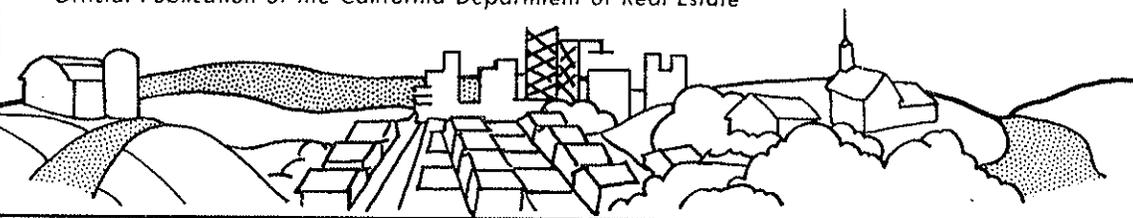




# REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



GEORGE DEUKMEJIAN, Governor

Summer 1984

JAMES A. EDMONDS JR., Commissioner

## BROKER BEWARE—SELLER BEWARE

by  
Raymond L. Royce  
Assistant Commissioner, Regulatory and Recovery

In the Winter 1980 and Fall 1981 issues of the *Real Estate Bulletin*, the Department of Real Estate (DRE) warned licensees of sales transactions commonly known as "cash-to-buyer" and "buyer walk-away" transactions. Such transactions are also known as "equity skimming." These transactions have become so numerous and have caused such devastating losses to sellers of real property in some parts of the state that we believe our licensees need to be warned again in a very explicit manner.

The article appearing in the Fall 1981 *Real Estate Bulletin* described "cash-to-buyer" transactions as having the following characteristics:

1. The buyer invests none of his own money.
2. The buyer arranges for a new first or second loan to finance the purchase.
3. The seller carries back a large junior note and deed of trust from the buyer.
4. The encumbrances against the property represented by the buyer's note and senior encumbrances exceed the fair market value of the property.
5. The seller agrees to the buyer receiving part of the cash from the new loan.

Are real estate sales which involve 100% financing or financing which exceeds the sale price or fair market value illegal? No, not necessarily. Neither are the seminars we all have seen advertised in the newspapers which purport to teach us how to purchase real property with no money down, how to get cash back from the seller, and how to make a fortune. But, consider the results: Department files are replete with stories of personal tragedy from sellers who have been victimized by such transactions.

No one deserves to be a victim. As an example, consider the seller with a home nearly paid for, who is close to retirement and is willing to take back a large second loan intended to produce retirement income. The seller accepts an offer which exceeds the sale price by \$30,000. Half of the financing is a new first loan obtained by the buyer, and the other half of the purchase price is a second loan taken back by the seller. From the first loan, the seller will receive some cash (less real estate commission and costs). The buyer will keep the \$30,000 cash from this loan. The seller is expecting to have a nice monthly retirement income of \$900 per month from his second loan.

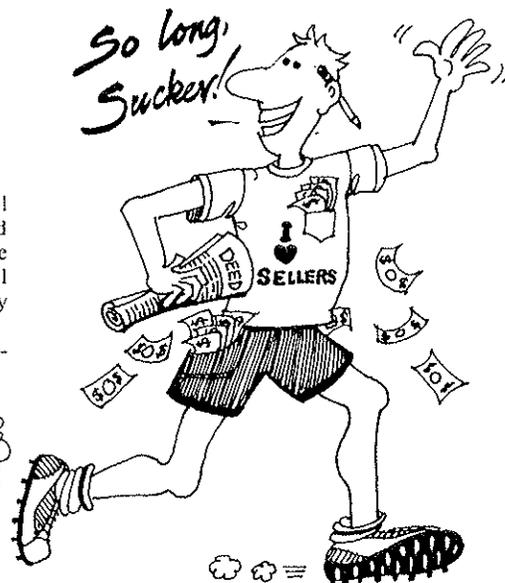
The buyer, however, fails to make any payments on either the first or the second loan.



What happens to the seller in this situation? To salvage what is left of his interest in the transaction, the seller has to take over the monthly payments on the first loan. Instead of receiving income of \$900 per month, he ends up *paying* \$950 per month on the buyer's obligation on the first loan to forestall foreclosure by the lender of the first loan. Consequently, the seller also suffers the financial loss of the money taken by the buyer, the real estate commission, original transaction costs, the costs of curing delinquent payments on the first loan, and other miscellaneous costs.

So where does the illegality come into the picture? We believe the actions of the buyer after the sale is closed establish the buyer's intent to commit a fraudulent and illegal act. If the buyer is a real estate licensee, he/she can expect the Department to file an action to suspend or revoke his/her license based upon fraud and dishonest dealing. We often find that there has been misrepresentation to the seller and/or the lender of the first as well.

The DRE is cooperating with district attorneys around the state concerning "buyer walk-away" transactions involving both licensees and non-licensees. District attorneys in Sacramento and San Joaquin Counties have filed criminal actions in "buyer walk-away" cases. We expect there will be other such actions which will result in criminal convictions. When asked to do so, the Department will cooperate with the Federal Bureau of Investigation and the Internal Revenue Service.



It is well established that a real estate licensee, acting as agent for a seller, is in a position of trust, with a duty as fiduciary to advise, inform, and protect the interest of the seller. When there is no down payment in a "cash-to-buyer" situation in what might otherwise be an honest transaction of legitimate purpose, such a transaction may expose the seller to a great risk of loss. Generally, a buyer with no personal investment in a real property purchase has no particular incentive to perform. A buyer taking cash out of a transaction may instead have great incentives *not* to perform contractual obligations and to default.

Failure of a licensee to properly advise and inform a seller of the danger of such transactions may very well be cause for the suspension or revocation of a real estate license. The Department has already taken such actions and, unfortunately, there will be others.

It is not our intent to imply the existence of widespread or pervasive dishonesty within the real estate industry. This is certainly not the case. Great effort has been made over the years by many industry people and by Real Estate Commissioners to bring a high standard of compliance with the law, ethical conduct, and a good reputation to the industry. There is every reason to protect these high standards and to guard against the few dishonest practitioners whose actions impugn the reputation of the industry.

