

# DEPARTMENT OF REAL ESTATE FORUM



# TODAY'S AGENDA

- **Opening Remarks**
  - Introduction of Chief Deputy Commissioner, Jeffrey Mason
  - Introduction of Acting Chief Counsel, John Van Driel
- **Operations Report**
- **Audit Report**
- **Subdivisions Report**
- **Q & A**

# ADMINISTRATION

(IT, Fiscal & HR)

Legislation /  
Regulations

Audits

Consumer Recovery  
Account

Enforcement

Legal

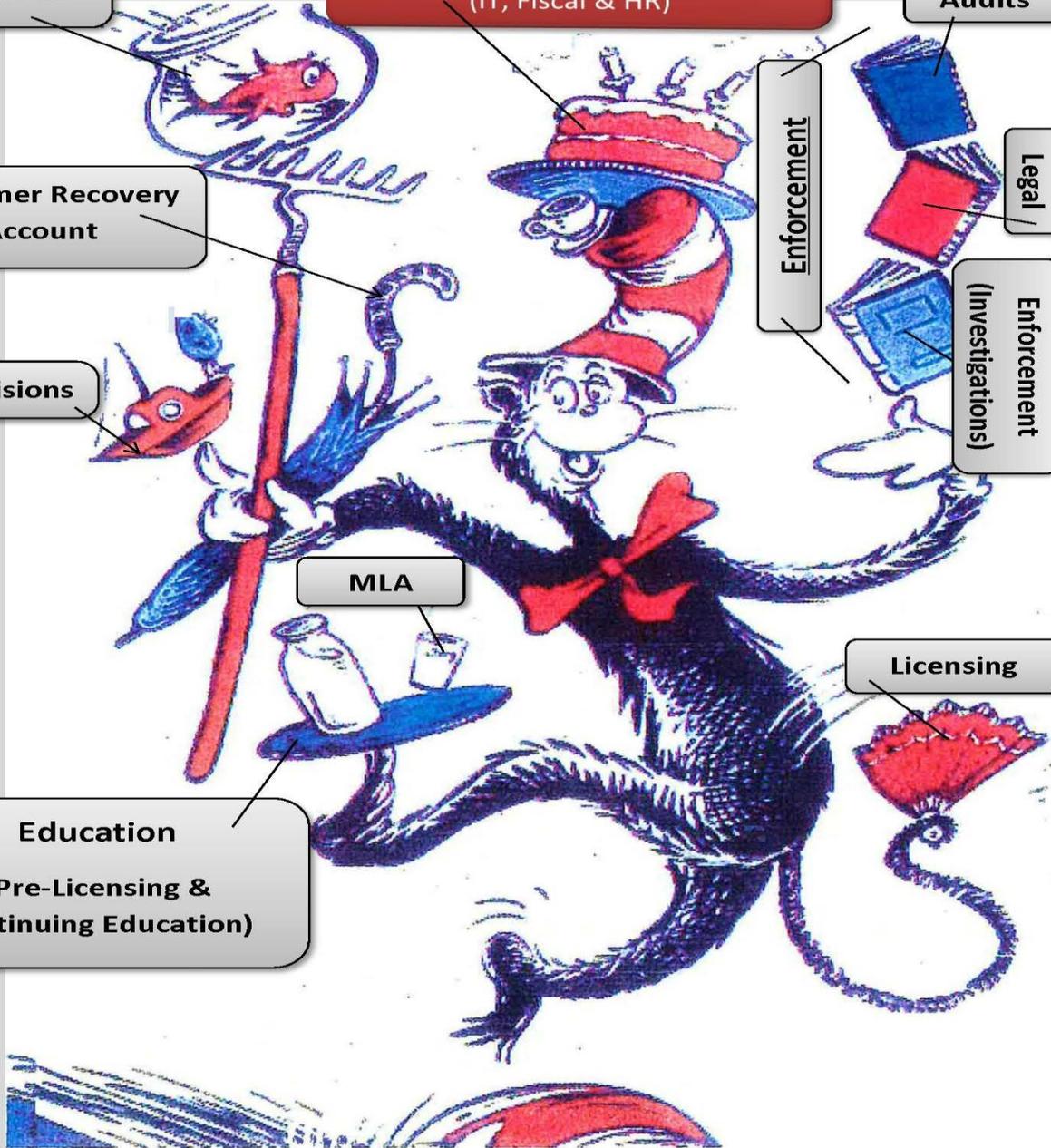
Subdivisions

Enforcement  
(Investigations)

MLA

Licensing

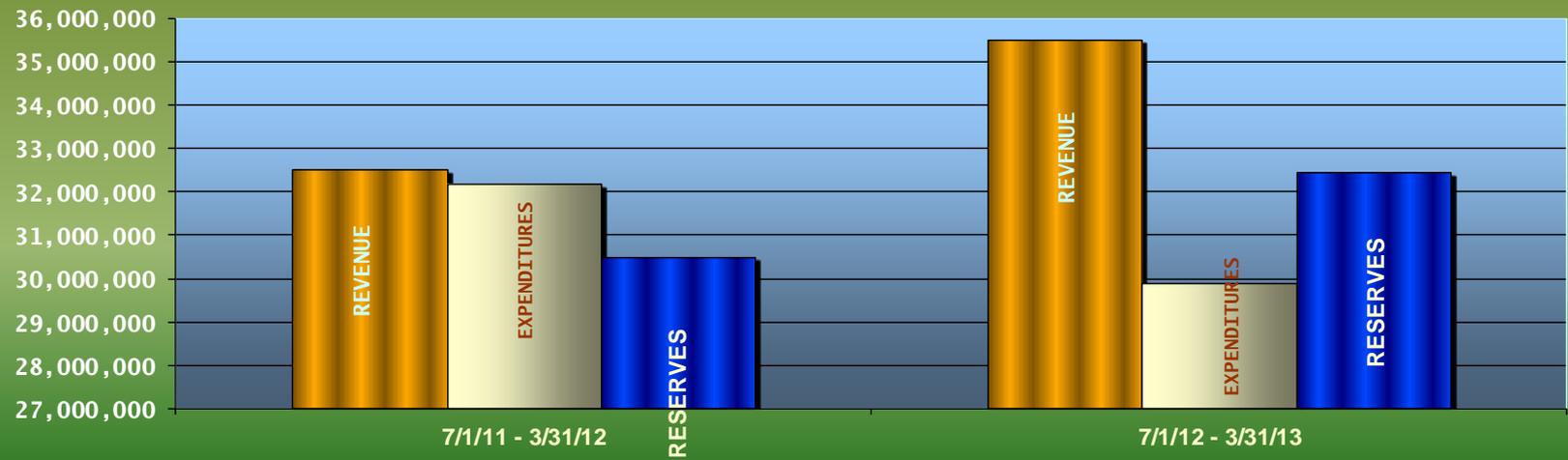
Education  
(Pre-Licensing &  
Continuing Education)



