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Real Estate Principles

Second Edition



Real estate licensing and endorsement

After reading this chapter, you will be able to:

- understand the function of the California Bureau of Real Estate (CalBRE) to oversee, regulate, administer and enforce the real estate law as practiced by licensees;
- identify the activities requiring a real estate license;
- determine the eligibility and education requirements for broker and agent licensing and renewal;
- understand the function of the Real Estate Recovery Fund; and
- comprehend when a mortgage loan originator (MLO) license endorsement is required of licensees who originate mortgages.

bulk sale

business opportunity

California Bureau of Real Estate (CalBRE)

designated officer (DO)

fictitious business name

mobilehome

mortgage loan originator (MLO)

principal

Real Estate Recovery Fund

Chapter 1

Learning Objectives

Key Terms

Real estate law is codified to protect the public in real estate transactions when a real estate licensee or subdivision is involved.¹

The California Legislature created the **California Bureau of Real Estate (CalBRE)** to oversee, regulate, administer and enforce the real estate law. The CalBRE is contained within the Department of Consumer Affairs.

CalBRE oversight

¹ Calif. Business and Professions Code §§10000 et seq.

Real Estate Commissioner

California Bureau of Real Estate (CalBRE)

A government entity which oversees, regulates, administers and enforces California real estate law as practiced by licensees.

The chief officer of the CalBRE is the **Real Estate Commissioner**. The *Real Estate Commissioner's* principal responsibility is to enforce all the real estate laws pertaining to real estate licensing and the Subdivided Lands Act.²

The Commissioner ensures that real estate licensees and members of the public dealing with licensees receive maximum protection.³

As a means of enforcing licensing and subdivision laws, the Commissioner issues regulations addressing conduct of persons falling within the real estate law activities. The regulations are part of the California Code of Regulations known as **Title 10**.

Activities requiring a real estate license

To engage in the business of real estate as a real estate **broker or agent**, a person first obtains a real estate license issued by the CalBRE.⁴

A *real estate broker* is a person who, for compensation or in expectation of compensation, engages in:

- negotiating the sale, purchase or exchange of real estate, leases or business opportunities;
- soliciting listings, buyers or sellers;
- leasing or renting, or offering to lease or rent, property on behalf of an owner or tenant;
- collecting rent from real estate or business opportunities;
- assisting in the purchase or lease of property owned by the state or federal government;
- negotiating real property sales contracts or mortgages to be secured directly or collaterally by real estate or business opportunities on behalf of lenders or borrowers; and
- negotiating the sale or purchase of a mobilehome.⁵

A **real estate agent** is an individual who, for compensation or in expectation of compensation, is employed by a licensed broker to do one or more of the acts of a licensed broker.⁶

Real estate agents are legally classified as *agents of the agent*, since they need to be employed by a real estate broker to render real estate-related services to the public. Agents render all services on behalf of the broker that employs them.

real estate agent

A person who, for compensation or in expectation of compensation, is employed by a licensed broker to do one or more of the acts of a licensed broker.

Delegated supervision, not agency

A sales agent employed by a broker is the agent of the broker, not a client. In turn, the broker is the agent of the client.

