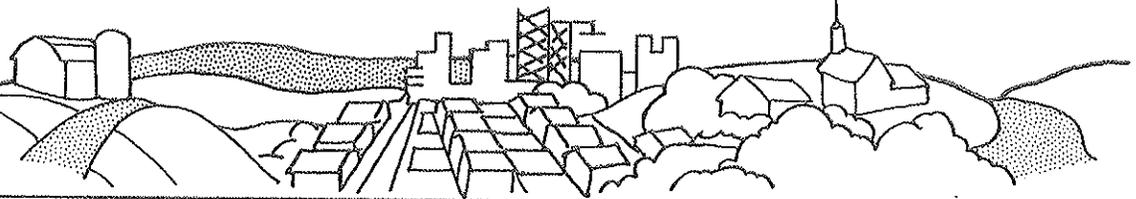




REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Spring 1981

DAVID H. FOX, Commissioner

Net Listing Does Not Relieve Broker of Most Obligations

prepared
by
Barbara Leidigh, Counsel

Following a recent disciplinary proceeding a real estate licensee who had listed property under a net listing* was disciplined for misrepresentation, failure to present an offer to the seller, and failure to reveal to the seller the amount of commission to be received from the sale. The licensee's real estate license was revoked and the licensee was given the right to obtain a restricted real estate license. The time for appeal from this decision had not expired as of this writing.

FACTS

The Administrative Law Judge who presided at the hearing found the following facts:

1. The real estate licensee (R) obtained a net listing from the seller (S) authorizing the sale of property. The net listing agreement provided that S would receive \$10,000 net from the sale, and that R would receive any excess over \$10,000 as a commission.
2. After determining the value of the property, R set the price and advertised it for sale at \$13,950.
3. R subsequently received an offer from B to purchase the property for \$12,950.
4. R refused to present the \$12,950 offer to S, falsely representing to B that S had turned down other offers for that amount.
5. Subsequently, R received an offer from B for \$13,950 and began the steps necessary to transfer title to B and to pay S \$10,000.
6. R failed to present B's \$13,950 offer to S.
7. R failed to reveal to S the amount of compensation that he expected to realize from the transaction before S signed documents relinquishing title to P. S learned the amount of R's compensation after title had been transferred to B.

*A "net listing" is a listing which provides that the agent may retain as compensation for agent's services all sums received over and above a net amount to be received by the owner.

DISCIPLINARY ACTION

The hearing officer determined that cause for discipline had been established under Business and Professions Code Sections 10176(a) (misrepresentation), 10176(g) (failure to reveal the amount of commission to the seller) and Regulation 2785(a)(5) (failure to present offer to seller).

DISCUSSION

Frequently real estate licensees have the mistaken impression that if they have a net listing they need not comply with the usual disclosure duties owed by the agent to the seller. This impression is probably caused by the idea that the "net listing exception" to the agent's usual duties is much broader than it actually is.

Under the usual listing agreement, which calls for compensation of the real estate agent at a negotiated percentage of the selling price, the agent must, as part of his or her fiduciary duty, disclose to the seller all material facts. For net listings, however, an exception has been carved out by two court cases with essentially similar facts, in which the broker failed to disclose to the seller the buyer's identity, and did in fact purchase the property for his own account. *Allen v. Dailey* (1928) 92 Cal. App. 308, 268 P. 404 and *Pascal v. Cotton* (1962) 205 Cal. App. 2d 597, 23 Cal Rptr. 357. In these cases, the courts held that the broker did not violate his fiduciary duty. However, in all other types of cases involving a net listing, in which full disclosure of all material facts was not made to the seller, the courts have found a violation of the broker's fiduciary duty. Thus, it appears that the exception has not been extended beyond the facts set forth in *Allen* and in *Pascal*. Generally, it appears that the net listing exception is limited to those situations in which a non-disclosure could not endanger the seller's financial interests, and in which the licensee's interests are not placed ahead of the seller's interests. Where non-disclosure may work to the seller's detriment, (the rationale used to justify the result in *Allen* and in *Pascal* cannot be applied.

In the case discussed herein, R failed to present all offers to S, and additionally failed to reveal to S the amount of his commission in the sale. Inherently, by failing to present the lower offer, he promoted his own financial

(Continued on page 5)

Qualifying Interests in Mini-syndicates with the Department of Corporations

PART II
prepared by
Staff of Department of Corporations

This is the second in a series of articles by the California Department of Corporations ("DOC") on the regulation of the offer and sale of interests in small real estate syndicates, sometimes referred to as "mini-syndicates" because they have less than 100 interests. Interests in "mini-syndicates" are "securities" subject to regulation under the Corporate Securities Law of 1968 (Section 25000 et seq., Corp. Code, "CSL"). The "value" of the real property to be acquired with investors' money has no bearing on whether the interests are "securities." The offer and sale of these interests must be qualified under the CSL, unless an exemption is available.

Qualifying the offer and sale of these securities should not be difficult, if the syndicator and his or her attorney are familiar with the rules under the CSL in Subchapter 2, Chapter 3, Title 10, California Administrative Code. Subarticle 10 of the rules deals with real estate programs. A complete application package may be obtained from any office of DOC.

Any security for which a registration has been filed with the Securities and Exchange Commission ("SEC") under the Securities Act of 1933 in connection with the same offering may be qualified by coordination under Section 25111. If the interests are not registered with the SEC, an application should be filed under Section 25113. An applicant should study the application package and make sure that all required information is properly set forth. A completed Consent to Service of Process must be included. In addition, the application

(Continued on page 7)

1981 Supplement to Real Estate Law Book is now available for \$1.00. This includes postage and handling. Mail request and check payable to the Department of Real Estate to:

Department of Real Estate
P.O. Box 160009
Sacramento, CA 95816

ATTENTION: Book Purchase.

REAL ESTATE BULLETIN

Official Publication of the
California Department of Real Estate
Member, National Association of Real Estate
License Law Officials

Vol. 41, No. 1 Spring 1981

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor
DAVID H. FOX
Real Estate Commissioner

PRINCIPAL OFFICE

1719-24th Street, Sacramento 95816
Telephone (916) 445-3995

- W. JEROME THOMAS, Chief Legal Officer
- WILLIAM A. WIGGINS, Assistant Commissioner
Administration Division, Licensing
- RICHARD D. CARLSON, Assistant Commissioner
Policy, Planning and Transaction Activities
- HENRY H. BLOCK, Assistant Commissioner
Education and Research, Course Approvals
and Continuing Education
- LARRY W. SMITH, Real Estate Manager III,
Licensing and Examinations
- RUTH M. FENNEL, Real Estate Specialist III,
Publications - Editor

NORTHERN REGULATORY AREA

JOHN R. LIBERATOR, Assistant Commissioner

District Offices

- San Francisco, Room 5816, 185 Berry Street, 94107
Telephone 415-557-2136
WILLIAM O. KEWLEY, Real Estate Manager III,
Regulatory
- Sacramento, 1719-24th Street 95816
Telephone 916-445-6776
BILLY R. LEDEMAN, Real Estate Manager III,
Regulatory
- Fresno, Rm. 3084, 2550 Mariposa St. 93721
Telephone 209-445-5009
ROBERT E. MCCART, Real Estate Manager II,
Regulatory

