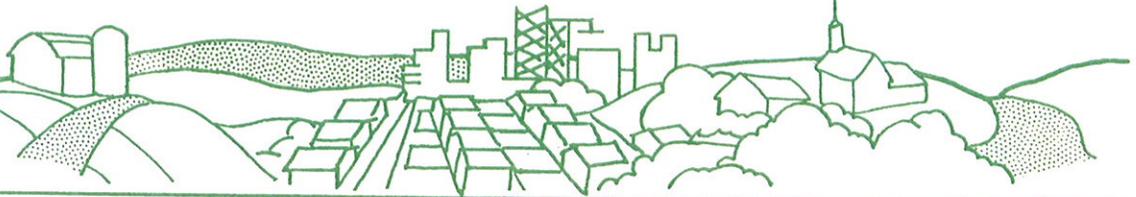




REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Winter 1978

DAVID H. FOX, Commissioner

1978 LEGISLATIVE SUMMARY

Following is a brief summary of the 1978 legislative activity of interest to real estate licensees. Unless otherwise specified, all bills are effective January 1, 1979. A copy of any bill may be obtained by writing the Legislative Bill Room, Sacramento, CA 95814.

Delegation of Powers

AB 3193—Robinson—Ch. 651: Correlates appropriate provisions of the Real Estate License Law with a recent change in the Administrative Procedure Act by deleting the reference in affected sections to the "Commissioner" and substituting therefor the "Department." As a result of this change, the Commissioner will be legally empowered to delegate his power to hear and decide such disciplinary matters as: adopting a proposed decision in its entirety, or reducing the proposed penalty; rejecting the proposed decision and deciding the case or the record, including the transcript, with or without taking additional evidence; ordering reconsideration; etc.

Inactive Licenses—Fees—Restitution

AB 3216—Gage—Ch. 1080: (1) Eliminates the status of inactive licensure effective as of January 1, 1981, but protects the right of the holder of such license to reinstate or renew on an active basis after such date. (2) Eliminates the requirement for a licensee whose license has been inactivated for six months or longer to wait 30 days for reinstatement or renewal on an active basis. This part becomes operative on January 1, 1979. (3) Requires, on or after January 1, 1981, holders of inactive licenses seeking reinstatement or renewal (on an active basis only) to present evidence of compliance with continuing education requirements. (4) Deletes the \$4 fee required for inactivating a license, changing a name or address of a licensee, transferring to the employ of a new broker, or for reinstatement of a license. This part becomes operative on January 1, 1979.

In addition, this legislation adds to an existing statute in the Real Estate Law, a provision authorizing the Commissioner to include in any action for injunctive relief a claim for restitution on behalf of persons injured due to a violation of a statute the Commissioner is

charged with enforcing, or violation of any order, license, permit, decision, demand or requirement issued or imposed on the violator. The court is empowered to award appropriate relief to such persons.

Jurisdictional Limits—Mortgage Loan Brokers

AB 3263—Maxine Waters—Ch. 653: Expands the jurisdiction of the Commissioner over loans negotiated by real estate brokers so that it applies to first loans of less than \$20,000 and junior loans of less than \$10,000.

License Examinees—Ringers

AB 3588—Suitt—Ch. 1285: Declares it unlawful for any person to practice any deception or fraud with regard to his or her identity in connection with any (DRE license) examination, application or request to be examined. Willful violations or knowingly participating in the violation is a misdemeanor.

Rebates for Business Referrals

AB 3768—Brown—Ch. 729: Empowers the Commissioner to suspend or revoke the license of a real estate licensee who claims, demands or receives a commission, fee or other consideration for referral of business to an escrow agent, structural pest control firm, title insurance, controlled escrow company, or underwritten title company.

Other consideration is defined *not* to include: bona fide payments for goods or facilities furnished; documents, services, information, advertising, educational materials, or other items of a like nature which are customary in the real estate business and which relate to the products or services of the furnisher; moderate expenses for food, meals, and beverages within the context of customary

(Continued on page 6)

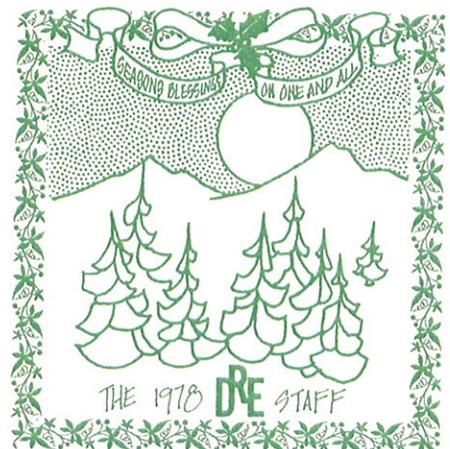
NO AUTOMATIC ENFORCEMENT OF DUE-ON-SALE CLAUSES

In July of 1975 Cynthia Wellenkamp purchased a home by paying the sellers' equity and agreeing to assume the sellers' loan. The deed of trust securing the loan contained a due-on-sale clause, and lender Bank of America attempted to enforce it shortly after the sale. Wellenkamp objected and filed suite to enjoin the foreclosure sale. The resultant landmark decision of the California Supreme Court has further eroded the effectiveness of due-on-sale clauses.

The decision in *Wellenkamp v. Bank of America*, 21 Cal. 3d 943, holds that in order to enforce a due-on clause upon the occurrence of an outright sale of property, the lender must demonstrate that enforcement is necessary to protect against impairment of its security or the risk of default. A lender's desire to adjust interest rates to current market levels does not constitute sufficient justification for enforcement since the possibility of increases in the prevailing rate of interest during the term of a loan is simply a business risk of the lender.

