

BACKGROUND PAPER FOR The Department of Real Estate

Joint Oversight Hearing, November 19, 2020

**Senate Committee on Business, Professions and Economic Development
and Assembly Committee on Business and Professions**

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

BRIEF OVERVIEW OF THE DEPARTMENT OF REAL ESTATE

History and Function of the Department

Real estate licensing in California commenced in 1917. The Department of Real Estate (DRE, or Department) is the State entity currently charged with responsibility to enforce the Real Estate Law, the Subdivided Lands Act, and the Vacation Ownership and Time-share Act of 2004. DRE's programs are in place to satisfy the Department's statutorily mandated obligations of licensing and regulating mortgage loan originators, real estate and prepaid listing service licensees, reviewing and approving subdivision and time share offerings, and approving continuing education (CE) and pre-license courses. Each of DRE's programs contribute toward satisfying its mission of protecting and serving the interests of the public in real estate transactions and providing related services to the real estate industry. Specifically, BPC § 10050 requires the Real Estate Commissioner to enforce all laws in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees.

With respect to its core functions, DRE currently licenses 421,624 persons in California. Licensed real estate salespersons (291,759) outnumber real estate licensed brokers (129,865) nearly two to one. Of these real estate licensees, over 26,000 have a Mortgage Loan Originator (MLO) endorsement that allows the licensee to originate residential mortgage loans. In FY 2019/2020, DRE issued over 17,396 new salesperson licenses and 3,911 new broker licenses. DRE's enforcement efforts resulted in 184 license application denials, 414 licensing disciplinary actions (revocations, surrenders, suspensions, and public reprovals), and 20 desist and refrain orders. Additionally, DRE issued over 2,852 final public reports, which translated to 33,679 new housing units being offered for sale in California in FY 2019/20.

DRE's current mission statement is as follows:

To safeguard and promote the public interests in real estate matters through licensure, regulation, education, and enforcement.

In 2012, Governor Brown submitted a reorganization plan to the Legislature. As a result, on July 1, 2013, DRE became a bureau within the Department of Consumer Affairs (DCA), henceforth referred to as CalBRE. AB 1317 (Frazier, Chapter 352, Statutes of 2013) enacted the statutory changes necessary to reflect the changes in law made by the Governor's Reorganization Plan No. 2 (GRP2), including moving the former DRE from under the jurisdiction of the former Business, Transportation, and Housing Agency to become the new CalBRE within DCA in the Business, Consumer Services, and Housing Agency.

On March 9, 2016, the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions, as part of their sunset review hearing, discussed various issues with the CalBRE. The hearing background paper noted that, since the GRP2, the "CalBRE appears to be lacking in the receipt of some key services like human resources support and management direction. In addition, the CalBRE noted that purchase orders, IT orders, contract payments, employee reimbursement, and miscellaneous human resources requests have been skipped or have not been processed since DRE became the CalBRE." Information shared by DCA, in connection with the sunset review hearing, showed that the cost to operate the CalBRE increased by about \$3.6 million annually, from about \$6.7 million in FY 2011-12 to \$10.3 million in FY 2016-17.

In July 2018, CalBRE reverted back into a Department of Real Estate through the passage of SB 173 (Dodd, Chapter 828, Statutes of 2017). DRE was removed from within DCA and placed within the Business, Consumer Services, and Housing Agency (BCSH). The DRE was without an appointed Commissioner from July 2018 to April 2020. On April 4, 2020, Doug McCauley was appointed Commissioner of the DRE. According to the Department, on June 30, 2020, all positions requested pursuant to the Budget Change Proposal submitted per SB 173 were filled with the exception of the training officer position.

DRE does not currently have a "board" or statutory advisory body. 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.

While DRE does not hold public meetings, it does use its website and online platforms to disseminate information to industry and the public. DRE has previously posted consumer alerts on its website on topics including: the hacking of Wire and Electronic Fund transfers in real estate transactions; timeshare exit/release companies; researching potential escrow agents; and rental scams for apartment seekers. DRE also notifies licensees by email to alert them of important law changes, the publication of the Real Estate Bulletin, important license advisories, as well as individual notifications particular to their license. Finally, DRE staff take part in consumer protection-focused events throughout the state.

DRE notes that executive staff has a current practice of meeting with the real estate industry generally twice a year to provide updates on all departmental program areas and three times a year to discuss the public report process. This report process discussing includes form changes, statute and/or regulation changes, policy or procedure changes and other issues related to the Subdivided Lands Law.

DRE also notes that its Education and Research Program meets with the California Community Colleges (“CCC”) Real Estate Endowment Advisory Board and the California State University (“CSU”) Real Estate Education Endowment Advisory Board to discuss and provide input and guidance on the financial status of the endowments, review scholarship requirements, review fiscal allocations for the next academic year, and review and approve real estate program improvement grants. DRE is on the CSU Board and has policy input. Education staff participate in the annual Financial Literacy Fair sponsored by the Department of Financial Protection and Innovation, formerly the Department of Business Oversight.

Finally, the Enforcement Program at DRE regularly participates in task force meetings with various district attorney offices, local real estate associations, and a number of law enforcement agencies. DRE Executive, Audit, and Enforcement staff participate in outreach efforts consisting of contacting and working with local licensee organizations, such as real estate, mortgage loan, property management, and escrow associations throughout the state.

Fiscal, Fund, and Fee Analysis

At the end of FY 2019/20, the DRE had an estimated 8.7-month reserve (72.5 percent) in the Real Estate Fund. Per Business and Professions Code Section 10226, if the Real Estate Fund exceeds an amount equal to 150 percent of DRE’s authorized budget as of June 30 of the current fiscal year, for the following fiscal year the Commissioner shall reduce the real estate license and subdivision fees so that the balance of the Real Estate Fund does not exceed an amount equal to 150 percent of DRE’s authorized budget for that following fiscal year.

Fund Condition						
(Dollars in Thousands)	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20*	FY 2020/21**
Beginning Balance	\$44,106	\$44,348	\$43,314	\$39,140	\$39,910	\$45,035
Prior Year Adjustment		\$736	\$(2,457)	\$2,252	\$3,586	
Revenues	\$51,527	\$52,199	\$51,280	\$48,227	\$50,298	\$50,677
Total Revenue	\$95,633	\$97,283	\$92,137	\$89,619	\$104,694	\$95,712
Budget Authority	\$52,295	\$52,204	\$54,085	\$52,995	\$55,883	\$54,884
Expenditures	\$51,196	\$50,306	\$49,984	\$46,273	\$50,881	\$54,884
Business, Consumer Services, and Housing Agency	\$0	\$0	\$0	\$239	\$265	\$265

Financial Information System for CA	\$89	\$64	\$67	\$6	(7)	\$0
Supplemental Pension Payments	\$0	\$0	\$0	\$685	\$5,251	\$0
Statewide General Administrative Expenditures (Pro Rata)	\$0	\$3,599	\$2,946	\$2,506	\$3,269	\$7,023
Loans Repaid From General Fund	\$0	\$0	\$0	\$0	\$10,900	\$0
Fund Balance	\$44,348	\$43,314	\$39,140	\$39,910	\$45,035	\$33,540
Months in Reserve	9.86	9.81	9.58	8.03	8.69	6.61

*FY 2019/20 not yet closed

**FY 2020/21 projection assumes full expenditure of authority

On January 10, 2020, the Governor's Budget for FY 2020/2021 for DRE was proposed at \$56.182 million. It is also important to note that DRE loaned \$10.9 million to the General Fund per Item 2320-011-0317 in the Budget Act of 2002. The \$10.9 million has been repaid in FY2019-20 along with interest of \$4.625 million. After negotiations due to the COVID-19 pandemic, the Governor's Budget for the FY 2020/2021 for DRE was enacted at \$55.519 million.

Real estate licenses are issued and renewed for a period of four years. In addition to the four-year term, licensees are provided two years past their expiration date to renew a license on a late basis. Its last fee change occurred in 2009, when license and examination fees were increased to the statutory maximum.

