



# Real Estate Bulletin

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS • BUREAU OF REAL ESTATE

FALL 2013

Vol. 73, No. 2

## REAL ESTATE MATTERS!



Wayne S. Bell  
*Commissioner*

### *Commissioner's Message*

## Establishing Priorities, Including Helping Licensees Stay Compliant with the Law: New Online Presentation on Trust Fund Reconciliations Among Available Tools

The Real Estate Commissioner is responsible for enforcing the California Real Estate Law and the Subdivided Lands Act in a way that achieves the maximum protection for the purchasers of real property and people dealing with real estate licensees. The Commissioner also safeguards and promotes the public interests (including licensees and consumers) in real estate matters through licensure, regulation, education, and enforcement.

After I was appointed by Governor Brown in February of this year, I undertook a thorough inventory of all of the work of, the opportunities available to, and the challenges confronting the Department of Real Estate — which became the Bureau of Real Estate (CalBRE) as of July 1, 2013 — and established a number of goals and priorities for CalBRE. These include:

- 1) Renewed and enhanced focus on real estate and mortgage fraud prevention through consumer outreach.
- 2) Further development and expansion of our emerging complaint resolution program where we facilitate disputes between consumers and licensees.
- 3) Expanded use of our citation and fine authority in a way that achieves consumer protection, results in the expedited correction of minor violations of the law, and allows us to focus our disciplinary apparatus and attention on the true and major wrongdoers who have caused or are causing harm to the public.
- 4) Application of appropriate filters and prioritization frameworks so that we can aggressively confront and administratively prosecute (and work with law enforcement prosecutors to achieve the best outcomes with respect to) people who are dishonest and engaged in:
  - a. Criminal conduct and serious violations of the Real Estate Law and Subdivided Lands Act.
  - b. Major real estate-and mortgage-related fraud.
  - c. Unlicensed activities.

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**REAL ESTATE BULLETIN**

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## 2014 Law Book Available

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

The 2014 Real Estate Law Book will be available online free of charge on January 1, 2014. The print version, which includes a CD copy, is expected to be available for purchase in mid to late January 2014.

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), and
- ➔ Pertinent excerpts from various California codes.

The cost is \$25 plus tax. Use the "RE 350 — Publications Request" form available online at [www.bre.ca.gov](http://www.bre.ca.gov).

**DISCLAIMER**

This *Real Estate Bulletin* is designed to provide accurate and authoritative information regarding the subject matter covered as of the first date of publication of this *Real Estate Bulletin*. The *Real Estate Bulletin* is offered with the understanding that the California Bureau of Real Estate is not engaged in rendering legal, tax, accounting, or other professional advice, and the *Real Estate Bulletin* is not a substitute for the advice of an attorney or other professional. If legal advice or other expert assistance is required, you should seek the services of a competent attorney or other professional.

## COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 1)

The objective of points three and four is to shift our foremost disciplinary enforcement attention and efforts away from pure compliance issues and minor violations, and to focus our prosecutorial attention on the truly bad actors where the public has been harmed or is at risk of harm.

### Renewed Focus on Helping Licensees with Compliance

In addition to improving and realigning our disciplinary, administrative prosecutorial, and consumer outreach efforts, I am also — as are all of us at CalBRE — committed to creating resources to help licensees comply with the laws enforced by the CalBRE. The aim here is to help ensure competency, and to bring those persons who are not deliberately out of compliance with the law, or willful violators of the law, back into compliance.

CalBRE has a number of existing tools and resources that can be used to help licensees meet the law's requirements.

### Existing and Planned Resources

Licensees will find valuable resources on our Web site ([www.bre.ca.gov](http://www.bre.ca.gov)) through the “Real Estate Business Resources” link found under the “Essential Information” section on our home page. This link can also be accessed by mousing over the “Licensees” tab at the top of each page. Licensees can also access all of CalBRE's publications (including issues of the *Real Estate Bulletin*) on the site by clicking on the word “Publications” at the upper-most, right-hand corner of the page.

A list of individual *Real Estate Bulletin* articles on a wide variety of subjects — from the disciplinary process to property management and fiduciary duties (many of which were written in response to questions from licensees) — can be accessed and retrieved by scrolling to the end of the “Real Estate Bulletin” section and clicking on the “Table of Real Estate Bulletin Articles.”

