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# REAL ESTATE BULLETIN

Arnold Schwarzenegger, Governor  
Dale Bonner, Secretary, Business, Transportation, & Housing Agency  
Jeff Davi, Real Estate Commissioner

Department of Real Estate

Fall 2007

## Message from Commissioner Davi

### *This is not your father's mortgage business any more...*

**M**ortgage Brokers and any agents involved in mortgage brokerage activity know that the industry has gone through its share of changes.

Most recently, as a result of financial markets (Wall Street) entering the lending business, we are experiencing the effect of aggressive pricing and products from investor portfolios that resulted in the current subprime lending debacle.

The industry and financial markets are now self-correcting and the regulators have and will be aggressively pursuing unscrupulous operators and imposing new requirements to ensure the soundness of underwriting practices and that the borrowing public receives the protections it deserves.

Federal regulators have already issued guidance on nontraditional mortgage products to federally insured and regulated entities and the state will soon be adopting similar standards. Specifically, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential

Mortgage Regulators (AARMR) have also issued guidance on nontraditional loan products and the Department of Real Estate (DRE) together with the Department of Corporations (DOC) have recently drafted regulations to implement the guidance with respect to their respective licensees.

The proposed regulations will amend the Mortgage Loan Disclosure Statement to ensure key information about nontraditional mortgage products is disclosed to the borrower. The regulations also amend the advertising criteria to ensure ads for nontraditional mortgage loan products contain pertinent information specific to the product advertised so the ad is not misleading.

I encourage anyone engaged in mortgage brokerage activity to review these proposed regulations, as well as review the accompanying proposed disclosure, in the "regulation changes" section on our Web site at [www.dre.ca.gov](http://www.dre.ca.gov).

Whether you are new to the mortgage business or a seasoned veteran, it is more important than ever to stay on top of the

rapidly changing regulatory changes as well as understanding your duties and responsibilities under existing law. I would encourage you to revisit the two previous bulletins that contained excellent articles on what it means to be a fiduciary and the broker's obligation to fully explain the terms of a loan to a borrower. You may also wish to seek out educational opportunities, such as the upcoming forums on the new lending environment that will address current enforcement efforts, litigation and how to implement best practices, hosted by the California Bankers Association. The first will be in Emeryville on November 28<sup>th</sup>, and the second in Anaheim on November 29<sup>th</sup>. For more information, you can visit [www.calbankers.com](http://www.calbankers.com).

As we move forward, it is my intent to rid the industry of the bad actors. And understanding the new and old rules of the game will ensure you provide a quality service to the public. 🏠



## Unlicensed activities lead to \$100,000 in fines and restitution

**A**n unlicensed individual who acted in the capacity of a real estate broker and took advantage of an unsuspecting homeowner was issued a Desist and Refrain Order by the Department of Real Estate (DRE), and subsequently, was named in a civil suit by the Monterey District Attorney's Office.

The transaction in question began with the unlicensed individual (respondent) sending a letter to a homeowner stating that he intended to relocate to the homeowner's area and asking if the owner was interested in selling her home. The owner of the property was, at the time, experiencing personal difficulties and responded in the affirmative. A short time later the respondent met with the homeowner and informed her that he had already purchased a home for himself, but that he would be willing to help her out of her situation and purchase her home for resale. He stated he would be willing to purchase the property and make repairs for \$40,000 off the top of the proceeds when the property was resold, and the

remaining proceeds from the sale would be split equally between himself and the seller. The seller agreed and was asked to sign various documents including escrow instructions and a purchase option agreement.

In the weeks that followed, the respondent advertised the property for sale through an auction, held open houses to permit the inspection of the property by potential buyers, and claimed that a portion of the proceeds would go to a named charity as part of his advertising campaign, although he had never contacted the organization to make proper arrangements or to obtain the permission to use their name in connection with his marketing. Ultimately a round-robin auction was conducted where he solicited and received bids and a successful bidder was achieved. *However, the respondent never completed his purchase of the property as he had proposed, and never made any underlying*

*Continued on page 8*

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STATE OF CALIFORNIA  
Arnold Schwarzenegger, Governor

BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
Dale Bonner, Secretary

DEPARTMENT OF REAL ESTATE  
Jeff Davi, Commissioner

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(For the deaf and hearing impaired)

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# The perils of dual agency

by Jeanine K. Clasen, Real Estate Counsel

While real estate brokers and salespersons are permitted by law to act as dual agents in real estate transactions, provided certain conditions are met, such dual agency arrangements present an increased risk of liability and/or discipline to the licensee.

## An Agent's Fiduciary Duties

Real estate brokers and salespersons ("agents") are engaged in the business of representing others in connection with real estate transactions. The duties imposed on such agents emanate from two bodies of law: regulatory statutes and the traditional law of agency.

Of particular relevance here are traditional "fiduciary" duties which each agent is required to provide to the person he or she represents (the "principal"). Fiduciary duties encompass numerous obligations which are beyond the scope of this article (For more information on fiduciary duties, see the *Summer 2007 Real Estate Bulletin*). Those most relevant to the problems raised by dual agency are the duties of disclosure, confidentiality, and loyalty:

### ➤ Disclosure

An agent owes an affirmative duty of disclosure to his principal, which means the agent must inform his or her principal of what the agent knows or should know which is likely to be material to the principal's interests or judgment in the transaction at issue. In the context of real estate transactions, this duty generally encompasses any facts *material to the principal's interests* affected by the transaction, which often extends beyond the facts concerning the value or desirability of the property. Moreover, an agent for the seller must *also* disclose to the *buyer* any known facts concerning the value or desirability of the property which the agent has reason to believe the buyer does *not* know and will not discover through reasonable diligence. In residential transactions, such disclosures are governed by statutes requiring the various specific disclosures and the use of certain forms, including the "Real Estate Transfer Disclosure Statement" ("TDS").

### ➤ Confidentiality

With the exception of the above-discussed affirmative disclosure requirements, an agent owes a duty to his or her principal *not* to use or disclose any information confidentially given him or her by the principal.

### ➤ Loyalty

An agent's duty of loyalty to his principal requires that all of the agent's actions while carrying out the purpose of the agency be performed in service of the principal's interests alone. The agent may not take any action or make any representation contrary to his principal's interests.

The above-summarized duties of an agent can sometimes be in conflict in dual agency situations.

## Rules of Dual Agency

Dual agency is permitted in real estate transactions provided the principals are notified in advance and consent to it. Without the principals' prior knowledge and consent, a dual agent is not entitled to recover a commission, even if no one is harmed as a result of the dual agency or the non-disclosure. Failure to disclose a dual agency may subject an agent to discipline by the Real Estate Commissioner. (Business & Professions Code § 10176 (d)).

