Real Estate Bulletin

SPRING 2021



Real Estate Commissioner Douglas R. McCauley

Commissioner's Update

All of us at DRE understand the challenges the pandemic has presented to our licensees. Coupled with market conditions that include low inventory, strong demand, and attractive mortgage interest rates, sticking to the industry's public health guidelines requires a firm commitment to compliance. Your dedication to keeping your clients, consumers, and colleagues safe is crucial to California returning to normal. One important way to help make that happen is to keep up-to-date on the vaccine rollout across the State by visiting the website for the Vaccinate All 58 campaign: <u>VaccinateAll58.com</u>.

Many experts acknowledge that the workplace will likely never function as it did prepandemic. The current competitive market conditions may cause your clients to push you to make transactions rapidly to take advantage of opportunities. It is tremendously important that you follow your fiduciary responsibilities, even when the market is moving so quickly.

(CONTINUED ON PAGE 3)

COVID-19 Licensee and Examinee Extensions Expire June 30, 2021 Use eLicensing to beat the last-minute rush

In response to COVID-19, Governor Gavin Newsom issued four executive orders that extended some deadlines for certain DRE licensees and pending applicants. The most recent order, N-83-20, extended some fee payment and license requirements until June 30, 2021. That deadline is quickly approaching.

Below is a summary of the affected groups:

1. Those whose DRE four-year license expired on or after April 16, 2020

You now have until June 30, 2021 to submit your renewal application, renewal fee, and continuing education (CE) requirements.

2. Those whose DRE license rights expired on or after April 16, 2020

Licensees have two years after expiration to renew their license. In cases where that two-year period ended on April 16, 2020 or after, you now have until June 30,



2021 to submit your renewal application, late fee, and CE requirements.

3. Those who are in the two-year window to pass the license exam

For examinees whose two-year window to pass the exam ended on April 16, 2020 or after, you now have until June 30, 2021 to schedule your license exam.



REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate Vol. 80, No. 1 - Spring 2021

STATE OF CALIFORNIA Gavin Newsom, Governor

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY Lourdes M. Castro Ramírez, Secretary

DEPARTMENT OF REAL ESTATE

Douglas R. McCauley, Real Estate Commissioner

REAL ESTATE BULLETIN STAFF

Bradley Evans Claire Goldstene Joanne Van

NORTHERN ENFORCEMENT AREA DISTRICT OFFICES

SACRAMENTO PRINCIPAL OFFICE Tricia Parkhurst.

Supervising Special Investigator II

1651 Exposition Blvd., Sacramento Mailing Address: P.O. Box 137011 Sacramento, CA 95813-7001 Consumer Information: (877) 373-4542

OAKLAND DISTRICT OFFICE

Vacant Supervising Special Investigator II

1515 Clay St., Suite 702 Oakland, CA 94612-1462 Consumer Information: (877) 373-4542

CENTRAL ENFORCEMENT AREA DISTRICT OFFICES

FRESNO DISTRICT OFFICE

Brenda Smith, Supervising Special Investigator II

2550 Mariposa Mall, Suite 3070 Fresno, CA 93721-2273 Consumer Information: (877) 373-4542

ADMINISTRATION

Marcus McCarther, Chief Deputy Commissioner

Tom Cameron, Assistant Commissioner, Audits

James Damrell, Assistant Commissioner, Legislation and Regulations

Stephen Lerner, Assistant Commissioner, Legal Affairs

Rick Lopes, Assistant Commissioner, Communications and Publications

Chris Neri, Assistant Commissioner,

Subdivisions Jeff Oboyski, Assistant Commissioner,

Licensing Chika Sunquist, Assistant Commissioner,

Enforcement Shelly Wilson, Assistant Commissioner,

Administrative Services

SOUTHERN ENFORCEMENT AREA— **DISTRICT OFFICES**

LOS ANGELES

Maria Suarez, Supervising Special Investigator II

320 West 4th St., Suite 350 Los Angeles, CA 90013-1105 Consumer Information: (877) 373-4542

SAN DIEGO DISTRICT OFFICE

Veronica Kilpatrick, Supervising Special Investigator II

1350 Front St., Suite 1063 San Diego, CA 92101-3687 Consumer Information: (877) 373-4542

SUBDIVISIONS NORTH-

SACRAMENTO DISTRICT OFFICE

Christina Park, Supervising Special Investigator II

1651 Exposition Blvd., Sacramento Mailing Address: P.O. Box 137005 Sacramento, CA 95813-7005 Consumer Information: (916) 576-3374

