

DEPARTMENT OF REAL ESTATE FORUM

Portola Plaza Hotel, Monterey

January 23, 2009

MEETING REVIEW

DRE STAFF IN ATTENDANCE:

Real Estate Commissioner Jeff Davi, Barbara Bigby, Tom Pool, Bill Moran, Fa-Chi Lin, Steve Ellis, Maria Giuriato, and Lisa Stratton.

OPENING REMARKS:

Commissioner Davi opened the meeting by welcoming everyone to his home town of Monterey, and introducing staff in attendance.

Focusing his remarks on the state of the Department of Real Estate, Commissioner Davi reported that the DRE is sound, secure and posed to do its mission of protecting the public in real estate transactions. The Department is seeing a lot of activity, and like the real estate market, the type and volume of activity is cyclical. The foreclosure crisis has increased the opportunities for scammers trying to take the last few dollars of homeowners already in jeopardy of losing their homes. DRE's current efforts are focused on putting an end to this activity. Discussion items included:

Advance Fees & Loan Modifications: DRE's main mission is to ensure the safety of consumers in their real estate transactions. With the rising number of foreclosures, loan modification companies are coming out of the wood work, charging outrageous advance fees to people, doing absolutely nothing to modify the loan, which results in the inevitable loss of the home to foreclosure. In California, a real estate broker license is required to conduct loan modification activities unless exempt under the Foreclosure Consulting Law, or an attorney doing loan modifications within his/her normal practice. Many loan modification companies are attempting to circumvent the licensing law by finding an attorney who will loan their name to give the impression that an attorney or law firm will be handling the modification. DRE has set up over 250 cases on suspected unlicensed loan modification activity since October. In addition, any broker who accepts an advance fee for a loan modification must have obtained a "no-objection" letter from the DRE prior to doing so. A list is published on the DRE website of those companies who have already obtained this approval from the Department. The Commissioner is encouraging consumers to "log on, look 'em up, and check 'em out" before paying anyone to assist them with their modification. Brokers are asked to encourage their clients to do the same before they do business with these companies. The Commissioner also asked that any known unlawful activity be reported to the department. He promised that each complaint would be investigated and action taken, if warranted. Companies determined to be unlicensed and conducting loan modification activity will be issued a Desist and Refrain Order requiring them to stop the activity. Once a D&R is issued, DRE will encourage the local DAs to issue criminal charges against them.

Bar Orders: The Governor passed a bill this year that gives the Department more authority to get the bad actors out of the business. SB 1737, effective January 1, 2009, prohibits, for up to 36 months, any participation in the real estate related business activities of a finance lender, residential mortgage lender, bank, credit union, escrow company, or underwritten title company. The first order has already been signed by Commissioner Davi, and many more are expected.

Mortgage Reform: Federal legislation, HR 3221 – The SAFE Act, mandates that every loan originator in the country must be either registered or licensed in the national mortgage licensing system (NMLS). This system has already been formed and nine states are already participating. California is also required to participate, but is faced with the necessity of passing legislation in order to implement. DRE will pursue this legislation jointly with the Department of Corporations, who also regulates lenders and mortgage brokers, and the Department of Financial Institutions. Under this Act, licensees in California who plan to be involved in the mortgage brokerage business, in addition to their real estate license, will have to go to the NMLS and apply for their license as well. There will be new CE requirements, testing requirements, fingerprint requirements, etc. Once the NMLS license is obtained, the DRE will add a rider to the real estate license to designate the licensee as a real estate broker or salesperson who is also licensed to do mortgage loans. California has until the end of the year to become compliant with HR 3221. Staff is currently working on implementation tasks as well as pursuing the legislation necessary to get it signed into law. This legislation will assist States in properly identifying and tracking anyone doing mortgage loan activity on a nationwide basis.

Reserves and Fees: The Department's financial status is cyclical, and follows close behind what is occurring in the real estate market. When the market was hot, business at DRE was booming and as a result, revenue went up and reserves were high. Over the past year, however, licensing has seen a steep decline: 40% fewer exams have been scheduled, translating into fewer original licenses being issued, ultimately resulting in less revenue for the department. This decline in revenue has required withdrawals from reserves in order to maintain operations. DRE is now faced with having to increase license and subdivision fees, which are currently at 1982 levels. In March, the Department will pursue regulations to raise fees to the statutory maximum. The Broker license fee will be increased from \$165 to \$300; the sales license fee will go from \$120 to \$245.

