



# *California Real Estate Exam Crash Course Guide*

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## **REGULATION OF REAL ESTATE LICENSEES**

The basic legal principles regarding real property law and its ownership now followed, as well as our legal vocabulary are based on the English Common Law. However, due to the Spanish influence in early California history, the community property laws are governed by Spanish Law. Most California laws are created by legislative act and are upheld under police power.

The California Real Estate Law or license law is codified in the Business and Professions Code and is further clarified by the Regulations of the Real Estate Commissioner.

### **I. DEPARTMENT OF REAL ESTATE**

A. **REAL ESTATE COMMISSIONER:** The Real Estate Commissioner, appointed by the Governor, is the chief executive of the Department and presides as chairperson of the Real Estate Advisory Commission.

1. It is the real estate commissioner's duty to:
  - a. determine administrative policy and enforce the provisions of Real Estate Law.
  - b. screen and qualify applicants.
  - c. regulate the sale of subdivisions.
  - d. investigate complaints against licensees.
  - e. hold formal hearings within terms of the Administrative Procedures Act.
2. Real Estate Law empowers the Commissioner to issue regulations to help administer and enforce the law. These regulations become part of the California Administrative Code and have the force and effect of the law itself, but are NOT law.
3. The Commissioner does not give legal advice nor settle commission disputes. The State Attorney General is the legal adviser. The District Attorney prosecutes law violations in his or her own county. In addition, the District Attorney investigates violations of Real Estate Law by unlicensed persons. An unpaid cooperating broker may file a civil suit.

B. **REAL ESTATE ADVISORY COMMISSION:** An 11-member board that consists of the Commissioner and ten other members who are appointed by the Commissioner. Six members must be licensed real estate brokers. Four must be public members.

### **II. REAL ESTATE ACTIVITIES REQUIRING OR EXEMPT FROM LICENSING**

#### **A. ACTIVITIES REQUIRING A LICENSE**

1. Sales Activity.
2. Property Management: 16 residential units or more require a resident manager. The property manager is responsible for routine maintenance and is employed under a written contract.

3. Sale of Government Land: assist in filing applications for purchase or lease of, or in locating or entering upon government owned lands. These real estate brokers and salespersons are known as land locators.
4. Mortgage Lending.
5. Loan Servicing.
6. Syndications.
7. Mobile homes: a Certificate of Title transfers ownership. A real estate licensee can represent the sale or purchase of a used mobile home, or a new, one if it is registered with HCD. Report the sale of a registered mobile home within ten calendar days to the HCD.
8. Business opportunities, including restaurants with liquor licenses, and franchises.

#### B. PERSONS OR ACTIVITIES EXEMPT FROM LICENSING

1. Anyone who is dealing with his or her own property.
2. Services rendered by an attorney-at-law performing duties on behalf of a client as their attorney. If an attorney-at-law receives a commission, a license is required.
3. Any receiver, trustee in bankruptcy, executor of estates or any person acting under court order.
4. Any trustee selling under a deed of trust foreclosure.
5. Anyone holding a duly executed power of attorney from the owner. The person appointed is called an Attorney-in-Fact. Appointment should be recorded for real estate transactions. The person signs the principal's name first, then his name as Attorney-in-Fact. When general powers are given, an attorney-in-fact can do all acts on behalf of the owner except:
  - a. convey a homesteaded property.
  - b. mortgage a property to them.
  - c. sell a property to him or her, even if adequate consideration is given.
6. Any stenographer, bookkeeper, receptionist, telephone operator or other clerical help in carrying out their job as such, and cannot perform acts requiring a license. A newspaper ad written by an unlicensed assistant requires the broker's written approval. A licensee must answer inquiries from the world wide web.
7. An officer of a corporation when selling corporate property provided the officer receives no special compensation.
8. Resident managers of apartment complexes, as long as they deal only with the complex in which they reside.

