

REAL ESTATE MANAGEMENT AND SUPERVISION

**CONTINUING EDUCATION COURSE
(BY CORRESPONDENCE)
FOR CALIFORNIA REAL ESTATE LICENSE RENEWAL**

**(3 Hours Credit)
Management and Supervision Requirement**

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To Comply with this Requirement, YOU MUST COMPLETE the Section Quizzes offered at the end of each Course Section before you can take the Course Final Exam.

THERE ARE 3 QUIZ SECTIONS TO BE COMPLETED FOR THIS COURSE, "REAL ESTATE MANAGEMENT AND SUPERVISION," AS FOLLOWS:

- Quiz Section #1 is to be taken after reading pages 1 through 17
- Quiz Section #2 is to be taken after reading pages 19 through 28
- Quiz Section #3 is to be taken after reading pages 30 through 41

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BACKGROUND

California adopted the State Real Estate Department Act in 1919 as a means of protecting the public in real estate and mortgage transactions involving the services of agents. This piece of legislation defined the terms “real estate broker” and “salesmen” and provided for their regulation, supervision, and licensing. It created a state Real Estate Department and the Office of Real Estate Commissioner, giving us provisions for the enforcement of the Act and penalties for its violation. Under the 1919 law, California appears to have created the first standalone and specialized Real Estate Department in the United States and the first valid office of Real Estate Commissioner in the country.

Of course, the regulation of the real estate industry has changed a great deal over the years. Even though the law continues to evolve, the requirement for real estate licensee qualification remains a valuable tool, enabling the Commissioner to ascertain that licensees, and potential licensees, meet established standards of knowledge and honesty.

Today’s California’s real estate laws are codified as Division 4 of the Business and Professions Code, which consists of two parts. Part 1 of Division 4 covers Licensing of Persons (Sections 10000 to 10580) and is the portion of the code that is normally referred to as California’s “Real Estate Law.” Part 2 of Division 4 covers Regulation of Transactions (Sections 11000-11288) and begins with the Subdivided Lands Law.

BROKER SUPERVISION

Q&A-1 A real estate broker is responsible for the supervision and conduct of his or her real estate brokerage business. The broker holds the license on behalf of the brokerage, and salespeople work for, and are supervised by, the broker.

Q&A-2 In the real estate brokerage business, proper management and supervision is important because, through the common law of agency, brokers are generally held liable for the acts of their agents – both licensed salespersons and nonlicensed employees – carried out in connection with company business. Even though a broker, as a principal or an employer, may not be personally at fault for errors or omissions, he or she can be held liable for damages arising from the negligent conduct of agents or employees who act within the general course and scope of their agency or employment.

Let’s make a quick mention about the management and supervision of salesperson/agents and that of unlicensed staff members. This course deals primarily with the management and supervision of licensees. However, brokers are also responsible for overseeing their unlicensed office personnel, and many of the topics covered in this course can be helpful in managing this group as well.

CalBRE has published its *Broker Compliance Evaluation Manual* primarily to assist real estate brokers conducting residential sales in ascertaining their compliance with CalBRE’s requirements. Available at CalBRE’s Web site, the Manual contains many of the questions that brokers are asked if visited by a CalBRE representative. This manual

REAL ESTATE MANAGEMENT AND SUPERVISION

INTRODUCTION

In July of 2015, the California Legislature amended § 10170.5 of the California Business and Professions (B&P) Code. § 10170.5(a) of the Code provides that no real estate license can be renewed unless evidence is submitted by the licensee of successful completion of certain continuing education courses.

The amended language requires that broker licensees renewing an original license for the first time with an expiration date on or after January 1, 2016, and those who are renewing on a late basis on or after the same date, must complete 45 clock hours of CalBRE (California Bureau of Real Estate) approved continuing education including six separate three-hour courses in the following subjects:

1. ethics;
2. agency;
3. trust fund handling;
4. fair housing;
5. risk management; and
6. management and supervision.

The final topic covering the management of real estate offices and the supervision of real estate activities is a new addition to the former list of five mandatory topics and is the subject of this course.

After renewing an original license for the first time, all salesperson and broker licensees must complete an eight-hour continuing education survey course for subsequent renewals that includes these six subjects. Alternately, licensees can choose to take each of the mandatory subjects separately.

This course fulfills the new continuing education requirement with extensive coverage of broker management and supervision practices to comply with the provisions of the B&P Code as well as the regulations of the Real Estate Commissioner (Commissioner). It provides guidance on how to manage and supervise real estate offices, salespersons, and broker associates.

Under another provision of the amended law, California real estate licensees will be able to elect a continuing education course containing relevant information to assist them in understanding how to be effectively supervised by a responsible broker or branch manager.

is not designed to encompass all broker obligations and responsibilities under the law, but it is a useful tools for reviewing records and office procedures.

Likewise, the *Mortgage Loan Broker Compliance Evaluation Manual RE 7* was prepared by CalBRE primarily to assist real estate brokers who engage in mortgage loan activities to assess compliance with CalBRE's requirements. It addresses many of the questions that are asked of Bureau staff and can be found at the Bureau's Web site.

ACCOUNTABILITY THROUGH THE LAW OF AGENCY

The law of agency is an area of common law dealing with fiduciary relationships. Common law grew out of the English judicial system and is derived from custom and judicial precedent (decisions and opinions of the courts), rather than from legislated statutes.

The agency relationship plays a major role in real estate transactions because it defines the accountability of the parties and is, therefore, the foundation of management and supervision practices.

Agency is referred to as a "triangular" relationship because it involves these three parties:

1. the broker (the agent for the seller);
2. the seller (the principal); and
3. the buyer (a third party).

The agency relationship also exists between the broker (this time the principal) and a salesperson or an employee (the agent).

It is important to note here that within our discussion of agency, the term "agent" refers to one who represents another and is not to be thought of as simply a licensee. For purposes of real estate law, a real estate salesperson is an agent of the real estate broker/principal under whom he/she is licensed. If the broker is a corporation, the salesperson is an agent of the corporation.

TWO TYPES OF AGENCY

The law of agency binds a principal by the authorized actions of his or her agent. Since only authorized acts of the agent can bind the company, it is important to gain an understanding of how this authority is conferred upon the agent.

Through the common law of agency, the principal, either expressly or implicitly, authorizes the agent to work under his or her control and on his or her behalf. According to § 2298, § 2299, and § 2300 of the California Civil Code, there are two kinds of agency – actual and ostensible. 真實的和表面的

An agency is **actual** when the agent is, in fact, employed by the principal. This would include assistants, clerical workers, and other unlicensed members of the staff who work under written job descriptions describing their duties and limiting their authority.

Another example of actual agency is a salesperson working for a broker under a contract that completely and precisely describes the activities the salesperson is authorized to undertake, for example, soliciting listing agreements and depositing escrow monies. When employees or salespersons are operating under actual authority, the broker can be held liable for their proper and improper acts.

An agency is **ostensible** when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his or her agent, but who is not really an agent. According to Civil Code § 2355, notice of termination of an agency relationship must be given to third parties when the agency is terminated resulting from:

- the expiration of its term;
- the extinction of its subject;
- the death of the agent;
- the agent's renunciation of the agency; and
- the incapacity of the agent to act as such.

