



1988 DRE Legislative Summary

by Eileen Parker, Manager of Legislation, Publications and Records Mgt., Sacramento

Real estate licensees should find this summary of 1988 legislation passed by the California Legislature of particular interest. All statutes will be effective January 1, 1989, unless otherwise noted.

The following brief descriptions of 1988 legislation are intended to alert you to the existence of pertinent changes to the law. They are not to be relied on as in-depth statements of the law. You should refer to the statutes for complete and accurate information.

❖ DEPARTMENT SPONSORED

SB 1890 (Seymour) - Chapter 434

Real Property: Subdivisions

Amends Section 10249.4 of, and adds Section 11000.2 to the Business and Professions Code.

The bill gives purchasers of undivided interests in an undivided interest subdivision a three-day right of rescission.

It also allows the Department to recover actual and necessary subsistence expenses incurred when inspecting out-of-state subdivided lands for preparation of a Public Report.

SB 1891 (Seymour) - Chapter 521

Corporate Broker Applicant

Amends Sections 10152 and 10177 of the Business and Professions Code.

Expands the present authority of the Commissioner to investigate the honesty and truthfulness of the corporation's officers, and also its directors and persons owning more than 10% of the stock of the corporation.

SB 2272 (Vuich) - Chapter 1265

Investigators

Amends Sections 231 and 8003 of, the Financial Code and adds Section 830.11 to the Penal Code.

Authorizes the Departments of Banking, Savings and Loan, and Real Estate to designate certain investigative employees to have peace officer standing with the right of access to criminal records. The bill prohibits the carrying of firearms and the designation authority is discretionary on the part of the Commissioner.

SB 2521 (Beverly) - Chapter 468

Receiverships: Payment of Costs and Fees

Amends Sections 10081 and 10081.5 of the Business and Professions Code.

Limits the liability of the Real Estate Commissioner to pay the fees and costs of administering a receivership over the operations of a real estate broker when the Commissioner is the moving party in obtaining the receivership.

SB 2640 (Vuich) - Chapter 1340

Real Estate Brokers: Loan Transactions

Amends Sections 10148, 10232.4, and 10236.2 of the Business and Professions Code.

Authorizes the Real Estate Commissioner to charge a real estate broker for the cost of a compliance audit if the broker has been the subject of a final desist and refrain order or final decision following a disciplinary hearing involving a violation of the trust fund handling requirements of the Real Estate Law.

It also requires all real estate brokers who either arrange loans or sell existing secured notes to deliver to prospective lenders/investors a disclosure statement containing pertinent information about the prospective borrower and the real property securing the borrower's loan. Finally it provides a civil penalty for real estate brokers who satisfy the mortgage loan broker threshold level of business activity but who fail to file a notification with the Department that they meet those requirements and/or file other financial and business activity reports triggered by having met threshold level business activity.

❖ REAL PROPERTY APPRAISALS

AB 3543 (Johnson) - Chapter 179

Appraisals

Adds Sections 1955.13 and 2924.7 to the Civil Code.

Permits persons performing appraisals of residential real property and using the uniform report format of the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) to call the appraisal "certified" when the form is completed in compliance with rules and regulations of the agency or agencies promulgating the form, and the form is prepared in compliance with current statutes specifying minimum standards for the performance of a "certified appraisal".

❖ COMMON INTEREST SUBDIVISIONS

AB 2484 (Hauser) - Chapter 123

Commercial/Industrial

Common Interest Developments

Amends Section 1363 of, and adds Section 1373 to the Civil Code.

Exempts common interest developments that are zoned commercial or industrial and limited in use to those purposes from certain provisions of the Davis-Stirling Common Interest Development Act.

Commissioner Edmonds Named 1989 NARELLO President-Elect

During the recent National Association of Real Estate License Law Officials' (NARELLO) Annual Conference, which was held in Atlanta, Georgia, the membership of NARELLO elected California Real Estate Commissioner James A. Edmonds, Jr. as their 1989 President-Elect. This is the first time in over ten years that a representative of the State of California has held this prestigious position.

Also honored at NARELLO's Annual Conference was the DRE's educational video entitled "Agency Disclosures in Real Estate Transactions". This video, which was developed under contract with the Real Estate Land Use Institute (RELUI) of the California State University System, received the NARELLO Outstanding Education Program Award for 1988.

Other action taken during the NARELLO Conference included the successful drafting of model state legislation relating to the regulation of real estate appraisers. ■

AB 3875 (Bates) - Chapter 430

Limited-Equity Housing Cooperatives: Subdivision Public Reports

Amends Section 11003.4 of the Business and Professions Code.

Revises the criteria for exempting limited-equity housing cooperatives from compliance with the Subdivided Lands Law by changing the amount of public financing to qualify for the exemption to 50% of the construction or development cost or \$100,000, whichever is less. Increases the amount of development costs that could be contributed by buyers of memberships in limited-equity cooperative mobilehome parks to 20%.

AB 4426 (Ferguson) - Chapter 1409

Common Interest Developments

Amends Sections 1355 and 1365 of the Civil Code.

Allows homeowners' associations to deliver a summary of the annual budget and financial statement to all members with a notice (10-point bold type) that the financial statement is available at a

REAL ESTATE BULLETIN
 Official Publication of the
 California Department of Real Estate

Vol. 48, No. 4 Winter 1988

STATE OF CALIFORNIA
 GEORGE DEUKMEJIAN, Governor

JAMES A. EDMONDS, JR.
 Real Estate Commissioner

EXECUTIVE OFFICE

107 South Broadway, Room 8107, Los Angeles 90012
 Consumer Information (213) 620-5903

PRINCIPAL OFFICE

2201 Broadway, P.O. BOX 187000, Sacramento, 95818-7000
 Consumer Information (916) 739-3684
 Mortgage Loan Broker (916) 739-3587
Licensing Numbers
 Information/Renewals (916) 739-3758
 Broker Qualifications (916) 739-3725
 Examination Scheduling (916) 739-3726

John R. Liberator, *Chief Deputy Commissioner*
 Robin T. Wilson, *Chief Legal Officer*
 Betty R. Ludeman, *Assistant Commissioner, Regulatory*
 Robert C. Arnold, *Assistant Commissioner Subdivisions*
 Ella T. Preston, *Asst. Commissioner Administrative Services*
 Larry W. Smith, *Managing Deputy Commissioner IV, Mortgage Lending Activities*
 Thomas R. Hensley, *Managing Deputy Commissioner IV, Licensing, Examinations and Education*
 Hilcen E. Parker, *Manager, Legislation and Public Information Services*
 Hermie S. Briones, *Chief Auditor*
 Suzanne Pecci, *Deputy Commissioner III, Publications Deputy*
 Laura Curry, *Interim Bulletin Editor*