(Continued on page 3)

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California Department of Real Estate

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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, \$2 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 1983—January—February 1984**

REB—Real estate broker RES—Real estate salesperson PRLS—Prepaid rental listing service  
RREB—Restricted real estate broker RRES—Restricted real estate salesperson APRLS—Restricted prepaid rental listing service  
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 for \$7.00 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

**Business and Professions Code**

490 relationship of conviction to licensed activity  
10085 failure to submit advance fee materials performing acts for which a license is required without the appropriate license  
10137 unlawful payment of compensation trust fund handling  
10145 failure to handle advance fees as trust funds or to furnish verified accounting to principal  
10146 retention and availability of real estate broker records  
10148 office abandonment  
10162 failure of prepaid rental listing service broker to refund advance fee paid  
10167.10 failure of prepaid rental listing service broker to verify availability of rentals violation or crime by prepaid rental listing service licensee  
10167.11 making any substantial misrepresentation commingling trust funds  
10176(e) secret profit or undisclosed compensation  
10176(g) 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 regulations conduct that would have warranted denial of a license  
10177(f) negligence or incompetence as licensee failure to supervise salespersons fraud or dishonest dealing not in licensed capacity  
10177(k) violation of restricted license condition  
10177(n) violation of real estate syndicate provisions of corporate securities law  
10177.5 civil fraud judgment based on licensed acts  
10234 failure of broker to record trust deed in loan transaction or to cause recorded assignment of trust deed in sale of note secured by trust deed  
10237.4 failure to deliver specified statement to purchaser of real property security  
10237.7 failure of real property securities dealer to submit proposed advertising  
10238.3 failure to obtain real property securities permit

**Regulations**

2715 broker's failure to maintain current address with DRE  
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  
2833 escrow trust fund handling violation crime or act done in perpetration of a crime substantially related to qualifications, functions or duties of the real estate profession  
2950(d) failure of broker handling escrows to maintain records  
2950(e) failure by broker to make escrow records available for inspection  
2950(f) failure to deposit escrow trust funds  
2950(g) broker-controlled escrow violation misleading advance fee advertising material use of unapproved advance fee agreements  
2972 advance fee accountings  
2973 failure to retain advance fee records  
2974 advance fee records retention

**LICENSES REVOKED**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Schader, Harry Woodrow III (RES)	P.O. Box 1833, Beverly Hills	12/7/83	10177(a)
Wat, Steve Kamwah (REB)(REO)	151 Glenville Cir., Sacramento	12/8/83	10177(k)
Horrocks, Marla Beth (RRES)	12657 Tiara St., N. Hollywood	12/13/83	490, 10177(b)
Goforth, Gary Lee (RES)	14 Montanas Norte, Irvine	12/13/83	490, 10177(b)
Warden, Wilbur Leon (REB)	93 Newcomb Dr., Ventura	12/21/83	490, 10177(b)
Taylor, Robert Clarkson (RES)	2500 W. Manchester Blvd., Inglewood	12/21/83	490, 10177(b)
Shamrock Unlimited (REC)	9434 Chesapeake Dr., Ste. 1205, San Diego	12/21/83	10177(d)(g)(h)
Astro Realty Systems, Inc. (REC)	7403A Princess View Dr., San Diego	12/22/83	2830, 2831, 2831.1, 2950(d)(e)(f), 10148, 10176(e)(g), 10177(d)
Harper, Richard Dale (RES)	4659 Texas St., #14, San Diego	12/22/83	10176(c)
Thomas, Robert Lee (REB)	623 Covina Blvd., San Dimas	12/23/83	10177(j)
Lomen, Kenneth Christian Jr. (RES)	1616 W. Shaw Ave., Fresno	12/27/83	490, 10177(b)
Mitchell, David Phillips (RES)	2516 Lizbeth, Anaheim	12/27/83	490, 10177(b)
Wrentmore, James George (RES)	8325 Keyesport Way, Citrus Heights	12/27/83	490, 10177(b)
Simoni, Ronald Anthony (RES)	3828 San Novado Way, North Highlands	12/27/83	2832, 10145, 10176(a)(i), 10177(d)
Burkhardt, Kenneth Arlen (REB)	7444 Auburn Blvd., Citrus Heights	12/27/83	490, 10177(b)
Lewis, Edward Leon (RES)	1423 Standiford Rd., Ste. 2, Modesto	12/28/83	490, 10177(b)
Buckalew, Stuart Ludwig (RES)	356 Pine Tree Cir., Pilot Hill	12/28/83	490, 10177(b)
Etlin, Stuart (RES)	24822 Malibu Rd., Malibu	12/29/83	490, 10177(b)
North American Capital Corporation (REC)	3608 Grand Ave., Ste. 204, Oakland	1/9/84	10176(a), 10177(f)(d), 10234
Pacific Capital Investments Inc. (REC)	3608 Grand Ave., #204, Oakland	1/9/84	10176(a), 10177(f)(d), 10234
Off—Lunetta, Pasquale Daniel			
Doan, Robert Martin (REB)(REO)	1361 Eastside Rd., El Cajon	1/10/84	10176(i)
Rossier, John Arthur (RES)	2025 Marconi, Sacramento	1/12/84	490, 10177(b)
Ngai-Pesic, Katherine S. (RES)	1802 Cheney Dr., San Jose	1/24/84	490, 10177(a)(f)
Bondoc, Reynaldo Camacho (RES)	186 Idora St., San Francisco	1/24/84	10137, 10176(a)(g)(i), 10177(f)(j)
Andrews, Carol Rita (REB)	3960 El Camino Ave., Sacramento	1/26/84	490, 2910, 10177(b)
Munguia, Jose Arnoldo (RES)	6300 Seville Ave., Huntington Park	1/30/84	10177.5
Gamete, Stanley Howard (RES)	31423 Coast Hwy., Apt. 29, South Laguna	2/1/84	490, 10177(b)
Andrews, Errol Wesley Jr. (REB)	428-21st St., Sacramento	2/1/84	490, 10177(b)
Cheiker, Elizabeth A. (RES)	16710 S. Orange, Paramount	2/1/84	10176(i)
Webb, Dale Lowell (RES)	2815 Timothy Ave., Redondo Beach	2/1/84	10176(i)
Woodridge, Clark Paul (RES)	1681 Kettering St., Irvine	2/7/84	490
Parkins, Samuel LeRoy (RES)	13701 Pine Needles Dr., Del Mar	2/9/84	10177.5
Gundlach, Garry Melvin (RES)	5924 El Cajon Blvd., San Diego	2/21/84	10130, 10176(i), 10177(d)
Holland, Bernard Daniel (RES)	13761 Poway Rd., Poway	2/21/84	490, 10177(b)
Doxie, Ansley Christopher (RES)	1448 Acadia Ave., Milpitas	2/21/84	490, 10177(b)(f)
Cooper, Charles Bruce (RES)	421 Industrial Pky., Hayward	2/21/84	490, 10177(b)(f)
Gholston, Andrew Jackson (REB)	4740 Federal Blvd., Ste. F, San Diego	2/21/84	2830, 2832, 2833, 2950(e)(g), 10145, 10148, 10176(i), 10177(d)
French, Donald James (RES)	P.O. Box 1349, El Cerrito	2/22/84	490, 10177(b)(f)