So, to those who have not received notice, the former agent is still *ostensibly* an agent. To illustrate, this means that the agent/salesperson could conceivably continue to obligate the principal/broker to listing agreements, perhaps unwanted or not priced fairly. In fact, § 2356 of the Civil Code states,

“...any bona fide transaction entered into with an agent by any person acting without actual knowledge of the revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors in interest.”

Current real estate law requires a real estate broker to exercise reasonable supervision over the activities of his or her salespersons. The CalBRE, formerly the Department of Real Estate (DRE) can hold real estate brokers accountable for failure to supervise. Therefore, it is important that brokers understand how to properly manage their real estate offices, salespersons, and broker associates. This knowledge will help to minimize the risk in operating a successful real estate brokerage firm.

Now that we understand the agency relationship and how a broker can be held liable for the acts of his licensed salespersons and unlicensed personnel, we can move on to our discussion of management and supervisory activities.

MORE ON BROKER/SALESPERSON RELATIONSHIPS

The law of agency sets the tone for the relationship between brokers and salespersons. However, statutory law also plays a role here. In the broadest terms, salespersons are generally considered employees of the broker or independent contractors. It is critical that brokers and other business owners correctly determine whether individuals providing services are employees or independent contractors.

One of the primary differences between the two is that generally, a business owner must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. This is not required when the person providing services is an independent contractor and is self-employed.

In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered. This includes behavioral control, financial control, and the type of relationship.

BEHAVIORAL CONTROL

Behavioral control refers to facts that show whether there is a right to direct or control how the worker performs the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is performed as long as the employer has the right to direct and control the work.

Behavioral control factors fall into the categories of:

- type of instructions given;
- degree of instruction;
- evaluation systems; and
- training.

Considerations that determine if a worker is an employee or independent contractor include:

- when and where to do the work;
- what tools or equipment to use;
- what workers to hire or to assist with the work;
- where to purchase supplies and services;
- what work must be performed by a specified individual; and
- what order or sequence to follow when performing the work.

When a worker is left to his own devices to get the job done, he is probably an independent contractor, as are most real estate salespersons.

FINANCIAL CONTROL

Financial control refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job. Financial control factors fall into these categories and further suggest that real estate salespersons are independent contractors:

- significant investment;
- unreimbursed expenses;
- opportunity for profit or loss;
- services available to the market (free to seek out business opportunities); and
- method of payment (regular wages for employers vs. a flat fee or commission for an independent contract).

TYPE OF RELATIONSHIP

Considerations for establishing the type of relationship include:

- the existence of a written contract, which suggests the worker is an independent contractor;
- benefits paid, typically available to employees and not to independent contractors; and
- permanency of the relationship, meaning that hiring a worker with the expectation that the relationship will continue indefinitely usually evidences the intent to create an employer/employee relationship; otherwise, a person is generally considered an independent contractor.

Businesses must weigh all of these factors when determining whether a worker is an employee or independent contractor, looking at the entire relationship and considering the degree or extent of the right to direct and control.

EFFECTS OF THE RELATIONSHIP

In addition to withholding income taxes, withholding and paying Social Security and Medicare taxes, and paying unemployment tax on wages paid to employees, there are other consequences to the type of relationship that exists.

- **benefits** – If a worker is an employee, he or she is usually eligible for paid vacation and sick leave, health insurance, retirement programs, and other employer-subsidized benefits.
- **liability** – Employers are typically liable for the acts of their workers. This includes injuries inflicted on customers and total strangers. It also includes harassment and discrimination.
- **worker's compensation** – The most common and costly type of liability occurs when a worker is hurt or killed during the course of employment.

Given this discussion, the line between employer/employee relationships and those of independent contractor is not so clear. Employees *generally* receive benefits and protection against liability, and Independent contractors *typically* do not, but legal challenges in court have provided exceptions to this rule.

ENSURING THAT POLICIES AND PROCEDURES ARE FOLLOWED

F/A-12
Responsible brokers must make certain that their management and supervisory activities meet with California law and the Commissioner's rules and regulations. Not only will this protect them from CalBRE sanctions, it will help to provide an efficient and profitable real estate practice.

Specifically, following the general guidelines shown here will help ensure that appropriate policies and procedures are in place and are being followed. Most of this material is discussed at length throughout this course.

- **Written policies and systems** – A written manual or handbook establishing policies, procedures, and systems should be provided to salespersons and other staff members. Subjects under cover should include, but are not limited to, the company's mission statement, expectations, operating rules and procedures, grievance and disciplinary procedures, and resources for any legal questions, for example, the Commissioner's rules and the Business and Professions Code. The manual should be updated regularly, at least annually.
- **Ongoing transaction review** – A review of transactions in process and completed should take place at least weekly. The review can take place in a group setting with other salespeople who can potentially shed light on challenging situations. Since the Commissioner requires "regular and consistent reports of licensed activities of salespersons," a weekly meeting is a fine time for this platform. (See Regular and Consistent Reporting below.)

This process also serves the purpose of keeping transactions and closings on schedule.

- **Salesperson's awareness of legal responsibilities** – A major part of management and supervision is making sure that salespersons are aware of their obligations, legal and otherwise, and that they are carrying them out. This can be accomplished by making clear the broker's expectations and providing sources for California law in the company's policy manual. Salespersons and employees must also be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
- **Salesperson's awareness of position, duties, and business environment.** The salesperson's position and duties should be absolutely clear. The broker must constantly evaluate the salesperson's attitude, knowledge, production, and documentation. This can be accomplished with a clear organizational chart and job description. In addition, licensees must keep current with changing real estate laws, technological changes, and trends impacting the broad field of real estate. CalBRE's Web site is an excellent source for this information.
- **Team work** – Most management and supervision functions can be carried out by branch and division managers with proper training. Communication is the key here. Brokers should make it known that they, or their managers, are available to answer questions and to provide guidance about difficult transactions. If the designated manager is available for consultation and to

make certain that salespersons are trained and up to date on office procedures, this can free up the broker for other tasks such as developing new business or new types of business.

- **Regular review of documentation** – Brokers must review and retain, in accordance with California law, supporting documents that may have a material effect on the rights and obligations of the parties in real estate transactions. This includes proper filing, storage, and maintenance of documents as required by law.
- **Availability and use of proper forms** – Up-to-date contract and disclosure forms, and proper instruction for their use, should be readily available. Required forms are typically available by download, but printed forms should be available also.
- **Proper handling of trust funds** – The fiduciary duty to properly remit, handle, and disburse client funds cannot be underestimated. A significant discussion is devoted to this topic in Section #2.
- **Regular and consistent reporting** – Regular and consistent reporting of the activities of licensed salespersons is required by law. This includes appointment, appointment cancellation, name and address changes, transaction reports as required by the Commissioner, knowledge of violation of the Real Estate Law, and others.

Regular and consistent reporting should also include a report of current listings, loan applications, and other transactions in progress and exactly where they are in the process. Brokers should be informed of all transactions occurring under their licenses at any given time.

- **Enforcing systems in place** – Enforcing policies, procedures, and systems in place must be done *consistently*.

ERRORS AND OMISSIONS INSURANCE E&O

Q1-3

Due to the complexity of today's real estate transactions, brokers may wish to consider carrying errors and omissions (E&O) insurance covering their salespersons and office personnel, regardless of their contractual and employment relationships. Errors and omissions insurance can help to reduce the risk to brokers and their firms against potential lawsuits.

