



Landmark Legislation Signed Affecting California Real Estate

Landmark legislation affecting real estate has been signed into law by Governor Deukmejian.

AB 3746

AB 1034

SB 491

AB 3746 (Lancaster-Montoya) becomes operative January 1, 1988. This bill establishes in law for the first time standards for the performance of real property appraisal services when the client specifies a certified appraisal is desired. The standards are based on guidelines established by major appraisal organizations and the standards may be enforced through civil actions or through injunction or other equitable relief. The use of a "certified appraisal" is not mandatory, but users can expect that when the designation of "certified" appears on an appraisal the report was prepared in accordance with statutory standards.

AB 1034 (Connelly-Grisham) also becomes operative January 1, 1988.

The bill will require listing and selling agents in real estate transactions to provide both buyers and sellers with specified written and oral disclosures. The listing agent must deliver a specified written disclosure form to the seller prior to the time of listing, and the selling agent must deliver the same disclosure to the buyer as soon as practicable, but prior to execution of an offer. The disclosure form sets forth the various forms of agency relationships between buyers and sellers and real estate licensees, and the duties owed by these licensees, depending on their agency relationship to the buyer and seller. The buyer and seller are to sign for receipt of the disclosure.

The bill will also require the licensees to orally disclose to the buyer and seller, as soon as practicable, whether he or she is acting as the seller's agent, the buyer's agent or a dual agent. Finally, the licensees will have to confirm the agency relationship in writing in a contract to purchase or lease or in a separate writing executed by the seller, buyer and the selling agency. The law will apply to real property transactions involving one-to-four residential units.

Landmark Legislation,
continued on page 3

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF REAL ESTATE



Richard Rosenthal, President
California Association of Realtors
525 South Virgil Avenue
Los Angeles, CA 90020

Re: AB 1034 (Connelly-Grisham)

Dear Richard:

May I extend my congratulations to you, the Executive Committee, the Board of Directors and, more specifically, to Dugald Gillies, Senior Vice President-Legislative Affairs and his staff, for all of your efforts and work with Assemblyman Lloyd Connelly in the passage of, what I consider, landmark legislation, which upon execution by the Governor, will become law with the operative date of January 1, 1988.

I am sure you have been informed that the legislation was limited to one to four family residential units (both owner and non-owner occupied) and excludes commercial and industrial real estate. Those amendments were proposed by National Advocacy and Marketing for their client, Coldwell Banker and Company. I met with representatives of Coldwell Banker and Company and senior members of my staff and came to the conclusion that I could support the proposed amendment with the following understanding:

1. Existing law requiring disclosure of a "dual agency" relationship remains unchanged.

2. In response to a suggestion by the Coldwell Banker Company, the Department of Real Estate will work with organized real estate and the major real estate licensee firms in an attempt to obtain their support and cooperation in requiring that the disclosure requirements of AB 1034 for one to four family residential dwellings would also be utilized by their respective real estate salespersons when listing and selling those "mixed use" commercial and industrial properties, which I refer to as "mom and pop" investment properties, which are not covered by the provisions of AB 1034. It is my understanding that the disclosure requirements of this bill will be applicable to "mixed use" properties containing one to four residential units. I believe the "mixed use" area can create the most difficulty with respect to lack of disclosure of agency relationships to the unsophisticated sellers/buyers oftentimes involved in these transactions.

I would ask the full support of the California Association of Realtors in accepting these guidelines. The Department of Real Estate does intend to enforce the existing law requiring disclosure of a dual agency representation. The Department's enforcement efforts will apply to all sophisticated commercial and industrial transactions, as well as the so-called "mixed use." It is my intention to widely circulate copies of this letter as we commence the educational time period provided in the statute for real estate licensees and consumers edification.

Again, my thanks to you for your personal help and that of your staff. 1986 has been a most successful one for you.

Sincerely,

James A. Edmonds, Jr.
Commissioner

REAL ESTATE BULLETIN

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STATE OF CALIFORNIA
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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, 2201 Broadway, Sacramento, CA 95818, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the Business and Professions Code.

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**DISCIPLINARY ACTION —
February 1986 to May 1986**

REB—Real estate broker RES—Real estate salesperson PRLS—Prepaid rental listing service
RREB—Restricted real estate broker RRRES—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 on application are not 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 to the Real Estate Commissioner, both of which are printed in the Real Estate Law book. The Real Estate Law book is available for purchase from the Department of Real Estate for \$10.00 plus tax.

Business and Professions Code

490 relationship of conviction to licensed activity
10130 acting without a license
10137 unlawful payment of compensation
10145 trust fund handling
10147.5 notice regarding negotiability of commission
10148 retention and availability of real estate broker records
10165 covers various violations
10167.9(a)(3) failure to include required terms in PRLS contract
10167.9(c) use of unapproved contract
10167.10(a) PRLS licensee's failure to make refund
10167.10(b) failure to refund deposit or portion thereof
10167.12 violation of crime by PRLS licensee
10176(a) making any substantial misrepresentation
10176(b) make false promise
10176(c) commingling trust funds
10176(h) fraud or dishonest dealing in licensed capacity
10177(a) procuring a real estate license by misrepresentation or material false statement
10177(b) conviction of crime
10177(d) violation of real estate law or regulations
10177(f) conduct that would have warranted denial of a license
10177(g) negligence or incompetence as licensee
10177(h) failure to supervise salespersons
10177(i) fraud or dishonest dealing not in licensed capacity
10231.2 failure to give self-dealing notice
10237.3 acting as real property securities dealer without endorsement
10237.4 failure to deliver specified statement to purchaser of real property security
10238.3 failure to obtain real property securities permit
10086 violation of order to desist and refrain

