS, the State Personnel Board (SPB), the Department of Finance (DOF), and other regulatory agencies, as required.
5. Ensure incoming Acquisition Requests are complete and based on sound business practices.
6. Review purchasing documents for accuracy, ensuring compliance with all applicable laws and regulations, prior to approving procurements.

The DRE, BSO provides direct support to all DRE's programs and serves as the Departmental Coordinator in handling Facility Services as follows:

- Minor Building Maintenance - addresses issues, between the Lessor, Vendors, and a Program's BSO liaison to arrange and perform services.
- Space Management - BSO coordinates with DGS, Real Estate Services Division for modular system furniture design, purchases, installations, space usage review (i.e., Americans with Disabilities Act (ADA) compliance, space allocations) floor layout design, and construction projects.
- Inventory Management/Surplus Property - BSO maintains a small supply of reusable conventional furniture that Programs may commonly need. BSO assist with any requests for DREs surplus property and, if a Program opts to purchase new conventional furniture, BSO follows all required purchasing guidelines.
- Fleet Management - BSO Vehicle Fleet Management Coordinator works with DGS, Office of Fleet and Asset Management (OFAM) to ensure compliance with fleet standards (i.e., Fleet Management Policies and Procedures, Defensive Drivers Training, Emergency Vehicle Roadside Assistance, Vehicle Reservation, Pre-tax Parking, Fleet forms).
- Forms Management - BSO coordinates with DGS Forms Management Center to ensure compliance, periodic review concerning the disposition (create or discontinue) of a Standard Form.
- BSO Recycle Contact works closely with CalRecycle on statewide recycling efforts, implements new recycling program, updates on recycling trends, technology and amendment changes to recycling policy and law.

ITD provides a variety of Telecommunications Services (Telecom) to meet the DRE's operational requirements. This includes telephone maintenance, modifications, establish new lines, transferring existing lines, and video conferencing.

Designated DRE Buyers are responsible for the following:

1. Process Acquisition Requests and prepare procurement documents in accordance with the Consolidated State Contracting Manual.
2. Provide consultation and advice to Programs and Management.
3. Mentor less experienced acquisition staff.
4. Be knowledgeable of procurement laws, regulations, Executive Orders, ethics, policies, procedures, and best practices.
5. Maintain procurement files and related documentation.
6. Develop and conduct procurement raining for programs.

C. Training

DRE Buyers are required to complete DGS' California Procurement and Contracting Academy (Cal-PCA) Basic Certificate, Ethics, the FI\$Cal: User Productivity Kits trainings, and any other Cal-PCA acquisitions training classes available that would be helpful to the DRE Buyer within the first year of employment with DRE and on an ongoing basis. All staff involved in the in the procurement process must be trained at the appropriate levels for the types, categories, and dollar thresholds of the procurement each staff conducts.

For a complete list of additional DGS training courses, go to the [California Procurement and Contracting Academy Courses](#).

NOTE: The CAL-Card Administrator, as well as anyone who is issued a CAL-Card must complete the [CAL-Card training course](#)

DRE Buyers attend several DGS procurement presentations, meetings, conferences, and other training opportunities throughout the year, such as the Customer Forms, State Contracting Advisory Network, Consolidated Annual Reports Training and Records Management.

In addition to attending training all procurement staff shall become familiar with:

- DRE's Procurement Policy,
- Consolidated State Contracting Manual (SCM), Volume 2,
- State Administration Manual (SAM),
- Public Contracting Code (PCC),
- Management Memos, and
- DGS Procurement Division Broadcast Bulletins.

For more information, go to [DRE Procurement's Resource page](#).

DRE will provide in depth, group and one-on-one training for CAL-Card reconciliation and transaction approval.

While there are [FI\\$Cal User Productivity Kits \(UPKs\) Trainings](#) available, the DRE BSO and ITD have discovered that these are high-level training and does not reflect all that is necessary to understand and operate/transact within FI\$Cal. Additional job aids can be found at: <https://fiscal.ca.gov/user-support/job-aids/>.

For more information regarding Fi\$Cal processes and procedures, go to [University of Fi\\$Cal](#).

D. [Conflict of Interest – Statement of Economic Interest \(Form 700\) / Incompatible Activities \(IA\) Policy and Accepting Gifts and Gratuities](#)

The DRE procurement staff and other designated staff that are required to complete the [Conflict of Interest – Statement of Economic Interest Form 700](#). Public officials, state officers and employees are urged to review applicable statutes, Fair Political Practices Commission regulations and departmental policy, conflict of interest code and incompatible activities statement for guidance regarding ethical issues. Filers are required to complete the Form 700 upon assuming office, leaving office and annually (every April 1st with the exception of the Controller which is every March 1st).

The Incompatible Work Activities form is also available at:

[0103\(4\) - Incompatible Work Activities Rev.04 Apr 28 2022.pdf](#)

The Form 700 must be signed prior to obtaining price quotations/bids from suppliers and signing the Acquisition Request and/or Purchase Order. The requestor of each Acquisition Request must sign Section 8 Conflict of Interest Statement on the BSO-47 each time he/she completes a request. The completed form must be kept on file in the Office of Human Resources for audit purposes. CAL-Card holders and the CAL-Card Approving Officials must also submit a completed copy to BSO.

Buyers and DRE employees involved in the procurement process, whether directly or indirectly, are discouraged from participating in the following activities:

- Accepting directly or indirectly any gift, including money or equipment, meals, lodging, transportation, entertainment, service, gratuity, favor, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business with the department you represent.
- Using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship.
- Situations that create the appearance of questionable or unethical practices.
- DRE's Conflict of Interest/Incompatible Activities Certification and Agreement forms are maintained in the DRE Human Resources Office.
- Buyers are advised not to accept, solicit, or pass on to other persons any gift, including money or any service, gratuity, favor, entertainment, hospitality, loan, or any other items of value from any person who is doing or seeking to do business of any kind with the DRE.

E. Ethics

All DRE staff who must complete the Economic Statement of Interest Form 700 must complete the online Ethics Training Course either through DGS, California Procurement and Contracting Academy (Cal-PCA) or the OAG online [Ethics Orientation for State Officials](#) (certificates are good for two years), within six (6) months of hiring, and biannually thereafter. Upon completion of the course, a Certificate of Completion is made available and must be provided to the BSO and the Human Resources Training Officer.

The Training Officer tracks the required training classes for all Buyers, which includes DGS-PD Cal-PCA Basic Acquisitions Certification Program (5-day) course, and other required courses through Cal-PCA. Records are maintained in the Human Resources Program.

DRE staff involved in procurement activities are either directly or indirectly spending public funds and are subject to public scrutiny. Consequently, DRE reminds staff involved in the procurement activities to:

- Act responsibly
- Conduct business honestly.
- Avoid wasteful and impractical purchasing practices.
- Avoid real or perceived conflicts when conducting business on the State's behalf.
- Advise DRE staff of expected standards of ethical and moral behavior during any procurement activity involving their participation.

F. Confidentiality Policy and Statement

The overall objective of maintaining confidentiality is to ensure the integrity of the procurement process, prevent any bidder/proposer from gaining an advantage, and avoid protests. It is important to understand that the disclosure of certain confidential or procurement-sensitive information could jeopardize the procurement. Individuals involved in the procurement must be careful to avoid breach of confidentiality both inside and outside of the workplace. Each individual is personally responsible for maintaining confidentiality in all oral and written communications, as well as in the handling of information through electronic means. The disclosure of any procurement-sensitive information that may jeopardize the acquisition may result in civil or criminal penalties and/or disciplinary action.

Any disclosure of confidential information by a State employee during the procurement process is a basis for disciplinary action, including dismissal from State employment, as provided by Government Code (GC) Section 19570 et seq. Total confidentiality during the procurement process is vital to preserve the integrity of the process. It cannot be over emphasized.

A signed [Confidentiality Statement Certification](#) is required for each staff person involved in the development of a competitive solicitation and have it placed in the procurement file.

G. Gift of Public Funds

Pursuant to GC section 19990, establishes the authority for departments to create incompatible Activity Statements for employees to follow. Buyers are responsible for knowing their department's policies regarding incompatible activities and in terms of best practices, buyers and employees involved in the procurement process, whether directly or indirectly, are discouraged from participating in accepting directly or indirectly any gift, including money or equipment, meals, lodging, transportation, entertainment, service, gratuity, favor, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business either the department he/she represents.

In accordance with the California State Constitution, Article 16, section 6, any gift of public funds is strictly prohibited. All expenditures must support the department's mission and benefit the State to not be considered gifts of public funds. This includes any advance payments or pre-payments made to a contractor before work has been performed or to a supplier before all products have been received.

Per the Governor's memo dated 2/18/2011, all state agencies and departments must stop spending taxpayer dollars on free giveaways and gift items such as key chains, pens, hats, and other gift items.

Note: The CAL-Card cannot be used to purchase items that are not authorized for State business. Each purchase must be supported with a justification documenting the reason for the purchase and benefit to the State. Items purchased for non-State business are considered a gift of public funds and are in violation of the California State Constitution, Article 16, section 6.

H. Americans with Disabilities Act

In compliance with the Americans with Disabilities Act (ADA) and State policy, the department must make every effort to ensure its programs, activities, and services are available to all persons, including persons with disabilities. The Department must provide reasonable accommodation to those persons with disabilities that have special needs requiring accommodation in order to participate in the procurement process and must be prepared to respond to those person having questions about reasonable accommodation.

The DRE Human Resources (HR) is responsible for ensuring the DRE's compliance with the ADA of 1990, State policy and the Fair Employment and Housing Act, which prohibit discrimination against employees or potential employees with disabilities.

HR manages the Reasonable Accommodation (RA) Request process, researching requests, making recommendations, and providing workstation evaluations. The Disability Analyst will work directly with the employee and the Health & Safety Analyst to ensure the RA procurement request is submitted and ensure the goods/services have been received and accepted. The RA Coordinator/EEO Officer, Kasey Singh, will not submit medical documentation to the Buyers, but instead identifies on the procurement request that the equipment is being purchased to fulfill a RA need. All documentation related to the employee's request is considered confidential and maintained by HR.

For more information, contact DRE's EEO Officer, Kasey Singh at 916-885-8440 or kasey.singh@dre.ca.gov.

The DRE shall not deny any qualified disabled applicant/employee a job-related opportunity based solely on his/her need for RAs and will not otherwise discriminate against individuals with disabilities.

All Standard Forms and Waivers are completed by HR and then submitted to the program for FI\$Cal entry. Once the FI\$Cal Requisition is approved, the BSO or ITD will complete the FI\$Cal PO and submit the request to the Supplier. Finally, BSO or ITD will notify HR and the program area that the PO has been dispatched.

Acquisitions conducted under the DRE's delegated purchasing authority are subject to the ADA. As such, DRE must:

- Ensure that all programs, activities, and services are available to all person, including person with disabilities.

- Ensure that ADA Coordinator is available to assist and respond to persons with disabilities needing a RA to participate in the procurement process.

Buyers shall ensure RA is provided to those persons with disabilities participating in the procurement process, following the SCM, SAM and internal policies. Buyers must first evaluate CalPIA products (i.e., chairs, tables) prior to requesting a CalPIA exemption based upon a RA or medical exemption. CalPIA provides pricing through the CalPIA Price List Catalog. If not purchasing through CalPIA, Buyers shall then attempt to purchase through a Small Business (SB)/Disabled Veteran’s Business Enterprise (DVBE). If unable to locate an SB/DVBE to fulfill the business need, a SB/DVBE Waiver must be submitted.

Chapter 3 – Preliminary Procurement Activities

A. Controlling / Reviewing Purchase Practices

The DRE accepts responsibility for its purchasing program, which includes but is not limited to:

- Ensuring the necessity of products and services being acquired.
- Securing appropriate funding.
- Complying with all applicable laws, regulations, executive orders, external/internal policies and procedures and best business practices.
- Determining appropriate acquisition approach (i.e., competitive, non-competitive, LPA order, etc.).
- Utilizing the appropriate documentation checklists for all procurement files.
- Ensuring all personnel involved in the procurement process have the appropriate training (i.e., ethics, CalPCA), experience, level of responsibility and accountability as necessary to ensure compliance.
- Maintaining a Procurement Log to track acquisition requests.
- Reviewing and approving of requisitions, solicitations, awards, purchase documents and contracts, according to purchasing laws, regulations, policies, procedures, and best practices.

Responsibility for a department's purchasing program resides primarily, but not solely, with the department's executive and management staff or its PCO. Responsibility also resides with all departmental staff involved in the procurement process.

Consequently, all personnel involved in the procurement process must have the appropriate training, experience, level of responsibility, and accountability as necessary

to ensure compliance with all State laws, regulations, executive orders, and with all the DGS-PD policies, procedures, and best practices.

The DRE ensures anyone with any type of purchasing authority maintains sufficient separation of duties (see [Chapter 2 –Procurement Roles, Responsibilities and Ethics, Section A – Separation of Duties](#)) in order to reduce the risk of error or fraud. Key duties and responsibilities such as conducting the procurement, approving purchase documents, acknowledging and receiving goods and services, approving invoices, and preparing payments should be segregated to separate the responsibilities.

The DRE is transacting in FI\$Cal. FI\$Cal role mapping is very complex and each role is designed to perform a specific business process in the system for: Accounting, Budgets, Procurement and Contracts. Each role name has a specific role description of what actions that role can perform in FI\$Cal, which also ensures proper separation of duties. See [FI\\$Cal Approval Process Workflow](#) for more information.

Example:

- Department PO Requester

Orders the goods within FI\$Cal cannot be the Department PO Receiving Processor for that PO. The system would prohibit them to receive their own order. Another end user within that Program that has been role mapped as a Department PO Receiving Processor would need to log-in to FI\$Cal to receive the goods.

FI\$Cal Roles and Responsibilities:

1. Department Requester (Buyer)/Department Requisition Processor – creates, receives, manages, cancels, and/or closes the requisition. The following list provides what is applicable to the request:
 - Ship to Location ID
 - Reporting Structure
 - Fund
 - Account
 - Program
 - Year of Enactment
 - Appropriation Reference

2. Department Receiving Processor

Receives goods, perform inspections, return items to vendors, and approves invoices.

3. Requisition Approver 1

Manager approves Requisition as first-level review/approver for appropriate acquisition type and reporting structure.

4. Requisition Approver 2/PO Buyer

Centralized Buyer who reviews/approves and sources Requisition to a PO.

5. Department CAL-Card Requester/Reconciler

Purchases, reconciles.

6. Requisition and/or PO Ad Hoc Approver

Another level for reviewing and/or approving. If you Ad Hoc another Requisition Approver, they must approve the Requisition; otherwise, the process stops causing the Requisition process to be redone due to time of quotes. If you just Ad Hoc as a reviewer, then the process continues, meaning the Requisition Approver 2 can review/approve without the Ad Hoc reviewer reviewing the Requisition.

Note: Requisition Approver 2/PO Buyer will initiate an Ad Hoc Approver on POs that are \$50,000 or higher to an Approver 3 to review/approve the PO before its workflows to the Approver 4.

7. PO Approver 1

BSO manager (for non-IT procurements) and ITS Manager (for IT procurements), reviews and approves POs as a first-level approver for Acquisition Type, Reporting Structure, appropriate/required uploaded attachments.

8. PO Approver 2

IT Manager I, reviews and approves POs as second-level approver.

9. PO Approver 3

Budget Officer, reviews, approves and budget checks POs as third level approver.

10. PO Approver 4

Assistant Commissioner – Licensing and Administration, reviews and approves POs as the fourth level approver for orders.

DGS Broadcast dated: February 12, 2016, informed all departments that State Contract and Procurement Registration System (SCPRS) transition from BidSync to FI\$Cal and, after SCPRS conversion was completed (March 14, 2016), those departments not transacting in FI\$Cal would be required to enter new SCPRS entries into FI\$Cal. As of July 1, 2016, all acquisitions of goods and services, regardless of dollar amount are required to be reported into FI\$Cal SCPRS.

NOTE: Those departments that are transacting in FI\$Cal do not need to perform separate SCPRS entries, as the FI\$Cal system collects SCPRS data automatically.

Once the BSO and ITD checklists have been developed, they are required to be completed and filed with each contract and procurement file to ensure the procurement is compliant with the SCM, Consolidated Vol. 2, SAM, FI\$Cal and Internal Policies/Procedures.

B. Internal Audits

The Department of Real Estate obtain its own Purchasing Authority, effective May 31, 2018. Because DRE does not yet have the staff to perform these internal audits, the Department of Real Estate (DRE) will perform these tasks, pursuant to the State Leadership Accountability Act in fiscal year 2019-20 and is due December 31, 2019.

DRE Audit staff will reach out to DRE management to determine that areas of greatest risk. Once those areas have been identified, the DRE will conduct an audit of those areas by speaking with management, reviewing documents, procedures and desk manuals and interview contracting staff. The DRE will provide DRE with a detailed audit report regarding their findings and require DRE to provide responses within 90 days, 180 days, and 365 days.

Previously, the DRE Management Audit and Review Services (MARS) Division provides independent and objective evaluative and consultative services to the DRE Programs to add value and improvement in the DRE's operations. MARS exists under the authority

and requirements of the State Leadership Accountability Act (SLAA) (GC 13400 through 13407).

The MARS mission is to safeguard physical and informational assets; ensure compliance with relevant statutes, policies, and procedures; promote operational economy and efficiency and encourage the achievement of management goals and objectives. Therefore, MARS endeavors to furnish management with analyses, appraisals, counsel, recommendations, and information in a manner that is consistent with the International Professional Practices Framework's Definition of Internal Auditing and the Code of Ethics issued by The Institute of Internal Auditors.

MARS is guided by the philosophy of promoting cost-effective controls and adding value to any operations it audits. The Scope of MARS' internal audits encompasses the examination and evaluation of the adequacy and effectiveness of the department's system of internal control and the quality of performance in carrying out assigned responsibilities.

The objective of MARS' internal audit is to assist DRE managers in the effective discharge of their responsibilities.

Scope:

The MARS Scope of Work (SOW) is to determine whether the DRE's network of risk management, control and governance processes, as designed and represented by management, is adequate and functioning in a manner to ensure:

- Risks are appropriately identified and managed.
- Interaction with the various governance groups occurs as needed.
- Significant financial, managerial and operating information is accurate, reliable, and timely.
- Employees' actions are in compliance with policies, standards, procedures, and applicable laws and regulations.
- Resources are acquired economically, used efficiently and adequately protected.
- Programs, plans and objectives are achieved.
- Quality and continuous improvement are fostered in the DRE's control process.
- Significant legislative or regulatory issues impacting the DRE are recognized and addressed properly.

Opportunities for improving management control and customer satisfaction may be identified during audits or reviews. They will be communicated to the Chief Counsel and appropriate level of management.

Contracts and Procurement Internal Audits:

The DRE, MARS currently does not use FI\$Cal as an internal audit tool. The DRE understands the potential of using the system for this purpose but has not developed any guidelines or procedures for auditing because Program procedures for purchasing and accounting are still being developed. The FI\$Cal system is not fully functional at this time. FI\$Cal will be utilized for internal auditing when set procedures are established and full functionality is implemented/rolled out.

C. Preapprovals

Once the buyer determines the classification of a purchase request (see [Chapter 5 – Procurement Classification and Approaches](#)) and, before initiating the procurement activities, the Buyer shall analyze the request to validate any pre-approval requirements.

Internal Approvals

The following items, regardless of the purchasing method used, must be reviewed, and approved as indicated below prior to completing the acquisition.

1. BSO approval is required for the following if being purchased for an Office Facility:

- Copier, Sorter, Mailing Machines
- Furniture
- Burglar Alarm Systems
- Smoke Detectors
- Compressors for Air
- Fans
- Storage Equipment
- Carpeting/Rugs
- Major IT and Lab Testing Equipment that may affect floor load, Electrical, HVAC
- Office/Building Equipment
- Wallpaper, Paneling, and Interior/Exterior Paint
- Fire Alarm Systems
- Room Air Conditioners
- Air Purifiers
- Space or Wall Heaters
- Sound Masking or Background
- Patio Covers
- Modular Furniture/Acoustical
- Drapes, Curtains, or Blinds
- Seatrain or Boxcar-type Storage
- Pallet Racking/Shelves
- Mobile Office Buildings

- Bullet Proof Glass Enclosures
- Storage
- Buildings/Prefabricated structures
- Kitchen Appliances
- Water Heaters
- Generators
- Security related purchases, including Video Surveillance

In addition to the above approvals:

- The State Fire Marshall must approve purchases of fire alarm systems.
- Purchases of modular furniture, acoustical screens, or office furniture from sources other than Prison Industry Authority (PIA) require a written waiver from PIA. Refer to [Chapter 5 – Procurement Classification and Approaches, Section M – California Prison Industry Authority](#) regarding the PIA Waiver process. The PIA Waiver Request form (SAL-F001) is available at the following site: <http://pia.ca.gov/pdf/Generalinfo/General-State-Agency-Exemption-Form.pdf>

2. DRE Records Management Coordinator approval is required for the following:

- Image Management Equipment
- Filing and Shredding Equipment

3. ITS approval, using the Information Technology Acquisition Request form, is required for all IT purchases as defined in SCM, Volume 2. This includes, but is not limited to:

- Miscellaneous Telecommunications Equipment
- Microcomputer Systems & Components
- Computer Software
- All Copiers

NOTE: Equipment listed on the ISD Approval Exclusions List does not require IT Approval.

When purchasing mobile equipment, DRE must submit the following to OFAM for approval prior to contract execution:

- Vehicle Acquisition Request (OFAM 160) for replacement or additional vehicles.

- A completed Purchasing Authority Purchase Order (STD. 65) or Purchase Estimate (STD. 66) for replacement or additional vehicles.
 - A current copy on file with OFAM of the Passenger Vehicle Usage Report (STD 276a) for the vehicle being replaced.
 - Submit completed vehicle acquisition package to:
Office of Fleet and Asset Management
Attn: Statewide Equipment Coordinator
1700 National Drive
Sacramento CA 95834
4. The DRE Legal Office will review certain acquisition documents to minimize risk to the Department. The Buyer is required to submit the following to the DRE Legal Office for review:
- Informal competitive IT services > \$100,000.00
 - Contracts that modify the vendor's General Terms and Conditions (GTC), General Provisions, Information Technology Modules, or Model Contract Language.
 - Contracts that incorporate any vendor terms and conditions.
 - Contracts that modify or add to the standard Exhibit D and E confidentiality language, including language related to information security, the safeguard of data, etc.
 - National examination contracts.
 - Request for Offers (RFO) or Requests for Quotes (RFQ) and/or the proposed resulting contract where the client and DRE are at an impasse and DRE still has concerns with the client response.
 - Leveraged Procurement Agreements (LPA) IT services RFOs and resulting contracts > \$100,000.
 - Informal/Formal competitive IT services >\$100,000 prior to submitting to DGS for solicitation.
 - Contracts >\$250,000.
 - Politically sensitive, high-profile contracts
 - Contracts containing language that is potentially not in the best interest of the State.
 - Non-Competitive Bids (NCB)
5. DRE Human Resources (HR) shall review the following prior to release, or agreement execution, to ensure that contracting outside of civil service is justified:

- Consulting Services Agreements
- Invitation for Bid
- Request for Proposal
- Examination Services
- Personal Services Agreements in which the state has a classification (i.e., Translator, Transcriptionist, Security Guard, etc.)

External Approvals

The following purchases require prior approval by the listed agency:

1. California Department of Technology (CDT) approval

GC section 11545 establishes CDT and gives CDT general authority over the strategic management and direction of the State's information technology resources. SAM sections 4800-5180 constitutes these powers and defines the procedures for obtaining CDT's approval of proposed information technology expenditures.

All departments must obtain the required approvals from CDT BEFORE initiating any IT procurement activity or encumbering any funds.

CDT approval is necessary for the following:

- IT projects that provide the necessary authorization to acquire IT goods and/or services for:
 - A Feasibility Study Report (FSR)
 - FSR for a business-based procurement
 - Special Project Report (SPR)
 - Compliance with the DMCP
 - Post Implementation Evaluation Report (PIER)
 - A project or acquisition that is excluded under SAM section 4819.32
- Telecommunication Acquisitions (excluding smart phone replacement)
 - Voice, data, video, and internet services
 - Personal communication devices (cellular phones, pagers, personal digital assistants (PDA), and/or related or configurations that permit remote communication and/or messaging)
- Public safety radio and related electronic equipment
- Radio and Microwave Equipment services

NOTE: SAM sections 4800-5180 requires all departments to obtain the required approvals from CDT before initiating any IT procurement activity or encumber any funds. CDT may decide to review specifications in procurement documents before they are advertised to ensure that the specifications are consistent with the functional specifications and system design for the project. ITS is responsible for obtaining these required approvals, if applicable.

2. DGS Office of Fleet and Asset Management (OFAM) approval

Per GC section 1332.09, departments may not procure mobile equipment without obtaining approval from DGS, OFAM. Evidence of OFAM approvals must be documented in the procurement file. The following motor vehicles and general use mobile equipment are subject to OFAM approval:

- Motor Vehicles
- All towed Trailers
- General use mobile equipment (self-propelled or vessels)
- Surplus mobile equipment (previously owned or operated by any entity)

OFAM approval is not required for:

- golf carts;
- mowers;
- generators;
- mobile home and/or office (permanently parked);
- indoor forklift;
- pallet jack;
- personnel hoist or lift;
- agriculture or construction equipment pulled by a vehicle;
- trailer (2,999 lbs GWR or less).

When purchasing new or replacement mobile equipment, DRE must submit an annual acquisition plan to OFAM. For more information, go to the acquire [New State Fleet Assets page](#).

3. DGS Surplus Property Program

DRE must utilize surplus property whenever feasible by contacting the DGS Surplus Property & Utilization (SPR) Program to determine if surplus personal

property is available. Personal property includes all types and categories of property (i.e., furniture), except land or other real property, and records of the state government.

Exceptions: If DRE is purchasing property related to an approved Reasonable Accommodation, then DRE is not required to contact DGS SPR Program to determine if surplus personal property is available.

NOTE: Procurement files must note use of this exemption.

To determine if surplus property is available, go to: <http://www.govdeals.com/StateofCalifornia> or contact the State Surplus Property and Reutilization Program at: 1700 National Drive, Sacramento, CA 95814 or (916) 928-580

4. DGS, Procurement Division

The Purchase Estimate (STD. 66) is the standard requisition used by departments to request the DGS-PD conduct competitive and/or non-competitive procurements of non-IT goods.

To complete the Purchase Estimate (STD. 66) at:
<https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std066.pdf>

Once completed, submit the STD.66 to DGS, Procurement Division by email at IAU@dgs.ca.gov or by mail at:

DGS/Procurement Division
Attn: Intake and Analysis Unit,
707 3rd Street, 2nd Floor
West Sacramento, CA 95605

5. California Prison Industry Authority (CalPIA)

CalPIA is a state organization that provides productive work assignments for inmates in California's adult correctional institutions to reduce idleness and improve job skills. Pero Penal Code Section 2807(b), all goods produced by CalPIA (see the complete list at: <https://catalog.calpia.ca.gov>) shall be purchased by the State.

External approval is required for the following:

- Furniture;
- Binders;

- Bedding;
- Cleaning products;
- Clothing & Textiles
- Gloves;
- Flags;
- Shoes;
- Modular Building;
- Signs and Decals
- Food Products

DRE may file an exemption request by calling (916) 323-2419 or faxing in the [Exemption Request Form](#) to (916) 322-1184.

6. DGS, Office of State Publishing (OSP)

OSP must be used for any printing projects unless an exemption waiver is obtained. To obtain an exemption from OSP, DRE must contact our dedicated [Customer Service Representative](#).

To purchase printing services, a Buyer must request a quote on [OSP's web site](#). For more information, go to: <https://www.dgs.ca.gov/OSP/Services/Page-Content/Office-of-State-Publishing-Services-List-Folder/Printing>

7. DGS, Office of Legal Services (DGS-OLS)

DRE is responsible for making sure that its contracts comply with applicable legal requirements and are based on sound business practices. DGS-OLS provides the final approval if required by law. In some instances, additional approvals may be needed, such as those from the Attorney General, State Fire Marshal, or other DGS offices.

As a rule, DGS-OLS approval is required on all services contracts over \$50,000 and interagency agreements over \$50,000 and less than \$1,000,000 that uses the current GIAs without modification and that has no direct or indirect subcontracting.

Purchasing activities that benefit from legal staff participation may include but are not limited to the following:

- Purchases that have a history of protests or litigation.
- Large scale IT integration projects.
- Conflict of interest issues.
- Follow-on contracting issues.
- In any purchase where suppliers are using an attorney.

In addition to external approval, buyers should also take the following into consideration:

1. Review and approvals:

- Have the proper approvals/signatures been secured?
- Is the request in compliance with equipment standards?
- Does the request require any technical review?
- Is there documentation in sufficient detail to support and justify conducting the
- procurement?
- Are there any program schedule requirements, special delivery instructions, time?
- constraints, etc.?

2. Funding authority:

- Is the procurement scheduling and planning effort limited by:
 - Budgetary constraints?
 - Funding limitations and/or restrictions?
 - Availability of current and future year funding?
 - Timing constraints impacted by availability of fiscal year funding?

8. DGS, Real Estate Services Division (RESD)

DGS-RESD has statutory authority for the acquisition of real property. Prior to acquiring a space, property and/or facility design services, DRE must contact [RESD's Real Estate Leasing and Planning Section](#).

9. California Human Resources (CalHR)

Pursuant to GC section 19131, Buyers are required to notify CalHR of the intention to execute a personal services contract meeting GC section 19130(a), which permits contracting for personal services to achieve cost savings; or, GC section 19130(b), which permits contracting for personal services when any of the requirements of GC section 19130(b) are met (see GC 19130 – Justifications)

IT Personal Services are defined as services that have someone performing IT related services, such as hardware, software, or system maintenance services SCM-F 2.E1.4.

IT Consulting Services Examples:

- Independent Verification and Validation
- Independent Project Oversight
- IT Integration Projects (required by SIMM Section 45)

GC section 19131 requires Buyers to notify CalHR of the intention to execute a personal services contract meeting GC section 19130(a) which permits contracting for personal services to achieve cost savings or GC section 19130(b) which permits contracting for personal services when any of the requirements of GC section 19130(b) are met [Gov Code 19130 - Justifications.docx](#)

Contracts to be awarded based on GC 19130(b) are sent for review to the organization(s) that represent the state employees who perform the type of work being contracted out. The SCO provides the designated exclusive representative copies of personal services contracts, RFPs, IFBs, and the STD. 215 Agreement Summary [Personal Services Procedures.pdf](#) and [BU Notification Sample.docx](#).

Pursuant to GC section 19135, if a contract is disapproved by the State Personnel Board (SPB) or its delegate, a department shall immediately discontinue that contract unless ordered otherwise by the SBP or its delegate. The department shall not circumvent or disregard the SPB's action by entering another contract for the same or similar services. A department shall serve notice of the discontinuation of the contract to the vendor within 15 days from the SPBs final action, unless a different notice period is specified.

Note: Careful analysis must be given when determining whether to use contracted personnel versus civil service positions within state government. Contracting for personal services, in lieu of using civil service personnel is permitted only if the standards outlined in GC section 19130, subdivision (a) or (b) are met.

GC section 19130(a) is used for achieving cost savings. Any department proposing to execute a contract based on cost savings to the state as justification for not using civil service personnel, must first notify the SPB of its intention.

GC section 19130(b) permits contracting for personal services when requirements are met and are subject to review at the request of an employee organization representing state employees.

10. State Personal Board (SPB)

Pursuant to GC section 19135, if a contract is disapproved by the State Personnel Board (SPB) or its delegate, a department shall immediately discontinue that contract unless ordered otherwise by the SBP or its delegate. The department shall not circumvent or disregard the SPB's action by entering another contract for the same or similar services. A department shall serve notice of the discontinuation of the contract to the vendor within 15 days from the SPBs final action, unless a different notice period is specified.

Note: Careful analysis must be given when determining whether to use contracted personnel versus civil service positions within state government. Contracting for personal services, in lieu of using civil service personnel is permitted only if the standards outlined in GC section 19130, subdivision (a) or (b) are met.

11. Department of Conservation

PCC section 10295.5 prohibits departments from purchasing sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975, unless the Department of Conservation (DOC) has determined that the surface mining operation is eligible to sell materials to the State.

If a department purchases sand, gravel, aggregates, or other minerals from a mining operation that is not on the DOC's list of approved mining operations, then the department must:

- Obtain both a retailer's certification of the supplier's identification and the Department of Conservation's listing of approved mines in effect at the time of the award and contains the originating mining operation.

- Document the procurement file that the items acquired came from an acceptable source.

Warning: Departments must obtain sufficient supplier certifications until the originating mining operation's identification can be determined. Click here to access the Department of Conservation's listing of approved mining operations.

12. DGS, Office of Records & Information Management (CalRIM)

Prior to the purchase or rental of any file, microfilm, optical disk and/or records destruction equipment, DRE will review and coordinate the purchase activity through DRE's records manager or analyst in accordance with the DGS California Records and Information Management (CalRIM) manual.

For more information, go to: <https://www.sos.ca.gov/archives/records-management-and-appraisal>

13. CDT, Statewide Technology Procurement

The Statewide Technology Procurement Division (STPD) conducts independent project oversight for state project acquisitions of information technology (IT) and telecommunications goods and services. STPD is responsible for developing innovative procurement approaches for highly complex IT projects (Public Contract Code 12100 and 12120).

STPD consulting services include formal acquisitions, contract reviews, addendums, and non-competitively bid contracts. Consultants review and recommend approval of project proposal requests and planning documents; create project oversight reports; escalate risks and issues; and assist in developing appropriate risk and issue mitigation strategies.

To execute a new contract, amend an existing contract, acquire oversight over a stage gate, or to submit general questions, the Buyer must log into the [STP Intake Portal](#).

Chapter 4 – Procurement Planning and Development

A. Planning

Planning the purchase should begin at the earliest possible time. The amount of time necessary for planning is dependent upon dollar value, risk, complexity and criticality, as well as prior history of the same purchase. The appropriate classification of purchase (non-IT/IT goods/services) aids in the decision of the procurement approach (i.e., informal/formal, exempt, LPA, etc.).

The role of the Buyer is to ensure that procurement laws, regulations, executive orders, policies, procedures, best practices and the Consolidated SCM, Vol. 2 are enforced within the day-to-day purchasing and contracting activities to the best of their abilities. The Buyer is also responsible for the official procurement file and related documentation maintenance.

The Buyer's first step in the planning and scheduling of a procurement is the initial review of the purchase request, as well as, but not limited to:

- Is the classification of acquisition (IT vs. Non-IT) appropriate?
- Is the acquisition an emergency purchase?
- Can civil servants, as opposed to outsourcing, satisfactorily preform the services?
- Can another state agency provide the good or service through an IA or alternate contracting means?
- Does the purchase require the use of any mandatory purchasing processes, such as CalPIA or use of existing telecommunications contracts?
- Is the request within the scope of the purchasing authority?
- Can you consolidate other requests for like equipment into a single purchase?
- What available purchasing approach can effectively meet the DRE's needs at the least cost in terms of time and resources?
- Can the functional requirements of the request be met through an LPA?
- Is the request so unique that no competition exists, and the needs of the customer can only be met through an NCB Contract?
- Will the purchase require the preparation of a SOW?
- What is the estimated dollar value?
- Are there any Certified SB/MB/DVBEs that can be solicited?

B. Classifying Non-IT Goods and Services vs. IT Goods and Services

The ability to properly classify a purchase enables the Buyers to conduct the procurement correctly:

- Applying the appropriate laws, regulations, policies and procedures
- Identifying whether or not the department has the applicable purchasing authority to conduct the purchase activity or requires assistance from external partners, such as the DGS, PD or CDT
- Securing additional approvals and/or waivers, as applicable

The impact of not being able to correctly classify a purchase may result in:

- Loss of funding
- Disputes, protests and/or lawsuits
- Illegal contracts
- Waste of time and effort

The DRE procurement non-IT and IT staff uses Consolidated SCM, Vol. 2 as guidelines to help determine the appropriate procurement classification. In addition, non-IT procurement staff will send the request to the IT procurement staff to confirm whether a specific product qualifies as IT.

Purchase Classification for non-IT goods are defined as all types of tangible personal property (tangible or movable products with little or no IT functionality), including materials, supplies and equipment. If the main value of the acquisition is for goods/commodities, with no IT classification or non-IT services, then the purchase is conducted under the non-IT goods purchasing authority.

Non-IT goods examples:

- Office supplies
- Furniture
- Food

Some consumable goods are considered IT products but may be acquired as non-IT Goods:

- Disk packs
- Printer ribbons and cartridges
- Training manuals
- Desktop station tables/printer stands

The DRE procurement staff use SCM, Vol. 1 (Non-IT Services) for personal services that are not IT. These services are primarily labor related, rather than providing a tangible product. They are activities are over DRE's delegated purchasing authority, as authorized by DGS, PD and are covered by DGS, OLS in SCM, Vol. I.

Note: DRE may not issue a Purchase Order for “goods/commodities” that include installation, set up or other services, if the dollar value of the services exceeds \$4,999.99. All purchases that include services exceeding \$4,999.99, which are not covered by a Leveraged Procurement Agreement, must be processed as a service contract.

IT goods are defined as all types of tangible personal property, including materials, supplies and equipment for IT - all computerized and auxiliary automated information handling. This includes systems design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, data communications. If the main value of the acquisition is for goods/commodities, with an IT classification, then the purchase is conducted under the IT goods purchasing authority (refer to Consolidated SCM, Vol. 2, Chapter 10, Section 1000).

IT goods examples:

- Central processing units (mainframes) and all related features and peripheral units
- Minicomputers, midrange computers, microcomputers, and personal computers
- Magnetic Ink Character Recognition
- Optical Character Recognition
- Modems
- Data sets
- Routers
- Magnetic tape units
- Card readers
- Mice
- Flash drives
- Software
- Scanners

IT personal services are defined as services that have someone performing IT-related services, such as hardware, software, or system maintenance services (see Consolidated SCM, Vol. 2, Chapter 10, Section 1002).

IT activities listed below either individually or in combination, are considered IT Services:

- IT facility preparation, operation, and maintenance.

- Application systems development and implementation, or changes to application systems or programs to meet new or modified needs, or maintenance, including:
 - Feasibility study preparation
 - Systems analysis
 - Systems design
 - Purchase and installation of software
 - Programming services
 - Data or programming conversions
 - Systems and procedures documentation
 - Project appraisal or assessment

- Operation of application systems or programs including:
 - handling,
 - assembling
 - editing of input-output data or media where IT equipment or IT personnel are used.

- Acquisition, installation, operation, and maintenance of data processing equipment.

- Other installation management activities including:
 - Performance measurement
 - System tuning
 - Capacity management

- Personnel employed in support of, or directly related to, any of the activities listed above, including:
 - Administration
 - Technical services
 - Clerical services
 - Travel
 - Training
 - Preparation of periodic and special reports

- Control functions directly related to the above activities.

IT consulting services are defined as services of an advisory nature that provide a recommended course of action or product of the mind. This may include subject matter

experts or specialists within the IT field overseeing technical projects or providing IT training. These services must be acquired in adherence to IT procurement rules.

IT consulting services Examples:

- Independent Verification and Validation
- Independent Project Oversight
- IT Integration Projects (required by SIMM Section 45)

C. Buyer Review

The Buyer’s first step in the planning and scheduling of a procurement effort is the initial review of a department’s purchase request. Reviewing the request in terms of the following information will assist the buyer in determining any impact in relationship to the procurement planning and scheduling activities. For more information, refer to Consolidated SCM, Vol. 2, Chapter 4.

Does the purchase require?	If “yes”
Departmental review and approvals	<ul style="list-style-type: none"> • Have the proper approval signatures been secured? • Is the request in compliance with equipment standards? • Does the request require any department technical review? • Is the documentation in sufficient detail to support and justify conducting the procurement? • Are there any program schedule requirements, special delivery instructions, time constraints, etc.? • Has Recycled and Environmentally Preferable Purchasing been considered?
Does the purchase require?	If “yes”
Funding Authority	<ul style="list-style-type: none"> • Is the procurement scheduling and planning effort limited by: <ul style="list-style-type: none"> ○ Budgetary constraints? ○ Availability of current and future year funding? ○ Timing constraints impacted by availability of fiscal year funding?
External reviews, waivers and/or approvals	<ul style="list-style-type: none"> • What is required by law, regulation, or policy? • For details of external reviews and approvals, refer to Consolidated SCM, Vol. 2, Chapter 4.

D. Specification Development

Buyers must follow the procurement planning and specification development techniques outlined in Consolidated SCM, Vol. 2, Chapter 3 and incorporate specification requirements in the SOW, when applicable. Specifications written in the SOW should not be so restrictive that it limits the competition to only one vendor. While each acquisition is unique, a few examples of commonly used specification requirements include commodity type, performance factors, customization requirements, established industry standards and specialized test and acceptance procedures, licenses, and permits. Price bundling shall be avoided.

[DGS, PD Engineering Services](#) shall be contacted in the event the department needs assistance with developing specification requirements for an acquisition.

E. Scope of Work

A Scope of Work (SOW) is a clear and concise description that protects the state and the contractor by identifying and documenting the details of the work to be provided/performed. Purchases, in which services will be provided, either wholly or in part with the goods, must include a description of the services to ensure clear expectations of the contractor's performance are documented. The extent of detail included in the SOW is entirely dependent on the complexity of the services, risk associated with the work and the type of deliverables. The SOW may be limited to a short narrative on the PO, or it may be a separate detailed attachment to the PO. A SOW must include, at minimum, the following information:

- A detailed statement of the purpose, objective, or goals to be undertaken by the contractor.
- Estimated time schedule of services by the contractor. Hours the work is expected to be performed i.e., 8:00 am – 5:00 pm.
- Completion criteria for the work to be performed.
- Amendment language to extend term, add funds, specific change in SOW.
- Skill level
- The names or personnel to be assigned.
- Contractor's billing rates, cost per deliverable, total cost, etc.
- Product specifications, delivery schedule, pallet requirements if applicable, etc.
- Description of when, where
- Special equipment required.
- Criteria acceptance
- Permits, licenses, insurance requirements.

F. Order Splitting

PCC section 10329 for non-IT goods and by policy for IT goods and services states that no person shall willfully split a single transaction into a series of transactions for the purpose of evading the bidding requirements.

Any orders place by DRE buyers shall not be split to circumvent competitive bidding, advertising, or the single purchase limit of the CAL-Card. Examples of splitting include, but are not limited to the following:

- Splitting one purchase transaction into two or more CAL-Card swipes because the purchase exceeds the single purchase limit.
- Using more than one purchasing method (i.e., service orders, POs, and CAL-Card) which in total will circumvent the single purchase limit.
- Multiple cardholders in the same unit acquiring the same goods needed by the program/division for the same acquisition from one or more vendors.
- Acquiring the same goods for different locations by the cardholder on separate transactions.
- Cardholders in separate units procuring various aspects of an acquisition or project.

Different cardholders under the same approving official or program/division to get the work done for the same or like services is prohibited.

Example of a split: Commodity exceeding the daily allowable limit of \$5,000

- September 15, Joe Doe placed order for \$4,900
- September 16, Jane Doe place order for \$4,600
- September 17, Justin Doe place order for \$4,900

Note: All these orders were delivered to the Sacramento Headquarter Office on September 22. Cardholders that work in the same or different geographical areas, ordering the same commodity and having it delivered to the same place on the same day. The sum of this order exceeded the daily maximum allowable.

Chapter 5 – Procurement Classification and Approaches

To help to assist in the classification and procurement approach process, see the [“Determining Procurement Method” Workflow](#).

A. Non-IT vs. IT

In accordance with SAM, Section 4819.2, any of the activities listed below either individually or in combination are considered an IT procurement:

- IT facility preparation, operation, and maintenance.
- Application systems development and implementation, or changes to application systems or programs to meet new or modified needs, or maintenance, including:
 - Systems analysis
 - Systems design
 - Purchase and installation of software
 - Programming services
 - Data or programming conversions
 - Systems and procedures documentation
 - Project appraisal or assessment
- Operation of application systems or programs including handling, assembling, or editing of input-output data or media where IT equipment or IT personnel are used.
- Acquisition, installation, operation, and maintenance of data processing equipment.
- Other installation management activities including:
 - Performance measurement
 - System tuning
 - Capacity management
- Personnel employed in support of, or directly related to, any of the activities listed above, including:
 - Administration
 - Technical services
 - Clerical services
 - Travel
 - Training
 - Preparation of periodic and special reports
 - Control functions directly related to the above activities.

An Information Technology Acquisition Request (ITAR) – RE767 is required if any one of the criteria above is met.

Examples of IT equipment:

- Bluetooth accessories
- Copiers
- Keyboards and mice
- Memory

- Computer room hardware
- Digital cameras
- Electronic subscriptions
- Electronic whiteboards/SMART boards
- Fax machines and multifunction devices
- Flash drives
- Hard drives
- Monitors
- Network cables and connectors
- PDAs/smartphones
- Projectors
- Printers
- Software
- Teleconferencing equipment
- Televisions

Samples of general procurement items:

- Batteries
- Blank media
- Carrying cases for IT items
- Power strips
- Printer toner and maintenance kits
- Technical reference materials

The above items may be purchased via either an ITAR or the Program’s general procurement process.

All printers, copiers, fax machines and televisions are considered IT items and require an ITAR.

B. Informal / Formal

Solicitations are documents used to request bids from suppliers and are characterized as either informal or formal.

Informal solicitations are generally straightforward or uncomplicated and usually of lower dollar value and may be conducted using Request for Quotations (RFQ) or Invitation for Bids (IFB), depending on the degree of specific language needed.

Formal solicitations are more complicated, higher in risk and usually of higher dollar value and are conducted using the IFB, depending on the degree of specific language needed. The following provides the dollar thresholds for distinguishing between informal and formal non-IT goods solicitations.

Procurement Type	Informal Solicitation	Formal Solicitation
Non-IT Goods	Less than \$100,000.00	More than \$100,000.00
IT Goods	Less than \$1,000,000.00	More than \$1,000,000.00

Types of Solicitation Documents	
Formal	Informal
Invitation for Bid (Non-IT and IT)	Request for Quote (Non-IT and IT)
Request for Proposal (IT)	Invitation for Bid (Non-IT and IT)
	Request for Offer (Non-IT and IT)

C. Fair and Reasonable

Fair and Reasonable pricing may be used for transactions under \$9,999.99. Price Comparison and Historical Comparison are the most used, but competition is always the preferred method of acquisition.

Buyers may acquire IT and non-IT goods and services valued at less than \$9,999.99 if fair and reasonable pricing can be established without receiving alternate quotes. Acquisitions that include only one offer under this dollar threshold must also include documentation supporting that fair and reasonable pricing was obtained.

Technique	Description
Price Comparison	A buyer has obtained and documented quotes or offers within the prior 18-month period from other responsible suppliers, which provides evidence that a price obtained is deemed fair and reasonable.
Catalog or market pricing	The price offered is supported by an established and verifiable catalog or market pricing media issued by a responsible supplier and/or through an established reputable forum. In addition, the pricing structure provided is one that a prudent buyer would accept as a reasonable representation of existing market value.
Controlled pricing	The price offered is set by law or regulation; competitively bid master agreement or statewide contracts, etc.
Historical pricing	A buyer can demonstrate that other transactions occurring within a prior 18-month period, which shows historical prices for similar acquisitions have yielded no material change in cost. Note: The definition of “material change” for this technique is deemed greater than a 15% increased difference between current and historical pricing.
Cost/benefit analysis	A buyer can demonstrate that their level of experience in the procurement field provides a sufficient knowledge base, which clearly indicates that the acquisition cost is low. The cost to the state of verifying the pricing fairness would most likely be more than any

	potential benefit that could be reasonably gained from searching the marketplace for lower price comparable acquisitions.
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When evaluating fair and reasonable pricing using price comparisons, catalog/market price and/or historical pricing, the comparison must be based on identical situations or those with small variations which do not affect pricing.

It is recommended that the official procurement files should include documentation regarding the technique used to support the fair and reasonable pricing, especially for all proprietary software, software maintenance and/or upgrade purchases, regardless of value.

D. Competitive

Procurement activities must be conducted in an open and fair environment that promotes competition among prospective vendors/suppliers. The nature of effective competition varies with the goods and services being acquired. Buyers conducting competitive procurements shall provide qualified suppliers with a fair opportunity to participate in the competitive solicitation process, stimulating competition in a manner conducive to sound State fiscal practices and emphasizing the elimination of favoritism, fraud, and corruption in awarding contracts.

There are several forms of written solicitations:

Written Solicitation Type	Type Overview
Request for Quote (RFQ)	The RFQ is a straightforward procurement format identifying by item and quantity what is needed by item, quantity, and price.
Invitation to Bid (IFB)	The IFB is a written procurement method used to solicit bid responses for non-IT goods exceeding \$100,000.00. NOTE: DRE does not have purchasing authority at this dollar amount for non-IT goods and will require DGS Procurement's One-Time Acquisitions to procure on DRE's behalf.
Request for Offer (RFO)	Technically not considered a competitive solicitation, an RFO is sent to Master Agreement, CMAS, and Cooperative Agreement holders, and are evaluated based on Best Value criteria.

Request for Proposals (RFP)	<p>The RFP is a written solicitation document required for IT goods and services acquisitions for amounts more than \$1,000,000.00.</p> <p>NOTE: DRE does not have purchasing authority at this dollar amount for IT goods and services and will require DGS Procurement’s One-Time Acquisitions to procure on DRE’s behalf.</p>
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All written solicitations must be written in a clear and concise manner, avoiding restrictive requirements and contain the following elements:

- The date and time suppliers’ responses are due
- Space for the signature of an authorized supplier representative that can bind the company contractually
- Information on how the bid responses is to be submitted (i.e., sealed envelope with the solicitation number and due date and time on the outside of the sealed package)
- Any attachments which are included and are required to be returned by bidders such as:
 - Preference program forms (i.e., Target Area Contract Preference Act (TACPA))
 - DVBE participation program and DVBE utilization reporting forms
 - Post-Consumer Content Form
- Statement of Work
 - Administrative requirements, as applicable
 - Technical requirements, as applicable
- Cost forms or clear indication of cost placement in the solicitation
- Evaluation information (basis for award)

Written solicitations are distributed by e-mail. Solicitations expected to exceed \$100,000.00 must contain the TACPA provision applying workplace and workforce preferences, as applicable, to eligible California-based companies. It is strongly recommended that the solicitation language and preference forms be included in all competitive solicitations valued at \$85,000 and greater. If the low responsive bid received from a responsible supplier is \$100,000, and the preference requirements were not included in the solicitation, the solicitation must be canceled and re-issued.

For more information, see Consolidated SCM, Vol. 2, Chapter 12, Section 1207.

Any clarifications or changes to a solicitation must be transmitted to all participating bidders by an addendum. An addendum documents all changes or revisions to the solicitation and shall include at a minimum the following information:

- Addendum number, (must be numbered consecutively), solicitation title and solicitation number
- Indication of where the revision or change is occurring in the solicitation. This may include deleting and inserting changed solicitation pages
- Revised or unchanged quote/bid opening date

A solicitation may be modified prior to quote/bid response due date. The addendum may be accomplished verbally (for phone quotes only) or written to coincide with the original solicitation format.

Example:

If a solicitation is conducted by phone, then the modification may also be conducted by phone. The addenda information must be documented as part of a phone script and must become part of the procurement file.

Example:

An addendum to a written solicitation cannot be conducted by phone. If the solicitation is released in written format, then any addenda to the solicitation must be in writing.

Note: An addendum to a solicitation shall be issued within a reasonable time before the bid opening date to allow prospective bidders sufficient time to prepare their bids. If, in the buyer's judgment, the addendum is significant and bidders will need more time to submit a responsive bid, then the date and time for the bid opening must be extended in the addendum.

The buyer must document quotes received by using the Bid/Quote Worksheet or using a document containing similar information. The bid/quote worksheet or similar document must be retained in the procurement file.

1. [Request for Quote \(RFQ\) – Non-IT](#)

The RFQ is the most common informal written solicitation format used for those solicitations not to exceed \$100,000.

The RFQ is a straight-forward procurement document that identifies what is requested by item, quantity, and price. The RFQ format identifies qualifying criteria for Goods and/or Services, as well as the requirements stated in the SOW for what is needed and requests a price.

For a sample RFQ for non-IT Goods, go to

<https://dre4.sharepoint.com/sites/BusinessServicesOffice>

Contract award resulting from the RFQ process will be to the responsible bidder that submits a responsive bid that is the lowest cost after application of any preference requirements (SB, TACPA, recycle, etc.) incentive (DVBE) or discounts, if applicable.

2. Request for Quote (RFQ) – IT

The RFQ is the most common informal written solicitation format.

The RFQ is a straight-forward procurement document that identifies what is needed, requests a price, and tends to be low in risk. The RFQ format identifies qualifying criteria for goods and/or services as well as the requirements stated in the SOW for what is needed and requests a price.

For a sample RFQ for IT goods and/or services, go to:

https://dre4.sharepoint.com/:w:/r/sites/1/_layouts/15/Doc.aspx?sourcedoc=%7BE8885040-CDAC-4308-B202-3FD15A927510%7D&file=ITAR%20Process.docx&action=default&mobileredirect=true

Contract award resulting from the RFQ process will be to the responsible bidder that submits a responsive bid that is the lowest cost after application of any preference requirements (SB, TACPA, recycle, etc.) incentive (DVBE) or discounts, if applicable.

3. Request for Offer (RFO) – Non-IT

The RFO is an informal written solicitation method used when obtaining supplier comparisons identifying the needs and requesting contractors to offer their best price and/or proposal to meet specific requirements.

RFOs are commonly used to procure non-IT goods and services, especially when used to purchase from a Leveraged Procurement Agreement.

4. Request for Offer (RFO) – IT

The RFO is an informal written solicitation method used when obtaining supplier comparisons identifying the needs and requesting contractors to offer their best price and/or proposal to meet specific requirements.

RFOs are commonly used to procure IT goods and services, especially when used to purchase from a Leveraged Procurement Agreement.

View [Sample RFQ for IT Services](#).

5. Information for Bid (IFB) – Non-IT

The IFB is a formal written solicitation method used to solicit bid responses for Non-IT Goods exceeding \$100,000.

DRE does not have purchasing authority for this non-IT amount and would require DGS Procurement's One-Time Acquisition Unit to procure on DRE's behalf. For more information, go to:

6. Information for Bid (IFB) – IT

The IFB is a formal written solicitation method usually used for IT goods alone or for IT Goods and Services exceeding \$1,000,000.

DRE does not have purchasing authority for this amount and would require DGS Procurement's One-Time Acquisition Unit to procure on DRE's behalf. For more information, go to: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/One-Time-Acquisitions>.

7. Request for Proposal (RFP) – Non-IT

The RFP is a formal, competitive written solicitation used when the State's requirements are written in general terms describing a problem to be solved or a goal to be achieved. The suppliers "propose" a business solution to the State's described needs.

DRE would require DGS Procurement's One-Time Acquisition Unit to procure on DRE's behalf. For more information, go to:

<https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/One-Time-Acquisitions>.

8. Request for Proposal (RFP) – IT

The RFP is a formal, written solicitation approach required for IT goods and services solicitations exceeding \$1,000,000. The RFP states the solicitation's requirements or specifications in a more general nature describing the problem to be solved or the goal to be achieved.

DRE does not have purchasing authority for this IT amount and would require DGS Procurement's One-Time Acquisition Unit to procure on DRE's behalf. For more information, go to: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/One-Time-Acquisitions>.

9. Term Purchases

Departments granted purchasing authority to conduct competitive solicitations may establish term purchase contracts through a competitive bid process. A term purchase could be established for:

- A specified period of time – not to exceed three years (36 months). The DRE will submit a request for optional years, if it's in the best interest of the state, to DGS, OLS for a Contract term longer than three years. If approved by DGS, OLS the provisional language for an option to extend past the three-year term, is required to be written in the solicitation as well as the Contract.
- A specified list of products and quantities.
- Items a department acquires on a routine basis.
- Must include solicitation requirements and specific language to be included in the solicitation.

A Buyer establishing a term purchase must adhere to the following:

- A competitive bid whenever the dollar amount is \$5,000.00 or greater.
- The solicitation must clearly identify contract start and end dates.
- The solicitation must clearly state the whole amount of the contract, but in no event may it exceed a department's approved purchasing authority limit for goods, as applicable to the procurement.

- The solicitation must clearly state a maximum number of units that may be purchased.

If the purchase is from an LPA for i.e., a copier, the PO is written per the LPA user/ordering instructions, which usually allows for a three-year or five-year maintenance term.

Note: A term purchase is not a suitable solicitation approach if a department is unable to commit to the state quantities. It is not the DRE's practice to incorporate term purchases for the day-to-day purchases of non-IT goods and IT goods/services. However, it would depend on the acquisition product, such as software maintenance, in which it might be in the DRE's best interest to write the term for 36 months to lock in a best price.

10. Blanket Purchase Orders

The DRE does not utilize Blanket Purchase Orders.

11. Advertising Requirements – California State Contracting Register (CSCR)

The CSCR was established to maximize competition through advertising State purchasing and contracting opportunities. Departments must advertise solicitations in the CSCR when purchasing the following:

- Non-IT Goods in excess of \$50,000.00
- IT Goods in excess of \$50,000.00
- IT Services in excess of \$4,999.99
- IT Goods and/or Services in excess of \$4,999.99 on the service portion and/or the goods portion is in excess of \$50,000.00

NOTE: Advertising requirement is eliminated when using the SB/DVBE Option.

Bid opportunities must be advertised for at least 10 working days (not including weekends or holidays) prior to the bid opening date.

Solicitations shall not be released prior to publication in the CSCR and must be released after or simultaneously with the Contract advertisement publication.

A copy of the published advertisement must be included in the procurement file.

Solicitations advertised in the CSCR may result in only one bid response. If the sole bid response is responsible and responsive, then the contract may be awarded.

The Buyer must document the procurement file with the justification to award to the sole bidder.

Departments can be granted an exemption from advertising in the CSCR if a [Contract Advertising Exemption Request \(STD.821\)](#) is submitted to the DGS-PD for review and approval. This form is used for two purposes:

- When a competitive solicitation is requested to be exempted from advertising or,
- When a competitive solicitation is neither feasible nor possible.

12. Charges and Transportation Management Unit (TMU)

In most cases, freight charges should be incorporated into the purchase price of the goods being purchased. Buyers conducting competitive solicitations shall determine shipping terms during the procurement planning phase. The preferred shipping method is “FOB” Destination Freight Pre-paid where the contractor is responsible for freight charges and costs as well as owning the goods during transit.

Prior to executing a requisition, contract or PO, Buyers shall complete a [Freight Rate Analysis Request](#) and submit to DGS’s Transportation Management Unit (TMU) at: transportationmanagement@dgs.ca.gov for approval before using the following shipping methods:

- FOB Destination, Freight Prepaid/Add – Shipping charge is assessed from the originating shipping point to the point of delivery. Purchase document must reflect “freight not to exceed cost per supplier quote state on PO.”
- FOB Origin, Freight Collection – The TMU will determine the cost and routing of freight.

Provide TMU with the following information:

- City, State and Zip Code of origin and destination
- Description of goods being shipped
- Estimated shipping weight
- Special handling requirements
- National Motor Freight Classification

The DGS, TMU must be contacted to determine the cost and routing of freight, whenever the weight of the purchase item is 100-lbs or more and FOB destination, Freight Prepaid is not used.

For more information visit the [TMU website](#) or contact TMU by phone at 916-376-1888.

E. Small Business / Disabled Veteran Business Enterprise (SB/DVBE) Contracting

Pursuant to the Small Business Procurement Contract Act (GC sections 14835 through 14843) and Military and Veterans Code (M&VC) section 999 et seq, all departments must offer procurement opportunities to CA certified small businesses (SB), microbusinesses (MB) and disabled veteran business enterprise (DVBE) whenever possible. Unless otherwise directed, any reference to certified small business(es) (SB) also includes certified microbusiness(es) (MB) as defined by the above referenced GC.

Pursuant to Executive Order S-02-06 and M&VC 999.2, each department shall have an annual statewide participation goal in state contracting of not less than 25 percent for SB and not less than 3 percent for DVBE.

DRE makes every effort to seek out and include certified SB and DVBE when conducting any procurement activity within its approved purchasing authority.

1. SB/DVBE Advocate

In accordance with GC section 14846, and M&VC section 999.12, State departments whose annual purchasing activities exceed \$100,000 shall designate a SB/DVBE Advocate.

The DRE SB/DVBE advocate, Van Nguyen, is responsible for:

- Serving as the DRE point of contact for SB/DVBE vendors by responding to inquiries and concerns like how to become SB/DVBE certified, as well

as assisting in directing people to the SB/DVBE certification in Cal eProcure and explaining to them how the program works.

- Promoting SB and DVBE business contracting participation
- Assisting DRE Buyers in identifying potential small, micro and DVBE businesses
- Ensuring non-discrimination in the execution of contracts and promoting positive external customer relations
- Identifying potential SB and/or DVBE prime contractors or subcontractors and potential contracting opportunities

The DRE SB/DVBE advocate(s) actively attends forums, training activities, workshops, and other advocate avenues to help in reaching out to firms to become a California (CA) certified SB, CA certified MB or a CA certified DVBE as well as finding already CA certified SB/DVBEs to aid us in meeting our annual mandated goals.

Visit the [DGS Advocate web page](#) or contact DRE's SB/DVBE Advocate, Van Nguyen at: 916-576- or van.nguyen@dre.ca.gov for more information.

2. SB/DVBE First Policy and SB/DVBE Option

To ensure DRE consistently meets the SB and DVBE goals, the DRE has a [SB/DVBE First Policy](#), which requires all procurements over \$100 and under \$250,000 for goods, services and IT good and services, be awarded to an SB, MB, NVSA or DVBE.

When utilizing the SB/DVBE Option procurement method, DRE Buyers must obtain responsive quotes from at least two or more responsible SB bidders OR two or more responsible DVBE bidders qualified to sell the specified product using the same specifications with each firm solicited. A "No Bid" or non-response is not considered an offer.

NOTE: For procurement of non-IT/IT goods or services, the \$249,999.99 threshold includes taxes, fees, and charges. See SAM 1233 and/or Consolidated SCM, Volume 2, 100.2.

When using the SB/DVBE Option, verification of SB or DVBE certification is required and must be included in the procurement and/or contract file. To verify, go to: <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

The advertising requirement is eliminated when using the SB/DVBE Option; however, in FI\$Cal we can now solicit by checking the “private” box and inviting established suppliers on the SB/DVBE mailing list.

3. SB/DVBE Off-Ramp

Mandatory State Contracts awarded by the DGS for IT Goods may have a SB/DVBE Off-Ramp, meaning Buyers will be permitted to purchase equivalent products at the same or lower price from other sources that are California certified SB or DVBE.

To determine whether a particular mandatory State Contract has an SB/DVBE Off-Ramp, consult the user instructions of that contract. The Buyer must report all purchases made using the SB/DVBE Off-Ramp as indicated in the user instructions of each contract and must document in the procurement file that the IT Goods being purchased are:

- Equivalent to the IT goods available from the State Contract including product description, functional requirements and manufacturer warranties as provided in the State Contract.
- Equal to or less expensive than the pricing offered from the State Contract for the same product based on the total order value before taxes.
- Department must have purchasing authority in order to utilize the SB/DVBE Off-Ramp as identified by the State Contract.

NOTE: If these rules cannot be applied, DRE may not use the SB/DVBE Off-Ramp provision to buy outside of the mandatory statewide contract.

When utilizing the SB/DVBE Off-Ramp, the Buyer shall enter the word: “Off-Ramp” into the LPA Number box on the Std. 65.

DRE requires Buyers to utilize the SB/DVBE Off-Ramp provision if provided in the LPA User Instructions in order to ensure 100% SB/DVBE participation is obtained.

When utilizing the SB/DVBE Off-Ramp, DRE Buyers must obtain responsive quotes from at least two or more responsible SB bidders OR two or more responsible DVBE bidders qualified to sell the specified product using the same

specifications with each firm solicited. A “No Bid” or non-response is not considered an offer.

Purchases over \$5,000 are to use the SB/DVBE Option.

NOTE: For procurement of non-IT/IT goods or services, the \$249,999.99 threshold includes taxes, fees, and charges. See SAM 1233 and/or Consolidated SCM, Volume 2, 100.2.

When using the SB/DVBE Option, verification of SB or DVBE certification is required and must be included in the procurement and/or contract file. To verify, go to: <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>, print out the valid certification and place it in the procurement file.

