

## COURSE GUIDELINES

RE 329 (Rev. 3/22)

### ETHICS COURSE

The guidelines set forth below are to assist sponsors in preparing an ethics course to meet the requirements of Business and Professions Code (B&P Code) Section 10170.5.

B&P Code Section 10170.5(a) provides that no real estate license can be renewed unless evidence is submitted by the licensee of successful completion of a three-hour continuing education course in **Ethics, Professional Conduct, and Legal Aspects of Real Estate**. Generally, courses approved by the Department of Real Estate to fulfill this requirement will include three hours of extensive coverage of ethical practices, and where appropriate by way of example, unethical conduct involving real estate licensees which could be considered a violation of one, or more, subsections of B&P Code Sections 10176 and/or 10177.

In an effort to provide real estate licensees with a broader, more flexible and in-depth coverage of the many aspects of ethics in the real estate industry, the Department's general suggested guidelines for sponsors designing a course to fulfill Section 10170.5(a) requirements have been revised as follows:

- Instruction time, including exam time, must total a minimum of 150 minutes (*three classroom hours*).
- Course content must address the subject of ethics as described in B&P Code Section 10170.5(1). This should include relevant legislation, regulations, articles, reports, studies, court decisions, treaties and information of current interest.
- Coverage is allowed of the ethical standards of real estate professional organizations, institutes, societies, etc., as well as specialized areas of real estate practice, e.g., commercial, industrial, business opportunities, mortgage lending, etc.
- Coverage of appropriate court decisions and practical examples and/or case studies as related to real estate practice and ethical behavior are recommended.

### AGENCY COURSE

This section provides the Department's suggested guidelines to qualify a continuing education course to meet B&P Code Section 10153.4 and 10170.5 requirements for a three-hour course in **Agency Relationships and Duties in a Real Estate Brokerage Practice**. The guidelines are designed to allow flexibility in course content in order to permit sponsors to target their courses to specific segments of the real estate industry.

With this goal in mind, the following minimum guidelines apply for courses designed to meet the agency requirement:

- Instruction time, including exam time, must total a minimum of 150 minutes (*three classroom hours*).
- Include as the primary focus of the course, coverage of agency relationships in a modern brokerage practice,

review of duties, required disclosures and confidences and required forms, including those specified under Civil Code Section 2079 et seq. (*Assembly Bill 1034, Chapter 785, §2*), as related to:

- In-house sales
- Cooperative sales
- Dual agency
- Buyers brokerage

It is recommended that other agency topics of current interest which are related to the activities of California real estate licensees be included in the proposed course content. Any legislation, regulation, article, report, court decision, etc., mentioned in the course should be referenced for the student's convenience.

### FAIR HOUSING COURSE

The following are guidelines for use by sponsors in preparing a continuing education ("CE") course on Fair Housing to meet the requirements of Business and Professions Code section 10170.5 ("Section 10170.5") subdivision (a)(4), including the new requirements added last year that will take effect on January 1, 2023:

#### ■ REQUIREMENTS

Beginning January 1, 2023, the three hour fair housing course required for license renewal by Section 10170.5 subdivision (a) (4) must include an interactive participatory component where the licensee shall role play as both a consumer and real estate professional.

#### ■ GOALS

The fair housing course should provide real estate licensees with:

- Knowledge of Federal and State fair housing laws relating to the sale and rental of real estate;
- Knowledge of selected Federal and State civil rights and anti-discrimination laws relating to real property transactions and business establishments;
- The ability to avoid practices that could be considered discriminatory in commercial and residential transactions and facilities;
- An understanding of the voluntary affirmative marketing agreement (VAMA) (a form agreement that can be used to comply with certain regulations implementing the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968), and the accompanying Code of Federal Regulations, tit. 24, sec. 200.615), and its application in the real estate industry;
- The desire to comply with the fair housing laws.

