We defend each answer with an explanation based on citations from the book. The citations are shown on a yellow background in Times-Roman.

Paragraphs labeled as Notes contain supplemental information we think useful but which is not part of the course. Paragraphs labeled Comments contain the author’s asides or opinions and may be ignored.

Recommendation: If you don’t fully understand a question or its explanation, we suggest you read the section in the book on which the question is based.

The quiz questions are much more difficult than questions on the final. In most cases, the quiz questions are longer, offer more choices, make greater use of real estate jargon, and require harder thinking than do questions on the final. And, unlike the questions on the final, a few quiz questions are tricky.

1. **1.2.1.1.2: JOINT AND SEVERAL LIABILITY**

The “deep pocket” rule states that a plaintiff awarded monetary damages from multiple defendants must recover his entire judgment from the defendant most responsible for his injuries.

False The ‘deep pocket’ rule states that when a plaintiff is awarded damages against multiple defendants, the plaintiff may recover the full amount of his judgment from any single defendant regardless of that defendant’s degree of liability.

Note: When multiple defendants are found liable, a plaintiff will usually collect from the defendant he believes has the greatest ability to pay. Often this will be the defendant with the best insurance.

2. **1.2.1.2.3: NEGLIGENCE**

A broker owes third parties the duty of utmost care.

False A broker owes his principal the duties of “utmost care” and “loyalty” but does not owe these same duties to a third party.

Citation: The duties you, as a fiduciary, owe your client are loyalty, honesty, integrity, and utmost care (CC §2079.16). The duties you owe third parties are: competence, fairness, and disclosure.

Note: The Agency Disclosure form mandated by CC §2079.16 lists the fiduciary’s duties as “utmost care,” “integrity,” “honesty,” and “loyalty”; and the duties owed to third parties as “honesty,” “fair dealing,” and “good faith.”

3. **1.2.2.3.1: ARBITRATION**

Arbitration decisions are a matter of public record.

False …unlike public justice where all documents and proceedings are open to the public; arbitration is 100% private.

Note: Arbitration findings, unlike the findings of a civil court, are not made public and are therefore unknown to CalBRE.
4. 1.2.2.3.2: LITIGATION

The standard of proof in civil cases is “clear and convincing proof to a reasonable certainty.”

**False**  In civil cases the standard of proof is “a preponderance of the evidence.”

Administrative courts use the standard of “clear and convincing proof to a reasonable certainty” and criminal courts use the standard of “beyond a reasonable doubt.”

5. 1.3.1.2: AVOID VEXATIOUS CLIENTS

Betty represents Bob. After working with Bob for two weeks she concludes Bob is a waste of her time. But because Betty signed a representation agreement with Bob, she has a professional and ethical duty to continue representing him.

**False**  Neither NAR®’s Code, the Real Estate Law, or CAR®’s Buyers Representation Agreement in anyway prohibits an agent from firing his client. As Robert Bass once quipped, “the last time I looked, disagreeable SOB’s are not a constitutionally protected class!”

6. 1.3.2.2: TRANSACTION FILE

The best reason for a salesperson to keep the important emails he sent to his clients is to …

A. provide documentation for his defense should he be sued.
B. comply with the Real Estate Law.
C. pass a compliance audit by CalBRE.

**(A)**  The most compelling reason for maintaining a transaction file (a file or files containing every document material to a given transaction) is to provide the documentation needed to defend yourself should you be sued. Citation: According to Barbara Nichols, a Los Angeles risk management expert: … “the best advice is to keep all transaction files for at least five years and major contracts, such as the listing agreement, purchase contract, and disclosure forms for 10 years.”

**(B)**  is wrong for three reasons: (1) The Real Estate Law requires brokers (not salespersons) to keep transaction files, (2) the Law requires the broker to keep the transaction file for no longer than three years – not five, and (3) the Law specifically exempts brokers from the requirement to retain electronic messages of an ephemeral nature which CalBRE regards as a reference to tweets, text messages, and emails.

**(C)**  is wrong because the responsibility to maintain the transaction file goes with the broker not the salesperson. Nevertheless, the salesperson should keep his own transaction file to protect himself should he be sued.
7. 1.3.3.4.1.1: E&O

E&O covers the defense of lawsuits and consequent money judgments for all of the following violations resulting from professional negligence except ...

A. failure to disclose.
B. breach of duty.
C. excessive compensation.
D. conflict of interest.
E. failure to secure adequate pricing.
F. discrimination based on a protected group.

