

DEPARTMENT OF REAL ESTATE FORUM



Long Beach Convention Center

Long Beach, CA

October 12, 2018



TODAY'S AGENDA



Opening Remarks – Acting Commissioner Dan Sandri

- Operations Report –
Sandra Knau, Assistant Commissioner-Administration
- Subdivision Report –
Chris Neri, Assistant Commissioner, Subdivision
- Audit Report –
Tom Cameron, Assistant Commissioner, Audits
- Legal, Legislation and Consumer Recovery Account Report –
Stephen Lerner, Assistant Commissioner, Legal Affairs
- Q & A and Dialogue
Dan Sandri and Panel

DEPARTMENT OF REAL ESTATE OPERATIONS REPORT



Sandra Knau
Assistant Commissioner
Administration & Licensing

DRE Operations

▶ Five District/Exam Offices

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

▶ **Authorized Positions: 354**

Financial Statistics

FY 2017-2018

DRE's Budget **\$54,520,000**

Revenues:

- ▶ Licensing-\$35,296,368
- ▶ Subdivisions-\$8,787,606
- ▶ Examinations-\$4,332,905
- ▶ Other- \$2,285,453
- ▶ **Total Revenues-\$50,702,332**

Financial Statistics

FY 2017-2018

DRE's Budget **\$54,520,000**

- ▶ Personnel-\$33,964,892
- ▶ DCA Pro Rata-\$5,496,101
- ▶ Facilities-\$4,152,960
- ▶ Recovery Claims-\$1,424,559
- ▶ Other-\$4,934,484
- ▶ **Total Expenditures-\$49,972,996**

Information Technology Updates

- ▶ Subdivision Online Public Report Application System (SOPRAS) Launched September 1st, 2018
- ▶ Broker-Associates on eLicensing- Tentative launch date October 2018

