

FAIR HOUSING ACT — WHAT THE '88 AMEND- MENTS MEAN

The U.S. Department of Housing and Urban Development (HUD) has adopted regulations which broaden the anti-discrimination provisions of the Federal Fair Housing Act of 1968 to prohibit discrimination in real estate transactions against any person on the basis of family status or physical or mental handicap. The regulations implement 1988 amendments to the Fair Housing Act. With limited exceptions, the new law provides specific protections for families with children under 18 years of age and assures access to residential real estate by physically or mentally impaired individuals.

The broad scope of the amendments make it unlawful to refuse to sell or rent or refuse to negotiate the sale or rental or otherwise make unavailable a dwelling to any person on the basis of race, color, religion, sex, national origin, familial status or physical or mental handicap.

Under the amendments, children may not be barred from living in "adults only" communities and handicapped individuals may not be denied access to single or multifamily dwelling units. The amendments define a dwelling as any building or structure designed as a residence to be occupied by one or more families. Mobilehome parks, trailer courts, condominiums, cooperatives and time-sharing properties are included in the amendments. Community associations and "adult" communities are clearly targeted, unless they qualify under one of the exceptions noted below.

Section 804(a) of the amendments effectively prohibit the designation of buildings, sections of buildings or certain floors of buildings as "adults only." The protection of the law is extended to include pregnant women and anyone who is in the process of acquiring legal custody of anyone under 18 years of age.

There are circumstances under which the concept of "adults-only" may be preserved for older persons. To qualify as a facility for older people, 100 percent of the residents must be 62 years of age or older or, 80 percent of the units must be occupied by at least one person over 55 years of age and significant facilities and services designed for use by

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BROKER SUPERVISION — SUGGESTIONS OF THE COMMISSIONER'S TASK FORCE

by Robin T. Wilson, Chief Counsel, Department of Real Estate

Forward

The subject of broker supervision has been a matter of ongoing concern to Real Estate Commissioner James A. Edmonds, Jr., for several years. He noticed, in review of hundreds of disciplinary cases, that many involved the failure of real estate brokers to supervise salespersons licensed to them.

All the cases had a common denominator — *the failure of brokers to design and implement a reasonable management system that would result in the salesperson's compliance with the provisions of the Real Estate Law and the regulations enacted thereunder.*

As a result of his observations, Commissioner Edmonds created a special task force to review the entire subject of supervision with the objective of developing practical and useful suggestions which all brokers could consider incorporating into their business operations and procedures.

The Supervision Task Force included licensees from small, medium and large brokerages and non-licensees with particular expertise. The composition of the Task Force crossed a broad spectrum of the real estate profession in California and provided a diversity of experience, concerns, views and ideas on the subject. The members included Dwayne A. Bartels, Dennis Galloway, Richard Loughlin, Lorraine Malone, Robert McNitt, Bruce T. Mulhearn, Jean G. Poulson, Paula K. Reddish, Raymond L. Spinelli and W. Jerome Thomas, Esq. Their suggestions reflect the insight, experience and knowledge shared by the members with the Department.

The product of the Task Force's diligent study are the following suggestions for broker supervision. **It should be made clear that the comments and suggestions set forth were not designed nor intended to establish standards of conduct, but only to provide concerned brokers with suggested means to comply with their responsibility to supervise salespersons licensed to them.** The text of the report will be serialized in the *Real Estate Bulletin* in four installments, commencing with this, the Summer, 1989 edition of the *Bulletin*.

— Robin T. Wilson

Introduction

There were two basic categories of failure to supervise cases:

On the one hand there were those well intentioned brokers who failed to comply with one or more obligation imposed on them by the Real Estate Law (Business and Professions Code Section 10000, et seq.) or by a regulation implementing the Real Estate Law. The most frequent type of case in this category is the failure of a broker to review and initial documents prepared by a salesperson which materially affected the rights or obligations of a party to a transaction for which a real estate license was required.

At the other end of the extreme are the "rent-a-broker" cases. A "rent-a-broker" is a person who will lend his or her broker license to a salesperson or an unlicensed person under a corporation or some other form of business to enable it to obtain a real estate broker license or maintain a brokerage business. The "rent-a-broker" plays no role, or a very limited role, in management of the corporation's activity for which a real estate license is required, including the duty to supervise salespersons. The "rent-a-broker" willingly leaves the operation of the brokerage to someone else, usually the organizer or promoter of the corporation or business entity, who is frequently a salesperson. Under both of the scenarios described above, the Commissioner has witnessed hundreds of thousands of dollars in losses to the public.

Background

Subdivision (h) of Section 10177 of the Business and Professions Code (hereinafter all code references are to the Business and Professions Code unless otherwise noted) makes the failure

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DISCIPLINARY ACTION — DECEMBER 1988 TO FEBRUARY 1989

- 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. 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. The *Real Estate Law* book is available for purchase from the Department of Real Estate for \$12.50 plus tax.