Most [E&O] policies exclude: • intentional acts (except for innocent participants), • acts performed outside the scope of agency, • personal injury, • suits alleging environmental damage (especially toxic mold), • fair housing violations (except, possibly, for defense), • commission disputes, • transactions for properties owned by the broker, and • issues pertaining to trademarks.

Typical claims covered are those alleging misrepresentation, failure to disclose, breach of duty, excessive compensation, conflict of interest, and failure to secure adequate pricing.

E&O insurance (aka, “professional liability insurance”) is designed to cover the legal expenses and damage awards for “goofs”; that is, negligent acts where the broker (or an associate) has inadvertently neglected to do something he should have done pursuant to rule or custom.

Note: It is violation of the fair housing laws for any licensee to make any decision concerning another based in whole or in part on that individual's membership in a legally-defined “protected group.” For example, steering Vietnamese immigrants to Vietnamese neighborhoods would be a fair housing violation (assuming the Vietnamese immigrants didn’t ask to see homes in Vietnamese neighborhoods).

8. 1.4.1.2.1: VISUAL

Which picture is efflorescence?

A. Picture ‘A’
B. Picture ‘B’
C. Picture ‘C’

Efflorescence is a white chalky substance consisting of minerals left from the evaporation of water.

Notes:

(A) is wrong because it depicts dry rot.
(C) is wrong because it depicts termite shelter tubes.
9. 1.4.1.3: WATER

The life cycle of dry rot is most similar to …

A. mistletoe.
B. moss.
C. a mushroom.
D. lichen.
E. a fern.

[C] Dry rots and mushrooms are both fungi; both feed on organic material in the presence of moisture.

Citation: The life cycle of dry rot is similar to that of the best known fungi – the mushroom.

Note: Molds are also fungi but differ from both dry rots and mushrooms in one important respect: Molds grow on the surface of the substances on which they feed while dry rots and mushrooms grow within the substances on which they feed. The visible portion of the mushroom, for example, is the mushroom’s bloom but the more massive body of the fungi lies below the surface. The same is true for a dry rot. This means when the dry rot’s bloom appears, it is usually too late to save the underlying wood.

10. 1.4.1.5: TERMITES

These are termite galleries.

True Galleries: These are the most telling and distressing sign of termite damage since they reduce the strength of the lumber in which they are found.

11. 1.4.3: PROFESSIONAL PEST INSPECTION

What statement about pest inspections is true?

(A) Pest inspections are required by law for all resales except tear-downs.
(B) Most lenders do not require pest inspections for concrete homes.
(C) By custom, the buyer selects and pays for the inspector.
(D) The pest inspector is professionally liable only to the buyer.
(E) The pest inspector should not make repairs.
(F) Lenders normally require a pest inspection when financing a new home.

(F) Even new homes framed with wood should be required to pass a pest inspection. New homes, albeit rarely, have been known to be constructed using rotten wood and, furthermore, the pest inspector not only looks for active infestation and past damage but also for conditions likely to promote infestation (e.g., a poorly ventilated attic). (Sorry if we fooled you by specifying “new home.” The law does not require any home to have a pest inspection AND the law does not license pest inspectors.)

The following answers are wrong for the reason listed:

(A) A pest inspection is not a legal requirement for the sale of a home but a “clean” pest inspection report is required by virtually all mortgage lenders before it will grant a loan.
(B) Homes made of inorganic materials such as concrete, AAC, or steel require a pest inspection because there is still plenty of wood for termites to munch in concealed parts of the home.
(C) By custom, the seller selects the inspector, pays for the inspection, and pays for the corrective work.
(D) The pest inspection service is legally accountable to both the seller and buyer.

(E) Unlike reputable home inspectors who do not bid for repairing the defects they find, pest inspectors make most of their profits from repairs.

Note: Remember, we feel entitled to fool you on the quiz questions but not the final questions.

12. 1.4.4.3.1: Legal Issues

California law prohibits any home inspector from contractually limiting his liability to his fee.

True For example, suppose a home inspector fails to find a leak in a master shower pan which subsequently costs the new owner $5,000 to repair. In this situation, the home inspector may not limit his liability to his inspection fee.

Citation: BPC §7198 states that contracts with provisions which waive the inspector’s duty to conduct a professional home inspection (per §7196) or limit the inspector’s liability to his inspection fee are invalid as such provisions are contrary to public policy. In other words, home inspectors are liable for negligence.

13. 1.4.4.3.3: Qualifying Home Inspectors

Which section title in a home inspector’s report would make you suspicious of the inspector’s objectivity?

