

MLS POLICIES FOR UNLICENSED ASSISTANT'S ACCESS

An unlicensed person acting in the capacity of Administrative Assistant (herein after called "Assistant") to a Broker or Agent shall have the same access as their Broker/Agent provided however:

1. An MLS Disclosure Agreement shall be signed between the Assistant and Broker or Agent.
2. A one hundred dollar (\$100), non-refundable, one time set up charge shall be paid by Broker for each and every Assistant of Broker or Agent. Three hours of training on the MLS system to be included. Training to be provided twice per month. If the Broker/Agent changes offices or otherwise needs to change Assistant access, the set up charge to the Broker shall not be reassessed. If the Assistant changes offices, the set up charge for that Assistant shall not reassessed. For every new Assistant hired, the set up charge shall be assessed.
3. A penalty of \$250.00 shall be assessed to Broker in the event of failure to notify the MLS of the employment of an Assistant or a change of Assistant status within 48 hours (i.e. Assistant is not longer in "employ" of Broker/Agent). MLS shall immediately terminate password of said Assistant.
4. The MLS Committee, or its appointees, will conduct a disciplinary hearing regarding any claim of a breach of confidentiality by Broker/Agent or Assistant regarding divulging password and/or answer back to any other person whether licensed or unlicensed, pursuant to Section 14 of the MLS Rules and Regulations.
5. Broker has the sole responsibility of providing supervision on the use of the database and MLS password and logon. Any violations of MLS Rules and Regulations by Assistant shall be deemed a violation by Broker and Broker shall be disciplined pursuant to the Rules and Regulations contained herein.
6. All Unlicensed Assistants to be assessed \$25.00 per month dues (excluding initiation).

UNDER NO CIRCUMSTANCES SHALL AN UNLICENSED ASSISTANT SHOW PROPERTY, ACCESS LOCK BOXES OR HAND OUT MLS INFORMATION TO THE GENERAL PUBLIC. SUCH ACTIONS WILL BE SUBJECT TO DISEPLINARY MEASURES.

**PLEASE SIGN PAGE 2 OF THE AGREEMENT.
ONLY PAGE 2 NEEDS TO BE SUBMITTED TO THE ASSOCIATION
OFFICE WITH THE PAYMENT.**

Tehama County Association of Realtors
ASSISTANT APPLICATION

PORTION TO BE FILLED OUT BY LICENSED/UNLICENSED ASSISTANT

Participant

NAME: _____
Last First Middle

Home Street Address

City State Zip

e-Mail

Subscriber

NAME: _____
Last First Middle

Office Name

Office Address: City State Zip

Office Phone

I acknowledge that I am responsible for Assistant's confidentiality of MLS information as outlined in Sections 4.3, 12.11, 12.12, 12.14 and 12.15, of the MLS Rules and Regulations and Policies (attached), and from time to time amended.

\$25.00 Monthly Fee will be charged for MLS Log-In Access for the above named Assistant/Office Administrator (Participant). (If Assistant works for subscriber, both subscriber and Participant must sign form).

Subscriber (Please Print) Signature Date

Participant (Please Print) Signature Date

Unlicensed Assistants

Business and Profession Code Section 10130 et seq.

Q. - What kinds of activities can an unlicensed administrative assistant perform?

A. - Unlicensed administrative assistants can perform a variety of activities to assist real estate licensees in transactions, however, they may not perform any activity which requires a real estate license. Please refer to Business and Profession Code Section 10130 et seq. (below) for a general description of licensed activity. In this regard, when unlicensed assistants are employed, it is essential that they be provided adequate supervision to ensure that the proper limitations are placed upon them so they do not perform activities which require a real estate license. It should be remembered that Business and Professions Code Section 10137 makes it unlawful for a real estate broker to employ or compensate, directly or indirectly, any unlicensed person for performing licensed acts. Therefore, it is imperative that the activities of unlicensed assistants be properly monitored.

BUSINESS AND PROFESSIONS CODE

SECTION 10130-10149

10130. It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department.

The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial.

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.