Fee Schedule and Revenue (list revenue dollars in thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2016/17 Revenue	FY 2017/18 Revenue	FY 2018/19 Revenue	FY 2019/20 Revenue *	% of Total Revenue
Exam Fees							
Salesperson Exam Fee	\$60	\$60	\$3,100	\$3,180	\$2,856	\$2,490	6.33%
Broker Exam Fee	\$95	\$95	\$500	\$533	\$492	\$444	1.07%
Original License Fees							
Salesperson	\$245	\$245	\$6,989	\$6,273	\$5,601	\$4,956	12.97%
Broker or Broker /Officer	\$300	\$300	\$939	\$846	\$767	\$682	1.76%
Corporation	\$300	\$300	\$571	\$550	\$507	\$509	1.16%

Renewal Fees								
Salesperson On Time	\$245	\$245	\$9,588	\$9,122	\$8,982	\$8,514	19.71%	
Salesperson Late	\$367	\$367	\$3,512	\$3,176	\$3,182	\$2,794	6.89%	
Broker On Time	\$300	\$300	\$6,445	\$5,910	\$5,239	\$5,012	12.31%	
Broker Late	\$450	\$450	\$1,324	\$1,192	\$1,106	\$924	2.47%	
Corporation On Time	\$450	\$450	\$1,115	\$1,043	\$963	\$1,001	2.24%	
Corporation Late	var	var	\$269	\$282	\$249	\$224	0.56%	
MLO Endorsement Fees*								
Salesperson, Broker, and Real Estate Corporation	\$300	Set in regulation = \$300	\$6,864	\$7,003	\$6,959	\$7,244	15.28%	
Subdivision Filing Fees	var	var	\$8,268	\$8,788	\$7,817	\$6,813	17.25%	

*FY 19/20 not yet closed

MLO license endorsements are issued for a period of one year and all such endorsements expire each year on December 31st. Endorseees can renew their endorsement during November and December of each year, or reinstate a recently lapsed endorsement during the following January and February. There have been no fee changes to the MLO endorsement since DRE began MLO licensing in March, 2010. Additionally, with the transition from BRE to DRE, DRE no longer participates in DCA's pro rata support. As of Fall 2020, the Department indicated it has saved up to \$5 million due to this change.

At the end of FY 2019/2020, DRE had spent \$50,881 total on personnel services and OE&E. Generally, personnel services costs increased and OE&E costs decreased after the reorganization from BRE to DRE.

Expenditures by Program Component (list dollars in thousands)								
	FY 2016/17		FY 2017/18		FY 2018/19		FY 2019/20*****	
	Personnel Services	OE&E						
Enforcement*	\$17,488	\$6,760	\$18,213	\$4,897	\$17,761	\$5,464	\$19,713	\$4,281
Licensing**	\$5,785	\$1,847	\$6,014	\$1,992	\$5,698	\$1,705	\$5,788	\$2,190
Administration* **	\$4,566	\$3,571	\$4,719	\$2,733	\$5,409	\$4,471	\$6,576	\$5,720
Subdivisions	\$4,605	\$545	\$5,016	\$573	\$5,194	\$571	\$5,738	\$876
DCA Pro Rata****	-	\$5,139	-	\$5,827	-	-	-	-
TOTALS	\$32,444	\$17,862	\$33,962	\$16,022	\$34,062	\$12,211	\$37,815	\$13,066

*Audits and Legal included within Enforcement.

**Examination, Education & Research included within Licensing

***Administration includes costs for executive staff, administrative support, and fiscal services.

****DCA Pro Rata charge ended in 17/18 as DRE became own department beginning in 18/19.

DRE reported a high vacancy rates during the first year of the return to department status. The DRE attributes this to the Department's need to first staff its Human Resources section in order to be able to fill vacancies. DRE also reports that it will continue to face the loss of institutional knowledge due to the projected retirement of key employees over the next five years. DRE is developing a succession-planning module to prepare for the future of the Department.

The Department experienced retention and recruitment difficulties with the request to reclassify employees in its Subdivision Program as part of the transition. DRE, along with CalHR, is working to consolidate the classifications used in the Subdivision Program area into an appropriate class.

DRE reports that it facilitates staff development through internal training, including bi-monthly presentations by DRE legal attorneys to enforcement and audit staff on relevant issues, and the services offered by the Department of Human Resources and other entities as needed. DRE spends an average of \$26,000 per year on training.

As of Fall 2020, DRE shared that it has continued to move forward on its staffing efforts despite the COVID-19 pandemic.

Licensing

DRE's performance targets for the Licensing Program include processing exam, license applications, and renewal applications is under 30 days. The target goal for completion of other licensing transactions is under 20 days. Given the cyclical nature of the workflow throughout the year, DRE reports that on average it meets these targets. However, given the unexpected impacts associated with the COVID-19 pandemic, DRE did experience increased licensing processing timeframes in FY 2019/20.

Over the course of the last three fiscal years (FYs), there has been a decrease in the average time to process exam and license applications.

DRE has recently experienced increased licensing processing timeframes, as well as extended wait times associated with taking the exam due to the COVID-19 pandemic. However, with exams once again being offered, staff acclimating to working remotely, and the implementation of proposed enhancements to DRE's on-line eLicensing system, DRE is confident licensing timeframes will soon return to target levels.

The performance barriers experienced by DRE are: (1) the volume of transactions, (2) incomplete applications and documentation received from applicants, (3) the need to redirect staff from application processing to answering phone calls when the call wait time is excessive. DRE has made improvements to mitigate increases in application processing timeframes by advising applicants upfront on how to minimize their own processing delays. This includes informative website content, frequently asked questions, enhanced applications in PDF format with required fields, and additional functionality added to DRE eLicensing system. Furthermore, DRE plans to continue to decrease the average processing time for exam and license applications through the implementation of an online application submittal. This service is expected to launch in 2021.

Over the past four fiscal years, DRE has denied 816 license applications. DRE does not currently track whether denials are based on criteria pursuant to BPC § 480 or for other specific reasons (i.e. failure to disclose a conviction, prior professional license disciplinary action, etc.). However, with the passage of AB 2138 in 2018, which became effective July 1, 2020, DRE has just recently begun tracking the bases for its license denials.

Applicants are required to submit copies of transcripts to show completion of required education. In order to verify experience, broker license applicants must submit experience verification forms, which provide a description and details of the applicant's experience. Where the applicant claims experience as a salesperson, the applicant's previous broker of record must sign the verification form. Where the applicant claims equivalent experience rather than licensed experience, the applicant must submit an employment verification form that provides a description and details of the applicant's experience as it relates to real estate. Two individuals who can attest to the applicant's claims of experience must sign this form.

All applicants are fingerprinted using Live Scan. Prior to July 1, 2020, applicants were required to answer disclosure questions on the application related to criminal history, as well as prior disciplinary action taken against a business or professional license. DRE did not keep statistics on which causes of action led to application denial. In response to AB 2138, effective July 1, 2020, DRE ceased asking for disclosure of criminal history on license applications. All applicants are still required to disclose prior disciplinary action taken against a business or professional license, as well as any requirement to register as a sex offender.

The only national database related to the real estate profession is for Mortgage Loan Originators (MLOs), created by the federal SAFE Act. Under the SAFE Act, MLOs who are not employed by a depository institution or a subsidiary of a depository institution must be both licensed by their state and registered on the Nationwide Multistate Licensing System and Registry ("NMLS"). California implemented MLO licensing through SB 36 (Calderon, Chapter Number 160, Statutes of 2009), which empowered DRE and DBO to license MLOs consistent with both agencies' existing law. DRE began issuing MLO license endorsements in March, 2010. As of FY 2019/20, DRE has approximately 26,000 MLOs in a renewable status. Further, in March of 2012, DRE began uploading public documents associated with disciplinary actions taken against licensed MLOs onto the NMLS databank. In FY 2019/20, DRE posted approximately 200 regulatory actions on the NMLS.

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

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

All salesperson and broker license applicants must pass a written examination. To pass the salesperson examination, a minimum score of 70% is required. To pass the broker examination, a minimum score of 75% is required. DRE uses a California-specific examination instead of a national exam.

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

Real estate salesperson – Real Estate Principles, Real Estate Practice, and one additional course from the following: Real Estate Appraisal, Property Management, Real Estate Finance, Real Estate Economics, Legal Aspects of Real Estate, Real Estate Office Administration, General Accounting, Business Law, Escrows, Mortgage Loan Brokering and Lending, Advanced Legal Aspects of Real Estate, Advanced Real Estate Finance, Advanced Real Estate Appraisal, Computer Applications in Real Estate, and Common Interest Developments.

