

DEPARTMENT OF REAL ESTATE FORUM



Anaheim Marriot Hotel
February 7, 2020



TODAY'S AGENDA



Opening Remarks – Acting Commissioner Sandra Knau

- Operations Report –
Sandra Knau, Assistant Commissioner-Administration
- Enforcement Report–
Jeff Oboyski, Assistant Commissioner, Enforcement
- Audit Report –
Tom Cameron, Assistant Commissioner, Audits
- Legal, Legislation and Consumer Recovery Account Report –
Stephen Lerner, Assistant Commissioner, Legal Affairs
- Q & A and Dialogue
Panel

DEPARTMENT OF REAL ESTATE OPERATIONS REPORT

Sandra Knau
Acting

Commissioner/Assistant
Commissioner Administration
& Licensing



DRE Operations

▶ Five District/Exam Offices

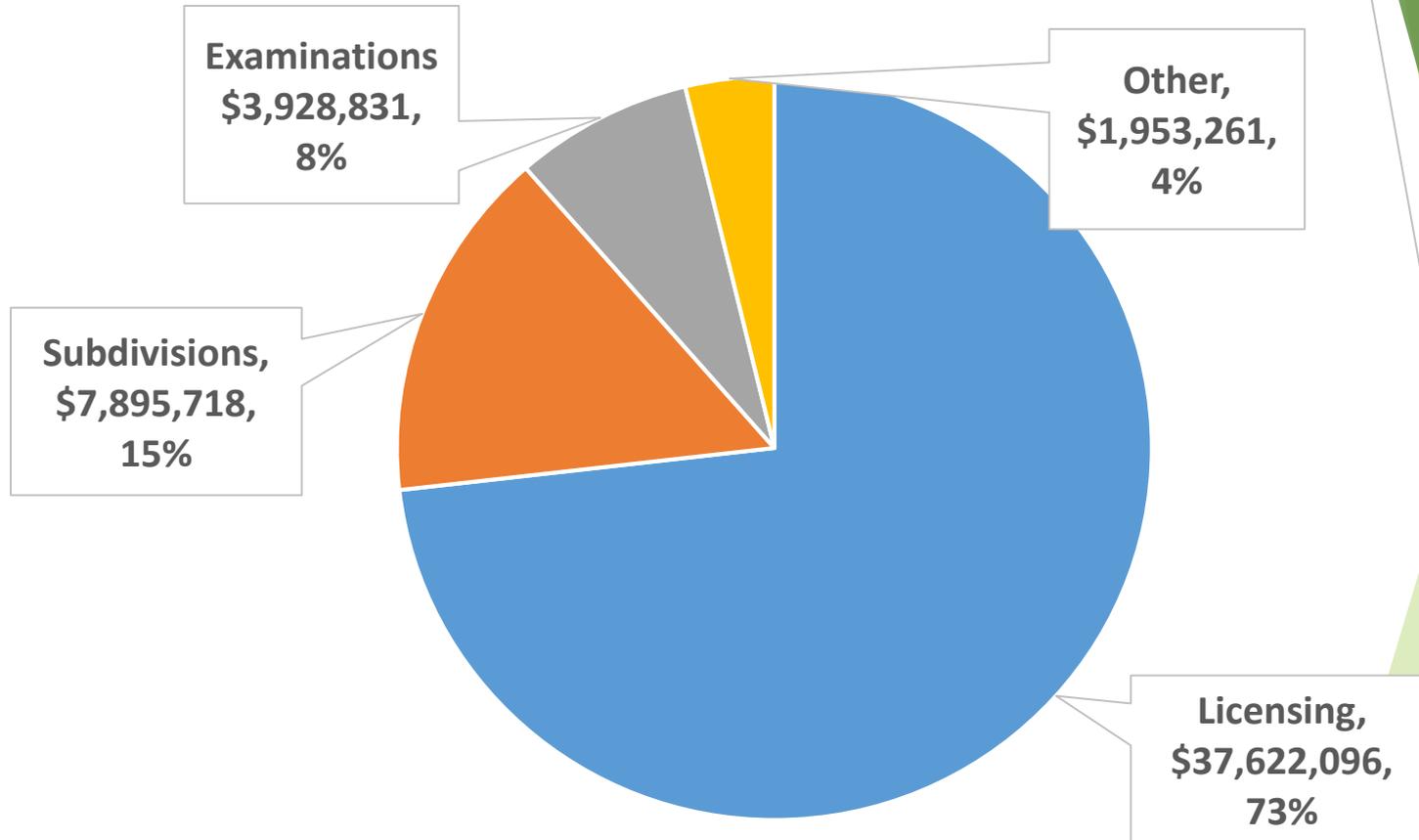
- ▶ Fresno
- ▶ Los Angeles
- ▶ Oakland
- ▶ Sacramento
- ▶ San Diego

