

## Most Common Enforcement Violations

The Department's Enforcement Section receives and processes a large number of complaints each year that are investigated and referred to the Department's Legal Section for disciplinary action. In many cases, the violations that resulted in disciplinary action could have been avoided if appropriate office procedures had been in place. The following is a list of the six most common violations of the Real Estate Law that have resulted in disciplinary action and some suggested remedies to avoid the violations. All references are to Sections of the California Business and Professions Code and the Regulations of the Real Estate Commissioner.

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### Trust Fund Record Keeping Violations

Trust fund handling and record keeping is one of the most common problem areas. We see case after case in which brokers handle trust monies on behalf of others and either convert the monies to their own use, or do not have the expertise to maintain proper accounting records and end up with shortages in their trust accounts. To avoid problems in this area, all real estate brokers should be familiar with the following laws and regulations that govern the handling of trust funds by real estate brokers.

**Section 10145** - General statute governing the handing of trusts funds.

**Regulation 2831** - Maintaining columnar records of trust funds received.

**Regulation 2831.1** - Maintaining separate records for each beneficiary.

**Regulation 2831.2** - Performing monthly reconciliation of trust fund accounts.

**Regulation 2834** - Allowing unlicensed and unbonded signatories on a trust account.

### Remedy

Deficiencies in the area of trust fund records usually stem from one of two common deficiencies by real estate brokers.

The most common problem found among brokers who maintain poor trust fund records is a lack of knowledge of what the law requires in the area of trust fund record keeping and a lack of basic bookkeeping or accounting skills. Brokers often attempt to handle large amounts of trust funds without any specific training in the area. This often results in a trust fund disaster.

Brokers should understand that simply because they are able to handle large amounts of trust funds by virtue of their license, it doesn't necessarily follow that they should. Before accepting any trust funds, brokers should make sure that they have the proper knowledge and skills necessary to handle and account for the trust funds that are received in their business operations. The level of knowledge and skill that is necessary will vary with the type of operation and the amount of trust funds that are handled. Brokers must be able to recognize the limitations of their knowledge and skills as their business operations expand and either get further training or hire professionals with appropriate training.

A second common problem found among brokers who maintain poor trust fund records is a general lack of supervision over their trust fund operations. It is common to find brokerage operations where the responsible broker has simply turned this aspect of the operation over to office personnel. A broker must always exercise vigilant and consistent oversight of the trust fund operation to ensure that there is compliance with the law.

The Real Estate Law is very specific as to how trust fund monies are to be handled and how records are to be maintained. Real estate brokers who handle trust fund monies have a responsibility to become knowledgeable in this area. A good place to start is by reviewing the DRE's publication entitled Trust Funds which is available on our Web site.

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## **Trust Fund Shortage Violations**

**Section 10145** - General statute governing the handling of trust funds.

**Regulation 2832** - Trust fund handling.

**Regulation 2832.1** - Trust fund shortages.

### **Remedy**

Often, trust fund shortages in brokerage operations are caused by poor record keeping and lack of control on the part of the responsible broker. The remedies to this problem were previously discussed.

Of even more concern than poor record keeping, are trust fund shortages resulting from the deliberate conversion of trust funds for personal use by the broker or by employees of the broker. When this occurs, it is taken very seriously. Real estate brokers who are found to have converted trust funds can be assured that disciplinary action will be taken against their license. Also, the potential for criminal prosecution exists.

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## **Failure to Supervise Violations**

**Section 10177(h)** - As a real estate broker, failed to exercise reasonable supervision over the activities of salespersons, or as the designated officer of a corporation, failed to exercise reasonable supervision over the activities conducted by the corporation for which a real estate license is required.

Lack of supervision on the part of a broker is a recurring problem. In case after case, the Department has to address the problem of real estate brokers becoming designated officers of corporations owned by salespersons or unlicensed individuals and then not properly supervising the operations.

While it is not illegal for brokers to become designated officers of corporations they do not own, they must remain mindful of their duty to supervise the licensed activities of the corporation. All

too often, real estate brokers do not take this responsibility seriously and the public suffers as a result.

### **Remedy**

Brokers need to understand the responsibility that they take on when they become the designated officer of a corporation or allow a group of salespersons to work under their individual broker license. The absentee broker may find himself/herself not only the subject of a DRE disciplinary action, but also the subject of a civil lawsuit. In the end, the costs greatly outweigh any benefit received in the income that is usually paid for the use of a license.

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## **Unlicensed Activity Violations**

**Section 10130** - Unlicensed activity.

**Section 10137** - Unlawful employment or payment to an unlicensed individual or to a real estate salesperson who is not employed by the broker.

The real estate licensing requirement is the cornerstone to providing consumer protection to the purchasers of real property and those persons dealing with real estate licensees (Section 10050). Therefore, the enforcement of these requirements must be vigorous. Real estate brokers who pay unlicensed individuals for performing acts that require a real estate license will be disciplined and held accountable to pay appropriate fines and penalties.

### **Remedy**

Real estate brokers should establish systems within their offices to ensure that salespersons working for them complete their continuing education, renew their licenses on time, and do not continue to work in the event that their license expires.

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## **Misrepresentation Violations**

**Section 10176(a)** - Making a substantial misrepresentation in a transaction for which a real estate license is required. The term misrepresentation not only applies to a direct statement regarding a material fact that is untruthful or incorrect, but it also includes the failure of a real estate licensee to disclose material facts that the principal should be made aware of.

### **Remedy**

Real estate licensees should avoid making any statement they do not know to be true to a principal in a transaction. And because failure by licensees to disclose material facts to principals in real estate transactions is a continuing problem, licensees should remember the simple admonition - **When in doubt, disclose, and do it in writing.**

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### **Criminal Conviction Violations**

In addition to the above-referenced violations, individuals are very often either denied licenses or disciplined by the Department for failing to disclose a criminal conviction on an application for licensure [Sections 10177(a) and 480(c)], and for being convicted of a substantially related criminal offense [Section 10177(b)].

### **Remedy**

The one remedy that should be discussed in connection with criminal convictions is that persons applying for a real estate license should take great care to disclose all past criminal convictions. If the conviction is not disclosed, DRE will find out and the applicant's chances of receiving a license will be diminished as a result of their nondisclosure.