Information Technology

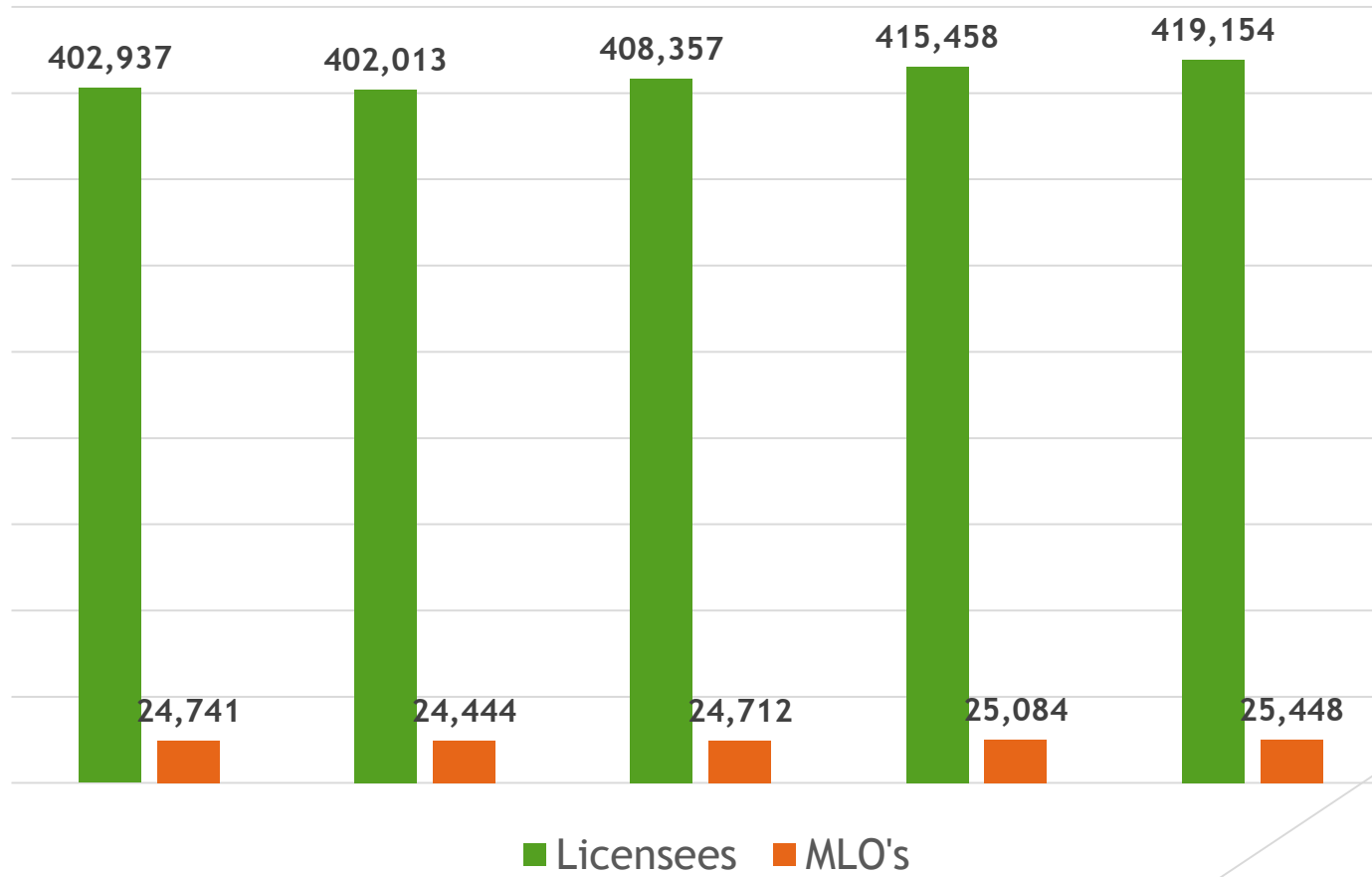
What's Next-

- ▶ Officer renewals on eLicensing-tentative date of December 2018
- ▶ Online submittal of exam and license applications
- ▶ Second phase of SOPRAS
- ▶ Website redesign

Licensing Workload

Exams Scheduled	FY 2016-2017	FY 2017-2018
RES	53,102	52,071
REB	4,816	5,195
New Licenses		
RES	24,358	23,550
REB	4,764	4,571
Renewals		
RES	48,334 (81%)	53,612 (80%)
REB	28,452 (89%)	29,767 (91%)
Total Licenses		
	415,458	419,154
Total MLO's		
	25,084	25,448

Licensing Population Last 5 Years



Enforcement Workload

Fiscal Year	FY 2016-2017	FY 2017-2018
Complaints Received	7,895	6,197
Complaints Referred for Investigation	4,796	4,181
Complaints Closed	2,643	3,237
Citations Issued	714	868

Department of Real Estate Administration & Licensing

Contact:

Sandra Knau

Assistant Commissioner-Administration &
Licensing

Phone: (916) 263-7300



SUBDIVISION PROGRAM OVERVIEW

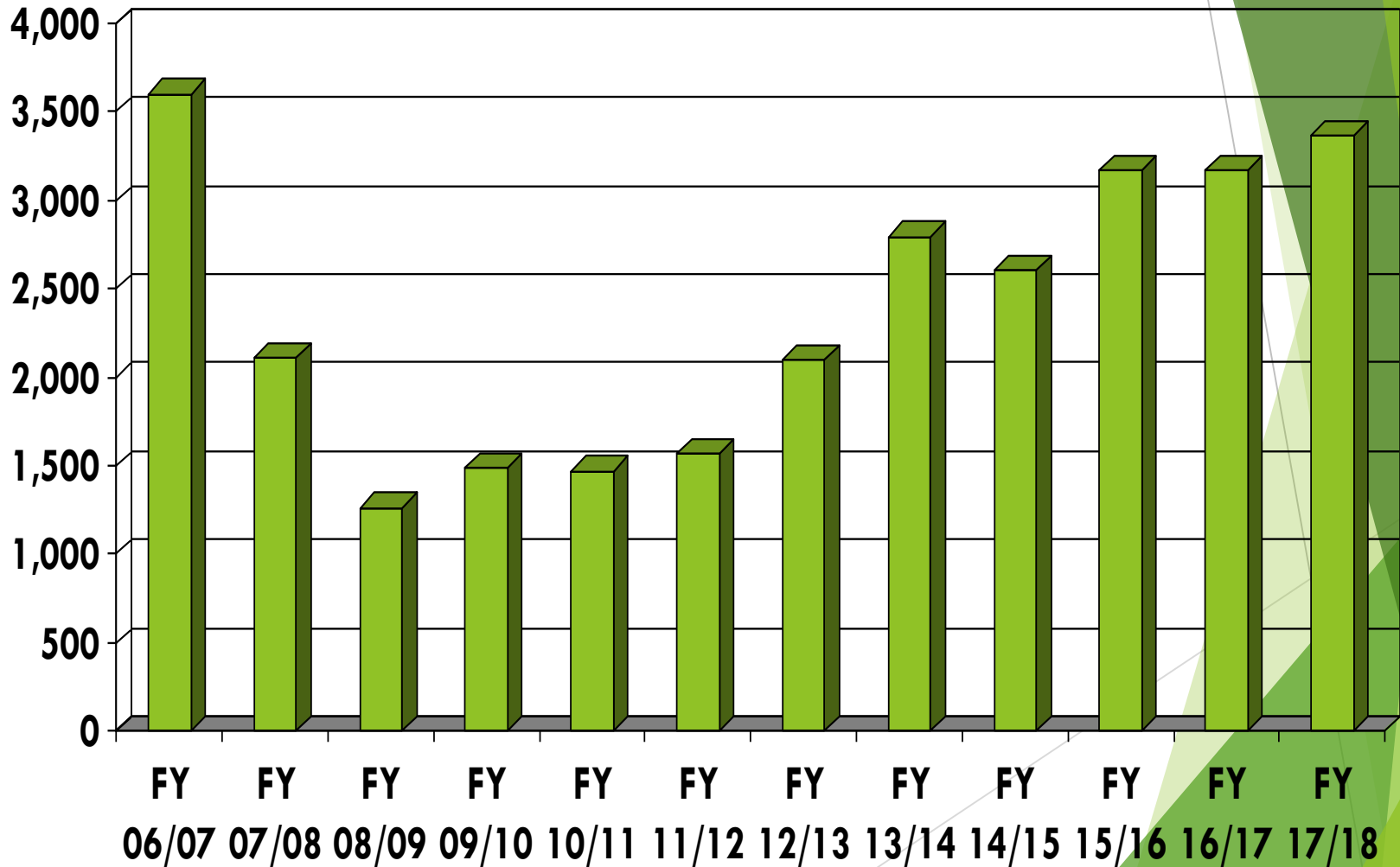


Chris Neri, Assistant Commissioner

Subdivision Filings (July 1 - June 30)

	FY 16/17	FY 17/18	% Change
Final Public Reports Applications Received	3168	3368	6.31%
Number of Lots/Units for Issued Final Public Reports	38,390	40,581	5.71%

Final Public Reports Issued by FY



Subdivision Map Act

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

Subdivided Lands Act (SLA)

