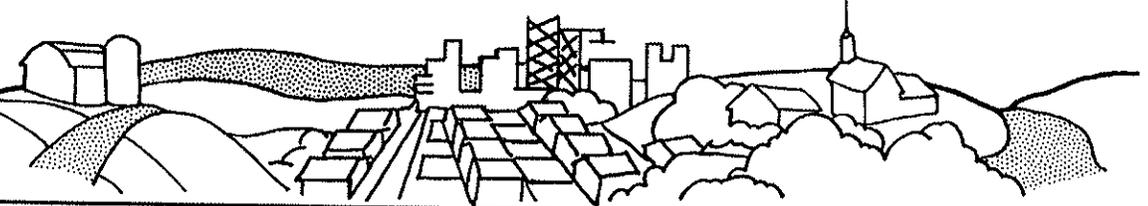




# REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Fall 1979

DAVID H. FOX, Commissioner

## OUT-OF-STATE SUBDIVISIONS

Licensees often contact the Department of Real Estate asking what requirements must be met in order to offer for sale and sell out-of-state subdivisions in California. These inquiries usually center around standard subdivisions, time sharing within condominiums in a subdivision, and other types of recreational properties.

Section 10249.2 of the Business and Professions Code provides that an offering for sale or lease, or a sale or lease (within California) of subdivision interests (lots, parcels, units or undivided interests) in a subdivision situated outside of the state shall be governed by the real property securities sections of the Real Estate Law (Article 6 of Chapter 3, Part 1 of Division 4) as well as by the Subdivided Lands Law (Chapter 1 of Part 2 of Division 4, of the Business and Professions Code, insofar as applicable) and further governed by such regulations as the Real Estate Commissioner may adopt as being reasonably necessary to enforce the provisions of the above sections of law (see Regulations 2790.2, 2790.7, and 2790.8).

unit *per each* recorded subdivision map containing nine or fewer lots, parcels, apartments, or units;

(2) \$500.00 plus \$3.00 for each lot, parcel, apartment, or unit *per each* subdivision recorded map containing 10 or more lots, parcels, apartments, or units to a maximum of \$5,000.00.

(3) A sum as provided by Section 11015 of Business and Professions Code for an inspection of the project by a DRE staff appraiser.

A subdivider/developer or agent may request the proper filing forms from the Headquarters Subdivision Section, 714 P Street, Sacramento, CA, 95814 or telephone the Subdivision Section at (916) 322-9741.

How long does it usually take to get a permit? If the DRE receives an Application and Questionnaire which is complete in all respects and in compliance with California law, a permit can usually be issued in three or four months' time. Unfortunately, receiving complete filings at the outset has not been our experience.

## DILEMMA OF THE COOPERATING AGENT

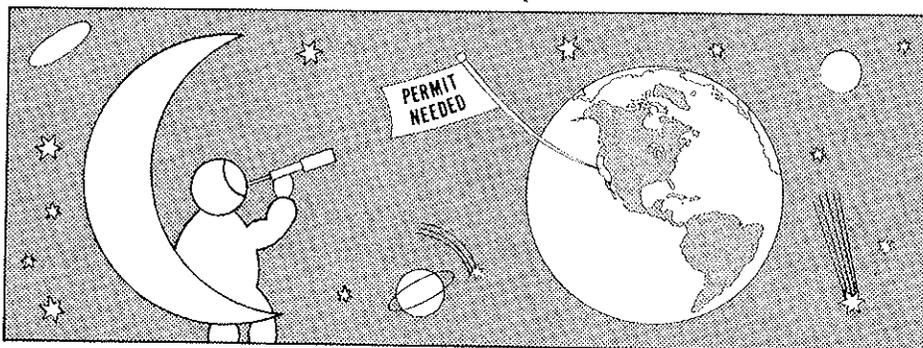
The concept of agency is simple enough in the abstract or when applied to the relationship of an owner and a listing agent in a real estate transaction. If A is the listing agent for B, A stands in B's shoes. A is obligated to act always with B's interests in mind and to do the utmost to obtain the most favorable results for B.

Customarily A does not make the decision—B does. It is A's duty however to apprise B of all of the facts which A has acquired in the course of acting on B's behalf which could affect B's decision. Theoretically these are facts which B would have directly obtained had he not employed A to act for him.

In the usual residential real estate transaction, the involvement of a cooperating (selling) licensee introduces confusion and uncertainty which legislators, judges, lawyers and legal writers have thus far failed to dispel.

The uncertainty stems principally from the fact that nearly all prospective buyers and most cooperating licensees regard the cooperating licensee as the agent of the prospective buyer in a transaction when in fact, under California case law, the cooperating licensee is more likely than not a subagent of the seller and thereby as much a fiduciary to the seller as is the listing agent. *Kruse v. Miller* (1956) 143 C.A. 2d 656; *Hale v. Wolfson* (1969) 276 C.A. 2d 285. This fiduciary duty may exist even though the cooperating licensee never meets the seller during the negotiations.

The existence of agency is almost always a question of fact. The doctrine of subagency of a cooperating broker appears to have been developed in the *Kruse* and *Hale* cases as a means to do justice in those fact situations. At the same time at least one other California appellate court has held that a broker employed to locate a residence for purchase by a prospective buyer owes a fiduciary obligation to that prospective buyer even though the broker cooperates with a listing broker in negotiating the sale of a residence to the buyer and even though the cooperating



Before offers for sale or lease of out-of-state subdivision interests can be made in California, a permit authorizing the sale of such interests must be issued by the California Department of Real Estate. Otherwise such interests are not qualified to be offered and sold in California.

In order to obtain the necessary permit the subdivider or his agent must file with the subdivision section of the DRE a prescribed form of Questionnaire and Application for Permit, together with the appropriate filing fee, and other required documentation.

Presently the filing fee for an out-of-state subdivision is:

(1) \$50.00 for each lot, parcel, apartment or

Out-of-state subdivisions must comply with all laws which apply to in-state subdivisions. This means there must be definite evidence that the lots, parcels, units, apartments, or undivided interests can be used for the purposes for which they are offered. All utilities, common areas and structures must be completed in place or financial arrangements acceptable to the Commissioner must have been made for completion within a specified time.

If the subdivision is a common interest project such as in a condominium or planned development, the subdivider must file with the Department a plan covering the

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## REAL ESTATE BULLETIN

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License Law Officials

Vol. 39, No. 3

Fall 1979

STATE OF CALIFORNIA  
EDMUND G. BROWN JR., Governor  
DAVID H. FOX  
Real Estate Commissioner

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The *Real Estate Bulletin* (USPS 456600) is a quarterly published by the State of California. Department of Real Estate, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the California Business and Professions Code.

