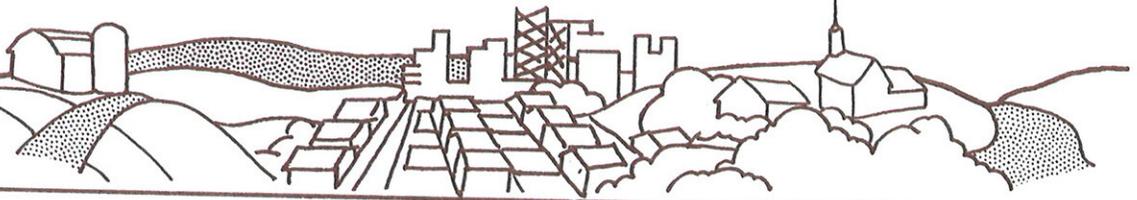


# REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Spring 1979

DAVID H. FOX, Commissioner

## new dre regulations

### Recovery Fund Limits Clarified, or . . . "Doubling the Brokers Doesn't Necessarily Double the Fund"

by Ray Thompson  
Staff Counsel



On January 3, 1979, Commissioner Fox adopted regulation changes which became effective on February 15, 1979.

In early December of last year the Department of Real Estate conducted public hearings in Los Angeles on the proposed changes.

The complete text of the new or amended regulations follows:

#### REPEAL SECTION 2741 OF ARTICLE 6.

Adopt new Section 2741 of Article 6 to read:

**2741. Officer Not to Have Salesperson's License.** No real estate salesperson may be licensed in the employ of a corporate real estate broker licensee, nor perform acts for which a real estate license is required on behalf of or in the name of the corporation, if:

(a) The salesperson, singly or together with other real estate salespersons licensed in the employ of the corporation owns or controls, directly or indirectly, a majority of the outstanding shares of stock of the corporation; or

(b) The salesperson is a director or an officer of the corporation.

The provisions above shall not apply in the case of a corporation which is licensed to act through an individual real estate broker who is an officer and director of the corporation and who has the responsibility to supervise the performance of acts for which a real estate license is required by those real estate salespersons who are shareholders, officers or directors of the corporation.

#### REPEAL SECTION 2741.5 OF ARTICLE 6.

Adopt new Section 2753 of Article 7 to read:

**2753. Retention of Salesperson's License Certificate.** The license certificate of an active real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed.

#### AMEND SECTION 2790.1 OF ARTICLE 12.

**2790.1. Filing Fees.** All subdivision filing fees shall be the maximums set forth in the Real Estate Law and the Subdivided Lands Law except the following:

(a) The filing fee under Section 11011 of the Code shall be \$50 plus \$2 for each lot in the subdivision to a maximum of \$3,000.

(b) The filing fee under Section 11000.1 of the Code shall be:

(1) \$30 for each subdivision interest for subdivision offerings of nine or less interests.

(2) \$300 plus \$2 for each subdivision interest for subdivision offerings of ten or more interests to a maximum fee of \$5,000.

(c) The filing fee under Section 10249.3 of the Code shall be:

(1) \$50 for each subdivision interest for subdivision offerings of nine or less interests.

(2) \$500 plus \$3 for each subdivision interest for subdivision offerings of ten or more interests to a maximum fee of \$5,000.

(d) The filing fee under Section 11011.12 of the Code for a subdivision offering of less than five subdivision interests shall be \$20 per interest.

#### REPEAL SECTION 2790.7 OF ARTICLE 12.

Adopt new Section 2790.7 of Article 12 to read:

**2790.7. Statutory Sections Applicable to Out-of-State Subdivision Offerings.** (a) The following provisions of Article 6 of Chapter 3 of the Real Estate Law and of Part 2, Division 4 of the Code shall govern the sale or lease and the offering to sell or lease lots, parcels or units in a subdivision situated outside of this state pursuant to Article 8 of Chapter 3 of the Real Estate Law:

(1) Sections 11003, 11003.1, 11003.2, 11004, subdivision (e) of 11004.5, 11007,

(Continued on page 6)

Unless you've been away from the practice of real estate for the past fourteen years, you undoubtedly know that California has a Real Estate Recovery Fund which is administered by

DRE. The Fund was created by law in 1964 to provide limited recovery to members of the public who are defrauded by real estate licensees and who are unable to collect on ensuing civil judgments against such licensees.

As measured by its claims record and its cost, the Fund has performed reasonably well. Of the more than 700 claims filed since the Fund began, 78 percent have been paid in whole or part, totalling nearly \$1.9 million. The cost has been minimal, presently 56 cents per salesperson and 94 cents per broker per year, a trifle compared to surety bond or other equivalent coverage.

Notwithstanding its payment record, recovery from the Fund is limited. A qualified claimant may recover only the amount uncollectable on the claimant's judgment, up to certain limits. Such limits are set forth in the Recovery Fund statutes. First, there is a limit of \$10,000 recoverable on losses resulting from a single transaction. This "transactional limit" applies regardless of the number of parties or parcels of real estate involved in the transaction. Thus, a claimant (or claimants) who recovered only \$5,000 on a \$20,000 fraud judgment may still collect only \$10,000 from the Fund.