SOUTHERN REGULATORY AREA

LEIGHTON J. PRATTMAN, Assistant Commissioner

District Offices

- Los Angeles (Main Office, Southern Area)
Rm. 8107, 107 S. Broadway 90012
Telephone 213-620-5903
ROBERT C. ARNOLD, Real Estate Manager III,
Regulatory
- San Diego, Rm. 5008, 1350 Froh St. 92101
Telephone 714-237-7345
CARL LEWIS, Real Estate Manager II,
Regulatory
- Santa Ana, Rm. 324, 28 Civic Center Plaza 92701
Telephone 714-558-4491
LINDA R. KATZMAN, Real Estate Manager III,
Regulatory

SUBDIVISIONS

- RAYMOND M. DABLER, Assistant Commissioner
Sacramento Hdqtrs: 1719-24th Street 95816
FRANK J. RYAN, Real Estate Specialist IV
Los Angeles, Room 8107, 107 S. Broadway, 90012
RANDOLPH BRENDA, Real Estate Manager III
Sacramento, Suite 250, 4433 Florin Road 95823
DUANE AASLAND, Real Estate Manager III
San Francisco, Room 5816, 185 Berry Street 94107

**STATE REAL ESTATE ADVISORY
COMMISSION MEMBERS**

- | | |
|-------------------------------------|------------------------------------|
| RAY C. CARLSON
Berkeley | CLARK WALLACE
Moraga |
| EMILIE F. GAYWOOD, JR.
Los Gatos | DONALD E. WERRY
San Francisco |
| GEORGE M. MARCUS
Palo Alto | DOUGLIS COLTON
Beverly Hills |
| ALBERTA (PINES) MAYER
Fremont | GARY W. LEFKOWITZ
Beverly Hills |

The Real Estate Bulletin (USPS 456600) is a quarterly published by the State of California, Department of Real Estate, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the California Business and Professions Code.

From the license renewal fee, \$1 is allocated to cover subscription to the Bulletin. Second Class Postage paid at Sacramento, California. Postmaster, send address changes to Real Estate Bulletin, 1719 24th Street, Sacramento 95816.

Disciplinary Action—September–November 1980

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 application is 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 \$3.00 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
- 10086 violation of order to desist and refrain
- 10145 trust fund handling
- 10176(a) making any substantial misrepresentation
- 10176(b) making false promise
- 10176(c) commingling trust funds
- 10176(d) fraud or dishonest dealing in licensed capacity
- 10177(a) procuring a real estate license by misrepresentation or material false statement

- 10177(b) conviction of crime
- 10177(d) violation of real estate law or regulations
- 10177(f) conduct that would have warranted denial of a license
- 10177(g) negligence or incompetence as licensee
- 10177(h) failure to supervise salespersons
- 10177(j) fraud or dishonest dealing not in licensed capacity
- 10177(k) violation of restricted license condition
- 11010 failure to file notice of intention to sell or lease subdivision
- 11018.2 illegal subdivision sales (sale of subdivision lots without public report)

Regulations

- 2830 failure to maintain trust fund account
- 2832 improper handling of earnest money deposit
- 2832.1 trust fund accountability

LICENSES REVOKED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Winn, Madeleine Louise (RES)	5109 N. Ravine Ln., Elm Oaks	9 1 80	10176(a)(1)
DeBalt, Harold Allison (REB)	4803 West Avenue, #18, Quartz Hill	9 3 80	490, 10177(d)(1)
Dba: Masters Realty			
Castro, Jeffrey Alan (RES)	9943 San Pablo Ave., El Cerrito	9 5 80	490, 10177(b)
Dunkham, Nina Elizabeth (RES)	635 N. Chippewa, Anaheim	9 10 80	490, 10177(b)
McKibbin, Stephen Rory (RES)	3852 Sherwood Dr., Sherman Oaks	9 11 80	490, 10177(b)
Swartz, William Richard (RES)	272 Glenview, San Francisco	10 7 80	490, 10177(a)(b)(1)
Davis, Timothy Mark (RES)	22635 Madison St., Hayward	10 9 80	490, 10177(b)
Bolton, Sherry Dean (RES)	2453 Gonzaga St., Palo Alto	10 15 80	490, 10177(b)(1)
Allen, Grant Wilbur (REB)	1467 Beaumont, Upland	10 21 80	10177(a)(6), 10177(b)
Callahan, Robert (RES)	410 South 1st St., Space 167, El Cajon	10 23 80	490, 10177(b)
Munka, George Frank (RES)	22145 Bunde, Mission Viejo	10 24 80	490, 10177(b)
McCall, Daniel E. (RES)	2899 San Angelo, Palm Springs	10 24 80	490, 10177(a)
Buchter, Cathann G. E. (RES)	8116 Camino Gianni, La Jolla	11 4 80	490, 10177(b)
Trimble, Edwin Herman (REB)	1819 North F St., San Bernardino	11 4 80	2830, 2832.1, 10176(a)(1)(i), 10177(d)
Dba: The Golden West Realty			
Reborn, Wilham Francis (RES)	4342 51st St., Apt. 4, San Diego	11 13 80	490, 10177(b)(1)
Stewart, John Gregory (REB)(RG)	400 Oceangate, Ste. 333, Long Beach	11 13 80	10177(a), 10177(d)
Oft: Stewart Mortgage Company			
Oft: Oceangate Equities			
Oft: Pyramid Realty			
Stewart Mortgage Company (REC)	400 Oceangate, Ste. 333, Long Beach	11 13 80	10177(a), 10177(d)
Oft: Stewart, John Gregory			
Greene, Harry Cecil (RES)	3406 Mulberry Ave., Riverside	11 25 80	490, 10177(b)
Pearson, Arlene Mae (RES)	8525 Hamilton Way, Stockton	11 25 80	10176(a)(1), 10177(j)
Pearson, Leonard Harold (RES)	8525 Hamilton Way, Stockton	11 25 80	10176(a)(1), 10177(j)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Rubalcava, Lupe (RES) (Right to RRES license on terms and conditions)	2964 Lawn Ct., Merced	9 15 80	490, 10177(b)
Strossenger, Peter Brooks (REB)(RO)	623 Pleasant Valley Rd., Diamond Springs	7 24 80	490, 10177(b)
(Right to RRES license on terms and conditions)			
Facio, Ralph Edward (REB)	3804 Railroad Ave., Pittsburg	9 24 80	490, 10177(b)
(Right to RRES license on terms and conditions)			
Thompson, William Burns (RES)	14021 Prairie, Hawthorne	10 9 80	10177(b)
(Right to RRES license on terms and conditions)			
Watts, Leona Libran (RFB)	2308 Artesa Blvd., Redondo Beach	10 15 80	490, 10177(b)(1)
(Right to RRES license on terms and conditions)			
Ayers, Betty Louise (REB)	1731 S. Euclid, Ste. G, Anaheim	10 21 80	2831, 2831.1, 2832, 10145, 10176(a)(b)(6)(b), 10177(b)(1)(j)
(Right to RRES license on terms and conditions)			
Osborn, Ralph William (RES)	7807 Temple Ln., Citrus Heights	10 21 80	490, 10177(b)
(Right to RRES license on terms and conditions)			
Zamora, John William Jr. (RES)	7059 Wooded Lake Dr., San Jose	10 27 80	490, 10177(b)
(Right to RRES license on terms and conditions)			
Boady, Susan Kathleen (RES)	5106 Carocum Dr., San Diego	11 12 80	490, 10177(b)
(Right to RRES license on terms and conditions)			
Lok, Kitty K. L. (RES)	100 W. Portal Ave., San Francisco	11 13 80	490, 10177(b)
(Right to RRES license on terms and conditions)			
Ward, Barbara Kay (RES)	1791 Hillsdale Ave., San Jose	11 17 80	10176(a)(1), 10177(d)
(Right to RRES license on terms and conditions)			
Hoffman, Donald Jay (REB)	493 Steison St., Moss Beach	11 18 80	490, 10177(b)
(Right to RRES license on terms and conditions)			
Sparks, Rayma Louise (RES)	49430 Road 426, Oakhurst	11 24 80	490, 10177(b)
(Right to RRES license on terms and conditions)			

