

## Nonresident Seller – Withholding Requirement

*by Harold McDonald, Deputy Commissioner III, in cooperation with the Franchise Tax Board*

We are all familiar with the collection of income taxes through withholding. This article is an introduction to the manner in which the withholding concept applies to a nonresident's sale of California real property.

When an escrow holder is instructed to disburse sales proceeds to a seller with a street address outside of California, or to the financial intermediary of that seller, the escrow holder must give the buyer written notification of the California withholding requirement. [Note that the escrow holder could be a real estate broker conducting an escrow pursuant to the exemption in Financial Code Section 17006(d). See the article "When Broker Handles Escrow" below.]

After escrow has given proper written notice, the burden of withholding falls on the buyer. The buyer is obligated to withhold 3 1/3% of the sales price. There is no withholding requirement if the sales price is \$100,000 or less or if the seller:

- had, in the year of sale, a homeowner's property tax exemption on the property; or,
- is a bank acting as a fiduciary for a trust; or,
- is a corporate mortgagee acquiring the property by foreclosure; or,
- is a partnership (and thus subject to other withholding requirements); or,
- is a resident of California or a corporation with a permanent place of business, or qualified to do business, in this state. An FTB Form 590 -

Withholding Exemption Certificate, completed by the seller, will meet the requirements of this exemption.

The pertinent statutes (Revenue and Taxation Code Sections 18805, 18815 and 26131) include penalties for an escrow holder who fails to give the buyer written notification and for a buyer who, having received escrow's written notification of the withholding requirement, fails to perform the withholding function.

The buyer must remit the withheld funds to the Franchise Tax Board (FTB) by the twentieth day of the month following the month in which the transaction closed. Copy A of FTB Form 597 is to accompany the payment.

The statutes provide that the seller may request that FTB authorize a reduced amount (or no amount) be withheld if FTB determines, within 45 days of the request, that such action will not jeopardize collection of the tax.

It is to the benefit of all concerned that these requirements be understood as early as possible in a transaction subject to withholding. A knowledgeable real estate agent can anticipate the need and alert the principals and escrow holder to their responsibilities.

As this article, prepared with the cooperation of FTB, is an introduction to this subject, readers are encouraged to contact FTB for further information. The address is: Franchise Tax Board, Withholding At Source Unit, P.O. Box 651, Sacramento, California 95812-0651, phone: 916-369-4900. ■

## When Broker Handles Escrow

Current law (California's Financial Code, Sections 17000 et. seq.), requires all providers of escrow services to be licensed by the Department of Corporations unless they are exempt from escrow agent licensing requirements. However, Financial Code Section 17006(d) provides such a licensing exemption for real estate brokers, under certain conditions. Section 17006(d) of the Financial Code exempts from the Escrow Law, "Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an

agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required". This means that a DRE licensed real estate broker may perform the third person duties of an escrow provider in transactions to which he or she is a party, and in which the broker is performing a duty requiring a license. This exemption is personal to the broker and a broker may not delegate or "contract out" any escrow services that may be provided pursuant to this exemption. The broker may only delegate ministerial duties in conducting the escrow, but he or she must personally control and supervise the escrow transaction.

When a real estate broker is handling an escrow pursuant to the Financial Code exemption, the broker is subject to all B&P Code requirements and the Real Estate Commissioner's Regulations. Of the applicable Regulations, Section 2950 prohibits the following:

- Escrow instructions with blanks to be filled in after signing;
- Additions, deletions or alterations to escrow instructions unless signed by all parties to the instructions;

*by Harold McDonald, Deputy Commissioner III*

- Failure, upon execution, to deliver to all parties who have signed them, a copy of the escrow instructions;
- Failure to maintain proper books, records and accounts in accordance with accepted principles of accounting and good business practice;
- Failure to maintain a physical office and have all records available for inspection, examination, and audit by DRE;
- Failure to deposit escrowed funds in a bank trust account or escrow account before close of the next business day;
- Withdrawing or paying out any deposited funds without written authorization from the person who paid the money into escrow;
- Failure to give all parties written notice that any licensee in the transaction has any interest as a stockholder, officer, partner or owner of the brokerage holding the escrow;
- Failure, at closing, to give each party a written accounting of all receipts and disbursements

*Escrow, continued on page 8*



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# Fictitious business name usage

by Peter J. Saverien, Real Estate Manager I, Post Licensing

The Department of Real Estate (DRE) continues to receive inquiries from licensees concerning fictitious business names (FBN). These questions include, "How do I add (or delete) a fictitious business name?" "What constitutes an FBN?" "People have difficulty pronouncing my legal name. Can I file a fictitious business name statement to simplify my name?" "Can a real estate salesperson have a fictitious business name?"

DRE approval of fictitious business names (sometimes called dba's — "doing business as") is governed in part by Section 10159.5 of the Business and Professions Code and Real Estate Commissioner's Regulation 2731. A licensee considering use of an FBN should check first with the department's licensing section to determine if the proposed name is acceptable to the department.

When words such as *bank, insurance* or *escrow* appear in a fictitious business name, a letter of approval must be obtained from the appropriate governing agency before the department will consider approval of the FBN. The DRE will question FBNs which contain terms such as *national, federal, United States, reserve* or *deposit insurance*.

Certain FBNs are not acceptable to the DRE, such as those that contain the name of a real estate salesperson but do not include the name of that salesperson's employing broker. Names that imply the existence of non-existent partnerships or corporations are also unacceptable. Misleading names or those that constitute false advertising are not allowed as are FBNs which include the name of a person whose real estate license was revoked.

If a locality issues an FBN statement which adheres to DRE guidelines, the DRE will accept that statement. In the event identical or similar names are issued in the same jurisdiction, that situation must be addressed with the local government agency issuing the FBN.

A real estate broker may add a FBN to his or her license by completing the appropriate Department of Real Estate form (RE 204 for brokers, RE 204A for corporations) and submitting it to the DRE together with a fictitious business name statement (FBNS) bearing a "filed" stamp from the county clerk in the county in which the broker's main office is located. **The requesting broker or corporation must be listed as a registrant.**

The fictitious business name must be entered on the application exactly as it appears on the FBN statement filed with the county clerk. The FBN

should be filed in *each* county where the broker will be doing business using that fictitious name. Proof of publication is not acceptable to the DRE unless it bears the county clerk's "filed" stamp. Legible photocopies of the FBNS may be submitted to the DRE.

If you submit an application for a fictitious business name bear in mind:

- A salesperson's name may be used only if it is in conjunction with his or her employing broker's name;
- All documents submitted must be clear and legible.

A salesperson cannot be issued a license containing a fictitious business name. Regulation 2731 requires the DRE to issue a license containing the person's legal name. Thus if a salesperson has an unusual first, middle or surname and prefers to use another name, that licensee must change his or her name legally. However, if a licensee—salesperson or broker—simply wishes to use

a nickname in addition to his or her licensed name, the individual should clearly distinguish the nickname from the legal name (e.g., quotation marks). A licensee who uses a nickname in conjunction with his or her licensed name does not need to advise the DRE of that fact.

