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## Newsletter Archives

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## About Pam Strickland

Pam is a Real Estate Broker from Santa Barbara with over 43 years' experience in Real Estate and Mortgage Lending.

Past-President, CAMB (California Association of Mortgage Brokers). Selected Mortgage Broker of the Year in 1992 by the CAMB and in 1993 by the NAMB (National Association of Mortgage Brokers).

Past Member, SAFE MLO National Test Maintenance Committee.

Past Member, California Mortgage Review Committee for the SAFE Act Mortgage Test.

Past Member, National Legal Review Committee for the SAFE Act Mortgage Test.

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Any recommendations contained in this message are based on Pam's many years of personal experience and research in the Real Estate industry and must not be considered legal advice. Please consult with appropriate legal counsel for further clarification.

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**Continuation of horror stories from true broker compliance mishaps. If you see yourself in any of these examples you need to take steps to get your house in order.**



## Salesperson with Property Management Business

Anyone who has a broker's license should know that all activities performed by his/her salespersons must be conducted under the broker. In this case, a salesperson licensed to the broker goes out and forms his own LLC, opens a bank account (not a trust account, mind you) in the LLC's name, advertises in the LLC's name and signs contracts/leases in the LLC's name. Where do we even start with the violations here?

1. The DRE does not license an LLC (only a corporation or a sole proprietorship). If the broker allows the salesperson to use a dba different from the licensed corporation name, the dba must be approved by the broker, filed with the county and then filed with the DRE (either as corporate owned or salesperson owned). Note that the dba cannot contain the name of a salesperson or broker-associate.
2. The trust account must be in the name of the licensed DRE corporation or dba and the broker-of-record must be a signer on the account. The broker-of-record must review the bank reconciliations each month and sign or initial proof of the review.
3. Only the licensed DRE corporation name or dba can be used for advertising or contracts/leases. And, it goes without saying that the broker-of-record is responsible for supervising all licensed activities of the agent.

## Depending on Outside Accounting Services

Many brokers utilize the services of outside accounting firms to reconcile their trust accounts (or even rely on them to perform everyday accounting duties). What many brokers don't understand is that with these services, while many are very good (and others are terribly bad, unfortunately), the use of these companies still doesn't absolve the broker of his/her responsibilities and oversight (and truth be told, the majority of brokers with audit violations truly thought that they were paying to have this done for them). When a broker receives the reconciliation report, he/she must look at the following:

1. Are there any outstanding deposits (deposits in transit)? How old are they? If they haven't cleared the bank within a few days of the beginning of the next month, what happened to them? Do you have embezzlement (for example, a cash deposit that never made it to the bank)? Do you have problems with your remote deposit machine and the bank never received the deposit (which happens more often than you can imagine)?
2. Do you have bank adjustments or journal entries that aren't being cleared out?
3. Do you have outstanding uncashed checks that need to be escheated to the state (over 3 years old)?
4. Are you checking to make sure that there is a true three-way tie-in to the bank/book/client each month?
5. Are you looking at the Property Balances that are run for ALL properties (not just active properties) to see that there are no negatives and that there are no "hidden" properties that you are no longer managing that have balances (positive or negative)? When you

receive the reconciliation package and the bottom line says "In Balance" your work is just beginning!

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## Teams and Team Names

Many real estate agents want to self-brand (create a group of other agents and form a team). There are many pitfalls in this for the broker-of record and he/she must make themselves aware of the rules and regulations that govern such associations. For example, a team must contain more than one licensed agent and each of the agents must work for the same broker-of-record. All members of the team must be paid individually by the broker-of-record (i.e. the team leader cannot be paid the full commission and then split the fees with the other team members). Unless it is a name that does not contain a team member's name, the team's name must contain the surname of at least one of the team members and must include either *team*, *associates* or *group* in the name. This name containing a surname of a licensee is not filed with the DRE as a dba. If, however, the team name does not contain a surname, then the chosen name must be filed as a dba with the county and the DRE. For example, *The Surf City Team* would not contain a licensee's surname and would have to be filed as a dba.

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## Expired Licenses

There is hardly a day that goes by that I don't receive a frantic call or e-mail from a broker whose corporate license, personal license, or a salesperson/broker-associate license hanging under their license has expired. Recently I received a call from a long-time broker whose most active salesperson had an expired license for over 6 months while she closed 50 transactions (with over \$300,000 in earned commissions generated during that time). This is a serious violation and can result in tremendous fines and penalties (and even the disgorgement of all commissions earned...OUCH!). Please institute a system that monitors the expiration date of all licenses. And, by the way, the salesperson mentioned above was turned in to the DRE by a competitor, of course!

### Compliance Consulting

For a thorough evaluation of your company's compliance with the multitude of regulations that pertain to the real estate industry, Pam is available for private, confidential remote consulting. She can also help you prepare for and get through a DRE audit or office survey and make sure you know what reports you and your company are required to file. For more information, see her website at [www.pamstrickland.com](http://www.pamstrickland.com).

To arrange your consultation, send an e-mail message to Pam at [pam@pamstrickland.com](mailto:pam@pamstrickland.com).