

BROKER SELF-EVALUATION

RE 540 (Rev. 2/20)

COMPLIANCE CHECKLIST

This checklist is designed to assist you in conducting a self-evaluation of your residential real estate business activities. The checklist covers the most common violations found during DRE broker office surveys. In addition, the Broker Compliance Evaluation Manual (available on DRE website under "Publications") may be used as a reference guide when completing this checklist. Copies of the cited code sections are attached for your reference. You should refer to your *Real Estate Law* book for the complete set of laws and regulations administered by the Department of Real Estate which affect your licensed real estate operation.

Before you begin answering the questions on this checklist, you should review the Department's Public Licensing Information. The following information is available on DRE's website www.dre.ca.gov or may be requested from any District Office: current main office address, branch office locations, broker associates, authorized fictitious business names, corporate affiliations, and list of salespersons sponsored under your broker's license.

You should be able to answer "yes" (when applicable) for each compliance item below.

Licensing Compliance

1. Do you have a branch office license for each location from which you conduct business? (B&P 10163) Yes No
You may only operate your business from the main office address printed on your license certificate unless you have a branch office license for other locations.
2. Are you operating with lawful fictitious business names? (B&P 10159.5 & Reg. 2731) Yes No
You may only use a fictitious business name if it is approved by DRE. The fictitious business name must appear on the face of a license in your possession as issued by the Department. The exception to this is a proper "team name" as defined in B&P 10159.7(a)(3)
3. Are you retaining salespersons and broker associates with DRE notification? (B&P 10161.8 & Reg. 2752) Yes No
A broker has five days to notify DRE whenever a salesperson or broker associate is hired and not more than ten days to notify DRE when terminated.
4. Are you retaining current licensed salespersons and broker associates? (B&P 10137) Yes No
A broker may not pay an expired licensee or an unlicensed person for an act requiring a license. (B&P 10131)
5. Do you have written agreements with salespersons and broker associates? (Reg. 2726) Yes No
Written affiliation agreements are required for each salesperson and broker working for you in a licensed capacity. Both you and the affiliated licensee should sign, date and retain a copy of this agreement for three years from the date affiliation is terminated.

Trust Account Compliance

1. Is a record maintained of funds not placed in the trust account? (Reg. 2831(a)(6)) Yes No
Uncashed checks made payable to escrow companies, appraisers, sellers, etc. are considered trust funds and you must keep records of all trust funds not placed in your trust account as specified in the Regulations.
 2. Is a record maintained of funds deposited in the trust account? (Reg. 2831) Yes No
A general trust fund control record must be maintained of all trust funds placed in your trust account. These records must contain the information specified in this Regulation.
 3. Are separate records maintained? (Reg. 2831.1) Yes No
In addition to the general trust fund control records required by Regulation 2831, you must
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keep separate trust account records for each beneficiary or transaction. By adding the total of all these separate records, your total should equal the balance of your general trust fund control record. A separate record should be maintained for any broker funds (not to exceed \$200) required to service the account.

4. Are trust funds being held for a lawful amount of time? (Reg. 2832) Yes No
Regulations require that, for most transactions, you place funds accepted on behalf of another person into the hands of that person, into a neutral escrow depository or into your trust account no later than three business days following the receipt of the funds.
5. Are appropriate records kept of unexplained overages in the trust account? (Reg. 2831.1).. Yes No
You must keep a separate record of these trust account overages and the funds must remain in a trust account and be reconciled on a monthly basis.
6. Is the trust account a designated trust account in your name as trustee? (Reg. 2832) Yes No
A trust account may also be in the name of your fictitious business name as trustee if you are the holder of a license bearing the fictitious name, or the trust account may include the words "Trust Account" as an alternate to naming the account in your name as trustee.
7. If the trust account is interest bearing, is the account maintained lawfully? (B&P 10145 & Reg. 2830.1) Yes No
You may not keep the interest earned on trust funds, and you must have written authorization from the owner of the trust funds to set up an interest bearing trust account. There must be a separate interest bearing account set up for each beneficiary.
8. Are all signatories to the trust account licensed or bonded? (B&P 10145(a) & Reg. 2834).. Yes No
In order for someone to withdraw funds from your trust account, they must be a salesperson licensed to you, a broker working under contract with you or an unlicensed person who is bonded/insured with coverage at least equal to the maximum amount of trust funds the person has access to.
9. Do you place general or payroll account funds in an account other than the trust account? (B&P 10176(e) & Reg. 2835) Yes No
General or payroll account funds should not be commingling with trust funds.
10. Do you make certain funds are available before writing checks from the trust account?..... Yes No
Bounced and NSF checks are obvious red flags that there is trouble with the trust account.
11. Do you perform monthly reconciliations of trust account records.? (Reg. 2831.2)..... Yes No
Once a month, you must be sure that the total of all separate beneficiary records balances with both your general trust account control records and with your trust account bank statement.