A. “Energy Saving Recommendations”
B. “Areas Not Examined”
C. “Cost Estimate of Suggested Repairs”
D. “Priority List of Repairs”
E. “Problems Which Should be Assessed by other Professionals”
F. “Safety Issues”
G. “Recommended Service Providers”

One of the questions you should ask when qualifying a home inspector for future engagements is: If your inspection finds defects, can you perform repairs or recommend someone who can? The answers should be “no” and “no.” You want a professional home inspector who makes his living only from home inspection and not from making repairs.

Another question you should ask: Can you provide me a sample of your home inspection report? The answer should be “yes.” When you receive the sample home inspection report you will want to make sure it includes these seven sections: (1) a description of areas not examined with corresponding explanations for why they were excluded, (2) guidelines for estimating the cost of repairs, (3) recommendations for consulting other professionals such as arborists or structural engineers, (4) a prioritization of repairs with justifications, (5) estimates for the remaining life expectancy of critical home systems such as the roof, (6) a list of potential safety issues, and (7) a list of recommendations for improving the energy efficiency of the home.
14. 1.4.5.4: STIGMATIZED PROPERTIES

One month after Doris moved into her new home her neighbor, Fred, was astonished to learn that she hadn’t known about the family of five that had been slaughtered in Sally’s very own home ten years before. From another neighbor, Doris learned that her seller’s listing agent had asked neighbors to keep quiet about the quintuple murder. Because Doris would not have purchased her new home had she known of the horrific murders, the seller and his agent are liable to Doris for misrepresentation.

False (incredibly). The facts cited in this question are the facts given in Reed v. King, 1983. In that case, the trial court answered ‘True’ – yes, the seller and his agent were liable to Doris for withholding from her their knowledge of the Vichi Murders (“no, DADDY, NO!” pleaded one of Vichi’s daughters just before her Dad dispatched his little girl with his 22). However, on appeal the appellate court answered ‘False’. In other words, the trial court considered the seller’s non-disclosure of the Vichi Murders material while the appellate court considered the non-disclosure immaterial.

So you may be asking, why is the answer ‘False’?

Subsequent to the ruling, in 1987 the California Legislature at CAR®’s urging passed a law that became CC §1710.2 (source). It states that “No cause of action arises against an owner of real property or his or her agent ... for the failure to disclose to the transferee the occurrence of an occupant’s death ... or the manner of death where the death has occurred more than three years prior to the date the transferee offers to purchase ... the real property.”

Says Jon Cambell in a Village Voice article about this wording:

The confused, somewhat ambiguous wording of the statute reflects the confused, somewhat ambivalent rulings (such as the Reed case) themselves. In plain language, it says that a broker or seller can’t be sued when a death in a home occurred over three years ago. On the other hand, it doesn’t require a broker to disclose a death that’s less than three years old, which is what makes the legislation such a masterpiece of legalistic gobbledygook. ... {The law} indicates what you are not prohibited from not doing.

CC §1710.2 law immunizes both brokers and sellers from liability for withholding their knowledge of any death occurring in the seller’s home three or more years prior to sale but if the death was within the three year window and is material to the buyer, then the nondisclosure could be actionable. For example, a death from a home invasion robbery in which the murderers had selected the home for its proximity to the freeway.

Note #1: The quintuple murder that occurred in Doris’ home, known as the “Vichi Murders” occurred in 1971 in Grass Valley California. The murder and the statute, CC §1710.2, is described in some detail in this article from the Village Voice.

Note #2: Rocket News 24 (an English-language site which reports news from Japan and Asia) reports that in Asian cultures, potential buyers are adamant against living where someone has died unnaturally. Tokyo developers have designed the website Oshima Land, where you can type in an address to determine if such an act has in fact been committed at that location and the page’s radius has recently been expanded to include North America. (Source)

Note #3: Had Doris asked the seller, “Do you know of any deaths which have occurred in this house?” The seller would have been liable to Doris had she feigned ignorance of the quintuple murder.

Note #4: Any AIDS-related death no matter when it occurred is legally non-material (CC §1710.2); however, this does not mean that the seller is not liable for misrepresentation if he lies about anything including an AIDS-related death in his home (source).
**Recommendation:** Consider compiling a standard list of questions to present to sellers covering areas of concern not covered elsewhere in the selling process. To this list include the questions “Has anyone ever been the victim of a crime which occurred in this home?” and “Do you know of anyone who has died in this home?”

15. **2.1.1.1.2: 2014 Legislation**

Of the several State laws passed in 2014, which is incorrectly described.

