



BUREAU OF REAL ESTATE FORUM



Sacramento Convention Center

Sacramento, CA

May 4, 2018

TODAY'S AGENDA

Opening Remarks – Commissioner Wayne Bell

- **Operations Report –**
Dan Sandri, Chief Deputy Commissioner
- **Administration and Licensing Update–**
Sandra Knau, Assistant Commissioner, Licensing & Administration
- **Enforcement Update –**
Rick Fong, Asst. Commissioner, Enforcement
- **Legal Affairs, Regulation and Legislative Report–**
Stephen Lerner, Assistant Commissioner, Legal Affairs
- **Audit Update –**
Tom Cameron, Assistant Commissioner, Audits
- **Subdivision Program Overview–**
Chris Neri, Assistant Commissioner, Subdivisions
- **Q & A and Dialogue**
Wayne Bell and Panel



BUREAU OF REAL ESTATE OPERATIONS REPORT



Daniel Sandri
Chief Deputy Commissioner

What's Happening?

- ▣ Transition CalBRE → DRE
 - Building up programs – Budget Change Proposal
 - Fiscal/Budget
 - Human Resources
 - Legislation
 - Publications and Communications
 - Information Security Officer

What's Happening?

- ▣ Transition CalBRE → DRE
 - Establish new Business Unit
 - Access and training for statewide Accounting, HR systems
 - New bank accounts
 - Purchasing authority and contracts
 - Establish reporting requirements

What's Happening?

- ▣ Transition CalBRE → DRE
 - Cleanup legislation
 - Obtain historical documents
 - Building signage
 - Updating forms, brochures and website
 - Rearranging space to fit new hires



