

Chapter 1



Real Estate Industry & Licensing

Chapter 1 Goals:

- List the job of the real estate broker and salesperson and what is allowed for each licensee
- How a real estate brokerage may be owned and operated
- How to become a real estate agent and broker
- Understand the basics of real estate law and how it is enforced
- Describe the role of the state real estate commissioner
- List the type of business dealings that may result in the suspension of a licensee

Chapter 1: Real Estate Industry & Licensing

Key Terms

associate licensee blind advertising Business and Professions Code (BPC) broker-officer California Association of Realtors California Department of Real Estate (CalDRE) Consumer Recovery Account corporation Department of Real Estate (DRE) fictitious name	fictitious name statement independent contractor licensing disclosure manufactured home mobile home dealer M.O.G. license mortgage broker partnership panic selling Prepaid Rental Listing Service (PRLS) Real Estate Advisory Commission	real estate agent real estate broker real estate brokerage Real Estate Commissioner Real Estate Education and Research Fund real estate fund real estate law enforcement real estate license expiration real estate license renewal restricted license salesperson sole proprietorship
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California Real Estate

The California Civil Code is a collection of legal statutes for the state. Civil Code, Division Two deals primarily with real estate. Other real estate codes can be found in Division Four of the **Business and Professions Code (BPC)**. The BPC includes codes that relate to real estate regulations, transactions, revenue, and licensing.

The **California Department of Real Estate (CalDRE)** is a government agency that is responsible for administering real estate law. It promotes and protects the interests of property owners, regulates the licensing process, hears complaints, creates enforcement mechanisms, and oversees policies that promote fair and open real estate property trade.

California Department of Real Estate (CalDRE)

The **California Department of Real Estate (CalDRE)** is an agency within the Department of Consumer Affairs.

**California Department of Real
Estate**

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Sacramento

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1350 Front Street, Suite 1063
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Real Estate Commissioner

The chief executive of CalDRE is the Real Estate Commissioner.

The **Real Estate Commissioner** is appointed by, and answers to, the Governor. He or she protects the interests of buyers, sellers, tenants, and professionals in the real estate market. The Commissioner interprets and enforces real estate laws and promotes property ownership.

The Real Estate Commissioner's wider responsibilities include:

- Creating or revoking real estate policy and laws
- Gathering and managing public property information
- Employing necessary personnel
- Choosing members of the Real Estate Advisory Commission
- Overseeing the real estate licensing process, including the issuing and revocation of licenses
- Engaging in real estate licensee disciplinary action
- Investigating potentially illegal real estate transactions
- Assisting in fraud prevention
- Establishing trust funds for victims of real estate licensee abuse

In order to be considered for the position of Real Estate Commissioner, an individual must be an active real estate broker who has a minimum of five years experience or has been involved in real estate transactions within five of the last ten years.

State residents have the ability to appeal certain regulations or statutes set forth by the Commissioner if they are deemed unnecessary or overly burdensome.

The Commissioner does not have the power to settle legal disputes. However, he or she does have the authority to bring a legal suit against a violator of real estate law on behalf of the people of California.

Real Estate Advisory Commission

The Real Estate Commissioner appoints a **Real Estate Advisory Commission** to provide recommendations on real estate policy, including market trends and real estate data.

This panel of ten members includes six licensed brokers to represent the licensee perspective and four non-licensed members of the public to represent the buyer/seller perspective.

The Commission typically hosts yearly meetings, but may host more depending on market conditions. Meetings are open to the general public.

Real Estate Funds

The Department of Real Estate is not funded through the state's general fund; rather, it is funded through real estate licensing and examination fees. The revenue derived from these fees is set aside into two accounts: The Real Estate Education and Research Fund and the Consumer Recovery Account.

The **Real Estate Education and Research Fund** commissions studies at public and private universities to help the DRE better understand the real estate market and current financial events.

20% of total licensing fees are allotted to a **Consumer Recovery Account**. The purpose of this trust fund is to compensate victims of fraud committed by a licensed agent or broker. The fund allows victims to recover at least some of their losses when a licensee has insufficient personal assets to cover them. The maximum recovery amount is \$50,000.

California Association of Realtors

The **California Association of Realtors** is a real estate trade association that works in service of real estate professionals and consumers. It is the state's primary housing advocate.

The Association produces the real estate industry's most commonly used forms and agreements.

The unique content within these forms and agreements, including the order and wording, is the property of the California Association of Realtors. The copyright notice on them is a legal warning to readers to refrain from copying, utilizing, or distributing the agreements without the Association's permission.

Real estate forms and agreements are routinely updated and altered based on ever-changing legal precedents. The most up-to-date forms and agreements can be found on the Association's website: www.car.org.

Agent/Broker Relationship

A **real estate agent** – also referred to as a real estate **salesperson** – is a licensed professional who has the legal right to represent a client in the sale, purchase, transfer, exchange, or leasing of property.

An agent is employed and supervised by a real estate broker/brokerage. A **real estate brokerage** is a firm wherein real estate agents perform real estate transactions under the tutelage of a broker.

Real estate brokerages can vary in size, ranging from as little as one person to many agents. However, there must be at least one **real estate broker** of record for a company to be a brokerage.

Real estate brokerages fall under the following categories:

- A) ***Sole Proprietorship***. These typically smaller, locally owned businesses are the most common type of brokerage. A real estate broker, real estate agent, or a non-licensed real estate can own a sole proprietorship. However, all transactions must still go through a broker. Sole proprietors can prepare Schedule C, D, or E forms to document business and income expenses.
- B) ***Corporation***. These are typically medium and large-sized real estate brokerages, although they can be small firms. The broker of record at a corporation is called the **broker-officer**.
- C) ***Partnerships***. Real estate partnerships are formed between two individuals, one of which is a real estate broker. Each additional branch office that is added in a real estate partnership requires an additional licensed real estate broker.

