



# REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Winter 1980

DAVID H. FOX, Commissioner

## MOBILEHOMES

Prepared by  
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Headquarters Office

Legislation effective July 1, 1980 has expanded to some extent the ability of real estate licensees to act as agents in the sale of mobilehomes. Prior to this legislation a real estate licensee could sell a mobilehome only if it was more than 8 feet wide and 32 feet long and had been registered with the Department of Motor Vehicles (DMV) for at least one year. Now licensees are also permitted to negotiate the sale of mobilehomes which are less than a year old, provided the requirements of Section 18551 of the Health and Safety Code for transforming a mobilehome to real property have been satisfied.

Under Section 18551, there are four principal prerequisites for transforming a mobilehome into real property: (1) obtaining a building permit, (2) placing the mobilehome on a foundation, (3) obtaining a certificate of occupancy and (4) recording a document reflecting that the mobilehome has been affixed to a foundation system. Licensees should also be familiar with the six preconditions which must be met before a local agency can issue a building permit. These are set forth in Sections 18551(a)(1) through 18551(a)(6) of the Health and Safety Code.

After a mobilehome has been installed on a foundation system pursuant to Section 18551 provisions it is deemed a fixture or improvement to the real property.

Attachment to a foundation system in accordance with the provisions of Section 18551 also results in other consequences for the mobilehome, its owner and for licensees. First, the mobilehome is taxable as real property. Secondly, DMV must cancel its registration and title to the mobilehome is thereafter registered with the county recorder where the mobilehome is located and ownership is transferred accordingly (until its removal from the foundation). Thirdly, removal from the foundation is prohibited unless prescribed conditions are met. Finally, it appears to allow real estate brokers to maintain an office to engage in the sale of mobilehomes at any location where all except one of the mobilehomes have been attached to a foundation.

### Taxation of Mobilehomes After July 1, 1980

After a mobilehome has been attached to a foundation system pursuant to Section 18551, it is taxable in the same manner as other real property. Mobilehomes which are sold new after July 1, 1980, but which are *not* attached to a foundation system pursuant to Section 18551, and mobilehomes sold new on or before June 30, 1980 for which vehicle license fees are 120 days or more delinquent on, or at any time after July 1, 1980, will be taxed as personal property. Taxation as personal property will be virtually indistinguishable from taxation as real property.

Those mobilehomes sold new on or before June 30, 1980, will continue to be taxed as vehicles, i.e., pay license fees until either permanently attached to a foundation pursuant to Section 18551 or until the registration fee is delinquent for 120 days or more.

Because some parts of the new legislation did not take its final shape until June, assessments practices this year will probably vary from county to county. Some mobilehomes may escape both property taxation and license fees. Assessment and other taxation procedures should be well established and standardized for the 1981-82 tax year.

A broker engaged in the sale of mobilehomes should, with some degree of assurance, be able to advise clients and prospective clients of the following:

(1) A mobilehome affixed to a foundation, certified, recorded, etc., after July 1, 1980, will be entered on the real property tax rolls of the county where located and will be taxed as real property.

(2) Mobilehomes with license fees delinquent for 120 days or more as of or after July 1, 1980, will be reported by DMV to the assessor of the county in which the mobilehome is located and will then be placed on the tax rolls.

(3) Mobilehomes on foundations before or after July 1, 1980, but not legally so in accordance with Section 18551, will appear on the unsecured property tax rolls and will be taxed as personal property during the 1981-82 tax year, but may escape taxation during the 1980-81 year.

### Removal of a Mobilehome from its Foundation

The new law prohibits removal of a mobilehome that has been attached to a foundation in accordance with the provisions

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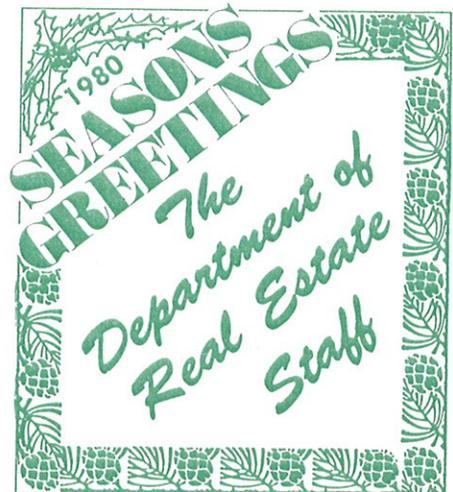
### Qualifying Interests in Mini-Syndicates with the Department of Corporations

prepared by  
Staff of Department of Corporations

This is the first in a series of articles on the regulation of the offer and sale of interests in small real estate syndicates by the California Department of Corporations ("DOC"). These are sometimes referred to as "mini-syndicates" because they have less than 100 interests. DOC administers the Corporate Securities Law of 1968 (Sections 25000 et seq., Corp. Code, "CSL"). The Rules under the CSL are contained in Subchapter 2, Chapter 3, Title 10, California Administrative Code.

Interests in mini-syndicates are "securities" subject to regulation under the CSL. While most mini-syndicates are limited partnerships, they all involve the basic arrangement whereby passive investors rely on the organizational and managerial ability of the syndicate manager to produce a profit from the investment, giving rise to an investment contract, profit-sharing agreement or limited partnership interest. Interests in mini-syndicates are securities regardless of the "value" of the property that is to be acquired with the investors' money. Indeed, DOC recently notified several syndicators, who believed that interests in their syndicates were not "securities" because

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

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**Disciplinary Action—June—August 1980**

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 \$3.00 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

**Business and Professions Code**

|          |  |         |  |
|----------|--|---------|--|
| 10177(c) | false advertisement  | 11018.2 | illegal subdivision sales (sale of subdivision lots without public report) |
| 10177(d) | violation of real estate law or regulations  |         |  |
| 490      | relationship of conviction to licensed activity  | 11023   | criminal violation of subdivision law                                      |
| 10145    | trust fund handling  |         |  |
| 10146    | failure to handle advance fees as trust funds or to furnish verified accounting to principal |         |  |
| 10148    | retention and availability of real estate broker records                                     |         |  |
| 10162    | office abandonment   |         |  |
| 10176(a) | making any substantial misrepresentation   |         |  |
| 10176(b) | making false promise   |         |  |
| 10176(c) | course of misrepresentations through salespersons  |         |  |
| 10176(d) | failure to disclose dual agency  |         |  |
| 10176(e) | commingling trust funds  |         |  |
| 10176(i) | 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(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) | improper use of governmental employment  |         |  |
| 10177(j) | fraud or dishonest dealing not in licensed capacity  |         |  |
| 10177(k) | violation of restricted license condition  |         |  |
| 10177.5  | civil fraud judgment based on licensed acts  |         |  |
| 11010    | failure to file notice of intention to sell or lease subdivision                             |         |  |
| 11012    | material change in subdivision without notice  |         |  |
| 11013.1  | sale of subdivided lands under blanket encumbrance   |         |  |
| 11013.2  | sale of subdivided lands subject to blanket encumbrance without compliance with conditions   |         |  |

**Regulations**

|           |   |
|-----------|---|
| 2725      | failure of broker to review agreements                        |
| 2731      | unauthorized use of fictitious business name                  |
| 2742      | failure of corporate broker to file articles of incorporation |
| 2785(a)10 | improper refund of earnest money deposit                      |
| 2831      | inadequate trust fund records                                 |
| 2831.1    | inadequate trust fund records                                 |
| 2832      | improper handling of earnest money deposit                    |
| 2832.1    | trust fund accountability                                     |
| 2902      | failure to furnish copy of instrument                         |
| 2950      | broker controlled escrow violation                            |

