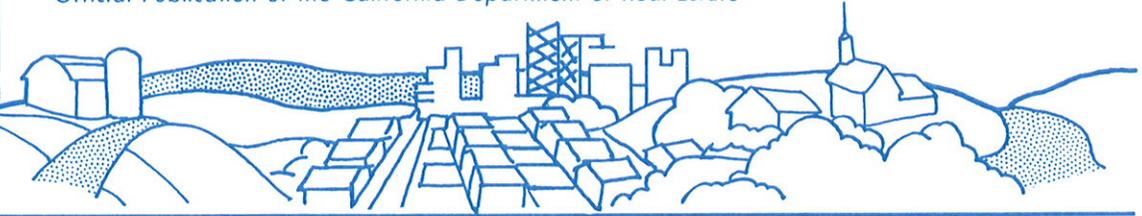




# REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Summer 1981

DAVID H. FOX, Commissioner

## IMPROVING YOUR PUBLIC IMAGE

by

Commissioner David H. Fox

After four-and-a-half years as Real Estate Commissioner, I really appreciate that most of you are doing a good job in serving the public as real estate professionals. I am concerned because your good work is so underrated in the public's distorted image of real estate brokers and salespersons.

However, in the past several months I have been heartened by an emerging sense of slowly increasing public respect for you. I think this is generated in large part by a growing awareness that you are participating in forty-five hours of continuing education (CE) to keep current in areas of benefit to your clients.

The CE program is off to a good start, and with your help I want to make it even better. During the next twelve months, DRE representatives will be auditing over one-half of all CE offerings. We intend to weed out the poor quality programs and encourage good ones.

### CONTINUING EDUCATION SURVEY GETTING UNDER WAY

So far many of you have attended one or more CE offerings. What do you think of them?

Please help us focus our auditing by telling us which offerings you believe are poor quality and should be dropped, and which you believe are good quality and should be encouraged, and also furnish your reasons. Send your evaluations to: CE Audit, Department of Real Estate, P.O. Box 160009, Sacramento, CA 95816. Be sure to include the 13-digit offering ID number appearing on the Attendance Certificate(s) you have received.

Your input is very important to us in doing all we can to improve the quality of our profession and gain a level of public respect and appreciation which real estate brokers and salespersons truly deserve. Working together, I am confident that we can make great progress toward achieving this goal.

## Understanding the Option

When is an option transformed into a contract of purchase and sale?

A real estate broker, although acting as a principal, recently found out the expensive way. (*Erich v. Granoff*, 109 Cal. App. 3d 920.)

An option may be defined as a contract by which a real property owner for consideration grants another party the continuous right to purchase the property at specified terms within a stipulated time limit, but without obligating the party who receives the right to exercise the right.

In an action by plaintiffs-optionees for specific performance of an option to purchase certain residential property, the trial court found for the plaintiffs and ordered respondent-optionor (the broker) to convey the property and ordered plaintiffs to pay the purchase price. Because the trial court did not grant attorney's fees, court costs, or damages to plaintiffs, for which the lease-option provided, they appealed the case; respondent and cross-appellant/optionor appealed from that part of the judgment granting specific performance.

The Court of Appeal affirmed the trial court's judgment in all respects except it modified the judgment to also provide recovery of damages, attorney's fees and court costs by plaintiffs.

In November 1967 Mr. and Mrs. "V" entered into a written lease agreement with a property owner which contained a 10-year option to purchase a single-family residence. The owner was also a real estate broker.

The terms of the lease included: (1) a right by lessees to assign the lease-option (2) the purchase price (to be adjusted by an express written formula should lessees exercise their option to purchase) and (3) an express time-limit within which option was to be exercised. However, the option was silent as to the time and mode of payment of the purchase price, that is, prior to or concurrent with the exercise of the option.

In 1973 Mrs. "V" remarried and became Mrs. "E." In June 1977 Mrs. "E" and her ex-husband Mr. "V" (the original optionees-lessees) gave the optionor written notice by ordinary mail of their intention to exercise the option. They received no reply. Pursuing the

(Continued on page 8)

## STOCK CO-OPERATIVES

There has always been some uncertainty among real estate licensees about the mechanics of listing, negotiating and closing the resale of a unit in a stock co-operative housing project. Two reasons for this uncertainty are the unique nature of the "interest" being sold (discussed in more detail below) and the rarity of stock-cooperatives as compared to other types of common interest subdivisions, such as condominiums.

In a stock co-operative, a purchaser does not receive title to an individual residential unit; rather he purchases stock or a membership in a corporation and the corporation holds title to the buildings and common facilities. Through his stock, the purchaser becomes part owner of the assets of the corporation and receives an exclusive right to occupy a particular unit. The exclusive right to occupy a particular unit is usually evidenced by an occupancy agreement or a lease; the right to occupy a unit is transferable only if the owner concurrently transfers all of his shares (or membership rights) for the unit being sold.

Before the adoption of California's condominium statutes in 1963, stock co-operatives enjoyed some popularity. But this acceptance declined drastically with the coming of condominiums. This was due to a number of factors. First, stock co-operatives were financed by blanket mortgages and the viability of the project depended on each and every member meeting his or her monthly assessment obligation. The failure of a stockholder to pay his or her share of the monthly assessments (making the corporation unable to meet its obligations) potentially jeopardized every other member's interest in the project. Secondly, a buyer did not obtain a fee interest in a unit, but only obtained an interest in the corporation which owned the improvements. This indirect method of owning real property was not as attractive to the public as the ownership

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The next Mini-syndicate article in the series prepared by Department of Corporations is scheduled for the Fall issue of the Bulletin.