Sandra Knau
Assistant Commissioner
Licensing &
Administration



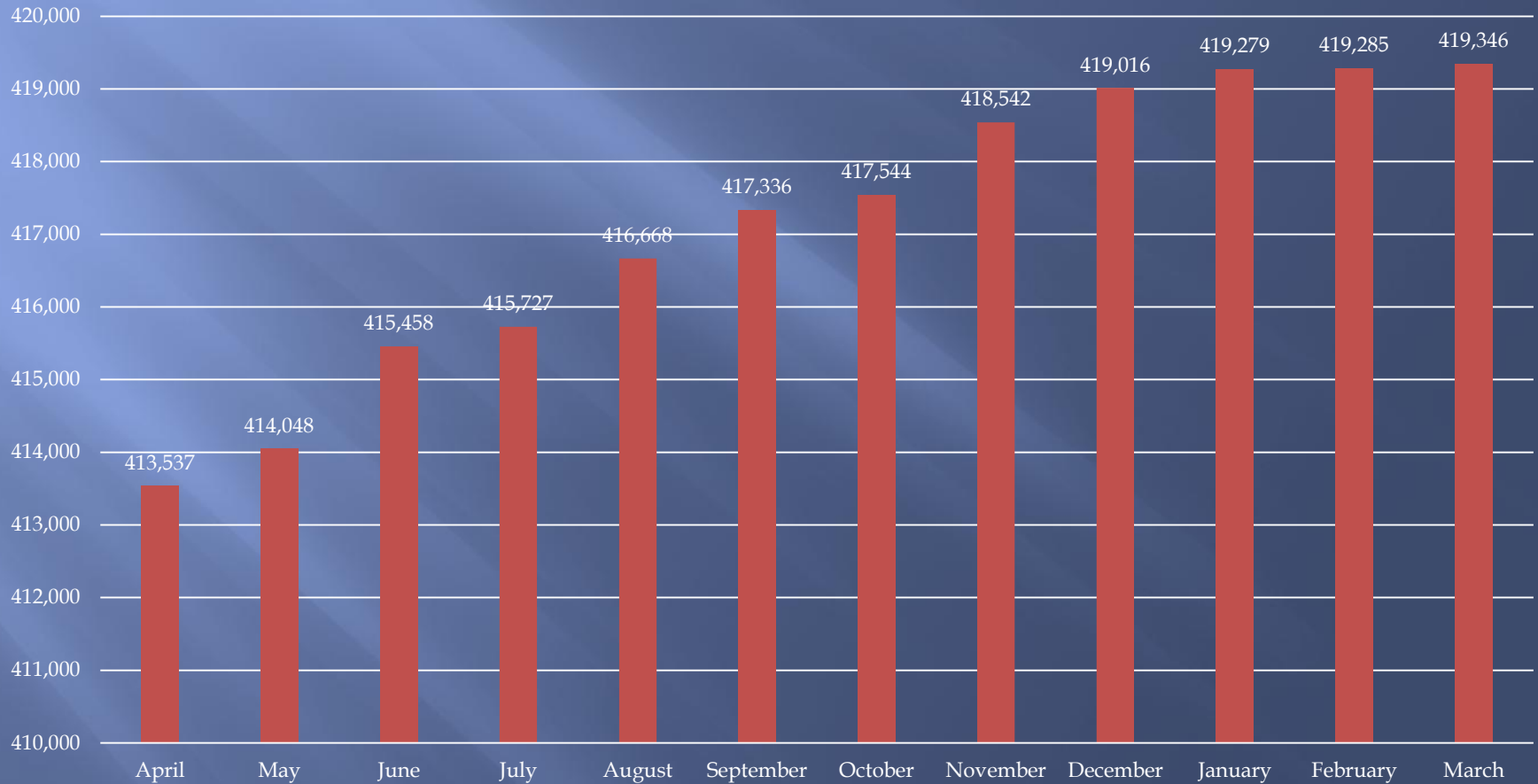
Information Technology Updates

- ▣ Subdivision Online Public Report Application System (SOPRAS)
- ▣ Virtual Call Center
- ▣ Officer renewals on eLicensing
- ▣ Broker-Associates on eLicensing

Licensing Workload

Exams Scheduled	July 2017-March, 2017	July 2016 to March 2016
RES	40,173	38,493
REB	3,892	3,638
New Licenses		
RES	17,792	17,123
REB	3,259	3,426
Renewals		
RES	38,868 (81%)	34,454 (82%)
REB	22,108 (92%)	20,954 (90%)
Total Licenses		
	419,346	413,341
Total MLO's		
	24,453	24,712

Licensing Population Last 12 Months



New Broker Associate Statistics

- ▣ January 1, 2018- Reporting of Broker Associates Required
- ▣ As of March 31, 2018:
 - 12,578 broker associates
- ▣ 218 broker associates have more than one broker affiliation
- ▣ Another 500 forms currently pending

Common Licensing Application Deficiencies

- ▣ Incorrect Form
- ▣ Missing signatures
- ▣ Incomplete Documents
- ▣ Missing broker information
- ▣ Missing valid contact information i.e. email address and current phone number

Things to Remember to avoid common application deficiencies

- ▣ If completing a form, use the fill in features on the document from CalBRE website
- ▣ Make sure you thoroughly review the form/answer all questions
- ▣ Don't forget to sign the form(s)

Bureau of Real Estate Licensing and Administration

Contact:

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& Administration

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ENFORCEMENT UPDATE



Rick Fong
Assistant Commissioner
Enforcement



Enforcement Activities For 7/1/17 - 3/31/18

▣ Complaint Resolution Program	137
▣ Investigations	3075
▣ Cite & Fine Issued	768

Complaint Resolution Program

Top Issues and Complaints

- ▣ Earnest Money Disputes
- ▣ Property Management
- ▣ Listing Agreement Disputes
- ▣ Lack of Record Keeping
- ▣ False Promises by Agent

Enforcement Program Investigations Common Allegations/Violations

- ▣ Dishonest Dealing and Fraud
- ▣ Trust Fund Commingling or Conversion
- ▣ Misrepresentation
- ▣ Negligence or Incompetence
- ▣ Unlicensed Activity

Cite & Fine Program Comparative Statistics

	7/1/16- 3/31/17	7/1/17- 3/31/18
Citations Issued	495	768
Fines Collected	\$185,650	\$311,550

Citation and Fine Program Frequent Violations

- ▣ Audit Violations
- ▣ Trust Fund Handling
- ▣ Record Keeping
- ▣ Broker Supervision
- ▣ Advertisement/First Point of Contact