E&O coverage is purchased to insure against liability for professional services rendered. It is used to mitigate the risk that is inherent in real estate transactions, generally in cases in which real estate professionals have failed to carry out their professional responsibilities, or they have done so in a negligent manner.

SUMMARY OF OFFICE POLICIES

Before choosing an E&O insurance policy, a broker should prepare a summary of the policies that have been established within the firm. An effectively written and properly

- any proprietary information; and
- the term of the agreement.

Prohibition on Conflicts of Interest

A conflict of interest can be thought of as a situation in which the aims of two or more parties are at odds. A conflict of interest is often interpreted as “self-dealing.”

The conflict is a component in a situation that is either directly adverse to the broker’s interests, or one in which the adverse component is materially limited. An example of conflict of interest is a salesperson whose potential buyer is a close family member. The salesperson’s desire to obtain the lowest possible price for the purchase is in conflict with the broker’s desire to obtain the highest, yet fair, price for the purchase.

Anti-Discrimination Policies

All business owners must comply with the equal employment opportunity laws prohibiting discrimination and harassment in the work environment and state and federal laws prohibited housing discrimination. Fair housing practices are discussed in detail later in this course.

Compensation

Policy manuals should clearly explain that the company will make required deductions for federal and state taxes, as well as voluntary deductions for the company’s benefits programs. In addition, the firm’s legal obligations regarding overtime pay, pay schedules, performance reviews, salary increases, time keeping records, breaks, and bonuses should be covered.

Work Schedules

This part of the manual describes the company’s policies regarding work hours and schedules, attendance, punctuality, and reporting absences, along with guidelines for flexible schedules and telecommuting.

Standards of Conduct

Expectations of how salespersons and staff personnel should conduct themselves should be made clear. This includes a dress code and an ethics code. In addition, everyone should be reminded of their legal obligations under California and federal law.

General Employment Information

This part of the manual should include an a overview of general employment policies covering employment eligibility, job classifications, employee referrals, employee records, job postings, probationary periods, termination and resignation procedures, company leave policies, transfers and relocation, and similar.

Safety and Security

The firm's policy for creating a safe and secure workplace should be set forth here. Safety requirements include the firm's compliance with the Occupational Safety and Health Administration (OSHA) laws and requiring workers to report accidents, injuries, and safety related issues.

Security requirements include password protecting computers and other steps that should be taken to secure electronic information, especially any personal identifiable information collected from customers. Cabinets and drawers should be locked securely when not in use.

SUPERVISION OF ALL TRANSACTIONS INVOLVING A REAL ESTATE LICENSE

LICENSE REQUIRED

F/A-4
a Under § 10130 of California's Business and Professions Code, it unlawful in California for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson without first obtaining a real estate license from the Department.

CONTROL AND SUPERVISION

F-A-3
b Under § 10159.7 of the Code, a responsible real estate broker is required to exercise control and supervision of salespersons while the salespersons are in the employ of the broker. The supervision of a salesperson required under this part or any other law is G-1-4 limited to regulatory compliance and consumer protection.

HIRING SUSPENDED OR BARRED LICENSEES

Under § 10087 of the B&P Code, the Commissioner may, after appropriate notice and opportunity for a hearing, suspend or bar a licensee from employment, management, or control, or bar a potential licensee from taking a licensing exam. These sanctions may not be in effect for longer than 36 months.

Suspension or bar is in order of the Commissioner finds:

- that the suspension or bar is in the public interest and that the person has committed a violation of the Real Estate law or a rule or order of the Commissioner; or
- that the person has been convicted of, or pleaded no contest to, a crime or has been held liable in any civil action if the crime or civil action involves dishonesty, fraud, deceit, or another offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

A licensee or potential licensee who has been suspended or barred is prohibited from:

- participating in any real estate salesperson or broker business activity;
- engaging in any real estate-related business activity on the premises where a

salesperson or broker is conducting business;

- participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company; and
- participating in examinations for licensure.

Brokers are responsible for ensuring that they do not hire suspended or disbarred individuals.

REAL ESTATE BROKER DEFINED

6-1-5

The B&P Code defines "real estate broker" for purposes of our discussion of control and supervision. Under § 10131, a real estate broker is a person who, for compensation or in expectation of compensation, regardless of the form or time of payment, negotiates to perform, or perform, one or more of the following acts for another:

- sells or offers to sell; buys or offers to buy; solicits prospective sellers or purchasers of; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of real property and business opportunities;
- leases or rents; offers to lease or rent; places for rent; solicits listings of places for rent; solicits for prospective tenants; negotiates the sale, purchase, or exchange of leases on real property or on a business opportunity; or collects rents from real property or from business opportunities;
- assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government;
- solicits borrowers or lenders for, or negotiates loans or collects payments or performs services for, borrowers, lenders, or note owners in connection with loans secured directly or collaterally by liens on real property or on business opportunities; and
- sells, or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity and performs services for the real property or business opportunity holder.

IF THE LICENSEE IS A CORPORATION

According to Business and Professions Code § 10211, if the licensee is a corporation, the license issued entitles one officer to engage in the business of real estate broker, without the payment of an additional licensing fee, if this person is so designated in the corporate license application.

Under §10159.2, if the licensee is a corporation, one officer must be designated as responsible for the supervision and control of the activities conducted by officers and employees on behalf of the corporation. The extent of responsibility is that which is

necessary to secure full compliance with the provisions of Division 4, Real Estate, of the Business and Professions Code.

Section 10158 of the Code provides that if the corporation desires that any of its officers, other than the officer designated under § 10211 above and for whom a licensing fee was not paid, to act under its license as real estate brokers, it must procure additional licenses to employ each additional broker/officer.

Back to B&P Code § 10159.2, a corporate broker licensee that has procured additional licenses designated under § 10158 may, by a resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker/officers. In this case, a certified copy of the resolution must be filed with CalBRE within five days of the change.

BRANCH OFFICE MANAGERS

Section 10164 of the B&P Code applies to appointing a branch manager with supervisory responsibilities.

An employing broker or corporate designated broker/officer may appoint a licensee as a manager of a branch office or division. The employing broker or corporate designated broker/officer may delegate to the appointed manager the following responsibilities:

- overseeing day-to-day operations;
- supervising the licensed activities of licensees; and
- supervising clerical staff employed in the branch office or division.

As with a broker or corporate broker/officer, a licensee who accepts this appointment is subject to disciplinary action under § 10165 for failure to properly supervise the activities described here.

The appointment of a manager can be made only with a written contract in which the manager accepts the delegated responsibility. The appointing employing broker or corporate designated broker/officer must retain a copy of the contract and send a notice to the Department identifying the appointed manager and the branch office or division concerned.

Appointment cannot take place if any of the following apply:

- The licensee holds a restricted license.
- The licensee is, or has been, subject to an order of Department.
- The licensee is a salesperson with less than two years of full-time real estate experience within five years preceding the appointment.

RE 242, Branch or Division Manager Appointment, is used for appointment. Language on the form certifies:

- that a written contract is in effect;

RETAINING AND REVIEWING DOCUMENTS

The management and supervision of salespersons includes retaining and reviewing documents that may have a material effect on the rights or obligations of a party in a transaction.