In its opinion the court reviewed prior decisions having to do with the enforceability of due-on clauses, particularly *La Sala v. American Savings and Loan Association*, (1971) 5 Cal. 3d 864, and *Tucker v. Lassen Savings and Loan Association*, (1974) 12 Cal. 3d 629. In *La Sala* further encumbering of real property through a second loan was found to be insufficient justification for acceleration of the maturity date while in *Tucker*, sale of the property under a real property sales contract

(Continued on page 5)



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

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

Disciplinary Action—July–September 1978

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

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

FOR YOUR INFORMATION

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

Business and Professions Code

125.6	illegal discrimination in providing services	10176(e)	commingling trust funds	11010	failure to file notice of intention to sell or lease subdivision
490	relationship of conviction to licensed activity	10176(i)	fraud or dishonest dealing in licensed capacity	11018.2	illegal subdivision sales (sale of subdivision lots without public report)
10130	performing acts for which a license is required without the the appropriate license	10177(a)	procuring a real estate license by misrepresentation or material false statement		
10137	unlawful payment of compensation	10177(b)	conviction of crime	2725	failure of broker to review agreements
10143	failure to deliver contract or receipt to prospective tenant by rental agent	10177(d)	violation of real estate law or regulations	2731	unauthorized use of fictitious business name
10145	trust fund handling	10177(f)	conduct that would have warranted denial of a license	2830	failure to maintain trust fund account
10148	retention and availability of real estate broker records	10177(g)	negligence or incompetence as licensee	2832	improper handling of earnest money deposit
10163	branch office license requirement	10177(h)	failure to supervise salespersons	2832.1	trust fund accountability
10176(a)	making any substantial misrepresentation	10177(j)	fraud or dishonest dealing not in licensed capacity	2851	supervision of salespersons by advance fee rental agent
10176(b)	making false promise	10177(k)	violation of restricted license condition	2852.3	advance fee contracts
10176(c)	course of misrepresentations through salespersons	10270	offering illegal real estate syndicate securities	2901	disposition of advance rental fee modifications to contract by licensee
				2905	delivery of pest control documentation

Regulations

LICENSES REVOKED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Whelan, Timothy Sean (RES)	532-L S. Citrus Ave., Covina	4/ 5/77	490, 10177(b)
*Johnson, Max Eugene (RES)	1271 Franklin Mall, Santa Clara	6/ 15/78	10145, 10176(a)(i), 10177(d)(f)
Case, Marvin Edwin (REB)(REG)	5400 Kirkland Way, Carmichael	7/ 4/ 78	10176(a)(c)(e)(i), 10177(d), 10270
Off—Protech Investment & Realty			
Apker, Carole L. (REB)	1751 N. Coronado St., Los Angeles	7/ 5/78	490, 10177(b)
Dbu—Blue Realty			
Doering, David Robert (RES)	1209 W. Lincoln Ave., Anaheim	7/ 5/78	490, 10177(b)
Barrie, Richard Roland (REB)	492 High St., Moorpark	7/ 7/78	10177(a)(f)
Dbu—West National Investments			
Correia, Albert Benjamin (RES)	2621 Wilkie Dr., Pomona	7/12/78	490, 10177(b)
Yancey, Wallace (REB)	1900 San Pablo Ave., Pinole	7/12/78	10176(a)(i)
Dbu—Select Properties			
Gagnon, Frank Norman (RES)	1520 Mt. Hamilton View Dr., San Jose	7/13/78	490, 10177(b)(f)
House, Richard John (RES)	2132 Farnsworth Way, Rancho Cordova	7/13/78	490, 10177(b)
Huston, John Milton (RES)	1333 W. Garvey Ave., West Covina	7/18/78	490, 10177(b)(f)
Warshaw, Donald Louis (RES)	10625 Etiwanda Ave., Northridge	7/18/78	490, 10177(b)(f)
Mnemi, Joe Jr. (REB)	512 14th St., Modesto	7/31/78	10145, 10148, 10176(a)(i), 10177(d)
Dbu—Regal			
Morrow, Leslie (RES)	513 N. McClure Rd., Modesto	7/31/78	490, 10177(b)
Press, David (RES)	172 El Dorado, Monterey	7/31/78	490, 10177(b)
Chartock, Wendy Helen (RES)	255 S. Rengstorff Ave., #8, Mountain View	8/ 1/78	490, 10177(b)
Land, Edward Henry (RES)	1320 Grass Valley Hwy., Auburn	8/16/78	490, 10177(b)
Quillec, Robert Joseph (REB)	21642 Redwood Rd., Castro Valley	8/22/78	10176(a)(i), 10177(f)(f)
Wong, Baline Ma (RES)	73 Camelot Ct., Daly City	8/23/78	490, 10177(b)
McKinsey, Clyde Leonard (REB)	590 Cressler St., Cedarville	8/28/78	10176(a)(b)(i), 10177(p)(g)
Dbu—Surprise Valley Realty			
Ross, Gregory J. (RES)	164 W. Duarte Rd., Arcadia	8/29/78	10176(a)(b)(i)
Johns, David Jesse (RES)	2633 Lawton St., San Francisco	8/31/78	10177(f)(j)
Houtsman, Edward Wesley (RREB)(RREFO)	14511 East 14th St., San Leandro	9/ 5/78	10145, 10176(e)(i), 10177(d)(f)(j)(k)
Off—Wesco Land & Management Corp.			
Wesco Land & Management Corp. (RREC)	14511 East 14th St., San Leandro	9/ 5/78	10145, 10176(e)(i), 10177(d)(f)(j)(k)
Celaya, Patricia Gise (RES)	833 Wainwright, Monterey	9/14/78	490, 10177(a)(b)(f)
Weber, Loretta Jane (RES)	301 W. Cliff St., Solana Beach	9/14/78	490, 10177(a)(b)
Katz, Martin David (REB)(REO)	1139 W. San Bernardino Rd., Covina	9/19/78	490, 10177(b)
Dbu—Security Investment & Realty Co.			
Dbu—Lenders Service Company			
Off—N. E. & H. United Corporation			
Lazarus, Stokes Stimpson (RES)	6309 Timberland St., Agoura	9/19/78	490, 10177(a)
Jackson, Dennis Michael (RES)	123 N. Tustin, Unit B, Anaheim	9/20/78	490, 10177(b)