Regulations

2715 broker's failure to maintain current address with DRE
2725 failure of broker to review agreements
2726 broker-salesperson agreements
2731 unauthorized use of fictitious business name
2742 failure of corporate broker to file articles of incorporation
2785(a)(10) unauthorized earnest money refund
2791 unlawful subdivision purchase money disbursements
2830 failure to maintain trust fund account
2831 inadequate trust fund records
2831.1 inadequate trust fund records
2832 failure to comply with specific provisions for handling trust funds
2832.1 broker's failure to obtain permission to disburse trust funds from an account involving multiple beneficiaries
2904 failure to disclose compensation for obtaining financing
2910 crime or act done in perpetration of crime substantially related to qualifications, functions or duties of the real estate profession
2950 broker-controlled escrow violation
2950(d) failure of broker handling escrows to maintain records
2950(f) failure to deposit escrow trust funds
2950(h) failure to disclose broker's interest in agency holding the escrow

LICENSES REVOKED

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW
Sutherland, Donald McKay (REB)(REO)	P.O. Box 1696, Costa Mesa	9/19/85	10177(g)(i)
Castonguay, Henry F. (RES)	3161 Groton Way, #3, San Diego	2/4/86	10130, 10177(d)(i)
Gamoian, Peter (RES)	5171 N. Brooks, Fresno	3/6/86	10176(a)(f)
Koch, Anton (REB)	3747 N. Thesta, Fresno	3/6/86	10176(a)(f), 10177(f)(i)
Reyes, Armando L. (RES)	5050 Abbotford Ct., Newark	3/10/86	490, 10177(b)(f)
Redd, Damell Valentino (RES)	P.O. Box 51686, San Jose	3/11/86	10176(a)(f), 10177(f)
Montano, Ignacio (RES)	23200 Washington, B-26, Colton	3/12/86	10177(g)
Welch, Samuel (RREB)	1760 Havana St., Seaside	3/12/86	490, 10177(b)(f)
Discovery Investment & Dev. Inc. (RIEC)	3220 S. Higuera St., Ste.205, San Luis Obispo	3/12/86	2725, 2831.1, 2834, 2970, 2972, 10085, 10137, 10145, 10146, 10176(e), 10177(d)(f)(h)
Lewis, John Jr. (REB)(REO)	9141 Elk Grove Bl., Elk Grove	3/12/86	2723, 2831.1, 2834, 2970, 2972, 10085, 10137, 10145, 10146, 10176(c), 10177(d)(f)(h)
Off-Discovery Investment & Dev. Inc.			

Disciplinary Action, continued on page 3

Disciplinary Action, *continued from page 2***Landmark Legislation**,*continued from page 1*

AB 3746

AB 1034

SB 491

SB 491 (Montoya), sponsored by the Department of Real Estate, becomes operative July 1, 1987 and requires mandatory education for licensees on agency relationships in real estate transactions.

The bill requires that after July 1, 1987, all real estate licensees must include, among the required 45 hours of continuing education courses, a three-hour course in agency relationships and reduces the number of hours of courses related to consumer protection from 21 to 18. This course is in addition to the required three-hour course in ethics.

The change will provide a means for ensuring that licensees have a better understanding of the subject of agency and their duties and responsibilities as agents. The Department will publicize both the changes in educational requirements and the agency disclosures to be made in real property transactions involving one to four residential units throughout 1987.

Commissioner James A. Edmonds, Jr. stated that the Department of Real Estate is currently working toward setting in place the regulatory procedures and course approval mechanisms necessary for implementation of both of these "agency" related bills. He believes that both licensees and consumers will benefit significantly from the new legislation.

Reproduced on the front page of the Bulletin is the letter sent to the California Association of Realtors setting forth the Commissioner's thoughts on enforcement of existing law and on these new provisions in the law addressing agency relationships. The letter was also sent to the California Association of Real Estate Brokers and members of the commercial and industrial real estate industry.

**Attention--
Real Estate Licensees:**

Licensees are required to notify the Department of Real Estate of any change of address. This notification will assure you of receiving every issue of the Real Estate Bulletin. If you fail to notify the Department of a change in mailing or business address, your file will be flagged and your name deleted from the Bulletin mailing list. Please help us save money and better serve you by keeping your address current.

