



Real Estate Bulletin

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS • BUREAU OF REAL ESTATE

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Wayne S. Bell
Commissioner

Commissioner's Message

Glancing Backwards – A Look at the Creation of California's Real Estate License Law and the Early Years (1917–1924) of Regulating Practitioners in the State

The California real estate license law was a result of the efforts of the California State Realty Federation, the predecessor to the California Association of REALTORS®.¹ The first license law for real estate practitioners was proposed in 1911 by the Federation, with a goal of elevating and improving the practice of real estate (and prohibiting the unethical and fraudulent practices that then existed in the industry), and a license bill was initially passed by the California Legislature in 1913.

However, the bill was vetoed by Governor Hiram Johnson because of opposition by the San Francisco Real Estate Board. World War I started the next year. In 1915, another, revised real estate licensing bill passed by the Legislature was purportedly vetoed due to opposition from one or more of Governor Johnson's advisors.

It was not until 1917 that a real estate license law was signed by Governor William D. Stephens, the successor to Governor Johnson. In that year, the California Legislature passed legislation requiring real estate brokers and salespersons to secure a license. That enactment was entitled "An act to define real estate brokers, agents, salesmen, solicitors; to provide for the regulation, supervision, and licensing thereof; to create the office of real estate commissioner; and making an appropriation therefor." The law was signed by Governor Stephens on June 1, 1917, and went into effect soon thereafter.

Interestingly, in a document entitled the *California Outlook* (September 1917), it is stated that the 1917 law was "aimed to maintain supervision over real estate operations and to stamp out swindling." In the *San Bernardino Daily Sun* (on March 20, 1918), it was stated that the 1917 "bill was presumed to have been aimed at the 'curb stone' brokers, as it demanded that every broker have an office."

On August 24, 1917, Governor Stephens appointed Freeman H. Bloodgood as the first Real Estate Commissioner.² During the first few months of its operations, the office of Real Estate

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2014 Law Book Available

Each year, the California Bureau of Real Estate’s *Real Estate Law Book* is updated to reflect changes in laws and regulations.

The *2014 Real Estate Law Book* is available free online. The print version, which includes a CD copy, is available for \$25 plus tax. To order, use the “RE 350 — Publications Request” form available online at www.calbre.ca.gov or on page 11 of this newsletter.

This important reference for licensees contains:

- ➔ The Real Estate Law (from the Business and Professions Code).
- ➔ The Real Estate Commissioner’s Regulations (from the California Code of Regulations).
- ➔ Portions of the Administrative Procedure Act (from the Government Code).
- ➔ Pertinent excerpts from various California codes.

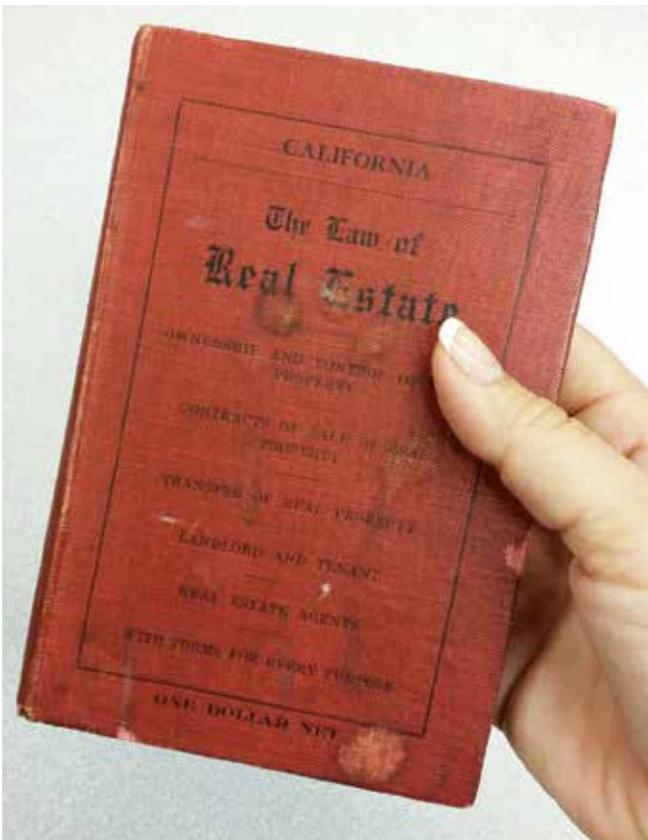
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COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 1)

Commissioner, which employed “inspectors in field work” and clerks, licensed approximately 8,000 real estate brokers and salespersons in California.