Regulations: Commissioner Davi reported that there will be at least 3 regulation hearings this year. The first hearing is scheduled for March 6 in Sacramento, and will address the issue of fees, as previously reported. Another hearing will be scheduled to address CE reform, regulations to clarify the license number requirement on all first-point of contact materials, and the use of the word escrow and affiliated escrow company. Another hearing will address the new Bar Order that allows the Commissioner to bar individuals from the real estate industry for 3 years, and to address the resignation of designated officers so that they are not immune from responsibility for any fraud or illegal activity at that company while they were in charge.

In conclusion, Commissioner Davi asked all licensees to remember DRE's new tag phrase: Log on, Look 'em up and check 'em out.

OPERATIONS REPORT:

Chief Deputy Bigby began her report by comparing the department's fiscal status for the first six months (July – Dec) of the 08/09 fiscal year with the same period in the previous (07/08) fiscal year.

Average monthly revenue dropped to \$1.6 million, down from \$2.5 million during 07/08. Expenditures averaged \$2.7 million, which was down from \$3.5 million in the prior fiscal year. Accordingly, the reserve balance has now dropped down to approximately \$30 million.

Summarily, total revenue was down 30%, from \$15.6 million in 07/08 to \$10.9 million in 08/09. This reflects the decline in real estate license examinations, original licenses issued, and the decline in subdivision filings. Net expenditures are down 7%, from \$19.8 million in 07/08, to \$16.5 million in 08/09. This reflects ongoing efforts to keep operations going while conservatively managing our

spending habits, and the investment in technology for long-term future cost savings. Reserves have declined by 33% from \$44.9 million in 07/08 to \$30 million in 08/09.

As to Licensing, comparing July-Dec 07/08 with July-Dec in 08/09, for the first time there was an actual decline in the overall licensee population. Salesperson examination applications have continued a dramatic decline of 80%, which is 46,000 fewer examinees. Broker examinees have declined by 42%. Original licenses issued are also in decline: salesperson licenses down 67% or over 13,000 licenses; broker licenses issued down by 35%.

As to renewals, the percentage of renewals is down, but the renewal total is up. Salesperson licensees renewing dropped from 74% to 64%, which is a decline of 10%; broker licensees renewing declined from 91% to 79%, which is a total percentage loss of 12%. Because of the volume of licenses that were issued over the past 4 years, there is a bulge in the license population, so even though the renewal percentage is down, the renewal count has actually increased: 26,851 sales licenses were renewed in 08/09 as compared to 24,408 in 07/08; 12,487 broker licenses were renewed as compared to 11,748 in 07/08.

The licensee population continues to decline from its peak in November 2007 at just over 549,000 licensees. As of December 31, 2008, the licensee population had dropped to 532,531. As of January 23, the licensee population has now declined to a total of 530,312.

Again comparing the first six months of 08/09 with the same period in 07/08, applications for final subdivision public reports were down 46%, amended reports declined for the first time by 23%, and the renewal of public reports declined by 5%.

As to Enforcement activity, comparing the first six months of the current fiscal year with the same period in the 07/08 fiscal year, complaints are up, with over 400 more transactional complaints received in 08/09 than in 07/08. The number of license denials has dropped, from 592 in 07/08 to 449 in 08/09, which is mainly due to the drop in original license applications. The number of total disciplinary actions is up by over 100 from the same time last fiscal year, from 376 to 476. D&Rs are also up by 14%, which reflects the D&Rs recently issued to advance fee companies. Audit activity has remained somewhat constant with 327 audits conducted as compared to 356 conducted in 07/08. Fewer audits were conducted because the ones that are being done are much more complex and time consuming. It is expected that the number of enforcement cases will continue to rise.

The current market has resulted in a shifting workload, away from the processing of new and renewing licensees into other areas of the department. As expected and earlier reported, enforcement complaints are up. Licensing has received 5000 separate arrest reports on existing licensees. Of those 5000, over 40% resulted in additional background checks that will have to be conducted by enforcement staff to determine whether that person should continue to hold a real estate license. The legislative impact of SAFE and other State initiatives have been dramatic on the workforce, and there has been an advance fee application explosion. The Department is also expanding its consumer outreach and protection, especially to those people that are experiencing advance fee problems.