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LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Bujakowski, Jeremy John (RES) (Right to RRES license on terms and conditions)	4869 Santa Monica Ave., Ste. C, San Diego	6, 29, 78	490, 10177(b)
Graesch, John Elmer (RES) (Right to RRES license on terms and conditions)	4983 Yaqui Gulch Rd., Cathays Valley	7, 5, 78	10176(a)
Kess, Richard Murray (REB) Dba - Red Carpet Realtors (Right to RREB license after 180 days on terms and conditions)	14511 East 14th St., San Leandro	7, 11, 78	125.6, 10137, 10177(d)(j)
Appleby, Leslie Margaret (RES) (Right to RRES license on terms and conditions)	1314 24th St., Apt. 5, Sacramento	7, 31, 78	10177(g), 2901
Kane, Henry William Jr. (REB) (Right to RREB license after 120 days on terms and conditions)	11802 Compton Ave., Los Angeles	8, 2, 78	490, 10177(b)
Lumley, Kenneth Ross (RES) (Right to RRES license after 10 days on terms and conditions)	285 Richfield Dr., #18, San Jose	8, 17, 78	490, 10177(b)
Glass, Tim John (RES) (Right to RRES license on terms and conditions)	P. O. Box 942, Morgan Hill	8, 21, 78	490, 10177(b)
Ybarra, Manuel (RES) (Right to RRES license on terms and conditions)	4515 Hamilton Ave., San Jose	8/21, 78	490, 10177(b)
Iassos, James Ambrose Jr. (REB) (Right to RREB license after 30 days on terms and conditions)	800 El Camino Real, Millbrae	8, 22, 78	10176(a)(i)
Blatt, James R. (RES) (Right to RRES license on terms and conditions)	2745 Tanglewood Dr., San Jose	8, 23, 78	10177(b)(f)
Nannizzi, Lucy (RES) (Right to RRES license after 10 days on terms and conditions)	2466 Unwin Ct., South San Francisco	8, 23, 78	490, 10177(b)
Tesoro, Mary Margaret (RES) (Right to RRES license on terms and conditions)	#9 Camino de Travesta, Carmel Valley	8, 23, 78	490, 10177(b)
Williams, George DeArmond (RES) (Right to RRES license on terms and conditions)	1634 Truckee Way, Woodland	8, 28, 78	490, 10177(b)
Hull, James Truman (REB) (Right to RREB license on terms and conditions)	1861 San Francisco Ave., Long Beach	8, 29, 78	490, 10177(b)
Thomas, Guy Paul (REB) (Right to RREB license on terms and conditions)	10551 Paramount Blvd., Downey	8, 30, 78	490, 10177(b)
Wallace, James Ray (RES) (Right to RRES license after 90 days on terms and conditions)	28362 Margenta Pky., Ste. 12, Mission Viejo	8, 31, 78	490, 10177(b)
Benedict, Ann Porter (RES) (Right to RRES license on terms and conditions)	2352 Alum Rock, San Jose	9, 5, 78	490, 10177(b)
McGee, Paul Owen (RES) (Right to RRES license on terms and conditions)	810 Oak Grove Rd., #84, Concord	9, 5, 78	490, 10177(b)(f)
Rowles, John Wesley (RES) (Right to RRES license after 90 days on terms and conditions)	15104 Bel Estes Dr., San Jose	9, 11, 78	490, 10177(a)(i)
King, John Willis (REB) (Right to RREB license after 180 days on terms and conditions)	17112 Clarke Ave., Bellflower	9, 12, 78	2725, 2731, 2851, 2852, 2852.3, 10143, 10163, 10177(d)
Aragon, Del Robert (REB) (Right to RREB license after 90 days on terms and conditions)	2963 Mowry Ave., Fremont	9, 14, 78	10176(b)(i), 10177(g)
Jordan, Gene Doyle (RES) (Right to RRES license after 30 days on terms and conditions)	1234 Kilecrease Cir., El Sobrante	9, 18, 78	10176(a)
Cantini, Michael James (RES) (Right to RRES license on terms and conditions)	3823 Fernwood, Orange	9, 19, 78	490, 10177(b)
Nixon, John Alexander (RES) (Right to RRES license after 60 days on terms and conditions)	1224 W. Olive St., Oxnard	9, 19, 78	490, 10177(a)(b)(f)
Carlos, Ana Lopez (RES) (Right to RRES license on terms and conditions)	1342 8th Ave., San Diego	9, 20, 78	490, 10177(a)(b)(f)
Burke, John Edward (RES) (Right to RRES license on terms and conditions)	2611 Westgate Ave., San Jose	9, 27, 78	490, 10177(b)

LICENSES SUSPENDED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Garcia, Ernesto Jose (RES)	5178 Mission St., San Francisco	7, 29, 77 90 days	10176(a)(i), 10177(f)
Wasserman, Donald Ray (REB) Dba - Golden Gate Realty	1046 Irving St., San Francisco	7, 5, 78 30 days	10145, 10177(d), 2832.1
Ricoz, Mary Ann (RES)	4148 Sunrise Blvd., Fair Oaks	7, 13, 78 15 days	10177(d)(jg), 2905
Mumford, Paul Rolland (REB)(REO) Off - Rebo, Inc. Off - Coin Laundry Equipment, Inc.	465 S. Auburn St., Grass Valley	8, 9, 78 30 days	10130, 10177(d), 11010, 11018.2

LICENSES SUSPENDED WITH STAYS

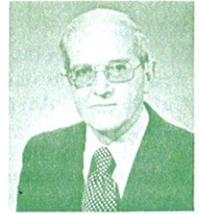
Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Taylor, Peggy, (REB) (Stayed for 1 year on condition)	1295 Glenneycro, Laguna Beach	8, 1, 78 30 days	10177(d)(jg)
O'Brien, John Patrick (REB) (Permanently Stayed)	P.O. Box 2042, 465 S. Auburn St., Grass Valley	8, 9, 78 30 days	10177(d), 11010, 11018.2
Dobriner, Alfred (REB) Dba - Western Land & Dev. Co. (Stayed for 55 days on conditions)	42500 Portola Ave., Palm Desert	8, 29, 78 60 days	490, 10177(b)

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Kier, Thomas F. (REB)	Rte. 1, Box 175A, Oroville	7, 7, 78
Molby, Margery (RES)	1530 S. Fairfax Ave., #8, Los Angeles	7, 7, 78
Singer, Alexander W. (RES)	7053 Bantl Springs Ct., San Jose	7, 7, 78
Walsmith, Frederick William (RES)	2963 106th Ave., Oakland	7, 27, 78
Ostrolenk, Mary Hellen (REB)	101 W. Hamilton, Ste. A, Campbell	8, 2, 78
Anderson, Herman Jr. (REB)	10024 Adams Ave., Huntington Beach	9, 7, 78

HEMPEL LEAVES STATE SERVICE

After more than 24 years with the Department of Real Estate, John E. (Jack) Hempel, 56, left state service on September 15, 1978, to give his attention to private business affairs.



Jack was a major contributor to departmental operations; among his earlier successes was the development and shepherding of legislation leading to the adoption by California of the "affirmative standards" concept in processing subdivision filings. This added an element of stability to the subdivision field in California which has always been well received by the subdividing industry and has been of immeasurable benefit to consumers of the state. He has long been identified as a champion of the maintenance and improvement of long range plans for the professional development of the real estate industry in California.

