



REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Summer 1980

DAVID H. FOX, Commissioner

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

Prepared by
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Southern Regulatory Area

A seller who advertises a real property as a "fixer upper" and offers it for sale on an "as is" basis is not thereby relieved of an affirmative duty to disclose all material facts to a purchaser where the purchaser cannot reasonably ascertain those facts for himself, the California Court of Appeal held in a recent case.* Failure to make such disclosure constitutes actual fraud.

The seller, a licensed real estate broker, bought a residential property which was the subject of an order for non-compliance with county codes because of an illegal room and other violations. The broker advertised the property for sale as a "fixer upper" to be sold "as is."

At the time of sale the broker also caused the escrow instructions to refer to the "as is" condition of the property and a disclaimer of any warranties "as to any condition having to do with city regulations or zoning or any other municipal conditions applying to the subject property." However, seller failed to inform the buyer or the real estate agent who accompanied the buyer about the non-compliance order.

After the sale the buyer learned about the order and, after considerable expense and delay, was able to correct the defects and get electrical and water services. When the buyer complained, seller offered to rescind the purchase but refused to compensate the buyer for time and expenses incurred in making the required building code corrections. The buyer complained to DRE.

An investigation by DRE led to the filing of an Accusation for violations of Subsections 10177(f) and (j), Business and Professions Code. After hearing the case, the Administrative Law Judge recommended a 45-day license suspension on each count. The Commissioner declined to accept the proposed decision and instead revoked the broker's license, with a right to a restricted license under terms and conditions after 45 days from the effective date.

The broker petitioned for a writ of mandate in Superior Court; the petition was heard and denied. The broker then appealed. The Court of Appeal said that the seller's verbal and written disclaimers did not constitute effective notice, which "entails more than elliptical obfuscation." The Court went on to say that the findings in the earlier case of *Lingsch v. Savage*, (1963) 213 Cal. App. 2d 729 applied. That case held that "It is now settled in California that where the seller (of real property) knows of facts materially affecting the value or desirability of the property which are known or accessible only to him and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer. Failure of the seller to fulfill such duty of disclosure constitutes actual fraud. The buyer and the buyer's agent were not under any duty to make an independent investigation of the state of the property. An 'as is' provision, generally speaking, means that the buyer takes the property in the condition visible to or observable by him; it does not in itself protect or absolve a seller from liability for passive concealment."

The Katz Court held that the seller's offer to rescind the purchase but not compensate the buyer for incurred expenses was "at best an excessively dubious factor in mitigation" and that DRE "acted well within its discretion" in revoking the broker's license.



Ignorance of the Subdivided Lands Act Is No Defense

In affirming the judgment of the trial court in *People v. Byers* (1979) 90 CA 3d 140, the Court of Appeal rejected a challenge of one of the defendants that the Subdivided Lands Act (Business and Professions Code Section 11000 et seq.) is an unconstitutional and illegitimate exercise of state police power.

In holding that property ownership rights reserved to the individual by constitutional provision must be subordinated to the rights of society the court declared that the provisions of the Subdivided Lands Act "... imposing various restrictions on the sale through subdivision of land do not violate or conflict with the equal protection clause or the due process requirement of the Constitution. The regulation of the subdivision of land is not a deprivation of a fundamental liberty but rather a limited regulation of the use of real property imposed to protect the members of the public exposed to that land use. The object of the act and its predecessor is the prevention of fraud and sharp practices in a type of real estate transaction peculiarly open to such abuses and is a necessary and reasonable protection against such practices."

The trial court convicted defendants (a real estate salesperson and two non-licensees, a son and a girlfriend of a father who moved to Canada to avoid prosecution after illegally subdividing land) of violations of the Subdivided Lands Act: Sections 11010 (failure to file notice of intention to sell or lease); 11018.1 (offering parcels for sale without first furnishing public report to prospective purchasers); 11022 (false and misleading advertising of the land offered for sale). The court also found them guilty of a public offense under Section 11023, punishable by a fine not exceeding \$5,000 or imprisonment not exceeding one year, or by both fine and imprisonment.

The salesperson's license was later revoked by the Real Estate Commissioner with a right to a restricted license on terms and conditions after 60 days.

The basic facts of the case are that the father of one of the defendants purchased approximately 456 acres of land in 1975. He then subdivided the parcel through the

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* *Katz v. Department of Real Estate*, (1979) 96 C.A. 3d 895.

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Disciplinary Action — December 1979-February 1980

REB—Real estate broker RES—Real estate salesperson REO—Real estate officer
REEB—Restricted real estate broker RRES—Restricted real estate salesperson REC—Real estate commissioner

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

FOR YOUR INFORMATION

The following are brief summaries of the numerical code sections listed after each licensee's name. The full context of the various sections is found in the Business and Professions Code and the Regulations of the Real Estate Commissioner, both of which are printed in the Real Estate Law book available for purchase from the Department of Real Estate at \$3.00 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

Business and Professions Code

| | | | | | |
|----------|--|----------|--|---------|--|
| 125.6 | illegal discrimination in providing services | 10177(g) | have warranted denial of a license | 11018.2 | illegal subdivision sales (sale of subdivision lots without public report) |
| 490 | relationship of conviction to licensed activity | 10177(h) | negligence or incompetence as licensee | | |
| 495 | public reproof for any act which would constitute grounds to suspend or revoke a license | 10177(j) | failure to supervise salespersons | | |
| | | 10177(k) | fraud or dishonest dealing not in licensed capacity | | |
| 10130 | performing acts for which a license is required without the appropriate license | 10177.5 | violation of restricted license condition | | |
| 10137 | unlawful payment of compensation | 10234 | civil fraud judgment based on licensed acts | | |
| 10145 | trust fund handling | | failure of broker to record trust deed in loan transaction or to cause recorded assignment of trust deed in sale of note secured by trust deed | | |
| 10162 | office abandonment | | real property securities permit | | |
| 10176(a) | making any substantial misrepresentation | 10238.3 | out-of-state subdivision sales | | |
| 10176(b) | making false promise | 10249 | offering illegal real estate syndicate | | |
| 10176(d) | failure to disclose dual agency | 10270 | securities | | |
| 10176(e) | commingling trust funds | | failure to file notice of intention to sell or lease subdivision | | |
| 10176(g) | secret profit or undisclosed compensation | 11010 | sale of subdivided lands under blanket encumbrance | | |
| 10176(i) | fraud or dishonest dealing in licensed capacity | 11013.1 | sale of subdivided lands subject to blanket encumbrance without compliance with conditions | | |
| 10177(a) | procuring a real estate license by misrepresentation or material false statement | 11013.2 | | | |
| 10177(b) | conviction of crime | | | | |
| 10177(d) | violation of real estate law or regulations | | | | |
| 10177(f) | conduct that would | | | | |

Regulations

| | |
|----------|--|
| 2726 | broker-salesperson agreements |
| 2780(a) | discriminatory acts |
| 2780(b) | discriminatory acts |
| 2780(bb) | discriminatory acts |
| 2780(cc) | discriminatory acts |
| 2780(k) | discriminatory acts |
| 2780(s) | discriminatory acts |
| 2780(t) | discriminatory acts |
| 2830 | failure to maintain trust fund account |
| 2831 | inadequate trust fund records |
| 2831.1 | inadequate trust fund records |
| 2832 | improper handling of earnest money deposit |
| 2832.1 | trust fund accountability |
| 2833 | escrow trust fund handling violation |
| 2835 | relinquishing control of trust funds |
| 2950 | broker controlled escrow violation |
| 2950(g) | broker controlled escrow violation |
| 2950(i) | broker controlled escrow violation |

