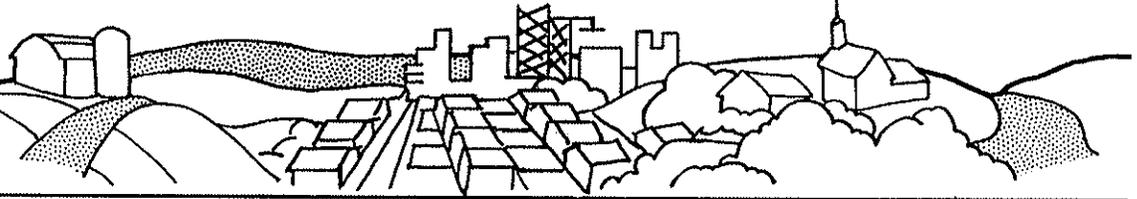




REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Fall 1981

DAVID H. FOX, Commissioner

Beware of Cash-to-Buyer Transactions

In the Winter 1980 issue of the *Real Estate Bulletin* we reported an increasing incidence of creative financing schemes that we have since come to refer to as "cash-to-buyer" or "buyer walk-away" transactions. Typically such a transaction includes the following elements:

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

In the *Bulletin* article we pointed out that if the seller should accept such an offer, there was every reason to believe that the buyer would simply walk away from the property and that the seller would then be faced with the choice of losing all interest in the property through foreclosure by the holder of a senior deed of trust or of foreclosing himself and taking over the property subject to the new senior encumbrance. We cautioned licensees against making such offers as principals and reminded them of the fiduciary duty as agent to fully explain to the seller all of the potential adverse consequences of accepting such an offer.

When the article was written, DRE had evidence of only a handful of such offers having been made throughout the state and no evidence of such an offer having been accepted by an owner. That situation has changed markedly in the intervening months. DRE is currently investigating more than 20 complaints against licensees involved in cash-to-buyer transactions and has evidence indicating that in Sacramento County alone, three particular individuals, acting independently and jointly, have been involved as buyers and/or agents in as many as 50 such transactions in the past 18 months. Foreclosures have taken place or notices of default have been filed in a large percentage of these transactions.

(Continued on page 4)

THE ROLE OF HUD/FHA IN APPRAISING SINGLE FAMILY HOMES

prepared by
*Department of Housing and Urban
Development
Sacramento Service Office*

From time-to-time HUD/FHA offices receive calls or letters from homeowners who have just discovered some defect in a home purchased with an FHA insured loan within the past year or so. Because FHA has insured the mortgage, a homeowner often incorrectly assumes the FHA in some manner is guaranteeing the home against defects, and the homeowner asks for HUD assistance to correct the problem.

An FHA insured mortgage does not insure or guarantee a home against defects. HUD/FHA has *no program* and *no authority* to provide financial assistance to correct defects or make repairs on existing properties. After asking the homeowner to again review the contract of sale and the closing documents, including the FHA commitment, the homeowner reluctantly comes to the conclusion that HUD does not warrant the value or condition of the property.

Although HUD/FHA makes no warranty of value or condition of a property, HUD's goal of encouraging improvement in housing standards and conditions has resulted in positive actions to minimize defects and problems in homes financed with FHA mortgage insurance. New homes must be warranted unconditionally by the builder for at least one year before FHA will insure the financing. All other homes are examined for noticeable defects by the appraiser. Repair of the noticeable defects and other necessary requirements are made a condition of the conditional commitment to insure the mortgage.

The FHA appraisal provides both an estimate of value and the acceptability of the property for mortgage insurance. The appraiser *examines*, as opposed to inspects, the existing property to determine its acceptability and compliance with FHA criteria. The criteria establishes the minimum acceptable level of the real property's quality to ensure that there are no noticeable defects

(Continued on page 6)

NEW REGULATIONS HIGHLIGHTED

Following are highlights of regulations which have been adopted recently. These regulations will be included in the revised *Real Estate Law* book, which should be available by mid-October. Regulations were effective on June 17, 1981, July 1, 1981 or August 16, 1981, as indicated.

Regulations Effective June 17, 1981

- Repeals Section 2785(b)(10) and renumbers Section 2785(b)(11) of Code of Ethics and Professional Conduct.
- Section 3012—Concerning continuing education, the term "Exemption Conditions" is corrected to read "Extension Conditions" and the term "exemption from" is corrected to read "extension of the time for completing."

Regulations Effective July 1, 1981

- Sections 2861 and 2862 are conformed to Chapter 1149, Statutes of 1980 (AB 2915) which amends Business and Professions Code Sections 10131.6, 10131.7 and 10177.2 and other pertinent codes. AB 2915 transfers jurisdiction over mobilehome registrations from Department of Motor Vehicles to Department of Housing and Community Development.

(Continued on page 8)

ATTENTION! NOTICE OF NEW CONTINUING EDUCATION REQUIREMENT

On and after January 1, 1983, real estate licensees applying for renewal of their licenses must complete as a part of the 45 clock hours of Continuing Education, a 3-hour course in ethics, professional conduct, and legal aspects of real estate.

Senate Bill 951 (Carpenter) signed into law by Governor Brown becomes effective on January 1, 1982. This new law (Business and

(Continued on page 7)

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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.

