

**COURSE GUIDELINES**

RE 329 (Rev. 2/06)

Education Section

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**ETHICS COURSE**

The guidelines set forth below are to assist sponsors in preparing an ethics course to meet the requirements of Business and Professions Code (B&P Code) Section 10170.5.

B&P Code Section 10170.5(a) provides that no real estate license can be renewed unless evidence is submitted by the licensee of successful completion of a three-hour continuing education course in **Ethics, Professional Conduct, and Legal Aspects of Real Estate**. Generally, courses approved by the Department of Real Estate to fulfill this requirement will include three hours of extensive coverage of ethical practices, and where appropriate by way of example, unethical conduct involving real estate licensees which could be considered a violation of one, or more, subsections of B&P Code Sections 10176 and/or 10177.

In an effort to provide real estate licensees with a broader, more flexible and in-depth coverage of the many aspects of ethics in the real estate industry, the Department's general suggested guidelines for sponsors designing a course to fulfill Section 10170.5(a) requirements have been revised as follows:

- Instruction time, including exam time, must total a minimum of 150 minutes (*three classroom hours*).
- Course content must address the subject of "ethics" as described above. Other topics, i.e., arbitration, general real estate practices or subjects will not be approved as meeting the required ethics requirement.
- Coverage is allowed of the ethical standards of real estate professional organizations, institutes, societies, etc., as well as specialized areas of real estate practice, e.g., commercial, industrial, business opportunities, mortgage lending, etc.
- Coverage of appropriate court decisions and practical examples and/or case studies as related to real estate practice and ethical behavior are recommended.

**AGENCY COURSE**

This section provides the Department's suggested guidelines to qualify a continuing education course to meet B&P Code Section 10153.4 and 10170.5 requirements for a three-hour course in **Agency Relationships and Duties in a Real Estate Brokerage Practice**. The guidelines are designed to allow flexibility in course content in order to permit sponsors to target their courses to specific segments of the real estate industry.

With this goal in mind, the following minimum guidelines apply for courses designed to meet the agency requirement:

- Instruction time, including exam time, must total a minimum of 150 minutes (*three classroom hours*).
- Include as the primary focus of the course, coverage of agency relationships in a modern brokerage practice, re-

view of duties, required disclosures and confidences and required forms, including those specified under Civil Code Section 2373 et seq. (*Assembly Bill 1034, Chapter 785, §2*), as related to:

- In-house sales
- Cooperative sales
- Dual agency
- Buyers brokerage

It is recommended that other agency topics of current interest which are related to the activities of California real estate licensees be included in the proposed course content. Any legislation, regulation, article, report, court decision, etc., mentioned in the course should be referenced for the student's convenience.

**FAIR HOUSING COURSE**

The following are guidelines for use by sponsors in preparing a **Fair Housing** course to meet the requirements of B&P Code Section 10170.5:

**■ GOALS**

The fair housing course should provide real estate licensees with:

- Knowledge of Federal and State fair housing laws relating to the sale and rental of real estate;
- Knowledge of selected Federal and State civil rights and anti-discrimination laws relating to real property transactions and business establishments;
- The ability to avoid practices that could be considered discriminatory in commercial and residential transactions and facilities;
- An understanding of the voluntary affirmative marketing agreement (VAMA) and its application in the real estate industry;
- The desire to commit to affirmative compliance with the fair housing laws.

**■ TOPICS**

The main emphasis of this course should be on covering the Federal and State fair housing laws relating to the sale and rental of real property. By covering these laws, subtopics such as red-lining, advertising, refusing to show property, block busting, etc. will be addressed. Listed below are the Federal and State laws that should be included in the course. Below each law are learning objectives and a description of what the instructor should convey to the students. For each type of discriminatory behavior, the instructor should provide examples taken from the real estate industry.

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**Federal Fair Housing Act (Title VIII of U.S. Civil Rights Act of 1968; 1988 Amendments)**

*Objective:*

The student will be able to identify what classes are protected under this law.

The instructor should convey that this act prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. The instructor should emphasize the 1988 amendments, and should define handicap and familial status.

*Objective:*

The student will be able to identify what acts are considered discriminatory under this law.