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
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Eury, Richard Dee (RES)	14748 Vanowen St., Van Nuys	3/25/86	490, 10177(b)
Rock, Robert (RES)	4790 Irvine Bl., #150-193, Irvine	3/25/86	490, 10177(b)
Bender, Kevin Alfred (RES)	4038 Calle Ariana, San Clemente	3/25/86	490, 10177(b)
Lippman, Sandra Jean (RES)	1416 Stonewood Ct., San Pedro	3/25/86	490, 10177(b)
Bhatia, Sunita V. (RES)	1701 7 Goya St., Granada Hills	3/25/86	490, 10177(b)
Reynolds, John Raymond (RES)	206 E. Camino Colegio, Santa Maria	3/25/86	490, 10177(b)
Jensen, Kyle Alan (RES)	7191 Encelia Dr., La Jolla	3/25/86	490, 10177(b)
Apollo Estates, Inc. (RREC)	5150 S. Normandie Ave., Los Angeles	3/31/86	10176(i), 10177(d)(g)
dba-Century 21 Apollo Estates, Inc.			
Ballinger, Benjamin Jr. (RREB)(RREC)	5150 S. Normandie Ave., Los Angeles	3/31/86	10176(i), 10177(d)(g)
Off-Apollo Real Estate Company			
Off-Apollo Estates, Inc.			
Sukhu, Satyandra Kumar (RES)	825 Covington Rd., Belmont	4/3/86	10145, 10176 (e)(i), 10177(d)(f)
Essary, William Marvin (REB)	4264 40th St., San Diego	4/8/86	2830, 2830.1, 2831, 2832.1, 2834, 10130, 10145, 10176(e), 10177(d)(g)(i)
Hom, Henry (REB)	3202 35th Ave., Oakland	4/8/86	10145, 10176(e)(i), 10177(d)(f)
Marks, David Allan (REB)(REO)	23960 Long Valley Rd., Hidden Hills	4/8/86	10177(h)
Off-Western Computer Services			
Off-Union Home Loans			
Off-Union Home Loans of America			
Off-Union Home Loans Sales Corporation			
Union Home Loans of America (REC)	11301 W. Olympic Bl., Los Angeles	4/8/86	2832.1, 10145, 10177(d)
Landry, Eve Ann (RES)	18400 Prairie St., #233, Northridge	4/10/86	490, 10177(b)
Schluter, Christopher Walter (RES)	5291 Yrinette, Garden Grove	4/15/86	10177(f)(j)
Zink, Donald Lee (REB)	2100 Sepulveda Bl., #25, Manhattan Beach	4/15/86	10176(i)
Western Computer Services (REC)	11301 W. Olympic Bl., Los Angeles	4/17/86	2832.1, 10145, 10148, 10176(e)(i), 10177(d)
Landers, Ronald Eugene (REB)(REO)	111 Los Altos, Oxnard	4/23/86	2785(a)(11), 10176(a), 10177(d)
Smith, Andrew David (RES)	685 W. Lynwood, Thousand Oaks	4/24/86	490, 10177(b)
Lochmiller, Philip Rand (RES)	240 Vista Grande Glenn, Escondido	5/1/86	490, 10177(b)
Lochmiller, Stephen Reid (REB)(REO)	3190 Bernie Dr., Oceanside	5/1/86	490, 10177(b)
Lochmiller, Jo Alice (REB)(REO)	P.O. Box 848, Madill, OK	5/1/86	490, 10177(b)
Lochmiller Industries (REC)	995 Postal Way, Ste. 108, Vista	5/1/86	10177(f)
North County Management Corp.(REC)	9225 Mira Mesa Bl., #204, San Diego	5/1/86	10177(f)
Reid Financial, Inc. (REC)	995 Postal Way, Ste. 116, Vista	5/1/86	10177(f)
LMC Financial Corp. (REC)	3727 Camino Del Rio South, Ste. 102, San Diego	5/1/86	10177(f)
South County Financial Services Inc.(REC)	3727 Camino Del Rio South, Ste. 102, San Diego	5/1/86	10177(f)
Pacific Funding Corp. (REC)	3727 Camino Del Rio South, Ste. 102, San Diego	5/1/86	10177(f)
Beedy, John Sanger Jr. (RES)	7827 Hampton Ln., Citrus Heights	5/5/86	10145, 10176(i), 10177(d)
Shepherd, Harry Donald (REB)	2401 24th St., Ste. A., Sacramento	5/5/86	2832.1, 10145, 10176(a)(i), 10177(d)(g)(i)
Shufelberger, Lester Maurice (REB)	9858 Kernan Ln, Redding	5/7/86	10145, 10177(d)(g)(h)
Erick, Velma Joan (RES)	P.O. Box 546, Cottonwood	5/8/86	490, 10177(b)
Peterson, Ronald Ferrell (REB)(REO)	110 E. 9th St., Ste. B882, Los Angeles	5/9/86	10177.5
Worth, Arthur Albert (REB)(REO)	15885 La Prenda Ct., Morgan Hill	5/20/86	490, 10177(b)
Staetter, Mary Elizabeth (RES)	4667 Ocean Bl., #202, San Diego	5/22/86	10176(i), 10177(j)

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

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Chodur, Philip Michael (REB)	4538 Cass St., San Diego	2/24/84	10177(i)
(Right to RREB license on terms and conditions)			
California Home Investment Inc (REC)	8907 Wilshire Bl., #200, Beverly Hills	3/4/86	2731, 110130, 10177(d)
(Right to RREC license on terms and conditions)			
Hill, James Lawrence Jr. (REB)	3222A Fruitvale Ave., Oakland	3/11/86	2830, 2832.1, 10145, 10177(d)
(Right to RREB license on terms and conditions)			
Lindsay, William Lee (REB)(REO)	2611 N. Lowell Ln., Santa Ana	3/13/86	10177(h)
(Right to RREB license on terms and conditions)			
Djindjic, Slavka (RES)	3601 Keystone Ave., #8, Los Angeles	3/18/86	490, 10177(b)
(Right to RRIS license on terms and conditions)			

Disciplinary Action, *continued on page 4*

Blind Ads

by Charles W. Koenig, Sacramento District
Manager Regulatory

Inquiries are frequently received at Department of Real Estate District Offices regarding DRE requirements affecting advertising a licensee's availability to perform a service for which a real estate license is required. The large number of such inquiries indicates that some confusion exists in the industry about what will satisfy the statutory prohibition against "blind advertising." Hopefully, what follows will help clarify the requirements and remove the confusion.

