



Real Estate Bulletin

DEPARTMENT OF REAL ESTATE

Winter 2023

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P.4 Summary of New Real Estate Laws | P.5 Fiduciary Duty to Borrowers and Steering Prohibitions



**Real Estate Commissioner
Douglas R. McCauley**

Commissioner's Update

The gateway into many occupations is a licensing exam. In real estate, this right of passage is the culmination of having taken required coursework and engaging in rigorous preparation.

Department of Real Estate exams are scientifically (actually, psychometrically) designed to measure a very precise point at which an examinee is sufficiently competent to provide real estate services consistent with Real Estate Law. This standard is often described as “entry level competence.” A valid exam will be sufficiently surgical to identify that point between those who possess the minimum level of competency and those who are close, but fall short.

Often exams are simply considered a tool to measure whether examinees have adequate knowledge, skills, and abilities. But, ultimately, the entire basis for regulating a profession and offering a licensing examination is to protect consumers.

A typical model of consumer protection relies on a robust enforcement program. And, our talented team of investigators and attorneys work tirelessly to collect and review evidence, interview parties to transactions, and prepare for and advocate in hearings. All of this crucial work takes place subsequent to consumer harm.

(CONTINUED ON PAGE 3)

New Pre-License Education Requirements Coming January 2024

Senate Bill 1495 (SB 1495), signed by Governor Gavin Newsom in September 2022, makes changes to the course content of the real estate practice class required of new real estate license applicants. SB 1495 takes effect on January 1, 2024.

Currently, all applicants for the salesperson or broker examination must complete a three semester or quarter equivalent course in real estate practice to qualify for the exam. Beginning January 1, 2024, these applicants will need to complete a revised course in real estate practice that includes the following content:

- A component on implicit bias, including education about the impact of implicit bias, explicit bias, and systemic bias on consumers, the historical and social impacts of those biases, and actionable steps students can take to recognize and address their own implicit biases.
- A component on the application of federal and state fair housing laws to the practice of real estate. The fair housing component must include an interactive participatory component, during which the applicant engages in role-play as both a consumer and a real estate professional.

These new requirements effect individuals who submit an application received by DRE on or after January 1, 2024, to take either the real estate broker or the salesperson examination.

Over the next year, DRE will work with California state colleges and universities, as well as with DRE course providers, to ensure that the new course meets the legislative requirements. We will post further updates about this topic on the DRE website. ■



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Real Estate Law

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Administrative Procedure Act

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COMMISSIONER'S UPDATE (CONTINUED FROM PAGE 1)

By contrast, the licensing exam serves as the ultimate preventative measure. If an exam works properly, only those knowledgeable about and capable of adhering to relevant laws will be licensed to provide real estate services. Coupled with consumer education and professional learning opportunities for licensees, this model of consumer protection is effective and efficient; it helps to prevent issues before they arise rather than remediating them after consumer harm has already occurred.

On the face of it, preparing the exam appears like a seemingly simple function. The reality, however, is that creating a licensing examination is a complicated and multistep process where two national standards must be met. Beginning with a “snapshot” of the profession (occupational analysis), data is crafted into the “test plan,” which articulates the knowledge, skills, and abilities that will be tested. From there, questions (items) are written and then reviewed for quality. Ultimately, once items have been determined to be valid, they are used to construct the exam.

This lengthy process is, as you would imagine, quite labor intensive. And while DRE staff conduct much of the operational work for exam development, subject matter experts (SMEs) perform the heavy lifting related to content. Our SMEs are licensees who represent all parts of the real estate sector, as well as all of the components that make up California’s rich diversity. The exam needs to reflect not just today’s marketplace, but everybody’s marketplace.

