

Real Estate

BULLETIN

CALIFORNIA DEPARTMENT OF REAL ESTATE

COMMON INTEREST
DEVELOPMENTS
REQUIRE SPECIAL CARE
BY AGENTS

NOTE FROM THE
COMMISSIONER

ESSENTIAL ELEMENTS
OF AN ADVANCE FEE
AGREEMENT



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FROM THE DESK OF THE Commissioner

Greetings,

If you have heard a representative from DRE speak at an event, read our advisories, or listen to our podcasts, you will likely home in on two points that we consistently emphasize. One is that DRE's mission is consumer protection. The other is that real estate licensees are agents of, and have fiduciary duties to, their clients.

I have been asked about DRE's consumer protection mission, but I do not know if I have ever been asked about a licensee's fiduciary duty.

If I had to simplify the concept, it's the care, loyalty, and integrity a real estate broker, and affiliated licensees as agents of the broker, must demonstrate to clients so that their clients can make an informed decision about their real estate transactions. That fiduciary duty is special and sets real estate licensees apart from many other professions.

In thinking back on complaints DRE has received, many issues could have been prevented had licensees remembered and performed their fiduciary duties and clearly disclosed facts material to clients, protected trust funds, and always acted in the clients' best interest. Further discussion about Fiduciary Duties in Real Estate can be found on the [Department's website](#).

As a real estate licensee, your value is in the license you have earned, the education you have taken, the skills you have learned, the experience you have gained, and most importantly, the care you take with your clients.

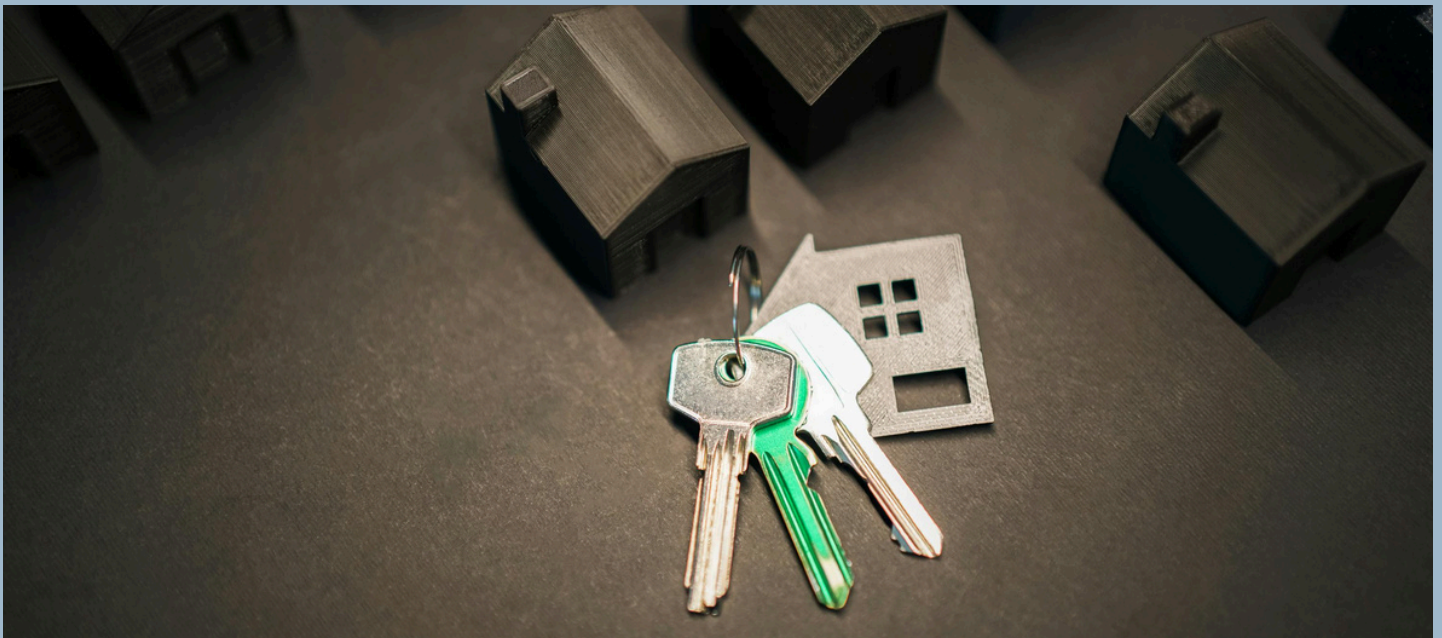
Show your value. Remember and perform your fiduciary duties.