10131. A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

(c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a hotel, motel, auto and trailer park, to the resident manager of an apartment building,

apartment complex, or court, or to the employees of that manager, or (2) any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit in a common interest development, as defined in Section 1351 of the Civil Code, in a dwelling unit in an apartment building or complex, or in a single-family home, or (3) any person other than the resident manager or employees of that manager, performing the following functions who is the employee of the property management firm retained to manage a residential apartment building or complex or court and who is performing under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets certain minimum requirements as specified in a regulation issued by the commissioner:

(A) Showing rental units and common areas to prospective tenants.

(B) Providing or accepting preprinted rental applications, or responding to inquiries from a prospective tenant concerning the completion of the application.

(C) Accepting deposits or fees for credit checks or administrative costs and accepting security deposits and rents.

(D) Providing information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.

(E) Accepting signed leases and rental agreements from prospective tenants.

(b) A broker or salesperson shall exercise reasonable supervision and control over the activities of non-licensed persons acting under paragraph (3) of subdivision (a).

(c) A broker employing non-licensed persons to act under paragraph (3) of subdivision (a) shall comply with Section 10163 for each apartment building or complex or court where the non-licensed persons are employed.

10131.1. A real estate broker within the meaning of this part is also a person who engages as a principal in the business of buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

As used in this section, "in the business" means any of the following:

(a) The acquisition for resale to the public, and not as an investment, of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year.

(b) The sale to or exchange with the public of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year.

However, no transaction negotiated through a real estate licensee shall be considered in determining whether a person is a real estate broker within the meaning of this section.

As used in this section, "sale," "resale," and "exchange" include every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property, except the original issuance of a promissory note by a borrower or a real property sales contract by a vendor, either of which is to be secured directly by a lien on real property owned by the borrower or vendor.

10131.2. A real estate broker within the meaning of this part is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

10131.3. A real estate broker within the meaning of this part is also a person who, for another or others, for compensation or in expectation of compensation, issues or sells, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of securities as specified in Section 25206 of the Corporations Code.

The provisions of this section do not apply to a broker-dealer or agent of a broker-dealer licensed by the Commissioner of Corporations under the provisions of the Corporate Securities Law of 1968.

10131.4. A real estate broker within the meaning of this part is also a person who acts for another or others for compensation or in expectation of compensation, to do one or more of the following acts:

(a) To sell or offer for sale, buy or offer to buy, solicit prospective sellers or purchasers, solicit or obtain listings, or negotiate the purchase, sale, or exchange of mineral, oil, or gas property.

(b) To solicit borrowers or lenders for or negotiate loans on mineral, oil, or gas property, or collect payments for lenders in connection with these loans.

(c) To lease or offer to lease or negotiate the sale, purchase, or exchange of leases on mineral, oil, or gas property.

(d) To rent or place for rent, mineral, oil, or gas property or to collect rent or royalties from mineral, oil, or gas property or improvements thereon.

(e) Other than as an officer or employee of the state or federal government, to assist or offer to assist another or others in filing an application for the purchase or lease of, or to locate or enter upon mineral, oil, or gas property owned by the state or federal government.

10131.45. A real estate broker within the meaning of this part is also a person who engages in the following businesses as a principal:

(a) Except as provided in subdivision (d) of Section 10133.35, buying or leasing, or taking an option on mineral, oil, or gas property for the purpose of sale, exchange, lease, sublease, or assignment of a lease of the property or any part of the property.

(b) Offering mining claims or any interest therein for sale or assignment.

10131.5. A nonresident of California may become a real estate broker by conforming to all of the provisions of this part.

10131.6. (a) Notwithstanding any other provision of law, a person licensed as a real estate broker may sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any mobile home only if the mobile home has been registered under Part 2 (Commencing with Section 18000) of Division 13 of the Health and Safety Code.

(b) No real estate broker who engages in the activities authorized by this section shall maintain any place of business where two or more mobile homes are displayed and offered for sale by the person, unless the broker is also licensed as a mobile home dealer as provided for by Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) As used in this chapter, "mobile home" means a structure transportable in one or more sections designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. "Mobile home" does not include a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, a commercial coach, as defined in Section 18001.8 of the Health and Safety Code, or factory-built housing, as defined in Section 19971 of the Health and Safety Code.

(d) In order to carry out this section, the commissioner shall prescribe by regulation, after consultation with the Department of Housing and Community Development, methods and procedures to assure compliance with requirements of the Health and Safety Code pertaining to mobile home registration, collection of sales and use taxes, and transaction documentation.