LICENSES REVOKED

| Name | Address | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|--------------------------------------|--|----------------|--|
| *Schloessman, Michael W. (REB) (REO) | P.O. Box E, 1217 Bayside Dr., Corona Del Mar | 10/16/79 | 490, 10177(b) |
| Red Giant, Inc. (REC) | 22555 Ventura Blvd., Woodland Hills | 12/ 4/79 | 2832.1, 2835, 2950(g), 10145, 10176(i), 10177(d) |
| Giant South Corporation (REC) | 8361 Vickers St., Ste. 204, San Diego | 12/ 4/79 | 2832.1, 2835, 2950(g), 10145, 10176(i), 10177(d) |
| Waranus, Kenneth Edmond (RES) | P.O. Box 593, Shasta | 12/26/79 | 490, 2910(a)(8), 10177(b) |
| Douglass, Doris Jean (RES) | 12507 Glamis Place, Pacoima | 12/ 27/79 | 2832, 10145, 10176(e)(i), 10177(d) |
| Hughes, John Stephen (RES) | 8126 Roven Court, Stockton | 12/ 31/79 | 490, 10177(b) |
| Neff, Gaylord Hallett (RES) | 7800 Texhoma Ave., Northridge | 1/ 2/80 | 10177(d)(j), 10234 |
| McBryde, Frank Joseph (RES) | 9247 Sepulveda Blvd., Sepulveda | 1/ 2/80 | 490, 10177(b) |
| Liechty, Robert James (RES) | 2425 Laurel Pass, Los Angeles | 1/ 2/80 | 490, 10177(b)(f) |
| Kellerman, Steven Louis (RES) | 3534 Farm Hill Blvd., #5, Redwood City | 1/ 2/80 | 490, 10177(b)(f) |
| Graybill, Richard Dale (RES) | 316 N. Fresno St., Fresno | 1/ 2/80 | 490, 10177(b) |
| Gommerman, Gerald Joseph (RES) | 140 Gold Hill Way, Vallejo | 1/ 2/80 | 490, 10177(b) |
| Cheek, Lujia Norma (RES) | 1434 Bozeman Dr., South Lake Tahoe | 1/ 2/80 | 490, 10177(b) |
| Warner, Michael Blair (RES) | 151 N. Monte Vista, La Habra | 1/ 2/80 | 10177(b) |
| Burnette, Arthur Bernard (RES) | 9500 Harratt Rd., Lakeside | 1/ 2/80 | 10130, 10137, 10177(d) |
| Goodlett, Hubert Samuel (REB) | 5150 S. Normandie Ave., Los Angeles | 1/ 2/80 | 490, 10177(b)(f) |
| Lehrer, Gabriel (REB) | 1017 D St., San Rafael | 1/ 2/80 | 10177.5 |
| Bailey, Clyde L. (RES) | 5777 Madison Ave., Sacramento | 1/ 2/80 | 10177(d), 11013.1, 11013.2, 11023 |
| Brandon, Dalbert Carlyle (RES) | 611 E. Buckeyewood, Orange | 1/ 3/80 | 490, 10177(b)(d)(f)(j), 10270 |
| William Messenger Corporation (REC) | 600 Newport Center Dr., Ste. 1220, Newport Beach | 1/ 7/80 | 10177(d) |
| Off—Messenger, William Scott | | | |
| Vercauteren, Robert Ronald (RES) | 1812 Schwepkes Ct., San Jose | 1/16/80 | 10177(b) |
| Parnell, Donald Curtis (RES) | 1630 N. Chester Ave., Bakersfield | 1/16/80 | 10177(d)(j), 10238.3, 10249, 11018.2 |
| Baker, Lana Ruth (RES) | 683 Comet Dr., Foster City | 1/16/80 | 490, 10177(b) |
| Bradley Mortgage Company (REC) | 1551 S. Robertson Blvd., Ste. 7, Los Angeles | 1/17/80 | 10177(d)(f)(j) |
| Holman, Joe L. (RES) | 488 W. Shaw, Clovis | 1/22/80 | 10176(a), 10177(j) |
| Altenbernd, Donald Frederick (REB) | 6319 DeSoto Ave., Ste. A, Woodland Hills | -1/22/80 | 10177.5 |
| Hicks, William Alton (RES) | 3960 El Camino Ave., Sacramento | 1/24/80 | 10145, 10176(a)(k), 10177(d)(j) |
| Day, Robert Oris (RES) | 3991 Ohio St., San Diego | 1/31/80 | 490, 10177(b) |
| Arritt, Steven Dennis (RES) | 13881 Tustin East Dr., #35, Tustin | 1/31/80 | 490, 10177(b) |
| Barnes, Gary Glenn (RES) | 2606 Foothill Blvd., La Crescenta | 2/ 5/80 | 490, 10177(b) |
| Barth, Russel Lewis (RES) | 23931 Warren Rd., Hemet | 2/ 5/80 | 490, 10177(b) |
| Sedlachek, Gary Raymond (RES) | 16161 Ventura Blvd., Encino | 2/ 5/80 | 490, 10177(b) |
| Crutchfield, Ralph Morgan (RES) | 29717 Red Mountain Dr., Valley Center | 2/ 5/80 | 490, 10177(b) |
| Chadworth, Robert John (RES) | P.O. Box 672, 2720 Junipero Serra Blvd., Daly City | 2/ 6/80 | 490, 10177(a)(b)(f) |
| Persons, Neal Warren (RES) | 218 East 6th St., National City | 2/ 6/80 | 10130, 10137, 10177(d), 10238.3, 10249, 11010, 11018.2 |

(Continued on Page 3)

LICENSES REVOKED

| Name | Address | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|----------------------------------|--|----------------|--|
| <i>(Continued from Page 2)</i> | | | |
| Pilato, Debra Ann (RES) | 552 East 1st St., Tustin | 2/ 7/80 | 490, 10177(b) |
| Kane, Henry William, Jr. (RREB) | 11802 Compton Ave., Los Angeles | 2/ 7/80 | 2831, 2831.1, 2832, 10145, 10176(a)(e)(i), 10177(d) |
| Wilson, Robert Stanley (RES) | 126 Sperry St., Vallejo | 2/13/80 | 490, 10177(b) |
| Stephens, Rudolph V. (REB) | 5050 Faber Way, San Diego | 2/14/80 | 490, 10177(b) |
| Peterson, Ivan Erland (RES) | 676 Shatto Pl., Los Angeles | 2/14/80 | 490, 10177(b) |
| Conway, Charles Macken (RES) | 17576 Walnut St., Fountain Valley | 2/14/80 | 490, 10177(b) |
| Dickman, John C. (REB) | 2051 Pioneer Ct., San Mateo | 2/14/80 | 490, 10177(b) |
| Langham, Maretta Arlene (RES) | 18859 Ventura Blvd., Tarzana | 2/18/80 | 2832, 10145, 10176(e)(i), 10177(d) |
| Morley, Alisha (RES) | 6513 Hanna, Canoga Park | 2/19/80 | 10177(b) |
| Flint, Knute Waldemar (REB) | 7402 Brighton, Los Angeles | 2/19/80 | 10177(b) |
| Bauer, David Louis (RREB) | 440 E. Lake Ave., Watsonville | 2/19/80 | 490, 10177(b) |
| Tilley, James Patrick (RES) | 1426 Dunn Ave., Richmond | 2/20/80 | 2830, 2832, 10145, 10176(a)(e)(i), 10177(d)(f) |
| Moore, Viridal (RES) | 2082 N. Capitol Ave., San Jose | 2/20/80 | 490, 10177(b) |
| Wenstrom, Raymond Stanley (RES) | 18 Donna Ln., Danville | 2/20/80 | 10177(b) |
| Sweedler, Renee (RES) | 303 S. Glenoaks Blvd., Ste. 7, Burbank | 2/20/80 | 490, 10177(b) |
| Spraul, J. Stanley (RES) | 5645 Slicer Cir., Agoura | 2/20/80 | 10177(b) |
| Melder, Albert Joseph, Jr. (RES) | 530 Franklin St., Monterey | 2/21/80 | 10177(b) |
| Deerson, Jacques Stanley (RES) | 1834 Cochran, Simi Valley | 2/21/80 | 490, 10177(b) |
| Cadiz, Richard Cafirma (RES) | 151 87th St., Ste. 2, Daly City | 2/25/80 | 490, 10177(a)(b)(f) |
| Cunningham, Michael Roy (RES) | 14536 Roscoe Blvd., Panorama City | 2/28/80 | 10177(b) |