LEGAL AFFAIRS

Stephen Lerner
Assistant Commissioner
Legal Affairs



LEGAL AFFAIRS

- ADMINISTRATIVE PROSECUTIONS
- CONSUMER RECOVERY ACCOUNT
- REGULATIONS
- CASES

LEGAL AFFAIRS

- Offices
 - Los Angeles
 - Sacramento
- Operational Units
 - Los Angeles Administrative Prosecution Unit
 - Sacramento Administrative Prosecution Unit
 - Consumer Recovery Account
 - Special Projects/General Law

LEGAL AFFAIRS DISPOSITION OF CASES

Category	July 1, 2017	March 31, 2018
Desist & Refrain Orders		45
License Suspensions		79
License Surrenders		75
License Revocations		200
Case Dismissals		68
Public Reprovals		8
Stipulations & Waivers/ Agreements		145
Application Denials		120
License Denials and Restrictions		64
Bar Orders		1
Total		805

CONSUMER RECOVERY ACCOUNT



California Bureau of Real Estate
Consumer Recovery Account
(July 1, 2017 – March 31, 2018)

Category		Total
Disposition of Claims	Claims Filed	56
	Paid	29
	Denied	59
Amount Paid		\$1,067,355

Consumer Recovery Account
Claims Filed & Total Amount Paid
(Fiscal Year)

Claims Filed	
FY 12/13	182
FY 13/14	153
FY 14/15	154
FY 15/16	74
FY 16/17	52
FY 17/18 (7/1/17 - 3/31/18)	56

Consumer Recovery Account

Claims Filed & Total Amount Paid

(Fiscal Year)

Total Amount Paid	
FY 12/13	\$2,625,615 (77 claims paid)
FY 13/14	\$4,286,536 (104 claims paid)
FY 14/15	\$4,898,912 (119 claims paid)
FY 15/16	\$3,396,293 (81 claims paid)
FY 16/17	\$1,434,411 (73 claims paid)
FY 17/18 (7/1/17 - 3/31/18)	\$1,067,355 (29 claims paid)

CONSUMER RECOVERY ACCOUNT

Claims History

Since 1964, CalBRE has paid over
\$60 million to victims



REGULATIONS

- BROKER ASSOCIATES
- PETITIONS TO REMOVE
DISCIPLINE FROM WEBSITE
- FIRST POINT OF CONTACT

Broker Associates

AB 2330 (Ridley-Thomas)

- Prior law required CalBRE to post information reported on salespersons associated with a broker
- New law extends requirement to brokers acting as salespersons for another broker (i.e., Broker Associates)
- New law requires CalBRE to post information reported on salespersons and Broker Associates associated with a broker

Broker Associates

Proposed Regulations

- Regulations under development
 - ❖ 45-day Public Comment Period closed
 - ❖ Submitted to Office of Administrative Law
 - ❖ Target Implementation Date: July 1, 2018
- Responsible broker to notify CalBRE within 5 days of affiliation with Broker Associate
- Notification can be provided on a CalBRE-approved form

Broker Associates

- RE 215- Broker Associate Affiliation Notification form created for this specific reporting requirement
- For notifications of affiliation, signatures of both the responsible broker and broker associate are required
- For terminations, only one signature is required on the form

Broker Associates

- Other broker license changes need to be completed on the broker change application form (RE 204) such as:
 - ❖ Main office address changes
 - ❖ Adding a fictitious business name
 - ❖ Canceling a fictitious business name

Broker Associates

- Further information can be found on our website
 - ❖ Frequently Asked Questions
 - ❖ Licensee Advisory
 - ❖ Real Estate Bulletin Articles (Fall 2017)

Petitions to Remove Discipline from Website

AB 2330 (Ridley-Thomas)

- Prior law required CalBRE to post status of every license on its website
 - ❖ Including all discipline
- New law authorizes the Commissioner to set up a petition process to remove discipline from the website
 - ❖ Licensees only (not available to unlicensed or non-licensed)
 - ❖ Discipline must be 10 years or older
 - ❖ Petitioner must pay a fee set by regulation
 - ❖ Findings that no credible risk to members of the public exists as a condition to removing discipline