The specific law is codified in Section 10140.6 of the Business and Professions Code. It states:

"A real estate licensee shall not publish, circulate, distribute, nor cause to be published, circulated, or distributed in any newspaper or periodical, or by mail any matter pertaining to any activity for which a real estate license is required which does not contain a designation disclosing that he/she is performing acts for which a real estate license is required.

The provisions of this section do not apply to classified rental advertisements reciting the telephone number at the premises of the property offered for rent or the address of the property offered for rent."

The law, simply stated, means that you must include the appropriate designation (such as Broker, Agent, Realtor, etc.) in the advertisement disclosing that you, as a licensee, are performing acts for which a real estate license is required. Further, a salesperson must also include the name of his/her employing broker (pursuant to Commissioner's Regulation 2770) in any ad in which the salesperson's name appears.

Oftentimes franchisees are under the mistaken impression that if their firm's name has a strong recognition as a real estate firm in the local area, that they need not include the appropriate designation that the licensee is performing acts for which their license is required. The law is quite specific in its application and therefore the chosen designation, i.e., Broker or Agent, must appear in all ads despite the immediate recognition as a real estate licensee.

Commissioner's Regulation 2770.1 specifies acceptable terms and abbreviations of those terms which can be used to satisfy the statutory prohibition against "blind ads."

Non Resident Reciprocity Statute Update

The State of Idaho has been added to the list of states that now offer reciprocity for California real estate licensees. Idaho residents are now eligible to renew existing California licenses or apply for new ones and California residents have similar rights in Idaho. •

Disciplinary Action, continued from page 3

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Nadrich, Jeff Ira (REB) (Right to RREB license on terms and conditions)	548 Live Oak Circle Dr., Calabasas	3/18/86	490, 10177(b)
Vener, Stuart David (RES) (Right to RRES license on terms and conditions)	16644 Rinaldi St., Granada Hills	3/25/86	490, 10177(e)
Barnett, Catherine Marie (RES) (Right to RRES license on terms and conditions)	17682 Anglin Ln., Tustin	3/25/86	490, 10177(b)
Schubert, James Walter (RES) (Right to RRES license on terms and conditions)	936 Bayview Ave., Oakland	4/7/86	490, 10177(b)(f)
Constine, Herbert Edward (REB) (Right to RREB license on terms and conditions)	16133 Ventura Bl., #675, Encino	4/8/86	10177(h)
Cooke, David Dean (REB)(REO) (Right to RREB license after 90 days on terms and conditions)	1111 A E. Washington Ave., Escondido	4/9/86	2977, 10176(a)(i), 10177(d)(h), 10231.2, 10237.3, 10237.4, 10238.3 10145, 10177(d)
Ing, Allan Bow Lun (REB) (Right to RREB license after 15 days on terms and conditions)	740 S. Bernardo Ave., Sunnyvale	4/10/86	490, 10177(b)(f)
Moore, David Edward (RES) (Right to RRES license on terms and conditions)	1868 Huxley Ct., San Jose	4/21/86	10177.5
Kappel & Kappel, Inc., (REC) (Right to RREC license on terms and conditions)	355 Main St., Vacaville	4/21/86	490, 10177(b)
Hunt, Nadean (RES) (Right to RRES license on terms and conditions)	5076 Ella Ln., Santa Barbara	4/22/86	10177(g)
Perryman, Alice Rowena (RES) (Right to RRES license on terms and conditions)	300 Larsson St., Manhattan Beach	4/24/86	10176(a)(i), 10177(f)(j)
Ruppel, Hiltraut (REB) (Right to RREB license on terms and conditions)	112 W. 25th Ave, Ste.1, San Mateo	4/25/86	490, 10177(b)
Andrion, Elpidio Quebral (RES) (Right to RRES license on terms and conditions)	11657 E. 207th, Lakewood	4/29/86	10167.9(a)(8), 10167.10(b), 10167.12(a)(1), 10177(d)
Dell, Dwight A. (REB) (Right to RREB license on terms and conditions)	3288 El Cajon Bl., San Diego	5/1/86	490, 10177(b)
Rampoldi, Michael Joseph (RES) (Right to RRES license on terms and conditions)	445 E. Almond Dr., #76, Lodi	5/6/86	490, 10177(b)
Henderson, Trish (RES) (Right to RRES license on terms and conditions)	228 W. Foothill Bl., Claremont	5/7/86	2785(a)(10), 2832, 10145, 10177(d)
Brown, William Edward (RES) (Right to RRES license after 30 days on terms and conditions)	5353 College Ave., Oakland	5/20/86	490, 10177(b)
Tynda, Trina G. (RES) (Right to RRES license on terms and conditions)	14532 Busby Dr., Whittier	5/20/86	490, 10177(b)
McKoon, Robin (RES) (Right to RRES license on terms and conditions)	570 Via Rueda, Santa Barbara	5/28/86	10177(g)
Jackson, Paul Wallace (REB) (Right to RREB license on terms and conditions)	7868 Valley Vista, SP 22, Yucca Valley		