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Disciplinary Action—March—May 1981

RES—Real estate broker
RREB—Restricted real estate broker
RES—Real estate salesperson
RRES—Restricted real estate salesperson
REG—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 \$3.00 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

Business and Professions Code

490	relationship of conviction to licensed activity	10177(d)	violation of real estate law or regulations	10238.1	failure of RPS dealer to file annual report
10130	performing acts for which a license is required without the appropriate license	10177(f)	conduct that would have warranted denial of a license	10238.3	real property securities permit
10145	trust fund handling	10177(g)	negligence or incompetence as licensee		
10148	retention and availability of real estate broker records	10177(h)	failure to supervise salesperson		
10176(a)	making any substantial misrepresentation	10177(i)	improper use of governmental employment	2785(a)(9)	false representation as to receipt of deposit
10176(b)	making false promise	10177(j)	fraud or dishonest dealing not in licensed capacity	2832	improper handling of earnest money deposit
10176(c)	commingling trust funds	10177.5	civil fraud judgment based on licensed acts	2832.1	trust fund accountability
10176(g)	secret profit or undisclosed compensation	10231	accepting loan funds for pooling	2834	trust account withdrawals by unauthorized person
10176(h)	secret profit under option agreement	10231.1	retaining lender's funds for more than 60 days	2902	failure to furnish copy of instrument
10176(i)	fraud or dishonest dealing in licensed capacity	10237.3	acting as real property securities dealer without endorsement	2903	failure to disclose termite infestation or structural defect
10177(a)	procuring a real estate license by misrepresentation or material false statement	10237.7	failure of RPS dealer to submit proposed advertising	2950	broker controlled escrow violation
				2950(g)	broker controlled escrow violation

Regulations

LICENSES REVOKED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Layendyk, Paul John (RES)	3649 Pershing Ave., San Diego	2/17/81	10176(d)(i), 10177(g)
Vulpatti, Joan Theresa (RES)	5544 Muir Drive, San Jose	3/10/81	490, 10177(b)(f)
Pernicano, Vinne Albert (RES)	4145 69th St., La Mesa	3/10/81	490, 10177(a)
Bird, David Bruce (REB)	152 W. Park Ave., El Cajon	3/11/81	490, 10177(b)
Pontrelli, Fidel (REB)	1128 1/2 Fair Oaks Ave., South Pasadena	3/13/81	10176(a)(g)(i)
Farris, Ernest Glen (REB)	1314 E. Shaw Ave., Fresno	3/16/81	10177.5
Jorgensen, Jorgen Krogh (REB)(REC)	645 Golden West Dr., Redlands	3/18/81	2950(g), 10176(i), 10177(d)
Off - Home Sellers Realty, Inc. Off - Jorgensen Mortgage and Loan Corporation Off - Trans American Realty Exchange, Inc.			
Home Sellers Realty, Inc. (REC)	1757 North D St., San Bernardino	3/18/81	2832.1, 2950(g), 10145, 10176(j), 10177(d)
Off - Jorgensen, Jorgen Krogh Jorgensen Mortgage and Loan Corporation (REC)			
Tennell, Loretta Kristine (RES)	5858 Magnolia Ave., Ste. C, Riverside	3/18/81	2950(g), 10176(i), 10177(d)
Rackstraw, Robert Wesley (RES)	9090 G St., Apt. 3, P.O. Box B32, Hesperia	3/18/81	490, 10177(b)
Lotus, Idonna Alta (RES)	P.O. Box 352, Valley Springs	3/23/81	490, 10177(b)
Vameghli, Hassan (RES)	21803 Russian River, Sonoma	3/23/81	10176(a)(f)
Cozad, Virginia Lee (RES)	1105 Palmita Dr., Modesto	3/23/81	490, 10177(b)
Swartzbaugh, John (RES)	1722 Coronado, #K, Long Beach	3/24/81	490, 10177(b)
Kern, Eugene Leland (RES)	4901 La Crescenta Ave., La Crescenta	3/24/81	490, 10177(a)
Clifton, Le Roy Kenneth (RES)	9800 Vista Dr., Sacramento	3/25/81	490, 10177(b)
Mayo, Eugene (RES)	1107 Ravara Rd., Stockton	3/30/81	10145, 10176(a)(e)(i), 10177(d)
Alm, Joyce Jean (REB)	2061 Business Center Dr., Ste. 105, Irvine	4/8/81	490, 10177(b)
Gilley, Stephen Walter (RES)	314 Main St., #3, Sausalito	4/8/81	490, 10177(b)
Leird, Lonne Earl (RES)	1529 Radeliff, Modesto	4/9/81	490, 10177(b)
Virga, Georgena Sarah (RES)	1214 Cole St., San Francisco	4/9/81	490, 10177(b)(f)
Fancher, Roger John (REB)(REC)	614 21st St., Huntington Beach	4/14/81	490, 10177(b)
Olivo, Rene (RES)	476 W. Vermont Ave., Ste. 201, Escondido	4/22/81	490, 10177(b)
Hettmansperger, Harry Daniel (RES)	3058 Millbridge Dr., San Ramon	4/22/81	10177(f)(j)
Alexander, Robert Dale (REB)	4540 N. Chestnut, #102, Fresno	4/22/81	490, 10177(b)
Goldy, Rufon Emanuel (REB)	9818 Olive St., Oakland	4/24/81	2832, 10145, 10148, 10176(e)(i), 10177(d)
Off - Realty World Landmark Real Estate			
Gaddy, Barbara Jean (RES)	250 S. Harding Blvd., Roseville	4/26/81	2832, 2902, 10145, 10176(a)(e)(g)(h)(i), 10177(d)
Birkmeier, Charles James (RES)	5138 Auburn Blvd., Sacramento	4/26/81	2832, 2902, 10145, 10176(e), 10177(d)(g)
Martin, Ted Gregory (REB)	6051 Reno Ave., Temple City	4/28/81	490, 10177(b)
Off - San Moritz Realty			
Bedolla, Jeffrey Paul (RES)	204 North 2nd St., Alhambra	4/29/81	10176(a)(f), 10177(j)
DeCusey, Kathleen Marie (RES)	1133 Laurie Ave., San Jose	4/29/81	490, 10177(b)
Kulak, Stephen Clement (RES)	11092 Plainview, Tujunga	5/5/81	490, 10177(a)
Ellis, Brenda Lee (RES)	401 N. Orchard, Fullerton	5/5/81	490, 10177(b)
Daniels, Jerry (RES)	1333 Woodside Dr., Modesto	5/13/81	490, 10177(b)
Barros, Ramon Cruz (RES)	2907 141st St., Gardena	5/13/81	490, 10177(b)
Fishman, Marilyn Pearl (RES)	306 San Leandro Way, San Francisco	5/14/81	10176(a)(g)(i), 10177(f)(j)
	9685 Santa Monica Blvd., Beverly Hills	5/20/81	10177(g)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Fizozio, Michael James (REB)	18043 Sunburst St., Northridge	7/5/79	10176(i)
(Right to RREB license after 15 days on terms and conditions)			
Quintal, Eileen Yeh (RES)	660 Green St., San Francisco	3/3/81	490, 10177(b)(f)
(Right to RRES license on terms and conditions)			