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

| Name | Address | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|---|--|----------------|--|
| *Arnold, William F. (REB) | 1542 Los Angeles Ave., Simi Valley | 11/14/79 | 490, 10177(b) |
| <i>(Right to RREB license after 90 days on terms and conditions)</i> | | | |
| Fenton, Jan Joseph (REB) | 3991 Ohio St., San Diego | 12/ 4/79 | 490, 10177(b) |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Lucas, Robert Albert (REB)(REO) | 7542 Lankershim Blvd., North Hollywood | 12/ 4/79 | 2832.1, 2835, 2950(g), 10145, 10177(d) |
| <i>Off—Giant South Corporation</i> | | | |
| <i>Off—Red Giant, Inc.</i> | | | |
| <i>(Right to RREB license after 180 days on terms and conditions)</i> | | | |
| Estep, Russel Adin (REB) | 1469 El Camino Real, Belmont | 12/ 5/79 | 2831, 2832, 10145, 10176(e), 10177(d) |
| <i>Dbá—Estep Realty Co.</i> | | | |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Settimo, Joyce Faye (RES) | 1726 Ybarra, Rowland Heights | 12/ 5/79 | 490, 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Frey, Michael Murphy (REB) | 4406 Pepperwood Ave., Long Beach | 12/ 5/79 | 490, 10177(b) |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Graham, R. J. (REB) | 1515 S. River Rd., West Sacramento | 12/ 5/79 | 490, 10177(b) |
| <i>(Right to RREB license after 60 days on terms and conditions)</i> | | | |
| Stachhouse, Harold D. (RES) | P.O. Box 187, Forest Ranch | 12/ 6/79 | 10176(a) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Waters, Terry Dean (RES) | 21932 Viso Ln., Mission Viejo | 12/ 6/79 | 490, 10177(b)(f) |
| <i>aka—Walters, Terry Dean</i> | | | |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Axelson, Donald Willis (REB)(REO) | P.O. Box 921, Lake Arrowhead | 12/ 6/79 | 2832.1, 10145, 10176(e)(i), 10177(d) |
| <i>(Right to RREB license after 30 days on terms and conditions)</i> | | | |
| LeBrane, Sandy (REB) | 201 Ocean Ave., San Francisco | 12/10/79 | 10177(d)(k) |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Noreen, James Warren (REB) | 2746 Pacific Ave., Stockton | 12/10/79 | 490, 10177(b) |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Lang, Dennis Leroy (RES) | 5025 Estates Way, El Cajon | 12/11/79 | 490, 10177(b)(f) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Green, David Irving (REB)(REO) | 8929 Wilshire Blvd., Ste. 100, Beverly Hills | 12/11/79 | 2832.1, 2950, 10145, 10177(d) |
| <i>Off—California Home Loan Corporation</i> | | | |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| California Home Loan Corporation (REC) | 8929 Wilshire Blvd., Ste. 100, Beverly Hills | 12/11/79 | 2832.1, 2950, 10145, 10177(d) |
| <i>Off—Green, David Irving</i> | | | |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Sharp, Don Wayne (REB) | 1505 G St., Modesto | 12/20/79 | 10176(a), 10177(g) |
| <i>Dbá—Land Bank Financial Services</i> | | | |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Day, Joseph Deneal (RES) | 3176 Big Springs Dr., Simi | 12/26/79 | 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Fieri, William Edward (RES) | 17926 Las Estadas, Fountain Valley | 12/26/79 | 490, 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Vlachos, Harry (REB) | 1050 W. Valencia, Fullerton | 12/26/79 | 490, 10177(b) |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Klansko, Steven (RES) | P.O. Box 656, Corte Madera | 12/27/79 | 490, 10177(b)(f) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Harrison, Ramona Anne (RES) | 2512 Castlewood Dr., Sacramento | 12/27/79 | 490, 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Clopton, Tommy Ray (RES) | 5700 Eirwanda Ave., #120, Tarzana | 12/27/79 | 490, 10177(b) |
| <i>(Right to RRES license after 60 days on terms and conditions)</i> | | | |
| Rowley, Mary Belle (RES) | 176 Wabash, #D3, Ukiah | 12/31/79 | 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Sherrell, Dennis Paul (RES) | 2421 Haley St., Bakersfield | 1/ 2/80 | 490, 10177(b) |
| <i>(Right to RRES license after 45 days on terms and conditions)</i> | | | |
| Lanni, Saverio Sam (RES) | 1347 Empire St., Anaheim | 1/ 2/80 | 490, 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Nikols, Steve (RES) | 9417 E. Las Tunas Dr., Temple City | 1/ 2/80 | 490, 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Hultman, Paul James (RES) | 3019 State St., Santa Barbara | 1/ 2/80 | 490, 10177(a) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Botash, Gailey (RES) | 192 N. Canon Dr., Beverly Hills | 1/ 2/80 | 490, 10177(a) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Curtis, Ted (RES) | 6876 Magnolia Ave., Riverside | 1/ 2/80 | 490, 10177(b)(f) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Fleury, Thomas Roger (RES) | Twain Hart Dr. near Joaquin Gully, Twain Harte | 1/ 2/80 | 10176(a)(b), 10177(g) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Fleury, Richard Paul (REB) | Twain Hart Dr. near Joaquin Gully, Twain Harte | 1/ 2/80 | 10176(a)(b), 10177(g) |
| <i>Dbá—Black Oak Realty</i> | | | |
| <i>(Right to RREB license on terms and conditions)</i> | | | |
| Minnis, Earl Gene (RES) | 18524 Arrow Hwy, Covina | 1/ 3/80 | 490, 10177(b) |
| <i>(Right to RRES license on terms and conditions)</i> | | | |
| Hunt, Robert Gordon (REB)(REO) | 16361 Winton, Apple Valley | 1/ 3/80 | 490, 10177(b) |
| <i>Off—Bob Hunt Realty, Inc.</i> | | | |
| <i>(Right to RREB license on terms and conditions)</i> | | | |

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Notes from Licensing

by Senior Deputy Larry W. Smith

Many real estate brokers for their own personal reasons elect to work for other brokers in a capacity similar to the relationship existing between a licensed real estate salesperson and an employing broker.

