CALIFORNIA DRE

Real Estate Bulletin

DEPARTMENT OF REAL ESTATE

WINTER 2018

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Criminals Are Targeting Wire and Electronic Funds Transfers

Real estate transactions in today's world often involve the wiring or electronic funds transfer (EFT) of money to complete a deal. Previous consumer alerts have referenced or covered wire fraud in **timeshare transactions** and **fraud against seniors.**

Wire transfers and EFTs in real estate purchase transactions have become the targets of criminals who interject themselves into a real estate transaction by posing as a party in the transaction. In these cases, the criminal often takes on the identity of a title or escrow company or real estate agent in the transaction and provides legitimate-looking instructions directing the buyer where to wire or transfer funds. These instructions result in the wiring or transfer of funds to the criminal's bank account, often overseas, and the immediate loss of thousands, or hundreds of thousands, of dollars to the victim.

These are sophisticated, professional-looking attacks on your real estate transactions, and you need to be on the lookout. Cybercriminals may convincingly take on the identity of legitimate parties to your transaction, using authentic-looking logos and personal details in communications to make you feel comfortable. It is best to be safe in how you respond, and to assume that your transaction is being targeted.

BEWARE!

What can you do to avoid such criminal activity?

1. Whenever possible, use alternatives to wire transfers or EFTs, such as cashier's checks, and get a receipt. For smaller transactions, make the payment in person by check or credit card and get a receipt, as these payment sources provide you with proof of payment.

2. Obtain phone numbers and account numbers of real estate agents and escrow-holders at the beginning of the real estate transaction, and use those numbers to contact agents and escrow-holders throughout the transaction.

3. Even if it looks or sounds legitimate, do not act on a change of wiring or EFT instructions that you receive electronically (via email) or via phone call. If your real estate transaction will utilize wiring or EFT of funds, and you receive an instruction change about wiring or EFT of funds, call the real estate agent or escrow officer by phone at the known number you obtained at the start of the transaction and verify new instructions before sending money. Better yet, if there is a wiring or EFT instruction change, instead make payment in person using a cashier's check!

4. Do not send personal information (bank account numbers, credit card numbers, social security numbers, and financial details) by personal email or text. Take steps to use a secure, encrypted site to send personal information, or provide this information in person.

If you are victimized, it is critical that you contact your depository institution and the FBI immediately to have a chance at halting the criminal transfer. You can file a report with the FBI by calling a local FBI office or reporting online at the FBI **Internet Crime Complaint Center**.

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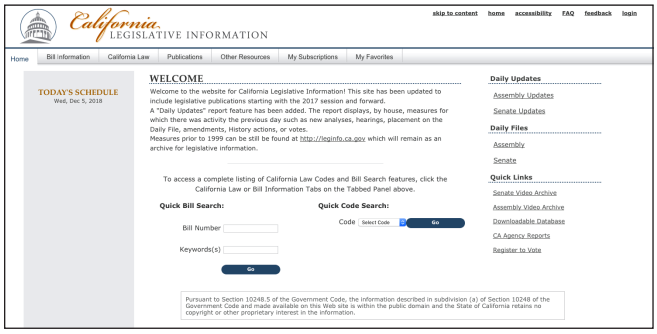
2018 Legislative Update

Sept. 30, 2018, marked the end of Gov. Jerry Brown's signing period following the second year of the 2017–18 legislative session. There were 1,217 bills sent to the governor in 2018, and he signed 1,016 bills into law and vetoed 201. Below are summaries of recently signed bills that affect real estate licensees and subdividers. These summaries are intended to alert you to pertinent law changes.

For more information, consult the statutes online at **http://leginfo.legislature.ca.gov**. Note that "SB" refers to a Senate bill and "AB" to an Assembly bill. The name appearing after the bill number is the author. All statutes are effective Jan. 1, 2019, unless otherwise noted.



AB 2138 (Chiu and Low, Chapter 995, Statutes of 2018)
Limits on licensing agencies' use of past criminal convictions

Existing law precludes licensing entities, including the Department of Real Estate (department), from denying a license application solely based on an expunged conviction. Effective July 1, 2020, this bill will preclude licensing entities from using the conduct underlying an expunged conviction to deny an application. It also will preclude a licensing entity from denying an application solely based on a criminal conviction, expunged or not, that is more than seven years old unless the conviction involves a serious felony or certain financial crimes.

