



Real Estate Bulletin

DEPARTMENT OF REAL ESTATE

SPRING 2020

Vol. 79, No. 1



Governor Newsom Appoints New Real Estate Commissioner

Doug McCauley was appointed Commissioner of the California Department of Real Estate (DRE) by Governor Gavin Newsom on April 2, 2020, and assumed office on May 6. Previously, he was appointed in 2018 as Chief Deputy Director of the Department of Housing and Community Development and was designated Acting Director in September of 2019.

Commissioner McCauley had been Executive Officer of the California Architects Board since 2001, where he led several key innovations, such as the nation's first evidence-based internship program for the design profession. He also managed the conversion of the California Supplemental Examination to a computer-based format, which dramatically increased access to licensure.

Commissioner McCauley received his DRE salesperson license in 1997. He earned a bachelor's degree in government from California State University, Sacramento, and a Master of Public Administration degree from Golden Gate University (San Francisco).

Commissioner McCauley lives in Sacramento with his wife and two sons. ■

DRE's Citation and Fine Program—Six Years Later

In 2014, the Department of Real Estate (DRE) began issuing citations for minor, technical violations. Over the course of six years, DRE has issued over 3,000 citations and assessed more than \$2 million in administrative fines, all of which went into DRE's Consumer Recovery Account. The Consumer Recovery Account is used to assist victims who have been defrauded or had trust funds converted by a real estate licensee in a transaction requiring that license.

Citation versus formal discipline. Formal discipline, which may include public reproof, suspension, restriction, or revocation of a license, is generally pursued for serious violations often involving significant consumer loss or injury. While citations may be issued for any violation of the Real Estate Law, DRE prefers to issue citations for relatively minor, or de minimis, violations often involving compliance matters. Typical violations that have resulted in citations include,



but are not limited to, failing to notify DRE of a change in address, faulty first point-of-contact material, failing to inform DRE of newly affiliated salespersons or broker-associates, improper team name advertising, and minor trust fund handling and recordkeeping issues.

(CONTINUED ON PAGE 3)

**REAL ESTATE BULLETIN**

Official Publication of the California
Department of Real Estate
Vol. 79, No. 1 – Spring 2020

STATE OF CALIFORNIA

Gavin Newsom, *Governor*

**BUSINESS, CONSUMER SERVICES
AND HOUSING AGENCY**

Lourdes M. Castro Ramírez, *Secretary*

DEPARTMENT OF REAL ESTATE

Douglas R. McCauley, *Real Estate
Commissioner*

REAL ESTATE BULLETIN

Bradley Evans, *Editor*

ADMINISTRATION

Vacant, *Chief Deputy Commissioner*
Sandra Knau, *Assistant Commissioner,
Licensing and Administrative Services*
Stephen Lerner, *Assistant Commissioner,
Legal Affairs*
Jeff Oboyski, *Assistant Commissioner,
Enforcement*
Chris Neri, *Assistant Commissioner,
Subdivisions*
Tom Cameron, *Chief Auditor*
Shelly Wilson, *Assistant Commissioner,
Communications and Publications*
Chika Sunquist, *Supervising Special
Investigator I, Mortgage Loan Activities*

**NORTHERN ENFORCEMENT AREA—
DISTRICT OFFICES****SACRAMENTO PRINCIPAL OFFICE**

Tricia Parkhurst,
Supervising Special Investigator II
1651 Exposition Blvd., Sacramento
Mailing Address:
P.O. Box 137011
Sacramento, CA 95813-7001
Consumer Information: (877) 373-4542

OAKLAND DISTRICT OFFICE

Robin Tanner, *Supervising Special
Investigator II*
1515 Clay St., Suite 702
Oakland, CA 94612-1462
Consumer Information: (877) 373-4542

**CENTRAL ENFORCEMENT AREA—
DISTRICT OFFICES****FRESNO DISTRICT OFFICE**

Brenda Smith, *Supervising Special
Investigator II*
2550 Mariposa Mall, Suite 3070
Fresno, CA 93721-2273
Consumer Information: (877) 373-4542