Supervision

1. Do you exercise reasonable supervision over the activities of your salespersons and broker associates? (Reg. 2725) Yes No
Reasonable supervision includes the establishment of polices and procedures to review and manage (1) all transactions requiring a license, (2) documents which may have a material effect on the parties, (3) filing and maintaining these documents, (4) handling of trust funds, (5) advertising, (6) familiarizing salespersons and broker associates with laws relating to prohibition of discrimination, and (7) regular reports of activities of salespersons and broker associates.
2. Can you describe your system to monitor compliance with established policies and procedures? (B&P 10164 & Reg. 2725) Yes No
A broker may use the services of brokers and salespersons to assist in supervision, as long as the broker does not relinquish overall responsibility.

Required Disclosures

- 1. Do you keep receipts for delivery of pest control documents? (Reg. 2905)..... Yes No
Records should be kept as evidence that you delivered pest control inspection reports, certifications, and completion notices, or otherwise informed the buyer of his/her rights under Civil Code Section 1099.

- 2. Are definite termination dates included in exclusive client agreements? (B&P 10176(f)).... Yes No
You cannot claim, demand, or receive a commission if your exclusive agreement does not contain a definite termination date.

- 3. Are negotiability of commission disclosures provided? (B&P 10147.5)..... Yes No
Any agreement that establishes your right to compensation for licensed acts must contain a notice that commission rates are negotiable and not established by law.

- 4. Are Real Estate Transfer Disclosure Statements provided? (B&P 10176.5) Yes No
Willful or repeated failure to provide buyers with a Real Estate Transfer Disclosure Statement is a violation of law. (Civil Code 1102 et seq. & 2079)

Record Keeping

- 1. Do you keep all listings, deposit receipts, canceled checks, trust account records, affiliation agreements, and other material documents obtained or executed in connection with your real estate transactions for three years? (B&P 10148) Yes No
These records are to be retained for three years and made available to the Commissioner for inspection and copying upon request.
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SALES TRANSACTION WORKSHEET

This worksheet is for your use in checking individual files for compliance with DRE laws and regulations. You may duplicate this form and use it on as many transaction files as you wish.

BUYER	BUYER'S PHONE	BUYER'S AGENT
SELLER	SELLER'S PHONE	SELLER'S AGENT

PROPERTY ADDRESS

DATE OFFER MADE	DATE OFFER ACCEPTED	DATE OF COMMUNICATION OF ACCEPTANCE
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DEPOSIT AMOUNT \$	DEPOSIT FORM <input type="checkbox"/> CASH <input type="checkbox"/> PERSONAL CHECK <input type="checkbox"/> NOTE <input type="checkbox"/> CASHIER'S CHECK
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WHO WAS DEPOSIT CHECK MADE PAYABLE TO?	WAS PERMISSION GIVEN TO HOLD FUNDS? (REG. 2832)
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BY WHAT DATE WAS MONEY TO BE DEPOSITED/ FORWARDED?	WHO HELD FUNDS?	WERE ALL OFFICE SUPERVISION PROCEDURES FOLLOWED? (REG. 2725) <input type="checkbox"/> Yes <input type="checkbox"/> No
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Review of Trust Fund Records

1. Date trust funds were forwarded/deposited:..... _____

2. Where were trust funds forward/deposited?

3. Was a record made for funds not placed in the trust account? (Reg. 2831(a)(6))..... Yes No

OR

Was a record made for funds placed in the trust account? (Reg. 2831)..... Yes No

4. Was a separate record made? (Reg. 2831.1)..... Yes No

5. Were trust funds properly handled? (Various Regs.)..... Yes No

6. Is pest control documentation appropriate? (Reg. 2905) Yes No

7. Were Real Estate Transfer Disclosure Statements delivered? (§10176.5 B&P; §1102 et seq. CC) Yes No

When were they delivered?

