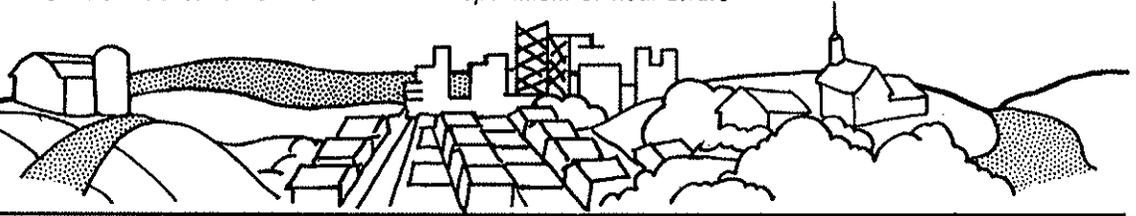




REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., *Governor*

Summer 1982

E. LEE BRAZIL, *Commissioner*

E. LEE BRAZIL APPOINTED REAL ESTATE COMMISSIONER

This is a particularly difficult time for the real estate industry in California and throughout the nation. Many licensees have been struggling to continue operating during a period of prolonged recession which has impacted the housing industry more severely than any other period of economic distress since World War II. For all of you who have remained in the real estate industry during this extraordinarily stressful time, I offer you my most sincere encouragement and best wishes for a speedy return to more profitable times. In addition, I wish to exhort you to continue to uphold the high professional standards to which California real estate licensees have always adhered for it is during periods of economic stress that adherence to high ethical and professional values is most difficult.

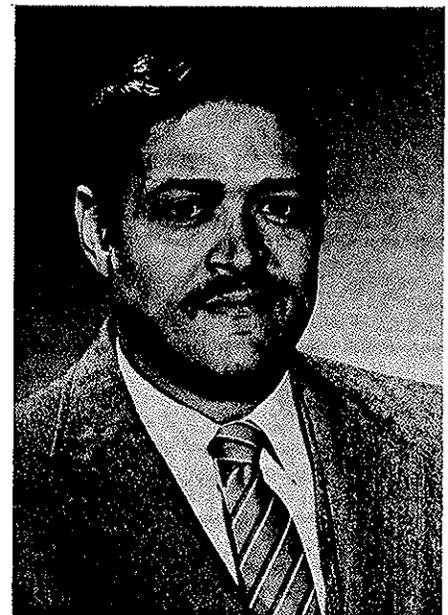
The Department of Real Estate, of course, shares in the general condition of the real estate industry. The Department is a "special fund agency," meaning that all of its revenues come from the regulated industry and not from tax revenues. Consequently, the Department is experiencing one of the most difficult budgetary crises in recent years as a result of lower license renewal rates and reduced subdivision filings. As of this writing, the Department anticipates an operating loss of approximately \$4 million during Fiscal Year 1982. Without a strong budgetary game plan and well developed fiscal solutions, the deficit for Fiscal Year 1983 would approach the \$5 million level. Clearly, the most pressing problem for the Commissioner at this time is the need to develop an economic strategy which will reverse the losses the Department has sustained during this year.

COMMISSIONER'S MESSAGE

One part of the economic solution will be the raising of subdivision filing fees to the allowable statutory maximums. Moreover, in order to reduce Department expenditures as much as possible, we have instituted a hiring freeze and are undertaking further measures to reduce expenses to a minimum. Unfortunately, these measures will not by themselves solve the Department's budget problems; therefore, it will also be necessary to impose another licensing fee increase—this time amounting to a 50% addition to the existing fee schedule.

Given the circumstances that I have briefly described to you, the number one priority for the Commissioner this year will be to implement the budgetary plan of attack while maintaining the Department's ability to fulfill its regulatory responsibilities. Other priorities will include providing effective regulation over the mortgage loan broker industry, improving the continuing education program and insuring that subdivision review procedures are as smooth and expeditious as possible.

I am both pleased and proud to have the opportunity to administer the Department of Real Estate even at this time of economic stress. It is my sincere hope that I will be able to steer our ship through the rocks and shoals of this recession to clear waters ahead.



Governor Edmund G. Brown Jr. appointed E. Lee Brazil Real Estate Commissioner and Director of the Department of Real Estate, effective January 25, 1982.

Prior to becoming Commissioner, Mr. Brazil was Vice President, Corporate Counsel and Secretary with Fox & Carskadon Financial Corporation, a San Mateo based real estate syndicator. He was also Assistant General Counsel of BRAE Corporation and Division General Counsel for ITEL Corporation. Mr. Brazil began his law practice as an associate attorney for the San Francisco law firm of Heller, Ehrman, White & McAuliffe.

Commissioner Brazil is a graduate of Harvard Law School and received his B.A. from Ohio State University. Prior to attending law school, Mr. Brazil served for five and a half years as a Naval Aviator, flying F-4 Phantoms with Fighter Squadron 114.

He and his wife, Rosemarie, who is also a real estate broker, reside in Foster City with their daughter, Allison.



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EDMUND G. BROWN JR., Governor

E. LEE BRAZIL
Real Estate Commissioner

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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.

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

Disciplinary Action—December 1981-January, February 1982

REB—Real estate broker
RREB—Restricted real estate broker
RES—Real estate salesperson
RRES—Restricted real estate salesperson
REO—Real estate officer
RECO—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 \$5.00 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

Business and Professions Code

10130 performing acts for which a license is required without the appropriate license
10137 unlawful payment of compensation
10145 trust fund handling
10148 retention and availability of real estate broker records
10161.8 & 10176(a) salesman employment and termination making any substantial misrepresentation
10176(b) making false promise
10176(c) commingling trust funds
10176(d) fraud or dishonest dealing in licensed capacity
10177(a) procuring a real estate license by misrepresentation or material false statement
10177(b) conviction of crime
10177(d) violation of real estate law or regulation

Regulations

10177(f) conduct that would have warranted denial of a license
10177(g) negligence or incompetence as licensee
10177(j) fraud or dishonest dealing not in licensed capacity
10177(h) failure to supervise salesperson
10177.5 civil fraud judgment based on licensed acts
10231.1 retaining lender's funds for more than 60 days
10237.3 acting as real property securities dealer without endorsement
10238.3 real property securities permit
10242(a) excessive loan costs/expenses
10248.1 charging prohibited loan fees
490 relationship of conviction to licensed activity
2727 failure of salesperson acting as a principal to make written disclosure to supervising broker of the sale or purchase of real property, business opportunity or mobilehome within the specified time limit
2731 unauthorized use of fictitious business name
2830 failure to maintain trust fund account
2831.1 inadequate trust fund records
2832 improper handling of earnest money deposit
2832.1 trust fund accountability
2834 trust account withdrawals by unauthorized person
2835 relinquishing control of trust funds
2843 collection of unearned fees from borrower
2950(c) broker controlled escrow violation