Business and Professions Codes

- 490 Relationship of conviction to licensed activity
- 10085 Failure to submit advance fee materials
- 10130 Acting without license
- 10137 Unlawful payment of compensation
- 10145 Trust fund handling
- 10145(c) Trust fund handling
- 10146 Failure to handle advance fees as trust funds or to furnish verified accounting to principal
- 10148 Retention and availability of real estate broker records
- 10159.5 Fictitious name
- 10162 Office abandonment
- 10165 Covers various violations
- 10176(a) Making any substantial misrepresentation
- 10176(d) Failure to disclose dual agency
- 10176(e) Commingling trust funds
- 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(d) Violation of real estate law or regulations
- 10177(f) Conduct that would have warranted denial of a license
- 10177(g) Negligence or incompetence as licensee
- 10177(h) Failure to supervise salespersons
- 10177(j) Fraud or dishonest dealing not in licensed capacity

- 10177(k) Violation of restricted license condition
- 10177.5 Judgement of fraud in a civil action
- 11018.2 Illegal subdivision sales (sale of subdivision lots without public report)

Regulations

- 2715 Broker's failure to maintain current address with DRE
- 2725 Failure of broker to review and initial agreements
- 2726 Broker-salesperson agreements
- 2731 Unauthorized use of fictitious business name
- 2731(a) Failure to obtain DBA license
- 2752 Notice of change of broker
- 2830 Failure to maintain trust fund account
- 2831 Inadequate trust fund records
- 2831.1 Inadequate trust fund records
- 2832 Failure to comply with specific provisions for handling trust funds
- 2832.1 Broker's failure to obtain permission to disburse trust funds from an account involving multiple beneficiaries
- 2834 Trust account withdrawals by unauth. person
- 2910(a)(1) Crime or act substantially related to qualifications, functions or duties of the R.E. profession
- 2970 Misleading advance fee advertising material

LICENSES REVOKED

Name	Address	Date	Violation
Alexander, Howard Leslie (RES)	37 Astoria Cir., Petaluma	2/27/89	10177(f)(j)
American Developers Mortgage Corp. (REC)	4944 E. Clinton Ave., # 103, Fresno	2/23/89	2830, 2831, 2831.1, 2832.1, 2970, 10085, 10137, 10146, 10148, 10176(e), 10177(d)
Apland, Jeffrey Dean (RES)	P.O. Box 90810, Santa Barbara	12/19/88	2831, 2832.1, 10177(d)(g)
Bankers Interstate Mortgage Corp. (REC)	10850 Wilshire Blvd., # 230, Los Angeles	12/13/88	2731(a), 2830, 10137, 10145, 10176(e), 10177(d)
Belk, Duil Delane (RES)	739 12th St., Fortuna	12/6/88	490, 10177(b)
Bramson, Steven S. (REB)	22913 Burbank Blvd., Woodland Hills	1/25/89	490, 10177(b)
Curtis, William Wayne (REB)	4212 Jump Ct., Sacramento	1/5/89	10148, 10165, 10177(d)
Edwards, Thomas E. (REB)	20853 Pioneer Blvd., Lakewood	12/9/88	490, 10177(b)
Eilman, Pamela Rae (RES)	P.O. Box 721, Green Bay, Wisconsin	1/5/89	490, 10177(b)
Evans, James Allan (REB)(REO)	5777 Madison Ave., # 520, Sacramento	1/6/89	10148, 10162, 10165, 10177(d)
Geller, Adam Vadim (RES)	2663 Centinela Ave., # 205, Santa Monica	2/9/89	490, 10177(b)
Girbes, John (RES)	8875 Centaurus Way, San Diego	9/6/88	10130, 10132, 10177(d)
Golden Oaks Mortgage Services, Inc. (REC)	5777 Madison Ave., # 520, Sacramento	1/6/89	10148, 10165, 10177(d)(f)
Hadden, Dionna Marie (RES)	2317 N. Winery, # B, Fresno	2/23/89	10137
Hammonds, Tyrone H. (RES)	10542 Mills Tower Dr., Rancho Cordova	1/19/89	490, 2910(a)(1), 10177(b)
Haufler, Michael James (REB)	964 Chorro St., # 6, San Luis Obispo	1/30/89	490, 10177(b)
Hopkins, Dennis Greg (REB)	1000 Greer Rd., Turlock	1/5/89	490, 10177(b)