LICENSES SUSPENDED WITH STAYS

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Green, David Irving (REB)(REO) Off—California Home Investment, Inc (All but 30 days stayed for 1 year on condition)	8907 Wilshire Bl., #200, Beverly Hills	3/4/86 (60 days)	10177(h)
Stewart, Don Marshall (REB)(REO) (Stayed for 1 year on terms and conditions)	601 Capitola Ave., Capitola	3/17/86 (6 months)	10145, 10177(d)
Capitolan Sentry Inc. (REC) (Stayed for 1 year on terms and conditions)	1705 49th Ave., Capitola	3/17/86 (6 months)	10145, 10177(d)
Fain, Mildred Viola (REB)(REO) (Stayed for 1 year on condition)	333 W. Baseline, San Bernardino	4/8/86 (30 days)	2725(a)(b), 2726, 2831, 2831.1, 2834(b), 10137, 10177(h)
First Alliance Mortgage Company (REC) Dba—First Alliance Financial Services Dba—First Alliance Service Company (Stayed on terms and conditions)	2700 N. Main St., 12th Fl., Santa Ana	4/10/86 (40 days)	2832.1, 10176(e)
Chisick, Brian (REB)(REO) Off—First Alliance Mortgage Company (Stayed on terms and conditions)	2700 N. Main St., 12th Fl., Santa Ana	4/10/86 (30 days)	2832.1, 10176(e), 10177(d)
Brown, William Henry (REB) (Permanently Stayed)	5353 College Ave., Oakland	5/7/86 (1 day)	10177(h)

Disciplinary Action, continued on page 5

Disciplinary Action, continued from page 4

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

NAME	ADDRESS	EFFECTIVE DATE
Sutake, Robert Allen (REB)	15592 Producer Ln, Huntington Beach	3/12/86
Nowzari, Ali (RES)	P.O. Box 2000-74, Mission Viejo	3/13/86
Hector Marsach, Inc. (REC)	16162 Beach Bl., Huntington Beach	3/13/86
Hoggard, Gurney, L. (REB)	P.O. Box 894, Ridgcrest	3/13/86
Thompson, William Robert (REB)	P.O. Box 15225, San Diego	3/14/86
White, Neal Elliott (RES)	8169 Suntree Lane, Fair Oaks	3/14/86
Palomar, Carmen (RES)	no address on record	3/14/86
Gonzalez, Pablo (RES)	5372 Mission St., San Francisco	3/14/86
McFarland, Henry Dahlman (REB)	P.O. Box 6344, Santa Rosa	3/14/86
Halkoff, Stanley David (REB)	841 Carley Rd., Santa Rosa	3/14/86
Thomas, Robert Lee (REB)	P.O. Box 224, San Dimas	3/14/86
Gamer, Judy (RES)	875 Gaylene, Concord	3/27/86
Moss & Moss (REC)	343 G Street, Lincoln	3/31/86
McPherson, Roy Curtis (REB)	P.O. Box 180, Oceanside	4/7/86
White, Neal Elliott (RES)	8169 Suntree Lane, Fair Oaks	4/22/86
White, Neal Elliott (RES)	8169 Suntree Lane, Fair Oaks	5/1/86
Powell, Gary D. (REB)	169 Front St., Danville	5/1/86
Dunhill-Weber Realty & Investment, Ltd. (REC)	P.O. Box 2034, Walnut Creek	5/1/86
Pearson, Don Carolyn (REB)	6622 Barnsdale Ct., San Jose	5/16/86
Phelps, Robert (RES)	11710 Oculito Ct., San Diego	5/16/86
Metcalf, Raymond E. (REB)	603 1st St., Oceanside	5/16/86
Sembach, Charles L. (REB)	1525 Merkley Ave., Ste. 104, West Sacramento	5/16/86
Sembach, Lillian (RES)	1525 Merkley Ave., Ste. 104, West Sacramento	5/16/86
Gundlach, Gary (RES)	5234 El Cajon Bl., San Diego	5/30/86

Licenses Suspended

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Miller, Alma Fidelia (RES)	P.O. Box 313, Santa Rosa	4/10/86 (180 days)	10177(f)(j)

Licenses Revoked With Stays

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Gothard, David Locke (REB)(REO)	280 W. Hamilton Ave., Campbell	4/21/86	10177(d)(j), 10234
(Stayed for 6 months on terms and conditions) (May be suspended for 30 days)			

Dry Cleaning Registration... More on Business Opportunities

The State Board of Dry Cleaning and Fabric Care, which regulates dry cleaners, is going out of business. Real estate licensees who engage in business opportunities transactions should be aware that beginning January 1, 1987 the Bureau of Home Furnishings in the California Department of Consumer Affairs will begin

registering dry cleaning plants. There is a registration fee of \$75.00 and a requirement to maintain a \$5,000 surety bond.

Dry cleaning establishments that have current licenses on January 1, 1987 will not be required to reregister until their licenses come up for renewal. Registration, under the terms of the

Tread Carefully in the Field of Business Opportunities

by the DRE Business Brokers
Advisory Committee

Have you ever thought about representing buyers and sellers in business opportunity transactions?

Did you know that "casualty" working in this specialized field is somewhat analogous to walking through an uncharted minefield? Even a carefully structured transaction—one in which there should be no surprises—may result in something exploding under your feet!

How do you keep yourself and your license intact?

It is important to understand that even though you have the "legal right" to represent buyers and sellers in business opportunity sales by being a real estate licensee, you need additional education and training in order to safely negotiate your way through a transaction. Courses in business appraisal, general accounting, small business management, taxation, business law, and business brokerage would be beneficial.

It is interesting to note that business brokers often specialize in the sale of specific types of businesses. For example, one agent may only handle restaurant sales while another licensee works exclusively with the dry cleaning industry. These individuals realize that specific knowledge is often needed for each type of business transaction and wisely work only within the parameters of their expertise. While any real estate agent may sell a business opportunity, there is much more to the transaction than merely filling out the proper forms.