More recently, Jack was the architect of the multi-state examination program, which California now shares with ten other states and which contributes to higher standards for licensure in those states and aids in the development of real estate licensing reciprocity.

He implemented the homeowners assistance desk concept of the Department of Real Estate in 1975. Actual charting of savings to consumers from this operation has already passed the four million dollar mark.

Last year he chaired a delegation of license law officials which worked out an affirmative fair housing agreement between the United States Department of Housing and Urban Development and the National Association of Real Estate License Law Officials. California was the first state to subscribe to this agreement. NARELLO honored Jack in 1968 by electing him its president.

His work experience at DRE included 14 years as Chief Deputy Director for the Department and 18 months serving as chief executive officer for the Department, immediately prior to the appointment of Real Estate Commissioner David H. Fox.

On numerous occasions Jack carried the full responsibility of the Real Estate Commissioner for controlling and directing all of the operations of the Department of Real Estate and had responsibility for the Department's legislative program.

Prior to coming to work for the Department he was a real estate licensee for a dozen years, was a Board President and CAR Regional Vice President and served one year as postmaster in San Clements. He also served on that city's Planning Commission and City Council.

The employees of the Department join Commissioner Fox in wishing Jack and Dorothy, his wife of 31 years, success in their new endeavors.

INDUSTRY LEADERS

We wish to congratulate two distinguished members of the real estate brokerage industry—Ray C. Carlisle and Clark E. Wallace—on their recent election to the office of President of the California Association of Real Estate Brokers and President of the California Association of Realtors, respectively.

Wallace is the majority stockholder of Wallace, Underwood, and Scofield, Realtors, headquartered in Moraga.

He has been a CAR Director and Regional Vice President, and has acted as Chairman for several CAR committees: Equal Rights, Convention, Legislative, and Board Legal Affairs. Wallace was named an honorary Director-for-Life in 1975. In 1977 he was elected First Vice President and in June 1978 became CAR President filling Don Wiedmann's unexpired term for the balance of 1978 due to Wiedmann's assuming the Executive Vice Presidency of CAR in June.

Carlisle is the sole owner of a real estate broker, appraisal and consultant firm in Oakland.

He has been Executive Assistant to the President of the National Association of Real Estate Appraisers (NSREA), Board Chairman of the Northern California Chapter of NSREA, a Director of Associated Real Property Brokers, and Regional Vice President of the National Association of Real Estate Brokers. He has served on many government committees, among which are: Governor's Home Energy Conservation Committee, the Realtor-Realist Committee, the Professional Development Advisory Committee, and Chairman Pro Tem of the Yellow Hat Committee for NAREB, which committee reviewed all major minority sponsored construction in this country.

BROKER QUALIFICATION

Backgrounds
Fiscal Year 1977-1978

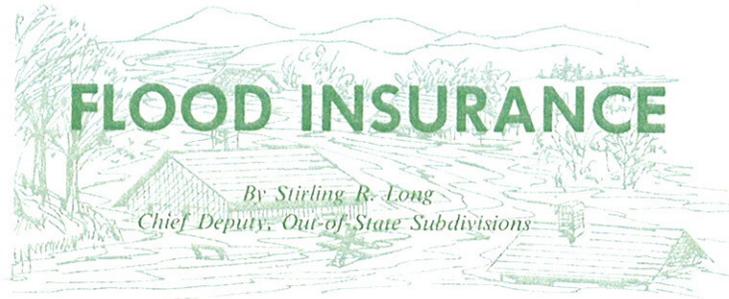
	Number	Percent
TWO YEARS SALES EXPERIENCE	3666	40.32%
MA OR MS DEGREE	410	4.55%
BA OR BS DEGREE	3269	36.17%
LLB OR JD DEGREE	140	1.54%
CALIFORNIA BAR	1284	14.12%
OUT OF STATE BAR	89	.98%
MISCELLANEOUS	214	2.37%
TOTAL BROKER APPLICATIONS APPROVED	9092	100.00%



45

Continuing Education Hours

is the Key to Continuing Success. Educational Persistence Pays.



FLOOD INSURANCE

By Stirling R. Long
Chief Deputy, Out-of-State Subdivisions

When the National Flood Insurance Act of 1968 was broadened into the Flood Disaster Protection Act of 1973 virtually all flood areas of the United States were affected in one way or another by the legislation. Identifiable flood plains were mapped with base flood elevations delineated. With that mapping, structures located within the boundaries of the base flood elevations have become ineligible for federally assisted loans.

In the event a county or municipality in which a building is located has adopted a flood plain management plan, emergency flood insurance is available to \$35,000 on the single-family structure and \$10,000 on the contents. The rates are 25 cents and 35 cents respectively on improvements and contents per \$100 insurable. Other types of structures are insurable at higher amounts with varying rates.

After a Flood Insurance Rate Map has been prepared (which may take one to two years) and the city or county of jurisdiction has adopted a flood plain ordinance, additional insurance is available up to \$150,000 on a residence and \$50,000 on the contents at the rates established by the study resulting in the Federal Insurance Rate Map. Rates may vary widely depending on the degree of risk.

This is an over-simplification of an extensive insurance plan and is intended to be merely a basic framework for the reader. Insurance agents will be able to provide more comprehensive information.

Real estate licensees and developers may wish to question the finding that a particular property is in the base flood elevation or that it is located within or outside of city limits. An appeal may be filed if an owner believes a base flood elevation incorrectly includes a disputed property. Map changes will be made upon the filing of a successful appeal based on

scientific information, i.e., engineering evidence that the structure is not in the base flood plain.

In the event of a jurisdictional boundary error, the owner or agent may file an appeal with the appropriate city or county administration. Such errors will be corrected by the issuance of a new map or, in the case of a minor change, by a letter of map amendment.

Any individual who believes property rights are adversely affected by an inaccuracy in flood hazard mapping may file a direct appeal by sending it with supporting documentation to:

Department of Housing and Urban Development
Federal Insurance Administration
Engineering Division
451 Seventh Street S.W.
Washington, D.C. 20410

Exemptions from insurance requirements will not be granted when:

1. A structure's lowest floor is elevated on posts or piers above the base flood elevation.
2. The basement of the structure is below the base flood elevation.
3. Documentation in support of exemption claim is not complete or certified by an appropriate professional engineer or land surveyor.

