Real Estate Bulletin

Technology and Supervision in the Real Estate Industry

By Jeff Oboyski, Assistant Commissioner, Enforcement

Increasingly, nearly all industries are relying more heavily on new technology to efficiently and effectively transact business, and this is certainly the case in real estate, where technology continues to reshape the way business is conducted.

Real estate traditionally was considered a brick-and-mortar business where agents would spend hours in their responsible broker's office researching listings for potential clients, preparing and reviewing contracts and addendums, or even attending regularly scheduled office meetings with other agents to discuss real estate trends and marketing strategies. Agents are now able to access much of this information, as well as participate in meetings, without stepping foot into a real estate office. In fact, as a result of having digital tools like online listings, mobile applications, virtual tours, and e-sign documents, licensees and consumers alike can view a listing from the comfort of their own home, discuss the terms of a contract through electronic

Furthermore, as the use of technology in the real estate industry continues to increase, the models used by practitioners in the industry to offer services to

messages, and get an idea of the value of a home with

just a few clicks of a button.

consumers continue to evolve. Recently, we have seen the introduction of what has been commonly referred to as "virtual brokerages." Virtual brokerages often describe themselves as online, discount brokerages that offer low cost or flat fee commissions, as well as innovative technologies. It has been suggested that because of technological advances offered by virtual brokerages, such as cloud-based software applications and office environments, there is no longer a need for a physical office to conduct business.

Although there is no statute in the real estate law that specifically prohibits "virtual brokerages" in California, licensees who engage in such a business model when offering real estate services should be aware they must 0 make sure they continue to comply with all the applicable real estate laws and regulations. One of the provisions of the law, specifically Business and Professions Code section 10162, states that every licensed real estate broker shall have and maintain a definite place of

business in California that serves as

his or her office for the transaction of business. This is the place where the Department of Real Estate can meet with a broker to review documents and records, including those maintained electronically, and serve a subpoena duces tecum. This "place of business" requirement means that a brokerage cannot be fully virtual in California.



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Furthermore, the more virtual a business becomes, the greater the scope and complexity of a supervisory system of oversight is needed to ensure compliance. Commissioner's Regulation 2725 provides a broker shall exercise reasonable supervision over the activities of his or her salespersons and must establish policies, procedures, and systems to review, oversee, and manage such activities, and have in place a system for monitoring compliance with such policies, rules, procedures and systems. With a virtual file/document review system, a broker would need to have policies, procedures, and systems that demonstrate how transactions and documents and files are to be reviewed remotely. On top of that, a broker would

then need to demonstrate through documentation that such policies, procedures, and systems are functioning, and that specific transactions/files have been reviewed. It is possible to review transactions, documents, and files remotely, and document such review and the supervisory instructions/actions that were given.

Please remember that the Department's highest priority is consumer protection. As industry's use of technology continues to evolve, it is important that licensees continue to comply with the Real Estate Law, including licensed real estate brokers having systems in place to ensure proper supervision. Proper supervision is critical whether a broker is working within a traditional brick-and-mortar model or under a newly emerging virtual brokerage technology model.

For more information about the Department of Real Estate, including recent news and alerts, please check out our website at **www.dre.ca.gov**.

Caution About Mortgage Fraud

Most of us remember what happened to the world economy a little over 10 years ago. We also might remember some of the causes leading up to the crash. We saw poorly underwritten mortgage loans that created opportunities for fraudsters to submit loans to federal financial institutions with straw borrowers, fake income and employment documents, and more. Those bad loans were bundled, securitized, and sold on the secondary market. There was the resulting mortgage meltdown and worldwide recession, when fraudsters took advantage of consumers

through loan modification and

foreclosure scams.

Now, in 2019, the Department is beginning to see a slight increase in the number of complaints about mortgage fraud, where loan documents are being forged and falsified and being submitted to federal financial institutions. Lenders are catching the bad loans and reporting the frauds to their appropriate regulating agencies, but sometimes only after the loans have been sold on the secondary market. The Department is also still receiving some complaints about scammers who are taking advance fees from borrowers for loan modification and foreclosure forbearance services; many of these complaints are coming from out-of-state consumers, in spite of state and federal laws prohibiting such advance fees. In the private money industry, the Department is receiving complaints related

to investor interests not being recorded, funds being taken and not properly invested, and more.

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The Department takes complaints about fraud very seriously, and accordingly conducts investigations of real estate law violations by real estate licensees and unlicensed persons to pursue disciplinary and regulatory action. In addition to our own investigations, the Department works with local, state, and federal law enforcement to pursue criminal action.

If you are aware of any real estate or loan fraud, please report it to the department at (877) 373-4542 or file a complaint using the **online complaint system**. Updates on disciplinary actions taken against real estate licensees can be received through the **Department's RSS feed**.

What to Do if You've Received a Request for Continuing Education Records

In the spring 2017 edition of the Real Estate Bulletin, we highlighted how the Education and Research section upholds the Department of Real Estate's (DRE) mission of safeguarding and promoting the public interests in real estate matters through licensure, regulation, education, and enforcement, by reviewing the reported continuing education records of licensees. This is a friendly reminder that, pursuant to Commissioner's Regulation 3013, licensees are required to respond to the request for continuing education records.

As part of a licensee's renewal, continuing education courses are certified as completed by the licensee on either the Continuing Education Course Verification (RE 251) form or through DRE's eLicensing system. As part of this review process, licensees are randomly selected and sent a letter requesting that they submit copies of the continuing education course completion certificates, pursuant to Commissioner's Regulation 3013. This regulation provides that the applicant, upon request of DRE, must submit certificates of attendance or certified copies thereof from sponsors of approved offerings to substantiate information provided by the applicant. A licensee who fails to provide DRE with course completion certificates, as required, may be subject to a fine or potential disciplinary action.

This request is compulsory and therefore, it is very important for licensees to respond to these letters to

avoid a possible fine or potential disciplinary action. It is suggested that licensees retain copies of all course completion certificates for up to five years so they can respond quickly if requested by DRE to provide substantiation. If certificates are misplaced, licensees should contact the course provider for a duplicate certificate, as the course provider is required to maintain a record of attendance or registration and final examination grade of each participant for a period of five years.

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