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

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**Disciplinary Action—December 1980–February 1981**

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

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

**FOR YOUR INFORMATION**

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

**Business and Professions Code**

490	relationship of conviction to licensed activity	10176(e)	commingling trust funds	10177(k)	violation of restricted license condition
10103	continuing jurisdiction over lapsed, suspended, or surrendered license	10176(g)	secret profit or undisclosed compensation	10234	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
10130	performing acts for which a license is required without the appropriate license	10176(f)	fraud or dishonest dealing in licensed capacity		
10137	unlawful payment of compensation	10177(a)	procuring a real estate license by misrepresentation or material false statement		
10145	trust fund handling	10177(b)	conviction of crime		
10176(a)	making any substantial misrepresentation	10177(g)	negligence or incompetence as licensee		
10176(b)	making false promise	10177(h)	failure to supervise salespersons		
10176(c)	course of misrepresentations through salespersons	10177(i)	fraud or dishonest dealing not in licensed capacity		
10176(d)	failure to disclose dual agency				

**Regulations**

2785(a)5	failure to present offer
2830	failure to maintain trust fund account
2831	inadequate trust fund records
2832	improper handling of earnest money deposit
2832.1	trust fund accountability
2950	broker controlled escrow violation

**LICENSES REVOKED**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Confenti, Jack Martin (REB)	441 S. Beverly Dr., #6, Beverly Hills	4/22/80	490, 10177(b)
*Waldman, Harvey (REB)	1300 W. Olympic Blvd., Los Angeles	10/2/80	10177(b)(f)
*Moss, Louise R. (RES)	P.O. Box 3249, 434 S. Euclid, Anaheim	11/27/80	10177(b)(f)
Bilazon, Avelina Uy (RES)	42626 N. 35th St. West, Lancaster	12/9/80	490, 10177(b)
Hellebrand, Carol Jean (RES)	2818 N. Westwood, Santa Ana	12/9/80	490, 10177(b)
Keon, Timothy Phillip (RES)	2630 Fair Oaks Blvd., Sacramento	12/9/80	10176(i), 10177(f)(k)(j)
McKuen, Michael Merle (REB) (REO)	6733 S. Sepulveda Blvd., Ste. B, Los Angeles	12/9/80	490, 10177(b)
Seager, Daniel Cecil (RES)	1251 S. Beach Blvd., Ste. 1, La Habra	12/9/80	490, 10177(b)
Chung, Soon Ok (RES)	3400 West 8th St., Ste. 1, Los Angeles	12/10/80	490, 10177(a)(f)
Green, Mary Kay (RES)	1257 Landsburn Cir., Westlake Village	12/10/80	490, 10177(b)
Rowan, Charles Frank (REB)	339 Avalon Dr., Vista	12/10/80	490, 10177(b)
Cordell, Major Henry Jr. (RES)	3500 Timberly Ln., Ceres	12/22/80	490, 10177(b)
Tidwell, Billy (RES)	6932 Irving Rd., Redding	12/22/80	490, 10103, 10177(b)
Knight, Pamela Verena (RES)	22601 Dardenne St., Woodland Hills	12/23/80	490, 10177(b)
Lagodzinski, James Gordon (RES)	1604 Koch Ln., San Jose	12/23/80	490, 10177(b)(f)
Nichols, Dennis Eugene (RES)	31738 City Creek, Running Springs	12/23/80	490, 10177(b)
Paniagua, Robert Antonio (RES)	5746 Meridian Ave., San Jose	12/23/80	490, 10177(b)
Wesson, William Rudy (RES)	P.O. Box 608, Tehachapi	12/23/80	490, 10177(b)
Ono, Chiyoko June (RES)	257 Navajo Dr., Salinas	12/29/80	490, 10177(b)
Miller, Duane Millard (RES)	4745 E. Terrace, Fresno	12/30/80	10130, 10137, 10177(d)(f)
Shaw, Cyrus James (RES)	1830 Irvine Ave., Newport Beach	1/6/81	10137, 10177(d)(j)
Madriz, Elias George (REB) (REO)	7 Hamilton Ct., Pacifica	1/14/81	490, 10177(b)
Cannistraci, Beth Ann (RES)	P.O. Box 26034, San Jose	1/19/81	490, 10177(b)(f)
Gove, Viola Belle (RES)	5765 Mt. View Dr., Redding	1/20/81	490, 10177(b)
Hosseini, Bijan (RES)	P.O. Box 1092, 124 Pine Valley, South Lake Tahoe	1/26/81	490, 10177(b)
Martin, Allen Wayne (REB)	638 Price St., Pismo Beach	1/27/81	2832.1, 2950, 10145, 10176(a)(b)(c)(e), 10177(d)(g)(h)
Martin Mortgage Company, Inc. (REC)	3801 Saviers Rd., Oxnard	1/27/81	2832.1, 2950, 10145, 10176(a)(b)(c)(e), 10177(d)(g)(h)
Off—Martin, Robert Lee			
Martin Mortgage Company of California, Inc. (REC)	3801 Saviers Rd., Oxnard	1/27/81	2832.1, 2950, 10145, 10176(a)(b)(c)(e), 10177(d)(g)(h)
Off—Martin, Robert Lee			
Martin, Robert Lee (REO)	3801 Saviers Rd., Oxnard	1/27/81	2832.1, 2950, 10145, 10176(a)(b)(c)(e), 10177(d)(g)(h)
Off—Martin Mortgage Company, Inc.			
Off—Martin Mortgage Company of California, Inc.			
Off—Shawn Realty, Inc.			
Mazza, Anthony Jr. (RES)	3051 Treat Blvd., #133, Concord	1/27/81	490, 10177(b)
Shawn Realty, Inc. (REC)	3821 Saviers Rd., Oxnard	1/27/81	2832.1, 2950, 10145, 10176(a)(b)(c)(e), 10177(d)(g)(h)
Off—Martin, Robert Lee			
Budig, Jerome Francis (REB)	4731 Melvin Dr., Carmichael	2/2/81	490, 10177(b)
Graham, Steve Allen (RES)	3940 G Parkway, Sacramento	2/2/81	490, 10177(b)
Shockley, Edward Lewis (RES)	1120 W. Lockeford, #2, Lodi	2/2/81	490, 10177(b)
Biglay, Jesse Sterling Jr. (RES)	8307 Foothill Blvd., Sunland	2/5/81	490, 10177(b)
Counts, Diana Sue (RES)	23136 Samuel, #218, Torrance	2/5/81	490, 10177(b)
Kneeland, Thomas Courtney (RES)	409 W. Channel, Santa Monica	2/5/81	490, 10177(b)
Matteson, Darwin Dee (RES)	25479 Dayton St., Barstow	2/5/81	490, 10177(b)
Stephenson, Yvonne Marie (RES)	Rte. 1, Box 122, Lake Isabella	2/5/81	490, 10177(b)
Wai, Hedy (RES)	943 N. Broadway, Ste. 201, Los Angeles	2/5/81	490, 10177(b)
White, Clarence Lester (RREB)	4515 Don Felipe Dr., Los Angeles	2/5/81	490, 10177(b)(k)
Wright, William Lee (RES)	450 N. Mathilda Ave., Sunnyvale	2/9/81	10177(b)(f)
Gonzalez, Pablo Rodolfo (RES)	97 Vendome Ave., Daly City	2/11/81	2832, 10145, 10176(i), 10177(d)
Marks, Arnold Gilbert Jr. (RES)	528 W. Huntington Dr., Monrovia	2/11/81	490, 10177(b)
Rotramel, James Scott (RES)	18736 Calahan, Northridge	2/11/81	490, 10177(b)
Culverson, Sharyl Jean (RES)	c/o Nina Klein, Frontera	2/17/81	490, 10177(b)
DiNobile, Rocco Jr. (RES)	1506 Venice Blvd., Venice	2/17/81	490, 10177(b)
Harrington, John Mitchell (RES)	2660 Starbridge Ave., Long Beach	2/17/81	490, 10177(b)
Kelley, Harry Robert (RES)	1681 El Dorado Dr., Thousand Oaks	2/17/81	490, 10177(b)
Mack, Darryl Richard (REB)	3111 W. Vernon, Los Angeles	2/17/81	490, 10177(b)

