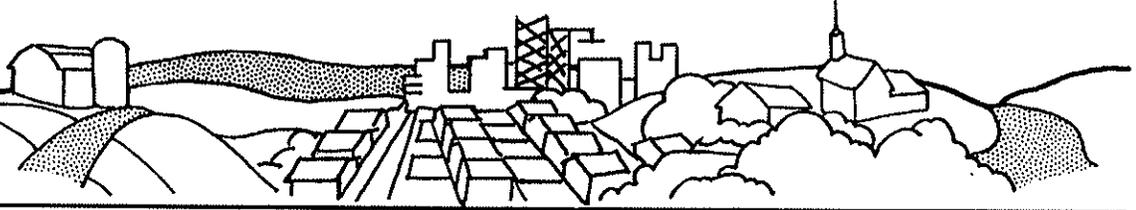




REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



GEORGE DEUKMEJIAN, Governor

Summer 1983

JAMES A. EDMONDS JR., Commissioner

"TESTERS" For Fair Housing Groups May Sue For Housing Bias

"Testers" are individuals who pose as renters or purchasers of real property, without intention to rent or buy, for the purpose of collecting evidence of unlawful steering practices. They are frequently associated with nonprofit fair housing groups.

On February 24, 1982, the U.S. Supreme Court, in a unanimous ruling, held that both a tester and the fair housing group employing her had standing to sue an apartment owner under the Fair Housing Act of 1968 (the Act) for giving false information about apartment availability in an apartment complex. The case is *Havens Realty Corporation, et al., v. Coleman, et al.*, 102 S. Ct. 1114.

In its ruling the Supreme Court stated that under Section 804(d) of the Act any person has an "enforceable right" to truthful information concerning the availability of housing and that under Section 812 the sole requirement for standing to sue is that plaintiff allege that as a result of the defendant's action the plaintiff has suffered "a distinct and palpable injury."

This case began in 1979 as a class action suit against Havens Realty Corp. and one of its employees alleging that Havens had engaged in a continuous course of racial steering, a violation of Section 804(d) of the Act. This section provides that it is unlawful for an individual or firm covered by the Act "to represent to any person because of race, color, religion, sex or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact available."

The plaintiffs were a black apartment-seeker; a black tester; a white tester; and Housing Opportunities Made Equal (HOME), the non-profit fair housing group employer of the two testers. HOME was organized under the laws of the State of Virginia and its purpose was "... to make equal opportunity housing a reality in the Richmond Metropolitan Area." The testers

(Continued on page 5)

Disclosure Requirements for Conversions

Assembly Bill 100 (Harris), Chapter 81 added Section 1134 to the Civil Code, effective July 1, 1982. It requires certain disclosures be made when converting an existing structure to a condominium project, stock cooperative, or community apartment project. The owner, developer, or agent of the owner or subdivider of the project being converted must provide any person who makes an offer to purchase a unit with either a written statement listing all substantial defects or malfunctions in the major systems in the unit and in the common areas, or a written statement disclaiming any knowledge of such defects. The disclaimer can only be given if a reasonable inspection of the unit and common areas of the project fails to reveal any substantial defects or malfunctions. The areas for this disclosure requirement include, but are not limited to, the roof, walls, floors, heating, air conditioning, plumbing, electrical systems or components of a similar or comparable nature. Recreational facilities located in the common areas are also subject to this requirement.

The subdivider, owner or agent must give the written statement as soon as practicable before the transfer of title in the first sale of a unit after conversion to a prospective buyer. "Prospective buyer" includes any person making a purchase offer. If the written disclosure is given after an agreement to purchase has been executed, the purchase agreement must contain a statement describing the buyer's right to rescind the agreement, the method for rescission and time allowed for the rescission. The time period permitted the buyer to give written notice of rescission is either 3 days after delivery of the disclosure statement in person or 5 days if deposited in the mail.

Any person who willfully fails to meet these disclosure requirements will be liable for actual damages suffered by the buyer.

Licensees affected by this bill should become thoroughly familiar with the law's provisions.



Due-on-Sale Update—The Way it Seems

On October 15, 1982, the President signed into law the Garn-St. Germain Depository Institutions Act of 1982 (Garn bill) which became effective upon signing. With certain exceptions described below, the Garn bill makes due-on-sale provisions in real property secured loans automatically enforceable by all types of lenders.

The Garn bill together with the earlier decision of the United States Supreme Court in *Fidelity Federal Savings and Loan v. de la Cuesta* is likely to have a significant impact upon the availability of assumable mortgage financing for home buyers. In *de la Cuesta*, the high court ruled that federally-chartered savings and loan associations can enforce acceleration provisions in their real property loans pursuant to regulations of the Federal Home Loan Bank Board regardless of conflicting state statutes and court decisions. By preempting state laws and judicial decisions which restrict enforceability of due-on-sale provisions in financing instruments, the Garn bill assures that due-on-sale clauses in real property loans originated after October 15, 1982, will be automatically enforceable by state-chartered lending institutions and individual lenders as well as by federally-chartered S&Ls.

The Garn bill contains special provisions with respect to enforceability of due-on-sale clauses in loan instruments of other than federally-chartered savings and loan associations which were originated, assumed or taken "subject to" during a so-called window period immediately preceding the effective date of the Garn bill.

The window period is that period of time between (A) the date on which a state by constitutional provision or statute or a decision of its highest court prohibited unrestricted enforcement of due-on-sale clauses and (B) October 15, 1982, the effective date of the Garn bill. The beginning date for the window period has yet to be determined in California. It seems likely that there will be legislation to establish that date, probably during the 1983 legislative session.