The advertising requirement is eliminated when using the SB/DVBE Option; however, in FISCAL we can now solicit by checking the “private” box and inviting established suppliers on the SB/DVBE mailing list.

4. SB/DVBE Waiver form

DRE makes every effort to seek out and include certified SB and DVBE when conducting any procurement activity within its approved purchasing authority. However, there may be instances when this is not possible; therefore, an [SB/DVBE Waiver \(RE 741\)](#) form must be filled out and provided to the SB/DVBE Advocate for approval before the procurement can be completed.

The following agreements are automatically exempt and do not require the SB/DVBE Waiver form to be completed:

- Interagency
- Federal Government
- Local Government
- Joint Power Authorities
- Prison Industry Authority (PIA)
- Room Rentals
- Public Transit
- Exams
- California State University / University of California (or respective campuses)
- Concessions
- Revenue / Reimbursement contracts
- Emergency
- Local Assistance / Subvention
- Community-Based Rehabilitation

5. SB Preference for Competitive Solicitations

Departments granted competitive purchasing authority shall offer a 5% preference to CA certified SBs when conducting a competitive solicitation. The SB preference (or if they are a certified MB) applies to competitive solicitations regardless of the format (RFQ or RFO) or dollar value, with few exceptions:

- the solicitation is conducted using the SB/DVBE Option procurement approach.
- if the acquisition is less than \$5,000 and price has been documented to be fair and reasonable.

To claim the SB preference, the firm must have its principal place of business located in California and be certified by DGS, Office of SB and DVBE Services (OSDS). The preference amount may not exceed \$50,000 for a bid and the combined cost of preferences granted may not exceed \$100,000 total.

Pursuant to GC Section 14838 Title 2, CCR 1896, if a bidder is not a certified SB, but wishes to be eligible for the 5% non-SB preference, the bidder must subcontract at least 25% of its net bid price to one or more CA certified SBs. A Bidder shall list the names of all certified SB firms being claimed for credit on the [Bidder Declaration form](#).

For each certified SB subcontractor listed, the bidder shall submit a copy of the quotes from each SB as an attachment, titled "Quotes from SB Subcontractors." This preference shall not be awarded to a noncompliant bidder and shall not be used to achieve any applicable minimum requirements.

A certified SB bidder(s) shall have precedence over a non-SB bidder(s) in the application of SB preference(s).

Example: Applying SB preference (shall be 5% of the net bid price of the lowest responsible responsive bidder meeting specifications)

Bidder	Bid Amount	Explanation	Bid Amount After Preference
A	\$30,750	Claims SB or MB status but is not a certified SB or MB; does not claim SB subcontractor participation	\$30,750

B	\$28,975 (lowest bid) used as net bid amount \$28,975 x 5% = \$1,448.75	Does not claim to be a SB or MB, and does not claim subcontractor participation	\$28,975
C	\$29,520 - \$1,448.75 = \$28,071.25	<u>Claims Non-SB</u> subcontractor preference and does commit to 25% certified SB or MB participation	\$28,071.25
D	\$29,870 - \$1,448.75 = \$28,421.25	<u>Claims SB</u> for MB status and is a certified SB or MB	\$28,421.25 – winner

Questions regarding the certification approval process or SB program should be directed to OSDS at (916) 375-4940 or osdshelp@dgs.ca.gov.

6. SB and Non-SB Subcontractor Preference

Departments granted competitive purchasing authority shall offer a 5% preference to CA certified SBs when conducting a competitive solicitation. The SB preference (or if they are a certified MB) applies for competitive solicitations regardless of the format (RFQ, IFB, and RFP) or dollar value, with few exceptions.

Exception: The SB preference is not applicable when the solicitation is conducted using the SB/DVBE Option procurement approach.

The non-SB preference is not applicable when the solicitation is being conducted using the “SB/DVBE Option” acquisition method.

To claim the SB preference, the firm must have its principal place of business located in CA and be certified by DGS, Office of SB and DVBE Services (OSDS). The preference amount may not exceed \$50,000 for a bid and the combined cost of preferences granted may not exceed \$100,000 total.

Pursuant to GC Section 14838 Title 2, CCR 1896, if a bidder is not a certified SB, but wishes to be eligible for the 5% non-SB preference, the bidder must subcontract at least 25% of its net bid price to one or more CA certified SBs.

A Bidder shall list the names of all certified SB firms being claimed for credit the [Bidder Declaration form \(GSPD -05-106\)](#).

NOTE: Each listed California certified SB must perform a “Commercially Useful Function” in performance of the contract, as defined by GC section 14837 (d)(4).

For each certified SB subcontractor listed, the bidder shall submit a copy of the quotes from each SB as an attachment, titled “Quotes from SB Subcontractors.” This preference shall not be awarded to a noncompliant bidder and shall not be used to achieve any applicable minimum requirements.

A certified SB bidder(s) shall have precedence over a non-SB bidder(s) in the application of SB preference(s).

Example: Applying SB preference (*shall be 5% of the net bid price of the lowest responsible responsive bidder meeting specifications*)

Bidder	Bid Amount	Bid Amount after preference	
A	\$30,750	\$30,750	Claims SB or MB status but is not a certified SB or MB; does not claim SB subcontractor participation
B	\$28,975 x 5% = \$1,448.75	\$28,975	Does not claim to be a SB or MB, and does not claim subcontractor participation
C	\$29,520 - \$1,448.75 =	\$28,071.25	<u>Claims Non-SB</u> subcontractor preference and does commit to 25% certified SB or MB participation
D	\$29,870 - \$1,448.75 =	\$28,421.25 – winner	<u>Claims SB</u> of MB status and is a certified SB or MB

Questions regarding the certification approval process or SB program should be directed to OSDS at (916) 375-4940 or osdshelp@dgs.ca.gov.

7. DVBE Incentive for Competitive Solicitations

A DVBE incentive is a method that provides an advantage to certain bidders. The incentive is applied during the evaluation process for bids proposing participation of CA certified DVBEs. The DVBE incentive applies to all competitive solicitations whenever the solicitation includes the DVBE Program Requirement, regardless of format (RFQ or RFO), delivery method or dollar threshold, unless the program requirement and/or incentive has been waived. Such a waiver must be approved in advance by the Assistant Commissioner or designee and documented in the procurement/contract file. This waiver does not relieve DRE from the annual 3% participation goal.

For awards based on low price, the allowable incentive percentage(s) identified in the solicitation cannot exceed 5% or be less than 1%. For awards based on high points, the incentive cannot exceed 5% or be less than 1% of total possible available points, not including points for socioeconomic incentives or preferences.

In accordance with Section 999.5(a) of the M&VC, an incentive will be given to bidders who provide DVBE participation. For contract award evaluation purposes only, the DRE shall apply an incentive to bids that include California certified DVBE participation.

The incentive is used only for evaluation purposes to arrive at the successful bidder and does not alter the amounts of the actual bid. Any responsive and responsible bidder with the confirmed DVBE participation and/or meets the requirements as specified in the solicitation is eligible to receive the incentive. Bidders who are not responsive and responsible regardless of the amount of DVBE participation are not eligible to receive the incentive.

The maximum incentive for this procurement is 5 percent of the total available points. Incentive points are awarded based on the amount of DVBE participation obtained, according to the matrix below.

The following table pertains to awards based on low price. It is in the DVBE Program Requirements packet and identifies the percentage(s) used to adjust the net bid price when calculating the DVBE incentive.

Confirmed DVBE Participation of:	DVBE Incentive:
5% or more	5%
4% – 4.99%	4%
3% – 3.99%	3%
Less than 2.99%	0 points

Should the circumstances of a particular acquisition dictate the need, the packet provides a provision to override the table with another table that either depicts:

- A different scale with varying percentages (within the acceptable range) or
- Single incentive percentage (within the acceptable range)

If the table will be superseded, elsewhere within the solicitation identify the new table and state that it overrides the table in the DVBE Program Requirements. Then:

- Ensure that the incentive amount does not exceed 5% and is no less than 1% for awards based on low price.
- Obtain managerial approval and document the rationale for the change in the procurement file.
- Ensure that the incentive amount does not exceed 5% or \$100,000, whichever is less, of the #1 ranked net bid price.
- When used in combination with a preference adjustment, the cumulative adjustment amount cannot exceed \$100,000.

Prior to a buyer including either of the above variances in the DVBE incentive requirements, the rationale for the change must be documented in the procurement file. The procurement file must also include signed approval for the variance by the department’s Procurement and Contracting Officer (PCO) or a designee at a managerial level with sufficient knowledge of the day-to-day procurement activities of the department. If DGS-PD is conducting the procurement for the department, a copy of the rationale for the change and the appropriate signed approval must be forwarded to PD with the department’s requisition.

Step	Calculation Action
1.	Identify the bidder with the #1 ranked net bid price (the lowest Responsive bid).
2.	Based upon the evaluated DVBE participation percentage, determine the corresponding percentage of DVBE incentive for the bidder.
3.	Multiply the #1 ranked net bid price by the DVBE incentive percentage to determine the “calculated incentive amount” for the bidder. Compare the “calculated incentive amount” to the incentive maximum (specified percentage or identified cap if any) and use the lower figure as the incentive amount.
4.	Subtract the incentive amount from the net bid price of the bidder. If a preference calculation was performed, be sure that the allowable cumulative adjustment is not exceeded.
5.	Subtract the incentive amount from the net bid price of the bidder. If a preference calculation was performed, be sure that the allowable cumulative adjustment is not exceeded.

Written solicitations shall include the [Bidder Declaration form \(GSPD -05-106\)](#) to allow bidders to identify if they are a DVBE and identify DVBE subcontractors, their proposed contract function and the corresponding percentage of participation. The DRE will apply an incentive to bids proposing the utilization of DGS certified DVBE firms identified on the Bidder Declaration. Information provided on the Bidder Declaration is verified by the DRE buyer prior to the award of the contract.

8. DVBE Waiver Process

DRE may waive the DVBE incentive if they have met or exceeded the three percent goal for two out of the three previous years. The waiver must be approved in advance by the Deputy Commissioner or their Designee.

Agencies may waive the DVBE requirement for an individual contract if they have met or exceeded the three percent goal for two out of three previous years. To see if your department qualifies, you can review the departmental list at the following website:

<https://www.documents.dgs.ca.gov/pd/smallbus/DVBEIncentiveExemptionList.pdf>.

Agencies are still expected to meet the overall DVBE goal attainment at the end of each year. When an agency decides to waive the DVBE requirement, this must be noted in the solicitation.

To access the DVBE Incentive Waiver (GSPD-07-04) go to:
<https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd07-04.pdf>

9. Certification Verification

The DRE Buyers are required to verify if the bidder is a CA Certified SB/MB and/or DVBE by going to:
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>. A printed copy of the certification must accompany the acquisition and be part of the procurement and/or contract file. Eligible SB/DVBEs will have an active certification through DGS.

For more information and to access a list of suspended firms, see the Office of Small Business & DVBE web site at: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/OSDS/OSDS>

In addition, the SB/DVBE certification information must be identified on page 2 of the STD. 215, if applicable.

NOTE: For SB/DVBE best practices for state departments, go to:
https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Small_Business_and_Disabled_Veteran_Business_Enterprise_Best_Practices

10. Commercially Useful Function (CUF)

In accordance with GC section 14837 and M&VC section 999, all SB and DVBE contractors, subcontractors and suppliers that bid on or participate in a state contract, regardless of whether it is a verbal or written solicitation and/or paid for using the CAL-Card as a payment method, must perform a commercially useful function (CUF).

In addition, the requirement to determine CUF is not affected by the applicability of the 5 percent SB and/or the DVBE participation preference program. There is no exception to this requirement. Consequently, certified SB, MB and DVBE businesses must perform a CUF. Buyers must determine that a CUF will be performed prior to contract award.

A certified SB, MB or DVBE is deemed to perform a CUF when the buyer determines the business does the following:

- Is responsible for the execution of a distinct element of the work of the contract?
- Is accountable by actually performing, managing, or supervising the work involved?
- Performs work that is normal for its business services/functions?
- Is responsible with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, quality and quantity, installing, if applicable and making payment?
- Is not subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices?

A copy of the [CUF Evaluation and Determination Worksheet](#) must be included in the procurement file.

All solicitations require a Bidder Declaration to be completed by the bidder and submitted with the bid response.

- Bidder Declaration form (GSPD -05-105)
<https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf>
- STD. 843 – Disabled Veteran Business Enterprise Declarations
https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd/pd_843.pdf

Bidder Declaration is not required for:

- Amendments that do not involve new or substitute subcontractors.
- Emergency purchases as defined by PCC section 1102 if it is determined that the bidder has not been listed as ineligible to do business with the State, is not a CA certified DVBE and is not using subcontractors.
- Verbal solicitations under \$5,000 if determined that the bidder has not been listed as ineligible to do business with the State, does not possess a CA DVBE certification and the bidder is not using subcontractors.
- Purchasing activities using Community Rehabilitation Program (CRP) or CalPIA

For additional information, please see the [DVBE and SB Program Violations and Sanctions web page](#).

11. Supplier Resources

The DRE maintains bidder lists that have been established using a variety of means to locate potential contractors, suppliers and/or vendors.

The DRE uses different formats and resources which include but are not limited to:

- LPA databases (i.e., CMAS, MSA);
- The [Cal eProcure portal](#) for CA Certified SB/MB/DVBE suppliers;
- prior offers/quotes and bids;
- internet searches; and,
- recommendations from customers/other agencies.

Request for Information (RFI) may be used to “survey” the marketplace (i.e., IT or non-IT with specific requirements) to understand what goods or services may be available and to approximate the dollars that may be needed for a procurement. Buyers will document and retain the information as part of the official procurement file for any subsequent resulting solicitation.

The RFI may be used to separate those suppliers who intend to participate in an upcoming solicitation from those who have no interest in participating. RFIs are typically used when there is an excessively large pool of interested suppliers. Buyers will document and retain the information as part of the official procurement file for any subsequent resulting solicitation.

RFI Components:

- Solicitation title, number, where, how and when to submit the response.
- Short, concise and to the point
- General description of the equipment or services to be solicited.
- Estimated quantities, features, general time frames and pertinent geographic information, buyer’s name, and telephone number
- Do not ask for any cost information, as such information could create an unfair bidding environment.
- Ask for interested bidders to provide contact name, address, telephone number and submittal date.

The RFI establishes the bid list for Buyers to use when distributing a solicitation. Buyers must keep track of the suppliers who respond and when

ready, mail the solicitation to them. If advertising is required, Buyers must send interested suppliers the solicitation outside the FI\$Cal system to ensure they are part of the resulting solicitation.

F. Non-Competitive Bid (NCB)

Non-Competitive Bid (NCB) contracts are limited by statute in accordance with PCC section 12102 and 12102.1 for IT Goods and Services and sections 10301 and 10302 for Non-IT Goods to the following conditions:

- Proposed acquisition for goods and services are the only goods and services that meet the State's need, or
- Emergencies, where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

There are three events to justify NCB acquisition as follows:

- Special Category NCB Request (SCR), where a department determines that a significant number of repeat NCB acquisitions for a particular category of Non-IT and/or IT Goods/Services will occur,
- NCB acquisition executed on an individual basis, or
- Limited to Brand contract justifications executed on an individual basis.

NOTE: Mailing lists are established using a variety of means to locate potential suppliers.

The DRE NCB limit for:

- Non-IT Goods and IT Goods and Services - \$25,000

NOTE: The dollar threshold maximum excludes sales tax and use tax, finance charges, postage and handling. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as Free on board (FOB), Origin, Freight Collect or FOB Destination.

- Non-IT Services - \$9,999

NOTE: For those valued at \$10,000 and above, they must be sent to DGS-PD, Dispute Resolution Unit for review and approval.

- Emergency Contract (non-natural disaster) IT and Non-IT Goods - \$25,000

NOTE: The dollar threshold maximum excludes sales tax and use tax, finance charges, postage, and handling. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as Free on board (FOB), Origin, Freight Collect or FOB Destination.

- New existing Proprietary Software, Proprietary Maintenance, Proprietary Subscriptions/Publications for:
 - IT - \$500,000
 - Non-IT Goods - \$50,000
- Purchases Under \$10,000

Departments with purchasing authority may solicit a bid from a single source for transactions under \$10,000 when pricing is determined to be fair and reasonable. In this case, no NCB justification is required if fair and reasonable pricing is established and documented. Refer to the Fair and Reasonable Acquisition Method for examples of fair and reasonable pricing methods.

Documentation to support fair and reasonable pricing must be retained in the procurement file.

These types of contracts should only be used when the department can fully justify the need. NCB Acquisitions require formal approval by DRE's Deputy Commissioner, Assistant Commission – Licensing & Administration, and Chief Legal Counsel.

NOTE: SCR's have no delegated authority and these types of requests require DGS-PD approval using the [SCR form](#).

If the acquisition is over the department's delegated authority, then DGS-PD would be a final approver; if the Acquisition is related to an IT Project, then the department would need final approval by CDT (this also applies when conducting purchases exempt from the NCB process).

Once the NCB Justification has been approved by DGS-PD, a department may execute the NCB Contract up to the approved dollar amount as indicated on the department's PAAL.

If the NCB Contract Justification is denied, DGS-PD will contact the department and discuss the following options:

Purchase	DGS-PD
Exceeds the department's NCB dollar threshold but is within the department's approved competitive purchasing authority threshold	<ul style="list-style-type: none"> • Advise the department to conduct a competitive solicitation, or • Cancel the request
Requested by a department without any type of purchasing authority	<ul style="list-style-type: none"> • Conduct a competitive solicitation to acquire the same or equivalent product on behalf of the department, or • Cancel the request

NCB Forms:

- NCB Contract Justification (GSPD 09-007) - <http://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd09-007.pdf>
- Contract Advertising Exemption Request (STD. 821) - <http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std821.pdf>

NCB Justification Process

All NCB Justifications must be submitted and approved electronically through the DGS NCB Portal.

When completing the NCB Justification, departments must respond to all questions clearly and concisely and must fully justify:

- why a particular good or service is restricted/unique
- how the background of events prompted the request
- what the consequences are if the good or service is not purchased
- that no competition exists, based on market research efforts

In addition, departments must document how the price is fair and reasonable. This includes providing a basis of the comparison used such as current market rates, historical pricing, LPA pricing, contracts for similar services, etc.

Finally, departments must describe any cost savings realized or avoided when selecting a particular good or service. Departments must quantify and substantiate their response.

The NCB Justification portal contains a set of consistent questions required for all NCBs; however, DGS reserves the right to ask additional questions that would serve to strengthen and clarify the unique circumstance, which has prompted the NCB. Additional questions may not always be consistent since no NCB is identical.

Example: An NCB for a Non-IT Good will generate different questions from an NCB for IT Goods or Non-IT Services. All three (3) will have unique characteristics, therefore requiring additional questions depending on the circumstance.

G. Limit To Brand (LTB)

The DRE does not currently utilize Limit to Brand (LTB) contracts. However, the DRE has LTB contract purchasing authority of \$25,000 per transaction, excluding sales and use tax, finance charges, postage, and handling. Shipping charges are also excluded from the dollar threshold limit unless the shipping charge is included in the evaluation such as FOB origin, freight collected, or FOB destination. All LTB contracts above the delegated amount need DGS-PD.

LTB contracts are limited by statute, in accordance with PCC section 12102(b) for IT Goods and sections 10301 and 10302 for Non-IT Goods.

The LTB Statement (GSPD-08-001) is used for the purchase of Goods of a particular brand or trade name or other specifications which have the effect of limiting bidding to one specified brand or trade name. An LTB solicitation requires more than one supplier. If there is only one known supplier, an NCB must be used to justify the purchase.

An LTB Statement is required for all competitive solicitations (formal and informal) and the SB/DVBE Option when a department believes that a product of a specified brand or trade name is the only product that will properly meet their need.

Existing proprietary software does not require an LTB.

Per the Bidder Instructions (GSPD-451, Revised and Effective 11/09/2011) referenced in each competitive solicitation, Article 7 states:

“Any reference to brand names and/or model numbers in the solicitation is intended to be descriptive, but not restrictive, unless otherwise specified. Bids offering equivalent items meeting the standards of quality specified may be considered, unless otherwise specified, providing the bid clearly describes the article offered and how it differs from the referenced brand. Unless bidder specifies otherwise, it is understood that the bidder is offering a referenced brand item as specified in the

solicitation. The State reserves the right to determine whether a substitute offer is equivalent to and meets the standards of quality indicated by the brand name references, and the State may require the supply of additional descriptive material and a sample.”

Departments must use the [LTB Statement](#) when submitting an LTB request to DGS. The LTB form must be uploaded and attached to the requisition and workflow (via FISCAL) to DGS-PD.

H. Leveraged Procurement Agreements (LPAs)

Leveraged Procurement Agreements (LPAs) are statewide agreements established/awarded by DGS which enables streamlined State purchases by removing time consuming bid processes and providing better cost prices. LPAs commonly include “user instructions” or “ordering instructions” with supplements that are unique to a particular LPA program and/or contract. It’s imperative that all Buyers review each supplier user/ordering instructions and supplements prior to making a purchase.

To view the State Contracts Index Listing, go to: <https://www.dgs.ca.gov/pd>
To find available LPAs, go to: <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Find-Leveraged-Procurement-Agreements>

LPAs offer non-IT and IT goods and services that have been competitively assessed, negotiated, or bid and are structured to comply with State procurement codes, policies, guidelines, and providing for maximum contractual protection. While LPAs are exempt from advertising, the use of a LPA does not exempt the DRE from adhering to all applicable laws, regulations, codes, and policies related to State contracting and procurement requirements. This includes, but not limited to:

- conducting and executing all applicable planning activities,
- pre-procurement approvals,
- GC section 19130 civil services considerations,
- contract approvals,
- prompt payment requirements, and
- receiving activities.

The following are excluded:

- Architectural
- Engineering and Environmental Services
- Legal Services

- Public Works

Unless identified as a mandatory contract, the use of LPAs is optional, although departments are encouraged to take advantage of the benefits of these pre-established contracts.

There are various types of LPAs, and are outlined below:

Master Services Agreements (MSA)

Master Services Agreements (MSA) are generally statewide agreements that have been competitively bid and prices analyzed. MSA User Instructions are unique to each agreement, therefore Buyers must thoroughly review the MSA in its entirety - includes review of the Contract supplements and User Instructions to determine the applicable requirements necessary to meet business needs. IT Goods/Services (\$1,500,000) and Non-IT Goods/Services (\$500,000). Offers are required. For more information, go to:

<https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Master-Agreements>

California Multiple Award Schedules (CMAS)

California Multiple Award Schedules (CMAS) are agreements that have been primarily, but not exclusively, negotiated by the federal General Services Administration (GSA). CMAS offers GSA pricing with California terms and conditions with suppliers who provide a variety of non-IT goods and services. DREs delegated purchasing authority for non-IT goods (\$100,000), non-IT services (\$250,000) and IT goods and services (\$500,000). Offers are required. For more information, go to: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules>

Software Licensing Program (SLP)

Software Licensing Program (SLP) was established to reduce the need for individual departments to conduct repetitive acquisitions for proprietary software licenses and software upgrades. SLP contract pricing is the maximum allowed. Buyers are strongly encouraged to negotiate lower prices. SLP Contracts are established with authorized participating resellers. The maximum allowed dollar amount for IT goods is \$2,000,000. Offers are required. For more information, go to:

<http://www.dgs.ca.gov/pd/Programs/Leveraged/SLP.aspx>

State Price Schedule (SPS)

The State Price Schedule (SPS) are price lists guaranteed for a specified period of time by the supplier. SPS agreements are to be used for unique and unusual items that preclude competitive bidding. Items with an IT component include in the SPS are Adaptive Equipment and Services for Persons with Disabilities. (DRE's purchase authority for non-IT/IT goods \$25,000.) Use of these is optional. Refer to User Instructions for each contract for how to use the agreement and what is required. For more information, go to: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Statewide-Contracts>

Statewide Contracts (SC)

Statewide Contracts (SC) are generally statewide agreements that were competitively bid with prices analyzed. They do not have dollar limits or limitations to their use except as noted in the agreement or contract. State contracts are comprised of non-IT and IT statewide commodity contracts, sourced commodity contracts, food contracts and pharmaceutical contracts. The majority of the SCs are mandatory. Some include language allowing departments to exercise a SB/DVBE off-ramp. Refer to User Instructions for each contract in how to use the agreement and what is required. For more information, got to: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Statewide-Contracts>

Cooperative Agreements

Cooperative Agreements are multi-state contracts where participating states may join together in order to achieve cost-effective and efficient acquisition of quality non-IT and IT goods and services. Price quotes are not required but conducting price comparisons is. Refer to each contract's User Instructions for how to use the agreement and what is required. For more information, go to: <https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Cooperative-Agreements>

The table below outlines the dollar thresholds for the LPAs:

Leveraged Procurement Agreements (Requiring further competition within the category [i.e., obtaining offers, etc.] – refer to individual LPA user instructions)				
18	1122 Procurement Program (GSA Component)	-	\$0.00	-
Leveraged Procurement Agreements (Requiring further competition within the category [i.e., obtaining offers, etc.] – refer to individual LPA user instructions)				
19	CMAS	\$500,000.00	\$100,000.00	\$250,000.00*
20	Cooperative Agreements	\$1,500,000.00	\$500,000.00	\$500,000.00
21	Master Agreements	\$1,500,000.00	\$500,000.00	\$500,000.00
22	Software Licensing Program	\$2,000,000.00	-	-
23	State Price Schedules	\$25,000.00	\$25,000.00	-
Acquisition Method		IT	Non-IT	Non-IT Services
Leveraged Procurement Agreements (No further competition required – refer to individual LPA user instructions)				
24	Cooperative Agreements	Unlimited	Unlimited	Unlimited
25	Master Agreements	Unlimited	Unlimited	Unlimited
26	Statewide Contract Orders	Unlimited	Unlimited	-
Acquisition Method		IT	Non-IT	Non-IT Services
Pre-Procurement Requirement				
27	Non-Competitively Bid (NCB) Justification	\$25,000	\$25,000	-
28	Limited to Brand (LTB Justification)	\$25,000	\$25,000	-

Exemptions to the dollar threshold for LPAs may be considered if DRE meets the necessary requirements. Refer to SCM, Consolidated Vol. 2 – Purchasing Authority for information on how to request an exemption to the dollar threshold on a transactional basis.

NOTE: Exemptions to the CMAS and SPS dollar threshold limits are not allowed, regardless of the type of purchasing authority. Exemptions to the MA maximum dollar threshold limits may be considered as described within the individual MA user instructions and by obtaining the approval of the DGS-PD. Exemptions to the CA 1122 Public Safety Procurement Program maximum dollar threshold limits may be considered on a single transaction basis by obtaining the approval of the DGS-PD.

LPA solicitations are not considered competitive and as such, must be worded carefully. Avoid using “bid”, “quote” and “evaluation”, instead use “offer” and “comparison”. When obtaining offers using a written document, refer to the document as an RFO. LPA RFO templates can be found on [DRE’s Procurement Intranet page](#). Buyers must not include competitive solicitation language regarding SB preference, protest, intent to award, evaluation criteria, two-envelope evaluation process or advertising requirements.

Multiple offers must be sought whenever multiple suppliers are known to exist unless otherwise directed by individual contract user instructions, policies and/or statutes or identified as an “exempt” contract. “Multiple offers” is defined to be a minimum of three (3) offers, including one CA certified SB and/or DVBE (if available).

See individual LPA topics within this chapter for additional instructions.

NOTE: Unless otherwise directed by either the LPA user instructions or it has been determined that the LPA being used is exempt from obtaining 3 offers, the procurement file must be documented in sufficient detail to support the supplier selection.

If a department contacts 3 sources and receives	Then the department shall document the procurement file with the reasons why
1-offer	The other two (2) suppliers did not respond.
2-offers	The third supplier did not respond.

Most of the LPAs required the selection of a supplier to be based upon “best value”, when there are multiple providers of Goods and Services. “Best value” relates to requirements and supplier selection criterion or other factors for a particular transaction that are established to ensure that business needs and goals are effectively met and that the State obtains the best value.

Using “best value”, the following minimum steps are required:

- Define business requirements
- Obtain a copy of the LPA Contract
- Review the contracts context with the department’s requirements and contractor offers
- Compare contracts and offers with those from other contractors
- Award to the supplier with documented “best value” assessment criteria that meets the requirements

Include the supplier selection basis, assessment requirements and the related documentation that supports the selection, using the Bid/Quote Worksheet, the best value determination worksheet, or the RFO's evaluation form and place it in the procurement file.

The below table illustrates the requirements of a buyer conducting and executing a CMAS order with a value of \$5,000 or greater:

CMAS Order is for:	And dollar amount is:	The buyer must:
Non-IT Goods	\$5,000.00- \$100,000.00	<ul style="list-style-type: none"> • Obtain 3 offers, 1 from SB or DVBE if available. • Document responses – refer to Section A, Topic 4. • Verify contract pricing listed with the specific contract to support the pricing being offered • Execute Purchase Document.
Non-IT Services	\$5,000.00 - \$50,000.00	<ul style="list-style-type: none"> • Obtain 3 offers, 1 from SB or DVBE if available. • Document responses – refer to Section A, Topic 4. • Verify contract pricing and requirements listed with the specific contract to support the pricing being offered • Execute Purchase Document.
	\$50,000.01-\$250,000.00	<ul style="list-style-type: none"> • Obtain 3 offers, 1 from SB or DVBE if available. • Verify contract pricing and requirements listed with the specific contract to support the pricing being offered Document responses –refer to Section A, Topic 4. Submit to the DGS/PD for review and approval: • Completed Purchase document (STD. 65) with all attachments. o Labor category titles on PO must match CMAS contract o Prices must be equal to or lower than

		<p>CMAS contract</p> <ul style="list-style-type: none"> o All required fields must be completed o Must have all required signatures • Summary Agreement – STD.215 o All required fields must be completed o Must have all required signatures • Copy of RFO <ul style="list-style-type: none"> o Must include Statement of Work o Must include clearly defined deliverables and any other requirements • Listing of all CMAS contractors contacted on this RFO, with one SB or DVBE if available • Copies of all supplier responses to the RFO <ul style="list-style-type: none"> o If only one offer is received, must include reasons why two other suppliers did not respond with an offer o If two offers received, must include reason why one other supplier did not respond with an offer • Complete copy of awarded supplier’s CMAS contract <ul style="list-style-type: none"> o Ensure that contract is still valid o Must include approved labor categories and/or services from base GSA contract • Copy of assessment and selection documents <ul style="list-style-type: none"> o Include evaluation methodology used o Include copies of all completed assessment documents
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		<ul style="list-style-type: none"> o Include reason for selecting proposed contractor • Certification for Expenditure of Funds, signed by your Agency's Secretary or Department's Director. See Chapter 2, info block 2.B3.15 for the required certification language.
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Original orders, which include options for changes that were assessed (must be specific to the amount of time allowed and the money associated) and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

Most LPA orders are executed using a purchase order (PO). Again, Buyers must read the user instructions provided for the individual LPA to determine the appropriate purchase document to utilize.

LPA amendments unique to non-IT Services, if the original contract permitted amendments, but did not specify the changes, it may be amended per PCC 10335(d)(1). A contract may only be amended once under this exemption:

- Term/time shall not exceed one year,
- Amendment cannot add more than 30% of the original value, and
- Amount may not exceed \$250,000.

If the original contract did not have language permitting amendments, the NCB process must be followed.

The finalized procurement file shall also include:

- a copy of the complete LPA,
- validation of the SB and/or DVBE status (if a SB and/or DVBE was awarded the PO),
- validating participation (if a SB and/or DVBE was awarded the PO),

Should you have any questions regarding any of the above LPAs, contact this Contract Administrator listed within the specific contract.

I. CAL-Card

The CAL-Card program is a cooperative agreement the DGS, Procurement Division entered into with the U.S. Bank National Association for VISA card services for the acquisition of goods and services only. Only agencies with non-IT and IT goods and services purchasing authority are permitted to participate in the program. The DRE has been granted authorization to participate in the State’s CAL -Card program. The CAL-Card is a payment mechanism and not a procurement approach; therefore, the program does not relieve the Buyer from adhering to all established procurement laws, regulations, policies, procedures, and best practices. All procurements still require the supporting documentation that would be required for the procurement method used. In addition, Buyers are required to obtain an invoice that references the individuals CAL-Card number and that the invoice is paid in full. Purchase documents must identify that payment will be made using CAL-Card and include all required terms, conditions, attachments, or documentation applicable to the transaction.

The DGS entered into a MSA with U.S. Bank National Association 7-20-99-42 for purchase card services. This serves as the basis for the CAL-Card Program that allows California State and local agencies to use the VISA card to make purchases.

The DRE’s CAL-Card policy is posted within DRE’s Policy Manual located on the [DRE Intranet](#) page. When taking ownership of a CAL-Card, end users are required to sign an acknowledgement form stating they have attended training and understand the DRE procurement policies and procedures.

Roles	Responsibilities
CAL-Card Program Administrator (or Alternate)	<ul style="list-style-type: none"> • Overseeing your state agency’s CAL-Card program. • Administering new and existing accounts. • Maintaining records of all account set ups and/or updates. • Maintaining audit file records for verification. • Monitoring system reports. • Providing program procedures and training. • Taking appropriate action related to account maintenance and payment process. • Coordinating CAL-Card procurement activities with the state agency’s purchasing authority contact(s). • Monitoring past due reports.
CAL-Card Approver	<ul style="list-style-type: none"> • Approving Budget expenditure. • Complying with all state and departmental procurement policies and procedures. • Reviewing and approving cardholder statements.

	<ul style="list-style-type: none"> • Maintaining familiarity with the duties and authorities of the authorized cardholders. • Timely submission of the CAL-Card statements to the billing office for payment
Cardholders (BSO cardholders; AGPA, SSA (2), BSA)	<ul style="list-style-type: none"> • Authorizing the purchase with the assigned purchase card. • Ensuring that all transactions comply with purchasing authority requirements. • Complying with all state and state agency procurement policies and procedures. • Reconciling the CAL-Card statement transactions with receipts and supporting documentation. • Reviewing and approving the CAL-Card statement transactions. • Filing a Cardholder Statement of Questioned Item (dispute form Invoice Dispute Notification STD.209) for billing issues unresolved with merchants. • Monitoring disputes through resolution and closure.
Accounting/Billing Office Contact	<ul style="list-style-type: none"> • Receiving and reconciling CAL-Card statements to the corresponding monthly invoices. • Ensuring timely payment of the CAL-Card program invoices. • Monitoring invoice payments and past due reports through completion. • Reporting inconsistencies to the CAL-Card Agency Program Administrator.

All CAL-Card users and the CAL-Card coordinator are required to complete CAL-Card training. The training for the CAL-Card program can be accessed at:

<https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/CAL-Card-Program>.

The transaction level for state agencies is based on commodity limits. Every CAL-Card holder within the DRE has a single transaction limit and a maximum spending limit for a 30-day period. The cardholder's approving official determines cardholder limits.

The CAL-Card may be used on any goods or services as long as it is accepted by the vendor, and the acquisition is within the DRE's purchase authority. Although it is encouraged, no purchase document (purchase order) is required for non-LPA CAL-Card purchases valued less than \$2,500.00; however, when purchases to an individual supplier reach \$7,500.00 within a calendar year, a purchase order must be issued for the next purchase. All CAL-Card purchases valued at \$2,500.00 or more must be executed

on a purchase order. In addition, some LPAs allow for P-Card usage. When using the CAL-Card on an LPA the purchases must be executed on the purchasing document specified in the LPA User Instructions (i.e., STD 213). When used, the purchasing document must indicate the acquisition was paid with CAL-Card to ensure vendors are not paid twice. Order splitting (see section on order splitting) is not permitted to circumvent these daily or monthly purchasing limits, nor to avoid competitive bidding limits or purchase authority limits.

The DRE allows the CAL-Card to be used to purchase non-IT goods. Non-IT services are prohibited from purchase by CAL-Card, which supports the DGS non-IT purchasing authority guidelines on CAL-Card governance, oversight, and compliance to State procurement laws and regulations, and cardholder State purchasing education and experience requirements.

Under no circumstances can purchases be split to:

- Circumvent a CAL-Card holder daily or monthly purchase limit
- Avoid competitive bidding limits
- Avoid purchasing authority limits

CAL-Card users must reconcile each CAL-Card transaction by entering all required information for the purchase in the FI\$Cal system. In addition, users must upload all required documentation for each transaction into the FI\$Cal system. Once all information has been entered into FI\$Cal, CAL-Card users shall retain hard copies and soft copies of each transaction in accordance with DRE's record retention policy. CAL-Card users should also save an electronic copy of each transaction in the corresponding folder in the CAL-Card shared folder.

To view CAL-Card FAQ's, go to:

<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/CAL-Card-Program-Frequently-Asked-Questions>

Order Splitting

PCC section 10329 for non-IT goods and by policy for IT goods and services states that no person shall willfully split a single transaction into a series of transactions for the purpose of evading the bidding requirements.

Orders placed by DRE buyers shall not be split to circumvent competitive bidding, advertising, or the single purchase limit of the CAL-Card. Examples of splitting include, but are not limited to the following:

- Splitting one purchase transaction into two or more CAL-Card swipes because the purchase exceeds the single purchase limit.
- Using more than one purchasing method (i.e., service orders, POs, and CAL-Card) which in total will circumvent the single purchase limit.
- Multiple cardholders in the same unit acquiring the same goods needed by the Program for the same acquisition from one or more vendors.
- Acquiring the same goods for different locations by the cardholder on separate transactions.
- Cardholders in separate units procuring various aspects of an acquisition or project.

Different cardholders under the same approving official or Program to get the work done for the same or like services is prohibited.

Example of a split: Commodity exceeding the daily allowable limit of \$5,000

September 15, Joe Doe placed order for \$4,900
 September 16, Jane Doe place order for \$4,600
 September 17, Justin Doe place order for \$4,900

All these orders were delivered to the Sacramento Headquarter Office on September 22. Cardholders that work in the same or different geographical areas, ordering the same commodity and having it delivered to the same place on the same day. The sum of this order exceeded the daily maximum allowable.

J. Emergency

The DRE may contract for non-IT and IT emergencies as defined by PCC sections 10340 and 12102(b) (2) regardless of dollar limits but must adhere to the purchasing processes applicable to the classification of the emergency.

Non-IT Goods and Services:

An emergency as defined by PCC section 1102 is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

IT Goods and Services:

An emergency as defined by PCC section 12102(a) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

An emergency is further divided into the following classifications which ultimately affects how the purchase activity will be processed:

- An emergency purchase not in response to a natural disaster, and
- An emergency purchase in response to a natural disaster (i.e., fire, flood, earthquake).

If an emergency purchase in response to a natural disaster when a response requires immediate action, the department shall proceed with the purchase regardless of the department's NCB purchasing authority status. Departments are not required to conduct competitive solicitations when the determination has been made those goods and/or services are needed on an emergency basis, where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

Regardless of the classification of the emergency, departments must document the procurement files, and upload documentation into FISCAL. The following information must be provided to the DGS-PD, as applicable:

- Description of the emergency
- Justification of why and consequences
- Description of the goods/price
- Names and quotes of vendors contacted
- Approval of the Chief of Administrator or designee

Poor planning is not an emergency.

Emergency Purchase Due to a Natural Disaster

Emergency purchases of non-IT goods, without competitive bidding, is permitted, when necessary, for the immediate preservation or protection of the public health, welfare, or safety. The DRE buyer must adhere to the following process when executing an emergency purchase in response to a natural disaster when a response requires immediate action.

When within the DRE's authorized non-competitively bid (NCB) contract purchasing authority dollar threshold, proceed with the purchase (via purchase order, and/or CAL-Card). The Buyer must document the circumstance of the emergency purchase, issue the purchase document, and identify the Purchasing Authority (PA) number in the PA number box on the purchase document or within the comments section on a FI\$Cal PO. When it exceeds DRE's authorized NCB contract purchasing authority threshold, proceed with the purchase (via purchase order, and/or CAL-Card), document the circumstance of the emergency purchase, and issue the purchase document, leaving the PA number box on the purchase document or blank within the comments section on a FI\$Cal PO.

Emergency Purchase Not Due to a Natural Disaster

The DRE buyer must adhere to the following process when executing an emergency purchase in response to an emergency situation other than a natural disaster.

If the purchasing activity is within the DRE's authorized NCB contract purchasing authority dollar threshold for IT goods and/or services, proceed with the purchase (via purchase order, and/or CAL-Card). Document the circumstance of the emergency purchase; document names and quotations of suppliers contacted; and issue the purchase document identifying the DRE's PA number in the PA number box identified on purchase document or within the comments section in a FI\$Cal PO.

When it exceeds DRE's authorized NCB contract purchasing authority threshold, proceed with the purchase (via purchase order, and/or CAL-Card) and contact the DGS-PD One-Time Acquisition (CDT/STPD for IT Goods and Services) immediately or within the next business day to provide the circumstance of the emergency at (916) 375-4381. The DGS/PD (STPD) contact will review the circumstance and if approved, assigns the transaction an Authorization to Exceed Monetary Limits (Form 42) number (FI\$Cal replaces form 42). Document the circumstance of the purchase and record the Form 42 number (FI\$Cal replaces form 42) in the PA number box on the purchase document prior to issuing the purchase document.

K. Office of Fleet and Asset Management (OFAM)

In accordance with GC section 13332.09 departments may not procure mobile equipment without first securing approval from the DGS, OFAM. Evidence of OFAM approvals must be documented in the procurement file.

The following motor vehicles and general use mobile equipment are subject to OFAM approval:

Mobile Equipment Type	Description
Motor vehicle	<ul style="list-style-type: none"> • A vehicle that is self-propelled and registered by the Department of Motor Vehicles (DMV) for street use.
General use mobile equipment	<ul style="list-style-type: none"> • Self-propelled mobile equipment • Self-propelled mobile equipment registered by the DMV for off-road use • Vessels registered by the DMV for use on water • Vessels documented by the US Coast Guard
Surplus mobile equipment	<ul style="list-style-type: none"> • Motor vehicles or general use mobile equipment that was previously owned or operated by any entity

For a complete listing of assets that require DGS, OFAM approval and Mobile Equipment Purchases shall be processed in accordance with [State Fleet Asset Oversight MM 13-01](#).

The fleet type assets not required to obtain the OFAM’s approval regardless of registration status by the DMV are:

- Golf Cart (if rated below 35 miles per hour)
- Mower (self-propelled and 24 horsepower or less)
- Generator
- Mobile home and/or office (only if permanently parked) *
- Indoor forklift
- Pallet jack
- Personnel hoist or lift
- Agriculture or constructions equipment pulled by a vehicle
- Other fleet-related equipment as determined by the OFAM
- Trailer (2,999 pounds or less)

NOTE: Trailer pertains to small trailers only and not the equipment mounted on trailers e.g., generators, welders, signs, outhouses, etc. Assets carried on trailers such as: motorcycles, snowmobiles, etc. are considered fleet assets and are referenced separately.

When purchasing mobile equipment, DRE must submit the following to OFAM for approval prior to contract execution:

- Vehicle Acquisition Request (OFAM 160) for replacement or additional vehicles.

- A completed Purchasing Authority Purchase Order (STD. 65) or Purchase Estimate (STD. 66) for replacement or additional vehicles.
- A current copy on file with OFAM of the Passenger Vehicle Usage Report (STD 276a) for the vehicle being replaced.
- Submit completed vehicle acquisition package to:

Office of Fleet and Asset Management
 Attn: Statewide Equipment Coordinator
 1700 National Drive
 Sacramento CA 95834

In accordance with the [OFAM Handbook](#), tires and batteries for mobile equipment must be purchased using the State’s leveraged procurement agreements whenever possible.

Mobile equipment repairs are considered non-IT services. BSO may not modify and/or repair mobile equipment without OFAM approval if the modification/repair exceeds the OFAM-established dollar thresholds.

The DRE BSO works with DGS, OFAM to ensure compliance with fleet standards. BSO ensures that all DRE employees who operate vehicles on official State business must have the following:

- Permanent state employee and be at least 18 years of age
- Valid CA driver’s license
- Defensive driver’s training certification
- Vehicle insurance and good driving record

[Authorization to Use Private Owned Vehicles on State Business \(STD. 261\)](#) must be completed, signed, and approved by the employee’s supervisor (annually) prior to using personal or DRE vehicle.

DMV Pull Notice Program:

- Employees who operate vehicles on official business as a condition of employment MUST participate in DMV “Pull Notice Program”.

Vehicle Safety:

- Driver will use, and must ensure all passengers use, seat belts when operating the vehicle
- Smoking is strictly prohibited in State vehicles

Transporting Passengers:

- Is limited to State employees involved in the performance of assigned state activities unless the employee's supervisor has given prior authorization – required each time.

L. Surplus Property Program

The DRE, BSO maintains a small supply of reusable conventional furniture (such as desks, chairs, bookcases, and filing cabinets) that divisions may commonly need. Should a division opt to purchase new conventional furniture, they are required to follow purchasing guidelines.

For additional information, see [Management Memo 11-01](#).

Buyers are to utilize surplus furnishings whenever feasible and procedures are in place that procurement staff are required to adhere at:

<https://www.dgs.ca.gov/OFAM/Services/Page-Content/Office-of-Fleet-and-Asset-Management-Services-List-Folder/Attend-Public-Auctions-of-Surplus-Personal-Property#@ViewBag.JumpTo>. To determine if surplus property is available, go to: <http://www.govdeals.com/StateofCalifornia> or contact the State Surplus Property and Reutilization Program at: 1700 National Drive, Sacramento, CA 95814 or (916) 928-5800.

When the DRE's needs cannot be met by the Surplus Property Program, our next step is to go through CalPIA. If they cannot meet it, then we request an exemption form to complete the [CalPIA Purchase Exemption](#) form before soliciting commercial vendors.

In accordance with SAM section 3520, prior to disposal of any state-owned personal property other than vehicles or mobile equipment, BSO must receive approval from the DGS, OFAM Surplus Property Section.

BSO will submit a [Property Survey Report \(Std. 152\)](#) for approval prior to disposition. Disposition includes sale, trade-in, discarding, recycling, donating to local school districts or turning the property over to Property Reutilization. If not reusable, all IT must be recycled.

M. California Prison Industry Authority (CalPIA)

Pursuant to PC section 2807, a department must first consider if CalPIA can fulfill their needs prior to purchasing an item from commercial vendors. If CalPIA cannot meet the

department's need, they may be granted a CalPIA exemption to procure goods from other sources when sufficiently justified.

The CalPIA is a State-operated agency that offers services and consumables. The [CalPIA Product Catalog](#) includes a variety of items from furnishings to binders. It is mandatory to purchase available CalPIA produced items regardless of cost.

For items in categories sold by CalPIA, division requesters must complete a [CalPIA Waiver Request Form \(SAL-F001\)](#). The following categories of items requiring a CalPIA waiver include but are not limited to:

- Binders
- Furniture and fixtures
- Printing
- Remanufactured toner
- Textiles including safety clothing and flags

The requestor submits a completed [CalPIA Waiver Request Form](#) along with a provisional requisition to their procurement analyst for review. If the CalPIA Waiver Request Form and provisional requisition pass procurement analyst quality control, they are packaged in a green folder with a routing slip for the Procurement and Contracting Officer to review and sign the CalPIA Waiver Request Form. The package is returned to the procurement analyst who returns the signed CalPIA Waiver Request to the division requester.

It is the division requester's responsibility to submit the signed waiver request to CalPIA. If CalPIA approves the waiver request and issues a CalPIA Waiver, the provisional requisition is entered into FIS with the CalPIA Waiver included in the attachment. If the request is denied, the provisional requisition is cancelled and a requisition to buy an appropriate item from CalPIA is created by the division requester.

The CAL-Card should not be used to procure goods from PIA. However, if an urgency requires using the CAL-Card; for purchases less than \$2,500.00 follow the instructions detailed in the CAL-Card Program section. Purchases that exceed \$2,500.00 require a purchase order.

N. Socioeconomic

1. Community Rehabilitation Program (CRP)

Buyers should consider purchasing products and services from rehabilitative or sheltered workshops, pursuant to Welfare and Institutions Code (WIC) section 19403. In accordance with WIC 19404, purchases using these programs are

exempt from advertising requirements, conducting a competitive bid and dollar threshold limits. These transactions are also exempt from the NCB contract requirements.

If the CRP procurement is used, be sure to document the procurement file to support that the price offered by a CRP is fair and reasonable. For additional information and certification information, go to:

<http://www.dor.ca.gov/VRED/Requirements-4-Becoming-Service-Provider.html>

2. Target Area Contract Preference Act (TACPA) Preference Program

The Department of General Services, Procurement Division, (DGS-PD) Dispute Resolution Unit (DRU) administers the Target Area Contract Preference Act (TACPA) program.

Pursuant to the TACPA, the state shall award workplace and workforce preferences to eligible California-based companies for state solicitations exceeding \$100,000.00 for the purchase of goods and services, including Information Technology goods and services, except a contract in which the worksite is fixed by the provisions of the contract. (See Government Code (GC) §§ 4530 – 4535.3)

Departments are required to designate a TACPA liaison. See Chapter 2, Section 210 for further information. For information, go to the [DGS's TACPA web page](#) or contact DRE's TACPA Liaison, Van Nguyen at 916-576-7866 or van.nguyen@dre.ca.gov.

Solicitations expected to exceed \$100,000.00 must contain the TACPA provision applying workplace and workforce preferences, as applicable, to eligible California-based companies.

a) Preference Amounts Specific to Solicitations for Goods

- A workplace preference of 5 percent to California-based companies who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in a distressed area.
- A workforce preference, as specified in GC Section 4533.1, to California-based companies who demonstrate and certify, under penalty of

perjury, that the workforce completing those labor hours are persons with a high risk of unemployment, as defined in GC Section 4532. GC Section 4533.1 specifies workforce preferences from 1 percent to 4 percent depending on the percentage of a bidder's workforce required to perform the contract who are persons with high risk of unemployment as committed to and certified by the bidder.

b) Preference Amounts Specific to Solicitations for Services

- A workplace preference of 5 percent to California-based companies who demonstrate and certify under penalty of perjury that not less than 90 percent of the total labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in a distressed area.
- A workforce preference, as specified in GC Section 4533.1, to California-based companies that demonstrate and certify, under penalty of perjury, that the workforce completing those labor hours are persons with a high risk of unemployment, as defined in GC Section 4532. Section 4533.1 specifies workforce preferences from 1 percent to 4 percent depending on the percentage of a bidder's workforce required to perform the contract who are persons with high risk of unemployment as committed to and certified by the bidder.

c) Preference Maximum Amounts

- The maximum preference cost for the workplace preference cannot exceed \$50,000.00.
- The maximum preference cost for the workforce preference cannot exceed \$50,000.00.
- The maximum combined preferences and incentives resulting from a workplace preference, workforce preference, and other preferences or incentives provided under any other provision of law shall be 15% but may not in any case exceed \$100,000.00 in total.

d) Preference Precedence

California certified small business bidders qualified in accordance with GC 14838 shall have precedence over non-small business bidders in that the application of any bidder preference for which non-small business bidders may be eligible, including the workplace and workforce preferences under

TACPA, shall not result in the denial of the award to a small business bidder. This shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference and incentive.

e) Assistance to Bidders & Distressed Area Map

The Department of General Services, with the cooperation of the Governor's Office of Planning and Research, shall assist prospective bidders in identifying those areas of the state which qualify as distressed areas for purposes of the TACPA preferences (Title 2 California Code of Regulations (CCR) 1896.38).

The following webpage contains an interactive map to determine if a business is located within a TACPA qualified zone: [Request-a-Target-Area-Contract-Preference](#).

For assistance, bidders may contact DGS-PD DRU at: TACPA@dgs.ca.gov

The Employment Development Department (EDD) shall assist bidders seeking to certify that they will employ persons with high risk of unemployment in recruiting eligible job applicants and shall certify such applicants, except youths participating in qualified cooperative education programs who shall otherwise be certified (2 CCR 1896.39).

F) Procedure

Step 1 - The Solicitation

State solicitations where the worksite is fixed are not eligible for application of TACPA preferences and therefore TACPA language must not be included. (i.e., Public Works contract with a fixed construction site)

For state solicitations where the worksite is not fixed and the dollar value is anticipated to exceed \$100,000.00 for the purchase of goods and/or services, the solicitation must include language indicating that the two TACPA preferences (workplace and workforce) are available. Below is sample solicitation language that each department is encouraged to use to ensure compliance with statutory and regulatory requirements in addition to effective contract management:

This solicitation provides for the optional TACPA preference. Bidders are not required to apply for this preference. Denial of the TACPA preference request is not a basis for rejection of the bid/offer.

The TACPA workplace and workforce preferences will be evaluated for this solicitation. California-based companies seeking TACPA preferences will need to complete and submit preference request forms with the bid/offer. The following webpage contains required preference request forms and an interactive map to determine if a business is located within a TACPA qualified zone: [Request-a Target-Area-Contract-Preference](#)

By submitting TACPA forms, a bidder given a TACPA preference agrees to the TACPA contract provisions required by Government Code section 4535 and provided in section 1896.40 of Title 2 of the California Code of Regulations (CCR) in addition to requirements specified on the [TACPA form STD 830](#).

If, based on the responsive proposals/bids/offers received, it is anticipated that the value of the resulting contract will exceed \$100,000 and the TACPA preference requirements were not included in the solicitation, then the awarding department must ensure compliance with the TACPA statutory requirements.

Any sample contract attached to a solicitation where TACPA applies is to include, either expressly or by reference, the provisions specified in section 2 CCR 1896.40.

Step 2 – Before Evaluating Proposals/Bids/Offers

Awarding departments must pay close attention to solicitation responses to determine if a TACPA preference has been requested. If so, confirm receipt of the following required preference request forms from California-based companies requesting TACPA preferences, as applicable:

- [TACPA form STD 830](#) is the application to apply for TACPA preferences for contracts involving the purchase of goods and/or services.

- Manufacturer's Summary – TACPA (Contract Activities and Labor Hours) form [DGS PD 525](#) is used for contracts involving the purchase of goods manufactured under the contract.
- Bidder's Summary – TACPA (Contract Activities and Labor Hours) form [DGS PD 526](#) is used for contracts involving the purchase of services.

Prior to evaluating proposals/bids/offers that are seeking any TACPA preferences, the DGS-PD, DRU must review the TACPA preference request(s).

Step 3 – Submitting TACPA Preference Requests to the DGS-PD DRU

Awarding departments must submit, as applicable, the following preference request forms and documents to the DGS-PD DRU via email to TACPA@dgs.ca.gov:

- [TACPA form STD 830](#)
- Manufacturer's Summary – TACPA (Contract Activities and Labor Hours) form [DGS PD 525](#)
- Bidder's Summary – TACPA (Contract Activities and Labor Hours) form [DGS PD 526](#)
- Copy of solicitation and any addendums
- Bidder's response to the solicitation in its entirety
- Delivery schedule (if applicable)

Step 4 – DGS-PD DRU's Evaluation of TACPA Preference Requests

Preference requests are typically reviewed and processed within five (5) business days and a recommendation memo (approval/denial) will be sent via email to the awarding department requestor with a copy to the Procurement and Contracting Officer (PCO).

Requests that do not contain the items noted in Step 3, as required, or otherwise contain insufficient information may be denied.

Step 5 – Evaluating Proposals/Bids/Offers & Contract Award

After receipt of a recommendation memo from DGS-PD DRU for a TACPA preference request, the awarding department may complete the evaluation

of proposals/bids/offers pursuant to GC sections 4530 - 4535.3 and 2 CCR 1896.33 (for goods contracts) or 2 CCR 1896.36 (for services contracts); then award the contract as appropriate.

Step 6 – Contract Award

When the contract award is based on approved TACPA preference(s), the awarding department must include the contract provisions required by 2 CCR 1896.40 as noted above.

The awarding department must notify the DGS-PD DRU if an award is made based on the approved preference so the DGS-PD DRU can monitor the contract for compliance.

A copy of the executed contract must be emailed with the notification to DGS-PD DRU at: TACPA@dgs.ca.gov.

Step 7 – Monitoring Compliance and False Certifications

DGS-PD DRU monitors TACPA compliance directly with the contractor and will notify the awarding department if any issues arise.

Awarding departments may report allegations of a contractor's non-compliance with TACPA commitments to DGS-PD DRU at: TACPA@dgs.ca.gov.

Step 8 – Non-Compliance Sanctions

Pursuant to Government Code (GC) 4535.1, a business that requests and is given a TACPA preference by reason of having furnished a false certification, and which by reason of that certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

- Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.
- In addition to the amount specified above, be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

- Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

Prior to the imposition of any of the above sanctions, the contractor or vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

The awarding department shall be responsible for conducting hearings authorized by Government Code Section 4535.1 relative to contract awards obtained due to the furnishing of a false certification. The awarding department may enter into an agreement for the purpose of having another state agency or office conduct such hearings and to furnish the awarding department with a report of findings and a recommendation (2 CCR 1896.41).

O. State Agency Buy Recycle Campaign (SABRC)

The DRE, BSO is responsible for the Recycling Program and submits the SABRC report in accordance with PCC Sections 12200-12217 annually (October 31) to CalRecycle.

The DRE continues to exceed the 50% waste diversion goal and has recently implemented a waste reduction and recycling program in each division to strive to meet the ambitious 75% recycling initiative set by the legislature and Governor Brown for recycling, composting and source reduction of solid waste by 2020.

BSO has set activities and business practices to attain our goals by:

- Increasing employee awareness of recycling programs and opportunities by placing large clear signage in appropriate locations throughout the DRE's leased facilities.
- Educating employees on program goals through the DRE's Intranet (COIN) and e-mail
- Maintaining awareness of program progress and challenging employees to improve efforts by publicizing waste disposal/recycling data.
- Designating a well-marked, specific area for recycled content in each office

The SABRC is a joint effort between the CA Department of Resources Recycling and Recovery (CalRecycle) and DGS to implement state law requiring state agencies and the legislature to purchase recycled-content products (RCP). Pursuant to PCC Section 12200

et. Seq., Buyers must utilize RCP. A minimum of 50% of funds expended in each of the targeted categories must be products meeting the requirements of an RCP. The required RCP varies by SABRC product category.

The 11 reportable product categories are as follows:

- Paper Products
- Printing and Writing Paper
- Mulch
- Glass
- Lubricating Oil Products
- Plastic Products
- Pain
- Antifreeze
- Tires
- Tire-Derived Products
- Metal Products

The SABRC reportable categories and requirements are located on the [CalRecycle website](#).

Product Category	Minimum Postconsumer Content Requirement	Requirement for reportable SABRC purchases
Antifreeze:	70%	50%
Building finishes:	Middle Range of state contracts	75%
Carpet:	Determination by DGS and posted in SCM	75%
Erosion Control Products:	100%	75%
Glass Products:	25%	75%
Lubricating Oils:	70%	75%
Metal Products:	10%	75%
Paint:	50%	50%
Paper Products:	30%	75%
Pavement Surfacing:	15%-25%	75%
Plastic Products:	20%	75%
Printing & Writing Paper:	30%	75%
Soil Amendments and Soil Toppings:	80%	75%
Textiles:	0%-100%	75%

Tire-derived Products:	50%	75%
Tires:	Retreaded: Must use an existing casing that has undergone retreading or recapping process in accordance with Public Resource Code (commencing with section 42400)	50%

Note: Reused or refurbished products should be considered 100 percent recycled and no minimum-content is required.

In accordance with PCC 12203, all state agencies shall ensure each of the following:

- January 1, 2020, at least 50% of reportable purchases are recycled products
- January 1, 2020, at least 75% of reportable purchases are recycled products, except for paint, antifreeze, and tires which would remain at the 50% requirement

The requirements specified apply to all reportable purchases of state agencies for the product categories listed. The purchase of a recycled product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed.

In order to sufficiently report on procurement within the 16 product categories, state agencies must track their purchases for the fiscal year by collecting Postconsumer-Content Certification forms ([CalRecycle Form 74](#)) or other forms of certification documentation from all suppliers. Agencies must keep this documentation on file. Periodically, agencies will be required to submit copies of certification documentation with their procurement reports. Agencies may need to provide the Postconsumer-Content Certification forms to their contractors to ensure that the information is being captured by the contractor for the purchases that the contractor makes. This postconsumer content certification provides the basis for obtaining compliant State Agency Buy Recycled Campaign (SABRC) products.

Tracking the amount of money spent on purchase of all reportable products-both RCPs and non-RCPs regardless of how they are purchased, e.g., via interagency agreement, statewide contract, contractor’s purchase of products.

FI\$Cal: DRE end users are required to populate the Environmentally Preferred Purchasing (EPP)/SABRC link during the creation of a FI\$Cal Requisition. The entered values are validated during the Requisition Approval process by both Requisition Approver 1 and 2 and again during the PO Approval process by PO Approver 1.

Pursuant to Public Resources Code section 42297 (c) (1) and (2), any plastic trash bag supplier, manufacturer or wholesaler, or any of its divisions, subsidiaries, or successors, is ineligible for any State contract or subcontract or renewal, extension or modification of any State contract, if it is not in compliance with the certification requirements of the law. To be compliant, manufacturers must meet either one of the following options:

- Ensure that its plastic trash bags contain a quantity of recycled plastic post-consumer material (RPPCM) equal to at least 10 percent of the weight of the regulated bags.
- Ensure that at least 30 percent of the weight of material used in all of its plastic products intended for sale in California is RPPCM.
- Ensure that its plastic trash bag when labeled as biodegradable or compostable meets ASTM D6400 standard for Compostable Plastics.

Manufacturers and wholesalers who are non-compliant with the Plastic Trash Bag Law cannot contract with the State regardless of the product being provided in the contract (i.e., plastic trash bags, janitorial supplies or services, or any other products or services). Additional information, including a listing of compliant and noncompliant trash bag manufacturers and wholesalers is available on the [CalRecycle website](#).

For more information about SABRC, visit <https://calrecycle.ca.gov/BuyRecycled/StateAgency/> or contact the SABRC Program at: SABRC@calrecycle.ca.gov

P. Environmentally Preferable Purchasing (EPP)

Environmentally Preferable Purchasing (EPP) is defined in PCC 12400-12404 as the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment, when compared with competing goods or services that serve the same purpose. This comparison takes into consideration, to the extent feasible, raw material acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, product performance, durability, safety, the needs of the buyer and cost.

The DRE is committed to purchase products that meet the Federal Energy Management Program recommended standards.

To designate a purchase as EPP, the purchase must fulfill one or more of the following criteria:

- Acquired through a leveraged procurement agreement identified as an “EPP” commodity or contract
- Meet a DGS Purchasing Standard
- Be SABRC compliant
- Meet third-party environmental certification(s) (e.g., Energy Star[®], Green Seal[®])
- Incorporate a take-back program
- Meet the requirements of an EPP purchases identified in an executive order or the State Administrative Management Memos and IT policies.

Departments are required to purchase the following commodities in accordance with current DGS statewide contract EPP specifications:

- Alternate fuel and zero emission vehicles
- Energy Star[®] rated products
- Recycled paint for exterior applications
- Low or Zero VOC paint for building indoor applications
- Remanufactured ink and toner cartridges
- WaterSense[®] or equivalent industry standard labeled fixtures and equipment

The DGS developed a best practices manual called the [Buying Green Guide](#). This guide provides information, tools and tips for Buyers and explains how the State views “green” products and businesses.

The DRE uses recycled products such as paper, toner, and other items. DRE end users are required to populate the EPP/SABRC link during the creation of a FI\$ Requisition. The entered values are validated during the Requisition Approval process by both Requisition Approver 1 and 2 and again during the PO Approval process by PO Approver 1.

For more information, visit the Buying Green web page at:
<http://www.dgs.ca.gov/buyinggreen/Home.aspx>

Q. Leasing

Currently, the DRE does not lease IT equipment.

R. Infrastructure-Related Bond Act of 2006

Not applicable to DRE.

S. Exempt

When a purchase is exempt from competitive bidding and/or the NCB justification process by statute or DGS policy, a non-IT or IT solicitation is developed using the appropriate procurement method/process and purchasing authority dollar thresholds still apply.

To procure using this type of method:

- Develop the solicitation and obtain a price quote from the supplier.
- Provide sufficient detail in the procurement file to identify the rationale to exempt the purchase from competitive bidding or advertising by stating specific statute or policy.
- Document the procurement file identifying how the purchase cost reasonableness was established.

