



# BUREAU OF REAL ESTATE FORUM



Monterey Portola Hotel

Monterey, CA

January 18, 2018

# TODAY'S AGENDA

## Opening Remarks – Commissioner Wayne Bell

- **Operations Report –**  
Dan Sandri, Chief Deputy Commissioner
- **Enforcement Report –**  
Rick Fong, Asst. Commissioner, Enforcement
- **Legal, Legislation and Consumer Recovery Account Report –**  
Stephen Lerner, Assistant Commissioner, Legal Affairs
- **Audit Report –**  
Tom Cameron, Assistant Commissioner, Audits
- **Q & A and Dialogue**  
Wayne Bell and Panel



# BUREAU OF REAL ESTATE OPERATIONS REPORT

Daniel Sandri  
Chief Deputy Commissioner



# Licensing Workload

Exams Scheduled	January through December 2016	January through December 2017
RES	50,201	55,318
REB	4,784	5,047
New Licenses		
RES	22,916	25,166
REB	4,577	4,611
Renewals		
RES	46,308 (82%)	51,550 (81%)
REB	28,482 (90%)	29,400 (91%)
Total Licenses		
	412,314	419,016
Total MLO's		
	25,711	26,310

# Subdivision Workload

	January through December 2016	January through December 2017
Final	3,253	3,218
Renewal	243	208
Amendment	293	316
Total Applications Received	3,789	3,742

# What's Happening?

- ▣ Transition CalBRE → DRE
  - We're Making It Happen!
    - Fiscal/Budget
    - Human Resources
    - Legislation
    - Publications and Communications
    - Information Security Officer

# ENFORCEMENT REPORT



Rick Fong  
Assistant Commissioner  
Enforcement



# Bureau of Real Estate Enforcement

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Enforcement

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# LEGAL, LEGISLATIVE AND CONSUMER RECOVERY ACCOUNT REPORT

Stephen Lerner  
Assistant Commissioner  
Legal Affairs



# CalBRE – LEGAL AFFAIRS DISPOSITION OF CASES

Category	Jan. 1, 2017 – Dec. 31, 2017
Desist & Refrain Orders	66
License Suspensions	96
License Surrenders	73
License Revocations	361
Case Dismissals	53
Public Reprovals	7
Stipulations & Waivers/Agreements	185
License Application Denials	155
License Denials with Right to Restricted License	58
Bar Orders	5
<b>Total</b>	<b>1,059</b>

CALIFORNIA BUREAU OF  
REAL ESTATE'S  
CONSUMER RECOVERY  
ACCOUNT



# California Bureau of Real Estate Consumer Recovery Account (January 1, 2017 – December 31, 2017)

Category		Total
Claims Filed		68
Disposition of Claims	Paid	93
	Denied	76
Amount Paid		\$2,244,882

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

Claims Filed	
2012	225
2013	131
2014	185
2015	69
2016	87
2017	68

# Consumer Recovery Account

## Claims Filed & Total Amount Paid

(Calendar Year)

Total Amount Paid	
2012	\$3,248,012 (58 claims paid)
2013	\$3,074,790 (81 claims paid)
2014	\$5,459,413 (140 claims paid)
2015	\$3,922,533 (104 claims paid)
2016	\$1,946,785 (43 claims paid)
2017	\$2,244,882 (93 claims paid)

# CONSUMER RECOVERY ACCOUNT

## *Claims History*

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

Approximately 54% of all applications paid



# CalBRE - 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
  - 45-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)

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

# Broker Associates

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

# Broker Associates

- ▣ Proposed Regulations
  - Regulations under development
    - ▣ 45-day Public Comment Period coming soon
  - Responsible broker to notify CalBRE within 5 days of affiliation with Broker Associate
  - Notification can be provided on a CalBRE-approved form

# Broker Associates

- ▣ RE 215- Broker Associate Affiliation Notification form created for this specific reporting requirement
- ▣ For notifications of affiliation, signatures of both the responsible broker and broker associate are required
- ▣ For terminations, only one signature is required on the form