SUBDIVISIONS SOUTH-LOS ANGELES DISTRICT OFFICE

Tony Fan, Supervising Special Investigator II Angele Chemsian, Supervising Special Investigator II, Budget Review Joseph Aiu, Subdivisions Statewide Compliance

320 West 4th St., Suite 350 Los Angeles, CA 90013-1105 Consumer Information: (213) 576-6983

The REAL ESTATE BULLETIN (ISSN 07347839) is published quarterly by the state of California Department of Real Estate, 1651 Exposition Blvd., Sacramento, CA 95815, as an educational service to all real estate licensees in the state under the provisions of section 10083 of the Business and Professions Code. Reproduction, in whole or in part, is authorized with attribution to the Department of Real Estate.



dre.ca.gov

The fastest, easiest way to manage your real estate license!

- Examination Services Schedule Exam (After Application Has Been Processed) Reschedule or Apply to Retake Exam Change Exam Mailing Address View Exam Records Check Exam Date, Time & Location View Exam Results Request Dupliate Schedule or Result Notices Find Out if License Has Been Issued

Brokers

- Iroker's
 Add/Change Main Office & Mailing Address
 Certify Salesperson Renewal or Employment Change
 Remove Salesperson from License
 Renew License
 Print License Certificate
 Update Phone Numbers/Email Address

Salespersons

- alespersons Add/Change Employing Broker Change Mailing Address Renew License Print License Certificate Update Phone Numbers/Email Address

Corporation Officers

- Certify Salesperson Renewal or Employment Change
 Remove Salesperson from License
 Print License Certificate
 Update Phone Numbers/Email Address

COMMISSIONER'S UPDATE (CONTINUED FROM PAGE 1)

The profession is already heavily reliant on technology, so that has certainly helped with adaptability. Functions, such as digital signatures, make it possible for clients to sign 50 pages of documents in less than five minutes. Given that reality, are you effectively explaining key terms and disclosures? All licensees should slow down to ensure they maintain their professional responsibilities. A minimal investment of your time now can save you the time and expense associated with responding to a complaint a client could file with the Department of Real Estate.

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The current competitive market conditions may cause your clients to push you to make transactions rapidly to take advantage of opportunities. It is tremendously important that you follow your fiduciary responsibilities, even when the market is moving so quickly.

The pandemic has also had a tangible impact on DRE and license applicants. We had to close our examination centers twice over the past year due to stay-at-home orders. Once re-opened, the centers were limited to operating at 50 percent capacity to adhere to health and safety protocols. Nevertheless, DRE staff redoubled our efforts to administer exams. We now offer evening and weekend exams, and opened an auxiliary exam site in Sacramento.

These efforts, along with aggressive scheduling, have allowed us to administer more than 1,300 exams every week. That's more than before COVID. We're making great progress reducing the exam backlog from the shutdown and hope to have exam wait times back to normal soon.

I also want to briefly update you on two important items involving the State Legislature's oversight of DRE and its operations. The first, called the Sunset Review process, is very close to completion. Every four years the Legislature performs an extensive review of DRE operations, which includes our programs, metrics, and new objectives. The process culminated with my appearance before a joint hearing of the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee. At the hearing I provided an overview of DRE operations and responded to questions from committee members. Members of the industry and public were also given an opportunity to offer testimony.

The hearings will result in legislation to both extend DRE's "sunset date" for another four years and to implement any recommendations from the two committees. At this time, it does not appear that any significant new policy initiatives will be included in our sunset bill.

The second is the process to confirm my appointment by the State Senate as Real Estate Commissioner. That process involved a number of steps, including appearing before the Senate Rules Committee in a public hearing to answer member questions. I'm honored to say that I was confirmed by both the Senate Rules Committee and the full Senate.