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective date	Violation Business and Professions Code Commissioner's Regulations
InPba, James Blair (RFB) Dba: JBL Realty Obl: JBL Realty, Inc (All but 30 days stayed for 1 year on terms and conditions)	4218 Mesa St., Torrance	9 17 80 (90 days)	10176(c)(6), 10177(d)
JBL Realty, Inc (RFC) Obl: InPba, James Blair (All but 30 days stayed for 1 year on terms and conditions)	4218 Mesa St., Torrance	9 17 80 (90 days)	10176(c)(6), 10177(d)
Horton, Clara Sue (RFS) (All but 30 days stayed for 1 year on condition)	726 Mecker St., La Puente	9 23 80 (90 days)	10177(i)
Drew, Eric William (RFB) Obl: Mid Towne Realty, Inc (Stayed for 1 year on terms and conditions)	709 Healdsburg Ave., Healdsburg	9 29 80 (60 days)	10177(h)
Wright, Dallas Edward (RFB) (Stayed for 1 year on terms and conditions)	709 Healdsburg Ave., Healdsburg	9 29 80 (60 days)	10176(a)
Hobbs, Doris Qualter (RFB) Dba: Imperial Realty Services Dba: Majestic Mortgage (All but 15 days stayed for 1 year on terms and conditions)	2331 W. Lincoln, Ste. A, Anaheim	10 7 80 (30 days)	10177(d), 11010, 11018.2
Muller Realtors & Management Co., Inc (RFC) Obl: Muller, Witold O. (Stayed for 2 years on conditions)	801 S. Garfield Ave., Ste 107, Alhambra	10 21 80 (90 days)	2832.1, 10086, 10145, 10176(i), 10177(d)
Muller, Witold O. (RFO) Obl: Muller Realtors & Management Co., Inc (Stayed for 2 years on conditions)	801 S. Garfield Ave., Ste 107, Alhambra	10 21 80 (90 days)	2832.1, 10086, 10145, 10176(i), 10177(d)
Hirasawa, Ernest Mamoru (RFS) (Stayed for 1 year on condition)	969 Pine Grove Ave., Los Angeles	10 21 80 (60 days)	10176(a), 10177(q)
Jiravic, John (RFS) (All but 30 days stayed for 1 year on terms and conditions)	26137 Marina Dr., Rolling Hills Estates	11 13 80 (90 days)	10177(g)
Laylor, Donald Keith (RFB) (All but 30 days stayed for 1 year on terms and conditions)	223 Redonda, Walnut	11 13 80 (90 days)	10177(g)
Montgomery, Charles Edward (RFS) (All but 30 days stayed for 2 years on terms and conditions)	973 Fairview Cir., Palm Springs	11 25 80 (60 days)	10177(d)

TAX ASSESSMENTS

Property assessment rolls for 1981-82 will launch California's new policy of showing assessed values at 100% of their taxable value rather than the 25% level that has been in use since 1955.

Alexander Pope, Los Angeles County Assessor, recently cautioned taxpayers not to be alarmed when their 1981 tax bills—the first installment of which is due next December—show an apparent four-fold increase over last year's values, plus the authorized allowance for a probable normal one-year growth of two percent.

Pope explained that as these assessments are quadrupled, the tax rate will drop in the same proportion to one percent of the taxable value. (Actually, most rates around the state will exceed the one percent amount because of voter-approved debt service that existed when Proposition 13 was adopted. In Los Angeles County the rate will average close to 1.2 percent.)

"Taxes will not change, except for the authorized two percent increase, unless there has been an ownership change or new construction," noted Pope. "A Constitutional amendment approved by the voters in 1978 changed the standard of 25% to 100% of taxable value effective with the 1981-82 Assessment roll. With the concurrent reduction in tax rates, the total taxes paid on the new value standard will be identical to what they would have been under the old 25% value standard and the old tax rate."

"To fit the new situation," Pope added, "the \$1,750 Homeowners' exemption will be quadrupled to \$7,000 and the \$1,000 Veterans' exemption to \$4,000."

The State Constitution has long required full value assessments in compiling the assessment roll. However, over the past years, assessments of less than 100% prevailed throughout California. In 1933, assessment ratio studies showed 50% to be the prevailing level. As a result, all 58 counties were equalized to 50% of full value, and state assessment rolls of utility property were compiled at the 50% ratio.

During World War II assessors' offices were understaffed with the result that as rapid inflation during and after the war sent property values soaring, most properties remained underassessed. In 1955, assessment ratio studies showed the prevailing level to be 25%. The State Board of Equalization selected that level for statewide equalization.

In the early Sixties, the Sacramento County Assessor challenged the use of the 25% standard in court. The court ruled that uniformity of assessment levels was more important than the actual and condoned use of the 25% ratio. In 1967, the Legislature formalized the 25% standard by enacting it into law, where it has remained until the 1978 vote restoring the 100% level to take effect this year.