But on March 19, 1918, the California Supreme Court declared the 1917 act unconstitutional and invalidated the law. The 1917 law was challenged by L.A. Raleigh, who was charged with operating without a license, via a writ for habeas corpus. The Supreme Court ruled that the “real estate brokers’ license law” was invalid as special legislation because it exempted broadly from its provisions corporations and persons who had received licenses from the Insurance Commissioner and/or the bureau of building and loan supervision. The Court concluded that the law’s exemptions amounted to a substantial discrimination between those attempted to be classified without any reasonable basis of classification.



In 1919, a revised act, “The State Real Estate Department Act” (or more fully, “An act to define real estate brokers and salesmen; to provide for the regulation, supervision and licensing thereof; to create a state real estate department and the office of real estate commissioner; to provide for the enforcement of said act and penalties for the violation thereof; and [repealing the 1917 Act]”), was approved by Governor Stephens on May 27, 1919, and went into effect on July 27, 1919. The 1919 Act was challenged in court and upheld against legal challenges as a valid exercise of police power.

Under the 1919 law, California appears to have created the first stand-alone and specialized real estate department in the United States, and the first valid office of Real Estate Commissioner in the country.

Ray L. Riley was appointed as Real Estate Commissioner in 1919.³ California’s population that year was about 3,300,000. From 1919 to 1921, the California Department of Real Estate issued approximately 10,700 broker licenses and 13,500 salesperson licenses.

In 1921, Edwin T. Keiser was appointed as California’s Real Estate Commissioner.⁴ It was also in 1921 that the 1919 real estate law was first amended. In a “Biennial Report of the State Real Estate Department” from Commissioner Keiser to Governor Stephens for the years 1921 and 1922, it is stated that “[t]he principal guiding purpose we have always had in mind in the administration of the act is the thought that the Legislature had when it passed the act, and that is to make it just as difficult as possible for the crooked real estate broker to remain in business.” Later in the report, it says that “[a]t all times we have tried to keep in mind the prevention of offenses by educating both the broker and the public.” In the report’s concluding remarks to the Governor, Commissioner Keiser wrote that: “With a few amendments to strengthen the real estate act I am confident the department can function in such a way as to render even greater service, meeting the approval of all honest and upright real estate operators.”

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COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 3)

In 1923, the real estate license law was amended again, arguably including the “few amendments” that Mr. Keiser referred to in his report. It was in 1923 that California law first authorized license examinations. And since 1923, control of the sale of subdivided lots in California for the purpose of protecting individual purchasers has been under the jurisdiction of the Real Estate Commissioner. The first authority granted to the Commissioner was to make and issue public reports on subdivided agricultural lands.

Each of the amendments to the 1919 act provided substantive improvements to the license law. What we now call the California Real Estate Law, pertaining to the education and licensure of, and the enforcement of the laws pertaining to, real estate practitioners, was derived from the 1919 act, the amendments of 1921 and 1923, and many additional amendments and changes.

Frank F. Merriam, the 28th Governor of California, commented (in 1923 or 1924) on the California real estate licensing law (which then included the 1919 act and the 1921 and 1923 amendments) when he was Speaker of the Assembly. At a banquet meeting of REALTORS® in Southern California, then Speaker Merriam stated:

I consider the real estate legislation enacted by the legislature of California during the sessions of 1919, 1921, and 1923 the most useful and progressive realty legislation in the interest of the public that has been passed in the Union. *** I congratulate the California Real Estate Association and its officers for their excellent work in building up the morale of the real estate business and continually striving to elevate the standard of the business. You are doing good work, and we are with you, Realtors of California.