**LICENSES REVOKED**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Marks, Keith Howard (RES)	7439 Lurline Ave., Canoga Park	2/17/81	490, 10177(b)
Poliandro, Rose Marie Jennie (RES)	6661 Kiwi Cir., Cypress	2/17/81	490, 10177(b)
Raines, Terry W. (RES)	20952 Blythe St., Canoga Park	2/17/81	490, 10177(b)
Stone, Roy Lewis Jr. (RES)	1291 Kenwood Rd., #162-D, Seal Beach	2/17/81	490, 10177(b)
Yeager, Charles Melvin (RES)	435 Canal, Newport Beach	2/17/81	490, 10177(b)
Aponte, Hector (RES)	1550 E. Fruit St., Santa Ana	2/19/81	490, 10177(b)
Yremuth, Lori Ann (RES)	22115 Hackney St., Canoga Park	2/19/81	490, 10177(b)
Josma, Gerard R. (RES)	P.O. Box 5021, 163 Cottonwood, State Line, NV	2/23/81	490, 10177(a)(b)
Itzkovics, Fred Mitchell (RES)	25255 Cabot Rd., Ste. 216, Laguna Hills	2/24/81	490, 10177(b)
Vargo, Julius (RES)	2805 Camino Del Mar, Apt. #34, Del Mar	2/24/81	490, 10177(a)(b)
Collins, Charles Edward (RES)	1300 Arnold Way, Alpine	2/25/81	490, 10177(b)
Kleber, Marvin (REB)	1375 Grand Ave., Arroyo Grande	2/27/81	490, 10177(b)

**ILLEGAL  
ESCROW ACTIVITIES**

A State Administrative Law Judge recently upheld a Desist and Refrain order issued by the Commissioner of Corporations against one L. B. Fredericks for activities which in the opinion of the Commissioner constituted the conduct of an escrow business without an escrow agent's license. The Commissioner formally adopted the Proposed Decision of the Administrative Law Judge on March 9, 1981.

Fredericks had contracted to establish and operate an "escrow division" for each of several real estate brokers for the escrowing of real estate transactions purportedly exempt from licensing and other requirements of the Escrow Law (Financial Code Section 17000 et seq) under the so-called broker exemption in Section 17006(d). At the time of the issuance of the Desist and Refrain Order, the exemption in Section 17006(d) applied to "any person licensed by the Real Estate Commissioner while performing acts in the course of or incidental to his real estate business." The law further provided that the burden of proving any exemption from the Escrow Law rested upon the person claiming the exemption.

In challenging the Commissioner's order, Fredericks asserted that each of his broker clients was entitled to the exemption, and that the exemption was not lost simply because he independently contracted with each of the brokers to perform the escrow work. The attorney for the Commissioner contended that Fredericks' arrangement with his broker clients constituted an extension of the broker exemption beyond both the letter and the spirit of the law. The attorney for the Commissioner argued that the sanctioning of Fredericks' plan of business as being within the exemption would deprive the public of statutory protections prescribed by the Escrow Law such as bonding, experience of escrow personnel and prohibitions against fee splitting, unearned rebates and compensation for referral.

After receiving evidence and hearing all of the arguments, the Administrative Law Judge ruled (1) that Fredericks had not carried the burden of establishing that his business operations were exempt from licensing under the Escrow Law and (2) that the Desist and Refrain order did not prohibit lawful conduct as Fredericks had contended.

DRE has for many years been concerned with devices used by some brokers to extend the broker escrow exemption beyond what both the DRE and the Department of Corporations believe was the intent of the Legislature in providing the exemption. The exemption was amended by the 1980 Legislature and is now applicable to "any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or