Serving as a SME for the DRE is a tremendous way to give back to the profession and share your knowledge. If you receive an invitation to participate in either developing the occupational analysis or crafting exam items, please step up and volunteer – it is very rewarding work and applying your expertise to the exam is an excellent way to protect consumers. ■

 @DougMcCauleyDRE

DRE’s San Diego Office has Moved

As of December 2022, DRE’s San Diego district office and exam center have moved and consolidated into a single location:

San Diego District Office & Exam Center
8620 Spectrum Center Blvd.
Suite 301
San Diego, CA 92123

The major cross street is Kearny Villa Road and the closest freeway is the 163 between the Clairemont Mesa Blvd. and Balboa Ave. exits.

Onsite parking is available for an hourly fee of \$2 per hour (subject to change). And, San Diego MTS lines are within walking distance.

Exams are scheduled on an as-needed basis; DRE cannot accommodate walk-ins for an exam. ■





Summary of New Real Estate Laws

Below are summaries of new state laws that affect real estate licensees and applicants. Unless otherwise noted, the laws take effect January 1, 2023.

- [Assembly Bill \(AB\) 1410](#) disallows 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 1837](#) makes changes to the process established by Senate Bill 1079 in 2020, which allows existing tenants, prospective owner-occupants, nonprofit organizations, and local governments, among others, up to 45 days after a home foreclosure auction to make an offer that meets the winning bid. It modifies the types of nonprofit entities that qualify as eligible bidders and disallows certain limited liability companies, and all limited partnerships, from bidding. It also subjects homes purchased by certain eligible bidders to a recorded affordability covenant and creates an enforcement mechanism for the SB 1079 process through the Attorney General.
- [AB 2170](#) provides an initial 30-day window for eligible bidders to purchase properties acquired by lending institutions through foreclosure, also known as "real estate owned" (REO) properties. The bill requires institutions that foreclose on 175 or more properties per year to only accept offers from prospective owner-occupants, qualified nonprofits, government entities, and other affordable housing providers for the first 30 days that an REO property is listed for sale. It also requires institutions to respond to each offer in writing and prohibits institutions from completing a bundled sale of more than one foreclosed property.
- [AB 2503](#) requires the California Law Revision Commission, by December 31, 2024, to deliver a study to the Legislature examining the establishment of consistent terminology in California law to describe the parties to an agreement, lease, or contract for the rental of residential real estate property, including mobile homes.
- [AB 2559](#) defines and specifies the elements that must be included in a reusable tenant screening report. If a landlord accepts a reusable screening report, the bill prohibits 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.
- [AB 2745](#) changes the experience requirements to sit for the real estate broker exam. The bill requires that non-licensed, general real estate experience used to qualify for the exam occur within five years of the exam application date.
- [AB 2960](#) specifies that the real estate disclosure statement requirements in effect on the date the parties entered into contract shall be the requirements that apply to that sales contract. Any subsequent changes to the disclosure requirement statute after the parties enter into the sales contract will not apply to that contract unless the statute specifies otherwise.
- [Senate Bill \(SB\) 1005](#) clarifies the current Probate Code regarding how a guardian or conservator may bring an action to partition a property if the property is the conservatee's present or former personal residence. Partition actions involve one party of a jointly owned property who wants to sell their ownership rights.
- [SB 1017](#) clarifies current law about the tenancy protections for victims of domestic violence or abuse, their household members, and their immediate family members. This includes protections that allow

(CONTINUED ON PAGE 10)

Fiduciary Duty to Borrowers and Steering Prohibitions

Real estate licensees (brokers and salespersons/ broker-associates working under the supervision of a broker) with a Mortgage Loan Origination (MLO) Endorsement may perform loan origination activities related to residential properties consisting of 1 to 4 units. California law requires that a DRE licensee providing mortgage brokerage services to a borrower act as a fiduciary of that borrower, which includes placing the economic interest of the borrower ahead of their own.

California courts have held that this relationship not only requires the broker to act in the highest good faith toward their client but prohibits the broker from obtaining any advantage over the client by virtue of the fiduciary relationship.

A mortgage broker who violates their fiduciary duties may face discipline by DRE of their underlying real estate license and their MLO Endorsement, as well as expose themselves to civil liability in a legal action from their client.