#### ■ TOPICS

The main emphasis of this course should be on covering the federal and state fair housing laws relating to the sale and rental of real

property, and relevant subtopics including, red-lining, advertising, refusing to show property, and block busting. The course should address the laws listed below e. A description of the learning objectives and what the instructor should convey to the students is listed for each law. For each type of discriminatory behavior, the instructor should provide examples taken from the real estate industry.

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***The Federal Fair Housing Act (Title VIII of U.S. Civil Rights Act of 1968, 42 U.S.C. §3604, and 1988 Amendments)***

***Objective:***

The student will be able to identify what classes are protected under this law.

The instructor should convey that this act prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, sex, physical or mental disability, familial status, or national origin. The instructor should address the 1988 amendments, and should define disabilities and familial status for purposes of this law.

***Objective:***

The student will be able to identify major relevant acts considered discriminatory under this law.

The instructor should cover the following acts that constitute prohibited discrimination, if based on race, color, religion, sex, disability, familial status, or national origin:

- Refusing to sell or rent after a bona fide offer has been made;
- Discriminating on the terms, conditions, or privileges of a sale or lease or in providing services or facilities;
- Indicating any preference in advertising or statements, oral or written;
- False representations as to the availability of a dwelling unit including “channeling” and “steering” to particular neighborhoods; and
- Attempting to persuade owners to sell or rent dwellings by making representations about the entry into the neighborhood of certain classes of people.

The instructor should also explain that this act also prohibits discrimination in the financing of housing.

***Objective:***

The student will be able to recognize major exemptions to the law.

The instructor should cover the major exemptions to the law, emphasizing that the exemptions do not apply to advertising and do not apply if the services of a real estate broker were used.

***Objective:***

The student will be able to appreciate the consequences of the violation of this law.

The instructor should convey the importance of following the law, and emphasize who may sue under the act and the severity of the penalties and legal remedies for violation.

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***The Civil Rights Acts of 1966 and 1970 (42 U.S.C. §§1981, 1982)***

***Objective:***

The student will be able to differentiate between the federal Fair Housing Act and the federal Civil Rights Acts, since the protections under each act differ from the other act..

The instructor should convey to the students that this law provides protection to individuals who are denied property rights (all real property rights, not simply residential) based on race. The instructor should emphasize that this act provides that all persons have the same right to make and enforce contracts to the full and equal benefit of all laws and proceedings for the security of persons and property. The instructor should also cover the holdings of court cases related to this law, such as the prohibition of racially motivated opposition to the construction of low-income housing.

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***The Americans with Disabilities Act (42 U.S.C. §12101 et seq.)***

***Objective:***

The student will be able to know and identify the requirements of the Americans with Disabilities Act.

The instructor should convey to the students that this law prohibits discrimination against individuals with disabilities in employment, public services, telecommunications, public accommodations, and commercial facilities. The provisions regarding commercial facilities and public accommodations affect the real estate industry by requiring owners or lessees of such buildings to make sure that their buildings comply with the rules.

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***The Unruh Civil Rights Act (California Civil Code §51)***

***Objective:***

The student will be able to relate this law to real estate offices, property management companies, and homeowners’ associations.

The instructor should convey that this law relates to business establishments, and prohibits them from discriminating based on essentially the same classes as the Federal Fair Housing Act.

***Objective:***

The student will be able to identify major exemptions to this law, such as senior citizen complexes as specified by Civil Code Section 53 and by Federal law.

The instructor should explain why and how senior citizen complexes may be exempt from this law.

***Objective:***

The student will be able to recognize the potential consequences and penalties for violation of this law.

The instructor should describe the potential consequences for violations of this law and related sections of the California Civil Code, including actual damages, punitive damages, and attorney’s fees.

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### ***The Disabled Persons Act (California Civil Code §54 et seq.)***

#### *Objective:*

The student will be able to explain the relevant effects of this law on property owners and others.

The instructor should convey that handicapped and physically disabled persons may not be discriminated against for housing accommodations. The instructor should also explain what is required of property owners for compliance with this law.