Real estate broker – Real Estate Practice, Legal Aspects of Real Estate, Real Estate Finance, Real Estate Appraisal, Real Estate Economics or Accounting, and three additional courses¹ from among the following: Real Estate Principles, Business Law, Property Management, Escrow, Real Estate Office Administration, Mortgage Loan Brokering and Lending, Advanced Legal Aspects of Real Estate, Advanced Real Estate Finance, Advanced Real Estate Appraisal, Computer Applications in Real Estate, and Common Interest Developments.

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

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

The average pass rate for first time salesperson applicants for the past four fiscal years is 57%, versus a 56% pass rate for applicants who retake the exam. The average pass rate for first time broker applicants for the past four fiscal years is 41%, versus 38% for retakes. However, for the last fiscal year the overall pass rate for salesperson examinees was 55%, and 51% pass rate for brokers. These overall rates are consistent with historical averages. The real estate exam is only offered in English.

DRE uses computer-based testing for the real estate salesperson and broker examinations. The computer-based system allows examinees to take examinations electronically and receive their results immediately following completion of the test. In addition, qualified candidates who have submitted a combination examination and license application with no deficiencies and who pass their exam can be issued their license immediately upon passage. These successful examinees receive their license identification number as part of this authorization and DRE's website public license information is immediately updated.

Computer-based testing is available at all five DRE examination centers: Fresno, La Palma, Oakland, Sacramento and San Diego. Examinations are administered Monday through Friday, and at some locations on Saturday, based on demand.

As described above, in the beginning of the COVID-19 pandemic, the Department had to close the number of applicant exam sites for safety reasons until it could procure personal protective equipment for staff. Once exam sites were re-opened, it then increased the number of exam administrations in the latter half of the year to offer more exams for license applicants.

¹ If both Real Estate Economics and Accounting are taken, only two additional courses are required.

The legal requirements regarding Statutory/Pre-License course approval can be found in BPC § 10153.5 and Commissioner's Regulations §§ 3000 through 3004. DRE approves courses, administered by private vocational schools that meet the statutory requirements. Schools that request course approval from DRE are required to provide evidence of approval with Bureau for Private Postsecondary Education (BPPE), or provide evidence that the school is exempt from the requirement of approval or registration. DRE does not work with the BPPE in the course approval process as DRE approves courses, not schools.

Continuing Education

BPC §10170.4 sets forth the criteria under which continuing education courses are approved. Licensees are required to complete CE courses every four years upon renewal.

CE audits are conducted by DRE's Enforcement Investigators, or by Education Section staff. Audits are conducted to determine if all of the Commissioner's Regulations are being followed, and to determine if the licensee has completed the required continuing education. Licensees found to be in violation may have disciplinary action taken against their license.

DRE conducts a routine sampling of the CE course verifications submitted by licensees. Over the past four fiscal years, DRE completed 1,460 audits of licensee CE records for those licensees who renewed using the eLicensing system during the previous four years. This audit resulted in 48 licensees failing to submit requested documents or 3% of the total audit population. The remaining 97% had no errors.

The DRE approves CE courses. To qualify, an entity offering a CE course must submit an approval application must at least 90 days before the start of the course, provide specified supporting documents, and ensure course offerings address required course content for licensee education. Once approved, any course shall remain approved for two years. Providers found in violation of the regulations may face formal withdrawal of course approvals.

The DRE conducts CE audits for various reasons. Continuing education audits are conducted by DRE's Enforcement investigators, or by Education Section staff. Audits are conducted to determine if all of the Commissioner's Regulations are being followed, and to determine if the licensee has completed the required continuing education. Licensees found to be in violation may have disciplinary action taken against their license. They are currently cited and required to comply with the audit. DRE conducts a routine sampling of the CE course verifications submitted by licensees. Over the past four fiscal years, DRE completed 1,460 audits of licensee CE records for those licensees who renewed using the eLicensing system during the previous four years. This audit resulted in 48 licensees failing to submit requested documents or 3% of the total audit population. The remaining 97% had no errors.

In Fiscal Year 2019/20, 256 continuing CE applications were approved. At the conclusion of FY 2019/20, there were 96 CE course providers offering 604 approved courses.

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

DRE continuously considers other alternatives to ensure that professional competence is maintained.

Enforcement

Although DRE has no statutory mandate as to the length of time in which to complete a complaint investigation, processing performance goals have been adopted to ensure timely and thorough complaint investigations. Moreover, DRE does work within the confines of the BPC § 10101 statute of limitations on all cases that are assigned for investigation: an action shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action, unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise. In such cases of dishonesty, the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action.

DRE's internal policy sets the processing timeframe for routine investigations at 180 days from receipt of the complaint to the completion of the investigation. For complaints involving complex and multifaceted issues associated with fraud or large numbers of targeted victims, DRE's goal is to complete the investigation within one year. By monitoring caseloads and investigative efforts, DRE consistently manages to complete more than 80% of all investigations in under a year.

In addition to addressing complaints at intake, each DRE district office is charged with ensuring cases are being investigated expeditiously. Supervising Special Investigators assist and work closely with investigators to ensure complaint investigations are completed in a timely and thorough manner. District Office managers are tasked with establishing and maintaining appropriate case management strategies to ensure maximum public protection goals are achieved.

DRE reports that it is impacted by cyclical fluctuations of the real estate market, because market cycles of "boom" and "bust" place alternating demands on DRE's Enforcement Program. A hot real estate market, as in the mid-2000s, may generate a huge influx of license applicants requiring background reviews. Market downturns, exemplified by the 2007 mortgage "meltdown," increase the number of unlicensed persons conducting mortgage loan originations, mortgage fraud, and ultimately an increase of foreclosure rescue and loan modification services fraud. Currently, some of the more common alleged violations include acting without a license/unlicensed property management, improper trust fund handling, misrepresentation by a licensee, fraud or dishonest dealing, false advertising, negligence, and improper broker supervision.

Prior legislation has given the DRE Enforcement Program more tools to combat mortgage fraud and other real estate misconduct. Legislation has also added safeguards to protect consumers who seek out services from real estate licensees and made technical changes intended to clarify certain provisions of Real Estate Law.

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

Additionally, this legislation authorized the Commissioner to assess penalties when a broker fails to file required reports with DRE.

More recently, AB 1650 (Frazier, Chapter 142, Statutes of 2016) revised the disclosure requirements for real estate licensees when advertising licensee services, AB 1807 (Bonta, Chapter 558, Statutes of 2016) required DRE to establish a petition process to allow licensees to request that DRE remove old license discipline information from DRE’s website. AB 2884 (Irwin, Chapter 285, Statutes of 2018) made a number of technical amendments updating the Real Estate Law.

The DRE reports that it has made internal organizational improvements to enhance the Enforcement Program’s handling of complaints.

DRE has also implemented the Enforcement Field Program (“EFP”), which focuses on performing proactive field investigations.

In addition to general investigative activities, the Enforcement Program emphasizes other proactive outreach initiatives. These outreach efforts consist of contacting and working with local licensee organizations, such as real estate, mortgage loan, property management and escrow associations throughout the state. These connections provide both licensees and local associations with opportunities to interact with and meet Enforcement staff, discuss and learn about changes in the Real Estate Law, and provide comments and feedback about compliance requirements. In Fiscal Year 18/19, DRE Enforcement staff participated in over 25 outreach events statewide.

