



Subdivision Advertising

by Martin F. Dingman, Assistant Commissioner, Subdivisions

Subdividers and their marketing agents should familiarize themselves with Section 2799.1 of the Commissioner's Regulations which relates to advertising and promotion of subdivided interests.

Realizing that subdividers may have difficulty in determining just what advertising may be construed as false or misleading, the Commissioner has published a pamphlet entitled, "Guidelines for Subdivision Advertising."

The regulation covers a variety of subjects, such as advertising of investment for profit or resale potential, discounts, price leaders, price increases, travel offers, and pictorial or illustrated depictions of the subdivision and surrounding land.

The regulation also prohibits using statements from the public report out of context and underscoring, italicizing, or otherwise highlighting any part of the public report, except in conformance with any highlight in the public report itself.

For some subdivision projects, advertising must be submitted to DRE prior to publication. For instance, advertising for land project subdivisions is required to be filed prior to use.

There are several remedies available when a subdivider uses false or misleading advertising.

continued on page 3, Advertising

DRE Enforcement Policy

by James A. Edmonds, Jr., Real Estate Commissioner

As I commence my fifth year as Real Estate Commissioner, I thought I would review with you the enforcement policy of the

Department of Real Estate with respect to regulatory matters.

In this regard, a guest article by Dr. Kenneth W. Edwards (author of "Your Successful Real Estate Career," American Management Association) in the Spring 1987 issue of the National Association of Real Estate License Law Officials'

NARELLO NEWS caught

my eye as it offered what I believe to be a straightforward approach to the matter of enforcement.

Dr. Edwards expounds the philosophy, "If you can't do the time, don't do the crime." I also subscribe to this philosophy. "If licensees know clearly what the rules are, and that there will be a fair, but no-nonsense enforcement of them, it seems certain that it will foster an attitude of seriousness and responsibility in their dealing with the public," says Dr. Edwards.

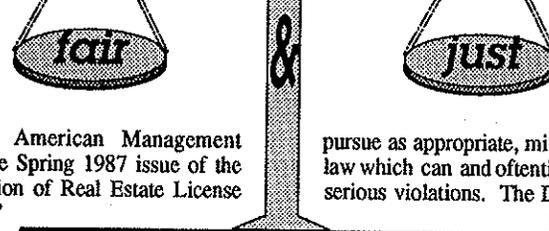
The Department's historical and current policy with respect to enforcement of the Real Estate Law is to be both fair and just. That is, pursue a "no-nonsense enforcement" of the Real Estate Licensing Law for the benefit of the consumer and the real estate industry.

Dr. Edwards goes on to state that, "A new licensee has two major potential negative influences to overcome. The first is the 'everybody does it' attitude." It is possible that the real estate industry had that feeling prior to the present state administration; however, under my term of office, let it be known that "everybody does not do it." Those who do and get caught will be disciplined in accordance with California's statutes.

For instance, I was somewhat distraught when I recently read a commentary in a realty board weekly magazine that indicated the Department of Real Estate was too severe in enforcing violations of the law found as a result of conducting routine audits of the offices of real

estate licensees. I disagree completely. When the Department of Real Estate was established in 1919, it was given as part of its charter the responsibility to protect the consumer. You

The Department's historical and current policy with respect to enforcement of the Real Estate Law is to be both



pursue as appropriate, minor violations of the law which can and oftentimes do lead to more serious violations. The Department will also pursue the major fraud transactions which you read of

daily in the news media.

The second obstacle identified by Dr. Edwards which new licensees are faced with is an adverse influence which is more subtle and much more difficult to combat. Some of the sales and marketing techniques to which the new salespeople are exposed today are very aggressive and even manipulative. "It can be difficult for those with poor judgment to draw the line between spirited salesmanship and unethical or illegal practices." (Dr. Edwards)

Dr. Edwards states that, "Part of the answer lies in writing rules and regulations that are practical and by establishing an effective means of communicating with the licensees."

I believe the California Real Estate Licensing Law and the Rules and Regulations of the Commissioner achieve the necessary practicality referred to by Dr. Edwards, and that the DRE Bulletin opens the lines of communication to all 321,000 California real estate licensees. I have in the past and will continue in the future to have dialogue with the real estate, housing and lending industries as well as consumer groups to ensure that the DRE is addressing the concerns and problem areas which exist in today's marketplace.

I believe that the DRE is doing the job that Governor Deukmejian expects it to do and that through its "no-nonsense enforcement" policy, the Department is providing protection for the consumer as well as a much needed service to real estate licensees and their related industries.

**REAL ESTATE BULLETIN**

Official Publication of the  
California Department of Real Estate

Vol. 48, No. 1 Spring 1988

STATE OF CALIFORNIA  
GEORGE DEUKMEJIAN, Governor

JAMES A. EDMONDS, JR.

Real Estate Commissioner

**EXECUTIVE OFFICE**

107 South Broadway, Room 8107, Los Angeles 90012  
Consumer Information (213) 620-5903

**PRINCIPAL OFFICE**

2201 Broadway, P.O. BOX 187000, Sacramento, 95818-7000  
Consumer Information (916) 739-3684  
Mortgage Loan Broker (916) 739-3580

**Licensing Numbers**

Information/Renewals (916) 739-3758  
Broker Qualifications (916) 739-3725

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**Regulatory District Offices**

San Francisco, Room 5816, 185 Berry Street, 94107  
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Edward V. Chiolo, Managing Deputy Commissioner III  
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Fresno, Room 3070, 2550 Mariposa Street, 93721  
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Robert Arnold, Managing Deputy Commissioner IV