AB 2884 (Irwin, Chapter 285, Statutes of 2018)
Multifaceted revision of the Real Estate Law

The stated goal of the California Association of Realtors (CAR), sponsor of AB 2884, was to "update" the language of the Real Estate Law (Business and Professions Code sections 10000 et seq.). The majority of the amendments appearing in this lengthy bill follow this pattern. However, substantive changes were also written into the bill, with the following highlights:

(Continued on page 4)

- **New section 10010.5. A statutory "savings clause" to preserve existing legal duties and relationships**
  AB 2884 inserts a savings clause into the Real Estate Law at section 10010.5. The savings clause outlines and preserves the existing duties of real estate licensees to each other and to their clients, expressing a clear legislative intent not to change those duties via AB 1289 and AB 2884.

- **Sections 10015.1–10018.17: Moved and/or amended definitions**
  AB 1289, described later in this article, deletes almost all of the real property definitions found in the Civil Code, inserting a reference to definitions in the Real Estate Law. (Civil Code section 1086.) Many of those definitions do not exist in the present Real Estate Law but are created by AB 2884. The new definitions in the Real Estate Law are not identical to those deleted from the Civil Code. The differences remaining at the end of the legislative process do not appear to create a substantive impact, and the savings clause described above should minimize the risk of a substantive impact in practice.

- **Section 10186.2: Adding a "criminal complaint" to events that a licensee must notice to the Department of Real Estate**
  Under current law, a real estate licensee must provide notice to the department when an indictment or information charging a felony against the licensee is brought. A licensee must also notice the department for a misdemeanor or felony conviction pursuant to Business and Professions Code section 10186.2. AB 2884 expands the initial list, relating to felony charges, to include a criminal complaint charging a felony against the licensee.

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Missing Our Emails?

If you are not receiving emails from the Department of Real Estate (department), you may want to check your email account settings:

- **Spam or junk folder**: Check your spam or junk folder to see if the department's email was incorrectly marked as spam. Emails from the department will be sent from either of these email addresses: **webmaster@dre.ca.gov** or **dre_no_reply@dre.ca.gov**.
- **Blocked address:** Check to see if our email address was added to your blocked email list.
- **Email filters:** Check your filters to see if the email could have been moved to another folder.

The department may not have your current email in our system. You can check your email address using the department's eLicensing system.

- **Section 10142: Allowance for electronic documents**
  The current statute requires that when a licensee's client signs a contract to employ the licensee for acts requiring a license, the licensee must provide a copy of the contract to that person at that time. AB 2884 makes two substantial changes to this provision. First, the provision of the copy may be "as soon as reasonably practicable after" the time the signature is obtained. Second, an allowance is made for the copy of the contract to be provided electronically, pursuant to the Uniform Electronic Transactions Act (Civil Code sections 1633.1 et seq.), where the licensee and the client have agreed to conduct the transaction by electronic means.

- **Section 10160: Deletion of an archaic license requirement**
  The Real Estate Law's licensing scheme predates the advent of computers and instant statewide communication. For much of the history of real estate licensing, a licensee's primary means to prove their status to a consumer or an investigator from the department was to show the paper license issued by the department. The current section 10160 reflects that time, requiring that a broker must possess "his" license and those of the "salesmen" working for the broker, making them available for inspection by the real estate commissioner or "his" designated representative. AB 2884 deletes section 10160. With internet access to the license database information on the department's webpage, the requirements of this section are no longer needed.