LICENSES REVOKED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Julian, Marie Teresa (RES)	14125 Van Nuys Blvd., Arleta	12/2/81	2830, 2832, 10145, 10176(a)(3), 10177(d)
McDonald, Kenneth Gibson (RES)	P.O. Box 170, Venice	12/8/81	490, 10177(a)
Denton, Robert Aubrey Jr. (REB) (REO)	16033 Ventura Blvd., #107, Encino	12/8/81	490, 2830-2831.1, 2950(e), 10145, 10148, 10176(j), 10177(a)(d)(x)
Off—Vista Financial, Inc.	17071 Ventura Blvd., Ste. 100, P.O. Box 235, Encino	12/8/81	490, 2830-2831.1, 2950(e), 10145, 10148, 10176(j), 10177(a)(d)(x)
Sidwell, Arnold Edward (RES)	12941 Newport Ave., #1E, Tustin	12/10/81	490, 10177(b)
De La Pena, Reynaldo, (RES)	3747 Toland Way, Los Angeles	12/10/81	490, 10177(b)
Ray, Richard Allan (REB)	2029 Century Park East, Ste. 415, Los Angeles	12/10/81	490, 10177(b)
Off—American Farm Management Consultants			
Whiston, Alfred Earl (RES)	5333 Baltimore Dr., #64, La Mesa	1/4/82	490, 10177(b)
Pacheco, Ronald Augustin (RES)	919 N. Westwood, Santa Ana	1/5/82	490, 10177(b)
Pruett, Richard Alan (RES)	6154 Yarmouth, #44, Encino	1/5/82	490, 10177(b)
Jenkins, William Michael (RES)	853 W. Beach, Inglewood	1/5/82	490, 10177(b)
Potts, Steven Enalls (RES)	20359 Anza, #19, Torrance	1/5/82	490, 10177(b)
Jones, Alan Curtis (RES)	3222 Merrygrove, West Covina	1/5/82	490, 10177(b)
Calder, Donna Jean (RES)	12950 Cree Dr., Poway	1/6/82	10176(a)
Saylor, Lewis Virgil (REB)	1966 University Ave., East Palo Alto	1/12/82	490, 10177(b)
Puongo, Milika Tonglawa (RES)	636 El Camino Real, South San Francisco	1/13/82	490, 10177(b)
Burreson, Rodney Howard (RES)	P.O. Box 7456, Van Nuys	1/13/82	490, 10177(b)
Gessole, Arthur Raymond (RES)	76-950 Lark Dr., Indian Wells	1/19/82	10130, 10176(e), 10177(d)(x)(g), 10231.1, 10237.3, 10238.3
Channell, Thomas L. (RES)	610 Newport Center Dr., Ste. 483, Newport Beach	1/19/82	490, 10177(b)
Travis, David James (RES)	19231 Victory Blvd., #132, Reseda	1/19/82	490, 10177(b)
Chesswas, Rosina Florence (RES)	20540 Almaraz Rd., Woodland Hills	1/19/82	490, 10177(b)
Snee, Craig Charles (RES)	2940 Thunder Dr., Oceanside	1/19/82	10177(g)
Knepper, Gayle Jacqueline (RES)	4898 La Sierra Ave., Riverside	1/19/82	490, 10177(b)
Sutton, John Hall (RES)	5771 Spyglass Ln., Ciera Heights	1/22/82	490, 10177(b)
Mooradian, Patricia Lynn (RES)	2932 Stanford Ln., El Dorado Hills	1/26/82	490, 10177(b)
Miller, Steven K. (RES)	16835 Algonquin, Huntington Beach	1/27/82	490, 10177(a)
Kositchek, Thomas Allen (RES)	11747 Sunset Blvd., #103, Los Angeles	1/28/82	490, 10177(b)
Banks, Douglas Edward (RES)	434 West 81st St., Los Angeles	1/28/82	2227, 10157, 10177(d)(x)
McCown, Barry S. (REB)	19131 Brookhurst, Huntington Beach	1/28/82	490, 10177(b)
Finley, Lloyd Earl (RES)	6401 Marysville Rd., Browns Valley	2/1/82	10176(a)(b)(c)(f)(i), 10177(f), 10177.5
Jenkins, Charles Curtis (RES)	38837 Sobramte St., Fremont	2/2/82	490, 10177(b)
Spurgeon, Gerald Edwin (REB)	P.O. Box 3534, Big Bear Lake	2/4/82	490, 10177(b)
Bean, Janet (RES)	3502 Katella Ave., Ste. 203, Los Alamitos	2/16/82	10176(e), 10177(d)
Hallmark Acceptance Corp. (REC)	4033 Terra Vista Way, Sacramento	2/18/82	490, 10177(b)
Amato, Charles John (REB) (REO)	1133 Mont Ln., Walnut Creek	2/22/82	490, 10177(a)(b)(x)(g)
LaDuca, Anthony R. (RES)	1910 Ralston Ave., Belmont	2/22/82	490, 10177(b)
Griffin, Michael Hackett (REB)	P.O. Box 14103, San Francisco	2/22/82	10176(c)(3), 10177(g)
King, Barry Joseph (RES)	2584 Reservoir Ln., Redding	2/22/82	490, 10177(b)
Beard, Marion Alice (REB)	9895 Warner (REB) (REO)	2/24/82	10176(c)(3), 10177(d)(g)
Erwin, Clyde Wayne (REB) (REO)	9895 Warner Ave., Ste. A, Fountain Valley	2/24/82	10176(c)(3), 10177(d)(g)
Off—The Estate Makers, Inc.			
The Estate Makers, Inc. (REC)	9895 Warner Ave., Ste. A, Fountain Valley	2/24/82	10176(c)(3), 10177(d)(g)
Off—Erwin, Clyde Wayne			

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Pacera, Paul Dale (RES)	P.O. Box 185, Palm Springs	11/20/81	490, 10177(b)
(Right to RRES license on terms and conditions)			
Waldron, Francis Patrick (RES)	801 S. Fairview, Santa Ana	12/2/81	480, 10177(b)
(Right to RRES license on terms and conditions)			
Deming, Raymond Earl (RES)	3927 Madison Ave., San Diego	12/15/81	490, 10177(b)
(Right to RRES license on terms and conditions)			
Gill, Michael James (RES)	25466 Cariz Dr., Valencia	12/17/81	490, 10177(b)
(Right to RRES license on terms and conditions)			