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### ***California Fair Employment and Housing Act (California Government Code §12900 et seq.)***

#### *Objective:*

The student will be able to identify acts that are prohibited and the protected classes under this law.

The instructor should convey that this law prohibits discrimination based on age, sex, race, color, religion, ancestry, or national origin in the areas of employment and housing. With respect to housing, the law prohibits discrimination in the sale, rental, lease, or financing of virtually all types of housing. Individuals may file complaints alleging discrimination with the California Civil Rights Department.

#### *Objective:*

The student will be able to identify major exemptions to this law.

The instructor should convey major exemptions to this law to the students.

#### *Objective:*

The student will be able to recognize the consequences of violating this law.

The instructor should convey who may sue under this act and the penalties and legal remedies for violation of this act.

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### ***California Business and Professions Code §125.6 and Regulations of the Real Estate Commissioner (title 10, California Code of Regulations §§2780–2781)***

#### *Objective:*

The student will be able to recognize discriminatory conduct that violates this statute and the Commissioner's Regulations and understands that such conduct can result in license disciplinary action.

The instructor should convey the seriousness with which the DRE regards discriminatory conduct by licensees. Also, the instructor should emphasize that the broker is generally responsible for the adherence to fair housing laws within the brokerage firm.

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### ***Other federal and state laws***

Equal Credit Opportunity Act (15 U.S. Code 1691, et seq.)

The Housing Financial Discrimination Act of 1977 (Holden Act) (California Health and Safety Code §§35800-35833)

Home Mortgage Disclosure Act (HMDA) (California Health and Safety Code 35815-35816)

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Voluntary Affirmative Marketing Agreement (VAMA)

Civil Code Section 1710 - AIDS

Fair Appraisal Act (*Chapter 352, Statutes of 2021*)

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### **TRUST FUND HANDLING COURSE**

The following are guidelines for use by sponsors in preparing a course to meet the requirements of B&P Code Section 10170.5:

#### ■ **GOALS:**

The trust fund handling course should provide the student with knowledge of the legal requirements for receiving and handling trust funds in real estate transactions, as set forth in the Real Estate Law and the Regulations of the Real Estate Commissioner. The course should describe the requisites for maintaining a trust fund account. Further, the course should explain and illustrate trust fund record keeping requirements. Trust fund courses may be individually tailored to describe transactions that are relevant to specific areas of real estate activity, such as residential, commercial, and industrial sales; property management; business opportunities; and mortgage loan brokerage. In the area of mortgage loan brokerage, there are additional legal and regulatory requirements for trust fund handling, which should be covered in a course that is specific to the area.

#### ■ **TOPICS:**

- General information
    - Trust funds vs. non-trust funds
    - Trust fund handling requirements
    - Identifying the owner(s) of the funds
  - Advance fee trust funds
    - Record keeping requirements
    - Disbursement disclosure requirements
    - Approval of advance fee agreement
  - Trust fund bank accounts
    - General requirements
    - Trust account withdrawals
    - Interest bearing accounts
    - Commingling prohibited
    - Trust fund liability
    - Maintaining trust account integrity
  - Accounting records
    - Record keeping systems
    - Recording process
  - Reconciliation of accounting records
  - Documentation requirements
  - Audits and examinations
  - Consequences of trust fund conversion
    - Loss of license
    - Receivership
    - Civil liability
    - Tax liability
    - Criminal sanctions
  - Sample transactions to explain use of records
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### ■ **MORTGAGE LOAN BROKERAGE:**

In addition to covering all of the above-referenced subjects, a trust fund course that is specific to the area of mortgage loan brokerage should also cover the following topics:

- Threshold reporting requirements
- Trust assets
- Quarterly trust fund status reports
- Multi-lender rule
- Servicing
  - Collection/servicing accounts
  - Impound/escrow accounts

### **RISK MANAGEMENT COURSE**

The following are guidelines for use by sponsors in preparing a course to meet the requirements of B&P Code Section 10170.5:

#### ■ **GOALS:**

The Risk Management course should provide the student with knowledge of the principles, practices and procedures calculated to avoid errors and omissions in the practice of real estate licensed activities, and the ability to recognize and resolve issues and appropriately handle situations that most frequently result in litigation.

