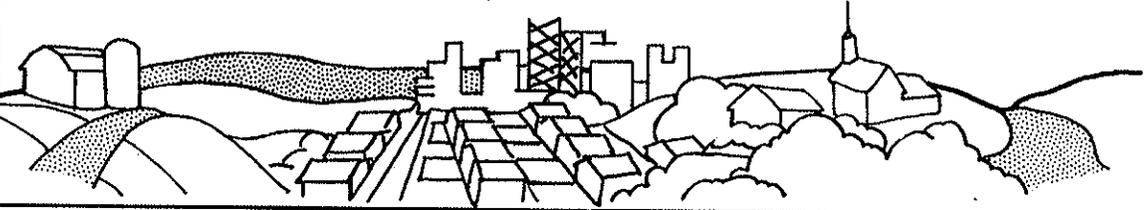




REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



GEORGE DEUKMEJIAN, *Governor*

Spring 1983

JAMES A. EDMONDS JR., *Commissioner*

Regulation Changes

Here are summaries or the actual text of regulations recently amended or adopted. They became effective February 20, 1983.

2716 IS AMENDED TO READ:

2716. License Fees. All license fees shall be the maximum fees set forth in the Real Estate Law.

2791. Purchase Money Disbursements. This regulation provides that certain specific terms and conditions must be included in a contract for sale between a subdivider and a purchaser of a subdivision interest which is being sold by the subdivider under the authority of this Department's public report.

The amendments to this regulation:

- a. Authorize a subdivider to include in a contract for sale a provision that the subdivider may use a portion of the buyer's purchase money prior to close of escrow to pay third parties for credit reports, escrow services, preliminary title reports, appraisals, and loan processing services, if the subdivider specifies in the contract the estimated amounts of these charges.
- b. Establish a specific time limit of 15 days within which a subdivider must order a refund of a buyer's purchase money if the sale of a subdivision interest does not close within the time provided by the contract for sale.
- c. Provide that if a subdivider has deposited buyer's purchase money in the subdivider's own account rather than in escrow, pursuant to the approval of the Department of Real Estate of an alternative form of security, and if the subdivider claims that the buyer has defaulted under the terms of the contract for sale, the subdivider must deposit into a neutral escrow the buyer's purchase money less the charges payable to third parties under the contract, pending the outcome of the subdivider's claim of default.

(Continued on page 3)

EDMONDS APPOINTED COMMISSIONER AND DIRECTOR

Commissioner's Message

My family and I are extremely proud of the honor bestowed upon me by Governor Deukmejian when he asked me to serve as Real Estate Commissioner. I was quick to respond in the affirmative for my family and I have a great deal of confidence in the ability of the man the voters of California elected Governor last November—and I wanted to be a part of his Administration and help him accomplish his goals!

In the professional fields of real estate, mortgage lending and building, many honors have been bestowed upon me by my business peers; but no prior honor was accompanied by the great current problems and responsibilities of this high office. Former Commissioner E. Lee Brazil and the Department of Real Estate staff made progress during the twelve-month term that Mr. Brazil served, but the remaining problems known at this time—the continuing education dilemma; further surfacing of mortgage loan



brokerage problems; need for accelerated auditing; and dual agency problems—do not make the task ahead of me an easy one.

Even before assuming office, it was obvious to me that a small percentage of real estate and mortgage lending "professionals" were continuing to violate the laws of the State of California, disregarding the long-standing high professional standards that have brought increasing regard and respect to these industries. This can be partially accounted for by the extraordinary stress placed on an industry that normally earns its livelihood based upon a percentage of the transaction value; by naive and unsophisticated mortgage loan brokerage operations that proliferated after passage of Proposition 2 (amendment of California's usury laws); and, in some sense, just plain greed!

It is my hope and wish that all of you will join with me and the personnel of the Department of Real Estate in assuring adherence to high ethical standards and compliance with the laws of our State. The continuance of public trust in the industry will be beneficial to all the people of California and essential to return the profession to a period of high productivity in real estate transactions, mortgage lending and subdivision activities.

Commissioner's Achievements

On February 23 Governor Deukmejian announced the appointment of James A. Edmonds, Jr., of Long Beach as the Real Estate Commissioner and Director of DRE.

Commissioner Edmonds has been active as a real estate broker, appraiser and mortgage banker since 1946. For nearly twenty-three years he operated City and Suburban Mortgage Company, a mortgage banking firm that he organized in 1956. Following sale

of that company to Southern Trust and Mortgage Company in 1979, Mr. Edmonds remained with the company in an executive capacity involved principally in governmental affairs.

The Commissioner has been involved in the real estate industry at the local, state and national levels for many years. He has also been active in community affairs in the Long Beach area. His positions and affiliations include the following:

(Continued on page 4)