It appears that as a result of the federal study on flood insurance, additional development and building code requirements will have to be met in areas deemed to be flood risks.

*Editor's Note: Homes and furnishings damaged by flooding, windstorm or tornado need prompt clean-up action to reduce loss from storm damage. However, there is danger in entering damaged buildings. The Department of Housing and Urban Development has produced an informative pamphlet on this subject through the Federal Disaster Assistance Administration entitled **When You Return to a Storm Damaged Home**, available from U.S. Government Printing Office, Washington, D.C. 20402. (Refer to stock no. 1977-0-233-999) Also see 1976 Fall Winter Bulletin for National Flood Insurance Program Article.)*



Liquidated Damages—A Clarification

The context of the Fall 1978 Bulletin article "Liquidated Damages in Real Property Transactions" has led some readers to believe that the contractual formalities of (1) separate signing or initialing by the parties to the contract and (2) printing of the liquidated damages clause in at least 10-point bold type or in contrasting red print of at least 8-point bold type are requirements for the enforceability of a liquidated damages clause only if the property that is the subject of the contract is a dwelling place of not more than four residential units which the purchaser intends to occupy as a residence.

This is not the case. A liquidated damages

provision in a contract to purchase and sell any real property is invalid unless the abovementioned contractual formalities have been satisfied.

Oddly enough the provision of the law which requires that a separate document meeting the separately-initialed or signed and size-of-type provisions which must accompany any payment—after the initial payment—that is to constitute part of the liquidated damages is applicable only to a so-called residential property transaction, i.e., one involving a dwelling place—of not more than four residential units—which the purchaser intends to occupy as a residence.

Notes from Licensing

by Senior Deputy
Larry Smith



It's always much more pleasing to be able to say it is going to cost less than it is to say it's going to cost more. That's exactly what is happening with the passage of Assembly Bill 3216. Effective January 1, 1979, licensees will no longer be required to pay various \$4.00 fee charges for certain license record changes.

Specifically, it will no longer be necessary to pay \$4.00 for:

- address changes of any kind
- salesperson transfer of employment
- license reinstatements to active status (may still require payment of the fee that was not paid when the license was originally obtained or renewed for one-half the regular or late fee)
- inactivation of a real estate license
- or change of personal or corporate name.

The documentation (forms, letters, etc.) will still be required so the licensing records at DRE can be updated but there will be no charge to do so.

Certain record changes will still require the \$4.00 fee, primarily due to the necessity of issuing a license certificate. These will include:

- adding or deleting a fictitious business name
- issuing a duplicate (replacement) license
- issuing branch office licenses or
- deleting a real property security dealer endorsement.

Another important aspect of this recently passed bill is the repeal of that portion of the law which required a 30 day waiting period for any licensee who desired active reinstatement of a license when the license had been continuously inactive for the preceding six month period. In other words, there will be no delay for reinstatement to active status from inactive status regardless of the length of the prior inactive period.

The elimination of certain \$4.00 fee charges and the 30 day delay portion of the law will significantly reduce correspondence workload for both DRE and licensees plus relieve licensees of reinstatement delays and the payment of fees for a variety of record transactions.

Fictitious Business Names

The DRE has also effected some changes in fictitious business name licensing procedures that will result in more uniform license expiration dates and lower fees to the licensee.

Commencing in October, a broker licensee who has a license bearing a fictitious business name (DBA) and who desires use of an additional DBA will be required to submit an application and fictitious business name statement, but only a \$4 fee. Previously a \$75 fee was required for an additional DBA license and the term of this license ran for four years from the date of issuance. Under the revised procedure however the new DBA will be an addition to the existing license rather

than a new and separate license. Thus the right to use the additional DBA will expire at the same time as the right to use the original DBA.

When the first DBA license is due for renewal, the second DBA license will automatically be due for renewal. The total fee will be \$75.00 plus \$4.00 for the second DBA license, a substantial savings to the broker. Previously, the fee would have been \$150.00.

There may be some variations to the above procedures, depending on such factors as the licensing status of each particular broker, i.e., whether corporations are involved, and how many DBA licenses may be in use by a broker or corporation. Space limitation doesn't permit comprehensive examples of every situation, but as additional DBAs are requested and as licenses are renewed, each will be examined and processed according to each individual licensing situation.

We will be happy to answer any questions broker licensees may have concerning this new fictitious business name licensing procedure.



The following revised list of telephone numbers are available to the public and licensees when calling the Sacramento Headquarters Section:

Original license issuance . . .	(916) 445-5971
Real estate broker qualifications	(916) 445-4011
Examination scheduling . . .	(916) 445-6587
Corporation licensing	(916) 322-4640
License information	(916) 445-5741

Wellenkamp (Continued from page 1)

(installment contract) was held to be insufficient justification.

The court in *Wellenkamp* held that any automatic enforcement of a due-on clause, particularly at times when mortgage money is in short supply, would operate in an extremely inhibitory manner. Further, if the lender were allowed to increase the interest rate to current market levels, this too would operate as a restraint on alienation. The restraint in the *Wellenkamp* case was held to be unreasonable because the large down payment by *Wellenkamp* created a sufficient equity to insure an adequate incentive not to commit waste or permit the property to deteriorate.

The implications of the *Wellenkamp* decision are very important in the area of financing real property purchases. Loans with institutional lenders may be assumed at the lower than prevailing interest rates unless the lender is able to demonstrate in court that its security will be impaired by the assumption. Financing possibilities involving an assumption of an existing loan include buyer paying all cash to the seller for the seller's equity or the seller carrying back a second deed of trust or an all-inclusive deed of trust as part of the purchase price.

The decision in *Wellenkamp* is expressly restricted to enforcement of due-on clauses by institutional lenders. No opinion was

Commissioner Appoints Five Members to Real Estate Advisory Commission

Real Estate Commissioner David H. Fox has appointed five prominent real estate brokers to the state's newly formed Real Estate Advisory Commission.

Named as members of the Commission are Clark E. Wallace of Moraga, current president of the California Association of Realtors; Ray C. Carlisle of Oakland, current president of the California Association of Real Estate Brokers; Alberta (Peppy) Mayer of Fremont, former director of the California Association of Realtors; Emmette T. Gatewood, Jr., of Los Gatos, a current director of the National Association of Realtors; and George M. Marcus of Los Altos, a current member of the California Housing Council.

The Commission acts as a resource to the DRE in formulating how the department may best advance the legitimate interests of consumers, industry members, and real estate licensees statewide.