**Regulatory District Offices**

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Consumer Information: (213) 620-5903  
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San Diego, Room 3064, 1350 Front Street, 92101-3687  
Consumer Information: (619) 237-7345  
J. Chris Graves, Managing Deputy Commissioner II  
Santa Ana, Room 324, 28 Civic Center Plaza, 92701  
Consumer Information: (714) 558-4491  
Thomas McCrady, Managing Deputy Commissioner III

**SUBDIVISIONS**

Principal Office: Sacramento, P.O.Box 187005, 95818-7005  
Consumer Information: (916) 739-3628  
Raymond L. Royce, Managing Deputy Comm. IV  
South - Los Angeles, Room 7111, 107 S. Broadway, 90012  
Consumer Information: (213) 620-2700  
Randolph Brendia, Managing Deputy Commissioner III  
North - Sacramento, P.O. Box 187005, 95818-7005  
Consumer Information: (916) 739-3631  
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**DISCIPLINARY ACTION**  
**September 1987 to November 1987**

**REB** - Real estate broker  
**RES** - Real estate salesperson  
**PRLS** - Prepaid rental listing service  
**REO** - Real estate officer

**RREB** - Restricted real estate broker  
**RRES** - Restricted real estate salesperson  
**RPRLS** - Restricted prepaid rental listingservice  
**REC** - Real estate corporation

Note: A list of actions is not published in this *Bulletin* until the 30-day period allowed for court appeal has expired, or if an appeal is taken on the disciplinary action stayed, until the stay is dissolved. Names of persons to whom licenses are denied on application are not 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 to the Real Estate Commissioner, both of which are printed in the *Real Estate Law* book. The *Real Estate Law* book is available for purchase from the Department of Real Estate for \$12.50 plus tax.

**Business and Professions Codes**

490 relationship of conviction to licensed activity 10177(f)  
495 public reproval 10177(h)  
10085 failure to submit advance fee materials 10177(j)  
10130 acting without license  
10137 unlawful payment of compensation 10237.3  
10145 trust fund handling 10238.3  
10148 retention and availability of real estate broker records 10240  
10159.5 fictitious name  
10160 broker possession and licensee inspection of license 10241(j)  
10162 office abandonment  
10167.9(a)(3) failure to include required terms in OPRLS contract  
10167.9(c) use of unapproved contract  
10167.10(a)(1) non-refund of PRLS fee  
10167.10(b) failure to refund deposit or portion thereof  
10167.11(a) referral of unavailable or non-existent rental property  
10167.11(b) false, misleading or deceptive advertising or description of a rental property  
10167.12 violation or crime by PRLS licensee  
10176(a) making any substantial misrepresentation  
10176(b) making false promise  
10176(c) course of misrepresentations through salespersons  
10176(e) commingling trust funds  
10176(g) secret profit or undisclosed compensation  
10176(i) 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(c) false advertisement  
10177(d) violation of real estate law or regulations

conduct that would have warranted denial of a license  
negligence or incompetence as licensee  
failure to supervise salespersons  
fraud or dishonest dealing not in licensed capacity  
acting as real property securities dealer without endorsement  
failure to obtain real property securities permit  
failure to give mortgage loan disclosure statement  
failure to give mortgage loan disclosure statement

**Regulations**

2715 broker's failure to maintain current address with DRE  
2725 failure of broker to review and initial agreements  
2731 unauthorized use of fictitious business name  
2830 failure to maintain trust fund account  
2831 inadequate trust fund records  
2831.1 inadequate trust fund records  
2832 failure to comply with specific provisions for handling trust funds  
2832.1 broker's failure to obtain permission to disburse trust funds from an account involving multiple beneficiaries  
2834 trust account withdrawals by unauthorized person  
2950(d) failure of broker handling escrows to maintain records  
2950(e) failure by broker to maintain and make escrow records available for inspection

**Licenses Revoked**

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Amidy Khaje, Ali (RES)	3131 Bascom, Ste. 4A, Campbell	9/16/87	10145, 10176(a)(e)(i), 10177(d)(f)
Aston, Anna Llons (RES)	16901 Ventura Bl., Encino	9/8/87	490, 10177(b)
Babij, Diane (RES)	7650 Kreth Rd., Fair Oaks	11/18/87	490, 10177(b)
Billingsley, Lois Anne (RES)	5560 78th St., Sacramento	10/13/87	490, 10177(b)
Biasingame, DeAnna Gaye (RES)	750 Garrett Ln., Arroyo Grande	11/16/87	490, 10177(b)
Chernik, Peter Robert (REB)(REO) Db a - Civic Realty Advisors	4 Embarcadero Center, Ste. 3600 San Francisco	12/17/86	490, 10177(b)(f)
Christensen, Clifford Cornelius (RES)	40879 Highway 41, Oakhurst	11/18/87	10176(a)(d)(f), 10137, 10177(d)(f)
Cimino, Philip John Jr. (RES)	453 Rancho Alegre, Covina	10/28/87	490, 10177(a)(j)
Colman, Janice Lena (PRLS)	7417 Van Nuys Bl., Ste. I, Van Nuys	9/1/87	490, 10167.10(a)(1), 10167.11(a), (b)(1), (b)(4), 10167.12(a)(2)
Collantes, Blanca (REB)	4174 Mission St., San Francisco	10/1/87	2731, 2830, 2832, 10145, 10177(d)
De Los Rios, Jose (RES)	916A Grace St., Bakersfield	11/16/87	490, 10177(b)
Eisenbeisz, Gene Herbert (RES)	12389 Sonoma Ct., Chino	10/14/87	490, 10177(b)
Forman, Ward Hamed (RES)	1340 Miracle Cir., Tulare	11/23/87	10177(f)(g)
Fowler, Charlene Elaine (REB)	20340 Highway 116, Monte Rio	11/17/87	10145, 10176(a), 10177(d)(g)(h), 10241(j)