**LICENSES REVOKED**

| Name  | Address  | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|---|--|----------------|--|
| *Komada, Joseph Richard (REB) .....<br>Dba Sav On Realty Co.        | 10849 S. Prairie Ave., Inglewood.....              | 3/7-80         | 2725, 10148, 10176(a)(b)(i), 10177(d)                              |
| *Fleming, Verena Marie (RES).....                                   | 516 Madison Ave., Chula Vista.....                 | 5/14-80        | 10176(a)(i), 10177(g)(j)   |
| *Coffman, Mark Andrew (RRES).....                                   | 25001 Sebastian, Mission Viejo.....                | 5/14-80        | 10177(b)(k)  |
| Dickerson, Grendetta Alice (REB).....                               | 8550 MacArthur Blvd., Oakland.....                 | 6/2-80         | 2831, 2831.1, 10145, 10176(c), 10177(d)                            |
| Perrine, Karen Lynette (RES).....                                   | 7400 Via Serena, Cucamonga.....                    | 6/3-80         | 490, 10177(b)  |
| Kesler, Robert Lilley (REB)(REO).....                               | 203 West Avenue J, Lancaster.....                  | 6/3-80         | 490, 10177(b)  |
| Covel, Alfred Frederick (RES).....                                  | 16810 Maiden Ln., Granada Hills.....               | 6/3-80         | 490, 10177(b)  |
| Collier, Donald Hiram (REB).....                                    | 4837 Gertrude Dr., Fremont.....                    | 6/10-80        | 10177.5  |
| Collier, A. Rexford (REB).....                                      | 1920 Homestead Rd., Santa Clara.....               | 6/10-80        | 10177.5  |
| Mayer, Ernest (RES).....  | 666 E. Ocean Blvd., Ste 2805, Long Beach.....      | 6/18-80        | 490, 10177(b)(f)   |
| Harris, James Graham (RES).....                                     | P.O. Box B 66769, Represa.....                     | 6/24-80        | 490, 10177(b)(f)   |
| Tam, Kar-Keung Barthol (RES).....                                   | P.O. Box 141, 200 Broadway, Millbrae.....          | 6/25-80        | 490, 10177(b)  |
| Cristobal, Randolph (RES).....                                      | 4469 Morrell St., San Diego.....                   | 6/26-80        | 490, 10177(b)  |
| Williams, Carole Aline (REB).....                                   | 18338 Ventura Blvd., Tarzana.....                  | 6/30-80        | 10176(a)(c)(i), 10177(c)   |
| Costello, James Lee (REB).....<br>Dba Kelly Investment Mortgage Co. | 1435 N. Waterman Ave., #3, San Bernardino.....     | 7/1-80         | 2832.1, 2950, 10145, 10176(i), 10177(d)                            |
| Duran, Harold Vahan (RES).....                                      | 3373 McGraw Ln., Lafayette.....                    | 7/7-80         | 490, 10177(b)  |
| Ullensvang, Thomas Lee (RES).....                                   | 8800 La Riviera Dr., Sacramento.....               | 7/14-80        | 10177(d), 11010, 11018.2   |
| Van Lingham, Beryl Jean (RES).....                                  | 3288 Birchwood Ln., San Jose.....                  | 7/15-80        | 490, 10177(b)(f)   |
| Ridlehuber, Jackie Sigley (RES).....                                | 859 Lurline Dr., Foster City.....                  | 7/16-80        | 490, 10177(b)  |
| Banker, John Slade (REB).....                                       | 327 17th St., Oakland.....                         | 7/29-80        | 490, 10177(b)(f)   |
| Curtis, Charles Robert (RES).....                                   | 401 W. Lauceta, #209, Orange.....                  | 7/30-80        | 490, 10177(b)  |
| Morrill, Philip Edwin (RES).....                                    | 785 Doane Ave., Claremont.....                     | 7/30-80        | 490, 10177(b)  |
| Smedley, Carl Douglas (RES).....                                    | 5208 Shasta Dam Blvd., Central Valley.....         | 8/6-80         | 10176(a)(i)  |
| Cole, Samuel Hitchcock (RES).....                                   | 718 Parkcenter Dr., Santa Ana.....                 | 8/6-80         | 490, 10177(b)(f)   |
| Budman, Richard Bruce (RES).....                                    | 8756 Complex Dr., San Diego.....                   | 8/12-80        | 490, 10177(b)  |
| Miller, Carl (RES).....   | 525 N. Cabrillo Park Dr., Ste. 324, Santa Ana..... | 8/19-80        | 490, 10177(b)  |
| Kelly, Jerome Bernard (RES).....                                    | 2904 Crooked Creek, Diamond Bar.....               | 8/19-80        | 490, 10177(b)  |
| Buttitta, George Washington (REB).....                              | 383 Redwood Ave., Santa Clara.....                 | 8/19-80        | 490, 10177(b)  |
| Miles, Jeanne Flow (RES).....                                       | 1550 Camelot Dr., Corona.....                      | 8/20-80        | 490, 10177(b)  |
| Larsen, Ted Terrill Leland (RES).....                               | 7444 Auburn Blvd., Citrus Heights.....             | 8/26-80        | 490, 10177(b)  |
| Lewis, Bettye June (RES).....                                       | 2635 Logan St., Oakland.....                       | 8/28-80        | 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 |
|---|---|----------------|--|
| Dunham, John Phillip (RES)<br>(Right to RRES license on terms and conditions)   | 905 W. Main, Ste. D, El Cajon                 | 6/3/80         | 490, 10177(b)  |
| Silva, Phillip Joseph (RES)<br>(Right to RRES license on terms and conditions)  | 3675 Paul Jones Ave., San Diego               | 6/3/80         | 10177(j)   |
| Owings, Winnie Faye (REB)<br>(Right to RREB license after 180 days on terms and conditions)   | 203 West Avenue J, Lancaster                  | 6/3/80         | 490, 10177(b)  |
| Grassi, Peter Edward (RES)<br>(Right to RRES license on terms and conditions)   | 600 Montgomery St., San Francisco             | 6/4/80         | 10177(b)   |
| Keshishian, Frank (RES)<br>(Right to RRES license on terms and conditions)  | 4605 Lankershim Blvd., Ste. 400, N. Hollywood | 6/12/80        | 490, 10177(b)  |
| Evans, Stephen Robert (RES)<br>(Right to RRES license on terms and conditions)  | 9723 Bolsa Avenue, Westminster                | 6/12/80        | 490, 10177(b)  |
| Jacobs, Gloria Rose (RES)<br>(Right to RRES license after 120 days on terms and conditions)   | 2369 Loring St., San Diego                    | 6/17/80        | 490, 10177(b)  |
| Corbin, William Eazer (RES)<br>(Right to RRES license after 120 days on terms and conditions)   | 960 N. Highway 101, Apt. 5, Leucadia          | 6/17/80        | 490, 10177(b)  |
| Gillen, Thomas William (REB)<br>(Right to RREB license on terms and conditions)   | 4192 Denver Ave., Yorba Linda                 | 6/24/80        | 490, 10177(b)  |
| Glanz, Reynold Lester (REB)<br>(Right to RREB license on terms and conditions)  | 791 S. Brookhurst, Anaheim                    | 6/24/80        | 490, 10177(b)  |
| Diaz, Felix Carrillo (RES)<br>(Right to RRES license on terms and conditions)   | 1003 E. Commonwealth Ave., Fullerton          | 6/24/80        | 490, 10177(b)  |
| Gee, Louis (RES)<br>(Right to RRES license after 15 days on terms and conditions)   | 164 11th St., Oakland                         | 6/25/80        | 10176(a)(i)  |
| Martin, Christine Martha (REB)<br>Dba—Gold Seal Realty<br>(Right to RREB license on terms and conditions)   | 1196 S. Winchester Blvd., San Jose            | 7/9/80         | 2731, 2832.1, 10145, 10177(d)                                      |
| McGuire, Terrence Vincent (REB) (REO)<br>aka—McGuire, T. V.<br>(Right to RREB license after 15 days on terms and conditions)  | 50 Mooring Rd., San Rafael                    | 8/4/80         | 10177(f)(j)  |
| Marcovecchio, Joseph Herbert (RES)<br>(Right to RRES license on terms and conditions)   | 736 S. Garfield Ave., Alhambra                | 8/5/80         | 490, 10177(a)  |
| Debald, Elsa Eva (RES)<br>(Right to RRES license on terms and conditions)   | 22456 Barton Rd., Grand Terrace               | 8/6/80         | 490, 10177(b)  |
| DeStout, Michael Donald Jr. (REB)<br>(Right to RREB license on terms and conditions)  | 4536 Auburn Blvd., Ste. A, Sacramento         | 8/8/80         | 10145, 10176(a), 10177(d)  |
| Defterios, Neko Kimon (REB) (REO)<br>Off—N.O.I. Corporation<br>Off—National Olympia Incorporated<br>(Right to RREB license after 15 days on terms and conditions)         | 22730 Hawthorne Blvd., Ste. 200, Torrance     | 8/19/80        | 2742, 10176(a)(c)(i), 10177(c)(d)(f)(h)(j)                         |
| National Olympia Incorporated (REC)<br>Dba—Olympic Realty & Development Co.<br>Off—Defterios, Neko Kimon<br>(Right to RREC license after 15 days on terms and conditions) | 22730 Hawthorne Blvd., #200, Torrance         | 8/19/80        | 2742, 10176(a)(c)(i), 10177(c)(d)(f)(h)(j)                         |
| Off—National Olympia<br>Dba—National Olympia<br>Off—Defterios, Neko Kimon<br>(Right to RREC license after 15 days on terms and conditions)                                | 22730 Hawthorne Blvd., Ste. 200, Torrance     | 8/19/80        | 10176(a)(c)(i), 10177(c)(d)(f)(h)(j)                               |
| Bakerink, Rex (REB)<br>Dba—ERA Professional Associates Realty<br>(Right to RREB license after 15 days on terms and conditions)  | 22730 Hawthorne Blvd., #205, Torrance         | 8/19/80        | 10176(a)(i), 10177(c)(d)   |
| Place, Betty (RES)<br>(Right to RRES license on terms and conditions)   | 2775 Cottage Way, Ste. 33, Sacramento         | 8/20/80        | 490, 10177(b)  |
| Wathen, Spalding Gabriel (REB) (REO)<br>(Right to RRES license after 30 days on conditions)   | 3076 W. Escalon, Fresno                       | 8/20/80        | 10176(a)(i), 10177(d)(g)(j), 11012, 11018.2                        |
| Wathen, John Bernard (RES)<br>(Right to RRES license after 30 days on conditions)   | 987 E. Birch Ave., Fresno                     | 8/20/80        | 10176(a)(i), 10177(d)(j), 11012, 11018.2                           |
| Machock, Gene Bernard (RES)<br>(Right to RRES license after 30 days on conditions)  | 987 E. Birch Ave., Fresno                     | 8/20/80        | 10176(a)(i), 10177(d)(g)(j), 11018.2                               |
| Huther, Rita Margarete (RES)<br>(Right to RRES license after 15 days on terms and conditions)   | 64 Mariner Green Dr., Corte Madera            | 8/25/80        | 10177(f)(j)  |
| Kaplan, Henry Heimie (REB)<br>(Right to RREB license after 120 days on terms and conditions)  | 729 Fresca St., Solana Beach                  | 8/27/80        | 490, 10177(b)  |

**LICENSES SUSPENDED**

| Name                                    | Address                          | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|---|----------------------------------|----------------|--|
| Johnson, Donald Lewis (RES)             | 10849 S. Prairie Ave., Inglewood | 3/7/80         | 2902, 10176(i), 10177(d)   |
| Wheeler, John Edward Jr. (REB)          | 3732 W. Barstow, Fresno          | 6/17/80        | 10145, 10177(d)  |
| Kolb, Jerome J. (REO)<br>Off—MJB Realty | 2485 E. Chapman Ave., Fullerton  | 6/19/80        | 10177.5  |
| Lem, Bill (REB)                         | 831 Webster St., Oakland         | 6/25/80        | 2725, 10148, 10177(d)  |
| Clark, John James (RES)                 | 533 Fremont Ave., Los Angeles    | 6/26/80        | 490, 10177(b)  |
|   |                                  | 45 days        |  |

**LICENSES SUSPENDED WITH STAYS**

| Name  | Address                               | Effective date | Violation Business and Professions Code/Commissioner's Regulations |
|---|---------------------------------------|----------------|--|
| Reymenandt, Louis Desura (RES)<br>(All but 15 days stayed for 1 year on terms and conditions) | 1625 El Camino Real, Ste. 2A, Belmont | 6/2/80         | 10176(a), 10177(i)   |
| Beck, Gerald Maxwell (REB)<br>(All but 30 days stayed for 3 years on conditions)              | 3076 W. Escalon, Fresno               | 6/3/80         | 10176(a)(i), 10177(d)(g)(j), 11018.2                               |
| LaForest, Roland Wilbert (REB) (REO)<br>(All but 10 days stayed for 1 year on condition)      | 1130 Suffolk Ct., Los Altos           | 6/4/80         | 10177(b)   |
|   |                                       | 30 days        |  |

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**Then The Broker Prepared a Mortgage . . .**

. . . which led to *People v. Sipper* (1943) 61 CA 2d Supp 844, in which case the court held that the selection and preparation of a deed of trust and later a mortgage by the broker in an independent loan transaction constituted the unlawful practice of law.