In light of the requirement to place the borrower's economic interest ahead of the broker's interest, brokers should be aware of all laws, regulations, and rules governing their activities as a real estate licensee and mortgage broker, including the federal Loan Originator Compensation (LO Comp) Rule.

Prescribed by federal law, the LO Comp Rule prohibits loan originators, including brokers, from receiving compensation based on the terms of consumer mortgage transactions.

Prior to this prohibition on terms-based compensation, mortgage brokers often received commissions that varied based on the terms of the mortgage loans they obtained for their clients. In many cases, brokers could receive larger commissions on loans with less advantageous terms for their clients. For example, a loan with a higher interest rate would result in a larger commission to the broker than the same loan with a lower interest rate. Under the LO Comp Rule, however, such practice now is prohibited.

Additionally, receiving compensation where the broker receives greater compensation for acting against the economic interests of the consumer would violate a broker's fiduciary responsibility to place the economic interest of their client ahead of their own if the decision was motivated by a broker's financial desire to increase their compensation.

Further, a broker may not steer or direct a borrower to close a loan with a particular lender based on the fact that the lender will pay the broker a higher commission than other lenders, unless that transaction is, in fact, the best loan for the borrower.



In light of the requirement to place the borrower's economic interest ahead of the broker's interest, brokers should be aware of all laws, regulations, and rules governing their activities as a real estate licensee and mortgage broker



It is also important that brokers remember to disclose to the borrower the costs and expenses associated with the loan, in addition to disclosing all compensation they received in the transaction. Along these lines, brokers are prohibited from taking any secret or undisclosed compensation, commission, or profit.

While the laws real estate licensees must follow are numerous, it is important to remember that many of these laws are based on the broker's fiduciary duty and responsibility to their client. You can find the [California Real Estate law on DRE's website](#), and the [Consumer Financial Protection Bureau \(CFPB\) website](#) has [information about the LO Comp Rule](#). ■



Unclaimed Property: What Real Estate Businesses Need to Know

By the California State Controller's Office

California law requires that banks, insurance companies, corporations, and certain other entities annually report and submit to the State Controller's Office (SCO) the unclaimed personal property of their customers when there has been no activity for a period of time (generally three years). Unclaimed property that remains unclaimed for the requisite length of time escheats (i.e., reverts) to the State Controller's Office.

While unclaimed property does not include real estate, it does include payroll and commissions (one-year dormancy period); savings, checking, and trust accounts; accounts payable or receivable; deposits for rent; vendor payments; and customer refunds.

Five Steps to Report Unclaimed Property

1. **Identify Unclaimed Property:** Search your books and records to identify any unclaimed property in your possession. Consult SCO's [Dormancy Periods Table](#) and [Property Reporting Cycles](#) for help in determining when a property is reportable.
2. **Perform Due Diligence and Mail Notices to Owners:** Notify property owners by mail if they have property that will become reportable within 6-12 months. Consult SCO's Guide to Due Diligence and [Sample Due Diligence Letter](#).
3. **Submit Notice Report to SCO Before November 1st:** The Notice Report informs SCO about unclaimed property on your books so the State can notify the owners to claim their property before it's transferred to the Controller's office and is due before November 1st each year.

The report, submitted via the SCO's [Holder Reporting Portal](#), consists of the [Universal Holder Face Sheet form \(UFS-1\)](#) and property owner details in standard NAUPA-II format. [Free reporting software](#) is available to compile and properly format property owner details for fewer than 100 properties. Consult SCO's [Notice Report Checklist](#) for additional details. Do not remit property at this time.

4. **Respond to Owners:** If contacted by owners of unclaimed property after the SCO notification, always respond to these inquiries, verify ownership, and reunite the property with the owner.
5. **Submit Remit Report and Remittance Between June 1st and June 15th:** The Remit Report notifies the SCO of any unclaimed property listed on your Notice Report that remains on your books and transfers that property to the Controller's office. The report must be submitted between June 1st and June 15th each year, along with any property transfers or remittances.