Purchases Exempt by Policy and/or Statute

- Proprietary subscriptions/publications and/or technical manuals (i.e., law books) regardless of media format – up to \$250,000.
- Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative or where there is only one distributor in the area for parts and services – up to \$250,000; if over \$250,000 – an NCB is required.
- Emergency contracts, which are necessary for the immediate preservation of life or state property.
- LPAs that have been competitively bid or that have been determined to be required for essential services and which have been established by a methodology that assures the state a reasonable price for the IT goods/services offered.
- IT Interagency Agreements.

- Contracts with business entities operating Community Based Rehabilitation Programs, which meet the criteria established by WIC Section 19404.
- Amendments to existing purchase documents under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. The amendment should only last during the period the protest or legal action is pending, and the exemption cannot extend beyond six months.
- Amendments to existing contract which were originally competitively bid.
 - IT goods and services which included options for changes (e.g., quantity or time), may be amended consistent with the terms of the original contract providing such extension(s) if such options were evaluated during the solicitation process.
 - IT Services under the Health Insurance Portability and Accountability Act MSA.
- NCBs exempt by policy must reference the basis for exemption from advertising or competitive bidding by (i.e., LPA number).
- Cost Reasonable purchases exempt by statute or policy must still be reasonable in cost and justification and include documentation in procurement files.

Chapter 6 – Acquisition Request Process

The DRE documents and maintain procurement records in sufficient detail to allow anyone to review the documentation and understand how the procurement was requested, conducted, awarded, and administered.

The Buyers are responsible for the official procurement file and provides each end user a worksheet that identifies the different procurement methods and the required documentation to be maintained.

Buyers must maintain a diary of events and decisions that lead up to and complete the purchase transaction. Buyers must take good notes of meetings and phone correspondences, print pertinent emails, and maintain signed approval and route slips to be retained in the procurement file.

Procurement and Contract files must include adequate documentation that clearly demonstrates sound business practices and judgment in the purchasing process and that all applicable rules were applied. The DRE documentation should consist of the following:

- Printed emails/correspondence, meetings notes and phone conversations
- Task notes (timeline and history of the actions and decisions made)

- Executive Office approval/signature via route slip(s)

Note: All procurement records are subject to Public Records Act requests. Avoid typos, scratch outs and personal notations not relevant to the procurement.

For more information, see the Purchase Order (PO) Acquisition Process and/or the Contract Acquisition Process. The below steps provide additional clarification to these process workflows.

A. Non-IT Acquisition Request

1. Acquisition Request (RE 935)

Complete the [Acquisition Request \(RE 935\)](#) form. The requestor must obtain all the appropriate approvals prior to submittal to BSO.

2. Contact Person

The RE 935 must include a contact person's name, email address, and business phone number with the area code. This person will be contacted if any further clarification or additional information is required.

3. Approval Signatures

The requestor is responsible for obtaining all approval signature(s) on the Acquisition Request. This may include the Commissioner, Assistant Commissioner, Program Manager, or the appropriate designee approvals/signatures. Approvals must be the requestor's supervisor or above.

4. Acquisition Request Submittal to BSO

When the requestor's Acquisition Request has been fully approved, it shall be submitted to the BSO Office. All the proper supporting documentation must be attached, as outlined in the "additional documentation" section below.

5. Financial Coding Information

Coding information (Index, PCA, Agency Billing Code, and Budget Fiscal Year) can be found by contacting the program's budget analyst or by referring to the Index/PCA/Fi\$Cal Listing at:

6. Additional Documentation

Below, is a list of required documentation that need to accompany the Acquisition Request form in the procurement file:

- For State Contracts/Leveraged Procurement Agreements (under State Contracts Index Listing), include the contract cover sheet and price page(s)
- Sellers Permit
- Request for Quotation (RFQ), written narrative used to solicit price quotes.
- Quote Detail (written quotes are required) with quantity, unit, and price information:
 - A detailed and complete description of the commodity/service, along with any required specifications, statement of work, unit price, terms, and delivery instructions. The delivery group and class, if available, should also be noted. Key nouns should precede the Material description (e.g., “Chair”: executive, high-back, swivel, color: brown, Manufacturer: La-Z-Boy, part number: LAZ123).

The Acquisition Request should be specific in describing exactly what is being requested. Brochures, catalog descriptions, manufacturer part numbers, manufacturer specifications or any other descriptive literature must be included to ensure the purchase item ordered and received is correct.

To help assist with specification preparation, use the [Bid Specification Checklist](#).

- The State does not pay federal taxes on purchases, only state sales tax and/or use tax. Taxes are assessed based upon where the products are physically received. The latest California Sales and Use Tax rate chart, by County, can be found on the [CA Department of Tax and Fee Administration \(CDTFA\)](#) website.
- Maintenance sales tax is in accordance with the Business Taxes Law Guide, Regulations 1502 of the Sales and Use Tax Regulations (or contact [CDTFA](#)).
- Small Business and Disabled Veteran Business Enterprise (SB/DVBE) Certifications must be verified and printed (an eligible SB/DVBE is one that

has an active certification through DGS):

- To obtain SB/DVBE certifications for vendors, go to:
<https://caleprocure.ca.gov/pages/sbdvbe-index.aspx>
- The [Disabled Veteran Business Enterprise Declarations \(STD. 843\)](#) Form is required for the winning vendor, if they are a DVBE.
- Include small business number(s) if applicable and expiration dates for quotes received. Government Code 14835 provides for a 5% preference to be given to bidders who qualify as small businesses (SBs). If a solicitation results in an SB submitting a bid, the SB is awarded the solicitation if their bid is evaluated as lower after subtracting 5% of the overall lowest responsible bidder's amount from the SB bid amount. Billing and payment are still at the SB submitted bid amount.
 - This preference does not apply to the SB/DVBE Option Process
- Expanding Pool: Per AB 1574, amended GC 14838 buyers are to include at least one new SB/Micro/DVBE vendor (has never been awarded a PO/Contract by DRE) in the quoting pool.
- **GenAI Disclosure & Factsheet STD 1000:** Bidders/offerors must notify the State in writing if their solution or services includes, or makes available, any GenAI technology, including GenAI from third parties or subcontractors. Bidders/offerors are required to complete and return form STD 1000 GenAI Disclosure & Factsheet at the time of bid/offer.
- The [Payee Data Record \(STD. 204\)](#) is required for the winning vendor.
- Fair and Reasonable Documentation for acquisitions under \$9,999.99
- Required Justification for Purchase
- Additional Required Forms and Approvals
 - PIA waiver form SAL-F001
 - Additional forms as required for the particular type of purchase

B. IT Acquisition Request

1. Information Technology Acquisition Request (ITAR) - RE 767

Complete the [Information Technology Acquisition Request \(RE 767\)](#) form. The requestor must obtain all the appropriate approvals prior to submittal to Information Technology Division (ITD). The IT Buyer, the IT Manager I (Clarence Mitchell), and the CIO (Calvin McGee) must sign off on the ITAR.

2. Contact Person

The RE 767 must include a contact person's name, email address, and business phone number with the area code. This person will be contacted if any further clarification or additional information is required.

3. Approval Signatures

The requestor is responsible for obtaining all approval signature(s) on the Acquisition Request. This may include the Commissioner, Assistant Commissioner, Program Manager, or the appropriate designee approvals/signatures. Approvals must be the requestor's supervisor or above.

4. Acquisition Request Submittal to ITS

When the requestor's Acquisition Request has been fully approved, it shall be submitted to the ITD. All of the proper supporting documentation must be attached, as outlined in the "additional documentation" section below.

5. Financial Coding Information

Coding information (Index, PCA, Agency Billing Code, and Budget Fiscal Year) can be found by contacting the program's budget analyst or by referring to the Index/PCA/Fi\$Cal Listing at:

6. Additional Documentation

Below, is a list of required documentation that need to accompany the Acquisition Request form in the procurement file:

- For State Contracts/Leveraged Procurement Agreements (under State Contracts Index Listing), include the contract cover sheet and price page(s)
- Sellers Permit
- Request for Quotation (RFQ), written narrative used to solicit price quotes.
- Quote Detail (written quotes are required) with quantity, unit, and price information:
 - A detailed and complete description of the commodity/service, along with any required specifications, statement of work, unit price, terms and delivery instructions. The delivery group and class, if available, should also be noted. Key nouns should precede the Material

description (e.g., “Chair”: executive, high-back, swivel, color: brown, Manufacturer: La-Z-Boy, part number: LAZ123).

- The Acquisition Request should be specific in describing exactly what is being requested. Brochures, catalog descriptions, manufacturer part numbers, manufacturer specifications or any other descriptive literature must be included to ensure the purchase item ordered and received is correct.
- To help assist with specification preparation, use the [Bid Specification Checklist](#).
- The State does not pay federal taxes on purchases, only state sales tax and/or use tax. Taxes are assessed based upon where the products are physically received. The latest California Sales and Use Tax rate chart, by County, can be found on the [CA Department of Tax and Fee Administration \(CDTFA\)](#) website.
- Maintenance sales tax is in accordance with the Business Taxes Law Guide, Regulations 1502 of the Sales and Use Tax Regulations (or contact [CDTFA](#)).
- Small Business and Disabled Veteran Business Enterprise (SB/DVBE) Certifications must be verified and printed (an eligible SB/DVBE is one that has an active certification through DGS):
- To obtain SB/DVBE certifications for vendors, go to: <https://caleprocure.ca.gov/pages/sbdvbe-index.aspx>
- The [Disabled Veteran Business Enterprise Declarations \(STD. 843\)](#) Form is required for the winning vendor, if they are a DVBE.
- Include small business number(s) if applicable and expiration dates for quotes received. Government Code 14835 provides for a 5% preference to be given to bidders who qualify as small businesses (SBs). If a solicitation results in an SB submitting a bid, the SB is awarded the solicitation if their bid is evaluated as lower after subtracting 5% of the overall lowest responsible bidder’s amount from the SB bid amount. Billing and payment are still at the SB submitted bid amount.
 - This preference does not apply to the SB/DVBE Option Process
- Expanding Pool: Per AB 1574, amended GC 14838 buyers are to include at least one new SB/Micro/DVBE vendor (has never been awarded a PO/Contract by DRE) in the quoting pool.
- **GenAI Disclosure & Factsheet STD 1000:** Bidders/offerors must notify the State in writing if their solution or services includes, or makes available, any GenAI technology, including GenAI from third parties or subcontractors. Bidders/offerors are required to complete and return

form STD 1000 GenAI Disclosure & Factsheet at the time of bid/offer.

- The [STD. 204 – Payee Data Record \(STD. 204\)](#) is required for the winning vendor.
- Expanding Pool: Per AB 1574, amended GC 14838 buyers are to include at least one new SB/Micro/DVBE vendor (has never been awarded a PO/Contract by DRE) in the quoting pool.
- Fair and Reasonable Documentation for acquisitions under \$9,999.99
- Required Justification for Purchase

Chapter 7 - Creating a Non-IT Solicitation

A. Request / Advertising

Purchases made under DRE’s Non-IT Purchasing Authority include all non-IT goods and some incidental services. The dollar limits are between \$100 and \$100,000 excluding sales tax, use tax, shipping, postage, and handling. Bidders should be advised that the standard invoice payment terms are “Net 45 days”.

The following bid and advertising requirements apply:

Non-IT Goods – Informal Solicitations			
Dollar Threshold	Quotes Needed	Method	CSCR Advertising?
Under \$5,000.00	Two (2), Fair & Reasonable (F&R) – One (1)	SB/DVBE Option F&R	No
\$4,999.99 - \$49,999.99	Three (3) SB/DVBE Option – Two (2)	RFQ LPAs SB/DVBE	No
\$50,000.00 - \$100,000.00	Three (3) SB/DVBE Option – Two (2)	RFQ / RFO LPAs SB/DVBE	Yes No, if using SB/DVBE
\$5,000.01 - \$249,999.99 SB/DVBE Option	Two (2) NOTE: Must be from 2 SBs or 2 DVBEs	SB/DVBE	No

Bid opportunities must be advertised for at least 10 working days (not including weekends or holidays) prior to the bid opening date.

Solicitations shall not be released prior to publication in the CSCR and must be released after or simultaneously with the Contract advertisement publication.

A copy of the published advertisement must be included in the procurement file.

Solicitations advertised in the CSCR may result in only one bid response. If the sole bid response is responsible and responsive, then the contract may be awarded.

The Buyer must document the procurement file with the justification to award to the sole bidder.

B. Phone Quotes

DRE requires written quotes for all orders. Phone Quotes are not accepted.

C. Bidder Instructions

The Bidders Instructions describe to potential bidders how to provide a responsive bid. The Bidder Instructions must be included and incorporated by reference in all competitive acquisition methods (written format) for Non-IT Goods and IT Goods and Services, except when conducting a formal solicitation where the evaluation is based on value effective.

The State's [Bidder Instructions](#) must be included or incorporated by reference in all competitive solicitations.

The State's General Provisions shall be incorporated by reference in all competitive acquisitions and purchase documents for non-IT goods and services valued in excess of \$4,999.00 and less than \$1,000,000.00.

The General Provisions may be supplemented with additional provisions tailored to a specific solicitation. Except where the General Provisions refer to specifics in the SOW, there are to be absolutely no changes made to the General Provisions without prior approval of DGS, PD.

[Non-IT Commodities General Provisions](#) shall be used or incorporated by reference in all competitive solicitations and purchases documents for non-IT goods.

The Buyers for non-IT purchases under \$5,000 provides the link to the CCC-307 in the email solicitations.

As an example, the below information can shall be copied and pasted underneath the buyer's signature when emailing an RFQ:

If you are responding to a solicitation for a quote, please consider the following Bidder's Instructions, General Provisions, and DVBE Program Requirements when preparing your information.

Bidder's Instructions:

<https://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/DGSPD%20451.pdf>

Non-IT General Provisions

<https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/Non-IT/NonITGeneralProvisions062122.pdf>

DVBE Program Requirements:

<https://www.dgs.ca.gov/-/media/8B524DA41A3E46B3ADBC69D8D7725E02.ashx>

Voluntary Statistical Ethnicity Data Sheet:

https://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_802.pdf

For more information about bidder instructions, general provisions and special provisions, go to: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Required-Language-for-Solicitations-and-Contracts?search=provisions>

If departments elect not to include and/or reference the General Provisions, then departments are required to obtain written confirmation, prior to award, that the supplier will abide by the following required contract provisions:

- Americans with Disabilities Act (ADA)
- Non-Discrimination and Statement of Compliance
- Drug-Free Workplace Certification
- Forced, Convict, & Indentured Labor
- National Labor Relations Board Certification
- Darfur certification
- Sweat free workshop
- Expatriate PCC10286

The procurement file must include this documentation.

D. Requirements

The procurement process for ordering non-IT Goods is considered decentralized; meaning purchasing staff ensure the necessity of products and services acquired, secure appropriate funding, and receive approval from division’s management before conducting the procurement. DRE Purchasing staff determine the appropriate acquisition type and method and compile required documentation including:

Included with Solicitation	Provided to Bidder to complete and return:
<ul style="list-style-type: none"> • Scope of Work and supporting documentation • Bidder Instructions 	<ul style="list-style-type: none"> • Payee Data Record • Bidder Declaration • SB/DVBE Certification Number • Seller’s Permit Number

1. California Civil Rights Laws Act

Pursuant to Public Contract Code section 2010, effective January 1, 2017, all procurements that exceed \$100,000 must include at the bid or proposal state, certifications documenting compliance with the Acts.

For all acquisition that including amendments that exceed \$100,000, departments must require vendors to certify that they are in compliance with the Acts. Use the following form and include it in the procurement file:

<https://dre4.sharepoint.com/sites/archive-2023-08-01T214109Z/DRE%20Internal%20Forms/Forms/AllItems.aspx?id=%2Fsites%2Farchive%2D2023%2D08%2D01T214109Z%2FDRE%20Internal%20Forms%2FRE%20750%2D799%20%28Information%20Technology%20Division%29%2Fcacivilrightscert%2Epdf&parent=%2Fsites%2Farchive%2D2023%2D08%2D01T214109Z%2FDRE%20Internal%20Forms%2FRE%20750%2D799%20%28Information%20Technology%20Division%29>. This applies regardless of the procurement approach, method or solicitation format used.

Note: The only exception to departments obtaining this information is for contracts awarded using DGS LPAs.

2. Loss Leader

All solicitations for goods/services shall contain the following statement:

“It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.”

Excluded acquisitions (do not require loss leader language):

- RFOs for acquisitions from Leveraged Procurement Agreements
- Acquisitions using Fair and Reasonable pricing
- Acquisitions using the SB/DVBE Option.

3. Non-Discrimination Ineligibility and Exception

Any contractor who wishes to contract with the State for non-IT and/or IT goods/services is subject to the provisions of GC section 12990 relating to discrimination in employment.

The “General Public Interest” section of the “California Regulatory Notice Register” lists businesses that the Department of Fair Employment and Housing has identified as ineligible to enter into State contracts.

To determine whether a contractor is eligible before award, the Buyer must review the list in the first issue of the most recent month at the site below:
http://www.oal.ca.gov/california_regulatory_notice_online/

to ensure the contractor is NOT listed. Once confirmed, the Buyer shall place a screenshot of the report, then include the documentation of eligibility in the procurement file.

NOTE: Contractors that do not meet the provisions of GC 12990 are not eligible to contract with the State for non-IT and IT goods.

The DRE provides the contractor the website and/or hardcopy of the Terms and Conditions related to the procurement type:

- Non-IT General Provisions
<https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/Non-IT/NonITGeneralProvisions062122.pdf>
- IT General Provisions
<https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/ITGeneralProvisions062122.pdf>

The requirements of GC section 12990 do not apply to a credit card purchase of goods of \$2,500 or less. The total amount of exemption authorized herein shall not exceed \$7,500 per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state

agency to monitor the use of this exemption and adhere to these restrictions on purchases.

4. Darfur Contracting Act

PCC sections 10475 through 10481, applies to any company that currently or within the previous three years has had business activities or other operations outside of the United States. All bidders must complete the [Darfur Contracting Act Certification Form](#) and submit with bid for acquisitions of non-IT goods or services regardless of the procurement approach, method or solicitation format (i.e., formal/informal bids, IFBs, RFPs, NCBs, SB/DVBE Option and under \$5,000 fair and reasonable pricing).

NOTE: The Darfur Contracting Act Certification Form is not required for the acquisitions of IT Goods/Services.

5. Iran Contracting Act

Pursuant to the Iran Contracting Act of 2010, PCC sections 2200 through 2208 state contractors are ineligible to bid on, submit a bid or proposal for, enter into, or renew any contract with the state for Goods or Services of one million dollars or more if the contractor engages in investment activities in Iran as defined in the Act.

The Act provides exceptions to the certification requirement, see PCC Sections 2203© and (d) for additional information regarding the exceptions.

Contractors shall submit the [Iran Contracting Act Certification](#) with any bid for Goods/Services of one million dollars or more.

Prior to executing any agreement, Buyers must check the list of ineligible contractors to confirm that the bidder is not on that list at:
<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses?search=iran>

DGS is required to provide/update the list of ineligible contractors that are prohibited from doing business with the State of California.

6. Tax Delinquents Prohibition Policy

Pursuant to the Public Contract Code section 10295.4, effective July 1, 2012, persons or companies identified as the largest tax delinquents by the Franchise Tax Board (FTB) or the California Department of Tax and Fee Administration (CDTFA) are ineligible to enter into any contract with the state for non-IT goods or services. Any contract entered into in violation of section 10295.4 is void and unenforceable.

Prior to executing any state contract or renewal for non-IT goods or services, the buyer must verify that the contractor is not on a prohibited list by checking both the FTB and CDTFA websites (links listed below).

This requirement applies regardless of the procurement approach, method, or solicitation format used, including, but not limited to: Request for Proposals, Invitation for Bids, and non-competitive awards.

Public Contract Code 10295.4 provides no exceptions to these prohibitions.

DRE buyers shall check the following web sites for delinquent taxpayers and document whether the seller was found delinquent.

FTB's Delinquent Taxpayer List: <https://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html>.

If found delinquent, a copy of the result must be included in the procurement file.

CDTFA Delinquent Taxpayer List: <https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm>.

7. Scope of Work

See Chapter 4, Section E for information regarding this requirement.

8. Payee Data Record

The State of California Revenue and Taxation Code Section 18646 requires that all State agencies provide the Taxpayer Identification Numbers of all parties entering into business transactions that may lead to payment from the State. This process facilitates tax compliance enforcement activities and the

preparation of Form 1099 and other information as required by Internal Revenue Code Section 6109(a).

The DRE requires a completed [Payee Data Record \(STD. 204\)](#) (to be obtained from a supplier prior to executing any procurement, if the supplier is not a government entity and not identified in FI\$Cal prior to any payment release. The taxpayer identification number is entered on the STD. 204, which is retained in DRE Accounting and the procurement file. It is acceptable to keep a STD. 204 in our records for future use as long as it was completed within the last 24 months with no change in information.

The completed STD. 204 must be provided to DRE's accounting office and must be attached to the purchase document; it is the buyer's responsibility when obtaining a copy of a supplier's LPA contract to ensure a completed STD. 204 is included or the buyer must obtain a completed STD. 204 from the supplier.

A taxpayer ID is not required for: reimbursable contracts, governmental entities, and local agencies. However, FI\$Cal requires state agencies to submit a STD. 204 for governmental entities.

NOTE: The DRE requires a Payee Data Record on file for every different vendor/supplier address with which business is conducted.

9. Bidder Declaration

All solicitations require a Bidder Declaration to be completed by the bidder and submitted with the bid response.

The Bidder Declaration form can be found at:

<https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf>

The Bidder Declaration is not required for:

- Amendments that do not involve new or substitute subcontractors.
- Emergency purchases as defined by PCC section 1102 if it is determined that the bidder has not been listed as ineligible to do business with the State, is not a CA certified DVBE and is not using subcontractors.
- Verbal solicitations under \$5,000 if determined that the bidder has not been listed as ineligible to do business with the State, does not possess a CA DVBE certification and the bidder is not using subcontractors.

- Purchasing activities using Community Rehabilitation Program (CRP) or CalPIA

For additional information, please see the [DVBE and SB Program Violations and Sanctions web page](#).

The DVBE Declaration form is necessary for any bid received from a certified DVBE.

The DVBE Declaration form can be found at:

https://www.documents.dgs.ca.gov/dgs/fmc/gp/pd/pd_843.pdf

10. Obtaining the Seller's Permit

In accordance with PCC section 10295.1, a copy of the seller's permit or certification of registration is required to be obtained on any tangible personal property purchase regardless of the dollar value. A State department or agency shall not contract for the purchase of tangible property from a supplier, contractor or an affiliate of a supplier or contractor, unless that supplier or contractor and all its affiliates that make sales for delivery into California, are holders of a California seller's permit issued by the BOE.

Always ensure that the seller's permit is active by going to the [California Department of Tax and Fee Administration's website](#). Print the validation page to include in the procurement file.

If the supplier's permit or registration number is known, another means of obtaining a copy can be found at:

<http://www.boe.ca.gov/info/publicrecords.htm>.

A copy of the supplier's/contractor's Seller's Permit or Certification of Registration must be obtained and accompany the Acquisition request or solicitation. This requirement does not apply to a CAL-Card purchase of goods of \$2,500 or less. The total amount of exemption authorized herein shall not exceed \$7,500 per year for each supplier/vendor from which a state agency is purchasing goods by CAL-Card.

Chapter 8 – Creating an IT Solicitation

Purchases made under the Department's IT Purchasing Authority including all IT goods and services must fall within the IT Goods and Services Purchasing Authority Delegation (refer to the [Purchasing Authority Approval Letter](#)).

A. Information Technology Acquisitions Request (ITAR) Process

All IT purchases must be submitted to ITD using the Information Technology Acquisitions Request (ITAR) process. An end user can open a help ticket or route the ITAR form to the ITS Buyer to initiate a purchase request.

The ITS Buyer will review the [ITAR form](#) and ensure the following fields have been completed:

- Cost Center
- Requestor Name
- Ship To Location
- List of End Users and a brief description of product and business need (Justification/Comments)
- Date Needed and Priority
- Product information such as Quantity, Description, Manufacturer Part Number, Unit Cost, and Taxable status

Any relevant documentation, such as additional justification, statement of work, pricing charts or specifications should be attached as well.

Once all required fields are completed the Purchase Request may be submitted for review and approval.

Functional Managers and Budget Officers are designated by their respective Program management and the list of those individuals can only be modified with the Division Chief's approval. Upon approval from both a Functional Manager and a Budget Officer, ITS will automatically forward the form to the Asset Manager (AM) system. A Purchase Request that does not receive both budgetary and management approval will remain in a pending status until fully approved or cancelled.

The ITS Buyer must review each Purchase Request to determine whether the product and justification meet DRE standards. It is also important to validate any research the customer has done along with the product description and manufacturer part number. If the product does not meet DRE standards, email the Requestor. Inadequate

justifications should be forwarded to management for further review and consultation with the customer. If necessary, deny the Purchase Request (cancelling it out of AM).

Sometimes it is necessary to gather approvals from additional sources such as the CDT, DGS or other internal and external control entities. Common instances include the Project Approval Lifecycle (PAL), IT Hardware Contract Exemptions and Telecommunications approvals.

A few examples are provided below; however, it is important to follow the appropriate approval process for the activity in question. This ensures the DRE remains in compliance with state law, regulations, and guidelines.

Project Approvals – All project-related approvals (PAL, Special Project Report, Post Implementation Evaluation Report (PIER), etc.) generally go through the DRE's Project Management Office as they maintain the relationship with the DRE's Project Oversight Contact assigned by the CDT.

IT Hardware Contract Exemption – Exemptions from a mandatory SC will follow an internal approval path of the DRE's IT Purchasing Authority Contact and the PCO prior to being sent to the DGS contract administrator for that particular contract. The justification approval form along with more details can be found at the following website: <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Request-an-IT-Hardware-Contract-Exemption?search=exemption%20process>

Telecommunication – Telecom approvals are handled through the DRE's BSO in conjunction with DRE's ITD who work with the CDT for Cal Net 2 and Cal Net 3 acquisitions.

The IT procurement authority for acquisitions that are part of a reportable IT Project from the DGS to the CDT, effective July 1, 2013. These changes are being made pursuant to statutory changes set forth in SB 71, Section 51; and as revised in PCC section 12100. The DGS has statutory authority to grant purchasing authority to those departments demonstrating the capability to make purchases that adhere to State statutes, regulations, executive orders, policy, procedures, sound business practices, and cost effectiveness and that are in the best interest of the State.

The CDT has granted IT Project Authority to the DRE with an IT Delegated Cost Threshold of \$2 million. IT Project Authority differs from DGS-PD IT purchasing authority because IT Project Authority includes costs associated with staffing, training, and travel which is not covered under delegated procurement authority.

B. Request / Advertising

The CSCR was established to maximize competition through advertising State purchasing and contracting opportunities. Departments must advertise solicitations in the CSCR when purchasing the following:

- IT Goods in excess of \$50,000.00
- IT Services in excess of \$4,999.99
- IT Goods and Services in excess of \$4,999.99 on the service portion only

Non-IT Goods – Informal Solicitations			
Dollar Threshold	Quotes Needed	Method	CSCR Advertising?
Under \$5,000.00	Two (2), Fair & Reasonable (F&R) – One (1)	SB/DVBE Option F&R	No
\$4,999.99 - \$49,999.99	Three (3) SB/DVBE Option – Two (2)	RFQ LPAs SB/DVBE	No
\$50,000.00 - \$100,000.00	Three (3) SB/DVBE Option – Two (2)	RFQ / RFO LPAs SB/DVBE	Yes No, if using SB/DVBE
\$5,000.01 - \$249,999.99 SB/DVBE Option	Two (2) NOTE: Must be from 2 SBs or 2 DVBEs	SB/DVBE	No

Bid opportunities must be advertised for at least 10 working days (not including weekends or holidays) prior to the bid opening date.

Solicitations shall not be released prior to publication in the CSCR and must be released after or simultaneously with the Contract advertisement publication.

A copy of the published advertisement must be included in the procurement file.

Solicitations advertised in the CSCR may result in only one bid response. If the sole bid response is responsible and responsive, then the contract may be awarded.

The Buyer must document the procurement file with the justification to award to the sole bidder.

C. Phone Quotes

DRE requires written quotes for all orders. Phone Quotes are not accepted.

D. Bidder Instructions and General Provisions

The Bidders Instructions describe to potential bidders how to provide a responsive bid. The Bidder Instructions must be included and incorporated by reference in all competitive acquisition methods (written format) for non-IT goods and IT goods and services, except when conducting a formal solicitation where the evaluation is based on value effective.

The State's [Bidder Instructions](#) must be included or incorporated by reference in all competitive solicitations.

The State's General Provisions shall be incorporated by reference in all competitive acquisitions and purchase documents for IT Goods and Services valued in excess of \$4,999.99 and less than \$1,000,000.

The General Provisions may be supplemented with additional provisions tailored to a specific solicitation. Except where the General Provisions refer to specifics in the SOW, there are to be absolutely no changes made to the General Provisions without prior approval of DGS, PD.

The State's [General Provisions](#) shall be used or incorporated by reference in all competitive solicitations and purchases documents for non-IT Goods.

[Information Technology General Provisions](#) shall be used or incorporated by reference in all competitive solicitations and purchase documents for IT goods.

[Cloud Computing-Software as a Services \(SaaS\)](#) shall be used or incorporated by reference in all competitive solicitation documents for IT goods and/or IT services.

[Cloud Computing Special Provisions for Software as a Services \(SaaS\)](#) shall be used or incorporated by reference in all competitive solicitation documents for IT goods and/or IT services.

[Cloud Computing Special Provisions for Infrastructure as a Service \(IaaS\) & Platform as a Service \(PaaS\)](#) shall be used or incorporated by reference in all competitive solicitation documents for IT goods and/or IT services.

As an example, the below information can shall be copied and pasted underneath the buyer's signature when emailing an RFQ:

If you are responding to a solicitation for a quote, please consider the following Bidder's Instructions, General Provisions, and DVBE Program Requirements when preparing your information.

Bidder's Instructions:

<https://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/DGSPD%20451.pdf>

IT General Provisions

<https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/ITGeneralProvisions062122.pdf?la=en&hash=A627F242C01919F872687EC62B8BC6BF41BE876E>

IT General Provisions - Cloud Computing Software as a Services (SaaS)

https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/CloudComputing_SaaSGeneralProvisions062122.pdf?la=en&hash=7B3D8F241D1486B9CA44AAE0932AA21BBBE19D74

Special Provisions – Cloud Computing for Software as a Service (SaaS)

https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/CLOUDCOMPUTINGSERVICESPECIALPROVISIONS_18_0301.docx?la=en&hash=D15B144C86A54D492E4E19AE810F7F35EA8D171F

Special Provisions – Cloud Computing for Infrastructure as a Service (IaaS) & Platform as a Services (PaaS)

https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/CLOUDCOMPUTINGSPECIALPROVISIONS_Infrastructure-as-a-Service-and-Platform-as-a-Service.pdf?la=en&hash=24218F2AED4E47885FBCB20B1107EA484203EFF3

DVBE Program Requirements:

<https://www.dgs.ca.gov/-/media/Divisions/PD/OSDS/Certification/DVBE/DVBEProgramRequirements.pdf?la=en&hash=FBCA257A3ED083F3DBB85ECEEB37013CBCF0545C>

Voluntary Statistical Ethnicity Data Sheet:

https://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/PD_802.pdf

For more information about bidder instructions, general provisions and special provisions, go to: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Required-Language-for-Solicitations-and-Contracts?search=provisions>

E. Requirements

IT procurement is centralized within the DRE ITD. All IT transactions are submitted via an [ITAR Form \(RE 767\)](#) through the DRE IT Procurement staff and the following documentation will need to be included with your solicitation, as well as requested from the Bidder to complete and return:

Included with Solicitation	Provided to Bidder to complete and return:
<ul style="list-style-type: none"> • Scope of Work and supporting documentation • Bidder Instructions 	<ul style="list-style-type: none"> • Payee Data Record • Bidder Declaration • SB/DVBE Certification Number • Seller's Permit Number

The following bid requirements apply:

- Acquisitions up to a value of \$9,999.99 require two (2) quotes from responsible suppliers whenever there is a reason to believe a response from a single source is not a fair and reasonable price. Fair and reasonable documentation must be included in package, along with the Acquisition Request. Refer to Consolidated SCM, Vol. 2, Chapter 15, Section 1510 whenever there is reason to believe a response from a single source is not a fair and reasonable price.
- If an acquisition is formal competitive and over \$100,000, then DGS will complete the procurement.

1. California Civil Rights Laws Act

Pursuant to Public Contract Code section 2010, effective January 1, 2017, all procurements that exceed \$100,000 must include at the bid or proposal state, certifications documenting compliance with the Acts.

For all acquisition that including amendments that exceed \$100,000, departments must require vendors to certify that they are in compliance with

the [Civil Rights Laws Act](#). This applies regardless of the procurement approach, method or solicitation format used.

Note: The only exception to departments obtaining this information is for contracts awarded using DGS LPAs.

2. Loss Leader

All solicitations for goods/services shall contain the following statement:

“It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.”

Excluded acquisitions (do not require loss leader language):

- RFOs for acquisitions from Leveraged Procurement Agreements
- Acquisitions using Fair and Reasonable pricing
- Acquisitions using the SB/DVBE Option.

3. Non-Discrimination Ineligibility and Exception

Any contractor who wishes to contract with the State for non-IT and/or IT goods/services is subject to the provisions of GC section 12990 relating to discrimination in employment.

The “General Public Interest” section of the “California Regulatory Notice Register” lists businesses that the Department of Fair Employment and Housing has identified as ineligible to enter into State contracts.

Use the list in the first issue of the most recent month at the site below:

http://www.oal.ca.gov/california_regulatory_notice_online/

The DRE provides the contractor the website and/or hardcopy of the Terms and Conditions related to the procurement type:

- Non-IT General Provision (GSPD)
<https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/Non->

[IT/NonITGeneralProvisions062122.pdf?la=en&hash=7D58E4294765EA74730DA67AEECF7CE6247B4A3A](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/ITGeneralProvisions062122.pdf?la=en&hash=7D58E4294765EA74730DA67AEECF7CE6247B4A3A)

- IT General Provisions <https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/ITGeneralProvisions062122.pdf?la=en&hash=A627F242C01919F872687EC62B8BC6BF41BE876E>

The requirements of GC section 12990 do not apply to a credit card purchase of goods of \$2,500 or less. The total amount of exemption authorized herein shall not exceed \$7,500 per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on purchases.

4. Iran Contracting Act

Pursuant to the Iran Contracting Act of 2010, PCC sections 2200 through 2208 state contractors are ineligible to bid on, submit a bid or proposal for, enter into, or renew any contract with the state for Goods or Services of one million dollars or more if the contractor engages in investment activities in Iran as defined in the Act.

The Act provides exceptions to the certification requirement, see PCC Sections 2203© and (d) for additional information regarding the exceptions.

Contractors shall submit the Iran Contracting Act Certification (https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/SCM/Iran_Contracting_Act_Verification_Form.pdf) with any bid for Goods/Services of one million dollars or more.

Prior to executing any agreement, Buyers are responsibility to check the list of ineligible contractors to confirm that the bidder is not on that list at:

<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses?search=iran>

DGS is required to provide/update the list of ineligible contractors that are prohibited from doing business with the State of California.

N-6-22 Certification of Compliance with Economic Sanctions Against Russia and Russian Entities and Individuals.

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Offeror represents that it is not a target of Economic Sanctions. The offeror shall certify that they are in compliance with the economic sanctions and Executive Order N-6-22. Should the State determine Offeror is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Offeror’s bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by DRE

5. Scope of Work

See [Chapter 7 – Creating a Non-IT Solicitation, Section D – Requirements, Item 7](#) or [Chapter 8 – Creating an IT Solicitation, Section D – Requirements, Item 7](#) for information regarding this requirement.

6. Payee Data Record

The State of California Revenue and Taxation Code Section 18646 requires that all State agencies provide the Taxpayer Identification Numbers of all parties entering into business transactions that may lead to payment from the State. This process facilitates tax compliance enforcement activities and the preparation of Form 1099 and other information as required by Internal Revenue Code Section 6109(a).

The DRE requires a completed [Payee Data Record \(STD 204\)](#) to be obtained from a supplier prior to executing any procurement, if the supplier is not a government entity and not identified in FI\$Cal prior to any payment release. The taxpayer identification number is entered on the Std. 204, which is retained in DRE Budgets. It is acceptable to keep a STD. 204 in our records for future use as long as it was completed within the last 24 months with no change in information.

The completed STD. 204 must be provided to DRE’s accounting office and must be attached to the purchase document; it is the buyer’s responsibility when obtaining a copy of a supplier's LPA contract to ensure a completed STD. 204 is included or the buyer must obtain a completed STD. 204 from the supplier.

A taxpayer ID is not required for: reimbursable contracts, governmental entities, and local agencies. However, FI\$Cal requires state agencies to submit a STD. 204 for governmental entities.

NOTE: The DRE requires a Payee Data Record on file for every different vendor/supplier address with which business is conducted.

7. Bidder Declaration

All solicitations require a Bidder Declaration to be completed by the bidder and submitted with the bid response.

The Bidder Declaration form can be found at:

<https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf>

The Bidder Declaration is not required for:

- Amendments that do not involve new or substitute subcontractors.
- Emergency purchases as defined by PCC section 1102 if it is determined that the bidder has not been listed as ineligible to do business with the State, is not a CA certified DVBE and is not using subcontractors.
- Verbal solicitations under \$5,000 if determined that the bidder has not been listed as ineligible to do business with the State, does not possess a CA DVBE certification and the bidder is not using subcontractors.
- Purchasing activities using Community Rehabilitation Program (CRP) or CalPIA

For additional information, please see the [DVBE and SB Program Violations and Sanctions web page](#).

The DVBE Declaration form is necessary for any bid received from a certified DVBE.

The DVBE Declaration form can be found at:

https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd/pd_843.pdf

8. Obtaining the Seller's Permit

In accordance with PCC section 10295.1, a copy of the seller's permit or certification of registration is required to be obtained on any tangible personal

property purchase regardless of the dollar value. A State department or agency shall not contract for the purchase of tangible property from a supplier, contractor or an affiliate of a supplier or contractor, unless that supplier or contractor and all its affiliates that make sales for delivery into California, are holders of a California seller's permit issued by the BOE.

Always ensure that the seller's permit is active by going to the [California Department of Tax and Fee Administration's website](#). Print the validation page to include in the procurement file.

If the supplier's permit or registration number is known, another means of obtaining a copy can be found at:

<http://www.boe.ca.gov/info/publicrecords.htm>.

A copy of the supplier's/contractor's Seller's Permit or Certification of Registration must be obtained and accompany the Acquisition request or solicitation. This requirement does not apply to a CAL-Card purchase of goods of \$2,500 or less. The total amount of exemption authorized herein shall not exceed \$7,500 per year for each supplier/vendor from which a state agency is purchasing goods by CAL-Card.

Chapter 9 – Evaluation

The evaluation and selection process should be developed during the planning stage of the procurement whether it's an Informal or Formal bid process. Once quotes are received, the Buyer (evaluator) must be unbiased and evaluate all bids fairly. If there is a conflict of interest or the appearance of one, the Buyer must withdraw from participating in the evaluation and contact their management for assistance.

Bids/quotes must include all the requirements described in the solicitation. Any attempted modification to the bid document is considered a material deviation from the specifications and cannot be considered – the bid/quote must be rejected.

Bid Submissions:

Bid submissions will be handled as follows:

- Bids will be received following the directive on the bid request (i.e., through e-mail, hand delivery or the postal service). Currently, DRE does not accept faxed bids.

- Bids are due by the bid closing date and time (Pacific Standard Time) identified in the solicitation.
- When sealed bids are required, each bid must be separately sealed inside an enveloped, signed, received by the closing time and date specified, and on all forms to be considered for award.
- Bids must be kept in a secured area and remain confidential until bid opening.
- Bids submitted after the closing time and date will be considered non-responsive.
- Bids must be dated and time stamped upon receipt. Buyers are required to create a bidder response list/log recording date, time bids are submitted with the bidder's company name, the bidder's contact person submitting the bid response and the amount quoted.

Bid Assessment and Documentation

The buyer must evaluate solicitation responses in accordance with the evaluation methodology established in the solicitation. The evaluation process and resulting source selection decision may be documented utilizing the Procurement Summary Document as established by DGS-PD.

Though this document is recommended, however, if this form or a revised form of this document is not used, then the procurement file must include the Bid/Quote Worksheet or the Evaluation and Selection Report to document how and why the award was made.

In using a [Procurement Summary](#), it:

- provides the history of those particular procurement transactions by explaining the significant facts, events and decisions leading up to the contract award.
- is completed for each solicitation, documenting events and decisions leading to award.
- should be written clearly, concisely, and realistically to support the soundness of the purchasing decision.
- document the offer prices.
- determines the selected supplier is responsible and the bid is responsive.

When utilizing a team, the evaluation of bids should be done independently by at least 3 people with knowledge regarding the procurement and the same people should evaluate each bid. The bids should be scored using a standardized scoring sheet that mirrors the information from the solicitation.

Once all evaluations have been completed, the evaluation scores are averaged for each bidder and an evaluation summary is completed by the evaluation team that lists the final

average score for each bidder who was evaluated. You can factor in SB preference and DVBE incentive if this was included in the solicitation.

The bidder with the highest score after SB/DVBE adjustments will be awarded the contract. The evaluation sheets and summary should be saved and become a part of the final contract file.

In the event of a tie, a coin toss is the chosen tie-breaking method and is notated in the solicitation. The toss must be fully documented, witnessed by a team member, and signed by both. If a SB and a SB/DVBE tie, the award goes to the SB/DVBE.

NOTE: When using the RFP format, an Evaluation and Selection Report must be used to document the evaluation and selection process used for contract award. This Evaluation and Selection Report must be completed in Fi\$Cal for all RFPs.

IT Value Effective Methodology

For IT Goods and/or Services transactions valued at over \$100,000, bids should be evaluated based on a value-effective methodology, where factors other than cost are of considerable value to the department. This applies unless the procurement is straight-forward and requirements are known, detailed, and clear such that the evaluation and selection can be based on lowest net cost meeting all other bid specifications. All requirements must be clearly identified associated points clearly identified in the evaluation section of the solicitation (or denoted non-scorable). The method for determining the winning bid must be clearly stated.

Example:

“Award may be made to the supplier achieving the highest cumulative number of points from the administrative requirements, technical requirements, and cost proposal evaluation phases.”

When using the value-effective evaluation methodology, the Two-Envelope Evaluation process must be followed.

Two-Envelope Evaluation Process

- Cost proposal must be sealed in its own envelope and clearly labeled as “Cost”
- The Administrative and technical proposals must be submitted together in a sealed envelope and clearly labeled as “Administrative and Technical.”

- The Administrative and Technical proposal will be evaluated to determine responsiveness of the bidder.
- All bidder responses will be kept sealed and under lock and key until evaluation of all technical and administrative criteria is completed and the results published.
- Once the bid has closed, the sealed cost proposals for the responsive proposers shall be opened at the time and place designated in the solicitation and the remainder of the evaluation completed. (Cost Buyers will meet to open bids and determine if the suppliers are responsive and responsible. Lastly, the cost is opened to determine lowest price. (Cost proposals of non-responsive bids/proposals will not be opened and returned to the proposer at their own expense.)
- Evaluators must verify all mathematical calculations.

Cost Proposal Certificate

The Cost Proposal Certificate is the State's confirmation that all proposals have been maintained sealed and under lock and key until the time cost proposals are opened. This certificate is retained within the procurement file and certified by the buyer that the information is correct.

Public Record Availability

During the evaluation period, solicitation and bid information are to be kept confidential. Once bids are opened, evaluated, and awarded, they become public records available to anyone requesting to review the file.

Where the solicitation process requires posting a Notice of Intent to Award, procurement documents become public and bidders may request a review of the procurement file after the Notice of Intent to Award is posted. Refer to Public Records Act, GC 6250 for exemptions from disclosure.

Note: For value effective acquisitions the results of the administrative and technical score shall be made available before the cost proposal opening (see PCC 12102.2 (a)(2); for the rule on solicitations under the Alternative Protest Process, see Chapter 6, Topic 4, of this manual or 1 CCR [California Code of Regulations] section 1404).

Bid Response / Award Availability

Where notices of intent to award are not used AND bid response/award information after award is complete, bid/response/award information shall be made available to any requestor. This information is to be retained in the procurement file.

Intent to Award

For IT goods or goods and services solicitations exceeding \$100,000, all bidders must be notified of an intent to award a contract at least five (5) working days prior to award, to allow for any protests. This notification period may be shorter when the Alternative Protest Process is used.

- For IFBs, any proposer who claims they are the lowest responsible bidder meeting the specifications for the contract and are not awarded may protest.
- For RFPs, any proposer who claims that the department failed to follow the procedures specified in the RFP may protest.

Notice of Intent to Award is submitted to the winning bidder after the five-day period.

Where notices of intent to award are not used, departments shall make available to any requestor, bid response/award information after award is complete. This information is to be retained in the procurement file and is subject to public inspection.

A. Responsive / Responsible

A supplier that submits a *responsive* bid is one who clearly indicates compliance without material deviation from the requirements of the solicitation and the terms and conditions of the proposed contract. Buyers evaluate bid responses by first determining that each one is clearly responsive to the bid requirements.

The State has established certain requirements with respect to bids to be submitted by prospective contractors. The use of “shall”, “must” or “will” in solicitations, indicates a requirement or condition from which a deviation, if not material, may be waived by the DRE Legal Counsel. A deviation from a requirement is material if:

- the deficient response is not in substantial accord with the solicitation requirements,
- it provides an advantage to one bidder over other bidders or
- has a potentially significant effect on the delivery, quantity or quality of items bide, amount paid to the bidder or on the cost to the State.

A responsible bidder possesses the experience, facilities, reputation, financial resources, and other factors required for contract award.

The definition of a supplier that submits a responsive and responsible bid is one who clearly indicates compliance without material deviation from the solicitation's terms and conditions and who possesses the experience, facilities, reputation, financial resources, and other factors existing at the time of contract award.

Determine the lowest responsible bidder, in accordance with Consolidated SCM, Vol. 2, Chapter 4, achieving competition is defined as receiving responsive bids from at least two responsible bidders, if the solicitation is not advertised. If only one responsive and responsible bid is received, the bid shall be cancelled and re-solicited. Be sure to contact the suppliers solicited to determine why they were unresponsive and consider modifying the solicitation to broaden competition. Responsive and responsible bids include the following:

- Bid was submitted on time
- Bid was signed by bidder
- Meets the requirements of the IFB/RFP

Bids shall be rejected if any of the following scenarios occur:

- Bid was submitted late
- Bid not signed by the bidder
- Bid is non-responsive with requirements of the IFB/RFP
- Bid does not meet the administrative requirements of the IFB/RFP
- Bid contains alternative agreement language from a prospective bidder that is considered counter proposal, or
- Bid contains terms and conditions that conflict with the IFB/RFP terms and conditions

To ensure effective competition, bids must be requested from a variety of suppliers. A search for suppliers can be performed through internet searches, catalog/marketing prices; industry listing; CA SB/DVBE listing; recommendations by customers; and [Cal eProcure](#). Be sure to consider DRE's SB/DVBE First Policy.

If competition results in only one responsive bid from a responsible bidder even though multiple bids were received, a Buyer may declare that competition has been achieved under the following conditions, after carefully considering all factors of the situation: risk, urgency and impact to their program. The Buyer must document the procurement

file with the reasons why only one responsive bid was received along with the evaluation of the other bidders who were determined to be non-responsive or not responsible before the Buyer can proceed with the award.

NOTE: Although advertising in the CSCR is not required within non-IT goods transactions valued from \$5,000 - \$50,000, it is recommended. Advertised solicitations may result in only one bid response. If the sole bid response is responsible and responsive, then the contract may be awarded.

If it is determined there is no competition, refer to Consolidated SCM, Vol. 2, Chapter 15 for NCBs. A response of 'No Response' or 'No Bid' cannot be considered as responsive.

Be sure to document the following:

- Suppliers solicited
- Responses received

B. Commercially Useful Function (CUF)

In accordance with GC section 14837 and Military & Veteran's Code, all SB, MB and DVBE contractors, subcontractors and suppliers that bid on or participate in a state contract, regardless of whether it is a verbal or written solicitation and/or paid for using the CAL-Card as a payment method, must-perform a CUF.

The requirement to determine CUF is not affected by the applicability of the 5% SB Preference and/or the DVBE participation requirement or incentive compliance. There is no exception for the evaluation of CUF compliance. Consequently, certified SB, MB and DVBEs must perform a CUF. Buyers must determine that a CUF will be performed prior to contract award.

A certified SB, MB or DVBE is deemed to perform a CUF when the buyer determines the business does the following:

- Is responsible for the execution of a distinct element of the work of the contract?
- Is accountable by actually performing, managing, or supervising the work involved?
- Performs work that is normal for its business services/functions?
- Is responsible with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, quality and quantity, installing, if applicable and making payment?

- Is not subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices?

DRE Buyers are to use the [CUF worksheet](#) to determine CUF.

All solicitations require a Bidder Declaration to be completed by the bidder and submitted with the bid response.

- Bidder Declaration (GSPD 05-105) – <https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf>
- DVBE Declarations (STD. 843) - https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_843.pdf

The Bidder Declaration is not required for:

- Amendments that do not involve new or substitute subcontractors.
- Emergency purchases as defined by PCC section 1102 if it is determined that the bidder has not been listed as ineligible to do business with the State, is not a CA certified DVBE and is not using subcontractors.
- Verbal solicitations under \$5,000 if determined that the bidder has not been listed as ineligible to do business with the State, does not possess a CA DVBE certification and the bidder is not using subcontractors.
- Purchasing activities using Community Rehabilitation Program (CRP) or CalPIA

For additional information, please see the [DVBE and SB Program Violations and Sanctions web page](#).

C. Material Deviations

Material deviations of mandatory requirements cannot be waived and the bid must be rejected.

The State has established certain requirements with respect to bid language. The use of "shall," "must," or "will" (except to indicate simple futurity) in solicitations, indicates a mandatory requirement or condition from which a deviation may not be waived by the State. A deviation from a requirement is material if the deficient response is not in substantial accord with the solicitation requirements, provides an advantage to one bidder over other bidders or has a potentially significant effect on the delivery, quantity or quality of items bid, amount paid to the supplier or on the cost to the State. Material deviations cannot be waived.

For instance, if a solicitation requires a telephone system that serves 500 users and the bidder only offered a system that would serve 250 users.

The words "should" or "may" in solicitations indicate desirable attributes or conditions but are non-mandatory in nature. Deviation from, or omission of, a desirable attribute or feature, will not cause rejection of the bid.

The State may reject any or all bids and may waive any immaterial deviation or defect in a bid. The State's waiver of any immaterial deviation or defect shall in no way modify the solicitation documents or excuse the bidder from full compliance with the solicitation specifications if awarded the contract.

All such deviations must be thoroughly documented using the [Deviation Worksheet](#) and placed in the procurement file to support the rejection.

D. Immaterial Deviations

A bid/quote in no way modifies the solicitation's documents or excuses the bidder from full compliance with the solicitation's specifications if awarded the contract.

For example, if the bidder referenced the wrong page in their supporting technical document.

The DRE does not accept alternate agreement language or provisions from a bidder. A bid/quote with such language will be considered a counter proposal and will be rejected.

All suppliers' bid/quote information received is kept confidential until after award.

Suppliers are assessed and evaluated to ensure that all the requested documentation has been correctly submitted.

The Bid/Quote worksheet is used to document responses from informal solicitations. A Procurement Summary is used to document responses received from formal solicitations.

Where the solicitation process requires posting a Notice of Intent to Award, the procurement file documents are public and available for anyone to review prior to the award of the contract. Refer to Public Records Act, GC 6250 for exemptions from disclosure. See also VCGC bid protest regulations.

The bid response consists of a bid summary with information on the suppliers who responded to the solicitation. Award availability is a courtesy notification to all suppliers who submitted bids informing them of the outcome.

E. Shipping Methods

In most cases, freight charges should be incorporated into the purchase price of the goods being purchased. Buyers conducting competitive solicitations shall determine shipping terms during the procurement planning phase. The preferred shipping method is “FOB” Destination Freight Pre-paid where the contractor is responsible for freight charges and costs as well as owning the goods during transit.

Prior to executing a requisition, contract or PO, Buyers shall complete a [Freight Rate Analysis Request](#) and submit to DGS’s Transportation Management Unit (TMU) at: transportationmanagement@dgs.ca.gov for approval before using the following shipping methods:

- FOB Destination, Freight Prepaid/Add – Shipping charge is assessed from the originating shipping point to the point of delivery. Purchase document must reflect “freight not to exceed cost per supplier quote state on PO.”
- FOB Origin, Freight Collection – The TMU will determine the cost and routing of freight.

Provide TMU with the following information:

- City, State and Zip Code of origin and destination
- Description of goods being shipped
- Estimated shipping weight
- Special handling requirements
- National Motor Freight Classification

The DGS TMU must be contacted to determine the cost and routing of freight, whenever the weight of the purchase item is 100-lbs or more and FOB destination, Freight Prepaid is not used.

For more information visit the [Transportation Management](#) website.

F. Sales Tax

DRE does not pay federal tax but pays state sales tax and/or use tax at the rate according to where the products are physically received. To determine a county's current tax rate, refer to [CDTFA's California City & County Sales & Use Tax Rates](#).

All state sales and use tax laws, rules and policies apply regardless of payment method, including CAL-Card purchases.

The BOE has rules, in accordance with [Regulation 1502 \(IT\)](#) and [Regulation 1546](#) (Non-IT goods) of the Sales and Use Tax Regulations of the Business Taxes Law Guide, some supplies are taxable. For more information, go to [BOE website](#).

Example:

35% of copier maintenance is taxable. This requires maintenance to be split into two lines, taxable vs. non-taxable (also known as the 3-line solution in FISCal).

G. Award to Other Than Lowest

Pursuant to PCC 10306, whenever a contract or PO under this article is not to be awarded to the lowest bidder, that bidder shall be notified 24 hours prior to awarding the contract or PO to the non-lowest bidder.

Informal IT/Non-IT Solicitations - If the Buyer determines that the lowest bidder will not be awarded the contract, then the Buyer will document the procurement file in sufficient detail to justify the determination of the lowest bidder being non-compliant then award the purchase to the next lowest bidder.

IT/Non-IT Formal evaluations – DRE does not have delegated purchasing authority for formal solicitations. This evaluation is completed by DGS on DRE's behalf.

IT Project Formal evaluations - DRE does not have delegated purchasing authority for formal solicitations. This evaluation is completed by CDT on DRE's behalf.

The memorandum shall include a description of the requirement(s) not met by the lowest bidder and provide sufficient detail to justify the determination of the lowest bidder being non-compliant.

Note: This action is unnecessary if a bidder submits a lower bid that is complaint, but will not receive the award based on a preference (i.e. SB and/or DVBE).

Chapter 10 – Protest / Disputes

Prior to award, bidders may file a protest against the awarding of the agreement on the grounds that the bidder is the lowest responsible bidder (IFB) and meets the specifications of the bid. If a protest is received, the Buyer shall notify DGS, Procurement Division's Dispute Resolution Unit (DRU) by phone or email at: 916-375-4581 or pdprotest@dgs.ca.gov and not award the purchase until either the protest has been withdrawn or the DGS, DRU or DGS, OLS has decided the matter.

The Buyers provides the information for protesting the award of contracts in all IFBs and RFPs. A competitive solicitation must provide key action dates that notify bidders of the last day to file a protest of the proposed contract award for non-IT Goods valued over \$50,000. Sample language in a bid may include:

Notice of the proposed award(s) shall be posted in a public place in the DRE, 1651 Exposition Blvd., Sacramento, CA for five (5) working days prior to awarding the agreement.

If any proposer, prior to the award of agreement, files a protest with the DRE and the Department of General Services (DGS), Office of Legal Services, 707 Third Street, 7th Floor, Suite 7-330, West Sacramento, CA 95605, on the grounds that the (protesting) proposer would have been awarded the contract had the DRE correctly applied the evaluation standard in the RFP, or if the DRE followed the evaluation and scoring methods in the RFP, the agreement shall not be awarded until either the protest has been withdrawn or the DGS has decided the matter. It is suggested that you submit any protest by certified or registered mail.

Within five (5) days after filing the initial protest, the protesting proposer shall file with the DGS, Office of Legal Services and the DRE, a detailed statement specifying the grounds for the protest.

IT Goods and Services solicitations over \$100,000 must include a provision for notice of intent to award, must be a written document, must provide language regarding protest procedures and must be advertised.

IT procurement authority for acquisitions that are part of a reportable IT project is under the preview of CDT, effective July 1, 2013.

Pursuant to PCC 12125, et seq. refers to the Alternative Protest Procedure to decrease the number of frivolous protests.

Types of Acquisitions that prohibited protest language/protests:

- Fair and Reasonable
- RFQs under \$100,000
- LPAs
- SB/DVBE Option

After a purchase has been executed, post award disputes can occur.

Disputes shall be documented in the procurement file. If all parties are unable to agree, complete the following steps:

1. All conflicts or disagreements that affect contract performance shall be documented.
2. Discussions shall occur with all principals (contractor, buyer, contract administrator, project manager, etc.) involved in the conflict.
3. Review dispute language contained within the General Provisions and any additional contract provisions that may impact the dispute.
4. Every effort shall be made to reach an agreement that is acceptable to all participants.
5. Written summaries of the major points of the dispute shall be prepared.
6. DRE cannot gift public funds and must ensure that any monies or settlement are reasonable, legal, and justifiable.
7. DRE management and/or DRE Legal shall be involved, as appropriate.
8. If the dispute resolution:
 - Requires clarification or change to the purchase document, an amendment to document the action shall be prepared and processed expeditiously.
 - Is unsuccessful, then the contractor must submit a written demand for final decision to the department director or designee. The contractor's written demand must present all facts of the dispute and be signed by a company officer.
9. The DRE Commissioner or designee shall render a final decision within a timely manner not to exceed 90 days from receiving the bidder's demand.
10. If the supplier is not satisfied with the DRE's final decision, then the supplier may appeal the decision to the DGS, Procurement Division's Dispute Resolution Unit for resolution at any time in the process. Either party to the dispute may invoke the Disputes clause.

Chapter 11 – Award and File Management

A. Determining the Appropriate Purchase Document

Each state agency has authority to purchase non-IT Goods with a dollar value up to \$100 excluding taxes. The authority to transact purchases in excess of \$100 is vested in the DGS-PD per PCC section 10308. State agencies cannot purchase non-IT Goods in excess of \$100 or IT goods without Purchasing Authority from DGS-PD.

Determining what the business need is, Buyers will establish which procurement method and/or STD. form is used. DRE uses FI\$Cal PO printable versions and only use forms listed below as an emergency/workaround.

- STD. 40A – Non-IT, under \$100.00 (pre-tax), including shipping costs
- STD. 65 – IT and Non-IT purchases of \$100.00 or more
- STD. 67 – Purchases from OSP
- STD. 213 – IT Goods and Services
- STD. 213A – Standard Agreement amendments
- STD. 215 – Agreement Summary (Encumbrance document – for Accounting)
- CON-001 – Service Order, agreements under \$5,000

NOTE: Leveraged Procurement Agreements (LPA) require the use of the STD. 65, although there may be some options or exceptions. LPA user instructions must be viewed to ensure that the proper purchase document is used when executing purchasing against an LPA.

The forms below require electronic signatures for DGS, OLS approval (non-IT services only)

- Std. 213 – Service contracts, including inter-agency agreements
- Std. 215 – Agreement Summary (Encumbrance document – for Accounting)

Step-by-Step instructions are provided to complete purchase documents on the shared drive as well as on the [FI\\$Cal web site](#).

PO Numbers are assigned in numerical order using Smart Numbering, assigned by the divisions. Example: 2017ITS01, 2017 indicates the fiscal year, ITD indicates the division, 001 the numerical order of the PO.

For CAL-Card purchases, an approved Purchase Request form must be completed prior to a purchase following all the required procurement procedures. Exceptions being, BSO and emergency purchases.

Purchasing through CalPIA is mandatory if they carry the needed item.

We cannot accept price bundling or complete package quotes for a solicitation, all items must be itemized individually.

When the weight of a purchase is over 100lbs, shipping through the TMU must be considered Also, the [Freight Rate Analysis Request](#).

Amending or canceling a PO begins with a requisition being submitted by the division when there is a change to the original purchase. The STD. 65 and FI\$Cal Requisition must state the purpose of the amendment or cancellation and contain the original total, amended total, and adjusted total. Canceling a PO in FI\$Cal requires closing it using the [Buyer's Workbench](#) in FI\$Cal.

Signature Authority:

- Less than \$100.00 are approved/signed at Program level by its manager or designee.
- Under \$50K, hard copies of STD. 65s are initialed by Program management or their designee, then routed for signature concurrently with the FI\$Cal PO. Both are subject to peer review by the BSO or IT Buyer and routed to the delegated authority coordinator and the budget/accounting office for budget approval.
- Purchases over \$50K follow the same process as purchases under \$50K, except with an added layer of approval by the Assistant Commission of Administration or his/her designee.

To view current signature authority list, see [Section E: Signature Authority](#).

B. [State Contract and Procurement Registration System \(SCPRS\) and FI\\$Cal](#)

The purpose of FI\$Cal Start Contracting and Procurement Registration System (SCPRS) is to collect contracting and purchasing information. It provides the State of California with a centralized database with information on state contracting and purchasing transactions and demonstrates visibility and accountability. Transactions subject to DGS oversight must be reported in this system. For more information, see [Management Memo 16-03](#).

DRE buyers shall register all transactions in the [FI\\$Cal SCPRS System](#), regardless of dollar value and acquisition method.

Step-by-Step instructions on how to register into the Fi\$Cal and [Cal eProcure web site](#) and [Broadcast Bulletin - Transition from BidSync \(SCPRS and CSCR Functions\) to Fi\\$Cal](#)

C. Official Procurement File Procedures

The Buyers provide each end user a worksheet that identifies the different procurement methods and the required documentation to be maintained.

Documentation begins at the outset of the procurement process, as the buyer should compile any information received from program regarding the requisition or how the need for purchase was established by program. The buyer should document the rationale of what kind of procurement method will be used. Any pertinent information shared between program and the buyer, such as quotes provided by program, possible vendors, time constraints, etc. should be documented.

The buyer shall describe how competition will be sought, promoted, and sustained throughout the course of the purchasing activity. If open competition is not the method of choice, the basis of the decision shall be documented.

The degree of documentation detail is determined by the cost, risk, complexity, and criticality of the purchasing activity.

Example:

If the selection of the purchase approach was dictated by time constraints, then appropriate notations in the procurement file should be made.

The Buyer should maintain a diary of the events and decisions that lead up to and complete the purchase transaction, providing a timeline and history of the actions and decisions made throughout the procurement process. The buyer shall make notations of meetings, phone correspondence, print pertinent emails, decisions made and keep signed approval and route slips to be retained in the procurement file.

The Buyer shall create and maintain the procurement files, which must include adequate documentation that clearly demonstrates sound business judgement was used in the purchasing process and that all the applicable rules designed to protect the interests of the State and its taxpayers were strictly applied. Additionally, the Buyer shall keep in mind that the procurement file may become part of a response to a public record request.

Consequently, avoid typos, scratch outs, and personal notations not relevant to the procurement. Every physical or electronic file must include all required applicable items, as well as all decision-making documentation. The buyer will use a checklist for these that will assist in documenting the file. The buyer should also create a “Lessons Learned” document that describes any difficulties or lessons from the procurement so that future buyers can use this as a decision making and historical tool.

