

Bureau of Real Estate

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

As of December 1, 2015

Section 1 – Background and Description of the Bureau and Regulated Profession

Provide a short explanation of the history and function of the bureau.¹

Real estate licensing in California commenced in 1917. The Bureau of Real Estate (CalBRE) is the State entity currently charged with responsibility to enforce the Real Estate Law and Subdivided Lands Act. CalBRE's programs are in place to satisfy the Bureau's statutorily mandated obligations of licensing and regulating mortgage loan originators, real estate and prepaid listing service licensees, reviewing and approving subdivision and time share offerings, and approving continuing education and pre-license courses. Within the framework of requirements of Division 4 of the Business and Professions Code (BPC) and the Regulations of the Real Estate Commissioner as contained in the California Code of Regulations, each of CalBRE's programs contribute toward satisfying its mission of protecting and serving the interests of the public in real estate transactions and providing related services to the real estate industry. Specifically, section 10050 of the BPC requires the Real Estate Commissioner to enforce all laws commencing with Section 10000 and Section 11000 of Part 2 in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees.

With respect to its core functions, CalBRE currently licenses more than 402,000 persons in California. Licensed salespersons (265,645) outnumber licensed brokers (136,232) nearly two to one. Of the 402,000 real estate licensees, over 24,000 have a Mortgage Loan Originator (MLO) endorsement that allows the licensee to originate residential mortgage loans. Last fiscal year, CalBRE issued over 25,000 new licenses and renewed over 79,000. CalBRE's enforcement efforts resulted in 185 license denials, 705 licensing disciplinary actions (revocations, surrenders, suspensions and public reprovls) and 62 Desist and Refrain Orders. Moreover, CalBRE issued over 2,600 final public reports, which translated to 30,628 new housing units being offered for sale in California in FY 14/15.

1. Describe the make-up and functions of each of the bureau's committees (cf., Section 12, Attachment B).

CalBRE does not convene any mandated committees.

¹ The term "board" in this document refers to a board, bureau, commission, committee, department, division, program, or agency, as applicable. Please change the term "board" throughout this document to appropriately refer to the entity being reviewed.

Table 1a. Attendance			
Bureau of Real Estate does not have committees.			
Meeting Type	Meeting Date	Meeting Location	Attended?
N/A	N/A	N/A	N/A

Table 1b. Bureau/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re- appointed	Date Term Expires	Appointing Authority	Type (public or professional)
N/A	N/A	N/A	N/A	N/A	N/A

2. In the past four years, was the bureau unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations? Not applicable, as the Bureau does not have any committees.

3. Describe any major changes to the bureau since the last Sunset Review, including:

(Note: In 2010, in lieu of a sunset hearing, the Department of Real Estate was the subject of an oversight hearing as Real Estate Law does not contain a sunset provision).

- **Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)**

On February 13, 2013, Governor Jerry Brown appointed Wayne Bell as the Real Estate Commissioner for the State of California Department of Real Estate. The Department of Real Estate became a Bureau in July 2013 under the Governor’s Reorganization Plan, No 2 (2012).

As Commissioner, Mr. Bell oversees the licensing and regulation of approximately 402,000 real estate licensees and is responsible for a staff of approximately 328.

Commissioner Bell previously served as Chief Counsel and Assistant Commissioner for Legal Policy and Recovery at the Department of Real Estate since 2006. He was Special Counsel and Director of Homeownership at the California Housing Finance Agency from 2003 to 2006, and Deputy Secretary and General Counsel at the California Business, Transportation and Housing Agency from 1999 to 2003. He worked in multiple positions at Ralphs Grocery Company from 1989 to 1999, including Vice President. Commissioner Bell earned a Juris Doctorate degree from Loyola Law School.

Governor’s Reorganization Plan No. 2 (2012)

On July 1, 2013, the California Department of Real Estate (DRE) became the California Bureau of Real Estate (CalBRE), under the Department of Consumer Affairs, following the approval of Governor Brown’s Reorganization Plan. The Governor’s plan, without objection by the legislature, cut the number of state agencies from 12 to 10 and eliminated or consolidated dozens of departments and entities.

Relocation of Headquarters Office

On July 1, 2013, CalBRE moved its headquarters location from 2201 Broadway, Sacramento, CA 95818 to 1651 Exposition Boulevard, Sacramento, CA 95815.

- **All legislation sponsored by the bureau and affecting the bureau since the last sunset review.**

Cal BRE has not sponsored legislation since the 2010 oversight hearing. However, the following is a brief summary of legislation enacted since the last sunset review that affects the Bureau.

AB 345 (Frazier, Chapter 68, Statutes of 2015) requires real estate brokers licensed by the Bureau of Real Estate to complete a three-hour continuing education course in the management of real estate offices and supervision of real estate licensed activities prior to renewal of their license. This bill also requires salespersons to complete a continuing education course that assists them to better understand how to be effectively supervised by a broker or branch manager.

AB 607 (Dodd, Chapter 216, Statutes of 2015) codifies existing regulations pertaining to the Bureau of Real Estate that allow fully bonded unlicensed employees of a licensed real estate broker, typically accountants and bookkeepers, to be signatory on the broker's trust account. Specifically, this bill allows the fidelity bond covering the unlicensed signatories on the broker's trust account to have a deductible - as long the deductible amount is covered by other assets acceptable to the Real Estate Commissioner.

AB 661 (Mathis, Chapter 76, Statutes of 2015) clarifies existing law by specifying which real estate instruments or documents pertaining to the sale or transfer of property are subject to a \$10, per document, county fee to fund the Real Estate Fraud Prosecution Trust Fund, and which are not.

AB 807 (Stone, Chapter 634, Statutes of 2015) makes technical clarifications to the definition of a "transfer fee," as established by AB 980 (Calderon, Chapter 689, Statutes of 2007), and requires all transfer fee documentation to be recorded on a single document.

SB 146 (Galgiani, Chapter 129, Statutes of 2015) provides technical clean-up to AB 2018 (Bocanegra, Chapter 892, Statutes of 2014), which specifies that, "team names," are not, "fictitious business names," and are therefore not required to register with the Bureau. This bill clarifies that team names are not required to register with the county in which the team operates, defines a "responsible broker's identity," and makes other non-substantive and conforming amendments.

SB 647 (Morrell, Chapter 263, Statutes of 2015) makes several technical amendments to statute following the enactment of SB 978 (Vargas, Chapter 669, Statutes of 2012) that made changes to the Real Estate Law and Corporations Code with respect to investor protections and "hard money" lending by threshold brokers. Specifically, this bill adds an additional property category with an associated loan-to-value ratio, modifies investor reporting requirements, and deletes a Department of Business Oversight reporting requirement. This bill also deletes the requirement that threshold brokers obtain annual questionnaires from investors, and instead, replaces that obligation with one which requires the broker to obtain questionnaires at least two business days, but not more than one year, prior to completing an investment, among other technical changes.

AB 569 (Chau, Chapter 661, Statutes of 2014) exempts specified housing developments from the election of directors for the homeowners' association if all residents are required to serve as directors. This bill also allows the sale or lease of individual interests in a stock cooperative or limited-equity housing corporation even when the property is held by a single mortgage, known as a blanket encumbrance. In addition, the bill expands the current exemptions from the public report process in the case of a cooperative if the financing involves a state or federally chartered credit union or certified community development financial institution.

AB 1700 (Medina, Chapter 854, Statutes of 2014) prohibits lenders from accepting an application or assessing any fees for a reverse mortgage unless the lender provided the prospective applicant with the specified reverse mortgage worksheet guide and seven days have elapsed since the potential applicant received required counseling.

AB 1730 (Wagner, Chapter 457, Statutes of 2014) makes violators of mortgage loan modification laws subject to liability in a potential civil action brought by specified public prosecutors for each violation. The bill provides for a separate cause of action if these violations are against a senior citizen or disabled person. This bill sets the statute of limitations for these violations at four years.

AB 1770 (Dababneh, Chapter 206, Statutes of 2014) creates a form to be used by borrowers in the case of a sale or refinance of their real property when there is a home equity line of credit open on that property. The form would instruct the lender to suspend all activity on that line of credit and close the account. The bill also instructs these lenders to close the accounts once they are settled and reconvey the property. This bill will take effect July 1, 2015, and sunsets on January 1, 2019.

AB 2018 (Bocanegra, Chapter 892, Statutes of 2014) allows a licensed broker to delegate the process of filing a fictitious business name to a licensed salesperson, thereby codifying existing practice. This bill also allows a salesperson to use a "team name" without filing for a fictitious business name if certain conditions are met.

AB 2039 (Muratsuchi, Chapter 893, Statutes of 2014) prohibits certain bids made at the auction of a home that are made solely to inflate the purchase price; this provision takes effect July 1, 2015. This bill also invalidates any provision of a contract between a lender or auction company hired by a lender and a homeowner that would require a homeowner to defend and compensate (indemnify) the lender or auction company for any liability resulting from the actions of the lender or auction company.

AB 2540 (Dababneh, Chapter 295, Statutes of 2014) requires Bureau licensees to provide the Bureau with an up-to-date mailing address, telephone number, and email address used for licensed activity and requires applicants for licensure to disclose valid contact information in the application. The bill does not require the Bureau to disclose this information publicly, but if the Bureau does, the information shall be presented in a way that discourages its use for commercial purposes. Violations of this provision will not be considered a misdemeanor.

SB 1171 (Hueso, Chapter 200, Statutes of 2014) defines the term "commercial real property" as it relates to the duties of a real estate agent to a prospective purchaser of real property. The addition of this definition to statute ensures that parties to a commercial real estate transaction, including sales and leases of real property, will receive a written disclosure if their agent works for both the buyer and seller or lessor and lessee, known as dual agency

SB 269 (Hill, Chapter 436, Statutes of 2013) enhances the Bureau's oversight of prepaid rental listing service licensees and increases consumer protection by doing the following: granting consumers of these services access to the Consumer Recovery Account, providing the Bureau with cite and fine authority, requiring licensees to disclose their license number and provide a written disclosure to consumers, and giving the Bureau the authority to disconnect phone lines utilized by unlicensed actors.

SB 676 (Block, Chapter 349, Statutes of 2013) clarifies that willful destruction or falsification of records required to be maintained by a licensee of the Bureau is grounds for disciplinary action. Like other violations of the Real Estate Law, the willful destruction or falsification of records would be a misdemeanor.

AB 1718 (Hill, Chapter 193, Statutes of 2012) recasts existing requirements that must be met prior to the licensure of real estate brokers, and allows the Real Estate Commissioner to grant an original real estate broker license to an applicant who (1) has passed the real estate broker license examination, (2) has satisfied other specified requirements, (3) either held a real estate salesperson's license, or (4) holds an active membership in the State Bar of California or has graduated from a four-year university with a specialization in real estate.

GRP 2 (Governor Brown, effective July 3, 2012) establishes the Department as a Bureau within the Department of Consumer Affairs, operative July 1, 2013.

SB 875 (Price, Chapter 380, Statutes of 2012) increases enforcement authority of the Bureau. [Expands on SB 706 (Price, Chapter 712, Statutes of 2011).]

SB 978 (Vargas, Chapter 669, Statutes of 2012) enacts several changes to the Real Estate Law and Corporations Code, by increasing real estate investor protections, and requiring the Department of Corporations to focus greater regulatory scrutiny on, and provide greater transparency regarding, the activities of those who solicit investors in connection with real estate investments.

SB 6 (Calderon, Chapter 716, Statutes of 2011) conforms California real estate law with the Dodd-Frank Wall Street Reform and Consumer Protection Act.

SB 53 (Calderon, Chapter 717, Statutes of 2011) makes several changes to California's Real Estate Law, to give the former Department of Real Estate more enforcement tools with which to crack down against mortgage fraud and other real estate violations, add safeguards to protect consumers who seek out services from real estate licensees, and make technical changes, intended to clean up certain portions of the Real Estate Law.

SB 458 (Corbett, Chapter 82, Statutes of 2011) expands existing law which prohibits a lender from receiving a judgment for a deficiency after a short sale on a first mortgage or deed of trust, as specified. This bill extends that anti-deficiency protection to all mortgages or deeds of trust, provided that the holder of the mortgage or deed of trust consents to the short sale. This bill also restates the above prohibition to clarify that the provisions do not impact multiple collateral loans.

SB 706 (Price, Chapter 712, Statutes of 2011) makes numerous enforcement enhancements to the former Department of Real Estate and the former Office of Real Estate Appraisers;

requires licensing boards to post information about licensees on the Internet, as specified; and makes updating and conforming changes.

- **All regulation changes approved by the bureau since the last sunset review. Include the status of each regulatory change approved by the bureau.**

The Commissioner has completed seven regulations packages (adoptions, amendments, or a combination of the two) since the beginning of 2011. (Note: All citations below are to sections within the Regulations of the Real Estate Commissioner, Chapter 6 of Title 10 of the California Code of Regulations.)

On August 26, 2011, the Commissioner amended sections **2770.1** and **2847.3**. These were technical amendments to the two sections, updating statutory references in response to a renumbering within statutes.

On August 31, 2011, the Commissioner amended section **3012.3**. This change addressed the definition of “good standing” as that term is used in Business and Professions Code section 10170.8. That statute, and this regulatory section, exempt specified senior licensees from continuing education requirements of the Real Estate Law.

On September 10, 2011, the Commissioner amended section **2731**. This change added subdivision (e) to the section, allowing natural persons who are licensees to use nicknames in licensed activity under specific circumstances.

On October 26, 2011, the Commissioner adopted or amended multiple sections of the Commissioner’s Regulations in order to implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE). These changes are outlined below:

- **2750** – A technical change for gender-neutrality.
- **2756** – Adding a requirement for specified licensees to hold a Mortgage Loan Originator License Endorsement, and for endorsed salespersons to work for endorsed brokers.
- **2758.1** – Outlining an examination requirement for the license endorsement.
- **2758.2** – Establishing a fingerprinting requirement for the license endorsement.
- **2758.3** – Clarification of the fiscal responsibility requirement established by statute.
- **2758.4** – Setting the fee required for license endorsement.
- **2758.5** – Establishing requirement for consistent licensee data on national SAFE registry (for the license endorsement) and in CalBRE real estate licensing system (for the underlying real estate license).
- **2758.6** – Establishing requirements relating to submission of information on corporate owners and officers where the corporation seeks/holds a license endorsement.
- **2758.7** – Establishing allowances relating to renewal of license endorsements and continuing education.

- **2911** – Amendment of CalBRE’s criteria for rehabilitation to address SAFE Act’s restrictions on license endorsements.
- **2912** – Amendment of CalBRE’s criteria for rehabilitation to address SAFE Act’s restrictions on license endorsements.
- **2945.1** – Establishes the effect of real estate license discipline on a license endorsement.
- **2945.2** – Establishes a limit on the use of prior real estate license discipline as a cause of action against a license endorsement.
- **2945.3** – Establishes the effect of prior felony convictions on a license endorsement.
- **2945.4** – Establishes uniformity of “due process” between the existing real estate license discipline system and the license endorsement discipline system.

On June 30, 2014, in response to the Department of Real Estate’s renaming to “Bureau of Real Estate” within the Governor’s Reorganization Plan No. 2, (2012), the Commissioner amended the regulations’ references to “the Department,” and made other non-substantive corrections.

On July 1, 2014, the Commissioner adopted four sections to implement the Citation and Fine discipline level.

- **2907.1** – Outlines the scope of citations and orders of correction.
- **2907.2** – Establishes criteria for use of citation discipline and establishment of fine amounts.
- **2907.3** – Establishes “due process” for appeals of citations and fines, creating an efficient and low-cost system commensurate with the types of violations addressed.
- **2907.4** – Establishes the time periods for timely payment of assessed fines.

On April 1, 2015, pursuant to Business and Professions Code 10450.6, the Commissioner amended section **2717**, adjusting the portion of license fees designated for the Education and Research Fund from zero percent to eight percent.

4. Describe any major studies conducted by the Bureau.

- **A Guide to Understanding Residential Subdivisions in California**

In 2014, the Bureau of Real Estate, along with California State University, Sacramento, produced the publication, ***“A Guide to Understanding Residential Subdivisions in California”***, as a resource for consumers, subdivision developers, and builders, who are interested in purchasing a home in a subdivision, and also for owners of homes and units in subdivisions, real estate licensees, land use planners and other regional subdivisions staff. This publication addressed the mandate, operation, substantive and procedural requirements of the Subdivided Lands Act, and provided important and significant information on common interest developments, homeowner associations, the Subdivision Map Act (which is the California enabling statute under which cities and counties enact local laws controlling the “subdivision” of land within their jurisdictions), and a variety of

other issues pertaining to residential subdivisions in California. The Guide to Understanding Residential Subdivision in California may be found on CalBRE's Web site at:
<http://www.bre.ca.gov/files/pdf/ResidentialSubdivisionsGuide.pdf>

- **Residential Subdivision Buyer's Guide**

In 2014, the Bureau of Real Estate, along with California State University, Sacramento, produced the publication, "**Residential Subdivision Buyer's Guide**" that focused entirely on subdivision issues for consumers and provided information for consumers considering the purchase of a home or unit in a residential subdivision in California or in a common interest development. The Residential Subdivision Buyer's Guide may be found on CalBRE's Web site at:
<http://www.bre.ca.gov/files/pdf/ResidentialSubdivisionBuyersGuide.pdf>

- **Real Estate License Examination Validation Study**

In 2011, the Bureau of Real Estate concluded a license examination validation study. This study determined that CalBRE license examinations are appropriate in content, subject category, and weight for entry into the real estate profession, and that the current real estate license examinations appropriately test and measure the knowledge levels of salesperson and broker license applicants.

- **High School Financial Literacy Course**

In 2011, the Bureau of Real Estate developed a Financial Literacy High School course in partnership with the California Community Colleges Real Estate Education Center, Sacramento Charter High School, and the National Association of Real Estate Brokers-Investment Division, Inc., a HUD Housing Counseling Agency NID-HCA ("NID-HCA"). The course was designed to educate young adults by developing and implementing an innovative real estate financial literacy program that provided important and relevant information and resources with a specific focus based upon emerging needs.

- **Fiscal and Economic Impact of New Housing**

In 2010, the Bureau of Real Estate, along with the California Department of Housing and Community Development, the California Housing Finance Agency, and the Center for Housing Policy, and in conjunction with Blue Sky Consulting Group, produced a report detailing the economic and fiscal effects of new housing in California. The report can be found at: <http://www.hcd.ca.gov/buildingcafuture.pdf>

5. List the status of all national associations to which the bureau belongs.

- **The Association of Real Estate License Law Officials (ARELLO)**

The Association of Real Estate License Law Officials is comprised of the official governmental agencies and other organizations around the world that issue real estate licenses or registrations in addition to regulating real estate practice and enforcing real estate law.

- **American Association of Residential Mortgage Regulators (AARMR)**

The mission of AARMR is to promote the exchange of information and education concerning the licensing, supervision and regulation of the residential mortgage industry, to

ensure the ability of state mortgage regulators to provide effective mortgage supervision for a safe and sound industry meeting the needs of the local financial markets and to protect the rights of consumers.

- Council on Licensure and Enforcement Regulation

CLEAR is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation. CLEAR is a dynamic forum for improving the quality and understanding of regulation in order to enhance public protection. Through conferences, services and publications, CLEAR provides the resources for ongoing and thorough communication of international licensure and regulation issues among all those interested in the field.

- **Does the bureau's membership include voting privileges?**

The membership of both ARELLO and AARMR consists of state and federal entities that regulate the real estate and mortgage industries. CalBRE has voting privileges for both and may participate in the election of officers and routinely engages in policy discussions that affect all jurisdictions.

- **List committees, workshops, working groups, task forces, etc., on which bureau participates.**

The Subdivision Program participates in regular periodic meetings with the California Building Industry Association (CBIA) to discuss the public report process including, but not limited to, form changes, statute and/or regulation changes, policy or procedure changes and other issues related to the Subdivided Lands Law. These CBIA/CalBRE Committee Meetings are typically attended by the following CalBRE staff members: Real Estate Commissioner, Chief Deputy Commissioner, Assistant Commissioner-Subdivisions, district office managers and select subdivision staff members. Committee members representing the real estate industry include: real estate subdividers, real estate attorneys, title company representatives and HOA budget preparers/managers. Generally, these meetings occur three times a year, but the number of meetings varies year to year depending on market conditions.