From the license renewal fee, \$1 is allocated to cover subscription to the *Bulletin*. Second Class Postage paid at Sacramento, California. Postmaster, send address changes to Real Estate Bulletin, 714 P St., Sacramento, CA 95814.

## Disciplinary Action—April-June 1979

REB—Real estate broker  
RREB—Restricted real estate broker  
RES—Real estate salesperson  
RRES—Restricted real estate salesperson  
REO—Real estate officer  
REC—Real estate corporation

NOTE: A list of actions is not published in this *Bulletin* until the 30-day period allowed for court appeal has expired; or if an appeal is taken on the disciplinary action stayed, until the stay is dissolved. Names of persons to whom licenses are denied upon application are not published.  
\* Not previously published

### FOR YOUR INFORMATION

The following are brief summaries of the numerical code sections listed after each licensee's name. The full context of the various sections is found in the Business and Professions Code and the Regulations of the Real Estate Commissioner, both of which are printed in the Real Estate Law book available for purchase from the Department of Real Estate at \$2.50 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

### Business and Professions Code

490	relationship of conviction to licensed activity	10176(c)	course of misrepresentations through salespersons	11018.2	illegal subdivision sales (sale of subdivision lots without public report)
10085	failure to submit to Commissioner prior to use advance fee agreements or advertising	10176(e)	commingling trust funds	11022	false advertising in subdivision sales
10103	continuing jurisdiction over lapsed, suspended, or surrendered license	10177(a)	fraud or dishonest dealing in licensed capacity	17500	false advertisement
10130	performing acts for which a license is required without the appropriate license	10177(b)	procuring a real estate license by misrepresentation or material false statement		
10137	unlawful payment of compensation	10177(c)	conviction of crime		
10138	unlawful payment of compensation	10177(d)	false advertisement		
10140	false advertisement	10177(f)	violation of real estate law or regulations	2831	inadequate trust fund records
10143	failure to deliver contract or receipt to prospective tenant by rental agent	10177(g)	conduct that would have warranted denial of a license	2831.1	inadequate trust fund records
10145	trust fund handling	10177(h)	negligence or incompetence as licensee	2832	inadequate trust fund records
10146	failure to handle advance fees as trust funds or to furnish verified accounting to principal	10177(i)	failure to supervise salespersons	2851	supervision of salespersons by advance fee rental agent
10148	retention and availability of real estate broker records	10177(j)	fraud or dishonest dealing not in licensed capacity	2852	advance fee contracts
10176(a)	making any substantial misrepresentation	10177(k)	violation of restricted license condition	2852.1	failure to file form of advance fee rental contract with DRE
		10177.5	civil fraud judgment based on licensed acts	2852.3	disposition of advance rental fee
		11010	failure to file notice of intention to sell or lease subdivision	2970	misleading advance fee advertising material
		11012	material change in subdivision without notice	2971	use of unapproved advance fee agreements
				2972	advance fee accountings
				2974	advance fee records retention

### Regulations

2831	inadequate trust fund records
2831.1	inadequate trust fund records
2832	inadequate trust fund records
2851	supervision of salespersons by advance fee rental agent
2852	advance fee contracts
2852.1	failure to file form of advance fee rental contract with DRE
2852.3	disposition of advance rental fee
2970	misleading advance fee advertising material
2971	use of unapproved advance fee agreements
2972	advance fee accountings
2974	advance fee records retention

### LICENSES REVOKED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Kennedy, Fraser Lalonde (REB)	1310 Milan Ave., South Pasadena	1/13/76	10145, 10176(e)(i), 10177(d)(i)
*Boyle, Larry Manning (RES)	22910 S. Crenshaw Blvd., Torrance	10/21/77	490, 10177(b)
Hackworth, John Anthony (RES)	4427 Utah St., #5, San Diego	4/17/79	490, 10177(b)
Bchrman, Mary Angela (RES)	1001 Sunnydale, #1902A, San Francisco	4/24/79	490, 10177(a)(b)(f)
Haley, Samuel Alan (REB)	1072 Kieley Blvd., Santa Clara	4/24/79	10145, 10148, 10176(e)(i), 10177(d)
Walsh, Maey Mackenzie (RES)	7808 Branham Ln., San Jose	4/24/79	490, 10177(b)(f)
Seaver, Julia Vivian (REB)	21344 Mission Blvd., Hayward	4/25/79	10177(b)
Dbas—Village Properties			
Arauj, Albert (RES)	590 Coventry Ct., Vacaville	4/30/79	490, 10177(b)
Connor, Sherrie Marlene (RES)	938 19th St., Oakland	4/30/79	10177(b)
Cox, Joanna (RES)	2942 E. Huntington, Fresno	4/30/79	490, 10177(b)
Kochler, William Albert (RES)	1138 Carlsbad Dr., San Jose	4/30/79	490, 10177(b)
Russell, Gerald Lee (RES)	1501 18th St., Sacramento	4/30/79	490, 10177(b)
White, Wanda (RES)	2010 Victor Ave., B-4, Redding	4/30/79	490, 10177(b)
Dyer, Richard Henry (RES)	Route 1, Box 1390, Placerville	5/1/79	10177.5
Pavese, Francis Jerome (REB)	6512 El Cajon Blvd., #G, San Diego	5/1/79	490, 10177(b)
Wallace, Bina Panday (RES)	1141 34th Ave., Sacramento	5/1/79	490, 10177(b)
Williams, Fred Calvin (REB)	11012 Chanera Ave., Inglewood	5/1/79	10145, 10176(a)(e)(i)
Wilson, Wesley Thomas (RES)	29699 Highway 41, Coarsegold	5/1/79	490, 10177(b)
Coulter, William Allen (RRES)	1948 Warren St., San Fernando	5/2/79	490, 10145, 10176(e)(i), 10177(b)(d)(i)(k)
Zablen, Jim Francis (RES)	27795 Hamiltair Dr., Lake Arrowhead	5/2/79	10137, 10177(d)(g)
Burlingame, William (REB)	1262 E. Hamilton Ave., Ste. A, Campbell	5/7/79	10177.5
Leisure Planning Incorporated (REC)	173 Raymundo Dr., Woodside	5/7/79	10145, 10176(a), 10177(d), 2831, 2831.1, 2832
Off—Barbour, Jerry Reed			
Norris, Robert Angus (RES)	8030 Surrey Ln., Oakland	5/7/79	490, 10177(b)(f)
O'Halloran, John Thomas (RES)	1542B Schenone Ct., Concord	5/7/79	490, 10177(b)
Averch, Reed Michael (REB)	P.O. Box 5358, Santa Barbara	5/8/79	10177(b)
Gourtey, Marion Nelson (REB)	2114 Manhattan Beach Blvd., Redondo Beach	5/8/79	490, 10177(b)
Dbas—Biltmore Realty			
Mallhot, Gerald Alfred (RES)	5259 Pacifica Dr., San Diego	5/8/79	490, 10177(b)
Sayles, Dorothy (RES)	5016 West Ave. K12, Quartz Hill	5/8/79	490, 10177(b)
Goudson, Jimmy (RES)	3953 West 60th St., Los Angeles	5/9/79	10176(a)(j), 10177(j)
Hedlund, Stephen Scott (RES)	3242 Beaudry Terrace, Glendale	5/9/79	490, 10177(b)
Atkinson, Zebbie Dee III (REC)	1555 Altadena, San Diego	5/24/79	490, 10177(b)
Off—United Calif. Real Estate Services, Inc.			
United Calif. Real Estate Services, Inc. (REC)	1555 Altadena, San Diego	5/24/79	490, 10177(b)
Off—Atkinson, Zebbie Dee III			
Findley, Robert Lee (RES)	3930 Pacific Heights Blvd., San Bruno	5/30/79	490, 10177(b)
Bushman, Ted (REB)	P.O. Box 1261, 217 W. Cook St., Santa Maria	6/1/79	490, 10177(b)
Bernard, Paul E. (REB)	2865 San Bruno Ave., San Francisco	6/6/79	10145, 10176(e), 10177(d)
Tuell, Ethel Belle (REB)	1910 Fennell Rd., Yountville	6/11/79	10140, 10176(a)(j), 10177(c)(d)(f)(g), 11022
Kayfer, Michael Daniel (RES)	1117 Rutherford Rd., Rutherford	6/25/79	490, 10177(b)(f)
Ciani, Aldo James (REO)	12 Caispan Cape, Coronado	6/26/79	490, 10177(b)
Off—C R C F United Growth			
Off—Pro United, Inc.			
Off—T C F & Associates, Inc.			
Fraum, James Gary (REO)	P.O. Box 815, 1013 Park Pl., Coronado	6/26/79	490, 10177(b)
Off—C R C F United Growth			
Gibson, Terry Dennis (REB)	428 Spencer St., Glendale	6/26/79	490, 10177(b)