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

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Heiserman, Yvonne Alice (RES) (Right to RRES license after 30 days on terms and conditions)	10439 Cozycroft, Chatsworth	3/4/80	10176(a)
*Thomas, George Andrew (RREB) (Right to RRES license on terms and conditions)	1208 Artesia Blvd., Hermosa Beach	9/16/80	2832, 10145, 10176(c)(i), 10177(d)(k)
Austin, William Pardee (REB) (REO) (Right to RREB license on terms and conditions)	27825 Hawthorne Blvd., Rancho Palos Verdes	12/2/80	490, 10177(b)
Rizzo, Raymond Christopher (RES) (Right to RRES license after 30 days on terms and conditions)	465 E. Chase Ave., El Cajon	12/2/80	10176(a)(i), 10177(f)
Hodge, Lewis James (REB) (Right to RREB license on terms and conditions)	3333 Telegraph Ave., Oakland	12/4/80	10176(a)
Olson, Jerrol Edward (RES) (Right to RRES license on terms and conditions)	4112 Via Lado, Torrance	12/9/80	490, 10177(b)
Washington, L. C. (RREB) (Right to RRES license on terms and conditions)	1447 West 29th St., Los Angeles	12/9/80	490, 10177(b)
Ramey, Melandi Christine (RES) (Right to RRES license on terms and conditions)	2235 Vista Verde Dr., San Jose	12/16/80	490, 10177(b)
Rosenblum, M. Jeffrey (RES) (Right to RRES license on terms and conditions)	6328 Oakridge Way, Sacramento	12/18/80	490, 10177(b)
Halas, Jonathan (RES) (Right to RRES license on terms and conditions)	231 Morro Bay Blvd., Morro Bay	12/23/80	490, 10177(b)
Johnson, Grant Stillman Jr. (REB) Dba—Sunshine Real Estate Dba—The Realty Shoppe (Right to RREB license after 30 days on terms and conditions)	Big Bear Blvd. & Division, Big Bear Lake	12/23/80	10176(a)(i)
Lundgren, Sanford Walter (RES) (Right to RRES license on terms and conditions)	18062 Irvine Blvd., Tustin	12/23/80	490, 10177(b)
Arson, Jan Mari (RES) (Right to RRES license on terms and conditions)	5806 Almond Ave., Orangevale	12/24/80	490, 10177(b)
Hugo, Roger Lee (RES) (Right to RRES license on terms and conditions)	452B S. Auburn St., Grass Valley	12/29/80	490, 10177(b)
Moser, Ed Jr. (REB) (Right to RREB license on terms and conditions)	3856 Pearl Ave., San Jose	12/29/80	490, 10177(b)(f)
Green, Harold J. (RES) (Right to RRES license after 30 days on terms and conditions)	16742 Bygrove, Covina	12/30/80	490, 10177(b)
Lynne, Clement Y. (RES) (Right to RRES license on terms and conditions)	4411 Matilija Ave., Sherman Oaks	12/30/80	490, 10177(b)
Towns, Walter Stanford Jr. (REB) (Right to RREB license on terms and conditions)	1310 Benedict Canyon Dr., Beverly Hills	12/30/80	490, 10177(b)
Anderson, Grant Roger (RES) (Right to RRES license after 60 days on conditions)	3040 Goodwin Ave., Redwood City	12/31/80	490, 10177(b)
Odell, Anna Mae (REB) (REO) (Right to RREB license on terms and conditions)	6300 Telegraph Ave., Oakland	12/31/80	2830, 2831, 2832, 10145, 10176(c), 10177(d)(g), 10234
Zelner, Gilbert Francis (REB) (Right to RREB license after 30 days on terms and conditions)	175 Quail Hollow, San Jose	1/12/81	490, 10177(b)(f)
Margitan, Bruce Earl (RES) (Right to RRES license on terms and conditions)	5945 Lemon Ave., Long Beach	1/13/81	490, 10177(b)
Wooden, Larry Thomas (REB) Dba—L. Thomas Weeden & Associates (Right to RREB license on terms and conditions)	Retrac Way, Retrac Ranch, Grass Valley	1/19/81	2785(a)(5), 10176(a)(g), 10177(d)
Barker, Geneva I. (RES) (Right to RRES license on terms and conditions)	304 Hammond Dr., Auburn	1/20/81	10176(a)(i)
Guenther, Gilbert Chris (REB) (Right to RREB license on terms and conditions)	21618 Ventura Blvd., Woodland Hills	1/22/81	10176(a)(i), 10177(g)
Jones, James Everett (REB) (REO) (Right to RREB license on terms and conditions)	406 Bullard, Clovis	1/22/81	10177(f)(j)
Mazurek, Edward Frank Jr. (REB) (Right to RREB license on terms and conditions)	1641 Langley Ave., Irvine	1/25/81	490, 10177(b)
Voss, Barbara C. (RES) (Right to RRES license on terms and conditions)	2070 Mountain Blvd., Oakland	1/26/81	10177(g)
Cardone, Savino Frank (REB) (Right to RREB license on terms and conditions)	2607 Pirineos Way, Carlsbad	1/27/81	490, 10177(b)
Valenzuela, Lamberto (RES) (Right to RRES license after 30 days on terms and conditions)	5200 E. Gage Ave., Bell	1/29/81	490, 10177(b)
Veall, Elizabeth Jean (REB) (Right to RRES license on terms and conditions)	857 Glenway Dr., #2, Inglewood	1/30/81	2832, 10145, 10176(a)(e)(i), 10177(d)(i)
Yslava, Alex Cocio (RES) (Right to RRES license on terms and conditions)	52 Hemlock Ct., Milpitas	2/5/81	490, 10177(b)
Gaviglio, Victoria Anne (RES) (Right to RRES license on terms and conditions)	55 Loma Vista, Burlingame	2/9/81	490, 10177(b)
Khalaf, Maria Eugenia (RES) (Right to RRES license on terms and conditions)	1249 Pinole Valley Rd., Pinole	2/10/81	10176(a)(i), 10177(f)(j)
Edwards, Mel E. (RES) (Right to RRES license on terms and conditions)	2032 S. Shenandoah St., #5, Los Angeles	2/17/81	490, 10177(a)(b)
Bruster, Billy B. (RES) (Right to RRES license on terms and conditions)	402 W. Yosemite, Manteca	2/18/81	490, 10177(b)
Williams, Leland Marquis (RES) (Right to RRES license on terms and conditions)	5285 Westlake Blvd., Homewood	2/23/81	2832, 10130, 10132, 10145, 10176(c), 10177(d)

(Continued on page 7)

(Continued on page 6)



**Co-operative** (Continued from page 4)

- (5) Members' voting rights.
- (6) Assessment obligations.
- (7) Use restrictions.
- (8) Unit repair obligations.
- (9) Manner by which a member's assessment obligation is enforced.

