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United States • California Real Estate Salesperson License Exam

California

Study Guide

KNOWLEDGE POINTS	CHAPTERS	EDITION
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CHAPTER 1

Real Estate Law: Definitions, the DRE and the Commissioner

1.1 Broker, salesperson, and licensee definitions

'Licensee' (unmodified) means any person, broker or salesperson, licensed under this part. 'Broker' means a person licensed as a broker; 'Salesperson' means a person licensed as a salesperson. A real estate salesperson must be a natural person, retained by a broker for compensation, to perform acts under § § 10131 et seq. The term 'salesman' means salesperson.

- ✓ A real estate salesperson must be a natural person retained by a broker for compensation
- ✓ A broker or company may be licensed, but a salesperson must be a natural person
- ✓ 'Licensee' without modification includes both brokers and salespersons

1.2 Responsible broker, manager, and broker associate

A 'responsible broker' is the broker responsible for exercising control and supervision of salespersons under § 10159.2, or a licensee subject to discipline under § 10177(h) for failure to supervise. A 'manager' is a licensee authorized to perform supervisorial services for a responsible broker. A 'broker associate' is a broker retained by a responsible broker to provide licensed services on the responsible broker's behalf.

- ✓ A responsible broker must exercise control and supervision over affiliated salespersons and broker associates
- ✓ Supervision is limited to regulatory compliance and consumer protection
- ✓ A broker associate is a licensed broker working under another responsible broker

1.3 Broker's fiduciary and supervisory duties preserved (§ 10010.5)

AB 1289 and AB 2884 did not change a broker's existing statutory/common law duties as agent, fiduciary duties, disclosure duties, or a responsible broker's duty to supervise. A responsible broker has a duty to supervise each affiliated salesperson and broker associate regardless of whether the retention contract calls it an independent contractor or employment relationship, and is liable for their actions or negligence.

- ✓ A responsible broker must supervise licensed acts of each affiliated salesperson/broker associate regardless of the contractor vs. employee label
- ✓ A responsible broker is liable for the actions or negligence of retained salespersons/broker associates
- ✓ Broker fiduciary and disclosure duties under existing law remain in force

1.4 Definition of listing and listing agreement types

A 'listing' includes lists of owners/property offered for sale/rent/lease/exchange, lists of prospective buyers, and service agreements to promote a sale or lease. A 'listing agreement' is a written contract between a seller and broker authorizing the broker to sell or find a buyer. Types: exclusive right to sell (compensation regardless of who sells), seller reserved (no compensation if owner sells directly), and open (compensation only if that agent obtains the accepted offer first).

- ✓ A listing agreement must be a written contract between seller and broker
- ✓ Exclusive right to sell listing entitles the agent to compensation no matter who effects the sale during the term
- ✓ Under an open listing, no exclusive rights are granted and the agent is paid only if that agent obtains the accepted offer before the property is otherwise sold
- ✓ Under a seller reserved listing, no compensation is owed if the owner sells directly, not through another broker

1.5 Department of Real Estate and Commissioner's role

The Department of Real Estate exists within the Business, Consumer Services, and Housing Agency; its chief officer is the Real Estate Commissioner. The Commissioner's principal responsibility is to enforce the Real Estate Law and the Subdivided Lands Law to achieve maximum protection for buyers of real property and persons dealing with real estate licensees.

- ✓ The Commissioner's principal responsibility is to enforce the law for maximum protection of buyers and those dealing with licensees
- ✓ The Real Estate Commissioner is the chief officer of the Department of Real Estate

1.6 Public protection is the highest priority (§ 10050.1)

Protection of the public is the highest priority for the Department in exercising its licensing, regulatory, and disciplinary functions. Where public protection conflicts with other interests, public protection is paramount.

- ✓ Protection of the public is the highest priority of the Department
- ✓ When public protection conflicts with other interests, public protection is paramount

1.7 Citations and administrative fines (§ 10080.9)

If the Commissioner has cause to believe an unlicensed person is performing acts requiring a license, or a licensee has violated the law, the Commissioner may issue a written citation. Citations may include an order to correct and an administrative fine not to exceed $2,500, deposited into the Recovery Account of the Real Estate Fund. The cited person has 30 days to request a hearing or the citation becomes final. No license may be issued or renewed while an unpaid fine or uncorrected citation remains.

- ✓ Administrative fines by citation may not exceed $2,500
- ✓ Citation fines are deposited into the Recovery Account of the Real Estate Fund
- ✓ The cited person has 30 days to request a hearing or the citation becomes final
- ✓ No license may be issued or renewed while an unpaid fine or uncorrected citation remains outstanding

1.8 Advance Fee Prohibited - Loan Modification

A licensee negotiating or offering to perform a mortgage loan modification or forbearance for a fee may not collect any compensation until fully performing all contracted services, may not take a lien or security, and may not take a power of attorney from the borrower.

- ✓ No compensation collected until all services fully performed
- ✓ No wage assignment, lien, or security to secure payment
- ✓ No power of attorney from the borrower
- ✓ Applies only to residential property with four or fewer dwelling units
- ✓ A violation is also subject to a civil penalty of up to $20,000 per violation under Civil Code § 2944.7

1.9 Desist and Refrain Orders

If the commissioner determines through investigation that a person has violated the license law or regulations, the commissioner may issue a desist and refrain order. The respondent must immediately cease and may request a hearing within 30 days of service.

- ✓ Respondent must immediately cease the activity upon receipt of order
- ✓ Respondent may request a hearing within 30 days of service
- ✓ Hearing must commence within 30 days of request unless postponed by respondent

1.10 Real Estate Law citation and core definitions

Part 1 of Division 4 is cited as the Real Estate Law. Definitions in Chapter 1 apply to this part only. 'Commissioner' means the Real Estate Commissioner; 'Department' means the Department of Real Estate in the Business, Consumer Services, and Housing Agency. 'Person' includes a corporation, company, and firm.

- ✓ Part 1 of Division 4 of the Business and Professions Code is known as the Real Estate Law
- ✓ 'Person' includes corporation, company and firm
- ✓ 'Department' means the Department of Real Estate within the Business, Consumer Services, and Housing Agency

1.11 Advance fee definition and exclusions (§ 10026)

An 'advance fee' is any fee, regardless of form, claimed, demanded, charged, received or collected by a licensee for licensed services or a listing before fully completing the contracted service. Fees may not be split into components to avoid regulation. Exclusions include Civil Code § 1950.5 security deposits, § 1950.6 screening fees, certain advertising fees not under broker control, and fees under a qualifying 'limited service' contract. A commission paid after full performance is not an advance fee.

- ✓ An advance fee is collected before the licensee fully completes the contracted service
- ✓ A fee cannot be divided into components to avoid advance-fee regulation
- ✓ A commission payable only after the contract is fully performed is NOT an advance fee
- ✓ Security deposits and tenant screening fees are excluded from the advance fee definition

1.12 Real property sales contract and trust deed definitions

A 'real property sales contract' is an agreement to convey title upon satisfaction of specified conditions that does NOT require conveyance of title within one year of formation (i.e., a land installment contract). 'Trust deed'/'deed of trust' includes 'mortgage.' 'Business opportunity' includes sale/lease of the business and goodwill of an existing enterprise.

- ✓ A real property sales contract does not require conveyance of title within one year of formation
- ✓ 'Trust deed' or 'deed of trust' as used in this part includes a mortgage
- ✓ A business opportunity includes the business and goodwill of an existing enterprise

1.13 Independent contractor vs. employee — no effect on public duties (§ 10032)

All obligations of brokers and salespersons to members of the public apply regardless of whether the broker-salesperson relationship is characterized as independent contractor or employer-employee. The parties may contract as either for their legal relationship with each other; tax/unemployment characterization follows the Unemployment Insurance Code and workers' comp follows the Labor Code.

- ✓ Duties to the public apply regardless of the independent contractor vs. employee characterization
- ✓ Broker and salesperson may contract as independent contractors or employer-employee for their relationship with each other

1.14 Appointment and qualifications of the Commissioner

The Commissioner is appointed by the Governor. The Commissioner must have been a real estate broker actively engaged in business in California for five years, or possess related real estate experience in California for five years within the last 10 years.

- ✓ The Commissioner is appointed by the Governor
- ✓ The Commissioner must have 5 years' experience as an active California broker or 5 years related real estate experience within the last 10 years

1.15 Commissioner's enforcement and rulemaking powers

The Commissioner enforces the Real Estate Law and has full power to regulate and control the issuance and revocation (temporary and permanent) of all licenses. The Commissioner may adopt, amend, or repeal rules and regulations reasonably necessary for enforcement, following the Administrative Procedure Act. These regulations are found in the California Code of Regulations.

- ✓ The Commissioner has full power over issuance and revocation of licenses, both temporary and permanent
- ✓ Rules and regulations must be adopted under the Administrative Procedure Act
- ✓ The Commissioner's principal office is in Sacramento

1.16 Commissioner's power to enjoin and appoint receiver (§ § 10081, 10081.5)

The Commissioner may bring an action to enjoin violations of the Real Estate Law and may seek restitution for injured persons. For trust fund violations under § 10145, if an audit reflects commingling or conversion of trust funds exceeding $10,000, the court may restrain the licensee and appoint a receiver. No preliminary injunction/TRO may be granted without at least five days' notice to the defendant.

- ✓ The Commissioner may seek an injunction and restitution for persons injured by violations
- ✓ An audit showing commingling or conversion of trust funds over $10,000 may lead the court to restrain the licensee and appoint a receiver
- ✓ No preliminary injunction or TRO without at least 5 days' notice to the defendant

1.17 DRE Online License Status Disclosure

The commissioner must provide license status information on the internet including suspensions, revocations, and accusations filed. Personal information (home phone, DOB, SSN) is excluded, but the licensee's address of record is disclosed. Licensees may use a P.O. box or alternate mailing address instead of a home address for the public record.

- ✓ Public online info must include suspensions, revocations, and accusations
- ✓ Personal info like home phone, DOB, and SSN may not be disclosed
- ✓ Licensee may provide a P.O. box or alternate address instead of home address
- ✓ Info must identify associate licensees and responsible brokers

1.18 Advance Fee Agreements and Materials

The commissioner may require advance fee agreement materials (contracts, solicitation letters, advertising) to be submitted at least 10 calendar days before use. If materials would tend to mislead, the commissioner may order they not be used within 10 days. Violation is a misdemeanor.

- ✓ Materials may be required 10 calendar days before use
- ✓ Commissioner may order misleading materials not be used within 10 days
- ✓ Violation is a misdemeanor punishable by up to $2,500 fine or 6 months jail

1.19 Advance Fee for Loans on Real Property

It is unlawful to charge an advance fee for soliciting lenders on behalf of borrowers or performing services in connection with real property secured loans before the borrower is obligated, unless done by a licensed real estate broker complying with the law.

- ✓ Advance fee for loan services before borrower obligation requires a licensed broker
- ✓ Banks, savings associations, and licensed finance lenders are exempt
- ✓ Violation punishable by up to $10,000 fine (up to $50,000 for corporations)

1.20 Suspension or Bar Order

In addition to other authority, the commissioner may suspend or bar a broker, salesperson, or unlicensed person for up to 36 months where it is in the public interest and the person committed a violation or was convicted of a crime involving dishonesty, fraud, or deceit.

- ✓ Bar/suspension may last up to 36 months
- ✓ Grounds include public-interest violations or conviction for dishonesty/fraud/deceit
- ✓ Person must request hearing within 15 days of notice or waives the right
- ✓ Upon notice, person is immediately prohibited from real estate business activity

1.21 Removal of Posted Discipline After 10 Years

A licensee may petition the commissioner (with a fee) to remove a disciplinary posting that has been on the DRE website for at least 10 years, upon showing evidence of rehabilitation that the notice no longer poses a credible risk to the public.

- ✓ Discipline posting must be at least 10 years old before removal petition
- ✓ Licensee must provide evidence of rehabilitation
- ✓ Commissioner considers other violations posing credible risk before removing

1.22 Environmental Hazards Booklet

The DRE publishes the Homeowners' Guide to Environmental Hazards (B&P § 10084.1; Health and Safety Code § § 25417–25417.2) to educate consumers on common hazards such as asbestos, radon, lead-based paint, formaldehyde, storage tanks and soil or water contamination. New editions must substantially comply with federal lead and radon disclosure requirements, and the guide has been updated to cover thirdhand smoke, wildfires, climate change and sea level rise. Delivering the booklet is deemed adequate general information on those hazards but never relieves the duty to disclose known hazards on the property.

- ✓ The Homeowners' Guide to Environmental Hazards covers asbestos, radon, lead-based paint, formaldehyde, tanks and contamination
- ✓ New editions must substantially comply with federal lead and radon disclosure requirements
- ✓ Updated to include thirdhand smoke, wildfires, climate change and sea level rise
- ✓ Delivery of the booklet is deemed adequate general information (Civil Code § 2079.7) but does not excuse disclosing known hazards

1.23 Deposit of Fees into the Real Estate Fund

All fees charged and collected under this part (and under Chapter 1 of Part 2), except as otherwise provided, must be paid by the commissioner into the state treasury at least once a month, accompanied by a detailed statement.

- ✓ Fees are deposited into the Real Estate Fund
- ✓ The commissioner must pay collected fees at least once a month with a detailed statement

1.24 Military Licensee Fee Exemption and Renewal

A 'military licensee' is a person who held a real estate license or endorsement when entering U.S. military service and notified the commissioner within six months of entry. Such licensees need not renew until the license period first commencing after re-entering business or one year after termination of military service, whichever is earlier. Privileges are lost upon dishonorable discharge or voluntarily remaining in service more than seven years from date of notification.

- ✓ Military licensee must notify commissioner within six months of entering military service
- ✓ Renewal deferred until the earlier of re-entering business or one year after termination of service
- ✓ Privileges lost on dishonorable discharge or voluntarily serving more than seven years from notification
- ✓ A person who failed to notify may apply for reinstatement upon resuming business or within one year of service termination

CHAPTER 2

Who Needs a License: Broker and Salesperson Acts and Exemptions

2.1 Real Estate License Required

It is unlawful to engage in, act as, advertise as, or assume to act as a real estate broker or salesperson in California without first obtaining a license, or to act as a mortgage loan originator without a license endorsement. District attorneys must prosecute violations.

- ✓ A license is required to act as a broker or salesperson in California
- ✓ A mortgage loan originator requires a license endorsement
- ✓ District attorneys have a duty to prosecute violations

2.2 Real Estate Broker Defined

A broker is one who, for compensation or expected compensation, performs for another acts such as selling, buying, soliciting, or negotiating real property or business opportunities; leasing/renting; collecting rents; soliciting borrowers/lenders and negotiating loans; and selling/exchanging real property sales contracts or notes secured by liens.

- ✓ Broker acts for compensation on behalf of another or others
- ✓ Covered acts include selling, buying, leasing, renting, and collecting rents
- ✓ Covered acts include negotiating loans secured by liens on real property
- ✓ Regardless of form or time of compensation payment

2.3 Persons Exempt from Real Estate License Requirement

Section 10131 acts do not require a real estate license when performed by certain persons acting in specific capacities. These exemptions do not apply to anyone using them to evade the license law.

- ✓ Exempt persons include: a corporate officer or general partner acting on the entity's own property without special compensation; a holder of a duly executed power of attorney; an attorney rendering legal services; a court-appointed receiver or trustee in bankruptcy; a trustee under a deed of trust selling under that trust's authority
- ✓ Exemptions are void if used to evade the provisions of the real estate law

2.4 Must Be Licensed to Sue for Compensation

A person acting as a broker or salesperson cannot bring or maintain a court action to collect compensation without alleging AND proving they were duly licensed at the time the cause of action arose.

- ✓ Plaintiff must both allege and prove they held a valid license when the cause of action arose
- ✓ Applies to brokers and salespersons seeking compensation for licensed acts

2.5 Restrictions on Paying and Receiving Commissions

A broker may not compensate an unlicensed person for licensed acts. A salesperson may only accept compensation from the broker under whom they are licensed and may pay other licensees only through the responsible broker.

- ✓ A broker may not compensate anyone (directly or indirectly) for licensed acts unless they are a licensed broker or a salesperson under the responsible broker; a broker may pay a commission to an out-of-state broker
- ✓ A salesperson may accept compensation for licensed activity only from the broker under whom they are currently licensed
- ✓ Licensees sharing compensation must have it paid through the responsible broker
- ✓ Violation may result in temporary suspension or permanent revocation of the license

2.6 Criminal Penalties for Unlicensed Activity

Acting as or advertising as a broker, salesperson, or mortgage loan originator without a license is a public offense with substantial fines and possible jail time; corporations face higher fines.

- ✓ Individuals: fine up to $20,000, or up to six months in county jail, or both
- ✓ Corporations: fine up to $60,000
- ✓ Excess fines above $10,000 (individual) or $50,000 (corporation) may be deposited into the county's Real Estate Fraud Prosecution Trust Fund if one exists

2.7 Property Management Exemptions

Certain managers and employees are exempt from licensing, including hotel/motel/apartment resident managers and their employees, and unlicensed property management firm employees performing specified leasing functions under broker supervision. Brokers must exercise reasonable supervision over such nonlicensed persons.

- ✓ Resident managers of apartments and their employees are exempt
- ✓ Unlicensed employees may show units, accept applications, deposits, and rents under supervision
- ✓ Broker must exercise reasonable supervision and control over nonlicensed persons
- ✓ Broker must comply with Section 10163 for each apartment location

2.8 Broker Definition - In the Business of Notes/Loans

A person acting as principal in the business of making loans or buying/selling real property sales contracts or notes secured by liens is a broker. 'In the business' means acquiring, selling, or making eight or more such contracts, notes, or loans in a calendar year.

- ✓ Eight or more transactions per calendar year constitutes being 'in the business'
- ✓ Own funds excludes third-party funds advanced conditioned on later purchase
- ✓ Transactions negotiated through a licensee are not counted for threshold

2.9 Lender and Financial Institution License Exemptions

Various mortgage/lending statutes (subdivisions (d) and (e) of § 10131, § 10131.1, Articles 5 and 7) do not apply to banks, trust companies, savings and loans, credit unions, insurance companies, finance lenders, residential mortgage lenders/servicers, securities brokers/dealers, PACE administrators/solicitors, and certain HUD-approved counseling organizations acting within their authority.

- ✓ Banks, trust companies, S&Ls, credit unions, insurance companies and their employees are exempt when acting under their governing law
- ✓ A person making collections on 10 or fewer loans, or in amounts of $40,000 or less per calendar year, is exempt from the payment-collection/servicing provisions
- ✓ A broker must exercise reasonable supervision over nonlicensed employees, and the commissioner may still discipline a broker for a nonlicensed employee's misconduct

2.10 Clerical Staff Exempt from Licensing

A license is not required for stenographers, bookkeepers, receptionists, telephone operators, or other clerical help when carrying out their clerical functions.

- ✓ Sections 10016, 10131, 10131.1, and 10132 do not apply to clerical help performing clerical duties
- ✓ The exemption applies only while carrying out clerical functions, not licensed activities

2.11 Partnership Real Estate Activity Requires Licensed Partners

A partnership may perform acts requiring a broker license only if every partner through whom the partnership acts is a licensed real estate broker.

- ✓ Every partner acting on behalf of the partnership in broker activities must hold a broker license
- ✓ Nothing precludes a partnership from performing broker acts if this licensing requirement is met

2.12 Broker Preparing Loan Documents as Unlawful Practice

A real estate broker who selects and prepares legal instruments such as notes, mortgages, and deeds of trust for a fee in an independent loan transaction may be engaged in the unlawful practice of law. 'Practice of law' is not limited to court appearances—it includes giving legal advice and preparing legal instruments that secure legal rights. Only active licensees of the State Bar may practice law in California.

- ✓ No person may practice law in California unless an active State Bar licensee (§ 6125)
- ✓ Selection and preparation of a note, mortgage, and deed of trust by a broker for a fee in an independent loan transaction has been held to be unlawful practice of law (People v. Sipper)
- ✓ 'Practice of law' includes legal advice and preparation of legal instruments, not just court appearances
- ✓ Unauthorized practice of law is a misdemeanor punishable by up to one year in county jail and/or a $1,000 fine (§ 6126)

2.13 Self-Service Storage Facility Management Exemption

Under the California Self-Service Storage Facility Act, an owner or operator managing a self-service storage facility or receiving rent from occupants does not need a real estate license. A self-service storage facility rents individual storage space for storing personal property and may not be used for residential purposes.

- ✓ No real estate license is required to manage a self-service storage facility or receive rent from occupants
- ✓ No occupant may use a self-service storage facility for residential purposes
- ✓ A self-service storage facility does not include a garage or storage area in a private residence

2.14 Broker Definition - Advance Fees, Securities, MOG

A broker also includes a person who collects advance fees for promoting sale/lease of property; one who negotiates specified securities (unless a licensed broker-dealer); and one who deals in mineral, oil, or gas (MOG) property for compensation or as a principal.

- ✓ Collecting advance fees to promote property sale/lease requires a broker license
- ✓ Broker-dealers licensed under Corporate Securities Law are exempt from securities provision
- ✓ Dealing in mineral, oil, or gas property for compensation requires a broker license

2.15 Broker Sale of Mobilehomes

A licensed broker may sell or negotiate a manufactured/mobilehome only if it has been registered under the Health and Safety Code. A broker may not display and offer two or more mobilehomes for sale unless also licensed as a mobilehome dealer.

- ✓ Broker may sell a mobilehome only if it is registered under Health and Safety Code
- ✓ Displaying/offering two or more mobilehomes for sale requires a mobilehome dealer license

2.16 Unlawful Mobilehome Advertising Acts by Licensees

A real estate licensee handling manufactured homes/mobilehomes may not advertise or offer for sale a unit unless it is properly placed in an established mobilehome park or otherwise lawfully located for at least one uninterrupted year. Licensees have specific duties regarding withdrawal of ads and accurate representations.

- ✓ Must withdraw any mobilehome advertisement within 48 hours after receiving notice the unit is no longer available for sale, lease, or exchange
- ✓ May not advertise a used mobilehome/manufactured home as 'new'
- ✓ May not falsely represent 'no downpayment required' when a downpayment is in fact required and financed by an additional loan
- ✓ Must properly endorse, date, and deliver certificate of ownership/title and deliver registration card to a lawful transferee

2.17 Real Estate Licensees May Sell Franchises

It is unlawful to sell a franchise in California unless the person is authorized. One category of authorized sellers is a person licensed by the Department of Real Estate as a real estate broker or salesperson. This connects real estate licensing to franchise sales activity.

- ✓ A licensed real estate broker or salesperson is authorized to effect the sale of a franchise in California
- ✓ Selling a nonexempt franchise without proper authorization (e.g., DRE license, broker-dealer license, or franchise broker registration) is unlawful
- ✓ A franchise offer must be registered under the Franchise Investment Law or exempted before it may be offered or sold

CHAPTER 3

License Qualification, Examination, Education, Renewal and MLO Endorsement

3.1 Salesperson Education Requirements

Applicants for the salesperson license/exam must show successful completion at an accredited institution of a three-semester-unit course in Real Estate Principles, plus Real Estate Practice, plus one additional statutory course. Evidence must be provided before taking the exam.

- ✓ Must complete Real Estate Principles, Real Estate Practice, and one additional approved course
- ✓ Evidence of course completion must be provided before taking the salesperson exam
- ✓ Requirements are waived for members of the State Bar of California and those qualified for the broker exam

3.2 Broker License Experience Requirement

An applicant for an original broker license must show they held a salesperson license for at least two years within the prior five years and were actively engaged in the business. Alternatively, an applicant with the equivalent of two years' general real estate experience may petition; a four-year college degree with a real estate major/minor may be treated as the equivalent of two years' experience.

- ✓ Must have held a salesperson license and been actively engaged at least two years within the prior five years
- ✓ Two years' equivalent general real estate experience may be accepted via written petition
- ✓ A four-year degree with a real estate major/minor may equal two years' experience

3.3 Written Examination Content Requirements

All applicants for a real estate license must pass a written examination administered by the commissioner in addition to proving honesty and truthfulness. For corporate broker applicants, each officer or agent through whom the corporation proposes to act must pass. The exam tests knowledge of English (reading, writing, spelling), real estate arithmetic, conveyancing principles, agency contracts, deposit receipts, deeds, mortgages, deeds of trust, land contracts, leases, appraisals, and land economics.

- ✓ The commissioner ascertains applicant qualification by written examination in addition to proof of honesty and truthfulness.
- ✓ Exam covers English proficiency, real estate arithmetic, conveyancing, agency obligations, business ethics, the Real Estate Law, and Commissioner's Regulations in Title 10 CCR.

3.4 Broker License Pre-License Course Requirements

Broker license applicants must complete, at an accredited institution, eight statutorily required three-unit college courses. Five are mandatory: Real Estate Practice (which must include an implicit bias component and an interactive fair housing component with roleplay), Legal Aspects of Real Estate, Real Estate Appraisal, Real Estate Financing, and Real Estate Economics or Accounting. The applicant must also complete three courses chosen from a list including advanced legal aspects, advanced finance, advanced appraisal, business law, escrows, real estate principles, property management, office administration, mortgage loan brokering/lending, computer applications, and common interest development law.

- ✓ Broker applicants must complete five mandatory three-unit courses plus three elective courses (eight total) at an accredited institution.
- ✓ The Real Estate Practice course must include an implicit bias component and an interactive fair housing roleplay component.
- ✓ The commissioner shall waive the course requirements for a member of the State Bar of California or one who completed an equivalent course of study.

3.5 Four-Year License Terms for Broker and Salesperson

All real estate broker and salesperson licenses issued by the commissioner are for a period of four years. Applicants must qualify in the appropriate examination and satisfy all other requirements before issuance. The four-year license may be renewed by filing the required application and fee and complying with continuing education provisions (Article 2.5, commencing with Section 10170).

- ✓ Both broker and salesperson licenses are issued for a four-year period.
- ✓ Renewal requires the application, fee, and compliance with continuing education under Article 2.5.

3.6 Grounds for Denial of MLO Endorsement

The Commissioner shall NOT issue an MLO endorsement unless: the applicant never had an MLO license revoked in any jurisdiction; has not been convicted of/pled guilty or nolo to a felony in the 7 years preceding application (or at any time if the felony involved fraud, dishonesty, breach of trust, or money laundering); demonstrates financial responsibility, character, and general fitness; and has met the education and written test requirements.

- ✓ No MLO endorsement if applicant ever had an MLO license revoked in any governmental jurisdiction
- ✓ No felony conviction in the 7 years before application, or ever if the felony involved fraud, dishonesty, breach of trust, or money laundering
- ✓ Applicant must demonstrate financial responsibility, character, and general fitness to command community confidence
- ✓ Expunged or pardoned felony convictions do not require denial, but the underlying facts may be

considered

3.7 MLO Pre-License Education and Testing

In addition to § 10153 requirements, an MLO applicant must complete at least 20 hours of NMLS-approved education: 3 hours federal law, 3 hours ethics (fraud, consumer protection, fair lending), and 2 hours on nontraditional mortgage products. The applicant must pass a qualified written test with a score of at least 75%. Failed tests may be retaken after 30 days; after 3 consecutive failures, the applicant must wait 6 months. An MLO who lapses for 5+ years must retake the test.

- ✓ MLO applicants must complete at least 20 hours of pre-license education (3 fed law, 3 ethics, 2 nontraditional products)
- ✓ A passing test score is at least 75% correct answers
- ✓ At least 30 days must pass between retests; 6-month wait after 3 consecutive failures
- ✓ MLO who fails to maintain a valid endorsement for 5 years or longer must retake the qualified written test

3.8 Continuing Education Basic Requirement

As a prerequisite to renewal of a real estate license, licensees must complete 45 clock hours of approved continuing education during the four-year period preceding the renewal application. The commissioner adopts regulations defining qualifying programs, equivalency standards, reporting/control systems, testing for correspondence/homestudy courses, and exemption conditions for health, military service, or other compelling cause.

- ✓ 45 clock hours of approved CE required within the 4-year period preceding renewal.
- ✓ CE is a prerequisite to license renewal on and after January 1, 1981.
- ✓ Exemptions available for health, military service, or other compelling cause.

3.9 Required First-Renewal CE Courses

For a licensee's first renewal, the 45 hours must include specific mandatory courses: a 3-hour ethics course; a 3-hour agency course; a 3-hour trust fund accounting and handling course; a 3-hour fair housing course with an interactive role-play component; a 3-hour risk management course; a 2-hour implicit bias training course; and, for brokers, an additional 3-hour course in office management and supervision. At least 18 hours must be consumer protection courses. 'Successful completion' of these mandatory courses requires passing a final examination.

- ✓ First renewal requires 3-hour courses in ethics, agency, trust fund handling, fair housing (with interactive role-play), and risk management, plus 2-hour implicit bias training.
- ✓ Brokers must additionally complete a 3-hour office management and supervision course.
- ✓ At least 18 of the 45 hours must be consumer protection courses.
- ✓ 'Successful completion' means passing a final examination.

3.10 Broker and Salesperson License Applications

Applications for broker or salesperson examinations and licenses must be made in writing (or electronically for MLO endorsements) to the commissioner with valid contact information and the required fee. No license is issued until the applicant passes the corresponding license examination.

- ✓ Applications must be in writing with valid contact info and the required fee
- ✓ License shall not be issued until the applicant passes the license examination
- ✓ MLO endorsement applications must meet SAFE Act (2008) minimum requirements

3.11 Nonresident Applicant Eligibility and Consent to Service

A nonresident may obtain a California real estate license if they qualify under the chapter and their home state permits Californians to obtain a license there. Every nonresident applicant must file an irrevocable consent that process may be served upon them by delivery to the Department of Real Estate when personal service cannot be made in California.

- ✓ Nonresident's home state must permit reciprocal licensure of California residents
- ✓ Foreign corporation is exempt if a designated licensed broker-officer is a California resident
- ✓ Nonresident must file an irrevocable consent to service of process through the DRE

3.12 Fingerprinting and Proof of Honesty

The commissioner may require proof of an applicant's honesty and truthfulness, including for corporate officers, directors, or 10%+ stockholders, and must require every original applicant to be fingerprinted before issuing a license. Petitions for reinstatement or penalty reduction also require submission of fingerprints.

- ✓ Every original applicant must be fingerprinted prior to license issuance
- ✓ Commissioner may require additional proof of honesty for applicants and corporate officers/directors/10%+ stockholders
- ✓ Reinstatement or penalty-reduction petitions must include fingerprints

3.13 Prohibition on Cheating or Subverting Exam

No person may cheat on, subvert, or attempt to subvert a licensing examination. Prohibited conduct includes unauthorized communication during the exam, copying answers, having another person take the exam, removing exam materials, unauthorized reproduction of exam content, possessing unauthorized materials/devices, failing to follow security rules, and providing false qualification information. The commissioner may bar a candidate who willfully cheats from taking any license exam and from holding an active license for up to three years.

- ✓ Cheating includes copying answers, impersonation, removing/reproducing exam materials, and possessing unauthorized devices or notes.
- ✓ The commissioner may bar a willful cheater from examination and from holding an active license for up to three years.

3.14 Fraud Regarding Examinee Identity

It is unlawful to practice deception or fraud regarding one's identity in connection with any examination, application, or request to be examined. Anyone who willfully violates or knowingly participates in the violation is guilty of a misdemeanor.

- ✓ Deception or fraud regarding identity in any examination, application, or request is unlawful.
- ✓ Willful violation or knowing participation is a misdemeanor.

3.15 Reexamination Time Limit

When an applicant fails the qualifying examination, they may apply for reexamination by filing the appropriate application and fee. The reexamination application and fee must be filed and the reexamination taken within the two-year period following the date the original application for examination was filed.

- ✓ A failed applicant may reapply for reexamination with the proper application and fee.
- ✓ Reexamination must be taken within two years following the date the original examination application was filed.

3.16 Continued Operation Under Timely Renewal

A properly completed renewal application filed before midnight of the last day of the license period, with the applicable renewal fee and good faith evidence of continuing education compliance, entitles the applicant to continue operating under the existing license after its expiration date, unless previously suspended or revoked. If the commissioner determines CE requirements were not met, they must either advise of an extended compliance period (Section 10171.2) or advise that operating rights expire five days after notice is mailed or on the normal expiration date, whichever is later.

- ✓ A timely renewal application with fee and good faith CE evidence allows continued operation past the expiration date.
- ✓ If CE is not met, operating rights expire five days after notice is mailed or on normal expiration date, whichever is later, subject to hearing rights.

3.17 Restricted License Issuance and Conditions

The commissioner may issue a restricted license to a person who has violated Division 4 in a way justifying suspension/revocation, or an applicant who met examination and experience requirements but failed to make a satisfactory showing on other requirements. A restricted license may be limited by term, to employment by a particular broker (if a salesperson), or by conditions in exercising privileges. The commissioner may also require surety bonds as a condition.

- ✓ A restricted license may be issued after a hearing to a violator or a deficient applicant in the public interest.
- ✓ Restrictions may include term limits, employment by a specific broker, conditions, and surety bonds.

3.18 No Property Right or Renewal Right in Restricted License

A restricted license confers no property right in the privileges exercised, and the holder has no right to renewal. The commissioner may, without a hearing, issue an order suspending the licensee's right to exercise restricted-license privileges pending final determination after a formal hearing.

- ✓ A restricted license confers no property right and no right to renewal.
- ✓ The commissioner may suspend restricted-license privileges without a hearing pending a formal hearing determination.

3.19 Mortgage Loan Originator Definition and SAFE Act

Under California's implementation of the federal SAFE Act, a 'mortgage loan originator' (MLO) is an individual who takes a residential mortgage loan application or offers/negotiates terms of a residential mortgage loan for compensation or gain. Individuals performing purely administrative/clerical tasks, those only performing real estate brokerage services (unless compensated by a lender or MLO), and certain others are excluded. A 'residential mortgage loan' is secured by a dwelling of one to four units used for personal, family, or household purposes.

- ✓ An MLO takes a residential mortgage loan application or offers/negotiates loan terms for compensation or gain.
- ✓ A dwelling means a residential structure with one to four units, including condos, mobilehomes, and trailers used as residences.

3.20 MLO License Endorsement Requirement

No individual may engage in business as a mortgage loan originator without first obtaining and maintaining a real estate license AND obtaining and maintaining a mortgage loan originator license endorsement. Endorsements are valid for one year, expiring December 31 each year. Brokers and salespersons who make, arrange, or service one-to-four-unit residential loans must notify the department. Failure to notify or obtain the endorsement results in penalties of $50/day (first 30 days), then $100/day, up to $10,000. Penalties are deposited into the Consumer Recovery Account of the Real Estate Fund.

- ✓ An MLO must hold both a real estate license and a mortgage loan originator endorsement, which expires each December 31.
- ✓ Failure to notify or obtain endorsement incurs $50/day for 30 days then $100/day, capped at $10,000; funds go to the Consumer Recovery Account.

3.21 MLO Endorsement Application Requirements

An applicant for a mortgage loan originator (MLO) license endorsement from the DRE Commissioner must furnish identifying information to the Nationwide Multistate Licensing System and Registry (NMLS&R), including fingerprint images for federal and state criminal background checks, personal history and experience, authorization for an independent credit report, and information on administrative, civil, or criminal findings by any jurisdiction.

- ✓ MLO applicants must submit fingerprints for state and federal criminal history background checks through NMLS&R
- ✓ Applicants must authorize NMLS&R and the Commissioner to obtain an independent credit report and any administrative/civil/criminal findings

3.22 Discipline of MLO Endorsement Holders

After notice and hearing, the Commissioner may deny, suspend, revoke, restrict, condition, or decline to renew an MLO endorsement for violation of the article or its rules, or if the applicant/holder fails to meet requirements of § 10166.05 or § 10166.09, withholds information, or makes a material misstatement. The Commissioner may also issue desist and refrain orders, including immediate temporary orders.

- ✓ MLO endorsements may be denied, suspended, revoked, restricted, or non-renewed for violations or material misstatements
- ✓ The Commissioner may issue immediate temporary desist and refrain orders and orders to cease business

3.23 Broker Mortgage Business Activity Reports

A broker who makes, arranges, or services one or more loans in a calendar year secured by 1-4 residential units must file an annual business activities report within 90 days after the broker's fiscal year end. The report covers all supervised brokers/salespersons and details mortgage activities, loan totals, rates, compensation, prepayment penalties, and disclosures. Late filing lets the Commissioner charge 1.5 times the cost of examination, and failure to pay within 60 days may result in license suspension or non-renewal.

- ✓ Brokers making/arranging/servicing 1-4 unit residential loans must file an annual business activities report within 90 days of fiscal year end
- ✓ Late filing allows the Commissioner to charge 1.5 times the examination cost, with license suspension for nonpayment within 60 days
- ✓ Brokers may file consolidated reports to satisfy both § 10166.07 and § 10232.2

3.24 Record Retention and Examination

Mortgage loan brokers must keep documents (at minimum those in § 10148) enabling the Commissioner to verify compliance. Records are subject to inspection, examination, or audit after reasonable notice, and failure to produce records within the specified time may result in license suspension or revocation. Penalties imposed on examination are deposited into the Consumer Recovery Account of the Real Estate Fund.

- ✓ Mortgage loan brokers must retain records (minimum those in § 10148) for Commissioner review
- ✓ Failure to produce records within the requested time period may result in license suspension or revocation
- ✓ Penalties collected are deposited into the Consumer Recovery Account of the Real Estate Fund

3.25 MLO Endorsement Renewal and Continuing Education

To renew an MLO endorsement, the originator must continue to meet minimum standards and satisfy annual continuing education. MLOs must complete at least 8 hours of CE annually: 3 hours federal law, 2 hours ethics (fraud, consumer protection, fair lending), and 2 hours on nontraditional mortgage products. Credit is only given in the year taken, the same course cannot be repeated in successive years, and a lapsed/suspended/revoked MLO must complete CE for the last year held before reinstatement.

- ✓ MLOs must complete at least 8 hours of continuing education annually (3 fed law, 2 ethics, 2 nontraditional products)
- ✓ CE credit is received only in the year the course is taken; the same course cannot be repeated in the same or successive years
- ✓ A lapsed/expired/suspended/revoked MLO must complete CE for the last year held before reinstatement

3.26 Subsequent-Renewal Nine-Hour Survey Course

A licensee who has already renewed under the first-renewal requirements must, for subsequent renewals, complete the 45 clock hours including a nine-hour update survey course covering the subject areas of ethics, agency, trust fund handling, fair housing, risk management, implicit bias, and (for brokers) office management/supervision.

- ✓ Subsequent renewals require a nine-hour update survey course within the 45 hours.
- ✓ The survey course must cover the mandatory subject areas from paragraphs (1)–(7) of § 10170.5(a).

3.27 CE Exemption for Long-Term Senior Licensees

The continuing education requirement does not apply to a real estate licensee who proves to the commissioner that they have been a licensee in good standing for 30 continuous years in California and are 70 years of age or older. 'Good standing' means an active license not suspended, revoked, or restricted by discipline, not surrendered while under investigation, and not subject to debarment.

- ✓ CE exemption requires 30 continuous years as a licensee in good standing AND age 70 or older.
- ✓ 'Good standing' excludes licenses suspended, revoked, restricted, surrendered under investigation, or debarred.

3.28 CE Grace Periods and Reinstatement Requirements

If an applicant submits good-faith but insufficient CE evidence, the commissioner may extend the license 90 days to allow additional proof (license still expires four years from the original date). A revoked license may not be reinstated, nor a restricted license issued, without proof of required CE (unless a qualifying exam is required instead). Applicants renewing/reinstating whose last active license was issued four or more years earlier must present CE compliance; if not, a 90-day temporary license may be issued.

- ✓ Commissioner may grant a 90-day grace period for good-faith but insufficient CE evidence.
- ✓ Reinstatement of a revoked/restricted license requires proof of required CE unless a qualifying exam is required.
- ✓ A 90-day temporary license may be issued when CE compliance is not shown at renewal/reinstatement after 4+ years.

3.29 License Denial/Suspension for Child Support Arrears

California licensing boards, including the Department of Real Estate, must check applicants against a certified list of child support obligors who are out of compliance. The DRE can withhold issuance or renewal of a real estate license if the applicant is on the list. 'Compliance' means being no more than 30 calendar days in arrears on support payments or obtaining a judicial finding of equitable estoppel. This directly affects real estate licensees and applicants.

- ✓ The Department of Real Estate is a 'board' subject to Section 17520 and must check applicants against the certified child support delinquency list before issuing or renewing a license
- ✓ Compliance means being no more than 30 calendar days in arrears on current support, periodic payments, or reimbursement obligations
- ✓ Boards must collect social security numbers or individual taxpayer identification numbers from all license applicants for matching purposes

3.30 Temporary License and Release Process

An applicant on the certified list who is otherwise eligible receives a temporary license valid for 150 days. Upon expiration, the license is denied unless the board receives a release from the local child support agency confirming compliance or a payment agreement. The applicant must act diligently in responding to notices, as the temporary license lapses after 150 days.

- ✓ A temporary license valid for 150 days is issued to an otherwise eligible applicant whose name is on the certified list
- ✓ Only one temporary license may be issued during a license term and the 150-day period generally cannot be extended (except certain driver's licenses)
- ✓ A board that receives a release from the local child support agency must process it within five business days
- ✓ Funds paid by an applicant/licensee are not refunded if the license is denied or suspended under this section

3.31 Veteran and Military Spouse Expedited Licensure

The commissioner must expedite the initial licensure process for honorably discharged active-duty veterans and for spouses/partners of active-duty members stationed in California who hold a current license in another jurisdiction. Applicants may apply military experience toward broker licensure requirements.

- ✓ Honorably discharged active-duty veterans receive expedited initial licensure
- ✓ Military spouses assigned to California who hold a current out-of-state license receive expedited processing
- ✓ Military experience may be applied toward broker licensure requirements

3.32 Definition of Accredited Institution

An 'accredited institution' means a college or university accredited by the Western Association of Schools and Colleges (WASC) or another regional accrediting agency recognized by the U.S. Department of Education, or one the commissioner judges to have an equivalent real estate curriculum. An 'equivalent course of study' consists of courses at a private vocational school found by the commissioner to be equivalent in quality to real estate courses at WASC-accredited colleges.

- ✓ Accredited institution means a college/university accredited by WASC or another recognized regional agency.
- ✓ Equivalent course of study means private vocational school courses found equivalent in quality to accredited college real estate courses.

CHAPTER 4

Business Operations: Names, Offices, Affiliation, Advertising and Records

4.1 Advertising Disclosure Requirements for Licensees

Licensees must disclose in advertising that they are performing acts requiring a real estate license, and must include their name, license number, NMLS unique identifier (if a mortgage loan originator), and responsible broker's identity on first-contact solicitation materials and purchase agreements.

- ✓ All licensed-activity advertising must contain a designation disclosing the licensee is performing acts requiring a license
- ✓ Name, license ID number, NMLS unique identifier (if MLO), and responsible broker's identity must appear on first-point-of-contact solicitation materials and purchase agreements
- ✓ A licensee who legally changes their surname may continue using the former name for license business if both names are filed with the department
- ✓ Exceptions exist for 'for sale/rent/lease/open house/directional' signs that either show only the responsible broker's identity or show no licensee ID

4.2 Designated Officer Supervisory Responsibility

The officer designated by a corporate broker licensee (per Section 10211) is responsible for the supervision and control of activities conducted by officers and employees, including supervising salespersons licensed to the corporation. A corporate broker with additional broker-officers may, by board resolution, assign supervisory responsibility over salespersons to those broker-officers. A certified copy of any such resolution must be filed with the commissioner within five days after adoption or modification.

- ✓ The designated corporate officer is responsible for supervising and controlling corporate licensed activity, including salespersons.
- ✓ Supervisory responsibility may be assigned to broker-officers by board resolution, filed with the commissioner within five days.

4.3 Definition of Real Estate Brokerage

Real estate brokerage involves agency directed, for compensation, primarily toward the sale, exchange, lease, rental, financing, or managing of real property or a business opportunity. The overall real estate business consists of the production, marketing, and financing of real property.

- ✓ Brokerage requires an agency relationship conducted for compensation
- ✓ Brokerage activities include sale, exchange, lease, rental, financing, or managing of real property or a business opportunity

4.4 Broker's Duty of Reasonable Supervision

A broker must exercise reasonable supervision over the activities of salespersons associated with the brokerage. This is a critical obligation distinct from ordinary selling because real estate practice involves complex, individualized products and professional service.

- ✓ Reasonable supervision includes establishing policies, rules, procedures, and systems to review, oversee, inspect, and manage salesperson activities
- ✓ The broker must be familiar with and fulfill many other legal requirements outlined by the Department of Real Estate
- ✓ The licensee must be prepared to educate, coach, and counsel clients since real estate is usually the largest single purchase a buyer makes

4.5 False Advertising About Land or Subdivisions

Knowingly publishing, distributing, or aiding false statements about land or a subdivision offered for sale or lease is a public offense, and a licensee may face license suspension or revocation.

- ✓ Punishable by a fine up to $1,000, up to one year in county jail, or both
- ✓ A real estate licensee who violates this section is subject to a disciplinary hearing for suspension or revocation
- ✓ The district attorney of each county prosecutes violations occurring in that county

4.6 Disclosure of Digitally Altered Property Images

A broker or salesperson using a digitally altered image in advertising for the sale of real property must disclose the alteration and provide access to the original unaltered image.

- ✓ Advertisements with a digitally altered image must include a conspicuous statement disclosing the alteration plus a link/URL/QR code to the original unaltered image
- ✓ A 'digitally altered image' is one changed via photo editing software or AI to add, remove, or change elements; it does not include common adjustments like lighting, cropping, color correction, or straightening that don't change the property's representation

4.7 Broker Must Report Selling Price to Parties

Within one month after closing a transaction conveying real property (or a business with real/personal property) through a broker, the broker must give the buyer and seller written notice of the selling price. An escrow closing statement disclosing the information satisfies this duty.

- ✓ Broker must provide written selling price information to both seller and purchaser within one month after closing
- ✓ For an exchange, the information must describe the property and any added money consideration
- ✓ An escrow-holder's closing statement revealing this information constitutes compliance

4.8 Duty to Deliver Copy of Signed Agreement

When a licensee prepares an agreement retaining the licensee for licensed acts or obtains a signature on a related contract, the licensee must deliver a copy to the signer as soon as reasonably practicable after signing.

- ✓ A copy of the signed agreement must be delivered to the signing party as soon as reasonably practicable after obtaining the signature
- ✓ The copy may be delivered electronically where the parties have agreed to conduct the transaction electronically under the Uniform Electronic Transactions Act

4.9 Commission Negotiability Notice

Any printed/form agreement establishing or altering compensation to a licensee for sale or purchase of residential property (four or fewer units) or a mobilehome must contain a 10-point boldface notice stating that commission amounts are not fixed by law, are set individually by each broker, and may be negotiable. The rate cannot be pre-printed in the agreement.

- ✓ Notice must be in not less than 10-point boldface type immediately preceding compensation provisions
- ✓ Notice must state real estate commissions are not fixed by law and are negotiable
- ✓ The amount or rate of compensation shall not be printed in the agreement
- ✓ Applies to residential property of four or fewer units and mobilehomes

4.10 License Authority Personal to Licensee

No real estate license gives authority to any person other than the one to whom the license is issued. When a corporation is licensed and wants officers other than the designated officer (per Section 10211) to act under its license as broker, it must procure an additional license for each such officer. If a sole designated broker-officer dies or becomes incapacitated, the corporation may operate without interruption if notice and an application for a new designated officer are filed before midnight of the 10th business day after the event.

- ✓ A license authorizes only the person to whom it is issued.
- ✓ A corporation must obtain an additional broker license for each officer beyond the designated officer who acts under its license.
- ✓ On death/incapacity of a sole designated officer, notice and a new-officer application must be filed within 10 business days.

4.11 Fictitious Business Name Requirements

An applicant desiring a license under a fictitious business name must file a certified copy of the fictitious business name statement filed with the county clerk. A responsible broker may by contract permit a salesperson to file for and obtain a county fictitious business name, deliver the department application signed by the broker, pay associated fees, and maintain ownership of the name subject to the broker's control. Advertising using such a name must include the responsible broker's identity as prominently as the fictitious name, plus the salesperson's name and license number.

- ✓ A fictitious business name license requires filing a certified copy of the county-filed fictitious business name statement.
- ✓ Advertising with a broker-owned fictitious name must display the responsible broker's identity equally prominently and include the salesperson's name and license number.

4.12 Team Name Requirements and Definition

A 'team name' is a brand name used by a salesperson and one or more other licensees to provide licensed services; it does not require a separate license. A team name must include the surname of at least one licensee member with the term 'associates,' 'group,' or 'team,' and must not include terms like 'broker' or 'brokerage' or imply an entity independent of the responsible broker. Advertising must conspicuously display the team name plus the name and license number of at least one team member, and the responsible broker's identity must be equally prominent.

- ✓ A team name must include a member's surname plus 'associates,' 'group,' or 'team,' and cannot imply an independent brokerage entity.
- ✓ Team advertising must display the responsible broker's identity as prominently as the team name and include at least one member's name and license number.

4.13 Notice of Affiliation and Termination

A responsible broker must notify the commissioner when retaining a salesperson or broker to conduct licensed activities, and when any affiliation is terminated, in the manner specified by the commissioner. A licensee acquiring a business address different from department records must notify the commissioner.

- ✓ The responsible broker must notify the commissioner of retention and termination of affiliated licensees.
- ✓ Licensees must notify the commissioner of a change of business address.

4.14 Definite Place of Business Requirement

Every licensed broker must maintain a definite place of business in California serving as the office for transacting business, where the license is displayed and client consultations are held. A license authorizes business only from the location stipulated. Applicants must provide a current office/mailing address, telephone number, and email address, and must inform the commissioner of any change no later than 30 days after making the change. The licensee email address is not a public record.

- ✓ Every broker must maintain a definite California place of business where the license is displayed.
- ✓ Licensees must report changes to office/mailing address, phone, or email within 30 days.

4.15 Branch Office Licenses

A broker maintaining more than one place of business in the state must apply for and procure an additional branch office license for each branch office. The application must state the person's name and location(s). The commissioner determines whether a broker is doing brokerage business from a location requiring a branch office license.

- ✓ A separate branch office license is required for each additional place of business.
- ✓ The commissioner determines whether a location requires a branch office license.

4.16 Branch or Division Manager Appointment

A responsible broker or corporate designated officer may appoint a licensee as manager of a branch office or division, delegating day-to-day operations and supervision of licensees and clerical staff. Appointment must be by written contract, with a copy retained and notice sent to the department. A licensee cannot be appointed manager if they hold a restricted license, are or were subject to a debarment order, or are a salesperson with less than two years of full-time real estate experience within the preceding five years. Delegation does not relieve the broker's own supervisory responsibility.

- ✓ Branch manager appointment requires a written contract and notice to the department.
- ✓ A manager cannot hold a restricted license, be debarred, or be a salesperson with under two years of full-time experience within five years.
- ✓ Delegating to a manager does not limit the responsible broker's supervisory duties under Section 10177(h).

4.17 Penalties for Violations

For a violation of Sections 10161.8, 10162, 10163, or subdivision (b) of 10164, the commissioner may temporarily suspend or permanently revoke the licensee's license in accordance with hearing provisions.

- ✓ Violations of affiliation notice, place of business, branch office, or manager rules may result in suspension or revocation.
- ✓ Discipline follows the hearing procedures of this part.

4.18 Elements of Brokerage Sales Operations

With regard to the sale of real property, brokerage operations are divided into several key elements. Brokerage firms typically compete for listings and cooperate with other brokers who want to find buyers for those listings.

- ✓ Securing listings (developing inventory) through leads, referrals, and direct canvassing
- ✓ Prospecting for buyers through various forms of advertising
- ✓ Negotiating a 'meeting of the minds' between buyer and seller
- ✓ Assisting with closing (transfer of property by required instruments)
- ✓ Firms compete for listings but cooperate with other brokers to find buyers

4.19 Broker's Other Pursuits and Conflicts of Interest

A broker may engage in other pursuits as long as they do not create a conflict of interest with the broker's fiduciary duty to the client. Upon full disclosure, a broker may broker loans, appraise property for a fee, act as a real estate investment adviser/consultant, operate a property insurance business, or offer notary services.

- ✓ Other pursuits are permitted only if they do not conflict with the broker's fiduciary duty to the client
- ✓ Related activities such as loan brokering, appraisal, or insurance require full disclosure
- ✓ Subdividing/developing requires a suitable contractor's license (or working with/for a licensed contractor) and compliance with subdivision laws

4.20 Use of REALTOR Designation and Code of Ethics

The term REALTOR can only be used by licensees associated with the National Association of REALTORS. The designation connotes competency, fairness, and high integrity through adherence to a code of ethics and professional standards of practice.

- ✓ Only licensees who are members of the National Association of REALTORS may use the REALTOR designation
- ✓ The Code of Ethics may establish obligations higher than those mandated by law
- ✓ Where the Code of Ethics and the law conflict, the obligations of the law take precedence

4.21 Reinstatement After Government Service

A broker or salesperson who relinquishes their license to assume a local, state, or federal government office may have it reinstated within six months of terminating service in office, upon payment of the appropriate renewal fee and CE compliance, if the relinquished license was issued four or more years prior to the reinstatement application.

- ✓ Reinstatement is available within six months of terminating government service.
- ✓ Reinstatement requires the renewal fee and CE compliance if the relinquished license was issued four or more years earlier.

CHAPTER 5

Trust Funds and Trust Account Reporting

5.1 Broker Duty to Deposit Trust Funds

A broker who accepts funds belonging to others in a transaction must, unless the funds are immediately placed into a neutral escrow depository or the hands of the principal, deposit all such funds into a trust fund account maintained in a bank or recognized depository in this state. Funds must remain there until disbursed per instructions of the person entitled to them.

- ✓ Trust funds not placed in neutral escrow or with the principal must go into the broker's trust fund account in a California bank/recognized depository
- ✓ Funds must remain in the account until disbursed according to instructions from the person entitled to the funds
- ✓ Broker may also place funds directly into the hands of the broker's principal

5.2 Authorized Signatories on Trust Fund Withdrawals

Withdrawals from an individual broker's trust account require the broker's signature (or a corporate broker's licensed officer). Others may be authorized in writing: a salesperson licensed to the broker, another broker under a written agreement, or an unlicensed employee if the broker carries fidelity bond/insurance at least equal to the maximum trust funds the employee can access.

- ✓ Individual broker withdrawals require the broker's signature; corporate broker requires the licensed officer's signature
- ✓ Salesperson, another broker, or unlicensed employee may withdraw only if specifically authorized in writing
- ✓ Unlicensed employee access requires fidelity bond/insurance equal to at least the maximum trust funds accessible; deductible may be up to 5% with evidence of financial responsibility
- ✓ Delegating signature authority does not relieve the broker of responsibility or liability for trust funds

5.3 Interest-Bearing Trust Accounts Requirements

A broker may, only at the request of the owner of the funds or principals, deposit trust funds into an interest-bearing account at an FDIC-insured institution. The account must be in the broker's name as trustee for the beneficiary, all funds insured, kept separate from broker/other funds, with required disclosures, and interest cannot benefit the broker or the broker's licensees.

- ✓ Interest-bearing deposit is allowed only when requested by the fund owner or principals
- ✓ Account must be in broker's name as trustee for the designated beneficiary/principal
- ✓ Interest earned shall not inure directly or indirectly to the benefit of the broker or a person licensed to the broker
- ✓ Broker must disclose the nature of the account, interest calculation, service charges, and withdrawal penalties
- ✓ In executory sale/lease/loan transactions the contract must specify who receives the interest

5.4 Salesperson Handling of Trust Funds

A salesperson who accepts trust funds on behalf of their broker must immediately deliver the funds to the broker, or as directed by the broker deliver them to the broker's principal or a neutral escrow depository, or deposit them into the broker's trust fund account.

- ✓ Salesperson must immediately deliver accepted trust funds to the broker
- ✓ If directed by broker, salesperson may deliver funds to the principal, a neutral escrow, or the broker's trust account

5.5 Advance Fees Are Trust Funds

A broker who contracts for or collects an advance fee from a principal must deposit those amounts into a trust account with a bank or recognized depository. Such funds are trust funds, not the agent's funds, and may be withdrawn for the agent's benefit only when actually expended for the principal or five days after verified accountings are mailed to the principal.

- ✓ Advance fees collected must be deposited into a trust account and are trust funds, not the broker's funds
- ✓ Withdrawals for the broker's benefit allowed only when expended for the principal or 5 days after verified accountings are mailed
- ✓ Each principal must receive a verified accounting at the end of each calendar quarter and when the contract is fully performed

5.6 Three-Year Record Retention Requirement

A broker must retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed or obtained in transactions requiring a license. The period runs from closing, or from the listing date if the transaction is not consummated. Records must be available for examination and audit by the commissioner.

- ✓ Retention period is three years for listings, deposit receipts, canceled checks, trust records, and related documents
- ✓ Period runs from closing, or from the listing date if the transaction is not consummated
- ✓ Records must be made available for examination, inspection, and copying during regular business hours
- ✓ Records subject to audit without further notice upon sufficient cause (audit not harassing in nature)

5.7 Broker Escrow Activity Reporting Requirements

A broker conducting escrows under the Financial Code § 17006 exemption must file an annual report with the department if activity meets certain thresholds, with escalating penalties for failure to report.

- ✓ Must file a report within 60 days after year-end if the broker performs escrow for five or more transactions, or escrows totaling $1,000,000 or more, in a calendar year
- ✓ Penalty for non-filing: $50/day for the first 30 days, then $100/day, not to exceed $10,000 total
- ✓ Failure to pay the penalty may result in license suspension or revocation; penalties go into the Recovery Account of the Real Estate Fund

5.8 Separate Record and Examination of Trust Accounts

Brokers must maintain a separate record of the receipt and disposition of all trust funds, including any interest earned. Upon request of the commissioner, the broker must furnish authorization for examination of trust account financial records per Government Code Section 7473.

- ✓ Broker must keep a separate record of receipt and disposition of all trust funds including interest
- ✓ Broker must furnish authorization for financial record examination upon the commissioner's request

5.9 Definition of Neutral Escrow

'Neutral escrow' means an escrow business conducted by a person licensed under Division 6 (Section 17000 et seq.) of the Financial Code or a person described in the specified exemptions of Section 17006.

- ✓ Neutral escrow is an escrow business licensed under the Financial Code
- ✓ The escrow holder must be an independent, licensed third party

5.10 Penalties for Mishandling Advance Fees

If advance fees are not handled properly, it is presumed the agent violated Penal Code Sections 506 and 506a. The principal may recover treble damages for misapplied amounts plus reasonable attorney's fees.

- ✓ Mishandling advance fees creates a presumption of Penal Code Section 506/506a violation
- ✓ Principal may recover treble damages plus reasonable attorney's fees

5.11 Chargeable Audits and Cost Recovery

The commissioner shall charge the broker for the cost of an audit when a final order or decision finds a Section 10145 (trust fund) violation. Failure to pay within 60 days of billing may lead to suspension, revocation, or denial of renewal until the cost is paid.

- ✓ Broker charged for audit cost upon a final finding of a Section 10145 violation
- ✓ Failure to pay within 60 days may result in suspension, revocation, or denial of renewal
- ✓ The commissioner may use estimated average hourly cost to determine audit cost

5.12 Penalty for Destruction of Records

The department may suspend or revoke the license of any broker, salesperson, or licensed corporation if the licensee or the corporation's director, officer, employee, or agent knowingly destroys, alters, conceals, mutilates, or falsifies required records or records sought in an investigation, audit, or examination.

- ✓ Knowingly destroying, altering, concealing, or falsifying required records is grounds for suspension or revocation
- ✓ Applies to records sought in connection with an investigation, audit, or examination

5.13 Broker Duty to Record Deed of Trust

Within one week after closing a broker-negotiated transaction where title is conveyed and a deed of trust is executed, the broker must record the deed of trust or deliver it to the beneficiary with a recommendation to record, unless the beneficiary instructs otherwise.

- ✓ Broker must cause the deed of trust to be recorded within one week of closing, or deliver it to the beneficiary with a written recommendation to record it forthwith
- ✓ Delivery to the escrow holder within the prescribed time is deemed compliance; failure does not affect the validity of the title transfer

CHAPTER 6

Discipline, Enforcement and Penalties

6.1 Statute of Limitations for Discipline

An accusation must be filed within three years of the occurrence of the grounds. For fraud, misrepresentation, or false promise, it must be filed within one year of discovery by the aggrieved party or three years of occurrence, whichever is later, but never later than 10 years from occurrence.

- ✓ General accusation limit is three years from occurrence
- ✓ Fraud/misrepresentation: one year from discovery or three years from occurrence, whichever is later
- ✓ Absolute maximum is 10 years from occurrence

6.2 General Disciplinary Powers

Upon grounds provided in this article and other articles of the chapter, the license of any real estate licensee may be revoked or suspended in accordance with the hearing provisions of this part.

- ✓ The commissioner may revoke or suspend any licensee's license on statutory grounds.
- ✓ Discipline must follow the part's hearing provisions.

6.3 Grounds for License Revocation or Suspension

Section 10176 lists acts by a licensee (while acting within the scope of licensed activity) for which the Commissioner may temporarily suspend or permanently revoke a real estate license. The Commissioner may act on his own motion or must investigate upon a verified written complaint.

- ✓ Making any substantial misrepresentation is grounds for discipline
- ✓ Making false promises likely to influence, persuade, or induce is grounds for discipline
- ✓ Acting for more than one party (dual agency) without knowledge or consent of all parties is prohibited
- ✓ Commingling the money or property of others with the licensee's own money or property is grounds for discipline
- ✓ Taking a secret or undisclosed profit/compensation without revealing the full amount to the buyer or seller is prohibited

6.4 Exclusive Agreements Must Have Termination Date

Section 10176(f) makes it grounds for discipline to claim, demand, or receive compensation under an exclusive agreement that lacks a definite, specified date of final and complete termination.

- ✓ Exclusive listing/representation agreements must contain a definite termination date
- ✓ Claiming compensation under an exclusive agreement without a specified termination date is a violation

6.5 Additional Grounds for License Discipline

Section 10177 allows the Commissioner to suspend/revoke, delay renewal, or deny a license for conduct such as fraud in procuring a license, felony/related-crime convictions, false advertising, negligence, and failure of supervision. It applies to corporate licensees through their officers, directors, or 10%+ stockholders.

- ✓ Procuring a license by fraud, misrepresentation, deceit, or material misstatement is grounds for discipline
- ✓ Conviction of a felony or a crime substantially related to licensee duties is grounds for discipline
- ✓ A broker who fails to exercise reasonable supervision over salespersons is subject to discipline
- ✓ Willfully using the term 'realtor' or a trade name of an organization the licensee is not a member of is prohibited
- ✓ Demonstrating negligence or incompetence in a licensed act is grounds for discipline

6.6 Prohibition on Blockbusting / Panic Selling

Section 10177(l) prohibits soliciting or inducing the sale, lease, or listing of residential property based on loss of value, increased crime, or school decline due to entry of persons with protected characteristics (blockbusting/panic peddling).

- ✓ Blockbusting based on protected characteristics under Government Code 12955 is grounds for discipline
- ✓ The prohibition includes claims of loss of value, increased crime, or declining schools tied to protected-class entry

6.7 Mandatory Reporting of Convictions and Discipline

Section 10186.2 requires a licensee to report to the DRE any felony charge/indictment, any felony or misdemeanor conviction, and any disciplinary action by another licensing authority, in writing within 30 days. Failure to report is itself cause for discipline.

- ✓ A licensee must report felony charges, convictions (felony or misdemeanor), and other-agency discipline within 30 days in writing
- ✓ Failure to make a required report is itself a cause for discipline

6.8 Disciplinary Procedure Under APA

Before suspending or revoking a license, the DRE must proceed under the Administrative Procedure Act (Government Code § 11500 et seq.). Upon denial of a license application, the department proceeds under Sections 485-488.

- ✓ License suspension/revocation follows the Administrative Procedure Act
- ✓ License application denials proceed under Sections 485-488

6.9 Jurisdiction Over Lapsed/Surrendered License

The lapsing, suspension, or voluntary surrender of a license does not deprive the DRE of jurisdiction to continue investigations, actions, or disciplinary proceedings and render a decision suspending or revoking the license.

- ✓ Lapse, suspension, or surrender does not end DRE jurisdiction
- ✓ DRE may still render a decision suspending or revoking the license

6.10 Cost Recovery of Investigations

In a disciplinary order, the commissioner may direct a licensee to pay the reasonable costs of investigation and enforcement, including Attorney General charges. The department will not renew or reinstate the license until costs are paid, except under a financial hardship agreement.

- ✓ Licensee may be ordered to pay reasonable investigation and enforcement costs
- ✓ License not renewed/reinstated until all ordered costs are paid
- ✓ Conditional renewal up to one year available for demonstrated financial hardship

6.11 Monetary Penalty in Lieu of Suspension

If the commissioner determines the public interest is adequately served, the commissioner may, on the licensee's petition, stay all or part of a suspension on condition that the licensee pay a monetary penalty and incur no further cause for discipline within a specified period. This discretion applies to suspensions from contested hearings or by stipulation. Failure to pay the penalty allows the commissioner, without a hearing, to order immediate execution of the stayed suspension.

- ✓ Commissioner may allow a monetary penalty in lieu of suspension if public interest is adequately served.
- ✓ The stay is conditioned on payment and on incurring no further cause for discipline during a specified period.
- ✓ Failure to pay the penalty allows immediate execution of the stayed suspension without a hearing.

6.12 Option to Purchase Disclosure Requirement

Section 10176(h) prohibits a licensee from using an option to purchase in a listing agreement unless, prior to or coincident with exercising the option, the licensee reveals in writing the full amount of profit and obtains the buyer's or seller's written consent.

- ✓ A licensee holding an option to purchase must disclose in writing the full amount of profit before exercising the option
- ✓ The licensee must obtain the principal's written consent approving the profit amount

6.13 Mortgage Loan Disbursement and Delay Violations

Section 10176(k) and (l) address broker misconduct in mortgage loan transactions, including failing to disburse funds per a loan commitment and intentionally delaying closing to increase borrower charges.

- ✓ Failing to disburse funds per a mortgage loan commitment (when broker is the lender or authorized to commit) is grounds for discipline
- ✓ Intentionally delaying a mortgage loan closing solely to increase interest, costs, fees, or charges is prohibited

6.14 Discipline for Transfer Disclosure Violations

The Commissioner may suspend or revoke a license if a licensee willfully or repeatedly violates the Real Estate Transfer Disclosure Statement provisions (Civil Code Section 1102 et seq.). This administrative remedy is the only remedy for licensee violations of Civil Code 1102.6b.

- ✓ Willful or repeated violation of the Transfer Disclosure Statement law is grounds for suspension/revocation
- ✓ The Commissioner's disciplinary action is the sole remedy for licensee violations of Civil Code Section 1102.6b

6.15 Disclosure of Licensee's Ownership Interest to Buyer

Section 10177(o) requires a licensee acting as the buyer's agent to disclose the nature and extent of any direct or indirect ownership interest in the property, including interests held by relatives, entities the licensee owns, or persons with a special relationship.

- ✓ A licensee acting as buyer's agent must disclose direct or indirect ownership interest in the property
- ✓ Ownership interests held by relatives, related entities, or persons with a special relationship must be disclosed

6.16 Summary Suspension for Fraudulent License Procurement

The Commissioner may, without a hearing, suspend a license procured by fraud, misrepresentation, deceit, or material misstatement of fact. This power expires 90 days after license issuance and the respondent may request a hearing.

- ✓ Summary suspension power for fraudulently procured licenses expires 90 days after license issuance
- ✓ The respondent has 30 days after service to request a hearing on the statement of issues

6.17 Prohibition on Misrepresenting Property Value

Section 10177.3 prohibits a licensee from knowingly or intentionally misrepresenting property value and bars a prohibited interest when providing an opinion of value used for mortgage loan origination on residential property.

- ✓ No licensee may knowingly or intentionally misrepresent the value of real property
- ✓ A licensee providing a value opinion used for mortgage origination cannot have a prohibited interest in the property

6.18 Referral of Customers for Compensation (Kickbacks)

Section 10177.4 permits discipline of a licensee who receives compensation for referring customers to escrow agents, pest control firms, home protection companies, title insurers, or title companies. Certain bona fide payments, promotional items, and moderate meals are excluded from 'other consideration.'

- ✓ Receiving a fee/commission for referring customers to escrow, pest control, home warranty, or title companies is grounds for discipline
- ✓ Bona fide payments for goods/services actually furnished and reasonably valued are not prohibited consideration

6.19 Discipline After Civil Fraud Judgment

Section 10177.5 allows the Commissioner, after a hearing, to suspend or revoke the license of a licensee against whom a final civil judgment was obtained on grounds of fraud, misrepresentation, or deceit in a transaction requiring a license.

- ✓ A final civil judgment for fraud, misrepresentation, or deceit is grounds for suspension or revocation
- ✓ The Commissioner may act after a hearing conducted under this part

6.20 Disclosure of Dual Roles When Arranging Financing

Section 10177.6 requires that an agent who arranges financing in connection with a sale/lease/exchange, or an entity arranging financing that also acts as agent, make a written disclosure of those roles to all parties within 24 hours.

- ✓ Written disclosure of dual roles (agent and financing arranger) must be made to all parties within 24 hours
- ✓ The disclosure applies to the sale, lease, or exchange and any related loan transaction

6.21 Broker Must Report Discharge of Salesperson for Violation

Section 10178 requires a responsible broker who discharges a salesperson for a violation that is grounds for discipline to file a certified written statement of facts with the Commissioner. Failure to report may result in the broker's license being suspended or revoked.

- ✓ A broker must file a certified written statement when discharging a salesperson for a disciplinary violation
- ✓ Failure to notify the Commissioner may result in suspension or revocation of the broker's license

6.22 Broker Liability Requires Guilty Knowledge

Section 10179 provides that a salesperson's or employee's violation does not cause revocation or suspension of the responsible broker's license unless the broker had guilty knowledge of the violation.

- ✓ A broker is not disciplined for a salesperson's violation absent guilty knowledge
- ✓ Guilty knowledge must be established at a hearing before the broker's license is affected

6.23 Reinstatement Examination and Misdemeanor Penalties

The Commissioner may require a qualifying exam as a condition of reinstating a revoked/suspended license (10182). Willful violation of the licensing division is a misdemeanor punishable by up to $10,000 fine, up to six months in county jail, or both (10185).

- ✓ The Commissioner may require passing a qualifying exam to reinstate a revoked or suspended license
- ✓ Willful violation is a misdemeanor: fine up to $10,000, jail up to six months, or both

6.24 Automatic Suspension During Incarceration

Section 10186.1 automatically suspends a license during any period the licensee is incarcerated after a felony conviction, regardless of appeal. Certain convictions (drug crimes, PC 187/261/288) are conclusively presumed substantially related to licensee duties.

- ✓ A license is automatically suspended during incarceration after a felony conviction, even pending appeal
- ✓ Convictions for controlled substances or Penal Code sections 187, 261, or 288 are conclusively presumed substantially related to licensee duties

6.25 Voluntary Surrender of License

A licensee under investigation or accusation may petition to voluntarily surrender their license. Surrender is effective upon acceptance by the commissioner; the surrendered licensee may be relicensed only by petitioning for reinstatement.

- ✓ Surrender becomes effective upon commissioner acceptance
- ✓ Relicensure requires petition for reinstatement under Gov. Code § 11522

6.26 Cross-Agency Notification of Escrow Discipline

When the Commissioner takes final enforcement or disciplinary action related to escrow services, the Commissioner must notify the Insurance Commissioner and Commissioner of Financial Protection and Innovation, and maintain a database of disciplined licensees on the DRE website.

- ✓ DRE must notify the Insurance Commissioner and Commissioner of Financial Protection and Innovation of final escrow-related disciplinary actions
- ✓ DRE must maintain an online database of licensees subject to escrow-related enforcement/disciplinary action

6.27 Corporate Broker Discipline and Renewal Tolling

A corporate broker is not disciplined for an officer/stockholder's individual acts if the offender is completely disassociated from the corporation. A decision to delay license renewal tolls license expiration until pending disciplinary actions are final or the license is surrendered.

- ✓ A corporation may avoid discipline if an offending officer/director/10%+ stockholder is completely disassociated from it
- ✓ Delayed renewal tolls the license expiration pending final disciplinary results or voluntary surrender

CHAPTER 7

License Fees and the Consumer Recovery Account

7.1 License Fee Payment, Expiration, and Late Renewal

Section 10200-10201 require all license fees to be paid in advance at application; licenses expire at midnight of the last day of their term. A late renewal is permitted within two years of expiration upon payment of a late fee equal to 1.5 times the regular renewal fee.

- ✓ License fees are payable in advance at the time of filing the application
- ✓ A late license may be renewed within two years of expiration by paying 1.5 times the regular renewal fee

7.2 Eligibility for Consumer Recovery Account Payment

An aggrieved person may recover from the Consumer Recovery Account after obtaining a final judgment (or confirmed arbitration award or criminal restitution order) based on the defendant's fraud, misrepresentation, deceit made with intent to defraud, or conversion of trust funds, arising from a transaction requiring a real estate license while the defendant was licensed. Only actual and direct loss is recoverable. Application must be filed within one year after the judgment becomes final. A spouse of the judgment debtor cannot recover.

- ✓ Loss must arise from fraud, misrepresentation, deceit with intent to defraud, or conversion of trust funds
- ✓ Defendant must have been licensed and performing acts requiring a license at the time
- ✓ Application must be filed within one year after the judgment becomes final
- ✓ Only the actual and direct loss unpaid on the judgment is recoverable
- ✓ A spouse or personal representative of the spouse of the judgment debtor cannot claim
- ✓ Claimant must diligently pursue collection against all liable persons including the employing broker

7.3 Recovery Account Payment Limits

For applications filed on or after January 1, 2009, the Consumer Recovery Account liability cannot exceed $50,000 for any one transaction and $250,000 for any one licensee, regardless of the number of persons aggrieved, parcels involved, or judgments. (Pre-2009: $20,000 per transaction and $100,000 per licensee.) When funds are insufficient for all valid claims against one licensee, claims are prorated equitably.

- ✓ Maximum $50,000 per transaction (applications filed on/after Jan 1, 2009)
- ✓ Maximum $250,000 per licensee (applications filed on/after Jan 1, 2009)
- ✓ Pre-2009 limits were $20,000 per transaction and $100,000 per licensee
- ✓ Insufficient funds are distributed pro rata among valid claims without regard to order of judgments

7.4 Automatic License Suspension After Payment

When the commissioner pays from the Consumer Recovery Account on behalf of a licensee, that licensee's license is automatically suspended on the date of payment if the judgment was established by clear and convincing evidence of fraud, misrepresentation, deceit, or conversion of trust funds. The licensee cannot be reinstated until repaying the account in full plus interest at the prevailing legal rate. A bankruptcy discharge does not relieve the licensee of this obligation.

- ✓ License is automatically suspended on the date of payment from the account
- ✓ Reinstatement requires full repayment plus interest at the prevailing legal rate
- ✓ A discharge in bankruptcy does not relieve the licensee from repayment or penalties
- ✓ Suspension applies when clear and convincing evidence of fraud/conversion existed

7.5 Discipline Independent of Repayment

Nothing in the chapter limits the commissioner's authority to discipline a licensee for Real Estate Law violations. Full repayment of Consumer Recovery Account obligations does not nullify or modify other disciplinary proceedings.

- ✓ Repayment to the Recovery Account does not cancel disciplinary action
- ✓ Commissioner retains full disciplinary authority under the Real Estate Law
- ✓ A licensee whose account obligation was paid remains subject to discipline

7.6 Application Filing Deadline and Non-Refundable Fees

A person who passes the exam must file the license application and fee within one year (10201.6). Real estate fees are non-refundable and deemed earned upon receipt (10207). An applicant who fails to appear for the broker exam within two years has the application lapse (10208.5).

- ✓ License application and fee must be filed within one year of qualifying in the examination
- ✓ No part of any real estate fee is refundable; it is deemed earned upon receipt by the department

7.7 Real Estate License Fees and Examination Lapse

The Business and Professions Code sets license and examination fees for brokers and salespersons and provides that applications lapse if the examination is not passed within a set time. A broker license fee is $450 (not to exceed $585) and a salesperson license fee is $350 (not to exceed $455). Restricted license fees equal the unrestricted fee. If an applicant fails to pass the license examination within two years from the date of filing the license application, the application lapses and no further proceedings are taken.