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

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Pakite, Ugas (RES) (Right to RRES license on terms and conditions)	1161 Winchester, #1, Glendale	4/12/79	490, 10177(b)
Omsberg, Andrea Lenore (RES) (Right to RRES license on terms and conditions)	10412 Wellworth, Los Angeles	4/17/79	490, 10177(e)
Werder, William Edward (RES) (Right to RRES license on terms and conditions)	1085 Pine Ave., Moss Beach	4/17/79	10130, 10137, 10177(d)
Goel, Ranjana (RES) (Right to RRES license on terms and conditions)	3046 Ryan Ave., Santa Clara	4/24/79	490, 10177(b)
Middleman, Doris Marie (RES) (Right to RRES license on terms and conditions)	705 Yarmouth Rd., Palos Verdes Estates	4/26/79	490, 10177(b)
Clifford, Watson Harvey (REB) Dba--W. H. Clifford Realty Company (Right to RREB license on terms and conditions)	Flying C Ranch, Copco Lake, Montague	4/30/79	11010, 11018.2, 10176(e)(i), 10177(d)(j)
Jacoby, Gloria Helen (REB) (Right to RREB license on terms and conditions)	4693 Persimmon Pl., San Jose	4/30/79	490, 10177(b)(f)
Sato, Kenneth George (RES) (Right to RRES license on terms and conditions)	3524 Breckenridge Way, Stockton	4/30/79	10176(e)
Crawford, Bede Joseph (RES) (Right to RRES license on terms and conditions)	1767 Bonair Rd., Vista	5/1/79	490
Winn, Byron Anthony (RES) (Right to RRES license on terms and conditions)	705 Ynez Cir., Danville	5/1/79	10177.5
Kolker, Jerrald Bert (RES) (Right to RRES license on terms and conditions)	5226 Tampa Ave., Tarzana	5/2/79	490, 10177(b)
Saldan, Michael L. (RES) (Right to RRES license on terms and conditions)	424 Plymouth Dr., Apt. 26, Vista	5/3/79	10177(b)
Harper, Howard Sidney (RES) (Right to RRES license after 15 days on terms and conditions)	173 Raymundo Dr., Woodside	5/7/79	10145, 10176(a), 10177(d), 2832
Keely, John Garry (REB) (REO) Off--Integrated Investments Incorporated (Right to RREB license after 60 days on terms and conditions)	1017 D St., San Rafael	5/7/79	10143, 10177(d)(f)(h), 2851, 2852, 2852.1, 2852.3
Pellegrini, George (REB) (Right to RREB license after 30 days on terms and conditions)	3540 Soquel Ave., Santa Cruz	5/8/79	10177(b)
Rollins, Vernon Crystal (REB) Dba--Associated Realty Brokers (Right to RREB license on terms and conditions)	703A N. Ventura St., Ojai	5/8/79	490, 10177(b)
Terra, Victor Edward (RES) (Right to RRES license on terms and conditions)	527 Easterby St., Sausalito	5/8/79	490, 10177(b)
Wenzel, John (RES) (Right to RRES license on terms and conditions)	1401 S. Harbor, #15D, La Habra	5/8/79	490, 10177(b)
Johnson, Leonard William (RES) (Right to RRES license after 90 days on terms and conditions)	15013 Kingsdale, Lawndale	5/9/79	490, 10177(b)
Ung, Raymond (RES) (Right to RRES license after 60 days on terms and conditions)	5640 Rosemead Blvd., #204, Pico Rivera	5/10/79	10177(b)
Cathy, Erma Louise (RES) (Right to RRES license after 15 days on terms and conditions)	3437 Dragoo Park Dr., Modesto	5/16/79	10177(j)
Cathy, Leonard Earl (RES) (Right to RRES license after 15 days on terms and conditions)	3437 Dragoo Park Dr., Modesto	5/16/79	10177(j)
Swift, Beulah Marie (RES) (Right to RRES license after 60 days on terms and conditions)	2090 Canterbury Rd., Sacramento	6/6/79	10130, 10143, 10177(d)(f), 2852, 2852.1, 2852.3, 10177(b)(f)
Booker, Gloria Jean (RES) (Right to RRES license on terms and conditions)	585 Fern Ave., Pinole	6/25/79	10145, 10176(a), 10177(d)(g)(j), 2832
Dedman, F. William Jr., (RREB) Dba--American River Properties Realtors (Right to RRES license on terms and conditions)	2630 Fair Oaks Blvd., Sacramento	6/28/79	10176(a)(f), 10177(d)(j), 11012
Hon, Henry (REO) Off--Multi Financial Corporation (Right to RREB license on terms and conditions)	3202 35th Ave., Oakland	6/28/79	10176(a)(f), 10177(d)(j), 11012
Multi-Financial Corporation (REC) Off--Hon, Henry (Right to RREB license on terms and conditions)	50 California St., 35th Flr., San Francisco	6/28/79	10176(a)(f), 10177(d)(j), 11012
Quan, Warren Fay (RRES) (Right to RRES license on terms and conditions)	328 Tideway Dr., Alameda	6/28/79	10176(a)(f), 10177(d)(j), 11012