DOCUMENTS TO BE MAINTAINED

Under § 10148 of the B&P Code, licensed real estate brokers must retain for three years copies of the following:

- listings;
- deposit receipts;
- canceled checks;
- trust records; and
- other documents executed and obtained in connection with any transactions for which a real estate broker license is required.

The retention period runs from the date of the closing of the transaction or the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records must be made available for examination, inspection, and copying by the Commissioner during regular business hours.

AUDIT

If the Commissioner believes there is sufficient cause, the records are subject to audit without further notice. The Commissioner will charge the broker for the cost of the audit, if the Commissioner has found that the broker has violated § 10145 of the B&P Code dealing with collecting and depositing trust fund monies or has violated a regulation or rule of the Commissioner with regard to trust fund monies.

If a broker fails to pay for the cost of an audit within 60 days of mailing a notice of billing, the Commissioner may suspend or revoke the broker's license or deny its renewal. The suspension or denial remain in effect until the cost is paid or until the broker's right to renew the license has expired.

The Commissioner may bring an action for the recovery of the cost of an audit in any court of competent jurisdiction, if necessary.

This Web site lists the ten most common violations found in CalBRE audits and references the B&P Code sections where their associated laws and regulations are found:

<http://www.dre.ca.gov/files/pdf/CommonViolationsFoundInAudits.pdf>

FAILURE TO MAINTAIN PROPER RECORDS

CalBRE may suspend or revoke the license of any real estate broker, salesperson, or corporation licensed as a real estate broker if the broker, salesperson, or any corporate director, officer, employee, or agent knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained or that have been sought in connection with an investigation, audit, or examination.

COMMISSIONER'S REGULATION 2729 – RECORD RETENTION

A real estate broker may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, trust records, and other documents necessary to meet recordkeeping requirements as long as the following conditions are met:

- The electronic image storage is nonerasable, known as “write once, read many” (“WORM”), that does not allow changes to the stored document or record.
- The stored document or record is made, or preserved as part of and in the regular course of, business.
- The original record from which the stored document or record was copied was made or prepared by the broker, or the broker's employees, at or near the time of the event reflected in the record.
- The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it electronically.
- The electronic image storage system contains a reliable indexing system that provides:
 - ready access to a desired document or record;
 - appropriate quality control of the storage process to ensure the quality of imaged documents or records; and
 - date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.

Records copied and stored must be retained for three years. Brokers must maintain at the broker's office a means of viewing copies of documents or records stored. Brokers must provide, at the broker's expense, a paper copy of any document or record requested by CalBRE.

COMMISSIONER'S REGULATION 2729.5 – RECORD RETENTION, UNIFORM ELECTRONIC TRANSACTION ACT

A real estate broker who obtains documents in connection with any transaction for which a real estate broker license is required, when the documents contain an

electronic signature pursuant to the Uniform Electronic Transactions Act (§ 1633.1 et seq. of the California Civil Code) or the Electronic Signatures in Global and National Commerce Act (ESIGN) must retain a copy of the documents, including the electronic signatures.

Copies can be retained by:

- making paper copies of the document; or
- using electronic image storage media as described in Commissioner's Regulation 2729.

The broker may retain these copies at a location other than the broker's place of business. However, the broker must maintain, at the broker's office, a means of viewing copies of stored documents and records.

After notice, documents or records must be made available for examination, inspection, and copying by the Commissioner during regular business hours. The broker is responsible for paying the expenses of paper copies of documents and records requested by CalBRE.

TRUST FUND HANDLING

Real estate licensees receive trust funds in the normal course of doing business. They receive these funds in trust, that is, on behalf of others, thus creating a fiduciary responsibility to the funds' owners. Brokers and salespersons must handle, control, and account for these trust funds according to established laws and regulations. Violating the laws and regulations governing trust funds can result in unfavorable business consequences and can be cause for revocation or suspension of a real estate license, not to mention the possibility of criminal sanctions and of being held financially liable for damages incurred by clients.

A real estate licensee is never allowed to mix the money held in trust with his or her own funds (called "commingling") or to convert such funds to his or her own use (called "conversion"). There are strict laws and regulations governing the handling of such trust funds to ensure commingling and conversion do not occur.

TRUST FUNDS AND NON-TRUST FUNDS

Because trust funds must be handled in a special way, real estate licensees must be able to tell the difference between trust funds and non-trust funds.

Trust funds are defined by the California Department of Real Estate as "money or other things of value that are received by a broker or salesperson on behalf of a principal or any other person, and which are held for the benefit of others in the performance of any acts for which a real estate license is required." In other words, trust funds may be cash or non-cash items.

Other than cash, trust funds can include a check applied as a deposit for an acquisition (whether made payable to the real estate licensee or to an escrow or title company), a

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personal note made payable to the seller, or even a pink slip to an automobile given as a deposit. Examples of non-trust funds are commissions from real estate, rents and deposits from licensee-owned real estate, and general operating funds.

TRUST FUND TRANSACTION REQUIREMENTS

Real estate licensees bear a fiduciary responsibility to the owner(s) of the trust fund(s). This means that the funds belong to others and are entrusted to the care and handling of the licensee. This is a legal obligation on the licensee, one of the reasons why a real estate license is required of those who represent others in real estate transactions. Various and specific obligations come with the fiduciary responsibility attached to the licensee. For example, the licensee is required to handle the funds according to the law and use them only for purposes authorized by the funds' owners. In addition, the licensee must keep an exact, comprehensive, and up-to-date accounting of the funds.

The usual trust fund transaction begins with a real estate licensee receiving funds from a seller/principal in conjunction with buying or leasing real property. Compliance with § 10145 of the B&P Code requires that brokers deposit funds, which are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in the state. Funds must be maintained there until disbursed by the broker in accordance the principal's instructions.

Also under § 10145, a real estate salesperson who accepts trust funds from others on behalf of the broker under whom he or she is licensed must immediately deliver the funds to the broker or, if so directed by the broker, deliver them to the custody of the broker's principal, deliver them to a neutral escrow depository, or deposit them into the broker's trust fund account.

Section 10145 also addresses interest-bearing accounts. A real estate broker may, at the request of the owner of trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company insured by the Federal Deposit Insurance Corporation (FDIC), if all of the following requirements are met:

- The account is in the name of the broker as trustee.
- All of the funds in the account are covered by insurance provided by an agency of the federal government.
- The funds in the account are kept separate from funds belonging to the broker or any other person for whom the broker holds funds in trust.
- The broker discloses the nature of the account, how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and possible penalties for withdrawals from the account.
- Interest earned on funds in the account may not benefit, directly or indirectly, the broker or a person licensed to the broker.

- In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract specify the person to whom interest earned will be paid.

ADVANCE FEES

Advance fees are fees received from a seller/principal for a listing or offer to sell or lease property. Section 10146 of the Business and Professions Code states that advance fees are trust funds, not funds of the agent, and must be deposited to a trust account. Amounts may be withdrawn only when actually expended for the benefit of the principal or five days after the verified accounts have been mailed to the principal.

Each principal must be furnished a copy of an accounting for the funds at the end of each calendar quarter and when the contract has been completely performed by the licensee.

COMMISSIONER'S REGULATION 2830 – BROKER PLACEMENT OF TRUST FUNDS WITH FINANCIAL INSTITUTIONS

This regulation makes clear that the relationship between a real estate broker and a client for whom the broker holds funds in trust is an agency relationship. As an agent, the broker owes a fiduciary duty to the client regarding the handling of the trust. Any benefit received by the broker relating to the broker's handling of client funds in trust belongs to the client by law, and the broker must pass that benefit along to the client.

