

BACKGROUND PAPER FOR THE DEPARTMENT OF REAL ESTATE

**(Oversight Hearing, March 7, 2011, Senate Committee on
Business, Professions & Economic Development)**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
FOR THE DEPARTMENT OF REAL ESTATE**

BRIEF OVERVIEW OF THE DEPARTMENT OF REAL ESTATE

The Department of Real Estate (DRE) in the Business, Transportation and Housing Agency (BT&H) is responsible for regulating the practice of real estate brokers and real estate salespersons in California. Originally enacted in 1917, the California law was the first real estate license law in the United States. DRE currently licenses more than 483,000 persons in California, with over 20,800 new licenses issued each year, and more than 95,000 licenses renewed each year. Licensed salespersons (333,330) outnumber licensed brokers (149,920) at a ratio of more than two to one. The DRE licenses and regulates real estate salespeople, brokers, and corporations. The DRE approves continuing education courses and providers as well as private pre-licensing course offerings. The DRE also regulates the building and time share industries with the review and approval of subdivision public reports.

In addition, DRE licenses some 44 "prepaid rental listing services," which supply prospective tenants with a list of residential real properties available for tenancy under an arrangement where the prospective tenants are required to pay a fee in order to obtain the list. Any person offering those services must hold a prepaid rental listing services license unless otherwise licensed as a real estate broker.

To implement mandates established by federal legislation (The Secure and Fair Enforcement Mortgage Licensing Act, called the SAFE Act), the California Legislature enacted SB 36 (Calderon, Chapter 160, Statutes of 2009), which requires that beginning, January 1, 2011, 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 deadline.

The DRE is responsible for implementation and enforcement of the Real Estate Law, as contained within the framework of Division 4 of the Business and Professions Code. The current DRE mission statement, as stated in its Five Year Strategic Plan for 2010-2015, is:

***To safeguard and promote the public interests in REAL ESTATE MATTERS
through licensure, regulation, education, and enforcement.***

The Real Estate Commissioner (Commissioner), who serves as the chief executive of the Department, is appointed by the Governor, subject to Senate confirmation. The Commissioner is mandated to enforce the Real Estate Law in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees. The current Commissioner, Jeff Davi, was appointed by Governor Arnold Schwarzenegger in October 2004. In order to qualify for appointment, a Real Estate Commissioner shall have been for five years an active real estate broker in California, or have had five years of related experience during the past ten years.

The law and DRE regulations establish a standard of knowledge, measured by a written examination for licensing real estate agents, and a minimum standard of disclosure for qualifying subdivided lands offerings. DRE also works to increase consumer awareness and collaterally assists the real estate industry in expanding its standards and increasing its level of professional ethics and responsibility.

A person must obtain a real estate license in order to engage in the real estate business and act in the capacity of, advertise, or assume to act as a real estate broker or salesperson in California. An applicant for real estate salesperson licensure must fulfill certain real estate education requirements and pass a real estate examination before obtaining the license. In most cases, a broker applicant, in addition to completing the educational prerequisites, must have two years of real estate experience or an equivalent type of experience before applying for the examination. Salesperson applicants must complete specified educational requirements before applying for the examination. Broker and salesperson licenses are issued for a four-year period. In general, both types of licenses may be renewed by submitting the appropriate application and fee, and evidence of completion of 45 hours of DRE-approved continuing education courses.

DRE also enforces the Subdivided Lands Act and the Vacation Ownership & Timeshare Act, the purpose of which is to ensure that subdividers of real property deliver to the buyer what was agreed to at the time of sale. The law covers most standard land subdivisions and various types of common interest developments, time-shares, certain undivided interest developments, and out-of-state time-share subdivisions offered for sale in California. Before real property which has been subdivided can be marketed in California, the subdivider must obtain a "public report" from DRE. Prior to the issuance of a public report, the subdivider must file an application along with documents supporting the representations made in the application. In sales (or leases exceeding one year in duration) of any new residential subdivisions consisting of five or more lots, units or interests, DRE requires that a prospective purchaser or tenant must be given a copy of the public report. The public report serves two functions aimed at protecting purchasers or tenants of subdivision interests: (1) it discloses material facts about title, encumbrances, and related information; and (2) it ensures adherence to affirmative standards for creating, operating, financing, and documenting the project.