▶ **Authorized Positions: 354**

Financial Statistics FY 2018-2019

DRE's Budget \$52,995,000

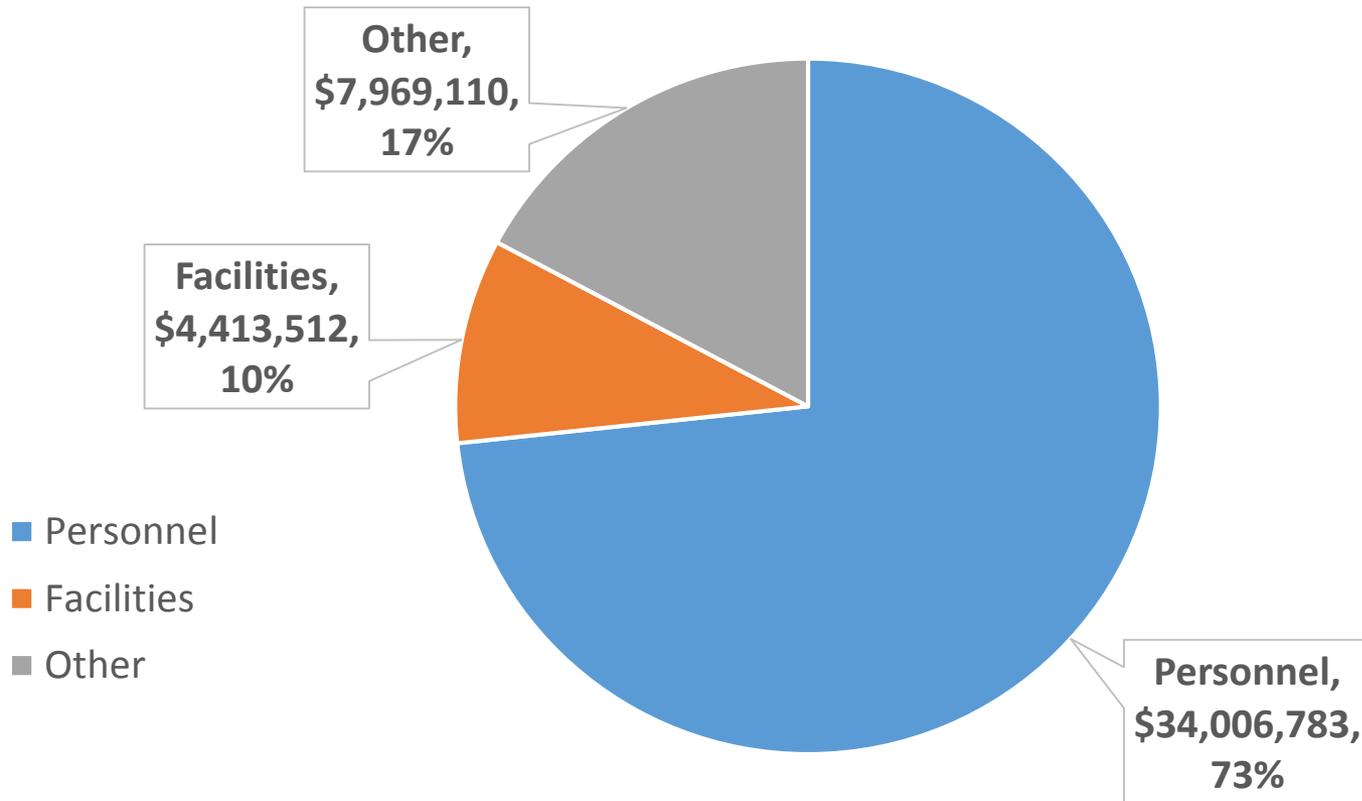
Revenues:



Financial Statistics FY 2018-2019

DRE's Budget \$52,995,000

Total Expenditures \$46,389,405



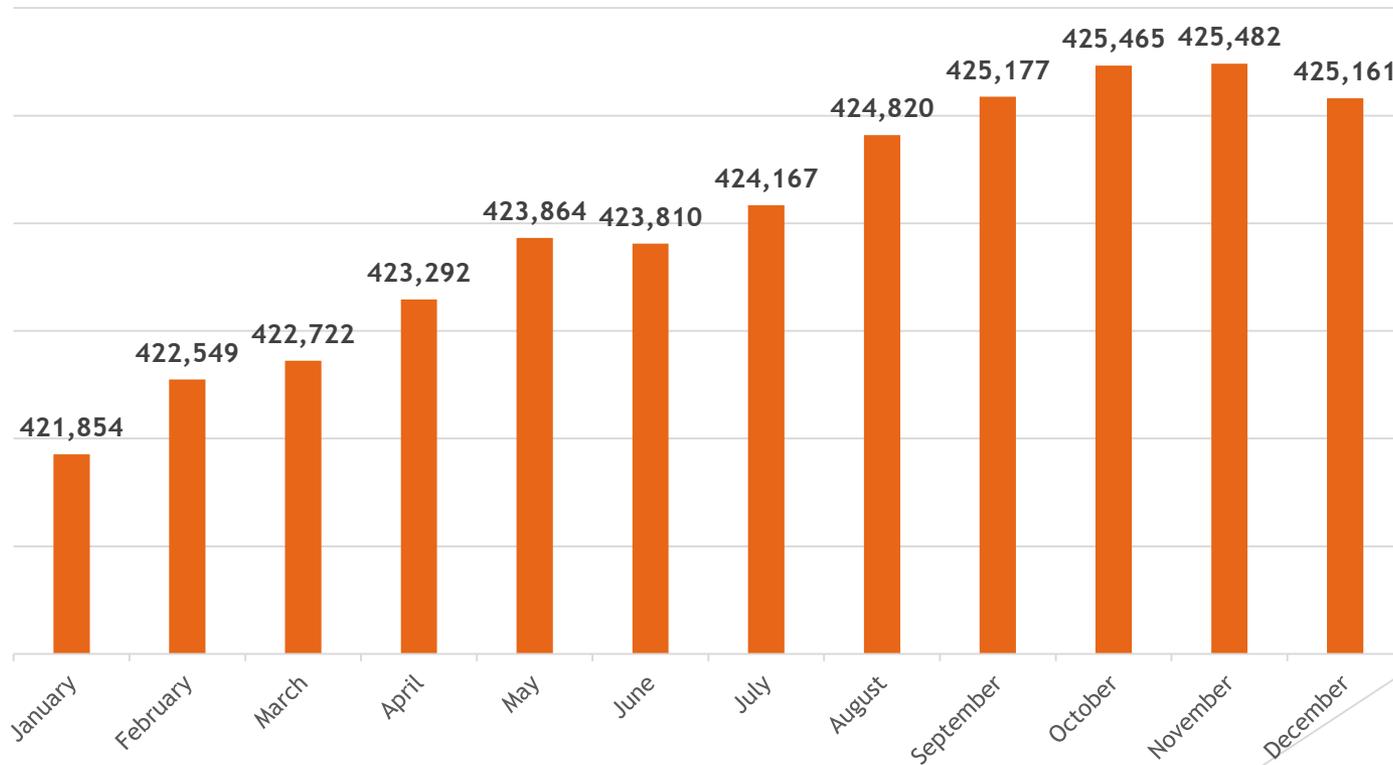
2020/21 Budget Change Proposal (BCP)

- ▶ A Budget Change Proposal is needed to increase personnel and funding
- ▶ One BCP was submitted for Fiscal Year 20/21
- ▶ This BCP request is to add eight positions for the Licensing Program
- ▶ These eight positions were requested to help reduce call wait times in Licensing
- ▶ Pending approval of the legislature and GO's

Licensing Workload

Exams Scheduled	2018	2019
RES	50,119	47,716
REB	4,988	5,441
New Licenses		
RES	23,357	22,063
REB	4,595	4,745
Renewals		
RES	54,029 (79%)	52,382 (79%)
REB	29,035 (89%)	27,493 (92%)
Total Licenses		
	421,512	425,161
Total MLO's		
	26,407	26,834

Licensing Population Last 12 Months



Information Technology Updates

- ▶ Officer renewals on eLicensing- added October 2019
- ▶ Ability to print a license application off of eLicensing for successful exam candidates- added January 2020
- ▶ Online submittal of exam and license applications-tentative date of July 2020
- ▶ Second phase of SOPRAS- tentative date September 2020
- ▶ Website redesign

Changes to Broker Examination Time and Format

- ▶ Effective January 27, 2020
- ▶ Time allotted for completion of Broker exam reduced from 5 hours to 4 hours
- ▶ Reduced from two sessions to one session
- ▶ Exam content, number of questions, and pass rates remain the same

Changes to Salesperson Examination Time and Format

- ▶ Effective January 27, 2020
- ▶ Time allotted for completion of Salesperson exam reduced from 3 hours and 15 minutes to 3 hours
- ▶ Exam content, number of questions, and pass rates remain the same

Department of Real Estate Administration & Licensing

Contact:

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ENFORCEMENT

JEFF OBOYSKI

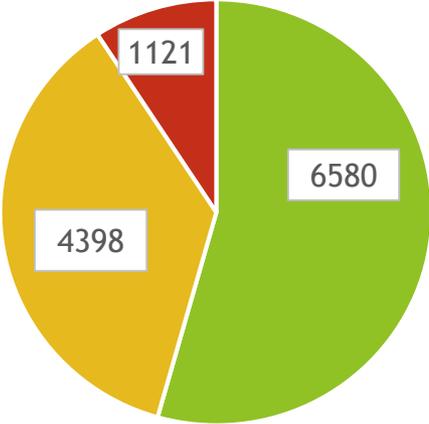
ASSISTANT COMMISSIONER-ENFORCEMENT



DRE'S ENFORCEMENT SECTION

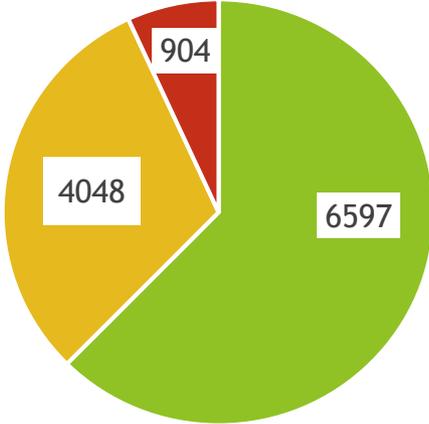
COMPLAINTS, INVESTIGATIONS, AND REFERRALS TO LEGAL

2018



■ Complaints ■ Investigations ■ Legal

2019



■ Complaints ■ Investigations ■ Legal

A man in a dark suit, white shirt, and striped tie is pointing his right index finger directly at the camera. The background is a blurred indoor setting with warm lighting.