Second, the amount payable as to any one licensee is limited to \$40,000. (The limit is \$20,000 for causes of action which arose prior to January 1, 1975.) This "per licensee" limit is in addition to the \$10,000 transactional limit. Thus, if five claimants had valid claims of \$10,000 each (i.e., total of \$50,000) against one licensee, a maximum of only \$40,000

(Continued on page 5)

**REAL ESTATE BULLETIN**

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Vol. 39, No. 1 Spring 1979

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**Disciplinary Action—October–December 1978**

REB—Real estate broker  
RREB—Restricted real estate broker  
RES—Real estate salesperson  
RRES—Restricted real estate salesperson  
REO—Real estate officer  
REC—Real estate corporation

NOTE: A list of actions is not published in this Bulletin until the 30-day period allowed for court appeal has expired; or if an appeal is taken on the disciplinary action stayed, until the stay is dissolved. Names of persons to whom licenses are denied upon application are not published.  
\* Not previously published

**FOR YOUR INFORMATION**

The following are brief summaries of the numerical code sections listed after each licensee's name. The full context of the various sections is found in the Business and Professions Code and the Regulations of the Real Estate Commissioner, both of which are printed in the Real Estate Law book available for purchase from the Department of Real Estate at \$2.50 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

**Business and Professions Code**

490	relationship of conviction to licensed activity	10177(a)	procuring a real estate license by misrepresentation or material false statement	10177(k)	violation of restricted license condition
10130	performing acts for which a license is required without the appropriate license	10177(b)	conviction of crime	11010	failure to file notice of intention to sell or lease subdivision
10137	unlawful payment of compensation	10177(c)	false advertisement	11018.2	illegal subdivision sales (sale of subdivision lots without public report)
10145	trust fund handling	10177(d)	violation of real estate law or regulations		
10176(a)	making any substantial misrepresentation	10177(f)	conduct that would have warranted denial of a license		
10176(b)	making false promise	10177(g)	negligence or incompetence as licensee	2725	failure of broker to review agreements
10176(c)	course of misrepresentations through salespersons	10177(h)	failure to supervise salespersons	2830	failure to maintain trust fund account
10176(e)	commingling trust funds	10177(i)	fraud or dishonest dealing not in licensed capacity	2832	improper handling of earnest money deposit
10176(j)	fraud or dishonest dealing in licensed capacity			2852.3	disposition of advance rental fee

**Regulations**

**LICENSES REVOKED**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Whelan, Michael Jerome Jr. (REB)	532-L S. Citrus Ave., Covina	10/17/77	490, 10177(b)
*Escobar, Juan Jose (RREB)	3017 Mission, San Francisco	11/ 1/78	10176(a)(j), 10177(f)(h)
Bielski, Stephen Alfred (RES)	480 S. Orchard Ave., Vacaville	10/ 2/78	490, 10177(b)
Austin, William Thomas (RES)	4876 Sunset Terrace, Apt. H, Fair Oaks	10/ 5/78	490, 10177(b)
Gleave, Leslie Dahl (REO)	1340 North 725 West, Orem, Utah	10/10/78	10176(a)(c)(i), 10177(c)(j)
Off—Pre Builder Land Resale Corporation Off—Pre Builder Land Management Corp. Off—Pre Builder Land Corporation			
Taylor, Jerome Tyler Jr. (RES)	7306 Hunting Creek Dr., Prospect, Kentucky	10/19/78	490, 10177(b)
Michael, Betty Jean (RES)	279 Cedar Rd., Vista	10/24/78	490, 10177(b)
Fox, William Heaton (REB) (REO)	2392 University, Riverside	10/25/78	10176(e)(f)
Off—U.B.L., Inc.			
Breen, Jack Patrick Jr. (RES)	2765 21st St., Sacramento	11/ 7/78	490, 10177(b)
Hughes, Randall Tate (RES)	120 E. Fairmont, #9, Modesto	11/ 7/78	490, 10177(b)
Martinez, Ronnie L. (RES)	900 Sepulveda Blvd., Manhattan Beach	11/ 8/78	490, 10177(a)(f)
Smith, Armand Wendell (RES)	1816 T St., Apt. C, Sacramento	11/14/78	490, 10177(b)
Thompson, Ronald Lee (RES)	700 W. LaVeta, #91, Orange	11/16/78	490, 10177(b)
Hillsborough, Helen Lucille (REB)	4345 37th St., San Diego	11/16/78	2725, 2852.3, 10176(c)(i), 10177(d)(g)(h)(k)
Dbas—Choice Rentals Dbas—Realty Consultants	1231 3rd Ave., Ste. C, Chula Vista		
Kennedy, Curtis Jerome (REB)	1555 Altadena, San Diego	11/16/78	490, 10177(b)
Juskalian, Robert Jr. (REB)	2930 N. Blackstone, #J, Fresno	11/22/78	490, 10177(b)
Dean, Martin Ellis (RES)	22336 De Kalb Dr., Woodland Hills	12/26/78	490, 10177(b)

**LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Guerini, John Theodore (REB) (REO)	624 E. Whittier Blvd., La Habra	6/ 1/78	490, 10177(b)
Dbas—Carousel Realty Off—Cal Financial Services, Inc. (Right to RREB license on terms and conditions)			
Kerns, Bernard John (REB) (REO)	4280 Redwood Hwy, San Rafael	10/ 4/78	10176(a)(g), 10177(g)
Off—Homequity, Inc. (Right to RREB license on terms and conditions)			
Barlenson, Bruce Edwin (REB)	Corner of Hwy 49 & Hwy 16, Plymouth	10/ 6/78	10176(e)(g), 10177(d)(f)
(Right to RREB license after 30 days on terms and conditions)			
Thygesen, Dennis Lee (RES)	129 Giorno St., Ukiah	10/10/78	10177(d)(f), 11010, 11018.2
(Right to RRES license on terms and conditions)			
Thygesen, Patricia Jo Lane (RES)	129 Giorno St., Ukiah	10/10/78	10177(d)(f), 11010, 11018.2
(Right to RRES license on terms and conditions)			
Heintz, Dennis Leston (RES)	P.O. Box 580, Temecula	10/10/78	10176(a)(g), 10177(c)
(Right to RRES license on terms and conditions)			
Buckman, William Austin (RES)	328 Huntley Dr., North Hollywood	10/10/78	10176(a)(g), 10177(c)
(Right to RRES license on terms and conditions)			
Blumling, Hyman C. (REB)	221 Robertson Blvd., Beverly Hills	10/10/78	10176(a)(g), 10177(c)
(Right to RREB license on terms and conditions)			
Miladinovich, Robert (REB)	22925 Arlington Ave., Ste. B, Torrance	10/24/78	10177(f)(j)
(Right to RREB license on terms and conditions)			
Wright, Cheryl L. (RES)	725 Howe Ave., #56, Sacramento	11/ 8/78	490, 10177(b)
(Right to RRES license on terms and conditions)			
Maramag, Daniel Atienza (RES)	82 Menlo Ave., Daly City	11/ 9/78	490, 10177(b)
(Right to RRES license on terms and conditions)			
Rempfer, Larry Wilbert (RES)	2056 Arnold Ave., Oroville	11/14/78	10130, 10137, 10176(e), 10177(d)
(Right to RRES license on terms and conditions)			

**LICENSES SUSPENDED**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Trans Western Mortgage Company (REC) ...	P.O. Box 2323, 1718 Chester Ave., Bakersfield.	11/ 8/78 30 days	10137
Medeiros, Frank Garcia (RES) .....	200 Bruce Ct., Modesto.....	11/15/78 15 days	10176(a), 10177(g)

**LICENSES SUSPENDED WITH STAYS**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Blomgren, Delbert Leo (RES) .....	1171 N. Steven, Reedley .....	10/ 2/78 45 days	10176(b), 10177(g)
(All but 15 days stayed 1 year on terms and conditions)			
Rasmussen, Robert Elmer (RES) .....	7469 North 5th, Fresno .....	10/ 2/78 90 days	10177(d)(g)
(All but 45 days stayed 1 year on terms and conditions)			
Eltinghouse, Robert Herman (REB) .....	Hwy 49 & Hwy 193, Cool .....	10/ 5/78 10 days	10177(g)
(Stayed for 1 year on condition)			
Muller, Claude Raymond Jr. (RES) .....	331 Wildcat Ct., Cool .....	10/ 5/78 30 days	10176(a)
(All but 15 days stayed 1 year on condition)			
Ainaksinen, Gary Wilford (RES) .....	2801 Autumn Estates, San Jose .....	10/16/78 30 days	10177(c)
(All but 15 days stayed 1 year on terms and conditions)			
Pantano Realty Co. (REC) .....	1060 El Camino Real, Belmont .....	10/19/78 30 days	10145, 10177(d)
Dbn--Country Club Realty Off--Pantano, Salvatore (All but 10 days stayed 1 year on terms and conditions)			
Huat, Anne Mae (REB) .....	6424 Watt Ave., North Highlands .....	12/ 8/78 30 days	490, 10177(b)
(Stayed for 1 year on terms and conditions)			

**INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS**

Name	Address	Date
Wilson, David Cooper (REB) .....	P.O. Box 2213, 17735 Redwood Rd., Castro Valley	11/15/78
Henson, Noble Edward (REB) .....	329 E. Regent St., Inglewood .....	12/ 5/78
Clemens, William L. Jr. (REB) .....	3176 Fullman St., Ste. 117, Costa Mesa .....	12/11/78

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**CONTINUING EDUCATION NOTICE**

PLEASE—DO NOT send copies of your continuing education certificates to the Department prior to the time for renewing your license.

Commissioner's Regulation 3013(a) states:  
**LICENSE RENEWAL PROCEDURE**

License renewal application on a form prescribed by the Real Estate Commissioner shall be filed not earlier than 60 days preceding license

expiration date. Applicants must itemize all courses meeting continuing education requirements taken in compliance with Article 2.5 and the hours of attendance at each. Itemizations are to be supported by certificates of attendance or certified copies thereof furnished by the applicant at the time of renewal showing a total of no less than 45 clock hours.

This means that NO license renewal requires evidence of continuing education completion credit until 60 days preceding January 1, 1981. **DRE**

**ASSISTANT REAL ESTATE COMMISSIONER ROYCE RETIRES**

Raymond L. Royce, Assistant Commissioner, in charge of the Southern Regulatory Area with headquarters in Los Angeles retired on December 15, 1978, after 16½ years of service with the Department. This regulatory area is the largest in the State. Royce was responsible for the administration of the Department's real estate law enforcement program in the southern area through district offices in Los Angeles, San Diego, and Santa Ana.



Royce began his career with the DRE in 1962 as a deputy real estate commissioner in the former Oakland office. For several years he was Chief Deputy in charge of the San Francisco office. Before moving to southern California as Assistant Commissioner he was in charge of out-of-state subdivision offerings in the Sacramento headquarters office.

Royce concluded that his service with the DRE has been an excellent and satisfying experience. During his career he handled hundreds of real estate law violations by real estate agents resulting in license revocations and suspensions, criminal prosecutions in cooperation with district attorneys, and civil injunctive proceedings in conjunction with the Attorney General. Royce reflected, "The vast majority of real estate agents are more skilled and conscientious than ever before. However, there still are some who find ingenious ways to violate the law and do great harm to the public."

Ray will make his home in Sacramento. He expects to return to private industry in the Sacramento area.

*In Memoriam*

Richard H. McAdoo passed away January 6, 1979. He was Supervising Deputy of the Fresno District Office at the time of his death and an employee of DRE for 25 years. Most of that time was spent in the Fresno office.

