

Chapter 14

LICENSING, EDUCATION, AND ASSOCIATIONS



I. DEPARTMENT OF REAL ESTATE (DRE)

DRE -- Department of Real Estate

- The state regulatory agency for real estate in California
- Purpose is to protect the public by:
 - enacting and enforcing laws relating to real estate
 - establishing requirements for salesperson's and broker's licenses

A. Real Estate Commissioner

- Chief Executive of the Department of Real Estate appointed by the governor
 - chairperson of the real estate commission
 - derives authority from the state legislature based upon the state's police power to enact laws beneficial to the general welfare of the public
 - decides the business policy of the department
 - recommends changes in policy
 - regulates the sale of subdivisions
 - evaluates applicants for licensing
 - investigates complaints against licensees
 - suspends, revokes, and denies licenses

A. Real Estate Commissioner

- Commissioner does not take the place of a court of law
- Does not give legal advice
- Does not settle commission disputes
- Can call formal hearings to discuss issues concerning an applicant for a license, a current license holder, or a subdivider
- May suspend, revoke or deny license or halt sales in a subdivision
- May levy fines up to a maximum of \$10,000

B. Real Estate Advisory Commission

- Recommends and makes suggestions to the Commissioner
 - ten members, all appointed by the Commissioner
 - six members are licensed real estate brokers and four are members of the general public
 - they meet at least four times a year with the Commissioner
 - proceeds of all meetings must be made public



II. REAL ESTATE LICENSE REQUIREMENTS

A License is:



- Required of anyone actively involved in a real estate transaction, at the service of another and in expectation of receiving a commission (Broker or Salesperson)

A. Who Must Have a License

- A person is required to have a license if they:
 - sell or offers to sell, buy or offers to buy, and solicit buyers or sellers
 - solicit or obtain listings
 - negotiate the purchase, sale, or exchange of real property or business opportunities
 - lease or rent, collect rents, or negotiate the sale, purchase, or exchange of leases
 - assist in the purchase of leases on lands owned by the state or federal government
 - appraise real property
 - negotiate loans, collect payments, or perform services for borrowers or lenders

A. Who Must Have a License

- Any person found to be involved in such actions without a license may be guilty of breaking the Real Estate Law, under which stiff penalties can be imposed

B. When a License is Not Required

- The following people, because of the nature of their work, are exempt from the licensing regulations:
 - employees of lending institutions
 - lenders making federally insured or guaranteed loans
 - certain agricultural associations
 - licensed personal property brokers
 - cemetery authorities
 - collectors of loans made on real property
 - certain clerical help

A person who is not a real estate salesperson or broker

- May solicit for the sale of real property (according to Section 10133 of the Real Estate Law) as long as he or she is:
 - the owner
 - holding power of attorney for the owner
 - an attorney at law acting on behalf of the owner
 - a receiver or court appointee
 - a trustee, selling under a deed of trust

C. Obtaining the Salesperson's License

- Any applicant who can meet the requirements:
 - AGE: 18 years of age to apply for a license, although there is no age restriction for taking the exam
 - RESIDENCE: provide Proof of Legal Presence in the United States
 - if not a California resident, refer to “Out-of-State Applicants” on DRE Web site
 - HONESTY: be honest and truthful
 - EDUCATION:
 - complete three college level courses from a list offered by the DRE
 - pass the required examination (Gov. Photo ID required)

2. 4-Year Salesperson's Regular, Renewable License

- To obtain a regular four-year salesperson's license, the applicant must:
 - complete a college level Real Estate Principles course, a Real Estate Practice course, and one other approved college level (broker-required) course
 - pass the DRE salesperson's exam
 - pay the necessary fees

3. Salesperson's Examination

- To pass, an applicant must achieve a score of at least 70% in the three-hour, fifteen minute salesperson's exam, which has 150 multiple choice questions
 - you do not get your score; you pass or you don't
 - a non-refundable fee is required to take the test; presently \$25
 - the use of silent, battery-operated, pocket-sized electronic calculators that are non-programmable and do not have a printout capability is permitted

4. Notification of Examination Results

- Mailed to you, normally within five working days after the examination, and available on DRE website (<https://secure.dre.ca.gov/elicensing>)
 - you may not apply for a re-examination until after notification of failure of a prior test; another application fee payment of \$25 will be required
 - there is a re-scheduling fee of \$10 (first time; \$25 thereafter)
- There is no limitation to the number of re-examinations you may take during the two-year period following the date of the filing of the original application