LICENSES REVOKED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Morgan-Ross, Jennifer (RES) aka-Rasmussen, Jennifer	11611 San Vicente Blvd., Los Angeles	11/10/82	10145, 10176(a)(f), 10177(d)(f)(g)
Jones, James Julius Jr. (REB)(REO) Off-Apollo Realty, Inc.	112 S. Meadowbrook Dr., San Diego	11/17/82	10231, 10238.3 10177.5
Apollo Realty, Inc. (REC) Off-Jones, James Julius Jr.	112 S. Meadowbrook Dr., San Diego	11/17/82	10177.5
Mansour, Joseph Jacob (RES)	8339 Brimfield, Panorama City	11/17/82	490, 10177(b)
Harper Smith, Inc. (REC) Off-Smith, Jack Ray	16901 San Fernando Mission Blvd., Granada Hills	11/17/82	10177(g)(h)
Dooley, Michael Lee (RES)	4605 Lankershim Blvd., Ste. 400, North Hollywood	11/18/82	490, 10177(b)
Price, Roy Alan (REB)	2707 Santa Clara Ave., Alameda	11/18/82	490, 10177(b)
Eays, Ernest John (RES)	4292 Cedarwood Ct., Concord	11/23/82	490, 10177(b)(f)
California Certified Realty Inc. (REC) Off-Wal, Steve Kenneth	4120 El Camino Ave., Sacramento	11/23/82	2831, 2832.1, 2834, 10145, 10176 (e), 10177(d)
Nelson, Arthur Julius (RES)	6728 Hillpark Drive, #308, Los Angeles	11/24/82	10130, 10137, 10176(i), 10177(d)
Alexander, Daniel Henry (RES)	925 West 49th Street, Los Angeles	11/24/82	490, 10177(b)
Robertson, John Cole (RES)	27036 Malibu Cove Colony Dr., Malibu	11/24/82	490, 10177(b)
Reese, Bonnie Joan (RES)	23920 Anza Ave., #222, Torrance	11/24/82	490, 10177(b)
Lattuca, Philip Joseph (RES)	1717 Delaware #1, Huntington Beach	11/26/82	490, 10177(b)
Hunter, Gerald L. (RES)	1351 S. Stanley Ave., Los Angeles	11/26/82	490, 10177(b)
Quinton, Elizabeth Ponya (RRES)	2209C Roselake Ave., Rosamond	11/26/82	2832, 10145, 10176(j), 10177(d)(k)
Starling, Pamela Joy (RES)	1459 Powell St., San Francisco	11/30/82	490, 10177(a)(b)
Kong, Yee Nor (RES)	581 Ridge Way, Yuba City	11/30/82	490, 10177(b)(f)
Simmons, James Alan (RRES)	2145 Irvin Way, Sacramento	11/30/82	490, 10177(b)
Homestowski, Lupe Christina (RES)	566 Marigold Dr., Fairfield	11/30/82	10177(k)
Thomas, Dorothy Ann (RRES)			10177(k)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Hutchens, Randall Craig (RES) (Right to RRES license on terms and conditions)	10600 Sepulveda Blvd., Mission Hills	8/17/82	490, 10177(b)
*DeRoute, Mary Worrell (RES) (Right to RRES license after 45 days on terms and conditions)	1210 Mariposa, El Segundo	8/25/82	10176(a), 10177(g)
White, Linda Joyce (RES) (Right to RRES license on terms and conditions)	5604 Chelsea Ave., La Jolla	9/1/82	490, 10177(b)
Sturgell, William Dick (REB) (Right to RREB license after 90 days on terms and conditions)	220 2nd St., Encinitas	9/1/82	10177(j)
Robertson, Clyde Lee (REB)(REO) Off-Damucson, Inc. (Right to RREB license after 90 days on terms and conditions)	1005 Euclid Ave., San Diego	9/1/82	10177(j)
Laufenberg, Keith Gary (RES) (Right to RRES license on terms and conditions)	8225 Auburn-Folsom Rd., Roseville	9/8/82	490, 10177(b)(f)
Cooper, Robert John (RES) (Right to RRES license on terms and conditions)	1774 Southwood, San Luis Obispo	9/8/82	490, 10177(b)
Hunter, Edward Stephen (REB) (Right to RREB license after 10 days on terms and conditions)	23H Muirfield Dr., San Jose	9/8/82	10176(a)(i), 10177(f)(g)
Lawrence, Charles Alvin (RES) (Right to RRES license on terms and conditions)	17832 Altamirano Ln., Huntington Beach	9/8/82	490, 10177(b)
Perchesky, Jerry Michael (RES) (Right to RRES license on terms and conditions)	710 Martinelli St., Watsonville	9/13/82	490, 10177(b)(f)
Stuart, Archie Albert (RES) (Right to RRES license on terms and conditions)	627 Encinitas Blvd., Encinitas	9/14/82	10177(g)
Walter, Richard Joseph (REB)(REO) Off-Orange West Properties Inc. Off-Sierra Realty & Investment Inc. (Right to RREB license after 30 days on terms and conditions)	292 S. Tustin Ave., Orange	9/14/82	10176(a), 10177(g)(h)
Sierra Realty & Investment Inc. (REC) (Right to RREC license on terms and conditions)	1436 E. Kateila Ave., Orange	9/14/82	10176(a)(i), 10177(g)
Bailey, Daniel Norman (RES) (Right to RRES license after 90 days on terms and conditions)	9831 Center Dr., Villa Park	9/14/82	10176(a)(i), 10177(g)(j)
Hadsell, Gary Earl (RES) (Right to RRES license after 30 days on terms and conditions)	22035 Arrowhead Ln., El Toro	9/14/82	10176(a)(i), 10177(g)
Turner, Bill Star (REB) (Right to RREB license on terms and conditions)	4950A Frye St., Clearlake Highlands	9/14/82	490, 10177(b)(f)
Hunter, Allen (RES) (Right to RRES license after 120 days on terms and conditions)	20914 Ambusher, Diamond Bar	9/14/82	490, 10177(a)
Robbins, Dorothy Ada (REB) (Right to RREB license after 180 days on terms and conditions)	15482 Pasadena Ave., #151, Tustin	9/14/82	10176(a)(b), 10177(d)(g)
Coonis, Michael (REB) (Right to RRES license after 180 days on terms and conditions)	3742 Montego Dr., Huntington Beach	9/14/82	10176(a)(b)(i), 10177(d)(g)
Stratford, Steven Grant (RES) (Right to RRES license after 30 days on terms and conditions)	2181A Patton Ave., Napu	9/20/82	490, 10177(b)(f)
Belknap, Wayne Eugene (REB) (Right to RREB license on terms and conditions)	541 W. Flora St., #19, Ontario	9/21/82	490, 10177(b)
Embry, John Edward (REB) (Right to RREB license on terms and conditions)	12357 Magnolia Blvd., #2, North Hollywood	9/28/82	10177(h)(j)
Bageetto, Elmo Domenie (RES) (Right to RRES license on terms and conditions)	1044 Coronado Ave., Apt. 11, Long Beach	10/14/82	10177(g)
Kincer, Jackie Nest (REB) (Right to RREB license on terms and conditions)	12604 E. South St., Cerritos	10/14/82	10176(a), 10177(g)(h)
Marquez, Richard Stephen (RES) (Right to RRES license after 15 days on terms and conditions)	404 S. Maple Tree Dr., Anaheim	10/19/82	10177(f)(j)

(Continued on page 7)

Disciplinary Digest

Prepared by

Stephen W. Thomas, Counsel
San Francisco District Office

A complaint filed with the Department of Real Estate by a consumer resulted in license discipline for a real estate salesperson for having made substantial misrepresentations and engaging in dishonest conduct in a real estate transaction. The broker to whom the salesperson was licensed at the time of the transaction also received discipline for failure to supervise the salesperson's licensed acts.