(Reprint of January 26, 1981, Los Angeles Assessor's Office News Release)

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
True, Charles (RFB)	55 Van Buren St., San Francisco	9 24 80
Caldwell, Howard Starr (RFB)	1015 E. Hillsdale Blvd., #209, Foster City	11 26 80

1980 Bulletin Index—
By Issue and Page

"AS IS" AND OTHER DISCLAIMERS DO NOT PROTECT AGAINST NON-DISCLOSURES OF MATERIAL FACTS Sum-1

BROKER

Agent's Special Statutory Duty Spr-1

Broker Controlled Escrow and Trust Account Violations Spr-4

Corporate Broker Fall-3

Good Morning—Etc Going to Sue Sum-6

Guidelines—Securities Broker Licensing Exemptions Win-7

Then the Broker Prepared The Mortgage Win-3

We Do Get Complaints Win-2

CALIFORNIA HOUSING STOCK—STATISTICS Spr-5

CAL-VET LOAN PROGRAM—LOAN STATISTICS Sum-5

CONTINUING EDUCATION

Memos Sum-4; Fall-4; Win-4

Continuing Education Statistics Sum-5

Notices Win-8

DEPARTMENT OF REAL ESTATE

Disciplinary Actions Spr-2; Sum-2; Fall-2; Win-2

Notes From Licensing Spr-6; Sum-3; Fall-6; Win-5

Retirement Fall-5

DISCRIMINATION

Brings DRE Discipline Win-6

Discriminatory Acts Spr-5

Recent Case Results Win-10

EXAMINATIONS

Multi-State Exam Reciprocity Ends Sum-6

New Examination Scheduling System Sum-6

Quarterly Exam Results Spr-5; Sum-4; Fall-4

FINANCING

Caution—Financing Schemes May Prove Adverse Win-5

Alternatives Fall-4

Points About Points Spr-6

FRANCHISE ADS Spr-3

HAS A HOUSE BEEN INSPECTED? HAS ANY WORK BEEN COMPLETED? Sum-6

LEGISLATION

Commissions Sum-5

Legislative Summary Win-4

MOBILE HOMES Win-1

Fixing The Model Year Win-10

MULTIPLE LISTING SERVICES AND CARWASHLIGHT ACT Fall-4

NOTARY LAW ENFORCEMENT Fall-1

PUBLIC REPROVALS Win-11

REAL ESTATE ADVISORY COMMISSION Fall-6

REAL PROPERTY SALES CONTRACT VICTIM—VENDEES Sum-5

REGULATION CHANGES Spr-1; Fall-1

SECURITIES

Had the Truth Been Told Win-4

SOLAR DIRECTORY Spr-4

SUBDIVISIONS

Streamlining the Process Spr-5

Ignorance of Subdivided Lands Act is No Defense Sum-1

SYNDICATES

Guidelines, Securities Broker Exemption Win-7

Qualifying Interests in Mini-Syndicates Win-1

THIS COURT SAID

Multiple Beneficiaries Under Trust Deed Spr-4

Tortious Interference With Broker's Contract Sum-7

TRUST DEED

Multiple Beneficiaries, Who Can Give Notice of Default (This Court Said) Spr-4

VETERANS ADMINISTRATION

Foreclosure Safeguards Sum-6

NEW AND AMENDED REGULATIONS SUMMARY

The regulations summarized herein, or printed in full, became effective on January 2, 1981, except Section 2791.8, 2792.18, and 3009(c), all of which became effective February 6, 1981.

A supplement to the *Real Estate Law* book printed by DRE is being prepared. It will include these regulation changes as well as 1980 Real Estate Law changes. It should be available by May 1, 1981, at any DRE office for \$1.00, including postage and handling.

Section 2705: Amends subsection (k) to include time-share estates and time-share uses under Subdivided Lands Law for regulation by the Real Estate Commissioner. **Section 2753 is amended:** Requires the broker to return immediately to the salesperson upon the termination of employment and on demand, the salesperson's license certificate. **Sections 2780 and 2781 are amended:** Business and Professions Code Section 125.6 provides that persons licensed under the provisions of the Code are subject to disciplinary action if the licensee refuses to perform licensed activity, aids or incites the refusal to perform such activity by another licensee, or makes any discrimination or restrictions in the performance of the licensed activity on the basis of race, color, sex, religion, ancestry, physical handicap or national origin. These amendments add marital status as a prohibited basis for discriminatory conduct by a licensee. **Section 2790.1 is amended:** Calls for subdivision filing fees to be the maximum set forth in the law, with certain specified exceptions. **New Section 2791:** Provides for purchase money disbursements. Business and Professions Code Sections 11013.2 and 11013.4 prohibit generally the sale or lease of lots or parcels within a subdivision (in situations where (1) the subdivision is subject to a blanket encumbrance and there does not exist in the blanket encumbrance or supplementary agreement a release clause or (2) the subdivision is not subject to a blanket encumbrance) unless the subdivider creates a deposit arrangement, bond, or other alternative device to protect the interest of the purchaser or lessee until, among other conditions, either party defaults under their contract for sale or lease, or the subdivider orders the refund of money to the purchaser or lessee. This new section permits a subdivider to charge a defaulting buyer for expenses incurred by the subdivider and for liquidated damages as allowed by law, while protecting the prospective buyer from an unfounded determination of default. A subdivider may claim against a deposit pursuant to a court or arbitrator's determination of default, or a waiver by a buyer thereof.

New Section 2791.1: Current law specifies one of the conditions under which a subdivider may sell or lease subdivided lots or parcels is that the entire sum of money paid or advanced by the purchaser or lessee of any such lot or parcel, or such portion thereof as the Commissioner shall determine is sufficient to protect the interest of the purchaser or lessee, shall be deposited in an escrow depository acceptable to the Commissioner. This section provides that the money deposited in escrow must be ordinarily the entire amount advanced or paid.

Section 2791.2 is repealed and new Section 2791.2 is adopted: Current law provides that one of the conditions under which a subdivider may sell or lease subdivided lots or parcels is that a bond to the State of California be furnished to the Commissioner for the protection of purchasers or lessees of such subdivided lands, in such amount and subject to such terms as may be approved by the Commissioner. This section provides that the sum of the bond(s) shall ordinarily cover the aggregate amount of money paid or advanced, less any amounts held in escrow. **Section 2791.3 is repealed. New Section 2791.3 is adopted** to provide, pursuant to Business and Professions Code Section 11013.4(d)(2), that the sum of a lien and completion bond or bonds for onsite construction work furnished by a subdivider shall ordinarily be not less than 120% of the estimate of the total cost of the construction work.

Section 2791.4 is repealed. New Section 2791.4 is adopted designating acceptable escrow depositories under Business and Professions Code Sections 11013.2 and 11013.4 to be escrow agents licensed by the Corporations Commissioner, banks, trust companies, savings and loan associations, title insurers and underwritten title companies. In exceptional circumstances the Commissioner may approve an escrow depository other than those listed. **New Section 2791.6:** Business and Professions Code Section 11013.2(b) specifies one of the conditions under which a subdivider may sell or lease subdivided lots or parcels subject to a blanket encumbrance is that the title to the subdivision is to be held in trust under an agreement of trust acceptable to the Commissioner until a proper release from such blanket encumbrance is obtained. This section designates a trust company as defined in Section 107 of the Financial Code as a trustee acceptable to hold title to a subdivision. **New Section 2791.7:** Current law prohibits an owner or subdivider from selling or leasing lots or parcels within a subdivision unless the subdivider complies with the purchase money protection law contained in Business and Professions Code Sections 11013.2 or 11013.4. This section requires the owner of a subdivision which is exempt from subdivision public report provisions under Section 11010.4 to seek Department approval of its method of protecting purchase money to comply with Section 11013.2(b), (c), or (d) or Section 11013.4(b), (c), (d), (e), or (f) of the Code. **New Section 2791.8:** Requires subdividers to maintain proper records of all funds received from prospective purchasers or lessees pursuant to Business and Professions Code Sections 11013.2 and 11013.4. **New Sections 2792, 2792.1 and 2792.2:** Defines "substantially complete" subdivision public report applications. **Sections 2792.6 and 2792.11 are repealed.**

(Continued on next page)

Notes from Licensing

by
Larry W. Smith
Real Estate Manager, III
Licensing and Examinations

Now that the Continuing Education requirement for license renewal has been in effect for several months, some misconceptions or misinterpretations of the requirement by licensees have become apparent. They are worth mentioning here.