(e) Nothing in this section increases or decreases, or in any way preempts, consumer notice requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 and related regulations which are set forth in Section 5414 of Title 42 of the United States Code and Section 3282.255 of Title 24 of the Code of Federal Regulations.

10131.7. It is unlawful for any real estate licensee acting under authority of Section 10131.6 to do any of the following:

(a) To advertise or offer for sale in any manner any mobile home, unless it is either in place on a lot rented or leased for human habitation within an established mobile home park as defined in Section 18214 of the Health and Safety Code and the advertising or offering for sale is not contrary to any terms of a contract between the seller of the mobile home and the owner of the mobile home park, or is otherwise located, pursuant to a local zoning ordinance or permit, on a lot where its presence has been authorized or its continued presence and that use would be authorized for a total and uninterrupted period of at least one year.

(b) To fail to withdraw any advertisement of a mobile home for sale, lease, or exchange within 48 hours after the real estate licensee's receipt of notice that the mobile home is no longer available for sale, lease, or exchange.

(c) To advertise or represent a mobile home as a new mobile home.

(d) To include as an added cost to the selling price of a mobile home, an amount for licensing, as prescribed by Section 10751 of the Revenue and Taxation Code, except where the buyer and seller agree to the proration of the license fees for the applicable license period, or transfer of title of the mobile home as a vehicle, which amount is not due to the state unless, prior to the sale, the amount has been paid by the licensee to the state in order to avoid penalties that would have accrued because of late payment of the fees.

(e) To make any representation that a mobile home is capable of being transported on California highways if the mobilehome does not meet all of the equipment requirements applicable to mobilehomes of Division 12 (commencing with Section 24000) of the Vehicle Code, or to fail to disclose any material fact respecting those equipment requirements.

(f) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on the real estate licensee's behalf or at the real estate licensee's place of business, that no down-payment is required in connection with the sale of a mobilehome when down-payment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the mobilehome.

(g) To fail or neglect properly to cause the endorsement, dating, and delivery (or fail to endorse, date, and deliver) of the certificate of ownership or certificate of title of the mobilehome, and, when having possession, to fail to deliver the registration card to a transferee who is lawfully entitled to a transfer of registration. Except when the certificate of ownership or certificate of title is demanded in writing by a purchaser, the licensee shall satisfy the delivery requirement of this subdivision by submitting appropriate documents and fees to the Department of Housing and Community Development for transfer of registration in accordance with Chapter 8 (commencing with Section 18075) of Part 2 of Division 13 of the Health and Safety Code and rules and regulations promulgated there-under.

10132. A real estate salesman within the meaning of this part is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

10133. (a) The acts described in Section 10131 are not acts for which a real estate license is required if performed by:

(1) A regular officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership, respectively, or in connection with the proposed purchase or leasing of real property by the corporation or partnership, respectively, if the acts are not performed by the officer or partner in expectation of special compensation.

(2) A person holding a duly executed power of attorney from the owner of the real property with respect to which the acts are performed.

(3) An attorney at law in rendering legal services to a client.

(4) A receiver, trustee in bankruptcy or other person acting under order of a court of competent jurisdiction.

(5) A trustee for the beneficiary of a deed of trust when selling under authority of that deed of trust.

(b) The exemptions in subdivision (a) are not applicable to a person who uses or attempts to use them for the purpose of evading the provisions of this part.

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticulture, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any business of that type.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code, that is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Office of Thrift Supervision of the United States Department of the Treasury by its regulations, when acting under the authority of that written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(10) Any person licensed as a residential mortgage lender or services when acting under the authority of that license.

(b) Persons described in paragraph (1), (2), or (3), as follows, are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars (\$40,000) or less, in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

(c) (1) Subdivision (d) of Section 10131 does not apply to an employee of a real estate broker who, on behalf of the broker, assists the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, as defined in Section 50003 of the Financial Code, where the lender is an institutional lender, as defined in Section 50003 of the Financial Code, provided the employee does not participate in any negotiations occurring between the principals.

(2) A broker shall exercise reasonable supervision and control over the activities of nonlicensed employees acting under this subdivision, and shall comply with Section 10163 for each location where the nonlicensed persons are employed.