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

- ▣ Affirmative Standards
- ▣ Disclosure

Affirmative Standards

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

Disclosure

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

What is covered by the SLA

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

Exemptions

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

Types of Subdivisions

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

Subdivision Sub-Types

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

Types of Public Reports

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

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

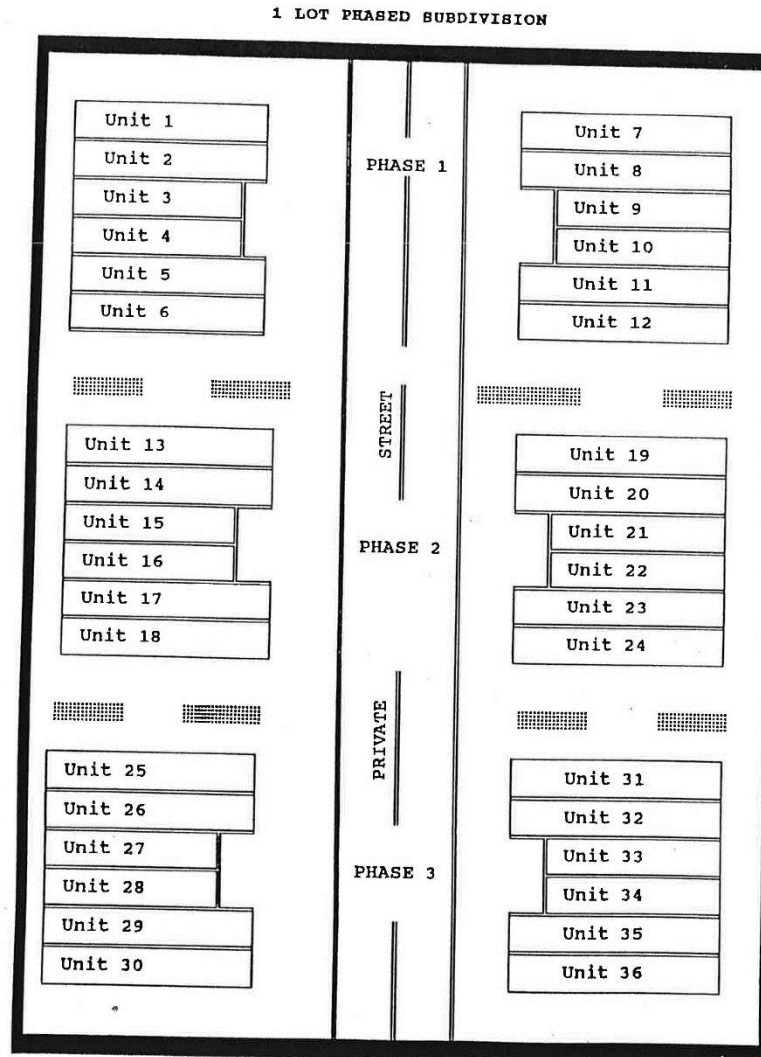
Budgets

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

Project Phasing

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

Phased Subdivision



Homeowner Associations (HOA)

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

HOA Governing Documents

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

Common Violations

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

What Do You Need To Know

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

Resale Transactions

Davis-Stirling - Civil Code 4525

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

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

Resale Transactions

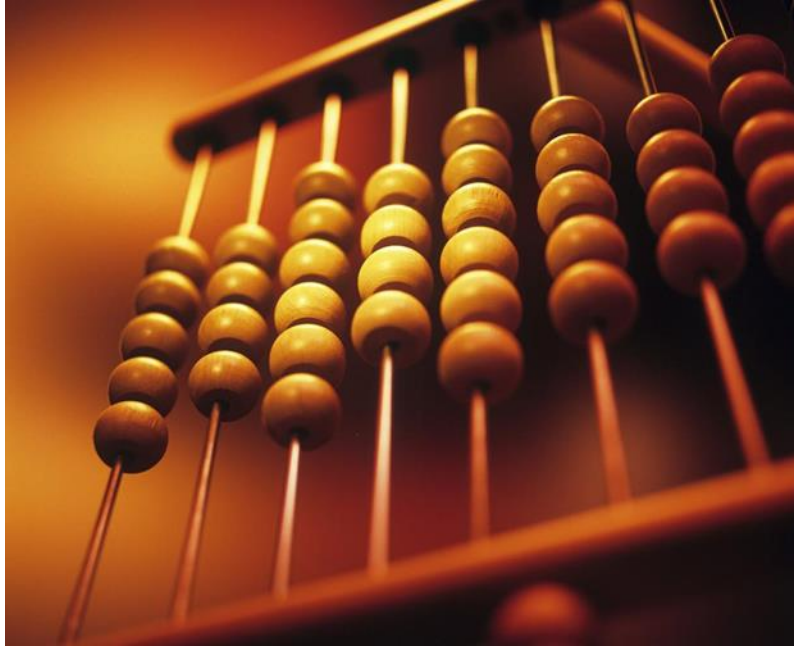
Davis-Stirling - Civil Code 4525

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

Where to Find More Information

- ▶ 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)