continued on page 3, Disciplinary Action

**Disciplinary Action, continued from page 2**

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Fritz, Donald E. (RES)	6804A Hyde Park Dr., San Diego	9/15/87	490, 10177(b)
Furshpan, Don Jay (RES)	27491 Almendra St., Mission Viejo	9/8/87	490, 10177(b)
Ghoogasian, Richard (REB)	1000 E. Walnut #221, Pasadena	10/20/87	10167.9(a)(3)(5), (c), 10167.10(b), 10167.11(b)(1)(2)(4), 10167.12, 10177(d)(b)
Dbs - CLN, Mr. Realty, Rentmasters, Selco-Tenant			
Giushko, Thomas Nikolai (RES)	802 N. Sweetzer, #101, Los Angeles	9/23/87	490, 10177(b)
Havens, Peggy June (REB)	56185 29 Palms Hwy, Yucca Valley	4/24/87	10176(a)(b)(f), 10177(d)
House, Karen Helen (RES)	1424 Camino Del Mar, Del Mar	9/15/87	490, 10177(b)
Hsu, Jennifer Shu-Yuan (RES)	501 N. 3rd St., #G, Alhambra	9/29/87	490, 10177(a)(b)
Hughes, Steven William (REB)(REO)	23201 Mill Creek Rd. Laguna Hills	4/2/87	10177(f)
Jensen, Robert Dwayne (REB)	627 Montclair Dr., Santa Clara	9/28/87	490, 10177(b)(f)
Johnson, Harold Dean (RES)	179 Mildred Av., Pittsburg	10/13/87	490, 10177(b)
Kale, Linda Lou (RES)	11690 Tarawa St., Cypress	11/19/87	490, 10177(a)(b)
Keeley, Edward Vaughn (RES)	8722 Sage Ct., Yucca Valley	10/29/87	490, 10177(b)
Kelly, Dennis George (RES)	P.O. Box 357, Cedar Ridge	11/16/87	490, 10177(b)
Lamond, Phyllis (RES)	P.O. Box 6143, Woodland Hills	9/22/87	490, 10177(b)
MacLeod, Kenneth (RES)	820 Center St., Ste.12, Costa Mesa	9/10/87	490, 10177(b)
Mamaug, Rollic Simangan (REB)	3128 Bertis Dr., Sacramento	10/13/87	2830, 2831, 2831.1, 2832, 10145, 10176(c), 10177(d)
Mathieu, Renee Yvonne (RES)	2536 De La Vina, Santa Barbara	10/14/87	490, 10177(b)
Matkin, Joel William (RES)	P.O. Box 466, Tuolumne	11/11/87	490, 10177(b)
May, Mitchell Lee (REB)	1220 W. Kern St., Tulare	11/23/87	10177(g)(h)
Mayorga, Viola Rico (RES)	111 Decathlon, Sacramento	11/17/87	490, 10177(b)
Messina, Terri Jean (RES)	11412 Twin Hills, Northridge	9/8/87	490, 10177(b)
Nationwide Home Loans Inc. (REB)	23201 Mill Creek Rd. Laguna Hills	4/2/87	10177(f)
Nunes, Paul Robert (RES)	1602 Melody Ln, San Jose	9/28/87	490, 10177(b)(f)
Olsen, Sharon Leo (RES)	P.O. Box 779, Hanford	10/6/87	10177(g)(i)
Orduno, Daniel (REB)	1401 Marek Dr., Montebello	9/22/87	10176(i), 10177(d)(f)
Parry, Richard Keith (RES)	2855 Canerita Dr., Fallbrook	9/15/87	490, 10177(b)
Pearson, Gary Dean (REB)	2969 W. Line, Bishop	11/18/87	10177(h)
Plocic, George (REB)	588 Lynette Cr., Vista	9/16/87	490, 10177(b)
Pollack, Mark Farrell (REB)	6749 Fulton Av., Van Nuys	9/1/87	2950(d)(e), 10148, 10177(d)
Poteci, Marc Eric (RES)	28852 Buendia, Mission Viejo	10/13/87	490, 10177(b)
Potter, Robert Otto (RES)	P.O. Box 8010, Laguna Hills	4/2/87	10177(f)
Reed, Warren William Jr. (RES)	841 Via Sierra Nevada, Riverside	9/3/87	10176(i), 10177(d)(g)
Releford, Leo Craig (RES)	3648 Karen Av., Long Beach	9/23/87	490, 10177(b)
Rogers, John Albert (RES)	1958 Garnet Av., San Diego	9/16/87	10176(i)
Schluntz, Inge Margarete (RES)	1123 Larkwood, West Covina	9/22/87	490, 10177(b)
Smith, Douglas James (RES)	4816 Summitree Ln., #C, Bakersfield	11/4/87	490, 10177(b)
Smith, Richard Lynn (RES)	4119 Andy St., Lakewood	10/14/87	490, 10177(b)
Snowder, Michael Henry (RES)	330 Idora Av., Vallejo	11/16/87	490, 10177(b)
Suglian, John Lee (RES)	4669 E. Alamos, #126, Fresno	11/17/87	10176(a)(b)(c)(i)
Thom, Richard David (RES)	10856 Mather Av., Sunland	10/14/87	490, 10177(b)
Tomooka, Gary Shigeru (RES)	218 S. Superior, Santa Maria	9/8/87	490, 10177(b)
Tong, Bobby (RES)	8430 Nagle Av., Sun Valley	9/23/87	490, 10177(b)
Treadwell, John Reginald (RES)	2489 Buntingham, Simi Valley	9/1/87	10085, 10130, 10177(g)
Tsu, Daniel C. (REB)	254 S. Hobart Bl., #10, Los Angeles	9/22/87	10177.5
Vienn, Marion Eunice (RES)	8453 1/2 S. Van Ness Av., Inglewood	11/10/87	2731, 10130, 10176(i), 10177(d)
Wahlin, Dennis Wesley (RES)	7 Barcelona Dr., Rancho Mirage	9/3/87	10176(i), 10177(d)(g)