Civil Code § 2079.21 expressly permits dual agency, but there is an inherent possible conflict of interest because it prohibits a dual agent from disclosing either principal's *negotiating strategy*. That is, the dual agent has all of the same duties discussed above *except* that he or she must *refrain* from disclosing to the buyer "that the seller is willing to sell... at a price less than the listing price" without the seller's express written consent, and he or she must

*Continued on page 10*

## October 1st deadline nears for conditional license repeal

Effective October 1, 2007, the implementation of Assembly Bill (AB) 2429 will change the qualifying educational requirements for the salesperson examination and for obtaining a real estate salesperson license. Currently, the Department has the authority to issue a conditional license to those applicants who show proof of completion of Real Estate Principles, with the remaining two required college-level courses to be completed within 18 months. Under the provisions of AB 2429, original salesperson examination applicants will be required to submit evidence of completion of a three-semester unit, or quarter-unit equivalent, college-level course in Real Estate Principles, Real Estate Practice *and* one additional course which must be chosen from the following list of courses:

- Legal Aspects of Real Estate
- Real Estate Finance
- Real Estate Appraisal
- Real Estate Economics
- Property Management
- Business Law
- Common Interest Developments
- Escrows
- Computer Applications in Real Estate
- Accounting
- Mortgage Loan Brokering and Lending

### *Assembly Bill 2429 will be implemented as follows:*

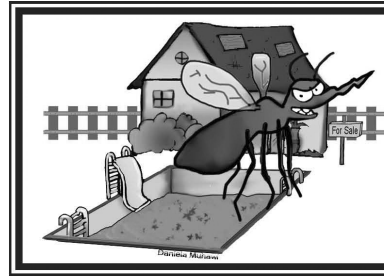
1. Original salesperson examination applications postmarked or received on or after October 1, 2007, will be required to include evidence of completion of all three required courses before they can be scheduled for an examination.
2. Salesperson examination applications are valid for a two-year period. Examination applications that are received or postmarked before October 1, 2007, that contain an acknowledgement that the applicant is enrolled in a Real Estate Principles course or has completed one, will be entitled to take the examination within the two-year period that the application is valid.
3. In order to be eligible for a conditional license, applicants who qualify for the examination as set forth in item 2, must pass the examination before October 1, 2007, and have the

## Help prevent the spread of the West Nile Virus (WNV):

### WANTED

#### LOCATIONS OF NEGLECTED SWIMMING POOLS

#### ALIAS: "GREEN" POOLS



### DEPRESSED HOUSING MARKETS AND FORECLOSURES HAVE LED TO MANY NEGLECTED OR "GREEN" SWIMMING POOLS IN CALIFORNIA.

- ⌘ Pools that are not maintained grow algae and bacteria, leading to "green" swimming pools.
- ⌘ Mosquitoes lay their eggs in "green" pools. These eggs hatch into larvae that become adult mosquitoes.
- ⌘ Mosquitoes from "green" pools can transmit WNV once they feed on an infected bird.
- ⌘ These WNV-infected mosquitoes can bite you and infect you with WNV!

#### WHAT DO I DO IF I HAVE, OR SOMEONE I KNOW HAS, A "GREEN" POOL?

- ⌘ Locate the mosquito control agency in your area by visiting: [www.westnile.ca.gov](http://www.westnile.ca.gov) or calling 1-877-WNV-BIRD (1-877-968-2473).
- ⌘ Contact your local mosquito control agency about the best course of action.

#### WHAT CAN THE LOCAL MOSQUITO CONTROL AGENCY DO?

The mosquito control agency can do the following:

- ⌘ Work with the real estate agent or property owner if necessary;
- ⌘ Place mosquito fish in the pool to eat the mosquito larvae;
- ⌘ Put a product in the pool that kills the larvae;
- ⌘ Help you decide how to manage the pool, if you own the pool, so no more mosquitoes are produced.
- ⌘ These actions stop mosquito production, but the pool remains green until it is properly maintained.

#### WHAT IF THERE IS NOT A LOCAL MOSQUITO CONTROL AGENCY IN MY AREA?

- ⌘ Contact your city government;
- ⌘ Use mosquito control slow-release products available at the local garden center or hardware store.

#### FOR MORE INFORMATION

- ⌘ Contact your local mosquito control program or health department
- ⌘ To locate the mosquito control program in your area visit: [www.westnile.ca.gov](http://www.westnile.ca.gov) or call 1-877-WNV-BIRD (1-877-968-2473)

4. license application received or postmarked before October 1, 2007.
4. Applicants who qualify for the examination as set forth in item 2, who pass the examination on or after October 1, 2007, or whose license application is received or postmarked on or after October 1, 2007, will be required to complete all three required courses before their four-year license can be issued.
5. Examination applications that are received or postmarked before October 1, 2007, that contain a verification that the applicant has completed all three required courses, will be entitled to take the examination and apply for a four-year license upon the successful completion of that examination.



# Disciplinary Action: March 07 - May 07

- ✓ 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 filed and the disciplinary action is stayed, until the stay is dissolved. Names of persons to whom licenses are denied on application are not published.
- ✓ Licensees are listed alphabetically by the District Office region of responsibility.
- ✓ The license type is listed in parentheses after the licensee's name. [REB – Real estate broker; RREB – Restricted real estate broker; RES – Real estate salesperson; RRES – Restricted real estate salesperson; PRLS – Prepaid rental listing service;

RPRLS – Restricted prepaid rental listing service; REO – Real estate officer; REC – Real estate corporation]

- ✓ Below are brief summaries of various regulations and code sections. The full text of the sections is available on the DRE Web site [www.dre.ca.gov](http://www.dre.ca.gov) under Real Estate Law and/or Regulations.
- ✓ Disciplinary actions that are “stayed” means there is “a delay in carrying out” all or part of the recommended discipline.



## Commissioner's Regulations

2725	Failure of broker to exercise reasonable supervision over the activities of his or her salespersons
2726	Failure to have broker-salesperson agreements
2731	Unauthorized use of fictitious business name
2742(c)	Failure of corporation to be in good standing
2753	Broker's failure to retain salesperson's license at main office or return the license at termination of employment
2830.1	Impound trust account handling
2831	Failure to keep proper trust fund records
2831.1	Inadequate separate trust fund beneficiary records
2831.2	Failure to reconcile trust account
2832	Failure to comply with trust fund handling provisions
2832(d)	Failure of broker holding trust funds contingent on offer of acceptance to properly place funds within 3 business days of acceptance
2832(e)	Failure of broker acting as escrow holder to deposit trust funds in trust account by next business day following receipt
2832.1	Failure to obtain permission to reduce trust fund balance in a multiple beneficiary account
2834	Trust account withdrawals by unauthorized or unbonded person
2835	Retention of broker funds in trust account
2840	Failure to give approved borrower disclosure
2950(d)	Failure of broker handling escrows to maintain records and accounts
2950(f)	Failure to deposit escrow trust funds
2950(g)	Broker-handled escrow disbursement without written instructions
2950(h)	Failure to disclose interest in the agency holding the escrow
2951	Improper record keeping for broker handled escrows

## Business and Professions Code

480(c)	Denial of license on grounds of false statement in license application
490	Substantially related criminal conviction
498	License obtained by fraud or misrepresentation
10130	Acting without license
10131(a)	Performing acts for which a real estate license is required
10137	Unlawful employment or payment of compensation
10145	Trust fund handling
10145(a)	Trust fund handling
10145(c)	Failure by salesperson to deliver trust funds to broker
10148	Failure to retain records and make available for inspection
10159.2	Failure by designated officer to supervise licensed acts of corporation
10159.5	Failure to obtain license with fictitious business name
10160	Failure to maintain salesperson licenses in possession of broker
10176(a)	Making any substantial misrepresentation
10176(e)	Commingling trust funds with brokers funds
10176(g)	Secret profit or undisclosed compensation
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 in performing licensed acts
10177(h)	Failure to supervise salespersons or licensed acts of corporation
10177(i)	Improper use of governmental employment giving access to confidential records
10177(j)	Fraud or dishonest dealing as principal
10177(k)	Violation of restricted license condition
10177.5	Civil fraud judgement based on licensed acts
10231.1	Retaining lender's funds for more than 25 days without a written agreement with the lender
10231.2	Failure to give self-dealing notice
10236.4	Failure to include license number or DRE license information telephone number in documents
10240	Failure to give mortgage loan disclosure statement
10241	Improper mortgage loan disclosure statement
10242	Exceeding allowable commissions, fees, or charges on mortgage loan