Audit Report



Tom Cameron
Assistant Commissioner, Audits

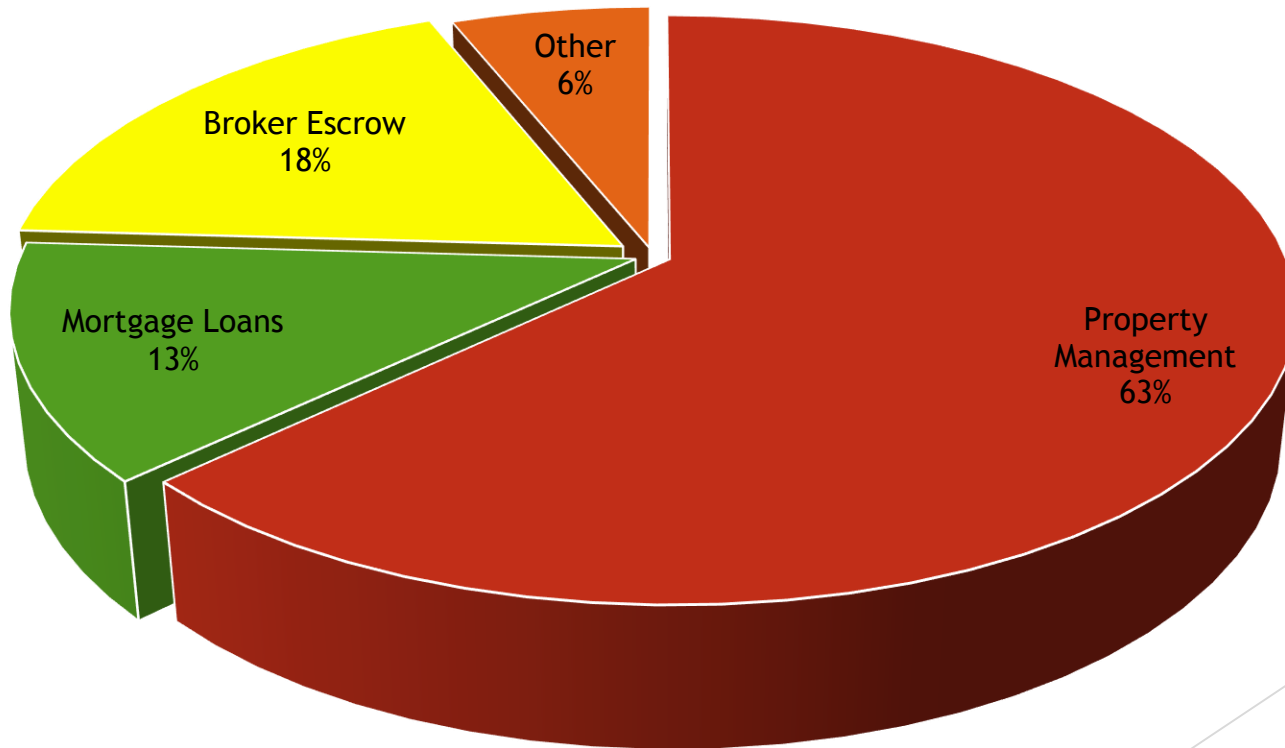
Trust Fund Handling

- ▶ Business & Professions Code §10145
- ▶ 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