Petitions to Remove Discipline from Website

Proposed Regulations

- Regulations under development
 - ❖ 45-day Public Comment Period closed
 - ❖ Final Review before submittal to Office of Administrative Law
 - ❖ Target Implementation Date: July 1, 2018
- CalBRE recommends that a petitioner submit his/her petition on a CalBRE-approved form
 - ❖ Must disclose all past convictions, pending civil/criminal actions, and past professional license discipline
 - ❖ Must submit fingerprints via Live Scan Service
 - ❖ Documentary evidence to support rehabilitation and elimination of “credible risk”
- Petition fee shall be paid
- Discipline must be 10 years or older

First Point of Contact

- AB 1650 (Frazer)
- Regulations under development
 - ❖ 45-day Public Comment Period closed
 - ❖ Target Implementation Date: October 1, 2018
- Proposed Regulations
 - ❖ License number required on “1st Point of Contact” solicitation materials
 - ❖ Responsible broker’s number not required as long as responsible broker’s name/logo appears with name and license number of salesperson or broker associate

First Point of Contact (Continued)

- 1st Point of Contact
 - ❖ Business Cards
 - ❖ Stationery
 - ❖ Websites owned or controlled by the soliciting licensee
 - ❖ Promotional and advertising flyers, brochures, leaflets, etc.
 - ❖ Advertisements in electronic media (internet, e-mail, radio, television, etc.)
 - ❖ Print advertising in any newspaper or periodical
- Excludes “for sale”, “for rent” or “open house” sign where sign has no name/logo or the name/logo belongs to the responsible broker

CASES

Horiike v. Coldwell Banker
California Supreme Court, Case No.
S218734

Horiike v. Coldwell Banker

- Decided November 21, 2016
- Case addresses residential dual agency and scope/extent of agent's fiduciary duty
 - ❖ Under dual agency, seller's agent owes a fiduciary duty to the buyer
 - ❖ Merits of Horiike's actual case not decided
 - ❖ Case remanded to Superior Court for further proceedings