And in early 1924, Real Estate Commissioner Keiser stated, “The real estate men and women of the state of California are to be commended upon the steps that they have taken toward making their business a profession. Your co-operation with this department has been wonderful. We appreciate the sincere and earnest way in which brokers of the entire state have responded in their support.”

As the State’s current Real Estate Commissioner (in 2014, some 90 years following the declarations above), I can say that the comments and expressions of gratitude offered by Commissioner Keiser and former Governor Merriam to organized real estate—for advocating, for supporting, and promoting the elevation of the character and professionalism of the practice and business of real estate—are shared by me and are as true today as they were when first uttered.

Principal Source Materials for this Article:

West’s California Codes – Business and Professions Code Section 10000, et seq.

State Real Estate Department Act – Chapter 605, Statutes 1919

The Realty Blue Book of California (The Keystone Publishing Co. – 1924)

Biennial [1921 and 1922] Report of the State Real Estate Department (Keiser)

California Real Estate Magazine – January 1973 and December 1999

Additional Information on the History of the California Department/Bureau of Real Estate:

<http://history.dre.ca.gov/>. This site can be accessed by going to the Bureau’s website at www.calbre.ca.gov, and going into the “Home” page. At the top right portion of the page is a link titled “About CaIBRE.” Tap on that link and you will be directed to a section called “General Information.” Under that heading is a link to the “History of the CaIBRE.” Tap on that link for access to the history.

¹ The Federation was founded in May of 1905, 109 years ago. In 1920, the name was changed to the California Real Estate Association and then, in 1975, the name was changed to the California Association of Realtors.

² For several years before his appointment as Commissioner, Mr. Bloodgood was a member of the State Board of Control.

³ Mr. Riley served as Commissioner until 1921. Thereafter, from 1921 to 1937, Riley served as Controller of the State of California.

⁴ Mr. Keiser served as Commissioner until 1925.

Benefit of the Doubt Program: Brokers Reporting Violations

Existing law requires that a broker notify the California Bureau of Real Estate (CalBRE) when the broker discharges an employee for a violation of the Real Estate Law (Business and Professions Code Section 10178). The law also requires the broker to provide a detailed written description of the reasons the employee was discharged.

Based on the small number of notifications received by CalBRE, it is clear that few brokers are notifying CalBRE when they let a rogue agent go. A significant reason for a broker's noncompliance appears to be fear, based on the uncertainty that the broker will also be named in the accusation based on the rogue agent's wrongdoing.

To address that fear and help ensure fired employees receive appropriate discipline, CalBRE implemented a program called Benefit of the Doubt (BOD). The BOD program establishes clear protocols that allow a broker who discharges an employee for cause to notify CalBRE without fear that CalBRE will automatically investigate the broker for lack of supervision.

The BOD program makes certain that the reporting broker will not automatically be named as a suspect. All cases involving brokers who notify CalBRE of the termination of a licensed employee for cause is centralized from Sacramento, providing for the review of evidence and facts through a single lens. This ensures consistency and promises that statewide investigative and compliance standards will be used.



The BOD program provides for an isolated investigation focusing on the salesperson's alleged misconduct, unless the facts warrant investigation expansion. Prior brokers may be included in the

investigation process to determine if a pattern exists that can lead to a maximum penalty against the agent. New employing brokers may also be contacted to establish applicable disciplinary action proceedings against the previous broker, to substantiate and support reporting-broker findings, to promote broker reporting, and to deter agent misconduct.

The BOD program also establishes a reporting broker discipline hierarchy. If the reporting broker is found to be without gross negligence or fault, no CalBRE action will be taken against him or her. If technical compliance issues are uncovered even though the broker properly supervised agents, addressed problems, has office procedures and controls in place, and reviewed business activities and management reports, the reporting broker may receive a corrective action letter or be cited and fined.

Formal disciplinary action against the reporting broker will be considered when he or she:

- Participates in unlawful acts or is found guilty when knowledge is substantiated.
- Is routinely absent from the office without designating an office manager.
- Fails to oversee the office manager or establish office procedures.
- Demonstrates lack of oversight.