The Education and Research Program at CalBRE participates in meetings with the California Community Colleges Real Estate Endowment Advisory Board and with the California State University Real Estate Education Endowment Advisory Board. The California Community Colleges (CCC) Real Estate Endowment Advisory Board meets to discuss and provide input and guidance on the financial status of the endowment, review scholarship requirements and review fiscal allocations for the next academic year. The California State University (CSU) Real Estate Education Endowment Advisory Board meets to discuss the financial status of the endowment, review scholarship requirements, review fiscal allocations for the next academic year, and reviews and approves real estate program improvement grants. The Bureau is on the Board and has input on policy.

The Enforcement Program at CalBRE regularly participates in task force meetings with various District Attorney Offices, local real estate associations, and a number of law enforcement agencies. Discussion topics include real estate fraud, mortgage fraud and financial/economic crimes. CalBRE Supervising Special Investigators, as well as other CalBRE investigative staff typically attend and participate at these meetings.

How many meetings did bureau representative(s) attend? When and where?

Approximately three California Building Industry Association/CalBRE Committee meetings are held per calendar year and they correspond with periodic CBIA meetings held throughout the state. The Bureau has attended six meetings since January 1, 2014:

- November 4, 2015 Sacramento, CA
- June 24, 2015 San Diego, CA
- February 11, 2015, Sacramento, CA
- October 13, 2014, Palm Desert, CA
- June 24, 2014, San Francisco, CA
- February 19, 2014, Sacramento, CA

The California State University Endowment Advisory Board meets once a calendar year. The last meeting was held on June 5, 2014 at California State University, Sacramento.

The California Community Colleges Endowment Advisory Board meets twice a calendar year. The last meetings were held on:

- April 18, 2015, Doubletree by Hilton, Brisbane, CA
- October 3, 2014, Hilton Los Angeles Airport, Los Angeles, CA
- April 14, 2014, Hilton Oakland Airport, Oakland, CA

The Enforcement Program meets regularly with the following agencies:

- Los Angeles District Attorney Real Estate Task force on the third Wednesday of every month at the State BAR's Los Angeles, CA office.
- Inland Empire Economic Crime Investigator's Association on second Wednesday of every month at the Riverside Police Department Headquarters.
- Consumer Fraud Task Force (San Diego City Attorney's Office) on the second Wednesday every other month at the San Diego City Attorney's Office.
- San Diego Association of Realtors Risk Management Committee on the second Wednesday of every month at the San Diego Association of Realtors' Main office in San Diego.
- Riverside's Consumer Fraud Roundtable on the second Thursday of every other month at the Riverside District Attorney's Office.
- Riverside's Real Estate Fraud Advisory Team (REFAT) quarterly at the Riverside District Attorney's office.
- Mortgage Fraud Working Group Meeting (Federal Bureau of Investigation (FBI)) quarterly held at the FBI's Law coordination center in San Diego.
- Orange County Financial Crime Investigator's Association on the first Tuesday of every month at Claim Jumper in Fountain Valley on 18050 Brookhurst Street, Fountain Valley, CA 92708.
- Santa Barbara District Attorney's Real Estate Fraud Roundtable; every other month on the fourth Friday, at the Santa Barbara Association of Realtors Headquarters.
- Ventura Real Estate Fraud Working Group, on the third Thursday of the month at the Ventura Coastal Association of Realtors Headquarters.
- Real Estate Anti-Fraud Advisory Coalition quarterly at the Bakersfield Association of Realtors Office.
- US Attorney's Fraud Task Force Meeting quarterly at the Federal Building at 501 I street, Sacramento.
- Yolo County Real Estate Fraud Advisory Team Meeting quarterly at the District Attorney's office, 301 Second St, Woodland.
- Solano County Real Estate Fraud Advisory Team Meeting, monthly at the Solano County District Attorney's office, 501 Texas Street, Fairfield, CA 94533.

- Shasta County District Attorney Roundtable, quarterly at the Shasta County District Attorney's Office, 1355 West St, Redding, CA.

If the bureau is using a national exam, how is the bureau involved in its development, scoring, analysis, and administration? Not applicable. CalBRE does not use a national exam.

Section 2 – Performance Measures and Customer Satisfaction Surveys

6. Provide each quarterly and annual performance measure report for the bureau as published on the DCA website

CalBRE's quarterly performance measure reports are available online at:

http://www.dca.ca.gov/about_dca/cpei/quarterly_reports.shtml

CalBRE's annual performance measure report is available online at:

http://www.dca.ca.gov/about_dca/cpei/2013_annual_bre.pdf

7. Provide results for each question in the bureau's customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

While CalBRE has a Customer Survey on its website, very few consumers submit survey responses. If a survey response identifies an issue, the survey is forwarded to the appropriate program manager to contact the consumer and address the concerns raised. In addition, CalBRE has begun the process to create a new Strategic Plan. To build a foundation for the new plan, CalBRE reached out to staff and contacted over 100,000 stakeholders and consumers asking all to complete an anonymous survey on CalBRE to identify strengths and areas in need of improvement. Over 3,000 responses were received and these responses are being used to identify areas of improvement and to develop a plan to address the areas of concern. The online customer survey may be found at: <http://secure.dre.ca.gov/publicasp/survey.asp>

Section 3 – Fiscal and Staff

Fiscal Issues

8. Describe the bureau's current reserve level, spending, and if a statutory reserve level exists.

At the end of FY 2014-15, the Bureau of Real Estate had an 8.8 month reserve in the Real Estate Fund. Per Business and Professions Code Section 10226, if the fund exceeds an amount equal to 150 percent of the Bureau's authorized budget as of June 30 of the current fiscal year, for the following fiscal year the commissioner shall reduce the real estate license and subdivision fees so that the balance of the Real Estate Fund does not exceed an amount equal to 150 percent of the Bureau's authorized budget for that following fiscal year.

9. Describe if/when a deficit is projected to occur and if/when fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the bureau.

(Note: While CalBRE does not anticipate the need to have a general fee adjustment, a small fee increase of \$7 for broker license applications and renewals and \$4 for salesperson license applications and renewals is mandated by Business and Professions Code 10470 should the Consumer Recovery Account become depleted. Due to significant pay-outs from the Consumer Recovery Account to victims of real estate fraud perpetrated by licensees during the real estate meltdown, CalBRE may have to collect the additional fees mandated by law.)

Table 2. Fund Condition						
(Dollars in Thousands)	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Beginning Balance	\$30,383	\$27,898	\$31,492	\$37,617	\$36,807	\$30,933
Revenues and Transfers	\$43,054	\$46,736	\$51,000	\$49,059	\$45,487	\$45,487
Total Revenue	\$73,437	\$74,634	\$82,492	\$86,676	\$82,294	\$76,420
Budget Authority	47,354	\$46,495	\$48,082	\$49,869	\$51,361	\$52,386
Expenditures	\$46,611	\$43,257	\$44,875	\$47,318	\$	\$52,386
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid From General Fund	\$0	\$0	\$0	\$0	\$0	\$3,500
Fund Balance	\$26,826	\$31,377	\$37,617	\$36,807	\$30,933	\$27,534
Months in Reserve	7.4	8.4	9.1	8.6	7.1	6.2

10. Describe the history of General Fund loans. When were the loans made? When have payments been made to the bureau? Has interest been paid? What is the remaining balance?

The Bureau loaned \$10.9 million to the General Fund per the Budget Act of 2002. No re-payments have been made to the Bureau.

11. Describe the amounts and percentages of expenditures by program component. Use Table 3. Expenditures by Program Component to provide a breakdown of the expenditures by the bureau in each program area. Expenditures by each component (except for pro rata) should be broken out by personnel expenditures and other expenditures.

Table 3. Expenditures by Program Component (list dollars in thousands)								
(Dollars in Thousands)	FY 2011/12		FY 2012/13		FY 2013/14		FY 2014/15	
	Personnel Services	OE&E						
Licensing*	\$5,413	\$3,712	\$5,126	\$2,953	\$5,839	\$3,121	\$5,995	\$3,143
Enforcement**	\$15,239	\$10,449	\$15,209	\$8,762	\$15,482	\$8,277	\$16,821	\$8,819
Subdivision	\$3,026	\$2,075	\$3,176	\$1,830	\$3,530	\$1,887	\$3,579	\$1,876
Administration***	\$3,961	\$2,716	\$3,849	\$2,218	\$3,066	\$1,639	\$3,042	\$1,595
DCA Pro Rata****	-	-	-	-	-	\$1,826	-	\$2,482
TOTALS	\$27,639	\$18,952	\$27,360	\$15,763	\$27,917	\$16,750	\$29,437	\$17,916

*Examination, Education & Research included within Licensing.
 **Audits and Legal included within Enforcement.
 ***Administration includes costs for executive staff, administrative support, and fiscal services.
 ****The Bureau did not go under the Department of Consumer Affairs until July 1, 2013.

12. Describe license renewal cycles and history of fee changes in the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citation) for each fee charged by the bureau.

Real estate licenses are issued for a period of four years. In addition to the four year license term, licensees are provided two years past their expiration date to renew a license on a late basis. Our last fee change occurred in 2009, when license fees were increased to the statutory maximum per Business and Professions Code Sections 10201, 10210, and 10215.

Table 4. Fee Schedule and Revenue (list revenue dollars in thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2011/12 Revenue	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	% of Total Revenue
Exam Fees							
Salesperson Exam Fee	\$60	\$60	\$1,403	\$1,838	\$2,589	\$2,656	4.64%
Broker Exam Fee	\$95	\$95	\$911	\$1,159	\$641	\$576	1.80%
Original License Fees							
Salesperson	\$245	\$245	\$3,266	\$4,097	\$5,270	\$6,059	10.23%
Broker or Broker /Officer	\$300	\$300	\$1,466	\$1,675	\$979	\$916	2.76%
Corporation	\$300	\$300	\$563	\$617	\$687	\$555	1.33%
Renewal Fees							
Salesperson On Time	\$245	\$245	\$9,582	\$9,635	\$10,509	\$9,811	21.64%
Salesperson Late	\$367	\$367	\$4,213	\$4,160	\$4,224	\$4,092	9.13%
Broker On Time	\$300	\$300	\$6,092	\$6,173	\$6,865	\$6,434	13.99%
Broker Late	\$450	\$450	\$1,484	\$1,553	\$1,544	\$1,496	3.33%
Corporation On Time	\$450	\$450	\$1,023	\$1,011	\$954	\$1,091	2.23%
Corporation Late	var	var	\$270	\$299	\$397	\$274	0.68%
MLO Endorsement Fees*							
Salesperson, Broker, and Real Estate Corporation	\$300	Set in regulation	\$6,574	\$6,884	\$6,706	\$6,773	14.74%
Subdivision Filing Fees							
	var	var	\$4,365	\$5,789	\$7,267	\$7,270	13.51%

*B&P section 10166.17(b) gives the Commissioner the authority to establish regulations to set the license fees associated with applying for or renewing an MLO license endorsement (see Commissioner's Regulation 2758.4). The MLO endorsement revenue is comprised of initial and renewal fees for a salesperson, broker, and real estate corporation.

13. Describe Budget Change Proposals (BCPs) submitted by the bureau in the past four fiscal years.

Table 5. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved
1111-05	FY 14-15	Pursuant to the Governor's Reorganization Plan No. 2 of 2012, the Department of Consumer Affairs was approved to transfer position authority for 5.0 permanent positions and budget authority for \$418,000 in FY 14-15 and ongoing—from the Bureau of Real Estate to the Department of Consumer Affairs effective July 1, 2014. The proposal is a technical clean-up of the Department's FY 2013-14 Governor's Reorganization Plan No. 2 Budget Change Proposal	5.0	5.0	\$391	\$391	\$27	\$27
1111-03	FY 13-14	Pursuant to the Governor's Reorganization Plan No. 2 of 2012, the Department of Consumer Affairs is requesting to transfer the budget and position authority from the Department of Real Estate and Office of Real Estate Appraisers to the Department of Consumer Affairs effective July 1, 2013.	340.7 (positions transferred to the Bureau of Real Estate and DCA Admin) & 8.0 (positions eliminated for efficiency)	340.7 (positions transferred to the Bureau of Real Estate and DCA Admin) & 8.0 (positions eliminated for efficiency)	\$28,851 (dollars transferred to the Bureau of Real Estate and DCA Admin) & - \$846 (dollars eliminated for efficiency)	\$28,851 (dollars transferred to the Bureau of Real Estate and DCA Admin) & -\$846 (dollars eliminated for efficiency)	\$17,563 (dollars transferred to the Bureau of Real Estate and DCA Admin) & - \$403 (dollars eliminated for efficiency)	\$17,563 (dollars transferred to the Bureau of Real Estate and DCA Admin) & -\$403 (dollars eliminated for efficiency)

Staffing Issues

14. Describe any bureau staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.

Retirements of Bureau Employees

The Bureau has experienced retirements of several key employees in leadership positions over the last two years. The Bureau is mitigating the impacts of these individuals by bringing back critical retired employees as temporary retired annuitants to train their successors.

15. Describe the bureau's staff development efforts and how much is spent annually on staff development (cf., Section 12, Attachment D).

The Bureau of Real Estate facilitates staff development through the use of internal training and staff development and the services offered by the Department of Consumer Affairs' Strategic Organizational Leadership and Individual Development (SOLID) Training and Development unit.

16. What are the bureau’s performance targets/expectations for its licensing² program? Is the bureau meeting those expectations? If not, what is the bureau doing to improve performance?

See response to #17.

17. Describe any increase or decrease in the bureau’s average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done by the bureau to address them? What are the performance barriers and what improvement plans are in place? What has the bureau done and what is the bureau going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?

As a result of an improving California economy and housing market, the number of applications for examinations and licensure has sharply increased over the past four fiscal years. FY 14/15 had a 59% increase in salesperson examinations scheduled and a 54% growth in salesperson licenses issued when compared to FY 12/13.

This uptick in licensure has created additional workload resulting in an increase in the average number of days it takes for the Bureau to complete the application process. The Bureau’s internal policy is to take no longer than 43 days to complete the licensure process and be able to either deny or issue a real estate salesperson or real estate broker license. In FY 11/12, it took the Bureau 44 days on average to process an application. That number increased to 73 days in fiscal year of 14/15.

The improving economy, the climbing home prices and real estate sales are traditional indicators that the applications for licensure will continue to grow. This growth will continue to strain the Bureau’s licensing operations and will negatively impact how quickly applicants can be licensed. The Bureau has attempted to mitigate the increased workload by relying on overtime and redirecting resources from other sections when possible. While both efforts have provided some relief, the impacts are temporary and short-lived.

² The term “license” in this document includes a license certificate or registration.

18. How many licenses or registrations does the bureau issue each year? How many renewals does the bureau issue each year?

Licensee Population	FY 2012/13	FY 2013/14	FY 2014/15
Total Licensees (By Type) [Sales] [Broker and Broker/Officer]	Total:410,701 270,117 140,584	Total:402,937 264,816 138,121	Total:402,013 265,953 136,060
Licenses Issued (By Type) Originals [Sales] [Broker and Broker/Officer]	Total:20,044 13,485 6,559	Total:22,964 17,663 5,301	Total:25,386 20,741 4,645
Renewals Issued (By Type) [Sales] [Broker and Broker/Officer]	Total:76,372 48,884 27,488	Total:85,126 54,537 30,589	Total:79,633 50,773 28,860

*The Bureau has an internal licensee tracking system that differs in display from the provided template. The tables provided most accurately display the requested information.

Mortgage Loan Originators (MLOs)	2013	2014	2015
Total MLOs (By Type) [Company] [Branch] [Individual]	Total:26,453 6,049 1,113 19,291	Total:26,894 6,117 1,184 19,593	Total:25,496 5,959 990 18,547
Total MLOs Renewal Requested (By Type) [Company] [Branch] [Individual]	Total:22,788 5,294 892 16,602	Total:22,596 5,278 820 16,498	Total:22,491 5,300 858 16,333
Total Renewal Approved (By Type) [Company] [Branch] [Individual]	Total:22,000 5,109 754 16,137	Total:22,045 4,920 812 16,313	Total:22,290 5,128 858 16,304

Table 7a. Licensing Data by Type

Application Type		Received	Approved	Closed	Issued	Pending Applications**			Cycle Times***		
						Total (Close of FY)	Outside Bureau control*	Within Bureau control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2012/13	Sales Exam	20,646	17,501	N/A	17,501	N/A	N/A	N/A	29 days	31 days	
	*Sales Combo	10,789	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Sales License	17,429	13,485	N/A	13,485	N/A	N/A	N/A	18 days	22 days	-
	Sales Renewal	50,997	48,884	N/A	48,884	N/A	N/A	N/A	18 days	20 days-	-
	Broker Exam	7,297	4,280	N/A	4,280	N/A	N/A	N/A	25 days	29 days	
	*Broker Combo	3,860	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Broker/Officer License	8,386	6,559	N/A	6,559	N/A	N/A	N/A	19 days	23 days-	-
	Broker/Officer Renewal	29,914	27,488	N/A	27,488	N/A	N/A	N/A	18 days	21 days-	-
FY 2013/14	Sales Exam	26,252	22,892	N/A	22,892	N/A	N/A	N/A	25 days	26 days	
	*Sales Combo	14,384	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Sales License	21,531	17,663	N/A	17,663	N/A	N/A	N/A	24 days	28 days	
	Sales Renewal	66,251	54,537	N/A	54,537	N/A	N/A	N/A	24 days	27 days	
	Broker Exam	3,640	1,537	N/A	1,537	N/A	N/A	N/A	36 days	32 days	
	*Broker Combo	1,908	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Broker/Officer License	5,948	5,301	N/A	5,301	N/A	N/A	N/A	27days	31 days	
	Broker/Officer Renewal	24,872	30,589	N/A	30,589	N/A	N/A	N/A	25 days	25 days	
FY 2014/15	Sales Exam	26,971	24,296	N/A	24,296	N/A	N/A	N/A	27 days	28 days	
	*Sales Combo	17,081	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Sales License	21,527	20,741	N/A	20,741	N/A	N/A	N/A	25 days	29 days	
	Sales Renewal	54,574	50,773	N/A	50,773	N/A	N/A	N/A	28 days	27 days	
	Broker Exam	3,400	2,066	N/A	2,066	N/A	N/A	N/A	31 days	31 days	
	*Broker Combo	1,948	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Broker/Officer License	5,945	4,645	N/A	4,645	N/A	N/A	N/A	27 days	31 days	
	(Broker/Officer Renewal)	30,692	28,860	N/A	28,860	N/A	N/A	N/A	25 days	29 days	

* The count of licenses issued for combination applications is included in the count of sales licenses issued.

**The Bureau does not track pending applications

***The Bureau recently started keeping track of cycle times for all license application types except combo applications.

Table 7b. Total Licensing Data			
	FY 2012/13	FY 2013/14	FY 2014/15
Initial Licensing Data:			
Salesperson License/Initial Exam Applications Received	48,864	62,167	65,579
Broker License/Initial Exam Applications Received	19,543	11,496	11,293
Salesperson License/Initial Exam Applications Approved	30,986	40,555	45,037
Broker License/Initial Exam Applications Approved	10,839	6,838	6,711
Salesperson Initial License/Initial Exam Applications Closed	N/A	N/A	N/A
Broker Initial License/Initial Exam Applications Closed	N/A	N/A	N/A
Salesperson License Issued	13,485	17,663	20,741
Broker/Officer License Issued	6,559	5,301	4,645
Initial License/Initial Exam Pending Application Data:*			
Pending Applications (total at close of FY)	N/A	N/A	N/A
Pending Applications (outside of bureau control)*	N/A	N/A	N/A
Pending Applications (within the bureau control)*	N/A	N/A	N/A
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE):*			
Average Days to Application Approval (All - Complete/Incomplete)	N/A	N/A	N/A
Average Days to Application Approval (incomplete applications)*	N/A	N/A	N/A
Average Days to Application Approval (complete applications)*	N/A	N/A	N/A
License Renewal Data:			
Salesperson License Renewed	48,884	54,537	50,773
Broker License Renewed	27,488	30,589	28,860
* Optional. List if tracked by the bureau.			
*The bureau does not track pending or weighted application data. We are currently working on enhancing our system to capture this type of information.			