Once a broker has reviewed the management documents for the project he should prepare a description of the interest being offered for sale. Forms such as the Standard Listing Agreement and Real Estate Purchase Contract and Receipt for Deposit should not be used. Nor is it advisable to modify these forms for use in a stock co-operative transaction because of the differences between the sale of general real estate and the sale of a co-operative interest. Instead, a checklist or information data sheet should be used to draft a listing agreement, sales contract and escrow instructions which are "tailor made" for the interest being offered for sale. The checklist should contain the following information:

- (1) A description of the entire project.
- (2) A description of the area to be exclusively occupied.
- (3) A description of the common area and common area facilities.
- (4) The term of the period of exclusive occupancy.
- (5) Limitations on the use of the unit and common area.
- (6) Monthly assessment.
- (7) If applicable, a copy of the blanket mortgage and information about its status.
- (8) A list of documents to be furnished to the new owner.

Many pre-1977 stock co-operatives were financed with blanket encumbrances. The funds to pay the note, taxes, insurance, etc., are still collected from each member as part of the assessments against members by the corporation. None of the stockholders are personally or directly responsible for making payments on the blanket loan. When a stockholder sells his membership rights, the new buyer only agrees to assume the seller's duty and obligation to pay the carrying charges and assessments. The buyer cannot assume any portion of the blanket loan. Therefore, the purchase price for the interest covered by a blanket loan is not "cash to loan" but is rather the price payable for the stock membership certificate and the exclusive occupancy right.

When there is a blanket encumbrance, the survival of the project may depend upon every member meeting the assessment obligation. Even though there may be some reserve cushion in the project's budget, the continuing inability of one or more members to make assessment payments will threaten every member's interest in the corporation unless it has or can raise the money to meet the project's monthly carrying charges. Licensees should therefore familiarize themselves with the cooperative's financial condition. Even though a co-operative has a cushion for meeting mortgage obligations, it may not have a sufficient reserve to cover the cost of major repairs or replacements, such as a roof. Having to assess tenants for this type

## Mortgage Loan Brokerage Advertising

*prepared by*  
Linda R. Katzman  
*Real Estate Specialist III*

Those real estate brokers engaged in mortgage loan brokerage activities who meet the criteria set forth in Section 10248.7 of the Business and Professions Code (reprinted below) are required to submit all advertising proposed to be used in mortgage loan brokerage activities to DRE prior to use. A broker who does not meet the criteria of Section 10248.7 *may* submit proposed mortgage loan advertising for screening by DRE. Non-disapproval of submitted advertising gives a broker assurance that the advertising will not be deemed to be in violation of any law or regulation applicable to the advertising of mortgage loan brokerage activities or in the sale or exchange of real property sales contracts and promissory notes secured by liens on real property. The specific examples of mortgage loan and trust deed advertising which are considered to be false, misleading or deceptive by DRE are set forth in Regulation 2848.

10248.7. The provisions of Sections 10248.8 and 10248.9 apply to every real estate licensee who meets the requirements of subdivisions (a) to (d), inclusive:

(a) Comes within the provisions of subdivision (d) of Section 10131.

(b) Has negotiated or intends to negotiate loans secured directly or collaterally by a lien on real property. For purposes of this subdivision, loans do not include loans described in Section 10245.

(c) Makes or will make 50 percent or more of the loans specified in subdivision (b) in a calendar year without them being secured directly or collaterally by first trust deeds. For purposes of this subdivision, junior trust deeds which secure notes given back to the seller by the purchaser on account for the purchase price shall not be considered in making the 50-percent test.

(d) Meets any of the following:

(1) Loans negotiated by the licensee in the prior calendar year or anticipated to be negotiated the next calendar year exceed 400.

(2) Advertising and overhead directly related to advertising in connection with his mortgage loan brokerage activities amount to more than 5 percent of gross revenue obtained by the licensee from activities for which a license is required. Notwithstanding this subdivision, any licensee who spends less than ten thousand dollars (\$10,000) per year in advertising shall not be subject to the provisions of Sections 10248.8 and 10248.9.

Licensees or entities under common management, direction or control in carrying on activities which are subject to the provisions of this article shall be considered as one licensee for the purpose of applying the criteria set forth herein.

**DRE**

All mortgage loan advertising submitted to DRE is screened in the Los Angeles office. Since the Department is required by statute to act on the proposed advertising within seven calendar days after receipt, it will be advantageous to those submitting advertising to mail it directly to: Department of Real Estate, 107 South Broadway, Room 8107, Los Angeles, CA 90012, Attn: MLB Advertising Desk.

The screening process is presently taking the full seven days allowed by the statute. Since submitted advertising may be disapproved and have to be revised and resubmitted, it should always be submitted well in advance of any publication deadline. With the uncertainty of mail deliveries, DRE recommends that one who has submitted advertising contact the advertising desk in Los Angeles if he or she has received no response within 14 calendar days after submittal.

DRE regulations require that all mortgage loan advertising be submitted in duplicate, but submittal in triplicate will help to speed up the screening process.

Screening of proposed advertising will be done chronologically according to the time of receipt by DRE and no proposed advertising will be screened or approved by telephone.

of repair may be as destructive to the co-operative's stability as the inability to make mortgage payments.

A stock co-operative which has five or more shareholders is a subdivision under the Subdivided Lands Law, and a public report authorizing the initial sale of "stock" is required. The Department of Corporations has recently asserted jurisdiction over stock co-operatives with four (4) or fewer shareholders.

The foregoing discussion briefly spotlights some aspects involved in the resale of interests

in stock-co-operative projects. A real estate licensee should not become involved in the resale of an interest in a co-operative until he or she is familiar with the salient features concerning the organization and operation of the co-operative through a careful study of the governing instruments and the financial statements. Even with this data in hand, it is advisable to talk to one or more members of the Board of Directors for other helpful information concerning the project's organization and operation that may not be found in the governing instruments.

**DRE**

## FOREST LAND PROPERTIES— ARE YOU MISSING A GOOD BET?

prepared by  
United States Department of Agriculture Forest Service

If you sell forest land properties you should be aware of three publicly funded cost-share programs designed to help your client, the small forest landowner, finance forest improvement work on his or her land.