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REAL ESTATE BULLETIN

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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 1982-January-February 1983

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 \$5.00 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

<i>Business and Professions Code</i>		<i>Regulations</i>	
490	relationship of conviction to licensed activity	10176(i)	fraud or dishonest dealing in licensed capacity
10085	failure to submit to Commissioner prior to use advance fee agreements or advertising	10177(a)	procuring a real estate license by misrepresentation or material false statement
10130	performing acts for which a license is required without the appropriate license	10177(b)	conviction of crime
10137	unlawful payment of compensation	10177(d)	violation of real estate law or regulations
10145	trust fund handling	10177(f)	conduct that would have warranted denial of a license
10162	office abandonment	10177(g)	negligence or incompetence as licensee
10176(a)	making any substantial misrepresentation	10177(h)	failure to supervise salespersons
10176(c)	course of misrepresentation through salespersons	10177(i)	fraud or dishonest dealing in licensed capacity
10176(e)	commingling trust funds	10177(k)	violation of restricted license condition
		10177.5	civil fraud judgment based on licensed acts
		10237.4	failure to furnish prescribed real property security statement
		10238.3	real property securities permit
		2715	brokers failure to maintain current address with DRE
		2726	broker-salesperson agreements
		2727	failure of salesperson acting as a principal to make written disclosure to supervising broker of sale or purchase of real property, business opportunity or mobile-home within specified time limit
		2830	failure to maintain trust fund account
		2831	inadequate trust fund records
		2831.1	inadequate trust fund records
		2832	improper handling of earnest money deposit
		2832.1	trust fund accountability
		2970	misleading advance fee advertising material