19. How does the bureau verify information provided by the applicant?

Applicants are required to submit copies of education transcripts to show completion of required education. In order to verify experience, broker license applicants must submit Experience Verification forms, which provide a description and details of the applicant's experience. The forms must be signed by the salesperson's previous broker(s) of record. In the case where the applicant submits an equivalent experience claim, an employment verification form must be submitted which provides a description and details of the applicant's experience. The form(s) must be signed by two individuals, one of whom must have had supervisory responsibility over the applicant.

1. What process does the bureau use to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?

All applicants are fingerprinted using Live Scan.

2. Does the bureau fingerprint all applicants?

Yes, the Bureau fingerprints all applicants.

3. Have all current licensees been fingerprinted? If not, explain.

All licensees have been fingerprinted with the exception of those licensees who obtained their license prior to 1971, which was when the Bureau began fingerprinting applicants for licensure. CalBRE receives and reviews criminal background check information from the Department of Justice (DOJ). CalBRE also reviews the applicant's

answers to questions concerning criminal violations, prior disciplinary action taken against a professional license, or pending criminal charges. The DOJ notifies CalBRE of subsequent arrests of current licensees.

4. Is there a national databank relating to disciplinary actions? Does the bureau check the national databank prior to issuing a license? Renewing a license?

The only national database is for loan originators of residential loans. Title V of HR 3321 – The Secure and Fair Enforcement Mortgage Licensing Act (SAFE Act) of the federal Housing and Economic Recovery Act of 2008 was signed into law on July 30, 2008. Under the SAFE Act, mortgage loan originators who are not employed by a depository institution or a subsidiary of a depository institution must be both licensed by their state and registered on the Nationwide Mortgage Licensing System and Registry (NMLS&R). California State Senate Bill 36 (Calderon, Chapter Number 160, Statutes of 2009) was signed in October 2009 and required the Bureau to implement the requirements set forth in the federal SAFE Act. CalBRE began issuing mortgage loan originators (MLO) license endorsements in March of 2010, and by the end of 2014, there were approximately 25,500 MLOs in a renewable status. Furthermore, in March of 2012, CalBRE began uploading public documents associated with disciplinary actions taken against licensed MLOs onto National Mortgage Licensing System (NMLS). To date, CalBRE has posted 179 of the 6,030 regulatory actions currently posted on NMLS.

5. Does the bureau require primary source documentation?

Yes. With respect to arrest and conviction information, CalBRE obtains certified copies of court documents and police reports for use in cases that lead to a filing of a statement of issues or accusation. Moreover, applicants are required to submit copies of education transcripts to show completion of required education.

20. Describe the bureau's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

The examination and licensing process for out-of-state and out-of-county applicant is no different than it is for applicants within the state. Each applicant for licensure must qualify for the appropriate written examination in California and meet all other statutory requirements. California has no reciprocity with any other state or country to allow a waiver of any of the requirements to obtain a license.

21. Describe the bureau's process, if any, for considering military education, training, and experience for purposes of licensing or credentialing requirements, including college credit equivalency.

a. Does the bureau identify or track applicants who are veterans? If not, when does the bureau expect to be compliant with BPC § 114.5?

CalBRE is in compliance with BPC § 114.5. As of January 1, 2015, the Bureau has received 113 applications from former or current military personnel.

b. How many applicants offered military education, training or experience towards meeting licensing or credentialing requirements, and how many applicants had such education, training or experience accepted by the bureau?

The Bureau does not track this information. It is possible that some military experience may qualify as equivalent to the two years salesperson experience necessary for the broker examination, but that information is reviewed on a case by case basis.

c. What regulatory changes has the bureau made to bring it into conformance with BPC § 35?

None at this time. It is worth noting that existing law requires real estate broker exam applicants to have two years experience as a real estate salesperson. However, Business and Professions Code Section 10150.6 allows a real estate broker exam applicant to petition the Real Estate Commissioner setting forth the applicant's general real estate experience, and if approved, the two years salesperson experienced may be waived. Under existing law, current and former military personnel whose jobs entail real estate related activity (such as negotiating leases on real property) may petition the bureau to have certain requirements of licensure waived. To date, no applicants for the broker exam have tried to use military experience in lieu of licensed experience.

d. How many licensees has the bureau waived fees or requirements for pursuant to BPC § 114.3, and what has the impact been on bureau revenues?

The Bureau currently has five licensees on a military service status; therefore the impact on the Bureau's revenue is minimal.

e. How many applications has the bureau expedited pursuant to BPC § 115.5?

As of January 1, 2013, the Bureau has expedited three applications pursuant to BPC § 115.5.

22. Does the bureau send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

The Bureau sends No Longer Interested notifications to DOJ electronically on a regular and ongoing basis. At present time, there is no backlog in this notification process.

Examinations

Table 8. Examination Data			
California Examination (include multiple language) if any:			
License Type		Salesperson	Broker
Exam Title		Salesperson	Broker
FY 2012/13	# of 1 st Time Candidates	22,015	5,941
	Pass %	52%	39%
FY 2013/14	# of 1 st time Candidates	18,841	2,646
	Pass %	44%	36%
FY 2014/15	# of 1 st time Candidates	23,794	2,449
	Pass %	49%	28%
Date of Last OA		2010	2010
Name of OA Developer		CPS Consulting	CPS Consulting
Target OA Date		2016	2016
National Examination (include multiple language) if any: N/A			
License Type			
Exam Title			
FY 2010/11	# of 1 st Time Candidates		
	Pass %		
FY 2011/12	# of 1 st Time Candidates		
	Pass %		
FY 2012/13	# of 1 st Time Candidates		
	Pass %		
FY 2013/14	# of 1 st time Candidates		
	Pass %		
Date of Last OA			
Name of OA Developer			
Target OA Date			

23. Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required?

Real estate broker and salesperson license applicants must pass a written examination in order to be issued a license. To pass the salesperson exam, a score of 70% is required. To pass the broker examination, a score 75% must be achieved. The Bureau uses a California specific examination instead of a national exam.

To qualify for the real estate examination, all license applicants must complete specific three semester unit, or four quarter unit, college level courses from an accredited college or university or through a private sponsor approved by the Commissioner. The course requirements for each license type are as follows:

Real estate salesperson-Real Estate Principles, Real Estate Practice, and one additional course from the following:

Real Estate Appraisal, Property Management, Real Estate Finance, Real Estate Economics, Legal Aspects of Real Estate, Real Estate Office Administration, General Accounting, Business Law, Escrows, Mortgage Loan Brokering and Lending, Advanced Legal Aspects of Real Estate, Advanced Real Estate Finance, Advanced Real Estate Appraisal, Computer Applications in Real Estate, and Common Interest Developments.

Real estate broker- Real Estate Practice, Legal Aspects of Real Estate, Real Estate Finance, Real Estate Appraisal, Real Estate Economics or Accounting; and three* courses from the following:

Real Estate Principles, Business Law, Property Management, Escrow, 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, and Common Interest Developments.

*If both Real Estate Economics and Accounting are taken, only two courses from the above group are required.

Broker license applicants must provide evidence of two years of licensed real estate experience, or an equivalent type of experience, completed within five years prior to the date of application. Salesperson license applicants do not have an experience requirement.

Prepaid Rental Listing Service applicants are not required to take an examination or submit evidence of experience or education to become licensed.

24. What are pass rates for first time vs. retakes in the past 4 fiscal years? (Refer to Table 8: Examination Data)

Average pass rates for first time salesperson applicants for the past three fiscal years are 48 % vs. 16% for retakes. Average pass rates for first time broker applicants are 34% vs. 17% for retakes. However, last fiscal year, the overall pass rate for salesperson examines was 54% and 42% for brokers which is consistent with historic al averages.

25. Is the bureau using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?

The Bureau uses computer based testing for the real estate salesperson and broker examinations. The computer-based system allows examinees to take examinations electronically and receive their results immediately following completion of the test. In addition, qualified candidates who have submitted a Combination Examination and License Application with no deficiencies and who pass their exam can be issued their license upon passage which allows them to immediately go to work. These successful examinees receive their license identification number as part of this authorization and the CalBRE public information on the Web site is immediately updated.

The electronic examination system is in an easy-to-use format, where exam workstations contain only a computer monitor and mouse; keyboards are not used. The activation of the workstation occurs with the assignment of a mouse to an examinee. Examinees are able to navigate back and

forth through the questions and choose answers by pointing and clicking with the mouse. Other benefits include testing tools such as a clock which counts down the individual's exam time and a counter which tracks the number of questions answered and those remaining.

Computer based testing is available at all five of our examination centers located in Fresno, La Palma, Oakland, Sacramento and San Diego. Examinations can be administered Monday through Friday, and at some locations on Saturday based on demand.

26. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

None at this time.

School approvals

27. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the bureau work with BPPE in the school approval process?

The legal requirements regarding Statutory/Pre-License course approval can be found under Business and Professions Code Section 10153.5 and Commissioner's Regulations 3000 through 3004. CalBRE approves private vocational courses that meet the statutory requirements for the sole purpose of providing Statutory/Pre-License courses to examinees attempting to qualify for the California real estate salesperson and broker examinations. Schools requesting approval with the Bureau are required to provide evidence of approval with Bureau for Private Postsecondary Education (BPPE), or provide information if the school is exempt from the requirement of approval or registration. The Bureau does not work with the BPPE in the course approval process as the Bureau approves courses, not schools.

28. How many schools are approved by the bureau? How often are approved schools reviewed? Can the bureau remove its approval of a school?

The Bureau does not approve schools, only courses.

29. What are the bureau's legal requirements regarding approval of international schools?

The Bureau has no separate legal requirements regarding approvals of international schools. All course approvals are governed by Business and Professions Code Section 10153.5 and Commissioner's Regulations 3000 through 3004.

Continuing Education/Competency Requirements

30. Describe the bureau's continuing education/competency requirements, if any. Describe any changes made by the bureau since the last review.

a. How does the bureau verify CE or other competency requirements?

Business and Professions Code §10150 and §10153 requires that the Bureau of Real Estate determine, by written examination, the competency of a prospective real estate licensee. CalBRE's testing program follows guidelines set by CalHR and other testing authorities and uses research/job analysis studies to update our examinations. Exam studies are performed on the average of once every six to seven years.

Business and Professions Code Section 10170.4 and Commissioner's Regulations 3006 through 3010 set forth the criteria for approval of continuing education offerings. Licensees are required to complete continuing education courses every four years upon renewal. Along with the renewal application and fee, a licensee is required to complete, sign, and submit form RE 251 titled, "Continuing Education Course Verification," with their renewal application. If renewing using eLicensing, the licensee must enter course certificate numbers into the Bureau's eLicensing system for verification.

b. Does the bureau conduct CE audits of licensees? Describe the bureau's policy on CE audits.

Continuing education (CE) audits are conducted by the Bureau's Enforcement Investigators, or by Education Section staff. Audits are conducted to determine if all of the Commissioner's regulations are being followed, and to determine if the licensee has completed the required continuing education.

c. What are consequences for failing a CE audit?

Licensees found to be in violation may have disciplinary action taken against their license.

d. How many CE audits were conducted in the past four fiscal years? How many fails? What is the percentage of CE failure? How many fails? What is the percentage of CE failure?

CalBRE conducts routine sampling of the CE course verifications submitted by licensees. The last major audit of CE course submissions occurred in 2012. In May 2012, the Bureau completed an audit of 254,000 licensee CE records for those licensees who renewed using the eLicensing system during the previous four years. Out of this audit, 505 licensee records resulted in further review of CE attendance records. This audit resulted in a total of 50 CE failures.

e. What is the bureau's course approval policy?

Criteria for course approvals are set forth in Regulations. See Commissioner's Regulations (Title 10 California Code of Regulations) Sections 3006-3013. As of February 28, 2015, the Bureau has 302 schools that are approved to offer Statutory/Pre-License courses. Approved statutory courses have no expiration date; therefore reviews of courses are conducted based on complaints received from the public or by internal investigations. The Bureau can withdraw a course approval pursuant to Commissioner's Regulation 3003.

f. Who approves CE providers? Who approves CE courses? If the bureau approves them, what is the bureau application review process?

The Education and Research Section at CalBRE monitors courses for education compliance by approved sponsors and licensees for structure and to ensure that course content has not materially changed from when the course was approved. Providers found to be in violation of the regulations may face formal withdrawal of course approvals. In addition, the Education and Research Section conducts CE audits of providers by contacting the licensee and confirming with the course provider that the licensee actually took the courses. Audits are also based on complaints received, and through internal investigations.

Additionally, sponsors consent to inspection and monitoring by authorized representatives of the Bureau when they sign the form titled, "CE Offering Approval Application", and (RE 315). In the event the Bureau's Enforcement investigators must audit a CE course, the investigator will attend the course undercover, as a licensee.

g. How many applications for CE providers and CE courses were received? How many were approved?

As of February 28, 2015, the Bureau has 673 approved continuing education offerings taught by 130 schools.

h. Does the bureau audit CE providers? If so, describe the bureau's policy and process.

Continuing education course audits are conducted by the Bureau's Enforcement Investigators, or by an outside vendor. Audits are conducted to determine if all of the Commissioner's regulations are being followed. Continuing education course providers found to be in violation of course approval regulations may have their course approval withdrawn.

Since FY 2013/14, the Bureau has performed 21 investigative audits on continuing education sponsors. These investigative audits ensure that continuing education sponsors are adhering to Bureau regulations, and may lead to the withdrawal of a sponsor's approval to offer courses.

As of this review, 15 CE course providers have had their course approvals withdrawn.

i. Describe the bureau's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensee's continuing competence.

Regulation changes regarding continuing education went into effect on January 1, 2011. The Education and Research Section ensures compliance of continuing education regulations, including a requirement of incremental assessments within a course, which provide remediation to the participant; final examinations consisting only of multiple choice, true/false or fill-in-the-blank questions with a maximum of 10% true/false questions; and participants who fail both the final examination and the re-examination must re-complete the credit hours and pass the final examination to receive credit for the course.

The Bureau continuously considers other alternatives to ensure that professional competence is maintained. Significant testing alternatives have been included to enhance continuing education such as, required amount of examination questions, required time frames, a limit to the amount of true/false questions, and the disallowance of more than one re-test after a failed exam. Retesting and recertification can be required as part of an administrative action taken against a licensee.

31. What are the bureau’s performance targets/expectations for its enforcement program? Is the bureau meeting those expectations? If not, what is the bureau doing to improve performance?

Although the Bureau has no statutory mandate as to the length of time in which to complete a complaint investigation, processing performance goals have been adopted to ensure timely and thorough complaint investigations to maintain a high level of consumer protection. Moreover, CalBRE does work within the confines of the statute of limitations on all cases that are assigned for investigation, to ensure investigations are concluded before the expiration of those limits. Business and Professions Code Section 10101 states an action shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action, unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise. In this case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action.

The Bureau’s internal policy requires that the processing timeframe for routine investigations be 180 days from receipt of the complaint to the completion of the investigation. For complaints involving complex and multifaceted issues associated with fraud or large numbers of targeted victims (such as with foreclosure rescue scams), the Bureau’s goal is complete the investigation in one year. By monitoring case loads and investigative efforts, the Bureau consistently manages to complete more than 95% of all investigations in under a year.

In addition to addressing complaints at intake, each district office has been tasked with ensuring cases are being investigated expeditiously. District office Supervising Investigators assist and work hand in hand with investigators to ensure complaint investigations are completed in a timely and thorough manner. Regional office managers as well as district office supervisors are tasked with establishing and maintaining appropriate case management strategies to ensure maximum public protection goals are achieved.

32. Explain trends in enforcement data and the bureau’s efforts to address any increase in volume, timeframes, ratio of closure to pending cases, or other challenges. What are the performance barriers? What improvement plans are in place? What has the bureau done and what is the bureau going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

CalBRE will always be impacted by cyclical fluctuations of the real estate market. Past market cycles of “boom” and “bust” patterns placed alternating demands on the Bureau’s Enforcement Program, first from a huge influx of license applicants requiring background reviews, to an increase in the number of unlicensed persons conducting real estate sales and/or mortgage loan originations, mortgage fraud, and ultimately an increase of foreclosure rescue and loan modification services fraud.

The impacts of these activities were addressed in part through new legislation that gave the CalBRE Enforcement Program more tools to combat mortgage fraud and other real estate misconduct. Furthermore, legislation has also added safeguards to protect consumers who

seek out services from real estate licensees and made technical changes intended to clarify certain provisions of Real Estate Law.

One key piece of legislation, SB 53 (Calderon, Chapter 717, Statutes of 2011) gives the Real Estate Commissioner the authority to issue citations and fines of up to \$2,500 to both licensees and unlicensed persons found to have violated the real estate law. Along with the authority to issue citations and fines, SB 53 also provided that any real estate broker who engages in escrow activities for five or more transactions in a calendar year or whose escrow activities equal or exceed \$1 million in a calendar year to file a report with CalBRE documenting the number of escrows conducted and the dollar volume escrowed during the calendar year in which the threshold was met. Additionally, this legislation authorized the Commissioner to assess penalties when a broker fails to file required reports with CalBRE.

Internal organizational improvements also enhanced the Enforcement Division's handling of complaints. The Bureau created the Complaint Resolution Program, (CRP) which attempts to resolve simple disputes or minor issues between consumers and licensees or subdividers as a potential alternative to formal investigations.

The mission of the CRP is to respond quickly and informally to concerns brought by consumers and members of the real estate industry by serving as a facilitator to resolve conflicts and/or to mitigate or prevent Real Estate Law violations. Since its inception, the program has proven effective in resolving disputes, and reducing investigative staff workloads by addressing issues up front as opposed to at the conclusion of a lengthy investigative process. In the current fiscal year, over 160 cases were handled by CRP.

The Centralized Intake Unit (CIU) centralizes the complaint intake process. The CIU streamlines and standardizes practices allowing for better tracking of complaints, and freeing district office staff to focus resources on investigative efforts. Additionally, processing of licensee and applicant cases involving Criminal Offender Record Information (CORI) was centralized, which reduced demands on Enforcement investigators and allows Enforcement to focus resources on urgent and priority cases.

Table 9a. Enforcement Statistics			
	FY 2012/13	FY 2013/14	FY 2014/15
COMPLAINT			
Intake*			
Received	5,023	5,773	5,031
Closed	4,779	4,312	2,057
Referred to INV	3,180	3,375	1,492
Average Time to Close	247	260	219
Pending** (close of FY)	1,996	1,321	852
Source of Complaint			
Public	3,134	4,033	4,492
Licensee/Professional Groups	n/a	n/a	n/a
Governmental Agencies	593	451	644
Other	622	684	423
Conviction / Arrest			
CONV Received	2,133	2,018	2,557
CONV Closed	2,789	2,652	2,584
Average Time to Close	n/a	n/a	n/a
CONV Pending** (close of FY)*	n/a	n/a	n/a
LICENSE DENIAL			
License Applications Denied*	181	228	97
SOIs Filed	271	210	229
SOIs Withdrawn***	n/a	n/a	n/a
SOIs Dismissed	36	29	32
SOIs Declined**	n/a	n/a	n/a
Average Days SOI***	n/a	n/a	n/a
ACCUSATION			
Accusations Filed	557	311	197
Accusations Withdrawn	n/a	n/a	n/a
Accusations Dismissed	51	125	64
Accusations Declined	n/a	n/a	n/a
Average Days Accusations	280	272	283
Pending (close of FY)**	1,698	1,165	753

*The Bureau does not track intake times. The times listed are the average time it takes to investigate a case.

**The Bureau does not separate conviction/arrest pending cases vs. accusation pending cases. Therefore the count of pending cases listed under accusations includes all cases currently pending with the Bureau.

***The Bureau does not track SOI's that have been dismissed or declined. The average days to process SOI cases are covered under the average time to prosecute cases.