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Friedkin, Morry (RES) (Right to RRES license after 60 days on terms and conditions)	3683 Maybelle Ave., Apt. C, Oakland	3/3/81	10177.5
Berg, Harold Mitchell (RES) (Right to RRES license after 15 days on terms and conditions)	11155 San Pablo Ave., El Cerrito	3/3/81	10177.5
Nelson, Christine Kaye (RES) (Right to RRES license on terms and conditions)	3500 Granada, #133, Santa Clara	3/5/81	10177(b)(f)
Berendowsky, Gary Lee (REB) (Right to RREB license after 30 days on terms and conditions)	30687 Oceanare Dr., Rancho Palos Verdes	3/11/81	490, 10177(b)
Blant, Karl Alfred (REB) (Right to RREB license after 90 days on terms and conditions)	P.O. Box 263, Decatur, Illinois	3/11/81	490, 10177(b)
Ladner, Elliott Vernon (RES) (Right to RRES license on terms and conditions)	347 N. Main St., Manteca	3/16/81	10176(a)(i), 10177(j)
Sklov, Elie Fisher (RES) (Right to RRES license on terms and conditions)	5118 Klump St., North Hollywood	3/18/81	490, 10177(a)
Worrell, Robert Lee (REB) (Right to RREB license after 90 days on terms and conditions)	4307 Sabadell, Las Vegas, Nevada	3/18/81	490, 10177(b)
Wright, Roger Estes (RES) (Right to RRES license on terms and conditions)	8501 45th St., Riverside	3/18/81	490, 10177(b)
Wainwright, Clifton (REB) (Right to RREB license after 120 days on terms and conditions)	10901 MacArthur Blvd., Ste. 6, Oakland	3/23/81	10176(c)(1)(6), 10177(f)(j)
Drasin, Loren Neil (REB) (Right to RREB license on terms and conditions)	5103 Aldca Ave., Encino	4/2/81	490, 10177(b)
Pauls, Vernon C. (REB)(REO) Off - Resort Management & Sales, Inc. (Right to RREB license on terms and conditions)	P.O. Box 4148, Fremont & Sandy Way, South Lake Tahoe	4/6/81	2832.1, 10145, 10177(d)
Hust, William Adair (RES) (Right to RRES license on terms and conditions)	15381 Charmeran Ave., San Jose	4/8/81	490, 10177(b)(f)
Murphy, Judy Ann (RES) (Right to RRES license on terms and conditions)	2210 Colony, Mountain View	4/13/81	490, 10177(b)
Gotschalek, Albert Louis (REB)(REO) (Right to RREB license on terms and conditions)	1125 S. Seaward Ave., Ventura	4/17/81	2832.1, 2834, 2930, 10145, 10176(c), 10177(d)(g)(h), 10231.1, 10237.3, 10237.7, 10237.8, 10238.1, 10238.3 490, 10177(b)
Dryden, Gregg Edward (RES) (Right to RRES license on terms and conditions)	22041 Clarendon Ave., Woodland Hills	4/22/81	
Wadley, Maryn Doyle (REB) (Right to RREB license after 30 days on terms and conditions)	420 Haines Rd., Auburn	4/28/81	2785(a)(9), 10176(a)(j)
Ma, Sandra Y. (RES) (Right to RRES license on terms and conditions)	640 East 19th Ave., San Mateo	5/5/81	490, 10177(b)
Edwards, Michael David (RES) (Right to RRES license on terms and conditions)	835 Blossom Hill Rd., #203, San Jose	5/6/81	490, 10177(b)
Harden, Patricia Maxine (RES) (Right to RRES license on terms and conditions)	5261 Lon Dale Rd., Oakdale	5/7/81	490, 10177(b)
Womack, Carl William (RES) (Right to RRES license after 90 days on terms and conditions)	17430 - 2 Vanowen, Van Nuys	5/12/81	10177(f)(j)
Morioka, Gary Yoshio (RES) (Right to RRES license after 90 days on terms and conditions)	1920 Plaza Del Amo, Torrance	5/13/81	10177(j)
Brown, Robert Daniel (REB)(REO) Off - L. & B Realty, Inc. (Right to RREB license after 30 days on terms and conditions)	1343 West Avenue J, Lancaster	5/20/81	10176(c)(i), 10177(d)
*Beall, Elizabeth Jean (REB) (Right to RRES license after 180 days on terms and conditions)	857 Glenway Dr., #2, Inglewood	1/30/81	2832, 10145, 10176(a)(c)(i), 10177(d)(j)

LICENSES SUSPENDED

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Westwood, Dan V. Sr. (RES) (All but 45 days stayed for 1 year on condition)	421 West 16th St., San Bernardino	2/25/81 (40 days)	10177(f)(g)
Kelly, John Henry (REB) (All but 15 days stayed for 1 year on condition)	4411 11th Ave., Ste. 1211, Los Angeles	3/31/81 (30 days)	490, 10177(b)
Banks, William Leon (REB) (All but 30 days stayed for 6 months on terms and conditions)	55709 29 Palms Hwy., Yucca Valley	4/14/81 (40 days)	10176(a), 10177(g)
Hunter, Orville Edward (RES) (All but 30 days stayed for 6 months on terms and conditions)	7475 Apache Trail, Yucca Valley	4/14/81 (40 days)	10176(a), 10177(g)

