



# BUREAU OF REAL ESTATE FORUM



Sacramento Convention Center

Sacramento, CA

May 5, 2017

# TODAY'S AGENDA

## Opening Remarks – Commissioner Wayne Bell

- **Operations Report –**  
Sandra Knau, Assistant Commissioner Licensing & Administration
- **Enforcement Update–**  
Rick Fong, Assistant Commissioner Enforcement
- **Legal and Consumer Recovery Account–**  
Steve Lerner, Assistant Commissioner Legal
- **Audit Report and Update–**  
Tom Cameron, Assistant Commissioner Audits
- **Subdivisions Report and Update–**  
Chris Neri, Assistant Commissioner Subdivisions
- **Q & A and Dialog**  
Wayne Bell and Panel



# BUREAU OF REAL ESTATE OPERATIONS REPORT



Sandra Knau  
Assistant Commissioner  
Licensing & Administration

# CalBRE Operations

## ▣ Five District/Exam Offices

- ▣ Fresno
- ▣ Los Angeles
- ▣ Oakland
- ▣ Sacramento
- ▣ San Diego

■ Authorized Positions: 332

# Financial Statistics

FY 2016-2017

CalBRE's Budget \$52,049,000

## REVENUES AS OF MARCH 2017

- ▣ Licensing-\$28,586,970
- ▣ Subdivisions-\$5,790,184
- ▣ Examinations-\$3,002,109
- ▣ Other- \$1,344,130
- ▣ Total Revenues-\$38,723,393