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LICENSES REVOKED

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Name	Address	Date	Violation
Hughes, Laverne Raymond (REB)	3332 E. Paul Ave., Fresno	2/23/89	2725, 2726, 2830, 2831, 2831.1, 2832.1, 2834, 10137, 10148, 10177(d)(g)(h)
Kerwin, David Sylvester III (REB)	968 Emerald St., # 216, San Diego	2/27/89	10177.5
Leffler, Daniel Edward (RES)	P.O. Box 11643, Costa Mesa	11/22/88	490, 10177(b)
Majano, Rosa Marimila (RES)	1940 Don Ave., # 4, Santa Clara	2/1/89	490, 10177(a)(b)
Malveaux, James Paul (RES)	563 Ellsworth St., San Francisco	12/8/88	490, 10177(b)
McMinn, Merlin Jett (RES)	444 N. State St., P.O. Box 118, Ukiah	1/19/89	490, 10177(a)(b)
Moore, Carrie Lee (RRES)	210 Myticewood, # A, Paso Robles	1/5/89	10130, 10137
Nguyen, Haiduong Thi (RES)	878 Canada Dr., Milpitas	1/30/89	490, 10177(a)(b)
Overseas Financial Resources Inc. (REC)	211 S. Ynez St., Monterey Park	2/28/89	10130, 10137, 10176(i)
Patton, Leroy (REB)	4236 Balboa Ave., Ste. 3, San Diego	12/13/88	490, 10177(b)
Quan, Warren Fay Jr. (RES)	1808 Santa Clara, Alameda	2/28/89	2715, 10130, 10131(a), 10131.2, 10137, 10165, 10176(a), 10177(d)
Rothwell, Laurie Samuel (REB)	1890 San Pablo Ave., Pinole	1/30/89	490, 10177(b)
Ryles, Henry Jr. (RRES)	P.O. Box 9397, Long Beach	12/6/88	490, 10177(b)
S & G Entities, Inc. (REC)	511 N. Main St., Lake Elsinore	1/9/89	2831, 2831.1, 2832.1, 2834, 10137, 10177(d)
Sande, Peter John (RES)	1177 Olivebranch Ln., San Jose	12/6/88	490, 10177(b)
Snyder, Pauli A. (RES)	P.O. Box 161875, Sacramento	12/22/88	490, 10177(b)
Soderling, Jay Scott (RES)	50 Santa Rosa Ave., 5th Floor, Santa Rosa	1/10/89	490, 10177(b)
Soderling, Leif David (REB)(REO)	50 Santa Rosa Ave., Santa Rosa	1/10/89	490, 10177(b), 10177.5
Suncin, Edward Steve (RES)	1725 S. Nogales, # 101, Rowland Heights	1/25/89	10137, 10145, 10176(a)(e)(i), 10177(d)(g)
Tippetts, Mark D. (RES)	2725 Candlewood St., Lakewood	2/14/89	490, 10177(b)
Vallejo, Albert Angel (RES)	16367 Denley, Hacienda Heights	12/20/88	490, 10177(b)
Voss, Laurence Harry (REB)	21495 Mission Blvd., Hayward	2/28/89	490, 10177(b)
Walloch, Lorraine W. (RES)	1021 Southwood Dr., Apt. E, San Luis Obispo	12/30/88	490, 10177(b)
Zomorodi, Fred (RES)	1115 S. Glenville Dr., # 4, Los Angeles	2/9/89	490, 10177(b)

LICENSES REVOKED WITH RIGHT TO A RESTRICTED LICENSE

Name	Address	Date	Violation
Alsip, Joseph Robert, Jr. (REB) (Right to RREB license after 180 days on terms and conditions)	1125 S. Seaward Ave., # 3, Ventura	2/28/89	10176(a)(i), 10177(d)
Andrews, Amos Lee (RES) (Right to RRES license on terms and conditions)	1381 5th St., Los Osos	12/30/88	490, 10177(b)
Avey, Jon Brian (RES) (Right to RRES license on terms and conditions)	3508 Windrift Way, # 117, Oceanside	1/24/89	490, 10177(a)
Boehn, Robert Arthur III (RES) (Right to RRES license on terms and conditions)	317 Stonybrook, Santa Rosa	2/15/89	490, 10177(b)
Butler, Scott Thomas (REB) (Right to RREB license on terms and conditions)	1811 "L" Ave., National City	8/27/87	490, 10177(b)
Carlos, Ariel Arceo (RES) (Right to RRES license on terms and conditions)	17730 Lassen St., # 113, Northridge	1/24/89	490, 10177(a)
Carrillo, Jorge Alfredo (RES) (Right to RRES license on terms and conditions)	1832 Dalton Pl., San Jose	12/21/88	490, 10177(a)(b)
Condit, Jan (RES) (Right to RRES license on terms and conditions)	110 N. Everett, # 304, Glendale	1/3/89	490, 10177(b)
Di Nunzio, Robert A. (REB) (Right to RREB license on terms and conditions)	150 E. Olive Ave., Ste. 203 Burbank	10/18/88	2725, 2725(a), 2726, 10148, 10177(d)
Difranco, Mary Elizabeth (RES) (Right to RRES license on terms and conditions)	204 Elizabeth Ct., Santa Paula	12/6/88	490, 10177(b)
Ehlinge, Jeffrey Barrett (RES) (Right to RRES license on terms and conditions)	6447 Surfside, Malibu	12/22/88	490, 10177(b)
Fajardo, Bernadette Leygo (RES) (Right to RRES license after 30 days on terms and conditions)	1312 Calle Linda, San Dimas	12/15/88	2731(a), 10130, 10137, 10177(d)
Halstead, Edward Dale (RES) (Right to RRES license on terms and conditions)	3611 Tierra Bella, Santa Barbara	2/16/89	490

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BROKER SUPERVISION

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of an individual real estate broker "...to exercise reasonable supervision over the activities of his salespersons..." or the failure of a corporate designated officer "...to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required" grounds to suspend or revoke a broker license.

The scope of the responsibility to exercise "reasonable supervision" has not been clearly defined by reported case law, by regulations issued by the Commissioner or by specific policy determinations of the Commissioner. One of the reasons for this uncertainty is that so much of a salesperson's activity takes place outside the presence of the broker. As a result there is no reasonable basis upon which it can be inferred that the broker, in exercise of reasonable care, could or should have known what it was that the salesperson did or did not do. Additionally, because of the many varying factors which affect a determination of reasonableness, such as the size of an office or the number and location of branch offices, it is difficult to develop an overall checklist which would be comprehensive enough to cover different scenarios of real estate brokerage operations.