- ✓ Broker license fee is $450 (max $585); salesperson license fee is $350 (max $455)
- ✓ License application lapses if applicant fails to pass exam within two years of filing
- ✓ Restricted broker/salesperson license fee is the same as the unrestricted license fee
- ✓ Salesperson exam and reexam fee is $100 (max $130); application lapses if applicant fails to appear within two years

7.8 Corporation License — Designated Officer

When a corporation is licensed as a real estate broker, the license entitles one designated officer to act on behalf of the corporation without additional fee. That officer must be named in the corporation's license application. For each additional officer through whom the corporation engages in real estate broker business, a separate original or renewal fee must be paid.

- ✓ One designated corporate officer may act for the corporation without paying an additional fee
- ✓ Each additional officer through whom the corporation does business must pay the appropriate original or renewal fee

7.9 Real Estate Fund Sub-Accounts and License Fee Allocation

The Real Estate Fund contains two separate accounts: the Education and Research Account and the Consumer Recovery Account. The commissioner may credit up to 8% of any license fee to the Education and Research Account, and 12% of any license fee is credited to the Consumer Recovery Account. If the Consumer Recovery Account balance reaches at least $3,500,000 as of June 30, excess funds go to the Real Estate Fund. The term 'Recovery Account' refers to the Consumer Recovery Account.

- ✓ Up to 8% of license fees may be credited to the Education and Research Account
- ✓ 12% of license fees is credited to the Consumer Recovery Account
- ✓ If Consumer Recovery Account balance reaches $3,500,000 on June 30, excess is credited to the Real Estate Fund
- ✓ 'Recovery Account' means the Consumer Recovery Account

7.10 Processing and Contesting an Application

The commissioner must mail an itemized list of deficiencies within 15 days if an application is incomplete, and render a final written decision within 90 days of a completed application. A judgment debtor must file a written response within 30 days after service to contest payment, or waive objections. If denied, the claimant may file a verified application in superior court within six months to obtain a court order directing payment. The commissioner may relitigate issues and defend the account.

- ✓ Commissioner must mail deficiency list within 15 days of receipt
- ✓ Final written decision required within 90 days of a completed application
- ✓ Judgment debtor must respond within 30 days after service or waive objections
- ✓ Denied claimant may file in superior court within six months of the denial notice
- ✓ Payment standard is preponderance of the evidence for granting, but suspension requires clear and convincing evidence

7.11 Insufficient Recovery Account Funds - Payment Order

If the Consumer Recovery Account lacks sufficient money to satisfy a duly authorized claim, the commissioner must pay the unpaid claims once sufficient funds are deposited, in the order the claims were originally filed, plus 4% annual accumulated interest.

- ✓ Unpaid claims are satisfied in the order originally filed
- ✓ Delayed payments accrue interest at 4 percent per year
- ✓ Payment resumes only when sufficient money is deposited in the account

7.12 Commissioner's Right to Subrogation

When the commissioner pays a judgment creditor from the Consumer Recovery Account, the commissioner is subrogated to all the creditor's rights, and the creditor must assign the judgment to the commissioner. Any amounts recovered are deposited back into the account.

- ✓ Commissioner becomes subrogated to the judgment creditor's rights upon payment
- ✓ The judgment creditor must assign all right, title, and interest to the commissioner
- ✓ Amounts recovered on the judgment are redeposited into the Consumer Recovery Account

7.13 Waiver of Rights for Noncompliance

An aggrieved person's failure to comply with all provisions of the Consumer Recovery Account chapter constitutes a waiver of any rights under that chapter.

- ✓ Full compliance with chapter requirements is mandatory to recover
- ✓ Noncompliance results in waiver of all rights to recovery

7.14 Commissioner Authority to Lower Fees

The Real Estate Commissioner may periodically prescribe fees lower than the statutory maximums when sufficient to offset administration costs, and must hold at least one regulation hearing each year to consider lowering fees. If, as of June 30, the Real Estate Fund balance exceeds 150 percent of the department's authorized budget for the following year, the commissioner must issue regulations reducing license and subdivision fees to bring the balance back within that 150 percent limit.

- ✓ Commissioner may set fees lower than statutory maximums to match administration costs
- ✓ Real Estate Fund balance exceeding 150% of authorized budget triggers mandatory fee reductions
- ✓ At least one fee-review regulation hearing must be held each calendar year

7.15 Augmentation Fees When Account Balance Low

If on June 30 the Consumer Recovery Account balance is less than $200,000, additional fees are charged at renewal/obtaining of licenses for four years thereafter: $7 for brokers, $4 for salespersons, and $1 for prepaid rental listing service licensees (within two years).

- ✓ Trigger balance is below $200,000 on June 30
- ✓ Broker augmentation fee is $7; salesperson $4; prepaid rental listing service $1
- ✓ Broker/salesperson fees apply within four years; PRLS within two years

7.16 Deposit and Allocation of Funds

Any sums received by the commissioner under this chapter must be deposited in the State Treasury and credited to the Consumer Recovery Account.

- ✓ Funds received under the chapter go to the State Treasury
- ✓ All such funds are credited to the Consumer Recovery Account

7.17 Liability for Filing False Documents

It is unlawful to file with the commissioner any notice, statement, or document required under the chapter that is false, untrue, or contains a willful material misstatement of fact. This is a public offense punishable by up to one year county jail and/or up to a $1,000 fine.

- ✓ Filing false or untrue required documents is a public offense
- ✓ Punishable by up to one year in county jail and/or up to $1,000 fine

CHAPTER 8

Other Regulated Businesses: Prepaid Rental Listing, Mineral/Oil/Gas, Out-of-State Land

8.1 Registration of Out-of-State Subdivisions

A person acting as principal or agent who intends to sell, lease, or offer lots, parcels, or interests in a subdivision located outside California but within the U.S. must register the subdivision with the commissioner before any sale, lease, or offer. The application requires a fee, description of the offering, certification of compliance with the situs state's requirements, and a consent to service.

- ✓ Registration with the commissioner is required prior to any sale, lease, or offer of out-of-state subdivision interests
- ✓ Registration is deemed complete if the department does not issue a notice within 10 days

8.2 Required Disclaimer for Out-of-State (U.S.) Subdivisions

It is unlawful to sell/lease or offer interests in a subdivision located outside California but within the U.S. unless printed material contains a conspicuous 10-point disclaimer stating the DRE has not inspected, examined, or qualified the offering. If offered orally, an expanded disclaimer must be received in writing before any sales visit/contact, and a copy must be inserted at the top of any purchase/lease agreement and initialed by the California resident.

- ✓ Advertising must contain the 10-point DRE non-inspection warning disclaimer
- ✓ The expanded disclaimer must be inserted at the top of the contract and initialed by the California resident

8.3 Prepaid Rental Listing Service Definition and License

A prepaid rental listing service (PRLS) supplies prospective tenants with listings of residential rental properties in exchange for an advance or contemporaneous fee, without negotiating the rentals. Roommate referral services are excluded, as are newspapers of general circulation. It is unlawful to conduct a PRLS business unless licensed as a PRLS or as a real estate broker.

- ✓ A PRLS supplies rental listings for an advance/contemporaneous fee without negotiating rentals
- ✓ Conducting a PRLS business requires a PRLS license or a real estate broker license
- ✓ Roommate referral services and newspapers of general circulation are excluded from PRLS regulation

8.4 PRLS Designated Agent Supervision and License Expiration

A prepaid rental listing service location must be conducted under the immediate supervision of the licensee or a designated agent who serves at only one location. When a designated agent permanently ceases at a location, the licensee must give written notice to the DRE within five days. A location license automatically expires 60 days after the business ceases to be managed by the designated agent of record, unless the licensee submits written notice of a new designated agent within that period.

- ✓ A designated agent may not serve as designated agent at more than one location (except a 60-day transition overlap).
- ✓ Written notice to the DRE required within 5 days of a designated agent's permanent departure.
- ✓ License for a location automatically expires 60 days after business ceases under the designated agent unless a new agent is noticed.

8.5 PRLS Bond Requirement and Exemptions

Except as exempted, each PRLS licensee must provide and maintain a $10,000 bond for each location, either as a corporate surety bond or a cash deposit (which may be placed in an interest-bearing account assigned to the commissioner with interest payable to the licensee). The bond may satisfy unsatisfied judgment creditors. Exemptions apply to tax-exempt persons, government agencies, and real estate brokers conducting PRLS under a real estate license.

- ✓ Each PRLS location requires a $10,000 bond or cash deposit maintained in force at all times.
- ✓ Bond exemptions: tax-exempt entities, government agencies, and licensed real estate brokers conducting PRLS.
- ✓ The bond/deposit may be used to satisfy judgment creditors under § 10167.10(e).

8.6 PRLS Written Contract Requirements

Before accepting a fee, a PRLS licensee must offer a written contract (paper or electronic) that includes the licensee's name and license number, addresses/phones, acknowledgment of fee received, description of the service, the tenant's rental specifications (structure type, location, furnished/unfurnished, bedrooms, maximum rent), a contract expiration date no later than 90 days from execution, a refund rights clause, licensee signature, a bold-type small claims remedy clause, and a boldface clause stating that purchasing other goods/services is optional. Contract forms must be filed with and approved by the DRE prior to use; records must be retained at least three years.

- ✓ Contract expiration date must not exceed 90 days from execution.
- ✓ Contract form must be filed with the DRE and approved before use; modifications not acted on within 15 working days are deemed approved.
- ✓ Records must be retained at least 3 years from contract termination and disposed of by shredding to protect tenant identity.

✓

Refund rights clause and boldface disclosure that additional goods/services are optional are mandatory.

8.7 PRLS Refund Rights of Prospective Tenant

A PRLS licensee must fully refund the fee if it does not supply at least three available rental properties meeting the contract specifications within five days after execution (unless the tenant obtains a rental through the licensee). If the tenant obtains a rental other than through the licensee or does not obtain a rental, the licensee must refund the fee minus a $50 service charge, provided the tenant demands the refund within 10 days after contract expiration. A required written notice of refund rights (at least 12-point type) must be given before accepting a fee. Bad-faith failure to refund exposes the licensee to damages up to $1,000 plus actual damages in small claims court.

- ✓ Full refund required if fewer than 3 conforming available rentals are supplied within 5 days of execution.
- ✓ Refund of fee minus a $50 service charge if tenant obtains rental elsewhere or none, with written demand within 10 days after expiration.
- ✓ Refunds must be paid within 10 days of receiving required documentation or signed statement.
- ✓ Bad-faith refusal to refund allows small claims damages up to $1,000 plus actual damages, satisfiable from the bond.

8.8 PRLS Violations and Discipline

It is a violation for a PRLS licensee or its employees/agents to make false or deceptive advertisements, or to refer a property known to be nonexistent, unavailable, falsely advertised, unconfirmed within the four-day availability window, or listed without owner permission. The commissioner may suspend, deny, or revoke the license for a violation or for a conviction substantially related to PRLS duties, after a hearing. Willful violation is a misdemeanor. A PRLS license runs for two years.

- ✓ Licensee must confirm property availability within a four-day period before disseminating listings (5–7 day grace allowed with good faith and disclosed confirmation date).
- ✓ Commissioner may suspend, deny, or revoke a PRLS license for article violations or substantially related convictions, after a hearing.
- ✓ Willful violation of the PRLS article is a misdemeanor.
- ✓ PRLS license term is two years.

8.9 Definition of Subdivision for This Article

A 'subdivision' includes land divided or proposed to be divided into five or more lots or parcels for sale/lease, or land in which five or more undivided interests are created for sale/lease, plus subdivisions defined in Section 11004.5 (excluding subsection (e)).

- ✓ Five or more lots/parcels triggers subdivision status
- ✓ Five or more undivided interests also constitutes a subdivision

8.10 Required Disclaimer for Foreign (Outside U.S.) Subdivisions

For subdivisions located outside the United States, all advertising must conspicuously contain a 10-point capital-type disclaimer that the DRE has not examined the offering (title, liens, escrow, management, etc.), advising consultation with an attorney familiar with the situs country's law. Oral offers require written delivery before a visit/contact, and the disclaimer must be inserted at the top of any contract and initialed by the California resident.

- ✓ Foreign subdivision advertising must include the 10-point capital-type DRE non-examination disclaimer
- ✓ Disclaimer must be inserted at the top of the contract and initialed by the California resident

8.11 Cease and Desist for Violations

If the commissioner finds a person is violating the article or a related regulation, the commissioner may order the person to cease and desist from the violation or from further sale/lease until corrected. The person must immediately cease upon receipt and may request a hearing under Section 11019(c).

- ✓ The person must immediately cease the described activity upon receiving the order
- ✓ The person may request a hearing under Section 11019(c)

8.12 Grounds for MOG License Discipline

The commissioner may suspend or revoke an MOG license for substantial misrepresentation, false promises, acting for more than one party without consent, commingling, secret profits, undisclosed option-to-purchase, felony/related conviction, negligence or incompetence, misuse of the term 'realtor,' or any fraud or dishonest dealing.

- ✓ Commingling client money with the licensee's own is grounds for discipline
- ✓ Acting for multiple parties without consent and taking secret profits are grounds
- ✓ Fraud, dishonest dealing, negligence, or incompetence justify suspension/revocation

8.13 PRLS Application and Broker Operation

A separate written application is required for each location operated by a non-broker licensee, with an application fee for the first location and a lower fee for each additional location; a portion ($40) of each fee is credited to the Consumer Recovery Account. A real estate broker may provide a PRLS at a licensed office under the broker's immediate supervision or that of a licensed salesperson. The Commissioner requires fingerprinting and may hold a hearing to verify honesty and truthfulness of applicants, agents, officers, and 25%+ owners.

- ✓ A separate PRLS application and fee is required for each location operated by a non-broker licensee
- ✓ Part of each application fee ($40) is credited to the Consumer Recovery Account
- ✓ A broker may operate a PRLS at a licensed office under immediate broker or salesperson supervision
- ✓ Fingerprinting is required for original applicants, designated agents, officers, directors, and 25%+ owners

8.14 PRLS Nonresident Consent to Service of Process

Every nonresident applicant for a prepaid rental listing service license must file, with the application, an irrevocable consent that if personal service cannot be made in California through due diligence, valid service may be made by delivering process to the Secretary of State.

- ✓ Nonresident PRLS applicants must file an irrevocable consent to service of process.
- ✓ Service may be made on the Secretary of State when personal service cannot be achieved in California.

8.15 Registration Term and Consent to Service

A registration under this article has a one-year term unless the commissioner prescribes longer by regulation. The application must include an irrevocable consent that if personal service cannot be made after due diligence, valid service may be made upon the Secretary of State.

- ✓ Registration term is one year unless a longer term is prescribed by regulation
- ✓ Application must include irrevocable consent to service on the Secretary of State

8.16 MOG or Real Estate Broker License Required

A person must be licensed as a mineral, oil, and gas (MOG) broker or a real estate broker to, for another for compensation, sell/buy/solicit/negotiate MOG property, solicit loans on MOG property, lease MOG property or leases, rent/collect royalties, or assist in filing applications on government-owned MOG property. Acting as a principal in buying/leasing/optioning MOG property for resale also requires a license.

- ✓ Compensated MOG brokerage acts require MOG or real estate broker license
- ✓ Acting as a principal in buying/leasing MOG property for resale requires a license
- ✓ Certain government-employee acts and enumerated exemptions do not require a license

8.17 Activities Not Requiring an MOG License

An MOG license is not required to act as a depository under an oil/gas lease (not for sale), engage in transactions under a court order, drill/produce oil, gas, or minerals, negotiate leases with production companies, or deal with non-oil/gas mineral rights as the owner.

- ✓ Drilling or producing oil, gas, or minerals is exempt from MOG licensing
- ✓ Court-ordered transactions and certain principal dealings are exempt

8.18 MOG License Not Subject to Continuing Education

MOG brokers are subject to many real estate broker provisions but are NOT subject to the Article 2/2.5 continuing education requirements as a prerequisite to license renewal. MOG brokers may receive a restricted license after revocation, with no property right or right to renewal.

- ✓ MOG brokers are exempt from continuing education renewal requirements
- ✓ A restricted MOG license carries no property right and no right to renewal
- ✓ Commissioner may suspend a restricted license pending a hearing

CHAPTER 9

Real vs. Personal Property, Fixtures and Land Descriptions

9.1 Freehold Estates

In feudal England, an estate was the ownership interest a person had in land. A freehold estate was of indefinite duration and not subject to servile incidents of the overlord; only a freehold owner could bring a real action, so only freehold estates were real property. A less-than-freehold estate was of specified duration.

- ✓ Freehold estates are of indefinite duration and are real property
- ✓ Less-than-freehold estates are of specified duration
- ✓ Only freehold estate owners could bring a real action

9.2 Fee Simple and Life Estates

A freehold estate could be an estate in fee (absolute or qualified) or a life estate. Fee simple absolute is the largest estate recognized by law, including the right to will it. A fee simple defeasible can be terminated if a condition is violated (e.g., grantor may reenter). A life estate lasts for the life of a person and is a freehold because its duration is not fixed in temporal terms.

- ✓ Fee simple absolute is the largest estate recognized by law
- ✓ Fee simple defeasible can be defeated if a condition is broken, allowing grantor reentry
- ✓ A life estate is a freehold measured by a person's life, not fixed months/years

9.3 Modern Definition of Real Property

Today property is thought of as the thing owned, and it is either real or personal. Real property consists of: (1) land; (2) anything affixed and regarded as a permanent part of the land; (3) that which is incidental or appurtenant to the land; and (4) that which is immovable by law.

- ✓ Real property = land, affixed permanent items, appurtenances, and things immovable by law
- ✓ Property is classified as either real or personal

9.4 Definition of a Fixture

Fixtures are items of personal property attached to land in such a manner as to be considered part of the real property. Once personal property becomes a fixture, it is treated as real property and passes with the land unless excepted.

- ✓ A fixture is personal property attached to land so as to become real property
- ✓ Fixtures pass with the real property in a conveyance unless excepted in writing

9.5 Five Tests for Determining a Fixture

Courts use five general tests to determine whether personal property has become a fixture: (1) Intention of the person incorporating it; (2) Method of attachment / degree of permanence (e.g., cement and plaster suggests a fixture); (3) Adaptability of the item for ordinary use with the land; (4) Agreement between the parties as to the property's nature; (5) Relationship between the parties (e.g., seller/buyer, landlord/tenant). Intention is regarded as the most important test.

- ✓ The five tests are: Intention, Method of attachment, Adaptability, Agreement, Relationship (mnemonic MARIA)
- ✓ Intention is generally the most important test
- ✓ A clear agreement between parties usually resolves fixture disputes
- ✓ Method of attachment considers the degree of permanence

9.6 Tenant's Right to Remove Trade Fixtures

A tenant may, during the term of the tenancy, remove anything affixed for purposes of trade, manufacture, ornament, or domestic use, provided removal can be done without damage to the premises. This exception does not apply if the item has become an integral part of the premises.

- ✓ Tenants may remove trade fixtures during the tenancy term
- ✓ Removal must not damage the premises
- ✓ The right does not apply if the item has become an integral part of the premises

9.7 Key Legal Distinctions Between Real and Personal Property

Important legal differences: (1) Sale of real property must ordinarily be in writing signed by the party to be charged; sale of personal property must be in writing if value exceeds $500. (2) Laws of the situs state govern transfer of real property title; commercial personal property sales are subject to federal and state law. (3) The state provides a recording system for documents affecting real property. (4) Tax laws distinguish between real and personal property.

- ✓ Real property sale agreements must be in writing signed by the party to be charged
- ✓ Personal property sales must be in writing if value exceeds $500
- ✓ Real property title transfer is governed by the law of the situs (location) state
- ✓ The state maintains a recording system for real property documents

9.8 Purpose and Methods of Legal Descriptions

Every parcel sold, leased, or mortgaged must be properly identified by a legal description that describes no other property but the one involved. The three most common methods are: recorded map (lot, block, tract), U.S. Government section and township, and metes and bounds.

- ✓ A good legal description describes only the one property in the transaction
- ✓ The three common methods are: recorded map, section/township, and metes and bounds

9.9 Section and Acreage Measurements

Key measurements: a township contains 36 sections; each section is 1 mile square and equals 640 acres; a mile is 5,280 feet; an acre is 43,560 square feet; a half-section is 320 acres; a quarter-section is 160 acres; a quarter of a quarter-section is 40 acres. Sections are numbered 1-36 beginning in the NE corner and running in a serpentine (boustrophedon) pattern.

- ✓ A section is 640 acres and one mile square
- ✓ A quarter-section = 160 acres; a quarter-quarter section = 40 acres
- ✓ An acre = 43,560 square feet; a mile = 5,280 feet
- ✓ Each side of a quarter-quarter section = 1,320 feet

9.10 Property as Bundle of Rights

In English Common Law, property referred not to the thing owned but to the rights the owner had. Property consisted of a 'bundle of rights' or 'bundle of interests' a person held in a thing, whether real or personal. These rights include the rights to possess, use, encumber, transfer, and exclude others.

- ✓ Property historically referred to rights, not the thing itself
- ✓ The bundle of rights includes: possess, use, encumber, transfer, and exclude others
- ✓ Applies to both real and personal property

9.11 Real vs Personal Property Origins

Early English courts distinguished lawsuits where an ousted landowner could recover the land itself ('real thing') from those where the owner could recover only monetary damages. A 'real action' returned the land ('real property'); a 'personal action' recovered monetary damages, and that limited interest was 'personal property.'

- ✓ A 'real action' allowed recovery of the land itself (real property)
- ✓ A 'personal action' allowed recovery of only monetary damages (personal property)

9.12 Less-Than-Freehold Estates as Personal Property

Less-than-freehold estates were the rights of tenants who rented or leased real property. These leasehold estates are classified as personal property, not real property.

- ✓ Leasehold/less-than-freehold estates are personal property
- ✓ These are the rights of tenants who rent or lease real property

9.13 Definition and Extent of Land

Land includes soil, rock, and other earth substances, plus space beneath the surface to the center of the earth and above to the sky. Courts recognize a public right to airspace as a 'highway' so long as it does not unreasonably interfere with the owner's enjoyment. Owners may drill vertically for oil/gas but not slantwise under a neighbor's land.

- ✓ Land includes surface, subsurface to earth's center, and airspace above
- ✓ Public has a right to reasonable use of airspace that does not interfere with the owner
- ✓ Owner may drill vertically for oil/gas but not slantwise under neighboring land

9.14 Things Affixed and Appurtenances

Things affixed to land include buildings, bridges, trees, and items affixed to them (doors, installed cabinets, built-in appliances). Appurtenant real property is anything used with the land for its benefit, such as easements/rights of way, watercourses, or mutual water company stock. Appurtenant stock cannot be transferred unless the land is transferred with it.

- ✓ Things affixed (buildings, trees, built-in appliances) are real property
- ✓ Appurtenances include easements, rights of way, and mutual water company stock
- ✓ Appurtenant mutual water company stock transfers only with the land

9.15 Definition of Personal Property

Personal property is any property that is not real property. It includes money, movable goods or chattels, evidences of debt, and choses (things) in action. A 'chose in action' is the right to recover money or personal property through a judicial proceeding, including recovery under a contract or damages for a tort.

- ✓ Personal property is any property that is not real property
- ✓ Includes money, chattels, evidences of debt, and choses in action
- ✓ A chose in action is the right to recover money/property via judicial proceeding

9.16 Buyer/Lender Assumptions on Fixtures

Buyers and lenders inspecting property in contemplation of purchase or loan are justified in assuming that whatever is attached to the land or building and essential to its use will be part of the conveyance or security. Any desired exceptions must be clearly stated in the contract.

- ✓ Attached items essential to use are presumed part of the conveyance/security
- ✓ Desired exceptions to fixtures must be stated clearly in the contract

9.17 Recorded Map (Lot and Block) Method

Under California's Subdivision Map Act (Government Code 66410 et seq.), all new subdivisions must be mapped. Once accepted and filed with the county recorder, a parcel is described by lot number, block, map/tract, and the city, county, and state (e.g., 'Lot 14, Block B, Parkview Addition...').

- ✓ The Subdivision Map Act requires mapping of all new subdivisions
- ✓ Lot-and-block descriptions reference lot, block, map/tract, city, county, and state
- ✓ The map must be filed in the county recorder's office

9.18 Township and Section System

The government survey system uses base lines (horizontal) and meridians (vertical). Range lines and township lines are six miles apart, creating townships of 36 square miles. Townships are measured north/south of a base line and ranges east/west of a meridian. California has three base line/meridian sets: Humboldt, Mt. Diablo, and San Bernardino. Guide meridians and standard parallels (correction lines) every 24 miles correct for the earth's curvature.

- ✓ A township is 6 miles square and contains 36 sections
- ✓ Base lines run east-west; meridians run north-south
- ✓ California has three base line/meridian sets: Humboldt, Mt. Diablo, San Bernardino
- ✓ Correction lines run every 24 miles to adjust for the earth's curvature

9.19 Metes and Bounds Description

A metes and bounds description is used when property is not covered by a recorded map and is shaped impractically for section/township description. It starts at a fixed point of beginning and follows the boundaries by courses and distances until returning to the point of beginning. Metes are measures of length; bounds are boundaries (natural/manmade); monuments (landmarks) are reference markers. A mistake at the point of beginning makes the description worthless.

- ✓ Metes and bounds must begin and end at the point of beginning
- ✓ Metes are measures of length; bounds are boundaries (rivers, roads, monuments)
- ✓ A mistake at the point of beginning renders the description worthless
- ✓ Monuments are physical markers subject to destruction and should be used cautiously

9.20 Crops Treated as Goods

A tenant's crops, industrial growing crops, and things attached to or part of the land that are agreed to be severed before sale (or under a contract of sale) are treated as goods (personal property).

- ✓ Crops agreed to be severed before sale are treated as goods
- ✓ Industrial growing crops are treated as personal property

9.21 Government Lots

Government lots are fractional pieces of land less than a quarter section, created by lakes, streams, or other features, or by township correction lines and unascertainable errors. They are identified by number rather than standard subdivision and do not necessarily contain a standard number of acres.

- ✓ Government lots are irregular fractional parcels less than a quarter section
- ✓ A government lot does not contain a standard number of acres
- ✓ Correction-line acreage adjustments are placed in western and northern quarter sections

9.22 Informal and Other Description Methods

A record of survey may be filed by a surveyor to disclose changes or discrepancies in boundaries. Assessor's maps may be used but land cannot be described in a deed by reference to such a map unless the map is recorded (Rev. & Tax. Code § 327). Informal methods (street address, ranch name, blanket reference) are legal but title companies will not ordinarily insure title using them.

- ✓ Informal descriptions (street address, name) are legal but not insurable by title companies
- ✓ Assessor's maps cannot be used for deed descriptions unless recorded
- ✓ A record of survey is filed with the county surveyor then the county recorder

CHAPTER 10

Estates and Forms of Co-Ownership

10.1 Tenancy in Common Characteristics

Tenancy in common exists when two or more persons own undivided interests in title. It is the default when a conveyance to two or more persons does not specify joint tenancy, partnership, or community property. Interests may be unequal, but are presumed equal if not stated. Each has a right of possession and none can exclude the others.

- ✓ Tenancy in common is the default co-ownership form when none is specified
- ✓ Interests may be unequal but are presumed equal if the deed is silent
- ✓ There is unity of possession—each cotenant has an equal right to possess the whole

10.2 Transfer and No Survivorship in TIC

A tenant in common may sell or mortgage their own interest freely, and the buyer becomes a tenant in common. There is no right of survivorship—a deceased cotenant's interest passes to heirs or devisees through probate. A cotenant may force a sale of the whole by a partition action.

- ✓ A tenant in common may convey or encumber only their own interest
- ✓ No right of survivorship exists; the interest passes to heirs/devisees via probate
- ✓ A partition action can force sale of the entire property

10.3 Four Unities and Right of Survivorship

Joint tenancy requires two or more persons as equal owners of the same undivided interest with the four unities: interest, title, time, and possession. Its key feature is the right of survivorship—on death, the surviving joint tenant(s) take the whole, excluding heirs. Joint tenancy property avoids probate, cannot be willed, and is not subject to intestate succession.

- ✓ Joint tenancy requires four unities: interest, title, time, possession
- ✓ If any unity is missing, a tenancy in common results
- ✓ Right of survivorship passes title to surviving joint tenants, avoiding probate

10.4 Severance of Joint Tenancy

A joint tenant may sever by conveyance to a third party or cotenant, converting that share to a tenancy in common; remaining joint tenants continue as joint tenants among themselves. Creditors of a living joint tenant may force an execution sale, severing the tenancy. A partition action is another severance method.

- ✓ Conveyance by a joint tenant severs the joint tenancy as to that interest
- ✓ Remaining joint tenants continue as joint tenants among themselves
- ✓ Execution sale by a creditor of a living joint tenant severs the joint tenancy

10.5 Community vs. Separate Property

Community property is generally all property acquired by spouses during marriage, other than separate property. Separate property includes property owned before marriage, acquired by gift or inheritance, and rents/profits from separate property, plus earnings while living separate and apart. Separate property must be kept clearly identifiable and not commingled.

- ✓ Community property is acquired by spouses during marriage other than separate property
- ✓ Separate property includes pre-marriage property and gifts/inheritances
- ✓ Rents and profits from separate property remain separate if not commingled

10.6 Management, Control and Disposition of Community Property

Each spouse has equal management and control of community property. Both spouses must join in any sale, conveyance, encumbrance, or lease of community real property. Neither may gift community property without consent of the other. Each spouse may will their half; absent a will, the decedent's half passes to the surviving spouse.

- ✓ Both spouses must sign to convey, encumber, or lease community real property
- ✓ Neither spouse may gift community property without the other's consent
- ✓ Each spouse may will their half; without a will it passes to the surviving spouse

10.7 Joint Tenancy vs. Community Property for Spouses

Spouses may hold record title as joint tenants yet own the property as community property by agreement; courts hold the true intention prevails over record title. Unlike joint tenancy, community property has no separable interest to encumber, so both spouses' signatures are required. Real estate licensees should obtain the signatures of all persons in title on listing and purchase agreements.

- ✓ True intention of spouses may prevail over the form shown in record title
- ✓ No separate interest exists in community property for one spouse to encumber alone
- ✓ Licensees should obtain signatures of all persons in title on listings and contracts

10.8 Forms of Real Property Ownership

An estate in real property may be owned in sole (several) ownership by one person; in joint, common, or community ownership (tenancy in common, joint tenancy, community property, partnership); or by other lawfully created entities. Sole ownership means ownership by one person who enjoys benefits and bears burdens and can freely dispose of the property.

- ✓ Sole/several ownership is ownership by one person
- ✓ Co-ownership includes tenancy in common, joint tenancy, community property, and partnership
- ✓ A sole owner needs only their own signature to convey

10.9 Creating a Joint Tenancy

By statute a joint tenancy may be created by transfer from a sole owner to himself and others, from tenants in common to themselves and others, from joint tenants to themselves/others, from spouses to themselves and others, or to executors/trustees as joint tenants. The words 'with right of survivorship' are not required but often included.

- ✓ A joint tenancy can be created by transfer from a sole owner to himself and others
- ✓ Survivorship language is helpful but not required for a valid joint tenancy
- ✓ Joint tenancy may be created among spouses, cotenants, or to trustees/executors

10.10 Effect of Mortgage/Foreclosure on Joint Tenancy

A joint tenant may mortgage their own interest without destroying the joint tenancy. If foreclosed while alive, the joint tenancy is severed (tenancy in common results). If the borrowing joint tenant dies first, the survivor takes title free of the mortgage executed by the deceased.

- ✓ A joint tenant can mortgage their interest without severing the joint tenancy
- ✓ Foreclosure during the borrower's lifetime severs the joint tenancy
- ✓ If the borrowing joint tenant dies, the survivor takes free of that mortgage

10.11 Recording Requirements on Death of Joint Tenant

On death of a joint tenant the joint tenancy terminates automatically, but for record title an affidavit and a certified copy of the death certificate or court decree of death must be recorded in the county where the property is located, typically with an affidavit identifying the deceased as a joint tenant.

- ✓ Joint tenancy terminates automatically at death but must be evidenced in the record
- ✓ A certified death certificate or court decree of death is recorded to clear title
- ✓ An affidavit identifying the deceased joint tenant is customarily attached

10.12 Pros and Cons of Joint Tenancy

The chief advantage is simplicity of vesting title in the survivor and avoiding probate delay. The survivor takes free of the deceased's debts and liens against the deceased's interest. Disadvantages include loss of the right to will one's interest, possible added taxes, and pitfalls for the unwary. Advising on how to take title is unauthorized practice of law for non-attorneys.

- ✓ Joint tenancy avoids probate delay and vests title simply in the survivor
- ✓ The survivor takes free of debts and liens against the deceased joint tenant
- ✓ Non-attorneys advising on how to hold title engage in unauthorized practice of law

10.13 Entities That May Hold Title

Corporations, trusts, partnerships, limited liability partnerships (LLPs), and limited liability companies (LLCs) may hold title to real property. An LLC may hold title but a real estate broker may not license an LLC to perform acts requiring a real estate license; corporations and partnerships (through licensed brokers) may be licensed.

- ✓ LLCs, corporations, trusts, and partnerships may hold title to real property
- ✓ An LLC cannot be licensed as a real estate broker entity
- ✓ Corporations and partnerships may perform licensed acts through licensed brokers

10.14 Caution on Trust-Held Title Transfers

When title is held in trust, brokers are often asked by lenders/title/escrow to instruct principals to transfer title out of the trust for financing or sale. Brokers may commit unauthorized practice of law by giving such instructions without advising that the decision requires knowledgeable legal counsel and other professionals.

- ✓ Instructing principals to move title out of a trust may be unauthorized practice of law
- ✓ Brokers must advise that such decisions require legal counsel
- ✓ Entity/trust title decisions have legal, tax, and estate-planning consequences beyond real estate practice

10.15 TIC Rent and Expense Sharing

No tenant in common can be charged rent for use of the property unless agreed. A cotenant receiving rent from a third party must share proportionately, and payments made for the benefit of all (repairs, taxes, mortgage payments) may be recovered proportionately from the others.

- ✓ A cotenant cannot be charged rent for their own use absent agreement
- ✓ Rent received from third parties must be shared proportionately
- ✓ Expenses paid for common benefit are recoverable proportionately

10.16 Tenancy in Partnership

Tenancy in partnership exists when two or more partners own property for partnership purposes. A partner has an equal right to possess partnership property only for partnership purposes; a partner's interest in specific property is not individually assignable or subject to attachment except on a claim against the partnership. On death, a partner's interest in specific property vests in surviving partners for partnership purposes.

- ✓ Partnership property may be possessed only for partnership purposes
- ✓ A partner's right in specific partnership property is not individually assignable
- ✓ On a partner's death, rights in specific property vest in surviving partners

CHAPTER 11

Recording, Title Assurance, Encumbrances and Homestead

11.1 Purpose of California Recording System

California adopted a recording system shortly after statehood to collect and maintain evidence of title in a safe public place. The system informs prospective purchasers and lenders about ownership and condition of title, protects innocent parties against secret transfers and undisclosed encumbrances, and keeps title freely transferable.

- ✓ Recording protects innocent lenders and purchasers against secret sales and undisclosed liens
- ✓ The purpose of recording is to keep title freely transferable
- ✓ California's system is known as a 'Race' or 'Race-Notice' recording statute

11.2 Actual vs. Constructive Notice

Actual notice is express information of a fact. Constructive notice is notice given by the public records—people are presumed to know the contents of recorded instruments. Recording an instrument of transfer or encumbrance imparts constructive notice to all persons.

- ✓ Actual notice consists of express knowledge of a fact
- ✓ Constructive notice arises from the public record and presumes knowledge of recorded contents
- ✓ Recording an instrument imparts constructive notice from the time it is filed for record

11.3 Duty to Inspect and Actual Notice from Possession

Recording benefits are not available to one who takes title with actual notice of a prior unrecorded instrument. Possession by someone other than the seller is actual notice imposing a duty to inquire. A prudent purchaser should inspect the premises and inquire of persons in possession about their claims.

- ✓ A party with actual notice of a prior unrecorded instrument cannot claim recording protection
- ✓ Possession by a non-seller imposes a duty to inquire
- ✓ Unrecorded interests (easements, leases, mechanic's lien rights) may be discovered by inspection

11.4 Recording Priorities and Notice Exceptions

Recording statutes encourage prompt recording and protect only innocent parties; the constructive-notice doctrine cannot aid proven fraud. Generally the first instrument recorded gains priority, but actual notice can defeat a later-recorded instrument even if recorded first. A later mortgage recorded first is superior only if that lender lacked notice of the earlier one.

- ✓ Recording laws protect only innocent parties
- ✓ Constructive notice cannot be used to aid proven fraud
- ✓ A prior-in-time party with earlier notice can defeat a party who records first but had notice

11.5 Nature of Easements and Tenements

An easement is a right, privilege, or interest limited to a specific purpose that one party holds in the land of another. It affects the use of property rather than ownership. The benefitted land is the 'dominant tenement,' and the burdened land is the 'servient tenement.' Unless made 'exclusive,' the servient owner may still use the burdened portion in a non-interfering way.

- ✓ The dominant tenement is benefitted; the servient tenement is burdened by the easement.
- ✓ An easement is an encumbrance affecting use, not a transfer of ownership of the land.
- ✓ Unless described as exclusive, the servient owner may continue using the land in a way that does not interfere with the easement.

11.6 Appurtenant Easements vs Easements in Gross

An appurtenant easement is attached to a dominant tenement and passes automatically upon transfer of that land without explicit mention in the deed ('appurtenant' means 'belonging to'). An easement in gross is a personal right not attached to any dominant tenement (e.g., utility company power lines). If an instrument is unclear, courts favor construing an easement as appurtenant.

- ✓ Appurtenant easements pass automatically with transfer of the dominant tenement, even without mention in the deed.
- ✓ An easement in gross is a personal right with no dominant tenement (e.g., utility easements).
- ✓ If unclear, an easement will be construed as appurtenant if it can fairly be attached to the land.

11.7 Void and Unenforceable Restrictions

Covenants and conditions that are unlawful, impossible, or in restraint of alienation are void. Restrictions based on race, color, sex, religion, ancestry, national origin, age, disability, sexual orientation, marital status, familial status, or source of income are unenforceable under state and federal law. Historic discriminatory covenants require a cover page/stamp declaring them unenforceable, and owners may record a 'Restrictive Covenant Modification.'

- ✓ Restrictions in restraint of alienation or that discriminate on protected bases are void/unenforceable.
- ✓ Discriminatory covenants must carry a cover page or stamp stating they are unlawful and unenforceable.
- ✓ An owner may record a 'Restrictive Covenant Modification' to strike an unlawful restrictive covenant.

11.8 Covenants Implied in a Grant Deed

Use of the word 'grant' in a conveyance of a fee simple estate implies two covenants: (1) that the grantor has not already conveyed the same estate to another, and (2) that the estate is free from undisclosed encumbrances made by the grantor. A grant deed is presumed to convey fee simple unless a lesser estate appears, and after-acquired title passes by operation of law to the grantee.

- ✓ The word 'grant' implies the grantor has not conveyed the estate to another and that it is free of undisclosed encumbrances made by the grantor.
- ✓ A grant deed is presumed to convey fee simple title unless a lesser estate is stated.
- ✓ After-acquired title automatically passes to the grantee by operation of law.

11.9 Notice of Discriminatory Restrictions

Since January 2000, a county recorder, title insurance company, escrow company, or real estate licensee who provides a declaration, governing documents, or deed containing an unlawful covenant must include a statement about the illegality of discriminatory restrictions and the homeowner's right to remove such language, either as a cover page or a stamp on the first page.

- ✓ Recorders, title/escrow companies, and licensees must attach a statement when providing documents with unlawful discriminatory restrictions.
- ✓ The statement must appear as a cover page over the document or a stamp on the first page.
- ✓ Homeowners have the right to have discriminatory covenant language removed.

11.10 Recording System and Chain of Title

The documentary record in the county recorder's office establishes ownership because possession may be by non-owners and transfers may occur without possession. Recording deeds and instruments in the county where property is located creates a traceable 'chain of paper title.' California uses race-notice recording to establish priority. Recording is generally not compulsory. Records may be erroneous, incomplete, or reflect fraud, so title depends on both recorded and off-record facts.

- ✓ Recording documents with the county recorder gives constructive notice and establishes chain of title priority.
- ✓ California uses a race-notice recording system to determine priority of recorded instruments.
- ✓ Recording is generally not compulsory, and the record may be incomplete or erroneous.

11.11 Preliminary Report Is Not a Title Search

In current practice, title insurers issue a 'preliminary report' rather than a search or abstract. A preliminary report is a commitment/binder—an offer to issue a title policy subject to stated exceptions. It is NOT an abstract of title and does not represent the condition of title; it merely states the terms on which the insurer will issue a policy if the offer is accepted.

- ✓ A preliminary report is an offer to issue a title policy subject to stated exceptions, not a representation of title condition.
- ✓ Preliminary reports are not abstracts of title and carry no abstract-related liability.
- ✓ The report only becomes effective coverage when the policy offer is accepted.

11.12 Standard Title Insurance Policy Coverage

In addition to risks of record, the standard policy covers off-record hazards such as forgery, impersonation, lack of capacity, undelivered deeds, federal estate tax liens, and defense costs including attorneys' fees. It does NOT cover known-but-undisclosed defects, easements/liens not of record, rights of parties in possession, matters a survey or inspection would reveal, mining claims, water rights, or zoning ordinances.

- ✓ The standard policy covers off-record hazards like forgery, impersonation, and lack of capacity, plus defense costs.
- ✓ It does not cover matters known to the insured but not disclosed to the insurer.
- ✓ It excludes unrecorded rights of parties in possession, survey/inspection matters, water rights, and zoning.

11.13 Homestead Exemption Amount (CCP § 704.730)

Since January 1, 2021 (AB 1885), the California homestead exemption protects a judgment debtor's principal dwelling in the amount of the greater of $300,000 or the countywide median sale price of a single-family home in the prior calendar year, capped at $600,000. Both the floor and the cap are adjusted annually for inflation beginning in 2022 (about $361,000 and $722,000 for 2025), so the exemption varies by county. The exemption applies automatically to any owner who resides in the dwelling when a judgment lien attaches or a forced sale is sought; recording a homestead declaration is optional and mainly protects sale proceeds (for six months after a voluntary sale) and priority against later judgment liens. Source: Code Civ. Proc. § 704.730, § 704.710 et seq. (AB 1885, 2020).

- ✓ The homestead exemption equals the greater of $300,000 or the county median single-family sale price, not to exceed $600,000, both indexed annually since 2022
- ✓ The exemption is automatic for a debtor residing in the dwelling; no declaration is required
- ✓ A recorded homestead declaration adds protection of sale proceeds for six months and priority over later judgment liens
- ✓ The old fixed amounts ($75,000 / $100,000 / $175,000) were repealed effective 2021

11.14 Restrictions on Solar Energy Systems Void

Any covenant, restriction, or condition in a deed, contract, security instrument, or governing document that effectively prohibits or restricts installation or use of a solar energy system is void and unenforceable. Only reasonable restrictions (not significantly increasing cost or decreasing efficiency) are allowed. HOA approval applications must be processed like architectural modifications.

- ✓ CC&Rs/governing documents that effectively prohibit or restrict solar energy systems are void and unenforceable
- ✓ Reasonable restrictions do not significantly increase cost or decrease efficiency; 'significantly' generally means over 10% or more than $1,000
- ✓ An association application not denied in writing within 45 days is deemed approved (absent reasonable request for more information)
- ✓ Associations may not establish a general policy prohibiting rooftop solar for household use on the owner's building, garage, or carport

11.15 ADU Restrictions in Deeds Void

Any covenant, restriction, or condition affecting transfer or sale of real property that effectively prohibits or unreasonably restricts construction or use of an accessory dwelling unit (ADU) or junior ADU on a single-family lot meeting Government Code requirements is void and unenforceable. Reasonable restrictions are allowed but cannot include fees or financial requirements.

- ✓ Covenants effectively prohibiting or unreasonably restricting ADUs/JADUs on qualifying single-family lots are void and unenforceable
- ✓ Reasonable restrictions must not unreasonably increase cost, effectively prohibit, or extinguish the ability to construct an ADU
- ✓ Reasonable restrictions shall not include any fees or other financial requirements
- ✓ The same rule voids ADU restrictions in planned development governing documents (Civil Code § 4751)

11.16 Instruments That May Be Recorded

After being acknowledged (executed before a notary or properly witnessed), any instrument or judgment affecting title to or possession of real property may be recorded. An 'instrument' is a written paper signed by a person transferring title, giving a lien, or giving a right to a debt or duty. It includes deeds, mortgages, leases, land contracts, deeds of trust, and agreements among owners.

- ✓ Instruments must be acknowledged before recording
- ✓ An instrument transfers title, gives a lien, or grants a right to a debt or duty
- ✓ Deeds, mortgages, leases, land contracts, and deeds of trust qualify as instruments

11.17 Purpose of Recording Statutes

Recording statutes permit (rather than require) recordation of any instrument affecting title or possession, and penalize a party who fails to record. Priority of recordation ordinarily determines the rights of parties with conflicting claims to the same property.

- ✓ Recording is generally permitted, not required
- ✓ Failure to record penalizes the non-recording party
- ✓ Certain statutes require recording as a predicate (e.g., exercise of power of sale by an assignee)

11.18 When an Instrument is Deemed Recorded

An instrument is recorded when duly acknowledged/verified and deposited with the recorder marked 'filed for record.' The recorder numbers it in order of receipt including year, month, day, hour, and minute, then indexes it. Property in more than one county must be recorded in each county to impart constructive notice there.

- ✓ An instrument is recorded when deposited and marked 'filed for record'
- ✓ The recorder notes the exact time (year, month, day, hour, minute) of reception
- ✓ Property in multiple counties must be recorded in each county to impart constructive notice

11.19 Purchase Money Priority and Subordination

A purchase-money mortgage/deed of trust given for the price of property has priority over other liens created against the purchaser, subject to recording laws. Persons with priority may waive it via a subordination agreement, commonly subordinating a seller carryback to a construction loan.

- ✓ Purchase-money liens have priority over other liens against the purchaser
- ✓ A subordination agreement lets a senior lienholder waive priority to a junior lien
- ✓ Tax and assessment liens are superior to any mortgage or deed of trust regardless of recording date

11.20 Judgment Liens on Real Property

A simple money judgment does not automatically create a lien. A lien on all real property of the judgment debtor in a county is created only when a properly certified abstract of judgment is recorded with the county recorder. The lien extends to real property the debtor acquires later, before the lien expires. This connects the concepts of recording and title encumbrances.

- ✓ A money judgment alone does not create a lien; recording a certified abstract of judgment with the county recorder creates the lien.
- ✓ The judgment lien attaches to all real property of the debtor in that county, including property acquired after recording but before expiration.
- ✓ Priority of an abstract of judgment is generally the date of recordation of the original abstract.

11.21 Creation of Easements

Easements arise chiefly in three ways: by express grant or reservation in a writing (deed or contract), by implication of law, or by long use (prescription). The most common method is express grant or reservation in a grant deed. A permanent easement can be granted only by the fee owner of the servient tenement or one with power to dispose of the fee. Recorded instruments impart constructive notice.

- ✓ Easements arise by express grant/reservation, by implication of law, or by prescription (long use).
- ✓ Only the fee owner of the servient tenement (or one able to dispose of the fee) can grant a permanent easement.
- ✓ A recorded deed or instrument imparts constructive notice of the easement.

11.22 Easement by Prescription and Termination

A prescriptive easement is created by continuous, uninterrupted use for five years that is hostile/adverse (without permission), open and notorious, exclusive as to asserting a private right, and under a claim of right. Payment of taxes is generally NOT required for a prescriptive easement (unlike adverse possession). Easements may terminate by release, legal action, nonuse of a prescriptive easement for five years, abandonment, merger, destruction of the servient tenement, or adverse possession. An easement created by grant cannot be lost by nonuse.

- ✓ A prescriptive easement requires five years of continuous, open, hostile, exclusive use under claim of right.
- ✓ Payment of property taxes is not required for a prescriptive easement, but is required for adverse possession.
- ✓ An easement obtained by grant cannot be lost by nonuse; a prescriptive easement can terminate after five years of nonuse.

11.23 Covenants, Conditions and Restrictions (CC&Rs)

Restrictions limit an owner's free use of land and are commonly called CC&Rs or the declaration. They are typically created by private owners through deed clauses, agreements, or subdivision plans. Zoning is a public (governmental) use restriction, distinct from private restrictions.

- ✓ Private restrictions (CC&Rs) are created by owners via deeds, agreements, or subdivision declarations.
- ✓ Zoning is a public/governmental use restriction, not a private one.
- ✓ A restriction usually takes the form of a covenant or a condition.

11.24 Distinction Between Covenants and Conditions

A covenant is a promise to do or not do something; its breach gives rise only to damages or an injunction, not forfeiture. A condition qualifies the estate granted; breach of a condition subsequent gives the grantor power to terminate the estate (forfeiture) with title reverting without consideration. Because the law abhors forfeitures, courts construe ambiguous restrictions as covenants unless intent to create a condition is plain.

- ✓ Breach of a covenant results in damages or injunction only; breach of a condition can result in forfeiture of title.
- ✓ Courts construe ambiguous restrictions as covenants unless intent to create a condition is clearly expressed.
- ✓ Some covenants 'run with the land' and bind successors; conditions run with the land into the indefinite future unless abandoned.

11.25 Zoning Affects Use Not Title

Zoning is a governmental use restriction. Local governments may adopt ordinances creating zones with standards for character and location of improvements, consistent with the general plan. To be valid, zoning must be substantially related to public health, safety, morals, or general welfare, must be uniform, and cannot be discriminatory. Enforcement affects only the use of the property, not the title.

- ✓ Zoning ordinances regulate the use of property, not the title.
- ✓ Valid zoning must relate to public health, safety, morals, or general welfare and be uniform and nondiscriminatory.
- ✓ Public authorities may enjoin or abate zoning violations affecting use only.

11.26 Purpose and Limits of Homestead Exemption

The homestead exemption shields the home against certain creditors enforcing judgment liens. Its validity depends on both recordation of the declaration and off-record facts, notably actual residency in the dwelling at the time of recording and an actual interest in the dwelling. The exemption does not protect against all forced sales.

- ✓ The homestead exemption protects a home only against certain judgment lien creditors, not all creditors.
- ✓ Validity requires actual residency in the dwelling and an ownership interest at the time the declaration is recorded.
- ✓ The exemption does not stop forced sales for pre-declaration judgments, prior voluntary encumbrances, or mechanic's/materialmen's liens.

11.27 Obligations Not Affected by Declaration

A homestead declaration does not protect against a forced sale where a judgment was obtained before recording, on debts secured by encumbrances executed by the owner before filing, or on mechanics', contractors', laborers', materialmen's, suppliers', or vendors' liens. Voluntary encumbrances such as a mortgage or deed of trust are not affected by a declaration.

- ✓ Judgments recorded before the homestead declaration are not defeated by it.
- ✓ Voluntary encumbrances (mortgages/deeds of trust) are not affected by a homestead declaration.
- ✓ Mechanic's and materialmen's liens on the premises remain enforceable despite the homestead.

11.28 Declared Homestead vs Automatic Exemption

California has two homestead statutes: Article 4 protects qualifying homeowner debtors who have NOT filed a declaration (automatic residential exemption), while Article 5 concerns those who record a homestead declaration. Both protect against certain judgment liens up to the statutory exemption amount. A dwelling where the owner or spouse resides may be selected as a Declared Homestead by recording a declaration in the county recorder's office.

- ✓ Article 4 provides an automatic exemption without a filing; Article 5 requires recording a homestead declaration.
- ✓ A Declared Homestead is created by recording a homestead declaration in the county where the dwelling is located.
- ✓ The owner or spouse must reside in the dwelling for it to qualify as a homestead.

11.29 Declaring Homestead and Spousal Rights

Either spouse can declare a homestead on community, quasi-community, tenancy-in-common, or joint tenancy property, but cannot declare on the separate property of the other spouse in which the declarant has no interest. A homestead cannot be declared after filing bankruptcy. Unmarried co-owners residing together must each record separate declarations. A declaration does not restrict the right to convey or encumber the property, and once recorded is prima facie evidence of the facts stated, though off-record matters could prove otherwise.

- ✓ A spouse cannot declare a homestead on the other spouse's separate property in which the declarant has no interest.
- ✓ Unmarried co-owners residing together must each record separate homestead declarations.
- ✓ A homestead declaration does not restrict the right to convey or encumber the property and is prima facie evidence of its stated facts.

11.30 Meaning of Marketable Title

Marketable (merchantable) title is not a perfect title but one free from plausible or reasonable objections, giving reasonable assurance of the rights involved. It is title a court would compel a buyer to accept in a specific performance action. Establishing marketable title matters most when property is transferred for consideration or used as loan security.

- ✓ Marketable title means title free from reasonable objections, not a perfect title.
- ✓ Marketable title is one a court would compel the buyer to accept in specific performance.
- ✓ Buyers and lenders require marketable title assurance before committing funds.

11.31 Evolution of Title Assurance Methods

Title assurance evolved through several forms: the abstract of title (a summary of successive conveyances plus a lawyer's opinion), the certificate of title (transitional, assuring not insuring), the guarantee of title (written assurances of research correctness), and finally title insurance, which insures against covered losses and extends protection to many non-recorded risks.

- ✓ An abstract of title is a summary of conveyances relied upon with a lawyer's opinion; it assures but does not insure.
- ✓ A certificate of title and guarantee of title provide assurances of correctness, not insurance.
- ✓ Title insurance both assures marketable title and compensates for covered losses, including some off-record risks.

11.32 ALTA and Extended Coverage Policies

The ALTA (American Land Title Association) policy for lenders expands coverage to include rights of parties in possession, unrecorded instruments, reservations in patents, and unmarketable title—useful for out-of-state lenders unable to inspect. Extended owner's policies (ALTA/CLTA) give owners similar protection. The CLTA policy provides Subdivision Map coverage; the ALTA policy makes Map Act coverage optional. Homeowner's policies exist for 1–4 residential units.

- ✓ The ALTA lender's policy covers rights of parties in possession, unrecorded instruments, and unmarketable title.
- ✓ Extended owner's coverage gives owners protection similar to the ALTA lender's policy.
- ✓ CLTA policies provide Subdivision Map coverage while ALTA makes it optional; homeowner's policies cover 1–4 units.

11.33 Indexing of Recorded Documents

The recorder indexes recorded documents alphabetically by names of grantors and grantees (or mortgagors/mortgagees, including beneficiaries and trustors of deeds of trust) and by nature of the document, as well as by date and recording reference.

- ✓ Documents are indexed by grantor and grantee names
- ✓ Indexing also covers mortgagors/mortgagees and deed of trust parties
- ✓ Documents are indexed by date and recording reference

CHAPTER 12

Contracts: Formation and Essential Elements

12.1 Definition and Classification of Contracts

A contract is an agreement to do or not to do a certain thing; it is a promise or set of promises the law will enforce. Contracts are classified by manner of creation, content, extent of performance, and legal effect. Express contracts state terms in words (oral or written); implied contracts are shown by acts and conduct.

- ✓ Express contract: terms declared in words; implied contract: shown by conduct
- ✓ Bilateral contract exchanges a promise for a promise; unilateral contract gives a promise to induce an actual performance
- ✓ Executory contract: something remains to be done; executed contract: both parties have fully performed

12.2 Void, Voidable, Unenforceable, and Valid Contracts

Contracts classified by legal effect. A void agreement is not a contract and has no legal effect (e.g., agreement to commit a crime, minor's real property contract). A voidable contract is valid on its face but may be rejected by a party (e.g., minor's contracts, fraud-induced contracts). An unenforceable contract is valid but cannot be sued upon. A valid contract is binding with all essential elements.

- ✓ Void = no legal effect at all (agreement to commit crime; minor under 18 contract re: real property)
- ✓ Voidable = valid until rejected by an injured party (fraud, minority)
- ✓ Unenforceable = valid but cannot be proved or sued upon (statute of limitations barred)
- ✓ Valid = binding, enforceable, has all essential elements

12.3 Four Essential Elements of a Contract

Under the California Civil Code, a contract requires: parties capable of contracting, mutual consent, lawful object, and sufficient consideration. A fifth requirement, a proper writing, is present only in certain contracts (those under the Statute of Frauds).

- ✓ Required elements: capable parties, mutual consent, lawful object, sufficient consideration
- ✓ A proper writing is a fifth requirement only for certain contracts
- ✓ All essential elements must be present for a valid contract

12.4 Offer and Acceptance Requirements

Mutual consent is evidenced by offer and acceptance. An offer must be communicated to the offeree, manifest contractual intention, and be definite and certain in terms. Parties are bound by outwardly manifested intentions, not secret intentions. The offer must be non-illusory, actually binding the offeror upon acceptance.

- ✓ Offer must be communicated to the offeree and manifest contractual intent
- ✓ No true 'meeting of minds' required; bound by apparent outward intentions
- ✓ Offer must be definite and certain; courts cannot make contracts for parties
- ✓ Offer must be non-illusory to actually bind the offeror upon acceptance

12.5 Five Ways to Terminate an Offer

An offer terminates by: (1) lapse of time (prescribed or reasonable time), (2) communication of notice of revocation before acceptance, (3) failure of offeree to fulfill a condition or a qualified acceptance/counteroffer, (4) rejection by the offeree, and (5) death or insanity of offeror or offeree. A counteroffer cancels the original offer.

- ✓ Offer terminates by lapse of time, revocation, counteroffer/qualified acceptance, rejection, or death/insanity
- ✓ Revocation is effective anytime before acceptance is communicated, even if a period was stated (unless an option was paid for)
- ✓ A qualified acceptance is a counteroffer that cancels the original offer
- ✓ Death or insanity of either party revokes the offer

12.6 Rules Governing Acceptance

Acceptance must be by the offeree who has knowledge of the offer, must be absolute and unqualified, and must be communicated. A material modification is a counteroffer. Silence is generally not acceptance. Acceptance must follow the manner specified, or any reasonable mode if none specified. A contract is formed when acceptance is properly mailed/deposited, even if the letter is lost.

- ✓ Acceptance must be by the offeree with knowledge of the offer
- ✓ Acceptance must be absolute and unqualified; material change makes it a counteroffer
- ✓ Silence is generally not an acceptance
- ✓ Mailbox rule: contract formed when acceptance is put in course of transmission, even if lost

12.7 Genuine Assent: Fraud

Genuine assent may be defeated by fraud, mistake, menace, duress, or undue influence, making the contract voidable and allowing rescission, damages, or reformation. Actual fraud (Civil Code 1572) includes false suggestion, unwarranted positive assertion, suppression of truth, a promise without intent to perform, and any act intended to deceive. Constructive fraud arises from breach of a duty. Fraud in the inducement makes a contract voidable; fraud in the inception/execution makes it void.

- ✓ Fraud, mistake, menace, duress, or undue influence make a contract voidable
- ✓ Actual fraud (CC 1572): false suggestion, unwarranted assertion, suppression of truth, promise without intent to perform, any act intended to deceive
- ✓ Fraud in the inducement = voidable; fraud in the inception = void
- ✓ A fraud waiver clause is ignored because fraud renders the whole agreement voidable

12.8 Capacity: Minors and Incompetents

For real estate exam purposes, an unemancipated minor cannot make a contract relating to real property, and such contract is void; a minor cannot appoint an agent (power of attorney is void). A real estate broker cannot serve as agent of a minor. Emancipated minors may contract for real property. Persons judicially declared of unsound mind cannot contract until restoration of capacity. Minors and incompetents may still acquire title by gift or inheritance.

- ✓ A minor's contract relating to real property is void; a minor's power of attorney is void
- ✓ A broker cannot serve as agent of a minor to buy or sell
- ✓ Emancipated minors (valid marriage, active military, or court declaration) may contract for real property
- ✓ After judicial determination of unsound mind, no contract can be made until capacity is restored

12.9 Definite and Certain Terms; Property Description

Courts refuse to enforce contracts that are uncertain (e.g., silent as to interest rate, maturity date, or amounts of mortgages). The contract must contain a property description sufficient to ascertain the property. Oral evidence may identify a description but cannot supply a missing or wholly uncertain one.

- ✓ Contracts too uncertain in material terms (loan amounts, interest, maturity) are unenforceable
- ✓ Property description must allow the property to be exactly ascertained
- ✓ Oral evidence may clarify but not supply a missing or wholly uncertain description

12.10 Mistake, Duress, Menace, Undue Influence

Where both parties are mistaken as to identity of the subject matter, or the subject matter has ceased to exist, there is no contract. Duress involves unlawful coercion/confinement or depriving one of free will; menace is a threat to commit duress; undue influence is unfair advantage taken through a confidential relationship or over another's weakness. These deprive the victim of free will and make the contract voidable.

- ✓ Mutual mistake as to subject matter identity means no contract exists
- ✓ Duress = coercion/confinement; menace = threat of duress; undue influence = unfair advantage in a confidential relationship
- ✓ Undue influence commonly involves trustee-beneficiary, broker-principal, attorney-client relationships
- ✓ These vitiating factors make the contract voidable

12.11 Lawful Object Requirement

A contract's consideration and object must be lawful. A single unlawful object voids the contract; with multiple objects, lawful ones may remain valid. Courts generally will not aid either party to an illegal contract. Unlicensed brokers or contractors cannot enforce their contracts. Restraint-of-trade and fraud/negligence-waiver provisions may be void; usurious interest provisions are void as to interest.

- ✓ Both object and consideration must be lawful; single unlawful object voids the contract
- ✓ Unlicensed brokers or general contractors cannot enforce their contracts
- ✓ Provisions avoiding one's own fraud or negligence are unenforceable
- ✓ Usurious interest provisions are void as to the interest portion

12.12 Sufficient Consideration

Every executory contract requires consideration - a benefit conferred or detriment suffered (or agreed to). Consideration is the price bargained for a promise and may be a return promise. It must have some value but need not be adequate; a nominal sum can support an option. Inadequacy matters only for specific performance and may signal fraud or undue influence.

- ✓ Consideration is a benefit conferred or detriment suffered/agreed, bargained for
- ✓ Consideration must have value but need not be adequate (nominal sum can support an option)
- ✓ Inadequacy of consideration matters in specific performance actions and may evidence fraud/undue influence

CHAPTER 13

Statute of Frauds, Interpretation, Discharge and Remedies

13.1 Contracts That Must Be Written (Civil Code 1624)

Under Civil Code Section 1624, certain contracts must be in writing and signed by the party to be charged: agreements not performable within one year; a promise to answer for another's debt; leasing for longer than one year or sale of real property or an interest therein; agreements employing an agent/broker to buy, sell, or lease (over one year) real estate for compensation; agreements not performable during the promisor's lifetime; a purchaser's agreement to pay a mortgage/deed of trust indebtedness unless assumption is provided in the conveyance; and loan commitments over $100,000 not for personal/family purposes.

- ✓ Real property sales and leases over one year must be in writing and signed by party to be charged
- ✓ Broker/agent employment agreements to buy, sell, or lease real estate for a commission must be in writing
- ✓ Agent's authority to sell real property must itself be in writing and subscribed
- ✓ Purchaser's agreement to pay mortgage indebtedness must be specified in conveyance to bind

13.2 Statute of Frauds Relates to Remedy Only

The Statute of Frauds affects the remedy, not the validity of the contract. A non-complying contract is unenforceable (not void) - effective until its invalidity is urged as a defense. It is a defense only and cannot support affirmative action. Significant partial performance can excuse the lack of writing, and full performance removes the statute entirely.

- ✓ A contract failing the Statute of Frauds is unenforceable, not void
- ✓ The statute is a defense only; it cannot be the basis for affirmative action
- ✓ Significant partial performance can excuse the lack of a writing
- ✓ Once fully performed, the Statute of Frauds does not apply

13.3 Broker Commission Must Be in Writing

A broker's contract to collect a commission must be in writing and signed by the party to be charged. A broker seeking a commission for leases over one year needs a written agreement. However, an oral agreement between brokers to share a commission is not subject to the Statute of Frauds. A moral obligation for services performed can support a compensation promise later put in escrow instructions.

- ✓ Broker commission agreements must be in writing and signed by the party to be charged
- ✓ Commission for leasing over one year requires written evidence
- ✓ An oral agreement between brokers to split a commission is enforceable (statute does not apply)

13.4 Rescission, Damages, and Specific Performance

A breach victim may accept the breach or choose among unilateral rescission, action for dollar damages, or specific performance. Rescission requires prompt action and restoring/offering to restore what was received. Damages must be reasonable and compensatory; exemplary damages are generally not allowed absent bad faith; nominal damages may be awarded when no real detriment exists.

- ✓ Breach remedies: unilateral rescission, dollar damages, or specific performance
- ✓ Rescission requires prompt action after discovery and restoration of what was received
- ✓ Damages must be reasonable and compensatory; exemplary damages generally not allowed
- ✓ Nominal damages awarded when breach caused no appreciable detriment

13.5 Specific Performance Requirements

Because land is unique, breach of an agreement to transfer real property presumptively cannot be adequately remedied by money, so equity may order specific performance. The remedy must be mutual. Adequate consideration must be received - if a higher price is offered during negotiations it must be presented. A buyer is always entitled to merchantable title. Certain obligations (personal service, procuring third-party consent, uncertain terms) cannot be specifically enforced.

- ✓ Specific performance available for real property because each parcel is unique
- ✓ The remedy of specific performance must be mutual
- ✓ Specific performance denied if assent obtained by fraud or consideration is inadequate
- ✓ Buyer is always entitled to merchantable title by the time seller must convey
- ✓ Obligations to render personal service or procure third-party consent cannot be specifically enforced

13.6 Note or Memorandum Requirements

The required note or memorandum may take any form (one paper or a series of letters) but must contain all material terms and bear the signature of the party to be charged. The other party bringing the action may add their signature later.

- ✓ Memorandum may be one paper or a series of letters but must contain all material terms
- ✓ It must bear the signature of the party to be charged
- ✓ The suing party can add their own signature later

13.7 Interpretation and Parol Evidence Rule

Contracts are interpreted to give effect to the mutual intention of the parties at the time of contracting. Clear language governs. Written parts control printed parts; original parts control form parts. The parol evidence rule bars extrinsic evidence to vary or add to an integrated written instrument, but outside evidence is allowed when the writing is incomplete/ambiguous or to show mistake, fraud, duress, illegality, or failure of consideration.

- ✓ Contracts interpreted per mutual intention at time of contracting; clear language governs
- ✓ Written parts control printed parts; original terms control copied form terms
- ✓ Parol evidence rule bars extrinsic evidence to vary an integrated writing
- ✓ Exceptions allow extrinsic evidence for ambiguity, fraud, mistake, duress, or failure of consideration

13.8 Assignment and Novation

A party may drop out by assignment or novation. Contracts are assignable unless personal in nature or expressly prohibited. An assignee stands in the assignor's shoes but the assignor remains secondarily liable unless released. Novation substitutes a new obligation for an old one, requiring intent to extinguish the old and the essentials of a valid contract, including new consideration.

- ✓ Contracts are assignable unless personal in nature or expressly/impliedly prohibited
- ✓ Assignor remains secondarily liable as surety/guarantor unless obligee releases them
- ✓ Novation substitutes a new obligation and requires intent to extinguish the old contract plus consideration

13.9 Discharge and Statute of Limitations

Contracts are discharged by full performance to breach, with methods including part/substantial performance, impossibility, agreement, release, operation of law, and acceptance of breach. The Statute of Limitations bars actions after the prescribed period: 2 years for oral contracts, 3 years for fraud/mistake or injury to property, 4 years for written contracts, and 10 years for a judgment. An action is commenced when the complaint is filed.

- ✓ Oral contract action: 2 years; written contract action: 4 years
- ✓ Fraud or mistake action: 3 years (accrues on discovery)
- ✓ Judgment action: 10 years
- ✓ Action commenced when complaint is filed with a court of competent jurisdiction

13.10 Spousal Signatures on Community Property

Both spouses must join in executing any instrument selling, conveying, encumbering, or leasing (over one year) community real property. Since an agreement to procure another's consent cannot be specifically enforced, obtaining both spouses' signatures is critical. Likewise, all co-owners must sign since a buyer cannot compel specific performance for only part of the property.

- ✓ Both spouses must join to sell, convey, encumber, or lease (over one year) community real property
- ✓ An agreement to procure a spouse's/third party's consent cannot be specifically enforced
- ✓ Obtain signatures of all owners; buyer cannot compel specific performance for only a portion

CHAPTER 14

Real Estate Contracts, Options, Liquidated Damages and Arbitration

14.1 3% Liquidated Damages Rule for Residential Purchases

For a contract to purchase residential property (four or fewer units where buyer intends to occupy), a provision that the buyer's payment constitutes liquidated damages is valid to the extent payment is actually made. If the amount does not exceed 3% of the purchase price, it is presumed valid unless the buyer proves it is unreasonable. If it exceeds 3%, it is invalid unless the seller proves it is reasonable.

- ✓ Applies to purchase of residential property of four or fewer units where buyer intends to occupy
- ✓ Amounts up to 3% of purchase price are presumed reasonable (buyer must prove otherwise)
- ✓ Amounts over 3% are invalid unless the seller proves the amount is reasonable

14.2 Validity of Seller Liquidated Damages Provisions

A liquidated damages provision protecting the seller if the buyer fails to complete a real property purchase is valid only if it meets specific statutory formatting and signing requirements. This governs the common practice of buyer deposits being retained as liquidated damages when a buyer defaults.

- ✓ The liquidated damages provision must be separately signed or initialed by each party to the contract (§ 1677(a))
- ✓ In a printed contract, the provision must be in at least 10-point bold type, or in contrasting red print in at least 8-point bold type (§ 1677(b))
- ✓ The chapter applies ONLY to liquidated damages to the seller when the buyer fails to complete the purchase (§ 1679)
- ✓ Nothing in the chapter affects a party's right to obtain specific performance (§ 1680)

14.3 Arbitration Provisions in Real Estate Contracts

Any contract to convey real property (including deposit receipts, real property sales contracts, leases with purchase options) containing a binding arbitration provision must clearly title it 'ARBITRATION OF DISPUTES.' The provision must be set out in specified type size/format, and a required NOTICE explaining the waiver of jury trial rights must appear before the signature line.

- ✓ Binding arbitration provisions must be clearly titled 'ARBITRATION OF DISPUTES'
- ✓ In printed contracts, must be at least 8-point bold type or contrasting red 8-point type; in typed contracts, in capital letters
- ✓ A statutory NOTICE stating parties give up rights to court/jury trial, discovery, and appeal must appear

before the signature line, requiring separate initialing

14.4 Elements and Provisions of Real Estate Contracts

Real estate contracts include sales contracts, leases over one year, and agent/broker employment agreements. They are like other contracts but must be in writing and signed under the Statute of Frauds, requiring capable parties, genuine consent, lawful object, and sufficient consideration. Forms should include date, parties, property description, consideration, mortgage/financing terms, other required provisions, and the closing date and place.

- ✓ Real estate contracts must be in writing and signed by the party to be charged
- ✓ Buyer's terms and conditions constitute the offer; seller's agreement is acceptance
- ✓ A definite offer plus unconditional acceptance creates the contract
- ✓ Contract provisions should include date, parties, description, consideration, financing terms, and closing

14.5 Types of Listings

A listing is a written contract employing an agent, creating fiduciary duties. Types: net listing (agent keeps excess over an accepted price; agent must disclose compensation before principal binds), open listing (may be given to multiple brokers; commission to broker who first produces a ready buyer; owner sale cancels all), exclusive agency listing (commission to named broker if any broker sells, but owner may sell without owing commission), and exclusive right to sell listing (commission owed even if owner sells).

- ✓ Net listing requires disclosure of agent's compensation before the principal binds himself
- ✓ Open listing: commission to broker who first produces a buyer; owner's own sale owes no commission
- ✓ Exclusive agency: owner may personally sell without owing commission to the broker
- ✓ Exclusive right to sell: commission due even if the owner sells the property
- ✓ Exclusive agency and exclusive right-to-sell listings must have a definite termination date

14.6 Deposit Receipt and Copies of Documents

California brokers use a deposit receipt when accepting earnest money with an offer; it is both a receipt and the basic contract, setting forth all sale terms, financing, and disposition of deposit. The real estate license law requires brokers/salespersons to give a copy of any document to persons signing it at the time the signature is obtained.

- ✓ The deposit receipt is both a receipt for earnest money and the basic contract of sale
- ✓ It must set forth all basic sale terms including financing and deposit disposition
- ✓ Brokers/salespersons must give a copy of any signed document to the signer when the signature is obtained

14.7 Translation Requirement for Negotiated Contracts

A person in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean must, before execution, deliver a translation of the contract in that language, including every term and condition. This covers, among others, residential leases/rentals for periods longer than one month covering a dwelling, apartment, or mobilehome, and certain loans. The English-language executed contract governs the parties' rights and obligations.

- ✓ Applies when negotiations are conducted primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean
- ✓ Covers residential leases/rentals for a period longer than one month
- ✓ The executed English-language contract determines the parties' rights and obligations

14.8 Remedies and Non-Waivability of Translation Rights

Upon failure to comply, the aggrieved party may rescind the contract. Any waiver of Section 1632's provisions is contrary to public policy and is void and unenforceable. The requirement does not apply if the other party negotiated through their own qualified interpreter (an adult fluent in English and the applicable language who is not employed by the business).

- ✓ Aggrieved party may rescind for a failure to comply
- ✓ Any waiver of these provisions is void and unenforceable
- ✓ Exception applies where the party used their own independent qualified interpreter

14.9 Validity of Liquidated Damages Provisions

A liquidated damages provision is generally valid unless the party challenging it proves it was unreasonable under the circumstances existing when the contract was made. However, for consumer retail purchases/rentals and residential dwelling leases, the provision is void unless it would be impracticable or extremely difficult to fix actual damages.

- ✓ Generally valid unless the challenger proves it was unreasonable at the time of contracting
- ✓ For consumer and residential dwelling leases, it is void unless actual damages are impracticable or extremely difficult to fix

14.10 Multiple Payments as Liquidated Damages

When more than one buyer payment is to serve as liquidated damages, each subsequent payment requires its own separately signed liquidated damages provision to be valid.

- ✓ The total of all payments must satisfy the requirements of Section 1675
- ✓ A separate liquidated damages provision meeting Section 1677 must be separately signed or initialed for each subsequent payment (§ 1678)

14.11 Residential Condominium Deposit Refund Rules

For residential condominium sales, seller retention of a buyer's deposit as liquidated damages is presumed valid if it does not exceed 3% of the purchase price, and refunds of excess must follow strict timelines.

- ✓ Amounts retained not exceeding 3% of the purchase price are valid unless the buyer proves the amount is unreasonable
- ✓ Refunds must be sent to the buyer's last known address within 90 days after final close of escrow
- ✓ If a new qualified buyer contracts to purchase, the accounting must be performed within 60 calendar days

14.12 Arbitration in Agency Agreements

Contracts between principals and agents in real property sales transactions—including listing agreements and buyer-broker representation agreements—that contain binding arbitration provisions are subject to the same titling and format requirements as conveyance contracts.

- ✓ Arbitration provisions in listing agreements and buyer-broker representation agreements must be titled 'ARBITRATION OF DISPUTES'
- ✓ Agreement to the arbitration provision is voluntary and requires separate initialing
- ✓ Arbitration provisions do not preclude claims for bodily injury or wrongful death, and this title applies only to contracts entered on or after July 1, 1989

14.13 Uniform Vendor and Purchaser Risk Act

Under Civil Code Section 1662, if neither title nor possession has transferred and the property is materially destroyed or taken by eminent domain without buyer's fault, the seller cannot enforce the contract and the buyer recovers amounts paid. If title or possession has transferred, the buyer bears the loss and must still pay. Parties may agree otherwise.

- ✓ Before title or possession transfers, risk of loss is on the seller (buyer recovers price paid)
- ✓ After title or possession transfers, risk of loss is on the buyer (still must pay)
- ✓ Parties may expressly allocate risk differently in the contract

14.14 Option Contract Requirements

An option is a contract in which, for consideration, the owner gives a prospective buyer the irrevocable right to purchase at a fixed price within a certain time. Actual consideration must pass (a mere recital is insufficient), though lease provisions can serve as consideration. The optionee is not bound to perform but may demand performance. Time is of the essence and strictly construed; if none is specified a reasonable time is implied. An option gives no interest in the land and cannot be mortgaged.