An agent and a broker must execute a formal written agreement in order to make a partnership valid. A formal agreement must be signed and dated. Its provisions must stipulate the roles and responsibilities of each party, as well as the commission structure.

Upon the execution of such an agreement, an agent becomes an **associate licensee** of a broker/brokerage.

An agent typically pays a fee or a percentage of his or her commissions to his or her broker in exchange for the broker's platform (i.e. paperwork, contracts, company name) and assistance.

Agents as Independent Contractors

A real estate agent technically works under a broker's supervision. Therefore, an agent

is legally considered an employee of a broker/brokerage.

However, agents render services on behalf of principals, not their brokers. They do not collect wages or salaries, but commissions. As long as an agent's actions are legal or ethical, brokers have no say in an agent's schedule or how he or she conducts business.

Therefore, for tax purposes, agents are characterized as self-employed independent contractors.

An **independent contractor** is an individual, business, or corporation that provides goods or services to another party on a per job basis, or when required.

Three main criteria make an agent an independent contractor:

1. The agent is licensed.
2. The agent is paid commissions in place of an hourly wage or a salary.
3. The agent has a written agreement with a broker indicating the agent's independent contractor status.

If all of these criteria apply, the IRS will tax the agent as an independent contractor.

This status allows an agent to avoid paying federal withholding taxes and to contribute to such things as employee social security tax and worker's compensation coverage.

California's Unemployment Insurance Act currently bars commission-based workers from receiving unemployment benefits. Therefore, an agent cannot claim unemployment insurance.



**INDEPENDENT CONTRACTOR AGREEMENT
WITH BINDING ARBITRATION OPTION
(Between Broker and Associate-Licensee)**
(C.A.R. Form ICA-BA, Revised 4/15)

This Agreement, dated _____,

is made between _____

("Broker") and

("Associate-Licensee").

In consideration of the covenants and representations contained in this Agreement, Broker and Associate-Licensee agree as follows:

1. **BROKER:** Broker represents that Broker is duly licensed as a real estate broker by the State of California, doing business as _____ (firm name), a sole proprietorship, a partnership, or a corporation. Broker is a member of the Association(s) of REALTORS®, and a participant to the Listing Service(s). Broker shall keep Broker's license current during the term of this Agreement. Multiple
2. **ASSOCIATE-LICENSEE:** Associate-Licensee represents that: (i) he/she is duly licensed by the State of California as a real estate broker, real estate salesperson, and (ii) he/she has not used any other names within the past five years, except _____. Associate-Licensee shall keep his/her license current during the term of this Agreement, including satisfying all applicable continuing education and provisional license requirements.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP:**
 - A. Broker and Associate-Licensee intend that, to the maximum extent permissible by law: (i) This Agreement does not constitute an employment agreement by either party; (ii) Broker and Associate-Licensee are independent contracting parties with respect to all services rendered under this Agreement; and (iii) This Agreement shall not be construed as a partnership.
 - B. Broker shall not: (i) restrict Associate-Licensee's activities to particular geographical areas, or (ii) dictate Associate-Licensee's activities with regard to hours, leads, open houses, opportunity or floor time, production, prospects, sales meetings, schedule, inventory, time off, vacation, or similar activities, except to the extent required by law.
 - C. Associate-Licensee shall not be required to accept an assignment by Broker to service any particular current or prospective listing or parties.
 - D. Except as required by law: (i) Associate-Licensee retains sole and absolute discretion and judgment in the methods, techniques, and procedures to be used in soliciting and obtaining listings, sales, exchanges, leases, rentals, or other transactions, and in carrying out Associate-Licensee's selling and soliciting activities; (ii) Associate-Licensee is under the control of Broker as to the results of Associate-Licensee's work only, and not as to the means by which those results are accomplished; (iii) Associate-Licensee has no authority to bind Broker by any promise or representation; and (iv) Broker shall not be liable for any obligation or liability incurred by Associate-Licensee.
 - E. Associate-Licensee's only remuneration shall be the compensation specified in paragraph 8.
 - F. Associate-Licensee who only performs as a real estate sales agent, shall not be treated as an employee for state and federal tax purposes. However, an Associate-Licensee who performs loan activity shall be treated as an employee for state and federal tax purposes unless the activity satisfies the legal requirements to establish an independent contractor relationship.
 - G. The fact the Broker may carry workers' compensation insurance for Broker's own benefit and for the mutual benefit of Broker and licensees associated with Broker, including Associate-Licensee, shall not create an inference of employment. (Workers' Compensation Advisory: Even though a Real Estate salesperson may be treated as independent contractors for tax and other purposes, the California Labor and Workforce Development Agency considers them to be employees for workers' compensation purposes. According to that Agency: (i) Broker must obtain workers' compensation insurance for a real estate salesperson and (ii) Broker, not a Real Estate sales person, must bear the cost of workers' compensation insurance. Penalties for failure to carry workers' compensation include, among others, the issuance of stop-work orders and fines of up to \$1,000 per agent, not to exceed \$100,000 per company.)
4. **LICENSED ACTIVITY:**
 - A. All listings of property, and all agreements, acts or actions for performance of licensed acts, which are taken or performed in connection with this Agreement, shall be taken and performed in the name of Broker. Associate-Licensee agrees to and does hereby contribute all right and title to such listings to Broker for the benefit and use of Broker, Associate-Licensee, and other licensees associated with Broker.
 - B. Broker shall make available to Associate-Licensee, equally with other licensees associated with Broker, all current listings in Broker's office, except any listing which Broker may choose to place in the exclusive servicing of Associate-Licensee or one or more other specific licensees associated with Broker.