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Milner, Robert William (REB)(REO) Off - Sentinel Mortgage & Loan Corp. (All but 45 days stayed for 1 year on condition)	1710 S. Amphlett Blvd., Ste. 217, San Mateo	1/24/81 (90 days)	10177(d), 10231
McKee, Albert Louis (REB) (Stayed for 2 years on condition)	3333 Grand Ave., Ste. 203, Oakland	3/13/81 (30 days)	10148
Vician, Robert Stephen (RES) (All but 30 days stayed for 6 months on terms and conditions)	366 S. Pierce, El Cajon	3/18/81 (6 months)	10176(a), 10177(g)
Stevens, Alison Louise (RES) (All but 30 days stayed for 1 year on conditions)	2443 E. Coast Hwy, Corona Del Mar	3/20/81	2903, 10177(d)
Pagano, George Joseph (RES) (All but 15 days stayed for 1 year on condition)	1166 Glennevre St., Laguna Beach	3/31/81 (90 days)	10177(g)
Mazza, Nancy Marie (RES) (All but 10 days stayed for 1 year on conditions)	2101 Market St., San Francisco	4/6/81 (30 days)	2903, 10130, 10177(d)(g)
Crane, Frederick Randall (REB) (All but 30 days stayed for 1 year on condition)	3610 Central Ave., Ste. 111, Riverside	4/7/81 (60 days)	10177(f)
Funchus, Harvey Eugene (RES) (Stayed for 1 year on condition)	1383 Calle Oriente, Milpitas	4/13/81 (30 days)	490, 10177(b)(f)
Ghoslow, Lloyd W. (REB)(REO) (All but 15 days stayed for 1 year on conditions)	601 McHenry Ave., Ste. A, Modesto	4/28/81 (45 days)	10177(g)
Liberty Real Estate, Inc. (REC) (All but 15 days stayed for 1 year on conditions)	601 McHenry Ave., Ste. A, Modesto	4/28/81 (45 days)	10177(g)
Dougherty, Vincent Jerome (REB) Dba - Racquet Club Realty (All but 30 days stayed for 2 years on terms and conditions)	645 Toulumne Ave., Thousand Oaks	5/5/81 (60 days)	10176(a)(i), 10177(g)
Schmolder, Andrew Nicholas (REB) (All but 15 days stayed for 1 year on condition)	56400 Hwy 71, Anza	5/14/81 (90 days)	10176(c)(i)

**Name spelling correction.

(Continued on page 5)

ESCROWS

The Summer 1981 *Real Estate Bulletin* contained an article entitled "Illegal Escrow Activities." At the request of the California Department of Corporations we reprint here an article appearing in its May 1981 *Escrow Newsletter* dealing with the same subject.

UNLICENSED ESCROW ACTIVITY

It has come to the attention of the Department of Corporations that there is an increasing number of persons who are purportedly conducting escrows under an exemption from the licensing requirements of the Escrow Law which are in fact illegal operations. These violations include forming an association or cooperative for the purpose of conducting escrows or accepting solicitation from an escrow officer who acts as an independent contractor for the purpose of conducting escrows without being licensed by the Department of Corporations.

Applicable Law

Section 17200 of the Escrow Law states "It shall be unlawful for any person to engage in business as an escrow agent within this State except by means of a corporation duly organized for that purpose licensed by the Commissioner (of Corporations) as an escrow agent."

"Person" means, in addition to the singular, persons, group of persons, cooperative, association, company, firm, partnership, corporation, or other legal entity.

Exemptions

Section 17006 of the Financial Code grants certain limited exemptions from the licensing requirements of the Escrow Law. This means that state and federally chartered banks and savings and loans, title insurers, attorneys, and real estate brokers are regulated by their respective agencies. These persons, while being exempt from the licensing requirements of the Escrow Law, must conduct their escrow activity within the limitations set forth in Section 17006 of the Escrow Law. The problem of illegal escrow activity centers around the broker's exemption, in most cases, because of a lack of understanding of what can or cannot be done under the exemption.

Interpretation

The Department of Corporations' interpretation of the exemption prior to amendment by AB 3305 was as follows: (1) the exemption is available only to the real estate broker; (2) the exemption is personal to the broker and duties concerning the exempt escrow transaction cannot be delegated; (3) the broker must be the selling or listing broker; (4) the exemption is not available for any association with other brokers for the purpose of conducting escrows; (5) when the broker's escrow business is a substantial

(Continued on page 5)



Memos From

Continuing Education

prepared by
Real Estate Specialist Irma Daoud

BEWARE
(Continued from page 1)

In one of the complaints under investigation, the seller had an equity of approximately \$237,000 in a \$275,000 home. He accepted an offer calling for the buyer to obtain a new first loan of \$165,000 and for him (the seller) to take back from the buyer, a promissory note of \$165,000 secured by a second trust deed. The seller also agreed to pay a \$16,500 real estate commission to the broker through whom the offer was made plus closing costs. The seller agreed to accept net cash of approximately \$53,000 on closing. This left between \$35,000 and \$40,000 cash to buyer from the proceeds of the new first loan. The buyer made no payments on the first or second loans and a trustee's sale ensued some eight months after the close of escrow. The original owner did not have the cash or convertible assets to reacquire the property at the trustee's sale. The end result to him was a net loss of approximately \$184,000 that will only be slightly cushioned by the tax deductible losses he sustained.

The buyer in this case is a non-licensee who has been involved in several buyer walk-away transactions in the Sacramento and Fremont areas. There are many more like him thanks in part to seminars that have been conducted throughout the state explaining how a person can acquire real property for nothing down and frequently with a "cash-to-buyer" bonus.

The growing number of these schemes to fleece sellers may be attributable in part to a newspaper article earlier this year that tended to glorify the exploits of one Robert G. Allen who in a period of 72 hours acquired several parcels of California real property using none of his own money. Several licensees have expressed their opinion that the writer of these articles was remiss in not having questioned the moral and ethical aspects of Allen's actions.