- ✓ An option requires actual consideration passing from optionee to optionor; a mere recital is insufficient
- ✓ The option makes the underlying offer irrevocable for the specified period
- ✓ The optionee is not bound to perform but may demand performance
- ✓ Time is of the essence in an option and is strictly construed
- ✓ An unexercised option gives no interest in the land and cannot be mortgaged

14.15 Handling Earnest Money Deposits

An earnest money deposit is trust funds. Under Real Estate Law Section 10145, a broker receiving trust funds must place them into a trust fund account, neutral escrow, or the hands of the principal. When a transaction disputes arise over the deposit, the broker is advised to file an interpleader action and deposit the funds with the court.

- ✓ An earnest money deposit is trust funds handled under Real Estate Law Section 10145
- ✓ Broker must place trust funds into a trust account, neutral escrow, or principal's hands
- ✓ In a deposit dispute, the broker should file an interpleader action and deposit funds with the court

14.16 Ten Dollar Limit on Document Signing Fees

No vendor or lessor of single family residential property may contract for or exact a fee exceeding ten dollars ($10) for signing and delivering a document connected with the transfer, cancellation, or reconveyance of any title or instrument when a buyer/lessee exercises an option to buy or completes performance of the sale contract. Applies prospectively only.

- ✓ Maximum $10 fee for signing and delivering transfer, cancellation, or reconveyance documents on single family residential property
- ✓ Applies when a buyer or lessee exercises an option to buy or completes the sale contract

14.17 Arbitration Limitations and Escrow

Arbitration provisions do not diminish court authority in probate, marital dissolution, lien foreclosure, unlawful detainer, or eminent domain. If an arbitration provision is in an escrow instruction, it does not preclude the escrowholder's right to file an interpleader action.

- ✓ Arbitration provisions do not limit court jurisdiction over probate, foreclosure, unlawful detainer, or eminent domain
- ✓ An arbitration provision in escrow instructions does not preclude the escrowholder's right to an interpleader action

14.18 Effect of Seller's Death on Contract

A properly drawn real estate contract binds the heirs, executors, administrators, and assigns of the parties. If the seller dies before conveying title, the buyer may compel specific performance against the seller's heirs, administrators, executors, or assigns.

- ✓ A well-drafted contract binds heirs, executors, administrators, and assigns
- ✓ Buyer may compel specific performance against a deceased seller's successors

14.19 Broker Commission on Options

A broker usually does not earn a commission for securing a client who takes an option; the right to a commission does not arise unless the option is exercised.

- ✓ A broker's commission on an option arises only if the option is exercised
- ✓ Simply securing an optionee client does not entitle the broker to a commission

14.20 Tender in Real Estate Transactions

A tender is an offer by one party to carry out that party's part of the contract, usually at closing. The party making a proper tender can show readiness and place the other in default. Objections must be specified at the time of tender or they are waived. If both parties are in default, neither may recover damages.

- ✓ A tender is an offer to perform one's contractual obligation, usually made at closing
- ✓ Proper tender places the refusing party in default, allowing rescission or suit
- ✓ Objections must be stated at the time of tender or they are waived
- ✓ If both parties are in default, neither may recover damages

CHAPTER 15

Deeds: Essentials, Acknowledgment, Recording and Delivery

15.1 Essentials of a Valid Deed

A deed transfers title to real property from the grantor to the grantee when properly executed, delivered, and accepted. California law requires specific essential elements for a deed to be valid. Transfer may be voluntary or involuntary (such as a foreclosure sale).

- ✓ A valid deed must be in writing
- ✓ The parties (grantor and grantee) must be properly described
- ✓ Parties must be competent to convey and capable of receiving the grant
- ✓ The property must be described so as to distinguish it from other parcels
- ✓ There must be a granting clause with operative words of conveyance (e.g., 'I hereby grant')
- ✓ The deed must be signed by the party making the conveyance
- ✓ The deed must be delivered and accepted

15.2 Elements Not Required for a Valid Deed

Contrary to law in some other states, California does not require certain traditional formalities for a deed to be valid. Understanding what is NOT required is frequently tested.

- ✓ A habendum clause ('to have and to hold') is NOT necessary
- ✓ Witnesses and a seal are NOT required
- ✓ A date is recommended but NOT necessary to validity
- ✓ Acknowledgment is NOT required for validity
- ✓ Recordation is NOT required for validity

15.3 Purpose and Nature of Acknowledgment

An acknowledgment is a formal declaration before a duly authorized officer (such as a notary public) by a person who executed an instrument that such execution is his or her act and deed. The officer executes a Certificate of Acknowledgment. Acknowledgment safeguards against forgery and false impersonation and allows the writing to be admitted into evidence without further proof of execution.

- ✓ An acknowledgment is a formal declaration before an authorized officer that execution is the signer's own act
- ✓ It serves as a safeguard against forgery and false impersonation
- ✓ Duly acknowledged writings may be introduced into evidence without further proof of execution
- ✓ Many instruments cannot be recorded unless acknowledged

15.4 Importance of Recording a Deed

Recording does not affect a deed's validity but is extremely important because it protects the grantee by establishing the sequence of transfers. A grantee who fails to record is in jeopardy if another document affecting title is recorded first. Possession also gives notice of the rights of persons in possession.

- ✓ Recording is NOT required for a deed's validity but protects the grantee
- ✓ The recording system establishes the sequence of transfers affecting property
- ✓ A first grantee who fails to record is in jeopardy if a later deed is recorded
- ✓ Possession of property gives constructive notice of the possessor's rights — buyers should investigate who is in possession

15.5 Delivery Requires Intent to Pass Title

A deed has no effect unless delivered, and delivery requires the grantor's intent to pass title immediately — not merely physical transfer of the document. Legal delivery can occur without physically handing over the deed if the requisite intent exists.

- ✓ A deed is of no effect unless delivered
- ✓ Delivery requires the grantor's intent to pass title immediately
- ✓ There is no valid delivery if grantor tells grantee not to record until grantor's death (both believing deed ineffective until recorded)
- ✓ Cross-deeds between spouses placed in a safe-deposit box for the survivor to record show no present delivery intent

15.6 Consideration Not Essential to Valid Deed

A deed is usually executed for consideration, but consideration is not essential for a valid transfer, and need not be mentioned in the deed. However, lack of consideration may affect the grantee's rights against certain third parties, since recording statutes protect bona fide purchasers.

- ✓ Consideration is NOT essential for a valid transfer of title
- ✓ Consideration need not be mentioned in the deed even if given
- ✓ A transfer without consideration by a grantor who is or becomes insolvent is fraudulent as to creditors and may be set aside

15.7 Who May Take Acknowledgments

Acknowledgments may be taken by various authorized officers within the state, most commonly a notary public. Since September 17, 1959, a notary may act anywhere within California (previously limited to their own county). Certain military officers may take acknowledgments of armed forces members.

- ✓ A notary public may take acknowledgments anywhere within California (Civil Code Section 1181)
- ✓ Justices, judges, court clerks, county clerks, and court commissioners may take acknowledgments
- ✓ Deputies of authorized officers may also take acknowledgments
- ✓ An acknowledgment taken outside California must conform to California's forms, provisions, and laws

15.8 Notary Public Seal and Journal Requirements

A California notary public must keep an official seal showing required information and must maintain a sequential journal of all notarial acts. The journal must be kept in a locked, secured area under the notary's exclusive control.

- ✓ The notary seal must show the notary's name, State Seal, words 'Notary Public,' county of filing, commission expiration date, and commission number
- ✓ The seal must be photographically reproducible (rubber stamp is nearly universal)
- ✓ The journal must record date, time, type of act, character of instrument, signature, satisfactory evidence of identity, and fee (Government Code Section 8206)
- ✓ For deeds, quitclaim deeds, deeds of trust affecting real property, or powers of attorney, the notary must obtain the signer's right thumbprint in the journal

15.9 Acknowledgment by Officer With Financial Interest

An officer taking an acknowledgment should not have a direct financial interest in the transaction, to discourage fraud. A notary with a direct financial interest cannot perform any notarial act in the transaction, and cannot acknowledge instruments they executed themselves.

- ✓ An officer with a direct financial or beneficial interest should not take an acknowledgment
- ✓ A notary cannot take acknowledgment of instruments executed by himself/herself (Government Code Section 8224.1)
- ✓ A notary cannot notarize a transaction in which they are named individually as grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee (Government Code Section 8202/822)
- ✓ An officer who is one of several grantors may acknowledge signing by other grantors, but their own signing must be acknowledged by a different officer
- ✓ An instrument disclosing such conflict on its face does not impart constructive notice

15.10 Instruments Requiring Acknowledgment for Recordation

California law protects property owners from unauthorized encumbrances by requiring most instruments affecting real property to be acknowledged or proved by the owner before recordation. Community property transfers require both spouses.

- ✓ Most instruments affecting real property must be executed and acknowledged/proved by the owner before recordation
- ✓ Instruments include conveyances, mortgages, trust deeds, agreements for sale, option agreements, and deposit receipts
- ✓ Any instrument transferring or encumbering community property must be executed by both husband and wife

15.11 Consistency of Names in Chain of Title

Complete record title requires direct name connections between owners in the chain of title. Substantial variation between the grantee's name in one instrument and the grantor's name in the next renders title defective, even if identity can be shown by off-record evidence.

- ✓ Instruments in a chain of title must show direct name connection between owners
- ✓ Substantial name variation renders title defective and the instrument fails to impart constructive notice
- ✓ Omission/addition of a middle name or initial is generally immaterial, but a variance in middle names/initials may cause defective record of title
- ✓ A person whose name changed must, in a conveyance, set forth the name in which title was taken (e.g., 'Mary Doe Smith, formerly Mary Doe')

15.12 Fictitious Names and Grantee Existence

A deed to a purely fictitious person is void, but a deed to an actual person under a fictitious name they use or assume is valid. The grantee must be an existing person (natural or artificial) capable of taking title.

- ✓ A deed to a purely fictitious (false or feigned) person is VOID
- ✓ A deed to a real person under a fictitious name by which they are known is VALID
- ✓ A misnamed grantee error can be corrected by a second deed under the true name
- ✓ A deed to a dead person is void

15.13 Presumption of Delivery and Conditional Delivery

The law presumes valid delivery if the deed is in the grantee's possession or recorded, but this presumption is rebuttable. A grant cannot be delivered conditionally to the grantee — delivery to the grantee is absolute. Conditions must be handled via escrow or by incorporating them in the deed itself.

- ✓ Delivery is presumed (rebuttably) if the deed is in the grantee's possession or is recorded
- ✓ A grant cannot be delivered to the grantee conditionally — delivery to the grantee is absolute
- ✓ To impose conditions, deposit the deed in escrow or incorporate conditions in the deed
- ✓ A deed presumed delivered as of its dated date; dated date often differs from recorded date

15.14 Acceptance Requirement and Testamentary Delivery

Ordinarily a deed cannot take effect unless accepted by the grantee, shown by acts, words, or conduct. Transfer conditioned on the grantor's death is ineffective as an attempted testamentary disposition. A deed to a governmental entity requires a certificate of acceptance.

- ✓ A deed must ordinarily be accepted by the grantee to take effect
- ✓ Exception: acceptance is presumed when the grantee is a minor or mentally incompetent
- ✓ A deed conditioned on the grantor's death fails as an invalid testamentary disposition (must meet will requirements)
- ✓ A deed to a governmental entity must contain a certificate of acceptance

CHAPTER 16

Types of Deeds; Void and Voidable Deeds

16.1 Quitclaim Deed

A quitclaim deed transfers only the interest the grantor has at the time of execution, with no warranties. It is commonly used to clear a 'cloud on the title.' It resembles the common law 'conveyance by a release.'

- ✓ A quitclaim deed transfers only whatever interest the grantor has at execution
- ✓ There are NO implied or express warranties in a quitclaim deed
- ✓ A quitclaim deed does NOT convey after-acquired title
- ✓ It is generally used to clear a cloud on the title (a minor defect)
- ✓ Deeds of guardians, administrators, and sheriffs usually have quitclaim effect pursuant to court order

16.2 Trust Deed (Deed of Trust)

A trust deed is a three-party security instrument conveying title to land as security for an obligation. The trustor conveys legal title to a trustee who holds it in trust for the beneficiary (lender), with power of sale on default. The trustor retains equitable title and possession.

- ✓ Three parties: trustor (borrower), beneficiary (lender), and trustee (holds legal title)
- ✓ The trustee holds legal title and has power to sell the property upon default
- ✓ The trustor retains equitable title and the right of possession
- ✓ The trustee reconveys legal title when the note is paid in full and the beneficiary requests reconveyance
- ✓ A licensee must record a deed of trust within one week after closing or deliver it appropriately (B&P Code Section 10141.5)

16.3 Void Deeds

Void deeds pass no title, even to a bona fide purchaser for value. Candidates must distinguish void deeds (no title passes) from voidable deeds (title passes subject to being set aside).

- ✓ A deed from a person whose incapacity has been judicially determined (e.g., conservatee) is void
- ✓ Forged deeds are void
- ✓ A deed from an unemancipated person under 18 is void
- ✓ A deed executed in blank where the grantee's name was inserted without authorization is void
- ✓ A deed purely testamentary in character (intended to operate only at death) is void

16.4 Reconveyance Deed

A reconveyance deed conveys title from the trustee back to the trustor when the trust terminates, typically when the promissory note is paid in full and the beneficiary issues a Request for Full Reconveyance.

- ✓ A reconveyance deed conveys title from trustee back to trustor on termination of the trust
- ✓ The beneficiary must issue a 'Request for Full Reconveyance' for the trustee to reconvey
- ✓ Termination usually occurs when the promissory note is paid in full

16.5 Sheriff's Deed

A sheriff's deed is given upon foreclosure of property under a judgment for foreclosure on a mortgage or a money judgment against the owner. It conveys only the title acquired under the foreclosure and carries no warranties.

- ✓ A sheriff's deed is given on foreclosure under a judgment for foreclosure or money judgment
- ✓ It conveys only the title acquired by the state or sheriff under the foreclosure
- ✓ It carries no warranties or representations whatsoever

16.6 Gift Deed

A gift deed transfers property without consideration, using a grant deed or quitclaim form. The grantor may (but need not) recite love and affection. A gift deed that defrauds creditors may be set aside.

- ✓ A gift deed may use a grant deed or quitclaim deed form
- ✓ The grantor may, but need not, state the transfer is for love and affection
- ✓ A gift deed made to defraud creditors may be set aside if it leaves the grantor insolvent (Uniform Fraudulent Transfer Act, Civil Code Sections 3439–3439.12)

16.7 Voidable Deeds

Voidable deeds are not void but pass title subject to being set aside in appropriate judicial proceedings. They contrast with void deeds which pass no title at all.

- ✓ A deed from a person of unsound mind whose incapacity has NOT been judicially determined is voidable
- ✓ A deed passes title but can be set aside through judicial proceedings
- ✓ Prior to March 4, 1972, a deed from a person 18-21 (except a lawfully married person 18+) was voidable

16.8 Warranty Deed

A warranty deed contains express covenants of title but is uncommon in California due to near-universal reliance on title insurance to evidence marketable title.

- ✓ A warranty deed contains express covenants of title
- ✓ Warranty deeds are uncommon in California because of reliance on title insurance

CHAPTER 17

Escrow: Nature, Elements and Instructions

17.1 Two Essential Elements of a Valid Escrow

A valid sale escrow requires two essential elements: (1) a binding contract/agreement between buyer and seller, and (2) the conditional delivery to a neutral third party of something of value (such as a grant deed, deed of trust, or funds). The binding agreement may take any legal form, including a deposit receipt (residential purchase agreement), agreement of sale, exchange agreement, option agreement, or executed escrow instructions.

- ✓ A valid escrow requires a binding contract/agreement between buyer and seller
- ✓ A valid escrow requires conditional delivery of something of value to a neutral third party
- ✓ The binding agreement can appear in any legal form (deposit receipt, agreement of sale, etc.)

17.2 Escrow Holder as Agent and Fiduciary

The escrow holder is the impartial/neutral third party who holds money, instruments, documents, or other things of value until specified events occur or conditions are met. The escrow holder is the agent and fiduciary of the principals and must exercise reasonable care, loyalty, and good faith. Its fiduciary duty is generally limited to faithful performance of the escrow instructions. The escrow holder acts as a dual agent for both buyer and seller (and lender, if applicable).

- ✓ The escrow holder is an impartial/neutral third party and depositary
- ✓ The escrow holder is the agent and fiduciary of the principals to the escrow
- ✓ The escrow holder is a dual agent of buyer and seller (and lender if applicable)
- ✓ Fiduciary duty is generally limited to faithful performance of escrow instructions (Summit Financial Holdings v. Continental Lawyers Title Co.)

17.3 Bilateral vs. Unilateral Escrow Instructions

California uses two forms of escrow instructions: bilateral (joint — executed by and binding on both buyer and seller) and unilateral (separate instructions executed by buyer and seller). Escrow instructions supplement the original contract and are interpreted together with it. If instructions conflict with the original contract, the later instructions usually control. Once joint/bilateral instructions are signed, neither principal may unilaterally change them; changes require mutual agreement.

- ✓ Bilateral instructions are executed by and binding on both buyer and seller
- ✓ Unilateral instructions are separate instructions executed by each party
- ✓ If escrow instructions conflict with the original contract, the later instructions usually control
- ✓ Neither principal may unilaterally change signed joint/bilateral instructions; mutual agreement is required

17.4 Escrow Holder Has No Discretionary Authority

Escrow instructions must contain mutuality reflecting the understandings and intentions of the principals. The escrow holder does not have and must not exercise discretionary authority — it acts on behalf of, not in place of, the principals. The escrow holder acts only upon specific written instructions.

- ✓ Escrow instructions must contain mutuality of understandings and intentions
- ✓ The escrow holder must not exercise discretionary authority
- ✓ The escrow holder acts only upon specific written instructions

17.5 Escrow Holder May Not Give Legal Advice

The escrow holder does not act as a mediator or arbitrate disputes and is prohibited from offering legal advice. When parties disagree, the escrow holder must suggest they consult an attorney (or a real estate broker for matters within the scope of the real estate license).

- ✓ The escrow holder is prohibited from offering legal advice
- ✓ The escrow holder does not act as a mediator or arbitrate disputes
- ✓ Disagreeing parties must be referred to an attorney or, where appropriate, a real estate broker

17.6 Escrow Trust Account and Confidentiality

The escrow trust account must be maintained with extreme care and overdrawn accounts (debit balances) are strictly forbidden. Escrows are privileged and confidential — the escrow holder must not release information to non-principals without approval of the principals.

- ✓ Overdrawn escrow trust accounts (debit balances) are strictly forbidden
- ✓ Escrows are privileged and confidential in nature
- ✓ Information may not be given to non-principals without the principals' approval

17.7 Funds Must Clear Before Disbursement

The escrow holder must not disburse funds until all checks, drafts, etc., have cleared and become available for withdrawal as an automatic right. This holding period may range from 1 to 10 days depending on the type and location of the financial institution. Before closing, the escrow holder must audit the file and account for all items, including cleared funds.

- ✓ Funds may not be disbursed until checks/drafts clear and are available as an automatic right
- ✓ The holding period may range from 1 to 10 days
- ✓ The escrow holder must audit the file before closing, accounting for all cleared funds

17.8 Who Are the Principals to the Escrow

In a real estate sale escrow, the principals include the buyer, the seller, and (if applicable) the lender(s) making the purchase money loan. Principals are those executing and performing the escrow instructions and making conditional deliveries. Not all parties are principals — non-principals (such as chain-of-title claimants, those placing demands for payment, or those submitting reports) are owed no fiduciary duty; the escrow holder acts toward them as a custodian in good faith.

- ✓ Principals include buyer, seller, and lender(s) making the purchase money loan
- ✓ Not all parties to an escrow are principals
- ✓ Fiduciary duties are not owed to non-principals; the escrow holder acts as a custodian toward them

17.9 Escrow Holder Neutrality and Interpleader

The escrow holder is a neutral stakeholder who is not concerned with controversies among the principals, though it can be held liable for violating written instructions. When disputes arise, the escrow holder may file an action of interpleader and for declaratory relief, asking a court to resolve the controversy and direct the escrow holder on how to proceed.

- ✓ The escrow holder is a neutral stakeholder not concerned with controversies among principals
- ✓ The escrow holder can be held liable for violating written instructions
- ✓ The escrow holder may file an interpleader action and seek declaratory relief to resolve disputes

17.10 When an Escrow Is Completed or Perfected

Properly drawn and executed escrow instructions become an enforceable contract. An escrow is termed 'completed' or 'perfected' when each of the terms of the instructions has been met or performed (satisfied or waived).

- ✓ Executed escrow instructions become an enforceable contract
- ✓ An escrow is 'completed' or 'perfected' when all terms are met, satisfied, or waived

17.11 Escrow as Limited/Special Agency

Escrow is a limited/special agency relationship governed entirely by the content of the escrow instructions. When the escrow is completed/perfected and closed, the escrow holder becomes the agent for each principal with respect to the things in escrow to which each has become entitled.

- ✓ Escrow is a limited/special agency relationship governed by the escrow instructions
- ✓ Upon close, the escrow holder becomes agent for each principal as to what each is entitled to

17.12 Perfection and Termination Before Signing

When all principals have signed mutual (conforming) instructions, the escrow becomes perfected. If only one principal has signed, that principal may terminate the proposed escrow at any time before the other signs conforming instructions. Lenders typically reserve the right to withdraw their instructions and funds if buyer/seller instructions do not conform.

- ✓ Escrow is perfected when all principals sign mutual (conforming) instructions
- ✓ If only one principal has signed, that principal may terminate before the other signs
- ✓ Lenders may withdraw instructions and funds if buyer/seller instructions do not conform

17.13 Duty to Communicate Material Facts

The escrow holder is the agent of the principals, and any facts known by the escrow agent are imputed to the principals. The escrow holder owes a duty to communicate to its principals knowledge acquired within the scope of the agency about material facts that might affect a principal's decision, including new or detrimental undisclosed information.

- ✓ Facts known by the escrow agent are imputed to the principals
- ✓ The escrow holder must disclose material facts affecting a principal's decision
- ✓ New or detrimental undisclosed information must be disclosed to the principals

17.14 Strict Neutrality Requirement

The escrow holder must remain strictly neutral, not favoring either principal (including the lender), and must avoid proceeding in a manner that results in gain to one principal at the detriment of another. Despite neutrality, the escrow holder must still advise principals of material facts as required.

- ✓ The escrow holder must remain strictly neutral, favoring no principal
- ✓ The escrow holder must avoid causing gain to one principal at the detriment of another

CHAPTER 18

Escrow Procedures, Escrow Law and Prohibited Conduct

18.1 Buyer/Seller Duty to Release Escrow Funds

When a real property purchase does not close by the contract date or duly executed extension, buyers and sellers are obligated to ensure that funds deposited in escrow are returned to the depositor or the party entitled to them under the contract. A party who fails to sign release documents within 30 days after a written demand becomes liable to the depositor.

- ✓ Funds must be returned to the depositor or entitled party if escrow does not close by the contract date or extension
- ✓ Failure to execute release documents within 30 days of written demand creates liability
- ✓ Liability includes the deposited amount, treble damages ($100 minimum to $1,000 maximum), and reasonable attorney's fees

18.2 Legal Definition of Escrow

Escrow is a transaction where one person, for purposes of effecting the sale, transfer, encumbering, or leasing of real or personal property, delivers a written instrument, money, evidence of title, or other thing of value to a neutral third person to hold until a specified event happens or a prescribed condition is performed, at which point it is delivered to the appropriate party. This neutral third party arrangement is fundamental to California real estate closings.

- ✓ Escrow requires a neutral third person to hold instruments, money, or title until a specified event occurs or condition is performed
- ✓ Escrow may be used to effect sale, transfer, encumbering, or leasing of real or personal property
- ✓ Internet escrow companies may also hold money for sale/transfer of personal property or services

18.3 Broker and Attorney Escrow Exemptions

The Escrow Law does not apply to certain persons, including banks, trust companies, savings associations, credit unions and insurers; attorneys with a bona fide client relationship not actively in the escrow business; title/abstract companies; and real estate brokers performing acts incidental to a transaction in which the broker is an agent or party and performing acts requiring a real estate license. These exemptions are personal and limited.

- ✓ A licensed real estate broker is exempt when performing escrow acts incidental to a transaction in which the broker is an agent or party requiring a license
- ✓ Attorney and broker exemptions are personal and cannot be delegated except under direct supervision
- ✓ The broker/attorney exemption is not available for arrangements set up to perform escrows for more than one business

18.4 Escrow Licensing and Exemptions

The Escrow Law (Division 6 of the Financial Code) requires escrow agents conducting public escrows to be licensed by the Department of Financial Protection and Innovation (DFPI, successor to the Department of Corporations and the Department of Business Oversight). Banks, savings associations, title insurance companies, underwritten title companies, trust companies, attorneys and real estate brokers have limited exemptions. Under Financial Code Section 17006(a)(4), a real estate broker is exempt when performing escrow acts in the course of, or directly incidental to, a real estate transaction in which the broker is an agent or a party.

- ✓ The Escrow Law is Division 6 of the California Financial Code, administered by the Commissioner of Financial Protection and Innovation (DFPI)
- ✓ Banks, savings associations, title and trust companies, attorneys and real estate brokers are exempt from escrow licensing within limits
- ✓ A broker is exempt under Financial Code § 17006(a)(4) only for escrows incidental to a transaction in which the broker is an agent or a party

18.5 Limits on the Broker Escrow Exemption

The broker exemption is personal to the broker — only ministerial duties may be delegated. The exemption is not available for arrangements with other brokers to conduct escrows, and it does not apply when the escrow business is a substantial factor in the broker's services (then it is not 'incidental'). A broker may not use a fictitious name containing 'escrow' unless it includes 'a non-independent broker escrow.' Escrowed funds must be kept in a trust account.

- ✓ The broker escrow exemption is personal; only ministerial duties may be delegated
- ✓ The exemption is unavailable for arrangements with other brokers to conduct escrows
- ✓ If escrow business is a substantial factor in the broker's services, it is not 'incidental'
- ✓ A broker using 'escrow' in a fictitious name must add 'a non-independent broker escrow' (Regulation 2731(d))

18.6 Broker Escrow Fiduciary Duty Not Limited to Instructions

When a real estate broker acts as escrow holder, its agency and fiduciary duties are NOT limited to the course and scope of the escrow instructions (unlike a neutral third-party escrow holder). The purpose and scope of the broker's agency expands to include the escrow, and the broker becomes agent and fiduciary of the other principal(s). These additional relationships and conflicts must be disclosed to and consented to by the principals.

- ✓ A broker acting as escrow holder has fiduciary duties NOT limited to the escrow instructions
- ✓ The broker becomes agent and fiduciary of the other principals when conducting the escrow
- ✓ The additional agency relationships and conflicts must be disclosed to and consented to by the principals

18.7 Prohibited Escrow Practices

Escrow holders may not disseminate misleading statements or call a non-escrow transaction an 'escrow.' They may not pay referral fees to brokers or others (including gifts of merchandise or things of value), and cannot disburse a broker's commission before closing. They may not accept instructions containing blanks to be filled in after signing, and any alteration requires initialing by all principals who previously signed. Copies of instructions must be delivered to all executing principals.

- ✓ Escrow holders may not pay referral fees (including gifts) to brokers or others
- ✓ A broker's commission cannot be disbursed before closing of escrow
- ✓ Escrow instructions may not contain blanks to be filled in after signing
- ✓ Alterations require initialing by all principals who previously signed

18.8 Good Faith Dispute Exception to Liability

No liability arises for failure to return escrow funds if the funds are withheld to resolve a good faith dispute between buyer and seller. A 'good faith dispute' exists when the party refusing return had a reasonable belief of legal entitlement to withhold the funds, as determined by the trier of fact. The denied party recovers damages only by proving there was no good faith dispute.

- ✓ No liability if funds withheld in good faith to resolve a good faith dispute
- ✓ The claimant must prove there was NO good faith dispute to recover damages
- ✓ 'Property' means real property with one to four residential units, at least one to be occupied by the buyer

18.9 Release Documents Do Not Cancel Contract

Neither a document required by the escrow holder to release funds nor acceptance of released funds is deemed a cancellation of the underlying purchase contract unless cancellation is specifically stated. The escrow holder may deposit disputed sums with the court (interpleader) and be discharged of further responsibility.

- ✓ Signing release documents does not cancel the underlying purchase/sale contract unless expressly stated
- ✓ Escrow holder may file an interpleader action or deposit disputed funds with the court to be discharged

18.10 Title Insurance Advisory Notice Requirement

In a purchase or simultaneous exchange of real property where no title insurance policy will be issued to the buyer or exchanging parties, a separate document notice must be provided, signed and acknowledged, advising that obtaining title insurance may be advisable due to possible prior recorded liens and encumbrances.

- ✓ A separate signed and acknowledged notice is required when no title insurance policy will be issued
- ✓ Notice must warn of possible prior recorded liens and encumbrances affecting the buyer's interest

18.11 License Disclosure in Escrow Instructions

All written escrow instructions executed by a buyer or seller must contain a statement in at least 10-point type including the license name and the name of the department issuing the license or authority under which the escrow person operates. This does not apply to supplemental instructions or modifications.

- ✓ Escrow instructions must disclose the license name and issuing department in not less than 10-point type
- ✓ The requirement does not apply to supplemental escrow instructions or modifications
- ✓ Financial Code § 17403.4 imposes the same requirement on escrow licensees and persons exempt under § 17006

18.12 Buyer's Choice of Title and Escrow (REOs)

Under the Buyer's Choice Act, a seller of residential property of four or fewer units (specifically a foreclosing lender/beneficiary that acquired title at a foreclosure sale) may not require, directly or indirectly, that the buyer purchase title insurance or escrow services from a particular provider as a condition of sale. A buyer may still agree to accept a seller-recommended provider if the seller first gives written notice of the right to make an independent selection.

- ✓ Seller cannot condition sale on buyer using a particular title insurer or escrow agent
- ✓ Applies to residential property of four or fewer units acquired by a lender at foreclosure (REO)
- ✓ Buyer may accept a recommended provider only after written notice of right to choose independently

18.13 Penalties for Buyer's Choice Act Violations

A seller who violates the Buyer's Choice Act is liable to the buyer for three times all charges made for the title insurance or escrow service. Any licensee who violates it is deemed to have violated their license law and is subject to discipline. The transaction is not invalidated solely due to noncompliance.

- ✓ Violating seller is liable for three times (treble) the title/escrow charges
- ✓ A licensee violator is deemed to have violated their license law and faces discipline
- ✓ Transaction is not invalidated solely due to noncompliance

18.14 Prohibition on Controlled Escrows by Developers

A real estate developer may not require, as a condition of transferring a single family residential dwelling, that escrow services be provided by an escrow entity in which the developer has a financial interest (5% or more ownership/control).

- ✓ Developer cannot require use of an escrow entity in which it has a financial interest for single family residential transfers
- ✓ 'Financial interest' means ownership or control of 5 percent or more of an escrow entity
- ✓ Violation makes developer liable for three times the escrow charge, minimum $250, plus attorney's fees; any waiver is void

18.15 $75 Building Homes and Jobs Act Recording Fee

A fee of $75 is charged at recording of every real estate instrument, paper, or notice per single transaction per parcel, capped at $225 per transaction. The fee funds the Building Homes and Jobs Trust Fund. 'Real estate instrument' broadly includes deeds, deeds of trust, reconveyances, quit claim deeds, declarations/abandonments of homestead, notices of default, easements, mechanic's liens, and CC&Rs.

- ✓ The SB2 recording fee is $75 per document, capped at $225 per single transaction per parcel
- ✓ Documents covered include deeds, deeds of trust, homestead declarations/abandonments, easements, and CC&Rs

18.16 Exemptions from the SB2 Recording Fee

The $75 fee is not imposed on documents recorded in connection with a transfer subject to documentary transfer tax, transfers of a residential dwelling to an owner-occupier, documents recorded by the federal government under the Uniform Federal Lien Registration Act, documents recorded by state/local government, or documents recorded to remove a restrictive covenant violating Section 12955.

- ✓ Exempt: transfers subject to documentary transfer tax and residential dwelling transfers to owner-occupiers
- ✓ Exempt: documents by federal/state/local government and those removing unlawful restrictive covenants (§ 12955)

18.17 Commercial Bribery Involving Title Business

An employee of a title insurer, underwritten title company, or controlled escrow company who corruptly pays a licensee, or a licensee who corruptly receives from such an employee, a commission or consideration as an inducement for the placement or referral of title business is guilty of commercial bribery. This ties into anti-kickback rules governing referrals in escrow and title business relevant to real estate practice.

- ✓ Paying or receiving consideration to induce referral of title business is commercial bribery
- ✓ Punishable by up to one year county jail, a $10,000 fine per transaction, or both
- ✓ Applies to both title/escrow company employees and licensees who receive such consideration

18.18 Regional Escrow Instruction Practices

In Southern California, joint/bilateral escrow instructions are typically prepared following execution of the purchase agreement and accompanied by the buyer's earnest money deposit with conditional delivery. In Northern California, unilateral escrow instructions are typically prepared a few days before closing, and the earnest money is delivered without conditional delivery — meaning the escrow is not opened until the unilateral instructions are signed and conditional delivery occurs.

- ✓ Southern California typically uses joint/bilateral instructions prepared after the purchase agreement
- ✓ Northern California typically uses unilateral instructions prepared shortly before closing
- ✓ In Northern California the escrow is not 'opened' until unilateral instructions are signed and conditional delivery occurs

18.19 Contents of Mutual Escrow Instructions

For a home purchase, mutual escrow instructions should include: the purchase price and terms, agreement as to mortgages, how buyer's title is to vest, matters of record subject to which buyer acquires title, inspection reports to be delivered through escrow, proration adjustments, date of possession, instruments to be signed and recorded, disbursements to be made, and the date of closing.

- ✓ Escrow instructions must specify the purchase price, terms, and how title will vest
- ✓ Escrow instructions must specify prorations, possession date, disbursements, and closing date

18.20 Preliminary Report and Demands

A Preliminary Report is ordered from the title company selected by the buyer; the escrow holder examines it for items not contemplated in the instructions, which the seller typically must clear. The escrow holder obtains a Demand for Pay-off if an existing loan is to be paid, or a Beneficiary Statement if the buyer is purchasing 'subject to' or 'assuming' an existing loan.

- ✓ A Preliminary Report is ordered from the buyer's selected title company
- ✓ A Demand for Pay-off is obtained when an existing loan is paid through escrow
- ✓ A Beneficiary Statement is obtained when the buyer purchases 'subject to' or 'assumes' a loan

18.21 Closing and Recording Procedures

Before closing, the escrow holder audits the file (cash reconciliation) and confirms that all principals have complied with the instructions. The title company runs a 'date down' to confirm no change in the seller's title before recording. After confirming recording, the escrow holder prepares the closing (settlement) statements, disburses funds and delivers instruments to those entitled. For most residential mortgage loans the final figures appear on the TRID Closing Disclosure (since October 3, 2015); the HUD-1 settlement statement is used only in transactions outside TRID, such as reverse mortgages. Escrow companies also prepare their own buyer and seller closing statements.

- ✓ The escrow holder must audit the file and reconcile all funds before closing
- ✓ A 'date down' confirms no change in the seller's title before recording
- ✓ Closing includes preparing closing statements, disbursing funds and delivering instruments
- ✓ On TRID-covered mortgage loans the Closing Disclosure (not the HUD-1) shows the final figures; the HUD-1 survives only in non-TRID loans such as reverse mortgages

18.22 Termination and Time Limits

Escrows are completed by full performance and closing, or terminated by mutual consent. Compliance must occur within the time limit unless mutually extended. The escrow holder has no authority to enforce or accept performance after the time limit, and cannot determine whether a principal has failed to perform — clear, precise instructions from the principals are required. Upon mutual cancellation each principal is entitled to return of their property.

- ✓ Escrows are completed by full performance or terminated by mutual consent
- ✓ The escrow holder has no authority to accept performance after the time limit expires
- ✓ The escrow holder cannot determine that a principal has failed to perform

18.23 Cancellation vs. Rescission of Purchase Agreement

Cancelling an escrow does not automatically cancel or rescind the underlying purchase agreement. In Cohen v. Shearer (1980), the court held that cancellation of escrow by mutual agreement did not rescind the purchase contract. Cancellation stops the transaction in place; rescission returns the principals to their prior status. If the purchase agreement is not also cancelled/rescinded, a principal may retain the right to specific performance or damages.

- ✓ Cancelling an escrow does not automatically cancel or rescind the purchase agreement (Cohen v. Shearer)
- ✓ Cancellation stops the transaction in place; rescission returns parties to their prior status
- ✓ A principal may retain specific performance or damages rights if the purchase agreement is not also rescinded

18.24 Escrow Companies Must Be Incorporated

An individual cannot be licensed as an escrow holder — a corporation organized for conducting escrow business must hold the license. Applicants must be financially solvent and furnish a surety bond of $25,000 or more based on yearly average trust fund obligations. Officers, directors, trustees, and employees with access to funds must furnish a bond of indemnification. Escrow money must be held in a trust account exempt from execution or attachment.

- ✓ Only a corporation, not an individual, may be licensed as an escrow holder
- ✓ Applicants must furnish a surety bond of $25,000 or more based on trust fund obligations
- ✓ Escrow money must be held in a trust account exempt from execution or attachment

18.25 Broker May Not Require a Specific Escrow Holder

A real estate broker may not nominate an escrow holder as a condition precedent to a transaction but may suggest one if requested by the principals. The buyer generally selects the escrow holder and the title insurance company. Regulators seek to minimize broker influence so buyers and sellers can compare and negotiate escrow services.

- ✓ A broker may not require a specific escrow holder as a condition of the transaction
- ✓ A broker may suggest an escrow holder only if requested by the principals
- ✓ The buyer generally selects the escrow holder and title insurance company

18.26 Future Tax Statement Address Requirement

Before recording, every deed conveying fee title must note the name and address to which future tax statements may be mailed. Deeds of trust/mortgages with power of sale must specify the trustor/mortgagor's address for notices of default and sale. Failure to note does not affect validity of the instrument.

- ✓ Every deed conveying fee title must note the name and address for mailing future tax statements on the first page
- ✓ Failure to note or an error in the name/address does not affect the validity of the deed or the notice imparted by recording

CHAPTER 19

Agency: Concepts, Creation and Authority

19.1 Definition of Agency and Principal

Under Civil Code § 2295, an agent is one who represents another (the principal) in dealings with third persons; this representation is called agency. The principal delegates authority to the agent to act on his or her behalf and exercise discretion. Real estate brokers typically act as special agents limited to soliciting and negotiating on behalf of the principal.

- ✓ Civil Code § 2295 defines an agent as one who represents another (the principal) in dealings with third persons
- ✓ Real estate brokers are generally NOT entitled to act in place of, or to bind, their principals
- ✓ A real estate broker/principal relationship is a special agency

19.2 Fiduciary Duties Owed to the Principal

An agency relationship creates a fiduciary duty owed by the agent to the principal within the course and scope of the agency. Fiduciary duties include loyalty; confidentiality; utmost care (or reasonable care in some situations); full and complete disclosure of all material facts; the obligation to account to the principal; the duty to act fairly, honestly and without fraud or deceit; and the duty to explain and counsel so the principal can make informed decisions. Courts compare this duty to that of a trustee to beneficiaries.

- ✓ Fiduciary duties include loyalty, confidentiality, utmost care, full disclosure of material facts, accounting, and honesty
- ✓ The broker's fiduciary duty is comparable to a trustee's duty to beneficiaries under a trust (Civil Code § 2322)
- ✓ The duty includes explaining and counseling the principal to permit informed decisions

19.3 Broker Responsible for Salesperson's Conduct

The real estate salesperson is an agent of the broker, whether classified as an employee or independent contractor. When a salesperson owes a duty to a buyer, seller, or party, that duty is equivalent to the duty owed by the broker. Broker associates act as agents of the responsible broker in the same manner as salespersons.

- ✓ Civil Code § 2079.13(b): an associate licensee's duty to any party is equivalent to the duty owed by the broker
- ✓ The broker is responsible for the salesperson who acts as an agent of the broker

19.4 General Agent vs. Special Agent

A general agent is authorized to conduct a series of transactions involving a continuity of service (Civil Code § 2295) and is an integral part of a business enterprise. A special agent conducts a single transaction or series of transactions not involving continuity of service (Civil Code § 2297). Real estate brokers are usually special agents. The distinction matters in determining the agent's authority to bind the principal.

- ✓ General agent (§ 2295): continuity of service, conducts a series of transactions
- ✓ Special agent (§ 2297): single transaction or series without continuity of service
- ✓ Real estate brokers are usually special agents, not general agents
- ✓ A special agent generally cannot bind the principal without ratification

19.5 Written Agreement Required for Commission

An agency agreement must be in writing for the agent to enforce a commission claim on a breach of contract theory (Civil Code § 1624(d); Phillippe v. Shapell). All extensions and modifications must also be in writing. Without a written agreement, the broker generally cannot recover compensation regardless of services rendered.

- ✓ Civil Code § 1624(d): a written signed agreement is required to recover a commission on a breach of contract theory
- ✓ Listing extensions and modifications must also be in writing to be enforceable
- ✓ A commission may be recovered under a tort theory (intentional interference) even without a written agreement (Buckaloo v. Johnson)

19.6 Essential Elements of an Agency/Listing Agreement

The essential terms are: (1) names of the parties; (2) identity of the property; (3) terms and conditions of the anticipated sale/lease/loan; (4) amount of compensation; (5) expiration date of the agency; and (6) signatures of all parties. For owner-occupied residential property, the agreement must contain a statement in ten-point bold print or larger that commissions are negotiable and not set by law.

- ✓ Essential terms: parties, property identity, transaction terms, compensation, expiration date, and signatures
- ✓ Owner-occupied residential listings require a ten-point bold statement that commissions are negotiable and not set by law

19.7 Broker Acting as Principal for Own Account

When a licensee acts as a principal for his or her own account, duties are still owed to the other principal including honesty, fairness, good faith, and no fraud or deceit. Licensees are subject to additional defined duties. The other party must understand the licensee may be acting as a principal (and potentially both agent and principal), and dealings are at arms-length. Full disclosure of the licensee's involvement and the legal effect must be made.

- ✓ Even acting as a principal, a licensee owes duties of honesty, fairness, good faith, and no fraud/deceit
- ✓ Options, net listings, and guaranteed sales are legal in California only with full disclosure of the licensee's involvement
- ✓ The licensee must dispel the agency image and disclose arms-length status when acting as a principal only

19.8 Switching from Agent to Principal Status

It is particularly dangerous for a licensee to start as an agent and then switch to principal-only status mid-transaction. The usual result is the licensee acts as both principal and special agent. The burden of proof is on the licensee to show the principal was fully informed of the change of status, and disclosures must be in writing.

- ✓ The burden of proof is on the licensee to show the principal was fully informed of a change of status
- ✓ Disclosures of change of status must be in writing (Civil Code § 2079.17; B&P § § 10176(a) and (d))
- ✓ Vague or ambiguous disclosures are insufficient notice of a change from special agent to principal

19.9 Option to Purchase by Broker/Agent

When a broker employed as a special agent to find a buyer also obtains an option to purchase the property, the broker occupies a dual status of agent and purchaser. The broker cannot exercise the option except by fully disclosing all information regarding the prospect of a sale to another and divesting the agency obligation.

- ✓ A broker with an option to purchase who is also the agent must make full disclosure before exercising the option
- ✓ Options should only be obtained from highly sophisticated or independently represented principals with full disclosure

19.10 Disclosure of Conflicts and Profits

Before dealing with a principal on his own account, the agent must make no misstatements and must disclose all relevant facts fully and completely, including the fact the agent is acting for his own account. The Real Estate Law requires the licensee to disclose any compensation, commission, or profit claimed or taken.

- ✓ An agent must disclose all facts likely to affect the principal's judgment before dealing on the agent's own account
- ✓ B&P § 10176(g): the licensee must disclose all compensation, commission, or profit taken in the transaction

19.11 Ways Agency Is Created

An agency relationship can be created by agreement (actual agency), by ratification, by estoppel, or from the conduct of the parties (ostensible or implied agency). Real estate special agency is typically created by an express agreement. When a broker and principal enter into an employment contract, an actual agency is created (Civil Code § 2299).

- ✓ Agency may be created by agreement (actual), by ratification, by estoppel, or by conduct (ostensible/implied)
- ✓ Civil Code § 2299: an actual agency is created by an employment contract authorizing the broker to act
- ✓ The duty to understand the agency relationship is placed primarily on the broker

19.12 Commission Payment Rules

Commissions can only be paid to a licensed broker, who may share with a salesperson/broker associate only if they have a written contract. A salesperson may not accept compensation from anyone other than the broker under whom they are licensed. A licensee may pay part of a commission to a principal, but a rebate to the buyer must be disclosed to the seller who paid the commission.

- ✓ B&P § 10137: it is unlawful to compensate an unlicensed person for acts requiring a license
- ✓ A salesperson may only be paid by, and pay through, the broker under whom they are licensed
- ✓ A commission rebate to the buyer must be disclosed to the seller who paid the commission

19.13 Express, Actual and Ostensible Authority

An agent's authority is limited to what the principal actually or ostensibly confers. Actual authority is intentionally conferred (or allowed through want of ordinary care). Ostensible (apparent/implied) authority arises when the principal intentionally or by want of ordinary care causes third persons to believe the agent has authority. Every agent may do what is necessary, proper or usual in the ordinary course of business to effect the agency.

- ✓ An agent has only such authority as the principal actually or ostensibly confers (Civil Code § 2315)
- ✓ Actual authority is that which the principal intentionally confers or allows the agent to believe he possesses (Civil Code § 2316)
- ✓ Ostensible authority is that which the principal causes or allows third persons to believe the agent possesses (Civil Code § 2317)
- ✓ Express authority precisely delineates authorized acts; implied authority may not conflict with express authority

19.14 Apparent Authority and Estoppel

Apparent (ostensible) authority depends on the reasonable expectations of third parties led to believe the agent is authorized. The principal is estopped to deny the agency where the principal's conduct created the appearance of authority and a third party reasonably relied to their detriment. The most common issue arises when a principal limits an agent's ordinary authority but fails to communicate the limitation to a third party.

- ✓ A principal is estopped to deny agency when the principal's conduct created the appearance of authority and a third party reasonably relied to their detriment
- ✓ An undisclosed limitation on an agent's ordinary authority generally does not bind third parties
- ✓ The act of the agent alone can never establish ostensible authority; silence of the principal who knows may create liability

19.15 Restrictions and Special Authority of Real Estate Brokers

A real estate broker is a special agent with limited authority that generally does not include power to act in place of the principal. An agency to sell ordinarily empowers the broker to find a buyer but not to convey title or modify/cancel the contract. An agent can never have authority to commit a fraud on the principal. Emergency situations can broaden authority when there is no time to obtain instructions.

- ✓ A real estate broker is a special agent with limited authority and cannot convey title without specific authority
- ✓ An agency to sell does not authorize the agent to modify or cancel the contract of sale after it is made
- ✓ An agent can never have authority to do an act known or suspected to be a fraud on the principal
- ✓ An agent has expanded authority in an emergency when acting in the principal's interest and there is no

time to obtain instructions

19.16 Authority to Receive Deposits

A broker limited to producing a ready, willing and able buyer has no authority to accept a deposit; if the broker does so, he acts as agent for the buyer and any misappropriation causes loss to the buyer. However, virtually all listing agreements expressly authorize the broker to accept an earnest money deposit on behalf of the seller, and this authority extends to subagents but not to a buyer's agent.

- ✓ Absent express authority, a broker accepting a deposit acts as agent for the buyer, so misappropriation causes loss to the buyer not the seller
- ✓ Most listing agreements expressly authorize the broker to accept an earnest money deposit for the seller
- ✓ Once the seller accepts the offer, deposit funds belong to the seller and the broker cannot return them to the buyer without seller consent

19.17 Ratification of Unauthorized Acts

A principal may become bound by an agent's unauthorized act through ratification. Certain requirements must be met, and ratification produces the same legal consequences as original authorization. In real property dealings, ratification must generally be in writing because it must be made in the same manner required to create the original authority.

- ✓ The agent must have professed to act as a representative of the principal
- ✓ The principal must have knowledge of all material facts and must ratify the entire act, accepting burdens with benefits
- ✓ The principal must ratify before the third party withdraws (Civil Code § § 2310 et seq.)
- ✓ In real property dealings, ratification must generally be in writing

19.18 Duty to Ascertain Scope of Agent's Authority

No liability is incurred by a principal for acts beyond the agent's actual or ostensible authority. A third party dealing with an agent has a duty to ascertain both the fact of the agency and the nature and extent of the authority, and bears the burden of proof if either is controverted.

- ✓ A third party dealing with an agent must ascertain both the fact of agency and the scope of authority (La Malfa v. Piombo Bros.)
- ✓ The principal is not liable for acts outside the agent's actual or ostensible authority
- ✓ The burden of proof is on the party seeking to hold the principal liable

CHAPTER 20

Fiduciary Duties and Disclosure Obligations

20.1 Duties to Both Principal and Other Party

As the principal's agent, the broker owes utmost care, integrity, honesty, loyalty, and confidentiality. California law also imposes duties on the listing agent toward the other party: reasonable skill and care, honesty and fairness in good faith, and disclosure of all material facts affecting the value, desirability, or use of the property. Sellers and their agents do not have to explain the legal effect of disclosures to the other party, but the agent of the principal receiving disclosures must explain and counsel that principal.

- ✓ A broker owes utmost care, integrity, honesty, loyalty, and confidentiality to the principal
- ✓ The listing agent owes the other party reasonable care, honesty/fairness, and disclosure of material facts affecting value or desirability
- ✓ An agent must explain and counsel their own principal to permit informed decisions (Field v. Century 21)

20.2 Agency Disclosure Statute (Civil Code § 2079.13 et seq.) and Scope

Civil Code § 2079.13 et seq. establishes the statutory agency disclosure form and process. Originally limited to residential property of one to four dwelling units, the law was extended by AB 1289 effective January 1, 2019 to ALL real property transactions, including commercial property, and to leases for more than one year. A "sale" includes an exchange and a real property sales contract. The statutory form must be used and must contain the entire text of Civil Code § 2079.16. Since 2019 the form uses the terms Seller's Agent, Buyer's Agent and Dual Agent (formerly listing agent / selling agent).

- ✓ Civil Code § 2079.13 et seq. governs agency disclosure; since 2019-01-01 (AB 1289) it applies to all real property transactions, including commercial, not only 1-4 residential units
- ✓ It applies to sales (including exchanges and real property sales contracts) and to leases for more than one year
- ✓ The disclosure form must contain the entire text of Civil Code § 2079.16
- ✓ Since 2019 the statutory terms are Seller's Agent, Buyer's Agent and Dual Agent

20.3 Timing and Delivery of Agency Disclosure

The disclosure must be delivered as soon as practical when the relationship becomes more than casual. The listing broker must deliver to the seller before entering the listing agreement. The selling/cooperating broker delivers to the seller before presenting the offer and to the buyer before the buyer signs the offer (or by the next business day if the offer was not prepared by that broker). 'As soon as practical' means at the time the seller signs the listing (Leendert Huijers case).

- ✓ The listing broker must deliver the disclosure to the seller before entering into the listing agreement
- ✓ The selling broker must deliver to the buyer before the buyer signs the offer (or next business day if not preparer)
- ✓ 'As soon as practical' means at the time the seller signs the listing (Huijers v. DeMarrais)
- ✓ If a party refuses to sign the receipt, the agent must set forth, sign, and date a written declaration of the refusal (§ 2079.15)

20.4 Three Agency Relationship Alternatives (Seller's Agent, Buyer's Agent, Dual Agent)

The agency confirmation must state the intended relationship using the statutory terms: Seller's Agent (acting exclusively for the seller), Buyer's Agent (acting exclusively for the buyer), or Dual Agent (acting for both seller and buyer). The relationship must be consented to in writing by the seller and the buyer and confirmed no later than in the purchase agreement (Civil Code § 2079.17). The disclosure and confirmation create a rebuttable presumption of the actual agency relationship.

- ✓ The three alternatives are Seller's Agent, Buyer's Agent, or Dual Agent (Civil Code § 2079.17)
- ✓ The intended agency must be consented to in writing by both seller and buyer
- ✓ Confirmation must occur no later than in the purchase agreement; the disclosure creates a rebuttable presumption of the actual relationship

20.5 Dual Agency Statutory Limitations

A listing broker who is also the selling broker is a dual agent and may not be the buyer's agent only (§ 2079.18). Payment of compensation does not by itself determine who the principal is (§ 2079.19). A dual agent may not disclose that the buyer will pay more or the seller will take less without express written consent (§ 2079.21). A listing broker may sell to an unrepresented buyer without becoming a dual agent, but may not advise/counsel that buyer and must disclose the buyer is unrepresented (§ 2079.22).

- ✓ § 2079.18: a broker who is both listing and selling broker is a dual agent, not a buyer's agent only
- ✓ § 2079.19: payment of compensation does not by itself determine who the principal is
- ✓ § 2079.21: a dual agent may not disclose the buyer will pay more or the seller take less without express written consent
- ✓ § 2079.22: a listing agent may sell to an unrepresented buyer but may not advise/counsel the buyer

20.6 Dual Agency Disclosure in All Transactions

Although Civil Code § 2079.13 et seq. applies only to 1-4 residential units, B&P § 10176(d) imposes dual agency disclosure requirements in ALL real property and secured transactions, restating the common law duty to disclose material facts. A licensee may not represent more than one party without the knowledge AND consent of both — the phrase 'knowledge or consent' must be read conjunctively.

- ✓ B&P § 10176(d): a licensee may not represent more than one party without the knowledge AND consent of both
- ✓ Dual agency disclosure applies to ALL real property and secured transactions, including commercial
- ✓ 'Knowledge or consent' is read in the conjunctive: consent requires knowledge

20.7 Loyalty and Confidentiality

A broker owes duties of loyalty and confidentiality to the principal and is prohibited from personally profiting from the agency except through agreed compensation. Courts equate the agent's duty to a principal with a trustee's duty to a beneficiary — the highest good faith, with no advantage taken through the slightest misrepresentation, concealment, duress or adverse pressure.

- ✓ A broker is prohibited from personally profiting from the agency except through agreed compensation
- ✓ The agent's duty to the principal is equated with a trustee's duty to a beneficiary (Probate Code § § 16000, 16015)
- ✓ A broker may not unite personal and representative characters in the same transaction without disclosure to and consent from the principal

20.8 Fair and Honest Dealing to Non-Client

Beyond fiduciary duties to the principal, a broker owes a duty of fair and honest dealing to the other party, including full disclosure of all material facts. A broker must not withhold from a buyer material facts about the property that are known or should be known to the broker and are not readily ascertainable by the buyer.

- ✓ A broker owes a duty of full disclosure of material facts even to a party who is not the broker's principal (Lingsch v. Savage)
- ✓ A listing broker representing the seller must conduct a reasonably competent and diligent inspection and disclose material facts (Easton v. Strassburger)
- ✓ This duty exists by reason of the agent's status as a real estate broker

20.9 Duty of Care Under Civil Code § 2079 et seq.

After Easton v. Strassburger, Civil Code § 2079 et seq. codified a broker's duty to buyers of 1-4 unit residential property to conduct a reasonably competent and diligent visual inspection and disclose material facts. The standard is that of a reasonably prudent licensee. The inspection excludes inaccessible areas, common areas of condos/PUDs, off-site areas, and public records.

- ✓ A broker must conduct a reasonably competent and diligent visual inspection of 1-4 unit residential property and disclose material facts (Civil Code § 2079.1)
- ✓ The standard of care is that of a reasonably prudent real estate licensee (Civil Code § 2079.2)
- ✓ The inspection excludes inaccessible areas, off-site areas, and public records/permits (Civil Code § 2079.3)
- ✓ Legal action for breach must commence within two years from date of possession (Civil Code § 2079.4)

20.10 Real Estate Transfer Disclosure Statement (TDS)

Civil Code § § 1102-1102.17 require sellers of 1-4 unit residential real estate to complete and deliver a comprehensive transfer disclosure statement to the buyer. These provisions are mandatory and cannot be waived, subject to statutory exceptions such as foreclosure sales. Delivery is a condition to the buyer's duty to perform.

- ✓ Sellers of 1-4 unit residential property must complete and deliver a TDS (Civil Code § § 1102.1, 1102.6)
- ✓ The TDS provisions are mandatory and cannot be waived by the parties (Civil Code § 1102(c))
- ✓ Certain sellers (e.g., foreclosure) are exempt (Civil Code § 1102.2(c))
- ✓ An action for negligent misrepresentation for TDS violation must be brought within 2 years of the violation

20.11 No Dual Agency Without Consent of Both

An agent cannot act for two or more principals in negotiations with each other unless each has knowledge of and consents to the dual agency. Regardless of the broker's honesty or contract fairness, the broker cannot recover commissions without disclosure and consent, and an undisclosed dual agency is grounds for rescission without a showing of injury. Even with consent, the agent owes both the same duty of utmost good faith.

- ✓ An agent cannot act for two principals in negotiations unless each knows of and consents to the dual agency
- ✓ Without disclosure and consent, the broker cannot recover commission regardless of honesty or contract fairness
- ✓ Undisclosed dual agency is grounds for rescission by any principal without showing injury
- ✓ Even with consent, the dual agent owes each principal utmost good faith and full disclosure of material facts (B&P Code § § 10176(a),(d))

20.12 No Secret Profits or Undisclosed Compensation

An agent cannot acquire secret interests adverse to the principal or make a secret personal profit from the agency. An agent who conceals an interest, or who misrepresents purchase price and pockets the difference, must disgorge the secret profits. All compensation regardless of form, time, or source must be disclosed.

- ✓ An agent may not make a secret personal profit and must disgorge secret profits (Ward v. Taggart)
- ✓ Claiming or receiving a secret profit or undisclosed compensation is cause for discipline (B&P Code § 10176(g))
- ✓ All compensation regardless of form, time, or source of payment must be disclosed

20.13 Nondisclosure and Duty of Disclosure of Latent Defects

Liability may arise from failure to disclose as well as from overt misstatements. A broker acting as seller's agent and the seller have a duty to disclose latent defects and facts materially affecting value, desirability, or intended use where the broker knows the buyer is unaware and cannot discover them through diligent attention. Such non-disclosure is sometimes called negative fraud.

- ✓ A seller's broker must disclose known latent defects and facts materially affecting value, desirability, or intended use unknown to the buyer
- ✓ Failure to disclose material facts (negative fraud) can create civil liability and license discipline
- ✓ A licensee is not liable for failing to disclose a death occurring more than three years before transfer, or a death by AIDS at any time (Civil Code § 1710.2)

20.14 Ostensible or Implied Agency

An agency relationship can arise from the conduct of the parties even without an express agreement and regardless of compensation source. The listing broker must exercise care to avoid unwittingly becoming the agent of the other principal (the buyer). Even a gratuitous agent (relative or friend acting without pay) is subject to agency duties.

- ✓ Ostensible or implied agency can arise from the conduct of the parties without an express agreement (Civil Code § § 2300, 2307, 2308)
- ✓ A listing broker must avoid unwittingly becoming the agent of the buyer through conduct
- ✓ A gratuitous agent is still subject to agency duties and responsibilities

20.15 Duty to Explain and Counsel Fiduciary Client

The § 2079 limitations and two-year period do not apply to the fiduciary duties owed to one's own principal. When a broker is a dual agent or the buyer's exclusive agent, the fiduciary duty goes beyond disclosure to a duty to explain and counsel the client about the disclosures, including recommending further inquiry to allow an informed decision.

- ✓ Fiduciary duties are distinguishable from and greater than mere disclosure duties
- ✓ A broker acting as fiduciary must explain and counsel the client about disclosed material facts (Salahutdin v. Valley of California)
- ✓ The two-year limitation on disclosure duties does not apply to fiduciary duties owed to a principal

20.16 Reasonable Care, Skill and Utmost Duty Standard

An agent owes a duty of reasonable care and skill, obedience to lawful directions, and accounting to the principal. Civil Code § 2079.16 requires a fiduciary duty of utmost care, integrity, honesty and loyalty to the principal, while the reasonable care standard applies to the non-client party. Even gratuitous agents who begin performance must exercise utmost good faith.

- ✓ A broker owes a fiduciary duty of utmost care, integrity, honesty and loyalty to the principal (Civil Code § 2079.16)
- ✓ The reasonable care standard is owed to the party who is not the agent's principal
- ✓ A gratuitous agent who begins performance must obey instructions and exercise utmost good faith

20.17 General Disclosure Duties and Related Buyers

A fiduciary must fully disclose all material facts relating to the agency. A seller's agent who negotiates a sale to a relative (spouse, mother-in-law) or a person with whom the agent has a blood, marital or other relationship suggesting the agent could indirectly acquire an interest must disclose that relationship as a material fact. A licensee acting as a principal must disclose licensure to the other party.

- ✓ A blood, marital or other relationship with a buyer suggesting the agent may indirectly acquire an interest is a material fact requiring disclosure
- ✓ A licensee acting as a principal must disclose the fact of licensure to the other party (B&P Code § 10177(o))
- ✓ An agent's duty includes full disclosure and explanation of facts necessary for the principal's informed decision

20.18 Jorgensen Rule - Disclosure Beyond Dual Agency Status

Merely disclosing dual agency status does not fully discharge the fiduciary duty. In Jorgensen, the broker had to disclose all material facts that might affect the seller's decision — including that the buyer was a speculator acquiring for investment and that the broker had a substantial personal stake in negotiating a bargain purchase for the buyer.

- ✓ Disclosing dual agency status alone does not discharge the fiduciary duty to disclose all material facts
- ✓ A broker must disclose the buyer's investment/speculative purpose and the broker's personal stake in the transaction (Jorgensen v. Beach 'n' Bay Realty)
- ✓ A broker guilty of violating fiduciary principles is not entitled to any profit from the transaction

20.19 Obligations of Salespersons and Broker Associates

Salespersons and broker associates are subject to the same fiduciary duties as their broker and must disclose to the broker's principal all information affecting the principal's decision. A broker has a statutory duty to reasonably supervise licensees and may be disciplined or held liable for their acts even without knowledge that the acts occurred.

- ✓ Salespersons/broker associates owe the same fiduciary duties as the broker, including against dual agency and secret profits
- ✓ A broker may be disciplined for a licensee's acts even if unaware they occurred, based on the duty to supervise (California Real Estate Loans v. Wallace)
- ✓ A broker is generally liable in damages for the acts and omissions of the broker's salespersons or broker associates

20.20 Misrepresentation - Fraud vs. Negligence

Misrepresentation may be fraudulent or negligent; both can create civil liability and license discipline. Fraud can support punitive damages. Actual fraud includes positive assertions not warranted by the person's information even if believed true. Constructive fraud includes any breach of duty gaining an advantage by misleading another, even without fraudulent intent — a fiduciary may be liable for constructive fraud (Salahutdin).

- ✓ A broker may make no representation without a reasonable basis, may assert no half-truths, and may not make interconnected misleading truths
- ✓ Fraudulent misrepresentation can support punitive damages; a fraud judgment can support license discipline based solely on the civil judgment
- ✓ A fiduciary may be liable to the principal for constructive fraud even without actually fraudulent intent (Salahutdin v. Valley of California)

20.21 Misrepresentation of Price and Puffing

A seller's agent's misrepresentation to a buyer of the lowest acceptable price is usually not actionable by the buyer because it is not a material fact; but such representations without seller consent may be actionable by the seller. A buyer's agent's price misrepresentation is usually actionable by the buyer. Statements once treated as mere 'puffing' (e.g., 'best on the street,' 'in perfect shape') are increasingly treated by courts as representations of material fact.

- ✓ A seller's agent's representation of the lowest acceptable price is not usually actionable by the buyer but may be actionable by the seller if made without consent
- ✓ In a dual agency, a licensee who issues a BPO for the seller should provide a copy to the buyer with seller consent
- ✓ Statements once considered 'puffing' may be treated as material fact representations when buyers reasonably rely on them

20.22 False Statements by Brokers/Agents to Principal

A broker, agent, factor, or consignee who willfully and corruptly makes a false statement to a principal regarding the price obtained for property, its quality or quantity, or expenditures made, is guilty of a misdemeanor. This reinforces an agent's duty of honesty and full disclosure to a principal.

- ✓ False statements to a principal about price, quality, quantity, or expenditures are a misdemeanor
- ✓ Punishable by fine of $200 to $1,000, or 10 days to 6 months county jail, or both

20.23 Warranty of Authority and Contract Liability

An agent who acts without or in excess of authority may be liable for breach of the implied warranty of authority. An agent may also be personally liable on a contract if the agent fails to reveal the principal's name or the fact of agency. To avoid personal liability, the principal's name must appear on the face of the contract and the agent should sign as agent for the named principal.

- ✓ An agent who acts without authority may be liable for breach of the implied warranty of authority
- ✓ An agent is personally liable if the agency capacity or the principal's name is not disclosed in the contract
- ✓ To avoid liability the agent should name the principal on the contract and sign 'by' himself as agent

CHAPTER 21

Dual Agency and Subagency

21.1 Payment of Compensation Does Not Determine Agency

Under Civil Code § 2079.19, the payment of compensation, or the obligation to pay it, does not by itself determine whether an agency relationship exists or whom the agent represents. A cooperating broker may represent the buyer exclusively even though the broker's compensation is ultimately funded by the seller (for example through a seller concession negotiated in the purchase agreement). Modern practice avoids subagency: the buyer's broker owes fiduciary duties to the buyer regardless of the source of payment.

- ✓ Payment of compensation does not by itself determine the nature of the agency relationship (Civil Code § 2079.19)
- ✓ A cooperating broker may represent the buyer exclusively even when compensation is funded by the seller
- ✓ Common industry practice is to avoid subagency; the buyer's broker owes fiduciary duties to the buyer regardless of who pays

21.2 How Dual Agency Arises

Dual agency exists when a broker represents both principals to a transaction. It arises when the listing broker (agent of the seller) also becomes the actual, ostensible, or implied agent of the buyer, or when two licensees of the same broker each represent opposing parties. The broker must have knowledge and consent of all principals.

- ✓ A broker may become agent of all principals only with the knowledge and consent of all parties (B&P Code § § 10176(a), (d))
- ✓ When two licensees of the same broker represent opposing parties, the broker is the dual agent of both principals (Civil Code § 2079.13(b))
- ✓ A dual agency can arise unexpectedly, even without a written agreement

21.3 Confidentiality Limits on Price in Dual Agency

A dual agent faces conflicts regarding loyalty and confidentiality, particularly in price negotiation. The dual agent cannot advocate price for either side and should present listed price/terms to the buyer and the buyer's written offer to the seller, recommending independent professional advice. The agent may provide both principals the same comparative market data (including a BPO).

- ✓ A dual agent shall not disclose to the buyer that the seller will accept less than listing price without the seller's express written consent (Civil Code § 2079.21)
- ✓ A dual agent shall not disclose to the seller that the buyer will pay more than the offering price without the buyer's express written consent (Civil Code § 2079.21)
- ✓ The price confidentiality rule does not alter duties regarding other confidential information
- ✓ A dual agent may provide both principals with the same comparative market data or BPO

21.4 Mortgage Brokers as Agents and Fiduciaries

Real estate brokers acting as mortgage brokers are agents and fiduciaries of the borrower, and may also be agents of the lender/creditor. When acting for both principals, they are dual agents. Mortgage brokers are not mere facilitators; they must place the interests of their principals ahead of their own, including placing the borrower's economic interest ahead of the broker's own.

- ✓ Mortgage brokers are agents and fiduciaries of at least the borrower; acting for both principals makes them dual agents
- ✓ Mortgage brokers must place their principals' (borrower's) economic interests ahead of their own
- ✓ Agency relationships must be disclosed to and consented to in writing by principals (B&P § 10176(d))

21.5 Creation of Subagency Relationships

A subagent is a broker appointed to assist the listing broker in carrying out the agency. Whether the cooperating broker becomes a subagent of the principal or merely the agent of the listing broker depends on whether the principal authorized the delegation. Express or implied authority from the principal makes the cooperating broker a subagent of the principal; without such authority, the cooperating broker is only the agent of the listing broker.

- ✓ When a listing broker appoints another broker WITH the express or implied authority of the principal, the second broker becomes the subagent of the principal (Civil Code § 2351)
- ✓ When a listing broker appoints another broker WITHOUT the consent of the principal, the second broker becomes the agent of the listing broker (Civil Code § 2350)
- ✓ A critical element is whether the principal agreed to allow delegation of authority (Civil Code § 2349)

21.6 Imputation of Cooperating Broker Acts

Under respondeat superior, negligent acts of a cooperating broker who is the authorized subagent of the seller may be imputed to the seller. If the cooperating broker is instead the agent of the listing broker, those acts are imputed to the listing broker. Intentional torts or criminal acts of an agent generally do not impute liability to the principal unless the principal knowingly ratifies and accepts the benefits.

- ✓ Negligent acts of an authorized subagent of the seller may be imputed to the seller under respondeat superior (Civil Code § 2338)
- ✓ A principal is not liable for an agent's intentional tort or criminal act unless the principal knowingly ratifies and accepts the benefits (Civil Code § 2339)
- ✓ Negligent misrepresentation by an agent may be characterized as constructive fraud

21.7 Agency Disclosure and Undisclosed Dual Agency in Commercial and Loan Transactions

Since January 1, 2019 (AB 1289) the statutory agency disclosure requirements of Civil Code § 2079.13 et seq. apply to commercial real property as well as residential property, so commercial agents must deliver the statutory disclosure form and obtain written confirmation of the agency relationship. Agents in loan transactions must likewise disclose their agency and obtain the informed consent of principals. Under common law and public policy, a compensation contract tainted by an undisclosed dual agency is unenforceable against either party (Culver v. Jaoudi, 1991), and the agent may forfeit the commission and face rescission.

- ✓ Since 2019-01-01 statutory agency disclosure (Civil Code § 2079.13 et seq.) applies to commercial transactions, not only 1-4 unit residential
- ✓ Agents in loan transactions must disclose agency and obtain the informed consent of principals
- ✓ An undisclosed dual agent cannot enforce a compensation contract against either party and risks forfeiture of commission and rescission (Culver v. Jaoudi)

CHAPTER 22

Listing Agreements and Broker Compensation

22.1 Exclusive Right to Sell Listing

This listing gives the broker the greatest protection and makes them the sole agent. The broker earns a commission if the property is sold/rented/encumbered during the listing period, regardless of who procures the buyer — even the owner. The owner relinquishes the right to list elsewhere and the right to defeat the commission by selling themselves.

- ✓ The broker earns the commission if the property sells during the listing period regardless of who procures the buyer
- ✓ Exclusive listings must contain a definite, specified termination date (B&P § 10176(f))
- ✓ For sheltered loan transactions (Article 7), exclusive authority to solicit lenders is limited to 45 days (B&P § 10243)

22.2 Commission Negotiability Notice Requirement

The amount or rate of compensation may not be preprinted in a form agreement for sale of residential property of four units or less, or a mobile home. Such agreements must contain a 10-point boldface notice stating that real estate commissions are not fixed by law and may be negotiated, per Business and Professions Code § 10147.5.

- ✓ Commission amount cannot be preprinted in form agreements for 1-4 residential units or mobile homes
- ✓ A 10-point boldface notice that commissions are not fixed by law and are negotiable is required
- ✓ The required wording is set out in Business and Professions Code § 10147.5

22.3 When a Broker Has Earned a Commission

A broker earns a commission when, within the life of the contract, it fulfills the agency terms by producing a buyer ready, willing and able to purchase on the owner's terms. Readiness and willingness can only be shown by an actual offer to purchase. Merely putting a prospect on the track of a property does not entitle a broker to a commission. The broker's obligation is to achieve a 'meeting of the minds' on price and terms. If a valid contract is executed, the broker is entitled to a commission even if the sale is never consummated.

- ✓ Readiness and willingness are shown only by an actual offer to purchase
- ✓ Merely showing or introducing a property is insufficient to earn a commission
- ✓ Once a valid contract is executed (meeting of the minds), the commission is earned even if the sale never closes

22.4 Procuring Cause Under Open Listing

Under an open listing, the broker who FIRST produces a ready, willing and able buyer per the listing terms is the procuring cause and entitled to the commission. Once a broker finds a buyer, it must promptly notify the principal. The seller may accept the first satisfactory offer and has no duty to determine which broker was procuring cause unless notified another broker was procuring cause. Broker A is not procuring cause if its prospect declines and is later induced by Broker B; but Broker A remains procuring cause if it achieved the meeting of the minds even though Broker B executed the paperwork.

- ✓ The broker who first produces a ready, willing and able buyer is the procuring cause
- ✓ A broker must promptly notify the principal upon finding a buyer
- ✓ The seller has no duty to investigate procuring cause unless notified another broker was procuring cause
- ✓ A broker who achieves the meeting of the minds is procuring cause even if another broker executes the contract

22.5 Exclusive Listings and Commission Recovery

Under an exclusive agency or exclusive right to sell, the broker has an additional basis for recovering compensation and need not necessarily meet the standard performance requirements. If the broker is prevented from performing due to a sale by the owner, sale through another agent, or withdrawal of the property from the market by the owner, the broker will ordinarily be entitled to a commission.

- ✓ Under exclusive listings, a broker may recover even without meeting standard performance requirements
- ✓ A broker is entitled to a commission if prevented from performing by an owner sale, another agent's sale, or withdrawal of the property

22.6 Open Listing

An open listing is the most informal type. The owner retains the right to revoke at any time, to sell the property him/herself, or to list with another broker. Sale by the owner or a subsequently hired agent defeats the original broker's commission.

- ✓ Owner may sell personally, list with others, or revoke at any time under an open listing
- ✓ Sale by the owner or another agent defeats the original broker's right to a commission

22.7 Exclusive Agency Listing

Under an exclusive agency, the owner agrees to employ only one broker to solicit buyers/tenants/lenders. The broker's commission is protected against other brokers, but the owner retains the right to sell/rent/encumber on their own and thereby defeat the broker's commission.

- ✓ The broker's right to a commission is protected against other brokers for the listing duration
- ✓ The owner may still sell personally and defeat the broker's commission claim

22.8 Net Listing

A net listing contemplates the seller realizing a specific net price, with the broker's commission being any amount received above that net. Net listings are legal in California but can easily lead to breach of fiduciary duty, so they should be used only with sophisticated or independently represented clients, with full disclosure.

- ✓ The broker's commission under a net listing is any amount received above the seller's specified net price
- ✓ Net listings are legal in California only with full disclosure and highly sophisticated or independently represented clients

22.9 Multiple Listing Service and Cooperating Brokers

The MLS is a mechanism for disseminating listing information among brokers; it is not itself a listing agreement. Historically, submitting a listing to the MLS carried a unilateral offer of subagency and of compensation to a cooperating broker. Since the NAR settlement practice changes effective August 17, 2024, offers of compensation to buyer brokers may no longer be published on an MLS; buyer-broker compensation is negotiated off the MLS and buyer brokers must have a written buyer representation agreement before touring a home. Cooperating brokers today ordinarily represent the buyer rather than act as subagents of the seller. Information a broker places in the MLS may be admissible in court as a representation of fact.

- ✓ The MLS is a medium for disseminating listings, not a listing agreement itself
- ✓ Since 2024-08-17 (NAR settlement) offers of buyer-broker compensation may not be displayed on the MLS; compensation is negotiated off-MLS
- ✓ A cooperating broker today ordinarily represents the buyer under a written buyer representation agreement rather than acting as the seller's subagent
- ✓ MLS profile information may be admissible in court in a misrepresentation claim

22.10 Commission May Depend on Any Lawful Condition

Payment of a commission under a listing may be made contingent upon any lawful condition. The seller may be relieved of paying if the language shows payment was contingent on a condition that did not occur. The broker bears the burden of proving all conditions were fulfilled. However, if the seller prevents fulfillment through fraud, bad faith, or collusion, the broker may recover even if the condition was not met.

- ✓ Commission payment may be conditioned on any lawful condition
- ✓ The broker has the burden to prove all conditions were fulfilled
- ✓ If the seller prevents fulfillment by fraud, bad faith, or collusion, the broker may still recover

22.11 Agreements Between Cooperating Brokers

An agreement between brokers to divide fees or commissions is legal and enforceable like other contracts, but creates no partnership or joint venture. A cooperating broker who is the procuring cause may recover the selling broker's share from the listing broker. The listing broker is liable to the cooperating broker only if the listing broker received a commission from the seller. The original broker cannot deprive the cooperating broker by settling with the principal for a lesser sum without consent.