Closely associated with the lack of a defined standard of "reasonable supervision" are provisions in the Real Estate Law and industry practices which enhance the difficulty of developing a meaningful and useful standard which balances the needs of the public and the industry for supervision.

First, there is Section 10179 of the code which provides that a broker cannot be disciplined for an act of a salesperson or employee unless the broker has guilty knowledge of the act or violation. This statute supports the independent contractor status of the broker-salesperson relationship and pushes the broker in the direction of not wanting to know what his or her sales staff is doing at least as far as potential disciplinary action is concerned. However, case law has made it clear that the responsibility to supervise cannot be avoided nor can the broker avoid discipline by ignoring what is going on under his or her license. Norman v. DRE (May 1979) CA 3d 768, tells brokers you cannot escape discipline simply by stating "I didn't know." As such, the duty is a separate obligation imposed on brokers, which can serve as a basis for disciplinary action irrespective of the broker's knowledge of the salesperson's activity. The Norman case impliedly recognizes that a broker needs to have in place a system for supervision.

In Norman the court discussed the license responsibility of a "rent-a-broker" whose real estate license had been disciplined. In his

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BROKER SUPERVISION

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appeal the broker asserted a defense that he had little or no knowledge about the activities being conducted under the name of the corporate broker. The appellate court stated in reply as follows: "Such a designated real estate broker must reasonably be charged with responsibility for corporate compliance with the Real Estate Law, for otherwise, with no such fixed responsibility, the statutory purpose would be frustrated." In reaching this conclusion, the court relied on the case of Grand v. Griesinger, 160 CA 2d 397, 406, and said, "The entire statutory scheme requires the broker to actively conduct his brokerage business and to supervise the activities of his salesmen."

The second factor which has made an effect on supervision, and is no less significant than the first, is the nature of the relationship between a broker and his salespersons. Is he or she an employee or an independent contractor? The answer is significant because of the responsibilities and liabilities imposed on the employer.

Case law has in essence looked at the specific area of the law under consideration to determine the status of the relationship between a broker and a salesperson licensed to him or her. Thus, when the law being analyzed has been the Real Estate Law or tort law, the salesperson has been considered an employee of the broker; however, when dealing with worker's compensation law, minimum wage and social security law, the salesperson is considered to be an independent contractor. This designation of the relationship based on the specific laws which are being dealt with has added to the uncertainty about the degree of supervision required of brokers by not providing a single focused response which can be used as a basis for better understanding the role and relationship of the broker and the broker's staff.

More important than case law is the fact that both brokers and salespersons have considered salespersons to be "independent contractors" with the right to determine how to accomplish their jobs. Whether or not this assessment has in fact been supported by the law, it has, for some brokers, psychologically dictated the exercise of minimum supervision. It has also made it difficult to get the industry to accept any standard which requires supervision. While case law has consistently held brokers (principals) liable to third parties for the acts of their agents, whether such acts were ratified by the broker and even though the broker was innocent and received no benefits from the transaction, some in the industry have argued that to even suggest a requirement of supervision might expand the standard of care owed by the