The report, submitted via the SCO's [Holder Reporting Portal](#), consists of the [Universal Holder Face Sheet form \(UFS-1\)](#) with updated contact information and report totals, an updated list of property owner details, a signed 14-F letter (which SCO sends you after processing your Notice Report), and the remittance.

Refer to SCO's [Remitting Unclaimed Property](#) guide for details about how to remit property to the Controller. To avoid penalties, you must transfer funds totaling \$2,000 or more via electronic funds transfer (EFT). To ensure that your EFT is processed on time, register with SCO's EFT Help Desk by April 30th. For additional details, consult SCO's [Remit Report Checklist](#).

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UNCLAIMED PROPERTY (CONTINUED FROM PAGE 6)

Unclaimed Property in Brokerage Trust Accounts

Brokerages with unclaimed funds in brokerage trust accounts should:

- Reconcile brokerage trust accounts regularly, and ensure that all payments are issued and accurate.
- If funds remain for which the owner or beneficiary is known, return them to the owner or report it to the Controller if the required dormancy time period has been reached.
- Overages in a brokerage trust account where the owner(s) is unknown escheat to the State Controller's Office three years from the date the overage was discovered, unless the owner is identified and the funds returned before the expiration of the three-year dormancy period.

Tips to Identifying Unclaimed Property

- Keep thorough records by using journal entries and memos routinely.
- Note the substance and date of communications with owners and create fields to enter this information in your accounting software to track dormancy, dates of contact, and owner activity.
- Keep a separate list of property in danger of becoming unclaimed to help expedite any reporting that may be required later.

Tips to Reducing Unclaimed Property

- Reconcile accounts on a daily, weekly, or monthly basis.
- Document the purpose of uncashed checks and their current status (reissued, voided, etc.), and make notes in your records.
- Automate payroll transactions and use direct deposit when possible to reduce the number of unclaimed wage and commission payments.
- Use electronic funds transactions for accounts payable to reduce the number of checks outstanding.
- Communicate regularly and reach out when you identify outstanding checks in case they need to be reissued.

The State Controller's Office Resources Can Help!

To help with the reporting process, SCO has a dedicated unit to educate and assist businesses. The Outreach and Compliance Unit offers free [webinars](#) throughout the year, which are strongly recommended for those reporting for the first time. Businesses may also set up free one-on-one webinars at their convenience.

SCO offers additional resources on its website, GoReport.sco.ca.gov, including required forms and quick guides on each step of the reporting process. You can also email UPDHolderOutreach@sco.ca.gov or call (916) 464-6088 with questions or to schedule a one-on-one webinar. ■



The California State Controller's Office



Preventing Problems: Take the Time to Review and Explain

DRE often receives complaints from consumers who were involved in a real estate or related transaction and claim that either a required disclosure was not made or later discover a material issue after closing. Many of these complaints share the same features:

- The salesperson or broker was helpful up to the time escrow was opened; afterward, however, the salesperson or broker stopped communicating.
- Disclosures and documents were sent electronically.
- The client didn't read the disclosures and documents.
- The client signed documents on a cell phone or tablet.
- The salesperson or broker did not review or explain the disclosures and documents for the client.

While many things in real estate practice have changed over the years, a broker's responsibility – and by extension the responsibility of an affiliated salesperson or broker-associate – has not changed.

As an agent, a broker has legal and fiduciary duties to their client. These duties include exercising the utmost care, integrity, honesty, and loyalty, and “explaining” what should be disclosed, as well as the significance

and consequences of disclosures. The agent must also “counsel” their client, including either conducting or recommending any required inquiries, so that the client can make an informed and considered decision to buy, sell, lease, exchange, borrow, or lend.