**SOUTHERN ENFORCEMENT AREA—
DISTRICT OFFICES****LOS ANGELES**

Maria Suarez, *Supervising Special
Investigator II*
320 West 4th St., Suite 350
Los Angeles, CA 90013-1105
Consumer Information: (877) 373-4542

SAN DIEGO DISTRICT OFFICE

Veronica Kilpatrick, *Supervising Special
Investigator II*
1350 Front St., Suite 1063
San Diego, CA 92101-3687
Consumer Information: (877) 373-4542

**SUBDIVISIONS NORTH—
SACRAMENTO DISTRICT OFFICE**

Sylvia Yrigollen, *Supervising
Special Investigator II*
1651 Exposition Blvd., Sacramento
Mailing Address:
P.O. Box 137005
Sacramento, CA 95813-7005
Consumer Information: (916) 576-3374

**SUBDIVISIONS SOUTH—
LOS ANGELES DISTRICT OFFICE**

Tony Fan, *Supervising Special Investigator II*
Angele Chemsian, *Supervising Special
Investigator II, Budget Review*
Joseph Aiu, *Subdivisions Statewide Compliance*
320 West 4th St., Suite 350
Los Angeles, CA 90013-1105
Consumer Information: (213) 576-6983

The *REAL ESTATE BULLETIN* (ISSN 07347839) is published quarterly by the state of California Department of Real Estate, 1651 Exposition Blvd., Sacramento, CA 95815, as an educational service to all real estate licensees in the state under the provisions of section 10083 of the Business and Professions Code. Reproduction, in whole or in part, is authorized with attribution to the Department of Real Estate.

DRE'S CITATION AND FINE PROGRAM—SIX YEARS LATER (CONTINUED FROM PAGE 1)

A citation. If you receive a citation, you will find specific information identifying the violation(s). Depending upon the number of violations involved, the citation may include an administrative assessment (fine) and/or an Order of Correction. The fine amount can be up to \$2,500 per violation per real estate licensee. In addition to a fine, a citation may also warrant corrective action. This may be directed through an accompanying Order of Correction, requiring the licensee to correct the violations, fully comply with the Real Estate Law, and attest that compliance has been effected.

Contesting a citation. DRE issues its citations and fines after careful consideration. If someone disagrees with the issuance of a citation or the assessment of a fine, DRE has established a procedure by which the licensee may contest the citation and/or fine. This process, known as the Citation Review Conference, or CRC, is an opportunity for the licensee to present evidence that they did not commit the specified violations, or offer mitigating evidence why the citation is unwarranted or the fine needs to be reduced. The licensee also has the right to request a formal administrative hearing before an administrative law judge.



Delinquent citations. When a citation has not been satisfied, either the full amount of the fine not paid or corrective action not implemented, DRE has a number of options. Once a due date passes and a citation is not fully satisfied, DRE places an immediate license hold on the licensee's record, thereby preventing a license renewal or the issuance of a new license or mortgage loan originator endorsement until the citation has been fully satisfied. DRE may also refer the unpaid debt to the California Franchise Tax Board or an outside agency to collect the unpaid debt. Finally, DRE may obtain a civil judgment or seek formal disciplinary action for the failure of a licensee to respond to or satisfy a citation.

The Department considers issuing citations a significant tool to address minor and technical violations that do not warrant formal disciplinary action, as well as to help encourage and reinforce compliance with the Real Estate Law. If you receive a citation, do not ignore it, otherwise you may face greater disciplinary action. For more information about DRE's citation program, visit our website at www.dre.ca.gov/Licensees/CiteandFine.html. If you have received a citation and have questions, contact the Citation Section at Citations@dre.ca.gov. ■



The Department considers issuing citations a significant tool to address minor and technical violations that do not warrant formal disciplinary action, as well as to help encourage and reinforce compliance with the Real Estate Law. If you receive a citation, do not ignore it, otherwise you may face greater disciplinary action.