² Bus & P C §§10050; 10051

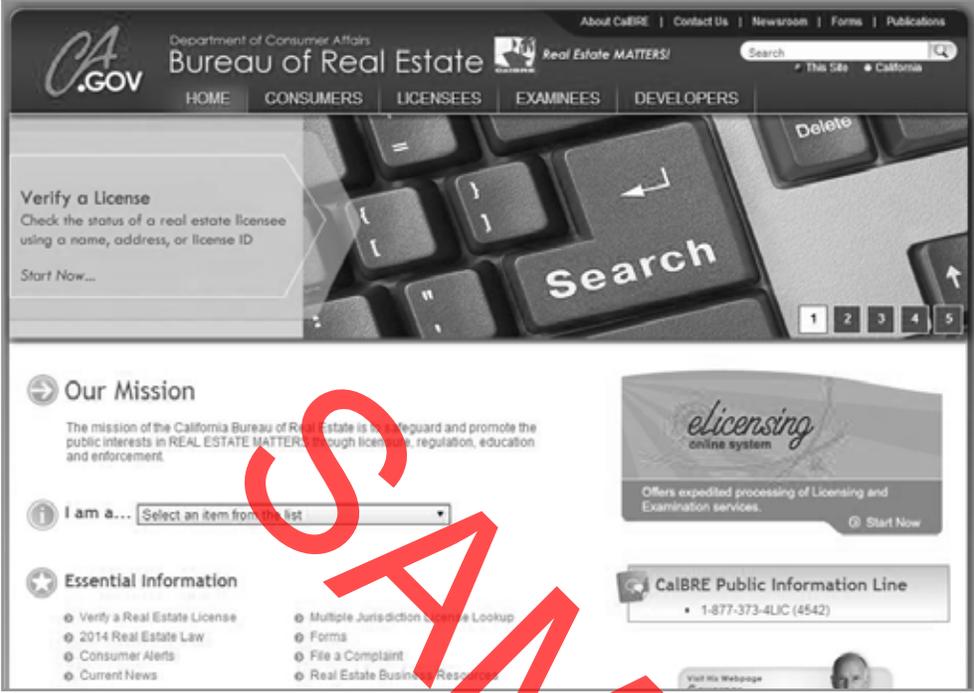
³ Bus & P C §10050

⁴ Bus & P C §10130

⁵ Bus & P C §10131

⁶ Bus & P C §10132

California Bureau of Real Estate (CalBRE) website and contact information



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Room 3070, Fresno, CA
93721 (559-445-2273)

Los Angeles
320 West 4th Street,
Suite 350, Los Angeles,
CA 90013 (213-620-
2072)

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1515 Clay Street, Suite
702, Oakland, CA
94612 (510-622-2552)

San Diego
1350 Front Street, Suite
1063, San Diego, CA
92101 (619-525-4192)

As an agent representing the broker, a real estate sales agent is authorized to prepare listings, sales documents, disclosure sheets, etc., on behalf of the broker. The agent does not do so on their own behalf.

The broker employing agents is required under the CalBRE's supervisory scheme to **reasonably supervise** sales agents' activities. *Reasonable supervision* includes establishing policies, rules, procedures and statements to review and manage:

- transactions requiring a real estate license;
- documents having a material effect upon the rights or obligations of a party to the transaction;
- the filing, storage and maintenance of documents;
- the handling of trust funds;
- advertisement of services that require a license;
- sales agents' knowledge of anti-discrimination laws; and
- reports of the activities of the sales agents.⁷

To be eligible for a broker or agent license, the applicant needs to:

- be at least 18 years old;⁸
- be honest and truthful;

**Licensing
education**

⁷ Calif. Bureau of Real Estate Regulation §2725

⁸ CalBRE Regs. §§2720; 2750

- make the application on the proper form prescribed by the CalBRE;
- complete the mandatory education; and
- pass the qualifying exam.

In addition, all applicants need to be fingerprinted. Fingerprints are not required if the applicant is currently licensed by the CalBRE or holds a real estate license that expired less than two years ago.

All statutory course requirements for both the agent and the broker license may be waived if the applicant is a member of the state bar.⁹

The individual broker license

Every real estate broker maintains a definite place of business which serves as an **office**. The *office* is the place where the broker displays their license and where consultations with clients are held.

If more than one place of business is maintained, the broker applies for and obtains an additional license for each office branch.

Qualifying for a broker license

An agent who has held a real estate agent license for at least two years within the last five years may apply for a broker license.

The agent is required to have worked on a full-time basis (at least 40 hours per week) as an agent during the two-year time requirement.

The CalBRE requires verification of the agent's employment using the **Employment Verification Form** issued by the CalBRE. [See the CalBRE's Employment Verification Form (CalBRE 226)]

Exceptions to the agent employment requirements will be given to an applicant who has:

- at least two years of general real estate experience, or
- graduated with a real estate-specific degree from a four-year college or university.

Experience qualifications

To qualify for the employment exemption based on experience, the broker applicant needs to file a written petition with the CalBRE setting forth the applicant's qualifications. [See the CalBRE's Equivalent Experience Verification Form (CalBRE 227)]

The CalBRE considers the following activities, conducted within the five-year period immediately prior to the date of application for the broker examination, as qualification in lieu of employment as a sales agent:

- experience as an escrow or title officer;
- experience as a mortgage officer directly related to the financing or conveying of property;

⁹ Bus & P C §510153.2

- experience as a subdivider, contractor or speculative builder, if the agent performed substantial duties relating to the purchase, finance, development and sale or lease of real property.