CITATIONS & FINES

- ▶ **\$2,500.00 Maximum**
- ▶ **Order of Correction**
- ▶ **Since 2014:**
 - ▶ **Over 3,000 citations**
 - ▶ **\$2.5M in fines**

PUBLIC PROTECTION

- ▶ **Business & Professions Code Section 10050.1** states, “Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions.”



CHANGES IN REAL ESTATE

- ▶ “TEAM NAMES” AND “MEGA TEAMS”
- ▶ VIRTUAL REAL ESTATE BROKERAGES
- ▶ IBUYERS

BROKER SUPERVISION

- ▶ **Business & Professions Code section 10015.1** provides, “‘Responsible broker’ means the real estate broker responsible for the exercise of control and supervision of real estate salespersons under Section 10159.2, or a licensee subject to discipline under subdivision (h) of Section 10177 for failure to supervise activity requiring a real estate license.”
- ▶ **Business & Professions Code section 10159.2(a)** states, “The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.”

BROKER SUPERVISION (cont.)

- ▶ **Business & Professions Code section 10177(h)** states, “As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.”
- ▶ **Commissioner's Regulation section 2725** provides, in part, “A broker shall exercise reasonable supervision over the activities of his or her salespersons.”
 - ▶ This regulation requires that the broker have policies, procedures, and systems in place to review, oversee, and manage the activities of his or her salespersons.

BROKER SUPERVISION (cont.)

▶ Business & Profession Code section

10162 provides, “Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held.”

Real Estate Bulletin

Technology and Supervision in the Real Estate Industry

By Jeff Oboyski, Assistant Commissioner, Enforcement

DRE vs. PRECIADO

- SOUTHERN CALIFORNIA
- EARNEST MONEY DEPOSITS
- MULTIPLE FELONY GRAND THEFT CHARGES
- ORDER SUSPENDING RE PRACTICE
- HEARING

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Attorney for Complainant

FILED
MAR 22 2019
DEPT. OF REAL ESTATE
By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against
LAURA CHRISTINA PRECIADO,
Respondent.