# Broker Associates

- ▣ Other broker license changes need to be completed on the broker change application form (RE 204) such as:
  - ▣ Main office address changes
  - ▣ Adding a fictitious business name
  - ▣ Canceling a fictitious business name

# Broker Associates

- ▣ Further information can be found on our website
  - Frequently Asked Questions
  - Licensee Advisory
  - Real Estate Bulletin Article published in the Fall bulletin

# Petitions to Remove Discipline from Website

- ▣ AB 2330 (Ridley-Thomas)
  - Prior law required CalBRE to post status of every license on its website
    - ▣ Including all discipline
  - New law authorizes the Commissioner to set up a petition process to remove discipline from the website
    - ▣ Licensees only (not available to unlicensed or non-licensed)
    - ▣ Discipline must be 10 years or older
    - ▣ Petitioner must pay a fee set by regulation
    - ▣ Findings that no credible risk to members of the public exists as a condition to removing discipline
  - Effective Date: January 1, 2018



# Petitions to Remove Discipline from Website

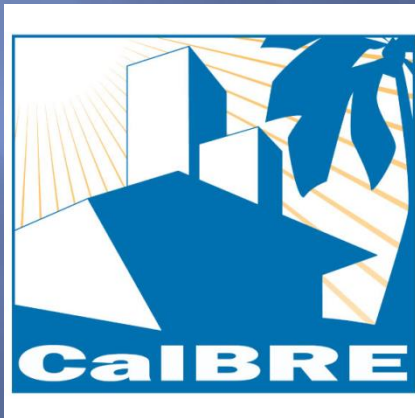
## ▣ Proposed Regulations

- Target Implementation Date: July 1, 2018
- Regulations under development
  - ▣ 45-day Public Comment Period coming soon
- CalBRE recommends that a petitioner submit his/her petition on a CalBRE-approved form
  - ▣ Must disclose all past convictions, pending civil/criminal actions, and past professional license discipline
  - ▣ Must submit fingerprints via Live Scan Service
  - ▣ Documentary evidence to support rehabilitation and elimination of “credible risk”
- Petition fee shall be paid
- Discipline must be 10 years or older

# Petitions to Remove Discipline from Website

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

# Update: 2017 Legislation



Bureau of Real Estate

# Signed into law: SB 764 (Moorlach)

- ▣ Relates to unlicensed signatories to a broker's client trust fund account
- ▣ Allows insurance (as well as the present bonding requirement) as protection against misdeeds by the unlicensed signatory

## Signed into law: AB 1139 (Reyes)

- ▣ Relates to “Transfer Fees” recorded on a title to real property, requiring a payment each time title transfers
- ▣ Existing law requires a document containing certain disclosures to be recorded in the property’s chain of title as a condition to payment of a transfer fee

# AB 1139 (Reyes) (Continued)

- ▣ Under federal law, with limited exceptions, federal housing agencies are prohibited from purchasing, investing or otherwise dealing in mortgages on properties encumbered by private transfer fee covenants, securities backed by such mortgages, or securities backed by the income stream from such covenants
- ▣ This bill will require that the transfer fee disclosure document include a warning that a person purchasing encumbered real property may have difficulty obtaining financing

# Signed into law: AB 1284 (Dababneh)

- ▣ Places licensing of Property Assessed Clean Energy (PACE) program administrators under the Department of Business Oversight.
  - Inserts a provision in the Real Estate Law to exclude PACE practices from the scope of real estate licensing
- ▣ For licensees with special interest in PACE consumer protection, other bills relating to that program that are awaiting signature include AB 1070 (Gonzalez Fletcher) and SB 242 (Skinner)

# Signed into law: AB 646 (Kalra)

- ▣ Existing law requires the agent for transferor of real property located within special flood hazard area or area of potential flooding to disclose that fact to prospective transferees
- ▣ New law requires the owner/landlord of real property located within special flood hazard area or area of potential flooding to notify the tenant regarding the risk of flooding
  - Effective July 1, 2018



# Signed into law: SB 173 (Dodd)

- ▣ Reverts the Bureau of Real Estate back to the Department of Real Estate
- ▣ Effective on July 1, 2018