Evidence carefully gathered by a DRE investigator (Specialist) and auditor, and introduced during the course of an administrative hearing, indicated that the salesperson had successfully devised a plan to deceive an institutional lender (a bank) into making a residential loan that would not otherwise have been made had the true terms of the transaction been known by the lender.

Testimony during the hearing revealed that the salesperson continually assured a prospective buyer that the buyer could "get into" a home even though the buyer had no money for a down payment. To this end, the salesperson prepared a Purchase Agreement for a single family residence which required from the buyer a \$14,000 cash down payment. The agreement provided that the balance of the purchase price would be obtained from a "new, first conventional loan." Although the sellers accepted the offer as written, the evidence established that at all times during the transaction all parties understood that the buyer would execute a promissory note in favor of the seller to be secured by a deed of trust on the property in place of the cash down payment.

The salesperson next prepared on buyer's behalf an application for a residential real estate loan. After obtaining the signature of the buyer, the salesperson, without the buyer's knowledge or consent, entered a statement on the application that the buyer had the down payment funds on deposit in the broker's trust account. The respondent salesperson then delivered the application and the Purchase Agreement to the bank for processing.

No mention was made in the application or the Purchase Agreement that the buyer would execute a purchase money promissory note secured by a second deed of trust on the property in lieu of a cash down payment.

To obtain the funds necessary to close escrow for the transaction, the salesperson obtained a personal loan in the required down payment amount through his own bank. At hearing, the DRE auditor traced the journey of those personal loan funds through three separate bank accounts and finally into the escrow for the transaction. Only after the down payment funds were deposited into the escrow did the bank fund its purchase money loan. The escrow thereafter closed and, on the same date, the buyer executed a promissory

(Continued on page 7)

Criteria for Mortgage Loan Brokers

Assembly Bill 1212 (Chapter 1117) became effective January 1, 1982. It added several new sections to the Business and Professions Code at Article 5 of Chapter 3 of Part I of Division 4. Section 10232.2(a) provides that real estate brokers acting in certain specified capacities who intend or reasonably expect to negotiate a combination of twenty or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two million dollars in any successive twelve months shall annually file with DRE a Report of Review by a licensed California independent public accountant of trust fund financial statements, conducted in accordance with generally accepted accounting practices. The remainder of Subsection (a) delineates the type of information which should be included in the report.

THE LAW PROVIDES THAT THE ANNUAL REPORT SHALL BE FILED WITH THE DEPARTMENT OF REAL ESTATE WITHIN NINETY (90) DAYS AFTER THE END OF THE BROKER'S FISCAL YEAR OR WITHIN SUCH ADDITIONAL TIME AS THE REAL ESTATE COMMISSIONER MAY ALLOW FOR FILING, PROVIDED GOOD CAUSE IS SHOWN. IF THE BROKER FAILS TO FILE THE REPORT WITHIN THE NINETY DAY PERIOD, THE COMMISSIONER MAY CAUSE AN EXAMINATION AND REPORT TO BE MADE AND MAY CHARGE THE BROKER ONE AND ONE-HALF TIMES THE COST OF MAKING THE EXAMINATION AND REPORT.

In the first part of January 1982 every broker who could be identified as meeting the threshold requirements set forth above was mailed by DRE a copy of Assembly Bill 1212 and a set of the proposed regulations to implement the bill. The Regulations became effective on June 12, 1982. The Department now is continually updating its computer listing of brokers who meet the threshold requirements and sending them a package at the end of their fiscal year informing them of their obligation under the law. *This notice procedure gives brokers 90 days to comply.* Included in the package are copies of pertinent regulations and three different forms consisting of the Lender/Purchaser Disclosure Statement, the Mortgage Loan/Trust Deed Annual Report and the Trust Fund Non-Accountability form.

The Department expected that although there would be some confusion with the administration of the law in the first few months, prudent and knowledgeable licensees would make the effort to familiarize themselves with the law. Apparently this is not the case. We have received a number of requests for extensions of time in which to submit the Annual Trust Fund Reports and we have shown leniency in granting the majority of them.

THIS ARTICLE WILL SERVE NOTICE TO ALL BROKERS THAT THE COMMISSIONER WILL NOW BEGIN TO EXERCISE HIS RIGHTS TO PERFORM THE AUDIT AND CHARGE THE BROKER ONE AND ONE-HALF TIMES THE COST OF MAKING THE AUDIT. If proper records are kept by a covered broker, the compilation of the Annual Trust Fund Review should not present a problem.

We would also like to take this opportunity to remind you that Assembly Bill 3666 (Chapter 886) became effective January 1, 1983. In addition to the Annual Report of Review, this bill by Section 10232.25 adds the following requirement, among others: A broker who meets the threshold requirements of Section 10232 SHALL, WITHIN THIRTY DAYS AFTER THE END OF EACH OF THE FIRST THREE FISCAL QUARTERS OF THE BROKER'S FISCAL YEAR, OR WITHIN SUCH ADDITIONAL TIME AS THE REAL ESTATE COMMISSIONER MAY ALLOW FOR GOOD CAUSE, FILE WITH THE COMMISSIONER A TRUST FUND STATUS REPORT AS OF THE LAST DAY OF THE FISCAL QUARTER. The report shall contain a declaration, under penalty of perjury, by the broker, that the information and representations in the report are true, complete and correct to the best of the broker's knowledge and belief.