**Licenses Revoked With a Right to a Restricted License**

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Ables, Curtis Ray (REB)	1209 West 6th St., Hanford	11/17/87	490, 10177(b)
(Right to RRES license after 60 days on terms and conditions)			
Abogado, Angelina Flores (RES)	908 S. Golden West, Unit 3, Arcadia	11/3/87	490, 10177(b)
(Right to RRES license on terms and conditions)			
Adkins, Dazene Marie (RES)	126 W. Le Roy, Arcadia	10/13/87	490, 10177(b)
(Right to RREB license on terms and conditions)			
Burckard, James P. (REB)	587 Ygnacio Valley Rd., Walnut Creek	10/7/87	10176(a)(i), 10177(f)
(Right to RRES license on terms and conditions)			
Collantes, Francisco Alberto (REB)	2806 24th St., San Francisco	10/1/87	2731, 10145, 10177(d)
(Right to RRES license on terms and conditions)			
Cotten, Dwight Neil (REB)	2581 Springs Rd., Vallejo	11/23/87	10177(g)
(Right to RREB license on terms and conditions)			

continued on page 4, Disciplinary Action

**Advertising, continued from page 1**

Under the Subdivided Lands Act, a criminal penalty may be imposed on any person who authorizes or uses false or misleading advertising pertaining to a subdivision offering. A remedy frequently used by DRE is the issuance of a desist and refrain order prohibiting the continued use of what is alleged to be false and misleading advertising, or the immediate cessation of sales, or both (see related article on page 5). This injunction-type power has been extended by statute to persons violating the provisions of Business and Professions Code Sections 17537, 17537.1 and 17539.1 in advertising or promoting the sale of subdivision interests.

These statutes deal with the restrictions on advertising of prizes, gifts or contests as part of an advertising plan or program. Although prizes, gifts or contests have been most often used in the offering of timeshares, campground offerings and the sale of such products as solar energy devices, the statutes apply generally to any advertising plan or program.

Among other restrictions, these statutes provide that it is unlawful to notify any person by any means, as a part of an advertising plan or program, that he or she has won a prize or will receive a gift and that as a condition of receiving such a prize or gift, he or she must pay any money or purchase or rent any goods or services. This includes handling and shipping under specified conditions. A fine (not to exceed \$2,500) or up to 6 months imprisonment, or both, is the prescribed penalty for violating this prohibition.

In addition, when the advertising plan offers any prize, gift, or money, or other item of value as a sales inducement to visit a location, attend a sales presentation or contact an agent, certain disclosures must be made in the advertisement clearly disclosing among other items, the following:

(1) The name and street address of the owner of the property or the provider of the services which are the subject of the visit, sales presentation, or contact with a sales agent.

(2) A general description of the business of the owner or provider, and the purpose of any requested visit, sales presentation, or contact with sales agent.

(3) A statement of the odds, in Arabic numerals, of receiving each item offered.

(4) All restrictions, qualifications, and other conditions which must be satisfied before the recipient is entitled to receive the item, including any deadline by which the recipient must visit the location, attend the sales presentation, or contact the sales agent in order to receive an item and the approximate duration of any visit and sales presentation. Any other conditions, such as minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive the item. Any financial qualifications shall be stated with a specificity sufficient to enable the recipient to reasonably determine his or her eligibility.

(5) A statement that the owner or provider reserves the right to provide a raincheck, or a substitute or like item.

continued on page 5, Advertising

## DRE Monitors Continuing Education Offerings

by William R. Groome, Real Estate License Examiner II

**H**ave you ever attended a continuing education course that was conducted unprofessionally? Did you wonder why the DRE would allow this sponsor to continue to offer the course?

If you have had this experience then you will be glad to learn that Real Estate Commissioner James A. Edmonds, Jr. has initiated a program to monitor continuing education offerings for compliance with Real Estate Law Regulations.

Approximately forty offerings have been monitored statewide since January 1987. DRE employees are attending courses and paying particular attention to the following types of potential irregularities:

- Lack of proper attendance controls to ensure that attendees who receive certificates actually attended 90% of the credited hours.
- Radical digressions from the approved content of the offering; for example, a "sales pitch" for goods or services.
- Questionable test administration procedures during the final examination for the offering.

Many of the offerings monitored have had these most frequently observed problems:

- (1) Failure to properly verify attendee identification; and
- (2) Failure to properly administer the closed book final examination.

Some other problems detected have been shortening the approved instruction time, observed cheating during the final examination and extensive "sales pitches" during approved instruction time.

The normal action taken by the DRE is to write a letter to the sponsor of the course offering citing the problem and requesting a response to the Department regarding what actions will be taken to prevent any recurrence of the problem. In some instances the "problem" is routed to the appropriate DRE district office for further investigation.

The DRE may decertify an offering if the sponsor does not correct a problem. Therefore, sponsors are usually quick to correct any problems identified with their offerings.