The course may be individually tailored to focus on specialized areas of real estate licensed activities such as residential sales, commercial or industrial sales, mortgage loan brokerage, property management, or business opportunities.

Risk Management can be applied to a wide range of functions and activities including negligence, negligent misrepresentation, intentional misrepresentation, fraud, constructive fraud, breach of fiduciary duty, breach of contract, violation of Business & Professions Code Section 17200 et seq., breach of duties pursuant to Civil Code Sections 1102 and 2079, etc.

#### ■ **TOPICS:**

- Understanding the Basic Concept of Risk Management
  - Terms and definitions
  - The probability of risk
  - Standard of care issues
- Common Areas of Risk
  - Contract preparation
  - Property conditions; property ownership
  - Trust fund handling
  - Broker supervision
  - Failure to research, investigate, and disclose material facts
  - Kickbacks; RESPA violations
  - Referrals to vendors and third parties
  - Conflicts of interest
  - Negligent advice

- Licensee Activities Likely to Contribute to Risk
  - Agency duties
  - Disclosure
  - Contract familiarity
  - Preparation, formation, interpretation and performance termination
  - Advertising
  - Fair housing
  - Employment issues and office management
  - Trust fund handling
  - Privacy issues
- Provide Practical Examples of High Risk Areas, such as:
  - Improper trust fund handling
  - Misrepresentation of value or property conditions
  - Concealment of material facts
  - Providing false and misleading advertising or statements for which there is no basis of fact
  - Basic anti-trust areas
  - Predatory lending
- Risk Reduction
  - Companies should adopt an official risk management policy that addresses company policies and procedures.
  - Risk can be minimized by planning, training, supervision, and enforcement.
  - The responsibility of brokers, office managers, and supervisors to manage risk by educating, training, and supervising employees and associates to recognize areas of risk.
  - Goals of risk management should be clearly stated, communicated to agents and employees, and understood.
  - Consequences of illegal or unethical behavior.
  - The need for licensees to stay current.
  - Risk is ongoing and elements of risk are reduced through proper training, supervision, and enforcement of office policies.
- Risk Management and the Consumer
  - Impact of the consumer's increased access to information.
  - Consumer's demand for greater value from a licensee's services.
  - Licensees are custodians of public trust when conducting licensed activities.
  - Fiduciary responsibility
- Legal Responsibility
  - Concept of vicarious liability; an individual, supervisor, or company can be held liable for certain conduct.
  - Statutory duties and responsibilities of the licensee.
  - Legal claims resolved by mediation, arbitration, or lawsuit.
  - License discipline by the Department of Real Estate.
  - Claims stemming from self-regulation of the real estate industry such as grievance/arbitration.



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## IMPLICIT BIAS TRAINING COURSE

The following are guidelines for use by sponsors in preparing a two-hour continuing education (CE) course on Implicit Bias training required by Business and Professions Code section 10170.5 subdivision (a)(6), including new requirements added last year that will take effect on January 1, 2023.

The Implicit Bias Training component should provide students with:

- Knowledge of what is Implicit Bias.
  - a. Types of Implicit Bias
  - b. Understanding Identity
  - c. Implicit Attitude Test (IAT)
- Knowledge of what is Explicit Bias.
  - a. Attitudes and beliefs we have about a person or group on a conscious level.
  - b. Provide examples of Explicit Bias
- Understanding of the Impact of Implicit, Explicit, and Systemic Bias.
  - a. How unconscious attitudes can affect the consumers or social groups.
  - b. Understanding the impacts on educational, workplace and economics.
  - c. Impact on housing.
  - d. Highlight the ways that current policies and practices create and reproduce inequitable outcomes that serve to reinforce biases.
- Understanding of the Historical and Social Impacts of Bias.
  - a. Fair Housing laws pertaining to anti-discrimination
  - b. Discriminatory CC&R's
  - c. The Regulations of the Real Estate Commissioner (title 10, California Code of Regulations, Sections 2780-2781)
- Recognizing and addressing implicit bias.
  - a. Individual strategies, including addressing a licensee's own bias.
  - b. Bias override- align behavior with conscious values
  - c. Create protocols to direct behavior to help address bias.
  - d. Perspective taking-empathy
  - e. Institutional strategies