One of the first agenda items for the Commission will be the newly developed Code of Ethics and Professional Conduct for all real estate agents. The members will also be discussing appropriate ways to enhance consumer protection and increase professionalism within the real estate field.

Meetings of the commission will be open to the public, giving everyone with good ideas the opportunity to have them considered.

Members of the commission serve without pay, but will be reimbursed for necessary expenses.

expressed as to whether private lenders, including sellers who take back secondary financing with due-on clauses will be bound by the holding of the case. The rationale underlying the decision tends to suggest that it would be applicable to private as well as institutional lenders.

Neither does the opinion address the issue of automatic enforcement of due-on clauses in deeds of trust used by federally chartered savings and loan associations. The applicability of state law—statutory and decisional—to loans by federal S & Ls is not settled and is the subject of pending litigation.

Though there can be no automatic enforcement of due-on clauses after *Wellenkamp*, there may still be circumstances in which enforcement will be allowed to protect the lender's interest. Factors which must be weighed in any transaction involving an assumption under a trust deed with a due-on clause include the buyer's credit rating, the current money situation, the amount of equity the buyer will have in the property as a result of down payment, etc. Also adequate protection must be provided to the seller against liability in the event that the buyer defaults. However, given the fact that neither the lender's nor the seller's interests are put in jeopardy by an assumption, prospective buyers generally will have more flexibility in arranging financing as a result of this decision.



Summary (Continued from page 1)

business educational or promotional practices pertaining to the business of the furnisher; and other items of a similar nature promotional of the furnisher's business.

Real Estate License Preparatory Courses

AB 3083-Young—Ch. 840: Requires the Real Estate Commissioner in cooperation with the Superintendent of Public Instruction to adopt minimum criteria to apply to a course, program of instruction, training or study purporting, in an organized setting, to prepare an applicant for any real estate license examination and which is offered subject to the Private Postsecondary Education Act of 1977. The criteria must relate the quality and content of the course so as to reasonably and adequately achieve knowledge of the stated objectives of the Real Estate Law and shall be implemented, administered, and enforced by the Superintendent of Public Instruction six months following the adoption of the minimum criteria, but no sooner than January 1, 1980.

Also requires the Commissioner, within 60 days following the initial adoption of regulations setting forth minimum criteria, to file a specified report with the Legislature.

Right to Financial Privacy Act

S.B. 708-Sieroty—Ch. 1346: Makes various changes to the Act, the most significant insofar as the investigations involving examination of bank records is concerned are:

1. Under existing law the customer has 10 days after service to move to quash the subpoena or summons before the bank is required to release the records. The law now provides that an authorized representative of a state or local agency may obtain financial records, if, among other stated requisites . . .

"Ten days after service pass without the customer giving notice to the financial institution that the customer has moved to quash the subpoena."

2. Under existing law the agency examining the financial records of the customer pursuant to the consent procedure must notify the customer of such examination within 30 days thereof and inform the customer that he has a right to make a written request as to the reason for such examination. This new law now measures the time for such notice from the receipt of any of the customer's financial records.

Also provides for extending delay of such notice through court processes.

Real Property Sales Contracts—Prepayment

S.B. 2050-Holmdahl—Ch. 565: Under present law a buyer of a residential dwelling (4 units or less) under a real property sales contract may prepay all or part of the balance due on the obligation at any time.

This legislation authorizes the seller, by a written agreement with the buyer, to prohibit prepayment for up to a 12-month period following the sale. A waiver (appears meaningless) by the buyer is contrary to public policy.

The intent of this law is to give the seller under a real property sales contract the opportunity to take advantage of the tax breaks available for installment sales. If 30% or more of the total price were paid within the first 12 months, the seller would be liable for taxes on the total gain from the sale whether received or not.

Thus sellers under such real property sales contracts will have some reasonable assurance that payment of taxes on their gains will be on the installment basis as planned.

Mortgages and Trust Deeds

A.B. 2118-Chimbole—Ch. 509: Deletes the requirement for the mortgagor or trustor or owner of the land to make a demand for a certificate of discharge or full reconveyance when a lien (mortgage or trust deed) has been paid in full. Instead, requires the mortgagee, or the assignee, to execute and acknowledge a certificate of discharge automatically and cause same to be recorded (unless he has written instructions to the contrary from the mortgagor or trustor or the owner).

In the case of a fully paid deed of trust the beneficiary (or assignee) is required to execute and deliver to the trustee a request for a full reconveyance and for the trustee to cause same to be recorded (if no contrary instructions). The trustee is also required to deliver to the trustor the deed of trust and note.

If the certificate of discharge or full reconveyance is to be delivered to the mortgagor or trustor, or the owner of the land, through an escrow to which such mortgagor, trustor, or owner is a party the mortgagor or trustee need not record same.

Experimental Loans—Banks

A.B. 2156-Ellis—Ch. 394: Among other things this Act authorizes the Superintendent of Banks to adopt regulations permitting banks to make experimental loans on residential real property. Such experimental loans shall be limited to forms of graduated payment mortgages, reverse annuity mortgages, flexible payment and flexible rate mortgages and combinations of such mortgages, with the further provision that such alternative mortgage instruments shall be limited in number, simple and comprehensible, and provide adequate opportunities and protections to those persons and classes of persons who have

previously not been able to participate in home ownership. The regulations shall also contain a provision requiring that full disclosure be made to potential applicants, among other things, of the nature and effect of the alternative mortgage payment instrument, the payment due each month of the payment term, and all costs or savings attributed to the alternative mortgage instrument.

The Superintendent is required to report annually to the Legislature. These provisions would remain in effect until January 1, 1984 and on such date are repealed.

Mortgage Guaranty Insurance

S.B. 2131-Beverly—Ch. 546: Allows a mortgage guaranty insurer to insure loans of institutional lenders secured by a mortgage or deed of trust on residential real property up to 100% of the fair market value of the real property. Applies to loans secured by liens on such real property in conjunction with a pledge or lien on personal property in the form of cash or equivalent, or loans which are experimental mortgages, flexible payment and flexible rate mortgages and combination of such mortgages—contains an urgency clause—became effective August 24, 1978.

Mortgage Guaranty Insurance—Stock Cooperatives

A.B. 2994-Bannai—Ch. 425: Provisions of the Financial Code, which became effective January 1, 1978, allow commercial banks and savings and loan associations, under specified conditions, to make loans on the purchase of an interest in a co-operative housing corporation by providing that such an interest is one in real property. No similar provision was added to the Insurance Code to allow private mortgage insurance agencies to insure these lenders.