It appears now that most sponsors are aware of the DRE continuing education monitoring effort and fewer problems are being observed. If you attend a Department of Real Estate-approved offering that was conducted improperly, please explain what you observed in writing and send it to: Continuing Education Monitoring Coordinator, Department of Real Estate, P.O. Box 187000, Sacramento, CA 95818-7000. ■

### Disciplinary Action, continued from page 3

#### Licenses Revoked With a Right to a Restricted License

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Etessam, Ursula T. (REB) (Right to RRES license on terms and conditions)	150 W. Edith Av., #38, Los Altos	9/1/87	490, 10177(b)(f)
Graham, James Orin (REB)(REO) (Right to RRES license on terms and conditions)	2201 Boynton Av., Fairfield	9/22/87	2731, 2830, 2831, 2831.1, 10145, 10176(a)(i), 10177(d)
Gregory, Raymond Jay (REO) (Right to RRES license on terms and conditions)	16162 Beach Bl. #100, Huntington Beach	10/27/87	10177(h)
Henricksen, Frederick M. (REB) (Right to RRES license on terms and conditions)	2990 Clay St., #2, San Francisco	11/4/87	2731, 2831, 10145, 10159.5, 10176(e), 10177(d)(h)
Keams, William Randal (RES) (Right to RRES license on terms and conditions)	1470 Old Ranch Rd., Placerville	10/22/87	10176(a)
Lantay, Gregory (RES) (Right to RRES license on terms and conditions)	108 1/2 East 7th St., Hanford	9/2/87	10130, 10177(d)(f)
Lee, Carolyn (RES) (Right to RRES license on terms and conditions)	970 S. Kingsley Dr., #106, Los Angeles	9/8/87	490, 10177(b)
Lewis, Jeffrey Walker (REB) (Right to RRES license on terms and conditions)	108 McFadden Pl., Newport Beach	9/8/87	2831.1, 2832.1, 2834, 10130, 10137, 10177(d)
Lockwood, William George (REB) (Right to RRES license after 60 days on terms and conditions)	22736 Vanowen St., #300, Canoga Park	9/25/87	490, 10177(b)
May, Dana Laurence (REB) (Right to RRES license after 30 days on terms and conditions)	1958 Garnet Av., San Diego	9/16/87	2831, 2832.1, 10145, 10148, 10177(d)(g)(h)
Palacio, J. Victor (RES) (Right to RRES license after 60 days on terms and conditions)	7833 Gretna Av., Whittier	10/6/87	490, 10177(a)(b)
Pasque, Thomas Peter (RES) (Right to RRES license on terms and conditions)	1843 Hamilton, Simi Valley	9/1/87	490, 10177(b)
Ray Gregory Inc (REC) (Right to RRES license on terms and conditions)	16162 Beach Bl. #100, Huntington Beach	10/27/87	2731, 2832.1, 10145, 10177(d)
Reza, Sal C. (RES) (Right to RRES license on terms and conditions)	1214 Beech Hill Av., Hacienda Heights	11/3/87	10145, 10176(i), 10177(d)
Ruiz, Albert Almeraz (REB) (Right to RRES license on terms and conditions)	2211 Canterbury Ln., La Habra	11/3/87	2830, 2831, 2831.1, 2832, 2832.1, 10145, 10177(d)(g)(h)
Selvage, Lois Yapo (RES) (Right to RRES license after 30 days on terms and conditions)	2330 San Ramon Bl., San Ramon	11/30/87	10176(a)(i)
Serpa, Adam (RREB) Off - Ray Gregory Inc (Right to RREC license on terms and conditions)	1998 N. Douty St., Hanford	9/2/87	2725, 2834, 10145, 10177(d)(h)
Smith, Kyle C. (REB)(REO) (Right to RRES license on terms and conditions)	6369 San Como Ln., Camarillo	10/20/87	2832.1, 10145, 10177(d)
Tapia, Policarpo Rolando (REB) (Right to RRES license after 30 days on terms and conditions)	2978 Mission St., San Francisco	7/10/87	490, 10177(b)
Van Blaricom, W. (RES) (Right to RRES license on terms and conditions)	1493 Fry Ln., Hayward	11/2/87	490, 10177(b)(f)
Vighi, Claudio (REB) (Right to RRES license on terms and conditions)	420 Glenn St., Vallejo	10/22/87	10176(a)
Werner, Rita Jeanne (RES) (Right to RRES license on terms and conditions) (RRES license suspended 90 days)	P.O. Box 66223, Los Angeles	9/1/87	490, 10177(b)

#### Licenses Suspended With Stays

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Anderson, Claude Pierce (REB) (Stayed on condition)	756 S. Genevieve Ln., San Jose	11/25/87 (30 days)	2715, 10162, 10177(d)
Bryan, Don G. (REB)(REO) (Stayed for 2 years on terms and conditions)	14282 Shadybrook Dr., Tustin	9/9/87 (180 days)	2731, 2830, 10177(h)
Coolidge, Carol Kay (RES) (Stayed on condition)	2560 Carlsbad Bl., Carlsbad	11/13/87 (30 days)	10177(f)
Goodlad, Lisa Anne (REB)(REO) (Stayed on condition)	1023 N. Brand Bl., Glendale	10/1/87 (30 days)	10177(h)
Goodlad, Nancy Lou (RES) (Stayed for 1 year on terms and conditions)	1023 N. Brand Bl., Glendale	10/1/87 (30 days)	10137
Hanna, Magdy (REB)(REO) Off - Vista Mortgage Corporation (Stayed for 1 year on terms and conditions)	4000 MacArthur Bl., Ste. 680, Newport Beach	11/12/87 (30 days)	2725, 10177(h)
Hartman, Larry Lee (REB)(REO) (Stayed for 1 year on terms and conditions)	451 W. Lincoln Av., Ste. 200, Anaheim	10/6/87 (30 days)	10237.3, 10238.3, 10177(d)

