

Salesperson Automatic Suspension

by Thomas R. Hensley, Manager In Charge,
Licensing Operations, Sacramento

ON MARCH 29, 1984 GOVERNOR DEUKMEJIAN signed into law Senate Bill 1042 (Lockyer), which became effective on January 1, 1986. This bill brought about major revisions in the educational prerequisite requirements which have to be satisfied to qualify to take either the real estate salesperson or broker license examination. This statute also made changes in continuing education requirements for the first renewal of the license of a salesperson who has been required to complete qualifying courses to take the salesperson examination.

Implementation of the new broker course requirements from 6 college-level courses to 8 for admittance to the broker examination went smoothly.

Unfortunately, changes to the requirements to take the salesperson examination, and the need to satisfy continuing education requirements for salespersons at their first-time license renewal still has some applicants/licensees confused. The following summary will clarify the current salesperson examination and licensing renewal requirements.

1. To qualify to take an examination for a real estate salesperson license on an after January 1, 1986, an applicant must have completed a 3-semester-unit (or quarter-unit equivalent) college-level course in Real Estate Principles.

2. 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 3-semester-unit college-level courses selected from among the following:

- Real Estate Practice
- Real Estate Appraisal
- Real Estate Financing
- Real Estate Economics
- Business Law
- Property Management
- Legal Aspects of Real Estate
- Real Estate Office Administration
- Accounting
- Escrows

Transcripts for the two additional courses should not be submitted until both have been successfully completed.

3. On the first renewal of a salesperson license, those licensees who have met the above

Automatic Suspension, continued on page 4

Reaching DRE by Mail

THE SACRAMENTO OFFICE OF DRE HAS CHANGED ITS post office box numbers.

To avoid longer mailing times, use *only* the new post office boxes.

- ✓ Check your supply of DRE forms. If you still have forms with the old P.O. Box numbers, contact the Department for a replacement supply.
- ✓ If you have the Department on a computer mailing list, have you corrected it?
- ✓ If you have forms, envelopes or cards pre-addressed with the Department's address, have you corrected them?

Old Post Office Box numbers are 16009, 160010, 160015, 160020, 160030, 168003. All of these box numbers were located in zip code 95816. *Mail sent to the old P.O. Boxes will be returned, undelivered.*

New Post Office Box Numbers

Division	P.O. Box	Zip Code
General Mail*	187000	95818-7000
Examinations	187001	95818-7001
Original Licenses	187002	95818-7002
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Broker Section	187004	95818-7004
Subdivision Section	187005	95818-7005
Book Orders	187006	95818-7006

* Use the General mail box for all divisions not listed here.

Non-Resident Reciprocity Statute Update

THE STATES OF WASHINGTON, FLORIDA, ALABAMA and Alaska have been added to the list of states that now allow license rights for California residents. Residents of Washington, Florida, Alabama and Alaska are now eligible to renew existing California licenses or apply for new ones and California residents have similar rights in Washington and Alaska.

An Obstacle Course You Should Avoid

by James A. Edmonds, Jr., Real Estate
Commissioner

MANY LICENSEES HAVE UNKNOWINGLY CREATED A delay with respect to the processing of their renewal applications and their requests for licensing information or approval of advertising and/or continuing education matters by submitting their materials to the Department of Real Estate utilizing the "Restricted Delivery" service offered by the U.S. Postal system. In many instances, the "Restricted Delivery" mail has been personally addressed to the Real Estate Commissioner. As a result, the Postmaster refuses to deliver the mail without the personal signature of the Commissioner.

You should be aware that in order for the Department of Real Estate to operate efficiently, staff who specialize in handling the mail have been designated to accept delivery on behalf of the Department, but are not able to accept mail officially restricted for delivery to specific individuals.

The Department has assigned certain Post Office Box numbers for its various operating sections in order to assist in sorting and expediting the handling of your inquiries. Thus, the licensee who utilizes the "Restricted Delivery" process usually delays the delivery of their letters. Licensees may wish to consider this when corresponding with the Department of Real Estate.

Video Tapes Available

THE DEPARTMENT OF REAL ESTATE ANNOUNCES TWO new Educational videotapes available from the Department's Book Orders Section:

"Compliance with Real Estate Transfer Disclosure Law" is a 32-minute program designed to provide general information concerning the real estate licensee's inspection law and a number of material real estate transfer disclosures required in real estate transactions.

"Agency Disclosures in Residential Real Estate Transactions" is a 22-minute program that provides general information regarding the material agency disclosures in real estate transactions required by State law.

Each title is available for \$25 per tape. Please use the publication order form that appears on page 7 of this Bulletin.

REAL ESTATE BULLETIN

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DISCIPLINARY ACTION
December 1987 to February 1988

- REB - Real estate broker
- RES - Real estate salesperson
- PRLS - Prepaid rental listing service
- REO - Real estate officer
- RREB - Restricted real estate broker
- RRES - Restricted real estate salesperson
- RPRLS - Restricted prepaid rental listing service
- 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 on application are not 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 for the Real Estate Commissioner, both of which are printed in the *Real Estate Law* book. The *Real Estate Law* book is available for purchase from the Department of Real Estate for \$12.50 plus tax.