Unfortunately the real estate industry as a whole appears to be little closer to a comprehensive definition of the "practice of law" than it was in 1943 when *Sipper* was decided. This is true largely because neither state legislative action nor reported cases on this subject have made it possible to approach an all-inclusive, clear or precise definition. Thus the long established character of the real estate agent's activities in serving the convenience of the community and the potential public harm which could result from uncontrolled brokerage operations must be clearly understood by today's licensee.

In *Sipper* a couple approached a broker and requested him to "make out a paper" to protect a woman from whom they had borrowed money. They did not tell the broker what kind of instrument they wanted and the broker prepared a trust deed which the county recorder refused to accept for recordation. The broker then prepared a mortgage and attempted to charge \$15.00 for the services, later reducing the fee to \$10.00. The broker was found guilty of the unauthorized practice of law because his selecting and preparing the legal instruments to be used involved more than a mere clerical function and the fee charged was found to be more than was appropriate for performing a clerical service.

Concerning the definition of "to practice law" the court said, ". . . in a larger sense it includes legal advice and counsel in the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court."

Business and Professions Code Section 6125 provides that no person shall practice law in California unless he is an active member of the state bar. Section 6126 of the Code states that for a person to do so if not an active member of the bar constitutes a crime (misdemeanor). But no statute defines the "practice of law." Moreover, in *Baron v. City of Los Angeles* (1970) 2 C. 3d 535 the court pointed out that the practice of law is whatever earlier judicial decisions said it was.

Thus the dilemma for responsible real estate agents—how to practice real estate but not practice law.

The very nature of a broker's "real world" business activities involves the selection of certain contract provisions, the completion of standardized contract forms and the performance of scrivener and clerical functions incidental to transactions negotiated by the agent.

Yet for a broker to draw complicated contracts or fill out printed transaction documents when the forms are not simple and commonplace "tools of the trade" used in the

(Continued on page 11)

## Legislative Summary

Here is DRE's summary of 1980 legislation passed by the California legislature which should prove to be of particular interest to real estate licensees. Unless otherwise stated, the operative date of these bills is January 1, 1981. **References to the code sections amended are to the Business and Professions Code, unless otherwise indicated.** A copy of any bill may be obtained by writing direct to the Legislative Bill Room, State Capitol, Sacramento, CA 95814.

### DEPARTMENTAL SPONSORED LEGISLATION

**Subdivision Funding Increase.** AB 2102—Hughes—Ch. 157: Appropriates \$803,842 from the Real Estate Fund to finance the addition of 31 permanent and 32 temporary positions to the Department's subdivision processing staff. **TAKES EFFECT IMMEDIATELY. Deficiency Appropriation, Recovery Act Claim; Real Estate Advisory Commission.** AB 2151—Hughes—Ch. 283: Increases the memberships of the Real Estate Advisory Commission from eight to ten members, six of whom must be licensed real estate brokers and four must be members of the public. Appropriates \$284,000 from the Real Estate Fund for Recovery Act purposes. **TAKES EFFECT IMMEDIATELY.** (Amends Section 10054.) **License Law Change: Continuing Education.** AB 2670—Hannigan—Ch. 263: Repeals \$4 branch office fee and \$4 duplicate license fee. Clarifies continuing education requirements with respect to corporate licensees by requiring persons licensed as corporate officers only to satisfy continuing education provisions. Provides that anyone seeking reinstatement of a revoked license may be required to comply with continuing education provisions. Reinserts language relating to continuing education which was inadvertently chaptered out. (Amends Sections 10153.7 and 10223; adds 10171.1 and 10171.3; repeals 10217 and 10220.) **Mortgage Loan Disclosure.** AB 3201—Waters—Ch. 553: Requires a real estate licensee to furnish a mortgage loan broker disclosure statement on all mortgage loan broker negotiated loans regardless of loan amount. (Amends Sections 10240, 10241 and 10245.) **Administrative Hearings—Restitution.** AB 3427—Harris—Ch. 688: Authorizes the Real Estate Commissioner in deciding cases affecting real estate licensees to impose as a condition of probation in lieu of suspension or revocation the payment of restitution to persons suffering damages as a result of a conversion of trust funds by the licensee. Effective only until January 1, 1984, unless extended or deleted. (Adds and repeals 10175.1.) **Subdivisions: Conversions.** SB 1646—Sieroty—Ch. 491: Increases to 90 days the time period during which a tenant of an apartment subject to conversion into a condominium, community apartment or stock cooperative may exercise an exclusive right to contract for the purchase of his or her unit. (Amends Gov. Code Section 66427.1.) **Subdivisions: Time-Share Projects.** SB 1736—Sieroty—Ch. 601: Includes time-share plans as subdivisions under the Subdivided Lands Act. Time-share projects will be considered "subdivisions" where they consist of 12 or more time-share estates or time-share uses having terms of five years or more. Owners of time-share projects for which sales were made prior to October 1, 1980, may continue sales after January 1, 1981, if an application for a public report has been submitted on or before November 28, 1980, and so long as an order of denial has not been issued by the Department. (Amends Sections 10249.3, 11000, 11000.1, 11004.5 and 11011.1; adds 10249.11 and 11003.5.) **Subdivisions: Exemptions.** SB 1776—Carpenter—Ch. 1336: Increases to five or more interests the number of interests necessary to trigger public report requirements for condominium, community apartment and stock cooperative projects. Exempts city limits standard residential subdivisions, public agency subdivisions and commercial and industrial subdivisions from the notice of intention and public report requirements. Increases subdivision filing fees to \$1,200 plus \$6 per interest for common interest filings and to \$300 plus \$10 per lot for standard subdivisions. (Amends Sections 10249.3, 10249.4, 11004.5, 11010, 11011, 11011.05, 11011.1, 11011.12, and 11018.2; adds Sections 11010.3, 11010.4 and 11010.6.) **Subdivision Public Reports.** SB 1777—Carpenter—Ch. 1335: Eliminates the requirement of submitting a report on the soil conditions and depth of fill, schools, and limits the statement regarding airports to a notice of the location of airports within two miles of the subdivision. However, the name and location of the public agency where information concerning soil conditions in the subdivision is available is to be referenced in the notice of intention. Provides that DRE is not a responsible agency for purposes of the California Environmental Quality Act. (Amends Sections 11010, 11013.1, 11013.2 and 11013.4; repeals 11018.4 and 11018.11; adds new 11018.6.)

### MOBILEHOMES

**Mobilehomes: Registration and Taxation.** AB 2915—Gage—Ch. 1149: Transfers jurisdiction for registering mobilehomes and mobilehome dealers from the Department of Motor Vehicles to the Department of Housing and Community Development. Relocates those code sections in the Health and Safety Code. Authorizes HCD to charge an annual registration fee and adopt rules and regulations for the transfer of registration and taxation functions from the Department of Motor Vehicles. Allows in lieu of holding title to the real property where the mobilehome is to be installed, the holding by the

(Continued on page 8)

## HAD THE TRUTH BEEN TOLD . . .

. . . fraudulent real property securities would not have been sold.

Corporation "C" acquired title to numerous lots in an unimproved California subdivision through a tax sale from a county assessor. Shortly after acquisition "C" created promotional notes secured by deeds of trust on many of these lots, which were real property securities as defined by Business and Professions Code Section 10237.1(b)(c).

These trust deeds showed "C" to be the trustor. The beneficiary was "A", a single individual. Some of the trust deeds were acknowledged by "B" as notary public and "B" also was the real estate broker against whom the DRE filed an Accusation for illegally offering the securities for sale.

Over a period of approximately six months "B" offered the real property securities for sale by means of newspaper classified ads in another large California county. The ads offered discounts off the face value of the notes of up to 50%. Individuals responded to the ads and purchased the securities through "B" who had failed to first obtain a real property securities endorsement for his broker's license and a permit from the Real Estate Commissioner as well as comply with other provisions of the real estate law applying to real property securities dealers (Article 6, Chapter 3, Part 1 of Division 4, Business and Professions Code).

In connection with the offers for sale without benefit of the appraisal requirement of law, "B" falsely represented the value of each lot to be equal to or greater than the face value of each note (interest only payable annually with principal due in two years). "B" also falsely represented that there were no other liens or encumbrances upon the various lots, when he knew, or should have known, this was not true.

"A" as beneficiary assigned the various notes and trust deeds to the individual purchasers, most of them receiving the first annual interest payment. Thereafter "C" made no payments of either principal or interest on the obligations. Certain purchasers complained to DRE. Following an investigation an Accusation was filed by the DRE against "B", the Department having no jurisdiction over "C" and "A".

Facts established at the Administrative Hearing included:

- lot values were actually far below the face amounts of the notes as represented by "B"
- lots were subject to improvement bonds amounting to over \$6,300 on each lot for principal, interest and penalties (some bonds had been foreclosed)
- purchasers were not furnished with the specified written statement required by Sections 10237.4 and 10237.5 of the Code
- no appraisal of each parcel of the real property, or purchaser's waiver thereof, was obtained in accordance with Section 10237.6.

The Administrative Law Judge issued a Proposed Decision that "B's" broker license be revoked. The Commissioner adopted the proposal. (In addition the matter was referred

(Continued on page 12)

## Syndicates *(Continued from page 1)*

the value of property owned by the syndicate equalled the value of the interests in the syndicate, that they were offering their securities in violation of the CSL.