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Sanchez, Roberto (REB) (Right to RREB license on terms and conditions)	209 San Felipe Ave., South Francisco	12/22/81	490, 10177(b)(X)
American Home Mortgage Corporation (REC). Off—Zvonek, Mary Katherine (Right to RREC license on terms and conditions)	230 Newport Center Dr., Ste. 200, Newport Beach	12/23/81	2832.1, 10177(d)(g)(h)
Zvonek, Mary Katherine (REB) (REO) Off—American Home Mortgage Corporation (Right to RREB license after 30 days on terms and conditions)	2434 Santa Ana Ave., Costa Mesa	12/23/81	2832.1, 10177(d)(g)(h)
Grecian, Richard Stewart (REB) (REO) Off—Sonoma Data Service Off—Redwood Empire Mortgage Company (Right to RREB license on terms and conditions)	513 E St., Santa Rosa	12/23/81	2843, 10177(d), 10242(a), 10248.1
Towner, George Edward (RES)	3700 Grissom St., Bakersfield	12/28/81	490, 10177(b)(X)
James, Clarence Lesly (RES)	6723 Long Beach Blvd., Long Beach	12/29/81	2832, 10145, 10176(c)(i), 10177(d)
Flynn, Charles Welch (RES)	14361 Lake St., Garden Grove	12/29/81	490, 10177(b)
Williams, Mike Eugene (RES)	P.O. Box 1015, Lucerne Valley	12/29/81	10176(a)(i)
McClure, Pauline June (RES)	P.O. Box 373, Lucerne Valley	12/29/81	10176(a)(i)
Kennedy, Edmund Charles (RES)	426 Newton Ave., Covina	1/5/82	10176(i)
Dios, Anthony Winkler (RES)	19 Savannah Ave., San Anselmo	1/13/82	10176(a)(i), 10177(i)(j)
Mauerman, Michael Richard (REB)	1500 McHenry Ave., Modesto	1/15/82	10177(i)
Mueller, Mark Stuart (REB)	2909 Coffee Rd., Ste. 6, Modesto	1/15/82	10177(i)
Marble, Rodney Wilkins (REB)	720 A St., San Rafael	1/18/82	10176(a)(i), 10177(i)(j)
Schuhd, Joseph Moses (REB)	1711 Rue De Valle, San Marcos	1/19/82	2731, 2830, 2834, 2835, 10177(d)(X)(h)
Trujillo, Anthony L. (RES)	2335 Honolulu Ave., Montrose	1/19/82	490, 10177(b)
Casale, Robert John (REB) (REO)	2700 Adams Ave., San Diego	1/19/82	10137, 10177(d)
C & R Realty, Inc. (REC)	2700 Adams Ave., San Diego	1/19/82	10137, 10177(d)
Clardy, John Daniel (REB) (REO)	P.O. Box WW, 5465 Bravo Toro, Santa Rosa	1/21/82	490, 10177(b)(X)(f)
Bettencourt, Ted Rose (REB)	2353 Michael Cir., Hanford	1/25/82	490, 10177(b)
Steele, Carl Steven (RES)	2300 Pinon Springs, Bakersfield	1/26/82	490, 10177(a)(b)
Tucker, William Leo (REB) (REO)	206 S. Placentia Ave., Placentia	1/27/82	10177(d)(X)(h)
House of Mortgages, Inc. (REC)	206 S. Placentia Ave., Placentia	1/27/82	10177(d)(g)(h)
House of Mortgages, Inc. (REC)	206 S. Placentia Ave., Placentia	1/27/82	10177(g)
Regent Investment Corporation (REC)	12313 Ventura Blvd., Studio City	1/27/82	10176(e), 10177(d)(X)(h)
Herman, Basil Elton (REB) (REO)	16328 Ventura Blvd., Encino	1/27/82	10176(e), 10177(d)(X)(h)
Manus, Rex Leo (REB)	409 Coffee Rd., Modesto	2/8/82	10145, 10176(e), 10177(d)
McAfee, Roberta Carol (RES)	3333 Camino Del Rio South, Ste. 100, San Diego	2/10/82	10177(i)(j)
Brown, David LeRoy (REB)	1264 Pine Ave., San Jose	2/16/82	490, 10177(b)
Blake, Victor Alanzo (RES)	P.O. Box 13910, American River Dr., Sacramento	2/22/82	490, 10177(b)
McDonald, Aisha (RES)	3850 West 102nd St., #2, Inglewood	2/23/82	490, 10177(a)
Fernandez, Carlos Adolfo (RES)	1823 12th St., #2, Santa Monica	2/23/82	490, 10177(b)
Marrin, Eugene Anthony (RES)	2300 Webster St., San Francisco	2/23/82	490, 10177(b)

LICENSES SUSPENDED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Bulger, Stephen Joseph (RES)	P.O. Box 872, Del Mar	11/24/81 (180 days)	490, 10177(b)
Hermosillo, Luis Michel (REB)	1327 Via Camille, Montebello	12/18/81 (15 days)	10177(g)
Miozza, Felix Marie (RES)	841 Inverness Ave., Glendora	2/2/82 (90 days)	10137, 10176(a)(i)
Goldman, Steven B. (REB) (REO)	3502 Katella Ave., Ste. 203, Los Alamitos	2/15/82 (1 year)	10176(e), 10177(d)

(Continued on page 7)

Allonge Not Effective As An Endorsement

Licenses involved in the assignment of promissory notes secured by deeds of trust should take note of a 1981 Court of Appeal decision declaring a promissory note to be unenforceable by an assignee to whom the assignment was made by an allonge (separate paper affixed to the note) signed by the transferor rather than by an endorsement on the note itself. This ruling in *Pribus v. Bush*, 118 C.A. 3d 1003, while highly technical can be very substantive in its effect.

In the case in question *Pribus* had executed a promissory note secured by a deed of trust on her home in favor of one Williams. Williams had induced *Pribus* to execute the note by promising that he would hold the note but make no use of it. Subsequently Williams transferred the note to defendant *Bush* using an allonge even though there was sufficient space on the note itself for Williams' endorsement.

Bush brought an action on the note claiming to be a holder in due course and therefore free of any defenses that *Pribus* would have been able to assert if the action had been brought by Williams.