<i>Business and Professions Codes</i>		10177(f)	conduct that would have warranted denial of a license
490	relationship of conviction to licensed activity	10177(g)	negligence or incompetence as licensee
495	public reproof	10177(h)	failure to supervise salespersons
10085	failure to submit advance fee materials	10177(j)	fraud or dishonest dealing not in licensed capacity
10130	acting without license	10237.3	acting as real property securities dealer without endorsement
10137	unlawful payment of compensation	10238.3	failure to obtain real property securities permit
10145	trust fund handling	10240	failure to give mortgage loan disclosure statement
10148	retention and availability of real estate broker records	10241(j)	failure to give mortgage loan disclosure statement
10159.5	fictitious name		
10160	broker possession and licensee inspection of license		
10162	office abandonment		
10167.9(a)(3)	failure to include required terms in OPRLS contract	Regulations	
10167.9(c)	use of unapproved contract	2715	broker's failure to maintain current address with DRE
10167.10(a)(1)	non-refund of PRLS fee	2725	failure of broker to review and initial agreements
10167.10(b)	failure to refund deposit or portion thereof	2731	unauthorized use of fictitious business name
10167.11(a)	referral of unavailable or non-existent rental property	2830	failure to maintain trust fund account
10167.11(b)	false, misleading or deceptive advertising or description of a rental property	2831	inadequate trust fund records
10167.12	violation or crime by PRLS licensee	2831.1	inadequate trust fund records
10176(a)	making any substantial misrepresentation	2832	failure to comply with specific provisions for handling trust funds
10176(b)	making false promise	2832.1	broker's failure to obtain permission to disburse trust funds from an account involving multiple beneficiaries
10176(c)	course of misrepresentations through salespersons	2834	trust account withdrawals by unauthorized person
10176(e)	commingling trust funds	2950(d)	failure of broker handling escrows to maintain records
10176(g)	secret profit or undisclosed compensation	2950(e)	failure by broker to maintain and make escrow records available for inspection
10176(i)	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(c)	false advertisement		
10177(d)	violation of real estate law or regulations		

Licenses Revoked

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Bayley, Joseph Anthony (REB)	792 Meridian Way, Ste C, San Jose	12/8/87	10148, 10177(d)
Benson, Gerlyn LeVelle (RES)	13004 S. Wilton Pl, Gardena	12/29/87	490, 10177(b)
Brandstetter, Zachary (REB)	26040 Newbridge, Los Altos	12/30/87	10176(a)(i), 10177(j)
Catalano, Richard Anthony (RES)	375 Capitol Av, San Francisco	1/13/88	490, 10177(b)(f)
Crawford, William Beverly (REB)(REO)	4925 Whisett Av, #118, N. Hollywood	2/29/88	10177(h)
Crittenden, Bruce Talley (REB)	31243 E. Outer Hwy 10, Redlands	2/3/88	490, 10177(b)
Dan Di Paola & Associates Corp (REC)	1500 J St, Modesto	1/26/88	2830, 2831, 2831.1, 2832, 2834, 2840, 2970, 10045, 10085, 10146, 10176(a)(i)(c), 10177(c)(d)(h), 10240, 10241
Eden, Dwane Ray (RES)	2556 Ribier Wy, Rancho Cordova	1/19/88	490, 10177(b)
Evergreen Diversified Services (REC)	480 North 1st St, Ste 118, San Jose	12/8/87	10148, 10177(d)
Ganun, Michael Phillip (RES)	1939 College Av, Weed	2/12/88	490, 10177(b)
Harris, Daniel Morris Jr. (RES)	811 N. Eucalyptus Av. #114, Inglewood	1/26/88	490, 10177(b)
Hodgkins, John Howard (RES)	c/o Mefford Realty, 5777 Madison Av, Ste 480, Sacramento	1/28/88	490, 10177(b)
Jaclara, Schneider, Miller & Clark Propertycorp (RREC)	1100 Glendon Av, Ste. 1132, Los Angeles	12/8/87	2731, 2831, 2831.1, 2832.1, 10145, 10148, 10177(d)(f)(k)
Kao, George Shyang (RRES)	436 S. Pomelo Av, #D, Monterey Park	1/26/88	490, 10177(b)(k)
Kessinger, David Edgar (REB)	3240 Pachappa, Riverside	12/22/87	490, 10177(b)

