



REAL ESTATE BULLET.IN

Gray Davis, Governor

Maria Contreras-Sweet, Secretary, Business, Transportation, & Housing Agency

Paula Reddish Zinnemann, Real Estate Commissioner

<http://www.dre.ca.gov>

Department of Real Estate

Spring 2001

Message from Secretary Contreras-Sweet & Commissioner Reddish Zinnemann The Need for Energy Efficiency

In these times of unprecedented energy demand, Governor Davis has called upon both the public and private sectors to significantly lower their energy consumption.

To date, much has been accomplished; however, additional energy efficiency measures are needed. It is incumbent on all of us to do what we can, both in the office and at home, to deter the over-taxing of California's energy supplies. Every individual energy saving measure is essential and such efforts will go a long way towards extending the availability of existing power supplies.

The Business, Transportation, & Housing Agency and the Department of Real Estate are requesting the assistance of the Real Estate industry in this vital effort. If we all help to conserve energy, we can avoid energy shortfalls, save money and benefit California's economy. Implementing the following energy saving measures will help ensure a brighter future for all of California!

What to do at the Office

1. Minimize heating by keeping the thermostat at 68 degrees or below. Reduce setting to 55 degrees at the end of the day. (For each 1 degree, you will save up to 5% on your heating costs.)
2. Wear comfortable business attire. Dress appropriately for cooler temperatures.
3. Turn off any lights that are not needed, especially in unused offices and conference rooms.
4. Turn down the remaining lighting levels if you can.

5. Turn off your computer if you are out of the office for more than a few minutes.
6. Some computers have a low power stand-by mode. Check to see if your computer is set for it.
7. If a Stage 3 is imminent, back up your computer and don't forget to frequently save what you are working on, to be ready if the power goes off.

What to do at Home

1. Turn the thermostat down to 68 degrees or below. When practical, reduce setting to 55 degrees or less

before retiring or when away for the day.

2. Where practical, avoid running large appliances.
3. Close off vents to rooms that are not being used.
4. Turn off all non-essential electrical lights.
5. Close shades and blinds to reduce the amount of heat lost through your windows.

Thank you for your cooperation.



Energy Efficient Mortgages

In response to the energy shortage currently being experienced throughout California, the California Housing Finance Agency (CHFA), which provides low interest mortgage loans to low to moderate income homebuyers has announced measures to streamline the processing of their CHFA/FHA Energy Efficient Mortgages (EEM). The EEM helps homebuyers to save money on utility bills by enabling them to finance the cost of adding energy efficient features to their home as part of their FHA insured home mortgage.

The changes to this program will allow first-time homebuyers to install energy efficient improvements in their home and finance these improvements as part of their low-interest rate CHFA home loan. The program also provides an added benefit to CHFA borrowers by giving them the ability to reduce their overall energy consumption and substantially lower their monthly utility bills.

The CHFA/FHA Energy Efficient Mortgage can be used to purchase either a new or existing home and provide funds to make energy-efficient improvements such as dual-paned windows, weather stripping, heating/air conditioning repairs, and wall and ceiling insulation. The improvements can be included in the borrower's mortgage if their total cost is less than the total dollar value of the energy that will be saved during the improvement's useful life as determined by a Home Energy Rating Systems (HERS) report. The cost of the improvements that may be eligible for financing as part of the mortgage is either 5% of the property's value (not to exceed \$8,000) or \$4,000, whichever is greater.

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REAL ESTATE BULLETIN

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STATE OF CALIFORNIA
GRAY DAVIS, Governor

BUSINESS, TRANSPORTATION AND HOUSING AGENCY
MARIA CONTRERAS-SWEET, Secretary

DEPARTMENT OF REAL ESTATE
PAULA REDDISH ZINNEMANN, Commissioner

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DRE Web Site Recent Changes

On December 1, 2000, the Department unveiled two big changes to its Web site: A new menu and a section called *Kids Korner*.

The new menu was implemented to make it easier for users to navigate our site. We replaced the previous tree menu on the home page with a system that uses separate submenus for each major topic. This change was the result of feedback from some of our users who had problems using the old menu. Judging by the volume of e-mails - that's to say, no more *e-complaints* - the new menu seems to be a hit.

Kids Korner came about in a different way. These pages were not the result of a problem that needed fixing, but rather because the State wanted to insure that its agencies' Web sites included topics for *all* of its constituents, not just adults. Needless to say, the obvious focus for our pages was *houses*. Our initial brainstorming session came up with subjects ranging from tree houses to lighthouses to haunted houses, with lots of others in between. Once we started researching in earnest, we decided to expand our theme to include families and communities, too, and the list eventually grew to over two dozen separate topics. It also became apparent that while some topics would appeal more to younger children, others would only interest teens or parents. For this reason, we decided to divide *Kids Korner* into distinct areas: Stuff for Little Kids, Stuff for Big Kids, and Stuff for Parents. Here are highlights of some of the things found in each:

Stuff for Little Kids: Grow an avocado tree • Build a bird house • Create a bird-friendly yard • Search for hidden pictures at the *Tree House* • Enjoy on-line coloring books, stories, and puzzles • Sing-along with on-line karaoke.

Stuff for Big Kids: Learn about the diversity of housing around the world • Visit some way-out California houses • Find out about adaptive housing • Discover the many career paths in the housing industry • Get spooked at year-round haunted houses • Visit the kids pages of other California agencies • Learn about California history and its culture • Find out about community service • Build a tree house • Get help with your homework • Explore the vast world of science.

Stuff for Parents: Reduce the stress of moving • Get your home earthquake prepared • Make your house and yard safe • Find out about family fitness • Teach your kids to cook • Enjoy family projects.

Rounding out *Kids Korner* are links about that all-time favorite board game, *Monopoly*®. Since some parents like to use the game to teach their kids about ownership, economics, and the value of money, it seemed a perfect fit.

We invite kids of all ages to visit *Kids Korner*. We think you'll not only have a great time, but you'll learn a thing or two along the way. The Department's Web site can be found at <http://www.dre.ca.gov>. 🏠

Mortgages

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Homebuyers interested in obtaining a CHFA/FHA EEM loan are encouraged to contact an approved CHFA lender. For a list of approved CHFA lenders or information regarding the CHFA/FHA EEM loan, contact: CHFA, Homeownership Programs, 1121 L Street, 7th Floor, Sacramento, CA 95814. Phone 1-916-324-8088; fax 1-916-324-6589; or visit the CHFA Web site at www.chfa.ca.gov. 🏠

DRE Audit Overview

Does the word "audit" make you feel uneasy? According to the dictionary "audit" simply means "an examination of records or accounts to check their accuracy." A broker who keeps proper books and records has no reason to fear a DRE examination; and at some point, it is likely a broker will receive a letter or call from a DRE representative asking for some of the broker's time in order to examine their books and records.