Richard was well known in the San Joaquin Valley not only as the representative of the Department of Real Estate but also for his fair dealings with members of the industry. His jurisdiction extended from Kern County on the South to Stanislaus County on the North and covered the Nevada border to Pacific Coast in San Luis Obispo County.

Richard is survived by his wife Viola and two sons.

*Notes from Licensing*

by Senior Deputy  
Larry Smith



In the past, all successful real estate license applicants have received by mail from the Sacramento DRE Examination Section sets of fingerprint cards along with their examination results and a license application. The completed fingerprint cards were then returned to the DRE with the license application and fee.

Effective February 1, 1979, in support of reducing expenses, the Department no longer automatically mails fingerprint cards to these successful license applicants, although fingerprints will still be required. The rationale behind no longer furnishing them is that these cards are readily available at the locations where fingerprints are taken.

Fingerprints may be taken at any office of the DRE and, normally for a fee, at sheriff's offices, police departments, Department of Motor Vehicle field offices or similar locations. In the event fingerprint cards are not available at a location where fingerprints can be taken, the DRE will furnish such cards upon written request from the applicant. This should, however, be a rather rare circumstance.

Elimination of the automatic furnishing of the cards by the DRE will also enable the Department to realize substantial savings in postage and supplies and also allow a more convenient and faster method of notifying applicants of examination results, compatible with the new data processing system currently being implemented.

License applicants are reminded that there is a separate \$6 fee for processing fingerprint cards, which fee has been in effect for some months, and is the amount charged the DRE by the state agency that actually processes the fingerprints. This \$6 fee is in addition to the license fee itself and must accompany the license application and fingerprint cards when submitted.

DRE

79-80 Edition  
of the  
Real Estate  
**REFERENCE  
BOOK**



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Attn: Reference Book

**APPEALS COURT RULES USE OF  
FALSE PRETENSES (MISREPRESENTATIONS)  
BY BROKER AND EMPLOYEE WAS GRAND THEFT**

by  
L. J. Peatman, Assistant Commissioner  
Southern Regulatory Area

In an amended grand jury indictment a real estate broker and her unlicensed employee were charged with felony counts of grand theft and forgery in a real estate transaction.

The indictment alleged that the defendants schemed to swindle the owners of a parcel of desert land by (1) secretly selling the land and forging the owners' names to a grant deed and escrow instructions and (2) arranging for the proceeds of the sale, amounting to more than \$71,000, to be placed in an account in a Nevada bank. Later \$65,000 from the account was transmitted to a coin company which delivered 3750 Swiss gold francs valued at \$19 each to a person with instructions bearing the forged signatures of one of the land owners. The escrow also sent \$6,000 of the proceeds to the broker as commission.

The defendants argued to the trial court that both counts should be set aside, but the trial court set aside the grand theft count only on the basis that the offense can involve only *personal* property, not *real* property.

This trial court order was appealed by the District Attorney. The Court of Appeals

overruled the trial court and reinstated the charge of grand theft against the defendants.

The appeals court said that grand theft as defined in Section 484 of the Penal Code is not only the offense of taking personal property (larceny) but also "embezzlement, by theft by trick and device, and theft by false pretenses" (citing *People v. Eitzen*, 43 Cal. App. 3d 253, 261) and "it is clear that real property as well as personal property may be the subject of theft by false pretenses." The elements of theft by false pretenses are: (1) that the defendant made a false representation; (2) that he did so with intent to defraud the owner of his property; and (3) that the owner was in fact defrauded in that he parted with his property--both possession and title--in reliance on the false representations. Proof of a false representation may be established by either words or conduct, or both.

The order appealed was reversed, the charge of grand theft restored, and the defendants ordered to stand trial.

*People v. Shirley*, 78 Cal. App. 3d 424, 439 (March 1978).



Seated left to right of the November 30, 1978 meeting of the Real Estate Advisory Commission are Commission members Roy C. Cardillo, Clark E. Wallace (Chairman), David H. Fox, and Alberto Mayer. Photo by Larry Alamo.

1978  
**QUARTERLY EXAM RESULTS**

	SALES		BROKERS	
	Took	Passed	Took	Passed
October	8,370	3,498	1,425	725
November	7,180	2,977	1,369	649
December	7,206	3,166	1,124	410
<b>TOTAL</b>	<b>22,756</b>	<b>9,641</b>	<b>3,918</b>	<b>1,784</b>

**RECOVERY FUND** (Continued from page 1)

would be payable from the Fund. In such a situation, the claims would be prorated and each would probably receive \$8,000.

In this regard, it should be pointed out that two license-related criteria in the Recovery Fund law must be met before a licensee is "involved" in a transaction. First, and most obvious, the person against whom the claim is filed must have been licensed by DRE at the time of the subject transaction. Second, the licensee also must have engaged in activities requiring a license.

Because the statutes affect the "bottom line" recovery and since they are not models of absolute clarity, the payout limits are sources of frequent confusion and contention in administering the Fund. Fortunately, two recent cases have helped clarify the application of these limits.

One, an unpublished Superior Court case from Northern California, involved two brokers who were engaged in the mortgage loan brokerage business. In 1973, the claimant (a lender) entered into an agreement with the brokers to loan \$19,000 to a builder in return for a promissory note and first deed of trust. The money was delivered but the claimant received a second deed of trust which was junior to a first deed of trust on the same property. The brokers had arranged the loan secured by the first deed of trust at the same time they arranged claimant's loan. The builder defaulted on the first trust deed and the holder foreclosed. Brokers did not inform claimant of the foreclosure proceedings and the security for claimant's loan was sold at foreclosure. No amount was ever repaid on the loan.