continued on page 3. *Disciplinary Action*

Disciplinary Action, continued from page 2

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Kraemer, Larry M (REB)(REO)	7419 Tierra Wy, Fair Oaks	2/10/88	10177.5
Lannin, Wayne Clinton (RES)	1777 Fisk Ct, Thousand Oaks	12/22/87	490, 10177(b)
Lawrence, John Edward (REB)	2271-F E. Palmdale Bl, #A2, Palmdale	1/14/88	490, 10177(b)
Lipsky, Ronald Lester (RREB)(RREO)	1100 Glendon Av, Ste. 1132, Los Angeles Off - Jaclara, Schneider, Miller & Clark Propertycorp	12/8/87	2731, 10177(d)(h)(k)
Longmire, Duane Everett (REB)(REO)	25505 Mahon Av, Escalon Off - Dan Di Paola & Associates Corp	1/26/88	2830, 2831, 2831.1, 2832, 2834, 2840, 2970, 10045, 10085, 10146, 10176(a)(i)(e), 10177(b)(d), 10240, 10241
Mathews, Robert Nathaniel Jr. (RES)	255 Salsbury Dr, Santa Clara	12/31/87	490, 10177(b)
McCarthy, John Edward (RES)	8975 Lawrence Welk Dr, #199, Escondido	12/9/87	490, 10177(b)
McDougall, Sheila Ann (RES)	2282 Santa Anita, Norco	1/7/88	490, 10177(b)
Mitchell, Virginia R. (RES)	P.O.Box 2926, Gardena	12/22/87	490, 10177(b)
Morgan, Charles Thomas (RES)	21157 Hawthorne Bl, Torrance	1/27/88	10176(b), 10177(j)
Nall, Jimmie Douglas (RES)	2444 Moorpark Av, #300, San Jose	1/12/88	490, 10177(b)(f)
Peterson, Carol Ann (RES)	204 1/2 San Benancio Cyn. Rd, Salinas	12/31/87	490, 10177(b)
Peterson, Holman Valdemar (REB)	1652 W. Texas, Fairfield	12/8/87	490, 10177(b)
Raicevich, Ivan Joseph (REB)	440 San Matco Av, San Bruno	12/31/87	490, 10177(b)(f)
Reed, Jerry (REB)	671 Newcastle Rd, Newcastle	2/29/88	490, 10177(b)
Saavedra, Florante Vergel (REB)	1590 Gilbreth Rd, Burlingame	12/8/87	2715, 10145, 10162, 10165, 10176(a)(i), 10177(d)(f)
Sanassarian, Shahan (RES)	389 Ensign Ln, Redwood City	12/7/87	10177.5
Schirtzinger, David Markley (RES)	2200 Laurelwood Rd, Santa Clara	12/31/87	490, 10177(b)(f)
Schwartz, Elaine Rose (RES)	280 S. Beverly Dr, #505, Beverly Hills	10/1/87	10176(a)(i)
Seymour, Robert Murray (REB)	107 Hidden Cove Cir, Sacramento	1/12/88	490, 10177(b)
Sheppard, Joyce Luella (REB)	17915 Ventura Bl, #200, Encino	2/9/88	490, 10177(b)
Stuckey & Stuckey Inc. (REC)	5020 Fray Av, Richmond	7/31/87	2831, 2831.1, 2832.1, 10145, 10176(e), 10177(d)(g)
Db - Stuckey Financial Services			
Stuckey, Henry Lee (REB)(REO)	5020 Fray Av, Richmond	7/31/87	2831, 2831.1, 2832.1, 10145, 10176(e), 10177(d)(g)
Off - Stuckey & Stuckey Inc.			
Weiner, Martin (REB)	P.O. Box 691, Northridge	1/26/88	490, 10177(b)
Williams, Hubert (RES)	Box 12711, Fresno	2/22/88	490, 10177(b)
Wilson, Goldie Adaline (REB)	7955 Morro Rd, Atascadero	1/20/88	10176(a)(i), 10177(j)

Licenses Revoked With a Right to a Restricted License

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Adams, Kristina (RES)	P.O.Box 658, Valley Center	12/29/87	490, 10177(b)
(Right to RRES license on terms and conditions)			
Baker, Johnnie Lewis (REB)	6400 Long Beach Bl, Long Beach	12/22/87	2830, 2831, 2831.1, 2832, 10145, 10177(d)
(Right to RRES license on terms and conditions)			
Chakmakjian, Sylvia Mary (REB)	1885 S. Winchester Bl, Campbell	2/1/88	2785(a)(9), 10177(d)
(Right to RRES license after 30 days on terms and conditions)			
Christopherson, Harry Oliver (REB)	195 E. Hillcrest Dr, Ste L, Thousand Oaks	2/23/88	490, 10177(b)
(Right to RREB license on terms and conditions)			
Coe, Connie Mayme (RES)	P.O.Box 242, Cardiff by the Sea	12/9/87	490, 10177(b)
(Right to RRES license on terms and conditions)			
Estrada, John Anthony (REB)	3500 Mowry Av, Ste A, Fremont	12/8/87	10145, 10177(d)
(Right to RRES license on terms and conditions)			
Farber, Marilyn Lee (RES)	240 N. Hermosa Dr, Palm Springs	2/25/88	490, 10177(b)
(Right to RRES license on terms and conditions)			
Garcia, George Maurice (RES)	15426 Leibacher Av, Norwalk	12/15/87	490, 10177(b)
(Right to RRES license on terms and conditions)			
Gold Medallion Realty Inc (REC)	298 S. Sunnyvale Av, Ste 105, Sunnyvale	12/7/87	10176(a)(i), 10177(f)
(Right to RREC license on terms and conditions)			
Hamilton, Aubrey J. (RES)	1740 W. San Bruno, Fresno	1/27/88	10145, 10176(a)(i), 10177(d)(e)
(Right to RRES license on terms and conditions)			
Harris, Ruby P. (REB)	3001 W. Florence, Los Angeles	1/5/88	2830, 2832, 2832.1, 10145, 10176(e), 10177(d)
(Right to RRES license after 30 days on terms and conditions)			
Lampkin, George Dewey (REB)	2756 Aborn Rd, San Jose	2/3/88	490, 10177(b)(f)
(Right to RREB license on terms and conditions)			
Loveless, Denise Jill (REB)	18022 Cowan St, Ste 203, Irvine	12/29/87	490, 10177(b)
(Right to RREB license on terms and conditions)			
Macedo, Victor Adolfo (RES)	P.O.Box 803, Downey	12/8/87	490, 10177(a)(b)
(Right to RRES license on terms and conditions)			

continued on page 4, Disciplinary Action

Threshold Broker Annual Composite Reports

by Larry Smith, Manager,
Mortgage Loan Activities

THERE ARE SOME SPECIAL PROVISIONS IN THE REAL ESTATE LAW that may affect certain real estate brokers who engage in the negotiation of loans or sale of promissory notes or the collection of payments. These special provisions are contained in Article 6 commencing with Section 10230 of the Business and Professions Code.

