



# BUREAU OF REAL ESTATE FORUM

Hyatt Regency - Indian Wells, CA  
January 27, 2017



# TODAY'S AGENDA

## Opening Remarks – Commissioner Wayne Bell

### ➤ Operations Report –

Daniel Sandri, Chief Deputy Commissioner

### ➤ Legal Affairs –

Stephen Lerner, Assistant Commissioner Legal Affairs

### ➤ Audit Report and Update–

Daniel Sandri, Chief Deputy Commissioner

### ➤ Q & A and Dialog

Wayne Bell and Panel



# BUREAU OF REAL ESTATE OPERATIONS REPORT



Daniel Sandri  
Chief Deputy Commissioner

# FINANCIAL STATISTICS

FY 2016-2017

**\$54.4 MILLION BUDGET**

## FIVE OFFICES/ EXAM CENTERS

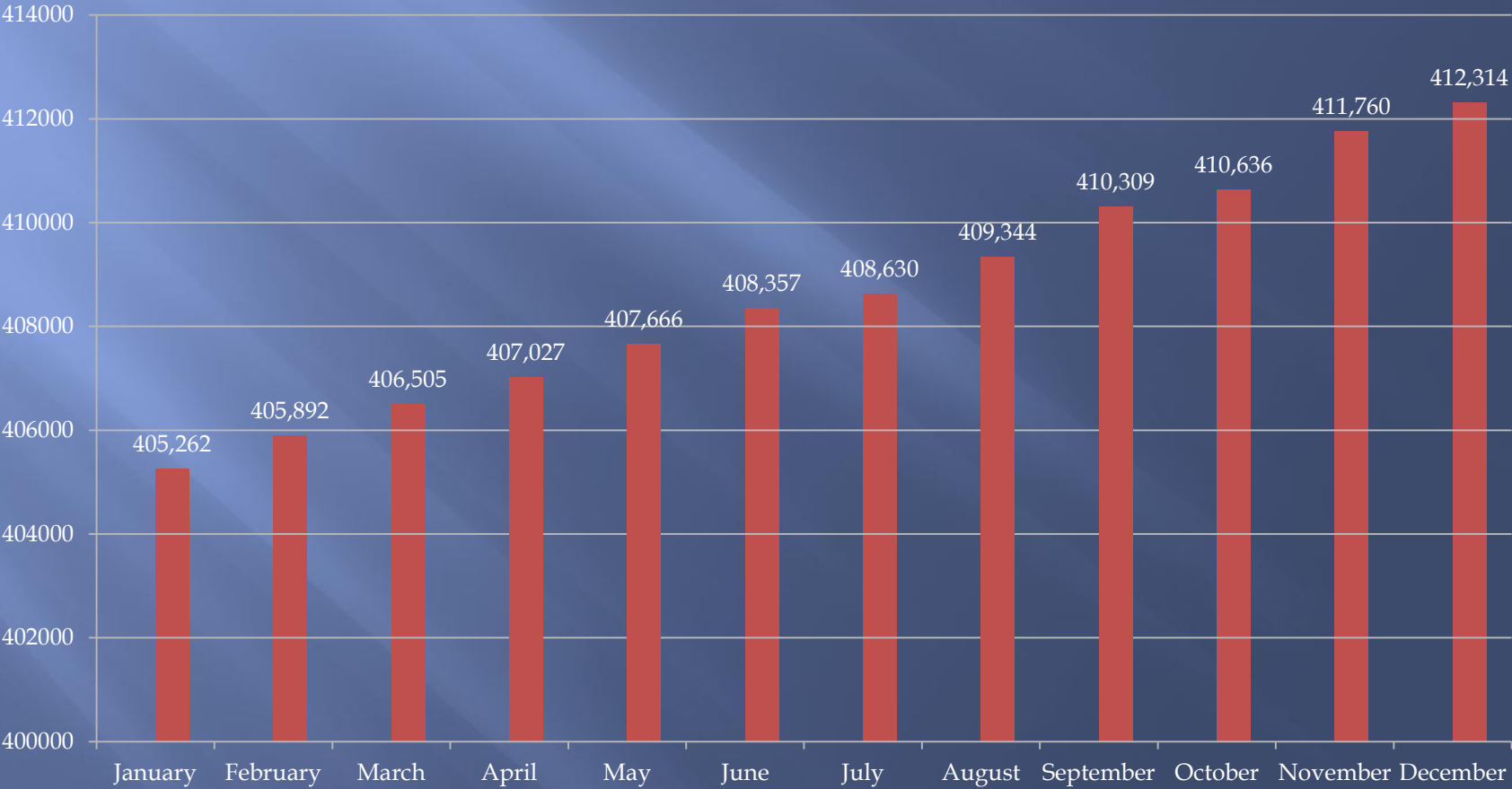
SACRAMENTO	OAKLAND	FRESNO	LOS ANGELES	SAN DIEGO
			FY 2015-2016	
Expenditures			\$51,238,695	
Revenues			\$51,569,913	