Horiike v. Coldwell Banker

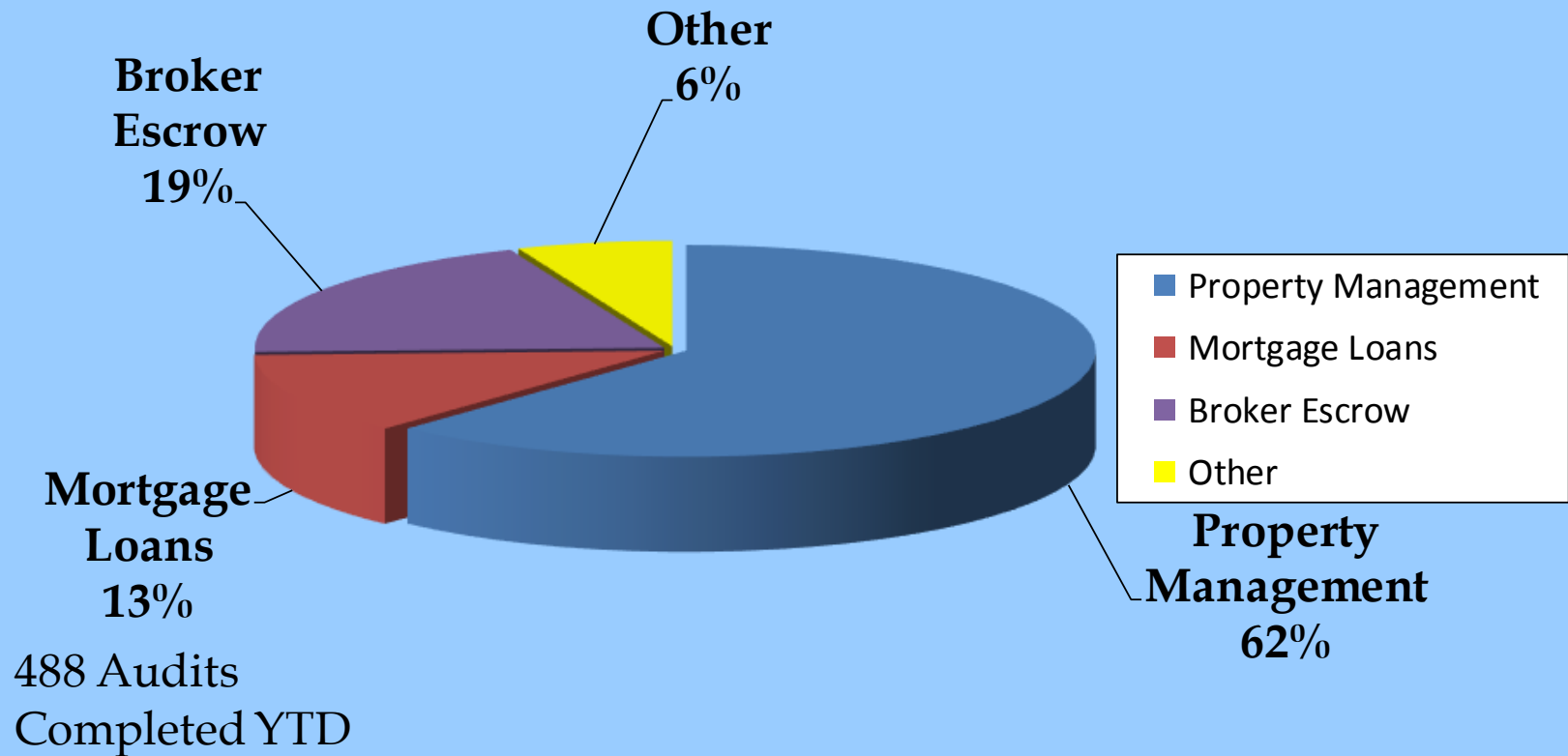
- Superior Court decision – April 5, 2018
- Case remanded to Superior Court for determination whether agent breached his fiduciary duty
- Superior Court decision
 - ❖ Seller's agent did not breach his fiduciary duty to Horiike
 - ❖ Seller's agent did not mislead Horiike in the purchase of his home
 - ❖ Seller's agent did not intentional or negligently misrepresent the property to Horiike
- Horiike may appeal