DRE No. H-41332 LA
ACCUSATION

NEW AT 6

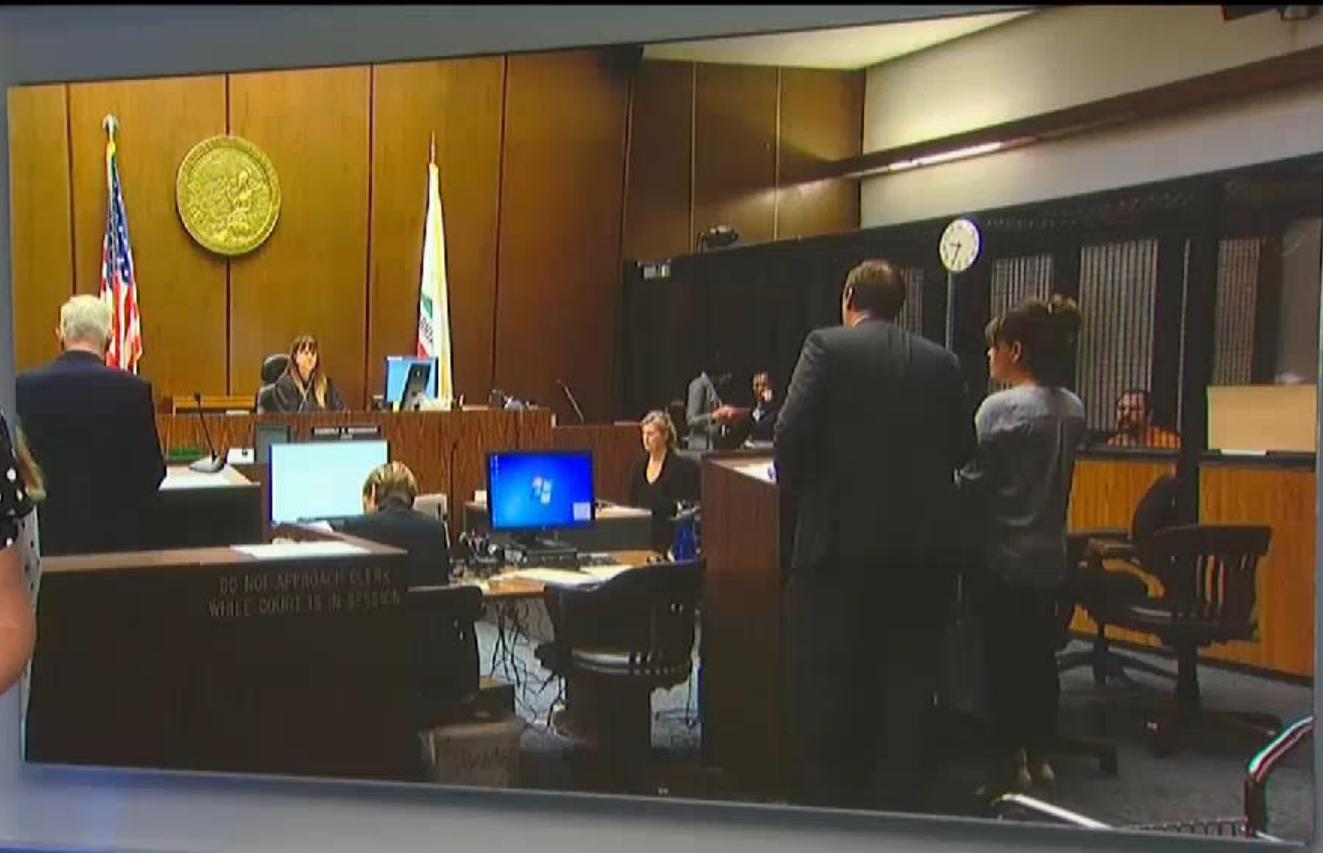
SHARE VIDEO & PICS: ISEE@NBCLA.COM

6:15 70°

LOS ANGELES
TOMORROW



Story and video available from NBC Los Angeles



NBC LA.COM

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LONG BEACH
TOMORROW



Story and video available from NBC Los Angeles

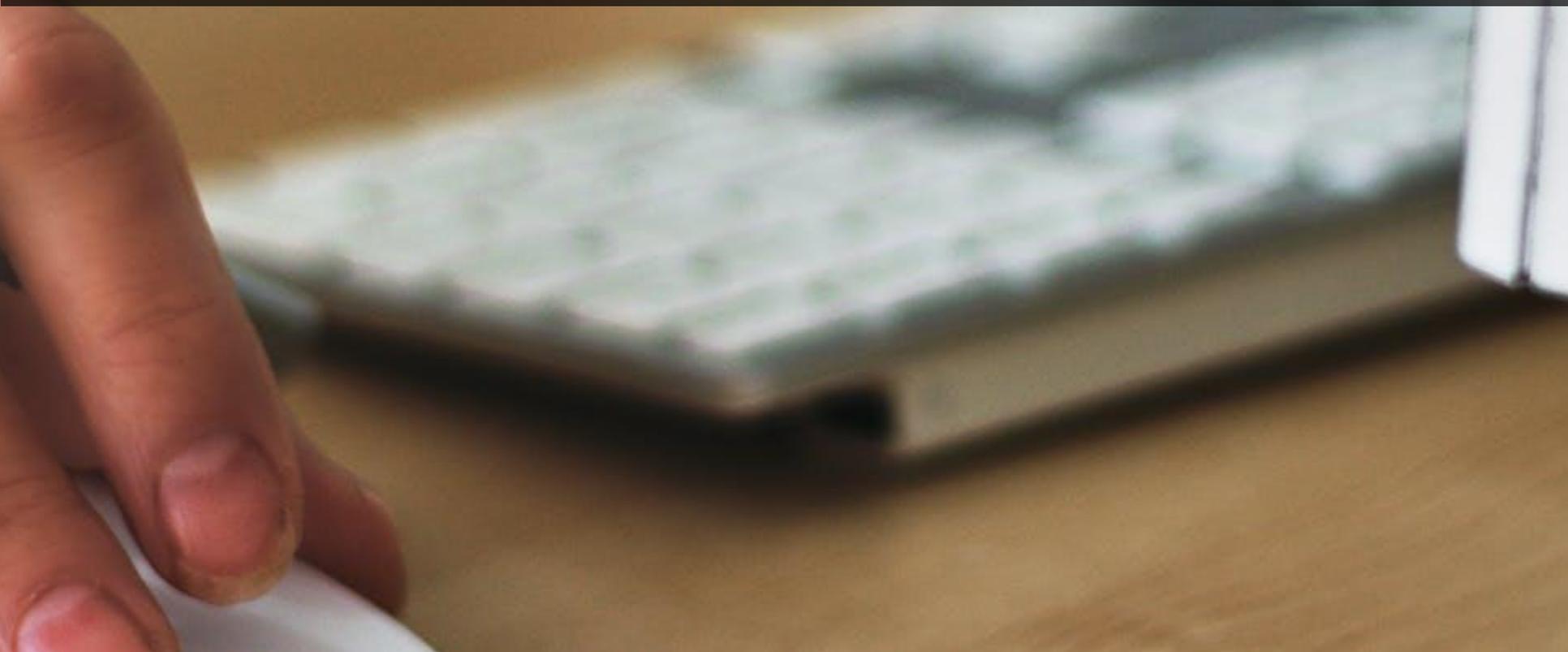
ENFORCEMENT FIELD PROGRAM

A conference room with a large white table and black chairs, with sunlight streaming through blinds. The room has a dark wood floor and large windows with vertical blinds. The text "ENFORCEMENT FIELD PROGRAM" is overlaid in a dark banner at the top.