A person may change his or her name through formal legal proceedings or informally through general usage or habit. The new name must be the name the person uses and is known by in all that person's affairs.

If the name was changed in formal legal proceedings, court documents to that effect may be submitted. If the name was changed informally, the DRE will accept as proof of change a valid California drivers license, DMV printout showing both names, or other significant and unquestionable evidence of change, such as a marriage certificate. Proof of use of the new name should be submitted to the DRE Licensing Section together with the appropriate change form (RE 204 for brokers, RE 214 for salespersons) and a letter stating that the licensee will use only the new name conducting business requiring a real estate license.

If there are any questions concerning the FBN process or any other licensing matter, the DRE's Licensing Information Section, located in the principal office in Sacramento, may be reached weekdays at (916) 739-3758 between the hours of 8 A.M. and 5 P.M. ■

# Time-Shares

## Know your product

by Gil Hatfield, Deputy Commissioner III

A time-shares sales pitch will usually include several components, some directly and some only peripherally, related to the prospective purchaser's right to vacation at the time-share project each year. This article will provide a glimpse at a few of the major inducements to purchase time-shares, and some facts the licensee should know when discussing such inducements with buyers.

### Exchange program

Surveys reveal that at least 70% of those who purchase time-share interests do so primarily because of the opportunity to become a member of an independent organization which effects exchanges of occupancy rights between owners of interests in time-share projects worldwide.

Licensees must be extremely careful when explaining the exchange program to prospective buyers so that each party understands that a time-share owner's right to exchange occupancy rights each year is not assured. The major reason for this is that these independent exchange companies have no relationship with the time-share project other than a contractual one, usually for 3 to 6 years with rights of renewal. If these contracts between the exchange company and the time-share projects' sponsor or association are not renewed at the expiration date, the time-share interest owners may lose their rights of exchange, depending on the exchange company's policy at the time of non-renewal. Furthermore, if the contract is breached, the exchange company may terminate the relationship and, again, time-share owners will probably lose their rights in the exchange program.

It is important that prospective time-share interest owners realize that their exchange rights are dependent upon adherence by their project sponsor or association to the standards of the exchange company. These standards usually involve maintenance and management quality minimums. Further, one major exchange company often requires that member projects have a minimum number of units. New projects or existing projects which are being renovated must meet the exchange company's unit completion schedule, or risk being terminated by the exchange company for their failure to meet the exchange company's minimum unit standards.

Prospective time-share interest owners should also understand that the existence of exchange opportunities in a particular project or location is dependent on the total demand by the exchange company's membership for the particular project or location. As the desirability of the exchange opportunity increases, so does the demand by the membership; therefore, many owners will not be able to exchange for the location of their choice.

Perhaps the most important point concerning exchange companies that prospective time-share interest owners should be told is that the exchange company could cease to operate. The time-share

# Notes from Licensing

## Bulletin Address Labels

by Peter J. Savertien, Real Estate Manager, Post Licensing

Thanks to a suggestion which I received from real estate broker Robert A. Holt of Alhambra, California, the DRE is in the process of implementing a new program which will include the individual licensee's expiration date on the mailing label of the *Real Estate Bulletin*. This additional reminder should assist licensees in planning the timely completion of their continuing education requirements and the renewal of their license. At this point in time the program will not display the expiration date of a corporation's broker license.

The Department wishes to thank Mr. Holt for his suggestion.

If the readers of the *Real Estate Bulletin* have any ideas which they feel would improve communication between themselves and the Department, please submit them to the editor's attention for consideration.

The following example demonstrates the current information now contained in the *Real Estate Bulletin* mailing label:

License ID#	Expiration Date	
00112233	EXP 09 30 92	***CAR-RT-SORT** CR-35 CAR S504 9298 064308
BROKER, IMA 123 ANY STREET ANYWHERE, CA 90000-0000		

Licensee Name & Mailing Address of Record

project sponsor has no control over this possibility. Prospective owners should understand that in this case their occupancy rights will be limited to the project in which they have purchased an interest.

### Inflation inducement

Another point discussed in time-share sales presentations which is often misleading is the benefit of time-share ownership as a hedge against inflation. Prospective owners are told that their purchase monies are actually prepaid rent for accommodations at a first class resort. This representation is often accompanied by a chart showing the estimated daily rates of first class accommodations in selected future years, given a particular rate of inflation.

This is misleading to the extent that prospective owners must also, as members of the project's owners association, pay annual assessments which will increase over time due to inflation. These assessments cover the costs of maintenance and operation of the time-share project. They include such costs as personnel, taxes, insurance, and reserves for building and furniture replacement. In the majority of California projects, these assessment presently average \$30 to \$40 per night.

This assessment is bound to increase with time because of inflation, the need to replace or make repairs to the building components or furniture, or for other reasons. It is important that the licensee discuss this issue with prospective owners if the licensee represents that purchasing a time-share interest is a method to beat inflation of resort rental costs.

### Resale market

Furthermore, prospective purchasers must not be misled into thinking that there is an extensive

resale market in time-shares. The resale market is extremely limited. The costs of reselling, in terms of promotion, advertising, and/or use of a sales organization will necessarily be very expensive.

### Right of occupancy

Another misleading claim made in sales presentations is that a time-share interest owner is guaranteed a right of occupancy in a unit each year. If the project's time-share program involves a first-reserved, first-served reservation system, as is the case in a majority of California projects, this representation simply is not true. The time-share interest owner's right of occupancy is dependent on the owner's timely reservation of unit occupancy time. If the owner fails to make a timely reservation, he or she may be unable to use a unit that year. Further, even if the owner is unable to make a reservation, the owner is not excused from his or her obligation to pay assessments to the owner's association.

Licensees should consider these issues so that misrepresentations in time-share sales presentations are avoided. Different people buy time-shares for different reasons. This article was intended only to highlight a few major areas where misrepresentation could lead persons to buy time-shares for the wrong reasons. In fact, time-sharing is a complex subject and there are numerous areas susceptible to misrepresentation of material facts. Time-share salespeople have both an obligation to become fully informed as to what they are trying to sell, and a duty to properly convey to prospective purchasers correct information about the product being sold. ■

## DISCIPLINARY ACTION — DECEMBER 1990 TO FEBRUARY 1991

- 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.
- The license type is listed in parenthesis after the licensee's name. [REB — Real estate broker; RREB — Restricted real estate broker; RES — Real estate salesperson; RRES — Restricted real estate salesperson; PRLS — Prepaid rental listing service; RPRLS — Restricted prepaid rental listing service; REO — Real estate officer; REC — Real estate corporation]
- The following are brief summaries of the numerical code sections listed. The full text 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.

