



**DEPARTMENT
OF
REAL ESTATE
FORUM**

WILLIAM E. MORAN
Assistant Commissioner
October 3, 2012





Today's Agenda

- **Welcome and Introductions**
- **Operations Report**
- **Dept of Consumer Affairs Overview**
- **Legislation Update**
- **Audit Cases**
- **DRE/State Bar Interplay**
- **Open Forum**
- **Closing Remarks**



OPERATIONS REPORT



Financial Statistics

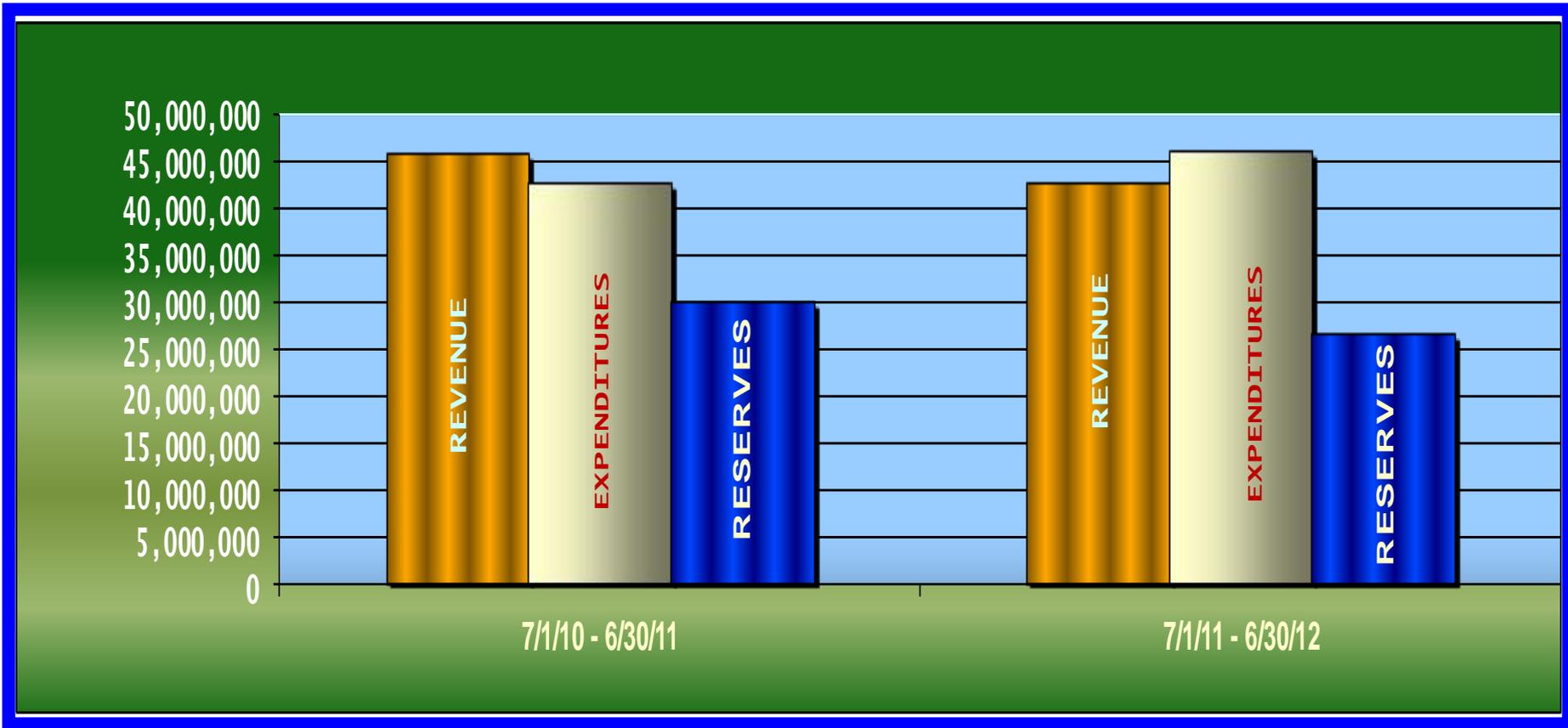
FY 2011/12



MONTH	REVENUE	NET EXPENDITURES	RESERVES
07/31/2011	\$2,665,229	\$3,509,914	\$29,265,728
08/31/2011	\$3,127,822	\$2,923,963	\$29,469,587
09/30/2011	\$2,973,925	\$2,859,042	\$29,584,470
10/31/2011	\$2,907,639	\$2,523,732	\$29,968,377
11/30/2011	\$4,155,981	\$4,819,433	\$29,304,925
12/31/2011	\$4,988,639	\$2,836,475	\$31,457,089
01/31/2012	\$4,576,557	\$3,232,409	\$32,801,237
02/29/2012	\$3,317,306	\$3,928,559	\$32,189,984
03/31/2012	\$3,769,174	\$5,765,171	\$30,501,390
04/30/2012	\$3,402,339	\$3,115,261	\$30,819,737
05/31/2012	\$3,385,662	\$5,218,173	\$29,421,000
06/30/2012	\$3,847,253	\$6,086,935	\$26,825,653