The declaration in a report submitted on behalf of a corporate broker shall be signed by a broker/officer by whom the corporation is licensed as a real estate broker and by the chief executive officer of the corporation if he or she is not the signing broker/officer. These reports do not have to be prepared by an independent public accountant. If the reports are not received within the thirty day period following the end of the fiscal quarter, the Commissioner may make an audit and charge the broker one and one-half times the cost.

Copies of Assembly Bill 3666 have already been or will be mailed by DRE to brokers who meet the threshold requirements.

DRE

Can You Afford the Two Year Grace Period?

Prepared by
Thomas Hensley
Real Estate Manager I

Occasionally the Department receives an inquiry from a desperate licensee regarding the fact that his/her license expired and subsequent to the expiration date the licensee "earned" a commission which the seller refuses to pay. The licensee is advised that (1) the licensee should not be engaging in activity requiring licensure when not properly licensed and (2) DRE cannot renew the license until the renewal requirements have been met.

The Real Estate Law provides that a licensee who fails to renew his/her license prior to the expiration date may renew it within two years from the expiration date by submitting a completed renewal application, continuing education course verification form, and the payment of a fee in an amount equal to 1-1/3 times the regular renewal fee. The time frame within which a licensee may renew on a late basis is referred to as the "two year grace period."

Some licensees are under the mistaken impression that during this grace period they may continue to conduct business for which a real estate license is required. **THIS IS NOT TRUE.** Unless a license is renewed on or before the expiration date, the individual license expires. All licensed activities should cease.

In the above described situation, the licensee should take a long hard look at Section 10136 of the Real Estate Law. This section states in part that a licensee shall not maintain any court action for the collection of compensation for the performance of any act requiring a real estate license without alleging and proving that he/she was duly licensed at the time the work was performed. In addition to this lost revenue dilemma, the licensee faces possible civil action by principal, departmental disciplinary action and in the case of a broker, all of the salespersons in his/her employ are *automatically terminated.*

Unless you consider the possible loss of commission, court costs, disciplinary action, and payment of a licensing late fee a bargain, keep track of your expiration date and renew your license on time.

DRE

EDMONDS — (Continued from page 1)

President, Long Beach Board of Realtors
Member, Board of Directors, California Association of Realtors
Member, Board of Directors, National Association of Realtors
Chairman, CAR Real Estate Finance Committee

Chairman, CAR Eminent Domain Committee
Chairman, CAR Government Housing Committee
President, Society of Real Estate Appraisers, Chapter 94
Chairman, Long Beach Redevelopment Agency.

During the 1979-80 fiscal year, Mr. Edmonds served as president of the California

Mortgage Bankers Association. He has also been a member of the Board of Governors for the Mortgage Bankers Association of America and has held numerous other positions of leadership in that industry.

The Commissioner is married to Mary Jaene and has two adult sons.

Welcome aboard, Commissioner Edmonds. The DRE staff looks forward to working for you and with you in serving the public and the real estate and subdivision industries.

Multiple Listing Service

A California appellate court recently ruled in the case of *Derish v. San Mateo-Burlingame Board of Realtors*, 136 C.A. 3d 534, that a Multiple Listing Service (MLS) has the right to deny the use of its services and facilities to persons not licensed as real estate brokers or real estate salespersons. In the *Derish* case the plaintiffs had brought suit against the board of Realtors which operated the MLS claiming antitrust violations for the refusal of the MLS to make its listings and services available to the plaintiffs who were not real estate licensees. The plaintiffs alleged that because of this refusal they were forced to employ a real estate broker and pay a commission to the broker for his services in arranging the sale of their property and in assisting them in purchasing another home.

In upholding the defendant's contention that the complaint did not state a cause of action, the appellate court observed that the "exchange of price data and other information among competitors is not a per se violation of the antitrust law" and that such an exchange of information is "valid under the rule of reason" if it increases the economic efficiency and renders the market more competitive.

The court found nothing in the 1976 landmark decision in *Marin County Board of Realtors v. Palsson*, 16 C. 3d 920, to suggest that the California Supreme Court had concluded that MLS services must be made available to unlicensed members of the general public. The court found strong policy reasons for restricting access to the MLS to persons licensed to perform activities "in accordance with exacting professional standards." The court concluded that if it were to determine that every member of the general public has the right to participate in an MLS, the Legislature's attempt to assure standards of competence among persons dealing with the public as real estate agents would be seriously undermined.

In the *Derish* opinion, the court commented upon the recent enactment by the Legislature of sections of the Civil Code expressly addressing the establishment and operation of multiple listing services through Chapter 547, Statutes of 1982 (Assembly Bill 3450).

These new provisions of the Civil Code clarify terms and relationships within an MLS system and among other things, establish the following definitions as part of statutory law:

Listing—A written contract between an owner of property and an agent by which the agent has been authorized to sell the property or to find or obtain a buyer.

Exclusive right to sell listing—A listing whereby the owner grants to an agent, for a specified period of time, the exclusive right to sell or to find or obtain a buyer for the property, and the agent is entitled to the agreed compensation if during that period of time the property is sold, no matter who effected the sale, or the listing agent receives and presents to the owner any enforceable offer from a ready, able, and willing buyer on terms authorized by the listing or accepted by

(Continued on page 6)

REGULATIONS— (Continued from page 1)

2791.1 IS AMENDED TO READ:

2791.1. Purchase Money Impounds. The amount of the money paid or advanced by a prospective buyer or lessee toward the purchase or lease of a subdivision interest (Purchase Money) that must be deposited and retained in an escrow depository or trust account pursuant to Section 11013.2(a) or 11013.4(a) of the Code shall ordinarily be the entire amount of the Purchase Money less disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

2791.2 IS AMENDED TO READ:

2791.2. Bond Alternative to Purchase Money Impound. The penal sum of a bond or bonds furnished by or on behalf of a subdivider pursuant to Section 11013.2(c) or Section 11013.4(b) or (c) of the Code shall ordinarily be not less than the aggregate amount of the money paid or advanced toward the purchase or lease of subdivision interests for which the subdivider is accountable to prospective purchasers or lessees less the sum of the amount held in escrow depositories or trust accounts pursuant to Section 11013.2(a) or Section 11013.4(a) of the Code and the disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

2792.17(c) IS AMENDED TO READ:

2792.17. Reasonable Arrangements—Members' Meetings.

(c) A special meeting of the members of the Association shall be promptly scheduled by the governing body in response to:

- (1) The vote of the governing body itself.
- (2) Written request for a special meeting signed by members representing at least 5% of the total voting power of the Association.