The instructor should cover the following acts that constitute discrimination, if based on race, color, religion, sex, handicap, familial status, or national origin:

- Refusing to sell or rent after a bona fide offer has been made;
- Discriminating on the terms, conditions, or privileges of a sale or lease or in providing services or facilities;
- Indicating any preference in advertising or statements, oral or written;
- False representations as to the availability of a dwelling unit including “channeling” and “steering” to particular neighborhoods; and
- Attempting to persuade owners to sell or rent dwellings by making representations about the entry into the neighborhood of certain classes of people.

The instructor should also explain that this act also prohibits discrimination in the financing of housing.

*Objective:*

The student will be able to recognize exemptions to the law.

The instructor should cover the exemptions to the law, emphasizing that the exemptions do not apply to advertising and do not apply if the services of a real estate broker were used.

*Objective:*

The student will be able to appreciate the consequences of the violation of this law.

The instructor should convey the importance of following the law, and emphasize who may sue under the act and the severity of the penalties and legal remedies for violation.

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**The Civil Rights Acts of 1966 and 1970; 42 U.S.C. §§1981, 1982**

*Objective:*

The student will be able to differentiate this law from the above one, in terms of who it protects and what it prohibits.

The instructor should convey to the students that this law provides protection to individuals who are denied property rights (all real property rights, not simply residential) based on race.

The instructor should emphasize that this act provides that all persons have the same right to make and enforce contracts to the full and equal benefit of all laws and proceedings for the security of persons and property. The instructor should also cover the holdings of court cases related to this law, such as the prohibition of racially motivated opposition to the construction of low-income housing.

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**Americans with Disabilities Act**

*Objective:*

The student will be able to know and identify the requirements of the Americans with Disabilities Act.

The instructor should convey to the students that this law prohibits discrimination against individuals with disabilities in employment, public services, telecommunications, public accommodations, and commercial facilities. The provisions regarding commercial facilities and public accommodations affect the real estate industry by requiring owners or lessees of such buildings to make sure that their buildings comply with the rules.

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**Unruh Civil Rights Act; California Civil Code §§51–52**

*Objective:*

The student will be able to relate this law to real estate offices, property management companies, and homeowners’ associations.

The instructor should convey that this law relates to business establishments, and that it prohibits them from discriminating based on essentially the same classes as the Federal Fair Housing Act.

*Objective:*

The student will be able to identify any exemptions to this law, such as senior citizen complexes as specified by Civil Code Section 53 and by Federal law.

The instructor should explain why and how senior citizen complexes may be exempt from this law.

*Objective:*

The student will be able to recognize the penalties for violation of this law.

The instructor should describe the penalties for violation of this law, including actual damages, punitive damages, and attorney’s fees.

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**California Civil Code §§54–55.1, Blind and Other Physically Disabled Persons**

*Objective:*

The student will be able to explain the affect of this law on property owners.

The instructor should convey that handicapped and physically disabled persons may not be discriminated against for housing accommodations. The instructor should also explain what is required of property owners for compliance with this law.

**California Fair Employment and Housing Act (Rumford Act)  
– California Government Code §§12900 et seq.**

*Objective:*

The student will be able to identify acts that are unlawful and the protected classes under this law.

The instructor should convey that this law prohibits discrimination based on age, sex, race, color, religion, ancestry, or national origin in the areas of employment and housing. With respect to housing, the law prohibits discrimination in the sale, rental, lease, or financing of virtually all types of housing. Individuals may file complaints alleging discrimination with the Department of Fair Employment and Housing.

*Objective:*

The student will be able to identify any exemptions to this law.

The instructor should convey these exemptions to the students.

*Objective:*

The student will be able to recognize the consequences of violating this law.

The instructor should convey who may sue under this act and the penalties and legal remedies for violation of this act.

**California Department of Real Estate Commissioner's  
Regulations §§2780–2782**

*Objective:*

The student will be able to recognize that discriminatory conduct is in violation of the Commissioner's Regulations and is cause for license disciplinary action.

The instructor should convey the seriousness with which the DRE regards discriminatory conduct by licensees. Also, the instructor should emphasize that the broker is responsible for the adherence to fair housing laws within the brokerage firm.