Additional factors include ignoring prior corrective actions letters or if a "rent-a-broker" situation exists.

The specific governing law and regulations for this program are Business and Professions Code Sections 10178, 1079, and 10177 (h), and Section 2725 of the Regulations of the Real Estate Commissioner. More information can be found in the *Broker Compliance Evaluation Manual* available on our website at www.calbre.ca.gov/files/pdf/brkrcomp.pdf.



CalBRE's Citation and Fine Program Now in Action

The California Bureau of Real Estate (CalBRE) recently finalized its authority to issue citations and assess administrative fines to violators of the California Real Estate Law.

Found in Business and Professions Code Section 10080.9 and newly approved Commissioner's Regulation 2907 (effective July 1, 2014), this new tool gives CalBRE wide latitude to address all violations of the Real Estate Law committed by real estate licensees. It also allows action to be taken on the more serious issue of unlicensed activity conducted by persons not licensed by CalBRE as a real estate broker, salesperson, mortgage loan originator, or prepaid rental listing service. The authority to issue citations and assess fines is expected to help in both obtaining a violator's attention and reinforcing compliance with the Real Estate Law.

How will citations and fines work?

A citation or other formal action will be considered when a violation is found after an investigation, audit, or examination of a licensee's records by CalBRE in response to a complaint, through random selection of a licensee for an office visit, or from completion of a routine audit. Depending upon the nature (such as the level of seriousness and potential for harm) and type of the violation, the appropriate action will be determined. For relatively minor and technical violations, especially in those instances where there has been no injury or loss to a consumer or where there is little or no danger to the public, a citation is likely the appropriate action. While CalBRE may issue a citation for any violation of the Real Estate Law, citations are particularly suited for minor violations that do not involve fraud, dishonesty, or loss or injury to a consumer. Consumer protection remains paramount, but citations are especially intended for such minor violations as failure to notify CalBRE of one's change in address, failure to disclose a real estate license identification number in their first point of contact advertising material, failure to notify CalBRE of newly employed salespersons who were hired and added to office staff, or late or failure to submit required threshold or periodic business activity reports.

A citation issued by CalBRE may include an Order of Correction as well as an administrative fine. An Order of Correction is simply a demand to fix or correct the cited violation(s) within a specified period of time (usually 30 days). To satisfy an Order of Correction, a licensee will need to correct identified violations or deficiencies and inform CalBRE with a Statement of Correction/ Compliance that all violations have been corrected and that the licensee is now in full compliance with the Real Estate Law. In addition to the Order of Correction, a citation may also—and will most likely—include an administrative fine assessed for each violation. The range of a fine—or the total of a fine assessed to a licensee—is set by statute at \$0 to \$2,500. The maximum fine amount for real estate licensees is \$2,500 per citation, and fine amounts may vary, depending upon the nature of the violation and other criteria. For example, answers to the following questions will help determine the appropriate fine: Is this the licensee's first violation of the sort, or is the violation a repeat of similar offenses? Was the violation inadvertent, deliberate, or a result of negligence? Did the violation involve or result in injuries to consumers? Before a fine amount is assessed, each violation is evaluated according to specified criteria, which helps establish an appropriate fine amount.

Persons unlicensed by CalBRE are also subject to citations and fines. Unlicensed activity is currently and has always been a significant challenge for CalBRE, so issuance of a citation—and accompanying administrative fine—may provide some relief in addressing the problem. Thus, the difference between those persons licensed and those unlicensed is one key factor in how fines will be assessed. While the maximum fine amount for real estate licensees is \$2,500 per investigation, those who are found to be conducting unlicensed activities may face substantially larger fine amounts or, rather, multiple fines tied to the same investigation.

CALBRE'S CITATION AND FINE PROGRAM NOW IN ACTION (Continued from page 6)

Fines apply to each unlicensed act

A person not properly licensed with CalBRE yet found to be conducting real estate activities that require a license may be issued a citation for the unlicensed activity and assessed the maximum fine amount per citation of \$2,500. But while the maximum fine amount for a real estate licensee is \$2,500 per case or investigation, the maximum fine amount for an unlicensed individual is a \$2,500 fine for EACH unlicensed act or transaction. Calculate the fines that may be assessed against an unlicensed person involved in 100 transactions, for example, and you can see how substantial the cost of operating without a license may become! We hope this new citation authority will help deter and discourage unlicensed activity.