# OPERATIONS REPORT



# FY COMPARISONS



# FINANCIAL STATISTICS

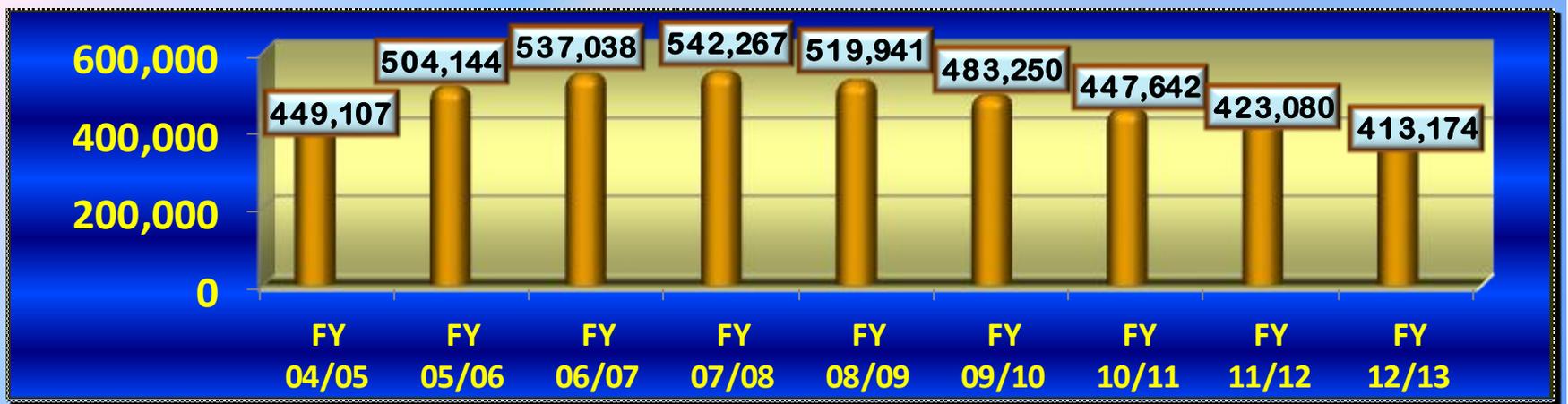
## 2013

MONTH	REVENUE	NET EXPENDITURES	RESERVES
07/31/2012	\$3,011,911	\$4,030,492	\$25,807,072
08/31/2012	\$3,177,870	\$3,126,248	\$25,858,694
09/30/2012	\$2,844,720	\$2,958,603	\$25,744,811
10/31/2012	\$3,421,963	\$3,046,296	\$26,120,478
11/30/2012	\$4,488,937	\$3,985,625	\$26,623,790
12/31/2012	\$4,847,027	\$3,263,710	\$28,207,107
01/31/2013	\$6,552,534	\$3,297,357	\$31,462,285
02/28/2013	\$3,283,244	\$3,640,295	\$31,105,234
03/31/2013	\$3,899,819	\$2,537,531	\$31,467,522