Audits Closed by Activities Statewide

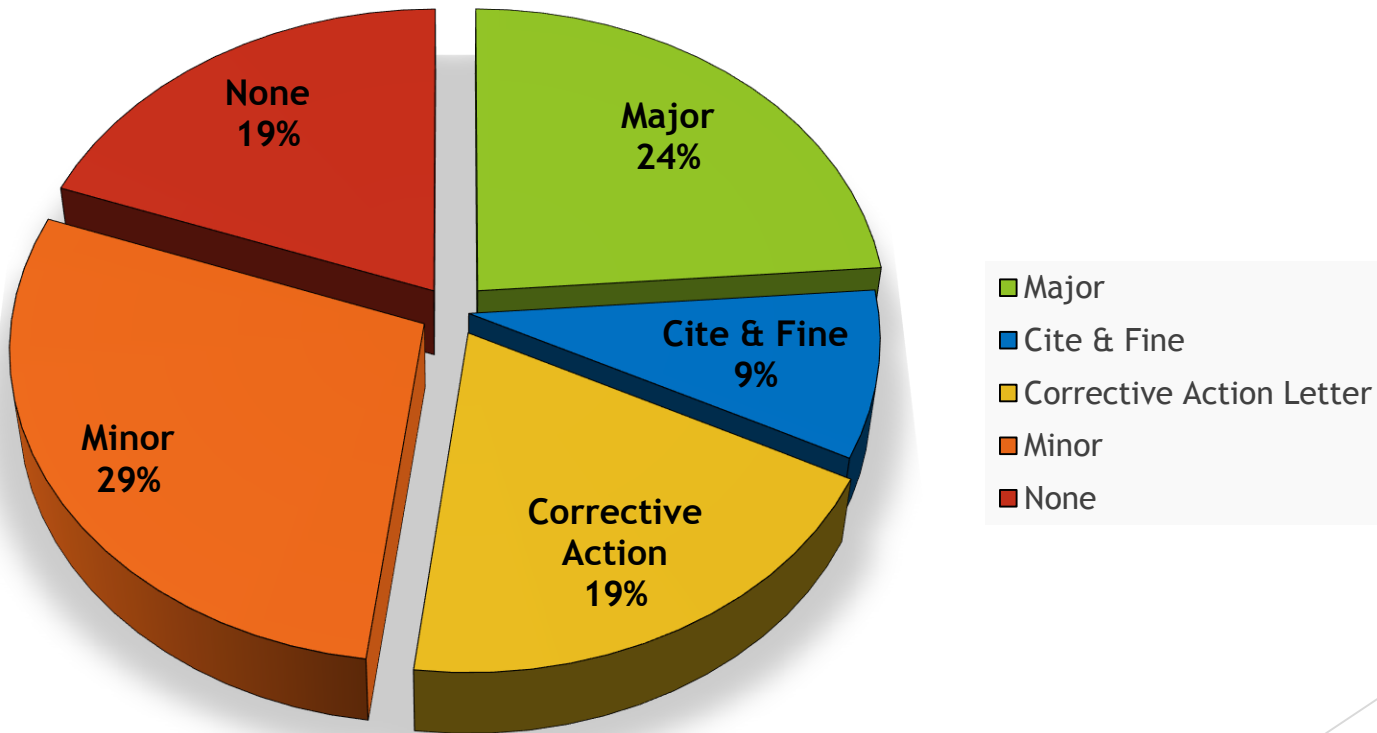
7/1/17 - 6/30/18

656 Audits Completed



■ Property Management ■ Mortgage Loans ■ Broker Escrow ■ Other

Findings of Audits Closed 7/1/17 - 6/30/18



Shortage Findings of Audits Closed

	7/1/16 - 6/30/17	7/1/17 - 6/30/18
Total Audits Closed	598	656
Total \$ Shortage	\$10.3 million	\$11.0 million
% Audits with Shortage	28.6%	33.0%
#(%) with \$10K+ Shortage	53 (8.9)	75 (11.4)

DRE Home Page

CA.GOV Department of Consumer Affairs Bureau of Real Estate

HOME CONSUMERS LICENSEES EXAMINEES

Verify a License
Check the status of a real estate licensee using a name, address, or license ID
Start Now...

Our Mission
The mission of the California Department of Real Estate is to safeguard and promote the public interests in REAL ESTATE MATTERS through licensure, regulation, education and enforcement.

I am a... | Select an item from the list

Essential Information

- Verify a Real Estate License
- 2018 Real Estate Law
- Consumer Alerts
- Current News
- FAQs
- Forms
- File a Complaint
- Real Estate Business Resources
- Complete List of Publications
- Invitation for Public Comment/Hearing Notices
- Course Provider Resources (Pre-License & CE)
- Current Application Processing Timeframes
- Advisory – Implementation of Petition Process for Removal of Discipline Delayed

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DRE Public Information Line
• 1-877-373-4LIC (4542)

Visit His Webpage
Governor
Edmund G. Brown Jr.

Secretary
Alexis Podesta

Acting Real Estate Commissioner
DRE
DANIEL J. SANDRI

Connect With Us

Real Estate Business Resources

INDUSTRY/LICENSEE RESOURCES

- Real Estate Law
- Real Estate Reference Book
- Broker Compliance Evaluation Manual
- Broker Self-Evaluation (RE 540)
- Course Provider Resources (Pre-License & CE)
- Search for Approved CE Course Offerings
- Online Access to Public Reports
- Disclosures in Real Property Transactions
- Doing Business on the Internet
- DRE Composite Report of Mortgage Loan/Trust Deed Annual Reports
- Guidelines for Unlicensed Assistants
 - Additional Information
- Licensee Advisories and Alerts
- Most Common Enforcement Violations
- Professional Responsibility: An Overview
- Professional Responsibility: Course Booklet
- Sample Trust Account Review (TAR) Reports
- Ten Most Common Violations Found in DRE Audits
- Trade Associations
- Trust Funds
- DRE Business Address Lookup
- Trust Account Reconciliation (Reg. 2831.2) * PowerPoint, 23MB
- Opening a Real Estate Broker Trust Account
- A Guide to Understanding Residential Subdivisions in California
- Residential Subdivision Buyer's Guide
- Movement Toward Professionalism - What Makes a Real Estate Practitioner a Professional
- Don't Be Surprised if You Get a Friendly Visit from a DRE Representative - Community Outreach

▶ Broker Compliance Evaluation Manual

▶ Ten Most Common Violations Found in DRE Audits

▶ Trust Funds

▶ Trust Account Reconciliation (Reg. 2831.2) * PowerPoint, 23MB

▶ Opening a Real Estate Broker Trust Account

STATE AND FEDERAL AGENCIES

Business & Professions Code §10148

- ▶ After notice, the books, accounts and records shall be made available for examination and copying
- ▶ All real estate records are required to be retained for three years
- ▶ DRE can charge the REB for the cost of any audit