## Financial Code

4975	Violation of covered loan requirements
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## REVOKED LICENSES

### Fresno Region

**Brager & Assoc, Inc. (REC)**  
3600 Sisk Rd., Ste.4H, Modesto  
*Effective:* 4/18/07  
*Violation:* 2831.2, 2832.1, 10145, 10177(d)

**Jaurique, Enrique (RES)**  
4840 N. Blackstone, Fresno  
*Effective:* 3/2/07  
*Violation:* 10177(b)

**Mendoza, Tiffany Michele (RRES)**  
1732 Dennis, Clovis  
*Effective:* 5/3/07  
*Violation:* 10177(k)

**Stockdale Realty, Inc. (REC)**  
2535 16<sup>th</sup> St., Ste. 210, Bakersfield  
*Effective:* 4/30/07  
*Violation:* 2831.1, 2831.2, 2832, 2832.1, 10145, 10177(d)

### Los Angeles Region

**Allen, Fabian Fonta (RES)**  
1060 North 13<sup>th</sup> Ave., Upland  
*Effective:* 5/24/07  
*Violation:* 490, 10177(b)

**American Network Financial, Inc. (REC)**  
31877 Del Obispo St., Ste. 204,

San Juan Capistrano  
*Effective:* 5/21/07  
*Violation:* 2742, 10176(a)(i), 10177(d)(f)(j), 10177.5

**Armand, Anthony Victor (REB, REO)**  
1835 Newport Blvd., #A 109-383, Costa Mesa  
*Effective:* 4/9/07  
*Violation:* 490, 10177(b)

**Baker, Tammy Lee (RES)**  
3731 Sungate Dr., Palmdale  
*Effective:* 5/8/07  
*Violation:* 490, 10177(b)

**Buehler, Dale Lawrence (RES)**  
1794 Kelton Ave., Los Angeles  
*Effective:* 4/30/07  
*Violation:* 490, 10177(b)

**Castelan, Erica Socorro (RES)**  
7033 Milton Ave., Whittier  
*Effective:* 5/22/07  
*Violation:* 490, 10177(b)

**Castillo, Audina Victoria (RES)**  
6930 S. Atlantic Ave., Bell  
*Effective:* 5/10/07  
*Violation:* 490, 10177(b)

**Chavez, David Fernando (RES)**  
16707 Bimini Ave., Cerritos  
*Effective:* 4/24/07  
*Violation:* 490, 10177(b)

**Chow, Michael Eugene (RES)**  
30981 Buenos Aires,

- Lucerne Valley  
Effective: 5/9/07  
Violation: 490, 10177(b)
- Clark, Jeffrey Kelly (RES)**  
5396 Crescent Ave., Cypress  
Effective: 5/29/07  
Violation: 490, 10177(b)
- Clayton, Laverne Smith (RES)**  
PO Box 2332, Culver City  
Effective: 4/23/07  
Violation: 10130, 10177(d)
- Coughlin, Justin Michael (REB, REO)**  
5000 Birch St., #4000,  
Newport Beach  
Effective: 5/21/07  
Officer of: American Network  
Financial, Inc.  
Violation: 10176(a),  
10177(f)(i)(j),  
10177.5
- Crow, Robert Fredrick (RES)**  
PO Box 3181, Crestline  
Effective: 4/26/07  
Violation: 490, 10177(b)
- Deluccia, James Anthony (RES)**  
8571 Kelso Dr., Huntington  
Beach  
Effective: 5/7/07  
Violation: 490, 10177(b)
- Elhuzayel, Ausama Salem (RES)**  
1845 W. Lullaby Ln., Anaheim  
Effective: 4/25/07  
Violation: 490, 10177(b)
- Ewell, Nicholas Albert (RES)**  
9849 Foothill Blvd., Ste. G,  
Rancho Cucamonga  
Effective: 4/12/07  
Violation: 490, 10177(b)
- Fichera, Michael Gerard (RES)**  
53 Mercantile Way, Ladera Ranch  
Effective: 5/8/07  
Violation: 490, 10177(b)
- Fonseca, Sergio J. (RRES)**  
1913 East 17<sup>th</sup> St., #100, Santa  
Ana  
Effective: 5/4/07  
Violation: 490, 10177(b)(k)
- Garman, Jody Gibbons (RES)**  
1699 Amarelle St., Newbury Park  
Effective: 5/7/07  
Violation: 490, 10177(b)
- Guinto, Elizabeth Candela (RES)**  
22355 Starwood Dr., Yorba Linda  
Effective: 4/30/07  
Violation: 490, 10177(b)
- Hagedorn, Christopher Alan (RES)**  
23228 Orange Ave., #1,  
Lake Forest  
Effective: 5/4/07  
Violation: 490, 10177(b)
- Justason, Larry Jay (RES)**  
4830 West 116<sup>th</sup> St., #B,  
Hawthorne  
Effective: 5/31/07  
Violation: 490, 10177(b)
- Kutzner, Robert Damian (RES)**  
1401 W. Carriage Dr., Santa Ana  
Effective: 4/4/07  
Violation: 490, 10177(b)
- Linares, Lupe (REB)**  
5612 Passons Blvd., Pico Rivera  
Effective: 4/9/07  
Violation: 490, 10177(b)
- Meola, Christopher Michael (RRES)**  
220 Hueneme Rd., Port Hueneme  
Effective: 5/9/07  
Violation: 490, 10177(b)
- Michaels, Ed (RES)**  
1273 Lands Burn Circle, Westlake  
Village  
Effective: 5/4/07  
Violation: 490, 10177(b)
- Mirroknian, Ali (RES)**  
6314 Van Nuys, #221, Van Nuys  
Effective: 5/7/07  
Violation: 490, 10177(b)
- Nguyen, Rebecca Quynh-Giao (RES)**  
9315 Bolsa Ave., #70,  
Westminster  
Effective: 4/4/07  
Violation: 490, 10177(b)
- Nunez, Gildardo Jr. (RES)**  
8222 Wisner Ave., Van Nuys  
Effective: 5/7/07  
Violation: 490, 10177(b)
- Pacheco, Angela Marie (RES)**  
12691 Luna Rd., Victorville  
Effective: 5/8/07  
Violation: 490, 10177(b)
- Pho, Anthony T. (RES)**  
28014 Marguerite Pkwy,  
Mission Viejo  
Effective: 4/26/07  
Violation: 490, 10177(b)
- Portillo, Maritza (RES)**  
14029 Bancroft Ct., Fontana  
Effective: 3/23/07  
Violation: 490, 10177(b)
- Rawleigh, Evalyn Basilisa (RES)**  
1039 West H St., Colton  
Effective: 3/21/07  
Violation: 490, 10177(b)
- Riganian, Greg (RES)**  
1925 S. Church St., Burbank  
Effective: 5/2/07  
Violation: 490, 498, 10177(a)(b)
- Rivero, Adelina N. (RES)**  
10911 Pioneer Blvd.,  
Santa Fe Springs  
Effective: 5/22/07  
Violation: 10145(c), 10176(a)(i),  
10177(d)
- Rogers, Toni Lenae (RES)**  
7543 W. Liberty Pkwy, Unit 621,  
Fontana  
Effective: 5/3/07  
Violation: 490, 10177(b)
- Ryan, Pamela Lynn (RES)**  
2111 East 1<sup>st</sup> St., #206, Santa Ana  
Effective: 4/26/07  
Violation: 490, 10177(b)
- Sady-Kennedy, Alejandro (REB)**  
27758 Santa Margarita Pky, #118,  
Mission Viejo  
Effective: 3/28/07  
Violation: 490, 10177(b)
- Sarup, Raj Prem Peter (REB)**  
350 S. Figueroa St., Ste. 190,  
Los Angeles  
Effective: 3/15/07  
Violation: 2742, 2832, 10137,  
10145(a), 10159.2,  
10177(d)(g)(h),  
10240, 10241
- Silverton, Ronald Robert (REB)**  
1568 Michael Ln.,  
Pacific Palisades  
Effective: 4/9/07  
Violation: 10177(g)(j)
- Stevens, Ryan (REB)**  
801 S. Grand Ave., Ste. 275,  
Los Angeles  
Effective: 4/2/07  
Violation: 490, 10177(b)
- Testa, Caspar Paul (RES)**  
3001 Beverly Glen Cir.,  
Los Angeles  
Effective: 5/7/07  
Violation: 490, 10177(b)

