



Real Estate Bulletin

DEPARTMENT OF REAL ESTATE

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What is a Broker Office Survey and How to Prepare for One

Brenda Smith, Fresno District Office Manager, and Tricia Parkhurst, Sacramento District Office Manager

The Enforcement section plays a vital role in the Department's overall mission to enforce the provisions of the Real Estate Law and the Subdivided Lands Law in a manner which provides protection for consumers. The Enforcement section seeks to protect the public by formally investigating complaints and taking preventive enforcement measures, including both industry and consumer education. One way the Enforcement section achieves this goal is by conducting routine Broker Office Surveys. These routine Broker Office Surveys are not in connection to any type of investigatory complaint, but a random selection from a list of identified brokers who have no formal disciplinary action against their license.

What is a Broker Office Survey

Many brokers may wonder what a Broker Office Survey is and how they prepare for one. A Broker Office Survey consists of a special investigator from the Department's Enforcement section meeting with a broker, usually at the broker's main office, to review and ensure that the broker's operation is in compliance with the Real Estate Law in the following areas: 1) licensing; 2) trust account/record keeping; 3) required disclosures; and 4) broker supervision. During the Broker Office Survey, the special investigator will ask the broker a series of questions to include, but not limited to, basic business information, number of broker associates/salespersons retained, branch office locations, type of licensed activity conducted, trust account information, and, most importantly, their supervision of their brokerage. In addition, the special investigator will ask to review a minimum of three transaction files. If violations are found, the special investigator will advise the broker of such and that follow-up will be required.

How To Prepare

The broker should prepare for a Broker Office Survey by reviewing the *Broker Compliance Evaluation Manual* available on the Department's website. The Department prepared the

Broker Compliance Evaluation Manual to assist real estate brokers conducting residential sales in ascertaining compliance with the Department's requirements. The Manual contains many of the questions that a broker will be asked during a Broker Office Survey.

Additionally, the broker should use the *RE 540 Broker Self-Evaluation Compliance Checklist* in conjunction with the Compliance Manual. The *Broker Self-Evaluation Compliance Checklist* is designed to assist brokers in conducting a self-evaluation of their residential real estate activities. The checklist covers the most common violations found during Broker Office Surveys, including:

- Licensing Compliance
- Advertising/First Point Contact Solicitation
- Trust Fund Handling
- Broker Supervision
- Required Disclosures in Real Property Transactions
- Record Keeping
- Unlicensed Activity

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WHAT IS A BROKER OFFICE SURVEY AND HOW TO PREPARE FOR ONE (CONTINUED FROM PAGE 1)

Tools and Tips for Brokers to Maintain Compliance:

- Gain a working knowledge and understanding of the various laws governing the real estate profession as outlined in the Real Estate Law Book.
- Exercise proper broker supervision and control over trust funds and real estate activities in your brokerage by establishing policies and procedures to: 1) review and manage all real estate transactions, 2) maintain proper records of real estate transactions, 3) ensure trust funds are properly handled and accounted for, and 4) review all advertising for compliance. Refer to Commissioner's Regulations 2725.
- Before accepting any trust funds, obtain the proper knowledge and skills necessary to handle and account for trust funds. A great resource is DRE's publication entitled *Trust Funds*, which is available on DRE's website.
- Establish systems and procedures to monitor license expirations.
- Review the Department's Online Public Licensing Information to ensure that the information listed for the broker and all retained salespersons and broker-associates is current.
- Review the numerous resources listed on the *Real Estate Business Resources* page on the DRE website at www.dre.ca.gov.
- Contact the Department of Real Estate at (877) 373-4542 with questions about what the Department requires for compliance. ■

Corporate Broker-Officer Renewals Added to eLicensing

The Department of Real Estate (DRE) recently added corporate broker-officer license renewals to the list of licensing transactions that can be performed using the online eLicensing system.

To renew a corporate broker-officer license using eLicensing, the following are required:

The corporation and broker-officer must be in a "licensed" status, wherein a main office address is active.

A broker-officer license must be renewed within 90 days of the expiration date of the broker-officer license.

Concerning continuing education requirements, if the broker-officer has a current individual broker license, no continuing education is required to renew the officer license. If the broker-officer holds an officer only license, continuing education completed within the last four years must be entered into eLicensing.

Should you have any questions about this online process, do not hesitate to call DRE's Licensing section at (877) 373-4542. For more information about the Department of Real Estate, including recent news and alerts, please check out our website at www.dre.ca.gov. ■





Cross-Qualification Practices and Pitfalls

Chika Sunquist, Supervising Special Investigator I, Mortgage Loan Activities

The Department of Real Estate often receives inquiries about the practice of cross-qualification, which involves buyers in a real estate transaction being required to qualify for a purchase loan through the sellers' preferred lender (even if the buyers are already qualified through their own lender).