LICENSES REVOKED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Kolby, Raymond Theodore, Jr. (RES)	5029 West 138th St., Hawthorne	3/9/82	490, 10177(b)
*Gruenwald, James George (REB)	4108 Newell St., Sacramento	9/16/82	10177(j)
*Bleiweis, Karen Patricia (RES)	1742 Reliez Valley Rd., Lafayette	10/27/82	490, 10177(b)(f)
aka—Rupnow, Karen Patricia aka—Bleiweis, Karen Rupnow			
*Straub, Donald Aetion (RREB)	5199 E. Pacific Coast Hwy., #603, Long Beach	11/24/82	490, 10177(b)(k), 10177.5
*Verdon, Christopher Reynolds (RES)	325 Calle Cuervo, San Clemente	11/26/82	10145, 10176(e)(f), 10177(d)(j)
*Chain, Alan Joseph (REB) (REO)	3516 Highland Ave., Manhattan Beach	11/26/82	490, 10177(b)
McCord, Cecil Brian (RES)	5732 Trinetto Ave., Garden Grove	12/7/82	490, 10177(b)
Rasmussen, Robert Elmer (RRES)	2519 W. Shaw, Ste. 106, Fresno	12/13/82	10177(j)(k)
Roberts, Richard Michael (RES)	P.O. Box 1495, Lake Arrowhead	12/14/82	490, 10177(b)
Athens, Anthony Alex (RES)	2333 Panda Place, Ventura	12/14/82	490, 10177(b)
Coonis, Michael Benjamin (REB) (REO)	8863 Adams Ave., Huntington Beach	12/28/82	490, 10177(b)
Off—Allocast Inc. Off—Sparta Funding Inc. Pyramid Home Loans Corporation (REC)	2659 Townsgate Rd., Ste. 222, Westlake Village	12/29/82	10176(i), 10177(d)(j)
Griffith, Thomas Russell (RES)	2753 Bolker Dr., Port Hueneme	12/29/82	490, 10177(b)
Ridley, Loretta (RES)	3058 N. Ewing, Alhambra	12/29/82	490, 10177(b)
Monroy, Rolando D. (RES)	331A S. Mayfair, Daly City	1/6/83	490, 10177(b)(f)
Shubin, Charles (RES)	459 W. Promontory Dr., Newport Beach	1/10/83	10237.4, 10238.3, 10177(d)
Skyland Real Estate (REC)	73 061 El Paseo, Palm Desert	1/10/83	10237.4, 10238.3, 10177(d)
Cobb, Willie Claude (RES)	P.O. Box 19143, Los Angeles	1/11/83	490, 10177(b)
Ford, Yolande Ringoist (RES)	3857 Birch St., Ste. 161, Newport Beach	1/11/83	490, 10177(b)
Fiice, Ernest C. Jr. (RES)	1 City Blvd., Ste. 812, Orange	12/14/82	10177(d)
Fiice, Ernest Charles (REB) (REO)	5500 Pasco Del Lago West #11E, Laguna Hills	1/13/83	10176(a)(e), 10177(d)(f)(g)(h)
Off—F & W Recouance Corp. Off—Heritage Home Loans Inc. Off—Heritage Loan Services Inc. Off—Heritage Trust Deed Guaranty Corp. Heritage Home Loans Inc. (REC)	1220 E. Birch St., Brea	1/13/83	10176(a)(e)(g), 10177(d)(f)(g)
Off—Felic, Ernest Charles Phillips, Catherine Mary (RES)	1701 Olympia St., Modesto	1/17/83	490, 10177(b)(f)
Jacko, Linda D. (RES)	4954 Hazeltine Ave. #8, Sherman Oaks	1/18/83	490, 10177(b)
Billinger, Mattie Mae (REB)	609 S. Long Beach Blvd., Compton	1/18/83	10176(j)
O'Neal, Patrick A. (RES)	1806 Port Renwick, Newport Beach	1/18/83	490, 10177(b)
Young, Cecil Vernon (REB)	334 Fairview Dr., Ventura	1/19/83	490
Wilton, Jay Henry (RES)	2206 Pier St., Santa Monica	1/19/83	490, 10177(b)
Bailey, Gary Lee (RES)	1779 East Ave., Hayward	1/24/83	490, 10177(b)
Madrid, Ernie L. (RES)	15762 Amar Rd., La Puente	1/18/83	490, 10177(a)
Wharton, Theron Daniel (RES)	P.O. Box 1727, Auburn	1/24/83	490, 10177(b)(f)
Rainwater, Florence Yevonne (RES)	23 Nogai Cir., Salinas	1/25/83	490, 10177(b)(f)
Bradshaw, John Robert (REB)	1299 E. Coe, Camarillo	1/25/83	490, 10177(b)
Scoble, John Robert (RES)	11665 Silverfir Dr., P.O. Box 1207, Truckee	1/31/83	490, 10177(b)
Johnson, Diane Lee (REB) (REO)	23877 S. Jacktone Rd., Ripon	2/1/83	10145, 10176(a)(i), 10177(d)
Braemer, Kenneth Albert (RES)	3922 Telegraph Rd., Ventura	2/2/83	10137, 10176(i)
Artoux, Gary Lee (RES)	P.O. Box 631, Malibu	2/2/83	10176(a)
Knight, Renee Deanna (RES)	329 14th St., Vallejo	2/4/83	490, 10177(b)
Fulton, Elmer Cecil (REB)	10944D Camino Ruiz, San Diego	2/4/83	490, 10177(b)
Lawrence, William Kadel (REB) (REO)	1650 Oregon St., Redding	2/7/83	2831, 2831.1, 2832.1, 10145, 10238.3, 10176(a)(e)(i), 10177(d)(j)
Off—Interstate 5 Real Estate Interstate 5 Real Estate (REC)	1650 Oregon St., Ste. 213, Redding	2/7/83	2831, 2831.1, 2832.1, 10145, 10238.3, 10176(a)(e)(i), 10177(d)(j)
Off—Lawrence, William Kadel Bartas, John Alexander (RES)	3700 Lillicip, #201, Santa Clara	2/8/83	490, 10177(b)
20th Century Real Estate Inc. (REC)	5464 Riverside Dr., Chino	2/8/83	10176(a), 10177(d)(j)
Off—Poole, John L. Marovitch, Louis Joseph III (REB)	22404 Barton Rd., Ste. 10, Grand Terrace	2/8/83	10176(a)(i), 10177(d)(g)
Caldwell, Kit Deloy (RES)	2975 Batiram, Pomona	2/10/83	490, 10177(b)
Clark, Michael Jack (RES)	1832 Constitution Ct., San Jose	2/14/83	490, 10177(b)(f)
Eitzen, Kenneth (RES)	P.O. Box 26364, San Jose	2/22/83	490, 10177(b)(f)
Tirado, Don Louis (RES)	293 Turquesa Ct., San Jose	2/22/83	490, 10177(b)(f)
Birica, Cleopatra M. (RES)	6545 Wilbur Ave., Space 50, Keseda	2/25/83	490, 10177(b)
Kim, Eun Soon (RES)	16023 Gledhill St., Sepulveda	2/25/83	490, 10177(b)
Gonzalez, Robert Garcia (REB)	8721 Hazeltine Ave., Panorama City	2/24/83	10176(i)
Glos, Robert Lester (RES)	59 Fallon Ln., Sacramento	2/28/83	10130, 10131, 10137, 10145, 10177(d)(j)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Frenkel, Barbara (RES) (Right to RRES license on terms and conditions)	7100 Balboa Blvd., #805, Van Nuys	10/28/82	10177(g)
*Laguna Viejo Realty Incorporated (REC) Off—Zigrossi, Gerald Fred (Right to RREC license on terms and conditions)	25515 Muirlands, Mission Viejo	11/24/82	10176(a)
*Zigrossi, Gerald Fred (REO) Off—Laguna Viejo Realty Incorporated (Right to RREB license on terms and conditions)	25515 Muirlands, Mission Viejo	11/24/82	10176(a)
Jgins, Clayton Donald (REB) (REO) Off—Coast County Mortgage (Right to RREB license on terms and conditions)	1185 N. Main, Ste. 3, Salinas	12/9/82	10177(f)(g)
Clugston, Monte Ronald (RES)	4022 East Clinton, Fresno	12/13/82	10177(g)
Dalton, John William (REB) (Right to RRES license after 90 days on terms and conditions)	5845 Mother Lode Dr., Placerville	12/13/82	10145, 10176(a)(c), 10177(d)(g)
Jahadi, Mohammad Hossein (RES) (REB)	6342 Bellarie Ave., North Hollywood	12/14/82	490, 10177(b)
Maxwell, Melba Gregston (RES) (Right to RRES license after 30 days on terms and conditions)	3097 Menlo Dr., Glendale	12/14/82	10176(a)
Bernard, Myron Steven (REB) (REO) Off—Lam Investments Inc. Off—Transamerican Business Consultants Inc. (Right to RRES license on terms and conditions)	615 Clivic Center Dr. West, Santa Ana	12/22/82	490, 10177(b)
Patania, John Paul (RES) (Right to RRES license on terms and conditions)	Telegraph Landing, #62, 154 Lombard St., San Francisco	12/22/82	490, 10177(b)(f)
Geffcken, Alhart Holm (RES)	9917 Sunset Blvd., Beverly Hills	12/28/82	490, 10177(b)
Waite, Terry Charles (RES) (Right to RRES license after 21 days on terms and conditions)	8146 Greenback Ln., Ste. 102, Fair Oaks	12/29/82	10177(g)
Freundberg, Alfred Lynn (RES) (Right to RRES license on terms and conditions)	12546 Miller Ave., Saratoga	11/3/82	490, 10177(b)(k)
Schwartz, Brian James (RES) (Right to RRES license on terms and conditions)	2830 Daxhart, Simi Valley	1/11/83	490, 10177(a)(b)
Van Schaik, Janete Teresa (REB) (Right to RREB license after 90 days on terms and conditions)	3770 Toronto Rd., Shingle Springs	1/12/83	10176(a)(i)
Smith, Burton Courtney (REB) (Right to RREB license on terms and conditions)	3115 N. Lake Blvd., Bldg. 94, Tahoe City	1/17/83	2830, 2831, 2831.1, 2832.1, 10145, 10176(c), 10177(d)
Lopus, Dorothy Helen (RES) (Right to RRES license on terms and conditions)	8205 Coromar, Atascadero	1/17/83	490, 10177(b)
Kelem, Louis (REB) (Right to RREB license on terms and conditions)	2170 El Camino Real, Occaside	1/19/83	490
Lampkins, Houston (RES) (Right to RRES license after 60 days on terms and conditions)	10724 2nd Ave., Inglewood	1/26/83	10176(a)(i), 10177(g)
Farrow, John Glen (RES) (Right to RRES license on terms and conditions)	19347 Ventura Blvd., Tarzana	1/27/83	490, 10177(b)
Lehman, Robert William (RES) (Right to RRES license on terms and conditions) off, Nathaniel (REB) (Right to RRES license on terms and conditions)	23981 La Chiquita Dr., Mission Viejo	1/27/83	490, 10177(b)
Lieberman, Sara Jean (REB) (REO) (Right to RREB license after 30 days on terms and conditions)	318 Rigby Ave., Bakersfield	1/31/83	490, 10177(b)
Celebrity Realty West, Inc. (REC) Off—Lieberman, Sara Jean (Right to RREC license after 30 days on terms and conditions)	18580 Ventura Blvd., #43, Tarzana	1/31/83	2832, 10145, 10176(a)(c), 10177(d)(g)
Baker, Marian Jeanette (RES) (Right to RRES license on terms and conditions)	203 Tahoe Dr., Vacaville	2/4/83	490, 10177(b)
Conlan, John Joseph (RES) (Right to RRES license on terms and conditions)	150 E. Saint Charles St., San Andreas	2/10/83	490, 10177(b)
Gillia, Barbara Ann (REB) (Right to RREB license on terms and conditions)	616 Carignane Ct., Lodi	2/15/83	490, 10177(b)
Wilkes, John T. (REB) (Right to RREB license on terms and conditions)	2030 Taylor Rd., Roseville	2/22/83	490, 10177(b)(f)
Foote, Richard Andrew (RES) (Right to RRES license on terms and conditions)	P.O. Drawer B C, Crestline	2/24/83	490, 10177(b)