Before being offered or sold in California, the interests in mini-syndicates must be qualified under the CSL unless an exemption is available. The exemption most frequently relied upon is the "non-public offering" exemption in Section 25102(f) of the CSL. The question of whether or not an offering is "public" so as to be excluded from this exemption depends, as the reader will suppose, upon a number of factors such as the manner of solicitation, the relationship and/or the sophistication of the parties and, to some degree, upon the number of persons and the information provided to them. Under the Commissioner's Rules, a transaction is presumed to be non-public if offers are not made to more than 25 persons and sales are not made to more than 10 such persons, but only if all of the offerees have either a significant preexisting relationship with the offeror or if, by reason of their business and financial experience, i.e., their investment sophistication, they can reasonably be assumed to be able to protect their own interests in the transaction. Commissioner's Release 5-C is available from DOC and provides information on determining whether or not an offering is "public."

When the qualification of a mini-syndicate offering is required, the failure to do so involves potentially serious consequences. Apart from possible criminal sanction, the syndicator in such a case may be held civilly liable to the investors, either for the return of their investment or for any damages sustained by them. There are sometimes difficult legal issues involved in determining whether or not the "non-public offering" exemption is available and, in such instances, the assistance of an attorney should be obtained.

The qualification of mini-syndicate offerings is not especially difficult for syndicators who have the necessary familiarity with the securities laws. About 60 percent of the real estate tax shelters which file applications with DOC are the so-called mini-syndicates. The great majority of these applications involved offerings to persons capable of undertaking the investment risk and with a reasonable degree of investment sophistication, thereby reducing substantially the burden placed on the Commissioner of Corporations in reviewing the offering. Virtually all such applications result in the issuance of a permit, though in about 50 percent of the cases some changes are required to accord with the standards adopted by the Commissioner.

In future articles, DOC will discuss the process of applying to qualify the sale of mini-syndicate interests.

**1980 Real Estate Law Book** with 8 page Supplement is now available from any office of the Department of Real Estate for \$3.00 (plus 6% sales tax if purchased in California).

## Notes from Licensing

by  
Larry Smith  
Real Estate Manager  
Licensing and Examinations

The subject of Continuing Education has been written about in this column in several previous issues of the *Bulletin*. Since this is the last issue to be published before January 1, 1981, when individual licensees and brokers holding only corporation licenses will be required to submit evidence of attendance at forty-five hours of approved Continuing Education offerings to renew their licenses, we decided to cover the subject one more time.

Telephone calls and other inquiries still indicate there are many licensees who are unaware of this new educational requirement

forty-five hours of Continuing Education will for license renewal. Failure to have attended obviously delay license renewal and possibly cause assessment of late renewal fees.

There is a special form (RE Form 251) to be used to present evidence of Continuing Education attendance. This form is mailed by DRE with every renewal application and is available at all DRE offices. Only the completed form is to be submitted with the renewal application. Certificates of attendance given by the course offeror are not to be submitted unless specifically requested by DRE.

Licenses that expire on or before December 30, 1980, but which are not renewed until on or after January 1, 1981, will be subject to the Continuing Education requirements. If, for example, a license expires on November 20, 1980, and it is renewed on time—or late—prior to January 1, 1981, no evidence of completion of Continuing Education courses will be required. If however the application for renewal is not made until on or after January 1, 1981, the Continuing Education requirements will be imposed.

## CAUTION—Financing Schemes May Prove Adverse

In recent months DRE has been seeing more and more offers to purchase real property involving financing with little or nothing in the way of a cash deposit and with large purchase money notes to be taken back by the seller. In most of these offers there is a great potential for injury to the seller.

Every owner receiving such an offer should carefully consider the possible ramifications of the proposed financing before accepting the offer. If such an offer is made through a real estate licensee acting as an agent for the seller, the agent has a duty to advise the seller of the potential for injury if the offer is accepted as presented. If the owner is still inclined to accept the offer in spite of the agent's warnings, the agent should recommend that the owner obtain legal counsel before proceeding any further with the transaction.

While there are many variations of these creative financing schemes, one recently reported to DRE involved an offer of \$154,000 by a real estate salesperson on a home that was free and clear of any mortgage. The terms of the offer gave the buyer the right to obtain a first loan of \$108,000. From the proceeds of the first loan, \$45,000 (29 percent of the purchase price) was to be paid to the seller with the balance of the proceeds—less the cost of the transaction—to be paid out of escrow to the buyer. The offer also provided for the seller to carry back a second note and deed of trust for \$100,000.

If the offer had been accepted and the transaction had materialized as contemplated under the terms of the deposit receipt, the buyer would have received title to the property encumbered by loans of more than \$200,000. In addition the buyer—with no funds having been invested—would have received between \$55,000 and \$60,000 in cash out of the escrow for the sale. The buyer would also have had several months in which to attempt to sell the property at a profit without risking any of her own funds. If unsuccessful in her efforts to sell the house, the buyer could then simply have walked away from the property leaving the seller with the choice of losing all interest in the property through foreclosure by the holder of the first deed of trust or of foreclosing himself under the second and taking over the property with the \$108,000 encumbrance. In either case, the seller would have ended up in a much worse position than when he agreed to sell.

In this particular case the owner of the property was fortunate to have been represented by a knowledgeable broker who presented the offer to the owner with an explanation of the adverse potential consequences to the seller if the offer were accepted. The owner wisely did not accept the offer.

The fact that a real estate licensee made this offer to purchase and that she and her broker presumably intended to share in the commission paid by the seller raises some interesting questions concerning her and her broker's fiduciary obligation to the seller.

Under the legal theory that says that a cooperating broker is the subagent of the seller of real property, the cooperating broker owes the same duty of disclosure to the seller as does the listing broker. Hence if the appropriate disclosure concerning the potential risks in accepting the offer had not been made by the listing agent, there is a distinct possibility of disciplinary action against the licenses of the offeror and her broker as well as against the listing agent.





# Memos From

## Continuing Education

prepared by  
Real Estate Specialist Tom Mabry

Here are some questions recently directed to and answers given by DRE's Continuing Education Unit. Hopefully they will prove helpful to *Bulletin* readers. The first two questions and answers appearing in the Fall *Bulletin* are now superseded and cancelled by the first question and answer in this article. (See explanation of recently enacted Section 10171.1 Business and Professions Code below.)

**Q.** How will Continuing Education requirements be applied if a real estate broker is licensed as an individual and also as an officer of one or more corporations?

**A.** If a real estate broker is licensed as an individual and also as an officer of one or more corporations, evidence of Continuing Education will be required only at the time of renewal of the individual license. For example, a broker is licensed as XYZ, Inc.—expiring 1981, an individual—expiring 1982, and ABC, Inc.—expiring 1983. The broker *will not* be required to submit evidence of Continuing Education for the renewal of XYZ, Inc. in 1981. The broker *will* be required to submit evidence of compliance with Continuing Education requirements for the renewal of the individual license in 1982. If the individual license is not renewed, the broker *will* be required to submit evidence of compliance with Continuing Education requirements for the renewal of ABC, Inc. in 1983.

Section 10171.1 of the Business and Professions Code, which becomes effective January 1, 1981, states that a licensed real estate broker who is licensed only as an officer of a corporation(s) will not be eligible for the renewal of such license nor for the issuance of a license in an individual capacity or as an officer of a corporation without submitting evidence of compliance with Continuing Education requirements. Thus, if a corporate broker/officer does not have a current individual license, the broker will be required to submit evidence of compliance with Continuing Education requirements before any *original* or *renewal* license can be issued to him in an individual or corporation officer capacity.

*Continuing  
Education*

is the  
Key to Continuing  
Success. Educational  
Persistence Pays.

**Q.** It's time to renew my license and I have to let DRE know I've completed Continuing Education requirements. WHAT DO I DO????

**A.** Procedures for submitting evidence of meeting Continuing Education requirements are contained in recently amended subdivision (a) of Commissioner's Regulation 3013 which reads:

"(a) A license renewal application on a form prescribed by the Real Estate Commissioner shall be filed not earlier than 60 days preceding license expiration date. Applicants must list all courses meeting continuing education requirements taken in compliance with Article 2.5 and the hours of attendance at each. Lists of courses furnished by the applicant at the time of renewal must show a total of no less than 45 clock hours. Certificates of attendance shall be retained by the licensee for a period of three years from the latest renewal date of the license."

The "form prescribed" will be furnished to you by the Department with your regular renewal application.

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

**A.** It is the responsibility of all DRE approved sponsors to maintain attendance records for a period of 5 years from the date of the offering. DRE does not have or keep such records. You should contact the sponsor and obtain a duplicate copy. (You may be charged a fee for the duplicate.) If you do not know the sponsor's address, DRE's Continuing Education Unit may be of help in furnishing you the sponsor's address of record. The Continuing Education Unit's address is Department of Real Estate, P.O. Box 160009, Sacramento, CA 95816. Telephone (916) 322-1752.

**Q.** Continuing Education offering I recently attended was somewhat technical for me although the instructor was excellent. I would like to attend this same offering again in order to clarify some of the points I'm not clear on. Will I be able to earn additional credit by attending the same offering more than once.?

**A.** Upon DRE approval, Continuing Education offerings are assigned a coded 13-digit number which remains effective for only one year from the date assigned. The offering may be attended only once for credit during this one year period. However, if at the end of the one year period, the offering sponsor renews the program by meeting DRE requirements, a new 13-digit number is assigned to the offering. The offering may then be re-taken for additional credit.

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## DISCRIMINATION BRINGS DRE DISCIPLINE

In early 1978, two brokers engaged in business as a real estate partnership. In the partnership Broker "A" was responsible for the sales and Broker "B" was responsible for the rental part of their business. Rentals then consisted of 60 single-family, multiple and townhouse units. Salesperson "C" was a licensee employed by the partnership through Broker "B" and he handled rentals.

Broker "B", without consulting Broker "A", set forth in writing various guidelines for handling the rentals. This policy was published, displayed in the rental office, distributed to at least one rental prospect and employees were instructed to follow it. One guideline read:

"Do not rent to anyone from the City of Oakland, California."