### III. LICENSE QUALIFICATIONS

A. **BROKER AND SALESPERSON REAL ESTATE LICENSES:** A 150 day temporary license may be issued to an otherwise qualified applicant whose name is on a list of delinquent child support payments. An unlicensed person who practices real estate may be fined up to \$10,000.00

1. An applicant for the real estate broker license must:
  - a. be at least 18 years of age;
  - b. make application on a form prescribed by the Commissioner;
  - c. have had two years full time experience or equivalent and have passed eight college level real estate oriented courses;
  - d. be honest and truthful;
  - e. pass a 200 multiple-choice question examination with a score of 75% or higher;
  - f. submit two sets of fingerprints if not currently licensed;
  - g. pay the license fee; and,
  - h. submit proof of legal presence in the USA.
  
2. An applicant for the real estate salesperson license must:
  - a. be at least 18 years of age;
  - b. make application on a form prescribed by the Commissioner;
  - c. be honest and truthful;
  - d. have been enrolled in a three-unit, college-level course in Real Estate Principles. The applicant is eligible to take the exam with proof of enrollment but must complete the course to apply for the license. A conditional 18-month salesperson license may be issued to qualified applicants who have completed only real estate principles.
  - e. pass a 150 multiple-choice question examination with a score of 70% or higher;
  - f. submit two sets of fingerprints;
  - g. pay the license fee;
  - h. submit proof of legal presence in the USA.

*Note: There are no citizenship or residency requirements for brokers or salespersons. Non-residents must file an "irrevocable consent" allowing the Commissioner, through the Secretary of State, to serve the licensee with a court summons if legal action is filed against the licensee.*

B. **CONTINUING EDUCATION:** No license can be renewed unless the licensee shows proof that he/she has completed 45 hours of instruction in DRE approved courses every four years. 18 of the 45 hours must be in consumer protection and three hours each on a survey course of Agency, Ethics, Fair Housing and Trust Funds. After two years of non-renewal (during which time, one cannot practice real estate), the state exam must be passed again in order to become licensed.

### IV. TYPES OF LICENSES

A. **REAL ESTATE BROKER:** A real estate broker is a person (natural or legal) who for compensation or in expectation of compensation, does or negotiates to do one or more of the following acts:

1. Individual Broker License:

- a. An office must be maintained by the broker (residence is okay).
  - b. The broker's license and salespersons; licenses (if any) must be available for inspection by the Commissioner at the broker's main office.
    - 1) The license need not be displayed on premises.
2. Corporate Real Estate License.
  3. Partnerships: The DRE no longer issues formal partnership licenses, however real estate business partnerships may be formed under the general law relating to such entities. A partnership may perform acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker.
    - a. A salesperson whose employing broker is a member of the partnership (formed by written agreement) may work out of any branch office maintained by any one of the members of the partnership.
  4. Branch Office: This license is required for each additional location.
  5. Fictitious Business Name (d.b.a.): A licensed broker, corporation or partnership may operate under a fictitious name (a d.b.a.; doing business as) if approved by the Commissioner. Filing a Fictitious Business Name Statement is good for five years from December 31st in the year filed. This statement must be published once a week for four weeks in a newspaper of general circulation in the county where the business is located.
- B. REAL ESTATE SALESPERSON:** Any natural person employed by a real estate broker to do any of the acts above for compensation or in expectation of compensation. According to Real Estate Law a salesperson is an employee - NOT an independent agent of the broker. Worker's Compensation is required for all employees. For income tax purposes, a salesperson may be an independent contractor.
1. Salesperson License: This license is issued to an individual who is employed by a broker and is under the control and supervision of a licensed broker.
    - a. The salesperson license must be available for inspection by the Commissioner at the broker's main office, not at the branch offices.
  2. The salesperson can receive compensation only from the salesperson's employing broker.
  3. There must be a **WRITTEN AGREEMENT** with the broker. This is a statutory requirement. Each party must keep a copy for three years. (Commissioner's Reg. 2776)
  4. Any licensed broker may work as an associate broker for employing broker, but must have a written employment agreement.
  5. A conditional 18-month salesperson license may be issued to an individual who has completed real estate principles and passed the state exam.