Informing DRE About Material Changes in Subdivision Public Reports

The Subdivided Lands Law requires a developer (subdivider) to obtain a Public Report from the Department of Real Estate (DRE) prior to marketing homes in a common interest development as well as other types of residential subdivisions. Once issued, the Public Report must reflect what is offered to a potential buyer accurately. Section 11012 of the Business and Professions Code (B&P) provides that it is unlawful for the owner, the owner's agent, or subdivider to materially change the setup of an offering after it has been submitted to DRE without first notifying DRE in writing of the intended change. Such changes must be reflected in the Public Report.

Although not intended to be all-inclusive, section 2800 of the Commissioner's Regulations lists many of the possible material changes in a subdivision itself or in the program for marketing the subdivision interests. In reviewing any proposed changes, the Department may, under certain and limited circumstances, determine that

an amended Public Report is not required. Generally, any change made that results in the subdivision Public Report not stating the true facts or omitting important facts, will require an amended Public Report.

Anyone in doubt as to whether a proposed change will require an amended Public Report may contact DRE's Subdivision Section for advice.

Most subdividers are aware of obvious material changes and promptly submit an application for an amended public report when, for example, there is a change in the name or organization structure of the subdividing entity, a change in the purchase money handling procedures, or the addition or deletion of common facilities.

Two types of frequently overlooked material changes are:

- An increase of 20% or more or a decrease of 10% or more in the regular assessments charged by an association over the amount reflected in the current

(CONTINUED ON PAGE 5)



Real Estate Bulletin

INFORMING DRE ABOUT MATERIAL CHANGES IN SUBDIVISION PUBLIC REPORTS (CONTINUED FROM PAGE 4)

Public Report. DRE sometimes receives applications for subsequent phases in a common interest subdivision that indicate assessments have been increased substantially over the amount of assessments listed in the Public Reports for prior phases. In these cases, amended Public Reports must be obtained for all prior phases that still contain unsold lots or units. In addition, delinquencies in the payment of regular assessments resulting in the receipt by the association of income that is more than 10% less than scheduled must be reported. As association receipts may be constantly changing, DRE policy permits the computation of the 10% threshold based upon three consecutive months using a rolling average. The amended Public Report will usually contain a “special note” disclosing the possible problems to potential buyers that might result from a substantial delinquency in the receipt of assessments.

- The creation by the subdivider of a subsidy or maintenance arrangement for HOA expenses that has not been approved by DRE. This usually takes the form of a maintenance agreement that permits the subdivider to defer all or a portion of their monthly assessments.

Any failure to notify DRE of material changes can result in administrative action such as the issuance of a Desist and Refrain Order, usually causing the cessation of sales. Civil action may also be brought against the subdivider by purchasers who did not receive the correct information in the Public Report.

DRE strongly recommends that all subdividers regularly review Commissioner’s Regulation 2800 in conjunction with their business plans and promptly submit notification of any proposed material changes in subdivision offerings to DRE. ■





Property Managers and California Withholding

By the California Franchise Tax Board

Property managers who manage real property and collect rent or lease payments for California property owners that reside outside of California (nonresident owner) are required to withhold 7% of the gross rent or lease payments in excess of \$1,500 per calendar year and remit the payments to the Franchise Tax Board (FTB). This article will identify when a property manager is required to withhold taxes, the amount that the property manager needs to withhold, and the consequences that will result if a property manager fails to withhold and remit the taxes to FTB.

California law requires withholding of tax by persons having the control, receipt, custody, disposal, or payment of items of income, commonly termed “withhold at source” (Title 18 California Code of Regulations (CCR) section 18662-1(a)(1)). As a property manager providing services to nonresident property owners, including but



not limited to renting, leasing, or collecting rent or lease payments on behalf of the nonresident owner, you are considered the withholding agent for California withholding purposes. As a withholding agent, you are required to withhold 7% on rent or lease payments

to nonresidents when the total payments of California source income, excluding property management fees, exceed \$1,500 for the calendar year. For example, a property manager who collects rents from tenants for a nonresident California property owner is required to withhold 7% of all payments associated with rents paid to nonresident owners when the payments are greater than \$1,500 per calendar year. The property manager may deduct its management fees and then calculate the 7% withholding based on the amount to be sent to the property owner.