However, such "broker-salespersons" are still licensed by DRE as real estate brokers. Only by written agreement with another broker are they acting as "broker-salespersons." Section 2726 of the Commissioner's Regulations requires that "every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement."

Even though a broker may act as a "broker-salesperson" in a relationship with another broker, for Department of Real Estate licensing and record-keeping purposes the licensee is still a broker. This means that a "broker-salesperson" should still communicate with the DRE using only appropriate broker forms and applications.

When using the proper broker forms no reference should be made to the name (or fictitious name) of the broker for whom the "broker-salesperson" works. That type of information is irrelevant as there is no reference in the DRE records that such a working relationship exists. It is also imperative that a "broker-salesperson" speak for himself or herself, meaning that any requests for record changes be made by the "broker-salesperson" and not by anyone else on his or her behalf.

A "broker-salesperson" should never use salesperson forms or applications when renewing or making changes to a broker record. Doing so will possibly cause errors to the record and delays in processing whatever is requested. Remember—a broker is always a broker regardless of any working relationship that may exist with another broker.

One further note—when a licensee writes to us for any reason, it will be helpful if the licensee will include a telephone number at which licensee can be reached during regular business hours. Sometimes a written communication does not seem clear or perhaps some discrepancy exists. These situations can usually be quickly resolved or clarified by a telephone call to the licensee, allowing changes to be processed quickly.

**DRE Headquarters
Office Has Moved to:
1719-24th Street, Sacramento 95816
P.O. Box 160009**

Administration 916-445-3995
Examinations 916-445-6587
Investigations 916-445-6776
Licensing 916-445-5741



Memos From

Continuing Education

prepared by

Deputy Commissioner Tom Mabry

All Attendance Certificates received by licensees for successful completion of continuing education offerings must contain a complete DRE approved thirteen-digit number, i.e. 0000 0 00 0000 00. If Attendance Certificates you receive do not contain a complete thirteen-digit number you should immediately contact the sponsor for the correct DRE approved number. **DO NOT CONTACT DRE FOR THIS NUMBER.**

Your attention is again called to Commissioner's Regulation 3013(a) which in substance says evidence of attending continuing education offerings *SHALL NOT* be filed with the Department earlier than *60 DAYS* preceding license renewal date.

"Does DRE ever monitor continuing education offerings?" "If so, how many people actually do the monitoring?"

These questions are often asked of the DRE Continuing Education Unit and the answers to the respective questions are "Yes," and "Many thousands."

The surprised response to these answers is usually, "I didn't realize the Department had that many employees." We don't, but we do have the help of many interested and concerned licensees who furnish "voluntary information" which helps the DRE to enforce continuing education regulations and improve attendance control procedures of the offerors.

Sponsors of approved continuing education offerings are required to maintain records evidencing that participants receiving certificates of credit actually attended 90% or more of the entire offering. These records generally consist of "sign-in/sign-out" sheets showing the amount of time the participants have actually been absent from the offering program. If the records indicate more than the allotted time for absenteeism, the sponsor is prohibited by law and regulation from awarding credit for the offering.

Experience to date has shown that most continuing education sponsors are doing an excellent job in enforcing the attendance requirement. However, lack of attendance awareness by a licensee and of attendance control by a sponsor have resulted in formal action by DRE against a licensee for falsifying attendance records and denial of a sponsor's request to renew an approved continuing education offering.

Both licensees attending continuing education offerings and the sponsors thereof are encouraged to contact DRE Continuing Education Unit if falsifying of attendance records is observed or should a lack of proper attendance control procedures be evident.

When reporting such information, a full explanation of the problem should be submitted, with names and addresses of persons involved, name of continuing education sponsor, name of continuing

education program and certificate number, date and place of program and the reporting licensee's name, address and telephone number.

Information should be sent to Department of Real Estate, Continuing Education Unit, P.O. Box 160009, Sacramento, CA 95816.

How can licensees find out where continuing education offerings are being given?

Some sources for this information are local Real Estate Boards, community college campuses, state universities and the University of California. Private colleges, schools and universities may also have information available.

The Department of Real Estate publishes a list containing the names, addresses, and telephone numbers of continuing education sponsors, titles and credit hours for all approved continuing education offerings. However, the list does not furnish dates and locations of the offerings. This information may be obtained from the particular sponsor of the offering you are interested in attending.

Offering lists may be obtained by sending a check or money order in the amount of \$4.50 to California Department of Real Estate, P.O. Box 160009, Sacramento, CA 95816, ATTENTION: Accounting.

"My salesperson's license is due for renewal in 1981 or later; however, I plan to obtain my broker's license before that date. Will I be able to 'carry over' continuing education credit earned while holding the salesperson's license to apply toward the 45 hours credit required for the first renewal of the broker license?"

The answer is NO! Current real estate law and regulations require continuing education credit to be earned within the four-year period preceding the renewal date of licenses due for renewal on January 1, 1981 or later. Since the broker's license when issued will be due for renewal four years from date of issuance, the continuing education credit earned prior to the issuance date would not have been earned within the required four-year period and cannot be so credited.



Ignorance (Continued from Page 1)

process of "four-by-fouring," circumventing the law by making transfers to four straw grantees (which grantees included his girlfriend, the real estate licensee and his wife, and others). Following these four conveyances, he again divided the four parcels and made sales to interested purchasers from the public at large.

To assist his father in the scheme the defendant son showed the property, the real estate licensee allowed his name to be used as a fictitious grantor and received payment therefor, and the defendant girlfriend of the father signed deeds showing her as owner of some of the parcels offered for sale. Proceeds from these sales went to the father, who received some of them in Canada after he moved there following the grand jury indictment.

Defendants contended that the land was "subdivided" in 1887 when a map was recorded which referred to the land as a subdivision, but the court held this was merely a "paper division" as the land then described as a subdivision did not and does not meet the requirements of the Subdivided Lands Act.

The court pointed out that although the girlfriend may have naively believed her voluntary assistance did not violate any law and while the real estate salesperson believed his conduct was lawful (even though he testified he at one time owned a subdivision and was aware of the nature of and requirement for public reports), ignorance of the Subdivided Lands Act is not a defense to prosecution for violating the Act (*Murphy v. San Gabriel Mfg. Co.* (1950) 99 Cal. App. 2d 365) and the intentional doing of an act expressly prohibited by statute constituted the offense denounced by the law regardless of good motive or ignorance of the criminal character of the act (*People v. Gory* (1946) 28 Cal. 2d 450; *People v. Mancha* (1974) 39 Cal. App. 3d 703).