AB 1289 (Arambula, Chapter 907, Statutes of 2018) Civil Code revisions to disclosures for home buyers
Like AB 2884, this bill was sponsored by CAR. AB 1289 amends a series of important articles in the Civil Code: Those that call for Transfer Disclosure Statements, Natural Hazards Disclosures, and Disclosures Regarding Real Estate Agency Relationships. As with AB 2884, described above, the majority of the amendments appearing in this lengthy bill are updates to language that appear to have no substantive effect on the law. However, substantive changes were also written into the bill, with the following highlights:

- **Section 1102.1(d). A "savings clause" to preserve existing legal duties and relationships**
  Just as with AB 2884, in an effort to avoid creating an unintended legal impact, this bill adds a very detailed "savings clause" into Civil Code section 1102.1(d). Further references to that savings clause also appear in Civil Code sections 1089, 1102.18, 1103.15, and 2079.15, spreading its impact to each of the articles affected by AB 1289. The savings clause outlines and preserves the existing duties of real estate licensees to each other and to their clients, expressing a clear legislative intent not to change those duties via AB 1289 and AB 2884.

- **Sections 2079.16 and 2079.21: Expansion of information a dual agent may withhold from clients**
  AB 1289 expands upon the existing restrictions against a dual agent sharing information between the two clients. The bill prohibits an agent from sharing "confidential information" from one party to the other without the express permission of the client. The bill defines "confidential information" as "facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price," explicitly including the existing law's restriction against sharing the seller's or buyer's flexibility on price.

- **Section 1102.3. Changing the "trigger" for a buyer's time period to reconsider their bid in light of disclosures**
  AB 1289 specifies that the buyer's window to consider the disclosures in the Transfer Disclosure Statement and rescind the purchase offer, if necessary, begins when the seller and the seller's agent have completed their portions of the Transfer Disclosure Statement and delivered the Transfer Disclosure Statement to the buyer or the buyer's agent. The buyer's agent would still be required to complete their disclosures on the Transfer Disclosure Statement, but now that duty must be fulfilled within the buyer's period of time to rescind their bid.

(Continued on page 6)

- **Section 2079.10a. Expanding the types of residential transactions where Sex Offender Registry information must be noticed**
  California's Department of Justice maintains a registry of sex offenders (commonly known as the Megan's Law website) pursuant to Penal Code section 290.4. Civil Code section 2079.10a currently requires a notice about how to seek information from the sex offender registry to be included in every lease, rental agreement, or sale contract for residential properties with one to four dwelling units. This bill adds "a leasehold interest in real property consisting of a multiunit residential property with more than four dwelling units" to the list of contracts that must contain a specified notice to the buyer about the state's sex offender website.

SB 818 (Beall, Chapter 404, Statutes of 2018)
California Homeowner Bill of Rights
This bill re-enacts various provisions of the California Homeowner Bill of Rights, which were repealed by statute on Jan. 1, 2018. These statutes establish requirements regarding foreclosures on mortgages and deeds of trust.

AB 2219 (Ting, Chapter 233, Statutes of 2018)
Third-party payment of tenant's rent
This bill requires a residential landlord or landlord's agent to allow a tenant to pay rent through a third party, provided that the third party acknowledges that (1) the third party is not a current tenant of the premises, and (2) the payment does not confirm or create a tenancy with the third party. The bill would also specify that this requirement does not require the landlord or landlord's agent to enter into a contract for a government housing assistance program, such as federal housing assistance voucher programs.

AB 2343 (Chiu, Chapter 260, Statutes of 2018)
Possible additional days to respond to "pay rent or perform" notice
AB 2343 enables possible extension of specified deadlines that are part of the eviction process. A tenant would have three "court" days (i.e., days that the Superior Court is open), rather than three calendar days, to respond to a "three-day notice" to pay rent or perform other covenants of the lease or vacate. A tenant would have five court days, rather than five calendar days, to file an answer to an eviction "unlawful detainer" summons. Saturdays, Sundays, and court holidays will no longer count as part of the three- or five-day tenant response time. These changes go into effect Sept. 1, 2019.

SB 721 (Hill, Chapter 445, Statutes of 2018)
Inspection of decks and balconies; condominium conversion requirement
This bill establishes a requirement for professional inspection of decks, balconies, and similar structural features for buildings with three or more multifamily dwelling units. Initial inspections and testing must be completed by Jan. 1, 2025, and the structure re-inspected every six years. Among other provisions, where such a building is being converted into a condominium development, the inspection report and confirmation of repairs/replacements must be provided to the department as a condition to the issuance of the final public report by the department.