Broker supervision, continued on Page 5

LICENSES REVOKED WITH RIGHT TO A RESTRICTED LICENSE *Continued from Page 3*

Name	Address	Date	Violation
Holmes Mortgage Company, Inc. (REC) (Right to RREC license on terms and conditions)	8425 Morro Rd., Atascadero	1/10/89	2725, 2831, 2831.1, 10145, 10176(i), 10177(d)(g)(h)
Holmes, Robert Drury (RES) (Right to RRES license on terms and conditions)	7360 El Camino Real, # B, Atascadero	1/10/89	10130, 10176(a), 10177(d)(g)
Howell, Alvin Bradford (REB)(REO) (Right to RREB license on terms and conditions)	5375 E. 2nd St., # 1, Long Beach	12/7/88	2831, 2832.1, 10145, 10177(d)
Jimenez, Cezar (RES) (Right to RRES license after 30 days on terms and conditions)	c/o 1502 W. Covina Pkwy., # 116, W Covina	1/10/89	10177(f)
Jones, Dennis Richards (RES) (Right to RRES license on terms and conditions)	1245 Bluff Rd., Montebello	12/13/88	490, 10177(b)
Kruger, Frederick William (REB) (Right to RRES license on terms and conditions)	10101 Slater Ave., # 240, Fountain Valley	1/5/89	490, 10177(b)
Lake, Karen Lynne (RES) (Right to RRES license on terms and conditions)	1833 Laurel Ln, W. Sacramento	2/3/89	2832, 10130, 10145, 10177(d)
Luhks, Alfred John, Jr. (REO) (Right to RREB license after 30 days on terms and conditions)	145 Widmar Pl., Clayton	1/3/89	10177(g)(h)
Mack, Edward Roy (REB)(REO) (Right to RREB license on terms and conditions)	568 De Armond Pl., Santa Maria	1/10/89	2725, 2831, 2831.1, 10145, 10176(i), 10177(d)(g)(h)
Merritt, Kevin Scott (REB) (REO) (Right to RRES license after 30 days on terms and conditions)	3940 W. Compton Blvd., Ste. A, Lawndale	2/28/89	2731(a), 2830, 2832.1, 2834(a), 10145, 10148, 10242
Millan, Basil (REB) (Right to RRES license on terms and conditions)	645 Redondo Ave., # 302, Long Beach	2/28/89	490, 2725, 2726, 10137, 10161.8, 10177(b)(d)
Parra, Gladys (RES) (Right to RRES on terms and conditions)	5233 Elmwood Ave., Lynwood	2/7/89	490, 10177(b)
Samouha, Haidy (RES) (Right to RRES license on terms and conditions)	10750 Lurie Pl., Northridge	2/16/89	490, 10177(b)
Samples, James Willard (REB) (Right to RREB license on terms and conditions)	10014 Louise Ave., Northridge	2/14/89	2725, 10177(d)(h)
Schonfeld, Brett Paul (RES) (Right to RRES license on terms and conditions)	14600 Dickens St., # 104, Sherman Oaks	2/23/89	490, 10177(b)
Shideler, Shirin (RES) (Right to RRES license on terms and conditions)	P.O. Box 5254, Sherman Oaks	2/16/89	10177(a)
Strelinski, Cass Stanley (REB) (REO) (Right to RREB license after 60 days on terms and conditions)	2130 E. 4th St., # 260, Santa Ana	1/9/89	10177(h)
Sunderhaus, Dennis Lee (REB) (Right to RRES license on terms and conditions)	100 Shoreline Way, Bldg. A, Ste. 280, Mill Valley	2/21/89	10177(f)(j)
Thom, Herb J. (RES) (Right to RRES license on terms and conditions)	1837 San Simeone Way, Stockton	12/21/88	490, 10177(b)
Turner, Clifton Alexander John (REB) (Right to RREB license on terms and conditions)	536 S. Second Ave., Ste. F, Covina	12/28/88	10177(h)
Velarde, Marie Montano (RES) (Right to RRES license on terms and conditions)	11027 1st Ave., Whittier	2/21/89	490, 10177(b)
Wallis, Dixie Gertrude (RES) (Right to RRES license on terms and conditions)	28554 Alpine Way, Shingletown	11/28/88	490, 10177(b)
Wells, Tara B. (RES) (Right to RRES license on terms and conditions)	935 Fremont Ave., Los Altos	12/19/88	490, 10177(b)
Whyte, George E. A. (REB) (Right to RREB license on terms and conditions)	9125 Jonell Ct., La Mesa	10/6/88	2715, 2752, 10163, 10177(d)(h)
Williams, Michele Cecilia (REB) (Right to RREB license after 90 days on terms and conditions)	4447 Don Milargo Dr., Los Angeles	1/5/89	10148, 10176(a)(i), 10177(d)(j)

LICENSES SUSPENDED

Name	Address	Date	Violation
Barsoumian, Abraham Kirk (RES) (Suspended for 30 days)	2525 E. Foothill # 4, Pasadena	8/19/88	10145(c), 10177(d)
Betts, Sandra Lorraine (RES) (Suspended for 60 days)	11817 Texas, # 4, Los Angeles	12/1/88	10177(d)
Forrest, Lloyd Willis (REB) (Suspended for 30 days)	617 W. Main St., Visalia	12/2/88	10176(a)(i)
Woods, Gerald Lee (REB) (Suspended for 30 days)	# 1 Fernbank, Irvine	10/26/88	10165, 10177(d)

LICENSES SUSPENDED WITH STAYS

Name	Address	Date	Violation
Jimenez, Felipe (REB) (Suspended for 30 days — All but 10 days stayed for 1 year on condition)	1426 W. Beverly Blvd., Montebello	12/15/88	10177(h)
Kismet Real Estate Investments, Inc. (REC) (Suspended for 10 days — Stayed on condition)	6324 Sunset Blvd., Los Angeles	12/1/88	2830, 2831, 2831.1, 2832.1, 10145, 10177(d)
LaFleur, Richard Deck (REB)(REO) (Suspended for 30 days — Permanently stayed on condition)	4840 Irvine Blvd., # 208, Irvine	1/23/89	10137
Michlin, Willard Del (REB)(REO) (Officer — Kismet Real Estate Investments, Inc.) (Suspended for 10 days — Stayed on conditions)	6324 Sunset Blvd., Los Angeles	12/1/88	10177(h)
Miller, Stanley Allen (REB) (Suspended for 30 days — Stayed for 1 year on conditions)	2007 W. Hedding St., San Jose	2/28/89	2831, 10145, 10176(c), 10177(d)(g)
Ocampo, Vicente Lapid (REB) (Officer — Vic Ocampo Realty One Real Estate Corp.) (Suspended for 30 days — Permanently stayed on condition)	819 W. Willow St., Long Beach	2/21/89	10177(g)
Rub, Robert Abraham (REB) (REO) (Suspended for 30 days — All but 5 days stayed for 1 year on conditions)	1900 Avenue of the Stars, # 1175, Los Angeles	12/30/88	10177(h)
Tookmanian, Diana (REB) (Suspended for 60 days — Stayed on terms and conditions)	430 N Sunnyslope Ave., Pasadena	7/20/88	10177(d)(h)
Vic Ocampo Realty One Real Estate Corp. (REC) (Suspended for 30 days — Permanently stayed on condition)	819 W. Willow St., Long Beach	2/21/89	10177(g)