For instance, you may be interested to learn:

- Cost-share assistance to the landowner can run 75-90 percent of the total cost of forest improvement work depending upon which program or program mix is chosen.
- Assisted forest improvement work can include tree planting, thinning, forest management plans, soil stabilization work (erosion control), wildlife habitat improvement, and many other activities depending upon the landowner's objectives.
- A host of professional foresters, *Service Foresters*, employed by the California Department of Forestry and aided with technical and financial assistance from the Forest Service, are available to the landowner for cost-share program details and *on-the-ground* assistance. The Service Foresters' primary function is to assist the small private forest landowner.
- In addition to incentive program activities, the Service Foresters are knowledgeable about forest management activities such as recreation, range, timber marking, forest taxation, forest products utilization, marketing assistance, and others.
- Service Forester assistance is given without charge, and referrals are made to private forestry consultants whenever possible.

Why have the Federal and State governments become involved? The demand for forest products has increased but domestic supply has diminished. In California, the need to import timber is expected to double by the year 2000, which is of public concern. Previously, private landowners could not afford the high cost of putting their forest land into production. With these forestry incentive programs, more than one million acres of small private ownerships in California could be put into forest land production today to meet tomorrow's needs.

This information should be useful to current forest landowners and certainly to prospective forest landowners. Real estate agents whose clients and/or prospective clients are interested in forest land properties should be aware of these incentive programs and their benefits in terms of increased land valuation and built-in tax advantages.

More information on the three forest incentive programs and Service Forester contacts can be obtained by contacting one of the following:

USDA Forest Service  
State and Private Forestry  
630 Sansome Street  
San Francisco, CA 94111  
(415) 556-8875

California Department of Forestry  
Forest Improvement Programs  
1416 Ninth Street  
Sacramento, CA 95814  
(916) 322-0623/322-0161

Extension Forester  
University of California  
163 Mulford Hall  
Berkeley, CA 94720  
(415) 642-2360

A brief synopsis of each of the three cost-share programs available to California forest landowners follows:

- ACP** Agricultural Conservation Program (Federal). Designed to provide an incentive for farmers (including forest landowners) to establish conservation measures on farm and forestland in order to stop water and wind erosion, conserve water, solve farm-related environmental problems, and to conserve forestlands and wildlife resources. Includes two approved forestry practices: planting and thinning.
- FIP** Forestry Incentives Program (Federal). Designed to provide for cost-effective production of timber with the latitude for enhancement of other forest resources for the private non-industrial forest landowner. Includes two approved forestry practices: planting and thinning.
- CFIP** California Forest Improvement Program (State). Designed to provide an incentive for landowners for reforestation (planting), soil erosion control, wildlife habitat improvement, management planning, thinning, and protection.

### SECOND PUBLIC REPORT NEEDED

Where a public report has already been issued by DRE for a subdivision, the terms "owner" and "subdivider" as used in Business and Professions Code Sections 11010, 11012, and 11018.1 include any person *who at any point in time*, owns, or has an option or contract to acquire the following listed subdivision interests for the purpose of sale, lease or financing, *if* the subdivision interests were or are to be acquired from the original recipient of a public report for the subdivided land (or from a person who succeeded to specified interests of the original recipient):

- Five or more subdivision interests in a subdivision other than a time-share project, and
- Twelve or more time-share estates or time-share uses in a time-share project.

Any person who comes within the above definition of "owner" or "subdivider" may not

offer the subdivision interest acquired or to be acquired without first obtaining a public report expressly authorizing the "owner" or "subdivider" to offer the subdivision interest for sale. See Regulation 2801.5, newly amended to conform with recent amendments to the term "subdivision" as used in the Subdivided Lands Law.

#### Illegal (Continued from page 3)

a party to the transaction and in which the broker is performing an act for which a real estate license is required."

While the meaning of this section as amended is not crystal clear, what is clear is that the intent of the sponsors of the amendment was to tighten the exemption. It is also predictable that there will be continuing efforts to eliminate or narrow the broker exemption and that the prospects for success of these efforts will be enhanced if the Legislature is convinced that real estate brokers are guilty of abusing the exemption.

THIS COURT  
SAID . . .



Recently two appellants appealed from the judgment of a trial court which erroneously denied appellants relief against a trustee who sold real property of a debtor under a deed of trust at foreclosure sale to other than the highest bidders, who were in fact the appellants.

The corporate trustee had refused to qualify the appellants as bidders (they made protest bids despite their rejection) solely because their cashier's checks were payable to themselves and not to the trustee, thus requiring endorsements over to the trustee. That refusal was determined by the appellate court to be a breach of duty by the trustee.

At trial, lengthy testimony from industry members established that by custom and practice it was usual for a trustee to accept cashier's checks made payable either to the individual bidder or to the trustee, and the trial judge found that such checks had previously been acceptable as well to respondent trustee as cash equivalents. Nevertheless, based on the then provisions of Civil Code 2924 h, subdivision (b), the trial judge concluded the trustee had an absolute discretionary right to refuse payment other than cash.

The pre-1980 version of this portion of the Civil Code authorized a trustee to require that bid payments be made in . . . "the equivalent of cash in a form satisfactory to the trustee." Legislation effective January 1, 1980, amended this language to read, . . . "the equivalent of cash, which may be advertised in the notice of sale, in a form *reasonably satisfactory* to the trustee to protect the interests of both the beneficiary and trustor. . . ." [Emphasis ours.]

In reversing the trial court's judgment and remanding with directions to the trial court to proceed in a manner consistent with its opinion, the appeal court pointed out that even though the events took place under the pre-1980 law, Civil Code Section 2924 regulating the power of sale has long been construed as a statute restricting and limiting (for the benefit of the trustor/debtor) the exercise of private powers of sale, and that Civil Code Section 2924 h must be construed with reference to the scheme of which it forms a part in such a way as to achieve harmony among the parts. Section 2924 h must, therefore, be construed as protective of the trustor/debtor.