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

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Davey, James Martin (RES) (Right to RRES license on terms and conditions)	150 Elm St., Redwood City	12/15/83	490, 10177(b)
Waring, Ruth Ann (RES) (Right to RRES license on terms and conditions)	P.O. Box 3471, San Diego	12/15/83	490, 10177(b)
Lunetta, Pasquale Daniel (REB)(REO) (Right to RRES license on terms and conditions)	P.O. Box 837, San Leandro	1/9/84	10176(a), 10177(d)(f)(h), 10234
Whitehead, William Albert (RES) (Right to RRES license on terms and conditions)	P.O. Box 8205, Truckee	1/12/84	490, 10177(b)
Goodwin, Frances Lucille (REB) (Right to RRES license after 30 days on terms and conditions)	2308 Olive Ave., Fremont	1/12/84	10176(a)(g)(i), 10177(j)
Lemos, John Anthony (RES) (Right to RRES license after 90 days on terms and conditions)	P.O. Box 19048, South Lake Tahoe	1/23/84	2830, 2832, 2970, 2971, 2972, 2973, 2974, 10085, 10145, 10146, 10176(a)(i), 10177(d)
Phelps, Stephen Paul (REB) (Right to RRES license on terms and conditions)	7145 Lynhullen Way, Sacramento	1/23/84	2830, 2832, 2970, 2971, 2972, 2973, 2974, 10085, 10145, 10146, 10176(a)(i), 10177(d)
Stump, Michael Dennis (REB) (Right to RRES license on terms and conditions)	11899 Edgewood Rd., Ste. H, Auburn	1/23/84	2830, 2832, 2970, 2971, 2972, 2973, 2974, 10085, 10145, 10146, 10176(a)(i), 10177(d)
Cowdrey, Martha J. (REB)(REO) Off - Sierra Mortgage Co. (Right to RRES license on terms and conditions)	1207-13th St., Ste. I, Modesto	1/30/84	10145, 10177(d), 10237.4, 10237.7, 10238.3
Sierra Mortgage Co. (REC) Off - Cowdrey, Martha J. (Right to RRES license on terms and conditions)	P.O. Box 1183, 1207-13th St., Ste. I, Modesto	1/30/84	10145, 10177(d), 10237.4, 10237.7, 10238.3
Lyle, James Roy (REB) (Right to RRES license on terms and conditions)	12344 Oak Knoll Rd., Ste. E, Poway	2/9/84	490, 10177(b)
Jones, David Alvin (PRLS) (Right to RRES license on terms and conditions)	7202 Fruitridge Rd., Sacramento	2/22/84	10167.10, 10167.11, 10167.12
Barber, William Brian (REB) (Right to RRES license on terms and conditions)	P.O. Box 538, Newcastle	2/27/84	490, 10177(b)

**LICENSES SUSPENDED WITH STAYS**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Beveridge, Loretta Ann (RES) (All but 60 days stayed for 3 years on terms and conditions)	1180-3rd Ave., Ste. C6, Chula Vista	11/3/83 (90 days)	10177(g)
*Rozar, Robert Louis (REB)(REO) Off - Whitegate Realty Co., Inc. (Stayed for 2 years on terms and conditions)	518-3rd Ave., Ste. 105, Chula Vista	11/3/83 (60 days)	10177(h)
*Whitegate Realty Co., Inc. (REC) Off - Rozar, Robert Louis (Stayed for 2 years on terms and conditions)	1180-3rd Ave., Ste. C6, Chula Vista	11/3/83 (60 days)	10177(h)
Schub, Robert Louis (RES) (All but 60 days stayed for 2 years on terms and conditions)	P.O. Box 22433, San Diego	12/21/83 (120 days)	10145, 10177(d)
Parvin, Dan R. (REB)(REO) (All but 15 days stayed for 1 year on terms and conditions)	3201 Jefferson Ave., Redwood City	1/10/84 (30 days)	10177(g)(h)
Century 21 Master Realtors, Inc. (REC) (All but 15 days stayed for 1 year on terms and conditions)	1537 Howe Ave., Ste. 112, Sacramento	1/10/84 (30 days)	10177(g)(h)
Hixon, Eva Mae (REB) (All but 3 days stayed for 1 year on terms and conditions)	1924 Minnewawa, Clovis	2/7/84 (60 days)	10176(a)
Chiusano, William (REB) (May be reinstated after 30 days on terms and conditions)	6085 Snell Ave., San Jose	2/21/84 (until 10/28/85)	2715, 10162, 10177(d)

**LICENSES SUSPENDED INDEFINITELY**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Paeker, Cefel Bernard Jr. (RRRES)	P.O. Box 4217, Inglewood	12/13/83	10177(k)

**INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS**

Name	Address	Date
Neal, William L. (REB)	2423 Camino del Rio South, Ste. 208, San Diego	12/8/83
Mears, Jerry (RES)	1770 Glenwood Dr., Bakersfield	12/8/83
M.E.A.R.S., Inc. (REC)	2823 Nile St., Bakersfield	12/8/83
Forrest, James (REB)(REO)	1405 Grand Ave., Arroyo Grande	12/8/83
Goetschalekx, Albert Louis (REB)(REO)	1127 S. Seaward Ave., #7, Ventura	12/8/83
Reichman, Charles E. (REB)(REO)	101 California St., Ste. 1100, San Francisco	12/27/83
Robinson, Mildred B. (REB)	1196 Willow Glen Way, San Jose	1/6/84
Bancor Mortgage & Loan Corporation (REC)	567 San Nicolas Dr., Ste. 206, Newport Beach	1/20/84
Vernon, Clarence Albert (REB)	25255 Cabot Rd., #115, Laguna Hills	1/25/84
Investors Loan Services, Inc. (REC)	15300 Ventura Blvd., Ste. 412, Sherman Oaks	2/3/84
Learned, Robert (RES)	P.O. Box 7772, South Lake Tahoe	2/3/84
Drake, Hobart (REB)	16706 S. Pioneer Blvd., Artesia	2/8/84
Drake, Michael (REB)	16706 S. Pioneer Blvd., Artesia	2/8/84
Park Realty, Inc. (REC)	16706 S. Pioneer Blvd., Artesia	2/8/84
Shoemaker, Jesse (RES)	1685 Lyle Dr., San Jose	2/23/84

**BEWARE**

(Continued from page 1)

What can you do to help clean up the "buyer walk-away" situation? First, remember your position of trust toward your principal. The seller gave the listing and will pay the commission. Before allowing the seller to accept a "risky" offer, it is your duty as a licensee to explain the risk, and counsel against acceptance of an offer. Secondly, if you are a broker and you have salespersons licensed to you, the law requires you to super-

vised these salespersons. Supervision includes instructing them in transaction pitfalls and knowing about any transactions which these salespersons are negotiating under your broker license.

We urge licensees to report "buyer walk-away" cases to the Department and to cooperate with the DRE in any resulting investigations. Anonymous complaints usually are not helpful. The fact of the matter is that the burden of proof is on the Real Estate Commissioner. This means we must be able to prove our case with competent evidence such

**PRLS LICENSES REVOKED IN DRE DISCIPLINARY ACTION**

The Prepaid Rental Listing Service (PRLS) licensing statutes (commencing with Section 10167 of the Real Estate Law) became effective on December 24, 1980. These statutes established a regulatory scheme and ground rules for the operation of a PRLS—commonly known in years past as advance fee rental agents.

A two-year PRLS license is issued without examination upon submission of a completed application, \$100 main office fee, \$25 fee for each additional office, and a \$2,500 bond for each office location. Approximately 150 individuals have been issued PRLS licenses in California.

Based upon a complaint, the Department of Real Estate (DRE) recently investigated the operations of a PRLS licensee. During the course of the investigation, it was discovered that the licensee listed a property without first obtaining written or oral permission from the owner in violation of Section 10167.11(a) and (d) of the Business and Professions (B&P) Code. The owner discovered that his property was included in a rental list, and notified the licensee that this property was rented. The licensee failed to immediately remove the property from the list, and continued to supply rental lists containing the unauthorized listing for over two months.

An advance fee of \$35 to \$45 was charged by the PRLS licensee for listings of residential real properties for rent. Several prospective tenants were unable to obtain rentals through the PRLS, and demanded a refund of the advance fees within ten days following the expiration of their contracts. The licensee refused to provide refunds in the amount over and above \$25 as required by Section 10167.10(b) of the B&P Code.

Prospective tenants were also supplied with rental listings that contained false, misleading, and deceptive information in violation of Section 10167.11(b). A four-bedroom house with yard and garage was listed, when in fact there was a two-bedroom house without a garage at that location. The same licensee listed a two-bedroom duplex without air conditioning, carpets, drapes, and garage as a three-bedroom duplex with all of the mentioned amenities.

In all of these acts and omissions, the PRLS licensee had actual notice, but did nothing tangible to correct any of the problems. The above-stated violations were proven at a hearing, and the DRE revoked the licenses of the Prepaid Rental Listing Service and its designated officer for violations of the Real Estate Law. **DRE**

as testimony of direct witnesses, documents, etc. It is not helpful to tell us we ought to investigate "Mr. Bad Guy." It is helpful when we receive information telling us what happened, who was involved, and when and where it happened. A productive investigation usually starts with some specific factual information.

You may be assured that the Real Estate Commissioner and Department of Real Estate employees have an interest in helping to maintain the high standards and reputation of the real estate industry. **DRE**

## HOMEOWNER ASSOCIATION FINANCIAL INFORMATION MANDATED BY STATUTE

by  
Raymond M. Dabler  
Real Estate Manager IV  
Subdivisions—Principal Office

Section 1730 has been added to the California Civil Code as a result of the passage of AB 2155 (Johnston). This 1983 urgency legislation dealing with financial disclosures to owners of subdivision common interests was patterned in part after the Commissioner's 1976 version of Regulation 2792.22. The new law which became effective on September 30, 1983 affects every homeowner association in California. It operates retrospectively for existing homeowner associations, commencing with the fiscal year of an association that begins on and after July 1, 1984.

As an example, if the homeowner association's fiscal year begins July 1, 1984, the governing body of the association will be responsible for preparing and distributing the budget and other information required under subdivision (a) of Section 1730 around May 1, 1984 or shortly thereafter.

### The Law

Following is the complete text of the new statute:

1730. (a) Financial statements by a common-interest subdivision association shall be prepared and distributed to all its members by its board of directors as follows:

(1) A pro forma operating budget for the ensuing fiscal year shall be distributed within 60 days prior to the beginning of the next fiscal year. The budget shall include all of the following:

(A) The estimated revenue and expenses on an accrual basis.