NORTHERN REGULATORY AREA

Robert McCabe, *Managing Deputy Commissioner IV*
Regulatory District Offices
 San Francisco, Room 5816, 185 Berry Street, 94107
 Consumer Information (415) 557-2136
 Edward V. Chiolo, *Managing Deputy Commissioner III*
 Sacramento, 2201 Broadway, P.O. Box 187000, 95818-7000
 Consumer Information (916) 739-3684
 Charles W. Koenig, *Managing Deputy Commissioner III*
 Fresno, Room 3070, 2550 Mariposa Street, 93721
 Consumer Information (209) 445-5009
 Jerry Fiscus, *Managing Deputy Commissioner II*

SOUTHERN REGULATORY AREA

Randy Brenda, *Managing Deputy Commissioner IV*
Regulatory District Offices
 Los Angeles, Room 8107, 107 S. Broadway, 90012
 Consumer Information (213) 620-5903
 San Diego, Room 3064, 1350 Front Street, 92101-3687
 Consumer Information (619) 237-7345
 J. Chris Graves, *Managing Deputy Commissioner II*
 Santa Ana, Room 324, 28 Civic Center Plaza, 92701
 Consumer Information (714) 558-4491
 Thomas McCrady, *Managing Deputy Commissioner III*

SUBDIVISIONS

Principal Office: Sacramento, P.O. Box 187005, 95818-7005
 Robert C. Arnold, *Assistant Commissioner, Subdivisions*
 South - Los Angeles, Room 7111, 107 S. Broadway, 90012
 Consumer Information (213) 620-2700
 Mike Decker, *Managing Deputy Commissioner III*
 North - Sacramento, P.O. Box 187005, 95818-7005
 Consumer Information (916) 739-3631
 Margaret Stroh, *Managing Deputy Commissioner III*

STATE REAL ESTATE ADVISORY COMMISSION MEMBERS

Anthony "Tony" Anewalt, San Diego
 Addison "Bob" Bowers, Huntington Beach
 Edward Clare, Sr., San Diego
 Loda Foncecarrada-Hargrove, Long Beach
 Arthur L. Godt, Stockton
 Dr. Dorothy J. Naman, Fresno
 H. Jackson Panlius, La Jolla
 Robert J. Waller, Huntington Beach
 Hosoa White, Los Angeles
 J. Carter Witt, Alamo

The REAL ESTATE BULLETIN (ISSN 07347839) is a quarterly published by the State of California, Department of Real Estate, 2201 Broadway, Sacramento, CA 95818, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the Business and Professions Code.

From the license renewal fee, \$2 is allocated to cover subscription to the BULLETIN. Second Class Postage paid at Sacramento, California. Postmaster, send address changes to REAL ESTATE BULLETIN, P.O. Box 187000, Sacramento, CA 95818-7000.

DISCIPLINARY ACTION
June 1988 to August 1988

- REB - Real estate broker
- RES - Real estate salesperson
- PRLS - Prepaid rental listing service
- REO - Real estate officer
- RREB - Restricted real estate broker
- RRES - Restricted real estate salesperson
- RPRLS - Restricted prepaid rental listing service
- REC - Real estate corporation

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

FOR YOUR INFORMATION

The following are brief summaries of the numerical code sections listed. 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. The *Real Estate Law* book is available for purchase from the Department of Real Estate for \$12.50 plus tax.

Business and Professions Code

- 480(2) fraud or dishonesty
- 490 relationship of conviction to licensed activity
- 10086 violation of order to desist and refrain
- 10130 acting without license
- 10137 unlawful payment of compensation
- 10145 trust fund handling
- 10145(a) trust fund handling
- 10145(d) 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
- 10159.5 fictitious name
- 10162 office abandonment
- 10163 branch office license requirement
- 10165 covers various violations
- 10167.9(b) non-retention of PRLS contract
- 10167.10(b) failure to refund deposit or portion thereof
- 10167.11(a) referral of unavailable or non-existent rental property
- 10176(a) making any substantial misrepresentation
- 10176(b) failure to disclose dual agency
- 10176(c) 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(d) violation of real estate law or regulations
- 10177(f) conduct that would have warranted denial of a license
- 10177(g) negligence or incompetence as licensee
- 10177(h) failure to supervise salespersons
- 10177(j) fraud or dishonest dealing not in licensed capacity
- 10177(k) violation of restricted license condition
- 10177.2 mobile home sales violations

- 10177.5 judgement of fraud in a civil action
- 10231.2 failure to give self-dealing notice
- 10232.2 failure to file annual MLB reports
- 11010 failure to file notice of intention to sell or lease subdivision
- 11013.2 sale of subdivided lands subject to blanket encumbrance without compliance with conditions
- 11018.2 illegal subdivision sales (sale of subdivision lots without public report)
- Regulations**
- 2715 broker's failure to maintain current address with DRE
- 2725 failure of broker to review and initial agreements
- 2731 unauthorized use of fictitious business name
- 2731(a) failure to obtain DBA license
- 2742 failure of corporate broker to file articles of incorporation
- 2785(a)(10) unauthorized earnest money refund
- 2794 failure to provide a public report
- 2830 failure to maintain trust fund account
- 2831 inadequate trust fund records
- 2831.1 inadequate trust fund records
- 2832 failure to comply with specific provisions for handling trust funds
- 2832.1 broker's failure to obtain permission to disburse trust funds from an account involving multiple beneficiaries
- 2834 trust account withdrawals by unauthorized person
- 2950(e) failure by broker to make escrow records available for inspection
- 2972 advance fee accountings

Licenses Revoked

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Beauchamp, Robert Francis (RREB)	3078 El Cajon Blvd, Ste A, San Diego	8/2/88	2831, 2832.1, 10145, 10177(d)
Behmke, Roberta Carlson (RES)	3759 Elco St, San Diego	7/12/88	490, 10177(b)
Borelli, Eugene Victor (RRES)	1763 Escalante Way, Burlingame	6/7/88	490, 10177(b)(j)
Braga, Anthony Joseph (RES)	PO Box 1004, Fontana	7/19/88	10086, 10176(e)(g)(i), 10177(d)(g)(j)
Bugg, Edna Louise (REB)	37952 Lavender Common, Fremont	7/25/88	2832.1, 10145, 10148, 10176(a)(e)(i), 10177(d)(g)(h), 10231.1
Butterfield, Shirley Jane (RES)	PO Box 777, San Miguel	8/29/88	490, 10177(b)
Cattaneo, Pamela Anne (RES)	27134 Shorewood Dr, Rancho Palos Verdes	6/7/88	490, 10177(b)
City Bond & Mortgage Corporation (REC)	3478 Buskirk Ave, Ste 300, Pleasant Hill	8/8/88	2831, 2832.1, 10145, 10176(e), 10177(d)(f), 10232.2, 10232.25
Cohen, Paul (RES)	6229 Seaside Walk, Long Beach	6/7/88	490, 10177(b)
Decker, Robert Eugene (RES)	2020 Arnold Dr, Martinez	7/18/88	10130, 10145, 10177(d)
Doollittle, Howard (REB)	4511 Alamo St, Simi Valley	6/14/88	490, 10177(b)

continued on page 3

Licenses Revoked
(continued from page 2)