In order to best serve the needs of your clients, you should be both knowledgeable and experienced. Remember, it is considered unethical to falsely claim expertise in any area of specialization within the real estate industry. •

new law, remains valid until or unless there is a change of ownership, change of corporate officers, or change of business locations.

Assembly Bill 183 eliminates licensing, examination and facilities inspections for dry cleaning plants. Dry cleaning establishments continue, however, to be subject to oversight by Cal-OSHA or the city or county in which they operate.

Until the new law goes into effect, the Board of Fabric Care retains regulatory authority over dry cleaners throughout California.

In order to facilitate the transition to deregulation in the field of fabric care, by April 1, 1987 a new one-year program will be in place to provide consumer and professional education and complaint mediation for consumers purchasing dry cleaning services.

For additional information about the new law and the registration and surety bond responsibilities for dry cleaning plants, contact the Board of Dry Cleaning and Fabric Care in Sacramento at (916) 920-6751 or the Bureau of Home Furnishings (916) 920-6951. •

A Current Look at the Finder's Exception

by Robert Baker, Real Estate Counsel II, Los Angeles Legal Section

THIS YEAR THE SUPREME COURT of Hawaii, in a case entitled *Property House, Inc. v. Kelley*, chose NOT to recognize a "middleman's" or "finder's" exception to the real estate broker's fiduciary duty to inform both the buyer and the seller of real property that the broker is acting as the agent of each party. Further, the court found that by (1) entering into a listing agreement with the sellers and (2) soliciting purchasers, Property House, Inc. (PHI) had acted as a real estate broker even though PHI was not involved in the actual negotiations between the parties.

In this case, PHI, a licensed real estate broker, entered into an agreement with Kelley to sell two hotels. Thereafter, without the knowledge or the written consent of Kelley, PHI entered into a separate and secret agreement with a prospective purchaser to act as his agent with respect to the purchase of the same two hotels. After the buyer submitted an offer which met Kelley's terms, but was nevertheless rejected, PHI brought an action against Kelley to collect a brokerage commission.

PHI sought to collect its commission by establishing that it was acting merely as a finder or "middleman" since it had not been involved in the actual negotiations between the seller and the prospective purchaser. PHI had to rely on this theory, because it had acted as an undisclosed dual agent, which deprived it of a right to compensation from the sellers under the listing agreement. The Hawaii court, citing the 1973 California case of *Tyrone v. Kelley*, 9 Cal. 3d 1, agreed that PHI fit the traditional definition of a finder as "one whose employment is limited to bringing parties together so that they may negotiate their own contract." It also noted that in another California case, *Batson v. Strehlow* (1968) 68 Cal. 2d 662, the court had stated that the middleman, unlike a broker, "is in no fiduciary relationship to his principal nor under any obligation not to receive compensation from the opposite party to the transaction."

However, after examining the rationale behind these cases, the Hawaii Supreme Court stated that there was no evidence that their legislature intended to exempt licensed real estate brokers, acting merely as middlemen, from the purview of the real estate licensing laws; and the court decided that PHI owed a duty to Kelley to disclose its dual representation and its failure to do so deprived it of its right to compensation from the sellers.

It is interesting to note that until recent amendments to California law, Hawaii law defined a real estate broker in substantially identical terms to California law. Effective January 1, 1985, the first paragraph of Section 10131 of the Business and Professions Code of the State of California amended the definition of a real estate broker to specify that the form or time of payment of any compensation received need not be considered as an element of the definition of a broker as further set forth in subparagraphs (a) through (e) of that section.

This small, but significant change in the basic definition of a real estate broker was designed to clarify the scope of activities requiring a real estate license as limited by the decision in *Tyrone v. Kelley*.

In *Tyrone*, the defendants sought to avoid the payment of a rather substantial fee to plaintiff on the grounds that Tyrone had been involved in the procurement of a large loan to be secured by real property, but was barred from collecting a fee as a finder by Section 10136 of the Business and Professions Code because, although unlicensed, he had been involved in the actual "solicitation" of the borrower and/or the lender and subdivision (d) of Section 10131 defines a real estate broker to include a person who "solicits borrowers or lenders." (All parties agreed that he had not been involved in the actual "negotiations.")

The California Supreme Court disagreed stating that "the Legislature [in enacting subdivision (d) of Section 10131] never intended the finder's exception to be made inapplicable by the finder's mere act of solicitation." The court then went on to state that solicitation of a borrower or lender would require a real estate license only if an "advance fee" was first collected.

Taken literally, the *Tyrone* decision led a multitude of loan packagers who purportedly were merely "soliciting" lenders or borrowers, and who were not involved in the actual "negotiations" of said loans, to believe that they could operate in an unlicensed capacity as mere "finders" or "middlemen," unless they received a fee paid in advance. As to other types of transactions defined as requiring a real estate license, the court in *Tyrone* did not specifically exclude solicitation as an act requiring licensing. Hence, the person soliciting buyers, sellers, lessors and lessees of real property still required a real estate license.

The amendment to section 10131 made it clear that a real estate license is required for *all* activities described in that section regardless of whether or not a fee is paid before or after services are rendered. Simply stated, if there is any "solicitation" involved and a fee is paid, "regardless of the form or time of payment," a real estate license is required.

Where does this amendment leave the so-called "finder's exception" today in California's licensing law? The amendment does not totally extinguish the exception, since there are and will be transactions in which individuals truly act as finders. It does, however, severely restrict the extent of solicitation a finder can engage in and still claim an exemption from real estate licensing requirements.