2792.27. Reasonable Arrangements—Annexation of Property to the Subdivision.

This regulation sets forth the Department of Real Estate's requirements for reasonable arrangements which a subdivider must make to annex additional phases to the initial phase of a subdivision development. The changes to this regulation rewrite the regulation for purposes of clarity, and also add a new subdivision (b)(5). New subdivision (b)(5) requires a subdivider to pay the homeowners association amounts sufficient to cover reserves for replacement and deferred maintenance of the common areas, if a subsequent phase of the development has been annexed, but has escaped assessment under the provisions of Regulation 2792.16(f). This situation would arise if a subdivider has annexed a phase to the development, has not sold any of the units in the annexed phase, but has instead rented the units to tenants for a year or more.

2800(j) IS AMENDED TO READ:

2800. Notification of Material Change. The owner of a subdivision which is the subject of an outstanding public report shall immediately report to the Real Estate

Commissioner relevant details concerning any material change in the subdivision itself or in the program for marketing the subdivision interests. A material change in the subdivision or in the offering shall include, but shall not be limited to the following:

(j) An increase of 20% or more or a decrease of 10% or more in the regular assessment charged by an Association against owners in a common interest subdivision over the amount of the regular assessment reflected in the current public report for the subdivision.

2834 IS AMENDED TO READ:

2834. Trust Account Withdrawals. (a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

- (1) a salesperson licensed to the broker.
- (2) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code or one of the persons enumerated in paragraph (1) or (2) of subdivision (a) above.

(c) An arrangement under which a person enumerated in paragraph (1) or (2) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

2840. Approved Borrower Disclosure Statement. This regulation sets forth a mortgage loan disclosure statement which a real estate broker is required to give to a borrower if the broker acts as an agent in arranging a loan secured by an interest in real property. The changes to this regulation revise the form of the statement, and add subdivision (c)(3) to clarify that the form may be used by a broker when the broker is lending his own funds to the borrower. As of January 1, 1983, brokers lending their own funds must provide this disclosure statement to prospective borrowers.

SECTION 2845 IS REPEALED.

This regulation sets forth the requirements with which a real estate broker must comply if he loans his own funds to a borrower, rather than acting as an agent in a loan transaction. This regulation was repealed, since AB 3666, Chapter 886, Statutes of 1982 as of January 1, 1983, requires that brokers lending their own funds in a loan transaction provide a loan disclosure statement to a prospective borrower.

NEW SECTION 2845 IS ADOPTED.

2845. Interpretive Opinion Request. Current law provides, at Section 10236 of the

(Continued on page 8)

SALE OF LICENSED COMMUNITY CARE FACILITIES

prepared
by
Department of Social Services
Sacramento

(Editor's note: Real estate brokers engaging in the sale of licensed community care facilities should make certain their advertising is not misleading and that full disclosures are made to potential new owners regarding licensing qualification requirements for both the new owners and the facilities.)

The community care facility licensing program of the California Department of Social Services is responsible for the licensing of nonmedical, out-of-home care facilities. Such facilities include day or residential care, provided in group and family homes; child care centers and preschools; foster homes; half-way houses; homefinding and adoption agencies; and other similar facilities. Persons served in these facilities include the mentally disordered, developmentally and physically disabled, aged, and socially dependent children and adults.

The licensing program ensures that the careprovider is qualified to care for the clients in the facility and that the facility's physical plant does not present any health and safety hazards. Because the license represents a check on both the careprovider and the facility, the license is not transferable.

Any sale of property which is licensed as a community care facility does not automatically include a transfer of the facility's license. The purchaser must apply for a license and complete the entire application process. The normal application process may require from one to three months to complete depending upon the type of license and the cooperation of the applicant. In some cases, new buyers may not even qualify for licensure because of criminal record background, lack of solvency, or related state and local zoning requirements.

Anne Bersinger, Deputy Director of the Community Care Licensing Division, comments: "A problem we experience is related to the advertisements which tend to mislead prospective buyers by inferring that the sale of a particular licensed facility includes automatic transfer of the license issued by this Department." In most cases, the advertisements for the sale of a facility specify

the number of residents and the amount of income that can be realized by the prospective owner. *However the advertisements do not indicate that licensure is a prerequisite for the operation of the facility.*

Bersinger indicates that her staff makes every attempt to facilitate the application process and make it as expedient as possible. However, the licensure process includes a facility site visit, criminal record checks for the licensee and facility staff and a fire clearance. Because of the number of requirements, and the expected time for processing an application, it is in the best interests of all parties involved in the real estate transaction for the potential buyer to be made aware of the conditions that must be met from the outset of the sales transaction. **To facilitate such communication, real estate brokers are urged to refer potential purchasers of licensed community care facilities to the appropriate Social Services District Office having responsibility for licensing.** Staff with expertise in the licensing process are available at the District Offices to provide assistance and to answer specific questions that may arise.

District Office staff will process an application for the prospective buyer prior to licensure so that there can be a smooth transition at the close of escrow. In fact, it is recommended that the purchase of the facility be made contingent upon approval of the license for the new facility owner. Then, if the license is not approved, the sale is terminated and the buyer has not purchased property that he/she cannot operate. Under no circumstances can the purchaser assume control of the facility until the license has been approved.

