



# REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



GEORGE DEUKMEJIAN, Governor

Fall 1984

JAMES A. EDMONDS JR., Commissioner

## **NEW** CONTINUING EDUCATION REGULATIONS

The regulations appearing below have been adopted to implement new statutory provisions for continuing education enacted during the 1983 legislative session. These regulations impose an examination or evaluation requirement for all continuing education offerings completed on or after August 1, 1984. Additional regulations proposed to implement new statutory continuing education provisions were still being reviewed by the Office of Administrative Law when this Bulletin went to press. Those regulations will be printed in the Winter Bulletin.

Adopt Section 3005 to read:

### 3005. Definitions.

As used in this article, the following definitions will apply:

(a) "Clock hours" means 50 minutes actually spent in any combination of presenting course content, seminar, conference discussions, workshop activity, and testing.

(b) "Approval" or "approved" with reference to an offering means a determination by the Department that the appropriate hours of continuing education credit will be given to licensees who have successfully completed the course within the time period specified by statute.

(c) "Final examination" means the test or other objective method by which the sponsor or instructor, after completion of the instructional phase of the offering, determines whether a participant has successfully completed the offering according to standards previously approved by the Department.

(d) "Closed book examination" means a written test taken by participants without reference to any sources of information other than materials previously approved by the Department.

(e) "Material change" as used in Section 3007.2 means a significant deviation, in one or more aspects, from the offering as approved by the Department including a change in curriculum, course length, form or substance of the final examination, workbooks, texts, or syllabi, but not including changes designed exclusively to reflect recent changes in statutes, regulations or decisional law.

(f) "Workshops and case study" means a learning situation of two or more individually or collectively approved meetings for the exchange of ideas and in-depth discussion of specific issues, problems or cases as proposed by the sponsor.

(g) "Evaluation" means a pass/fail rating of a participant based upon the sponsor's or monitor's personal observations of the partic-

ipant's performance and achievements over the entire course of a workshop, case study, conference or seminar offering.

(h) "Completed" as used in Sections 3006, 3006.1, 3007.4, and 3013 in reference to a continuing education offering, means the date of successful completion of a final examination or in the case of an offering for which an "evaluation" has been approved, the date on which the sponsor makes a "pass" evaluation of the participant's performance.

(i) "Seminar" means an offering which combines learning through an instructor's lecturing according to an approved program of instruction and involvement of the participants through controlled discourse among themselves and with the instructor.

(j) "Conference" means a meeting of persons, including but not limited to members of trade and professional associations, the primary purpose of which is for consultation, discussion and study by participants on matters of mutual interest and concern other than continuing education for license renewal.

Adopt Section 3005.1 to read:

### 3005.1. Access to Offerings.

Registration for all continuing education offerings shall be open to all licensees. Sponsors and their agents shall be responsible for compliance with this regulation.

Amend Section 3006 to read:

### 3006. Criteria for Approval of Offerings.

In acting on an application for approval of a continuing education offering, the Commissioner shall apply, but shall not be limited to the application of, the following criteria:

(a) Offerings shall have at least three successive clock hours of instruction.

(b) For other than a correspondence course offering, participants shall be physically present during at least 90% of the offering time exclusive of the time allocated to the administering of a final examination.

(Continued on Page 5)

## EASTON v. STRASSBURGER— DISCLOSURE RESPONSIBILITY OF REAL ESTATE AGENT

by  
W. Jerome Thomas  
Chief Legal Officer

In February of this year, Division Two of the First District Court of Appeal rendered a decision in a case entitled *Easton v. Strassburger*, 152 C.A. 3d 90. On May 31, 1984, the California Supreme Court denied the requests of appellant, the National Association of Realtors, California Association of Realtors and a host of other organizations and persons for a hearing or decertification of the opinion. The opinion is therefore judicial precedent in future litigation involving the alleged failure of a real estate licensee to disclose information about a residential property to a prospective purchaser.

### Recent Appellate Court decision may set judicial precedent for future cases involving duty of licensee to disclose facts.

The *Easton* case stands for the proposition that a real estate broker acting as an agent in the sale of a residential real property has a duty to the prospective buyer, not only to disclose facts about the property known to the broker that may materially affect the value or desirability of the property to the buyer, but also a "duty to conduct a reasonably competent and diligent inspection of property . . . in order to discover defects . . ." to be disclosed to the buyer.

Briefly stated, the facts of the case are that Easton, the plaintiff, purchased a single-family residence from Strassburger for \$170,000 in 1976. Valley Realty (Valley) was the listing broker in the transaction. During the three years immediately preceding the sale to Easton, there had been two landslides on the property. Strassburger had taken corrective action to prevent further subsidence of the

(Continued on Page 8)

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Vol. 44, No. 3 Fall 1984

STATE OF CALIFORNIA  
GEORGE DEUKMEJIAN, Governor

JAMES A. EDMONDS JR.  
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, \$2 is allocated to cover subscription to the *Bulletin*. Second Class Postage paid at Sacramento, California. Postmaster, send address changes to *Real Estate Bulletin*, 1719-24th Street, Sacramento 95816.

**Disciplinary Action— March-May 1984**

REB—Real estate broker RES—Real estate salesperson PRLS—Prepaid rental listing service  
RREB—Restricted real estate broker RRES—Restricted real estate salesperson RPRLS—Restricted prepaid rental listing service  
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 for \$7.00 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

<i>Business and Professions Code</i>		<i>Regulations</i>	
490	relationship of conviction to licensed activity	10177(b) 10177(d)	conviction of crime violation of real estate law or regulations
10103	continuing jurisdiction over lapsed, suspended, or surrendered license	10177(f)	conduct that would have warranted denial of a license
10130	performing acts for which a license is required without the appropriate license	10177(g) 10177(h) 10177(i)	negligence or incompetence as licensee failure to supervise salespersons improper use of governmental employment
10137	unlawful payment of compensation	10177(j)	fraud or dishonest dealing not in licensed capacity
10145	trust fund handling	10177(k)	violation of restricted license condition
10162	office abandonment	10177.5	civil fraud judgment based on licensed acts
10165	covers various violations	10231	accepting loan funds for pooling
10176(a)	making any substantial misrepresentation	11010	failure to file notice of intention to sell or lease subdivision
10176(b)	making false promise	11013.2	sale of subdivided lands subject to blanket encumbrance without compliance with conditions
10176(d)	failure to disclose dual agency	11018.2	illegal subdivision sales (sale of subdivision lots without public report)
10176(e)	commingling trust funds		
10176(g)	secret profit or undisclosed compensation		
10176(i)	fraud or dishonest dealing in licensed capacity		
		2725	failure of broker to review agreements of incorporation
		2742	failure of corporate broker to file articles of incorporation
		2785(a)(10)	unauthorized earnest money refund
		2830	failure to maintain trust fund account
		2831	inadequate trust fund records
		2831.1	inadequate trust fund records
		2832	improper handling of earnest money deposit
		2832.1	trust fund accountability
		2833	escrow trust fund handling violation
		2834	trust account withdrawals by unauthorized person
		2950(d)	failure of broker handling escrows to maintain records
		2950(e)	failure by broker to make escrow records available for inspection
		2950(g)	broker-controlled escrow violation