Business & Professions Code §10148

- ▶ The bureau may suspend or revoke a licensee if they destroy, alter, conceal, mutilate or falsify any of the books or documents required by this section or have been sought in connection with an investigation or audit

Audit Case

- ▶ Investigative PM audit
- ▶ Auditee asked for a 2-week delay
- ▶ Entrance conference was held and REB mentioned an \$80,000 shortage caused by mortgage payments
- ▶ Bank accounts were actually short over \$160,000
- ▶ Exit conference

Department of Real Estate Audit Section

Tom Cameron - Assistant Commissioner, Audits

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916 263-8704





LEGAL AFFAIRS



Stephen Lerner
Assistant Commissioner
Legal Affairs

LEGAL AFFAIRS

- ADMINISTRATIVE PROSECUTIONS
- CONSUMER RECOVERY ACCOUNT
- STATUTES
- REGULATIONS

Legal Affairs

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

LEGAL AFFAIRS

DISPOSITION OF CASES

Category	July 1, 2017 – June 30, 2018
Desist & Refrain Orders	49
License Suspensions	92
License Surrenders	99
License Revocations	353
Case Dismissals	100
Public Reprovals	9
Stipulations & Waivers/Agreements	194
Application Denials	152
License Denials and Restrictions	68
Bar Orders	7
Total	1,123

CONSUMER RECOVERY ACCOUNT

Consumer Recovery Account (July 1, 2017 – June 30, 2018)

Category		Total
Claims Filed		66
Disposition of Claims	Paid	39
	Denied	86
Amount Paid		\$1,424,559

Consumer Recovery Account

Claims Filed & Total Amount Paid

(Fiscal Year)

Claims Filed	
FY 12/13	186
FY 13/14	153
FY 14/15	159
FY 15/16	76
FY 16/17	70
FY 17/18	66

Consumer Recovery Account

Claims Filed & Total Amount Paid

(Fiscal Year)

Total Amount Paid	
	\$2,625,615 (77 claims paid)
	\$4,286,536 (104 claims paid)
	\$4,898,912 (119 claims paid)
	\$3,396,293 (81 claims paid)
	\$2,022,602 (89 claims paid)
	\$1,424,559 (39 claims paid)

CONSUMER RECOVERY ACCOUNT

Claims History

Since 1964, CalBRE has paid over \$61 million to victims

Approximately 54% of all applications paid

Update: 2018 Legislation



Overview of 2018 Legislative Activity

- Bills that reached the Governor's Desk: 1,217
- Bills Signed: 1,016
- Bills Vetoed: 201



Overview of 2018 Legislative Activity

Signed by Governor

- AB 1289 (Arambula)
- AB 2138 (Chiu and Low)
- AB 2884 (Irwin)
- SB 721 (Hill)

AB 2884(Irwin) AB 1289 (Arambula)

- Both bills include a “Savings Clause” added to statute to preserve existing legal duties and relationships
- The bills move real estate definitions from the Civil Code to the Real Estate Law
- Licensees must report a felony criminal complaint filed against them to the DRE, just as with an indictment currently
- Brokers are no longer required to keep the paper licenses for themselves and their salespersons
- AB 1289 amends Civil Code Sections 2079.16 and 2079.21 to expand the information a dual agent may withhold from clients

AB 2138 (Chiu and Low)

Existing law:

- Authorizes denial of license if applicant is convicted of felony or substantially-related misdemeanor
- Authorizes denial of license if applicant knowingly made a false statement of fact that is required to be disclosed on his/her application
- Precludes denial of a license solely based on a conviction if conviction dismissed or expunged

AB 2138 (Chiu and Low)

New law:

- Precludes denial of license if applicant convicted of a crime that is more than 7 years old
 - Exception: Convictions for serious felonies or financial crimes
- Precludes denial of license based on acts underlying a conviction if conviction has been dismissed or expunged
- Precludes entity from inquiring about criminal history on license applications
- Effective July 1, 2020

SB 721 (Hill)

- Inspection of decks or balconies for buildings with 3+ dwelling units
 - Performed by licensed architect, engineer or specified building contractor
- Inspections to be conducted
 - Initially by January 1, 2025
 - Subsequently every 6 years
- Repairs to be completed within 120 days
- Inspection report submitted to DRE
 - Condition to issuance of final public report