This Act provides that the definition of "authorized real estate security" includes a stock or membership certificate issued to a tenant-stockholder or resident-member by a completed fee simple co-operative housing corporation. Thus, a mortgage guaranty insurance will be available for conventional loans secured by stock or membership certificate in a stock co-operative.

Home Protection Insurance

S.B. 2222-Foran—Ch. 1203: Establishes a comprehensive statutory scheme for regulation of the home protection (formerly warranty) industry by the Department of Insurance. Allows Real Estate licensees to solicit, negotiate and effectuate home protection contracts in connection with his or her licensed function. No home protection company shall pay to any person (including real estate licensees) any commission as an inducement or compensation for the issuance, purchase or acquisition of home protection contracts. Excepts from "Home Protection Contract" definition—home appliance warranties, pest control service agreements and certain other contracts. Urgency clause—Effective September 26, 1978.

(Continued on next page)

NEW RESEARCH REPORT

Recreational Facilities Criteria For Remote Subdivisions: The California Case, a study of the use of recreational land is now available from DRE, 714 P Street, Sacramento, California 95814. This study was developed by the Center for Business and Economic Research, California State College, Bakersfield. Cost \$1.50 plus tax.

Summary *Continued from page 6*

Bill to Maintain the Codes

S.B. 2052—Song—Ch. 380: Repeals certain obsolete provisions of the License Law. Real Estate Law: Repeals Section 10150.8 and Article 2.5 (commencing with Section 10465) of Chapter 6 of Part 1 of Division 4 of the Business and Professions Code.

Relocation Assistance—Property Appraisals

A.B. 3080—Lockyer—Ch. 378: Provides that with respect to provisions of the law relating to relocation assistance pursuant to which a public entity may acquire real property, when the property involved is owner occupied residential property and contains no more than 4 residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer to acquire the property is based. Prior to this enactment such appraisals were exempt from disclosure.

Assessor's List of Property Transfers

A.B. 2719—Kapiloff—Ch. 220: Under existing law, the county assessor is required to maintain a list of property transfers in the county, other than transfers of undivided interests, which have occurred within the prior 2-year period, with specified information regarding such transfers. Such list is required to be open to inspection by any assessee who has filed a timely application for reduction of his assessment before the local board of equalization or assessment appeals board upon payment of a fee of \$10.

This new law allows any person to inspect the list of property transfers, and would authorize the assessor to require payment of a fee equal to the cost of such inspections, not to exceed \$10. Does not apply to counties having a population of less than 50,000 people.

Mobilehome Parks—Right of Entry

A.B. 2785—Nestande—Ch. 396: Provides that the ownership or management of a mobilehome park shall have no right of entry to a mobilehome without prior written consent, except as to a right of entry upon the land on which a mobilehome is located for utility maintenance and protection of the mobilehome park at a reasonable time, or entry in emergency situations or when the mobilehome is abandoned.

Mobilehomes and Mobilehome Park Tenancies

A.B. 2291—Suitt—Ch. 1035: Changes the size of mobilehomes in mobilehome parks to which termination of tenancies applies from mobilehomes of 8 feet in width or 40 feet in length to those which are 32 feet in length but are less than 40 feet in length. Expands provisions prohibiting waiver of tenant's rights. Also changes the size of mobilehomes in the provision allowing real estate licensees to engage in sale of certain mobilehomes from the present law of mobilehomes which are greater than 8 feet in width and 40 feet in length to those greater than 8 feet in width and 32 feet in length.

Cal-Vet Loans—Mobilehomes

A.B. 719—Cullen—Ch. 13: Provides that the maximum purchase price under the Cal-Vet program of a mobilehome in a mobilehome park shall be \$22,500. Requires that the rate of interest charged for such purchases shall be 1% greater than that charged to purchasers of conventional housing or of a mobilehome on a lot owned by the purchaser.

Tax Impounds—Senior Citizens

S.B. 1318—Nejedly—Ch. 1071: Under existing law, senior citizens of 62 years of age or over may apply for and secure a right to postpone the payment of property taxes on their homes.

This legislation prohibits a lender from requiring a borrower, who has secured the right to postpone payment of the taxes, to maintain payments to an impound, trust or other type of account with regard to taxes if the borrower has postponed such taxes and has submitted evidence to the lender of the postponement. Further, the Act requires a refund of amounts paid into impound, trust, or other types of accounts prior to the submission of evidence of postponement if such amounts haven't been used in payment or partial payment of taxes. Applies to loan agreements executed after the effective date of the Act except it would not apply to a loan which is made, guaranteed, or insured by the Federal Government.

Eminent Domain—Inverse Condemnation

S.B. 1705—Sieroty—Ch. 411: Permits an inverse condemnation action to be commenced by a property owner if a public entity, having commenced an eminent domain proceeding, has not diligently attempted to serve the complaint and the summons relating to such proceeding, within 6 months after the commencement of the proceeding (adoption of a resolution of necessity).

Ground Water Recharge—Subdivisions

S.B. 2046—Vuich—Ch. 620: Permits local government to adopt an ordinance requiring the payment of a fee as a condition of approval of a subdivision requiring a final or parcel map, or as a condition to issuance of a building permit for the purpose of using such fees for construction of planned recharge facilities for replenishment of the underground water supply in the area of benefit.

Geological and Soils Report Notice of Intention

S.B. 1308—Alquist—Ch. 521: Requires subdivider to submit to the Commissioner as part of the notice of intention a true statement, if applicable, referencing any soils or geological reports that have been prepared for the subdivision.

Also requires final subdivision maps note any geological reports for the subdivision, date of such report, and the geologist's name. The soils report or geological report, or both, are to be kept on file by local government for public inspection.

Parcel Maps

A.B. 2032—Papan—Ch. 340: Existing law requires that, after approval of a final or parcel map of a subdivision, the city clerk shall transmit the map to the clerk of the county board of supervisors for transmittal to the county recorder.

This new law, instead, requires the city clerk to transmit parcel maps directly to the county recorder.

40-Acre Subdivisions

A.B. 1858—Chimbole—Ch. 88: Under existing law, a parcel map is required for certain minor subdivisions including those in which each parcel has a gross area of not less than 40 acres or is not less than a quarter-quarter section (government survey). A local ordinance, however, may require a tentative and final map for a subdivision in which one or more of the parcels is between 40 acres and 60 acres in size.