Other types of direct real estate-related experience will be considered by the CalBRE if it satisfies the intent of the law.¹⁰

All broker applicants need to complete **eight statutory courses** of three-semester units or the quarter equivalent, unless exempt.

Five of the eight courses need to be in:

- real estate practice;
- legal aspects of real estate;
- real estate appraisal;
- real estate finance; or
- real estate economics or accounting.¹¹

The remaining three courses can be selected from any of the following:

- real estate principles;
- business law;
- property management;
- real estate office administration;
- escrows;
- mortgage brokering and lending;
- advanced legal aspects of real estate;
- common interest developments (CIDs);
- advanced real estate finance;
- advanced real estate appraisal; or
- computer applications in real estate.¹²

The three courses taken to meet the agent licensing requirements count towards the eight courses a broker needs to complete. Thus, a licensed agent only needs to take five additional courses to qualify to take the broker exam.

On completion of the course requirements, the broker applicant applies to take the state broker licensing exam. The applicant has two years from the CalBRE receipt of the *examination application* to meet the license qualification requirements and take the exam.

If the broker applicant fails the exam, they may apply for reexamination within two years after filing the examination application. No limit is placed on the number of times the applicant may take the exam.

¹⁰ See the CalBRE's *Instructions to License Applicants*, July 2009

¹¹ Bus & P C §10153.2(a)(1)

¹² Bus & P C §10153.2(a)(2)

Pre-licensing coursework

Taking the broker exam

Sidebar

The California real estate salesperson and broker examination

The CalBRE broker and agent licensing examination consists of seven major areas of real estate practice, divided as follows:

1 — Property Ownership and Land Use Controls and Regulations

Approximately 15% of the sales and broker exam.

- classes of property [See Chapter 31 and 32];
- property characteristics [See Chapter 84];
- encumbrances [See Chapter 47 and 52];
- types of ownership [See Chapter 33];
- descriptions of property [See Chapter 40];
- government rights in land [See Chapter 31];
- public controls [See Chapter 85];
- environmental hazards and regulations [See Chapter 16];
- private controls [See Chapter 37];
- water rights [See Chapter 36]; and
- special categories of land.

2 — Laws of Agency

Approximately 17% of the sales and broker exam.

- law, definition and nature of agency relationships, types of agencies, and agents [See Chapter 2 and 3];
- creation of agency and agency agreements [See Chapter 3];
- responsibilities of agent to seller/buyer as principal [See Chapter 2];
- disclosure of agency [See Chapter 3 and 28];
- disclosure of acting as principal or other interest [See Chapter 3];
- termination of agency [See Chapter 24];
- commission and fees [See Chapter 24 and 25]; and
- responsibilities of agents to non-client third-parties [See Chapter 2].

3 — Valuation and Market Analysis

Approximately 14% of the sales and broker exam.

- value [See Chapter 29];
- methods of estimating value [See Chapter 29]; and
- financial analysis [See Chapter 29 and 54].

4 — Financing

Approximately 9% of the sales and broker exam.

- general concepts [See Chapter 54 and 54];
- types of loans [See Chapter 54 and 57];
- sources of financing [See Chapter 54 and 57];
- government programs [See Chapter 56];
- mortgages/deeds of trust/notes [See Chapter 61 and 65];
- financing/credit laws [See Chapter 54];
- loan brokerage [See Chapter 58]; and
- types of loan originators. [See Chapter 54]

5 — Transfer of Property

Approximately 8% of the sales and broker exam.

- title insurance [See Chapter 51 and 52];

- deeds [See Chapter 65];
- escrow [See Chapter 30];
- tax aspects [See Chapter 72];
- special processes; and
- transfer through court supervision [See Chapter 49]; and
- types of vesting. [See Chapter 49]

6 — Practice of Real Estate and Disclosures (Includes specialty areas)

Approximately 25% of the sales and broker exam.