The court held that *Bush* was not a "holder" of the note and therefore could not qualify as a holder in due course under Commercial Code Section 3302, subdivision 1, because the purported assignment to *Bush* by allonge did not satisfy Section 3302, subdivision 2, requiring that an endorsement of assignment be "written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof."

In articulating the reasoning behind the holding, the court noted that neither the Uniform Commercial Code nor its predecessor, the Negotiable Instruments Act, expressly states whether or not an allonge can be used where there is still space on the instrument itself for an endorsement. The court acknowledged that the decisions of other jurisdictions are not unanimous on whether an endorsement by allonge is effective where there is room on the negotiable instrument itself for the endorsement. The court aligned itself with the so-called majority view as the better reasoned one and ruled that the purported assignment to the defendant by allonge was not effective as an endorsement.

DUE-ON-SALE CAUTION

DRE has recently been made aware of an offering to "real estate professionals" in southern California of a legal product described by the offeror as a title holding trust. The trust is represented to be a device that will "solve the acceleration problem" which still may exist in the case of loans made by federally chartered savings and loan associations in spite of the *Wellenkamp* and *Dawn Investment Company* holdings (see page 8). The trust is also touted as a means to sell real property without triggering reassessment under Proposition 13.

The explanation provided by the author for the representation that the transfer to the trust

(Continued on page 8)

Mortgage Loan Disclosure Statements

Prepared by
Norman G. Catalano, Manager I
San Francisco District Office

When is a disclosure statement required by the Real Estate Law and the Commissioner's regulations in a mortgage loan transaction?

TO A BORROWER

For several years prior to January 1, 1981, a disclosure statement was required to be provided to a borrower only in the case of a loan subject to Article 7 of Chapter 3 of the Real Estate Law (Business and Professions Code Sections 10240, et seq.). Simply stated, the disclosure statement had to be provided by a broker to the prospective borrower of a loan secured by a first deed of trust in the amount of less than \$20,000 or a loan secured by a junior deed of trust of less than \$10,000. The broker was required to furnish this statement to the prospective borrower prior to the borrower becoming obligated to complete the loan transaction.

Assembly Bill 3201 (Chapter 553) which became law on January 1, 1981, amended Sections 10240 and 10245 of Article 7 to require delivery of a mortgage loan disclosure statement to the borrower in *all* real property loan transactions—regardless of amount—negotiated by a real estate licensee acting as an agent. Regulation 2840 contains the approved form of the disclosure statement required by Section 10240 of the Real Estate Law.

There is no express requirement for a disclosure statement to be given to a borrower in a situation in which the broker is the lender. If a broker—particularly one who advertises and holds himself out to the public as a mortgage loan broker—contemplates funding loans secured by real property on either an interim or permanent basis, DRE recommends that the broker fully disclose significant information about the loan to the borrower much as he would if he were acting as an agent. When acting as a lender, the broker may use the approved form of disclosure in Regulation 2840 as a guide, but he should omit from the form anything and everything that might suggest to the borrower that the broker is acting as his agent. To comply with Regulation 2845 which requires that a broker who holds himself out to the public as an agent for the negotiation of loans secure the express written consent of the borrower to the lending of broker-controlled funds, the following statement should be included in the disclosure instrument:

"(Name of lender) is a real estate broker, but is the lender in this transaction and is not acting as the agent of the borrower."

If the funds loaned to the borrower are not the funds belonging to the broker, but funds controlled by him, the disclosure statement should be modified accordingly. "Broker controlled funds" is defined in Regulation 2845 as funds owned by the broker, or an entity in which the broker has an ownership interest of 10 percent or more, or funds of a person related to the broker by blood or marriage.

Interested licensees may obtain a copy of DRE's recommended form of disclosure instrument for a transaction in which the broker acts in the capacity of a lender from the mortgage loan broker desk at the Department's Los Angeles office.

In a loan transaction in which the broker is a permanent or interim lender, the limitations on prepayment penalties specified in Section 2954.9 of the Civil Code rather than those specified in Business and Professions Code Section 10242.6 apply.

DRE is proposing legislation this year to expressly require that written disclosure along the lines of that required by Regulation 2840 be given to a borrower in a loan transaction in which a mortgage loan broker provides permanent or interim funding to the borrower. If the bill is enacted into law it will eliminate the uncertainty that currently exists in the minds of many mortgage loan brokers who lend their own funds when funds from an independent lender are not immediately available. Under the terms of the proposed legislation, a broker anticipating that the loan to the borrower may be made wholly or in part from broker controlled funds must include a statement to that effect in the mortgage loan disclosure instrument given to the prospective borrower. Moreover if and when the broker elects to make the loan to the borrower from broker controlled funds, he must so advise the borrower not later than the next business day but in any case before the close of escrow of the loan transaction.

TO A LENDER/PURCHASER

Effective January 1, 1982, Assembly Bill 1212 (Chapter 1117) became law. It added Sections 10231.2, 10232, 10232.1, 10232.2, 10232.4 and 10232.5 among others to Article 5 of Chapter 3 (Business and Professions Code Sections 10230, et seq.).

Section 10232 establishes a special category for real estate brokers who in any successive 12 months negotiate a combination of 20 or more real property loans or trust deed sales with an aggregate dollar volume of more than \$2,000,000. Sales and exchanges of trust deeds and real property sales contracts by a broker acting as principal for his own account are to be included in determining whether a broker falls within this special category.

The statute also establishes a rebuttable presumption that a broker meets the 20/\$2,000,000 threshold based upon his or her business activity during any successive three-month or six-month period.

A broker who does meet the threshold of business activity established by Section 10232 must provide a prospective lender or purchaser with a completed disclosure statement in most transactions. The disclosure statement need not be given by a broker who meets the threshold only if (1) the "lender" is the seller of real property taking back a promissory note secured by the real property as a method of financing the purchase or (2) the loan or sale is made under authority of a permit issued by DRE or the Department of Corporations or (3) the loan or sale is made pursuant to an exemption from the requirement of a permit under which a

(Continued on page 5)

Bulletin Interviews Paul E. Markey, Supervising Auditor, Northern Regulatory Area

Bulletin: In general, what are the functions and responsibilities of DRE auditors?

Auditor: The Department's auditors function as specialists in matters involving the books and financial records maintained by real estate brokers and subdividers. Investigative audits, subdivision impound examinations, trust account examinations and loan broker examinations are conducted to determine if the operations of the broker or subdivider, as disclosed by their business records, are in compliance with the real estate and subdivision laws and commissioner's regulations.

Bulletin: What are the major differences between a formal DRE audit procedure and a "spot-check" office examination?