Although the practice of cross-qualification is not necessarily unlawful under the California Real Estate Law, there are specific actions taken by real estate licensees that may lead to violations of the law that can then lead to disciplinary action.

Many real estate licensees establish relationships with lenders because they have learned to trust the practices of those lenders through past experience. The licensees then share those experiences with their seller clients, who may elect to require cross-qualification. Using a preferred, trusted lender helps the sellers know that the buyers are truly able to qualify for the loan to purchase the property.

Requiring that the buyers be cross-qualified through a specified lender as a condition of submitting an offer is a contractual and negotiable matter between the buyer and seller. A potential violation occurs when the seller's agent,

and not the seller, requires the cross-qualification; sometimes, the seller is not aware that the cross-qualification is being required and is not being made aware of all purchase offers. Further issues arise when the seller's agent is receiving some sort of compensation, kick-back, referral fee, etc., from the specified lender.

Determining whether a buyer qualifies for a loan to purchase the property is helpful information for the seller to know when considering an offer. The seller's agent, however, cannot disclose the buyers' personal and/or financial information to the seller or use the information to try to negotiate a higher selling price.

When a seller requires cross-qualification through a specified lender, the buyer may have to submit certain documents to that lender—including a loan application, loan underwriting findings, and other supporting documents. Issues arise when the seller's agent requires that those documents be submitted directly to the seller's agent, and not to the lender. At that point, the seller's agent is acting as an agent for the lender, creating an agency relationship. That agency relationship must be disclosed to all parties in the transaction. Depending on the seller's agent's activities, there may be an agency relationship created between the seller's agent and the

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CROSS-QUALIFICATION PRACTICES AND PITFALLS (CONTINUED FROM PAGE 4)

buyer, which also must be disclosed and thereby creates dual agency and a fiduciary relationship. Furthermore, if the loan is for a home purchase, the seller's agent is taking an application for a residential mortgage loan for compensation, which is an act requiring a mortgage loan originator license endorsement. Additional requirements are triggered, including cost and expense disclosures, compensation disclosures, and so on.

Real estate licensees are cautioned to consult with their brokers to make certain that they are following all laws related to the practice of cross-qualification to protect their clients, to whom they owe fiduciary duties, and to protect themselves from potential violations of law. ■

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Secret or Undisclosed Compensation

Real estate licensees are required to disclose various details in real estate transactions. For activities requiring a real estate license, a licensee is required to disclose to their contracting parties the full amount of compensation, commissions, or profit earned according to Business and Professions Code (Bus. & Prof. Code) section 10176(g).

Compensation is normally disclosed on a listing agreement, escrow instruction, property management agreement, mortgage loan disclosure statement, or a loan servicing agreement. Compensation for licensees can come in many forms, typically including commissions, escrow fees, property management fees, loan origination, and loan servicing fees. Compensation, however, can

also take different forms and can be received from other parties apart from the licensee's direct clients, and should be disclosed appropriately.

Department of Real Estate (DRE) auditors have found in numerous situations that real estate licensees have not fully disclosed all compensation received, or expected to be received, from their clients, other party to the transaction, or third party. DRE auditors often find situations where a licensee has charged clients in excess of costs incurred or where a licensee has benefited from trust funds. These situations would result in income or profit to the licensee and should be disclosed to the client.

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SECRET OR UNDISCLOSED COMPENSATION (CONTINUED FROM PAGE 6)

Examples include:

- **Marking-up invoices or receiving discounts from vendors before submitting them to their beneficiaries** – For example, a licensee purchases \$500 of building materials and invoices his/her property owner \$550; or receives a plumbing invoice for \$5,000 and, if paid on time, obtains a 10% discount from the vendor which is not forwarded to the property owner.
- **Earning points on credit card purchases** – For example, a licensee purchases maintenance supplies by credit card and earns points on the transaction. The

points are then converted into cash or other benefit such as travel points or hotel stays.

- **Late Charges** – For example, a licensee who keeps all or a portion of any late charge.
- **Returned Check/Automated Clearing House (ACH) Fees** – For example, a licensee is charged \$25 by the bank for a returned check/ACH and in return charges the tenant \$40.

Under Bus. & Prof. Code section 10176(g), the real estate commissioner may suspend or revoke a real estate licensee for having any secret or undisclosed compensation or profit. Therefore, licensees should make every effort to fully disclose all compensation or profit earned in real estate transactions requiring a license. ■





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www.dre.ca.gov

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