**LICENSES REVOKED**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Ferrante, Joseph Michael (REB)	337 N. Vineyard Ave., Ste. 300, Ontario	3/24/83	10177(j)
*Meramonte, Inc. (REC)	2160 Royale Rd., Sacramento	8/5/83	2832.1, 2834, 10176(e), 10177(d)(h)
*Glassford, Harry Warner (REB)	7969 Engineer Rd., Ste. 202, San Diego	12/13/83	10176(i)
*Pataez, Javier Chuck (RES)	1201 Mission Rd., Alhambra	12/21/83	490, 10177(b)
*Lopez, Celia Palazuelos (RES)	1330 W. Juneherry Pl., Oxnard	2/22/84	490, 10177(b)
Morgan, Emmett James (RES)	4424—5th Ave., Los Angeles	3/16/84	2832, 10145, 10176(i), 10177(d)(j)(k)
Reda Realtors, Inc. (REC)	10061 Talbert, Ste. 200, Fountain Valley	3/21/84	11010, 11013.2, 11018.2, 10177(d)
Off—Reda, Albert Robert			
Archer, James Dennis (RES)	715 Paseo Del Mar, Palos Verdes Estates	3/22/84	10177(f)(j)
B E C Financial, Inc. (REC)	4640 Jewell St., Ste. 101, San Diego	3/27/84	10103, 10177(d)
Off—Hughes, Roy			
Riker, Elwood Nelson (RES)	2321G Santa Clara Ave., Santa Ana	3/28/84	490, 10177(b)
Merriweather, George Anthony (RES)	P.O. Box 1245, Ojai	3/28/84	490, 10177(b)
Nagy, Alexander J. (RES)	3104 Charlotte St., Newbury Park	3/29/84	490, 10177(b)
Schmidt, Frank (RES)	56330 Bonanza Dr., Yucca Valley	3/29/84	490, 10177(b)
Messina, Marge J. (RES)	440 Granada Dr., La Habra	3/29/84	490, 10177(b)
Hancock, Clara Tobin (RES)	521 Firethorne, Brea	3/29/84	490, 10177(b)
Scholtz, Dennis (RES)	208 Via Mentone, Newport Beach	3/29/84	490, 10177(b)
Cherney, Nicholas Louis (RES)	P.O. Box 2389, Long Beach	3/29/84	490, 10177(b)
Sensor, Harold Gregory (RES)	7271 Pontoosuc, Riverside	3/29/84	490, 10177(b)
Stephenson, Helen S. Finan (RES)	14651 Caminito Orense, San Diego	3/29/84	10137, 10176(e)(i), 10177(d)
Hyland, David Patrick (REB)(REO)	1436 E. Katella Ave., Orange	3/29/84	490, 10177(b)
Phillips, Daniel Joseph (RES)	8 Anza Lido Park, Newport Beach	4/4/84	490, 10177(b)
Regency Real Estate, Inc. (REC)	1805 Westcliff Dr., Newport Beach	4/5/84	10177(f)
McInerney, John Francis (REB)(REO)	P.O. Box 491, Oxnard	4/5/84	10177.5
Off—R.C.R. Corporation			
R.C.R. Corporation (REC)	2239 Townsgate Rd., Ste.102, Westlake Village	4/5/84	10177.5
Off—McInerney, John Francis			
Taubman, William Clare (REB)(REO)	441 S. Broadway, Santa Ana	4/5/84	10176(a)(b)(i), 10177(j)
Off—Golden Opportunities Realty, Inc.			
Golden Opportunities Realty, Inc. (REC)	441 S. Broadway, Santa Ana	4/5/84	10176(a)(b)(i), 10177(j)
Off—Taubman, William Clare			
Hayrikian, Andy (RES)	852 N. 16th St., Montebello	4/10/84	490, 10177(b)
Woodruff, Gamaliel Bernard (RES)	2815 Santa Cruz Way, Sacramento	4/11/84	490, 10177(b)
White, Neil Elliot (RES)	8169 Sun Tree Ln., Fair Oaks	4/11/84	490, 10177(b)
Lewis, Brent Dean (RES)	6608 Summer Rain Way, Citrus Heights	4/11/84	490, 10177(b)
Miranda, Carolyn Irene (RES)	636 Las Palmas, Sacramento	4/11/84	490, 10177(b)
Briggs, Floyd I. Jr. (RES)	2779 Robert Ct., Redding	4/11/84	10145, 10176(a)(e)(i), 10177(d), 10145, 10176(a)(e)(i), 10177(d), 2831
Redding Security Funding, Inc. (REC)	2040 Hilltop Dr., Redding	4/11/84	2832.1, 2834
Avila, Vincent Dan (RES)	6083 Peoria Dr., Citrus Heights	4/11/84	490, 10177(b)
Van Laningham, Jack Ronald (RES)	260 N. Mathilda Ave., Apt. C6, Sunnyvale	4/11/84	490, 10177(b)(f)
Bryson, Henry Wayne (RES)	3700—26th St., San Francisco	4/11/84	490, 10177(b)(f)
Wilson, Wayne Lee (RES)	5037 E. Huntington, Fresno	4/11/84	10177(g)
Lagerholm, Donn Vail (RES)	P.O. Box 426, Edison	4/11/84	490, 10177(b)
Ferran, Thomas Francis (REB)	3745 Suffolk Dr., San Diego	4/11/84	490, 10177(b)
Rowe, Richard Robinson (RES)	232—13th St., Vallejo	4/16/84	490, 10177(b)
Budd, Mary David (RES)	2704—16th Ave., Sacramento	4/16/84	490, 10177(b)
Dean, John Edgar (REB)	22151 Clarendon, Woodland Hills	4/17/84	10176(a)(g)
Alejo, Jerry Dean (RES)	2833 Agate, Bakersfield	4/23/84	10177(f)(j)
Stewart, Herman Joseph (RES)	3216 Godman, Chicago	4/24/84	10137, 10176(a)(g)(i)
Campora, Sidney Antonio (RES)	1019 Downing Dr., Lodi	4/30/84	10130, 10177(d)
Brewer, Lois Lee (RES)	330 N. Fulton, Fresno	4/30/84	2831, 2831.1, 2950(d)(e)(g), 10130, 10145, 10176(i), 10177(d)(f)(g)
Marcus, George Redrick Jr. (REB)	854 E. California, Fresno	5/30/84	10130, 10177(d)(f)(g)(h)
Robinson, R. Paul (RES)	610 Mundy Terrace, El Cajon	5/1/84	490, 10177(b)
Fraze, Joyce D. (RES)	3972 Kenneth, Riverside	5/1/84	490, 10177(b)
Newberry, Harold Fenimore Jr. (REB)	40933 Florida, Hemet	5/1/84	490, 10177(b)
Fellner, Andrew Tivadar (REB)(REO)	2667 Camino Del Rio S. #107, San Diego	5/1/84	490, 10177(b)