PROACTIVE FIELD INVESTIGATIONS

ENFORCEMENT FIELD PROGRAM

MONITOR RESTRICTED LICENSEES AND THOSE DISCIPLINED



ENFORCEMENT FIELD PROGRAM

PROACTIVE BROKER OFFICE SURVEYS

COMPLIANCE EVALUATIONS

- ▶ LICENSING
- ▶ TRUST ACCOUNT/RECORDKEEPING
- ▶ REQUIRED DISCLOSURES
- ▶ BROKER SUPERVISION

A photograph of a business meeting. Several people are seated around a table with laptops and documents. One person in the foreground is writing on a document with a red pen. The scene is brightly lit, suggesting an office environment.

ENFORCEMENT FIELD PROGRAM

**“BROKER COMPLIANCE EVALUATION MANUAL” AND
CHECKLIST AVAILABLE ON WEBSITE**



ENFORCEMENT - PROACTIVE OUTREACH INITIATIVES

- ▶ **PROACTIVE OUTREACH INITIATIVE**
- ▶ **OPPORTUNITIES TO INTERACT WITH ENFORCEMENT STAFF**

A close-up photograph of a person's hands holding a stack of white papers. A magnifying glass is positioned over one of the pages, which has some faint, illegible text on it. The background is blurred, showing more of the person's hands and the stack of papers.

ENFORCEMENT SUPPORT OFFICE (ESO)

- ▶ PETITION INTAKE**
- ▶ CITE & FINE**
- ▶ STATISTICAL DATA**

DEPARTMENT OF REAL ESTATE

JEFF OBOYSKI

**ASSISTANT COMMISSIONER,
ENFORCEMENT**

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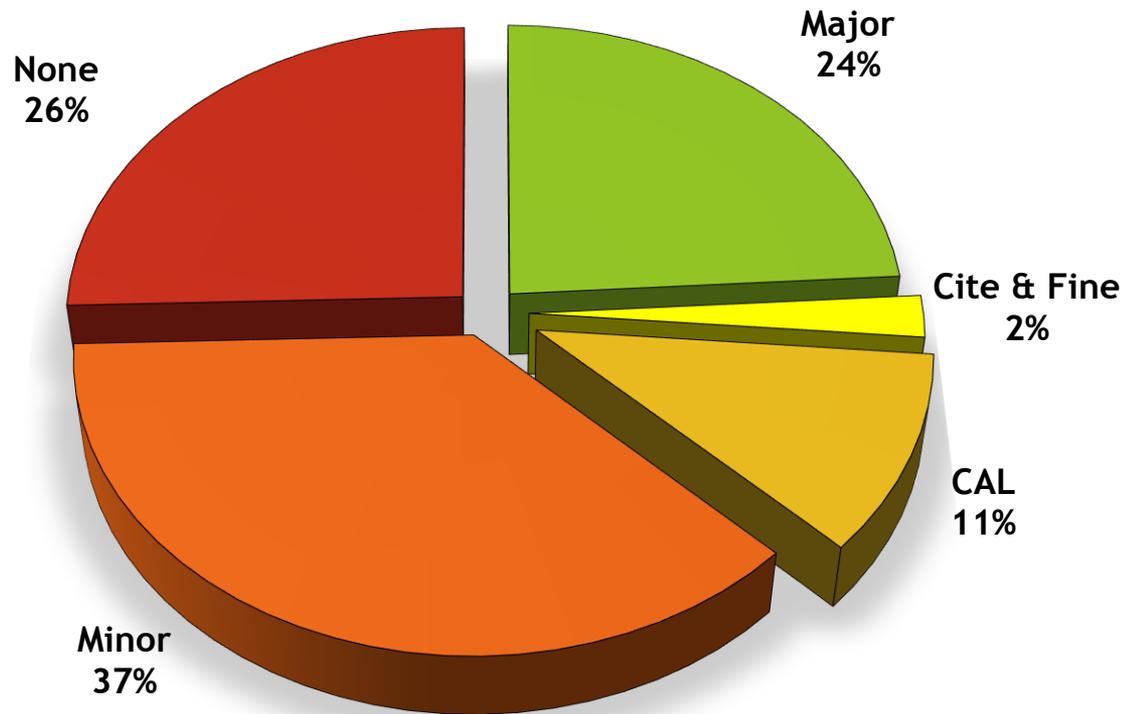
Audit Report