It is the Department's opinion that if a California court were asked to rule on the same facts as the Hawaii Supreme Court,

that its holding would be similar.

By executing the listing agreement, Property House clearly became the agent of the seller in the Hawaiian case. By entering into a separate agreement with the buyer, Property House became a dual agent. The Hawaii court acknowl-

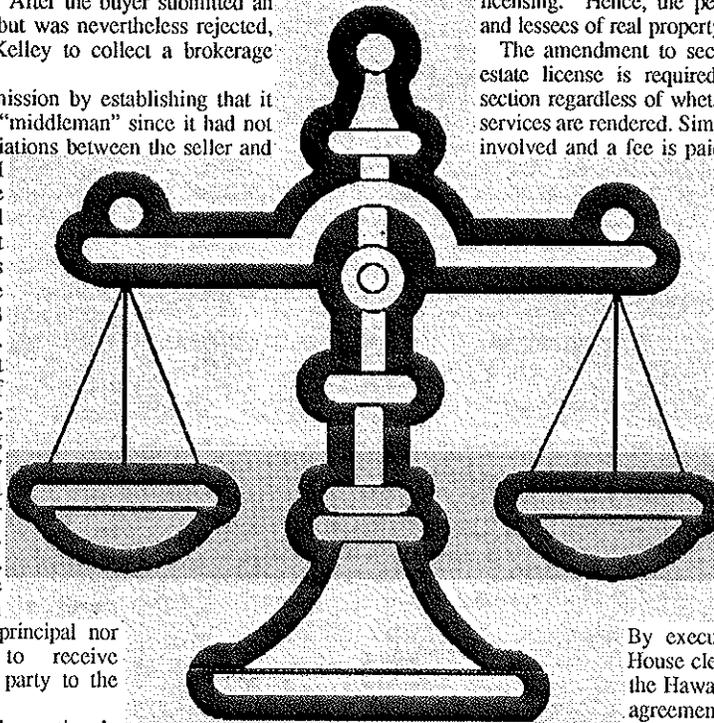
edged this relationship in disallowing Property House to claim the finder's exception.

Similarly, the California Supreme Court has stated that when necessary, it will find an agency relationship to protect the parties to a real estate transaction (*Hale v. Wolfson*, 26 C.A. 2d 290). The Department of Real Estate has taken a similar position.

Where the "finder" may have his proper place in other areas of commerce, the usefulness of the finder in real estate-related activities is questionable. Where the broker has a fiduciary duty to his principal, including the duty of accountability, the finder or middleman has no such obligations to either party. Additionally, where the broker must have years of experience, is tested for his knowledge and scrutinized for his honesty, the finder need not have any experience in the field of real estate and is not tested for either his knowledge or his integrity. Finally, while the broker acts on behalf of his principal from the inception of the employment relationship to the close of the transaction, the finder, by definition, can do little more than merely introduce the parties and then quietly withdraw.

To illustrate this relationship, in a recent incident under investigation by the Department, a self-described unlicensed "finder" told one complaining party—in this case, the seller—"I got mine, now it's up to you to get yours."

The Department believes the amendment to Section 10131 does in effect substantially restrict the type of solicitation a finder can engage in without the benefit of a real estate license. •



Tips on Satisfying the Examination Course

by Darlene North, DRE Licensing, Sacramento

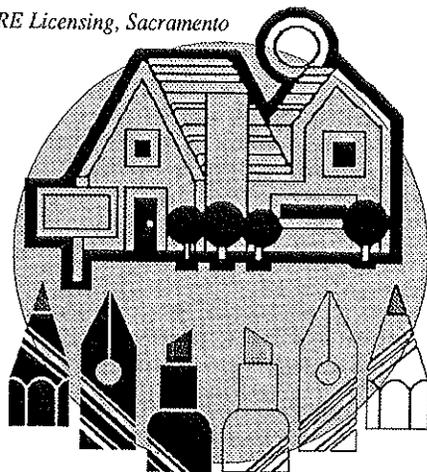
Whether you are presently a salesperson applying for the broker examination or a broker assisting a prospective salesperson applicant, you should be aware of the basic educational requirements.

Colleges or Universities that offer 3 semester- or 4 quarter unit Real Estate courses must be accredited by either the Western Association of Schools or a Regional Accrediting Association. If a course is taken at a private school, the school must have been approved by the Department of Real Estate prior to offering that particular course. Interested persons may obtain a free list of approved schools from the Sacramento Principle Office of DRE at P.O. Box 160009, Sacramento, CA 95816.

Neither experience nor continuing education courses can be used to fulfill the statutory course requirements set forth by law for the salesperson or broker examination. It should also be noted that examination qualification courses cannot be used to meet continuing education requirements when the license is to be renewed.

A copy of the official transcripts, showing successful completion of courses, should be submitted with your examination application and other required materials. If a transcript is absolutely not available to you, the Department will accept a letter from the accredited institution where the course was taken, if the letter:

1. is on official school letterhead;
2. bears the official school seal;
3. is signed by the dean or associate dean;
4. indicates the student's name;



5. reflects the course title
6. reflects the number of semester or quarter units;
7. indicates the grade the student earned; and
8. indicates the date the course was completed.

The DRE recognizes the fact that some accredited colleges offer required real estate courses but change course titles (for example, Introduction to Real Estate may be offered rather than Real Estate Principles). In these situations, the student should provide a copy of the catalog description of the course along with the proper verification of successful course completion. This step is required in order for the Department to determine if the course can be considered equivalent to the required course.

Evaluations for course equivalencies will only be done when an examination application and fee are submitted and cannot be done by telephone or at our public counters.