The appeal court concluded also that while the trustee is agent for both beneficiary and trustor with a duty to conduct a fair, open and reasonable sale with diligence and discretion to protect the rights of the debtor and creditor, it is also fair to conclude that the trustee's duty extends "to all participants in the sale, including prospective bidders." (*Baron v. Colonial Mortgage Service Co.*, 111 Cal. App. 3d 316.)

DRE

### USE OF CREATIVE FINANCING IN SUBDIVISION SALES

Many real estate licensees act as marketing agents for new subdivision projects. Several have been surprised to learn that the offering of a creative financing program for subdivision sales may require an amended subdivision public report before the lots, parcels or units may be offered for sale or lease to the public.

To correct this misunderstanding, the following edited version of an article appearing in the April 1, 1981 issue of the *Subdivision Industry Bulletin* prepared by DRE is printed here.

### UPDATE ON CREATIVE FINANCING

Because of the apparent difficulty in obtaining traditional financing for purchasers of lots/units in subdivisions, especially condominium projects, developers have submitted a variety of "Creative Financing" proposals to our Subdivision Sections for review after the issuance of the Public Report. Some of the plans are very innovative and unique and are viable alternatives to traditional methods of financing. Other such plans have contained elements of actual or potential risks for purchasers.

The Department review of the developers' financing proposals is usually a slow process because it is a rare situation when all the needed information is submitted at the time of the request for review. Normally, it is necessary to amend Public Reports to afford proper disclosure of the developers' financing plans and, as a rule, developers do not submit an amendment fee with their proposed financing documents because they are not sure at that point whether an amended public report will be required. This delays the review.

To expedite DRE review, we recommend that those developers offering unusual financing plans (especially those with balloon payments of under seven years, subsidized interest payments, equity sharing plans, all inclusive deeds of trust or any plan requiring a complete refinancing of the property within less than seven years) concurrently submit:

- A letter with a complete explanation as to how the plan will operate, furnishing sales prices, down payments, and basic interest rates to be subsidized by the developer in dollars and cents. Describe the amount to become due and payable as a balloon payment, the amount to be refinanced at a later date, arrangements for such refinancing, if any, and if the developer is financing the sales by taking back notes and trust deeds for all or part of the purchase price, the loan-to-income ratio with which he is qualifying buyers if this differs from that normally used by regulated lending institutions.
- Submit a copy of all documents to be used in the financing with all the blanks filled in as an example of a typical transaction.
- If subdividers believe they have submitted a complete package and that the financing plan is one that DRE will wish to explain in a Public Report, then we recommend that the developer submit a fee for an Amended

### LICENSES SUSPENDED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Cassano, Jeffrey Alan (RES)	406 Bullard, Clovis	1/21/81 (30 days)	10176(a)(i), 10177(g)(j)
J & J Realty (REC)	406 Bullard, Clovis	1/21/81 (60 days)	10176(a)(i), 10177(g)(j)
Off—Jones, James Everett Jones, James Everett (REB) (REO)	406 Bullard, Clovis	1/21/81 (60 days)	10176(a)(i), 10177(g)(j)
Off—J & J Realty Stewart, Roberta Mary (RES) aka—Priddy, Roberta Mary	7746 N. DeWolf, Clovis	1/21/81 (30 days)	10176(a)(i), 10177(g)(j)

### LICENSES SUSPENDED WITH STAYS

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Grisanti, Paul Joseph (RES) (Stayed for 1 year on condition)	29046 Cliffs Dr., Malibu	5/2/80 (30 days)	10177(j)
Osborn, Philip Gene (REB) (REO) Dba—American Realty Off—American Five Star (All but 30 days stayed for 2 years on conditions)	7130 Magnolia Ave., Riverside	11/19/80 (90 days)	10176(d)(g)(i), 10177(j)
Palicz, Richard John (RES) (Stayed for 2 years on conditions)	2885 Jackson St., Riverside	11/19/80 (90 days)	10176(d)(g)(i), 10177(j)
Kahn, Edwin Bernie (REB) (All but 60 days stayed for 2 years on terms and conditions)	247 E. Tahquitz McCallum, #27, Palm Springs	12/2/80 (120 days)	10177(d)
Odell, Sampson Boyce (REB) (REO) (Stayed for 2 years on conditions)	6300 Telegraph Ave., Oakland	12/2/80 (10 days)	2831, 10145, 10176(e), 10177(d)(g)
Singleton, Dorothy Mary (RES) (Stayed for 1 year on condition)	12950 Brookpark Rd., Oakland	12/11/80 (30 days)	490, 10177(b)
American Five Star (REC) Dba—American Realty Off—Osborn, Philip Gene (Stayed for 2 years on conditions)	7130 Magnolia Ave., Riverside	12/19/80 (90 days)	10176(d)(g)(i), 10177(j)

### INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Camp, James M. (REB)	1587 San Elijo Ave., Encinitas	12/16/80
Smedley, Douglas (RES)	5208 Shasta Dam Blvd., Central Valley	1/20/81
McKuen, Michael M. (REB)	1806 Montana Ave., Santa Monica	1/21/81
Jenkins, Charles Curtis (RES)	7002 Moody St., #204, La Palma	1/26/81
Research Corporation West (REC)	3610 Central Ave., Ste. 500, Riverside	2/23/81
Butterworth, James B. (REB)	12991 Caminito Bodgga, Del Mar	2/18/81

### PUBLIC REPROVALS

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Albright, John Henry V. (RES)	13438 Marlette Dr., La Mirada	1/20/81	490, 10177(b)

Public Report along with the proposed financing plan. If the financing plan includes balloon payment provisions, prepayment penalties and acceleration clauses, it will be necessary to amend the Public Report unless the Final Subdivision

Public Report for the project already contains a reference to those items.

If it appears to the Department that there is any sort of unusual risk to the purchaser, this information will always be disclosed in the Public Report. **DRE**

## CANCELLATION OF ESCROW MAY NOT CANCEL PURCHASE CONTRACT

In the recent case of *Cohen v. Shearer* (1980), 108 C.A. 3d 939, a Court of Appeal decided that cancellation of an escrow by mutual agreement of the parties did not rescind the purchase contract between them.