Effective: 5/23/07  
Violation: 490, 10177(a)(b)

### Sacramento Region

**Goff, Gerry Kendall (RES)**  
350 Laurelwood Circle, Manteca  
Effective: 5/15/07  
Violation: 10177(b)

**Ross, Brian Douglas (RES)**  
4178 San Ramon Way, San Jose  
Effective: 4/30/07  
Violation: 490, 10177(b)

**Ross, Christopher (RES)**  
1457 W. Walnut St., Stockton  
Effective: 5/10/07  
Violation: 490, 10177(b)

### San Diego Region

**4M Mortgage, Inc. (REC)**  
9320 Hazard Way, Ste. A-1,  
San Diego  
Effective: 5/22/07  
Violation: 10137

**Alexander, Lorene Alyce (RES)**  
1173 Calle Dulce, Chula Vista  
Effective: 3/1/07  
Violation: 490, 10177(b)

**Cardenas, Ricardo Chavez (REB, REO)**  
8765 Aero Dr., Ste. 226,  
San Diego  
Effective: 4/1/07  
Violation: 490, 10177(b)

**Combs, Adam Joseph (RES)**  
9056 Camphor Tree Ct., Corona  
Effective: 5/2/07  
Violation: 490, 10177(b)

**Cunningham, Scott Seiwel (RES)**  
15048 Zieglinde Dr.,  
Lake Elsinore  
Effective: 5/8/07  
Violation: 490, 10177(b)

**Garibay, Asunta Rose (RES)**  
42200 Margarita Rd., #413,  
Temecula  
Effective: 5/8/07  
Violation: 490, 10177(b)

**Lambert, Stephen Michael (RES)**  
2615 Clovis St., San Diego  
Effective: 4/18/07  
Violation: 10130, 10177(d)

**Malone, Gregory M. (RES)**  
3405 Florida St., #205, San Diego  
Effective: 4/23/07  
Violation: 490, 10177(b)

**Parcel, Christopher John (REB)**  
2180 Garnet Ave., #3E, San Diego  
Effective: 3/14/07  
Violation: 490, 10177(b)

**Schmied, Alexandra Maria (RES)**  
1822 Polk Ave., San Diego  
Effective: 3/1/07  
Violation: 480(c), 490,  
10177(a)(b)

**Spruill, Daniel Lee (REB)**  
22335 Hillview Dr., Perris  
Effective: 5/8/07  
Violation: 490, 10177(b)

**Sullivan, Catherine Mary (REB)**  
6924 Town View Ln., San Diego  
Effective: 4/23/07  
Violation: 490, 10177(b)



## REVOKED WITH RIGHT TO A RESTRICTED LICENSE

### Fresno Region

#### Brager, Robert Joseph (REB, REO)

3000 Edgeview Dr., Modesto  
Effective: 4/18/07

Violation: 2831.2, 2832.1,  
10145, 10159.2,  
10177(d)(h)

Right to RREB license on terms and conditions

### Los Angeles Region

#### Bahk, Paul H. (RES)

15018 Hartsook St.,  
Sherman Oaks

Effective: 3/6/07

Violation: 498, 10177(a)

Right to RRES license on terms and conditions

#### Bunn, Maceo Jr. (RES)

8729 Beckenham Ln., #B,  
Inglewood

Effective: 5/8/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Cervantes, Joe Louis (RREB, RREO)

520 West 5<sup>th</sup> St., Ste. H, Oxnard

Effective: 4/23/07

Officer of: El Rancho Home  
Loans, Inc.

Violation: 10159.2,  
10177(d)(g)(h)

Right to RREB license on terms and conditions

#### Chang, Andy (REB)

12209 Central Ave., Chino

Effective: 5/29/07

Violation: 490, 10177(b)

Right to RREB license on terms and conditions

#### Conklin, Glen C. (RES)

384 Knollglen, Irvine

Effective: 5/21/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Coronel, Mercedes Santos (RES)

1230 Westholme Ave., #103,  
Los Angeles

Effective: 5/7/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Current, Gerard Paul (REB)

524 S. Grand Ave., Pasadena

Effective: 5/22/07

Violation: 490, 10177(b)

Right to RREB license on terms and conditions

#### El Rancho Home Loans, Inc. (RREC)

520 West 5<sup>th</sup> St., Ste. H, Oxnard

Effective: 4/23/07

Violation: 2831, 2831.2, 2842.5,  
2846.7, 2950(d)(g),  
10145, 10176(a),  
10177(d)(g), 10231.1,

10232.2, 10236.4,

10240, 10242

Right to RREC license on terms and conditions

#### Gibbs, Michael John (RES)

6615 Pacific Coast Hwy, Ste. 180,  
Long Beach

Effective: 4/25/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Hernandez, Manuel Jose (RES)

13309 Filmore St., Pacoima

Effective: 5/7/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Khairzada, Masood Aristotle (RES)

PO Box 151, Ventura

Effective: 5/29/07

Violation: 490

Right to RRES license on terms and conditions

#### Lopez, Hector (RES)

530 Foxglove Pl., Oxnard

Effective: 4/24/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Lopez, Martin Alberto (RES)

6125 Archwood Way, Palmdale

Effective: 3/7/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Mai, Tom T. (REB)

10161 Bolsa Ave., #204-A,  
Westminster

Effective: 5/22/07

Violation: 490, 10177(b)

Right to RREB license on terms and conditions

#### Miller, Thomas Bruce (REB)

3121 W. Coast Hwy,  
Newport Beach

Effective: 3/1/07

Violation: 10148, 10177(d)

Right to RRES license on terms and conditions

#### Nabhan, Ibrahim Mohamad (REB, REO)

1125 W. Foothill Blvd., Ste. 205,  
Upland

Effective: 3/5/07

Violation: 4975, 10137, 10159.2,  
10176(i),  
10177(d)(g)(h)

Right to RREB license on terms and conditions

#### Nagy, Julius Laszlo (REB)

8800 Eton Ave., Space 79,  
Canoga Park

Effective: 4/25/07

Violation: 490, 10177(b)

Right to RREB license on terms and conditions

#### Petrullo, Michael August (REB, REO)

7518 Penobscot Dr., West Hills

Effective: 5/23/07

Violation: 490, 498, 10177(a)(b)

Right to RREB license on terms and conditions

#### Porizek, Kevin Mathew (RES)

15516 Gerkin Ave., Lawndale

Effective: 5/23/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Portillo, Luis Jr. (REB)

19030 Valley Blvd., Bloomington

Effective: 5/28/07

Violation: 2831.1, 2831.2, 2832,  
10145(a), 10177(d)

Right to RREB license on terms and conditions

#### Rojas, Dora (RES)

13333 Paramount Blvd.,  
South Gate

Effective: 5/8/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Sarhangian, Arash (RES)

2305 West 190<sup>th</sup> St.,  
Redondo Beach

Effective: 4/24/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Schumacher, Charles Gerald (REB, REO)

1136 Larrabee Street,  
West Hollywood

Effective: 5/29/07

Officer of: Carmel Business

Sales, Inc.