# Financial Statistics

FY 2016-2017

CalBRE's Budget \$52,049,000

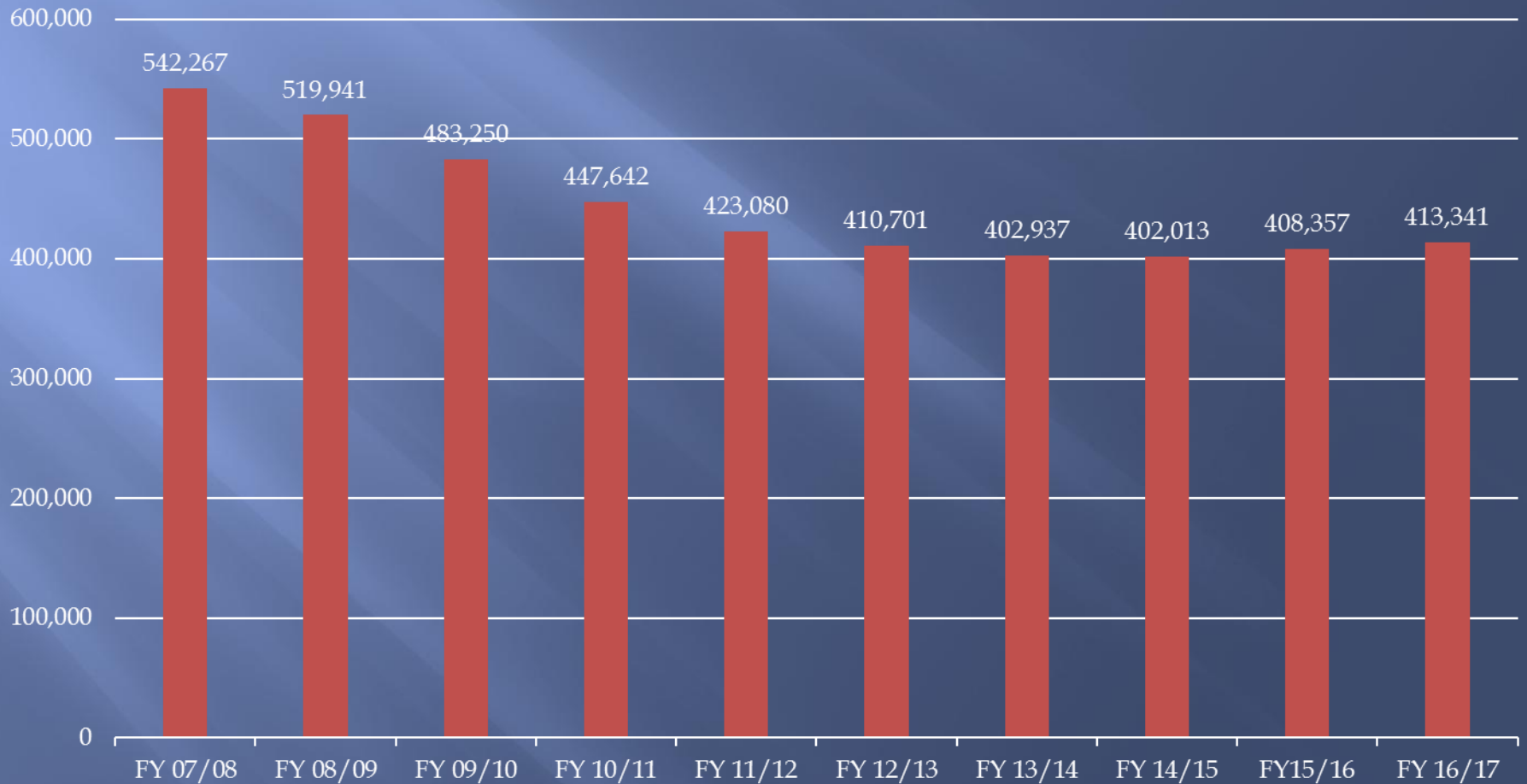
## EXPENDITURES AS OF MARCH 2017

- ▣ Personnel-\$23,849,521
- ▣ DCA Pro Rata-\$3,740,950
- ▣ Facilities-\$2,975,755
- ▣ Recovery Claims-1,342,721
- ▣ Other-\$3,716,416
- ▣ Total Expenditures-\$35,625,363

# Licensing Workload

Exams Scheduled	July to March 2016-2017	July to March 2015-2016
RES	38,493	35,638
REB	3,638	3,976
New Licenses		
RES	17,123	15,702
REB	3,426	3,185
Renewals		
RES	34,454 (82%)	35,609 (84%)
REB	20,954 (90%)	20,727 (90%)
Total Licenses		
	413,341	406,505
Total MLO's		
	24,453	24,712

# Licensing Population Last 10 Years





# Real Estate Education Endowments

# Real Estate Education Endowments

- ▣ Created in the 1970's by the Department of Real Estate with California Universities and Community Colleges to further the advancement of real estate education
- ▣ Provide real estate scholarships to disadvantaged students

# UC Berkeley & UC Los Angeles

- ▣ 1973 - \$500,000 Endowment created with UC Berkeley and UCLA to fund Professorships or Chairs in Real Estate.
- ▣ UC Berkeley- current endowment value-\$6.2 million
- ▣ UCLA-current endowment value-\$6.4 million

# California State Universities

- ▣ 1974-1975 - \$1 million endowment funded by then DRE for the California State University System
- ▣ Provide maintenance, development, and improvement of real estate programs.
- ▣ Provide scholarships to disadvantaged students
- ▣ Current endowment value is 2.6 million.
- ▣ \$50,000 in scholarships awarded annually

# California Community Colleges

- ▣ 1975 - \$1.9 million endowment funded by then DRE for California Community Colleges.
- ▣ Provide for maintenance, development, and improvement of real estate courses.
- ▣ Provide scholarships for disadvantaged students
- ▣ Current endowment value is 3.8 million
- ▣ Over 350 scholarships awarded in the last 10 years

# Bureau of Real Estate Licensing and Administration

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& Administration

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# LEGAL AND CONSUMER RECOVERY ACCOUNT

Stephen Lerner  
Assistant Commissioner  
Legal Affairs



# CalBRE – LEGAL AFFAIRS DISPOSITION OF CASES

Category	July 1, 2016 – March 31, 2017
Desist & Refrain Orders	60
License Suspensions	83
License Surrenders	61
License Revocations	231
Case Dismissals	43
Public Reprovals	4
Stipulations & Waivers/Agreements	81
Application Denials	107
License Denials and Restrictions	54
<b>Total</b>	<b>724</b>



CALIFORNIA BUREAU OF  
REAL ESTATE'S  
CONSUMER RECOVERY  
ACCOUNT



# California Bureau of Real Estate Consumer Recovery Account (July 1, 2016 – March 31, 2017)

Category		Total
Claims Filed		52
Disposition of Claims	Paid	73
	Denied	23
Amount Paid		\$1,434,411
Average Paid Per Claim		\$19,649.49

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

Claims Filed	
FY 11/12	243
FY 12/13	182 (not including 4 court refiles)
FY 13/14	153
FY 14/15	154 (not including 5 court refiles)
FY 15/16	74 (not including 2 court refiles)
FY 16/17 (7/1/16 - 4/14/17)	80

# Consumer Recovery Account

## Claims Filed & Total Amount Paid

(Fiscal Year)