Claimant obtained a judgment for \$19,000 (plus costs) against both brokers on grounds of fraud and misrepresentation, and subsequently filed a claim against the Fund for the entire amount. The claimant and DRE agreed that only one transaction was involved. Thus, the sole issue at the court hearing on the claim was whether \$19,000 could be recovered, or only \$10,000.

Claimant asserted that \$19,000 was recoverable on the theory that up to \$10,000 was payable as to each of the two licensees. DRE contended that the transactional limit was controlling and limited recovery to \$10,000. In upholding the Department's position, the court expressly concluded that for a single transaction the maximum recovery was \$10,000 even where two licensees were involved.

The second case of *Fox v. Prime Ventures, Ltd., et al.*, 86 Cal.App.3d 333 (1978) was somewhat more complex. It involved three

separate but nearly identical claims against two licensees. One of the licensees was Heneveld, an individual broker. The other was Sather Gate Mortgage Co., Inc., an advance fee loan operation licensed through Heneveld as its designated officer. In 1973, each of the claimants separately agreed in writing to deposit a considerable amount of money with Sather Gate to be held in trust to secure payment for Sather Gate's services in arranging mortgage loans. Thereafter, Heneveld fraudulently and in violation of the agreements withdrew the deposits for his personal use. All claimants obtained judgments against both Heneveld and Sather Gate and presented Recovery Fund claims totaling \$50,000.

The only issue, again, was the amount recoverable from the Fund. DRE contended that only one licensee was involved and that the liability of the Fund was therefore only \$20,000 (the lower per licensee limit applied here because all transactions were before January 1, 1975).

In *Prime Ventures* the trial court held that two licensees were involved and ordered payment of \$40,000. The Department appealed the order as to the extra \$20,000. It contended that because claimants' agreements were with Sather Gate, the only licensed activity involved in the transactions was that of Sather Gate. DRE further argued that since it was not necessary for Heneveld to have an individual broker license in order for Sather Gate to be licensed through him as its designated officer, his having an individual license had nothing to do with the losses incurred and, therefore, should not result in greater recovery from the Fund. The First District Court of Appeal agreed with the Department, reversing the trial court's order and limiting the Fund's payout to \$20,000.

These two cases have clarified the Fund's payout limits. For all claims based on a single transaction, the maximum recoverable is \$10,000 . . . regardless of the number of claimants, the number of parcels of real estate, or the number of licensees involved. As between the two limits, the transactional limit is controlling; no single transaction claimant can recover more than \$10,000. Only where claims involving two or more transactions are presented may the Fund's payout exceed \$10,000. Then, the maximum payable is \$40,000 as to each licensee involved, but the amount recoverable as to any single transaction is still \$10,000.

Although the payout limits have been clarified, the Fund is not without other challenges. Undoubtedly future cases or legislation will assist in resolving other complicated issues related to the Fund. 

modification of a security interest

- a notice to creditors of an intended bulk transfer must be recorded, published and delivered to the county tax collector at least 12 business days before the transfer is to be consummated
- upon every bulk transfer for cash or for an obligation to pay cash in the future (except for such a sale by auction) it is the duty of the transferee (or escrow agent) to apply the consideration to pay the debts of the transferor which are filed in writing by creditors with the transferee, or transferee's agent or escrow agent, prior to the consummation of the transfer. Payment of claims to be in the manner prescribed. (Section 6106)
- the notice to the creditors required under Section 6107 shall now include the name and address of the

**ONE MORE TIME —  
ON USURY**

In an article on the subject of usury in the Fall 1978 issue of the *Bulletin*, the statement was made that the DRE legal staff was of the opinion that the prearranged sale of a purchase-money promissory note to a third party for the purpose of financing the sale of real property would be considered by a court to be a loan and thereby subject to the usury provisions of the California Constitution. In light of a recent holding of the California Supreme Court in a case entitled *Boerner v. Colwell Company*, 21 Cal. 3d 37, it now seems doubtful that a California court faced with the question will characterize the prearranged sale of a promissory note carried back by the seller in a real property transaction as a loan unless the sale itself was not a bona fide one:

In the *Boerner* case the plaintiffs entered into a contract with a builder for the construction of a vacation home. The plaintiffs requested that the builder arrange the financing, and the builder did arrange construction financing with defendant, Colwell Company, a mortgage banker. The arrangements were made in accordance with an established program in which the details of the financing were specified by the defendant. In addition before agreeing to finance the construction, the defendant checked the credit of the customer and made a desk appraisal of the value of the real property as improved with the structure to be built. Funds were not available for the construction until the defendant had accepted the construction contract for purchase. Upon acceptance, the defendant recorded the contract and the deed of trust securing the owner's obligations under the contract. In short, the construction of the vacation home was financed by the prearranged sale of the construction contract to defendant.

The interest paid by plaintiff to defendant to finance the construction exceeded 10 percent per year and plaintiff commenced a class action claiming that the financing constituted a loan at usurious interest rate.

In a 4-3 decision the Supreme Court characterized the financing arrangement as a bona fide credit sale and therefore not subject to the usury laws. The majority concluded that the applicability of the usury laws "must be limited to those cases in which the record clearly reveals that the substantial intent of the parties was to effect the hire of money at an excessive rate of interest rather than to finance a bona fide sale of property."

person with whom claims may be filed and the final date for filing claims

- in any transaction handled by an escrow agent, the transferee shall deposit with the escrow agent the full amount of purchase price or consideration; no funds shall be drawn from escrow prior to the actual closing and completion of the escrow for payment, in whole or in part, of any commission, fee or other consideration as compensation for a service which is contingent upon the performance of any act, condition, or instruction set forth in the escrow.