Finally, I want you to know what an honor it is for me to serve as your Real Estate Commissioner. I'm pleased to work with a dedicated team at DRE. They are mission-driven, value stakeholder input, and are committed to continuous improvement. We understand the important work of licensees in creating opportunities for Californians to have quality places to live, work, and play. That work inspires us and fosters a spirit of collaboration and innovation that will serve us well as we strive toward fulfilling Governor Newsom's vision of a California for All.

Dougs R. Mille @DougMcCauleyDRE



DRE Staff Expand Exam Capacity to Address COVID-Related Closures

As with most Californians, the COVID-19 pandemic has changed the way we work at the Department of Real Estate in order to ensure the safety of licensees, applicants, and staff. Today, about 90 percent of DRE staff have a telework schedule.

But some work can't be done from home, and that includes the essential work of administering exams at our five examination centers. Throughout the pandemic the centers have continued to operate at 50 percent capacity with the implementation of a number of health and cleaning safety protocols, except when regional stay-at-home orders forced their temporary closure.

During the most recent closure, between December 7, 2020 and January 24, 2021, DRE had to cancel more than 5,800 licensing exams. Staff reached out to these examinees to let them know about the cancellation and reached out again when the centers reopened to offer them the first chance to reschedule. Only a handful have not yet taken or scheduled their exam.

Further, as part of an effort to expand testing capacity, DRE has added extra examination sessions, including evening sessions in Sacramento, an auxiliary exam center in Sacramento, and Saturday sessions in La Palma, Sacramento, and San Diego, DRE's largest exam centers.

As a result of all these improvements, DRE is now administering about 1,300 exams every week, and hopes to have exam wait times back to normal soon.

When It Comes To Escrow...

"Opening" escrow in a real estate transaction requires two essential elements:

- 1. A binding contract/agreement between a buyer and a seller; and
- 2. Conditional delivery to a neutral third party of something of value.





DRE Exam Centers

Sending an earnest money deposit alone to an escrow or title company does not open escrow; it simply opens an escrow file. For escrow to be considered formally opened, the earnest money deposit must be accompanied by escrow instructions jointly signed and approved by both the buyer and the seller, which would fulfill the two essential elements listed above.

If a transaction is cancelled and escrow was not technically opened, typically the deposit must be returned to the buyer.

Read more in the "Escrow" chapter of the *Reference Book—A Real Estate Guide* on the DRE website at <u>https://dre.ca.gov/</u>publications/ReferenceBook.html.

COVID-19 Tenant Relief Act

Overview

In an effort to minimize the ongoing impact of COVID-19 on California tenants and landlords, the Legislature passed and Governor Gavin Newsom signed the COVID-19 Tenant Relief Act (SB 91), which took effect on February 1, 2021. Senate Bill 91 includes two major elements: 1) it extends eviction protections established under the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088); and 2) it provides rental assistance to qualifying tenants and landlords for the payment of rent and utilities.

The Department of Real Estate continues to take an active role in providing information and resources to tenants and landlords related to these laws.

Extension of Eviction Protections

Assembly Bill 3088 prohibited a landlord from evicting a tenant for the tenant's failure to pay part or all of the rent between March 1, 2020 and January 31, 2021, due to financial distress related to COVID-19.

SB 91 extends these eviction protections through June 30, 2021, for tenants that timely provide their landlord with a declaration of COVID-19 Related Financial Distress and who pay at least 25 percent of their unpaid rent by June 30, 2021. While a tenant will be responsible for repaying the remainder of any unpaid rent on and after July 1, 2021, he or she can never be evicted due to the non-payment of COVID-19 rental debt if the tenant returns to the landlord within 15 business days of receipt a signed Declaration of Financial Distress and, for rent owed after September 1, 2020, tenders payment by June 30, 2021 of at least 25 percent of the unpaid rent.

Rental Assistance Program

SB 91 also establishes the State Rental Assistance Program to provide financial assistance to cover up to 80 percent of an eligible household's unpaid rent and utility costs accumulated between April 1, 2020 and March 31, 2021. Rental assistance under SB 91 is awarded in three rounds, with the goal of first helping communities hit hardest by COVID-19.