Total Amount Paid (** based on check date**)	
FY 11/12	\$3,165,669 (94 claims 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 (7/1/16 - 4/14/17)	\$1,439,246 (74 claims paid)

# CONSUMER RECOVERY ACCOUNT

## *Claims History*

Since 1964, BRE has paid over  
\$52 million to victims

Approximately 54% of all applications  
paid



# NEW REGULATIONS



# Rehabilitation Criteria

- ▣ Effective Date: July 1, 2017
- ▣ Amends section 2911 for applicants and section 2912 for licensees of the Commissioner's Regulations
- ▣ Adds language allowing consideration of the nature and severity of the applicant's or licensee's conviction(s) or act(s)
- ▣ Adds language ensuring that the applicant or licensee has not retained funds that belong to a harmed party, even where the harmed party cannot be located
- ▣ Eliminates unnecessary limitations on the use of expungement to demonstrate rehabilitation
- ▣ Adds language to conform with statutory changes relating to mortgage loan originators

# First Point of Contact

- ▣ AB 1650 (Frazer)
- ▣ Regulations under development
  - 45-day Public Comment Period coming soon
- ▣ Proposed Regulations
  - License ID required on “1st Point of Contact” solicitation materials
  - Responsible broker’s ID not required as long as responsible broker’s name/logo appears with name and License ID of salesperson or broker associate



# First Point of Contact (Continued)

- ▣ 1<sup>st</sup> 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

# Broker Associates

- ▣ AB 2330 (Ridley-Thomas)
  - Prior law required CalBRE to track 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 track salespersons and Broker Associates associated with a broker
  - Effective date: January 1, 2018

# Broker Associates

- ▣ Proposed Regulations
  - Target Implementation Date: January 1, 2018
  - Regulations under development
    - ▣ 45-day Public Comment Period coming soon
  - Responsible broker to notify CalBRE within 5 days of associating with Broker Associate
  - Notification shall be provided on a CalBRE-approved form
  - Both the responsible broker and the broker associate shall sign the form

# 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
    - ▣ Website notice is no longer required to prevent a credible risk to members of the public
  - Effective Date: January 1, 2018

# Petitions to Remove Discipline from Website

## ▣ Proposed Regulations

- Target Implementation Date: January 1, 2018
- Regulations under development
  - ▣ 45-day Public Comment Period coming soon
- A petition must be submitted 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 history must be 10 years or older