In response to these new and shifting demands, a change in assignments was deemed necessary: For the first time ever, subdivision deputies are being assigned enforcement caseloads. They will be handling most of the background investigations that will be coming from Licensing. Subdivision deputies who have prior enforcement experience will be given transactional cases to work as well. Subdivision positions have been redirected to the Legal, Legislation and MLB Sections, where the workload has been extraordinarily high. Licensing staff is assisting Maria Giuriato with outreach efforts. Licensing

temporary help staff was dismissed prior to the Governor's executive order being issued. All overtime has been redirected to Enforcement, and additional resources are focusing on advance fee submittals.

Bigby also reported that the new Licensing Call Center is now operational, and was completed on time and under budget. The excess money set aside for this project was returned to the department's reserves. The first duplicate license was issued through the new Call Center phone lines on December 3 at 6 p.m., before it was even officially operational. The first mailing address change request came through on December 4 at 4:30 p.m. New toll-free licensing phone numbers are: 1-877-DRE-4LIC, which replaces the current local numbers for licensing and examinations. Spanish speaking consumers seeking general information or license status information can call 1-877-DRE-4321.

The Electronic Examination Project is back on track. Renovations on the Oakland and Fresno exam sites continue, with Oakland being ahead of schedule. Testing plans and new proctor manuals have been completed. Customized software for admittance, monitoring, delivery and grading is in its final development stages. System testing on some proctor components is underway.

Examination Study: For the first time ever, the Department is soliciting input from all licensees into the content of the license examinations. As part of the study, there is a link on the website where feedback can be provided as to what needs to be on the examination. Participation is encouraged.

New law book is now available on the website. Printing has been delayed, but expect to have the printed books available by February 1. The price remains at \$25.

ADVANCE FEES AND LOAN MODIFICATIONS:

Tom Pool, Assistant Commissioner for Legislation, Public Information and Mortgage Lending, reported on the issue of advance fees and loan modification services. An advance fee, by definition, is the collection of an upfront fee for the purpose of promoting the sale or lease of real property, or the collection of an upfront fee for the purpose of negotiating a loan secured by real property. The collection of an advance fee must meet the following requirements: 1) A real estate broker license is generally required to collect an advance fee; 2) licensed attorneys are exempt if acting under the scope of their license; 3) agreement and solicitation materials must be submitted to the DRE to ensure the DRE does not object to their use; 4) agreement must specify the services to be rendered; 5) advance fees must be deposited into a trust account; 6) fees collected must only be expended on the promised services; 7) an accounting of the advance fees must be provided to the principal; 8) any unearned portion of the advance fee must be refunded to the principal; and 9) no advance fee may be collected after a Notice of Defense has been recorded. Exceptions to the Advance Fee requirements include upfront appraisal and credit report fees, and upfront tenant "screening fees" for residential rentals.

Penalties for the violating the law include license discipline, including revocation; desist and refrain order, criminal sanctions (\$1000 fine, 6 months in jail, or both), and a Bar Order.

Pool reported that the DRE has enhanced its website to assist licensees in meeting the legal requirements of collecting such fees, and provided information for consumers to read so they are better educated prior to engaging the services of an individual or company promising to modify their loan. Information available for licensees includes a list of the essential advance fee elements, as well as an exemplar agreement and accounting format. Available consumer information includes a consumer alert on loan modification services and the payment of an advance fee. Consumers are encouraged to do a licensee look-up on our database, as well as check the posting of brokers who have received a "no objection" letter from the DRE on their advance fee agreements.

LICENSING CALL CENTER PRESENTATION:

Steve Ellis, Assistant Commissioner for Administrative Services, presented an overview of the DRE's new Licensing Call Center. Licensees are now able to access their licensing records through the new toll-free number to obtain specific information pertaining to their license. Exam applicants are able to get information on the status of a pending application or reschedule a future examination. Speech recognition technology enables personalized self-service by enabling callers to speak their requests. Custom prompts guide the caller through the call process so information can be obtained directly from DRE's records. Context sensitive menus so only menu options are received that apply to a licensee's particular situation. Intelligent call-routing enables callers to be routed to the technician best able to assist them. Once a call is forwarded to a technician, a desktop display of the caller's license information is automatically opened on the computer screen to facilitate the handling of the call. For those individuals looking for general licensing information, a menu of consumer information options is available, including license status look-ups, licensing requirements, exam date availability, office locations, forms and frequently asked questions.