# Signed into law: 15 Housing Bills

- ▣ SB 2 (Atkins)
  - Imposes a new \$75 to \$225 fee on real estate transactions
  - Estimated to generate approx. \$250-\$300 million per year to fund affordable housing development, programs to assist homeless people, and long-range development planning in cities and counties
  
- ▣ SB 3 (Beall)
  - Place \$4 billion housing bond on November 2018 ballot
  - If approved, \$1 billion would go to the CalVet home loan program
  - If approved, \$3 billion would help fund low-income projects and development near jobs and public transportation
  
- ▣ SB 35 (Wiener)
  - For communities that have not built enough housing (at all income levels), permits developers to bypass local review process for housing development
  - Mandates higher construction worker pay and benefits on projects with 10+ units

# Housing Bills (Cont.)

- ▣ SB 166 (Skinner)
  - Requires local government to have development sites identified, at all times, for all unmet housing needs
  
- ▣ SB 167 (Skinner)/ AB 678 (Bocanegra)
  - Strengthens the state's Housing Accountability Act, which seeks to prevent communities from killing proposed housing projects or homeless shelters
  
- ▣ SB 540 (Roth)
  - Allows cities and counties to create preplanned zones for affordable housing, helping to speed development in city centers close to jobs and public transit
  - Contains minimum benchmarks for percentage of units sold or rented to moderate-income (30%), low-income (15%) and very low-income households (5%) and the number of market-rate projects set aside for low-income people (10%)

# Housing Bills (Cont.)

- ▣ AB 72 (Chiu)
  - Gives state housing officials new authority to report violations to the Attorney General if jurisdictions are not complying with their own housing plans or violate state law
  
- ▣ AB 73 (Chiu)
  - Allows cities and counties to designate so-called “housing sustainability districts,” which streamline the development process for new housing near transit
  - Seeks to speed any lawsuit challenging an environmental review through the courts
  - Mandates at least 20% of housing within district to be affordable to low-income people

# Housing Bills (Cont.)

- ▣ AB 571 (Garcia)
  - Expands the state low-income tax credit program to farmworker housing
- ▣ AB 879 (Grayson)
  - Changes state's housing element law, which requires cities and counties to plan for new development at all income levels
  - Requires cities and counties to address and, where legally possible, remove hurdles to housing production
- ▣ AB 1397 (Low)
  - Requires cities and counties to zone land that can realistically support housing development
  - Requires the residential parcels to have access to sufficient infrastructure for water, sewer and other public utilities

# Housing Bills (Cont.)

- ▣ AB 1505 (Bloom)
  - Permits cities and counties to mandate that a portion (at least 15%) of units in market-rate housing be set aside as affordable to low- or moderate-income people
- ▣ AB 1515 (Daly)
  - Strengthens the Housing Accountability Act by making it harder for cities and counties to vote down housing projects or emergency shelters that meet existing zoning and other land-use regulations
- ▣ AB 1521 (Bloom)
  - Requires public notification when low-income housing protections expire and units can be converted to market-rate

# 2017 Court Decisions

- ▣ Skulason v. CalBRE
  - Court of Appeals, 1<sup>st</sup> Appellate District
  - Decided August 16, 2017
  - Facts
    - ▣ Between 1996 and 1999, Skulason convicted of 3 misdemeanors involving the operation of a vehicle
    - ▣ In 2000, Skulason applied for a real estate salesperson license and fully-disclosed all convictions in her application
    - ▣ CalBRE filed a Statement of Issues seeking to deny her license application
      - The Statement of Issues referenced her 3 convictions

# 2017 Court Decisions (Cont.)

## ▣ Skulason v. CalBRE (Cont.)

### ▪ Facts (Cont.)

- ▣ In 2004, the parties settled their administrative dispute via a stipulation and waiver
  - CalBRE agreed to issue a restricted salesperson license
  - No requirement to keep the settlement confidential
- ▣ In 2007, Skulason obtained dismissals of her misdemeanor convictions pursuant to Penal Code sections 1203.4 and 1203.4a
- ▣ In 2010, Skulason successfully applied to remove the restrictions on her license and obtained a plenary license
- ▣ In 2010, Skulason requested CalBRE to remove her prior disciplinary history from its website
- ▣ CalBRE refused and Skulason filed a lawsuit requesting the Superior Court to order CalBRE to take down her disciplinary history