- trust account management [See Chapter 6];
- fair housing laws [See Chapter 7];
- truth in advertising [See Chapter 12];
- record keeping requirements [See Chapter 6];
- agent supervision [See Chapter 2];
- permitted activities of unlicensed sales assistants [See Chapter 26];
- CalBRE jurisdiction and disciplinary actions [See Chapter 1 and 8];
- licensing, continuing education requirements and procedures [See Chapter 1];
- California Real Estate Recovery Fund [See Chapter 1];
- general ethics [See Chapter 7 and 9];
- technology [See Chapter 25];
- property management [See Chapter 73 and 74];
- commercial/industrial/income properties [See Chapter 76];
- specialty areas;
- transfer disclosure statement (TDS) [See Chapter 15];
- natural hazard disclosure (NHD) statements [See Chapter 17];
- disclosure of material facts affecting property value [See Chapter 13];
- need for inspection and obtaining/verifying information [See Chapter 21];
- reports [See Chapter 21 and 22]; and
- servicing diverse populations. [See Chapter 7 and 8]

7 — Contracts

Approximately 12% of the sales exam and 12% of the broker exam.

- general [See Chapter 24, 27 and 55];
- listing agreements [See Chapter 24 and 25];
- buyer-broker agreements [See Chapter 25];
- offers/purchase Contracts [See Chapter 27];
- agreements [See Chapter 75 and 76];
- promissory notes/securities [See Chapter 61];
- purchase/lease options [See Chapter 24 and 67]; and
- advanced fees. [See Chapter 6]

Sidebar

The California
real estate
salesperson
and broker
examination

Cont'd

Once the applicant has been notified by the CalBRE of their passing, the applicant may apply for a broker license and pay the appropriate licensing fee within one year.

Agent license

An agent is an individual employed by a real estate broker to directly participate in brokerage activities on the broker's behalf.

To qualify to take the *real estate agent license CalBRE exam*, an applicant completes a three-semester unit course, or the quarter equivalent, in:

- real estate principles;
- real estate practice; and
- one elective course in the following subjects:
 - legal aspects of real estate;
 - real estate finance;
 - property management;
 - real estate appraisal;
 - real estate economics or accounting;
 - business law;
 - real estate office administration;
 - escrows;
 - mortgage brokering and lending;
 - common interest developments (CIDs); or
 - computer applications in real estate.¹³

The applicant has two years from the date the exam application is filed with the CalBRE to take the exam.¹⁴

An applicant who fails to take the exam and pass within two years from the date of filing the application will have to file a new application to take the exam.

An applicant who fails the agent exam may apply for reexamination. No restriction exists on the number of times the applicant may take the test within the two-year period following the application.¹⁵

Once the CalBRE notifies the applicant of passing, the applicant may apply for an agent license. The application for the license and the fee are to be submitted to the CalBRE within one year of the examination date.

principal

A person, an individual or an entity, acting as a buyer or seller, represented by a broker and their agents.

Exemptions from license requirements

The following are major categories of persons and activities which are exempt from real estate licensing requirements:

- a person dealing with their own property, called a **principal**;

¹³ Bus & PC §10153.4

¹⁴ Bus & PC §10153.8

¹⁵ Bus & PC §10153.8

- an officer of a corporation, or a general partner of a partnership or a manager of a limited liability company (LLC), collectively called **entities**, with respect to property owned or leased by the entity. To be exempt, the acts may not be performed in expectation of a fee;
- an individual with *power-of-attorney* authority;
- an attorney rendering legal services for a client;
- a receiver, trustee in bankruptcy or any person acting under order of a court;
- a trustee of a trust deed lien who is acting under a power-of-sale provision in the trust deed;¹⁶ or
- a resident manager of an apartment complex, hotel, motel or trailer park.¹⁷

Also exempt are individuals acting on behalf of others, such as **unlicensed employees** of real estate brokers, who arrange, accept reservations or money for transient occupancy in:

- vacation rentals such as hotels, motels or residence clubs;
- *common interest developments (CIDs)*, such as condominium projects, planned urban developments (PUDs), community apartment projects and stock cooperatives; or
- an apartment unit or single family residence (SFR).¹⁸

An individual acting without a real estate license, either as a broker or agent, is guilty of a public offense punishable by a maximum fine of \$20,000 for an individual or \$60,000 for a corporation, six months in jail, or both a fine and imprisonment.¹⁹

A real estate broker and real estate agent license is valid for *four years* from the date of issuance noted on the license certificate.²⁰

All real estate brokers and sales agents need to complete at least **45 hours of continuing education (CE)** to renew a license issued by the CalBRE.²¹

The CE requirements for license renewal were legislated to help maintain and improve the level of competence of real estate brokers and agents.