Tom Cameron
Assistant Commissioner, Audits



Findings of Audits Closed 1/1/19 - 12/31/19



Shortage Findings of Audits Closed 1/1/19 - 12/31/19

- ▶ Total audits closed - 483
- ▶ \$7.7 Million
- ▶ 32.5% had shortages
- ▶ 60 audits > \$10,000 short, 12.4%

What Audits is Seeing

- ▶ Trust fund shortages on PM, and BE audits
- ▶ Lack of broker oversight
- ▶ Broker-controlled escrow activities and failure to report to DRE
- ▶ Delays in providing records

Top 5 Audit Violations

- ▶ **#5:** Commissioner's Reg. 2831: Record of All Trust Funds Received and Disbursed
 - ▶ This is the columnar, checkbook register
 - ▶ Must be in chronological order, include all money in and out of the trust account, with all the detail of Reg. 2831

Top 5 Audit Violations

- ▶ **#4:** Commissioner's Reg. 2831.1: Separate Record for Each Beneficiary/Transaction
 - ▶ Usually related to incomplete or inaccurate Separate Records
 - ▶ Must have the detail referenced in Reg. 2831.1(a)
 - ▶ Must account for Unidentified Funds

Top 5 Audit Violations

- ▶ **#3**: Commissioner's Reg. 2831.2: Trust Account Reconciliation
 - ▶ This is a monthly reconciliation of Control Record to Separate Records
 - ▶ Do your monthly reconciliation between books and bank, **THEN** perform this **REQUIRED** reconciliation



Top 5 Audit Violations

- ▶ **#2: Commissioner's Reg. 2832: Trust Fund Handling**
 - ▶ If not sent to escrow or principal, trust funds must be deposited within 3 business days into trust account
 - ▶ Account designation often the issue - we look to the signature card

Top 5 Audit Violations

- ▶ **#1: Business and Professions Code §10145: Handling of Trust Funds**
 - ▶ Trust funds must be placed into one of 3 places: a neutral escrow depository; or into the hands of the principal; or into a proper trust fund account
 - ▶ Interest-bearing account violations

Audit Case

- ▶ Proactive audit
- ▶ Scheduling conflicts with D.O. and RES
- ▶ Eight bank and corporate accounts reviewed
- ▶ \$306,000 shortage caused by:
 - ▶ \$112,000 transfer to Personal Account of RES
 - ▶ Subsequently paid \$88,000 to Line of Credit
 - ▶ \$20,000 transfer to Corporate Account
 - ▶ \$13,000 Negative Balances

Audit Case

- ▶ \$161,000 Unidentified
- ▶ Multiple Recordkeeping Issues - Control Record, Separate Records and not performing Reconciliations
- ▶ Lacking trust account designations and proper signatories
- ▶ Interest bearing accounts
- ▶ No broker supervision

Audit Case

- ▶ Accusation filed on REC, D.O. and RES
- ▶ Broker stipulated to a RRES and the Corporation was revoked outright
- ▶ RES stipulated to an outright revocation and to a BAR Order for 36 months
- ▶ BAR Order prohibits a person from engaging in the following activities in California:
 - ▶ Holding any position of employment, management, or control in a real estate business.

Audit Case

- ▶ Participating in any business activity of a RES or REB
- ▶ Engaging in any real estate related business activity on the premises where a RES or REB is conducting business; and
- ▶ Participating in any real estate related business activity of a finance lender, residential mortgage lender, bank credit union, escrow company, title co., or underwritten title co.

Department of Real Estate Audit Section

Tom Cameron - Assistant Commissioner, Audits

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LEGAL AFFAIRS



Stephen Lerner
Assistant Commissioner
Legal Affairs

LEGAL AFFAIRS

- ADMINISTRATIVE PROSECUTIONS
- CONSUMER RECOVERY ACCOUNT
- STATUTES
- REGULATIONS

Legal Affairs

- Offices
 - Los Angeles
 - Sacramento
- Operational Units
 - Los Angeles Administrative Prosecution Unit
 - Sacramento Administrative Prosecution Unit
 - Consumer Recovery Account
 - Special Projects/General Law

License Discipline Process

- Complaint filed with DRE
 - Initiated on DRE's Own Motion
 - Receipt of Verified Third Party Complaint
- Complaint Investigated
 - Enforcement Section
 - Audit Section
- Legal Section Prosecutes Disciplinary Action
 - Preparation and filing of Operative Pleading(s)
 - Limited Discovery

License Discipline Process (Cont.)