**LICENSES REVOKED**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Wilson, Mary Ann Theresa (RES)	8712 Wahl St., Santee	5/1/84	490, 10177(b)
Housie, Marion Jr. (RES)	6969 Eureka Dr., Riverside	5/1/84	490, 10177(b)
Tone, Richard Nicholas Jr. (REB)	2315 Peachtree Ln., San Jose	5/2/84	10145, 10176(i), 10177(d)
Parrack, Deborah Antoinette (RES)	9522 Dewey Dr., Garden Grove	5/8/84	490, 10177(b)
Keane, Joseph Denis (RES)	122 E. Oceanfront, Newport Beach	5/8/84	490, 10177(b)
McMurray, Amber Ellen (RES)	1142 Orange St. #2, Riverside	5/8/84	490, 10177(b)
Lake Arrowhead Company, Inc. (REC)	P.O. Box 1060, Lake Arrowhead	5/8/84	10177(f)
Vilton, Rhonda Jo (RES)	391 Los Soneto Dr., San Diego	5/10/84	490, 10177(b)
Mukai, Alexander (REB)	25381 Helena Cir., Mission Viejo	5/10/84	490, 10177(b)
Holland, Lynn Edward (RES)	P.O. Box 1244, Tahoe City	5/10/84	10145, 10176(e), 10177(d)
Holland, Kathleen Theresa (RES)	P.O. Box 1244, Tahoe City	5/10/84	10145, 10176(e), 10177(d)
Fitzpatrick, Robert James (RES)	551 E. Capistrano Way, San Mateo	5/14/84	2831.1, 2832, 2833, 2950(d), 10145, 10176(a)(i), 10177(d)(f)(g)
Milestone Investment Dev. & Mgt., Inc. (REC) Off—Paolillo, Dean D.	2755 Campus Dr., Ste. 255, San Mateo	5/14/84	2831.1, 2832, 2833, 2950(d), 10145, 10176(a)(i), 10177(d)(f)(g)
Grizzly Investments, Inc. (REC)	27211 Hwy. 189, Blue Jay	5/15/84	10177(f)(g)
Ladd, Robert James (RES)	350 Bedford, Orange	5/16/84	490, 10177(b)
Pitter, Howard Keith (RES)	17362 Almelo St., Huntington Beach	5/16/84	490, 10177(b)
Harris, Jack (RES)	986 La Canada-Verdugo Rd., Pasadena	5/16/84	490, 10177(b)
All California Equity Services, Inc. (REC)	5155 Seabreeze Way, Oxnard Shores	5/16/84	10177(f)
California Equity Mortgage, Inc. (REC)	5530 Corbin #222, Tarzana	5/16/84	10177(f)
Johnson, Lovie Ray (RES)	1103 L St., Apt. D, Bakersfield	5/21/84	490, 10177(b)
George, Perry Francis (RES)	P.O. Box 214331, Sacramento	5/21/84	490, 10177(b)
Herther, Herbert Matthews (REB)	27102 Calle Del Cid, Mission Viejo	5/22/84	490, 10177(b)
Clancy, Pamela Cecile (RES)	4670 Clayton Rd., Concord	5/24/84	2832, 10145, 10176(a)(i), 10177(d)(f)(g)
Stansky, Paul Michael (RREB)	510 Mt. Davidson Ct., Clayton	5/24/84	2725, 2832, 10145, 10176(i), 10177(d)(g)(h)
California Apartment Investments, Inc. (REC) Off—Ryan, Frank Van Buren	721 N. Prospect, Redondo Beach	5/24/84	2742, 10176(i), 10177(d)(f)(g)
Ryan, Frank Van Buren (REB)(REO)	721 N. Prospect, Redondo Beach	5/24/84	490, 10176(i), 10177(b)(d)(g)
Off—California Apartment Investments, Inc.			
Ryan, David E. (RES)	6319 W. Slauson Ave., Culver City	5/24/84	10176(j), 10177(d)(j)
Artz, George Walton (REB)(REO)	2160 Royale Dr., Sacramento	5/31/84	10177(h)