A new law passed in 2014 …

A. requires every new licensee to be a U.S. citizen.
B. allows an HOA to require an owner to maintain a “designated common area.”
C. requires an escrow to notify HELOC lenders that they should suspend further draws.
D. allows teams to advertise under a name not license with a DBA.
E. allows CalBRE to require each licensee to provide his email address.
F. prohibits CalBRE from denying a license for an expunged conviction.

(A) **SB 1159** requires all 40 licensing boards under the Department of Consumer Affairs (which includes CalBRE) to consider applicants regardless of immigration status by 2016.

All the other choices correctly describe laws enacted in 2014.

(B) **AB 968** delineates default responsibility between an HOA and a homeowner for repairing, replacing, and/or maintaining various spaces in a CID unless otherwise provided in the governing documents.

(C) **AB 1770** requires the use of a form to instruct the lender to suspend all activity on a line of credit and close the account so that no draws can be made on the HOA line of credit during the refinance process.

(D) **AB 2018** allows a salesperson to use a “team name” without filing for a fictitious business name (aka, “DBA”) if certain conditions are met.

(E) **AB 2540** requires real estate licensees to provide CalBRE with an up-to-date mailing address, telephone number, and e-mail address used for licensed activity.

(F) **AB 2396** precludes a licensing board or bureau from denying a license application solely on the basis of a conviction that has been dismissed.

16. **2.1.1.1.3: 2013 Legislation**

Of the State laws passed by in 2013, which law is incorrectly described:

A. A licensee’s falsification of records is grounds for disciplinary action.
B. A foreclosing lender may recover his deficiency using a collection agency.
C. Sellers must disclose pre-litigation claims against their builders.

(B) Prior to SB 426, some lenders were using collection agencies and other non-judicial means to try to collect their foreclosure losses (i.e., deficiencies) on purchase money loans (loans where the money advanced was used only for the purchase of the property). SB 426 closes this loophole thus making it illegal for a lender to collect a deficiency by any means whatsoever.

The remaining choices correctly state other State laws passed in 2013:

(A) **SB 676** clarifies that willful destruction or falsification of records required to be maintained by a CalBRE licensee is grounds for disciplinary action. {It’s hard to believe that this wasn’t always the case.}
(C) SB 652 revises the standard disclosure statement used in real estate transactions by requiring a seller of real property to disclose all pre-litigation claims for damages made by the seller to the potential buyer. An example of a “pre-litigation claim” would be a demand for a builder to fix a leaky roof.

17. 2.1.1.4.3: AB 1718 BROKER LICENSES

A candidate for a broker’s license must …

A. be a California resident.
B. be 21 to 85 years of age.
C. have a degree in real estate or experience in a related field.
D. have a four-year college degree.
E. be licensed as a salesperson.
F. have no felony convictions.

(C) A broker candidate must have two or more years full-time experience in a real-estate related profession and a four year college degree ... with a major or minor in real estate can be considered as equivalent to two years’ experience. (A 19-year-old could not meet the two-year experience requirement since one must be at least 18 years of age to have a salesperson license.)

Note: Before AB 1718 became law in 2014, anyone with a four year college degree in any discipline was exempt from the experience requirement for becoming a broker. As a result of that law, the only broker candidates now exempt from the experience requirement are college graduates majoring or minoring in real estate. Also, instead of two years experience selling real estate as a licensed salesperson, other real-estate related experience qualifies; for example, experience as an escrow or an appraiser.

(A) is wrong because any legal resident can become a broker (and, in 2016, any illegal resident can become a broker (source)). (In case you are wondering, both the salesperson and the broker exams are given only in English.)

(B) is wrong because you need only be 18 years of age or older and there is no maximum age requirement for a broker applicant.

(D) is wrong because there is no educational attainment requirement to be a broker – sixth grade drop outs may be brokers.

(E) is wrong because some broker applicants do not need to be licensees. These would include (1) college graduates with a major or minor in real estate, (2) applicants with two or more years in real estate-related fields such as real estate law, mortgage lending, and real estate sales experience earned in another state.

(F) is wrong because an applicant can have a criminal history providing it does not include a conviction for a crime of dishonesty (click here for a list of the most common disqualifying convictions). The disqualifying convictions can be for a felony or a misdemeanor. Moreover, one may even have a criminal history which includes one-or-more disqualifying crimes providing the applicant can demonstrate that he is a rehabilitated criminal (click here for CalBRE’s criteria for determining if an applicant has been rehabilitated).
18. **2.1.1.4.6: AB 2610 TENANTS: FORECLOSURE AND UNLAWFUL DETAINER**

Bob purchases a 50-unit apartment building at a trustee’s sale. All units are occupied and all tenants rent month-to-month. Bob wishes to demolish the building to build his dream home. How many days must Bob wait before bringing in the wrecking ball?