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Farris, Odell Blakley (REB)	6227 Buckler, Los Angeles	8/11/88	2830, 2831, 2831.1, 2832, 10145, 10176(e)(6), 10177(d)(g)
Flynn, Connie Lee (RES)	1764 Vista Creek Dr, Roseville	7/15/88	490, 10177(b)
Fortson, John Clark (REB)	1305 Solano Ave, Vallejo	8/16/88	2830, 2832, 10145, 10176(G), 10177(d)
French, Bruce Earl (RES)	106 Ardmore Way, Benicia	7/14/88	490
Gabriel, Norbert (RES)	PO Box 99452, San Francisco	7/18/88	10137, 10176(a)(f)
Guilbert, Howard Edward (REB)	14973 Lakeshore Dr, Clearlake	8/17/88	2725(a)(b), 2831.1, 2832, 10145, 10176(e), 10177(d)(h)
Hargaray, Elizabeth Ann (REB, REO)	1603A Douglas Blvd, Roseville	7/5/88	10176(a)(i), 10177.2
Henderson, Robert Fortune (RES)	2701 Colony View Pl, Hayward	7/18/88	490, 10177(b)
Henshaw, Steven (RES)	41 W. Yokuis Ave, Stockton	8/16/88	490, 10177(a)(b)
Henson, Noble Edward (REB)	936 W Manchester Ave, Los Angeles	7/27/88	490, 10177(b)
Horton, Robert Michael (RES)	1364 Haight St, San Francisco	6/8/88	10177(f)(j)
Hudson, Darryl Ray (RES)	34008 Hieskell Dr, Raymond	8/23/88	490, 10177(b)(f)
Interstate Mortgage Company, Inc (REC)	2934 E. Garvey Ave South, West Covina	6/21/88	10177(f)
Johnson, Jimmie Rogers (RRRB)	344 N. Towne Ave, Pomona	7/19/88	10176(i), 10177(d)(g)(k)
Keiton, Leo R. (RES)	PO Box 550, Fort Bragg	7/7/88	490, 10177(b)(f)
Kennedy, Jerry Allan (RES)	6671 Sunset Blvd, Ste 1584B, Hollywood	7/27/88	10176(a)(j), 10177(f)(j)
Lilley, John Sumner (REB)	2111 Geer Rd, Ste 610, Turlock	7/13/88	10167.9(b), 10167.10(b), 10167.11(a), 10167.12(a)(l), 10176(a)(k), 10177(d)(j)(g)
Lovern, John Daniels (RES)	524 Mills Way, Goleta	7/19/88	490, 10177(b)
Low, Robert Warren Jr. (RES)	401 West A St, Ste 1000, San Diego	7/28/88	490, 10177(b)
Lynch, Stephen Jerome (RES)	2 Admiral Dr, Unit 371, Emeryville	8/8/88	490, 10177(b)
Marin Financial Corporation (REC)	Gate 3 Rd Berth 4, Sausalito	6/27/88	2830, 10145, 10177(d), 10231.2
Marin Mortgage, Inc (REC)	Marinship Yacht Harbor, Gate 3 Rd Berth 4, Sausalito	6/27/88	2830, 10145, 10177(d), 10231.2
Martin, Mary (REB) Dbs: Dunmar Realty	9920 S La Cienega Blvd, Inglewood	7/28/88	2731(a), 2950(e), 10148, 10176(a)(l), 10177(d)(j)
Mc Cant, Elijah Mac Jr. (REB, REO)	3478 Buskirk Ave, Ste 300, Pleasant Hill	8/8/88	2831, 2832.1, 10145, 10176(e), 10177(d)(f)(g)(h), 10232.2, 10232.25
McCloskey, Jeff Charles (RES)	PO Box 862, Carmichael	6/21/88	490, 10177(b)
McLendon, Timothy Keat (RES)	PO Box 693, Windsor	6/1/88	490, 10177(b)
Neville, Ellen Edith (RES)	615 Templeton Ct, Sunnyvale	7/25/88	2832.1, 10145, 10148, 10176(a)(m)(n), 10177(d)(f)(g), 10231, 10231.1
Nguyen, Hanh My (RES) Property Marketing Company (REC)	2545 E. Chapman, Ste 200, Fullerton 667 Brea Canyon Rd, Ste 24, Walnut	6/7/88 7/28/88	490, 10177(b) 2731(a), 10137, 10148, 10177(d)
Ronson Equity Management Inc (REC)	680 Langsdorf Dr, Ste 120, Fullerton	6/14/88	10176(a), 10177(g)
Rooks, Curley Lee (RES)	1940A University Ave, East Palo Alto	8/16/88	490, 10145, 10176(e), 10177(b)(d)
Saghian, Hortsel Kalimi (RES)	11683 Goshen Ave, #105, Los Angeles	7/12/88	490, 10177(b)
Sanudo, Antonio Gamez (RES)	3657 W Dayton, Fresno	7/28/88	10130, 10176(a)(o), 10177(d)(j)
Schwei, Mary Jo (RES)	1430 1/2 S. Orange Grove, Los Angeles	7/27/88	490(c), 10177(a)
Sena, Julian Jr (RES)	18 Miralste Plaza, Rancho Palos Verdes	7/28/88	490, 10177(b)
Shamma, Saroj Sue B. (RES)	1761 Lotus Rd, El Centro	7/13/88	10177(d), 11010, 11013.2, 11018.2
Skipper, Cindy Diane (RES)	8536 Kem Canyon Rd, #181, Bakersfield	7/15/88	490, 10177(b)
Smith, Cynthia Marie (RES)	PO Box 2131, Fair Oaks	7/18/88	10176(a)(p), 10177(j)
Swarthout, Linda Donyse (RES)	2210 Wilshire, #884, Santa Monica	6/16/88	2731(a), 10176(a), 10177(d), 10177.5
Tan, Young-Chi (RES)	10438 Prune Tree Lane, Cupertino	6/13/88	490, 10177(b)(f)
Tokubo, Shigeru (RES)	PO Box 257, Tahoe Vista	7/15/88	490, 10177(b)
Tran, Uyen Ngoc (RES)	8563 Locust Dr, Buena Park	7/19/88	490, 10177(b)
Trehan, Manju (RES)	1924 Evermont Ct, San Jose	7/14/88	490, 10177(b)(f)
Valley Oak Investment & Loan Inc (REC)	1136A Saratoga Sunnyvale Rd, San Jose	7/25/88	2832.1, 10145, 10148, 10176(a)(e)(f), 10177(d)(f)(g), 10231, 10231.1
Varela, Luis Fernando (RES)	8637 Norwood Pl, Rosemead	7/19/88	490, 10177(b)
Walton, David Robert (REB)	12025 Sorrento Valley Rd, San Diego	6/16/88	490, 10177(b)
Western Real Estate Marketing Corp (REC)	PO Box 2154, Mission Viejo	7/20/88	10130, 10176(a)(b)(e)(i), 10177(d)
Whitney, Bernard (REB)	2005 Ocean Dr, Manhattan Beach	7/27/88	490, 10177(b)
Wilkins, James Dennis (RES)	95 Church St, #2308, Los Gatos	7/11/88	490, 10177(b)

continued on page 4.