Unless in possession of written permission from the client, it is unlawful for any real estate broker, including any corporate broker, to receive, directly or indirectly, any commission, compensation, or other consideration from any person or institution, other than the client, as an inducement for placing a trust fund account.

Unless in possession of written permission, the following activities are considered inducements for the placement of trust account business and are unlawful:

- receiving or requesting payment for business expenses, including but not limited to rent, employee salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment, or computers;
- receiving or requesting any form of consideration intended to benefit the broker, rather than the trust account itself, including cash, below market rate loans, automobile charges, or merchandise or merchandise credits;
- receiving or requesting on behalf of broker or corporation, compensating balances or benefits in the pricing or fees for the maintenance of a compensating balance account;
- receiving or requesting the time or effort of a depository employee for any service unrelated to the trust account; and
- receiving or requesting expenditures for food, beverages, and entertainment.

Receiving or requesting the following are not unlawful:

- promotional items with a permanently affixed company logo of the bank or other recognized depository with a value of less than \$10 (Promotional items do not include gift certificates, gift cards, or other items that have a specific monetary value on its face or that may be exchanged for another item having a specific monetary value; and
- education or educational materials exclusively related to the business of trust fund management if continuing education credits are not provided.

COMMISSIONER'S REGULATION 2830.1 – INTEREST BEARING ACCOUNTS

A real estate broker, when acting as agent for a financial institution as beneficiary of a loan, may deposit and maintain funds from or for the account of an obligor for the future payment of property taxes, assessments or insurance relating to real property containing only a one-to-four family residence in an interest-bearing trust account if the following requirements are met:

- The account is in the name of the broker as trustee.
- All of the funds in the account are covered by insurance provided by an agency of the federal government.
- All of the funds in the account are funds held in trust by the broker for others.
- The broker discloses to the obligor how interest will be calculated and paid.
- No interest earned on the funds may, directly or indirectly, benefit the broker or to any person licensed to the broker.

COMMISSIONER'S REGULATION 2831 – TRUST FUND RECORDS TO BE MAINTAINED

Every broker must keep a record of all trust funds received, including uncashed checks held according to instructions of the principal. This record, including records maintained under an automated data processing system, must set forth in chronological sequence the following information in columnar form:

- the date the funds were received;
- from whom the funds were received;
- the amount received;
- with respect to funds deposited in an account, the date of deposit;
- with respect to trust funds previously deposited to an account, the check number and date of related disbursement;
- with respect to trust funds not deposited in an account, the identity of the other depository and the date funds were forwarded; and
- the daily balance on the account.

These records must be maintained for each bank account containing trust funds. Maintenance of journals of account cash receipts and disbursements or similar records or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, constitute compliance with this section as long as they are maintained in a format that will readily enable tracing and reconciliation.

~~Brokers are not required to keep the records of checks written by a principal given to the broker and payable to third parties for services, including but not limited to escrow, credit, and appraisal services, when the total amount for any transaction is less than \$1,000.~~

Brokers must retain copies of these records for three years.

Note that CalBRE has published *Trust Funds, a Guide for Real Estate Brokers and Salespersons RE 13* to assist with trust fund handling compliance. This document can be found at the Bureau's Web site.

COMMISSIONER'S REGULATION 2831.1 – SEPARATE RECORD FOR EACH BENEFICIARY OR TRANSACTION

Brokers must keep a separate record for each beneficiary or transaction, accounting for all funds that have been deposited to the broker's trust bank account and interest, if any, earned. This record must include information sufficient to identify the transaction and the parties to the transaction.

Each record must set forth in chronological sequence the following information in columnar form:

- the date of deposit;
- the amount of deposit;
- the date of each related disbursement;
- the check number of each related disbursement;
- the amount of each related disbursement;
- if applicable, the dates and amounts of interest earned and credited to the account; and
- the balance after posting transactions on any date.

~~Maintenance of trust ledgers of separate beneficiaries or transactions or similar records or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, constitute compliance with this section as long they are maintained in a format that will readily enable tracing and reconciliation in accordance.~~

COMMISSIONER'S REGULATION 2831.2 – TRUST ACCOUNT RECONCILIATION

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The balance of all separate beneficiary or transaction records maintained must be reconciled with the record of all trust funds received and disbursed at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify:

- the bank account name and number;
- the date of the reconciliation;
- the account number or name of the principals, or beneficiaries or transactions; and
- the trust fund liabilities of the broker to each of the principals, beneficiaries, and transactions.

COMMISSIONER'S REGULATION 2832 – TRUST FUND HANDLING

As granted under Commissioner's Regulation 2832, there are specific conditions that permit an exception to part of the Code. When a check is received from a potential buyer or renter (the "offeror") in connection with an offer to buy or lease real property, the deposit check may be held uncashed until the offer is accepted if the following conditions are met:

- the check is not negotiable by the broker or if the offeror has given written instructions that the check not be deposited or cashed until acceptance of the offer; and
- the seller ("offeree") is informed that the check is being so held, before or at the time the offer is presented.

Once the owner's offer is accepted, the licensee may continue to hold the earnest money check and not deposit it only if the licensee receives written permission from the offeror/buyer and offeree/seller to do so. Otherwise, the check must be placed in escrow, deposited to a trust account, or into the hands of the offeree within three business days.

Except as noted in our discussion of interest-bearing accounts, the trust account cannot be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to withdraw the funds.

COMMISSIONER'S REGULATION 2832.1 – TRUST FUND HANDLING FOR MULTIPLE BENEFICIARIES

The written consent of every principal who is an owner of the funds in the account must be obtained by the broker prior to each disbursement if the disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

COMMISSIONER'S REGULATION 2834 – TRUST ACCOUNT WITHDRAWALS

In accordance with Commissioner's Regulation 2834, a withdrawal can be made from an individual broker's trust account only with the signature of the broker or one or more of the following and if authorized in writing:

- Not Special*
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- a salesperson licensed to the broker;
 - a licensed broker who has entered into a written sales agreement with the broker; or
 - an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

Withdrawals can be made from the trust fund account of a corporate broker only upon the signature of:

- an officer through whom the corporation is licensed; or
- one of the persons described above, provided that authorization in writing is given by the officer and that the officer is an authorized signatory on the trust account.

COMMISSIONER'S REGULATION 2835 – COMMINGLING

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Commingling occurs when trust funds are deposited into a broker's general or personal bank account rather than into the trust account. Commingling is prohibited.

The following are not considered commingling:

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- the deposit into a trust account of reasonably sufficient funds, not to exceed \$200, to pay service charges or fees against the account by the bank;
 - the deposit into a trust account of funds belonging partly to the broker and partly to the principal when it is not reasonably practicable to separate them, for example, a property management fee earned from each check; however, the funds belonging to the broker must be disbursed not later than 25 days after their deposit; and
 - the deposit into a trust account of broker-owned funds in connection with making, collecting payments, or servicing a real property loan.

COMMISSIONER'S REGULATION 2836 – SUBDIVIDER AND BROKER RECORDS

Subdividers are required to maintain, in accordance with accepted accounting practices, records of all funds received from prospective purchasers or lessees of subdivisions interests.

