Bureau of Real Estate Forum

California Association of Realtors' Expo

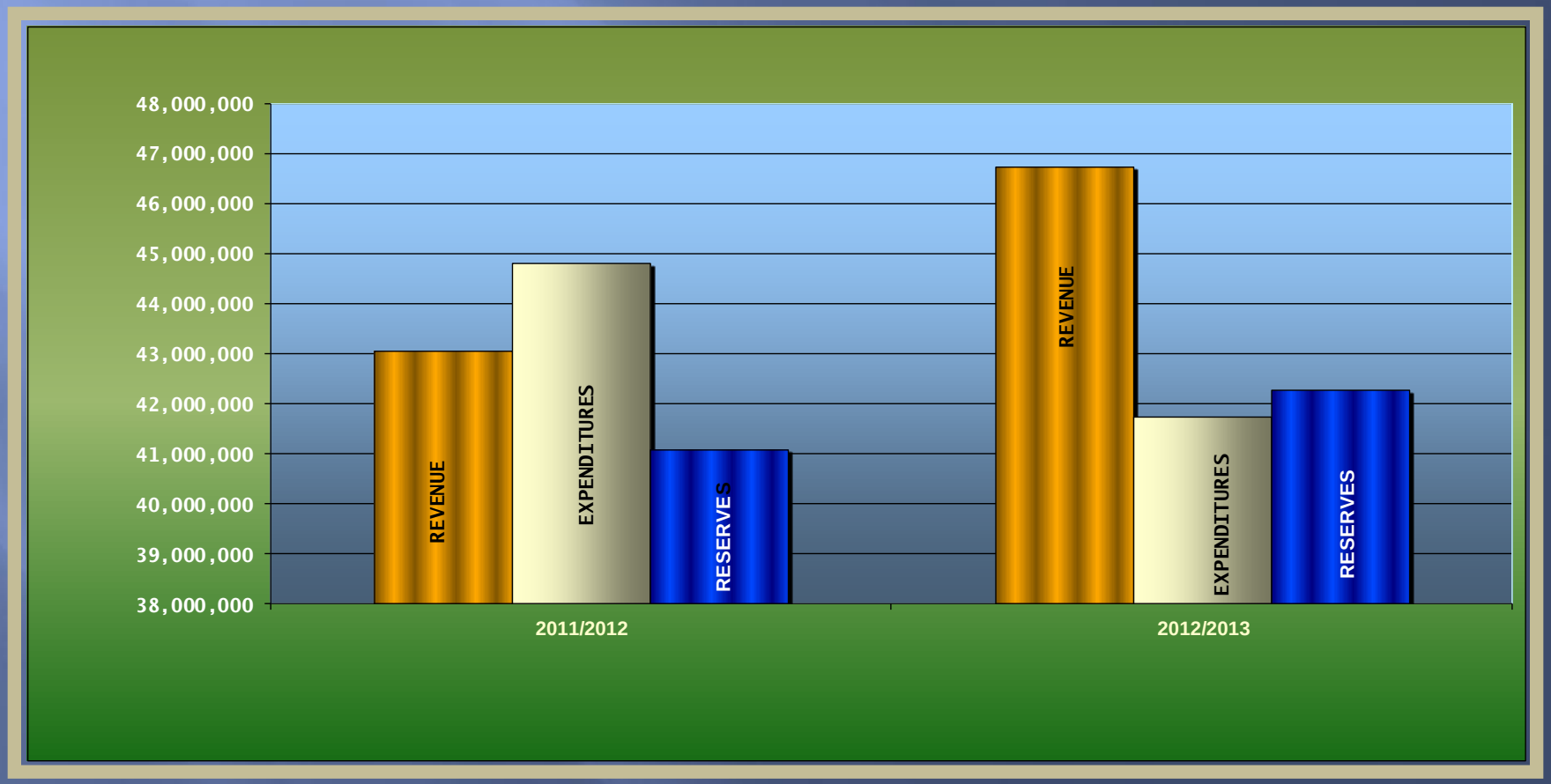
January 24, 2014

TODAY'S AGENDA

- Opening Remarks
- Operations Report
- Audit Report
- Enforcement Report
- Recovery Account
- Q & A