C. **PREPAID RENTAL LISTING SERVICE:** This special license allows licensees to collect a fee for supplying a prospective renter with a list of available rentals. The rental service **MUST PROVIDE** three actual rentals meeting the prospective tenant's criteria within five days of receipt of the rental fee.

1. This does not permit licensee to negotiate leases nor do any other type of real estate activity.
2. Each location must have this special license.
3. Each location must be bonded for \$2,500.
4. If a broker wants to move the main office to a new location, he or she must give notice of the new address and telephone number to any prospective tenants before the move.

D. **RESTRICTED, SUSPENDED, REVOKED OR CANCELLED LICENSES**

1. Restricted License is a probationary license.
2. Suspended License: License temporarily lost.
3. Revoked License: License lost for an unlimited time. Person cannot apply for reinstated license until one year has passed.
4. Cancelled License.

## V. **CHANGES AND TRANSFERS**

A. **MAIN OFFICE ADDRESS OR NAME CHANGE:** A broker must notify the Commissioner in writing by the next business day of any address change.

B. **TRANSFER OF SALESPERSON'S LICENSE**

1. The new broker must send a written notice indicating the change, to the Department headquarters in Sacramento within five days.
2. The former broker must send a written notice within five days to the department headquarters in Sacramento and give the license to the salesperson.

C. **DISCHARGE OF A SALESPERSON:** When discharging a salesperson for a violation of the Real Estate Law, the employing broker must (1) discharge the salesperson and (2) immediately file a certified written statement of the facts (within three business days of termination, the broker must give the license to the licensee).

D. **DEATH OF A BROKER:** Upon a broker's death, the licenses of the sales associates are automatically cancelled. A salesperson may transfer to a new broker immediately.

**VI. ADVANCE FEES:** Some brokers collect a fee paid in advance of any services rendered. Advance fees are collected from: (a) sellers to cover the advertising of properties or businesses for sale; or (b) loan applicants to cover the cost of services to be performed in arranging the loan. Advance fees may only be collected pursuant to an advance fee agreement in not less than ten-point type, approved by the Department of Real Estate at least ten business days prior to its use. Fees must be deposited into the broker's trust fund account. An accurate accounting of the expenditures must be given to the client.  
\*Appraisal and Credit Report Fees do not require an advance fee agreement.

## **VII. REAL ESTATE LAW ENFORCEMENT**

**A. INVESTIGATIONS AND HEARINGS:** The actions of a licensee may be investigated by the Commissioner upon receipt of a written complaint, or upon the Commissioner's own motion. (The Commissioner must use established legal procedures to discipline licensees.)

1. Investigation process includes:
  - a. statements received from witnesses and/or licensee;
  - b. documents obtained and verified, if needed; and
  - c. a conference is held to determine seriousness and validity of the complaint.
2. The hearing is held according to the Administrative Procedures Act.
  - a. An Accusation or Statement of Issues is served to the affected licensee.
  - b. A desist and refrain order may be issued, which means, "stop now."

**B. TYPES OF VIOLATIONS:** Sections 10176 and 10177 of the Business and Professions Code constitute the foundation for most license suspensions or revocations

1. Misrepresentation. Section 10176(a): The failure to disclose material facts which should be told to the principal or a false statement of fact.
2. False Promise. Section 20276(b): The promising to do something in the future which is usually impossible to perform.
3. Continued Misrepresentation. Section 17176(c).
4. Dual Agency. Section 10176(d): The failure to inform all principals(s) he is acting as agent for more than one party in a transaction. This can result in loss of all commission and/or suspension or revocation of the license. Dual Agency exists when Listing Agent and Selling Agent are with the same company. The dual agent cannot reveal the seller's lowest price or the buyer's highest price without their consent. Single agency requires the agent to be "fair and honest" with all parties to the sale. A single agent acts for only a buyer, or only a seller. A single agent is client oriented. An exclusive authorization to locate property is a buyer broker representation agreement. It requires a definite termination date. It could lead to a dual agency.
5. Commingling. Section 10176(e): The mixing of the principal's funds with the broker's personal money. This is not to be confused with conversion (misappropriation) which is the spending or using of the principal's funds.