A subdivider must maintain records of receipt, deposit, and disbursement of all funds collected in connection with the operation of a homeowners association Records must

ADVERTISING

Following California law with respect to advertising is essential to the successful management and supervision of brokerage firms.

FALSE OR FRAUDULENT STATEMENTS

Section 10140 of the B&P Code deals with advertising and false or fraudulent statements.

In California, it is unlawful for anyone to make a statement that is false or fraudulent, with regard to any land or subdivision offered for sale or lease or with regard to any order of the Commissioner under this section, and the person making such statements is guilty of a public offense. The punishment for making these false or fraudulent statements is a fine of up to \$1,000, imprisonment in a county jail for up to one year, or both the fine and imprisonment.

If the violator is a real estate licensee, he or she is also subject to license suspension or revocation.

FICTITIOUS BUSINESS NAME

Section 10159.5 of the Business and Professions Code speaks to using a fictitious business name. Every person applying for a real estate license may have the license issued under a fictitious business name. In order to accomplish this, the licensee must file, with his or her application, a certified copy of the fictitious business name statement filed with the County Clerk.

A responsible broker may, by contract, permit a salesperson to perform all of the following:

- File an application on behalf of the broker with the County Clerk to obtain a fictitious business name.
- Deliver to CalBRE the application signed by the responsible broker, requesting the Bureau's approval to use the approved fictitious business name, which must be identified with the responsible broker's license number.
- Pay for any fees associated with filing the application.
- Maintain ownership of the fictitious business name used subject to the control of the responsible broker. "Ownership of a fictitious business name" means the right to use, renew, and control the use of a fictitious business name.

A salesperson using an authorized fictitious business name may use that name only as permitted by his or her responsible broker.

As to advertising by those who do business under fictitious business names, § 10159.5 provides that advertising and solicitation materials, including business cards, print and electronic media, and "for sale" signage using a fictitious business name, must include

the responsible broker's identity in a manner that is equally as prominent as the fictitious business name. This includes both the broker and the salesperson using the fictitious business name.

"Responsible broker's identity" means a name and the associated license identification number under which the responsible broker is currently licensed by CalBRE and conducts business in general or is a substantial division of the real estate firm.

"Fictitious business name" means a professional identity or brand name under which activity requiring a real estate license is conducted. Using a fictitious business name requires approval by CalBRE.

FALSE STATEMENTS – LOANS AND REAL PROPERTY SALES CONTRACTS

Section 10235 of the B&P Code addresses false statements made in connection with negotiating loans and real property sales contracts.

Under this part of the Code no real estate licensee may knowingly advertise, or otherwise place before the public, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for making, purchasing, or negotiating loans or real property sales contracts.

Indicating or implying a specific yield or return on any note, other than the interest rate specified in note, can be considered evidence that the advertisement is misleading or deceptive unless the ad sets forth the actual interest rate found in the note and the discount from the outstanding principal balance at which it is being offered for sale.

IDENTIFYING NUMBERS

Sections 10235.5 and 10236.4 relate to the disclosure of identifying numbers.

California Real estate licensees and mortgage loan originators are prohibited from placing advertisements, disseminated primarily in the state for loans, unless the advertisement contains a disclosure within the printed text of the ad – or the oral text in the case of radio or television – the CalBRE number and the unique identifier assigned to the licensee by the Nationwide Mortgage Licensing System and Registry (NMLS) under which the loan would be arranged.

In compliance with § 10235.5 of the Code, § 10236.4 provides that every licensed real estate broker must display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors.

A mortgage loan originator must display the unique identifier assigned by NMLS on all advertisements where there is a solicitation for borrowers.

PROHIBITION OF DISCRIMINATION

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Our discussion of discrimination is limited to housing discrimination. Every broker and salesperson must avoid any practices that could be considered discriminatory in commercial and residential transactions.

THE FAIR HOUSING ACT

Title VIII of the Civil Rights Act of 1968 is sometimes known as the "Fair Housing Act." The Fair Housing Act details housing provisions applicable to a broad range of discriminatory practices and is enforceable by federal authority. Title VIII of the 1968 Act contained comprehensive fair housing provisions, which became effective on January 1, 1969, and originally applied to persons who attempted to buy houses from developers. Under those provisions, such persons were entitled to injunctive relief and damages from developers who refused to sell to them on account of race or color.

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The Act has been amended and expanded to apply to nearly all forms of housing used as residences, whether they are for sale or rent. This includes homes, apartments, and condominiums. It also applies to:

- group homes for recovering addicts;
- hospice facilities;
- nursing homes;
- seasonal bungalows; and
- shelters for battered women and homeless people.

Specifically, this act prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. It also prohibits discrimination in the financing of housing. This ban upon discriminatory policies and practices affects many Americans who, otherwise, might not benefit from federal assistance in the financing of housing.

The following acts are deemed to be discriminatory if based on race, color, religion, sex, handicap, familial status, or national origin:

- refusing to sell or rent after a bona fide offer has been made;
- discriminating on the terms, conditions, or privileges of a sale or lease or in providing services or facilities;
- indicating any preference in advertising or statements, oral or written;
- false representations as to the availability of a dwelling unit including "channeling" and "steering" to particular neighborhoods; and
- attempting to persuade owners to sell or rent dwellings by making representations about the entry into the neighborhood of certain classes of people.

premises within 60 days. The Court of Appeals for the District of Columbia Circuit affirmed.

The agreements in *Hurd v. Hodge* covered only two-thirds of the lots of a single city block, and preventing African Americans from buying or renting homes in that specific area would not have rendered them ineligible to do so elsewhere in the city. Thus, if §1982 had been thought to do no more than grant African American citizens the legal capacity to buy and rent property free of prohibitions that wholly disabled them because of their race, judicial enforcement of the restrictive covenants at issue would not have violated §1982.

But the U.S. Supreme Court took a broader view of the statute. Although the covenants could have been enforced without denying the general right of blacks to purchase or lease real estate, the enforcement of those covenants would nonetheless have denied the African American buyers "the same right 'as is enjoyed by white citizens...to inherit, purchase, lease, sell, hold, and convey real and personal property.'" That result, the U.S. Supreme Court concluded, was prohibited by §1982. To suggest otherwise, the Court said, "is to reject the plain meaning of language."

Hurd v. Hodge squarely held, therefore, that an African American citizen who is denied the opportunity to purchase the home [he] wants "solely because of [his] race and color," has suffered the kind of injury that §1982 was designed to prevent.

THE AMERICANS WITH DISABILITIES ACT OF 1990

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. This law prohibits discrimination against individuals with disabilities in employment, public services, telecommunications, public accommodations, and commercial facilities. The provisions regarding commercial facilities and public accommodations affect the real estate industry by requiring owners or lessees of such buildings to make sure that their buildings comply with the law.

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The ADA establishes enforceable standards for new construction, alterations to existing buildings, and barrier removal. Some of the most common provisions regarding compliance with accessibility standards include ramps, marked parking spaces, elevators, restroom accessibility, and allowing service animals.