In general, the call from DRE is triggered by one of two events. The most common reason is the routine examination, where a broker's name is selected from the DRE licensing database. The other is a complaint filed with DRE against a broker. It should be noted that not all complaints against a broker result in an audit. For example, a complaint from a broker's employee stating the broker is withholding a commission would most likely be referred to the Department of Industrial Relations, since the DRE does not have jurisdiction to resolve such a complaint.

However, a complaint from a trust deed investor stating that their monthly loan payment check, written from the broker's trust fund loan servicing account, had been returned for insufficient funds would trigger an examination of the broker's records and accounts.

Regardless of the reason for the examination, the purpose of an audit is always the same; to protect the public by determining if the broker is in compliance with the provisions of the Real Estate Law and the Commissioner's Regulations, especially those relating to the handling of trust funds. If you carefully review the *Real Estate Bulletin*, which contains a list of final licensee disciplinary actions, you will note that many of the actions are based on the mishandling or improper accounting of trust funds.

What if you do receive a call from the Department scheduling your records for an examination; what does the Department usually look at?

When contacted by a DRE representative, a broker will be asked, at the minimum, to provide the following books and records which relate to a specific time period.

- ▶ Bank statements for all trust fund accounts used in connection with your real estate or mortgage brokerage activities.
- ▶ Trust fund records of receipts and disbursements and separate records for each beneficiary.
- ▶ Cancelled checks and deposit slips for said accounts.
- ▶ Salesperson and broker licenses.
- ▶ Broker-salesperson relationship agreements.
- ▶ Transaction files for review.

Failing to provide the requested information may be grounds for disciplinary action.

Depending on the size of the company and the number of accounts and transaction files to be reviewed, an examination may last a few days to several weeks. At the conclusion of the audit, the auditor will conduct an exit interview with the broker to discuss the findings of the examination. The violations discovered (if any) will dictate what happens next. If technical violations are discovered, the broker simply may be told to correct them. Minor violations may result in a corrective action letter which will outline specific violations and instructions to the broker to correct them. And if the violations are serious, a referral to the DRE Enforcement Section will be made in order to initiate formal action. The formal action may consist of a Desist and Refrain Order, which requires the broker to cease a practice which is contrary to the Real Estate Law; or the violations may be serious enough to warrant an accusation against the licensee which may lead to the revocation of the license.

Whether a broker is or has been audited is not a matter of public record

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Licensing Section Update

The Licensing Section is currently involved in the final phases of the conversion of its records to the new Enterprise Information System (EIS) as well as the conversion of its microfilm masterfile records to a LAN-based imaging system consisting of scanners, key data entry, OCR software for data capture, and a relational database for indexing and retrieval. The conversion of the system is very time consuming and staff is currently "testing" the computer programs prior to implementation, which is expected to occur later this spring.

The additional workload that is created by the conversion of the EIS system is being addressed, to the extent possible, by staff working overtime. The Department regrets any delays that members of the industry and the public may be experiencing because of the computer conversion. Staff is making every effort to process all applications and transactions in a timely manner.

In this regard, please help us to be more efficient and to provide you with timely service. You can help by submitting only current forms which can be obtained at any DRE office, on the DRE's Web page at www.dre.ca.gov or by calling (916) 227-0931. Also, please take the time to review any forms that you submit to make sure that they are properly completed and signed, submit legal presence documents for original and renewal applications and maintain a current mailing address. Remember, mailing addresses can be updated by the licensee through the DRE's Web site.

Your patience and understanding during the computer conversion are appreciated. 🏠

Announcing California Department of Real Estate Seminar

The Department of Real Estate is conducting a seminar for Spanish speaking consumers in Fresno on Saturday, May 12, 2001, from 9:00 a.m. to 12:30 p.m. at the State Building auditorium located at 2550 Mariposa Mall, Fresno, California. The program will provide attendees with an overview of the home buying and loan origination processes and information as to things to watch out for in real estate transactions. It will be conducted entirely in Spanish. The seminar will be free to the public and will be limited to the seating capacity of the auditorium (110 seats). Interested parties may call the Department for information at (916) 227-0772 in Sacramento or in Fresno at (559) 445-5009.

Continuing education exemption

The DRE regularly receives questions concerning the possibility of being exempted from the continuing education requirement.

Currently, there is only one provision in the Real Estate Law which provides an exemption from the continuing education requirement. Section 10170.8 of the Business and Professions Code states that a licensee who has reached the age of seventy and has held a real estate license in California in good standing for thirty continuous years can qualify for the exemption.

The age and experience provisions of this statute must be met on or before the renewal date of the license in question. The exemption cannot be granted if only one or the other of these requirements is met. A licensee in good standing is one who holds a license which has not been suspended, revoked or restricted as a result of disciplinary action any time within the thirty-year period. An automatic suspension (Section 10153.40 of the Real Estate Law) for failure to submit satisfactory evidence of completion of two real estate courses within 18 months of obtaining an original salesperson license is not considered a disciplinary matter with regards to Section 10170.8.

Licensees who desire to qualify for the continuing education exemption must submit RE 213 (Continuing Education Extension/Exemption Request) with their renewal application and the appropriate fee. The form must be accompanied by a copy of the licensee's birth certificate or drivers license along

with the date the licensee was first licensed.


Please keep in mind that the exemption only applies to the continuing education requirement and does not exempt the renewing licensee from submitting a renewal application, fee, proof of residency or any other document needed to renew a license. The RE 213 form can be obtained at any DRE office, on the DRE's Web page at www.dre.ca.gov or by calling (916) 227-0931.

Licensees may wish to confirm whether they would be eligible for an exemption prior to actually submitting their renewal application. This may be accomplished by sending a written request to the Licensing Section at P.O. Box 187000, Sacramento, CA 95818. This request should include a copy of a birth certificate or drivers license and a statement of the date the licensee was first licensed. Confirmation may not be made by telephone because the information must be researched by our staff on microfilm and/or optical disk records.

Audit overview

Continued from page 3

nor are corrective action letters. All Desist and Refrain Orders, Accusations and the results of a disciplinary hearing are a matter of public record and are published in the *Real Estate Bulletin*. In addition, formal actions against a licensee become part of their licensing records.

In order to avoid being another statistic listed in the quarterly *Real Estate Bulletin*, it would be worthwhile to conduct your own business audit to ensure compliance with the Real Estate Law. To help in this regard, the Department has created a "Broker Compliance Evaluation Manual." This manual can be downloaded from the DRE Web site at www.dre.ca.gov/brkrmanl.htm. 