BUREAU OF REAL ESTATE AUDITS

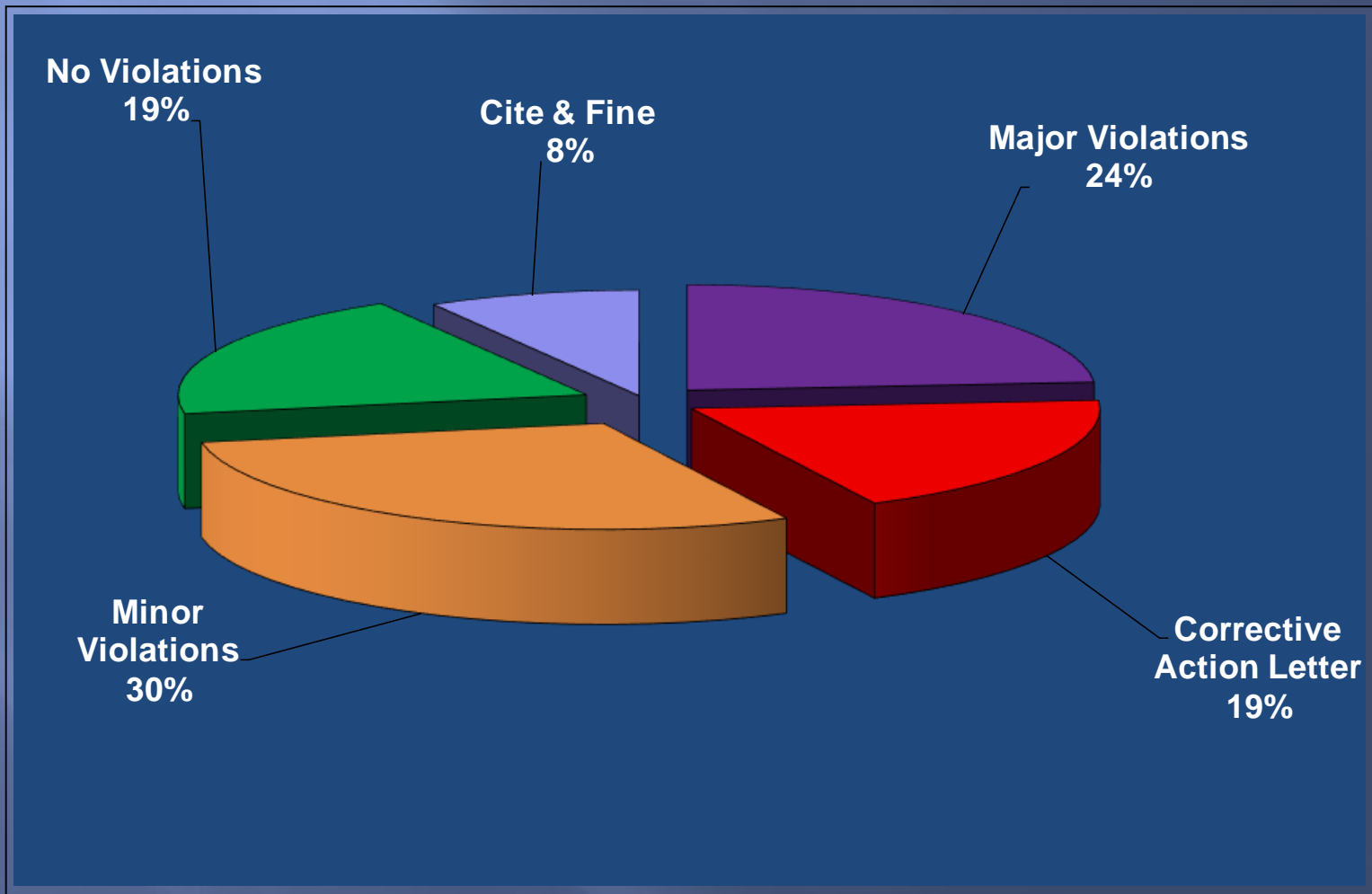


Tom Cameron
Assistant Commissioner, Audits

Audits Closed by Activities Statewide 7/1/17 - 3/31/18



Findings of Audits Closed, 7/1/17 - 3/31/18



Shortage Findings of Audits Closed

	7/1/16 - 3/31/17	7/1/17 - 3/31/18
Total Audits Closed	414	488
Total \$ Shortage	\$9.2 million	\$9.5 million
% Audits with Shortage	29.4%	33.6%
#(%) with \$10K+ Shortage	41 (10)	57 (11.6)

Trust Fund Handling- §10145(a)(1)

- ▣ A real estate broker who accepts funds from others has one of three things to do with those funds
- ▣ Place them into a neutral escrow depository
- ▣ Into the hands of the broker's principal
- ▣ In a trust fund account maintained by the broker in a bank or recognized depository in this state

Commissioner's Regulation 2832

- ▣ Trust account maintained must be in the name of the broker, or in a CalBRE registered fictitious name of the broker, as trustee at a bank or financial institution
- ▣ Funds must be deposited within 3 business days unless broker is performing broker-controlled escrows then it is one business day after receipt

What Audits is Seeing

We continue to find:

- ▣ Trust Fund Shortages on PM, BE audits
- ▣ Lack of Broker oversight
- ▣ Broker-controlled escrow activities and failure to report to CalBRE
- ▣ Delays in providing records
- ▣ Falsification of bank records

Audit Case

- ▣ Investigative escrow audit
- ▣ Broker deposited a \$9,500 rent payment into his business account less \$1,500
- ▣ Auditor called the licensee
- ▣ Second auditor met with the licensee and was given redacted bank statements
- ▣ Licensee and Bank were served a subpoena

Audit Case

- ▣ Subpoenaed bank documents showed commissions, credit card payments and trust fund handling in the business account
- ▣ Recordkeeping issues
- ▣ Broker said the bank mistakenly deposited trust funds into the wrong account

Audit Case

- ▣ REB blamed his lack of a physical office on the Bureau's failure to investigate another licensee
- ▣ REB described the Bureau staff as incompetent, the audit was fraudulent and poorly performed
- ▣ Revoked license by ALJ