Lender/Purchaser Disclosure Statement

by Larry W. Smith, Manager,
Mortgage Loan Activities

Senate Bill 2640, effective January 1, 1989, amends several sections of the Business and Professions Code and adds a new one. This Bulletin article pertains to Sections 10232.4 and 10236.2 of Article 5 that deal with protections offered the lender or purchaser in a mortgage loan type transaction.

Section 10232.4 requires a real estate broker who acts within the meaning of Section 10131(d) or (e) to provide a lender or purchaser with a specific disclosure statement that describes the note and trust deed being funded or offered for sale, details about the borrower and other pertinent information of value to the lender or note purchaser. Prior to this recent amendment, only brokers who met the threshold criteria of Section 10232 were required to provide this disclosure statement. This was a limited number of brokers. Now all brokers must provide this disclosure statement to lenders and note purchasers regardless of whether or not they meet the Section 10232 criteria, unless another exemption applies, such as an institutional lender or note purchaser (bank, savings and loan, insurance company, pension trust, FNMA, FHLMC, etc.). What this means is that the disclosure statement previously provided to only a relatively few lenders and purchasers is now to be given to practically all non-institutional lenders and note purchasers. The information in the disclosure statement is provided to assist them in making the decision whether or not to lend money or purchase an existing note.

The disclosure statement, known as the Lender/Purchaser Disclosure Statement, is available at all DRE district offices for broker use in complying with Section 10232.4.

The new section which was added to Article 5 concerns a broker's notification to DRE whenever the threshold criteria of Section 10232 is reached. New Section 10236.2 reads as follows:

- (a) A real estate broker who satisfies the criteria of subdivision (a) or (b) of Section 10232 and who fails to notify the Department of Real Estate, in writing, of that fact within 30 days thereafter as required by subdivision (e) of Section 10232 shall be assessed a penalty of fifty dollars (\$50) per day for each additional day written notification has not been received up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day the penalty is one hundred dollars (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000) regardless of the number of days, until the department receives the written notification.
- (b) The commissioner may suspend or revoke the license of any real estate broker who fails to pay a penalty imposed under this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

Lender/Purchaser, continued on page 4

Lender/Purchaser

continued from page 3

(c) All penalties paid or collected under this section shall be deposited into the Real Estate Fund.

Subdivision (a) and (b) of Section 10232 mentioned in Section 10236.2 describes the "threshold" of business activity which when reached, triggers notification to DRE. Brokers are urged to familiarize themselves with Article 5 so appropriate notification can be made if the provisions of the law are applicable to their business operations.

\$100 Personal Funds May Be Maintained In A Trust Account

By Paul Markey, Audit Supervisor,
San Francisco Audit Section

The Department of Real Estate allows a broker to maintain up to \$100 in personal funds in a trust account. This amount is for the sole purpose of covering bank charges on the account such as monthly service fees, check printing charges, and returned-check fees. Trust funds *may not* be used to pay for these charges.

Some brokers have asked DRE to increase the amount of personal funds that may be maintained in a trust account. They suggested that the amount be at least equal to the minimum deposit required by financial institutions to waive monthly service fees so that brokers don't incur these expenses.

After giving consideration to the issue, the Department concluded that the deposit required by banks to waive service fees cannot be used as a basis in setting the maximum amount of personal funds that may be maintained in a trust account. Since the deposit requirements to waive service fees vary from bank to bank, ranging to over \$5,000, the Department determined that the maximum amount would have to be set at around \$2,000 - \$3,000 to accommodate many brokers. This amount was considered not acceptable. A trust bank account may lose its trust account status and the protections that come with it if excessive non-trust funds are maintained in it on a regular basis. Avoidance of bank service fees is not considered a sufficient reason to maintain personal funds in a trust account because of this risk. Such charges are a usual cost of doing business which a broker must absorb as part of his or her overhead.

If \$100 is insufficient to cover bank charges and fees, it is preferable to make arrangements to have the bank charge the broker's commercial account for trust account charges.

If personal funds are maintained in the trust account, the broker must keep a separate record for the funds as required by Commissioner's Regulation 2831.1. Activities affecting such funds must be appropriately recorded, e.g., increasing the personal funds deposited (in no event more than \$100) and paying bank service charges. The balance reflected on the separate record must be the correct amount of personal funds remaining in the trust account.