Many licensees are of the opinion that if the Continuing Education requirement is not met by the time license renewal is due, then renewal will not be possible unless the real estate examination is again taken and passed. Such is not the case.

Section 10201 of the Real Estate Law provides that the holder of any license who has failed to renew it prior to the expiration of the period for which it was issued and who has otherwise qualified for such license may renew it within two years of the expiration date by payment of a late renewal fee. Section 10171 states that license renewal will be denied unless the applicant has completed the Continuing Education requirements set forth in the law. A licensee may, therefore, renew on a late basis within two years after expiration of a license by payment of the appropriate late fee and submitting proper evidence of having attended approved Continuing Education offerings. The only time the real estate examination will again be required is if the licensee fails to exercise the renewal right within two years after license expiration.

Many licensees who have every intention of completing the 45 hours of Continuing Education are unable to do so because their plan of attendance did not allow sufficient time to substitute alternative offerings. Many licensees wait until the last few months prior to license renewal to attend offerings of their choice and then find that they are cancelled. Sometimes unforeseen personal circumstances prevent attendance. At that point, there may not be other offerings available to attend to renew the license on time. Also, licensees may be forced to attend an offering that is not particularly beneficial but must do so to meet the renewal deadline.

Licensees are urged to begin attending offerings as early as possible and practical so any unforeseen circumstances can be handled more easily.

COURSE VERIFICATION FORM

All licensees are required to complete RE Form 251 (Continuing Education Course Verification) in addition to the application submitted for license renewal. All offerings attended, for which a completion certificate was received, are to be listed on this form by offeror approval number. The thirteen digit approval number should appear on the certificate received from the offeror. If the DRE determines that one or more offerings listed is deficient in some respect, the licensee will be so notified. Upon correction of the deficiency by the licensee, a new fully completed RE Form 251 is to be resubmitted listing all offerings attended—not just the one or ones in question.

DRE

Net Listing (Continued from page 1)

interests and jeopardized the sale of the property. Likewise, in failing to reveal his commission to S, where S could have received substantially more for the property, and the commission was disproportionately large, R promoted his own interests at the expense of S.

In cases such as this, failure to discharge disclosure obligations may spawn civil action against a real estate licensee for failure to satisfy fiduciary duties. Additionally, the Department has statutory bases for instituting disciplinary action against a licensee with a net listing who does not make full disclosure. First, the Real Estate Law provides for disciplinary action whenever a licensee, in the course of licensed activities, makes a substantial misrepresentation. This section does not require a fiduciary relationship with the party to whom the misrepresentation is made. In the case discussed herein, R misrepresented to B the seller's willingness to accept the \$12,950 offer and was disciplined, in part, for so doing. R also misrepresented to S by failing to present offers, thereby impliedly representing that no offers had been made. R thus also violated the Real Estate Law's express requirement that all offers be presented to the seller. Lastly, R failed to carry out the duty to advise S before or at the time when S contractually agreed to the sale, the amount of R's compensation, commission or profit as a result of the sale. This requirement carries no exception for net listings.

In light of the above limitations on the "net listing exception," a real estate licensee using a net listing agreement is wise to observe the disclosure duties which exist under any other listing agreement.



DRE Research and Education Advisory Committee

Real Estate Commissioner David H. Fox recently appointed five prominent people to this advisory committee.

Named as members of the committee are: Ruby Bims of Oakland, Regional Vice President of the California Association of Real Estate Brokers; Earl F. Cheit, Dean, Schools of Business Administration, University of California, Berkeley; Gerald D. Cresci, Special Assistant to the Community Colleges Chancellor for Vocational Education; William H. Hippaka, Professor, Real Estate Law and Finance, California State University, San Diego; and Don C. Roberts of Whittier, Honorary Director-for-Life of the California Association of Realtors.

The committee acts as a resource to the DRE in formulating how the Department may best utilize the Real Estate Education and Research Fund in the advancement of education and research in real estate. This fund is available by contract for programs and projects approved by the Commissioner at accredited institutions of higher learning and/or qualified associations and corporations.



Summary (Continued from page 4)

Section 2792.18 is amended: Business and Professions Code Section 11018.5 requires the Commissioner to issue a subdivision public report if he finds, among other facts, that reasonable arrangements have been made to assure the completion of the subdivision and all off-site improvements included in the offering. With respect to the voting rights of subdivision association members, this amendment provides expressly that no regulation, which requires the approval of members other than the subdivider for action to be taken by the association, is to preclude the subdivider from voting his interests, except as specified. The amendment clarifies permissible methods of approving actions by associations where a dual or single class of voting membership exists. **Section 2792.25 is amended:** The practice of discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, or ancestry is against public policy. This amendment revises regulations prohibiting certain restrictions upon alienation to conform to the above grounds (marital status added). Also provides that in a limited equity housing cooperative, the purchase and sale of the stock or membership interest of a resident-owner shall be controlled by the Association as prescribed in Section 33007.5 of the Health and Safety Code. **Section 2800, subdivision (a) is amended:** Requires the sale, conveyance, transfer of title in trust, or granting of an option to acquire 5 or more subdivision interests in a subdivision other than a time-share project or 12 or more time-share estates or time-share uses in a time-share project be reported to the Commissioner as a material change in the offering. **Section 2801.5 is amended:** Revises the definition of condominium, stock cooperative, and community apartment projects by increasing the required number of units, shareholders or apartments needed to qualify the project as a subdivision from 2 or more to 5 or more. **Sections 2810, 2811, 2812, 2813, 2815, 2816, 2817, 2818, and 2819 are repealed and contents of these sections renumbered as Sections 2791, 2791.1, 2791.2, 2791.3, 2791.4, 2791.5, 2791.6, 2791.7 and 2791.8.**