Broker's Initials (_____)

Associate-Licensee's Initials (_____)

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Fax: _____



- C. Associate-Licensee shall provide and pay for all professional licenses, supplies, services, and other items required in connection with Associate-Licensee's activities under this Agreement, or any listing or transaction, without reimbursement from Broker except as required by law.
- D. Associate-Licensee shall work diligently and with his/her best efforts to: (i) sell, exchange, lease, or rent properties listed with Broker or other cooperating Brokers; (ii) solicit additional listings, clients, and customers; and (iii) otherwise promote the business of serving the public in real estate transactions to the end that Broker and Associate-Licensee may derive the greatest benefit possible, in accordance with law.
- E. Associate-Licensee shall not commit any unlawful act under federal, state or local law or regulation while conducting licensed activity. Associate-Licensee shall at all times be familiar, and comply, with all applicable federal, state and local laws, including, but not limited to, anti-discrimination laws and restrictions against the giving or accepting a fee, or other thing of value, for the referral of business to title companies, escrow companies, home inspection companies, pest control companies and other settlement service providers pursuant to the California Business and Professions Code and the Real Estate Settlement Procedures Acts (RESPA).
- F. Broker shall make available for Associate-Licensee's use, along with other licensees associated with Broker, the facilities of the real estate office operated by Broker at _____ and the facilities of any other office locations made available by Broker pursuant to this Agreement.
- G. **PROHIBITED ACTIVITIES:** Associate-Licensee agrees not to engage in any of the following Real Estate licensed activities without the express written consent of Broker:
- ☐ Property Management; ☐ Loan Brokerage ☐ Business Brokerage;

However, if Associate-Licensee has a Real Estate Broker's License, Associate-Licensee may nonetheless engage in the following prohibited activity(ies) only:

provided that (1) such prohibited activities are not done under the Broker's License, (2) no facilities of Broker (including but not limited to phones, fax, computers, and office space) are used for any such prohibited activities, (3) Associate-Licensee shall not use any marketing, solicitation or contact information that include Broker's name (including business cards) for such prohibited activities, (4) Associate-Licensee informs any actual or intended Principal for whom Associate-Licensee performs or intends to perform such prohibited activities the name of the broker under whose license the prohibited activities are performed, and (5) if Associate-Licensee is performing other permitted licensed activity for that Principal under Broker's license, then Associate-Licensee shall inform any actual or intended Principal for whom the prohibited activities are performed that the prohibited activities are not performed under Broker's license.

5. PROPRIETARY INFORMATION AND FILES:

- A. All files and documents pertaining to listings, leads and transactions are the property of Broker and shall be delivered to Broker by Associate-Licensee immediately upon request or termination of this Agreement.
- B. Associate-Licensee acknowledges that Broker's method of conducting business is a protected trade secret.
- C. Associate-Licensee shall not use to his/her own advantage, or the advantage of any other person, business, or entity, except as specifically agreed in writing, either during Associate-Licensee's association with Broker, or thereafter, any information gained for or from the business, or files of Broker.

6. SUPERVISION: Associate-Licensee, within 24 hours (or _____) after preparing, signing, or receiving same, shall submit to Broker, or Broker's designated licensee: (i) all documents which may have a material effect upon the rights and duties of principals in a transaction; (ii) any documents or other items connected with a transaction pursuant to this Agreement in the possession of or available to Associate Licensee; and (iii) all documents associated with any real estate transaction in which Associate-Licensee is a principal.

7. TRUST FUNDS: All trust funds shall be handled through the Broker's trust account and in compliance with the Business and Professions Code, and other applicable laws.

8. COMPENSATION:

- A. **TO BROKER:** Compensation shall be charged to parties who enter into listing or other agreements for services requiring a real estate license:
- ☐ as shown in "Exhibit A" attached, which is incorporated as a part of this Agreement by reference, or
- ☐ as follows: _____

Any deviation which is not approved in writing in advance by Broker, shall be: (1) deducted from Associate-Licensee's compensation, if lower than the amount or rate approved above; and, (2) subject to Broker approval, if higher than the amount approved above. Any permanent change in commission schedule shall be disseminated by Broker to Associate-Licensee.

- B. **TO ASSOCIATE-LICENSEE:** Associate-Licensee shall receive a share of compensation actually collected by Broker, on listings or other agreements for services requiring a real estate license, which are solicited and obtained by Associate-Licensee, and on transactions of which Associate-Licensee's activities are the procuring cause, as follows:
- ☐ as shown in "Exhibit B" attached, which is incorporated as a part of this Agreement by reference, or
- ☐ other: _____

Broker's Initials (_____)

Associate-Licensee's Initials (_____)