AB 3041 (Cunningham, Chapter 306, Statutes of 2018)
Prohibition on new "transfer fees"
This bill prohibits the creation of private transfer fee requirements in the title of real property, except for certain transfer fees that do not disqualify a real property from federal mortgage backing.

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2018 LEGISLATIVE UPDATE (CONTINUED FROM PAGE 6)

SB 1173 (Vidak, Chapter 91, Statutes of 2018)
Common interest developments with time-share plan interests: Notice through time-share governing association

In circumstances where a time-share plan is part of a mixed-use common interest development, this bill allows a homeowners' association to satisfy a statutory requirement for annual member outreach through communication with the time-share plan's governing association. The bill also allows the time-share plan association to provide its updated member address list to the homeowners' association for this purpose.

SB 1183 (Morrell, Chapter 136, Statutes of 2018)
Successors in interest to deceased borrowers of reverse mortgages

Current law prohibits a mortgage servicer from recording a notice of default when a borrower has died until affording an opportunity for a successor in interest to assume the loan. This bill creates the same prohibition when the loan is a reverse mortgage.

'Coming Soon' Advertising: Be Sure to Maintain Fiduciary Responsibility for Your Client or Face Civil and Regulatory Liability

In a competitive real estate market, obtaining a listing is a sought-after business opportunity for a real estate licensee. However, becoming a listing agent for a seller brings with it a responsibility to act in the best interests of that seller—a fiduciary responsibility. A fiduciary responsibility carries with it the duty to act with the highest standard of care for a client and place the client's interests ahead of your own.

In the summer 2007 *Bulletin*, former Commissioner Wayne Bell wrote in detail about the fiduciary duties of real estate licensees: **"The Real Estate Brokerage as Fiduciary: A Summary Review of What it Means and Why it Matters."** Included in the article was the following:

In the case of *George Ball Pacific, Inc. v. Coldwell Banker & Co.*, 117 Cal. App.3d 248 (1981), at page 256, the Court of Appeal (First District) noted that the general principles of agency combine with the statutory duties of the Real Estate Law to impose "on a real estate agent 'the same obligation of undivided service and loyalty that [the law] imposes on a trustee in favor of his beneficiary.' [Citations.] This relationship not only imposes [on the agent] the duty of acting in the highest good faith toward his principal but precludes the agent from obtaining any advantage over the principal in any transaction had by virtue of his agency. [Citation.]" A real estate licensee is further "charged with the duty of fullest disclosure of all material facts concerning the transaction that might affect the principal's decision. [Citations]."

Furthermore, with the passage of Assembly Bills 2884 and 1289, effective Jan. 1, 2019, new Business and Professions Code section 10010.5 and Civil Code section 1102.1(d) codify into these parts that a real estate broker owes fiduciary duties to a person who retains that broker to perform acts for which a license is required.

How does this fiduciary duty relate to "Coming Soon" advertising? Since an agent has to act with integrity for a client, and always act in the client's interests to the exclusion of all other interests—including those that could benefit the agent above all else, a "Coming Soon" advertising plan must be of benefit to the client.

"Coming Soon" advertising CAN benefit the seller if handled properly. Such advertising can increase exposure time of the property and generate interest in the public about a soon-to-be marketed property, helping potential purchasers prepare to tour the property or make an offer when the property is put up for sale. A practice of "Coming Soon" advertising coupled with initially not showing the property is sometimes known as a "Coming Soon—No Showing" strategy (or similar) and can well serve a client. In such a strategy, the property may show as "Coming Soon" on a multiple listing service, but also as not yet being shown to potential buyers. After a time, the property is broadly marketed as for sale. There are likely multiple listing service requirements that must be met to advertise a property as "Coming Soon—No Showing" or similar.

The potential conflict a "Coming Soon" strategy can have with a licensee's fiduciary duty comes when the listing agent begins accepting offers before the property is exposed to a larger audience via a multiple listing service or by other means. When a property is not exposed to the full market, a client's best interests might not be served, even when a full price offer is received (because the property may well have sold above the marketed price if better advertised). Imagine the dilemma for a listing agent if a seller accepts an offer on a poorly marketed property and then receives much higher backup offers as the property receives greater exposure.