Much of this particular portion of the law is for the protection of the private lender in a loan transaction or the private purchaser (investor) of an existing note and trust deed when the transaction is handled by a real estate broker.

Details of the protections for the lender/purchaser have been the subject of previous Bulletin articles. The focus of this article is on the reports that must be submitted by a broker who is subject to the provisions of the law. Generally a broker is considered to have met the "threshold" of business activity if twenty or more loans aggregating \$2 million or more have been negotiated over a twelve-month period. A rebuttable presumption is created that a broker will meet the threshold if, in any three months, five or more loans are negotiated aggregating \$500,000 or in any six months ten or more loans are negotiated aggregating \$1 million. A broker also meets the "threshold" of business activity if collections of payments are made on loans for others totalling \$500,000 or more in any twelve months. The law specifies that loans or sales negotiated by a broker or for which a broker collects payments shall not be counted in determining whether the "threshold" is met if the lender or purchaser is FNMA, FHMLC, GNMA, a bank, savings and loan, credit union, insurance company, etc.

The reports submitted by "threshold" brokers to the Department consist of business activity and trust fund account activity, if trust funds were handled by the broker. The business activity report includes such information as the total number and dollar amount of loans negotiated, amount of late charges assessed, prepayment penalties, commissions charged, and other loan costs and charges. The trust fund account report includes the receipt and disposition of funds of others used in the origination or purchase of loans and/or as collected as payments on behalf of others. These reports are examined by the Department and are compiled annually to produce a composite report of both business and trust account activity of all brokers who meet the "threshold" level of business. The individual reports submitted by brokers are exempt from public disclosure. Only the Annual Composite Reports are available for review.

The composite report for calendar year 1987 will be available in August 1988 for public inspection at any Department of Real Estate office or a copy may be obtained by mail. Send a stamped self addressed envelope to Department of Real Estate, Mortgage Loan Section, P.O. Box 187000, Sacramento, CA 95818-7000 and ask for "Threshold Broker Composite Report 1987."

Automatic Suspension, continued from page 1

requirements will not be required to complete continuing education courses except for a minimum 3 clock-hour course in "Ethics, Professional Conduct and Legal Aspects of Real Estate" and a minimum 3 clock-hour course in "Agency Relationships and Duties in a Real Estate Brokerage Practice."

4. Salespersons who qualify to take the examination by completing only the Real Estate

**As a reminder,
approximately four
months prior to the date
of suspension, the
Department sends a
"Notice of Possible
License Suspension"
letter to conditional
salesperson licensees.**

Principles course will 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. As a reminder, approximately 4 months prior to the date of suspension, the Department sends a "Notice of Possible License Suspension" letter to conditional salesperson licensees.

5. The fee for a real estate salesperson license is \$120 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.

During the last six months of 1985, the Department received 160,000 applications for the salesperson examination. Due to the large number of applications received prior to the effective date of Senate Bill 1042, we continued to test these applicants through the end of April 1986. Since examinations are scheduled on a first come, first served basis, those applicants who qualified with a college-level course in Real Estate Principles did not begin taking the examination until the latter part of April 1986. Some of these individuals received their licenses in June 1986 and became subject to the automatic suspension process in December 1987.

Initially, due to the small number of applicants involved, the process seemed to be operating smoothly. As the number of conditional licenses increased, problems began to surface. Some of the problems include submittal of:

Disciplinary Action, continued from page 3

Licenses Revoked With a Right to a Restricted License

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Marziano, John Carl (REB) (Right to RRES license on terms and conditions) (RRES license to be suspended for 120 days)	540 Clayton Av, El Cerrito	2/24/88	10130, 10137, 10145, 10177(d)
Mullen, Michael H. (REB) (Right to RREB license on terms and conditions) (RREB license may be suspended for 30 days)	2979 Loma Vista Rd, Ventura	9/21/87	2832.1, 2950(b), 10145, 10176(i), 10177(d)
Olson, Jerrol Edward (RES) (Right to RRES license on terms and conditions)	4112 Via Lado, Torrance	12/15/87	2785(a), 2832, 10145, 10176(a)(i), 10177(d)(g)
Saylor, Jerry Milton (REB) (Right to RREB license after 24 days on terms and conditions)	1440B W. Shaw, Fresno	12/14/87	2830, 2970, 10085, 10145, 10146, 10176(a)(e)(i), 10177(d)(g)(j)
Toomey, Bernard Carver (REB) (Right to RREB license on terms and conditions)	1470 Rosecrans St, San Diego	12/8/87	2831, 2832.1, 10145, 10148, 10177(d)
Tran, Alex (REB)(REO) (Right to RREB license on terms and conditions)	298 S. Sunnysvale Av, Ste 105, Sunnysvale	12/7/87	10176(a)(i), 10177(f)