- ✓ Broker-to-broker commission-split agreements are legal and create no partnership or joint venture
- ✓ The listing broker is liable to the cooperating broker only if the listing broker received a commission from the seller
- ✓ The original broker cannot reduce the cooperating broker's share by settling for less without the cooperating broker's consent

22.12 Right of Principal to Secure Buyer Under Open Listing

Under an open listing, an owner's sale to a buyer not referred by the broker does not violate the listing or create liability. However, the owner may not deal directly with the agent's prospect to avoid a commission. An agency contract irrevocable for a fixed time does not prevent the owner from selling to a person with whom the agent had no prior negotiations.

- ✓ Under an open listing, an owner may sell to a buyer not referred by the broker with no liability
- ✓ The owner cannot deal directly with the broker's prospect to avoid paying commission
- ✓ An irrevocable-for-a-fixed-time agency does not bar sale to a person the agent never negotiated with

22.13 Commission Negotiable Between Principal and Broker

The commission amount is set in the broker's employment contract. Absent incapacity to read or fraud, the signing party is bound by the express terms. If no compensation amount is stated, the law implies a promise to pay the usual or customary commission charged in the neighborhood for like services.

- ✓ A party signing the contract is bound by its express terms absent fraud or incapacity
- ✓ If no commission amount is stated, the law implies the customary neighborhood commission for like services

22.14 Seller Responsible When Seller Negotiates Contract

A seller who negotiates the contract terms is responsible for its form and contents. A broker does not lose a commission if, after producing a ready, willing and able buyer, an unenforceable contract results from the seller's mistake, inadvertence, or ignorance. If the seller undertakes to complete the contract alone, the seller is estopped from denying the commission on unenforceability grounds.

- ✓ A seller negotiating the contract bears responsibility for its form and contents
- ✓ A broker keeps the commission even if the seller's mistake makes the contract unenforceable
- ✓ A seller who completes the contract alone is estopped from denying the commission based on unenforceability

22.15 Seller Interference With Competing Agents

Under an open listing with competing brokers, agents must be permitted to act freely and independently without owner interference. The owner owes nothing to an unsuccessful agent, but may not avoid a commission by personally negotiating a contract with an agent-produced prospect on substantially similar terms.

- ✓ Competing agents under an open listing must act freely without owner interference
- ✓ The owner cannot avoid commission by personally negotiating with an agent's prospect on substantially similar terms

22.16 Protective (Safety) Clause and Post-Termination Sales

To recover a commission, a broker must produce a satisfying offer within the listing's time limit. Where a sale is completed directly by buyer and seller after expiration on the same terms (or only a price reduction), the broker is likely the procuring cause and entitled to compensation. A protective/safety clause allows the seller to owe a commission if the property sells within a set period after expiration to a person the broker negotiated with during the listing. Such clauses typically require the broker to furnish the owner a list of prospects within a prescribed number of days after expiration. A seller may also waive the expiration by encouraging the broker to continue efforts.

- ✓ A broker generally must produce the offer within the listing's time limit
- ✓ A protective/safety clause preserves commission for a set period after expiration for prospects the broker negotiated with
- ✓ The clause typically requires the broker to furnish a written list of prospects within a set number of days after expiration
- ✓ A seller may waive the termination date by encouraging the broker to continue efforts

22.17 Consideration and Licensing for Agency

Consideration is not essential to create an agency; a gratuitous agent is still held to agency standards but does not need a license. However, where there is any expectation of compensation (broadly viewed) in a transaction subject to the Real Estate Law, a license is required.

- ✓ Consideration is not essential to create an agency; a gratuitous agent is still bound to agency duties
- ✓ A license is required whenever there is an expectation of compensation in a covered transaction (B&P § 10131 et seq.)

22.18 Tort Recovery for Interference with Broker's Commission

A broker may recover a commission under a tort theory (rather than contract) by proving the owner intentionally interfered with the broker's prospective economic advantage. In the leading case, a broker relied on a 'FOR SALE - CONTACT YOUR LOCAL BROKER' sign, negotiated with buyers, and notified the owner in writing of being the procuring cause; the owner sold to that group without the broker. The court denied a contractual commission (no signed written agreement) but allowed a tort suit for intentional interference. Six criteria determine whether a duty of care is owed.

- ✓ A broker may recover under a tort theory of intentional interference even without a written commission agreement
- ✓ The six duty-of-care criteria include: intent to affect the agent, foreseeability of harm, certainty of injury, connection between conduct and injury, moral blame, and public policy of preventing future harm

CHAPTER 23

Broker Supervision and Liability

23.1 Broker's Vicarious Liability and Duty to Supervise

Even when not personally at fault, a broker can be held liable in damages for the negligent conduct of salespersons and broker associates acting within the course and scope of their agency. Independent contractor status for tax purposes does not diminish this liability. The broker must establish policies, rules, procedures, and systems to monitor associate conduct.

- ✓ The supervising broker is vicariously liable for the negligent acts of salespersons and broker associates
- ✓ Independent contractor status for tax purposes does not alter agency/employee relationship or broker liability
- ✓ 10 CCR § 2725 requires the supervising broker to establish policies and systems to monitor associate conduct

23.2 Liability for Intentional Torts and Criminal Misconduct

Ordinarily employers are not liable for intentional torts or crimes of agents, but the supervising broker WILL be liable where the broker ratifies the misconduct or knew/should have known and failed to reasonably prevent it (reasonably foreseeable). When a broker knows a salesperson is committing fraud, the broker must intervene and terminate the misconduct.

- ✓ A broker is liable for intentional torts/crimes of associates if the broker ratifies them or knew/should have known and failed to prevent
- ✓ A broker who knows of fraud must intervene, take steps to stop it, and consider terminating the perpetrator

CHAPTER 24

Termination of Agency

24.1 Ways Agency Is Terminated

Per Civil Code § 2355, an agency may terminate by: expiration of its term; extinction of its subject; death of the agent; the agent's renunciation; or incapacity of the agent to act. Notice to third persons is required in these cases; otherwise the former agent remains an ostensible agent to those without notice.

- ✓ Civil Code § 2355 lists five ways an agency terminates: term expiration, extinction of subject, agent's death, renunciation, or incapacity
- ✓ Notice of termination must be given to third persons or the former agent remains an ostensible agent
- ✓ Termination by death/incapacity/revocation of the principal is effective as to third persons even without notice

24.2 Principal's Power to Revoke Agency

Because agency is founded on trust, the principal has an absolute POWER to revoke at any time unless the agency is coupled with an interest. However, the principal may not have the RIGHT to revoke and may be liable for breach of contract if revoking without good cause. A broker's right to earn a commission is not itself an interest that prevents revocation.

- ✓ A principal has absolute power to revoke agency unless it is coupled with an interest
- ✓ A broker's right to earn a commission is NOT an interest that precludes termination
- ✓ Revoking without good cause may make the principal liable for breach of contract or the commission (Blank v. Borden)

CHAPTER 25

Statutory Agency Disclosure (Civil Code § 2079.13–2079.25)

25.1 Agency Terms and Broker Responsibility Defined

Civil Code § 2079.13 defines key agency terms for real property transactions. An 'agent' is the broker under whose license a listing is executed or an offer to purchase is obtained. The broker bears responsibility for salespersons and broker associates acting as agents; their duty to any party equals the duty owed by the broker. A 'dual agent' acts for both seller and buyer. A 'listing agreement' is a written contract authorizing the agent to sell or find a buyer. A 'buyer-broker representation agreement' is a written contract authorizing the buyer's agent to provide licensed services for the buyer.

- ✓ The listing broker is responsible for salespersons/broker associates who act as agents under their license
- ✓ A salesperson or broker associate's duty to a party equals the duty owed by the supervising broker
- ✓ Listing agreements and buyer-broker representation agreements must be in writing
- ✓ A dual agent acts, directly or through a salesperson, for both seller and buyer

25.2 Timing of Agency Disclosure Form Delivery

The Agency Relationship Disclosure form (§ 2079.16) must be provided at specific times. The seller's agent must provide it to the seller before entering the listing agreement. The buyer's agent must provide it to the buyer as soon as practicable before executing a buyer-broker representation agreement and before the buyer's offer to purchase. If the offer is not prepared by the buyer's agent, delivery must occur no later than the next business day after receiving the offer. The agent must obtain a signed acknowledgment of receipt.

- ✓ Seller's agent must deliver the disclosure form to the seller before entering the listing agreement
- ✓ Buyer's agent must deliver the form as soon as practicable before the buyer-broker agreement and the offer
- ✓ If the offer wasn't prepared by the buyer's agent, deliver by the next business day after receipt
- ✓ The agent must obtain a signed acknowledgment of receipt except as provided in § 2079.15

25.3 Contents of Agency Relationship Disclosure Form

Section 2079.16 mandates the exact form 'Disclosure Regarding Real Estate Agency Relationship.' A seller's agent owes the seller a fiduciary duty of utmost care, integrity, honesty, and loyalty. To both buyer and seller, all agents owe: diligent exercise of reasonable skill and care; honest and fair dealing and good faith; and a duty to disclose all facts materially affecting the value or desirability of the property that are not known to or within the diligent attention of the parties. A dual agent owes fiduciary duties to both parties but may not disclose confidential information (financial position, motivations, bargaining position) without express permission.

- ✓ A seller's or buyer's agent owes their principal a fiduciary duty of utmost care, integrity, honesty, and loyalty
- ✓ All agents owe both parties a duty to disclose material facts affecting value/desirability not readily observable
- ✓ A dual agent must have the knowledge and consent of both parties
- ✓ A dual agent may not disclose confidential price-impacting information without express permission

25.4 Confirmation of Agency Relationship

Under § 2079.17, as soon as practicable, the buyer's agent must disclose to buyer and seller whether acting as buyer's agent or dual agent, and the seller's agent must disclose to the seller their status. The agency relationship must be confirmed in the purchase contract or a separate writing executed or acknowledged prior to or coincident with execution of the contract, using the statutory confirmation form identifying brokerage firm and license numbers. This confirmation is in addition to the § 2079.14 disclosure.

- ✓ Agency relationship must be confirmed in the purchase contract or a separate writing
- ✓ Confirmation must occur prior to or coincident with execution of the contract
- ✓ The confirmation must identify the brokerage firm and license numbers in the statutory form
- ✓ The confirmation requirement is in addition to the § 2079.14 disclosure form

25.5 Dual Agent Confidential Information Restrictions

Section 2079.21 prohibits a dual agent from disclosing, without express permission, confidential information obtained from the seller to the buyer or from the buyer to the seller. 'Confidential information' means facts about the client's financial position, motivations, bargaining position, or personal information impacting price (e.g., seller willing to accept less than listing price, or buyer willing to pay more than offered). This does not alter duties regarding confidential information other than price.

- ✓ A dual agent may not disclose the seller's confidential info to the buyer without express permission
- ✓ A dual agent may not disclose the buyer's confidential info to the seller without express permission
- ✓ Confidential information includes willingness to accept less/pay more than the stated price

25.6 Single-Family and Commercial Property Definitions

For agency-disclosure purposes, 'single-family residential property' means real property improved with one to four dwelling units (including a leasehold exceeding one year), a unit in a stock cooperative/ condo/PUD, or a mobilehome/manufactured home sold through a broker under B&P § 10131.6. 'Commercial real property' means all real property except single-family residential, residential dwelling units under § 1940, mobilehomes, vacant land, and recreational vehicles. A 'sale' includes exchanges, real property sales contracts, and leaseholds exceeding one year.

- ✓ Single-family residential property includes 1-4 dwelling units and leaseholds exceeding one year
- ✓ 'Sale' includes exchanges and the creation of leaseholds exceeding one year's duration
- ✓ Commercial real property excludes single-family residential, mobilehomes, vacant land, and RVs

25.7 Refusal to Sign Acknowledgment of Receipt

Under § 2079.15, if a seller or buyer refuses to sign an acknowledgment of receipt of the agency disclosure form required by § 2079.14, the agent must set forth, sign, and date a written declaration of the facts of the refusal. This preserves compliance despite the party's refusal.

- ✓ If a party refuses to sign the acknowledgment, the agent must prepare a written declaration of the refusal
- ✓ The agent must sign and date the written declaration of the facts of the refusal

25.8 Compensation Not Determinative of Agency

Under § 2079.19, payment or the obligation to pay compensation to an agent by the seller or buyer does not necessarily determine the agency relationship. A listing agent and selling agent may agree to share commission, and such terms are not determinative of a particular relationship. A buyer's agent may receive compensation from the seller without becoming the seller's agent.

- ✓ Who pays the commission does not necessarily determine the agency relationship
- ✓ Listing and selling agents may share commission without altering their respective agency status

25.9 Modification of Agency Relationship

Under § 2079.23, a contract between principal and agent may be modified to change the agency relationship at any time before performance of the act that is the object of the agency, with the written consent of the parties. A lender/auction company controlling a transaction may not require the homeowner or listing agent to defend or indemnify it as a condition of approval; such clauses are void and unenforceable.

- ✓ The agency relationship may be modified before performance with the written consent of the parties
- ✓ Clauses requiring a homeowner or listing agent to indemnify a lender/auction company are void and unenforceable

25.10 No Diminishment of Disclosure Duties

Section 2079.24 provides that nothing in the article diminishes the duty of disclosure owed to buyers and sellers by agents and their associate licensees, or relieves them from liability for their conduct or for breach of fiduciary duty or duty of disclosure. A seller's agent may also be a buyer's agent (§ 2079.22), and a party choosing not to be represented does not by itself make an agent a dual agent.

- ✓ Nothing in the article diminishes an agent's duty of disclosure or fiduciary duty to buyers and sellers
- ✓ A party choosing not to be represented does not by itself make the other agent a dual agent

CHAPTER 26

Listing, Buyer-Broker, MLS and Mortgage-Broker Fiduciary Statutes

26.1 Buyer-Broker Representation Agreement Required

A buyer-broker representation agreement must be executed between a buyer's agent and buyer as soon as practicable, but no later than execution of the buyer's offer to purchase real property. It must include terms on broker compensation, services to be rendered, when compensation is due, and contract termination. Before execution, the buyer's agent must provide the agency disclosure form required by Section 2079.14.

- ✓ Agreement must be executed no later than execution of the buyer's offer to purchase
- ✓ Must include compensation, services rendered, when compensation is due, and termination terms
- ✓ Buyer's agent must first provide the § 2079.14 agency disclosure form

26.2 Term Limits and Renewal of Buyer-Broker Agreements

A buyer-broker representation agreement may not last longer than three months from the date made (except with a corporation, LLC, or partnership). It cannot renew automatically; any renewal must be in writing, dated, and signed by all parties, and a renewal may not exceed three months. An agreement made in violation is void and unenforceable, and a violating licensee is deemed to have violated their license law.

- ✓ Agreement cannot last longer than three months (except entity buyers)
- ✓ No automatic renewal; renewals must be written, dated, signed, and limited to three months
- ✓ A violating agreement is void and unenforceable; violating licensee violates their license law

26.3 Duration Limit on Exclusive Listing Agreements

It is unlawful for an exclusive listing agreement on single-family residential property (one to four units, or a co-op/condo/PUD unit, mobilehome sold through a licensee, etc.) to last longer than 24 months from the date made (except with corporations, LLCs, or partnerships). Agreements may not renew automatically; renewals must be in writing, dated, and signed, and may not exceed 12 months.

- ✓ Exclusive listing agreements on single-family residential property cannot exceed 24 months
- ✓ Renewals must be written, dated, signed, and cannot exceed 12 months
- ✓ 'Single-family residential property' includes 1–4 unit property, co-op/condo/PUD units, and certain mobilehomes

26.4 Right to Display For Sale Signs

Any provision that prohibits or restricts a property owner or their agent from displaying reasonably located, reasonably sized signs advertising the property for sale, lease, or exchange is void as an unreasonable restraint on alienation. Owners and agents may display signs advertising sale/lease/exchange, directions, and owner/agent name, address, and telephone number.

- ✓ Provisions prohibiting reasonable for-sale/lease/exchange signs are void as unreasonable restraints on alienation
- ✓ Signs must be reasonably located, in plain view, of reasonable dimensions/design, and not adversely affect public safety
- ✓ Permitted sign content includes for sale/lease/exchange notice, directions, and owner's or agent's name, address, and telephone number

26.5 MLS Authorization and Accuracy Requirements

A listing may not be placed in an MLS unless authorized or directed by the seller in the listing. An agent or appraiser who places a listing or information in the MLS is responsible for the truth of all representations of which they had or should have had knowledge, to anyone injured by falseness or inaccuracy. The MLS must retain listing information for at least three years.

- ✓ A listing may not be placed in the MLS unless authorized or directed by the seller in the listing agreement
- ✓ The agent/appraiser is responsible for the truth of representations to anyone injured by their inaccuracy
- ✓ The MLS must retain listing information for no less than three years

26.6 Recording Prohibition and Penalties

It is unlawful to record or attempt to record an exclusive listing agreement (or memoranda/notice of one) with the county recorder, or to enforce one made or recorded in violation. Such an agreement is void and unenforceable; the homeowner may keep any consideration received. A violation also constitutes a violation under Section 1770, and a violating licensee is deemed to have violated their license law.

- ✓ Recording or attempting to record an exclusive listing agreement is unlawful
- ✓ Violating agreements are void and unenforceable and the homeowner may keep consideration received
- ✓ A licensee who violates the section is deemed to have violated their license law
- ✓ Government Code § 27280.6 separately prohibits a county recorder from recording an exclusive listing agreement or a notice of one

26.7 Mortgage Broker Owes Fiduciary Duty to Borrower

Under § 2923.1, a mortgage broker providing mortgage brokerage services to a borrower is the fiduciary of the borrower, and any violation of these fiduciary duties violates the broker's license law. The broker must place the borrower's economic interest ahead of the broker's own. This duty is owed regardless of whether the broker also acts as agent for another party. 'Mortgage brokerage services' means arranging, as exclusive agent for the borrower or dual agent, a residential mortgage loan (secured by 1-4 residential units) made by an unaffiliated third party.

- ✓ A mortgage broker is a fiduciary of the borrower and must place the borrower's economic interest first
- ✓ Violation of the broker's fiduciary duties is a violation of the broker's license law
- ✓ The fiduciary duty applies regardless of whether the broker also acts for another party
- ✓ Financial Code § 4979.5 imposes the same fiduciary duty on brokers arranging covered (high-cost) loans

26.8 Definition of Agent for Listings

For purposes of the listing article, an 'agent' is one authorized by law to act in that capacity for the type of property and is licensed as a real estate broker under B&P Code Section 10130 et seq., or is a licensee as defined in Health and Safety Code Section 18006 (manufactured housing).

- ✓ An 'agent' must be licensed as a real estate broker or a licensee under Health & Safety Code Section 18006
- ✓ The agent must be authorized by law to act for that type of property

26.9 Definition of Multiple Listing Service

A multiple listing service (MLS) is a facility of cooperation of agents and appraisers operating through an intermediary that does not itself act as an agent or appraiser, through which agents establish express or implied contracts for compensation among MLS participants, or which may be used to prepare market evaluations and appraisals of real property.

- ✓ The MLS intermediary does not itself act as an agent or appraiser
- ✓ The MLS enables express or implied compensation contracts between participating agents

CHAPTER 27

Value: Concepts, Principles and Definitions

27.1 Definition of Appraisal and Market Value

An appraisal is the act or process of developing an opinion of value. Value is the present worth of all rights to future benefits arising out of property ownership. Property rights in real estate are normally appraised at Market Value—the most probable price the property would bring if freely offered on the open market with both a willing buyer and a willing seller.

- ✓ An appraisal is an opinion of value of an adequately described property as of a specified date
- ✓ Market Value is the most probable price with a willing buyer and willing seller on the open market
- ✓ Appraisals mainly concern fee simple estate valuation as opposed to partial interest value
- ✓ Licensed/certified appraisers in California must comply with USPAP

27.2 Principle of Substitution

The principle of substitution is the basis of the appraisal process. Value tends to be set by the cost of acquiring an equally desirable substitute. A buyer will pay no more, and a seller expect no less, than the price of an equivalent substitute. If an owner claims a home is worth $95,000 but a substitute with the same features costs $90,000, the value is approximately $90,000.

- ✓ Value is set by the cost of acquiring an equally desirable substitute
- ✓ Substitution is the basis of the appraisal process
- ✓ A buyer pays no more than the price of an equivalent substitute property

27.3 Principle of Highest and Best Use

The highest and best use is that which produces the greatest net return to the land over a given period. The appraiser applies four tests: the use must be (1) legally permissible, (2) physically possible, (3) economically feasible, and (4) the most productive use. There may be two uses—one with the site vacant and one as improved—reconciled into a final determination.

- ✓ Highest and best use produces the greatest net return to the land
- ✓ Four tests: legally permissible, physically possible, economically feasible, most productive
- ✓ Site must be analyzed and evaluated in conformity with highest and best use

27.4 Principles of Progression and Regression

Progression: the worth of a lesser-valued property is enhanced by association with many similar objects of greater value (under-improvement). Regression: the worth of a greater-valued property is reduced by association with many lesser-valued objects (super adequacy or over-improvement).

- ✓ Progression enhances value of a lesser property near greater-valued properties
- ✓ Regression reduces value of a greater property near lesser-valued properties
- ✓ Regression relates to over-improvement/super adequacy; progression to under-improvement

27.5 Principle of Anticipation and the Income Approach

Value is created by anticipated future benefits derived from the property. In Market Value Analysis, appraisers estimate the present worth of future benefits—this is the basis for the income approach. The income approach analyzes the present worth of projected future net income and anticipated future resale value.

- ✓ Anticipation holds value is created by anticipated future benefits
- ✓ Anticipation is the basis for the income approach to value
- ✓ Income approach analyzes present worth of projected future net income and resale value

27.6 Cost, Price, and Value Distinguished

USPAP distinguishes cost, price, and value. Cost is the amount required to create, produce, or obtain a property (a fact or estimate of fact). Price is the amount asked, offered, or paid (once stated, a fact). Value is the monetary relationship between properties and those who buy, sell, or use them—never a fact, always an opinion that must be qualified (e.g., market, liquidation, investment value).

- ✓ Cost is the amount required to create or obtain a property
- ✓ Price is the amount asked, offered, or paid; once stated it is a fact
- ✓ Value is an opinion, never a fact, and must always be qualified
- ✓ Price paid may or may not relate to value ascribed by others

27.7 Four Elements of Value

There are four essential elements of value: Utility, Scarcity, Demand (with financial ability to purchase), and Transferability. None alone creates value; all must be present. A useful acronym is DUST. Utility creates demand, but demand must be backed by purchasing power. Real estate cycles cause fluctuations in these elements.

- ✓ The four elements are Utility, Scarcity, Demand, and Transferability (DUST)
- ✓ All four elements must be present to achieve value
- ✓ Demand must be implemented by purchasing power to be effective

27.8 Types of Obsolescence and Depreciation

Appraisers consider functional and external obsolescence. External (economic) obsolescence is caused by factors outside the property boundaries and is not curable. Functional obsolescence is caused by a deficiency or superadequacy and can be curable or incurable. Curable functional obsolescence provides a positive return if repaired (cost to cure is less than value added).

- ✓ External/economic obsolescence is caused by outside factors and is incurable
- ✓ Functional obsolescence results from a deficiency or superadequacy
- ✓ Curable functional obsolescence costs less to fix than the market will pay
- ✓ Incurable obsolescence costs more to correct than the market will pay

27.9 Bundle of Rights in Real Property

Rights in real property are referred to as the 'Bundle of Rights,' which includes the right to occupy and use; to sell in whole or in part; to bequeath; and to transfer by contract for a specific period (lease). It also implies the right NOT to take any of these actions. These rights are limited by government powers.

- ✓ Bundle of Rights includes occupy/use, sell, bequeath, and lease
- ✓ Rights are limited by taxation, eminent domain, police power, and escheat
- ✓ The appraiser must know the rights in a property before making a proper valuation

27.10 Principles of Conformity, Change, and Supply/Demand

Conformity: maximum value is realized when land uses are compatible with architectural harmony (zoning helps set standards). Change: real property is in constant flux affecting properties, neighborhoods, and cities. Supply and demand: price varies directly with demand and inversely with supply.

- ✓ Conformity holds maximum value results from compatible land uses
- ✓ Supply and demand: price varies directly with demand and inversely with supply
- ✓ Change reflects that real property is in a constant state of flux

27.11 Principle of Contribution

A component part of a property is valued in proportion to its contribution to the value of the whole, or by how much its absence detracts from the whole. Maximum values are achieved when improvements produce the highest net return commensurate with the investment.

- ✓ A component is valued by its contribution to the value of the whole
- ✓ Maximum value occurs when improvements produce highest net return
- ✓ Contribution measures how much a part's absence detracts from value

27.12 Principles of Competition, Balance, and Four-Stage Life Cycle

Competition: created where substantial profits are being made, which can lead to oversupply and lower prices. Balance: value is created when opposing elements are in equilibrium; imbalance comes from over- or under-improvement. Four-stage life cycle: all property goes through growth, stability, decline, and revitalization.

- ✓ Competition is created where substantial profits are being made
- ✓ Balance is achieved by developing a site to its highest and best use
- ✓ The four-stage life cycle is growth, stability, decline, and revitalization

27.13 Utility Value versus Market Value

Utility Value is value directed toward a particular use (subjective value), including amenities or value for a specific person/purpose. Market Value is the amount in money for which a property can be sold in prevailing market conditions—the objective value based on the willing buyer/willing seller concept.

- ✓ Utility Value is subjective, directed toward a particular use
- ✓ Market Value is objective, based on willing buyer and willing seller
- ✓ Value types include Liquidation, Market, Investment, and Assessed Value

27.14 Federal Market Value Definition Conditions

The regulatory Market Value definition is the most probable price a property should bring in a competitive open market under conditions requisite to a fair sale. Implicit conditions: buyer/seller typically motivated; well informed and acting in own best interest; reasonable time for market exposure; payment in cash or comparable terms; and price unaffected by special or creative financing.

- ✓ Buyer and seller must be typically motivated and well informed
- ✓ A reasonable time must be allowed for market exposure
- ✓ Price must not be affected by special or creative financing or concessions
- ✓ Payment is in cash or comparable financial arrangements

27.15 Four Forces Influencing Value

Value is created, maintained, modified, and destroyed by the interplay of four great forces: (1) Environmental and physical characteristics, (2) Social ideals and standards, (3) Economic influences, and (4) Political/government regulations. These forces interweave and are in constant change.

- ✓ The four forces are Physical, Social, Economic, and Political/Governmental
- ✓ These forces interweave and each is in constant change
- ✓ Neighborhoods are affected by these four forces influencing value

27.16 Plottage and Assemblage

Plottage or assemblage is the added increment of value created when several parcels of land are combined under one ownership to produce greater utility than the parcels held separately. It applies especially in urbanized multiple-residential and commercial areas, and to light industrial areas.

- ✓ Assemblage is the combining of parcels; plottage is the resulting increment of value
- ✓ Combined parcels must produce greater utility than separate ownership
- ✓ May apply in commercial, residential, and light industrial areas

CHAPTER 28

The Appraisal Process and the Sales Comparison Approach

28.1 Sales/Market Data Comparison for Sites

Under the sales comparison method, sales and listings of comparable vacant sites are obtained and adjusted to the subject. Comparable data should have similar zoning and be in the same or similar neighborhood with similar purchasing power. Verified transactions are adjusted for Time, Location, and Characteristics to derive an indicated value.

- ✓ Comparables should have the same zoning and similar neighborhood/income levels
- ✓ Adjustments are made for time, location, and lot characteristics
- ✓ Adjust the comparable toward the subject; adjustments applied to comparables not subject
- ✓ Verify sales were true open-market transactions reflecting market value

28.2 Abstraction Method of Land Valuation

The abstraction (extraction) method obtains land value where there are no vacant land sales. Take the sale price of an improved property, subtract the depreciated cost of the improvements (cost new less accrued depreciation), and the difference approximates the land value, which can then be applied per square foot to the subject.

- ✓ Abstraction is used when there are no vacant land sales
- ✓ Land value = sale price minus depreciated cost of improvements
- ✓ Depreciated value of improvements = cost new less accrued depreciation

28.3 Steps in the Appraisal Process

The appraisal process under Standard 1 begins with defining the appraisal problem (identifying client, intended use, type of value, effective date, property characteristics, assignment conditions), determining scope of work, collecting and analyzing data (market analysis and highest and best use), applying the three approaches to value, and reconciling to a final opinion.

- ✓ First step is to define the appraisal problem and understand the purpose/value sought
- ✓ Highest and best use analysis considers site as vacant, ideal improvement, and property as improved
- ✓ Final step is reconciliation of value indications into a final opinion of value

28.4 Principle of Substitution Basis

The Sales Comparison Approach (formerly market data comparison approach) is based on the principle of substitution: a buyer should not pay more for a property than the cost of acquiring a comparable substitute. It is most useful for land, residences, and improvements with high similarity and a ready market.

- ✓ The principle of substitution is the basis of the sales comparison approach
- ✓ A buyer will not pay more than the cost of a comparable substitute property
- ✓ This approach is most adaptable for real estate brokers/salespersons and single-family residences

28.5 Adjustments Made to Comparables

In the sales comparison approach, adjustments are always made to the comparable properties, never to the subject. Subtract from a comparable that is superior to the subject; add to a comparable that is inferior to the subject.

- ✓ Adjustments are always made to the comparable, never the subject property
- ✓ Subtract the adjustment if the comparable is SUPERIOR to the subject
- ✓ Add the adjustment if the comparable is INFERIOR to the subject
- ✓ Downward adjustments for subject's poor repair/design; upward for subject's superior features

28.6 Reconciliation, Not Averaging

After adjusting comparables, the less comparable ones are eliminated and greatest weight is given to sales most similar to the subject. The appraiser does not average adjusted prices; reconciliation is a judgment process arriving at the final value opinion.

- ✓ Do not average the adjusted sales prices of the comparables
- ✓ Give greatest weight to the comparable most similar to the subject
- ✓ Eliminate less comparable properties from consideration

28.7 USPAP Standards 1 and 2

USPAP Standard 1 covers all appraisal development activities, while Standard 2 covers the final reporting step. Together they guide the appraiser through the entire appraisal process from defining the problem to communicating the value opinion.

- ✓ Standard 1 covers appraisal development activities (defining problem, scope, data collection, approaches, reconciliation)
- ✓ Standard 2 covers reporting and communication of the value opinion
- ✓ A report is any written or oral communication of an appraisal transmitted to the client upon completion

28.8 Units and Elements of Comparison

Units of comparison are property components used for comparing (site size, square footage, number of rooms, number of units). Elements of comparison are characteristics causing prices to vary: financing terms, time (market conditions), sale conditions (arm's length), location, physical characteristics, and income.

- ✓ Units of comparison: site size, square footage, number of rooms, number of units
- ✓ Elements of comparison: financing terms, time, sale conditions, location, physical characteristics, income
- ✓ The suggested sequence for adjustments: finance terms, time, sale conditions, location, physical characteristics, other

28.9 Advantages and Disadvantages

The sales comparison approach is the most easily understood and commonly used method, especially for single-family residences. Disadvantages include difficulty finding enough alike properties, unreliability from excessive adjustments, dated sales in changing markets, and limitations during rapid inflation.

- ✓ Most easily understood and most common method among brokers/salespersons
- ✓ The greater the number/amount of adjustments, the less reliable the comparable becomes
- ✓ Dated sales become less reliable in a changing market
- ✓ In rapid inflation, value opinions may lag behind sale prices because appraisers rely on confirmed closed sales

CHAPTER 29

The Cost Approach and Depreciation

29.1 Cost Approach Definition and Procedure

The Cost Approach views value as land value (as if vacant) plus the cost to reconstruct the building as new, less accrued depreciation. It relies on the principle of substitution and sets the upper limit of value. Steps: estimate land value at highest and best use, estimate replacement/reproduction cost, estimate accrued depreciation, deduct depreciation, then add land value.

- ✓ Value = land value (as vacant) + reconstruction cost new − accrued depreciation
- ✓ The principle of substitution applies to the cost approach
- ✓ Cost new tends to set the UPPER limit of value
- ✓ Land value is estimated at its highest and best use, usually via market comparison
- ✓ Depreciation is deducted only from the improvements, not the land

29.2 Three Bases of Reconstruction Cost New

There are three cost-as-new bases: Historic Cost indexed to cost new (actual original cost adjusted by price indices), Reproduction Cost New (cost to build an exact replica with same design/materials), and Replacement Cost New (cost to rebuild with modern methods/materials providing same utility). Replacement Cost New is the most frequently used base.

- ✓ Reproduction cost = exact replica in original design and materials
- ✓ Replacement cost = same utility using modern methods, design, and materials
- ✓ Replacement Cost New is the most frequently used cost approach base
- ✓ Indexed Historic Cost is most useful for newer or unique buildings

29.3 Definition and Three Types of Depreciation

In appraisal, depreciation is 'loss in value from any cause,' measured as the difference between cost new and current value. The three types are: Physical deterioration (wear, deferred maintenance, damage), Functional obsolescence (poor design, outdated features, superadequacies), and External/economic obsolescence (adverse influences outside the property).

- ✓ Depreciation = loss in value from any cause
- ✓ Physical deterioration and functional obsolescence are inherent within the property and may be curable or incurable
- ✓ External (economic) obsolescence is caused by factors outside the property and is almost always incurable

✓

Superadequacies (e.g., excessive additions costing more than market pays) are functional obsolescence

29.4 Straight-Line (Age-Life) Method

The straight-line method spreads depreciation equally over the improvement's total estimated life. A 50-year life = 2% depreciation per year. Effective age (based on condition/utility) is generally used instead of actual age. This method is easy to calculate, used by the IRS, and understood by laypersons, though buildings do not actually depreciate uniformly.

- ✓ Annual depreciation rate = 100% ÷ total estimated life (e.g., 50 years = 2%/year)
- ✓ Effective age is used instead of actual age based on condition, utility, and life expectancy
- ✓ Straight-line method is easy to calculate and used by the IRS

29.5 Cost Approach Depreciation Calculation Example

To compute value: multiply cost new by the depreciation percentage (effective age × annual rate), deduct that accrued depreciation from cost new to get depreciated improvement value, then add land value. Example: $120,000 cost new × 40% (20 yrs effective age × 2%) = $48,000 depreciation; $72,000 depreciated improvements + $50,000 land = $122,000 indicated value.

- ✓ Accrued depreciation = cost new × (effective age × annual rate)
- ✓ Depreciated improvement value = cost new − accrued depreciation
- ✓ Indicated value by cost approach = depreciated improvements + land value

29.6 Methods of Estimating Cost New

Four methods estimate cost new: Square-Foot Method (most common on West Coast, fastest, compares cost per square foot), Cubic-Foot Method (popular in East, considers height, used for industrial/warehouse), Quantity Survey Method (detailed labor/materials, very accurate but time-consuming, used by contractors), and Unit-in-Place Method (cost of installed units, detailed, seldom used by appraisers).

- ✓ Square-Foot Method is the most common on the West Coast and the fastest
- ✓ Cubic-Foot Method considers height and is popular in the Eastern U.S. for industrial/warehouse
- ✓ Quantity Survey Method is the most detailed and accurate but time-consuming
- ✓ Unit-in-Place Method computes cost of units as installed on a square foot basis

29.7 Book vs Actual Depreciation

Book depreciation is a tax/accounting concept: a mathematical deduction from the owner's original (historic) cost basis over useful life, meeting IRS rules, creating paper losses/tax shelters. Actual depreciation used by appraisers is loss in value determined by market data, deducted from current cost new. Appraisers use actual, not book, depreciation.

- ✓ Book depreciation is deducted from owner's original (historic) cost for tax/accounting purposes
- ✓ Actual (appraisal) depreciation is loss in value deducted from current reconstruction cost new
- ✓ Book value = original cost + capital additions − accumulated depreciation
- ✓ Depreciation is allowed on improvements only, not land
- ✓ Appraisers use actual depreciation, not book depreciation

29.8 Methods of Calculating Accrued Depreciation

Accrued depreciation is loss that has already occurred; remainder depreciation occurs in the future. The curable/incurable distinction depends on economic feasibility. Methods include: Straight-line (age-life) method, Cost-to-cure (observed condition/breakdown) method, and the Market data (abstraction) method.

- ✓ Accrued depreciation has already occurred; remainder depreciation occurs in the future
- ✓ The measure between curable and incurable depreciation is economic feasibility
- ✓ Cost-to-cure (breakdown) method is the most refined for examining complex depreciation
- ✓ Market data (abstraction) method compares depreciated value from actual market sales

29.9 Future Depreciation in Income Approach

Future depreciation is loss not yet occurred, significant in income capitalization for recapture of improvement value (return OF investment vs return ON invested capital). Measured by straight-line (fixed sum deducted annually) or sinking fund method (annual reserves accumulating with compound interest). Salvage value need not be recaptured.

- ✓ Recapture is the return OF investment, distinct from return ON invested capital (interest/profit)
- ✓ Straight-line: deduct a fixed sum yearly over remaining economic life (e.g., 25 yrs = 4%)
- ✓ Sinking fund method accumulates reserves with compound interest to offset depreciation
- ✓ Salvage value need not be returned through the annual depreciation charge

29.10 Direct vs Indirect Costs

Cost estimates are classified as direct (hard) costs — labor, equipment, materials — and indirect (soft) costs — legal, title, appraisal fees, permits, taxes during construction, financing charges. Developer's overhead, supervision, and profit are also included.

- ✓ Direct (hard) costs = labor, equipment, materials
- ✓ Indirect (soft) costs = administration items like legal, permits, financing, insurance during construction
- ✓ Developer's overhead, supervision, and profit are added to complete cost estimate

CHAPTER 30

The Income Approach, Residual Techniques and Multipliers

30.1 Income Approach and Capitalization

The Income Approach values the present worth of future benefits (income stream) and is based on the principle of anticipation. Capitalization converts future income into present worth. Direct capitalization (Overall Rate, GRM) converts a single year's income; Yield capitalization values a series of payments over the investment's life.

- ✓ The Income Approach is based on the principle of anticipation
- ✓ Capitalization converts future income into present worth of property
- ✓ Direct capitalization uses a single year's income; yield capitalization uses multi-year cash flows
- ✓ Net income used is what a fully informed person with competent management would expect

30.2 The Overall Rate (IRV) Formula

The fundamental capitalization formula is I ÷ R = V (Net Annual Income ÷ Overall Rate = Value). Rearranged: I = R × V and R = I ÷ V. If any two factors are known, the third can be found. The preferred method of deriving the Overall Rate is analysis of comparable sales.

- ✓ Value = Net Annual Income ÷ Overall Rate (I ÷ R = V)
- ✓ Income = Rate × Value; Rate = Income ÷ Value
- ✓ The Overall Rate represents both return ON and return OF the investment
- ✓ The lower the cap rate, the greater the valuation and assumed security

30.3 Determining Net Annual Income

Start with potential gross income, deduct vacancy/collection loss to get effective gross income, then deduct operating expenses (fixed, variable, reserves for replacement) to get net operating income (NOI). Principal/interest payments and income tax depreciation are excluded as expenses.

- ✓ Potential Gross Income − Vacancy/Collection Loss = Effective Gross Income
- ✓ Effective Gross Income − Operating Expenses = Net Operating Income (NOI)
- ✓ Fixed expenses (taxes, insurance) are paid regardless of occupancy
- ✓ Variable expenses (utilities, management, maintenance) depend on occupancy
- ✓ Reserves for replacements cover short-lived components (roof, carpets, stoves)
- ✓ Mortgage payments and book depreciation are NOT allowable expenses

30.4 Gross Rent Multiplier (GRM)

The GRM is a Direct capitalization technique found by dividing the sales price by the monthly rent (e.g., $90,000 ÷ $600 = 150). Applied by multiplying the selected GRM by the subject's market rent. The GIM includes all gross income (rent plus other sources). Multipliers are not averaged.

- ✓ GRM = sales price ÷ monthly rent
- ✓ Value estimate = selected GRM × subject's market rent
- ✓ GRM analyzes gross rents; GIM analyzes all gross income
- ✓ Multipliers must be applied consistently (monthly or annual) and are NOT averaged
- ✓ Use market rent (effective GRM) when a comparable sold with non-market rents

30.5 Effective Gross Income Calculation

Effective gross income is calculated by summing all potential rental income plus other income (parking, laundry), producing potential gross annual income, then deducting vacancy and collection losses. In the example, apartment rents plus other income totaled $344,400 potential gross annual income, less 5% vacancy/collection loss ($17,220), yielding $327,180 effective gross income.

- ✓ Potential Gross Income = total rental income + other income (parking, laundry, etc.)
- ✓ Effective Gross Income = Potential Gross Income − vacancy and collection losses
- ✓ Vacancy/collection loss is applied as a percentage of potential gross income

30.6 Reconstructing the Operating Statement

To determine net operating income, the appraiser reconstructs the owner's statement by removing improper (non-allowable) expense deductions. Capital improvements, depreciation, and personal/entertainment expenses are NOT allowable operating expenses. Allowable expenses include fixed expenses (taxes, insurance, license), variable expenses (utilities, maintenance, management salary), and reserves for replacement. In the example $32,000 (capital improvements + depreciation) and $750 (entertainment) were excluded.

- ✓ Capital improvements and depreciation are NOT allowable operating expenses
- ✓ Personal/entertainment expenses are NOT allowable deductions
- ✓ Allowable expenses = fixed + variable + reserves for replacement
- ✓ Net income = effective gross income − total allowable expenses

30.7 Capitalization of Net Income into Value

Property value under the income approach is found by dividing annual net operating income by the overall capitalization rate. In the example $239,080 net income ÷ .095 cap rate = $2,516,632, rounded to $2,500,000. A lower cap rate produces a higher value; a higher cap rate produces a lower value.

- ✓ Value = Net Operating Income ÷ Capitalization Rate
- ✓ Cap rate and value are inversely related — lower rate means higher value
- ✓ Final appraised values are commonly rounded

30.8 Appraiser vs Owner Viewpoint

The owner views income property as equity in a financed property, deducting loan payments, interest, and book depreciation for tax purposes. The appraiser reconstructs income/expense to market amounts a well-informed investor anticipates, disregarding personal equity, spendable income, and tax consequences, to find Market Value.

- ✓ Owner focuses on equity, financing, and tax position; appraiser focuses on Market Value
- ✓ Appraiser disregards principal/interest payments and book depreciation as non-allowable expenses
- ✓ Equity = difference between loan amount and property value/price

30.9 Contract Rent vs Market Rent

Contract rent is the actual contracted rent received; market rent is what the property should bring in the open market. The income to use is future anticipated income, not solely past/current income. Rents and vacancy factors are based on market rent data.

- ✓ Contract rent = actual/contracted rent received
- ✓ Market rent = rent the property should bring in the open market
- ✓ Income used is future anticipated income; reliance solely on past income is incorrect

30.10 Effect of Rate Variation on Value

A variation of only 1 percent in the capitalization rate can make a substantial difference in capitalized value. Example: $30,000 income at 6% = $500,000; at 7% = ~$428,500. Higher risk demands a higher rate; lower rate means greater valuation and assumed security.

- ✓ A 1% variation in the cap rate substantially changes capitalized value
- ✓ The greater the risk, the higher the required rate
- ✓ Lower cap rate = higher value and greater assumed investment security

30.11 Building Capitalization Rate

The building cap rate equals the interest rate (return on) plus the recapture rate (return of). Recapture rate = 100% ÷ remaining economic life. Example: $28,000 building income; recapture 4% × $190,000 = $7,600; net after recapture $20,400 ÷ $190,000 = 10.74% interest; total building cap rate = 14.74%.

- ✓ Building cap rate = interest rate (return on) + recapture rate (return of)
- ✓ Recapture rate = 100% ÷ remaining economic life
- ✓ Building cap rate can also = net income to building ÷ building value

30.12 Discounted Cash Flow Analysis

Yield capitalization converts economic benefits into present value by discounting each anticipated benefit at a yield (discount) rate. The most common form is discounted cash flow (DCF) analysis, where periodic cash flows and reversion are each discounted to present value and summed. The yield rate includes a safe rate plus premiums for risk, illiquidity, and management burden.

- ✓ Discounting converts future benefits to present value using a yield/discount rate
- ✓ Future benefits include periodic cash flows and the reversion (sale proceeds)
- ✓ Yield rate = safe rate + premiums for risk, illiquidity, and management burden
- ✓ Present values of all future benefits are summed for total property value
- ✓ Method and timing of returns on and of capital are explicit in yield capitalization

30.13 Building and Land Residual Techniques

Residual techniques separate net income between land and building using Direct capitalization. Building residual (land value known): multiply land value by land cap rate for land income, deduct from total NOI to get building income, capitalize at building rate, add land value. Land residual (building value known): reverse the process to find land value.

- ✓ Building residual: used when land value is known and building value is unknown
- ✓ Land residual: used when building value is known and land value is unknown
- ✓ Income to known component = component value × its cap rate; residual income capitalized at other rate
- ✓ Total property value = value of known component + residual component value
- ✓ Residual techniques have very limited use for special valuation problems

CHAPTER 31

Reconciliation and Appraising Specific Property Types

31.1 The Three Approaches to Value

There are three approaches used to estimate market value: the Sales Comparison Approach (analyzing recent sales/listings of similar properties), the Cost Approach (land value plus depreciated cost of improvements), and the Income Approach (capitalizing potential income into value). Each approach is applied independently, then reconciled.

- ✓ Sales Comparison approach analyzes recent sales and listings of similar properties
- ✓ Cost approach = land value (as vacant) + depreciated cost new of improvements
- ✓ Income approach capitalizes the estimated potential income into value
- ✓ Each approach is used independently, then conclusions are reconciled into one value opinion

31.2 Reconciliation to Final Opinion of Value

After completing the approaches, their value indications are reconciled to a final opinion. The final value is NOT an average; greater weight is given to the approach with better data quality and relevance. The appraiser uses judgment and reasoning, and the final value should be rounded, not stated in odd dollars and cents.

- ✓ The final opinion of value is NOT an average of the approaches
- ✓ Greater weight goes to the approach with the best quantity/quality of data and relevance
- ✓ Relevance depends on intended use, property type, and market participant behavior
- ✓ The final value opinion should be rounded, not reported in odd dollars and cents

31.3 Income Approach to Value

The income approach applies where rental data exists in the neighborhood. Market rent of the subject is estimated through experience and comparison, then gross monthly multipliers of similar properties are gathered and analyzed to arrive at one multiplier applied to the subject. For small residential income properties, monthly gross multipliers are used rather than income capitalization methods.

- ✓ Applied only when rentals exist in the neighborhood
- ✓ Market rent is estimated by experience and comparison
- ✓ One gross monthly multiplier is derived from similar properties and applied to the subject
- ✓ Small units use gross multipliers; income capitalization is not normally employed

31.4 Manufactured vs Mobile Home Distinction

Manufactured homes were factory-built to HUD Code standards on or after June 15, 1976; mobile homes were built before the HUD Code ('pre-HUD' or 'trailer' homes). A key consideration is whether the unit is real or personal property, verified by attachment and recorded forms (HCD form 433A confirms conversion to real property).

- ✓ Manufactured homes are HUD Code (on/after June 15, 1976); mobile homes are pre-HUD
- ✓ Recorded HCD form 433A confirms the manufactured home is affixed and no longer personal property
- ✓ The Sales Comparison Approach is often the most applicable for these properties

31.5 Appraising Small Multi-Family Dwellings

Small multi-family units (two to four living units such as duplexes, triplexes, and fourplexes) are appraised approximately the same as single family homes when sufficient rental data exists for an income approach. Cost factors, depreciation, and land value are calculated the same way as for single family homes. Small units use monthly gross multipliers rather than income capitalization. The sales comparison approach differs by placing less emphasis on pride of ownership and refining units of comparison to a per-unit or per-room basis.

- ✓ A small multi-family dwelling contains two to four living units (duplex, triplex, fourplex)
- ✓ Cost factors, depreciation, and land value are calculated the same as single family homes
- ✓ Small units are appraised using monthly gross multipliers, not income capitalization
- ✓ Sales comparison for multi-family may be refined to a per-unit or per-room basis

31.6 Neighborhood Analysis Factors

Appraising a single-family residence requires neighborhood analysis considering type of occupants (income, age groups, owner vs non-owner occupancy), type of improvement (mixture of uses, age, price range, conformity), neighborhood trend (detrimental factors, transitions, life cycle stage), and changes in land use (zoning, transportation, encroachments).

- ✓ Neighborhood analysis considers occupants, improvements, trend, and land use changes
- ✓ Conformity of the neighborhood affects value
- ✓ The neighborhood life cycle stage and transitional trends impact market demand

CHAPTER 32

Appraiser Licensing (BREA) and Appraisal Statutes

32.1 Four Levels of Appraiser Licensing

California has four appraiser license levels: (1) Certified General — may appraise any type of real property; (2) Certified Residential — any one-to-four unit residential property and non-residential up to $250,000 transaction value; (3) Residential License — non-complex one-to-four unit residential up to $1 million and non-residential up to $250,000; (4) Trainee License — must work under supervision of a Certified Residential or Certified General appraiser.

- ✓ Certified General appraisers may appraise any type of real property
- ✓ Certified Residential covers 1-4 unit residential plus non-residential up to $250,000
- ✓ Residential License covers non-complex 1-4 unit up to $1 million and non-residential up to $250,000
- ✓ Trainees must work under a Certified Residential or Certified General supervisor; no supervisor may supervise more than three trainees

32.2 Real Estate Licensee Opinion of Value vs. Appraisal

An 'appraisal' is the act or process of developing an opinion of value for real property. However, an opinion of value given by a real estate licensee in the ordinary course of business (such as a broker's price opinion/comparative market analysis) is NOT an appraisal, and the licensee may not refer to it as an appraisal. Federally related transactions require a state-licensed appraiser.

- ✓ An 'appraisal' is the act or process of developing an opinion of value for real property
- ✓ A real estate licensee's opinion of value given in the ordinary course of business is not an appraisal and shall not be referred to as an appraisal
- ✓ A 'dwelling' means a residential structure containing one to four units
- ✓ A consumer can have only one 'principal' dwelling at a time; a vacation or second home is not a principal dwelling

32.3 Prohibition Against Improperly Influencing Valuations

No person with an interest in a real estate transaction involving a valuation may improperly influence or attempt to influence the development, reporting, result, or review of a valuation through coercion, extortion, bribery, intimidation, compensation, or instruction. Prohibited acts include seeking a minimum/maximum value, conditioning hiring or compensation on value conclusions, and withholding payment because a value is not high enough.

- ✓ Cannot influence a valuation through coercion, extortion, bribery, intimidation, compensation, or instruction
- ✓ Cannot condition an appraiser's hiring or compensation on the value conclusion returned
- ✓ Permitted actions include asking for consideration of additional comparables, correction of errors, or obtaining multiple valuations to select the most reliable

32.4 Unbiased Appraisal Notice in Sales Contracts

After July 1, 2022, every contract for the sale of real property must contain (in no less than 8-point type) a notice stating that any appraisal must be unbiased, objective, and not influenced by protected characteristics such as race, color, religion, gender, sexual orientation, marital status, national origin, source of income, disability, age, and others. Buyers/sellers may report suspected bias to the lender/mortgage broker and file a complaint with the Bureau of Real Estate Appraisers.

- ✓ Notice must appear in no less than 8-point type in every real property sales contract after July 1, 2022
- ✓ A licensed person refinancing a first-lien purchase money loan on 1-4 unit residential property must also deliver the notice prior to or with the loan estimate/mortgage loan disclosure statement

32.5 FIRREA and Appraiser Licensing Origins

In 1989 Congress passed FIRREA (the Savings and Loan Bailout Bill), whose Title XI required each state to establish a program to license and certify real estate appraisers performing appraisals for federally related transactions, adhering to Appraiser Qualifications Board (AQB) criteria. California responded in 1990 by enacting the Real Estate Appraisers' Licensing and Certification Law (B&P Code § 11300 et seq.), creating the Office of Real Estate Appraisers (OREA). OREA was renamed the Bureau of Real Estate Appraisers (BREA) in 2013 and operates within the Department of Consumer Affairs.

- ✓ FIRREA (1989), Title XI, requires states to license appraisers for federally related transactions
- ✓ California's 1990 Real Estate Appraisers' Licensing and Certification Law (B&P Code § 11300 et seq.) created OREA, renamed the Bureau of Real Estate Appraisers (BREA) in 2013
- ✓ States must adhere to AQB qualification criteria set by The Appraisal Foundation

32.6 Appraiser Education and Experience Requirements (AQB Criteria)

Under the current Appraiser Qualifications Board (AQB) criteria adopted by California: a Trainee License requires 75 hours of qualifying education (including the 15-hour National USPAP course) plus a supervisor/trainee course and no experience; a Licensed Residential appraiser needs 150 hours of education and 1,000 hours of experience gained in no fewer than 6 months, with no college degree required; a Certified Residential appraiser needs 200 hours of education, 1,500 hours of experience in no fewer than 12 months and a bachelor's degree (or an approved alternative); a Certified General appraiser needs 300 hours of education, 3,000 hours of experience in no fewer than 18 months (at least 1,500 hours non-residential) and a bachelor's degree. All levels except trainee must pass the National Uniform Licensing and Certification Examination. AQB-approved Practical Applications of Real Estate Appraisal (PAREA) programs may substitute for some experience.

- ✓ Licensed Residential: 150 education hours + 1,000 experience hours in at least 6 months; no degree required
- ✓ Certified Residential: 200 education hours + 1,500 experience hours in at least 12 months + bachelor's degree (or approved alternative)
- ✓ Certified General: 300 education hours + 3,000 experience hours in at least 18 months (1,500 non-residential) + bachelor's degree
- ✓ Trainee: 75 hours of education including the 15-hour USPAP course, no experience; all other levels must pass the national uniform exam

32.7 License Terms and Renewal / Continuing Education

Appraiser licenses issued by the Bureau of Real Estate Appraisers (BREA) are valid for two years, but the required 56 hours of continuing education is proven in a four-year cycle (averaging 14 hours per year). Each cycle must include the 7-hour National USPAP Update Course every two years, a 4-hour California Federal and State Laws and Regulations course, and, for renewals on or after January 1, 2023, a course on the elimination of bias in real estate appraisal and cultural competency (AB 948). BREA's enforcement unit may deny, restrict, suspend or revoke a license and impose fines of up to $10,000 per violation.

- ✓ Appraiser licenses are valid for two years; 56 CE hours are proven every four years (average 14 per year)
- ✓ 7-hour National USPAP Update Course required every two years plus a 4-hour state and federal laws course each cycle
- ✓ Since 2023 (AB 948) each renewal cycle must include a course on elimination of bias and cultural competency
- ✓ BREA may fine up to $10,000 per violation

CHAPTER 33

Deeds of Trust, Trustee Sales and Anti-Deficiency Rules

33.1 Anti-Deficiency Protection on Purchase Money Loans

California Code of Civil Procedure 580b bars deficiency judgments on purchase money loans. When a seller carries back financing (seller/vendor loan) or a lender finances the purchase of an owner-occupied dwelling of not more than four units, the lender cannot pursue the borrower for any shortfall after foreclosure. This is a critical borrower protection that limits the lender's recovery to the value of the secured property.

- ✓ No deficiency judgment lies under a deed of trust or mortgage given to the vendor (seller) to secure the balance of the purchase price
- ✓ No deficiency on a loan for an owner-occupied dwelling of not more than four families used to pay all or part of the purchase price (a 'purchase money loan')
- ✓ No deficiency on a sale of real property where the purchaser fails to complete the contract of sale

33.2 No Deficiency After Approved Short Sale

When a lender gives written consent to a short sale of a dwelling of not more than four units (sale price less than the outstanding indebtedness), no deficiency may be owed, collected, or rendered once title is voluntarily transferred to a buyer by recorded grant deed and the sale proceeds are tendered to the lender per the agreement.

- ✓ Applies to a note secured by a deed of trust/mortgage on a dwelling of not more than four units sold with the holder's written consent
- ✓ The lender cannot require the borrower to pay additional compensation, aside from sale proceeds, in exchange for consenting to the short sale
- ✓ Any purported waiver of the short sale protections is void and against public policy

33.3 Trustee Sale Postponement via Listing Agreement

For residential real property of no more than four dwelling units subject to a power of sale, a trustee's sale must be postponed an additional 45 days if the mortgagor/trustor delivers, at least five business days before the scheduled sale, a listing agreement with a California licensed real estate broker to be placed on a publicly available marketing platform. Delivery must be by certified mail or overnight courier with tracking confirming signature and delivery date/time. This postponement may be used only once.

- ✓ Listing agreement must be with a California licensed real estate broker and delivered at least 5 business days before the scheduled sale
- ✓ Postponement extends the sale by an additional 45 days and may not be used more than once
- ✓ Right to reinstate is extended based on the new scheduled sale date per Section 2924c(e)

33.4 Trustee Sale Postponement via Purchase Agreement

If a sale was already postponed and the trustee receives a copy of a bona fide, fully executed purchase agreement at least five business days before the scheduled sale, the trustee must postpone the sale to at least 45 days after the purchase agreement was received. A 'purchase agreement' must have a price equal to or greater than the unpaid balance of all obligations of record, and include the buyer's name, sales price, closing date, and acceptance by the designated escrow agent. This postponement may be used only once.

- ✓ Purchase price must equal or exceed the unpaid balance of all obligations of record secured by the property
- ✓ Purchase agreement must include buyer name, sales price, agreed closing date, and acceptance by escrow agent
- ✓ Postponement moves the sale to at least 45 days after receipt and may not be used more than once

33.5 67 Percent Minimum First-Sale Bid Rule

For one-to-four unit residential property subject to a first lien deed of trust, the mortgagee/beneficiary must provide the trustee a fair market value at least 10 days before the initially scheduled sale, and the trustee may not sell at the first sale for less than 67% of that fair market value. If unsold, the trustee postpones at least seven days, and the property may then be sold to the highest bidder.

- ✓ Trustee may not accept a first-sale bid below 67% of the property's fair market value
- ✓ Fair market value must be provided at least 10 days before the initially scheduled sale
- ✓ If unsold at first sale, trustee postpones at least 7 days, then property may be sold to highest bidder

33.6 Content and Posting of Notice of Sale

Before a trustee's sale, notice of sale must be posted at least 20 days before the sale in one public place in the city (or county seat), published once a week for three consecutive weeks (first publication at least 20 days before sale), posted conspicuously on the property, and recorded with the county recorder at least 20 days prior. The notice must include trustee name and contact, original trustor name, property description (street address, APN, or legal description), beneficiary name/address, and total unpaid balance with estimated costs.

- ✓ Notice must be posted at least 20 days before the sale and published once weekly for 3 consecutive weeks
- ✓ Notice must be recorded with the county recorder at least 20 days prior to the date of sale
- ✓ Notice must state the total unpaid balance plus reasonably estimated costs and expenses

33.7 Time, Place, and Manner of Trustee's Sale

All sales under a power of sale must be held in the county where the property is located, made at auction to the highest bidder, between 9 a.m. and 5 p.m. on any business day, Monday through Friday. When property consists of several known lots, they must be sold separately unless the deed of trust provides otherwise, and only enough property to satisfy the indebtedness may be sold. A trustee may not bundle properties; each must be bid on separately unless the instrument requires otherwise.

- ✓ Sales must be at public auction to the highest bidder between 9 a.m. and 5 p.m., Monday through Friday, in the county where the property is located
- ✓ Separate lots must be sold separately unless the deed of trust provides otherwise, and no more may be sold than needed to satisfy the debt
- ✓ A trustee may not bundle properties for sale; each property must be bid on separately

33.8 Bids at Trustee's Sale Are Irrevocable Offers

Each bid made at a trustee's sale under a power of sale in a deed of trust or mortgage is deemed an irrevocable offer to purchase the property for the bid amount. Any subsequent higher bid by the same or another bidder cancels the prior bid. Any postponement or discontinuance of the sale cancels the last bid. Bid amounts must be paid in cash, a cashier's check drawn on a state/national bank, or a check from a credit union, savings and loan, or savings bank, or a designated cash equivalent.

- ✓ Each bid is an irrevocable offer to purchase at that amount
- ✓ A second or subsequent higher bid cancels the prior bid
- ✓ Postponement or discontinuance of sale cancels the last bid
- ✓ Acceptable payment includes cash, cashier's check, or designated cash equivalent

33.9 Perfection and Rescission of Trustee's Sale

A trustee's sale is deemed final upon acceptance of the last and highest bid. If the trustee's deed is recorded within 21 calendar days after the sale (or within 60 days when an eligible tenant buyer or eligible bidder submitted a notice of intent under § 2924m), the sale is deemed perfected as of 8 a.m. on the actual sale date. When the § 2924m provisions sunset on January 1, 2031, the recording window returns to 15 days. The sale is subject to automatic rescission for failure of consideration if the bid funds are not available for withdrawal; a rescinded sale reinstates all lienholder interests in the same priority as if the sale had not occurred.

- ✓ Sale deemed final on acceptance of the last and highest bid
- ✓ Perfected as of 8 a.m. on the sale date if the trustee's deed is recorded within 21 days (60 days when a § 2924m notice of intent was filed; 15 days after the 2031 sunset)
- ✓ Automatic rescission occurs if the bid funds are not available for withdrawal
- ✓ Rescission reinstates lienholder priority as if no sale occurred

33.10 Bidder Default and Bid-Rigging Prohibited

A last and highest bidder who fails to deliver the final bid amount is liable to the trustee for damages, including court costs and attorney's fees. Willful failure to deliver or cancellation of payment is a misdemeanor punishable by a fine up to $2,500. It is unlawful to accept consideration not to bid or to fix or restrain bidding; violation is punishable by a fine up to $10,000 and/or up to one year in county jail. It is lawful, however, to state that a property is sold 'as-is.'

- ✓ Defaulting bidder is liable for damages, court costs, and attorney's fees
- ✓ Willful failure or cancellation is a misdemeanor with fine up to $2,500
- ✓ Bid-rigging or paying someone not to bid is punishable by up to $10,000 fine and/or 1 year jail
- ✓ Stating a foreclosure property is sold 'as-is' is lawful

33.11 Prospective Owner-Occupant Priority in Foreclosure Sales

For trustee's sales of property with one to four residential units, the sale is not final until certain conditions are met that give priority to owner-occupants and tenants. A 'prospective owner-occupant' is a natural person who declares they will occupy the property as their primary residence within 60 days of the trustee's deed recording and maintain occupancy for at least one year, and who is not the mortgagor/trustor, their close relative, or an agent for another buyer. If such a bidder is the last and highest bidder, they must submit the affidavit at the sale or by 5 p.m. the next business day.

- ✓ Applies to residential property of one to four units
- ✓ Owner-occupant must intend to occupy as primary residence within 60 days of deed recording
- ✓ Owner-occupant must maintain occupancy for at least one year
- ✓ Cannot be the mortgagor/trustor, their child/spouse/parent, or an agent for another

33.12 Eligible Tenant Buyer and Eligible Bidder Windows

After a trustee's sale, the sale is not deemed final for 15 days to allow eligible tenant buyers or eligible bidders to submit a bid or nonbinding written notice of intent. Eligible tenant buyers may match the highest bid within 15 days (or 45 days if they filed a notice of intent). Other eligible bidders (nonprofits, community land trusts, housing cooperatives, government entities) may exceed the highest bid within 45 days. Title remains with the mortgagor/trustor until the sale is deemed final.

- ✓ Sale not final for 15 days to allow eligible tenant buyer or bidder bids
- ✓ Eligible tenant buyers may match highest bid; other eligible bidders may exceed it
- ✓ 45-day extended window applies if a nonbinding notice of intent was filed
- ✓ Title remains with the mortgagor/trustor until the sale is deemed final

33.13 First Look Program for Institutional Foreclosures

Modeled on the federal First Look program, this section gives prospective owner-occupants and eligible bidders the first opportunity to purchase one-to-four-unit residential properties acquired through foreclosure by an 'institution' that forecloses on 175 or more residential properties annually in California. During the first 30 days after listing, the institution may only accept offers from eligible bidders, who must submit an affidavit or declaration. The intent is to expand homeownership and strengthen neighborhoods before investor offers are considered.

- ✓ Applies to institutions foreclosing on 175 or more residential properties annually in California
- ✓ During the first 30 days after listing, only offers from eligible bidders may be accepted
- ✓ Eligible bidders include prospective owner-occupants, qualifying nonprofits, community land trusts, and government entities
- ✓ Prospective owner-occupant must occupy as primary residence within 60 days and maintain occupancy at least one year

33.14 Refinance of Purchase Money Loans Retains Protection

For credit transactions executed on or after January 1, 2013, refinancing a purchase money loan retains anti-deficiency protection, except as to any new principal advanced that was not applied to the original purchase money obligation. Payments of principal are deemed applied first to the purchase money balance, then to any new advance.

- ✓ A refinance is deemed a purchase money loan except as to the principal amount of any new advance
- ✓ Guarantors, pledgors, and other sureties are not protected and may still be liable for the deficiency
- ✓ Any purported waiver of these protections is void and against public policy under related provisions

33.15 Definition of Fair Market Value for Trustee Sales

'Fair market value' for the 67% rule means an estimate made within six months of the initially scheduled sale, determined by an opinion of a licensed real estate broker, an appraisal from a licensed appraiser, a commercially utilized automated valuation model, or a computerized property valuation system. The trustee may rely on the value provided and has no duty to verify its source or accuracy. Failure to comply does not affect validity of the sale to a bona fide purchaser.

- ✓ Valuation may come from a licensed broker's opinion, licensed appraiser, AVM, or computerized valuation system
- ✓ Estimate must be made within six months of the initially scheduled sale date
- ✓ Trustee has no duty to verify the source or accuracy of the valuation

33.16 Required Bidder and Owner Warnings on Notice

For deeds of trust secured by one-to-four single-family residences, the notice of sale must contain a 'Notice to Potential Bidders' warning that bidders buy a lien (possibly junior) not the property itself and may be responsible for senior liens, and a 'Notice to Property Owner' explaining that the sale date may be postponed and how to obtain postponement information (toll-free number or website available 24/7 at no cost).

- ✓ Notice must warn bidders they are bidding on a lien, not the property, and may owe senior liens
- ✓ Postponement information must be made available free of charge, 24 hours a day, seven days a week
- ✓ Failure to comply with the notice-language requirements does not invalidate an otherwise valid sale

33.17 Postponement Limits and Procedures

A trustee's sale may be postponed for any period not exceeding a total of 365 days from the date in the notice of sale, upon court order, operation of law, mutual agreement of trustor and beneficiary, trustee discretion, or force majeure preventing access. Postponements exceeding 365 days require a new notice of sale. Each postponement and its reason must be announced by public declaration at the time and place last appointed for sale, and the trustee must maintain records of each postponement.

- ✓ Total postponements may not exceed 365 days from the notice date without a new notice of sale
- ✓ Postponement must be given by public declaration stating the new date, time, and place of sale
- ✓ A force majeure postponement is for seven calendar days at the same time and location

33.18 Exceptions to Short Sale Protection

The short sale anti-deficiency protection does not apply if the borrower commits fraud or waste with respect to the property, or if the borrower is a corporation, LLC, limited partnership, or political subdivision of the state.

- ✓ Fraud or waste by the trustor/mortgagor allows the lender to pursue damages and existing remedies
- ✓ Protection does not apply where the borrower is a corporation, LLC, limited partnership, or political subdivision

CHAPTER 34

Loan Terms and Borrower Protections

34.1 Reverse Mortgage Disclosure and Annuity Prohibition

The first page of any deed of trust securing a reverse mortgage must state in 10-point boldface type: 'This deed of trust secures a reverse mortgage loan.' A lender or origination participant may not require an applicant to purchase an annuity as a condition of the loan, and may not refer borrowers to purchase annuities or other financial/insurance products before closing or expiration of the rescission right. Title, hazard, flood, and other customary insurance products are permitted.

- ✓ Deed of trust first page must contain the 10-point boldface reverse mortgage statement
- ✓ Lender may not require an annuity purchase as a condition of a reverse mortgage
- ✓ Lender may not refer borrowers for annuity/financial products before closing or expiration of rescission right

34.2 Reverse Mortgage Mandatory Counseling Requirements

Before accepting a final application, the lender must give the borrower a list of at least 10 HUD-approved counseling agencies. The counseling agency may not receive compensation from the lender. The lender may not accept a final application or assess fees until seven days lapse from the counseling date, evidenced by a signed counseling certification. A required plain-language notice must be provided in 16-point type before counseling, and a reverse mortgage worksheet guide in 14-point type before the counseling session.

- ✓ Lender must provide a list of at least 10 HUD-approved counseling agencies before final application
- ✓ Lender may not accept a final application or assess fees until 7 days after counseling, per signed certification
- ✓ 16-point plain-language notice and 14-point worksheet guide must be provided to the applicant

34.3 Real Estate Broker Usury Exemption

Loans made or arranged by a licensed California real estate broker and secured in whole or part by liens on real property are exempt from the usury interest-rate restrictions in Article XV of the California Constitution. This is a commonly tested financing/agency point.

- ✓ Loans made or arranged by a licensed real estate broker and secured by real property are exempt from constitutional usury limits
- ✓ A loan is 'arranged' by a broker when the broker acts for compensation to solicit, negotiate, or arrange the loan for another
- ✓ The exemption applies whether the broker acts as a principal or agent and whether or not acting within

the scope of the license

34.4 Reverse Mortgage Requirements

A reverse mortgage is a nonrecourse loan secured by real property that provides cash advances based on the equity in the borrower's owner-occupied principal residence and requires no payment until the loan becomes due.

- ✓ A reverse mortgage is nonrecourse and based on equity in the borrower's owner-occupied principal residence
- ✓ No payment of principal or interest is required until the entire loan becomes due and payable
- ✓ The loan must be made by a lender licensed or chartered under state or federal law
- ✓ Prepayment in whole or part must be permitted without penalty at any time

34.5 Reverse Mortgage Loan Terms and Events of Maturity

A reverse mortgage may have a fixed or adjustable interest rate (including compound interest) and may include lender costs and fees charged at execution, periodically, or at maturity. If the loan provides periodic advances, those advances cannot be reduced based on interest rate adjustments. A lender who fails to make required advances and fails to cure after notice forfeits treble the amount wrongfully withheld plus legal interest. The loan may become due when the home is sold or title transferred, all borrowers cease occupying it as a principal residence, a fixed maturity date occurs, or an event jeopardizing the lender's security occurs.

- ✓ A lender failing to make required advances and to cure default forfeits treble the amount wrongfully withheld plus legal-rate interest
- ✓ Loan becomes due upon sale/transfer of title, borrowers ceasing occupancy as principal residence, fixed maturity date, or event jeopardizing security
- ✓ Periodic advances may not be reduced in amount or number due to interest rate adjustment

34.6 Reverse Mortgage Occupancy and Absence Rules

Temporary absences not exceeding 60 consecutive days do not cause the mortgage to become due. Extended absences over 60 consecutive days but less than one year do not trigger maturity if the borrower has taken prior action to secure and protect the home satisfactory to the lender. The lender's right to collect proceeds is subject to the statute of limitations for written loan contracts, commencing when the loan becomes due and payable. A property held in trust is deemed owner-occupied if the occupant is a beneficiary of that trust.

- ✓ Temporary absences up to 60 consecutive days do not accelerate the loan
- ✓ Absences over 60 days but under one year do not accelerate if borrower has secured the home satisfactorily
- ✓ Property held in trust qualifies as owner-occupied if occupant is a trust beneficiary

34.7 Reverse Mortgage Lien Priority

A reverse mortgage constitutes a lien against the property to the extent of all advances made and all interest accrued on those advances. That lien has priority over any lien filed or recorded after recordation of the reverse mortgage loan.

- ✓ The reverse mortgage lien covers all advances plus accrued interest
- ✓ The lien has priority over liens recorded after the reverse mortgage recordation

34.8 Impound Account Requirement Prohibited Except Limited Cases

A lender generally cannot require an impound, trust, or other account for taxes/insurance on a single-family owner-occupied dwelling except in specified situations (government requirement, prior default/delinquency, LTV 90%+ of sale price or appraised value, combined loans exceeding 80% of appraised value, higher-priced mortgage loans under Reg Z, or loans under a homeownership preservation program). An impound account established in violation is voidable at the borrower's option at any time, without otherwise affecting the loan's validity.

- ✓ Impound accounts on single-family owner-occupied dwellings may only be required in the enumerated exceptions (e.g., 90%+ LTV, combined loans over 80% of appraised value, higher-priced mortgage loans)
- ✓ Other statutory exceptions: a loan made, guaranteed or insured by a state or federal government lender, or a borrower who fails to pay two consecutive tax installments
- ✓ A prohibited impound account is voidable at the borrower's option at any time but does not invalidate the loan or sale
- ✓ 'Single-family, owner-occupied dwelling' means one owned and occupied by a signatory within 90 days of execution of the mortgage/deed of trust

34.9 Limits on Impound Account Balances and Handling

A lender maintaining an impound account may not require monthly deposits exceeding RESPA limits, may not hold sums exceeding what is reasonably necessary to pay obligations as they come due, and may not make payments causing insurance cancellation or tax delinquency. Excess sums must be refunded within 30 days unless the parties agree otherwise, and any such agreement may be rescinded at any time.

- ✓ Monthly impound deposits cannot exceed RESPA (12 U.S.C. 2609) limits, and balances cannot exceed amounts reasonably necessary to pay obligations
- ✓ Excess funds must be refunded within 30 days unless the parties mutually agree otherwise
- ✓ Lender may not disburse in a way that causes insurance cancellation or tax delinquency; harmed persons may sue for damages or injunctive relief

34.10 Late Charge Limits on Residential Loans

For a loan secured by a mortgage/deed of trust on a single-family owner-occupied dwelling, a late charge cannot exceed the greater of 6% of the principal-and-interest installment due or $5. A payment is not 'late' until at least 10 days after the due date, and a late charge cannot be imposed more than once for the same installment.

- ✓ Late charge limited to the greater of 6% of the P&I installment or $5
- ✓ A payment is not late until at least 10 days after the due date; no late charge if paid within that period
- ✓ A late charge cannot be imposed more than once on the same installment; payments apply to the most recent installment due

34.11 PMI Cancellation Notice to Borrower

When PMI or mortgage guaranty insurance is required as a loan condition, the lender must notify the borrower in writing whether it can be canceled, and if so provide the identifying info, cancellation conditions (including the required loan-to-value ratio and whether an appraisal is needed), and cancellation procedure. This notice is due within 30 days after close of escrow, in at least 10-point bold type, at no cost. Violation allows treble damages plus attorney's fees.

- ✓ PMI cancellation notice must be given within 30 days after close of escrow in at least 10-point bold type
- ✓ Notice must state cancellation conditions including the required LTV ratio and whether an appraisal is necessary
- ✓ Does not apply to FHA/VA loans or bond-funded mortgages requiring insurance for the life of the loan; violations allow treble damages and attorney's fees

34.12 Prepayment Rights and Charges on Residential Loans

For loans on residential property of four units or less, the borrower may prepay all or part of the balance plus accrued interest at any time. For owner-occupied residential property of four units or less, a prepayment charge may only apply within five years of execution; up to 20% of the original principal may be prepaid in any 12-month period without penalty, and a charge on the excess cannot exceed six months' advance interest on that excess.

- ✓ Borrower of residential property of four units or less may prepay in whole or part at any time
- ✓ Prepayment charges on owner-occupied 1-4 unit residential loans allowed only within five years of execution
- ✓ Up to 20% of original principal may be prepaid per 12-month period penalty-free; charge on excess capped at six months' advance interest on that excess

34.13 No Prepayment Penalty on Acceleration or Disaster

An obligee that accelerates the loan upon conveyance (due-on-sale) cannot collect a prepayment penalty resulting from that acceleration, subject to written-waiver exceptions for 1-4 unit residential loans. No prepayment penalty may be charged where the securing residential structure is rendered unoccupiable by a natural disaster in a governor-declared state of emergency and the prepayment is causally related.

- ✓ No prepayment charge may be collected for prepayment resulting from acceleration on conveyance, absent a valid separately signed written waiver on 1-4 unit residential loans
- ✓ No prepayment penalty applies when a governor-declared natural disaster renders the residential structure unoccupiable and prepayment is causally related
- ✓ For installment loans, no prepayment charge applies when prepayment is made in conjunction with a bona fide sale of the securing real property

34.14 Cancellation of Private Mortgage Insurance

A lender or servicer may not charge or collect future PMI or mortgage guaranty insurance payments once specified conditions are met, primarily when the loan balance drops to 75% or less of value. This protects owner-occupied one-to-four unit residential borrowers from paying unnecessary insurance.