The following documents are required, as applicable to the acquisition type/requirements:

- Full solicitation (RFO, RFQ, RFI, IFB, RFP, etc.) with all attachments (i.e., SOW, Attachments/Exhibits, Cost Worksheets, specifications, provisions, terms and conditions, general provisions, confidentiality statement, bidder instructions, etc.) and addendums
- State agency-specific procurement documents
- All required approval documents with signatures
- List of solicited suppliers and contact information
- All solicitation responses
- Documentation of supplier non-response, if applicable
- CSCR Ad, if applicable
- Questions/Answers, if applicable
- Bid/Quote Worksheet
- Darfur Certification
- Bidder Declaration (GSPD-05-105)
- CCC-307, not required on IT
- DVBE Declarations (STD. 842)
- Waivers/Exemptions, if applicable
- Seller’s and/or Business permits
- Payee Data Record (STD. 204)
- All solicitation responses/narrative (i.e., cost worksheet and/or quote in separate sealed envelope, bidder references, resumes, bidder certification sheet, insurance certification, bidder minimum qualification documentation, mandatory requirements) with date/time stamp of receipt
- Evaluation and selection documents
- Material Deviation Worksheet
- Documentation of award to other than lowest bidder
- Protest documents, if applicable
- SB/DVBE Certification
- Commercially Useful Function
- Information Technology Acquisition Request (ITAR) (RE767)

- Verification Supplier is not tax delinquent
- SB Preference and DVBE Incentive calculation documentation
- Copy of entire LPA
- SB Off-Ramp documentation, if applicable/allowable on LPA
- Signed copy of the Contract Documents (STD. 65, STD. 213, STD. 210, STD. 213A, CON-001, STD. 215) and all attachments and amendments
- Contract Award Report (STD. 16), if applicable
- Procurement Summary, Evaluation & Selection Report (ESR)
- All correspondence (written and/or electronic)

Purchases of \$5,000 or more require a STD. 16. These are maintained on the shared drive and originals are kept with the procurement packet.

Chapter 12 – Post Award Contract Administration

Personnel assigned to perform supplier performance and contract administration activities are often referred to as a “contract manager” or “contract administrator”. The Contract Administrator is a post award responsibility, between the Requester and the supplier from contract award to contract closeout, ensuring the supplier delivers the product and/or service per the purchase document requirements and/or detailed description of the services to be performed. An individual must be assigned to monitor supplier performance. Any deviations or unacceptable performance levels shall be documented and provided to the Buyer to assist in problem resolution.

A. Roles and Responsibilities

The person assigned contract administration functions must be made aware of the expectations and requirements of the position, such as:

- Have sufficient knowledge of contracting principles as they relate to their responsibilities in administering the contract.
- Determine whether a post-award orientation with assigned contract administrator, project managers, and suppliers are warranted to achieve a clear and mutual understanding of all contract requirements and to identify and resolve potential problems prior to any contract performance.
- Communicate with both the Buyer and supplier on contractual issues.
- Monitor the Contractor to assure compliance with applicable laws, contract requirements and all expenditures charged by the Contractor.
- Maintain records in sufficient detail to allow anyone to review documentation and understand how the procurement was requested, conducted, awarded, and

administered. The records maintained by the contract administrator are incorporated into the procurement file and retained for compliance and/or auditing purposes.

- Review and approve invoices for services according to the terms of the Contract and forward to DAO in sufficient time to avoid late payment interest penalties.
- Issue an [Invoice Dispute Notification Form \(STD. 209\)](#) when an invoice dispute cannot be resolved. Disputed portions of the invoice should not be paid.
- Complete a [Contractor Evaluation Form \(STD. 4\)](#) for Non-IT/IT consulting services and any category of purchase, competitive, LPAs, NCB that is required within 60-days of the service contract completion. The STD. 4 shall be uploaded into FI\$Cal and kept as part of the procurement file. The evaluations shall remain on file by the department for a period of three years. If the Contractor does not satisfactorily perform the work or service specified in the Contract, the department must send one copy of the evaluation to DGS, OLS within five working days of the completion of the evaluation.
- Maintain records or logs to turn over to the Procurement Office at the completion of the Contract.
- Ensuring appropriate documents are distributed. (i.e., Memo of Service Contract to bargaining Unit; original copies to the contractor with attachments and/or exhibits; copies to Claim Audits and DAO; copies to DGS/Department of Finance, if applicable).
- Uploading the contract into FI\$Cal
- Encumbering funds via STD. 215
- Program contacts the contractor to execute contract and begin work. Prior to initial work, this may consist of a meeting with all parties involved to ensure there is a clear understanding of what's required.
- Monitoring performance of the contract

- Ensuring ethical standards are maintained and that Form 700, Conflict of Interest Form and DRE's Statement of Incompatible Activities are complete, if applicable.

For more information on ethical standards, refer to the Fair Political Practices Commission.

When establishing the procurement file for post award contract administration, DGS-PD recommends:

- Developing a user-friendly filing system. File by Contract/PO number or supplier name.

- Establishing a separate hard copy file for each Contract/PO administered.
- Developing a log sheet for a diary of activities. This may include dates and times of discussion and subject matter discussed.
- Developing spreadsheets for tracking expenditures, invoices, and/or timekeeping for the life of the transaction.
- Creating file dividers for:
 - Original Contract/PO and all amendments/addendums/supplements/changes
 - Work Authorizations
 - Deliverables
 - Correspondence – acceptance letters, termination notices, etc.
 - Invoices
 - SB/DVBE participation, including department and DGS approved substitutions all related supporting documentation, the Prime Contractor’s Certification – DVBE Subcontracting Report (STD. 817) and payments made by prime contractors to the DVBE subcontractors when provided.

B. Receiving, Inspection, Acceptance and Rejection

The Buyers transact in FI\$Cal and must be appropriately role mapped to perform certain functions within the system (a separation of duties). The Buyer can create a requisition but cannot receive their own items. BSO’s Receiving Processor can receive goods, perform inspections, return items to vendors, and receive services (i.e., approve invoices for services received).

Upon completion of a Contract/PO, Buyers notify the requestor and the requestor is provided a complete and accurate Contract/PO (including but not limited to technical specifications, any questionnaires the supplier filled out, product literature, post-consumer content form if applicable, etc.) to compare shipments received to what was ordered. The Office Technician or the requestor receives goods and signs acknowledging that the goods were delivered, not that they were “accepted.” It is the requesting program/individual that determines whether the goods or services received are acceptable and conform to all the terms and conditions of the purchase document. The entire receiving process consists of:

1. Receiving or acknowledgement of a delivery
2. Inspection of goods or evaluation of satisfactory condition or performance of services

3. Acceptance testing of either the first article delivered or a random sampling of all or selected items delivered
4. Documented acceptance or rejection of the goods or services

Receiving A Shipment

Receiving is the act of taking possession of goods in order to stage them for inspection or place them into inventory. The Office Technician or requester signs for goods and provides the acknowledgement that the goods were delivered, not that they were “accepted.” Packing slips should be included in all shipments received. At a minimum, the supplier should provide the following information on the packing slip to ensure products received can be verified and be acknowledged as received:

1. Purchase order number as issued
2. Numbers of items
3. Quantity and unit of measure
4. Product part number
5. Description of the goods shipped

In lieu of the [Stock Received Report \(STD. 106\)](#), DRE uses a “**Stock Received**” stamp placed on a copy of the Purchase Order which provides a location in which to enter a “partial delivery” date and a “complete delivery” date, and a location for the receiver to sign and date the acknowledgement, as well as instruction to return a completed copy to the Buyer.

If the Requestor elects to accept partial deliveries, a photocopy of the approved purchase order is used as a stock received report. When using the purchase order as a stock received report, the Requestor checking the goods will write the:

1. Date received
2. Quantity received
3. Note any defect in condition

This process is followed for each PO shipment received through completion. The last stock received report for an order must be stamped or designated as “complete” when the order is completely fulfilled.

The FI\$Cal system allows receiving staff to receive stock directly in the system. Each Buyer at HQ has the “Department Receiving Processor” role in FI\$Cal. However, the primary receiver at the DRE HQ is the Office Technician. FI\$Cal is now the official book

of record for receiving, however documentation rules still apply. All supporting documentation shall be scanned and uploaded into FI\$Cal.

The receiver will enter the date received, the quantity received, and note any defect in the condition of goods. Once the goods or services are received and accepted, the information is entered into the system and work-flowed to the accounting office on the day the goods are received.

A filled order is determined by carefully checking and documenting the quantity, description, and condition of the goods. Buyers are responsible for following up on all open purchase documents, requesting substitutions, when necessary, documenting supplier performance. When goods require a substitution, the Buyer is required to amend the PO to reflect any changes.

If a delivery is determined to be unacceptable at the receiving point, the Requestor, or buyer does one of the following (as directed by SAM 3861):

1. Refuse the shipment, document why it's not acceptable
2. If partially damaged or short, accept it and note exceptions on the delivery receipt as follows:
 - a. Damage Notations – Document the damage (holes, water damage, tears, broken, etc.) accurately and in detail. Write down the number of items damaged and include a description of the damaged articles.
 - b. Shortage Notations – If the shipment is missing pieces, write the number of pieces delivered on the delivery receipt and circle it. Then write down the number of pieces missing and note them as “short”.
 - c. Signatures – Write down all exceptions on copies of the delivery receipt. Have the driver sign copies by using full name. After driver signs, Office Technician or requestor signs full name and identifies the program name, date, and time of day.

Inspecting A Shipment

Inspecting is the act of examining goods that have been delivered to determine conformance to what was ordered via the PO. Other than IT goods, it is seldom that acquisitions require specialized skills or expertise in examining the goods to determine conformance.

Upon acknowledging receipt of an order, Requestor conducts an inspection for the following minimum conditions:

1. Verifies that what was ordered conforms to purchase order documentation, including the product description, model, brand, and product numbers.
2. Verifies the quantity ordered against the quantity shipped or delivered.
3. Inspects for damage or breakage.
4. Checks for operability/functionality.
5. Confirms instructions regarding special handling or packaging were followed.
6. Verifies that the unit of measurement count is correct.
7. Verifies that delivery documentation is acceptable.
8. Verifies that packaging integrity is preserved, no leakages, damages, etc.
9. Verifies that perishable items are in good condition and expiration dates have not been exceeded. Inspections are completed within a reasonable amount of time, and within 48 hours.

When it is determined that the inspection will not be immediate, the PO, or supporting documentation should detail when the inspection will occur and how it will be accomplished.

Documentation may include a standard installation checklist for the supplier to complete and provide to a state representative upon completion of the tasks. Buyers shall advise requestors to document in the procurement file all inspection results and provide the results to the Buyer for filing within the procurement file.

This documentation should, at a minimum, identify:

- what action was performed,
- who was in attendance (DRE/Supplier personnel) by name and title,
- when and where the inspection occurred, and
- the inspection results.

Upon confirming that goods received and inspected are in conformance with the terms of the PO, document the results of the delivery and inspection on the PO.

At a department's discretion, a receiver may be granted a PO View Role in FI\$Cal which would allow the receiver to see the original PO quantity and is then able to notify the buyer of any over/under shipments. Without this role, the receiver counts the items received and enters the quantity into FI\$Cal.

If the goods are not in conformance with requested requirements (does not match the Contract/PO), the Receiving staff must immediately communicate the problem(s) and the rejection in writing to the Buyer. Product substitutions, over shipments or under shipments must not be accepted without being properly documented. A Contract/PO amendment must be executed.

TIP: DGS-PD recommends Receiving Personnel:

- Keep Contract/POs open until suppliers have met all obligations and deliveries. This is particularly important when accepting any partial deliveries or staggered deliveries over a period of time or in future fiscal years.
- Report immediately to the buyer identified on the Contract/PO any problems or questions in delivery, receipt or discrepancies in equipment received inspected and accepted.

The Buyer in turn is responsible for notifying the supplier and holding the rejected goods until the supplier can take possession of the goods and remove them from the site. Notice of rejection should be provided to the supplier describing the defect(s) that renders the delivery as non-conforming to requirements, what the delivery and inspection criterion was and how the delivered product does not conform. In some cases, the Buyer can accept any unit of measure (e.g., lot, case, pallet) and reject the rest.

If the supplier, within a reasonable time period does not remove rejected goods, the Buyer may:

1. Ship products back to supplier at the supplier's expense
2. Store the rejected products with reimbursement required from the supplier for any incurred costs

In all cases contact the supplier in a timely fashion when rejecting goods that are over shipments, defective or for any other non-conformance to the PO, and prepare a [Returned Stock Report \(STD 108\)](#) when returning goods to a supplier. The STD 108 must also be retained in the procurement file.

Acceptance Testing

Acceptance Testing is the act of testing what is purchased, either all items delivered, or the first item delivered or by random sampling of some or all items delivered. Testing determines what is purchased is in substantial accord with the contract and suppliers and/or manufacturers published technical specification and performs at a satisfactory level. For example, when we purchase a printer, the solicitation document identifies a 30-day acceptance-testing period, during which the printer would be required to run error-free from the first day of installation.

Acceptance testing ensures that what is purchased, goods or services, is in substantial accord with the supplier's and/or manufactures published technical specifications and performs at a satisfactory level. Once informed by the Requestor, the Buyer acknowledges acceptance, via email, of acceptance to the supplier. This email is retained in the procurement file.

Accepting software procedures:

1. Commercial software is governed by the terms and conditions of the license agreement provided within the shrink-wrap package.
2. Custom software, unless otherwise provided by the statement of work, will be accepted either:
 - a. By issuance of an acceptance letter for each custom software product acquired or,
 - b. 60-days from date of install, unless a letter of rejection has been issued

NOTE: Buyer/Requestor/Receptionist must make sure to note the date that the software was installed.

Rejecting Non-Conforming Goods

The following process should be followed if the goods are not in conformance with any requirements of the PO:

Stage	Description
1	The Requestor that is rejecting the goods must immediately communicate the problem(s) and rejection in writing to the Buyer.
2	The Buyer is responsible for notifying the supplier, making arrangements to hold the rejected goods somewhere protected from damage, and taking care of rejected goods until the supplier can take possession of the goods and remove them from the site.
3	An emailed notice of rejection is prepared and provided to the supplier describing the defect(s) that renders the delivery as non-conforming to the PO, what the delivery, inspection criterion was, and how the delivered product does not conform.
4	The buyer can accept any unit of measure (e.g., lot, case, and pallet) and reject the rest. For example: A PO executed for 50 cases of bond paper, but the supplier shipped 150 cases of bond paper. The Requestor, or Receptionist may either reject the entire shipment or accept the just 50 cases of bond paper

	in accordance with the provisions of the PO. The remaining 100 cases are rejected and returned to the supplier.
5	<p>If the supplier, within a reasonable time period, does not remove rejected goods, the Buyer may:</p> <ul style="list-style-type: none"> • Ship products back to the supplier at the supplier’s expense. • Store the rejected goods with reimbursement required from the supplier for any incurred costs.

The Buyer is required to contact the supplier in a timely fashion when rejecting goods that are over-shipments, defective or for any other non-conformance to the purchase document. In accordance with SAM section 8422.20, prepare a STD. 108 when returning goods to a supplier. All documentation is maintained to follow up with the supplier as necessary.

Supplier Performance Report (SPR)

Upon confirming with the program individual requesting and receiving the order that goods received and inspected are either in conformance with the terms of the purchase document or are to be rejected, document the results of the delivery and inspection.

The [Supplier Performance Report \(SPR\)](#) may be used by the receiving staff to report on the quality and timeliness of a contractor’s delivery. Its purpose is to capture and track performance histories, preparing correction or cure notice(s), or use in future supplier development and subsequent source selection activities conducted.

C. Asset Management and Surplus

The DRE Property and Asset Management Coordinator (PAMC) is responsible for implementing the DRE Property and Asset Management Policy which accounts for the Department’s property and assets. This includes tagging and tracking property and assets, disposing of assets properly, conducting physical inventory, and reconciling property and assets.

1. Asset Tagging

- Upon receipt of goods, verify against the Purchase Order (PO) to ensure the product is what was ordered and is in good working condition.
- When the product is determined to be what was ordered, affix the assigned property tag(s) to your item(s) as designated on the Property Transaction Form.

NOTE: The Property Transaction Form is generated by the PAMC and is not available on the DRE Intranet. The Property Transaction Form and the property tags will accompany a copy of the executed PO.

- Record the serial number, acquisition date, assigned employee and/or unit name, and supervisor's name onto the Property Transaction Form.
- Signed and dated Property Transaction Forms shall be provided to the Property and Asset Management Coordinator by clients within the specified timeframe below:
 - 60 days for non-IT items
 - 90 days for CAL-PIA
 - 120 days for IT equipment

2. Disposal Methods for Surveying State Surplus Property

Surplus state property shall be disposed of using one of the disposition methods defined below:

- Trade-In: Use this when the vendor will be picking up the old equipment upon delivery of the new equipment.
- Valueless: When an item is no longer valuable/working, to be legally/safely disposed of.
- Donation to Eligible Non-Profit Organization: *Must* be an eligible public school/district in California. If assistance is required in obtaining a list of eligible schools, please contact the DRE PAMC at (916) 576-7864.

NOTE: State agencies are not permitted to donate state surplus property to regular non-profit organizations or charities.
- Department of General Services Property Reuse Program: When an item is listed in fair condition and is still operable, once an approval email from the PAMC is received, contact the DGS Property Reuse Program at: (916) 928-5851 to inquire if they would accept the items being surveyed.
- Universal Waste: When an item is in poor or junk condition and is considered salvageable or recyclable it can be given to a salvage dealer, certified recycler, or E-waste facility.
- Lost, Stolen or Destroyed Property: When property is lost, stolen, or destroyed, the client will prepare a Property Survey Request. Client must follow the responsibilities outlined in PPPM Section 6.5.
- Transfer: To be used when your item is still operable, in fair condition or better and another program or state agency can use it.
- Recycle: non-serviceable surplus asset shall be:
 - Transferred to CalPIA designated facility for all CalPIA

manufactured conventional furniture and Modular System Furniture (MSF);

- Recycled by a licensed furniture recycler or public landfill for commercially manufactured furniture; and
- Recycled by a certified electronic recycle vendor for electronic goods and IT equipment.

3. Property Survey

The program decides on the disposal method for each request. Once the disposal method has been chosen, the client will complete the [Property Survey Report \(STD. 152\)](#) form and submit it to the State and Federal Property Reuse Program Office.

If the property survey request includes any IT equipment that holds internal memory, a [Certificate of Computing Media Sanitation form \(152 A\)](#) will need to be completed and submitted with the Property Survey Report (152), certifying that the memory or hard drive of that specific item has been “wiped”, “removed”, or “sanitized.” This form can be found at: https://www.dgs.ca.gov/-/media/Divisions/OTPF/S/Memos/MM12_01.pdf?la=en&hash=18C28753A9CF3D60956FE2CD044F11320E478A3F

NOTE: The program can have Information Technology Service perform this task or contact the Help Desk to open a ticket. This procedure needs to be performed and certified before approval can be obtained for disposal.

Items that require sanitation include:

<ul style="list-style-type: none">• printers,• fax machines,• computers,• laptops,• scanners,	<ul style="list-style-type: none">• copiers• flash drives,• cell/smart phones,• servers,• etc.
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4. Replacement Requests:

- Submit the completed Property Survey Request form along with the Acquisition Request.
- If no purchase is being made, the client can send the Property Survey Request directly to the PAMC for processing.

- Upon receipt of the approved [Property Survey Report \(STD. 152\)](#) the identified equipment must be disposed of within 30 days of receiving the approval.
- After disposal has occurred, sign and date the “Certification of Disposition” box on the Property Survey Report (STD. 152), or the “Property Custodian” box on the [Property Transfer Report \(STD. 158\)](#).
NOTE: The Property Survey Report and the Property Transfer Report are generated by the PAMC upon receipt.
- Forward the original to BSO, ATTN: Property Asset Management Coordinator

5. Transfer Requests

- Client will receive the approved Property Transfer Report (STD. 158) from the PAMC via e-mail.
- Prior to transferring, remove all property tags from the equipment and destroy.
- Within 30 days from receiving the approved Property Transfer Report, the equipment should be transferred as identified on the Property Transfer Report.
- For equipment transferred within DRE, the new program will receive a Property Transaction Form and new property tags from the DRE PAMC.
- For equipment not transferred within DRE, please remove property tags before disposal occurs. No new tag(s) will be issued because the item(s) will not be housed within DRE or its entities. Proceed with the remaining steps below.
- The new program will affix the assigned property tags to the equipment and record the serial number, acquisition date, assigned employee/unit name and the supervisor over that piece of equipment, on the Property Transaction Form.
- The new program will sign/date and return the Property Transaction Form to BSO, Attention: Property Asset Management Coordinator.
- After transfer has occurred the original client will sign and date the “Property Custodian” box on the Property Transfer Report.
- Forward the original Property Transfer Report to BSO, Attention: Property Asset Management Coordinator.
NOTE: The Property Transaction Form must be turned in by the specified due date, in order for DRE to be in compliance with the State Administrative Manual (SAM). If the client does not respond or return the completed Property Transaction Form within the

allocated timeframes, the employee's manager will be notified via email of the delinquent Property Transaction Form.

6. Lost, Stolen, or Destroyed Property

- The employee must notify their manager/supervisor immediately of the incident.
- The employee must complete a [Property Survey Report \(STD. 152\)](#).
- The employee prepares an incident report that describes the event, a statement of how to prevent repeat situations, and a statement detailing the date and time.
- The Manager will contact the Department of the California Highway Patrol to report missing or stolen assets, and obtain a written crime report, inform the DRE Chief Information Security Office (CISO) of the lost or stolen property, and contact the Internal Audit Office.
- The Manager will immediately submit the Property Survey Request form along with the incident reports listed in steps 3 and 4 to the (PAMC) for processing.
- The program will receive an approved Property Survey Report via e-mail from the PAMC. The program signs the "Certification of Disposition" box and returns the original to BSO, Attention: Property Asset Management Coordinator. Keep a copy for your program's records.

D. Payment of Invoices

To comply with the State's Prompt Payment act, the DRE has a total of 45 days to provide payment to the awarded vendor once the invoice is received.

The DRE, Accounting receives, date stamps, tracks, and distributes invoices to the appropriate Program for review/approval. They are distributed through interoffice mail. Programs are required to approve or dispute invoices and return them to Accounting within five days of receipt. If an invoice is not received, divisions should contact the supplier to request that one be submitted to Accounting.

Because of this 45-day processing window, it is important that accurate and correct invoices are provided to avoid delays.

To approve an invoice, the buyer must validate it against the appropriate procurement document to ensure:

- Accurate PO/Contract Number is listed
- Description of item or service, unit quantity and price are itemized
- Appropriate sales/use tax is applied
- Accurate billing address
- Invoice number and date is listed
- Valid billing period
- Supplier name and remittance address is current

NOTE: DRE will not pay for anything that is not in the purchase documents, such as pallets, shipping, travel costs, etc. Additionally, buyers will include product and service line item descriptions and prices and not a bundled configuration with a total price.

In accordance with SAM section 3851, 3852, and 8422.1, all freight bills must be audited by the TMU prior to being scheduled for SCO payment. If a freight bill doesn't bear TMU's audit stamp, the invoice will be removed from the claim schedule by SCO and returned to the department. TMU's freight bill approval is not required for the following items:

- The amount of the freight bill is \$500.00 or less.
- Freight services performed under a contract pursuant to the requirements of SAM Section 1200 et seq., specifying the exact rates to be applied for the services.

To prevent a conflict of interest, the person signing to authorize a purchase, cannot be same person signing to authorize payment of that purchase.

If an invoice is incorrect, divisions must contact the supplier, complete an [Invoice Dispute Notification \(STD. 209\)](#) form and return it to Accounting within five days.

The payment processing timeline stops when an Invoice Dispute Notification (STD. 209) and [Returned Stock Report \(STD 108\)](#) is completed and sent to the supplier. When the corrected invoice is received, there are 15 working days to submit the completed payment package to DRE Accounts Payable for processing. DRE may dispute an invoice submitted by a supplier for reasonable cause if the supplier is notified within 15 working days from receipt of the invoice or delivery of the goods or services, whichever is later. An invoice shall not be disputed to avoid late penalties.

An invoice may be disputed for any of the following reasons:

- Goods/services not received
- Non-compliance with contract
- Incorrect billing information or amount due
- Partial shipment received
- Duplicate billing
- Invoice is intended for another department
- Damaged goods
- Invoice not properly executed
- Payee Data Record (STD. 204) not on file with the Accounting Unit.
- Accounting can dispute the invoice, if the invoice is received in the Accounting Unit directly from the supplier and if the invoice has no contract or Purchase Order documentation

The Client in receipt of ordered goods or services is responsible for disputing an invoice received in the Client's office.

Discounts

Departments are encouraged to take advantage of prompt payment discounts on invoices when offered by suppliers. [CCR, Title II, Section 1895.8](#) states discounts involving discount periods of less than 20 days shall not be included in the calculation of low bid. Cash discounts can only be taken when the department is able to pay within the number of days specified by the supplier.

Example:

5% in 20 days (This will be shown in the Comments field in FI\$Cal and be reflected within the body of the FI\$Cal purchase order or in the "Payment Terms" block on the Std. 65).

Cash discounts offered by bidders for prompt payment of invoices are not to be considered in evaluating bids and offers to determine the purchase order award.

Maintain a Clear Separation of Duties

Departments should have departmental policies and procedures in place to ensure a clear separation of duties. Buyers should not be involved in receiving goods, approving invoices, or making payments for goods or services that they procured.

E. Prompt Payment

The Prompt Payment Act requires State agencies to pay properly submitted, undisputed invoices within 45 calendar days of initial receipt. To meet this timeline, both DRE, Accounting and the division must date and time stamp the invoice upon receipt and process the invoice within 15 calendar days of the date/time stamp. This allows DRE Accounting and SCO to process the invoice within the required time. If the requirement is not met, Accounting and/or the division must automatically calculate and authorize payment of the appropriate late payment penalties as specified in GC section 927, et seq. Whichever division held onto the invoice in excess (determined by date stamps) causing the delay in payment will be responsible for said penalties.

The DRE, Accounting must submit a [Late Payment Penalty report \(DGS PD 800\)](#) by September 30th of each year, in accordance with the Prompt Payment Act, GC section 927 et seq., to DGS, PD Office of SB & DVBE Services.

Departments are encouraged to take advantage of prompt payment discounts on invoices when offered by suppliers. CCR, Title II, Section 1895.8 states discounts involving discount periods of less than 20 days shall not be included in the calculation of low bid. Cash discounts can only be taken when the department is able to pay within the number of days specified by the supplier.

The Prompt Payment Act, GC section 927 et seq. requires departments to submit a [Late Payment Penalty Report \(DGS PD 800\)](#) to the DGS Director. This report provides information on late payment penalties paid during the fiscal year.

F. File Procedures

Each procurement file should consist of the following and a copy of the File Documentation Checklist should be completed and placed inside the procurement file:

Non-IT Purchase Request/Requisition (RE 935) and justification	For Non-IT Acquisitions only
Solicitation (RFQ, RFO, IFB, RFP, etc.) and all addenda Showing that all solicited vendors were provided with necessary Bidder's Instructions, General Provisions, etc.	For all solicited vendors
SB/DVBE Certifications	For all solicited vendors
Commercially Useful Function Certification	For SB/DVBE purchases only
SB/DVBE Waiver Form	If applicable
Exemption by statute or DGS policy documentation	If applicable

Quotes (Written) Include all responsive bids, as well as attach documentation from vendors who declined to bid/offer (“no bids”) or unresponsive	All quotes/offers received
Bid/Quote worksheet	Documenting all responses
Disabled Veteran Business Enterprise Declarations (STD. 843) Form	For winning vendor only, if winning vendor is a certified DVBE
Payee Data Record (STD. 204)	For winning vendor only
Seller’s Permit	For winning vendor only
Bidder’s Declaration (GSPD-05-105)	For winning vendor only.
IT Acquisitions Request (ITAR) (RE 767) Form (includes DMCP justification)	For IT Acquisitions only
Certification of Compliance with State IT Policies	For IT Acquisitions only
Copy of entire Leveraged Procurement Agreement and price	If applicable
Darfur Certification Form	For Non-IT Acquisitions only
Conflict of Interest/Incompatible Activities Statement	From all DRE staff involved in procurement process
CalPIA Waiver (SAL-F001)	If applicable
Surplus Property Consideration	If applicable
Confidentiality Statement	From all DRE staff involved in procurement process
Approved NCB/LTB justification	If applicable
Evaluation and selection documents Includes material deviation worksheet; SB Preference and DVBE Incentive calculation documentation; documentation of award to other than lowest bidder (if applicable)	As needed
Copy of Notice of Contract Award (STD. 16)	For purchases over \$5,000
Protest documents	If applicable
Secretary of State Corporate Qualification Verification	If applicable
Post-Consumer Recycled Content (PCRC) Certification	Non-IT Acquisitions only
Copy of CSCR advertisement	If applicable
Non-tax delinquent verification	For winning vendor only
Telecom Service Request Form	If applicable
Property Survey Request Form	If applicable
Copy of Stock Received Report (Std. 106)	If applicable
Copy of Stock Returned Report (Std. 108)	If applicable

Sole Source Documentation	If applicable
Fair and Reasonable Evaluation and documentation	For acquisitions <\$9,999.00
Exhibits: Scope of Work, Budget Detail and Payment Provisions, Special/Additional Terms and Conditions, etc.	If applicable
Any other applicable justifications, cost comparisons, approvals, exemptions, etc.	As needed
CA Civil Rights Law Certification	For acquisitions over \$100,000
Iran Contracting Act	For IT acquisitions over \$1,000,000

G. Amendments / Cancellations

Requests to amend an existing Purchase Order should be directed to the buyer who created the Purchase Order. The amended Purchase Order number is the same original Purchase Order number with a numerical character added at the end.

- Purchase Order files contain an accurate history of the action requested and who requested the action.
- Requestor and supervisor approvals are on file for audit purposes.

Amendments must be entered into before the expiration of the original acquisition. If the amendment has the effect of making the acquisition subject to other requirements such as exceeding dollar approval thresholds, those requirements must then be complied with.

Requests to cancel an existing Purchase Order should be directed to the buyer who created the Purchase Order.

For non-IT services only, DRE has received direction from the DGS Office of Legal Services stating that a competitively bid acquisition (see SCM, Volume 1) which does not include options to extend but permits amendments may be amended only once (unless using an LPA) as follows:

- Time not to exceed one year or
- Dollars not to exceed 30% of the original acquisition value and the dollars added (not cumulative contract value)

NOTE: An amendment is required when cancelling a Purchase Order. A cancellation Purchase Order must be issued to cancel the order. This will disencumber the

funds for this purchase.

For more information, see Consolidated SCM, Volume 2, Chapter 18, Section 1805.

H. Reporting

Due August 1

In compliance with Consolidated SCM, Volume 2, Chapter 22, the DRE submits the [Contracting Activity Report](#) to DGS, PD for the reporting period of July 1 – June 30

These reports consist of the following:

- Infrastructure Bond Activity Report (STD. 810A)
(http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810A.pdf)
- Consulting Services Report (STD. 810C)
(http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810C.pdf)
- Ethnicity, Race, Gender, and Sexual Orientation (ERGSO) (STD. 810E)
(http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810E.pdf)
- SB/DVBE Option and DVBE Incentive Report (STD. 810S)
(http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810S.pdf)
- Improvement Plan Outline (if the Department does not meet the required state contracting participation of at least 25% SB and 3% DVBE
(<https://www.surveymonkey.com/r/3MKMY63>)

Due on or before October 31

In accordance with PCC Sections 12200-12217, the BSO submits the State Agency Buy Recycled Campaign (SABRC) report to the Department of Resources Recycling and Recovery (CalRecycle).

- State Agency Buy Recycled Campaign (SABRC) report
(<https://secure.calrecycle.ca.gov/SABRC/SignIn.aspx?ReturnUrl=%2fsabrc%2f>)

Due September 30

DRE Accounting is responsible for submitting the Late Payment Penalty report in accordance with the Prompt Payment Act, GC Section 927 et seq., to the DGS Director.

- Late Payment Penalty Report

http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_800.pdf)

Due on or before November 1

- Prime Sub Contractors (STD. 810D)
(https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810D.pdf)

Other report information:

Buyers must report the Notice of Contract (STD. 16) to the Department of Fair and Employment Housing (DFEH) to the following email address:
complianceprograms@dfedh.ca.gov within 10 days of all contract awards over \$5,000

- Contract Award Report (STD. 16) –
(<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std016.pdf>)

Buyers must submit a Report of Independent Contractor(s) (DE-542) to Employment Development Department in accordance with California's Unemployment Insurance Code Section 1088.8.

- Report of Independent Contractor(s) (DE-542)
(https://www.edd.ca.gov/pdf_pub_ctr/de542.pdf)
- Contract/Contractor Evaluation (STD. 4)
(<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std004.pdf>)

I. File Retention

The retention period on all purchasing documents is the current fiscal year, plus two (2) prior fiscal years in office, and five (5) additional prior fiscal years offsite at the State Records Center.

Appendix 1 – Acronyms

ADA	Americans with Disabilities Act
A&E	Architectural Engineering and Environmental Services
BOE	Board of Equalization
BSO	Business Services Office
CA	California
CalHR	California Human Resources
Cal-PCA	California Procurement and Contracting Academy
CalPIA	California Prison Industry Authority
CalRecycle	California Department of Resources Recycle and Recovery
CDT	California Department of Technology
CMAS	California Multiple Award Schedules
CRP	Community Rehabilitation Program
CSCR	California State Contracts Register
CUF	Commercially Useful Function
DGS	Department of General Services
DMCP	Desktop Mobile Computing Policy
DOF	Department of Finance
DPM	Data Processing Manager
DRE	Department of Real Estate
DVBE	Disabled Veteran Business Enterprise
EEO	Equal Employment Opportunity
EPP	Environmentally Preferable Purchasing
FI\$Cal	Financial Information System of California
FOB	Freight on Board
GC	Government Code
HR	Human Resources
IAA	Inter-Agency Agreement
IACP	Intermediate Acquisition Certification Program
IFB	Information for Bid
IT	Information Technology
ITAR	Information Technology Acquisitions Request
ITS	Information Technology Services
LPA	Leveraged Procurement Agreement
LTB	Limit to Brand
M&VC	Military & Veterans Code
MB	Micro-Business
MM	Management Memo

MSA	Master Services Agreement
N/A	Not Applicable
NASPO	National Association of State Procurement Officials (NASPO)
NCB	Non-Competitive Bid
Non-IT	Non-Information Technology
NVSA	Nonprofit Veteran Service Agency
OAG	Office of the Attorney General
OFAM	Office of Fleet Management
OLS	Office of Legal Services
PAAL	Purchasing Authority Approval List
PAIR	Purchase Authority Increase Request
PAMU	Purchasing Authority Management Unit
PAU	Purchasing Authority Unit
PCC	Public Contracting Code
PCO	Procurement Contracting Official
PD	Procurement Division
PE	Purchase Estimate
PIA	Prison Industry Authority
PO	Purchase Order
RA	Reasonable Accommodation
RFO	Request for Offer
RFP	Request for Proposal
RFQ	Request for Quote
SABRC	State Agency Business Recycle Campaign
SAM	State Administrative Manual
SB	Small Business
SB	Senate Bill
SB/DVBE	Small Business and Disabled Veteran Business Enterprise
SC	Statewide Contract
SCM	State Contracting Manual
SCPRS	State Contract and Procurement Registration System
SCR	Special Category NCB Request
SIMM	Statewide Information Management Manual
SLP	Software Licensing Program
SOW	Scope of Work
SPB	State Personnel Board
SPS	State Price Schedule
TACPA	Target Area Contract Preference Act
Telecom	Telecommunication

TMU	Transportation Management Unit
UEI	University Enterprises, Inc.
UPK	User Productivity Kits
VOL	Volume

Forms and Checklists

Certification of Compliance	https://cdt.ca.gov/wp-content/uploads/2019/06/SIMM-71B-Certification.pdf
One-Time Requisitions Request	https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Submit-a-FISCAL-Requisition-to-One-Time-Acquisitions
Purchase Estimate (STD. 66)	http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std066.pdf
Purchase Estimate Preparation Checklist	https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Submit-a-FISCAL-Requisition-to-One-Time-Acquisitions
Conflict of Interest (Form 700)	https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Form%20700/2022-23/Form_700_2022.pdf
Incompatible Activities	https://dre4.sharepoint.com/:b:/r/sites/Policies/Shared%20Documents/0100%20-%20General/0103(4)%20-%20Incompatible%20Work%20Activities_Rev.04_Apr_28_2022.pdf?csf=1&web=1&e=hNhDRP
Confidentiality Statement	https://dre4.sharepoint.com/:w:/r/DRE%20Internal%20Forms/RE%20750-799%20(Information%20Technology%20Division)/buyerconfidentiality.docx?d=wbf8983f3f6314458910d42981b9178b9&csf=1&web=1&e=o46hEx
Prison Industry Authority Waiver Request	http://pia.ca.gov/pdf/Generalinfo/General-State-Agency-Exemption-Form.pdf
Non-IT/IT Goods RFO Template	https://dre4.sharepoint.com/:w:/r/teams/IDriveMigration/Procurement/Procurement Docs/Templates/RFO Template - Consulting Services.docx?d=wf31e09698cfd49199f6285d11443884d&csf=1&web=1&e=n3XQoC
IT Goods RFQ Template	https://www.documents.dgs.ca.gov/pd/delegations/RFQgoods.doc
IT Services RFQ Template	https://dre4.sharepoint.com/:w:/r/teams/IDriveMigration/Procurement/Procurement Docs/Templates/RFO Template - Consulting Services.docx?d=wf31e09698cfd49199f6285d11443884d&csf=1&web=1&e=n3XQoC
Freight Rate Analysis Request	http://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/PD_freightanalysisworksheet.pdf
SB/DVBE Waiver Form	https://dre4.sharepoint.com/:b:/r/teams/IDriveMigration/Procurement/Procurement Docs/SB DVBE Waiver form.pdf?csf=1&web=1&e=6gbVVU
Bidder Declaration (GSPD-015-105)	https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/gspd05-105.pdf
DVBE Incentive Waiver Form (GSPD-07-04)	https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/gspd07-04.pdf

Non-Competitive Bid Template (GSPD-09-007)	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd09-007.pdf
Non-Competitive Bid File Documentation Checklist	https://www.dgs.ca.gov/-/media/F4E9E9FC597840C28C6515B66BB79D0A.ashx
CalPIA Purchase Exemption Form	https://www.calpia.ca.gov/about/doing-business-with-calpia/exemption-process/general-state-agency-purchase-exemption-form
Property Survey Report (STD. 152)	http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std152.pdf
Bidder Instructions	https://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/DGSPD%20451.pdf
General Provisions – Non-IT Goods	https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/Non-IT/NonITGeneralProvisions062122.pdf?la=en&hash=7D58E4294765EA74730DA67AEECF7CE6247B4A3A
General Provisions – IT Goods	https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/ITGeneralProvisions062122.pdf?la=en&hash=A627F242C01919F872687EC62B8BC6BF41BE876E
Cloud Computing Special Provisions for software as Service (SaaS)	https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/CLOUDCOMPUTINGSERVICESPECIALPROVISIONS_18_0301.docx?la=en&hash=D15B144C86A54D492E4E19AE810F7F35EA8D171E
Cloud Computing Special Provisions for Infrastructure as a Service (IaaS) & Platform as a Service (PaaS)	https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/CLOUDCOMPUTINGSPECIALPROVISIONS_Infrastructure-as-a-Service-and-Platform-as-a-Service.pdf?la=en&hash=24218F2AED4E47885FBCB20B1107EA484203EFF3
Darfur Contracting Act Certification Form	https://www.dgs.ca.gov/-/media/Divisions/PD/Acquisitions/Solicitation-Document-Attachments/Darfur-Contracting-Act.pdf
Iran Contracting Act Certification	https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/SCM/Iran_Contracting_Act_Verification_Form.pdf
Payee Data Record (STD. 204)	https://www.documents.dgs.ca.gov/dgs/FMC/PDF/Std204.pdf
DVBE Declaration (STD. 843)	https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd/pd_843.pdf
Acquisition Request Form (RE 935)	https://dre4.sharepoint.com/_layouts/15/viewer.aspx?sourcedoc=%7b362b0b25-d5ea-4708-8cc4-5a995e2bf214%7d
Information Technology Acquisition Request (RE 767)	https://dre4.sharepoint.com/sites/archive-2023-08-01T214109Z/_layouts/15/viewer.aspx?sourcedoc=%7bbb0d6878-6df0-475d-aed6-564d443e9dd9%7d

Procurement Summary – Bid/Quote Worksheet	https://dre4.sharepoint.com/:b:/r/teams/IDriveMigration/Procurement/Procurement Docs/Editable Templates/Bid Quote Worksheet - fillable v.2.pdf?csf=1&web=1&e=RYOLh4
Commercially Useful Function Worksheet	https://www.dgs.ca.gov/-/media/Divisions/PD/OSDS/Certification/CUF/CFUEvaluationandDeterminationWorksheet.pdf
Under \$10,000 Checklist	https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/SCM/SCM-Link-Docs/fildocunder10k.pdf
Competitive IT Acquisition Checklist	https://dre4.sharepoint.com/:w:/r/teams/IDriveMigration/Procurement/Procurement Docs/IT Checklist - Updated 2023.docx?d=waeba7b9ca16f44a6be501140694270b9&csf=1&web=1&e=RRMu1b
Leveraged Procurement Agreement Checklist	https://dre4.sharepoint.com/:w:/r/teams/IDriveMigration/Procurement/Procurement Docs/IT Checklist - Updated 2023.docx?d=waeba7b9ca16f44a6be501140694270b9&csf=1&web=1&e=RRMu1b
Stock Received Report (STD. 106)	https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std106.pdf
Returned Stock Report (STD. 108)	https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std108.pdf
Invoice Dispute Notification (STD. 209)	https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std209.pdf
Contractor Evaluation (STD. 4)	http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std004.pdf
Contracting Activity Report (STD. 810)	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810.pdf
I-Bond (STD. 810A)	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810A.pdf
Consultants (STD. 810C)	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810C.pdf
Prime / Sub Contractors (STD. 810D)	https://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810D.pdf
Ethnicity, Race, Gender, and Sexual Orientation (ERGSO) (STD. 810E)	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810E.pdf
SB/DVBE Option and DVBE Incentive Report (STD. 810S)	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_810S.pdf
Late Payment Report	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/pd_800.pdf
Notice of Contract (STD. 16)	http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std016.pdf
Authorization to Use Private Owned Vehicles on State Business (STD. 261)	http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std261.pdf
TACPA Preference (STD. 830)	https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std830.pdf
Contract Advertising Exemption Request (STD. 821)	http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std821.pdf
Special Category Request NCB Form	http://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd09-008.pdf
Limited to Brand Statement	https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd08-001.pdf
Bid Specification Checklist	https://www.dgs.ca.gov/-/media/2D45322F830C42E8B7AEFE9C5E72ED91.ashx

California Civil Rights Law Certification	https://dre4.sharepoint.com/sites/archive-2023-08-01T214109Z/ layouts/15/viewer.aspx?sourcedoc=%7b77bd16ce-57c3-4ba0-aa39-9aefb3ae8fc0%7d
Iran Ineligible Contractor List	https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses?search=iran
Deviation Worksheet	https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/SCM/SCM-Link-Docs/devwrksht-word.doc
Certification for Computing Media Sanitation	https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std152.pdf
Post-Consumer Content Certification Form	https://www2.calrecycle.ca.gov/Docs/Web/111480

Procedures

Purchase Estimate via Fi\$Cal	https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Submit-a-FI\$Cal-Requisition-to-One-Time-Acquisitions
Fi\$Cal User Productivity Kits	http://www.fiscal.ca.gov/access-fiscal/procurementjobaids.html
Fi\$Cal Job Aids	https://fiscal.ca.gov/user-support/job-aids/
Non-IT Procurement Process Workflow	https://dre4.sharepoint.com/teams/ProcurementPoliciesProceduresManual/_layouts/15/viewer.aspx?sourcedoc={417cd85c-d032-44a4-8787-982cc8df4583}
IT Procurement Process Workflow	https://dre4.sharepoint.com/teams/ProcurementPoliciesProceduresManual/_layouts/15/viewer.aspx?sourcedoc={8db8c1db-7fa0-411f-b71c-e711f9103c56}
Procurement Method Determination Process (Non-IT)	https://dre4.sharepoint.com/teams/ProcurementPoliciesProceduresManual/_layouts/15/viewer.aspx?sourcedoc={417cd85c-d032-44a4-8787-982cc8df4583}
Procurement Method Determination Process IT)	https://dre4.sharepoint.com/teams/ProcurementPoliciesProceduresManual/_layouts/15/viewer.aspx?sourcedoc={8db8c1db-7fa0-411f-b71c-e711f9103c56}

Resources

State Contracting Manual, Volume 2, Consolidated State Contracting Manual	https://www.dgs.ca.gov/PD/Resources/SCM/TOC
Purchasing Authority Approval Letter	https://www.dre.ca.gov/files/pdf/PurchasAuthorityApproval.pdf
Cal-PCA Courses	https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/California-Procurement-and-Contracting-Academy-Courses
Ethics Course	https://oag.ca.gov/ethics/course
DRE SB/DVBE First Policy	https://dre4.sharepoint.com/:w:/r/_layouts/15/Doc.aspx?source=doc=%7BA37E6E14-7A04-4C44-AE51-6DEC43D78BE0%7D&file=sbdvbecontracting.docx&action=default&mobileredirect=true&DefaultItemOpen=1
CAL-Card Guidebook	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/CAL-Card-Program
CAL-Card Training	https://learn.adobeconnect.com/cal-cardtraining/
State Administrative Manual	http://sam.dgs.ca.gov/
DGS Engineering	https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Request-Procurement-Engineering-Services
DGS, Transportation Management Unit	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Transportation-Management
SB/DVBE Advocate	https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Information-for-SB-DVBE-Advocates
Cal eProcure Vendor Search	https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx
Suspended Firms List	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/OSDS/OSDS
Cal eProcure	https://www.caleprocure.ca.gov
Master Services Agreements (MSA)	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Master-Agreements
California Multiple Award Schedules (CMAS)	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules

Software Licensing Program (SLP)	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Software-Licensing-Program
Cooperative Agreements	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Cooperative-Agreements
State Price Schedules	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Statewide-Contracts
Statewide Contracts	https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Statewide-Contracts
State Fleet Asset Oversight MM 13-01	https://www.dgs.ca.gov/-/media/Divisions/SAM/Memos/MM13_01
OFAM Handbook	https://www.dgs.ca.gov/-/media/Divisions/OFAM/Publications/Handbook_April-2022.pdf
Cost-Effective Re-Use of Surplus Furniture, MM 11-01	https://www.dgs.ca.gov/-/media/Divisions/OTPF/SAM/Memos/MM11_01.pdf
Available Surplus Property	http://www.govdeals.com/StateofCalifornia
CalPIA Catalog	http://catalog.pia.ca.gov/store.php?t=1483998604
Community Rehabilitation Program	http://www.dor.ca.gov/VRED/Requirements-4-Becoming-Service-Provider.html
Target-Area Contract Preference Act Preference Program (TACPA)	https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Request-a-Target-Area-Contract-Preference?search=tacpa
CalRecycle	http://www.calrecycle.ca.gov/BuyRecycled/StateAgency/
Buying Green Guide	https://www.dgs.ca.gov/PD/Resources/Find-EPP-Goods-and-Services
California Regulatory Notice Registration list	http://www.oal.ca.gov/california_regulatory_notice_online/
SB & DVBE Program Violations and Sanctions	http://www.dgs.ca.gov/pd/Programs/OSDS/firmviolations.aspx
California Department of Tax and Fee Administration – Seller’s Permit Verification page	https://onlineservices.cdtfa.ca.gov/
Non-Competitive Bid Portal	https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Portal-for-Non-Competitively-Bid-Contracts

IT Hardware Contract Exemption Process	https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Request-an-IT-Hardware-Contract-Exemption?search=exemption%20process
Board of Equalization web site	www.boe.ca.gov
California City & County Sales & Use Tax Rates	https://www.cdtfa.ca.gov/taxes-and-fees/rates.aspx
Fi\$Cal Step-by-Step instructions	https://fiscal.ca.gov/user-support/fiscal-learning-center/
Purchase Order Amendments/Cancellations	https://www.dgs.ca.gov/PD/Resources/SCM/TOC/18/18-02
Contract Amendments/Cancellations	https://www.dgs.ca.gov/PD/Resources/SCM/TOC/18/18-03
Management Memo 16-03	https://www.dgs.ca.gov/-/media/Divisions/OTPF/S/Memos/MM16_03.pdf?la=en&hash=BEC660DD2FA0CB12FEC5603A9F9CD058BF88F0C6
STP Intake Portal	https://cadtprod.service-now.com/stp

**Department of Real Estate
Business Services Office**

Contract Process for Non-IT Services

Revised: October 2024

Below are the steps to receiving contracts and what is required:

STEP 1 - Receive and Review RE 935 Purchase Request Form

- **Verify proper signature authority**
Requestor and Management
- **Verify justification**
Required on all contracts
- **Scope of Work (SOW)**
Indicate what services are needed, where services are required and why, term dates for contract, etc.
- **Log DRE 935 request into DRE Contract Log**

STEP 2-PRE- PROCESS CONSIDERATIONS:

- **Contact requestor about any questions / changes regarding contract**
 - Examples include: clarification of SOW
- **Assign unique contract # from contract log on shared drive**
- **Create electronic folder within the contracts fiscal year folder indicating the new contract # as the file name**
- **Prepare Legal Transmittal and send scope of work to Legal for review and edits.**
- **Determine appropriate services approach**
Service Considerations and Options:
 - In house resources
 - Other state agencies-Interagency Agreement
 - Informal contract – limited amount and term
 - Joint Powers of Authority
 - Civil Service Considerations – GC 19130 (a) or (b)
 - State Mandated contract

- Formal Contract Service – Formal Bid
- Non-Competitive Bid Service Agreement
- Sole Source
- Request for Offer (RFO)

STEP 3 - Prepare Contract Request

- **Check SOW is completed correctly, with necessary detailed information**
- **Identify appropriate vendors for services:**
 - Use <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx> website to search for Small and Disabled Veteran businesses, search for other vendors on internet, need 3 vendors if one or less SB/DVBE vendor is used, need 2 vendors if SB/DVBEs are used and make sure they are both the same, SB to SB or DVBE to DVBE certification. Use caleprocure.ca.gov to search for state contracts as well.
 - Expand Pool: per AB 1574, GC 14838 buyers are to expand their pool of vendors and include at least one new vendor in their solicitation
- **Print out SB/DVBE certifications**
 - Make sure they are not expired, certifications must be verified prior to bids, save to add to contract folder.

STEP 4 - Send Contract Request to Vendors

- **Send Request e-mail to all vendors at the same time (Blind Copy) with same instructions**
- **Info to send with request**
 - Bidders Instructions
 - Scope of Work (SOW)
 - Request for Quote/Offer-Notice to Prospective Contractors
 - Due date for bids to be returned to DRE
 - Required check list-list will depend on services requested
 - Include Links to DGS Bidders Instructions, IT General Provisions, Non-IT General Provisions and DVBE Program requirements
 - CCC-307-Contractors Certification
 - Small Business Certification
 - Contractors references as necessary
 - Cost Sheet
 - Attachments when necessary

- Completion of Forms; STD 204-Payee Data Record, Bidders and DARFUR
 - C.U.F. Document
 - Russian Sanctions
 - GenAI notice and STD 1000 form
- **Keep all request for services documents in DRE BSO electronic contract File folder**

STEP 5 Receive and Review Quotes from Vendors

- **Compare quotes**
Look for discrepancies in math calculations, completion of attachments and forms, signatures completed in the correct documents.
- **Verify and Document C.U.F requirements are met**
- **Determine Winning Vendor**
- **Update log with vendor's information and amount of contract**
- **Ensure all necessary forms were returned**
Cannot award to vendor that did not submit all required documentation

STEP 6 Prepare Contract forms STD 213 and STD 215

- **Completed STD 213, Standard Agreement, form with the exhibits attached (exhibits are created from the SOW) and STD 215, Agreement Summary**
- **Double check all fiscal year break downs are correct when entering the information into the STD 215.**
- **Create electronic contract folder stating contractor's name and contract #**
- **Contracts with amounts over \$49,999.99 will require DGS approval through the DGS portal.**

STEP 7 Assemble and Route For Approvals

- **Send STD 213 with exhibits to Vendor for signature via email or US mail. Vendor will then need to route a copy with "wet" signatures to BSO via US mail for processing. STD 213 is then routed to appropriate Manager for signature**
- **All exhibits must include the Russian Sanction language and Exhibits D and E. These exhibits are approved by Legal and must include in all contracts, per Admin.**
- **STD 215 is routed to the Budget Analyst for approval via email. Once approved, Budget analyst will then route the STD 215 via interagency mail with "wet" signatures to BSO**
- **All additional forms and information will remain in the contract folder with analyst**
- **Submit entire contract packet to SSMI for approval or Assistant Commissioner of Administration if contract is over \$49,999.99.**

- Once all documentation is approved, upload into the contract file created for this specific contract, under the assigned contract #

STEP 8 Enter Contract into FISCAL

- Create contract using documentation from the STD 213, exhibits and STD 215
- Upload documentation into FISCAL contract, in the “add agreement” tab
- Once approved, create purchase order as a payment mechanism for the contract

STEP 9 Completion of Contract

- Send STD 213 via email or US mail to Vendor indicating services can now be rendered
- File is active for duration of the term of the agreement

STEP 10-Invoice Tracking

- Create invoice log in the shared drive, Invoice Log folder
- The invoice log will have the same identification as the contract #
- Invoice log will be used each time an invoice is received from the vendor for services
- Report any invoice issues to DRE Fiscal

All contracts are required to include the Russian Sanction language, which is located in your contract exhibits, approved by Legal and are to be used with every contract created.

See below for example:

EXHIBIT E

ADDITIONAL TERMS AND CONDITIONS

1. **RIGHT TO TERMINATE**: DRE reserves the right to terminate this Agreement subject to 30 days written notice to the Contractor. The Contractor may submit a written request to terminate this agreement only if DRE should substantially fail to perform its responsibilities as provided herein.

However, the Agreement can be immediately terminated for cause. The term “for cause” shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the Agreement. In this instance, the Agreement termination shall be effective as of the date indicated on the DRE’s notification to the Contractor.

2. **CONFIDENTIALITY OF DATA**: No reports, information, inventions, improvements, discoveries, or data obtained, repaired, assembled, or developed by the Contractor pursuant to this Agreement shall be released, published, or made available to any person (except to DRE) without prior written approval from DRE.

The contractor by acceptance of this Agreement is subject to all of the requirements of California Civil Code Sections 1798, *et seq.*, regarding the collections, maintenance, and disclosure of personal and confidential information about individuals.

4. **POTENTIAL SUBCONTRACTORS**: Nothing contained in this Agreement or otherwise shall create any contractual relation between DRE and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to DRE for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from DRE's obligation to make payments to the Contractor. As a result,

DRE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

5. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE): DRE has determined that the DVBE participation goals for this Agreement are exempt. However, the Contractor may use DVBE's and report the participation to DRE.
6. GOODS AND SERVICES: DRE reserves the rights to inspect, reject, and/or accept all goods and services provided within this agreement.
7. Forum/Venue for Dispute Resolution

Any legal action arising from a dispute by and between the parties under this Agreement shall be filed in the Superior Court of the State of California for the County of Sacramento.

8. Governing Law

This Agreement shall be governed by the laws of the State of California.

9. Certification of Compliance with Economic Sanctions Against Russia and Russian Entities and Individuals

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Offeror represents that it is not a target of Economic Sanctions. The offeror shall certify that they are in compliance with the economic sanctions and Executive Order N-6-22. Should the State determine Offeror is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Offeror's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by DRE.

**Department of Real Estate
Business Services Office**

Purchasing Process for Non-IT Goods

Revised: October 2024

STEP 1 - Receive and Review RE 935 Purchase Request Form

- **Date stamp form**
- **Verify proper signature authority**
Requestor's Manager
- **Verify justification**
Required on all purchases.
- **Log DRE 935 request into DRE Purchase Log**

PRE- PROCESS CONSIDERATIONS:

STEP 2 - Procurement Research

- **Determine appropriate request classification**
Non IT and Goods or Service (For services, see Contract Request For Services Section).
Goods vs. Services:
 - **Definition of goods** – Is it a contract for the purchase of a Commodity or Goods? (PCC § 10300, et seq.) Does the contract have as its sole or main purpose, the buying of some tangible items such as equipment, parts, supplies, or other merchandise? If so, further consideration must be made to determine whether any services are being provided as well, and which has the predominant value to the contract; the items being purchased, or the services being rendered? The dollar value associated with the services provided, or the value of the goods being supplied are factors that should be considered. (See State Contracting Manual, Volume 2.)

- **Definition of services** –Is the acquisition for non-IT services? (PCC § 10335 et seq.) Does the contract have as its sole or primary purpose providing non-IT services? Services contracts are those that have someone doing something. Many service contracts are easily identified, e.g. waste removal services, cleaning services, etc. However, some services contracts are more difficult to determine, especially when they involve other disciplines as well. Example: A contract for carpeting may involve purchase of carpet (commodity) as well as removal of old carpet and pad (service), and installation of new carpet and pad (service). The determining factor should be what is the primary focus of the contract and expertise of the contractor. Is it the purchase of the item – that includes labor, or is the request for labor or installation? (See State Contracting Manual, Volume 1.)

- **Contact requestor about any questions / changes regarding purchase**
 - Examples include: clarify product by noun description, i.e. office supplies, desk, chair, etc.
 - Determine if product is discontinued, obtain model, make, item number or if description given does not match.
 - Determine quantity wanted, if unclear.
 - Advise program/requestor that item(s) will be quoted for comparable or like product; not by brand only = restrictive bidding.

- **Assign unique 8 character PO# from PO log on shared drive**
 - Different tabs for DO's and procurement methods in log
- **Determine appropriate procurement method:**
 - Competitive price quotes
 - Sole source
 - Historical comparison
 - Cal CARD
 - State contract (Skip to step 5B)
 - Find list of state contracts at www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.htm
 - PIA (Skip to step 5C)
 - OSP (Skip to step 5D)

- **Determine appropriate services approach (For services detail refer to the Contract Request For Services Section). Service Considerations and Options:**
 - In house resources
 - Other state agencies
 - Temporary hire
 - Informal contract – limited amount and term
 - Joint Powers of Authority
 - Civil Service Considerations – GC 19130 (a) or (b)
 - State Mandated contract
 - Formal Contract Service – Formal Bid
 - Non-Competitive Bid Service Agreement
- **IT Acquisition of Goods and Services please contact ITS.**

PURCHASING OF GOODS:

STEP 3 - Prepare Purchase Request For Quote

- **Check RE 935 is correctly filled out**
Verify item numbers and descriptions are correct from catalogs or websites.
- **Identify appropriate vendors for purchase:**
Use <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx> website to search for Small and Disabled Veteran businesses, search for other vendors on internet, need 3 vendors if one or less SB/DVBE vendor is used, need 2 vendors if SB/DVBEs are used and make sure they are both the same, SB to SB or DVBE to DVBE certification.
 - Expand Pool: per AB 1574, GC 14838 buyers are to expand their pool of vendors and include at least one new vendor in their solicitation
- **Print out SB/DVBE certifications**
Make sure they are not expired, certifications must be verified prior to bids, save for PO packet.

STEP 4 - Send Request For Quote to Vendors

- **Send RFQ e-mail to all vendors at the same time (Blind Copy) with same instructions**
- **Info to send with RFQ**
 - Bidders Instructions
 - Due date for quotes to be returned to DRE
 - Include Links to DGS Bidders Instructions, IT General Provisions, Non-IT General Provisions and DVBE Program requirements, Russian Sanctions, GenAI notice and form STD 1000
- **Keep all Request for Quote Documents in DRE BSO Procurement File**

STEP 5A Receive and Review Quotes from Vendors

- **Compare quotes**
 - Look for discrepancies in item numbers or quantity values, math calculations and ensure sales tax for the area of purchase is correct.
- **Verify and Document C.U.F requirements are met**
 - Make sure form is completed by vendor.
- **Determine Winning Vendor**
 - Lowest bid is the winning vendor
- **Update log**
 - List winning quote pricing onto purchasing log
- **Forms to send to vendor once bidder is selected**
 - Recycled Content Form CIWMB 74
 - Darfur Act Compliance Form
 - Bidders Declaration Form GSPD 105
 - DVBE Declaration Form STD 843 (only if DVBE is used)
 - Payee Data Record Form STD 204
 - Obtain seller's permit
 - Copy of SB/DVBE certification
 - DRE Russian Sanctions Notification
 - CUF Form
 - DRE PO Checklist
- **Ensure all necessary forms were sent**
 - Cannot award to vendor that did not submit everything needed

STEP 5B Get State Contract Pricing

- **Check contract for current pricing**

www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.htm

- Must print all documents associated with your purchase from the contract

STEP 5C Get Prison Industries Authority Pricing

- **Check PIA website for current pricing**

www.pia.ca.gov

- Forms are not required for purchase through PIA

STEP 5D Get Office of State Publishing Pricing - for printing services

- **Check OSP website for current pricing**

www.osp.dgs.ca.gov - Forms are not required for purchase through OSP

STEP 6 Prepare Purchase Request for Fi\$cal PO

All forms must be filled out by winning vendor

STEP 7 Assemble and Route Purchase Request Packet For Approvals

- All vendor quotes received
- All applicable documents received from all vendors
- Recycled Content Form CIWMB 74
- Darfur Act Compliance Form
- Bidders Declaration Form GSPD 105
- DVBE Declaration Form STD 843
- Payee Data Form STD 204
- Sellers Permit
- SB/DVBE Certification Proof
- Copy of Request for Quote sent to Vendors
- C.U.F. Proof
- Any communications with vendors regarding purchase
- Documentation for sole source, NCB procurement method
- Previous purchase documentation for Historical Comparison procurement method
- Billing breakdown if various billing codes are used

- Update log entry on status of original DRE 935 Request now converted to this Purchase Request

Submit packet to DRE Business Services Manager for review and approval. DRE BSO will update the Purchase log should the request be returned.

If the purchase contains equipment or furniture a copy of the PO must be given to the asset coordinator in BSO for asset tracking and ID tagging.

- **STEP 9 Review Status of Purchase Requests Submitted**
- **Enter PO information to Fi\$cal using the instructions below**

I:\Sacramento\Shared_Folders\Business Services Office Shared\Procedures - BSO\BSO Manual

Document: "Fi\$cal – Creating a PO"

- **DRE Business Services Procurement staff will check to see if any hard copies are returned.**

If so, ensure the Business Services Manager has received them first to update Purchase Log. DRE Business Services Manager will forward documentation to the DRE Business Services Offices Procurement staff to provide any additional information requested; correct any discrepancies noted, and process request back out through the DRE Business Services Manager; or file any purchase orders completed. Staff will update the DRE Purchase Log accordingly.

- **EMERGENCY ORDERS**

Emergencies are situations that are deemed imminent threats to employee health and safety or protection to state property. Contact vendor by phone and advise them of emergency and proceed as directed. If no contact can be made, make the appropriate emergency only transaction and document the situation and steps taken. Efforts for alternate bids should still be made over the phone and documented.

STEP 10 Close Out Purchase Request/P.O. Packets

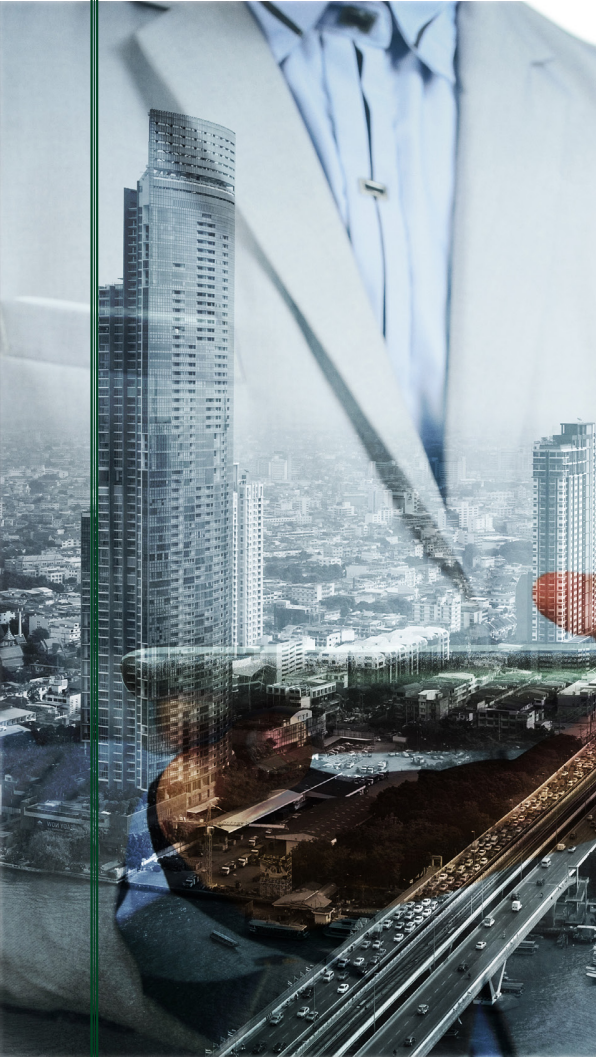
- **Receive copy signed packing slip from requesting program**
DRE Business Services Procurement staff will receive receipt document or copy of packing slip and attach to file copy of purchase packet.
- **Close the P.O. out on the Purchasing Log**
DRE Business Services Procurement staff will make final entry into Purchase Log closing transaction out. Invoices received are then verified with the P.O. Packets and the copy of form STD 65, Purchasing Authority Purchase Order, confirming all items were received.
The Invoices are then approved for payment with the PCA/Index/Object of Expenditure coding and sent to Fiscal for final processing.