Licenses Revoked With A Right To A Restricted License

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Bachman, Karen Lynn (RES) (Right to RRES license on terms and conditions)	24238 Hartland St, Canoga Park	8/25/88	490, 10177(b)
Badillo, Napoleon Perez (REB) (Right to RRES license on terms and conditions)	21495 Mission St, Hayward	8/5/88	2715, 2731, 2831, 10145, 10159.5, 10162, 10176(e)(i), 10177(d)(f)
Bodell, Ronald (REO) (Right to RREB license on terms and conditions)	8031 Linda Vista Rd, #210, San Diego	6/7/88	2831, 10145(a)(d), 10176(e), 10177(d)
Bewley, Rex Lee (RES) (Right to RRES license on terms and conditions)	4583 Lamplighter Ln, Santa Maria	7/26/88	10130, 10177(d)
Black, James Karl (REB) (Right to RRES license on terms and conditions)	1826 Westcliff Dr, #233, Newport Beach	8/25/88	490, 10177(b)
Brown, Mitchell (REB, REO) Off --- Marin Financial Corporation Off --- Marin Mortgage, Inc (Right to RREB license after 90 days on terms and conditions)	Marinship Yacht Harbor, Gate 3 Rd Berth 4, Sausalito	6/27/88	2830, 10145, 10177(d), 10231.2
Citadel Property Management Services Inc (REC) (Right to RREC license on terms and conditions)	1920 E. 17th St, Ste 220, Santa Ana	7/19/88	10177(d)
Denton, Carolyn H. (REB, REO) (Right to RREB license on terms and conditions)	19836 Ventura Blvd, Woodland Hills	7/5/88	10177(h)
Doty, Robert Alvin (REB) (Right to RREB license on terms and conditions)	575 Main St, Ste C, Templeton	7/13/88	10177.5
Estrella, Karen Elizabeth (REB) (Right to RREB license on terms and conditions)	7919 Pebblebeach Dr, Citrus Heights	7/15/88	10177(j)
Freedom D & R Realty Inc (REC) (Right to RRES license after 90 days on terms and conditions)	1615 N French St, Ste 203A, Santa Ana	6/16/88	480(2), 10176(i), 10177(f)(j)
Gomez, Felix (REB) (Right to RREB license on terms and conditions)	219 N Euclid Ave, Upland	8/30/88	2830, 2832, 2832.1, 10145, 10177(d)
Hadjian, Farrokh Fred (REB, REO) (Right to RREB license on terms and conditions)	18340 Ventura Blvd, Ste 206, Tarzana	10/1/87	490, 10177(b)
Hall, Christopher Byron (RES) (Right to RRES license on terms and conditions)	1400 Ojai Rd, Santa Paula	6/8/88	490, 10177(b)
Hunter, Robert Grant (RES) (Right to RRES license on terms and conditions)	30505 Titian Dr, Coarsegold	7/25/88	10176(a)(b)(i), 10177(j)
Irvine, Jean (RRES) (Right to RRES license on terms and conditions)	5382 Catowba Ln, Irvine	8/2/88	10177(k)
Karasck, Lynn Edwina (RES) (Right to RRES license on terms and conditions)	11622 Gorham Ave, #2, Los Angeles	6/16/88	490, 10177(b)
Kashifi, Shahram (RES) (Right to RRES license on terms and conditions)	506 Walden Dr, Beverly Hills	5/26/88	490, 10177(b)
Kelly, Kemper George (RES) (Right to RRES license on terms and conditions)	4684 Oakwood Pl, Riverside	8/2/88	490, 10177(b)
Lilo, Patsy Francis (RES) (Right to RRES license on terms and conditions)	1770 El Vista, Arcadia	5/31/88	10130, 10177(d)(f)
Minott, George Oliver (REB) (Right to RREB license after 30 days on terms and conditions)	1123 Cloverdale Ave, Los Angeles	8/30/88	10177(h)
Newton, Charles G (RES) (Right to RRES license on terms and conditions)	PO Box 396, Cupertino	6/9/88	10137
Pacific Horizon Properties Inc (REC) (Right to RREC license on terms and conditions)	8031 Linda Vista Rd, #210, San Diego	6/7/88	2831, 10145(a)(d), 10176(e), 10177(d)
Petersen, Martin Anthony (RES) (Right to RRES license on terms and conditions)	2701 Hobart, Modesto	7/12/88	490, 10177(b)
Phillips, Norman Francis (REB, REO) Off --- Western Real Estate Marketing Corporation Off --- Skyview Realty Inc (Right to RRES license after 90 days on terms and conditions)	27500 Marguerite Pky, Ste 2, Mission Viejo	8/18/88	2834, 2972, 10146, 10177(d)(h)
Pini, Dario Louis (RES) (Right to RRES license on terms and conditions)	16 W Mission, Ste T, Santa Barbara	6/16/88	490, 10177(b)
Restivo, William Peter (REB) (Right to RRES license on terms and conditions)	1920 E. 17th St, Ste 220, Santa Ana	7/19/88	10177(d)(h)
Sais, Deborah K (RES) (Right to RRES license on terms and conditions)	1235 W Palmyra, #J, Orange	6/1/88	490, 10177(b)
Sarkisian, Nayri Maral (RES) (Right to RRES license on terms and conditions)	455 W Dryden St, Apt 17, Glendale	6/8/88	490, 10177(a)
Schiefer, Lawrence Thomas (RES) (Right to RRES license on terms and conditions)	1110 S El Camino Real, San Mateo	8/5/88	490, 10177(b)
Smith, William Arthur (REB, REO) Off --- T. F. Associates, Inc (Right to RREB license on terms and conditions)	11200 Golf Links Rd, Oakland	7/5/88	10137, 10177(g)
Snelgrove, Emid Louise (REB) (Right to RREB license after 60 days on terms and conditions)	1007 Honeywood Ct, Santa Paula	8/26/88	2715, 2731, 10177(d)

continued on page 5.

Licenses Revoked With A Right To A Restricted License (continued from page 4)

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Swarthout, Edward Erben (REB) (Right to RREB license on terms and conditions)	280 S Beverly Dr, Beverly Hills	7/27/88	10177(h)
Usmany, Daniel (REB, REO) Off — Freedom D & R Realty Inc (Right to RREB license after 90 days on terms and conditions)	1615 N French St, Ste 203A, Santa Ana	6/16/88	480(2), 10176(a)(i), 10177(f)(i)
Victorian Mortgage Service, Inc (REC) (Right to RREC license on terms and conditions)	28570 Marguerite Pky, Ste 203, Mission Viejo	6/16/88	2731, 10130, 10177(d)
Villanueva, Romualdo Lamadrid (RES) (Right to RRES license on terms and conditions)	105 El Camino Real, Millbrae	8/2/88	2842.5, 10130, 10137, 10145, 10176(e), 10177(d), 10240
Walter, Ronald Cyril (REB, REO) Off — Ronson Equity Management Inc DWB Investments Inc (Right to RRES license after 45 days on terms and conditions)	1340 Encinitas Blvd, Encinitas	6/14/88	10177(b)
Woodward, Pamela Rae (RES) (Right to RRES license on terms and conditions)	1853 Denver Ave, Claremont	8/16/88	490, 10177(a)(b)

Licenses Suspended

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Denison, Grant Cherrington (REB, REO) Dba — Denison & Associates (Suspended for 30 days)	505 Fernleaf Ave, Corona Del Mar	7/1/88	10137
Eastern General Finance (REC) (Suspended indefinitely)	550 S Hill St, 10th Floor, Los Angeles	6/6/88	2742, 10177(f)
Trotter, David K (REB, REO) Off — Golden Eagle Mortgage Company, Inc (Suspended for 30 days)	14831 E Whittier Blvd, #201, Whittier	7/28/88	10177(h)