OPERATIONS REPORT

FY COMPARISONS



BUREAU OF REAL ESTATE

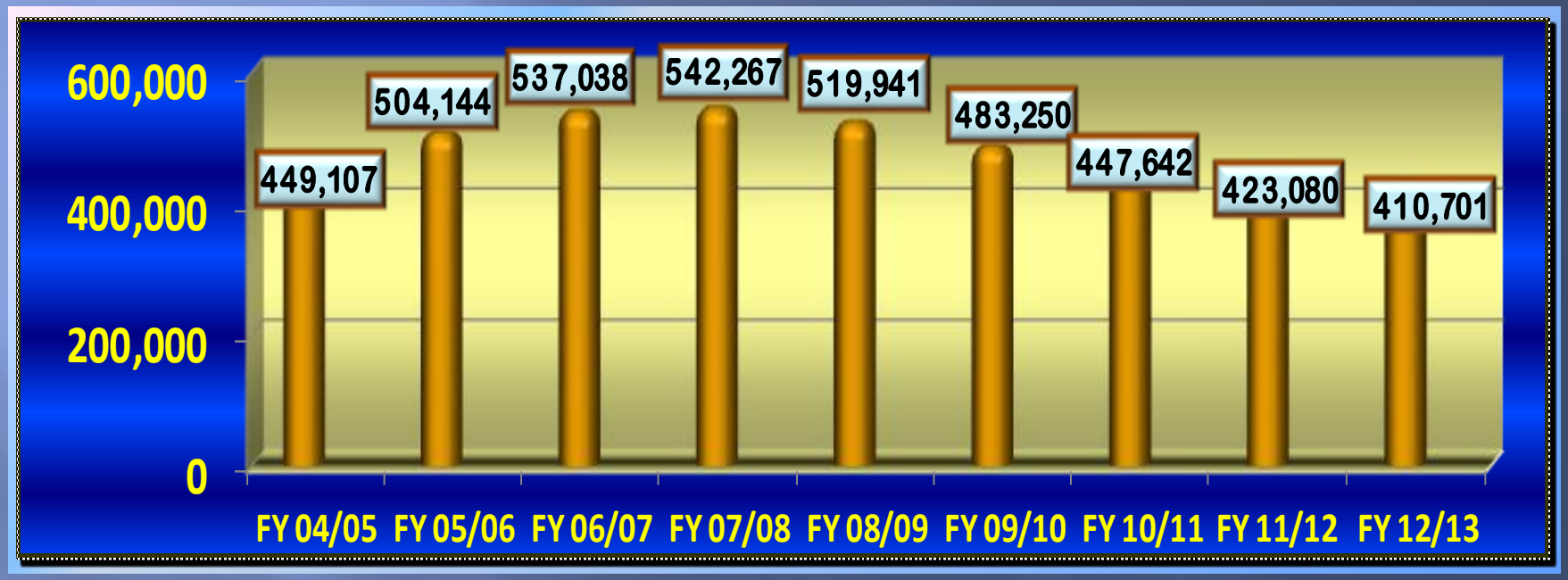
- Licensing
- Subdivisions
- Enforcement
- Legal