What to expect if you receive a citation

First, read the citation carefully, along with any notices and details that come with it. The citation will identify the violation(s) you committed, provide information on how to pay the fine, describe any corrective action needed

(if necessary), and explain the process for contesting the citation, if you choose to. If an Order of Correction is included with the citation, then corrective action will need to be effected within a specific timeframe. Make note of any deadline for making the corrections and instructions for notifying CalBRE that you are now in compliance. Finally, regarding the fine, if one is assessed, you will typically have 30 days from receipt of the citation to pay it.

There is a review process if you want to contest the citation. The first level of review is a Citation Review Conference (CRC), which is an informal review of the citation conducted by CalBRE. Depending upon information that you may submit in mitigation, the citation may be upheld, modified, or even dismissed. If the citation and fine are upheld, then the next level to contest the citation would be a formal administrative hearing before an administrative law judge. We are looking to resolve every citation at the lowest possible level of review; however, in some cases an administrative hearing may be the last resort to remedy the matter. An

administrative law judge will review the evidence collected by CalBRE and uphold the citation or determine that CalBRE was in error and dismiss the citation. Administrative hearings are expensive, for both CalBRE and the licensee, so CalBRE is going to strive to issue citations and assess fines only in cases where evidence is clear and unambiguous. Specific information regarding the review and appeal processes is available on CalBRE's website and from the Citation and Fine section.





Some Facts About Residential Tenant Application Screening Fees, Advance Fees, and Trust Funds

California Civil Code (CC) Section 1950.6 states that a landlord or his or her agent may charge an applicant an application screening fee to cover the costs of obtaining information about an applicant when he or she requests to rent a residential property. The information obtained about an applicant may include personal reference checks and consumer credit reports prepared by consumer credit reporting agencies.

The current maximum application screening fee as of January 1, 2014, is \$43.05.

Pursuant to CC Section 1950.6(b), the amount of the application fee shall not be greater than the actual out-of-pocket costs of obtaining the information about the potential tenant and the reasonable value of time spent by the landlord or the agent to do it. The law also states that the fee can never be greater than \$30 per applicant, adjusted annually commensurate with an increase in the Consumer Price Index beginning on January 1, 1998. Section 1950.6(e) adds that any portion of funds not used for performing a personal reference check or obtaining a consumer credit report shall be returned to the applicant.

As long as the above requirements are met, Section 1950.6(j) **exempts an application screening fee from the definition of “advance fee”** as defined in Section 10026 of the Business and Professions Code (B&P Code).

However, while application screening fees are not considered to be advance fees, CC Section 1950.6 does



not exclude them from the definition of trust funds when collected by an agent operating on behalf of a property owner. Trust funds are defined as: “Money or other things of value that are received by a broker or salesperson on behalf of a principal or any other person, and which are held for the benefit of others in the performance of any acts for which a real estate license is required.”

If these funds are collected from an applicant by a broker acting as an agent prior to the service being provided as defined in CC Section 1950.6(h)—“... the purpose of which is to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property”—the funds must be placed into a designated trust account as required by B&P Code Section 10145 and Commissioner’s Regulation 2832. These funds are required to be held in a trust account on behalf of the applicant until the service for which they are collected has been performed or until they have been refunded to the applicant.

RESIDENTIAL TENANT APPLICATION SCREENING FEES, ADVANCE FEES, AND TRUST FUNDS (Continued from page 8)

When these funds are deposited into the trust account, a broker is required to record them on a record of all trust funds received and disbursed (per Commissioner's Regulation 2831) and maintain a separate record for each beneficiary or transaction (per Commissioner's Regulation 2831.1). Categorizing all screening application fees under one separate record would not affect compliance. A broker is required to maintain a separate record for each individual from whom the broker collected the screening application fee.