A copy of this bill may be obtained by writing to: Legislative Bill Room, Sacramento, CA 95814. (Chapter 490, Stats, 1978.) 

**BuSine\$\$ Opportunities**

Real estate licensees who handle business opportunity transactions should be aware that new bulk sales legislation became effective January 1, 1979. Assembly Bill 2534-Knox repealed Section 3440.1 of the Civil Code, amended Sections 6102, 6103, 6105, 6107 and 6111 of and added Sections 6106 and 6106.1 to the Commercial Code.

These law changes include the following provisions:

- manufacturers are now included as an enterprise required to give advance notice to creditors of an impending bulk transfer
- "transfer" no longer includes the creation or

## Statewide Structural Pest Control Hearings

by  
Larry Alamao, Staff Counsel

Last July the Department of Real Estate and the Structural Pest Control Board held a series of joint hearings into structural pest control related problems affecting real estate transactions. The hearings were prompted by the more than 3,000 structural pest control complaints received annually by the two Departments.



Commissioner David H. Fox, who chaired the first hearing held in Los Angeles, observed that the structural pest control industry costs California citizens some \$250 million each year.

The hearings addressed such matters as:

- the selection of inspectors
- the cost of inspection and corrective work
- incomplete reports and improper repairs
- multiple reports and failure to disclose that more than one report exists
- forms and practices.

During the three days of the hearings (held in Los Angeles, San Francisco and San Diego) over 50 witnesses testified. Appearing were witnesses from large and small real estate brokerages, pest control firms and a number of consumer complainants. Witnesses testified that:

- infestations and structural damage were often overlooked
- reports were kept concealed
- report "shopping" frequently occurs
- very few persons (including real estate licensees) understand or can read structural pest control reports
- certain structures or areas of an improved property are often excluded from inspections
- pressure is sometimes exerted to overlook items which should be reported
- quite often no one will accept responsibility for problems which are reported or occur as a result of the report contents or omissions.

The last point prompted one member of the hearing panel to describe the structural pest control processes as "a conspiracy of nonresponsibility." One witness observed that pest control difficulties are the single most time-consuming problem in residential real property sales.

The hearings produced general agreement that improvements are needed in pest control operations. Among the many suggested solutions were:

- increased training of structural pest control inspectors and education of the public at large on structural pest control matters
- the need for greater involvement and assistance on the part of real estate agents

- greater enforcement efforts to remove dishonest practitioners
- simplified forms and practices
- the need for full disclosure of all structural pest control reports and documents prepared in a particular transaction.

In addition to testimony on abuses, a number of witnesses described how they managed to avoid most structural pest control problems. In general, real estate licensees were successful in handling or controlling structural pest control difficulties because the licensees simply took the time to read and understand the inspection reports (and ask questions, if necessary). Further, these licensees closely monitored the entire structural pest control process and helped their clients when problems occurred.

Finally, the licensees who avoided the normal structural pest control pitfalls usually explained to their clients what was taking place and why. The hearing panel was told that larger real estate offices usually have formal structural pest control training programs for their sales associates. In smaller offices an experienced licensee will closely supervise structural pest control matters.

A report on the testimony, findings and suggestions made at the hearings has been compiled. The Department of Real Estate, the Structural Pest Control Board, interested real estate licensees and pest control operators are working to implement the suggested improvements coming from the hearings.

*(Editor's note: Many real estate licensees believe there is a requirement to deliver only one report and notice of completion. However, where the licensee has reason to believe that the report delivered does not contain findings of infestation noted in any other report not delivered, the licensee must disclose the report not delivered. Disciplinary action has been initiated by the Department for such a failure to disclose.)*

DRE

### REGULATIONS (Continued from page 1)

11010, 11011 (except the fee provisions), 11011.8, 11012, 11013, 11013.1, 11013.2, 11013.3, 11013.4, 11013.5, 11014, 11015, 11017, 11018, 11018.1, 11018.4, 11018.5, 11018.7, 11021, 11028, 11029, 11029.1 and 11200 of Part 2, Division 4 of this Code.

(2) Sections 10237.2, 10237.6, 10237.7, 10237.8, 10237.9, 10238, 10238.1, 10238.2, 10238.3, 10238.4, 10238.5 and 10238.6 of Article 6, Chapter 3 of the Real Estate Law.

(b) For purposes of administration of Article 8, Chapter 3 of the Real Estate Law:

(1) The term "real property securities dealer" in Sections 10237.6, 10237.7, 10237.8, 10237.9, 10238, 10238.1 and 10238.3 of the Code shall be read to refer to an applicant for a permit to sell or lease or to offer to sell or lease in this state, lots or parcels in a subdivision situated outside of this state.

(2) The terms "real property security" or "real property securities" in Sections 10237.2, 10238.2, 10238.3, 10238.4 and 10238.6 of the Code shall be read to refer to subdivision interests in a subdivision situated outside of this state.

(3) The term "public report" in Sections 11013.5, 11018, 11018.1, 11018.4, 11018.5, 11018.7 and 11029 of the Code shall be read to mean "permit".

(c) The report referred to in Section 10238.1 shall contain such information as the

Commissioner may determine to be material to the filing and to the permit issued pursuant to Section 10238.4.

### AMEND SECTION 2792.6 OF ARTICLE 12 TO READ:

**2792.6. Required Documents for Condominium and Planned Development Public Report Application.** An applicant for a public report for a planned development or condominium subdivision shall submit the following documents with the notice of intention and questionnaire or as soon thereafter as possible:

(a) A current policy of title insurance or preliminary title report covering all of the subdivision interests for which a public report is sought including, but not limited to, the following content:

(1) A legal description of the subdivided property.