- ✓ PMI cancellation available when outstanding principal is 75% or less of the lesser of sales price or appraised value
- ✓ Loan must be for personal, family, household, or purchase money on owner-occupied 1-4 unit residential property
- ✓ Borrower must be current, with no more than one late penalty and no payment over 30 days late in prior 12 months
- ✓ Loan must have been made on or after January 1, 1998

34.15 Earthquake Insurance Disclosure on Condo Loans

A lender originating a loan secured by a borrower's separate interest in a condominium project that requires earthquake insurance (or a fee in lieu) must make specific written disclosures to the potential borrower.

- ✓ Lender must disclose that it or the institutional third party requires earthquake insurance or a fee in lieu
- ✓ Lender must disclose that not all lenders require earthquake insurance
- ✓ Lender must disclose earthquake insurance may be required on the entire condominium project
- ✓ Disclosure must be made in writing as soon as reasonably practicable

34.16 Hazard Insurance Limited to Replacement Value

No lender may require a borrower to carry hazard insurance on improvements exceeding their replacement value as a condition of a loan. The lender must disclose this rule in writing before execution of loan documents.

- ✓ Lender cannot require hazard insurance exceeding the replacement value of improvements
- ✓ Written disclosure of this rule required before execution of any note or security documents
- ✓ Violation allows injunctive relief, damages, and attorney's fees but does not affect loan validity

34.17 Consumer Caution and Home Ownership Counseling Notice

A covered loan cannot be made unless the 'Consumer Caution and Home Ownership Counseling Notice' is provided to the consumer in writing (12-point font or larger) no later than three business days before signing the loan documents. The notice warns borrowers they could lose their home, advises shopping around for rates/fees, recommends consulting an independent credit counselor, and provides the HUD counseling hotline. A signed acknowledgment of receipt creates a rebuttable presumption the disclosure obligation was met.

- ✓ The disclosure must be provided in writing, 12-point font or larger, at least three business days before signing loan documents
- ✓ A consumer's signed acknowledgment of receipt creates a rebuttable presumption the disclosure was delivered
- ✓ The notice must inform borrowers of risk of losing the home and reference HUD-approved housing counseling

34.18 Mortgage Broker Disclosure and Anti-Steering Duties

A mortgage broker who arranges only higher-priced mortgage loans must disclose that fact to the borrower both orally and in writing at the time of initially engaging in mortgage brokerage services. Brokers may not steer borrowers to a higher-cost loan than they qualify for, may not make false or misleading statements, and must receive the same compensation regardless of whether paid by lender, borrower, or third party.

- ✓ A broker arranging only higher-priced mortgage loans must disclose that fact orally and in writing at the outset
- ✓ Brokers cannot steer borrowers to loans costing more than they qualify for
- ✓ A broker must receive the same compensation whether paid by lender, borrower, or third party

34.19 Real Property Loan Advertisement License Disclosure

Any advertisement disseminated primarily in California for a loan secured by real property collateral must disclose the license under which the loan is made or arranged, and the state regulatory entity supervising that loan type. If lending is unlicensed, the ad must state that the loan is being made by an unlicensed party not under state regulatory supervision.

- ✓ Real property loan advertisements must disclose the license and supervising state regulatory entity
- ✓ Unlicensed lending ads must state the loan is arranged by an unlicensed party not under state supervision
- ✓ Banks, savings associations, credit unions, and industrial loan companies (and non-separately-licensed affiliates) are excepted

34.20 Variable Rate Loan Disclosure Requirements

For loans by non-supervised lenders financing purchase or construction of 1-4 residential units, variable interest rate provisions are only valid if certain protective terms and a bold disclosure notice are included in the security document.

- ✓ An increase in rate requires an identical decrease when the index moves in the opposite direction
- ✓ Rate may change no more than once per semiannual period and not more than 0.25% per period, capped at 2.5 points above the initial rate
- ✓ The security document must contain a 10-point boldface 'NOTICE TO BORROWER' stating the document contains a variable interest rate provision
- ✓ Borrower may prepay without penalty within 90 days of notice of a rate increase

34.21 Shared Appreciation Loan Definition

A shared appreciation loan is secured by real property and obligates the borrower to pay contingent deferred interest (a share of appreciation, rents/profits, or both). Owner-occupied 1-4 unit residences are generally excluded from the base definition.

- ✓ Contingent deferred interest is the borrower's obligation to pay a share of the property's appreciation and/or rents and profits
- ✓ The base definition excludes loans on 1-4 unit residential property occupied by the borrower
- ✓ The borrower-lender relationship is debtor-creditor only, not a joint venture or partnership
- ✓ Lenders are exempt from constitutional usury provisions for shared appreciation loan transactions

34.22 Adjustable-Rate Residential Mortgage Disclosure

Lenders offering adjustable-rate residential mortgage loans on 1-4 unit properties must provide the Federal Reserve's 'Consumer Handbook on Adjustable Rate Mortgages' and comply with disclosure and prepayment requirements.

- ✓ Lenders must provide the Federal Reserve 'Consumer Handbook on Adjustable Rate Mortgages' upon request or when first giving written ARM information, whichever is earlier
- ✓ Borrower must be permitted to prepay in whole or part without a prepayment charge at any time
- ✓ A 'lender' is one making more than 10 loans in any 12-month period on 1-4 unit residential property
- ✓ Failure to comply exposes the lender to actual damages, costs, and attorney's fees

34.23 Restriction on Pre-Recording Interest Accrual

For loans secured by one-to-four residential dwelling units, a borrower cannot be required to pay interest on the principal for more than one day prior to recording of the mortgage/deed of trust when loan proceeds are placed in escrow. Interest may accrue the business day before recording only if the borrower affirmatively requests a Monday/post-holiday recording and the per diem interest disclosure is signed before funds are placed in escrow.

- ✓ No interest may be charged more than one day prior to recording for 1-4 unit residential loans in escrow
- ✓ Early interest accrual requires borrower's affirmative request plus written per diem disclosure signed before escrow funding

34.24 Annual Itemized Accounting of Loan and Impound Funds

Every mortgagee, beneficiary, or vendor must, on written request, furnish the borrower an itemized annual accounting of interest, principal, and impound funds within 60 days after year-end. One accounting per calendar year is free; additional statements carry set fees ($0.50/month if requested in advance for a year or more, $1 for a single month, $5 for a single cumulative statement).

- ✓ Borrower entitled to one free itemized accounting per calendar year; additional statements cost $0.50, $1, or $5 depending on type
- ✓ Accounting must be furnished within 60 days after the end of the calendar year
- ✓ No increase in the monthly impound payment is effective until the borrower receives an itemized accounting, the new payment rate, and an explanation of the increase

34.25 Automatic Annual Statement Under § 2954.2

Every mortgagee of record on a one- to four-family residence securing purchase-money or refinance debt must furnish the mortgagor a written annual statement within 60 days after year-end, without charge and without request, showing interest, principal, late charges, and impound activity. The statement must contain a 10-point-type notice that additional accountings can be requested under § 2954.

- ✓ One free annual statement must be provided without request within 60 days of year-end for one- to four-family residences
- ✓ 'Mortgagee' includes deed-of-trust beneficiaries, real property sale contract vendors, and loan servicers; 'mortgage' includes first/second mortgages, deeds of trust, and real property sale contracts
- ✓ Statement must include a 10-point-type notice of the right to request additional accountings

34.26 Notice Prerequisite to First Late Charge

Before assessing a first late/default charge on a delinquent real-property loan payment, the lender must either notify the borrower in writing giving at least 10 days from mailing to cure, or inform the borrower by billing/notice of the date after which the charge applies. The notice must state the charge amount or calculation method.

- ✓ Before the first late charge, borrower must get written notice with at least 10 days to cure, or advance billing notice of the assessment date
- ✓ The notice must state the amount of the charge or the method of calculation
- ✓ For multiple borrowers, notice mailed to one satisfies the requirement

34.27 Termination of PMI Payments Conditions

A borrower may terminate future PMI payments if conditions are met: a written request, note at least two years old, personal/family/purchase-money purpose secured by owner-occupied one- to four-unit property, unpaid principal balance no more than 75% of sale price or current appraised value, and payments current (not more than 30 days late over the prior 24 months with no recorded notice of default).

- ✓ PMI payments may be terminated only if the unpaid principal balance is 75% or less of sale price or current fair market value
- ✓ The note must be at least two years old and payments must be current (no more than 30 days late over the preceding 24 months)
- ✓ Borrower pays for any appraisal, which is ordered and the appraiser selected by the lender/servicer; does not apply to notes executed before January 1, 1991

34.28 Interest Required on Impound Accounts

A financial institution making or purchasing loans on a one- to four-family residence in California that holds advance funds for taxes, insurance, or related purposes must pay the borrower at least 2% simple interest per annum, credited annually or on termination. It may not impose fees that reduce the effective rate below 2%. The same 2% rule applies to hazard insurance proceeds held in a loss draft account pending repair.

- ✓ Impound accounts on one- to four-family residences must earn at least 2% simple interest per annum, credited annually or on termination
- ✓ No fee or charge may reduce the effective interest rate below 2%
- ✓ Hazard insurance proceeds held in a loss draft account pending rebuilding/repair must also earn at least 2% interest

34.29 Negative Amortization Disclosure on Covered Loans

A covered loan generally cannot contain a negative amortization provision (where the payment schedule causes the principal balance to increase). The exception is a first mortgage where the originator discloses to the consumer that the loan contains a negative amortization provision that may add principal to the loan balance.

- ✓ Covered loans cannot contain negative amortization provisions unless it is a first mortgage
- ✓ The originator must disclose in writing that the loan may add principal to the balance

34.30 Prohibition on Steering and Ability-to-Repay

An originator may not steer, counsel, or direct a consumer to a loan product with a risk grade less favorable than one they qualify for. A covered loan may not be made unless the originator reasonably believes the consumer can repay based on income, obligations, and resources (not counting equity in the home). A borrower is presumed able to repay if total monthly debts do not exceed 55% of monthly gross income.

- ✓ Originators cannot steer consumers to a worse risk grade than they qualify for
- ✓ Ability to repay must be evaluated without relying on the consumer's home equity
- ✓ A borrower is presumed able to repay if total monthly debts do not exceed 55% of gross monthly income

34.31 CFPB Rulemaking Authority over RESPA and TILA

On the designated transfer date of July 21, 2011, Title X of the Dodd-Frank Act moved rulemaking authority for RESPA from HUD and for TILA from the Federal Reserve Board to the Consumer Financial Protection Bureau. RESPA is now implemented by Regulation X (12 CFR 1024) and TILA by Regulation Z (12 CFR 1026), both administered and enforced by the CFPB. Acting under that authority the CFPB issued the TILA-RESPA Integrated Disclosure rule, which replaced the Good Faith Estimate and the HUD-1 settlement statement with the Loan Estimate and the Closing Disclosure for most closed-end consumer mortgages closing on or after October 3, 2015. The CFPB supervises depository institutions with more than $10 billion in assets and non-depository mortgage originators, brokers and servicers of any size, and enforces the RESPA prohibition on kickbacks and unearned fees. A real estate licensee is not CFPB-supervised merely by holding a license, but referral-fee arrangements, marketing services agreements and affiliated business arrangements with lenders, title companies and escrow providers are squarely within the CFPB enforcement remit.

- ✓ Dodd-Frank Title X transferred RESPA rulemaking from HUD and TILA rulemaking from the Federal Reserve to the CFPB effective July 21, 2011
- ✓ RESPA is implemented by Regulation X (12 CFR 1024); TILA by Regulation Z (12 CFR 1026); both are now CFPB rules
- ✓ The CFPB TRID rule replaced the GFE and HUD-1 with the Loan Estimate and Closing Disclosure for applications taken on or after October 3, 2015
- ✓ CFPB supervises depositories over $10 billion in assets plus non-depository mortgage originators, brokers and servicers of any size
- ✓ RESPA Section 8 bars kickbacks, referral fees and unearned fees for referring settlement service business; an Affiliated Business Arrangement disclosure is required when referring to an affiliated provider

34.32 Dodd-Frank Act: Mortgage Reform, ATR/QM and MLO Licensing

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203), signed in July 2010, rebuilt the federal framework for residential mortgage lending after the 2008 financial crisis. Title X created the Consumer Financial Protection Bureau and consolidated federal consumer-finance rulemaking in it. Title XIV, the Mortgage Reform and Anti-Predatory Lending Act, added the Ability-to-Repay requirement: before making a closed-end consumer mortgage a creditor must make a reasonable, good-faith determination that the borrower can repay it, verified from third-party records rather than stated income. A loan meeting the Qualified Mortgage criteria receives a presumption of compliance. Title XIV also bars loan originator compensation that varies with the terms of the loan other than loan amount, bars steering a borrower to a loan that pays the originator more, restricts mandatory arbitration clauses and single-premium credit insurance in residential mortgages, and requires escrow accounts and a written appraisal with a physical interior inspection on higher-priced mortgage loans. Building on the earlier SAFE Act regime, a California real estate licensee who originates residential mortgage loans must obtain an NMLS-registered mortgage loan originator license endorsement from the DRE in addition to the real estate license.

- ✓ Dodd-Frank (Pub. L. 111-203, 2010): Title X created the CFPB; Title XIV reformed residential mortgage origination
- ✓ Ability-to-Repay: the creditor must make a reasonable good-faith determination of repayment ability from verified third-party records; a Qualified Mortgage carries a presumption of compliance
- ✓ Loan originator compensation may not vary with loan terms other than the loan amount, and steering a borrower to a higher-paying loan is prohibited
- ✓ Mandatory arbitration clauses and single-premium credit insurance are restricted in residential mortgage transactions
- ✓ Higher-priced mortgage loans require an escrow account and a written appraisal based on a physical interior inspection
- ✓ A California real estate licensee acting as a mortgage loan originator needs an NMLS MLO license endorsement issued by the DRE

CHAPTER 35

Seller Financing, Land Contracts, Loan Modification and Foreclosure Consultants

35.1 Home Equity Sales Contract Definitions

This chapter protects homeowners in foreclosure from equity purchasers who buy homes below fair value. Understanding who qualifies as an equity purchaser, equity seller, and a residence in foreclosure is essential.

- ✓ An 'equity purchaser' is any person who acquires title to a residence in foreclosure, EXCEPT one buying for personal residence, via deed in lieu, at a trustee's sale, by statute/court order, or from a spouse or blood relative
- ✓ A 'residence in foreclosure' is a 1-to-4 family dwelling, one unit owner-occupied as principal residence, against which a notice of default has been recorded
- ✓ An 'equity seller' is any seller of a residence in foreclosure
- ✓ Business day excludes Sunday and listed federal holidays

35.2 Home Equity Contract Form and Content Requirements

Every home equity sales contract must be written and contain specific terms, formatting, and a mandatory statutory notice, and must be signed and dated before any conveyance instrument is executed.

- ✓ Contract must be in letters equal to 10-point bold type, in the language principally used to negotiate the sale (§ 1695.2)
- ✓ Contract must be fully completed, signed, and dated by both parties BEFORE execution of any instrument of conveyance
- ✓ Contract must include equity purchaser's name/address/phone, property address, total consideration, payment terms, possession transfer time, rental terms, and a cancellation notice
- ✓ Must contain the 14-point boldface 'NOTICE REQUIRED BY CALIFORNIA LAW' warning that no deed may be signed until the cancellation right ends

35.3 Equity Seller's Right to Cancel

The equity seller has a strong statutory right to cancel a home equity sales contract, providing a cooling-off period to protect vulnerable homeowners.

- ✓ The seller may cancel until midnight of the FIFTH business day after signing, OR until 8 a.m. on the day of the foreclosure sale, whichever occurs first (§ 1695.4)
- ✓ Cancellation is effective by personal delivery of written notice or by telegram to the address in the contract, and need not be in any particular form
- ✓ The cancellation statement must be in immediate proximity to the seller's signature in at least 12-point bold type
- ✓ Until the purchaser complies with these notice requirements, the equity seller may cancel the contract

35.4 Prohibited Acts by Equity Purchaser

During the cancellation period, the equity purchaser is barred from taking numerous actions, and is prohibited from making misleading statements at any time.

- ✓ Until the cancellation period fully elapses, the purchaser cannot accept or induce execution of a conveyance, record documents, transfer/encumber the property, or pay the seller any consideration
- ✓ Within 10 days of receiving a cancellation notice, the purchaser must return without condition all original contract and documents signed by the seller
- ✓ The purchaser must make no untrue or misleading statements regarding value, proceeds, contract terms, or the seller's rights

35.5 Seller Financing Arranger of Credit Duties

In a purchase of a dwelling for four or fewer families where an arranger of credit is involved and the seller (vendor) extends credit, written disclosures must be made to both purchaser and vendor. The arranger who obtained the purchase offer generally makes the disclosures.

- ✓ Applies to purchase of dwelling for not more than four families with an arranger of credit and vendor-extended credit
- ✓ Disclosures must be made to the purchaser and to the vendor in writing
- ✓ When multiple arrangers exist, the one who obtained the purchase offer makes the disclosure unless parties designate another in writing

35.6 Loan Modification Free-Services Disclosure

A licensee who negotiates or offers to perform a mortgage loan modification or forbearance for a fee paid by the borrower must provide a separate statement in not less than 14-point bold type, before entering any fee agreement, advising that it is unnecessary to pay a third party and that HUD-approved nonprofit counseling is available free. Applies to mortgages/deeds of trust on residential property of four or fewer dwelling units.

- ✓ Free-services statement must be provided in not less than 14-point bold type before any fee agreement
- ✓ If services negotiated in a Civil Code Section 1632 language, statement must be translated into that language
- ✓ Violation by a natural person is punishable by up to $10,000 fine and/or up to one year jail; corporation up to $50,000
- ✓ Applies only to residential real property of four or fewer dwelling units
- ✓ Civil Code § 2944.6 imposes the same notice on any person (not only licensees), except a person modifying a loan they own or service

35.7 Remedies, Unconscionability, and Rescission

Equity sellers have powerful civil and criminal remedies against violating equity purchasers, including exemplary damages, and may rescind unconscionable transactions.

- ✓ Seller recovers actual damages plus attorneys' fees and costs; exemplary damages of at least 3x actual damages are awarded for certain violations (§ 1695.7)
- ✓ Actions must be commenced within 4 years of the alleged violation
- ✓ Taking unconscionable advantage of a property owner in foreclosure is unlawful (§ 1695.13), and such a transaction may be rescinded within 2 years of recordation of the conveyance
- ✓ Any waiver of the chapter's provisions is void and unenforceable as contrary to public policy (§ 1695.10)
- ✓ An absolute conveyance with a repurchase option creates a presumption that the transaction is a loan/mortgage, rebuttable by clear and convincing evidence

35.8 Representative Licensing and Bonding Requirement

Any representative acting for an equity purchaser must be a licensed real estate agent and be bonded, providing written proof to the equity seller.

- ✓ The representative must provide written proof of a valid current California Real Estate Sales License (§ 1695.17)
- ✓ The representative must be bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the property
- ✓ A written statement under penalty of perjury confirming licensing and bonding must be given to all parties before transfer of any interest

✓

Failure to comply renders the equity purchase contract void at the seller's option and makes the purchaser liable for all damages

35.9 Definition and Exemptions of Foreclosure Consultant

A foreclosure consultant is any person who solicits or performs, for compensation, services represented to stop/postpone foreclosure sale, obtain forbearance, assist with reinstatement, save the residence from foreclosure, or obtain surplus foreclosure proceeds. Licensed attorneys, licensed real estate persons acting under their license authority (BPC 10131/10131.1), banks, and certain lenders are exempt. Real estate licensees should know when their activities fall within the exemption.

- ✓ A foreclosure consultant performs services for compensation to stop/postpone a foreclosure sale or save a residence in foreclosure
- ✓ Attorneys, real estate licensees acting under license authority, banks, and lenders are exempt from the definition
- ✓ 'Residence in foreclosure' and 'owner' are defined by reference to Section 1695.1
- ✓ Foreclosure consultant activity begins from recording of the Notice of Default until the foreclosure sale

35.10 Foreclosure Consultant Contract and Cancellation Rights

An owner may cancel a foreclosure consultant contract until midnight of the fifth business day after signing. Every contract must be in writing, disclose the exact nature of services and total compensation, include a state-required 14-point boldface notice, and be accompanied by a detachable notice of cancellation form in duplicate. The contract must be in the language principally used in negotiation.

- ✓ Owner may cancel until midnight of the fifth business day after signing a compliant contract
- ✓ Contract must be in writing, fully disclose services and total compensation, with required 14-point boldface notice
- ✓ A detachable Notice of Cancellation form (10-point type) must accompany the contract in duplicate
- ✓ Until the consultant complies with Section 2945.3, the owner may cancel the contract

35.11 Prohibited Foreclosure Consultant Practices

A foreclosure consultant may not collect compensation until fully performing all contracted services, charge more than 10% per annum on any loan made to the owner, take any lien/security or power of attorney, receive undisclosed third-party consideration, or acquire any interest in the residence in foreclosure from the owner they contracted with. These consumer-protection prohibitions are frequently tested.

- ✓ No compensation until all contracted services are fully performed
- ✓ Cannot charge more than 10 percent per annum on any loan made to the owner
- ✓ Cannot take any lien, security, or power of attorney; such security is void and unenforceable
- ✓ Cannot acquire any interest in the residence in foreclosure from the owner they contracted with (voidable)

35.12 Foreclosure Consultant Registration, Bond and No-Waiver

A foreclosure consultant must register with and maintain a certificate from the Department of Justice and obtain a $100,000 surety bond in favor of the State for the benefit of homeowners. Any waiver by an owner of these protections is void as against public policy. Owners may sue for actual damages, attorneys' fees, and at least treble exemplary damages, within four years of the violation.

- ✓ Must register with the Department of Justice and maintain a $100,000 surety bond
- ✓ Any owner waiver of the article's protections is void and unenforceable as contrary to public policy
- ✓ Owner action must be commenced within four years of the alleged violation; exemplary damages at least 3x
- ✓ A representative must be a licensed California real estate salesperson bonded at twice the property's fair market value

35.13 Required Seller Financing Disclosures

The arranger must disclose detailed credit terms to both parties, including senior encumbrance terms, balloon payment warnings, negative amortization risks, all-inclusive trust deed responsibilities, purchaser credit data, title insurance, and requests for notice of default.

- ✓ Must disclose terms of the note and all senior recorded encumbrances (balances, payments, balloon, interest rate, default status)
- ✓ Must warn if refinancing may be needed due to lack of full amortization and that it may be difficult
- ✓ Must disclose negative amortization potential and any balloon payment date and amount
- ✓ Must disclose purchaser's credit data and warn CCP Section 580b may limit recovery to net sale proceeds on foreclosure

35.14 Definition of Real Property Sales Contract

A real property sales contract (land contract) is an agreement to convey title upon satisfaction of specified conditions that does not require conveyance of title within one year of formation. It may not be transferred apart from the underlying property.

- ✓ A real property sales contract does not require conveyance of title within one year from formation
- ✓ The contract may not be transferred by the fee owner unless accompanied by transfer of the property, and vice versa
- ✓ A land contract may still be assigned or pledged as security to the holder of a first lien

35.15 Seller Trust Duties and Required Statements

Sellers under land contracts must hold pro rata insurance and tax payments in trust and must include required statements in the contract, including number of years to complete payment and the basis for tax estimates.

- ✓ Seller must hold pro rata insurance and tax payments in trust for the designated purpose
- ✓ Contracts entered after Jan 1, 1966 must state years required to complete payment and basis of tax estimate
- ✓ Misappropriating buyer installment payments while seller's own obligation is due is a public offense

35.16 Buyer Right to Prepay Land Contract

A buyer of subdivided residential land (dwelling for not more than four families) under contracts entered on or after January 1, 1969 has the right to prepay all or part of the balance, though the seller may prohibit prepayment for up to 12 months by written agreement.

- ✓ Buyer entitled to prepay all or part of the balance on qualifying residential land contracts
- ✓ Seller may prohibit prepayment for up to a 12-month period by written agreement
- ✓ Any waiver of the buyer's prepayment right is contrary to public policy, unenforceable, and void

CHAPTER 36

Mortgage Loan Brokerage under the Real Estate Law

36.1 Threshold Broker Reporting Criteria

Sections 10232.2, 10232.25, 10233, and 10236.6 apply to a 'threshold broker' who intends or reasonably expects, in a successive 12 months, to negotiate 10 or more loan/note/contract transactions totaling more than $1,000,000, or to make collections of $250,000 or more on behalf of note owners or obligors. Certain institutional lenders/purchasers (Fannie Mae, Ginnie Mae, Freddie Mac, FHA, VA, banks, etc.) are excluded from the count. A broker meeting the criteria must notify the DRE in writing within 30 days after that determination.

- ✓ Threshold status: 10+ transactions totaling over $1,000,000 in 12 months, or collections of $250,000+ on behalf of owners/obligors
- ✓ Institutional lenders/purchasers (FNMA, GNMA, FHLMC, FHA, VA, banks) do not count toward the threshold
- ✓ A broker meeting the criteria must notify the DRE in writing within 30 days of that determination

36.2 Threshold Broker Annual Trust Fund Reports

A threshold broker must annually file reports with the DRE within 90 days after the end of the broker's fiscal year, including a review of trust fund financial statements by a licensed California independent public accountant and a report of business activity (numbers and dollar amounts of transactions, servicing, fees, defaults, foreclosures, and commissions). A broker who received no trust funds in cash or convertible to cash may instead file a notarized statement under penalty of perjury within 30 days. Failure to file may result in a DRE examination billed at 1.5 times cost and possible license suspension or denial of renewal.

- ✓ Annual trust fund reports must be filed within 90 days after the broker's fiscal year end
- ✓ Reports require a review of trust fund statements by a licensed California independent public accountant
- ✓ Failure to file may lead to a DRE exam charged at 1.5 times cost and license suspension or renewal denial

36.3 Quarterly Trust Funds Status Report

A threshold broker must file a trust funds status report with the commissioner within 30 days after the end of each of the first three fiscal quarters. The report must represent compliance of trust account records and bank account with regulations, state aggregate accountability for trust funds, include bank statements and a schedule reconciling to true balance, and explain any difference between accountability and the adjusted bank balance. It must be declared true under penalty of perjury by the broker (and, for a corporate broker, signed by a broker-officer).

- ✓ Quarterly trust funds status reports are due within 30 days after each of the first three fiscal quarters
- ✓ Report must reconcile trust account bank balance to the broker's aggregate accountability and explain any difference
- ✓ Report requires a penalty-of-perjury declaration by the broker; corporate reports signed by a broker-officer

36.4 Loan-to-Value Limits for Mortgage Note Sales

When a broker sells or offers to sell a note secured by real property (or an undivided interest in such a note), the aggregate principal amount of the note plus senior encumbrances cannot exceed set percentages of the current market value of each parcel. Values are determined in writing by the broker or appraiser under § 10232.6.

- ✓ Owner-occupied single-family residence: 80% LTV maximum
- ✓ Non-owner-occupied single-family residence: 75%
- ✓ Commercial/income-producing properties: 65%; single-family zoned improved lot with offsite improvements: 65%
- ✓ Income-producing land (crops, timber, minerals): 60%
- ✓ Zoned but non-income producing land for development: 50%; other real property: 35%
- ✓ Absolute caps when exceeding: 80% improved real property, 50% unimproved, 65% single-family zoned lot
- ✓ The same LTV schedule applies to multilender (fractionalized) note sales under Article 6 (§ 10238)

36.5 Delivery and Retention of Loan Disclosure Statement

When soliciting a person to make a loan secured by real property or to purchase a real property sales contract or note secured by a deed of trust, the broker must deliver the completed § 10232.5 statement as early as practicable before the person becomes obligated and before receipt of any funds. The statement must be signed by both the lender/purchaser and the broker (or salesperson on the broker's behalf).

- ✓ Disclosure statement must be delivered before obligation and before receipt of funds
- ✓ Statement must be signed by prospective lender/purchaser and broker
- ✓ Broker must retain a true copy of the executed statement for three years

36.6 Required Content of Lender Disclosure Statement

For loan negotiation under § 10131(d), the disclosure statement to the prospective lender must include property identification, estimated fair market value (by appraisal, waivable in writing), property description, borrower identity/income/credit data, note terms, encumbrance information, loan servicing provisions, joint beneficiary arrangements, use of funds, and a suitability responsibility statement.

- ✓ Must include estimated fair market value determined by appraisal (lender may waive in writing case-by-case)
- ✓ Must disclose terms of the promissory note and all liens/encumbrances against the securing property
- ✓ Must include statement of broker's responsibility to determine suitability if subject to § 10232 or Article 6

36.7 Limit of Ten Qualified Purchasers

Notes or interests under this exemption may not be sold to more than 10 persons, each of whom must qualify by income or net worth and sign a retained statement that the investment does not exceed 10% of net worth (excluding home, furnishings, autos) or 10% of adjusted gross income. Spouses and dependents count as one person; institutional investors are not counted. The signed statement must be retained by the broker for four years.

- ✓ Maximum 10 purchasers per multilender transaction
- ✓ Investment cannot exceed 10% of purchaser's net worth or 10% of adjusted gross income
- ✓ Purchaser statement must be retained by broker for four years
- ✓ Spouses and their dependents count as one person

36.8 Mortgage Loan Disclosure Statement Requirement

Every real estate broker negotiating a loan secured by a lien on real property must deliver a written Mortgage Loan Disclosure Statement (containing all § 10241 information) within three business days after receiving a completed written loan application, or before the borrower becomes obligated on the note, whichever is earlier. The statement must be personally signed by the borrower and the broker/licensee, and an exact copy delivered to the borrower at execution. The broker must retain a true copy on file for three years.

- ✓ Disclosure statement must be delivered within 3 business days of completed application or before borrower obligation, whichever is earlier
- ✓ Statement must be personally signed by borrower and broker/licensee
- ✓ Broker must retain a signed copy for three years
- ✓ Licensee may not permit borrower to sign if any required § 10241 information is omitted

36.9 Required Content of Loan Disclosure Statement

The statement (form approved by the commissioner) must separately set forth estimated maximum costs (appraisal, escrow, title, notary, recording, credit fees), broker commissions/loan origination fees, existing liens and their priority, amounts paid on borrower's order, net loan proceeds, principal, interest rate, term, installment info, balloon payment notice, broker identity/license number, broker-controlled funds disclosure, prepayment terms, and a statement that credit insurance is not required.

- ✓ Balloon payment loans require the specified 10-point bold NOTICE TO BORROWER about refinancing risk and foreclosure
- ✓ Statement must disclose broker name, license number, and licensed place of business
- ✓ Broker must disclose if loan may be made wholly or partly from broker-controlled funds

36.10 Maximum Costs, Charges and Commissions

Costs/expenses (excluding actual title and recording fees) cannot exceed 5% of principal or $390, whichever is greater, capped at $700 and actual costs. Commission limits vary by lien priority and term: first trust deed loans allow 5% (term under 3 years) or 10% (3+ years); junior trust deeds allow 5% (under 2 years), 10% (2 to under 3 years), or 15% (3+ years). No interest may be charged before proceeds are available or deposited in escrow.

- ✓ Costs/expenses capped at greater of 5% of principal or $390, but never more than $700
- ✓ First trust deed commission: 5% if term under 3 years, 10% if 3 years or more
- ✓ Junior trust deed commission: 5%/10%/15% based on term brackets

36.11 Acceptance and Retention of Loan Funds

A broker doing mortgage loan brokerage acts under Sections 10131(d), 10131(e), and 10131.1 may not accept purchase or loan funds from a prospective purchaser or lender except as to a specific loan, real property sales contract, or note that the broker is authorized to negotiate or sell or has bought and fully paid for. Funds payable under a promissory note or real property sales contract may not be retained longer than 25 days except pursuant to a written agreement with the purchaser or lender.

- ✓ Funds may only be accepted for a specific loan, contract, or note the broker is authorized to handle
- ✓ Funds payable under a note or contract may not be retained longer than 25 days without a written agreement
- ✓ These rules apply to acts under Section 10131(d), 10131(e), and 10131.1

36.12 Solicitation Statement Before Accepting Investor Funds

A broker who solicits and accepts funds for a purchase or loan transaction in which the broker will directly or indirectly obtain the use or benefit of the funds (other than commissions, fees, and costs) must first submit a copy of the required disclosure statement to the DRE. The completed statement (per Section 10232.5) must be delivered to the person solicited at least 24 hours before accepting any funds or executing any obligating instrument. It must be signed by the lender/purchaser and the broker, a copy given to the lender/purchaser, and the broker must retain a true copy for four years.

- ✓ Disclosure statement must be delivered at least 24 hours before accepting funds or executing an obligating instrument
- ✓ The executed statement must be signed by both the prospective lender/purchaser and the broker
- ✓ Broker must retain a true copy of the executed statement for four years

36.13 Exceeding LTV Limits and Written Justification

A broker may exceed the standard LTV percentages when the broker determines the excess encumbrance is reasonable and prudent considering all relevant factors, but never above the absolute caps. A written statement of the material considerations must be prepared and retained in the transaction records.

- ✓ Broker must prepare and retain a written statement of material considerations relied upon
- ✓ Copy of statement or its information must be included in § 10232.5 disclosures
- ✓ Aggregate never exceeds 80% improved / 50% unimproved / 65% single-family zoned lot

36.14 Appraisal Delivery to Purchaser

A copy of the appraisal or the broker's evaluation for each parcel securing the note must be delivered to the purchaser, and the broker must advise the purchaser of the right to receive a copy. An appraisal is a written estimate of value based on assembling, analyzing, and reconciling facts and value indicators. A broker may not purport to appraise unless qualified by special training, preparation, or experience.

- ✓ Copy of appraisal/evaluation must be delivered to purchaser for each parcel
- ✓ Broker must advise purchaser of right to receive a copy
- ✓ Broker cannot appraise without qualifying training, preparation, or experience

36.15 Purchaser Suitability Statement (Income/Net Worth)

A note or interest cannot be sold unless the purchaser meets an income or net worth qualification and signs a statement retained by the broker for four years. The purchaser must certify that the investment does not exceed 10% of net worth (excluding home, furnishings, autos) or 10% of adjusted gross income.

- ✓ Purchaser must certify investment $\leqslant$10% of net worth (excluding home, furnishings, autos) OR $\leqslant$10% of adjusted gross income
- ✓ Broker must retain the signed statement for four years

36.16 Exemptions from Disclosure Statement Requirement

The disclosure statement need not be delivered to certain sophisticated or governmental parties, including sellers taking back purchase-money notes, government entities and agencies (FNMA, GNMA, FHLMC, FHA, VA), banks and financial institutions, pension/profit-sharing/welfare funds with net worth of at least $15 million, SEC-registered corporations, and licensed real estate brokers or residential mortgage lenders/servicers.

- ✓ Seller taking back a purchase-money note is exempt
- ✓ Pension/profit-sharing/welfare funds must have net worth of at least $15,000,000 to qualify as exempt
- ✓ Banks, government agencies, and licensed brokers/mortgage lenders are exempt

36.17 Broker Custody of Investor Funds Pending Disbursement

When a broker holds a prospective lender/purchaser's funds with express permission in an escrow depository or trust fund account, the broker must deliver the disclosure statement and obtain written consent before disbursing. Absent a § 10231.1 written agreement, the broker must return uncommitted funds within 25 days of receipt.

- ✓ Broker must obtain owner's written consent before disbursing held funds
- ✓ Absent a § 10231.1 written agreement, funds must be transmitted back within 25 days after receipt

36.18 Investor Suitability Determination

Brokers subject to § 10232.3 or Article 6 must make reasonable efforts to ensure purchasers can understand the investment, bear the economic risk, and that the investment is suitable given their objectives, portfolio, and financial situation. The determination is based on information obtained from the purchaser.

- ✓ Broker must ensure purchaser has capacity to understand and can bear the economic risk
- ✓ Suitability must consider age, investment objective, experience, income, net worth, and financial situation
- ✓ Records supporting suitability must be retained at least four years

36.19 Required Content of Purchaser Disclosure Statement

For sale of a real property sales contract or note under § 10131(e) or § 10131.1, the statement to the prospective purchaser must include property identification and value, description of improvements, trustor/vendee ability to pay and payment history, contract/note terms and principal balance, servicing provisions, whether the dealer acts as principal or agent, and suitability responsibility.

- ✓ Must disclose the trustor's or vendee's payment history and ability to meet obligations
- ✓ Must state whether the dealer is acting as principal or agent
- ✓ Must include estimated fair market value by appraisal (purchaser may waive in writing)

36.20 Broker's Disclosure Duty via Licensed Appraiser

A broker who engages an appraiser licensed or certified by the Bureau of Real Estate Appraisers (BREA) and delivers the appraisal to the lender and purchaser meets the fair market value disclosure obligation under § 10232.5 and need not provide a separate value estimate. This does not apply if the appraiser is the broker's employee, and the broker remains liable if the referral was negligently made or the value was known to be inaccurate.

- ✓ Delivering a licensed appraiser's appraisal satisfies the FMV disclosure obligation
- ✓ Exception does not apply where appraiser is broker's employee or broker knew value was inaccurate
- ✓ Section applies only to loan transactions, not purchase/sales transactions

36.21 Authorization Required to Service Promissory Note

A licensee servicing a note or real property sales contract must have written authorization within a written servicing agreement, provide annual accountings of unpaid principal balance and collections/disbursements, and give written notice within 15 days of specified events such as recording a notice of default or trustee's sale.

- ✓ Servicing requires written authorization in a written servicing agreement meeting § 10238(k) requirements
- ✓ Written notice must be given within 15 days of recording a notice of default or notice of trustee's sale
- ✓ Notice required within 15 days of delinquency over 30 days or receipt of payment ⩾5 monthly payments with reconveyance request

36.22 Recordation of Trust Deeds and Assignments

A licensee negotiating a loan secured by a trust deed must cause it to be recorded naming the lender (not the licensee) as beneficiary before disbursing funds, unless the lender gives written authorization for prior release. If released early, the trust deed must be recorded or delivered within 10 days. Assignments of sold notes/contracts must be recorded within 10 working days after receiving funds or close of escrow.

- ✓ Trust deed must be recorded naming lender as beneficiary before funds are disbursed (unless written authorization)
- ✓ If funds released on authorization, trust deed must be recorded within 10 days
- ✓ Assignments must be recorded within 10 working days after receipt of funds or close of escrow; licensee cannot be named beneficiary/assignee

36.23 Misleading Loan Advertising Prohibited

A licensee may not knowingly advertise false, misleading, or deceptive statements about rates, terms, or conditions for making, purchasing, or negotiating loans or real property sales contracts. Implying a specific yield or return other than the note's stated interest rate is prima facie misleading unless the ad states the actual interest rate and the discount from principal balance.

- ✓ No false, misleading, or deceptive advertising regarding loan rates, terms, or conditions
- ✓ Implying a specific yield/return beyond the note's stated rate is prima facie misleading unless actual rate and discount are disclosed

36.24 License Number and Identifier Disclosure in Advertising

A licensee or mortgage loan originator advertising a loan in this state must disclose the DRE number and the NMLS unique identifier under which the loan would be made or arranged. Brokers must display their license number on all advertisements soliciting borrowers or investors, and disclosures under §§ 10232.4 and 10240 must include license number, unique identifier, and the department's license information telephone number.

- ✓ Loan advertisements must disclose DRE number and NMLS unique identifier
- ✓ Broker must display license number on all advertisements soliciting borrowers or investors
- ✓ §§ 10232.4 and 10240 disclosures must include license number, unique identifier, and DRE license info phone number

36.25 Penalties for Noncompliance with Section 10232

A broker who satisfies § 10232 criteria but fails to notify the DRE in writing within 30 days is assessed $50/day for the first 30 days, then $100/day, up to a maximum $10,000 total. The commissioner may suspend or revoke the license for failure to pay, and penalties are deposited into the Consumer Recovery Account of the Real Estate Fund.

- ✓ Penalty is $50/day up to day 30, then $100/day, capped at $10,000 total
- ✓ Commissioner may suspend or revoke license for failure to pay the penalty
- ✓ Penalties are deposited into the Consumer Recovery Account of the Real Estate Fund

36.26 Multilender Notice Filing With Commissioner

A broker conducting multilender (fractionalized) note transactions under Section 25102.5 of the Corporations Code must file a notice with the Real Estate Commissioner's Mortgage Loan Section within 30 days after the first transaction, and file an amended notice within 30 days of any material change. A servicing agent whose collected payments over any three consecutive months exceed $125,000, or who serves more than 120 investors, must file the notice within 30 days of becoming servicing agent.

- ✓ File original notice within 30 days after first transaction under § 10237
- ✓ File amended notice within 30 days of any material change
- ✓ Servicing agent must file within 30 days if payments exceed $125,000 in 3 consecutive months OR investors exceed 120

36.27 Trust Account Handling and Inspection

Payments received on multilender notes must be deposited immediately into a trust account maintained per Section 10145 and CCR Article 15, and may not be commingled with the servicing agent's assets. Payments must be transmitted pro rata to purchasers within 25 days of receipt. If payments over three consecutive months exceed $125,000 or investors exceed 120, the trust account must be inspected by an independent CPA at least every three months.

- ✓ Payments must be deposited immediately to a trust account and not commingled
- ✓ Payments must be transmitted pro rata to investors within 25 days of receipt
- ✓ Independent CPA inspection required at no less than 3-month intervals when thresholds are met
- ✓ CPA report forwarded to broker and commissioner within 30 days of period close

36.28 Broker Written Disclosure to Purchasers

The broker must disclose in writing to each purchaser or lender the material facts of the transaction on a commissioner-approved form (per § 10232.5), including sale price, premium/discount, effective rate of return, escrow holder, and all costs. Any interest of the broker or affiliate in the transaction must be disclosed, and risks associated with multiple-parcel security must be fully disclosed. A copy of the servicing agreement must be delivered to each purchaser.

- ✓ Written disclosure on a commissioner-approved form is mandatory to each purchaser
- ✓ Broker or affiliate interest in the transaction must be disclosed
- ✓ Copy of servicing agreement must be delivered to each purchaser
- ✓ Broker cannot own/develop the security property at time of sale unless disclosed

36.29 Default, Voting Rights, and No Guarantees

Documentation must provide that a default on any note is a default on all, and that holders of more than 50% of recorded beneficial interests govern actions on behalf of all holders under Civil Code § 2941.9. The broker or servicing agent may not issue guarantees or engage in advancing borrower payments, though advances to cover dishonored checks may be recovered from the trust fund when the past-due payment is received.

- ✓ A default on any note/interest is a default on all notes/interests
- ✓ Holders of more than 50% of recorded beneficial interests may govern collective actions
- ✓ Broker/servicing agent may not issue guarantees or advance borrower payments

36.30 Fiduciary Duty Preserved (§ 10239.1)

Nothing in this article changes existing agency relationships or limits the fiduciary duty of brokers to borrowers, lenders, and purchasers of notes or interests. The Commissioner of Financial Protection and Innovation's securities jurisdiction is neither limited nor expanded by this article.

- ✓ Broker's fiduciary duty to borrowers, lenders, and purchasers is not limited by this article
- ✓ Existing agency relationships between parties remain unchanged

36.31 Federal Disclosure Compliance for Larger Loans

In a federally regulated residential mortgage loan whose principal exceeds the thresholds in Section 10245, the broker satisfies the § 10240 disclosure requirement by providing the federal disclosures required by RESPA and the Truth in Lending Act (today the TRID Loan Estimate, which replaced the RESPA good faith estimate in October 2015), showing the broker's license number and a statement that it is not a loan commitment, plus the required balloon payment disclosure if applicable. The borrower must acknowledge receipt in writing before becoming obligated.

- ✓ For larger federally regulated loans the federal RESPA/TILA disclosures (the TRID Loan Estimate since 2015, formerly the GFE) satisfy the state Mortgage Loan Disclosure Statement requirement
- ✓ The disclosure must show the broker's license number and state that it is not a loan commitment
- ✓ Borrower must acknowledge receipt in writing before becoming obligated

36.32 Definition of 'Dwelling' Under the Article

A 'dwelling' means a single unit in a condominium or cooperative, or any parcel containing only residential buildings with four or fewer units, owned by a signatory to the securing mortgage or deed of trust at execution.

- ✓ A single condo/cooperative unit qualifies as a dwelling
- ✓ Residential parcels with 4 or fewer units qualify as a dwelling
- ✓ Except for § 10240, Article 7 applies only to loans secured by a dwelling

36.33 Broker-Controlled Funds Defined and Disclosed

'Broker-controlled funds' are funds owned by the broker, specified relatives (spouse, child, parent, grandparent, sibling, in-laws), or any entity in which the broker (alone or with those relatives) has a 10 percent or greater ownership interest. If a broker elects to make a loan with such funds, the borrower must be advised no later than the next business day after the election and before close of escrow.

- ✓ 10 percent or more ownership interest triggers broker-controlled funds classification
- ✓ Borrower must be notified of broker-controlled funds by the next business day and before escrow closes

36.34 Credit Insurance Cannot Be Required

Purchase of credit life or credit disability insurance cannot be required as a condition of making the loan. Only one credit disability premium may be collected per loan contract regardless of number of borrowers (with limited exceptions for multiple wage-earner borrowers).

- ✓ Credit life/disability insurance cannot be a condition of the loan
- ✓ Only one credit disability premium may be collected per loan contract

36.35 Appraisal Report Delivery to Borrower

When a fee is charged to the borrower for an appraisal of the security property, a copy of the appraisal report must be given to both the borrower and the lender at or before closing.

- ✓ Appraisal copy must go to both borrower and lender when a fee is charged
- ✓ Delivery must occur at or before closing of the loan

36.36 Late Charges on Real Property Loans

A late charge on an installment cannot exceed 10% of the installment (minimum $5 allowed), assessed only on the principal-and-interest portion. No late charge may be imposed more than once for the same late payment, nor on any installment paid within 10 days of its due date.

- ✓ Late charge limited to 10% of the installment, with a $5 minimum permitted
- ✓ No late charge if installment is paid within 10 days of the scheduled due date

36.37 Prepayment on Single-Family Owner-Occupied Loans

On a loan secured by a single-family owner-occupied dwelling, prepayment charges may apply only within 7 years of execution. Up to 20% of unpaid balance may be prepaid in any 12-month period without penalty; a charge on the excess cannot exceed six months' advance interest on the excess amount. No prepayment penalty applies if a natural disaster (declared state of emergency) renders the dwelling uninhabitable and prompts the prepayment.

- ✓ Prepayment charge allowed only within 7 years of loan execution
- ✓ 20% of unpaid balance may be prepaid penalty-free in any 12-month period
- ✓ Owner-occupied dwelling means occupied by a signatory within 90 days of execution

36.38 Loan Negotiation Agreement Term Limit

An exclusive agreement authorizing or retaining a licensee to negotiate a loan secured by real property is limited to a term of not more than 45 days. If the loan is not consummated due to borrower's failure to disclose liens or vested title, the borrower is liable for costs/expenses and one-half of the negotiation charges.

- ✓ Exclusive loan-negotiation agreement limited to 45 days maximum
- ✓ Broker may not record a lien against borrower's property except after filing a legal action

36.39 Article Exemption Thresholds

Except for Sections 10240, 10240.3, 10242.5, and 10242.6, the article does not apply to bona fide first trust deed loans of $30,000 or more, or to junior lien loans of $20,000 or more.

- ✓ First trust deed loans of $30,000+ are exempt from most of the article
- ✓ Junior lien loans of $20,000+ are exempt from most of the article

36.40 Borrower Remedies and Non-Waiver

A borrower may recover three times any excess or prohibited amount plus costs and reasonable attorney's fees (action within 2 years), unless the overcharge was a bona fide error, in which case only the excess is recoverable. A borrower cannot waive any right or remedy under this article, though bona fide settlements are allowed.

- ✓ Borrower may recover treble the excess/prohibited charge plus costs and attorney's fees
- ✓ Recovery action must be brought within two years; borrower cannot waive rights under the article

36.41 Broker Exemption for Series of Notes Secured by Real Property

A real estate broker licensed by the California Real Estate Commissioner is deemed the issuer of a series of notes (or undivided interests in notes) secured directly by real property when offered under a common plan complying with Article 6 (§ 10237) of the Real Estate Law. Such transactions are exempt from securities qualification under Section 25110, relieving the broker of separate securities registration for these mortgage-note offerings.

- ✓ A series of notes secured directly by an interest in the same real property, or equivalent undivided interests, is exempt from Section 25110 if it complies with Article 6 (commencing with § 10237) of the Business and Professions Code
- ✓ A licensed real estate broker offering such notes of various makers under a common documentation/loan-standard plan with servicing provisions is deemed the issuer of the notes and undivided interests

36.42 Real Estate Syndicate Broker Securities Exemption

Under § 25206, a broker licensed by the Real Estate Commissioner is exempt from the securities-agent requirements of Section 25210 when handling interests in general/limited partnerships, joint ventures, or unincorporated associations (not corporations) formed solely for investment in real property. This allows licensed brokers to market real estate syndication interests without a separate securities license within defined limits.

- ✓ The entity must be owned beneficially by no more than 100 persons and formed for the sole purpose of investment in or gain from an interest in real property
- ✓ The exemption applies to partnerships, joint ventures, and unincorporated associations but NOT to corporations
- ✓ An interest held by spouses counts as held by one person for the 100-person limit

36.43 Construction Loan Safeguards for Completed-Value Basis

For construction/rehabilitation loans, 'current market value' may equal the completed project value only if statutory safeguards are met. Requirements differ by whether the amount withheld exceeds $100,000. Loans must be fully funded into escrow before recording and cannot exceed $2,500,000 total.

- ✓ Loan must be fully funded and deposited in escrow prior to recording of deed(s) of trust
- ✓ Total loan cannot exceed $2,500,000
- ✓ When withheld amount exceeds $100,000, an independent neutral third-party escrow holder and independent qualified person verification of draws are required
- ✓ USPAP-compliant appraisal by qualified/licensed appraiser required

36.44 Investor Questionnaire Safe Harbor

A broker is deemed compliant if it obtains a completed commissioner-approved investor questionnaire at least two business days and not more than one year before each sale, and uses the responses as an aid. Subsequent questionnaires need only reflect updates. Use of a questionnaire is not mandatory.

- ✓ Questionnaire must be obtained at least 2 business days and no more than 1 year before completing each sale
- ✓ Use of a questionnaire is not required but provides a safe harbor

36.45 Broker Advancing Non-Obligor Funds

If a servicing broker applies funds other than those received from the obligor to protect the security (e.g., paying senior debt service), the broker must give written notice to the mortgagee/beneficiary/owner within 10 days, stating the date, amount, payee, source of funds, and reason for payment.

- ✓ Written notice required no later than 10 days after making the payment
- ✓ Notice must state date, amount, payee, source of funds, and reason

36.46 Prohibited Inducements for Loans

No licensee may advertise or offer to give a prospective purchaser or lender any premium, gift, or object of value as an inducement for making a loan or purchasing a note or real property sales contract.

- ✓ Advertising premiums, gifts, or objects of value as loan inducements is prohibited
- ✓ Applies to inducements for both making loans and purchasing notes/contracts

36.47 Commissioner Audit of Broker Accounts

The commissioner may, after reasonable notice, audit any broker conducting transactions under this article, examining trust accounts and certain nontrust accounts where trust funds were deposited. Nontrust account audit authority is limited to instances where an annual/independent CPA review or departmental audit reveals unauthorized transfers.

- ✓ Audits require reasonable notice to the broker
- ✓ Nontrust account audits limited to where reviews reveal unauthorized transfers of trust money

36.48 Good Faith Reliance on Interpretive Opinions

The commissioner may honor requests for interpretive opinions on this article. No liability provision applies to an act done or omitted in good faith in conformity with a written interpretive opinion of the commissioner or the Attorney General, even if the opinion is later amended, rescinded, or held invalid.

- ✓ Good faith conformity with a written interpretive opinion shields from liability under this article
- ✓ Protection continues even if the opinion is later amended, rescinded, or invalidated

36.49 Nontraditional and Subprime Lending Standards

The commissioner applies published guidance on nontraditional mortgage product risks and subprime mortgage lending to brokers acting under Section 10131.1 or 10131(d). Brokers must adopt and adhere to policies reasonably intended to meet those objectives.

- ✓ Brokers must adopt and adhere to policies addressing nontraditional and subprime lending risks
- ✓ Applies to brokers acting under Section 10131.1 or 10131(d)

CHAPTER 37

Leasehold Estates and Lease Essentials

37.1 Distinguishing Feature of Leasehold Interest

A leasehold interest is defined by the tenant's right to exclusive possession and use of real property for a fixed period. The landlord retains the reversion (basic title) during the lease. Parties without exclusive possession rights (hotel guests, licensees, employees) are not governed by landlord-tenant law.

- ✓ Exclusive possession is the hallmark of a leasehold/tenancy
- ✓ Landlord retains the reversion during the lease term
- ✓ Hotel guests, licensees, and employees are NOT tenants because they lack exclusive possession

37.2 Four Categories of Leasehold Estates

Leases are classified into four types based on term: estate for years (definite fixed period), estate from period to period (periodic tenancy, e.g., month-to-month), estate at will (terminable by either party, no fixed period), and estate at sufferance (tenant holds over after lease expiration).

- ✓ Estate for years has a definite period fixed in advance
- ✓ Periodic tenancy continues for recurring periods (month-to-month is most common)
- ✓ Estate at will is terminable at will of either party with no set duration
- ✓ Estate at sufferance arises when a tenant holds over after the term expires

37.3 Lease as Both Conveyance and Contract

A lease has two characteristics: a conveyance of an estate creating 'privity of estate,' and a contract governing delivery, maintenance, use, and payment creating 'privity of contract.' Each carries its own rights and obligations.

- ✓ A lease creates privity of estate (conveyance of the leasehold)
- ✓ A lease creates privity of contract (agreement governing the relationship)
- ✓ Both privity types carry distinct rights and obligations

37.4 Statute of Frauds for Leases

A lease of one year or less may be created verbally, but longer leases must be in writing. California's Statute of Frauds requires a lease to be written if it has a term longer than one year OR a term under one year that expires more than one year after the agreement is reached.

- ✓ Leases of one year or less may be oral
- ✓ Leases longer than one year must be in writing
- ✓ A lease under one year that expires more than one year after the agreement must be in writing
- ✓ Unenforceable oral leases result in a tenant at-will if possession is taken

37.5 Essential Elements of a Lease

No particular words or form are required, but a valid lease must show intent to create a landlord-tenant relationship, identify the parties, describe the premises, specify time/amount/manner of rent, and establish a definite term.

- ✓ Must evidence intent to create a landlord-tenant relationship
- ✓ Must identify parties and describe the premises
- ✓ Must specify time, amount, and manner of rent payments
- ✓ Must establish a definite term

37.6 Contract Requirements for a Valid Lease

As a contract, a lease requires mutual assent (offer and acceptance), mutuality of obligation, legal capacity of the parties, and a lawful object. Lease provisions against public policy (e.g., waivers of tenant procedural rights or security deposit rights) are void even if the overall object is lawful.

- ✓ Requires mutual assent, mutuality of obligation, capacity, and lawful object
- ✓ Minors, persons of unsound mind, and those deprived of civil rights lack capacity
- ✓ Provisions waiving tenant procedural or security deposit rights are void as against public policy

37.7 Scope of Landlord-Tenant Chapter and Exclusions

This chapter applies to all persons who hire dwelling units in California, including tenants, lessees, boarders, and lodgers. It excludes transient occupancy in hotels/motels subject to transient occupancy tax, and certain hotel/motel occupancies where the innkeeper retains control and provides specified services (personal property safeguarding, central telephone, maid/mail/room service, occupancy under seven days, and food service). A 'dwelling unit' is a structure or part used as a home or sleeping place by persons maintaining a household.

- ✓ The chapter covers all persons who hire dwelling units, however denominated
- ✓ Transient hotel/motel occupancy subject to occupancy tax is excluded
- ✓ Hotel occupancy exclusion requires the innkeeper to retain control and provide specified services

37.8 Leasehold Estate as Chattel Real

Although a leasehold is an interest in real property, it is classified as personal property (chattel real) and is governed by laws applicable to personal property.

- ✓ A leasehold estate is chattel real
- ✓ It is treated as a form of personal property despite involving real estate

37.9 Estate at Will and 30-Day Notice

An estate at will has no designated duration and is terminable by either party. Acceptance of periodic rent converts it to a periodic tenancy. California requires advance 30-day notice of termination for tenancies at will.

- ✓ Landlord's acceptance of periodic rent treats the tenancy as periodic (Civil Code 1946)
- ✓ California requires 30-day advance notice to terminate an estate at will

37.10 Foreign-Language Residential Lease Translation Rule (Civil Code § 1632)

When a residential lease or rental agreement for longer than one month is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean, the landlord must deliver an unexecuted translation of the lease in that language before it is signed. The English version signed by the parties remains the binding contract; failure to provide the translation lets the tenant rescind. The rule does not apply when the tenant negotiated through their own qualified interpreter.

- ✓ Civil Code § 1632 covers Spanish, Chinese, Tagalog, Vietnamese and Korean, not only Spanish
- ✓ A translated copy must be given before the residential lease (over one month) is executed; the English contract governs
- ✓ Failure to comply allows the tenant to rescind; a waiver of the right is void

37.11 Modification of Executory Lease Provisions

Executory (unperformed) provisions of a written lease cannot be orally modified; they must be modified in a writing signed by all original parties. Fully performed obligations may become executed modifications.

- ✓ Executory provisions must be modified in a signed writing
- ✓ Oral modification of unperformed written lease terms is ineffective

37.12 Execution, Delivery, and Acceptance

A written lease generally must be executed, delivered, and accepted to be enforced. A lease signed and delivered by the landlord is enforceable by the tenant even if unsigned by the tenant. If the tenant takes possession or pays rent without signing, acceptance is presumed and the landlord can enforce the lease, but full execution is needed to enforce special covenants.

- ✓ Landlord-signed and delivered lease is enforceable by tenant even if tenant did not sign
- ✓ Tenant's possession or rent payment presumes acceptance
- ✓ Full execution is required to enforce special contractual covenants (e.g., covenant to repair)

37.13 Recording of Leases

A lease or memorandum may be recorded in the county where premises are located. Unrecorded leases are still enforceable between the parties and against those with notice. A lease over one year that is unrecorded and gives no notice through possession becomes subordinate to a bona fide purchaser.

- ✓ A lease or memorandum may be recorded but recording is not required for enforceability between parties
- ✓ Unrecorded leases bind parties with notice of the tenant's interest
- ✓ An unrecorded lease over one year may be subordinate to a bona fide purchaser without notice

37.14 Lease Term and Statutory Presumptions

The term is the period the tenant may occupy the premises. If unspecified, a term is implied by law based on property type: residential defaults to the rent-payment period (one month if unaddressed), agricultural/grazing to one year, and other properties to one month absent custom or written designation.

- ✓ Residential term defaults to the rent-payment period; one month if unaddressed (CC 1944)
- ✓ Agricultural/grazing property term is one year
- ✓ Other property defaults to one month unless designated in writing (CC 1943)

37.15 Statutory Limits on Lease Terms

Statutory maximum term limits supersede agreed terms: agricultural/horticultural leases cannot exceed 51 years, town/city lots and mineral/oil/gas leases cannot exceed 99 years, and leases of property owned by emancipated minors or incompetents are limited to what a probate court authorizes. A lease commencing on a future event is invalid if it does not begin within 30 years of execution.

- ✓ Agricultural/horticultural leases limited to 51 years
- ✓ Town/city lot leases and mineral/oil/gas leases limited to 99 years
- ✓ Future-event commencement lease is invalid if term does not begin within 30 years of execution

37.16 Lease Renewal vs. Lease Extension

A renewal creates a new, distinct tenancy requiring a new instrument, while an extension continues the original lease. A holdover with landlord acceptance of rent presumes renewal on the same terms, month-to-month if rent is monthly, never longer than one year. Renewal/extension rights within the Statute of Frauds must be written and reasonably specific.

- ✓ Renewal creates a new tenancy; extension continues the original lease
- ✓ Holdover with rent acceptance presumes month-to-month renewal, no longer than one year
- ✓ Renewal/extension terms must be specific; 'to be mutually agreed upon' is unenforceable
- ✓ Options must be exercised strictly and before lease expiration

37.17 Automatic Renewal Clause in Residential Lease

A residential lease providing for automatic renewal if the tenant remains or fails to give notice is voidable by the non-drafting party unless the automatic renewal clause and a recital appear in 8-point boldface type immediately above the signature line.

- ✓ Automatic renewal clause is voidable by the non-drafting party
- ✓ It is valid only if printed in 8-point boldface with a boldface recital above the signature line

CHAPTER 38

Rent, Security Deposits and Screening Fees

38.1 Security Deposit Limits

For residential tenancies, a landlord generally cannot demand or receive security exceeding one month's rent, in addition to first month's rent. A limited exception allows up to two months for small landlords who are natural persons (or an LLC of natural persons) owning no more than two rental properties totaling no more than four units. Service members retain the one-month protection.

- ✓ General limit: security may not exceed one month's rent (in addition to first month's rent paid before occupancy); effective July 1, 2024
- ✓ Small-landlord exception: up to two months' rent if the landlord is a natural person or an LLC of all natural persons owning no more than two rental properties with no more than four total dwelling units
- ✓ The two-month exception does not apply to service members, who keep the one-month limit; landlords may not refuse to rent to a service member on that basis
- ✓ An advance payment of six or more months' rent is permitted if the lease term is six months or longer
- ✓ The tenant's claim to the security is prior to the claim of any creditor of the landlord

38.2 Permitted Uses of Security Deposit

A landlord may only claim from the security amounts reasonably necessary for: unpaid rent, repair of tenant-caused damage (beyond ordinary wear and tear), cleaning to restore the unit to its inception-of-tenancy cleanliness, and restoring personal property if authorized by the agreement. Landlords cannot deduct for ordinary wear and tear or preexisting conditions.

- ✓ Deductions are limited to unpaid rent, tenant-caused damage beyond ordinary wear and tear, cleaning to restore inception-level cleanliness, and (if authorized) restoration of personal property
- ✓ A landlord may NOT deduct for ordinary wear and tear, its cumulative effects, or preexisting damage/defects
- ✓ A landlord cannot require the tenant to pay for professional carpet or other professional cleaning unless reasonably necessary to restore the unit to inception condition (exclusive of wear and tear)

38.3 21-Day Return and Itemized Statement Rule

No later than 21 calendar days after the tenant vacates, the landlord must furnish an itemized statement of the security's disposition and return any remaining portion. If deductions exceed $125, the landlord must include copies of documents (bills, invoices, receipts) and photographs supporting the charges. Good-faith estimates are allowed when repairs or documents cannot be completed within 21 days.

- ✓ The landlord must furnish the itemized statement and return the remaining security no later than 21 calendar days after the tenant vacates
- ✓ Supporting documents (bills, invoices, receipts) and photographs must be included with the itemized statement unless deductions do not exceed $125 or the tenant waives it in writing
- ✓ If the security or rental payments were received electronically, the remainder must generally be returned electronically to a tenant-designated account unless another method is agreed in writing
- ✓ Where a repair or documentation cannot be completed within 21 days, the landlord may deduct a good-faith estimate and must complete requirements within 14 days of completing the repair or receiving documentation

38.4 Transfer of Deposit on Sale of Property

Upon termination of the landlord's interest (sale, assignment, death, receivership), the landlord must within a reasonable time either transfer the remaining deposit to the successor in interest and notify the tenant, or return the deposit to the tenant with an accounting. Before a voluntary transfer, the landlord must give the successor a written statement of the remaining security, itemized deductions, and their election.

- ✓ Landlord must either transfer deposit to successor (with notice to tenant) or return it to tenant with accounting
- ✓ Prior to voluntary transfer, landlord must deliver written statement of remaining security and deductions to successor
- ✓ Successor in interest assumes all landlord rights/obligations for the deposit upon receipt

38.5 Successor Liability and Damages for Bad Faith

If the landlord fails to comply with transfer rules, the successor is jointly and severally liable for the deposit. A successor cannot require the tenant to replace untransferred deposits without first making restitution or providing an accounting. Bad faith retention or demand may subject the landlord/successor to statutory damages up to twice the deposit amount plus actual damages, and the landlord bears the burden of proving reasonableness of amounts claimed.

- ✓ Successor jointly and severally liable with landlord for deposit repayment upon noncompliance
- ✓ Bad faith retention subjects landlord to statutory damages up to twice the security amount plus actual damages
- ✓ Landlord bears burden of proof as to reasonableness of amounts claimed
- ✓ A good-faith successor after reasonable investigation is not liable for damages

38.6 Application Screening Fee Limits and Rules

A landlord may charge an applicant a screening fee to cover actual costs of obtaining information (credit reports, reference checks). The fee cannot exceed actual out-of-pocket costs plus reasonable value of time, and is capped at $30 per applicant (adjustable annually by CPI since 1998). A landlord may not charge the fee when they know no unit is or will soon be available.

- ✓ Screening fee capped at $30 per applicant (CPI-adjustable annually from Jan 1, 1998)
- ✓ Fee cannot exceed actual out-of-pocket costs plus reasonable value of landlord's time
- ✓ No fee may be charged when landlord knows no unit is/will be available in a reasonable time

38.7 Independent Obligation to Pay Rent and Its Exceptions

The tenant's rent obligation is generally 'independent' of the landlord's obligations, so a tenant must keep paying even if the landlord fails to perform. Exceptions include breach of a material covenant, breach of the implied warranty of habitability (residential), and actual/constructive eviction, which may abate or terminate rent.

- ✓ Rent is generally an independent obligation despite landlord's failures
- ✓ Breach of the implied warranty of habitability (non-waivable) allows rent abatement
- ✓ Constructively evicted residential tenant may remain and abate rent proportionate to impairment
- ✓ Rent obligation terminates on eviction only if the tenant vacates

38.8 Purpose and Character of Security Deposits

A security deposit secures the tenant's performance and monetary obligations. It creates a debtor/creditor relationship, is held for the depositing tenant's benefit, and the tenant's claim has priority over the landlord's creditors except a bankruptcy trustee. Forms include cash, letters of credit, and certificates of deposit.

- ✓ Security deposit secures the tenant's lease performance
- ✓ Creates a debtor/creditor relationship between landlord and tenant
- ✓ Tenant's claim has priority over landlord's creditors except a bankruptcy trustee

38.9 Residential Deposits Are Refundable

In residential leases, regardless of label ('cleaning fee,' 'advance payment,' 'charge'), money deposited to secure performance is a refundable security deposit. Any purported waiver of the right to a refund (less lawful deductions) is null and void.

- ✓ All residential deposits securing performance are refundable regardless of label
- ✓ Waiver of the right to a security deposit refund is void
- ✓ Lawful deductions may be subtracted from the refund

38.10 Itemized Statement and Return of Deposit

After a tenant vacates and surrenders, the landlord must furnish an itemized statement (with supporting documents for repairs/cleaning) and return any remaining deposit within the statutory period, delivered personally or by first-class mail.

- ✓ Landlord must provide an itemized statement of deductions after surrender
- ✓ Landlord must include documentation for repair/cleaning deductions
- ✓ Remaining deposit must be returned within the statutory time (per CC 1950.5)

38.11 Transient Occupancy Trust Account and Recordkeeping

Any person or entity, including one employed by a real estate broker, who on behalf of another solicits, arranges, or accepts reservations or money for transient occupancies in a common interest development dwelling, apartment, or single-family home must maintain complete records and hold all money received in a trust account for the benefit of the owners. This is a property management/rental handling duty relevant to trust fund handling.

- ✓ All money received must be kept in a trust account maintained for the benefit of the dwelling unit owners
- ✓ Records and books of account must be kept per generally accepted accounting principles and maintained for at least three years
- ✓ Owners must receive an accounting at least quarterly (monthly when there are deposits or disbursements)
- ✓ A real estate licensee may satisfy these requirements by complying with the Real Estate Law

38.12 Permitted Forms of Rent and Deposit Payment

A landlord must allow a tenant to pay rent and the security deposit by at least one form that is neither cash nor electronic funds transfer (e.g., a check). Cash-only demands are only allowed for up to three months after a bounced check or stop-payment, with written notice. Landlords must also accept rent from a qualifying third party under certain conditions.

- ✓ Landlord must allow at least one payment method that is neither cash nor EFT (such as a personal check)
- ✓ Cash may be demanded as the exclusive form of payment only for up to three months following a dishonored check or stop-payment order, and only with written notice attaching the dishonored instrument
- ✓ A landlord may not charge any fee for payment by check for rent or security deposit
- ✓ A third party may pay rent if they provide a signed acknowledgment they are not a tenant and that acceptance does not create a new tenancy
- ✓ A waiver of these provisions is void and unenforceable as contrary to public policy

38.13 Reusable Tenant Screening Reports

A reusable tenant screening report is a consumer report prepared within the previous 30 days at the applicant's request and expense, made available to landlords at no cost. Landlords may elect to accept these reports but are not required to. If a landlord accepts one, the landlord cannot charge access or application screening fees.

- ✓ A reusable tenant screening report must be prepared within the previous 30 days, at the applicant's request and expense, and available to the landlord at no cost
- ✓ The report must include name, contact info, employment verification, last known address, and eviction history results, and must state the date through which the information is current
- ✓ If a landlord accepts a reusable screening report, the landlord shall not charge the applicant a fee to access it or an application screening fee
- ✓ Landlords are not required to accept reusable screening reports; where a local ordinance conflicts, the policy giving greater protection to applicants applies

38.14 Initial Inspection and Photo Requirements

After notice of intent to terminate, the landlord must notify the tenant in writing of the option to request an initial (pre-move-out) inspection and the right to be present. The purpose is to let the tenant cure deficiencies to avoid deductions. Landlords must give 48 hours' written notice of the inspection and provide an itemized statement of proposed deductions. New photo requirements apply for tenancies beginning July 1, 2025.

- ✓ Landlord must notify tenant in writing of the right to request an initial inspection and to be present; inspection occurs no earlier than two weeks before the termination date
- ✓ At least 48 hours' prior written notice of the inspection date/time is required unless both parties sign a waiver
- ✓ For tenancies beginning on/after July 1, 2025, the landlord must photograph the unit at the inception of the tenancy; beginning April 1, 2025, photos must be taken after the unit is returned (before and after repairs/cleanings)
- ✓ The tenant may cure identified deficiencies before termination to avoid deductions

38.15 Tenant Waiver of Deposit Documentation Rights

A tenant may waive certain rights to itemized documentation and photographs of the unit, but only if the waiver is signed at or after a termination notice is given, or no earlier than 60 days before a fixed-term lease expires. Even with a waiver, the landlord must comply if the tenant requests documentation within 14 days of receiving the itemized statement.

- ✓ Waiver only effective if signed at/after termination notice or within 60 days of fixed-term lease expiration
- ✓ Landlord must still provide documentation within 14 days if tenant requests within 14 days of receiving the itemized statement
- ✓ Waiver must substantially include the required statutory text

38.16 Bad Faith Forfeiture of Security Claim

A landlord who in bad faith fails to comply with the itemized statement and documentation requirements is not entitled to claim any amount of the security deposit. Mailings must go to the address provided by the tenant, or to the vacated unit if none is provided.

- ✓ Landlord loses right to claim any security if bad faith noncompliance with itemization duties
- ✓ Mailings sent to tenant-provided address, or the vacated unit if no address given

38.17 No Nonrefundable Deposits; Small Claims Enforcement

A lease or rental agreement cannot characterize any security as 'nonrefundable.' Actions under this section may be brought in small claims court if within jurisdictional limits. Proof of the existence and amount of a deposit may be established by any credible evidence such as a canceled check, receipt, or lease.

- ✓ No lease provision may label any security deposit as 'nonrefundable'
- ✓ Deposit disputes within jurisdictional amounts may be pursued in small claims court
- ✓ Deposit existence/amount provable by any credible evidence

38.18 Screening Fee Receipt and Refund Requirements

The landlord must provide an itemized receipt for the fee. If no reference check or credit report is performed, the unused portion must be refunded. A copy of any consumer credit report must be given to the applicant within seven days. If application isn't considered, the fee must be refunded within seven days. The screening fee is not an 'advance fee' or 'security.'

- ✓ Landlord must provide an itemized receipt for the screening fee
- ✓ Unused portion must be refunded if no reference check or credit report is obtained
- ✓ Copy of credit report must be provided to applicant within 7 days of receipt
- ✓ Screening fee is not an 'advance fee' (B&P 10026) or 'security' (Civil Code 1950.5)

38.19 Commercial (Non-Residential) Security Deposits

For non-residential rentals, deposits are held for the tenant and their claim is prior to any creditor except a bankruptcy trustee. The landlord may claim only amounts reasonably necessary for rent defaults, damage repair, or cleaning. If claimed only for rent, remaining deposit must be returned within two weeks; if claimed for repairs/cleaning, no later than 30 days after regaining possession.

- ✓ Deposit claim is prior to landlord's creditors except a bankruptcy trustee
- ✓ Deposit for rent-only defaults must be returned within 2 weeks of regaining possession
- ✓ Deposit including repair/cleaning must be returned no later than 30 days after regaining possession
- ✓ Bad faith retention subjects landlord to damages up to $200 plus actual damages

38.20 Nature and Source of Rent Obligation

Rent is consideration for possession, use, and enjoyment. The obligation arises from express lease terms (privity of contract) or mere occupancy where no gift is intended (privity of estate). A tenant is bound by covenant to pay rent even if never taking possession.

- ✓ Rent obligation arises from privity of contract or privity of estate
- ✓ Rent may be paid in goods, crops, or other consideration ('charges equivalent to rent')
- ✓ A covenant to pay rent binds a tenant even without taking possession

38.21 Late Charges and Forfeiture Limits

A late charge is enforceable only if reasonably related to the landlord's anticipated administrative costs and lost interest. Because forfeiture is drastic, a landlord generally may not terminate the lease solely for a late payment when the lease provides a late charge.

- ✓ Late charges must reasonably relate to actual anticipated costs and lost interest
- ✓ A landlord may not terminate the lease solely because of a late rent payment when a late charge applies

38.22 Rent on Condemnation/Eminent Domain

If leased premises are taken by eminent domain, the lease terminates on the date of taking (unless otherwise stated) and rent ceases. If only part is taken and the remainder remains usable, the tenant may still owe rent, so leases should provide for proportional abatement.

- ✓ Complete taking by eminent domain terminates the lease and rent obligation
- ✓ Partial taking with usable remainder may keep the rent obligation in force
- ✓ Leases should specify proportional abatement for partial takings

38.23 Bad Faith Retention Penalty

If the landlord retains any portion of the deposit in bad faith, the landlord is liable for actual damages plus a possible statutory penalty. Courts may award bad-faith damages when the facts warrant.

- ✓ Bad-faith retention exposes the landlord to actual damages plus statutory penalties
- ✓ Courts may award bad-faith damages based on the facts

38.24 Unbundled Parking for Qualifying Residential Property

An owner of a qualifying residential property that provides parking must unbundle parking from the price of rent. Off-street parking cannot be included in the rental agreement and must be covered by a separate agreement or addendum. Tenants have a right of first refusal to parking spaces built for their property.

- ✓ Parking must be unbundled from rent for the life of the property; off-street parking is handled in a separate agreement or addendum
- ✓ Tenants have a right of first refusal to parking spaces built for their property; remaining spaces may be leased month-to-month to on-site or off-site users
- ✓ Failure to pay a separately-leased parking fee cannot be the basis for an unlawful detainer, but the owner may revoke the parking right if unpaid by the 45th day after due
- ✓ 'Qualifying residential property' = a unit issued a certificate of occupancy on/after Jan 1, 2025, with 16+ units, in one of ten specified counties; excludes units with individual garages, affordable/deed-restricted, LIHTC, tax-exempt bond, or Section 8 units

38.25 Qualified Commercial Tenant Operating Cost Protections

A commercial landlord cannot charge a qualified commercial tenant fees for building operating costs unless costs are proportionately allocated, incurred within the prior 18 months or reasonably expected within 12 months, and supporting documentation is provided upon written request within 30 days. Qualified tenants include microenterprises, restaurants with fewer than 10 employees, and nonprofits with fewer than 20 employees. Applies to leases/tenancies on or after January 1, 2025.

- ✓ Building operating costs must be proportionately allocated and documented before charging a qualified commercial tenant
- ✓ Qualified tenant = microenterprise, restaurant with <10 employees, or nonprofit with <20 employees
- ✓ Landlord must provide supporting documentation within 30 days of written request
- ✓ Any waiver of these rights by a qualified commercial tenant is void as against public policy

38.26 Timing and Delivery of Rent

Absent agreement or course of dealing, rent is due at the end of each holding period and delivered to the premises. Most leases specify advance payment and a specific payment address. Rent paid by check suspends the obligation until presented to the bank, but a knowingly bad check does not suspend the obligation.