A CalBRE sales agent renewing for the first time needs to complete **45 hours** of CE, consisting of:

- 18 hours of *Consumer Protection* courses;
- 15 hours comprised of five separate three-hour courses in:
 - *Agency*;
 - *Fair Housing*;

Continuing education requirements

¹⁶ Bus & PC §10133

¹⁷ Bus & PC §10131.01

¹⁸ Bus & PC §10131.01

¹⁹ Bus & PC §10139

²⁰ Bus & PC §§10153.6; 10153.7

²¹ Bus & PC §10170.5

- *Trust Funds*;
- *Ethics*; and
- *Risk Management*; and
- the remaining 12 hours composed of either *Consumer Protection* or *Consumer Service* courses, including *Office Management and Supervision* course if they choose to take it.

While brokers and sales agents beyond their first renewal are required to include the Office Management and Supervision course in their 45 CE hours, the CalBRE allows them the option of choosing how to study it.

A licensee may study the Office Management and Supervision material separately or aggregated into an eight-hour “survey” course with the five mandated courses.

Here, the 45 CE hours will consist of:

- 18 hours of Consumer Protection courses;
- mandated topical courses, structured as either:
 - 18 hours comprised of six separate three-hour courses in:
 - Agency;
 - Fair Housing;
 - Trust Funds;
 - Ethics;
 - Risk Management; and
 - Office Management and Supervision; OR
 - eight hours in a survey course covering all six subjects; and
- the remaining hours composed of Consumer Protection or Consumer Service.

Consumer protection

Courses covering the following real estate-based topics are considered *consumer protection* courses:

- real estate financing;
- land use regulation and control;
- consumer disclosures;
- agency relationships;
- capital formation for real estate development;
- fair practices in real estate;
- appraisal and property valuation technique;
- property management;
- energy conservation;
- environmental regulation;
- probate;

Examinations and Exam/License Applications

Broker		Agent	
Examination fee	\$95	Examination fee	\$60
Broker 1st reschedule	\$20	Agent 1st reschedule	\$15
Broker subsequent reschedule	\$30	Agent subsequent reschedule	\$30

Original Exam/License Applications and Corporation License Applications

Original Broker/Corporation License	\$300
Original Agent License	\$245

Renewal License Applications

Broker/Corporation renewing on-time	\$300
Broker/Corporation renewing late	\$450
Agent renewing on-time	\$245
Agent renewing late	\$367

Sidebar

CalBRE licensing and renewal fees

- mineral, oil and gas conveyancing;
- government programs such as redevelopment;
- business opportunities; and
- taxation of real estate transactions.²²

Consumer service courses cover topics designed to help licensees achieve a higher level of competence in sales, organizational and management skills. Examples of consumer service courses include:

- how to market property;
- how to hold an open house;
- how to motivate sellers; and
- how to obtain a listing.

A licensee is exempt from CE requirements if, on the actual renewal date of the real estate license, the licensee:

- is at least 70 years of age; and
- has been a real estate licensee in California for at least 30 consecutive years.²³

Acts for which a real estate license is required may be performed in the name of a **corporation** if a licensed officer of the corporation qualifies the corporation for a license issued by the CalBRE.²⁴

The corporate license

²² Bus & P C §10170.5(a)(6)

²³ Bus & P C §10170.8

²⁴ BRE Reg §2740

Violations of real estate law

Violation of a real estate law by a broker or his sales agent may result in the suspension or revocation of the license by the Real Estate Commissioner. The following are grounds for suspension or revocation of a CalBRE license.

Business and Professions Code §10176

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

- a. *Making any substantial misrepresentation.*
- b. *Making any false promises of a character likely to influence, persuade or induce.*
- c. *A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.*
- d. *Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.*
- e. *Commingling with his or her own money or property the money or other property of others which is received and held by him or her.*
- f. *Claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.*
- g. *The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.*
- h. *The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of the profit.*
- i. *Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.*
- j. *Obtaining the signature of a prospective purchaser to an agreement which provides that the prospective purchaser shall either transact the purchasing, leasing, renting or exchanging of a business opportunity property through the broker obtaining the signature, or pay a compensation to the broker if the property is purchased, leased, rented*

or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange or rent.