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

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Seling, Robert Alan (REB) (Right to RREB license on terms and conditions)	3333 W. Coast Hwy., Ste. 303, Newport Beach	7/14/83	2831, 2831.1, 10176(a), 10177(d)
*Beltran, Frank Joe (REB)(REO) (Right to RRES license on terms and conditions)	3001 E. Florence Ave., Huntington Park	9/23/83	2832.1, 10145, 10177(d)
*Blum, Dorothy Joanne (RES) (Right to RRES license on terms and conditions)	1889 Brian Ct., Thousand Oaks	2/21/84	490, 10177(b)
*Buchan, Monica Mary Boswell (RES) (Right to RRES license on terms and conditions)	1026 N. Western Ave., San Pedro	2/21/84	10176(a)(d)(f), 10177(g)
*Hall, Joyce M. (RES) (Right to RRES license on terms and conditions)	1026 N. Western Ave., San Pedro	2/21/84	10176(a)(d)(f), 10177(g)(j)
*Lifton, Gilbert (REB)(REO) (Right to RREB license after 30 days on terms and conditions)	23664 Country Villa Rd., Ramona	2/22/84	2785(a)(10), 10177(d)(g)
Milner, Kenneth D. (REB) (Right to RREB license after 9 months on terms and conditions)	4400 Garfield Ave., Carmichael	3/9/84	10145, 10177(d)(g)(h)
Buffington, Barry C. (RES) (Right to RRES license after 30 days on terms and conditions)	8077 Shantung Dr., Santee	3/13/84	10176(a)(i)
Bartolo, Frances Joanne (REB) (Right to RREB license on terms and conditions)	P.O. Box 7726, Stockton	3/13/84	2830, 2831.1, 2832, 10145, 10177(d)
Bartolo, Donald James (RES) (Right to RRES license on terms and conditions)	120 Westmore Dr., Santa Cruz	3/13/84	10130, 10145, 10177(d)(f)
Golden State Equity Corporation (REC) Off—Brook, Milton L. (Right to RREC license on terms and conditions)	591 Camino De Le Reina, Ste. 426, San Diego	3/13/84	2830, 2831, 2831.1, 2832.1, 10145, 10177(d)
Brook, Milton L. (REB)(REO) Off—Golden State Equity Corporation (Right to RREB license on terms and conditions)	591 Camino De Le Reina, Ste. 426, San Diego	3/13/84	10177(h)
Solario, Christopher James (RES) (Right to RRES license on terms and conditions)	1108 Nantucket, Modesto	3/15/84	490, 10177(b)
Rilling, Kenneth Paul (RES) (Right to RRES license on terms and conditions)	P.O. Box 178, Soquel	3/19/84	490, 10177(b)(f)
Lovasz, Viola (RES) (Right to RRES license on terms and conditions)	3885 Prospect Ave., Culver City	3/20/84	490, 10177(b)
Jones, Jana Jannelle (RES) (Right to RRES license on terms and conditions)	4595 Wilshire Blvd. #101, Los Angeles	3/20/84	10176(a)(f), 10177(g)
Reda, Albert Robert (REB)(REO) Off—Reda Realtors, Inc. Off—Oceana Pacific Financial Corp. (Right to RRES license after 90 days on terms and conditions)	8382 Sandalwood Cir., Westminster	3/21/84	11010, 11013.2, 11018.2, 10177(d)
Sharif, Fereidoun (RES) (Right to RRES license on terms and conditions)	3531 Nova Scotia Ave., San Jose	3/26/84	10177(b)(f)
Bouin, Frederic (RES) (Right to RRES license on terms and conditions)	8926 Rangely Ave., Los Angeles	3/27/84	490, 10177(b)
Bly, Shirley Louise (RES) (Right to RRES license on terms and conditions)	155 Washington St., Marina Del Rey	3/27/84	490, 10177(b)
Hughes, Roy (REB) Off—B E C Financial, Inc. (Right to RREB license after 12 months on terms and conditions)	4236 Balboa Ave., San Diego	3/27/84	10103, 10177(d)(h)
Korb, Helen (RES) (Right to RRES license on terms and conditions)	13523 Bessemer St., Van Nuys	3/27/84	490, 10177(b)
Thomas, Charles Fred (REB) (Right to RREB license on terms and conditions)	421 N. Parsons St., La Habra	3/29/84	490, 10177(b)
Novodor, Helen J. (RES) (Right to RRES license on terms and conditions)	6846 Hatillo, Canoga Park	3/29/84	490, 10177(b)
Ollendorf, Ursula Marie (RES) (Right to RRES license on terms and conditions)	39812 San Moreno Ct., Fremont	4/3/84	10145, 10176(i), 10177(d)(f)
Harrington, Kathleen Lynn (RES) (Right to RRES license on terms and conditions)	Onans Old 395, Crowley Lake	4/9/84	490, 10177(b)
Manelis, Robert (RES) (Right to RRES license on terms and conditions)	Rt. 1 Box 1921 Barry Rd., Davis	4/11/84	490, 10177(b)
Easton, Helen Lorraine (RES) (Right to RRES license on terms and conditions)	1081 N. Laurel Ave., Lindsay	4/11/84	490, 10177(b)
Mason, Molly Lurline (RES) (Right to RRES license on terms and conditions)	P.O. Box 853, Colfax	4/17/84	490, 10177(b)
Sprague, Robert E. (RES) (Right to RRES license on terms and conditions)	4080 Hancock St. #4113, San Diego	4/17/84	490, 10177(b)
Tatro, Danney Boy (RES) (Right to RRES license on terms and conditions)	1322 West 223rd St., Torrance	4/17/84	10130, 10177(d)(j)

*Notes from  
Licensing*

by

*Lawrence J. Cannon  
Real Estate Manager I*

*Sacramento Licensing Operations*

Questions by licensees regarding the renewal process are not uncommon at any of our offices. This does not surprise us, considering 4,000 to 6,000 licenses are renewed every month.

We are frequently asked about the issuance of a new license certificate once a licensee has mailed in a properly-completed renewal application, Continuing Education Course Verification form (RE 251), and a correct fee. For example, what if these items were mailed in just prior to the expiration date of the license? Should the licensee stop conducting licensed activities if a new certificate has not been mailed out?

The Real Estate Law, Section 10156.2 of the Business and Professions Code, states that a licensee who submits the proper renewal requirements prior to the expiration date of the license, may continue to conduct licensed activities until either a renewed license certificate is issued or a notice received indicating the renewal application is deficient. Even though a license certificate may not be issued until after the license expiration date passes, the certificate would show an effective date without a break in the license term.

If there is a problem with the renewal application, it typically involves a discrepancy in the information entered by the licensee on the Continuing Education Course Verification form. In such cases, a letter would be sent by DRE's Licensing Section to the licensee

*(Continued on Page 4)*

**"Mr. DRE"  
In Memoriam  
GAYLORD K. NYE**

Retired Assistant Commissioner Gaylord K. Nye died August 28, 1984 in San Francisco where he and his wife, Doris, resided for the past 51 years.

Mr. Nye was one of the most widely known and highly respected administrators in the history of the Department, serving 46 years prior to his retirement in 1967.

During his illustrious career with DRE, he pioneered many licensing, education, subdivision, and law enforcement programs and procedures that are now used not only in this Department but in similar departments across the United States.

Mr. Nye will be remembered by many people in the real estate industry as well as DRE employees for steadfastly adhering to fair principles of enforcement and upholding both the spirit and letter of the law.

He is survived by his wife, daughter Janet Blomquist, three grandchildren and two great-grandchildren.



*(Continued on Page 4)*

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

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Hickman, Christopher Ray (REB) (Right to RREB license on terms and conditions)	3333 Camino Del Rio S., Ste. 420, San Diego	4/25/84	490, 10177(b)
Reyes, Zorina P. (RES) (Right to RRES license on terms and conditions)	736 Stanford Dr., Placentia	5/8/84	490, 10177(b)
Chapa, Roman Jr. (RES) (Right to RRES license on terms and conditions)	4521 E. Gage Ave., Bell	5/8/84	10176(a)(i)
Goldman, Steven B. (REB) (Right to RRES license on terms and conditions)	11242 Kensington Rd., Los Alamitos	5/8/84	10177(h)
Fallin, Don (RES) (Right to RRES license after 90 days on terms and conditions)	4460 Lewis Rd., Diamond Springs	5/9/84	10130, 10177(d)(g)
Walker, Grant William (REB)(REO) (Right to RREB License after 15 days on terms and conditions)	107 Janet Way, Grass Valley	5/9/84	10130, 10177(d)(g)(h)
Paolillo, Dean D. (REB)(REO) (Right to RRES license on terms and conditions)	1065 E. Hillsdale Blvd. #214, Foster City	5/14/84	2831.1, 2832, 2833, 2950(d), 10145, 10176(a)(i), 10177(d)(f)(g)
Off—Milestone Investment Dev. & Mgt., Inc. (Right to RRES license on terms and conditions)			
Ha, Le Hoc (RES) (Right to RRES license on terms and conditions)	1427 S. Garfield, Alhambra	5/15/84	490, 10177(b)
Clardy, James Lee (REB) (Right to RREB license on terms and conditions)	975 San Pasqual St., Ste. 128, Pasadena	5/16/84	2830, 2832, 10145, 10176(i), 10177(d)
Bradshaw, Sherod Dale (RES) (Right to RRES license on terms and conditions)	882 S. Anza St., El Cajon	5/17/84	490, 10177(b)
Donithorne, Dennis Duwayne (RES) (Right to RRES license after 30 days)	1529 Denali Way, San Jose	5/23/84	490, 10177(b)(f)