### Commissioner's Regulations

<p>2715 Broker's failure to maintain current address with DRE</p> <p>2725 Failure of broker to review and initial agreements</p> <p>2725(a) Failure of broker to review agreements</p> <p>2726 Broker-salesperson agreements</p> <p>2731 Unauthorized use of fictitious business name</p> <p>2752 Notification of change of employing broker</p> <p>2785(a)(11) Failure to disclose direct or indirect interest property</p> <p>2794 Failure to provide a public report</p> <p>2800(c) Subdivision material change</p> <p>2830 Failure to maintain trust fund account</p> <p>2831 Inadequate trust fund records</p> <p>2831.1 Inadequate trust fund records</p> <p>2831.2 Reconciliation of trust account records</p> <p>2832 Failure to comply with provisions for handling trust funds</p> <p>2832.1 Broker's failure to obtain permission to disburse trust funds from an account involving multiple beneficiaries</p> <p>2834 Trust account withdrawals by unauthorized person with trust fund rules</p> <p>2970 Misleading advance fee advertising material</p> <p>2972 Advance fee account</p>	<p>10131(d)</p> <p>10137</p> <p>10145</p> <p>10145(a)</p> <p>10145(c)</p> <p>10145(d)</p> <p>10146</p> <p>10148</p> <p>10153.4</p> <p>10159.2(a)</p> <p>10159.5</p> <p>10161.8</p> <p>10162</p> <p>10163</p> <p>10165</p> <p>10167.10</p> <p>10176(a)</p> <p>10176(b)</p> <p>10176(c)</p> <p>10176(d)</p> <p>10176(e)</p> <p>10176(f)</p> <p>10176(g)</p> <p>10176(i)</p> <p>10177(a)</p> <p>10177(b)</p> <p>10177(d)</p> <p>10177(f)</p> <p>10177(g)</p>	<p>Acting as a broker without a license</p> <p>Unlawful payment of compensation</p> <p>Trust fund handling</p> <p>Trust fund handling</p> <p>Trust fund handling</p> <p>Trust fund handling</p> <p>Failure to handle advance fees as trust funds or to furnish verified accounting to principal</p> <p>Retention and availability of real estate broker records</p> <p>Failure of salesperson to complete required courses</p> <p>Supervision of licensed acts of a corporation</p> <p>Fictitious business license</p> <p>Failure of broker to notify Commissioner of salesperson employment</p> <p>Office abandonment</p> <p>Branch office license requirement</p> <p>Covers various violations</p> <p>Failure of PRLS broker to refund advance fee paid</p> <p>Making any substantial misrepresentation</p> <p>Making false promises</p> <p>Course of misrepresentations through salespersons</p> <p>Failure to disclose dual agency</p> <p>Commingling trust funds</p> <p>Listing agreement without definite termination date</p> <p>Secret or undisclosed profit</p> <p>Fraud or dishonest dealing in licensed capacity</p> <p>Procuring a real estate license by misrepresentation or material false statement</p> <p>Conviction of crime</p> <p>Violation of real estate law or regulations</p> <p>Conduct that would have warranted denial of a license</p> <p>Negligence or incompetence as licensee</p>	<p>10177(h)</p> <p>10177(i)</p> <p>10177(j)</p> <p>10177(k)</p> <p>10177(n)</p> <p>10177.5</p> <p>10231.2</p> <p>10232</p> <p>10232(e)</p> <p>10232.1</p> <p>10232.25</p> <p>10232.4</p> <p>10232.5</p> <p>10233</p> <p>10233.1</p> <p>10234</p> <p>10236.1</p> <p>10237.3</p> <p>10238.3</p> <p>10240</p> <p>10240(a)</p> <p>10242</p> <p>11010</p> <p>11012</p> <p>11018.2</p>	<p>Failure to supervise salespersons</p> <p>Improper use of governmental employment</p> <p>Fraud or dishonest dealing not in licensed capacity</p> <p>Violation of restricted license condition</p> <p>Violation of real estate syndicate provisions of corporate securities law</p> <p>Judgement of fraud in a civil action</p> <p>Failure to give self-dealing notice</p> <p>Threshold broker</p> <p>Failure to notify of threshold broker status</p> <p>MLB advertising</p> <p>Failure to file trust fund status reports</p> <p>Failure to give lender/purchaser disclosure</p> <p>Failure to provide lender disclosure statement</p> <p>Failure of MLB to have written servicing contract</p> <p>Failure to notify that servicing broker has made advances on mortgage loan obligations</p> <p>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</p> <p>Offering inducement for mortgage loan transaction</p> <p>Acting as real property securities dealer without endorsement</p> <p>Failure to obtain real property securities permit</p> <p>Failure to give mortgage loan disclosure statement</p> <p>Failure to deliver mortgage loan disclosure statement</p> <p>Exceeding allowable commissions, charges or interest rate on mortgage loan</p> <p>Failure to file notice of intention to sell or lease subdivision</p> <p>Material change in subdivision without notice</p> <p>Illegal subdivision sales (sale of subdivision lots without public report)</p>
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### Business and Professions Codes

<p>480(a) Denial of real estate license on grounds of conviction of crime, dishonest or fraudulent act, or act which would warrant suspension or revocation of license</p> <p>490 Relationship of conviction to licensed activity</p> <p>10085 Failure to submit advance fee materials</p> <p>10086 Violation of desist and refrain order</p> <p>10130 Acting without license</p>	<p>10176(g)</p> <p>10176(i)</p> <p>10177(a)</p> <p>10177(b)</p> <p>10177(d)</p> <p>10177(f)</p> <p>10177(g)</p>	<p>Secret or undisclosed profit</p> <p>Fraud or dishonest dealing in licensed capacity</p> <p>Procuring a real estate license by misrepresentation or material false statement</p> <p>Conviction of crime</p> <p>Violation of real estate law or regulations</p> <p>Conduct that would have warranted denial of a license</p> <p>Negligence or incompetence as licensee</p>	<p>10240(a)</p> <p>10242</p> <p>11010</p> <p>11012</p> <p>11018.2</p>	<p>Failure to deliver mortgage loan disclosure statement</p> <p>Exceeding allowable commissions, charges or interest rate on mortgage loan</p> <p>Failure to file notice of intention to sell or lease subdivision</p> <p>Material change in subdivision without notice</p> <p>Illegal subdivision sales (sale of subdivision lots without public report)</p>
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### LICENSES REVOKED

#### Fresno Region

Cal Sun Realtors & Investment Co, Inc (REC)  
862 W. Grangeville Blvd., Hanford  
Effective: 1/4/91  
Violation: 2830, 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 10137, 10145, 10148, 10176(e), 10177(d)

Haylock, Jean (REB, REO)  
862 W. Grangeville Blvd, Hanford  
Effective: 1/4/91  
Violation: 2830, 2831, 2831.1, 2831.2, 2832, 2832.1, 10137, 10145, 10148, 10176(e), 10177(d), 2834

Officer: Cal Sun Realtors & Investment Co, Inc.