For California withholding purposes, nonresident owners include the following:

- Individuals who reside outside of California.
- Corporations, partnerships, and LLCs that do not have a permanent place of business in California or are not registered with the California Secretary of State to do business in California.
- Any trust without a resident grantor, beneficiary, or trustee, or estates where the decedent was not a California resident.

As a withholding agent, you are responsible for withholding; however, there are various ways to be exempt or to withhold a reduced amount.

For California withholding purposes, the following property owners are exempt from withholding:

- California residents.
- Corporations, partnerships and LLCs registered with the California Secretary of State to do business in California or who have a permanent place of business in California.

(CONTINUED ON PAGE 7)

PROPERTY MANAGERS AND CALIFORNIA WITHHOLDING (CONTINUED FROM PAGE 6)

- Estates where the deceased was a California resident at the time of death.
- Nonresident owners whose gross payments do not exceed \$1,500 in a calendar year.

California residents or corporations, partnerships, and limited liability companies with a permanent place of business in California, use Form 590, Withholding Exemption Certificate, to certify an exemption from withholding. When a Form 590 exemption is certified, no withholding is required.

California nonresident property owners may qualify for a waiver or reduced withholding. Nonresident property owners or property managers may request a waiver from withholding by submitting Form 588, Nonresident Withholding Waiver Request to FTB. They may also request reduced withholding by submitting Form 589, Nonresident Reduced Withholding Request to FTB.

If FTB grants a waiver or authorizes a reduced withholding amount, FTB will notify the requester of the withholding by sending them a Waiver Determination Notice or Reduced Withholding Approval letter.

If the nonresident owner is not able to obtain an approved waiver from withholding, then the property manager must withhold on the rental and lease payments collected if the gross payments exceed \$1,500.

Property managers report tax withheld on California source income to the FTB using Form 592, Resident and Nonresident Withholding Statement. Withholding is remitted for the payment period associated with the income earned (April 15, June 15, Sept. 15, Jan. 15), along with the Form 592-V, Payment Voucher for Resident and Nonresident Withholding.

The property manager is required to send Form 592-B, Resident and Nonresident Withholding Tax Statement to the nonresident property owner by January 31 of the following calendar year. Form 592-B shows the California nonresident property owner the total amount withheld and reported on Form 592 for the tax year. The nonresident property owner must file Form 592-B with their California income tax return to claim the withholding credit.

(CONTINUED ON PAGE 8)





PROPERTY MANAGERS AND CALIFORNIA WITHHOLDING (CONTINUED FROM PAGE 7)

For example:

A property management company collected rents for a property owned by a New York resident. The rents collected for each payment period is \$10,000. The property management fees per payment period are \$1,000.

PAYMENT PERIOD	1 (DUE 4/15/XX)	2 (DUE 6/15/XX)	3 (DUE 9/15/XX)	4 (DUE 1/15/XX)	TOTAL
Rents collected	\$10,000	\$10,000	\$10,000	\$10,000	\$40,000
Less management fees	(\$1,000)	(\$1,000)	(\$1,000)	(\$1,000)	(\$4,000)
Amount to be withheld upon	\$9,000	\$9,000	\$9,000	\$9,000	\$36,000
Multiply by withholding percentage	7%	7%	7%	7%	7%
Amount to be withheld and sent to FTB	\$630	\$630	\$630	\$630	\$2,520

In the above scenario, the property manager would be required to send the withholding of \$630 to FTB for each payment per payment period along with a completed Form 592 and Form 592-V. By January 31 of the following year, the property manager is required to send the nonresident property owner Form 592-B, which shows the amount of rents collected of \$40,000 and withholding remitted of \$2,520.

The Form 592-B gives the property owner the information needed to claim the income and withholding on their California Tax Return.

If property managers, as withholding agents, fail to withhold the required amount and in a timely manner remit the withholding to FTB, they become liable for the amount that was required to be withheld, unless it is shown that the failure to withhold was due to reasonable cause. In such cases, property managers may also be liable for penalties and interest associated with their failure to withhold.