Upon collection, pursuant to CC Section 1950.6(d), the landlord or his or her agent shall provide, personally, or by mail, the applicant with a receipt for the fee paid by the applicant, which receipt shall itemize the out-of-pocket expenses and time spent by the landlord or his or her agent to obtain and process the information about the applicant.

Note: The above does not constitute a full recital of all the facts concerning residential application screening fees. Please see CC Section 1950.6 for more details.

CALBRE'S CITATION AND FINE PROGRAM NOW IN ACTION (Continued from page 7)

CalBRE considers the issuance of citations an opportunity to help educate both licensees and nonlicensees alike and to encourage and reinforce compliance with Real Estate Law. Given this emphasis upon compliance education, information regarding specific citations issued—and any fines paid—will not be posted on CalBRE's website, nor will such information be attached to one's individual public licensee website record. The information is still public, however, and may be obtained through a request submitted to CalBRE pursuant to the Public Records Act.

Citations should not be ignored. Although they will not be recorded as discipline to your real estate license, the failure to pay a fine could lead to a nonrenewal of your real estate license and, in some cases, possible formal disciplinary action. As for fines received by CalBRE, all money will go into CalBRE's Real Estate Consumer Recovery Account, which is used to assist victims of real estate fraud committed by licensed agents and brokers.

If you have questions or would like to know more about the Citation and Fine program, please contact the Cite and Fine section, one of CalBRE's newer enforcement units.

Write us: California Bureau of Real Estate
Cite and Fine
P.O. Box 137012
Sacramento, CA 95813-7012

Visit: California Bureau of Real Estate - Headquarters
Cite and Fine
1651 Exposition Boulevard
Sacramento, CA 95815

Call: (916) 263-2111 - Main
(916) 263-8889 - Fax



Hiring a Land Surveyor

By Raymond L. Mathe, Professional Land Surveyors Senior Registrar, Board of Professional Engineers, Land Surveyors, and Geologists

At times, you may need to have a property surveyed in order to determine the limits of the property that is a part of the transaction. You may know a surveyor or someone who says they can “survey,” but is, in fact, unlicensed. This person may have the appropriate skills, so you choose to hire him or her to survey. No problem ... or is it? Unfortunately, there may be several violations of State law in this example—and one of the violators might be YOU!



You may not see the problem if you’ve been relying on an individual who claims to have the appropriate skills to successfully identify property limits. However, there are several laws and regulations relating to land surveying. This article will discuss excerpts from the Business and Professions Code Sections 8700–8805.

Section 8704 states, “Any person practices land surveying when he professes to be a land surveyor...” and Section 8726 states, “A person ... practices land surveying ... who ... does or offers to do any one or more of the following: ... (c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.” Simply put, anyone who represents a property line to another is practicing land surveying. Persons not authorized to practice land surveying are in violation of California law. In other words, you or the

unlicensed surveyor are subject to fines (or worse) if either of you are locating property or representing boundaries for your client.

Section 8726(i) discusses anyone who “... procures or offers to procure land surveying work for himself, herself, or others.” If you are entering into a contract to provide these services for your client, you are practicing land surveying. You can recommend a land surveyor to your client; however, your client must contract directly with a professional authorized to practice land surveying.

One final detail: Section 8759 states “... [anyone] authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client” So if you, or your client, need the services of a land surveyor, that professional is required to enter into a written contract prior to providing land surveying services. Executed properly, a contract provides protection for all parties involved.

How do you know if the surveyor you hire is licensed? You can visit the website of the Board of Professional Engineers, Land Surveyors, and Geologists at www.bpelsg.ca.gov and click on the “Licensee Lookup” link to search for the surveyor by name or license number. Surveyors are required to place the license number on all contracts, maps, plats, or reports related to land surveying. You can also call our office, and you will be directed to someone who can assist you.

If you know of someone who is providing unlicensed land surveying services, we would like to know. Please send us as much information as you have and we will look into the situation.

So when you need a property surveyed for a real estate deal, be certain that a licensed professional land surveyor is hired to define property lines. This will provide your client with the service they are expecting, and it will help to keep you and your client out of court when there is a disagreement in the location of the property.



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