Oliver, Geraldine Marie (RES)  
P.O. Box 1049, Porterville  
Effective: 12/19/90  
Violation: 10176(a)(i)

#### Los Angeles Region

Argento, Joseph (RREB)  
1867 Lohengrin St., Los Angeles  
Effective: 1/24/91  
Violation: 10165, 10176(i), 10177(d)(g)

Barrero, Efraim Jr. (RES)  
1976 Paloma St., Pasadena  
Effective: 1/15/91  
Violation: 490, 10177(b)

Crossman, Susan Marie (RES)  
630-4 Church Pl., Redlands  
Effective: 1/29/91  
Violation: 490, 10177(b)

Dezfooli, R. (RES)  
3800 N. Poppyseed Ln., #N, Calabasas  
Effective: 1/15/91  
Violation: 490, 10177(a)

Diaz, Belkys (RES)  
17116 Leal Ave., Cerritos  
Effective: 1/17/91  
Violation: 490, 10177(a)(b)

Dicesare, Peter Frank (RES)  
418 Grant St., Upland  
Effective: 1/29/91  
Violation: 490, 10177(b)

Fernandez, Ana Maria (RES)  
6119 Otis Ave., Huntington Park  
Effective: 1/29/91  
Violation: 490, 10177(b)

Foust, Michael Jay (RES)  
11417 Miller Rd., Whittier  
Effective: 2/5/91  
Violation: 490, 10177(b)

Gearing, Raymond Jay (REB)  
988 Hawthorne Ln., Ventura  
Effective: 1/15/91  
Violation: 490, 10177(b)

Hale, Edwin M. (RES)  
P.O. Box 2412, Beverly Hills  
Effective: 1/17/91  
Violation: 490, 10177(b)

Hassell, Norman Strickland (REB)  
11124 Amestoy Ave., Granada Hills  
Effective: 1/26/91  
Violation: 2725(a), 2830, 2831, 2831.1, 10148, 10176(e), 10177(d)

Houston, Shane David (RES)  
8002 Hillside Rd., Alta Loma  
Effective: 1/10/91  
Violation: 490, 10177(b)

Joscelyn, Ruth Virginia (RES)  
4609 W. Slauson Ave., Los Angeles  
Effective: 1/29/91  
Violation: 490, 10177(b)

Khraishi, Tahir A. (RES)  
12444 Hammack St., Los Angeles  
Effective: 12/19/90  
Violation: 2731, 10130, 10137, 10159.5, 10177(d)

Kiel, Charise Michele (RES)  
22161 Parthenia St., West Hills  
Effective: 12/11/90  
Violation: 490, 10177(b)

McNeil, Jimmy Dale (RES)  
P.O. Box 775, Alta Loma  
Effective: 1/31/91  
Violation: 490, 10177(b), 10177.5

Monahan, William Irvin (REB)  
485 Triangle St., Thousand Oaks  
Effective: 1/17/91  
Violation: 2715, 2725, 2726, 2731, 2752, 10161.8, 10163, 10165, 10177(d)(h)

Mulchahey, Georgia June (RES)  
18 Sycamore Ln., Rolling Hills Estates  
Effective: 1/15/91  
Violation: 490, 10177(b)

Mulchahey, James Marion (RES)  
18 Sycamore Ln., Rolling Hills Estates  
Effective: 12/4/90  
Violation: 490, 10177(b)

Negron, Felix Louis (RES)  
1587 Andrea Cir., Simi Valley  
Effective: 1/29/91  
Violation: 490, 10177(b)

Nelson, James H. (RES)  
254 E. Sidlee St., Thousand Oaks  
Effective: 1/15/91  
Violation: 490, 10177(b)

Niki, John C. G. (RES)  
15504 Caulfield Ave., Norwalk  
Effective: 1/29/91  
Violation: 490, 10177(a)(b)

O'Connor, Matthew Harris (RES)  
1043 W. Washington, Venice  
Effective: 1/24/91  
Violation: 490, 10177(a)(b)

Olson, Clarence H. (REB)  
8631 Surrey Ln., Alta Loma  
Effective: 1/8/91  
Violation: 490, 10177(b)

Pacific Skyline Mortgage Inc (REC)  
8939 S. Sepulveda, Ste. 330, Los Angeles  
Effective: 1/8/91  
Violation: 2970, 2972, 10085, 10146, 10148, 10177(d), 10232, 10240

Porsche, Rod (RES)  
20001 Bryant St., West Hills  
Effective: 2/13/91  
Violation: 10177.5

Prevost, C. Michael (RES)  
8815 Orion Ave., #206, Sepulveda  
Effective: 2/13/91  
Violation: 490, 10177(a)

Reichersamer, Marcella Joyce (REB)  
1835 Long Beach Blvd., Long Beach  
Effective: 1/8/91  
Violation: 10176(i), 10177(d), 10237.3, 10238.3