This section does not restrict the ability of the commissioner to discipline a broker or corporate broker licensee or its designated officer, or both the corporate broker licensee and its designated officer, for misconduct of a nonlicensed employee acting under this subdivision, or, pursuant to Section 10080, to adopt, amend, or repeal rules or regulations governing the employment or supervision of an employee who is a nonlicensed person as described in this subdivision.

10133.15. The provisions of Article 5 (commencing with Section 10230) and Article 7 (commencing with Section 10240) do not apply to any person whose business is that of acting as an authorized representative, agent, or loan correspondent of any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies or when making loans qualified for sale to any of the foregoing insofar as that business is concerned.

10133.2. The provisions of Sections 10131, 10131.1, 10131.2, and 10132 do not apply to any stenographer, bookkeeper, receptionist, telephone operator, or other clerical help in carrying out their functions as such.

10133.3. The provisions of Sections 10131 and 10131.2 relating to business opportunities do not apply to any person, partnership, corporation, or other legal entity which for another or others sells or offers to sell, solicits prospective sellers or purchasers of, solicits or obtains listings of, advertises for sale, buys or offers to buy, or negotiates the purchase, sale, or exchange of radio, television, or cable enterprises which are licensed and regulated by the Federal Communications Commission, or any successor agency, pursuant to the Communications Act of 1934, as amended and which purchase, sale, or exchange is not in substance a transfer of real property.

10133.35. A real estate broker's license shall not be required to engage in any of the following activities with respect to a mineral, oil, or gas property:

(a) To act as a depository under an oil lease, gas lease, or oil and gas lease other than for purpose of sale.

(b) To engage in any transaction subject to an order of a court of competent jurisdiction.

(c) To engage in the business of drilling for or producing oil or gas or mining for or producing minerals.

(d) To negotiate leases or agreements between an owner of mineral, oil, or gas lands, leases, or mineral rights, and a person organized for or engaging in oil or gas or mineral or metal production, or to enter into leases or agreements with an owner of mineral, oil, or gas lands, leases, or mineral rights on behalf of a disclosed or undisclosed person organized for or engaging in oil or gas or mineral or metal production.

(e) To deal with mineral rights or land, other than oil or gas rights or land, as the owner of the rights or land.

10133.4. (a) The provisions of subdivision (b) of Section 10131 do not apply to persons acting in the capacity of a film location representative in connection with a transaction which complies with the requirements of subdivision (c).

(b) As used in this section:

(1) "Film location representative" means an employee of a principal arranging for the use of real property for photographic purposes.

(2) "Principal" means the person who will use the real property for photographic purposes.

(c) In every transaction arranged by a film location representative, the principal shall maintain liability insurance insuring both that principal and the real property owner against death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the real property which is the subject of the transaction. The amount of the insurance coverage shall not be less than five hundred thousand dollars (\$500,000) per person or one million dollars (\$1,000,000) per occurrence for personal injury and five hundred thousand dollars (\$500,000) for property damage. It must be issued by an insurance carrier authorized to sell such insurance in California.

10133.5. The provisions of Article 5 (commencing with Section 10230) do not apply to any person who is an approved lender, mortgagee, seller, or servicer for the Federal Housing Administration, United States Department of Veterans Affairs, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, when making loans to be sold to, or when servicing loans on behalf of and subject to audit by, any of the foregoing with respect to those loans.

10135. When a lease or leasing is referred to in this article, it includes any lease, whether such lease is the sole transaction involved, or the principal or an incidental part of the transaction involved.

10136. No person engaged in the business or acting in the capacity of a real estate broker or a real estate salesman within this State shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose.

10137. It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesman licensed under the broker employing or compensating him; provided, however, that a licensed real estate broker may pay a commission to a broker of another State.

No real estate salesman shall be employed by or accept compensation from any person other than the broker under whom he is at the time licensed.

It is unlawful for any licensed real estate salesman to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he is at the time licensed.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

10137.1. Nothing contained in this division shall preclude a partnership from performing acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker.

10138. It is a misdemeanor, punishable by a fine of not exceeding one hundred dollars (\$100) for each offense, for any person, whether obligor, escrowholder or otherwise, to pay or deliver to anyone a compensation for performing any of the acts within the scope of this chapter, who is not known to be or who does not present evidence to such pay or that he is a regularly licensed real estate broker at the time such compensation is earned.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee in accordance with the provisions of this part relating to hearings.