Section 2820.2 is amended to read: "Discretionary Project Approval. Except as otherwise provided in this Article, the issuance of a final or preliminary public report by the Department under the provisions of the Subdivided Lands Law constitutes the 'approval' of a 'discretionary project' for any project in which the Department is the lead agency. If the 'local agency' charged with the responsibility for 'approval' of construction of a subdivision project has granted permission for on-site construction under a 'categorical exemption' or by ministerial action, then the issuance of a final or preliminary public report shall not be subject to the 'approval' by the Department as a 'lead agency.'" **Section 2820.4 is amended to read:** "When 'Approval' Occurs. 'Approval' by the Department of a subdivision project for which it is the 'lead agency' occurs at the time of the issuance of a preliminary or final public report. If a preliminary public report has been issued, the issuance of a final public report for the same subdivision project is a ministerial act unless otherwise expressly stated in the preliminary public report." **Section 2821 is amended to read:** "Local Agency as Lead Agency. The 'local agency' which grants 'approval' of a tentative or parcel map or issues other entitlement pursuant to provisions of the Subdivision Map Act, and local ordinances for implementation thereof, is the 'lead agency' for subdivision projects for which the Department issues a final or preliminary public report." **Section 2821.2 is amended to read:** "Categorical Exemptions for Amended and Renewal Public Reports. The issuance of an amended public report or a renewal public report pursuant to Section 2795.3, Title 10, California Administrative Code, is categorically exempt from the requirement for environmental impact evaluation under this Article unless there are proposed changes in the setup of the subdivision offering involving significant alterations in the use or condition of land, water or other physical attributes of the subdivided property which were not contemplated, and therefore did not have, environmental impact evaluation at the time of 'approval' of the subdivision project by the Department as 'lead agency.' Such categorical exemptions include, but are not limited to, changes of ownership of the subdivided land offered for sale, changes in the means for financing the purchase of subdivision interests and proposals for construction and sale of on-site improvements on subdivided lands which have previously received environmental impact evaluation of off-site improvements."

Section 2840 is amended: Under Business and Professions Code Section 10240 and 10241 real estate brokers who negotiate a loan in any amount to be secured directly or collaterally by a lien on real property must, before the borrower becomes obligated to complete the loan, deliver to the borrower a written statement, as specified. For a first trust deed loan in a principal amount of less than \$20,000 or a junior loan in a principal amount of less than \$10,000 the broker must also certify in such statement that the loan is being made in compliance with specified provisions of law regulating real estate brokers (Article 7 of Chapter 3 of the Real Estate Law). This amendment conforms the form of the mortgage loan disclosure statement as approved by the Commissioner to state that a broker certifies compliance with the real property loan law for loans within the statutory limits.

Sections 2850, 2852, 2852.1, 2852.2, 2852.3, 2853 and 2856 of Article 17—Advance Fee Rental Agents—are repealed. New Sections 2850, 2851, 2851.1, 2851.2 and 2852 are adopted—Prepaid Rental Listing Services. New Section 2850: Prescribes the conditions under which a person licensed as a real estate broker may obtain a prepaid rental listing service license. "Prepaid Rental Listing Service License for Real Estate Broker. If a real estate broker desires to do business under a prepaid rental listing service (PRLS) license rather than under his or her real estate broker license, he or she may obtain a PRLS license by satisfying the application and fee requirements of Section 10167.3(a) of the Code, the bonding requirement of Section 10167.7 and, if applicable, by filing the consent-to-service statement referred to in Section 10167.6. If licensed as a PRLS, a real

(Continued on page 8)

PREPAID RENTAL LISTING SERVICES

On September 25, 1980, Governor Brown signed an urgency measure Senate Bill 1564 (Chapter 1051, Statutes of 1980). It became effective on that date.

SB 1564 establishes a regulatory scheme and the ground rules for the operation of prepaid rental listing services—commonly known in years past as advance fee rental agents. The following is a brief summary of the more significant features of the bill. We urge those who will be engaged or counseling in this operation to obtain a copy of the bill by writing to Legislative Bill Room, State Capitol, Sacramento, CA 95814.

LICENSING

SB 1564 adds Article 2.3 (commencing with Section 10167) to the Real Estate Law and repeals Section 10143. The bill establishes a special license for prepaid rental listing services. A real estate broker licensee may however operate a prepaid rental listing service (PRLS) business under the broker license. Most of the other statutory and regulatory provisions for the operation of a PRLS business apply to a real estate broker conducting the business under the broker license.

A two-year PRLS license will be issued, without examination, upon the submission of an application and a \$100 fee. There is an additional fee of \$25 for each location other than the main office. An applicant must satisfy the department as to his honesty and truthfulness. To assist the department in this determination, an applicant must submit a set of fingerprints and a \$6 fingerprint processing fee with the application (Section 10167.4). Every PRLS licensee must provide evidence of a bond, or cash deposit in lieu of bond, in the amount of \$2,500 for each location (Section 10167.7). A real estate broker proposing to conduct a PRLS business under the broker license does not have to post a bond or cash deposit.

Under the terms of the legislation the license and bond requirements did not become effective until December 24, 1980. Unlicensed operation of a PRLS business on and after that date is a violation of law.

The Department of Real Estate has developed an application form for a PRLS license and the application package includes an acceptable format for the bond and a cash deposit security. The following are considered to be among the more significant provisions of law to a person proposing to conduct a PRLS business:

CONTENTS OF CONTRACT

SB 1564 requires the use of written contracts in the conduct of a PRLS business. The form of the contract used must be filed with the Department of Real Estate prior to use and *must* contain the items enumerated in Section 10167.9. Contract forms should be filed with the Department of Real Estate, 185

Berry Street, Room 5816, San Francisco, California 94107, Attn: Fred Baranski. It is suggested that forms intended for use be filed with the Department prior to making arrangements for printing.

REFUNDS

SB 1564 sets forth the rights that a prospective tenant has to a refund of any fees paid to the PRLS. Moreover it requires that the refund rights be set forth in the contract (Section 10167.10). A violation of a refund provision may subject a licensee to disciplinary action and a bad faith denial of a refund can result in an award of compensatory damages and an award of up to \$200 in punitive damages (Section 10167.10(f)).

VIOLATIONS

Violations by PRLS licensee or a broker which may lead to disciplinary action, under Sections 10167.11 and 10167.12 are:

10167.11. It shall be a violation of this article for any licensee or any employee or agent of a licensee to refer a property to a prospective tenant knowing or having reason to know that:

(a) The property does not exist or is unavailable for tenancy.

(b) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.

(c) The licensee has not confirmed the availability of the property for tenancy during the four-day period immediately preceding dissemination of the listing information. However, it shall not be a violation to refer a property to a prospective tenant during a period of from five to seven days after the most recent confirmation of the availability of the property for rental if the licensee has made a good faith effort to confirm availability within the stated four-day period, and if the most recent date of confirmation of availability is set forth in the referral.

(d) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.

10167.12. (a) The commissioner may suspend or revoke the license of a prepaid rental listing service or the license of the service to operate at one or more locations for either of the following:

(1) A violation of a provision of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.

(2) A conviction of a licensee, or of an officer, director or owner of 25 percent or more of the shares of a corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.