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Art Bishop Realty, Inc. (REC)	11149 S. Crenshaw Blvd., Inglewood	12/5/88
Bishop, Art (REB)	11149 S. Crenshaw Blvd., Inglewood	12/5/88
Branca, Budd Barry (RES)	1915 W. Glenoaks Blvd., Ste. 200, Glendale	12/7/88
Burton, Wayne (REB)	2487 N. Sierra Wy., San Bernardino	12/5/88
Figueroa, Carlos Alejandro (REB)	2601 Mission St., Ste. 804, San Francisco	2/17/89
Flynn Realty, Inc. (REC)	413 Main St., Ste. B, El Segundo	12/7/88
Ghilarducci, Albert Salvatore (RES)	1540 River Park Dr., Sacramento	1/27/89
Guerrero, Ramiro Gomez (RES)	1688 Pelican Point Ct., Chula Vista	12/7/88
Hasche, Evelyn Susama (RES)	3443 State St., Santa Barbara	2/17/89
Hasche, Nina Annine (REB)	3443 State St., Santa Barbara	2/17/89
Janson, Nancy Lee (RES)	1451 Danville Blvd., Ste. 105, Alamo	1/6/89
Jones, Ben Carl (REB)	P.O. Box 470, Moreno	12/7/88
Moen, Vernon Marcellas (RES)	4348 Van Nuys Blvd, Ste 205, Sherman Oaks	1/27/89
Mussack, Allen J. (RES)	P.O. Box 9060, San Jose	12/7/88
Newport Pacific Funding, Inc. (REC)	4000 MacArthur Blvd, Ste 470, Newport Bch	1/6/89
Obersoler, Norma Lee (RES)	223 Ardys Pl., Vista	2/17/89
Stuckey, Henry Lee (REB)	10901 Macarthur Blvd., Ste. 206, Oakland	1/25/89
Tanno-Pacific Financial Inc. (REC)	P.O. Box 13024, San Rafael	12/7/88
Tone, Richard Nicholas Jr. (REB)	P.O. Box 222, Sutter Creek	2/17/89
Townsend, Paul Raymond (REB)	P.O. Box 46, Spring Valley	12/7/88
Union Home Loans (REC)	11301 W. Olympic Blvd., Los Angeles	1/27/89
Western Computer Services (REC)	11301 W. Olympic Blvd., Los Angeles	1/27/89

TRUST DEED INVESTMENTS — WHAT YOU SHOULD KNOW

A practical guide for consumers who are interested in participating in trust deed investments is available from the Department of Real Estate. The 26-page booklet, *Trust Deed Investments — What You should Know*, was produced by Parkway Land, Inc. through the Department of Real Estate's education and research program. The booklet presents an overview of the basic steps and documentation involved in trust deed investments. The publication may be ordered from the DRE, P.O. Box 187006, Sacramento, CA 95818-7006. Please remit \$2.00 plus applicable sales tax. A 20 percent discount is available for orders exceeding 100 copies.

BROKER SUPERVISION

continued from Page 4

broker to third parties, and thus the liability of brokers. While the Department recognizes the need to be sensitive to the issues of expanded liability, the ironic part of this view is that to avoid civil liability, an effective supervision program is necessary to obtain compliance with the Real Estate Law.

Because of the inability to design a simple standard to determine what constitutes reasonable supervision, and what a broker could or should have known about the activity of his or her sales staff, the task force has looked into other requirements imposed by or under the Real Estate Law and the regulations, and good business judgement, as suggestions to assist brokers in designing a system to comply with their responsibility to provide reasonable supervision over their sales staffs.

This approach is generally consistent with the one used by the Department when charging a broker with failure to supervise in a disciplinary case. It is rare to see an allegation of the failure of a broker to supervise in an accusation which does not also include the failure of a broker to review and initial documents which may materially affect the rights and obligations of a party to a real estate transaction or some failure with respect to trust fund handling. These specific violations are the only area where there is something firm to grasp when dealing with supervision and where reasonably implemented policies can help effect compliance. As such, the suggestions of the Task Force are made to assist brokers in developing their own policies and guidelines for implementing their responsibility to supervise. The starting point is the time when a decision is made whether to sign on a salesperson under one's broker license.

To be continued in the Fall, 1989 edition of the Bulletin: Hiring and Terminating Salespersons.

ESCROW INDUSTRY STUDY AVAILABLE

A study of California's escrow industry titled *Analysis of California's Escrow Industry as it Affects Real Estate Licensees* is available from the Department of Real Estate (DRE).

The study, conducted by Arthur Young and Company under contract from the DRE, examines the depth, scope and diversity of California's escrow industry and describes the various levels of regulatory overview exercised by State and federal authorities.

The report may be purchased from the California Department of Real Estate, P.O. Box 187006, Sacramento, CA 95818-7006. Enclose \$6.00 plus appropriate California sales tax.

FAIR HOUSING

continued from Page 1

elderly persons must be in place. "Special facilities" for older individuals include an accessible physical environment, communal dining facilities, social and recreation programs, the availability of emergency and preventive health care and other similarly-intended services or facilities.

The principle of equal housing opportunity for handicapped individuals is addressed in the Act by making it unlawful (Section 804(f)(2)) "for any person to discriminate or to otherwise make unavailable a dwelling to any buyer or renter because of a handicap of the person..."