DRE's Enforcement and Audit sections investigate complaints regarding alleged violations of the Real Estate Law, the Department's regulations, and other applicable laws. If a complaint is supported by evidence, the Commissioner may, after providing an opportunity for an administrative hearing, revoke, suspend, or deny a real estate license. The Commissioner may also issue desist and refrain orders to stop activities that are in violation of these laws

The Department regularly publishes three bulletins to educate its licensees. The *Real Estate Bulletin*, which is circulated quarterly to all current licensees, contains information on legislative and regulatory changes, commentaries, and advice. The *Mortgage Loan Bulletin* is published twice yearly as an educational service to real estate licensees engaged in mortgage lending activities. Finally, the *Subdivision Industry Bulletin* is published annually for title companies and persons involved in the building industry. DRE also publishes numerous forms, books, brochures, and videos relating to licensee activities, duties and responsibilities, market information, taxes, financing, and investment information. All DRE publications are electronically available free of charge on the DRE Website at www.dre.ca.gov.

The revenue necessary to operate DRE is derived from fees charged for real estate licenses, subdivision public reports, and various other permits issued by DRE. In addition to its operating funds, DRE also maintains the Real Estate Recovery Account (RERA); currently, 12% of all license fees collected by DRE are credited to this account. Under certain conditions, when a consumer obtains a civil judgment against a real estate licensee as a result of fraud, misrepresentation, deceit, or conversion of trust funds by a licensee while acting as an agent in the transaction, that consumer may seek reimbursement from RERA for actual and direct loss up to \$50,000 for any one transaction and \$250,000 per licensee.

The total revenues anticipated by the DRE for FY 2010/11 is \$48,838,000 and for FY 2011/12 is \$50,256,000. This anticipated increase in revenue is primarily based on the implementation of the new mortgage loan originator license endorsement requirements beginning January 1, 2011. The total expenditures anticipated for the DRE for FY 2010/11 is \$44,060,000, and for FY 2011/2012 is \$45,570,000. The DRE anticipates it would have approximately 11.3 months in reserve for FY 2010/11, and 11.5 months in reserve for FY 2011/12. The DRE spends approximately 63% of its budget on its enforcement program. For FY 2009/2010 DRE had 344 approved positions. 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 received budget augmentation for 27 new PYs in FY 2010/2011 and is seeking additional budget augmentation in FY 2011/2012.

DRE is headquartered in Sacramento and maintains branch offices in Oakland, Fresno, Los Angeles, and San Diego.

In July 2010, the DRE submitted its sunset report to the Senate Business, Professions and Economic Development Committee (BP&ED.) The report was submitted at the request of BP&ED Committee Chair, at the time, Senator Gloria Negrete McLeod. In this report provided in Members' binders, the DRE describes more detailed information regarding the responsibilities, operations and functions.

INITIAL OVERSIGHT REVIEW

This is the initial review of the Department of Real Estate by this Committee. The BP&ED Committee's jurisdiction includes oversight of the DRE.

Recent Legislation

In addition to the incremental historical increase in responsibilities, the authority and jurisdiction of the DRE has been most recently significantly expanded as described below:

Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act) was signed into law on July 30, 2008 to enhance consumer protection and reduce fraud in mortgage loan transactions. The SAFE Act requires all 50 states and 5 territories to put into place a licensing system for mortgage loan originators that meets the minimum requirements of the SAFE Act. The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have created, and will maintain, the Nationwide Mortgage Licensing System and Registry (NMLS&R) to streamline the licensing process with oversight by HUD. The NMLS&R contains a single license record for each mortgage loan lender, broker, branch and mortgage loan originator which can be used to apply for, amend and renew a license in any participating jurisdiction.

SB 36 (Calderon, Chapter 160, Statutes of 2009) was enacted by the Legislature and signed into law in October 2009, in order to bring California Real Estate Law, Finance Lenders Law, and Residential Mortgage Lending Act into compliance with the SAFE Act, by requiring those engaging in mortgage loan origination activities to obtain a license from Department of Corporations, or if a real estate licensee, to obtain a license endorsement from the DRE. This bill prohibits any DRE licensee after, December 31, 2010, from engaging in the business as a mortgage loan originator without first obtaining and maintaining a loan originator's license endorsement and registering with the NMLSR. The license endorsement will only be available to real estate licensees that comply with the federal SAFE Act's background check, education requirements, and personal character requirements. CSBS and AARMR have determined that all license endorsements will expire on December 31st of each year, and must be renewed, effective January 1st of each year. Additionally, SB 36 mandates the submission of mortgage call reports, reporting of enforcement actions, and public access to certain licensing information.

SB 94 (Calderon, Chapter 630, Statutes of 2009) prohibits persons from charging advance fees to borrowers in connection with a loan modification, and requires those who wish to charge a fee for loan modification services to provide a notice to borrowers regarding other options available to the borrower. As a result of the passage of SB 94, any person, including real estate licensees and lawyers are prohibited from demanding or collecting an advance fee from a consumer for loan modification or mortgage loan forbearance services affecting 1-4 unit residential dwellings. Most of the provisions of SB 94 will sunset on January 1, 2013 unless otherwise extended by new legislation.