Table 9b. Enforcement Statistics (continued)			
	FY 2012/13	FY 2013/14	FY 2014/15
DISCIPLINE			
Disciplinary Actions			
Proposed/Default Decisions*	N/A	N/A	N/A
Stipulations*	450	375	287
Average Days to Complete*	N/A	N/A	N/A
AG Cases Initiated**	N/A	N/A	N/A
AG Cases Pending** (close of FY)	N/A	N/A	N/A
Disciplinary Outcomes			
Revocation	664	649	735
Voluntary Surrender	167	150	120
Suspensions	191	182	150
Restricted Licenses Issued***	581	590	594
Other	N/A	N/A	N/A
Petition for Reinstatement/Removal of Restrictions Granted	155	135	60
Public Letter of Reprimand (<i>Public Reprovals</i>)	15	15	17
Cease & Desist/Warning (<i>Desist & Refrain Orders</i>)	149	108	96
PROBATION***			
DIVERSION****			

*The Bureau does not track proposed/default decisions, nor does it separate timeframes for stipulations. These timeframes are included in the timeframes posted under accusations.

**The Bureau does not use the Attorney General to prosecute cases, as the Bureau has its own legal division to prosecute cases.

***The Bureau does not use probationary licenses, but issues restricted licenses to licensees who are subject to certain terms and conditions as set forth in orders. The counts for restricted licenses have been provided under the discipline heading.

****The Bureau does not participate in diversion programs.

Table 9c. Enforcement Statistics (continued)			
	FY 2012/13	FY 2013/14	FY 2014/15
INVESTIGATION			
All Investigations			
First Assigned	3,180	3,375	3,646
Closed	2659	2541	2,989
Average days to close	247	260	219
Pending (close of FY)	1,996	1,321	852
Non-Sworn Investigation			
Closed	2659	2541	2,989
Average days to close	247	260	204
Pending (close of FY)	1,996	1,321	852
Sworn Investigation*			N/A
Closed	N/A	N/A	N/A
Average days to close	N/A	N/A	N/A
Pending (close of FY)	N/A	N/A	N/A
CITATION AND FINE			
Citations Issued	18	116	402
Average Days to Complete	N/A	N/A	N/A
Amount of Fines Assessed	\$34,000	\$235,000	\$291,275
Reduced, Withdrawn, Dismissed	0	2	19
Amount Collected	\$34,000	\$233,300	\$226,825
CRIMINAL ACTION			
Referred for Criminal Prosecution**			

*The Bureau does not use sworn investigators to investigate complaints.

**The Bureau does not formally track criminal referrals. However, staff routinely refers cases to law enforcement, including Desist and Refrain Orders issued for unlicensed activity. As a result of these referrals, staff frequently is asked to testify in criminal proceedings.

Table 10. Enforcement Aging					
	FY 2012/13	FY 2013/14	FY 2014/15	Cases Closed	Average %
CaIBRE Legal Cases (Average %)					
Closed Within:					
1 Year	919	481	292	1692	71.85%
2 Years	385	121	51	557	23.65%
3 Years	71	9	15	95	4.03%
4 Years	0	1	7	8	0.34%
Over 4 Years	0	0	3	3	0.13%
Total Cases Closed	1,375	612	368	2355	
Investigations (Average %)					
Closed Within:					
90 Days	1,151	1,233	1,267	3,651	32.55%
180 Days	744	600	709	2,053	18.3%
1 Year	1,308	1,222	943	3,473	30.96%
2 Years	816	749	474	2,039	18.18%

33. What do overall statistics show as to increases or decreases in disciplinary action since last review.

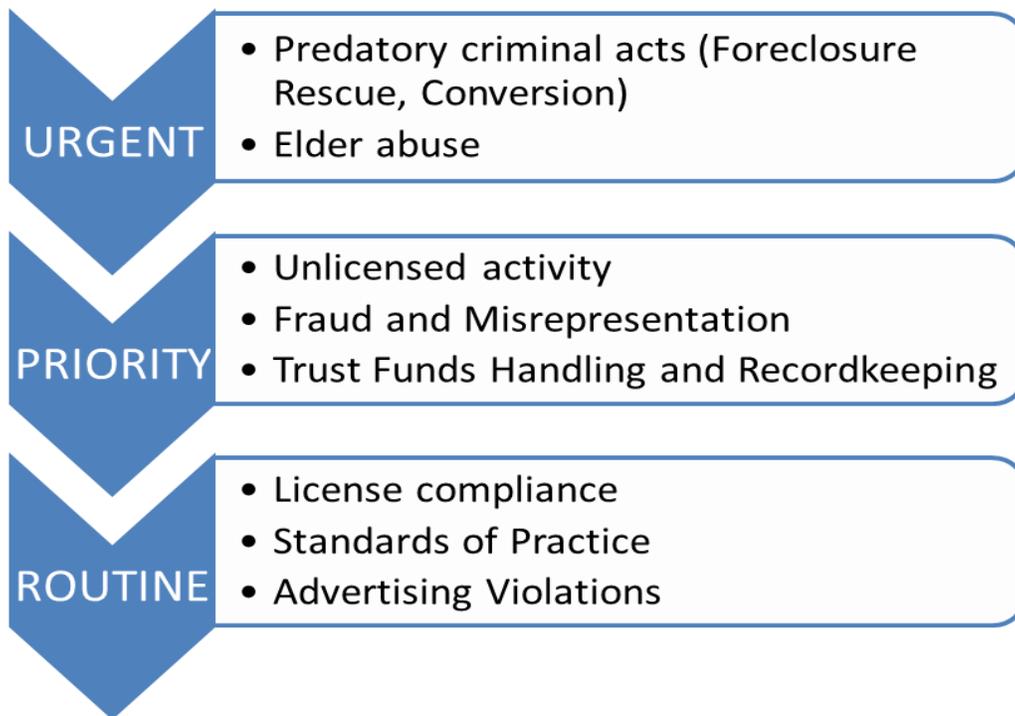
The statistics show a decrease in disciplinary action since the last sunset review, based in part that consumer complaints have a direct correlation to market conditions. When the real estate market is improving, consumer complaints tend to decrease.

As enforcement case loads return to manageable levels, CalBRE is able to once again be more proactive on enforcement. It can conduct more routine audits of real estate brokers and visit real estate offices.

34. How are cases prioritized? What is the bureau’s compliant prioritization policy? Is it different from DCA’s *Complaint Prioritization Guidelines for Health Care Agencies* (August 31, 2009)? If so, explain why.

Based on market conditions, the Bureau’s Enforcement program continuously reexamines its priorities, workload, and productivity in order to determine it is meeting its statutory mandate for consumer protection.

The Bureau’s Centralized Intake Unit, has a system to prioritize complaints as they are received. The cases involving the greatest harm to the public take the highest priority. The graphic below provides a general picture of how cases are prioritized.



35. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report to the bureau actions taken against a licensee. Are there problems with the bureau receiving the required reports? If so, what could be done to correct the problems?

Other than subsequent arrest records provided to CalBRE from DOJ, there is no requirement by local officials or organizations, or other professionals, or for civil courts to report actions taken against a licensee. However, mandatory self-reporting requirements of violations of the Real Estate Law are set forth in BPC §10186.2 and §10178.

BPC §10186.2 requires a real estate licensee to notify the Bureau, within 30 days, of an indictment, felony charge, conviction, or any disciplinary action taken by another licensing entity or authority in California, other state, or by a federal agency.

BPC 10178 requires an employing broker to report to the Bureau whenever a real estate salesperson is terminated by the broker for any violation of the Real Estate Law. Real estate brokers failing to notify the Bureau of such terminations may be subject to disciplinary action.

36. Does the bureau operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases have been lost due to statute of limitations? If not, what is the bureau's policy on statute of limitations?

BPC §10101 details the statute of limitations for filing disciplinary actions against real estate licensees. Under this section, no action can be filed ten years from the occurrence. Any charges involving fraud, misrepresentation or false promise must be filed within one year after the date of discovery. Other accusations that can lead to disciplinary action must be filed no later than three years from when the act occurred.

The Bureau does not have statistical information on the number of cases that have been lost due to statute of limitations. However, the Enforcement Program strives to complete cases within a one year period, thereby reducing this type of risk.

37. Describe the bureau's efforts to address unlicensed activity and the underground economy.

The Bureau takes a multi-step approach to address the challenge associated with unlicensed activity. First, the Bureau prioritizes these types of violations for investigation, often working jointly with local and other state agencies. When investigations have been completed and violations confirmed, the Bureau issues Desist and Refrain orders which may be accompanied with Bar Orders enjoining unlicensed persons from working in real estate or related industries. With newly-acquired citation authority pursuant to Senate Bill 53 (Calderon, Chapter 717, Statutes of 2011), the Bureau has begun to issue multiple citations and fines to unlicensed individuals or entities. Finally, in egregious cases of unlicensed activity the Bureau has adopted a vertical prosecution model, where a Bureau counsel, special investigator, and (when appropriate) an auditor work together, from case set up to final prosecution.

All Desist and Refrain Orders filed against unlicensed persons are posted on CalBRE's website.

Cite and Fine

38. Discuss the extent to which the bureau has used its cite and fine authority. Discuss any changes from last review and describe the last time regulations were updated and any changes that were made. Has the bureau increased its maximum fines to the \$5,000 statutory limit?

On January 1, 2012, the Bureau was given citation and fine authority, through the passage of Senate Bill 53 (Calderon, Chapter 717, Statutes of 2011). The regulations implementing CalBRE's citation authority were adopted on July 1, 2014.

Prior to the enactment of Senate Bill 53, the Bureau could pursue various levels of administrative/disciplinary action:

- Corrective Action Letter, a warning from the Bureau that respondent's actions violate the Real Estate Law but does not warrant formal discipline;
- Order to Desist and Refrain, where the violation is more serious or where an unlicensed person conducts licensed real estate activities;
- Statement of Issues or Accusation, formal action where the Bureau seeks to deny a license application or impose formal discipline on an existing licensee;
- Order of Debarment, formal action where the Bureau seeks to separate a respondent from the real estate industry.

The statutory authority for cite and fine provided the Bureau with the means to address all violations of the Real Estate Law by real estate licensees, as well as unlicensed individuals. The range of Bureau-issued fines, as set forth in statute, remains \$0 to \$2,500 per fine.

39. How is cite and fine used? What types of violations are the basis for citation and fine?

The Bureau considers the issuance of citations an opportunity to educate both licensees and non-licensees alike and to encourage and reinforce compliance with the Real Estate Law. While citation authority empowers the Bureau to issue a citation and impose a fine for any violation of the Real Estate Law, citations issued to real estate licensees are typically for relatively minor, or de minimis violations of the law that do not merit the higher disciplinary action. Citation authority also permits the Bureau to issue a citation and impose a fine on an unlicensed person engaged in an activity for which a real estate license is required. For those persons conducting unlicensed real estate activities, which generally pose a greater risk to consumers, a citation and fine is significantly more substantive than a Desist and Refrain Order.

40. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals of a citation or fine in the last 4 fiscal years?

Since July 1, 2014, when the Bureau began issuing citations, there have been a total of 19 requests for the Bureau's informal Citation Review Conference. Of these 19 requests, seven respondents paid the fine without attending the conference. 12 Citation Review Conferences held in Los Angeles and Sacramento (based on the respondent's location) and all the citations were affirmed. There have been no requests for an administrative hearing.

41. What are the 5 most common violations for which citations are issued?

Trust account handling and recordkeeping violations account for the most common violations. These violations include: failure to conduct monthly reconciliation of trust accounts, allowing unlicensed and/or unbonded signatories on the broker trust account, using bank accounts that are not specifically designated trust accounts in the name of the broker as trustee, and minor shortages in the trust accounts. An additional violation frequently cited is the real estate licensee mortgage loan originator failure to submit required periodic business activity reports.

42. What is average fine pre- and post- appeal?

Of those citations/fines contested:

- Average pre-appeal fine amount: - \$1,791.
- Average post-appeal fine amount: - \$1,143.
- Average reduction of fine amount resulting from the Bureau’s informal Citation Review Conference:- 36%

43. Describe the bureau’s use of Franchise Tax Bureau intercepts to collect outstanding fines.

The Bureau has not yet referred uncollected fines to Franchise Tax Board. Considering the high rate of compliance with citations issued and relatively few informal and formal appeals, the number of unpaid fines has been extremely small (i.e., approximately 4 of 247 citations, for 2% of citations issued). While the Bureau may refer unsatisfied citations and unpaid fines to the Franchise Tax Board, the Bureau is empowered to deny the renewal or reissuance of a license belonging to a person who has an unpaid fine.

Cost Recovery and Restitution

44. Describe the bureau’s efforts to obtain cost recovery. Discuss any changes from the last review.

The authority to obtain cost recovery of investigations is relatively new and the process to ask for and collect costs is continuing to evolve for the better. Business and Professions code 10106 was added to the Real Estate Law in 2011 and gave the Real Estate Commissioner the authority to obtain investigative costs for a licensee found to have violated the Real Estate Law. CalBRE asks for costs recovery in most all stipulations and cases that go an administrative hearing. If a licensee does not pay investigative costs, the licensee’s license can be suspended and will not be reinstated/renewed until the costs are paid. The CalBRE also has a contract with a collection agency, and when appropriate, uncollected debts are given to the collection agency to pursue collection.

45. How many and how much is ordered by the bureau for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.

CalBRE does not aggregate how much respondents are ordered to pay in cost recovery, the tracking of cost recovery is tracked on an individual basis and cannot be easily aggregated. The Bureau does know that cost recovery from licensees is quite high given that nonpayment of costs will result in license suspension/revocation or non-renewal. As demonstrated in Chart 11 below, the amount collected for cost recovery has increased every year since FY 11/12 and the trend is expected to continue as CalBRE refines cost recovery process.

46. Are there cases for which the bureau does not seek cost recovery? Why?

Because no license is issued to the applicant, the Bureau does not seek cost recovery for Statement of Issues cases wherein a license application is denied for cause, such as prior criminal convictions.

47. Describe the bureau’s use of Franchise Tax Board intercepts to collect cost recovery.

The Bureau refers unpaid debts, which includes unpaid investigative, audit, and legal costs, to the Franchise Tax Board for collection.

48. Describe the bureau’s efforts to obtain restitution for individual consumers, any formal or informal bureau restitution policy, and the types of restitution that the bureau attempts to collect, i.e., monetary, services, etc. Describe the situation in which the bureau may seek restitution from the licensee to a harmed consumer.

There are several circumstances under which restitution may be made to the consumer:

- **Complaint Resolution Program** - Through facilitation by a Bureau investigative staff member, the licensee may agree to refund a deposit or reimburse fees collected. In some transactions involving property defects which may not have been properly or fully disclosed, a licensee may agree to fix the defect.
- **Citation** - If a citation is issued, it may be accompanied with an order of correction requiring the licensee to make restitution to the victim.
- **Accusation** –If an accusation is filed, the Bureau may recover restitution for consumers by entering into settlements with licensees, or by asking the administrative law judge to order reimbursement, refund, or payment of damages to the victim(s).
- **Consumer Recovery Account** - Funded from a portion of fees paid by licensees, the Consumer Recovery Account enables a person who has been defrauded or had trust funds converted by a real estate licensee in a transaction that required that license, and who satisfies specified requirements, to recover at least some of his or her actual loss when the licensee has insufficient assets to pay for that loss. Since its inception in 1964, the Bureau has paid over \$52,000,000 to members of the public from the Consumer Recovery Account.

Table 11. Cost Recovery*		(list dollars in thousands)		
	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
Total Enforcement Expenditures	N/T	N/T	N/T	N/T
Potential Cases for Recovery *	N/T	N/T	N/T	N/T
Cases Recovery Ordered	N/T	N/T	N/T	N/T
Amount of Cost Recovery Ordered	N/T	N/T	N/T	N/T
Amount Collected	\$16,925	\$64,194	\$287,305	\$270,000
* “Potential Cases for Recovery” are those cases in which disciplinary action has been taken based on violation of the license practice act.				

*The Bureau does not track the amount of cost recovery that is ordered. We are currently working on enhancing our system to be able to track these amounts. We can only provide the amount that is actually collected for investigative costs.

Table 12. Restitution*				
(list dollars in thousands)				
	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
Amount Ordered*	N/T	N/T	N/T	N/T
Amount Collected*	N/T	N/T	N/T	N/T

*The Bureau does not currently have a method for tracking restitution ordered in decisions. We are currently working on enhancing our IT system to begin tracking these types of issues.

Section 6 – Public Information Policies

49. How does the bureau use the internet to keep the public informed of bureau activities?

Does the bureau post bureau meeting materials online? When are they posted? How long do they remain on the bureau’s website? When are draft meeting minutes posted online? When does the bureau post final meeting minutes? How long do meeting minutes remain available online?

CalBRE does not have an advisory board and does not conduct any meetings subject to any open meeting act including the Brown Act or Bagley-Keene Open Meeting Act. However, the CalBRE makes extensive use of its website to keep the public and industry informed of the Bureau’s activities. In addition to posting information, such as FAQs, Consumer and Licensee Alerts, current processing times, legislative updates, time and date of forums, the CalBRE maintains a RSS Feed that allows licensees to register to receive emails from CalBRE regarding important information – such as consumer alerts, the release of the Real Estate Bulletin and legislative updates. Moreover, recent legislation requires licensees to provide CalBRE email addresses used to conduct licensee activity. To date, CalBRE has over 115,000 emails addresses allowing CalBRE to email updates and alerts to licensees.

50. Does the bureau webcast its meetings? What is the bureau’s plan to webcast future bureau and committee meetings? How long to webcast meetings remain available online?

Not applicable; the Bureau does not hold public meetings.

51. Does the bureau establish an annual meeting calendar, and post it on the bureau’s web site?

Not applicable; the Bureau does not hold public meetings.

52. Is the bureau’s complaint disclosure policy consistent with DCA’s *Recommended Minimum Standards for Consumer Complaint Disclosure*? Does the bureau post accusations and disciplinary actions consistent with DCA’s *Web Site Posting of Accusations and Disciplinary Actions (May 21, 2010)*?

CalBRE posts all accusations, disciplinary actions and Desist and Refrain Orders (D&R) on its website. Accusations, disciplinary actions and D&Rs attach to a licensee’s on-line license record in the form of a PDF and can be viewed by simply clicking on the file number, all of which is compliant with the Minimum Standards for Consumer Complaint Disclosure.

53. What information does the bureau provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?

CalBRE posts a licensee’s name, type of license, fictitious names, branch office locations, business address, length of licensure, and for salespersons – his or her employing broker, disciplinary actions, license number and expiration date.

54. What methods are used by the bureau to provide consumer outreach and education?

As the real estate market recovers, CalBRE continued its focus this fiscal year on outreach to consumers, industry, and other stakeholders, providing educational opportunities for industry to learn about compliance issues, for consumers to learn how to avoid falling victim to real estate fraud and schemes, and for public service partners to learn about real estate matters. CalBRE sponsored or participated in nearly 100 outreach events last fiscal year. For consumer events, CalBRE often partnered with the California State Bar and members of state legislature who hosted fraud prevention town hall meetings throughout the state. While many of the fraud prevention town halls focused on seniors, some events focused on various populations and others on public protection generally. Events were conducted in Russian, Chinese and Spanish wherein fraud prevention tips unique to these communities were provided. These outreach events reach thousands of participants in the state and help both industry and consumers alike apply the lessons learned from the market downturn. Moreover, CalBRE continues to expand the content on its website to help educate both consumers and the industries CalBRE regulates. Last fiscal year CalBRE posted on its website helpful videos explaining the exam and license application process for a broker and salespersons license. In addition, CalBRE posted and distributed consumer alerts regarding the scams involving biweekly mortgage loan services, tips and questions for consumer seeking the services of a real estate licensee and tips for seniors on how to avoid real estate fraud.

CalBRE publishes numerous publications and consumer alerts specifically geared toward consumers. For example, the Bureau of Real Estate, along with California State University, Sacramento, produced the publication, ***“Residential Subdivision Buyer’s Guide”*** that focused entirely on subdivision issues for consumers and provided information for consumers considering the purchase of a home or unit in a residential subdivision in California or in a common interest development.

Section 7 – Online Practice Issues

55. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the bureau regulate online practice? Does the bureau have any plans to regulate internet business practices or believe there is a need to do so?