The word "handicap" is defined as a mental or physical impairment which substantially limits one or more of the person's major life activities or refers to a person with a record of impairment or who may be regarded as impaired. Current drug addicts, persons convicted of drug-related felonies and transvestites are not considered handicapped within the new law, but alcoholics are.

In new construction of multifamily facilities (four or more units), residences must be accessible to handicapped persons. Buildings constructed with elevators must accord handicapped access to 100 percent of the units. In garden style apartments, only ground-floor units are affected.

Common use areas and buildings must be accessible to handicapped persons and all doors and passageways must be wide enough to accommodate wheelchair-bound individuals.

Each new living unit must be constructed in a manner that assures access throughout by handicapped individuals. Light switches, plugs and environmental controls must be accessible; bathroom walls must be reinforced to accommodate future installation of grab rails and kitchens and baths must be designed and installed in a manner that ensures usability by impaired people.

The HUD regulations apply to any person, or other entity, whose business includes the sale, brokerage or appraisal of residential real estate. They complement existing California law and Department of Real Estate (DRE) Commissioner's Regulations which prohibit discrimination in real estate transactions.

Although the California Department of Fair Housing and Labor maintains jurisdictional authority in discrimination cases, the Department of Real Estate assumes a regulatory role when allegations of discrimination involve real estate salespeople, brokers and appraisers. The DRE may take disciplinary action against real estate licensees who violate Business and Professions Code, Section 125.6,

Fair housing, *continued on Page 8*

DEALING WITH OUT-OF-STATE BROKERS

by George Sublette, Attorney in Charge, Los Angeles

In the last few years, California real estate brokers have increasingly become involved as agents in real estate transactions wherein the subject real property, the sellers, the buyers and/or the real estate agents were located or licensed in different states or countries. This is likely to be the situation where the buyers or sellers are foreign companies or investors.

The real property involved is usually commercial or industrial in nature, is often of substantial value, and such transactions may be looked upon as great opportunities by California real estate agents. Such transactions may involve the California real estate broker cooperating with and sharing commissions with another broker whose office is located outside of California. The problem lies in the fact that the cooperating broker may not be licensed as a real estate broker in California. In such cases, the California real estate broker should exercise the necessary care to make certain that his or her participation in such transactions does not violate the California Real Estate Law.

The California Real Estate Law requires that one be licensed in California as a real estate broker if one, for or in expectation of compensation, performs in California certain acts set forth mainly in Section 10131 of the California Business and Professions Code (the "Code") and also in various other sections of the Code.

In a transaction involving out-of-state or out-of-country real estate brokers, there is always the possibility, and even probability, that such out-of-state agents may come into California in connection with the transaction. If the out-of-state broker participates in California in the negotiation of the transaction, or performs in California any other acts requiring a real estate broker license under the California Real Estate Law, the out-of-state broker must be licensed as a real estate broker in California.

Section 10137 of the California Business and Professions Code provides, in part, that "It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him; provided, however, that a licensed real estate broker may pay a commission to a broker of another state."

Section 10137 makes it lawful for a California licensed real estate broker to cooperate with and share a commission with a broker of another state. However, Section 10137 does not mean that the out-of-state broker can perform, in California, acts requiring a real estate broker license unless the out-of-state broker is also licensed in the State of California.

Section 10137 of the Code further provides that "For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license" of the California real estate broker. Also, Section 10138 of the Code provides, in part, that it is a misdemeanor, punishable by a fine "for each offense, for any person whether obligor, escrow holder or otherwise, to pay or deliver to anyone a compensation for performing any of the acts within the scope of this chapter, who is not known to be or who does not present evidence to such payor that he is a regularly licensed real estate broker at the time such compensation is earned. For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license" of the California real estate broker.

With the foregoing facts in mind, California real estate brokers are well-advised to take whatever steps are necessary to make sure the cooperating agents with whom they deal are licensed in California if the cooperating agents are performing or should reasonably be expected to perform, in California, acts requiring a real estate license under the California Real Estate Law.

DISCOVER OR DISCLOSE?

In the Spring, 1989 *Real Estate Bulletin* an article titled "Don't Be a Rent-A-Broker" stated, "In most instances the Department does not disclose that the broker is a mere figurehead until after the loss of money or other damages is incurred by a client of the broker.

The article should have stated that the Department does not **discover** that the broker is a mere figurehead, etc.

— Editor

CA LEADS IN RESALE HOME PRICES

SMSA	Median Price	
	4th Qtr 88	4th Qtr 87
1 Orange County	\$231,200	32.2%
2 San Francisco Bay Area	\$228,100	29.6%
3 Los Angeles Area	\$191,200	24.6%
4 San Diego	\$157,200	18.6%
5 Riverside, San Bernardino	\$113,200	16.5%
6 Honolulu	\$225,000	16.4%
7 Buffalo/Niagara Falls	\$ 67,500	14.0%
8 Philadelphia	\$104,600	13.0%
9 Albany/Schenectady/Troy	\$100,000	10.9%
10 Chicago	\$101,400	10.8%
** United States	\$ 87,900	3.4%

* A National Association of Realtors (NAR) survey.
* Reprinted with permission from *Realtor News*, a NAR publication.