Licensing Fees Update

by Pam Davis, DRE Post Licensing, Sacramento

The Licensing Section is receiving applications with inappropriate fees. In the past, "half-fees" were paid to renew a license on an "inactive" status. The remainder of the fee was paid when a licensee submitted a change application to "activate" the license. In addition, other fees were required to be submitted with a change application in conjunction with a request for a duplicate license, to add a branch office or a fictitious business name (dba) to a real estate broker or corporation license.

These fees were eliminated in 1981 and incorporated into the original and renewal license fees. Unfortunately, there are some outdated change and renewal application forms still being used which indicate that these fees are required. Payment of these obsolete fees results in an expenditure of staff time to refund the money. Further, if it is not possible to process the outdated form, additional staff time is required to send the licensee a current form, resulting in a delay in processing the licensee's request.

To obtain current renewal or change application forms or information regarding fees, please contact Licensing Information in Sacramento at (916) 739-3758.

Renewal fees are:

	Salesperson	Broker/Officer
one-time renewal	\$120.00	\$165.00
late renewal (2-year grace period)	\$160.00	\$220.00

Real estate licensees must have both a broad-based understanding of the many facets of real estate and a knowledge of the current Real Estate Law.

The Real Estate Law book is a working tool every licensee should own. The 1986 Supplement to the 1985 Real Estate Law book contains the additions, amendments and deletions made in the California Real Estate Law, and contains other pertinent excerpts from the California Codes which became effective January 1, 1986.

The 1985 Real Estate Law book, including the

1986 Supplement costs \$10 plus tax. The price includes postage and handling. If the 1986 Supplement is purchased separately, the price is \$1 including tax, postage and handling.

The 1984-85 Reference Book includes 30 chapters covering topics such as agency, escrows, subdivisions, real estate finance and real estate transactions. Additionally, the Reference Book contains sample real estate forms and various useful charts and tables. A current edition of the Reference Book is a useful guide for both the novice and experienced professional.

The price for the 1984-85 Reference Book is \$10 plus tax.

A special 20% discount may be applied to the purchase of 25 or more copies of any one title. When purchased separately, the 1986 Supplement is not subject to this special discount.

When ordering any of the described publications, please use the order form on this page. Personal check or money order payable to the Department of Real Estate is acceptable.

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WARNING — ILLEGAL 4x4 SUBDIVISIONS

The Subdivided Lands Law, which is administered and enforced by the Department of Real Estate (DRE) defines a subdivision, in part, as "improved or unimproved land divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into five or more lots or parcels."

The law provides that any person who intends to offer subdivided lands within this State for sale or lease shall file with the DRE an application for a public report.

The law further states "no person shall sell or lease, or offer for sale or lease in this State any lots or parcels in a subdivision without first obtaining a public report from the Real Estate Commissioner," and "a copy of the public report of the Commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision."

The obvious purpose of the public report is to prevent fraud and misrepresentation in the selling or leasing of subdivided land. The Subdivided Lands Law contains heavy penalties, both civil and criminal, for willful failure to comply with those provisions noted above.

At the present time there seems to be a revival of the old game of creating more than five or parcels through the recording of multiple parcel maps, a technique sometimes

used for evading the Subdivided Lands Law and local subdivision ordinances.

There are several ways of doing it. A simplified example is the owner who has 40 acres. This owner files a parcel map splitting the 40 acres into four 10-acre parcels which are then sold or conveyed to four of his associates each of whom files a parcel map splitting a 10-acre parcel into four 2-1/2 acre parcels. At this point 16 lots or parcels have been created which may be offered for sale. Of course, there is the potential for further lot splitting by conveying lots back and forth among the associates, to one or more corporations, relatives or dummy buyers.

A broker may find himself or herself in trouble for illegal subdividing by suggesting that an owner split a parcel of land into four parcels, then selling the four parcels for the owner and finally suggesting to the purchasers

of the four parcels that each of them split their parcel into four parcels and list the resulting subdivided parcels for sale with the broker. By taking this course of action the broker, although not an owner of the land, may have created a subdivision within the meaning of the law which requires the filing of an application with the Real Estate Commissioner for a public report.

We remind our readers that willful violation of the Subdivided Lands Law is cause for action by the Commissioner to suspend or revoke the real estate license of the violator. The act of illegal 4x4 subdividing, whether done by a real estate licensee or one who is not licensed, carries a criminal penalty. The law says it is a public offense punishable by a fine not exceeding \$5000 or by imprisonment in the State prison, or in the county jail not exceeding one year, or by both such fine and imprisonment. •

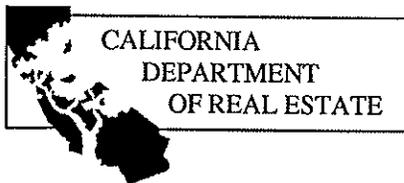
East Meets West

For the second year, Sacramento DRE met with representatives of the Ministry of Construction of the Japanese Government. The public/private sector mission came to Sacramento to explore what the Ministry characterized as "California government's positive stance in providing guidance and establishing reliable frameworks for the enhancement of efficiency, and adequate protection of the parties involved in real estate transactions."

Presentations by Martin Dingman, Assistant Commissioner for Subdivisions, Raymond Royce, Assistant Commissioner for Regulatory and Recovery, Tom Hensley, Licensing Manager, and John Liberator, Chief Deputy Commissioner provided the visitors with answers to procedural and technical questions about the Department's authority and operations. •



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