Peninsula Business

Sales, Inc.

Violation: 10177(h)

Right to RREB license on terms and conditions

#### Smith, Scott Joseph (REB, REO)

10 Monarch Bay Plaza,  
Monarch Beach

Effective: 4/19/07

Violation: 490, 10177(b)

Right to RREB license on terms and conditions

#### Stockton, Robert Glen (RES)

412 E. Freeland St., Apt. 3,  
Long Beach

Effective: 5/29/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Watanabe, Bryan S. (RES)

724 North 6<sup>th</sup> St., Montebello

Effective: 4/30/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

### Oakland Region

#### Clark, Kelly Kristi (RES)

1626 Hampel St., Oakland

Effective: 4/25/07

Violation: 490(a), 10177(b)

Right to RRES license on terms and conditions

#### Hartman, JoanKathryn (RES)

50 Starlight Ln., Eastham, MA

Effective: 5/17/07

Violation: 10177.5

Right to RRES license on terms and conditions

#### Larson, Steve Dwayne (RES)

PO Box 112186, Campbell

Effective: 5/7/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Meyer, Wendy Dana (RES)

4 Meyer Place, Kentfield

Effective: 5/30/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Valentine, Heather Feather (RES)

5459 Poinsett Ave., El Cerrito

Effective: 3/21/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Wainwright, Wayne Taylor (REB)

1970 Broadway, #700, Oakland

Effective: 5/22/07

Violation: 490, 10177(b)

Right to RREB license on terms and conditions

### Sacramento Region

#### Gregory, Cathryn Jean (REB)

150 Camino Vista, St. Helena

Effective: 3/21/07

Violation: 10145, 10177(d)

Right to RREB license on terms and conditions

#### Humackich, Kasey John (RES)

14769 Sutter Island Rd.,  
Courtland

Effective: 4/9/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Keenan, Jenifer Marie (RES)

PO Box 2653, Weaverville

Effective: 5/9/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Kirchen, Cynthia Louise (REB)

2836 Watson Ct., Montague

Effective: 3/14/07

Violation: 490, 10177(b)(f)

Right to RREB license on terms and conditions

#### Pera, Cinzia Rita (RES)

11527 Snowpeak Way, Ste. 617,  
Truckee

Effective: 4/30/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

### San Diego Region

#### Delman, Brian Marc (REB)

611 S. Palm Canyon Dr.,  
Suite 7112, Palm Springs

Effective: 4/30/07

Violation: 10177(f)

Right to RREB license on terms and conditions

#### Garcia, Jesus Arturo (RES)

6960 Magnolia Ave., Ste. 103,  
Riverside

Effective: 5/30/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

#### Riley, Jay Michael (RES)

16190 Turtleback Rd., San Diego

Effective: 5/8/07

Violation: 490, 10177(b)

Right to RRES license on terms and conditions

**Stewart, James (RES)**  
6083 Valencia St., Corona  
Effective: 5/29/07  
Violation: 490, 10177(b)  
Right to RRES license on

**Sypherd, Eric Emmett (RES)**  
1215 Saffron Cir., Corona  
Effective: 5/28/07  
Violation: 490, 10177(b)  
Right to RRES license on terms and conditions

**SUSPENDED**

**Oakland Region**

**Nguyen, Ha Thu Thi (RES)**  
3422 Piemonte Ct., San Jose  
Effective: 5/23/07  
Violation: 10137, 10177(d)  
Suspended for 90 days

**San Diego Region**

**Winsor, Michael James (REB, REO)**  
9320 Hazard Way, Ste. A-1, San Diego  
Effective: 5/22/07  
Officer of: 4M Mortgage, Inc.  
Violation: 10137, 10177(d)  
Suspended for 30 days

**SUSPENDED WITH STAY**

**Fresno Region**

**Peninsula Business Sales, Inc. (REC)**  
26346 Carmel Rancho Ln., Carmel  
Effective: 5/29/07  
Violation: 10130, 10131(a), 10177(d)  
Suspended for 60 days-stayed for 2 years on terms and conditions

**Los Angeles Region**

**Alberts, Joseph (REB, REO)**  
22470 Barton Rd., Grand Terrace  
Effective: 5/28/07  
Violation: 2831, 2831.1, 2831.2, 2832, 10177(d)  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Castro, Daniel Carmen (REB)**  
4403 Riverside Dr., Ste. C, Chino  
Effective: 3/1/07  
Violation: 2831, 2831.1, 2832(d), 2832.1, 2835, 10145, 10177(d)  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Clarion Mortgage Capital, Inc. (REC)**  
17772 East 17<sup>th</sup> St., Ste. 211, Tustin  
Effective: 5/22/07  
Violation: 10137, 10177(f), 10240  
Suspended for 30 days-stayed for 2 years on terms and conditions

**Eisele, Kirk D. (REB)**  
65 Palatine, #421, Irvine  
Effective: 3/30/07  
Violation: 10159.2, 10177(d)  
Suspended for 60 days-30 days stayed for 2 years on terms and conditions

**Grand Capital & Assoc., Inc. (REC)**  
2400 E. Katella Ave., #1220, Anaheim  
Effective: 5/18/07  
Violation: 2753, 2831, 2831.1, 2831.2, 2832(e), 2832.1, 2834, 2950(d)(f)(g), 2951, 10145, 10160, 10177(d)(g), 10240  
Suspended for 120 days-stayed for 2 years on terms and conditions

**Hoaglund, Wesley Craig (REB, REO)**  
16802 Aston St., Irvine  
Effective: 5/8/07  
Violation: 2726, 2831, 2831.2, 2832.1, 2834, 10145(a), 10177(d), 10240  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Jara, Francisco Javier (REB, REO)**  
2400 E. Katella Ave., #1220, Anaheim  
Effective: 5/18/07  
Violation: 2753, 2831, 2831.1, 2831.2, 2832(e), 2832.1, 2834, 2950(d)(f)(g), 2951, 10145, 10159.2, 10160, 10177(d)(g)(h), 10240  
Suspended for 120 days-stayed for 2 years on terms and conditions – Suspended Indefinitely

**Lares, Gudelia (RES)**  
1915 S. Rosita Ave., Santa Maria  
Effective: 3/7/07  
Violation: 10130, 10177(d)  
Suspended for 60 days-stayed for 2 years on terms and conditions

**Lee, Chris Duckyun (REB, REO)**  
1440 N. Harbor Blvd., Ste. 650, Fullerton  
Effective: 3/19/07  
Violation: 2831, 2831.1, 2832(d), 2840, 10145, 10176(e)(g), 10177(d)(g)(h), 10240  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Lenox Financial Mtg. Corp.(REC)**  
16802 Aston St., Irvine  
Effective: 5/8/07  
Violation: 2726, 2831, 2831.2, 2832.1, 2834, 10145(a), 10177(d), 10240  
Suspended for 90 days-stayed

for 2 years on terms and conditions

**NFN Group Inc. (REC)**  
22470 Barton Rd., Grand Terrace  
Effective: 5/28/07  
Violation: 2831, 2831.1, 2831.2, 2832, 10177(d)  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Pattenaude, Thomas Patrick (REB, REO)**  
21138 Costanso St., Woodland Hills  
Effective: 4/2/07  
Violation: 10137, 10177(d)(g), 10240  
Suspended for 60 days-stayed for 2 years on terms and conditions