6. Definite Termination Date. Section 10176(f): The failure to specify a definite and final termination date to on any exclusive listing.
7. Secret Profit. Section 10176(g): The purchasing through a “dummy-buyer” with the intent to resell at a higher price. Usually referred to as a “double escrow” for the benefit of the agent (illegal). Real estate licensees cannot make a secret profit. (Owners, not brokers, can make secret profits. Disclose when acting for relatives, as a principal, or when rebating commission to buyers for closing costs.)
8. Listing With An Option. Section 10176(h).
9. Dishonest Dealing. Section 10176(i): A “catch all” to pick up unspecified violations.
10. Obtaining a License by Fraud. Section 10177(a): A licensee makes any misstatement of facts in a license application and procures the license by fraud or misrepresentation. You have one year from the date you sit for your exam to apply for the license.
11. Convictions. Section 10177(b): This allows denial of a license after conviction of a felony or misdemeanor involving moral turpitude (i.e.: perjury, embezzlement, robbery).
12. False Advertising (“Bait and Switch”). Section 10177(c): (Appropriate abbreviations are BRO and AGT.)
13. Violations of Other Sections. Section 10177(d): A “catch all” giving authority to proceed against a licensee for violating the Real Estate Law or Commissioner's Regs.
14. MISUSE OF Trade Name. Section 10177(e): This prohibits the use of the term “Realtor®” or any trade name or insignia of membership in any real estate organization of which a licensee is not a member.
15. Conduct Warranting Denial. Section 10177(f): This permits denial of license if the applicant fails to be honest, trustful, and of good reputation.
16. Negligence or Incompetence. Section 10177(g): The careless and inept activity by a licensee who endangers the interest of his clients or customers.
17. Supervision of Salespersons. Section 10177(h): This requires a broker to exercise reasonable supervision over all activities of the salespersons. A salesperson with two years experience out of the last five may be selected as a manager.
18. Violating Government Trust. Section 10177(i): The using of government employment to violate the confidential nature of records that is available as an employee.
19. Other Dishonest Conduct. Section 10177(j): Another “catch all” clause which covers any other conduct which constitutes fraud or dishonest dealing.

20. Restricted License Violations. Section 10177(k): This allows the Commissioner to proceed against any licensee who violates restrictions placed on a restricted license. (A desist and refrain order means, “stop now.”)
  21. Inducement to Panic Selling (also called “Blockbusting” or “Panic Peddling”). Section 10177(l): This prohibits the inducement to sell, lease or list property based upon entry into the neighborhood of a person(s) or another race, color, religion, ancestry or national origin. A licensee should be “color blind” and free from all bias. (A licensee cannot answer any questions about one’s race.)
  22. Steering. Section 2782(a-d): The illegal practice of channeling home seekers interested in equivalent properties to particular areas, either to maintain the homogeneity or to change the character of an area in order to create a speculative situation.
  23. Redlining. 2782(d): An illegal lending policy of denying real estate loans on properties in older, changing urban areas, usually with large minority populations, because of alleged higher lending risks, without due consideration being given by the lending institution to the creditworthiness of the individual loan applicant. (The clause in a loan application that asks for the race of the borrower is optional and is not required to be completed.)
- C. OTHER PENALTY SECTIONS: Violation of additional sections of the B&P Code will place the license of the broker or salesperson in jeopardy and may lead to disciplinary action.
1. Employing or paying an unlicensed person. The broker could lose his or her license and also be subjected to a maximum fine of \$100. Sections 10137 & 10138.
  2. Blind Advertising: The failure to disclose that the party is a licensee acting as agent. Section 10140.6. (The company name or the licensee’s status is not in the ad.)
  3. Failure to notify the buyer and the seller of the selling price within one month after completion of the sale. This is not required if done by the escrow company. Section 10141.
  4. Failure to record a trust deed created on the sale of a property handled by the broker within one week of closing unless done by the escrow company. Section 10141.5.
  5. Failure to deliver a copy of any contract to the party signing it at the time that it is signed. Section 10142.
  6. Failure to retain for three years, copies of all listings, deposit receipts, cancelled checks, trust records, and other related documents. Section 10148. Loan transaction documents must be retained for four years. The period shall run from:
    - a. Date of the closing of the transaction, or
    - b. If the transaction is not consummated, it is from the date of the listing.
    - c. *Exception:* Retain a Mortgage Loan Disclosure Statement for three years.