- Roman, James Anthony (RES)  
1936 N. Jameson, #C,  
Santa Barbara  
Effective: 2/5/91  
Violation: 490, 10177(a)(b)
- Ross, Irving (RES)  
4338-4 Glencoe Ave.,  
Marina Del Rey  
Effective: 12/27/90  
Violation: 490, 10177(b)
- Scotti, Anthony (REB)  
9040 Lindblade St., Culver City  
Effective: 1/31/91  
Violation: 490, 10177(b)
- Sullivan, John Kenneth (REB)  
323 Market St., Venice  
Effective: 2/13/91  
Violation: 10177.5
- Taggart, Marion (RES)  
4422 Finely Ave., #5, Los Angeles  
Effective: 12/19/90  
Violation: 490, 10177(b)
- Veevaert, Guy Gerard (REB)  
146-148 S. Granite Ave.,  
Ontario  
Effective: 10/18/90  
Violation: 10177(j)
- Venegas, Steve Calderon (RES)  
10025 Virginia Ave., South Gate  
Effective: 12/26/90  
Violation: 490, 10177(a)(b)
- Wall, Les John (RES)  
117 S. Granada, #1, Alhambra  
Effective: 1/29/91  
Violation: 490, 10177(b)
- Wilson, John Arthur (REB)  
4431 Rosecrans Ave., #300,  
Hawthorne  
Effective: 1/8/91  
Violation: 2725, 2970, 2972,  
10085, 10146, 10177(d)(h),  
10232, 10240
- Wimberly, Ronald Stephen (REB,  
REO)  
732 9th St., Ste. C,  
Hermosa Beach  
Effective: 1/8/91  
Violation: 2725, 2970, 2972,  
10085, 10146, 10148, 10177  
(d)(h), 10232, 10240  
Officer: Pacific Skyline  
Mortgage Inc.
- Winters, Marc (REB)  
19300 Rinaldi St., Northridge  
Effective: 12/4/90  
Violation: 10176(i)
- Yap, Dionisio Escudra (RES)  
6243 Woodruff Ave.,  
Lakewood  
Effective: 1/29/91  
Violation: 490, 10177(b)
- Santa Ana Region**
- Barlow, Theresa Collette (RES)  
2060 Rancho Corona Dr.,  
Corona  
Effective: 1/31/91  
Violation: 10177.5
- Disparte, Louis William (REB)  
16541 Gothard St.,  
Huntington Beach  
Effective: 1/29/91  
Violation: 490, 10177(b)
- Eckenweiler, Brad Paul (RES)  
601 Begonia, Corona Del Mar  
Effective: 1/29/91  
Violation: 10130, 10137,  
10177(d)
- Kipco Development Services Inc  
(REC)  
26471 Crown Valley Pky, Ste. 100,  
Mission Viejo  
Effective: 2/19/91  
Violation: 10137,  
10176(e)(i), 10177(d)
- Lee, Gary Lawrence (RES)  
819 Goldenrod St., Placentia  
Effective: 12/19/90  
Violation: 490, 10177(b)
- Mann, Sean Michael (RES)  
3171 Remora Dr.,  
Huntington Beach  
Effective: 1/15/91  
Violation: 490, 10177(a)(b)
- Moss, Don Marshall (REB)  
31961 Paseo De Tania,  
San Juan Capistrano  
Effective: 1/29/91  
Violation: 10159.2,  
10177(d)(g)(h)
- Nguyen, Dung Quoc (RES)  
P.O. Box 2232, Westminster  
Effective: 1/15/91  
Violation: 490, 10177(a)(b)
- Ostrow Winkelman & Associates  
Inc. (REC)  
1905 East 17th St., Santa Ana  
Effective: 1/15/91  
Violation: 10177.5
- Pacific Federal Bancorp (REC)  
3700 Campus Dr., Ste. 205,  
Newport Beach  
Effective: 10/18/90  
Violation: 10130, 10176(c),  
10177(d)(f)(j)
- Perry, Terry Gene (RES)  
8490 Yearling Way, Riverside  
Effective: 1/15/91  
Violation: 490, 10177(b)
- Rhine, Timothy Roy (RES)  
1313 Altura, San Clemente  
Effective: 1/17/91  
Violation: 490, 10177(b)
- Security National Development  
Corp (REC)  
2001 East 1st St., #101,  
Santa Ana  
Effective: 1/29/91  
Violation: 2725, 10130,  
10137, 10177(d)
- Sacramento Region**
- Baker, Douglas Earl (RES)  
P.O. Box 18879,  
South Lake Tahoe  
Effective: 2/5/91  
Violation: 490, 10177(a)
- Centurion Deeds Inc (REC)  
601 University Ave., Ste. 237,  
Sacramento  
Effective: 1/8/91  
Violation: 2725, 2731, 2834,  
10145(a), 10177(d),  
10176(a)(i)(j)
- Dillman, Robert John (REB)  
601 University Ave, #211,  
Sacramento  
Effective: 1/8/91  
Violation: 2725, 2731, 2834,  
10145(a), 10177(d),  
10176(a)(i)(j)
- Jackson, Russell Lamar (RES)  
2000 Ascot Pky, #2226, Vallejo  
Effective: 1/10/91  
Violation: 490, 10177(b)
- Rivera, Vicente Ncededog (RES)  
2320 Harvard St., Sacramento  
Effective: 1/7/91  
Violation: 10145(c),  
10176(a)(c)(i), 10177(j)
- San Diego Region**
- Boyle, James Joseph (REB)  
1333 Camino Del Rio South,  
San Diego  
Effective: 1/29/91  
Violation: 490, 10177(b)
- Edmondson, William Mario (RES)  
P.O. Box 7354, San Diego  
Effective: 2/6/91  
Violation: 490, 10177(b)
- Golden Triangle Capital Inc (REC)  
5510 Morehouse Dr., Ste. 290,  
San Diego  
Effective: 1/29/91  
Violation: 2831, 2831.1,  
2832.1, 10176(e)(j), 10177(d),  
10232.4, 10234, 10240(a)
- Mathews, Tana Tia (RES)  
13390 Heston Pl., San Diego  
Effective: 12/4/90  
Violation: 490, 10177(a)
- Pendleton, John Douglas (RES)  
9362 Twin Trails Dr., #105,  
San Diego  
Effective: 12/11/90  
Violation: 10177(j)
- Spann, Marcia Myers (RES)  
2266 Del Mar Scenic Pky.,  
Del Mar  
Effective: 2/8/91  
Violation: 10176(e), 10236.1
- Sundance Mortgage Inc (REC)  
7220 Trade St., Ste. 101,  
San Diego  
Effective: 2/8/91  
Violation: 2832.1, 10145,  
10176(c), 10177(d)(g)
- Tagle, Ferdy Joseph (REB)  
3252 Holiday Ct., Ste. 201,  
La Jolla  
Effective: 1/29/91  
Violation: 10176(i),  
10177(d)(g), 10177.5
- San Francisco Region**
- Olness, Michael Fredrick (RES)  
4447 Stoneridge Dr., Ste. 1,  
Pleasanton  
Effective: 2/20/91  
Violation: 490, 10177(b)
- Weiner-Shupp, Carol Lynn (RES)  
587 Harriet Ave., Campbell  
Effective: 2/20/91  
Violation: 490, 10177(b)
- Los Angeles Region**
- Easterly, Donald Wallace (RES)  
3236 E. Hilldale Ave.,  
Simi Valley  
Effective: 2/13/91  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions.
- Gastelum, William Wayne (REB)  
7340 Oak Park St., Van Nuys  
Effective: 1/29/91  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions; restricted  
license to be suspended for 30  
days.
- Jung, Joann (RES)  
P.O. Box 1451, Port Hueneme  
Effective: 12/4/90  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions.
- LaForge, Thomas Nelson (RES)  
18500 Main St., Ste. 100,  
Hesperia  
Effective: 1/29/91  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions, restricted  
license to be suspended for 60  
days.
- Lee, Alice I-Ming (RES)  
1330 Lorain Rd., San Marino  
Effective: 12/6/90  
Violation: 10153.4,  
10177(a)(f)(j)  
Right to RRES license on terms  
and conditions.
- Lee, Tany Hood (RES)  
P.O. Box 323, Lancaster  
Effective: 1/17/91  
Violation: 490, 10177(a)(b)  
Right to RRES license on terms  
and conditions.
- Lerner, Yaffa (RES)  
1491 Benedict Canyon Dr.,  
Beverly Hills  
Effective: 1/11/91  
Violation: 10176(a)(b)(i),  
10177(g)  
Right to RRES license on terms  
and conditions; RRES license  
suspended for 30 days.
- Martin, Melania M. (RES)  
11308 Sinclair Pl., Northridge  
Effective: 1/2/91  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions.
- Slaughter, Jack E. (RES)  
7231 Jordan Ave., #8,  
Canoga Park  
Effective: 12/18/90  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions.
- So, Ping (RES)  
342 S. Chandler Ave.,  
Monterey Park  
Effective: 12/4/90  
Violation: 490, 10177(a)(b)  
Right to RRES license on terms  
and conditions.
- Sacramento Region**
- Charter Mortgage & Investments  
Inc (REC)  
921 14th St., Modesto  
Effective: 2/6/91  
Violation: 2830, 2831.1,  
10145, 10177(d), 10231.2,  
10232.4, 10232.5  
Right to RREC license on terms  
and conditions; restricted  
license to be suspended 30  
days, 15 days stayed.
- Huil, Wesley Terrence (REB)  
7808 Kelley Dr., Ste. D, Stockton  
Effective: 12/19/90  
Violation: 490, 10177(b)  
Right to RREB license on terms  
and conditions.
- Thompson, Sheldon Lynn (REB)  
921 14th St., Modesto  
Effective: 2/6/91  
Violation: 2830, 2831.1,  
10145, 10177(d), 10231.2,  
10232.4, 10232.5  
Right to RREB license on terms  
and conditions; restricted  
license to be suspended for 30  
days, 15 days stayed.
- San Diego Region**
- C S W Property Management (REC)  
999 N. Pacific St., Oceanside  
Effective: 12/26/90  
Violation: 2831, 2831.1,  
2832.1, 10145, 10148  
Right to RREC license on terms  
and conditions.
- Mason, D. L. (REB, REO)  
439 San Marcos Blvd.,  
San Marcos  
Effective: 12/26/90  
Violation: 10177(h)  
Right to RREB license on terms  
and conditions.
- Schoonard, Glen Elvin (REB)  
8845 Wintergardens Blvd.,  
Lakeside  
Effective: 1/15/91  
Violation: 490, 10177(b)  
Right to RREB license on terms  
and conditions.
- Wilson, Scott Andrew (RES)  
608 S. Nevada St., Oceanside  
Effective: 2/5/91  
Violation: 490, 10177(a)(b)  
Right to RRES license on terms  
and conditions.
- Zeluff, Thomas John (REB)  
4120 West Point Loma Blvd,  
San Diego  
Effective: 1/17/91  
Violation: 2831, 2831.1,  
10145, 10148, 2832.1, 10177(d)  
Right to RREB license on terms  
and conditions.
- San Francisco Region**
- Blevins, Richard Edward Sr. (RES)  
39275 State, St., Fremont  
Effective: 2/25/91  
Violation: 10176(a),  
10177(g)  
Right to RRES license on terms  
and conditions.
- Diversified Realty Services (REC)  
1299 Fourth St., Ste., 202,  
San Rafael  
Effective: 6/20/90  
Violation: 2800(c), 10177(d),  
11012  
Right to RREC license on terms  
and conditions.
- Evans, Lillian Salgado (RES)  
5830 Laguna Seca Way,  
San Jose  
Effective: 12/4/90  
Violation: 490  
Right to RRES license on terms  
and conditions.
- Krystal, Jacobo (REB, REO)  
901 Tamalpais Ave., 2nd Fl.,  
San Rafael  
Effective: 6/20/90  
Violation: 2800(c), 10177(d),  
11012  
Officer: Diversified Realty  
Services  
Right to RREB license on terms  
and conditions.