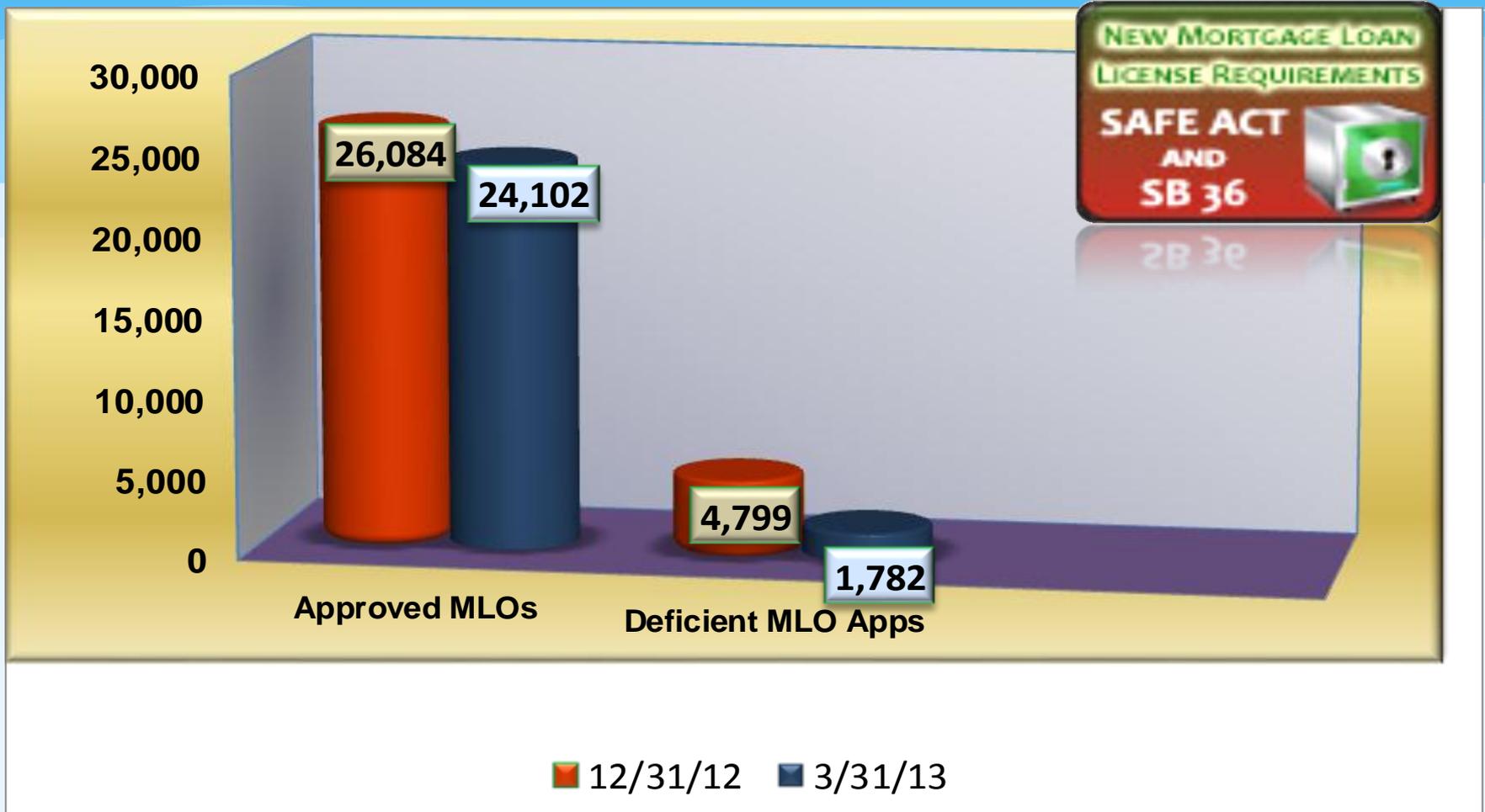
# LICENSING WORKLOAD



# LICENSE POPULATION



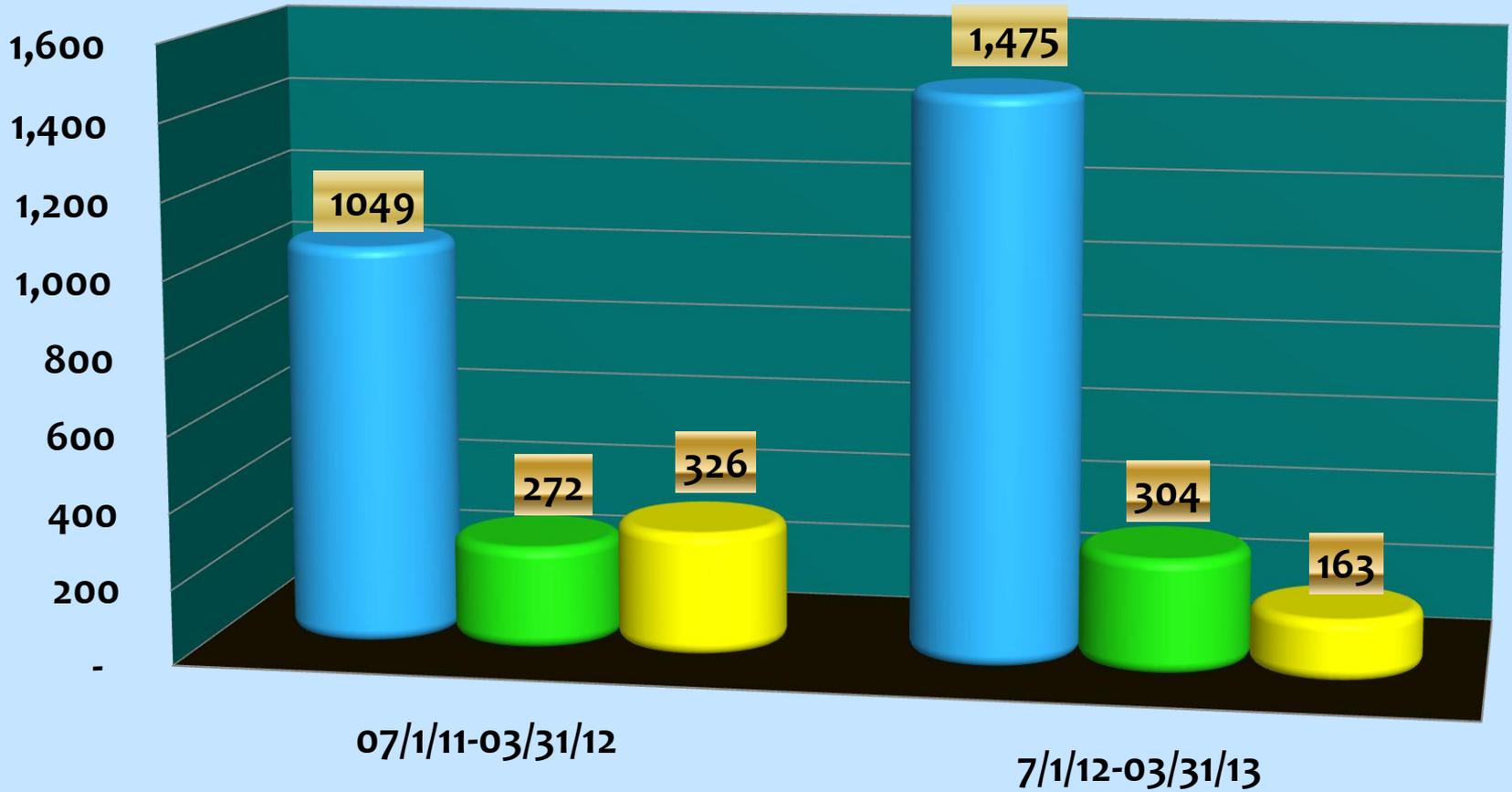
# MLO ENDORSEMENTS



# ENFORCEMENT RESULTS

Type of Order	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY TO DATE 3/31/13
Outright Revocation	247	375	528	484	560	636	450
Surrendered	46	72	106	90	114	138	90
Revocation w/Restrictions	147	122	146	149	114	144	105
Suspension	113	136	146	163	96	188	150
Public Repeal	10	4	11	20	16	18	11
Outright Denials	614	650	462	224	154	172	91
Denials w/Restrictions	770	508	346	135	91	105	69
Desist & Refrain Orders	79	74	145	161	202	213	134
Bar Orders	N/A	N/A	N/A	N/A	23	24	4