Another example of similar licensee ignorance or willful disregard of the Subdivided Lands Act was reported in *Handeland v. California Department of Real Estate* (1976) 129 CA 2d. After the Department of Real Estate suspended the license of a real estate salesperson for creating a subdivision and offering lots for sale without first notifying the Real Estate Commissioner and obtaining a subdivision public report, the Superior Court sustained the action of the Department. The respondent

(Continued on Page 8)

QUARTERLY EXAM RESULTS 1980

| | SALES | | BROKERS | |
|----------|--------------|--------------|--------------|------------|
| | TOOK | PASSED | TOOK | PASSED |
| JANUARY | 8,825 | 3,623 | 1,674 | 728 |
| FEBRUARY | 8,482 | 3,479 | 1,794 | 902 |
| MARCH | <u>8,367</u> | <u>3,536</u> | <u>1,356</u> | <u>668</u> |
| TOTAL | 25,674 | 10,638 | 4,824 | 2,298 |

CAL-VET LOAN PROGRAM

(Table indicating increased activity through Contracts of Purchase entered into by the DEPARTMENT OF VETERANS AFFAIRS over the last three fiscal years—amounts in thousands.)

| | 1979 | | 1978 | | 1977 | |
|------------------|---------------|------------------|--------------|------------------|--------------|------------------|
| | Units | Amount | Units | Amount | Units | Amount |
| Farms | 15 | \$ 1,206 | 10 | \$ 804 | 9 | \$ 660 |
| Homes | 12,972 | 557,445 | 8,589 | 334,800 | 7,781 | 260,912 |
| Mobilehomes | 311 | 7,388 | 126 | 3,403 | 2 | 22 |
| Home Improvement | 1,074 | 6,259 | 899 | 2,477 | 1,756 | 2,846 |
| TOTAL | 14,372 | \$572,298 | 9,624 | \$341,490 | 9,548 | \$264,440 |

VICTIM-VENDEES

The intent of the California Legislature in enacting Civil Code Section 2985.4 and the penalty section Penal Code Section 506b (both dealing with sellers of real property who receive prorated payments for taxes under a real property sales contract) was to offer protection to the vendee-purchaser from misappropriation and misuse of said funds by the vendor-seller. Civil Code Section 2985.4 reads: "Every seller of improved or unimproved real property under a real property sales contract who receives pro rata payments for insurance and taxes shall hold these amounts in trust for the purpose designated. These amounts shall not be disbursed for any other purpose without the consent of the payor and any person or corporation holding an encumbrance on the property. This section shall not apply to a state- or federal-supervised assignee of a seller who as agent for the seller receives and disburses payments."

Any person who violates said section is guilty of a public offense punishable by a fine not exceeding \$5,000 or by imprisonment . . . not exceeding one year, or by both such fine and imprisonment. (Penal Code Sec. 506 b.)

A recent appellate court case is a reminder of how some unscrupulous vendors may victimize unwary vendees who make no effort to ascertain that vendors are actually paying the real property taxes when the contract of sale so provides.

A husband and wife (unlicensed) were in the illegal business of selling subdivided land through their dba organization without first filing written notification with the Real Estate Commissioner and obtaining a public report.

Their practice was to acquire 30 or 40 acres of land and within a short time of acquisition solicit purchasers and sell off 5 or 10 acre parcels under real property sale contracts. From the date of purchase the buyers paid monthly installments of principal, interest and prorated tax amount to the sellers. Post-sale correspondence was carried on with buyers by the wife.

However, the taxes were not paid by sellers and remained continuously delinquent, mostly for the tax years between 1970-1975.

In the resultant Superior Court action the sellers were convicted for violations of Business and Professions Code Sections 11010 (offer to sell or lease subdivided lands without filing notice of intention) and 11018.2 (offering and selling without public report) and nine counts of violating Civil Code Section 2985.4 (receipt of prorated payments for taxes under a real property sales contract and failure to place the amounts in a trust fund or to disburse money without consent of payors). On appeal, the judgments were affirmed. (*People v. Thygesen* (1979) 93 CA 3d 895.)

Buyers under such contracts should arrange with sellers to establish a neutral joint collection account wherein the collection agent is charged with making timely payment of taxes, or buyers should make an annual (or biannual) independent check with the tax collector to make sure taxes are being paid.

The experience of the many vendees damaged by the defendants' long term tactics of cashing vendees' checks but leaving taxes unpaid, should serve as a helpful warning to any licensee counseling with a contract purchaser of real estate who is not paying real property taxes direct.



Commissions

In May 1980 Governor Brown signed into law as an emergency measure Senate Bill 1958 (Greene) clarifying and amending the recently adopted Business and Professions Code Section 10147.5. This section concerns the negotiability of real estate commissions and the notice requirement for any printed or form real estate agreement. (See 1979 Winter Bulletin, page 6.)

The newly amended section now includes the sale of mobilehomes within its provisions. Amended Section 10147.5 becomes operative on July 1, 1980. It reads:

"10147.5 (a) Any printed or form agreement which initially establishes, or is intended to establish, or alters the terms of any agreement which previously established a right to compensation to be paid to a real estate licensee for the sale of residential real property containing not more than four residential units, or for the sale of a mobilehome, shall contain the following statement in not less than 10-point boldface type immediately preceding any provision of such agreement relating to compensation of the licensee:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

(b) The amount or rate of compensation shall not be printed in any such agreement.

(c) Nothing in this section shall affect the validity of a transfer of title to real property.

(d) As used in this section, "alters the terms of any agreement which previously established a right to compensation" means an increase in the rate of compensation, or the amount of compensation if initially established as a flat fee, from the agreement which previously established a right to compensation."



CONTINUING EDUCATION STATISTICS AS OF MAY 1, 1980



| | |
|--|-----|
| Total continuing education applications received | 982 |
| Total continuing education applications approved | 656 |
| Total sponsors participating | 381 |

General breakdown of seminars, courses and conferences:

- a) Offerings approved through private entrepreneurs—450
- b) Approved offerings through University of California—25 (23 resident and 2 correspondence)
- c) Approved offerings through private universities—41
- d) Approved offerings which are "transportable" offered through the State College Chancellor's Office—7
- e) Approved offerings through individual state colleges—2
- f) Approved offerings through individual community colleges—22
- g) Approved offerings which are "transportable" offered through the Community Colleges Chancellor's Office—26
- h) Offerings through professional organizations/societies—78
- i) Offerings offered through adult schools—4
- j) Offerings through out-of-state colleges/universities—1

NEW EXAMINATION SCHEDULING SYSTEM

by Thomas Hensley
Senior Deputy, Pre-Licensing

The DRE has now completed computerizing the examination scheduling system. This added feature complements the recently computerized licensing system and provides more efficient processing of original licenses. The old scheduling method was in operation for 40 years.

The new system provides an examination identification number of six digits by which examination records will be maintained. This is not a license identification number. Any examination inquiries referring to this number will be given faster service by the examination scheduling section. Examinees who pass the test will be issued a mailing label. This label will be attached to the license application and will expedite the processing of the license request when filed.

All examination applications will be processed on a "received date" basis. We will no longer be able to honor requests of applicants desiring (1) to be scheduled together (2) only A.M. or only P.M. scheduling or (3) specified day of the week scheduling. Any changes to an original examination request must be made in writing and accompanied by the appropriate application and fee. Requests for changes via telephone will not be accepted.

The six cities in which examinations are conducted were added to the system one by one and the procedure closely monitored. Sacramento and Fresno were the first sites to utilize the new computer scheduling system.

Servicing VA Guaranteed Loans

The Winter 1979 Bulletin, in its Legislative Summary, page 8, gave notice of new statutory safeguards for homeowners facing foreclosure.

In a recent Information Bulletin the Veterans Administration requested VA loan mortgage holders to follow, or to require their servicing agents to follow, those generally accepted standards of loan servicing as are employed by prudent conventional lenders and to also consider additional relief for delinquent veteran-borrowers in any instances in which the veteran desires to retain his or her residence and appears to have reasonable financial prospects for doing so. VA regulations provide for certain specific relief measures which may be of assistance in appropriate cases, since under the VA guaranteed loan program mortgage holders have broad discretion to extend relief to veteran-borrowers without prejudicing the holders right under the contract of guarantee.

According to VA, "Now more than ever, in view of current and projected economic conditions, it is most important that holders offer their voluntary cooperation with VA to help veterans retain their homes during temporary financial difficulties."