BUREAU OF REAL ESTATE

- 328 Employees
- 5 Offices

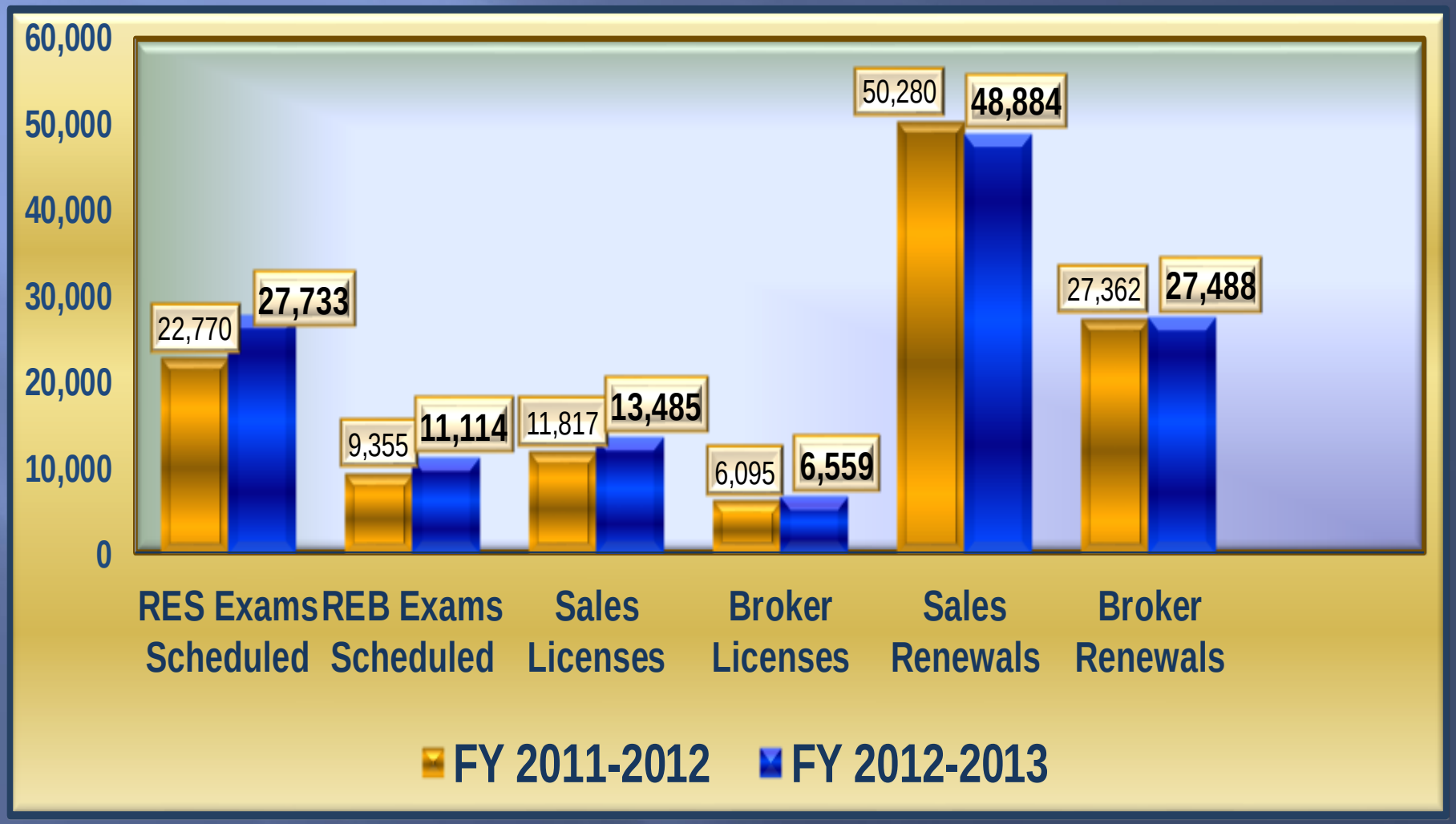
LICENSING

LICENSE POPULATION

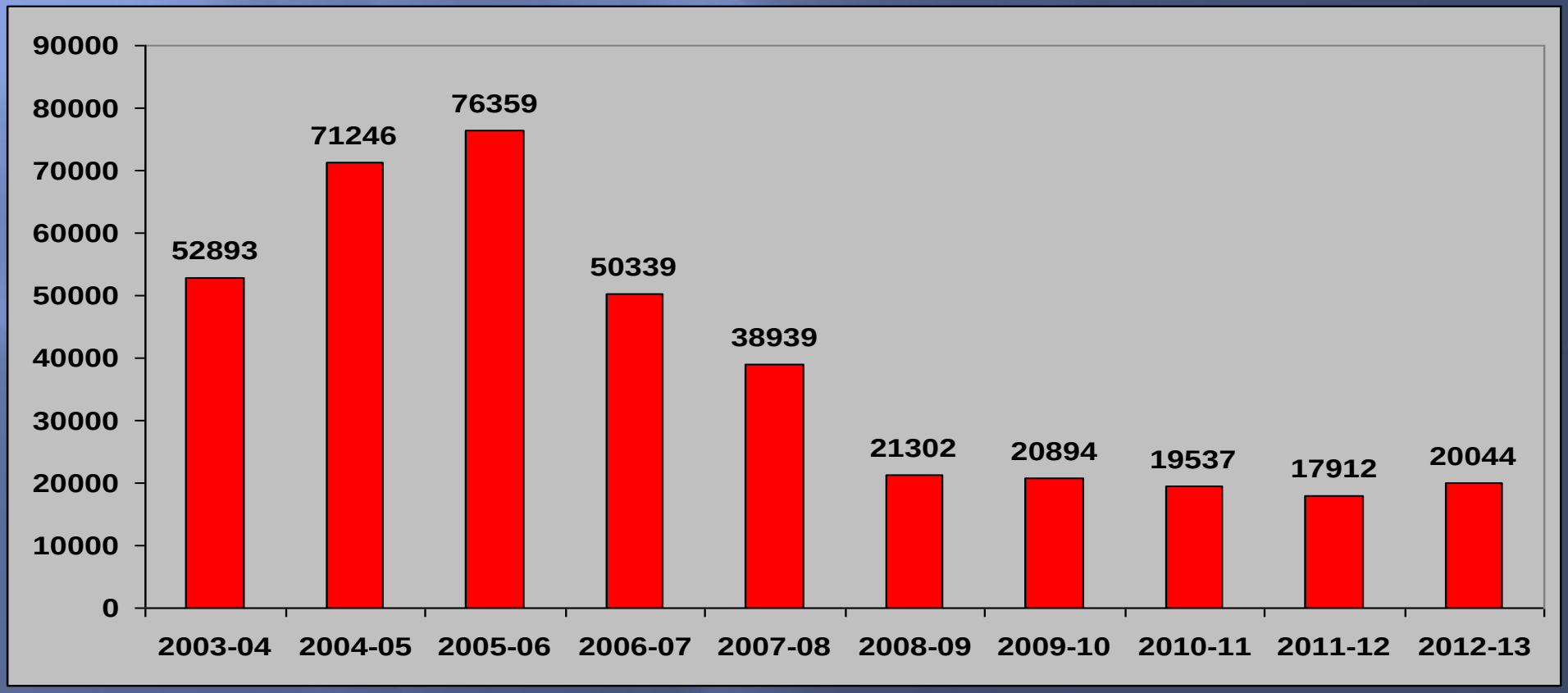


License Population as of 1/19/2014: 405,802

LICENSING WORKLOAD