# SUBDIVISION COMPARISON

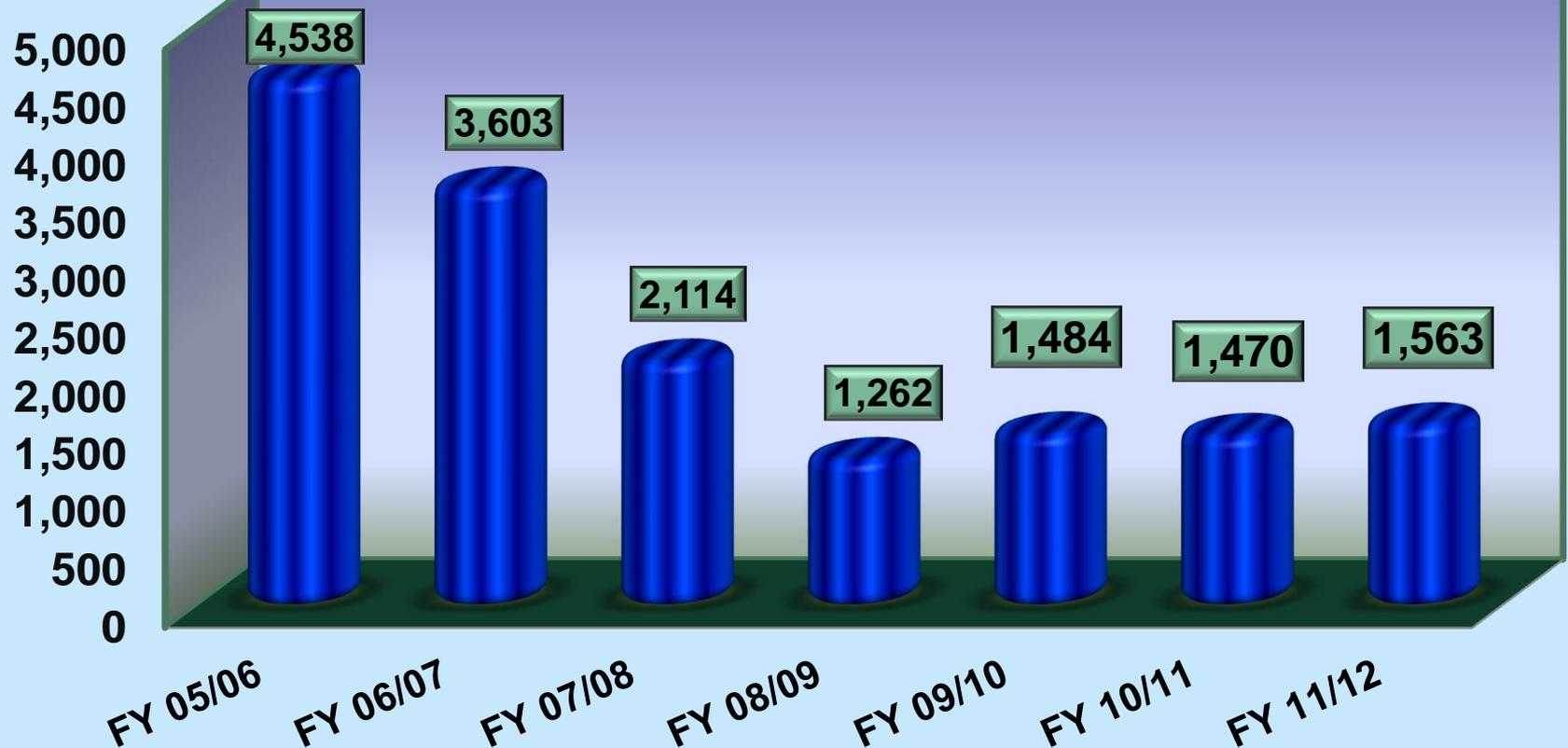


Final

Renewal

Amendment

# 7-yr SUBDIVISION PUBLIC REPORT COMPARISON



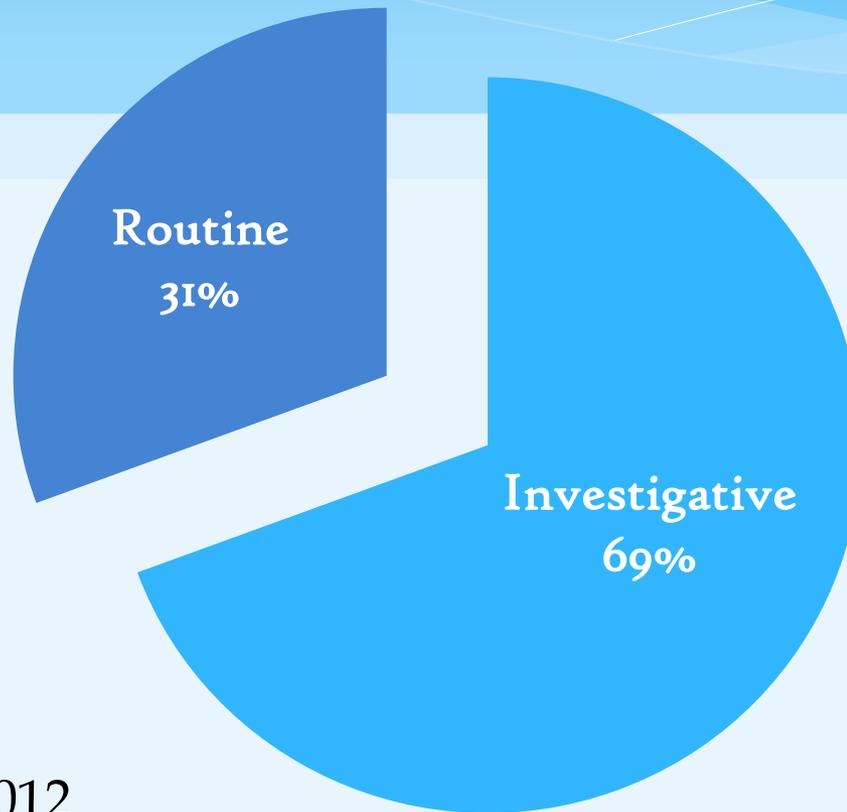
■ Final

# The Importance of Recordkeeping and Review DRE Audits



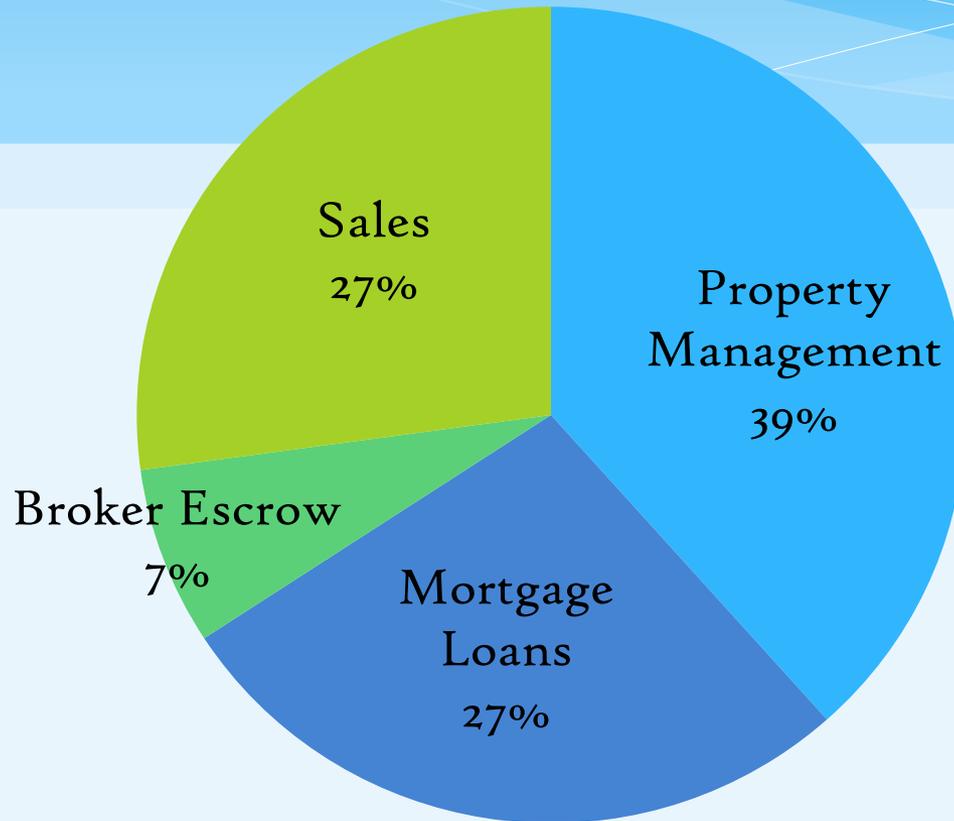
Dan Sandri  
Assistant Commissioner, Audits

# Types of Audits Closed Statewide - 2012



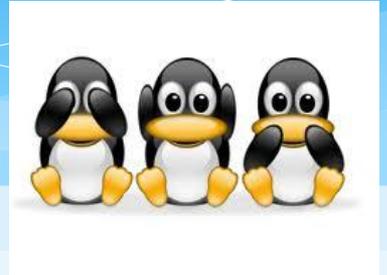
836 Audits  
Completed in 2012

# Audits Closed by Activities Statewide – 2012



836 Audits  
Completed in 2012

# The Importance of Recordkeeping and Review



- \* The top 5 violations found on DRE audits each relates to trust fund handling or trust fund recordkeeping.
- \* HOWEVER, compliance with each of these B&P Code sections or Commissioner's Regulations is extremely unlikely and of limited beneficial effect if the broker doesn't properly review and supervise.

# The Top 5 Audit Violations of 2012

## #5: Commissioner's Reg. 2831.1: Separate Record for Each Beneficiary / Transaction

- \* Usually related to incomplete or inaccurate Separate Records.
- \* Must have the detail referenced in Reg. 2831.1(a).
- \* Must account for Unidentified Funds



# The Top 5 Audit Violations of 2012

## #4: Commissioner's Reg. 2831.2: Trust Account Reconciliation

- \* This is a monthly reconciliation of Control Record to Separate Records.
- \* Do your monthly reconciliation between books and bank, **THEN** perform this **REQUIRED** reconciliation.



# The Top 5 Audit Violations of 2012

## #3: Commissioner's Reg. 2831: Record of All Trust Funds Received and Disbursed

- \* This is the columnar, glorified checkbook record.
  - Must be in chronological order, include all money in and out of the trust account, with all the required detail of Reg. 2831.

# The Top 5 Audit Violations of 2012

## #2: Commissioner's Reg. 2832: Trust Fund Handling

- \* If not sent to escrow or principal, trust funds must be deposited within 3 business days into trust account.
- \* Account designation often the issue – we look to the signature card.