More information can be found at www.ftb.ca.gov with the search term “nonresident withholding.” ■

Continuing Education Auditing

As part of a licensee's renewal, 45 hours of continuing education is required to be completed pursuant to Business and Professions Code sections 10170, 10170.4 and 10170.5. Licensees certify the completion of this education by entering completed continuing education course information on either the Continuing Education Course Verification (RE 251) form or through the Department of Real Estate's (DRE) online eLicensing system. Pursuant to Commissioner's Regulation 3013, DRE's Education and Research Section may audit continuing education records of licensees. Commissioner's Regulation 3013 provides that upon the request of DRE, "the applicant shall submit certificates of attendance or certified copies thereof from sponsors of approved offerings to substantiate the information provided by the applicant." A licensee who fails to provide DRE with course completion certificates, as required, may be subject to a fine or potential disciplinary action.

It is suggested that licensees retain copies of all course completion certificates for up to five years so they can respond quickly to an audit request. If certificates are misplaced, licensees should contact the course provider for a duplicate certificate, as the course provider is required by Commissioner's Regulation 3012.2 to maintain a record of attendance or registration and final examination grade of each participant for five years.

Licensees are encouraged to report course providers who are violating education regulations to DRE. The Education Provider Complaint (**RE 340**) and Education Provider Complaint Information (**RE 340A**) forms can be found on DRE's website, www.dre.ca.gov, and should be used to notify DRE of such violations.

As always, the Education and Research Section recommends that applicants and licensees, when searching for education providers, do so through DRE's website to verify course approval status and to check for any prior disciplinary action taken against course providers. ■





COVID-19 CALLING ALL CALIFORNIANS!

Every Californian can safely help their community during these difficult times. Here are some ways you can make a difference:



Deliver Meals

Vulnerable seniors are at greatest risk amid COVID-19. Let's help keep them safe and cared for. Contact your local Meals on Wheels organization, visit www.mealsonwheelsamerica.org.



Donate to a shelter or food bank

During this time organizations are running low on food items, help them stay well stocked for those in need. Visit www.serve.ca.gov to find one near you.



Volunteer at a food bank

Food banks are in great need of volunteers to help pack and sort food. They are taking precautions to prioritize volunteer safety. Visit California Association of Food Banks at www.CAfoodbanks.org



Support Nonprofits

Nonprofit organizations serving vulnerable communities – like seniors and low-income families – need your help. Find a fund to donate to nonprofits in your community on the Philanthropy California COVID-19 Response Page: www.philanthropyca.org/covid-19-response.



Wellness Checks

Check on Older Neighbors with a Call, Text or Talk through the door



Hygiene Kits

Create hygiene kits and drop off at a shelter for people experiencing homelessness to help them stay healthy.



Donate Blood

Donated blood has decreased dramatically. Healthy, eligible donors are urged to come out and give to ensure there's lifesaving blood on the shelves for those who need it most. Visit the American Red Cross: www.redcrossblood.org/give.html/find-drive



**TAKE THE
CENSUS TODAY!**

(844) 330-2020

CALIFORNIACENSUS.ORG



Official Publication of the California Department of Real Estate

CALIFORNIA DEPARTMENT OF REAL ESTATE
1651 EXPOSITION BLVD.
SACRAMENTO, CA 95815

Real Estate Bulletin

VOL. 79, NO. 1

SPRING 2020

INSIDE THIS ISSUE

For all the latest real estate information for consumers, licensees, examinees, and developers, visit the DRE website and follow us on **Facebook** and **Twitter**.

www.dre.ca.gov

 @CaliforniaDepartmentOfRealEstate

 @CA_DRE

- *Governor Newsom Appoints New Real Estate Commissioner*
- *DRE's Citation and Fine Program—Six Years Later*
- *Informing DRE About Material Changes in Subdivision Public Reports*
- *Property Managers and California Withholding*
- *Continuing Education Auditing*

We'd like to hear from you!



Email us at editor@dre.ca.gov



PDE_20-114 