■ **FAIR LENDING**

*Equal Credit Opportunity Act (15 U.S. Code 1691, et seq.)*

*Objective:*

The student will be aware that this act became effective on October 28, 1975 and that it prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, or on the grounds of receipt of income from a public assistance program. The law also requires that a lender/creditor who denies an application for credit must provide the applicant with a statement of reasons or a written notification of the applicant's right to obtain a statement of reasons.

The student should also be aware that, in addition to the foregoing Federal Law, state law regulates the issuance of consumer credit reports, access by the consumer to such reports, and the obligations of credit reporting agencies. Also users of consumer credit reports are subject to the requirements of State law and must provide notice to the consumer when credit is denied. This law is found in California Civil Code Section 1785.1 et seq.

**The Housing Financial Discrimination Act of 1977 (Holden Act) – California Health and Safety Code §§35800–35833**

*Objective:*

The student will be able to recognize that financial institutions are prohibited from discrimination of financial assistance.

The instructor should convey what acts are illegal under this law and what classes are protected by the law. The instructor should cover the following prohibited acts:

- Refusing to lend due to neighborhood trends (red-lining).
- Discriminating in the availability of financing.
- Appraising using neighborhood trends based on changes in race, color, etc.

*Objective:*

The student will be able to identify to whom this act applies.

The instructor should convey that this act applies to one to four dwelling unit property to be used as a residence and is owner occupied. The act also applies to owners seeking home improvement loans, even if the owner will not occupy the property.

*Objective:*

The student will be able to describe the ramifications of not complying with this act.

The instructor should convey who may sue under the act and should list the penalties and legal remedies for violation.

**Home Mortgage Disclosure Act (HMDA) – California Health and Safety Code 35815–35816**

*Objective:*

The student will be aware that the Federal Home Mortgage Disclosure Act, covered under HMDA, includes requirements for lenders that meet specified criteria to report loans made by census tract number. The student will also learn that lenders who are in the business of originating residential loans while operating under State licenses must report their lending activities to the State agency under whose jurisdiction they operate.

■ **SPECIAL TOPICS**

**Voluntary Affirmative Marketing Agreement (VAMA)**

A discussion of VAMA should be included in the course. The instructor should convey that VAMA is designed to assist real estate firms in complying with the fair housing laws, so those signing the agreement and complying with its terms will be in a better position to comply with Federal and State fair housing laws and to defend against fair housing suits. The instructor should encourage students to introduce into the practice of the real estate profession procedures and safeguards that will permit them to comply with the fair housing laws.

**Advertising**

In addition to the references to advertising in the fair housing laws discussed above, the course should address the Department

of Housing and Urban Development's (HUD) Fair Housing Regulations. The instructor should convey the importance of complying with HUD's requirement that brokers and leasing agents display an equal opportunity poster containing a fair housing slogan and logo. The instructor should also discuss the advertising guidelines issued by HUD which illustrate specific types of advertising that can result in a violation of the law.

### **Aids**

The students should be made aware of the specific disclosure laws regarding AIDS. The instructor should convey the rules on disclosing whether a prior occupant has AIDS or died because of AIDS. This rule is found in Civil Code Section 1710.

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## **TRUST FUND HANDLING COURSE**

The following are guidelines for use by sponsors in preparing a course to meet the requirements of B&P Code Section 10170.5:

### ■ **GOALS:**

The trust fund handling course should provide the student with knowledge of the legal requirements for receiving and handling trust funds in real estate transactions, as set forth in the Real Estate Law and the Regulations of the Real Estate Commissioner. The course should describe the requisites for maintaining a trust fund account. Further, the course should explain and illustrate trust fund record keeping requirements. Trust fund courses may be individually tailored to describe transactions that are relevant to specific areas of real estate activity, such as residential, commercial, and industrial sales; property management; business opportunities; and mortgage loan brokerage. In the area of mortgage loan brokerage, there are additional legal and regulatory requirements for trust fund handling, which should be covered in a course that is specific to the area.