Toll-Free Numbers:

English – 877-DRE-4LIC (877-373-4542)

Spanish – 877-DRE-4321 (877-373-4321)

ENFORCEMENT CASES:

Bill Moran, Assistant Commissioner for Enforcement, presented the Department of Real Estate's investigation of Crisp & Cole. This case is one of lender fraud. The respondents defrauded federally insured lenders, involved fraudulent appraisals, falsified employment and income information, and falsified buyers' intention to occupy residences. DRE's action in this case included the license revocation of Crisp Cole & Associates, Tower Lending, Carl Cole and David Marshall Crisp. DRE also coordinated with the FBI and expects criminal charges to be forthcoming against the respondents.

PSA CAMPAIGN:

Maria Giuriato, Real Estate Industry & Consumer Liaison, gave a report on the DRE's new outreach campaign "Project Homeowner." The objective of the campaign is to educate California homeowners and potential buyers about opportunities available to them in today's market. This program is designed to help consumers avoid foreclosure, restore consumer confidence and serve multicultural communities. Some of the key goals for Project Homeowner include providing housing counseling services for homeowners in jeopardy of losing their homes; increase awareness of the predatory entities who are targeting those at risk; educate consumers on the payment of advance fees; educate potential first time home buyers on the purchase of their first home; and expose potential buyers to opportunities to purchase bank owned properties. DRE will oversee the implementation of the campaign in partnership with the California Hispanic Chamber of Commerce, Creative Marketing Solutions as well as other sponsors and community and private partners.

Project Homeowner consists of a media campaign in addition to a "road show". The media campaign will involve 8 key California markets, and will include English and Spanish outlets. Interviews are planned for TV and radio, as well as the broadcast of public service announcements. Road shows will involve educational outreach to major community groups and non-profit and for-profit agencies and businesses. Loan modification services are also planned by Chase and other banks.

The Department of Real Estate has received financial support from key corporate financial institutions and businesses, so the costs associated with the project are not an impact on the State budget. The DRE

is still looking for sponsors to be a part of this unique project. Interested parties should contact Maria Giuriato at (916) 227-0782 or via email at Maria_Giuriato@dre.ca.gov.

OPEN FORUM:

Q) DRE has a regulation hearing in early summer regarding the new requirement to have license number on all materials. If I order business cards in May and include my license number, are there size requirements to be considered in order to be in compliance?

A) The regulation requires the licensee identification number to be included on all print media, advertising, and first point of contact materials. No size requirements have been designated. The regulations are mainly going to deal with how we deal with print media, advertising, flyers and internet media because we want to clarify that you're not required to put it on everything, only on first point of contact materials.

Q) Would a salesperson put their license number, or the license number of their broker?

A) The agent's license number. The purpose is to be able to identify the individual with whom the public is doing business.

Q) If a loan modification company puts the upfront funds into escrow and only takes them out if successful, does this amount to an upfront fee?

A) If you're collecting the money upfront, then it's an advance fee.

Q) When is the increase in licensing fees going to be effective?

A) The hearing is set for March 6, and the fee increase is expected to be effective July 1, 2009.

Q) What about the person who only accepts a fee once the modification is successful?

A) If he's a licensed real estate broker, this is perfectly legal. But he/she must be licensed as a real estate broker in order to do loan modifications unless he/she is exempt under the Foreclosure Consultant Law.

Q) At the Risk Management Forum, an opinion was given that attorneys who do loan modifications are simply practicing the law. What is your position?

A) If that attorney, in the course of his law practice, does a loan modification for one of his clients, and collects a retainer to do so, that would be a legal activity. But if that attorney decides to open another store and decides to call it "So and So's Loan Modification Company," and he hires some people to do the work, he's violating the law.

CLOSING REMARKS: Next meeting is scheduled for June 5, 2009 in Sacramento.

Lisa Stratton
Recorder