8. Does the agreement have a definite termination date? (§10176(f) B&P) Yes No

9. Was negotiability of commission disclosed? (§10147.5 B&P)..... Yes No

BUSINESS AND PROFESSIONS CODE**Broker Defined**

10131. A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

- (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or buyers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property or a business opportunity.
- (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase, or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.
- (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.
- (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.
- (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

Unlawful Retention or Payment of Compensation - Penalty

10137. It is unlawful for any licensed real estate broker to retain, compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the responsible broker retaining or compensating him or her, or to retain or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

No real estate salesperson shall accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed.

It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed. A licensee may enter into an agreement with another licensee to share that compensation provided that any compensation is paid through the responsible broker.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

Handling of Trust Funds - Interest-Bearing Accounts - Neutral Escrow Defined

10145. (a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

- (2) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of that broker, or in the case of a corporate broker, only upon the signature of an officer through whom the corporation is licensed pursuant to Section 10158 or 10211, or one, or more, of the following persons if specifically authorized in writing by the individual broker or officer:

- (A) A real estate salesperson licensed to the broker.
- (B) Another broker acting pursuant to a written agreement with the individual broker that conforms to the requirements of this part and any regulations promulgated pursuant to this part.
- (C) An unlicensed employee of the individual 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. For purposes of this section, bonds or insurance providing coverage shall protect the broker from intentional wrongful acts committed by an employee of that business, including theft, dishonest acts, or forgery. Bonds and insurance providing coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds and insurance with a deductible, the employing broker shall have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

Evidence of financial responsibility shall include one or more of the following:

- (i) Separate bond or insurance coverage adequate to cover the amount of the deductible.
- (ii) A cash deposit held in a separate account, apart from other funds of the broker, the broker's employees, or the broker's principals, in a bank or recognized depository in this state adequate to cover the amount of the fidelity bond deductible and held exclusively and solely for the purpose of paying the fidelity bond deductible amount.
- (iii) Any other evidence of financial responsibility approved by the commissioner.

- (3) An arrangement under which a person enumerated in subparagraph (A), (B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.
- (4) Notwithstanding the provisions of paragraphs (1), (2), and (3), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:
- (A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.
- (B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.
- (C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).
- (D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.
- (E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.
- (F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.
- (G) A licensed residential mortgage lender or servicer acting under the authority of that license.
- (H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.
- (5) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (3) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.
- (b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.
- (c) A real estate salesperson who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.
- (d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:
- (1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.
 - (2) All of the funds in the account are covered by insurance provided by an agency of the United States.
 - (3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.
 - (4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.
 - (5) Interest earned on funds in the account shall not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.
 - (6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.
- (e) The broker shall have no obligation to place trust funds into an

interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

- (f) Subdivision (d) does not preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.
- (g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.
- (h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.
- (i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

Negotiability of Real Estate Commissions - Notice Requirement

10147.5 (a) Any printed or form agreement which initially establishes, or is intended to establish, or alters the terms of any agreement which previously established a right to compensation to be paid to a real estate licensee for the sale of residential real property containing not more than four residential units, or for the sale of a mobilehome, shall contain the following statement in not less than 10-point boldface type immediately preceding any provision of such agreement relating to compensation of the licensee:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

- (b) The amount or rate of compensation shall not be printed in any such agreement.
- (c) Nothing in this section shall affect the validity of a transfer of title to real property.
- (d) As used in this section, "alters the terms of any agreement which previously established a right to compensation" means an increase in the rate of compensation, or the amount of compensation if initially established as a flat fee, from the agreement which previously established a right to compensation.

Retention of Records - Chargeable Audits - Cost Recovery-Penalties for Unlawful Destruction of Records

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall

run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. This subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature, as described in subdivision (d) of Section 1624 of the Civil Code.

- (b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.
- (c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.
- (d) The commissioner may maintain an action for the recovery of the cost of an audit in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.
- (e) The bureau may suspend or revoke the license of any real estate broker, real estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained by this section or that have been sought in connection with an investigation, audit, or examination of a real estate licensee by the commissioner.