Trust Accounts & Bank Charges

During the course of a recent examination of a trust account, the assigned DRE auditor noted that the broker had failed to keep records of personal funds deposited into the account to cover bank fees and charges and related bank debits (Regulation 2835 Title 10, California Code of Regulations allows brokers to deposit up to \$200 of personal funds into the trust account). The result was that there was a minor trust fund shortage in the account. When the auditor pointed out the source of the problem, the broker admitted to some confusion and uncertainty about just what records should be maintained for such deposits and debits. Admittedly, the Regulations do not clearly explain what a broker should do; they only address trust fund handling, not the handling of personal funds deposited into the trust account. However, common sense and the general standard of practice used by most brokers provide an easy and acceptable answer. The deposit of personal funds should be accounted for in the same manner as any other trust fund deposit.

Bank charges against a trust account are an obligation of the account holder, the broker. They are a cost of operation similar to rent, telephone or utility services. The right of a bank to debit a trust account to collect its fees and charges is normally covered in the agreement opening the account. The debiting for fees is usually done on a monthly basis and is set forth in the

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Disciplinary Action — Sept. to Nov. 2000

- ✓ 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 found in the Business and Professions Code and the Regulations of the Real Estate Com-

missioner, 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. Disciplinary actions that are "stayed" means "a delay in carrying out" all or part of the recommended discipline.

Commissioner's Regulations

2715	Licensee's failure to maintain current business or mailing address with DRE
2726	Failure to have broker-salesperson agreements
2731	Unauthorized use of fictitious business name
2752	Broker's failure to notify DRE of salesperson employment
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
2832.1	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	Violation of broker-controlled escrow requirements
2950(d)	Failure of broker handling escrows to maintain records and accounts
2950(h)	Failure to advise all parties of licensee's interest in agency holding escrow
2951	Improper record keeping for broker handled escrows

Business and Professions Code

490	Substantially related criminal conviction
498	License obtained by fraud or misrepresentation
10130	Acting without license
10137	Unlawful employment or payment of compensation
10138	Payment of compensation to unlicensed person
10145	Trust fund handling
10145(a)	Trust fund handling
10145(a)(1)	Failure of broker to place trust funds into neutral escrow depository, the hands of the principal or a trust fund account
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
10161.8	Failure of broker to notify Commissioner of salesperson employment/termination
10162	Failure to maintain a place of business
10176(a)	Making any substantial misrepresentation
10176(e)	Commingle trust funds with brokers 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 in performing licensed acts
10177(h)	Failure to supervise salespersons or licensed acts of corporation
10177(j)	Fraud or dishonest dealing as principal
10177.5	Civil fraud judgment based on licensed acts
10229	Violation of multi-lender requirements
10229(a)	Violation of multi-lender requirements
10229(e)	Violation of multi-lender requirements
10229(j)	Violation of multi-lender requirements

10231	Accepting loan funds for other than a specific loan
10232	Failure to notify DRE of threshold status
10232.25	Failure to file trust fund status reports
10234	Failure to broker negotiating mortgage loan to record or cause trust deed to be recorded
10240	Failure to give mortgage loan disclosure statement

Finance Code

17006	Violation of Escrow License Law
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REVOKED LICENSES

Los Angeles Region

Afshari, Massoud (REB)

4724 Topaz Rd., Chino Hills
Effective: 11/13/00
Violation: 10177.5

Alcon Holding Corporation (REC)

P.O. Box 1324, Colton
Effective: 9/11/00
Violation: 10177(f)

Anderson, Stanley Emmet (REB, REO)

12750 Center Court Dr., Ste. 100, Cerritos
Effective: 11/27/00
Violation: 490, 10177(b)

Bennett, Dennis Hale (RES)

33282 Golden Lantern St., Dana Point
Effective: 9/28/00
Violation: 10130, 10177(d)

Blanco, Graciela Chavez (RES)

11837 Calabash Ave., Fontana
Effective: 10/30/00
Violation: 490, 10177(b)

Bratten, Walter Willard Jr. (RES)

P.O. Box 11791, Palm Desert
Effective: 9/12/00
Violation: 490, 10177(b)

Caringal, David E. (RES)

1921 N. Maple Ave., #10, Costa Mesa
Effective: 9/28/00
Violation: 490, 10177(b)

Carrillo, Louie J. (RES)

13962 Weidnerst, Pacoima
Effective: 10/24/00
Violation: 490, 10177(b)

Churchill McGann, Inc. (REC)

10351 Santa Monica Blvd., Ste. 410, Los Angeles
Effective: 11/17/00
Violation: 2715, 10162, 10177(d)

Cummiford, Randy William (RES)

8149 Calmada Ave., Whittier
Effective: 9/21/00
Violation: 10176(a)(i)

Garcia, Martha Norma (RES)

12727 Carinthia Dr., Whittier
Effective: 11/16/00
Violation: 490, 498, 10177(a)(b)

Garcia, Stevan (RES)

5956 Live Oak St., Bell Gardens
Effective: 10/10/00
Violation: 490, 498, 10177(a)(b)

Gonzalez, Francisco Xavier (RES)

8711 Nogal, Whittier
Effective: 9/20/00
Violation: 10177.5

Great American Bancorp, Inc. (REC)

575 Anton Blvd., #750, Costa Mesa
Effective: 9/14/00
Violation: 2715, 10148, 10162, 10177(d)(j)

Howard, Kevin O. (RES)

15608 S. Frailey Ave., Compton
Effective: 10/5/00
Violation: 498, 10177(a)

Judy, Luc M. A. (REB)

P.O. Box 194, Sierra Madre
Effective: 9/28/00
Violation: 490, 10177(b)

Jheong, Michael H. (RES)