A. 90 days.
B. 60 days.
C. 30 days.

(A) **AB 2610**, which became law in 2012, requires the new owner of a foreclosed building to give its current occupant(s) a 90-day eviction notice or a new lease. The law also requires the new owner to honor any existing lease with more than 90 days remaining UNLESS the new owner plans to make his purchase his primary residence. Had any of Bob’s tenants had long leases, Bob might have been able to break their leases on the supposition that the property he purchased would become his primary residence.

19. **2.1.2.2: AGENTS NEED’N’T KEEP EPHEMERAL DOCUMENTS. WOW!**

Brokers must retain each of the following types of document with respect to a transaction except …

A. brochures.
B. contracts.
C. written letters.
D. MLS postings.
E. emails.

(E) Previously, the Bureau put forward an interpretation that the law (BPC §10148) which requires retention of all documents obtained by an agent “in connection with” a real estate transaction includes all electronic documents. Not just emails; but texts, tweets, and probably even posts.

In 2015, the legislature modified BPC §10148 by adding “this subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature …” by which the Commissioner interprets this to refer to emails, texts, tweets, and posts.

**Note:** For those of you with real estate websites, be aware that once or twice a month a web crawler from the [The Way Back Machine](https://web.archive.org/) visits your site. Each time it visits it makes a recording of your site (less graphics) for its archive and then makes that archive available to the public. (Its archive begins in 1996.) Thus, if you are sued, you or your plaintiff may be able to use The Way Back Machine to gather evidence from information posted on your site as of a given date – details such as listings, recent sales, sales claims, and your “about me” page.
20.  2.1.2.5: **MORE RESPONSIBILITY FOR BRANCH MANAGERS**

**BACKGROUND:** Bob is a branch manager of Sally’s Realty, Inc.. When Sally appointed Bob she gave CalBRE written notification of Bob’s appointment. Sally also signed an employment agreement with Bob in which Bob agreed to accept responsibility for enforcing the Real Estate Law.

**SITUATION:** Gertrude works for Bob. CalBRE finds Gertrude responsible for a serious violation of the Real Estate Law. Who will CalBRE hold responsible?

A. Only Bob and Gertrude.
B. Sally, Bob, and Gertrude.
C. Only Gertrude.
D. Only Sally and Gertrude.
E. Only Sally.

(B) Sally formally appointed Bob as her branch manager according to the procedure described by SB 510. That procedure required Sally to notify CalBRE of Bob’s appointment using CalBRE’s [RE 242: “Branch or Division Manager Appointment”](#) and for Sally to sign an agreement with Bob in which Bob agreed to accept management responsibility for ensuring that Sally’s sales agents followed the Real Estate Law.

Now that CalBRE has found that Gertrude violated the Real Estate Law, CalBRE will hold Bob vicariously responsible and, because Bob works for Sally, also hold Sally vicariously responsible. However, because CalBRE holds Bob more responsible than Sally by virtue of his formal appointment as Sally’s branch manager, it is likely CalBRE would not discipline Sally assuming, of course, that Sally was in any way complicit in Gertrude’s violation. For example, had Sally been aware of violations similar to Gertrude’s in her other branches and had she not taken reasonable precautions to avoid such violations, then CalBRE might also discipline Sally.

Had Sally not informed CalBRE of Bob’s appointment as her branch manager, CalBRE would have held Sally directly responsible for Gertrude’s violation and, assuming Bob was not complicit in Gertrude’s violation, would not have disciplined Bob.

21.  2.1.4.1: **MANDATED POSTING OF DISCIPLINARY ACTIONS**

CalBRE will remove from its public website a document describing a disciplinary action taken against a licensee if the document …

A. is more than five years old.
B. proves embarrassing to the licensee.
C. deters potential clients from doing business with the licensee.
D. describes a conviction that has been expunged.
E. if ever required by law to do so.

(E) This is the only possible answer since all the other choices are reasons that CalBRE specifically rejects as reasons for circumventing the California Public Records Act and the Information Practices Act of 1977 and SB 706 (BPC §10083.2). CalBRE claims that these laws require the posting of disciplinary documents such as Accusations, Statement of Issues, and Desist and Refrain Orders. CalBRE writes that it will continue to implement §10083.2 in accordance with its current practice and will not remove public information from its website.
22. **2.1.4.3: DENIAL OF LICENSE MUST BE ACCORDING TO THE RULES**

The Commissioner denied David Singh a license because Singh had been convicted of fraud. The Court of Appeals found that the Commissioner had improperly denied Singh a license because ...