Licenses Suspended With Stays

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Cabrera, Henry (REB) (May be stayed after 30 days on condition)	592 Guerrero St, San Francisco	12/8/87 (until 1/21/89)	2715, 10162, 10165, 10177(d)
Chateau Capital Corp. (REC) (Stayed on condition)	20501 Ventura Bl, #345, Woodland Hills	2/17/88 (30 days)	2831, 2831.1, 2832.1, 2834, 10145, 10176(e), 10177(d), 10231
Douglas, Gary Michael (REB)(REO) Off - Chateau Capital Corp. (Stayed on condition)	20501 Ventura Bl, #345, Woodland Hills	2/17/88 (30 days)	10177(h)
Flory, Frederick Anthony (REB)(REO) (Permanently stayed on condition)	2602 Santa Monica Bl, Santa Monica	7/30/87 (30 days)	2731, 10167.9(a)(7)(c), 10167.10(b), 10167.12(a)(1), 10177(d)
Grundy, Gordon William (REB) (Permanently stayed on condition)	341 Bayside Dr, Newport Beach	1/26/88 (30 days)	2830, 2831, 2831.1, 10177(d)
Pacific/Atlantic Financial Corporation (Permanently stayed on condition)	2602 Santa Monica Bl, Santa Monica	7/30/87 (30 days)	2731, 10167.9(a)(7)(c), 10167.10(b), 10167.12(a)(1), 10177(d)
Polistrini, Andrew Jr. (REB) (May be stayed on condition)	34207 Coast Hwy, Ste 100, Dana Point	12/16/87 (30 days)	10177(j)
Robey, Dennis Arnold (REB) (All but 5 days stayed for 1 year on terms and conditions)	16265 Main St, Ste 600, Lower Lake	12/30/87 (20 days)	10176(a), 10177(g)
Robey, Lawrence Grant (REB) (All but 10 days stayed for 1 year on terms and conditions)	14106A Olympic Dr, Clearlake	12/30/87 (30 days)	10176(a), 10177(g)

continued on page 5, Disciplinary Action

- Continuing education courses instead of two 3-semester-unit college-level statutory courses;
- Forty-five hours of continuing education courses and one 3-semester-unit college level course;
- A request for extension of time (which we do not have the authority to grant);
- Only one 3-semester-unit college-level course;
- A degree without the transcripts;
- Two 3-semester-unit college-level courses and the certificates for the Agency and Ethics courses (the Agency and Ethics certificates should be retained so that the

- licensee will be able to complete the Continuing Education Course Verification form at renewal time);
- Two 3-semester-unit college-level courses after the date of suspension has passed. This error results in an automatic suspension, which is not lifted until the license certificate is issued.

It would be appreciated if brokers, as well as private and public school instructors, would advise prospective and newly licensed salespersons of the above stated requirements so that they can comply without suffering the consequences of the automatic suspension program. ■

Liability of an Accommodating Grantor

by Gerald M. Condon: Condon, Condon & Festa, Santa Monica, CA, reprinted from CEA News, January 1988, with permission of the author

Agreeing to Cooperate in an Exchange

Seller's apartment building is in escrow. Buyer has agreed "to cooperate in an exchange." Seller now requests the Buyer to act as an accommodating grantor. Seller wants Buyer to purchase the replacement property and exchange it for the Seller's property.

The Buyer refuses. Buyer does not want to sign a Grant Deed to a property he does not own. Seller reminds Buyer of Buyer's agreement "to cooperate in an exchange." Buyer replies by stating that he did agree to cooperate in an exchange but he did not agree to sign a Grant Deed to a property he did not own. Is the Buyer correct?

The Buyer is probably correct. The typical statement "Buyer agrees to cooperate in an exchange" is most likely unenforceable. What does it mean? It is vague, ambiguous and does not specifically state what the buyer is to do. What the Seller intended the Buyer to do is:

1. To accept a substituted Seller; or
2. Act as an accommodating grantor in a multi-party exchange.

It is doubtful a court would enforce this ambiguous provision because it does not specifically and clearly state what the Buyer is to do. I recommend this provision not be used. In its place, the Seller should clearly and precisely define what it meant by "the Buyer will cooperate in an exchange."

Liability of the Accommodating Grantor

The escrow was structured as a multi-party exchange. One party has acted as an accommodating grantor. The escrow is now closed. The grantee of the property discovers structural defects and code violations.

Who does the Grantee sue? Most likely everybody. This includes the true owner and the accommodating grantor.

The accommodating grantor is shocked. The accommodating grantor has received an indemnification agreement. It matters not. This is not protection against a lawsuit. An indemnification agreement agrees to reimburse the accommodating grantor for costs of the lawsuit, attorney's fees, judgments and other liabilities but does not keep the accommodating grantor out of the lawsuit. If the accommodating grantor is sued, he/she must pay his/her own monies for attorney's costs and may ultimately be subject to a judgment. Then and only then can the accommodating grantor seek enforcement of the indemnification agreement.