UNRUH CIVIL RIGHTS ACT – CALIFORNIA CIVIL CODE § 51

Under the Unruh Civil Rights Act, all persons are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, including both private and public entities. The Unruh Civil Rights Act protects all persons against arbitrary and unreasonable discrimination by a business establishment. This law prohibits real estate offices, property management companies, homeowners' associations, and other businesses from discriminating because of:

- age;
- ancestry;

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- color;
- disability;
- genetic information;
- medical condition;
- marital status;
- national origin;
- race;
- religion;
- sex (includes pregnancy, childbirth, medical conditions related to pregnancy or childbirth, gender, gender identity and gender expression); and
- sexual orientation.

Real estate brokers who unlawfully deny full and equal accommodations, advantages, facilities, privileges and services of their business establishments on the grounds covered and protected in the federal Fair Housing Act and the Unruh Civil Rights Act are in violation of the law.

The business conducted by a real estate broker is subject to the requirements of the Unruh Civil Rights Act. In some circumstances, both a real estate broker and owner of a property may be guilty of discrimination in violation of the Act, but the broker who in good faith does all within his or her power to serve all members of society is not liable if the broker's failure to complete a business transaction is due solely to the owner's refusal to complete a transaction because of discrimination.

Case Example: Vargas v. Hampson

The complaint alleged that the plaintiffs, desiring to purchase a home in a tract, made a cash deposit with the defendant real estate broker, and signed a purchase and sale agreement, but that later the defendant returned the deposit, telling the plaintiffs that the house would not be sold to them for the sole reason that they were of "Mexican ancestry," and that his refusal was pursuant to his "policy not to sell" real property to persons of Mexican ancestry. The action on the part of the real estate broker was in violation of the Unruh Civil Acts Act. See Vargas v. Hampson (1962) 57 C2d 479, 20 Cal Rptr 618, 370 P2d 322.

CALIFORNIA CIVIL CODE § 54-55.2 – BLIND AND OTHER PHYSICALLY DISABLED PERSONS

Under California Civil Code Section 54, individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places. A violation of the right of an individual under the Americans With Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.

They are also entitled to full and equal access to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law or state or federal regulation.

Any person renting, leasing, or otherwise providing real property for compensation may not refuse to permit an individual with a disability, at that person's expense, to make reasonable modifications of the existing rented premises if the modifications are necessary to afford the person full enjoyment of the premises. However, any modifications may be conditioned on the disabled tenant entering into an agreement to restore the interior of the premises to the condition existing prior to the modifications. No additional security may be required on account of an election to make modifications to the rented premises.

THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (RUMFORD ACT)

The Rumford Act, California Government Code §12900 et. seq., prohibits discrimination based on age, sex, race, color, religion, ancestry, or national origin in the areas of employment and housing. With respect to housing, the law prohibits discrimination in the sale, rental, lease, or financing of virtually all types of housing. Individuals may file complaints alleging discrimination with the Department of Fair Employment and Housing.

The Rumford Act states that the following are unlawful:

- for the owner of any housing accommodation to discriminate against any person because of the race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability of that person.
- for any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability or an intention to make any such preference, limitation, or discrimination.
- for any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability of that person or persons, or of prospective occupants or tenants, in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

- for any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.
- for any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.
- for any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, marital status, ancestry, disability, familial status, or national origin.
- for any person or other organization or entity whose business involves real estate related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.
- to deny any person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, marital status, ancestry, disability, familial status, or national origin.
- to otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, familial status, disability, or national origin.

SUPERVISION OVER RESTRICTED LICENSES

In the event that a license has been suspended, revoked, or denied after a hearing, the Commissioner is empowered to issue certain types of restricted licenses. These are licenses that allow the licensee to continue to work but under limited conditions. For example, a license may be restricted in any of the following ways:

- by term, for example one month or six months;
- employment by a particular broker, in the case of a salesperson;
- limitation of activity to a certain area or type of transaction;
- requirement of a surety bond; or
- a combination of these or other restrictions as the Commissioner sees fit.

Supervision over a restricted license requires that the broker ensure that the restrictions on activity are not violated.

CalBRE's Broker Supervision Task Force Report issued in 2010 recommends the following when employing a restricted real estate licensee:

1. Fully read and understand the circumstances that led to the license restriction.
2. Increase observation and control in those areas that are closely related to the behaviors that caused the restriction.
3. Realize that the restricted license is a probationary license and monitor the licensee's activities with that mindset.
4. Exercise individual judgment and higher levels of control and supervision over the interactions of the restricted licensee

The Task Force also raised questions concerning standards of care when supervising a restricted real estate licensee. When employing a restricted real estate salesperson, the broker is acknowledging that he or she will carefully review all transaction documents that the salesperson licensee prepares and will exercise close supervision over his or her licensed activities.

Further, the decision of the Commissioner authorizing the restricted licensee includes a provision that the prospective employing broker certify in writing that he or she has read the decision. As such, the prospective employer is aware of the acts that caused the license to be restricted. If the restricted licensee violates any of the conditions of the restricted license, the employing broker also certifies that he or she will immediately notify the Commissioner in writing.

Of course, it is not possible to detail what is meant by "close supervision" of the restricted licensee. However, the supervision should be in line with what the circumstances that caused the restriction call for.

In response to the concerns of the Task Force, CalBRE provided the following suggestions when overseeing the activities of restricted real estate salespersons:

1. Fully read and understand the circumstances that led to the license restriction.
2. Increase observation and control in those areas that caused or are closely related to the behaviors that caused the restriction.
3. Realize that the restricted license is a probationary license and monitor the licensee's activities with that mindset.
4. Exercise individual judgment and better control over the interactions of the restricted licensee

PROSPECTIVE EMPLOYING BROKER CERTIFICATION (RE 552)

RE 552, Prospective Employing Broker Certification, includes the following language certifying recognition of the requirement for close supervision of any particular restricted licensee:

"I hereby certify that I have read the decision of the real estate commissioner dated in case number h-_____, which provides for the issuance of a restricted real estate salesperson and/ or MLO license endorsement to _____. I will carefully review all transaction documents which the restricted salesperson licensee and/or holder of a restricted MLO license endorsement prepares and will otherwise exercise close supervision over the licensed activity of the above named salesperson. should he/she violate any of the conditions of the restricted license and/or restricted MLO license endorsement, I will immediately notify the real estate commissioner in writing."


RESTRICTED SALESPERSON CHANGE APPLICATION (RE 214A)

RE 214A, *Restricted Salesperson Change Application*, is used by restricted salespersons to make changes in their records of:

- mailing address;
- telephone number;
- email address;
- personal name;
- activation;
- sponsoring broker; and
- employment discontinuation.

Restricted licensees may not use the eLicensing system on the CalBRE Web site. Restricted licensees must mail all requests for changes.

TEAMS

 Sections 10159.6 and 10159.7 of the B&P Code deal with real estate licensees who work as teams. Under § 10159.6, advertising and solicitation materials that contain a team name, including print or electronic media and "for sale" signage, must include and display in a conspicuous and prominent manner the team name and the name and license number of at least one of the licensed members of the team.

The responsible broker's identity must be displayed as prominently and conspicuously as the team name in all advertising and solicitation materials.

Advertising and solicitation materials may not contain terms that imply the existence of a real estate entity independent of the responsible broker.

Under § 10159.7, "team name" means a professional identity or brand name used by a salesperson and one or more other real estate licensees in providing services. The use of a team name does not require that a separate license be issued for the name.