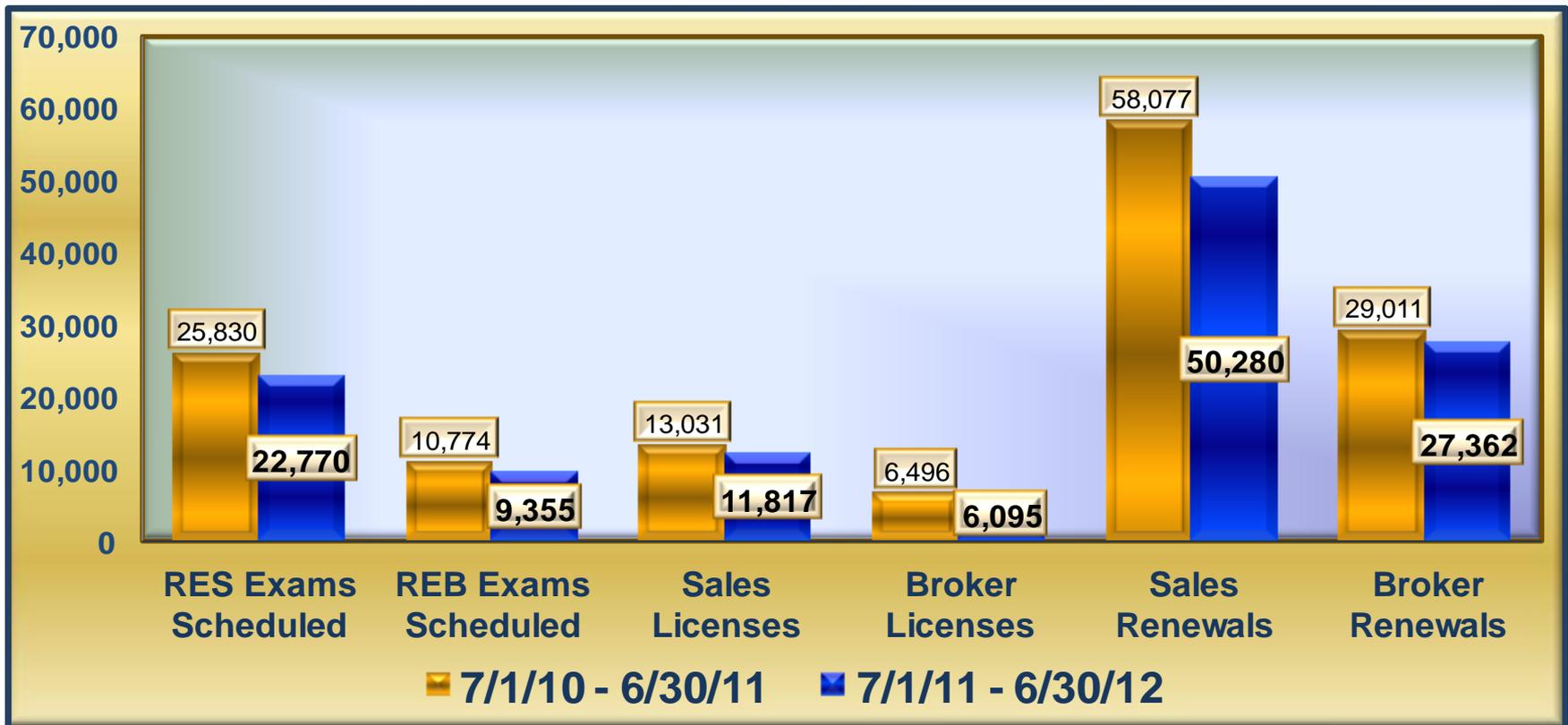


Fiscal Year Comparisons





Licensing Workload





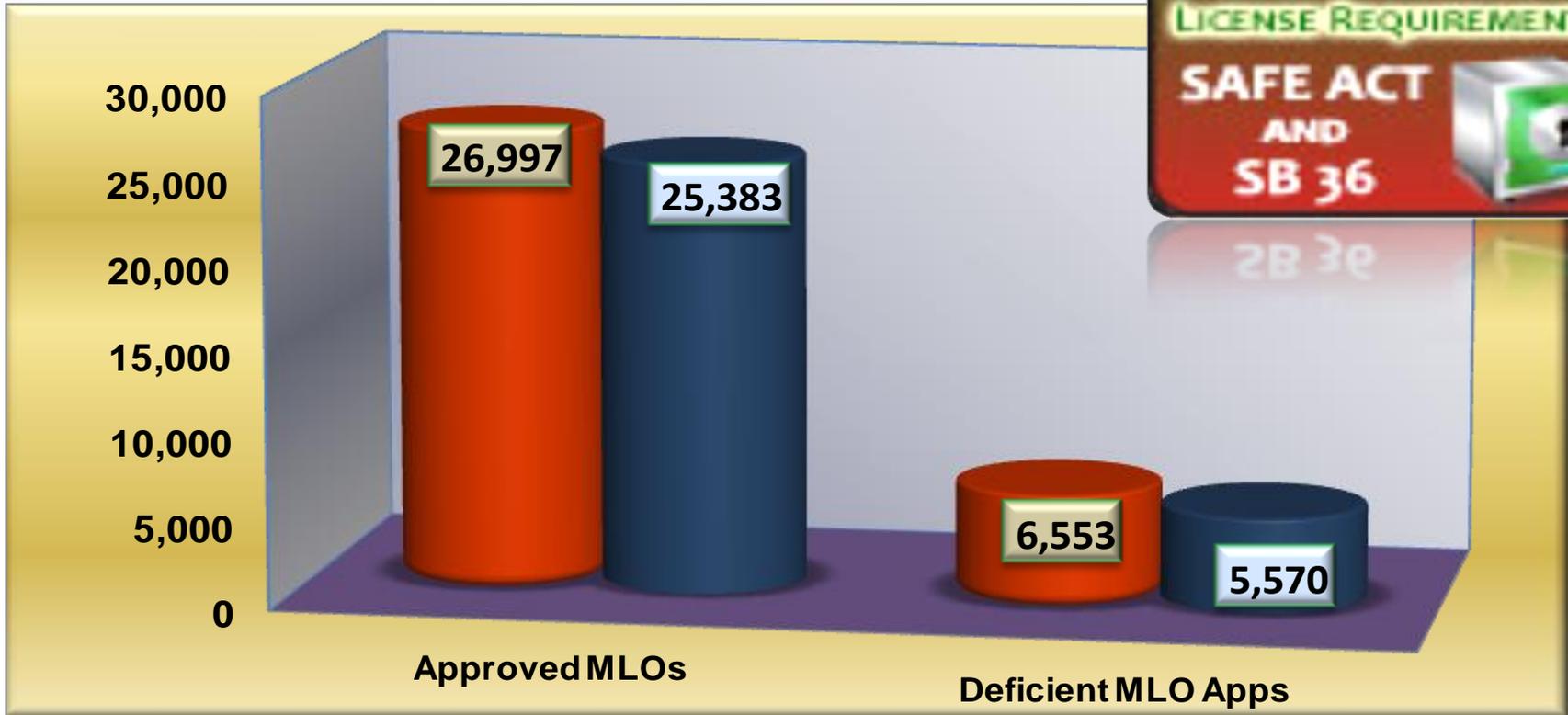
License Population





MLO Endorsements

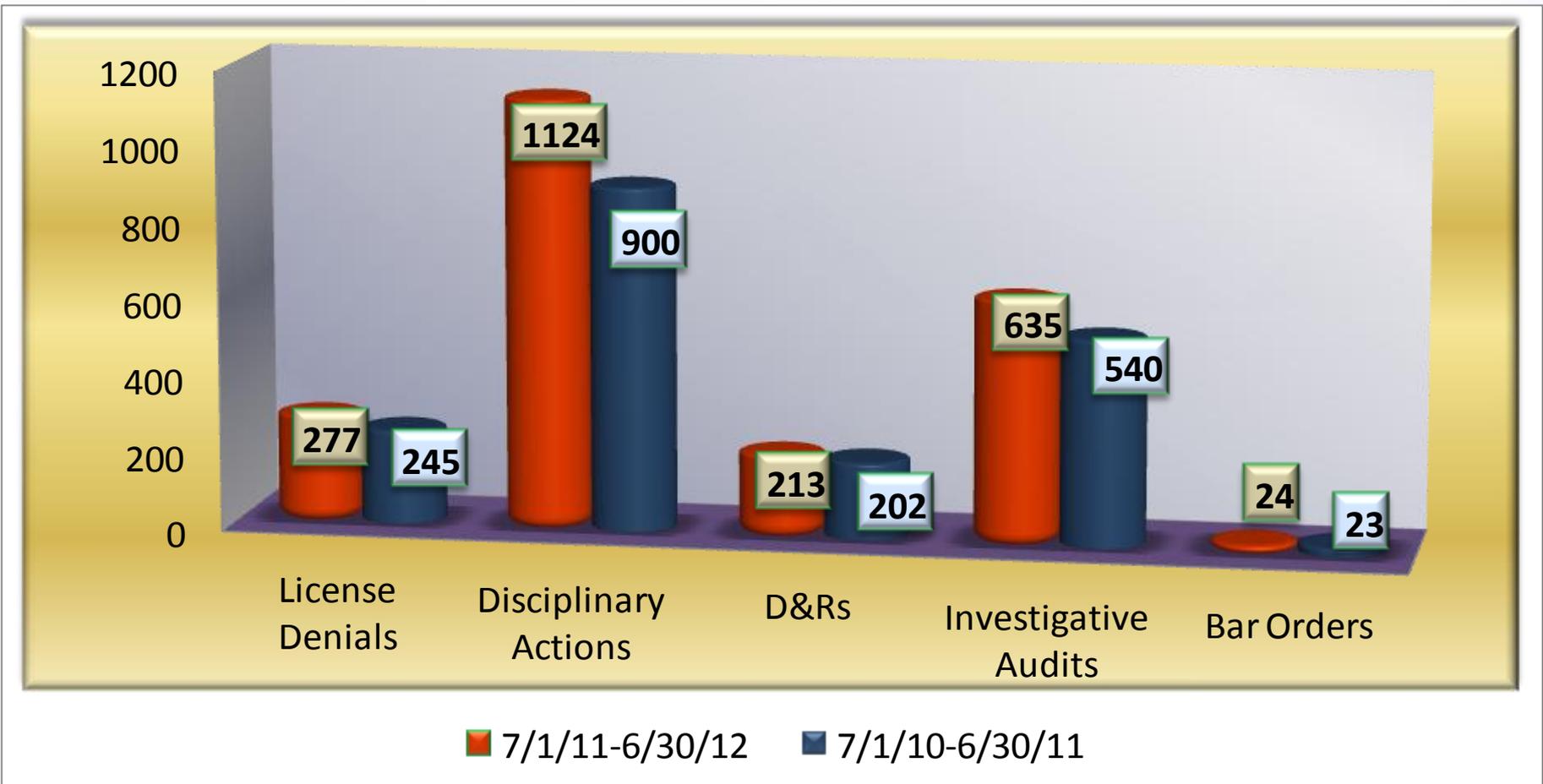