(B) The identification of the total cash reserves currently set aside.

(C) The identification of the estimated remaining life and the methods of funding used to defray the future repair, replacement, or additions to those major components that are attributable to the areas for which the association is obligated.

(D) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that are attributable to the areas for which the association is obligated.

(2) A copy of a review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). The review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(3) A statement as to an association's policies and practices in enforcing the lien rights or other legal remedies for the default in the payment of its assessments against its members shall be delivered within 60 days prior to the beginning of the next fiscal year.

(b) As used in this section, "common-interest subdivision association" means any association, organization, corporation, or group of individuals which has been vested with the management responsibilities of ownership, operation, and furnishing of a common interest in subdivisions defined and described in Sections 11000 and 11004.5 of the Business and Professions Code, for and on behalf of other owners.

(c) If the governing instruments of an association have a more stringent standard than prescribed by this chapter, those instruments shall prevail over the provisions of this chapter.

(d) This section shall operate retrospectively as well as prospectively to the full extent that it may constitutionally operate retrospectively commencing with the new fiscal year of a common-interest subdivision association following June 30, 1984.

(e) This chapter shall remain in effect only until July 1, 1989, and on that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends that date.

### The Regulation

The Department has amended Regulation 2792.22 to properly implement the new statute. This regulation was effective February 10, 1984, and now reads as follows:

#### 2792.22 Reasonable Arrangements—Budgets and Financial Statements

(a) The following financial and related information shall be regularly prepared and distributed by the governing body to all members of the Association:

(1) A budget for each fiscal year consisting of at least the following information shall be distributed not less than 45 days prior to the beginning of the fiscal year.

(A) Estimated revenue and expenses on an accrual basis.

(B) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies.

(C) An itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the common areas and facilities for which the Association is responsible.

(D) A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible.

(2) A balance sheet—as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of an interest in the subdivision—and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed.

(3) A report consisting of the following shall be distributed within 120 days after the

close of the fiscal year.

(A) A balance sheet as of the end of the fiscal year.

(B) An operating (income) statement for the fiscal year.

(C) A statement of changes in financial position for the fiscal year.

(D) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(b) If the report referred to in (a)(3) above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

(c) In addition to financial statements, the governing body shall annually distribute within 60 days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against members' subdivision interests.

Amended Regulation 2792.22 provides that the budget for each fiscal year be distributed **not less than 45 days** prior to the beginning of the fiscal year. This was placed in the regulation for the purpose of remedying the situation presented by the statutory language "**within 60 days**" rather than in "not less than 60 days" before the beginning of a fiscal year. Without such implementing regulation, the governing body could conceivably send the budget out the day before the beginning of the fiscal year. In addition, the regulation attempts to solve the problem created by the fact that the bill calls for distribution of a **copy of the review** of the financial statement prepared by an independent accountant without specifying that the financial statements must also be distributed. The fact that financial statements must accompany the review or vice versa may not be clear from a reading of the statute alone, so subdivision (a)(3) of Regulation 2792.22 does make it clear that a balance sheet and an operating statement must be distributed by the governing body.

### Regulation 2813.5

Regulation 2813.5 also became effective on February 10, 1984. This regulation is nearly identical to Regulation 2792.22, but pertains to time-share projects only.

### Civil Code Section 1360

Section 1360 of the Civil Code was also amended. Licensees must be aware that, as a result of the amendment to Section 1360, the seller (other than the subdivider) of a lot/unit or time-share in a common-interest subdivision must now furnish purchasers with not only a copy of the Declaration of Covenants, Conditions and Restrictions, Articles of Incorporation and Bylaws for the Association, but also the financial statements (prepared in accordance with Section 1730) which have already been distributed to the owner of such a unit.

(Continued on page 6)

# NEW REAL ESTATE SALESPERSON AND BROKER LICENSE EXAMINATION REQUIREMENTS

by  
 Thomas L. Mabry  
 Real Estate Manager II  
 Education, Research and Publications

On March 29, 1984, Governor Deukmejian signed into law Senate Bill 1042—Lockyer (Chapter 66) which, on January 1, 1986, brings about major revisions in educational requirements for individuals wishing to qualify for either the real estate salesperson or broker license examination. The new law also makes changes in continuing education requirements for the **first renewal** of the license of a salesperson who has been required to complete qualifying courses for the salesperson license.

SB 1042 amends Sections 10170.5, 10209, 10209.2, and 10215, adds Section 10153.3, and repeals and adds Sections 10153.2, 10153.4, 10153.5, and 10154 to the Business and Professions Code relating to real estate licensees. Major points in the new law are:

## APPLICANTS FOR THE REAL ESTATE SALESPERSON EXAMINATION

- To qualify to take an examination for a real estate SALESPERSON license on and after January 1, 1986, an applicant must have completed the college-level course REAL ESTATE PRINCIPLES.
- Those who must satisfy this new requirement must also, *either* prior to issuance of the original license *or* within eighteen months after issuance, complete two additional basic real estate courses selected from among the following:
  - Real Estate Practice
  - Real Estate Appraisal
  - Real Estate Accounting
  - Business Law
  - Property Management
  - Legal Aspects of Real Estate
  - Real Estate Financing
  - Real Estate Economics
  - Escrows
  - Real Estate Office Administration
- On the **first renewal** of a SALESPERSON license, those licensees who have met the above requirements will not be required to complete continuing education requirements *except* for a minimum three clock hour course in "Ethics, Professional Conduct and Legal Aspects of Real Estate."
- SALESPERSONS who qualify to take the examination by completing only the REAL ESTATE PRINCIPLES course shall have their licenses automatically suspended, effective eighteen months after issuance of the conditional license, *unless* the two additional courses have been completed within that time. The suspension will not be lifted until the licensee has submitted the required evidence of remaining course completion and the Commissioner has given written notice to the licensee of the lifting of the suspension.
- The fee for a real estate SALESPERSON license is \$120.00 for those applicants who *have* satisfied all of the educational requirements (three courses) prior to issuance of the license. The fee for those who *have not* satisfied all of the educational requirements prior to issuance of the license is \$145.00.