Auditor: A formal Audit is an in-depth review of the broker or subdivider's handling of trust funds over a specific period of time while a "spot check" examination is a cursory review of transactions selected at random to determine if client funds are being handled properly and other records required by law are being maintained.

One difference between a "spot check" examination and an Audit is the Notice which must be given before an examination or inspection. From a practical standpoint, the auditor generally calls on a randomly selected broker's office, explains the purpose of his/her visit and in the majority of cases, by mutual agreement, this constitutes the required Notice and the auditor proceeds with the examination. During an inspection the auditor will spot check the flow of funds and records accountability in just a few transactions and normally will not be at the broker's office for more than three hours. An Audit, however, is a complete check of *all* transactions over a given period of time.

Bulletin: The fiduciary responsibility of a real estate broker requires proper handling of all trust funds and the maintenance of adequate records. How may "trust funds" be defined?

Auditor: Trust funds are money or things of value received by the broker, or the salesperson, on behalf of his principal or any other person in the performance of any acts for which a real estate license is required, and not belonging to the broker but being held for the benefit of others. Cash, checks, notes, stock certificates, etc., are examples of trust funds.

Bulletin: What constitutes a "true" trust account? Must the account have the words "trust account" on it?

Auditor: A trust bank account is one which names the broker as the trustee and one which contains only clients' funds. The bank signature card should name the broker as trustee of the account. The words "Trust Account" or "Real Estate Trust Account" or similar wording should be on the account. Commissioner's Regulation 2830

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Document Rejection By The Recorder's Office May Delay Payment of Your Commission

prepared by
Leonard Panish
Los Angeles County Registrar-Recorder

On September 9, 1850, California was admitted as a state and one of the first acts of the legislature was to adopt a recording system.

Under the Spanish and Mexican governments, there were no registry or recording laws, so it was necessary that some device be created by which evidence of title to, or an interest in land could be collected in a convenient and safe public place. The system allows persons intending to purchase or otherwise deal with land to be informed as to the ownership, condition of the title, and be protected from secret conveyances and liens.

The basis of the California recording system is modeled after the recording system established by the American Colonies and in use in many of the eastern states at the time California became a state.

All documents presented for recording must be authorized by law to be recorded. If a document is required or permitted by law to be recorded it must meet specific mandates, ordinances and rules to be acceptable for recording. Unacceptable documents nonetheless are still presented for recording. Listed below are a few of the more unusual documents that have been presented for recording at the Los Angeles County Recorder's Office:

- A Common Law wife lien;
- A notice of completion for a new born baby;
- A quitclaim deed to a satellite revolving around the earth;
- Official notice to stop real property taxes;
- A deed to a condominium in space; and
- A power of attorney purportedly signed by a dog.

This last document, like the rest, was notarized, however none of the above documents were acceptable as they were not authorized by law to be recorded.

Approximately sixty percent of the documents presented for recording are processed through the title insurance industry. Twenty percent arrive by mail and the remaining twenty percent are presented in person by the general public.

The most common reasons for rejecting documents for recording are as follows:

- Lack of payment of the Documentary Transfer Tax or lack of a sufficient explanation on the face of the document as to why the tax is not applicable. For example, two deeds declaring no Documentary Transfer Tax—one from A to B the other from B to A consummating an exchange of real property are both taxable transactions. A tax based on the value of the real property conveyed less any liens is due at the rate of fifty-five cents per \$500 of value or fraction thereof.
- Improper certificate of acknowledgment before a notary public. For example a conveyance executed by XYZ Corporation using the certificate of acknowledgment for an individual party printed on the form in lieu of attaching the corporation form.
- Non-photographible document or portion of a document such as the legal description or notary seal. This problem may be corrected by substituting a copy that is photographically reproducible or preparing by typewriting or handwriting a legible copy certified by the party creating the copy under penalty of perjury as being a true copy of the original. This procedure is pursuant to Government Code Section 27361.7.

Proper preparation of documents presented for recording will facilitate the recording process thereby avoiding delays in receiving your commission from the escrow.

All county recorders in this State belong to the County Recorders' Association. One of the purposes of this Association is to adopt rules for the uniformity of recording throughout the State. Generally all counties follow the intent of the recording laws, however interpretation and practice of recording laws may vary.

Listed below are the recording volumes for four categories of documents recorded in Los Angeles County which you may find useful:

Classification	Year				
	1977	1978	1979	1980	1981
Deeds	309,721	299,585	311,138	259,675	217,729
Deeds of Trust and Mortgages	373,808	385,673	376,490	323,487	272,990
Notices of Default	19,762	20,648	22,516	27,965	44,088
Trustee's Deeds	3,464	1,899	1,319	1,280	3,006

45 **Hours** From
Continuing Education

prepared by
Tom Maury, Real Estate Manager

When applying for renewal of your real estate license, you must include with the application a properly completed R/E Form 251 (Continuing Education Course Verification Form). Various information taken from your Continuing Education

Attendance Certificates must be included on the R/E Form 251.

It has been noted many licensees are incorrectly using the "date of issuance" shown on their certificates instead of the date completed. Two dates are generally shown—the date the particular offering was "attended or completed" and the date of "issuance." To have your renewal application processed, the date you actually "completed" the offering must be shown, not the date of issuance. Use of the date of issuance will cause delays in the renewal of your license. **DRE**

INTERVIEW (Continued from page 4)

provides . . . "the broker shall deposit the funds upon receipt into a trust fund account in the name of the broker as trustee at a bank or other financial institution. Except as provided by Section 2830.1 [concerning interest bearing accounts] the trust fund account may not be an account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds."

Bulletin: Are there legal reasons for the trust account requirement?

Auditor: Yes. Firstly, it is necessary to separate the brokers own money from separate trust moneys to avoid commingling. Secondly, should legal action be instigated against the broker, all his bank accounts except a true trust account could possibly be frozen during the action. Thirdly, should the broker die or become incapacitated, his personal funds could be tied up. Fourthly, funds in true trust accounts are recognized for FDIC insurance purposes up to \$100,000 when properly identified as to ownership of the funds.

Bulletin: If a broker has money due him from a client who is the owner of funds in the broker's trust account, can the broker withhold the amount owing him from the trust account as an offset?

Auditor: Absolutely not. To collect, the broker's recourse for non-payment of the debt would be a civil court action.

Bulletin: Under the Real Estate Law and Regulations of the Commissioner, who is responsible for the deposit and safekeeping of trust funds and the disbursing of trust funds from a broker's trust account?