The practice of licensed activity via the internet is an ever increasing factor in the real estate industry. The internet increases the probability that illicit operators will attempt to function as legitimate businesses, when in fact they may not be operating within the law. CalBRE has adopted advertising regulations that require entities that are licensed to engage in real estate activities in other jurisdictions but not in California, to post on its website that the services are not available in California. For unlicensed activity targeting Californians, CalBRE investigates and, if appropriate, will issue a Desist and Refrain Order which is served on the respondents and posted on CalBRE’s website. In addition, by working with the various law enforcement real estate task forces, the Bureau maintains a proactive approach in order to become aware of deceptive practices in the early stages, and thus be able to react quickly to these issues.

56. What actions has the bureau taken in terms of workforce development?

The Bureau does not have any current or recent workforce development initiatives in place.

57. Describe any assessment the bureau has conducted on the impact of licensing delays.

As a result of an improving California economy and housing market, the number of applications for licensure has sharply increased over the past four fiscal years. This includes an 80.5% increase in applications for licensure between 2010-11 and 2014-15 and a 44.3% increase over the last two fiscal years.

This rise in workload has increased time for BRE staff to process an application and for an applicant to obtain licensure. The standard that BRE has established is that it should take no more than 43 days for an applicant for licensure to complete the application and examination process and receive their real estate salesperson or real estate broker's license. In FY 2011-12 it took the Bureau 44 days on average to process an application. In 2014-15, it took the Bureau staff an average of 73 days to process applications due to the high volume received by intake staff.

To assist with applying resources and mitigate increased processing times, the Bureau tracks processing times on a weekly basis. These processing times are posted on the Bureau's website so applicants can anticipate when his or her application will be processed. Moreover, management uses the weekly reports to determine when to shift resources to licensing or employ overtime.

58. Describe the bureau's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.

Twice a year, the Bureau provides the California Community Colleges with updates on current licensing statistics, any changes in licensing requirements, and legislation that affects potential licensees and the real estate industry.

The Bureau communicates regularly with private course providers who are approved by the Bureau to offer pre-license education, providing them with updates regarding legislation changes affecting the industry.

59. Provide any workforce development data collected by the bureau, such as:

- a. Workforce shortages**
- b. Successful training programs.**

The Bureau does not collect any workforce development data.

60. What is the status of the bureau's implementation of the Uniform Standards for Substance Abusing Licensees?

The Uniform Standards are not applicable to the Bureau.

61. What is the status of the bureau's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?

Although CPEI regulations are not applicable, the Bureau, does maintain a goal of 180 days to complete investigations and determine if any further disciplinary actions are necessary.

62. Describe how the bureau is participating in development of BreEZe and any other secondary IT issues affecting the bureau.

The Bureau is not participating in the development of BreEZe and there are currently no plans to transition to BreEZe. Prior to becoming part of the Department, the Bureau developed a robust Enterprise Information System (EIS). The EIS system consists of 11 major business systems integrated into an enterprise wide system and was deployed long before its affiliation with the Department and, as such, a transition to BreEZe is impractical. The EIS system covers the following major program areas within the Bureau:

- Audits
- Education
- Enforcement
- Examinations
- Exam Development
- Fiscal
- Legal
- Licensing
- Recovery
- Mortgage Loan Activity
- Subdivisions

In addition to our EIS system, the Bureau has its own eLicensing system, which is a web based system that provides the following services to examination applicants and licensees:

- Schedule an examination date
- Schedule a re-exam date
- View examination records
- View examination results
- Request duplication examination result and schedule notices
- Licensee mailing address changes
- Broker renewals
- Salesperson renewals

- Changes of employment
- Broker main office address changes
- Print Licenses

Secondary IT issues affecting the Bureau include:

Our Information Technology Section consistently identifies and conducts activities related to aligning the Bureau’s business direction with emerging technology solutions. However, as is the case with any system, legislative and organizational changes require continuous enhancements to our EIS system as we must modify applications to comply with these new requirements. Our Information Technology Section must rely on limited resources to accommodate these changes in a timely manner.

Section 10 – Bureau Action and Response to Prior Sunset Issues

Include the following:

- 1. Background information concerning the issue as it pertains to the bureau.**
- 2. Short discussion of recommendations made by the Committees/Joint Committee during prior sunset review.**
- 3. What action the bureau took in response to the recommendation or findings made under prior sunset review.**
- 4. Any recommendations the bureau has for dealing with the issue, if appropriate.**

The previous oversight hearing was conducted in 2010. At that time, the Bureau was operating as a Department under the former Business, Transportation, and Housing Agency. Thirty five issues were identified in the prior oversight hearing report. Of those thirty five issues, most all have been resolved.

What follows are the prior oversight hearing report issues pertaining to the Department of Real Estate (DRE), (now CalBRE). There were recommendations the Committee staff made regarding particular issues or problem areas which needed to be addressed as well as recommendations that were made by then Department of Real Estate staff. The responses in red below are the most up-to-date response to these issues.

DEPARTMENT ADMINISTRATION ISSUES

ISSUE #1: Is the DRE able to meet the goals and objectives of its Five Year Strategic Plan developed in 2010?

Background: The DRE’s most current Strategic Plan was updated in 2010. The five-year Strategic Plan is the culmination of the collective efforts of its employees, managers and supervisors, and executive staff over the course of eight months. Extensive surveys were conducted to help identify current challenges, such as addressing the aftermath of a global real estate meltdown, and future needs, such as ensuring the Department has a dynamic, educated and connected workforce. The Department determined that in order to meet the growing needs of California citizens, the real estate industry, and government that it must branch out beyond typical government models to become much more driven by consumer protection and customer service.

In light of the recent changes to the department's regulatory and licensing responsibilities, and concerns which have been raised over the past year, and with the current staffing and resource needs of the DRE, does the DRE believe that it is able to meet its strategic goals and objectives?

Staff Recommendation: *The DRE should report to the Committee by January 1, 2012 on its progress in meeting the goals and objectives of its Strategic of Plan of 2010-2015 and identify what efforts it is taking to address any problems identified since the Strategic Plan was adopted.*

While many of the goals of the 2010-2015 strategic plan have been met, GRP 2 and the transition from a Department to Bureau has created a new dynamic and CalBRE has begun the process of creating a new strategic plan. Significant goals that have been met from the 2010-2015 plan include:

- Creation of Speakers Bureau where consumer groups and industry can request a speaker from CalBRE to make a presentation at an outreach event. As noted earlier, CalBRE participated in nearly 100 events last year and reached thousands of participants.
- CalBRE created an internal employee recognition program wherein employees are peer nominated in five areas that relate to CalBRE's following core values: Caring, Excellence, Knowledge, Communication and Professionalism. Nominations are reviewed by a committee consisting of rank and file employees and awards are given quarterly.
- Electronic submission of Public Report applications will be operational early next year.
- Training modules and training regarding complex law involving mortgage brokering has been created and internal statewide training provided for staff.
- Periodic internal statewide town halls are conducted where all CalBRE staff is allowed to ask questions of the executive staff and the executive staff can provide updates. The town halls are broadcast through CalBRE's video conferencing system from the Sacramento office to all four of the district offices.
- A centralized enforcement intake system has been deployed allowing for greater consistency in identifying urgent and critical cases.

ISSUE #2: Should a Real Estate Advisory Commission (REAC) be established with a public member majority to advise the Commissioner and give policy input to the DRE, the Administration and the Legislature?

Background: Originally established in 1935, as advisory body to the Commissioner, the Real Estate Advisory Commission (REAC) was repealed in 2005 along with eight other boards and commissions within state government through a Budget trailer bill (SB 64, Chapter 77, Statutes of 2005). The elimination stemmed from a recommendation of Governor Arnold Schwarzenegger's California Performance Review. In the State of the State Address in 2005, the Governor proposed eliminating some 88 boards and commissions

The REAC was a ten member advisory panel appointed by the Commissioner, who presided over meetings. The REAC was composed of six licensed real estate brokers, and four non licensed members of the public. REAC members received per diem and were reimbursed for expenses. The meetings which were required to be held at least four times a year were subject to the open meetings act, and all records of the REAC were required to be open to the public. The law required the REAC to meet with, consult and advise the Commissioner on the functions and policies of the DRE and how it may best serve the people of the state and recognize the legitimate needs of the industry which it regulates and the licensees of the department. The law required the views and suggestions of both the public licensees to be solicited at the meetings. In addition, the Commissioner was required to notify the REAC of the intention to adopt rules and regulations at least 30 days prior to their adoption.

It appears prior to its elimination in 2005, the REAC had not met since the Real Estate Commissioner appointed by Governor Davis resigned in December of 2003. Since REAC members were appointed by and serve at the pleasure of the Commissioner, upon the resignation of the Commissioner, the REAC members automatically resigned, and the REAC member positions remained unfilled. In a DRE forum in 2005, Commissioner Davi suggested that the function of REAC could be carried out through the formation of ad hoc committees organized on an as-needed basis. The Commissioner believed that the ad hoc committees could promote open dialogue from all areas of the industry.

A commission that consistently meets in a public capacity, subject to the notice requirements of the open meeting laws, is a valuable forum for input from the public, including consumers and consumer interest groups, licensee discussions, and issues raised by public members of that commission. In addition, such a commission enhances the transparency of the overseeing regulatory agency, such as the DRE.

In carrying out its role and responsibilities, it would seem as if an advisory commission such as REAC could be an effective forum to better inform the DRE, the Administration and the Legislature on future policy decisions which need to be made for the future of the real estate profession in California. This especially seems to be true in light of the complex issues that have arisen in the wake of the recent financial meltdown and home mortgage crisis.

When REAC was eliminated in 2005, it was argued that the Commissioner could continue to seek information from industry by creating non-statutory ad hoc groups, as needed. To what extent has this been done and does the Commissioner believe this is still the best approach?

Staff Recommendation: *The DRE should detail its efforts to provide a consistent forum for input from the public and from licensees since the elimination of REAC in 2005. The DRE should further advise the Committee as to whether a new REAC should be established with a public member majority to advise the Commissioner and give policy input to the DRE, the Administration and the Legislature.*

The CalBRE executive team has a long-standing practice of meeting with the real estate industry in an open, public forum three times per year to present issues of mutual interest, provide operational and budget related information, give updates on enforcement and audit cases, and present the opportunity for an open forum for any questions or concerns to be posed to the panel. CalBRE executive management also meets with representatives of the building industry at least twice a year to provide similar information and to address specific concerns with the processing of subdivision filings. Absent a commission, CalBRE routinely establishes task forces and special projects with industry volunteer participants to tackle key issues. As noted above, CalBRE participates in many task forces in order to share and keep current with trends.

ISSUE # 3: Should the Real Estate Law be amended to clarify that protection of the public is the highest priority of the DRE?

Background: Consumer protection is the essential purpose of all California's occupational licensing and regulatory agencies. However, in many instances statutory schemes do not establish clearly that protecting consumers is the agency's primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of the statutes.

According to the Center for Public Interest Law (CPIL) which has monitored the activities of many regulatory boards and bureaus, including the DRE, for nearly 30 years, the role and purpose of the regulatory and licensing agencies is clearly public protection.

Nearly ten years ago, the Legislature enacted AB 269 (Correa, Chapter 107, Statutes of 2002) to state specifically that protection of the public is the highest priority for each board, bureau, committee, and commission regulated under the Department of Consumer Affairs (DCA) within the Business and Professions Code in exercising licensing, regulatory, and disciplinary functions.

Prior to that time very few of the enabling acts of DCA regulatory agencies actually say that protection of the public is their purpose. The consumer protection role of regulatory agencies is not always apparent to

consumers, or the courts that are reviewing agency actions, or the agencies themselves. And especially, in an agency like DRE whose chief executive is required to be a licensee, it may appear to consumers and other members of the public that the agency is strongly influenced by members of the very profession that it regulates. In 1990, the Legislature enacted SB 2375 (Presley, Chapter 1597, Statutes of 1990) which established within the B&P Code for the Medical Board and its affiliated agencies the articulated priority that consumer protection must outweigh other conflicting interests in all agency activities -- licensing, regulation and enforcement.

Under current law, Section 10050 of the B&P Code requires the Real Estate Commissioner to enforce all laws relating to real estate licensees and subdivided lands in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees. While this is a strong mandate regarding the Commissioner's administration of the law, it does not declare that protection of the public is the highest priority, and that protection of the public is paramount above other interests that may be promoted.

Even though the DRE has responsibility to regulate the real estate profession, it would appear important to clarify that the highest priority of DRE is to protect the public.

Staff Recommendation: *Section 10050.1 should be added to the Business and Professions Code, to provide that "Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."*

Section 10050.1 was added to the Real Estate Law in 2012.

EDUCATION ISSUES

ISSUE # 4: Are education levels for licensed brokers and salespersons adequate?

Background: The requirement to sit for the salesperson examination were changed in October 2007 by AB 2429 (Negrete McLeod, Chapter 278, Statutes of 2006) requiring three courses prior to taking the examination. Previously the requirement was for an applicant to certify enrollment in a Real Estate Principles course. Correspondingly, examination pass rates for the salesperson exam increased from 42% in 2006/07 to 60% in 2009/10.

According to DRE, this higher pass rate is directly attributable to the increased prerequisite requirements for salesperson applicants (successful completion of Real Estate Principles, Real Estate Practice, and one elective offering from an established list of courses).

In its 2009 Report, the LAO additionally suggested that there was substantial disconnect between the educational requirements for entry into the real estate field and the broad range of activities authorized by the license.

Staff Recommendation: *The DRE should inform the Committee about whether it believes that any educational requirements should be changed or revised for licensed brokers or for licensed salespersons.*

CalBRE has concluded that the current license requirements are appropriately balanced to provide prerequisite entry level standards of knowledge with the creation of jobs and economic opportunity.

Since the 2009 LAO report, there have been a few changes to the broker prerequisites and license continuing education requirements. Specifically, in 2012 AB 1718 amended the college degree requirements to obtain a real estate broker license. Prior to AB 1718, the real estate law allowed a real estate broker exam applicant to use a four year college degree, in lieu of two years experience as a real estate salesperson, to qualify for the broker exam. AB 1718 requires that only a four year degree with a major or minor in real estate may be used to qualify for the broker's exam in lieu of two years' experience as a salesperson.

Effective 2016, with the passage of AB 345, requires licensees to take continuing education course work in the management of real estate offices and supervision of real estate activities in order to renew a license.

EXAMINATION ISSUES

ISSUE # 5: The number of candidates sitting for the examinations has fallen significantly. What adjustments has the DRE made because of this dramatic decrease in the number of examinations given?

Background: Over the last few years there has been a significant drop in the number of people sitting for the broker and salesperson licensing examinations. In FY 2006/07 128,540 persons sat for the examinations. By FY 2009/10 that number had fallen to 34,851 – a 72% decrease in examinations. Obviously, such a change in the number of candidates sitting for the examinations has a significant impact on the DRE’s examination program.

Staff Recommendation: *DRE should report to the Committee the impact of this dramatic drop in the number of candidates sitting for the examinations on its examination program, including the impact upon revenues and examination staff, and any efforts made by the DRE to redirect staff to other areas of DRE’s regulatory programs.*

During the licensing and examination boom in the mid 2000s, the CalBRE experienced a large increase in processing times. To address the huge increase in workload, CalBRE expended resources IT solutions instead of increasing staff. Specifically, DRE developed online systems, including an online exam scheduling and license renewal system. Once the online systems were deployed, processing times improved. The processing times also benefited from the decline of applicants due to the downturn. With the current surge of applicants, CalBRE is looking at additional IT enhancements and other potential solutions to the current increase in workload. With respect to revenues, in 2009 DRE/CalBRE raised license fees to the statutory maximums to compensate for the dramatic drop in licensing. The fee increase and adequate reserves has resulted in adequate revenues to cover expenses.

ISSUE # 6: Examination development and examination validation.

Background: According to the DRE, item analyses are routinely run on the real estate examinations to validate examination development and item performance. These reports examine responses in order to assess the quality of the items and of the tests as a whole. According to the DRE, the examinations have a high degree of reliability. The DRE’s testing program follows guidelines set by the State Personnel Board and other testing authorities and routinely uses research/Job Analysis studies to update its examinations. Exam studies are performed on the average of once every six to seven years.

DRE states that it is currently conducting a Job Analysis and Testing Procedures Study by a private consultant. The DRE uses brokers and salespersons with years of licensed real estate experience as subject matter experts to develop its examinations.

In 1999, the Legislature enacted AB 1105 (Jackson, Chapter 67, Statutes of 1999) to establish B&P Code § 139 which requires the Department of Consumer Affairs in consultation with its various regulatory boards and bureaus to establish a policy regarding examination development and validation, and occupational analysis, and requires the Department to submit this policy to the Legislature. Section 139 further requires each board to annually submit to the Department its method for ensuring that every licensing examination administered on behalf of the board is subject to periodic evaluation. The evaluation is required to include: (1) a description of the occupational analysis upon which the examination is based; (2) item analysis data sufficient for psychometric evaluation of the items; (3) an assessment of the appropriateness of prerequisites for admittance to the examination; and (4) an estimate of the costs required to perform these functions.

That legislation states the Legislature’s intent that occupational analyses and examination validation studies are fundamental components of licensure programs. It expresses the further intent that policies developed for

examination development, validation and occupational analysis be used by the fiscal, policy, and sunset review committees of the Legislature in their annual reviews of those regulatory agencies.

It appears that the laws governing the Department of Real Estate do not contain requirements like those in Section 139. The DRE has indicated that its examination program follows guidelines set by the State Personnel Board and other testing authorities; however, it is unclear whether those guidelines are adequately sufficient for appropriate examination development.

Staff Recommendation: *DRE should report to the Committee its specific policies for examination development and validation and give input on whether it believes that a provision similar to Section 139 should be enacted pertaining to the DRE. The DRE should also give the Committee the timeframes for completing the current job analysis and its plans for future examination development.*

CalBRE's last examination validation study was completed in July 2013, and is in the early stages of performing a new examination validation study, to once again review the exam content, categories and subject matter. The Bureau has met with, and will be working with the Department of Consumer Affairs' Office of Professional Examinations, to begin an examination validation study during fiscal year 2016/17. CalBRE has no position that a provision similar to Section 139 should be enacted by CalBRE.

LICENSING AND PRACTICE ISSUES

ISSUE # 7: New Mortgage Loan Originators (MLO) license endorsement issues.

Background: In order to implement mandates established under the federal SAFE Act, the California Legislature enacted SB 36 (Calderon, Chapter 160, Statutes of 2009), which requires as of, January 1, 2011, that real estate licensees who wish to act as mortgage loan originators must apply to DRE and obtain a mortgage loan originator (MLO) license endorsement. The Department issued over 22,000 MLO license endorsements prior to the January 1, 2011.

The hope is that the new rules will professionalize an industry that swelled during the real estate bubble with people who had little experience or education, and who were in some cases outright criminals. DRE believes that the new license endorsement requirement should help keep bad actors out of the real estate business.

However, some brokers have alleged that they are being made the scapegoat of Wall Street which inflated the mortgage market by bundling bad loans and selling the risk to investors. Critics say that experienced and honest professionals are being shut out of business by larger financial corporations who want to corner the market. Some critics suggest that the new rules will not necessarily solve the problem but will just put another layer of requirements upon legitimate brokers and salespersons. A *Sacramento Bee* article dated December 5, 2010, suggested the new laws may be shutting out veteran brokers and loan originators. In addition, many brokers are frustrated that the new law has created an unlevel playing field because the new licensing requirements do not apply to loan officers at banks.

Although it is very early in the license endorsement process, it would be helpful to receive input from the DRE and interested parties about whether the new licensing endorsement requirement is achieving their intended purposes, and whether there might be any new unforeseen consequences of the new requirements.