7. Failure to maintain a place of business and to make licenses available for inspection. Sections 10160, 10162, and 10165.
8. Receiving compensation for referral of customers to any escrow company, structural pest control firm, or title insurance company. Section 10177.4.
9. Failure to notify the Commissioner when discharging a salesperson for cause. Section 10178.

**VIII. REAL ESTATE FUNDS:** There are two accounts

- A. EDUCATION AND RESEARCH FUND gives money to the University of California, State Colleges and Community Colleges to foster real estate education.
- B. REAL ESTATE RECOVERY ACCOUNT underwrites the payment of uncollectible court judgments against licensees.
  1. The liability of the Recovery Account shall not exceed the following amounts for causes of action which occurred on or after January 1, 1980:
    - a. \$20,000 for any one transaction; and,
    - b. \$100,000 for any one licensee.
  2. Automatic Suspension. If the commissioner pays a judgment on behalf of a licensee, the license of the broker or salesperson shall be automatically suspended, until repaid to the DRE with interest.
  3. Repayment of the Recovery Fund. No license can be reinstated until full reimbursement, including interest, has been made to the DRE.

**IX. TRADE AND PROFESSIONAL ASSOCIATIONS**

- A. The National Association of Realtors® unifies the organized real estate interests of the nation. The term REALTOR® is owned by NAR. Illegal use can lead to loss of license, and is both unlawful and unethical.
  1. California Association of Realtors® (CAR). Misuse of the term Realtor® is a violation of California Real Estate Law.
  2. NAR Code of Ethics: A moral science.
- B. The National Association of Real Estate Brokers owns the term REALTIST®.
- C. Institute of Real Estate Management (IREM): CPM is the designation of a Certified Property Manager.

- X. TRUST FUND RECORDS:** A true record must be kept of all trust funds which pass through a broker's hands. Upon request by the DRE, under the Uniform Electronic Transaction Regulations, a broker must provide paper copies of trust fund records for the last three years, at broker's expense.

## A. DEFINITION OF TRUST FUNDS

1. Trust Funds: Money or things of value received by the licensee on behalf of the principal, and not belonging to the broker but being held for the benefit of others.
2. Purpose: A trust fund is set up to separate a principal's money from a broker's money in the broker's own general account so the monies will not be commingled.

## B. HANDLING OF FUNDS

1. The law requires that the licensee place funds accepted on behalf of his principal, (a) into the hands of his principal, (b) into neutral escrow depository, or (c) into a trust fund account not later than three business days following receipt of said funds.

## C. TRUST ACCOUNT WITHDRAWALS. Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker. The broker of record must be the trustee of the account.

1. A salesperson licensed to the broker.
2. An unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds.
3. Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of an officer through whom the corporation is licensed.
4. Earned commissions may remain in the trust account for a period not to exceed 25 days.
5. Overage in a trust account: account for it and keep it in the trust account.

## D. TRUST FUND RECORDS

1. The records must show: (1) the date funds are received, from whom received, and the amount; (2) show the date of the deposit, check number or date of related disbursements; and, (3) the daily balance of the trust bank account.
  - a. For all transactions involving monies deposited in the trust account, the broker must keep a separate record for each beneficiary or transaction.
  - b. Records also must be in columnar form and set forth information sufficient to identify the transaction and the parties to the transaction.
2. Checks drawn on the trust account:
  - a. should be numbered.
  - b. cancelled checks (and voided checks) must be retained for three years.
3. Reconciliation: The bank's accounting must reconcile with the broker's records.
  - a. Brokers must reconcile their trust funds records at least once a month. (Reg. 2831).
  - b. A record of the reconciliation must be maintained.