Licenses Suspended With Stays

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
American Bankers Mortgage Corporation (REC) (Suspended for 30 days; Permanently stayed on condition)	519 W Carson St, Ste 204, Carson	6/1/88	2715, 2831, 2831.1, 10137, 10163, 10165, 10177(d)
Bates, Charles Elwood (REB, REO) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	11549 Los Osos Valley Rd, San Luis Obispo	5/30/88	10177(d), 11018.2, 2794
Bonomi, Thomas V (REB, REO) Dba — Better Homes Realty Off — Oceana Investments Incorporated (Suspended for 9 mths.; Stayed for 1 year on terms and conditions)	108 Manor Dr, Pacifica	6/27/88	2823.1, 10145, 10177(d)
Chen, Tony P. H. (RES) (Suspended for 30 days; Stayed for 1 year on condition)	423 N Atlantic, #202, Monterey Park	7/28/88	10177(b), 11018.2
David Winckler Company (REC) (Suspended for 20 days; Stayed for 1 year on terms and conditions)	1451 River Park Dr, Ste 246, Sacramento	8/28/88	10130
Engel, Steven Charles (REB) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	604 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Gray, Gerald Holman (REB) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	718 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Huang, Jack Ming Shan (REB, REO) Off — Regal Rock, Inc (Suspended for 30 days; Stayed for 1 year on conditions)	432 N Atlantic Blvd, #202, Monterey Park	7/28/88	10177(b), 11018.2
Joedon, Inc (REC) (Suspended for 30 days; Stayed for 1 year on conditions)	424 N San Mateo Ave, San Mateo	7/11/88	2831, 10145, 10177(d)
Knotts, Francis William (REB) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	746 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Knotts, Stephen Lester (RES) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	746 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Koon, Thomas H (REB, REO) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	816 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794

Charges For Certain Follow-up Audits

By Frank Lin, Audit Unit Supervisor,
Los Angeles Audit Section

Under a bill recently signed into law by the Governor, the Department of Real Estate will charge real estate brokers for the cost of a compliance audit performed as a follow-up to a final desist and refrain order or a final decision following a disciplinary hearing, when the order or decision found that the broker had violated Section 10145 or a regulation interpreting Section 10145 (trust fund handling and recordkeeping requirements). SB 2640 (Vuich), which becomes effective January 1, 1989, added among other things subsection (b) to Section 10148 of the Business and Professions Code:

“(b) The commissioner shall charge a real estate broker for the cost of an audit if prior to the audit the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

The commissioner has the right to file a civil suit to recover the cost of a compliance audit in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.”

Business and Professions Code Section 10145 pertains to trust fund handling provisions, which include requiring that:

- Trust funds received which are not immediately placed into a neutral escrow depository or into the hands of the broker's principal shall be deposited into a trust fund account maintained by the broker in a bank or recognized depository in this state.
- All funds deposited in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.
- A real estate broker acting as a principal pursuant to B & P Code Sec. 10131.1 or Article 6 (commencing with Section 10237) shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.
- A real estate salesperson who accepts trust funds from others on behalf of the broker under whom he or she is licensed, shall immediately deliver the funds to the broker or, if so directed by the broker, shall place the funds into the

Follow-up Charges, continued on page 6

Follow-up Charges

continued from page 5

hands of the broker's principal, into a neutral escrow escrow depository, or shall deposit the funds into the broker's trust fund account.

- Trust funds shall not be deposited in an interest bearing account unless all of the requirements of B & P Sec. 10145, subsection (d), are met, or unless allowed under Commissioner's Regulation 2830.1
- A broker shall maintain records for the receipt and disposition of trust funds.
- A broker shall, upon request of the Commissioner, furnish to the Commissioner an authorization for examination of financial records of any trust fund accounts maintained in a financial institution.

Regulations interpreting B & P Code Section 10145 include but are not limited to the following: Reg. 2830, Trust Fund Account; Reg. 2830.1, Interest Bearing Trust Account; Reg. 2831, Trust Fund Records to be maintained; Reg. 2831.1, Separate Record for Each Beneficiary or Transaction; Reg. 2831.2, Trust Account Reconciliation; Reg. 2832, Trust Fund Handling; Reg. 2832.1, Trust Fund Handling for Multiple Beneficiaries; Reg. 2834, Trust Account Withdrawals.

The full texts of the above regulations and of Section 10145 are listed in the Real Estate Law Book.

Hazard Insurance Legislation Update

by Larry Smith,
Manager, Mortgage Loan Services

Assembly Bill 1673, Chapter 715 of the Statutes of 1987, (Johnston) became law January 1, 1988 and restricted lenders from requiring hazard insurance in amounts in excess of the value of the improvements. Prior to this bill, which added Section 2955.5 to the Civil Code, no restrictions existed that prevented lenders from requiring borrowers to provide hazard insurance coverage in excess of the improvement value.

For example, if an improved property was valued at \$100,000 and the land value was \$30,000 of that amount, prior to January 1, 1988, the lender could require a borrower to provide for \$100,000 worth of hazard insurance coverage regardless of the fact that the land portion was indestructible. Under AB 1673, only the improvement value could be required to be covered by hazard insurance.

Assembly Bill 3919, Chapter 276 of the Statutes of 1988, which became effective on July 5, 1988, added provisions to Section 2955.5 of the Civil Code to define "hazard insurance coverage" and "improvements."

Hazard insurance coverage means insurance against losses caused by perils commonly covered in policies described as a "Homeowner's Policy," "General Property Form," "Guaranteed Replacement Cost Insurance," "Special Building Form," "Standard Fire," "Standard Fire with Extended Coverage," "Standard Fire with Special Form Endorsement," or comparable insurance coverage.

Hazard Insurance, continued on page 8

Licenses Suspended With Stays

(continued from page 5)

NAME	ADDRESS	EFFECTIVE DATE	VIOLATION REAL ESTATE LAW REGULATIONS
Lanam, Joseph William (REB, REO) Off — Joedon, Inc (Suspended for 30 days; Stayed for 1 year on conditions)	60 N El Camino, San Mateo	7/11/88	2831, 10145, 10177(d)
Ling, James Christopher (REB, REO) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	2645 Townsgate Rd, Westlake Village	8/12/88	10177(d)(g)
Loeinger, Thomas Joseph (REB) (Suspended for 30 days; Stayed on terms and conditions)	14922 Hawthorne Blvd, Lawndale	6/9/88	2832.1, 10145, 10177(d)
Macie, Vic (REB) (Suspended for 30 days; All but 10 days stayed for 1 year on condition)	5336 Chaumont Dr, Wrightwood	7/28/88	2731, 2831, 2831.1, 10177(d)(h)
Oceana Investments Incorporated (REC) (Suspended for 9 months; Stayed for 1 year on terms and conditions)	108 Manor Dr, Pacifica	6/27/88	2832.1, 10145, 10177(d)
Pacific Central Mortgage Inc (REC) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	2645 Townsgate Rd, Ste 100, Westlake Village	8/12/88	10177(d)(g)
Pasnick & Stagner Investments Inc (REC) (Suspended for 15 days; Stayed for 1 year on terms and conditions)	.711 W Shaw, #104, Clovis	7/25/88	2725, 2832, 10145, 10177(d)
Pasnick, Victor Keith (REB, REO) (Suspended for 15 days; Stayed for 1 year on terms and conditions)	711 W Shaw, #104, Clovis	7/25/88	2725, 2832, 10145, 10177(d)
Pinedorosa Realty Inc (REC) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	816 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Putnam, Charlotte Joyce (REB) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	718 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Regal Rock, Inc (REC) (Suspended for 30 days; Stayed for 1 year on terms and conditions)	423 N Atlantic Blvd, #202, Monterey Park	7/28/88	10177(b), 11018.2
Rosenfeld, Lorraine (REB) (Suspended for 30 days; Stayed for 1 year on conditions)	2170 El Camino Real, #204, Oceanside	7/28/88	10137
Royster, Phillip Dade (REB) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	4003 Maple Tree Dr, Anaheim	8/28/88	10177(h)
Smith, Sharon Valo (REB) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	816 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Wel-ter Inc (REC) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	743 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Welsh, Donald Edward (REB, REO) (Suspended for 10 days; Stayed for 1 year on terms and conditions)	743 Main St, Cambria	5/30/88	10177(d), 11018.2, 2794
Winckler, David Campbell (REO) (Suspended for 20 days; Stayed for 1 year on terms and conditions)	1451 River Park Dr, Ste 246, Sacramento	8/28/88	10137
Yu, Julia (RES) (Suspended for 30 days; Stayed for 1 year on condition)	423 N. Atlantic Blvd, #202, Monterey Park	7/28/88	10177(b), 11018.2
Ziak, Neil Marin (REB, REO) Off — American Bankers Mortgage Corporation (Suspended for 30 days; Permanently stayed on condition)	29515 Driftwood Ln, Palos Verdes	6/1/88	10177(h)