(b) For the purpose of determining whether grounds exist for suspending or revoking the license of a prepaid rental listing service the commissioner shall hold a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

DRE

NOTICES

Mobilehomes

In the Winter 1980 *Real Estate Bulletin* it was reported that as of July 1, 1980, real estate licensees may negotiate the sale of mobilehomes that are less than a year old if the requirements of Section 18551 of the Health and Safety Code for transforming a mobilehome to real property have been satisfied. Since publication of that article, DRE has received several inquiries asking if the new legislation allows real estate licensees to negotiate the sale of a mobilehome directly from a manufacturer to a buyer if the mobilehome is to be installed by the buyer on a permanent foundation system pursuant to Section 18551.

According to the legal staffs of DRE and the Department of Housing and Community Development, the answer is NO. Until the transformation from mobilehome to real property is finalized through the recording of a document reflecting that the mobilehome has been affixed to a permanent foundation system, it remains a mobilehome and can be sold under a real estate license only if it has been registered for at least one year with DMV or HCD.

Time-Share Projects

In the *Legislative Summary* in the Winter issue of the *Bulletin*, the synopsis of S.B. 1736, the legislation expressly bringing time-sharing projects under the Subdivided Lands Law, implied that sales in *all* time-share projects may continue to be made after January 1, 1981, without a public report if sales were made prior to October 1, 1980, and an application for a public report was submitted to the Department before November 28, 1980.

This statement is inaccurate in that the so-called compliance grace period which allows sales to continue after January 1, 1981, even though a public report has not been issued, is applicable only to time-share projects in apartments and hotel and motel rooms. **DRE**

DRE JURISDICTION OVER TIME-SHARE INTERESTS

Beginning January 1, 1981, DRE has expanded jurisdiction under the subdivision law over time-share offerings in California.

A time-share interest may be either (1) an undivided interest in the real property (time-share estate) with the periodic right to use all or a portion of the property or (2) only a right to use (time-share use). In either situation the time of use may be specified, e.g., the first two weeks in February each year, or the plan may operate on a first reserved, first served basis.

Prior to the effective date of the 1980 legislation (Senate Bill 1736, Chapter 601) the department had jurisdiction over offerings of five or more time-share interests in every type of real property except apartments and commercial space—hotels and motels.

Under SB 1736 offerings of 12 or more time-share estates or time-share uses—having terms of five years or more—in a structural dwelling place are subject to applicable

(Continued on page 8)

Syndicates (Continued from page 1)

will not be sufficient unless a "Customer Authorization of Disclosure of Financial Records" is attached.

The applicant should carefully prepare the documents which will govern the operation of the syndicate. To expedite review of the application by DOC, the following documents should be attached to a real estate syndicate application:

1. Articles of limited partnership;
2. Certificate of limited partnership;
3. Property management agreement;
4. Opinion of counsel (see Commissioner's Rule 140.117.5);
5. Escrow agreement requiring an impoundment of funds until minimum capital is raised;
6. Underwriting report;
7. Appraisals and title reports, if the program involves specific properties;
8. Financial statements (see Rule 140.118.5(a)-(c));
9. Offering circular and proposed advertising;
10. Subscription agreements.

In addition to being thoroughly familiar with the application, the required attachments and the Commissioner's rules, applicants should be prepared to comply with standards set forth in the rules. Especially, applicants must demonstrate compliance with the compensation and conflicts-of-interest requirements, sponsor experience and net worth requirements as well as voting rights and reports-to-investors requirements. Recently, as a result of reviewing numerous mini-syndicates, the Commissioner has "relaxed," in some circumstances, the requirements for track records, projections and audited financial statements.

Members of the Qualification and Registration Division staff are available for pre-filing conferences. For the most part such conferences are beneficial only if the applicant or the attorney have carefully read the rules and have specific questions regarding DOC standards and requirements. Too many applicants expend unnecessary time in disputing basic positions of DOC.

DOC is currently reviewing the "mini-syndicates" area. In the next article, DOC anticipates a discussion of proposed changes in rules relating especially to "mini-syndicates."

MORTGAGE LOAN BROKERS

Real estate brokers who negotiate loans in any amount, to be secured directly or collaterally by a lien on real property must, before the borrower becomes obligated to complete the loan, deliver to the borrower a written statement in prescribed form containing specified information. (Business and Professions Code Sections 10240 and 10241.)

Previously the statement was not required for first trust deed loans of \$20,000 or more and junior loans of \$10,000 or more. The law, amended in 1980, now covers any mortgage loan in any amount negotiated by a real estate

REAL ESTATE LICENSES ISSUED AND IN EFFECT AS OF JANUARY 14, 1981 (By County)					
COUNTY	POPULATION	BROKERS/OFFICERS	SALESPERSONS	TOTAL	TOTAL (JULY 1979)
Alameda	1,105,600	3,869	10,389	14,258	14,250
Alpine	1,300	6	10	16	15
Amador	19,900	141	298	439	401
Butte	141,600	661	1,465	2,126	1,953
Calaveras	21,600	149	326	475	376
Colusa	13,300	23	45	68	58
Contra Costa	646,100	3,176	7,580	10,756	9,546
Del Norte	17,900	49	94	143	114
El Dorado	89,900	814	1,836	2,650	2,468
Fresno	492,400	1,687	4,605	6,292	5,788
Glenn	22,000	40	123	163	138
Humboldt	108,700	292	691	983	896
Imperial	95,700	127	315	442	402
Inyo	19,100	59	132	191	169
Kern	382,200	900	2,616	3,516	3,103
Kings	72,300	91	325	416	383
Lake	36,500	256	581	837	801
Lassen	22,200	63	229	292	310
Los Angeles	7,161,600	31,199	80,664	111,863	109,248
Madera	59,900	186	574	760	583
Marin	224,300	1,595	3,390	4,985	4,475
Mariposa	11,600	54	106	160	129
Mendocino	67,500	243	651	894	785
Merced	129,600	225	724	949	806
Modoc	9,400	23	45	68	60
Mono	9,100	79	275	354	315
Monterey	284,100	1,039	2,351	3,390	3,256
Napa	94,300	355	792	1,147	1,104
Nevada	51,000	478	1,018	1,496	1,317
Orange	1,916,300	12,665	33,648	46,313	46,082
Placer	119,200	860	2,125	2,985	2,408
Plumas	17,700	87	193	280	259
Riverside	661,800	3,372	8,113	11,485	9,954
Sacramento	776,700	3,561	9,154	12,715	12,173
San Benito	22,400	49	119	168	109
San Bernardino	838,000	3,160	8,507	11,667	10,650
San Diego	1,849,100	12,291	26,234	38,525	36,139
San Francisco	659,300	3,971	6,667	10,638	11,200
San Joaquin	325,000	790	2,126	2,916	2,670
San Luis Obispo	152,000	894	2,006	2,900	2,359
San Mateo	597,000	3,026	7,066	10,092	9,695
Santa Barbara	298,500	1,476	3,892	5,368	5,160
Santa Clara	1,274,100	6,368	15,331	21,699	20,975
Santa Cruz	180,200	989	2,298	3,287	2,849
Shasta	118,700	523	1,346	1,869	1,665
Sierra	3,300	12	17	29	31
Siskiyou	40,800	146	403	549	551
Solano	227,900	566	1,826	2,392	2,013
Sonoma	287,200	1,498	3,503	5,001	4,338
Stanislaus	255,800	784	2,066	2,850	2,584
Sutter	51,500	206	452	658	592
Tehama	38,200	132	255	387	310
Trinity	13,100	49	111	160	121
Tulare	237,400	608	1,498	2,106	1,917
Tuolumne	36,200	213	503	716	644
Ventura	514,700	2,206	6,801	9,007	8,068
Yolo	111,000	298	723	1,021	900
Yuba	49,900	119	251	370	355
The State	23,063,700	108,798	269,784	378,582	360,266
OUT OF COUNTRY	N/A	43	115	158	107
OUT OF STATE	N/A	1,474	5,247	6,721	4,350
GRAND TOTAL	N/A	110,315	275,146	385,461*	364,672