Note: [HUD also has warned mortgagees of home equity "rip-off" schemes. Licensees should help increase public awareness of equity abuses.]



Has a House Been Inspected? Has Any Work Been Completed?

(Reprinted with permission from Structural Pest Control Board News, March 1980.)

How To Tell

After October 1, 1979, every time a pest control company makes an inspection for wood-destroying pests or organisms, the inspector must post a tag at the entrance of the attic, subarea or garage. The tag contains the firm's name and the date of the inspection.

A similar tag must be posted next to the inspection tag when the company completes a Notice of Work Completed or Not Completed indicating any work completed with respect to wood-destroying pests or organisms. In addition to the firm's name and the date of the completion, this tag must name any chemical used.

The structural pest control company must also note on the inspection report the location of the inspection tag as well as the presence of any other inspection or fumigation tag that is less than two years old.

Structural Pest Control Board licensees are required to file with the Board copies of all inspection reports and completion notices. The Board is required to maintain this file for two years and provide copies to anyone who requests them. Due to budgetary cuts and employee reductions beyond the Board's control, reports filed in 1979 cannot be searched. However, anyone who wishes to determine if there are additional inspection reports or completion notices or wants copies of known reports after January 1, 1980, and for the portion of 1978 still within the two-year statute may contact the Structural Pest Control Board, 1430 Howe Avenue, Sacramento 95825, where the records will be searched for a \$2 fee and copies of any documents on file will be provided.

Multi-State Exam Reciprocity Ends

In the Summer 1979 Bulletin we announced the withdrawal of California from the Multi-State Examination Program.

The program provided a partial examination reciprocity to those license applicants who had taken and passed the multi-state portion of the examination in another of the participating states.

In our withdrawal notice it was explained that California would honor raw scores for partial exam reciprocity from the other states until July 1, 1980. This is still the case.

After July 1, 1980, all persons applying for licensure in California will be required to take the entire licensing examination, 150 questions for salespersons and 200 questions for brokers. The sales exam is 3 hours and 15 minutes in length, the brokers 5 hours, in two 2½ hour sessions.



Mighty is the force of habit (Cicero). Habit is a cable; we weave a thread of it every day, and at last we cannot break it (Horace Mann).

Good Morning— I'm Going To Sue



Many agents who thought they'd really done a good job representing a property owner in a real estate transaction have been greeted by those words from the former client.

Quite often this situation has resulted because the agent somewhere along the line foolishly overstepped his authority or field of expertise and gave advice he or she was unqualified to give.

It would be wonderful if real estate agents could just sit back and wait for the arrival of the commission check after having brought about the "meeting of the minds" (mutual assent and agreement) of a ready, willing and able buyer and seller. The textbooks and the law agree that's when they have earned a commission.

However, in the real world the fact that escrow closes and payday comes at all is usually attributable to much hard work by the licensee in working out problems which arise between the signing of the purchase and sale agreement and the transaction closing. It is during this period that an agent may have cause to worry (based upon the demands, words and acts manifested by the principals) whether or not a "meeting of the minds" was ever obtained. Seeing the transaction begin to shake a little and realizing that the parties are expecting the agent "to be all things to all parties" and engineer the happy conclusion, an agent is sometimes tempted to live up to this unfairly bestowed image and overstep his rightful role.

A licensee must remember that unless he or she is also an attorney, or a CPA, or an appraiser, or a professional tax consultant, he or she is not qualified to give advice in these fields to others. If the agent does so and clients act to their detriment on the advice given, the agent's phone may acquire a sour ring—

"Good morning. I plan to sue . . ."



Diligence is the mother of good fortune (Cervantes). Industry is the soul of business and the keystone of prosperity (Dickens). Industry is a lodestone to draw all good things (R. Burton). Elbow grease gives the best polish (Cynic's Calendar).

1980 Real Estate Law Book is now available from any office of the Department of Real Estate for \$3.00 (plus 6% sales tax if purchased in California).



The book can be obtained in person or by mail. If ordered by mail send check or money order payable to Department of Real Estate at 1719-24th Street, (P.O. Box 160009), Sacramento, CA 95816. Attention: LAW BOOK.