With sincere appreciation for the work you all do,



DRE COMMISSIONER





Essential Elements of an Advance Fee Agreement

DRE has started to see an increase in submissions of advance fee materials from real estate brokers who want to collect an advance fee or an upfront fee as compensation for their services.

Before a real estate broker can collect an advance fee, the broker must comply with Business and Professions Code (Bus. & Prof. Code) section 10085 and Commissioner's Regulation 2970. A real estate broker must submit their advance fee materials to the DRE for review and approval. The materials include an advance fee agreement, accounting format, and any advertising or promotional materials. Only after DRE issues a "no objection" letter is the broker, under the terms applicable, allowed to collect an advance fee from a client to perform a real estate service.


Just because a broker may have successfully satisfied the requirements set forth in Bus. & Prof. Code section 10085 and Commissioner's Regulation 2970, the broker still must be aware that their fiduciary duty regarding the collection of an advance fee from their client is not over. A real estate broker has a responsibility to follow specific requirements when collecting advance fees, which includes handling advance fees as trust funds. A real estate broker is required to follow the requirements of Bus. & Prof. Code section 10145 and Commissioner's Regulations 2831, 2832, 2834, and 2835 any time trust funds are collected. A properly designated trust account in the name of the broker must be used, and exact record-keeping requirements must be followed. However, when an advance fee is collected, there are additional requirements a real estate broker must adhere to besides the listed code sections above.

Advance fees must also be handled accordingly as described in Bus. & Prof. Code section 10146. Requirements include, but are not limited to, depositing advance fees into a trust account, providing quarterly accountings of trust funds to the principals, and withdrawing funds only when they are expended for the benefit of the principal or five days after verified accountings are mailed to the principal.

Commissioner's Regulation 2972 details the quarterly accounting content that must be provided to the principal as required by Bus. & Prof. Code section 10146 on how their advance fee is being earned and spent by the real estate broker. The accounting must include information such as a description of services rendered or to be rendered, the amount of advance fee allocated or disbursed, and copies of advertisements if disbursements were made for advertising.

As a reminder, Bus. & Prof. Code section 10146 also states that if advance fees are not handled in accordance with that section, it is presumed that the agent has violated sections 505 and 505a of the Penal Code and the principal may recover treble (triple) damages and reasonable attorneys' fees.

Additionally, advance fees for loan modifications on residential 1-4 unit properties are prohibited per Bus. & Prof. Code section 10085.6.

For more information about the requirements for advance fee agreements, see DRE's publication: https://dre.ca.gov/files/pdf/adv_fees_essential_elements.pdf. 





THINKING OF BECOMING A REAL ESTATE BROKER? HERE'S WHAT YOU NEED TO KNOW

The following outlines key qualifications and documentation requirements for prospective applicants seeking to sit for the broker license examination administered by the Department of Real Estate (DRE).

Under Real Estate Law, specifically, sections 10150.6 and 10153.2 of the Business and Professions (Bus. & Prof.) Code, broker license applicants must meet both education and experience requirements. Candidates are required to successfully complete eight college-level courses. In addition, applicants must demonstrate at least two years of full-time licensed salesperson experience or present equivalent qualifying experience obtained within the last five years.

The [eight required courses](#) must be completed through either (1) a regionally accredited college or university (accredited by an agency recognized by the U.S. Department of Education) or (2) a private vocational school whose courses have been approved by DRE.

Applicants must submit appropriate proof of course completion. For courses taken at a college or university, official transcripts are required. For courses completed through a private vocational school, applicants must provide course completion certificates.

Applicants who submit proof of current membership in the State Bar of California are exempt from the pre-license education requirements.

The experience requirement may be satisfied through licensed salesperson experience or equivalent experience. To qualify using licensed salesperson experience, an applicant must have been actively engaged in full-time real estate activities as a licensed salesperson for at least two out of the last five years immediately preceding the date the broker application is submitted. This experience must be documented by completing and submitting a [Licensed Experience Verification \(RE 226\)](#) form for each responsible broker. The RE 226 form must be completed and certified under penalty of perjury by the salesperson and their responsible broker.

If the broker responsible is unavailable to sign the RE 226 form, the salesperson must also submit an [Experience Certification \(RE 228\)](#) form. This form must be completed and signed by two individuals in a related professional capacity who can attest to the applicant's activities with that broker and who are not related to the applicant by blood or marriage.