A. his conviction was for a misdemeanor.
B. he was rehabilitated.
C. he was a police officer with numerous commendations.
D. he had completed his sentence.

(B) The trial court [and later the Court of Appeals] agreed with Singh’s contention that the Commissioner had abused his discretion “because the Commissioner could not legally deny Singh a real estate broker’s license because of his conviction where Singh had complied with all applicable criteria of rehabilitation.”

**Note:** This case must have been very expensive for Mr. Singh. He appealed the Commissioner’s decision with the Administrative Law Judge (ALJ). Before the Judge he called several witnesses to vouch for his good character. But, alas, the ALJ agreed with the Commissioner. So Singh appealed to Superior Court. The Superior Court disagreed with the ALJ for having failed to consider Singh’s rehabilitation. And when Singh must have thought his nightmare over, the Commissioner appealed the Court’s decision (and lost). WOW! Imagine having to pay your attorney $400/hour to go through all of that!

**Comment:** Based upon review of just two findings of license denial by the Commissioner, it appears to your Editor that CalBRE is perfunctorily denying licenses to anyone convicted of anything. For example, in one case I found that CalBRE had denied a license to an applicant for having been convicted of using Offensive Words in School in violation of Penal Code §415.5(a)(3)! The commissioner claimed that the conviction was “a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under CR §2910 to the qualifications, functions, or duties of a real estate licensee.”

23. **2.1.4.4: DISCIPLINE BY ANOTHER LICENSING AUTHORITY**

Sally is licensed by CalBRE and the Nevada Board of Cosmetology (NBC). The NBC fines Sally $25 for failure to sterilize her cuticle nippers. Sally must report this incident to CalBRE.

**True** The article on which this question is based was written by CalBRE’s Chief Counsel, Wayne Bell (now “The Commissioner”). In describing the disciplinary actions which licensees must self-report to CalBRE he insists that it must be ... any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

Mr. Bell writes that because the law is written in “plain language” it permits no exceptions emphasizing that this means ‘Any disciplinary action taken against a licensee (again meaning filed, initiated, and/or complete).

He does admit that the term “disciplinary action” is open to interpretation but also writes that ... if the action is actually or deemed to be ‘disciplinary,’ the licensee must report the same to CalBRE in writing within the applicable 30 day window or face discipline by the Bureau.

Sally’s circumstance meets all the criteria of a disciplinary action which must be reported to CalBRE: (1) Sally has a real estate license, (2) the NBC is a licensing authority in the United States, (3) Sally has an NBC license, and (4) Sally was disciplined by the NBC for a violation.
24. **2.1.4.5: LICENSE REGULATIONS AFFECTED BY SB 53**

Which statement about the Commissioner’s power to levy fines is false?

<table>
<thead>
<tr>
<th></th>
<th>Statement</th>
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<tbody>
<tr>
<td>A</td>
<td>The Commissioner may only levy fines for violations of the Real Estate Law.</td>
</tr>
<tr>
<td>B</td>
<td>The recipient has only thirty days to contest the fine.</td>
</tr>
<tr>
<td>C</td>
<td>The Commissioner may levy a fine against an unlicensed person.</td>
</tr>
<tr>
<td>D</td>
<td>The fine may be for no more that $2,500.</td>
</tr>
<tr>
<td>E</td>
<td>Fines paid to the Commissioner are deposited into CalBRE’s General Operating Fund.</td>
</tr>
</tbody>
</table>

**(E)** Any money collected from the citations would be placed into the {Consumer} Recovery Account of the Real Estate Fund.

**Notes:**
1. The power to levy fines is a new (2012) power granted to the Commissioner by the enactment of SB 53.
2. The Consumer Recovery Account is that fund maintained by the Commissioner to compensate consumers who have been defrauded or have been the victims of theft by real estate licensees (details).

25. **2.2.1.1: PETS AND OTHER ANIMALS**

By law, which of these animals is most likely not a pet? The animal that …

<table>
<thead>
<tr>
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<th>Statement</th>
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<tbody>
<tr>
<td>A</td>
<td>hisses.</td>
</tr>
<tr>
<td>B</td>
<td>meows.</td>
</tr>
<tr>
<td>C</td>
<td>barks.</td>
</tr>
<tr>
<td>D</td>
<td>tweets.</td>
</tr>
</tbody>
</table>

**(A)** The man shown in bed with his yellow boa constrictor and anaconda is using his snakes to cope with his *cynophobia* – an anxiety disorder better known as “the fear of dogs.”