Auditor: The licensed real estate broker is ultimately responsible for the depositing, safekeeping and disbursing of all trust funds. While Regulation 2834 allows a real estate broker to authorize other specified employees to make withdrawals from his/her trust account, the provisions of the regulation in no way limit the broker's liability or responsibility for the handling/dispersing of trust funds in the broker's custody and control.

Bulletin: What persons may the broker authorize to make trust account withdrawals?

Auditor: (1) A salesperson employed by the broker; (2) a corporate officer of a licensed corporate broker; or (3) any unlicensed employee when covered by a fiduciary bond indemnifying the broker against loss of money or property by an act of the employee, which bond is to be in an amount sufficient to cover the funds or property held in trust.

Bulletin: Then, under prescribed conditions, a broker may assign the bookkeeping and record-keeping duties to another employee?

Auditor: Yes, such duties can be delegated or assigned to others but the broker is responsible for the custody and control of trust funds and reasonable supervision of the business activities of all employees.

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AMENDMENTS TO SUBDIVIDED LANDS LAW

On April 4, 1982, Governor Brown signed Assembly Bill 1311 into law, and it became immediately effective as Chapter 148, Statutes of 1982.

The bill amends two sections of the Subdivided Lands Law (Business and Professions Code Sections 11000, et seq.) and adds Section 1133 to the Civil Code.

The purpose of the Business and Professions Code amendments is to remove all DRE jurisdiction under the Subdivided Lands Law over the sale, lease or financing of interests in the following types of subdivisions:

1. Expressly zoned industrial subdivisions limited in use to industrial purposes.
2. Expressly zoned commercial subdivisions limited in use to commercial purposes.
3. Subdivisions offered by public agencies.

Prior to the effective date of Chapter 148, industrial, commercial and public-agency subdivisions were exempt from having to file a notice of intention to subdivide and from other provisions of the Subdivided Lands Law having to do with the issuance of a public report, but remained subject to certain provisions, e.g., Section 11013.2 which prescribes purchase money handling for subdivision interests subject to a blanket encumbrance.

Civil Code Section 1133 establishes a caveat that must be given by the seller—or lessor under a lease for a term longer than five years—to the buyer/lessee of a subdivision interest that is subject to a blanket encumbrance if the subdivision is one that is exempt from the provisions of the Subdivided Lands Law.

"Subdivision" is defined in Civil Code Section 1133 Subsection (b) as any division of real property into two or more lots, parcels and units for purposes of sale, lease or financing. Thus the caveat must be given not only in connection with sales or leases of commercial, industrial and public-agency subdivision interests subject to blanket encumbrances, but to sales and leases in 2 to 4 unit residential subdivisions as well. The bill thus closes the gap in the area of consumer protection that has existed since the definition of common-interest subdivisions subject to the Subdivided Lands Law was changed from two or more units to five or more units effective January 1, 1981.

The notice that must be given by the seller/lessor and signed by the buyer or lessee reads as follows:

"BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN AS A 'BLANKET ENCUMBRANCE.'

"IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE MORTGAGE, DEED OF TRUST, OR LEASE."

Any person who "willfully" violates Section 1133 by failing to give the prescribed notice is liable to the buyer or lessee for actual damages suffered, reasonable attorney's fees and a fine not to exceed \$500. Under California decisional law, a violation may be held to have been "willfully" done even if it was not done with an intent to violate nor with an evil intent. **DRE**

MORTGAGE LOAN

(Continued from page 4)

disclosure statement must be given as a condition to the use of the exemption.

The content of the disclosure statement to be given in the case of a real property loan origination is set forth in subdivision (a) of Section 10232.5. The content of the disclosure to be used in the sale of a sales contract or promissory note is prescribed in subdivision (b). The Real Estate Commissioner has proposed the adoption of Regulation 2846 to establish the form and content of a disclosure statement that will be acceptable to DRE. The proposed regulation further provides however that the format of disclosure under Regulation 2846 is not necessarily the only format that will satisfy the statute.

Section 10231.2 imposes a special disclosure requirement upon every broker who proposes to solicit funds through advertising or representations that he or she is acting in an agency capacity in negotiating mortgage loans or trust deed sales if the broker intends to directly or indirectly have the personal use or benefit of the funds

borrowed. In these circumstances the broker must furnish the completed disclosure statement to the prospective lender or purchaser and to DRE not less than 24 hours before the purchaser/lender delivers funds to the broker or executes any contract committing to make the loan or purchase. The disclosure statement provided to the lender/purchaser must include a detailed statement of the broker's intended use and disposition of the funds and an explanation of the nature and extent of the benefits that the broker expects to derive either directly or indirectly. A broker soliciting funds for his personal use and benefit must furnish the prescribed disclosure statement whether or not he meets the 20/\$2,000,000 threshold criteria of Section 10232.

Brokers who met the Section 10232 threshold as of January 1, 1982, were required by the terms of that statute to register with DRE on or before February 1, 1982. Brokers who did not meet the criteria on January 1, 1982, but who do so after that date must notify the Department in writing within 30 days after determining that they do meet the criteria.

INTERVIEW *(Continued from page 5)*

Bulletin: Does the law require every real estate broker to maintain a trust bank account?

Auditor: No. The broker can either place trust funds in a trust bank account or into a neutral escrow depository or into the hands of his principal, not later than the next business day following broker's receipt of the funds.

Bulletin: Earlier, you made mention of "an interest bearing" trust account. Is the use of this type of account limited in nature?

Auditor: Yes. It's use is spelled out in Regulation 2830.1. A real estate broker who receives funds in trust from or on behalf of an obligor for the payment of property taxes, assessments, or insurance relating to property containing only a one-to-four family residence is not precluded from depositing and maintaining such funds in an interest-bearing account in a bank, savings and loan association, or other financial institution, provided the account is one that is insured by an agency of the Federal government.

Of course, none of the interest earned on funds deposited by the broker into an interest bearing account shall accrue to the benefit of the broker.

Bulletin: At the minimum, what must the trust funds record system contain for trust funds which go into the bank trust account (checks, cash, etc.)?

Auditor: For funds which go into a trust bank account, the records must set forth, in columnar form, the date funds are received; from whom received; the amount received; description of the item; date funds are deposited into the trust account. For disbursements, the records must show to whom paid, description of the item, amount paid out, check number and date of check. Records must show the daily balance of the trust bank account. (Regulation 2831.)