# The Top 5 Audit Violations of 2012

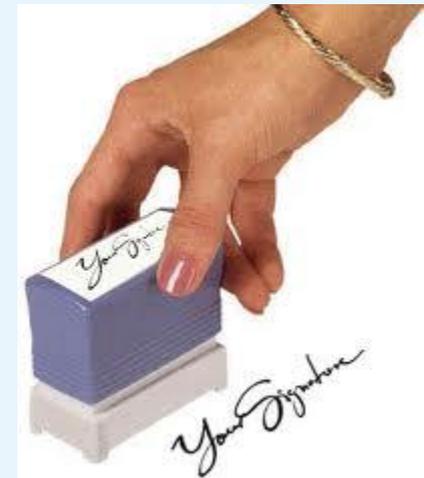


## #1: Business & Professions Code §10145: Handling of Trust Funds

- \* Trust funds must be placed into one of 3 places: a neutral escrow depository; or into the hands of the principal; or into a proper trust fund account.
- \* Interest-bearing account violations.

# Audit Case: Have Books, But No Oversight

- \* Property Manager – 265 properties (404 units) for 260 owners
- \* Collected \$6.5 million annually
- \* Managed through 1 trust account
- \* Broker was only Signatory on account
- \* **BUT...**
- \* There was a signature stamp, and 2 others had access to it...



# Audit Case



- \* The audit was scheduled, then delayed by the broker on the Friday before the appointment.
- \* Auditor was met at the entrance conference by the broker and attorney.
- \* Broker explained that, in middle of prep for audit, office manager (Mr. PM) confessed to “borrowing” money from the trust account.
- \* Attorney stated that, unknown to REB, Mr. PM had a gambling problem.

# Audit Case



## BACKGROUND:

- \* REB had hired Mr. PM, a trusted, close family friend, over 10 years prior.
- \* Bookkeeper was relatively new, suspicious of excuses, but felt Mr. PM was her boss.
- \* Mr. PM hid documents from bookkeeper, insisted on collecting rents and making deposits, and could get the signature stamp from unsecured desk.

# Audit Case



## FINDINGS:

- \* The audit revealed a trust fund shortage of \$313,268.17 as of 2/28/11.
- \* The shortage was due to:
  - Bank charges: \$2,147.74
  - Negative Owner Balances\* \$38,896.38
  - Checks to Business Acct \$72,100.00
  - Embezzlement \$110,614.83
  - Unidentified Cause(s) \$89,509.22

# Audit Case



How Mr. PM took trust funds:

- \* Collected and kept cash rents – these monies never made it to bookkeeper (\$38,700)
- \* Took cash from money to be deposited (\$68,000+)
- \* Forged trust account checks using signature stamp or by forging signature (at least \$37,000+ kept)

# Audit Case



**HOW** Mr. PM took trust funds:

- \* There was no effective separation of duties
  - Money-handling free-for-all!
  - Bookkeeper could have done so, too!
- \* Inaccuracy of records favors no detection
- \* The Broker did not supervise – records were not reviewed and there was no system to monitor compliance.

# DRE Audits: Trust Fund Shortages - 2012



\$5,188,453.44 in total trust fund shortages in 2012

Breakdown by real estate activity:

- \* \$3,330,392.12 – Property Management
- \* \$1,564,393.25 – Mortgage Loans
- \* \$294,642.07 – Broker Escrow
- \* \$9,026.00 – Sales



# Trust Funds/Recordkeeping Resources

On the DRE webpage – [www.dre.ca.gov](http://www.dre.ca.gov):

- \* MANY Real Estate Bulletin Articles
- \* Publications
  - Broker Compliance Evaluation Manual
  - Trust Funds Booklet
  - Real Estate Law Book
  - Real Estate Reference Book
- \* Trust Fund Recordkeeping forms



Home : Publications

## Publications



- Complete List of Publications
- 2012 Real Estate Law Book and CD
- Reference Book - A Real Estate Guide
- Presentation Material
- Instructions to License Applicants
- Using the Services of a Mortgage Broker
- A Consumer Guide to Filing Real Estate Complaints

### BULLETINS

- Real Estate Bulletin
- Mortgage Loan Bulletin
- Subdivision Industry Bulletin

### FORMS

- Audits
- Consumer
- Consumer Recovery Account
- Education and Research (Sponsors)
- Education (Licensees)
- Enforcement
- Examinations
- Licensing
- Licensing Change Requests
- Miscellaneous
- Mortgage Lending Brokers
- Prepaid Rental Listing Services
- Subdivisions

[En Español](#) [Chinese](#)

[Surviving the Real Estate Escrow Process in California](#) #RE 23 (New 11/10)  
Information about the real estate escrow process, including tips and mistakes to avoid.

[Brochure version](#) #RE 23 [En Español](#) [Chinese](#)

[Trust Deed Investments - What You Should Know!!](#) #RE 35 (Rev. 3/07)  
Explains the basic steps and factors involved in trust deed investments.

[Using the Services of a Mortgage Broker](#) #RE 35A (Rev. 8/11)  
Explains the basic steps and factors involved in a mortgage transaction handled by a broker.

[En Español](#) [In Chinese](#)

### LICENSEE/EXAMINEE PUBLICATIONS

[2012 Real Estate Law Book and CD](#) #RE 2 (Rev. 1/12)  
Contains the Real Estate Law and Subdivided Lands Law, the Regulations of the Real Estate Commissioner, the Administrative Procedure Act and pertinent excerpts from other California Codes related to the practice of real estate.



[Broker Compliance Evaluation Manual](#) #RE 5 (Rev. 8/10)  
Covers the important points of office procedure and trust fund handling by real estate brokers.

[Disclosures in Real Property Transactions](#) #RE 6 (Rev. 2005)  
Describes disclosures required of sellers and real estate salespersons.

[eLicensing Online System Brochure](#) #RE 11 (Rev. 11/11)  
Provides information for real estate examinees and licensees on the services available via DRE's interactive online eLicensing system.

[How to Obtain a Mortgage Loan Originator License Endorsement](#) #RE 19 New 10/11  
This brochure sets forth the general requirements for obtaining a MLO License Endorsement.