**LICENSES SUSPENDED**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Cotton, Irwin Joseph (REB) Dba--Cotton Realty Dba--Apex Realty Dba--San Francisco Rental and Realty Co.	573 Kernberry Dr., San Rafael	4/11/79 90 days	10145, 10148, 10177(d), 2852.3
Crockett, Ella Ruth (RES)	1 Mount Vernon Ln., Atherton	4/17/79 30 days	10137, 10138, 10177(d)
Bramante, Frank Joseph (RRES)	23493 Via Jacinto, Laguna Hills	5/31/79 30 days	10137

**LICENSES SUSPENDED WITH STAYS**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Joslin, Charles Daniel (REB) (REO) Off--Levitt & Sons of Calif., Inc. (All but 10 days stayed for 1 year on conditions)	9253 Caspiane Way, Sacramento	4/16/79 30 days	10176(a)
Crockett, James H. (REB) (REO) Off--James H. Crockett Realty (All but 45 days stayed for 1 year on terms and conditions)	2142 University Ave., East Palo Alto	4/17/79 60 days	10137, 10138, 10177(d)
Carlson, Perry August (REB) (Stayed indefinitely after satisfaction of condition)	P.O. Box 143, 3277 Begonia Cir., Marina	4/24/79 indefinitely	10176(a)(f), 10177(d)
Hovorka, Stanley Martin Jr. (REB) (Stayed for 1 year on terms and conditions)	163 Shooting Star 1st, Foster City	4/24/79 10 days	10177(b)
Rare Earth Real Estate, Inc. (REC) Off--Van Haeften, Karel August R. (All but 15 days stayed for 2 years on terms and conditions)	Kappas Marina, East Pier Berth 1, Sausalito	4/24/79 90 days	10085, 10146, 10176(e), 10177(d), 2970, 2971, 2972, 2974
Van Haeften, Karel August R. (REB) (REO) Off--Rare Earth Real Estate, Inc. (All but 15 days stayed for 2 years on terms and conditions)	P.O. Box 946, Kappas Marina, East Pier Berth 1, Sausalito	4/24/79 90 days	10085, 10146, 10176(e), 10177(d), 2970, 2971, 2972, 2974

(Continued on page 7)

*Notes from Licensing*

by Senior Deputy  
Larry W. Smith



In the Winter 1978 issue of the Bulletin department procedural changes for handling fictitious business name licensing (DBAs) was discussed. Since then further record-keeping simplification for fictitious business name licensees has become possible because of DRE's new computerized Real Estate Licensing and Examinations System (RELES).

RELES has the ability to store multiple fictitious business names for any broker. The newly designed DRE license certificate has space to display multiple names on its face, thus eliminating issuance of separate license certificates for each DBA under which a broker wants to operate. Henceforth all DBAs used by a broker will be placed on a single broker license record and license certificate.

There are, of course, many brokers who now have multiple licenses due to their use of multiple DBAs. These multiple fictitious business name records are being combined in the new system with a single broker license record, and eventually all brokers using more than one DBA will receive a single license certificate bearing all DBAs in use.

Varying expiration dates will be uniformed to the longest existing term license, and the broker will select a single main office address with all other business locations being designated as branch offices. Fictitious business names, although only appearing on the main office license certificate, may be used at any location maintained by the broker. Salespersons may also do business for the broker under any DBA maintained by the broker.

Some of these changes will be immediate within the record system of the Department; however, brokers will see such changes over a longer period of time depending on license expiration date.

The \$4.00 fee structure is based primarily on whether a license certificate is issued. Therefore, whenever one or more fictitious names are added to or dropped from an existing license a new license certificate will be issued, requiring a \$4.00 fee.

Fictitious Business Name Statements and appropriate DRE applications must still be submitted for fictitious business names.



# REVOCATIONS

## LICENSEES TAKE SECRET PROFITS/COMPENSATION

Owners of a residence listed it for sale with a corporate broker through a salesperson licensed to the corporation. Approximately 45 days later "A" offered to purchase the property under certain conditions including the condition that "A" qualify for an FHA insured mortgage loan. The owners accepted the offer and an escrow was opened to consummate the sale.

"B" then offered through a second broker to purchase the property for \$2,300 more than "A" had offered to pay. A salesperson for the second broker transmitted the offer of "B" to the designated broker for the corporation. The corporate broker and listing salesperson were then aware that "A" had changed his mind about purchasing the property. The listing salesperson informed the owners that "A" would like to back out of the transaction, but he did not disclose "B's" offer to the owners.

The listing broker and salesperson then caused the following events to occur:

- Owners conveyed the property to "A" in escrow number one.
- "A" executed a grant deed to the property to listing salesperson.
- The deed of "A" to the listing salesperson was deposited in escrow number two. In this escrow the property was conveyed to "B" at the price that "B" had agreed to pay.

In escrow number one licensees caused "A" to apply for an FHA insured loan and to represent to FHA that "A" intended to occupy the residence. Licensees were aware of the FHA owner-occupancy requirement for an insured loan.

In addition to the commissions that they received in the transactions, licensees also profited at the expense of owners from the resale of the property to "B" for \$2,300 more than "A" had agreed to pay. At no time in the course of the transactions did licensees disclose to owners any information whatsoever concerning the proposed resale to "B".

Owners ultimately learned of the resale to "B" and brought suit for fraud against licensees. In addition the matter was brought to the attention of the DRE and disciplinary action followed resulting in revocation of the licenses of respondents.

## BROKER SNARED BY SELFISH MOTIVES

Real estate broker "B" obtained a listing of ranch property consisting of two parcels, one of pasture land and the other a small parcel with a farmhouse and out buildings. "O", a prospective buyer, made a written offer to purchase the pasture land only. This offer was presented to "B" and the owners by "S", a salesperson in the employ of broker "C". Owners rejected this offer.

Eleven days later "O" made a second written offer to purchase the pasture land through "S". "B" and "S" together presented the second offer to owners. Owners accepted the offer in principle, but created a counter offer by specifying terms for "O's" payment of the purchase price. "B" added the words "2 days for acceptance" to the owner's counter offer.

On the same day that the counter offer was made, "O" accepted it in the presence of "S" by initialing the terms prescribed by owners. "S" then tried unsuccessfully on several occasions to deliver the accepted copy of the contract to "B".

Approximately one week later "B" advised owners that "O" had not accepted their counter offer. "B" then made an offer to purchase both parcels from owners. In reliance upon "B's" representation that "O" was no longer interested in the pasture land, owners accepted "B's" offer. Before the sale to "B" closed however owners learned of "O's" acceptance of their counter offer and upon advice of counsel refused to convey to "B".

