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Pam-a-gram

February, 2014

Newsletter for California Mortgage & Real Estate Brokers

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About Pam Strickland

Pam is a Real Estate Broker from Santa Barbara with over 30 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).

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

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

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.

## Trust Fund Issues and New Filing Requirements for Broker-Controlled Escrows and Mortgage Originators



### Do YOU Know Where Your Clients' Money REALLY Is?

And so it happens once again. Today I found a Broker's trust account with over \$10,000 missing. This is probably just the tip of the iceberg and I'll probably find more missing as I go further into the accounts. Not long ago I helped discover over \$250,000 missing from a trust account in Santa Maria. And, tragically, a Broker's employee in Northern California recently committed suicide during a CalBRE audit when the auditor started discovering discrepancies. Ultimately it was uncovered that she had taken well over \$300,000 of trust account money.

You are sitting there reading this, shaking your head, wondering how these Brokers could be so clueless, and thinking "It could never happen to me!" And I have to ask: "Are you sure?" Not one of the aforementioned Brokers thought it could ever happen to them, either. They were all completely and totally blindsided by the discoveries. Me? I've come to expect it. It is more the norm than the aberration. Whether it is the fault of the economy or the lack of morals or just pure, unadulterated greed, this type of behavior is happening more and more.

In 2012 the CalBRE discovered the following during routine or investigative audits:

### Trust Fund Shortages — Breakdown by Real Estate Activity

|                          |                       |     |
|--------------------------|-----------------------|-----|
| Property Management      | \$3,330,392.12        | 64% |
| Mortgage Loans           | \$1,564,393.25        | 30% |
| Broker Controlled Escrow | \$294,642.07          | 5%  |
| Real Estate Sales        | \$9,026.00            | 1%  |
| <b>2012 TOTAL</b>        | <b>\$5,198,453.44</b> |     |

Bear in mind that these findings were only in the actual audits. The percentage of companies audited is extremely small. Imagine what audits of the whole universe of Broker trust accounts would uncover. I shiver at the very thought of that!

Most brokers think they know how to review their trust account reports and reconciliations. That is, if they review them at all. Many brokers, however, have no clue what they are even looking for when they review the information provided to them by their staff.

Here are some pointers on what the Broker should carefully review:

- Any and all CASH deposits. Trace them through and make sure they actually hit the bank.
- Deposits in transit (unreconciled deposits). These, by their very nature, are last working day of the month deposits that don't hit the bank until the first working day of the next month. If those deposits in transit don't meet these criteria, they are being used to "force" the reconciliation and indicate errors in entry or out and out thefts. Either way, they must be cleared out on a monthly basis.

Please consult with appropriate legal counsel for further clarification.

Contact Pam at:

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- Negatives in Client Beneficiary Ledgers. It goes without saying that a client's funds cannot run into the negative (with an exception for property management companies where clients own multiple properties and the aggregate of all balances for that client's properties are positive).
- Three-Way Reconciliation. A trust account must reconcile in all three areas, i.e. the reconciled bank statement must equal the columnar (running) balance (book) record and both must agree with the total of all beneficiary ledgers.
- Use common sense. Don't let the person who writes the checks reconcile the trust account. Don't let the person who writes the checks receive the monthly bank statement. Have multiple eyes overlooking everything when it comes to trust accounts.

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## Miscellaneous

The following important information is now available at the CalBRE website ([www.bre.ca.gov](http://www.bre.ca.gov)) under CURRENT NEWS on the homepage:

### **NEW Escrow Activity Report**

The **Escrow Activity Report** is available online using the link provided. It is due within 60 days after the end of each calendar year for brokers who met the escrow threshold. See Business and Professions Code Section 10141.6. (1/2/2014)

### **Mortgage Loan Business Activity Report (BAR)**

If you or your corporation are originating mortgage loans, go to <https://secure.dre.ca.gov/bars/> to file your Business Activity Report (online submissions only).

### **Opening a Real Estate Broker Trust Account**

Information has been posted regarding the opening of a real estate broker trust account (12/20/2013)

[www.bre.ca.gov/files/pdf/OpeningTrustAccount.pdf](http://www.bre.ca.gov/files/pdf/OpeningTrustAccount.pdf)

### **Important Narrated PowerPoint Training Now Available: Trust Account Reconciliation (Reg. 2831.2)**

The Bureau of Real Estate urges all brokers who handle trust funds through a bank account to review this narrated presentation about Commissioners Regulation 2831.2. (7/26/2013)

[www.bre.ca.gov/files/ppt/TrustAccountReconciliation.ppsx](http://www.bre.ca.gov/files/ppt/TrustAccountReconciliation.ppsx)

## 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 in-office consulting. She can also help you prepare for and get through a CalBRE audit. Further information is available on her website: [www.pamstrickland.com](http://www.pamstrickland.com)