Enforcement Statistics				
	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
COMPLAINT				
Intake				
Received	7,911	6,415	6,497	6,184
Closed	2,834	2,313	2,028	2,346
Referred to INV	4,796	4,181	4,088	4,737
Average Time to Close	33	44	46	28
Pending (close of FY)	591	909	711	510
Source of Complaint				
Public	1,963	1,487	1,990	1,897
Licensee/Professional Groups	N/A	N/A	N/A	N/A
Governmental Agencies	850	929	792	736
Other	4,599	4,512	1,546	2,104
Conviction / Arrest				
CONV Received	2,486	2,771	2,313	2,177
CONV Closed	1,292	1,306	1,073	1,418
Average Time to Close	N/A	N/A	N/A	N/A

CONV Pending (close of FY)*	N/A	N/A	N/A	N/A
LICENSE DENIAL				
License Applications Denied	201	229	202	184
SOIs Filed	254	288	215	174
SOIs Withdrawn	N/A	N/A	N/A	N/A
SOIs Dismissed	41	38	35	26
SOIs Declined	N/A	N/A	N/A	N/A
Average Days SOI	N/A	N/A	N/A	N/A
ACCUSATION				
Accusations Filed	490	462	406	371
Accusations Withdrawn	N/A	N/A	N/A	N/A
Accusations Dismissed	34	49	48	24
Accusations Declined	N/A	N/A	N/A	N/A
Average Days Accusations	255	263	270	350
Pending (close of FY)*	274	368	391	345

DISCIPLINE Table 9a Enforcement Statistics continued	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
Disciplinary Actions				
Proposed/Default Decisions**	N/A	N/A	N/A	N/A
Stipulations**	215	269	226	176
Average Days to Complete**	N/A	N/A	N/A	N/A
AG Cases Initiated***	N/A	N/A	N/A	N/A
AG Cases Pending*** (close of FY)	N/A	N/A	N/A	N/A
Disciplinary Outcomes				
Revocation	350	353	329	255
Voluntary Surrender	69	99	61	64
Suspension	106	92	105	87
Restricted Licenses Issued****	217	257	263	110
Petition for Reinstatement/Removal of Restrictions Granted	42	36	36	32
Public Letter of Reprimand (Public Reprovls)	5	9	6	8
Cease & Desist/Warning (Desist & Refrain Orders)	76	49	22	20

*DRE does not separate conviction/arrest pending cases from other accusation pending cases. Therefore, the count of pending cases listed under accusation includes all cases currently pending with DRE.

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

***DRE does not use the Attorney General to prosecute cases, as DRE has its own Legal division to prosecute cases.

Enforcement Statistics (continued)				
	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
INVESTIGATION				
All Investigations				
First Assigned	4,910	3,714	3,952	4,737
Closed	4,540	3,653	3,422	3,943
Average days to close	168	188	186	211
Pending (close of FY)	1,663	1,672	1,782	1,896
Non-Sworn Investigation				
Closed	4,540	3,653	3,422	3,943
Average days to close	168	188	186	211
Pending (close of FY)	1,663	1,672	1,782	1,896
Sworn Investigation*				
Closed	N/A	N/A	N/A	N/A
Average days to close	N/A	N/A	N/A	N/A
Pending (close of FY)	N/A	N/A	N/A	N/A
CITATION AND FINE				
Citations Issued	717	871	244	122
Average Days to Complete	N/A	N/A	N/A	N/A
Amount of Fines Assessed	\$450,825	\$611,150	\$324,950	\$130,450
Reduced, Withdrawn, Dismissed	\$51,425 / 99 citations	\$134,950 / 189 citations	\$29,050 / 51 citations	\$1,500 / 19 citations
Amount Collected	\$421,650	\$644,575	\$367,500	\$117,200
CRIMINAL ACTION				
Referred for Criminal Prosecution**	N/A	N/A	N/A	N/A

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

*****DRE does not participate in diversion programs.

*DRE does not use sworn investigators to investigate complaints.

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

Enforcement Aging							
	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	Cases Closed	Average %
DRE Legal Cases (Average %)							
Closed Within:							
0 - 1 Year	732	836	837	773	602	3,780	79%
1 - 2 Years	318	214	190	156	79	957	20%
2 - 3 Years	11	3	7	6	2	29	1%
3 - 4 Years	0	0	0	0	0	0	0
Over 4 Years	0	0	0	0	0	0	0
Total Attorney General Cases Closed	1,061	1,053	1,034	935	683	4,766	
Investigations (Average %)							
Closed Within:							
90 Days	369	832	554	720	1,133	3,608	32%
91 - 180 Days	566	661	497	405	293	2,422	22%
181 - 1 Year	1,031	759	684	612	172	3,258	29%
1 - 2 Years	846	323	335	310	75	1,889	17%
Total Investigation Cases Closed	2,812	2,575	2,070	2,047	1,673	11,177	

The statistics show a decrease in disciplinary actions since the last sunset review, in part because the volume of consumer complaints has a direct correlation to market conditions. When the real estate market is improving, the number of consumer complaints tends to decrease.

As Enforcement caseloads returned to manageable levels following the last decade's market crash, DRE reports that it is again making efforts to be more proactive on enforcement efforts. DRE now conducts more routine broker office surveys and audits of real estate brokers and visits to more real estate offices.

Based on market conditions, DRE reports that its Enforcement Program continuously reexamines its priorities, workload, and productivity objectives in order to ensure it is meeting its statutory mandate for consumer protection.

Pre-complaint review staff in each of the five district offices prioritize complaints as they are received. The cases involving the greatest potential or actual harm to the public receive the highest priority. DRE uses the following categories when prioritizing cases:

- **Urgent** – Predatory criminal actions/lending issues, elder abuse and “high profile” cases.
- **Priority** – Unlicensed activity, fraud and misrepresentation, trust funds handling and recordkeeping.
- **Routine** – License compliance, standards of practice and advertising violations.

DRE prioritizes cases with protection of the public as the highest priority. For real estate activities, this includes giving highest priority to cases where a practitioner poses a physical or financial threat to the public.

Other than subsequent arrest records provided to DRE from the Department of Justice, there is no requirement for notice from local officials or organizations, or other professionals, or from civil courts to report actions taken against a licensee. However, licensees are bound by mandatory self-reporting requirements regarding violations of the Real Estate Law, as specified in BPC §§ 10186.2 and 10178.

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

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

Pursuant to BPC §§ 10232 and 10232.2 for threshold brokers, and 10238 (j) and 10238(k)(3) for multi-lender brokers, brokers who provide private money loan services are required to notify the Department if their private money business levels meet specified volumes. These brokers are also required to submit quarterly and annual reports to the Department detailing loan and trust fund handling activity. Brokers who fail to submit required reports pursuant to these sections are subject to audit by DRE Audit Section, may be charged for preparation of delinquent reports, and may be subject to citation and fine or disciplinary action for report delinquency. The Enforcement and Audit Sections coordinate actions to keep report delinquencies to a minimum.

Per BPC § 10166.02, real estate brokers (or salespersons working for such brokers) who make, arrange, or service loans secured by residential 1-4 unit property must submit an online Mortgage Loan Activity Notification to the Department within 30 days of commencing the activity. Licensees who fail to submit the required notification are subject to penalty fees. Real estate brokers who act pursuant to BPC §§ 10131(d), 10131(e), or 10131.1 and who make, arrange, or service loans secured by residential 1-4 unit property must also file a Business Activity Report for their fiscal year.

Brokers who are exempt from the Escrow Law (California Financial Code § 17006) and who engage in broker-controlled escrow activities for five or more transactions in a calendar year or whose escrow activities equal or exceed \$1,000,000 in a calendar year must submit an Escrow Activity Report to the Department. Licensees who fail to submit the required notification are subject to penalty fees and may be subject to audit by DRE Audit Section.

DRE reports a multi-step approach to address unlicensed activity. First, DRE prioritizes these types of violations for investigation, often working jointly with local law enforcement and other state agencies. When investigations have been completed and violations confirmed, DRE issues Desist and Refrain orders and may also issue Bar Orders that enjoin unlicensed persons from working in real estate or related industries. More recently, DRE's citation authority also permits DRE to issue a citation and impose a fine on an unlicensed entity engaged in an activity for

which a real estate license is required. Finally, in egregious cases of unlicensed activity, DRE has adopted a vertical prosecution model, where a DRE counsel, special investigator, and (when appropriate) an auditor work together, from case set up to final prosecution.

All Desist and Refrain Orders filed against unlicensed persons are posted on DRE's website in order to disseminate the information as widely as possible for consumer awareness and protection.

On January 1, 2012, DRE was given citation and fine authority through the passage of SB 53 (Calderon, Chapter 717, Statutes of 2011). The regulations implementing DRE's citation authority were adopted on July 1, 2014. In FY 2019/20, DRE issued 122 citations and assessed \$130,450 in administrative fines. Since July 1, 2014, and through June 30, 2020, the total number of citations issued is 3,196, and the total amount of administrative fines assessed is \$2,704,000.

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

DRE considers the issuance of citations an opportunity to educate both licensees and non-licensees alike and to encourage and reinforce compliance with the Real Estate Law. DRE reports that citations issued to real estate licensees are typically for relatively minor violations of the law that do not warrant higher disciplinary action. Citation authority also permits DRE to issue a citation and impose a fine on an unlicensed person engaged in an activity for which a real estate license is required.