continued on page 5, Disciplinary Action

**Disciplinary Action**, continued from page 4**Licenses Suspended With Stays**

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Juarez, Alfredo Morales (REB) (Stayed on condition)	523 Highland Av., National City	10/8/87 (30 days)	2831, 2831.1, 2832.1, 10145, 10177(d)
Newport Pacific Funding Corp (REC) (Stayed on condition)	4000 MacArthur Bl., Ste. 680, Newport Beach	11/12/87 (30 days)	2830, 10137, 10177(d)
Pro Mortgage Service Inc. (REC) Off - Newport Pacific Funding Corp. (Permanently Stayed on condition)	23555 Golden Springs, Diamond Bar	10/27/87 (30 days)	10130, 10137, 10177(d)
Seizer, Jack Campbell (REB) (Permanently stayed on condition)	2840 College Av., Berkeley	11/30/87 (30 days)	10177(d), 10240
Smith, Boby Warren (REB)(REO) (All but 10 days stayed for 1 year on terms and conditions)	21319 Tambo Pl., Diamond Bar	10/27/87 (30 days)	10137, 10177(b)
Vista Mortgage Corporation (REC) (May be stayed after 30 days on condition)	451 W. Lincoln Av., Ste. 200, Anaheim	10/6/87 (until 4/14/90)	10237.3, 10238.3, 10177(d)
Walter, Bernard David (REB) (Stayed for 1 year on terms and conditions)	1965 Market St., San Francisco	9/17/87 (30 days)	10145, 10177(d)

**Licenses Suspended**

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Distelrath, James Henry (RES)	4276 Independence St., Chino	9/23/87 (10 days)	490, 10177(b)
Norman, Harold (REB)	4120 National Av., Burbank	10/8/87 (30 days)	10176(e)(i), 10177(d)
Wills, Don Wylie (RES)	1590 N. Batavia, Orange	6/3/87 (90 days)	2830, 2832, 10145, 10176(g), 10177(d)(g)

**Public Repeals**

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Young, Jack M. (RES)	1803 Virginia Rd., San Marino	9/9/87	495, 10137

**Indefinite Suspensions Under Recovery Fund Provisions**

NAME	ADDRESS	EFFECTIVE DATE
Bishop, Art (REB)	11149 S. Crenshaw Bl., Inglewood	11/13/87
Boutin, Roland (RES)	150 West Edith, #1, Los Altos	11/3/87
Bridges, Douglas Ray (REB)	4240 Citrus Cir., Yorba Linda	9/3/87
Craven, Michael Don (RES)	8112 Le Mans, Stockton	11/4/87
Delphi Investment Corporation (REC)	2640 Cordova Ln. Ste., 120, Rancho Cordova	10/1/87
Emslie, Norma G. (REB)	P.O. Box 2697, La Habra	11/24/87
Guerrero, Edward R. (RES)	3992 Mission St., Apt. #205, San Francisco	11/17/87
Horizons West (REC)	1647 N. California Bl., Ste. 201, Walnut Creek	11/24/87
Kizer, Darrell Lee (RES)	7510 Cermos Av., Stanton	10/6/87
Marlowe, Monroe (RES)	6410 Van Nuys Bl., Van Nuys	10/1/87
McCormick, Cyril Roland (RES)	P.O. Box 3200, Laguna Hills	10/1/87
Myers, Paul Elmo (RES)	1141 W. Barstow, Fresno	9/3/87
Schippert, Billie Richard (RES)	2640 Cordova Ln. Ste., 120, Rancho Cordova	10/1/87
Scianna, Marion Peter (REB)	442B Olive Hwy, Oroville	10/1/87
Willard Leon Grimes (REO)	2272 Market St., San Francisco	11/24/87

**The Desist and Refrain Order — Subdivision Sales**

by Raymond L. Royce  
Chief, Subdivision Operations

As our readers well know, new subdivisions cannot lawfully be offered for sale or lease until the subdivider has obtained a subdivision public report from the Department of Real Estate. The public report is a disclosure document and one of its purposes is to prevent fraud and misrepresentation in the offering of subdivided land. A copy of the public report must be given to prospective purchasers prior to accepting purchase money deposits or entering into a contract to purchase. A receipt must be taken for the public report, on a prescribed form, from the prospective purchaser.

When the public report no longer reflects the true facts, after it has been issued, or when the marketing of the subdivision does not conform to law in some respect, the DRE may issue and serve the subdivider with an order to desist and refrain stopping further sales until an amended public report is obtained or until the problem is corrected.

There are many specific reasons for the issuance of the desist and refrain order, a few of which are listed here:

1. False or misleading advertising.
2. Failure of the subdivider to complete common area facilities in common interest subdivisions.
3. Failure of the subdivider to pay monthly homeowner assessments on unsold lots or units in common interest subdivisions.
4. Failure to impound purchase money deposits.
5. Use of purchase and sales agreements and escrow instructions other than those filed with the DRE to obtain the public report.
6. Failure to organize and constitute a homeowners association in accord with Articles of Incorporation, By-Laws and Covenants, Conditions and Restrictions after the public report has been issued.
7. Changing the terms of the sales offering after the public report has been issued, without notifying the DRE.

It must be obvious to our readers that the desist and refrain order is a very effective means of correcting unlawful activity in the offering of subdivisions. We would suggest that when in doubt, you check it out with the DRE. ■

**Advertising**, continued from page 3

Also, it is unlawful for any person to offer any item when such person knows or has reason to know that the advertised item will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

Stringent requirements also apply to the operation of contests, especially in the need to make a myriad of specific disclosures.

Subdividers, and their marketing agents, should thoroughly review these Business and Professions Code statutes, if they plan to offer gifts, prizes or contests as sales inducements in their advertisements. ■

## Homeowners Associations — Misunderstood Vehicles for Subdivision

by Martin F. Dingman  
Assistant Commissioner,  
Subdivisions



### Governance

As early as the Sixth Century B.C., condominiums were a common form of real property ownership in major Roman cities. Ancient history was repeated when the condominium concept was reintroduced in the U.S. following enactment of the National Housing Act of 1961. The act provided federal mortgage insurance for this "new" form of home ownership and proved to be the impetus for condominium development in this country.

California legislators responded by enacting condominium statutes in 1963 and again in 1965 when the terms "subdivided lands" and "subdivision" were expanded to include all then existing types of common interest subdivisions.