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

| Name | Address | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|---|--|----------------|--|
| Beaumont, Joan, Maryann (RES) (Right to RRES license on terms and conditions) | 1483 Hidden Mesa Trail, El Cajon | 1/ 3/80 | 490, 10177(b) |
| Roberts, Jerome Merritt, Jr. (REB) (Right to RREB license on terms and conditions) | 175 S. San Antonio Rd., Los Altos | 1/ 7/80 | 10176(a)(i), 10177(g) |
| Tynsky, John Milton (REB) (Right to RREB license on terms and conditions) | 1230 E. Main St., Grass Valley | 1/ 8/80 | 10177(a)(b) |
| ord, Janice Marie (RES) (Right to RRES license on terms and conditions) | 1505 Carribeau Way, Laguna Beach | 1/10/80 | 490, 10177(b) |
| Wondka, Michael Eugene (RES) (Right to RRES license on terms and conditions) | 24970 Hesperian Blvd., Hayward | 1/17/80 | 490, 10177(b) |
| Martinez, Antonia (RES) (Right to RRES license after 30 days on terms and conditions) | 190 N. King Rd., San Jose | 1/17/80 | 10177(b) |
| Luis, Judy M. (RES) (Right to RRES license after 20 days on terms and conditions) | 821 E. Yosemite Ave., Manteca | 1/17/80 | 490, 10177(b) |
| Irwin, Joann Barbara (RES) (Right to RRES license on terms and conditions) | 359 El Camino Real, South San Francisco | 1/17/80 | 10177(b) |
| Yarbro, Albert (REB)(REO) (Right to RREB license on terms and conditions) | 1440 23rd St., Santa Monica | 1/17/80 | 10177(d)(f)(j) |
| Ahlstedt, Robert Earl (REB) (Right to RREB license after 90 days on terms and conditions) | 2206 K Street, #4, Sacramento | 1/24/80 | 10145, 10176(a)(j), 10177(d)(j) |
| Morgan, Emmett James (RES) (Right to RRES license on terms and conditions) | 4340 Leimert Blvd., Los Angeles | 1/28/80 | 2832, 10137, 10145, 10176(c), 10177(d) |
| Gladstein, Louis Edward (RES) (Right to RRES license on terms and conditions) | 35070 Mission Hills Dr., Rancho Mirage | 1/29/80 | 10177(b) |
| Jordan, Steven Allen (RES) (Right to RRES license on terms and conditions) | 1490 W. Shaw Ave., Ste. D, Fresno | 1/30/80 | 490, 10177(a)(b)(j) |
| Oakland Management & Development (REC) Dba—Omad (Right to RREC license on terms and conditions) (Restricted license suspended for 30 days from effective date of decision) | 630 20th St., Oakland | 2/ 1/80 | 2740, 10158, 10177(d) |
| Edmonson, Walter Joseph (REB) (Right to RREB license on terms and conditions) | 5857 MacArthur Blvd., Oakland | 2/ 1/80 | 2830, 2832, 10145, 10177(d)(g) |
| Spaulding, Norman Warren, Jr. (RES) (Right to RRES license on terms and conditions) (Restricted license to be suspended for 30 days from date of issuance) | 112 Centennial, Santa Cruz | 2/ 1/80 | 10130, 10177(d)(f) |
| Grunklee, Jean Marie (RES) (Right to RRES license on terms and conditions) | 1534 E. Catalina Ave., Santa Ana | 2/ 5/80 | 10177(b) |
| McCready, Kathleen Rae (RES) (Right to RRES license on terms and conditions) | 1745 N. Grand Ave., Santa Ana | 2/ 6/80 | 490, 10177(b) |
| Gaynor, Miriam (RES) (Right to RRES license after 30 days on terms and conditions) | 1635 Staffordshire Dr., Lancaster | 2/ 6/80 | 10176(a), 10177(g) |
| Weir, Charles Curtis (RES) (Right to RRES license on terms and conditions) | 16911 Bellflower Blvd., Bellflower | 2/ 6/80 | 490, 10177(b) |
| Bowman, Mary Elizabeth (REB) (Right to RREB license after 30 days on terms and conditions) | 318 W. Foothill Blvd., Upland | 2/ 7/80 | 10176(a)(i) |
| Smyth, Colleen Mary (RES) (Right to RRES license on terms and conditions) | 1030 Stratford Ct., Del Mar | 2/ 7/80 | 490, 10177(b) |
| Edmundson, Ronald Dee (RES) (Right to RRES license after 60 days on terms and conditions) | 65 Myrtle Dr., Oroville | 2/13/80 | 490, 10177(b) |
| Gray, Monica Hopkins (RES) (Right to RRES license on terms and conditions) | 4544 Auburn Blvd., Sacramento | 2/13/80 | 490, 10177(b) |
| Williams, Thomas F. (REB) Dba—Century 21 Tom Williams & Associates (Right to RREB license on terms and conditions) | 2990 N. Del Rosa, Ste. D, San Bernardino | 2/13/80 | 10176(c)(i), 10177(d) |
| Malone, James Edward (REB) (Right to RREB license on terms and conditions) | 4074 Eggers Dr., Fremont | 2/14/80 | 10177(h) |
| Metz, Alma Frances (REB) (Right to RREB license after 90 days on terms and conditions) | 4074 Eggers Dr., Fremont | 2/14/80 | 125.6, 2780(a)(b)(bb)(cc)(k)(l), 10177(d)(h) |
| Helton, Eugene Lee (RES) (Right to RRES license after 30 days on terms and conditions) | 4074 Eggers Dr., Fremont | 2/14/80 | 125.6, 2780(a)(b)(cc)(k)(s)(t), 10177(d) |
| Nickerson, Marian Ann (RES) (Right to RRES license after 30 days on terms and conditions) | 302 E. Carson St., Ste. 106, Carson | 2/19/80 | 490, 10177(b) |
| Calcote, Karen Roseann (RES) aka—Jerek, Karen Roseann (Right to RRES license on terms and conditions) | 4851 Fell Ave., San Jose | 2/19/80 | 10177(b) |
| Hall, Kenneth Richard (RES) (Right to RRES license on terms and conditions) | 9272 Greenback Ln., Orangevale | 2/19/80 | 490, 10177(b) |
| Alvis, Norman Foster (REB) (Right to RREB license on terms and conditions) | 5301 Madison Ave., Sacramento | 2/19/80 | 11010, 11013, 11018.2, 10177(d)(j) |
| Lee, Edward Wong (RES) (Right to RRES license on terms and conditions) | 2739 Riverside Blvd., Sacramento | 2/20/80 | 490, 10177(b) |
| Williams, Clydia (RES) (Right to RRES license on terms and conditions) | 7957 Greenly Dr., Oakland | 2/20/80 | 490, 10177(b) |
| Kong, Jeffrey Samuel (RES) (Right to RRES license on terms and conditions) | 240 La Pala Dr., San Jose | 2/20/80 | 490, 10177(b) |
| Middleton, James Murray (REB) (Right to RREB license on terms and conditions) | P.O. Box 7464, 26358 Carmel Rancho Ln., #8, Carmel | 2/20/80 | 10145, 10176(c), 10177(d) |
| Ledington, Janet Fay (RES) (Right to RRES license on terms and conditions) | 18333 Bear Valley Rd., Hesperia | 2/21/80 | 490, 10177(b) |
| Lynville, Christopher Rowe (RES) (Right to RRES license on terms and conditions) | 2627 C St., #7, San Diego | 2/21/80 | 490, 10177(b) |
| Maruyama, Adam Atsumu (REB) (Right to RREB license on terms and conditions) | 1834 West 182nd St., Torrance | 2/21/80 | 490, 10177(b) |
| ott, Manning (RES) aka—Scott, Ralph Manning (Right to RRES license on terms and conditions) | 2210 Stockton, #204, San Francisco | 2/25/80 | 490, 10177(a)(b)(f) |



THIS COURT SAID . . .

A 1977 Florida District Court of Appeal case affirmed a mortgage loan broker's right to a joint and several award for a commission of \$6,000 from a lender and borrower who secretly excluded her from negotiating the final terms of the loan. *Bermil Corp. v. Sawyer*, (1977) Fla. 353 So. 2d 579.

Bermil needed money to satisfy its default on a first mortgage on a shopping center. Bermil's president signed a loan application with Sawyer, a mortgage loan broker, agreeing to pay her a \$6,000 fee if she could obtain a \$60,000 loan on specified terms. Sawyer found Leeds to make the loan and she prepared and recorded the mortgage.

Leeds produced a loan proceeds check of only \$57,000 telling Sawyer he would give her the \$3,000 balance. She refused as she believed "the funding of a mortgage note by a lender in an amount less than the actual face value of the note could be a usurious transaction" resulting in the appearance of a "kickback of some kind."

Thereupon Bermil and Leeds excluded Sawyer from the negotiations, entered into a new agreement which proved to be a usurious sale and option to repurchase, and closed the transaction with Leeds keeping the \$6,000 originally designated as Sawyer's commission. Sawyer then brought action for (1) breach of brokerage contract against Bermil and (2) interference with such contract against Leeds.

At trial Sawyer was awarded a judgment against Bermil for \$6,000 commission and against Leeds for \$6,000 as damages for the tortious interference with the brokerage contract.

In affirming the trial court's judgment the appeal court said in part: ". . . it is no defense to the payment of a brokerage commission that the parties consummated the transaction upon different terms and without the participation of the broker when (1) the broker initially brought the parties together and (2) the parties purposely excluded the broker from the negotiations by dealing with one another directly and in a clandestine manner."

The court also stated, "Where a vendor and vendee act in concert to deprive a broker of her commission pursuant to a contract entered into between the broker and the vendor, then an action for tortious interference with that contract will lie against the vendee, as well as an action for breach of the brokerage contract against the vendor."



Real estate licensees should avoid expressions of opinion as to the condition of property offered for sale. What might appear to a licensee to be harmless "puffing" may not be so considered by the prospective purchaser or by a court of law considering the question.