California law also imposes duties on the agent with respect to the other principal to the transaction. For example, there are certain duties that the seller's agent owes to a buyer and the buyer's agent owes to a seller. These duties include, but are not limited to, the exercise of reasonable skill and care, the obligation to act honestly and fairly and in good faith, and the duty to disclose to the broker all facts that are either known or should be known and that materially affect the value, desirability, or, implicitly, the intended use of the property. Please note that additional duties arise if someone is acting as a dual agent for both the buyer and seller.

It's important that licensees remember their fiduciary duties to their clients and their duties to the other parties involved in any real estate and related transactions. Taking the time with your client to review and explain each step in the process, as well as the required disclosures and other relevant paperwork, can help make the process go more smoothly for everyone involved. ■

The Important Role of Enforcement in Regulating California's Real Estate Industry

As a licensing and regulatory agency with consumer protection as its primary mission, the Department of Real Estate (DRE) is responsible for enforcing California's Real Estate Law and Subdivided Lands Law.

With this authority, DRE can deny a license to an applicant if they do not meet the requirements for licensure and discipline a license for proven violations of California law. DRE's discipline may range from license revocation for more serious violations to public reproof, issuing a corrective action letter, or issuing citations and fines for less significant violations. DRE also may issue Desist and Refrain Orders to stop activities that violate Real Estate Law or Subdivided Lands Law and issue Bar Orders for the most egregious offenses to prohibit a person or entity from engaging in real estate activities for up to three years.

DRE enforces these laws to achieve maximum protection for real estate consumers, while exercising impartiality and fairness toward both the consumer and the industry. Many of DRE's enforcement actions originate as consumer complaints.

DRE posts on its website [summaries of the most serious enforcement actions](#) taken against licensees, as well as [other disciplinary actions](#). ■

Partial List of DRE Publications

DRE offers many publications on topics of interest to applicants, licensees, and consumers. All DRE publications are available [online](#) and can be ordered by mail by submitting a [Publications Request \(RE 350\)](#)

Consumer Publications

- **Finding the Right Real Estate Agent: What You Should Do**
Spanish Chinese
- **Preventing Real Estate Fraud: How to Protect Yourself and Your Home**
Spanish Chinese
- **Sources of Home Loans**
Spanish Chinese
- **Surviving the Real Estate Process in California**
Spanish Chinese
- **A Consumer Guide to Filing Real Estate Complaints**
Spanish Chinese
- **California Tenants—Guide to Residential Tenants’ and Landlords’ Rights and Responsibilities**
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- **Quick Guide for Tenants Renting a Home**
- **Financial Sense to White Picket Fence**
Spanish Chinese
- **A Consumer Guide to Mortgage-Related Complaints**
Spanish Chinese
- **A Homeowner’s Guide to Foreclosure in California**
Spanish Chinese
- **Fraud Warning for California Homeowners in Financial Distress**
Spanish Chinese
- **Loan Modification Self-Help Guide**
Spanish Chinese
- **Reverse Mortgages: Is One Right for You?**
Spanish Chinese

Applicants/Licensees

- **2023 Real Estate Law Book**
- **Obtaining a California Real Estate Salesperson License**
- **Obtaining a California Real Estate Broker License**
- **Obtaining a Mortgage Loan Originator License Endorsement**
- **Real Estate Advertising Guidelines**
- **Broker Compliance Evaluation Manual**
- **Mortgage Loan Broker Compliance Manual**
- **Disclosures in Real Property Transactions**
- **Trust Funds**

Subdivisions

- **A Guide to Understanding Residential Subdivisions**
- **Residential Subdivision Buyer’s Guide**
- **Subdivision Public Report Application Guide**
- **Subdivisions Online Public Report Application System Guide**
- **Timeshare Manual**
- **Operating Costs Manual for Homeowner Associations**
- **Reserve Study Guidelines for Homeowner Association Budgets** ■





Former DRE Licensee Sentenced to Prison in \$8 Million Mortgage Loan Fraud Scheme

A joint case by the California Department of Real Estate (DRE) and California Attorney General's Office (AG) ended in December 2022, with prison time, the surrender of a real estate license, and restitution for consumers.