To highlight the relevance of these articles to licensee practice issues, in the current issue you will find an article titled, “A Licensee's Duty to Present All Offers,” written by Robin Trujillo and Summer Bakotich of CalBRE, and articles regarding trust fund handling requirements.

In addition to those materials and resources, we are planning more. These include relevant PowerPoint presentations, answers to commonly asked questions, a list of the most common enforcement violations and what can be done to avoid those, and vignettes providing easy-to-follow, step-by-step guidance.

### Newest Tool for Licensees: Help and Guidance with Trust Fund Issues

The newest tool for licensees who handle trust funds through one or more bank accounts is a narrated and easy-to-follow PowerPoint presentation on trust account reconciliations (covering the requirements of Commissioner's Regulation 2831.2). This was developed by Corena de Sonnaville of CalBRE's Audits unit in Sacramento, and we believe — and think you will too — that it is a superb educational resource.

If you subscribe to our RSS service, you've already received information about the trust account reconciliations step-by-step presentation. If you do not, you can access the PowerPoint through our Web site at [www.bre.ca.gov](http://www.bre.ca.gov).

Noncompliance with trust account and trust fund handling rules are common, and we are very hopeful that the presentation and materials will help to educate and guide licensees in this area.

If there are other requirements in the Real Estate Law and Subdivided Lands Act that are confusing or unclear, and which CalBRE can effectively provide guidance and training on or help clarify, please let us know, as we want to help you fulfill the obligations of the law.



## A Licensee's Duty to Present All Offers

*What it means, common complaints and misconceptions, and how to achieve compliance*

*By Robin Trujillo, Supervising Special Investigator II, and Summer Bakotich, Special Investigator*

The Bureau of Real Estate (CalBRE) is receiving inquiries and complaints from both consumers and real estate licensees who are concerned that some listing brokers and/or agents are failing to present all purchase offers to the sellers. These claims typically range from general suspicions to more serious allegations involving fraud and misrepresentation. Whether it is the former or the latter, these complaints are carefully reviewed and, if appropriate, investigated by the CalBRE to determine if violations of the Real Estate Law exist and whether disciplinary action is merited. In order for consumers to better understand this issue, and to help real estate licensees avoid problems in this area, this article will cover the following topics relating to the handling of purchase offers and concerns that real estate licensees are not presenting all offers to their principals:

- Overview of complaints received by the CalBRE.
- Discussion of agency, fiduciary duty, and California law.
- Exploration of some common misconceptions.
- Examination of CalBRE investigations involving this issue and discussion of best practices to help prevent the filing of these types of complaints or, alternatively, to help real estate licensees better prepare for a CalBRE investigation of this nature.

### Overview of Complaint Issues

With the real estate market improving, CalBRE is receiving many calls and complaints from buyers who claim their offers were never presented to the sellers of the properties. A typical complaint received by CalBRE might involve the following scenario: A buyer, through his or her broker, submits an offer to purchase a property to the listing broker. The offer is an all cash offer at the listed price of the property as advertised on

the Multiple Listing Service (MLS). After several days pass, the buyer's broker advises that neither a verbal or written response has been received from the listing broker regarding the offer. Eventually, the buyer's broker advises the buyer that the property is no longer showing as an active listing on the MLS and has been sold to another buyer. The buyer calls the CalBRE because he or she believes the offer was not presented to the seller and that the listing broker has acted negligently and/or fraudulently in violation of the Real Estate Law.

The same type of complaint is often received from a buyer's agent who suspects that the listing agent intentionally withheld his or her buyer's offer and has instead "cherry picked" a different offer to present to the seller where the listing broker also represents the buyer and/or might yield a higher commission.

These types of complaints are especially prevalent in short sales. In a short sale transaction, the sale is contingent on the approval of the short sale lender. This means that the short sale lender must approve the sales price, the buyer, and all terms and conditions related to the sale. In those cases, the CalBRE often receives complaints from buyers who claim that the listing broker not only failed to present all offers to the seller, but also failed to disclose all offers to the short sale lender. Many of these claims originate from buyers who offered to pay more than the asking price of a property. Such buyers are often suspicious of a seller who would not accept, or at least counter, an offer that exceeds the listing price.