Where Audit Activities Are Focused

- ▣ Investigative and focused proactive audits on those who handle a high volume of trust funds
- ▣ Property management, broker escrow and hard money MLB
- ▣ Unsupervised operations involved in these activities
- ▣ Restricted licensees handling trust funds

Bureau of Real Estate Audit Section

Contact:

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SUBDIVISION PROGRAM OVERVIEW



Chris Neri, Assistant Commissioner

Subdivision Filings (July 1 – March 31)

	FY 16/17	FY 17/18	% Change
Final Public Reports Applications Received	2252	2460	9.23%
Number of Lots/Units for Issued Final Public Reports	29,287	30,329	3.56%

Subdivision Map Act

- Subdivides real property
- Local government jurisdiction
- Conditions of approval of subdivision map
- Enacts subdivision ordinances by which local government have direct control
- Objectives:
 - Coordinate subdivision design with the community plan
 - Insure subdivider will complete areas dedicated for public purposes

Subdivided Lands Act (SLA)

Protect purchasers from misrepresentation, deceit and fraud in subdivision sales:

- ▣ Affirmative Standards

- ▣ Disclosure

Affirmative Standards

- Suitability for intended use
 - Vehicular access
 - Potable water
 - Available utilities
 - Offsite improvements
- Fair dealing
 - Securing buyer's deposit money
 - Release of blanket encumbrances
 - Conveyance of proper title
 - Completion of common area

Disclosure

- Public Report discloses significant information about the subdivision
- May include negative aspects of the offering:
 - Unusual present or future costs
 - Hazards or adverse environmental factors
 - Unusual restrictions or easements
 - Necessary special permits or improvements
 - Unusual financing arrangements

What is covered by the SLA

- Intent to offer; sale, lease or financing
- Five or more lots, parcels, units or interests
- Improved or unimproved land or lands
- Contiguous or non-contiguous land
- Residential focus
- Land or lands located in California
- Statutory timeframes

Exemptions

- Subdivisions consisting of less than 5 lots, units or parcels.
- Standard subdivisions located entirely within the city limits which will be sold with completed residential structures.
- Subdivisions expressly zoned for commercial or industrial purposes.
- Subdivided land offered for sale or lease by a state, local or other public agency.
- Bulk sales – builder to builder transactions of 5 or more lots, units or parcels.

Types of Subdivisions

- Standard
- Common Interest
 - ▣ Condominium
 - ▣ Planned Development
 - ▣ Stock Cooperative
 - ▣ Community Apartment
- Undivided Interests

Subdivision Sub-Types

- Master Planned Communities
- Continuing Care Subdivisions
- Hotel Condominiums
- Mobile Homes
- Tenancy-in-common (TIC's)
- Mixed-use subdivisions
- Condominium conversions (CC 1134)

Types of Public Reports

- Preliminary Subdivision Public Reports - (PINK) typical term of 1 year
- Conditional Subdivision Public Reports - (YELLOW) typical term of 6 or 30 months depending on the project type
- Final Subdivision Public reports - (WHITE) typical term of 5 years

All of these reports can be amended or renewed, as needed.