- k. Failing to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:
 1. The lender.
 2. Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.
- l. Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.
- m. Generating an inaccurate opinion of the value of residential real property requested in connection with a debt forgiveness sale, in order to do either or both of the following:
 1. Manipulate the lienholder to reject the proposed debt forgiveness sale.
 2. Acquire a financial or business advantage, including a listing agreement, that directly results from the inaccurate opinion of value, with regard to the subject property.

The officer qualifying the corporation for a corporate broker license is called the **designated officer (DO)**. The corporation holds its brokerage license through the DO.

The DO is responsible for the supervision and control of the activities of officers and employees of the corporation. This includes supervision of the activities of agents and brokers employed to act as agents for the corporate broker. Failure of the DO to supervise may result in the suspension or revocation of the DO's real estate license.

The individual broker, when acting as the DO, acts on behalf of the corporation in the capacity of a corporate officer only. The individual who is the DO may also become an employee of the corporation and act as an agent of the corporation rendering services to the corporation's clients.

The DO is liable to the corporation for any failure to supervise agents. However, the DO is not liable to corporate clients for breaching their duty to supervise agents – this supervision is a duty owed to their employer, the corporation and the CalBRE who entrusted them as a designated officer.

A licensee may use a **fictitious business name** in any activity for which a real estate license is required, if the license is issued under the fictitious name.²⁵

²⁵ CalBRE Reg. §2731(a)

Violations of real estate law

Cont'd

designated officer (DO)

The individual who is the licensed officer qualifying a corporation for a corporate broker license.

fictitious business name

The name under which a business or operation is conducted, also known as a d.b.a. ("doing business as...").

Fictitious business name

A *fictitious business name* license will only be granted to a broker who has complied with the filing requirements for a fictitious business name, also known as a *d.b.a.* (“*doing business as...*”).²⁶

The CalBRE will refuse to issue a license under a fictitious business name when:

- the name is misleading or would constitute false advertisement;
- implies a partnership or corporation exists when one does not;
- includes the name of a real estate agent;
- violates California’s Business and Professions Code on fictitious business name requirements; or
- is the name formerly used by a licensee whose license has been revoked.²⁷

Mineral, oil and gas

A real estate broker and agent may solicit and negotiate for the purchase, lease or exchange of mineral, oil and gas property. The licensee may also arrange or negotiate and service loans on mineral, oil and gas property.²⁸

Finally, the licensee may rent mineral, oil and gas property and collect the rents or royalties from the mineral, oil and gas property.²⁹

Child support obligations

The CalBRE cannot issue or renew a real estate license if the applicant is on a list of persons not in compliance with **child support orders** provided by the State Department of Social Services.³⁰

However, the CalBRE may issue a **150-day temporary license** to an otherwise qualified applicant who is on the list of persons neglecting child support. Only one 150-day license will be issued, and a four-year license cannot be issued until a release is obtained from the district attorney’s office.³¹

The State Department of Social Services also provides the CalBRE with a supplemental list of real estate licensees who are delinquent in child support payments for more than four months. If the licensee does not renew their license with the CalBRE within six months of the CalBRE’s receipt of the supplemental list, the license will be subject to suspension.

The CalBRE has the authority to suspend the license of any licensee placed on the supplemental four-month delinquency list. However, before a license can be suspended, the CalBRE gives the licensee notice that the license will be suspended 150 days after the notice is served, unless the licensee receives a release from the district attorney.

²⁶ CalBRE Reg. §2731(b)

²⁷ CalBRE Reg. §2731(c)

²⁸ Bus & P C §10500

²⁹ Bus & P C §10500

³⁰ Calif. Family Code §17520

³¹ Fam C §17520

Also, any real estate licensee whose name appears on the certified list or supplemental list provided by the State Department of Social Services for noncompliance with an order for child support is liable to the CalBRE for a special handling fee of \$95 for each time their name is on the list.³²

The CalBRE commissioner will not issue a license or reinstate a suspended license until the \$95 fee is paid.³³

A **business opportunity** is the sale or lease of the operations and goodwill of an existing business enterprise or opportunity.