**NEW MORTGAGE LOAN
LICENSE REQUIREMENTS**
**SAFE ACT
AND
SB 36**



■ 12/31/11 ■ 8/31/12



Enforcement Activities FYTD 11/12 vs. 10/11



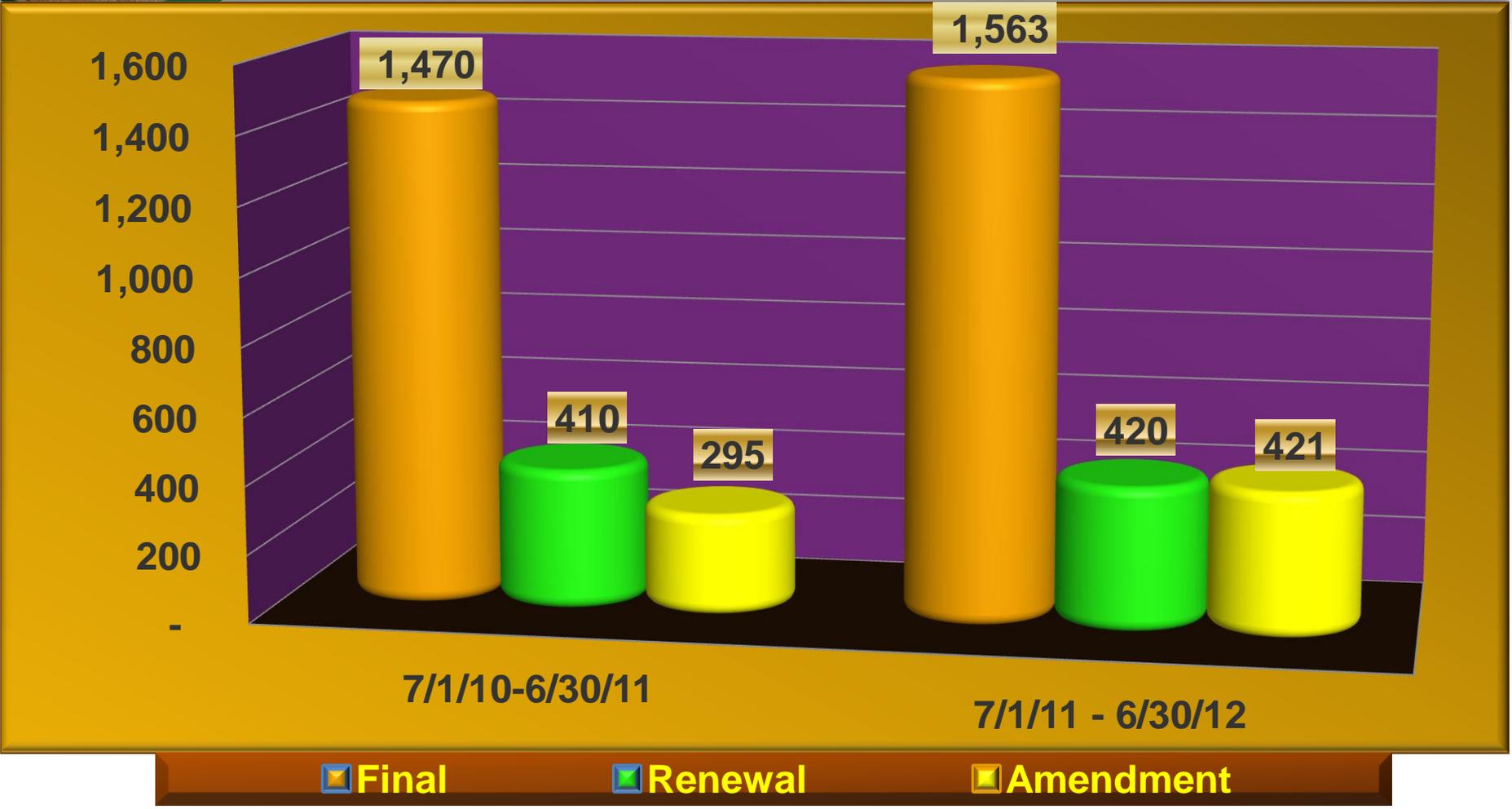


Enforcement Results

Type of Order	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11	FY 11/12
Revoked	227	247	375	528	484	560	636
Surrendered	38	46	72	106	90	114	138
Revoked/Restricted	168	147	122	146	149	114	144
Suspended	102	113	136	146	163	96	188
Public Reproval	23	10	4	11	20	16	18
Denials/Outright	536	614	650	462	224	154	172
Denials/Restricted	742	770	508	346	135	91	105
Desist & Refrain Orders	30	79	74	145	161	202	213
Bar Orders	N/A	N/A	N/A	N/A	N/A	23	24