LICENSES SUSPENDED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Mosqueda, Manuel L. (RES) (Right to Restricted license on terms and conditions)	20902 Dumetz Rd., Woodland Hills	12/7/82 (1 year)	490, 10177(b)
Cantrell, Roy LaVerne Jones (REB) (Right to Restricted Sales license on terms and conditions)	10180 Reseda Blvd., Northridge	12/14/82 (1 year)	490, 10177(b)

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Iughes, Warren Burton (RES) (Stayed for 2 years on terms and conditions)	543 N. Kenter, Los Angeles	11/9/82 (30 days)	10177(d)
Iletcher, Warren Jr. (RES) (Stayed for 1 year on terms and conditions)	1766 Carmona, Los Angeles	12/14/82 (30 days)	2727, 10177(d)
Trass, Raymond Earl (REB) (Stayed for 1 year on terms and conditions)	5800 Wilshire Blvd., Los Angeles	1/26/83 (20 days)	10177(g)
Rayshire Corporation (REC) (Stayed for 1 year on terms and conditions)	5800 Wilshire Blvd., Los Angeles	1/26/83 (20 days)	10177(g)
Vanjay Investment Corporation (REC) Off—Vandervoort, James Oliver (All but 30 days stayed for 1 year on terms and conditions)	4676 Admiralty Way, Ste. 701, Marina Del Rey	1/26/83 (60 days)	10177(d), 11012, 11018(i)

(Continued on page 7)

Disciplinary Digest

Prepared by
Stephen D. Thomas, Counsel
San Francisco District Office

“AN OFFER YOU CANT REFUSE” is a common expression, made famous by a popular film.

However, even if the offer is one that can be—and possibly will be—refused, it still must be presented to the seller. Such is the mandate of the Code of Ethics and Professional Conduct contained in Regulation 2785(a)(5) which reads:

(a) Unlawful Conduct. Licensees shall not engage in “fraud” or “dishonest dealing” or “conduct which would have warranted the denial of an application for a real estate license within the meaning of Business and Professions Code Sections 10176 and 10177 including, but not limited to, the following acts and omissions:

(5) The willful failure by a listing broker to present or cause to be presented to the owner of the property any offer to purchase received prior to the closing of the sale, unless expressly instructed by the owner not to present such an offer, or unless the offer is patently frivolous.

Such also is the holding of the Real Estate Commissioner in a recent disciplinary action in which the license of a real estate broker was revoked. The facts indicate a classic violation of the cited Code section.

The licensee (respondent) had obtained from the seller a listing for sale of a large commercial property. Although the listing was to be placed with the local Multiple Listing Service, the respondent failed to do so. The property was in a high-demand area, and the asking price apparently was very reasonable.

Shortly after the listing was effective, the respondent, through his own efforts, located a buyer. A written offer was made, and after a series of counter-offers, the buyer and seller reached an agreement.

All commissions from the transaction were to go to the respondent.

However, what the respondent failed to disclose to his principal, the seller, was that a higher offer with better terms had been obtained through the efforts of another licensee. This offer had been written up—and the respondent notified of its existence—*prior* to the date of final agreement between the first buyer and the seller. And, of course, the offer provided for a commission split between the respondent and selling agent.

(Continued on page 7)

DUE-ON-SALE (Continued from page 1)

Under the Garn bill provisions, window period loans will remain governed by *Wellenkamp*, *Dawn Investment* and other California judicial decisions for a three-year period from October 15, 1982, through October 14, 1985, unless the California Legislature establishes different provisions with respect to enforceability of window period loans through legislation enacted during the three-year period. The Garn bill gives comparable authority to the United States Comptroller of the Currency to establish rules applicable to window period loans originated by national banks.

and fast rules, and real estate licensees should be extremely guarded in offering advice about the enforceability of due-on-sale clauses to clients who are contemplating the financing of a purchase through assuming or taking "subject-to" an existing loan. Even the *de la Cuesta* decision which is relatively straightforward leaves unanswered the question of whether federal savings and loan associations that have converted from state-chartered associations may automatically enforce due-on-sale clauses in loans that were made while the association was under state charter. Determination of when the window period began will have to await the enactment of a law by the California Legislature or

CARVING OUT THE CALIFORNIA WINDOW



EXPLANATION:

1. A "window period" of some undetermined length has been carved out of the federal preemption of state law for mortgages containing due-on-sale clauses which were originated or assumed after California first took action to prohibit enforcement of due-on-sale clauses upon outright transfers of property.
2. California legislature must determine the date it first took the prohibitory action. That date will be TIMEPOINT A in this diagram. The period between TIMEPOINT A and TIMEPOINT B will be California's "window period."
3. Real property loans, other than loans made by federally chartered institutions, originated or assumed during this "window period" may be transferred for the 3-year assumability period between TIMEPOINT B and TIMEPOINT C (October 15, 1982 to October 15, 1985) without danger of lender acceleration.
4. After TIMEPOINT C (October 15, 1985) "window period" loans may be accelerated by the lender upon transfer unless legislative action intervenes during the 3-year period between TIMEPOINT B and TIMEPOINT C.

The apparent reason for the window period is to avoid the harsh effects that automatic enforceability of due-on-sale clauses would be likely to have upon persons who entered into real property purchase and financing transactions in reliance upon state statutory or decisional law restricting the enforceability of due-on-sale clauses. The Garn bill leaves it for each state to determine how best to ameliorate the effect of the legislation upon those persons who entered into transactions believing—on the basis of state law or judicial decisions—that due-on-sale clauses were not enforceable by lenders without a showing of security impairment. The California Legislature may act before October 15, 1985, to extend the *Wellenkamp* rule and other appellate decisions restricting enforceability of due-on-sale clauses in window period loans by state institutions and individuals beyond October 15, 1985. The Legislature also has the authority to enact legislation which will limit applicability of the *Wellenkamp* rule for window period loans to a period less than the three-year period immediately following October 15, 1982. If the California Legislature does not act with respect to window period loans before October 15, 1985, all due-on-sale clauses in these loans will become automatically enforceable.

There are a great many questions about enforceability of due-on-sale clauses that remain to be answered. There are few hard

possibly a decision by the California Supreme Court. Until then about the only thing that can be said with any degree of assurance about the beginning date of the window period is that it is a date not later than August 25, 1978, the date that the *Wellenkamp* decision came down.