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- C. PARTNERS, TEAMS, AND AGREEMENTS WITH OTHER ASSOCIATE-LICENSEES IN OFFICE:** If Associate-Licensee and one or more other Associate-Licensees affiliated with Broker participate on the same side (either listing or selling) of a transaction, the commission allocated to their combined activities shall be divided by Broker and paid to them according to their written agreement. Broker shall have the right to withhold total compensation if there is a dispute between associate-licensees, or if there is no written agreement, or if no written agreement has been provided to Broker.
- D. EXPENSES AND OFFSETS:** If Broker elects to advance funds to pay expenses or liabilities of Associate-Licensee, or for an advance payment of, or draw upon, future compensation, Broker may deduct the full amount advanced from compensation payable to Associate-Licensee on any transaction without notice. If Associate-Licensee's compensation is subject to a lien, garnishment or other restriction on payment, Broker shall charge Associate-Licensee a fee for complying with such restriction.
- E. PAYMENT:** (i) All compensation collected by Broker and due to Associate-Licensee shall be paid to Associate-Licensee, after deduction of expenses and offsets, immediately or as soon thereafter as practicable, except as otherwise provided in this Agreement, or a separate written agreement between Broker and Associate-Licensee. (ii) Compensation shall not be paid to Associate-Licensee until both the transaction and file are complete. (iii) Broker is under no obligation to pursue collection of compensation from any person or entity responsible for payment. Associate-Licensee does not have the independent right to pursue collection of compensation for activities which require a real estate license which were done in the name of Broker. (iv) Expenses which are incurred in the attempt to collect compensation shall be paid by Broker and Associate-Licensee in the same proportion as set forth for the division of compensation (paragraph 8(B)). (v) If there is a known or pending claim against Broker or Associate-Licensee on transactions for which Associate-Licensee has not yet been paid, Broker may withhold from compensation due Associate-Licensee on that transaction amounts for which Associate-Licensee could be responsible under paragraph 14, until such claim is resolved. (vi) Associate-Licensee shall not be entitled to any advance payment from Broker upon future compensation.
- F. UPON OR AFTER TERMINATION:** If this Agreement is terminated while Associate-Licensee has listings or pending transactions that require further work normally rendered by Associate-Licensee, Broker shall make arrangements with another associate-licensee to perform the required work, or Broker shall perform the work him/herself. The licensee performing the work shall be reasonably compensated for completing work on those listings or transactions, and such reasonable compensation shall be deducted from Associate-Licensee's share of compensation. Except for such offset, Associate-Licensee shall receive the compensation due as specified above.
- 9. TERMINATION OF RELATIONSHIP:** Broker or Associate-Licensee may terminate their relationship under this Agreement at any time, with or without cause. After termination, Associate-Licensee shall not solicit: (i) prospective or existing clients or customers based upon company-generated leads obtained during the time Associate-Licensee was affiliated with Broker; (ii) any principal with existing contractual obligations to Broker; or (iii) any principal with a contractual transactional obligation for which Broker is entitled to be compensated. Even after termination, this Agreement, inclusive of Paragraph 12, shall govern all disputes and claims between Broker and Associate-Licensee connected with their relationship under this Agreement, including obligations and liabilities arising from existing and completed listings, transactions, and services.
- 10. AUTOMOBILE:** Associate-Licensee shall maintain automobile insurance coverage for liability and property damage in the following amounts \$ _____ / \$ _____. Broker shall be named as an additional insured party on Associate-Licensee's policies. A copy of the endorsement showing Broker as an additional insured shall be provided to Broker.
- 11. PERSONAL ASSISTANTS:** Associate-Licensee may make use of a personal assistant, provided the following requirements are satisfied. Associate-Licensee shall have a written agreement with the personal assistant which establishes the terms and responsibilities of the parties to the employment agreement, including, but not limited to, compensation, supervision and compliance with applicable law. The agreement shall be subject to Broker's review and approval. Unless otherwise agreed, if the personal assistant has a real estate license, that license must be provided to the Broker. Both Associate-Licensee and personal assistant must sign any agreement that Broker has established for such purposes.
- 12. AGREEMENT TO ARBITRATE AND DISPUTE RESOLUTION:**
- A. DISPUTE RESOLUTION PROCESS:** (1) Broker and Associate-Licensee agree to timely notify the other person and mediate all disputes and claims between them arising from or connected in any way with this Agreement before resorting to arbitration or court action. (2) If any dispute or claim is not resolved through mediation, or otherwise, Broker and Associate-Licensee may mutually agree to submit disputes involving commissions for property transactions to binding arbitration by the procedures and rules set forth in the California Code of Ethics and Arbitration Manual, a copy of which is available at the following link: www.car.org/legal/calabarules/.

Broker's Initials (_____)

Associate-Licensee's Initials (_____)

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- B. BINDING FINAL ARBITRATION:** All claims or disputes between Broker and Associate-Licensee, not resolved pursuant to Paragraph 12A, shall be submitted to binding arbitration in accordance with Paragraphs 12 B-G. Broker and Associate-Licensee, on behalf of him or herself and any assistants employed by Associate-Licensee, mutually agree to use confidential individual binding arbitration, instead of going to court, for any disputes or claims now in existence or that may exist in the future (i) that Associate-Licensee may have against Broker, his/her affiliates, and/or their current or former employees, and (ii) that Broker and/or his/her affiliates may have against Associate-Licensee his/her affiliates, and/or their current or former employees. Such claims would include, without limitation, any concerning the initiation of the work relationship, the pay or other compensation for the work performed, breach of contract, expenses, any claims by Broker or Associate-Licensee for violations of applicable law or regulations, the decision by Broker or Associate-Licensee to end the assignment, any claims for conversion and/or breach of fiduciary duty, as well as any claims that arise from or relate to Broker's classification of Associate-Licensee as an independent contractor rather than an employee. Such claims do not include disputes or claims which either Broker or Associate-Licensee may have against a Broker client, customer or other brokerages, or vice versa, including cross claims between Broker or Associate-Licensee in conjunction with such disputes. This Agreement to Arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq.
- C. ARBITRATION RULES:** Except for those claims resolved by Paragraph 12A, all other claims covered by Paragraph 12B shall be arbitrated pursuant to the then-current JAMS' Expedited or Comprehensive Arbitration Rules and Procedures which are available at www.jamsadr.com (under the Rules/Clauses tab) or www.car.org/legal/calabarules/. Notwithstanding any contrary provisions in those rules, however, Broker will pay all costs of the Arbitration that are in addition to or in excess of the amount that a party would need to pay if he/she filed a case in a court of law. Each party shall bear his or her own attorney fees and costs, except that the arbitrator may award a party attorney fees or costs if such an award is authorized by an applicable law or contract. Broker and Associate-Licensee agree that the arbitration will be conducted by a single arbitrator in the JAMS office (as applicable) closest to the county of the Broker's office with which the Associate-Licensee is or was associated (unless otherwise agreed).
- D. NOTICE AND TIMING; APPLICABLE LAW; FINDINGS:** The aggrieved party must file and give written notice of any claim to the other party no later than the expiration of the statute of limitations (deadline for filing) that the law prescribes for the claim. Otherwise, the claim shall be void and deemed waived. The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the applicable state, or federal law, or both, as applicable to the claim(s) asserted including applicable California real estate law. In the event of a dispute, the arbitrator shall decide which substantive laws shall apply. The Arbitrator is authorized to award any remedy allowed by applicable law. The Arbitrator shall issue a written and signed statement of the basis of his or her decision, including findings of fact and conclusions of law.
- E. CLASS ACTION WAIVER:** (1) Broker and Associate-Licensee agree that any and all claims pursued against each other will be on an individual basis, and not on behalf of or as a part of any purported class, collective, representative, or consolidated action. Both Broker and Associate-Licensee hereby waive their right to commence, become a party to or remain a participant in any group, representative, class collective or hybrid class/collective or group action in any court, arbitration proceeding, or any other forum, against the other. The parties agree that any claim by or against Broker or Associate-Licensee shall be heard in arbitration without joinder of parties or consolidation of such claim with any other person or entity's claim, except as otherwise agreed to in writing by Broker and Associate-Licensee. This Class Action waiver shall supersede any contrary agreements, statements or rules in the JAMS Rules. (2) The waiver of Class Action claims and proceedings is an essential and material term of this arbitration agreement in this Paragraph 12, and the parties agree that if it is determined that the waiver in this Paragraph 12E is prohibited or invalid in its entirety in a case in which a class action, representative action or similar allegations have been made, then the remainder of Paragraph 12 shall also be void. If, however, some, but not all, of the waivers are found to be unenforceable for any reason in a case in which class action, representative action or similar allegations have been made, the Associate-Licensee's individual claims shall be decided in arbitration. Any class action, representative action or similar action as to which the class action waiver in this Paragraph 12E is found to be unenforceable shall be decided in court and not in arbitration.
- F. CONFIDENTIALITY:** Broker and Associate-Licensee agree that all proceedings before the arbitrator will remain confidential between the parties, including but not limited to any depositions, discovery, pleadings, exhibits, testimony, or award. The confidentiality will not apply to any court proceeding in which either party seeks to confirm, correct, or vacate an arbitration award.
- G. ASSOCIATE-LICENSEE UNDERSTANDS ARBITRATION AND WAIVER AGREEMENT:** Associate-Licensee represents and warrants that he/she understands the meaning and effect of the arbitration and waiver agreements in this Paragraph 12 and has been provided a reasonable time and opportunity to consult with legal counsel regarding this agreement to arbitrate. Associate-Licensee hereby agrees to the provisions of these Paragraphs 12 A-G (initial): **ASSOCIATE-LICENSEE** ()