Animals used to mitigate a medical condition are, by law, not pets but assistance animals. Since they are not pets they are exempt from all pet policies. Assistance animals are variously known as “comfort animals,” “therapy animals,” “companion animals,” or “emotional support animals”.

Housing providers may not prevent a tenant or owner from keeping an assistance animal unless it (1) poses a direct threat to the health or safety of others, or (2) would cause substantial physical damage to the property of others. However, if the threat or damage can be reduced or eliminated by another reasonable accommodation, the landlord must allow the animal.

**Citation:** If the animal is a service animal (such as a seeing-eye dog) or an animal … that is used to ameliorate a disability. By law, animals that fit into those categories are not considered pets, and different standards apply.
26.  **2.2.1.2: COURT ALLOWS SHOWING FOR TENANT-OCCUPIED HOMES**

The law gives a landlord the right to show his tenant’s residence to a prospective buyer subject to several conditions. Which of the following is **not** one of these conditions?

A. The tenant must be given written notification at least 72 hours in advance.
B. The tenant must have been notified within the preceding 120 days that his residence is for sale.
C. The showing must take place during normal business hours.

**[A]** CC §1954 provides that a landlord may enter a leased or rented dwelling to “exhibit the dwelling unit to prospective or actual purchasers.” Such entry may not be made “during other than normal business hours” unless the tenant consents to entry at some other time. Provided that the tenant has previously been given notice within the past 120 days that the property is for sale, **24 hours is presumed to be reasonable notice and notice may be given orally** (§1954 (d)(2)).

In interpreting this law, the Superior Court judge mentioned in this article devised these restrictions: (1) The agent could hold two open houses per month; (2) They could be on weekend days between 1:00 p.m. and 4:30 p.m. (3.) The agent must be present and the tenant may be present during any open house. (4) The agent must give ten days advance email notice to the tenant of proposed open house dates and the tenant has 48 hours to acknowledge or to propose an alternative weekend date.

27.  **2.2.2.1: SWIMMING POOL INCREASES LANDLORD’S DUTIES OF CARE**

A tenant holds an ill-fated backyard birthday party for her six year old and five neighbor children. Each neighbor child is injured at the party. For which child is the landlord most liable?

A. Alice suffers a concussion when she falls out of a tree.
B. Bobby contracts Lyme’s disease from a tic.
C. Chucky is treated for rabies after being bitten by a squirrel.
D. Daisy is hospitalized after contracting a severe rash from poison oak.
E. Eddie’s liver is damaged from having eaten a poisonous mushroom.

**[D]** Of course any of the parents of any of the injured children could sue the landlord but, we believe, Daisy’s parents would have the best shot at prevailing in a suit against the landlord.

In the tragic case of *Johnson v. Prasad, 2014* a little boy who was the guest of a tenant drowned in the landlord’s pool. The Court held that even though the pool did not violate the Swimming Pool Safety Act, the landlord could be sued for not having secured the pool more tightly because the boy’s drowning was foreseeable and could have been easily prevented.

By these two standards, (1) foreseeability and (2) ease of prevention; Daisy’s accident was the most foreseeable and the most preventable. The landlord should have foreseen that children – who could not be expected to recognize poison oak ("leaves of three, let it be") – would play amidst that miserable plant then thriving in their tenant’s backyard. Not only was Daisy’s misfortune foreseeable, it was also easily preventable – if only the landlord had removed the poison oak or, at the very least, had fenced it off. All the other misfortunes suffered by Alice, Bobby, Chucky, and Eddie were, in our opinion, less foreseeable and less preventable.
28. **2.2.3.1: Airbnb Provides Benefits But There Are Objections Too**

Which interest group has the **least** concern about Airbnb?

A. Travelers  
B. Neighbors  
C. Municipal Governments  
D. The Hospitality Industry  
E. Fair Housing Groups  
F. HOA Governing Boards.

(A) “Travelers” is an interest group which benefits by using Airbnb which is an immensely popular platform for providing peer-to-peer lodging opportunities. The other groups that benefit from Airbnb are hosts who rent out their properties, rooms, or even couches to travelers.

All the other interest groups have concerns about Airbnb and want restrictions placed upon Airbnb hosts:

(B) Neighbors in close proximity to an Airbnb rental property, such as in a CID, frequently complain of increased, louder than usual, and often late-hour noise.