While the above complaints and concerns are not exhaustive, most complaints we receive involving this issue tend to center around two primary questions:

- Is a listing broker or salesperson required by law to present each and every offer to the seller of real property?

## A LICENSEE'S DUTY TO PRESENT ALL OFFERS (Continued from page 4)

- Is a listing broker or salesperson required by law to respond, either verbally or in writing, to each and every offer received?

The purpose of the next section is to answer the above questions by examining a licensee's duties when representing a principal in a real estate transaction.

### Discussion of Agency, Fiduciary Duty, and California Law

The concepts of agency and fiduciary duty apply to the relationship that exists between a real estate licensee and his or her principal in a real estate transaction. An agency relationship, as defined by Section 2295 of the California Civil Code, exists when an agent represents another, called the principal, in dealings with third persons. In most real estate transactions, a real estate broker acts as an agent for his or her principal. It is precisely this "agency relationship" that creates and requires a fiduciary duty of utmost care, integrity, honesty, and loyalty owed by the agent to the principal within the course and scope of the agency and the authority granted by the principal. Once an agency relationship exists, an agent is bound by law to uphold and perform certain statutory duties as a fiduciary in a real estate transaction.

Fiduciary duties impose the highest standard of care on real estate licensees. These duties include, among others, confidentiality, the exercise of utmost care, full and complete disclosure of all material facts, the obligation to account to the principal, and the obligation to act fairly, honestly, and without fraud or deceit.

Fiduciary duties are grounded in both statutory and regulatory law, as well as case law. Some of the fiduciary duties have been codified in certain California statutes and regulations that are enforced by the CalBRE. For example, the duties that prohibit an agent from



obtaining any advantage over the principal and require that an agent disclose all material information and act in his or her client's best interests are incorporated into Section 10176 of the Business and Professions Code. This code section addresses secret profits or undisclosed compensation, misrepresentation of material facts, and fraud or dishonest dealing.

For the purposes of this article, it is imperative to emphasize the importance of a licensee's duty to fully and truthfully disclose all material facts concerning a real estate transaction, especially information that might impact the principal's decision. It is within the scope of a licensee's duty of full disclosure that a licensee must present all offers and counteroffers in a timely and diligent manner to his or her principal, unless his or her principal has specifically directed the licensee to do otherwise. For example, a real estate licensee cannot select offers based on his or her own self interests, but instead must promptly, obediently, and efficiently follow the lawful instructions of his or her principal and uphold the principal's best interest at all times. Equally important, a real estate licensee is required by law to disclose the nature and full amount of any compensation, commission, or profit that he or she will receive from the transaction. Real estate licensees must



## A LICENSEE'S DUTY TO PRESENT ALL OFFERS (Continued from page 5)

fulfill these statutory duties, and any intentional neglect or fraudulent conduct related to the same could result in administrative, civil and/or criminal action against them.

### Common Misconceptions

Based on our investigations and experiences in talking with the public, we have found that there are some common misconceptions about how a listing broker or salesperson should handle the receipt of a purchase offer. And, while the CalBRE's jurisdiction is limited only to the activities of real estate licensees, we have also found that consumers sometimes misunderstand what obligations the seller legally has in these types of situations. The following is a brief and basic synopsis of an agent and/or seller's duties and obligations when it comes to the receipt and handling of purchase offers in connection with the sale of real property:

- A broker or salesperson must present all offers as instructed by his or her principal. This means there may be situations where a seller specifically instructs the broker to only present offers based upon certain criteria, such as all cash offers or offers meeting a specific price point. Or, a seller might instruct the broker to cease the presentation or submission of any offers received after an offer has already been accepted and escrow has opened.
- A seller of real property may accept any offer he or she chooses, and the most attractive offer may not always be the highest offer.
- A seller and/or broker is not required by law to respond to and/or reject an offer, either verbally or in writing. Hence, a potential purchaser may not receive any verbal or written response to his or her offer from the seller or the seller's broker. Furthermore, the absence of a response is not unlawful and does not automatically mean the seller's broker has not presented the offer or violated the Real Estate Law.