# 2017 Court Decisions (Cont.)

- ▣ Skulason v. CalBRE (Cont.)
  - Bus. & Prof. Code section 10083.2(a) – Requires the Commissioner to provide on its website information on the status of every license
    - ▣ “License Status” includes information on suspensions, revocations, and accusations filed pursuant to the Administrative Procedures Act
    - ▣ CalBRE also includes information on statements of issue, stipulations & agreements, and stipulations & waivers as part of “License Status”
  - Bus. & Prof. Code section 10083.2(c) – Effective January 1, 2018, permits the Commissioner to remove discipline history from its website if discipline is more than 10 years old, the petitioner pays a fee, and the Commissioner finds that the petitioner no longer represents a credible risk to members of the public

# 2017 Court Decisions (Cont.)

- ▣ Skulason v. CalBRE (Cont.)
  - Skulason argued
    - ▣ Retaining the public display of her disciplinary information violated her constitutional right to privacy
    - ▣ CalBRE's posting of expunged convictions obstructs the legislative intent of
      - Penal Code sections 1203.4 and 1203.4(a) which release a criminal defendant from all penalties and disabilities resulting from the offense
      - Labor Code section 432.7 which extends certain protections to job applicants who have obtained dismissals of their convictions

# 2017 Court Decisions (Cont.)

- ▣ Skulason v. CalBRE (Cont.)
  - Appellate Court decision
    - ▣ No legal authority/affirmative duty requiring CalBRE to remove publicly available information from its website
    - ▣ Excellent explanation of expungement
      - Expungement does not equal factual innocence
      - Expungement does render the conviction a legal nullity
    - ▣ Labor Code section 432.7 prohibits conduct of “employers” and CalBRE is not her employer
    - ▣ No right to privacy in publicly available information

# 2017 Court Decisions (Cont.)

- ▣ Skulason v. CalBRE (Cont.)
  - Appellate Court decided in favor of CalBRE
  - Skulason petitioned the California Supreme Court for review
  - Skulason and 9 third-parties requested the California Supreme Court to depublish the appellate court decision
  - The appellate court decision is final
    - ▣ The California Supreme Court denied the petition for review
    - ▣ The Supreme Court denied the requests to depublish the appellate court decision