As a result of a declining housing market and a significant increase in the number of notice of defaults filed, fraud associated with loan modification scams escalated to historic levels. In addition, a number of loan modification companies were charging homeowners \$1,000 to \$4,000 for little to no work. In most cases, companies ask for the money upfront and lure homeowners in with false promises and guarantees. This bill was aimed at solving the issue of these "loan modification specialists" charging absurd fees for little to no work completed. In 2009, the DRE filed actions against nearly 600 persons and entities that were providing loan modification services illegally. Another 150 such actions were filed in the first four months of 2010.

Significant Issue: The Mortgage Crisis

In the middle of the last decade, what started out as a nontraditional and subprime mortgage problem evolved into a global liquidity crisis and an economic downturn that some labeled the Great Recession, because of its severity. Major financial institutions failed; others merged or were acquired in last-ditch efforts to save themselves. The stock market went into free fall. California's unemployment rate climbed to more than 12%. Home equity became a vanishing commodity, eroding even more quickly than the retirement savings accounts of aging baby boomers. Consumer confidence fell to all-time lows. Notices of default and foreclosures grew to all-time highs.

In 2008, nearly a quarter million Californians lost their homes to foreclosure. Over 96% of those properties reverted to the lender. When it first began, the problem seemed limited to subprime borrowers with poorly underwritten and inadequately disclosed mortgage loans. Yet, as the problem grew and the economy has weakened, the effects of what was initially labeled "the subprime mortgage crisis" spread to borrowers among all walks of life and income levels, and to all types of loans. For some, the problem has been mortgage affordability. Either mortgage payments grew to levels that are no longer sustainable by borrowers, or borrowers' financial situations have declined to levels that can no longer accommodate an unchanged mortgage payment.

Affordability, however, was the only symptom of a growing problem. What once appeared to be solely an affordability problem increasingly became a negative equity problem. More borrowers left mortgages they could afford, because home values had fallen below the mortgage values, and the borrowers would rather walk away from a bad investment than spend years trying to rebuild home equity.

On the Federal level, in 2009 Congress created the Financial Crisis Inquiry Commission (FCIC) to examine the causes of the financial crisis and to report its findings to the Congress, the President, and the American people. Chaired by former State Treasurer Phil Angelides, the FCIC focused upon various factors of the financial meltdown including: fraudulent practices by mortgage lenders, reckless risk-taking by Wall Street banks and other financial institutions; the federal oversight of Fannie Mae and Freddie Mac, the entities that supported the secondary market for mortgages, and decades of government efforts to encourage homeownership.

The FCIC released its final report on the causes of the financial crisis in January 27, 2011, concluding that the financial crisis was an "avoidable" disaster caused by widespread failures in government regulation, corporate mismanagement and heedless risk-taking by Wall Street. The commission faulted shoddy mortgage lending, the excessive packaging and sale of loans to investors and risky securities backed by the loans.

In September 2010 the *Sacramento Bee* reported that foreclosure sales accounted for 43% of all property sales in California, the third-highest percentage among all states. In the second quarter of 2010, the April to June period, 62,492 California properties in some stage of foreclosure were sold.

Throughout the crisis, 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.

In May, 2009, the Legislative Analysts Office released a report titled, "*Department of Real Estate: Opportunities to Improve Consumer Protection*," and pointed out a number of deficiencies in the DRE's licensing, education, enforcement and recovery programs.

November 12, 2010 the *Sacramento Bee* published the results of study in which the newspaper found that of some 260 people charged with a real estate-related crime or sued by the state in recent years, at least 45 of those accused or convicted were still listed as licensed brokers or salespeople by the DRE, and consumers would have no way of knowing of the accusations. Another dozen had their real estate licenses suspended or revoked.

In July 2009, the Washington, DC based non-profit *Center for Public Integrity* published that an investigation of the real estate appraisal industry in California and Florida found that since 2005, one in six appraisers whose licenses were revoked or surrendered kept their real estate sales or broker's licenses. This allowed them to continue working in the real estate industry negotiating sales to homebuyers, who likely know little about their pasts.

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 their 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.

CURRENT SUNSET REVIEW ISSUES

The following are issues pertaining to the DRE, and other areas of concern for the Committee to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The DRE and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

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.*

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.

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 a decade ago, the Legislature enacted AB 269 (Correa, Chapter 107, Statutes of 2002) to state specifically in each respective licensing act 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 stated that protection of the public was 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."

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.

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.*

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.*

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?*

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.

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.*

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.*

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.*

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.

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 a 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.

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 order or final decision that the broker violated the trust fund provisions of B&P Code §10145 or a related regulation, 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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.*

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 licensee. This would reduce costs to the consumer and create a different, more simplified, application process.

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.

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.

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.

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.

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.”*

**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.*

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 several services including personnel services, and until recently DRE also provided budget 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.*