Staff Recommendation: *The DRE should relate to the Committee its early observations of this new license endorsement requirement. Are the new rules accomplishing what was intended? Are there steps that should be taken to level the playing field for persons who act as mortgage loan originators? What are the challenges that still face DRE in implementing these new requirements?*

Clearly the new MLO licensing requirements have raised the standards for those that engage in mortgage loan originations. The new paradigm has weeded out the casual, less educated loan originators that were prevalent

during the real estate bubble. CalBRE has been issuing endorsements since 2011 and has not experienced any significant issues with either the issuing of the endorsements or with disciplinary actions against endorsees. Although the Bureau is not a voting member, CalBRE staff sits on various Conference of State Bank Supervisors (CSBS) and Nationwide Mortgage Licensing System (NMLS) committees including, its legal and licensing committees. This ensures CalBRE has the ability to voice any concerns or suggested enhancements to the CSBS.

ISSUE # 8: The number of licensed brokers and salespersons has decreased in recent years. What adjustments has DRE made because of this decrease in numbers?

Background: In FY 2006/07, there were approximately 537,000 licensees under the DRE. In FY 2009/10, that number fell to 483,000 licensees; a drop of some 54,000 licensees, a 10% overall reduction in licensing population. It appears that this drop in the number of licensees is due largely to the housing meltdown. In its report, the DRE indicates that it has redirected staff (a total of 17 positions) from the Subdivision Program to the Enforcement Program. Has DRE seen the need to reassign any of its licensing staff in light of the decrease in the number of licensees? Is there any need for any changes to its licensing program because of this decrease?

Staff Recommendation: The DRE should tell the Committee of the impact of the drop in the number of licensees upon its operations, including the impact upon revenues and licensing staff, and any efforts made by the DRE to redirect staff to other areas of DRE's regulatory programs.

See response to question 12 above.

ISSUE # 9: Has DRE adopted regulations regarding disclosure of license identification numbers?

Background: The Real Estate Law requires real estate licensees to disclose their license identification numbers in mortgage loan advertisements and to disclose that a real estate license is required for real estate activities advertised in marketing materials. In 2008, the Legislature enacted SB 1561 (Negrete McLeod, Chapter 284, Statutes of 2008) to further require real estate licensees to disclose their license number on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting as an agent in those transactions. The bill also authorized the DRE to adopt regulations identifying the materials in which a licensee must disclose a license identification number. These provisions were later amended to also include licensees with the new mortgage loan originator license endorsement, and require those licensees to include their NMLS registry registration numbers.

This legislation requiring consumer notification of the fact that a person is licensed was a significant component in permitting the public to more readily identify and validate the license records of individuals and those using nicknames or other business names.

Subsequently, DRE promulgated regulations to specify the types of materials that licensees must disclose their license number on, including: business cards, stationery, websites controlled by the licensee, promotional fliers, brochures, all types of mail, and other promotional marketing materials (CCR § 2773). It is unclear whether the regulation has been updated to also require mortgage loan originators to include their federal NMLS registration numbers on those kinds of materials.

Staff Recommendation: *The DRE should update the Committee on its efforts to update its regulations to include advertising disclosures by mortgage loan originators.*

CalBRE does not believe an amendment to its regulations is necessary because existing law addresses this issue. Specifically, California Business & Professions Code Section 10140.6, which was amended by SB 36 (Calderon, Chapter 160, Statutes of 2009), requires MLOs to disclose their assigned unique identifier number on all solicitation materials intended to be the first point of contact with consumers and on real property

purchase agreements when acting as an agent in those transactions. The CalBRE has notified its licensees of this statutory requirement, and is currently enforcing this provision of law.

ISSUE # 10: Has the DRE found problems related to reverse mortgages, and are any changes needed so that DRE can address any emerging problems in this area?

Background: A reverse mortgage is a type of home loan that is available to borrowers 62 years of age or older whose homes are paid for or nearly paid off. A reverse mortgage enables a borrower to obtain income through cash payment or credit lines by tapping the equity in their home.

On December 7, 2010, Consumers Union, in conjunction with California Advocates for Nursing Home Reform and the Council on Aging Silicon Valley, released a report titled Examining Faulty Foundations in Today's Reverse Mortgages. That report suggests as a matter of public policy that reverse mortgages should be considered suitable only when a senior has no other viable option, and those considering a reverse mortgage should always consider less costly options first. The report states that reverse mortgages come with high costs, can expose borrowers to potential abuse and can place non-borrowers who may share the dwelling at risk of displacement when the borrower dies or must leave the home. More cause for concern is that loan bailouts have soared. The annual sum of reverse mortgages taken over by a federal insurance fund has more than quadrupled in four years, from \$81.3 million in 2004 to \$381.3 million in 2008, according to an analysis of more than 500,000 loans over two decades by Consumers Union

In March 2009, the Federal Bureau of Investigation (FBI) issued a Bulletin warning about this new potential for abuse. In a joint investigation involving the FBI and Housing and Urban Development's (HUD) Office of Inspector General, the agency reported that "unscrupulous loan officers, mortgage companies, investors, loan counselors, appraisers, builders, developers, and real estate agents are exploiting Home Equity Conversion Mortgages (HECMs)—also known as reverse mortgages—to defraud senior citizens." The Bulletin states that seniors are recruited through local churches, investment seminars, and television, radio, billboard, and mailer advertisements, and the fraud is committed primarily through equity theft, foreclosure rescue, and investment schemes.

A June 2009, a report by the United States Government Accountability Office (GAO) into the growing use of reverse mortgages cited an instance in which two insurance agents in California were accused of designing a seminar to teach licensed insurance and real estate agents how to sell reverse mortgages to senior citizens in conjunction with annuities. In the case investigated by the California Department of Insurance, it was further alleged that they were teaching agents to convince senior homeowners that purchasing an annuity with reverse mortgage funds is a condition of obtaining the loan.

In 2010, DRE launched its Financial Literacy Task Force in a strategic outreach effort critical to promoting an understanding for all Californians of real estate financial transactions including, but not limited to, purchasing a first home, renting and refinancing an existing mortgage. The Task Force focuses on a number of financial issues for young persons, adults and senior citizens, including reverse mortgages.

It would appear that the use and abuse of reverse mortgages is an important issue for the growing population of older Californians.

Staff Recommendation: *The DRE should speak to its efforts to educate and inform the public and licensees about reverse mortgages, and identify any problems that it may have found in this area, and what actions it has taken. The DRE should also advise the Committee of whether it has sufficient authority to address problems in this area and give the Committee any recommendations for changes in the law.*

CalBRE has not identified or received any complaints involving reserve mortgages over the past three years. However, through the CalBRE Speaker's Bureau, CalBRE has partnered with the Contractor's State License Board and its Senior Scam Stopper program, consumer groups and legislative staff to provide information on how to avoid fraud. CalBRE provides its publication [Reverse Mortgages - Is One Right for You?](#) as part of the

handouts at such events. This brochure explains the pros and cons of reverse mortgages and is geared toward senior citizens.

CalBRE continues to monitor real estate scams and provide consumer outreach in a variety of formats including consumer alerts, brochures, speaking engagements, forums with industry, interactions with mortgage counselors, law enforcement and regulatory partners, as well as mortgage professional associations. At this time, CalBRE can offer no recommendations for law changes on this subject.

CONTINUING EDUCATION ISSUES

ISSUE # 11: Are there improvements that could be made to the current continuing education program?

Background: In its 2009 Report, the LAO noted that real estate licenses are renewed every 4 years. Since the continuing education requirements must be met for license renewal, the 45 hours of continuing education must be completed prior to the completion of the 4 year license cycle. The LAO suggests that there is no requirement that the 45 hours be spaced out throughout the 4 years; the courses can be completed at any time during the 4 years. In order to require continuing education to be continual throughout the license period, the LAO recommended that California should consider shortening the license period from 4 years to 2 years to increase licensee competency.

Staff Recommendation: *The DRE should advise the Committee whether it believes that the current continuing education requirements are sufficient and whether the continuing education should be spread out over the term of the license. The DRE should consider if there might be alternative ways to spread the education out over the four year license timeframe. The DRE should also give its views to the Committee on whether it would be appropriate to shorten the license period from 4 years to 2 years.*

CalBRE cannot reasonably conclude or quantify that consumer protection would be enhanced by an initiative to spread out the continuing education. While the merits of how often continuing educational courses should be completed can be debated, requiring annual continuing education with a four-year license term would be costly and create logistical problems due to the large license population. Such a modification should be preceded by discussion with industry, and would require several law changes, an IT project, feasibility study and budget augmentation to implement. However, CalBRE does require completion of continuing education as part of certain license disciplinary actions when a lack of knowledge is perceived.

Further, under the SAFE Act, individuals with a Mortgage Loan Originator (MLO) license/endorsement are required to complete annual continuing education requirements.

ENFORCEMENT ISSUES

A number of the enforcement issues and staff recommendations in this section are raised due to concerns about the overall abilities of the Department of Real Estate to address enforcement issues in light of the current financial and mortgage crisis. The issues and recommendations are set forth in an effort to give the DRE an array of enforcement tools that are available to other licensing agencies under this Committee's jurisdiction.

ISSUE # 12: Should the DRE be given authority to issue administrative citations and fines to real estate licensees?

Background: DRE is authorized to examine the books, accounts and records and to investigate the actions of real estate licensees, and if the DRE finds that a licensee has committed those violations of the Real Estate Law, the Commissioner may suspend or revoke a licensee's real estate license or, instead, may impose monetary penalties against the licensee.

However, the Real Estate Law does not contain any provision for issuing citations and fines to the DRE licensees. For that reason, if a DRE investigation or audit identifies a violation by a licensee, in order to take action, the DRE must initiate a formal disciplinary action against the licensee, which can take a good deal of time and resources for the DRE's enforcement and legal staff. Such formal action is often not warranted in cases where there are lesser violations of the licensing act by a licensee, or on occasions where it is appropriate to take action to immediately assure compliance with the law rather than a formal disciplinary action against a licensee.

In such cases the ability to issue an administrative citation and fine can be an effective tool to gain compliance with the law for lesser violations. Licensees do not lose the ability to appeal an administrative citation and fine, but are given the right to request a hearing before an Administrative Law Judge. Granting DRE citation and fine authority will help both consumers and licensees, by allowing DRE enforcement staff to more quickly address violations with licensees, and by directing licensees to more quickly correct those items found to be in violation. The precedent for this proposal already exists within the Financial Code (Section 23058) and elsewhere in the Business and Professions Code (Sections 125.9 and 148).

In addition, the ability to issue citations and fines to unlicensed persons acting in the capacity of a licensee is also an important and effective tool in battling unlicensed activity.

The general provisions of the B&P Code grant general authority to DCA boards and bureaus to issue citations and fines of up to \$5,000 to licensees for violations of the law, and to unlicensed persons for acting in the capacity of a licensee. Granting the DRE similar authority would be an important tool to gain compliance in a number of cases.

Earlier in the current 2011-2012 Legislative Session, SB 53 (Calderon and Vargas) was introduced in order to, among other things; authorize the DRE to issue citations to unlicensed persons engaging in activities for which a real estate license is required, or to real estate licensees who violate the Real Estate Law or its regulations. The bill authorizes citations to include an order to correct the violation, to desist and refrain from engaging in a specific business activity, or to suspend all business operations. The bill would authorize administrative fines of up to \$2,500 which would be credited to the DRE's Recovery Account and made available upon appropriation by the Legislature.

Staff Recommendation: *The DRE should be given statutory authority to issue citations and fines to real estate licensees and to unlicensed persons acting in the capacity of a licensee for violations of the law such as that proposed in SB 53.*

Cite and Fine authority was provided by SB 53 (Calderon, Chapter 717, Statutes of 2011) and has been implemented.

ISSUE # 13: Should the DRE disclose the status of every license, including: suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the DRE, or by the department of another state or jurisdiction?

Background: Currently a number of regulatory boards are required to post the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the board or by the licensing program of another state. There appears to be no reason why DRE should not be subject to the same basic requirements for disclosure over the Internet that the boards and bureaus under DCA are currently required to disclose to the public. Much of this information is considered as public information, and the disclosure of license status and disciplinary information is an important part of informing and protecting the public.

It appears that DRE posts a great deal of information about disciplined licensees and actions taken against unlicensed persons on the Internet. Committee staff has noted the following actions clearly listed on its Internet website www.dre.ca.gov.

- Bar orders – which bar a licensed or unlicensed person from employment management, or control, for an up to 36 months, at any real estate related business or at a lender, credit union, escrow company or title company.
- Desist and refrain orders and accusations – against licensed or unlicensed persons for violations of the Real Estate Law.
- Desist and refrain orders for unlicensed activity.

For some time, this Committee has taken the position that not disclosing disciplinary actions is inconsistent with public protection. The Committee has further urged licensing boards and bureaus to publicly disclose accusations filed against licensees. An accusation is a public record under the Public Records Act (PRA). If a consumer made a PRA request to the DRE about a particular licensee, DRE would have to disclose any pending accusation. An accusation means that the complaint has been fully investigated, the investigation is complete, and the prosecutor (DRE's enforcement deputy) believes that there is "clear and convincing evidence" of a violation that merits disciplinary action. An accusation is not a naked complaint. The filing of the accusation is what turns a confidential investigation into a matter of public record. Other regulatory licensing agencies such as the Medical Board of California (MBC) have been publicly disclosing accusations since 1993.

In addition, within the last year, the Director of the Department of Consumer Affairs notified Committee staff that each of its licensing boards, bureaus and commissions now post formal accusations against licensees on the board, bureau or commission's Internet website.

There is no reason why DRE should not disclose accusations that are already public records. Once the investigation is completed, and accusations are filed, the public must be made aware of the charges against licensees.

Staff Recommendation: *The DRE should inform the Committee more fully about its disclosure policies for enforcement actions. It should advise the Committee as to whether it publishes all accusations filed against licensees on its Internet website. The DRE should insure that it discloses the status of every license, and any disciplinary action taken against the licensee, including: formal accusations, suspensions, revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the DRE or by the department of another state or jurisdiction.*

CalBRE posts on its website the status of every license and any disciplinary action taken against a licensee. Pursuant to Business and Professions Code Section 10083.2, CalBRE appends all accusations and disciplinary actions to a licensee's online license records which can be accessed by a click of a mouse.

ISSUE # 14: The DRE does not have the ability to request cost recovery.

Background: The ability to recover the costs for the investigation and enforcement of a disciplinary case in which an administrative law judge has found a licensee to have committed violations of the licensing act is an important tool for licensing and regulatory agencies. This negatively impacts the industry by laying enforcement costs upon the backs of the entire licensing population rather than those that are being disciplined. A general provision of the B&P Code authorizes licensing boards within the Department of Consumer Affairs to request an administrative law judge to issue an order for the recovery of the reasonable costs of investigation and enforcement of a disciplinary case.

DRE has very limited cost recovery that extends only to offset a portion of the costs of any audit, if the commissioner has found in a final desist and refrain order or in a final decision that the broker violated B&P Code §10145 or a regulation related thereto, and a follow-up audit that is conducted as part of such an administrative action (B&P Code § 10148(b)). The current provision requires the Commissioner to charge a real estate broker for the cost of an audit after a desist and refrain order has been issued, or a final decision has been rendered, following a disciplinary hearing that the broker has violated the trust fund requirements of

the Real Estate Law. In these cases, the cost recovery is assessed to offset audit program costs only. In addition, the DRE also has the authority to charge a licensee for the preparation of a specified trust fund report under B&P Code § 10232.25(c). However, it does not have the authority to request that an administrative law judge order a licensee who has been found to have committed licensing law violations to pay cost recovery to the DRE.

DRE also believes its current cost recovery authority should be expanded to include all disciplinary actions in which DRE prevails. The DRE suggests that the enactment of enforcement cost recovery would provide an opportunity to offset the costs of and expand consumer outreach. DRE believes that it is fitting that those real estate licensees against whom the Department takes administrative action, and for which DRE prevails, should pay for the investigatory and enforcement costs of their case and not the general license population.

Staff Recommendation: DRE should be given statutory authority to request an administrative law judge to order a licensee found to have violated the real estate law to pay to DRE the reasonable costs of the investigation and enforcement of the case.

Pursuant to Business and Professions Code Section 10106, CalBRE now has the authority to ask an administrative law judge to order a respondent found to have violated the Real Estate Law to pay for investigative costs. CalBRE asks for cost recovery in nearly all its administrative actions.

ISSUE # 15: Should the DRE be authorized to recover reasonable costs for probation monitoring for a licensee who is placed on probation by an administrative law judge?

Background: Currently DRE does not have explicit statutory authority to recover the costs associated with probation monitoring for a disciplined licensee that has been placed upon probation. A number of regulatory boards under the DCA have explicit statutory authority to recover costs associated with probation monitoring. Such a requirement can be made a term of probation for DRE disciplinary cases without statutory authority in stipulated settlements, but statutory authority will give DRE greater explicit authority, lead to quicker resolution of probation terms, and authorize DRE to refuse to renew the license of a licensee who has not paid probation costs.

DRE has recommended increasing the renewal fee for a probationary license in order to offset the higher costs of probation or restricted license monitoring. However, giving DRE the authority to recover the cost for probation monitoring would more directly address the issue of costs without creating a new licensing fee category.

Staff Recommendation: The DRE should be authorized to recover reasonable costs of probation monitoring from a licensee who is placed on probation or issued a restricted license by administrative law judge or through a stipulated settlement.

Pursuant to Business and Professions Code Section 10186, CalBRE has the right to charge a restricted licensee the cost of monitoring his or her activity. In cases where disciplinary action is taken due to trust fund shortages or trust fund record keeping, CalBRE charges the respondent licensee the cost of a following up audit.

ISSUE # 16: Should DRE be authorized to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts?

Background: In the course of its regulatory activities, the DRE may issue a citation and fine to an unlicensed person, or may at times make penalty assessments to real estate licensees. As with all regulatory agencies, at times it can be difficult to collect all administrative fines and fees that are due to the agency. In order to improve effectiveness in the collection of monies owed to DRE, including those for fines or cost recovery, the DRE should be authorized to enter into a contract with a collection agency. Legislation would be needed to allow the DRE the ability to provide the collection agency with social security numbers.

Staff Recommendation: *The DRE should be authorized to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts.*

CalBRE has contracted with a collection agency and employs its services when appropriate.

ISSUE # 17: Should the DRE be given authority to enter into stipulated settlements without filing an accusation against a licensee?

Background: The Administrative Procedures Act (APA) requires an agency to file an accusation or statement of issues against a licensee before the regulatory agency can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, it is the experience of a number of regulatory boards that there are instances in which a licensee is willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process. Licensees may be willing to do this in order to minimize the cost of an administrative hearing or in order to expedite the resolution of a disciplinary matter. In such cases in which a licensee may be agreeable to the disciplinary action of the DRE, the ability to directly enter into a stipulated settlement would save time and costs for both the licensee and the DRE.

The provision to enter into a stipulated settlement should require the settlement to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. In addition, the provision should also allow a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

Staff Recommendation: *The DRE should be authorized to enter into a settlement agreement with a licensee or applicant prior to the DRE's issuance of an accusation or statement of issues against the licensee.*

Pursuant to Business and Professions Code Section 10100.4, CalBRE now has the authority to enter into settlement agreements.

ISSUE # 18: Should a DRE license be automatically suspended while the licensee is incarcerated?

Background: As indicated above, the November 12, 2010 *Sacramento Bee* publication of a study in which some 260 people were charged with a real estate-related crime, or sued by the state; at least 45 of those accused or convicted were still listed as licensed brokers or salespeople by the DRE, and consumers had no way of knowing of those who had committed a crime. Some of the real estate licensees that were convicted and then incarcerated still were licensed in good standing with the DRE.

Existing law allows physicians and surgeons and podiatrists licenses to be suspended while incarcerated. There is no reason why real estate licensees should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent a broker from practicing while in prison or while released pending appeal of a conviction. Years may pass before a convicted licensee's license can be revoked, and it is not protecting the best interests of the public when they have no indication that there are problems with a licensee who has been convicted of a felony.

Staff Recommendation: *The law should be changed to provide that the license of a licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed. In such cases, the DRE should be required to notify the licensee of the suspension and of his or her right to a specified (due process) hearing.*

Pursuant to Business and Professions Code Section 10186.1, CalBRE has the authority to suspend a license of a licensee who is incarcerated.

ISSUE # 19: Should there be a prohibition of Gag Clauses in Civil Dispute Settlement Agreements?