Indefinite Suspensions Under Recovery Fund Provisions

NAME	ADDRESS	EFFECTIVE DATE
Aguirre, Ernesto Vizcarrá (RES)	15737 Three Palms St, Hacienda Heights	6/13/88
Beaumont, Leslie (REB)	5402 Ruffin Rd, Ste 107, San Diego	8/18/88
Brennan, Kathleen C. (REB)	P. O. Box 2726, Capistrano Beach	7/20/88
Butterfield, James Claude (REB)	160 Sunrock Dr, Folsom	8/9/88
Fedder, Martin (REB)	P. O. Box 156, Rancho Mirage	7/1/88
Guerrero, Edward R. (RES)	3993 Mission St, Apt 205, San Francisco	7/20/88
Jensen, Leslie (REB)	3279 Mt Diablo Ct, #4, Lafayette	7/25/88
Moody, Catherine Agnes (RES)	45455 Concho Ct, Fremont	6/13/88
Nasi, Mary Ellen (REB)	231 S. Anita, Los Angeles	6/21/88
Pierson, Jon Micken (REB)	604 W. Palo Alto, Fresno	6/27/88
Utlak, Leda J. (REB)	P. O. Box 7000-258, Rancho Palos Verdes	8/31/88
Whittemore, Leona Dale (REB)	P. O. Box 3722, Big Bear Lake	8/31/88
Wiggan, Herman Nicholas (REB)	347 Hayes, San Francisco	6/13/88
Woeffel, Richard Jr. (REB)	1727 Martin Luther King Jr Way, Ste 216, Oakland	8/31/88

Statement of Real Estate Bulletin issued quarterly was filed with Postmaster on October 3, 1988. Location of office of publication and headquarters of publisher is 2201 Broadway, Sacramento, CA 95818. Publisher: James A. Edmonds, Jr., Real Estate Commissioner, State of California; Managing Editor: John R. Liberator, Chief Deputy Commissioner, Department of Real Estate; Interim Editor: Laura Curry, Department of Real Estate; all with offices at the address given above. Owner: Department of Real Estate, State of California, 2201 Broadway, Sacramento, CA 95818-7000. Bondholders, mortgagees, and other security holders: none. Average number of copies each issue during preceding 12 months: 265,035; paid circulation through dealers, etc.: none; mail subscriptions: 261,863; total paid circulation: 261,863; free distribution: 1,903; total distribution: 263,766; office use, leftover, etc.: 1,269; total press run: 265,035. Actual number of copies of single issue published nearest to filing date: 267,438; sales through dealers and carriers, etc.: none; mail subscriptions: 264,321; free distribution: 2,078; total distribution: 266,399; office use, leftover, etc.: 1,039; total press run: 267,438.

Legislation

continued from page 1

location within the subdivision's boundaries. It requires the association to mail a copy of the financial statement to members requesting one at the expense of the association. Additionally, it permits an estimate of the current replacement costs of major components as opposed to the estimated remaining life, and provides for amendment of needed restrictions by a vote of 50% or more of the homeowners when the restrictions do not contain provisions for amendment or do not prohibit amendment.

AB 4496 (Killea) - Chapter 1188 Common Interest Developments: Director and Officer Liability

Adds Section 1365.7 to the Civil Code.

Limits the monetary liability of the directors and officers of a homeowners' association of a residential development for tortious acts or omissions if the acts or omissions are performed within the scope of the director's or officer's duties, performed in good faith, not willful, wanton, or grossly negligent and at the time of the act or omission, the association was appropriately insured.

SB 2104 (Ellis) - Chapter 1625 Mobilehome Parks

Amends Section 11010.8 of the Business and Professions Code.

Applies to mobilehome parks which are purchased by nonprofit corporations composed of residents of the park.

Amends provisions of existing law relating to conditions when a notice of intention is not required to be filed with DRE.

❖ MORTGAGES

AB 4529 (Clute) - Chapter 1190 Mortgages: Transfer of Servicing

Adds Section 2937 to the Civil Code.

Requires any person who transfers the servicing of a note or other instrument secured by a mortgage or deed of trust on a single family residential real property to give notice to the borrower within 30 days of the transfer.

❖ REAL ESTATE LICENSEES

AB 1240 (Sher) - Chapter 881 Arbitration: Real Estate

Adds Title 9.3 (commencing with Section 1298) to Part 3 of the Code of Civil Procedure.

Provides that contracts relating to the sale or lease of real property which contain arbitration provisions must also contain specified language disclosing the effect of the arbitration provision.

AB 4034 (Stirling) - Chapter 517 Real Estate Recovery Act

Amends Section 10474 of the Business and Professions Code. Urgency. In effect now.

This bill clarifies existing case law related to the per-licensee limits which apply when multiple licensed real estate personnel commit acts in a transaction which leads to judgements against these people and the judgements otherwise qualify for payment from the Recovery Account.

SB 2258 (C. Green) - Chapter 1293 Subdivision Sales

Adds and repeals Section 11018.8 of the Business and Professions Code.

Requires owners, subdividers or agents subject to DRE Public Report requirements to supply and post a map in a conspicuous place at the sales office

showing the location of all existing freeways and all proposed freeways that have been approved in the general plan which are within two miles surrounding the subdivision. This bill applies only to cities or counties adopting an ordinance making the statute operative to that jurisdiction.