Regulations

- First Point of Contact
- Broker Associate Reporting
- Removal of Discipline from CalBRE's Website

First Point of Contact

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

First Point of Contact (Continued)

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

Broker Associates

AB 2330 (Ridley-Thomas)

- Prior law required DRE to post information reported on salespersons associated with a broker
- New law extends requirement to brokers acting as salespersons for another broker (i.e., Broker Associates)
- New law requires DRE to post information reported on salespersons and Broker Associates associated with a broker
- Both the responsible broker and the broker associate shall sign the form
- Effective date: May 31, 2018

Petitions to Remove Discipline from Website

AB 2330 (Ridley-Thomas)

- Prior law required DRE to post status of every license on its website
 - Including all discipline
- New law authorizes the Commissioner to set up a petition process to remove discipline from the website
 - Licensees only (not available to unlicensed or non-licensed)
 - Discipline must be 10 years or older
 - Petitioner must pay a fee set by regulation
 - Findings that no credible risk to members of the public exists as a condition to removing discipline
- Target Implementation Date: January 1, 2019

Advertising: DBA v. Team Names



Example 1



Example 2



Example 3



Example 4



Example 5

The logo for Fred Real Estate Group features the word "fred" in a white, lowercase, sans-serif font inside a green rounded rectangle with a white border. Below this, the words "REAL ESTATE GROUP" are written in a bold, uppercase, sans-serif font. A thin green horizontal line separates this from the tagline "The answer in real estate." which is in a green, lowercase, sans-serif font. The entire logo is set against a white background with a green geometric pattern on the right side.

fred

REAL ESTATE GROUP

The answer in real estate.

DBA's

Bus. & Prof. Code section 10159.7(a)(2):

“‘Fictitious business name’ means a professional identity or brand name under which activity requiring a real estate license is conducted”

DBA's

2 Classifications of DBA's:

- Broker-owned fictitious business name
- Salesperson-owned fictitious business name
 - Contract with responsible broker authorizing salesperson to file/obtain a fictitious business name (Bus. & Prof. Code §10159.5(a)(2))
 - Use of the name as permitted by the responsible broker (Bus. & Prof. Code §10159.5(b)(1))
 - Broker still responsible for supervising salespersons ((Bus. & Prof. Code §10159.5(b)(2))

DBA's

Steps to obtain a fictitious business name:

1. If salesperson, contract with broker for authority to file/obtain a fictitious business name
2. Obtain a fictitious business name from the county clerk
3. Deliver a fictitious business name application to DRE
 - a. Signed by the responsible broker
 - b. Pay applicable fees

DBA's

Reasons why a DBA application would be denied:

- Misleading or constitute false advertising (Commissioner's Regulations §2731(c)(1))
- Implies a partnership or corporation when such an entity does not exist (Commissioner's Regulations §2731(c)(2))
- Includes the name of a real estate salesperson (Commissioner's Regulations §2731(c)(3))
- Is the name formerly used by a licensee whose license has since been revoked (Commissioner's Regulations §2731(c)(5))

Team Names

Bus. & Prof. Code section 10159.7(a)(5):

“Team name’ means a professional identity or brand name used by a salesperson . . . for the provision of real estate licensed services.”

Team Names

- Used by two or more real estate licensees
- The team name includes the surname of at least one licensee member of the team
- The team name includes “associates,” “group,” or “team”
- The team name does not include:
 - Real estate brokerage
 - Broker
 - Brokerage
 - Other term that leads a member of the public to believe that the team is offering real estate brokerage services
 - Other term that suggests or implies the existence of a real estate entity independent of a responsible broker

Advertising - Responsible Broker's Identity

Salesperson-owned DBA's

- Advertising and solicitation materials using a fictitious business name shall include the responsible broker's identity in a manner equally as prominent as the fictitious business name (Bus. & Prof. Code §10159.5(d))

Team Names

- The responsible broker's identity shall be displayed as prominently and conspicuously as the team name in all advertising and solicitation materials (Bus. & Prof. Code §10159.6(b))

Example 1



Example 2



Example 3



Example 4



Example 5

fred

REAL ESTATE GROUP

The answer in real estate.

Department of Real Estate Legal Affairs

Contact:

Stephen Lerner- Assistant Commissioner,

Legal Affairs

Stephen.Lerner@dre.ca.gov

(916) 263-8704



Q&A

THANK YOU

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

www.bre.ca.gov

Next Meeting to be held in
Sacramento, CA