**LICENSES REVOKED WITH STAYS**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Linhart, Mary Ann (RES) (Stayed for 3 years on terms and conditions) (Suspended for 90 days)	7834 Florence, Downey	5/19/83	10176(a)(i), 10177(g)(j)

**LICENSES SUSPENDED**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Dieter, Cyril (REB)	56185 Twenty Nine Palms Hwy., Yucca Valley	3/23/84 (30 days)	10176(a), 10177(g)(h)
Ware, Florence Elizabeth (RES)	P.O. Box 623, 56185 Yucca Blvd., Yucca Valley	3/23/84 (15 days)	10176(a)
Rawlings, Al J. (RES)	22409 Lanark St., Canoga Park	4/10/84 (180 days)	10176(a)
Banfield, Everett Colby (REB)(REO)	P.O. Box 554, Tahoe City	5/10/84 (90 days)	10177(h)

**LICENSES SUSPENDED WITH STAYS**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
*Lewis, Kathleen Marie (REB) (Stayed for 2 years on terms and conditions)	1722 S. Gaffey St., San Pedro	2/21/84 (120 days)	10177(g)
Baczkowski, Anthony John (REB) (All but 60 days stayed for 2 years on terms and conditions)	885 Silver Spur Rd., Rolling Hills Estates	3/22/84 (90 days)	10177(h)
Engelstad, Russell Wayne (REB) (Stayed for 1 year on terms and conditions)	38665 Fremont Blvd., Fremont	4/3/84 (60 days)	10177(h)
Moon, Jamie Lee (REB)(REO) (All but 30 days stayed for 1 year on terms and conditions)	5462 W. Marathon Ave. #211, Hollywood	4/10/84 (45 days)	2832.1, 10145, 10177(d)
Westley, David G. (REB)(REO) (All but 180 days stayed for 1 year on terms and conditions)	1908 N. Beverly Dr., Beverly Hills	4/10/84 (1 year)	10177(j)
Tatro, Norman Wildred (REB) (Stayed for 1 year on terms and conditions)	15215 S. Normandie Ave., Gardena	4/17/84 (90 days)	10137
Spann, Ginger Rea (REB) (All but 10 days stayed for 1 year on terms and conditions)	601 Main Street, Ramona	5/10/84 (60 days)	10177(d)(g)
The Home Shoppe Realtors, Inc. (REC) (Stayed for 1 year on terms and conditions)	119 N. Vincent Ave., Covina	5/16/84 (10 days)	10177(g)
Martin, Dortha Jeanne (REB)(REO) (Off—The Home Shoppe Realtors, Inc. (Stayed for 1 year on terms and conditions)	2125 Temple Ave., Signal Hill	5/16/84 (10 days)	10177(g)

**LICENSES SUSPENDED INDEFINITELY WITH STAYS**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Costoso, Linda Julia (REB) (All but 30 days stayed on terms and conditions)	6220 Acacia St., Los Angeles	4/10/84	10162, 10165, 10177(d)

**PUBLIC REPROVALS**

Name	Address	Effective Date	Violation Business and Professions Code/Commissioner's Regulations
Collins, Charles Joseph (REB)(REO) (Off—Northern California Home Loans, Inc.)	4534 Juno Way, Sacramento	4/16/84	10177(d), 10231
Northern California Home Loans, Inc. (REC) (Off—Collins, Charles Joseph)	6728 Fair Oaks Blvd., Ste. 400, Carmichael	4/16/84	10177(d), 10231
Forrest (Klein), Debra Smades (RES)	700 E. Shaw Ave., Fresno	4/19/84	10177(d)

**INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS**

Name	Address	Date
Leahy, Austin Joseph (REB)	1100 Quail St., Newport Beach	3/26/84
Booi, Norman Kent (RES)	5863 Belbert Cir., Calabasas	3/26/84
Ruiz, Selso Hernandez (REB)	354 N. Capitol Ave., San Jose	4/6/84
Robert Ingram & Co., Inc. (REC)	500 Sansome St., Ste. 406, San Francisco	4/16/84
Blasingham, Kenneth Walton (REB)	6481 Orangethorpe Ave., Ste. 4, Buena Park	4/16/84
William C. Power & Associates, Inc. (REC)	2055 Woodside Rd., Redwood City	4/27/84
Mission Mortgage Exchange, Inc. (REC)	998 Monterey St., San Luis Obispo	5/15/84
Gessele, Arthur Raymond (RES)	76-950 Lark Dr., Indian Wells	5/22/84
Sharp, Frank (RES)	P.O. Box 100, Escondido	5/22/84
Hobbs, Stephen John (REB)	413 Main St., Ste. B, El Segundo	5/25/84

**NOTES** (Continued from Page 3)

explaining the problem and advising the licensee that a 90-day license term extension has been granted. The licensee could continue conducting licensed activities while correcting the problem and resubmitting a newly-completed RE 251. When the problem is resolved, a license certificate would again be issued without a break in the license term.

Incorrect continuing education information may be caused by transposed course certificate numbers or a number which was issued incorrectly by the course sponsor. If the latter situation is true, it will be necessary for the licensee to contact the course sponsor to obtain a corrected course certificate. DRE cannot provide or verify correct course certificate numbers over the telephone. Licensees should check certificates of attendance immediately upon receipt to verify that the 13-digit course/offering number and course title are correctly written.

We encourage licensees to submit their renewal requirements 30 to 60 days in advance of their license expiration date. Sufficient processing time is then available to review the application, notify the licensee if a deficiency needs to be addressed, and schedule the release of the license certificate to coincide with the pending license expiration date.

It is particularly important for brokers with salespeople in their employ to file their renewal application in advance of their license expiration date. If the employing broker's license expires, salespeople under that license are cancelled from the employ of the broker on our records. At that point, until the broker license is renewed or the salespeople enter into the employ of a new broker, licensed activity cannot be performed. Either situation requires that a Salesperson Change Application form (RE 214) be submitted after being completed and signed by the broker and each salesperson. An early renewal filing by brokers assures that their salespeople will not have to go through an employment termination and reinstatement process.

**YOUR COMPETITORS CARE**

Section 10140.6 of the Business and Professions Code prohibits advertising of any activity for which a real estate license is required unless the advertisement contains a designation disclosing that the licensee is performing acts for which a real estate license is required. This section of the Real Estate Law is the prohibition against blind advertising.

Section 2770.1 of the Commissioner's Regulations states: "Use of the terms broker, agent, Realtor, loan correspondent or the abbreviations bro., agt., or other similar terms or abbreviations, is deemed sufficient identification to fulfill the designation requirements of Section 10140.6 of the Business and Professions Code."

Violation of the law by a licensee with respect to blind advertising is often reported by other licensees. It could be grounds for disciplinary action by the Department of Real Estate.