### ■ **TOPICS:**

- General information
  - Trust funds vs. non-trust funds
  - Trust fund handling requirements
  - Identifying the owner(s) of the funds
- Advance fee trust funds
  - Record keeping requirements
  - Disbursement disclosure requirements
  - Approval of advance fee agreement
- Trust fund bank accounts
  - General requirements
  - Trust account withdrawals
  - Interest bearing accounts
  - Commingling prohibited
  - Trust fund liability
  - Maintaining trust account integrity
- Accounting records
  - Record keeping systems
  - Recording process
- Reconciliation of accounting records
- Documentation requirements

- Audits and examinations
- Consequences of trust fund conversion
  - Loss of license
  - Receivership
  - Civil liability
  - Tax liability
  - Criminal sanctions
- Sample transactions to explain use of records

### ■ **MORTGAGE LOAN BROKERAGE:**

In addition to covering all of the above-referenced subjects, a trust fund course that is specific to the area of mortgage loan brokerage should also cover the following topics:

- Threshold reporting requirements
- Trust assets
- Quarterly trust fund status reports
- Multi-lender rule
- Servicing
  - Collection/servicing accounts
  - Impound/escrow accounts

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## **RISK MANAGEMENT COURSE**

The following are guidelines for use by sponsors in preparing a course to meet the requirements of B&P Code Section 10170.5:

### ■ **GOALS:**

The Risk Management course should provide the student with knowledge of the principles, practices and procedures calculated to avoid errors and omissions in the practice of real estate licensed activities, and the ability to recognize and resolve issues and appropriately handle situations that most frequently result in litigation.

The course may be individually tailored to focus on specialized areas of real estate licensed activities such as residential sales, commercial or industrial sales, mortgage loan brokerage, property management, or business opportunities.

Risk Management can be applied to a wide range of functions and activities including negligence, negligent misrepresentation, intentional misrepresentation, fraud, constructive fraud, breach of fiduciary duty, breach of contract, violation of Business & Professions Code Section 17200 et seq., breach of duties pursuant to Civil Code Sections 1102 and 2079, etc.

### ■ **TOPICS:**

- Understanding the Basic Concept of Risk Management
  - Terms and definitions
  - The probability of risk
  - Standard of care issues
- Common Areas of Risk
  - Contract preparation

- Property conditions; property ownership
- Trust fund handling
- Broker supervision
- Failure to research, investigate, and disclose material facts
- Kickbacks; RESPA violations
- Referrals to vendors and third parties
- Conflicts of interest
- Negligent advice
- Licensee Activities Likely to Contribute to Risk
  - Agency duties
  - Disclosure
  - Contract familiarity
  - Preparation, formation, interpretation and performance, termination
  - Advertising
  - Fair housing
  - Employment issues and office management
  - Trust fund handling
  - Privacy issues
- Provide Practical Examples of High Risk Areas, such as:
  - Improper trust fund handling
  - Misrepresentation of value or property conditions
  - Concealment of material facts
  - Providing false and misleading advertising or statements for which there is no basis of fact
  - Basic anti-trust areas
  - Predatory lending
- Risk Reduction
  - Companies should adopt an official risk management policy that addresses company policies and procedures.
  - Risk can be minimized by planning, training, supervision, and enforcement.
  - The responsibility of brokers, office managers, and supervisors to manage risk by educating, training, and supervising employees and associates to recognize areas of risk.
  - Goals of risk management should be clearly stated, communicated to agents and employees, and understood.
  - Consequences of illegal or unethical behavior.
  - The need for licensees to stay current.
  - Risk is ongoing and elements of risk are reduced through proper training, supervision, and enforcement of office policies.
- Risk Management and the Consumer
  - Impact of the consumer's increased access to information.
  - Consumer's demand for greater value from a licensee's services.
  - Licensees are custodians of public trust when conducting licensed activities.
  - Fiduciary responsibility
- Legal Responsibility
  - Concept of vicarious liability; an individual, supervisor, or company can be held liable for certain conduct.
  - Statutory duties and responsibilities of the licensee.
  - Legal claims resolved by mediation, arbitration, or lawsuit.
  - License discipline by the Department of Real Estate.
  - Claims stemming from self-regulation of the real estate industry such as grievance/arbitration.