Fictitious Name

10159.5. (a) (1) Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

(2) A responsible broker may, by contract, permit a salesperson to do all of the following:

- (A) File an application on behalf of a responsible broker with a county clerk to obtain a fictitious business name.
- (B) Deliver to the bureau an application, signed by the responsible broker, requesting the bureau's approval to use a county approved fictitious business name

that shall be identified with the responsible broker's license number.

- (C) Pay for any fees associated with filing an application with a county or the bureau to obtain or use a fictitious business name.
 - (D) Maintain ownership of a fictitious business name, as defined in paragraph (2) of subdivision (a) of Section 10159.7, that may be used subject to the control of the responsible broker.
- (b) (1) A salesperson using a fictitious business name authorized by subdivision (a), shall use that name only as permitted by his or her responsible broker.
- (2) This section does not change a real estate broker's duties under this division to supervise a salesperson.
- (c) A person applying to a county for a fictitious business name pursuant to subdivision (a) may file his or her application in the county or counties where the fictitious business name will be used.
- (d) Advertising and solicitation materials, including business cards, print or electronic media and "for sale" signage, using a fictitious business name obtained in accordance with paragraph (2) of subdivision (a) shall include the responsible broker's identity, as defined in paragraph (1) of subdivision (a) of Section 10159.7, in a manner equally as prominent as the fictitious business name.
- (e) Notwithstanding subdivision (b) of Section 10140.6, advertising and solicitation materials, including print or electronic media and "for sale" signage, containing a fictitious business name obtained in accordance with paragraph (2) of subdivision (a) shall include the name and license number of the salesperson who is using the fictitious business name.
- (f) Notwithstanding Section 10185, a violation of this section is not a misdemeanor.

Fictitious and team Names - Definitions

10159.7. (a) For the purposes of this article, the following definitions shall apply:

- (1) "Fictitious business name" means a professional identity or brand name under which activity requiring a real estate license is conducted and the use of which is subject to approval by the department pursuant to Section 10159.5.
- (2) "Ownership of a fictitious business name" means the right to use, renew, and control the use of a fictitious business name obtained in accordance with Section 10159.5.
- (3) "Team name" means a professional identity or brand name used by a salesperson, and one or more other real estate licensees, for the provision of real estate licensed services. Notwithstanding any other law, the use of a team name does not require that a separate license be issued for that name pursuant to Section 10159.5. A team name does not constitute a fictitious business name for purposes of this part or any other law or for purposes of filing a fictitious business name statement with an application as required by subdivision (a) of Section 10159.5 if all of the following apply:

- (A) The name is used by two or more real estate licensees who work together to provide licensed real estate services, or who represent themselves to the public as being a part of a team, group, or association to provide those services.
- (B) The name includes the surname of at least one of the licensee members of the team, group, or association in conjunction with the term "associates," "group," or "team."
- (C) The name does not include any term or terms, such as "real estate broker," "real estate brokerage," "broker," or "brokerage" or any other term that would lead a member of the public to believe that the team is offering real estate brokerage services, that imply or suggest the existence of a real estate entity independent of a responsible broker.

- (b) Nothing in this section changes a real estate broker's duties under this division to supervise a salesperson.

Salesperson and Broker Associate Retention and Termination

- 10161.8.** (a) The commissioner shall specify the manner in which a responsible broker shall provide notice to the commissioner of an affiliation with a real estate licensee or by which a real estate licensee shall provide notice of a change of address or affiliation.
- (b) Whenever a responsible broker retains a real estate salesperson to conduct activities requiring a license, the responsible broker shall notify the commissioner in a manner specified by the commissioner.
 - (c) Whenever a responsible broker retains a real estate broker to conduct activities requiring a license, the responsible broker shall provide notice to the commissioner in a manner specified by the commissioner.
 - (d) Whenever an affiliation with a real estate licensee is terminated, the responsible broker shall provide notice to the commissioner in a manner specified by the commissioner.
 - (e) Whenever a real estate licensee acquires a business address different from the address shown in the records maintained by the commissioner, the licensee shall notify the commissioner in a manner specified by the commissioner.