## REGULATIONS

(Continued from Page 1)

(c) The final examination shall comply with the requirements of Section 3007.3 and shall be designed to evaluate a participant's attentiveness and comprehension of the offering.

(d) An evaluation as a determination of a participant's successful completion of an offering shall be approved only for seminars, workshops, case studies, and conferences involving presentation to, and evaluation of, groups of no more than 20 participants by an instructor.

(e) No offering shall be approved for more than 21 clock hours of continuing education credit.

(f) All offerings shall require completion within one year from the date of registration.

(g) Instructor Qualification. Instructors, conference leaders, lecturers, and others who present a continuing education requirement offering must meet at least one of the following qualifications.

(1) A bachelor's degree in a related field to that in which the person is to teach, from a school listed as an institution of higher learning by the U.S. Department of Education, or from a comparable school of a foreign country.

(2) A valid teaching credential or certificate authorizing the holder to teach in the field of knowledge covered in the offering.

(3) Five years full-time experience in the applicable field.

(4) Any combination of at least five years of full-time experience and college level education in the applicable field.

### **Adopt Section 3006.1 to read:**

#### **3006.1. Expiration of Approval.**

If an offering had approval at the time of registration by a licensee, credit for the offering shall be given to the licensee at the time of license renewal notwithstanding the fact that approval had expired and had not been renewed or reinstated at the time that the applicant successfully completed the offering.

### **Repeal and adopt a new Section 3007 to read:**

#### **3007. Application for Offering Approval.**

An application for approval of a continuing education offering shall be made on a form prescribed by the Department not less than 90 days before the proposed commencement date of the offering. The application shall be accompanied by the fee and include at least the following:

(a) The name, address and telephone number of the applicant.

(b) If the applicant is not a natural person, the names, titles, and addresses of the directors, officers or partners of the entity.

(c) Statements of policy regarding attendance controls and procedures for record maintenance.

(d) Summary of the offering including:

(1) Title.

(2) Prerequisites for admission or participation, if any.

(3) Complete time schedule indicating duration of each main offering topic in increments of not more than 30 minutes.

(4) Proposed form of certificate of course completion.

(5) Textbook(s) and student materials prescribed.

(6) Proposed advertising copy for the offering.

(7) Outline or syllabus, referenced to text by page number if text is used.

(8) At least two different tests or final examinations, or a bank of questions sufficient to construct two examinations, including questions, answers, and methods of compliance with the rules set forth in Section 3007.3. The Commissioner may require the sponsor to submit additional examinations or questions during the approval period on 45 days written notice.

(9) A description of the means by which student performance will be evaluated for those offerings employing evaluation.

(10) For correspondence courses, a list of reading lesson assignments with page references. Each reading assignment shall include a short quiz to be returned with a grade to the student. Not more than 10% of the final exam questions may duplicate quiz questions.

(11) A statement whether the offering is intended to comply with Business and Professions Code Section 10170.5(a), (b) or (c).

(12) Disclosure of the method of offering presentation.

(13) The names and qualifications of the instructors.

(14) A statement of sponsor's refund and reexam policies, and the means by which the statement of policies shall be provided to licensees before registration of an offering.

### **Adopt Section 3007.1 to read:**

#### **3007.1. Submittal of Audio Tapes.**

The sponsor of an offering shall prepare and submit to the Department, an audio tape recording of an actual presentation within 30 days after receipt of a request therefor from the Department or within ten days after the next presentation of an offering if an audio tape recording is not available to the sponsor on receipt of the request from the Department.

### **Amend Section 3007.2 to read:**

#### **3007.2. Material Change in Course Offering.**

(a) Any proposed material change to an approved offering shall be submitted by the sponsor to the Department for consideration and approval prior to use.

### **Adopt Section 3007.4 to read:**

#### **3007.4. Offerings Approved Before Final Examination or Evaluation Requirement.**

If an approved offering which did not require a final examination or sponsor's evaluation was successfully completed by a licensee prior to the effective date of Section 3007.3 and within the four years immediately preceding the expiration date of the license to be renewed, continuing education credit for the offering shall be given to the applicant.

### **Adopt Section 3007.5 to read:**

#### **3007.5. Consumer Protection Courses.**

All offerings approved by the Department prior to imposition of the requirement that

offerings be expressly identified by the sponsor according to the category specified in subdivisions (a), (b), and (c) of Section 10170.5 of the Code are "consumer protection" courses within the meaning of subdivision (b) of the Section 10170.5.

### **Amend Section 3008 to read:**

#### **3008. Offerings Not to be Approved.**

The Commissioner shall not approve a proposed continuing education offering that includes any of the following subject matter or conditions:

(a) Courses required by statute to obtain a real estate broker license or examination preparation courses.

(b) Offerings for the improvement of office and business skills such as typing, speed reading, memory improvement, grammar, report writing, advertising copy preparation, development of sales promotional devices, sales motivation and sales techniques.

(c) Sales promotion or other meetings held in conjunction with the general business of the attendees or his/her employer.

(d) Meetings which are a normal part of in-house staff or employee training.

(e) That portion of any offering devoted to the consuming of meals or to transporting participants to and from sites to be viewed or inspected as part of the offering.

(f) A correspondence course if any lesson or segment is conducted in a classroom lecture setting.

### **Amend Section 3010 to read:**

#### **3010. Denial or Withdrawal of Approval.**

(a) The Commissioner shall not approve a proposed continuing education offering if it does not meet the prescribed statutory and regulatory standards. If the Commissioner denies approval of an application for an offering, the Commissioner shall give notice of that denial to the sponsor. The sponsor may within 30 days after receipt of the notice of disapproval, file a written request for hearing. The Commissioner shall hold the hearing within 90 days after receipt of the request for hearing unless the applicant requests or agrees to a postponement. If the hearing is not held within 90 days after receipt of the request for hearing or on the hearing date to which continued at the request or with the agreement of the sponsor, or if a decision is not rendered by the commissioner within 30 days after conclusion of the hearing, the commissioner shall within 10 days issue a certificate of approval to the sponsor. In a hearing on an order of disapproval issued by the commissioner, the burden of proving that the offering satisfies the prescribed statutory and regulatory criteria for a continuing education offering shall be on the sponsor.

(b) If the Commissioner determines that a previously-approved continuing education offering no longer meets the prescribed statutory and regulatory standards for approval, the commissioner shall give written notice to the sponsor of withdrawal of approval including the reasons for the determination.

(Continued on Page 6)

## REGULATIONS

(Continued from Page 5)

Withdrawal of approval will be effective 15 days after the notice of withdrawal is received by the sponsor unless the sponsor earlier files a written request for a hearing to challenge the withdrawal. If the request for hearing is received by the commissioner before 15 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal of approval shall not be effective unless and until ordered by the commissioner pursuant to findings and conclusions reached after a hearing. The hearing on an order withdrawing approval of an offering shall be held within 30 days after receipt of the request for hearing unless continued to a later date by order of the commissioner or by agreement of the parties. In a hearing on an order withdrawing approval of an offering, the burden of proving that the offering no longer meets the prescribed statutory and regulatory standards shall be on the commissioner.