Trust account handling and recordkeeping compliance issues are the most common violations subject to this disciplinary action. These violations include: failure to conduct monthly reconciliation of trust accounts, allowing unlicensed and/or unbonded signatories on the broker trust accounts, using bank accounts that are not specifically designated as trust accounts in the name of the broker as trustees, and minor shortages in the trust accounts. An additional violation frequently cited in citations is lack of broker supervision.

Of those citations/fines contested:

- Average pre-appeal fine amount: \$1,285.
- Average post-appeal fine amount: \$624.
- Average reduction of fine amount resulting from DRE's informal Citation Review Conference: 51%.

DRE began referring uncollected fines to the Franchise Tax Board in July 2019. Considering the high rate of compliance with citations issued and relatively few informal and formal appeals, the number of unpaid fines has been extremely small (i.e., approximately 61 of 3,267 citations remain unsatisfied, for a delinquency rate of 2% of citations issued). One partial payment of \$183 has been collected thus far by the Franchise Tax Board. While DRE refers unsatisfied citations and unpaid fines to the Franchise Tax Board, DRE is empowered to deny the renewal or issuance of a new license to a person who has an unpaid fine. DRE has found that the denial of a renewal or a new license is a more effective means of compliance.

DRE asks for costs recovery in almost all stipulations and cases that go to an administrative hearing. If a licensee does not pay investigative costs, the licensee's license can be suspended and will not be reinstated or renewed until the costs are paid. DRE also has a contract with a collection agency, and when appropriate, unsatisfied debts are assigned to the collection agency to pursue collection.

Because no licenses are issued to the applicants, DRE does not seek cost recovery for Statement of Issues cases, wherein license applications are denied for cause, such as the denial of a license for prior criminal convictions. DRE refers unpaid debts, which includes unpaid investigative, audit, and legal costs, to the Franchise Tax Board for collection.

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

- **Complaint Resolution Program (CRP):** Through facilitation by a DRE investigative staff member, a licensee may agree to refund a deposit or reimburse fees collected. In some transactions involving property defects which may not have been properly or fully disclosed, a licensee may agree to fix the defect.
- **Citation:** If a citation is issued, it may be accompanied with an order of correction requiring the licensee to make restitution to the victim.
- **Accusation:** If an accusation is filed, the Department may recover restitution for consumers by entering into settlements with licensees, or by asking the administrative law judge to order reimbursement, refund, or payment of damages to the victim(s).
- **Consumer Recovery Account:** Funded from a portion of fees paid by licensees – and administrative fine assessments, the Consumer Recovery Account enables a person who has been defrauded or had trust funds converted by a real estate licensee in a transaction that required that license, and who satisfies specified requirements, to recover at least some of his or her actual loss when the licensee has insufficient assets to pay for that loss. Since the account's inception in 1964, DRE has paid over \$65,000,000 to members of the public from the Consumer Recovery Account.

As the use of technology in the real estate industry continues to increase, the department is seeing more "virtual brokerage-type businesses." Virtual brokerages describe themselves as online, discount brokerages that offer low cost, flat fee commissions as well as innovative technologies.

DRE's Enforcement Program reviews social media sites, websites, and other internet sites for compliance with real estate laws and advertising disclosures. Since a real estate broker is required to maintain a definite place of business that serves as his or her office for the transaction of business per BPC § 10162, this business requirement means that a brokerage cannot be fully virtual in California.

In order to run a real estate operation that is largely an online practice, a broker must institute a broker supervision program that is capable of remote supervision and examination of transactions conducted by salespersons and broker associates, and demonstrate upon investigation that such oversight and supervision is being conducted. DRE has seen some successes and failures in the supervision of online brokerages. DRE will continue to look into the activities of online brokerages as well as the more traditional brokerage operations.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

DRE was last reviewed by the Legislature through sunset review in 2016 when it was still a bureau within DCA. During the previous sunset review, 16 issues were raised. In December 2019, DRE submitted its required sunset report to the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions (Committees). In this report, DRE described actions it has taken since its prior review to address the recommendations made. Issues which were not addressed and which may still be of concern to the Committees are more fully discussed under “Current Sunset Review Issues.”

- **Staffing issues are resolved.** While DRE faced some temporarily higher vacancy rates in 2018 and 2019 while the Human Resources Section was being rebuilt, the vacancy problem has now been resolved. DRE is confident it can provide strong consumer protection with current staffing levels.
- **A new strategic plan is in place.** Over the course of fiscal year 2018-2019, DRE prepared a new strategic plan covering July 2019 – June 2023. The focus of the new strategic plan is the achievement of objectives that improve its ability to protect the public, provide better services to the public, including services to consumers and licensees, and improve internal communication. DRE is tracking progress on achievement of strategic plan objectives on a quarterly basis through required updates from program managers at the end of each fiscal year quarter.
- **Outreach efforts are enhanced.** DRE participates in a variety of public outreach activities involving consumers, industry groups, and law enforcement at all levels. Some meetings occur on a regular basis. Other events are scheduled as opportunities are presented, including appearances by DRE administrators and staff at consumer events coordinated locally by members of the Legislature. DRE also establishes task forces and special projects with industry volunteer participants in order to address specific issues. In coordination with the Contractors State Licensing Board, DRE staff take part in monthly Senior Scam Stopper events throughout the State. Education staff participate in the annual Financial Literacy Fair sponsored by the Department of Financial Protection and Innovation (formerly Business Oversight).
- **Long wait times on phone calls are being addressed.** DRE continues to receive a very high volume of phone calls from consumers, including real estate licensees. In FY 2019/20, DRE received approximately 276,000 calls, or approximately 22,300 calls per month. An increasing licensing population has led to an increase in the number of phone calls received by the Licensing Program and there exists a high average call wait time for licensees, applicants, and consumers. As of the end of fiscal year 2019/20, Licensing wait times averaged approximately 20 to 25 minutes per call. DRE has attempted to mitigate Licensing phone call wait times through the use of technology. In 2018, DRE deployed a new Virtual Call Center (VCC), to be able to provide enhanced call reporting and handling. Recent additions in 2019 to DRE’s eLicensing system, including added functionality to enable Broker Officers to renew licenses online and Broker Associate Reporting, have resulted in improvements in Licensing call wait times. DRE will continue to increase the services offered through the eLicensing system, including the addition of an online examination and license application capability. These enhancements to DRE’s eLicensing system should substantially lower call wait times. DRE

has also attempted to mitigate this excessive workload through the use of overtime, hiring of staff, as well as the redirection of existing staff and resources from other sections to the extent feasible. DRE will continue to address wait times through all possible means.

- **General Fund loan monies have been repaid.** DRE loaned \$10.9 million to the General Fund per Item 2320-011-0317 in the Budget Act of 2002. The \$10.9 million was repaid in FY 2019-20 along with interest of \$4.625 million.
- **DRE's ability to issue citations and collect fines is working.** The capacity to issue citations and fines has given DRE the opportunity to address hundreds of minor violations of the Real Estate Law each year in a substantive, but cost-effective, manner.

CURRENT SUNSET REVIEW ISSUES FOR THE DEPARTMENT OF REAL ESTATE

The following are unresolved issues pertaining to the DRE, or areas of concern that should be considered, along with background information for each issue. There are also Committee staff recommendations regarding particular issues or problem areas DRE needs to address. DRE and other interested parties have been provided this Background Paper and DRE will respond to the issues and staff recommendations.

ADMINISTRATIVE ISSUES

ISSUE #1: (STAFFING) What steps is DRE taking to secure permanent leadership and fill vacant staffing positions?

Background: DRE experienced high vacancy rates during the first year of the return to department status. This was due to the fact that the Department needed to first staff its Human Resources Section in order to be able to fill vacancies. In 2020, the Department gained a number of new senior leadership staff, including a new commissioner. There is currently one vacancy in a senior leadership role—the Assistant Commissioner, Enforcement.

DRE will continue to face the loss of institutional knowledge due to the retirements of key employees over the next five years. DRE is implementing a succession-planning module to prepare for the future of the Department. For existing staff, DRE facilitates staff development through internal training, including bi-monthly presentations by DRE legal attorneys to enforcement and audit staff on relevant issues, and other entities as needed. DRE spends an average of \$26,000 per year on training.