FY 2011-12 vs. FY 2012-13



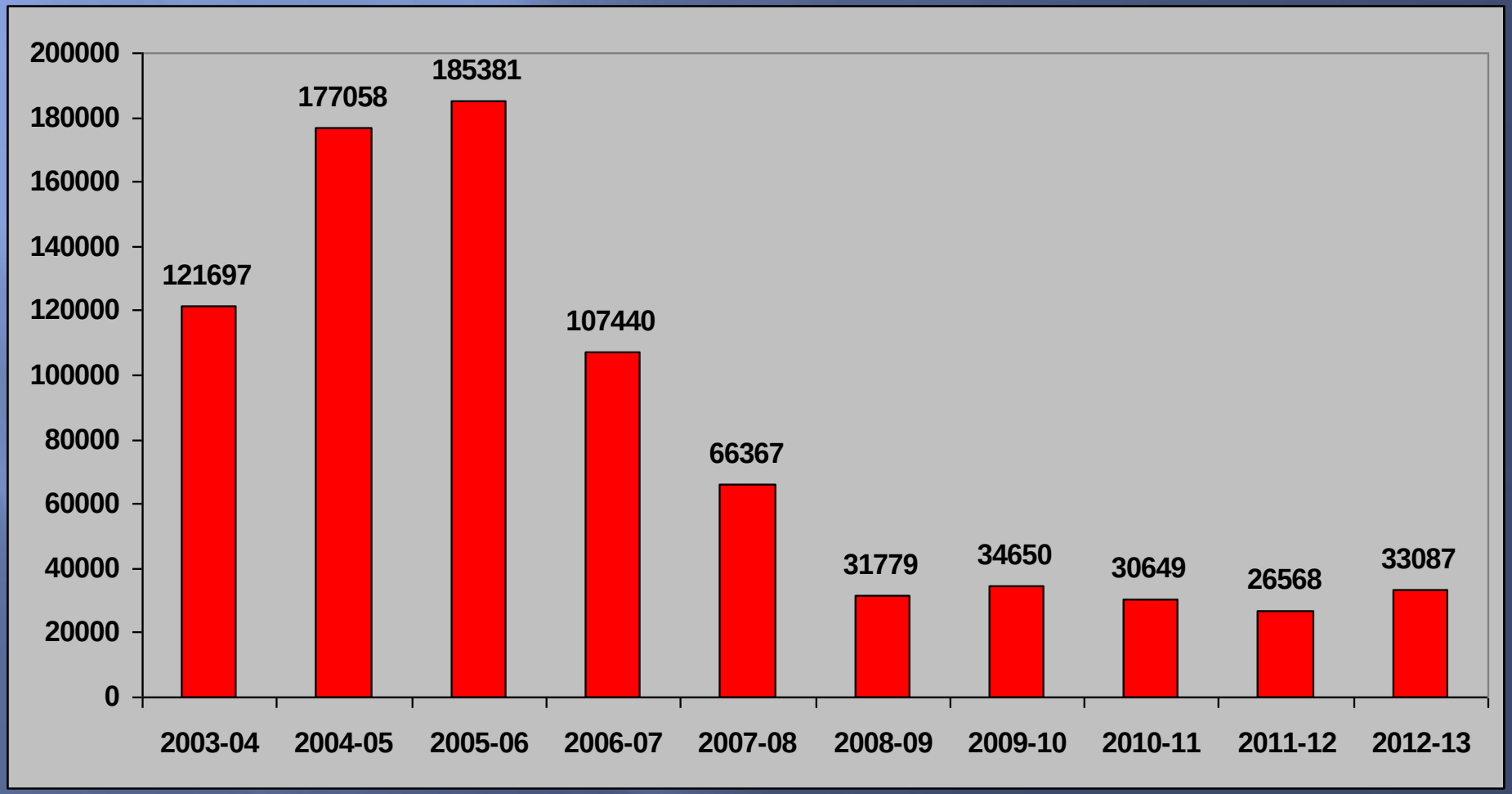
NUMBER of LICENSES ISSUED



NUMBER of LICENSES ISSUED
FY2011-12 vs. FY 2012-13

- Fiscal Year Change: 11.9%
- Change Last 3 Fiscal Years: 2.6%
- Change Last 5 Fiscal Years -5.9%