California Department of Real Estate

Sunset Report – Attachment C

Major Studies





Agent-Next: PropTech and Future of Real Estate Intermediation

2024

Principal investigators:

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Sponsors:

California Department of Real Estate (DRE)
Real Estate and Land Use Institute (RELUI)



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Executive Summary

Our working definition of PropTech in this project refers to the use of technology to streamline and enhance various aspects of the real estate intermediation industry, including but not limited to property valuation, listing platforms, property management, conveying property rights, and client management.

Based on potential benefits and risks that PropTech may bring about to the real estate intermediation (REI) industry, our team has been tasked by the Department of Real Estate (DRE) to study future scenarios of PropTech and their potential impact on the REI profession as well as DRE's mission and statutory duties.

The project was initiated with the broad goal of understanding the relevance of PropTech to DRE's mission and documenting the current status of PropTech literature. The project concludes with a set of actionable insights and strategic recommendations for updating the regulatory framework.

Major activities of this study include:

1. Review existing literature on PropTech to provide a working definition
2. Understand the role of real estate agents and the licensing exam process
3. Examine more than 15 key PropTech startups
4. Benchmark to gain lessons from other industries that are going through similar challenges.

Property technology, or PropTech, integrates information technology (including hardware, software, and data analytics tools) in the real estate industry. PropTech has impacted the traditional property buying, selling, and management process, making it more efficient and convenient for agents and users.

5. Document equity and inclusion aspects of PropTech
6. Conduct unstructured interviews with more than ten leading industry experts
7. Review the results of the Occupational Analysis Questionnaire (Job Analysis Survey) to identify PropTech-related tasks and skills
8. Develop a conceptual model and future scenarios
9. Conduct a survey of professionals to assess proposed ideas and scenarios
10. Propose a set of short-term and long-term recommendations to DRE

Four scenarios for the future of PropTech are identified based on a literature review, a study of industry trends, and experts' opinions.

Four Possible Scenarios for the Future of Real Estate

Intermediation

- Scenario I (Enhanced Productivity): The productivity of real estate agents will be increased, but they will not be replaced, nor the nature of their jobs will be changed.
- Scenario II (New Roles): envisioning changes to real estate agents' tasks and possibly eliminating specific tasks but not decreasing the number of needed agents in the industry.
- Scenario III (AI Replacing Some Agents): The rise of PropTech leverages technology to streamline transactions. As a result, the number of traditional real estate agents may decrease as online platforms play a more prominent role in connecting buyers and sellers.

Scenario I: Enhanced

Productivity

Scenario II: New Roles

Scenario III: AI Replacing

Some Agents

Scenario IV: Autonomous

Digital Industry

- Scenario IV (Autonomous Digital Industry): In this disruptive scenario, the role of human real estate agents is entirely supplanted by digital systems, driven by the emergence of advanced technologies.

Summary of Survey Results The survey of 188 real estate licensees in California suggests that the majority of respondents (66.25%) anticipate significant changes in the real estate industry due to PropTech's advancement in the next five years.

While only a small percentage (3.21%) believe that real estate agents will be replaced entirely with digital systems (Scenario IV), a more substantial portion (31.55%) foresees a reduction in the number of real estate agents needed (Scenario III). A slightly higher percentage (32.09%) expects real estate agents' roles and tasks to be significantly changed but not replaced (Scenario II). Only 33.16% of respondents anticipate increased productivity without changing the nature of agents' jobs (Scenario I).

Our study reveals a dynamic landscape in the real estate industry concerning the adoption of PropTech tools and the preparedness of professionals for technological changes:

- High adoption rate of electronic document management systems and marketing tools
- Moderate current adoption rate of AI-based products but interest in learning it for future adoption
- Concerns about compliance, security, and data privacy as a significant barrier to adopting new PropTech solutions
- Not viewing PropTech as a significant threat to replace real

estate agents

- Broad support for including PropTech in the licensure and continued education processes.
- High-priority continuing education topics include Fundamentals of PropTech, Legal and Ethical Aspects of PropTech, and Effective Use of Generative AI for Real Estate

PropTech solutions empower companies to enhance operational efficiency, lower expenses, and deliver enhanced customer experiences. Moreover, PropTech can democratize the real estate industry, reduce barriers to entry, and make it more accessible to a broader spectrum of individuals. These advantages for the industry create opportunities for the DRE as well.

Opportunities for DRE The main identified opportunities for DRE that emerged due to new PropTech solutions include:

- Improved transparency in the industry to enforce compliance measures more effectively.
- More efficient education and training with AI-based solutions and simulated real-world scenarios.
- Use of regulatory technology (RegTech) for improved compliance and supervisory functions.

Improved transparency
More efficient education
Use of RegTech

Emerging Challenges If algorithms are trained on biased or limited data, they can inadvertently reinforce discriminatory practices or exclude certain groups from accessing housing opportunities. Additionally, reliance on automated decision-making processes in PropTech may reduce human oversight, raising concerns about accountability and the potential for unfair treatment. It is crucial

to incorporate ethical considerations, transparency, and fairness into developing and implementing PropTech solutions to mitigate such risks. Finally, if PropTech disrupts industry structure toward eliminating or reducing the number of human agents by replacing them with digital platforms, there is a risk of unemployment for some licensees and a reduced population of licensees.

Challenges for DRE include the digital gap, new legal and ethical challenges, and the need for an updated compliance framework for consumer protection. One concern is the likely biased algorithms or hidden redlining practices that may perpetuate existing inequalities.

The overarching theme of our study is that PropTech affects **“consumer protection”** and **“consumer services”** aspects of real estate agents’ work. Consumer protection includes significant issues such as data privacy, fairness and biases, misleading information, digital redlining, and model transparency. Consumer service dimensions require real estate agents to have a fiduciary duty to serve their clients’ best interests. Agents who fail to catch up with the progress in PropTech may not deliver the best outcomes for their clients because they are not using the most efficient solutions for advertisement and listing, client management, and market analysis.

The recommendations for the Department of Real Estate (DRE) span short-term, medium-term, and long-term actions to adapt to the changing landscape of PropTech. In the short term (first two years), educational and awareness initiatives are proposed, including enhancing staff knowledge, launching public awareness campaigns, and collaborating with educational institutions for specialized courses. Guidelines and policy development are also recommended,

involving forming a PropTech compliance task force, reviewing existing frameworks, collaborating with PropTech providers, and establishing feedback mechanisms. In the medium and long term (beyond two years), integration of PropTech in licensing exams and continuing education is advised, along with regulatory updates addressing the ethical implications of AI and blockchain. In addition, we recommend that DRE examine ethical monitoring and reinforcement strategies that involve expanding technological infrastructure, investing in AI-driven tools, and collaborating with law enforcement. The last long-term recommendation includes examining jurisdiction expansion possibilities and forming a specialized arbitration body to resolve complex real estate disputes swiftly. These recommendations aim to fortify the DRE's role in regulating PropTech and ensuring the real estate industry's ethical and efficient adaptation to technological advancements.

Finally, we suggest future studies in this area to complement the findings of the current report. A follow-up study is proposed to develop detailed learning objectives and resources for PropTech training. Additionally, a study on domestic compliance trends could explore activities by real estate regulatory bodies in other states, offering insights into a multi-state compliance framework. Another recommended study focuses on the regulatory expectations of PropTech to guide private companies in navigating regulatory risks. Lastly, recognizing the dynamic nature of PropTech, the suggestion is made to update the current study's framework, scenarios, and recommendations every two years periodically. These proposed studies aim to enhance the understanding and regulatory preparedness of the DRE in the evolving realm of PropTech.

1 Introduction

Property Technology (PropTech) represents the innovative integration of various information technology tools—including hardware, software, and data analytics—into the real estate sector. PropTech has impacted the traditional ways of property buying, selling, and management, making it more efficient and convenient for agents and users.

Understanding the underlying factors and developments in PropTech is crucial for the Department of Real Estate (DRE) due to PropTech's significant impact on the real estate sector. PropTech solutions empower companies to enhance operational efficiency, lower expenses, and deliver enhanced customer experiences. Moreover, PropTech has the potential to democratize the real estate industry, reducing barriers and making it more accessible to a broader spectrum of individuals. For this reason, we recommend paying special attention to PropTech's inclusionary opportunities. Additionally, using data analytics within PropTech enables households, developers, and investors to make more informed and insightful decisions, ultimately maximizing their investment opportunities. Overall, PropTech holds the potential to reshape the real estate landscape and drive positive transformations throughout the industry.

However, PropTech also introduces new risks and challenges, such as the potential for biased algorithms and likely implicit redlining practices, which may inadvertently perpetuate existing inequalities. If algorithms are trained on biased or limited data, they can

inadvertently reinforce discriminatory practices or exclude certain groups from accessing housing opportunities. Additionally, reliance on automated decision-making processes in PropTech may lead to reduced human oversight, raising concerns about accountability and the potential for unfair treatment. It is crucial to ensure that ethical considerations, transparency, and fairness are incorporated into developing and implementing PropTech solutions to mitigate such risks. Finally, if PropTech disrupts industry structure toward eliminating or reducing the number of human agents by replacing them with digital platforms, there is a risk of unemployment for some licensees and a reduced population of licensees.

The challenge to adapt and survive in the age of PropTech has already been noted by real estate brokerage firms. The 2021 Profile of Real Estate Firms by the National Association of Realtors (NAR) reports that 47% of real estate firms see "Competition from nontraditional market participants" as their biggest challenge. 41% of firms mention "Keeping up with technology", and 16% cite "Liability in a digital world (contracts, signatures, etc.)" as their biggest challenge.

Given potential benefits and risks that PropTech may bring about to the real estate intermediation (REI) industry, our team has been tasked by the Department of Real Estate (DRE) to study future scenarios of PropTech. This study focuses on the potential benefits and risks PropTech may bring to the real estate intermediation (REI) industry, as well as its impact on the REI profession and DRE's mission and statutory duties.

This report presents the results of analyzing the current status

and future options for addressing PropTech in the supervisory and regulatory functions of DRE. In addition to the CalPoly team's original data collection and analysis, the research has significantly benefited from discussions with industry experts and DRE staff.

The overarching theme of our analysis is that PropTech affects **"consumer protection"** and **"consumer services"** aspects of real estate agents' work. Consumer protection includes significant issues such as data privacy, fairness and biases, misleading information, digital redlining, and model transparency. Consumer service dimensions require that real estate agents have a fiduciary duty to serve their client's best interests. Agents who fail to catch up with the progress in PropTech may not deliver the best outcomes for their clients because they are not using the most efficient solutions for advertisement and listing, client management, and market analysis.

Several other service industries (including insurance, finance, and legal professions) have been experiencing digital transformation in their service delivery models. Thus, updates in their regulatory, compliance, and supervision frameworks can inform policy updates for DRE. We have included examples of lessons that can be learned from other sectors. Our report concludes by providing short-term and long-term recommendations to DRE.

The report is structured as follows. We first introduce methodologies used in this research in Chapter 2. Section 3 presents a conceptual model and set of scenarios for the future of PropTech and its potential impact on the roles and responsibilities of licensees and DRE. Section 4 discusses the results of a survey sent to a large group of licensees. We discuss the implications of PropTech scenarios for

DRE in Section 5. Section 6 includes recommendations of the study.

Finally, Section 7 summarizes suggestions for additional studies.

2 Methodology of Research

The project team utilized a comprehensive approach to examine the multifaceted impact of PropTech on the future of the real estate industry. Given the novelty of the methodology, it integrates various research methods to provide a thorough understanding of the evolving landscape. The following sections detail the specific methods employed:

1. Literature Review:

- **Scope:** A comprehensive literature review was conducted to establish a foundational understanding of the existing body of knowledge on PropTech and its implications for the real estate sector. The review systematically examined academic journals, industry reports, and relevant publications. The result of the literature review has been reported in this project's Inception Report.
- **Purpose:** The literature review serves as the basis for identifying key themes, trends, and gaps in the current understanding of PropTech within the real estate context.

2. Benchmarking:

- **Scope:** Benchmarking was employed to gain lessons from other industries that are going through similar challenges.
- **Purpose:** Benchmarking provides insights into how other industries update their regulatory and compliance frameworks to allow their service providers to leverage technology for maximum impact.

3. Expert Panels:

- **Composition:** Multiple interdisciplinary groups of experts were assembled, including real estate professionals, technologists, and regulatory specialists.
- **Method:** Structured expert panels were conducted to gather qualitative insights, expert opinions, and predictions regarding the impact of PropTech on the real estate industry. These sessions facilitated rich discussions on technological advancements, regulatory challenges, and industry adaptation.
- **Purpose:** Expert panels contribute nuanced perspectives, allowing for a holistic understanding of the diverse factors shaping the future of real estate in the context of technological innovation.

4. Community Survey:

- **Sampling:** A structured survey was sent to more than 5000 real estate agents to receive their opinions on industry trends and the changes needed in the licensure process.
- **Instrument:** The survey instrument was designed to capture some demographic information such as race, gender, and educational background, information about job title, role, and activities related to the profession, perspective on the future of PropTech, its role in practice, and how regulators should respond to the emerging technological developments. Respondents' participation took approximately 10 minutes.
- **Purpose:** The community survey provides quantitative data to complement qualitative insights, offering a

broader understanding of the prevalent sentiments and experiences within the industry.

5. **Conceptual Model Development:**

- **Approach:** A conceptual model synthesizing findings from the literature review, benchmarking, expert panels, and community survey was developed. This model serves as a framework for understanding the interplay of technological, economic, and regulatory factors shaping the future of real estate.
- **Purpose:** The conceptual model enhances the project's analytical framework, illustrating the dynamic relationships and potential pathways through which PropTech influences the real estate landscape.

In combination, these methods offer a comprehensive and multi-dimensional analysis of the impact of PropTech on the real estate industry, aligning with the project's overarching goal of providing actionable insights and strategic recommendations for updating the regulatory framework.

3 Conceptual Model and Scenarios

To conceptualize the future of real estate agents in the presence of PropTech solutions, we consider the major roles and responsibilities of real estate agents and discuss how these roles would be affected or disrupted by PropTech.

Table 1 presents a list of critical services that real estate agents provide, together with the potential substitution of those services through digital solutions.

Table 1: The Impact of PropTech on Various Roles of Real Estate Agents

RE Agent Role	Example of PropTech Substitute	Implications
Market trend analysis	Market analysis tools	Improved efficiency of real estate agents
Price advice	Electronic estimate models	Potential to replace agents by providing direct information to clients.
Property listing	Online platforms	Potential to replace agents by allowing clients to list their homes directly.
Marketing strategies	Social media platforms	Expanding real estate agents' reach.
Property showing	Virtual tours	Potential to both augment or replace agents
Contract negotiation	AI-assistants	Potential to replace agents by allowing clients to negotiate via AI-assistants
Handling closing process	Large language models	Potential to significantly improve the efficiency of agents as well as to replace them with automatic drafting solutions.
Emotional buffer and support to clients	Smart Chatbots	Potential to replace agents.

3.1 What Constraints Will PropTech Relax?

Geography Digital platforms weaken limits of space and geography by allowing professionals to provide services to clients outside of their current location. Real estate agents can also benefit from the same opportunity by working with and intermediating clients who may reside outside their current business location.

Volume of Transactions In a traditional business model, an agent's available time to meet and work on documents determines the number of clients they can handle. PropTech solutions unleash real estate agents' potential by automating several process steps (from appointment setting to contract preparation.)

Team Work and Knowledge-Sharing PropTech can break the traditional barriers to collaboration between agents who are not necessarily working in the same space by facilitating data and knowledge sharing. On the one hand, open communication will improve the informational efficiency of the real estate market. However, it may also increase the risk of collusion among various agents.

Access to Information and Data Analytics A critical impact is that even agents without advanced data analytics and economics skills can obtain highly digestible and relevant information about the market.

Showing/Viewing Times A classic showing process is limited by the time of the day and the schedule of current occupants and potential buyers/tenants. Virtual tours remove this barrier by eliminating the need for the synchronous presence of multiple parties on the property.

Access to Potential Buyers/Tenants The traditional marketing and advertisement channels not only limit the reach of the information to a particular group (e.g., those who physically pass by the property) but also lack personalized and targeted marketing and advertisement. PropTech enables agents to reach a much more

comprehensive range of potential buyers/tenants with a more targeted and customized information set.

3.2 Plausible Scenarios

We discuss four major feasible scenarios for the future of the real estate industry facing progress in PropTech. The scenarios are generated using various inputs, including benchmarking of other industries, industry expert interviews, historical trend analysis, and mapping the progress in ML/AI to the value chain of the real estate profession.

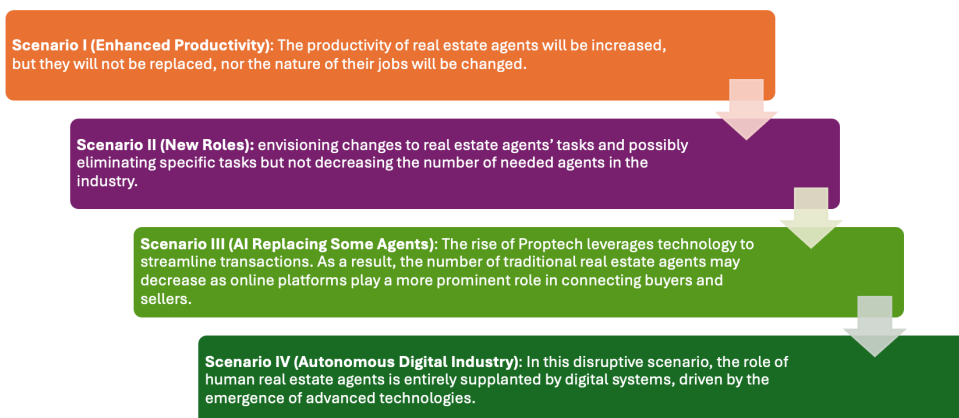


Figure 1: Four Scenarios for Future of Real Estate Profession

3.2.1 Scenario I: Enhanced Productivity

In this scenario, the productivity of real estate agents will be increased, but they will not be replaced, nor will the nature of their jobs be changed. Consequently, PropTech has a relatively minor influence on the real estate industry's structure and conduct. Real estate agents remain central to the process, but they are equipped with advanced technological tools that empower them to provide

more efficient and effective services. Thus, progress in PropTech only makes real estate agents more efficient, but will not replace them. Technological manifestation of this scenario can be:

Enhanced Data Analytics: The use of big data and analytics tools could provide real estate agents with more accurate and insightful information about market trends, property values, and customer preferences. This empowers agents to make more informed decisions and provide better client advice.

Enhanced Client Relationship Management (CRM) Systems: Advanced CRM systems could help agents manage their client interactions more effectively. These systems can provide personalized insights, track client preferences, and automate communication, enhancing the overall customer experience.

3.2.2 Scenario II: New Roles

This scenario envisions some changes to real estate agents' tasks and possibly eliminating specific tasks but not decreasing the number of needed agents in the industry. Thus, while the real estate agents' roles and tasks will be significantly changed, they will not be replaced.

The technological manifestation of this scenario includes all the elements of the previous scenario and adds further technological components, including:

The automation of Routine Tasks: With the integration of advanced technologies like AI and automation, routine and repetitive tasks such as paperwork, data entry, and scheduling

could be automated. This allows real estate agents to focus more on complex and relationship-driven aspects of their work.

Virtual Reality (VR) and Augmented Reality (AR): These technologies could revolutionize property showings. Virtual property tours and augmented reality visualizations might reduce the need for physical visits, saving time for both agents and clients.

Specialization in Niche Markets: As specific routine tasks become automated, real estate agents might choose to specialize in niche markets or offer highly personalized services. This specialization could range from unique property types to specific demographics.

Focus on Negotiation and Consultation: With technology handling more administrative tasks, real estate agents may find themselves spending more time on negotiation, strategy, and providing expert advice to clients. This could strengthen the client-agent relationship.

3.2.3 Scenario III: AI Replacing Some Agents

In this scenario, the rise of PropTech leverages technology to streamline transactions. As a result, the number of traditional real estate agents may decrease as online platforms play a more prominent role in connecting buyers and sellers. We believe this is a likely scenario for the medium-term outlook of the industry. It will result in fewer active agents, but will not fundamentally change the structure of the real estate intermediation industry.

The technological manifestation of this scenario includes all the elements of the previous scenarios and adds further technological components, including:

Online Brokerage Platforms: Online platforms become central hubs for real estate transactions, allowing buyers and sellers to connect directly. These platforms leverage user-friendly interfaces, comprehensive property databases, and advanced search algorithms to streamline the buying and selling process. The shift towards online platforms poses challenges for traditional real estate agents. The demand for their services may decrease as more individuals opt for the convenience and speed of digital platforms.

Integration of IoT, Smart Buildings, and GIS Systems: If IoT, smart buildings, and GIS systems are integrated with listing platforms, potential buyers can receive an accurate, data-driven, and reliable account of the performance of the property and its surrounding environment. Thus, the information asymmetry between buyers and sellers will be eliminated or reduced, and the demand for an expert agent will decrease.

3.2.4 Scenario IV: Autonomous Digital Industry

In this disruptive scenario, the role of human real estate agents is entirely supplanted by digital systems driven by the emergence of advanced technologies. Thus, real estate agents will be replaced entirely with digital systems. Digital platforms become a compelling alternative, providing services traditionally relying on human intermediaries. The technological manifestation of this scenario includes all the elements of the previous scenarios and adds further technological components, including:

Blockchain Technology and Financing Options : Blockchain technology, coupled with flexible financing options, ensures

transparent and secure transactions, offering buyers an easy return policy and diminishing the role of agents in the process. This transformation leads to entirely virtual property transactions, with digital contracts and signatures becoming the norm.

Personalization and AI Assistance: As technology-driven platforms offer user-friendly interfaces, personalized recommendations, and AI assistance, the demand for human agents decreases significantly, prompting a reevaluation of industry roles and skills. The real estate industry is experiencing a shift towards a digitally-driven ecosystem, resulting in increased efficiency and transparency.

Table 2: Roles and Responsibilities of Real Estate Agents in Different Scenarios

Scenarios I and II	Scenario III	Scenario IV
Agents remain central to transactions, utilizing technology for enhanced client services. They leverage digital tools for market analysis, personalized recommendations, and efficient communication.	Online platforms take a prominent role in connecting buyers and sellers. Agents focus on transaction facilitation, negotiation, and expert advice. Their numbers may decrease as online platforms gain prominence.	AI-powered platforms assume many traditional agent functions, potentially reducing the need for human intermediaries. Agents may transition to specialized roles or work within AI-enabled platforms.

3.3 Evolution of Roles

Table 3: Evolution of Real Estate Agent Roles in Different Scenarios

Roles	Scenario I and II	Scenario III	Scenario IV
Listing Agent	Create and manage property listings, utilizing technology for effective online marketing.	Continue to list properties, potentially leveraging advanced online platforms for wider exposure.	AI-enabled platforms may automate the listing process, potentially reducing the need for manual listing agents.
Transaction Facilitator	Facilitate property transactions, leveraging technology for efficiency and client satisfaction.	Continue to facilitate transactions, but with a potential decrease in numbers due to online platforms.	AI-enabled platforms may take on transaction facilitation, potentially reducing the need for human agents in this role.
Market Analyst	Utilize technology for in-depth market analysis, providing clients with valuable insights for informed decisions.	Market analysis remains important, but online platforms may provide some automated analysis tools.	AI-driven platforms may offer advanced market analysis tools, potentially reducing the need for dedicated market analysts.
Negotiation	Leverage negotiation skills to secure favorable client deals, supported by technology for data-driven negotiations.	Negotiation expertise remains crucial, but online platforms may offer some negotiation support tools.	AI-enabled platforms may incorporate advanced negotiation algorithms, potentially augmenting agent expertise.
Personalized Advisor	Provide personalized advice and recommendations to clients based on their needs and preferences.	Continue to offer personalized advice, but online platforms may also provide algorithm-driven recommendations.	AI-enabled platforms may offer highly personalized recommendations based on advanced algorithms and data analysis.
Compliance and Regulations	Stay informed about and navigate complex regulations to ensure transactions comply with legal requirements.	Regulatory expertise remains important, especially in online transactions, which may involve additional compliance considerations.	AI-enabled platforms may incorporate regulatory compliance features, potentially reducing the need for specialized experts.

4 Survey

This section reports the results gathered through a structured survey. The survey was sent to a sample of approximately 5000 licensees, and we received 188 responses in total (after two rounds of reminders).

4.1 Survey Design

The goal of the survey is to measure views of the licensee population on the following topics:

1. Current status of familiarity and adoption of PropTech tool
2. Future scenarios of PropTech and their impact on the profession
3. Suggestions for including PropTech in the licensure process

4.2 Discussion of Selection Bias

Any voluntary survey is subject to the concerns of selection bias in responses. Selection bias refers to the fact that though the survey is sent to a random sample, those entities who deliberately choose to respond (or not respond) may inherently differ from the overall population. Thus, if there is a correlation between the “decision to respond” and “characteristics of respondents”, a response bias might be introduced. For example, if younger agents, tech-savvy agents, or less busy agents have a higher response rate, survey results will be biased toward their views rather than the views of

the overall population.

The first step to examine the extent of bias in responses is to compare the observable characteristics of the responses with those of the overall population. This strategy, however, does not fully identify potential bias if the bias is induced through unobservable characteristics.

To run a few observable characteristic checks, we compared the location and gender of respondents, the two characteristics with available data, with those numbers from the overall population.

In terms of gender, while 49% licensees are identified as female, the responses included 45% identifying themselves as female. Thus, the survey might have a small bias toward the male population.

Table 4 shows the percentage of licensees in a few large counties versus the response rate from those counties. We note a slight bias toward higher response rates from agents working in larger counties.¹

¹To partially mitigate this bias, we over-represented the weight of the sample from small counties in the survey Emails sent. We also sent an additional reminder only to agents working in small counties.

Table 4: Percentage of Agents in Selected Large Counties

County	Percentage in Sample	Percentage in Responses
Alameda	3.68%	3.08%
Los Angeles	23.31%	26.31%
Orange	8.59%	13.63%
Riverside	5.52%	6.33%
Sacramento	4.91%	3.20%
San Bernardino	4.39%	2.45%
San Diego	7.36%	9.83%
Santa Clara	4.29%	4.16%
Sonoma	4.91%	1.39%
Sum	66.96%	70.38%

Standard techniques, e.g., inverse weighted sampling based on expected response rate, exist to mitigate response biases. However, since the topic of study is novel and little is known about the correlation between licensees and their potential response rate, we cannot fully utilize these techniques.

4.3 Key Insights from Survey Responses

High Adoption of Electronic Document Management Systems

(EDMS) and Marketing tools: An overwhelming 85.64% of respondents reported regular use of electronic document management systems such as DocuSign. The widespread use of EDMS indicates a firm reliance on digital platforms for handling paperwork and streamlining transactions. Digital listing platforms (60.64%), market analytics tools (61.17%), virtual tours and staging with drone photography (57.45%), and video production and social media (49.47%) emerged as widely adopted PropTech tools. The

result suggests leveraging analytical, visual, and interactive content to enhance property marketing.

The majority of respondents have used at least three PropTech-related tools.

Question What PropTech tools and solutions do you regularly use in your real estate work?

ANSWER CHOICES	RESPONSES	
None of the above	9.09%	17
Digital listing platforms	60.96%	114
Electronic document management systems (e.g. docuSign)	85.56%	160
Market analytics tools	61.50%	115
Video production, and Social media	49.73%	93
AI-based content production (e.g. ChatGPT)	21.93%	41
Virtual tours and staging, drone photography	57.75%	108
Total Respondents: 187		

Figure 2: PropTech Tools and Solutions

Moderate Adoption of AI-Based Content Production: While only 21.8% of respondents use AI-based content production tools like ChatGPT, considering the relatively new emergence of the technology, there is a high likelihood of growth in the integration of generative artificial intelligence for content production.

AI-based solutions (such as ChatGPT and other large language models) are just emerging. We expect to observe a higher penetration rate of AI-based solutions in the next few years.

Technology Adoption Perspective: 25.3% of respondents believe they are ahead of their peers when adopting new technologies. The majority of respondents (57.6%) see themselves as “Just keeping up” with new technology, while only 15% feel that they are “falling behind”. The numbers should be interpreted in the context that over 56% of respondents have a bachelor’s degree or higher, and 58.7% have been in the business for more than 20 years, emphasizing the need for continuous learning and adaptation within the real estate

industry.

Question When it comes to new technology, what best describes you?

ANSWER CHOICES	RESPONSES	
Ahead of my peers	25.41%	47
Just keeping up	57.30%	106
Falling behind	15.14%	28
Don't know	2.16%	4
TOTAL		185

Figure 3: Readiness

High Priority Investment Areas: Market analysis and CMA (65.2%), property listing (67.40%), business operations (63.5%), contract preparation, and document management (60.7%) are the areas where respondents are most willing to invest time and resources to acquire new technology, indicating a focus on data-driven decision-making and operational efficiency.

Question Please specify where you're open to investing time and resources to acquire new technology.

ANSWER CHOICES	RESPONSES	
Market analysis and CMA	65.00%	117
Client representation	55.56%	100
Property listing	67.22%	121
Property showing	48.33%	87
Contract preparation and document management	60.56%	109
Business operations (e.g., compliance, networking, branding, and performance management)	63.33%	114
Total Respondents: 180		

Figure 4: New PropTech Tools and Solutions

Barriers and Concerns: Concerns about data privacy and security (47.2%), lack of familiarity with new technology (56.6%), and concerns about initial costs (56.6%) emerge as primary barriers to

the adoption of PropTech solutions, underscoring the importance of addressing these concerns to facilitate widespread adoption. Doubts about the efficiency of new technology were shared among only 25.3% of respondents.

Question What are the primary barriers influencing your willingness to adopt PropTech solutions?

ANSWER CHOICES	RESPONSES	
Concerns about data privacy and security	46.96%	85
Lack of familiarity with new technology	56.91%	103
Risk of integration with existing systems	32.04%	58
Concerns about initial costs	56.35%	102
Resistance among my colleagues	7.73%	14
Doubts about the efficiency of new technology	25.41%	46
Total Respondents: 181		

Figure 5: Barriers

Perceptions of Future Changes: A third of respondents (33.2%) believe that the productivity of real estate agents will increase without significant changes to their roles, reflecting a cautious optimism about the impact of PropTech on the industry. However, most respondents expect significant changes in their industry due to technology. While just 3% of respondents see digital systems completely replacing real estate agents, 31% believe the number of real estate agents needed in the industry will be reduced, and 32% believe real estate agents’ roles and tasks will be significantly changed, but they will not be replaced.

Question With PropTech’s advancement in the next five years, which of these scenarios is most likely to happen?

Preferred Exam for PropTech Skills: A substantial portion (44.2%) of respondents believe that both the Salesperson Exam and Broker

ANSWER CHOICES	RESPONSES
The productivity of real estate agents will be increased, but they will not be replaced, nor the nature of their job will be changed.	33.33% 62
The real estate agents roles and tasks will be significantly changed, but they will not be replaced.	32.26% 60
The number of real estate agents needed in the industry will be reduced.	31.18% 58
Real estate agents will be completely replaced with digital systems.	3.23% 6
TOTAL	186

Figure 6: Future Scenarios

Exam are suitable for testing basic PropTech skills, indicating a recognition of the importance of technological proficiency across various roles in real estate intermediation.

Question What is the best exam to test for basic PropTech skills?

ANSWER CHOICES	RESPONSES
Salesperson Exam	14.62% 25
Broker Exam	8.19% 14
Both	44.44% 76
Neither	32.75% 56
TOTAL	171

Figure 7: Exam

Continuing Education Priorities: Legal responsibilities in PropTech (62.8%), basics of PropTech (56.4%), effective use of generative AI (42.4%), and ethics in PropTech (41.8%) are identified as the top priorities for continuing education, emphasizing the importance of regulatory compliance, foundational knowledge, and data-driven practices in the evolving real estate landscape.

Question What topics would you like to take as your California real estate continuing education?

ANSWER CHOICES	RESPONSES	
Basics of PropTech	56.14%	96
Effective use of listing platforms	33.33%	57
Electronic and document transaction management	37.43%	64
Ethics in Proptech (e.g. bias)	41.52%	71
Legal responsibilities in PropTech (e.g. privacy)	62.57%	107
Customer relationship management	34.50%	59
Virtual tours and staging	20.47%	35
Video production and social media marketing	26.32%	45
Introduction to data analytics	33.33%	57
Effective use of Generative AI (e.g. ChatGPT)	42.69%	73
Other (please specify)	3.51%	6
Total Respondents: 171		

Figure 8: Exam Topics

Mainstream skills in PropTech: The relatively lower interest in topics such as virtual tours and staging (20.4%) and video production and social media marketing (26.2%) for continuing education suggests that individuals either keep themselves updated in these areas or outsource those skills.

Emerging Interest in AI-Based Content Production: The moderate adoption of AI-based content production (21.8%) and the interest in the effective use of Generative AI (42.4%) underscore a growing curiosity and openness among real estate professionals toward leveraging artificial intelligence in content creation and communication.

5 Implications for DRE

5.1 Opportunities

New technologies allow DRE to supervise licensees more effectively and fulfill its mission.

Improved Transparency and Accessibility: PropTech solutions can potentially improve transparency in the conduct of industry by providing accessible information about real estate transactions, property histories, legal documents, and market conduct. This increased transparency could help regulatory and supervision agencies (including DRE) to enforce compliance measures more effectively.

More Efficient Education and Training: Though online training materials for the licensure process have been available for more than two decades, new AI-based solutions can further improve the depth and efficiency of the training and examination process by allowing current and future licensees to interact with simulated real-world scenarios.

Use of Regulatory Technology Regulatory Technology (RegTech) refers to advanced technology for improved compliance and supervisory functions. The emergence of RegTech is partly a response to the increased complexity of regulatory frameworks and risks of non-compliance. Thus, companies in sectors such as finance and banking aim to use modern technology to better comply with

PropTech results in both new challenges (e.g., digital redlining) and opportunities (e.g., RegTech solutions) for DRE.

rules and regulations.

Regulatory Technology may refer to various applications to ensure compliance, from simply better visualization of the compliance data to AI-based process automation and robot-driven tasks. The benefits include better auditability of procedures, higher accuracy and quality of information, compatibility, and consistency between various systems.

RegTech solutions might be employed by both regulatory agencies as well as agents who are subject to regulations. In industries with a concern for market manipulation (e.g., finance and insurance), RegTech solutions can help regulations detect and investigate abnormal behavior. RegTech can also help licensees and regulated firms in those sectors better comply with the regulations.

Figure 9 shows a few examples of RegTech solutions that broker firms and/or DRE may adopt for better compliance with complex laws and regulations and for more effective enforcement.

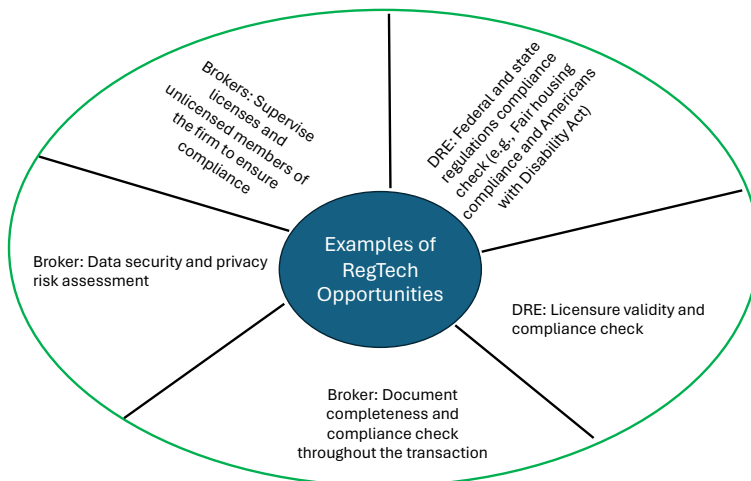


Figure 9: Examples of RegTech Opportunities for DRE and Broker Firms

Based on reports issues by consulting firms, such as Deloitte² and EY³, likely trends in RegTech that can directly affect DRE or Real Estate firms include:

- Integration of compliance components with the standard business process automation, in particular, using AI-based systems that can provide better contextualization for regulations.
- Better consumer protection through automated transaction audits and background checks (e.g., title search)
- Data-driven and automated supervision of fair housing laws
- Compliance risk monitoring systems
- Improved online exam integrity

5.2 Challenges

By changing the way agents and clients interact as well as the methods for representing properties and producing content, PropTech solutions may create new challenges for DRE's statutory responsibilities.

5.2.1 Digital Gap

PropTech solutions may require a significant initial investment in software/hardware and skills for licensees and potential clients. These initial investments will likely result in digital gaps across

²<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/risk/in-risk-RegTech-Gaining-momentum-noexp.pdf>

³https://assets.ey.com/content/dam/ey-sites/ey-com/en_us/topics/financial-services/ey-regulatory-technology-regtech.pdf

demographic and location groups. More specifically, some sources of potential digital gap include:

- **Lack of Tech Literacy** Some real estate agents may have limited experience or familiarity with advanced technology tools and platforms, which could hinder agents' ability to effectively adopt and utilize PropTech solutions.
- **Limited Access to Resources** Small or independent real estate agents or agencies may face budget constraints that limit their ability to invest in expensive PropTech tools or platforms.
- **Uneven Adoption Rates** Adoption of PropTech may vary based on factors like location, market demographics, and client preferences. The uneven adoption can create disparities in the industry.
- **Digital Divide in Client Base** Agents with clients with limited access to or familiarity with technology may face challenges in implementing PropTech solutions.
- **Resistance to Change** Long-established agents who are used to traditional methods may resist adopting new technologies, especially if they perceive them as disruptive or time-consuming to learn.
- **Inadequate Training and Support** Insufficient training and support for adopting and using PropTech tools can lead to underutilization or improper implementation.

5.2.2 Responsibilities and Compliance

PropTech solutions may create new legal and jurisdiction boundary challenges for licensees and regulatory agencies.

A significant challenge arises from the rapid evolution of new technologies, often surpassing the rate at which corresponding legal frameworks are established or updated. Real estate agents embracing new solutions may encounter difficulties due to existing regulations inadequately addressing the complexities of these new tools. In particular, inadequate legal frameworks create uncertainty regarding agents' responsibilities and liabilities in utilizing PropTech solutions, compounded by ambiguities in laws about data privacy, liability allocation, and contractual obligations.

The integration of PropTech solutions introduces a potential blending of traditional real estate functions with automated processes (e.g., using a virtual staging software.) Utilizing AI algorithms, automated valuation models, contract drafting solutions, or blockchain-based contracts challenges conventional understandings of agency relationships and fiduciary duties. Our survey results suggest that licensees face the complex task of navigating new technological solutions' ethical and legal obligations.

5.2.3 Algorithmic Biases

As real estate agents utilize new AI-based solutions (including Generative AI tools and Large Language Models), there's a potential for unintended challenges regarding fair housing laws and anti-discriminatory regulations. AI-driven models, while efficiently

Determining accountability in scenarios involving system errors, data breaches, fake information, and algorithmic biases becomes intricate, exposing agents to legal risks due to unclear guidelines on liability allocation within technological innovations.

handling tasks such as property descriptions and customer interactions, can inadvertently perpetuate biases in historical data or algorithmic design. Due to the datasets they are trained on, potential algorithmic biases embedded in these models might reflect and reinforce patterns of discrimination from past interactions or listings. Such biases relating to race, ethnicity, gender, or other protected characteristics could inadvertently manifest in language generated by these models, potentially conflicting with anti-discrimination regulations.

Integrating AI into real estate practices requires a cautious approach to mitigate algorithmic biases. Real estate agents must critically assess and address biases ingrained within these AI technologies. Scrutinizing training data for biases, implementing algorithms that prioritize fairness, and regularly auditing model outputs to detect and rectify biases are imperative to ensure compliance with fair housing laws. Additionally, fostering diversity in datasets and involving multidisciplinary teams in developing and deploying LLMs can mitigate biases, ensuring that these technologies align with ethical and legal obligations while enhancing operational efficiency in the real estate sector. Striking a balance between leveraging the capabilities of new systems (e.g., LLMs) and upholding fair housing principles remains a paramount concern for real estate professionals integrating these advanced technologies into their practices.

5.2.4 Cross-Border Transactions

The integration of PropTech in the real estate industry has empowered agents to engage in cross-border transactions within

the United States, transcending state boundaries and expanding their market reach. While this advancement presents lucrative opportunities, it is not without its challenges. Navigating the diverse legal and regulatory landscapes across different states demands a comprehensive understanding of inter-state property laws, tax regulations, and compliance requirements. Agents must adapt to varying market practices and potentially contend with state-specific licensing and disclosure mandates. Additionally, effectively communicating and building trust with clients in distant locations requires a strategic and culturally sensitive approach. Coordinating logistics such as property viewings, inspections, and paperwork across state lines demands meticulous planning and organization. While PropTech facilitates cross-state transactions, agents must navigate these unique challenges to successfully navigate and thrive in this extended operational landscape.

5.3 Lessons from Other Industries

Several industries with characteristics similar to real estate intermediation have adopted AI/ML in their practices and revised or updated their professional codes of conduct and compliance frameworks. Examples of such industries include finance, insurance, health care, and legal professions. Like real estate, those industries are also facing new questions and challenges in the cross-border regulation of services, transparency in computational models, algorithmic biases, human supervision, and data privacy. Here are examples of practices that one can learn from other industries.

5.3.1 Sandboxes

A sandbox is a risk-controlled approach that allows new companies, particularly FinTech and Insurance-Tech, to test new products and services in a specific environment (e.g., limited geography or range of services) with relaxed regulatory requirements. This encourages innovation while maintaining consumer protection at the broader level. In real estate, a sandbox approach may include new licensure requirements in experiment zones and markets.

5.3.2 Data Privacy

The General Data Protection Regulation (GDPR)⁴ in the European Union, California Consumer Protection Act (CCPA)⁵, and similar laws in other jurisdictions impose strict requirements on the collection, processing, and protection of personal data. Recent regulatory updates have significantly changed how companies handle and safeguard user information.

5.3.3 Ethics of AI in Legal Profession

The essential ethical guidelines for AI in legal practice emphasize topics such as transparency and accountability, bias avoidance, human supervision, confidentiality, communication, regular monitoring and testing, competence and education, and informed consent of client.⁶

⁴<https://gdpr-info.eu>

⁵<https://oag.ca.gov/privacy/ccpa>

⁶https://www.squirepattonboggs.com/-/media/files/insights/publications/2019/02/legal-ethics-in-the-use-of-artificial-intelligence/legalethics_feb2019.pdf

5.3.4 AI in Insurance

National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI) offers a framework and some guiding principles for the ethical and responsible use of AI in the insurance industry. These principles are intended to guide insurers in developing and deploying AI technologies while ensuring compliance with regulatory standards and consumer protection. These recommendations include principles such as respecting the rule of law, avoiding discrimination, being accountable for the output of the AI-based system, and transparency in the operation of the AI system.

6 Recommendations

After analyzing and identifying potential trends/scenarios, emerging challenges and opportunities, views of licensees, and experiences of other industries, we summarize specific recommendations to the Department of Real Estate. The recommendations address new challenges related to Consumer Protection and Consumer Service and update DRE's actions toward fulfilling its mission.

6.1 Summary of Recommendations

Depending on the time horizon and urgency of the need they address, the recommendations are classified as short-term (first two years) and medium and long-term (beyond two years.)

6.2 Short-Term Actions (First Two Years)

6.2.1 Educational and Awareness Initiatives

- Enhance DRE staff's knowledge and expertise in matters related to emerging PropTech technologies and their regulatory requirements.
- Launch a public awareness campaign to inform stakeholders (especially licensees) about recent PropTech solutions, their potential, and potential regulatory changes and compliance requirements. Provide resources, workshops, and online courses to confidently improve consumers' ability to navigate PropTech platforms. Digital literacy empowers consumers to

make informed decisions and reduces the likelihood of falling victim to fraudulent practices.

- Produce an online introductory PropTech course and conduct outreach programs to mitigate digital gaps on the agents' side.
- Collaborate with qualified educational institutions (public and private) to introduce specialized courses in PropTech. The effort can include supporting the development of PropTech courses in two-year, four-year, and graduate-level academic institutions.
- Actively engage with consumer advocacy groups to stay abreast of emerging issues and gather insights into consumer experiences with PropTech platforms.

6.2.2 Develop Guidelines and Policies

- Form a PropTech compliance task force to examine potential deficiencies and update the current compliance framework. Conduct regular assessments focused on the user experience of PropTech platforms. Evaluate the accessibility, usability, and transparency of these platforms from the consumer's perspective. The findings can inform regulatory decisions, ensuring consumers have user-friendly interactions with PropTech tools and can easily understand the processes involved.
- Conduct an updated review of existing regulatory frameworks to identify immediate gaps and areas for refinement
- Foster collaboration between the Department of Real Estate and PropTech providers to ensure a mutual understanding of

regulatory compliance.

- Enforce regulations that require PropTech platforms to provide standardized and easily understandable disclosures to consumers. These disclosures should encompass how data is collected, utilized, and protected and any potential algorithm biases. Standardization ensures consumers have consistent and clear information across different platforms, empowering them to make informed decisions.
- Establish a feedback mechanism to receive opinions from licensees on new compliance and regulatory challenges. Create easily accessible reporting channels for consumers to submit complaints or concerns about PropTech services. The DRE should have a dedicated unit to investigate and address these complaints promptly. Establishing a responsive system empowers consumers and holds PropTech platforms accountable for any potential issues.
- Establish key performance indicators (KPIs) to assess the progress in updating DRE's regulatory and supervision roles.

6.3 Medium and Long-Term Actions (Beyond Two Years)

6.3.1 Integration of PropTech in Licensing Exams and Continuing Education

We propose updating licensing requirements and continuing education content by including new PropTech-related content justified through laws and regulations and the Job Analysis Survey.

The following topics in the continuing education and licensing exams can be considered as potential additions (see Table 5.) Several new PropTech topics can already be included in the current Sales and Broker Exams Tasks. In particular, general categories related to the following tasks/knowledge can be updated to include the use of PropTech solutions:⁷

- Document Management
- Closing Document Preparation
- Utilizing Available Resources for Knowledge of Market Conditions
- Maintaining Client Records
- Promoting Client Property
- Locating Potential Clients
- Managing Real Estate Offices
- Ensuring Proper Use of Technology
- Supervising Licensed and Unlicensed Staff
- Monitoring the Fulfillment of Contracts
- Complying with Reporting Requirements
- Managing Properties

⁷We did not find any direct reference to PropTech in the 2024 Occupational Survey. As the industry practice evolves, future rounds of occupational analysis surveys might inform the updating of contents related to each task.

Table 5: Suggestions for Updating Licensure Process

Topics	Exam		Pre-License and Continuing Education
	Salesperson	Broker	
Basics of PropTech	✓	✓	Include basic topics in Real Estate Practice course + introduce a new CE Course + Add as a new topic to the Nine-hour survey course
Legal and compliance aspects of PropTech		✓	Add to existing Legal Aspects courses
Algorithmic Biases in PropTech		✓	Implicit Bias course, Fair Housing course
Ethics of PropTech	✓	✓	Add to Ethics course
Consumer protection in PropTech (e.g., data privacy)			Add to Consumer Protection series
Consumer service through PropTech (e.g., electronic document management or listing platforms)			Add to Consumer Service series
PropTech System Integrity			Add to Business Management courses for Brokers
PropTech Risks (e.g., data breach)		✓	Add to Risk Management course
Automated Valuation Systems (AVM)	✓	✓	Add to Real Estate Appraisal course
Effective Use of Social Media			Add to elective Marketing course
Virtual reality, drones, and virtual staging			Introduce as a new CE course.
Large Language Models (LLM) and Generative AI for real estate transactions			Introduce as a new CE course.

Table 6 provides samples suggested to be added to Sales and Broker Exams tasks and content.

Table 6: Examples of New Sales and Broker Exam Tasks Related to PropTech

Sales Exam
Educate clients about the overall process of listing on electronic platforms
Advise clients about online mortgage platforms
Advise clients regarding potential biases in PropTech solutions (e.g., automated valuation systems)
Advise clients on the benefits and limitations of using virtual tours and virtual staging solutions

Broker Exam
Educate clients about the overall process of listing on electronic platforms
Advise clients about online mortgage platforms
Advise clients regarding potential biases in PropTech solutions (e.g., automated valuation systems)
Advise clients on the benefits and limitations of using virtual tours and virtual staging solutions
Train firm real estate licensees on ethics and compliance requirements of PropTech

6.3.2 Regulatory Updates

- Study the need for a new legal framework to address the ethical implications of AI and blockchain in real estate transactions.
- Develop and disseminate updated guidelines on ethical practices and code of conduct for real estate professionals. Guidelines may include frameworks for data security, algorithmic transparency, and consumer rights. The regulations should provide a solid legal foundation for overseeing PropTech activities to ensure ethical practices and protect consumers.
- Develop and implement measures to identify, address, and mitigate any algorithmic biases in PropTech applications. This

is particularly important in real estate to prevent discriminatory outcomes in housing transactions. Regular audits and assessments can help identify and rectify biases, ensuring fair and equitable treatment for all consumers.

- Implement regulations that mandate digital platforms used in real estate adhere to accessibility standards. Well-established standards ensure that the tools are inclusive, catering to individuals with varying levels of digital proficiency, including those with disabilities. Platforms should prioritize features like text-to-speech, easy navigation, and compatibility with assistive technologies.
- Create partnerships with other regulatory bodies to align standards and streamline interdepartmental processes.

6.3.3 Monitoring and Reinforcements

- Expand DRE's technological infrastructure and resources to audit and supervise new automated systems effectively.
- Invest in AI-driven tools and RegTech solutions for proactively monitoring and identifying potential regulatory violations.
- Collaborate with other law enforcement agencies and third parties to identify PropTech real estate misconduct. Implement a system of periodic audits conducted by independent third parties to assess PropTech platforms' compliance with regulations and consumer protection standards. These audits should cover data security, algorithmic transparency, and adherence to ethical practices. Third-party verification enhances credibility and ensures impartial evaluations.

6.3.4 Explore new territories for DRE

- Study potentials for expanding the DRE’s jurisdiction to cover evolving aspects of real estate, such as virtual properties or decentralized finance.
- Establish a specialized arbitration body within the department to resolve complex real estate disputes swiftly
- Develop targeted programs to address specific demographics or communities facing digital disparities. This could involve providing additional support, resources, or training tailored to the needs of these groups.

7 Suggestions for Future Studies by DRE

In this section, we enumerate suggestions for follow-up studies and analysis that can complement the findings of the current report. While we appreciate the importance of those studies, their detailed implementation is beyond the scope of the current project.

1. Educating PropTech:

- Develop a comprehensive curriculum that includes both theoretical and practical aspects of PropTech.
- Identify key learning objectives for each module, ensuring a well-rounded understanding of the subject matter.
- Provide a list of recommended resources, including textbooks, online courses, and case studies, to support educators and learners.

2. Domestic and International Regulatory Trends on PropTech:

- Conduct a comparative analysis of Real Estate regulatory frameworks in various states or countries
- Collaborate with industry experts, regulatory bodies, and PropTech companies to understand their perspectives on regulatory expectations.
- Investigate potential regulatory gaps
- Propose strategies to mitigate risks for consumers and agents investing in PropTech

3. Cybersecurity in PropTech:

- Investigate the cybersecurity risks associated with adopting PropTech solutions in real estate.
- Analyze potential platform vulnerabilities, data privacy concerns, and the implications of cyber threats on property transactions.
- Propose guidelines and best practices for ensuring the security and integrity of PropTech systems, protecting user data and financial transactions.

4. PropTech for all:

- Explore the role of PropTech in addressing challenges related to affordable housing and housing inequality.
- Examine how technology can be leveraged to make housing more accessible, reduce costs, and streamline affordable housing initiatives.
- Assess the social and economic impact of PropTech solutions on diverse communities and propose strategies to ensure inclusivity in adopting these technologies.

5. Updating Current Study:

- Establish a schedule for biannual updates to the study, ensuring that it remains relevant in the face of rapid technological advancements.
- Incorporate feedback from stakeholders and users to enhance the study's accuracy and applicability.
- Consider adding a section highlighting emerging trends and technologies in PropTech since the last update.

8 Conclusion

Although the specific nature of coming changes is unclear, there is agreement among professionals and experts that the change is coming to the real estate intermediation industry due to emerging technologies. While a third of respondents foresee increased productivity without significant role changes, a substantial portion anticipates significant shifts in the industry due to technology, with only a tiny fraction envisioning the complete replacement of real estate agents by digital systems.

Our study reveals a dynamic landscape in the real estate industry concerning the adoption of PropTech tools and the preparedness of professionals for technological changes. The high adoption rates of electronic document management systems and various marketing tools suggest the existing reliance on digital platforms for several tasks. Despite the moderate current use of AI-based tools, agents are interested in learning more and adopting emerging AI-based technologies, including generative AI for content creation. Professionals exhibit a range of attitudes toward technology adoption, with a quarter considering themselves ahead, the majority keeping pace, and a small fraction feeling behind, emphasizing the ongoing need for continuous learning.

Market analysis, property listing, and business operations emerge as high-priority investment areas in PropTech, reflecting the demand for data-driven decision-making and operational efficiency. Barriers to adoption, such as data privacy concerns and unfamiliarity with new technology, highlight areas that need attention in education and policymaking domains. Continuing education priorities for agents should also include the importance of legal responsibilities using PropTech tools, basic knowledge of PropTech, and ethical considerations. Observing agents' interest in the PropTech skills examination was

noted, emphasizing the relevance of both the Salesperson and Broker Exams. Finally, the widespread interest in PropTech indicates a growing curiosity and openness among real estate professionals from diverse educational backgrounds, demographics, geographical locations, and primary focus.

We suggest that the Department of Real Estate (DRE) focus on educational initiatives in the next two years, including enhancing staff expertise and launching a public awareness campaign. Collaboration with educational institutions, a new PropTech compliance task force, and establishing feedback mechanisms are recommended for immediate attention.

Looking beyond the initial two years, the DRE should integrate PropTech into licensing exams and continuing education. The integration effort involves updating licensing requirements and adding topics like Algorithmic Biases and Ethics of PropTech. Regulatory updates, including the need for a legal framework for AI and blockchain, measures to address algorithmic biases, and ensuring accessibility standards, are crucial. Additionally, the DRE should consider expanding its jurisdiction, establishing a specialized arbitration body, and implementing targeted programs to address digital disparities in specific demographics or communities.

Finally, we recommend future studies to complement this report, such as a) develop a comprehensive curriculum that includes both theoretical and practical aspects of PropTech, b) conduct a comparative analysis of domestic and international Real Estate regulatory frameworks in relationship with PropTech, and AI in particular, c) investigate the cybersecurity risks associated with the adoption of PropTech solutions in real estate, d) explore the impact PropTech on social justice, and housing affordability, and e) update the current study to include emerging trends and technologies after two years.