As the *Bulletin* goes to press, the following facts can be stated concerning automatic enforceability of due-on-sale clauses in loan instruments:

1. Federally-chartered savings and loan associations may automatically enforce due-on-sale clauses in promissory notes and deeds of trust which they originated while federally chartered.
2. With certain exceptions of limited application enumerated in the Garn bill, all loans originated after October 15, 1982, may be accelerated by the lender upon transfer of the property securing the loan.
3. Loans originated before the window period which are secured by real property that was not transferred during the window period may be accelerated upon transfer of the property.
4. Loans originated, assumed or taken "subject-to" during the window period are governed by California law and remain assumable under the rationale of *Wellenkamp* and related California decisional law for a period of up to three

(Continued on page 8)

KITING

On February 28th a husband and wife submitted an offer to purchase a residence through the listing real estate broker who assisted in the negotiations for the sale and purchase. The offer was for \$81,000 and purchasers gave broker a check for \$1,000 payable to broker as a good faith deposit.

This offer was refused by owners. A second offer for \$83,500 was submitted on behalf of purchasers by broker, who retained the \$1,000 and used it as the earnest money deposit of the second offer. This offer was accepted by owners on March 2nd.

Shortly thereafter broker opened an escrow at Bank "A" and represented to sellers and buyers that it would be a 30 day escrow. On April 5th purchasers gave broker an additional \$18,022, which broker claimed was the balance needed to close escrow.

Believing the transaction was complete, purchasers moved into the property on April 13th. On April 30th purchasers were advised by owners that they had received no monies from the transaction.

When contacted by purchasers, broker assured them that everything was all right. The following day, however, the escrow officer at Bank "A" confirmed to buyers and sellers that there were no funds in the escrow.

The \$19,022 received by broker from purchasers constituted trust funds that broker was required to place into a neutral escrow depository, into the hands of broker's principal or into a trust account, according to Section 10145 of the Business and Professions Code (hereafter the Code). Broker failed to handle said funds as prescribed in said section and instead placed them into a non-trust fund account maintained by him at Bank "B", commingling said funds with other funds. Broker then converted the funds to his personal use.

Buyers and sellers both testified at the subsequent DRE hearing that they had not authorized broker to use any of the monies handed broker for any purpose other than the purchase of the subject residence.

In order to complete the transaction and close the escrow, broker gave a deposit to escrow holder Bank "A" consisting of several checks totalling \$19,022. These checks were given to broker as downpayments by purchasers of other real properties who were in no way connected with the subject transaction, and were used by broker without authorization by the owners of said funds. The checks given as downpayments by these other purchasers also constituted trust funds as defined by Section 10145 of the Code. Broker thus also commingled and converted these trust funds in order to close the sale and complete subject escrow.

Escrow finally closed on May 7th. Buyers filed a complaint with DRE. An investigation and administrative hearing followed. The hearing officer found that broker had violated Section 10145 of the Code and that grounds for the revocation of respondent's license were

(Continued on page 5)

TESTERS (Continued from page 1)

were employed by HOME to determine whether Havens and other apartment owners practiced racial steering.

At the time of the alleged violations Havens owned and operated two apartment complexes in a suburb of Richmond, VA. The complaint alleged that when the black apartment-seeker inquired of Havens as to the availability of an apartment at one complex, he was falsely told that none was available. On several specified dates the black tester was told there were no vacancies while the white tester was told there were vacancies.

The federal trial judge ruled that because the testers and HOME were not actually seeking housing, they suffered no injury. Their suit was dismissed and the suit of the black apartment seeker was continued.

On appeal by HOME and the testers, the appeals court found that they did have standing to sue and reinstated their lawsuit. Havens Realty appealed the ruling to the Supreme Court.

In sorting out the rights of the parties the Supreme Court determined that:

- the black tester could sue for damages for having been given false information
- HOME could sue because the false information received by it impaired its ability to function properly as a provider of housing counselling and referral services and caused an unnecessary drain on its resources
- the white tester was offered an apartment by Havens, was not given false information, and cannot sue.

The case was remanded for trial along the lines directed by the High Court.

Some interesting observations by the Court stemming from Havens are:

- the congressional intention cannot be overlooked in determining whether testers have a right to sue; a tester who has been the object of a misrepresentation and has suffered injury within the meaning of Section 804(d) has standing to sue in two capacities: as testers and as individuals deprived of the benefits of interracial association.
- the 180-day limitation period for filing a civil suit under the Act does not bar an action where a plaintiff challenges not just one occurrence of conduct violative of the Act but alleges continuing violation manifested in a number of incidents, and a complaint is timely when filed within 180 days of the last alleged occurrence of a discriminatory practice.



AUDIT

According to information appearing in the December 1982 issue of *CAT News*, a monthly publication of the Community Associations Institute, many persons believe the main purpose for an audit is to disclose fraud. However, the audit is really designed to express an opinion by a CPA on the fairness of the financial statements being audited. "Management makes the decisions and the auditor gives his opinion on the fairness of management's presentations of the resultant facts."

**Public Service—
an Obligation
of Appraisers**

By John D. Dorchester, Jr., MAI

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Perhaps the most basic requisite for group endeavor to qualify as a profession is that it satisfy a public need. Public service is a requirement and obligation of professionals.

Service to the public, in the professional sense, is an elusive concept. The "public good" would suffer if trash were not collected regularly, yet few have argued that service to the public is a guiding tenet of the garbage business. It is simply a business. It can be financially rewarding because the service is needed.

Is compensation paid to practitioners a major indicator of a public service profession? Clearly, no. Of the four traditional professions (medicine, law, education, and religion), the first two are at the top of the compensation ladder, while the latter two are near the bottom. Interestingly, some doctors and lawyers who receive exceptionally high fees are accused of being "unprofessional," while others are classified as leading their profession because of their ability to earn such fees.

There must be another dimension to public service by which it may be judged. I believe there are two major factors that may be evaluated by the following questions: is the service one that, if not available, would result in substantial damage to society or the public good? Is the service rendered so that the focus is on the client and the public rather than the self-interest of the person rendering the service?

Nurturing the public interest involves providing a service with importance beyond an individual work assignment or client and beyond the self-interests of those who render such services. In this context the four practitioners' services may not always be up to this standard.