- c. Must keep a running daily balance of the trust account.
4. Broker's Personal Funds:
    - a. Cover service charges. He/she can have up to \$200 in the account.
    - b. Keep earned commissions in the account for no more than 25 days.

*Note: If the buyer and seller decide to go directly to escrow and the buyer makes out a check to the escrow company and hands it directly to the escrow clerk, the broker does not need to keep a record of this check. The broker should reflect this in the buyer's file, and does not have to maintain a record of trust funds received and not placed in the broker's trust account.*

## **XI. TRANSACTION IN TRUST DEEDS AND REAL PROPERTY SALES CONTRACTS**

### **A. NOTES SECURED BY TRUST DEEDS. (Article 5, Chapter 3 Real Estate Law) (Selling loans secured by real estate)**

1. Acceptance of Loan Funds: The broker may only accept funds in advance from a prospective buyer or lender when the funds are to be used to purchase specific loans which the broker has written authorization to negotiate or sell that which he owns.
2. Retention of Funds: The broker cannot hold funds collected on notes or sales contracts for more than 25 days unless given written authorization to do so.
3. Written Authorization is required if the broker is to make collections for others on notes or sales contacts.
4. Recording New Loan.
5. Assignment.
6. Misleading Advertising is strictly prohibited. Any ad implying a specific yield in excess of the interest is misleading unless the interest rate and the discount rate are shown separately.
7. Inducements: Brokers can offer gifts to get loan business, with disclosure of conditions.

### **B. MORTGAGE LOAN BROKERS LAW. (Article 7, Chapter 3, Real Estate Law):** The following restrictions apply to Hard Money loans (loans which cash is advanced by lenders on new notes, not just an extension of credit by a seller) arranged by a broker for a fee. The law applies to first trust deeds of less than \$30,000 and junior loans of less than \$20,000. (Equity in the property is the collateral.)

1. Interest: There are no limitations. Real estate loans that are made or arranged by a real estate broker are exempt from the Usury Law.
2. Commissions: Commissions are calculated as a percentage of the loan amount:
  - a. 1st Trust Deeds Under \$30,000, with a term of three years or more = 10% commission

- b. Junior Trust Deeds Under \$20,000, with a term of three years or more = 15% commission
3. Maximum Costs and Expenses, excluding title and escrow fees:
    - a. Loans of \$0 to \$7,800: Actual costs or \$390, whichever is less.
    - b. Loans from \$7,801 - \$14,000: Actual costs, or 5% of the loan, whichever is less.
    - c. Loans over \$14,000 - Actual costs, but no more than \$700.
  4. Mortgage Loan Disclosure Statement:
    - a. The statement must be approved by the Real Estate Commissioner.
    - b. The statement must be signed by the borrower before signing other loan documents.
    - c. A copy must be kept by broker for three years.
    - d. Interest cannot commence until the lender has deposited funds in escrow or made them available to the borrower.
  5. Balloon Payments: Except as noted below, hard money installment loans of less than three years cannot have a balloon payment (no one payment can be greater than twice the amount of the smallest installment).
  6. Exclusive Agreements may not have more than a 45 day term for loans of \$2,000 or less.
  7. Borrower's Liability: If a loan cannot be consummated due to the borrower's failure to disclose existing liens, the borrower may pay all costs and expenses and one half the commission.
  8. Credit Life Insurance: The borrower cannot be required to purchase this insurance as a condition of a loan.
  9. Late Charges: Cannot exceed 10% of the installment due, but the lender can charge a \$5.00 minimum. Payments made within ten days of the scheduled due date are not considered as "late."
  10. Prepayment Penalty: Loans on single-family, owner occupied homes can have a prepayment penalty only if the loan is paid off within seven years. (Mortgage interest, property taxes and any prepayment penalty are tax deductible.)