Branch Offices

10163. If the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch office license.

Grounds for Revocation or Suspension

10176. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate

the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade, or induce.
- (c) A continued and flagrant course of misrepresentation or making of false promises through licensees.
- (d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.
- (e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.
- (f) Claiming, demanding, or receiving a fee, compensation, or commission under any exclusive agreement authorizing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.
- (g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the buyer or seller contracting with the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.
- (h) The use by a licensee of any provision, which allows the licensee an option to purchase, in an agreement with a buyer or seller that authorizes the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee, prior to or coincident with election to exercise the option to purchase, reveals in writing to the buyer or seller the full amount of the licensee's profit and obtains the written consent of the buyer or seller approving the amount of the profit.
- (i) Any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.
- (j) Obtaining the signature of a prospective buyer to an agreement which provides that the prospective buyer shall either transact the purchasing, leasing, renting, or exchanging of a business opportunity property through the broker obtaining the signature, or pay a compensation to the broker if the property is purchased, leased, rented, or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange, or rent.
- (k) Failing to disburse funds in accordance with a commitment to

make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:

- (1) The lender.
 - (2) Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.
- (l) Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.
 - (m) Violating any section, division, or article of law which provides that a violation of that section, division, or article of law by a licensed person is a violation of that person's licensing law, if it occurs within the scope of that person's duties as a licensee. **10176.5.** (a) The commissioner may, upon his or her own motion, and shall upon receiving a verified complaint in writing from any person, investigate an alleged violation of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code by any real estate licensee within this state. The commissioner may suspend or revoke a licensee's license if the licensee acting under the license has willfully or repeatedly violated any of the provisions of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code.
 - (b) Notwithstanding any other provision of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, and in lieu of any other civil remedy, subdivision (a) of this section is the only remedy available for violations of Section 1102.6b of the Civil Code by any real estate licensee within this state.

COMMISSIONER'S REGULATIONS

2725. Broker Supervision.

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

2726. Broker-Salesman Relationship Agreements.

Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.

2731. Use of False or Fictitious Name.

- (c) The commissioner may refuse to issue a license bearing a fictitious name to a broker if the fictitious name:
- (1) Is misleading or would constitute false advertising.
 - (2) Implies a partnership or corporation when a partnership or corporation does not exist in fact.
 - (3) Includes the name of a real estate salesperson.
 - (4) Constitutes a violation of the provisions of Sections 17910, 17910.5, 17913 or 17917 of the Code.
 - (5) Is the name formerly used by a licensee whose license has since been revoked.
 - (d) A license may not be issued or renewed with a fictitious business name containing the term “escrow”, or any name which implies that escrow services are provided, unless the fictitious business name includes the term, “a non-independent broker escrow” following the name. Licensees who have been or are issued a license with a fictitious business name with the term “escrow”, or any term which implies that escrow services are provided, must include the term “a non-independent broker escrow” in any advertising, signs, or electronic promotional material.
 - (e) Where a licensee is a natural person, the use of a nickname in place of his or her legal given name (first name) shall not constitute a fictitious name for purposes of this section, provided that where the nickname is used, the licensee also uses as a surname (last name) his or her surname as it appears on his or her real estate license, and includes his or her Bureau-issued license identification number as required by Section 10140.6 of the Code.

2752. Notice of Change of Broker.

Whenever a real estate salesperson enters the employ of a real estate broker, the broker shall notify the commissioner of that fact within five days. This notification shall be given on a form prepared by the Bureau and shall be signed by the broker and the salesperson. The form of notification shall provide for the furnishing of at least the following information:

- (1) Name and business address of the broker.
- (2) Mailing address of the salesperson, if different from the

business address.

- (3) Date when the salesperson entered the employ of the broker.
- (4) Certification by the salesperson that he has complied with the provisions of Section 10161.8(d) of the Business and Professions Code.
- (5) Name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.
- (6) Certification by the salesperson that the predecessor broker has notice of the termination of the relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor broker to give notice of the termination of the broker/salesperson relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the commissioner not more than ten days following such termination.