(c) This section shall not apply to withdrawal of approval required by a change in the law.

**Adopt Section 3011.1 to read:**

### 3011.1. Petitions for Equivalency for Course Instruction.

(a) For instruction of real estate related courses not approved for continuing education, submit a statement under penalty of perjury which includes at least the following information:

(1) The petitioner's qualifications to teach the course.

(2) The title of the course.

(3) The date and location the instruction took place.

(4) Clock hours of instruction.

(5) Titles and description of instruction materials used including the name of the publisher, the date of publication, and an outline or syllabus of the course.

(6) Any other information useful in determining that the course will contribute to current knowledge as set forth in Business and Professions Code Section 10170.4(f).

(7) A certification by the course sponsor or school that the information provided pursuant to subsections 1 through 6 is true and correct.

(b) Instructors of approved continuing education courses may receive a certificate of completion for the number of hours actually spent in instruction at one presentation of the course. No examination shall be taken to qualify for such certificates of completion, but instructors may receive continuing education credits only for those courses for which they are on file as the approved instructor.

**Adopt Section 3011.2 to read:**

### 3011.2. Petitions for Equivalency for Authorship of Articles or Books.

(a) Submit a copy of the published article or book.

(b) Submit a statement signed under penalty of perjury which includes at least:

(1) A summary of the article or book with date of publication.

(2) An explanation of how the material published meets the criteria of Section 3011.

(3) The number of copies sold or circulation of the publication carrying the article.

**Adopt Section 3011.3 to read:**

### 3011.3. Petitions for Equivalency for Development of Real Estate Programs, Laws, and Research.

(a) If the claim for continuing education credit is based upon development of education programs, submit a statement under penalty of perjury including at least the following information:

(1) A clear and complete description of the education program.

(2) A description of the role of the petitioner in developing the program.

(3) The number of hours the petitioner devoted to development of the program.

(4) The period during which the program was developed.

(5) An explanation of how the development of the program meets the standard of Section 3011.

(b) If the claim involves development of real estate law or research, submit a statement under penalty of perjury that includes at least:

(1) A detailed description of the law affected or the research performed.

(2) The number of hours devoted to the research or development of law.

(3) An explanation of how the petitioner's participation meets the standard set forth in Section 3011.

(4) A copy of the research report or of the law developed shall be attached to the petition, if the report or law exists. If research support data is not available, the Commissioner may request whatever additional information is needed to support the claim.

**Amend Section 3012 to read:**

### 3012. Extension Conditions.

An extension of the time for completing the continuing education requirements may be obtained by submitting with the regular renewal application evidence showing that applicant was unable to comply with the continuing education requirements. Such evidence may be (1) health reasons preventing attendance, (2) active duty in the military service with assignment to a permanent duty stationed outside of the state during the last 18 months of a license period, or (3) other compelling cause beyond the control of the applicant while engaged in the real estate business.

The Commissioner may extend an otherwise expired license while investigating such evidence for not to exceed 90 days if he finds applicant can reasonably be expected to be found to meet minimum requirements for renewal under this Article.

 DRE

## ACCUSATIONS FILED

# Continuing Education Violations

by

Robert C. Arnold  
Real Estate Manager IV  
Southern Regulatory Area

In an effort to stop abuses in the granting or claiming of continuing education credits, the Department of Real Estate is spot-checking license renewal applications against the attendance records of continuing education sponsors. Accusations seeking to revoke or suspend their licenses were recently filed by the DRE against two licensees.

In the first case, a real estate broker submitted a license renewal application showing completion of an 8-hour, DRE-approved course. The correct 13-digit certificate number for the course was listed on the Continuing Education Course Verification form. A review of the sponsor's attendance records revealed that the licensee did not attend the course. Information obtained by DRE indicated the broker obtained the 13-digit number from one of the broker's salespeople who did attend the class. The broker has been charged with violations of Sections 10177(a), 10177(f), and 10177(j) of the Business and Professions Code.

The second Accusation was filed against a real estate broker licensed as a corporation officer for aiding one of the salespeople licensed to the corporation in obtaining continuing education credit without attending the courses. The salesperson was in the hospital at the time the salesperson's license renewal was due. The licensed officer, through a realty board employee, arranged to have completion of 45 hours of continuing education certified for the salesperson who was ill and not able to attend the courses. The broker was charged with violations of Sections 10177(a) and 10177(j) of the Business and Professions Code.

Sections 10177(a), (f), and (j) of the Business and Professions Code read as follows:

"10177. The commissioner may suspend or revoke the license of any real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or any salesman, by fraud, misrepresentation or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.

\*\*\*

(f) Acted or conducted himself in a manner which would have warranted the denial of his application for a real estate license.

\*\*\*

(j) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing."

 DRE

## Know These Statutorily-Required Disclosures

by  
**Martin F. Dingman**  
*Assistant Commissioner—Subdivisions  
 Sacramento Principal Office*

Real estate licensees, whether or not engaged in subdivision sales, are generally aware that the law prohibits any person from taking a written offer to purchase or lease an interest in a subdivision or solicit or accept money or other consideration toward the purchase or lease of such an interest until the prospective purchaser or lessee has received and had an opportunity to read a copy of the Subdivision Final Public Report issued by the Department of Real Estate.

Real estate agents should also be familiar with prescribed written disclosures which must be given to purchasers of certain exempt subdivided properties and in case of resales of common interest subdivision interests. Three different provisions of the Civil Code come into play for the types of subdivided properties hereinafter described.

### Civil Code Section 1133

Civil Code Section 1133 imposes certain disclosure requirements on a subdivider, or his or her agent or representative, when the property is subject to a blanket encumbrance (monetary lien). More specifically, the disclosure caveat set forth below must be given by such persons when a subdivision interest is subject to a blanket encumbrance but the offering of sale or lease (having a term in excess of five years) is exempted from the provisions of the Subdivided Lands Law. Therefore, the caveat must be given in connection with sales or leases of commercial, industrial, and subdivided property offered for sale by public agencies. It also must be given in those transactions involving sales and leases of 2-4 unit common interest or standard subdivisions which, like the former described developments, are not subject to the Subdivision Public Report requirements or any other provision of the Subdivided Lands Law. The caveat set forth in the statute reads as follows:

BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN AS A "BLANKET ENCUMBRANCE".

IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE MORTGAGE, DEED OF TRUST, OR LEASE.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of Buyer or Lessee

### Civil Code Section 1134

Condominium conversion projects of 5 or more units require the issuance of a Subdivision Public Report and compliance with all other applicable provisions of the Subdivided Lands Law. However, additional requirements attach to a common interest residential development converted from an existing dwelling (e.g., apartment house), since the provisions of Civil Code Section 1134 are also applicable to such conversions. This statute requires the owner, subdivider, or agent of the owner or subdivider of a conversion project to deliver to the prospective buyer a written statement listing all substantial defects or malfunctions in the major systems in the unit and common area of the premises, or a written statement disclaiming any knowledge of such defects. The disclaimer may be delivered only after the owner or subdivider has inspected the unit and common area and has not discovered a defect or malfunction which a reasonable inspection would have disclosed. The subdivider must give the written statement as soon as practicable before transfer of title for the first sale of a unit in the project.