NUMBER of EXAMS ADMINISTERED



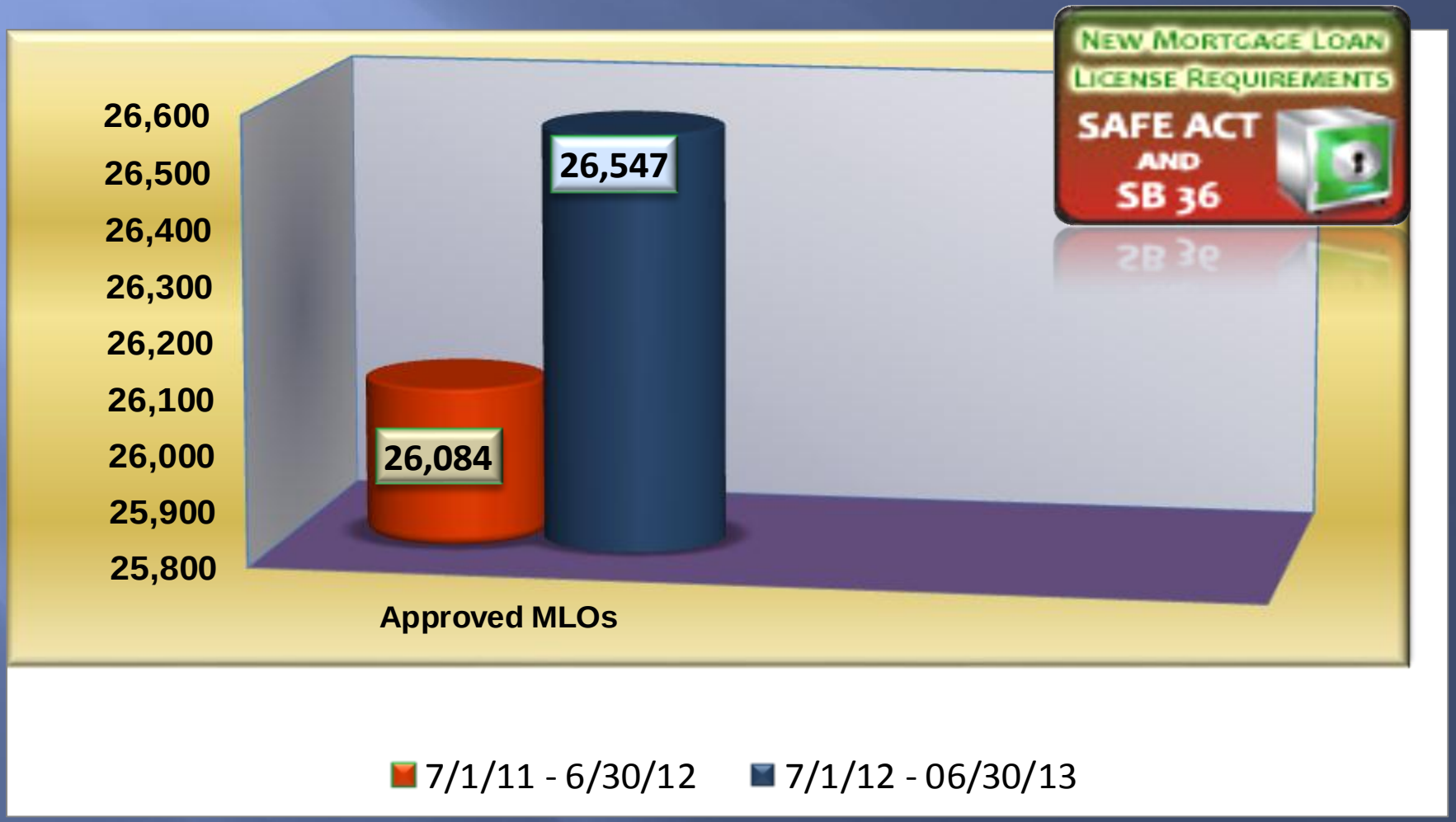
LICENSING WORKLOAD
4th QTR Comparison
2012 vs. 2013

	7/1/2012-12/31/2012	7/1/2013-12/31/2013	% Change
Exams			
RES	12,308	18,536	51%
REB	5,445	4,410	-19%
New Licenses			
RES	5,575	7,798	40%
REB	2,736	2,614	-4%
Renewals			
RES	21,598	25,777	19%
REB	12,385	14,296	15%