In the next few months DRE expects to file several accusations against real estate licensees who have been involved either as buyer-principals or as listing or selling agents in cash-to-buyer transactions. These accusations will probably charge fraud and dishonest dealing and misrepresentation in the failure to make a full and fair disclosure to the seller of the potential adverse consequences of a cash-to-buyer sale. DRE is also looking closely at the involvement of mortgage loan brokers in arranging the financing for many of these transactions. DRE believes that a broker acting in the capacity of mortgage loan broker has a duty to his lender clients to investigate the bona fides of a purchase transaction before recommending that the client commit his or her funds to the financing. In many of the cases now under investigation there are strong indications that the most perfunctory investigation by the broker would have disclosed to him that the buyer in the transaction had no real interest in acquiring the property. With this information in hand, the mortgage broker should have foreseen the probability of a default on the loan and should have advised his lender clients accordingly.

Whose idea was this continuing education anyway? This article will attempt to answer this and some of the other general and specific questions coming into the Department about the continuing education program.

Legislation was enacted in 1976 in response to a movement within the industry to "professionalize" the practice of real estate. Essentially, the law states that after January 1, 1981, no real estate license shall be renewed unless the applicant submits evidence of having completed at least 45 clock hours of continuing education. The Commissioner was directed to adopt regulations to implement the law.

After study and public hearings, regulations 3005-3013 (Title 10, California Administrative Code) were adopted setting forth the basic guidelines to effectuate the continuing education legislation. Basically, the guidelines are that the offering material provide licensees with substantive knowledge of current real estate laws and practices that will enable them to better protect and benefit their clients.

Since the legislation was enacted, the Department has received over 1,500 applications for offering approvals. More than 800 are currently approved, ranging from elementary offerings for the beginning licensee to more sophisticated practices and techniques for the experienced practitioner. A number of offerings are directed to specializations within the field, such as property management and business opportunity brokerage.

Sponsors of the approved offerings include individuals, private schools, professional societies and trade organizations, universities, and state and community colleges. Cost per hour ranges from a very nominal sum to \$20.00 or more. Some are offered without charge.

Questions and comments we receive surprisingly indicate that many licensees have only recently become aware of the continuing education requirement or have neglected to set up a study plan in advance; as a result many have taken just any available offerings to renew their license. Prior planning and the wide range of offerings should enable each licensee to take offerings suited to his or her special interest and level of expertise and also to do some cost and value comparisons of the offerings with other licensees. Advertising material and course title frequently do not provide an adequate description of the offering content, and for continuing education offerings, as for other goods and services, cost is not necessarily a reliable index to value.

In evaluating an offering content, licensees should ask: Will it provide information

needed in my everyday real estate activity and will it help me in representing the client and protecting the public?

Regulations explicitly exclude certain types of material from consideration for continuing education offerings because the material does not directly accomplish the aim and purpose of continuing education—improved client service and consumer protection. Such courses include office management, sales psychology, speed reading, and memory improvement. General academic courses are excluded because they do not cover current specific laws, regulations, and real estate practices and hence are not directed to the licensees current daily client services and real estate activities. License preparation courses, statutory broker courses, and bar admission are excluded from consideration because this would constitute "double dipping" by using the same material to qualify for the license and also for license renewal.

Since continuing education is directed to upgrading the technical competence of the real estate licensee, certain types of material are excluded by implication. Such courses include those directed to the consumer, investor, and owner-manager of rental property, e.g., activities not falling within the definition of a real estate licensee.

Below are some of the questions currently being asked by licensees. Some originally were published in the Winter 1980 issue of the *Real Estate Bulletin*.

Q. How can licensees find out where continuing education offerings are being given?

A. The Department does not maintain a calendar of offerings. Some sources for this information are trade media, local Real Estate Boards, community college campuses, state universities, and the University of California. Private colleges, schools, and universities may also have information available.

The Department of Real Estate does publish a list containing the names, addresses and telephone numbers of continuing education sponsors, titles, and credit hours for all approved continuing education offerings. However, the list does not furnish dates and locations of the offerings. This information may be obtained from the particular sponsor of the offering you are interested in attending.

Offering lists may be obtained by sending a check or money order in the amount of \$4.50 to the California Department of Real Estate, P.O. Box 160009, Sacramento, CA 95816, Attention: Accounting.

(Continued on page 7)

NOTICES

When writing to DRE for any reason, it is important that licenses include in the letter, form or other communication a telephone number at which they can be reached during regular business hours.

Sometimes information appearing on a licensee's communication to us needs immediate clarification before DRE can make the changes or take the action requested by the licensee.

Usually most problems can be clarified or resolved satisfactorily by a telephone call to the licensee.

Help us help you faster.

LOAN FRACTIONALIZING

Because of the recent interest shown by mortgage loan brokers in the subject of loan fractionalizing, the following which appeared as a part of the *Commissioner's Forum* in the September 1981 *California Real Estate* magazine is reprinted here.

QUESTION

I am in the mortgage loan business though not on a large scale. In recent months as real property prices have skyrocketed, it has become increasingly difficult for me to arrange loans in which one lender can provide all of the funds needed by the borrower. I have heard that there are some special requirements to put two or more unrelated lenders together on a single loan. Is this information correct, and if so, what are the requirements?

ANSWER

The practice of a broker putting two or more unrelated lenders together to fund a loan secured by the same real property is commonly known as "loan fractionalizing." It can take any number of different forms, e.g., the issuance by the borrower to each lender of a separate note and an undivided interest in the deed of trust securing the note. Whatever the form, the essence of the practice of fractionalizing is the issuance to two or more persons of evidences of indebtedness of equal priority each of which is secured by an interest in the same parcel of real property.

The position of the Department of the Corporate Securities Law of 1968 and that a permit must be obtained from the Department of Corporations before such loans can be arranged by mortgage loan brokers.

"Security" is very broadly defined in the Corporate Securities Law to include among other things "any note; . . . evidence of indebtedness; . . . investment contract; . . . or, in general, any interest or instrument commonly known as a security". Having thus broadly defined a security, the Department of Corporations by a series of express exemptions for "securities" which in the judgment of the Legislature do not demand all of the protections afforded by the Corporate Securities Law. The exemption from qualification for sale (permit requirement) under the Corporate Securities Law that is most relevant in connection with the negotiation of loans secured by deeds of trust or with the purchase, sale or exchange of deeds of trust is in Section 25100(p) of the Corporate Securities Law. That section grants an exemption from the permit requirement for sale or issuance of a "promissory note secured by a lien on real property, which is not one of a series of notes secured by interests in the same real property", i.e., a mortgage loan or trust deed sale or exchange transaction involving a single lender (or purchaser) funding a transaction with a single borrower (or seller).