DRE experienced retention and recruitment difficulties with the request to reclassify employees in its Subdivision Program. Initially started in 2015, the reclassification process was necessary because DRE had employees in the Special Investigator series performing Subdivisions processing work, which was determined to be a misclassification. This resulted in a recruitment and wage disparity/misallocation issue within the Subdivisions Program, with Special Investigators, Associate Governmental Program

Analysts, and Deputy Commissioners all doing the same work for different pay. DRE has been working closely with CalHR to correct the issue.

DRE reports that it requested and was approved for 18 positions to transition back to department status. It has utilized the positions to accomplish the following tasks:

- **Rebuilding the Accounting/Budget Section** – DRE has worked to establish a separate accounting function under the new statewide Fi\$Cal accounting system. DRE is now responsible for building annual budgets and establishing an accounting function to track money in and out of the Real Estate Fund versus budget.
- **Rebuilding the Human Resources Section** – DRE has endeavored to rebuild a Human Resources Section that provides administrative support to the divisions of DRE through support services such as recruitment, hiring, position classification, civil service examinations, labor relations, employee discipline, employee benefits, training, employee counseling, and equal employment.
- **Adding a Legislation Section** - DRE must evaluate the effect of proposed legislation on consumers, the State, and the real estate industry by performing analyses on pending legislative bills. It is critical in making sure that consumer protection is maintained and that the effect of legislation on licensees and the State is known. DRE will often be asked to provide technical input on bills, and what the bill impact would be, including any fiscal impacts.
- **Creating a Publications and Communications Section** – This section is responsible for updating the Real Estate Law Book, the Real Estate Reference Book (which provides general information on many aspects of real estate practice), the quarterly Real Estate Bulletins, as well as DRE booklets, consumer and industry advisories and alerts. This section also prepares and updates policy manuals, and is responsible for DRE’s website content. In addition, this section is responsible for the Public Information Officer duties, which include preparation of press releases and responding to media inquiries.
- **Hiring an Information Security Officer** – DRE has hired an Information Security Officer, who is responsible for protecting private information and ensuring that its information security practices and reporting are in full compliance.

The Department staff includes Doug McCauley, Real Estate Commissioner; Marcus McCarther, Chief Deputy Commissioner; Stephen Lerner, Assistant Commissioner, Legal Affairs; and James Damrell, Assistant Commissioner, Legislation and Regulations.

Staff Recommendation: *DRE should continue to inform Committees of its plan to secure permanent leadership and fill vacant staff positions. How can DRE recruit top quality candidates? Where is DRE in the hiring process? Does DRE have the adequate resources and support to fill those vacancies? If not, what does DRE suggest to best meet its departmental needs? What efficiency measures has DCA taken since the last sunset review process to ensure strong justification for each of its staff members? What does the succession-planning model look like for the future of the Department, as well as current and future staff? Do current DRE staff have the*

support they need for their current responsibilities? Has DRE successfully addressed the reclassification issues that initially began in 2015?

ISSUE #2: (RELATIONSHIPS WITH BCSH AND ENFORCEMENT ENTITIES) What is the status of the working relationship between DRE and the California Business, Consumer Services, and Housing Agency (BCSH)? How is the relationship between DRE and enforcement agencies like local District Attorneys it works with to support consumer protection?

Background: On July 1, 2018, BRE transitioned back from a bureau within DCA to a stand-alone department under the authority of the California Business, Consumer Services, and Housing Agency (BCSH). DRE does not engage in programming and services with DCA.

As part of its enforcement program, DRE regularly participates in task force meetings with various district attorney offices, local real estate associations, and a number of law enforcement agencies. DRE Executive, Audit and Enforcement staff participate in proactive outreach efforts consisting of contacting and working with local licensee organizations, such as real estate, mortgage loan, property management and escrow associations throughout the state.

Staff Recommendation: *DRE should inform the Committees of its working relationship with BCSH. How does the new Department engage with BCSH? Does the Department have enough independence to achieve its goals and carry out its statutorily-mandated duties? DRE should also inform the Committees of its working relationship with district attorneys (DAs) and other external enforcement parties. How has DRE engaged with these groups? How is enforcement now different than it was under BRE structure? What, if anything, can or should be changed to ensure enforcement needs are met?*

ISSUE #3: (RULEMAKING) Is DRE moving forward with regulatory packages and undertaking rulemaking? How is this process different than it was for the former bureau?

Background: On July 1, 2018, BRE changed from a bureau within DCA to its own department under the authority of the BCSH. Rulemaking used to take place under DCA’s guidance and direction, but now DRE is directing its rulemaking processes. It would be helpful for the Committees to better understand the process, timeframes, and status of regulation efforts.

Staff Recommendation: *DRE should inform the Committees of its progress on rulemaking. Does DRE have a rulemaking backlog? Please discuss the rulemakings initiated by DRE during each of the last five fiscal years, including a summary of the time from initial development to final approval by the Office of Administrative Law. Does DRE have any rulemakings currently outstanding?*

ISSUE #4: (RECENT HOUSING LEGISLATION) How has DRE responded to AB 1482? What kind of changes is DRE anticipating after the recently-enacted 2020 legislative housing efforts?

Background: Last year, AB 1482 (Chiu, Chapter 597, Statutes of 2019) became law. As a result, rent increases are limited to no more than 5% plus local inflation and landlords must have “just cause” to terminate a tenancy, among other things. This year, Assemblymembers Grayson, Chiu, Bonta, and

Gabriel announced an eight-bill, housing legislation package, mostly aimed at reforming impact fee formulas, assessment of fees, and establishing a ceiling for development fees. Governor Newsom also focused almost his entire State of the State address on homelessness and housing, signaling that it would be a priority for him this year.

After Governor Newsom issued the stay-at-home order in March, priorities for most legislators changed. However, landlord and tenant protections remained an important issue in the 2020 legislative year. The Governor recently signed AB 3088 (Chiu, Chapter 37, Statutes of 2020), a bill that provides targeted protections for tenants to shield them from evictions due to COVID-19-related back rent through February 1, 2021 and extends anti-foreclosure protections in the Homeowner Bill of Rights to small landlords.

Staff Recommendations: *DRE should inform the Committees of how it has responded to AB 1482 from 2019, AB 3088 from 2020, and how it is planning to respond to more housing legislation, such as the legislative ideas proposed this year. What efforts has the Department taken to prepare for and educate licensees on the changes that may come via impact fees in the future? What other changes does DRE need to be ready for and how is it preparing for them?*

ISSUE #5: (EXCLUSIVITY) How is DRE responding to bills and ideas that promote exclusivity in the housing market through technical language?

Background: In recent years, brokers and realtors have not listed homes on certain online services.² These homes are referred to as “coming soon” or “off market” destinations. By allowing a “who you know” market, brokers and realtors have fed the idea that buyers will have access to the best properties through certain people “in the know.” However, for low-income and minority homebuyers, this practice of saving homes for those with access to certain information invokes discriminatory history in housing.

Staff Recommendation: *DRE should inform the Committees of how it interacts with ventures to promote exclusivity in the housing market. What steps, if any, is it taking to promote housing equity? Does DRE have discussions about this topic with industry members in its meetings and at its attended events throughout the year?*

ISSUE #6: (GENERAL FUND LOANS) What are potential impacts to DRE’s fund stability if language is removed from the Law requiring fees to be reduced if a General Fund loan occurs?

Background: During the recent budget process, the Administration proposed repealing language in the Real Estate Law that authorizes the Department to reduce certain fees when a General Fund loan is made from the Real Estate Fund. Specifically, Business and Professions Code Section 10226.5 (a) states that “If at any time funds are transferred or loaned from the Real Estate Fund to the General Fund by the Budget Act, then 30 days from and after the date of the transfer or loan, fees shall be reduced as indicated in subdivision (b), irrespective of any provisions of the Budget Act precluding

² See: https://www.washingtonpost.com/realestate/a-real-estate-association-is-cracking-down-on-off-market-properties-heres-what-that-means-for-buyers/2019/11/11/e391c3ae-0013-11ea-8bab-0fc209e065a8_story.html.

that reduction. The fees include, but are not limited to real estate broker examinations, first reschedules of broker examinations, real estate broker licenses, real estate salesperson examinations, real estate salesperson licenses, applications for an original, renewal, or amended registration, among other things.