## APPLICANTS FOR THE REAL ESTATE BROKER EXAMINATION

- An applicant for BROKER licensure applying for the examination on and after January 1, 1986, must have completed eight courses in addition to the experience/educational requirements. These eight courses must include the following *five*:
  - Real Estate Practice
  - Real Estate Appraisal
  - Real Estate Economics *or* Accounting
  - Legal Aspects of Real Estate
  - Real Estate Financing
- The remaining *three* courses are to be selected from the following:
  - Real Estate Office Administration
  - Advanced Legal Aspects of Real Estate
  - Advanced Real Estate Appraisal
  - Advanced Real Estate Finance
  - Real Estate Principles
  - Business Law
  - Property Management
  - Escrows

Courses referred to in this article must be a three semester unit course or the quarter equivalent completed at an accredited institution of higher learning *or* an equivalent course of study offered by a private vocational school approved by the Commissioner.

To obtain a copy of Senate Bill 1042 (Chapter 66) write to: Legislative Bill Room, State Capitol, Room B-32; Sacramento, CA 95814. The first copy of each bill requested is free, and there is a small charge for additional copies. Prices may be obtained by calling (916) 445-2323.



# What Real Estate Agents Should Understand About Adjustable Rate Mortgages (ARMS)

by  
 Fred E. Case, Professor  
 Housing, Real Estate and Urban Land  
 Studies Program  
 Graduate School of Management  
 University of California, Los Angeles

A recent study by the Federal Home Loan Mortgage Corporation (Freddie Mac) indicates that adjustable rate mortgages (ARMS) are gaining increasing acceptance, but that real estate agents are often unable to explain the operations of such a mortgage. The study also indicates that many lenders expect real estate agents to present such explanations and clients presume that agents have taken care of their interests. Given the changing character of an ARM, small changes in interest rates, particularly upward, could produce unpleasant surprises for the borrowers—surprises which might be avoided if the basics of an ARM were fully explained to a client. In fact, over 90% of the lenders surveyed felt that a nationwide educational campaign aimed at real estate agents and builders would be beneficial.

An ARM is a mortgage which permits changes in payment or interest rates according to changes in a specified index. Approximately one half of an estimated 100 different types of ARMS in California are used regularly. The first thing to remember, then, is that there is no such thing as a standardized ARM. Each ARM should be examined carefully to be sure that all terms are understood. To simplify the process of understanding, the following questions should be considered in evaluating any ARM:

- What is the initial contract rate and how long will that rate be used?  
 Recently lenders have reported initial rates ranging from 9.50% to 12.625%. In almost all instances, that rate prevailed only during the first year or less of the loan.
- What causes the rate to change?  
 All rates change in conformance to some kind of an index. For example, the rate may change in proportion to the rate changes in Treasury bills or costs of funds. In California, savings and loan ARMs are frequently related to the costs of funds for savings and loan associations as reported by the San Francisco Home Loan Bank. Commercial bank ARMs may be indexed to the six-month Treasury bill rate.
- How frequently can the rate change?  
 Usually the rate will only change every six months or one year, but it can change monthly if the loan agreement calls for this.

(Continued on page 8)

# Mortgage Loan Disclosure Statement Requirements

by  
**Edward V. Chiolo**  
*Real Estate Manager III, Regulatory  
San Francisco District Office*

Borrower and Lender Disclosure Statements for certain real property loans negotiated by real estate brokers or in which a broker participates as the lender are now firmly imbedded in various provisions of the Real Estate Law. Article 5 of this law contains the Lender Disclosure Statutes, and Article 7 contains the Borrower's. The purpose of this article is to trace statutory developments up to the present time relating to circumstances under which each disclosure must be given.

## Borrower's Statement

Refer to *Business and Professions Code Sections 10240, 10241, and 10245.*

Prior to January 1, 1981, the Borrower's Disclosure Statement was required only when both of the following conditions were present: 1) the licensee was acting strictly as an agent under Section 10131(d) and was not the lender, either directly or indirectly; and 2) when a "regulated" loan was involved; i.e., a loan covered under Article 7 (real property loans) in which the amount of the loan was either under \$20,000 for a first deed of trust or under \$10,000 for a junior deed of trust.

The law was changed, effective January 1, 1981, and the Mortgage Loan Disclosure Statement was required to be given to the borrower in either a regulated or unregulated loan transaction. As long as the licensee was acting as an agent under Section 10131(d) and was not the lender directly or indirectly, the prospective borrower was now statutorily owed a Mortgage Loan Disclosure Statement irrespective of the dollar amount of the loan.

The most current changes to the required borrower's disclosure became effective on January 1, 1983. This latest amendment requires that the statement be given not only when the licensee is acting strictly as an agent in either a regulated or unregulated loan, but also when the licensee "solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker."

## Lender/Purchaser Statement

Refer to *Business and Professions Code Sections 10231.2, 10232, 10232.4, and 10232.5.*

With the passage of AB 1212, effective January 1, 1982, the requirement for a Lender/Purchaser Disclosure Statement came into existence. The prospective lender or note purchaser is entitled to the disclosure statement from the licensee when: 1) the broker meets the "threshold" criteria as set forth in Section 10232; or 2) the broker, "through express or implied representations that the broker or salespersons acting on the broker's behalf are engaging in acts for which a real estate license is required by subdivision (d) or (e) of Section

(Continued on page 7)

## HOMEOWNER (Continued from page 4)

Section 1360 also requires that the seller furnish a written statement from the association that discloses the amount, if any, of delinquent assessments on the lot/unit. This particular requirement extends to the original sale of a lot/unit or time-share in a common-interest subdivision by the subdivider as well as to a resale by an individual owner.

Real estate agents will, of course, be expected to inform their principals of the necessity for compliance with Section 1360. The information required to be furnished to purchasers should be available from the homeowner associations since most associations throughout the state have had experience with the previous requirements of Section 1360 and must now comply with Section 1730 of the Civil Code. In fact, many associations have been following these procedures for several years as a prudent business practice.