- ✓ Absent agreement, rent is due at the end of the period and payable at the premises
- ✓ Payment by check suspends the rent obligation until presentment
- ✓ A tenant knowingly issuing a bad check does not suspend the obligation and may face immediate suit or eviction

CHAPTER 39

Possession, Habitability, Maintenance and Tenant Remedies

39.1 Landlord's Limited Right of Entry (Residential)

A landlord may enter a residential unit only in specific situations: emergency, to make repairs/improvements, to supply services, to show the unit, when abandoned/surrendered, or by court order. The landlord may not abuse or harass, and any waiver of these protections is void.

- ✓ Entry allowed only for emergency, repairs, services, showing, abandonment, or court order
- ✓ Landlord may not abuse access rights or harass the tenant
- ✓ Waiver or modification of statutory entry protections is void

39.2 Covenant of Quiet Enjoyment

Every lease implies a covenant of quiet enjoyment—the landlord warrants not to disturb the tenant's possession. It does not protect against acts of third parties beyond the landlord's control. Breaches include eviction, denying access, allowing paramount-title ouster (e.g., senior foreclosure), or disturbances rendering premises unsuitable.

- ✓ Every lease implies a covenant of quiet enjoyment
- ✓ The covenant does not cover acts of uncontrollable third parties
- ✓ A senior lienholder's foreclosure without a non-disturbance agreement breaches the covenant
- ✓ A tenant must have legal right to possession to claim breach

39.3 Implied Warranty of Habitability

California implies a warranty of habitability in residential leases—premises must meet bare living requirements. The tenant need not vacate to escape rent; the tenant remains liable for the reasonable rental value while occupying. The tenant must first give notice and allow a reasonable time to cure before reducing rent or vacating, and does so at risk if a court disagrees.

- ✓ Residential dwellings carry a non-waivable implied warranty of habitability
- ✓ Tenant need not vacate to assert habitability (unlike commercial constructive eviction)
- ✓ Tenant must give notice and allow reasonable time to cure before withholding rent
- ✓ Withholding rent risks eviction if the court finds no breach

39.4 Landlord Pesticide Application Disclosure

A landlord applying pesticide without a licensed pest control operator must give affected tenants written notice at least 24 hours before application, including the pest, product name/brand, required caution statement, and approximate date/time/frequency. Broadcast applications (over two square feet), foggers, or aerosols also require notice to affected adjacent units.

- ✓ Written notice must be given at least 24 hours prior to application when landlord applies pesticide without a licensed operator
- ✓ Notice must state the pest, pesticide product name and brand, the state-required CAUTION statement, and approximate date/time/frequency
- ✓ Adjacent units (beside, above, or below) must be notified for broadcast applications, foggers, or aerosol sprays
- ✓ Common area pesticide notices must be posted before application and remain posted at least 24 hours after

39.5 Landlord Duty to Provide Security Devices

A landlord of a building intended for human habitation must install and maintain an operable dead bolt lock on each main swinging entry door, operable window security/locking devices on openable windows, and locking mechanisms on common area exterior doors in multifamily developments. The tenant must notify the landlord of inoperable devices, and the landlord is liable only if not corrected within a reasonable time after notice.

- ✓ Landlord must install/maintain an operable dead bolt on each main swinging entry door; the bolt must extend at least 13/16 inch beyond the strike edge
- ✓ Landlord must provide window security/locking devices for openable windows (excluding louvered, casement, and high windows) and locks on common area exterior doors in multifamily developments
- ✓ Does not apply to horizontal sliding doors or to historically significant buildings
- ✓ Tenant must notify landlord of inoperable devices; landlord not liable unless failing to correct within a reasonable time after notice

39.6 Tenant Repair and Deduct Remedy

If a landlord fails within a reasonable time after notice to repair dilapidations rendering the premises untenantable, the tenant may make repairs and deduct the cost from rent (up to one month's rent) or vacate and be discharged from further rent. Acting after 30 days is presumed reasonable.

- ✓ Tenant repair-and-deduct cost may not exceed one month's rent of the premises
- ✓ Remedy is available no more than twice in any 12-month period
- ✓ Repairing/deducting after the 30th day following notice is presumed to be after a reasonable time (rebuttable)
- ✓ Remedy is unavailable if the condition was caused by the tenant's own violation (Sections 1929 or 1941.2)

39.7 Notice Requirements for Entry

Except in emergencies, abandonment, or consent, entry must be during normal business hours with reasonable advance notice; 24 hours is presumed reasonable. Notice must state date, approximate time, and purpose. Special oral-notice rules apply for showings to buyers after written notice of sale.

- ✓ Entry generally requires reasonable notice; 24 hours is presumed reasonable
- ✓ Entry must be during normal business hours absent emergency or consent
- ✓ Notice must include date, approximate time, and purpose

39.8 Habitability Criteria (Civil Code 1941.1)

A residential landlord must keep the dwelling habitable, including weatherproofing/unbroken windows and doors, working plumbing and gas, hot/cold running water, working heating and electrical systems, clean and sanitary grounds free of vermin, adequate garbage receptacles, sound floors/stairs/railings, and (in residential hotels) a locking mail receptacle.

- ✓ Landlord must maintain waterproofing, plumbing, water, heating, and electrical in working order
- ✓ Premises must be clean, sanitary, and free of vermin at commencement
- ✓ Floors, stairways, and railings must be in good repair

39.9 Non-Residential Maintenance and Compliance

In non-residential leases, the landlord has no implied duty to repair; obligations are set by the lease, and absent a covenant the tenant takes the premises 'as is.' Compliance with laws (asbestos, seismic, ADA) is determined by lease terms and, under Brown v. Green, the parties' probable intent based on factors like term length, cost, and repair nature.

- ✓ No implied landlord duty to repair in non-residential leases
- ✓ Absent a covenant, tenant takes commercial premises 'as is'
- ✓ Brown v. Green analyzes probable intent for compliance costs (term, cost, structural vs. non-structural)

39.10 Fixtures and Trade Fixtures

Improvements and fixtures often become part of the premises (landlord's property) at term end unless agreed otherwise. However, trade fixtures installed for trade, manufacture, ornamental, or domestic use may be removed by the tenant during or at the end of the term, unless removal would damage the property.

- ✓ Permanent improvements generally become the landlord's property at term end
- ✓ Trade fixtures may be removed by the tenant unless integral or removal causes injury
- ✓ Parties should address fixture disposition by agreement in advance

39.11 Residential Landlord Liability for Defects

A residential landlord may be liable in negligence for injuries from hazardous conditions discoverable by reasonable inspection at renting, and must repair defects arising later after tenant notice. Warning a tenant is generally insufficient to avoid liability.

- ✓ Liable for pre-existing defects discoverable by reasonable inspection
- ✓ Duty to repair later-arising defects after receiving notice
- ✓ Merely warning the tenant does not insulate the landlord from liability

39.12 Pest Control Service Contract Notice to Tenants

A landlord who has executed a contract for periodic pest control service must provide each new tenant with a copy of the notice provided by the registered structural pest control company under B&P Code Section 8538.

- ✓ Landlord must give each new tenant a copy of the structural pest control company's notice if a periodic pest control contract exists
- ✓ Requirement is triggered when a contract for periodic pest control service has been executed

39.13 Smoke Detector Responsibility

Every dwelling for human occupancy must have an operable smoke detector. The landlord installs and maintains it, but once operable at possession, the tenant must notify the landlord if it becomes inoperable.

- ✓ Landlord must install and maintain operable smoke detectors
- ✓ Tenant must notify landlord if a working detector later becomes inoperable

39.14 Tenant's Affirmative Obligations (Civil Code 1941.2)

If a tenant's failure substantially contributes to uninhabitability, the landlord has no duty to repair. Tenants must keep their area clean/sanitary, dispose of waste properly, use fixtures properly, not damage the premises, and occupy areas only for intended uses.

- ✓ Tenant must keep the unit clean, dispose of waste, and use fixtures properly
- ✓ Tenant must not deface or damage the structure or fixtures
- ✓ Landlord's repair duty is excused if tenant substantially causes uninhabitability

39.15 Latent Defects — Peterson Standard

Under Peterson v. Superior Court, which reversed Becker's strict liability, a residential landlord is liable for injuries from defects only if negligent in failing to discover and correct them. Landlords are not strictly liable for undiscoverable latent defects.

- ✓ Peterson replaced strict liability with a negligence standard for latent defects
- ✓ Landlord liable only if negligent in failing to discover/correct the defect

39.16 Commercial Landlord Liability Conditions

A commercial landlord generally is not liable for injuries from defects unless the lease places maintenance duty on the landlord, contains a repair covenant, or gives the landlord control over the defective area; or if the landlord has a statutory duty, knows of a latent defect and fails to disclose/repair, or repairs negligently.

- ✓ Commercial landlord liable if lease imposes maintenance duty or control over the defect
- ✓ Liable if under statutory duty or aware of undisclosed latent defect
- ✓ Liable if a repair is made negligently or not made after agreeing to do so

CHAPTER 40

Transfer and Termination of Tenancy; Unlawful Detainer

40.1 Termination of Periodic Tenancy Notice Periods

For month-to-month tenancies, either party may terminate by giving at least 30 days' written notice. Under Section 1946.1, an owner terminating must generally give at least 60 days' notice, but only 30 days if the tenant has resided less than one year, or in a qualifying sale to a natural-person owner-occupant buyer. Landlords cannot charge fees for serving notices.

- ✓ Month-to-month tenancy may be terminated by either party with at least 30 days' written notice
- ✓ An owner terminating a residential tenancy generally must give at least 60 days' notice; only 30 days if the tenant occupied less than one year
- ✓ 30-day notice applies in a bona fide sale to a natural person buyer intending to occupy for one year, with escrow established and notice within 120 days
- ✓ A landlord may not charge the tenant a fee for serving, posting, or delivering any termination notice

40.2 Just Cause Termination Requirement

After a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner may not terminate the tenancy without just cause, which must be stated in the written termination notice. Special rules apply when additional adult tenants are added before existing tenants reach 24 months.

- ✓ After 12 months of continuous lawful occupancy, an owner may not terminate a tenancy without just cause
- ✓ Just cause must be stated in the written notice to terminate tenancy
- ✓ If additional adults are added before an existing tenant reaches 24 months, protections apply only if all tenants have 12+ months or one tenant has 24+ months of occupancy

40.3 At-Fault Just Cause Grounds for Termination

For tenancies covered by the just cause law, an owner may terminate for at-fault just cause, which includes tenant misconduct. These grounds allow termination when the tenant is responsible for the reason for eviction. Curable violations must first be given a notice and opportunity to cure.

- ✓ At-fault just cause includes default in rent payment, breach of a material lease term, nuisance, waste, criminal activity, unauthorized subletting/assignment, and using premises for unlawful purposes.
- ✓ Refusal to execute a written extension/renewal with similar terms, or refusal to allow lawful owner entry, are at-fault grounds.
- ✓ Before terminating for a curable lease violation, the owner must give notice of the violation and an opportunity to cure per CCP Section 1161(3); if uncured, a three-day notice to quit may then be served.

40.4 No-Fault Just Cause Grounds

No-fault just cause allows termination for reasons not caused by tenant misconduct: owner/relative move-in, withdrawal from rental market, compliance with government orders on habitability, and intent to demolish or substantially remodel. Each has specific notice and follow-through requirements.

- ✓ No-fault just cause includes owner/relative intent to occupy (12 continuous months as primary residence), withdrawal from the rental market, compliance with a government/court order or local ordinance to vacate, and intent to demolish or substantially remodel.
- ✓ For owner move-in, the intended occupant must move in within 90 days after the tenant vacates and occupy as a primary residence for at least 12 consecutive months, or the unit must be re-offered to the former tenant at the same rent.
- ✓ 'Substantially remodel' requires work needing a permit or hazardous material abatement that forces the tenant to vacate for at least 30 consecutive days; cosmetic improvements (painting, decorating, minor repairs) do not qualify.

40.5 Relocation Assistance for No-Fault Termination

When an owner terminates for a no-fault just cause, the owner must provide relocation assistance or a rent waiver equal to one month's rent, regardless of the tenant's income. The tenant must be notified of this right in the written termination notice.

- ✓ The owner must, at its option, either provide a direct relocation payment equal to one month of rent or waive the final month's rent in writing before it becomes due.
- ✓ Direct relocation assistance must be provided within 15 calendar days of service of the notice, and the amount equals one month of the rent in effect when the notice was issued.
- ✓ Failure to strictly comply with the relocation assistance requirement renders the termination notice void.

40.6 Three-Day Notice to Pay Rent or Quit

A tenant is guilty of unlawful detainer when they remain in possession after default in rent and fail to comply with a proper three-day notice (excluding weekends and judicial holidays). The notice must state the amount due, the name, telephone number, and address of the person to receive payment, and available days/hours for personal delivery, or account/electronic payment details.

- ✓ The three-day notice excludes Saturdays, Sundays, and other judicial holidays
- ✓ The notice must state the exact amount of rent due and where/how payment may be made
- ✓ The notice may be served at any time within one year after the rent becomes due

40.7 Assignment vs. Sublease

An assignment transfers the tenant's entire remaining interest; a sublease transfers part of the premises or the whole for less than the full remaining term. The actual nature of the transfer, not its label, controls. Leases often prohibit transfer without landlord consent, which must be exercised reasonably.

- ✓ Assignment transfers the entire remaining interest; sublease transfers less
- ✓ The nature of the transfer, not its name, determines its legal treatment
- ✓ Consent-to-transfer clauses require the landlord to act reasonably
- ✓ Anti-transfer clauses are construed strictly against the landlord

40.8 Liability After Assignment or Sublease

An assignment does not release the original tenant unless the landlord agrees. An assignee who expressly assumes is fully liable; without assumption, the assignee is liable only for obligations tied to privity of estate (rent, maintenance), not purely contractual ones. In a sublease, the subtenant has no direct obligation to the landlord (no privity), and terminating the tenant's lease extinguishes the subtenant's rights.

- ✓ Original tenant remains liable after assignment unless expressly released
- ✓ Assignee who expressly assumes is fully liable; without assumption liable only via privity of estate
- ✓ Subtenant has no direct obligation to landlord absent privity
- ✓ Termination of the tenant's lease extinguishes the subtenant's rights

40.9 Grounds for Lease Termination

A lease expires by its own terms or terminates through a specific right or a lease-terminating event. General grounds include notice, destruction, frustration of purpose, merger, death, bankruptcy of either party, exercise of an option, breach, illegal use, and abandonment/surrender. A lease cannot be terminated for reasons contravening public policy such as retaliation or discrimination.

- ✓ An estate for years ends automatically at term expiration without notice
- ✓ Grounds include notice, destruction, frustration, merger, death, bankruptcy, breach, illegal use, and surrender
- ✓ A lease may not be terminated for retaliatory eviction or unlawful discrimination

40.10 Termination by Notice

A tenancy at will requires at least 30 days' written notice. A periodic tenancy may be terminated by written notice equal to the length of the period, not exceeding 30 days (Civil Code § 1946), and a tenant's notice need not coincide with the rent due date. For residential month-to-month tenancies, however, Civil Code § 1946.1 requires the landlord to give at least 60 days' written notice if the tenant has lived in the unit for one year or more (30 days if less than one year, or in a qualifying sale to an owner-occupant buyer), while the tenant still needs only 30 days. Properties covered by the Tenant Protection Act (§ 1946.2) or local rent control also require just cause for termination.

- ✓ Tenancy at will: at least 30 days' written notice
- ✓ General periodic tenancy rule (Civil Code § 1946): notice equal to the period, up to 30 days; a tenant's notice need not match the rent due date
- ✓ Residential landlord terminating a month-to-month tenancy (Civil Code § 1946.1): 60 days' notice if the tenant has occupied one year or more, otherwise 30 days; the tenant needs only 30 days
- ✓ Just-cause requirements under the Tenant Protection Act or local rent control may further restrict termination

40.11 Three-Day Notice and Service

To terminate for default, a landlord must serve a written notice requiring the tenant within three days to cure (if curable) or vacate, as a prerequisite to an unlawful detainer. Service may be by personal delivery, substituted service with mailing, or posting-and-mailing if the tenant cannot be located. Serving notice does not by itself terminate the lease.

- ✓ A three-day notice to cure or quit is a prerequisite to unlawful detainer
- ✓ Service may be personal, substituted, or by post-and-mail
- ✓ Serving the notice does not automatically terminate the lease

40.12 Non-Waivable Residential Tenant Rights

For residential leases after January 1, 1976, any provision waiving certain tenant rights is void: security deposit rights (CC 1950.5), entry limitations (CC 1954), the right to assert future causes of action, statutory notices, litigation procedural rights, habitability, and the landlord's duty of care to prevent injury.

- ✓ Waivers of security deposit and entry-limitation rights are void
- ✓ Waivers of future causes of action and statutory notices are void
- ✓ Waivers of habitability and the landlord's duty of care are void

40.13 Unlawful Detainer Procedure

Unlawful detainer is the quick, common eviction remedy available against tenants who hold over, default in rent, breach covenants, commit waste/nuisance, or fail to quit after notice. A three-day notice to cure or quit is usually required. The court may award possession and rent through judgment, but not post-judgment rent. If the tenant surrenders before trial, the case becomes an ordinary damages suit without priority.

- ✓ Unlawful detainer applies to holdovers, rent defaults, covenant breaches, waste, and failure to quit
- ✓ A three-day notice is usually required (no cure option if breach is incurable)
- ✓ Court may award possession and rent through judgment, not post-judgment rent
- ✓ Surrender before trial converts the case to an ordinary damages action

40.14 Tenant Answer and Defenses in Unlawful Detainer

A tenant has five days from service of the summons to answer or a default judgment is entered. Affirmative defenses must be raised in the answer or are waived. Common defenses include procedural noncompliance, breach of habitability, retaliatory eviction, and discrimination. Only the sheriff may physically evict; the landlord may not do so.

- ✓ Tenant has five days to answer or risk default judgment
- ✓ Affirmative defenses must be raised or are waived
- ✓ Common defenses: defective notice, habitability breach, retaliation, discrimination
- ✓ Only law enforcement may remove a tenant; self-help eviction is prohibited

40.15 Automatic Renewal/Extension Clause Formatting

A lease term providing for automatic renewal or extension is voidable by the party who did not prepare the lease unless the provision appears in at least eight-point boldface type in the body of the agreement, with a recital in the same type immediately before the signature line.

- ✓ Automatic renewal/extension clauses must appear in at least eight-point boldface type to be valid
- ✓ The clause is voidable by the party who did not prepare the lease if the type/recital requirements are not met
- ✓ Any waiver of these provisions is void as against public policy

40.16 Properties Exempt from Just Cause Law

Section 1946.2 does not apply to certain property types. Candidates must recognize the exemptions, which mirror those for rent caps, including single-family homes and condos owned by non-corporate owners when proper notice is given.

- ✓ Exemptions include transient/tourist hotels, certain care/religious facilities, dormitories, owner-shared units, single-family owner-occupied residences renting no more than two units/bedrooms, and duplexes where the owner occupies one unit.
- ✓ Housing issued a certificate of occupancy within the previous 15 years is exempt (except mobilehomes).
- ✓ Separately alienable single-family homes/condos are exempt if the owner is not a REIT, corporation, or LLC with a corporate member, AND the required exemption notice is provided to the tenant.

40.17 Required Just Cause Notice to Tenants

Owners of covered residential property must provide tenants a statutory notice about rent increase limits and just cause protections. The notice has formatting and timing requirements tied to tenancy dates.

- ✓ The notification or lease provision must be in no less than 12-point type and include the statutory language referencing Civil Code Sections 1947.12 and 1946.2.
- ✓ Just cause protection applies after all tenants have continuously and lawfully occupied for 12 months or more, or at least one tenant for 24 months or more.
- ✓ An owner's failure to comply with any provision renders the written termination notice void; any waiver of tenant rights under this section is void as contrary to public policy.

40.18 Local Ordinance Preemption and Owner Liability

The just cause statute interacts with local ordinances and imposes civil liability on owners who violate it. Only one just cause scheme applies to a given property.

- ✓ A property cannot be subject to both a local just cause ordinance and this section; more protective local ordinances adopted on/before Sept 1, 2019 or that are more protective control.
- ✓ An owner recovering possession in material violation is liable for actual damages, discretionary attorney's fees/costs, and up to three times actual damages plus punitive damages for willful, oppressive, fraudulent, or malicious conduct.

40.19 Early Termination for Victims of Abuse/Violence

A tenant may terminate a tenancy early if the tenant, a household member, or an immediate family member was a victim of specified acts such as domestic violence, sexual assault, stalking, human trafficking, elder abuse, or crimes causing bodily injury or involving weapons/force. Documentation is required.

- ✓ The termination notice must be in writing and include a protective order, a police report, qualified third-party documentation, or other reasonable verification that the qualifying act or crime occurred.
- ✓ Notice must be given within 180 days of the qualifying order, report, or act/crime.
- ✓ The tenant is responsible for rent for no more than 14 calendar days after giving notice and is released without penalty from further rent obligations; the termination is not a breach of the lease.

40.20 Security Deposit Protection for Abuse Victims

A landlord may not penalize a tenant who terminates a lease under the abuse/violence provisions by forfeiting deposits or advance rent. The general security deposit law otherwise still governs.

- ✓ A landlord cannot require a tenant terminating under this section to forfeit security deposit money or advance rent due to the termination.
- ✓ The tenant is not considered to have breached the lease by reason of the termination, and the standard law governing security deposits applies in all other respects.

40.21 Holdover and Three-Day Notice to Perform Covenants

A tenant is guilty of unlawful detainer when continuing in possession after the term expires without landlord permission, or after breaching lease covenants other than rent (such as unauthorized assignment or subletting) following a proper three-day notice to perform or quit.

- ✓ Holdover tenants who remain after term expiration without permission may be removed via unlawful detainer
- ✓ A three-day notice to perform covenants (excluding weekends/holidays) is required for non-rent lease breaches
- ✓ The tenant, subtenant, or interested party may cure the breach within the three-day period to save the lease
- ✓ On agricultural lands, a tenant holding over more than 60 days without demand is deemed to hold by permission for another year

40.22 Three-Day Notice and Lease Termination Grounds

A tenant who assigns, sublets, commits waste, maintains a nuisance, or uses premises for unlawful purposes contrary to lease terms terminates the lease, entitling the landlord to restitution of possession upon three days' notice to quit. A landlord may not charge a tenant a fee for serving or delivering any notice.

- ✓ Assignment/subletting/waste/nuisance or unlawful use contrary to lease terminates the lease and permits a three-day notice to quit
- ✓ A landlord or its agent shall not charge a tenant a fee for serving, posting, or delivering any notice

40.23 Transfer by Landlord

Unless prohibited, a landlord may transfer its interest; the lease remains in effect and the new landlord and tenant have the same rights and obligations. Under Civil Code 823, a successor landlord is not liable for the prior landlord's violations of covenants against encumbrances or relating to title/possession.

- ✓ Landlord may transfer interest unless the lease prohibits it
- ✓ Lease survives transfer with same rights and obligations
- ✓ Successor landlord not liable for prior landlord's title/encumbrance covenant violations (CC 823)

40.24 Destruction of Premises

If neither party assumes a duty to rebuild, either may terminate on complete destruction (if not at fault). A tenant may terminate on partial destruction of a substantial/material portion. A commercial landlord's unconditional rebuild obligation prevents tenant termination, but a general repair covenant does not bar termination on total destruction.

- ✓ Either party may terminate on complete destruction if not at fault and no rebuild duty
- ✓ Tenant may terminate on substantial partial destruction
- ✓ A landlord's unconditional rebuild obligation prevents tenant termination

40.25 Merger, Death, and Bankruptcy

Merger occurs when landlord and tenant estates unite (no intervening estate), terminating the lease and rent obligation. A fixed-term lease is not terminated by death of a party absent a lease provision; a tenancy at will terminates on death with notice. Bankruptcy imposes an automatic stay; the trustee may accept or reject leases, and rejection generally breaches the lease.

- ✓ Merger of leasehold and fee terminates the lease and rent obligation
- ✓ A fixed-term lease survives the death of either party absent contrary provision
- ✓ Bankruptcy's automatic stay bars eviction without court approval; trustee may reject leases

40.26 Breach of Condition vs. Covenant

A condition is a prerequisite; its non-occurrence entitles termination. A covenant is a promise; its breach normally yields damages, not termination. Ambiguous provisions are construed as covenants. Material covenants (habitability, no-assignment, lawful use) may justify termination. Covenants are dependent, except that rent and landlord obligations remain independent—yet habitability breach lets residential tenants withhold rent.

- ✓ Non-occurrence of a condition allows termination; covenant breach usually yields only damages
- ✓ Ambiguous provisions are construed as covenants to avoid forfeiture
- ✓ Rent obligation and landlord obligations are generally independent
- ✓ Habitability breach is an exception allowing residential tenants to withhold rent

40.27 Illegal Use and Abandonment/Surrender

Occasional illegal use does not justify termination unless the lease so provides; only illegality relating to the premises' use may justify termination. Surrender by mutual agreement occurs on abandonment and acceptance, merging estates and limiting the tenant to pre-surrender obligations. Surrender may occur by operation of law—e.g., when a landlord relets after abandonment.

- ✓ Occasional illegal use is not grounds for termination unless the lease provides
- ✓ Surrender requires abandonment plus landlord acceptance
- ✓ Reletting after abandonment effects surrender by operation of law
- ✓ Written surrender is required if the lease was within the Statute of Frauds, absent operation of law

40.28 Right to Maintain Lease and Sue for Rent

A landlord may keep the lease in effect and sue for each installment as it becomes due (CC 1951.4), whether the tenant remains or abandons. Tenants may assert defenses such as offset rights or breach of the implied warranty of habitability. This remedy is often financially unsatisfactory.

- ✓ Landlord may sue for each rent installment as it becomes due (CC 1951.4)
- ✓ Applies whether the tenant remains or abandons
- ✓ Tenant may raise offset and habitability defenses

40.29 Termination and Damages (CC 1951.2)

After three days' notice, if the tenant fails to cure or quit, the landlord may terminate under CC 1951.2 and recover damages. On abandonment, the landlord typically retakes for the tenant's account and relets, then sues for the difference between the lease rent and the amount obtained by reletting.

- ✓ Landlord may terminate and recover damages under CC 1951.2 after notice
- ✓ Landlord commonly relets and sues for the rent differential
- ✓ Retaking on abandonment is for the tenant's account

40.30 Limited Access to Eviction Records

Unlawful detainer (eviction) case records are shielded from public access for the first 60 days after filing. Access before then is limited to parties, attorneys, residents, and persons who can supply specific identifying information. If the plaintiff obtains judgment against all defendants within 60 days, records become accessible.

- ✓ Clerk allows access only to a party, attorney, or someone providing at least one plaintiff and one defendant name plus the premises address
- ✓ Records generally become public 60 days after filing if judgment is entered for the plaintiff
- ✓ A landlord or agent shall not charge a tenant a fee for serving, posting, or delivering any notice

40.31 Unlawful Detainer Complaint and Response Timing

An unlawful detainer complaint must be verified, describe the premises with reasonable certainty, and (for residential property) attach the termination notice and lease. The defendant must respond within 10 days (excluding weekends and holidays) after service.

- ✓ The complaint must be verified, describe the premises with reasonable certainty, and state the amount of rent in default when based on nonpayment
- ✓ In residential actions the plaintiff must attach the termination notice(s) and the written lease/rental agreement
- ✓ The defendant's response is due within 10 days (excluding Saturdays, Sundays, and judicial holidays) after service

40.32 Frustration of Commercial Purpose

A tenant generally cannot terminate merely because its purpose is frustrated, but may terminate if the lease specifies and limits use and that use becomes impossible. Termination requires complete (not merely material) frustration, an unforeseeable and uncontrollable intervening event, and no assumption of that risk.

- ✓ Frustration allows termination only if the lease limits use and it becomes impossible
- ✓ Frustration must be complete, not merely significant or material
- ✓ The intervening event must be unforeseeable, uncontrollable, and not a risk the tenant assumed

CHAPTER 41

Tenant Protections and Landlord Prohibited Conduct

41.1 Landlord Menacing and Retaliatory Acts Prohibited

It is unlawful for a landlord to influence a tenant to vacate by theft-type conduct, extortion, force or menacing conduct interfering with quiet enjoyment, significant intentional violations of the entry-rights statute (§ 1954), or threatening to disclose immigration or citizenship status. A tenant prevailing in a civil action (including small claims) is entitled to a civil penalty up to $2,000 per violation. Good-faith warnings and normal explanations of the lease or law are not violations.

- ✓ A landlord may not use force, menacing conduct, or immigration-status threats to induce a tenant to vacate
- ✓ Prevailing tenant may recover a civil penalty up to $2,000 per violation
- ✓ Good-faith warning notices and normal-course explanations are not violations

41.2 Tenant Citizenship Status Inquiries Prohibited

A landlord or landlord's agent may not inquire about, require disclosure of, or disclose a tenant's or prospective tenant's immigration or citizenship status for purposes of harassment, retaliation, or inducing vacancy. Public entities may not compel landlords to make such inquiries. A landlord may still comply with federal legal obligations, subpoenas, or court orders, and may request documentation to verify financial qualifications or identity.

- ✓ Landlord may not inquire about or require disclosure of immigration/citizenship status
- ✓ Landlord may still verify identity and financial qualifications of prospective tenants
- ✓ Compliance with federal law, subpoenas, or court orders is not a violation

41.3 Prohibited Disclosure of Immigration Status - Damages

It is unlawful for a landlord to disclose a tenant's immigration or citizenship status to immigration authorities or agencies with intent to harass, retaliate, influence vacancy, or recover possession. A court finding a violation must order statutory damages between 6 and 12 times the monthly rent for each person whose status was disclosed, issue injunctive relief, and award attorney's fees and costs to the prevailing party. Waivers of these rights are void as against public policy.

- ✓ Statutory damages are 6 to 12 times the monthly rent per person whose status was disclosed
- ✓ Court must award attorney's fees and costs to the prevailing party
- ✓ Any waiver of these tenant rights is void as a matter of public policy

41.4 Prohibition on Landlord Retaliation

A landlord may not retaliate against a tenant (not in default on rent) for exercising rights or complaining about tenantability by recovering possession, causing involuntary quit, raising rent, or decreasing services within 180 days of the protected act. Threatening to report a tenant to immigration authorities is retaliatory conduct.

- ✓ Landlord may not retaliate within 180 days of a protected tenant act (complaint, notice, inspection, judicial/arbitration proceeding)
- ✓ Tenant may not invoke the retaliation protection more than once in any 12-month period
- ✓ Reporting or threatening to report a tenant to immigration authorities is prohibited retaliatory conduct
- ✓ Violating landlord is liable for actual damages plus punitive damages of $100 to $2,000 per act where fraud, oppression, or malice exists; any waiver of tenant rights is void

41.5 Tenant Rights After Foreclosure Sale

When a rental property is sold in foreclosure, tenants receive substantial protections. Month-to-month tenants must receive 90 days' written notice to quit before removal. Tenants under a fixed-term lease entered before foreclosure transfer generally retain the right to possession until the end of the lease term, with all lease rights and obligations surviving foreclosure.

- ✓ Month-to-month or periodic tenants in possession at foreclosure sale must receive 90 days' written notice to quit under Section 1162
- ✓ Fixed-term lease tenants may remain until the end of the lease term, and lease obligations survive foreclosure
- ✓ The purchaser/successor bears the burden of proving a fixed-term lease is not entitled to protection

41.6 Disclosure of Application for Permit to Demolish

An owner or agent who applies for a permit to demolish a residential dwelling unit must give written notice of that fact to prospective tenants before entering a rental agreement or accepting any fees, and to current tenants before applying for the permit. The notice must include the earliest approximate demolition date and the approximate tenancy termination date; demolition may not occur before the noticed date. Failure to comply allows a tenant to recover actual damages, moving expenses, a civil penalty up to $2,500, and attorney's fees.

- ✓ Owner must disclose a demolition permit application to prospective tenants before accepting fees or signing a lease
- ✓ Owner must notify current tenants before applying for the demolition permit
- ✓ Noncompliance exposes the landlord to actual damages plus a civil penalty up to $2,500 and attorney's fees

41.7 Former Federal/State Ordnance Location Disclosure

A landlord of a residential dwelling with actual knowledge of any former federal or state ordnance location in the neighborhood area must give written notice to a prospective tenant before executing a rental agreement. Ordnance locations are former military training areas that may contain explosive munitions and cannot readily be observed or discovered.

- ✓ Landlord with actual knowledge of former ordnance location must give WRITTEN notice to prospective tenant BEFORE executing the rental agreement
- ✓ 'Neighborhood area' means within one mile of the residential dwelling
- ✓ 'Former ordnance location' is an area identified by a federal or state agency as once used for military training that may contain explosive munitions

41.8 Tenant Rights Following Foreclosure Sale

After a foreclosure sale of residential property, tenants have protections. Month-to-month tenants generally have the right to stay at least 90 days. A fixed-term lease must be honored by the new owner unless the new owner will occupy the property as a primary residence or in other limited circumstances. In cities with 'just cause for eviction' ordinances, the tenant may not have to move at all. All lease obligations, including the duty to pay rent, continue after the sale. It is an infraction to tear down the required foreclosure notice within 72 hours of posting, subject to a $100 fine.

- ✓ A new owner must honor a fixed-term lease unless occupying the property as a primary residence or other limited exception
- ✓ Month-to-month tenants generally receive at least 90 days before being required to move
- ✓ Tenant obligations, including rent, continue after the foreclosure sale
- ✓ Tearing down the posted foreclosure notice within 72 hours is an infraction subject to a $100 fine

41.9 Exceptions to Fixed-Term Lease Survival

A fixed-term lease surviving foreclosure may still be terminated on 90 days' notice if certain conditions apply, protecting bona fide arms'-length tenants but not insiders or sham leases.

- ✓ May terminate on 90 days' notice if purchaser will occupy the unit as a primary residence
- ✓ May terminate if the lessee is the mortgagor or a child, spouse, or parent of the mortgagor
- ✓ May terminate if the lease was not an arms' length transaction or requires substantially below-market rent (unless subsidized)

41.10 Protection for Tenant Victims of Abuse

A landlord cannot terminate or refuse to renew a tenancy based on an act of abuse or violence against a tenant, immediate family member, or household member when documentation of abuse is provided. Abuse includes domestic violence, sexual assault, stalking, human trafficking, and elder/dependent adult abuse.

- ✓ Landlord shall not terminate/nonrenew based on abuse or violence against tenant, family, or household member if documentation is received
- ✓ Documentation must generally be issued within the last 180 days (protective order, police report, or qualified third-party statement)
- ✓ Landlord shall not disclose tenant-provided information to third parties without written consent or court order

41.11 Flood Disclosure to Residential Tenants

For every residential lease or rental agreement entered into on or after July 1, 2018, the owner or person offering the property for rent must disclose in no smaller than eight-point type whether the property is in a special flood hazard area or area of potential flooding (if the owner has actual knowledge), where to obtain hazard information (MyHazards tool), and that the owner's insurance does not cover the tenant's personal possessions so renter's/flood insurance is recommended.

- ✓ Residential lease/rental flood disclosure required for agreements on or after July 1, 2018, in no smaller than 8-point type
- ✓ 'Actual knowledge' includes written public agency notice, mortgage-required flood insurance, or owner currently carrying flood insurance
- ✓ Must inform tenant that owner's insurance does not cover tenant's personal possessions and recommend renter's/flood insurance

41.12 Owner/Agent Disclosure to Tenant

The owner of a multi-unit dwelling, or a party signing on the owner's behalf, must disclose the name and address of persons authorized to manage and to receive process, notices, and demands. For oral agreements, this must be furnished in writing on tenant demand and kept current; it binds successor owners/managers.

- ✓ Owner must disclose the property manager and agent for service of process
- ✓ For oral agreements, disclosure must be furnished in writing on tenant demand
- ✓ A non-complying signer becomes the owner's agent for service and obligations
- ✓ Disclosure may be satisfied by posting notices in conspicuous places

41.13 Protecting Tenants at Foreclosure

Federal and California laws protect tenants when their rental is foreclosed. The federal Protecting Tenants at Foreclosure Act generally lets a tenant with a pre-foreclosure lease stay until the lease ends, unless a buyer will occupy as a primary residence, in which case a 90-day notice applies. Local rent control, Section 8, and just-cause ordinances may provide greater protection.

- ✓ A pre-foreclosure lease generally continues after foreclosure until it ends
- ✓ A purchaser intending to occupy as a primary residence may give a 90-day notice
- ✓ Local rent control and Section 8 protections may exceed the federal Act

41.14 Tenant Political Sign Display Rights

A landlord generally may not prohibit a tenant from posting political signs relating to elections, initiatives/referenda/recalls, or issues before public bodies. Signs may be displayed in the window/door of a multifamily unit or on the yard, window, door, balcony, or outside wall of a single-family unit. A landlord may restrict signs exceeding six square feet, those violating law, or those violating valid CID governing documents. Reasonable posting periods begin at least 90 days before and end at least 15 days after the election or vote.

- ✓ Landlord may prohibit political signs larger than six square feet
- ✓ Reasonable posting period runs from at least 90 days before to at least 15 days after the vote
- ✓ Landlord may not otherwise prohibit qualifying political sign displays

41.15 Tenant Religious Item Display Rights

A property owner may not enforce a restrictive covenant prohibiting religious items from being displayed on a dwelling's entry door or door frame. Exceptions apply where the item threatens public health or safety, hinders opening/closing the door, violates law, is obscene, or exceeds 36 by 12 square inches (and does not exceed the door size). 'Property owner' includes CID associations, boards, members, landlords, and sublessors.

- ✓ Landlords/owners may not prohibit religious items on an entry door or door frame
- ✓ Exception applies if item exceeds 36 by 12 square inches or threatens health/safety or blocks the door

41.16 Personal Micromobility Device Rights

A landlord may not prohibit a tenant from owning personal micromobility devices, or from storing and recharging up to one device per occupant in the unit if the device is non-motorized, meets specified UL/EN safety standards, and is insured by the tenant. This does not apply if the landlord provides secure, long-term on-premises storage with electrical connections at no charge. Landlords may enforce fire-code compliance and prohibit battery/motor repairs in the unit, but disability accommodation rights are preserved.

- ✓ Landlord may not prohibit ownership of personal micromobility devices
- ✓ Tenant may store/recharge up to one device per occupant if it meets safety standards and is insured
- ✓ Exception applies if landlord provides free secure, long-term on-premises storage

41.17 Social Security Hardship as Eviction Defense

A tenant may raise Social Security hardship as an affirmative defense in an unlawful detainer action based on nonpayment of rent when a disruption in Social Security benefits caused the nonpayment.

- ✓ The tenant must prove benefits were terminated, delayed, or reduced through no fault of the tenant and that this hardship prevented paying the rent.
- ✓ If proven, the court stays the unlawful detainer until 14 days after benefits are restored or 6 months after the stay, whichever is earlier; the tenant remains obligated to pay past-due rent.
- ✓ The defense applies only to nonpayment-of-rent actions and is scheduled to remain in effect until January 20, 2029.

41.18 Tenant Protections for Crime Victims

A landlord may not refuse to rent to, or continue renting to, a qualified tenant solely because the tenant previously exercised statutory rights as a victim, or terminated a prior tenancy due to being a victim of domestic violence, sexual assault, or similar crime. Landlords face liability for violations and must keep victim information confidential.

- ✓ An owner or agent shall not refuse to rent or continue renting to an otherwise qualified tenant solely because the tenant previously exercised these victim protections or terminated a prior tenancy for those reasons
- ✓ A landlord must not disclose information provided by a tenant under this section to third parties unless the tenant consents in writing or disclosure is required by law/court order
- ✓ A landlord who violates this section is liable for actual damages plus statutory damages of $100 to $5,000

41.19 Exceptions Allowing Termination Despite Abuse

A landlord may still terminate even after receiving abuse documentation if the perpetrator resides in the same unit, or if the perpetrator has threatened others' safety and the tenant continues to permit the perpetrator's presence after a three-day notice.

- ✓ Termination allowed if the perpetrator is a tenant in residence of the same dwelling unit
- ✓ Termination allowed if perpetrator threatened physical safety of others AND tenant permits presence after a three-day notice
- ✓ Landlord is not liable to other tenants for actions taken in compliance with this section

CHAPTER 42

Property Management Practice

42.1 Dual Responsibility of the Property Manager

A property manager serves two parties with sometimes competing interests, and must balance owner profitability against tenant value and legal compliance.

- ✓ The manager owes a duty to the owner/client for the highest return on the property
- ✓ The manager owes a duty to tenants for the best value, reasonable safety, and fair housing compliance
- ✓ The manager must rent units at the highest market rent, keep costs within budget, and preserve/enhance property value

42.2 Written Management Agreement

A property manager should have a written contract with the owner defining responsibilities. As an agent, the manager is bound by fiduciary and legal duties.

- ✓ The contract should state terms, period, management policies, fees, and the authority/powers granted by owner to agent
- ✓ Standard management agreement forms are available for rental properties
- ✓ The manager as agent owes good faith, loyalty, skill, care, due diligence, and full disclosure
- ✓ The agent must avoid commingling and refrain from secret personal profits without the principal's knowledge and consent

42.3 Trust Fund Accounting Requirements

Due to the fiduciary relationship between broker and owner, the property manager must maintain an adequate trust fund accounting system and comply with trust account laws.

- ✓ An accurate record must be kept of all trust funds passing through the broker's hands
- ✓ Responsibility for trust fund records is placed on the property management broker
- ✓ An outside accountant should be retained periodically to review the accounting system
- ✓ Unlicensed office assistants may be bonded so they can legally handle clients' funds

42.4 IREM Professional Designations

IREM certifies individuals (not firms) as qualified property managers because ability rests with the person, not the corporation. Different levels of training and experience yield different designations.

- ✓ Certified Property Manager (CPM) is earned by individuals meeting education and experience requirements
- ✓ Accredited Residential Manager (ARM) requires a lesser degree of training and on-site experience
- ✓ Accredited Management Organization (AMO) is a firm meeting IREM guidelines and utilizing at least one CPM

42.5 Three Types of Property Managers

There are three distinct types of property managers, differing by employer, scope, and the number of properties managed. Understanding each role is important for the exam.

- ✓ The individual property manager is a real estate broker who manages properties for one or more owners
- ✓ The individual building manager is employed by a property manager or owner and usually manages a single large property
- ✓ The resident manager may be employed by a broker, managing agent, or owner to manage an apartment building part- or full-time
- ✓ Asset managers make owner-level decisions on change of use, refinancing, and sale, and often supervise other property managers

42.6 Specific Duties of the Property Manager

The property manager performs a wide range of specific operational duties. Exam candidates should recognize these core management responsibilities.

- ✓ Establish the rental schedule for the highest yield consistent with good economics
- ✓ Merchandise space, collect rent, prepare and execute leases, and qualify tenants' credit
- ✓ Maintain records and make regular reports to the owner
- ✓ Advertise vacancies, supervise maintenance, audit and pay bills, and obtain insurance
- ✓ Be knowledgeable about and comply with applicable Federal, State, and local laws

42.7 Establishing the Rent Schedule

Setting rents requires a thorough neighborhood/market analysis. The property manager compares competitive buildings and analyzes economic and demographic factors to set rents that maximize income.

- ✓ Rent levels are established on the basis of scarcity and comparability of values
- ✓ The manager must survey rents of comparable competition buildings in the neighborhood
- ✓ Analysis includes population growth, income levels, local industry, transportation, and housing market conditions
- ✓ The final rent schedule should bring maximum income consistent with good economics

42.8 Maintenance and Preventive Care

The property manager must maintain the building and purchase supplies/services efficiently, balancing expenditures so the owner still profits. Prompt and preventive maintenance saves money.

- ✓ Repairs should be made immediately, as delay allows problems to worsen and become costlier
- ✓ Ongoing preventive maintenance is the goal to reduce large future expenditures
- ✓ Purchasing must emphasize obtaining the best value for the owner's money
- ✓ If all income is spent leaving no profit, the owner will seek another manager

42.9 Owner Records and Reports

The property manager must keep proper records and report regularly to the owner, providing both monthly accountings and a detailed annual statement to guide future policies.

- ✓ Reports must be easily understandable and cover all operations
- ✓ Provide a monthly accounting plus a detailed annual statement
- ✓ Annual statements help assess income/expense fluctuations and formulate future policies

42.10 Property Management Fees

Management fees can be structured in several ways; most commonly as a percentage of gross rents collected. Rates vary by property type and location.

- ✓ Fees may be a flat monthly amount, a percentage of gross rents collected, or a combination
- ✓ Percentage fees range from about 3% on large structures to as high as 20% on individual houses or small buildings
- ✓ Resort areas with high turnover may charge up to 50% of gross rent
- ✓ Managers often receive additional compensation for lease renewals and supervising major repairs/alterations

42.11 Merchandising Rental Space

Effectively marketing available space is essential; the most common method today is internet advertising. Reducing vacancy time controls advertising and opportunity costs.

- ✓ The most common method of merchandising rental property today is internet advertising
- ✓ Other methods include signs, newspaper ads, brochures, business contacts, and tenant referrals
- ✓ A sound maintenance program is important because worn properties discourage prospective tenants

CHAPTER 43

Common Interest Developments (Davis-Stirling Act)

43.1 Prohibited Restrictive Covenants Must Be Deleted

No declaration or governing document may include a restrictive covenant that violates Government Code Section 12955 (discriminatory covenants). The board must amend the document—without member approval—to delete such covenants and restate the document. The Civil Rights Department, a city/county, or any person may sue for injunctive relief if the association fails to delete within 30 days of written notice, and the court may award attorney's fees to the prevailing party.

- ✓ Discriminatory restrictive covenants prohibited under Gov. Code § 12955 are unenforceable
- ✓ Board must delete such covenants without member approval and record the restated declaration
- ✓ Association has 30 days after written notice to delete before an enforcement action may be filed

43.2 Seller's Common Interest Development Disclosure Documents

Under Civil Code § 4525, an owner selling a separate interest in a common interest development (condo, PUD, stock cooperative) must provide the prospective purchaser with a specific set of documents as soon as practicable before transfer of title or execution of a real property sales contract. These include all governing documents (CC&Rs, bylaws, articles or a statement of non-incorporation), the most recent annual budget/reserve disclosures, a statement of current regular/special assessments and unpaid amounts, fines, notices of violation, defect lists, rental/age restriction statements, and (if requested) board minutes for the prior 12 months.

- ✓ Seller must deliver the § 4525 documents to the buyer as soon as practicable before transfer of title or execution of the sales contract
- ✓ Disclosures include governing documents, assessment/fee statement, unpaid assessments and fines, notices of violation, and reserve/budget summaries
- ✓ If requested by the buyer, seller must provide approved board meeting minutes (excluding executive session) for the prior 12 months
- ✓ Statement must disclose any rental/leasing prohibition and any age-occupancy restriction limited by Section 51.3

43.3 HOA Rental Restrictions Limited by Law

Governing documents cannot prohibit or unreasonably restrict rental/leasing of separate interests unless effective before the owner acquired title (§ 4740). Restrictions cannot limit rentals to less than 25% of separate interests (§ 4741). Owners may rent portions of owner-occupied units for periods over 30 days (§ 4739). Boards had to amend non-compliant governing documents by July 1, 2022.

- ✓ An owner is not subject to rental prohibitions unless the governing document was effective before the owner acquired title (§ 4740)
- ✓ HOAs cannot restrict rentals to less than 25% of separate interests (§ 4741)
- ✓ ADUs and JADUs are not counted as separate interests, and a unit is not counted as rented if owner-occupied
- ✓ Short-term/transient rentals of 30 days or less may still be prohibited
- ✓ Willful violation exposes the HOA to actual damages plus a civil penalty up to $1,000

43.4 Void Restrictions on Marketing Owner's Interest

Any governing document provision that arbitrarily or unreasonably restricts an owner's ability to market their interest is void (§ 4730). HOAs may not charge marketing fees exceeding actual costs or establish an exclusive relationship with a real estate broker for sales in the development.

- ✓ Provisions arbitrarily or unreasonably restricting an owner's ability to market their interest are void
- ✓ HOAs may not impose marketing fees exceeding actual/direct costs
- ✓ HOAs may not require an exclusive broker relationship for the sale or marketing of owner interests

43.5 Duty to Levy Sufficient Assessments

Associations must levy regular and special assessments sufficient to perform their obligations but may not collect more than necessary for the purpose levied.

- ✓ Association must levy regular and special assessments sufficient to meet its obligations, except as limited by § 5605 (§ 5600)
- ✓ Association may not impose or collect an assessment or fee exceeding the amount necessary to defray the costs for which it is levied

43.6 Limits on Assessment Increases (20%/5% Rule)

The board's authority to raise assessments is capped without member approval. This is a heavily tested HOA rule.

- ✓ Board may not increase regular assessments more than 20% over the prior fiscal year without approval of a majority of a quorum of members (§ 5605)
- ✓ Board may not impose special assessments that in the aggregate exceed 5% of budgeted gross expenses for the fiscal year without member approval
- ✓ Regular assessment increases require compliance with § 5300 budget disclosure requirements
- ✓ 'Quorum' means more than 50 percent of the members

43.7 HOA Assessments as Owner Debt and Delinquency

Regular or special assessments plus late charges, collection costs, reasonable attorney's fees, and interest are a personal debt of the owner at the time levied. Assessments are delinquent 15 days after they become due unless the declaration provides a longer period.

- ✓ Assessments become delinquent 15 days after due date unless governing documents allow longer
- ✓ Assessment plus charges is a personal debt of the owner of the separate interest when levied

43.8 Recoverable Late Charges and Interest on Delinquencies

When an assessment is delinquent, an association may recover reasonable collection costs, attorney's fees, a late charge, and interest. Interest limits under Article XV of the California Constitution do not apply to associations, subject to statutory caps.

- ✓ Late charge may not exceed 10% of the delinquent assessment or $10, whichever is greater
- ✓ Interest may not exceed 12% annual rate, commencing 30 days after assessment becomes due

43.9 Pre-Lien Notice Requirements

At least 30 days before recording a lien for a past-due debt, the association must notify the owner of record by certified mail with a description of collection/lien procedures, the calculation method, an itemized statement of charges, and required boldface foreclosure warning language. The owner has rights to inspect records, request a board meeting, and pursue dispute resolution.

- ✓ Must give 30-day certified-mail notice before recording a lien including itemized statement of charges
- ✓ Notice must state right to inspect records (§ 5205), request a payment-plan meeting, and request dispute resolution/ADR

43.10 Recording and Priority of Assessment Liens

The assessment amount plus costs, late charges, and interest becomes a lien once the association records a notice of delinquent assessment with the county recorder describing the amount, legal description, and owner. The lien decision must be made by board majority vote in an open meeting and cannot be delegated to an agent. A copy must be mailed by certified mail within 10 days of recordation.

- ✓ Decision to record a lien must be a board majority vote in an open meeting, recorded in minutes, and cannot be delegated to an agent
- ✓ Copy of recorded notice must be mailed certified mail within 10 calendar days of recordation; lien is prior to later-recorded liens unless declaration subordinates it

43.11 Enforcement of Assessment Liens by Foreclosure

After 30 days following lien recordation, the lien may be enforced by court sale, trustee sale, or a substituted trustee. Prior to foreclosure the association must offer meet-and-confer or ADR at the owner's choice (binding arbitration unavailable if judicial foreclosure intended). The decision to foreclose must be made only by the board via majority vote in executive session, recorded in open-meeting minutes by parcel number, at least 30 days before any public sale.

- ✓ Lien may be enforced by judicial or nonjudicial foreclosure after 30 days following recording
- ✓ Board must approve foreclosure by majority vote in executive session at least 30 days prior to any public sale; decision cannot be delegated to an agent

43.12 Right of Redemption After HOA Foreclosure

A nonjudicial foreclosure by an association is subject to a right of redemption. The redemption period ends 90 days after the sale, and the notice of sale must state the property is being sold subject to this right of redemption.

- ✓ The redemption period ends 90 days after an association's nonjudicial foreclosure sale
- ✓ Notice of sale must include a statement that the property is sold subject to the right of redemption

43.13 $1,800 / 12-Month Foreclosure Threshold

An association may not use judicial or nonjudicial foreclosure to collect delinquent assessments unless the amount (excluding accelerated assessments, late charges, fees, attorney's fees, interest) equals or exceeds $1,800 or the assessments are more than 12 months delinquent. Below this threshold the association may sue in small claims court or record a lien (but not foreclose until threshold met).

- ✓ No foreclosure unless delinquent assessments are at least $1,800 or more than 12 months delinquent
- ✓ Below threshold, association may collect via small claims action or record a lien but cannot foreclose

43.14 CID Manager Not Required to Hold Real Estate License

A common interest development (CID) manager provides management or financial services to a homeowners' association for compensation. A CID (common interest development) is a residential development identified in Civil Code § 4100. Notwithstanding any other law, an individual is NOT required to obtain a real estate or broker's license to perform the services of a CID manager to an association.

- ✓ A 'common interest development' is a residential development identified in Civil Code § 4100
- ✓ A CID manager provides management or financial services to an association for compensation
- ✓ An individual may not be required to obtain a real estate or broker's license to perform CID manager services to an association
- ✓ Management services include implementing governing documents (Civil Code § 4150) and board directives in an advisory capacity

43.15 Conversion Statement of Defects Disclosure

Before the first sale of a unit converted from an existing dwelling into a condominium, community apartment project, or stock cooperative, the owner/subdivider or agent must deliver a written statement listing all substantial defects/malfunctions in major systems and common areas, or a disclaimer of knowledge (only after inspection). Major systems include roof, walls, floors, HVAC, plumbing, electrical, and recreational facilities.

- ✓ Written statement of substantial defects in major systems and common areas required before first sale of converted units
- ✓ A disclaimer is permitted only after the owner/subdivider inspects and finds no defect a reasonable inspection would disclose
- ✓ 'Major systems' include roof, walls, floors, HVAC, plumbing, electrical, and recreational facilities

43.16 Buyer Rescission Rights on Late Delivery

If the conversion defect disclosure is delivered after execution of the purchase agreement, the buyer may terminate within three days after personal delivery or five days after delivery by mail. The disclosure delivered after execution must describe the buyer's right, method, and time to rescind. Willful failure creates liability for the buyer's actual damages; noncompliance does not invalidate the transfer.

- ✓ Late-delivered disclosure gives buyer 3 days (personal) or 5 days (mail) to terminate
- ✓ The disclosure must describe the buyer's right, method, and time to rescind
- ✓ Willful failure results in liability for the buyer's actual damages

43.17 Required Contents of a CID Declaration

A declaration recorded on or after January 1, 1986 must contain a legal description of the common interest development and state whether it is a community apartment project, condominium project, planned development, stock cooperative, or a combination. It must also set forth the name of the association and the restrictions (equitable servitudes) on use or enjoyment of the development.

- ✓ Declaration must include a legal description and identify the type of CID
- ✓ Declaration must name the association and state enforceable equitable servitudes/use restrictions
- ✓ Applies to declarations recorded on or after January 1, 1986

43.18 Airport Influence Area Notice in Declaration

If a CID is located within an airport influence area, a declaration recorded after January 1, 2004 must include a statutory 'NOTICE OF AIRPORT IN VICINITY' disclosure warning buyers of possible noise, vibration, or odors. A similar notice is required for property within the San Francisco Bay Conservation and Development Commission jurisdiction (declarations recorded on or after January 1, 2006). Such a notice does not constitute a title defect, lien, or encumbrance.

- ✓ Airport influence area notice required in declarations recorded after Jan 1, 2004
- ✓ SF Bay Conservation and Development Commission notice required for declarations recorded on/after Jan 1, 2006
- ✓ The disclosure notice is not a title defect, lien, or encumbrance

43.19 Hierarchy of Governing Documents

When governing documents conflict, a specific priority order applies. The law prevails over governing documents; the declaration (CC&Rs) prevails over articles of incorporation; articles/declaration prevail over bylaws; and bylaws/articles/declaration prevail over operating rules. This hierarchy is testable for understanding CID document authority.

- ✓ Law prevails over all governing documents
- ✓ Order of priority: declaration > articles of incorporation > bylaws > operating rules
- ✓ The declaration (CC&Rs) prevails over the articles of incorporation

43.20 Types of Common Interest Developments

A common interest development (CID) means a community apartment project, condominium project, planned development, or stock cooperative. A condominium consists of an undivided interest in common in real property coupled with a separate interest in a unit. A planned development (PUD) has common area owned by an association or in common, with the power to levy assessments that may lien separate interests. A stock cooperative uses a corporation to hold title, with shareholders receiving exclusive occupancy rights.

- ✓ The four CID types are community apartment project, condominium project, planned development, and stock cooperative
- ✓ A condominium = undivided interest in common area + separate interest (unit)
- ✓ The Davis-Stirling Act does not apply to developments containing no common area

43.21 Association Duty to Provide Documents and Fees

Under Civil Code § 4530, upon written request the association must provide the requested § 4525 documents within 10 days. The association may charge the seller a reasonable fee based on actual cost of procurement, preparation, reproduction, and delivery, and must give a written estimate of fees on the Section 4528 form before processing. No extra charge may be imposed for electronic delivery, and delivery cannot be withheld except for payment of the authorized fee. Bundling required documents with other transaction documents is prohibited, and the seller must give the buyer, at no cost, any specified documents already in the seller's possession.

- ✓ Association must provide requested § 4525 documents within 10 days of written request
- ✓ Fees must be based on actual cost, itemized separately, and estimated in advance on the § 4528 form
- ✓ Delivery may not be withheld except for payment of the authorized fee; no extra charge for electronic delivery
- ✓ Bundling of required documents with other transaction documents is prohibited

43.22 Penalty for Violating Transfer Disclosure Duties

Civil Code § 4540 makes any person who willfully violates the transfer disclosure article liable to the purchaser for actual damages plus a civil penalty up to $500. The prevailing party in an enforcement action is awarded reasonable attorney's fees. However, § 4545 provides that a violation does not affect the validity of title to the transferred property.

- ✓ Willful violation results in liability for actual damages plus a civil penalty not to exceed $500
- ✓ Prevailing party is entitled to reasonable attorney's fees
- ✓ A violation of the disclosure article does not affect the validity of title transferred

43.23 Limits on Association Transfer Fees

Civil Code § 4575 prohibits an association or community service organization from imposing or collecting any assessment, penalty, or fee in connection with a transfer of title, except for the association's actual costs to change its records and amounts authorized under § 4530 for document preparation. Section 4580 provides narrow exceptions for certain environmental-mitigation and pre-2004 organizations.

- ✓ Associations may only charge actual costs to change records plus § 4530 document fees in connection with a transfer
- ✓ No other transfer-related assessment, penalty, or fee may be imposed except under the § 4580 exceptions

43.24 Member Vote to Grant Exclusive Use of Common Area

Under Civil Code § 4600, unless the governing documents specify a different percentage, the board may not grant exclusive use of any portion of the common area to a member without the affirmative vote of members owning at least 67 percent of the separate interests. Numerous exceptions allow the board to act without a vote, such as correcting engineering or construction errors, accommodating a disability, assigning designated parking/storage, installing EV charging stations or solar energy systems, and complying with governing law.

- ✓ A 67 percent affirmative vote of separate-interest owners is required before the board grants exclusive use of common area (unless documents state otherwise)
- ✓ Exceptions permitting board action without a vote include disability accommodation, EV charging station installation, solar energy systems, and correcting engineering/construction errors

43.25 Transfer of Separate Interest Includes Common Area Interest

In common interest developments, any conveyance, judicial sale, or transfer of a separate interest automatically includes the associated undivided interest in the common area and the owner's membership interest in the association. This applies across community apartment projects (§ 4625), condominiums (§ 4630), planned developments (§ 4635), and stock cooperatives (§ 4640).

- ✓ A transfer of the separate interest includes the undivided interest in the common area (condos, PUDs) or ownership interest in the corporation (stock coops)
- ✓ Transfer of the owner's entire estate also includes the owner's membership interest in the association
- ✓ In a stock cooperative the interest transferred is the ownership interest in the corporation, however evidenced

43.26 Protected Owner Uses in HOAs

Governing documents cannot prohibit the display of the U.S. flag (§ 4705), religious items on entry doors (§ 4706), noncommercial signs/posters/flags/banners within size limits (§ 4710), keeping at least one pet (§ 4715), or satellite dishes/antennas 36 inches or less not visible from streets/common areas (§ 4725). Reasonable restrictions and public health/safety exceptions may apply.

- ✓ The U.S. flag and religious items (per § 4706) cannot be prohibited
- ✓ Noncommercial signs/posters over 9 sq ft and flags/banners over 15 sq ft may be restricted
- ✓ HOAs cannot prohibit keeping at least one pet, subject to reasonable rules
- ✓ Antennas/satellite dishes 36 inches or less not visible from street or common area cannot be prohibited

43.27 Drought and Water-Efficient Landscaping Protections

Governing document provisions prohibiting low water-using plants, artificial turf, or compliance with water-efficient landscape ordinances are void (§ 4735). HOAs cannot fine owners for reducing watering during declared drought emergencies, and cannot require pressure washing during a drought emergency (§ 4736).

- ✓ Provisions prohibiting low water-using plants or artificial turf/synthetic grass are void
- ✓ HOAs cannot fine owners for reducing/eliminating watering during a state or local drought emergency
- ✓ Owners cannot be required to reverse water-efficient landscaping after the emergency ends
- ✓ Provisions requiring pressure washing during a declared drought emergency are void

43.28 EV Charging Stations and TOU Meters in HOAs

Governing document provisions that effectively prohibit or unreasonably restrict installation of EV charging stations (§ 4745) or EV-dedicated TOU meters (§ 4745.1) are void. Applications are processed like architectural modifications and are deemed approved if not denied in writing within 60 days. Owners must disclose existing charging stations/meters to prospective buyers.

- ✓ Provisions prohibiting or unreasonably restricting EV charging stations or EV-dedicated TOU meters are void
- ✓ Applications not denied in writing within 60 days are deemed approved
- ✓ Owners must disclose the existence of a charging station/TOU meter and related responsibilities to prospective buyers
- ✓ Willful violation exposes the HOA to actual damages plus a civil penalty up to $1,000

43.29 HOA Board Monthly Financial Review Duties

The board of a common interest development must conduct monthly reviews of financial records unless governing documents impose stricter standards. These reviews cover operating and reserve account reconciliations, budget-vs-actual comparisons, financial institution statements, income/expense statements, and check registers/ledgers/delinquency reports.

- ✓ Board must review reconciliations of operating AND reserve accounts on a monthly basis (§ 5500)
- ✓ Board must review current-year actual revenues/expenses against budget monthly
- ✓ Review may be done by individual members or a subcommittee (treasurer plus one member) outside a board meeting if ratified at the next meeting and noted in minutes (§ 5501)

43.30 Restrictions on Transfers From Association Accounts

Transfers from reserve or operating accounts require prior written board approval unless below set thresholds tied to association size.

- ✓ Associations with 50 or fewer interests: no board approval needed only if transfer is less than lesser of $5,000 or 5% of estimated budget income (§ 5502)
- ✓ Associations with 51 or more interests: threshold is lesser of $10,000 or 5% of estimated budget income

43.31 Reserve Fund Withdrawal and Use Limits

Reserve accounts are protected: withdrawals require dual signatures and funds may only be spent on the major components for which the reserve was established.

- ✓ Withdrawal from reserve accounts requires signatures of at least two directors, or one non-director officer plus one director (§ 5510)
- ✓ Reserve funds may only be spent on repair, restoration, replacement, or maintenance (or related litigation) of major components the association must maintain

43.32 Temporary Transfer of Reserve Funds

The board may temporarily borrow from reserves to meet short-term cashflow needs if proper notice is given and the funds are repaid, generally within one year.

- ✓ Board must give notice in a board meeting notice (§ 4920) stating reasons, repayment options, and whether a special assessment may be considered (§ 5515)
- ✓ Transferred funds must be restored to the reserve fund within one year of the initial transfer, subject to documented temporary delay
- ✓ Board may levy a special assessment (subject to § 5605 limits) to restore expended reserve funds

43.33 Triennial Reserve Study Requirement

At least every three years the board must cause a visual inspection of major components and a reserve study, reviewed annually, when replacement value equals or exceeds one-half the gross budget.

- ✓ Reserve study visual inspection required at least once every three years, reviewed annually (§ 5550)
- ✓ Study must identify major components with remaining useful life under 30 years, their remaining life, repair cost estimates, annual contribution needed, and a reserve funding plan
- ✓ Major components include gas, water, and electrical service lines where the association is responsible for them

43.34 Assessment and Reserve Funding Disclosure Summary

Associations must provide a standardized Assessment and Reserve Funding Disclosure Summary with the annual budget report, based on the most recent reserve study and printed in boldface, showing reserve adequacy over the next 30 years.

- ✓ Reserve summary must be based on the most recent reserve study, use only cash/cash equivalents, and be printed in boldface type (§ 5565)
- ✓ Summary must disclose current replacement cost, remaining/useful life, funding percentage, and per-unit reserve deficiency
- ✓ The disclosure form must accompany each annual budget report delivered under Section 5300 (§ 5570)

43.35 Emergency Assessment Exception

The assessment increase limits of Section 5605 do not apply to emergency situations, which are narrowly defined.

- ✓ Emergency situations include: a court-ordered extraordinary expense; an expense to address a threat to personal health/safety or hazardous condition; or an unforeseen expense not reasonably foreseeable in the budget (§ 5610)
- ✓ For unforeseen-expense emergencies, the board must pass a resolution with written findings distributed to members with the notice of assessment

43.36 Application of Owner Payments

Payments made by an owner must first be applied to assessments owed. Only after assessments are paid in full may payments be applied to collection fees, attorney's fees, late charges, or interest. The owner may request a payment receipt.

- ✓ Payments apply first to assessments owed, then to fees/costs/late charges/interest
- ✓ Association must provide a receipt on request showing date and person who received payment, and provide an overnight payment mailing address in the annual policy statement

43.37 Payment Plans and Meet-and-Confer

An owner may submit a written request to meet with the board to discuss a payment plan for the noticed debt. The board must meet in executive session within 45 days if requested within 15 days of the notice postmark. Late fees do not accrue during a payment plan if the owner complies. Prior to recording a lien, the association must offer meet-and-confer dispute resolution.

- ✓ Board must meet in executive session within 45 days of a proper payment-plan request
- ✓ Additional late fees shall not accrue during the payment plan while owner is in compliance

43.38 Lien Release and Erroneous Liens

Within 21 days of payment of the amounts in the notice of delinquent assessment, the association must record a lien release or notice of rescission and provide a copy to the owner. If a lien was recorded in error, the recorder must release it within 21 days and the association must reverse all related charges and pay related dispute-resolution costs.

- ✓ Lien release must be recorded within 21 days of payment of the delinquent amounts
- ✓ If a lien was recorded in error, association must reverse all late charges, fees, interest, attorney's fees, and costs of collection

43.39 Damage Charges vs. Disciplinary Penalties as Liens

A charge reimbursing the association for repair of common area damage caused by a member, guest, or tenant may become a lien enforceable by sale if authorized in governing documents. However, a monetary penalty imposed as a disciplinary measure (other than late payments) may not be treated as an assessment enforceable by sale.

- ✓ Common-area damage reimbursement charges may become an enforceable lien if authorized in governing documents
- ✓ Disciplinary fines/penalties (except late payments) cannot be characterized as assessments enforceable by foreclosure sale

43.40 Volunteer Officer and Director Liability Protection

A volunteer officer or director of a residential or mixed-use CID association is not personally liable beyond insurance coverage if the act was within the scope of duties, in good faith, and not willful, wanton, or grossly negligent, provided the association maintains required liability coverage. This applies only to volunteers who are tenants or owners of no more than two residential separate interests.

- ✓ Required coverage: at least $500,000 for developments of 100 or fewer separate interests; at least $1,000,000 for more than 100
- ✓ Protection requires the act be in good faith, within scope of duties, and not willful, wanton, or grossly negligent

43.41 Condominium and Stock Cooperative as Real Property

A condominium is an estate in real property and may be an estate of inheritance/perpetual estate, life estate, estate for years (such as a leasehold), or any combination. In a stock cooperative, both the separate interest and the correlative interest in the cooperative corporation are interests in real property.

- ✓ A condominium is an estate in real property that may be perpetual, for life, for years, or a combination
- ✓ In a stock cooperative, both the separate interest and the correlative corporate stock interest are interests in real property

43.42 Common Area vs. Exclusive Use Common Area

Common area is the entire CID except the separate interests. Exclusive use common area is a portion of common area designated for exclusive use of one or more (but fewer than all) owners, appurtenant to their separate interest—for example, shutters, awnings, balconies, patios, exterior doors, and telephone wiring serving a single unit but located outside its boundaries. A 'separate interest' is the individually owned unit, lot, or occupancy right depending on the CID type.

- ✓ Common area = entire CID except the separate interests
- ✓ Exclusive use common area serves fewer than all owners and is appurtenant to specific separate interests
- ✓ Items like balconies, patios, and wiring serving a single unit are exclusive use common area

43.43 Association, Board, and Managing Agent Defined

An 'association' is a nonprofit corporation or unincorporated association created to manage a CID. The 'board' is its board of directors. A 'managing agent' is a person who, for compensation, exercises control over the assets of a CID—but this excludes regulated financial institutions acting in the normal course and attorneys acting within the scope of their license. A 'member' is an owner of a separate interest.

- ✓ An association is a nonprofit entity created to manage a common interest development
- ✓ A managing agent controls CID assets for compensation; regulated financial institutions and attorneys are excluded
- ✓ A member is an owner of a separate interest

43.44 Validity and Notice Requirements for HOA Operating Rules

Civil Code § 4350 provides that an operating rule is valid only if it is in writing, within the board's authority, not in conflict with law or governing documents, adopted in good faith, and reasonable. Under § 4360, the board must give general notice of a proposed rule change at least 28 days before adoption and general notice of the adopted change within 15 days. An emergency rule change addressing an imminent threat to health/safety or substantial economic loss is effective for only 120 days and may not be readopted as an emergency rule.

- ✓ An operating rule must be in writing, within board authority, consistent with law and governing documents, adopted in good faith, and reasonable
- ✓ Board must give general notice of a proposed rule change at least 28 days before adoption and notice of the change within 15 days after
- ✓ An emergency rule change is effective for only 120 days and cannot be readopted as an emergency rule

43.45 Member Right to Reverse an HOA Rule Change

Under Civil Code § 4365, members owning 5 percent or more of the separate interests may call a special vote to reverse a rule change. The written request must be delivered within 30 days after the association gives general notice of the rule change, and the vote must be held not less than 35 nor more than 90 days after the request. A rule change may be reversed by a majority of a quorum, and a reversed rule may not be readopted for one year.

- ✓ Members owning 5% or more of separate interests may call a special vote to reverse a rule change
- ✓ The written request must be delivered within 30 days after the association's general notice of the rule change
- ✓ A rule reversed by member vote may not be readopted for one year

43.46 Ownership of Common Area in a CID

Civil Code § 4500 provides that, unless the declaration otherwise states, common area in a condominium project or in a planned development where owners hold the common area is owned as tenants in common in equal shares, one for each separate interest. Section 4505 grants appurtenant nonexclusive rights of ingress, egress, and support through the common area, and § 4510 prohibits an association from denying an owner physical access to the owner's separate interest.

- ✓ Common area is owned as tenants in common in equal shares (one per separate interest) unless the declaration provides otherwise
- ✓ Each separate interest has appurtenant nonexclusive rights of ingress, egress, and support through the common area
- ✓ An association may not deny a member or occupant physical access to their separate interest

43.47 Protected Assembly and Communication Rights (§ 4515)

Civil Code § 4515 prohibits governing documents from restricting members' or residents' rights to peacefully assemble, meet, canvass, distribute information, use common areas for meetings, and use social media to discuss association matters. No fee, deposit, or insurance may be required to use common area for these activities, and the association may not retaliate against members exercising these rights.

- ✓ Governing documents cannot prohibit peaceful assembly, canvassing, or distribution of information about CID living, elections, or legislation
- ✓ No fee, deposit, or insurance may be required to use the common area for protected assembly activities
- ✓ Associations may not retaliate against members for exercising these rights; violations carry a civil penalty up to $500

43.48 Exclusive Use Areas May Be Separately Transferred

Exclusive use areas may be transferred independent of any other interest in a common interest subdivision only if the declaration expressly authorizes separate transfer and the transfer complies with the declaration's terms (§ 4645).

- ✓ Separate transfer of exclusive use areas requires express authorization in the declaration
- ✓ The transfer must occur in accordance with the terms of the declaration

43.49 No Partition of Condominium Common Area

In a condominium project, the common area must remain undivided and there is no judicial partition, except under the limited circumstances in § 4610, such as destruction of a material part not rebuilt within three years, destruction of more than three-fourths of the project when a majority of owners oppose rebuilding, or a project more than 50 years old that is obsolete and uneconomic. Partition, when allowed, is only by sale of the entire project.

- ✓ Condominium common area remains undivided with no judicial partition except as allowed by § 4610
- ✓ Partition is only by sale of the entire project and requires a showing of specific statutory conditions

43.50 Mechanic's Liens in Common Interest Developments

Labor or materials furnished at an owner's request cannot create a lien against another owner's property unless that owner expressly consented (§ 4615). An owner may remove their separate interest from a shared lien by paying the attributable fraction or recording a lien release bond of 125% of the attributable sum.

- ✓ No lien attaches to another owner's property without express consent, except emergency repairs
- ✓ An owner can clear their interest by paying the attributable fraction or recording a lien release bond for 125% of the attributable sum
- ✓ Association must give members notice within 60 days of being served a claim of lien on common area

43.51 Solar Energy System Disclosure to Buyers

An owner of a solar energy system installed on a multifamily common area roof shared with other homeowners must disclose to prospective buyers the existence of the solar energy system and the owner's related responsibilities. The owner remains responsible for maintenance, repair, replacement, and restoration costs.

- ✓ Owner must disclose existence of any solar energy system to prospective buyers
- ✓ Owner must disclose related responsibilities (maintenance, repair, damage, restoration costs) under Civil Code § 714
- ✓ Successive owners assume the same disclosure and maintenance obligations

43.52 Wood-Destroying Pest Maintenance Responsibility

In a community apartment project, condominium project, or stock cooperative, the association is responsible for repair and maintenance of the common area occasioned by wood-destroying pests unless the declaration provides otherwise. In a planned development, each owner is responsible for their separate interest, though the responsibility can be delegated to the association by majority member approval, recoverable as a special assessment.

- ✓ Condos/community apartment/stock cooperatives: association handles common area pest damage unless declaration says otherwise
- ✓ Planned developments: each owner handles own separate interest pest damage unless delegated to association by majority vote
- ✓ Association may temporarily remove occupants for pest treatment with 15-30 days' notice before relocation

43.53 Balcony / Exterior Elevated Element Inspection

Condominium associations with 3+ attached multifamily units must have exterior elevated elements (decks, balconies, stairways, walkways with walking surface over six feet above ground, supported by wood) inspected by a licensed engineer or architect for safety.

- ✓ Inspection required at least once every nine years by a licensed structural/civil engineer or architect of a statistically significant sample (§ 5551)
- ✓ First inspection had to be completed by January 1, 2025, coordinated with the reserve study
- ✓ If an element poses an immediate threat, the inspector must report to the association immediately and to local code enforcement within 15 days; the association must restrict access until repaired
- ✓ Applies only to buildings with three or more attached multifamily dwelling units

43.54 Affordable Housing Unit Assessment Cap

For associations recording their original declaration on or after January 1, 2025, regular assessment increases on deed-restricted affordable housing units are capped.

- ✓ Regular assessment increase against a deed-restricted affordable housing unit limited to 5% plus cost-of-living change, not to exceed 10% over prior assessment (§ 5605(c))
- ✓ Does not apply to developments of 20 units or fewer or where affordable-unit percentages exceed stated thresholds

43.55 Annual Assessment and Foreclosure Notice

The annual policy statement must include a specified 'Notice Assessments and Foreclosure' in at least 12-point type describing owner rights regarding assessments, liens, foreclosure, payment plans, and dispute resolution.

- ✓ Annual policy statement must include the statutory assessments-and-foreclosure notice in at least 12-point type
- ✓ Association may not use nonjudicial foreclosure to collect fines or penalties except common-area repair costs if authorized

43.56 Tenant-in-Common Owner Tort Protection

Tort actions arising solely from an owner's tenancy-in-common interest in common area must be brought only against the association, not individual owners, if the association maintains prescribed general liability insurance.