This is hardly the protection the accommodating grantor was looking for. At this point, the accommodating grantor may be alone. The original owner of the property may be in bankruptcy, insolvent or cannot be located. Therefore, notwithstanding the indemnification agreement

grantor may be the only one "available" to satisfy a judgment.

Indemnification and Waiver and Release Agreement

The accommodating grantor should receive an indemnification agreement from the "true owner" and a Waiver and Release Agreement from the Grantee. Both the indemnification agreement and Waiver and Release Agreement are complex documents and should be drafted with precise concern to the particular underlying business facts. They are not agreements that are susceptible to standard form.

"Buyer agrees to cooperate in an exchange" is most likely unenforceable. What does it mean? It is vague, ambiguous and does not specifically state what the buyer is to do.

Making the Accommodating Grantor Aware of the Potential for Liability.

Acting as an accommodating grantor is not a casual responsibility. Because it is fraught with potential liabilities one should participate as an accommodating grantor with due consideration for caution and concern.

Oftentimes the potentiality for liability is not made clear to the accommodating grantor. The responsibility for disclosure and warning certainly rests with the real estate licensee. Escrow may also have a duty to advise in circumstances where escrow has led the parties or a party to the escrow to rely on escrow for advice; or where escrow on its own initiative has structured the multi-party exchange.

The duty of a broker is to warn the party of potential dangers. The licensee who fails to advise the accommodating grantor to seek legal counsel and/or to point out the areas of danger might well be in breach of their brokerage responsibility.

Involvement in a lawsuit is not limited to actions brought by the grantee. A lawsuit brought by the transferee of the Grantee could involve the accommodating grantor.

This article is a simplistic overview of the ramifications of one acting as an "accommodating grantor." Its purpose is to alert parties to an exchange to understand the realities of acting as an accommodating grantor and notwithstanding an indemnification/waiver agreement may still be in jeopardy.

Neither the indemnification nor waiver agreement will provide absolute freedom from litigation. Absolute certainty is achieved by not acting as an accommodating grantor. ■

Disciplinary Action, continued from page 4

Licenses Suspended

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
CRI Brokerage Corp (REC)	1037 East South St, Long Beach	1/5/88 (60 days)	2715, 2731, 2830, 2831, 2831.1, 2834, 10177(d)
Goldberg, Gary Jay (REB)	2330 Westwood Bl, #206, Los Angeles	9/1/87 (180 days)	10177(j)
Jorgensen, Jerrie Marie (RES)	11472 South St, Cerritos	2/10/88 (30 days)	10177.5

Indefinite Suspensions Under Recovery Fund Provisions

NAME	ADDRESS	EFFECTIVE DATE
Alfinito, Alfred (REB)	2441 Moorpark Av, San Jose	12/2/87
Art Bishop Realty Inc (REC)	11149 S. Crenshaw Bl, Inglewood	12/2/87
Bishop, Art (REB)	11149 S. Crenshaw Bl, Inglewood	12/2/87
Emslie, Norma G. (REB)	460 Encanada, La Habra Heights	12/10/87
Guyser, James M. (RES)	13270 Twin Hills Dr, #45A, Seal Beach	12/16/87
Honn, Patrick Louis (REB)	1313 N. Hill Av, Pasadena	12/21/87
McCormack, Cyril Roland (RES)	P.O.Box 3200, Laguna Hills	12/31/87
Old Towne Mortgage & Brokerage (REC)	23161 Lake Center Dr, #221, El Toro	2/4/88
Portuondo, Rafael (REB)	P.O.Box 1641, South Miami, FL	2/17/88
Rodriguez, Joel (RES)	P.O.Box 9603, Brea	12/30/87
Slade, Robin G. (REB)	P.O.Box 1797, Oakland	2/2/88
Waldschmidt, Ronald Glenn (REB)	675 N. First St, Ste 1108, San Jose	2/10/88
Wm Greer & Company (REC)	1337 Howe Av, Ste 210, Sacramento	1/22/88

Monthly Reconciliation of Trust Account Records Now Mandatory

by Paul Markey, Audit Supervisor, San Francisco Audit Section

REAL ESTATE BROKERS WHO RECEIVE TRUST funds that are to be deposited into and disbursed from a trust fund bank account must now reconcile their trust funds records at least once a month.

Real Estate Commissioner's Regulation 2831.2, a new regulation which became effective April 1988, provides that:

"The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions."

The two records that must be reconciled are the "Record of All Trust Funds Received and Disbursed—Trust Fund Bank Account" (required by Regulation 2831), and the "Separate Beneficiary Records" that are retained for each beneficiary or transaction (required by Regulation 2831.1). As mentioned in Regulations 2831 and 2831.1, these two records can be in columnar form or can consist of records, whether main-

Reconciliation Report	
Bank Account Name:	_____
Bank Account Number:	_____
Date of Reconciliation:	_____
Balances per Separate Beneficiary Records:	
Principal (or property) A	\$ xx
Principal (or property) B	xx
Principal (or property) C	xx
Principal (or property) D	xx
Etc.	xx
Etc.	xx
Etc.	xx
Total of Separate Beneficiary Records	xx
Balance per Record of	
All Trust Funds Received	xx
Difference	
(if any, must be fully explained)	\$xx

figure 1

tained manually or under an automated data processing system, which are in accordance with generally accepted accounting principles. Examples of non columnar records are cash receipts journal, cash disbursements journal, general ledger, and subsidiary ledgers.