Background: Currently, physicians and surgeons are prohibited from including gag clauses in civil dispute settlements. AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other licensed professionals such as real estate licensees should not be subject to the same prohibition which would prevent them from including a “gag clause” in a civil settlement, and thus prevent DRE from receiving information from a consumer about a licensee who may have violated the law.

The use of gag clauses in civil settlements with licensed professionals still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delays and thwart a licensing agency’s effort to investigate possible cases of misconduct, thereby preventing the agency from performing its most basic function – protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed professionals. California should not allow those who harm the public to hide their illegal acts from the authority that grants them their license to practice as a professional by the use of gag clauses in civil settlements.

Staff Recommendation: *Statutory changes should be made to prohibit a real estate licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with or filing a complaint with the DRE based on any action arising from the licensee’s practice.*

AB 2570 (Hill, Chapter 561, Statutes of 2012) added Business and Professions Code Section 143.5 which prohibits a licensee of any board, bureau, or program under the Department of Consumer Affairs from using or allowing the use of confidentiality agreements, or “gag clauses,” in settlement agreements.

ISSUE # 20: Should the failure to cooperate with a DRE investigation by a licensee be unprofessional conduct, thereby making the license subject to disciplinary action?

Background: In dealing with other regulatory agencies, a significant factor preventing the timely completion of investigations often is the refusal of some licensees to cooperate with an investigation of the regulatory agency. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. The enactment of a statutory requirement could at times significantly reduce the substantial delays that result from a licensee’s failure to cooperate during a DRE investigation.

Staff Recommendation: *The law should be changed to declare that it is unprofessional conduct for a real estate licensee to fail to cooperate with a DRE investigation. The provision should also specify that failure by a licensee to furnish information in a timely manner to the DRE or cooperate in any disciplinary investigation constitutes unprofessional conduct.*

CalBRE has no position on such a legislative proposal.

ISSUE # 21: Should DRE licensees be required to report to DRE upon arrest, conviction or upon any disciplinary action taken against the licensed person by another state or federal regulatory agency?

Background: According to DRE, applicants for original and renewal licenses are currently required to disclose criminal violations, prior disciplinary action taken against a professional license, or pending criminal charges. In such cases, a license will only be issued to the applicant after the receipt and review of the confirming information from the Department of Justice.

Current law requires individuals who hold certain professional licenses to notify their licensing board when they are indicted, or charged with a felony or convicted of a felony or misdemeanor. Under the B&P Code, a

physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine are among those required to report to his or her respective board when there is an indictment or information charging a felony against the licensee, or he or she has been convicted of a felony or misdemeanor. Real estate professionals should also be required to notify the DRE when they are subject to any such action. This would put the DRE on notice that a licensee may have committed criminal acts which would be cause for disciplinary action by the DRE.

Staff Recommendation: *Real estate licensees should be required to submit a written report to the DRE for the following reasons: (1) the bringing of an indictment or information charging a felony against the licensee; (2) arrest of the licensee; (3) conviction of the licensee of any felony or misdemeanor; and, (4) any disciplinary action taken by another regulatory agency of this state or of another state or an agency of the federal government.*

Pursuant to Business and Professions Code Section 10186.2, real estate licensees are required to report:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

Failure to make a report required by this section shall constitute a cause for discipline.

ISSUE # 22: Should the DRE be authorized to hire a certain number of investigators with the authority and status of peace officers?

Background: In certain cases involving criminal offenses, the DRE could pursue investigations more quickly if it were able to hire both sworn peace officers and non-sworn investigators. By hiring sworn peace officers, DRE would have access to a greater number of investigatory tools, such as access to the California Law Enforcement Telecommunications System (CLETS), in order to obtain arrest and criminal record information from other states more readily, and have a greater ability to administer search warrants.

Staff Recommendation: *The DRE should give input to the Committee about whether it should be authorized to hire a certain number of investigators with the authority and status of peace officers.*

CalBRE has access to sworn peace officers through the Department of Consumer Affairs' Division of Investigation.

ISSUE # 23: Should court clerks be required to report to DRE when a judgment is entered against a DRE licensee for a crime or personal injury; or when a felony charge is filed against a DRE licensee?

Background: When a judgment is entered against a licensee, or when a licensee is charged with a felony, it is important for the DRE to be notified so that it can take action against a licensee if the circumstances of the judgment or charge warrant disciplinary action. This is basic information that should be reported by the clerk of the court to the DRE. Similar provisions already apply to a number of regulatory boards under DCA.

Staff Recommendation: *The law should be amended to require that the clerk of the court provide notice to DRE if there is a judgment for a crime committed in excess of \$30,000, for which the licensee is responsible due to their negligence, error, or omission in practice, or his or her rendering unauthorized professional services. The law should further be amended to require the clerk of the court to report any filings of charges of a felony against a real estate licensee to the DRE.*

CalBRE has no position on such a legislative proposal.

ISSUE # 24: Does DRE have adequate authority to suspend a license when necessary to protect the public?

Background: In a general provision of the B&P Code, which applies to all licensing boards, Section 494 authorizes a licensing agency to issue an interim suspension order if a licensee has violated the law and that allowing the licensee to continue to practice would endanger the public health, safety, or welfare.

The DRE is granted separate powers to impose restrictions upon licenses. DRE lists those powers in this manner:

- B&P Code § 10156.7 – A restricted license may be suspended without a hearing if the required terms and conditions are not met.
- B&P Code §10175.2(c) – A license may be suspended for failure to pay a monetary penalty ordered by the Commissioner.
- B&P Code § 10177(k) – A restricted license may be suspended for violating any of the terms, conditions, restrictions, and limitations in the order.
- B&P Code § 10177.1 – A license that was procured through fraud, misrepresentation, deceit, or lying on the application may be suspended within 90 days of issuance of the license. B&P Code § 10475 – The Commissioner suspend a licensee, when a payment is made from the Recovery Account in settlement of a claim or toward satisfaction of a judgment against that licensee.

DRE further is given the ability to seek injunctive relief:

- B&P Code § 10081 – If a person has violated or is about to violate the Real Estate Law, the Commissioner can bring an action to enjoin in the Superior Court.
- B&P Code § 10081.5 – Injunction-Appointment of Receiver. If a real estate licensee has violated the trust fund laws or is found through an audit to have comingled more than \$10,000 in trust funds, the Commissioner can bring an action to enjoin in the Superior Court and a receiver may be appointed.
- B&P Code § 10086(b) – Authorizes the Commissioner to an action in the Superior Court to obtain a restraining order, as specified.

It is unclear whether DRE is able to take action to obtain an interim suspension order under the authority granted pursuant to the general provision of the B&P Code, Section 494. It is significant to note that currently DRE has promulgated regulations to deny or revoke a license under sections 480, 490 and 493, and to issue public reprisals under section 495, but does not take action under Section 494.

Staff Recommendation: *The DRE should advise the Committee as to whether it believes it has authority to obtain an interim suspension order under Section 494, and whether it believes such an authority would be a beneficial addition to its enforcement program.*

CalBRE believes it has sufficient disciplinary tools and it is doubtful Section 494 would add to these tools in any meaningful way. For example, pursuant to Business and Professions Code section 10186.1, CalBRE may automatically suspend a license of a licensee who is incarcerated (irrespective of a conviction), or issue a restricted license pursuant to Business and Professions Code section 10156.6 to a licensee who has violated the Real Estate Law. Specifically, the Commissioner may add restriction to a license to ensure the interest of the public is served.

ISSUE # 25: Should the DRE utilize the authority under Section 23 of the Penal Code to request that a judge in a criminal case suspend or restrict a licensee?

Background: Penal Code Section 23 can be an effective enforcement tool for state agencies that regulate licensees under the B&P Code. Section 23 authorizes a licensing agency to appear in any criminal proceeding against a licensee “to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public.” These provisions authorize the judge to effectively order that a licensee be suspended from practice, or restricted in how he or she may practice under the license.

From discussions with DRE staff, it appears that DRE has never taken action under PC § 23 to request that a judge in a criminal case suspend or restrict a licensee from practice under their license. It seems that in some cases, DRE could effectively use this process to efficiently take action to suspend a licensee from practice when they are facing criminal charges.

In light of the findings of the *Sacramento Bee* in its November 12, 2010 article, described above, in which DRE licensees charged with real estate related crimes still held a clear license with the DRE, it would seem to be appropriate that DRE begin using this authority when possible. This is a clear instance in which the DRE should be able to improve its protection of the public.

It should be pointed out, that in the *Sacramento Bee* article, it was noted that the DRE cannot take administrative action against a licensee convicted of a crime until the time for appeal of the conviction had passed or the conviction had been upheld on appeal. Those due process provisions would still apply. The DRE would still have to wait until after the conviction becomes final to take action to revoke a license for a criminal conviction, however PC § 23 allows the agency to request the criminal judge to suspend the licensee in egregious cases.

Staff Recommendation: *DRE should tell the Committee whether there is any reason they are unable to take action under Penal Code Section 23, and if there is no reason why it should not immediately take steps to begin utilizing this provision of law.*

CalBRE has taken note on Penal Code section 23, and on occasion, when appropriate, made recommendations to the court in criminal proceedings against a real estate licensee.

ISSUE # 26: Should an independent enforcement program monitor be appointed to investigate and evaluate the DRE’s enforcement program?

Background: As described elsewhere in this background paper, significant issues have risen in the last decade which have evolved into a global liquidity crisis and an economic downturn. During that time, home equity eroded rapidly, and the focus of real estate activity shifted dramatically. Higher incidence of fraudulent activity and violations of the Real Estate Law have been documented by both DRE and by observers in federal and state governments by consumers and by the news media. Foreclosures account for nearly half of all property sales in California, and significant criticism has been focused upon real estate practices. Recent reports and articles have criticized the DRE for its lack of taking action against licensed real estate brokers and salespersons when necessary. Considering the problems that have existed within this industry and the current mortgage crisis, the DRE should be making a concerted effort to take any necessary action against its licensees who may have played a part in both the mortgage and lending crisis, and who may have been involved in unethical activities or violated the law.

In recent years, when a significant question has arisen with the enforcement and regulatory activities of various regulatory boards within the Department of Consumer Affairs, this Committee and the former Sunset Review Committee recommended the appointment of an enforcement monitor. Specifically, enforcement monitors were appointed for the Contractors State License Board, the Medical Board of California, the Bureau of Automotive Repair, and the Bureau for Private Postsecondary and Vocational Education. It has been found that the use of an enforcement monitor has been extremely effective in assisting a regulatory agency in improving the overall efficiency of its disciplinary and enforcement system.

An enforcement monitor is typically charged with investigating and evaluating the agency's discipline system and procedures, making its highest priority the reform and reengineering, as necessary, of the enforcement program and operations, including the agency's complaint, investigation, accusation, and settlement policies and practices.

Staff Recommendation: *An Enforcement Program Monitor should be appointed to the DRE whose duties would include monitoring and evaluating the DRE's disciplinary system and reporting its findings and recommendations, as specified, to the Secretary of BT&H, the Real Estate Commissioner and the Legislature every six months, beginning on September 1, 2012, with a final report March 1, 2014. The Enforcement Program Monitor should be funded through the Real Estate Fund of the DRE.*

There is no indication that DRE/CalBRE' enforcement efforts are deficient. As noted in the charts above, CalBRE performs its investigations in a timely manner and is successful in achieving license discipline as appropriate, as such; CalBRE does not believe this recommendation is necessary and would not be a valuable use of resources.

TECHNOLOGY AND INTERNET USE ISSUES

ISSUE #27: Are there improvements the DRE can make to enhance its internet capabilities?

Background: The public is currently unable to file an online complaint against a real estate licensee. DRE requires complaints to be filed in writing by using the DRE's complaint form, or by submitting a letter to the DRE. DRE indicates that one of the reasons why it does not accept complaints online, is that documentation almost always must be submitted to substantiate the claims made in the complaint, and that this is simply impractical to be done in online complaints.

DRE points out that it is further studying a number of ideas including online complaint submittals as part of the Enforcement Development Task Force and the 5-year strategic plan.

It is noted that the Department of Consumer Affairs licensing boards typically receives complaints filed online against licensees and have done so for a number of years. A typical online complaint form asks the complainant to list the supporting documents that the consumer can supply relating to the complaint, and then once the online complaint is submitted the complainant is advised that they will be contacted with further instructions on where to send copies of documents supporting the allegations in the complaint.

Staff Recommendation: *DRE should move quickly to begin accepting complaints online. DRE should further report its progress to the Committee by January 1, 2012.*

CalBRE has implemented an online complaint system.

ISSUE #28: What is the status of the enhancements to the DRE's Enterprise Information System?

Background: The DRE uses an Enterprise Information System (EIS) for much of its information technology data base needs. There are apparently some shortcomings in the current EIS, and the Department points out that it must manually track and report several elements that should appropriately be carried out by its information system. For instance, DRE manually transmits departmental performance standards to reporting agencies, and DRE does not currently maintain data on referrals of enforcement cases to other agencies as part of its EIS data base, and must track such information manually. The DRE currently enhancing the IT functions to, among other things, record comprehensive information to better track cases referred to other agencies and track performance standards.

Staff Recommendation: *DRE should report on the current status of its IT enhancements and give the Committee the timeline for completing the enhancements.*

The EIS system is supported by six IT staff who must also support the databases, networks, various state mandates from the California Technology Agency, and critical components of the infrastructure upon which EIS is dependent. Currently, the most significant IT enhancement, is the creation of an online Subdivision Public Report Application, This enhance will allow developer to electronically submit public report applications which will reduce filing errors and greatly enhance efficiencies. The online Public Report process is expected to be deployed early next fiscal year.

ISSUE #29: Electronic examinations.

Background: Computer based testing, or electronic examinations are being implemented by DRE. Electronic examinations improve efficiencies, reduce costs, improve examination security, and provides for the immediate issuance of a real estate license to a qualified examinee upon passing the test. An applicant who takes an electronic examination can leave the examination facility with the examination score and a license identification number authorizing him/her to immediately begin working. That information is also immediately made available as part of the public record.

According to DRE, electronic exams are now available in DRE's Oakland and Fresno District Offices on a full time basis. The Los Angeles and San Diego exam center renovations were stalled due to the pending sale of the Los Angeles State Office Building and the planned demolition of the San Diego building. During 2010, DRE has been working with DGS and located suitable off-site examination facilities in both regions. DGS space planning is now completed and contractor bidding has begun. Both the San Diego and LA exam centers are expected to be operational within six months. DRE also plans to relocate its Sacramento headquarters office within the next 12-18 months and will establish the Sacramento exam center at the new headquarters facility.

The total cost of DRE's Electronic Examination Project per the Department's Special Project Report is estimated to be \$5,056,194.

Staff Recommendation: *DRE should update the Committee on its progress toward fully implementing the electronic examination project.*

In July 2013, the final electronic exam center was opened in Sacramento. CalBRE now has electronic exam centers in San Diego, Los Angeles, Fresno, Oakland and Sacramento.

BUDGET ISSUES

ISSUE # 30: Is the DRE adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Background: The DRE is a self-supporting, special fund agency that obtains its revenues from licensing fees. The fees are currently set at the maximum level of the range provided in statute due to a recent fee increase. According to the sunset report, all licensing fees are set at the statutory maximum. The exception is the mortgage loan originator license endorsement fees which are established in regulation and do not have a statutory limit. All other licensing fees were brought to their maximum level in March 2010.

There is an outstanding \$10.9 million General Fund loan from the DRE's special fund. The fund has a projected reserve level for FY 2010/11 of 11.3 months of operating expenses (\$43,759,000) if the outstanding General Fund loan is taken into consideration in the reserve balance. Without the General Fund loan in the reserve balance, DRE would have only 8 months of operating reserves (\$32,859,000).

The Department expects its spending level to increase as a result of federal SAFE Act and California's SB 36 requiring special licensure and enforcement of mortgage loan originators. DRE forecasts that it will be able to fund operations and maintain its current level of operating reserves until FY 2015/16 with fees at their current levels. No deficit is forecasted.

Staff Recommendation: *The DRE should assure the Committee that with the recent fee increase it will have sufficient funds to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas if appropriate staffing is provided.*

Please see fund condition projections noted above.

ISSUE # 31: Does the DRE have adequate resources to fully implement the licensing and enforcement requirements inherent in SB 36?

Background: As previously described, the federally mandated SAFE Act requires all states to license and register their mortgage loan originators (MLO) through a nationwide registry called the National Mortgage Licensing System (NMLS). Senate Bill 36 (Chapter 160, Statutes of 2009) brought California into compliance with the SAFE Act by requiring those engaging in MLO activities to obtain a license from the Department of Corporations or, if a real estate licensee, obtain a license endorsement from DRE.

The SAFE Act was enacted in direct response to the collapse of the real estate market and resulting closure of some of the country's largest financial institutions. It is intended to create a process through which federal and state government can track MLOs operating in multiple states and monitor the financial stability of individuals and businesses in the mortgage loan industry to reduce potential for these mortgage businesses to unexpectedly go out of business.

SB 36 took effect on January 1, 2010. DRE has already approved over 22,000 MLO endorsements and there are over 8,000 pending applications. These license endorsements will be renewed annually. As part of its enforcement program, DRE will conduct reviews and audits of mandatory annual and quarterly reports required by the SAFE Act and SB 36. Based on known and projected workload, DRE anticipates that each year it will review about 2,500 of quarterly and annual reports; conduct approximately 250 audits; and open approximately 3,000 enforcement cases.

In Fiscal Year 2010/11, DRE was authorized 27 personnel years (PYs) to implement the SAFE Act and SB 36. The Governor's proposed budget for Fiscal Year 2011/12 includes only two additional PYs. When reviewing the Governor's proposed budget, DRE advised Senate Budget Subcommittee #4 that they intend to request additional PYs in 2011/12 via a Spring Finance Letter; therefore, the Budget Subcommittee denied the two PYs in the Governor's budget without prejudice pending receipt of the Spring Letter. The Budget Subcommittee also noted that the Senate Committee on Business, Professions and Economic Development was scheduled to hold oversight hearings on the DRE, the outcome of which may affect their action on the DRE budget.

Based on the workload estimates listed above, DRE indicates that they will need approximately 60 PYs to fully implement the SAFE Act and SB 36.

Staff Recommendation: *The DRE should identify for the Committee the staffing resources necessary to fully implement the provisions of SB 36, and detail its current efforts to obtain those resources. In addition, the Committee should support efforts to obtain, through the current Budget Process, those resources which are adequately justified by the Department.*

In 2010, CalBRE pursued a budget change proposal to implement SB 36 and obtained the necessary personnel to implement SB 36.

RECOVERY ACCOUNT ISSUES

ISSUE # 32: Is the criteria for access to payment from the Recovery Account too cumbersome and expensive, making it difficult for consumers to obtain payments from the Recovery Account? Is the Recovery Fund underutilized for purposes of consumers claims?

Background: DRE administers a consumer protection program through which consumers can file claims to recover at least some of the monetary loss in a real estate transaction when they are defrauded or had trust funds converted by a real estate licensee under certain conditions. This program is solely funded by license fees which are held in the "Recovery Account." Twelve percent of all licensing fees collected by DRE are set aside for the Recovery Account, which has been budgeted at \$2.8 million for at least the past six years.

Whenever DRE pays a claim out of the Recovery Account, the licensee who is associated with that claim is automatically suspended. The suspension is lifted when the licensee reimburses the Account the amount paid out in full. Consumers may be paid for actual and direct loss, up to a statutory maximum of \$50,000 per transaction, with a possible total aggregate maximum of \$250,000 per licensee.

The data in the following table was provided by the DRE:

	Deposit into Recovery Fund (12% of license revenue)	Amount swept into DRE fund	Claims Filed	Claims Paid	Claims Denied	Total Dollars Paid
FY 2005/06	2,841,619	8,604,247	17	65	7	426,000
FY 2006/07	2,461,792	2,783,591	37	17	9	269,000
FY 2007/08	2,118,107	2,118,107	62	60	8	1,191,000
FY 2008/09	2,076,132	0	111	17	6	685,000
FY 2009/10	4,173,116	1,893,956	181	48	9	950,000
Total	13,670,766	15,339,901	408	207	39	3,521,000
Average	2,734,153	3,079,980	82	41	8	704,200

Based on the last five fiscal years, the department collected an average of \$2.7 million into the Recovery Account and paid out an average of \$704,200. However, DRE representatives report that the increase in claims filed and claims paid in recent years is continuing into Fiscal Year 2010/11 and that average payouts will increase.