**Santa Ana Region**

Apex Property Management Inc (REC)  
5142 Warner Ave., #106,  
Huntington Beach  
Effective: 2/13/91  
Violation: 2831.2, 2832.1,  
10145(d)(3), 10145(d)(5),  
10176(e), 10177(d)  
Right to RREC license on terms  
and conditions.

Beardslee, Clark Smith (REB,  
REO)  
5142 Warner Ave., #106,  
Huntington Beach  
Effective: 2/13/91  
Violation: 2831.2, 2834,  
10145(d)(3), 10145(d)(5),  
10176(e), 10177(d)  
Right to RREC license on terms  
and conditions.

Mahoney, Michael Brent (RES)  
250 E. Country Hills Dr.,  
La Habra  
Effective: 2/7/91  
Violation: 490, 10177(a)  
Right to RRES license on terms  
and conditions.

Myers, Jeffrey Lloyd (REB)  
25502 Dana Mesa Dr.,  
San Juan Capistrano  
Effective: 2/8/91  
Violation: 10137,  
10177(d)(h)  
Right to RRES license on terms  
and conditions.

**REVOKED WITH STAYS****Santa Ana Region**

Acorn Realty Investments Corp  
(REC)  
13027 Perris Blvd, Ste. 206,  
Moreno Valley  
Effective: 2/26/91  
Violations: 2725, 2726, 2752,  
2831, 2831.1, 2831.2, 10176(i),  
10177(d)  
Stayed for 2 years on terms and  
conditions.

Munton, Frank Boughton (REC)  
13027 Perris Blvd.,  
Moreno Valley  
Effective: 2/26/91  
Violations: 2725, 2726, 2752,  
2831, 2831.1, 2831.2, 10176(i),  
10177(d)  
Stayed for 2 years on terms and  
conditions.

**SUSPENDED****Fresno Region**

Foster, David Jeffrey (REB)  
4242 North D St., Madera  
Effective: 12/21/90  
Violations: 2790, 10177(d)(j),  
11010, 11012  
Suspended for 45 days.

**Los Angeles Region**

Hathaway, Mark McClellan (REB)  
3198 West 7th St., #606,  
Los Angeles  
Effective: 1/31/91  
Violations: 2715, 10177(d)  
Suspended for 30 days.

Pichedvanichok, Nittaya (RES)  
17410 Bloomfield Ave.,  
Cerritos  
Effective: 2/18/91  
Violations: 2832, 10130,  
10145, 10177(d)(f)  
Suspended for 10 days.

Tully, Carlton John (REB)  
20621 Plummer St., Chatsworth  
Effective: 12/11/90  
Violations: 10177(h)  
Suspended for 30 days.

**San Francisco Region**

Isola, Albert John (REB)  
14895 East 14th St., Ste. 250,  
San Leandro  
Effective: 1/14/91  
Violations: 10177(g)  
Suspended for 5 days.

**SUSPENDED WITH STAYS****Fresno Region**

Carlson, Herbert Alvin (REB,  
REO)  
30010 Yosemite Springs Pky.,  
Coarsegold  
Effective: 1/16/91  
Violation: 2725, 2831, 2970,  
2972, 10085, 10086, 10146,  
10177(c)(d)(g)(h)  
Officer: Yosemite Lakes  
Park Home & Land Inc  
Suspended for 60 days; stayed  
for 2 years on terms and  
conditions.

Vernon, Helen B. (REB)  
175 Atlantic City Ave.,  
Grover City  
Effective: 12/5/90  
Violation: 10177(g)  
Suspended for 45 days; stayed  
for 1 year on conditions.