2830.1. Interest-Bearing Trust Account

A real estate broker, when acting as agent for a financial institution as beneficiary of a loan, may deposit and maintain funds from or for the account of an obligor for the future payment of property taxes, assessments or insurance relating to real property containing only a one-to-four family residence, in an interest-bearing trust account in a bank or savings and loan association in order to pay interest to the obligor in accordance with Section 2954.8 of the Civil Code if the following requirements are met:

- (a) The account is in the name of the broker as trustee.
- (b) All of the funds in the account are covered by insurance provided by an agency of the federal government.
- (c) All of the funds in the account are funds held in trust by the broker for others.
- (d) The broker discloses to the obligor how interest will be calculated and paid.
- (e) No interest earned on the funds shall inure directly or indirectly to the benefit of the broker nor to any person licensed to the broker.

2831. Trust Fund Records To Be Maintained.

- (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:
 - (1) Date trust funds received.
 - (2) From whom trust funds received.
 - (3) Amount received.
 - (4) With respect to funds deposited in an account, date of said deposit.
 - (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
 - (6) With respect to trust funds not deposited in an account,

identity of other depository and date funds were forwarded.

- (7) Daily balance of said account.
- (b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
- (c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.
- (d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.
- (e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Bureau or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

2831.1. Separate Record for Each Beneficiary or Transaction.

- (a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:
- (1) Date of deposit.
 - (2) Amount of deposit.
 - (3) Date of each related disbursement.
 - (4) Check number of each related disbursement.
 - (5) Amount of each related disbursement.
 - (6) If applicable, dates and amounts of interest earned and credited to the account.
 - (7) Balance after posting transactions on any date.
- (b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with

Section 2831.2.

2831.2 Trust Account Reconciliation

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

2832. Trust Fund Handling.

- (a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.
- (b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.
- (c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if
- (1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and
 - (2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.
- (d) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.
- (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing

such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.

2834. Trust Account Withdrawals.

- (a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:
- (1) a salesperson licensed to the broker.
 - (2) a person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.
 - (3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.
- (b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:
- (1) an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code; or
 - (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.
- (c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

2835. Commingling.

"Commingling" as used in Section 10176(e) of the Code is prohibited except as specified in this section. For purposes of Section 10176(e), the following shall not constitute "commingling"

- (a) The deposit into a trust account of reasonably sufficient funds, not to exceed \$200, to pay service charges or fees levied or assessed against the account by the bank or financial institution where the account is maintained.
- (b) The deposit into a trust account maintained in compliance with subdivision (d) of funds belonging in part to the broker's principal and in part to the broker when it is not reasonably practicable to separate such funds, provided the part of the funds belonging to the broker is disbursed not later than twenty-five days after their deposit and there is no dispute between the broker and the broker's principal as to the broker's portion of the funds. When the right of a broker to receive a portion of trust funds is disputed by the broker's principal, the disputed portion shall not be withdrawn until the dispute is finally settled.
- (c) The deposit into a trust account of broker owned funds in connection with activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when making, collecting payments or servicing a loan which is subject to the provisions

of Section 10240 of the Code provided:

- (1) The broker meets the criteria of Section 10232 of the Code.
 - (2) All funds in the account which are owned by the broker are identified at all times in a separate record which is distinct from any separate record maintained for a beneficiary.
 - (3) All broker owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit.
 - (4) The funds are deposited and maintained in compliance with subdivision (d).
 - (5) For the purpose of this section, a broker shall be deemed to be subject to the provisions of Section 10240 of the Code if the broker delivers the statement to the borrower required by Section 10240.
- (d) The trust fund account into which the funds are deposited is maintained in accordance with the provisions of Section 10145 and the regulations of this article.

2905. Pest Control Documentation.

In a real estate transaction subject to the provisions of Section 1099 of the Civil Code, the real estate broker acting as agent for the seller in the transaction shall effect delivery of the inspection report, certification and the notice of work completed, if any, to the transferee in accordance with said section.

If more than one real estate broker licensee is acting as an agent of the transferor in the transaction, the broker who has obtained the offer made by the transferee shall effect delivery of the required documents to the transferee unless the transferor has given written directions to another real estate broker licensee acting as agent of the transferor in the transaction to effect delivery.

If the agent cannot obtain the required documents to deliver to the transferee and does not have written assurance from the transferee that all of said documents have been received, the agent shall advise the transferee in writing of the transferee's rights under Section 1099.

The broker shall maintain a record of the action taken to effect compliance with this regulation in accordance with Section 10148 of the Business and Professions Code.