California Department of Real Estate

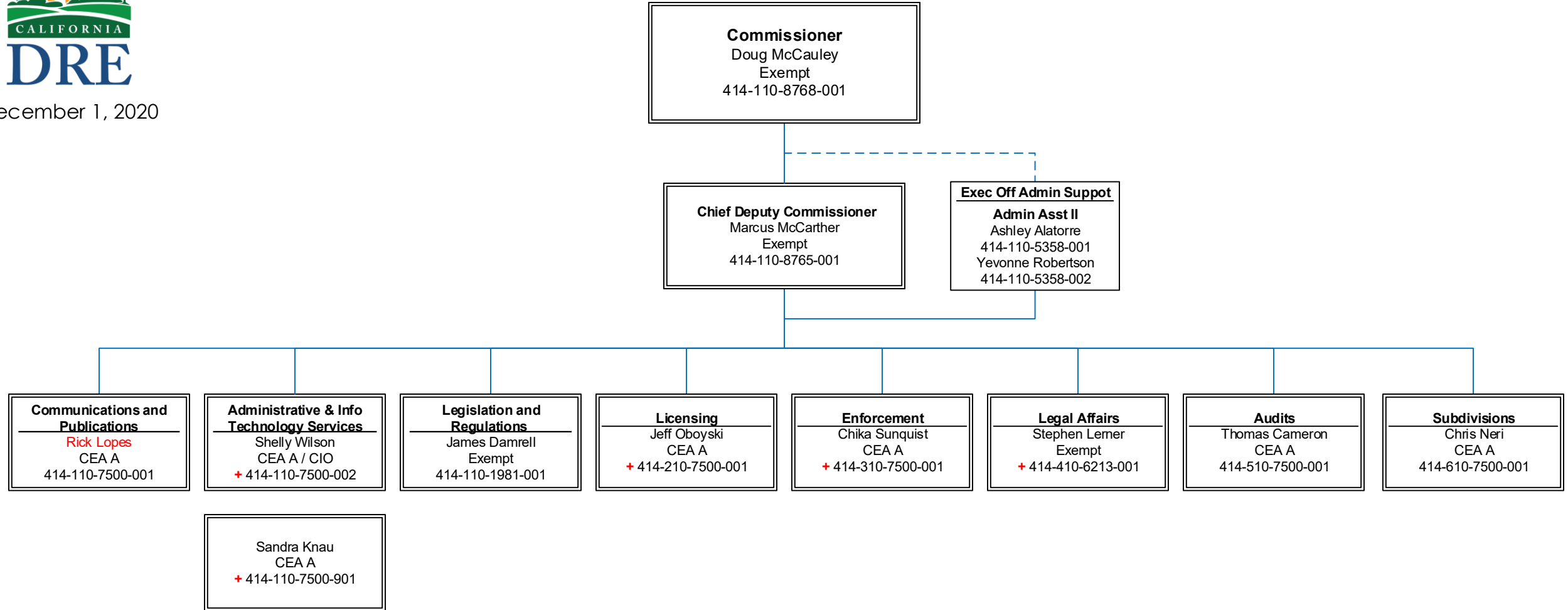
Sunset Report – Attachment D

DRE Organization Charts





December 1, 2020



+ - CORI Position

Doug McCauley, Commissioner

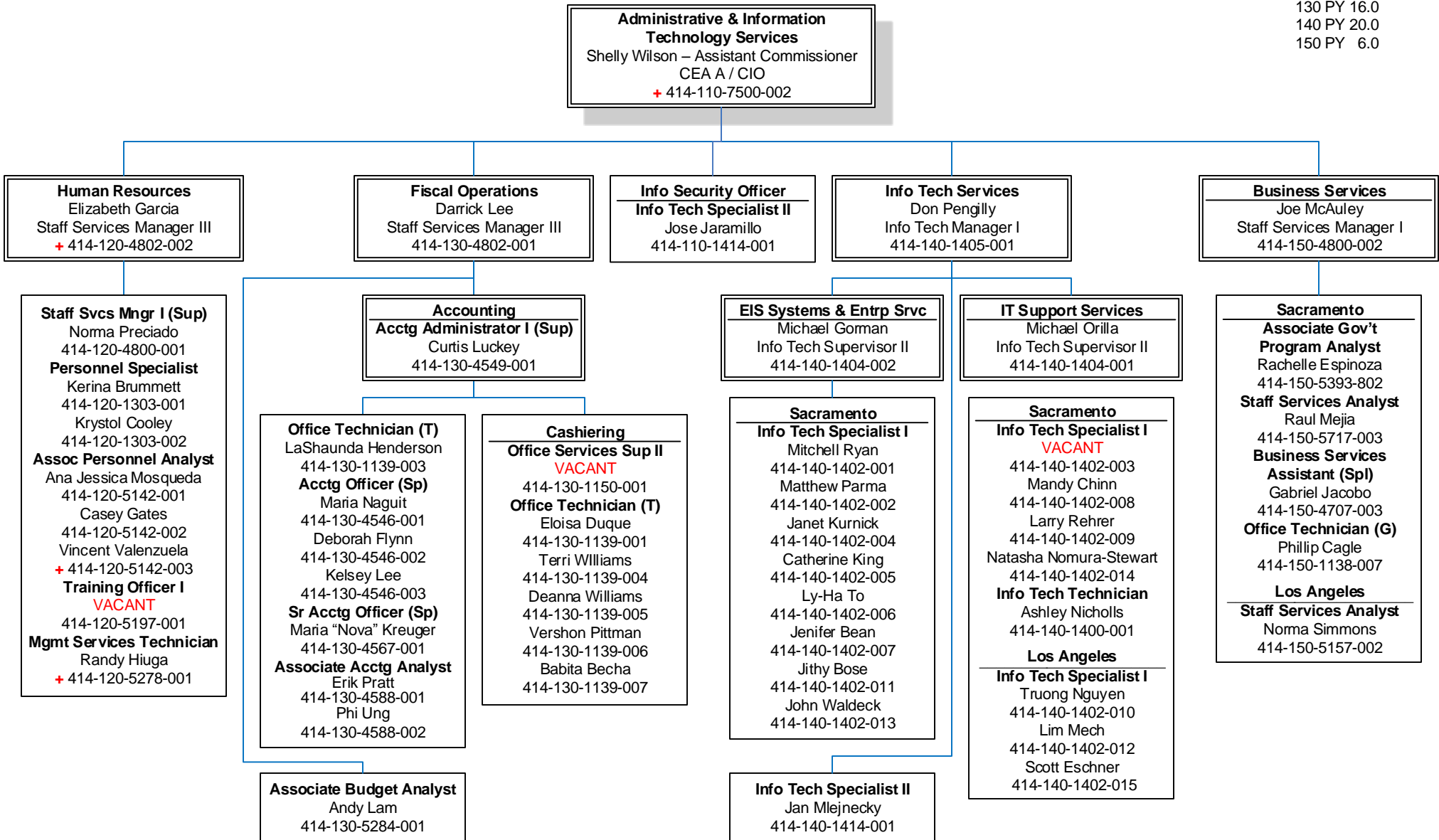
Vincent Valenzuela, C&P Analyst

Communications and Publications
Rick Lopes, Assistant Commissioner
CEA A
414-110-7500-001

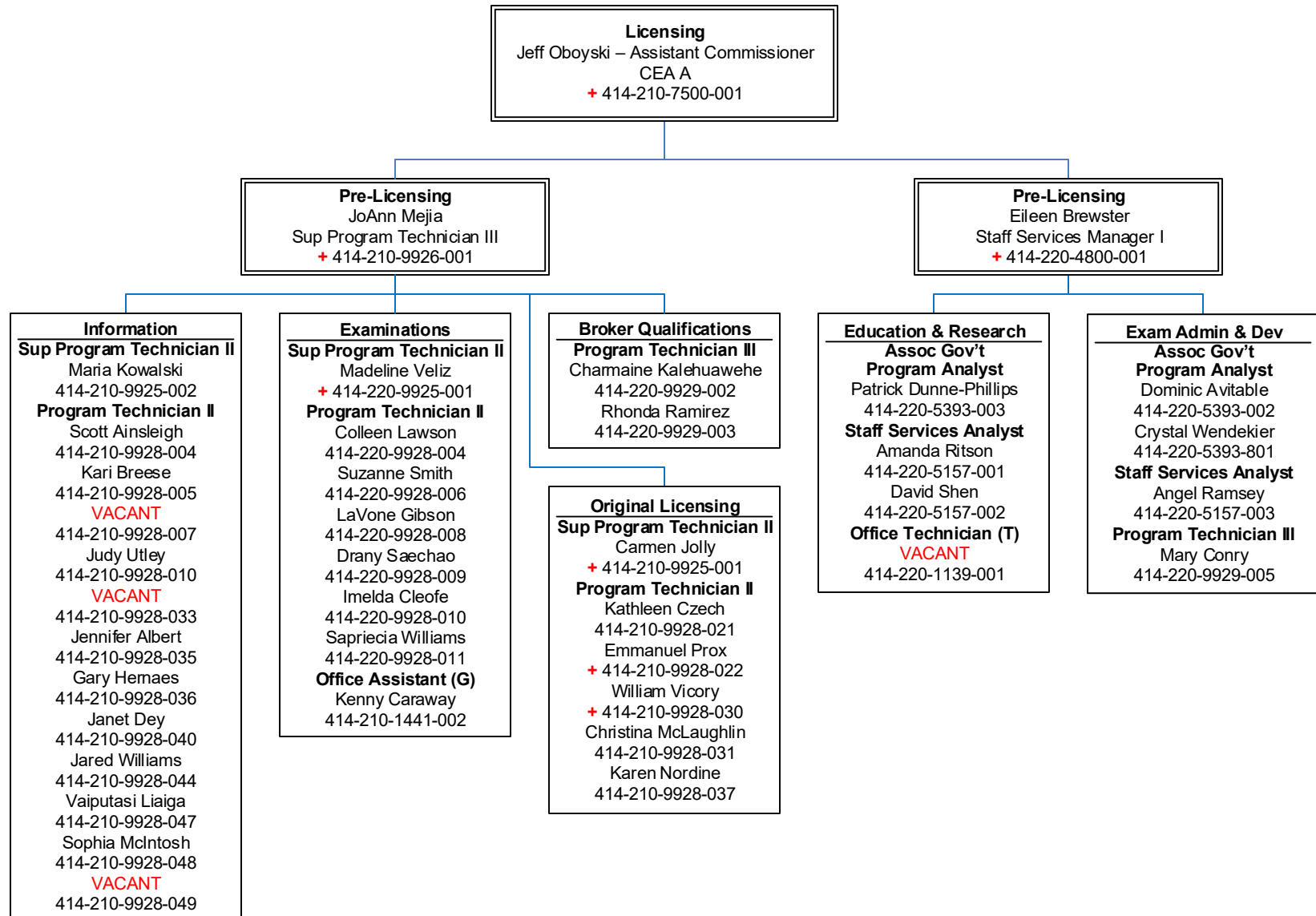
**Associate Governmental
Program Analyst**
Bradley Evans
414-110-5393-004

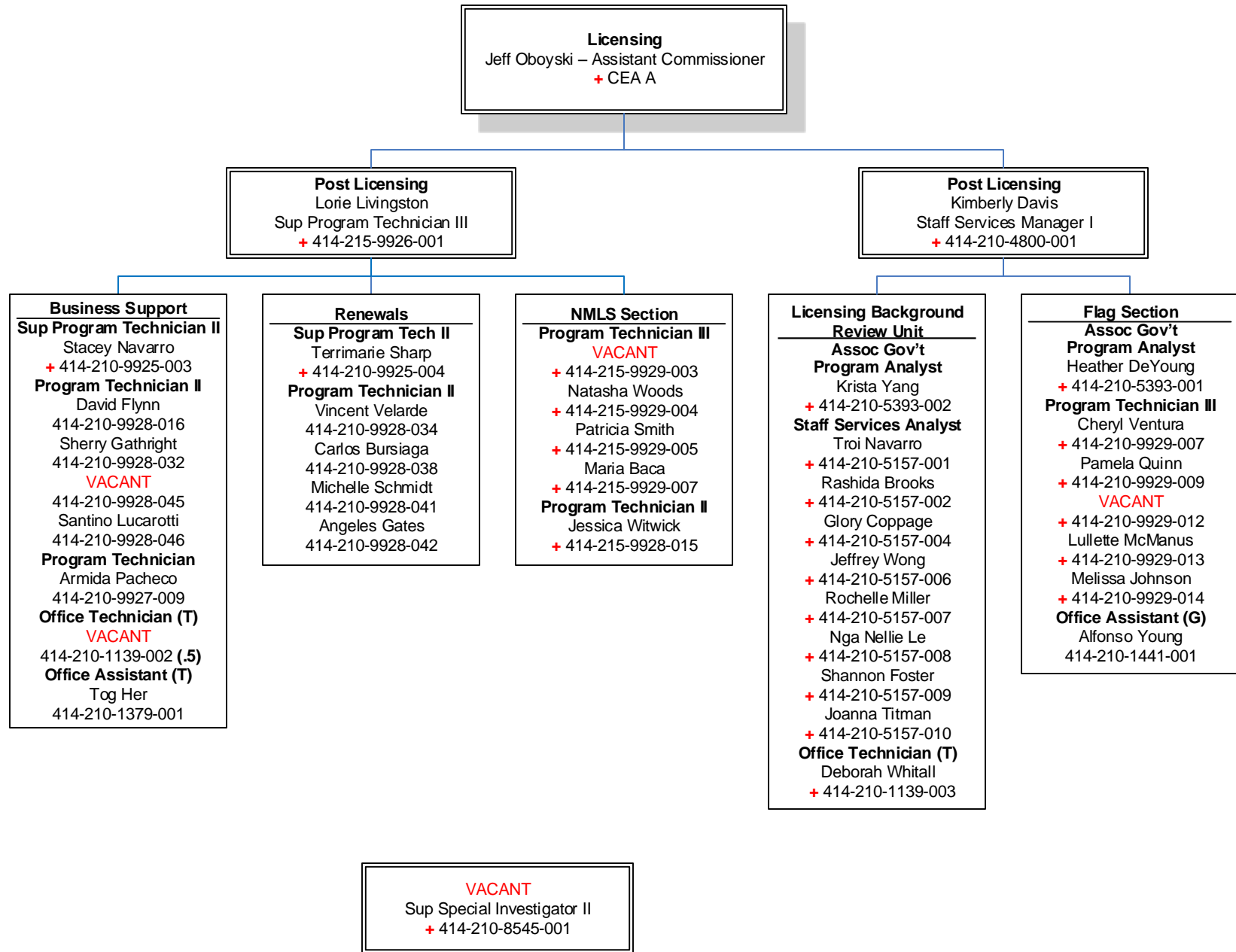
Legislation and Regulations
James Damrell, Assistant Commissioner
Exempt
414-110-1981-001

**Associate Governmental
Program Analyst**
Yi Wen "Eva" Erickson
414-110-5393-003



+ - CORI Position





Department of Real Estate

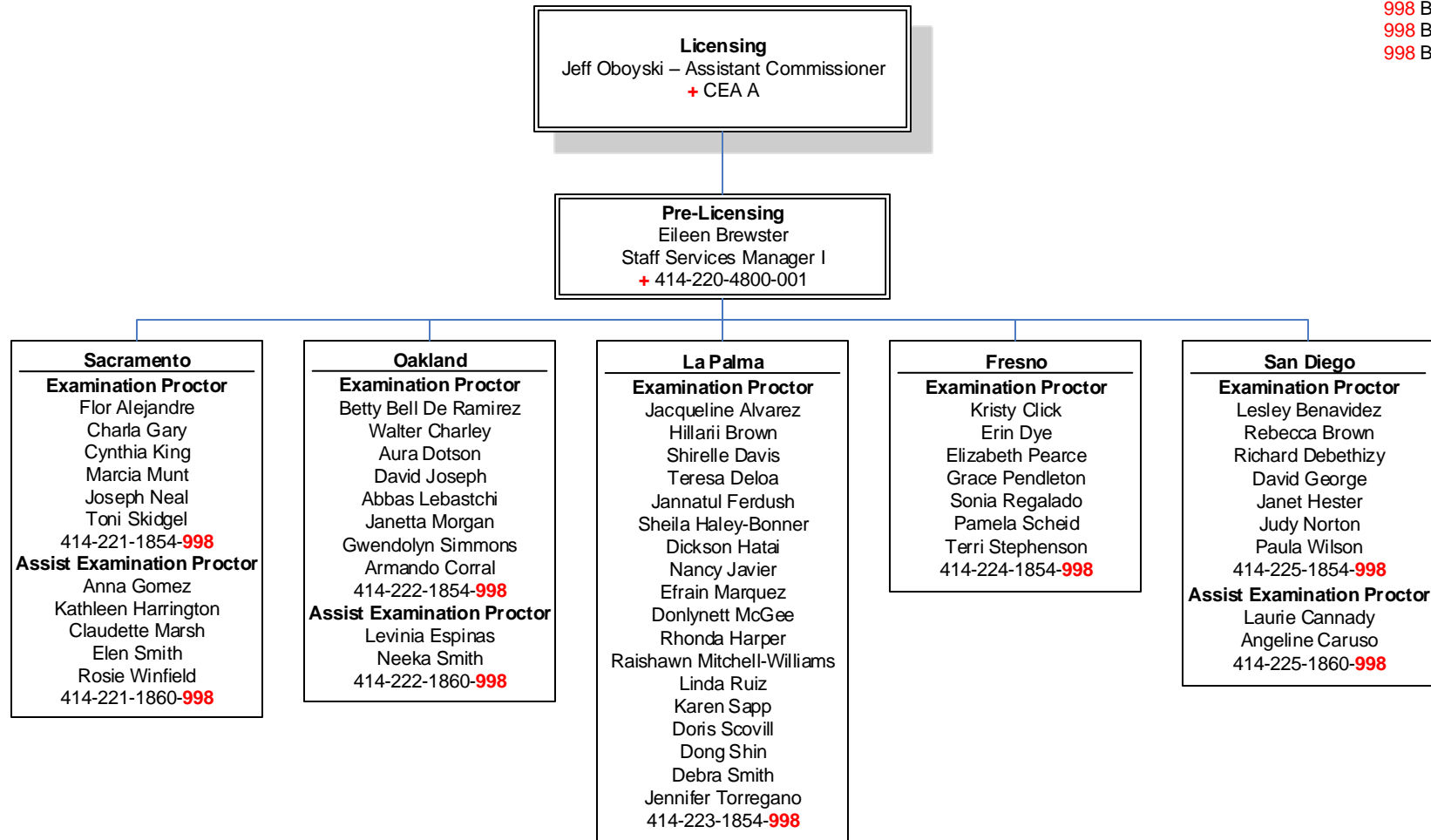
December 1, 2020

Licensing

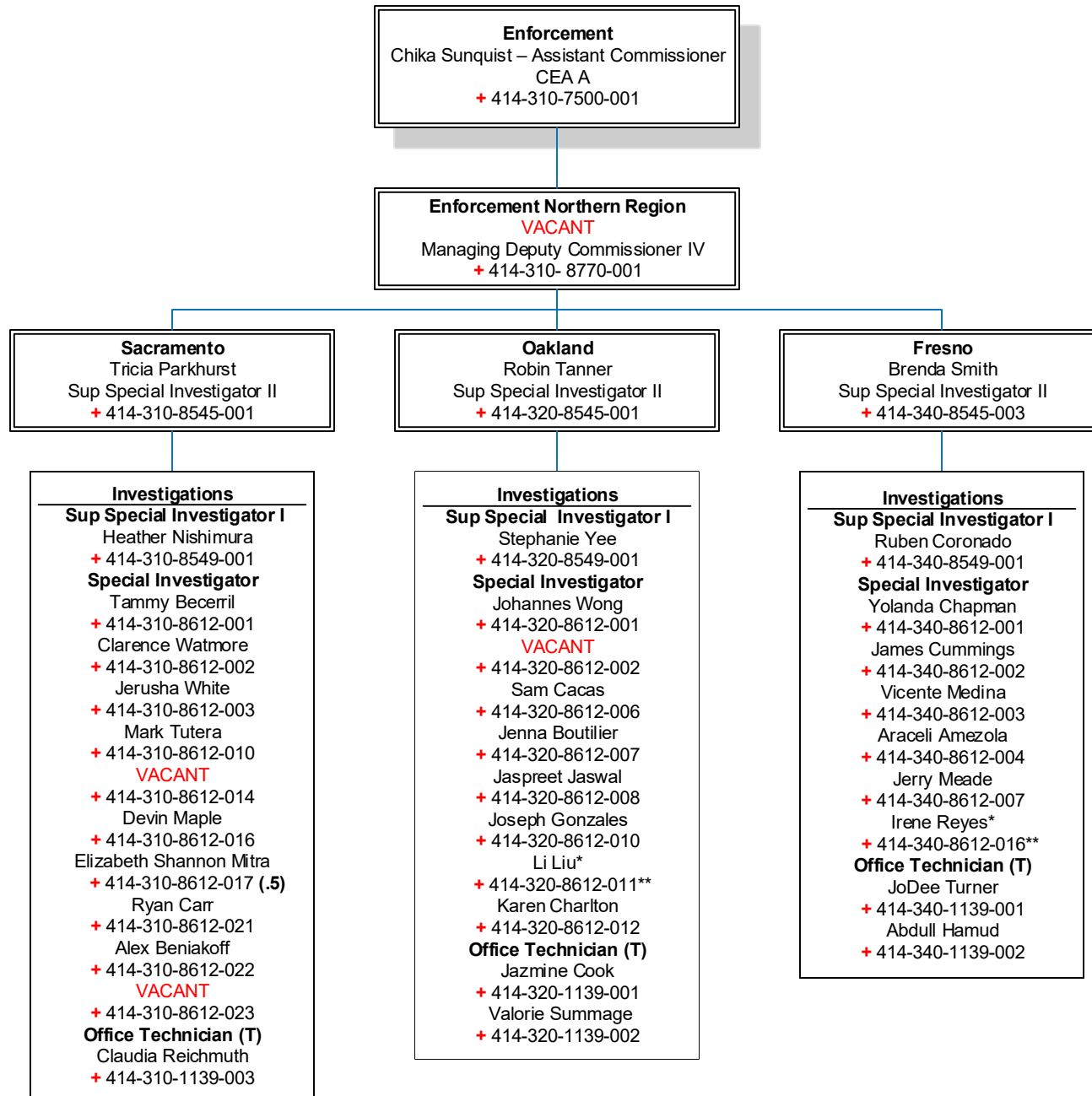
Current

FY 2020-21

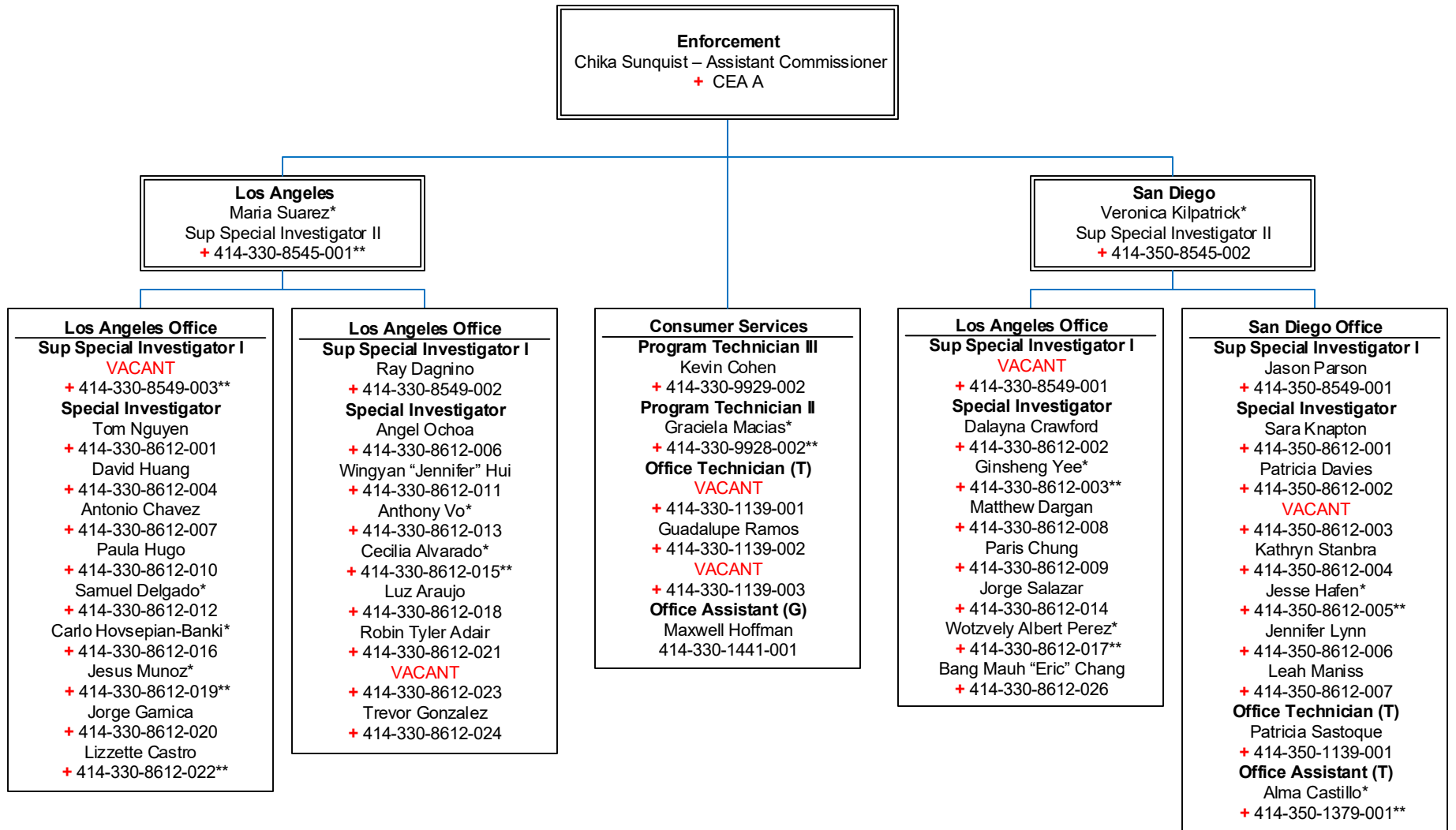
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 998 Blanket 222 8.0
 998 Blanket 223 17.0
 998 Blanket 224 7.0
 998 Blanket 225 9.0



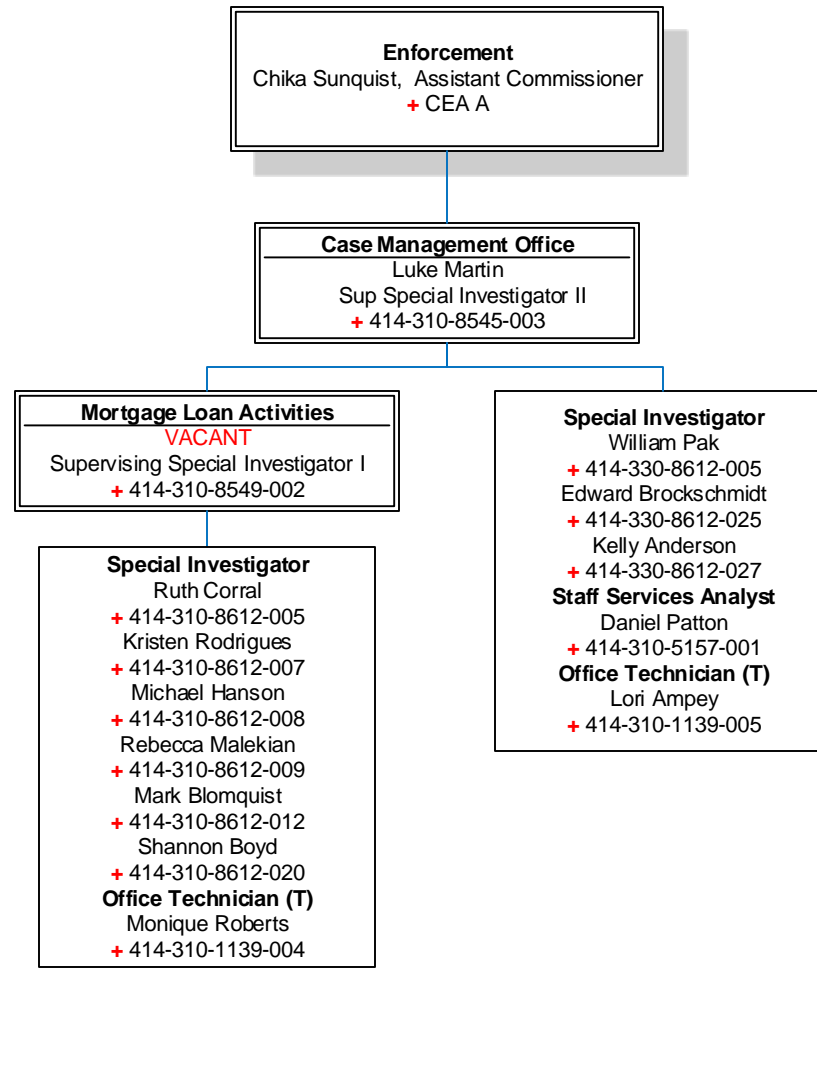
Positions with serial number 998 are temporary Blanket positions which are not included in the total Authorized PY Total for the Department



+ - CORI Position
*Certified Bilingual
** Bilingual Position



+ - CORI Position
*Certified Bilingual
** Bilingual Position



Legal
Stephen Lemer – Assistant Commissioner
Exempt
+ 414-410-6213-001

Legal - Northern Region
Assistant Chief Counsel
Johnny Barron
+ 414-410-5871-002

Recovery Account
Real Estate Counsel III (Sp)
VACANT
+ 414-410-5537-006
Real Estate Counsel II
Janine Clasen
+ 414-410-5538-011
Legal Secretary
Loretta Jones
+ 414-410-1282-001

Legal Support Unit
Legal Support Supervisor I
VACANT
+ 414-430-1277-001

Legal - Southern Region
Assistant Chief Counsel
James Demus
+ 414-430-5871-001

Sacramento Legal
Real Estate Counsel III (Sp)
Jason Lazark
+ 414-410-5537-003
Megan Lee Olsen
+ 414-410-5537-004
Truly Sughrue
+ 414-410-5537-005
Richard Uno
+ 414-410-5537-007
Adriana Badilas
+ 414-410-5537-010
Real Estate Counsel I
Kyle Jones
+ 414-410-5539-002
Senior Legal Analyst
Stephanie Black
+ 414-410-5333-001
Legal Analyst
VACANT
+ 414-410-5237-010

Specialized Legal Work
Subdivisions Legal Specialist
Attorney IV
David Bruce
+ 414-410-5780-001
Legal/HR Specialist
Attorney IV
Jamie Yust
+ 414-410-5780-002
Special Projects
Real Estate Counsel III
Daniel Kehew
+ 414-410-5537-009

Sacramento Office
Legal Secretary
Kathie Knapp
+ 414-410-1282-005
Rebecca Dew
+ 414-410-1282-007
Brooke Nicholas
+ 414-410-1282-008
Senior Legal Typist
VACANT
+ 414-410-3224-003
Office Technician (T)
VACANT
+ 414-410-1139-001

Los Angeles Office
Legal Secretary
John Aguilar
+ 414-430-1282-003
Agnes Ng
+ 414-430-1282-004
Carl Selorio
+ 414-430-1282-005
Zovinar Garabedian
+ 414-430-1282-007
Elvira Ruiz
+ 414-430-1282-008
Senior Legal Typist
VACANT
+ 414-430-3224-002

Los Angeles Legal
Real Estate Counsel III (Sp)
Julie To
+ 414-430-5537-001
Steve Chu
+ 414-430-5537-002
Judith Vasan
+ 414-430-5537-003
Diane Lee
+ 414-430-5537-004
Laurence Haveson
+ 414-430-5537-005
Lissete Garcia
+ 414-430-5537-006
Real Estate Counsel II
Kevin Sun
+ 414-430-5538-009
Real Estate Counsel I
Andrea Bentler
+ 414-430-5539-001
Kathy Yi
+ 414-430-5539-002
Legal Analyst
Rosa Posada
+ 414-430-5237-001

Department of Real Estate

December 1, 2020

Audits

Current

FY 2020-21
510 PY 9.0
520 PY 8.0
530 PY 19.0
540 PY 3.0
550 PY 2.0

Audits
Tom Cameron – Assistant Commissioner
CEA A
414-510-7500-001

Northern Region
Michael Rivera
Sup Auditor II, DRE
414-510-4493-001

Southern Region
Jennifer Lin
Sup Auditor II, DRE
414-530-4493-004

Office Technician (T)
VACANT
414-530-1139-001

Sacramento
Corena DeSonnville
Sup Auditor I, DRE
414-510-4491-002

Oakland
Cecilia Yan
Sup Auditor I, DRE
414-520-4491-001

Los Angeles
Marichu Soriano
Sup Auditor I, DRE
414-530-4491-002

Los Angeles
Nada Dagher
Sup Auditor I, DRE
414-530-4491-003

Los Angeles
Dorcas Cheng
Sup Auditor I, DRE
414-530-4491-001

Sacramento
General Auditor III
Alvin Samareta
414-510-4285-001
Rana Tarazi
414-510-4285-007
Robert Leonard
414-510-4285-009
Karan Dogra
414-510-4285-010
Ji Hyun Hong
414-510-4285-011
Auditor I
Buri Xiong
414-510-4175-001

Oakland
General Auditor III
Jayendra Barbhaiya
414-520-4285-007
VACANT
414-520-4285-008
Na Lin
414-520-4285-010
Gina King
414-520-4285-011
Auditor I
Archie Kwong
414-520-4175-001
Sean Thee
414-520-4175-002
Daniel Montes
414-520-4175-003

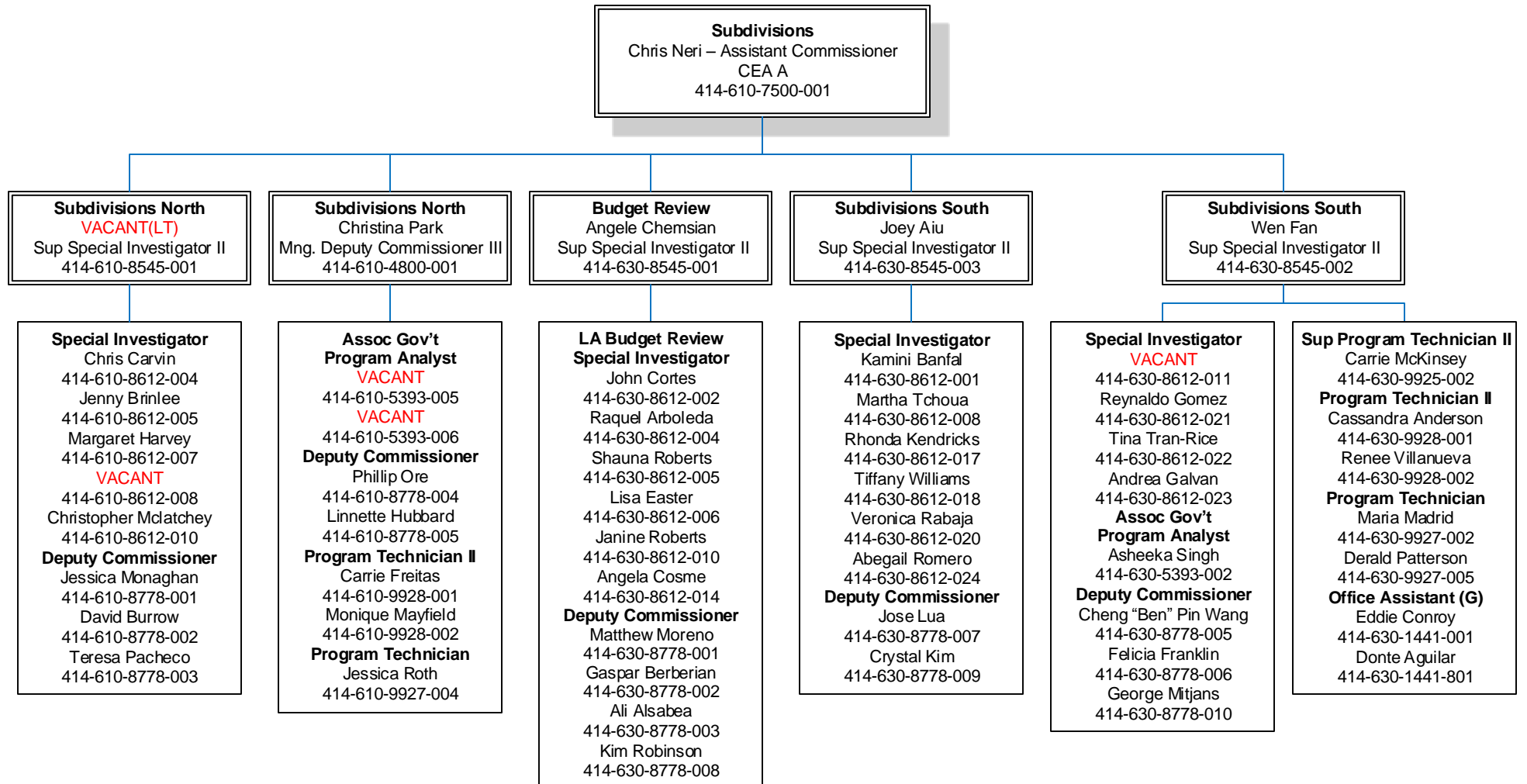
Los Angeles
General Auditor III
Godswill Keraoru
414-530-4285-010
Anna Hartoonian
414-530-4285-013
Chambers Tse
414-530-4285-015
General Auditor II
David Quek
414-530-4287-002
Kaori Kuboniwa
414-530-4287-003
Auditor I
Guadalupe Barragan
414-530-4175-001

Los Angeles
General Auditor III
Chona Picayo
414-530-4285-007
Isabel Beltran
414-530-4285-011
General Auditor II
Mandeep Sidhu
414-530-4287-001
Raymond Chow
414-530-4287-806

Los Angeles
General Auditor III
Zaky Wanis
414-530-4285-001
Anitha Wijaya
414-530-4285-014
General Auditor II
Shirley Xie
414-530-4287-004
Auditor I
VACANT
414-530-4175-815

San Diego
General Auditor III
Jennifer Borromeo
414-550-4285-001
VACANT
414-550-4285-002

Fresno
General Auditor III
Amanda Patterson
414-540-4285-001
Diana Brewster
414-540-4285-002
Joshua Matkin
414-540-4285-003





December 2, 2021

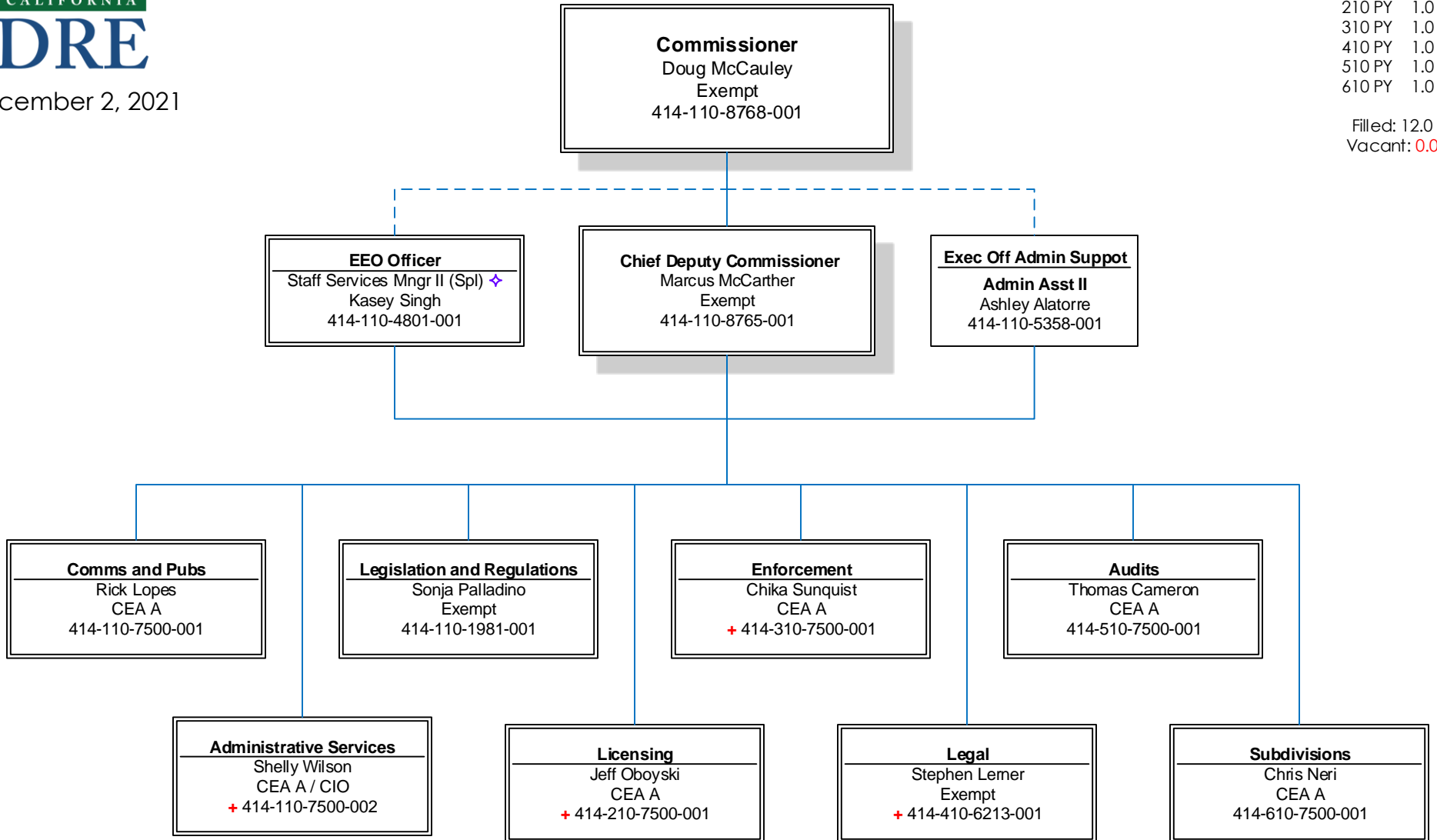
CALIFORNIA DEPARTMENT OF REAL ESTATE

Current

FY 2021-22
Authorized Positions: 376.00

110 PY 7.0
210 PY 1.0
310 PY 1.0
410 PY 1.0
510 PY 1.0
610 PY 1.0

Filled: 12.0
Vacant: 0.0



+ - CORI Position
✦ - Exceptional Allocation

Doug McCauley, Commissioner

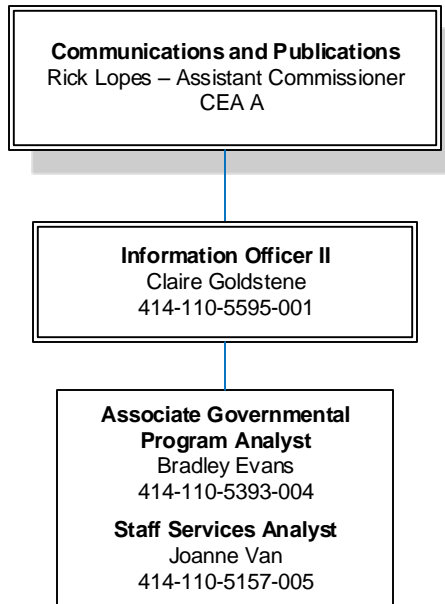
Maria Grant, Special Projects Analyst

Communications and Publications

Current

FY 2021-22
110 PY 3.0

Filled: 3.0
Vacant: 0.0



Legislation & Regulations

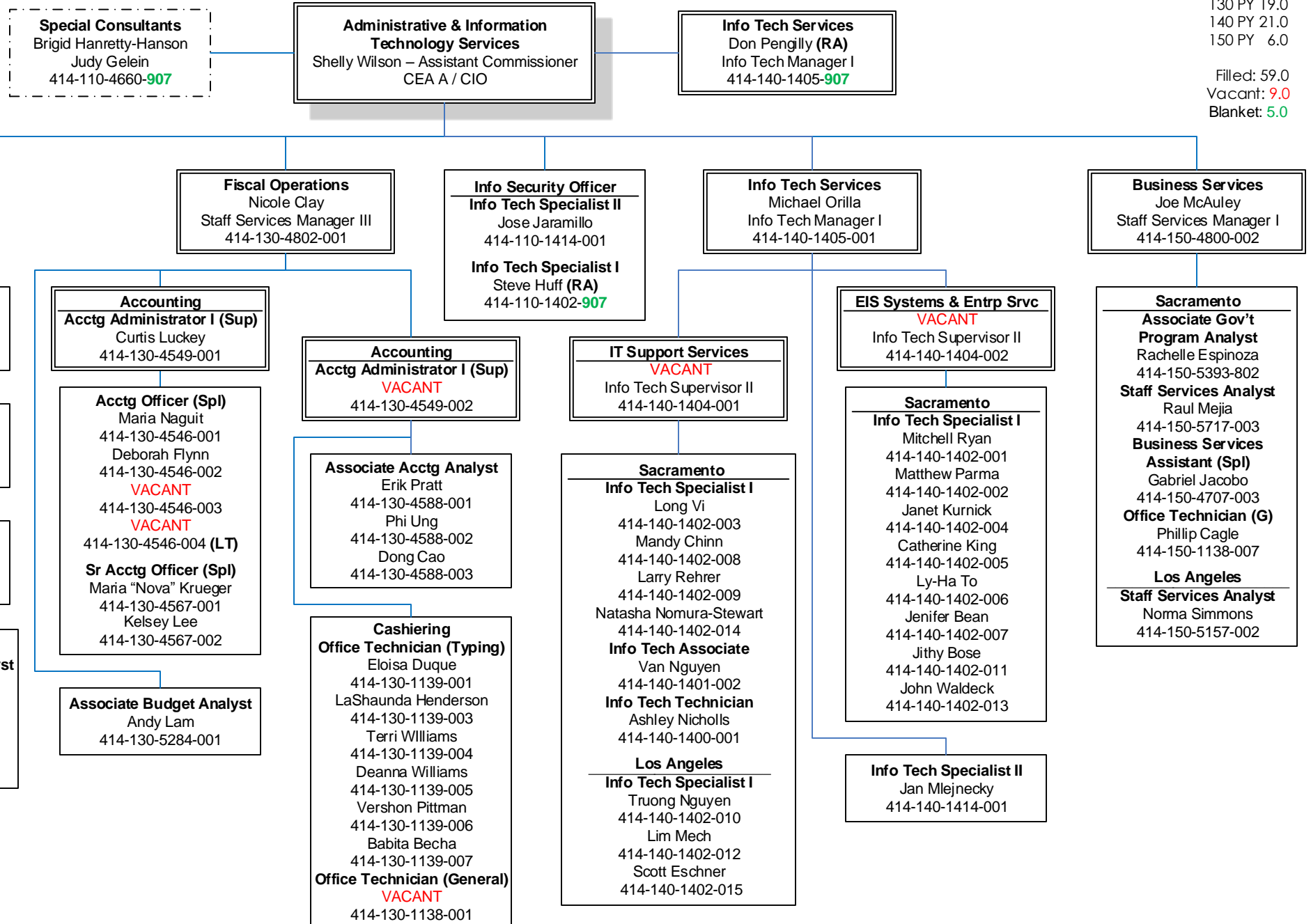
Current

FY 2021-22
110 PY 1.0

Filled: 1.0
Vacant: 0.0

Legislation and Regulations
Sonja Palladino – Assistant Commissioner
Exempt

**Associate Governmental
Program Analyst**
Yi Wen “Eva” Erickson
414-110-5393-003



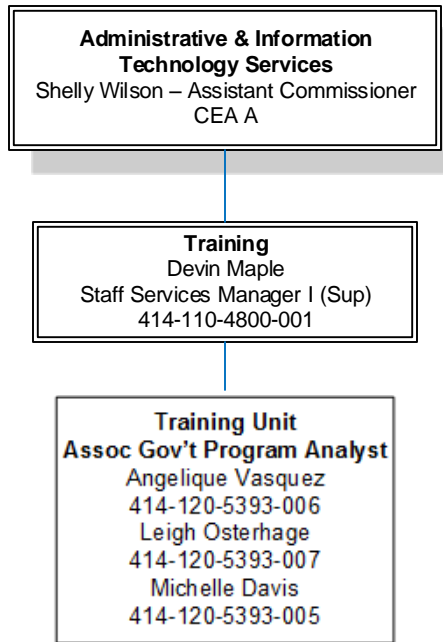
+ - CORI Position
 ✦ - Exceptional Allocation

Training Office

Current

FY 2020-21
110 PY 4.0

Filled: 1.0
Vacant: 0.0



Department of Real Estate

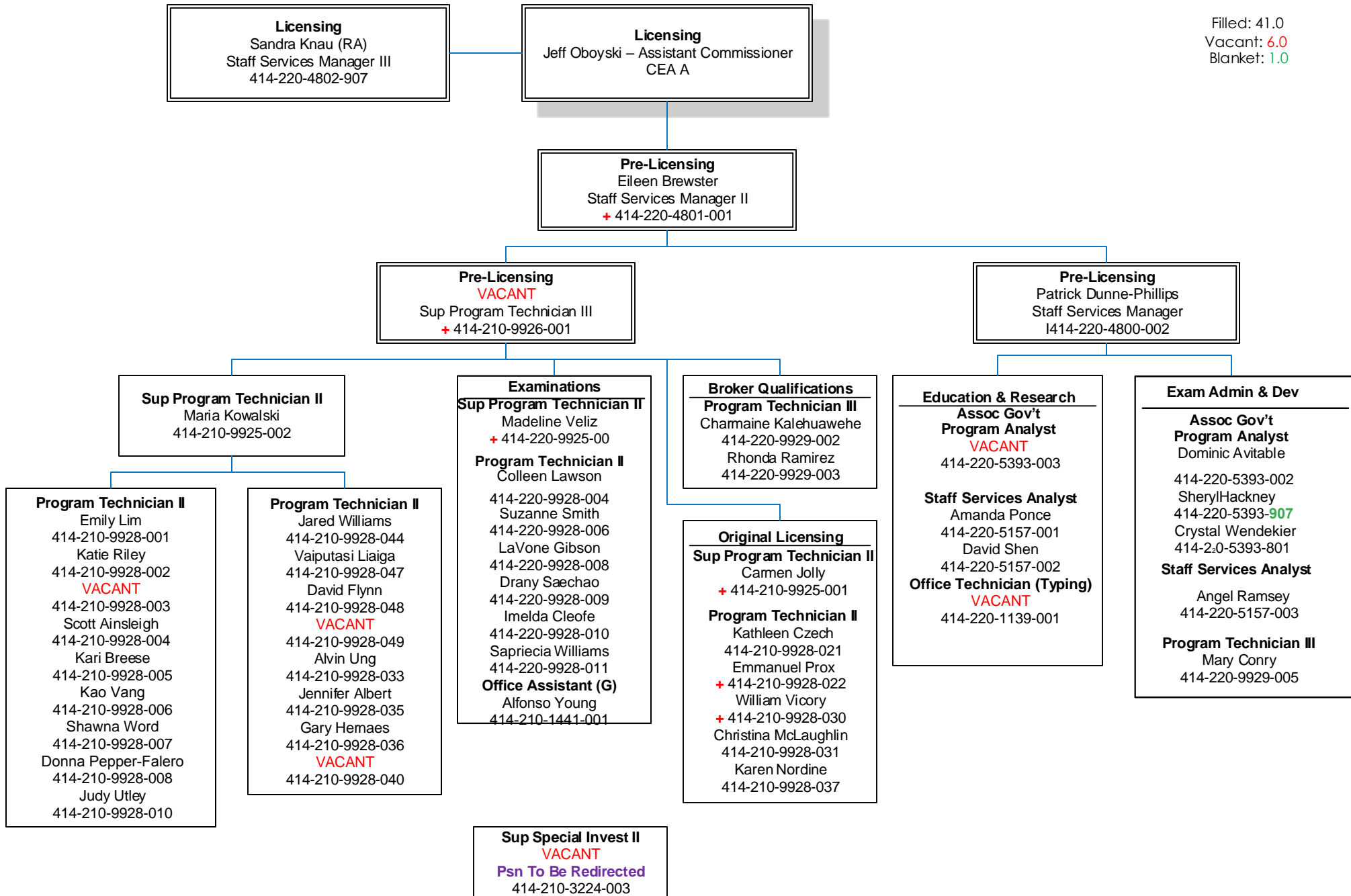
December 2, 2021

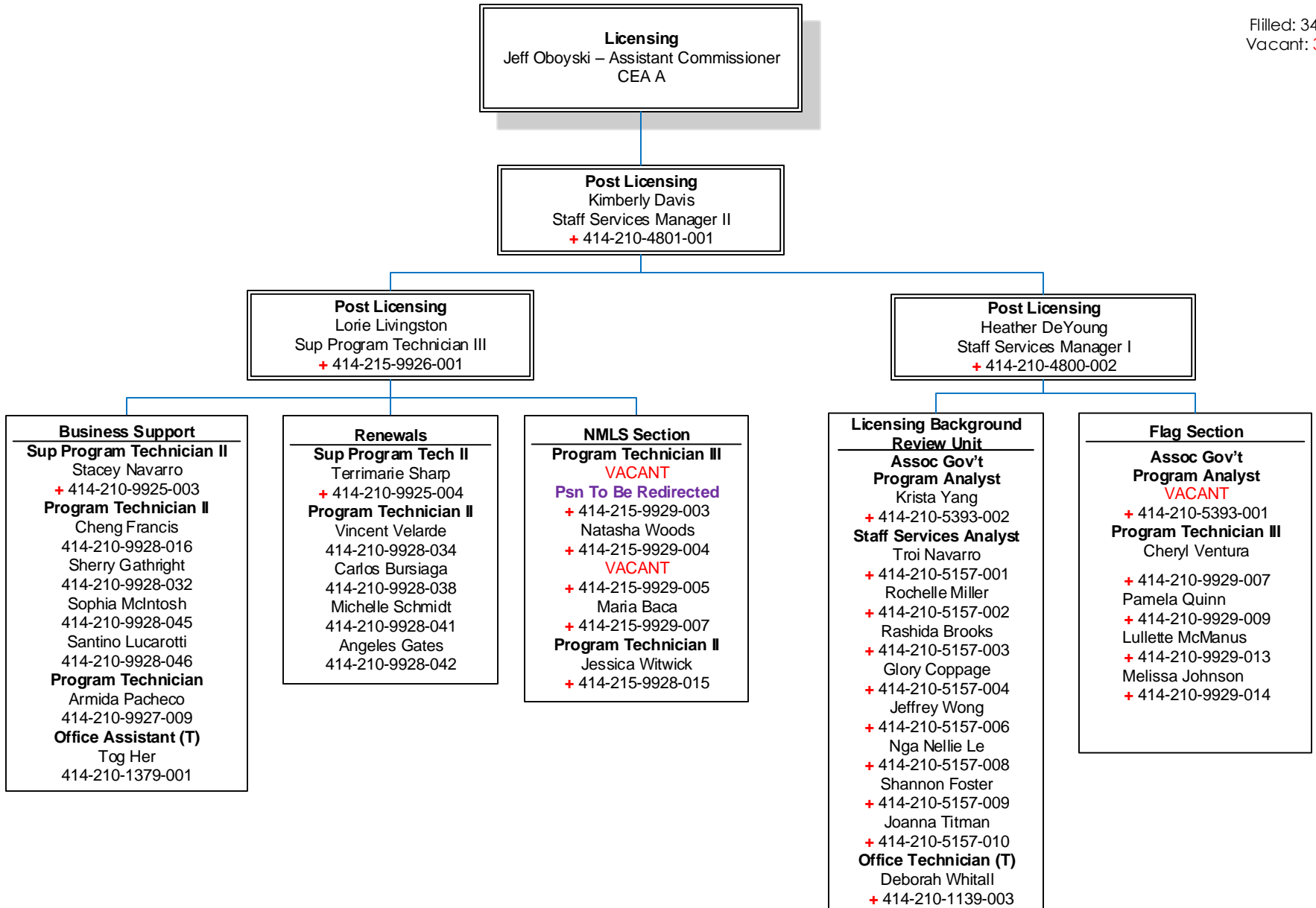
Licensing

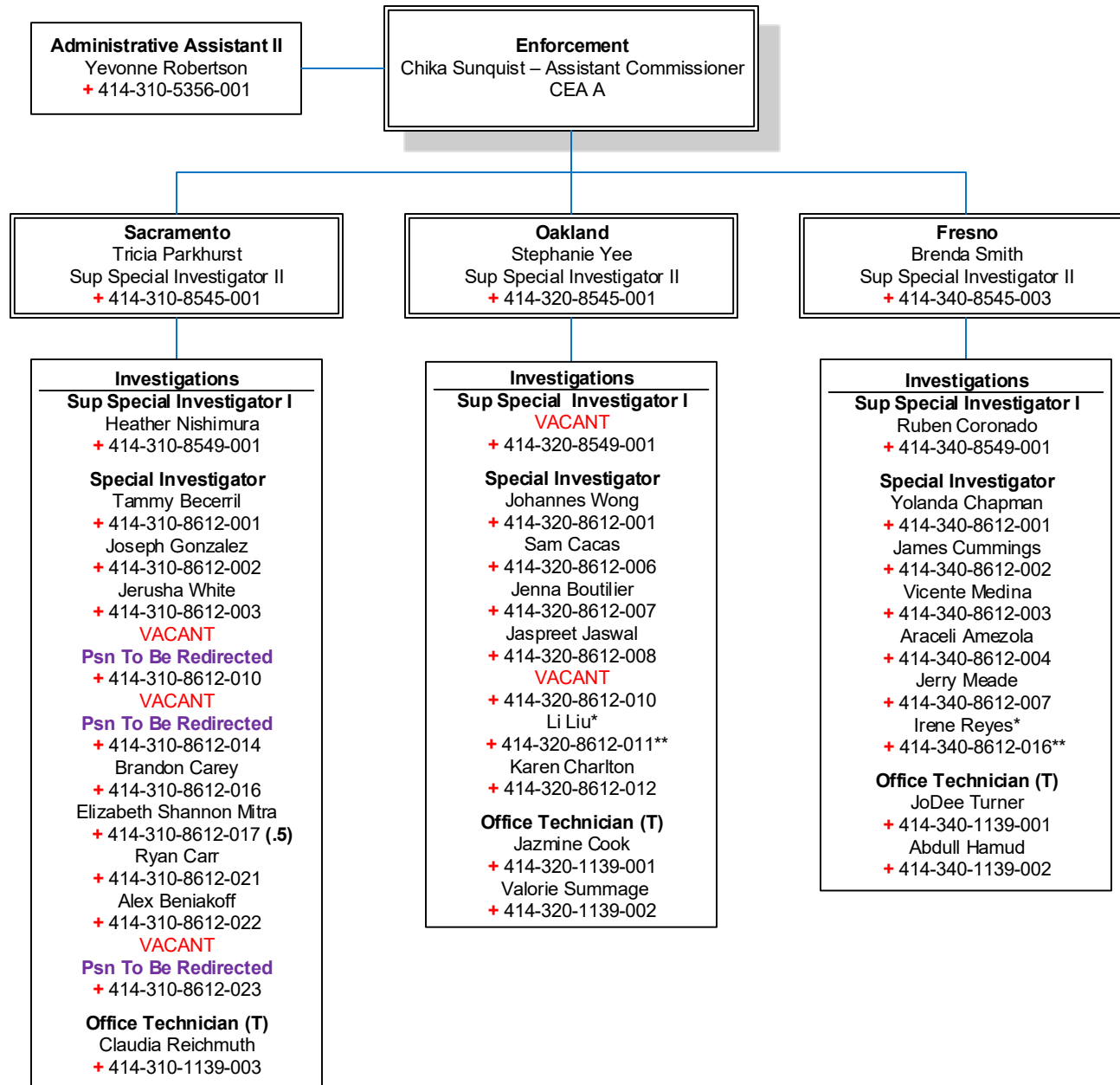
Current

FY 2021-22
210 PY 26.0
220 PY 20.0

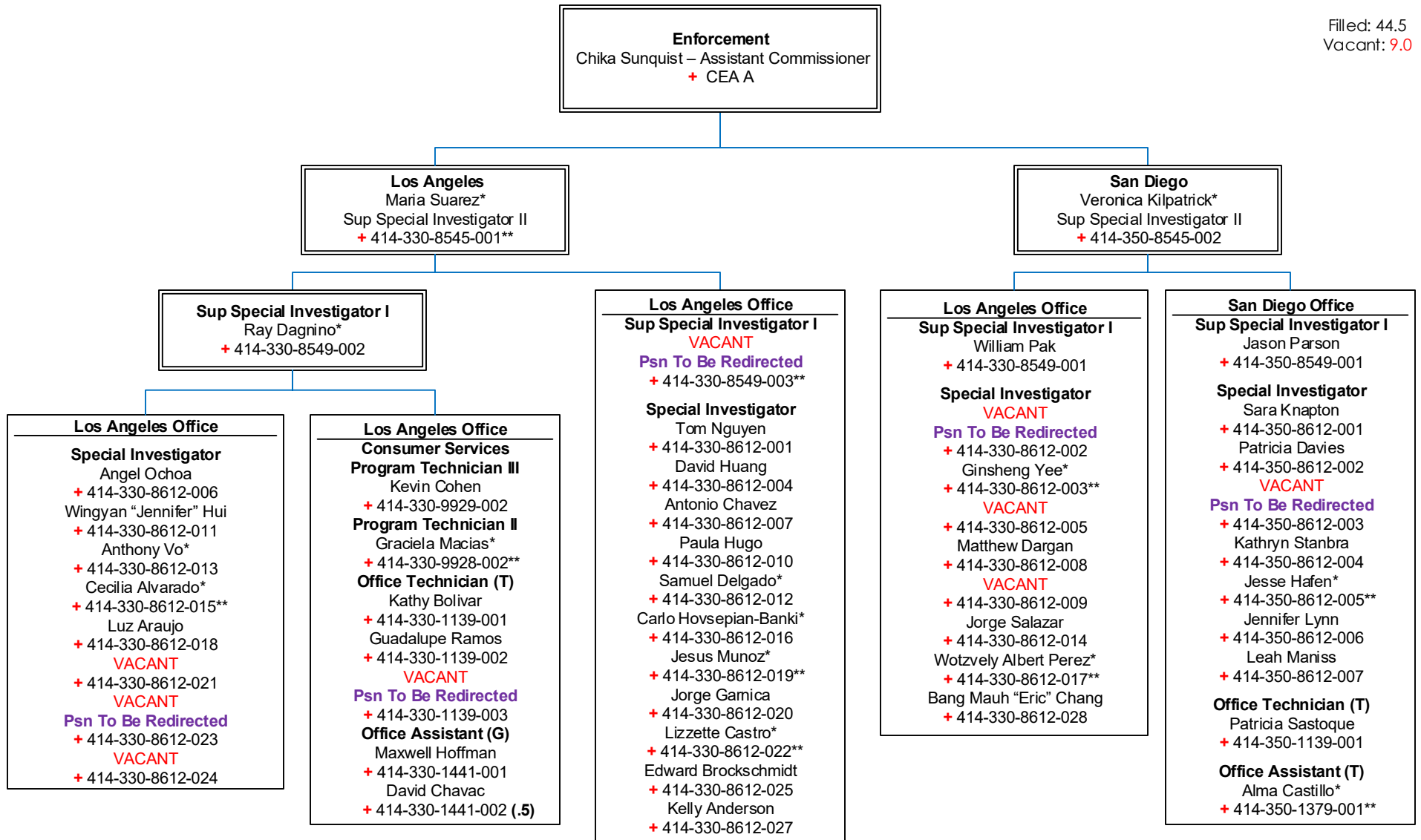
Filled: 41.0
Vacant: 6.0
Blanket: 1.0



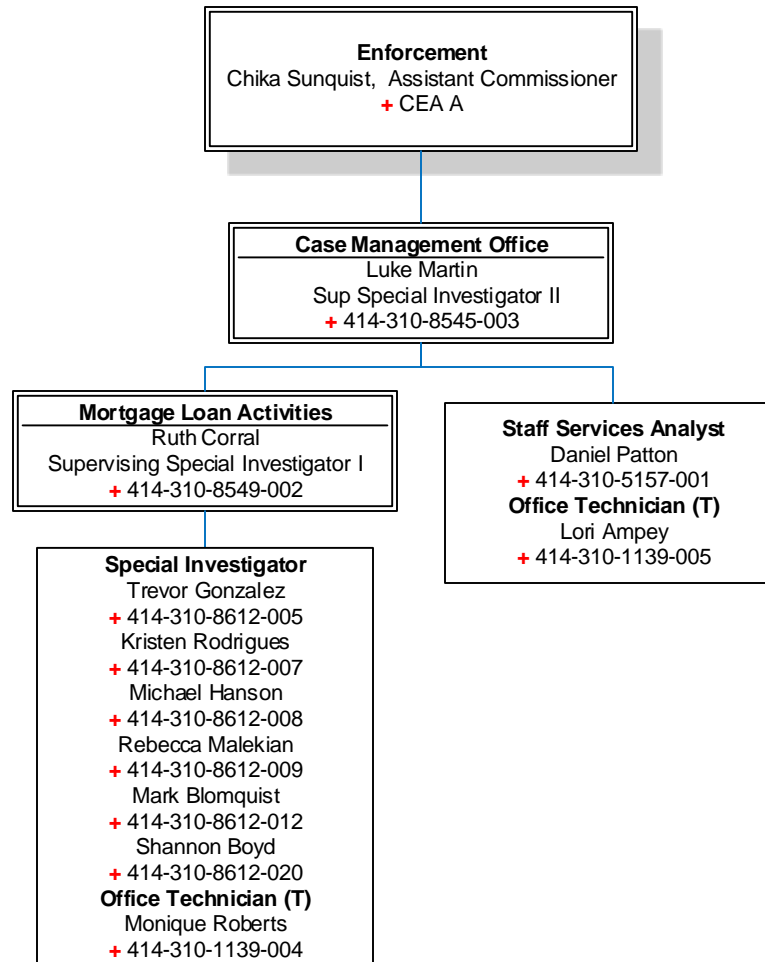


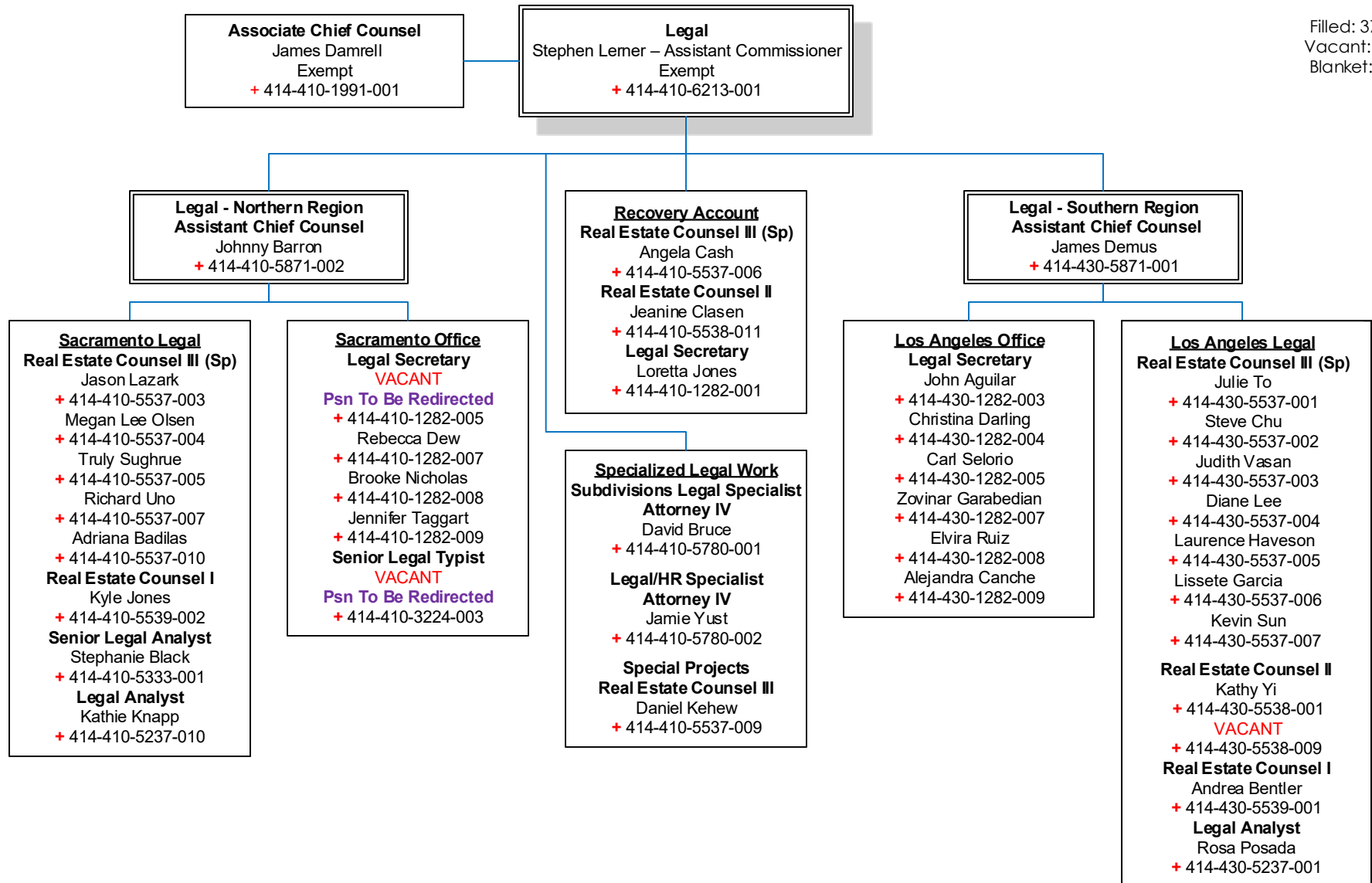


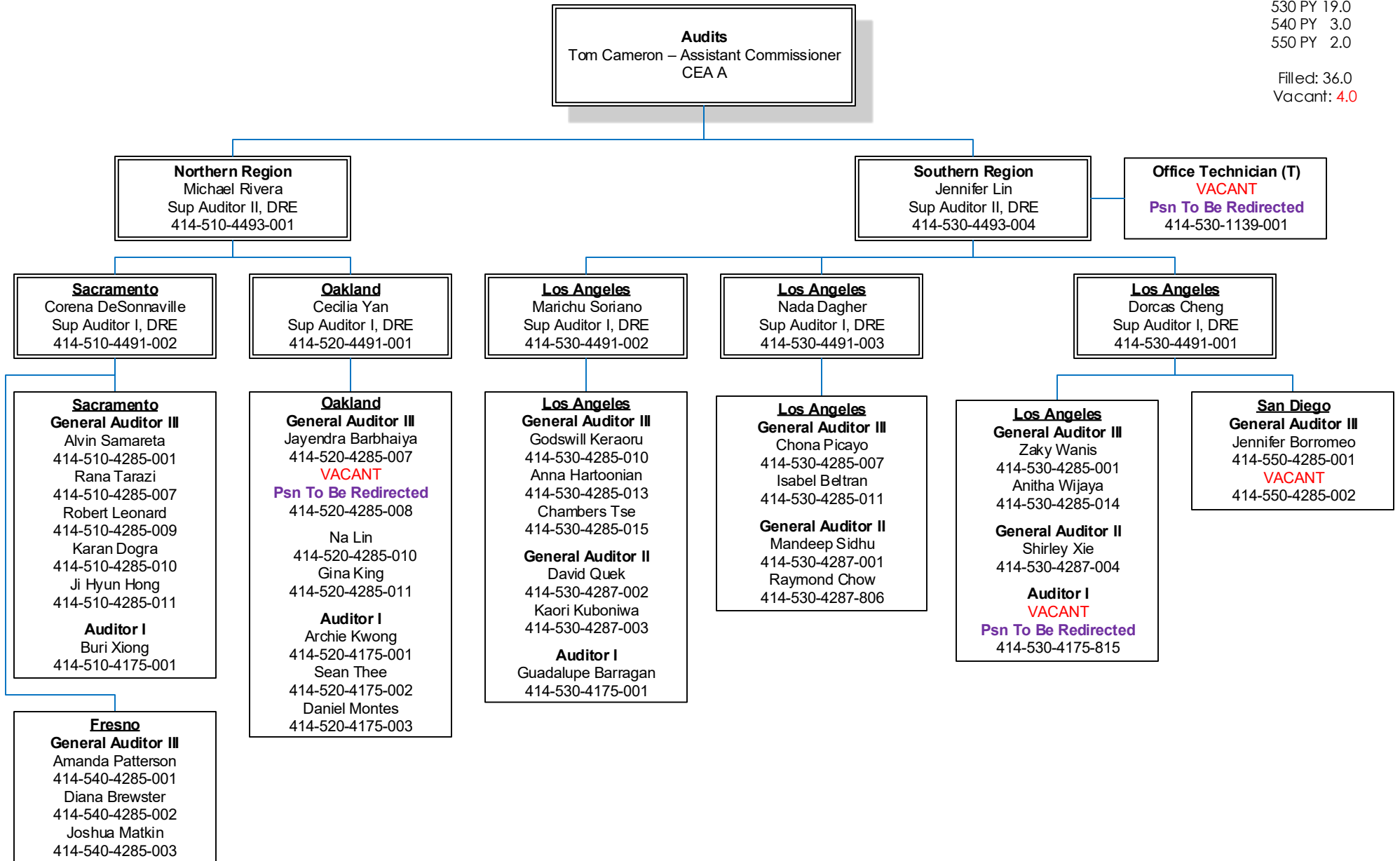
+ - CORI Position
*Certified Bilingual
** Bilingual Position