Both brokers allowed the implementation and enforcement of this office policy, except that Broker "A" told employees that the policy was not to apply to the renting of a townhouse owned by him personally.

A complaint was filed with DRE. An investigation culminated in an accusation against the licensees involved. The following findings were made by the Administrative Law Judge who presided at the hearing on the accusation:

- A number of people (both black and white) sought to see if they could rent property through the partnership rental agency and they were informed by employees or Salesperson "C" that rentals could not be made to Oakland residents. (This policy had the effect of limiting the opportunity for Oakland's black citizens to rent real property in the area served by the brokers and of channeling or steering them away from the area because of their race.)
- A white person who stated that she lived in Oakland was told by salesperson "C" that a townhouse was available for rental. This townhouse was personally owned by Broker "A" who had given instructions to rental employees that his townhouse was available to prospects from Oakland.
- Another Oakland rental prospect was told that although she could not rent a townhouse, she could buy one.
- A black person who said she was from Oakland inquired of Broker "A" about a townhouse rental. Broker "A" did not inform her of the Oakland restriction. The townhouse involved was owned by Broker "A".
- A black person seeking a rental was told by an employee that if he lived in Oakland "we can't rent to you." The prospect said he lived in Fremont. A key to the property was handed the prospect.
- Broker "B" stated she didn't rent to people from Oakland because they were black and didn't pay rent. She said she established the policy when after an illness she returned to her office and found many tenant problems, including bad rent checks and property damage.
- Broker "A" first saw the guidelines late in December 1977 when Broker "B" placed a

(Continued on page 9)

# GUIDELINES—SECURITIES BROKER LICENSING EXEMPTION

Several years ago when small real estate syndicate security offerings (100 owners or less) were regulated by the Department of Real Estate under the Real Estate Syndicate Act, DRE and the Department of Corporations issued a joint release designed to provide a readily understandable line of demarcation between the jurisdictions of the two state agencies over investment offerings related to real property.

Effective January 1, 1978, the Real Estate Syndicate Act administered by DRE was repealed and the Department of Corporations was given exclusive authority to regulate real estate syndicate security offerings. At the same time the licensing requirements under the Corporate Securities Law of 1968 were amended to exempt real estate brokers from the requirement of a securities brokers license for the sale of "real estate syndicates" as defined in Section 25206 of the Corporate Securities Law, a definition

taken from the Real Estate Syndicate Act. Thus, Section 25206 exempts a real estate broker from the requirement that he also be licensed as a securities broker-dealer, "when engaged in transactions in any interest in any general or limited partnership, joint venture, unincorporated association, or similar organization (but not a corporation) owned beneficially by no more than 100 persons and formed for the sole purpose of, and engaged solely in, investment in or gain from an interest in real property, including but not limited to, a sale, exchange, trade, or development."

The Department of Corporations recently issued release No. 62-C superseding the release previously jointly issued with DRE. The purpose of release No. 62-C is essentially the same as that of its predecessor, i.e., to provide guidelines for determining when real estate brokers selling interests in entities

which own, or are being created to own, real property are exempt from a requirement of licensing as a securities broker.

A verbatim reprinting of most of Release No. 62-C follows. (The term "real estate entity" is used to refer to the organizations in which a real estate broker can sell interests under an exemption from the requirement of licensure under the Corporate Securities Law.)

Since the Section 25206 (Corporate Securities Law) exemption from the licensing requirement for brokers-dealers is limited to licensed real estate brokers selling only securities which are interests in real estate entities, persons proposing to rely on the exemption should review the activities, or the proposed activities, of the issuer to determine whether it is a real estate entity. The following illustrates activities which will cause an issuer to be classified as a real estate entity:

1. Ownership by the entity of land with no income producing capacity or minimal income producing capacity, with the objective of holding the land for sale -- or development and sale -- at a profit.
2. Ownership and operation by the entity of an apartment building, apartment complex, or similar multiple-residential housing facility.
3. Ownership and operation by the entity of a building or building complex comprising offices for commercial or professional use.
4. Ownership and operation by the entity of a shopping center or commercial or industrial park offering units, sites, or spaces within the premises to lessees, and not entailing or contemplating the conduct by the entity, alone or with others, of any business within or in connection with the premises.
5. Ownership and operation by the entity of a motel, trailer park, mobilehome park, campground, or similar facility offering units, sites or spaces within or on the premises to lessees for monthly or longer periods; provided that the entity does not, alone or with others, conduct or manage any business in connection with the premises, except for housekeeping, maintenance, groundkeeping, and other services directly related to the premises.
6. Ownership of land and improvements by the entity on or in which a commercial, industrial, professional, or agricultural enterprise is to be conducted entirely by persons other than, and not affiliated with, the entity.
7. Ownership and operation by the entity of agricultural land in which the entity derives income solely from the cultivation, harvesting and marketing of agricultural products produced on the land, without conversion or processing of the products into a different form.

If a partnership, joint venture, unincorporated association or similar organization engages, or proposes to engage, in the conduct of a commercial, industrial, agricultural or other business or professional enterprise directly related, or incidental, to the ownership of real property, the entity is not a real estate entity. Therefore, licensed real estate brokers selling interests in such entities are not exempt from the licensing requirement as a broker-dealer under Section 25210(a) of the Law by virtue of Section 25206. The following illustrates activities which indicate that an entity is conducting a business or professional enterprise and is not a real estate entity:

1. Ownership and operation by the entity of a hotel.
2. Ownership and operation by the entity of a convalescent hospital.
3. Ownership and operation by the entity of an amusement park, golf course, skating rink, or similar type of recreational facility
4. Ownership and operation by the entity of a shopping center or commercial or industrial park where the entity, alone or with others, conducts a business on one or more of the units, sites, or spaces within the premises.
5. Ownership and operation by the entity of a motel, trailer park, mobilehome park, campground, or similar facility

offering units, sites or spaces within or on the premises to lessees for periods of less than one month, or where the entity, alone or with others, conducts a business within, on or in connection with the premises other than the renting of units, sites or spaces or other than housekeeping, maintenance, groundkeeping, and other services directly related to the premises. Examples include the ownership and/or operation of a grocery, souvenir, or other merchandise store.

6. Ownership and operation by the entity of agricultural land in which the entity derives income from the cultivation, harvesting, and marketing of agricultural products produced on the land or otherwise, with conversion or processing of the products into a different form.

Several clarifying comments are appropriate.

1. Interests in an entity contemplating acquisition of two or more properties are not considered interests in a real estate entity for purposes of Section 25206, if any of the properties require activities of the entity falling under the above illustrations.
2. Because of the limitations of real estate entity to investment in or gain from an interest in real property, a holding company or company owning stock or other securities is not a real estate entity. Indeed, all corporations are specifically excluded from those entities listed in Section 25206 of the Law and referred to throughout this release as "real estate entities".
3. Since obligations, such as promissory notes secured by real property or security interests in real property, are personal property, an entity contemplating investing in such obligations is not a real estate entity for purposes of Section 25206 because it will not be engaged solely in investment in or gain from real property.
4. A security in the nature of an investment contract is not considered an interest in a real estate entity. In a real estate entity, ownership of real property is vested in the partnership, joint venture or other organization. If title to the property is vested in the individual purchasers coupled with a management agreement designed to confer upon them proceeds or income from the activities of the manager, the security is an investment contract.
5. The Section 25206 exemption is unavailable if interests in the real estate entity will be owned beneficially by more than 100 persons. An interest held by a husband and wife is considered held by one person.

This release is limited to the exemption provided by Section 25206 of the Law. Other exemptions may be available for brokers licensed by the Real Estate Commissioner. We especially direct your attention to Section 25004(f) of the Law and Rule 260.204.1.

By order of  
GERALDINE D. GREEN  
Commissioner of Corporations

/s/  
ROBERT E. LA NOUE  
Assistant Commissioner  
Office of Policy

## NOTICES

DRE continues to receive many inquiries by licensees concerning whether real estate broker license applicants will need (1) a college B.A. degree and (2) eight (rather than six) statutory college level real estate courses to qualify for the broker examination.

**THE ANSWER IS, "NO."** Qualifications for broker examination and licensure remain the same. Any change in current broker qualification requirements will first require a law change by the state legislature.



Effective July 1, 1980, the enforcement authority of the Office of Fair Lending with respect to mortgage bankers was formally transferred to the Department of Real Estate.

In this regard, mortgage bankers should make certain that the fair lending notices which are provided to loan applicants pursuant to Housing and Financial Discrimination Regulation 7114 refer to the following offices of the Department of Real Estate as the appropriate places at which to file fair lending complaints:

Department of Real Estate  
185 Berry Street, Room 5816  
San Francisco, CA 94107

Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, CA 90012.



If your license is due for renewal on January 1, 1981, or soon thereafter, time has almost run out for you to earn the 45-hours of Continuing Education credit required for renewal. Hopefully you have had no trouble locating DRE approved Continuing Education offerings. However, for licensees who have experienced difficulty, a list of approximately 800 DRE approved offerings including sponsor's name, address and telephone number may be obtained from DRE by sending a check or money order in the amount of \$4.50 to Department of Real Estate—Attention Accounting Section—P.O. Box 160009, Sacramento, CA 95816.



Brokers dealing in used mobilehome sales should be aware that effective January 1, 1981, Business and Professions Code Section 10131.7 permits that where buyer and seller agree, the license fees paid for registration of the mobilehome may be prorated.