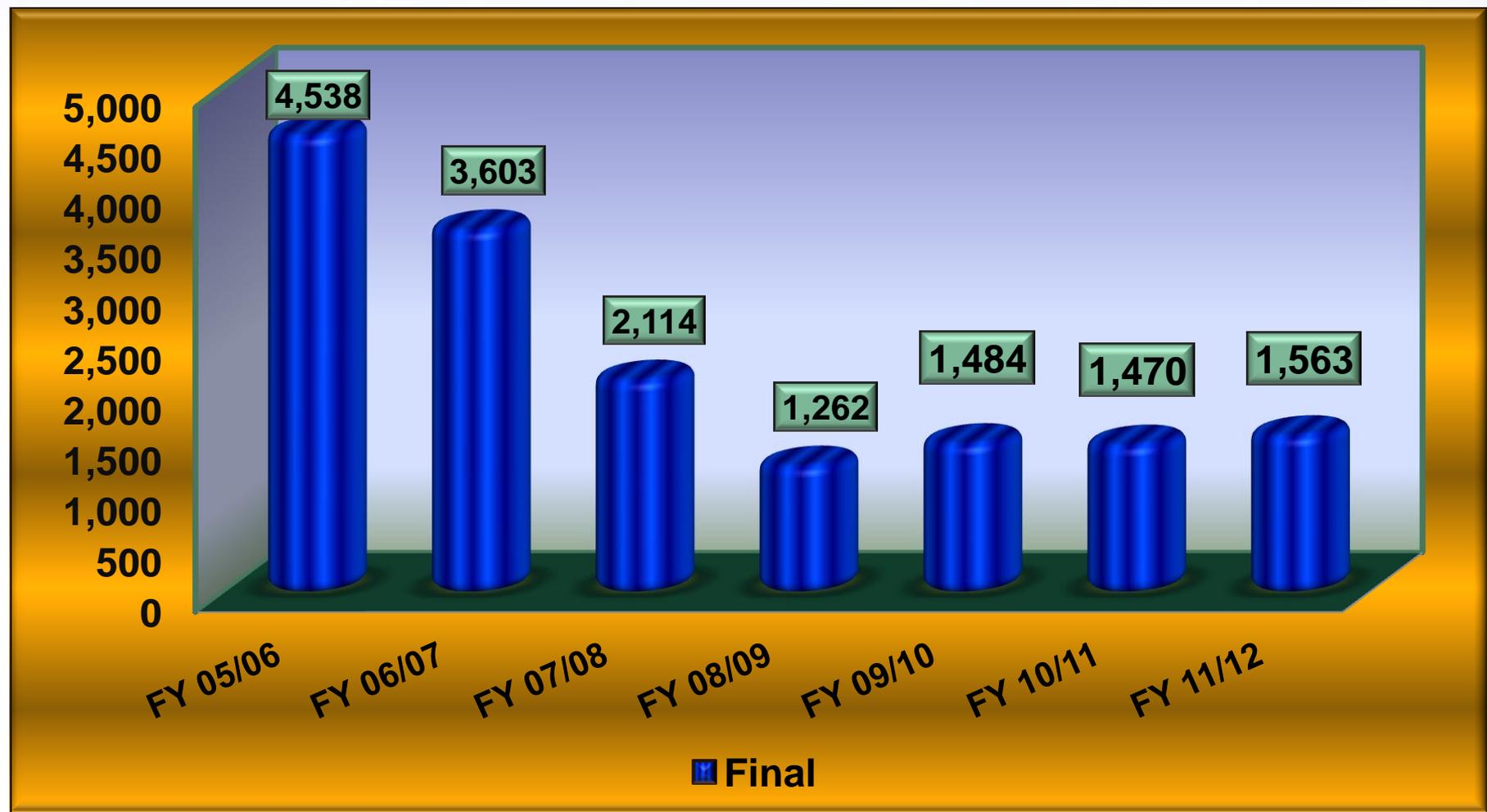


Subdivision Comparison





7-Yr Subdivision Public Report Comparison





Department of Consumer Affairs Overview

Reichel Earhart
DCA Deputy Director, Board Relations





Legislative Update 2012

Presented by:

Tom Pool

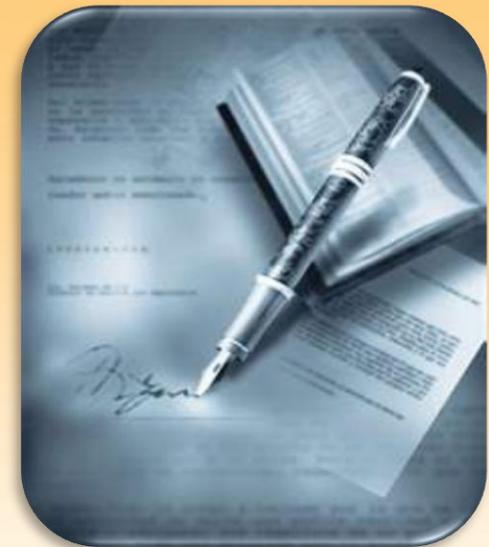
Assistant Commissioner



2012 Legislative Update

September 30th marked the end of the two year legislative session.

- Record year for DRE
- Tracked over 70 bills
- Performed over 60 analyses
- Effective date 1/1/2013



Significant Legislation

Today we will review 7 of the most significant pieces of legislation:

- ❖ AB 1718 (Hill)
- ❖ AB 278 (Eng) / SB 900 (Leno)
- ❖ AB 1950 (Davis) / SB 980 (Vargas)
- ❖ SB 1055 (Lieu)
- ❖ SB 1191 (Simitian)





Assembly Bill 1718 (Hill)

Broker License Qualifications:

- ❖ Current law:
 - ✓ College degree in lieu of two years of experience
 - ✓ Law school degree also qualifies for experience waiver
- ❖ As of 1/1/2013:
 - ✓ Degree major or minor in real estate
 - ✓ Member of the CA State Bar
- ❖ To qualify under current law, complete and compliant applications must be received by 12/31/2012





AB 278 (Eng)/SB 900 (Leno)



Homeowner's Bill Of Rights

- ❖ By-passed legislative process
 - ✓ Conference Committee
 - ✓ Four Major Points to Committee Report

- ❖ Prohibits “dual track” foreclosures
 - ✓ Precludes foreclosure while homeowner’s application for a loan modification is being considered

- ❖ Requires a single point of contact for homeowners who are negotiating a loan modification

AB 278 / SB 900 (Cont.)