Shearer agreed to sell a home to Cohen. During escrow a dispute arose between them and Cohen filed suit seeking specific performance. Later by agreement both parties executed instructions to the escrow agent which read: "All previous instructions given by Buyer and Seller in the above escrow are hereby cancelled, and this escrow is not to be consummated." Pursuant to these instructions, the escrow agent returned the buyer's deposit which was the only item then in the escrow.

Cohen pursued his action to specifically enforce the purchase contract. The trial court concluded that the instructions to the escrow agent constituted a mutual rescission of the purchase agreement and dismissed the suit.

On appeal the Court of Appeal reversed the trial court action. In its opinion the Court of Appeal noted that the instruction to the escrow agent related only to the escrow and not to the purchase contract and that there was nothing in the record which suggested that the instruction to release the deposit money was intended as a rescission of the purchase contract or as an abandonment of Cohen's suit for specific performance.

While a situation such as this is not likely to arise very often, licensees should nevertheless heed the message. Escrow instructions ordinarily augment rather than supplant the basic agreement for the purchase of the property. Therefore if you are seeking to carry out your principal's decision to cancel a contract of purchase or sale, be sure that the other party to the contract agrees in writing to do precisely that. Do not settle simply for his or her written advice to cancel the escrow. As happened in the *Cohen* case, if a purchase agreement is not cancelled along with the escrow, either party to the agreement may retain the right to specific enforcement of the contract or for the recovery of damages. **DRE**

## Homestead Limits Raised

Effective January 1, 1981, homestead exemptions from execution of judgments were increased as follows:

Claimant	Increased From	To
Heads of families	\$40,000	\$45,000
Persons age 65 or older	\$40,000	\$45,000
Any other person	\$25,000	\$30,000

Individuals may now claim a homestead exemption, or claim for exemption from execution, in not to exceed the above amounts in actual cash value over and above all liens and encumbrances on the property at the time of any levy of execution of a judgment. (Civil Code Section 1260 and Code of Civil Procedure Sections 690.3 and 690.31.)

Homestead property may be a dwelling house or a condominium, stock co-operative, community apartment or planned development unit. Exemption may be claimed under Code of Civil Procedure Section 690.3 for a house trailer, mobilehome, houseboat, boat, or other waterborne vessel in which the claimant or his or her family actually resides.

Section 690.3 states that the exemption it provides does not apply if the debtor (claimant) or debtor's spouse has an existing homestead under the Civil Code (commencing with Section 1237) or has obtained a prior judicial determination that debtor's dwelling house is exempt from execution under Code of Civil Procedure Section 690.31.

Civil Code Section 1260 provides that any declaration of homestead filed prior to January 1, 1981, shall be deemed to be amended as of January 1, 1981, to reflect the increased values permitted, provided the right of any creditor to execute judgment under the prior law is not defeated or impaired. 

## Option (Continued from page 1)

matter by telephone, Mrs. "E" told optionor she had remarried and he told her he would sell only to her and her ex-husband. He told her he would furnish the sale price information to the escrow.

Mrs. "E" retained an attorney who was told the same thing by the optionor, except that optionor agreed to furnish the sales price. Optionor, however, continued to delay in furnishing the purchase price. Upon demand of the attorney the optionor finally furnished the computed price.

Mrs. "E" then assigned one-half of her interest in the lease to her second husband. They applied for and obtained a loan to purchase the property, available upon their demand. Mr. and Mrs. "E" then opened an escrow, scheduled to close in 30 days (on or before November 6, 1977).

The optionor returned unsigned the escrow documents sent him for signature and by letter advised he would not become a party, but stated title to the residence would be conveyed if the purchase price was tendered on or before November 11, 1977.

On or about November 11th, optionor-lessee advised Mr. and Mrs. "E" that: (1) the 10-year lease was being terminated and (2) they now occupied the property on a month-to-month tenancy. He increased the rent 60%. Mr. and Mrs. "E" did not pay the rent so optionor started a Municipal Court action for unlawful detainer and obtained judgment for possession of the premises and past due rent. Mr. and Mrs. "E" appealed this judgment and the court granted a stay of execution pending appeal and imposing the conditions that rent be paid and a \$5000 bond be posted. The conditions were met.

In March 1979 the specific performance Superior Court action began. The trial court found in favor of the optionees, except that even though the lease contained an enforcement provision calling for the injured party in a court action to be reimbursed by the other party for all costs sustained in the enforcement, the trial court denied attorney's

fees and costs (over \$15,000). An appeal was filed by optionees.

In answer to optionor's assertion that the option was either never exercised by optionees or the terms were not timely met, the appellate court said this position had no merit, optionor failing to distinguish between (1) an option and (2) the exercise of an option which results in a contract of purchase and sale.

The court rejected optionor's contention that Mr. and Mrs. "E" could perform the option terms only if the option price was tendered prior to the expiration of the option, since the option was silent on the method of payment, and held that the original written notice by optionees to optionor was a sufficient exercise of the option and sufficient to create a binding contract of sale between the parties.

Here are listed three interesting principles of law cited in the Opinion in this case:

"An option is transformed into a contract of purchase and sale when there is an unconditional, unqualified acceptance by the optionee of the offer in harmony with the terms of the option and within the time span of the option contract." (*Cates v. McNeil* (1915) 169 Cal. 697 [147 P. 944]).

"A contract must be so construed to, as nearly as is possible, ascertain and give effect to the intention which the parties had at the time the contract was entered into." (Civ. Code §1636.)

"It is generally recognized that payment of the purchase price in an option contract is, unless otherwise stated in the contract, an obligation to be performed by the optionee in his performance of the conditions of the bilateral contract of purchase and sale which is formed upon the exercise of the option." (*Cates v. McNeil* (1915) 169 Cal. 697 [147 P. 944].)

The court directed the trial court to calculate and order the payment by optionor of Mr. and Mrs. "E's" reasonable attorney's fees in the trial action plus costs and damages, and interest totalling \$2657, as well as \$1,500 attorney's fees plus costs on the appeal.

Clearly, a costly excursion through the courts for this optionor-lessee.

Official Publication

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