"B" sued owners for specific performance in spite of owners expressed desire to sell to "O". Owners incurred substantial expenses in defending the lawsuit brought by "B".

Upon being sued by "B", owners complained to the Department of Real Estate and an investigation followed. Ultimately DRE filed an Accusation against "B's" broker license. The Administrative Law Judge who heard the case proposed revocation of "B's" license. In the Proposed Decision the Administrative Law Judge commented to the effect that "B" was under a duty to act in the best interests of the owners and should have subordinated personal interest to the interests of the principals. The Commissioner adopted the Proposed Decision of the Administrative Law Judge and "B" appealed the Decision to the Superior Court. After reviewing the transcript and the exhibits of the administrative hearing, the Superior Court affirmed the Commissioner's Decision revoking "B's" broker license.

**DRE**

## OUT-OF-STATE (Continued from page 1)

ownership, operation and maintenance of the common interests and facilities. This is usually done by furnishing DRE with a copy of the governing instruments for the project, i.e., the Covenants, Conditions and Restrictions, the Articles of Incorporation, and Bylaws establishing the owners association.

The plan of organization must comply with DRE regulations which are designed to assure that the plan will be workable after the subdivider leaves the scene and the individual owners take over the management of the subdivision and the association.

Before the permit is issued, a "fair, just and equitable" test is applied to the project proposed for sale, just as in the case of any real property security. Because of the real property securities aspect, a good deal more information is asked for in the application than in the application form used for in-state subdivisions.

Moreover there are other special requirements that must be met. For example, a bond in the penal sum of \$5,000.00 issued by a corporate surety approved by the Commissioner and running to the State of California for the use and benefit of interested persons is required. The bond is conditioned upon the dealer (subdivider) complying with all provisions of Article 6 of Chapter 3 of the Real Estate Law (Section 10237 et seq. of the Business and Professions Code). Also a schedule of selling costs, including commission, advertising, promotional, and administrative expenses must be submitted to DRE.

The Real Property Securities Law cited above provides that if the Commissioner finds the offering to be "fair, just and equitable" he shall issue the permit. Essentially this means that the merits and value of the property offered must be established, all pertinent laws complied with and a determination made that the offering will not work a fraud upon California purchasers.

Many out-of-state subdividers successfully qualify their subdivisions to be offered in California. For a more detailed understanding of what is involved in qualifying an out-of-state subdivision for sale in California, it is suggested that interested readers obtain a current edition of the Department's *Real Estate Law* and review those parts of the Business and Professions Code and Commissioner's Regulations on the subject of subdivisions, especially out-of-state subdivisions. Then if there are still questions, call or write us for an explanation.

**DRE**

### 1979 QUARTERLY EXAM RESULTS

	SALES		BROKERS	
	Took	Passed	Took	Passed
April	9,624	4,260	1,400	649
May	9,268	4,044	1,868	927
June	<u>9,092</u>	<u>3,866</u>	<u>1,374</u>	<u>581</u>
TOTAL	27,984	12,170	4,642	2,157

A real estate licensee recently inquired in connection with the continuing education license renewal requirement, "How long does it take to complete 45 clock hours of education?" There are a number of possibilities: 2,700 minutes or 162,000 seconds, for those who willingly apply themselves; perhaps 90 hours or more for those who don't. Agreed?

## AN HONEST REPLY— "I DON'T KNOW"

Decisional law in a growing number of contemporary court cases makes it clear that real estate purchasers are relieved from any responsibility to independently investigate facts represented as true by the owner or broker, unless purchaser knows said representations are false.

Another recent case in point stems from the decision of the Maine Supreme Court in April 1979 (according to *Maine Real Estate News*, June 1979) in *Letellier v. Small*, Decision No. 2042 in business for Law Docket No. Yor 78-33.

The facts of the case are that seller Small fraudulently misrepresented to buyer Letellier that a lot had been approved for installation of a subsurface sewage system. The court awarded a \$9500 recovery to purchaser, and stated in part . . . "A plaintiff may justifiably rely on the fraudulent misrepresentation of a defendant, whether made intentionally or recklessly, without investigating the truth or falsity of the representation. Reliance is unjustified only if the plaintiff knows the representation is false or its falsity is obvious to him."

Although this case did not involve a real estate agent, the findings are as applicable to a defendant-agent as to a defendant-seller.

A real estate agent who operates on

guesswork in answering questions of principals, purchasers and third parties in real estate transactions is walking a legal precipice. An agent should make no representation which cannot be made from agent's own knowledge, unless he can identify the outside source of his information for the questioning party.

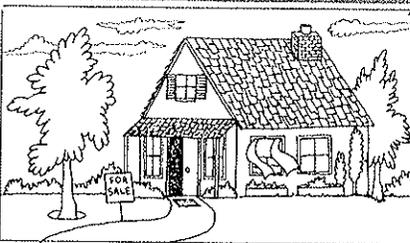
Should a buyer ask the agent conducting buyer through an "open house" about the age, condition and performance of the air-conditioning unit in the residence, unless agent has personal first-hand knowledge about the unit, the correct answer should be, "I don't know, but I'll make a point of finding out from both the seller and his service company."

"I don't know" often is not only the best answer, it is the *only* answer.

### A TWAIN REFRAIN

A thought attributed to Mark Twain allows that October is one of the peculiarly dangerous months in which to speculate in stocks. The others are July, January, September, April, November, May, March, June, December, August, and February.

### OPEN HOUSE



An "open house" in real estate parlance does not mean "leave the door open." Nor does it mean to tell your friends, neighbors and clients that the "key is under the flower pot."

Citizen alert programs throughout California communities admonish the homeowner to guard against theft. And yet, unfortunately, there are some few real estate agents who after a showing forget to lock the homeowner's door behind them, making entry by strangers a simple matter.

When accepting a listing on real property, the law of agency imposes upon the broker/agent a high degree of care over the listed property. If the homeowner has given the agent a key to the property along with permission to show it to prospective buyers, the agent has a duty to use common safeguards to protect the property from possible intruders after agent has left the premises.

Should the key be left in a multiple listing box and a board member fails to lock the door on leaving, the listing broker may well be personally liable to the owner for resulting theft or vandalism.

Prospective buyers and lookers come in all sizes, shapes, characters and characteristics. It isn't difficult for a wife to stick something in her purse while the husband "talks turkey" to the salesman in the next room.

The listing broker not only has the duty of a fiduciary in negotiating the sale and transfer of real property, but he also carries the burden of reasonable care over the owner's property and personal belongings when acting as a custodian of the property. This duty is not satisfied merely because the agent acts in good faith and with unquestionable honesty. An agent is liable for any loss which his principal may sustain as a result of the agent's proven negligence or breach of duty.