In lieu of licensed salesperson experience, applicants may qualify by demonstrating equivalent experience gained during two out of the last five years immediately preceding the date the broker application is submitted.

Equivalent experience must be documented by completing and submitting a [Non-Licensed Experience Verification \(RE 227\)](#) form for each experience claimed. Applicants must also provide supporting documentation, such as W2 forms, 1099 forms, employment contracts, or license certifications, as applicable. The RE 227 form must be certified under penalty of perjury by the applicant and by two individuals in a related professional capacity, who are not related to the applicant by blood or marriage and who can attest to the applicant's activities.



Qualifying equivalent experience may include, but is not limited to: work as an escrow or title officer; service as a loan officer in a capacity directly related to the financing or conveying of real property; experience as a subdivider or speculative builder, performing comprehensive duties involving the purchase, financing, development, and sale or lease of real property; work as a real property appraiser; experience as a real estate licensee in another state; and experience in activities that fall within certain real estate license exemptions under the California Business & Professions Code.

Applicants should note that claims of equivalency based on activities requiring a real estate license, when performed without proper licensure, will not be accepted. Additionally, DRE may conduct further review and inquiry when evaluating all claimed experience.

The only exemption to the experience requirement applies to applicants who hold a degree from a four-year college or university, with a major or minor in real estate. Applicants must provide proof of the degree through official college or university transcripts.

Whether qualifying through licensed salesperson experience or equivalent experience, applicants are encouraged to submit complete and detailed information on all required forms, along with sufficient documentation. This will assist DRE in determining eligibility and help avoid unnecessary processing delays.

For comprehensive information on broker license examination qualifications and the application process, please visit [DRE's website](#). 🏠





Common Interest Developments Require Special Care by Agents

There are many aspects of home ownership in a common interest development that cannot be observed from an inspection of the property but may be just as relevant to ownership and use as the physical condition of the property. This is particularly true with respect to the “governing instruments” for common interest subdivisions.

For the reasons set forth below, buyers should be advised to carefully read these documents and to discuss with their agent, an attorney, and financial advisor any questions they may have about the documents’ meaning and content.

Documents for the Buyer (Civil Code Section 4525)

A seller of a lot/unit in a common interest development is required to furnish the prospective buyer with copies of the following documents as soon as practicable before the transfer of title or the execution of a purchase agreement to the lot/unit:

1. A copy of the governing documents of the common interest development, including a copy of the association’s articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.
2. A statement relative to the enforceability of any age restriction which does not comply with Civil Code Section 51.3, which legally defines and protects senior citizen housing developments and establishes specific age thresholds that communities must enforce to qualify for exemptions from standard age-discrimination laws under the Unruh Civil Rights Act.

3. A copy of the most recent documents distributed pursuant to Article 7 (commencing with Civil Code Section 5300) of Chapter 6, which includes the HOA's annual budget report and the annual policy statement.
4. A true statement as to the amount of the current regular and special (if any) assessments and fees, and any delinquent assessments and related charges, which may become a lien on the unit being sold.
5. A copy or a summary of any notice previously sent to the owner pursuant to Civil Code Section 5855 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request.
6. A copy of the initial list of defects provided to each member of the association pursuant to construction defect prelitigation procedures (Civil Code Section 6000), unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Civil Code Section 6100. Disclosure of the initial list of defects pursuant to this paragraph does not waive any privilege attached to the document. The initial list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.
7. A copy of the latest information provided for in Civil Code Section 6100, which requires HOAs to notify their members when a construction defect settlement is reached with a builder. The notification includes a description of the defects and a good faith estimate of when the defects will be corrected or replaced, and the status of the claims for those defects that were not previously identified in the initial list of defects.
8. Any change in the association's current regular and special assessments and fees, which have been approved by the association's board of directors but have not become due and payable as of the date disclosure is provided.
9. If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition.
10. If requested by the buyer, a copy of the minutes of board meetings, excluding meetings held in executive session, conducted over the previous 12 months that were approved by the board.
11. A copy of the report issued pursuant to the most recent exterior elevated elements (balcony) inspections conducted pursuant to Civil Code Section 5551.

Highlights and Considerations

It is essential that a buyer carefully examine these documents, especially the CC&Rs, association rules, and any architectural guidelines, prior to purchasing a lot/unit in a common interest subdivision. Any one of these documents may reveal to the buyer what may be considered material facts associated with the property. These are items that may not be material in the sense of affecting the value of a lot/unit, but they may be extremely important to a buyer's future plans for using the lot/unit.