The case against Alex Ashod Dadourian, a licensed broker and mortgage loan originator, began in 2018 with referrals to DRE from law enforcement and several lenders. Investigators from DRE's Mortgage Loan Activities Unit helped build a case against Mr. Dadourian, whose company, Success Funding dba Pride Funding, was located in Northridge.

Mr. Dadourian defrauded lenders by using forged documents and fraudulent records to secure more than \$8 million in mortgage loans for his clients in order to earn commissions for himself.

The criminal case, prosecuted by the AG, resulted in Mr. Dadourian being convicted on 91 felony counts of mortgage fraud, grand theft, identity theft, and conspiracy. He was sentenced to 5 years and 4 months in prison and ordered to pay restitution.

In September 2020, DRE filed an administrative accusation against Mr. Dadourian's broker license ([#01061832](#)). That portion of the case ended in September 2022, when Mr. Dadourian surrendered his license.

Between 2017 and 2019, Mr. Dadourian defrauded financial lenders by taking out 17 mortgage loans based on fraudulent applications and supporting documentation. He forged documents, such as employment verifications, inflated earnings statements, and education records that lenders use to assess applicants' creditworthiness. The employers listed on the applications either did not exist or had no record of having employed the loan applicants.

The fraudulent loans totaled more than \$8 million, with Mr. Dadourian receiving more than \$254,000 in fees and commissions. ■

SUMMARY OF NEW REAL ESTATE LAWS (CONTINUED FROM PAGE 4)

victims to terminate their tenancy without penalty and protection from eviction based solely on those acts of violence or abuse. It also expands 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 expands the evidence a court can consider as proof of abuse or violence in eviction proceedings and establishes new court procedures to grant a partial eviction when the perpetrator of violence resides in the same unit as the victim. Lastly, the bill makes 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.

- Beginning January 1, 2024, [SB 1495](#) will modify the required course content of the real estate practice course, which is required for all applicants for the real estate salesperson examination and broker examination. The course will now include the following additional elements:
 - o A component on implicit bias, including education about the impact of implicit bias, explicit bias, and systemic bias on consumers; the historical and social impacts of those biases; and actionable steps students can take to recognize and address their own implicit biases.
 - o A component on federal and state fair housing laws and their application to the practice of real estate, which also includes an interactive participatory component where the student role-plays as both a consumer and a real estate professional.

SB 1495 also extends from 30 to 45 the number of days a licensee has to publish a statement in a local newspaper when they decide to use a fictitious business name. ■

Top 5 Tips to Prevent Winter Viruses

Building a good defense will help prevent severe illness and hospitalization from the flu, COVID-19, and respiratory syncytial virus (RSV).

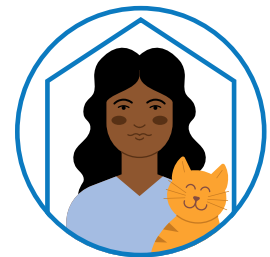
1. Get Vaccinated, Boosted (and Treated)

Getting your [flu and COVID-19 vaccines](#) are the best way to reduce the chances of getting severely ill. If you test positive for COVID-19 and have symptoms, speak to a health care provider right away about [treatment](#).



2. Stay Home if You're Sick and Test for COVID

Staying home when you're sick slows the spread of flu, RSV and COVID-19. Remember to test for COVID and contact your doctor immediately if you're positive to discuss treatment options.



3. Wear a Mask

There is no vaccine for RSV, so wearing a mask can slow the spread and protect the most vulnerable, including babies, young children, and older adults.



4. Wash Your Hands

Frequently wash your hands with soap and warm water for at least 20 seconds. This is one of the easiest and most effective ways to prevent spreading germs.



5. Cover Your Cough or Sneeze

Cough or sneeze into your elbow, arm, or a disposable tissue. Don't forget to wash or sanitize your hands and dispose of the tissue afterwards!



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interactive links on this flyer**





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We’d like to hear from you!



Email us at editor@dre.ca.gov