# Licensing Workload

Exams Scheduled	January - December 2015	January - December 2016
RES	46,522	50,201
REB	5,362	4,784
New Licenses		
RES	20,843	22,916
REB	4,367	4,577
Renewals		
RES	50,323 (79%)	46,308 (82%)
REB	28,241 (88%)	28,482 (90%)
Total Licenses		
	404,957	412,314
Total MLO's		
	21,836	21,789

# Licensing Population

## Total Licenses January to December 2016



# MORTGAGE LENDING ACTIVITY

## Need MLO Endorsement to Originate Residential Loans

MLO Stats		
	2015	2016
Approved Individuals	16,092	16,021
Approved Companies	4,854	4,909
Approved Branches	890	859
<b>Total MLOs</b>	<b>21,836</b>	<b>21,789</b>

# SUBDIVISIONS WORKLOAD

## Applications for Public Report

	2015	2016
Final	2818	3251
Renewal	277	242
Amendment	253	288
Total Applications Received	3348	3781

## TOTAL UNITS COVERED BY REPORTS

2015: 32,289

2016: 38,941



# Enforcement Workload

	2015	2016
Consumer Complaints Received	4,310	4,474
Consumer Complaints Assigned for Investigation	1,396	1,803
Citations Issued	723	523
\$ Citations Assessed	\$406,384	\$283,625



# Legal Affairs

- Legal
- Consumer Recovery Account
- Legislation/Regulations
- Cases

Stephen Lerner  
Assistant Commissioner  
Legal Affairs



## Disposition of Cases

<b>Category</b>	<b>2016</b>
Desist & Refrain Orders	73
License Suspensions	110
License Surrenders	102
License Revocations	384
Case Dismissals	73
Public Reprovals	6
Stipulation & Waiver/Agreement	85
License Application Denials	131
License Denials with Right to Restricted License	62
<b>Total</b>	<b>1,026</b>

## Most Common Violations – 2016

- Improper Record Keeping (Failure to reconcile; Failure to maintain accurate records; Incomplete transaction files).
- Unlicensed Activities (Sales agents conducting broker activities without broker's license; Property management without broker's license or supervising broker).
- Fraud/Conversion/Misrepresentation (Straw-purchasers; Forging loan documents).
- Trust Fund Mishandling (Commingle; Failure to deposit trust funds in trust accounts; Failure to identify trust accounts; Allowing unbonded non-licensees as signatories on trust accounts).

# CONSUMER RECOVERY ACCOUNT



# PURPOSE

Last resort victim's fund to compensate innocent members of the public who are victimized by dishonest real estate licensees

# HISTORICAL BACKGROUND

- Operative on January 1, 1964
- 12% of License Fees  
(B&P Code §10450.6)





# CONSUMER RECOVERY ACCOUNT

## *Claims History*

Since 1964, BRE has paid over \$59 million to victims

Approximately 54% of all applications paid





# CLAIM REQUIREMENTS



# WHO MAY FILE

“Aggrieved Person”

CONSUMER

INNOCENT MEMBER OF THE PUBLIC



# BASIS FOR APPLICATION

- 1) Final Judgment/Criminal Restitution Order
  - \* Finding of Intentional Fraud
  - \* Conversion of Trust Funds
- 2) Licensed Activity
- 3) Actual and Direct Loss

# COVERAGE LIMITS

(B&P Code § 10474.5)

as of 2008

- \$50,000/per transaction
- \$250,000/per licensee



# Consumer Recovery Account (2016)

Category	Total
Claims Filed	86
Disposition of Claims	Paid 43
	Denied 27
Amount Paid	\$1,946,785
Average Paid Per Claim	\$45,274