720 S. Plymouth Blvd., #9, Los Angeles
Effective: 11/20/00
Violation: 10145(c), 10176(i), 10177(d)



- Krikorian, Karen Houry (RES)**
1325 E. Windsor Rd., #1,
Glendale
Effective: 11/27/00
Violation: 490, 10177(b)
- Lemos, Charlie Anthony (RES)**
12020 Neenach St., Sun Valley
Effective: 11/9/00
Violation: 498, 10177(a)
- Liu, Jerry Y. K. (RES)**
2002 W. Foothill Dr., Fullerton
Effective: 10/17/00
Violation: 490, 10177(b)
- Lopez, Alexander Portillo (REB)**
5315 E. Beverly Blvd., Ste. 4,
Los Angeles
Effective: 9/27/00
Violation: 10177.5
- Lopez, Tony G. (REB)**
100 W. Fifth St., Long Beach
Effective: 9/7/00
Violation: 490, 10177(b)
- Marchand, Stephane Roger (RES)**
412 N. Coast Hwy., Ste.193,
Laguna Beach
Effective: 9/7/00
Violation: 498, 10177(a)
- Matsumoto, Hideo (RES)**
615 E. Olive Ave., #E, Burbank
Effective: 9/5/00
Violation: 490, 10177(b)
- Mohammed, Raja Firoz (RES)**
1765 S. Starshine Rd., Walnut
Effective: 11/20/00
Violation: 10177.5
- Moss, Brian W. (RRES)**
15134 Moir Ct., Tustin
Effective: 9/30/00
Violation: 490, 10177(b)
- Nahid, Roya (RES)**
217 E. Alameda Ave., #300,
Burbank
Effective: 11/20/00
Violation: 490, 10177(b)
- National Mortgage Center, Inc. (REC)**
632-C El Camino Real, Tustin
Effective: 9/12/00
Violation: 2834, 2840, 10137,
10177(d)(g), 10240
- Novikova, Svetlana (RES)**
22537 Flamingo St.,
Woodland Hills
Effective: 11/16/00
Violation: 498, 10177(a)
- Olson, Troy Alan (RRES)**
14926 Martha St., Van Nuys
Effective: 11/16/00
Violation: 10177(f)(j)
- Ortiz, Cynthia Ann (RES)**
1722 Mitchell, #137, Tustin
Effective: 11/27/00
Violation: 490, 10177(b)
- Payne, John T. (RES)**
830 West 104th Place,
Los Angeles
Effective: 10/10/00
Violation: 498, 10177(a)
- Penson, Calvin Ray (RES)**
3873 ½ West 54th St.,
Los Angeles
Effective: 10/12/00
Violation: 490, 10177(b)
- Prondzinski, Sharon Lanae (RES)**
30122 Niguel Ave., #272,
Laguna Niguel
Effective: 10/3/00
Violation: 498, 10177(a)
- Reyes, Veronica P. (RES)**
8711 Nogal, Whittier
Effective: 9/20/00
Violation: 10177.5
- Rico, Miguel Angel (RES)**
1150 Wilkins Ave.,
East Los Angeles
Effective: 10/23/00
Violation: 498, 10177(a)
- Rue, Louis Dale (RES)**
41530 Woodhaven Drive East,
Palm Desert
Effective: 8/17/00
Violation: 490, 10177(b)
- Santos, Danilo (RES)**
1631 S. Mesa St., San Pedro
Effective: 11/13/00
Violation: 490, 10177(b)
- Santos, Jose Casas (RES)**
5863 Mimosa Ct., Chino Hills
Effective: 9/6/00
Violation: 10177(b)
- Silver, Robert M. (REB)**
10544 Camarillo St., Toluca Lake
Effective: 11/1/00
Violation: 490, 10177(b)
- Strogin, Vickie Lynn (RES)**
P.O. Box 371883, Reseda
Effective: 9/28/00
Violation: 498, 10177(a)
- Switzer, George W. (RES)**
529 W. Walnut Ave., Redlands
Effective: 11/14/00
Violation: 490, 10177(b)
- Oakland Region**
- Cassou, Anne-Laure Marie (RES)**
PO Box 2208, Mill Valley
Effective: 11/16/00
Violation: 490, 10177(b)
- Doyle, Victoria L. (RES)**
712 Edgemar, Pacifica
Effective: 11/13/00
Violation: 10130, 10176(i),
10177(d),
- Garcia, Francisco Martinez (RES)**
362 Bluefield Dr., San Jose
Effective: 11/1/00
Violation: 498, 10177(a)
- Ly, Long Thanh (RES)**
1248 Daniel Ct., Milpitas
Effective: 11/24/00
Violation: 490, 10177(a)(b)
- Pollock, James Michael (RES)**
345 Mountain View, San Rafael
Effective: 11/2/00
Violation: 10137, 10176(i),
10177(d)
- Siegel, Stephen Stewart (REB)**
1613 Bridgeway, Sausalito
Effective: 10/5/00
Violation: 490, 10177(b)
- Tran, Kim Chi (RRES)**
P.O. Box 612634, San Jose
Effective: 9/20/00
Violation: 10130, 10137,
10145(c), 10176(e)(i), 10177(d)
- Sacramento Region**
- Gibbs, Stephen Haynes (REB, REO)**
1007 Live Oak Blvd., Ste. A-8,
Yuba City
Effective: 10/4/00
Violation: 490, 10177(b)
- San Diego Region**
- Bacila, Liviu (RES)**
1326 Sutter St., San Diego
Effective: 10/25/00
Violation: 498, 10177(a)
- Bloomingtondale, F. J. (REB)**
8262 University Ave., La Mesa
Effective: 10/4/00
Violation: 2726, 2731, 2831.2,
2832, 2832.1, 10145, 10177(d)
- Metcalf, John Brien (RES)**
5666 La Jolla Blvd., #171 PMB,
La Jolla
Effective: 10/26/00
Violation: 498, 10177(a)
- Richman, Bryan Howard (RES)**
1163 E. Washington Ave., #B,
El Cajon
Effective: 10/4/00
Violation: 498, 10177(a)
- REVOKED WITH A RIGHT
TO A
RESTRICTED LICENSE**
- Fresno Region**
- U S Mortgage Center (REC)**
1241 E. Shaw Ave., Ste. 102,
Fresno
Effective: 10/4/00
Violation: 10137, 10138
Right to RREC license on terms
and conditions
- Los Angeles Region**
- Cruzado, D. Joel (REB)**
14440 Allegan St., Whittier
Effective: 9/5/00
Violation: 10159.2, 10177(d)
Right to RREB license on terms
and conditions
- Hamilton, Arlett Therese (REB)**
P.O. Box 2962, Culver City
Effective: 10/2/00
Violation: 10177(j)
Right to RREB license on terms
and conditions
- Harper, Michael Ray (REB, REO)**
33062 Santiago Dr., Dana Point
Effective: 10/4/00
Officer of: Comparison Shop
Home Loans, Inc.
Violation: 2834, 10148,
10159.2, 10177(d)
Right to RREB license on terms
and conditions
- Hernandez, Gerardo (REB, REO)**
2013 Martha Ln., Santa Ana
Effective: 11/22/00
Violation: 2834, 2840, 10159.2,
10177(d)(g), 10240
Right to RREB license on terms
and conditions
- Hoag Property Mgmt, Inc. (REC)**
10551 Paramount Blvd., Downey
Effective: 9/13/00
Violation: 10130, 10145,
10177(d)
Right to RREC license on terms
and conditions
- Huynh, Thoi Anh (RES)**
14372 Rio Grande St.,
Westminster
Effective: 9/12/00
Violation: 498, 10177(a)
Right to RRES license on terms
and conditions
- Jones, Linda Sledge (REB)**
2641 Crenshaw Blvd., Los Angeles
Effective: 10/30/00
Violation: 2831, 2831.1, 2832,
10145, 10177(d), 17006
Right to RREB license on terms
and conditions
- Klimenko, Maruska E. (RES)**
9933 Pangborn Ave., Downey
Effective: 11/13/00
Formerly: Beltran, Maruska
Esmeralda
Violation: 10177(f)(j)
Right to RRES license on terms
and conditions
- Magarin, David Alfonso (REB)**
3416 Tweedy Blvd., South Gate
Effective: 11/16/00
Violation: 2731, 2831, 2831.1,
2831.2, 2832, 2834, 2950(h),
10145, 10159.2, 10177(d)
Right to RREB license on terms
and conditions
- Martin, Douglas Wesley (REB)**
4614 West Ave L-2, Quartz Hill
Effective: 11/3/00
Violation: 10176(a), 10177(g)
Right to RREB license on terms
and conditions
- Mathews, Barbara E. (RES)**
655 Baker St., #U102,
Costa Mesa
Effective: 10/12/00
Violation: 498, 10177(a)
Right to RRES license on terms
and conditions
- McKinnon, Marvin John (RES)**
PO Box 1717, Lancaster
Effective: 11/14/00
Violation: 490, 10177(b)
Right to RRES license on terms
and conditions
- Medrano, Amalia (RES)**
340 N. Maple Ave., #2,
Montebello
Effective: 11/29/00
Violation: 10176(a)
Right to RRES license on terms
and conditions
- Meyers, Stephanie Andrea (RES)**
17420 Hartland St., Van Nuys
Effective: 11/15/00
Violation: 490, 10177(b)
Right to RRES license on terms
and conditions