(2) The nature of the interest or estate covered by the policy or report.

(3) The record owner of the interest or estate covered by the policy or report.

(4) All easements, liens, rights, interests and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.

(5) The existence of the encroachment of improvements over lines of record title.

(6) All mechanics liens arising out of work completed or work in progress.

(7) The existence of assessments or potential assessments for public improvements completed or under construction.

(b) Evidence of the financial arrangements to assure completion of all on-site and off-site improvements included in the offering.

(c) A detailed statement as to the method of financing the sales of subdivision interests to purchasers thereof.

(d) Where appropriate, a schedule of the fractional interests in the common area to be acquired by purchasers of individually-owned subdivision interests.

(e) A copy of the declaration of covenants, conditions and restrictions for the subdivision development.

(f) A copy of all proposed governing instruments for the owners' association including, where applicable, articles of incorporation or association, bylaws, management agreement and rules for the use of common areas and recreational facilities.

(g) A copy of exemplar escrow instructions including at least the following:

(1) A description of the nature of the transaction.

(2) Provision for the return to non-defaulting buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed by a date prescribed in the instructions.

(3) The name and address of the escrow depository to be utilized.

(4) Where applicable, directions to the escrow depository to assure compliance with the provisions of Section 11018.5(a)(2)(B) of the Code.

(Continued on page 7)

**REGULATIONS** (Continued from page 6)

(h) Where appropriate, a copy of the agreement entered into with the county assessor pursuant to Section 2188.3 of the Revenue and Taxation Code.

(i) In the case of condominium development, a copy of the plan recorded pursuant to Section 1351 of the Civil Code.

(j) Where applicable, a copy of the subdivision map or parcel map filed with the county recorder.

(k) A copy of all agreements, promissory notes, deeds and deeds of trust and other instruments to be issued to, or entered into with, a purchaser of a subdivision interest.

(l) If the applicant for a public report is a corporation, a copy of the resolution of the Board of Directors of the corporation authorizing the filing of the application for a public report.

(m) A detailed pro forma budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision project with comparative or other data supporting estimates of expenses.

(n) Such other documents as the commissioner may require.

**AMEND SECTION 2792.8 OF ARTICLE 12 TO READ:**

**2792.8. Governing Instruments for Common Interest Subdivisions.** (a) Governing instruments for the ownership and management of subdivisions enumerated in Section 11004.5 of the Code (common-interest subdivisions) including the Covenants, Conditions and Restrictions (CC&Rs), Articles of Incorporation (Articles) and Bylaws shall ordinarily provide for, but need not be limited to, the following:

(1) Creation of an organization (hereafter Association) of subdivision interest owners;

(2) A description of the common interests of the subdivision owners or lessees;

(3) Transfer of title and/or control of common interests or of mutual and reciprocal rights of use to the owners in common or the Association;

(4) Procedures for calculating and collecting regular assessments from owners to defray expenses attributable to the ownership, operation or furnishing of common interests or to the enjoyment of mutual and reciprocal rights of use;

(5) Procedures for establishing and collecting special assessments for capital improvements or for other purposes;

(6) Liens upon privately-owned subdivision interests for assessments levied pursuant to the CC&Rs and foreclosure thereof for nonpayment;

(7) Policies and Procedures relating to the disciplining of members for failure to comply with provisions of the governing instruments;

(8) Creation of a governing body for the Association;

(9) Procedures for the election and removal of governing body members and officers of the Association;

(10) Enumeration of the powers and duties of the governing body and the officers and of the limitations upon the authority of the governing body to act without the prior approval of members representing a majority of the voting power of the Association;

(11) Allocation of voting rights to Association members;

(12) Preparation of the budgets and financial statements of the Association, and for distribution to the Association members;

(13) Regular and special meetings of Association members with notice requirements;

(14) Regular meetings of the governing body with provision for notice to Association members;

(15) Quorum requirements for meetings of members of the Association and of the governing body;

(16) Procedures for proxy voting at members' meetings;

(17) Policies and procedures governing the inspection of books and records of the Association by members;

(18) Amendment procedures for those provisions of the governing instruments which relate to the ownership, management and control of the Association and/or the common interests;

(19) Prohibitions against or restrictions upon the severability of a separately-owned portion from the common interest portion of a subdivision interest;

(20) Conditions upon which a partition of a condominium project may be had pursuant to Section 1354 of the Civil Code;

(21) Action to be taken and procedures to be followed in the event of condemnation, destruction or extensive damage to the subdivision interests, including provisions respecting the use and disposition of insurance proceeds or damages payable to the Association or to a trustee on behalf of owners on account of condemnation, destruction or damage;

(22) Annexation of additional land to the existing development where appropriate;

(23) Architectural and/or design control;

(24) Special provisions for enforcement of financial arrangements by the subdivider to secure performance of his commitment to complete common-area improvements;

(25) Granting of easements or use rights affecting the common areas.

(b) The Commissioner will ordinarily consider provisions of the governing instruments proposed for a common-interest subdivision to constitute "reasonable arrangements" under Section 11018.5 of the Code if the provisions are in substantial conformance to the applicable standards prescribed in Sections 2792.4 and 2792.15 through 2792.28 of these Regulations and if they do not otherwise arbitrarily deny, limit or abridge the right of owners with respect to management, maintenance, preservation, operation or control of their subdivision interests.