The first round of funding is designated for households with an income level less than 50 percent of the area median income. Funding in the second round is earmarked for communities identified by the California Department of Housing and Community Development (DHCD) as disproportionally impacted by COVID-19. The third round of funding is designated for households where the income level is at or below 80 percent of the area median income.

A landlord can agree to participate in the State Rental Assistance Program or they can opt out. DRE encourages all eligible landlords, especially small landlords, to apply. A landlord that agrees to accept rental assistance must release all claims against the tenant for any outstanding rental debt for the covered period. Alternatively, a landlord may choose not to accept any rental assistance and instead attempt, on or after July 1, 2021, to recover all outstanding rental debt.

If a landlord chooses not to participate in the program, a qualified tenant may apply for up to 25 percent of the eligible household's unpaid rental debt for the covered period. Subject to funding availability, a qualified tenant may also apply for rental assistance to cover 25 percent of prospective rent and utility payments for the months of April, May, and June 2021.

The Department's Ongoing Role

The Department of Real Estate continues to play an important role in educating tenants and landlords about the protections under AB 3088 and SB 91. For more information about prohibitions against evictions, financial assistance, and available resources from various federal, state, and local governments, please visit <u>www.</u> housingiskey.ca.gov. This website also has notices and forms (available in multiple languages) that AB 3088 and SB 91 require a landlord provide a tenant.



What You Should Expect From a Continuing Education Course Sponsor

Every real estate licensee in California is required to successfully complete 45 hours of continuing education (CE) within their four-year license period in order to renew that license (Business and Professions Code [BPC] section 10170.5, except as otherwise provided in BPC sections 10153.4 and 10170.8).

The 45 hours of course work must be taken through a continuing education sponsor who has received prior course approval through the Department of Real Estate, which reviews course material to ensure compliance with Article 25 in the regulations of the Real Estate Commissioner.

Licensees should be aware of the following:

- Sponsors must post their 4-digit sponsor ID# on continuing education promotions. Also, be sure that the sponsor's company name matches that listed with DRE. All sponsors with active DRE-approved courses can be immediately verified by using the following link: <u>http://secure.dre.ca.gov/publicasp/cecontinue.asp</u>.
- The sponsor is required to provide all potential course participants (licensee) a "General Information Page" prior to course registration. This mandatory document sets forth all requirements and policies that affect the participant's enrollment and completion of the course, i.e., fees, cancellation, refund, attendance, dismissal, final exam criteria, etc.
- Incremental assessments (i.e., case studies, quizzes, or other exercises) are required after each logical unit of instruction or chapter within a correspondence course.
- Participants taking a correspondence offering or package of offerings may only complete final exams for a maximum of 15 credit hours during any one 24-hour period.
- Participants taking a correspondence course must have access to the course materials for the approved number of credit hours for that course prior to completing the final exam.



- Continuing education courses cannot be completed in less time than the length of time approved. For example, an 8-hour online survey course should take 8 hours to complete.
- Final exams for CE courses may be administered by a proctor designated by the sponsor who is not related to the participant taking the exam by blood, marriage, domestic partnership, or in any other relationship, i.e., future employing broker, that might reasonably influence them from properly administering the exam.
- More final exam rules:
 - o Final exams can only consist of 10% true/false questions.
 - o Final exams are allowed one minute per question.
 - o To pass the final exam, a participant must receive a score of 70% or higher.
 - o Participants shall not take possession of the final exam outside of the controlled environment in which it is administered.
 - o A failed final exam can only be retaken once. After two failed final exams, the entire course must be repeated.
- All courses must be completed within one year from the registration date.

Maintenance Responsibilities for Condominium or Planned Development Projects

Each year DRE receives a number of inquiries regarding who is responsible for the maintenance of common areas within a condominium or planned development. Answering this type of question can be difficult, since it may involve interpretation of the project's governing documents.

The maintenance responsibilities for areas owned by individual purchasers and those areas owned in common are normally set forth in the recorded CC&Rs, though since these responsibilities do not necessarily correlate with fee ownership a party to the agreement may need to maintain an area they do not own.