Broker's Initials ()

Associate-Licensee's Initials ()

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13. OFFICE POLICY MANUAL: If Broker's office policy manual, now or as modified in the future, conflicts with or differs from the terms of this Agreement, the terms of the office policy manual shall govern the relationship between Broker and Associate-Licensee.

14. INDEMNITY AND HOLD HARMLESS; NOTICE OF CLAIMS:

A. Regarding any action taken or omitted by Associate-Licensee, or others working through, or on behalf of Associate-Licensee in connection with services rendered or to be rendered pursuant to this Agreement or real estate licensed activity prohibited by this agreement: (i) Associate-Licensee agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, awards, costs and attorney fees, arising therefrom and (ii) Associate-Licensee shall immediately notify Broker if Associate-Licensee is served with or becomes aware of a lawsuit or claim regarding any such action.

B. Any such claims or costs payable pursuant to this Agreement, are due as follows:

☐ Paid in full by Associate-Licensee, who hereby agrees to indemnify and hold harmless Broker for all such sums, or
☐ In the same ratio as the compensation split as it existed at the time the compensation was earned by Associate-Licensee Other: _____

Payment from Associate-Licensee is due at the time Broker makes such payment and can be offset from any compensation due Associate-Licensee as above. Broker retains the authority to settle claims or disputes, whether or not Associate-Licensee consents to such settlement.

15. ADDITIONAL PROVISIONS:

16. DEFINITIONS: As used in this Agreement, the following terms have the meanings indicated:

A. "Listing" means an agreement with a property owner or other party to locate a buyer, exchange party, lessee, or other party to a transaction involving real property, a mobile home, or other property or transaction which may be brokered by a real estate licensee, or an agreement with a party to locate or negotiate for any such property or transaction.

B. "Compensation" means compensation for acts requiring a real estate license, regardless of whether calculated as a percentage of transaction price, flat fee, hourly rate, or in any other manner.

C. "Transaction" means a sale, exchange, lease, or rental of real property, a business opportunity, or a manufactured home, which may lawfully be brokered by a real estate licensee.

17. ATTORNEY FEES: In any action, proceeding, or arbitration between Broker and Associate-Licensee arising from or related to this Agreement, the prevailing Broker or Associate-Licensee shall be entitled to reasonable attorney fees and costs.

18. ENTIRE AGREEMENT: All prior agreements between the parties concerning their relationship as Broker and Associate-Licensee are incorporated in this Agreement, which constitutes the entire contract. Its terms are intended by the parties as a final and complete expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be amended, modified, altered, or changed except by a further agreement in writing executed by Broker and Associate-Licensee.

Broker:

Associate-Licensee:

(Brokerage firm name)

(Signature)

By

Its Broker/ Office manager (check one)

(Print name)

(Print name)

(Address)

(Address)

(City, State, Zip)

(City, State, Zip)

(Telephone)

(Fax)

(Telephone)

(Fax)

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Date



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INDEPENDENT CONTRACTOR AGREEMENT (ICA-BA PAGE 5 OF 5)

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Broker Liability

Although an agent may be considered an independent contractor for tax purposes, the case *Resnik v. Anderson & Miles* (1980) determined that an agent “cannot be classified as an independent contractor” in regards to his or her relationship with his broker.

Even if an agent is conducting a transaction and performing most of the work, all contracts will be identified under a broker’s name. A broker is responsible for overseeing and supervising all of an agent’s transactions. Consequently, a broker can be held liable for the actions of one of his or her agents.