Budgets

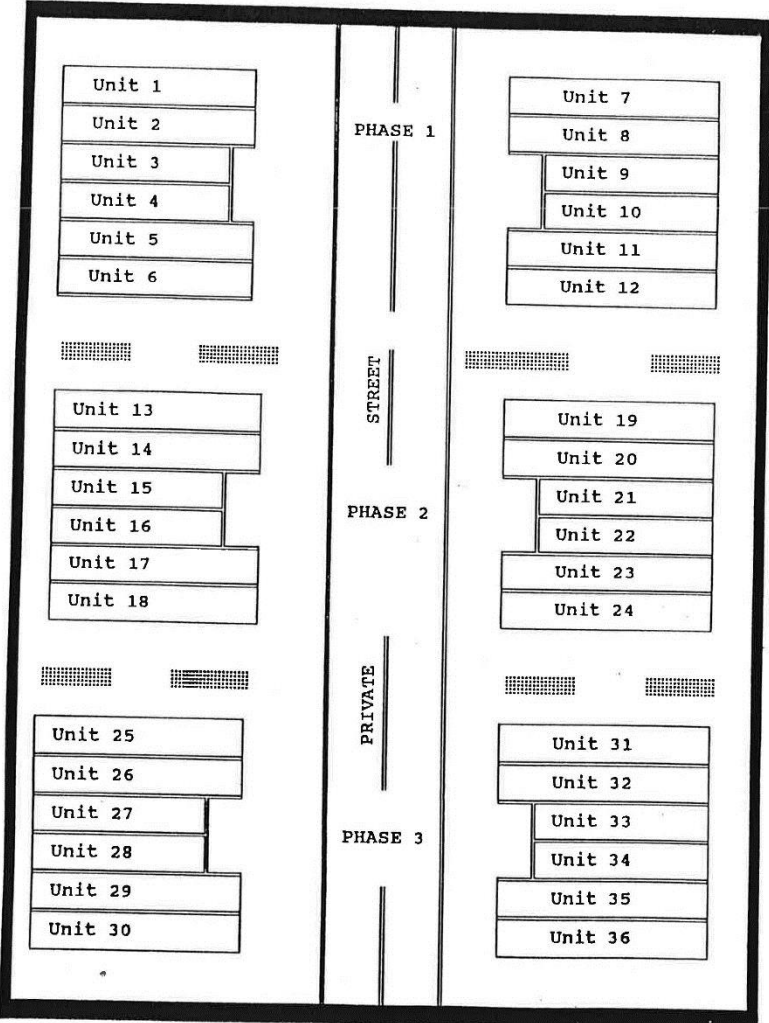
- Fixed, operating, and reserve costs
- Condo-conversions
- Maintenance responsibilities - HOA vs. homeowners
- Special assessments (i.e. delinquent assessments in existing HOA's)

Project Phasing

- What is a phase?
- How is phasing accomplished?
- Why phase your project?
 - ▣ Lower assessment liability
 - ▣ Completion of common areas
 - ▣ Rental programs
 - ▣ De-annexation of phase

Phased Subdivision

1 LOT PHASED SUBDIVISION



Homeowner Associations (HOA)

- Incorporated or unincorporated
- Management documents
 - ▣ CCR's – Control by developer
 - ▣ Bylaws
 - ▣ Articles of Incorporation/Association
 - ▣ Contracts with HOA/Shared-use Agreements
- CalBRE does not regulate HOA's

HOA Governing Documents

- Age restrictions
- Pet limitations
- Parking limitations
- Recreational facility rules
- Solar arrangements (Solar CC&R's)
- Rental restrictions
- Right of first refusal
- Level of common area maintenance
- Designation of maintenance responsibilities
- Existence of transfer fees
- Responsibility for insurance

Common Violations

- Completion of common area
- Sales without a public report
- Misrepresentation
- Material Changes
- Bonding remedies for HOA, homeowners
- Can not interpret a contract

What Do You Need To Know

- What constitutes a “subdivision”
- Common interest governing documents
- The “Public Report”
- Use of the accepted purchase contract
- Use caution with “oral representations”
- Civil Code Section 4525
- Solar Arrangements

Resale Transactions

Davis-Stirling - Civil Code 4525

The following information must be provided by the owner to the prospective buyer before transfer of title:

- Governing documents (CC&R's, Bylaws and Articles)
- Age restricted property statement, if applicable
- Financial statements
- HOA assessment and delinquency statement

Resale Transactions

Davis-Stirling - Civil Code 4525

- Notice of violation of the governing documents
- Construction defect information
- Any change in the HOA's current assessment structure
- Rental restrictions, if applicable

Where to Find More Information

www.dre.ca.gov/Developers/

- The following publications may be of assistance:
 - ▣ Real Estate Law & Reference Books
 - ▣ Residential Subdivision Buyer's Guide
 - ▣ Guide to Understanding Residential Subdivisions in California
 - ▣ Living in a Common Interest Development
 - ▣ Subdivision Public Report Application Guide (SPRAG)



Q&A

THANK YOU

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

www.bre.ca.gov

Next Meeting to be held in
Long Beach, CA