- While it is beyond the scope of this article, it should also be noted that not all lenders have the same requirements and policies when it comes to a short sale. For instance, some lenders may require that sellers and their brokers disclose and submit all offers received, whereas other lenders may only require submission of the offer ultimately accepted by the seller. There are also lenders that may only require the submission of offers meeting certain established criteria and/or price point.

In many cases, it is one or more of these misconceptions that causes the filing of a complaint and the initiation of a CalBRE investigation.

### CalBRE Investigations

When CalBRE receives a complaint involving the alleged failure to present all offers, we must determine if the listing broker disclosed and/or presented each and every offer in accordance with the instructions of his or her principal (the seller). Specifically, an investigation of this nature requires that the CalBRE obtain evidence regarding whether or not an offer was presented to the seller and/or if it was accepted or rejected. During the investigation, the CalBRE will seek information from, among others, the listing broker. The broker will be asked to provide proof that all offers were presented to the seller or, in the alternative, to provide a reason why one or more offers were not presented. The broker will further be asked to identify and provide for inspection all offers, whether accepted or rejected.

Pursuant to Section 10148 of the Business and Professions Code, a broker must retain, for no less than three years, copies of all real estate documents, including but not limited to, any documents which were executed or obtained by him or her in connection with any transactions for which a real estate broker license is required. Often times, it is during these types of investigations that the CalBRE finds a listing broker retained a copy of the offer that was ultimately

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## A LICENSEE'S DUTY TO PRESENT ALL OFFERS (Continued from page 6)

accepted, but failed to retain copies of offers received and rejected by a seller. This practice is in violation of the Real Estate Law; a listing broker must retain copies of all offers received for three years, regardless of the disposition of the offer.

As a matter of best practices, it would be prudent for a real estate broker to retain evidence in his or her file showing that each and every offer was presented to the seller, unless specifically directed by the seller to do otherwise. For example, a transaction log might be kept and maintained to record when the offer was received, whom it was presented to (if there are multiple sellers), how it was presented (in person, e-mail, fax, mail, etc.), when it was rejected or accepted, and by whom. This type of documentation would quickly provide CalBRE with the information needed.

Furthermore, although not required by law, when an offer is received and rejected, and no counteroffer is made, it would be wise for the broker or salesperson to provide the buyer's agent with a written acknowledgement that the offer was reviewed and rejected by the seller. This practice alone could potentially resolve a dispute or complaint in this area, as well as quickly address the concerns raised

in an investigation involving this issue. We have come across several brokers who are establishing policies and procedures such as these in order to better supervise their salespeople, prevent any potential civil disputes, and/or prevent the filing of complaints with the CalBRE.

## Conclusion

In closing, we hope the information in this article will provide clarification to licensees and consumers alike concerning a listing broker or agent's duty to present all offers. The expectation is that a more knowledgeable consumer base, combined with the application of best practices by the real estate industry, will result in fewer problems and complaints in this area. That said, however, if a CalBRE investigation determines that a licensee has intentionally failed to disclose or present any offer (absent specific instructions from his or her principal), the licensee risks the filing of administrative discipline which could result in the suspension or revocation of his or her real estate license, as well as possible civil and/or criminal penalties.

## ENDNOTES:

\*It should be noted that real estate licensees who are also members of the California Association of Realtors® or any local board or association may be held to a higher standard or special rules and guidelines, which may require members to present offers as soon as possible or inform the cooperating broker with a reason for not doing so. Please refer to any special rules or guidelines established by any association or board of which you are a member for more information.

\*For more information regarding the concepts of agency and fiduciary duty, please see Chapter 10 in the CalBRE's current Reference Book available on our Web site at [www.bre.ca.gov/Publications/ReferenceBook.html](http://www.bre.ca.gov/Publications/ReferenceBook.html) and the article on fiduciary duty in the Summer 2007 *Real Estate Bulletin* at [www.bre.ca.gov/files/pdf/reb/rebsum07.pdf](http://www.bre.ca.gov/files/pdf/reb/rebsum07.pdf).