Homeowners' Bill of Rights

- ❖ Expands notice requirements that must be provided to a borrower before taking action on a loan modification application or pursuing foreclosure
 - ✓ Lender must contact borrower to explore options to foreclosure
 - ✓ Loan modification application must be acted upon
- ❖ Private right of action allowed for violations of procedures
 - ✓ Injunctions against foreclosure until violations are corrected
 - ✓ Civil penalties against servicers that file multiple, inaccurate mortgage documents or commit reckless or willful violations of law





AB 1950 (Davis)/SB 980 (Vargas)



Advance Fees

- ❖ Current law precludes the collection of advance fees in connection with loan modification services
- ❖ Prohibition on advance fees affects:
 - ✓ Real estate licensees
 - ✓ Attorneys
 - ✓ Unlicensed persons and entities
- ❖ Prohibition on advance fees sunset on 1/1/2013



AB 1950 / SB 980 (Cont.)

Advance Fees

- ❖ Advance fee prohibitions extended
- ❖ Extends statute of limitations for misdemeanor crimes related to mortgage fraud from one year to three years





Senate Bill 1055 (Lieu)

Rent Collections

- ❖ Responds to landlords requiring online payments
- ❖ Requires a landlord/agent to allow a tenant to pay rent and deposit of security by at least one form of payment that is neither cash nor electronic funds transfer
 - ✓ bans the practice of online-only rental payments
 - ✓ prohibits the use of cash as the exclusive form of payment
- ❖ Exceptions for bounced checks and mutual agreement



Senate Bill 1191 (Simitian)



Tenant Rights

- ❖ Requires a residential landlord who has received a notice of default from a lender to disclose the notice of default *in writing* to any prospective tenant before executing a lease for the subject property.
- ❖ Provides the remedy for a landlord's failure to provide the disclosure:
 - ✓ Lease is voidable at the election of the tenant
 - ✓ The tenant is entitled to recover one month's rent or twice the actual damages
 - ✓ The tenant may elect to deduct a total of one month's rent from future rent owed to the landlord if he or she stays



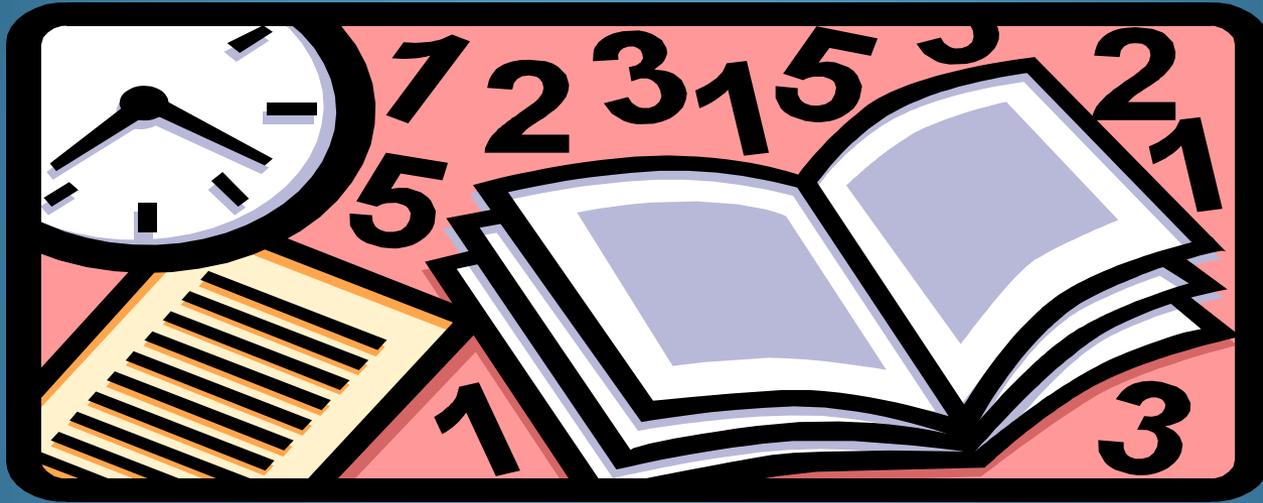
CONCLUSION

For copies of any legislative bill, visit:

www.leginfo.ca.gov



Department of Real Estate Audit Case



Dan Sandri
Chief of Audits

Mortgage Mess in Monterey

- David Arthur Nilsen, licensed REB
- dba Cedar Funding, Cedar Properties
- Place of Business: Monterey, CA
- Business Activity: Private Money Lending and Loan Servicing



David Nilsen – Cedar Funding

- Loans mostly negotiated under DOC Permit, with Cedar Funding Mortgage Fund, LLC as lender, but also under DRE license with individual lenders.
- Loans were primarily construction loans.
- Negotiated 40 loans @ \$24 million.
- Servicing 130 loans valued at \$147 million.