❖ SUBDIVISIONS

SB 2254 (Mello) - Chapter 1365 Community Facilities Districts

Amends Section 11010 of the Business and Professions Code and various provisions of the Government Code and Streets and Highways Code.

Requires subdividers to furnish a true statement or reasonable estimate of the amount of any (existing or planned) indebtedness of a Community Facilities District. Requires a notice of special tax to be given to prospective purchasers of subdivision interests not requiring a Public Report. The notice of special tax must be no smaller than 8-point type and shall contain specific language. The bill also contains other specified changes.

SB 2665 (Doolittle) - Chapter 1121 Subdivision Public Reports

Amends Section 11010.2 of the Business and Professions Code.

Revises procedures to be followed for determining and correcting deficiencies in applications for a Public Report and Notice of Intention to subdivide.

AB 3773 (Hauser) - Chapter 274 Real Property: Subdivided Land

Exempts from the transfer disclosure law real property that is being transferred pursuant to a Subdivision Public Report issued by the Department of Real Estate, except when the real property being transferred has been previously occupied. ■

Undivided Interest Subdivisions

There seems to be a question in the minds of many concerning whether and under what circumstances one must apply for and receive a public report prior to offering for sale and selling undivided interests in land. This article will, we hope, answer that question.

California regulates the offer and sale of undivided interest in land as part of the Subdivided Lands Act (Section 11000, et seq., of the Business and Professions Code). Section 11000.1 defines the term subdivision to include:

"Improved or unimproved land or lands, lot or lots, or parcel or parcels, of any size, in which, for the purpose of sale or lease or financing, whether immediate or future, five or more undivided interests are created or are proposed to be created."

Undivided interests include tenancies in common and the more frequently used joint tenancies. There are several exceptions to the definition of an undivided interest subdivision, which are unique

in the Subdivided Lands Act. The exceptions are discussed in more detail below.

The first exception is for interests held by persons related by blood or marriage. The Commissioner has never issued regulations interpreting this exception nor has there been any published court decisions. Therefore, it is uncertain how close those relatives must be to qualify for this exception; however, since exceptions from licensing or permit requirements are narrowly interpreted in order to effectuate the purpose of the license or permit, it is assumed that this exception will be narrowly construed and limited to direct and immediate relatives of close consanguinity. The Department would surely look askance at a group of persons related as third cousins through blood or marriage as being eligible for the exception.

Undivided interests created as the result of a foreclosure sale are also exempted (see Section 11000.1(b)(3)). If there are several beneficiaries of a trust deed, the foreclosure of the trust deed without sale to a third party will result in a tenancy

by P. H. Werner, DRE Staff Counsel, Sacramento

in common between the beneficiaries. Even if the foreclosure results in creating five or more undivided interests, those interests are exempt from regulation. One, however, cannot avoid the requirement for a public report by making a trust deed to several "dummies" and foreclosing. Outside of obvious dangers of being charged with criminal violations for conspiracy to violate the Act, the Department would look at the substance of the transaction to determine whether or not an exception truly applied.

Another exception from the definition applies to interests created by a valid order or decree of a court (Business and Professions Code Section 11000.1(b)(4)). However, a scheme to use the courts and the legal system as a means of avoiding the Act will be found to be a violation. *Pratt v. Adams*, 229 CA 2d 602 (1964).

Still another exception is for the sale of undivided interests expressly qualified by issue of a permit

Undivided Interest, continued on page 8

Undivided Interest

continued from page 7

from the Corporations Commissioner (Business and Professions Code Section 11000.1(b)(5)). It should be noted that a transaction exempt from the Department of Corporations permit requirements does not escape the requirement for a public report, since no permit has been issued. For example, the sale of undivided interests under the nonpublic offering exception for securities would not be exempt from the Act.

Undivided interests offered for sale as a "time-share project" are also exempted. "Time-share projects" are defined in the Subdivided Lands Law as "common interest subdivisions", and the Commissioner has issued specific regulations controlling the offering of such time-share interests (California Code of Regulations Sections 2810-2831.13).

The most important exception is subdivision (b)(2) which might be called a "sophisticated investor" exception. The section reads, in part:

"The undivided interests are to be purchased and owned solely by persons who present evidence satisfactory to the Real Estate Commissioner that they are knowledgeable and experienced investors who comprehend the nature and extent of the risks involved in the ownership of these interest."

The section goes on to provide:

"The Real Estate Commissioner shall grant an exemption from the provision of this part if the undivided interests are to be purchased by no more than ten persons, each of whom furnishes a signed statement to the Commissioner that he/she (1) is fully informed concerning the real property to be acquired and his/her interests therein including the risks involved in ownership of undivided interests, and (2) is purchasing the interest or interests for his own account and with no present intention to resell or otherwise dispose of the interest for value, and (3) expressly waives protections afforded to a purchaser by the provisions of this act."

The language has been divided into two parts in this article because there are actually two different exceptions in the subdivision.

The second part provides a mandatory exception. The Commissioner *shall* grant an exception if ten or less persons are to buy the interests and each submits the statement defined in the law. Note that if the buyer has no present intent to resell, then there is little investment opportunity inherent in the transaction. The first part provides a broader exception. If the Commissioner is provided with satisfactory evidence that all the buyers, whatever their number may be, are "sophisticated investors," then an exception may be granted. In determining whether or not to grant the exemption, the Commissioner will use the criteria that have been used for many years in determining whether securities offerings are non-public offerings: relevant experience, education, income and net worth.

Based on the above, the general rule is that creation of five or more undivided interests requires a public report from the Department, unless one of the exceptions set forth above applies. While the Department has not come across many, most of the undivided interest offerings in recent years have been recreational projects in which the buyer obtains an undivided interest in rural land for recreation vehicle camping and outdoor activities. However, due to recent changes in the tax law, acquisition of real property for investment purposes by conveying undivided interest to investors has become more prevalent. Many of these projects and the recreational projects are subject to the requirement of obtaining a public report before the interest can be sold. Failure to comply will result in a purchaser's right to rescind. *Murphy v. San Gabriel Manufacturing Company* (1950) 99 Cal. App. 2d 365. ■

Hazard Insurance

continued from page 6

"Improvements" means buildings or structures attached to the real property.

Section 2955.5 also provides for injunctive relief to any person harmed by a violation of the section and civil damages and attorneys fees.

Section 2955.5 is applicable to contracts entered into on or after January 1, 1988. Individual copies of the bills may be obtained without charge upon request from the Legislative Bill Room, State Capitol, Sacramento, California 95814, (916) 445-2323. ■



Official Publication

CALIFORNIA DEPARTMENT OF REAL ESTATE

P.O. BOX 187000

Sacramento, California 95818-7000



Second Class Postage

PAID

at

Sacramento, California