# Petitions to Remove Discipline from Website

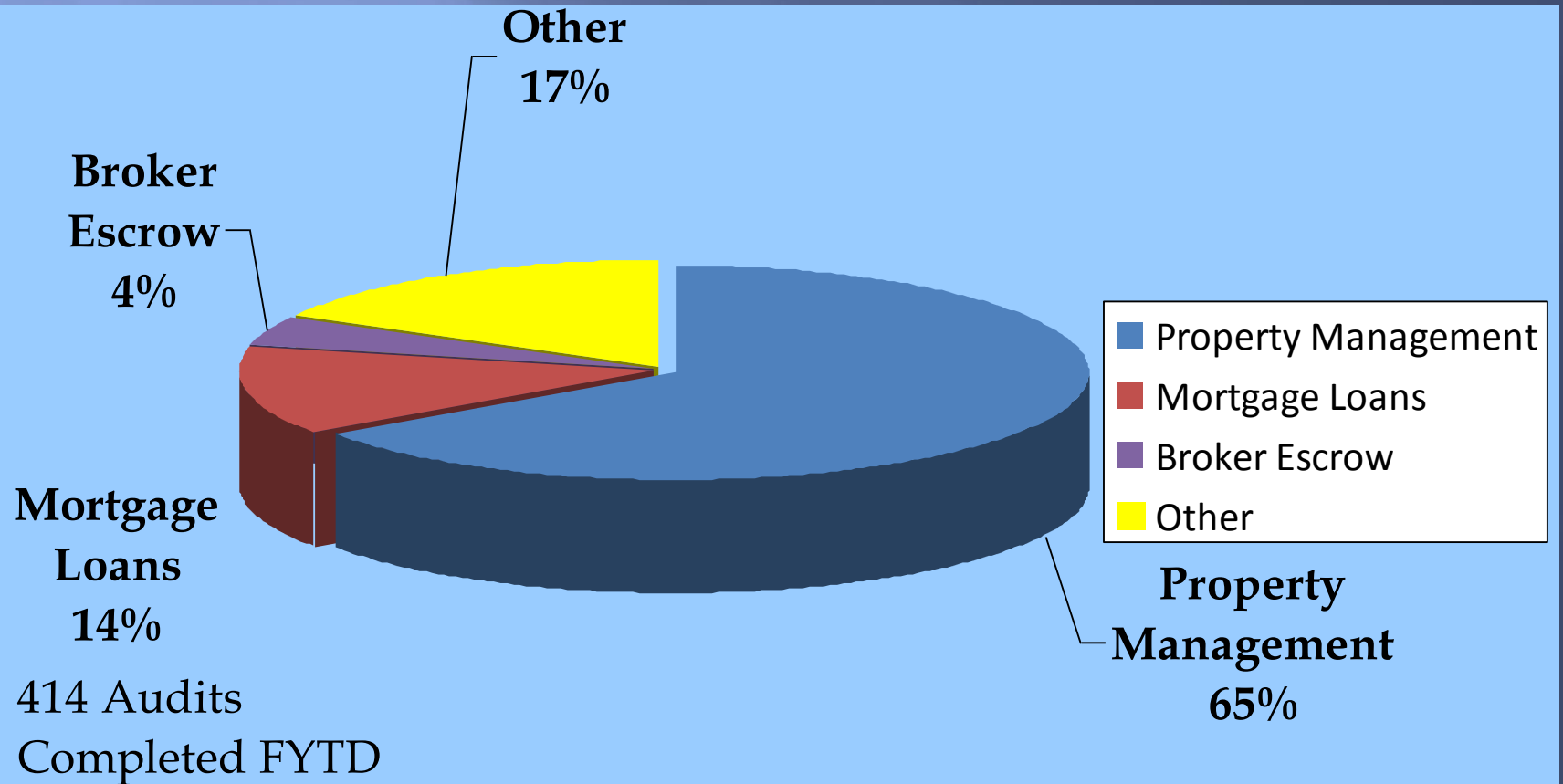
- ▣ Proposed Regulations (Continued)
  - “Credible risk” includes (but is not limited to):
    - ▣ Petitioner is currently on probation or parole
    - ▣ Felony conviction remains on petitioner’s criminal record despite opportunity for expungement or reduction
    - ▣ Petitioner refuses to make him/herself reasonably available for CalBRE interview during investigation
    - ▣ Petitioner has not reimbursed CalBRE for payments from the Consumer Recovery Account where claim filed against petitioner as judgment debtor
    - ▣ Petitioner submitted petition less than 1 year after denial of prior petition
    - ▣ Petitioner submitted petition less than 10 years after effective date of discipline
    - ▣ Petitioner’s license is currently subject to restrictions and a concurrent petition to remove those restrictions is not granted

# BUREAU OF REAL ESTATE AUDITS



Tom Cameron  
Chief Auditor

# Audits Closed by Activities Statewide - 7/1/16 - 3/31/17



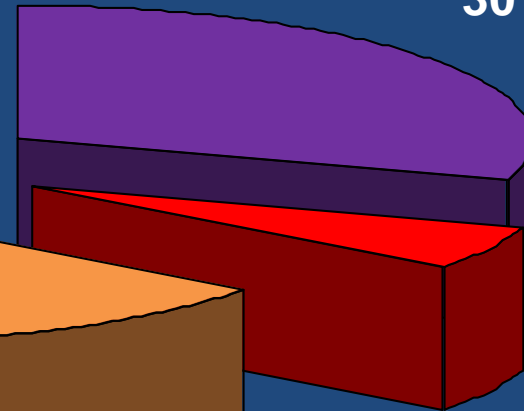
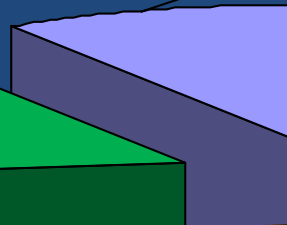