## Summary (Continued from page 4)

mobilehome owner of a prescribed long-term lease. Requires instead of a written consent from the person that holds title to the mobilehome to install the mobilehome that evidence be provided by the legal owner that indicates the mobilehome owner owns the mobilehome or has agreed to discharge any security interest in the home. Deletes the requirement that fees paid into the Mobilehome Revolving Fund be used for the enforcement of consumer protection. Authorizes HCD to use the money for administration. Incorporates provisions proposed by SB 1992 and SB 1422. Includes numerous other provisions relating to mobilehomes. (Amends various Health and Safety, Revenue and Taxation, and Vehicle Code Sections.) **Manufactured Homes: Zoning.** AB 2698—Roos—Ch. 1150: Expressly requires factory-built housing and certain mobilehomes installed on foundation systems be permitted in zones in which conventionally constructed family dwellings are permitted. Permits local agencies to establish certain zones for these mobilehomes and factory-built housing so long as the effect of this zoning does not prohibit these structures from the agency's jurisdiction. Enacts various changes with respect to the transport of such housing including increasing the width restrictions on mobilehomes from 10 to 14 feet. (Amends various Government, Health and Safety and Vehicle Code Sections.) **Mobilehomes: Property Taxation.** SB 1422—Presley—Ch. 285: Provides a system of taxing mobilehomes in the same manner as conventional homes under statutes implementing Proposition 13. Revises the method of taxing mobilehomes under the sales and use tax law. Incorporates state sales and use tax exemptions into local tax authority. **TAKES EFFECT IMMEDIATELY.** (Amends various Health and Safety, Revenue and Taxation and Vehicle Code Sections.) **Proration of License Fees in Sale of Used Mobilehomes.** SB 1595—Speraw—Ch. 227: Permits the buyer and seller of a used mobilehome to agree to the proration of the license fees paid for registration of the mobilehome. (Amends Section 10131.7.) **Mobilehome Parks.** SB 1665—Robbins—Ch. 1127: Exempts the leasing of mobilehome park space from the Subdivided Lands Law except in the case of leases of over five years. (Amends Section 11000.) **Mobilehome Park Conversions.** SB 1722—Craven—Ch. 1065: Requires that a subdivider, at the time of filing a tentative map, file a report on the impact of a mobilehome park conversion on park residents. The report must address the availability of adequate replacement space in mobilehome parks. The subdivider is required to make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map. Local agencies or legislative bodies may require subdividers to mitigate any adverse impact of the conversion on the ability of displaced residents to find adequate space. (Adds Gov. Code Section 66427.4.) **Mobilehomes: Zoning.** SB 1960—Rains—Ch. 1142: Provides that a city, including a charter city, county, or city and county, shall not prohibit the installation of mobilehomes on foundation systems on lots zoned for single-family dwellings. However, such installation may be subject to certain other requirements applicable to conventionally constructed single-family residential dwellings. Any architectural requirements imposed on the mobilehome structure itself would be limited to roof overhang, roofing materials and siding materials. (Adds Gov. Code Section 65852.3. Amends Health and Safety Code Section 18300.)

### HOUSING

**Homestead Exemptions.** AB 1613—Bane—Ch. 15: Increases homestead exemption to \$45,000 for heads of households and persons aged 65 or over and \$30,000 for all others. (Amends Civil Code Section 1260.)

### CONSUMER PROTECTION

**Release of Liens.** AB 399—McVittie—Ch. 529: Establishes a bonding procedure for removing mortgage liens where the holder of the mortgage cannot be located or refuses to release the lien after payment in full. (Adds Civil Code Section 2941.7.) **Recordation of Liens Affecting Real Property.** AB 481—Papan—Ch. 1281: Requires the county recorder or a state agency in the case of a state tax lien to notify the property owner that an involuntary lien has been recorded which affects his or her title. Requires a lien holder other than a government entity to pay a fee to the county recorder for the recordation of an abstract of judgment or other document which creates an involuntary lien. (Adds Civil Code Section 2885 and Gov. Code Sections 27297.5 and 27387 and amends Code of Civil Procedure Section 674.) **Quiet Title Actions.** AB 1676—McAlister—Ch. 44: Enacts a general comprehensive statutory scheme providing for an action to establish title against adverse claims to property or any interest therein. (Amends Civil Code Sections 1006 and 2931(a); amends and renumbers Chapter 3; adds Chapters 4 and 4.5. Repeals Code of Civil Procedure Section 738 et seq. relating to property.) **Prepaid Rental Listing Services.** SB 1564—Watson—Ch. 1051: Provides for the licensing of any person rendering prepaid rental listing services and specifies the fees for such licenses. Requires a bond to be maintained in force for each separate business location by a licensee. Exempts real estate brokers from the licensing and bond requirements. Provides a regulatory structure under which prepaid rental listing services must operate. Establishes violations under the act and disciplinary and civil remedies to such violations. (Adds Article 2.3 to Chapter 3 of Part 1 of Division 4 of, and repeals Section 10143 of the Business and Professions Code.) **Real Estate Commissions Disclosure.** SB 1958—Greene—Ch. 96: Clarifies the coverage of

(Continued on page 9)

### Mobilehomes (Continued from page 1)

of Section 18551 unless the following conditions are met: (1) all persons having title to any estate or interest in the real property consent to its removal, and (2) 30 days prior to removal, the owner of the mobilehome notifies the Department of Housing and Community Development (HCD) and the local assessor of its intended removal.

HCD must be given written evidence of the consent to removal by all persons having title or interest in the real property. HCD will then require the owner to obtain a transportation permit or mobilehome registration, whichever it deems appropriate. Once removed from the permanent foundation, the mobilehome will be treated as personal property in accordance with the above comments on taxation of mobilehomes.

#### Transferring Title—Pink Slips

If a mobilehome is attached to a foundation in accordance with Section 18551, DMV will cancel the registration when the certificate of occupancy is issued and the document reflecting installation on a foundation system has been recorded. Thereafter the mobilehome will be treated as any other residential improvement to real property. If all requirements of Section 18551 have been satisfied, title insurance for the lot and mobilehome package should be available.

A vehicle pink slip will continue to evidence title to mobilehomes that have not been legally affixed to a permanent foundation system, and a transfer of the pink slip will continue to be the means for transferring title to such mobilehomes.

#### Mobilehome Sales Office

Under Section 10131.6(b) of the Real Estate Law a real estate broker may not maintain an office to engage in the sale of mobilehomes at any place where two or more mobilehomes are displayed or offered for sale unless he also has a mobilehome dealer's license. However, when a mobilehome is transformed into real property through compliance with the requirements of Section 18551, the limitations of Section 10131.6(b) no longer appear applicable. Therefore, a broker can set up an office where all of the mobilehomes *except one* have been placed on foundations with proper certification and recordation.

#### Special Problems

Effective immediately, the notice required by Section 10147.5 of the Business and Professions Code regarding the negotiability of the amount or rate of commissions is applicable to the sale of mobilehomes, whether the mobilehome is considered real or personal property or a vehicle for tax purposes.

Mobilehomes brought into California from out of state will be treated as if they were originally registered in California for tax purposes, registration and transfer of title.

This article is a general discussion of some of the aspects of recent legislation dealing with mobilehomes. For guidance in a specific fact situation, a licensee should seek the advice of his own attorney. **DRE**

## MOBILEHOMES— Fixing the Model Year

Recently the Santa Barbara District Attorney and the Department of Real Estate considered actions against a real estate broker for his handling of a used mobilehome sale. The broker was accused by the buyer of the mobilehome of having falsely represented it to be a 1969 model when in fact it had been manufactured in 1963.

The broker admitted that he had told the buyer that the mobilehome was a 1969 model based upon what the seller had told him. When interviewed, the seller acknowledged that she had told the broker that the mobilehome was a 1969 model because that is what she had been told when she purchased it from a former owner.

The model year of a mobilehome is important to a buyer not only in judging its value, but also in the determination of the rights of a tenant in a mobilehome park under the California Mobilehome Residency Law (Civil Code Section 798, et seq.). In the case in question, the management of the park where the mobilehome was located permitted it to remain on site after the transfer of ownership in spite of its age. A different buyer in a similar situation would likely not be as fortunate.

In its handling of this complaint, the District Attorney's office took the position that the real estate broker was under a duty to verify the year of manufacture of the mobilehome at the time of listing it. Such verification only requires that the licensee check the pink slip for the mobilehome. The District Attorney's office also concluded that a misrepresentation of the age of a mobilehome by a licensee after having failed to obtain correct information was a basis for an action against the licensee under Business and Professions Code Section 17500 for untrue or misleading misrepresentations.

In this case no action was taken against the licensee by either the District Attorney or the Department of Real Estate because there were many mitigating factors. The case however should serve as an object lesson for all real estate licensees, not only those engaged in the sale of used mobilehomes.

A listing agent has an obligation to do more than simply transcribe onto a listing form all of the information about the property that is given to him by the owner. In many instances the owner does not have precise information to complete the listing and admits to lack of such information. It is the duty of the licensed professional to verify those items in the listing which are susceptible to verification, particularly when the licensee knows or has reason to believe that the information is likely to be important to prospective buyers.

## Recent Discrimination Case Results

Victims of housing discrimination may look beyond relief provided by governmental agencies and seek private judicial enforcement.

As stated in Title VIII of the 1968 Civil Rights Act it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. Title VIII prohibits discrimination because of race, color, religion, sex or national origin in the sale, rental or financing of dwellings. Moreover, the United States Supreme Court has held in *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409 that the 1866 Civil Rights Act prohibits discrimination in the sale or rental of *all* housing based upon race or color.

In each of the following actions based upon alleged discrimination in housing, damages were awarded to the plaintiff:

**Allegation:** Discriminatory refusal to rent based upon race. Relief granted: Jury awarded \$20,000 compensatory damages and \$10,000 punitive damages. Court upheld award and also awarded \$6,443.00 in attorney's fees plus court costs. *Parker v. Shonfeld*, 409 Fed. supp. 876 (Northern District of California, 1976.)

**Allegation:** Racial discrimination in sale of vacant lot. Relief granted: \$10,000 award (\$1,500 actual damages, \$3,000 punitive damages and \$5,500 attorney's fees) notwithstanding the fact that the property in question was transferred to the plaintiff fourteen days after the filing of the complaint. *Clemons v. Runck*, 402 Fed.Supp. 863 (Southern District of Ohio, 1975).

**Allegation:** A black couple were enjoined from purchase of a home pending appeal of a court decision finding bias against the owner. Relief granted: Court of Appeal award of \$5,185 for the difference in interest rates and \$4,500 for loss of capital gains. *Moore, et al. v. Townsend, et al.*, 577 F(2d) 424 (Seventh Circuit, 1978).