**REPEAL SECTION 2792.11 OF ARTICLE 12.**

Adopt new Section 2792.11 of Article 12 to read:

**2792.11. Undivided Interests Subdivision—Required Documents.** An applicant for a public report for the sale of undivided interests in subdivided land including the sale of subdivision interests in community apartment projects and stock cooperatives shall submit the following documents with the notice of intention and questionnaire or as soon thereafter as possible.

(a) A current policy of title insurance or preliminary title report covering all of the subdivision interests for which a public report is sought including, but not limited to, the following content:

(1) A legal description of the subdivided property.

(2) The nature of the interest or estate covered by the policy or report.

(3) The record owner of the interest or estate covered by the policy or report.

(4) All easements, liens, rights, interests and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.

(5) The existence of the encroachment of improvements over lines of record title.

(6) All mechanics liens arising out of work completed or in progress.

(7) The existence of assessments or potential assessments for public improvements completed or under construction.

(b) Evidence of the financial arrangements to assure completion of all on-site and off-site improvements included in the offering.

(c) A detailed statement as to the method of financing the sales or leases of subdivision interests to purchasers or lessees.

(d) Copies of all instruments to be issued to, or entered into with, purchasers of subdivision interests including financing instruments.

(e) A copy of declaration of covenants, conditions and restrictions recorded, or to be recorded, for the subdivision.

(f) Copies of all proposed governing instruments for the owners association including, where applicable, articles of incorporation or association, bylaws, management agreements and rules for the use of common areas and facilities.

(g) A copy of exemplar escrow instructions covering sales of subdivision interests including at least the following:

(1) A description of the nature of the transaction.

(2) Provision for the return to nondefaulting buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed within the time prescribed in the instructions.

(3) The name and address of the escrow depository to be utilized.

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**REGULATIONS** (Concluded)

(4) Where applicable, directions to the escrow depository to assure compliance with the provision of Section 11018.5(a)(2)(B) of the Code.

(h) Where applicable, a copy of the subdivision map or parcel map filed with the county recorder.

(i) A narrative statement of the plan for the formation and operation of the project.

(j) A detailed pro forma budget reflecting estimated ownership, operation and maintenance expenses and reserves for the subdivision with comparative or other data supporting the estimates.

(k) If the applicant for a public report is a corporation, a copy of the resolution of the board of directors of the corporation authorizing the filing of the application for a public report.

(l) Where applicable, copies of the subscription, membership and/or occupancy agreements to be executed by the purchaser of a subdivision interest.

(m) Where applicable, a copy of any regulatory agreement with a governmental agency affecting the ownership and operation of the subdivision project.

(n) A copy of any proposed management agreement between the owners association and a management agent.

(o) Such other documents as the Department may require.

**AMEND SECTION 2792.16 OF ARTICLE 12 TO READ:**

**2792.16. Reasonable Arrangements—Assessments and Liens.** (a) Regular Assessments to defray expenses attributable to the ownership, operation and furnishing of common interests by the Association shall ordinarily be levied against each owner according to the ratio of the number of subdivision interests owned by the owner assessed to the total number of interests subject to assessments.

(b) In the case of a subdivision offering in which it is reasonable to anticipate that any owner will derive as much as 10% more than any other owner in the value of common services supplied by the Association, the

assessment against each owner may be determined according to a formula or schedule under which the assessments against the various subdivision interests bear a relationship which is equitably proportionate to the value of the common services furnished to the respective interests.

(c) The subdivider—and his successor in interest, if any—is an owner subject to the payment of regular and special assessments against subdivision interests which he owns provided, however, that the subdivider and any other owner of a subdivision interest which does not include a structural improvement for human occupancy may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvement. The exemption may include, but shall not necessarily be limited to:

(1) Roof replacement;

(2) Exterior maintenance;

(3) Walkway and carport lighting;

(4) Refuse disposal;

(5) Cable television; and

(6) Domestic water supplied to living units.

Any such exemption from the payment of assessments shall be in effect only until a notice of completion of the structural improvement has been recorded or until 120 days after the issuance of a building permit for the structural improvement, whichever first occurs.

(d) The governing body of the Association may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider, impose a regular annual assessment per subdivision interest which is more than 20% greater than the regular assessment for the immediately preceding fiscal year.

(e) (1) In any fiscal year, the governing body of the Association may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed 5%

of the budgeted gross expenses of the Association for that fiscal year.

(2) Every general special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments.

(3) The above provisions with respect to special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the governing body to reimburse the Association for costs incurred in bringing the member and his subdivision interest into compliance with provisions of the governing instruments for the subdivision.

(f) (1) Regular assessments against the subdivision interests in a phase of a multi-phase subdivision or against all subdivision interests in a single-phase subdivision shall commence on the date of closing of the first sale of a subdivision interest in that phase or on the first day of the month following the closing of the first such sale.

(2) Except in those subdivision offerings where there is an approved subsidization plan which otherwise provides, voting rights attributable to subdivision interests shall not vest until assessments against those interests have been levied by the Association.

(g) (1) A lien for regular or special assessments against an owner may be made subordinate by the CC&Rs to the lien of any first mortgage or first deed of trust (hereafter collectively first encumbrance) against subdivision interests of the owner.

(2) In the case of a subordination of a lien for assessments to a first encumbrance, the transfer of a subdivision interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first encumbrance shall extinguish the lien of assessments which were due and payable prior to the transfer of the subdivision interest.

(3) No transfer of the subdivision interest as the result of a foreclosure or exercise of a power of sale shall relieve the new owner, whether it be the former beneficiary of the first encumbrance or another person, from liability for any assessments thereafter becoming due or from the lien thereof.

**REPEAL SECTIONS 2990 THROUGH 2999.6 INCLUSIVE OF ARTICLE 23.**

DRE