Every project is different and the maintenance responsibilities may be assigned based on the architectural characteristics of the project. For example, certain common areas of a condominium project may be the responsibility of an individual unit owner if there are no shared party walls (e.g., exterior painting of freestanding units). Also, maintenance of the roofs of units with discernible roof lines could be the responsibility of individual owners. In these cases, the CC&Rs normally grant the individual unit owner an easement over the common area, for which they are responsible.

Please note that in the absence of clear language in the project's governing documents regarding who maintains what, Civil Code section 4775 of the Davis-Stirling Act may be applicable. Section 4775(a) provides, in relevant part, that "unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, and maintaining the common area . . . the owner of each separate interest is responsible for repairing, replacing, and maintaining that separate interest . . . and the owner of each separate interest is responsible for maintaining the exclusive use common area appurtenant to that separate interest and the association is responsible for repairing and replacing the exclusive use common area."

It is extremely important that the homeowners association budget be structured and sufficient to

account for the association's maintenance responsibilities and costs. For each new project, DRE provides specific guidelines for all items included in the initial budget. However, the initial budget on a new project is only a projection of operating costs, based on rates and formulas of the anticipated costs to operate and maintain the common areas. After DRE approval of the budget, the homeowners association's assessment amount is disclosed in the final subdivision public report and a copy of the budget is provided to all buyers. A portion of the assessment will be allocated to the reserve fund for long-term repair and replacement of major common area components.

While the Department of Real Estate has regulatory oversite of common interest subdivisions during the development stages of the project, it does not oversee homeowners associations once all the units or lots have been sold. The homeowners association is intended to oversee subdivision affairs and serve as the forum in which to address homeowner's concerns.

If you have questions about maintenance responsibilities in a condominium or planned development project, you should first review the governing documents and budget for the project. If these documents do not resolve your concerns, then we recommend contacting the homeowners association along with a review of the applicable law, such as Civil Code section 4775.



Vaccinate All 58

Vaccination is one of the most important tools to help end the COVID-19 pandemic. It's safe, effective, and free. Visit <u>www.vaccinateall58.com</u> to learn more about when you can get vaccinated, how to get vaccinated, how vaccines work, what to expect after vaccination, and other vaccine-related information.



Fiduciary Duty and Electronic Transactions

Real estate licensees are a key part of any real estate transaction and are trusted by their clients to act in the highest good faith. As times change, as technology improves, and as processes change, remember that the duty of a real estate licensee as a fiduciary remains the same – to place their client's interest ahead of their own.

Increasingly, real estate documents are sent electronically to consumers and clients for their review and signature. While this certainly improves efficiency, some consumers sign documents on their smart phones and/ or do not actually read them. They may simply tap or click through the signature lines, perhaps not realizing the importance or implications of the documents they are signing.

As fiduciaries, real estate licensees are expected to explain the significance and consequences of the disclosures and documents before their clients sign. If clients do not understand the documents or need legal advice, they should be referred to legal counsel.

Furthermore, fiduciary duties and obligations to clients do not end once escrow is opened. Licensees should review documents sent from or through escrow to their clients, even if the licensee utilizes the services of transaction coordinators or other clerical support. This is particularly important when it comes to reports, documents, and disclosures generated by third parties, including the title or escrow company.

For example, a title company's instructions may conflict with those already agreed upon by the parties and include clauses which state that the title company's instructions will control in the event of conflicting language. This may affect some of the agreed upon terms between the seller and buyer. Additionally, some parties may try to require buyers, sellers, and even lenders to warrant (insure) issues not normally warranted by those parties, such as information about unknown liens or encumbrances on the property. Licensees should explain these types of issues to clients so they can make educated decisions about the documents they sign or try to negotiate the new terms or conditions that are being presented. More information about a licensee's fiduciary duty can be found in various DRE publications, such as the *Reference Book—A Real Estate Guide* and previous editions of the *Real Estate Bulletin*, on the DRE website at <u>www.dre.ca.gov/publications</u>.



WHAT YOU SHOULD EXPECT FROM A CONTINUING EDUCATION COURSE SPONSOR (CONTINUED FROM PAGE 6)

• Every participant who successfully completes a course should receive a completion certificate within 15 days of completing the course.