Originally, this provision, along with Business and Professions Code Section 10226, was a “poison pill” meant to cap the size of the Real Estate Fund’s surplus and discourage transfers or loans from Real Estate Fund to the General Fund. The present “poison pill” arose in the aftermath of the budgetary crises of the early 1990s, given that in three budget years from 1990-91 to 1992-93, Deukmejian and Wilson Administration budget actions transferred a total of \$14 million from the Real Estate Fund to the General Fund. Over the next decade, the current “poison pill” language developed through four bills to reflect fee structures prior to those in the early 1990s: SB 1002 SB 1002 (Craven, Chapter 416, Statutes of 1993); AB 2536 (Miller, Chapter 342, Statutes of 1996); AB 447 (Kuykendall, Chapter 447, Statutes of 1997); AB 2007 (Committee on Business and Professions, Chapter 676, Statutes of 2004). AB 2536 in 1996 was responsible for raising the license fee ceiling to its present amounts and eliminated a sunset date. Notably, the current “poison pill” language speaks to both transfers and loans thanks to AB 2007.

Since raising the license fee ceiling in 1996, it is unclear when fees were last adjusted pursuant to this authority or if the section is obsolete. It would be helpful for the Committees to understand the impact of striking this provision, including information DRE should provide about any potential negative impacts stemming from fee and funding instability that could stem from adjustments 30-days after a loan is made.

Staff Recommendation: *DRE should provide information about how frequently this code section has resulted in fee adjustments, the impact to DRE operations if the language remains in tact, and any operational efficiencies gained if language is repealed.*

LICENSING ISSUES

ISSUE #7: (DUAL AGENCY) Are the current disclosure requirements surrounding dual agency adequate to protect consumers from salespeople who may not be acting in the consumers’ best interest?

Background: Current law does not always require brokers who are engaging in transactions with property owners or landlords on one side, and lessees on the other, to disclose that conflict of interest.

In 2017, Assemblymember Gonzalez introduced AB 1059, which would have prohibited an agent, a broker, brokerage firm, or any licensee of the broker or brokerage firm acting as a dual agent for both the buyer and seller in the same real estate transaction. It also would have prevented a broker, a brokerage firm, or any licensee of the broker or brokerage firm from acting as a dual agent in connection with its representation of any principal. Additionally, in 2017 Assemblymember Jacqui Irwin introduced AB 1626 to more clearly define when a dual agency condition exists and specify the fiduciary duties of licensees engaged in such transactions under existing state law. AB 1626 hoped to provide clarification on this issue that was discussed in current law in *Easton v. Strassburger*, a court

case decided in 1984 by the California Court of Appeal for the Third District. Both legislative efforts failed, but the issue persists.

Staff Recommendation: *DRE should inform the Committees of its opinion of dual agency. Does DRE believe consumers are adequately protected? What, if any, changes would DRE like to see to ensure consumers have adequate protection while also balancing the need for a fair market environment for all parties?*

ISSUE #8: (ELICENSING) How has the eLicensing program changed since the change from BRE to DRE?

Background: DRE conducts routine sampling of the CE course verifications submitted by licensees. Over the past four FYs, DRE completed 1,460 audits of licensee CE records for those licensees who renewed using the eLicensing system during the previous four years. This audit resulted in 44 licensees failing to submit requested documents or 3% of the total audit population. The remaining 97% had no errors. Additionally, DRE has used the eLicensing system to attempt to lower wait times when consumers call DRE.

Staff Recommendation: *DRE should inform the Committees of the status of its eLicensing program. What changes have been made since the last sunset review? In what ways is the department hoping to incorporate additional changes into the eLicensing program?*

ISSUE #9: (TRACKING MILITARY APPLICANTS) Should DRE track applicants offered military education, training, or experience toward meeting licensing or credentialing requirements?

Background: DRE does not track applicants offered military education, training, or experience toward meeting licensing or credentialing requirements. It is possible that some military experience will qualify as equivalent to the two years of salesperson experience necessary for the broker examination, but that information is reviewed on a case-by-case basis.

Staff Recommendation: *DRE should inform the Committees of why it does not track applicants offered military education, training, or experience toward meeting licensing or credentialing requirements. What benefits, if any, would come from this oversight? What resource would DRE need to accomplish this goal?*

ENFORCEMENT ISSUES

ISSUE #10: (CONSUMER RECOVERY) What is the status of efforts to ensure consumers are compensated?

Background: Since 1964, DRE has administered the Consumer Recovery Account that compensates consumers for some or all of their monetary losses resulting from a real estate licensee's fraud, misrepresentation, or deceit made with the intent to defraud or convert trust funds. Prior to receiving

compensation and pursuant to Bus. & Prof. Code section 10470 et seq., a consumer must submit an application for payment that includes a civil judgment or criminal restitution order; the judgment or order must be based on a finding of intentional fraud or conversion of trust funds; the underlying fraud or conversion was conducted in connection with a transaction requiring a real estate license; and the consumer must have undertaken reasonable efforts to enforce the judgment or order and collect from all other parties involved in the underlying transaction. DRE will pay the consumer's 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. For claims paid out of the Recovery Account, DRE automatically suspends the license of the licensee associated with that claim. The suspension remains in effect until such time as the licensee reimburses the Recovery Account the amount paid out in full.

Since Fiscal Year 2015/2016, DRE has received 372 claims (or an average of 93 claims per fiscal year), paid out \$10,060,411 (or an average of \$2,515,102 per fiscal year), and denied 229 claims (or an average of 57 claims per fiscal year).

While the Consumer Recovery Account continues to meet its statutory purpose of serving as a fund of last resort for victims of real estate fraud, the Consumer Recovery Account remains out of reach for some consumers. One prerequisite to receiving payment from the account is that the consumer must obtain a civil judgment or criminal restitution order that includes a finding of intentional fraud or conversion of trust funds. With respect to civil judgments, some consumers may not wish to expend additional money to retain an attorney to file a lawsuit, prosecute the action, and obtain a judgment if the consumer's monetary loss is substantially equal to or less than the anticipated legal fees for that attorney. For instance, a consumer may not wish to spend \$20,000 or more to retain an attorney when he or she sustained a \$20,000 loss due to the licensee's fraudulent activities. While the consumer can proceed in propria persona (i.e., representing himself or herself), the consumer may face procedural or substantive obstacles to obtaining a judgment due to their lack of familiarity with the legal process. A consumer also may proceed via Small Claims Court but the monetary damages that he or she can recover are capped at \$10,000, which can be less than satisfactory for the consumer if his or her losses exceed the statutory limit.

Staff Recommendation: *DRE should provide an update on the CRA, including suggestions for enhancing opportunities for consumers to access monies when appropriate.*

ISSUE #11: (CE STANDARDS) Does DRE have consistent standards for CE and CE audits to ensure parity in the audits licensees may undergo?

Background: The DRE conducts CE audits for various reasons. Continuing education audits are conducted by DRE's Enforcement investigators, or by Education Section staff. Audits are conducted to determine if all of laws are being followed, and to determine if the licensee has completed the required continuing education. Licensees found to be in violation may have disciplinary action taken against their license, including a citation and notice to comply with the audit.

DRE conducts a routine sampling of the CE course verifications submitted by licensees. Over the past four fiscal years, DRE completed 1,460 audits of licensee CE records for those licensees who renewed using the eLicensing system during the previous four years. This audit resulted in 48 licensees failing to submit requested documents or 3% of the total audit population. The remaining 97% had no errors.

However, licensees have reported potential inconsistencies in the enforcement of CE violations. It would be helpful to understand what standards there are for staff undertaking audits and standards for the outcome of this work, including violations.

Staff Recommendation: *DRE should provide an update on CE audit standards and process. Does DRE have consistent standards that are consistently applied? If so, what concerns, if any, have been raised to DRE about the process of auditing and evaluation? If not, should DRE develop consistent standards that are consistently applied for auditing situations?*

ISSUE #12: (PREPAREDNESS FOR MARKET SWINGS) What do DRE’s enforcement statistics demonstrate about the nature of the market and DRE’s enforcement efforts? Is the Department adequately prepared to handle the potential uptick in illicit activities if the cyclical real estate market is to downturn in the future?