Yosemite Lakes Park Home &  
Land Inc (REC)  
30010 Yosemite Springs Pky.,  
Coarsegold  
Effective: 1/16/91  
Violation: 2725, 2831, 2970,  
2972, 10085, 10086, 10146,  
10177(c)(d)(g)(h)  
Suspended for 60 days; stayed  
for 2 years on terms and  
conditions.

**Los Angeles Region**

Alpha Bravo Financial Inc (REC)  
8920 Vernon Ave., #120,  
Montclair  
Effective: 2/13/91  
Violation: 2725, 2726,  
10131(d), 10137, 10145,  
10177(g)(h)  
Suspended for 90 days; stayed  
for 3 years on terms and  
conditions.

Asher Dann & Associates Inc  
(REC)  
209 N. Canon Dr.,  
Beverly Hills  
Effective: 2/5/91  
Violation: 10177(g)  
Suspended for 90 days; stayed  
for 2 years on conditions.

Black Orchid Empire Inc. (REC)  
20621 Plummer St., Chatsworth  
Effective: 12/11/90  
Violation: 2831, 2831.1,  
2832.1, 10145, 10177(d),  
10240, 10242  
Suspended for 30 days; stayed  
on condition.

Dann, Asher (REB, REO)  
209 N. Canon Dr.,  
Beverly Hills  
Effective: 2/5/91  
Violation: 10177(g)(h)  
Suspended for 90 days, stayed  
for 2 years on conditions.

**Environmental Hazards Booklet  
Now available**

*Environmental Hazards: A Guide for Homeowners and Buyers*, a booklet produced by M. B. Gilbert Associates under contract with the Department of Real Estate in conjunction with the Department of Health Services, is now available to the public. The new 47-page booklet, which is a publication of the Department of Health Services, provides information regarding the environmental hazards commonly found on or affecting residential real estate.

The \$5.55 booklet may be ordered from:

Department of General Services  
Publications Section  
P. O. Box 1015  
North Highlands, CA 95660  
Telephone (916) 973-3700

James, Eric F. (REB)  
1231 Lincoln, Santa Monica  
Effective: 1/15/91  
Violation: 10161.8, 10165,  
10177(d)  
Suspended for 90 days; stayed  
on condition.

Labutis, Jacqueline R. (RES)  
406 Entrada Dr., Santa Monica  
Effective: 1/15/91  
Violation: 2785(a)(11),  
10177(d)  
Suspended for 90 days; stayed  
on condition.

Madrid, Raul (REB)  
921 W. Foothill Blvd., Upland  
Effective: 2/13/91  
Violation: 2725, 2726,  
10137, 10145, 10177(d)  
Suspended for 60 days; stayed  
for 3 years on terms and  
conditions.

**Sacramento Region**

Hannigan & O'Neill (REC)  
1121 N. Texas St., Fairfield  
Effective: 2/28/91  
Violation: 2831, 2831.1,  
2831.2, 2832, 2832.1, 10145,  
10176(e), 10177(d)  
Suspended for 40 days; stayed  
for 1 year on terms and  
conditions.

O'Neill, Thomas Aloysius (REB)  
1121 N. Texas St. Fairfield  
Effective: 2/28/91  
Violation: 2831, 2831.1,  
2831.2, 2832, 2832.1, 10145,  
10176(e), 10177(d)  
Suspended for 40 days; stayed  
for 1 year on terms and  
conditions.

**San Diego Region**

Coldwell Banker Residential  
Brokerage Co (REC)  
27271 La Ramblas,  
Mission Viejo  
Effective: 2/18/91  
Violation: 10137  
Suspended for 20 days; stayed  
on condition.

**Santa Ana Region**

Desert Rentals Inc (REC)  
170 E. Palm Canyon Dr.,  
Palm Springs  
Effective: 12/4/90  
Violation: 10137  
Suspended for 30 days; stayed  
for 1 year on terms and  
conditions.

Holzgang, Darryl August (REB)  
771 West 19th St., Ste. AA,  
Costa Mesa  
Effective: 1/31/91  
Violation: 10177(h)  
Suspended for 30 days; stayed  
for 1 year on condition.

Huckfeldt, Klaus Dieter (REB)  
170 E. Palm Canyon Dr.,  
Palm Springs  
Effective: 12/4/90  
Violation: 10177(h)  
Suspended 30 days; stayed for 1  
year on conditions.

Scher, Sy (REB)  
27956 Mazagon, Mission Viejo  
Effective: 12/11/90  
Violation: 10177(h)  
Suspended for 1 year; all but 15  
days stayed for 1 year on terms  
and conditions.

Williams, Thomas Carroll (REB,  
REO)  
28 Executive Park, Irvine  
Effective: 2/18/91  
Violation: 10137  
Suspended for 8 days; stayed on  
condition.

**INDEFINITE  
SUSPENSIONS  
(under Recovery Acct.  
provisions)****Los Angeles Region**

3T Funding Corporation (REC)  
1930 S. Brea Canyon Rd.,  
Diamond Bar  
Effective: 12/10/90

Polzin, Thomas Coleman (REB)  
P. O. Box 507, Lake Arrowhead  
Effective: 01/14/91

Slaton, C. Philip (REB)  
Box 3317, Ventura  
Effective: 1/14/91

Tapia, Abe Jr. (RE (RES))  
1930 S. Brea Canyon Rd.,  
Diamond Bar  
Effective: 12/10/90

Woodson, Charles (RES)  
P. O. Box 109, Topanga  
Effective: 1/11/91

**Sacramento Region**

Guiver, Russell (REB)  
3 Donna Street, Oroville  
Effective: 12/26/90

Signal Home Loans, Inc. (REC)  
3 Donna Street, Oroville  
Effective: 12/26/90

**San Diego Region**

Ray G. Stock & Associates, Inc.  
(REC)  
P. O. Box 362, Ramona  
Effective: 1/14/91

Rubin, Philip (REB)  
2727 De Anza Rd., Space R22,  
San Diego  
Effective: 12/24/90

Stock, Ray G. (REO)  
P. O. Box 362, Ramona  
Effective: 1/14/91

**San Francisco Region**

First National Real Estate Treasury  
(REC)  
14341 Sobey Road, Saratoga  
Effective: 1/4/91

Soreco, Carl Joseph (REB)  
4680 Hamilton Ave., #209,  
San Jose  
Effective: 1/4/91

**Santa Ana Region**

Pawlowski, Charles Otto (REB)  
P. O. Box 2214, Westminster  
Effective: 12/10/90

Myers Alpha Corporation (REC)  
P. O. Box 2312, Newport Beach  
Effective: 12/4/90

Myers, Randolph Ross (REB)  
P. O. Box 2312, Newport Beach  
Effective: 12/4/90

**PUBLIC REPROVALS****Santa Ana Region**

Paine, Charles Frank Joseph (REB)  
25322 Barents, Laguna Hills  
Effective: 1/29/91  
Violation: 10177(g)

# Client Protection

## Purchase money trust deed subordinated to a development loan

written by Roland Adickes, Counsel

A railroad worker's widow owned an old house on 2.7 acres, near a growing suburban area. She listed the property for sale at a price which reflected the value of the land for multi-unit residential development.