For a complete list of regulations pertaining to CE courses, review Article 25 of the Commissioner's Regulations in the *2021 Real Estate Law Book*, available on the DRE website: <u>www.dre.ca.gov</u>.

Should it be discovered that a licensee did not take a final exam upon receiving a CE completion certificate or falsified CE information provided on their licensing renewal forms, the licensee could be subject to formal disciplinary action by DRE.

To report any violations of the above regulations, a course provider complaint form is now available on the DRE website by searching for forms RE 340 and RE 340A.

Signs of a Foreclosure Relief Scam

In light of the unprecedented pandemic and economic crisis, many Californians may be dealing with foreclosure in the coming months and years.

The federal government has free resources and help for those facing foreclosure. **It is not necessary to pay a third party to arrange for foreclosure relief or a loan modification**. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting <u>www.hud.gov</u>. If you are eligible for a loan modification or refinance program, a HUD-approved counselor will work with you to compile an intake package for your servicer.

Below are some red flags you should be aware of to protect yourself from becoming a victim of a foreclosure relief scam.

Makes Guarantees

Stop Foreclosure Now! 95% Success Rate! 100% Money Back Guarantee!

If it sounds too good to be true, it probably is. No one, including attorneys, can truthfully guarantee they can stop a foreclosure or get you a loan modification. Be wary of companies or attorneys that make such claims.

Requires a Fee in Advance

Pay \$3,000 and keep your home!

Advance fees are collected before any services are provided. Generally, the collection of advance fees is prohibited, but there are limited exceptions, including attorneys providing legal services. Consumers should be mindful if they are asked to pay an advance fee.

Many times, once fees are paid, the company will collect the money and disappear. Also, be concerned if the company only accepts payment via wire transfer or cashier's check.

Attorneys are allowed to charge upfront fees; however, thoroughly research the attorney and review their state bar record. You can also ask friends and family if they know of an attorney they trust and recommend.

Advises You to Stop Paying Your Mortgage Company or to Stop Talking to Your Mortgage Company

Pay us, and we'll take it from here.

Companies or attorneys may collect your money and then do nothing, or send you documents or information that are available for free, or advise you to stop paying your mortgage company. Keep talking to your mortgage company yourself—they may be willing to modify your loan.

Do not send your mortgage payment to anyone other than your mortgage company. Attorneys or companies may simply keep the money instead of paying the mortgage company.

Asks You to Sign Documents You Don't Understand/ Asks You to Sign Over or Transfer the Deed to Your Home

Sign this now! Don't worry about the details!

Don't let companies or attorneys pressure you into signing something you do not understand. For example, a "bait and switch" scheme involves a homeowner who doesn't realize that they are signing over the deed to their property. The homeowner may think they are signing up for a new loan or another financial arrangement.

Also, be skeptical if someone asks you to sign over the deed to your home. For example, a "rent-tobuy" involves an attorney or company convincing the homeowner to sell them the property so that the homeowner can "buy it back later." Usually, the terms of these deals make it impossible for the homeowner to actually buy back their home, and the homeowner loses their home or is evicted.

Engages in a "Hard Sell"

Limited time only! Don't wait! Call now!

Be concerned if you feel an attorney or company is pressuring you to hire them. Legitimate businesses will not employ high pressure direct marketing. An example

(CONTINUED ON PAGE 10)



COVID-19 LICENSEE AND EXAMINEE EXTENSIONS EXPIRE JUNE 30, 2021 (CONTINUED FROM PAGE 1)

4. Those who have passed their exam, but not applied for their license

For those who passed the exam and whose one-year deadline to apply for a license expired on April 16, 2020 or after, you now have until June 30, 2021 to apply for licensure.

Any affected licensee or examinee can make fee payments on time, but will not be penalized if they miss their original deadline, so long as the payment is made by June 30, 2021.

eLicensing Renewals

The secure eLicensing online system (www.dre.ca.gov) offers expedited processing of salesperson, broker, and officer license renewals any time or day of the week. eLicensing is easy to use, paperless, and interactive. Licensees simply enter information needed for license renewal, including the course number and completion date of any required continuing education classes. (All required continuing education must be completely satisfied in order to renew through eLicensing.) Acceptable methods of payment include VISA, MasterCard, and American Express credit cards, or debit cards bearing a VISA or MasterCard logo.