**Allegation:** Refusal to sell real property based on race. Relief granted: Preliminary injunction and \$822 reimbursement to plaintiff for out-of-pocket expenses. (In this case, real estate brokers intervened, alleging the loss of commission because of defendant's refusal to sell.) *Crumble v. Blumthal*, 549 F(2d) 462 (Seventh Circuit, 1977).

**Allegation:** Redlining. Lending institutions sought to require a higher down payment because the home that the plaintiff was buying was located in a racially mixed area. (Plaintiff later financed the purchase through another lending institution.) Relief granted: \$5,000 in compensatory damages, \$2,500 in punitive damages and attorney's fees and court costs. *Harrison v. Heinzeroth Mortgage Co.*, 414 F.S. 66 (Northern District of Ohio, 1977).

**Allegation:** Refusal to rent based on race. Relief granted: Awarded \$2,500 compensatory damages and \$4,500 to cover attorney's fees at the trial level plus an additional \$1,500 in attorney's fees in connection with the appeal. (The lower court refused to hear the testimony of fair housing "testers," but the appeal court ruled that the proffered testimony of the testers should have been considered.) *Wharton v. Knefel*, 562 F(2d) 550 (Eighth Circuit, 1977). **DRE**

### Summary *(Continued from page 8)*

AB 802 (See 1979 summary) disclosures regarding the negotiability of real estate commissions and would extend the disclosure requirement to listing agreements involving the sale of mobilehomes. TAKES EFFECT IMMEDIATELY. (Amends Section 10147.5.)

### DEVELOPMENT

**Subdivision Processing.** AB 2320—McCarthy—Ch. 1152: Provides time limitations in which the Department must review a notice of intention to sell or lease subdivided land and issue or deny a public report. Deletes certain requirements to be contained in a notice of intention. Makes additional changes in the Subdivision Map Act and the zoning power of local governments directed towards encouraging the construction of housing and the elimination of red tape. (Amends, adds and repeals various sections of Gov. Code and amends Sections 11010 and 11018.2; adds 11010.2 and 11010.3 to; repeals and adds 11018.6 of Business and Professions Code.) **Subdivisions: Conversion of Apartment Buildings.** SB 1645—Sieroty—Ch. 1128: Requires that each tenant of a unit proposed for conversion to a condominium, community apartment project, or stock cooperative be given 10 days notice of the time and place of any local hearing on the conversion, including notification of the tenant's right to appear and be heard. Prospective tenants must be given notice of the proposed conversion during the period beginning 60 days prior to the filing of the tentative map. Confers upon tenants all appeal rights currently enjoyed by the subdivider. The bill incorporates changes in Government Code Section 66427.1 made in SB 1646 and SB 1838. (Amends Gov. Code Sections 66427.1, 66451.3, 66452.3 and 66452.5; adds 66452.8 and 66452.9.) **Subdivisions: Conversions.** SB 1838—Marks—Ch. 1048: Revises the list of findings required in order for local government approval of a stock cooperative, community apartment or condominium conversion. Requires that each tenant: (1) be given 60 days written notification prior to filing of a tentative map; (2) each tenant or person applying for rental has or will have received all required notices and rights; (3) receive 10 days written notification that an application for a public report has been or will be filed with DRE and that a copy of the public report will be available on request; (4) has been or will be given written notification within 10 days of final map approval; (5) has been or will be given 180 days prior to termination of the tenancy notice of intention to convert (increased from 120 days in current law); (6) has or will be given notice of a 90 days right-of-first refusal in purchasing that tenant's unit (incorporates changes made by SB 1646). Also conforms stock cooperative grandfathering provisions in Chapter 1192 of the Statutes of 1979 to the new rights and notices created by this bill. (Amends Gov. Code Section 66427.1 and Section 8 of Chapter 1192 of Statutes of 1979.)

### FINANCE AND TAXATION

**Mortgage Loan Fees and Insurance Premiums.** AB 2373—Young—Ch. 446: Increases the upper limit of fees that can be charged for various mortgage loan broker services and excludes title and recording charges from that limit. Revises the limit on the number of premiums collected for credit life and disability insurance. Repeals statutory provisions superseded by Proposition 2 amendments to the usury law. (Amends Sections 10241.1 and 10242.) **Real Property Foreclosures.** AB 2475—Fenton—Ch. 423: Relocates and consolidates provisions regarding the foreclosure of residential real property and the activities of foreclosure consultants. Repeals certain rights of the seller of a residence in foreclosure. Limits the time period in which a seller may elect to rescind transactions for such a violation to two years from the recordation of the notice of default. Excludes from the definition of a mortgage foreclosure consultant a variety of financial institutions, other businesses relating to the title or escrow business and certain actions by a real estate licensee, including a mortgage loan broker acting in that capacity. Repeals requirements that a person exercising a power of sale have no interest in the property. TAKES EFFECT IMMEDIATELY. (Amends Sections 10133.1 and 17351; repeals 11700 et seq; amends various Civil Code Sections.) **Loans: Interest Rates.** AB 3142—McAlister—Ch. 1139: Authorizes re-negotiable rate mortgage loans subject to certain restrictions. (Adds Civil Code Sections 1916.8 and 1916.9 and amends Section 1916.5; amends Sections 1227, 1236 and 5074 of Financial Code relating to interest rates.) **Escrow Agents.** AB 3305—Knox—Ch. 243: Limits the real estate licensee exemption from the escrow law to apply to any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required. (Amends Section 17006, Financial Code.) **Separate Assessments for Stock Cooperatives and Community Apartment Projects.** SB 1640—Speraw—Ch. 774: Requires county assessors to separately assess the interests of shareholders in stock cooperatives and co-tenants in community apartment projects upon written request. Takes effect on the lien date for the 1981-82 fiscal year and thereafter. A board of supervisors may postpone the effective date to the lien date for the 1982-83 fiscal year. (Amends Gov. Code Section 66412 and adds Rev. and Taxation Code Section 2188.7.)

### DISCRIMINATION

**Marital Status Discrimination.** AB 2244—Hughes—Ch. 191: Adds marital status as grounds for disciplinary action for refusal of a licensee to perform licensed services or making any discrimination or restriction in the performance of such services. (Amends Section 125.6.)



### Discipline *(Continued from page 6)*

copy on his desk. Broker "A" objected to the Oakland restriction but was told by Broker "B" that an attorney had advised that it was legal. Broker "A" told employees not to enforce the restriction in renting out his own townhouse and he avoided taking any responsibility enforcing the restriction. Except for his own townhouse, he was never actually involved with any prospective tenants who lived in Oakland. (When Broker "A" later purchased Broker "B's" interest in the partnership, he abolished the Oakland restriction.)

- Salesperson "C" first saw the rental guidelines at the same time Broker "A" saw them, when Broker "B" handed him a copy. Salesperson "C" questioned her about the restriction and was told that an attorney had said it was legal. She instructed him and all other employees to enforce the guidelines equally. Salesperson "C" applied the restriction against everyone from Oakland, whether black or white, except in the rental of Broker "A's" townhouse.
- In 1977 the population of Oakland was over forty-four percent black, whereas the population of the nearby city where the property is located (and two neighboring communities as well) had no more than one percent black population in 1970. During 1977 Broker "B" managed 60 rental units involving 97 tenants of which 18 were Latin Americans and 13 were black Americans.
- Broker "B's" office policy of not renting real property to Oakland residents was in substance a device to circumvent state and federal laws prohibiting the practice of discrimination because of race or color in the rental of real property.
- The evidence, and reasonable inferences from the evidence, established that Broker "A" and Salesperson "C" knew that the Oakland restriction was intended to preclude black persons from renting property in the area.

Grounds for disciplinary action against Broker "B" and Salesperson "C" were established pursuant to Business and Professions Code Sections 125.6 and 10177(d) and Section 2780, subsections (a), (b), (k), (t), (bb), and (cc) of DRE Regulations. Salesperson "C" was also found to be in violation of Subsection (s) of Section 2780. Grounds for disciplinary action against Broker "A" and Broker "B" were established pursuant to Business and Professions Code Section 10177(h).

As a result, the real estate broker license of Broker "A" was revoked with an immediate right to a restricted license on terms and conditions. The real estate broker license of Broker "B" was revoked with a right to a restricted license after 90 days on terms and conditions. The real estate salesperson license of Salesperson "C" was revoked with a right to a restricted license after 30 days on terms and conditions.



**LICENSES SUSPENDED WITH STAYS**

| Name   | Address   | Effective date      | Violation Business and Professions Code/Commissioner's Regulations |
|--|---|---------------------|--|
| Carpenter, Calvin Loveless (REB) (REO)<br>Dba Carpenter Realty<br>Off Carpenter Realty, Inc.<br>(Stayed for 1 year on conditions)    | 1611 4th St., Santa Rosa                                | 6 11 80<br>10 days  | 2831, 2831 I, 2832, 10145, 10176(c), 10177(d)(g)                   |
| Kolb, Jerome Jr. (REB)<br>(All but 90 days stayed for 1 year on condition)   | 2485 E. Chapman Ave., Fullerton                         | 6 19 80<br>180 days | 10177.5  |
| White, Christiane Mathilde (REB)<br>(All but 90 days stayed for 1 year on condition)   | 554 S. Los Coyotos Dr., Anaheim                         | 6 19 80<br>180 days | 10177.5  |
| Whitmore, Robert Autry (REB)<br>(Subject to stay after 30 days on terms and conditions)  | 3443 Beacon Ave., Ste. C, Fremont                       | 7 1 80<br>674 days  | 10162, 10177(d)  |
| Javier, Arthur (RES)<br>(All but 15 days stayed for 2 years on terms and conditions)   | 1110 S. El Camino Real, San Mateo                       | 7 2 80<br>60 days   | 10176(a), 10177(i)(g)(j)   |
| Adams, Giovannette (RES)<br>(Stayed for 1 year on condition)   | 1731 Berryessa Rd., San Jose                            | 7 16 80<br>30 days  | 490, 10177(b)  |
| Papadakis, Nicholas Ernest (REB) (REO)<br>Off Berendo Realty & Management Corp.<br>(All but 30 days stayed for 2 years on condition) | 267 West 7th St., San Pedro                             | 7 29 80<br>90 days  | 10176(d)(i)  |
| Magudson, Karl (REB)<br>Dba Key Realty<br>(Stayed for 2 years on terms and conditions)   | P.O. Box 10106, 2263 Lake Tahoe Blvd., South Lake Tahoe | 7 30 80<br>90 days  | 2832, 10145, 10176(a)(i), 10177(d)(g)(j)                           |
| MJB Realty (REC)<br>(Stayed for 1 year on condition)   | 2485 E. Chapman Ave., Fullerton                         | 7 31 80<br>180 days | 10177.5  |
| Giese, Ralph Franklin (REB)<br>(All but 10 days stayed for 1 year on terms and conditions)   | 3849 Castro Valley Blvd., Castro Valley                 | 8 6 80<br>30 days   | 2785(a)(10), 10145, 10177(d)(g)                                    |
| Rivers, Levi (RES)<br>(All but 30 days stayed for 3 years on terms and conditions)   | 11149 S. Crenshaw Blvd., Inglewood                      | 8 6 80<br>90 days   | 10177(j)   |
| Nelson, Allen Merle (REB) (REO)<br>(All but 20 days stayed for 1 year on terms and conditions)                                       | 1601 Civic Center Dr., Ste. 202, Santa Clara            | 8 18 80<br>30 days  | 10146, 10177(d)(g)   |
| California Consolidated Financial Services, Inc. (REC)<br>(All but 20 days stayed for 1 year on terms and conditions)                | 1601 Civic Center Dr., Ste. 202, Santa Clara            | 8 18 80<br>30 days  | 10146, 10177(d)(g)   |

**INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS**

| Name                       | Address                   | Date    |
|----------------------------|---------------------------|---------|
| Farris, Ernest Glen (REB)  | 1314 E. Shaw Ave., Fresno | 6 19 80 |
| Berger, Lewis Arthur (RES) | 12146 4th St., Yucaipa    | 8 18 80 |

Who are the real estate professionals? Realtors? Realists? MAIs? GRIs? and members of other renowned real estate societies? Yes, but not they only.

Any active real estate licensee dedicated to serving the real estate needs of the community with fairness, fidelity and currency of real estate knowledge has the credentials also. The one-man operation qualifies just as readily as

the multi-officed corporate broker.

The question is, how do you see yourself and how does your community perceive you?

Members and potential residents of a community may acquire their impressions about the real estate profession from their contacts with your employees. What kind of business-service image does your office project?

**Mortgage** (Continued from page 3)

ordinary conduct of his business may well constitute the unlawful practice of law. There is considerable authority in the legal profession claiming that certain real estate practices (e.g., preparing a transfer document or making a determination that additional provisions are to be included in blank spaces of a contract) might be termed the unlicensed practice of law. On the other hand, there are respectable opinions to the contrary.

Most real estate industry practices (title, escrow, brokerage, banking, etc.) have evolved from (1) custom (2) the public's need for convenience while engaging in real property transactions and (3) the general public policy of the legal profession and courts not to interfere unduly with these customs and needs provided they do not pose unreasonable risk of harm to the persons served thereby and provided the professional services and scrivener/clerical functions incidental to such professional services can be safely performed without recourse to a lawyer.

So far the experiences of California real property owners with real estate agents have seemingly demonstrated to the satisfaction of our courts, legislators and members of the bar

that no real need exists for a statutory definition of acts which constitute the unauthorized practice of law by real estate licensees. This is certainly a compliment to the entire real estate profession in general and to the individual licensee in particular. It indicates that real estate professionals are committed to practicing real estate to its fullest while being vigilant to avoid the pitfalls of practicing law without a license.

The leadership of the California Association of Realtors over the years in getting certain standard real estate contracts and forms approved for industry use through implementation agreements with the California State Bar has done much to deal with what were at one time "gray areas" in real estate practice. Its actions have given real estate licensees both a healthy awareness of the subtleties involved in practicing real estate and an appreciation of the deference shown licensees by the legislature and the legal profession.

Each year as new laws place increasing burdens upon real estate licensees to explain contract provisions and choices to the parties and make certain disclosures (e.g., liquidated damages, Civil Code Section 1675; structural pest control reports, Civil Code Section 1099; earthquake hazard zones disclosure, Public

**Public Reprvals**

Bulletin readers have inquired as to the source of DRE's authority for the publishing in the Bulletin of Public Reprvals. Here it is, from the Business and Professions Code:

**Section 495.** Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act which would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.



**SPECIAL REMINDERS**

- Business and Professions Code Section 10147.5 concerning negotiability of and printed requirements for real estate commissions now includes mobilehome sales—effective July 1, 1980.
- On and after September 1, 1980, license fees are the statutory maximums—\$85.00 for broker and \$60.00 for salespersons.
- On and after January 1, 1981:
  1. No individual or corporate broker/officer only license renewals without continuing education certification evidence, using special form to be completed by applicant. Special form RE-251 will be included with each renewal application mailed out by DRE to renewal applicant.
  2. Inactive license status ends.

Resources Code Section 2621.9), the need grows for licensees to stay alert to dangers of "crossing the line" as did the broker in the Sipper case.

The present state of affairs places definite controls on a broker's business activities yet without prohibiting such acts as the preparation of common transaction documents and offering counsel—not legal advice—incidental to the transaction at hand. The courts and members of the bar acquiesce in permitting the real estate professional to act responsibly in the daily conduct of a brokerage business. Brokers should guard well this advantageous position by recognizing and recommending the services of an attorney when necessary or desired by a party in the transaction.

Above all, real estate licensees should not allow a principal or client to place upon them that responsibility which belongs only to a lawyer. Agents endanger their licenses and reputations and do a disservice to customers when they inadvertently overstep into the attorney's domain.

The greatest difficulty for the agent, of course, is recognizing the line between law and real estate practice, and knowing when to pass up the opportunity of "preparing the mortgage."



## Memos (Continued from page 6)

**Q.** Recently I passed the salesperson examination and have submitted my license application and fee to DRE. I have not yet received the license but would like to attend a Continuing Education seminar being offered in my area. Will the credit I earn from attending the seminar count toward the next renewal of my license?

**A.** Continuing Education credit must be earned within the 4 year period preceding the renewal of a license. Since you have not yet received your license, you cannot be sure the effective date of this license will be prior to the Continuing Education offering you wish to attend. It would be wise to wait until you have actually received your license before attending a Continuing Education offering if you wish to use the credit for the next renewal of your license.

**Q.** Our family will soon be moving out of state for an unknown period of time. I would like to keep my license. I am concerned about the availability of Continuing Education in the area where we will be living. Is it possible to earn the required Continuing Education credit by taking "correspondence" courses?

**A.** Yes. There are currently several DRE approved Continuing Education correspondence courses available ranging in credit from five (5) to forty-five (45) hours. Unlike "live" seminar offerings which require attendance in order to earn credit, correspondence courses require the successful completion of a supervised final examination. (See the notice on Page 8 of this *Bulletin* for information on how to order a list of all DRE approved Continuing Education offerings, including offerings by correspondence.)

**Q.** As a real estate licensee specializing in appraisal work, I would prefer to attend only Continuing Education offerings on this subject. Is this possible or must I attend classes on a variety of subjects?

**A.** Continuing Education credit may be earned by attending any offering which is approved by the Department regardless of subject. For example, you could attend fifteen different 3-hour appraisal offerings as long as each has received a different approval certificate number from DRE.

## WE DO GET COMPLAINTS

Through telephone calls, letters, in-person visits and the filing of formal written complaints against real estate licensees, DRE is made aware by both homebuyers and homeowners that they experience a variety of problems and misunderstandings in dealing with some real estate agents.

Often these complaints are misdirected to the Department, the complainants seeking civil remedies outside the Department's jurisdiction. Sometimes a complainant is simply "letting off steam" born of frustration or criticizing the private business practices of a broker over which DRE has no control.

Many of these grievances prove to be only misunderstandings or communications failures which are resolved to the joint satisfaction of complainant and licensee before DRE is formally contacted by an "aggrieved" person. However, a licensee's willingness to resolve a complaint once filed with the Department will not forestall a full DRE investigation of the facts and a formal administrative hearing if warranted, even though the person filing the complaint withdraws it.

What are the most frequently reported shortcomings of licensees as perceived by those who register complaints with DRE? The most common failings include:

- poor communications (neglecting to stay in touch or return phone calls)
- lack of explanation to buyer and seller as to the purpose of earnest money funds, how they are to be handled under the purchase contract and why
- poor drafting of listing and purchase agreement details, especially as to contingencies
- delivery of transaction documents for approval and signature at inconvenient times (especially amendments)
- misrepresentations, negligent and incompetent acts or omissions and mishandling of trust funds
- neglecting to give a signatory party a copy of the document at time of signing

## Truth (Continued from page 4)

to the district attorney of the county of jurisdiction for such action as is appropriate against "C" and "A" over whom DRE has no jurisdiction.)

At the hearing the licensee attempted to establish that since off-site improvements had been constructed the lots could no longer be considered unimproved and consequently no real property securities were created. However DRE's counsel established that this property was "unimproved" within the meaning of Section 10237.1(c) because the improvements were "off site."

Licensees entering new fields of endeavor in the practice of real estate should know the law governing such activities. The public expects real estate professionals to be able to counsel expertly and truthfully in real estate matters. Sometimes that counseling should be, "Sorry, that transaction is out of my field of expertise. I suggest you see your attorney for advice."

- talking in generalities instead of specifics (commonly referred to as hedging, dodging and evading the issue)
- oral promises left unfulfilled (usually concerning repairs to be supervised by agent, personal property to remain, property inspections to be completed)
- incomplete explanations of (1) transaction documents and (2) the various phases of the transaction
- lack of attention to escrow progress, resulting often in unexpected expenditures for complainant (furniture storage, motel and restaurant bills, transportation costs)
- no interest shown or follow-up made after escrow closed.

Successful licensees know that the above acts and omissions can be avoided. Brokers interested in staying in business in the highly competitive real estate field will make sure that they *are* avoided, referrals and repeat customers being a valued part of the success story.

This means establishing a reputation for reliability, dependability and fairdealing—leaving no room for complaints.

What client could ask for anything more?

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