+ - CORI Position
*Certified Bilingual
** Bilingual Position







Subdivisions
Chris Neri – Assistant Commissioner
CEA A
414-610-7500-001

Subdivisions North
Christina Park
Mng. Deputy Commissioner III
414-610-8676-001

Budget Review
Angele Chemsian
Sup Special Investigator II
414-630-8545-001

Subdivisions South
Joey Aiu
Sup Special Investigator II
414-630-8545-003

Subdivisions South
Wen Fan
Sup Special Investigator II
414-630-8545-002

Special Investigator
Chris Carvin
414-610-8612-004
Jenny Brinlee
414-610-8612-005
Margaret Harvey
414-610-8612-007
Christopher Mclatchey
414-610-8612-010
Deputy Commissioner
Jessica Monaghan
414-610-8778-001
David Burrow
414-610-8778-002
VACANT
414-610-8778-003
Wes Jigour (RA)
414-610-8778-907

**Assoc Gov't
Program Analyst**
VACANT
414-610-5393-005
Deputy Commissioner
Phillip Ore
414-610-8778-004
Linnette Hubbard
414-610-8778-005
Gil Hatfield
414-610-8778-006
Program Technician II
Carrie Freitas
414-610-9928-001
Monique Mayfield
414-610-9928-002
Program Technician
Jessica Roth
414-610-9927-004

**LA Budget Review
Special Investigator**
John Cortes
414-630-8612-002
Raquel Arboleda
414-630-8612-004
Shauna Roberts
414-630-8612-005
Lisa Easter
414-630-8612-006
Janine Roberts
414-630-8612-010
Angela Cosme
414-630-8612-014
Deputy Commissioner
Matthew Moreno
414-630-8778-001
Gaspar Berberian
414-630-8778-002
Ali Alsabea
414-630-8778-003
Kim Robinson
414-630-8778-008

Special Investigator
Kamini Banfal
414-630-8612-001
Martha Tchoua
414-630-8612-008
Rhonda Kendricks
414-630-8612-017
Tiffany Williams
414-630-8612-018
Veronica Rabaja
414-630-8612-020
Abegail Romero
414-630-8612-024
Deputy Commissioner
Jose Lua
414-630-8778-007
Crystal Kim
414-630-8778-009

Special Investigator
Reynaldo Gomez
414-630-8612-021
Tina Tran-Rice
414-630-8612-022
Andrea Galvan
414-630-8612-023
**Assoc Gov't
Program Analyst**
Asheeka Singh
414-630-5393-002
Deputy Commissioner
Cheng "Ben" Pin Wang
414-630-8778-005
Felicia Franklin
414-630-8778-006
George Mitjans
414-630-8778-010

Sup Program Technician II
Carrie McKinsey
414-630-9925-002
Program Technician II
Cassandra Anderson
414-630-9928-001
Renee Villanueva
414-630-9928-002
Derald Patterson
414-630-9928-003
Program Technician
Maria Madrid
414-630-9927-002
Office Assistant (G)
Eddie Conroy
414-630-1441-001
VACANT
414-630-1441-801

Subdivisions North
VACANT
Sup Special Investigator II
414-610-8545-001



December 1, 2022

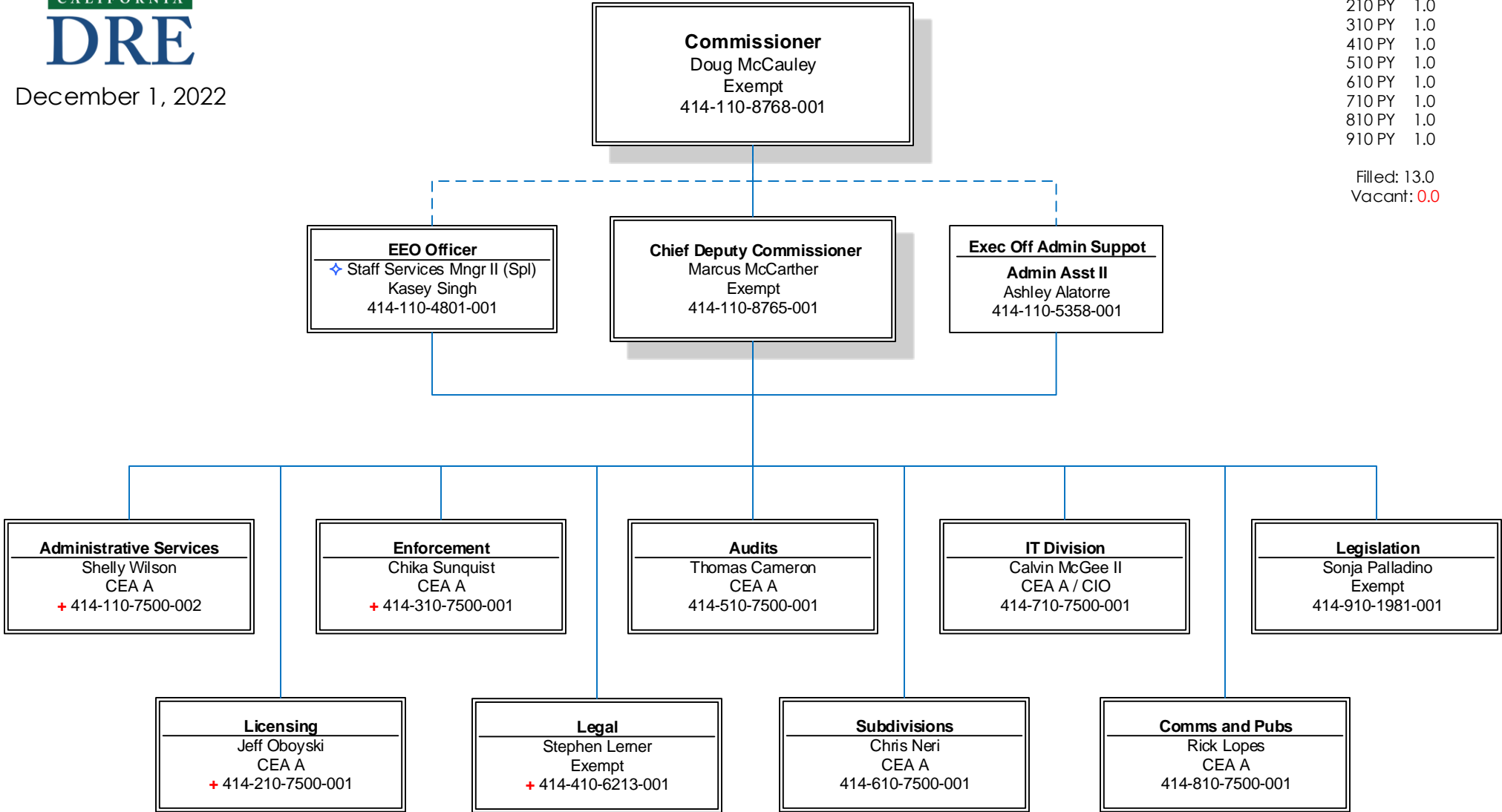
CALIFORNIA DEPARTMENT OF REAL ESTATE

Current

FY 2022-23
Authorized Positions: 381.00

110 PY 5.0
210 PY 1.0
310 PY 1.0
410 PY 1.0
510 PY 1.0
610 PY 1.0
710 PY 1.0
810 PY 1.0
910 PY 1.0

Filled: 13.0
Vacant: 0.0



+ - CORI Position
♦ - Exceptional Allocation

Doug McCauley, Commissioner

Vincent Valenzuela, C&R Manager

Administrative Services
Shelly Wilson – Assistant Commissioner
CEA A

Human Resources
Greg Skubal
Staff Services Manager III
+ 414-120-4969-001

Fiscal Operations
Nicole Clay
Staff Services Manager III
414-130-4802-001

Personnel Services
Staff Svcs Mngr I (Sup)
Vincent Valenzuela
+ 414-120-4800-001

Health & Safety
✦ Staff Svcs Mngr I (Spl)
Ana Jessica Mosqueda
414-120-4800-002

Accounting
Acctg Administrator I (Sup)
Curtis Luckey
414-130-4549-001

Accounting
Acctg Administrator I (Sup)
Yanchang Baltodano
414-130-4549-002

Training Unit
Devin Maple
Staff Services Manager I
414-140-4800-001

Business Services
Joe McAuley
Staff Services Manager I
414-150-4800-002

Class & Pay Unit
Assoc Personnel Analyst
VACANT
+ 414-120-5142-002
Erik Zepeda
+ 414-120-5142-003
Maly Boonsalat
+ 414-120-5142-005

Perform Mgmt & Labor
✦ Staff Svcs Mngr I (Spl)
Courtney Cartier
414-120-4800-003

Accountant Trainee
Vershon Pittman
414-130-4179-002
Helen Gossa
414-130-4179-003 (LT)
Acctg Officer (Spl)
Maria Naguit
414-130-4546-001
Deborah Flynn
414-130-4546-002
Sr Acctg Officer (Spl)
Maria "Nova" Krueger
414-130-4567-001
Kelsey Lee
414-130-4567-002

Associate Acctg Analyst
Theresa Carrico
414-130-4588-001
Phi Ung
414-130-4588-002
Kathryn Douma
414-130-4588-003

Training
Associate Governmental
Program Analyst
Michelle Davis
414-140-5393-001
Shannon Foster
414-140-5393-002
VACANT
414-140-5393-003

Sacramento
Associate Governmental
Program Analyst
Rachelle Espinoza
414-150-5393-802
Staff Services Analyst
Raul Mejia
414-150-5717-003
Business Services
Assistant (Spl)
Gabriel Jacobo
414-150-4707-003
Office Technician (G)
Phillip Cagle
414-150-1138-007
Los Angeles
Staff Services Analyst
Norma Simmons
414-150-5157-002

Payroll & Benefits Unit
Staff Services Analyst
Sarah Clavano
414-120-5157-003
Personnel Specialist
Katelyn Jaramillo
414-120-1303-001
Filadelfo Flores-Rivera
414-120-1303-002
Sr Personnel Specialist
Deidra Hill-Hudson (RA)
414-120-1317-907

Special Projects
Staff Svcs Mngr I (Sup)
Julia Lembach
414-120-4800-004

Associate Governmental
Program Analyst
VACANT
414-120-5393-001
Maria Grant
414-120-5393-002
Marissa Hemdon
414-120-5393-003

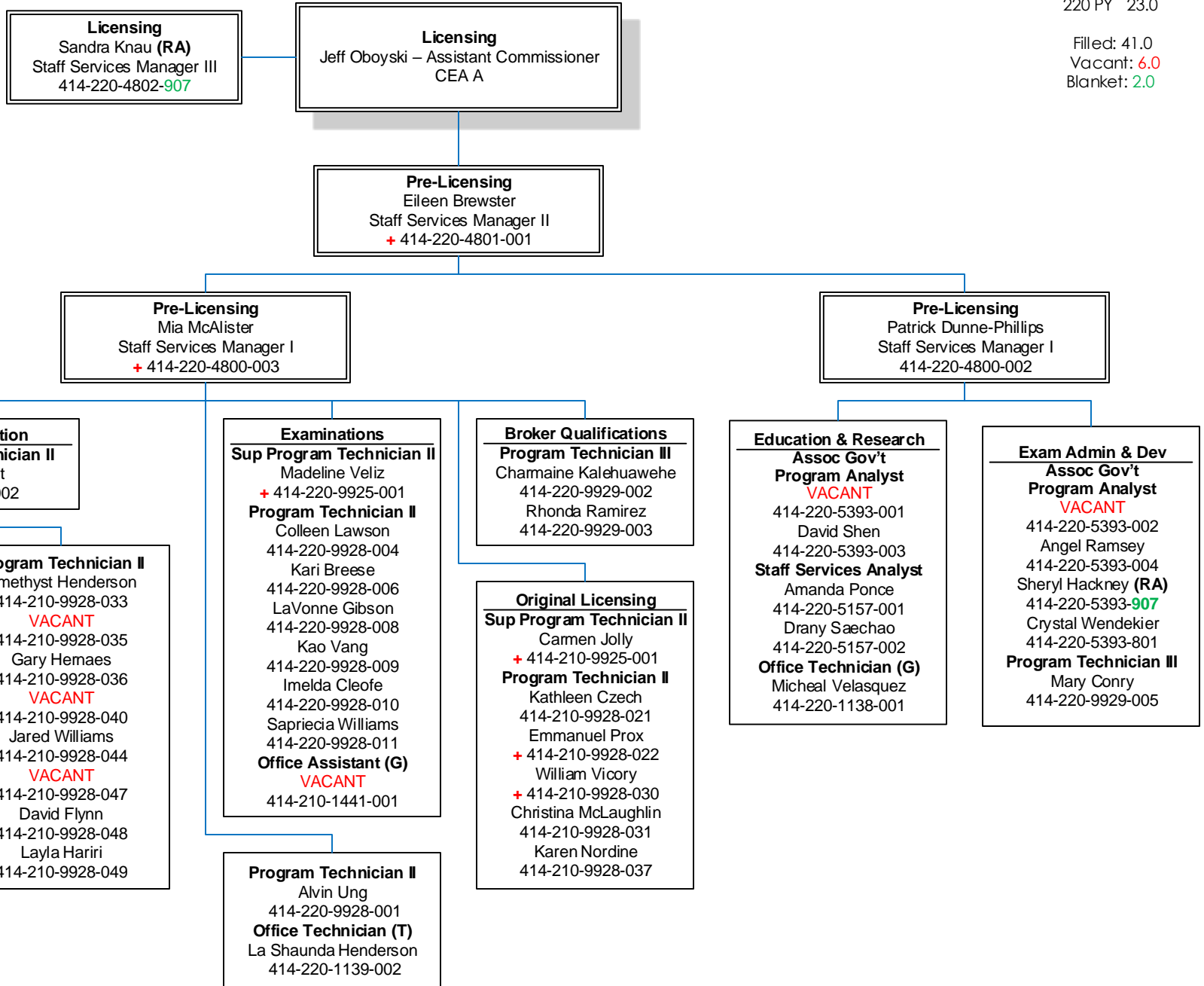
Associate Budget Analyst
Andy Lam
414-130-5284-001

Cashiering
Office Technician (Typing)
VACANT
414-130-1139-001
Terri Williams
414-130-1139-004
Deanna Williams
414-130-1139-005
VACANT
414-130-1139-006

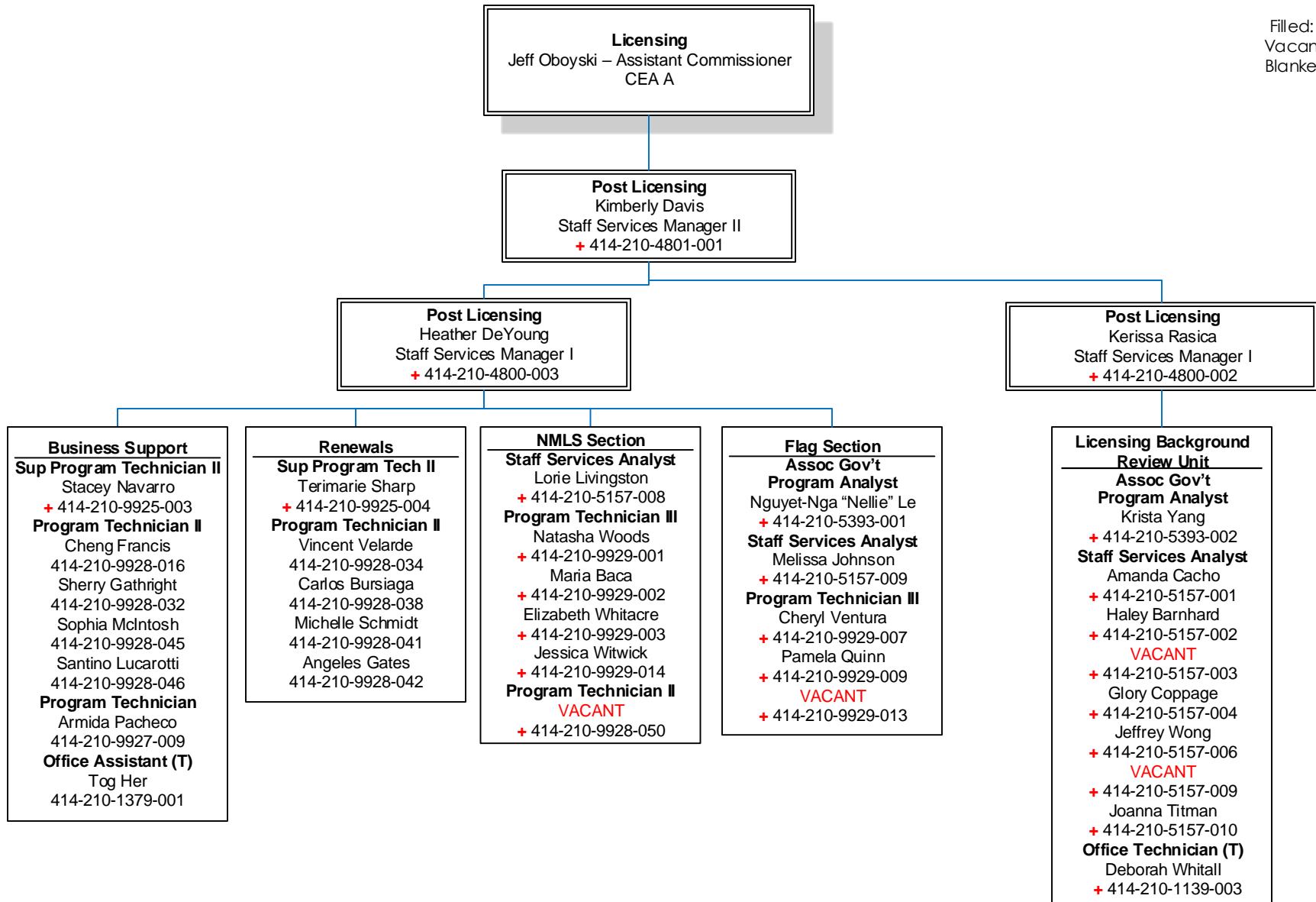
Mgmt Services Technician
Randy Hiuga
+ 414-120-5278-001

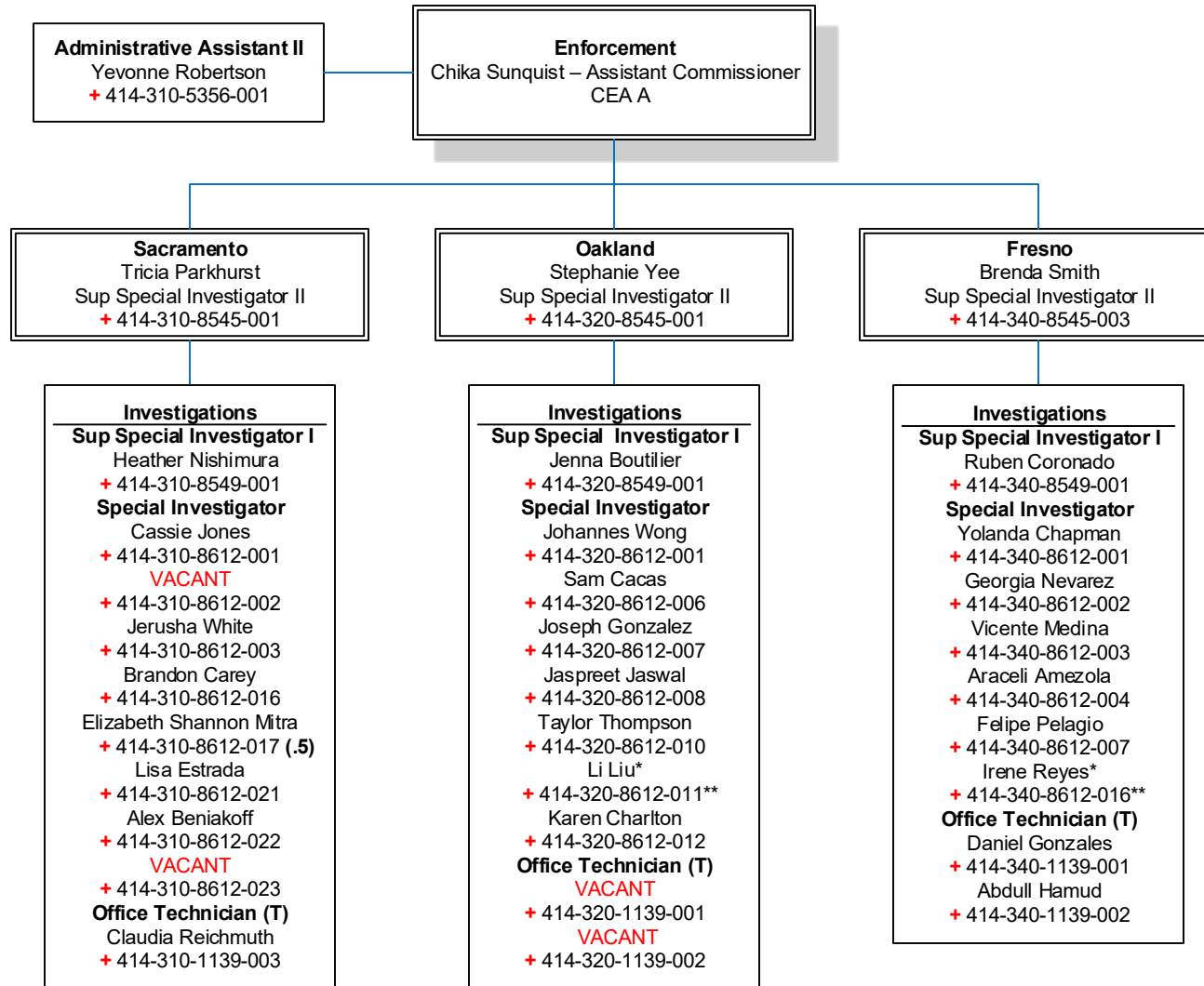
Office Technician (General)
Anthony Walls
Exempt
414-130-8491-001

+ - CORI Position
✦ - Exceptional Allocation

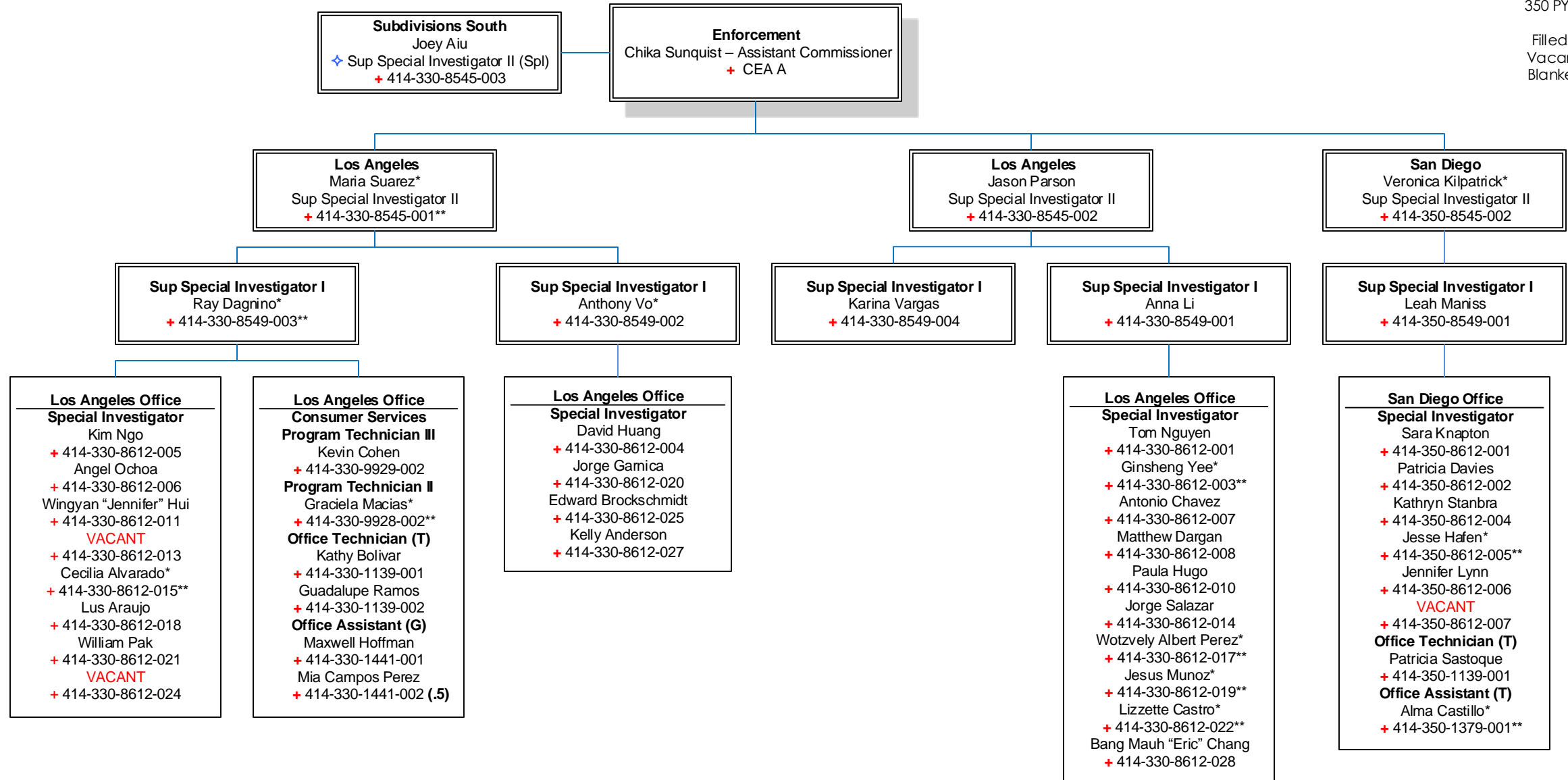


+ - CORI Position





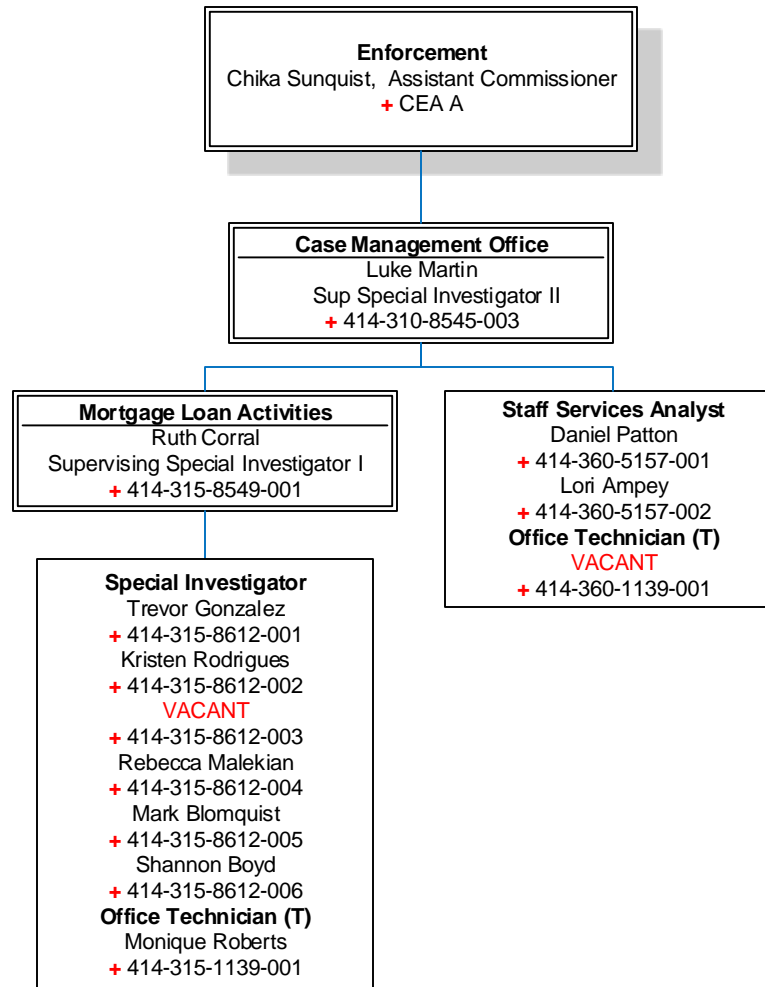
+ - CORI Position
*Certified Bilingual
** Bilingual Position

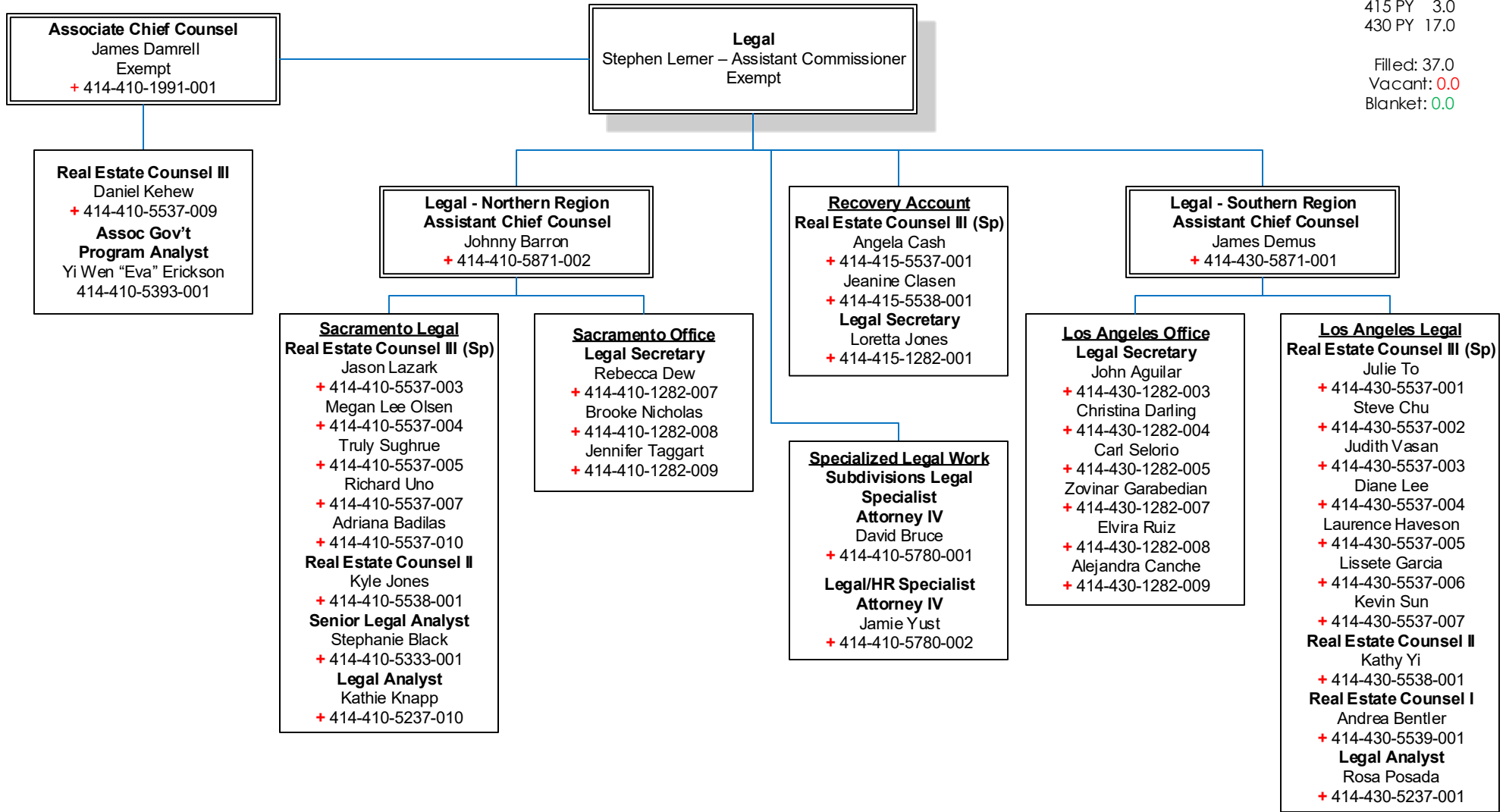


+ - CORI Position
◆ - Exceptional Allocation
*Certified Bilingual
** Bilingual Position

310 PY 1.0
315 PY 8.0
360 PY 3.0

Filled: 10.0
Vacant: 2.0
Blanket: 0.0





+ - CORI Position

Audits

Audits
Tom Cameron – Assistant Commissioner
CEA A

Northern Region
Michael Rivera
Sup Auditor II, DRE
414-510-4493-001

Administrative Audits
✦ **Staff Mgmt Auditor (Spl)**
VACANT
414-510-4160-001

Southern Region
Jennifer Lin
Sup Auditor II, DRE
414-530-4493-004

Sacramento
Corena DeSonnville
Sup Auditor I, DRE
414-510-4491-002

Oakland
Cecilia Yan
Sup Auditor I, DRE
414-520-4491-001

Los Angeles
Marichu Soriano
Sup Auditor I, DRE
414-530-4491-002

Los Angeles
Nada Dagher
Sup Auditor I, DRE
414-530-4491-003

Los Angeles
Dorcas Cheng
Sup Auditor I, DRE
414-530-4491-001

Sacramento
General Auditor III
Alvin Samareta
414-510-4285-001
Rana Tarazi
414-510-4285-007
Robert Leonard
414-510-4285-009
Karan Dogra
414-510-4285-010
Ji Hyun Hong
414-510-4285-011
Auditor II
Buri Xiong
414-510-4287-001

Oakland
General Auditor III
Jayendra Barbhaiya
414-520-4285-007
Na Lin
414-520-4285-010
Gina King
414-520-4285-011
Auditor II
Sean Thee
414-520-4287-001
Auditor I
VACANT
414-520-4175-001
Daniel Montes
414-520-4175-003

Los Angeles
General Auditor III
Godswill Keraoru
414-530-4285-010
Anna Hartoonian
414-530-4285-013
VACANT
414-530-4285-015
General Auditor II
VACANT
414-530-4287-002
Kaori Baron
414-530-4287-003
Auditor I
Guadalupe Barragan
414-530-4175-001

Los Angeles
General Auditor III
Chona Picayo
414-530-4285-007
Isabel Beltran
414-530-4285-011
General Auditor II
Mandeep Sidhu
414-530-4287-001
VACANT
414-530-4287-806

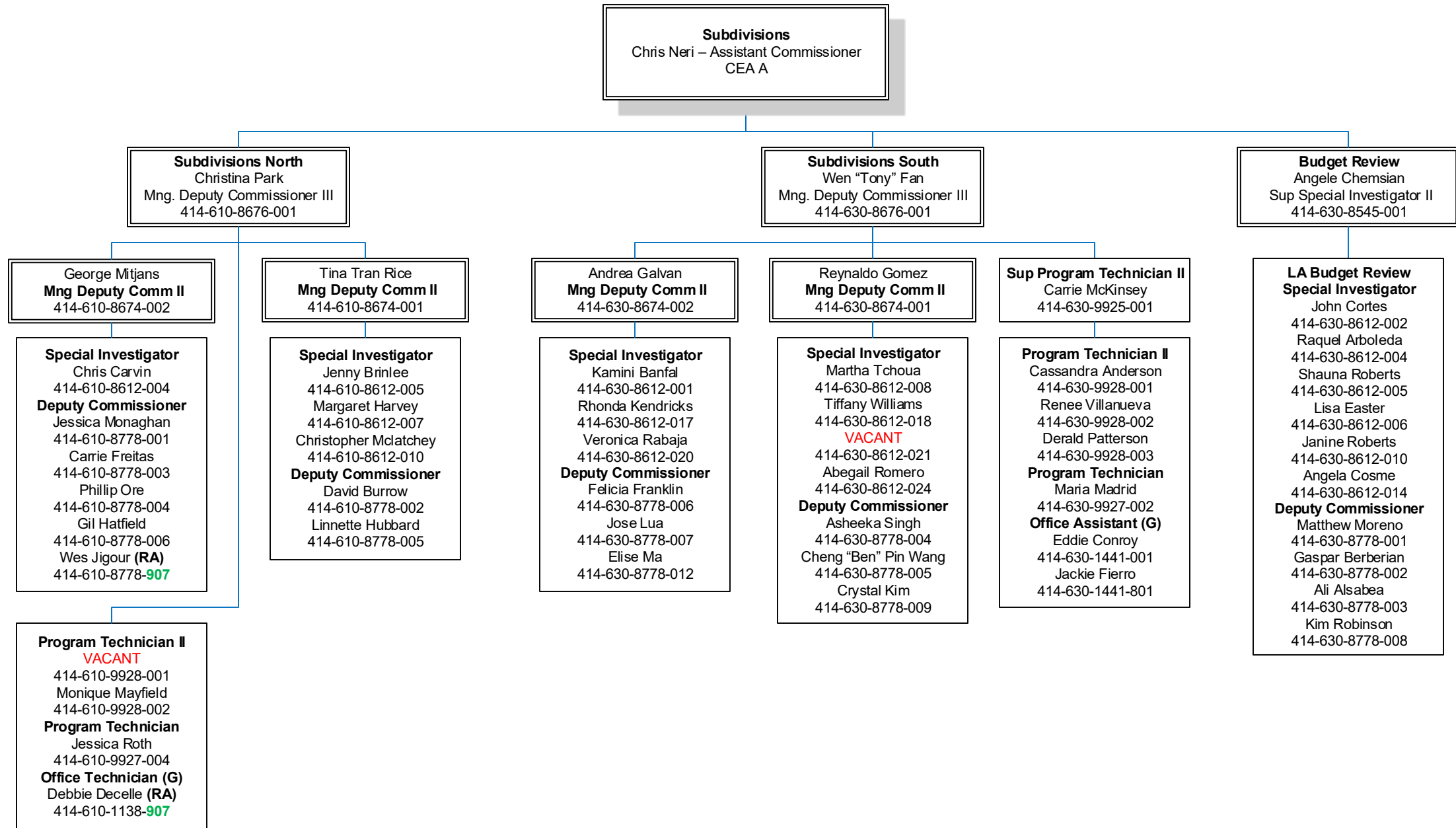
San Diego
Auditor I
Essam Rawashdeh
414-550-4175-001

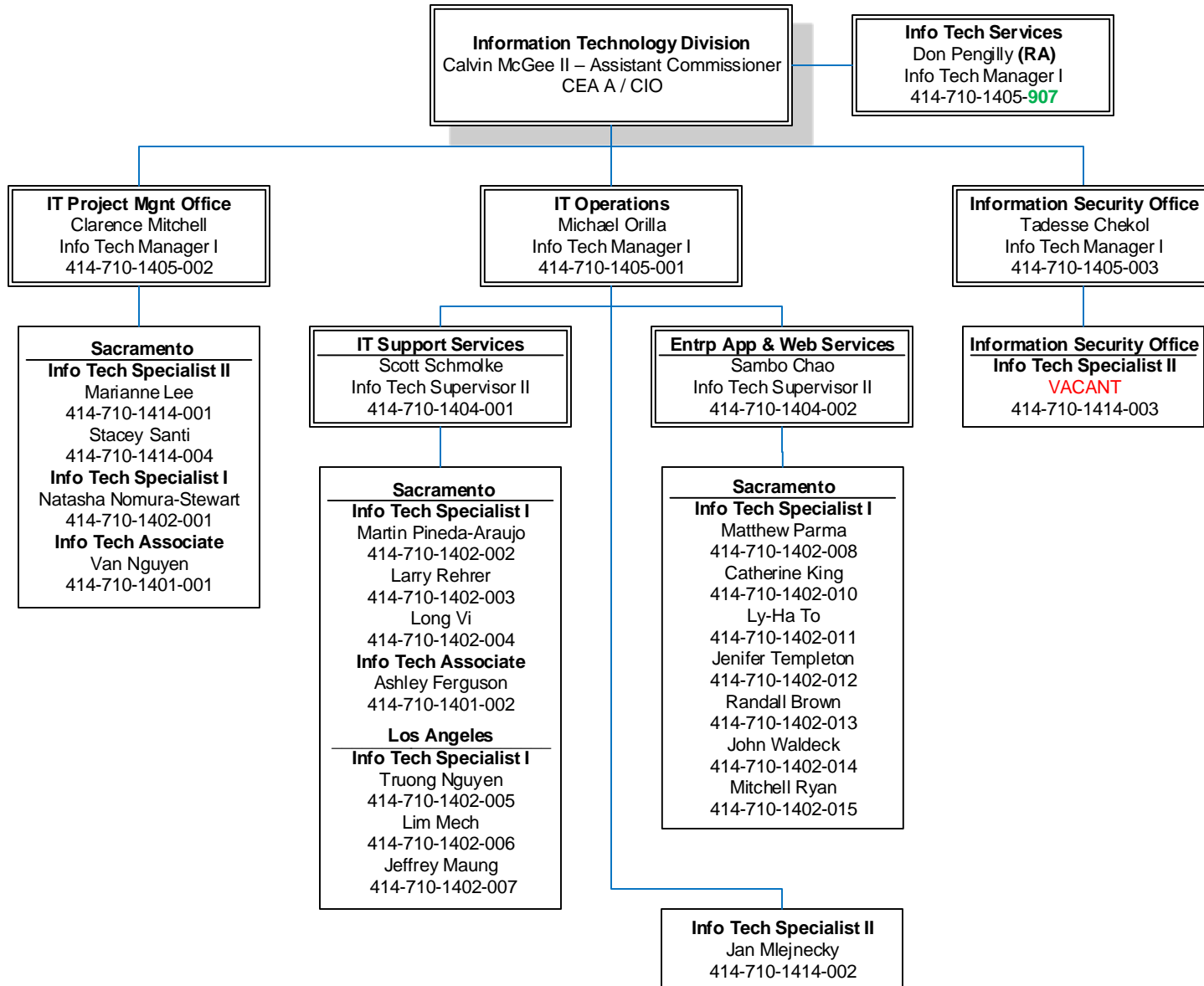
Los Angeles
General Auditor III
Zaky Wanis
414-530-4285-001
Anitha Wijaya
414-530-4285-014
General Auditor II
Shirley Xie
414-530-4287-004

San Diego
General Auditor III
Jennifer Borromeo
414-550-4285-001

Fresno
General Auditor III
Amanda Patterson
414-540-4285-001
Diana Brewster
414-540-4285-002
Joshua Matkin
414-540-4285-003

Subdivisions





Communications and Publications

Current

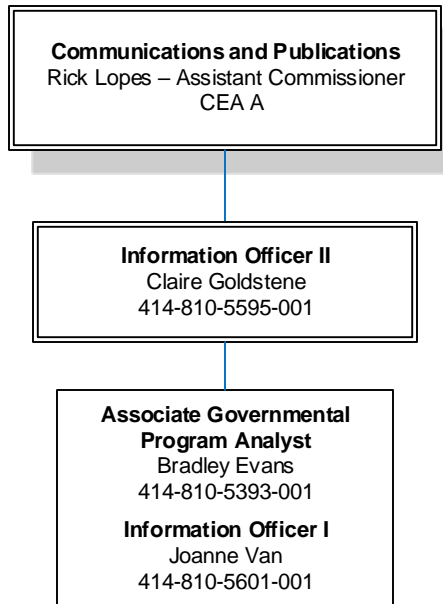
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Legislation

Current

FY 2022-23

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Filled: 1.0

Vacant: 0.0

Blanket: 0.0

Legislation and Regulations
Sonja Palladino – Assistant Commissioner
Exempt

**Associate Governmental
Program Analyst**
Hailey Gil (.5)
414-910-5393-001



December 1, 2023

CALIFORNIA DEPARTMENT OF REAL ESTATE

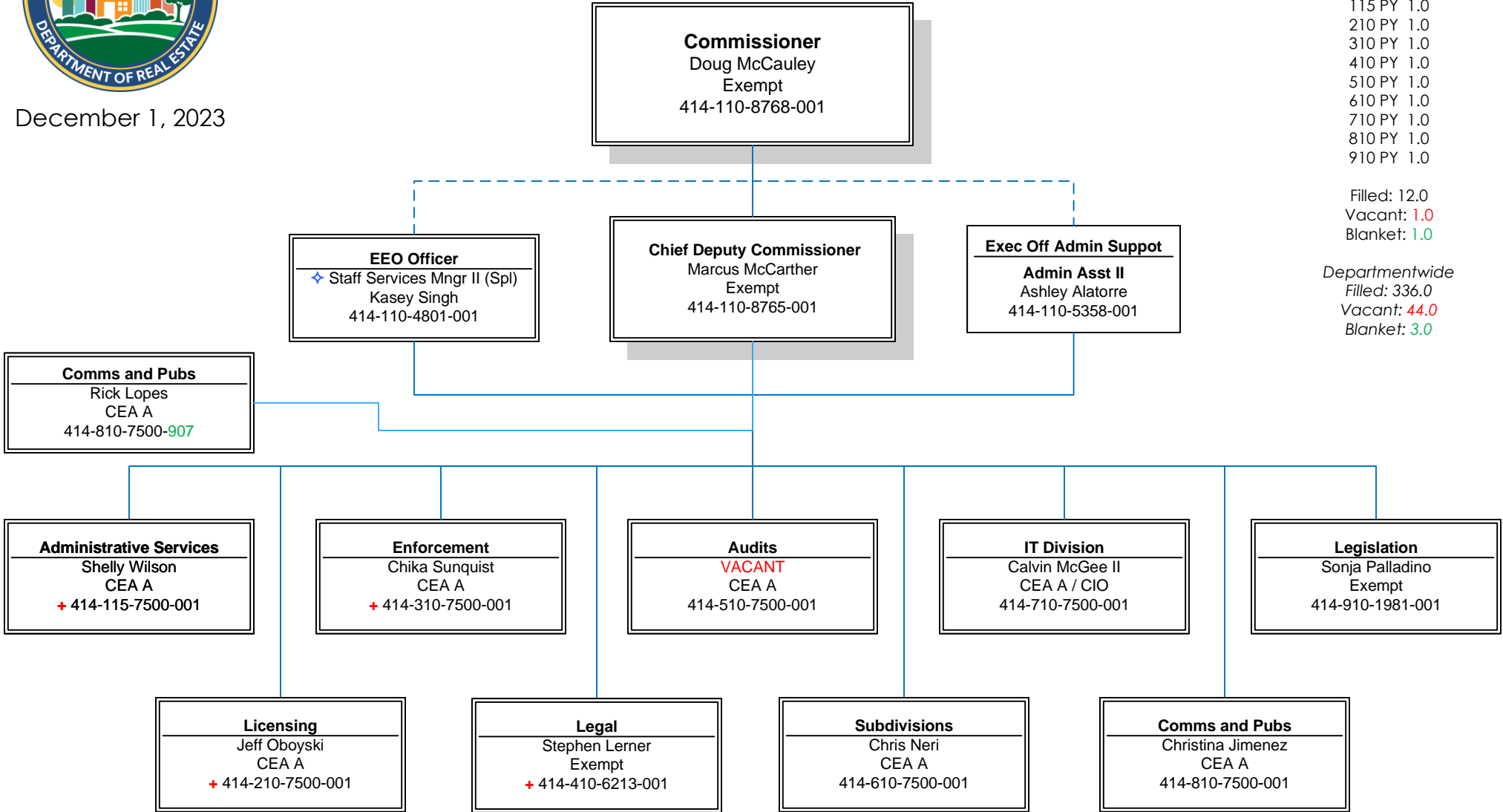
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810 PY 1.0
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Blanket: 1.0

Departmentwide
Filled: 336.0
Vacant: 44.0
Blanket: 3.0



+ - CORI Position
◆ - Exceptional Allocation

Douglas R. McCauley, Commissioner

Vincent Valenzuela, C&R Manager

Administrative Services

Administrative Services
Shelly Wilson – Assistant Commissioner
CEA A

Human Resources
Gregory Skubal
Staff Services Manager III
+ 414-120-4969-001

Fiscal Operations
Nicole Clay
Staff Services Manager III
414-130-4802-001

Personnel Services
Staff Svcs Mngr I (Sup)
Vincent Valenzuela
+ 414-120-4800-001

Leave Coordinating Unit
❖ **Staff Svcs Mngr I (Spl)**
Ana Jessica Mosqueda
414-120-4800-002

Accounting
Acctg Administrator I (Sup)
Curtis Luckey
414-130-4549-001

Accounting
Acctg Administrator I (Sup)
Yanchang Baltodano
414-130-4549-002

Training Unit
Devin Maple
Staff Services Manager I
414-140-4800-001

Business Services
Joe McAuley
Staff Services Manager I
414-150-4800-002

Class & Recruitment Unit
Assoc Personnel Analyst
Sarah Clavano
+ 414-120-5142-002
Erik Zepeda
+ 414-120-5142-003
Michelle Aguirre
+ 414-120-5142-005

Perform Mgmt & Labor Unit
❖ **Staff Svcs Mngr I (Spl)**
Courtney Cartier
414-120-4800-003

Accountant Trainee
Vershon Pittman
414-130-4179-002
Helen Gossa
414-130-4179-004
Acctg Officer (Spl)
Maria Theresa Naguit
414-130-4546-001
VACANT
414-130-4546-002
Sr Acctg Officer (Spl)
Maria Krueger
414-130-4567-001
Kelsey Lee
414-130-4567-002

Associate Acctg Analyst
Theresa Carrico
414-130-4588-001
Phi Ung
414-130-4588-002
Kathryn Douma
414-130-4588-003

Training
Associate Governmental Program Analyst
Michelle Davis
414-140-5393-001
Shannon Foster
414-140-5393-002
VACANT
414-140-5393-003

Sacramento
Associate Governmental Program Analyst
Rachelle Espinoza
414-150-5393-802
Staff Services Analyst
Raul Mejia
414-150-5157-003
Business Services Assistant (Spl)
Gabriel Jacobo
414-150-4707-003
Office Technician (G)
Phillip Cagle
414-150-1138-007
Los Angeles
Staff Services Analyst
VACANT
414-150-5157-002

Special Projects Unit
Staff Svcs Mngr I (Sup)
Julia Lembach
414-120-4800-004

Associate Governmental Program Analyst
Leila Thomas
414-120-5393-001
Maria Grant
414-120-5393-002
Marissa Herndon
414-120-5393-003

Associate Budget Analyst
Andy Lam
414-130-5284-001

Cashiering
Office Technician (Typing)
Terri Williams
414-130-1139-004
Deanna Williams
414-130-1139-005
VACANT
414-130-1139-006

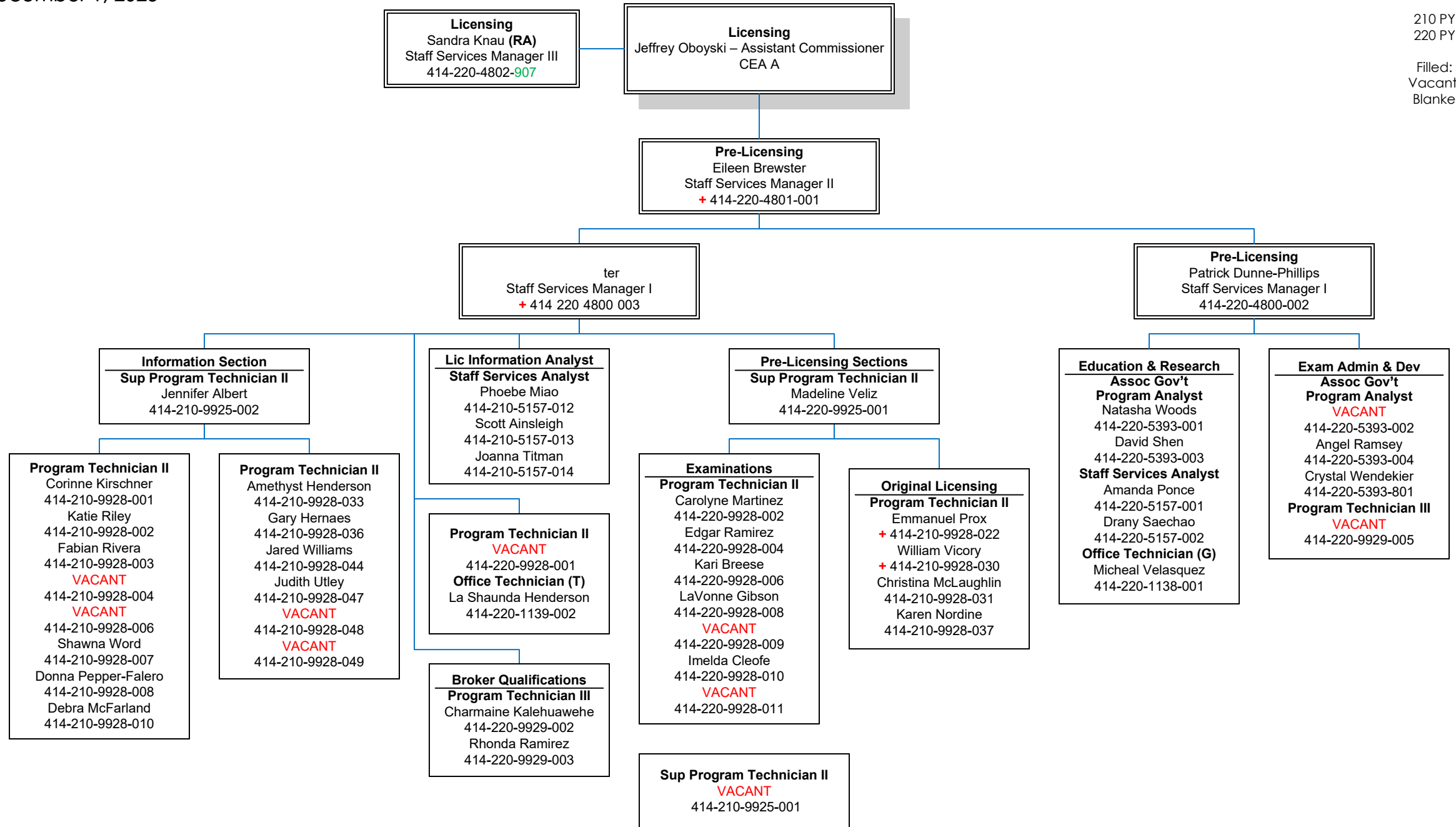
Office Technician (General)
Anthony Walls
Exempt
414-130-8491-001

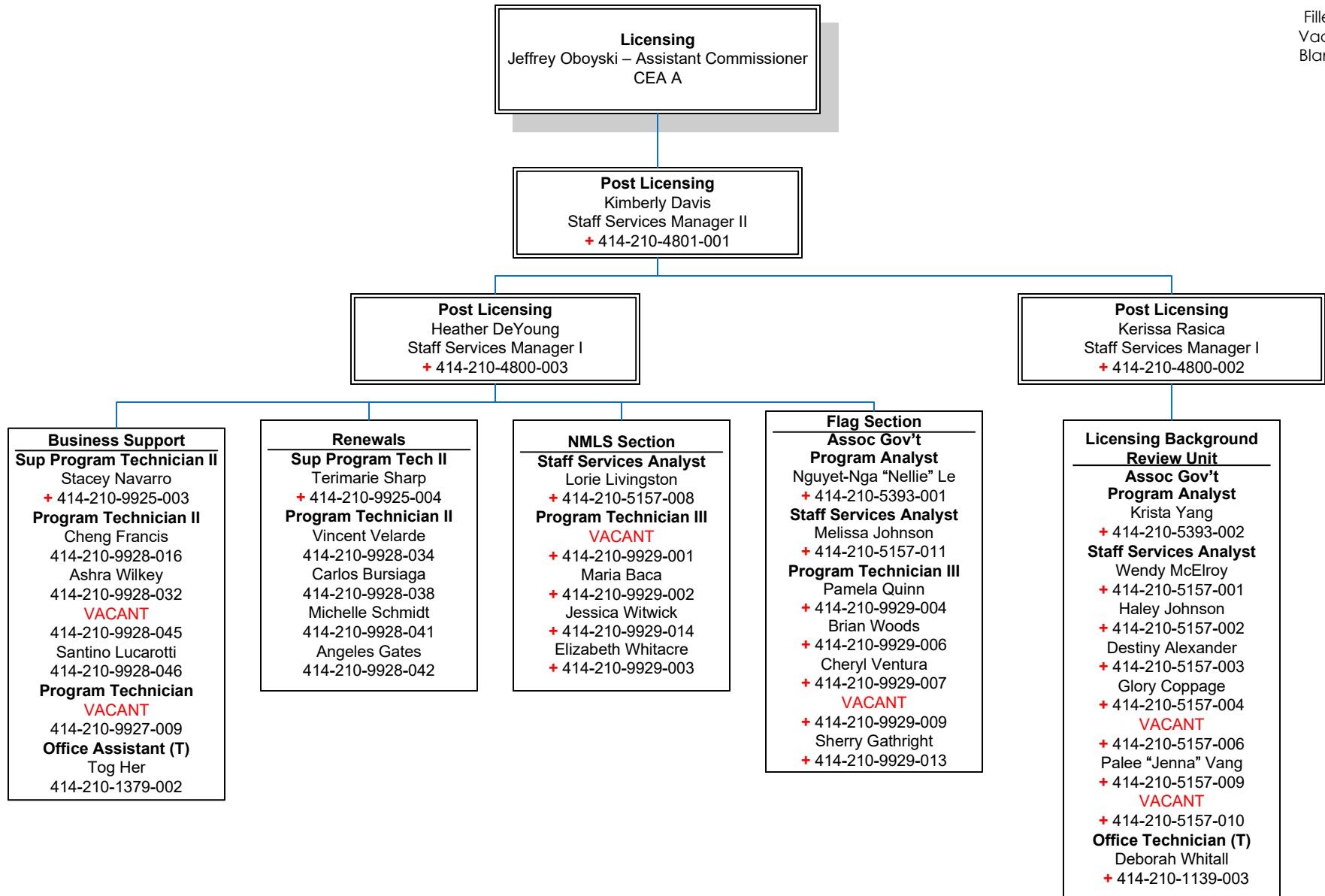
Payroll & Benefits Unit
Staff Services Analyst
Katelyn Jaramillo
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Personnel Specialist
Nelly R. Brazil
414-120-1303-001
Filadelfo Flores-Rivera
414-120-1303-002

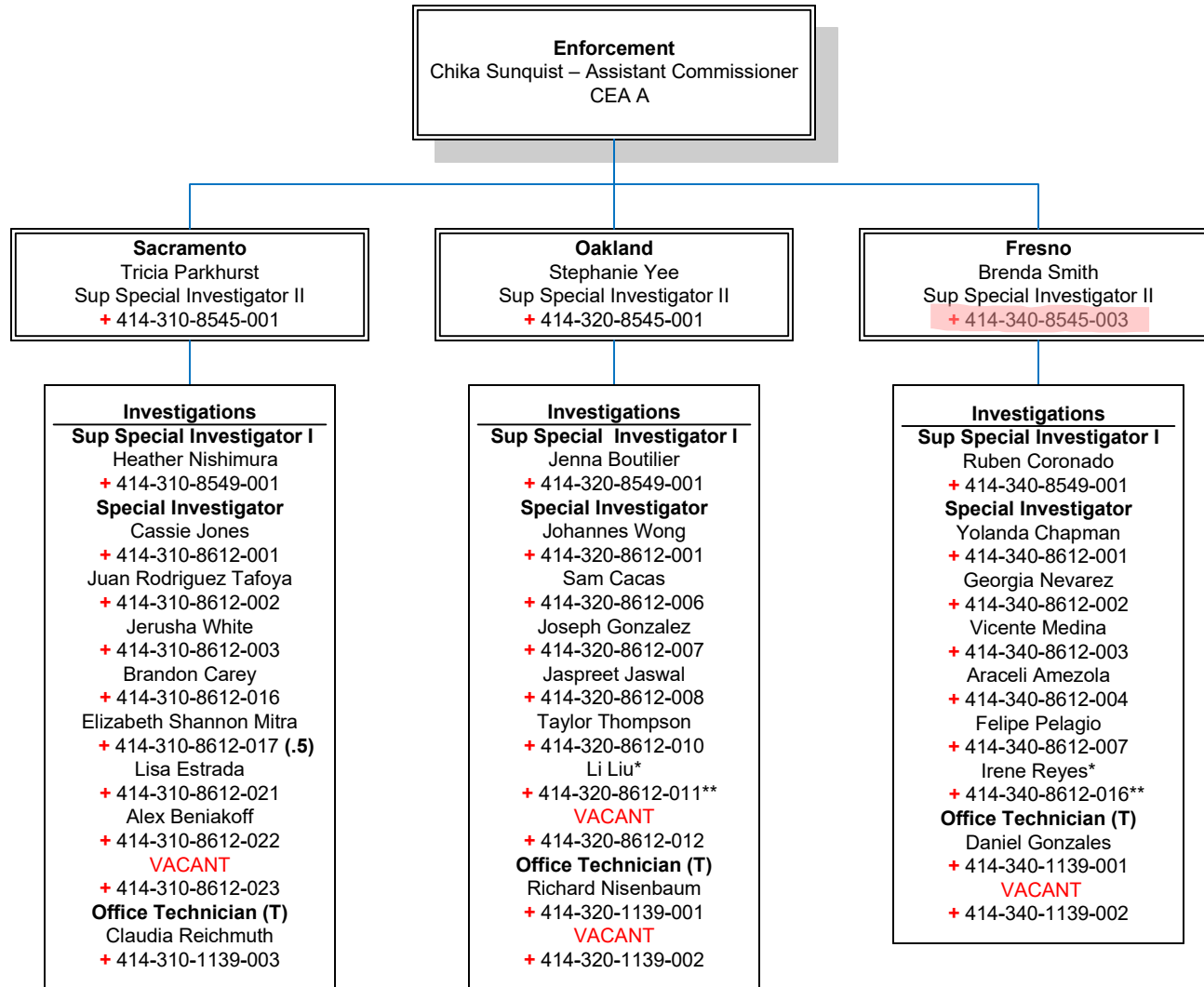
Mgmt Services Technician
Randy Hiuga
+ 414-120-5278-001