For example, if a broker was aware that one of his or her agents was engaging in fraudulent behavior, but did nothing to prevent the behavior, the broker can be held liable for the agent’s actions.

A broker cannot be held liable for an agent’s intentional torts or criminal misconducts, however.

It is advised that brokers purchase general liability and errors & omissions insurance to cover the potential actions of their agents.

Terminating an Agent/Broker Agreement

In order to legally terminate an agent/broker agreement, the following steps must be taken:

1. A broker must inform the Department of Real Estate of the change in agent/broker status. This must be done in writing.
2. A broker must sign R/E Form 214, which indicates the termination of an agent’s employment. A broker must also return an agent’s license within a three-day period.
3. A new R/E Form 214 must be filed if and when an agent finds a new broker.

Real Estate Licensing

One of the ways in which The Department of Real Estate protects the public is by requiring all real estate professionals to be licensed.

In the early 21st century, California became the first state to enact a codified conferment of rights to buyers and sellers. Among these rights was the requirement that all real estate representatives be certified. Initially, a lower court determined that this

requirement violated the Constitution. However, the Supreme Court reversed the lower court's ruling two years later.

Modern law requires that every real estate agent and broker in the country be licensed by their respective states prior to conducting real estate activities.

All real estate transactions must be executed under a broker's license. All brokerage locations must have a valid broker license on file. A broker must store a copy of his or her agents' licenses at the primary office location.

When a License is Required

A real estate license is required for the following actions:

- Buying, selling, or soliciting to buy or sell property on behalf of a principal, including mobile homes, government land, and properties with minerals, oil, or gas
- Exchanging a property
- Renting, or soliciting to rent, property for a principal
- Representing a principal in the search to locate a property for purchase or lease
- Representing the sale or purchase of a real estate contract or promissory note
- Representing a principal in a loan transaction
- Issuing, selling, exchanging, or negotiating the transfer of securities
- Collecting an advance fee for the promotion of a property

If an unlicensed individual performs a service that requires a real estate license, a principal may be entitled to not pay a commission for those services.

Mineral, Oil, and Gas

In the past, real estate agents had to possess a separate license (**M.O.G. license**) to represent properties that contained mineral, oil, or gas. However, M.O.G. licenses are no longer required and no longer issued.

Manufactured/Mobile Homes

Real estate agents who represent two or more manufactured/mobile home transactions at any given time must also be licensed as a **mobile home dealer**.

Agents can obtain a license from the Department of Housing and Community Development (HCD).

Additional regulations for mobile home sales include:

- The agent or broker is responsible for validating the certification of title for the mobile home and giving it to the buyer.
- The real estate agent or broker has 10 days to report the sale to HCD.
- Mobile home sales require the property to have a permit from the Department of Transportation. This ensures that the property can be legally driven.
- A mobile home can only be advertised in the mobile home park in which it is located and it must remain there for a minimum of one year after being sold.
- Mobile home advertising must be removed within 48 hours of the sale of the home or the removal of the sale.

Mortgage Brokers

A real estate broker can also solicit and sell loan products. This type of broker is known as a **mortgage broker**. A mortgage broker/brokerage can:

- Solicit borrowers for loan products
- Sell loan products
- Negotiate loans with lenders
- Directly service loans (i.e. collect payment, manage property)
- Service loans on behalf of a lender or investor

New laws require mortgage brokers who originate loans to register with the state of California as a loan originator.

Prepaid Rental Listing Service (PRLS)

A real estate agent or broker can charge a fee for providing prospective tenants a list of properties. This is called a **prepaid rental listing service (PRLS)**.

Individuals and corporations may also sell prepaid rental listing services; however, they must attain a separate PRLS license. In order to obtain this license, an individual or corporation must:

- Fill out an application form
- Complete a fingerprint card
- Obtain \$10,000 bond or deposit
- Pay PRLS license fees

Each additional location must meet the above application requirements.

Tax-exempt organizations or agencies associated with the government are not required to obtain the \$10,000 bond or deposit amounts.

Exemptions

The following groups of people do not require a real estate license:

- Homeowner
- Real estate manager (i.e. apartment, hotel)
- Power of attorney assignee
- Lawyer for property transactions
- Trustee
- Escrow agents
- Title agents
- Employees of lenders
- Investors
- Real estate assistants

Agent Licensing Requirements

An applicant for a real estate agent license must be:

- A U.S. citizen, or legally reside in the United States
- At least 18 years old
- Fingerprinted

In order to obtain a real estate agent license, an applicant must:

- Complete real estate coursework
- Pass real estate exam
- Submit application and application fees

Coursework

Before being allowed to take the real estate exam, an applicant must complete three college-equivalent real estate courses. The two universally required courses are:

- “Real Estate Principles”
- “Real Estate Practice”

An applicant must choose a third course from The Department of Real Estate's approved list. Among the course choices are:

- "Real Estate Appraisal"
- "Property Management"
- "Real Estate Finance"
- "Real Estate Economics"
- "Legal Aspects of Real Estate"
- "Office Administration"
- "Mortgage Loan Brokering and Lending"
- "General Accounting"
- "Business Law"
- "Escrows"
- "Computer Applications in Real Estate"
- "Interests Developments"

Real Estate Exam

The real estate exam covers a wide range of real estate-related material.

It consists of a multiple-choice portion and a written portion. Both portions gauge an applicant's knowledge of real estate concepts and their readiness to be an agent.



The written portion of the exam is used to test an applicant's knowledge of the English language and his or her ability to perform the basic calculations required for real estate transactions.

Chapter review questions and discussion points contained within this book supplement preparation for the real estate exam. However, the questions are more introductory than exhaustive. It is a prospective licensee's responsibility to comprehend the ideas and concepts engendered in the book, including those that are not explicitly addressed in the review material.