LICENSES SUSPENDED

| Name | Address | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|-------------------------------|--------------------------------|--------------------|--|
| Alfaro, Alberto Jose (RES) | 345 Serrano Dr., San Francisco | 12/10/79 (15 days) | 10145, 10177(d)(g) |
| Henry, Richard Thompson (REB) | 1901 East 4th St., Santa Ana | 1/ 7/80 (10 days) | 2726, 10137, 10177(d) |
| Swaton, Harvey Lloyd (RES) | P.O. Box 1145, Los Altos | 1/ 7/80 (10 days) | 10130, 10137, 10177(d) |

(Continued on Page 8)

LICENSES SUSPENDED

| Name | Address | Effective date | Violation Business and Professions Code Commissioner's Regulations |
|--------------------------------|-----------------------------------|-----------------------|--|
| Cortopassi, Wayne Albert (RES) | 1317 Florin Rd., Sacramento | 1/ 7/80 (15 days) | 10176(a)(i), 10177(d) |
| Hinkle, William Thomas (RES) | 1415 W. Shaw Ave., Fresno | 1/ 22/80 (45 days) | 10176(a)(d)(e)(f), 10177(g) |
| McDonald, James Allen (RES) | 23210 S. Crenshaw Blvd., Torrance | 2/ 6/80 (15 days) | 2832, 10145, 10176(a), 10177(d) |

LICENSES SUSPENDED WITH STAYS

| Name | Address | Effective date | Violation Business and Professions Code Commissioner's Regulations |
|--|---|-------------------------|--|
| Mini, Dillon James (RES) (All but 15 days Stayed for 2 years on condition) | 1245 Arkansas St., Vallejo | 12/ 4/79 (45 days) | 10137, 10145, 10177(d) |
| Crispin, Raymond Joseph (RES) (All but 15 days Stayed for 2 years on condition) | 18087 San Bernardino Rd., Bloomington | 12/ 5/79 (60 days) | 10176(a)(i), 10177(g) |
| MacMaster, James Evan (RES) (Stayed for 1 year on terms and conditions) | 4434 Eggers Dr., Fremont | 12/ 6/79 (30 days) | 10176(a), 10177(f)(g) |
| Staveris, Jerry (REB)(REO) Off—Jackson Staveris, Inc. (All but 15 days Stayed for 1 year on condition) | 1025 University Ave., Sacramento | 12/ 10/79 (30 days) | 10176(a) |
| Wilcox, Emory (REB) (All but 30 days Stayed on condition) | 2229 Alum Rock Ave., San Jose | 12/ 26/79 (309 days) | 10162, 10177(d) |
| Rogier, Alain (REB)(REO) Off—American Metals Corporation Off—World Wide Land Company (All but 30 days Stayed for 2 years on terms and conditions) | 17181 Parthenia St., Northridge | 12/ 27/79 (180 days) | 10177(d), 11010, 11018.2, 10270 |
| American Metals Corporation (REC) DbA—American Marketing Systems, Inc. (All but 30 days Stayed for 2 years on terms and conditions) | 16055 Ventura Blvd., Encino | 12/ 27/79 (180 days) | 10177(d), 10270, 11010, 11018.2, 10270 |
| Mathes, Donald Dean (RES) (All but 30 days Stayed for 2 years on condition) | 6854 Atlanta Circle, Stockton | 12/ 27/79 (90 days) | 10176(d)(i) |
| Duggan, Mary Jane (RES) (All but 30 days Stayed for 2 years on condition) | 1803 Austin Way, Santa Rosa | 12/ 27/79 (90 days) | 10176(a)(i), 10177(f)(g) |
| Claiborne, Neil Richard (RES) (All but 15 days Stayed for 1 year on terms and conditions) | 8120 Donnanwood Way, Orangevale | 12/ 27/79 (1 year) | 10130, 10137, 10177(d) |
| Andino, Delores Kay (RES) (All but 90 days Stayed for 1 year on condition) | 14461 Red Hill, Tustin | 1/ 3/80 (180 days) | 490, 10177(b) |
| Wesson, David Bruce (RES) (All but 30 days Stayed for 2 years on terms and conditions) | 505 N. Tustin Ave., Santa Ana | 1/ 3/80 (60 days) | 10177(d), 10270 |
| Branon, John Raymond (REB) (All but 15 days Stayed for 1 year on terms and conditions) | 15540 Monterey Hwy., Morgan Hill | 1/ 7/80 (60 days) | 10176(a)(i), 10177(f)(j) |
| Lattanzio, Robert Lee (REB)(REO) DbA—Southwest Properties (Stayed for 1 year on condition) | 1477 E. Shaw, Suite 150, Fresno | 1/ 8/80 (30 days) | 10177(d) |
| Odom, William Brown (REB) (Stayed for 1 year on condition) | 41300 Fremont Blvd., Fremont | 1/ 17/80 (30 days) | 2830, 2833, 2950(i), 10145, 10176(g), 10177(d) |
| Hinkle, Walter Oakley (REB)(REO) Off—Hinkle Realty, Inc. (All but 5 days Stayed for 1 year on condition) | 1415 W. Shaw Ave., Fresno | 1/ 22/80 (15 days) | 10176(a)(d)(e)(f), 10177(g) |
| Willcox, Royce William (RES) (All but 15 days Stayed for 2 years on terms and conditions) | 4624 Mosher Dr., Stockton | 1/ 22/80 (90 days) | 10176(a), 10177(g) |
| McLaurin, James Wesley III (RES) (All but 10 days Stayed for 2 years on terms and conditions) | Star Route 725—109, Tehachapi | 2/ 12/80 (30 days) | 10176(a) |
| Short, George, Jr. (REB) (All but 15 days Stayed for 1 year on condition) | 4444 Manzanita Ave., Ste. 4, Carmichael | 2/ 21/80 (45 days) | 10176(a)(i), 10177(j) |

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

| Name | Address | Date |
|--------------------------------------|---|-----------|
| Homeowners Loan Corporation (REC) | 2625 Park Blvd., Palo Alto | 11/ 6/79 |
| Reed, William Henry (RES) | 721 River Park Drive, San Jose | 11/ 6/79 |
| McKenzie, Donald Walter (RES) | 13540 Foothill Blvd., Sylmar | 12/ 6/79 |
| Ponikvar, Rudolph Robert (REB) | 1330 Broadway, #1048, Oakland | 12/ 20/79 |
| Miranda, James Honorato (REB) | 2202 S. Forest, Santa Ana | 12/ 20/79 |
| Rich Investment Mortgage Corp. (REC) | 3940 W. Compton Blvd., Ste. C, Lawndale | 2/ 7/80 |

PUBLIC REPROVALS

| Name | Address | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|---------------------|------------------------|----------------|--|
| Payne, Milton James | 2612 J St., Sacramento | 1/ 20/80 | 10176(e)(i), 10177(j) |

Official Publication
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Sacramento, California 95816

Ignorance (Continued from Page 4)

then appealed the case to the Court of Appeal contending that his failure to obtain a public report was merely an act of negligence and, therefore, not a basis for disciplinary action under Section 10177(d) which authorizes suspension or revocation of the license of any real estate licensee who has willfully disregarded or violated any of the provisions of the Real Estate Law or the Subdivided Lands Law.

The court had this to say in disposing of the respondent's contentions:

The provisions of the Subdivided Lands Law are designed to provide a prospective buyer with a full disclosure of the risks involved in the purchase of subdivided lands prior to the actual purchase by him and to prevent the occurrence of substantive wrongs before they occur.

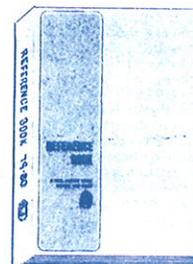
Petitioner's argument that the department must show that a licensee knew that he was violating the law in order to sustain a charge under Section 10177(d) defeats the regulatory purposes of the Real Estate Law in that it would place the burden of enforcement as in the case of a subdivision violation upon the buyer rather than upon the department.

The disciplinary procedures provided under Section 10177(d) are to protect the public not only from the dishonest real estate licensee, but also from the licensee who is "uninformed, negligent or unknowledgeable."



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