Morelos, Lionel Augustine (RES)
PO Box 2104, Santa Maria
Effective: 11/27/00
Violation: 490, 10177(b)
Right to RRES license on terms and conditions

Teamwork Realty, Inc. (REC)
2551 E. Gage Ave.,
Huntington Park
Effective: 9/5/00
Violation: 2831, 2831.1, 2831.2, 2950(d), 2951, 10145, 10177(d)
Right to RREC license on terms and conditions

Trejo, Oscar M. Jr. (RES)
1030 N. Ballista Ave., La Puente
Effective: 11/6/00
Violation: 498, 10177(a)
Right to RRES license on terms and conditions

Oakland Region

Common Interest Mortgage and Realty, Inc. (REC)
42840 Christy St., Ste. 201, Fremont
Effective: 10/11/00
Violation: 2832.1, 10145, 10177(d)
Right to RREB license on terms and conditions

Forsht, Gregory Leo (REB)
550 H St., Crescent City
Effective: 10/4/00
Violation: 2831, 2831.1, 2831.2, 10145, 10177(d)
Right to RREB license on terms and conditions

Sacramento Region

Crest Property Management (REC)
2740 Fulton Ave., Ste. 223, Sacramento
Effective: 11/16/00
Violation: 2831, 2831.2, 2832.1, 10145(a)(1)
Right to RREC license on terms and conditions

Reynolds, Gary Eugene (REB)
118 Hazelmere Dr., Folsom
Effective: 10/2/00
Violation: 2832, 10145, 10177(d)
Right to RREB license on terms and conditions

Thomas, Eleanor Claire (REB, REO)
302 E. Ranch Rd., Sacramento
Effective: 11/16/00
Officer of: Crest Property Management
Violation: 10159.2, 10177(h)
Right to RREB license on terms and conditions

Vizzolini, Richard Michael (REB, REO)
1241 E. Shaw, Fresno
Effective: 10/4/00
Officer of: U S Mortgage Center
Violation: 10177(h)
Right to RREB license on terms and conditions

SUSPENDED WITH STAY

Los Angeles Region

Barnes, Bernard Marion (REB)
19339 Winged Foot Circle,
Northridge
Effective: 9/25/00
Officer of: American Middle Class Mortgage & Real Estate, Inc.; TCB Financial & Investment, Inc.; Premier Capital, Inc.; Universal Network Mortgage Co.
Violation: 2715, 2832, 10145, 10162, 10177(d)
Suspended for 30 days-stayed for 2 years on terms and conditions

Boecker, Theodore James (REB)
23580 Sunnymead Blvd.,
Moreno Valley
Effective: 9/28/00
Officer of: Moreno Valley Realty, Inc.
Violation: 2831, 2832.1, 10145, 10177(h)
Suspended for 60 days-stayed for 2 years on terms and conditions

Cosner, Richard David (REB, REO)
6809 Magnolia Ave., Riverside
Effective: 11/28/00
Officer of: Silvercrest Realty, Inc.
Violation: 10177(h)
Suspended for 60 days-stayed for 2 years on terms and conditions

Eddy, John Paul (REB, REO)
1962 Freeman Ave., Long Beach
Effective: 9/21/00
Officer of: In-Co Financial, Inc.
Violation: 10130, 10177(d)(h)
Suspended for 90 days-stayed for 2 years on terms and conditions

Euro-Funding Corporation (REC)
12750 Center Dr., Ste. 100,
Cerritos
Effective: 10/25/00
Violation: 2831, 10145, 10177(d)
Suspended for 60 days-stayed for 2 years on terms and conditions

Fields, Lynwood Earl (REB, REO)
12121 Wilshire Blvd., #959,
Los Angeles
Effective: 11/17/00
Violation: 2715, 10162, 10177(d)
Suspended for 90 days-stayed for 2 years on terms and conditions

Gasbarro Investments, Inc. (REC)
4930 Abbeyville Ave.,
Woodland Hills
Effective: 10/10/00
Violation: 2831, 2831.1, 2831.2, 10145, 10177(d), 10231.2
Suspended for 90 days-stayed for 2 years on terms and conditions

Gasbarro, David Joseph (REB, REO)
5362 Fallbrook Ave.,
Woodland Hills
Effective: 10/10/00

Officer of: Gasbarro Investments, Inc.
Violation: 10159.2, 10177(d)
Suspended for 90 days-stayed for 2 years on terms and conditions

In-Co Financial, Inc. (REC)
1962 Freeman Ave., Long Beach
Effective: 9/21/00
Violation: 10130, 10137, 10177(d)
Suspended for 90 days-stayed for 2 years on terms and conditions

Litt Mortgage, Inc. (REC)
15760 Ventura Blvd., Ste. 2021,
Encino
Effective: 10/30/00
Violation: 2731, 2831.1, 2950, 2951, 10145, 10177(d), 10229(a)(e)(j), 10232, 10232.25, 10234
Suspended for 90 days-stayed for 2 years on terms and conditions