# Findings of Audits Closed, 7/1/16 – 3/31/17

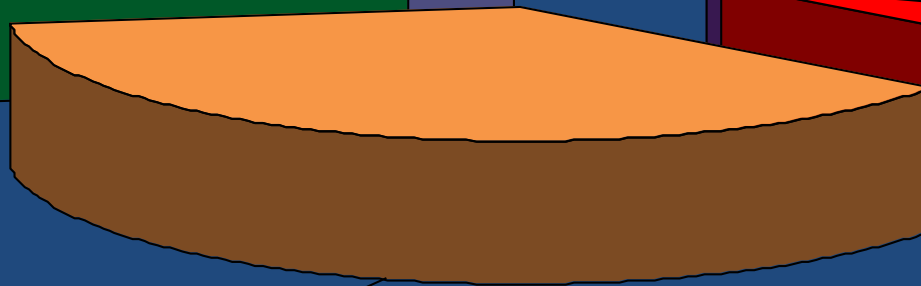
No Violations  
18%

Cite & Fine  
9%

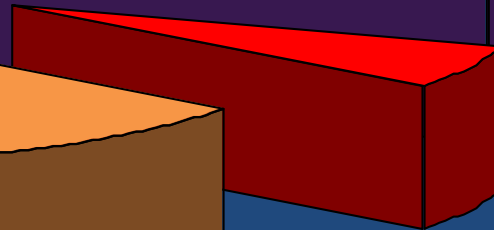
Major  
Violations  
30%



Minor  
Violations  
38%



Corrective  
Action Letter  
5%



# Shortage Findings of Audits Closed

	7/1/15 - 3/31/16	7/1/16 - 3/31/17
Total Audits Closed	438	414
Total \$ Shortage	\$12.28 million	\$9.29 million
% Audits with Shortage	37.2%	29.4%
#(%) with \$10K+ Shortage	59 (13.5)	41 (9.9)

# Top 5 Audit Violations

## #5: Commissioner's Reg. 2831.1: Separate Record for Each Beneficiary / Transaction

- ▣ Usually related to incomplete or inaccurate Separate Records.
- ▣ Must have the detail referenced in Reg. 2831.1(a).
- ▣ Must account for Unidentified Funds

# Top 5 Audit Violations

## #4: Commissioner's Reg. 2831: Record of All Trust Funds Received and Disbursed

- ▣ This is the columnar, glorified checkbook record.
  - Must be in chronological order, include all money in and out of the trust account, with all the required detail of Reg. 2831.

# Top 5 Audit Violations

## #3: Commissioner's Reg. 2831.2: Trust Account Reconciliation

- ▣ This is a monthly reconciliation of Control Record to Separate Records.
- ▣ Do your monthly reconciliation between books and bank, **THEN** perform this **REQUIRED** reconciliation.



# Top 5 Audit Violations

## #2: Commissioner's Reg. 2832: Trust Fund Handling

- ▣ If not sent to escrow or principal, trust funds must be deposited within 3 business days into trust account.
- ▣ Account designation often the issue – we look to the signature card.



# Top 5 Audit Violations

## #1: Business & Professions Code §10145: Handling of Trust Funds

- ▣ Trust funds must be placed into one of 3 places: a neutral escrow depository; or into the hands of the principal; or into a proper trust fund account.
- ▣ Interest-bearing account violations.



# 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**



# Where Audit Activities Are Focused

- ▣ Investigative and Focused Routine 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

# Auditor Obstacles / Adventures









# Bureau of Real Estate Audit Section

Contact:

Tom Cameron – Assistant Commissioner, Audits

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# SUBDIVISION PROGRAM OVERVIEW



Chris Neri, Assistant Commissioner



# 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

# 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



# 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.*

# Purchase Contracts

CalBRE reviews purchase contracts for compliance with the Subdivided Lands Act and the Regulations of the Real Estate Commissioner:

- ▣ blanket encumbrances have been or will be released.
- ▣ purchase money handling clauses
- ▣ liquidated damages clauses
- ▣ incentive clauses

# Budgets

- Fixed, operating, and reserve differences
- Conversions – Special Considerations
- Maintenance divisions between HOA and homeowners
- Special assessments
- Common problems with HOA budgets

# Budgets (continued)

- Common areas
  - ▣ What is it
  - ▣ When is it conveyed to HOA
- Site inspections
- Re-Starting HOA and its impact on reserves

# Homeowner Associations (HOA)

- ▣ Incorporated or unincorporated
- ▣ Management documents
  - CCR's – Control by developer
  - Bylaws
  - Articles of Incorporation/ Association
  - Contracts with HOA

# HOA Governing Documents

- Age restrictions
- Pet limitations
- Parking limitations
- Recreational facility rules
- Window coverings
- Rental restrictions
- Right of first refusal
- The state of repair of recreational facilities
- Responsibility for internal and external maintenance
- 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 - 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 - 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.bre.ca.gov/Developers/](http://www.bre.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](http://www.bre.ca.gov)

Next Meeting to be held in  
TBA, CA