The agent exam is very similar to the broker exam, although there are fewer concepts to learn in the agent exam.

Application

Upon passing the real estate exam, the final step for an applicant is to submit his or her application and application fees. An applicant must do so within one year of passing the exam.

The real estate license application will ask about an applicant's background, including criminal background and any previous convictions. These are relevant even if they are more than five years old or occurred in another state.

An applicant must also provide his or her social security number. Corporation applicants are not required to do so.

Prospective applicants must be honest. Providing inaccurate or misleading information or failing to disclose potentially negative items may be grounds for the denial of a license.

The application should be sent to:

The Department of Real Estate
P.O. Box 187001
Sacramento, CA 95818

Before an agent's license can be activated, an agent must indicate his or her broker of choice.

Broker Licensing Requirements

An individual must be at least 18 years old to apply for a real estate broker license.

An applicant is also required to have been active in real estate for two of the last five years on a full-time basis. (For example, as a real estate agent.) However, an applicant with an AA degree only needs one year of experience. An applicant with a four-year degree is exempt from this requirement.

Coursework

An applicant must complete a total of eight college-equivalent courses at an accredited higher learning or vocational school.

The following courses must be successfully completed:

- "Real Estate Practice"
- "Legal Aspects of Real Estate"

- “Real Estate Finance”
- “Real Estate Appraisal”
- “Real Estate Economics or Accounting”

Additionally, applicants must choose three additional courses from the following choices:

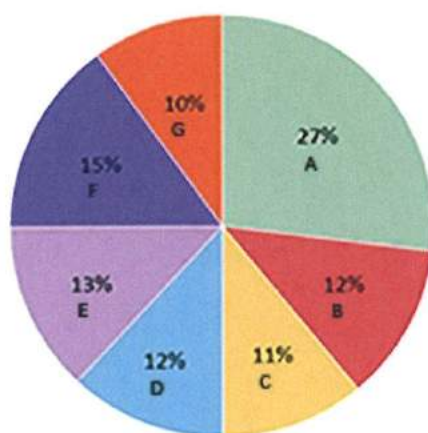
- “Real Estate Principles”
- “Business Law”
- “Property Management”
- “Office Administration”
- “Escrow”
- “Mortgage Loan Brokering and Lending”
- “Advanced Legal Aspects of Real Estate”
- “Advanced Real Estate Finance”
- “Advanced Real Estate Appraisal”
- “Computer Applications in Real Estate”
- “Common Interests Development”

Attorneys are exempt from all educational and experience requirements.

Test Breakdown of Topics by License

Broker

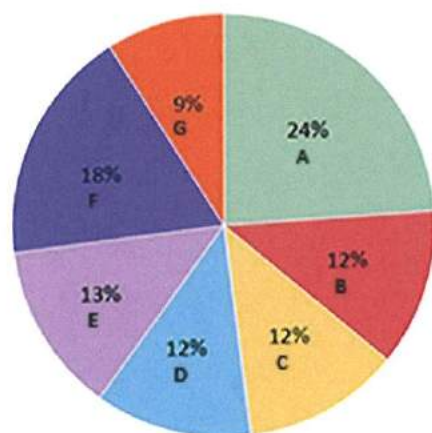
A	Real Estate Practice and Mandated Disclosures	27%
B	Contracts	12%
C	Valuation and Market Analysis	11%
D	Agency Law	12%
E	Financing	13%
F	Property Ownership and Land Use Controls and Regulations	15%
G	Real Property Transfer	10%



● A ● B ● C ● D ● E ● F ● G

Salesperson

A	24%
B	12%
C	12%
D	12%
E	13%
F	18%
G	9%



● A ● B ● C ● D ● E ● F ● G

Real Estate License Expiration

Real estate professionals cannot practice with an expired license. If an agent or broker's license expires, he or she must cease all real estate activities immediately. This includes any transactions that may already be in progress.

If a broker's license expires, agents who work for the brokerage will subsequently be placed in non-working status.

Real Estate License Renewals

Agent and broker licenses are valid for four years.

CalDRE will mail a notification letter informing a licensee of the need to renew his or her license 60 days before its expiration. However, licensees can renew their licenses up 90 days prior to its expiration.

It is recommended that a licensee renew his or her license well ahead of its expiration date to prevent it from becoming temporarily invalid.

A real estate license is considered a renewal if it is completed within a two-year period of expiration. If a license is not renewed within a two-year period of the license's expiration, licensee holders must retake the real estate exam.

A licensee must submit a different renewal application depending on which type of real estate professional he or she is.

- Agent: RE 209
- Broker: RE 208
- Corporation Officer: RE 207

In addition to the renewal application and renewal fee, a broker and an agent must successfully complete 45 hours of approved continuing education (CE) courses. The requirements for these courses are:

- 15 hours (five, three-hour courses) in the following subjects:
 - Ethics
 - Agency
 - Fair Housing
 - Trust Fund Handling
 - Risk Management
- 18 hours in consumer protection courses
- 12 hours in consumer service or consumer protection courses

Although renewing one's license may seem like a long process, it is actually easier than it was in previous years. Nowadays, a licensee can renew his or her license through the mail or online.

If a licensee chooses to renew through the mail, he or she should send his or her application and coursework documentation to:

Department of Real Estate
P.O. Box 187001
Sacramento, CA 95818

If a licensee wishes to renew online, he or she can visit dre.ca.gov and go to the eLicensing online system.

The Department of Real Estate can withhold the issuance of a license renewal to any licensees who are delinquent in child or spousal support payments. If a licensee's license is frozen, the licensee must update his or her records and/or fix compliance issues within 150 days.