Background: DRE will always be impacted by cyclical fluctuations of the real estate market, because market cycles of “boom” and “bust” place alternating demands on DRE’s Enforcement Program. A hot real estate market, as in the mid-2000s, may generate a huge influx of license applicants requiring background reviews. Market downturns, exemplified by the 2007 mortgage “meltdown,” increases the number of unlicensed persons conducting mortgage loan originations, mortgage fraud, and ultimately an increase of foreclosure rescue and loan modification services fraud.

Statistics reported in 2019 show a decrease in disciplinary action since the last sunset review, in part because the volume of consumer complaints has a direct correlation to market conditions. When the real estate market is improving, the number of consumer complaints tends to decrease. As Enforcement caseloads returned to manageable levels following the last decade’s market crash, DRE was able to once again be more proactive on enforcement efforts. DRE now conducts more routine broker office surveys and audits of real estate brokers and visits to more real estate offices.

In the past, the real estate market has experienced an uptick in illicit activities if the cyclical real estate market downturns in the future. In the Fall of 2020, the Department shared that, generally speaking, complaints decrease when the market is good, but increase when the market turns.

Staff Recommendation: *DRE should continue to update the Committees on its enforcement statistics and DRE’s responses to those statistics. DRE should also inform the Committees of how it will respond when the real estate market experiences a downturn in the future. How will it respond to a likely uptick in illicit activities? What additional resources might DRE need to face this future?*

ISSUE #13: (AB 2138) How have the amendments to DRE regulations, specifically in Sections 2911, 2912, and 2915, impacted DRE and applicants for licensing? What data is available after the passage of AB 2138 in 2018?

Background: In 2018, Assembly Bill 2138 (Chiu/Low, Chapter 995, Statutes of 2018) was signed into law, making substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied based on prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing

board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. These provisions are scheduled to go into effect on July 1, 2020.

Because AB 2138 significantly modifies current practice for boards in their review of applications for licensure, it was presumed that its implementation would require changes to current regulations for every board impacted by the bill. Currently, the Board is in the process of finalizing its regulations to revise its denial criteria to incorporate the changes from the bill. It is also likely that the Board may identify potential changes to the law that it believes may be advisable to better enable it to protect consumers from license applicants who pose a substantial risk to the public. AB 2138 went into effect on July 1, 2020.

Staff Recommendation: DRE should inform the Committees of the impact of changes in regulations (i.e., the criteria for rehabilitation and 10-year-old discipline information removed from a website) and AB 2138. What, if anything, has DRE noticed after changes to its regulations? What does the data from the time the bill was enacted show about license denials? Is DRE in compliance with AB 2138 now that the July 1, 2020 deadline has passed?

ISSUE #14: (AB 2330) How has AB 2330 passed after the most recent sunset review impacted DRE in its processes?

Background: A number of laws have impacted DRE since the last sunset review. AB 1650 (Frazier, Chapter 142, Statutes of 2016) revised the disclosure requirements for real estate licensees when advertising licensee services. AB 1807 (Bonta, Chapter 558, Statutes of 2016) required DRE to establish a petition process to allow licensees to request that DRE remove old license discipline information from DRE’s website. AB 2884 (Irwin, Chapter 285, Statutes of 2018) made a number of technical amendments updating the Real Estate Law.

Additionally, language that originated in AB 1807 and was joined to AB 2330 (Ridley-Thomas, Chapter 614, Statutes of 2016) required the Real Estate Commissioner to establish a petition process to remove license discipline information from CalBRE’s (now DRE’s) website after a successful petition by a disciplined licensee. The Commissioner may grant the petition upon the licensee’s showing that the subject discipline is 10 years or older, the licensee has been rehabilitated and no longer poses a consumer risk, and the licensee tenders a fee sufficient to defray the cost of an investigation associated with the petition.

In addition, language that originated in AB 2330 required reporting and tracking of broker associates: those brokers who contract to act as salespersons for another broker, who becomes the “responsible broker.” Responsible brokers and broker associates will be required to notify CalBRE upon entering or ending such contracts, and CalBRE will track these relationships.

DRE began processing of petitions for removal of discipline from DRE website on March 7, 2019, following final approval of Commissioner’s Regulation 2915. As of September 30, 2019, DRE has

received 59 petitions for removal of discipline, some of which are near the point of decision as to whether removal will be approved or denied.

As of October, 2018, the Department has developed an online capability through eLicensing (accessed via DRE website) through which responsible brokers and brokers who enter into the employ of a responsible broker can notify the Department of this arrangement.

Staff Recommendation: *DRE should inform the Committees of the impact of the above-mentioned legislation. What changes has DRE implemented in terms of disclosure requirements, petition processes, or other technical fixes in response? At this point, does DRE believe it has met the requirements of AB 2330?*

ISSUE #15: (STATUTE OF LIMITATIONS) Has DRE identified any problems with its current Statute of Limitations for completing cases?

Background: Although DRE has no statutory mandate as to the length of time in which to complete a complaint investigation, processing performance goals have been adopted to ensure timely and thorough complaint investigations. Moreover, DRE does work within the confines of the BPC § 10101 statute of limitations on all cases that are assigned for investigation: an action shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action, unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation, or a false promise. In such cases of dishonesty, the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation, or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action.

Staff Recommendation: *DRE should inform the Committees of any issues it might have had with completing a complaint investigation. Do existing regulations provide enough time to process complaints? Is DRE still able to follow existing BPC § 10101 for all of its cases? If not, why, and what changes should be made?*

TECHNICAL CHANGES

ISSUE #16: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACTS ADMINISTERED BY DRE) Should DRE take amendments that are technical in nature but may improve Department operations and the enforcement of those laws?

Background: In any practice act, there are technicalities that need to be changed. Because BRE became DRE in 2018, it is appropriate to look at the practice act again for any changes that need to be made to help the Department.

Staff Recommendation: *DRE should inform the Committees of any outstanding technical issues. The Committees may wish to amend the various acts to include technical clarifications.*

COVID-19

ISSUE #17: (WHAT EFFECT HAS THE COVID-19 PANDEMIC HAD ON DRE?) What is the Department doing to address COVID-19 related issues?

Background: COVID-19 dramatically changed the way people live, work, and interact in the world. For safety reasons, DRE reduced the number of applicant exam sites in the early part of the year. It then increased the number of exam sites in the latter half of the year to offer more exams for licensing applicants. Additionally, DRE implemented an emergency telework policy. As of early November 2020, DRE has 87% of its staff working remotely. Finally, DRE is accepting and using more electronic documents and signatures to support their licensees during this time.

Additionally, the Governor has issued a series of waivers to assist professions during the COVID-19 pandemic. Most recently, Governor Newsom issued an Executive Order on October 28, 2020 extending an existing Executive Order that extends the deadlines for the payment of real estate license application and renewal fees and continuing education requirements for licensees.

Staff Recommendation: *DRE should update the Committees on its efforts to continue to provide licensing exams for its applicants, provide staff with proper electronic equipment to promote remote working environments, and support its licensees. Staff also asks that the Department provide updates on any additional problems that may arise due to COVID-19, such as inability to fill vacant staff positions, budgetary issues, etc. Finally, DRE should assess its ability to provide virtual or mobile opportunities for its licensees, from licensing and application requirements to whether a brokerage should be permitted to operate fully online in California moving forward.*

**CONTINUED REGULATION OF THE PROFESSION BY
THE DEPARTMENT OF REAL ESTATE**

ISSUE #18: (SHOULD THE DEPARTMENT BE CONTINUED?) Should the licensing and regulation of salespersons and brokers be continued and regulated by the Department?

Background: The welfare of consumers is best protected when there is a well-regulated real estate profession. Although DRE faces a number of challenges, it should be continued with the recommendation for further review by the Committees in four years. This is the Department's first Sunset Review since removal from DCA.

Staff Recommendation: *Staff recommends that the Department's operations and Real Estate Law, the Subdivided Lands Act, and the Vacation Ownership and Time-share Act be reviewed again in four years by the respective Committees of the Senate and Assembly. Staff also recommends that salespersons, brokers, mortgage loan originators, and prepaid rental listing services, and the Subdivided Lands Act and the Vacation Ownership and Time-share Act of 2004 continue to be regulated by the Department in order to protect the interests of licensees and the public.*