In order that agents can determine the circumstances under which an individual seller as well as the subdivider may be responsible for compliance with Section 1360, the amended statute is reprinted below:

1360. (a) The owner of a lot or unit in any of the subdivisions referred to in Section 11004.5 of the Business and Professions Code, shall, as soon as practicable before transfer of title or the execution of a real property sales contract as defined in Section 2985, give to the prospective purchaser a copy of the declarations of restrictions, bylaws, and articles of incorporation affecting rights to the property being offered for transfer, and a true statement in writing from the governing body of any of the subdivisions referred to in Section 11004.5 of the Business and Professions Code as to the amount of any delinquent assessments and information relating to penalties, attorney's fees, and other charges therein as provided by the declaration of restrictions of the subdivision or the management documents of the governing body on the lot or unit

as of the date the statement is issued, and a copy of the most current financial statements, as defined in Section 1730, which have already been distributed to the owner of such a unit.

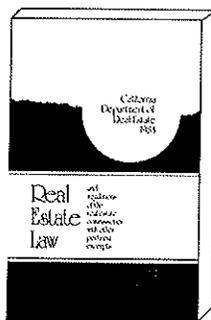
(b) Upon written request, the governing body of any of the subdivisions referred to in subdivision (a) shall, within 10 days of the mailing or delivery of such request, provide the owner of a lot or unit in such subdivision with a copy of the declarations of restrictions, bylaws, and articles of incorporation applicable to that subdivision, together with a true statement in writing as to the amount of any delinquent assessments, penalties, attorney's fees, and other charges therein as provided by the declaration of restrictions of the subdivision or the management documents of the governing body on the lot or unit as of the date of the request. The governing body may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

(c) The provisions of this section, except those provisions relating to a written statement of delinquent assessments and such other charges as may be authorized by the declaration of restrictions or management documents, shall not apply to the transfer of a lot or unit the transfer of which is required to be preceded by the furnishing to a prospective purchaser of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code.

(d) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot, or unit which is subject to the provisions of this section for the actual damages and in addition thereto shall pay a penal sum in an amount not to exceed five hundred dollars (\$500), and in an action to enforce such liability, the prevailing party shall be awarded reasonable attorney's fees.

(e) Nothing in this section shall affect the validity of title to real property transferred in violation of the provisions of this section.

DRE



The 1983 *Real Estate Law* book is now available 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 for reference.

You may use the order form shown at the right. A discount of 20% is available with the purchase of 25 or more copies.

To: Department of Real Estate  
Accounting Section  
P.O. Box 160009  
Sacramento, CA 95816

Please send \_\_\_\_\_ copy(ies) of the 1983 *Real Estate Law* book to:

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# Center for Real Estate and Urban Economics

University of California, Berkeley

The University of California at Berkeley was one of the first academic institutions to establish a center for the study of the urban land market. In 1950 a curriculum and a Real Estate Research Program were inaugurated in the graduate and undergraduate Schools of Business Administration on the Berkeley campus.

For the last three decades, the Center for Real Estate and Urban Economics of the University of California has been a leading center of real estate research in the country. Along with related education programs, the Center has made major contributions to the expansion of knowledge in the real estate field. Many of the students trained under this program have served the profession well and gone on to become leaders in the industry.

Research at the Center is directed toward the following goals:

- excel nationally as a center for policy research in commercial real estate development and finance, housing finance and construction, and urban and regional development.
- promote understanding and encourage innovation in the real estate finance system.
- study and analyze issues related to the real estate development process.
- provide a detailed study and analysis of the urban and regional economy of California.
- serve as a practical forum for academics, government officials, and business leaders.
- sponsor creative and thoughtful academic research.
- improve academic resources for education in real estate and urban economics at the university level.
- communicate research findings to the public and private sectors and to others concerned with the allocation of urban land resources.

To disseminate research findings more widely, the Center instituted production of a "Quarterly Report" which has a current circulation of approximately 4,000. These "Quarterly Reports" contain news and information about real estate issues as well as synopses of the studies reported in full in the Center's working paper and reprint series. Copies are available at DRE offices.

In addition, the Center produces over 20 papers each year which are distributed to the real estate and academic communities as well as to libraries and the general public. The Center and its library facilities serve as important information resources for the real estate industry, the State of California and other government agencies, as well as for the general public.

The Berkeley Center continues to serve as an exemplary model for other established and emerging centers in the study, analysis, and understanding of all facets of the real estate field.



# 1984 ECONOMIC AND REAL ESTATE FORECAST

Prepared by the  
Center for Real Estate and Urban Economics  
University of California, Berkeley

The economic and real estate recovery of 1983 has continued in a strong fashion during the first part of 1984. New housing production in California surged substantially over the 200,000 unit level, approaching the record production levels of the late 1970s. Resale of existing homes also shows a continued recovery in 1984.

While the economic and real estate recovery has been strong for the first half of the year, interest rates have begun to rise again. The prime rate, the government bond rate, and the mortgage rate are already up 100 basis since the first of the year. Large deficits in the federal government budget, a strongly-growing economy, and a tightened monetary policy all portend higher interest rates in the second half of 1984. These rising interest rates may slow the real estate recovery by late 1984 or early 1985.

The accompanying Table shows our forecast for a number of key economic and real estate market indicators.