- ✓ Required general liability: at least $2,000,000 for 100 or fewer separate interests; at least $3,000,000 for more than 100
- ✓ Tort action arising solely from tenancy-in-common ownership must be brought only against the association

43.57 Association Crime and Fidelity Insurance

An association must maintain crime insurance, employee dishonesty coverage, or fidelity bond coverage equal to or greater than the combined reserves plus three months of total assessments, including computer/funds-transfer fraud protection. Coverage must extend to any managing agent. Self-insurance does not satisfy this requirement.

- ✓ Fidelity/crime coverage must equal or exceed combined reserves plus three months of total assessments
- ✓ Self-insurance does not meet the requirement; coverage must include managing agent dishonesty

43.58 Notice of Insurance Lapse

The association must notify all members as soon as reasonably practicable if any policy in the annual budget report lapses, is canceled, or significantly changes, and must immediately notify members if replacement coverage will not be in effect before existing coverage lapses.

- ✓ Association must give individual notice if a described policy lapses, is canceled, or has a significant coverage change
- ✓ Must immediately notify members if replacement coverage will not be effective before existing coverage lapses

CHAPTER 44

Transfer Disclosure Statement (Civil Code § 1102 et seq.)

44.1 Application of Transfer Disclosure Article

This article applies to any transfer by sale, exchange, real property sales contract, lease with option to purchase, other option to purchase, or ground lease coupled with improvements of any single-family residential property (including manufactured/mobilehomes). Any waiver of the article's requirements is void as against public policy. The Transfer Disclosure Statement may NOT be waived even in an 'as is' sale (Loughrin v. Superior Court).

- ✓ The TDS article applies to transfers of one-to-four/single-family residential property including sales, exchanges, and lease-options
- ✓ Any waiver of the disclosure requirements is void as against public policy
- ✓ The TDS cannot be waived even in an 'as is' sale

44.2 Exempt Transfers from Disclosure Requirements

The disclosure article does NOT apply to numerous transfers, including: sales requiring a public report; court-ordered sales (probate, writ of execution, foreclosure, bankruptcy trustee, eminent domain, specific performance); transfers to a mortgagee/beneficiary by a defaulting borrower and foreclosure sales; transfers by a fiduciary administering a trust, guardianship, conservatorship or estate; transfers between co-owners; transfers to a spouse or a person in the line of consanguinity; transfers between spouses from dissolution/legal separation; and transfers to/from any governmental entity.

- ✓ Court-ordered, foreclosure, bankruptcy, and eminent domain sales are exempt from the TDS
- ✓ Transfers to a spouse or blood relative (line of consanguinity), between co-owners, and to/from a government entity are exempt
- ✓ The fiduciary/trust exemption does not apply if the trustee is a natural person who was a former owner or occupant within the preceding year
- ✓ The natural hazard disclosure article (Civil Code § 1103.1) has the same exemptions

44.3 TDS Delivery Timing and Buyer's Right to Terminate

The seller must deliver the completed TDS to the prospective buyer as soon as practicable before transfer of title (or before execution of a sales contract/lease-option). If any disclosure or material amendment is delivered AFTER the buyer executes an offer, the buyer may terminate the offer within three days after delivery in person, or five days after delivery by mail or electronic record, by written notice of termination to the seller or seller's agent. The termination period begins when Sections I, II, and III of the form are completed and delivered to the buyer.

- ✓ TDS must be delivered as soon as practicable before transfer of title
- ✓ If delivered after offer execution, buyer may terminate within 3 days (personal delivery) or 5 days (mail/electronic delivery)
- ✓ The termination clock begins when Sections I, II, and III of the TDS are completed and delivered

44.4 Contents of the Transfer Disclosure Statement (TDS)

The TDS is a statutory form disclosing the condition of single-family residential property. It is NOT a warranty and is not a substitute for buyer inspections. It contains: Section I (coordination with/substituted disclosures such as the Natural Hazard Disclosure); Section II (Seller's Information — listing property items/appliances, significant defects in structural components, and awareness of environmental hazards, encroachments, unpermitted additions, soil/drainage problems, zoning violations, CC&Rs, HOA authority, common areas, and lawsuits); and Section III/IV (Agent's Inspection Disclosure based on a reasonably competent and diligent visual inspection of accessible areas).

- ✓ The TDS is a disclosure, not a warranty, and does not substitute for buyer inspections
- ✓ The agent must conduct a reasonably competent and diligent visual inspection of the accessible areas and disclose material items
- ✓ The seller must disclose known environmental hazards, unpermitted alterations, defects, CC&Rs, HOA authority, and lawsuits affecting the property

44.5 Mello-Roos and Special Assessment Disclosure

When a property being sold is subject to a continuing lien securing Mello-Roos special taxes, a 1915 Improvement Bond Act fixed lien assessment, or a contractual (PACE-type) assessment program, the seller must make a good faith effort to obtain the applicable disclosure notice from each levying local agency and deliver it to the prospective buyer, so long as the notice is made available by the agency.

- ✓ Seller must make a good faith effort to obtain and deliver the Mello-Roos/assessment disclosure notice to the buyer
- ✓ A substantially equivalent notice may include the most recent year's property tax bill or an itemization of current assessment amounts
- ✓ Once a proper disclosure is delivered, the seller/agent need not provide additional information, and there

is no duty to discover taxes/districts not actually known

44.6 Delivery When Multiple Brokers in Transaction

When more than one licensed real estate broker acts as agent in a transaction subject to this disclosure article, the broker who obtained the offer from the transferee (buyer) is responsible for delivering the required disclosures to the transferee, unless the transferor has given other written delivery instructions. If the responsible broker cannot obtain the disclosure document and has no written assurance the transferee received it, the broker must advise the transferee in writing of their rights to disclosure and maintain a record of compliance efforts per B&P Code Section 10148.

- ✓ The broker who obtained the buyer's offer must deliver the disclosures unless the transferor gives other written instructions
- ✓ If disclosure cannot be obtained, the broker must advise the transferee in writing of their disclosure rights
- ✓ The broker must maintain a record of actions taken to comply per B&P Code Section 10148
- ✓ The same delivery rule applies to natural hazard disclosures (Civil Code § 1103.11)

44.7 Transfer Not Invalidated; Liability for Damages

No transfer subject to this article is invalidated solely because a person failed to comply with a provision of the article. However, any person who willfully or negligently violates or fails to perform a duty prescribed by the article is liable for actual damages suffered by the transferee.

- ✓ Failure to comply with disclosure requirements does NOT invalidate the transfer
- ✓ A person who willfully or negligently violates disclosure duties is liable for actual damages suffered by the transferee
- ✓ The same rule applies to the natural hazard disclosure article (Civil Code § 1103.13)

44.8 Seller and Agent Liability Limitations

Neither the seller nor any seller's or buyer's agent is liable for an error, inaccuracy, or omission if it was not within their personal knowledge, was based on information timely provided by public agencies or qualified experts, and ordinary care was exercised in obtaining and transmitting it. Delivery of information by a public agency or a report by a licensed expert (engineer, surveyor, geologist, pest control operator, contractor, roofing contractor) dealing with matters within their expertise is sufficient compliance and relieves the seller/agent of further duty on that item.

- ✓ No liability for errors outside personal knowledge if based on public agency/expert information and ordinary care was used
- ✓ A report by a qualified licensed expert on matters within their expertise satisfies the disclosure obligation for that item

44.9 Seller Certifications on Smoke Detectors and Water Heater

In the TDS, the Seller certifies that, as of close of escrow, the property will comply with Health and Safety Code Section 13113.8 (operable, approved smoke detectors installed per State Fire Marshal regulations) and Section 19211 (water heater tank braced, anchored, or strapped in place per applicable law).

- ✓ Seller certifies operable approved smoke detectors installed per State Fire Marshal regulations as of close of escrow
- ✓ Seller certifies the water heater is braced, anchored, or strapped in place per applicable law

44.10 Local Option Real Estate Transfer Disclosure Statement

On and after July 1, 1990, any city or county may elect to require additional disclosures using the Local Option Real Estate Transfer Disclosure Statement, beyond the standard TDS required by Section 1102.6. Ordinances adopted before July 1, 1990 remain valid and may be amended. The form is a disclosure of property condition, not a warranty by the seller or licensee, and is not a substitute for buyer inspections.

- ✓ Cities/counties may require the Local Option TDS in addition to the standard Section 1102.6 TDS
- ✓ The disclosure is not a warranty and is not part of any contract between buyer and seller
- ✓ Addenda may be used to facilitate required disclosures

44.11 Airport Vicinity Disclosure Requirements

If a city/county adopts a different or additional disclosure form regarding proximity or effects of an airport, it must contain at minimum the 'Notice of Airport in Vicinity' from B&P Code Section 11010 or Civil Code Section 1103.4/4255. If no such form is adopted, providing an 'airport influence area' disclosure, or a written disclosure of an airport within two statute miles, satisfies airport disclosure requirements.

- ✓ Airport disclosure must include the statutory 'Notice of Airport in Vicinity' minimum language
- ✓ A written disclosure of an airport within two statute miles satisfies requirements if no current airport influence map exists

44.12 Notice of Supplemental Property Tax Bill

It is the sole responsibility of the seller or agent to deliver a disclosure notice explaining that California property tax law requires the Assessor to revalue property when ownership changes, resulting in one or two supplemental tax bills. The notice warns that supplemental bills are not mailed to the lender and are not paid through impound accounts, so the buyer must pay them directly to the tax collector.

- ✓ The notice text must appear in at least 12-point type or a contrasting color
- ✓ The title 'Notice of Your "Supplemental" Property Tax Bill' must be in at least 14-point type or a contrasting color
- ✓ Supplemental tax bills are the buyer's responsibility to pay directly and are not paid by the lender/impound account

44.13 Manufactured Home/Mobilehome Transfer Disclosure

Resale of a manufactured home or mobilehome (except those in a common interest development) requires the Manufactured Home and Mobilehome Transfer Disclosure Statement, made in compliance with Civil Code Section 1102(b) and Health & Safety Code Sections 18025 and 18046. The seller discloses condition, included appliances/features, known defects, and environmental/structural conditions, with agent inspection disclosures where an agent is involved.

- ✓ The disclosure is not a warranty and 'agent' includes licensed mobilehome dealers/salespersons and real estate brokers/salespersons
- ✓ Seller must certify operable smoke detectors (H&S Code 13113.8) and braced water heaters (H&S Code 19211) as of close of escrow
- ✓ A buyer has the right to rescind for at least three days after delivery if the disclosure is delivered after signing the offer to purchase

44.14 Disclosure of Contractor Work After Recent Acquisition

A seller of single-family residential property who accepts an offer within 18 months of taking title must disclose any room additions, structural modifications, alterations, or repairs made since acquiring title that were performed under a contract, plus the name and contact information of each contractor (where the aggregate contract price exceeds the threshold in B&P Code 7027.2). Applies to offers accepted on or after July 1, 2024.

- ✓ Applies to single-family residential sales where the seller accepts an offer within 18 months of taking title, on or after July 1, 2024
- ✓ Seller must disclose contractor-performed work and provide contractor names/contact info for contracts exceeding the B&P Code 7027.2 threshold
- ✓ Seller must provide copies of any permits obtained, or direct the buyer to the third party who holds them

44.15 Good Faith, Amendment, and Delivery of Disclosures

Each disclosure required by this article must be made in good faith, meaning honesty in fact in the conduct of the transaction. The article's specified disclosures do not limit other disclosure obligations existing to avoid fraud, misrepresentation, or deceit. Disclosures may be amended in writing by the seller or agent, subject to buyer rescission rights. Delivery is by personal delivery or mail to the transferee, and delivery to a transferee's spouse is deemed delivery to the transferee unless the contract provides otherwise.

- ✓ Disclosures must be made in good faith, defined as honesty in fact in the conduct of the transaction
- ✓ Disclosures may be amended in writing but remain subject to the buyer's rescission rights under Section 1102.3/1102.3a
- ✓ Delivery to the spouse of a transferee is deemed delivery to the transferee unless the contract provides otherwise
- ✓ The same good-faith, amendment and delivery rules apply to natural hazard disclosures (Civil Code §§ 1103.8–1103.10)

44.16 Former Ordnance Location Disclosure

A seller of residential real property with actual knowledge of former federal or state ordnance locations within the neighborhood area must give written notice as soon as practicable before transfer of title. 'Former ordnance locations' are areas once used for military training that may contain potentially explosive munitions. 'Neighborhood area' means within one mile of the property. This disclosure does not limit obligations under other laws or to avoid fraud.

- ✓ Seller must disclose actual knowledge of former ordnance locations within one mile of the property
- ✓ Disclosure must be in writing and given as soon as practicable before transfer of title
- ✓ 'Neighborhood area' is defined as within one mile of the residential real property

44.17 Window Security Bars Disclosure

The existence of any window security bars and any safety release mechanism on those bars must be disclosed pursuant to Section 1102.6 or 1102.6a of the Civil Code (the Real Estate Transfer Disclosure Statement).

- ✓ Window security bars and their safety release mechanisms must be disclosed
- ✓ Disclosure is made through the Real Estate Transfer Disclosure Statement (§ 1102.6 or 1102.6a)

44.18 Industrial Use / Nuisance Disclosure

A seller of residential real property with actual knowledge that the property is adjacent to or zoned to allow an industrial use described in CCP Section 731a, or affected by a nuisance created by such use, must give written notice of that knowledge as soon as practicable before transfer of title.

- ✓ Seller with actual knowledge must disclose if property is adjacent to or zoned for industrial use
- ✓ Disclosure must be in writing, as soon as practicable before transfer of title

44.19 Fire Hazard Zone Defensible Space Compliance Documentation

On and after July 1, 2021, a seller of property in a high or very high fire hazard severity zone must provide the buyer documentation showing compliance with PRC Section 4291 (defensible space) or local vegetation management ordinances. Where a local ordinance exists, the seller provides the compliance documentation and local agency info; where no ordinance exists but inspection documentation is available, the seller provides documentation obtained within the six months preceding the transaction. If no compliance documentation was obtained, seller and buyer must enter a written agreement requiring the buyer to obtain compliance documentation (within one year of close of escrow where no local ordinance).

- ✓ Effective July 1, 2021, sellers in high/very high fire hazard zones must provide defensible space compliance documentation
- ✓ If seller has not obtained documentation, buyer and seller must enter a written agreement for buyer to obtain it
- ✓ Where no local ordinance exists, the buyer must obtain compliance documentation within one year of close of escrow

44.20 Manufactured/Mobilehome Resale Disclosure

The transferor of a manufactured home or mobilehome subject to this article must deliver the required written statement: when an agent is involved, no later than close of escrow; when no agent is involved, at the time the transferee executes any purchase document. If a disclosure or material amendment is delivered after offer execution, the transferee may terminate within three days (personal delivery) or five days (mail).

- ✓ With an agent involved, the manufactured/mobilehome disclosure must be delivered no later than close of escrow
- ✓ Without an agent, it must be delivered at the time of execution of a purchase document
- ✓ Late delivery gives the transferee 3 days (in person) or 5 days (mail) to terminate

44.21 Later Inaccuracy and Approximations

If disclosed information later becomes inaccurate due to acts, occurrences, or agreements after delivery, the resulting inaccuracy is not a violation. If information is unknown or unavailable when disclosure is required and a reasonable effort was made to ascertain it, the seller may use a clearly-identified, reasonable approximation based on the best available information, not used to circumvent the article. The requirements in effect when the parties enter the contract are the ones that apply.

- ✓ Subsequent inaccuracy from later events is not a violation of the disclosure article
- ✓ A reasonable, clearly-identified approximation may be used when information is unavailable after a reasonable effort to obtain it

44.22 Private Transfer Fee Disclosure

For property transferred on or after January 1, 2008 that is subject to a transfer fee (as defined in Section 1098), the transferor must provide an additional disclosure statement at the same time as the TDS, unless the document under Section 1098.5(b) was already provided.

- ✓ Disclosure must state that payment of a transfer fee is required and identify the amount and how it is calculated
- ✓ Disclosure must identify the entity to which the fee is paid, its purpose, and the date/circumstances when the obligation expires

44.23 Disclosure of Smoking Residue History

A seller of single-family residential property with actual knowledge of any residue from smoking tobacco or nicotine products, or any history of occupants smoking on the property, must disclose that knowledge to the buyer in writing. Residue means chemical accumulation indicated by smell or elevated nicotine test results; smoking includes use of electronic cigarettes or vape devices.

- ✓ Seller must disclose in writing actual knowledge of smoking residue or smoking history
- ✓ Smoking includes use of electronic cigarette or vape devices for inhaling an aerosol

44.24 Escrow Agent Not Deemed Agent for Disclosures

Any person or entity, other than a real estate licensee, acting as an escrow agent for a transfer subject to this article is not deemed the agent of the transferor or transferee for purposes of the article's disclosure requirements.

- ✓ A non-licensee escrow agent is not deemed the agent of buyer or seller for TDS disclosure purposes
- ✓ This exemption does not extend to a real estate licensee acting in the transaction
- ✓ The same rule applies under the natural hazard disclosure article (Civil Code § 1103.11)

CHAPTER 45

Natural Hazard, Fire and Earthquake Disclosures

45.1 Application and Scope of Natural Hazard Disclosure

This article applies to sales, exchanges, real property sales contracts, leases with an option to purchase, other options to purchase, or ground leases coupled with improvements of single-family residential real property. It applies only if the seller or agent is required to disclose the property's location within a special flood hazard area (FEMA Zone A or V), area of potential flooding, very high fire hazard severity zone, earthquake fault zone, seismic hazard zone, or state responsibility wildland area. Any waiver of the article's requirements is void as against public policy.

- ✓ The article applies to single-family residential property sales and specified leases with options to purchase
- ✓ Any waiver of the natural hazard disclosure requirements is void as against public policy
- ✓ Disclosure is triggered by actual knowledge or by a posted parcel/map list at county offices

45.2 Required Natural Hazard Disclosure Statement

Disclosures must be made on the statutory Natural Hazard Disclosure Statement (NHDS), which identifies whether the property lies within a special flood hazard area, area of potential flooding (dam failure inundation), high/very high fire hazard severity zone, wildland area with forest fire risks, earthquake fault zone, or seismic hazard zone. The statement is a disclosure, not a warranty or part of the contract, and buyers may rely on it. If maps lack sufficient accuracy to determine inclusion, the seller/agent must mark 'Yes' (unless a qualifying report is attached). The NHDS may be used only between seller, seller's agent, and prospective buyer—not by insurers, lenders, or agencies.

- ✓ Disclosures must be made on the statutory Natural Hazard Disclosure Statement form
- ✓ If maps are of insufficient accuracy to determine inclusion, the seller/agent must mark 'Yes'
- ✓ The NHDS is a disclosure and not a warranty or part of any contract between seller and buyer

45.3 Timely Delivery and Three-Day Termination Right

The seller must deliver the NHDS as soon as practicable before transfer of title (or before the buyer executes the contract for sales contracts, lease-options, or ground leases). If a disclosure or a material amendment is delivered after the buyer executes the offer, the buyer has three days after personal delivery, or five days after delivery by mail or electronic record, to terminate the offer by written notice to the seller or seller's agent.

- ✓ NHDS must be delivered as soon as practicable before transfer of title
- ✓ Late delivery after offer execution gives buyer 3 days (personal delivery) or 5 days (mail/electronic) to terminate
- ✓ Termination must be by written notice of termination to the seller or seller's agent

45.4 Special Flood Hazard Area Disclosure

An agent for a transferor, or the transferor acting without an agent, of real property in a FEMA-designated special flood hazard area (Zone 'A' or 'V') must disclose to prospective transferees that the property is within such an area. Disclosure is required only when the transferor/agent has actual knowledge, or the local jurisdiction has compiled a parcel list with posted notice. It may be provided through the Natural Hazard Disclosure Statement or Local Option Disclosure Statement.

- ✓ Disclosure required for property in FEMA special flood hazard area (Zone A or V) upon actual knowledge or posted parcel list
- ✓ Disclosure may be delivered via the Natural Hazard Disclosure Statement (CC 1103.2) or Local Option Statement (CC 1102.6a)
- ✓ Persons acting under a power of sale (CC 2924) are not deemed agents of the transferor for this disclosure

45.5 Homeowner's Guide to Earthquake Safety Delivery

After January 1, 1993, the transferor of any residential property with 1-4 units of conventional light-frame construction built before January 1, 1960, must deliver to the purchaser a copy of the 'Homeowner's Guide to Earthquake Safety' and complete an earthquake hazards disclosure indicating whether the transferor has actual knowledge of listed deficiencies. Numerous transfers are exempt, including those requiring a public report, court-ordered transfers, foreclosure/deed-in-lieu transfers, fiduciary transfers, and transfers between spouses or co-owners.

- ✓ Applies to 1-4 unit residential dwellings of light-frame construction built before January 1, 1960
- ✓ Transferor must deliver the Homeowner's Guide to Earthquake Safety and complete an earthquake hazards disclosure of known deficiencies
- ✓ Exemptions include public report transfers, court-ordered, foreclosure, fiduciary, spousal, and co-owner transfers
- ✓ The seller may complete the report without consulting any design professional

45.6 Very High Fire Hazard Zone Disclosure Duty

A transferor of real property located within a very high fire hazard severity zone must disclose to the prospective transferee that the property is in the zone and subject to Section 51182 defensible space requirements. Disclosure is required when the transferor/agent has actual knowledge or when a map including the property has been provided to the local agency and notice posted at the county recorder, assessor, and planning agency.

- ✓ Sellers must disclose that property lies within a very high fire hazard severity zone subject to § 51182
- ✓ Disclosure is triggered by actual knowledge or by a map provided to the local agency with posted notice

45.7 Method of Fire Hazard Zone Disclosure

In transactions subject to Civil Code § 1103, the disclosure is made via the Local Option Real Estate Disclosure Statement (§ 1102.6a) or the Natural Hazard Disclosure Statement (§ 1103.2). If the map lacks sufficient accuracy/scale, the transferor must mark 'Yes' on the NHD unless a report verifies the property is not in the zone, allowing a 'No.'

- ✓ Disclosure is delivered through the Natural Hazard Disclosure Statement or Local Option Real Estate Disclosure Statement
- ✓ If the map is not sufficiently accurate, the transferor must mark 'Yes' unless a qualifying report proves otherwise

45.8 Earthquake Fault Zone Disclosure Requirement

An agent for a transferor of real property located within a delineated earthquake fault zone, or the transferor acting without an agent, must disclose to any prospective transferee that the property is within such a zone. Disclosure is triggered when the transferor or agent has actual knowledge, or when a map covering the property has been provided to the city/county and notice posted at the county recorder, assessor, and planning agency. In transactions subject to Civil Code § 1103, disclosure is made via the Local Option Real Estate Transfer Disclosure Statement (§ 1102.6a) or the Natural Hazard Disclosure Statement (§ 1103.2).

- ✓ Agent or transferor must disclose location within a delineated earthquake fault zone to prospective buyers
- ✓ Disclosure required when there is actual knowledge OR a map has been provided and notice posted at county offices
- ✓ Disclosure delivered via Local Option Real Estate Transfer Disclosure Statement or the Natural Hazard Disclosure Statement
- ✓ If map is not sufficiently accurate/scaled, agent must mark 'Yes' on the NHD unless a § 1103.4 report verifies the property is not in the hazard zone

45.9 Seismic Hazard Zone Disclosure Requirement

An agent for a transferor of real property located within a designated seismic hazard zone, or the transferor acting without an agent, must disclose to any prospective transferee that the property is located within a seismic hazard zone. The trigger conditions (actual knowledge or map provided plus posted notice) and delivery methods mirror the earthquake fault zone rules, using the Local Option or Natural Hazard Disclosure Statement under Civil Code § 1103 transactions.

- ✓ Disclosure of location in a designated seismic hazard zone is required to prospective transferees
- ✓ Triggered by actual knowledge OR a provided map plus posted county notice
- ✓ Delivered through the Local Option Real Estate Transfer Disclosure Statement or Natural Hazard Disclosure Statement
- ✓ Agent marks 'Yes' on NHD if map accuracy is insufficient, unless a § 1103.4 report verifies otherwise

45.10 Fire Hardening Disclosure in Fire Hazard Zones

On or after January 1, 2021, sellers of property in a high or very high fire hazard severity zone, where the home was built before January 1, 2010, must provide a disclosure notice stating the home predates Wildfire Urban Interface building codes and directing buyers to readyforwildfire.org. The seller must disclose known vulnerability features (e.g., non-ember-resistant vents, untreated wood shakes, combustible landscaping within five feet, single-pane/nontempered windows).

- ✓ Applies to homes in high/very high fire hazard severity zones built before January 1, 2010
- ✓ Seller must disclose which listed wildfire-vulnerability features they are aware of, and (after July 1, 2025) which low-cost retrofits have been completed
- ✓ If a final inspection report exists under Gov. Code 51182, seller must provide a copy or where it may be obtained

45.11 Liability Protection and Expert/Third-Party Reports

Neither seller nor seller's or buyer's agent is liable for errors, inaccuracies, or omissions not within their personal knowledge if the information was timely provided by public agencies or qualified experts and ordinary care was exercised. Delivery of a report by a licensed engineer, land surveyor, geologist, or natural hazard expert satisfies compliance (substituted disclosure). Such expert reports must also determine and, where applicable, provide notices for airport influence areas, San Francisco Bay Conservation and Development Commission jurisdiction, Right to Farm (within one mile of designated farmland), and Mining Operations (within one mile of a reported mine).

- ✓ Sellers and agents are not liable for errors outside their personal knowledge if based on agency/expert info and ordinary care was used
- ✓ A report by a licensed engineer, surveyor, geologist, or hazard expert can serve as substituted disclosure
- ✓ Expert reports must include Airport, BCDC, Right to Farm, and Mining Operations notices where

applicable

45.12 Dam Inundation Area Disclosure

An agent for a transferor, or the transferor without an agent, of real property in an area of potential flooding shown on an inundation map (Water Code Section 6161) must disclose the fact to prospective transferees. Like the flood hazard disclosure, it applies only with actual knowledge or a posted parcel list and is delivered via the Natural Hazard or Local Option Disclosure Statement.

- ✓ Disclosure required when property lies in a potential flooding/inundation area on an approved inundation map
- ✓ Triggered by actual knowledge of the transferor/agent or a compiled parcel list with posted notice
- ✓ Delivered through the Natural Hazard Disclosure Statement or Local Option Real Estate Disclosure Statement

45.13 Commercial Earthquake Safety Guide Delivery

On and after January 1, 1993, the transferor or agent of any unreinforced masonry building with wood frame floors or roofs, built before January 1, 1975, must deliver to the purchaser a copy of the Commercial Property Owner's Guide to Earthquake Safety as soon as practicable before the sale, transfer, or exchange.

- ✓ Applies to unreinforced masonry buildings with wood frame floors/roofs built before January 1, 1975
- ✓ Transferor or agent must deliver the Commercial Property Owner's Guide to Earthquake Safety before the transfer
- ✓ Certain transfers described in Section 8893.3 are exempt from this requirement

45.14 Transferor Earthquake Deficiency Disclosure Duty

The transferor of a dwelling must disclose earthquake vulnerability deficiencies within their actual knowledge that are material to the transaction. Disclosure is limited to actual knowledge—there is no duty to inspect. The transferor must also disclose any corrective measures taken to address listed items.

- ✓ Transferor must disclose earthquake deficiencies within actual knowledge that are material: absence of anchor bolts securing sill plate, unbraced perimeter cripple walls, unbraced first-story walls, unreinforced masonry foundation or walls, habitable rooms above a garage, and unanchored/unstrapped water heaters
- ✓ Transferor must disclose material information within actual knowledge regarding corrective measures or improvements made to address these items
- ✓ Disclosure obligation is limited to items within the transferor's actual knowledge

45.15 Real Estate Licensee Earthquake Guide Duty

No transfer of title is invalidated for failure to comply with the earthquake disclosure chapter. The real estate licensee's duty is limited to providing the seller a copy of the Homeowner's Guide to Earthquake Safety for delivery to the prospective transferee per Civil Code § 2079.8.

- ✓ No transfer of title shall be invalidated based on failure to comply with the earthquake disclosure chapter
- ✓ The licensee's duty is limited to providing the seller a copy of the Homeowner's Guide to Earthquake Safety for delivery to the transferee (Civil Code § 2079.8)

45.16 Designation of Fire Hazard Severity Zones

The State Fire Marshal identifies moderate, high, and very high fire hazard severity zones using statewide criteria (fuel loading, slope, fire weather, wind). Local agencies must designate these zones by ordinance within 120 days of receiving recommendations and may increase but never decrease the level of fire hazard severity zone identified by the State Fire Marshal.

- ✓ Local agencies must adopt fire hazard severity zone ordinances within 120 days of State Fire Marshal recommendations
- ✓ A local agency may only increase, never decrease, the fire hazard severity level set by the State Fire Marshal

45.17 Defensible Space Requirement of 100 Feet

An owner/lessee/operator of an occupied dwelling or structure within a very high fire hazard severity zone must maintain 100 feet of defensible space from each side and the front and rear (not beyond the property line except by law). More intense fuel reduction is required between 5 and 30 feet, and an ember-resistant zone within 5 feet of the structure.

- ✓ 100 feet of defensible space must be maintained around structures in very high fire hazard severity zones
- ✓ An ember-resistant zone is required within 5 feet of the structure; intense fuel reduction between 5 and 30 feet

45.18 State Responsibility Area / Wildland Fire Disclosure

A transferor of real property located within a state responsibility area (as classified by the board under § 4125) must disclose to a prospective transferee that the property is in a wildland area that may contain substantial forest fire risks and hazards and is subject to § 4291 requirements. The transferor must also disclose (except in counties that assumed fire responsibility) that the state is not responsible for providing fire protection to structures in the wildlands absent a cooperative agreement. Disclosure is made via the Local Option or Natural Hazard Disclosure Statement.

- ✓ Transferor must disclose location within a state responsibility area with substantial wildland fire risks and § 4291 obligations
- ✓ Must disclose the state is not responsible for fire protection to structures unless a cooperative agreement exists
- ✓ Triggered by actual knowledge OR a provided map with posted county notice
- ✓ Delivered via Local Option Real Estate Disclosure Statement or Natural Hazard Disclosure Statement

45.19 No Duty to Update After Compliance

After a seller and agent comply with Section 1103.2, they are relieved of further duty regarding those items of information. They need not notify the buyer if the information later becomes inaccurate due to governmental action, map revision, or other occurrence—unless the seller or agent has actual knowledge that the information has become inaccurate.

- ✓ After compliance, the seller and agent have no duty to update disclosures for later map revisions or changes
- ✓ The exception is when the seller or agent has actual knowledge the information became inaccurate

CHAPTER 46

Other Statutory Disclosures and Notices on Sale

46.1 Death and HIV/AIDS Disclosure Exemptions

A property owner or agent is not required to disclose an occupant's death that occurred more than three years before an offer, or that an occupant had HIV or died from AIDS-related complications, as these are not material facts requiring disclosure. This is a heavily tested California disclosure rule.

- ✓ No disclosure is required for a death on the property occurring more than 3 years prior to the date the transferee offers to purchase, lease, or rent
- ✓ No disclosure is required that an occupant was living with HIV or died from AIDS-related complications
- ✓ No cause of action arises against an owner or agent for not disclosing these facts
- ✓ The section does NOT immunize an owner or agent from making an intentional misrepresentation in response to a direct inquiry about deaths on the property
- ✓ 'Agent' includes any person licensed under the Real Estate Law (BPC § 10000 et seq.)

46.2 Megan's Law Database Notice Requirement

Every lease/rental agreement for single-family residential property (and multi-unit property over four units) entered into on or after July 1, 1999, and every sale contract for 1-4 unit residential property, must contain a specified sex offender database notice in at least 8-point type. Contracts on/after April 1, 2006, must reference the www.meganslaw.ca.gov website. Delivery of the notice satisfies the disclosure; the lessor/seller/broker need not provide additional information on registered sex offender proximity.

- ✓ Megan's Law notice required in 8-point type in specified leases and 1-4 unit residential sale contracts
- ✓ Contracts on/after April 1, 2006 must reference www.meganslaw.ca.gov
- ✓ Delivery of the notice relieves the broker/seller of providing additional sex offender proximity information

46.3 Smoke Alarm Disclosure Statement Required on Transfer

On and after January 1, 1986, the transferor of any real property containing a single-family dwelling — whether by sale, exchange, or real property sales contract (Civil Code § 2985) — must deliver to the transferee a written statement indicating the transferor is in compliance with the smoke alarm requirements. The disclosure may be part of the receipt for deposit, an addendum, or a separate document. Smoke alarms must be approved and listed by the State Fire Marshal at time of installation; battery-operated alarms meeting Section 13114 standards satisfy the requirement unless prohibited by local rules.

- ✓ Transferor must deliver a written smoke alarm compliance statement as soon as practicable before transfer of title (or before execution of a real property sales contract)
- ✓ Delivery may be in person or by mail to the transferee/transferor or their authorized agent; delivery to a spouse is deemed delivery unless the contract states otherwise
- ✓ 'Single-family dwelling' includes one- or two-unit dwellings but excludes manufactured homes, mobilehomes, and commercial coaches

46.4 Water Heater Bracing Seller Certification

All new, replacement, and existing residential water heaters must be braced, anchored, or strapped to resist earthquake displacement per the California Plumbing Code. The seller of real property containing a water heater must certify in writing to the prospective purchaser that this section has been complied with.

- ✓ The seller's water heater certification must be in writing and may be included in the Homeowner's Guide to Earthquake Safety, sales contract/receipt for deposit, or a Transfer Disclosure Statement (Civil Code § 1102.6/1102.6a)
- ✓ 'Water heater' means a standard heater with a capacity of not more than 120 gallons for which a preengineered strapping kit is readily available; owners may not evict a tenant to comply with this section

46.5 Structural Pest Control Inspection Certification

A registered pest control company that makes an inspection report must, upon request, prepare and deliver a certification stating the presence or absence of wood-destroying pests or organisms in visible and accessible areas. This certification is important in real estate transactions where a termite/pest report is required as a disclosure. Certifications differ based on whether infestation was found and whether corrective work was completed.

- ✓ Certification is a written statement attesting to the absence or presence of wood-destroying pests or organisms found in visible and accessible areas
- ✓ A registered company must, if requested by the person ordering the inspection report, prepare and deliver a certification
- ✓ Certification must disclose any recommendations that have not been completed at time of certification
- ✓ A written warranty for fumigation must be provided by the registered company contracting with the owner

46.6 Prohibited Misrepresentations About Homestead Declarations

A homestead declaration is a voluntary recorded document relating to the homestead exemption under Code of Civil Procedure § 704.710. It is unlawful for a homestead filing service to make untrue or misleading statements suggesting that recording a homestead declaration prevents forced sale of a debtor's dwelling, prevents foreclosure of a mortgage/deed of trust/mechanic's lien, is required by law, or is connected to obtaining a homeowner's property tax exemption. Exam candidates should distinguish the recorded 'homestead declaration' from the automatic homestead exemption available to all owners.

- ✓ Recording a homestead declaration does NOT prevent forced sale by a creditor or foreclosure of a mortgage/deed of trust/mechanic's lien
- ✓ A homestead declaration is not required by law and is unrelated to the homeowner's property tax exemption
- ✓ The homestead exemption under CCP § 704.710 is available to all persons, not only those who record a declaration

46.7 Required Homestead Filing Service Disclosure and Fee Cap

Any offeror of a homestead filing service must disclose that the service is not associated with any government agency, that recording is voluntary, that recording does not protect the home against forced sale, and that owners may record a declaration themselves. The disclosure must appear at the top of each page in 12-point boldface type in a heavy-lined box. The service must deliver the notarized declaration to the county recorder within 10 days, pay all notarization/recordation fees, and may not charge until after recordation. Total charges (including all fees) cannot exceed $25.

- ✓ Disclosure must state the service is NOT associated with any government agency and that recording is voluntary
- ✓ Notarized homestead declaration must be delivered to the county recorder no later than 10 days after notarization
- ✓ No money may be charged until after recordation, and total charges may not exceed $25
- ✓ Attorneys performing this service for retained clients are excluded from the homestead filing service definition

46.8 Definition and Exclusions of Transfer Fees

A 'transfer fee' is any fee payment requirement imposed within a covenant, restriction, or condition in a deed, contract, security instrument, or other document affecting transfer of real property that requires a fee upon transfer. Excluded are governmental fees/taxes, mechanics' lien fees, court-ordered transfers, marriage dissolution fees, estate/trust administration fees, lender fees, and Common Interest Development assessments.

- ✓ A transfer fee is a fee triggered by transfer imposed via covenant, restriction, or condition on real property
- ✓ Governmental fees, taxes, mechanics' liens, and CID assessments are NOT transfer fees

46.9 Transfer Fee Disclosure Document Requirements

For transfer fees, a separate document titled 'Payment of Transfer Fee Required' in at least 14-point boldface type must be recorded. It must include the owners' names, legal description, APN, the fee amount or percentage, dollar-cost examples ($250,000/$500,000/$750,000 for residential), expiration terms, purpose of funds, and the receiving entity with contact information.

- ✓ The disclosure document must be titled 'Payment of Transfer Fee Required' in at least 14-point boldface type
- ✓ For residential property, actual dollar-cost examples must be shown for homes priced at $250,000, $500,000, and $750,000
- ✓ The document must be recorded in the county where the property is located and identify the fee amount, purpose, and receiving entity
- ✓ Private transfer fees created on or after February 8, 2011 also require a 14-point boldface notice that

FHFA/FHA will not deal in mortgages on property burdened by a private transfer fee covenant that provides no direct benefit

46.10 Transfer Fees Prohibited After January 1, 2019

On or after January 1, 2019, a transfer fee shall not be created. Any transfer fee created in violation of this rule is void as against public policy. Limited exceptions exist for excepted transfer fee covenants under federal law and for certain pre-June 1, 2009 litigation-settlement or government-approved covenants meeting specific requirements.

- ✓ No transfer fee may be created on or after January 1, 2019
- ✓ Any transfer fee created in violation is void as against public policy

46.11 Delivery of Structural Pest Control Report

As soon as practical before transfer of title or execution of a real property sales contract, the transferor, fee owner, or agent must deliver to the transferee a copy of a structural pest control inspection report, provided that certification or preparation of a report is a condition of the contract or a requirement of financing. Delivery may be made in person or by mail to the transferee or an authorized person; delivery to either spouse is deemed delivery to a transferee unless the contract states otherwise. A transfer is not invalidated solely by failure to comply unless that failure would independently be grounds for rescission.

- ✓ Pest control report must be delivered as soon as practical before transfer of title when required by the contract or financing
- ✓ Delivery to either spouse is deemed delivery to the transferee unless the contract states otherwise
- ✓ Failure to comply does not invalidate transfer unless it would otherwise be grounds for rescission

46.12 Water-Conserving Plumbing Fixture Disclosure

For all building alterations or improvements to single-family residential real property, the permit applicant must replace noncompliant plumbing fixtures with water-conserving fixtures as a condition of final permit approval. As of January 1, 2017, all noncompliant fixtures in single-family residences must be replaced. A seller of single-family residential property must disclose in writing the replacement requirement and whether the property includes any noncompliant plumbing fixtures.

- ✓ As of January 1, 2017, noncompliant plumbing fixtures in single-family homes must be replaced with water-conserving fixtures
- ✓ Seller must disclose in writing whether the property contains noncompliant plumbing fixtures
- ✓ The seller must affirm the plumbing-fixture disclosure is the seller's own representation, not the agent's, and is not a warranty (Civil Code § 1102.155)

46.13 Delivery of Hazard and Energy Booklets

When required informational booklets are delivered to a buyer—Environmental Hazards booklet, Homeowner's/Commercial Property Owner's Guide to Earthquake Safety, or Home Energy Rating Program booklet—the seller or broker need not provide additional general information on those topics, and the booklet is deemed adequate to inform the buyer. However, this never relieves the duty to disclose known hazards affecting the property.

- ✓ Delivering the required booklet is deemed adequate to inform the buyer on general hazards/energy topics
- ✓ Booklets do not increase or decrease the seller/broker's duty to disclose known hazards on the property
- ✓ Applies to environmental hazards, earthquake safety (residential and commercial), and home energy rating booklets

46.14 Pipeline Notice in Sale Contracts

Every contract for the sale of single-family residential real property entered into on or after July 1, 2013, must contain, in at least 8-point type, a notice informing the buyer that gas and hazardous liquid transmission pipeline location information is available via the National Pipeline Mapping System (NPMS). Delivery of the notice is deemed adequate to inform the buyer, but does not alter existing disclosure duties.

- ✓ SFR sale contracts on/after July 1, 2013 must include the pipeline notice in at least 8-point type
- ✓ Notice directs buyers to the National Pipeline Mapping System (NPMS) website
- ✓ Notice delivery does not alter other seller/broker disclosure duties

46.15 Prohibition on Unsolicited Offers in Fire ZIP Codes

Section 2079.26 prohibits making an unsolicited offer to purchase residential real property in specified LA/Ventura fire-affected ZIP codes. Before transfer of title, buyer and seller must execute a written attestation affirming the purchase was not from an unsolicited offer, which creates a presumption the offer was solicited unless clear and convincing evidence shows otherwise. The buyer must record the attestation with the deed. A licensee violating this violates their licensing law. This article is repealed January 1, 2027.

- ✓ Unsolicited offers to purchase residential property in the listed fire ZIP codes are prohibited
- ✓ Buyer and seller must execute a written attestation affirming the offer was solicited before title transfer
- ✓ A licensee who makes a violating written offer is deemed to have violated licensing law
- ✓ The seller may cancel the purchase agreement until four months after execution; violators face up to $25,000 civil penalty

46.16 Exemptions from Smoke Alarm Disclosure

The smoke alarm disclosure requirement does not apply to certain transfers, mirroring the Transfer Disclosure Statement exemptions. These exempt transactions do not require the transferor to deliver the statement.

- ✓ Exempt transfers include: those requiring a public report (B&P § 11018.1), court-ordered transfers, foreclosure/trustee sale transfers, fiduciary transfers in administration of estates/trusts, co-owner-to-co-owner transfers, and transfers to a spouse or lineal relatives
- ✓ Also exempt: transfers between spouses from divorce/legal separation decrees, Controller transfers under Unclaimed Property Law, and tax-sale transfers under the Revenue and Taxation Code

46.17 Agent Liability and Remedy for Smoke Alarm Disclosure

Agents and escrow parties are generally shielded from liability for errors or omissions in the transferor's smoke alarm disclosure, except a licensee who participates in making the disclosure with actual knowledge of its falsity. The section imposes no duty on agents to monitor compliance, does not invalidate title for noncompliance, and limits damages.

- ✓ A licensee (B&P § 10011) is liable only if participating in the disclosure with actual knowledge of its falsity
- ✓ No transfer is invalidated for noncompliance; the exclusive remedy is actual damages not to exceed $100, exclusive of court costs and attorney's fees

46.18 Balcony/Deck Inspection Disclosure on Sale

Buildings with three or more multifamily dwelling units must have exterior elevated elements (balconies, decks, porches, stairways, walkways more than six feet above ground and reliant on wood) inspected by a qualified licensed professional. Reports must be maintained and disclosed at any subsequent sale of the building. For condominium conversions after January 1, 2019, inspection must occur before the first close of escrow and be submitted to the DRE as a condition to the final public report.

- ✓ Inspections must be completed by January 1, 2026, and every six years thereafter
- ✓ Inspection reports must be kept in the owner's permanent records for at least two inspection cycles and disclosed/delivered to the buyer at any subsequent sale of the building
- ✓ This section does not apply to common interest developments (Civil Code § 4100)

46.19 Grant Deed Copy Service Disclosure Requirements

A grant deed copy service offers, through mailed solicitation, to obtain a copy of a property owner's grant deed or record of title for compensation. It is unlawful to make untrue or misleading statements, imply government affiliation, or claim a fee-payment deadline. The required disclosure (14-point boldface, in a heavy-lined box at top of each page) must state the service is not associated with any governmental agency and that owners can obtain their own copy from the county recorder for the stated county fee.

- ✓ Disclosure must state the service is NOT associated with any governmental agency and that owners can get a copy from the county recorder for the stated fee
- ✓ It is unlawful to use envelopes or names that simulate government documents or imply government affiliation
- ✓ The required disclosure must be printed in 14-point boldface type in a box formed by a heavy line at the top of each page

46.20 Smoke Alarms on Sale/Rental of Used Mobilehomes

Beginning January 1, 2020, used manufactured homes, mobilehomes, and multifamily manufactured homes sold or rented must have an operable, State Fire Marshal-approved smoke alarm installed in each room designed for sleeping on the date of rental or transfer of title. Manufacturer information on operation, testing, and maintenance must be provided to the purchaser or renter.

- ✓ The requirement is satisfied if, within 45 days prior to rental/transfer, the lessor/transferor signs a declaration that each smoke alarm is installed and operable
- ✓ For manufactured/mobilehome sales on real property, the real estate licensee liability provisions of § 13113.8(e), (f), and (g) apply to these disclosures

46.21 Dealer/Broker Roles in Manufactured Home Sales

For dealer sales of new or used manufactured homes/mobilehomes, purchase documents must contain specified disclosures including a full price description and notices. If the dealer is also a licensed real estate broker, the sale of a manufactured home being installed on a foundation (§ 18551) may be included in the purchase document for the underlying real property. On resale of homes not previously installed on a foundation, a dealer may engage in listings and payments with real estate licensees.

- ✓ A dealer who is also a licensed real estate broker may include a foundation-installed manufactured home sale in the underlying real property purchase document
- ✓ Dealers may cooperate, multiple-list, and share payments with real estate licensees on resale of mobilehomes not previously installed on a foundation system

CHAPTER 47

Broker's Duty of Visual Inspection (Civil Code § 2079)

47.1 Broker Duty of Competent Visual Inspection

A broker or salesperson owes a prospective buyer of residential property of 1-4 dwelling units (or a manufactured home) a duty to conduct a reasonably competent and diligent visual inspection and disclose all facts materially affecting value or desirability that an investigation would reveal. This applies to both listing brokers and cooperating brokers.

- ✓ Duty applies to residential real property of 1 to 4 dwelling units and manufactured homes
- ✓ Broker must conduct a reasonably competent and diligent visual inspection and disclose material facts
- ✓ Duty applies to both the listing broker and a cooperating broker who acts to find a buyer

47.2 Scope and Standard of Inspection Duty (§§ 2079.1-2079.5)

The article also applies to leases with option to purchase, ground leases, and real property sales contracts for 1-4 unit property. The standard of care is that of a reasonably prudent real estate licensee. The inspection does NOT include areas reasonably/normally inaccessible, off-site areas, public records, or (for common-interest units) more than the unit offered for sale. Legal action for breach must be brought within two years of date of possession.

- ✓ Standard of care = degree of care a reasonably prudent real estate licensee would exercise
- ✓ Inspection excludes inaccessible areas, off-site areas, and public records/permits
- ✓ Legal action for breach must commence within 2 years of date of possession
- ✓ Buyer retains a duty to exercise reasonable care to protect themselves

47.3 Exempt Transfers from Inspection Duty (§ 2079.6)

The inspection duty does not apply to sales requiring a public report (subdivided lands) under B&P Code Sections 11018.1 or 11234, or sales made without a public report under Section 11010.4, unless the property has been previously occupied.

- ✓ Article does not apply to sales requiring furnishing of a public report (new subdivision sales)
- ✓ Exemption does not apply if the property has been previously occupied

CHAPTER 48

California Real Property Taxation

48.1 Proposition 13 Assessment Rules

Proposition 13 (1978, Cal. Const. art. XIII A) limits the general ad valorem property tax to 1 percent of the assessed value, plus the rate needed for voter-approved bonded indebtedness. The assessed (base year) value is the fair market value when the property last changed ownership or was newly constructed (or the 1975-76 value), and it may increase by no more than 2 percent per year (or the California CPI if lower). A change of ownership or new construction triggers reassessment to current market value; temporary declines below the factored base year value are recognized under Proposition 8. A Preliminary Change of Ownership Report (PCOR) is filed with the deed at recording, and a change of ownership between spouses or registered domestic partners is excluded from reassessment. Source: Cal. Const. art. XIII A; Rev. & Tax. Code § § 51, 60 et seq., 480.3.

- ✓ Maximum general tax rate is 1% of assessed value plus voter-approved bonded debt
- ✓ Base year value is set at change of ownership or new construction and may rise at most 2% per year
- ✓ Change of ownership or new construction triggers reassessment to current market value
- ✓ Proposition 8 allows a temporary reduction when market value falls below the factored base year value
- ✓ A Preliminary Change of Ownership Report (PCOR) is filed with the deed; interspousal transfers are excluded from reassessment

48.2 Proposition 19: Base Year Value Transfer for Seniors, Disabled and Disaster Victims

Since April 1, 2021, Proposition 19 lets a homeowner who is 55 or older, severely disabled, or whose home was substantially damaged by a wildfire or other declared natural disaster transfer the taxable (factored base year) value of their primary residence to a replacement primary residence anywhere in California, purchased or built within two years before or after the sale of the original home. If the replacement is of equal or lesser value the base year value transfers unchanged; if it is more expensive, the difference in market value is added to the transferred base year value. Owners 55+ or disabled may use the transfer up to three times (disaster victims once per disaster). This replaced the former Propositions 60/90/110, which allowed only a one-time transfer, within the same county or a reciprocating county, and only to a home of equal or lesser value. Source: Cal. Const. art. XIII A § 2.1; Rev. & Tax. Code § 69.6.

- ✓ Eligible: homeowners 55 or older, severely disabled, or victims of a wildfire or declared natural disaster
- ✓ The base year value may move to a replacement primary residence anywhere in California, within two years of the sale
- ✓ A more expensive replacement adds the difference in value to the transferred base year value
- ✓ Up to three transfers for 55+/disabled owners (one per disaster for disaster victims); the old one-time, same-county limits of Props 60/90 no longer apply

48.3 Proposition 19: Parent-Child and Grandparent-Grandchild Exclusion

Since February 16, 2021, Proposition 19 narrowed the exclusion from reassessment for transfers between parents and children (and grandparents to grandchildren when the parents are deceased). The exclusion now applies only to the transferor's family home (principal residence) or family farm, and only if the child makes it their own principal residence within one year of the transfer (claiming the homeowners' or disabled veterans' exemption). The excluded amount is limited to the factored base year value plus $1,000,000, adjusted for inflation every two years (about $1.04 million for 2025-2027); value above that limit is reassessed. Transfers of other property (rentals, second homes, commercial property) are fully reassessed; the former $1,000,000 'other property' exclusion under Propositions 58 and 193 was repealed. Source: Cal. Const. art. XIII A § 2.1(c); Rev. & Tax. Code § 63.2.

- ✓ Only the transferor's principal residence (family home) or family farm can qualify for the parent-child exclusion
- ✓ The child must occupy the home as a principal residence within one year of the transfer
- ✓ The exclusion covers the factored base year value plus $1,000,000 (inflation-adjusted every two years); excess value is reassessed
- ✓ Rentals, vacation homes and commercial property transferred to children are fully reassessed; grandparent-grandchild transfers qualify only if the parents are deceased

48.4 California Property Tax Calendar and Delinquency

California property taxes run on a fiscal year from July 1 to June 30 and become a lien on the property on January 1 preceding the fiscal year (the lien date). Tax bills are mailed in the fall and are payable in two installments: the first is due November 1 and delinquent after December 10; the second is due February 1 and delinquent after April 10 (the mnemonic 'No Darn Fooling Around'). A 10 percent penalty attaches to each delinquent installment, plus a cost on the second. Taxes unpaid at the end of the fiscal year make the property tax-defaulted on July 1; the owner may redeem by paying the taxes, penalties and 1.5 percent monthly interest, and the tax collector gains the power to sell the property at a tax sale after five years of default (three years for certain nonresidential commercial property). Source: Rev. & Tax. Code § § 2192, 2605, 2606, 2617, 2618, 3691.

- ✓ Fiscal year July 1 - June 30; lien date January 1
- ✓ First installment due November 1, delinquent after December 10; second due February 1, delinquent after April 10
- ✓ A 10% penalty attaches to each delinquent installment
- ✓ Property becomes tax-defaulted July 1 after the unpaid year; it may be sold at tax sale after five years of default, subject to redemption

48.5 California Real Estate Withholding (FTB Form 593)

In addition to federal FIRPTA withholding on foreign sellers, California requires the buyer (in practice the escrow holder) to withhold state income tax on the sale of California real property by any seller, resident or nonresident, and remit it to the Franchise Tax Board with Form 593. The default withholding is 3 1/3 percent (0.0333) of the total sales price; the seller may instead elect the alternative calculation of the gain multiplied by the seller's maximum tax rate. No withholding is required if the sales price is $100,000 or less, the property was the seller's principal residence, the sale results in a loss or zero gain, the property is exchanged under IRC § 1031 or involuntarily converted, or the seller is a corporation, partnership, LLC, bank, tax-exempt entity or estate with a California presence, as certified on Form 593. Source: Rev. & Tax. Code § 18662; FTB Form 593 instructions.

- ✓ California withholding applies to sales by any seller, including California residents, unlike FIRPTA which targets foreign sellers
- ✓ Default withholding is 3 1/3% of the total sales price, or optionally the gain times the seller's maximum tax rate
- ✓ Exempt: sales price of $100,000 or less, principal residence, loss or zero gain, § 1031 exchange, involuntary conversion, and qualifying entity sellers
- ✓ The buyer/escrow holder remits the withholding to the Franchise Tax Board with Form 593

48.6 Assessment Reduction Service Disclosures and Rules

An assessment reduction filing service assists property owners in preparing applications/requests to reduce assessed value of residential property. It is unlawful to make untrue or misleading statements, such as guaranteeing a reduction, implying a county fee where none exists, or implying government affiliation. Required disclosure must inform owners of their right to a free informal assessor review and their right to file an Application for Changed Assessment with the county board of equalization or assessment appeals board themselves. The disclosure must note an appeals board may raise (but not above the Proposition 13 protected value) or lower property values.

- ✓ Disclosure must state the service is not associated with government and that an informal assessment review is available at no cost from the assessor
- ✓ No money may be collected for a request for review until it is filed with the assessor, or for an appeal application until filed with the clerk of the appeals board
- ✓ Written authorization from the property owner is required before filing, and the offeror must keep the original for three years
- ✓ An appeals board may raise property values but no higher than the Proposition 13 protected value

48.7 Documentary Transfer Tax Rate

The documentary transfer tax applies to all transfers of real property in the county and helps appraisers determine sale prices from public records. It is computed at 55 cents for each $500 of consideration or fraction thereof.

- ✓ Documentary transfer tax rate is 55 cents per $500 of consideration or fraction thereof
- ✓ Applies to all transfers of real property located in the county
- ✓ If a lien/encumbrance remains and portion of price is exempt, this must be stated on the deed

48.8 Homeowners' Exemption and Other Assessment Exemptions

An owner who occupies a dwelling as their principal residence on the January 1 lien date may claim the homeowners' exemption, which reduces the assessed value by $7,000 (saving roughly $70 per year at the 1 percent rate). The claim is filed once with the county assessor; filing by February 15 secures the full exemption, and a late claim filed by December 10 receives 80 percent for that year. The exemption cannot be combined with the much larger disabled veterans' exemption on the same home. Property owned by governments, churches, nonprofit schools and certain welfare organizations is exempt from taxation altogether. Source: Cal. Const. art. XIII § 3(k); Rev. & Tax. Code § § 218, 255.

- ✓ The homeowners' exemption removes $7,000 of assessed value from an owner-occupied principal residence
- ✓ Occupancy on the January 1 lien date is required; file by February 15 for the full exemption (80% if filed by December 10)
- ✓ The exemption is claimed once and continues until the owner moves; it cannot be combined with the disabled veterans' exemption
- ✓ Government, religious, nonprofit school and welfare property is fully exempt

CHAPTER 49

Fair Housing: Unruh Act, FEHA and the Holden Act

49.1 Unruh Civil Rights Act Protected Classes

The Unruh Civil Rights Act guarantees all persons within California full and equal access to accommodations, advantages, facilities, privileges, and services in all business establishments regardless of protected characteristics. Real estate licensees and business establishments (including brokerages and housing providers) must not discriminate. A violation of the federal ADA also constitutes a violation of the Unruh Act.

- ✓ Protected classes include sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, and immigration status
- ✓ Applies to all business establishments of every kind whatsoever
- ✓ A violation of the federal Americans with Disabilities Act (ADA) automatically constitutes a violation of the Unruh Act
- ✓ Protection includes perception of a characteristic and association with a person who has a characteristic

49.2 Senior Citizen Housing Exception to Age Discrimination

Section 51 prohibits business establishments from discriminating in the sale or rental of housing based on age. However, a business may lawfully establish and preserve housing designed for senior citizens pursuant to Section 51.3, provided it is not preempted by the federal Fair Housing Amendments Act's familial status protections. Housing built on or after January 1, 2001 is presumed designed for seniors' needs if it meets specified accessibility criteria.

- ✓ Age discrimination in the sale or rental of housing is generally prohibited
- ✓ Senior citizen housing is a valid exception when it meets the criteria in Section 51.3
- ✓ This section does not apply to the County of Riverside
- ✓ Federal Fair Housing Amendments Act familial status protections can preempt the exception

49.3 Discriminatory Deed Restrictions Void or Revised

Deed provisions restricting the right to sell, lease, rent, use, or occupy property based on characteristics protected under Government Code Section 12955 (FEHA) are void, even those imposing penalties, forfeiture, or reverter. Under 782.5, such provisions are deemed revised to omit the offending language. Exception exists for housing for older persons regarding familial status.

- ✓ Deed provisions restricting sale/lease/use/occupancy based on protected characteristics (Gov Code 12955) are void, including those with penalty, forfeiture, or reverter
- ✓ Under Section 782.5, discriminatory provisions in deeds are deemed revised to omit the offending provision
- ✓ Exception: with respect to familial status, restrictions do not apply to qualifying housing for older persons under Gov Code Section 12955.9
- ✓ Civil Code § 53 likewise voids any written-instrument provision restricting conveyance, encumbrance, leasing, use or occupancy on a protected basis

49.4 FEHA Housing Discrimination Definitions

The California Fair Employment and Housing Act (FEHA) defines key terms for housing discrimination. 'Owner' broadly includes lessees, managing agents, and real estate brokers/salespersons. 'Discrimination' encompasses refusal to sell/rent, misrepresenting availability, inferior terms, harassment, and refusal of reasonable accommodations/modifications for disabled persons.

- ✓ 'Owner' includes lessees, sublessees, assignees, managing agents, and real estate brokers or salespersons
- ✓ 'Discrimination' includes refusal to permit reasonable modifications (at the disabled person's expense) and refusal to make reasonable accommodations in rules/policies/services for disabled persons
- ✓ In a rental, the landlord may condition permission for modification on the renter agreeing to restore the interior to its prior condition (excluding reasonable wear and tear)
- ✓ Exception: refusal to rent a portion of an owner-occupied single-family home to one roomer/boarder living within the household is not discrimination if the owner complies with anti-discriminatory notice rules

49.5 Source of Income Protected Class

'Source of income' means lawful, verifiable income paid directly to a tenant or to a landlord on behalf of a tenant, including public assistance and housing subsidies such as Section 8 vouchers and HUD-VASH vouchers. A landlord is not a tenant's representative except for HUD-VASH vouchers.

- ✓ Source of income includes federal, state, or local public assistance and housing subsidies, including Section 8 vouchers and HUD-VASH vouchers
- ✓ Discrimination against tenants based on lawful, verifiable source of income is prohibited

49.6 Protected Classes Under FEHA

It is unlawful for owners, financial institutions, appraisers, and those in real estate-related transactions to discriminate based on the FEHA protected classes. FEHA protects more classes than federal fair housing law.

- ✓ Protected characteristics: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, and genetic information
- ✓ Protected status includes a perception that a person has a characteristic or is associated with a person who has/is perceived to have such a characteristic
- ✓ Prohibited practices include discriminatory inquiries, notices/advertisements indicating preference, blockbusting for profit, denial of MLS access, and discriminatory land use practices

49.7 Holden Act Prohibition on Redlining

The Holden Act (§ 35800 et seq.) prohibits financial institutions from discriminating in the availability or provision of financial assistance for purchasing, constructing, rehabilitating, improving, or refinancing housing accommodations based on the conditions, characteristics, or trends of the neighborhood or geographic area surrounding the property (redlining). It aims to prevent neighborhood decline and preserve homeowner equity, and to encourage lending in underserved areas.

- ✓ No financial institution may discriminate in financial assistance based on neighborhood/geographic conditions unless it can demonstrate consideration is required to avoid an unsafe and unsound business practice
- ✓ No financial institution may discriminate based on the protected characteristics listed in Government Code § 12955(a) or (d)
- ✓ 'Housing accommodation' includes improved/unimproved residential real property occupied by the owner containing not more than four dwelling units

49.8 Discrimination by Licensees Prohibited

Every person holding a license under the Business and Professions Code is subject to disciplinary action if, because of any characteristic listed or defined in Civil Code Section 51 (Unruh Civil Rights Act), the licensee refuses to perform the licensed activity, aids or incites another licensee's refusal, or makes any discrimination or restriction in performing the licensed activity. This applies to real estate licensees and supports fair housing enforcement.

- ✓ A licensee who refuses to perform licensed activity because of a characteristic protected under Civil Code § 51 is subject to discipline
- ✓ Aiding or inciting another licensee to refuse to perform the licensed activity is also grounds for discipline
- ✓ Making any discrimination or restriction in the performance of the licensed activity because of a protected characteristic is prohibited
- ✓ Architectural barriers conforming to applicable state or local building codes do not constitute discrimination under this section

49.9 Senior Citizen Housing Age and Unit Requirements

Establishes definitions and requirements for qualifying senior citizen housing developments in California. A qualifying resident/senior citizen must be 62 or older, or 55 or older in a designated senior citizen housing development, which must contain at least 35 dwelling units. Qualified permanent residents (generally 45+) and permitted health care residents may also occupy such housing under specified conditions.

- ✓ A 'senior citizen' is 62 years or older, or 55 years or older in a senior citizen housing development
- ✓ A 'senior citizen housing development' must have at least 35 dwelling units
- ✓ A 'qualified permanent resident' must generally be 45 years of age or older or be a spouse/cohabitant/support person
- ✓ CC&Rs may require at least one senior citizen per dwelling unit as primary permanent resident
- ✓ This section does not apply to the County of Riverside

49.10 Senior Citizen Housing Development Definition

A senior citizen housing development is a residential development developed with more than 20 units as a senior community by its developer and zoned or characterized as a senior community. Note this specific section applies only to Riverside County, but the general concepts of qualifying resident age thresholds appear throughout California senior housing law.

- ✓ A senior citizen housing development requires more than 20 units developed and zoned/characterized as a senior community
- ✓ Qualifying resident/senior citizen means 62 or older, or 55 or older in a senior citizen housing development
- ✓ Developments requiring a public report under B&P Code Section 11010 (application after July 1, 2001) must obtain a public report as a senior citizen housing development under Section 11010.05

49.11 Prohibited Financial and Aggregate Income Standards

Financial institutions may not discriminate in financial assistance terms. Landlords must account for aggregate income of persons residing together on the same basis as married persons. When a government rent subsidy exists, income standards must be based only on the tenant's portion of the rent.

- ✓ Financial or income standards must account for aggregate income of persons residing together on the same basis as married persons
- ✓ With a government rent subsidy, the income standard must be based only on the portion of rent the tenant pays, not total rent
- ✓ Applicants using rent subsidies must be offered the option to provide alternative evidence of ability to pay in lieu of credit history

49.12 Retaliation and Aiding Discrimination Prohibited

It is unlawful for an owner to harass, evict, or discriminate where the dominant purpose is retaliation against a person who opposed unlawful practices, reported them, testified, or aided others in exercising rights. It is also unlawful to aid, abet, incite, compel, or coerce discriminatory acts.

- ✓ Retaliation against persons opposing or reporting unlawful practices is prohibited
- ✓ Aiding, abetting, inciting, compelling, or coercing discriminatory acts is unlawful
- ✓ This does not delay legitimate unlawful detainer actions

49.13 Void Unlawful Restrictive Covenants

Unlawful restrictive covenants based on protected characteristics are void and violate state and federal fair housing law, regardless of whether accompanied by a statement they are repealed or void. Recording a document to add a racially restrictive covenant is a misdemeanor.

- ✓ Restrictive covenants based on protected characteristics are void even if a statement says they are repealed or void
- ✓ Recording a document to add a racially restrictive covenant is a misdemeanor (prosecution within 3 years of discovery of recording)

49.14 Restrictive Covenant Cover Page and Modification

A county recorder, title company, escrow company, real estate broker/agent, or association providing a copy of a declaration, governing document, or deed must place a cover page/stamp (14-point boldface) stating any protected-class restriction is void and may be removed via a Restrictive Covenant Modification form. Beginning July 1, 2022, brokers/agents/title/escrow with actual knowledge of a possible unlawful covenant must notify the owner of their ability to remove it.

- ✓ Brokers, agents, title, and escrow companies must attach a 14-point boldface cover page notice of void restrictions when providing a declaration, governing document, or deed
- ✓ Beginning July 1, 2022, if a broker/agent/title/escrow has actual knowledge a delivered document includes a possible unlawful restrictive covenant, they must notify the owner of the covenant and their ability to remove it
- ✓ County counsel must review and approve a Restrictive Covenant Modification before recording; approval removes the illegal covenant from all affected property

49.15 Intergenerational Senior Housing Occupancy Rules

Allows establishment of intergenerational housing developments combining senior citizens, caregivers, and transition age youths, provided occupancy and affordability requirements are met. At least 80 percent of occupied units must house at least one senior citizen, with up to 20 percent occupied by a caregiver or transition age youth. The development must be affordable to lower income households.

- ✓ At least 80 percent of occupied dwelling units must be occupied by at least one senior citizen
- ✓ Up to 20 percent of units may be occupied by at least one caregiver or transition age youth
- ✓ The development must be affordable to lower income households per Health and Safety Code Section 50079.5
- ✓ The occupancy requirement commences when at least 25 percent of units are occupied

49.16 Occupancy and Guest Rules in Senior Housing

Senior housing CC&Rs may limit occupancy but no more exclusively than requiring one senior citizen per unit with other residents being qualified permanent residents or permitted health care residents. Temporary guests under 55 are allowed up to 60 days per year. Permitted health care residents may remain during a senior's 90-day medical absence under specified conditions.

- ✓ At least one resident per unit may be required to be a senior citizen intending to reside as primary residence
- ✓ Persons under 55 may be temporary guests for no more than 60 days in any year
- ✓ Permitted health care residents may continue occupancy during senior's absence for hospitalization if senior expects to return within 90 days and submits written request

CHAPTER 50

Subdivided Lands Law and Public Reports

50.1 Definition of Subdivided Lands and Subdivision

'Subdivided lands' and 'subdivision' mean improved or unimproved land within California divided or proposed to be divided for sale, lease, or financing into five or more lots or parcels. Parcels of 160+ acres described by government survey on the assessment roll are excluded unless divided for oil and gas purposes. Out-of-state subdivisions and ordinary apartment/office leasing are exempt.

- ✓ Division into five or more lots/parcels triggers subdivision status
- ✓ Parcels of not less than 160 acres by government survey are generally excluded
- ✓ Subdivisions located entirely outside California are exempt from this part

50.2 Application for Public Report Required

Any person intending to offer subdivided lands in California for sale or lease must file an application for a public report with the Department of Real Estate, consisting of a notice of intention and a completed questionnaire. The notice must contain owner/subdivider details, legal description, title condition and encumbrances, terms of sale, utility provisions, indebtedness/assessments, school district info, and airport proximity notices.

- ✓ A public report application (notice of intention plus questionnaire) must be filed with the DRE before offering subdivided lands
- ✓ The notice must disclose title condition, encumbrances, utilities, and terms of sale
- ✓ An Airport in Vicinity notice is required if the property is in an airport influence area

50.3 Grounds for Denial of Public Report

The Real Estate Commissioner must examine any subdivision and issue a public report authorizing sale/lease unless grounds for denial exist. Denial grounds protect purchasers from fraud, inability to deliver title, and inadequate financial arrangements.

- ✓ The commissioner shall issue a public report unless there are grounds for denial
- ✓ Grounds include failure to comply with the chapter/regulations, misrepresentation/deceit/fraud, and inability to deliver title
- ✓ Grounds also include inadequate financial arrangements for offsite improvements, community/recreational facilities, or guaranties/warranties
- ✓ For residential subdivisions, must show vehicular access and potable domestic water is or will be available

50.4 Prospective Purchaser Must Receive Public Report

§ 11018.1 requires the owner, subdivider, or agent to give a copy of the public report to the prospective purchaser BEFORE execution of a binding contract or agreement for sale/lease. A receipt must be taken from the purchaser.

- ✓ A copy of the public report must be given to the prospective purchaser prior to execution of a binding contract
- ✓ A receipt must be taken from the prospective purchaser as prescribed by regulation
- ✓ A public report copy must be given upon oral/written request to any member of the public and posted conspicuously at sales offices
- ✓ For common interest developments (Civil Code § 4100), a specified CID General Information statement must be given

50.5 Public Report Required Before Sale or Offer

§ 11018.2 prohibits any person from selling, leasing, or offering for sale/lease any lots in a subdivision without first obtaining a public report from the Real Estate Commissioner, except where a notice of intention is not required.

- ✓ No person may sell, lease, or offer subdivision lots without first obtaining a public report
- ✓ The section does not apply to subdivisions for which a notice of intention is not required

50.6 Subdivision Desist and Refrain Orders

The commissioner may order a person to desist and refrain from acts or further sale/lease of subdivision interests upon determining violations, false advertising, unfulfilled representations, or failure to report material changes.

- ✓ The commissioner may issue a desist and refrain order for violations, failure to fulfill representations, or failure to report material changes
- ✓ Upon receipt of the order, the recipient must immediately discontinue activities
- ✓ The recipient may file a written request for hearing within 30 days after service
- ✓ The matter is assigned to the Office of Administrative Hearings; the hearing must commence within 15 days of the request

50.7 Subdivision Map Act Purpose and Objectives

The Subdivision Map Act (Government Code Sections 66410 et seq.) sets conditions for approval of subdivision maps and requires local governments to enact subdivision ordinances giving them direct control over subdivision projects and physical improvements. It coordinates subdivision design with community plans and ensures the subdivider properly completes areas dedicated for public purposes.

- ✓ The Subdivision Map Act is found in Government Code Sections 66410 et seq.
- ✓ Its two objectives are: (1) coordinate subdivision design with the community plan, and (2) ensure subdividers complete dedicated public areas without burdening taxpayers
- ✓ Local governments control subdivision types and required physical improvements through subdivision ordinances

50.8 Subdivided Lands Law and Public Report

The Subdivided Lands Law (Business and Professions Code Sections 11000-11200) is administered by the Real Estate Commissioner to protect purchasers from fraud, misrepresentation, or deceit in the initial sale of subdivided property. With few exceptions, no subdivision can be offered for sale until the Commissioner issues a public report.

- ✓ The Subdivided Lands Law is found in Business and Professions Code Sections 11000-11200
- ✓ The Real Estate Commissioner administers the Subdivided Lands Law to protect purchasers from fraud and misrepresentation
- ✓ No subdivision can be offered for sale in California until the Commissioner issues a subdivision public report (with few exceptions)
- ✓ The final public report is not issued until the subdivider meets all statutory requirements, including financial arrangements to complete improvements

50.9 Definition of Subdivision Under Both Laws

The common definition of 'subdivision' is the division of improved or unimproved land for the purpose of sale, lease, or financing, whether immediate or future. However, the two laws differ on thresholds and inclusions. The Subdivided Lands Law applies to 5 or more lots/units/parcels, while the Subdivision Map Act applies to 2 or more.

- ✓ Subdivided Lands Law applies to 5 or more lots, units, or parcels; Subdivision Map Act applies to 2 or more
- ✓ Subdivision Map Act requires land to be contiguous; Subdivided Lands Law has no contiguity requirement
- ✓ Under Subdivided Lands Law, 160-acre-and-larger parcels designated by government survey are excepted; Subdivision Map Act has no such exception
- ✓ Improved standard residential subdivisions within city limits are exempt under the Subdivided Lands Law but included under the Subdivision Map Act

50.10 Standard vs. Common Interest Subdivisions

A standard subdivision has no common areas. A common interest subdivision gives purchasers a separate lot/unit plus an undivided or membership interest in common area, usually managed by an owners' association. The four types of common interest subdivisions are condominiums, planned developments, stock cooperatives, and community apartment projects.

- ✓ A standard subdivision has no common areas
- ✓ The four common interest subdivision types are condominium, planned development, stock cooperative, and community apartment project
- ✓ A common interest subdivision includes an undivided or membership interest in the common area, typically managed by an owners' association

50.11 Condominium, Planned Development, Stock Cooperative, Community Apartment

A condominium is an undivided interest in common in real property coupled with a separate interest in a defined unit (typically fee simple air space). A planned development has separately owned lots plus commonly owned areas. A stock cooperative is a corporation holding title where shareholders receive exclusive occupancy rights transferable only with the stock. A community apartment project gives an undivided interest in land plus exclusive occupancy of an apartment.

- ✓ A condominium owner typically owns the unit's air space in fee simple plus an undivided interest in common areas
- ✓ A planned development (Civil Code § 4175, Davis-Stirling Act) has separately owned lots and commonly owned areas managed by an owners' association
- ✓ In a stock cooperative, occupancy rights are transferable only concurrently with transfer of the shares of stock
- ✓ In a community apartment project, the purchaser owns an undivided interest in the land plus exclusive occupancy of an apartment

50.12 Affirmative Standards for Public Report

The Commissioner must deny a public report if the offering is not suitable for its intended use (suitability test) or fails fair-dealing standards. Suitability for residential offerings requires vehicular access, potable water, utilities, and offsite improvements. Fair dealing requires security of buyer deposit money, clearing mechanic's liens, releasing interests from blanket encumbrances, and conveying proper title.

- ✓ Affirmative standards address (1) suitability for intended use and (2) fair dealing in the sale or lease
- ✓ The Commissioner must deny a public report if the offering is not suitable for the proposed use
- ✓ Fair-dealing standards include securing buyer deposits, clearing mechanic's liens, releasing blanket

encumbrances, and conveying proper title

50.13 Notice of Intention and Use of Public Report

Before subdivided land is offered for sale or lease, a Notice of Intention combined with a Questionnaire and Application must be filed with the Commissioner on DRE forms. The public report must be delivered to prospective purchasers with time to read it before an offer; the purchaser signs a receipt the subdivider retains for three years.

- ✓ A Notice of Intention (combined with Questionnaire and Application) must be filed before offering subdivided land
- ✓ The public report must be given to a prospective purchaser with time to read it before any offer to purchase or lease
- ✓ The subdivider must obtain a signed receipt for the public report and retain it for three years for Commissioner inspection
- ✓ Upon request, the subdivider must give a copy of the public report to any member of the public

50.14 Undivided Interests as Subdivisions

Subdivided lands also include land of any size in which five or more undivided interests are created or proposed for sale, lease, or financing. Exemptions apply for interests held by related persons, no more than 10 knowledgeable investors who waive protections, foreclosure sales, court decrees, or interests qualified under the Corporate Securities Law.

- ✓ Creation of five or more undivided interests constitutes a subdivision
- ✓ Exemption allowed for up to 10 sophisticated investors furnishing signed waivers
- ✓ Foreclosure-created and court-decree interests are exempt

50.15 Right to Rescind Undivided-Interest Purchase

A buyer of an undivided-interest subdivision has a right to rescind any contract until midnight of the third calendar day following execution of the offer to purchase. The subdivider must clearly disclose this rescission right and furnish a rescission form. A signed non-rescission certificate is conclusive evidence for good-faith third parties.

- ✓ Rescission right runs until midnight of the third calendar day after offer
- ✓ Subdivider must conspicuously disclose the right and provide a rescission form
- ✓ A signed non-rescission certificate is conclusive evidence to good-faith third parties

50.16 Additional Defined Forms of Subdivisions

Subdivided lands also include planned developments with 5+ lots, community apartment projects with 5+ apartments, condominium projects with 5+ condominiums, stock cooperatives with 5+ shareholders, and limited-equity housing cooperatives, plus associated memberships and owners' association interests. Time-share plans are excluded (governed by Chapter 2).