An age restriction provision is an example of a material fact for the buyer to look for in the use restrictions. Buyers should also look for restrictions on types of vehicles allowed or whether there are restrictions on pets, architectural design, fence height and location, and other limitations, such as parking or working on cars in the driveway. These restrictions are found in many governing documents. In some instances, there are restrictions on such matters as the color one can use to paint the exterior of a house or the shade of drapes.

A careful review of the governing documents by a buyer is also important so that they can learn about the duties and responsibilities of ownership within the development. For example, who is responsible for internal and external maintenance of a unit? And who has the responsibility to maintain insurance for certain components of a unit? Further, the financial documents pertaining to the operation and maintenance of the common area may include important information relative to future assessment obligations.

When a buyer has questions about any of these documents, a buyer's agent should, as fiduciary, explain the practical application of the disclosures. For legal or financial advice, buyers should be referred to their legal counsel or appropriate financial advisor.



Special Inquiry on Lawsuits

It is important for the buyer to find out whether the association is involved in a lawsuit or whether a lawsuit involving the association or a seller's interest is imminent or contemplated. A lawsuit may have a negative effect on ownership. For example, if reserves have been used, or are being used, to pay litigation costs, that expenditure could result in the imposition of a special assessment at some time in the future on a new owner. A lawsuit may also make it difficult to refinance or sell a lot/unit, particularly if the lawsuit involves an allegation of construction defects.

How does a buyer find out about lawsuits? Many common interest developments have newsletters which discuss such matters. In any event, a buyer may want to consider talking to a member of the board of directors, as well as the managing agent for the development, to get a better picture of past and future ownership experience and expectations for the development.

Professional Insight Recommended

A buyer's agent should not just settle for providing a principal with disclosures following a physical inspection of a lot/unit in a common interest development; they must carefully review the management documents and describe to their client the practical application of the disclosures provided. The agent should also advise the buyer to carefully review the management documents and seek legal or other professional advice, if and when necessary. This will allow buyers to have all the material information needed to decide whether to buy in that common interest development. 🏠





WHY PROPERTY MANAGERS SHOULD REMOVE MERCURY THERMOSTATS NOW


By California Department of Toxic Substances Control

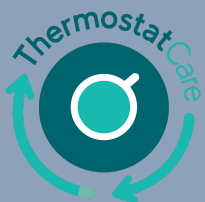
If you manage a portfolio of older properties, there's a reasonable chance mercury thermostats are still installed somewhere in your inventory. Any thermostat manufactured before 2006 likely contains liquid mercury — and a single unit contains roughly 3 grams, enough to contaminate a 20-acre lake.

That's not an abstract environmental statistic. Improperly discarded mercury thermostats leach into soil and water, and mercury vapors pose documented neurological and respiratory risks to the people living in your properties. Upgrading an old mercury thermostat protects your tenants and your property.

The good news is that California has made safe disposal of mercury thermostats easy. Thermostat Care is a free mercury thermostat disposal program operating under California law, with more than 675 drop-off locations statewide. Drop off a mercury thermostat and you'll receive a \$30 mail-in rebate for each unit. If you're managing multiple units and replacing old thermostats, that rebate can add up, plus the ongoing energy savings from smart thermostats.

The swap is simple: remove the old unit, drop it off at a Thermostat Care collection location, and receive the \$30 mail-in rebate.

To find a drop-off location near you, visit ThermostatCare.org. 





Test Your California Real Estate Knowledge



1 What is the name of the DRE online system that allows licensees to electronically update and renew their license?

- A. DRElicensing
- B. eLicensing
- C. Licensing.org
- D. GetaLicense.com

2 Which of the following courses is **REQUIRED** for a California real estate salesperson license?

- A. Property Management
- B. Real Estate Principles
- C. Mortgage Lending
- D. Real Estate Appraisal

3 How many hours of continuing education are required for real estate license renewal in California?

- A. 30 hours
- B. 45 hours
- C. 60 hours
- D. 75 hours

4 How long is a California real estate license valid before renewal is required?

- A. 2 years
- B. 3 years
- C. 4 years
- D. 5 years

5 Which of the following is a required continuing education topic for first-time license renewal?

- A. Marketing Strategies
- B. Fair Housing
- C. Real Estate Investing
- D. Property Development

ANSWER KEY
Q1: B. eLicensing
Q2: B. Real Estate Principles
Q3: B. 45 hours
Q4: C. 4 years
Q5: B. Fair Housing

DRE MISSION

To safeguard and promote the public interests in real estate matters through licensure, regulation, education and enforcement.