+ - CORI Position
❖ - Exceptional Allocation

Pre-Licensing



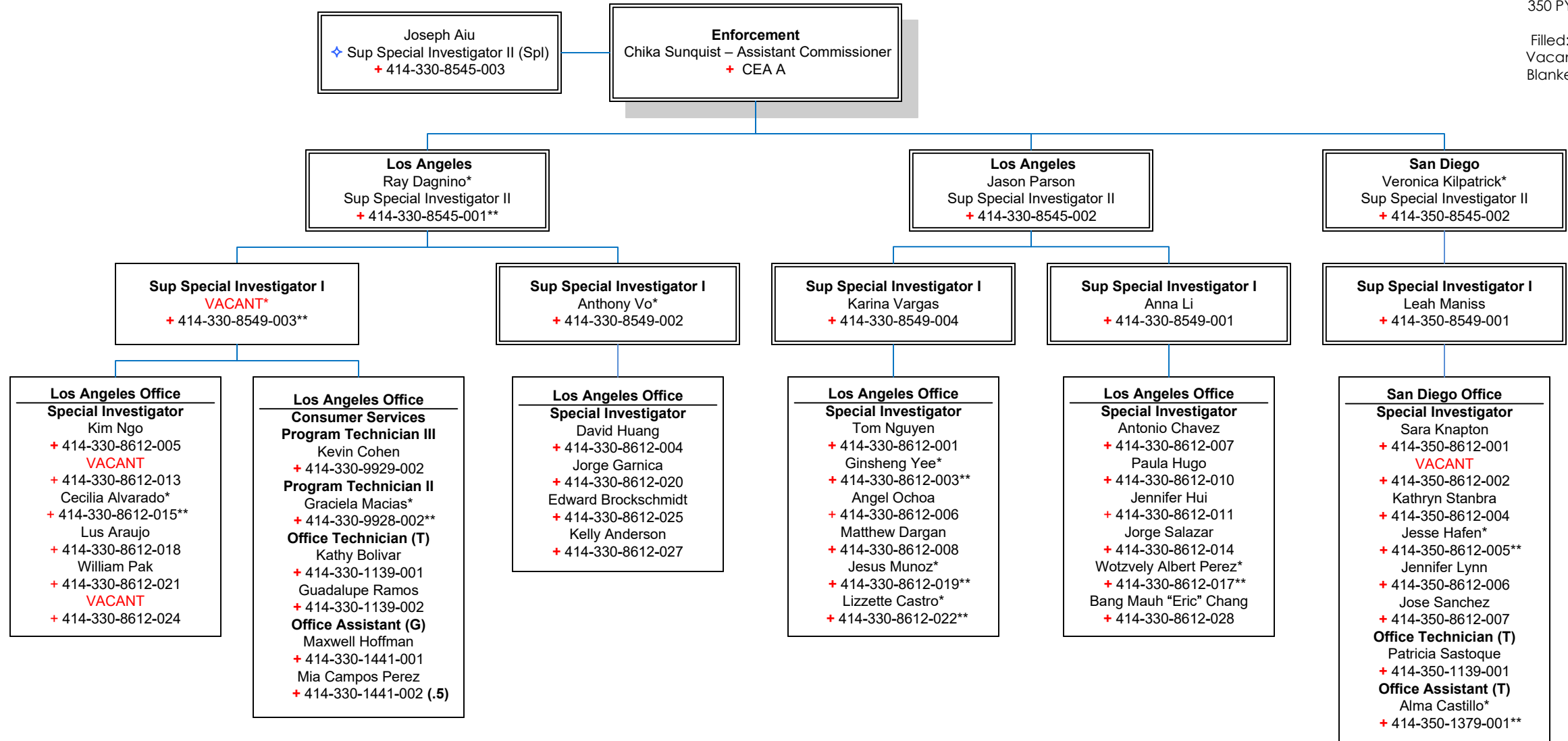




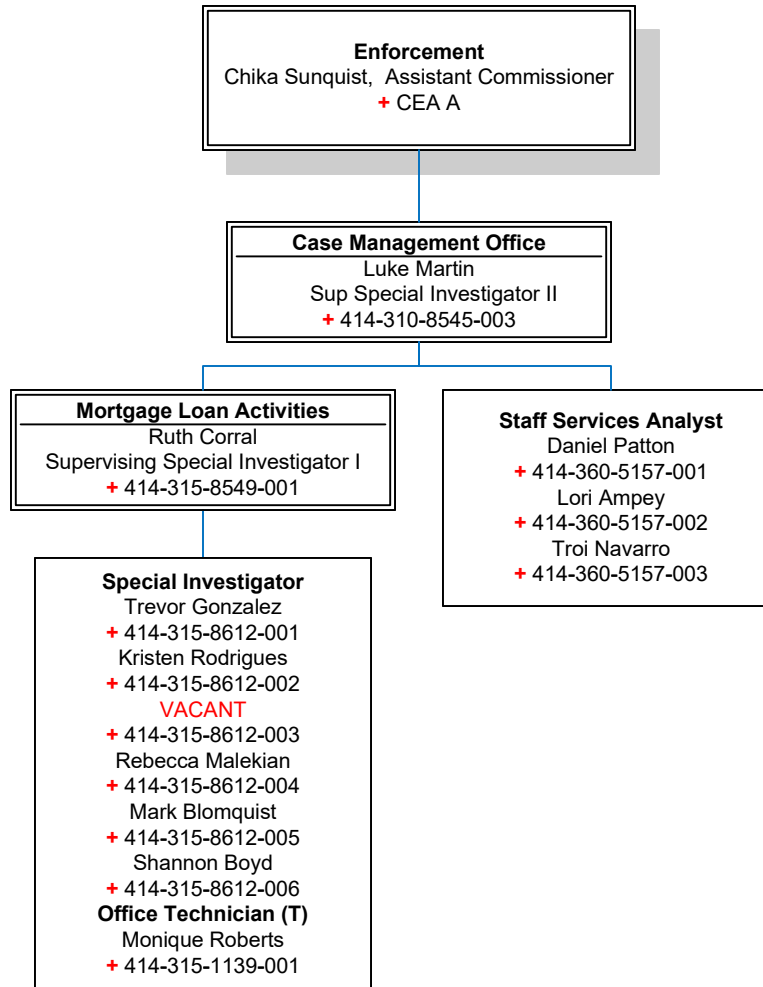
+ - CORI Position
*Certified Bilingual
** Bilingual Position

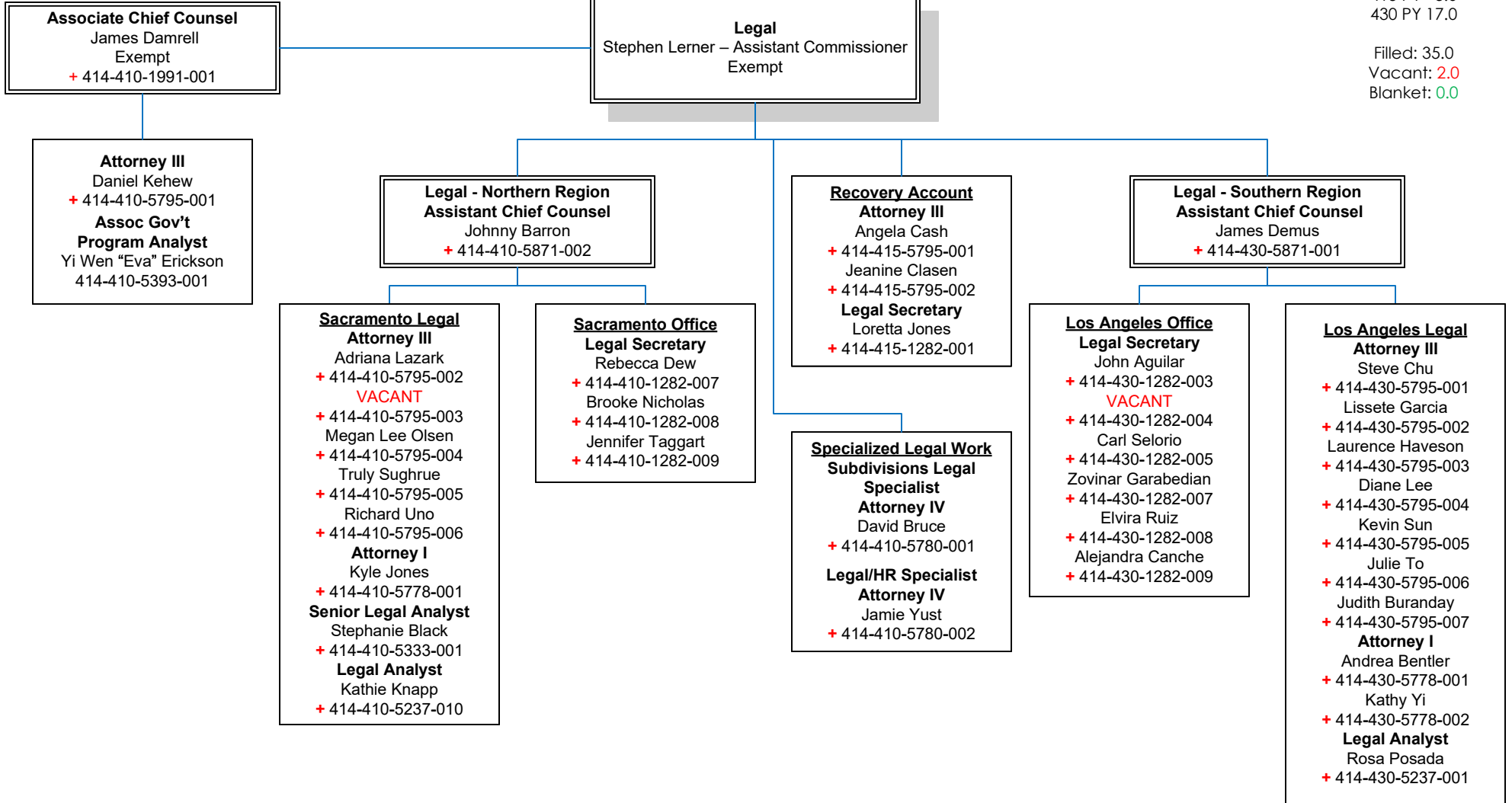
Vacant Position
Running Out
Leave

Enforcement – Southern Region



+ - CORI Position
◆ - Exceptional Allocation
*Certified Bilingual
** Bilingual Position





Audits

Audits
VACANT – Assistant Commissioner
 CEA A

Northern Region
 Michael Rivera
 Sup Auditor II, DRE
 414-510-4493-001

❖ **Staff Mgmt Auditor (Spl)**
 Seyed "Navid" Sadri
 414-510-4160-001

Southern Region
VACANT
 Sup Auditor II, DRE
 414-530-4493-004

Sacramento
 Corena De Sonnaville
 Sup Auditor I, DRE
 414-510-4491-002

Oakland
 Cecilia Yan
 Sup Auditor I, DRE
 414-520-4491-001

Los Angeles
 Marichu Soriano
 Sup Auditor I, DRE
 414-530-4491-002

Los Angeles
 Nada Dagher
 Sup Auditor I, DRE
 414-530-4491-003

Los Angeles
 Dorcas Cheng
 Sup Auditor I, DRE
 414-530-4491-001

Sacramento
General Auditor III
 Alvin Samareta
 414-510-4285-001
 Rana Tarazi
 414-510-4285-007
 Robert Leonard
 414-510-4285-009
 Karan Dogra
 414-510-4285-010
 Ji Hyun Hong
 414-510-4285-011
Auditor II
 Buri Xiong
 414-510-4287-001

Oakland
General Auditor III
 Jayendra Barbhaiya
 414-520-4285-007
 Na Lin
 414-520-4285-010
 Gina King
 414-520-4285-011
General Auditor II
 Sean Thee
 414-520-4287-001
Auditor I
VACANT
 Daniel Montes
 414-520-4175-001
 Daniel Montes
 414-520-4175-003

Los Angeles
General Auditor III
 Godswill Keraoru
 414-530-4285-010
 Anna Hartoonian
 414-530-4285-013
VACANT
 414-530-4285-015
General Auditor II
VACANT
 414-530-4287-002
 Kaori Baron
 414-530-4287-003
Auditor I
 Guadalupe Barragan
 414-530-4175-001

Los Angeles
General Auditor III
 Chona Picayo
 414-530-4285-007
 Isabel Beltran
 414-530-4285-011
General Auditor II
 Mandeep Sidhu
 414-530-4287-001
VACANT
 414-530-4287-806

San Diego
Auditor I
 Essam Rawashdeh
 414-550-4175-001

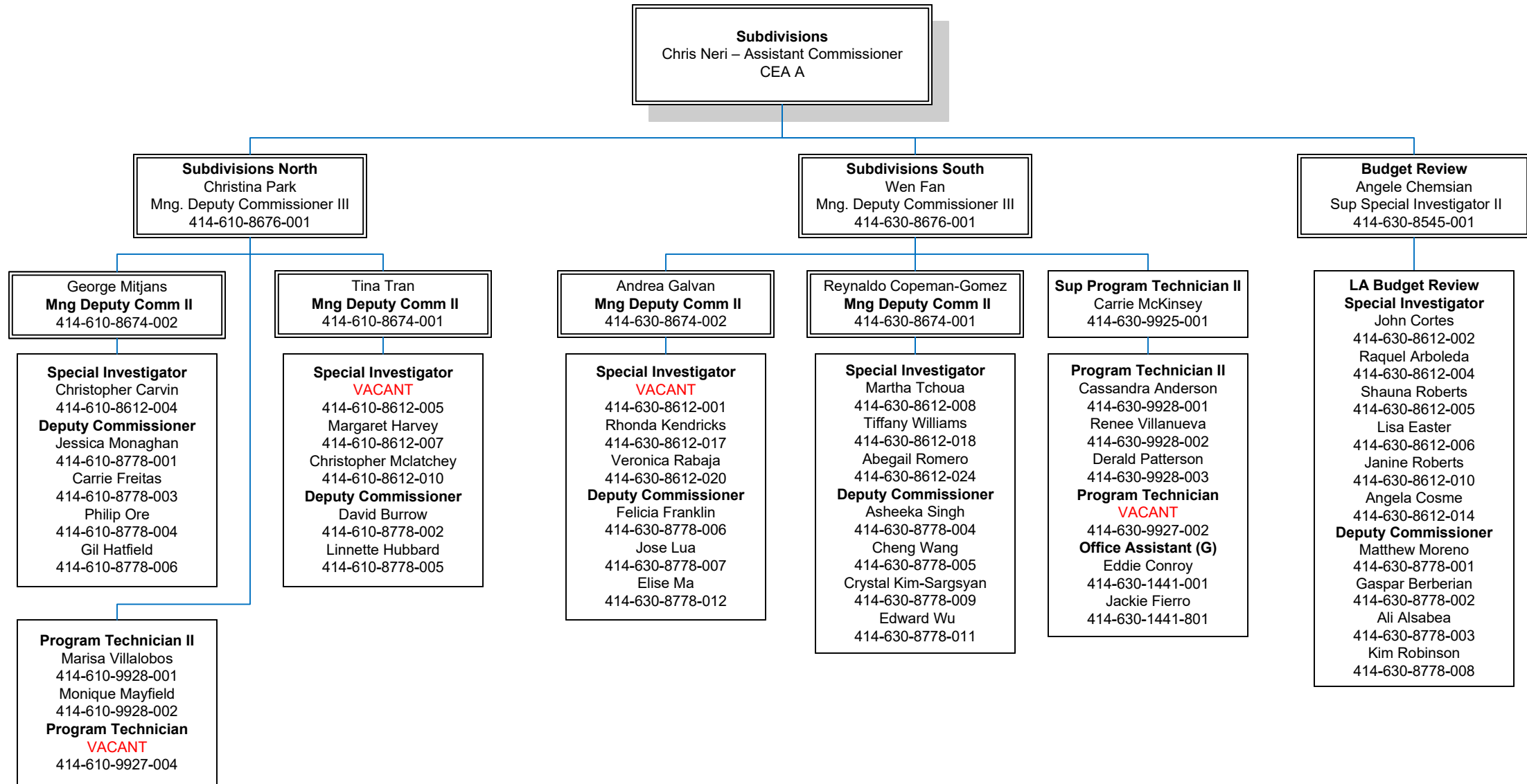
Los Angeles
General Auditor III
 Zaky Wanis
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 Anitha Wijaya
 414-530-4285-014
General Auditor II
VACANT
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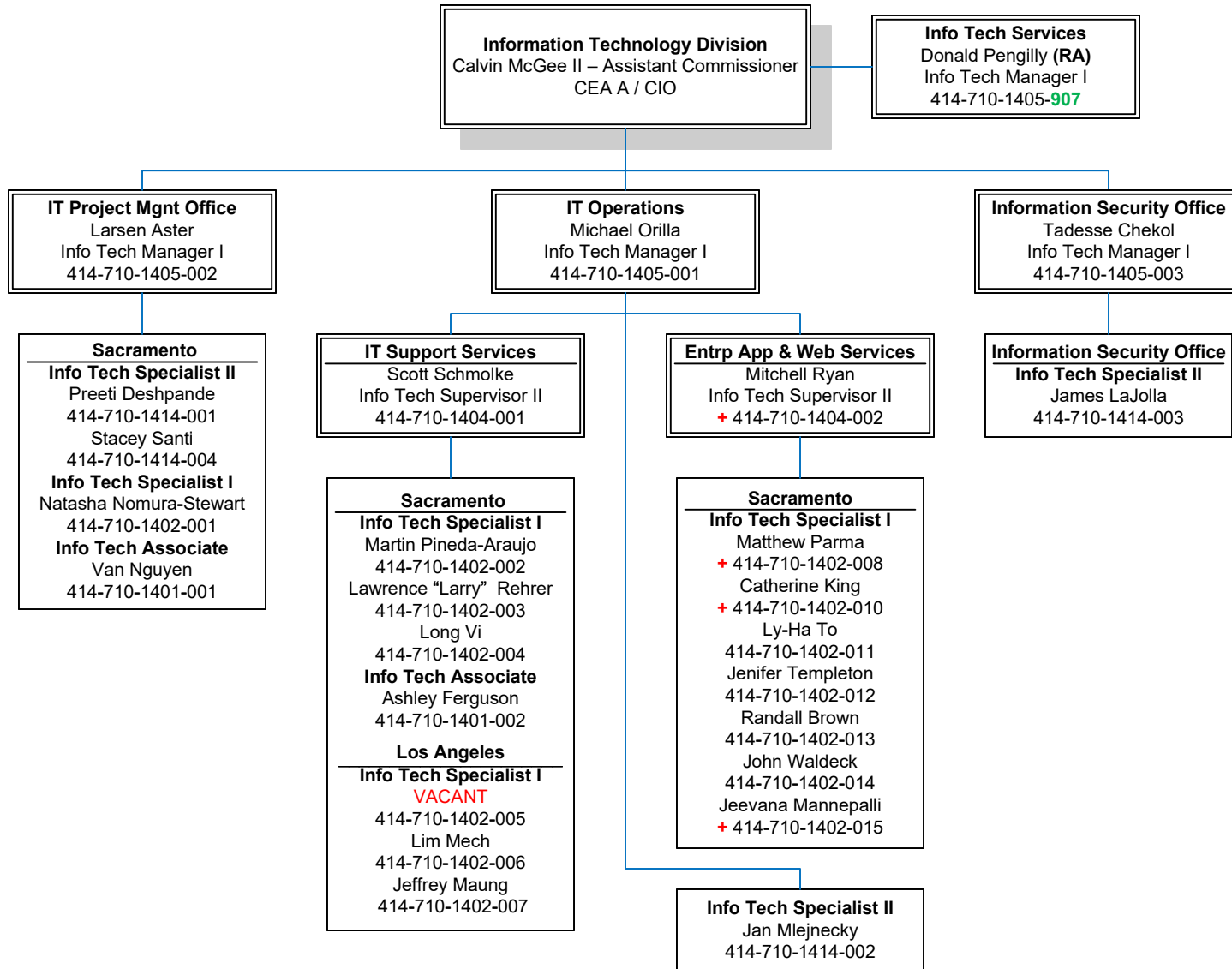
San Diego
General Auditor III
 Jennifer Ann Borromeo
 414-550-4285-001

Fresno
General Auditor III
 Amanda Patterson
 414-540-4285-001
 Diana Brewster
 414-540-4285-002
 Joshua Matkin
 414-540-4285-003

❖ - Exceptional Allocation

Subdivisions





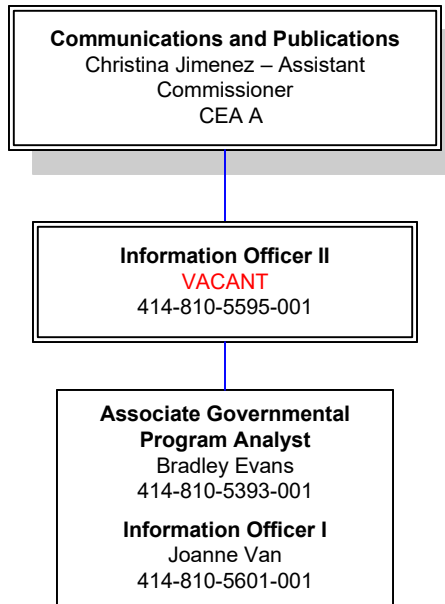
Communications and Publications

Current

FY 2023-24

810 PY 3.0

Filled: 2.0
Vacant: 1.0
Blanket: 0.0



Legislation

Current

FY 2023-24

910 PY 1.0

Filled: 1.0
Vacant: 0.0
Blanket: 0.0

Legislation and Regulations
Sonja Palladino – Assistant Commissioner
Exempt

❖ **Staff Scvs Mgr I (Spl)**
Robert Simpson
414-910-4800-001

California Department of Real Estate

Sunset Report – Attachment E

DRE Strategic Plan





THE CALIFORNIA
DEPARTMENT OF
REAL ESTATE
2022-2025

STRATEGIC PLAN

Safeguarding and promoting the public interests in real estate matters through licensure, regulation, education and enforcement.

Message from the Commissioner



On behalf of our more than 370 dedicated civil servants who serve more than 430,000 licensed real estate agents and brokers, I am proud to present the California Department of Real Estate's (DRE) 2022-25 Strategic Plan. Together, we have charted a new course that focuses on our shared outcomes with the flexibility to innovate how we achieve them.

Work to update this plan started in 2021 in the midst of a statewide pandemic and in the wake of its resulting effects to our state's economy, housing, and workplace. As we all worked diligently to adapt to a new working environment while maintaining our operations, we built upon the evolving realities with insights from DRE employees and key stakeholders. Those waves of change are not likely to subside.

The policy challenges of serving a geographically and demographically diverse state will continue to increase in complexity. Advances in technology and market forces will continue to create both opportunities and threats for salespersons, brokers, consumers, and our workforce. While we adapt our methods and tools in response to these conditions, our core purpose remains the same: to be the champion for consumer protection in real estate.

The biggest shift in our plan is putting more emphasis on our shared goals and objectives that we achieve through collaboration across our divisions. Each division still has unique programs and policies. However, all of us share responsibility in the outcomes for our ultimate customers: Californians. These outcome-based goals give us a 4-pointed North Star by which we can orient our long-term plans, while protecting the flexibility to prioritize specific initiatives and resource allocations to adapt to sudden changes.

I am excited for the future of DRE for our workforce, customers, and stakeholders. I look forward to collaborating and innovating with all of you in the years ahead.

Doug McCauley

Real Estate Commissioner

About the Department of Real Estate



The California Legislature enacted the nation's first real estate license law in 1917. Providing for the licensing and regulation of real estate licensees, this law continues to serve as a model for similar legislation in many other states. The California Department of Real Estate (DRE) continues to enjoy a nationwide reputation as a leader in real estate licensing and regulation.

The Real Estate Commissioner is appointed by the Governor and serves as the chief executive of the Department of Real Estate. To facilitate the administration and enforcement of the Real Estate Law and the Subdivided Lands Law, the Commissioner is empowered by law to issue regulations. Known as the Regulations of the Real Estate Commissioner, these have the force and effect of law.

It is the Commissioner's responsibility to enforce these laws in a manner that achieves maximum protection for real estate customers. In administering the laws and regulations, the Commissioner exercises judgement impartially, with fairness to both the consumer and industry.

DRE's revenue comes from fees charged for real estate licenses, subdivision public reports, and the issuance of various permits.

DRE achieves its mission through the dedication of more than 370 civil servants contributing across eight divisions: Licensing, Enforcement, Subdivisions, Audits, Legal, Legislation, Communications, and Administrative. Employees operating from a headquarters in Sacramento and four District Offices (Fresno, Los Angeles, Oakland, and San Diego) carry out DRE's responsibilities as mandated by California's Real Estate Law and the Subdivided Lands Law.

Department of Real Estate Mission, Vision, and Core Values



MISSION

To safeguard and promote the public interests in real estate matters through licensure, regulation, education, and enforcement.

VISION

To be the champion for public protection in real estate.

CORE VALUES



Caring



Knowledge



Professionalism



Communication



Excellence

Department of Real Estate Community Map



The Department interacts with a diverse group of constituents and stakeholders. Each of these types of stakeholders bring unique and at times competing interests. Our role is to work with the overall real estate community and the public at large to achieve our legislative and administrative mandates in a professional, impartial, and courteous fashion.



The above diagram illustrates the different dimensions of the public that we serve. Our direct interaction with our immediate stakeholders has a collective impact on the integrity of California's overall housing market. The heart that makes all of this happens is of course our dedicated civil servants, which we affectionately refer to as the "DREam Team."

Department of Real Estate Goals and Objectives



Our Department Strategic Plan focuses on what unites us in our shared mission. Therefore, our strategic goals form a 4-pointed North Star that guide how we operate and prioritize initiatives. Each division contributes their unique expertise, policies, and programs to achieve these outcomes.

Our four goals provide a balanced scorecard to guide our decision making. A **Healthy Organization** attracts and retains the talent to deliver **Customer-centric Service**. Those services are sustained and continuously enhanced through **Innovative Operations**. And as a public agency, we demonstrate **Resourceful Stewardship** with how we allocate our time, talent, and technology to achieve the highest and best results.

Goal: Customer-centric Service

Our primary focus is on real estate consumers and customers. Protecting their interests drives industry confidence, economic vitality, and forms the foundation where all Californians live, work, and play. We build towards our reputation as the best consumer protection and customer empowerment department through our exemplary and consistent actions.

Objectives:

1. Consistently deliver timely, quality, and courteous experiences for external and internal customers.
2. Scan for and anticipate emerging opportunities and trends that will enhance consumer protection.
3. Improve the review and regulation of subdivisions and timeshares.
4. Build upon effective licensing programs to ensure industry competence that continuously improves consumer protection.
5. Increase regulatory compliance through proactive outreach and effective enforcement.

Goal: Healthy Organization

We are a talented team of consumer protection champions. We achieve our mission and power our other strategic goals by deliberately investing in an inclusive, collaborative, and engaged workforce.

Objectives:

1. Be an engaged workforce through commitment, communication, learning, career advancement, retention, and recruitment.
2. Improve how leaders and employees manage dynamic workloads to align priorities and capacity.
3. Cultivate a respectful and inclusive culture that leverages diversity as a strategic strength.
4. Foster an adaptable hybrid workplace where we continuously evolve how we collaborate

Department of Real Estate Goals and Objectives, cont.



Goal: Innovative Operations

We are re-imagining our processes and technology to embrace innovation. Our teams leverage lean methods and modern tools to continuously improve the delivery of results.

Objectives:

1. Expand adoption of digital solutions for high-volume and routine services to increase self-service, enhance functionality, and efficiency.
2. Streamline processes that require manual intervention by addressing key bottlenecks.
3. Strengthen program knowledge and continuity with updated and easily referenced standards and procedures.
4. Continually seek opportunities to update our operations to align with legislative and market changes.
5. Prepare for the future and reduce risks by enhancing the use of and modernizing our mobile and core technologies.

Goal: Resourceful Stewardship

We leverage our resources to perform at the highest level possible. Our resources include our people, budgets, facilities, data, and technology assets. As stewards of these resources, we make wise investments and transparently track our impact according to our strategic priorities.

Objectives:

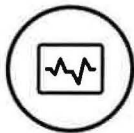
1. Expand the fiscal awareness of our individual and interconnected budgets.
2. Proactively monitor and reallocate vacant positions to the place of highest need.
3. Evaluate utilization of resources and propose solutions to ensure adequate workforce and technology capacity.
4. Evaluate and align service level capacity with allocated budgets and forecasted fee revenue.
5. Adapt facilities and technologies to enable a new hybrid of onsite, field, and remote workforce.

Department of Real Estate Dynamic Strategic Management



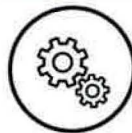
Strategic Planning is an event. Strategic Management is an ongoing process. We've made our Strategy Map nimble and resilient by separating the stable North Star components from the dynamic elements that will need to adapt along the way. We execute, assess, and adapt our Strategic Plan through the following tool sets and disciplines. These are the tools that we will use to be good stewards of the public resources we've been entrusted to invest.

Performance Dashboard



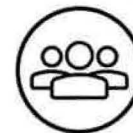
This is a set of Key Performance Indicators (KPIs). Each KPI sets specific target ranges and measure progress against Goals and Objectives. As a management team, we update and review this on a quarterly basis to hold ourselves accountable. Each division will manage more program specific service and performance related measures.

Prioritized Project Portfolio



This is a set of the active and upcoming department level strategic initiatives. These are large, high visibility, and temporary efforts to evolve our services to achieve our goals. We use this to determine relative priorities across our strategic opportunities to guide resource allocation and workforce planning, and to track progress towards completion. We use scalable project management standards to define, initiate, manage and close projects.

Ongoing Governance



All strategic plans are based on the information and assumptions available at the time. Circumstances are always changing. The executive team monitors the prioritization and execution of the projects on a monthly or as needed basis. As new items are identified and existing items are completed, progress is made on the KPIs or new data sets become available, the executive team will monitor and evolve the performance.

Department of Real Estate Acknowledgements



This Strategic Plan represents the collective contributions of hundreds of points of input from DRE employees and key stakeholders. Opportunities were offered at all levels and through multiple channels including a department-wide survey to all staff, multiple open forums to discuss live and solicit feedback from all staff, and division level management team discussions.

We'd like to thank everyone who participated in the Strategic Plans development for listening, contributing and for the passion that led to spirited debate to provide us with a clear and flexible plan to guide our decision making going forward. This deliberate and thoughtful engagement will serve DRE well into the future.

California Department of Real Estate

Sunset Report – Attachment F

Legislation Impacting DRE





California Department of Real Estate Sunset Report – Attachment F Bills Impacting the Real Estate World and DRE Since 2021-24

Licensure

AB 830 (Flora, Chapter 376, Statutes of 2021) Licensed Surnames.

AB 830 allows real estate licensees who change their legal surnames, from which the license was originally issued, to continue to use their former surnames for business purposes. Both the new and previous name must be filed with the Department of Real Estate. The bill ensures that use of a former last name does not constitute a fictitious name prohibited under real estate law.

AB 2745 (Irwin, Chapter 162, Statutes of 2022) Experience equivalent for broker examinations.

AB 2745 changed the experience requirements to sit for the exam to become a real estate broker. The bill required that non-licensed, general real estate experience used to qualify for the broker's exam occur within five years of the exam application date. The bill also clarified that when the Commissioner considers four-year degrees in lieu of licensed experience for broker's exam applicants, degrees completed more than five years before the application date may be considered.

SB 263 (Rubio, Chapter 361, Statutes of 2021) Fair housing and implicit bias training for real estate applicants and licensees.

Commencing January 1, 2023, SB 263 modified the composition of two courses that are required to qualify to take either the real estate salesperson or real estate broker licensing exam. The bill incorporated a component on implicit bias into the real estate practice course and incorporated a component on federal and state fair housing into the legal aspects of real estate course. In addition, commencing January 1, 2023, the bill made changes to the continuing education requirements for salespersons and brokers. The fair housing course was required to include an interactive participatory component, and a new two-hour implicit bias course was required.

SB 1495 (Committee on Business, Professions and Economic Development, Chapter 511, Statutes of 2022) Pre-licensure implicit bias and fair housing education.

SB 1495 made changes to SB 263 (Rubio, Chapter 361, Statutes of 2021) to consolidate new training requirements and correct drafting errors to improve implementation. Specifically, beginning January 1, 2024, SB 1495 modified the required course content of the real estate practice course to include a component on federal and state fair housing laws and their application to the practice of real estate. Such courses were required to include an interactive participatory component where the student role-plays as both a consumer and a real estate professional. The real estate practice course is required for all applicants for the real estate salesperson examination and broker examination. This content had previously been required for the legal aspects course which only those taking the real estate broker examination are required to take. In addition, the bill updated the name of the Nationwide Multistate Licensing System & Registry where it appears in statute and corrected cross-reference errors in statute. It also extended from 30 to 45 the number of days a licensee has to publish a statement in a local newspaper when they decide to begin using a fictitious business name.

Landlord Tenant

AB 838 (Friedman, Chapter 351, Statutes of 2021) Health and Safety Inspections.

Commencing July 1, 2022, AB 838 required a city or county to inspect a property if it receives a complaint regarding lead hazards or substandard living conditions. Upon inspection, it will have to advise the property owner of violations, required remedies, and reinspect the property. Among other provisions, AB 838 ensures that an inspection cannot be conditioned upon a tenant being current on rent or other factors. Inspection fees cannot be charged unless substandard conditions or lead hazards are found.

AB 2559 (Ward, Chapter 288, Statutes of 2022) Reusable Tenant Screening reports.

AB 2559 defined and specified the elements that must be included in a reusable tenant screening report. If a landlord accepts a reusable screening report, the bill prohibited them from charging an application screening fee or a fee to access the reusable report. The bill does not require that landlords accept a reusable tenant screening report and any local rule that provides more protection to the applicant prevails.

SB 1017 (Eggman, Chapter 558, Statutes of 2022) Leases: termination of tenancy: abuse or violence.

SB 1017 clarified existing law about the tenancy protections for victims of domestic violence or abuse, their household members, and their immediate

family members. This included protections that allow victims to terminate their tenancy without penalty and protection from eviction that is based solely on those acts of violence or abuse. It also expanded existing eviction protections to tenants whose family members are victims and to tenants who are victims of gun violence or other crimes causing bodily injury. Further, it expanded the evidence a court can consider as proof of abuse or violence in eviction proceedings and established new court procedures to grant a partial eviction when the perpetrator of violence resides in the same unit as the victim. Lastly, the bill made landlords liable in a civil action to the tenant for actual damages and for a fine of up to \$5,000 if they do not allow a victim, who follows proper noticing requirements, to terminate their tenancy without penalty.

AB 12 (Haney, Chapter 733, Statutes of 2023) Rental Deposits.

Beginning July 1, 2024, AB 12 limited the amount landlords can charge a tenant for a rental housing security deposit to one month's rent for either a furnished or unfurnished unit. Exempted from this limitation were landlords who 1) are a natural person or limited liability company in which all members are natural persons, and 2) who own no more than two residential rental properties that collectively include no more than four dwelling units. Such landlords would be allowed to charge deposits of two month's rent, provided that the tenant is not a service member.

AB 1317 (Carrillo, Chapter 757, Statutes of 2023) Unbundled Parking.

AB 1317 requires owners of multifamily properties that have 16 units or more, and which received a certificate of occupancy on or after January 1, 2025, to unbundle the cost of parking from the cost of the rent. This requirement only applies to properties located in the counties of Alameda, Fresno, Los Angeles, Riverside, Sacramento, San Bernardino, San Joaquin, Santa Clara, Shasta, and Ventura. Exempted from this requirement are affordable housing developments where 1) 100 percent of the units are affordable to low- and moderate-income households, or 2) developments financed by federal low-income housing tax credits or tax-exempt bonds.

AB 2347 (Kalra, Chapter 512, Statutes of 2024) Summary proceedings for obtaining possession of real property: procedural requirements.

AB 2347 extends the time by which a tenant must respond to an unlawful detainer action from five court days to 10 court days after being served. This bill requires a hearing when a tenant moves to demur (object) or strike any portion of the action to occur in no fewer than five court days, but no greater than seven court days, after the filing of the notice of the motion. A court may set the hearing for a later date upon a showing of good cause. This bill also allows a

landlord to respond orally in opposition to the tenant's motion to demur or strike any portion of the complaint. If the landlord seeks to have written opposition considered in advance of the hearing, it will be required to be filed and served in advance of the hearing.

AB 2493 (Pellerin, Chapter 966, Statutes of 2024) Rental Application Fees.

AB 2493 prohibited a landlord from charging a prospective tenant an application screening fee if no unit is available for rent. This bill also prohibited a landlord from charging an application screening fee unless the landlord does either of the following: 1) has a screening process that considers applications in the order received, grants tenancy to the first prospective tenant who qualifies, and does not charge the fee until/unless an application is actually being considered, or 2) refunds the entire application screening fee if the applicant is not selected for tenancy for any reason. Additionally, the bill required landlords to provide applicants who paid a screening fee with a copy of the consumer credit report within seven days of receiving the report.

AB 2747 (Haney, Chapter 279, Statutes of 2024) Credit Reporting of Rent Payments.

This bill required residential landlords to offer tenants the opportunity to have positive rental payment information reported to at least one nationwide consumer reporting agency. The bill allowed tenants who elect to have rental payment information reported to stop reports at any time. Landlords could charge tenants up to \$10 per month for this reporting service. Only landlords who own residential buildings of 16 units or more must comply with these requirements, unless the landlord owns more than one residential rental building and the landlord is a real estate investment trust, corporation, or limited liability company in which at least one member is a corporation. Assisted housing developments also were exempted from the bill's provisions.

AB 2801 (Friedman, Chapter 280, Statutes of 2024) Security Deposit Deductions.

AB 2801 clarified a landlord's ability to deduct funds from a security deposit. It clarified several existing tenant protections related to residential rental security deposits and required a landlord to photographically document conditions of a residential unit at the inception, as well as the conclusion, of a tenancy. Further, the bill prohibited landlords from charging the tenant or making a claim against a security deposit for professional carpet cleaning or other professional cleaning services unless necessary to restore the premises to the original condition at the inception of the tenancy.

SB 267 (Eggman, Chapter 776, Statutes of 2023) Tenant Protections for Victims of Domestic Violence.

SB 267 prohibited housing providers, in instances where a prospective tenant has a government rent subsidy, from requiring an applicant's credit history as part of the rental application if the provider does not also allow applicants to submit lawful, verifiable alternative evidence of a reasonable ability to pay the portion of rent for which the tenant will be responsible. If the applicant with a government rent subsidy elects to provide such alternative evidence, the bill required the housing provider to 1) provide the applicant reasonable time to respond with the alternative evidence and 2) consider that evidence in lieu of credit history. Violations of these provisions are a violation of the Fair Employment and Housing Act.

SB 567 (Durazo, Chapter 290, Statutes of 2023) No-Fault Just Cause Evictions.

Beginning April 1, 2024, SB 567 revises the no-fault just cause eviction provisions of the Tenant Protection Act of 2019 and provides additional enforcement mechanisms for all provisions of the Act, including for violations of restrictions on residential rent increases and no-fault just cause evictions. In regard to no-fault just cause evictions, the bill will impose additional requirements and timelines for two specific situations: 1) when an owner or owner's family move into the unit being vacated due to an eviction, and 2) the substantial remodeling or demolition of the unit. New enforcement mechanisms include injunctive relief, reasonable attorney's fees, damages, the possibility of triple damages and punitive damages, as well as legal enforcement by the Attorney General and a city attorney or county counsel.

SB 611 (Menjivar, Chapter 287, Statutes of 2024) Rental Housing Fees.

SB 611 prohibited landlords from charging tenants a fee for paying their rent or security deposit by check or for providing to tenants a notice communicating the termination of tenancy or unlawful detainer. Beginning April 1, 2025, landlords who charge a military service member a security deposit higher than standard or advertised due to credit history, credit score, housing history, or other factors, will be required to provide the tenant with a written statement of the amount of the higher fee and an explanation as to why it is being charged. This must be provided on or before the date the lease is signed. In these scenarios, the bill also required that any additional security deposit be refunded after six months, provided that the tenant is not in arrears on any rent due at that time.

SB 712 (Portantino, Chapter 630, Statutes of 2023) Micromobility Devices

This measure prohibited a landlord from disallowing a tenant from owning personal micromobility devices, or from storing and recharging up to one device per person in the dwelling unit. Examples of these devices include electric bicycles and electric scooters, among others. The bill also allowed a landlord to alternatively provide secure, long-term storage for tenants' devices, and maintain any prohibitions on tenants storing devices in their dwelling units.

SB 1051 (Eggman, Chapter 75, Statutes of 2023) Lock Changes for Victims of Abuse.

SB 1051 built upon existing law to protect tenants who are at risk of abuse or violence by allowing them to have their locks changed, free of charge, by their landlord if they provide required documentation to the landlord. The bill also expanded the types of documentation that can be provided to include documentation from a qualified third party and allows for tenants to have locks changed if a member of their immediate family or household is a victim of abuse or violence. Additionally, this bill prohibited a landlord from taking an adverse action in the screening process against a prospective tenant that was a victim of abuse who exercised their rights to terminate a past tenancy, requested a lock change, was a victim of abuse, or previously summoned law enforcement or emergency assistance.

SB 1103 (Menjivar) Non-Profit Commercial Tenant Protections.

SB 1103 extended existing residential tenant protections and notice requirements for lease terminations and rent increases to qualified commercial tenants, defined as certain small businesses and nonprofits. This bill allows a landlord to charge these tenants fees to cover building operating costs not included in a rental agreement if certain conditions are met. Additionally, the bill adds commercial rental agreements for qualified commercial tenants entered into on or after January 1, 2025, to current requirements to provide translated copies of contracts negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean at the time they are signed.

Sales

AB 948 (Holden, Chapter 352, Statutes of 2021) Discrimination in Appraisals and Refinancing.

AB 948 created the Fair Appraisal Act. Among its provisions, it required every sales contract for real property that is made after July 1, 2022, to include a notice stating that the appraisal of the property is required to be unbiased, objective, and not influenced by specific factors. Those factors include race, color, religion, gender, sexual orientation, marital status, medical condition, military or veterans status, national origin, source of income, ancestry, disability,

genetic information, and age. The notice must also include information on what actions a buyer or seller can take if they believe an appraisal has been affected. Those licensed by DRE, among other professions, were required by the measure to deliver this same notice when involved in the refinancing of a residential real estate property of up to four units. Lastly, it added refinancing a housing accommodation to the list of actions for which it is unlawful to discriminate against any person or group based upon these factors.

AB 1466 (McCarty, Chapter 359, Statutes of 2021) Discriminatory Deed Restrictions.

AB 1466 made changes to the Restrictive Covenant Modification process. Among those changes were increasing the types of people and entities that can request a modification, expanding current notices so they include information on the process to request modification, requiring professionals involved in property sales to inform buyers and sellers of an existing restrictive covenant, and increasing their duty to assist in filing the modification. The bill created a new fee on real estate instruments that are subject to the SB 2 (Atkins, Chapter 364, Statutes of 2017) recording fee to fund this work.

AB 2960 (Committee on Judiciary, Chapter 420, Statutes of 2022) Disclosures.

AB 2960 was the annual Judiciary Committee omnibus bill. For transfers of real property, this bill specified that the real estate disclosure statement requirements in effect on the date the parties entered into contract are the requirements that apply to that sales contract. The bill specified that any subsequent changes to the disclosure requirements after the parties enter into the sales contract do not apply to that contract unless the statute specifies otherwise. The bill also extended the sunset date on provisions allowing self-storage facility owners to notify self-storage occupants of lien sales by electronic mail.

AB 225 (Grayson, Chapter 420, Statutes of 2023) Homeowners' Guide to Environmental Hazards.

AB 225 requires, as existing resources permit or as private resources are made available, that the next update of the Homeowners' Guide to Environmental Hazards booklet includes information regarding wildfires, climate change, and sea level rise. The bill requires the Department of Toxic Substances Control to seek the advice and assistance of the departments in the Natural Resources Agency in updating the booklet.

AB 968 (Grayson, Chapter 95, Statutes of 2023) Disclosure of Home Repairs and Renovations.

AB 968 required the seller of a single-family residential property to disclose work done on the property, if the seller obtained title of the property within the previous 18 months. Specifically, the law required the seller to provide information regarding all room additions, structural modifications, alterations, or repairs made to the property since obtaining title if they were performed by a contractor. Only contracts totaling \$500 or more are required to be reported. The name of each contractor with whom the seller entered into a contract for the work and copies of permits must also be disclosed. This disclosure requirement applied on or after July 1, 2024.

AB 1280 (Maienschein, Chapter 99, Statutes of 2023) Fire Disclosures.

AB 1280 revised the Natural Hazard Disclosure Statement that a seller of single-family residential property is required to provide a buyer. It now requires the statement to include whether the property is located within a *high* fire hazard severity zone, whereas previous law only required the disclosure of a very high fire hazard severity zone. Additionally, the statement must indicate whether the property is located in a state responsibility area or a local responsibility area. Responsibility areas indicate who must provide fire protection.

AB 1345 (Hart, Chapter 577, Statutes of 2023) Exclusive Listing Agreements.

AB 1345 made it unlawful for an exclusive listing agreement for the sale of a single-family residential property to last longer than 24 months and for renewals to last longer than 12 months. For purposes of this measure, exclusive listing agreement also includes any agreement to enter into a future one. In addition, the bill made it unlawful to present an exclusive listing agreement for recording with a county recorder and, if done so, the agreement becomes void and unenforceable. A violation of this new law is considered a violation of a person's licensing law, thereby authorizing DRE to take action against a real estate licensee's professional license. If an agreement is made in exchange for compensation, the homeowner shall keep the compensation, however, the agreement will still be void.

AB 2992 (Nguyen, S., Chapter 516, Statutes of 2024) Buyer Broker Representation Agreements.

In response to a class action lawsuit regarding real estate commissions, AB 2992 required a buyer's agent and a buyer in a real estate transaction to execute a buyer-broker representation agreement as soon as practicable, but no later than when a buyer's offer to purchase real property is executed. This bill defined a buyer-broker representation agreement as a written contract between a buyer and a buyer's agent in which the buyer's agent has been authorized by the buyer to provide services for which a real estate license is required. The

agreement must include, at a minimum, the terms related to the compensation of the real estate broker, services to be rendered, when compensation is due, and contract termination. This bill prohibited buyer-broker representation agreements from lasting longer than three months and from automatically renewing, as well as limited any renewals of such agreements to three months. This bill also created parallel consumer protections for buyers as those experienced by sellers in relation to a listing agreement.

SB 382 (Becker, Chapter 443, Statutes of 2024) Electrical System Disclosures.

Beginning January 1, 2026, SB 382 will require the seller, or seller's agent, of a single-family residential property to deliver to the prospective buyer a specific disclosure advising (1) that the buyer may want to obtain an inspection of the electrical system, (2) that substandard wiring poses a fire risk and may make it difficult to obtain property insurance, and (3) that limited electrical capacity may cause difficulty in supporting future electrical additions such as solar generation, electric space and water heating, or electric vehicle charging.

SB 1366 (Hurtado, Chapter 21, Statutes of 2024) Water Tank Disclosures.

Beginning January 1, 2025, this bill requires a seller of real property that received domestic water storage tank assistance from the State Water Resources Control Board to provide the buyer a disclosure statement that indicates (1) the property has a domestic water storage tank provided by a county, community water system, local public agency, or nonprofit organization, (2) the domestic water storage tank was made available to households that had a private water well run dry or destroyed, (3) the domestic water storage tank may not transfer with the real property, and (4) due to the water well issues that led to this property needing assistance, the buyer is advised to have a professional inspect the water well and evaluate the availability of water to the property.

SB 1399 (Stern, Chapter 475, Statutes of 2024) Transfer Agreements.

SB 1399 clarified that the existing prohibition on private transfer fees in real property transactions does not apply to private transfer fee covenants if the covenant meets all of the following requirements: (1) was created pursuant to an agreement enacted prior to June 1, 2009, (2) applies to the land identified in the agreement, (3) pertains to agreements that settled litigation or were approved by a government agency, (4) pertains to an agreement that was recorded in each county in which the land is located, (5) pertains to an agreement that specified the development area applies to any covered parcel to be created within that area, and (6) complies with current law regarding transfer fee notice requirements.

This clarification is necessary to remove ambiguity on whether the private transfer fees that were agreed to in the 2008 Tejon Ranch Conservation and Land Use Agreement are permissible, due to the fact that while the agreement was entered into in 2008, the actual covenants have not yet been created.

HOA

AB 502 (Davies, Chapter 517, Statutes of 2021) Common interest developments: election requirements.

AB 502 allows all homeowners associations (HOAs), regardless of size, to elect by acclamation candidates for the board of directors, if the number of candidates is no more than the number of vacancies. To take advantage of this process, the HOA must meet increased noticing provisions, have had a regular election in the past three years, confirmed receipt of a candidate nomination, and provided a nominee who has been disqualified with the opportunity to appeal. Lastly, the board of the HOA must also consider the vote by acclamation at a meeting where the agenda includes the name of each candidate to be elected by acclamation.

AB 1101 (Irwin, Chapter 270, Statutes of 2021) Common interest developments: funds: insurance.

AB 1101 modified current financial practices and insurance requirements for homeowners associations (HOAs) in common interest developments. The bill revised the ways HOA managing agents can handle association funds, prevent managing agents from investing HOA funds in stocks or high-risk investments, and remove the ability to commingle funds, among other provisions. The bill also requires HOAs and their managing agents to maintain crime insurance, employee dishonesty insurance, and fidelity bond coverage, or their equivalents.

AB 1410 (Rodriguez, Chapter 858, Statutes of 2022) Social Media Discourse, Rental Restrictions, and Violations During a Declared Emergency.

AB 1410 disallowed the governing documents of a homeowner's association (HOA) from prohibiting members and residents from discussing their common interest development (CID) on social media, including discussions that are critical of the association or governance. It also makes unenforceable any provisions of HOA governing documents that prohibit owners from renting a portion of the owner-occupied space for a period of more than 30 days. Lastly, it prevents an HOA from pursuing enforcement actions for violations during a

declared emergency, if that emergency makes it unsafe to fix the violation; this will not apply in cases of nonpayment of assessments.

AB 648 (Valencia, Chapter 203, Statutes of 2024) Electronic Meetings.

AB 648 authorizes a homeowners association to hold both board or member meetings entirely by teleconference without any physical location, if certain conditions are met. A teleconference includes meetings held via electronic connection, through audio or video means. Meetings where ballots are to be counted for the purposes of elections will still require a physical location.

AB 2114 (Irwin, Chapter 100, Statutes of 2024) Exterior Decks and Balconies.

AB 2114 allows civil engineers to conduct the required visual inspection of exterior elevated elements of condominium buildings of three or more units, in addition to structural engineers and architects, as allowed by current law.

AB 572 (Haney, Chapter 745, Statutes of 2024) Assessment Caps for Deed Restricted For-Sale Units.

AB 572 prohibits homeowners associations that are originally formed on or after January 1, 2025 from imposing a regular assessment against an owner of a deed-restricted affordable housing unit that is more than a five percent increase from the current regular assessment, plus the percentage change in the cost of living, but not exceeding ten percent. These provisions do not apply to a development 1) with 20 or fewer units or 2) where the percentage of deed restricted affordable units exceeds that required by a local inclusionary ordinance. This bill also does not apply to a development built in an area without an inclusionary ordinance if either 1) the percentage of units that are deed-restricted affordable housing exceeds 10 percent or 2) for projects approved via AB 2011 (Wicks, Chapter 647, Statutes of 2022) low-income streamlining, the percentage of units that are deed-restricted affordable housing exceeds 15 percent of the units in the development.

AB 2159 (Maienschein, Chapter 383, Statutes of 2024) Electronic Voting.

AB 2159 allows homeowners' associations to conduct elections via electronic secret ballot. The measure established parameters for election operating rules that allow for electronic secret balloting, establish requirements for the electronic secret balloting systems, update noticing requirements related to voting to incorporate electronic secret balloting, and clarify that election counting must be done at a public, in-person meeting. If an association decides to conduct an election via electronic secret ballot, the election rule must allow members to change their preferred method of voting from electronic secret

ballot to written ballot or written ballot to electronic secret ballot, as appropriate.

AB 1458 (Ta, Chapter 303, Statutes of 2023) Election Quorum Requirements.

For instances where there is a lack of quorum at a meeting to count ballots for a homeowner's association board of director's election, AB 1458 allows the board to call a subsequent meeting at which the quorum required to elect directors will only be 20 percent of the association's members voting in person, by proxy, or by secret ballot. The subsequent meeting must be called at least 20 days after the initial meeting. No less than 15 days before this meeting, the association will be required to provide general notice to the membership of the date, time, and location of the subsequent meeting along with the list of all candidates and a statement that the quorum for the election will be 20 percent of the association. This applies to associations regulated by the Davis Stirling Act and the Corporations Code. The bill also modified the required notice regarding elections and recalls of the board of directors to now include 1) a statement that if quorum is not reached, the board may call a subsequent meeting at which quorum is 20 percent, and 2) a note that the meeting is not only where ballots will be counted, but also where a quorum will be determined.

AB 2460 (Ta, Chapter 401, Statutes of 2024) Election Quorum Requirements.

This bill made technical changes to AB 1458 (Ta, Chapter 303, Statutes of 2023), which allowed for homeowner's associations to reconvene an election meeting at a future date in the event there was an absence of a quorum. At the reconvened meeting, the quorum for purposes of voting will be 20 percent of the members of the association voting.

SB 900 (Umberg, Chapter 288, Statutes of 2024) Health and Safety Repairs.

SB 900 provides that a homeowner's association (HOA) is responsible for the repairs and replacements necessary to restore interrupted gas, heat, water, or electrical services in a development unless either the declaration of a common interest development provides otherwise or the service is the responsibility of a public, private, or other utility service provider. The HOA board is required to commence the process of repairing services within 14 days of an interruption. If there are insufficient reserve funds available to cover the cost of repair, the HOA is authorized to obtain competitive financing to pay for the costs of the repairs and levy an emergency assessment for the repayment of the loan without a vote of the members of the HOA. If an HOA board is unable to meet a quorum within 14 days to act on commencing needed repairs and replacements, then the quorum required at the next duly noticed board meeting will be reduced to the number of board members that attend. Additionally, the bill requires HOAs

to inspect gas, water, and electrical systems every three years as part of an association's triennial inspection of major components.

Consumer Recovery Account

SB 887 (Committee on Business, Professions and Economic Development, Chapter 510, Statutes of 2023) Electronic Applications.

Among other provisions, SB 887 allowed the Department to accept applications to the Consumer Recovery Account electronically, in a manner prescribed by the department.

Fees

SB 164 (Committee on Budget and Fiscal Review, Chapter 41, Statutes of 2024) Fee Increase.

Among other provisions, SB 164 increased the licensing, examination, subdivision, and timeshare-related fees, among others that are levied by DRE. It also established a cap for each fee that may be reached via regulation. The bill required DRE to conduct at least one stakeholder meeting prior to formally proposing a regulatory fee increase, as well as provide reports on DRE's revenues, expenditures, and reserves at its annual fee hearing.

Military

AB 107 (Salas, Chapter 693, Statutes of 2021) Licensure: veterans and military spouses.

Among other provisions, AB 107 required DRE to compile information on military, veteran, and spouse licensure into an annual report for the Legislature. The report must contain the number of applications for expedited licenses for both veterans and the spouses of active-duty service members, as well as the number of expedited licenses issued and denied per calendar year. Lastly, the report must include the average length of time between application and expedited license issuance.

SB 800 (Archuleta, Chapter 431, Statutes of 2021) Sunset Renewal, Military Licensing, Good Standing, Etc.

SB 800 extended the sunset for DRE and the Bureau of Real Estate Appraisers. The measure also allowed DRE to use bar notices issued by sister agencies as grounds for action, codified current expedition of licenses for veterans and partners of members of the Armed Forces, and clarified the definition of real estate license in good standing.

SB 143 (Committee on Budget and Fiscal Review, Chapter 196, Statutes of 2023) Portability of Professional Licenses for Servicemembers.

SB 143 required the Department of Real Estate (DRE) to create a program to conform with federal law that allows military servicemembers and their spouses who are in California on military orders to practice with a license from other states, if they meet the following requirements:

- Have actively used their license during the two years immediately preceding the relocation required by the military orders;
- Provided DRE with a copy of the military orders showing the relocation to California;
- Remains in good standing with both (1) the licensing authority that issued the license; and (2) if licensed in more than one state, district, or territory, remaining in good standing with every licensing authority that has issued them a license at a similar scope of practice and in the discipline applied.
- Submitted to DRE's authority for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

**SB 152 (Committee on Budget and Fiscal Review, Chapter 198, Statutes of 2023)
Criminal Background Checks.**

SB 152 made necessary statutory changes to comply with federal requirements regarding criminal background checks. The bill required the Department of Real Estate, as well as other state entities, to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for employees, prospective employees, contractors, and subcontractors.

Mortgage Lending

AB 2424 (Schiavo, Chapter 311, Statutes of 2024) Foreclosure Postponement and Voluntary Third-Party Notifications.

AB 2424 provided homeowners with greater foreclosure protections. The bill requires mortgage services to inform borrowers that a third party can record a request to receive copies of notices of default and sale regarding the property and that, by doing so, may allow the third party to assist the borrower in avoiding foreclosure. The bill also allows borrowers to postpone a foreclosure sale date by 45 days if they provide the trustee with an agreement to list the property for sale in a marketing platform. They can extend the sale an additional 45 days if they provide the trustee a purchase agreement to sell the property. The bill requires all residential properties, up to four units, which are to be sold at a foreclosure auction to be sold at 67 percent of the fair market value. If the property does not sell at this price, there will be a second

foreclosure auction at least seven days later where the property can be sold to the highest bidder.

AB 3108 (Jones-Sawyer, Chapter 517, Statutes of 2024) Mortgage Fraud.

This bill prohibits a person who originates covered loans from avoiding, or attempting to avoid, statutory restrictions on covered loan activity by committing mortgage fraud. The bill added to the definition of mortgage fraud when a mortgage broker or person who originates a loan, with the intent to defraud, does either of the following: 1) instructs or deliberately causes a borrower to sign documents that reflect the terms of a business, commercial, or agricultural loan, with knowledge that the borrower intends to use the loan proceeds primarily for personal, family, or household use, or 2) instructs or deliberately causes a borrower to sign documents reflecting the terms of a bridge loan, with knowledge that the loan proceeds will not be used to acquire or construct a new dwelling.

SB 455 (McGuire, Chapter 873, Statutes of 2023) Mortgage Servicers: State of Disaster.

When transferring a mortgage to a new servicer, SB 455 requires the current mortgage servicer to deliver to the new mortgage servicer any written records between the borrower and the current servicer regarding the borrower's decision to use insurance proceeds to repair or replace property damaged during a proclaimed state or local emergency. This applies to residential properties with up to four dwelling units or mobilehomes. The bill also requires the new servicer to "not dishonor" a previous written agreement to repair the property if approved by the prior servicer, borrower, and owner of the promissory note.

SB 1146 (Wilk, Chapter 601, Statutes of 2024) Broker Mortgage Refinancing.

This bill served as an omnibus measure to make changes to the Civil Code regarding mortgage and foreclosure law. Specifically, it addressed a recent court decision to restore the prior interpretation of law regarding refinancing high interest mortgages, included small lenders who are not licensed in the licensed small lender exclusion single point of contact mortgage law, and addressed situations where a foreclosure auction is postponed due to a force majeure, among other changes. The bill addressed a recent Ninth Circuit Court of Appeals ruling that would prevent real estate brokers from arranging forbearances, loan modifications, or mortgage extensions on loans they had not personally made or arranged.

California Department of Real Estate

Sunset Report – Attachment G

Authority for Each Fee Charged by DRE





California Department of Real Estate

Sunset Report – Attachment G

List of Fee Authorities

Fee Type		Statute (B&P Code Section)	Commissioner's Regulation
EDUCATION	Statutory / Pre-License Course Application	10209	3002
EDUCATION	Continuing Education Course Application 1-2 hours	10170.4	3009
EDUCATION	Continuing Education Course Application 3 hours	10170.4	3009
EDUCATION	Renewal Application 1-2 hours	10170.4	3009
EDUCATION	Renewal Application 3 hours	10170.4	3009
EDUCATION	Continuing Education Equivalent Activity Petition Application (1 item)	10170.4	3009
EXAMINATION	Salesperson Original Examination (Exam Only)	10213.5	2716.1
EXAMINATION	Salesperson Re-Examination	10213.5	2716.1
EXAMINATION	Salesperson First Rescheduled Exam	10213.6	2716.1

EXAMINATION	Salesperson Subsequent Rescheduled Exam	10213.6	2716.1
EXAMINATION	Salesperson Professional Responsibility Exam	10222	none
EXAMINATION	Salesperson Professional Responsibility Re-Exam	10222	none
EXAMINATION	Broker Original Examination (Exam Only)	10208.5	2716.1
EXAMINATION	Broker Re-Examination	10208.5	2716.1
EXAMINATION	Broker First Rescheduled Exam	10213.6	2716.1
EXAMINATION	Broker Subsequent Rescheduled Exam	10213.6	2716.1
EXAMINATION	Broker Professional Responsibility Exam	10222	none
EXAMINATION	Broker Professional Responsibility Re-Exam	10222	none
ORIGINAL LICENSE	Salesperson License Fee	10215	2716.1
ORIGINAL LICENSE	Broker License Fee	10210	2716.1
COMBINATION LICENSE	Salesperson License & Exam Fee	10213.5, 10215	2716.1
COMBINATION LICENSE	Broker License & Exam Fee	10210, 10208.5	2716.1
LICENSE RENEWAL	Salesperson On Time Renewal	10215	2716.1
LICENSE RENEWAL	Salesperson Late Renewal (within 2 years after license exp. Date)	10201	2716.1
LICENSE RENEWAL	Broker On Time Renewal	10210	2716.1
LICENSE RENEWAL	Broker Late Renewal (within 2 years after license exp. Date)	10201	2716.1
LICENSE RENEWAL	Officer On Time Renewal	10210	2716.1

LICENSE RENEWAL	Officer Late Renewal (within 2 years after license exp. Date)	10201	2716.1
CORPORATION LICENSE	Corporation license or Additional Officer	10210	2716.1
RESTRICTED LICENSE	Salesperson License Fee	10214.5	none
RESTRICTED LICENSE	Broker License Fee	10209.5	none
RESTRICTED LICENSE	Additional Officer License Fee	10209.5	none
RESTRICTED LICENSE	Corporation License Fee	10209.5	none
PETITION APPLICATION	Petition Application Fees Reinstate Revoked / Surrendered License	10186	none
PETITION APPLICATION	Petition Application Fees Removal of Discipline from License Information	10083.2	2915
PREPAID RENTAL LISTING SERVICE	Individual License Fee	10167.3(a)	none
PREPAID RENTAL LISTING SERVICE	Individual Renewal Application	10167.3(a)	none
PREPAID RENTAL LISTING SERVICE	Individual Each Additional Location	10167.3(a)	none
PREPAID RENTAL LISTING SERVICE	Corporate License Fee	10167.3(a)	none
PREPAID RENTAL LISTING SERVICE	Corporate Renewal of Location	10167.3(a)	none
PREPAID RENTAL LISTING SERVICE	Corporate Addition of Location	10167.3(a)	none
PREPAID RENTAL LISTING SERVICE	Corporate Designated Agent Application	10167.3(a)	none
PREPAID RENTAL LISTING SERVICE	Corporate Officer Renewal Application	10167.3(a)	none

PREPAID RENTAL LISTING SERVICE =	Corporate Duplicate PRLS License Certificate	10167.3(a)	none
MORTGAGE LOAN ORIGINATOR	Corporation Original	10166.17	2758.4
MORTGAGE LOAN ORIGINATOR	Corporation Renewal	10166.17	2758.4
MORTGAGE LOAN ORIGINATOR	Salesperson Original	10166.17	2758.4
MORTGAGE LOAN ORIGINATOR	Salesperson Renewal	10166.17	2758.4
MORTGAGE LOAN ORIGINATOR	Broker Original	10166.17	2758.4
MORTGAGE LOAN ORIGINATOR	Broker Renewal	10166.17	2758.4
MORTGAGE LOAN ORIGINATOR	Mortgage Loan Advertising Submittal	10232.1	2847
SUBDIVISION FILING	Basic (Final Public Report) Standard Subdivision	11011	2790
SUBDIVISION FILING	Basic (Final Public Report) Common Interest Subdivision	11011	2790
SUBDIVISION FILING	Time-share Filings In-state	11232	2810.5
SUBDIVISION FILING	Time-share Filings Out-of-State	11232	2810.5
SUBDIVISION FILING	Out-of-State Registrations (Non-Timeshare)	10249.3	none
SUBDIVISION FILING	Preliminary Public Report Original	11011	2790
SUBDIVISION FILING	Preliminary Public Report Amended	11011	2790
SUBDIVISION FILING	Preliminary Public Report Renewal	11011	2790

SUBDIVISION FILING	Preliminary Public Report Timeshare	11232	2810.5
SUBDIVISION FILING	Conditional Public Report / Permit Original	11011	2790
SUBDIVISION FILING	Conditional Public Report / Permit Amended	11011	2790
SUBDIVISION FILING	Conditional Public Report / Permit Renewal	11011	2790
SUBDIVISION FILING	Conditional Public Report / Permit Timeshare	11232	2810.5
SUBDIVISION FILING	Amended Fees Standard	11011	2790
SUBDIVISION FILING	Amended Fees Common Interest Subdivision	11011	2790
SUBDIVISION FILING	Amended Fees Time-share Filings	11232	2810.5
SUBDIVISION FILING	Amended Fees Out-of-State Registrations	10249.3	none
SUBDIVISION FILING	Amended Fees Subdivider name change or other non-substantive and recurring changes	11011, 11232	2790.1.5, 2810.5
SUBDIVISION FILING	Amended Fees Additional applications submitted concurrently	11011, 10232	2790.1.5, 2810.5
SUBDIVISION FILING	Renewal Fees Standard	11011	2790
SUBDIVISION FILING	Renewal Fees Common Interest Subdivision	11011	2790
SUBDIVISION FILING	Renewal Fees Time-share Filings	11232	2810.5
SUBDIVISION FILING	Renewal Fees Out-of-State Registrations	10249.3	none

SUBDIVISION FILING	Miscellaneous Fees Filing fee for Notice of Intention without a completed subdivision questionnaire	11011	2790.1.5
SUBDIVISION FILING	Miscellaneous Fees Filing fee for Application to Amend Documents	11018.7	2793
SUBDIVISION FILING	Miscellaneous Fees Interest Fees	11232	2810.5
SUBDIVISION FILING	Miscellaneous Fees Filing Fee to review a declaration	11011	2790.6
SUBDIVISION FILING	Miscellaneous Fees Advertising Review Fee	11022	2799.2
MISCELLANEOUS	Child Support Obligor	Family Code 17520(n)	2716.5