**Richard, Troy Willie (REB, REO)**  
40749 Inwood Ct., Palmdale  
Effective: 3/26/07  
Violation: 2731, 2831, 2832, 2834, 2840, 2950(d), 2951, 10137, 10145, 10177(d), 10240  
Suspended for 90 days-60 days stayed for 2 years on terms and conditions

**Sahagon, DioSelina (REB)**  
1519 S. Broadway Rd., Santa Maria  
Effective: 3/7/07  
Violation: 10137  
Suspended for 60 days-stayed for 2 years on terms and conditions

**Sim, Chris S. (REB, REO)**  
555 E. Ocean Blvd., Ste. 420, Long Beach  
Effective: 3/19/07  
Violation: 2831, 2831.1, 2832(d), 2840, 10145, 10176(e)(g), 10177(d)(g)(h), 10240  
Suspended for 90 days-stayed for 2 years on terms and conditions

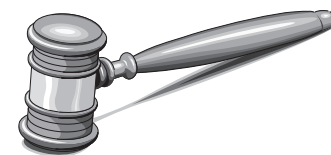
**Stoic Capital Corp. (REC)**  
21138 Costanso St., Woodland Hills  
Effective: 4/2/07  
Violation: 10137, 10177(d)(g), 10240  
Suspended for 60 days-stayed for 2 years on terms and conditions

**Thai, Kim-Phung Thi (RES)**  
12219 Loya River, Fountain Valley  
Effective: 3/6/07  
Violation: 10145(c), 10177(d)  
Suspended for 150 days-stayed for 2 years on terms and conditions

**Oakland Region**

**Century 21 Countrywide Inc. (REC)**  
3111 McLaughlin Ave., San Jose  
Effective: 5/23/07  
Violation: 10137, 10159.5, 10177(d)(h)  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Dinh, Tony (REB, REO)**  
3111 McLaughlin Ave. San Jose  
Effective: 5/23/07  
Officer of: Century 21 Countrywide, Inc.  
City Home Loans, Inc.  
Violation: 10137, 10159.2(a), 10177(d)(h)



Suspended for 90 days-stayed for 2 years on terms and conditions

**Huynh, Jackie Ngoc (RES)**  
212 9<sup>th</sup> St., #306, Oakland  
Effective: 4/30/07  
Violation: 10137, 10177(d)  
Suspended for 30 days-stayed for 2 years on terms and conditions

**San Diego Region**

**Fair Housing Center (REC)**  
6809 Indiana, Ste. 204, Riverside  
Effective: 5/30/07  
Violation: 2831, 2831.1, 2831.2, 2832.1, 10145, 10176(g), 10177(d)(g)  
Suspended for 30 days-stayed for 2 years on terms and conditions

**Hernandez, Julio Cesar (REB, REO)**  
3741 Merced Dr., Ste. J, Riverside  
Effective: 5/29/07  
Officer of: JC Lending, Inc.  
Violation: 2731, 2831, 2832, 2834, 2950(d)(h), 2951, 10145, 10159.2, 10159.5, 10176(g), 10177(d)(g)(h)  
Suspended for 90 days-stayed for 2 years on terms and conditions

**JC Lending, Inc. (REC)**  
3741 Merced Dr., Ste. J, Riverside  
Effective: 5/29/07  
Violation: 2731, 2831, 2832, 2834, 2950(d)(h), 2951, 10145, 10159.5, 10176(g), 10177(g)  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Meckes, Brett A. (REB, REO)**  
6809 Indiana, Ste. 200, Riverside  
Effective: 5/30/07  
Officer of: Fair Housing Center  
Violation: 2831, 2831.1, 2831.2, 2832.1, 10145, 10159.2, 10176(g), 10177(d)(g)(h)  
Suspended for 30 days-stayed for 2 years on terms and conditions

**Torres, Sarah Mae (REB)**  
42051 San Jose Dr., San Jacinto  
Effective: 5/14/07  
Violation: 2830.1, 2831.2, 2832, 2832.1, 2834, 10137, 10145, 10177(d)  
Suspended for 150 days – 120 days stayed for 2 years on terms and conditions



## The case of the two-timing broker

Real estate can be a lucrative profession and there are many ways to earn money as a licensee. In spite of this, much of the time in the Department's Enforcement Section is spent dealing with licensees who have chosen to make their money in ways that are not legitimate.


A recent example of this involved a real estate broker who was contacted by an out-of-state doctor and was asked to locate a vacation property to fit within a budget of \$8,000 to \$10,000 per month. Our licensee located a property and negotiated a 3½ month lease which called for a substantial amount of money up front as well as a security deposit. The commission paid by the owner in this transaction was \$2,800, which was to be split between the listing agent and our respondent. Up to this point, all of this is perfectly normal. Except that in this case, our licensee negotiated a different lease with the lessor than he negotiated with the lessee.

The lease that our licensee negotiated with his client was for 3½ months with a monthly rent of \$9,000. The lease called for \$31,500 to be paid up front and a \$5,000 security deposit. He secured the lessee's signature on the agreement, and collected two checks. The first was for \$31,500 and the other for \$5,000.

The lease that he negotiated with the lessor called for a monthly rent of \$8,000 with \$28,000 paid up front and a \$5,000 security deposit. He forged the lessee's signature on the agreement. He deposited the \$31,500 check and the \$5,000 deposit into his general account and then cut checks to the listing agent for the property owner in the amounts of \$28,000 and \$5,000, thus pocketing the additional \$3,500.

Now this little trick worked pretty well for the respondent for about 9 months or so, until the doctor was ready to take


another vacation and wanted to lease the property again. Once again, he contacted our respondent to negotiate another lease on the property with the same terms as the previous year. To refresh his memory as to the specifics of the terms he agreed to the year before, he asked our licensee for a copy of the previous lease that he signed. Unfortunately for our licensee, he sent the doctor a copy of the wrong lease, or depending on your point of view, the right lease. When the doctor received the lease, he noticed that his signature was forged on the \$8,000 per month rental as well as the \$28,000 up front payment. He then put the pieces together. He filed a complaint with the Department, an investigation ensued, and the respondent's real estate license was revoked for fraud and misrepresentation.

It is unfortunate that there are licensees who will engage in this type of conduct and take advantage of their clients in order to make a few additional dollars on a commission. Real estate licensees are required to be honest and truthful in their dealings with members of the public whom they represent in real estate transactions. When they are not, they run the risk of investigation and disciplinary action, including the possible revocation of their license. 

## Unlicensed – Fines

*Continued from page 1*

payments. Instead, the respondent voided his agreements and proceeded with the sale of the property directly from the owner to the buyer. Upon closing of the escrow, the seller learned for the first time that the sale of the property was directly between herself and the successful bidder. The respondent, who never took title to the property, collected approximately \$56,000 from the proceeds of the sale.

Upon examination of the transaction, it was determined that the respondent had placed himself in the role of a broker in this transaction and that he was not acting as a principal. The Department issued a Desist and Refrain Order against the respondent ordering him to cease conducting activities which require a real estate license. In addition, the Monterey District Attorney's Office, which also investigated the transaction, filed a civil suit against the respondent for his role in advertising, marketing, and providing services in selling the property without a real estate license. The District Attorney's case resulted in a \$100,000 settlement with \$52,000 in reimbursement to the seller and \$48,000 in fines. 

