



# California Department of Consumer Affairs Bureau of Real Estate Consumer Recovery Account

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*DCA Internal Audit Office  
Report 2016-102  
August 2016*



August 11, 2016

Wayne Bell, Commissioner  
Bureau of Real Estate  
1651 Exposition Blvd.  
Sacramento, CA 95815

Subject: Final Audit Report of the Consumer Recovery Account Audit –Bureau of Real Estate

Dear Mr. Bell:

Enclosed please find our final audit report for the Bureau of Real Estate (BRE). The audit was performed at the request of the DCA audit committee to provide an assessment of the Bureau's Consumer Recovery Account. The audit test period was Fiscal Years 2012/2013, 2013/2014 & 2014/2015. The last day of field work was May 2, 2016.

We received your response on August 2, 2016 and have included it in the report as Attachment I. As outlined in your response, the Bureau of Real Estate concurs with our audit findings and has taken action or plans to take corrective actions to improve its operations.

We will return to BRE for follow-up reviews after 180-days and 360-days from the date of the final report to evaluate your progress in implementing the audit recommendations.

We appreciate the cooperation extended by BRE's staff during the course of the audit. If you have any questions, please contact me at (916) 574-8192.

Sincerely,

A handwritten signature in blue ink, appearing to read "Annecia Wallace".

Annecia Wallace  
DCA Internal Audit Chief

cc: Awet Kidane, Director

Enclosure: Final Audit Report of the Consumer Recovery Account Audit – Bureau of Real Estate

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## **Report Summary**

The Department of Consumer Affairs' (department) Internal Audit Office completed a Consumer Recovery Account audit of the Bureau of Real Estate (Bureau). Our audit examined the Bureau's activities related to the Consumer Recovery Account.

To evaluate the Bureau's Consumer Recovery Account, we interviewed pertinent personnel, reviewed relevant documentation and processes. We performed compliance testing of key functions and compared actual operations to applicable laws, regulations, and guidelines. Our audit test period was Fiscal Years 2012/2013, 2013/2014 & 2014/2015.

Our audit revealed the Bureau had one deficiency related to the operations of the Consumer Recovery Account. The following audit issue is addressed in greater detail under the Finding and Recommendation section of this report:

1. The bureau did not establish and utilize a Consumer Recovery Account Fund for purposes related to the Consumer Recovery Account cases. Furthermore, the bureau did not allocate 12 percent of the revenue generated from license fees to the Recovery Account.

Recommendation: Ensure that all transactions related to the Consumer Recovery Account are completed using the designated fund account.

## **Background**

Originally enacted in 1917 as the Department of Real Estate, the Bureau of Real Estate's (BRE) programs are in place to satisfy its statutorily mandated obligations of licensing, approval of subdivision offerings, and consumer protection. Within the framework of requirements of Division 4 of the Business and Professions Code and the Regulations of the Real Estate Commissioner as contained in the California Code of Regulations, each of BRE's programs contributes toward satisfying its mission.

The core function and legal mandate of the BRE is to protect the consumer and the public through the administration of license examinations to evaluate real estate knowledge and expertise, issuance of real estate licenses to qualified individuals, regulation of real estate license activities, and qualification of subdivision offerings.

To carry out its primary responsibility to the public, the Bureau acts in concert with other governmental agencies, education providers, and community organizations to enhance its enforcement and consumer awareness efforts to lessen the risk of loss to consumers in real estate transactions. Through consumer outreach, the public is better able to make more informed decisions and protect themselves to the extent they are able. By educating its licensees, the Bureau helps ensure that they are aware of their legal responsibilities, as well as their fiduciary obligations to their clients. With increased interactions with law enforcement agencies, the Bureau can contribute to the criminal prosecution of licensed and unlicensed individuals who violate the law. By approaching these principal responsibilities from the multiple avenues of education and enforcement, the Bureau maximizes the effectiveness of its consumer protection efforts. However, when a consumer has been victimized, the Bureau enforces the provisions of the real estate law by investigating complaints, performing audits and taking appropriate administrative action.

The Consumer Recovery Account started operating in 1964 and is funded from a percentage of the fees paid by licensees. The purpose of the fund is to enable a person who has been defrauded or had trust funds converted by a real estate licensee in a transaction requiring that license, and who satisfies specified requirements (California Business and Professions Code Section 10471 et seq.) to recover at least some of his or her actual loss when the licensee has insufficient personal assets to pay for that loss.

The Bureau has processed over 4,000 applications from members of the public and paid in full or in part over 50% of the claims filed, totally more than \$41,000,000 since its inception.

## **Objectives, Scope and Methodology**

The objectives and scope of this audit were to determine:

- Whether policies and procedures are established to guide staff in effectively handling operational activities;
- Whether duties are clearly defined and adequate separation of duties exist;
- Whether BRE utilizes the Consumer Recovery Account as intended;
- Whether deposits, transfers and expended funds are completed as authorized;
- Whether Consumer Recovery Account claims/cases are properly processed;
- Whether the records are adequately managed; and
- Whether BRE complies with applicable laws and regulations.