The vehicle that came into being to provide management of the common interest concerns of the condominium is known as the homeowners association. Homeowners associations are often misunderstood, not only by association members, but also, in many instances, by officers and elected directors.

The Real Estate Commissioner requires that an association of owners be formed to assure the continual management, operation and maintenance of the project. It is created and organized by the developer at the onset of the project as part of the Public Report process. Membership is mandatory for all who buy into the project.

Most common interest subdivision owners associations are organized as nonprofit mutual benefit corporations under the Nonprofit Mutual Benefit Corporation Law (Corporations Code Sections 7710 - 8910). Some commentators describe owners associations as businesses operated exclusively for the benefit of the residents; but, perhaps the most commonly accepted comparison is that such organizations are the equivalent of mini-governments.

When a large condominium management firm collapsed a few years ago it came as a great shock to many Southern California-based owners associations that no state agency had regulatory control over the operations of such management firms. A rushed legislative attempt to require condominium management firms to be licensed as real estate brokers barely failed passage in the Legislature.

The 1985 legislative year, however, resulted in the passage of Assembly Bill 314 (Chapter 874), the Davis-Stirling Common Interest Development Act. This bill and companion legislation consolidates much of the law on common interest subdivisions and relocates it in the Civil Code (Sections 1350 - 1372). For the first time, there is a statutory mandate to create an association to govern every common interest

project. Such associations may be incorporated or unincorporated.

AB 314 also expands the powers of owners associations in such areas as: remedies for delinquent assessments; amending the CC&Rs; expiration of liens; and suing for damages to common elements.

DRE has had many written requests in past years requesting its involvement in a myriad of issues pertaining to owners associations. We have received letters from association members who are unhappy with one or more actions of the boards of directors of their particular projects. Complainants are also unhappy with our typical factual reply—"DRE has no continuing role over the operations of owners associations once a project is sold out."

Even during the sales period, the only indirect involvement of DRE pertains to proposed changes to the governing instruments. Under Business and Professions Code Section 11018.7, there can be no valid material change in the governing documents of a common interest subdivision without the prior written consent of the Real Estate Commissioner. This is true whether a change is proposed by the developer, the association, an individual owner, or a group of owners. Ordinarily, this requirement is in force as long as the subdivider or the subdivider's successor in interest holds or directly controls one-fourth of the votes that could effect the change.

In order to give notice to prospective purchasers of the nature of common interest developments and the roles of owners associations, DRE has included a general information statement with each public report for a common interest development issued in the past 11 years. The theme of this statement (see "Common Interest Development General Information" on this page) is that the success of a common interest subdivision project is directly related to the willingness of its members to actively participate in the affairs of the owners association. Members should appreciate and participate in the governance of what is the substantial equivalent of a small community.

AB 314 added a provision (Business and Professions Code Section 11018.1(c)) which now mandates that the owner, subdivider or agent give the prospective purchaser a copy of the statement along with the public report.

Real estate licensees engaged in the resale of condominium units and parcels or units of other common interest developments should consider using the Common Interest Development General Information statement as a guide in responding to related general questions from prospective purchasers. ■

## Common Interest Development General Information

*(Under provisions of AB 314, this statement must be provided, along with the public report, to all prospective buyers of common interest subdivision property)*

The project described in the attached Subdivision Public Report is known as a common-interest development. Read the public report carefully for more information about the type of development. The development includes common areas and facilities which will be owned or operated by an owners' association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase.

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&Rs), Articles of Incorporation (or association) and Bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.

A homeowners association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you." Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association

*continued on page 7, Information*

## Information, continued from page 6

which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community... the management can serve you well, but you will have to work for its success. ■

## Amended and Renewed Public Reports

by Geoff McLennan, Subdivisions North Section, Sacramento

**B**rokers should understand when a subdivision public report may no longer be valid and when to recommend to the selling subdivider that an amendment be filed with the Department of Real Estate. It is very common for the Department to receive inquiries from real estate brokers and salespeople about whether a public report is still valid given certain changes in the subdivision offering or project.

Suppose one of your salespeople advises you that the developer has decided to: add a spa or tennis court to the common area; change the recorded restrictions; change the diameter of some lots; or that a special assessment district has been created.

Should you, as the responsible broker, continue sales uninterrupted? Should you write a letter to the Department of Real Estate Subdivision Office nearest you? Should you tell the subdivider to contact an attorney?

In order to assist subdividers and to provide consumers with essential information about a project, the Department offers the following information:

An amendment to a public report is required when a material change occurs. Commis-

sioner's Regulation 2800(a-o) defines a material change to include, among other things, a change in the common facilities (such as tennis courts or a spa), revisions to the recorded restrictions, discovery of latent hazards (such as toxic materials or geologic conditions), addition or relocation of easements upon unsold lots, substantial homeowner assessment delinquencies, or a change in utilities (such as gas, sewage or electricity). This list is not inclusive and other changes may also constitute a "material change" and thus necessitate an amended public report.

Occasionally, the Department will determine that a change is immaterial or does not require an amended public report. When there is doubt, a broker is well advised to contact either one of the Department's Subdivision Offices in writing or by telephone to determine if an amendment to a public report is required.

### In Southern California, contact:

Department of Real Estate, Subdivisions South, 107 South Broadway, Room 7111, Los Angeles, CA 90012, (213) 620-2700

### In Northern California, contact:

Department of Real Estate, Subdivisions North, 2201 Broadway, P.O. Box 187005, Sacramento, CA 95818-7005, (916) 739-3631. ■

## When a Real Estate Broker License is Required of a General Partner of a Partnership

by George Sublette, Attorney in Charge, Los Angeles Legal Section

**U**ntil the late 1960s, the Department of Real Estate issued broker licenses to partnerships. However, partnership real estate broker licenses were abolished in 1967. Since then, the Department has not issued broker licenses to either general or limited partnerships. Is there any circumstance, then, when a broker license may be required of a general partner in a partnership engaged in real estate transactions?