Litt, David Aaron (REB)
15760 Ventura Blvd., #2021,
Encino
Effective: 10/30/00
Officer of: Litt Mortgage, Inc.
Violation: 2831.1, 10177(d)(h)
Suspended for 90 days-stayed for 2 years on terms and conditions

Moreno Valley Realty, Inc. (REC)
23580 Sunnymead Blvd.,
Moreno Valley
Effective: 9/28/00
Violation: 2831, 2832.1, 10145, 10177(d)
Suspended for 60 days-stayed for 2 years on terms and conditions

Mulhearn Realtors (REC)
16911 Bellflower Blvd.,
Bellflower
Effective: 10/4/00
Violation: 2831, 2831.2, 2832.1, 2834, 2835, 10145(a), 10176(e), 10177(d)(g)
Suspended for 45 days-stayed for 1 year on conditions

Mulhearn, Bruce (REB, REO)
16911 Bellflower Blvd.,
Bellflower
Effective: 10/4/00
Officer of: Mulhearn Realtors
Violation: 2831, 2831.2, 2832.1, 2834, 2835, 10145(a), 10176(e), 10177(d)(g)
Suspended for 45 days-stayed for 1 year on conditions

Padron, Leonardo (REB, REO)
16025 E. Gale Ave., #B5,
City of Industry
Effective: 11/16/00
Violation: 2731, 2832, 2832.1, 2950(h), 10145(a), 10177(d)(g)
Suspended for 60 days-stayed for 2 years on terms and conditions

Shea, Douglas James (RES)
2962 Tigertail, Los Alamitos
Effective: 9/21/00
Violation: 10130, 10177(d)
Suspended for 90 days-stayed for 2 years on terms and conditions

Silvercrest Realty, Inc. (REC)
6809 Magnolia Ave., Riverside
Effective: 11/28/00

Violation: 2950(h), 10145, 10177(d)
Suspended for 60 days-stayed for 2 years on terms and conditions

Wall Street Residential Loans, Inc. (REC)
8361 E. Florence Ave., Ste. 201,
Downey
Effective: 10/5/00
Violation: 2731, 2831, 2831.1, 2831.2, 2832, 2834, 2950(h), 10145, 10177(d), 10240
Suspended for 60 days-stayed for 2 years on terms and conditions

Oakland Region

Hubby, John Adams Jr. (RES)
11487 Lindy Pl., Cupertino
Effective: 9/28/00
Violation: 10177(d)
Suspended for 60 days-stayed for 2 years on terms and conditions

Rosenberg, Robert M. (REB, REO)
42840 Christy St., Ste. 201,
Fremont
Effective: 10/11/00
Officer of: Common Interest Mortgage and Realty, Inc.
Violation: 10177(h)
Suspended for 90 days-stayed for 2 years on terms and conditions

Sacramento Region

Sirmans, Doris Ann (RES)
1239 Broadway, Chico
Effective: 9/5/00
Violation: 10177(g)
Suspended for 60 days-stayed for 2 years on terms and conditions

PUBLIC REPROVAL

Los Angeles Region

American Middle Class Mortgage & Real Estate, Inc. (REC)
18340 Ventura Blvd., #214,
Tarzana
Effective: 9/25/00
Violation: 2731, 10177(d)

Premier Capital, Inc. (REC)
5530 Corbin Ave., Ste. 175,
Tarzana
Effective: 9/25/00
Violation: 2715, 2752, 10161.8, 10162, 10177(d)

T C B Financial & Inv., Inc. (REC)
16299 Ventura Blvd., #214,
Encino
Effective: 9/25/00
Violation: 2731, 10177(d)

Universal Network Mortgage Co. (REC)
17815 Ventura Blvd., #205,
Encino
Effective: 9/25/00
Violation: 2715, 2731, 10161.8, 10177(d)



LICENSE SURRENDERED

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

Fresno Region**Arone, Douglas (RES)**

720 Kern, #C, Morro Bay
Effective: 10/6/00

Los Angeles Region**Comparison Shop Home Loan, Inc. (REC)**

20100 Brookhurst St., #A,
Huntington Beach
Effective: 10/3/00

Meza Gold Mortgage Corporation (REC)

1004 W. Foothill Blvd., Ste. A,
Upland
Effective: 11/14/00

Molina, Rebecca E. (RES)

6124 N. Oak Ave., Temple City
Effective: 10/18/00

Ramirez, Arturo (RES)

4709 Orange St., Pico Rivera
Effective: 9/21/00

Yee, Tony Foo Wing (RES)

P.O. Box 50743, Irvine
Effective: 11/16/00

Oakland Region**Galant, Len (RES)**

647 23rd Ave., San Francisco
Effective: 11/14/00

Harris, Michael Flynn (REB)

P.O. Box 1960, Pleasanton
Effective: 9/28/00

Lim, Michelle (RES)

3355 Newton Dr.,
Mountain View
Effective: 10/4/00

Sacramento Region**Carlsson, Claes Robert (REB)**

2324 Grand Canal Blvd., Ste. 8,
Stockton
Effective: 10/10/00

West, Robert Johnson (REB)

2681 Latham Dr., Sacramento
Effective: 10/6/00

SUSPENDED**Los Angeles Region****Madrigal, Julissa (RES)**

722 Hoefner Ave., Los Angeles
Effective: 11/27/00
Violation: 10177(g)
Suspended for 90 days

Sacramento Region**Sirmans, Clifford Eugene (REB)**

663 Canyon Creek Way, Galt
Effective: 9/5/00
Violation: 10177(g)(h)
Suspended for 180 days

Conference scheduled Community college educators

The California Community Colleges Real Estate Education Center will sponsor a spring Real Estate Educators' Conference on Friday, April 20th at the Holiday Inn – Oakland Airport, 500 Hegenberger Road.


Registration is open to public and private school educators and others interested in real estate education. Advance registration is \$25 for educators who are affiliated with a community college and \$30 for non-community college persons. After April 6th, registration for the Oakland conference is \$35 for educators affiliated with a community college and \$40 for noncommunity college persons. Participants may also register at the door. The conference will begin at 9 A.M.

Speakers include:

- Syndicated columnist/instructor Robert Bruss of the College of San Mateo;
- California Department of Real Estate Manager of Education and Research Betty Ludeman; and
- California Office of Real Estate Appraisers Licensing and Enforcement Division Chief John Brenan and Supervising Investigator Greg Harding.

Participants may earn Department of Real Estate and/or Office of Real Estate Appraisers continuing education credit towards license and certificate renewal at the conference. A three-hour seminar, "How to Use Real Estate for Retirement Planning," will be offered from 2 to 5 P.M. There is an additional \$15 seminar fee.