Appraising clearly provides a necessary societal service that goes far beyond the considerations of a single assignment. That is why the Appraisal Institute insists on high ethical, moral, and competency standards for its members and candidates. These words are as valid today as when written by the Appraisal Institute's first president, Philip W. Kniskern, in the first *Appraisal Journal* 50 years ago:

It is clear that the Institute has been organized and is being developed with a full and clear conception of its public obligations and responsibilities and that it intends to cherish and constantly justify full public confidence and respect . . . constructive advances in this field will contribute to real estate investment stability and security . . .

One needs little market experience to see the extent to which our designations and the

(Continued on page 6)

**Criminal Conviction and
Revocation for Sale of Broker
Qualification Course Transcript**

In January 1982, A, a real estate salesperson who wished to complete courses to qualify to take the broker examination before the mid-1982 expiration of her salesperson license, called B, a licensed real estate broker, and inquired about enrolling in broker-qualification correspondence courses that A believed B was offering.

B was operating a real estate school at the time, but was not offering correspondence courses. A was not able to attend classes at the school because of the distance she would have to travel.

When A explained her plight, B suggested that she purchase a transcript from him for \$500 which would show that she had taken and passed six live broker qualification courses recently conducted by B. A told B that she would consider the proposition and would get back to B if she decided to buy the transcript. Immediately upon terminating the conversation, A called a DRE office and related the gist of B's proposition. The DRE investigator in turn called the local District Attorney who promptly assigned an investigator to the case. At the investigator's urging, A called B, accepted his offer and arranged a meeting to exchange the cash for the transcript. The district attorney's investigator posing as A's husband accompanied A to the meeting and witnessed the delivery of the \$500 for the fraudulent transcript.

B was arrested on the spot and was subsequently convicted of violation of Section 32382 of the California Education Code (unlawful sale of a diploma). In addition to the criminal conviction, DRE revoked B's real estate broker license.



KITING (Continued from page 4)

established under provisions of Sections 10176(e)(1) and 10177(d)(1) and (j) of the Code.

The Commissioner adopted the Hearing Officer's proposed decision of license revocation. Broker pursued remedies through the courts all the way to the California Supreme Court, which denied broker's petition for hearing. Broker's license was revoked.



BALLOONS

Multi-family-dwelling balloon mortgages made 10 to 15 years ago may become a monumental problem for owners should they be unable to refinance or sell the properties as loans fall due.

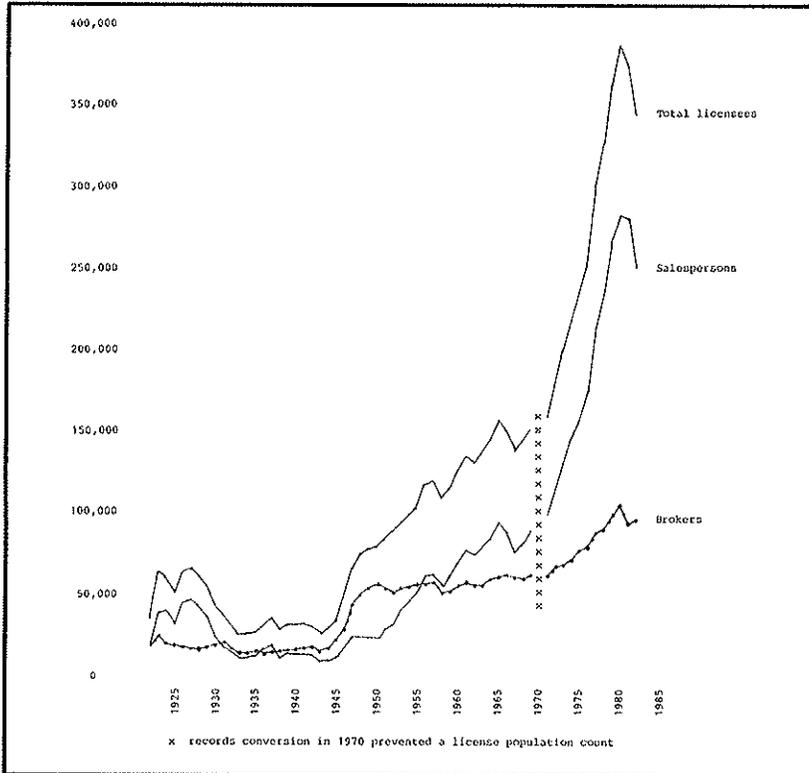
One expert economist estimates \$15 to \$30 billion in apartment building and \$50 to \$100 billion in commercial building balloon loans will come due over the next few years. Whether these mortgages made originally at 8-10% can be exchanged for new mortgages at reasonable rates so rentals will not skyrocket remains to be seen.

Notes from Licensing

In these days of economic uncertainty, conditions are no better reflected than in the real estate industry and in the declining number of real estate licensees appearing in the records of the DRE.

The following graph was prepared from DRE statistics maintained over the years. It shows California licensing trends spanning 50 years from 1922 to the present.

Some liberties were taken with figures in early years as there were at varying times several different classes of licenses existing then that have not been issued since the mid 1960s. No total figure used from those years significantly affects the overall intent of the graph, which is to show the general historical trend of substantial licensee growth and the present downtrend of licensee population.



County	As of January 4, 1983		As of January 4, 1982	
	Broker/ Officer	Sales- Person	Broker/ Officer	Sales- Person
Alameda	3,859	8,320	3,952	9,607
Alpine	3	7	3	6
Amador	134	327	137	306
Butte	628	1,239	672	1,421
Calaveras	145	317	142	322
Colusa	24	45	25	42
Contra Costa	3,542	6,416	3,997	7,316
Del Norte	55	75	53	83
El Dorado	779	1,547	799	1,790
Fresno	1,764	3,751	1,790	4,328
Glenn	44	102	40	119
Humboldt	273	607	293	681
Imperial	122	261	128	294
Inyo	61	123	61	134
Kern	947	2,338	924	2,600
Kings	99	262	97	324
Lake	258	506	266	571
Lassen	66	173	70	193
Los Angeles	30,656	67,002	31,511	76,682
Madera	200	513	202	572
Marin	1,727	2,957	1,714	3,329
Mariposa	51	109	58	122
Mendocino	274	545	282	632
Merced	236	575	237	673
Modoc	16	35	21	36
Mono	79	256	81	273
Monterey	1,096	1,993	1,082	2,272
Napa	384	664	383	748
Nevada	523	925	514	1,026
Orange	13,489	29,194	13,477	32,790
Placer	966	2,096	942	2,242
Plumas	92	142	89	174
Riverside	3,445	7,278	3,522	8,017
Sacramento	3,816	7,718	3,769	8,764
San Benito	52	109	48	125
San Bernardino	3,267	7,972	3,318	8,906
San Diego	12,642	21,771	12,879	25,197
San Francisco	3,492	5,195	3,926	6,100
San Joaquin	831	1,820	845	2,064
San Luis Obispo	991	1,903	977	2,100
San Mateo	3,136	5,989	3,139	6,791
Santa Barbara	1,570	3,319	1,582	3,705
Santa Clara	6,698	12,699	6,764	14,580
Santa Cruz	1,027	1,962	1,026	2,294
Shasta	556	1,123	555	1,271
Sierra	10	16	12	16
Siskiyou	146	319	163	393
Solano	619	1,621	615	1,795
Sonoma	1,589	3,002	1,567	3,456
Stanislaus	819	1,667	823	1,932
Sutter	209	381	210	442
Tehama	134	233	142	262
Trinity	47	83	49	97
Tulare	632	1,246	634	1,419
Tuolumne	226	420	222	478
Ventura	2,437	5,692	2,439	6,695
Yolo	332	630	322	725
Yuba	99	206	121	234
TOTAL	111,816	227,723	113,048	259,595