10139. Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker

without being so licensed shall be guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding fifty thousand dollars (\$50,000).

10140. Every officer, agent or employee of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circularization of any false statement or representation concerning any land or subdivision thereof, as defined in Chapter 1 (commencing at Section 11000) of Part 2 of this division, offered for sale or lease, or, if the land is owned by the State or Federal Government, which such person offers to assist another or others to file an application for the purchase or lease of, or to locate or enter upon, and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any said land or subdivision, as defined in Chapter 1 (commencing at Section 11000) of Part 2 of this division, contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or causes the same to be issued, circulated, published or distributed, or who, in any other respect, willfully violates or fails to comply with any of the provisions of this section, or who in any other respect willfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand or requirement of the commissioner under this section, is guilty of a public offense, and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment, and, if a real estate licensee, he shall be held to trial by the commissioner for a suspension or revocation of his license, as provided in the provisions of this part relating to hearings. The district attorney of each county in this State shall prosecute all violations of the provisions of this section in respective counties in which the violations occur.

10140.5. Each advertisement or other statement which is published by a real estate broker or salesman offering to assist persons to file applications for the purchase or lease of, or to locate or enter upon, lands owned by the State or Federal Government shall, when published, indicate the name of the broker for whom it is published and state that he is licensed as a real estate broker by the State of California.

10140.6. A real estate licensee shall not publish, circulate, distribute, nor cause to be published, circulated, or distributed in any newspaper or periodical, or by mail any matter pertaining to any activity for which a real estate license is required which does not contain a designation disclosing that he is performing acts for which a real estate license is required.

The provisions of this section shall not apply to classified rental advertisements reciting the telephone number at the premises of the property offered for rent or the address of the property offered for rent.

10141. Within one month after the closing of a transaction in which title to real property or in the sale of a business when real or personal property is conveyed from a seller to a purchaser through a licensed real estate broker, such broker shall inform or cause the information to be given to the seller and purchaser in writing of the selling price thereof and in event an exchange of real property or a business opportunity is involved, such information shall include a description of said property and amount of added money consideration, if any. If the transaction is closed through escrow and the escrow holder renders a closing statement which reveals such information that shall be deemed compliance with this section on the part of the broker.

10141.5. Within one week after the closing of a transaction negotiated by a real estate broker in which title to real property is conveyed from a seller to a purchaser and a deed of trust secured by real property is executed, such broker shall cause such deed of trust to be recorded with the county recorder of the county in which the real property is located, or cause it to be delivered to the beneficiary with a written recommendation that it be recorded forthwith, unless written instructions not to record are received from the beneficiary. If the transaction is closed through escrow and the deed of trust is delivered to the escrow holder within the time prescribed by this section that shall

be deemed compliance with this section on the part of the broker. Nothing in this section shall affect the validity of a transfer of title to real property.

10142. When a licensee prepares or has prepared an agreement authorizing or employing such licensee to perform any of the acts for which he is required to hold a license, or when such licensee secures the signature of any person to any contract pertaining to such services or transaction, he shall deliver a copy of the agreement to the person signing it at the time the signature is obtained.

10143.5. Any real estate broker who assists another or others, or whose real estate salesmen assist another or others, for a compensation, in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the State or Federal Government shall report to the commissioner the names and addresses of all persons he or his salesmen have assisted in filing applications for land owned by the State or Federal Government and the amount of compensation received from such persons. The report shall be filed quarterly within 10 days after the end of each calendar quarter.

10144. The commissioner may prescribe by regulation the information which shall be contained in contracts or other agreements by a real estate broker, or a real estate salesman, to assist another or others in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the State or Federal Government, including, but not limited to, information with regard to the services agreed to be performed and information with regard to the hazards which may prevent the person to be assisted in filing an application with the State or Federal Government ever receiving any state or federal land under the application.

10145. (a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

(2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.

(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

10146. Any real estate broker who contracts for or collects an advance fee from any other person, hereinafter referred to as the "principal," shall deposit any such amount or amounts, when collected in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn there from for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned hereinafter have been mailed to the principal. Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of the trust account in accordance with the procedures set forth in Section 7473 of the Government Code.