The one-on-one lender/borrower or purchaser/seller transaction requires a permit only if the promissory note is a real property security as defined in Section 10237.1 of the Real Estate Law. To constitute a real property security the note must be guaranteed by the broker or must be a promotional note as defined by Section 10237.1. If the promissory note is a real property security, it cannot be offered to the public unless a permit has been issued by DRE.

As the Department of Corporations interprets the Corporate Securities Law, the offering of undivided interests in a promissory note secured by a deed of trust is the equivalent of the offering of a series of promissory notes secured by interests in the same real property. A guarantee by the broker negotiating the loan or sale is not a prerequisite to those interests being treated as securities under the Corporate Securities Law. You should contact the Department of Corporations for further information on the specific requirements that you will have to meet in engaging in loan fractionalizing in your mortgage loan brokerage business.

DRE

Many *Real Estate Bulletins* are returned to DRE by the post office as being nondeliverable. DRE must pay the substantial cost for this return postage. Beginning with the Summer 1981 issue of the *Bulletin*, the names and mailing addresses of all licensees whose *Bulletins* have been returned to us will be removed from the computer mailing system until such time as the licensee furnishes us with a written notification of the licensee's current mailing address.

Also, see "Notes from Licensing" this issue.

The Department of Corporations has not contributed an article on Mini-syndicates for this issue of the *Bulletin*. Until further notice the series is discontinued.

DRE

In the *Statement of Appraised Value* (appraisal) received by each purchaser, homebuyers are notified that "HUD does not warrant the value or the condition of the property." The *Statement* advises in bold type that "The purchaser should satisfy himself/herself that the price and the condition of the property are acceptable." Some HUD field offices also require the purchaser to sign a statement that repairs HUD's disclaimer of warranty, and on which the purchaser acknowledges: "I am aware that any statement to the contrary, which may have been made by the seller or his representative(s) that such a warranty does exist, is not factual."

Nonetheless, the incorrect presumption persists that the homebuyer need not be concerned about the condition of the property because HUD supposedly has completely inspected, repaired and warranted the property. HUD's own reputation for requiring essential repairs, or a de-emphasis by a real estate agent of the buyer's responsibility to determine the condition of the property, may give life to that false presumption.

A real estate licensee has the duty to disclose to the buyer all material facts pertaining to the real estate transaction. The thin line between an honest sales pitch and misrepresentation can be crossed inadvertently by too much emphasis on the effect of the FHA appraisal on the condition of the property.

Full disclosure, including advising the buyer that HUD does not warrant the value or condition of a property and that the buyer is responsible for satisfying himself/herself of the property's condition, would eliminate most, if not all, of the homebuyer's dissatisfaction. It may protect the seller and real estate agent not only against expensive and time-consuming litigation, but against disciplinary proceedings instituted by the Department of Real Estate as well.

HUD/FHA (Continued from page 1)

Getting education is like getting measles. You have to go where measles is. (Flexner)

Success is a ladder, not an escalator. (Anon)

AMBIGUOUS LISTING PROVISION

Real estate licensees who themselves draft provisions in listings, deposit receipts and other instruments used in conducting their real estate brokerage businesses or who use standard or canned forms of contracts should guard against the use of ambiguous language that may affect their rights or the rights of their principals. A recent Ohio Supreme Court case entitled *Central Realty Company v. Climer*, 406 NE 2d 515, should serve as an object lesson.

Broker "B" was employed under a three-month exclusive listing contract to sell "O's" 175-acre farm. "B" prepared the listing for "O's" signature and included an extension clause which provided "... if the property is sold within three months after the period of this listing to anyone with whom you (the broker) have negotiated with respect to a sale during the period of this listing and of whom I have notice, I agree to pay you a commission of 6%."

"B" negotiated with neighbors of "O" for the purchase of the property during the listing period, but no agreement was reached. "O" had notice of the negotiations. Within three months after the listing with "B" had expired, "O" sold the property to the neighbors through another broker at a price lower than the listing price with "B." "B" filed suit for his commission.

In denying the recovery to "B," the trial court ruled that the extension clause was not clear on whether it was to have effect only if a sale was made by "O" himself during the period of the extension or if it also applied in the case of a sale negotiated by another broker during the extension. The court noted that the ambiguity in the listing could have been avoided by the use of more precise wording. It therefore resolved the doubt against "B" since it was "B" who was responsible for the wording of the contract.

The Ohio Supreme Court—with three justices dissenting—upheld the judgment of the trial court and in doing so observed as follows: "We agree with the trial judge when he stated, '... there is a doubt which the broker could have prevented by more explicit phrasing. The extension clause simply states 'or is sold,' but does not say by whom. More explicit wording would have stated 'or is sold by me alone or through another broker.' The ambiguity and doubt is to be resolved against the plaintiff."

California statutory law is consistent with this holding of the Ohio Supreme Court. Civil Code Section 1654 provides in part that "in cases of uncertainty... the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." Therefore to avoid what happened to "B" and to forestall similar problems for their principals, licensees need to be constantly alert to contractual provisions that are susceptible to differing interpretations. If the licensee can be said to be responsible for the ambiguity, it is likely that a California court considering the question will resolve it against the licensee or his principal as the Ohio court did.

DRE

REAL PROPERTY TAX POSTPONEMENT MAY AID QUALIFIED SENIOR CITIZEN HOMEOWNERS

Real estate agents should be aware of a little-known program that permits qualified senior citizens to defer paying real property taxes on their owner-occupied homes as long as there is sufficient cash value in the property to make the eventual payment of the taxes. A person over the age of 62, living in his or her own home, and having household income of less than \$30,200 a year may elect to defer payment of the real property taxes. The State will pay them for the property owner, in effect "lending" the owner the funds at a 7% interest rate. This loan must be repaid in the event of a change in ownership of the property (either through sale or at the time of death), or if the amount of taxes and interest should exceed the owner's equity in the property.