## Proper Account Designation and Responsibilities When Bank Accounts Used for Trust Fund Handling are Levied

*It is imperative that brokers properly designate accounts as trust accounts, avoid mixing personal funds with trust funds, and maintain proper accounting records as required, in order to be able to demonstrate that client funds in the account are, in fact, trust funds and not subject to levy for broker debts.*

Auditors at the California Bureau of Real Estate CalBRE have recently seen numerous cases where brokers have had their accounts used for trust fund handling levied by creditors (including the Internal Revenue Service). In some cases, the account levied was properly designated as a trust account and did not have excess broker funds in it. Accounts levied are usually accounts used for multiple beneficiaries, not single-beneficiary accounts. In a recent case, the broker stated that the bank did not offer support in preventing the levy, leaving it to the broker to fight back, even though the account was designated as a trust account as required by Business and Professions Code Section 10145 and Commissioner's Regulation 2832. In at least one case, the broker seemed almost resigned to the trust funds being gone, which is unacceptable. It is imperative that every broker do what is necessary to protect client funds, including protecting his or her account against levies that are spurious, to insure consumers are not harmed.

### Broker's Responsibility

The first responsibility of a real estate broker who handles trust funds through a bank account is to properly designate an account as a trust account. There can be differences in how this is done, depending on whether the account is used for the handling of trust funds for a single beneficiary client, or if it will be used for the handling of trust funds for multiple beneficiaries.

### Single Beneficiary Trust Account

If the account is maintained by the broker for a single beneficiary (e.g., one property owner), it can be designated as a trust account in the name of the

broker as trustee, but set up using the tax identification number of the beneficiary. As long as the broker then maintains the properly designated account free of commingled broker funds, the account should be protected against attachment against broker debts. It is acceptable if the account is set up in the tax identification number of the broker (and properly designated as a trust account, of course), but there may be a greater chance of levy by a creditor for broker debt. With either alternative, the beneficiary client must not be a signatory on the trust account.

### Multiple Beneficiary Trust Account

If one account is maintained for handling of trust funds for multiple beneficiaries (for example, many property owners or lenders), the account will have to be set up in the tax identification number of the broker, or in the case of an individual broker without a tax identification number, in the social security number. Of course, the account must be properly designated as a trust account in the name of the broker as trustee, and proper accounting records must be maintained in accordance with Commissioner's Regulations 2831, 2831.1, and 2831.2. For any trust account, withdrawals are only permitted for persons listed under Commissioner's Regulation 2834.<sup>1</sup>

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<sup>1</sup> Commissioner's Regulation 2834(a) states that withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

- 1) a salesperson licensed to the broker.
- 2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker.
- 3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of trust funds to which the employee has access at any time.



## PROPER ACCOUNT DESIGNATION AND RESPONSIBILITIES WHEN BANK ACCOUNTS USED FOR TRUST FUND HANDLING ARE LEVIED (Continued from page 8)

### Bank Account Levy

In spite of a broker's best efforts, it is possible that a bank account properly designated and maintained as a trust account can be levied by a creditor of the broker. Brokers who have had trust funds in their trust accounts (or accounts used for trust fund handling) levied or attached by a creditor of the broker must file a claim of exemption with the levying party (often a sheriff) within 10 days of the Date of Notice that is listed on the levy. While the bank should fight for the broker in such a case as well, if the bank does not, the broker has a duty to do so. The broker must not accept such a levy of trust funds. The Bureau considers such a levy of trust funds to be a cause of shortage as soon as the money is taken out of the account.

If the creditor does not object to the claim of exemption, the levy will be released. If the creditor does object, a hearing will follow. The broker would need to show proof that these funds are trust funds by showing the account is designated as a trust account as required and that he/she has accounting records to prove these funds are the funds of clients. This demonstrates the importance of proper account designation and recordkeeping in accordance with Regulations 2831, 2831.1, and 2831.2.

Taking the proper steps before and after a trust account levy will ensure the protection of client's funds and protect a broker from license disciplinary action. For information on how to file a claim of exemption, visit the Sacramento County Public Law Library at [www.saclaw.lib.ca.us/pages/claim-exemption-bank-levy.aspx](http://www.saclaw.lib.ca.us/pages/claim-exemption-bank-levy.aspx).