- ✓ Planned developments, condos, co-ops, and community apartment projects with five or more units are subdivisions
- ✓ Time-share plans and exchange programs are NOT subdivisions under this chapter
- ✓ Owners' association memberships tied to these developments are covered

50.17 Airport Influence Area Disclosure in Public Report

The subdivision notice of intention/public report must disclose when property lies within an airport influence area (also called airport referral area). This alerts prospective buyers that airport-related noise, vibration, odors, overflight, safety, or airspace protection factors may affect the property and land uses. An airport influence area is determined by an airport land use commission.

- ✓ Disclosure of airport influence area is required in subdivision public report content when applicable
- ✓ An 'airport influence area' means the area where current or future airport noise, overflight, safety, or airspace factors may significantly affect land uses
- ✓ The area boundaries are determined by an airport land use commission

50.18 Notice of Right to Farm Disclosure

If residential subdivision property is within one mile of designated farmland ('Prime Farmland,' 'Farmland of Statewide Importance,' 'Unique Farmland,' 'Farmland of Local Importance,' or 'Grazing Land') on the current Important Farmland Map, the report must contain a Notice of Right to Farm. This warns buyers of potential agricultural inconveniences (noise, odors, dust, spraying, machinery operation at any hour) and that legal remedies against normal agricultural practices may be barred under Civil Code Section 3482.5.

- ✓ Notice of Right to Farm required when residential property is within one mile of designated farmland
- ✓ Notice must warn that agricultural practices may occur at any time during the 24-hour day
- ✓ Buyers may be barred from legal remedies against agricultural operations conducted consistent with proper customs per Civil Code Section 3482.5

50.19 Commissioner Review Timelines for Public Reports

Upon receiving a notice of intention and application for a public report, the Real Estate Commissioner must review for completeness. Within 10 days the commissioner notifies the applicant whether the filing is quantitatively substantially complete. The commissioner then provides a list of deficiencies needed to make the filing qualitatively complete (60 days for standard subdivisions/common interest, 20 days for others), and issues the public report within 15 or 10 days after the filing is deemed qualitatively and substantially complete.

- ✓ Commissioner must notify applicant of substantial completeness within 10 days of receipt
- ✓ Public report issued within 15 days (11000.1/11004.5 subdivisions) or 10 days (other subdivisions) after filing is complete
- ✓ Commissioner cannot deny a public report for inadequate information if the delay was caused by the commissioner's failure to meet statutory timelines

50.20 Industrial/Commercial Subdivision Exemption

The Subdivided Lands Law chapter does not apply to the proposed sale or lease of lots/interests limited to industrial or commercial uses by law or recorded CC&Rs. However, this exemption does not affect counting whether there are five or more lots for purposes of Sections 11000, 11001, or 11004.5.

- ✓ Chapter does not apply to lots limited to industrial or commercial use by law or recorded CC&Rs
- ✓ Exemption does not change the five-or-more-lot count for jurisdictional purposes
- ✓ 'Commercial use' includes overnight-stay businesses and non-community-apartment complexes

50.21 Builder-to-Builder Exemption

The chapter does not apply to sales/leases of subdivision interests to persons who acquire them to engage in the business of building residential, commercial, or industrial structures, or for resale/lease to such businesses, provided the purchase agreement or a separate disclosure states the purchaser must comply with the chapter before offering the interests for sale to the public. The exemption cannot be used to evade the chapter.

- ✓ Builder-to-builder transfers are exempt when purchaser acquires interests for the construction/resale business
- ✓ Purchase agreement or disclosure must state buyer must comply with the chapter before public resale
- ✓ Exemption does not apply if used to evade other provisions of the chapter

50.22 Public Agency and Second Notice Exemptions

The Subdivided Lands Law does not apply to land offered for sale, lease, or financing by a state agency (including UC), local agency, or other public agency. A second notice of intention/report is not required when previously reported lots are acquired through foreclosure or deed in lieu by specified financial institutions and sold in conformance with the prior public report, the original report is given to first purchasers, and the commissioner is notified of the ownership change within 30 days.

- ✓ Chapter does not apply to subdivided land offered by state, local, or other public agencies
- ✓ Foreclosure-acquired lots sold per the prior public report may skip a second notice if commissioner is notified within 30 days
- ✓ Original public report must be given to first purchasers in the foreclosed subdivision

50.23 Right to Negotiate Property Inspections Disclosure

For residential subdivisions, the public report must disclose that a prospective buyer has the right to negotiate with the seller to permit inspections of the property by the buyer or the buyer's designee under mutually agreeable terms, notwithstanding any contrary purchase contract provision.

- ✓ Residential subdivision public reports must disclose the buyer's right to negotiate property inspections
- ✓ Inspection may be conducted by the buyer or the buyer's designee under mutually agreeable terms
- ✓ This right applies notwithstanding any contrary provision in the purchase contract

50.24 Notice of Material Change in Offering Setup

After a subdivision project is submitted to the DRE, it is unlawful for the owner, agent, or subdivider to materially change the setup of the offering without first notifying the department in writing. This applies to changes of which the owner/agent/subdivider has actual or constructive knowledge.

- ✓ Material changes to the offering setup require prior written notice to the DRE
- ✓ Making a material change without notice is unlawful
- ✓ The requirement applies to changes of which there is actual or constructive knowledge

50.25 Blanket Encumbrance and Release Clause Requirement

A blanket encumbrance is a trust deed, mortgage, lien, or agreement securing money that affects more than one lot/parcel of subdivided land. It is unlawful to sell or lease lots subject to a blanket encumbrance unless there is a release clause unconditionally providing that a purchaser/lessee can obtain title free and clear of the blanket encumbrance upon complying with purchase/lease terms.

- ✓ A blanket encumbrance is a lien or agreement affecting more than one lot/parcel of subdivided land
- ✓ Selling lots under a blanket encumbrance requires an unconditional release clause
- ✓ The release clause must let a buyer obtain title free and clear upon fulfilling purchase/lease terms

50.26 Blanket Encumbrance Sale Conditions

When a subdivision is subject to a blanket encumbrance without a release clause, the owner, subdivider, or agent may not sell or lease lots unless one of four protective conditions is met to safeguard purchaser funds. These options are escrow deposit, title held in trust, bond to the State, or an alternative method approved by the commissioner.

- ✓ Purchaser money must be deposited into an escrow depository acceptable to the commissioner until a proper release is obtained or default is determined
- ✓ Title may be held in trust until a proper release from the blanket encumbrance is obtained
- ✓ A bond to the State of California may be furnished for the benefit and protection of purchasers/lessees to return their money if no release is obtained
- ✓ Taxes and assessments levied by public authority are NOT considered a blanket encumbrance (§ 11013.3)

50.27 Subdivision Not Subject to Blanket Encumbrance

If a subdivision is NOT subject to a blanket encumbrance (§ 11013.4), sale/lease is still unlawful unless purchaser protection is provided by escrow/trust deposit, a State bond, association certificate with bond on file, proof of security/completion bonds, or an alternative method.

- ✓ Purchaser funds must be deposited into an escrow depository or trust account until legal title or contracted interest is delivered
- ✓ A State bond may provide for return of money if title/interest is not delivered within the contract time
- ✓ A lien and completion bond issued by an admitted surety insurer is required for residential improvements offerings

50.28 Right to Hearing on Public Report Denial

§ 11018.3 gives a subdivider objecting to a public report denial the right to request a hearing within 30 days, with strict timing rules that result in rescission of the denial and issuance of the report if deadlines are missed.

- ✓ A subdivider may file a written request for hearing within 30 days after receipt of the denial order
- ✓ The commissioner must hold the hearing within 20 days unless postponed
- ✓ If deadlines for hearing/decision are not met, the denial is rescinded and a public report is issued

50.29 Additional Findings for CID Public Reports

For subdivisions described in § 11004.5 (condominiums, community apartment projects, stock cooperatives, planned developments), the commissioner must find that arrangements assure completion, adequate conveyance instruments exist, and governing documents bind purchasers before issuing a public report.

- ✓ Reasonable arrangements must assure completion of the subdivision and offsite improvements
- ✓ Uncompleted improvements require lien/completion bonds, impounded funds, or escrow disbursement arrangements
- ✓ Governing documents (CC&Rs, articles, bylaws) must bind purchasers and occupants of every lot

50.30 CID Governing Documents Delivery

§ 11018.6 requires anyone offering CID subdivision interests to make governing documents available for examination before an offer and give copies to each purchaser before transfer.

- ✓ CC&Rs, articles of incorporation/association, and bylaws must be made available before execution of an offer
- ✓ Copies must be given to each purchaser as soon as practicable before transfer
- ✓ A statement of outstanding delinquent assessments must be provided

50.31 Conditional Public Report Requirements

The commissioner may issue a conditional public report allowing sale/lease before a final public report if deficiencies are corrected and certain outstanding items (final map, CC&Rs, articles) are likely to be timely satisfied. Legal title cannot transfer until a final public report issues.

- ✓ Delivery of legal title cannot take place until issuance of a final public report
- ✓ All purchase money must be deposited in compliance with escrow requirements of § 11013.2(a) or § 11013.4(a)
- ✓ Provision must be made for return of all purchaser money if no final public report is issued during the term
- ✓ The purchaser must sign a receipt confirming they received and read the conditional report and written statement

50.32 Conditional Public Report Term Limits

§ 11018.12(h)-(i) sets time limits on conditional public reports. The standard term is six months, renewable once for six months, with a longer term for large attached residential condominium projects.

- ✓ A conditional public report term shall not exceed six months, renewable for one additional six-month term
- ✓ For attached residential condominium units of 25 or more units, the term shall not exceed 30 months, renewable once for six months
- ✓ A decision not to issue a conditional report must be noticed in writing within five business days with reasons

50.33 False Public Report Is a Public Offense

It is unlawful to make, issue, publish, deliver, or transfer as genuine any public report that is forged, altered, false, or counterfeit while knowing it to be so, or to participate in doing so. This protects subdivision buyers from fraudulent disclosure documents issued under the authority of the DRE.

- ✓ Knowingly dealing in a forged, altered, false, or counterfeit public report is a public offense (§ 11020(a))
- ✓ Punishable by a fine up to $10,000, imprisonment under Penal Code § 1170(h) or county jail up to one year, or both (§ 11020(b))
- ✓ This penalty is not exclusive and does not affect other remedies provided by law (§ 11020(c))

50.34 False Subdivision Advertising Prohibited

An owner, subdivider, agent, or employee may not, with intent to sell or lease subdivided lands, authorize or aid advertising (print, radio, or telecast) that contains a false or misleading statement, picture, or sketch. Advertising may be submitted to the DRE in advance for approval.

- ✓ False or misleading subdivision advertising with intent to sell/lease is unlawful (§ 11022(a))
- ✓ Advance ad submission requires a $200 fee (may be set up to $260 by regulation); ad is deemed approved if not disapproved within 15 calendar days (§ 11022(b))
- ✓ DRE is not estopped from later disapproving the same or similar ad; publishers/printers are not liable absent actual knowledge or ownership interest

50.35 Violations Constituting a Public Offense

Violation of enumerated subdivided-lands sections (including 11010, 11018.2, 11019, and 11022) is a public offense carrying criminal penalties.

- ✓ Violation of listed sections is a public offense (§ 11023)
- ✓ Punishable by fine up to $10,000, imprisonment under Penal Code § 1170(h) or county jail up to one year, or both

50.36 Required Contents of Subdivision Sales Contracts

Every sales contract for the purchase of real property in a subdivision must clearly disclose the legal description, outstanding encumbrances as of the contract date, and the terms of the contract.

- ✓ Contract must clearly set forth the legal description of the property (§ 11200)
- ✓ Contract must disclose encumbrances outstanding at the date of the sales contract
- ✓ Contract must state the terms of the contract

50.37 Planning Commission and General Plan Consistency

Local legislative bodies assign planning responsibility to themselves, a planning commission, or planning department. Counties must create a planning commission; cities have the option. The commission develops and maintains the general plan and reviews zoning, subdivision maps, use permits, and variances. Subdivision maps cannot be approved if inconsistent with the general or specific plan.

- ✓ Creation of a planning commission is required for counties but optional for cities
- ✓ Government Code Section 66473.5 bars local agencies from approving a tentative map inconsistent with the adopted general or specific plan
- ✓ Zoning ordinances must be consistent with the adopted general plan (charter cities are exempt from this consistency requirement)

✓

A general plan must include seven elements: land use, circulation, housing, conservation, open space, noise, and safety

50.38 Exceptions to Notice of Intention Requirement

A Notice of Intention/Application is not required for a standard subdivision within city limits where lots are sold improved with completed residential structures (or with financial arrangements satisfactory to the city). Also excepted are subdivisions limited to commercial/industrial use by zoning or CC&Rs, and land offered by public agencies.

- ✓ Standard subdivisions within city limits with completed residential improvements may be exempt from the Notice of Intention requirement
- ✓ Commercial and industrial subdivisions limited in use by zoning or CC&Rs are excepted
- ✓ Subdivided land offered by a state, local, or other public agency (including the University of California) is excepted

50.39 Preliminary Public Report

A subdivider may request a preliminary public report to begin marketing before the final report issues. It allows only accepting fully refundable reservations held in escrow, not binding sales. Preliminary public reports have a one-year term and are renewable.

- ✓ A preliminary public report only allows the subdivider to accept reservations, not binding sales
- ✓ Reservation money under a preliminary public report must be fully refundable and kept in escrow
- ✓ Preliminary public reports have a one-year term and may be renewed

50.40 Final, Amended, Renewed, Conditional Public Reports

A final public report is valid for five years. A material change (change of ownership, use, or money handling) requires an amended public report. If not sold out after five years, the subdivider applies for renewal. A conditional public report permits binding sales contracts before final qualification under specified conditions.

- ✓ A final public report has a five-year life; a material change during that period requires an amended public report
- ✓ If a subdivision is not sold out after five years, the subdivider may apply for a five-year renewal
- ✓ A conditional public report allows binding contracts before the project fully qualifies for a final report
- ✓ An interim public report permits only nonbinding reservations pending an amended report and is valid one year

50.41 Blanket Encumbrance Deposit Protection

A blanket encumbrance exists when more than one lot/unit/interest secures a single lien. Without an unconditional release agreement, the subdivider must protect purchaser money by impounding it in escrow, placing title in trust, or posting a bond to the State of California guaranteeing return of purchase money if release is not obtained.

- ✓ A blanket encumbrance makes more than one lot, unit, or interest security for a single lien
- ✓ The subdivider must impound purchase money in escrow, place title in trust, or furnish a bond to protect purchasers from a blanket encumbrance
- ✓ Even without a blanket encumbrance, purchaser deposit money must be impounded in escrow/trust unless an acceptable alternative (like a bond) is used
- ✓ A bond cannot secure reservation deposits under a preliminary public report or deposits under a conditional public report

50.42 CC&Rs Purpose and Function

CC&Rs (Declaration of Covenants, Conditions, and Restrictions) assure that a subdivision's nature remains unchanged. Conveyances are made subject to them. For common interest subdivisions, CC&Rs prescribe the project's nature, provide for maintenance, set behavior rules, and enable assessments. An HOA carries out the CC&Rs. Existing recorded restrictions (set-backs, density limits) may not be eliminable.

- ✓ Conveyances in a subdivision are made subject to the recorded CC&Rs
- ✓ CC&Rs control land use and, for common interest developments, govern maintenance, rules, and assessments
- ✓ Common interest subdivisions almost always have a homeowners' association to enforce the CC&Rs
- ✓ Existing recorded restrictions such as set-backs and density limits frequently cannot be eliminated

50.43 Reporting Material Changes

Any material change in the subdivision, marketing program, or handling after filing the application or issuing the public report must be reported to the Commissioner. A material change is anything causing the public report or questionnaire to not reflect true conditions. Failure to report may allow rescission of purchases.

- ✓ Material changes to the subdivision or its marketing must be reported to the Commissioner
- ✓ A material change is anything that makes the public report or questionnaire no longer reflect true conditions
- ✓ The sale of five or more parcels/units to a single purchaser must be reported to the Commissioner
- ✓ Failure to report material changes may furnish a basis for rescission of purchases through court action

50.44 Nonresident Subdivider Consent to Service

Every nonresident subdivider must file an irrevocable consent that if personal service cannot be made in California after due diligence, valid service may be made by delivering process to the Secretary of State.

- ✓ Nonresident subdividers must file irrevocable consent to service
- ✓ Service may be made on the Secretary of State when personal service fails

50.45 San Francisco Bay Conservation Commission Jurisdiction Notice

On or after July 1, 2005, for property within the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC), the report must state that fact and provide the BCDC jurisdiction notice, advising that use and development may be subject to special regulations, restrictions, and permit requirements.

- ✓ BCDC jurisdiction notice required for property in the commission's jurisdiction (on/after July 1, 2005)
- ✓ Notice must state that use/development may require special permits and be subject to special restrictions
- ✓ Soils/geologic reports and use of fill must also be truthfully disclosed in the report

50.46 Senior Housing Occupancy Restriction Disclosure

A person proposing to create a senior citizen housing development (per Civil Code 51.3/51.11) or an intergenerational housing development (Civil Code 51.3.5) must include a complete statement of occupancy restrictions in the public report application, and any issued public report must also include that statement.

- ✓ Application for public report for senior/intergenerational housing must state all occupancy restrictions
- ✓ Any public report issued must include a complete statement of occupancy restrictions
- ✓ Intergenerational housing provisions apply to applications on/after January 1, 2022

50.47 Mobilehome Park / Floating Home Marina Nonprofit Purchase Exemption

A notice of intention is not required when a nonprofit corporation of residents purchases a mobilehome park or floating home marina, if a majority of members/directors are homeowners, all members are residents, a securities permit under Corporations Code 25113 is obtained, and all tenant purchase funds are held in escrow until title transfers to the nonprofit.

- ✓ Majority of nonprofit members and board must be homeowners of the park/marina; all members must be residents
- ✓ A securities permit under Corporations Code 25113 must be obtained (unless a qualifying exemption applies)
- ✓ All tenant purchase funds must be deposited in escrow until the title-transfer document is recorded

50.48 Mobilehome Park/Marina Conversion Price Disclosure

Before filing a notice of intention for a mobilehome park or floating home marina proposed for conversion to resident ownership, the subdivider must disclose in writing to homeowners/residents the tentative price of the subdivided interest, with a statement that the price is non-binding and may change. This disclosure does not authorize sales before the public report is issued.

- ✓ Subdivider must give written tentative-price disclosure to residents before filing the notice of intention
- ✓ Disclosure must state the tentative price is not binding and could change
- ✓ Disclosure does not authorize selling/leasing interests before a public report issues

50.49 Subdivision Public Report Filing Fees and Fund Deposit

The commissioner sets subdivision filing fees by regulation up to statutory maximums (e.g., notice of intention without questionnaire $300 up to $390; original public report for 11004.5 interests $3,000 up to $3,900 plus per-interest fee). All fees are deposited into the Real Estate Fund and are deemed earned upon receipt, with no refund unless paid by mistake or inadvertence.

- ✓ Filing fees are set by regulation but cannot exceed statutory maximums
- ✓ All subdivision fees are deposited into the Real Estate Fund and deemed earned upon receipt
- ✓ Fees are non-refundable unless the commissioner finds they were paid by mistake or inadvertence

50.50 Blanket Encumbrances on Stock Cooperatives

§ 11013.6 allows individual interests in stock cooperatives or limited-equity housing cooperatives to be sold subject to a blanket encumbrance if specific notice, public report, and escalating financing reserve requirements are met.

- ✓ A public report accounting for the blanket encumbrance must be obtained from the DRE
- ✓ Financing reserves escalate: 2 months debt service before first sale, 3 months at 25% sold, 5 months at 50% sold, 8 months at 75% sold
- ✓ Notice required under Civil Code § 1133 must be given to each prospective purchaser/lessee

50.51 Commissioner Consent for Governing Document Amendments

§ 11018.7 prohibits amendments materially changing owner rights without the commissioner's prior written consent while the subdivider holds or controls at least one-fourth of the votes.

- ✓ No material amendment is valid without commissioner consent while subdivider controls as many as one-fourth of the votes
- ✓ The commissioner will deny consent if the change would form the basis for denial of a public report
- ✓ An application fee of $50 (not to exceed $65) accompanies each application

50.52 Abandonment of Public Report Application

§ 11018.13 permits the commissioner, after written notice, to abandon a public report application if required § 11010 data is not furnished within three years of the notice of intention filing.

- ✓ The commissioner may abandon an application if required data is not furnished within three years of the notice of intention
- ✓ Written notice must be given to the subdivider before abandonment
- ✓ Regulations establish time periods and hardship/extenuating circumstances

50.53 Statute of Limitations for Subdivision Violations

For calculating the limitations period in any civil or criminal action involving a violation of the subdivided lands chapter, the cause of action is deemed to accrue no earlier than the recording of the deed, lease, or contract of sale that describes the wrongfully sold or leased parcel.

- ✓ Cause of action accrues no earlier than recording of the conveying instrument describing the wrongful parcel (§ 11021)
- ✓ Nonrecording does not prohibit maintaining an action before recording occurs

50.54 Blanket Encumbrance Notice Requirement

If a subdivision lot/parcel/unit is subject to a blanket encumbrance but exempt from B&P Code § 11013.2 compliance, the subdivider or its agent may not sell or lease it (for terms over five years) until the buyer/lessee has been furnished with and has signed a statutory notice warning they could lose their interest through foreclosure of the blanket encumbrance even if not delinquent on their own obligations.

- ✓ A signed statutory blanket-encumbrance notice is required before sale or lease over five years
- ✓ The notice warns the buyer/lessee could lose the interest through foreclosure of the blanket encumbrance
- ✓ Failure of buyer/lessee to sign does not invalidate the conveyance, but willful violators face actual damages plus a fine up to $500

50.55 Water Disclosure in Subdivision Public Report Application

When a subdivider offers lots and provides domestic water through a mutual water company, the applicant must include a separate document in the Business and Professions Code § 11010 public report application confirming an adequate potable water supply and disclosure/protection for security holders. Securities of the mutual water company may be sold only after the Real Estate Commissioner issues the public report, and only to lot purchasers or their successors — not to the subdivider.

- ✓ The application for a public report (per § 11010 B&P Code) must include a separate document assuring compliance with the mutual water company chapter, adequate water supply, and completion of the system before the public report issues
- ✓ Securities of the mutual water company are appurtenant to the land (per § 14300) and may be sold/issued only to lot purchasers or their successors after the Real Estate Commissioner issues the public report
- ✓ An offering circular must be delivered to each prospective purchaser of the securities disclosing rights, duties, and consequences of failing to pay for water or assessments

50.56 Water Shares Appurtenant to Land

Shares in a mutual water company are appurtenant to specific described lands and transfer only with the land. When property is conveyed (or title passes by sale, foreclosure, or probate), the water company secretary issues a new stock certificate to the grantee and cancels the former shares. Delinquent assessments can cause the right to water or dividends to be denied or forfeited.

- ✓ Water stock made appurtenant to land transfers only with the land and cannot be sold or transferred separately, except after sale/forfeiture for delinquent assessments
- ✓ Upon a recorded conveyance, foreclosure, or probate order, the secretary must issue a new certificate to the grantee and cancel the prior shares appurtenant to that land

50.57 Title Company Role in Subdivisions

After land is acquired, the title company issues a preliminary guaranty showing names of persons required to sign the subdivision map, and provides the preliminary report required by the DRE. Title companies also perform subdivision processing for public reports, though they typically do not prepare management documents or the HOA budget.

- ✓ The title company issues a preliminary guaranty identifying persons who must sign the subdivision map
- ✓ The title company provides the preliminary report required by the Department of Real Estate
- ✓ Title company subdivision processing does not typically include management documents or the homeowner association budget

50.58 Desist and Refrain Orders

The Commissioner may issue a Desist and Refrain order to stop violations of the Subdivided Lands Law or to halt sales that would justify denial of a public report. The named person has 30 days to request a hearing; procedural timelines apply and failure to meet them vacates the order.

- ✓ The Commissioner may issue a Desist and Refrain order to stop Subdivided Lands Law violations or improper sales
- ✓ The named person has 30 days after receipt to request a hearing to contest the order
- ✓ The D&R is deemed vacated if the hearing is not timely commenced or the decision is not timely rendered

CHAPTER 51

Subdivision Map Act, Planning, Zoning and CEQA

51.1 Alquist-Priolo Earthquake Fault Zone Disclosure

The Alquist-Priolo Earthquake Fault Zoning Act controls development near hazardous faults; the State Geologist delineates zones (usually a quarter mile wide). Under Public Resources Code Section 2621.9, an agent (or seller acting without an agent) must disclose to a prospective purchaser that property is within a delineated earthquake fault zone.

- ✓ The Alquist-Priolo Act controls development in the vicinity of hazardous earthquake faults
- ✓ An agent for the seller (or the seller if unrepresented) must disclose that property lies within a delineated earthquake fault zone
- ✓ A subdivider within a fault zone must obtain special approval under State Mining and Geology Board criteria
- ✓ Earthquake fault zones are usually about one-quarter mile wide

51.2 General Plan Requirement and Purpose

In California, comprehensive plans are called 'general plans.' Every city and county must adopt its own general plan for long-term physical development covering the entire planning area. The general plan is described by California courts as 'a constitution for all future developments' because all city and county land use decisions must be consistent with it.

- ✓ By state law every city and county must adopt a general plan for long-term physical development
- ✓ All city and county land use decisions must be consistent with the general plan
- ✓ The planning area includes all land under the local government's jurisdiction plus any related outside land (Gov. Code Section 65300)

51.3 Seven Mandatory General Plan Elements

State law requires the general plan to address seven mandatory categories or 'elements.' Depending on location, additional elements (e.g., coastal development, mineral resource protection) may be required, and optional concerns such as recreation and historic preservation may be included. The plan and all its elements must be an integrated, internally consistent statement of development policies.

- ✓ The seven required elements are: land use, circulation, housing, conservation, open space, noise, and safety
- ✓ Coastal development and mineral resource protection may be required depending on the jurisdiction's location
- ✓ The general plan and all its elements must be integrated, internally consistent, and compatible

51.4 General Plan Consistency Requirements

Legislation and court decisions established the general plan as the local constitution for physical development. Zoning ordinances of general law cities must be consistent with the general plan. Subdivision map approvals and public works must also conform, with special rules for Los Angeles.

- ✓ Zoning ordinances of general law cities must be consistent with their general plan
- ✓ Every city and county except Los Angeles is prohibited from approving a subdivision map unless it is consistent with the general plan
- ✓ Every city and county, including Los Angeles, must deny a subdivision map found inconsistent with the general plan
- ✓ A 1980 court decision established that public works must be consistent with the plan

51.5 Zoning Authority and Police Power

California cities and counties adopt ordinances dividing their jurisdictions into land use districts or zones, each with regulations controlling use. Zoning authority derives from the police power in the California Constitution and must rationally promote public health, safety, and welfare to be valid.

- ✓ Zoning authority derives from the police power in Article XI, Section 7 of the California Constitution
- ✓ Zoning is invalid unless it rationally promotes the public health, safety, and welfare
- ✓ State law sets minimum standards and procedures while allowing local discretion

51.6 Zoning Ordinance Map and Text

A zoning ordinance consists of a map and a text. The map delineates zone boundaries; the text specifies amendment/administrative procedures and characteristics of each zoning category. Zoning regulates land use from the individual project-site viewpoint, making it one tool for implementing the general plan.

- ✓ A zoning ordinance consists of a map (zone boundaries) and a text (development standards)
- ✓ The text sets permitted uses, conditional use permit uses, minimum parcel sizes, building heights, lot coverage, setbacks, and densities
- ✓ Zoning is only one of several measures used to implement the general plan

51.7 Zoning Variances vs. Use Variances

Where a parcel's size, shape, topography, or location prevents meeting a zoning standard (e.g., setback), the owner may apply for a variance waiving strict application. A variance provides the same, but not additional, development privileges as neighboring parcels. Use variances authorizing prohibited uses are barred for counties and general law cities.

- ✓ A zoning variance provides the same, but not additional, development privileges as neighboring parcels in the same zone
- ✓ California counties and general law cities are prohibited from granting use variances authorizing a use not otherwise permitted in a zone
- ✓ A variance may waive standards like setbacks but cannot waive a use restriction (e.g., retail in a residential zone)

51.8 Conditional Use Permits

Zoning ordinances list special uses authorized only with a conditional use permit, typically for uses potentially incompatible with the zone due to spillover effects like noise or traffic. Permits require compliance with conditions and run with the land.

- ✓ Conditional use permits authorize uses subject to conditions that alleviate spillover effects (noise, traffic, pollution)
- ✓ The local government may revoke a conditional use permit after a public hearing if conditions are not met
- ✓ A conditional use permit runs with the land, applying despite a change in ownership

51.9 Physical Suitability and Environmental Review

The local jurisdiction must find a proposed subdivision conforms to applicable general and specific plans and must deny approval if the site is not physically suitable. Water, drainage, soil, and sewerage problems can limit feasibility, and significant environmental effects trigger CEQA (Environmental Quality Act) review. A preliminary soils report by a registered civil engineer is required for subdivisions requiring a final map.

- ✓ A local agency must deny a subdivision if the site is not physically suitable for the proposed development
- ✓ Significant adverse environmental effects trigger review under the California Environmental Quality Act
- ✓ A preliminary soils report by a registered civil engineer is required for every subdivision requiring a final map (waivable under certain conditions)
- ✓ An EIR may be required by local government before approving the subdivision map

51.10 Dedication of Streets, Parks, and School Sites

Local governments may require dedication of land for streets, easements, and bicycle paths. For parks/recreation, subdivisions of 50 or fewer parcels may require a proportionate money payment; more than 50 parcels may require land dedication (industrial subdivisions exempt). Under the Map Act and School Facilities Act, school site dedication may be required at tentative map approval, with the district accepting within 30 days.

- ✓ Local government may require dedication of land for streets, alleys, utility easements, drainage easements, and bicycle paths
- ✓ Subdivisions of 50 or fewer parcels may pay a proportionate fee; those over 50 may be required to dedicate parkland
- ✓ Industrial subdivisions are exempt from park and recreation dedication requirements
- ✓ School site dedication must be imposed at tentative map approval, and the school district must agree to accept within 30 days or the requirement terminates

51.11 Map Requirements and Thresholds

The Subdivision Map Act generally requires tentative and final maps for subdivisions creating five or more parcels/condominiums, community apartment projects with five or more interests, or conversions to a stock cooperative of five or more units. If a final map is not required, a parcel map is generally required. The final map survey must be by a registered civil engineer or licensed land surveyor.

- ✓ Tentative and final maps are generally required for subdivisions of five or more parcels, condos, or interests
- ✓ A parcel map is generally required when a final map is not required (Government Code Section 66428)
- ✓ The final map survey must be prepared by a registered civil engineer or licensed land surveyor
- ✓ A tentative map shows design (streets, grades, easements, lot dimensions) and existing topographic conditions

51.12 Tentative Map Approval and Appeal

The local jurisdiction will not approve a tentative map unless design and improvements conform to general/specific plans and health/environmental considerations. A subdivider has 10 days to appeal adverse action; a hearing must be held within 30 days and a decision rendered within 10 days after the hearing. Failure to act timely deems the map approved to the extent it complies.

- ✓ A tentative map is not approved unless it conforms to applicable general and specific plans and health/environmental standards
- ✓ A subdivider has 10 days from adverse action to file an appeal of a tentative map decision
- ✓ An appeal hearing must be held within 30 days and a decision rendered within 10 days after the hearing
- ✓ A vesting tentative map (Government Code 66498.1) gives rights to develop under ordinances in effect

when approved

51.13 State Housing Law and the California Building Standards Code

Housing and construction are regulated by the State Housing Law, the California Building Standards Code (Title 24 of the California Code of Regulations, which adopts and amends the model International Building, Residential, Plumbing, Mechanical and Electrical codes on a three-year cycle) and the Contractors' State License Law. Local governments enforce the state codes and may adopt stricter local amendments only with express findings that local climatic, geological or topographical conditions make them reasonably necessary; they retain full control over zoning, setbacks, fire zones and yard requirements. No construction or alteration may begin before a building permit is issued.

- ✓ Housing and construction are regulated by the State Housing Law, the California Building Standards Code (Title 24) and the Contractors' State License Law
- ✓ The California Building Standards Code adopts the model codes statewide; local amendments must be stricter and supported by express findings of local necessity
- ✓ Local government retains control over zoning, setbacks, fire zones and yard requirements
- ✓ No construction or alteration may begin before a building permit is issued

51.14 Eminent Domain, Taking, and Just Compensation

Eminent domain allows government to take private property for public use with just compensation (generally fair market value). Not all value-reducing regulation is a taking; but a regulation denying all economically beneficial use constitutes a taking requiring compensation. Condemnation of part of a parcel may require compensation for severance damage. Inverse condemnation lets an owner sue when a public work damages property.

- ✓ Eminent domain requires 'just compensation,' generally measured as fair market value
- ✓ A regulation that denies all economically beneficial or productive use of land constitutes a compensable taking
- ✓ Severance damages compensate for loss in value to a remaining parcel; general benefits do not offset but special benefits may
- ✓ Inverse condemnation is an action initiated by the owner when a public work damages property or an eminent domain action is not diligently pursued

51.15 Amendment of General Plan Elements

Amendments to mandatory general plan elements are limited in frequency. Amendments are usually initiated by planning agencies but may be done by any manner the local legislative body specifies, and by initiative measure. Development agreements can supersede general plan amendments in conflicts.

- ✓ Mandatory elements of general plans may be amended no more than four times per calendar year
- ✓ Amendment by initiative measure has been upheld by the California Supreme Court
- ✓ If a development agreement is in effect, its terms supersede conflicting general plan amendments

51.16 Specific Plans as Implementation Tools

After adopting a general plan, a municipality may prepare specific plans to implement it, usually for a particular development site or sub-area. A specific plan contains text and diagrams detailing land use and infrastructure and is subordinate to the general plan, while zoning and maps must conform to it.

- ✓ A specific plan is subordinate to and must conform to the general plan
- ✓ Zoning, public works, tentative subdivision maps, parcel maps, and development agreements must be consistent with an applicable specific plan
- ✓ Specific plans are not part of the general plan and differ from area/community plans which are sub-units of the general plan

51.17 Permitted, Conditional, and Accessory Uses

Zoning districts typically include permitted, conditional, and accessory uses. Understanding these distinctions is important for exam candidates dealing with land use restrictions.

- ✓ Permitted uses are allowed as a matter of right within the district
- ✓ Conditional uses are not allowed as a matter of right but may be allowed subject to specific conditions, usually after a public hearing
- ✓ Accessory uses are incidental to a primary use, such as a shed in a residential district

51.18 Planned Unit Development Zoning

Planned unit development (planned development) is a flexible zoning classification applied to land developed as a unit. It allows more flexible application of zoning regulations and diversification in structure locations, implemented through review and approval of a master or 'precise' plan.

- ✓ Planned unit development applies zoning regulations in a more flexible manner than specific classifications
- ✓ The process is implemented by local government review and approval of a master or 'precise' plan
- ✓ 'Planned development' can also describe a common interest development with common areas and an owners association

51.19 Rezoning and Amendment Relief

A property owner wanting to use property in a manner not permitted may seek administrative relief (conditional use permit) or legislative relief (zoning amendment/rezoning). Any rezoning must be consistent with the applicable general or specific plan, requiring a plan amendment if the use conflicts.

- ✓ A rezoning or zoning amendment must be consistent with the applicable general or specific plan
- ✓ If the sought use is inconsistent with the general/specific plan, a plan amendment must also be obtained
- ✓ Owners may seek administrative relief (conditional use permit) or legislative relief (zoning amendment)

51.20 CEQA in Land Use Decisions

CEQA plays a major role in planning, zoning, and land-use permitting. It applies to discretionary projects with potential significant environmental impact, requiring environmental review. Ministerial projects and specifically exempted projects are not subject to CEQA.

- ✓ CEQA applies to discretionary projects (general/specific plan or zoning amendments, conditional use permits, variances, tentative subdivision/parcel map approvals)
- ✓ Ministerial projects such as final subdivision maps and most building permits are not subject to CEQA
- ✓ An initial study determines the type of environmental document needed

51.21 CEQA Environmental Documents

Based on the initial study, the agency prepares a negative declaration (no significant effect), a mitigated negative declaration, or an environmental impact report (EIR) if significant effects are possible. If significant effects are unavoidable, approval requires a statement of overriding considerations.

- ✓ A negative declaration is prepared if no significant adverse environmental effect will occur
- ✓ An EIR must be prepared and certified when a project may cause one or more significant effects; it has draft and final stages
- ✓ A statement of overriding considerations is required to approve a project with unavoidable significant effects

51.22 Final Map Taxes, Improvements, and Recordation

Before filing a final map, the subdivider must file a certificate showing no tax/assessment liens (or bond/deposit for taxes not yet payable). Before approval, required improvements must be made or secured by bond/cash deposit. After approval, the map is recorded, and the subdivider furnishes a certificate of title showing consenting parties hold record title.

- ✓ Before filing a final map, the subdivider must certify no unpaid tax or assessment liens exist (or post a bond for taxes not yet payable)
- ✓ Required public improvements must be completed or secured by a bond or cash deposit before final map approval
- ✓ At recordation, the subdivider must furnish a certificate of title establishing that consenting parties hold record title interest

CHAPTER 52

Vacation Ownership and Time-Share Act

52.1 Seven-Day Cancellation of Purchase Contract

A purchase contract for a time-share interest, incidental benefit, or exchange program right (made on the same day or within 7 days after attending a sales presentation) is voidable by the purchaser without penalty within seven calendar days after receipt of the public report or execution of the contract, whichever is later. Cancellation of the time-share purchase automatically rescinds any associated incidental benefit or exchange program enrollment.

- ✓ Contract voidable without penalty within 7 calendar days of receipt of public report or contract execution, whichever is later
- ✓ Notice of cancellation is timely if given by midnight of the 7th calendar day
- ✓ Mailed cancellation is presumed given on postmark date; faxed on confirmed transmission date
- ✓ Any attempt to obtain a waiver of the cancellation right is void and of no effect
- ✓ Court may award reasonable attorneys' fees and costs to prevailing purchaser

52.2 Purpose and Scope of the Time-Share Act

The Act ensures full and fair disclosure to time-share purchasers and provides uniform regulation. It is to be interpreted broadly to cover all time-share plans of at least three years' duration created for accommodations located or offered for sale in California.

- ✓ Applies to plans with a California accommodation/component site, and to plans without one if sold or offered to individuals located in California (§ 11211.5(a))
- ✓ Interpreted broadly to include condominiums, cooperatives, vacation clubs, and multisite plans of at least three years (§ 11211(d))
- ✓ Does not preempt general consumer-protection laws (B&P § § 17200–17209, 17500–17539.1)

52.3 Time-Share Act Exemptions

Certain small or short-term arrangements are exempt from the Act, and renewal periods are counted when measuring the term and financial obligation.

- ✓ Exempt: plans of 10 or fewer time-share interests (§ 11211.5(b)(1))
- ✓ Exempt: plans whose use extends 3 years or less, or where total obligation is $3,000 or less over the entire term (§ 11211.5(b)(2)-(3))
- ✓ Renewal and renewal-option periods are included when determining the plan's term (§ 11211.5(c))

52.4 Developer Responsibility for the Offering

The developer must supervise, manage, and control all aspects of the offering—including promotion, advertising, contracting, and closing—and is responsible for the acts of any sales or marketing entity used.

- ✓ Developer must supervise and control all offering activities and is responsible for each registered plan (§ 11214(a))
- ✓ Any violation during offering activities is deemed a violation by the developer as well as the actual violator (§ 11214(b))

52.5 Exchange Program Disclosure Requirements

When a purchaser is offered membership in an exchange program, extensive written disclosures (17 items) must be provided before or concurrently with signing, including fees, limitations, and independently audited performance data. Failure to disclose or use of unfair/deceptive practices violates the Act.

- ✓ 17 required disclosures must be provided in writing prior to or concurrently with contract execution (§ 11216(b))
- ✓ Exchange performance data must be independently audited by a CPA and reported annually by August 1 (§ 11216(b)(17))
- ✓ Failure to observe requirements or use of unfair/deceptive practices is a violation of the chapter (§ 11216(d))

52.6 Registration Exemptions for Resales and Associations

An owner reselling a time-share interest acquired for personal use, and an association/managing entity selling interests acquired through foreclosure or gratuitous transfer, need not register the plan, but the association must still provide disclosure documents and a rescission right.

- ✓ Owner reselling an interest acquired for own use and occupancy is exempt from registration (§ 11225(a))
- ✓ Association/managing entity selling foreclosed or gratuitously transferred interests is exempt but must deliver time-share instruments, current budget, and assessment amounts (§ 11225(b))
- ✓ Purchaser must be given a 7-calendar-day right to cancel, disclosed in conspicuous type immediately before the signature line

52.7 Rescission Rights for Short-Term Products

A purchaser of a short-term time-share product has a right to rescind until midnight of the seventh calendar day (or later per contract) following the day the contract is made, and is entitled to a full 100% refund without deduction. The developer must disclose the rescission right in writing, along with reservation availability, blackout dates, and other terms.

- ✓ Rescission allowed until midnight of the 7th calendar day, entitling purchaser to 100% refund without deduction
- ✓ Developer must disclose rescission rights, reservation availability, and blackout dates in writing
- ✓ Deposits must be returned no later than 10 business days after written notice of rescission or when funds become available
- ✓ Developer must place purchase money in independent escrow, post a bond, or make alternative arrangements to secure return of funds

52.8 Contract Cancellation Notice Requirements

The short-term product contract must contain the contract date and a conspicuous cancellation statement immediately near the purchaser's signature space, informing them of the 7-day cancellation right and how to exercise it. Contracts negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean require a translated copy.

- ✓ Conspicuous cancellation statement required in immediate proximity to purchaser's signature
- ✓ Contracts negotiated in specified foreign languages require an unexecuted translation before rescission period begins
- ✓ Cancellation may be exercised by facsimile or first-class mail to the specified address

52.9 Public Report Receipt Retention Requirement

A receipt must be taken from each person executing a reservation agreement or making a written offer to purchase/lease a time-share interest under a preliminary, conditional, or final public report. Purchasers must be given an opportunity to read the public report before signing or paying. The public report is for information only and is not a recommendation or endorsement.

- ✓ Developer must retain each receipt for a final public report for three years from the date of receipt
- ✓ Purchaser must be afforded opportunity to read the public report before executing a contract or paying any consideration
- ✓ The public report is informational only and is not a recommendation or endorsement of the time-share
- ✓ Receipts must be made available for inspection by the commissioner during regular business hours

52.10 Required Purchase Contract Contents

The developer must furnish each purchaser a completed, executed contract including the execution date, developer and plan names/addresses, purchase price and additional charges, construction completion dates, nature/duration of the time-share interest, term in years, and a conspicuous cancellation notice. Out-of-state accommodations require additional disclosure that California law does not govern management.

- ✓ Contract must include actual execution date, purchase price, and all additional charges
- ✓ Conspicuous cancellation notice must appear immediately before the purchaser's signature space
- ✓ Out-of-state accommodations require a conspicuous disclosure that the plan is not governed by California law

52.11 Cancellation Notice Attached to Public Report

The developer must attach a Notice of Cancellation Rights to the face page of every public report given to a prospective purchaser, printed in conspicuous type. The notice informs the purchaser they may cancel within seven calendar days and are entitled to return of all money and consideration given.

- ✓ Cancellation notice must be attached to the face page of every public report in conspicuous type
- ✓ Notice must state the purchaser is entitled to return of all money and consideration upon cancellation
- ✓ Notice must include a completed cancellation form with developer info and DRE registration file number

52.12 Time-Share Plan Operating Budget Requirements

An estimated operating budget must be filed with the commissioner detailing annual expenses, revenue, and assessments collectible from purchasers. Required expense items include administration, management fees, maintenance, taxes, insurance, security, operating capital, and reserves for deferred maintenance and capital expenditures. The budget must cover at least 12 months and include a sworn certification by a budget expert.

- ✓ Budget must be filed with the commissioner and cover a period of at least 12 months
- ✓ Reserves must be based on estimated life and replacement cost; a reasonable plan funds reserves within 5 years at 50% of the fully funded amount
- ✓ Collection of required reserves solely by special assessment is not reasonable
- ✓ Budget must include a sworn certification by an independent CPA, employee CPA, or commissioner-approved expert, plus signature by the developer
- ✓ Certification must confirm the budget omits no material fact and contains no untrue statements, fraud, or unwarranted future representations

52.13 Time-Share Escrow Requirements

A developer must deposit 100 percent of all funds received during the purchaser's rescission period into an escrow account at an acceptable depository. Funds may only be disbursed to the developer after expiration of the rescission period and per the purchase contract.

- ✓ 100% of funds received during rescission period must be deposited in an acceptable escrow account
- ✓ Acceptable depositories include licensed escrow agents, banks, trust companies, S&Ls, and title insurers
- ✓ Funds disbursable to developer only after rescission period expires and per purchase contract
- ✓ If construction incomplete, funds stay in escrow until certificate of occupancy or equivalent obtained
- ✓ Developer may substitute a surety bond, letter of credit, or other financial assurance in lieu of escrow

52.14 Release of Escrowed Funds Conditions

A developer is not entitled to release of escrowed funds until providing satisfactory evidence to the commissioner that the interest is free and clear of claims, or a subordination and notice to creditors document is recorded, or property is transferred to a nonprofit/owners' association, or alternative protective arrangements are approved.

- ✓ Funds not released until time-share interest is free and clear of liens/encumbrances
- ✓ Alternatively, a recorded subordination and notice to creditors document may satisfy the requirement
- ✓ Developer must notify commissioner of potential tax or liens from claims against other purchasers
- ✓ Alternative arrangements protecting purchasers require commissioner approval

52.15 Prohibited Acts in Time-Share Sales

Persons subject to the time-share chapter are prohibited from numerous deceptive practices, including material misrepresentations, predicting resale price increases, stating a time-share is a financial investment, and failing to honor timely rescission notices.

- ✓ No material misrepresentation false or misleading in time-share advertising or promotion
- ✓ Cannot predict increases in resale price or value of the time-share interest
- ✓ Cannot state that purchase of a time-share interest constitutes a financial investment
- ✓ Must disclose annual maintenance/association dues and taxes before contract execution
- ✓ Must cancel purchase and refund upon valid timely written notice of rescission; no waiver of rescission allowed
- ✓ Contracts negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean require an unexecuted translation before rescission period

52.16 One-to-One Purchaser to Accommodation Ratio

All time-share plans must maintain a one-to-one purchaser to accommodation ratio, meaning the number of purchasers eligible to use accommodations in a given calendar year never exceeds the number of accommodations available that year.

- ✓ Total purchasers eligible during a year cannot exceed total accommodations available that year
- ✓ Each purchaser must be counted at least once
- ✓ No individual accommodation may be counted more than 365 times per year (366 in leap year)
- ✓ Delinquent purchasers remain eligible for purposes of the ratio calculation

52.17 Key Time-Share Definitions

The Department of Real Estate and Real Estate Commissioner administer the Act. A time-share interest is either a time-share estate (freehold or estate for years with a future interest) or a time-share use (right to occupy without such an estate). Plans are single-site or multisite.

- ✓ 'Department' = Department of Real Estate; 'Commissioner' = Real Estate Commissioner (§ 11212(e)-(f))
- ✓ 'Time-share estate' includes a freehold/estate-for-years interest; 'time-share use' is a mere right to occupy (§ 11212(x))
- ✓ 'Developer' includes anyone who creates a plan or is in the business of selling time-share interests in the ordinary course of business (§ 11212(i))
- ✓ Exchange arrangements exceeding $3,000 per recurring period are regulated as time-share plans (§ 11212(l))

52.18 Time-Share Estate as Separate Real Property Interest

Each time-share estate constitutes a separate estate or interest in real property, including ownership for tax purposes.

- ✓ A time-share estate is a separate estate/interest in real property (§ 11213)
- ✓ Includes ownership in real property for tax purposes

52.19 Incidental Benefit Disclosure Requirements

When a time-share purchaser is offered an incidental benefit, the developer must provide a disclosure statement describing the benefit, its terms, and that its continued availability is not necessary for use of the accommodation. Costs of the incidental benefit cannot be passed on as a common expense of the time-share plan.

- ✓ Disclosure must state that participation is voluntary and fees are payable only upon use
- ✓ Costs of acquisition, operation, maintenance, or repair of the incidental benefit cannot be passed to purchasers as a common expense
- ✓ Developer must include a description of incidental benefits in the initial application for registration
- ✓ Developer must deliver records to the commissioner within 10 business days of request

52.20 Developer Certified Budget Submission Requirements

Developers of time-share plans must submit certified budgets to the commissioner annually for as long as the registration is in effect. Certification cannot contain false statements where the certifier knew or should have known the truth. Budgets increased more than 20 percent in a year require additional evidence and must be submitted at least 15 days before the covered period begins.

- ✓ Certified budget must be submitted annually while registration remains in effect
- ✓ Certification must be dated within 90 days prior to budget submission to commissioner
- ✓ Budget increases over 20 percent require evidence of compliance with Section 11265(a)(5)
- ✓ Budget must be submitted at least 15 days prior to the first day of the period it covers
- ✓ Audited financial statements must be delivered to commissioner upon request

52.21 Developer Obligation for Unsold Inventory Expenses

A time-share developer is obligated for expenses associated with unsold inventory. The developer must either pay the full maintenance fee on each interest owned, or enter into a subsidy agreement (deficit subsidy) covering the shortfall between expenses and assessments collected from other owners.

- ✓ Developer must pay full maintenance fees on owned interests OR provide a deficit subsidy agreement
- ✓ Executed subsidy agreement copy must be furnished to association within 10 days after closing of first sale/lease
- ✓ Deficit subsidy program requires reserves for replacement and major maintenance
- ✓ Commissioner requires a surety bond, cash deposit, letter of credit, or other assurance

52.22 Assurance Amount Limits for Developer Obligations

The financial assurance the developer must furnish cannot exceed the lesser of 50 percent of the anticipated one-year operation/maintenance cost (including reserves) or 100 percent of assessments attributed to total unsold interests owned by the developer.

- ✓ Assurance shall not exceed the lesser of 50% of one-year operation cost or 100% of assessments on unsold interests
- ✓ Security must be delivered to a neutral escrow depository or trustee
- ✓ Security remains available until developer gives notice of 80% closed sales AND association confirms no delinquency
- ✓ Assurance amount may be adjusted annually with commissioner approval

52.23 Buy Down Subsidy Requirements

A developer may pay a portion of assessments otherwise payable by purchasers (buy down subsidy). The developer must enter a contract with the association detailing obligations and provide an assurance for the buy down obligation not exceeding the aggregate reduction amount.

- ✓ Developer must enter a written contract with the association specifying obligations and valuation methods
- ✓ Executed subsidization contract must be furnished within 10 days after closing of first sale/lease
- ✓ Assurance for buy down subsidy cannot exceed the aggregate amount of annual assessment reductions
- ✓ Post-July 1, 2005 disputes over release of security go to arbitration under AAA Commercial Rules

52.24 Inventory Control Certification

With each amendment or renewal application, and initial submittals where sales occurred prior to a California public report, the developer must submit a third-party certification that the inventory control system functions as described.

- ✓ Certification must be by an independent third party acceptable to the commissioner
- ✓ Certification must be dated not more than three months prior to application submittal
- ✓ Certification must be based on random sampling of transactions within the preceding six months
- ✓ Title insurance companies and independent CPAs are deemed acceptable third parties

52.25 Time-Share Declaration of Dedication

The developer must record covenants dedicating accommodations to the time-share plan before the first sale, including organization of an owners' association, assessment methods, insurance requirements, and termination procedures.

- ✓ Covenants must be recorded before closing of the first sale of a time-share interest
- ✓ Must include organization of an association of time-share interest owners
- ✓ Must describe methods for calculating and collecting regular and special assessments
- ✓ Must require comprehensive general liability and property/casualty insurance
- ✓ For out-of-state sites, the law of the situs state controls if a conflict exists

CHAPTER 53

Real Estate Math

53.1 Simple Interest Computation Basics

Simple interest is calculated by multiplying the principal (amount of the note) by the interest rate, giving the interest for one year. The interest rate is expressed as a decimal (e.g., .06 for 6%, .09 for 9%), with two places marked off from the right. To find interest for a period other than one year, multiply by the fraction of the year (time). The basic formula is Interest = Principal x Rate x Time.

- ✓ Interest for one year = Principal x Rate
- ✓ Convert the percentage rate to a decimal by moving two places from the right (6% = .06)
- ✓ For partial years, multiply by time as a fraction of the year
- ✓ Use a proper fraction for periods less than 1 year and an improper fraction for periods over 1 year

53.2 360-Day Year Banker's Method

Because 365 days makes an awkward denominator, standard business/appraisal practice assumes each month has 30 days and a year has 360 days. This is the basis for interest and proration calculations on the exam. Example: interest on $4,650 for 75 days at 10% = 4,650 x .10 x 75/360 = $96.88.

- ✓ Assume 12 months of 30 days each = 360-day year for interest and proration
- ✓ 1 year, 4 months, 10 days = 490 days (360 + 120 + 10)
- ✓ Interest = Principal x Rate x (days ÷ 360)

53.3 Three-Variable Real Estate Math Formulas

Many real estate math problems use a three-variable relationship where each variable is a function of the other two. Common forms: Income = Rate x Value; Tax = Assessed Value x Rate; Percentage = Rate x Base; Commission = Sale Price x Rate; Area = Length x Width. Given any two variables, you can solve for the third by multiplying or dividing.

- ✓ Income = Rate x Value; Rate = Income ÷ Value; Value = Income ÷ Rate
- ✓ Commission = Sale Price x Rate; Sale Price = Commission ÷ Rate; Rate = Commission ÷ Sale Price
- ✓ Percentage = Rate x Base; Rate = Percentage ÷ Base; Base = Percentage ÷ Rate
- ✓ Tax = Assessed Value x Rate; Assessed Value = Tax ÷ Rate; Rate = Tax ÷ Assessed Value

53.4 Area (Spatial) Measurements and the Acre

Area is length x width. Conversions: 1 square foot = 144 square inches; 1 square yard = 9 square feet; 1 square rod = 30 1/4 square yards; 1 acre = 10 square chains, 160 square rods, 4,840 square yards, or 43,560 square feet. As a square, an acre is about 208.71 feet on a side. Section, township, and quarter-section units are used in land descriptions.

- ✓ 1 acre = 43,560 square feet = 4,840 square yards = 160 square rods
- ✓ 1 square yard = 9 square feet; 1 square foot = 144 square inches
- ✓ A section = 1 square mile = 640 acres; a quarter section = 160 acres
- ✓ A township = 36 square miles; an acre as a square ≈ 208.71 feet per side

53.5 Bankers 12%-30 Day / 6%-60 Day Method

A shortcut using a 360-day year: interest on any principal for 30 days at 12%, or for 60 days at 6%, equals the principal with the decimal moved two places to the left. This works because 12% per annum equals 1% per month, and 1% of a number is its hundredth part. Example: $8,432.67 at 12% for 30 days (or 6% for 60 days) = $84.33. Other rates and periods can be derived proportionally.

- ✓ Move decimal two places left for 30 days at 12% or 60 days at 6%
- ✓ 12% per annum = 1% per month
- ✓ Derive other rates by taking fractions (e.g., 3% for 60 days = 1/2 of 6% amount)
- ✓ Derive other periods by proportion (6 days = 1/10 of 60 days; 3 days = 1/2 of 6 days)

53.6 Amortization Payment Factor Tables

An amortization table gives the monthly payment needed to fully repay (amortize) a $1,000 loan over a set term at a given interest rate. To find a loan's monthly principal-and-interest payment, look up the factor for the term and rate, then multiply by the number of thousands in the loan amount. Longer terms lower the monthly payment; higher rates raise it.

- ✓ Monthly payment = table factor x (loan amount ÷ 1,000)
- ✓ The factor depends on both the interest rate and the loan term in years
- ✓ Longer loan terms produce lower monthly payments; higher rates produce higher payments

53.7 Common Linear Measurements

Standard units of linear measurement used in land descriptions: one foot = 12 inches; one yard = 3 feet (36 inches); one rod = 16 1/2 feet or 5 1/2 yards; one furlong = 40 rods; 100 feet = 6.6 rods; one mile = 5,280 feet, 1,760 yards, 320 rods, or 80 chains.

- ✓ One mile = 5,280 feet = 1,760 yards = 320 rods = 80 chains
- ✓ One rod = 16 1/2 feet = 5 1/2 yards
- ✓ One yard = 3 feet = 36 inches

53.8 Area and Volume Formulas

Area of a square or rectangle = length x width (in the linear unit used). Area of a triangle = base x 1/2 height. Cubic (volume) measurement = length x width x height: 1 cubic foot = 1,728 cubic inches; 1 cubic yard = 27 cubic feet.

- ✓ Area of rectangle/square = length x width
- ✓ Area of triangle = 1/2 x base x height
- ✓ Volume = length x width x height
- ✓ 1 cubic yard = 27 cubic feet; 1 cubic foot = 1,728 cubic inches

53.9 Surveyors' Chain and Link Measurements

Old surveyors' measurements: 1 link = 7.92 inches; 1 rod = 25 links; 1 chain = 4 rods or 66 feet. Modern surveyors use a steel tape (engineer's chain) 100 feet long with one-foot links, so a mile measured by a modern steel-tape chain is 52.8 chains.

- ✓ 1 chain = 4 rods = 66 feet
- ✓ 1 rod = 25 links; 1 link = 7.92 inches
- ✓ A mile = 80 (surveyor) chains, but 52.8 modern engineer's chains

53.10 FIRPTA Withholding Rate and the Buyer-Residence Exceptions

Under the Foreign Investment in Real Property Tax Act (IRC § 1445) the buyer, not the seller, is the withholding agent when U.S. real property is acquired from a foreign person, and must withhold from the amount realized and remit to the IRS. The PATH Act of 2015 raised the general rate from 10 percent to 15 percent of the amount realized for dispositions after February 16, 2016. Two exceptions turn on the buyer acquiring the property as a residence and intending to occupy it: where the amount realized is $300,000 or less no withholding is required, and where it is more than $300,000 but not more than $1,000,000 a reduced rate of 10 percent applies. Above $1,000,000, or where the buyer will not use the property as a residence, the full 15 percent applies. FIRPTA is a federal obligation and is entirely separate from California withholding under Revenue and Taxation Code § 18662, reported on FTB Form 593, which applies to every seller including California residents at a default rate of 3 1/3 percent of the total sales price. A transaction with a foreign seller can be subject to both.

- ✓ FIRPTA general withholding is 15% of the amount realized for dispositions after February 16, 2016 (raised from 10% by the PATH Act of 2015)
- ✓ Buyer acquires as a residence and amount realized is $300,000 or less: no withholding
- ✓ Buyer acquires as a residence and amount realized is over $300,000 but not more than $1,000,000: reduced rate of 10%
- ✓ Over $1,000,000, or the buyer will not use it as a residence: full 15%
- ✓ The buyer is the withholding agent, not the seller
- ✓ FIRPTA is federal and separate from California FTB Form 593 withholding (default 3 1/3% of sales price, applies to all sellers)

CHAPTER 54

Supplement: Foreclosure and Redemption

54.1 Nonjudicial Foreclosure Timeline: Notice of Default, Reinstatement, and Homeowner Bill of Rights

A trustee sale under a deed of trust begins when the trustee records a Notice of Default (NOD); the trustor has a reinstatement period that runs until 5 business days before the sale date (Civ. Code § 2924c). No Notice of Sale may be given until at least 3 months after the NOD is recorded; the Notice of Sale must then be posted and published at least 20 days before the sale and recorded at least 14 days before the sale (Civ. Code § § 2924, 2924f). Once the trustee sale is completed there is no statutory right of redemption. Under the Homeowner Bill of Rights the servicer must contact the borrower (or attempt to) at least 30 days before recording the NOD to explore alternatives, may not dual track by proceeding while a complete loan modification application is pending, and must provide a single point of contact (Civ. Code § § 2923.55, 2923.6, 2923.7). The minimum time from NOD to sale is therefore roughly 4 months. Source: Cal. Civ. Code § § 2923.55, 2923.6, 2924, 2924c, 2924f

- ✓ Reinstatement right continues until 5 business days before the trustee sale (Civ. Code § 2924c).
- ✓ Notice of Sale cannot be given until 3 months after the Notice of Default is recorded (Civ. Code § 2924).
- ✓ Notice of Sale must be posted and published at least 20 days before the sale and recorded at least 14 days before (Civ. Code § 2924f).
- ✓ Servicer must contact or attempt to contact the borrower 30 days before recording the NOD (Civ. Code § 2923.55).
- ✓ No right of redemption exists after a completed trustee sale; dual tracking is prohibited (Civ. Code § 2923.6).

54.2 Judicial Foreclosure, One-Action Rule, and Statutory Right of Redemption

A mortgage or deed of trust may be foreclosed judicially by court action; California's one-action rule requires the lender to exhaust the security first and permits only one action on the debt (Code Civ. Proc. § 726). After a judicial foreclosure sale the debtor has a statutory right of redemption of 3 months if the sale proceeds satisfy the debt with interest and costs, or 1 year if a deficiency remains (Code Civ. Proc. § 729.030); the debtor may remain in possession during redemption. A deficiency judgment is available only through judicial foreclosure, is barred after a nonjudicial trustee sale (Code Civ. Proc. § 580d), and is limited by the fair value rule (Code Civ. Proc. § 580a). Judicial foreclosure is slow and costly, so lenders normally use the power of sale in a deed of trust. Source: Cal. Code Civ. Proc. § § 725a, 726, 729.030, 580a, 580d

- ✓ Redemption after judicial foreclosure: 3 months if proceeds cover the debt, 1 year if a deficiency remains (CCP § 729.030).
- ✓ One-action rule: lender must foreclose the security first and gets one action on the debt (CCP § 726).
- ✓ No deficiency judgment after a nonjudicial trustee sale (CCP § 580d).
- ✓ Deficiency in judicial foreclosure is limited to the difference between debt and fair value (CCP § 580a).
- ✓ Debtor keeps possession during the redemption period after a judicial sale.

CHAPTER 55

Supplement: Liens and Title

55.1 Mechanic's Liens: Preliminary Notice, Notice of Completion, Lien Deadlines, Notice of Nonresponsibility

Contractors, subcontractors, suppliers and laborers who improve real property have a constitutional lien right (Cal. Const. art. XIV § 3; Civ. Code § 8000 et seq.). Subcontractors and suppliers must serve a 20-day preliminary notice on the owner, direct contractor and construction lender within 20 days of first furnishing labor or materials to preserve lien rights (Civ. Code § 8200). An owner may record a Notice of Completion within 15 days after completion (Civ. Code § 8182); a direct contractor then has 60 days and other claimants 30 days after that recording to record a claim of lien, and if no Notice of Completion is recorded all claimants have 90 days after actual completion (Civ. Code § § 8412, 8414). A lien action must be filed within 90 days after the lien is recorded or the lien expires (Civ. Code § 8460), and lien priority relates back to the commencement of the work of improvement (Civ. Code § 8450). An owner who did not order work by a tenant or other person may post and record a Notice of Nonresponsibility within 10 days of learning of the work (Civ. Code § 8444). Source: Cal. Civ. Code § § 8182, 8200, 8412, 8414, 8444, 8450, 8460

- ✓ Preliminary notice must be given within 20 days of first furnishing labor or materials (Civ. Code § 8200).
- ✓ Notice of Completion may be recorded within 15 days after completion (Civ. Code § 8182).
- ✓ After a Notice of Completion: direct contractor has 60 days, others 30 days, to record a lien; with no notice, 90 days after completion.
- ✓ Foreclosure action on a mechanic's lien must be filed within 90 days after recording (Civ. Code § 8460).
- ✓ Notice of Nonresponsibility must be posted and recorded within 10 days of learning of unauthorized work (Civ. Code § 8444).

CHAPTER 56

Supplement: Title and Ownership

56.1 Adverse Possession Requirements (Five Years and Payment of Taxes)

Title by adverse possession requires possession that is actual, open and notorious, hostile to the true owner, continuous for 5 years, and under claim of right or color of title (Code Civ. Proc. § § 318, 321, 322, 325). Unlike most states, California also requires the claimant to have paid all taxes levied and assessed on the property during the entire 5-year period (Code Civ. Proc. § 325(b)). Adverse possession cannot run against government-owned land, and the claimant perfects marketable title by a quiet title action. A prescriptive easement is acquired by the same 5-year use but confers only a right of use and does not require paying taxes unless the easement is separately assessed. Source: Cal. Code Civ. Proc. § § 318, 321-325

- ✓ Adverse possession requires 5 years of open, notorious, hostile and continuous possession (CCP § 325).
- ✓ Claimant must have paid all property taxes assessed during the 5 years (CCP § 325(b)).
- ✓ No adverse possession against public or government land.
- ✓ Title is perfected and made insurable through a quiet title judgment.
- ✓ Prescriptive easement: same 5-year use, but no tax payment required and only a right of use is gained.

CHAPTER 57

Supplement: Landlord-Tenant

57.1 Statewide Rent Cap (Tenant Protection Act), Costa-Hawkins, and Rent Increase Notice Periods

The Tenant Protection Act of 2019 (AB 1482) limits annual rent increases on covered residential units to 5 percent plus the regional CPI change, capped at 10 percent, with no more than two increases in any 12-month period (Civ. Code § 1947.12, in effect through January 1, 2030). Exempt units include housing issued a certificate of occupancy within the last 15 years, single-family homes and condominiums not owned by a corporation or REIT when the required exemption notice is in the lease, and owner-occupied duplexes. The Costa-Hawkins Rental Housing Act bars local rent control from covering single-family homes, condominiums, and units first occupied after February 1, 1995, and guarantees vacancy decontrol, letting the landlord set a new market rent when a tenant voluntarily leaves (Civ. Code §§ 1954.50-1954.535). A rent increase on a periodic tenancy requires 30 days written notice if all increases in the prior 12 months total 10 percent or less, and 90 days notice if they exceed 10 percent (Civ. Code § 827). Source: Cal. Civ. Code §§ 827, 1947.12, 1954.50-1954.535

- ✓ AB 1482 cap: 5 percent plus CPI per year, never more than 10 percent, maximum two increases in 12 months (Civ. Code § 1947.12).
- ✓ Rent cap exempts housing built within the last 15 years and most individually owned single-family homes and condos with the required lease notice.
- ✓ Costa-Hawkins allows vacancy decontrol and exempts single-family homes, condos and post-February 1, 1995 units from local rent control.
- ✓ Rent increase notice: 30 days if 10 percent or less in 12 months; 90 days if more than 10 percent (Civ. Code § 827).
- ✓ The Tenant Protection Act rent cap sunsets January 1, 2030 unless extended.

CHAPTER 58

Supplement: Trust Funds

58.1 Trust Account Recordkeeping, $200 Broker Funds Limit, and Three-Business-Day Deposit Rule (Regs 2831-2835)

Commissioner Regulation 2832 requires a broker to place trust funds into a neutral escrow, into the hands of the principal, or into the broker's trust account within 3 business days of receipt; a buyer's check may be held uncashed until acceptance only if the buyer so instructs and the seller is informed before acceptance (10 CCR § 2832). The broker may keep no more than $200 of personal funds in the trust account to cover bank charges; anything more is commingling (10 CCR § 2835). The broker must keep a columnar record of all trust funds received and disbursed, a separate record for each beneficiary or transaction, and must reconcile the separate records with the control record and bank balance at least monthly (10 CCR § § 2831, 2831.1, 2831.2). Withdrawals may be made only by the broker or an authorized signatory, and a shortage may be created only with written consent of all owners of the funds (10 CCR § § 2832.1, 2834). Source: 10 Cal. Code Regs. § § 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 2835

- ✓ Trust funds must be deposited into escrow, the trust account, or delivered to the principal within 3 business days of receipt (Reg 2832).
- ✓ A broker may keep a maximum of $200 of personal funds in the trust account (Reg 2835).
- ✓ Trust records must be reconciled with the bank balance at least once a month (Reg 2831.2).
- ✓ A separate beneficiary record must be kept for each principal or transaction (Reg 2831.1).
- ✓ Trust fund shortages require prior written consent of every owner of the funds (Reg 2832.1).

CHAPTER 59

Supplement: State Property Law

59.1 California Water Rights: Riparian, Appropriative, and Correlative Rights

All water within California belongs to the people of the state, and every use must be reasonable and beneficial (Cal. Const. art. X § 2; Water Code § § 100-102). Riparian rights belong to owners of land bordering a natural watercourse; they are appurtenant to the land, cannot be sold separately from it, and allow reasonable use shared correlatively with other riparian owners. Appropriative rights allow diversion of surface water for use on non-riparian land under a permit from the State Water Resources Control Board, with priority to the first in time (Water Code § 1200 et seq.). Overlying landowners hold correlative rights in percolating groundwater, and groundwater basins are managed under the Sustainable Groundwater Management Act of 2014 (Water Code § 10720 et seq.). Source: Cal. Const. art. X § 2; Cal. Water Code § § 100-102, 1200 et seq., 10720 et seq.

- ✓ Riparian rights attach to land adjoining a watercourse and pass with the land; they cannot be conveyed separately.
- ✓ Appropriative rights require a permit from the State Water Resources Control Board and follow first in time, first in right.
- ✓ Overlying owners share groundwater under the correlative rights doctrine.
- ✓ All water use must be reasonable and beneficial (Cal. Const. art. X § 2).
- ✓ Water in a natural watercourse is owned by the state, not the landowner (Water Code § 102).

CHAPTER 60

Supplement: Closing Practice and Special Sales

60.1 Probate Sales: Court Confirmation, Overbid Formula, and Broker Commissions

Real property of a decedent's estate is sold by the personal representative and, unless the representative has full authority under the Independent Administration of Estates Act, the sale must be confirmed by the probate court (Prob. Code § 10300 et seq.). At the confirmation hearing the court invites overbids; the first overbid must exceed the accepted offer by at least 10 percent of the first $10,000 plus 5 percent of the remainder (Prob. Code § 10311). The sale price must be at least 90 percent of the court-appraised value (Prob. Code § 10309). Broker commissions are set by the court and divided between the listing and overbidding brokers as the code directs (Prob. Code §§ 10160-10167), and an exclusive listing granted by the representative is limited to 90 days, with court approval required for any 90-day extension (Prob. Code § 10150). Source: Cal. Prob. Code §§ 10150, 10160-10167, 10300-10316

- ✓ Minimum overbid in probate court: 10 percent of the first $10,000 plus 5 percent of the balance of the accepted offer (Prob. Code § 10311).
- ✓ Probate sale price must be at least 90 percent of the appraised value (Prob. Code § 10309).
- ✓ Commissions in a court-confirmed probate sale are fixed by the court, not by the listing (Prob. Code § 10161).
- ✓ Exclusive listings by a personal representative are limited to 90 days (Prob. Code § 10150).
- ✓ Court confirmation is not needed when the representative has full authority under the Independent Administration of Estates Act.

60.2 Business Opportunity Sales: Bulk Sales Law, Sales Tax Clearance, and ABC License Transfer

Selling a business opportunity (goodwill, inventory, fixtures) requires a real estate license (Bus. & Prof. Code § § 10030, 10131). A transfer of substantially all inventory and equipment outside the ordinary course of business is a bulk sale; the buyer must record and publish a Notice of Bulk Sale and deliver it to the county tax collector at least 12 business days before the sale, and sales of $2,000,000 or less that are substantially for cash must go through escrow (Com. Code § § 6101-6111). The buyer should obtain a sales tax clearance certificate from the California Department of Tax and Fee Administration or withhold enough of the price to cover unpaid sales tax; otherwise the buyer becomes liable as a successor (Rev. & Tax. Code § § 6811-6812). Transfer of an alcoholic beverage license requires filing a notice of intended transfer with the Department of Alcoholic Beverage Control and recording it with the county, with the price held in escrow until ABC approval (Bus. & Prof. Code § § 24073-24074); the license itself is personal property. Source: Cal. Com. Code § § 6101-6111; Rev. & Tax. Code § § 6811-6812; Bus. & Prof. Code § § 10030, 24073-24074

- ✓ Notice of Bulk Sale must be recorded, published and delivered to the tax collector at least 12 business days before the sale (Com. Code § 6105).
- ✓ Buyer of a business must get a sales tax clearance or withhold funds to avoid successor liability (R&T Code § 6811-6812).
- ✓ A real estate license is required to sell business opportunities (B&P Code § 10131).
- ✓ ABC liquor license transfers require notice to ABC, county recording, and escrow of the purchase price (B&P Code § 24074).
- ✓ Business goodwill, fixtures and a liquor license are personal property, transferred by bill of sale.

CHAPTER 61

Supplement: Mortgage Law

61.1 California Usury Limits and Exemptions (Constitution Article XV)

The California Constitution limits interest on loans made primarily for personal, family or household purposes to 10 percent per year, and on all other loans (including most real estate loans) to the greater of 10 percent or 5 percent above the Federal Reserve Bank of San Francisco discount rate (Cal. Const. art. XV § 1). Exempt lenders include banks, savings institutions, credit unions, licensed finance lenders, and loans made or arranged by a licensed real estate broker and secured by real property (Civ. Code § 1916.1). Seller carryback financing (a credit sale) is not a loan and is not subject to usury. A lender who charges usurious interest forfeits the interest and may be liable for treble the interest paid (Civ. Code § 1916-3). Source: Cal. Const. art. XV § 1; Cal. Civ. Code § § 1916-3, 1916.1

- ✓ Consumer loans: maximum 10 percent per year (Cal. Const. art. XV § 1).
- ✓ Other loans: greater of 10 percent or 5 percent over the Fed discount rate.
- ✓ Loans made or arranged by a licensed real estate broker and secured by real property are exempt (Civ. Code § 1916.1).
- ✓ Seller carryback financing is a credit sale, not subject to usury.
- ✓ Usurious lenders forfeit interest and may owe treble damages (Civ. Code § 1916-3).

61.2 Reconveyance Deadlines, Beneficiary Statements, and Request for Notice of Default

When a deed of trust is paid off, the beneficiary must deliver the original note, deed of trust and a request for reconveyance to the trustee within 30 days, and the trustee must execute and record the full reconveyance within 21 days of receiving them; violation carries a $500 statutory penalty plus actual damages (Civ. Code § 2941). A borrower or authorized party may demand a beneficiary statement (payoff or balance information) and the lender must furnish it within 21 days; the fee is capped by statute (about $30, verify current amount) (Civ. Code § 2943). A junior lienholder or other interested party may record a Request for Notice of Default and Sale, after which the trustee must mail a copy of any recorded Notice of Default within 10 business days and of the Notice of Sale at least 20 days before the sale (Civ. Code § 2924b). Source: Cal. Civ. Code § § 2924b, 2941, 2943

- ✓ Beneficiary must send reconveyance documents to the trustee within 30 days of payoff (Civ. Code § 2941).
- ✓ Trustee must record the reconveyance within 21 days; penalty is $500 plus damages.
- ✓ Beneficiary statement must be delivered within 21 days of demand (Civ. Code § 2943).
- ✓ A recorded Request for Notice of Default entitles the requester to a mailed copy of the NOD within 10 business days (Civ. Code § 2924b).
- ✓ Junior lienholders record a Request for Notice to learn of senior defaults and protect their position.

CHAPTER 62

Supplement: License Law Gaps

62.1 Written Broker-Salesperson Agreement and Delegation of Supervision (Regs 2725-2726)

Every broker must have a written agreement with each salesperson and broker associate licensed under the broker, dated and signed by both parties, covering supervision, duties and compensation; the broker must retain the agreement for 3 years after termination of the relationship (10 CCR § 2726; Bus. & Prof. Code § 10148). Reasonable supervision under Regulation 2725 includes establishing written policies and procedures for reviewing transaction documents, handling trust funds, advertising, and monitoring compliance; the broker may delegate supervisory duties to another broker or to a salesperson who has at least 2 years of full-time real estate experience within the last 5 years, but the delegating broker remains responsible. The agreement is required whether the salesperson is treated as an employee or an independent contractor for tax purposes. Source: 10 Cal. Code Regs. § § 2725, 2726; Bus. & Prof. Code § § 10148, 10177(h)

- ✓ A broker must have a signed, dated written agreement with every salesperson (Reg 2726).
- ✓ The broker-salesperson agreement must be kept for 3 years after the relationship ends.
- ✓ Supervision may be delegated to a salesperson with 2 years full-time experience in the past 5 years, but the broker remains liable (Reg 2725).
- ✓ Written policies for document review, trust funds and advertising are part of reasonable supervision.
- ✓ Failure to supervise is grounds for discipline under B&P Code § 10177(h).