### LICENSE SURRENDERED

*(Licenses voluntarily surrendered per B&P Code §10100.2 during an administrative action/investigation)*

#### Fresno Region

**Carmel Business Sales, Inc. (REC)**  
1027 Vaquero Rd., Pebble Beach  
Effective: 5/29/07

#### Los Angeles Region

**1031 Commercial Exchange, Inc. (REC)**  
335 N. Maple Dr., Ste. 369, Beverly Hills  
Effective: 5/22/07

**Acuna, Andres Z. (RES)**  
2081 N. Oxnard Blvd., #178, Oxnard  
Effective: 3/8/07

**Benesch, Jose (RES)**  
1329 Rolling Knoll Rd., Diamond Bar  
Effective: 5/17/07

**Bui, Thuyhong T (REB, REO)**  
12442 Brookhurst St., Garden Grove

Effective: 5/2/07  
Officer of: L B Net, Inc

**Chang, Li Hsin Johnson (RES)**  
22 Cezzane, Irvine  
Effective: 3/13/07

**CIS Realty, Inc. (REC)**  
1 Centerpointe Dr., Ste. 440, La Palma  
Effective: 5/7/07

**Envision Mortgage Services, Inc. (REC)**  
33 Blossom, Irvine  
Effective: 5/3/07

**Florin, Louis Josue (RES)**  
6758 Dos Rios Rd., Downey  
Effective: 3/16/07

**Gonzalez, George (REB)**  
10219 Lundene Dr., Whittier  
Effective: 5/31/07

**King, Mark Stephen (RES)**  
PO Box 480, Carpinteria  
Effective: 3/7/07

**L B Net, Inc. (REC)**  
12442 Brookhurst St., Garden Grove  
Effective: 5/2/07

**Naranjo, Galo Jr. (RES)**  
7913 S. Main St., Los Angeles  
Effective: 4/19/07

#### San Diego Region

**Greif, Grant E. (RES)**  
1775 N. Ella Mae Ln., San Jacinto  
Effective: 4/23/07

**Sambrano, Anthony (REB, REO)**  
4448 Eagle Rock Blvd., Ste. E, Los Angeles  
Effective: 5/8/07  
Violation: 10159.2, 10177(d)

### INDEFINITE SUSPENSIONS

*(under Recovery Acct. provisions)*

**Arakelian, Alexander L. (RES)**  
31492 West St., Laguna Beach  
Effective: 3/16/07

**Scott, Mark A. (RRES)**  
1321 Granite Springs Dr., Chula Vista  
Effective: 5/24/07

### PUBLIC REPROVAL

#### Los Angeles Region

**Dunkee Financial Corp. (RES)**  
4448 Eagle Rock Blvd., Suite E, Los Angeles  
Effective: 5/8/07  
Violation: 2831, 2950(d), 2951, 10145, 10177(d)



## Storage of real estate records on electronic media?

Can brokers store their real estate records on electronic media? Can a real estate broker avoid storage costs related to bulky transaction files and other real estate documentation? Fortunately, the answer is “yes” and the details are found in Commissioner’s Regulation 2729.

Section 10148 of the Business and Professions (B&P) Code requires a broker to retain for three years all real estate documentation executed by or obtained by him or her in a transaction that required a real estate broker’s license. After notice, these records shall be made available for examination, inspection, and copying by a representative of the DRE. Real estate brokers can run into complications in complying with Section 10148, such as limited onsite storage space or costs, security and accessibility related to use of off-site locations.

Commissioner’s Regulation 2729(a) provides an alternative, allowing a real estate broker to use electronic image storage media to retain and store copies of all documents executed by him or her in connection with any transaction for which a real estate broker license is required. Copies of real estate documents, such as all listings, real estate purchase agreements, trust fund records, and any other type of real estate related documents can be stored on an electronic image storage media if the following requirements of Regulation 2729(a)(1 through 6) are satisfied:

1. The electronic image storage shall be nonerasable “write once, read many”, that does not allow changes to the stored document or record.
2. The stored document or record is made or preserved as part of and in the regular course of business.

3. The original record from which the stored document or record was copied was made or prepared by the broker or the broker’s employees at or near the time of the act, condition or event reflected in the record.
4. The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.
5. The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.
6. Records copied and stored under this section shall be retained for three years pursuant to Section 10148 of the B&P Code.

Commissioner’s Regulation 2729(b) does require the broker to maintain at his or her office a means of viewing these stored documents. Also, the broker shall provide, at his or her expense, a paper copy of any document or record requested by the DRE.

Regulation 2729 allows a real estate broker to utilize current technology while at the same time complying with Section 10148 of the Business and Professions Code. Done properly, a real estate broker can maintain real estate documentation as required while saving valuable office space or reducing the concerns about the high storage costs and adequate protection of his or her real estate files at an offsite facility. 🏠

## Licensing report

The Licensing Section is responsible for the administration of real estate license examinations as well as the issuance and renewal of salesperson and broker licenses. Due to the favorable real estate market in recent years, interest in obtaining a real estate license increased significantly. While this trend is slowing, DRE’s licensing workload remains elevated due to the increased number of licensees.

### Licensing and Examination Activity

Comparing Fiscal Year 2006-07 (July 1 through June 30) with the prior two fiscal years, the number of salesperson examinations scheduled decreased by -28% (2004-05) and -35% (2005-06) while the number of broker examinations increased by 16% and 0% respectively. In fiscal year 2006-07 the DRE scheduled over 183,000 total examinations. Following the same annual comparisons to 2004-05 and 2005-06, the issuance of new salesperson licenses decreased by -21% and -25%, while the issuance of new broker licenses increased by 18% and 0%. License renewals increased by 41% and 11% for salespersons and were +12% and -3% for brokers.

### Population

The number of licensees had previously peaked in FY 1991-92 with a total of approximately 376,000. Fiscal year 1992-93 started a downward trend, than in September 1998, the number of licensees dropped to 295,527. Since then, the number of licensees has steadily increased to our current population of approximately 539,000.

As to the continuing education program, the DRE has been charged with implementing AB 223. Under the provisions of this

bill, all licenses which have an expiration date of June 30, 2007, or later, or file a renewal application on a late basis after that date, are required to complete a DRE approved 3-hour course in Risk Management as a part of the mandatory continuing education requirement. The continuing education requirement for salespersons who are completing their first renewal on and after July 1, 2007, increased from 12 to 15 hours with the addition of a Risk Management course.

Also, as a result of the passage of AB 2429, effective October 1, 2007, the qualifying education requirements for the salesperson examination and for obtaining a real estate salesperson license will be increased to three courses. Currently, the DRE has the authority to issue a conditional license to those license applicants who show proof of completion of a course in Real Estate Principles, with the remaining two required college-level courses to be completed within 18 months. Under the provisions of AB 2429, original salesperson examination applicants will be required to submit evidence of completion of a three-semester or quarter-unit equivalent, college level course in Real Estate Principles, Real Estate Practice and one additional specified course before they can sit for the real estate salesperson exam. For more information regarding this bill, please refer to the Summer 2007, edition of the Real Estate Bulletin, or the DRE Web site.

The DRE Web site debuted its *eLicensing*, online services on September 11, 2002, and in fiscal year 2002-03, licensees completed 23,993 transactions. Since then the Department has continued to expand the types of transactions available. More than half of those who renewed their licenses did so by using the DRE Web site and as of June 30, 2007 more than 1,443,000 transactions have been completed online. 🏠

## Subdivisions report

Before a subdivision can be marketed in California, the subdivider must obtain a Subdivision Public Report (California project), permit (out-of-state timeshare) or confirmation of their registration (non-California project located within the United States) from the Department of Real Estate (DRE). The public report/permit discloses to prospective purchasers pertinent information about the subdivision. Prior to issuance of a public report or permit, the subdivider must submit evidence to the DRE that adequate financial arrangements have been made for completion.