# Consumer Recovery Account (2016)

Category	REB	Corporation	Officer	RES	Total
License Suspensions	11	7	7	17	42

# 2016 Legislation



# Overview of 2016 Legislative Activity

- ▣ 1,059 bills sent to Governor Brown
- ▣ Governor signed (or allowed to become law without signature) 900 bills
- ▣ Governor vetoed 159 bills
- ▣ 11 bills impacting CalBRE





# AB 2330 (Ridley-Thomas)

- ▣ Goes into effect on January 1, 2018.
- ▣ Two main program changes:
  - Petition process for removal of discipline from CalBRE's website.
  - CalBRE tracking of Broker Associates



## AB 2330 (Ridley-Thomas)

- ▣ Existing law requires CalBRE to post status of every license on its website;
  - ▣ Including all discipline.
- ▣ Legislation authorizes the Commissioner to set up a petition process to remove license discipline from website.

# AB 2330: Petition Process



- ▣ Requirements:
  - Licensees only – not unlicensed or formerly licensed;
  - May petition 10 years after discipline imposed ;
  - Fee and Petition Form to be established by regulation;
  - “licensee provides evidence of rehabilitation indicating that the (website) notice is no longer required in order to prevent a credible risk to the members of the public”.

# AB 2330

- ▣ Regulations under development now.
- ▣ Goal: One petition form, one price, one investigation

# AB 2330: Broker Associate Tracking

- Existing law requires CalBRE to post status of every license on its website:
  - Including identifying salespersons affiliated with a broker.
  - Legislation will require responsible brokers to notify CalBRE regarding brokers associated with and acting as salespersons for them;
- Regulations under development;
- Forms are being created;

# AB 2330: Broker Associate Tracking

- ▣ “Broker Associate” is defined to be a broker who is under contract to work as a salesperson for another broker;
- ▣ **HOWEVER:** A broker is not statutorily limited to working for just one broker.

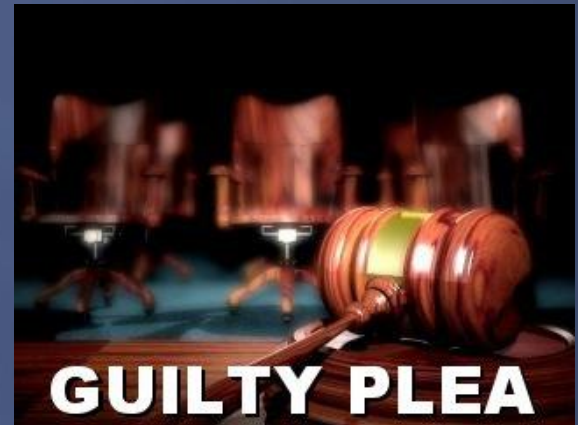
# AB 1650 (Frazer): License ID Disclosure

- ▣ Revisiting the “First Point of Contact Solicitations”
- ▣ Regulations under development
- ▣ License ID now required for print and electronic media ads, certain “for sale” sign uses, and classified rental ads





# SB 1196 (Hill): Guilty Plea



- ▣ B&P §10177(b)(2) added
- ▣ Goal: Empower Real Estate Commissioner to suspend a licensee where he or she enters guilty plea in federal case, but sentencing will be delayed
- ▣ Intended for very limited use



# SB 710 (Galgiani): Team Names

- Existing law permits use of team names provided:
  - The name is used by two or more real estate licensees;
  - The licensees represent themselves to the public as being part of a team, group or association;
  - The name includes the surname of at least one of the licensee members of the team, group or association;

# SB 710 (Continued)

- The name does not include or suggest real estate broker, real estate brokerage, broker or brokerage;
- Identifies the responsible broker
- Legislation revises the definition of responsible broker to mean broker's name or broker's name and CalBRE license number.

# AB 1381 (Weber): Exemption from Real Estate Law for Outdoor Advertisers

- ❑ Existing law requires broker's license for buying/selling or leasing/renting of real property for another in expectation of compensation;
- ❑ Legislation exempts certain outdoor advertising representatives;
- ❑ New Section: 10133.45



# AB 1381 (Continued)

- ▣ Outdoor advertising representative defined as:
  - ▣ An employee of a corporation, LLC, or partnership;
  - ▣ The employer holds a CalTrans license to engage in the business of outdoor advertising;
  - ▣ The employee arranges for the lease/transfer of real property for his or her employer;
  - ▣ The real estate transaction is solely for the placement of, access to, or operation of an advertising display;
  - ▣ Specified liability insurance in place

# AB 685 (Irwin): Real Estate Law “Clean-up”

- ▣ “*Salesman*” – Gone!
- ▣ Nothing substantive, but many sections with small changes you may spot.