5. Electronic Fingerprint Requirement (Salesperson and Broker)

- Active License fee -- \$120
- Broker License fee -- \$165
- Live scan set of your fingerprints - \$56 (paid to scan service provider—fee may vary)
- Upon completion of the real estate license exam, a copy of RE Form 237 (Live Scan Service Request Form) will be mailed to all applicants
- List of providers of the live scan fingerprinting technique is available through the DRE website:
www.dre.ca.gov

D. Obtaining the Broker's License

VA 94

- Required of any individual who wants to operate a real estate office
- 200-question exam; 75% to pass

BROKER LICENSE REQUIREMENTS

18 YEARS OF AGE TO APPLY FOR LICENSE
(No age restriction for taking exam)

PROVIDE PROOF OF LEGAL PRESENCE IN U.S.

PREVIOUS EXPERIENCE
(Two years or college education)

COMPLETE REQUIRED 8 BROKER COURSES

BE HONEST AND TRUTHFUL

PASS THE REQUIRED DRE EXAM

1. Broker's Qualifying Experience

- Generally, two years of full-time work (104 consecutive forty-hour weeks) as a salesperson
 - can be replaced by equivalent cumulative part-time experience as a salesperson within the five-year period immediately preceding the application
 - the DRE may accept experience in other fields:
 - lease, escrow, title insurance, bonds, mortgage services, or other areas related to real estate
 - may also be replaced by educational achievement—equivalency request to DRE
 - four-year college degree
 - community college grad only needs 1 yr. experience

These are the five required broker courses:

- Real Estate Practice
- Legal Aspects of Real Estate
- Real Estate Finance
- Real Estate Appraisal
- Real Estate Economics (or Accounting)

Plus three courses from the following:

- Real Estate Principles
- Business Law
- Property Management
- Escrows
- Real Estate Office Administration
- Mortgage Loan Brokering and Lending
- Advanced Legal Aspects of Real Estate
- Advanced Real Estate Finance
- Advanced Real Estate Appraisal
- Computer Applications in Real Estate
- Common Interest Development

E. Renewal of License (Broker and Salesperson)

- Every 4 years
- The license renewal fee for a salesperson is \$120 if filed on time and \$180 if filed late
- A broker's renewal costs \$165 if on time and \$248 if filed late
- Two-year grace period during which re-taking of examination not required – late fee owed

Employment Notification

- When a salesperson enters employ of a real estate broker, broker immediately notifies the DRE in writing
- Whenever a salesperson is terminated, broker immediately notifies the DRE in writing

F. Continuing Education (CE) Requirement

- 45 clock hours of Commissioner-approved courses are required during the four-year period preceding license renewal
 - 3 hours of Ethics and Professional Conduct
 - 3 hours of Agency
 - 3 hours of Trust Fund Accounting and Handling
 - 3 hours of Fair Housing
 - 33 hours of Consumer Protection
- Only agency and ethics required for the salesperson's first renewal; thereafter full 45 hours

Six-Hour Continuing Education (CE) Survey Course

- Can replace the 12-hour combination of four separate 3-hour courses in (Ethics, Agency, Trust Fund Handling, and Fair Housing), starting with your second license renewal

G. Other Real Estate-Related Licenses

1. Prepaid Rental Listing Service (PRLS) License - is required when running a business that supplies prospective tenants with listings of residential real property for rent or lease while collecting a fee for such service
 - contract sample must be approved by DRE
 - fingerprints and a \$2,500 surety bond per location
2. Real Property Securities Dealer Endorsement (RPSD) - required of any principal or agent engaging in the business of selling real property securities (such as promissory notes or sales contracts)
 - \$10,000 surety bond required



III. BUSINESS OPPORTUNITY BROKERAGE

Business Opportunity Broker

- You must have a real estate license to sell businesses to others
- Business - an establishment whose main purpose is the buying and reselling of goods, or the performance of services with the intention of making a profit

SALE OF A BUSINESS



1. **REAL PROPERTY** (SALE OR LEASE)
2. **PERSONAL PROPERTY** (EQUIPMENT AND FIXTURES)
3. **GOODWILL** (REPUTATION AND ESTABLISHED SALES)

A. Business Opportunity Sale

- The sale or lease of a business, including the goodwill of an existing business
 - grocery stores, liquor stores, laundromats, service stations, restaurants
- When a business is sold, the real property involved is transferred by “deed”
- Personal property is transferred by “bill of sale;” often requires three documents:
 - promissory note, security agreement, compliance with UCC-1 financing statement

B. Business opportunity listing should include:

- All information necessary for a real property sale
 - name of business and owner
 - nature and location of business
 - price and terms of sale
 - encumbrances and items to be assumed by buyer
- If there is a lease, terms should be stated
- Important income information:
 - gross income, expenses and net income
- Competition
- Usual business hours
- Status of employees staying
 - salaries, benefits, etc.