The filing period for this tax-deferment program is open until December 31 for taxes which will become due in December 1982. Claim booklets may be requested from the State Controller's Office.

UPDATE

The Summer 1981 *Real Estate Bulletin* contained an article entitled "Stock Co-operators." On page 5, second column, of that issue, it was stated that the Department of Corporations asserts jurisdiction over stock co-operators with four (4) or fewer shareholders. The Department of Corporations has since reconsidered its opinion that it had jurisdiction over the sale and offering of such projects and has issued a later opinion which exempts stock cooperatives of four or less shareholders (members) from qualification requirements of the Corporate Securities Law unless offered or sold with an investment contract.

ESCROW (continued from page 3)

- The broker must be the person who determines that the specified events have occurred or that the prescribed conditions have been performed which activates the escrow agent's duties of delivery.
- The broker must have control over the books and records pertaining to the exempt transaction.
- A broker may not contract to have the exempt escrow service performed by a person not licensed pursuant to the Escrow Law or otherwise exempt from the licensing requirements of the Escrow Law. It would seem to follow that if the broker is to legitimately claim an exemption from the licensing requirements of the Escrow Law, the broker must possess the qualifications and proficiency to conduct the escrow activity, and accept the full fiduciary responsibility to the principals of the escrow.

AB 3305 (Chap. 243, Stats. 1980) was introduced to amend Section 17006(d) to reflect the Department's interpretation of the exemption, and was not an attempt by the Department to deny the exemption or to question the right to the exemption as some parties have contended. The Department does maintain, however, that exempt escrow transactions must be conducted in a manner consistent with the limitations of the specific exemption.

Section 17006(d), as amended by AB 3305, provides that the exemption applies to "any broker licensed by the Real Estate

Legislative Amendment

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Collier, Donald Head (REB)	4837 Centrade Pl., Fremont	3-2-81
Roman, Charles Frank (REB)	319 Avalon Dr., Vista	4-9-81
King, Jane (REB)	1630 Centra Ave., Englewood	4-15-81
Nickeloff, Brent Anthony (RES)	7027 Dublin Blvd., Dublin	5-15-81

The amendment to Section 17006(d) does not alter the Department's opinion that:
• The exemption is personal to the broker and that the broker may not delegate or "contract out" any escrow services that may be provided pursuant to the exemption.
• A broker relying on an exemption may permit his employees to perform ministerial or administrative duties in connection with the exempt escrow transaction, however, the written instruments, money, or evidences of title that are the subject of the escrow transaction must be under the control of the broker claiming the exemption for the exemption to apply.

DRE

Notes from Licensing

by
Larry W. Smith
Real Estate Manager, III
Licensing and Examinations

When DRE converted the current licensee records to a more sophisticated data processing system, the ability to maintain a separate mailing address, as well as a business address, for each licensee became a reality. This mailing address part of the licensee record was discussed in previous columns. It is shown on all licensing forms used by licensees and applicants for licenses.

Some real estate brokers, perhaps unknowingly, are making it difficult for salespersons to receive correspondence and other mailings from DRE. As brokers are required to sign most forms sent to DRE on behalf of salespersons, some brokers are taking that last opportunity to change the salespersons' designated mailing address. There may be good reason for this in some situations and some salespersons would not object to such a change anyway; but most such changes are made without the salespersons' knowledge. That is what causes the problem.

If a salesperson is unaware of the broker's having changed the mailing address on the form placed on file with DRE, the salesperson may not realize the need to again change it when transferring from broker to broker. Let's say the salesperson prefers to receive the DRE *Bulletin*, license renewal notices, etc., at his or her home address and accordingly enters that as the mailing address on the form. The DRE form is submitted by the salesperson to the broker for signature and the broker, without notifying the salesperson, changes the salesperson's mailing address to the broker's office address. Later the salesperson transfers to a new broker and fails to change the mailing address to either the new broker or the salesperson's home address because the salesperson thinks the home address is already designated as the mailing address. As a result, correspondence from DRE, and perhaps others, continues to go to the prior broker's address.

What happens? The salesperson is usually annoyed with DRE—and so is the previous employing broker—because it appears the proper change was not made on the DRE records. In fact, the requested changes were made as shown on the submitted form, but due to the lack of communication between salesperson and broker the problem occurred.

Mailing addresses and business addresses are separate items in the computer record system and changing one does not change the other automatically. Each needs to be changed separately if necessary. 

Trust Fund Handling by Syndicate General Partner

A knowledgeable real estate attorney recently wrote to DRE about a broker-client who as the general partner of a limited partnership real estate syndicate managed the real property owned by the syndicate. As property manager, the broker collected income from the real property and deposited the funds into the same bank account that he used for the deposit of the trust funds of the clients of his regular brokerage business. The broker did this because he believed that he was performing acts for the syndicate for which a real estate license is required. The attorney agreed that these were trust funds of the syndicate but had concluded that since the broker was a part owner of the funds of the partnership, the depositing of the funds into trust made him technically guilty of commingling his own funds with trust funds. The attorney asked for DRE's comments and recommendations to permit him to properly advise his client on how best to avoid disciplinary action should DRE audit his trust account.

The solution that we offered was more practical than legal. We recommended that the broker establish a separate trust account for the limited partnership as beneficiary. In this way the broker would still be handling the partnership funds as trust funds, but the separate account would obviate the possibility that an attachment or execution directed against the broker could adversely affect any trust account beneficiary other than the partnership. We advised the attorney that DRE would not be likely to take any action for what might technically constitute commingling if broker accounted for and handled the partnership funds in the manner that we recommended. 