At a minimum, an agent should disclose that a better sales price could be obtained if the property were to be marketed on a multiple listing service and obtain the seller's prior written permission that she or he agrees to not fully market the property.

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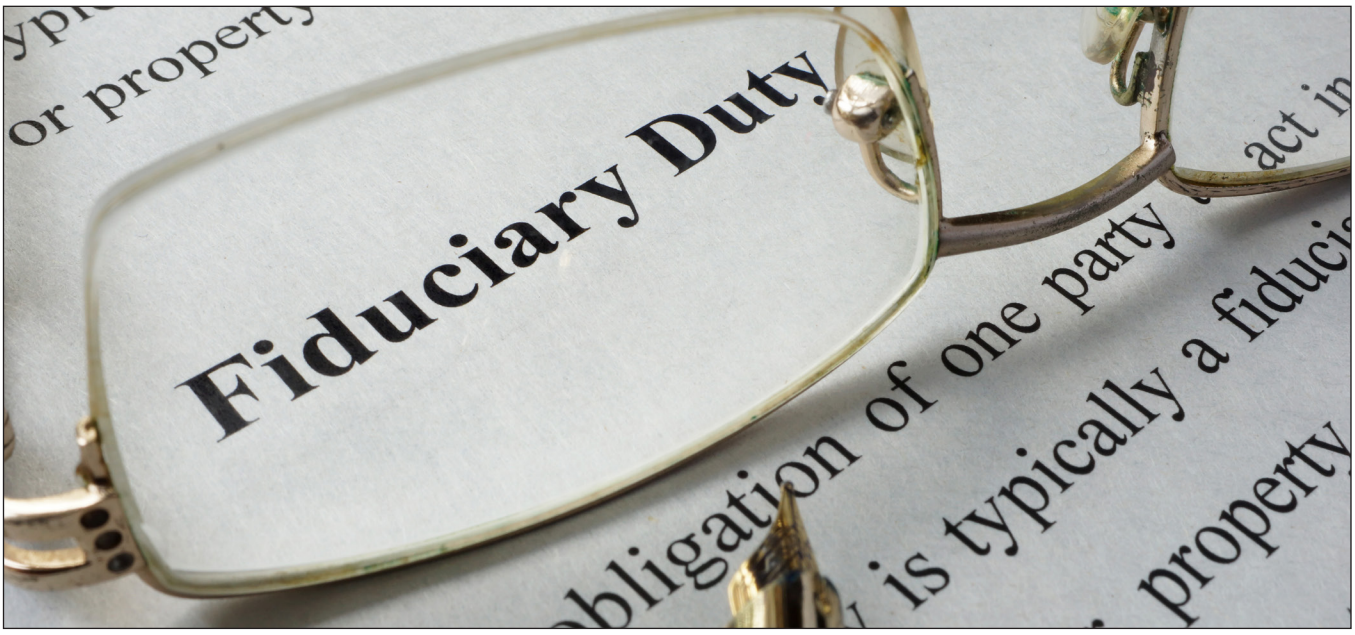
'COMING SOON' ADVERTISING (CONTINUED FROM PAGE 8)



A listing agent who encourages the use of a "Coming Soon" program, without broadly advertising a property via a multiple listing service or other means, especially exposes himself/herself to the potential for an increased chance of civil liability and regulatory action when the agent also then represents the buyer in a dual agent capacity. Such a dual agent would need to be able to demonstrate that the agent acted in the best interests of the seller to obtain a purchase price that was as high as could be expected for a fully marketed property. This agent, who receives commissions on both ends of the transaction, could face scrutiny questioning whether they worked to obtain the best offer possible for the seller or was acting in such a capacity for personal financial gain.