The required reconciliation consists of comparing the balance shown on the "Record of All Trust Funds Received and Disbursed—Trust Fund Bank Account" (or similar record) as of a particular date with the total of the balances on the "Separate Beneficiary Records" as of the same

date. If the two figures do not agree, the cause of the difference should be located and the records adjusted. Differences could be caused by incorrect calculation of balances, incorrect posting, or failure to record a transaction in one or both records.

If there is more than one trust fund bank account, a separate set of trust fund records and reconciliation report must be maintained for each account.

Trust Account Reconciliation

An example of a reconciliation format that could be used appears as *figure 1*.

Computerized accounting systems normally have features to reconcile the subsidiary records with the summary account, referred to as control account. In these cases the computer report listing the individual subsidiary records balances and their total will be an acceptable reconciliation report if the total agrees with the balance on the control account. Every real estate office must regularly reconcile their records and retain the reconciliation reports for three years. After notice, these reports, like other trust account records, shall be made available for examination and inspection by the Commissioner or his designated representative during regular business hours and shall, upon the appearance of sufficient cause, be subject to audit without further notice.

A real estate office can ensure the accuracy of balances reflected on the records by complying with the requirement to reconcile trust accounts regularly. ■

Antideficiency Statutes Do Not Preclude an Action for Fraud

by Robert Arnold, Managing Deputy Commissioner, Southern Regulatory Area

A CALIFORNIA APPELLATE COURT RECENTLY RULED that the California Antideficiency statutes (Civil Code of Procedure Section 580a, 580b, 580d, 725a, 726) do not preclude actions for fraud. The court stated that a suit for fraud was not an attempt to recover on a debt or a note. The court noted that the policies of the antideficiency statutes are not frustrated by permitting creditors to recover personal judgments against borrowers who fraudulently induce creditors to loan money.

The facts of the case are that a lender loaned a borrower \$108,000 for the purchase of a single-family residence, based on the representation that he would make a \$21,000 cash down payment and retain ownership of the property. In fact, he made no down payment and promptly transferred the property to another individual. The lender later sold the note on the secondary market to the Federal Home Loan Mortgage Corporation (FHLMC). When the borrower defaulted, FHLMC conducted a trustee's sale at which it

acquired the property by making a full credit bid. FHLMC then demanded that the lender purchase the property, which the lender did. The lender then sold the property on the open market for a loss of \$50,000. The lender then sued the borrower for damages.

The lender alleged that it, not FHLMC, was damaged when it was required to repurchase the property and sell it on the open market. The lender alleged a conspiracy to defraud among the buyer, seller, transferee, broker and escrow company, and argued that its suit was not an attempt to recover a deficiency judgment.

The Appellate Court concurred noting the manifest fraud involved, in the loan transaction but cautioned lenders against assuming that all deficiency judgment protection may be circumvented simply by alleging fraud based on any form of overstatement or exaggeration by the borrower.

Source: *Guild Mortgage Co. v. Heller* (1987) 193 CA 3d 1505, 239 CR 59. ■

Withholding Laws Amended

from Carole Foster, Community Services, Franchise Tax Board

A BUYER OR TRANSFEREE WHO ACQUIRES CALIFORNIA real property interests from a foreign person, fiduciary, partnership or corporation is required, under Revenue and Taxation Code Sections 188059(a)(2) and 26131(a)(2) to withhold and transmit tax to the Franchise Tax Board equal to one-third of the amount withheld under Section 1445 of the Internal Revenue Code.

The buyer or transferee must file Form 597, Withholding Tax Return for Dispositions by Foreign Persons of California Real Property Interests, and remit the tax withheld to the Franchise Tax Board within 20 days after the date of transfer. A copy of the Form 8288, the U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, must be attached to Form 597.

Form 597 can be obtained by writing to:

Tax Forms Request Unit
P.O. Box 942840
Sacramento, CA 94240-0070 ■

Notes from Licensing

by Lawrence J. Cannon, Managing Deputy Commissioner II, Licensing

IF YOU OBTAINED A REAL ESTATE SALESPERSON LICENSE within the last two years, you are a part of the first "generation" of individuals to be affected by the provisions of Senate Bill 1042.

In order to take the salesperson examination, you had to submit evidence of completion of a college-level course in Real Estate Principles. Prior to enactment of SB 1042, there were no education requirements to obtain a salesperson license in California.

The new law also made it mandatory for license applicants to submit evidence of two additional three semester unit college-level courses in related areas of real estate within eighteen months of license issuance. While some applicants have submitted evidence of the two additional courses with their examination appli-

cation or before obtaining their original license, the majority of the applicants have waited to submit evidence of the courses until sometime after their "conditional license" has been issued.

A licensee who has not submitted evidence of the two additional courses will receive a reminder warning letter approximately four months prior to the eighteen-month deadline. The letter will advise the licensee that if proper evidence of the two additional courses is not received, his or her license will be automatically suspended. An average of 1,000 warning letters have been mailed out on a monthly basis since the first eighteen-month deadline approached in November 1987.

Licensees should bear in mind that if their license is automatically suspended, license ac-

tivities cannot be conducted from the date of suspension until the proper course information is submitted and a new license certificate is issued.