NUMBER of EXAMS ADMINISTERED

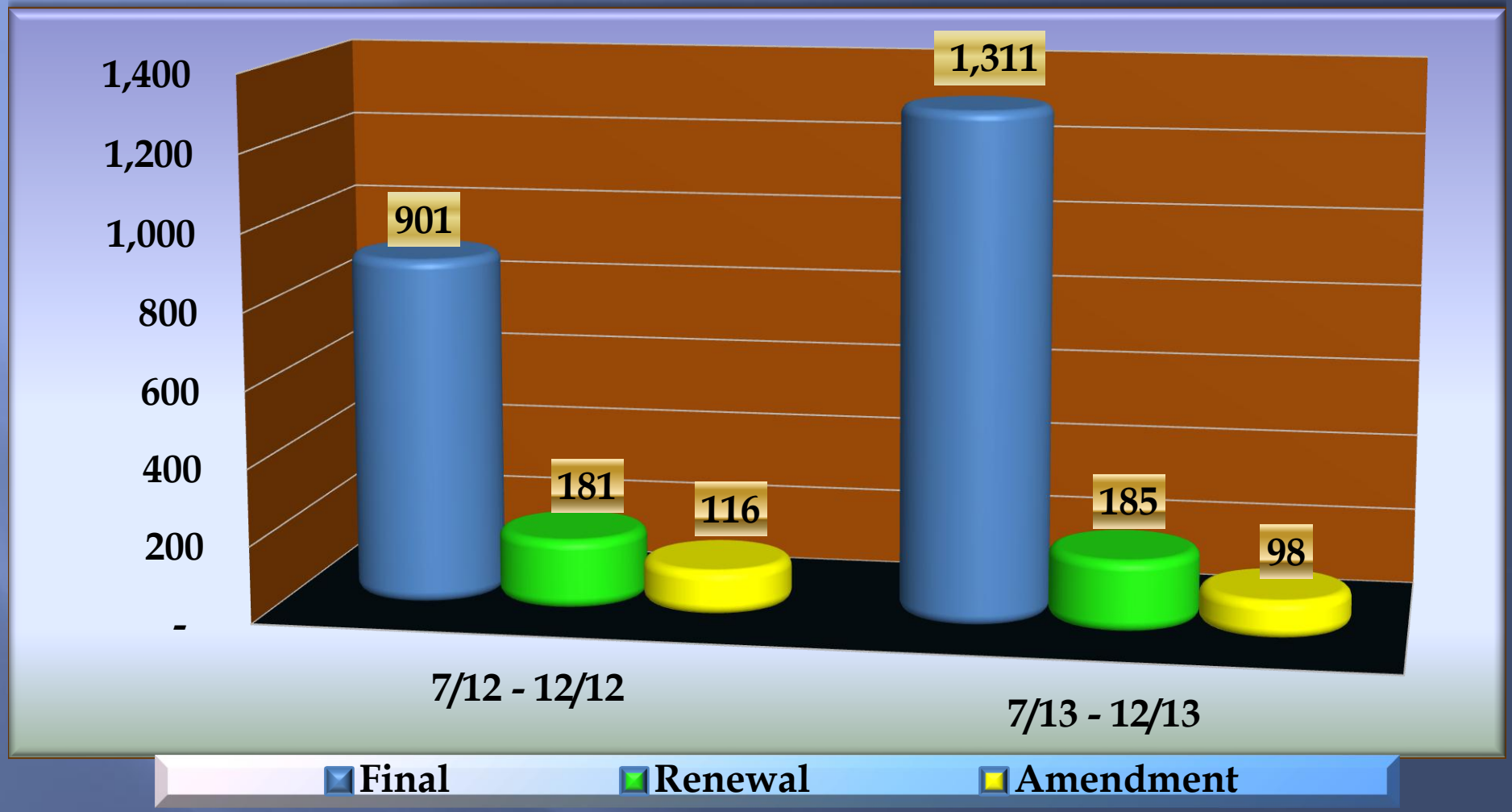
- Change Over Last Fiscal Year: 24.5%
- Change Last 3 Fiscal Years: 8.0%
- Change Last 5 Fiscal Years 4.11%