**DRE**

### RESEARCH REPORTS STILL AVAILABLE

*Characteristics and Professional Experiences of California Real Estate Licensees*, research study from California State University, Los Angeles by Dr. Marshall E. Reddick, Chairman of Department of Marketing. *Recreational Facilities Criteria For Remote Subdivisions: The California Case*, a study of the use of recreational land, developed by the Center for Business and Economic Research, California State College, Bakersfield.

Still available for \$1.50 each plus tax (enclose check or money order) from the Department of Real Estate, 714 P Street, Sacramento, CA 95814, ATTENTION: Book Purchase.

## REAL ESTATE BROKER LICENSE REQUIREMENTS— THE "PLAN"

In recent weeks the DRE has received many telephone inquiries concerning the "plan for professionalization." The majority of the callers are interested in knowing whether or not the "plan" still calls for applicants for a California real estate broker license to have a college degree commencing in 1980.

The answer is, "No." Here is a brief look at the history, purpose and current status of the college degree past idea.

Beginning in 1966, the Real Estate Commissioner's Office drafted and circulated a "Blueprint for Professionalization of the Real Estate Business in California." The blueprint or plan was designed to provide flexible guidelines for elevating the standards of real estate licensees. The original blueprint did plan for increased educational requirements. However, that plan was subsequently revised and updated several times and the most recent version *does not* call for a college degree or any degree in order to obtain a broker license.

Any additional educational requirements would require a change in law by the state legislature.

The committee which recommended the current (1978) plan was composed of persons representing consumers, the academic community, the California Association of Real Estate Brokers, and the California Association of Realtors. After deliberating on the status of the real estate industry, the committee did not feel, with any degree of unanimity, that a general education real estate license requirement should be accommodated in the years immediately ahead.

In view of the above, and because real estate has become an increasingly complex field, the committee recommended serious consideration should be given to the deletion of the educational real estate alternative to the otherwise required two years' full time real estate salesperson experience for the real estate broker license. The committee also recommended legislation to increase the number of required courses for broker license applicants from the current six to eight.

Legislation was introduced to accomplish the above recommendations. Assembly Bill 1183 would eliminate the substitution of education for the required two years salesperson experience. Senate Bill 1039, which was vetoed, would have increased the number of the required college level courses for obtaining a broker license from the current 6 courses to a total of 8 courses.

As we go to press in August, the fate of A.B. 1183 is unknown. In a future edition of the Bulletin we will advise readers of the outcome.

**DRE**

# FOREIGN INVESTORS

Real estate agents handling agricultural land transactions should be aware of the requirements for aliens to report certain farmland ownerships as prescribed under the federal Agricultural Foreign Investment Disclosure Act of 1978, (AFIDA).

Knowledgeable investors throughout the world are seemingly increasing their investments in United States income-producing properties, which properties include our productive farmlands.

With increasing unsettled worldwide economics and political conditions, U.S. real estate has recently received exceptional attention primarily because mortgage financing is widely available, with safety of equity capital, and there is comparatively small degree of governmental interference in industrial, commercial and other income producing real estate investments.

Among the features of U.S. agricultural lands which attract international buyers are the rapid and steady appreciation in both farmland values and farm income.

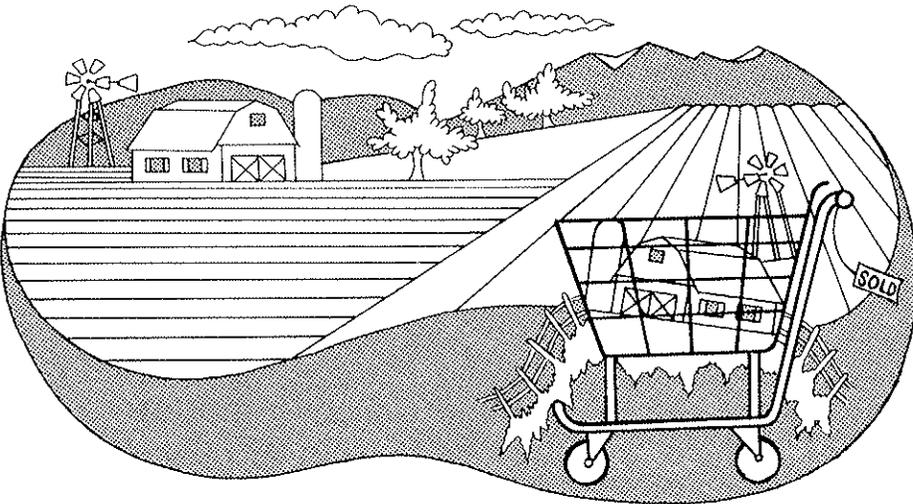
One investment authority claims farmland values doubled from 1972 to 1977 and cites statistics for year ending March 1, 1976 claiming 23 million acres of farmland changed hands in that year, 63% to active farmers, about 12% to part-time farmers, and 25% to undetermined purchasers.

Although the extent of the actual activity of foreign purchasers in U.S. lands is seemingly not well documented at this time, it appears the AFIDA report to be completed by alien investors will go far to establish this data and enable an assessment to be made as to

altogether by foreign purchasers, allowed to appreciate for years, and then resold?

Among other things, the AFIDA report asks for the following information from the investor:

- Type of activity—land holding, land acquisition, land disposition, land use change to agriculture, or land use change to nonagriculture.
- Type of interest held—fee, option, purchase, contract, etc.
- How tract was acquired or transferred—cash, installment transaction, trade, foreclosure, etc.
- Land value, including improvements—purchase price of land, non-purchase



whether the consequences of unregulated foreign agricultural investments are undesirable.

Some real concerns of the U.S. Department of Agriculture are:

- Will this trend result in farmlands becoming investment assets rather than production assets?
- Are farmland prices being artificially inflated to the detriment of the small farmer?
- How will rights to privacy/anonymity of foreigners be affected?
- Will land be taken off the market

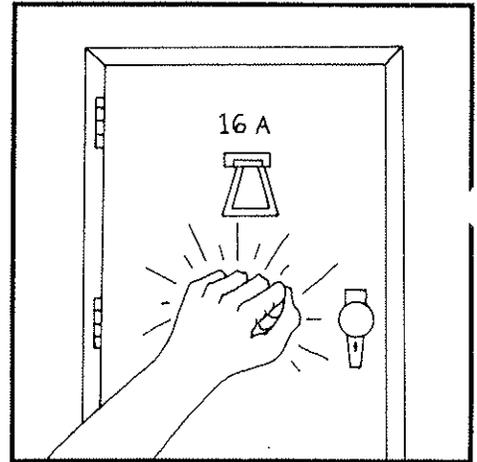
acquisition valuation, etc.

