

# Reference Book

## Information Relating to Real Estate Practice, Licensing and Examinations



LDA — ISBN 0-916478-02-5

*Published and Distributed by*  
State of California, Department of Real Estate

## Preface

For the novice and the experienced, individuals preparing for license examination, and as a day-to-day guide in the broad field of real estate, the *Reference Book* is a useful tool.

The *Reference Book* complements another publication available through the California Department of Real Estate entitled *Real Estate Law*. The law book contains the Real Estate Law, Regulations of the Real Estate Commissioner, portions of the Administrative Procedure Act and pertinent excerpts from other California Codes.

It is recommended that real estate brokers and salespersons have a current copy of each volume.

Although the information in the *Reference Book* is believed accurate at the time of publication, persons using the information should check for possible law and procedure changes and other industry developments and trends of more recent date.

To the many individuals and organizations, both public and private, who so generously contributed time, knowledge and interest in preparation and review of this book, we express our sincere appreciation. We would like to give a special thanks to Bob Gilmore and S. Guy Puccio for giving so much of their time in making this revision possible.

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## **A Word of Caution**

Never before has the world of real estate presented so many complexities and challenges to the real estate licensee. Real estate is an exciting business to be in, yet a highly demanding profession.

Real estate licensees should guard well the privilege of practicing real estate while avoiding stepping over the sometimes subtle line into the practice of law.

The real estate broker should be the first to recognize that although the field of real estate is highly technical and complicated by the overlapping of numerous areas of knowledge, the legal profession is even more technical, requiring years of preparation and constant study and research.

The phrase “to practice law” and similar expressions are *not* confined to meaning “appearances in court.” They include legal advice and counsel and the preparation of legal instruments by which legal rights are secured.

It has been held, for example, that the selection and preparation of a mortgage or deed of trust by a broker in an independent loan transaction in which a fee was charged by the broker was the unlawful practice of law, even though only one transaction was involved.

To the layperson, what appears on the surface to be a minor difficulty may in fact be a complex legal issue, requiring the attention of a competent attorney. Brokers should not attempt to provide advice to clients needing counsel to solve legal problems. Indeed, under the Business and Professions Code, the practice of law by persons who are not members of the State Bar is specifically prohibited.

The foregoing is intended to remind and encourage real estate brokers to be alert for business activity that may require consultation with an attorney and avoid allowing principal or client to place upon them that responsibility which belongs only to a lawyer. Agents endanger their licenses and reputations and do a distinct disservice to customers when they overstep into the attorney’s domain.