In order to help us process additional course transcripts more efficiently, we encourage salesperson licensees to utilize RE Form 221 - Statutory Course Transcript Submittal; this form is available at any of our District Offices. Alternatively, the course transcripts should be submitted with a copy of the license certificate or a brief note indicating the licensee's name and current address, the license identification number, and a brief statement giving the reason the course transcripts are being submitted.

Following these steps should eliminate any delay in having your new unconditional license certificate issued.



Name _____

Shipping Address _____

City _____ State _____ Zip Code _____

• Make check or money order payable to:
DEPARTMENT OF REAL ESTATE

• MAIL TO:
Department of Real Estate
Book Orders
P.O. Box 187006
Sacramento, CA
95818-7006

• DO NOT SEND CASH

• FOR FASTER RESPONSE:
PLEASE INCLUDE A SELF-ADDRESSED MAILING LABEL OF NOT LESS THAN 1"X3" IN SIZE FOR EACH ITEM ORDERED.

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	2	1987 Real Estate Law Book (1988 Supplement included free of charge)		\$12.50	
	3	1988 Supplement to Real Estate Law (Brochure)		\$2.00	
	4	Instructions to License Applicants - (Brochure)		Free	
	6	Disclosures in Real Estate Transactions - (1987) (Brochure)		\$2.00	
	7	A Homeowner's Guide to Foreclosure in California - (1987) (Brochure)		\$2.00	
	11	Consumer Protection and Licensee Liability Protection - (1987) (Report)		\$6.00	
	12	Deregulation of Financial Institutions - (1987) (Report)		\$6.00	
	17	Future of California Housing Resale Market - (1986) (Report)		\$6.00	
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				+ California Tax	
				TOTAL ENCLOSED	\$

Any order not including California State Sales Tax will be returned unfilled

DRE Bulletin Index for 1987

This index contains an alphabetical listing of titles of articles that have appeared in the DRE Bulletin since the Spring 1987 issue.

	<u>page #</u>		<u>page #</u>
1987 DRE Legislative Summary	Winter 1987, • 1	Looking for a Specialist	Fall 1987, • 1
1987 Edition Reference Book Published	Summer 1987, • 7	Mandatory Salesperson Course Completion Requirements	Fall 1987, • 5
1987 NARELLO Education Award for DRE Videos	Winter 1987, • 7	Mobilehome Park Conversions to Resident Ownership	Fall 1987, • 7
Amended and Renewed Public Reports	Spring 1988, • 7	Mortgage Loan Advertising Review Moved to Sacramento Office	Spring 1987, • 4
Arthur Godi Appointed Chairman of Revamped Continuing Education Advisory Committee	Spring 1987, • 4	Mortgage Loan Brokers – Special Requirements	Fall 1987, • 3
Calif. Continuing Education Requirements Extended Indefinitely – Research Study Completed	Winter 1987, • 5	NARELLO Digest Published	Spring 1987, • 8
California Franchise Tax Board	Spring 1987, • 5	New Continuing Education “Agency” Course Requirement	Spring 1987, • 5
Clarification of “Certified Appraisal Report” Statute	Winter 1987, • 8	“Nothing Down” Industry Diminishes	Summer 1987, • 1
Commissioner Appoints New Advisory Commission Members	Spring 1987, • 1	Proper ID Required to Take Continuing Education Examinations	Summer 1987, • 6
Commissioner Edmonds Honored by Lambda Alpha International	Winter 1987, • 7	Real Estate Educators Conferences	Fall 1987, • 8
Common Interest Developments – Furnishing Controlling Documents and Financial Statement	Spring 1988, • 8	Real Estate Transfer Disclosure Statement: Debunking the Myths	Summer 1987, • 1
Corporate Officer Licensing Exemption Change	Fall 1987, • 6	Recovery Account Analysis Completed	Spring 1987, • 3
Don't Ignore License Expiration Dates	Summer 1987, • 6	Responsibilities of Continuing Education Attendees	Summer 1987, • 6
DRE Communication Link – A Current Mailing Address	Winter 1987, • 3	Social Security Number Requirements	Summer 1987, • 5
DRE Enforcement Policy	Spring 1988, • 1	Spring Real Estate Educator's Conference	Spring 1988, • 8
DRE Licensing System Goes “On-Line”	Spring 1987, • 1	Steering to Escrow, Title and Home Protection Companies Prohibited	Fall 1987, • 6
DRE Monitors Continuing Education Offerings	Spring 1988, • 4	Subdivision Advertising	Spring 1988, • 1
Educational Videos Released by DRE	Summer 1987, • 7	Supervision of Salespersons – When is an “Independent Contractor” Not an Independent Contractor	Winter 1987, • 6
“Fair Market Value” Defined for Financial Institutions	Fall 1987, • 8	The Desist and Refrain Order – Subdivisions Sales	Spring 1988, • 5
Fingerprint Fee Reduction	Fall 1987, • 1	When a Real Estate Broker License is Required of a General Partner of a Partnership	Spring 1988, • 7
Homeowners Associations – Misunderstood Vehicles for Subdivision Governance	Spring 1988, • 6		
How to Advertise Consumer Credit	Spring 1987, • 6		
Key Promotions at DRE	Summer 1987, • 7		



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