The following procedures were performed to address the audit objectives:

- Interviewed key personnel, including BRE staff to obtain their perspectives;
- Reviewed available written policies and procedures governing BRE's operations;
- Reviewed prior audit reports;
- Tested the administrative internal control processes to determine if they are in accordance with the state and federal laws; and
- Determine whether the Bureau has adequate internal controls established for the Consumer Recovery Account.

## **Finding and Recommendation**

### **1. Consumer Recovery Account Fund Usage**

The bureau did not establish and utilize a Consumer Recovery Account Fund for purposes related to the Consumer Recovery Account cases. These accounts were not established prior to joining DCA or immediately after joining DCA. The accounts were established March 2016 during the fieldwork of this audit. Furthermore, the bureau did not allocate 12 percent of the revenue generated from license fees to the Recovery Account and 8 percent of the revenue generated to education and research.

California Business and Professions Code, Section 10450.6, states in part, "There shall be separate accounts in the Real Estate Fund for purposes of real estate education and research and for purposes of recovery which shall be known respectively as the Education and Research Account and the Consumer Recovery Account. The commissioner may, by regulation, require that up to 8 percent, or any lesser amount that he or she deems appropriate, of the amount of any license fee collected under this part be credited to the Education and Research Account. Twelve percent of the amount of any license fee collected shall be credited to the Consumer Recovery Account..."

BRE Consumer Recovery Account Unit Manual 2016, states in part, "Separate accounts have been established for education and research and for purposes of recovery. These funds are known as the Real Estate Education and Research Account and the Recovery Account. Twenty percent of all revenue from license fees are credited to the Real Estate Education and Recovery Account. Eight percent of the fees are allocated to education and research, and twelve percent is allocated to the Recovery Account for payment of applications against the Recovery Account."

This results in limited and/or nonexistent accounting records specifically related to expenditures, transfers in and out, deposits, withdrawals, balance history, and minimum and maximum balance limits associated with the restrictions of the funds.

#### **Recommendation:**

Ensure that all transactions related to the Consumer Recovery Account are completed using the designated fund account. Additionally, ensure the account is maintained in accordance with the requirements of the California Business and Professions Code and Generally Accepted Accounting Principles.



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GOVERNOR EDMUND G. BROWN, JR. 

## MEMORANDUM

<b>DATE:</b>	August 2, 2016
<b>TO:</b>	Naomi Banks, Associate Management Auditor
<b>cc:</b>	Stephen M. Lerner, Assistant Commissioner for Legal Affairs Angela Cash, Consumer Recovery Account Counsel
<b>FROM:</b>	Wayne S. Bell, Real Estate Commissioner
<b>SUBJECT:</b>	CORRECTIVE ACTION PLAN

In response to the Department of Consumer Affairs - Internal Audit Office's request, please find attached the Consumer Recovery Account's Corrective Action Plan.

**Bureau of Real Estate  
Consumer Recovery Account  
Corrective Action Plan**

**Finding and Recommendation**

**1. Education and Research Account Fund and Consumer Recovery Account Fund Usage**

The bureau did not establish and utilize an Education and Research Account Fund and a Consumer Recovery Account Fund for purposes related to the Consumer Recovery Account cases. These accounts were not established prior to joining DCA or immediately after joining DCA. The accounts were established March 2016 during the fieldwork of this audit. Furthermore, the bureau did not allocate 12 percent of the revenue generated from license fees to the Recovery Account and 8 percent of the revenue generated to education and research.

California Business and Professions Code, Section 10450.6, states in part, "There shall be separate accounts in the Real Estate Fund for purposes of real estate education and research and for purposes of recovery which shall be known respectively as the Education and Research Account and the Consumer Recovery Account. The commissioner may, by regulation, require that up to 8 percent, or any lesser amount that he or she deems appropriate, of the amount of any license fee collected under this part be credited to the Education and Research Account. Twelve percent of the amount of any license fee collected shall be credited to the Consumer Recovery Account..."

BRE Consumer Recovery Account Unit Manual 2016, states in part, "Separate accounts have been established for education and research and for purposes of recovery. These funds are known as the Real Estate Education and Research Account and the Recovery Account. Twenty percent of all revenue from license fees are credited to the Real Estate Education and Recovery Account. Eight percent of the fees are allocated to education and research, and twelve percent is allocated to the Recovery Account for payment of applications against the Recovery Account."

This results in limited and/or nonexistent accounting records specifically related to expenditures, transfers in and out, deposits, withdrawals, balance history, and minimum and maximum balance limits associated with the restrictions of the funds.

**Recommendation:**

Ensure that all transactions related to the Consumer Recovery Account are completed using the designated fund account. Additionally ensure the account is maintained in accordance with the requirements of the California Business and Professions Code and Generally Accepted Accounting Principles.

**Bureau of Real Estate  
Consumer Recovery Account  
Corrective Action Plan**

**Corrective Action Plan**

Although the Bureau of Real Estate did not utilize a separate and segregated fund for the Consumer Recovery Account prior to March 2016, the Bureau of Real Estate set aside sufficient funds from the Real Estate Fund to meet Consumer Recovery Account claim obligations.

Effective July 1, 2016, the Bureau of Real Estate has allocated twelve percent of all revenue from license fees to a separate fund for the Consumer Recovery Account. In addition, all transactions related to the Consumer Recovery Account are completed using this designated fund account.