MLO ENDORSEMENTS

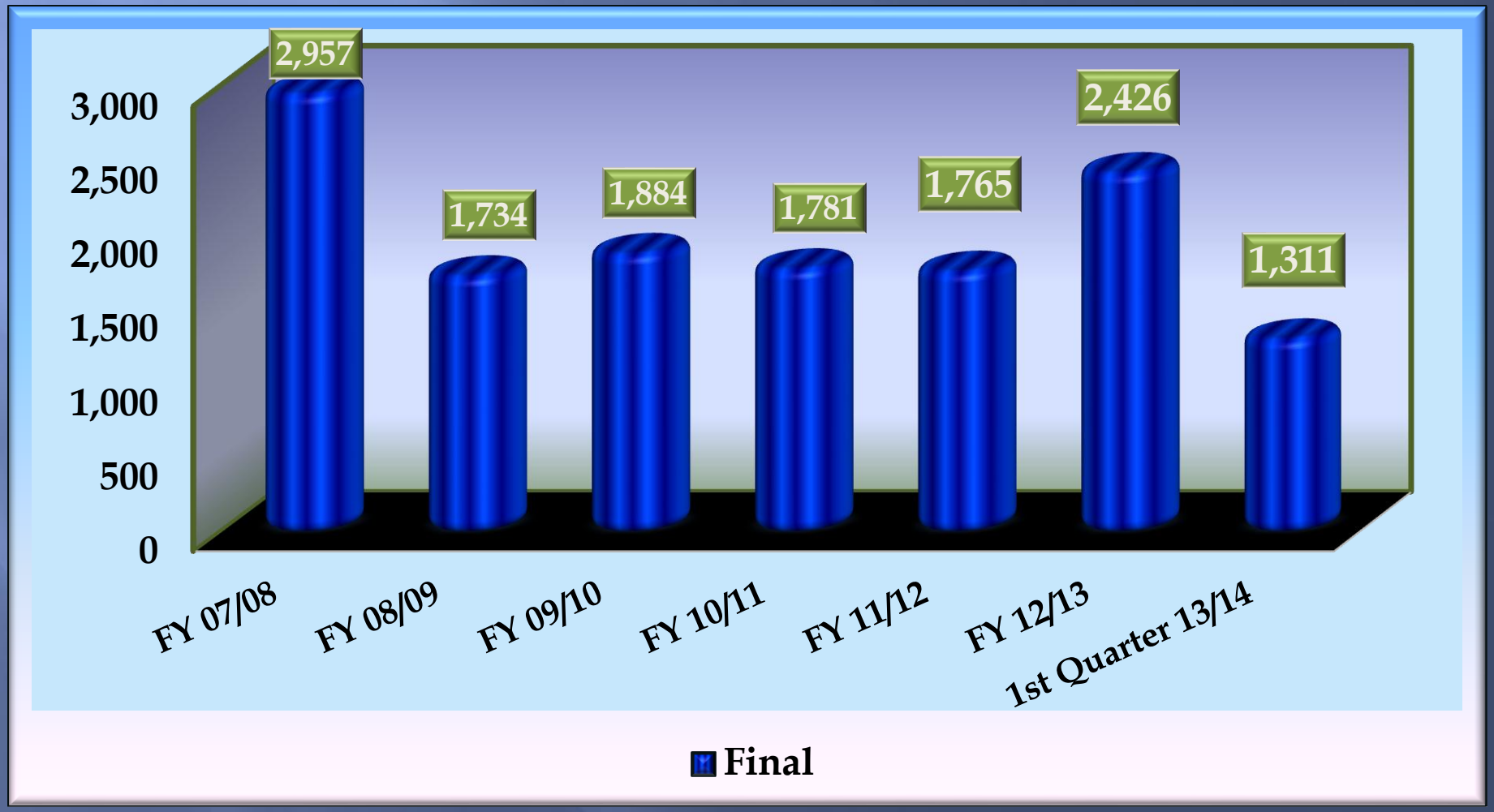


SUBDIVISIONS

SUBDIVISION COMPARISON



7-yr SUBDIVISION PUBLIC REPORT COMPARISON



ENFORCEMENT LEGAL

ENFORCEMENT RESULTS

Type of Order	FY 11/12	FY 12/13	FY 13/14
Outright Revocation	636	549	297
Revocations w/Restrictions	144	141	84
Surrendered	138	129	73
Suspension	188	191	88
Public Reproval	18	15	8
Outright Denials	172	101	38
Denials w/Restrictions	105	80	38
Desist & Refrain Orders	213	149	40
Bar Orders	24	4	2

BUREAU OF REAL ESTATE AUDITS UPDATE

Dan Sandri, Assistant Commissioner

Opening a Trust Account

EMBELLISHMENT

Opening a Trust Account

The Steps:

1) Ask to open a business checking account.

2) Verify or confirm that the account has federal insurance coverage (FDIC, NCUSIF, etc.).

3) Ask to have the account opened and titled as a "trust" account in your name, registered dba or corporate broker name, with the broker designated "as trustee" in the title or on the signature line.

unt.pdf - Windows Internet Explorer provided by the California Application Cent
rustAccount.pdf
Web Slice Gallery

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS – BUREAU OF REAL ESTATE

"OPENING A REAL ESTATE BROKER TRUST ACCOUNT"

Issued: December 2013

The Law:

When read in combination, Business and Professions Code Section 10145(a)(1) and Commissioner's Regulation 2832(a) require a real estate broker who accepts *funds belonging to others* to deposit those funds into one of three places, within three business days following receipt of the funds by the broker or by the broker's salesperson:

1) Into a neutral escrow depository,
2) Into the hands of the owner of the funds, or
3) Into a trust fund account maintained by the broker in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee. The account must be in a bank or recognized depository in California.

Why do real estate brokers sometimes have difficulty establishing trust accounts at some banks or depositories?

A trust account is an account managed by a person on behalf of a beneficiary. The person who manages the trust is known as the trustee. A trust account is set up as a means to separate trust funds (monies belonging to persons other than the broker – *e.g.*, principals and clients) from non-trust funds (monies belonging to the broker). In the real estate transactional and agency world, the broker managing the account in trust is a fiduciary to the beneficiaries of the account. A fiduciary relationship between the licensee and client exists, regardless of whether a formal trust agreement has been established.