In addition to these records, for all transactions involving moneys deposited in the trust account, the broker must keep a separate record for each beneficiary or transaction. These records also must be in columnar form and set forth information sufficient to identify the transaction and the parties to the transaction. Columnar information must include the date, description, and amount of funds deposited; the date, description, check number and amount of each related disbursement; and the account balance. (Regulation 2831.1)

By the way, brokers utilizing an automated data processing record system in accordance with sound accounting principles are considered to be in compliance with the law and regulations.

Bulletin: At the minimum, what kind of journalizing or record system is required for trust funds which *do not* go into a broker's bank trust account—e.g., a pink slip on an automobile or promissory note?

Auditor: Checks or notes or even a pink slip on an automobile which pass through the broker's hands and are held by him for any period of time for the benefit of a third person

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INTERVIEW (Continued from page 4)

are trust funds. A record must be kept of these trust funds in columnar form showing the date received; the form (note, check, cash); the amount; from whom received. As to the disposition of such trust funds, the record must show a description/identification of the item disposed of; to whom disbursed (escrow, title company, returned) and the date of disposition or forwarding. (Regulation 2831.)

Bulletin: What sections of the Real Estate Law and Commissioner's Regulations cover the requirements for proper trust fund handling and record keeping?

Auditor: The appropriate law and regulation sections are Business and Professions Code Sections 10145, 10146 and 10148 and Commissioner's Regulations 2830 through 2835.

Bulletin: Other records besides trust fund records must be adequately maintained by a broker. What are these records and for how long must they be kept available for examination, if needed, by a DRE representative?

Auditor: A real estate broker is required by law to retain for three years copies of all listings, deposit receipts, canceled checks, trust records, collection receipts, and other documents executed by him or obtained by him in connection with any transaction for which a real estate broker license is required.

Copies of disclosure statements required by brokers under Sections 10231.2, 10232.4, 10237.4 and 10240 must be retained for four years. Prepaid rental listing service operators (broker or PRLS licensee) must retain the original of each contract for at least six months.

Bulletin: When does the record retention period start to run?

Auditor: Either from the closing date of the transaction or, if the transaction is not consummated, from the date of the listing. For PRLS operators the period runs from the date of contract termination.

Bulletin: In the usual buy/sell transaction, when does the broker's legal responsibility for trust fund handling begin?

Auditor: His responsibility for handling trust funds begins the moment he receives such funds into his custody.

Bulletin: Do property management brokers experience any particular problems in properly accounting for the trust funds of their multiple beneficiaries?

Auditor: Property Management Brokers must carefully oversee their trust ledgers to prevent the payment of funds in excess of the available balance in the trust bank account for a particular property. If disbursements exceed receipts for a particular property, funds that belong to one owner will be used to pay obligations or expenses of another and a trust account shortage will result, a violation of B & P Code Section 10145 and Regulation 2832.1. This regulation requires that the broker not disburse or permit disbursement of trust funds from the trust account without prior consent of every principal who is owner of funds in the account when a disbursement will reduce the balance of the account to an amount less than

the existing aggregate trust fund liability of the broker to all owners of the funds.

Bulletin: From your experience as Supervising Auditor for DRE's Northern Regulatory Area, what type of error or omission by real estate brokers occurs most frequently?

Auditor: Usually a broker gets into trouble from a trust account examination because he/she fails to establish, maintain and retain adequate trust fund records, especially for trust funds not placed in the trust bank account.

Bulletin: How can this type of law violation be avoided by the licensee?

Auditor: There is no substitute for the careful and personal oversight and supervision of a real estate brokerage by the licensed owner-broker. Also, regular trust account bank reconciliations are a must. They should be prepared at least monthly and then reviewed by the broker personally.

Bulletin: What is the reason for most accounting violations?

Auditor: It is usually the broker's ignorance of sound accounting procedures and his failure to maintain adequate trust fund records. Brokers who are unskilled in accounting principles should consult a professional accountant, attorney or bookkeeper for guidance.

Chapter 24 of the current Reference Book printed by the DRE also has guidelines for an acceptable accounting and record-keeping system.

Bulletin: Overall, do you find adequate broker supervision in those cases where a broker has delegated bank trust account handling to other employees?

Auditor: Generally, yes. Unfortunately, there are instances when a broker failed in his obligation to reasonably supervise and see that clients' funds are protected.

Bulletin: What advice can you offer brokers as to how they might improve trust fund accountability?

Auditor: Brokers should never forget they have a trusteeship with regard to trust funds in their custody. It is good business practice for every broker to perform periodically "his own audit" of his trust funds. Each month the trust account bank statement should be reconciled and each month broker's trust obligation should be determined. By regularly reviewing and reconciling the trust bank balance with the trust obligation, the broker can assure himself that the funds entrusted to his care are being properly maintained in the trust bank account.

EDITOR'S NOTE:

DRE auditors make both formal and random official visits to brokers offices to perform Audits and Trust Account Examinations. This is part of DRE's consumer protection program. Should a trust account examination disclose a violation(s), one of four things generally happens: (1) compliance is achieved on the spot and the case is closed (2) a "corrective action letter" is sent to the broker and a second examination by DRE is made to determine compliance (3) a Desist and Refrain Order is issued, followed by a second compliance examination (4) the examination or follow-up examination results in an Accusation being filed against the broker.

Trust account examinations are conducted on a daily basis. Auditors are concerned with more than proper trust fund handling. They uncover such violations as operating branch offices without a license, illegal use of a fictitious name, negligence, incompetence, lack of reasonable broker supervision, unauthorized signatures on trust accounts and unauthorized custody and control of trust funds.

Brokers are urged to review all office procedures to assure compliance with the Real Estate Law and Commissioner's Regulations.