The following are some best practices for agents when representing a seller:

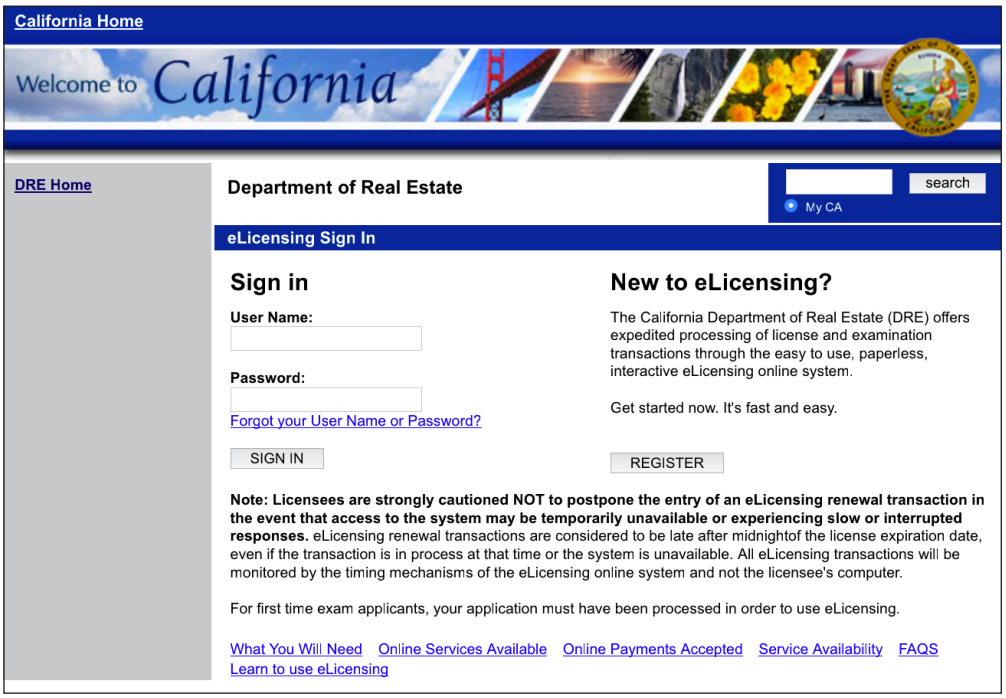
- Market the property via multiple listing service or other broad advertising means.
- Make sure the seller agrees to and understands how the property will be marketed.
- If using a "Coming Soon" strategy, do not accept and act on offers until a property has been broadly marketed.
- If the property will not be fully marketed, obtain prior written permission from the seller that demonstrates they understand that such a "Coming Soon" strategy may not result in receiving the best sales price.
- Avoid double-ending a property that is not fully marketed—it is best to refer potential buyers to another agent.

Always remember that working as an agent in real estate brings with it a responsibility to act in the best interests of the client with a high standard of care and adopt strategies that truly benefit your client. Such practices will enhance your reputation and result in greater long-term success.

'Broker-Associate' Notifications Can Now be Done Online

By Jeff Oboyski, Licensing Manager

AB 2330, which became effective Jan. 1, 2018, requires that whenever a broker acting as a salesperson (i.e., a broker-associate) enters the employ of another real estate broker or corporation, the responsible broker shall immediately notify the Department of Real Estate (DRE) commissioner of this arrangement in writing. It also requires that whenever the employment of a broker-associate is terminated, the responsible broker shall immediately notify the commissioner in writing.



DRE recently added "Broker-Associate" notifications to the list of licensing transactions that can be performed using the **eLicensing** system. A broker-associate may use eLicensing to affiliate his or her broker's license with one or more responsible brokers. The effective date of the affiliation is the date the new responsible broker certifies the affiliation through eLicensing.

The broker-associate will be required to enter the new responsible broker's license identification number as part of the eLicensing transaction. If the responsible broker's email address is on file with DRE, an email will be automatically forwarded from eLicensing to the responsible broker advising him or her of the pending affiliation and the need to complete the transaction through the affiliation certification process.

The new responsible broker will need to certify, through the eLicensing system, the new affiliation before it can become effective. Once the responsible broker has certified the broker-associate's affiliation and, if a broker-associate email address has been provided to eLicensing, an email will be sent to the broker-associate advising that the transaction is completed.

The real estate law does not limit the number of responsible brokers for which a broker-associate can affiliate; however, an affiliation/employment agreement signed by the responsible broker and the broker-associate may prohibit such activity. Although affiliations between broker-associates and responsible brokers appear on online public license records, this information will not appear on individual license certificates.

Should you have any questions about this online process, do not hesitate to call the DRE's Licensing section at (877) 373-4542.

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