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## MANAGEMENT AND SUPERVISION COURSE

The guidelines set forth below are to assist sponsors in preparing a Management and Supervision course to meet the requirements of B&P Code §10170.5.

Business and Professions Code (B&P Code) Section 10170.5(a) provides that no real estate license can be renewed unless evidence is submitted by the licensee of successful completion of three-hour continuing education courses in Ethics, Agency, Fair Housing, Trust Fund Handling and Risk Management.

Generally, courses approved by the Department of Real Estate to fulfill this new requirement will include three-hours of extensive coverage of broker management and supervision to fulfill the requirements set forth under B&P §10159.2, and Commissioner's Regulations 2724, 2725, 2725.5, 2726 and 2743 and must include the following topics:

- How to establish policies, rules, and procedures including systems to review, inspect and manage offices.
- Supervision of all transactions involving a real estate licensee.
- Retaining and reviewing documents which may have a material effect upon the rights or obligations of a party in a transaction.
- The proper filing, storage and maintenance of documents required under B&P §10148 and Commissioner's Regulation 2729 and 2729.5.
- Proper handling of trust funds according to B&P §10145 and Commissioner's Regulations 2830 through 2836.
- Advertising of any service for which a license is required pursuant to B&P §10140.6, §10159.5, §10235, §10235.5 and §10236.4.
- Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- Regular and consistent reports of licensed activities of salespersons.
- The role and responsibilities of branch or division managers pursuant to B&P §10164, including salespersons acting as branch or division managers.
- The responsibilities of a broker to ensure salespersons working as "teams" are in compliance with B&P §10159.7.
- Supervision over restricted licensees.

The Department's general suggested guidelines for Sponsors designing a course to fulfill the Section 10170.5(a)(6) requirements have been revised as follows:

- Instruction time, including exam time, must total a minimum of 150 minutes (three classroom hours).
  - Course content must address the subject of "broker management and supervision" as described above. Other topics or subjects will not be approved as meeting the required management or supervision course content requirement.
  - Coverage of appropriate court decisions and practical examples and/or case studies as related to the management
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and supervision of licensed agents are recommended, including decisions adopted by the real estate Commissioner involving violations of B&P 10177(h), failure to supervise.

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### **PERTINENT EXCERPTS OF THE BUSINESS AND PROFESSIONS CODE**

**10170.5.** (a) Except as otherwise provided in Sections 10153.4 and 10170.8, a real estate license shall not be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing that shall include an interactive participatory component, during which the applicant shall roleplay as both a consumer and real estate professional.

(5) A three-hour course in risk management that shall include, but need not be limited to, principles, practices, and procedures calculated to avoid errors and omissions in the practice of real estate licensed activities.

(6) A two-hour course in implicit bias training that shall include both of the following:

(A) A component regarding the impact of implicit bias, explicit bias, and systemic bias on consumers and the historical and social impacts of those biases.

(B) Actionable steps licensees can take to recognize and address their own implicit biases.

(7) In addition to paragraphs (1) to (6), inclusive, a broker shall complete a three-hour course in the management of real estate offices and supervision of real estate licensed activities that shall include, but need not be limited to, the requirements described in subdivision (a) of Section 10159.7 and Section 10164.

(8) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in the commissioner's approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities,

redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

(9) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques, including relevant information to assist a salesperson or broker in understanding how to be effectively supervised by a responsible broker or branch manager, that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, a real estate license shall not be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a nine-hour update survey course that covers the subject areas specified in paragraphs (1) to (7), inclusive, of subdivision (a).