LICENSES SUSPENDED WITH STAYS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Sutton, Vincent Glenn (REB) (REO) Off—Sutton & Associates Real Estate Co. (All but 15 days stayed for 2 years on terms and conditions)	3741 Boise Ave., Los Angeles	12/8/81 (60 days)	2832.1, 10145, 10177(d)(g)
Sutton & Associates Real Estate Co. (REC) ... Off—Sutton, Vincent Glenn (All but 15 days stayed for 2 years on terms and conditions)	3741 Boise Ave., Los Angeles	12/8/81 (60 days)	2832.1, 10145, 10177(d)(g)
Lu, Rue, Gary F. (REB)	11828 Washington Blvd., Whittier	12/17/81 (45 days)	10137, 10161.8, 10177(d)(g)(h)
Perreras, Conrado Zapanta (REB) (REO) (Stayed for 1 year on terms and conditions)	3373 Mission St., San Francisco	12/22/81 (30 days)	10177(h)
Jacob, Annie Mayo (RES)	67 St. Francis Square, Daly City	12/22/81 (60 days)	10176(f), 10177(i)(g)
Banks, Betty Jeanne (REB)	19132 Pioneer Blvd., Cerritos	1/6/82 (60 days)	10177(g)
Cassil, Robert Brayshaw (REO)	1704 Union St., San Francisco	1/18/82 (60 days)	2832.1, 10145, 10177(a)
Off—Hawthorne Stone R. E. Investments, Inc. (Stayed for 1 year on terms and conditions)			
Gilson, Thomas A. (RES)	P.O. Box 366, Clearlake	2/7/82 (30 days)	10137, 10145, 10176(e), 10177(d)

PUBLIC REPROVALS

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Kroh, Carlton James (RES)	1337 Howe Ave., Ste. 210, Sacramento	1/19/82	490, 10177(b)
Morales, Mary Louise (RES)	5610 Peacock Ln., Riverside	2/16/82	490, 10177(b)

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Kilz, Raymond John (REB)	1670 Griffith Park Blvd., Los Angeles	12/17/81
BEC Financial, Inc. (REC)	4640 Jewell St., Ste. 101, San Diego	1/7/82
Kleber, Marvin Sam (REB)	1375 Grand Ave., Arroyo Grande	1/12/82
Payton, Alice Marie (RES)	3212 Springdale Dr., #210, Long Beach	1/28/82
Williams, Fred C. (REB)	11012 Chanera Ave., Inglewood	2/22/82

Wellenkamp Rule Extended

In a case entitled *Dawn Investment Co. v. Superior Court of Los Angeles County*, 30 Cal. 3d 695, the California Supreme Court recently extended the so-called *Wellenkamp* rule to non-institutional lenders and to investment and commercial property.

In the 1978 case of *Wellenkamp v. Bank of America*, the Supreme Court held that the automatic enforcement by an institutional lender of a due-on-sale clause in a deed of trust on real property constituted an unreasonable restraint on alienation. The effect of the *Wellenkamp* holding has been to virtually eliminate foreclosure attempts by institutional lenders based upon the sale of the real property securing the promissory note held by the lender. This in turn has resulted in the extensive use in sales transactions of creative financing involving the buyer's assumption of the first loan against the property with the seller carrying back a junior note from the purchaser.

In the *Wellenkamp* opinion the Supreme Court expressly limited its holding to the enforcement of due-on-sale clauses by institutional lenders and—by implication in some of its rationale—to owner-occupied dwellings. Until the *Dawn Investment* case, the questions of automatic enforceability by private lenders and of enforceability where the securing property was other than an owner-occupied dwelling have not been conclusively answered.

In the *Dawn Investment* case, the sellers of the real property and co-beneficiaries of the deed of trust securing the promissory note were a corporation wholly owned by a husband and wife, and the mother of the husband-owner. When they sold the property in 1977, the sellers took back a note secured by a second deed of trust which contained a due-on-sale clause. When the purchasers sold the property three years later and took back an all-inclusive deed of trust, the petitioners (beneficiaries of the note) notified the sellers and new owners of their election to accelerate the payment of the note. The sellers then sought an injunction and declaratory relief.

In ruling that the *Wellenkamp* holding was applicable to investment property as well as to an owner-occupied dwelling, the court rejected the petitioners' argument that the rule against automatic enforcement should not be applied in the case of the investor-purchaser because the investor and lender were "both concerned with business considerations." Instead, the court reaffirmed the rule of *Wellenkamp* that the test for reasonableness of a restraint on alienation involves balancing the quantum of restraint against the justification for it. Applying that test, the court determined that there was no valid basis for any distinction between a due-on-sale clause in a deed of trust on an owner-occupied dwelling and a deed of trust on an investment or commercial property.

Of greater overall significance is the court's ruling that the rule against automatic enforceability applies to private as well as institutional lenders. It rejects all of petitioner's contentions that the law should be different for a private lender than for an institutional one. In particular the court reasons that while private financing is usually short term and that the quantum of restraint is thus less than in the case of long-term financing, the justification for restraint in the case of short-term financing is also less. The court concluded that ". . . no substantial reason has been shown to treat private lenders differently than institutional lenders. . . ."

The question of automatic enforceability of a due-on-sale clause in a deed of trust in which a federally chartered savings and loan association is the beneficiary has not yet been finally decided. The United States Supreme Court has agreed to hear *de la Cuesta v. Fidelity Federal Savings and Loan Association*, a case in which a California appellate court held that the *Wellenkamp* rule applied to due-on-sale clauses in deeds of trust of federally chartered savings and loan associations.

DUE-ON-SALE (Continued from page 3)

will not invoke a due-on-sale clause in a deed of trust is that the lender will not be made aware of any subsequent transfers of beneficial interest. While no explanation is given for the statement that the trust will avoid reassessment of the property under Proposition 13, DRE believes that the author has in mind the transfer of title to the property to a revocable trust in which the purchaser of the property would be the sole beneficiary.

It is readily apparent that there can be no assurance that the beneficiary of the loan made by a federal savings and loan association will not become aware of the transfer of the beneficial interest in the property to a new owner. Likewise there can be no assurance that the beneficiary will not take action to enforce the due-on-sale clause. Neither of these possibilities can be described as remote.

DRE has been advised by the legal staff of the Board of Equalization that the law does in fact exempt the conveyance of real property to a revocable trust as an event triggering reassessment under Proposition 13. Obviously however there are serious legal and practical problems presented to any person who receives merely the equitable interest in real property while the seller retains legal title—or the ability to unilaterally acquire title at any time from a trust. The purchaser's situation is comparable in many respects to that of a vendee under a real property sales contract.

Licenses contemplating the use of a trust such as that described here are urged to obtain private legal advice before involving their clients in any such transaction. If a licensee does involve a client in such a transaction without a complete and accurate disclosure of the potential consequences to the client, civil liability and/or disciplinary action against the licensee is the likely result. 

DRE COMPLAINTS: When the real estate market is depressed, the number of complaints to DRE against licensees tend to increase. Currently the real estate market is conducive to sharp practices by some licensees.

Approximately 50% of DRE's complaints allege some type of misrepresentation; roughly 30% allege negligence or incompetence; recently over 10% of complaints filed or investigations made by DRE concerned mishandling of trust funds,

especially by mortgage loan brokers.

Licenses are encouraged to avoid practices which can lead to criticism of the industry generally and disciplinary action against their licenses in particular. 

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