CONTINUING ED (Continued from page 4)

Q. Can I attend only a portion of an offering and get credit for the hours attended?

A. No; certificates may be issued only for the number of approved hours and require 90% or more of attendance.

Q. What is the time limit for an approved offering to count for renewal?

A. The offering must have been taken during the 4 years immediately preceding license renewal.

Q. My license is about to expire and I have not completed my continuing education credits. Can I get license extension?

A. Normally NO; however, see section 10171.2 of the license law which contains the very limited basis for a 90-day license extension possibility.

Q. I filed my renewal application and the Department notified me my certificate numbers were wrong or had been rejected by the computer. What's the problem?

A. Sometimes the problem is that the date of offering/completion does not match the approval number. Offerings are given an approval number and are approved for one year. The prior year's number may have been used in error on the certificate. Check with the sponsor for the approval number in effect at the time you took the course.

Occasionally it happens that the certificate was issued for the wrong number of hours. If the certificate was issued incorrectly, contact the sponsor.

Q. I've lost or misplaced my Continuing Education Attendance Certificates. How can I obtain duplicates?

A. CONTACT THE SPONSOR. It is the responsibility of all DRE approved sponsors to maintain attendance records for a period of five years from the date of the offering. DRE DOES NOT HAVE OR KEEP SUCH RECORDS. You should contact the sponsor

and obtain a duplicate copy/copies. (You may be charged a fee for the duplicate(s).) If you do not know the sponsor's address, DRE's Continuing Education Unit may be of help in furnishing you the sponsor's address of record. The Continuing Education Unit's address is Department of Real Estate, P.O. Box 160009, Sacramento, CA 96816, or telephone (916) 322-1752. 

ATTENTION

(Continued from page 1)

Professions Code Section 10171.1) reads as follows:

10171.1. On and after January 1, 1983, no real estate license shall be renewed unless the commissioner finds that the applicant for the license has, during each four-year period preceding the renewal application, completed as part of the 45 clock hours of attendance provided for in Section 10170.4, a three-hour course in ethics, professional conduct, and legal aspects of real estate. Any such course shall include, but need not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

This section shall be operative until January 1, 1985, and on such date is repealed.

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Attn: Reference Book

REGULATIONS (Continued from page 1)

**Regulations Effective August 16, 1981,
dealing with Time-Shares.**

- Section 2790.7—Amended to conform to provisions of Sections 10249.3 and 10249.11 of the Business and Professions Code, which include time-share estates or time-share uses as out-of-state subdivision offerings.
- Adds new Article 12.2, Time-Share Projects, Sections 2810 through 2813.8.
- Section 2810—Defines “substantially complete” subdivision public report application for Time-Share Projects.
- Section 2810.1—Specifies the regulations in Article 12 (Subdivisions) applicable to time-share projects.
- Section 2810.2—Requires applicant for time-share public report to present evidence of habitability of or financial ability to complete the project, sufficient property interest in project to allow its completion, and permissibility of project under local ordinance, if any.
- Section 2810.3—Presale Requirements for Closing. Prescribes purchase money handling requirements in connection with time-share offerings.
- Section 2810.4—Specifies conditions for the addition of a dwelling unit to a time-share project.
- Section 2810.5—Prescribes when time-share offerings with dwelling units both in the state and out of the state will be treated as an out-of-state subdivision.
- Section 2810.6—Requires subdivider to notify Department of material changes to time-share project for which a public report has already been issued, and describes what constitutes a material change.
- Section 2810.7—Provides that the Real Estate Commissioner can approve alternative rights and remedies—other than those prescribed by the regulations—affording comparable protection to time-share owners.
- Section 2811—Requires the sponsor of a time-share project to record a Declaration dedicating any dwelling units to the time-share project and requires certain provisions therein.
- Section 2812—Specifies standards for “reasonable arrangements” in time-share projects as being those in substantial accord with Sections 2812.1 through 2812.10 and 2813 through 2813.8.
- Section 2812.1—Requires transfer of control in time-share project to owners association or to trustee prior to consummating first sale of time-share interest in project and provides for sponsor to reserve commercial use easements under certain conditions.
- Section 2812.2—Requires conveyance of time-share project dwelling units to trustee prior to closing of sale of first time-share interest and prescribes elements of the trust instrument.
- Section 2812.3—Requires time-share project sponsor to provide security for payment of assessments as an owner in the project and specifies requirements for security.
- Section 2812.4—Prescribes conditions pertaining to the sponsor's subsidization of cost of operating or maintaining a time-share project operation.
- Section 2812.5—Requires covenant by time-share project sponsor not to encumber dwelling units after execution of the Declaration without written consent of majority of other owners.
- Section 2812.6—Requires the Declaration in Section 2811 to prohibit partition of the project by owners.
- Section 2812.7—Prescribes conditions for joint time-share and commercial use of common facilities.
- Section 2812.8—Prescribes that a management agent shall be employed by a time-share project pursuant to a prescribed written management agreement.
- Section 2812.9—Allows rental of occupancy periods to members of the public under certain circumstances.
- Section 2812.10—Requires time-share project to be insured against property damage and personal injury claims.
- Section 2813—Requires regular meetings of time-share project owners and prescribes requirements for such meetings, unless by the nature of the project this is impracticable.
- Section 2813.1—Specifies members' voting rights in time-share project owner associations.
- Section 2813.2—Prescribes composition and election procedures for governing bodies of time-share project owner association.
- Section 2813.3—Specifies requirements for meetings of governing bodies of time-share project owner associations.
- Section 2813.4—Specifies requirements for regular and special assessments to defray costs of operating time-share projects.
- Section 2813.5—Requires dissemination of certain financial and other pertinent information to all time-share owners in a project.
- Section 2813.6—Requires that records of time-share project owner association be available for inspection and copying by association members.
- Section 2813.7—Specifies procedures and limits for a time-share project owners association to discipline its members for failure to comply with the project's Declaration or rules and regulations, including absolute forfeiture of an owner's rights, title or interest in the project in certain circumstances.
- Section 2813.8—Specifies procedures for amending governing instruments of time-share projects.

DRE

Official Publication

CALIFORNIA DEPARTMENT OF REAL ESTATE

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