## Property Management Electronic Payment Processing

### Avoiding the pitfalls

*Note: The principles below can also apply to the collection of mortgage loan trust funds, with only a slight modification of terms, examples, and definitions. This article is tailored to and focused on property management activities due to recent growth in the use of electronic payment processing in that industry.*

The use of property management electronic payment processors by real estate brokers for Automated Clearing House and credit card payments has become widespread in recent years. The services of these payment processors may range from providing a portal for the electronic collection of rents and deposits on behalf of the broker to the processor actually collecting and handling rents and deposits before forwarding them to the real estate broker.

Property management payment processors need to be aware that, unless they have a real estate broker license, they must avoid performing acts for which a license is required, including the collection or handling of trust funds. Real estate brokers also need to be aware of issues, pitfalls, and liability related to the failure to protect trust funds of their clients and the disclosure of costs and rebates. Specifically, some concerns are:

- Does the payment processor perform acts for which a license is required, including the collection of rents from real property for or in expectation of compensation?
- Are trust funds handled properly throughout the transaction?
- Are tenants aware of payment options and the associated costs?
- Are rebates or other forms of payments or cost offsets paid to brokers?

### License Needed?

Business and Professions Code Section 10131 provides that a real estate broker license is required for “a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

\*\*\*

*(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.”*

If a payment processor collects or receives and holds rents or other trust fund payments into its own account(s), and receives compensation or benefit for handling and processing the funds, the processor must have a real estate broker license. In addition, unless properly licensed, the payment processor must not solicit for prospective tenants, negotiate payment terms, or be involved in the listing of places for rent.

On the other hand, if the role of the payment processing company is solely to provide a conduit for the payment of such rents/trust funds by another, wherein the processor provides a system for immediate distribution of trust funds from tenant to property manager without ever taking possession, holding, or controlling the funds, it can be concluded that they are not collecting rents, regardless of whether compensation is received.

### Trust Funds Handled?

If the payment processor actually receives rents or other trust fund payments for deposit into one of the processor’s accounts, not only does the processor need a real estate license, but the account needs to be designated as a trust account and contractual agreements with clients need to be in place. Furthermore, brokers utilizing payment processors need to be aware that,

## PROPERTY MANAGEMENT ELECTRONIC PAYMENT PROCESSING (Continued from page 10)

depending on the transaction flow, the use of a third-party service intermediary provider may not meet the trust fund handling requirements of Business and Professions Code Section 10145(a)(1) if client trust funds go into the intermediary's bank account. It is the responsibility of the broker to make sure that trust funds are properly and securely handled throughout real estate transactions involving his or her clients.

If client trust funds pass through directly to the broker, it is incumbent on the broker to make sure such funds are deposited into the broker's trust account and not into a business account. It is also important that funds in the broker's trust account remain under the broker's control, with signatory requirements of Commissioner's Regulation 2834 met, and that the funds are properly accounted for.

### Payment Options and Costs

Tenants need to be made aware of the payment options available and the costs to the tenants associated with use of each payment option. Brokers should make sure that tenants know if they have to pay a fee for the use of a payment processing system to make a payment. For instance, if a tenant makes rent or security deposit payments via credit card or electronic funds transfer, any additional costs of such payment options need to be disclosed to that tenant in advance.

Incidentally, recently passed legislation requires that a tenant be allowed to pay rent and security deposits by at least one form of payment that is neither cash nor electronic funds transfer, except when a tenant has previously attempted to pay with a check drawn on insufficient funds or has ordered a stop payment (see also Civil Code Section 1947.3).

### Rebates or Special Consideration Received?

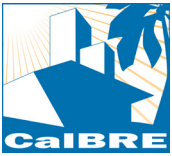
If a broker performing property management activities receives rebates or an offset of fees charged from the payment processor for transactions handled through the payment processor, the broker should disclose this fact to tenants and owners, as it may be material to them. When in doubt, disclose. Furthermore, if rebates exceed costs, and this profit is not disclosed, the broker may be in violation of Business and Professions Code Section 10176(g) — secret or undisclosed compensation.

In conclusion, those who are involved in property management electronic payment processing must pay attention to and comply with the real estate law regarding licensing, disclosures, and trust fund handling.

The use of a vendor for electronic payment processing for property management can offer convenience to the client and to the broker providing property management services. It is important that a broker who utilizes a property management electronic payment processor be diligent in assuring that client trust funds are handled safely, are properly accounted for, and that proper disclosure is made when needed.







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