Licensing Disclosures

The Department of Real Estate requires all agents and brokers to disclose licensing information on any material used to solicit business. This includes:

- Business Cards
- Websites
- Advertising Fliers
- Brochures
- Marketing or Promotional Materials

Licensing information does not need to be included in the following scenarios:

- Radio, Film, & TV Advertising
- Print Media Advertising (i.e. newspapers, magazines)
- "For Sale" Signs

Using a Fictitious Name

An agent or brokerage may conduct business under a fictitious name. A **fictitious name** refers to a name that does not indicate the real name(s) of an agent or a brokerage's owners.

It is illegal for an agent or a brokerage to conduct business under a fictitious name unless the name has been registered with the state. In order to register, an agent or brokerage must obtain a fictitious name certificate within 40 days of creating a business (Business and Professions Code 17900).

An agent or brokerage must then publish a **fictitious name statement** in a newspaper of general circulation in the county where the fictitious name was filed. This statement – also known as “doing business as” or a DBA – must also be stamped and filed with the county clerk.

This must be done within 30 days of the fictitious name’s existence (Business and Professions Code 17917).

An agent or brokerage must then submit the documents to:

The Department of Real Estate
P.O. Box 137004
Sacramento, CA 95813

A fictitious name must appear on an agent or broker’s license before the name is used to conduct licensed real estate activities (Business and Professions Code, Section 10159.5(a)).

The Real Estate Commissioner has the right to refuse a license to a party with a fictitious name if the name is misleading, implies a nonexistent partnership, violates the Business and Professions Code, or is the name of an agent whose license has previously been revoked.

Real Estate Law Enforcement

Complaints can be filed against real estate licensees. They can come from buyers, sellers, brokers, private groups, or different real estate associations.

Common complaints include:

- Trust fund recordkeeping
- Unlicensed activity
- Illegal activity
- Misrepresentation
- Inaccurate documentation

Formal complaints must be made in writing. There must be factual documentation indicating the licensee's wrongful action.

If the Real Estate Commissioner views the complaint as viable, he or she may choose to investigate. An investigation may include examining a licensee's bank records, recent transactions, and other records that may validate or disprove the complaint.

The Real Estate Commissioner typically administers a verdict in an informal setting, unless the DRE believes a formal hearing in the presence of a judge is necessary.

Common Licensee Violations

1. *Misrepresentation.* This is the most common complaint filed against an agent/broker. It often involves an agent/broker misrepresenting the condition of a property and/or the details of the transaction. For example, an agent might misrepresent the presence of mold or damages on a property.
2. *False Statements.* Like misrepresentation, false statements are used to misguide a client or an agent in a transaction.
3. *Undisclosed Dual Agency.* This occurs when an agent does not inform a principal that he or she is representing both principals in a transaction. Both a buyer and a seller must approve dual representation.
4. *Listing Termination Date.* Properties cannot be listed with an agent for an indefinite period of time; there must be a clear termination date. Both the agent/broker and the principal must agree to this date.
5. *Extra Profit.* All profits and charges must be disclosed to both principals and agents in a transaction. It is illegal for an agent/broker to make an extra profit at the other party's expense. For example, an agent cannot intentionally list a client's property for below market value only to have a friend, family member, or the agent buy the property and resell it for a profit.
6. *Dishonest Practice.* Agents and brokers cannot employ dishonest business practices. For example, it is illegal for an agent to represent an illegitimate "straw buyer" in an attempt to alter a property's final sale price.
7. *Consent.* Only a seller can approve a buyer. An agent/broker cannot obtain signatures from a buyer without the seller's consent.

Reasons to Suspend or Revoke a Real Estate License

1. *Fraudulent License.* A real estate license was obtained through fraud or misrepresentation.
2. *Undisclosed Activities.* A license holder failed to disclose previous criminal activity.
3. *False Advertising.* A license holder provides false advertising with the intent of soliciting business. Distribution and circulation prove intent. False advertising includes misleading the public about the size or condition of a property or the details of a transaction and failing to disclose the agent's name and licensing information (this is referred to as **blind advertising**). For example, an agent cannot claim that a property can be built up to 15 units if the building is not yet approved for the construction of 15 units.
4. *Misrepresentation of Organization.* A licensee falsely claims that he or she is a member of a group or organization for the purpose of soliciting business. For example, an agent cannot claim that he or she is a member of the Realtor Organization if this is not true.
5. *Negligent Supervision.* A license holder engages in carelessness and incompetence, whether intentional or not. For example, a broker's lack of oversight over his or her agents.
6. *Government Trust.* A license holder misuses access to government documents or information.
7. *Restricted License Violation.* A license holder violates the terms of a restricted license.
8. *Emotion Selling.* A license holder uses fear to convince people to make irrational real estate decisions (known as **panic selling**). A license holder cannot use race, ethnicity, religion, or market conditions to bait people into buying or selling a property. For example, an agent cannot say: "Minorities are moving into your neighborhood. You should sell your house now before your property values goes down!"
9. *Mobile Home Violations.* A licensed mobile home dealer fails to validate the certification of title for a mobile home or fails to provide it to the buyer; participates in the sale of a stolen mobile home; violates mobile home registration and transfer rules.

Suspended, Restricted, and Revoked Licenses

The state can suspend a real estate license at any point and for any reason, even while the verdict of a complaint against a licensee is still being determined.

The Commissioner may alternatively choose to reduce the violating party's license to a restricted license. A **restricted license** is enforced for a time period congruent with the severity of a licensee's violation and the opinion of the Commissioner.

The terms of a restricted license may include:

- *Restrict the length of the license term.* For example, the license term may be reduced to two years rather than the standard four years.
- *Require the licensee to work under the supervision of a specific firm or entity.*
- *Require the licensee to complete additional coursework that is related to the particular violation.*
- *Require the licensee to pay a fine.* Such fines are typically paid into the Consumer Recovery Account.
- *Submit additional documentation to the state.*

A restricted licensee cannot renew or change the status of his or her license until the restriction is removed.

If the violation is severe, the Real Estate Commissioner may permanently revoke a licensee's license.