Please note, however, that eLicensing is not available for either officers renewing after the four-year license expiration date or any restricted licensees. These renewal applications must be submitted by mail to:

Department of Real Estate P.O. Box 137003 Sacramento, CA 95813-7003

Remember, you may use eLicensing or mail your renewal application 90 days prior to your license expiration date. Your renewal is considered on-time if your eLicensing transaction is completed or your application is postmarked before midnight on June 30, 2021. If you mail your renewal on time, Business and Professions Code Section 10156.2 permits you to continue operating under your existing license after its expiration date, unless notified otherwise by the DRE.



SIGNS OF A FORECLOSURE RELIEF SCAM (CONTINUED FROM PAGE 9)

of this is when an attorney or a business you don't know calls or emails you and wants you to hire them. Additionally, all promises and agreements should be in writing.

So, What Can Homeowners and the Public Do?

- Be aware of the latest laws and policies: HUD and the Biden Administration are continuously addressing immediate housing needs, including extensions of evictions and foreclosure moratoriums, and extensions of forbearance request deadlines. For the most up-to-date information, review the HUD website: <u>www.</u> <u>hud.gov</u>.
- Contact HUD, and encourage others to contact HUD, if you or they are experiencing potential foreclosure.
- Report suspicious activity to the appropriate authorities, such as the California Department of Real Estate (<u>www.dre.ca.gov</u>), the Federal Trade Commission (<u>www.ftc.gov</u>), the California Attorney General's Office (<u>www.oag.ca.gov</u>), the Better Business Bureau (<u>www.bbb.org</u>), as well as state and local consumer protection agencies.



COVID-19 CALLING ALL CALIFORNIANS!

Every Californian can safely help their community during these difficult times. Here are some ways you can make a difference:



Deliver Meals

Vulnerable seniors are at greatest risk amid COVID-19. Let's help keep them safe and cared for. Contact your local Meals on Wheels organization, visit **www.mealsonwheelsamerica.org**.



Donate to a shelter or food bank

During this time organizations are running low on food items, help them stay well stocked for those in need. Visit **www.serve.ca.gov** to find one near you.



Volunteer at a food bank

Food banks are in great need of volunteers to help pack and sort food. They are taking precautions to prioritize volunteer safety. Visit California Association of Food Banks at www.CAfoodbanks.org



Support Nonprofits

Nonprofit organizations serving vulnerable communities – like seniors and low-income families – need your help. Find a fund to donate to nonprofits in your community on the Philanthropy California COVID-19 Response Page: www.philanthropyca.org/covid-19-response.



Wellness Checks

Check on Older Neighbors with a Call, Text or Talk through the door



Hygiene Kits

Create hygiene kits and drop off at a shelter for people experiencing homelessness to help them stay healthy.



Donate Blood

Donated blood has decreased dramatically. Healthy, eligible donors are urged to come out and give to ensure there's lifesaving blood on the shelves for those who need it most. Visit the American Red Cross: www.redcrossblood.org/give.html/find-drive







Official Publication of the California Department of Real Estate

CALIFORNIA DEPARTMENT OF REAL ESTATE 1651 EXPOSITION BLVD. SACRAMENTO, CA 95815

Real Estate Bulletin

VOL. 80, NO. 1

SPRING 2021

For all the latest real estate information for consumers, licensees, examinees, and developers, visit the DRE website and follow us on Facebook and Twitter.

www.dre.ca.gov

• @CaliforniaDepartmentOfRealEstate

) @CA_DRE

We'd like to hear from you!



Email us at editor@dre.ca.gov

INSIDE THIS ISSUE

- COVID-19 Licensee and Examinee Extensions Expire June 30, 2021
- DRE Staff Expand Exam Capacity to Address COVID-Related Closures
- COVID-19 Tenant Relief Act
- What You Should Expect From a Continuing Education Course Sponsor
- Fiduciary Duty and Electronic Transactions
- Maintenance Responsibilities for Condominium or Planned Development Projects
- Signs of a Foreclosure Relief Scam