Common types of *business opportunities* include:

- liquor stores;
- gas stations; and
- restaurants.

The arranging of a sale or purchase of a business opportunity is governed by the CalBRE. To receive a fee for the sale of a business opportunity, it is necessary to hold a real estate license, unless the person receiving the fee is licensed as a **securities broker** or **dealer** by California or the United States.

The sale of a business opportunity consists of two transactions:

- the sale of the business, including inventory, trade fixtures and goodwill; and
- the sale of the real property itself, whether a fee or leasehold interest, including the building and land.

The documents used in the sale of a business include a:

- *bill of sale*;
- *Uniform Commercial Code (UCC)-1 Financing Statement* for the personal property [See **RPI** Form 436-1]; and
- a *deed* (or assignment of the leasehold and a trust deed) for the transfer of the real property. [See **RPI** Form 404]

On the sale of a business opportunity, the inventory of the business is transferred to the buyer by a **bill of sale**. The transfer of more than one-half the inventory of a business' materials or goods to a person other than the business' customers is called a **bulk sale**. A *bulk sale* needs to comply with the UCC since it is the transfer of personal property.³⁴

The buyer of the inventory gives public notice of the transfer 12 days before the transfer takes place to perfect their interest in the acquisition of the inventory on closing.³⁵

Business opportunities

business opportunity

The assets for a business enterprise including its goodwill. The term includes the sale or lease of the business and goodwill of an existing business enterprise or opportunity.

Bulk sales

bulk sale

The transfer of more than one-half the inventory of a business' materials or goods to a person other than the business' customers.

³² Fam C §17520; CalBRE Reg. §2716.5

³³ CalBRE Reg. §2716.5

³⁴ Calif. Commercial Code §6102

³⁵ Com C §6105

Mobilehome sales

mobilehome

Property designed to be used as a dwelling, classified as either personal or real property depending on the method of attachment to a parcel of real estate. Also known as a manufactured home.

Mobilehomes have a unique legal status, being either real estate or personal property.

A *mobilehome*, also called a *manufactured home*, is a structure:

- at least eight feet in width, 40 feet in length or more than 320 square feet when transported in one or more sections;
- built on a permanent chassis;
- designed to be used as a dwelling with or without a permanent foundation.³⁶

A mobilehome that meets the requirements and is attached to a permanent foundation is no longer considered personal property but **real estate**, since it is a permanent fixture or an improvement to real estate.³⁷

The broker handling the sale of a mobilehome that is considered real estate conducts themselves as though they are handling the sale of real estate.

The rules for buying, selling, registering and encumbering mobilehomes that are not considered real property differ from the rules for real estate sales.

The government agency responsible for the registration of mobilehomes is the **California Department of Housing and Community Development (HCD)**. Mobilehomes are registered with the *HCD*, unless the mobilehome is considered real estate.³⁸

When a new mobilehome is first purchased it is registered on a form provided by the HCD, referred to as the **original registration** of the mobilehome.

At the time of the *original registration* of the mobilehome, the HCD creates a permanent title record for the mobilehome.

Real Estate Recovery Fund

Real Estate Recovery Fund

Funds available to individuals who have obtained a final-court judgment against a licensee and are unable to recover the judgment from the licensee. Also known as the Consumer Recovery Account.

The **Real Estate Recovery Fund**, also known as the *Consumer Recovery Account*, is available to individuals who have obtained a final-court judgment against a real estate licensee for losses caused while acting as an agent and are unable to recover the judgment from the licensee.

The judgment needs to be based on:

- fraud, misrepresentation or deceit;
- conversion of trust funds; or
- criminal restitution.³⁹

For causes of action which occurred on or after January 1, 2009, the threshold is \$50,000 for one transaction and \$250,000 for any one licensee.⁴⁰

³⁶ Calif. Health and Safety Code §18007

³⁷ Health & S C §§18039.1; 18551

³⁸ Health & S C §§18206; 18000 et seq.

³⁹ Bus & P C §10471

⁴⁰ Bus & P C §10474

A licensee's license will be suspended and will not be reinstated until the licensee repays any amounts paid from the *Real Estate Recovery Fund* to satisfy a judgment against them.⁴¹

Licenses who make or arrange residential mortgages are required to obtain a CalBRE **mortgage loan originator (MLO) license endorsement**.