Section 10137.1 of the Business and Professions Code was added to the Real Estate Law when partnership licenses were abolished. For purposes of the Real Estate Licensing Law, general and limited partnerships are treated alike.

The section provides:

"Nothing contained in this division shall preclude a partnership from performing acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker."

Section 10137.1 does not mean that all partners of a partnership necessarily must be licensed as real estate brokers. It does mean that every partner who, on behalf of a partnership, performs acts for which a real estate license is required, must be licensed as a real estate broker.

Section 10131 of the Business and Professions Code, in Subsections (a) through (e), describes acts that require a real estate broker license if the described acts are performed for another or others and are performed for compen-

sation or in expectation of compensation.

A general partner of a partnership is required to have a real estate broker license if the general partner performs, on behalf of the partnership, any of the acts described in Subsections (a) through (e) of Section 10131, unless an exemption from the license requirements exists.

Section 10133 of the Business and Profes-

**"Nothing contained in this division shall preclude a partnership from performing acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker."**

sions Code sets forth a number of exemptions and provides that the acts described in Section 10131, Subsections (a) through (e), are not acts for which a real estate license is required if they are performed by certain persons and under certain circumstances. Specifically, Section 10133(a) provides, in part, that the acts described in Section 10131, Subsections (a) through (e), do not require a real estate license if performed by a general partner of a partnership with respect to real property owned or leased by the partnership or in connection with the proposed purchase or leasing of real property by the partnership if the acts are not performed by the partner in expectation of "special compensation." The key, therefore, is whether the described acts are performed by the general partner in expectation of "special compensation." But, what is the meaning of "special

compensation?"

In virtually every general or limited partnership agreement, there are provisions for the regular or periodic distribution of the profits of the partnership assets and on dissolution or termination of the partnership. This is compensation which a general partner is entitled to by virtue of the partnership agreement for the performance of all his duties and services on behalf of, and his other contributions to, the partnership. The general partner's right to the described compensation is not contingent upon, and the amount of such compensation is not calculated with reference to, particular transactions or acts. This is not "special compensation"

within the meaning of Section 10133(a). If this is the only compensation expected by the general partner, then a real estate broker license is not required.

However, if the general partner performs any of the acts set forth in Section 10131, Subsections (a) through (e), in expectation of compensation which is actually a commission or bonus which is directly related to and contingent on the general partner's successful performance of any of the described acts in relation to specific transactions on behalf of the general partnership, then the general partner is required to have a real estate broker license. The general partner is performing the acts in expectation of "special compensation" within the meaning of Section 10133(a), and the exemption from licensing requirements is not applicable. ■

## Common Interest Developments — Furnishing Controlling Documents and a Financial Statement

**T**here are two real property disclosures pertaining to the transfer of ownership in common interest developments which appear to require much the same thing. Although the disclosures are similar in requirements, they differ as to the parties obliged to deliver the disclosure documents to the prospective buyer or lessee.

Civil Code Section 1368 requires that the owner of a dwelling unit or other separate interest in a common interest development such as a condominium, planned unit development, stock cooperative or a timeshare must, as soon as possible before the transfer of title or before entering into a real property sales contract, provide the prospective purchaser with the following:

- a copy of the governing documents of the development;
- if there is a restriction in the governing documents limiting occupancy of the unit on the basis of age in a different manner than that prescribed by law (specifically Civil Code Section 51.3), then the owner must provide a statement

that the age restriction is only enforceable to the extent permitted by law and specify the applicable provisions of the law;

- a copy of the most recent financial statement of the homeowners' association, prepared and distributed according to the law;
- a written statement from the association as to the amount of any unpaid assessment owed by the present owner of the dwelling unit as of the date of the statement. The statement must also include any late charges, interest, and costs of collection as of the date of the statement which are or may become liens against the property.

An owner who willfully violates this law is subject to actual damages caused by the failure to deliver the required documents and must also pay a civil penalty of not to exceed five hundred dollars (\$500). In any court action to enforce liability, the party winning the action will be awarded reasonable attorney fees.

Business and Professions Code Section 11018.6 imposes similar disclosure requirements on subdividers and their agents. It requires that

any person offering to sell or lease lots or units in a common interest development which requires a public report prior to the offering, must also make available and deliver to the prospective purchaser or lessee before the transfer of the property the following:

- the governing documents for the association;
- any other instrument which defines the common, mutual, reciprocal rights and responsibilities of the owner;
- the current financial statement;
- a statement from the governing board of the association regarding any outstanding delinquent assessments and related charges levied by the association against the subdivision in question.

Real estate licensees, whether engaged in the initial sale of units or lots in common interest developments, or in the resale of such subdivision interests for individual owners, should thoroughly familiarize themselves with these two statutes. ■

## Spring Real Estate Educator's Conferences

*by George Bairey, Director, Real Estate Education Center*

**C**alifornia Community Colleges Real Estate Educators' Conferences will be held at Northern and Southern California locations this spring for the benefit of full time and part-time real estate instructors throughout the state.

A northern California conference will be held Friday, April 29, at the Westin Hotel in

Millbrae. A southern California conference is scheduled Friday, May 6, at the Westin-South Coast Plaza in Costa Mesa.

The conference theme is "How You Can Be Better in Your Classroom." Registration is open to all real estate instructors, both public and private, in the state. Advance registration is required, and there is a conference fee for instruc-

tors who are not affiliated with a community college.

For additional information, contact the California Community Colleges Real Estate Education Center, Yosemite Community College District, P.O. Box 4065, Modesto, CA 95352, telephone (209) 575 6465. ■



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