David Nilsen – The Audit



- Audit initiated to investigate self-dealing loans reported to DRE.
- Prior audit resulted in Nilsen license suspension and fines. There was no money mishandling at that time.
- On April 22, 2008, audit began in Nilsen's office. Within days, investor complaints began coming in to DRE.

David Nilsen – The Audit

- Entrance conference with Mr. Nilsen and servicing manager Manoel Errico.
- Soon, our auditors were introduced by Nilsen to attorneys.
- These were attorneys for investors whose money was in the LLC.
- Construction loans for development projects were partially funded – when borrower asked for money, more investor funds were solicited.



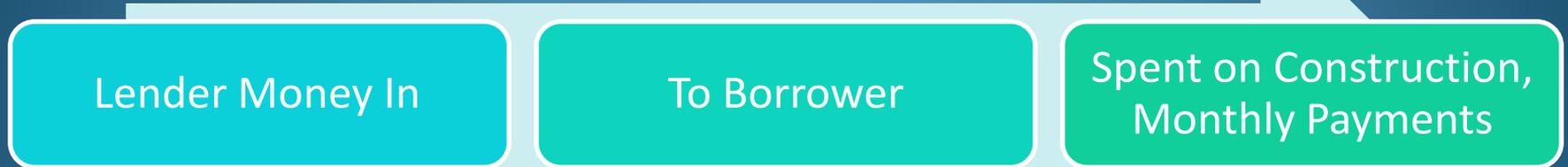
David Nilsen – The Audit

- There were three accounts for handling of client money: an escrow account, a servicing account, and an LLC account.
- Poor records were maintained – per Mr. Errico, borrower and investor balances were not accurate/updated.
- Because of these inaccuracies, and lack of reconciliations, we set about to determine a minimum accountability.



David Nilsen – The Audit

Money Flow:



Accounting Process:



David Nilsen – The Audit

- The auditors started with positive lender and borrower balances. 1,100 LLC investments were not included.
- The auditors made many adjustments to balances. *This took weeks.*
- In this way, we determined a *minimum* amount that should have been in the trust accounts.



David Nilsen – The Audit



- During the audit, Nilsen's office closed – he didn't want to talk to the gathering crowd who had invested and whose payments had ceased.
- Complaints to DRE increased.
- There were concerns about records being carted away.



David Nilsen – The Audit

- By mid-May, records access became a problem due to complete office shutdown.
- DRE Audits had already collected sufficient documentation.
- A preliminary audit report was issued 5/14/08.
- After additional records examined at DRE office, a final report was issued on 6/10/08.



David Nilsen – The Results



- The audit revealed:
 - ❑ A minimum trust fund shortage of **\$13,952,052** as of 12/31/07;
 - ❑ Loans over disbursed to borrowers;
 - ❑ Failure to Record Deeds of Trust in Names of Beneficiaries/Failure to Assign Interests;
 - ❑ Self-dealing – loans made to related entities;

David Nilsen – The Results

- ❑ Multi-lender violations (> 10 lenders on a note; Income/Net Worth Statements)
- ❑ Cedar Funding Inc. performed real estate activity without a license.
- ❑ Failure to reconcile accounting records.



David Nilsen - Timeline



- 4/22/08 - Audit Starts
- 5/14/08 - Preliminary Audit Report issued
- 5/16/08 - Accusation filed against Nilsen
- 5/21/08 - Desist & Refrain Order filed and served
- 5&6/08 - Complaints received by DRE
- 5/26/08 - Cedar Funding Inc. files for bankruptcy
- 6/10/08 - Final Audit Report issued
- 9/24/08 - David Nilsen's REB license revoked

David Nilsen - Timeline

- 9/8/09 - Nilsen and Errico indicted by federal grand jury.
- 10/24/11 - Nilsen Pleads Guilty to conspiracy to commit mail and wire fraud.
- 4/3/12 - Nilsen sentenced to 8 years in prison and ordered to pay \$69,828,833 in restitution.
- Manoel Errico remains a fugitive.
- Attempts continue to recoup funds of lenders through bankruptcy case.





DRE/State Bar Interplay

Wayne Bell, Chief Legal Counsel





Q&A

PANEL FORUM

PANEL FORUM



THANK YOU!

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

www.dre.ca.gov



Next Meeting – January 25, 2013
Monterey