Some arrangements have been worked out which permit the buyer to act as manager or administrator of the facility, under direction of the current licensee, until the license is approved. Even under these circumstances, the buyer must meet licensing requirements for facility staff at that level, including appropriate criminal record clearances.

Questions regarding sale of property and impact on facility license status should be directed to the local District Office. Phone numbers and addresses for the District Offices can be found in the telephone book under State of California, Social Services Department. If you cannot determine the District Office which services your area, you can contact the Community Care Licensing Division, 744 P Street, Mail Station 19-50, Sacramento, California 95814. 

MULTIPLE— (Continued from page 5)

the owner. The exclusive right to sell listing may provide for compensation of the listing agent if the property is sold within a specified period after termination of the listing to anyone with whom the agent has had negotiations before that termination.

Exclusive agency listing—A listing which is the same as an "exclusive right to sell listing," except that the owner reserves the right to sell directly but not through any other agent and, in that event, without obligation to pay compensation to the agent.

Open listing—A listing which grants no exclusive rights or priorities to the listing agent, and a commission is payable to the agent only if the agent procures and presents to the owner an enforceable offer from a ready, able, and willing buyer on the terms authorized by the listing or accepted by the owner, before the property is otherwise sold either through another agent or by the owner directly and before the listing expires by its terms or is revoked.

Probate listing—A contract conforming to Section 760 of the Probate Code.

Listing agent—One who has obtained a listing of property of the kind in respect of which he or she is authorized by law to act as an agent for compensation.

Multiple listing service—A facility of cooperation of agents operating through an intermediary which does not itself act as an agent, through which agents establish express or implied legal relationships with respect to listed properties.

The following requirements and proscriptions among others are now part of the law as the result of the passage of A.B. 3450:

1. If an open listing is placed into an MLS, the total compensation that the owner must pay shall go to the selling agent who procures an enforceable offer from a ready, able and willing buyer on terms accepted by the owner.
2. An open listing does not have to specify compensation to be paid to the selling agent, but may state that the compensation is to be negotiated between the owner and the selling agent.
3. No listing may be placed in an MLS unless authorized or directed in the listing itself by the owner.
4. An agent who places a listing in the MLS for compensation is responsible for the truth of all representations in the listing as to which the agent had knowledge or reasonably should have had knowledge.

Licensees who contemplate using the services of a multiple listing service are urged to carefully study all of the provisions in Sections 1086 through 1090 of the Civil Code.

SUBDIVISIONS

Since January 1, 1983, newly amended Civil Code Section 1360 requires the owner of a lot or unit in a common interest subdivision (planned development, condominium, community apartment, stock cooperative, or time-share projects or a limited-equity housing cooperative) to furnish a prospective purchaser with a written statement from the governing body of the owners' association as

to the amount of any delinquent assessments and information relating to penalties, attorney's fees and other charges provided for in the Declaration of Restrictions of the project or the governing body management documents on the unit or parcel as of the date the statement is issued. The statement is to be given as soon as practicable before transfer of title or the execution of a real property sales contract.

"Owner" includes the subdivider. The

statement(s) must be furnished prospective purchasers whether the sale is the original sale or a resale.

Owners who willfully fail to give written disclosure statements, shall be liable to the purchaser for actual damages and in addition shall pay a penal sum of not to exceed \$500 as well as the attorney's fees of the prevailing purchaser in any action to enforce the liability. 

BENEFICIARY STATEMENTS

Civil Code Section 2943 amended by Chapter 1203, Statutes of 1982 (Assembly Bill 3204) requires beneficiaries of mortgage loans to deliver a "true, correct and complete copy of the note and any subsequent modification thereto" to entitled persons on demand.

The section also requires that the beneficiary provide a copy of the deed of trust or mortgage with the beneficiary statement where the written demand of the entitled person so requests. The beneficiary may not impose any additional charge for furnishing a copy of the deed of trust or mortgage. "Entitled person" under the section includes, among others, the trustor (or mortgagor) or his or her successor in interest, or a licensed escrow agent or real estate broker acting as an escrow holder under subdivision (d) of Section 17006 of the Financial Code.

The penalty against a beneficiary for failure to prepare and deliver a beneficiary statement within 21 days after receipt of written demand from an entitled person has been increased from \$100 to \$300. The fee that the beneficiary may charge for furnishing the required statement—when provision is made in the loan instruments for such a fee—has been increased from not to exceed \$15 to not to exceed \$50.

The section remains applicable only to deeds of trust and mortgages executed on or after January 1, 1964.



DISCIPLINARY — (Continued from page 3)

note secured by a deed of trust on the property in favor of the sellers. Proceeds from the seller's equity were used to repay the personal loan.

A bank official testified at hearing that had the bank known the true terms of the transaction—that is, the buyer would make no cash down payment, and that instead the buyer would execute the note secured by a second deed of trust on the property—then bank policy, and indeed bank regulations, would have prohibited the loan to the buyer. Documentation in the bank's loan file also indicated that the buyer had gone into default shortly after the loan was made, and that the property was in the process of being resold.

The Administrative Law Judge found that the salesperson's dishonest acts and substantial misrepresentations warranted discipline, and recommended the salesperson's license be revoked with a right to a restricted real estate salesperson license granted on terms and conditions including a 30-day suspension.

The Administrative Law Judge also found that the respondent broker failed to properly supervise the salesperson, and recommended the real estate broker's license be suspended for 30 days.

The Real Estate Commissioner adopted the findings and recommendations of the Administrative Law Judge.

Licenseses should be cautious of any alternative financing arrangements for real property transactions in which it appears that there may be an element of deception or a failure to disclose all material facts. Such arrangements can very well lead to substantial license discipline.



LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Paul, Charles Simon (REB) (Right to RREB license on terms and conditions)	4031 W. Imperial Hwy, Inglewood	10/20/82	490, 10177(b)
Clark, Sharon Adelle (RES) (Right to RRES license on terms and conditions)	5645 San Vicente Way, North Highlands	10/27/82	490, 10177(b)
Moreland, Ardie James (REB) (Right to RREB license after 90 days on terms and conditions)	10025 MacArthur Blvd., Oakland	10/27/82	490, 10177(b)(f)
Hamilton, Mark Jay (RES) (Right to RRES license on terms and conditions)	225 S. Barstow Rd., Barstow	11/2/82	490, 10177(b)
Deeb, Sharon Ann (RES) (Right to RRES license on terms and conditions)	1910 Arroyo, Oceanside	11/2/82	490, 10177(b)
Schlicht, David George (RES) (Right to RRES license on terms and conditions)	17551 Covello St., Van Nuys	11/9/82	10177(a)
Becchetti, Philip James (RES) (Right to RRES license after 30 days on terms and conditions)	151 Toyon, Fairfax	11/10/82	10145, 10176(a)(i), 10177(d)(x)(j), 10231, 10238.3
Brookins, Richard James (RES) (Right to RRES license on terms and conditions)	943 W. Westfield, Porterville	11/12/82	490, 10177(b)
Hughes, Ada (RES) (Right to RRES license on terms and conditions)	15148 Haynes St., Van Nuys	11/23/82	490, 10177(b)
Worsham, Dunisha (REB) (Right to RREB license on terms and conditions)	3902 Brown Ave., Oakland	11/23/82	490, 10177(b)
Wat, Steve Kamwah (REB)(REO) Off—California Certified Realty Inc. (Right to RREB license on terms and conditions) (30 day suspension after issuance of restricted license)	151 Glenville Cir., Sacramento	11/23/82	2725, 2831, 2832.1, 2834, 10145, 10176 (e), 10177(d)(h)
Abernathy, David Mark (RES) (Right to RRES license on terms and conditions) (30 day suspension after issuance of restricted license)	3924 Hollister Ave., Carmichael	11/23/82	2832.1, 10145, 10176(e), 10177(d)
Wolf, Michael Robert (RES) (Right to RRES license after 60 days on terms and conditions)	5707 Candor St., Lakewood	11/24/82	10177(g)
Jacoby, Carol J. (RES) (Right to RRES license on terms and conditions)	7562 Ellis 17G, Huntington Beach	11/24/82	490, 10177(b)
Landon, Jason Conrad (RES) (Right to RRES license on terms and conditions)	109 College Ct., Barstow	11/24/82	10177(d)(g)
Lipton, Alvin Louis (RES) (Right to RRES license on terms and conditions)	630 Cole Pl., Beverly Hills	11/24/82	10177(d)(g)
Tapper, Andrew I. (RES) (Right to RRES license on terms and conditions)	815 N. Alpine Dr., Beverly Hills	11/26/82	490, 10177(a)
Martin, Thomas Eugene (REB)(REO) (Right to RREB license on terms and conditions)	4441 Auburn Blvd., Ste. B, Sacramento	11/29/82	490, 10177(b)
Brooks, Dedra Ann (RES) (Right to RRES license after 90 days on terms and conditions)	Rt. 1, Box 933, Red Bluff	11/30/82	490, 10177(b)

LICENSES REVOKED WITH STAYS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Mogannam, Diane Esa (RES) (Revocation order stayed on terms and conditions)	265 Joost Ave., San Francisco	9/20/82	10177(k)

LICENSES SUSPENDED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Young, Walter Pung (REB) (45 days)	8777A 411 Tulare Dr., Huntington Beach	10/5/82	10177(d), 11010, 11018.2
Young, Shirley Mchiyo (RES) (30 days)	8777A 411 Tulare Dr., Huntington Beach	10/5/82	10177(d), 11010, 11018.2
Smith, Jack Ray (REB)(REO) Off—Harper Smith, Inc.	16300 Midwood Dr., Granada Hills	11/17/82	10177(g)(h)
Harper, Harry Franklin (RES) (15 days)	6736 Laurelgrove, North Hollywood	11/17/82	10177(g)
Carter, Freddie L. (RES) (15 days)	16901 San Fernando Mission Blvd., Granada Hills	11/17/82	10177(g)
Moore, Carl Lee (REB)(REO) Off—La Jolla International Brokers Inc.	293 Via Dei Cerrito, Olivenhain	11/24/82	10177(d)(g)(h)
La Jolla International Brokers Inc. (REC) Off—Moore, Carl Lee	8950 Villa La Jolla Dr., #2244, La Jolla	11/24/82	10177(d)(g)(h)

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Reese, Arthur Howell Jr. (REB) (All but 15 days Stayed for 1 year on terms and conditions)	18124 Mt. Washington St., Fountain Valley	9/14/82 (180 days)	10177(d)
Miller, John Alexander (RES) (Stayed for 1 year on terms and conditions)	17042 Queenside Dr., Covina	9/14/82 (180 days)	10177(d)
Thacker, Norma Sue (RES) (Stayed for 2 years on terms and conditions)	1310 Wendy Ct., Roseville	9/21/82 (6 months)	10176(a)(i)
Cook, Leslie Allyson (RES) aka—Allyson, Leslie aka—Shevitt, Leslie Allyson (All but 15 days Stayed for 2 years on condition)	3575 Montclair Rd., Cameron Park	10/1/82 (90 days)	10176(a)

(Continued on page 8)