If any required disclosure is made after the contract is signed, the purchaser has a three-day right of rescission or five days if the disclosure is delivered by mail. Any such disclosure must contain a statement describing the buyer's rights, method, and time to rescind.

### Civil Code Section 1360\*

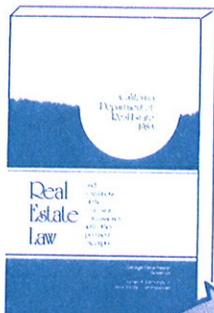
Whenever there is a resale of a lot or unit in a condominium or other common interest

subdivision, Civil Code Section 1360 requires that the owner give to the prospective purchaser a copy of the declaration of restrictions, bylaws, and articles of incorporation affecting the property. Upon 10 days written request by a unit owner, the governing body of the homeowners association must deliver to the unit owner a copy of the aforesaid document and a statement of all delinquent assessments, penalties, fees, and costs allocable to the unit. Failure of either the seller or the association to comply with these requirements may result in the purchaser recovering actual damages plus a statutory \$500 penalty and a reasonable fee for the purchaser's attorney.

The seller (including the subdivider) must also give the purchaser a statement prepared by the homeowners association which describes all delinquent assessments, penalties, and costs allocable to the unit being sold and a copy of the most current financial statement distributed to all members of the association by its Board of Directors. The fact that Civil Code Section 1360 places the burden on the seller to deliver the described documents and statement would not excuse an agent's lack of performance in this area. An agent representing a seller in case of such resales runs the risk of being held liable civilly for damages incurred by the purchaser on account of non-compliance with this statute. The agent may also be subject to discipline for misrepresentation or negligence.



\* This Section is quoted in the Summer 1984 Bulletin on Page 6.



The 1983 **Real Estate Law** book may be purchased for \$7 plus tax, which includes handling and mailing. If you purchase the **Law** book, the **1984 Supplement** will be included at no charge.

Real estate licensees are charged with knowing the Real Estate Law and the Regulations with which they must comply in the everyday practice of real estate.

The **Real Estate Law** book will provide you with a convenient reference to these laws and regulations as well as other portions of law applicable to the real estate profession.

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## EASTON CASE (Continued from Page 1)

soil, but did not inform Valley of the soil problems nor of the corrective action taken. Valley's agents inspected the property several times during the listing period and, according to the appellate court, there was evidence that Valley's agents "were aware of certain 'red flags' which should have indicated to them that there were soils problems." Earth movements and landslides occurring soon after Easton occupied the property virtually destroyed its value.

Easton filed suit against Strassburger, Valley and others. Valley was charged with fraudulent concealment, intentional misrepresentation and negligent misrepresentation. The jury found against Valley only under a simple negligence theory. It returned a joint and several judgment against several of the defendants and apportioned comparative negligence 5 percent to Valley, 5 percent to the cooperating broker who had not been named as a defendant, 65 percent to the seller and 25 percent to other defendants. While the opinion does not reflect the fact, Valley's monetary exposure far exceeded 5 percent of the \$197,000 awarded to Easton as a result of the seller's having become insolvent following the sale of the property.

Valley appealed the trial court judgment relying principally upon an asserted error by the trial judge in giving the following instruction to the jury:

"A real estate broker is a licensed person or entity who holds himself out to the public as having particular skills and knowledge in the real estate field. He is under a duty to disclose facts materially affecting the value or desirability of the property that are known to him or *which through reasonable diligence should be known to him.*"

Valley contended that a broker's duty to a prospective buyer was only to disclose known facts about the property, not facts which should be known in the exercise of reasonable diligence.

The Court of Appeal rejected Valley's contention. In its opinion, it pointed out that the law of California has long required both the seller of real property and the broker to inform a prospective buyer concerning material defects known to them but unknown and unobservable by the buyer. It pointed out that a broker in a transaction is liable for the intentional tort of fraudulent concealment or negative fraud if he fails to disclose material facts about the property that are not known to, nor within the reach of the diligent observation of, the prospective buyer. The court acknowledged the fact that no California appellate decision had expressly held that a broker is under a duty to disclose material facts about the property that he *should have known*. It then went on to declare that the purpose of assuring that a prospective buyer was provided with sufficient information to make an informed decision on whether to purchase "would be seriously undermined if the rule were not seen to include a duty to disclose reasonably discoverable defects." The court's reasoning appears to be summed up in the following observations:

"If a broker were required to disclose only known defects, but not also those that are reasonably discoverable, he would be shielded by his ignorance of that which he holds himself out to know. The rule thus narrowly construed would have results inimical to the policy upon which it is based. Such a construction would not only reward the unskilled broker for his incompetence, but might provide the unscrupulous broker the unilateral ability to protect himself at the expense of the inexperienced and unwary who rely upon him."

The opinion in this case leaves a host of unanswered questions, not only for the practitioner who wants to avoid liability, but also for the practitioner who wants to do what the law tells him is the right thing to do. For example, is there a duty of a *cooperating broker* to inspect and discover defects in the property? For reasons that are not apparent

from the opinion itself, the selling broker was not named as a defendant in the *Easton* case and the holding of liability was against the listing broker who was undeniably the agent of the seller. The rationale underlying the decision suggests that if a listing broker and selling broker were both named as defendants in a suit by a buyer, both would be jointly and severally liable if the court or jury found a negligent failure-to-detect and failure-to-disclose set of circumstances. That conclusion, however, cannot be stated with certainty since the opinion does include an observation that "seller's broker" (listing broker) is the agent "most frequently . . . best situated to obtain and provide the most reliable information on the property . . ." to the prospective buyer. While that statement by the court is undoubtedly true in the abstract, defects in the property that have not been disclosed by the seller but are discoverable through an inspection of the property are equally discernible to listing broker and selling broker in most cases.

If a defect is not one that is readily discernible through a careful walk-through inspection of the property, this decision could portend future decisions holding that either a listing broker or selling broker has a duty to hire professional persons to inspect the property and its component systems to discover defects that are not readily discernible. If the law does develop along those lines, then the duty that the listing broker owes to a prospective buyer could transcend that owed by the seller.

As the law now stands, it is not possible to specify how far a broker must go in any particular set of circumstances to discover existing defects to be pointed out to a prospective buyer or to give reasonable assurance that no significant defects exist. For the present, however, both listing brokers and selling brokers will be well advised to spot "red flags" that signal possible defects and to follow up as necessary to minimize the possibility that a buyer will enter into a contract to purchase the property without having at least as much information about the apparent defect as the broker has or can readily obtain. 

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