The California Community Colleges Chancellor's Office and the Real Estate Education Center in Modesto sponsor instructor workshops each semester that are funded by earnings from the Community Colleges Real Estate Education Advancement Endowment Fund. The fund was established in 1975 by a grant from the Department of Real Estate to the California Community Colleges Board of Governors.

Additional information may be obtained from the California Community Colleges Real Estate Education Center, Yosemite Community College District, PO Box 4065, Modesto CA 95352, telephone (209) 575-6965, fax (209) 575-6306. The Web page address is <http://yccd.yosemite.cc.ca.us/realstate>. 

INDEFINITE SUSPENSIONS

(under Recovery Acct. provisions)

Los Angeles Region**Johnson, George Albert (REB)**

816 North O St., #55, Lompoc
Effective: 9/6/00

Morales, Jonathan A. (REB)

291 S. La Cienega Blvd.,
Ste. 304, Beverly Hills
Effective: 11/29/00

Morales, Ophelia C. (RES)

291 S. La Cienega Blvd.,
Ste. 304, Beverly Hills
Effective: 11/29/00

Park, Ted Alyn (REB)**Mortgage Link (REC)
Mortgage Link Investments, Inc. (REC)**

402 S. Milliken Ave., Ste. G.,
Ontario
Effective: 9/21/00

Reandra Real Estate Co., Inc. (REC)

291 S. La Cienega Blvd., Ste.
304, Beverly Hills
Effective: 11/29/00

Oakland Region**Ansold Realty, Inc. (REC)**

695 De Long Ave., Ste. 97,
Novato
Effective: 9/6/00

Brockman, Phillip William (REB)

2140 Peralta Blvd., #207,
Fremont
Effective: 10/25/00

Coh, Alfredo Legaspi (RES)

6717 Mission St., Ste. E,
Daly City
Effective: 11/13/00

East, James H. (REB)

415 G St., Antioch
Effective: 9/21/00

Molina, Armando Jose (REB)

1699 Dolores St., San Francisco
Effective: 11/29/00

Shaler, Sam (REB)

1882 Austin Ave., Los Altos
Effective: 9/12/00

Sharpe, Timothy Jennings (REB)

4709 Country Hills Dr., Antioch
Effective: 11/13/00

Sacramento Region**Hoxie, Lowell Ellsworth (REB)**

336 Skidder Trail, Truckee
Effective: 11/15/00

San Diego Region**Bentley, Laurie Lynn (RES)**

P.O. Box 27721, San Diego
Effective: 10/23/00

Golden Pacific Funding, Inc. (REC)

591 Camino De La Reina,
Ste. 928, San Diego
Effective: 9/12/00

Williams, Mark Thomas (REB)

8490 Hydra Lane, San Diego
Effective: 10/17/00

Upon DRE's Request Real Estate Brokers Must Produce Records

A recent Appellate Court decision sustained the Department's disciplinary action against a broker for willfully failing to retain records in accordance with Section 10148 of the California Business and Professions (B&P) Code. The facts of the case are as follows:

A real estate broker who managed a property on behalf of an owner had collected a security deposit in the amount of \$1,475 from a tenant. Upon his retirement, the broker transferred the management of this property to another individual. Shortly after this occurred, the property owner was informed that the tenant's security deposit was not transferred to the new individual managing the property. Accordingly, the property owner filed a complaint with the Department alleging that the broker had failed to relinquish the security deposit to the new property manager.

When contacted by the Department, the broker maintained that he had paid cash to the new property manager for the security deposit without obtaining any receipt or other evidence of the transaction. The Department subpoenaed the broker's trust account records and was advised that he could not locate the records. Instead of producing transaction and trust account records, the broker offered his bank records to the Department to reconstruct the account.

The Department filed an accusation against the broker alleging that he had failed to retain the required trust account records for the property and make them available for the Department's inspection. Because the records were not produced, the Department sought disciplinary action against the broker pursuant to Section 10177(d) of the B&P Code for failing to maintain and produce records upon the Department's request as required by Section 10148 B&P Code.

Approximately seven months later, the broker found the missing records. However, the Department proceeded

with its charge that the broker did not produce the trust account records upon request. Following a hearing, the Administrative Law Judge issued a proposed decision which found that the broker's tardiness in providing the requested records was not motivated by intent to withhold or deceive. However, the decision also found that the broker had failed to retain the records in a manner that allowed him to make them available to the Department on request, and as a result, there were grounds for disciplinary action against the broker. The broker's license was revoked with a right to a restricted broker license. The Department adopted the decision, and the broker filed a petition for a Writ of Administrative Mandate in the Superior Court to appeal the Department's decision. The petition was denied and a judgment was issued upholding the Commissioner's findings and discipline.

The broker appealed the Superior Court Decision on the basis that his failure to produce the records was not a willful act. The Appellate Court sustained the Department's disciplinary action and held that the broker had a duty to maintain records in a manner so that they could be found. When the broker was unable to produce his trust account records upon request, a violation occurred.

This Decision makes it clear that real estate brokers must comply with Section 10148 of the B&P Code and produce, upon proper notice from the Department all documents either executed or obtained by the broker in connection with any transaction that requires a real estate license. Brokers must retain these records for a period of three years from the close of the transaction, or from the date of the listing if the transaction was not consummated.

Trust accounts

Continued from page 4

monthly bank statement. It is a charge that the broker knows will be made against the funds in the account, and it is a disbursement just the same as a check or wire transfer.

As noted above, the Department allows brokers to deposit up to \$200 of their own money into the trust account without the deposit constituting commingling (Regulation 2835). For obvious reasons, such a deposit is necessary to avoid the conversion of trust funds to pay for a business operating expense, which would be grounds to suspend or revoke a license. On the other side of the coin, the broker must avoid keeping more than \$200 of his personal funds in the account. Doing so would constitute commingling, another grounds for suspending or revoking a license. Therefore it is essential for the broker to know how much of his or her money is in the trust account at all times. This can be done by accounting for the deposit of personal funds, and subsequent bank debits, in the same way he or she would account for the deposit and disburse-

ment of a principal's funds into the trust account. In other words, the broker should enter the deposit and all bank debits and charges into columnar records maintained in accordance with Regulation 2831, and also maintain a separate beneficiary record for the deposit and debit by the bank of these personal funds. In this way the broker can properly and accurately reconcile and balance the trust account each month as required by Regulation 2831.2.