- Date of acquisition or transfer.
- Current land use—crop, pasture, timber, agriculture, other.
- Intended land use—no change, other agriculture, other nonagriculture.

The following information is quoted from the informational pamphlet supplied us by the U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service (April 1979).

"Foreigners who own, buy, sell, or hold interest in U.S. farmland must report their holdings and transactions to the U.S. Secretary of Agriculture. The reporting requirement became law in late 1978 when the

(Continued on page 8)



Under what conditions may a landlord legally enter the tenant's dwelling?

Civil Code Section 1954 states such entry may be made:

- (a) in an emergency
- (b) to make necessary or agreed repairs, alterations, improvements, decorations, supply necessary or agreed services, or show dwelling to prospective or actual purchasers, mortgagees, tenants, workmen or contractors
- (c) where tenant has abandoned or surrendered the premises
- (d) pursuant to court order.

Other than in the case of an emergency or tenant abandonment, landlord must enter during "normal business hours," unless tenant consents at time of entry. Except in an emergency situation or where otherwise impracticable to give notice, landlord must give tenant reasonable notice of intent to enter (24 hours presumed reasonable). Landlord shall not abuse this entry right nor harass tenant.

Civil Code Section 1953 provides that any lease or rental agreement provision attempting to waive or modify tenant's rights under Civil Code Section 1954 is void.

DRE

## APPRAISAL VALUATION ERRORS

According to an article in *The Appraiser*, June 1979, a federal district court ruled that an appraiser "failed to exercise reasonable care and competence" and awarded plaintiff damages of \$256,000 due to a \$2 million error in the final estimate of value. The article cited another instance of appraiser negligence which involved a homebuyer suing an appraiser, hired by the seller, because of an error in the square footage used to compute total value. The court held that the appraiser "should have known that the appraisal report would be relied on by prospective purchasers" and the buyer "... had a right to sue because he had been harmed by the appraiser's negligence."

DRE

(Continued from Page 3)

**LICENSES SUSPENDED WITH STAYS**

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Gamby, John W. (RES) (Stayed for 2 years on terms and conditions)	2517 Las Gallinas, San Rafael	4/25/79 30 days	496, 10177(b)
Hoan, John Ray (RES) (All but 15 days stayed on conditions)	1904 Westbrook Dr., Bakersfield	4/30/79 30 days	10177(g)
Reyburn, Earl Francis (REB) (All but 15 days stayed on conditions)	2525 Haley St., Bakersfield	4/30/79 30 days	10177(d)
Walters, Barbara Annette (RES) (Stayed for 1 year on terms and conditions)	Route 1, Box 47, Bishop	5/1/79 10 days	10176(a), 10177(g)
Walters, Jue Phillip (RES) (Stayed for 1 year on terms and conditions)	Route 1, Box 47, Bishop	5/1/79 10 days	10176(a), 10177(g)
Harbour, Jerry Reed (REB) (REO) Off—Realty Executives of Marin, Inc. Off—Aardvark Real Estate Rentals, Ltd. Off—Henry Kray Associates, Inc. (All but 15 days stayed for 1 year on terms and conditions)	173 Raymundo Dr., Woodside	5/7/79 60 days	10145, 10177(d)(h), 2831, 2831.1
De Marini, Lloyd John Jr. (RES) (Stayed for 2 years on conditions)	512 Keelson Cir., Redwood City	5/8/79 30 days	10177(g)
Mirabella, Frank Joseph (RES) (All but 15 days stayed for 2 years on conditions)	444 Richmond Dr., #1, Millbrae	5/8/79 60 days	10177(g)
Sanders, Lee Boyce (RES) (All but 15 days stayed for 1 year on terms and conditions)	486 Maple Ln., Garberville	5/8/79 60 days	10176(a)(i), 10177(f)(j)
Wagner, Mary Margaret (REB) (Stayed for 1 year on terms and conditions)	2000 Broad St., San Luis Obispo	5/31/79 30 days	10145, 10177(d)
Abdala, Gregorio Alberto (REB) (REO) Dba—Gold Seal Realty Off—Great Gold Seal California Corp. (Stayed for 1 year on terms and conditions)	4440 Mission St., San Francisco	6/6/79 15 days	10176(a)
Augustyn, Thomas George (RES) (Stayed for 2 years on terms and conditions)	4920 Pearl Ave., San Jose	6/28/79 90 days	10176(a)(i), 10177(d)(j), 11012

**FREEZE-OUT**

Those experienced in real estate transactions are able to detect some of the abuses that sometimes beset home sellers. Here is a practice by some real estate licensees which constitutes unlawful conduct under Commissioner's Regulation 2785(a) (1) Ethics and Professional Conduct Code.

Eager for a listing, a licensee tells owners that he has buyers looking for a house "just like yours" and ready to make an offer, although such buyers do not exist. Misrepresenting the probable market value, agent does not quibble with owners over terms, price, etc., just sets them so high the owners cannot refuse to list and gets a 90-day listing to "freeze-out" the competition.

A few days or weeks pass by. Of course owners have started looking for a new home to purchase, but no acceptable offers to purchase sellers' overpriced home have been received.

Agent now contacts the sellers and breaks the news that buyers won't pay the excessive price at which the property is listed. Slowly the agent begins to work on the sellers' ever increasing concern of not selling their home—terms are not suitable; cannot get cash to the loan; maybe owners should sell on contract because interest rates and points are so high; or maybe agent will be willing to purchase the home if owners will substantially lower the salesprice to accommodate licensee. The agent thus continues to wear down the sellers with the intent of getting owners to relist the property at the market value indicated for the property in the first place.

Such a technique is unlawful and unquestionably damages the image of the entire real estate industry. Sooner or later the DRE will be called in to investigate such activities. Sooner or later a licensee engaging in such dishonest dealings will be disciplined for this conduct.

Even though a few more listings may be gleaned along the way, the chances are good that such a licensee will effectively set the conditions for his own "freeze-out" from the real estate profession.

The pertinent subsection of Commissioner's Regulation 2785 referred to above reads:

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

(1) Knowingly making a substantial misrepresentation of the likely market value of real property to its owner either for the purpose of securing a listing or for the purpose of acquiring an interest in the property for the licensee's own account.

**INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS**

Name	Address	Date
Hoover, Betty (RES)	7340 Circle Pky., Sacramento	5/18/79
Klock, Clayton Jay (REB)	1501 N. Broadway, Ste. 200, Walnut Creek	6/1/79
Johnson, Johnnie Lee (RES)	294 Calvert Dr., Santa Clara	6/13/79
Lehrer, Gabriel (REB)	150 Manor Dr., Mill Valley	6/13/79
Henson, Noble Edward (REB)	329 E. Regent St., Inglewood	6/19/79

**DILEMMA** (Continued from page 4)

broker's commission will be paid by the seller. *Walters v. Marler* (1978) 83 C.A. 3d 1.