APPRAISERS (Continued from page 5)

actions of our members and candidates have influenced the market and its stability over the past 50 years. A simple reflection of this is the number of contracts that specify that MAIs must be involved in establishment of new rents, prices for later settlements, or similar terms. I believe history will recognize that major elements of the real estate market's instabilities were influenced by lessened requirements for appraisals, the proliferation of appraisal organizations and designations, and the availability of "the right number at a price."

These problems are indications that the Appraisal Institute must do more if it, through its members and candidates, is to serve the public interest. Demand for appraisal services clearly raced ahead of our ability to furnish designated members during the 1950s and 1960s in particular. This has resulted in a supply of appraisers who are recognized as professionals by the public, yet who are outside our jurisdiction and our direct influence. There is widespread market confusion and concern over who are truly qualified as professional appraisers. Unfortunately, many who are so recognized

fail to meet our standards, or the professional qualification of motivation to render a true public service, while working for a client or employer.

The question of how we may better serve the public is being raised in many issues for which decisions are sought. They include consolidation, admissions processes and requirements, NAR relationships, and others. These issues transcend our individual self-interest. Like all matters pertaining to our profession, however, settlement of these issues based upon the public interest is also in the best self-interest of all those within the profession.

That belief is why the Appraisal Institute is still around after all this time. We are fifty years YOUNG, and working to invest who we are and what we have learned in the future!

(Editor's Note: Much of the foregoing comment applies to the real estate licensee in the conduct of business affairs with and for the public. The question is worth asking: Should real estate practitioners fail to consider and value the public's best interest above self-interest, will there be a demand for the services of real estate agents five, fifteen or fifty years from now?)

45 Hours *Hours* **Almas From**
Continuing Education
 prepared by
Tom Hays, Real Estate Manager

Survey Results

In August 1982, DRE conducted a survey of persons who attended one or more continuing education offerings. Persons selected to receive the survey were taken from lists submitted by the sponsors for the last conducted offering. Questionnaires were mailed to 2,000 randomly selected people with a response of approximately 55% or 1105 returned questionnaires.

Twenty-one questions were posed ranging from whether a responder held a real estate license (96% did) to an opinion as to the overall evaluation of continuing education as an aid to licensees in serving the public (81% gave an overall evaluation of adequate or good).

Other questions requested opinions on benefits received from the offerings, quality of offerings, pass/fail examinations and major objections to the program—to mention a few.

The overall results appear to support continuing education in some form. For a copy of the survey and results, write to DRE Continuing Education Survey, P.O. Box 160009, Sacramento, California 95816.



DISCIPLINARY (Continued from page 3)

Respondent attempted to put off the selling agent—who requested presentation of the offer to the seller—by stating that the property had been sold. However, the selling agent persisted, and eventually made the seller aware of his buyer's offer. Upon learning of the terms—and date—of this offer, the seller confronted the respondent who then disclosed that yet a third offer—again through another selling agent—had been made, from a very interested buyer on terms comparable to the other offers.

The seller then cancelled in writing the listing agreement and terminated the services of the respondent. The seller also sought to renounce and rescind the agreement entered into with the first buyer, and to accept one of the other offers. The actions of the respondent caused the seller and buyer to seek legal assistance to resolve the transaction.

After hearing, the Administrative Law Judge recommended that the respondent's broker license be revoked. The Commissioner adopted this recommendation.

In summary, all offers—with the limited exceptions contained in Regulation 2785—must be presented to sellers prior to the closing of a sale of the property. Such a practice is consistent with the Real Estate Law's emphasis upon full disclosure to an agent's principal. Failure to follow such a practice, as can be seen, may lead not only to substantial damages to a principal but also to substantial license discipline.



LICENSES SUSPENDED WITH STAYS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Vandervoort, James Oliver (REB) (REO)..... Off—Vanjay Investment Corporation (All but 30 days stayed for 1 year on terms and conditions)	4676 Admiralty Way, Ste. 701, Marina Del Rey	1/26/83 (60 days)	10177(d), 11012, 11018(g)
Axelson, Donald Willis (REB) (REO)..... Off—Lake Arrowhead Company, Inc. (All but 30 days stayed for 2 years on terms and conditions)	328 Shasta Dr., Lake Arrowhead.....	1/27/83 (120 days)	2715, 2726, 10130, 10162, 10177(d)
Koetitz, Robert Alvin (REB)..... (Stayed for 1 year on terms and conditions)	9620 Cosumnes Rd., Wilton.....	2/7/83 (20 days)	10177(g)
Poole, John L. (REB) (REO)..... Off—New Life Real Estate Off—20th Century Real Estate, Inc. Off—John Poole & Associates, Inc. (Stayed for 1 year on terms and conditions)	5464 Riverside Dr., Chino.....	2/8/83 (60 days)	10176(a), 10177(d)(g)
Rutherford, Pat (REB) (REO)..... Off—Pat Rutherford Realty & Investments, Inc. (All but 30 days stayed for 1 year on terms and conditions)	1694 North D St., San Bernardino.....	2/8/83 (90 days)	10177(g)
Welch, Jeff Robert (REB)..... (Stayed for 1 year on condition)	2471 Berryessa Rd., San Jose.....	2/9/83 (30 days)	2832.1, 10145, 10176(e), 10177(d)
Gillett, Thomas D. (RES)..... (All but 60 days stayed for 2 years on terms and conditions)	612 Sapphire St., Redondo Beach.....	2/15/83 (120 days)	10177(g)
Sherwood, William Robert (RES)..... (All but 15 days stayed for 1 year on terms and conditions)	2732 Bottlebrush Dr., Los Angeles.....	1/7/83 (60 days)	10176(a)