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Arnold, Margaret Jean (REB) (Stayed permanently)	6347 Thornton Ave., Newark	10/19/82 (15 days)	2832.1, 10145, 10177(d)
Taylor, Gary Gene (RES) (All but 45 days Stayed for 1 year on conditions)	5101 Canterbury St., Cypress	10/27/82 (90 days)	10176(i)
Bruning, Delno Arnold Jr. (REB) (All but 45 days Stayed for 1 year on conditions)	8292 Regency St., La Palma	10/27/82 (90 days)	10176(i)
Siordia, Edward S. (REB) (All but 10 days Stayed for 2 years on terms and conditions)	3310 W. Beverly Blvd., Montebello	11/9/82 (30 days)	10177(g)
Bennett, George Edward (RES) (All but 15 days Stayed for 1 year on condition)	10450 Friars Rd., Ste. P, San Diego	11/9/82 (60 days)	10177(d)(g)
Campbell, Gerald Bruce (REB)(REG) Off—Century 21 Campbell Properties, Inc. (Stayed for 1 year on condition)	10450 Friars Rd., Ste. P, San Diego	11/9/82 (30 days)	10177(d)(g)(h)
Century 21 Campbell Properties, Inc. (REC) Off—Campbell, Gerald Bruce (Stayed for 1 year on condition)	10450 Friars Rd., Ste. P, San Diego	11/9/82 (30 days)	10177(d)(g)
Dahlstrom, Donald Allan (REB) (All but 90 days Stayed for 1 year on condition)	1850 5th Ave., San Diego	11/24/82 (365 days)	10177(g)
Holloway, Nina Virginia (REB) (Stayed for 2 years on condition)	3351 India St., San Diego	11/24/82 (180 days)	10177(g)
De Plomb, Eugene Pierre (RES) (Stayed for 2 years on condition)	7228 Country Club Dr., La Jolla	11/30/82 (90 days)	10177(j)

REGULATIONS—(Continued from page 5)

Business and Professions Code, that the Real Estate Commissioner may issue interpretive opinions when requested from interested persons with respect to mortgage loan brokerage activities and real property securities transactions. This regulation sets forth the requirements which must be followed by any person requesting an interpretive opinion from the Real Estate Commissioner.

NEW SECTION 2846.8 IS ADOPTED TO READ:

2846.8. Quarterly Trust Fund Status Report.

(a) The Commissioner shall publish and make available to interested persons as an official form of the Department, an approved format and content for the Trust Fund Status Report described in Section 10232.25 of the Code.

(b) The publication of a form pursuant to subdivision (a) is for the purpose of aiding real estate licensees in complying with Section 10232.25 of the Code. The form prescribed by the Commissioner shall not constitute the only format or content that will satisfy the requirements of Section 10232.25.

(c) Real estate brokers who meet the criteria of Section 10232 of the Code need not file a Trust Fund Status Report for a fiscal quarter ending in 1982, but shall file a report for each fiscal quarter ending after January 1,

1983 other than the last fiscal quarter of the broker's fiscal year.

SECTION 2847.3 IS REPEALED.

This regulation established criteria to be used in determining license advertising costs and overhead for all mortgage loan broker advertising. It was repealed since it is no longer authorized under repealed Section 10248.8 of the Code. 

**68% of Income
Attributed to Sales of
Single Family Homes**

According to the *Realtor News* (February 1983) published by the National Association of Realtors, the sale of single family homes provided the greatest source of income for nearly 7 out of 10 real estate firms participating in a random survey conducted by the Association in August of 1982 for its "1982 Profile of Real Estate Firms."

Commercial, industrial or farm and land brokerage services accounted for the primary income of 14.5% of the broker respondents while 17.5% stated appraisal services, building and development functions, syndication and other activities provided their prime sources of revenue.

The survey also revealed, among other things, that: (a) 9 out of 10 firms had only one office but most of the remaining firms maintained two offices (b) the median age of real estate firms rose to 8.2 years in 1982 from 7.8 years in 1981.

1982 Bulletin Index

By Issue and Page

AGENTS

- Disclosure Duty Win-6
- Prison and License Revocation for Agent Win-1

ASSESSED VALUATIONS Win-5

COMING TO TERMS

- Definitions Win-6

COMMISSIONER

- Message by E. Lee Brazil Sum-1
- Continuing Education at a Crossroads Win-1

COMPLAINTS TO DRE Sum-8

CONTINUING EDUCATION

- At a Crossroads Win-1
- Ethics Notice Spr-5
- Memos From Spr-7; Sum-5; Fall-3; Win-7
- Survey Spr-8

DEPARTMENT OF REAL ESTATE

- Disciplinary Actions Spr-2; Sum-2; Fall-2; Win-2
- Memos From Continuing Education Spr-7; Sum-5; Fall-3; Win-7
- Notes From Licensing Spr-3; Sum-4; Win-3
- Statistics (Licensing) Spr-5

ETHICS AND YOU Fall-6

EXCLUSION OF CHILDREN FROM RENTAL HOUSING PROHIBITED Win-4

FAIR HOUSING STATISTICS Fall-6

FAIR LENDING REGULATION NOTICE Win-5

FINANCING

- Alternative Financing or Shakey Loan Spr-1
- Balloons and Dominoes Win-5
- Due-on-Sale Caution Sum-3
- Effective Interest Rates on Homes Purchased Spr-4
- Wellenkamp Rule Extended Sum-8

LAW & REGULATION CHANGES Fall-1; Win-1

LEGISLATION

- Legislative Summary Fall-1; Win-1
- Subdivided Lands Law Amended Sum-6

LICENSING

- License Qualifications Spr-4
- Notes From Licensing Spr-3; Sum-4; Win-3
- Statistics Spr-5

MORTGAGES/TRUST DEEDS/NOTES

- Allonge Not Effective as Endorsement Sum-3
- Foreclosure Consultants Spr-1
- Mortgage Loan Disclosure Statements Sum-4

NOTARY LAW CHANGES Fall-1

PREPAID RENTAL LISTING SERVICES Fall-6

RECORDING

- Document Rejection by Recorder May Delay Commissions Sum-5

SMALL CLAIMS COURT Spr-4

STRUCTURAL PEST CONTROL Spr-6

SUBDIVISIONS

- Amendments Sum-6
- Check the Public Report Win-4

THIS COURT SAID

- Broker Mishandling Negotiations Spr-5

TRUST FUNDS

- Interview Supervising Auditor Sum-4
- Audit Fall-5

WHEN EAST MET WEST Spr-1

Official Publication

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