[Instructions to License Applicants](#) #RE 4 (Rev. 1/12)  
Provides information about how to obtain and maintain a California Real Estate License, a Prepaid Rental Listing Service License, and a Mortgage Loan Originator License Endorsement.

[Mortgage Loan Broker Compliance Manual](#) #RE 7 (Rev. 3/12)  
Assists the real estate broker who engages in mortgage loan activities with assessing compliance with DRE requirements. Includes a checklist.

[Reference Book - A Real Estate Guide](#) (Rev. 2010)  
Covers real estate principles and practices, useful for licensing exam preparation.



[Trust Funds](#) #RE 13 (Rev. 8/12)  
Explains requirements for proper handling of trust funds by real estate brokers and salespersons.

### SUBDIVISION PUBLICATIONS

[Operating Cost Manual for Homeowners Associations](#) #RE 8 (Rev. 4/07)  
Contains guidelines and worksheets for budget preparation and evaluation of expenses and investments.

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# Some Real Estate Bulletin Articles

- \* Summer 2012 – Fees Collected for Eviction Protection Services.
- \* Summer 2011 – Trust Fund Handling in an Electronic Age.
- \* Summer 2009 – Are You Collecting an Advance Fee?...More to Know
- \* Fall 2008 – Trust Fund Withdrawals – Commissioner’s Regulation 2834.
- \* Summer 2008 – Property Management Activities and Audits.

# Some Real Estate Bulletin Articles

- \* Summer 2008 – Property Management Activities and Audits.
- \* Summer 2006 – Trust fund handling and separation of duties.
- \* Summer 2004 – Trust fund handling requirements.
- \* Summer 2003 – Undisclosed compensation; Grounds for revocation of license.
- \* Spring 2002 – Broker’s, don’t allow property owners to have signatory or withdrawal power over your trust accounts.

# Trust Funds/Recordkeeping Resources



And *Coming Soon to the website...*

- \* PowerPoint Narrated How-To Presentations!
  - How To Reconcile Your Records and Accounts
  - How To Setup A Trust Fund Account
  - And other topics – Please Stay Tuned!

# Department of Real Estate Audit Section

Contact:

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# Subdivision Program Update

Chris Neri, Assistant Commissioner

# Subdivision Map Act

- \* Subdivides real property
- \* Local government jurisdiction
- \* Conditions of approval of subdivision map
- \* Enacts subdivision ordinances by which local government have direct control
- \* Objectives:
  - \* Coordinate subdivision design with the community plan
  - \* Insure subdivider will complete areas dedicated for public purposes

# Subdivided Lands Law (SLL)

Protect purchasers from misrepresentation, deceit and fraud in subdivision sales:

- \* Affirmative Standards
- \* Disclosure

# Affirmative Standards

- \* Suitability for intended use
  - Vehicular access
  - Potable water
  - Available utilities
  - Offsite improvements
- \* Fair dealing
  - Securing buyer's deposit money
  - Release of blanket encumbrances
  - Conveyance of proper title
  - Completion of common area

# Disclosure

- \* Public Report discloses significant information about the subdivision
- \* May include negative aspects of the offering:
  - \* Unusual present or future costs
  - \* Hazards or adverse environmental factors
  - \* Unusual restrictions or easements
  - \* Necessary special permits or improvements
  - \* Unusual financing arrangements

# What is covered by the SLL

- \* Intent to offer; sale, lease or financing (B&P Sec. 11000)
- \* Five or more lots, parcels, units or interests
- \* Improved or unimproved land or lands
- \* Contiguous or non-contiguous land
- \* Residential focus
- \* Land or lands located in California

# Exemptions

- \* Subdivisions consisting of less than 5 lots, units or parcels. (B&P Sec. 11000)
- \* Standard subdivisions located entirely within the city limits which will be sold with completed residential structures. (B&P Sec. 11010.4)
- \* Subdivisions expressly zoned for commercial or industrial purposes. (B&P Sec. 11010.3)
- \* Subdivided land offered for sale or lease by a state, local or other public agency. (B&P Sec. 11010.6)
- \* Bulk sales – builder to builder transactions of 5 or more lots, units or parcels. (B&P Sec. 11010.35)

# Types of Subdivisions

- \* Standard
- \* Common Interest
  - Condominium (Civil Code Sec 783)
  - Planned Development (B&P Sec 11003)
  - Stock Cooperative (B&P Sec 11003.2)
  - Community Apartment (B&P Sec 11004)
- \* Undivided Interests (B&P Sec 11000.1)

# Subdivision Sub-Types

- \* Master Plan Offerings (Reg. 2792.32)
- \* Continuing Care Subdivisions (Reg. 2792.33)
- \* Hotel Condominiums
- \* Mobile Homes (B&P Sec 11000(a))
- \* Tenancy-in-common (TIC's)
- \* Mixed-use subdivisions
- \* Condominium conversions