This legislation removes the authority of local government to require by ordinance tentative and final map approval for a subdivision containing parcels of between 40 acres and 60 acres in size.

The net effect of this Act is that a subdivision containing parcels of 40 acres or more will be accomplished by a parcel map and the design and improvements requirements for such a map per the Subdivision Map Act and local ordinances.

Multiple Final Map Filings

A.B. 2414—Craven—Ch. 338: Allows a subdivider to file multiple final maps relating to an approved or conditionally approved tentative map, provided such multiple maps are filed prior to the expiration of the tentative map and the subdivider informs the advisory agency (planning commission) of such intention when the tentative map is filed. Recites that the Act is declaratory of existing law.

Parcel Maps Certification

A.B. 2425—Craven—Ch. 335: Currently the Subdivision Map Act requires a statement by an engineer (surveyor) that the parcel map procedures of the local agency have been complied with and that the parcel map conforms to the approved tentative map and the conditions of approval thereof.

(Continued on last page)

The Structural Pest Control Board advises that its consumer education booklet 10 FREQUENTLY ASKED QUESTIONS ABOUT STRUCTURAL PEST CONTROL INSPECTIONS AND REAL ESTATE TRANSFERS is available.

This booklet attempts to answer the most common questions asked by the public regarding the pest control inspection report that usually accompanies a real estate transfer.

A copy may be obtained by sending a stamped, self-addressed envelope to:

"10 Frequently Asked Questions"
Structural Pest Control Board
1430 Howe Avenue
Sacramento, CA 95825

Bulk orders (over 50 copies) may be purchased by organizations for 8¢ a copy.

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Summary *Continued from page 7*

This enactment substitutes for the above-specified statement, statements that the requirements of the Subdivision Map Act and local ordinance have been complied with and that the map substantially conforms to the approved or conditionally approved tentative map, if any.

Liens to Secure Subdivision Improvements

A.B. 3178—Craven—Ch. 1105: Under existing law when the furnishing of security is authorized or required in connection with acts or agreements pursuant to the Subdivision Map Act, either a bond or bonds, a deposit of money or negotiable bonds, or an instrument of credit must be provided.

This Act would authorize, in cases where the local agency finds it would be impractical to require installation of the required improvements sooner than two years after recordation of the final map or parcel map, security to be in the form of a lien on the property to be divided, created by contract between the property owner and the local agency. In addition, any form of security authorized by ordinance and acceptable to the local agency would be allowed. The lien by contract or security instrument would take effect on its recording and would be indexed by the name of the owner in the grantor index and the local agency in the grantee index. The local agency may grant partial or full releases of the lien or subordinate same if the completion of improvements would not be jeopardized.

Parcel Maps

A.B. 3357—Chimbole—Ch. 426: Under present law the filing of any parcel map which creates four or fewer parcels and which requires no dedication or offer of dedication requires only the subdivider's signature and acknowledgment.

This legislation authorizes cities and counties to require for the filing of a parcel map, the written consent of all parties having any record title ownership interest in the real property being subdivided into four or fewer parcels if the subdivider has no record title ownership interest in the property. Record title ownership does not include mineral rights or other subsurface rights which have been severed from the fee ownership.

Residential Loans—Savings and Loans

A.B. 3637—Nestande—Ch. 400: Existing law permits a savings and loan association to make amortized loans upon the security of residential real property for single family use of 80% to 90% of the value of the real property, if, among other things, the loan does not exceed \$55,000. Existing law also permits associations to make loans upon such property up to 95% of the value under specified conditions, and if the loan does not exceed \$42,000.

This new law, among other things, raises the ceiling on 80% to 90% loans to \$75,000 and 95% loans to \$60,000.

Escrows—Real Estate Developer

A.B. 3638—Nestande—Ch. 552: Existing law, as found in the Financial Code, prohibits any person as a condition precedent to entering into any transaction involving the transfer of real property containing a single-family residence from requiring that the escrow be conducted by any specified escrow agent.

This enactment repeals existing law and would prohibit a real estate developer (defined as any person or entity having an ownership interest in real property which is improved by such person or entity with single-family dwellings which are offered for sale to the public) from requiring as a condition precedent to the transfer of real property containing a single-family residential dwelling that escrow services effectuating such transfer be provided by an escrow entity in which the developer has a "financial interest." The term "financial interest" means ownership or control of 5 percent or more of an escrow entity.

Imposes on developers violating its provisions a liability for damages in an amount equal to the greater of \$250 or three times the charge for escrow services, plus attorney's fees and costs. Any waiver of the prohibition is void as against public policy.

Contains an urgency clause and became effective August 25, 1978.

Fees or Land Dedications—Subdivision

A.B. 3653—Craven—Ch. 709: Existing law authorizes a city or county by ordinance to

require dedication of land, or the payment of a fee, or a combination of both if the ordinance meets given requirements, which include having a definite standard for determining the proportion of the subdivision to be dedicated and specifying when development of the recreational facilities will begin.

This legislation requires the city or county to develop a schedule specifying how and when it will use the land or fees. Collected fees which have not been committed within 5 years after payment of the fees or issuance of building permits on one-half the lots created by the subdivision, whichever occurs later, must be paid to the record owners of the subdivision as specified.

Personal Income Tax—Capital Gains

A.B. 3802—Kapiloff—Ch. 569: This comprehensive legislation pertaining to personal income tax provides, among other provisions, that a taxpayer may elect to exclude from gross income up to \$100,000 of any gain realized on the sale or exchange of the taxpayer's principal residence in accordance with rules to be prescribed by the Franchise Tax Board.

The election shall be available only once in a taxpayer's lifetime. In the case of a married taxpayer, an election may be made only if the taxpayer's spouse, at the time of the sale or exchange, joins in such election.

For purposes of this law, a sale or exchange includes destruction, theft, seizure, requisition, or condemnation of such property.

Principal place of residence means a dwelling owned and occupied by the taxpayer as the taxpayer's principal place of residence for at least two years prior to its sale or exchange, located in this state and receiving either the homeowner's exemption or the disabled veteran's exemption. It includes a residential unit in a cooperative housing corporation and a portion of a multidwelling or multipurpose dwelling occupied as a principal residence by the taxpayer.

Applies to sales or exchanges occurring on or after January 1, 1978, with respect to taxable years beginning on or after such date.