Through the public report process, DRE oversees the creation of new standard, common interest and timeshare developments. To protect purchasers from fraud and misrepresentation in subdivision sales, DRE maintains uniform minimum statewide standards for site suitability, financing of improvements and facilities, sales agreements, purchase money handling, the release of blanket encumbrances, and vital disclosures concerning the availability of fire protection, water supply and quality, vehicular access, latent natural hazards, reservations of mineral rights and easements, and

community association assessments. The DRE's subdivision program also seeks to ensure that the intricate arrangements required for managing common interest developments, including association budgets and governing instruments, are established in a way which balances the needs of the builder with those of purchasers.



### Statistics

DRE received 3603 applications for a Final Subdivision Public Report in fiscal year 2006/07. This was a decrease of 20% compared to the previous fiscal year total of 4537.

Amended Subdivision Public Report applications rose 36% in FY 2006/07. These numbers reflect the changing market patterns. Subdivider's are amending development plans to decrease the number of homes in each phase, while increasing the number of overall phases resulting in an increase in amendment applications. 🏠

## Perils

*Continued from page 2*

refrain from disclosing to the seller "that the buyer is willing to pay a price greater than the offering price" without the buyer's express written consent.

### Perils of Dual Agency

Dual agency commonly arises where two salespersons associated with the same broker undertake to represent two or more parties to a transaction, in which case the broker is then the dual agent and each salesperson has the duties of a dual agent. Also, dual agency commonly occurs where a listing broker, who is the agent of the seller, also becomes the agent of the buyer, either by agreement or through conduct in representing the buyer's interests. In such cases, the dual agent owes the above-discussed fiduciary duties to *both* principals in the transaction, and must comply with the statutory exception on disclosure of negotiation strategy discussed above.

Even where a dual agent carefully complies with all of the applicable statutory disclosure and consent requirements, pitfalls remain. One major problem is that a dual agent's traditional fiduciary duties to *both* principals remain in effect throughout the term of the agency, and are not necessarily fulfilled by the agent's proper use of required written disclosures early in the transaction. Except for price negotiation strategy, all agents must affirmatively notify their principals of potentially material facts they discover during the transaction. But what if a dual agent learns of "confidential" information - unrelated to price negotiation strategy - from "Principal A" (A) which would clearly be material to the interest of "Principal B" (B) in the transaction? Under the rules discussed

above, the agent may be violating his duty of disclosure to B if he remains silent, and he may be violating his duty of confidentiality to A if he discloses the information to B. Unless the agent can obtain express written consent from A authorizing disclosure, and subsequently disclose the information to B, the law provides no clear solution to this problem or protection for the agent who violates his or her duties.

The best option for the dual agent may be to withdraw from the transaction once he or she realizes there is an **irresolvable conflict of interest**. An agent violates his or her fiduciary duties when his or her own interests are placed ahead of those of his principals, or favors one principal over the other. However, the Department has seen that some agents may be unwilling to do so if it requires forfeiting their commission, or possibly inconveniencing one or both principals. Nevertheless, proceeding in such circumstances is risky for the agent.

For example, in a recent unpublished appellate case, the sellers and buyers executed a contract for the purchase and sale of residential property with a dual agent ("Smith"). Smith knew the property was subject to tax liens and judgments in excess of the purchase price of the property, and did not disclose this fact to the buyers. The following events took place between execution of the contract and close of escrow:

1. Sellers informed Smith that they were working on a compromise settlement of the tax liens with the I.R.S., and that if a settlement could not be reached, the sellers would not be able to transfer title to the buyers at close of escrow.

2. Buyers learned independently of the tax liens, and inquired of Smith about them. Smith said the sellers were "working on compromising" the tax liens, *which would not be a problem*.
3. Sellers were unable to compromise the liens and could not transfer title at time of escrow.

In short, Smith did not perform his fiduciary duty to the buyers. There was a real risk that the sellers would be unable to consummate the deal, which was, of course, material to the buyers' judgment about whether to proceed with the transaction. Smith also violated the duty of good faith to the buyers by omitting the facts from the statements in effort to comfort the buyers about the status of the I.R.S. negotiations, which amounted to an *affirmative misrepresentation* on Smith's part in light of the agent's fiduciary disclosure obligations.

Smith and the employing brokerage firm were subject to civil liability based upon (among other things) the above-discussed breaches of fiduciary duties to the buyers. In such cases, courts may conclude the dual agent remained silent about the negative material facts out of a desire to obtain the anticipated commission. Such inferences lend support to claims against the agent.

Other problems with dual agency arise with the inherent difficulty in price negotiations for the property, as well as the belief that the requisite disclosure forms absolve the agent from further disclosures. In a 1998 appellate case, a listing agent was alleged to have acted on behalf of both the seller

*Continued on page 12*



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Real Estate Bulletin — Fall 2007

## Perils

*Continued from page 10*

and the buyer during negotiations concerning the prospective purchase of real property. Prior to presenting the purchase offer to the seller, the listing agent assured the buyer that he thought the seller would accept an offer below the list price of the property. The seller was then convinced to reduce the list price. However, evidence was unclear as to whether the listing agent informed the seller that he was representing the buyer at or before the time the listing agent relayed the purchase offer to the seller. Although the dual agency was disclosed in the escrow instructions, which the seller had initialed but not read, the court found that such disclosure did not absolve the listing agent or his employing broker of liability to the seller for breach of duty. The listing agent did not call attention to the dual agency in the manner it was disclosed, and the disclosure came too late to allow the seller to incorporate it in his judgment of whether to proceed with the transaction.

In conclusion, although there may be advantages to acting as a dual agent, the potential perils of dual agency must be understood. The following question should always be considered by a licensee who is about to act as a dual agent: Is the reward worth the risk of a lawsuit or license discipline? 🏠

## Property tax tips



Moved or moving? New address? Use the *eLicensing* online system at [www.dre.ca.gov](http://www.dre.ca.gov) to make the change or submit the appropriate "change" form: RE 214 for salespersons; RE 204 for brokers; RE 204A for corporations.

*from Board of Equalization's Taxpayers' Rights Advocate Office*

**M**any real estate professionals may not be aware of the various exclusions from change in ownership reassessments currently available to their clients. For example, Section 63.1 of the Revenue and Taxation Code allows transfers between parents and their children to be excluded from reassessment. The end result is the new owners, whether parent or child, enjoy the prior person's property tax base. The advantage to your client is that they would pay substantially less property taxes.

Proposition 193, effective in March 1996, extended this benefit to the grandparent to grandchild transfers where the parents are no longer alive. Both these transfers (parent to child and grandparent to grandchild) have some limitations and require an application to be filed in the county where the property is located.

Real property in California is typically assessed at market value as of the date it changes ownership or is newly constructed. Generally when the property changes ownership and is reassessed, the assessed values go up, thus property taxes increase also. This increase can be reduced dramatically by retaining the tax base from the parents (or grandparents). If you have a client that might qualify for one of these exclusions, we urge you to discuss it with the county assessor.

The Taxpayers' Rights Advocate Office of the Board of Equalization can also direct you to other resources on this or any other property tax issue. In addition, if you are having difficulty getting an issue resolved through normal channels, the Advocate's office stands ready to help. The Advocate's office works closely with all 58 counties (as well as the Internal Revenue Service and Franchise Tax Board) and is able to assist both taxpayers and assessors resolve problems that occur prior to, during or after the assessment process. For more information, visit the Board of Equalization's Web site at [www.boe.ca.gov/tra.htm](http://www.boe.ca.gov/tra.htm) or call toll free 1-888-324-2798. 🏠