A team name does not constitute a fictitious business name if all of the following apply:

- the name is used by two or more real estate licensees who work together to provide licensed real estate services or who represent themselves to the public as being a part of a team, group, or association to provide those services;
- the name includes the surname of at least one of the licensee members of the team in conjunction with the term "associates," "group," or "team;"
- the name does not include terms such as "real estate broker," "real estate brokerage," "broker," "brokerage," or any other term that would lead the public to believe that the team is offering real estate brokerage services or terms that imply the existence of a real estate entity independent of a responsible broker.

FAILURE TO SUPERVISE

Under § 10177(h) of the B&P Code, the Commissioner may suspend, revoke, delay renewal, or deny the issuance of a license to a licensee or applicant who has failed to exercise reasonable supervision over the activities of salespersons or brokers/officers.

The Commissioner may also suspend, revoke, delay, or deny a license to a corporation if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has failed to exercise reasonable supervision over the activities of salespersons or brokers/officers.

VIOLATIONS

Under § 10185, a person, including officers, directors, agents, and employees of corporations, who willfully violate or knowingly participates in the violation of Division 4 of the Business and Professions Code is guilty of a misdemeanor punishable by a fine not exceeding \$10,000, by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

Under § 10137, it is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts under regulation who is not a broker or salesperson licensed under the broker. It is also unlawful to employ or compensate any licensee for engaging in an activity for which a mortgage loan originator license endorsement is required if the licensee does not hold a mortgage loan originator license endorsement. However, a broker may pay a commission to a broker of another state.

Further, no real estate salesperson may be employed by, or accept compensation from, any person other than the broker under whom he or she is licensed.

Finally, it is unlawful for any licensed real estate salesperson to pay a compensation for performing any of the acts requiring a license to any licensee except through the broker under whom the first salesperson is licensed.

For violating this part of the Code, the Commissioner may temporarily suspend or permanently revoke the license.

REAL ESTATE MANAGEMENT AND SUPERVISION

Course Offering – Mandatory CalBRE Quiz Sections

**Management and Supervision

Mandatory CalBRE Quiz Sections:

Review for Section #1 – Quiz Section #1 (to be taken after reading pages 1 through 17)

- P.2
1. Real estate brokers are responsible for the supervision and conduct of their real estate brokerage businesses.
A. true B. false

2. Through the law of agency, brokers are generally held liable for the acts of their agents.
A. true B. false

- P.8
3. Errors and omissions insurance is required of California real estate brokers.
A. true B. false

- P.14
4. CalBRE requires brokers to exercise complete and unlimited supervision over the activities of their salespersons.
A. true B. false

- P.15
5. A California real estate broker must be an individual and cannot be a corporation.
A. true B. false

Review for Section #2 – Quiz Section #2 (to be taken after reading pages 19 through 28)

- P.19
1. Real estate brokers are required to retain copies of their transactions for five years.
A. true B. false

- P.25
2. Copies of real estate transaction documents can be retained by making paper copies or electronically.
A. true B. false

- P.27
3. Commingling is the illegal practice of mixing money held in trust with a licensee's own funds.
A. true B. false

- P.26
4. California Real Estate Law requires licensees to reconcile bank account records with bank statements each month.
A. true B. false

- P.25
5. All earnest money deposits must be placed into escrow immediately upon receipt.
A. true B. false

Review for Section #3 – Quiz Section #3 (to be taken after reading pages 30 through 41)

- P.30
1. The punishment for making false or fraudulent statements in connection with real property is up to \$1,000.
A. true B. false

- P.30
2. Brokers are not permitted to operate using fictitious business names.
A. true B. false

- P.32
3. The Fair Housing Act applies only to property sales and not to properties that are rented.
A. true B. false

- P.35
4. The Americans with Disabilities Act prohibits discrimination against individuals with disabilities in employment, public services, telecommunications, public accommodations, and commercial facilities.
A. true B. false

- P.40
5. Two salespersons operating as a team must secure a license in their team's name.
A. true B. false

REAL ESTATE MANAGEMENT AND SUPERVISION — FINAL EXAM "A"

P.19

1. How long are documents of transactions required to be retained by brokers?

- A 1 year
- B 2 years
- C 3 years
- D 5 years

2. Which types of agency are recognized in California?

P.3

- A Actual, obvious
- B Apparent, authentic
- C Actual, ostensible
- D Binding, authoritative

3. What type of supervision are real estate brokers required by law to exercise over the activities of their salespersons?

P.14

- A Obvious
- B Controlled
- C Reasonable
- D Equitable

4. Which California Code regulates the practices of real estate brokers and salespersons?

P.14

- A Business and Professions
- B Civil
- C Real Estate
- D Corporations

5. Through which common law are brokers generally held liable for the acts of their agents?

P.3

- A Agency
- B Contracts
- C Reason
- D Liability

P.27

6. Who of the following cannot make withdrawals from a trust fund account?

- A A salesperson licensed to the broker
- B Anyone under a written broker/salesperson agreement
- C The broker's spouse
- D An unlicensed employee with fidelity bond coverage

P.35

7. A property owner wants to restrict his listing to include only potential buyers who are Christian. What should you do?

- A Accept the listing but do not follow the seller's instructions
- B Refuse the listing
- C Follow the seller's instructions
- D Refer the seller to another agent in your firm

P.16

P.17

8. A California real estate broker decides to appoint a branch manager to supervise her main office. Which of the following is required?

- A A written contract between the broker and the manager
- B Approval of the manager by CalBRE
- C At least two year's supervisory experience on the manager's part
- D A current background check

9. A California broker fails to maintain proper records of his transactions. Later he falsifies some of documents to make

them appear compliant. Which of the following statement is correct?

P.30

- A This is not a serious offense.
- B The broker could be fined up to \$1,000.
- C The broker will have to appoint someone to supervise compliance with record retention requirements.
- D The broker's license could be temporarily suspended or permanently revoked.

10. A salesperson mixes his own money with the funds he receives from clients in the normal course of business. Which prohibited act has the salesperson engaged in?

P.27

- A Misappropriation
- B Conversion
- C Commingling
- D Embezzlement

11. Under California law, how much of his own funds can a broker keep in his trust account to cover bank fees and other bank charges?

P.27

- A not more than \$25
- B \$50
- C \$100
- D up to \$200

12. What is the purpose of a real estate broker having a policy and procedure manual?

P.7

- A To establish the broker's expectations of salespersons and staff
- B To comply with California law
- C To protect the broker from lawsuits
- D To make available contracts, disclosures, and other forms

13. Because real estate licensees receive funds on behalf of others, which of the following responsibilities is created?

P.21

- A personal
- B business
- C fiduciary
- D sanguine

14. Which of the following is a correct statement about California real estate licensees and discriminatory policies and practices?

P.32

- a. Brokers must avoid discriminatory practices in all transactions, but salespeople are excused.
- b. Brokers and salespeople must avoid discriminatory practices in residential transactions, but the rules do not apply to commercial transactions.
- c. Every broker and salesperson must avoid any practices that could be considered discriminatory in commercial and residential transactions.
- d. Brokers may determine whether their salespeople must follow anti-discrimination policies.

15. If a California broker purchases errors and omissions insurance, which of the following would be covered under the policy?

P.8

- A Bodily injury on the office premises
- B Fraud committed by a salesperson under the broker's supervision
- C Sexual harassment in the office
- D Negligence of a salesperson in proper disclosure