(C) Many cities and counties prohibit residential rentals of less than thirty days in any area other than those zoned for hotel or motel use. Others may allow short-term rentals, but require a fee based on actual usage (e.g. a “transient occupancy tax”). In other jurisdictions where residential rentals of less than thirty days are allowed, there may not be an occupancy tax, but there will be a registration requirement – along with a fee.

(D) Hotels and motels, like the owners of cabs and cab companies, say that it is unfair for these “free lance” competitors like Airbnb hosts not to have to be subject to the same health and safety safeguards and standards that they must meet.

(E) Another social issue in connection with short-term and vacation rentals is the potential for fair housing violations. Hosts have a great deal of freedom in selecting and rejecting applicants; and they are far from being subject to the scrutiny of regulators who have been policing the standard rental markets for years.

(F) Neighbors in close proximity, such as in a CID, frequently complain of increased, louder than usual, and often late-hour noise.

29. **2.2.3.2: Protecting Against Prescriptive Easements**

Almost every day over the past six years, Sally walked her dog across her neighbor’s backyard to reach a public park. No owner had ever objected; nor had any given Sally their consent. One day George confronted Sally saying, “I’m your new neighbor, get off my land and don’t come back!” Sally has no legal right to continue using her shortcut.

False: Unbeknowst to George when he bought his property, Sally had already established, in theory at least, a prescriptive easement over George’s property. She did so, unwittingly, by meeting all the legal requirements for a prescriptive easement just as had the Pulidos in establishing the right to use Pereira’s private road (*Pulido v. Pereira, 2015*). The elements necessary to establish a prescriptive easement are well settled. The party claiming such an easement must show use of the property which has been open, notorious, continuous, and adverse for an uninterrupted period of five years.

Sally’s use of her shortcut was **open and notorious** because the previous owners of the land through which she trespassed (that is, before George bought the property) knew of her shortcut and never did anything about it. (Remember: An easement attaches to the land and not to an individual property owner.)
The point of Mr. Hunt’s article is that buyer agents should be keen to spot indications of long term and continuous trespass on properties their client’s consider buying less their buyer find our later that the use of his property is burdened by a prescriptive easement. George’s agent should have spotted the well-trodden path leading to the park and the mounds of old poop along the path made by Sally’s dog.

Note #1: Trespass is defined as the act of knowingly entering another person’s property without permission (source). A trespass is illegal if the owner posts no-trespassing signs or orders the trespasser to desist.

Note #2: If Sally’s claim for a prescriptive easement were to be contested by George, Sally would have to go to court to convince a judge to grant her the easement. That wouldn’t be cheap or easy. Sally would have to prove to the judge that she had been using the shortcut openly, regularly, and continuously for at least five years and that at no time during that period did any owner object to her trespass or grant her permission to use the shortcut. As Mr. Hunt points, one of the ways the establishment of a prescriptive easement can be thwarted is by granting permission to use the property.

Note #3: If Sally were successful in establishing an easement by prescription, George could not prevent Sally from using her shortcut by erecting some kind of barrier such as a locked gate or a fenced-in dog.

Note #4: There are “private” and “public” prescriptive easements. If only Sally had used the shortcut, then she would ask the judge to grant her a private prescriptive easement; but if several others had used the same shortcut, she would ask the judge to grant her and the others a public prescriptive easement. Moreover, a prescriptive easement may pass to the user(s) successor’s-in-interest (e.g, the next owner of Sally’s home). (Source)

Note #5: The law concerning prescriptive easements was formed hundreds of years ago in the common law courts of England. Hence it is complex and arcane. A very good FAQ concerning prescriptive easements in California can be found here.

30. 2.2.4.1: FAIR HOUSING NOW COVERS GENDER IDENTITY

It is illegal to discriminate based on “gender identity”; that is, based on a person’s …

A. sexual attraction to one’s own sex.
B. choice of feminine or masculine dress.
C. internal sense of being male or female.
D. gender assignment at birth.

(C) Gender identity refers to a person’s deeply felt internal sense of being male or female. Gender expression refers to one’s behavior, mannerisms, appearance, and other characteristics that are perceived to be masculine or feminine. Note: California law has at least four ways to define the protected category of sex: (1) male/female, (2) sexual orientation (answer A), (3) gender expression (answer B), or (4) gender identity (answer D). No matter which definition is used, California law makes it illegal for a licensee to take an individual’s sex into consideration when performing licensed activities.

Comment: Facebook has 56 gender categories including “cisgender” (aka, “straight”) (Source).