# Types of Public Reports

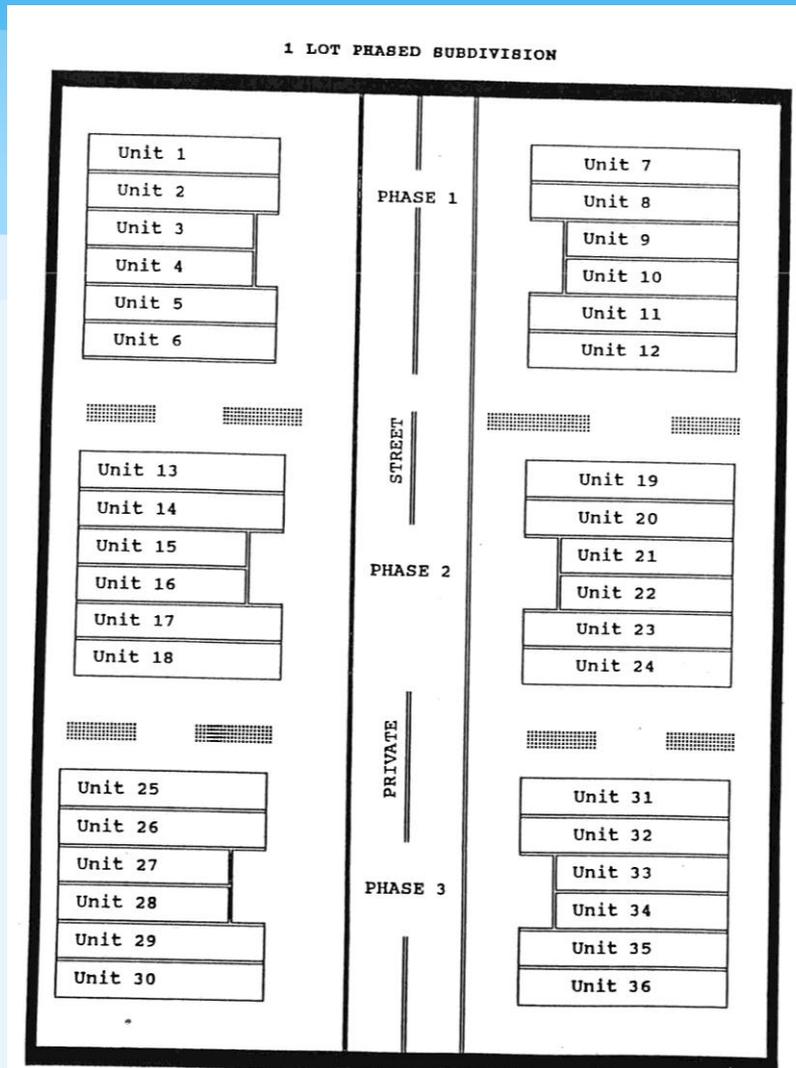
- \* Preliminary Subdivision Public Reports - (PINK) typical term of 1 year
- \* Conditional Subdivision Public Reports - (YELLOW) typical term of 6 or 30 months depending on the project type
- \* Final Subdivision Public reports - (WHITE) typical term of 5 years

*All of these reports can be amended or renewed, as needed.*

# Phases

- \* What is a phase?
- \* How is phasing accomplished?
- \* Reasons to increase phases in a project
- \* Completion of common areas
- \* Rental programs
- \* De-annexation of phase

# Phased Subdivision



# Purchase Contracts

DRE reviews purchase contracts for compliance with the Subdivided Lands Law and the Regulations of the Real Estate Commissioner:

- \* blanket encumbrances have been or will be released.
- \* purchase money handling clauses
- \* liquidated damages clauses
- \* incentive clauses

# Budgets

- \* Fixed, operating, and reserve differences
- \* Conversions – Special Considerations
- \* Maintenance divisions between HOA and homeowners
- \* Special assessments
- \* Common problems with HOA budgets

# Budgets (continued)

- \* Common areas
  - What is it?
  - When is it conveyed to HOA?
- \* Site inspections
- \* Re-Starting HOA and its impact on reserves

# Homeowner Associations (HOA)

- \* Incorporated or unincorporated
- \* Management documents
  - CCR's – Control by developer
  - Bylaws
  - Articles of Incorporation/Association
  - Contracts with HOA

# HOA Governing Documents

- \* Age restrictions
- \* Pet limitations
- \* Parking limitations
- \* Recreational facility rules
- \* Window coverings
- \* Rental restrictions
- \* Right of first refusal
- \* The state of repair of recreational facilities
- \* Responsibility for internal and external maintenance
- \* Existence of transfer fees
- \* Responsibility for insurance

# Common Violations

- \* Completion of common area
- \* Sales without a public report
- \* Misrepresentation
- \* Material Changes (Reg. 2800)
- \* Bonding remedies for HOA, homeowners
- \* Can not interpret a contract

# What Do You Need To Know?

- \* What constitutes a “subdivision”?
- \* Common interest governing documents
- \* The “Public Report”
- \* Use of the accepted purchase contract
- \* Use caution with “oral representations”
- \* Civil Code Section 1368

# Resale Transactions - Civil Code 1368

The following information must be provided to the prospective buyer:

- \* Governing documents (CC&R's, Bylaws and Articles)
- \* Age restricted property statement, if applicable
- \* Financial statements pursuant to Civil Code 1365
- \* HOA delinquency statement

# Resale Transactions - Civil Code 1368

- \* Notice of violation of the governing documents
- \* Construction defect information
- \* Any change in the HOA's current assessment structure
- \* Rental restrictions, if applicable

# Where to Find More Information

[www.dre.ca.gov/Developers/](http://www.dre.ca.gov/Developers/)

The following publications may be of assistance:

- \* Real Estate Law Book
- \* Reference Book
- \* Subdivision Public Report Application Guide (SPRAG)
- \* Operating Cost Manual
- \* Living in a Common Interest Development

# Q&A

# PANEL FORUM

## THANK YOU

This power point presentation and the audio file of the meeting will be made available in its entirety on the DRE website.

[www.dre.ca.gov](http://www.dre.ca.gov)

**Next Meeting – October 9, 2013  
Long Beach**



DRE  
CALIFORNIA

# Focus of “Enforcement” Effort

<p>“A” (Gold Standard) “B”  (“Good” )</p>	<p>“C” (Average)</p>	<p>“C-”  (“Bad”) (Maybe Fixable - Wobbler)</p>	<p><u>Thrust of Our Focus</u> “D”(More “Bad”) “F” (“Ugly”)</p>
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## Compliance Spectrum

No harm to public	No or little harm to public	Maybe legitimate	Public Harm
Legitimate License or Exempt	Legitimate License or Exempt	If legitimate - very simple Negligence / Minimal Incompetence	Illegitimate / Dishonest / Unlicensed / Non-Exempt
Follow the rules * <u>Compliance</u> *	Follow the rules * <u>Compliance</u> *	Failure to follow the rules	Rule Breakers – Criminals (Grossly Incompetent) Fraud (Incompetent / Bad Intent) *PROSECUTION*