Buyers of businesses fall into two categories:

- Experienced individual with a background in the field or business he or she is buying
 - requires only basic facts
- New buyer who is usually young and inexperienced
 - needs more help but is sometimes hesitant to ask questions; all pertinent facts and applicable laws should be detailed

C. Bulk Sales - Transfer of business inventory

- Bulk Transfer - any sale of a substantial part of:
 - Inventory - items purchased for resale
 - Other supplies, equipment and fixtures associated with the conduct of business

1. Div. 6: Uniform Commercial Code (Inventory Sales)

- Buyer (Transferee) Must Comply with the UCC
 - requires buyer in a bulk transfer to give seller's creditors fair warning that a sale of inventory is about to take place:
 - 12 business days prior to transfer - recorded notice with the county recorder's office
 - 12 business days prior to transfer - published notice in a newspaper of general circulation in the county or judicial district
 - 12 business days prior to transfer - delivered notice (by hand or registered mail) to county tax collector

2. Protection for Creditors

- Published and posted notices must include:
 - notification that the transfer is going to take place
 - name and any business addresses used by the seller
 - location and description of the property
 - place and date of the transfer
- If all the conditions are not met, any bulk transfer is fraudulent and void against creditors but valid between buyer and seller

D. California Sales Taxes

- Sales Taxes are imposed on the sale of tangible personal property by retailers
- Brokers and salespersons who are involved in the sale of businesses need to be familiar with sales taxes
- A seller's permit from the State Board of Equalization allows them to buy at wholesale without paying sales tax, so long as they collect sales tax from their customers
 - escrow checks to see if all sales taxes are paid



IV. REAL ESTATE LAW AND REGULATIONS



Real Estate Law and Regs

- California Real Estate Law: that portion of the Business and Professional Code which refers to licensing/subdivisions
- Commissioner's Regulations: rules which form part of the California Administrative Code established and enforced by the Commissioner of Real Estate



A. Enforcement of Real Estate Laws

- Commissioner is responsible for enforcement of the provisions of the Real Estate Law
 - must act on a verified complaint in writing
 - may investigate the actions of any person engaged in the real estate business or acting in the capacity of a licensee within the state
 - can revoke, restrict, or suspend a license
 - can deny a license to an applicant if the applicant does not meet the full requirement of the law

B. Hearings For License Violations

- All hearings conducted in strict accordance with Administrative Procedure Act's rules when there is a question as to one's right to obtain or keep their license
- Before denying, suspending, or revoking any license, licensee is served a statement in which Commissioner is complainant
- Licensee/respondent may appear with or without counsel
- Hearing is conducted according to rules of evidence in civil matters; hearing officer rules based on findings
- Commissioner may accept or reject the proposed decision or reduce the penalty
- Respondent can appeal to the courts

C. Licenses: Revoke, Restrict, Suspend

- Revoke – take away the license
 - Restrict – to limit the use of the license
 - Suspend – to take away the license for a period of time
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1. Child Support Obligations (150-day license): the DRE will not issue or renew a full-term license if the applicant is on a list of persons who delinquent with court order to provide child support payments
 - 150 days to get current or suspension follows



V. COMMON REAL ESTATE LAW VIOLATIONS

Common violations include:

- A. Section 10176 - Real Estate Licensee acting within the scope of their license
 - “blind advertising” - violation
 - pocket listings - unethical
- B. Section 10177 - Real Estate Licensee not necessarily acting as a licensee
 - infractions that occur inadvertently or without intent may result in license restriction
 - flagrant violations would likely lead to revocation

C. Regulations of the Commissioner

- The Regulations of the Real Estate Commissioner have the force and effect of the law itself
- The California Department of Real Estate produces a factual law book entitled Real Estate Law (Real Estate Law and Regulations of the Real Estate Commissioner), which can be obtained from their office



VI. REAL ESTATE GENERAL FUND

General Fund:

- All money collected from license fees and exams goes into the Real Estate General Fund
- 80% used for operating expenses of the Department of Real Estate
- 20% set aside as follows:
 - 8% - Education and Research Fund
 - 12% - Recovery Fund

Recovery Fund

- Established for the payment of damages and arbitration awards to people who have suffered financial loss due to the wrongful act(s) of a licensee in a real estate transaction
 - to qualify for payment, plaintiffs must obtain a judgment in civil court (or through arbitration)
- Maximum recovery per occurrence - \$20,000
- Maximum recovery per any individual licensee limited to \$100,000



VII. TRADE AND PROFESSIONAL ASSOCIATIONS

Trade and Professional Ass'ns.

- Voluntary, non-profit organizations made up of independent firms in the same industry

A. Local Board of Realtors

- A voluntary organization of real estate licensees in a particular community
 - NORBAR--North Bay Association of Realtors
- Often provide a multiple listing service (MLS) for their members
 - not the case in our area – BAREIS (Bay Area Real Estate Information Services) is a separate entity providing the MLS to paid subscribers

B. California Association of Realtors® (CAR)

- The state division of the National Association of Realtors®
- Objectives and Purposes:
 - a. promote high standards and unite its members
 - b. safeguard the property-buying public
 - c. foster legislation for the benefit and protection of the real estate field
 - d. cooperate in the economic growth and development of the state
- Most active, successful licensees belong to CAR
- www.car.org California Ass'n of Realtors®

C. National Association of Realtors® (NAR)

- National trade association for all state associations and local boards of realtors in the U.S.
- Trade Name - only active members of the National Association of Realtors® or CAR are permitted to use the term “Realtor”
 - use of this trademark without the proper affiliation is grounds for license revocation
- Code of Ethics - every member must swear to it
 - not just how one should act; how they must act
- www.realtor.org National Ass’n of Realtors®

D. Realist Defined

- Although composed principally of African Americans and other minority real estate professionals, NAREB or the Realist organization is an integrated entity open to all practitioners who are committed to achieving “democracy in housing”
- www.nareb.com/default.shtml
 - National Association of Real Estate Brokers (NAREB)

E. National Ass'n of Hispanic Real Estate Professionals (NAHREP)

- The National Association of Hispanic Real Estate Professionals is a national non-profit trade association made up primarily of Hispanic members
- The mission statement of NAHREP is: “To increase the Hispanic homeownership rate by empowering the real estate professionals that serve Hispanic consumers”
- www.nahrep.org -- National Association of Hispanic Real Estate Professionals (NAHREP)

Other Professional Trade Associations

F. Asian Real Estate Association of America (AREAA)

G. National Association of Exclusive Buyer Agents (NAEBA)

H. Independent Boards - include:

1. Chinese American Real Estate Professionals Association of Southern California
2. Chinese Real Estate Association of America
3. Korean Real Estate Brokers of Southern California
4. W.I.R.E. - Women in Real Estate

H. Other Related Associations

- American Bankers Association
- American Savings and Loan Institute
- Building Owners and Managers Association
- Mortgage Bankers Association
- National Association of Home Builders
- National Association of Mutual Savings Banks
- Prefabricated Home Manufacturers Institute

Other Related Associations

- I. Real Estate Instructor and Licensing Associations
 - real estate instructor organizations and other professional bodies related to real estate education and licensing

- J. No Affiliation Necessary - It is not required that a licensee must be affiliated with any trade association – that decision is strictly individual and personal

HOMework

- Read Chapter 15
- Prepare for the Final Exam
- Study Hall (Yes or No)
- Continue reading your supplemental text and e-mail your book report
- Get your extra credit in!!!

Chapter 14 - Summary

■ DRE

- Commissioner

■ Salesperson's License

- 18 yrs
- Honest, truthful
- Pass Principles course
- Pass state exam
- Electronic fingerprint scan
- Conditional license

■ Broker's License

- Needed to operate a real estate office
- 18 yrs
- 2 yrs experience or equivalent
- 8 broker courses completed
- Honest, truthful
- Pass exam

Chapter 14 - Summary

■ Continuing Education

■ 45 hrs every 4 yrs

■ 3 hrs

- Ethics
- Agency
- Trust fund handling
- Fair housing

■ Business Opportunity

■ Bulk Transfer

■ California Real Estate Law

- Business and Professions Code
- Commissioner's regulations

■ Violations

- Section 10176
- Section 10177