One might think that the answer to this dilemma is for the law to declare that a licensee who cooperates with a listing agent under an MLS arrangement or otherwise is a dual agent with a fiduciary obligation to both seller and buyer. Unfortunately if the courts were to adopt the doctrine of dual agency in such real estate brokerage transactions, they would have to come to grips with subdivision (d) of Section 10176 of the Real Estate Law which makes it a basis for disciplinary action for a licensee to act for more than one party in a transaction without the knowledge or consent of all parties. Not only does a legal problem exist with the adoption of a dual agency doctrine in real estate transactions involving cooperation between licensees, but equally important is the fact that dual agency is generally an unsatisfactory arrangement in practice. The agent who attempts to represent both parties is not likely to represent either of them very well.

One California writer has suggested that express provisions in listing agreements and deposit receipts should (1) establish the cooperating broker as an independent representative of the buyer; (2) establish a single fiduciary duty of the cooperating broker to the buyer; (3) remove the subagency relationship between the cooperating broker and listing broker; and (4) remove liability of a seller for acts of the cooperating broker. (*Realtor Report*, San Francisco Board of Realtors, May 13, 1977, Volume 5, No. 4)

There is no doubt that private contract law can be employed to fashion a legal relationship in which the cooperating broker becomes the agent of the buyer and the buyer

alone. The major difficulty with this proposed solution to the problem is that there does not appear to be much sentiment within the industry to initiate changes in the existing relationships no matter how misunderstood they are by the average licensee.

The present state of the law appears to be that the cooperating licensee, unless he has declared himself to both parties to be a dual agent, has a duty of dealing honestly, truthfully and fairly with the party to whom he is not a fiduciary, i.e., the prospective buyer. This duty, according to one court, rests "on the statutory duty under the Real Estate Law of fair and honest dealing imposed upon all real estate licensees (brokers and salesmen) in all of their dealings as such licensees." *Realty Projects, Inc. v. Smith* (1973) 32 CA 3d 204 at 210.

While in most instances it is difficult to distinguish between a licensee's obligations as a fiduciary and those of fair and honest dealing that exist simply because a person is a licensee, in the present confused state of the law the cooperating licensee should recognize that he or she is acting as a subagent of the seller and should so inform the prospective purchaser. As the seller's subagent, the cooperating licensee is committed to obtaining the best possible price and terms for the seller. This recognition and disclosure by the cooperating licensee should serve to remove any doubt or misunderstanding as to what should be disclosed to whom with regard to any matter in which the interests of the buyer and seller may conflict, e.g., revealing the minimum price that an owner will accept for the property being offered for sale.

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## FOREIGN (Continued from page 6)

President signed the Foreign Agricultural Investment and Disclosure Act. The data gained from these disclosures will form the basis of periodic reports to the President and Congress.

Failure to file an accurate report can result in a penalty with fines up to 25 percent of the farmland's fair market value.

### WHO MUST REPORT

- Individuals who are not U.S. citizens or citizens of the Northern Mariana Islands or the Trust Territory of the Pacific Islands.
- Individuals not lawfully admitted to the United States for permanent residence or who are paroled into the United States under the Immigration and Nationality Act.
- Any organization created under the laws of a foreign government or a U.S. organization which has located its principal place of business outside the United States.
- Any U.S. organization where 5 percent of the ownership is controlled by one or more foreigners or by foreign companies or corporations.
- Foreign governments.

### WHAT TO REPORT

- Each tract of agricultural land in farmland in the United States, its territories, the Northern Mariana Islands and the Trust Territories of the Pacific Islands owned by persons required to report.
- Leaseholds of 10 years or more.

*Under the law, the term farmland embraces more than fields used for growing crops. It also includes land in timber or forestry. Idle farmland used for crops or timber within the past 5 years must also be reported.*

*Tracts of less than 1 acre which produce less than \$1,000 worth of products in gross sales per year are exempt from the reporting requirements.*

### WHEN TO REPORT

Foreign persons, foreign governments or foreign organizations who owned land on February 1, 1979, must report by August 1, 1979. Those buying or selling land February 2, 1979 or later must report the transfer within 90 days. The U.S. Department of Agriculture will report first on alien land holdings in the United States to the President and Congress in late 1979. Subsequent reports will be made semi-annually.

### WHERE TO REPORT

The Secretary of Agriculture designated the Agricultural Stabilization and Conservation Service (ASCS) to collect the reports of foreign ownership because ASCS has over 2,700 offices in rural counties throughout the United States. Persons wishing to obtain a reporting form (ASCS-153) may do so from any of these county offices.

To find the ASCS county office, look in the white pages of the telephone book. In most cases it will be listed under U.S. Government, then under the subhead U.S. Department of Agriculture. The office will be listed as ASC or ASCS county office.

Although interested parties may obtain a form from any ASCS county office, the completed form must be returned to the ASCS county office that administers farm programs for the county where the land is located."

Brokers and salespersons in California specializing in foreign interest land transactions should contact their own county ASCS office for guidance or further details.

*(Also of concern to licensees dealing in agricultural land specialization should be California Assembly Bill 262 introduced by Assemblyman Lehman on January 11, 1979, an act proposed to prohibit nonresident aliens or alien business entity from purchasing, acquiring, or holding an interest in agricultural land, as such terms are defined.)*

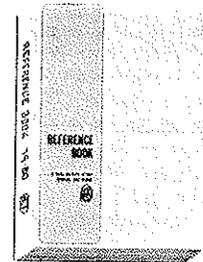


1978 Real Estate Law Book and 1979 Supplement are both available now from any office of the Department of Real Estate for \$2.50 plus 6% sales tax if purchased in California.

The book and supplement can be obtained in person or by mail. If ordered by mail send check or money order payable to Department of Real Estate at 714 P Street, Sacramento, CA 95814. Attention: LAW BOOK.



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## Report on National Housing Starts and Building Permits

New privately owned housing construction was authorized in May 1979 at an estimated seasonally adjusted annual rate of 1,591,000 units in the 16,000 permit-issuing places. This is 5 percent above the revised rate of 1,517,000 for April 1979, but 9 percent below the rate of 1,756,000 for May 1978.

New single-family units were authorized in May 1979 at a seasonally adjusted annual rate of 1,027,000 units compared with the revised April rate of 1,036,000. Units in apartment buildings with five units or more were authorized in May at an annual rate of 453,000 compared with the revised April estimate of 362,000. The May annual rate of permit authorized units in buildings with two to four units was 111,000.

During the first 5 months of this year, 632,100 units were authorized by permits in the 16,000 places compared with 722,600 units for the same period in 1978, a decrease of 13 percent.

Source: U.S. Dept. of Commerce, Bureau of the Census, Construction Reports for May '79, issued July '79.