The commissioner may issue such rules and regulations as he deems necessary to regulate the method of accounting, and to accomplish the purpose of the provisions of this code relating to advance fees including, but not limited to, establishing forms for and determining information to be included in such accountings. Each principal shall be furnished a verified copy of such accountings at the end of each calendar quarter and when the contract has been completely performed by the licensee. The Real Estate Commissioner shall be furnished a verified copy of any account or all accounts on his demand therefore.

Where advance fees actually paid by or on behalf of any principal are not handled in accordance with the preceding paragraph, it shall be presumed that the agent has violated Sections 506 and 506a of the Penal Code. The principal may recover treble damages for amounts so misapplied and shall be entitled to reasonable attorneys' fees in any action brought to recover the same.

10147. (a) On or before January 1, 1993, the Seismic Safety Commission shall develop, adopt, and publish a Commercial Property Owner's Guide to Earthquake Safety for distribution to licensees for purposes of Section 2079.9 of the Civil Code and, upon request, to any member of the general public.

(b) In developing the guide, the Seismic Safety Commission shall consult with the Office of Emergency Services, the Division of Mines and Geology of the Department of Conservation, the Department of Real Estate, and other interested agencies and persons.

(c) The commission shall, to the extent possible, rely on currently available data to develop the guide. To the extent necessary, the commission may contract for the development and production of the guide. The commission shall update the contents of the guide whenever it determines that information within the guide is sufficiently inaccurate or incomplete so as to reduce the effectiveness of the guide. The commission shall charge a fee to cover the costs of production, distribution, development, and updating the guide.

(d) The guide shall include, but need not be limited to, all of the following:

(1) Maps and information on geologic and seismic hazard conditions in the state.

(2) Explanations of typical structural and nonstructural earthquake hazards.

(3) Recommendations for mitigating the hazards of an earthquake, including references and explanations of what constitutes "adequate wall anchorage" as defined in Section 8893.1 of the Government Code.

(4) A statement that there are no guarantees of safety or damage prevention that can be made with respect to a major earthquake and that only precautions, such as retrofitting, can be taken to reduce the risk of various types of earthquake damage. For purposes of preparing the statement, the commission shall confer with insurers and design professional associations.

(5) Notice of the obligation to post a sign as required by Section 8875.8 of the Government Code.

10147.5. (a) Any printed or form agreement which initially establishes, or is intended to establish, or alters the terms of any agreement which previously established a right to compensation to be paid to a real estate licensee for the sale of residential real property containing not more than four residential units, or for the sale of a mobilehome, shall contain the following statement in not less than 10-point boldface type immediately preceding any provision of such agreement relating to compensation of the licensee:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

(b) The amount or rate of compensation shall not be printed in any such agreement.

(c) Nothing in this section shall affect the validity of a transfer of title to real property.

(d) As used in this section, "alters the terms of any agreement which previously established a right to compensation" means an increase in the rate of compensation, or the amount of compensation if initially established as a flat fee, from the agreement which previously established a right to compensation.

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

10149. (a) On or before July 1, 1992, the Seismic Safety Commission shall develop, adopt, and publish a Homeowner's Guide to Earthquake Safety for distribution to licensees for purposes of Section 2079.8 of the Civil Code and, upon request, to any member of the general public.

(b) In developing the guide, the Seismic Safety Commission shall consult with the Office of Emergency Services, the Division of Mines and Geology of the Department of Conservation, the Department of Real Estate, and other interested agencies and persons.

(c) The commission shall, to the extent possible, rely on currently available data to develop the guide. To the extent necessary, the commission may contract for the development and production of the guide. The commission shall update the contents of the guide whenever it determines that information within the guide is sufficiently inaccurate or incomplete so as to reduce the effectiveness of the guide. The commission shall charge a fee to cover the costs of production, distribution, development, and updating the guide.

(d) The guide shall include, but need not be limited to, all of the following:

(1) Maps and information on geologic and seismic hazard conditions for all areas of the state.

(2) Explanations of the related structural and nonstructural hazards.

(3) Recommendations for mitigating the hazards of an earthquake.

(4) A statement that there are no guarantees of safety or damage prevention that can be made with respect to a major earthquake and that only precautions, such as retrofitting, can be taken to reduce the risk of various types of earthquake damage. For purposes of preparing the statement, the commission shall confer with insurers and design professional associations.