PUBLIC REPROVALS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Warren, Elma Adelaide (REB) (REO).....	948 Quintana Rd., Morro Bay.....	12/2/82	2831, 2831.1, 10177(d)(h)
Thomas, Francis Joseph (RES).....	6080 Lewis Ln., San Luis Obispo.....	12/2/82	10145, 10177(d)(g)

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Ivey, William L. (REB).....	1741 W. Katella Ave., Anaheim.....	11/10/82
Scotto, Michael John (REB).....	165 Country Club Dr., Novato.....	12/10/82
Cal-West Properties, Inc. (REC).....	5637 N. Pershing, Ste. A-1, Stockton.....	12/10/82
Bird, David Bruce (REB).....	152 W. Park Ave., Ste. 252, El Cajon.....	12/16/82
Stewart Mortgage Company (REC).....	400 Oceanate, Ste. 333, Long Beach.....	01/20/83
Copeland, Willis M. (REB).....	3765 Jurupa Ave., Riverside.....	01/21/83
Gray, Robert Taylor (RES).....	5647 Playa Del Rey, #2, Sunnyvale.....	02/24/83

1983 REAL ESTATE LAW

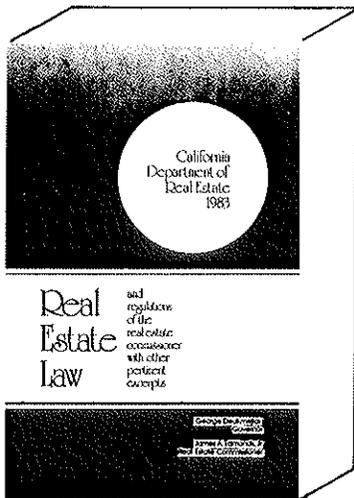
The 1983 *Real Estate Law* book will be available July 15, 1983, for \$7 plus tax, which includes handling and mailing.

Real estate licensees are charged with knowing the Real Estate Law and the Regulations with which they must comply in the every day practice of real estate.

The *Real Estate Law* book contains a convenient and readable copy of these laws and regulations as well as other portions of law applicable to real estate practice. Every licensee is encouraged to have a current edition of the *Real Estate Law* available at all times in home and office.

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DUE-ON-SALE (Continued from page 4)

years after October 15, 1982, unless and until the California Legislature (for state-chartered lending institutions and individuals) or the Comptroller of the Currency (for national banks) acts to adopt or modify the window period provisions of the Garn bill.

5. Unless legislation to extend the effectiveness of the *Wellenkamp* ruling for window period loans is enacted by the State Legislature by October 15, 1985, loan assumability without the consent of the lender except in a few instances of limited application will no longer exist in California.

Some of the notable exceptions to automatic enforceability of due-on-sale clauses enumerated under the Garn bill include the following:

1. Creation of a junior deed of trust or lien on property which is not related to a transfer of the rights of occupancy.
2. Transfer of the property to a joint tenant upon the death of another joint tenant.
3. Transfer to a relative of the borrower resulting from the death of the borrower.
4. Transfer into an inter vivos trust of which the borrower is a beneficiary if it does not relate to a transfer of rights of occupancy of the property.

This article does not purport to be exhaustive on the subject of the enforceability of due-on-sale clauses in instruments for loans secured by real property in California. In many respects, e.g., identifying and applying the window period provisions of the Garn bill, the issues surrounding the power of a beneficiary to automatically enforce a due-on-sale clause are as confused and uncertain as they have been at any time since the *Wellenkamp* decision. Licensees are therefore encouraged to seek legal advice for themselves or their clients in the course of negotiating any transaction in which a buyer will assume or take "subject-to" an existing loan. 

How Much Does It Cost? Can I Afford It?

A house is a house and a home is a home, but a home can soon become just a house again if its occupants cannot afford it. Pride of ownership may lose out in an economic struggle to pay the mortgage.

A real estate agent may tell his prospect, "You should be able to afford a home if your monthly payment is no more than 30 percent of your income." Some lending authorities may say the buyer should qualify for a loan if his income is four times the monthly payment.

Formulas and guidelines offered to aid prospects in making housing decisions can be misleading. For example, "You should buy a house which costs no more than two and one-half times your annual salary." Such formulas do not always consider the size of the family, other installment obligations, the take-home pay, recurring medical bills, other costs such as home maintenance services and rising energy bills. Long-established "rules-of-thumb" should be carefully considered because they may no longer work for even the average family.

In today's economy where steadily increasing costs threaten affordable housing, innovative mortgage instruments have also become part of the lending scheme. A mortgage payment required by a "new era" instrument may not be fixed and stable for its term but instead variable and escalating at specified intervals. This type of mortgage is only a part of the increasing expense of homeownership and, unfortunately, income doesn't always keep pace with living and maintenance expenses.

Lenders, of course, will have the last word as to a prospective buyer's creditworthiness. But licensees should also counsel and assist homebuyers on tight budgets to see the whole expense picture of homeownership so purchasers do not buy a foreclosure as well as a temporary unaffordable home. 

COMING TO TERMS

Zero Percent Financing. . . . A mortgage plan charging zero percent interest, with installment payments all applied to the unpaid principal balance. There are many varieties. Typically a large downpayment (20-30%) is required with the balance of the purchase price repayable in equal monthly installments spread over a 5 or 7 year term, with no balloon payment.

Growing-equity Mortgage. . . . A mortgage instrument permitting a home purchaser to pay off a mortgage by making increasingly larger monthly payments with all of the increase being applied to the unpaid principal balance of the loan so that the mortgage may be paid in full in 10-15 years rather than 20-30 years.

Ethics. . . . That branch of moral science, idealism, justness, and fairness which concerns the duties a member of a profession or craft owes to the public, clients or partner, and to professional brethren or members. Accepted standards of right and wrong. Moral conduct, behavior or duty.

Valid. . . . Legally sufficient or effective. As to contracts, a contract in all respects in compliance with the laws of contracts: (1) parties capable of contracting (2) mutual consent (3) lawful object (4) sufficient consideration, and, in certain cases required by law, (5) a proper writing. 

LICENSING

May a real estate salesperson be licensed as a corporation? *No.* Section 10132 of the Business and Professions Code defines a salesperson as "A natural person employed by a real estate broker." DRE will issue a salesperson license to a natural person only. 

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