ECONOMIC AND REAL ESTATE FORECAST				
	1981	1982	1983 Estimate	1984 Forecast
<b>Overall Economy (%)</b>				
Real Disposable Income .....	2.2	-0.4	2.2	4.1
CPI Inflation .....	8.9	3.9	3.8	5.3
Unemployment .....	7.5	9.6	9.6	7.8
Treasury Bill .....	14.1	10.7	8.7	9.5
Prime Rate .....	18.9	14.9	10.8	11.6
AAA Bond .....	14.2	13.8	12.0	12.8
<b>California (%)</b>				
Unemployment Rate .....	7.4	9.9	9.7	7.7
Personal Income (Per Capita) .....	9.7	5.8	4.9	6.8
<b>U.S. Housing (000)</b>				
Housing Starts .....	1084	1062	1703	1825
Single-Family .....	705	663	1067	1221
Multi-Family .....	379	400	636	604
Home Sales .....	2407	1995	2730	3149
Mortgage Rates (%) .....	14.7	15.1	12.7	13.1
House Price (% Change Existing) .....	6.6	2.4	3.2	5.3
Mortgage Originations (Billions) .....	98	97	190	235
<b>California Housing (000)</b>				
Household Formations .....	285	210	150	211
Migration .....	204	258	250	250
Housing Starts .....	102	80	165	205
Single-Family .....	61	48	99	136
Multi-Family .....	41	32	66	69
Home Sales .....	333	234	343	390
House Price (% Change Existing) .....	8.2	3.8	2.3	5.4
<b>California Commercial Construction (Constant Millions of Dollars Permits)</b>				
Office .....	1944	2511	2837	2553
Industrial .....	1482	1605	2054	2362
Other Commercial .....	1902	1343	1585	1696

Source: Center for Real Estate and Urban Economics; University of California, Berkeley

## MORTGAGE (Continued from page 6)

10131, proposes to solicit and accept funds, or to cause the solicitation and acceptance of funds, to be applied to a purchase or loan transaction in which the broker will directly or indirectly obtain the use or benefit of the funds other than for commissions, fees and costs and expenses as provided by law for the broker's services as an agent.

In the second circumstance above, a true

copy of the disclosure statement must first be submitted to the Department of Real Estate before it is presented to the prospective lender or note purchaser. Once this has been done, the statement must then be given to the prospective lender or note purchaser at least 24 hours before the earlier of the broker's acceptance of any funds from that person or the execution of any instrument obligating that person to make the loan or note purchase.



4. By how much can the rate change?  
Typically increases in rates are limited to .5% for each period.
5. Is there a cap on the total rate which can be charged?  
Rates can increase by as much as 7.5% over the life of the loan. Usually each amount of change is limited. The more frequent the change, the lower the limit on change.
6. Can the payment be changed?  
Lenders prefer to keep a particular ratio between a borrower's income and the mortgage payment. For that reason, the rate change may also be accompanied by a payment change, but always within given limits.
7. If the rate or the payment or both change and the borrower has a large payment to make, can adjustments be made?  
This is the part of ARMs which is most worrisome to lenders and borrowers, and something that causes trouble for real estate agents who fail to mention it. If the payment is kept the same and the rate is changed, or if the payment change might be too large for the borrower, the "extra" rate or payment could be added to the principal amount due on the loan. In the case of a fixed payment and a changing rate, with the rate moving constantly upward, any additional amounts not paid might add so much to the unpaid amount that the borrower would owe as much or more than the initial mortgage—even though payments were made regularly on the loan.



## SECURED OBLIGATIONS: BALLOON PAYMENTS

by  
*John R. Liberator*  
*Real Estate Manager IV*  
*Mortgage Loan Activities*

Those real estate licensees who conduct business as mortgage loan brokers and service promissory notes secured by real property for their lenders should be aware of recent legislation concerning balloon payment loans. As a result of the Governor's signing of AB 1600, Section 2924(i) was added to the Civil Code effective January 1, 1984. This section requires the holder of a balloon payment note which is secured by real property to provide the obligor of the note with written notice at least 90 days but not more than 150 days prior to the due date of the final/balloon payment on the loan.

This written notice must state the following:

- name and address of the person to whom the final payment is to be made;
- date on which the final payment is due;
- exact amount of the final payment or, if unknown, a good faith estimate of the amount owed, including unpaid principal, interest and any other charges; and
- if appropriate, a statement that the borrower has a contractual right to refinance the final payment.

The provisions of Section 2924(i) are applicable to balloon payment loans which: (1) are secured by real property containing one to four residential units, at least one of which is or will be occupied by the obligor; (2) were executed on or after January 1, 1984; and (3) were made for a term in excess of one year.

There is only *one* Licensing Section for the Department, and it is located in the Sacramento Principal Office. If you wish to contact Licensing Information, please use the area code **916** for Sacramento as a prefix to the numbers listed in that article.

We are sorry for any inconvenience caused to our readers.



The code section does not apply to: (1) open-end credit as defined in Regulation Z; (2) notes created in creative financing transactions for which notice by the "arranger of credit" is already required under Civil Code Section 2956; or (3) loans made for the principal purpose of financing construction of one or more residential units.

For the purposes of this code section, "balloon payment loan" is defined as a loan which provides for a final payment that is more than twice the amount of any of the immediately preceding six regularly-scheduled payments, or which contains a "call provision," provided that the mere existence of such a provision shall not create a "balloon payment loan" if the "call provision" is not exercised by the holder of the note.

"Call provision" is defined as a term of the loan contract that provides the note holder with the right to declare the loan due and payable either after a specified date or after a specified time period has elapsed following "closing." It is the Department's interpretation that the definition of "call provision" includes demand notes. Thus, in effect, applicable notes which were formerly simply demand notes now become demand—plus not less than 90 days notice—notes.

Failure to provide the notice required under Section 2924(i) will not extinguish the obligor's obligation. However, such an omission will cause the due date of the balloon payment to become the later of: (1) the date set forth in the note; (2) a date 90 days from the date of delivery of the required notice; or (3) the date set forth in the required notice. Also, any person who willfully violates the provisions of this code section shall be liable in the amount of the actual damages suffered by the obligor.

Real estate brokers who service promissory notes secured by real property on behalf of the note owners should make certain that if they assume the obligation to provide the balloon payment notice as described above to the obligor, they also fully comply with all of the provisions of Section 2924(i). If the notice requirement is to remain the responsibility of the lender, the broker servicing the note should fully explain the requirement to the "holder" of the balloon payment note so he/she can achieve compliance.



### Notes from Licensing

In the Spring 1984 issue of the *Real Estate Bulletin*, an article appearing in this column on Page 6 provided a series of telephone numbers to assist licensees in contacting the DRE's Licensing Section. Unintentionally, the area code for these numbers was not included.

Official Publication

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