* This figure does not include licenses whose holders may have reinstatement rights (approximately 25,000).

broker—or a salesperson on behalf of a broker. The licensee must certify compliance with specified provisions of the law *only* if the loan is a first trust loan under \$20,000 or a junior loan under \$10,000.

The certification language in the Mortgage Loan Disclosure Statement which is required by Section 10240 has been amended in Regulation 2840 to read:

"Neither the broker nor the designated

representative identified below is the lender in this transaction, either directly or indirectly.

"If the loan to which this disclosure statement applies is a loan secured by a first deed of trust in a principal amount of less than \$20,000 or a loan secured by a junior lien in a principal amount of less than \$10,000, the undersigned certifies that the loan will be made in compliance with Article 7 of Chapter 3 of the Real Estate Law."

DRE

Energy Conservation and VA Acquisition Loan Increases

According to VA Information Bulletin 80-48 and extract of DVB Circular 26-80-31, VA loans to purchase homes may be increased if purchaser is to make certain energy conservation improvement/improvements in the property.

All CRVs (certificates of reasonable value) issued for existing properties will be rubberstamped with the following endorsement:

"The amount of reasonable value shown in item 1 may be increased by up to one of the following if such increase is expended for weatherization and/or energy conservation improvements to the property:

- a. \$2,000, without a separate value determination;
- b. \$3,500, if supported by a reasonable value determination by a designated appraiser;
- c. More than \$3,500, subject to appraisal by VA and subsequent endorsement of the Certificate of Reasonable Value."

The determination as to the reasonable cost of a particular property's weatherization and/or energy conservation improvements will be the lender's responsibility for loan amount increases up to \$2,000, or up to \$3,500 when the reasonable value of the improvements is determined by a designated fee appraiser. The types of improvements to be made under this procedure will be limited to installation of one or more of the following: (a) Solar heating systems, including solar systems for heating water for domestic use; (b) Solar heating and cooling systems; (c) Combined solar heating and cooling systems; (d) Caulking and weatherstripping; (e) Furnace efficiency modifications limited to: (1) replacement burners, boilers, or furnaces designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency; (2) devices for modifying flue openings which will increase the efficiency of the heating system; and (3) electrical or mechanical furnace ignition systems which replace standing gas pilot lights; (f) Clock thermostats; (g) New or additional ceiling, attic, wall, and floor insulation; (h) Water heater insulation; (i) Storm windows and/or doors, including thermal windows and/or doors; (j) Heat pumps; and (k) Vapor barriers.

In cases involving improvements other than the foregoing, or when other improvements will be made in conjunction with the foregoing (e.g., room additions, the installation of siding, etc.), the prior approval of VA as to the veteran's income and credit will be required except where the loan is eligible to be closed automatically by a lender with such authority.

Time-Shares (Continued from page 6)

provisions of the Subdivided Lands Law and regulations of the Real Estate Commissioner. Time-share offerings in apartments and hotel and motel rooms are included in the coverage of the legislation. Time-share estate offerings, but not time-share use offerings, in real property that is not a structural dwelling place, e.g., campgrounds and recreational vehicle parks, are subject to DRE jurisdiction.

A public report must be obtained before sales of 12 or more time-share interests in real property located within California can be made in this state. If the time-share interests to be offered in California are in real property located outside of the state, DRE derives its regulatory authority from the so-called Out-of-State Land Promotions Law (Business and Professions Code Section 10249, et seq.), and a permit rather than a public report is a prerequisite to an offering for sale.

The law has a grace period which permits an owner of a time-share project in a hotel, motel or apartment who had made bona-fide sales prior to October 1, 1980, to continue to make sales after January 1, 1981 without a Public Report or permit if certain conditions are satisfied. Unless an offering qualifies for the so-called compliance grace period, a public report or permit must be obtained before making any sales after January 1, 1981.

It is the Department's view that a real estate license is required of a person negotiating the sale of any time-share interest in this state. This position is consistent with a Court of Appeal decision which declared that memberships in a club conferring time-share use rights in condominiums constituted interests in real property which the court characterized as being in the nature of a lease.

Licenses interested in time-share opportunities may obtain a copy of Senate Bill 1736, Chapter 601, by making request to the Legislative Bill Room, State Capitol, Sacramento 95814.

Summary (Continued from page 5)

estate broker shall comply with all of the provisions of Article 2.3 of Chapter 3 of the Real Estate Law applicable to PRLS licensees including all subdivisions of Section 10167.10." **New Sections 2851, 2851.1 and 2851.2:** Specify a minimum monetary amount for a bond to be maintained in force for each separate business location by a prepaid rental listing service licensee. Such bond may be in the form of a \$2,500 corporate surety bond or a cash deposit for each location. The bond may be utilized by the Commissioner for the benefit of prospective tenants with whom the licensee has contracted. These amendments prescribe the form of such corporate surety bonds and the acceptable format for the creation and assignment of cash deposits. The amendments also provide for notice to the prepaid rental listing service to restore the amount of the security if payment made for the benefit of a prospective tenant out of the corporate surety or cash deposit reduces the surety obligation or the cash deposit below the aggregate statutory amount. **New Section 2852:** Requires a prepaid rental listing service (PRLS) licensee to give notice of a proposed change of location and to give notice of the address and phone number of the new location to all tenants with whom the licensee has outstanding contracts.

Section 3007 is amended: Pursuant to the Commissioner's authority to promulgate regulations regarding the conduct of continuing education courses, offering entities must apply for approval on a form prescribed by the Commissioner. The amendment revises the form to require the disclosure of the type and level of training and the student group for which the offering is designed. **Section 3009 is amended:** Business and Professions Code Section 10209.2 requires the Commissioner to establish, by regulation, fees for applications for approval of continuing education offerings, seminars or conferences in an amount sufficient to cover the cost of processing such applications. The amendment increases program offering fees which offering entities must remit in accordance with a fee schedule as specified and requires additionally that a fee of \$10.00 be remitted for each instructor approved if approval is not processed as part of an original or renewal application. 

Official Publication

CALIFORNIA DEPARTMENT OF REAL ESTATE

1719-24th Street

Sacramento, California 95816