# Bureau of Real Estate Legal, Legislation and Consumer Recovery Account

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Legal Affairs

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# AUDITS

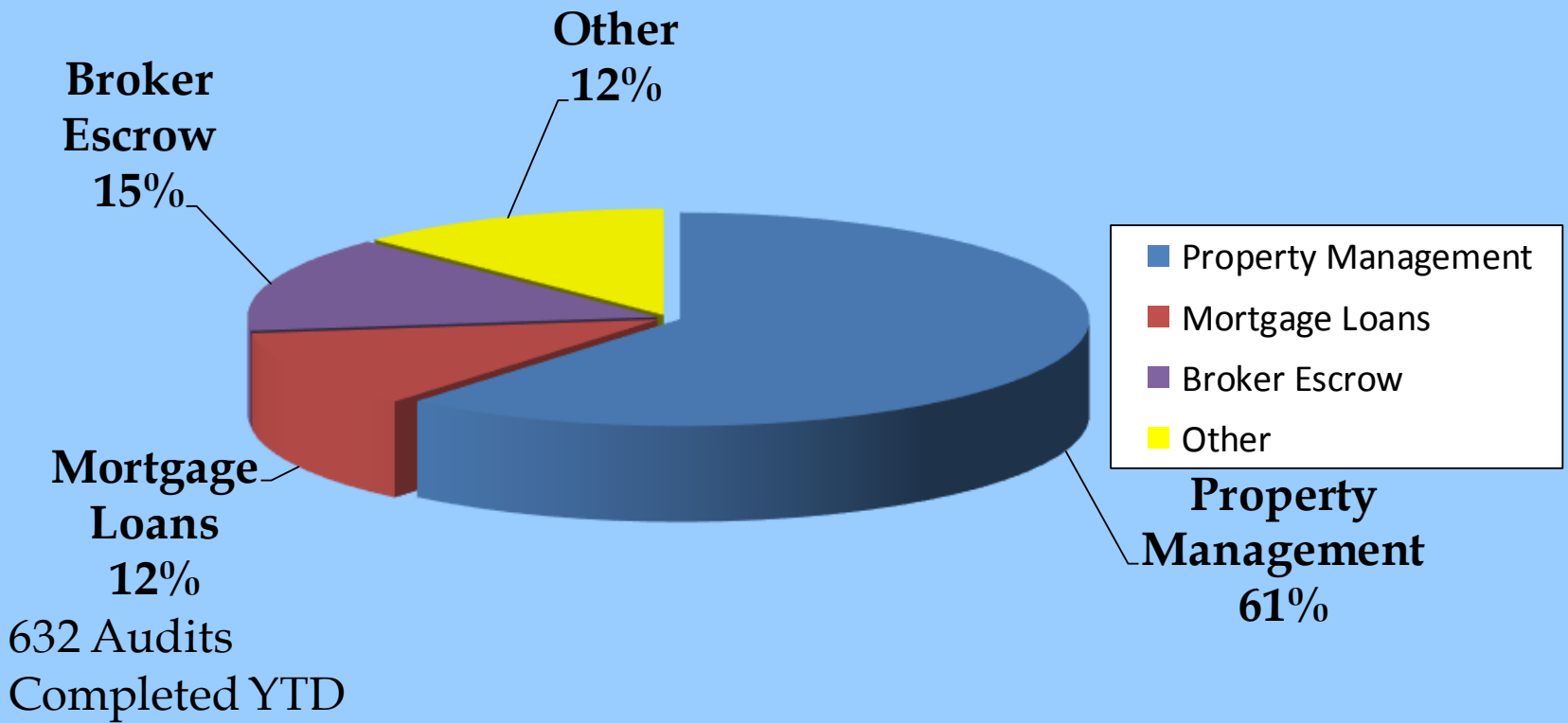


Tom Cameron  
Assistant Commissioner, Audits

# Trust Account Emergency Kit

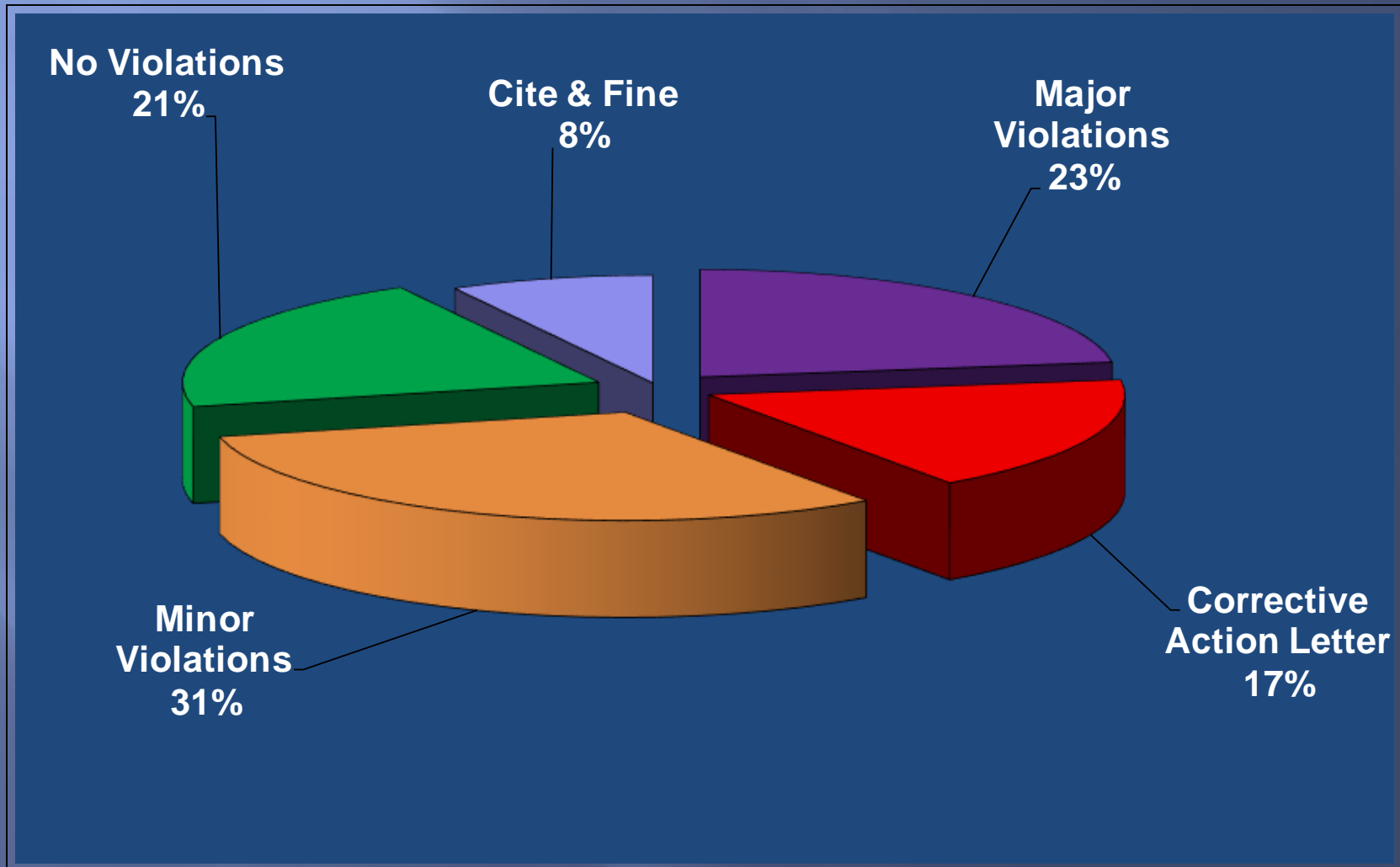


# Audits Closed by Activities Statewide 1/1/17 - 12/31/17





# Findings of Audits Closed, 1/1/17 - 12/31/17



# Shortage Findings of Audits Closed

	1/1/16 - 12/31/16	1/1/17 - 12/31/17
Total Audits Closed	585	632
Total \$ Shortage	\$8.4 million	\$8.5 million
% Audits with Shortage	32.4%	31.3%
#(%) with \$10K+ Shortage	67 (11.4)	69 (10.9)

# Fidelity Bonds and Insurance - §10145(a)(2)

- ▣ Withdrawals may be made from a trust fund account only upon the signature of the broker, or designated officer in the case of a corporate broker
- ▣ A real estate salesperson licensed to the broker
- ▣ A person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker

# Fidelity Bonds and Insurance - §10145(a)(2)

- ▣ An unlicensed employee of the broker if the broker has fidelity bond or insurance coverage equal to at least the maximum amount of the trust funds to which the unlicensed employee has access at any time

# What Audits is Seeing

We continue to find:

- ▣ Trust Fund Shortages on PM, BE audits
- ▣ Lack of Broker oversight
- ▣ Broker-controlled escrow activities and failure to report to CalBRE
- ▣ Delays in providing records
- ▣ Falsification of bank records

# Audit Case

- ▣ Proactive escrow audit
- ▣ Broker allowed his unlicensed business partner to sign on the bank account
- ▣ Broker failed to provide a control record
- ▣ Trust funds transferred between the trust account and the business account
- ▣ \$1.5 million shortage
- ▣ Lack of broker supervision

# Where Audit Activities Are Focused

- ▣ Investigative and focused proactive audits on those who handle a high volume of trust funds
- ▣ Property management, broker escrow and hard money MLB
- ▣ Unsupervised operations involved in these activities
- ▣ Restricted licensees handling trust funds

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*Q&A*

*THANK YOU*

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

[www.bre.ca.gov](http://www.bre.ca.gov)

Next Meeting to be held in  
Sacramento, CA