A *residential mortgage* is any loan primarily for personal, family or household use, known as a **consumer purpose mortgage**, secured by a deed of trust on a dwelling. Dwellings include:

- one-to-four unit residential properties;
- mobile homes; and
- trailers or houseboats, if they are used as residences.⁴²

In order for a transaction to trigger the CalBRE MLO license endorsement requirement, it needs to meet both the prongs of the residential mortgage definition:

- a *consumer purpose*; and
- security in the form of a *dwelling*.

Thus, whether or not a CalBRE MLO license endorsement is required depends on the purpose of the mortgage, not just the property securing it. Mortgages for personal and household purposes when secured by a dwelling are consumer purpose mortgages, and trigger the endorsement requirement. On the other hand, loans made for business, investment or agricultural purposes whether or not secured by a dwelling are not made for a consumer purpose, and do not trigger the endorsement requirement.

To become CalBRE-endorsed as an MLO, a licensee needs to:

- complete the national and state California-specific mortgage brokerage examination;
- submit a MLO licensee endorsement application through the *Nationwide Mortgage Licensing System and Registry (NMLS)*;
- complete and supply a criminal background check, including fingerprinting, to the NMLS;
- complete 20 hours of pre-license education; and
- provide authorization for the NMLS to obtain a credit report on the licensee.

The NMLS is an offshoot of the larger regulatory scheme known as the **Secure and Fair Enforcement (SAFE) Mortgage Licensing Act**.

Mortgage loan brokerage

mortgage loan originator (MLO)

A California Bureau of Real Estate (CalBRE) licensee who receives fees to arrange a consumer mortgage other than a carryback.

MLO endorsement

⁴¹ Bus & P C §10475

⁴² Bus & P C §10166.01; 12 Code of Federal Regulations §108.103

To keep their CalBRE endorsement, MLOs need to meet minimum licensing/endorsement standards, pay the yearly renewal fee and complete a minimum of eight hours of continuing education annually, including:

- three hours of federal law and regulations;
- two hours of ethics (including instruction on fraud, consumer protection and fair lending issues); and
- two hours on lending standards for nontraditional mortgages.

Chapter 1 Summary

The California Legislature created the Bureau of Real Estate (CalBRE) to oversee and regulate the real estate law. The chief officer of the CalBRE is the Real Estate Commissioner, who enforces all the real estate laws pertaining to real estate licensing and the Subdivided Lands Act.

To engage in the business of real estate as a real estate broker or agent, a person first obtains a real estate license issued by the CalBRE.

A real estate broker is a person who, for compensation or in expectation of compensation, engages in real estate activities, such as:

- negotiating the sale, purchase or exchange of real estate;
- soliciting listings, buyers or sellers; or
- leasing or renting on behalf of an owner or tenant.

A real estate agent is a person who, for compensation or in expectation of compensation, is employed by a licensed broker to do one or more of the acts of a licensed broker.

To qualify to take the CalBRE real estate agent license exam, an applicant completes three statutory courses of three-semester units or the quarter equivalent, unless exempt, and pass the CalBRE agent licensing exam.

An agent who has held a real estate agent license for at least two years within the last five years may apply for a broker license. All broker applicants are to complete eight statutory courses of three-semester units or the quarter equivalent, unless exempt, and pass the CalBRE broker licensing exam.

A real estate broker and agent license is valid for four years from the date of issuance. To renew their CalBRE license, real estate brokers and sales agents are to complete at least 45 hours of continuing education (CE) every four years.

The Real Estate Recovery Fund is available to individuals who have obtained a final-court judgment against a real estate licensee and are unable to recover the judgment from them. The threshold for recovery is \$50,000 for one transaction and \$250,000 for any one licensee

Licenses who make or arrange residential mortgages are required to obtain a CalBRE mortgage loan originator (MLO) license endorsement. A residential mortgage is any mortgage primarily for personal, family or household use secured by a deed of trust on a dwelling.

To become CalBRE-endorsed as an MLO, a licensee first completes the national and state mortgage brokerage examination, and completes 20 hours of pre-license education. To keep their endorsement, MLOs complete a minimum of eight hours of continuing education annually.

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Chapter 1 Key Terms

Quiz 1 Covering Chapters 1-3 is located on page 606.