At the end of each fiscal year, the DRE transfers all but \$3.5 million out of the Recovery Account. On average, over \$3 million was swept from the Recovery Account and into the Real Estate Fund each year. As of December 31, 2010, the balance in the Recovery Account was over \$6 million.

Current Requirements for Recovery Account Claims. The requirements for payment from the Recovery Account are set forth in B&P Code Sections 10470-10481 and California Code of Regulations Sections 3100-3109. Consumers filing an application for payment from the Recovery Account must submit a final civil judgment, arbitration award, or a criminal restitution order against the licensee. Additionally, the judgment, award or order must be based on intentional fraud or conversion of trust funds in connection with a transaction requiring a real estate license. The consumer must make a reasonable search for the licensee's assets, and if any assets are found, the consumer must make a reasonable effort to collect from the licensee's assets to satisfy the judgment. In addition, the consumer must make a reasonable effort to collect from all other parties involved in the transaction that may be liable to and able to pay the victim.

DRE regulations require that consumers produce a comprehensive record of the legal proceedings that lead up to the final order, evidence that they have sought to collect from licensee, evidence that the consumer served the licensee notice of having filed a claim with the DRE, and other declaratory statements. A copy of the application and required notice must be served on the licensee, who is given an opportunity to respond to the allegations and object to payment of the claim.

Once the application is complete, the Department must issue a decision granting or denying payment within 90 days. However, if the Department does not respond, the application is deemed denied (B&P Code § 10471.3(a)).

If an application is denied, the consumer has the right to re-file the claim in court. When there is a decision to pay, the licensee has the right to file a writ of mandamus challenging the decision.

The criteria for access to payment from the Recovery Account has been criticized as too cumbersome and expensive, making it difficult for consumers to obtain payments from the Recovery Account. Critics point to the fact that annual payments rarely meet or exceed the \$2.5 million annual budget of the Recovery Account. Payments to consumers over the past five years have averaged \$700,000, an average of 40 claims per year have been paid in that same timeframe and a substantial portion of the amount intended for Recovery Account claims has been swept back into the DRE's Fund on an annual basis.

A number of issues and recommended changes to the Recovery Account are described as follows:

Reduce Threshold for Payment to Consumers. As shown above, access to the Recovery Account has been limited. The LAO suggests that this is partly explained by excessive litigation costs associated with obtaining a civil judgment or restitution order against a DRE licensee.

The LAO recommended that the Legislature consider expanding access to the account by eliminating the requirement that consumers obtain a restitution order, particularly for cases in which DRE determined that the agent or broker has committed an act of fraud or other significant misrepresentation that resulted in consumer damages. This would expand access to the Recovery Account, as well as potentially increase licensee accountability for their actions since license privileges are suspended until the account is repaid.

Access to payment from the Recovery Fund could also be modified to allow payment to the consumer if there is a restitution order issued by DRE that is not paid by the license. This would reduce costs to the consumer and create a different, more simplified, application process.

As noted by the chart on the next page, the Consumer Recover Account paid victims of real estate fraud perpetrated by licensees in record amounts in the past two years and another record is expected as well next fiscal year.

Doing away with the requirement of obtaining a civil judgment or a criminal restitution order based on a conviction similar to intentional fraud or conversion of trust funds for access to the Recovery Account would have several adverse consequences.

Under the current rules, no administrative hearing is required in connection with a Consumer Recovery Account application. If an applicant for payment from the Consumer Recovery Account were not required to obtain a civil judgment or criminal restitution order (or a proper arbitration award), the "fact finding" performed by the civil and criminal courts would have to be done in a hearing before an administrative law court. Those findings would have to include not only the liability of a licensee for intentional fraud or conversion of trust funds, but whether the victim is an "aggrieved person" for whom the Recovery Account's benefits were meant to apply, the amount of the victim's "actual and direct loss" in the transaction, whether the acts of the licensee in the transaction actually required a real estate license, and, finally, the administrative law judge would also have to render a money judgment for a particular victim or victims. Rendering a money judgment (which that "judgment creditor" could then assign to CalBRE upon payment from the Recovery Account) for a private victim is not within the jurisdiction of an administrative law court.

Consumer Recovery Account

	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Claims Filed	243	180	152	154
Claims Paid	94	77	104	119
Amount Paid	\$3,165,669	\$2,625,615	\$4,286,536	\$4,898,912
Total Active Claims				381

An administrative hearing is held by CalBRE to either prove that a licensee has violated the Real Estate Law or regulations, or to deny an applicant's effort to obtain a license on various grounds. The administrative hearing is not a forum to advocate for any particular victim. No government agency attorney, at any level, represents the private interests of any particular private individual. It is a forum in which CalBRE seeks to enforce the law and regulations relating to acts requiring a real estate license, and is undertaken with the primary goal of protecting the public in general. The CalBRE's counsel does not represent the victim, and does not have the victim's interest as his primary consideration.

A requirement for payment from the Consumer Recovery Account has always been that the claimant "... has diligently pursued collection efforts against all judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment." See B&P Code Section 10471(c) (7). In any disciplinary case prosecuted by the CalBRE, it would be impossible to join (as defendants, or "respondents" in the administrative law case) unlicensed persons. CalBRE does not have jurisdiction over persons to whom it does not grant licenses. Justice would be fractured by either forcing a consumer/victim to pursue a civil case for a money judgment, specific performance, or other equitable remedy against an unlicensed person, while at the same time, participating in an administrative disciplinary case brought by CalBRE against any licensee(s) who defrauded that victim. This requirement, along with another that the claimant must assign his judgment to CalBRE, subrogating CalBRE to all of the rights of the judgment creditor/claimant, is at the heart of the intent of the Legislature that the Consumer Recovery Account was meant to be a limited "fund of last resort".

When CalBRE files a disciplinary action against a licensee for fraud, its primary interest of protecting the public dictates that the licensee be put out of business as quickly as possible, to prevent further loss. One of the means CalBRE uses to accomplish that goal is to accept the surrender of the real estate license. As surrender is a form of settlement, there are typically no admissions of the factual allegations of the accusation. There are also no findings of fact which could provide any benefit to a defrauded victim. The process of accepting surrender in lieu of putting on an administrative hearing is done to conserve resources in appropriate cases. If a claimant had to depend on a disciplinary action against a licensee to provide access to the Consumer Recovery Account, CalBRE's practice of accepting surrenders from errant licensees would be in direct contradiction of the victim's dependence on CalBRE's finding of intentional fraud.

In an effort to make access to the Consumer Recovery Account more fair to a claimant who had no way to know of or control the technicalities of the license status of a licensee, CalBRE requested and received the Legislature's amendment of Business & Professions Code Section 10471, effective January 1, 2002, to remove two technical defenses to payment. One defense would deny payment to a claimant when a real estate salesperson committed fraud without acting under the supervision and control of his employing broker. The second defense would deny payment if a salesperson were doing acts which required a broker license.

The ability of a claimant to access the Consumer Recovery Account by obtaining a criminal restitution order was another effort to expand the availability of claimants to the Consumer Recovery Account (SB 150, effective January 1, 1998). Contrary to a civil action, in which a defrauded victim typically pays both attorney fees and costs, there is no cost to a victim who obtains a criminal restitution order. Those costs are borne completely by the prosecuting District Attorney's office.

Another effort to enhance the benefits of the Consumer Recovery Account resulted in an increase in the overall limits of the account's liability. Beginning in 2009, the transaction limit was raised from \$20,000 to \$50,000 per transaction; and from \$100,000 to \$250,000 per licensee.

In summary, the evolution of the law concerning the Consumer Recovery Account, and the benefits it affords to those defrauded by real estate licensees, were matters given much thought and deliberation by the Legislature itself over a period of many years. That evolution has continued, making access fairer and less costly and benefits more available, while maintaining the solvency of the account.

Amend CCR § 3102 (Substantially Complete Application) to reflect actual practice. California Code of Regulations Section 3102, sets forth requirements for a "substantially complete application" for payment from the Recovery Fund, which includes a copy of the final judgment or order as well as a long list of documentation and narrative descriptions of details pertaining to the claim. It requires copies of the original complaint, settlement conference statements, demurrer or motions for summary judgment, etc. However, DRE staff states that they do not always require all of the items detailed in 3102. Staff states that they only require the application, identity of the licensee, a copy of the judgment, and a narrative declaration explaining details of the case. The additional documentation listed in 3102 is only requested when necessary to establish facts and calculate appropriate claim amounts when determining "actual and direct loss."

Eliminate "actual and direct loss" as a condition for payment calculation. B&P Section 10471(a) sets forth the requirements for consumers to file an application for payment from the Recovery Fund. Among other things, this section states that the aggrieved person may file an application for payment of the amount unpaid on the judgment that represents an "actual and direct loss" to the claimant in the transaction. The actual and direct loss standard requires DRE personnel to calculate appropriate payment from the fund, despite the already existing judgment, which creates necessity for the additional paperwork required in CCR Section 3102.

This standard should be eliminated so that consumer claimants can be paid the amount unpaid on the judgment.

The potential impact of eliminating the actual and direct loss standard would be that certain amounts which are not considered to be "out-of-pocket" loss are often included in the judgment, including punitive damages, "benefit of the bargain" damages, and attorney's fees. Furthermore, costs could be included in the judgments that are not related to licensed activities. Such items are not allowed under case law.

Eliminate B&P 10471.3(a) regarding the automatic denial of a claim if/when the DRE does not take any action on a claim. B&P Section 10471.3(a) states, “If the commissioner fails to render a written decision in response to the claim within 90 days after its receipt, or within the extended period agreed to by the claimant, the claim shall be deemed to have been denied by the commissioner on the final day for rendering the decision.” This appears to be a potential due process violation, sets up an incentive for the DRE to take no action, and is inconsistent with consumer protection and customer service functions of the DRE and should be deleted from the code.

In 2012 B& P 10471.3 was amended to delete the provision denying a claim if the commissioner does not render a decision within 90 days.

Create Separate Recovery Account Fund. The LAO also recommended that the Recovery Account should be a stand-alone fund – separate and distinct from the Real Estate Fund. Under current law, the Recovery Account is essentially a sub-account of the Real Estate Fund. The commissioner is authorized to transfer funds between these accounts without any notification to the Legislature or the administration, making it a challenge for either branch to exercise oversight of department expenditures.

In light of these issues, LAO recommended that the Legislature adopt legislation to establish the Recovery Account as a separate special fund, and require the department to notify the Legislature of any transfers between the funds. LAO also recommended that the Legislature adopt budget bill language directing the Department of Finance to include a fund condition statement for the newly created fund the documents published by the administration each January. This would greatly improve the legislative oversight of the department expenditures and allow the Legislature to better track expenditures for recovery payments to victims of fraud.

CalBRE has no position on such a legislative proposal. Current law mandates a separate account in the Real Estate Fund for the Consumer Recovery Account.

Increase Promotion of the Recovery Account by the DRE. DRE has published a Recovery Account brochure and complete instructions on how to file a claim on its website. DRE representatives also indicate that they promote the account when talking to the press and at speaking events on a regular basis. However, the Department could do more to publish the account and make the information more easily available. Perhaps even referring to it as a “consumer recovery account” would make it more obvious that it is a tool available to the public.

In 2012 the Recovery Account was renamed to the “Consumer Recovery Account.” Moreover, CalBRE has worked closely with AG and District Attorneys advising that in cases involving findings of real estate fraud perpetrated by real estate licensees that sentencing include criminal restitution orders (CROs) which can be used as a basis to put in a Consumer Recovery Account claim. CROs have proven highly effective and is one of the causes that has increased payouts from the Consumer Recovery Account.

Staff Recommendation: *The DRE should speak to each of the issues identified above, and make recommendations to the Committee about whether each of the proposed statutory and regulatory changes as follows should be made. (1) Reduce the threshold for payment to consumers, by eliminating the requirement that consumers obtain a restitution order, particularly for cases in which DRE determined that the agent or broker has committed an act of fraud or other significant misrepresentation that resulted in consumer damages. Access to payment from the Recovery Fund could also be modified to allow payment to the consumer if there is a restitution order issued by DRE that is not paid by the license. (2) Amend CCR § 3102 (Substantially Complete Application) to simplify its requirements and to reflect actual practice of DRE. (3) Eliminate “actual and direct loss” in B&P § 10471(a) as a condition for payment calculation so that consumer claimants can be paid the amount unpaid on the judgment. (4) Eliminate B&P 10471.3(a) regarding the automatic denial of a claim if/when the DRE does not take any action on a claim. (5) Establish the Recovery Account Fund as a separate special fund, and require the DRE to notify the Legislature of any transfers between the funds. Adopt budget bill language directing the Department of Finance to include a fund condition statement in the annual Budget documents. (6) DRE should*

increase its promotion of the Recovery Account to consumers, including but not limited to, renaming it “Consumer Recovery Account.”

CalBRE has provided responses above, directly following each of the issues.

CONTINUED REGULATION OF THE PROFESSION BY THE DEPARTMENT OF REAL ESTATE

ISSUE #34. Should the licensing and regulation of real estate brokers and salespersons be continued and be regulated by the current Department of Real Estate?

Background: The welfare of consumers is best protected when there is a well-regulated real estate profession. Although the DRE faces a number of challenges, it should be continued with the recommendation for further review by the Committee in four years.

Staff Recommendation: *Recommend that the profession should continue to be regulated by the current DRE in order to protect the interests of consumers and be reviewed once again in four years.*

CalBRE values the support of the Committee.

ISSUE # 35: Should the Office of Real Estate Appraisers (OREA) be consolidated with the DRE?

Background: In 2009, AB 33 (Nava) proposed to consolidate the OREA with the DRE. The bill also proposed to make a number other changes, including: reorganize the Department of Financial Institutions and Department of Corporations as divisions of a new Department of Financial Services; and establish a new license to regulate mortgage brokers. The provisions of the bill unrelated to the consolidation of OREA and DRE became problematic and AB 33 was eventually amended and changed to another subject.

According to individuals familiar with the history of OREA’s creation, California originally planned on creating OREA as an independent division of DRE. Placement of the Appraisal Law in the Business and Professions Code, in code sections that begin where the Real Estate Law ends, is one reflection of those original plans. However, a last-minute decision resulted in the creation of OREA as a separate body in 1990 when the Real Estate Appraisers Licensing and Certification Laws were enacted (AB 527, Chapter 491, Statutes of 1990).

There have been periodic attempts to merge OREA with other regulatory agencies including, SB 1866 (Figueroa) from 2002, a vetoed bill that would have folded OREA into DOC, and the Governor’s 2005 California Performance Review, which recommended consolidating the OREA and the DRE in a Division of Real Estate Licensing in a new Commerce and Consumer Protection Department.

OREA’s independence is a federal mandate. Although the federal Financial Institutions Reform, Recovery, and Enforcement Act provides that recommendations of the ASC are nonbinding on the states, the federal law also gives the ASC power to “disapprove” a state’s appraiser regulatory scheme, if the ASC determines that a state agency’s policies, practices, and procedures are inconsistent with Title XI. If a state’s regulator is disapproved, no appraisers licensed or certified by that state may provide valuations in federally-related real estate transactions, something which effectively eliminates the profession in any state so disapproved.

ASC Policy Statement 1, sets out ASC’s standards regarding the structure and independence of state appraisal regulatory agencies. According to that policy statement, ASC does not impose any particular organizational structure on states. However, the ASC believes that: “Ideally, states should maintain totally independent state agencies answerable only to the governor or a cabinet level official who has no regulatory

responsibility for real estate licensing/certification, promotion, development or financing functions ('realty related activities'). A state, however, may choose to locate its state agency within an existing regulatory body. Any state with its appraiser regulatory function in a department that regulates realty related activities must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function."

In August 2004, the ASC sent a letter to Governor Schwarzenegger in response to a proposal in the CPR to transfer OREA from BT&H to a new Department of Commerce and Consumer Protection, under an Undersecretary for Real Estate, who would also supervise DRE. In that letter, the ASC reminded the Governor that the organizational structure of any state agency that oversees the state appraisers' regulatory body must provide maximum insulation for that regulatory body from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions. The ASC concluded by stating, "The ASC strongly urges that State agency decisions, especially those relating to license or certificate issuance, revocation and disciplinary actions, not be made by State officials who are also responsible for realty related activities. State officials should accept and implement the actions of the appraiser board unless they are inconsistent with the public interest and trust. Additionally, such State agency decisions should be final administrative actions subject only to appropriate judicial review."

For these reasons, any consolidation of OREA with DRE must maintain OREA's ability to issue and revoke licenses and act as the sole administrative (non-judicial) arbiter of disciplinary actions involving appraiser licensees.

OREA is a small regulatory agency. It relies upon DRE for many services including personnel services, until recently DRE provided budget and legal services for OREA.

Staff Recommendation: *The Office of Real Estate Appraisers should be consolidated as a part of the DRE. In drafting the consolidation legislation, firewalls should be established to ensure that OREA maintains its independence to issue and revoke licenses. Consideration should be made to creating an independent board of Real Estate Appraisers under DRE to prevent any influence of the real estate industry but allow this board to seek resources from DRE as needed.*

OREA became part of the Department of Consumer Affairs under GRP2 and is now the Bureau of Real Estate Appraisers.

Section 11 – New Issues

This is the opportunity for the bureau to inform the Committees of solutions to issues identified by the bureau and by the Committees. Provide a short discussion of each of the outstanding issues, and the bureau's recommendation for action that could be taken by the bureau, by DCA or by the Legislature to resolve these issues (i.e., policy direction, budget changes, and legislative changes) for each of the following:

1. Issues that were raised under prior Sunset Review that have not been addressed.
The Bureau does not think that there are outstanding issues from the previous sunset.
2. New issues that are identified by the bureau in this report.
The Bureau has not identified any new issues.
3. New issues not previously discussed in this report.
The Bureau has not identified any new issues.
4. New issues raised by the Committees.
The Bureau is not aware of any new issues identified by the Committees

Section 12 – Attachments

Please provide the following attachments:

- A. Bureau's administrative manual.
- B. Current organizational chart showing relationship of committees to the bureau and membership of each committee (cf., Section 1, Question 1).
 - Not applicable.
- C. Major studies, if any
 - See links in Section 1, Question 4 response.
- D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).
- E. CalBRE's quarterly performance measure reports.
 - Not applicable.
- F. CalBRE's annual performance measure report
 - Not applicable.

Section 13 – Bureau Specific Issues

THIS SECTION ONLY APPLIES TO SPECIFIC BOARDS, AS INDICATED BELOW.

Diversions

Discuss the board's diversion program, the extent to which it is used, the outcomes of those who participate, the overall costs of the program compared with its successes

Diversions Evaluation Committees (DEC) (for BRN, Dental, Osteo and VET only)

1. DCA contracts with a vendor to perform probation monitoring services for licensees with substance abuse problems, why does the board use DEC? What is the value of a DEC?
2. What is the membership/makeup composition?
3. Did the board have any difficulties with scheduling DEC meetings? If so, describe why and how the difficulties were addressed.
4. Does the DEC comply with the Open Meetings Act?
5. How many meetings held in each of the last three fiscal years?
6. Who appoints the members?
7. How many cases (average) at each meeting?
8. How many pending? Are there backlogs?
9. What is the cost per meeting? Annual cost?
10. How is DEC used? What types of cases are seen by the DEC?
11. How many DEC recommendations have been rejected by the board in the past four fiscal years (broken down by year)?

Disciplinary Review Committees (Board of Barbering and Cosmetology and BSIS only)

1. What is a DRC and how is a DRC used? What types of cases are seen by the DRCs?
2. What is the membership/makeup composition?
3. Does the DRC comply with the Open Meetings Act?
4. How many meetings held in last three fiscal years?
5. Did the board have any difficulties with scheduling DRC meetings? If so, describe why and how the difficulties were addressed.
6. Who appoints the members?
7. How many cases (average) at each meeting?
8. How many pending? Are there backlogs?
9. What is the cost per meeting? Annual cost?
10. Provide statistics on DRC actions/outcomes.