A cooperating broker brought in an offer which provided for a cash down payment to the seller, the right to the seller to receive

clear title to one of the first three residential condominium units to be built, and the balance of the purchase price to be paid out of the developer's "profits" from the sale of the other units in the project.

The widow consulted an attorney who wrote a letter to the listing broker spelling out the absence of safeguards in case the condominiums were not built, the lack of specific plans for the condominiums, and the lack of specific terms for the "seller financing", and asked for a meeting. The listing broker, the widow and the attorney met, and the attorney described to all present the lack of safeguards he had stated in his letter. The attorney advised against the transaction.

Thereafter, the cooperating broker came back with a new offer with similar terms including the right of seller to apply a fixed amount of the purchase money balance toward the purchase of one of the condominium units and a trust deed in favor of seller to be subordinated to a construction loan.

When the widow's attorney saw this offer, he again advised her against accepting the offer, unless safeguards, such as construction disbursement controls, and partial releases instead of complete subordination, were placed into the contract. The widow rejected this second offer on her attorney's advice.

Later, the listing broker let her inexperienced salesperson represent the widow at a meeting to discuss yet another offer. The cooperating broker told the widow and the salesperson that she was redrafting the offer to insert the protective provisions previously requested by the widow's attorney. When the offer had been redrafted, it was left at the attorney's office for his review. The attorney reviewed this new draft and wrote a two-page criticism of it, listing specific, necessary protections for the widow, including some payment each time a development or construction loan against the property recorded, giving her the authority to release the property one lot at a time, to avoid her involvement with subordination. He advised the widow against accepting this offer, because it

required her to subordinate her trust deed to loans for more than the property could be worth.

The listing broker took no steps to keep informed about the progress of the negotiations. The cooperating broker, after receiving the attorney's two-page list of objections and required safeguards, redrafted the offer once again, and told the widow and the salesperson representing the listing broker, that this redrafted offer took care of the attorney's objections. Based on these representations, the widow signed

the contract. In fact, the contract, as redrafted by the cooperating broker, was even more unfavorable to the widow's interests than the previous offers. It still required the widow to subordinate her purchase money loan, this time to four separate construction loans and did not give her construction payments control or partial release protections. The contract further required the widow to execute a note and trust deed for the brokers' commission with priority over her purchase money trust deed. The listing broker made no effort to review this contract before it was signed by her principal, the widow, and the listing broker simply initialed this contract when she saw it two days after her principal had signed it. She did not warn the widow that the contract did not contain any of the safeguards the attorney had previously pointed out as absolutely necessary, and that the widow should immediately consult her attorney since the contract was signed in reliance on false representations made by the cooperating broker.

The developer obtained a hard money loan against the property to which the widow's purchase money trust deed was subordinated. One fourth of the developer's

loan was used to pay the commissions of the listing and cooperating broker. The developer used all the remaining loan proceeds to tie up adjacent property. (He had decided to try for a larger project.) No map was filed, no permits were obtained, no units were built. The hard money lender foreclosed. Instead of payments on her purchase money trust deed note, all the widow got was a lawsuit.

In a disciplinary proceeding against the licensees involved in this transaction, the administrative law judge found that the listing broker failed to assure that her principal had adequate representation and protections in a highly speculative land development transaction. The broker was not required to have the skills of a real estate attorney in matters of subordination and development loans, but the broker had the obligation to make sure,

before presenting an offer for signature to her client, either, that the advice of her client's attorney had in fact been followed, or, that her client clearly knew that the attorney's advice had not been followed. It was improper for the listing broker to lead her client to believe that all was well, when the broker must have known, by reading the contract, that the protections for which her client's lawyer had asked, were not in the contract, and knew, that her client's lawyer had not been shown this contract.

Following the disciplinary hearing, the Commissioner signed a Decision revoking the license of the cooperating broker outright, based on her



misrepresentations. The license of the listing broker was revoked with right to a restricted license, after a 30-day suspension of the restricted license when issued. In addition, the listing broker was ordered to pay restitution to the widow as a condition of the issuance of her restricted license. ■

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### Processing delays You can help

Inaccurate or incomplete applications submitted to DRE for examinations, original/renewal licenses, and status changes can cause processing delays. When DRE receives incomplete and/or inaccurate applications the Department's staff must spend extra time writing letters, telephoning, or returning improperly completed applications. As a result, your requests are delayed.

Before mailing forms to DRE, please check them for accuracy, completeness, and proper signatures. If a fee is required, please submit a check or money order, made payable to the "Department of Real Estate", for the proper amount.

If you have questions about a particular form or fee, please contact us. ■

# Escrow

*continued from page 1*

including the name of the person to whom any disbursement is made; and

- Delivering or recording a real property transfer instrument without first obtaining the transferor's written consent.

In addition, Section 2951 of the Regulations requires that the broker comply with all record keeping requirements of the applicable B&P Code and Commissioner's Regulations when conducting an escrow under the Financial Code exemption. These record keeping requirements are associated with trust fund handling and issues related to trust fund transactions.

As summarized in the Spring 1990 Real Estate Bulletin, the DRE's audit efforts have disclosed a number of violations of the Real Estate Law by brokers who handle their own escrows. The DRE's audit program places emphasis in these areas which represent the greatest potential for consumer loss. Broker performed escrows is one of the areas in which the DRE audit emphasis is routinely placed.

To illustrate, consider the case of a real estate broker whose license was revoked after it was found that he engaged in the following conduct:

- Used an unlicensed location for the conduct of his own and other escrows;

- Operated the escrow business under a fictitious business name without a license in that name from DRE;
- Used escrow/trust accounts *not* in the broker's name as trustee;
- Failed to maintain adequate and accurate records of all escrow trust funds received;
- Failed to maintain complete and accurate records for each beneficiary from whom escrow trust funds were received;
- Failed to reconcile monthly the records of all funds received with the separate beneficiary records; and
- Caused or allowed, via a signatory not licensed or bonded, disbursements which, without the prior written consent of every account beneficiary, resulted in the balances in the

accounts to be considerably less than the aggregate liabilities.

Should licensees decide to conduct real estate broker in-house escrows pursuant to the Financial Code exemption, be advised that only those transactions in which the broker is an agent or party and is performing an act for which a real estate license is required are covered by the provisions of the exemption. The provision does not extend to a real estate broker who engages as a principal in the buying from, selling to or exchanging with the public real property sales contracts or promissory notes secured directly or collaterally by real property. It is also important for the real estate broker to monitor his compliance with all aspects of the Real Estate Law, especially Commissioner's Regulation 2950 when conducting broker escrows. ■

## Sacramento mailing addresses

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Broker/Corporation	187004	95818-7004
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