CALIFORNIA INCOME TAX WITHHOLDING REQUIRED FOR REAL PROPERTY SALES

Real estate brokers, agents, escrow officers and others involved in sales of California real property in which the seller is a foreign person should be aware of recent changes in California income tax law.

California Revenue and Taxation Code Sections 18805 and 26131 have been amended to conform to Section 1445 of the Internal Revenue Code (IRC). Section 1445 requires purchasers of real property to withhold, in most circumstances, 10 percent of the purchase price and remit this amount to the IRS when purchasing property from a foreign seller. California laws require the buyer or transferee to deduct and withhold tax for California purposes an amount equal to one-third of the amount withheld under Section 1445 of the IRC.

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 of the date of transfer. A copy of the federal form 8288 must be attached to the Form 597.

All questions concerning the procedures for filing the forms and remitting the tax should be directed to: Franchise Tax Board, Withholding at Source Unit, P.O. Box 651, Sacramento, CA 95812-0651; Telephone: (916) 369-4900.

YOU CAN HELP REDUCE PROCESSING DELAYS

Inaccurate or incomplete forms submitted to the Department of Real Estate (DRE) for examination, original licenses, license renewals, status changes and other requests that require DRE action are a major reason for many of the delays in processing applications and requests. When the DRE receives incomplete or inaccurate application forms everyone suffers, because the Department's staff must spend extra time processing and returning — and many times re-returning — the improperly submitted applications. As a result, exam schedules are delayed, the receipt of original licenses is delayed, status changes become backlogged, etcetera.

Please assist the Department by checking forms you and members of your staff submit to the DRE for accuracy and completeness, before they are mailed. If a fee is required, please submit a properly completed check. With your assistance, application processing delays can be reduced.

REAL ESTATE PUBLICATION REQUEST

	DRE	RE#	TITLE OF PUBLICATION, BROCHURE, REPORT OR VIDEO	COST	QUANTITY	YOUR COST
<ul style="list-style-type: none"> • Make check or money order payable to: Department of Real Estate 		1	1987 Reference Book	\$12.50		
		2	1987 Real Estate Law Book (Free 1988 Supplement included)	\$12.50		
		3	1988 Supplement to Real Estate Law (brochure)	\$2.00		
		4	Instructions to License Applicants (brochure)	Free		
<ul style="list-style-type: none"> • Mail To: Department of Real Estate Book Orders P. O. Box 187006 Sacramento, CA 95818-7006 		6	Disclosures in Real Estate Transactions (1987; brochure)	\$6.00		
		7	A Homeowner's Guide to Foreclosure in California (1987; brochure)	\$6.00		
		11	Consumer Protection and Licensee Liability Protection (1987; report)	\$6.00		
<ul style="list-style-type: none"> • Do Not Send Cash 		12	Deregulation of Financial Institutions (1987; report)	\$6.00		
		17	Future of California Housing Resale Market (1986; report)	\$6.00		
<ul style="list-style-type: none"> • For Faster Response: Please include a self-addressed mailing label (not less than 1" x 3" in size). 		18	Licensee Interaction With Respect to Marketing REOs (1987; report)	\$6.00		
		19	Common Interest Homeowners' Assoc. Mgmt. Study (1987; report)	\$6.00		
		20	Payment and Interest Rate Shock (1987; report)	\$6.00		
		21	Job Analysis and Testing Procedures Study (1987; report)	\$6.00		
		22	Licensee's Role in Marketing of Housing to the Elderly (1986; report)	\$6.00		
		23	Real Estate Specialization — Need for Special Licenses and/or Educational Requirements (1987; report)	\$6.00		
		24	Reasons for Today's Foreclosures (1987; report)	\$6.00		
		25	Rental Housing Data Base (1986; report)	\$6.00		
		26	Restructuring of the Real Estate Brokerage Industry (1986; report)	\$6.00		
		27	Review of California's Continuing Education Program — including testing requirements (1987; report)	\$6.00		
<ul style="list-style-type: none"> • DRE Cannot Accept Returns or Make Refunds. 		28	Supervision of the Real Estate Office (1987; video)	\$25.00		
		29	Trust Funds (1987; video)	\$25.00		
<ul style="list-style-type: none"> • Prices Are Subject To Change. 		30	Study of California's R.E. Appraisal Industry (1988; report)	\$6.00		
		32	Compliance with the Real Estate Transfer Disclosure Law (1988; video)	\$25.00		
<ul style="list-style-type: none"> • Allow 4—6 Weeks For Delivery 		33	Agency Disclosures in Residential Real Estate Transactions (1988; video)	\$25.00		
		34	Mobilehome Park Purchases by Residents (1986; brochure)	\$2.00		
		35	Trust Deed Investments — What You Should Know (1989; brochure)	\$2.00		
		38	Analysis of California's Escrow Industry (1988; report)	\$6.00		

SHIPPING NAME

SHIPPING ADDRESS

CITY

STATE

ZIP



SUBTOTAL

+ CALIFORNIA TAX

TOTAL ENCLOSED \$

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FAIR HOUSING

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and Commissioner's Regulation 2780, which implements the code.

The California Business and Profession Code, Section 125.6, states, in part:

Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity.

Commissioner's Regulation 2780 specifically provides that discriminatory conduct by licensees, as defined in the Business and Professions Code, and as described in the regulation, may be the basis for disciplinary action against the licensee by the Real Estate Commissioner.



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