The goal of the Department's trust account record requirements is to enable a broker to carry out his or her fiduciary duty "to account" to principals for all trust funds received and disbursed, and to establish a wall between personal, business and fiduciary transactions. By accounting for the deposit of personal funds as suggested, brokers will avoid possible disciplinary action against their license for conversion or commingling and help achieve the goals of the trust account record keeping requirements. 🏠

Examination Study

The Department of Real Estate is charged by law to administer qualifying license examinations to determine if prospective real estate licensees have appropriate knowledge in certain basic areas of real estate practice. The examinations are designed to assure that candidates for a real estate license have the appropriate levels of competence to provide adequate protection to the public in the conduct of performing real estate activities as an agent on behalf of a party to the transaction.

In the late 1980's, a full study of the examination process was conducted in order to determine the relevance of the Department's license examination and testing procedures to the knowledge requirements for the practice of real estate brokerage at that time. In the mid 1990's, a re-evaluation and update of the study was completed. Among the recommendations provided by the full study was the need for the Department to periodically update the job content and related knowledge requirements. The report concluded that changes in real estate brokerage practices should be reflected in the licensing examinations and testing procedures used by the Department in order that prospective licensees can be properly qualified. In this regard, the Department has recently commissioned a new examination study which is currently underway.

To assist the contractor with this study, Real Estate Commissioner Paula Reddish Zinnemann has named an advisory workgroup consisting of representatives from various specialized areas of real estate. The workgroup, which is serving in an advisory capacity, has had several meetings with the contractor to discuss current standards and practices in today's real estate industry as well as to provide input for the development of exam questions. The members of the workgroup, with their various areas of expertise, will assist the contractor in evaluating the current knowledge, skills and abilities that are important for real estate salespersons

Unexplained Trust Fund Overage

One of the requirements when a broker maintains a bank account as a depository for trust funds is that the balance of the account at any time must equal the aggregate trust fund liability of the broker to all owners of said funds. If the bank account balance is less, there is a trust fund shortage, and if it is more there is an overage. Either one is a violation of the real estate law and regulations, and must be corrected by the responsible broker.

A question frequently asked by numerous brokers is how should they handle an overage in a trust fund bank account if the cause of the overage is not identified. An overage occurs when the adjusted bank balance is greater than the total of the separate subsidiary records reflecting the liability to the funds' owners. Usually the broker is not able to identify who the excess money belongs to, if the bank account has not been regularly reconciled with the subsidiary records. When a difference between the two is discovered, the transactions to be reviewed are so voluminous, that locating the difference is quite difficult. (This is one reason why it is important to reconcile the bank account record with the separate subsidiary records on a regular basis as required by Regulation 2831.2.)

The Department of Real Estate interprets Section 10145 to require that if the cause of the overage is not known and the person entitled to the overage

can not be identified, the *excess funds may not be withdrawn* from or transferred out of the trust account for the broker's own use, or otherwise be treated as non-trust funds. The overage should be treated as a trust liability that is unidentified as of the reconciliation date, and should continue to be so treated until the broker can prove otherwise. The funds, therefore, must be maintained in the trust account. Overages not cleared in five years will escheat to the state under the Unclaimed Property Law.

The manner of clearing an overage will depend on its cause. If the excess funds belong to the broker, e.g., earned property management fees, the amount must be withdrawn from the account. The bank balance would then equal the total trust fund liability as reflected on the subsidiary records.

When the cause of the overage is not identified, however, it is not known whether the trust fund account contains non-trust funds or whether adjustments are needed to the liability accounts. If the overage is treated as non-trust funds and then withdrawn from the account to avoid commingling, such disbursement will cause a shortage if the excess funds are actually for unrecorded trust liability, due to errors in recording transactions in the subsidiary records that understate the trust fund liabilities.

Continued on page 12

and brokers at the time of licensure.

The study, which is scheduled to be completed in July 2001, will provide a discussion of the methodology used to acquire, analyze, and assess the information gathered by the contractor to determine the current abilities and job tasks important to newly licensed salespersons and brokers. It will also outline current job requirements and practices and how these may be reflected in the qualifying examinations and testing procedures. The exam questions will be evaluated for currency and relevancy to present practices and outdated questions will be revised or deleted.

The study will include a review of the test specifications used by the Department; the adequacy of the Department's test development procedures including the validation process for new test questions; the method for determining the appropriateness of passing scores and levels of difficulty of the examinations; and the Department's test administration and security procedures.

The Department looks forward to the completion of this study and assessing the recommendations for updating DRE's license examinations and testing procedures. 🏠

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Trust fund overages

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Since the trust account is intended to contain trust funds only, and the broker has the fiduciary responsibility for the proper handling and accounting of trust funds, the burden is on the broker to prove that the overage is not trust funds. Business and Professions Code Section 10145 provides that funds deposited in a trust fund bank account may be disbursed only upon the authorization of the funds' owner. Any unexplained trust fund overage therefore may not be disbursed as non-trust funds; it must be left in a trust account until the broker can prove, through adequate source documentation, that it is non-trust funds.

To properly account for an unexplained overage, a separate subsidiary record must be maintained for the amount. The card/record should be titled "Unexplained Overage," and should provide sufficient details including the date of the reconciliation in which the overage was found and an explanation of the entry, i.e., that it was a trust account overage

that could not be located. For documentation purposes a copy of the reconciliation report similar to that required by Regulation 283I.2 must be attached to or referenced on that record. By having this "Unexplained Overage" separate record, the total of all subsidiary records should equal the adjusted trust fund bank account balance.

An unexplained overage may not be used to cover shortages in other beneficiary accounts and/or trust accounts, or a shortage that may arise after the reconciliation date. It will be cleared only if the cause of the overage is located and the amount is subsequently withdrawn from the account, or the amount is sent to the State Controller's Office as provided under the Unclaimed Property Law.

To receive more information on the Unclaimed Property Law you may contact: State Controllers' Office, Division of Unclaimed Property, 300 Capitol Mall, Suite 80I, Sacramento, CA 95814 *Note:* Trust funds belonging to specific beneficiaries who can not be located for over five years will also escheat to the State per the Unclaimed Property Law.

HUD – EEM

The HUD Energy Efficient Mortgage (EEM) is probably more important today than ever before in California's history. The EEM can be tacked on to your original purchase or refinance mortgage after your buyer has been qualified and it will not affect the buyer's qualifications in any way. The buyer usually saves enough in reduced utility costs to easily make the small increase in monthly payments. EEM's can be used with either of HUD's 203b or 203k loan programs. And, if that's not good enough HUD offers the Title I Home Improvement Loan Program. Now is the time to be asking yourselves, what can I do to help my state reduce the use of energy. A great way is through conservation. So if you want to do your part, this may be the easiest way to participate and make for happy customers - because you brought a way to use less energy and save money to their attention. Contact your local HUD approved lender for more information about this terrific and timely mortgage program 