- Outcome
 - Hearing before an Administrative Law Judge
 - ❖ Issuance of Proposed Decision
 - Settle Action via Stipulation
 - Dismiss Action
- Commissioner Action
 - Adoption/rejection of Proposed Decision
 - Approval/rejection of Proposed Stipulation
- Request for Reconsideration (Optional)
- Petition for Writ of Mandate

Legal Affairs

Disciplinary Tools

- Revocation
- Restriction
- Suspension
- Surrender
- Public Reproval
- Corrective Action Letter
- Cite and Fine
- Desist and Refrain Order
- Bar Order



LEGAL AFFAIRS

DISPOSITION OF CASES

Category	Jan. 1, 2019 - Dec. 31, 2019
Desist & Refrain Orders	25
License Suspensions	100
License Surrenders	67
License Revocations	313
Case Dismissals	72
Public Reprovals	9
Stipulations & Waivers/Agreements	194
Application Denials	92
License Denials and Restrictions	59
Bar Orders	7
Total	938

CONSUMER RECOVERY ACCOUNT

Consumer Recovery Account

(January 1, 2019 – December 31, 2019)

Category		Total
Claims Filed		52
Disposition of Claims	Paid	85
	Denied	4
Amount Paid		\$2,808,928

Consumer Recovery Account

Claims Filed & Total Amount Paid

(Calendar Year)

Claims Filed	
2014	185
2015	69
2016	87
2017	68
2018	157
2019	52

Consumer Recovery Account

Claims Filed & Total Amount Paid

(Calendar Year)

Total Amount Paid

Total Amount Paid	
2014	\$5,459,413 (140 claims paid)
2015	\$3,922,533 (104 claims paid)
2016	\$1,946,785 (43 claims paid)
2017	\$2,244,882 (93 claims paid)
2018	\$1,507,912 (39 claims paid)
2019	\$2,808,928 (85 claims paid)

CONSUMER RECOVERY ACCOUNT

Claims History

Since 1964, DRE has paid over
\$65 million to victims

Legislation



2018 Legislation



AB 2138 (Chiu and Low)

Existing law:

- Authorizes denial of license if applicant is convicted of felony or substantially-related misdemeanor
- Authorizes denial of license if applicant knowingly made a false statement of fact that is required to be disclosed on his/her application
- Precludes denial of a license solely based on a conviction if conviction dismissed or expunged

AB 2138 (Chiu and Low)

New law:

- Precludes denial of license if applicant convicted of a crime that is more than 7 years old
 - Exception: Convictions for serious felonies or financial crimes
- Precludes denial of license based on acts underlying a conviction if conviction has been dismissed or expunged
- Precludes entity from inquiring about criminal history on license applications
- Effective July 1, 2020

2019 Legislation



Overview of 2019 Legislative Activity

- Bills that reached the Governor's Desk: 991
- Bills Signed: 928
- Bills Vetoed: 63

Overview of 2019 Legislative Activity

Signed by the Governor

- AB 5 (Gonzalez)
- AB 892 (Holden)

AB 5 (Gonzalez) The “Dynamex” Bill

- Signed by the Governor on September 18, 2019
- Codifies the “Dynamex” California Supreme Court case that reset the standard for independent contractors in this state.
- C.A.R. lobbied for, and the bill now includes, language that excludes the real estate industry from this codification.

AB 892 (Holden)

- Signed by the Governor on September 20, 2019
- C.A.R.-sponsored bill. “Clean up” language to correct minor issues found in the Civil Code disclosure requirements after 2018’s amendments (AB 1289 - Arambula).
- “Clean up” for issues spotted in the Civil Code after 2018’s amendments (AB 1289 - Arambula).
- Includes a requirement that MLS retain listing information for three years.

2020 Legislation



Proposed 2020 Legislation

- AB 687 (Daly) – Licensing LLCs
 - Similar to licensing of corporations
 - Insurance Requirement
 - ❖ 5 or fewer licensees - \$1 million per year
 - ❖ More than 5 licensees
 - \$1 million per year
 - \$100,000 per additional licensee
 - Capped at \$5 million per year
 - ❖ Proof of Insurance submitted to the Commissioner

Proposed 2020 Legislation

- AB 1263 (Low)
 - Prohibiting a licensee from contracting with any person/entity limiting that person's/entity's ability
 - ❖ to file a complaint with the licensee's regulatory board, bureau or department
 - ❖ To participate in any investigation into the licensee by the licensee's regulatory board, bureau or department
 - Waiver of prohibition is against public policy and is void and unenforceable
 - Violation constitutes unprofessional conduct subject to discipline by the licensee's regulatory board, bureau or department

Proposed 2020 Legislation

- AB 1845 (Rivas)
 - Creates Office to End Homelessness within the Governor's Office
 - Creates the position of Secretary on Housing Insecurity and Homelessness
 - Lead state entity in fight against homelessness
 - Focus on coordinating the various federal, state, and local departments/agencies that provide housing and homeless services

Proposed 2020 Legislation

- AB1850 (Gonzalez) – AB 5 (Part 2)
 - Would declare the intent of the Legislature to enact legislation that would clarify the application of the CA Supreme Court's Dynamex decision

Regulations

- AB 2138 – New license applicants
- AB 2884 – Omnibus Cleanup Bill
- Protected Classes
- Mortgage Call Reports – Establishing time periods when reports must be filed

Department of Real Estate Legal Affairs

Contact:

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Legal Affairs

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Q&A

THANK YOU

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

www.dre.ca.gov

Next Meeting to be held in
Sacramento, CA