Explaining the absence of a "formal trust agreement" is often where real estate brokers have difficulties with depositories. It is common today for individuals and families to create formal, written trusts that will distribute assets upon an individual's death. These may be done to reduce estate tax liability, to protect property in the estate, or to avoid probate. These written trust agreements are usually prepared by an attorney. It is this formal trust agreement that a bank may ask for if a real estate broker simply requests to "open a trust account."

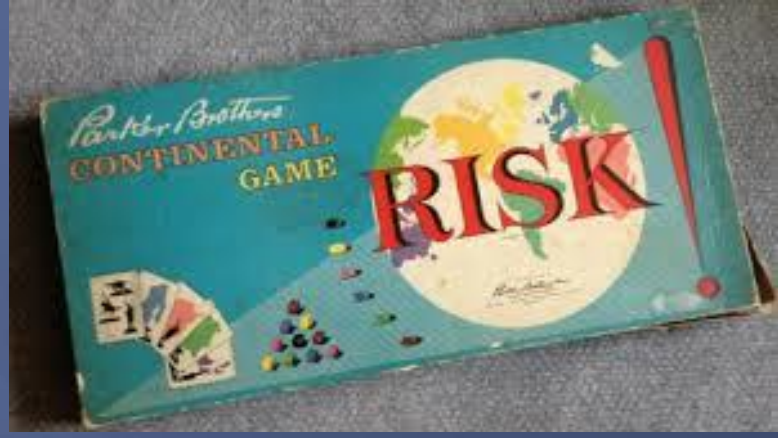
Requesting that a Broker Trust Account Be Opened -- What To Tell The Bank/Depository:

Audit Case

Broker managed 148 properties, with annual trust fund collections > $3 million

- Broker used two non-trust accounts for trust fund handling.
- No separate records were maintained.
- Trust Account Reconciliations had never been performed.
- Many other violations.
- Licensee was rather self-righteous.

Audit Case



The Audit findings:

- ***Minimum*** Trust Fund Shortage of $448,317.90.
- Transfers of ***over $2.07 million*** in trust funds to personal and business accounts.
- Trust funds were invested in stocks in the broker's name via Ameritrade.
- Trust funds were used to purchase a branch office in the other half of the State.
- Why? Due to required payment of interest to tenants!

A Basic Concept

The Results of the Audit Case

- Auditor held an Exit Conference
- Not surprisingly, the case went to an Administrative Law Hearing
- Hearing Result: Outright Revocation of REB License.
- Petition for Reconsideration was denied.
- Broker's attorney filed Petition for Writ of Administrative Mandamus with Superior Court
- Judge denied the Order for Writ
- Broker license = Revoked.

CALIFORNIA BUREAU OF REAL ESTATE'S CONSUMER RECOVERY ACCOUNT

PURPOSE

Last resort victim's fund to compensate innocent members of the public who are victimized by dishonest real estate licensees

HISTORICAL BACKGROUND

- Operative on January 1, 1964
- 12% of License Fees
(B&P Code §10450.6)
- $3,500,000/year

CONSUMER RECOVERY ACCOUNT
Claims History

Since 1964, BRE has paid approximately $50 million to victims

Approximately 54% of all applications paid

CLAIM REQUIREMENTS

WHO MAY FILE

"Aggrieved Person"

CONSUMER

INNOCENT MEMBER OF THE PUBLIC

BASIS FOR APPLICATION

1) Final Judgment

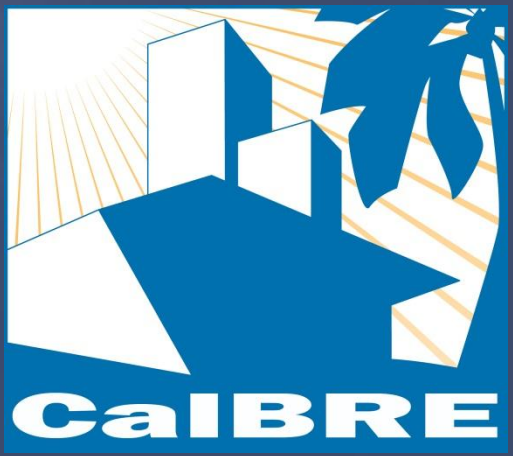
2) Licensed Activity

3) Actual and Direct Loss

COVERAGE LIMITS

(B&P Code § 10474.5)
as of 2008

- $50,000/per transaction
- $250,000/per licensee



CASE STUDY

- EMERALD BAY FINANCIAL INC. AND THREE INDIVIDUAL REAL ESTATE LICENSEES
- 30 VICTIMS
- TRUST DEED INVESTMENTS
- CalBRE AWARDED $1,000,000 TO VICTIMS

CONSUMER RECOVERY ACCOUNT QUESTIONS

(916) 263-8925

Q&A

THANK YOU

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

www.bre.ca.gov

Next Meeting – May 2, 2014
Sacramento, California