# AB 73 (Waldron): Removing Required Disclosure of HIV/AIDS Situations

- ▣ Went into effect on September 24, 2016;
- ▣ Relates to prior Civil Code requirements of disclosure about prior occupant's HIV-positive status or death from AIDS-related complications



# SB 1150 (Leno): Mortgage Successors in Interest Assuming Deceased's Mortgage

- ▣ Prevents a mortgage servicer from foreclosing where:
  - Original borrower died;
  - Borrower's "successor in interest" documents to servicer his/her status, and interest in assuming the loan or some foreclosure alternative loan.

# CalBRE – Legal Affairs

## Court Decisions



*Horiike v. Coldwell Banker*

California Supreme Court, Case No. S218734

- ▣ Decided November 21, 2016;
- ▣ Case addresses residential dual agency and scope/extent of agent's fiduciary duty;
- ▣ Representation
  - Buyer's agent was salesperson Chizuko Namba;
  - Seller's agent was salesperson Chris Cortazzo;
  - Both agents were employed by Coldwell Banker, but served on different teams and worked out of different offices.

*Horiike v. Coldwell Banker*

California Supreme Court, Case No. S218734

- ▣ Mr. Horiike thought he was buying a 15,000 square foot house in Malibu only to find out that the living space totaled approximately 9,434 square feet;
- ▣ Seller's agent never reported discrepancy;
- ▣ Crux of dispute is whether seller's agent had a duty to Mr. Horiike (the buyer) to report discrepancy;

*Horiike v. Coldwell Banker*

California Supreme Court, Case No. S218734

- ▣ Coldwell Banker argued no duty because separate agents on separate teams from separate offices;
- ▣ Mr. Horiike argued Coldwell Banker by definition was a dual agent and its duty as broker carried over to its salespersons;
- ▣ Supreme Court held seller's agent owed a fiduciary duty to the buyer.

# AUDITS



Daniel Sandri  
Chief Deputy Commissioner

# Shortage Findings of Audits Completed

	1/1 - 12/31 2015	1/1 - 12/31 2016
Total Audits Completed	607	585
Total \$ Shortage	\$13.87 million	\$8.46 million
% Audits with Shortage	36.2%	32.5%
#(%) with \$10K+ Shortage	77 (12.7)	67 (11.5)



# What Audits is Seeing

We continue to find:

- ▣ Trust Fund Shortages on PM, BE audits
  - ❖ 42% of PM audits
  - ❖ 44% of BE audits
- ▣ Lack of Broker oversight
- ▣ Advance Fee Violations
- ▣ Falsification of bank records

# What Audits is Doing

Investigative Audits

Property Management and Broker Escrow Audits

Follow-up Audits Pursuant to Legal Case

Restricted Licensee Audits – Results from 45 Completed:

- Trust Fund Shortages: 20
- No Violations: 10



# Broker Escrow Notification

- ▣ Per §10141.6, Brokers required to report if engage in 5 or more, or activities  $\geq$  \$1 million.
- ▣ For Calendar 2015, 170 Brokers Reporting
- ▣ Dollar amount reported...?
- ▣ \$10.3 BILLION!



# Top Broker Escrow Violations

1. Trust Fund Handling – §10145/Reg. 2832
2. Trust Fund Recordkeeping – Regs. 2951, 2831, 2831.1, 2831.2 et seq
3. Fictitious Business Name - §10159.5/Reg. 2731
4. Failure to Supervise - §10159.2/Reg. 2725
5. Trust Fund Shortage – §10145/Reg. 2832.1
6. Failure to Disclose Interest – Reg. 2950(h)
7. Failure to Maintain Records - §10148/Reg. 2950 (d,e)



# Q&A

## THANK YOU

This power point presentation will be made available in its entirety on the CalBRE website.

[www.bre.ca.gov](http://www.bre.ca.gov)

Next Meeting to be held in  
Sacramento, CA – May 5, 2017