

## SUBDIVISION ADVERTISING GUIDELINES

RE 631 (Rev. 11/98)

SUBDIVISIONS

### INTRODUCTION

- These guidelines have been prepared to assist subdividers and advertising agencies in the preparation of subdivision advertising material.
- The guidelines are based upon laws affecting real estate and/or the Commissioner's Regulations. They are intended to assist those concerned with practical application of the laws and regulations.
- The guidelines do not cover all advertising representations nor are they intended to indicate a complete application of the laws and regulations.
- A ❖ following a law or regulation quote, indicates DRE explanation or comment.

### PART I — SUBDIVISION ADVERTISING GUIDELINES

#### **Advertising Review**

California law does not require that subdivision advertising material be approved prior to use; however, proposed advertising may be filed for review and approval by the Department of Real Estate pursuant to Business and Professions (B&P) Code Section 11022.

#### **Filing of Advertising**

Requests for the Department's review of subdivision advertising material must be directed in writing to:

*Mail only:* Department of Real Estate  
Subdivisions, Technical Office  
P.O. Box 137005  
Sacramento CA 95813-7005

*Hand delivery:* Department of Real Estate  
Subdivisions, Technical Office  
1651 Exposition Blvd.  
Sacramento CA 95815

All advertising material *must be filed in duplicate* and accompanied by a fee of \$75. Checks or money orders must be made payable to *Department of Real Estate*.

Pursuant to B&P Code Section 11022, the Department has fifteen (15) calendar days from receipt of the material to communicate disapproval of the proposed advertising.

Advertising may be filed directly by the subdivider. The subdivider must provide the Department with authorization for any other party who will submit advertising on behalf of the subdivider. This authorization must reference the particular subdivision and advertising plan to which it pertains. It cannot be a blanket authorization.

#### **General Standards For Advertising**

- a. Claims or representations contained in the advertising shall be accurate and provable.
- b. Advertising shall fully state factual material which does not misrepresent the facts or create misleading impressions.

### PART II — TIME-SHARE ADVERTISING INFORMATION

Many time-share developers make use of direct mail materials (e.g., "Mail-O-Gram", "Winner-Gram", etc.) to promote sales. This form of advertising offers gifts as an inducement for travel to the project or another site where the recipient is required to attend a sales presentation as a condition of receiving a gift.

The Department uses Commissioner's Regulation 2799.1 and B&P Code Section (§) 17500–17539 to evaluate such material and, when appropriate, to require changes. Basically, the written text of the material must be straightforward and may not constitute deceptive or misleading advertising.

Developers must not use any subdivision advertising which violates Commissioner's Regulation 2799.1 or B&P Code Sections 17537, 17537.1 or 17539.1. Any use thereof may result in a Desist and Refrain Order being issued which prohibits further sales.

Developers are reminded that they are responsible for advertising published on their behalf by marketing representatives.

As you are aware, developers are not required to submit advertising for review and approval. However, review and approval may be preferable to use of advertising which may later become the focus of complaints and possibly the basis for issuance of a Desist and Refrain Order. This caveat is especially appropriate for direct mail and giveaway programs employed to promote sales in time-share subdivisions.

### **PART III — REGULATIONS OF THE REAL ESTATE COMMISSIONER**

#### **§2799.1 Subdivision Advertising Criteria.**

Standards which will be applied by the Real Estate Commissioner in determining whether advertising for sale or lease of subdivision interests is false, untrue or misleading within the meaning of those terms in §§10140, 10177(c), 11022, and 17500 of the B&P Code shall include, but shall not be limited to the following:

**§2799.1(1)** Advertising shall not imply a use of a subdivision interest that is not set forth in the Notice of Intention and Questionnaire comprising the application for a public report or permit.

❖ Typical primary uses are single family residential, multi-family residential, commercial, recreational, agricultural and industrial. “Investment” is sometimes represented as a secondary use in the offering. “Raw Land” subdivisions are subdivisions which do not qualify for the usual primary or secondary uses. As such they may be offered only as raw land with no representations of current or potential use.

**§2799.1(2)** A subdivision shall not be advertised under a name, designation or appellation that is not set forth in a Notice of Intention and Questionnaire.

❖ Cities and counties officially identify subdivisions by tract number or by tract name. The subdivider may wish to use another name for the subdivision for advertising purposes. The tract name or tract number and the advertising name will be included in the subdivision public report. However, in advertising the designated advertising name, as stated on the Public Report or Permit, must be used.

**§2799.1(3)** A subdivision shall not be advertised by a name or trade style which implies, contrary to fact, that the subdivider or his agent is a bona fide research organization, public agency, nonprofit organization or similar entity.”

❖ This regulation covers any kind of organization which is owned, controlled, or in any way associated with the subdivider. Likewise, representations of or by a purported research organization which is owned, controlled or affiliated with the subdivider shall not be advertised unless there is a disclosure that the organization is not a bona fide research organization. Advertising will not be approved if it implies, contrary to fact, that real estate is owned and/or offered by any public agency.

**§2799.1(4)** No improvement, facility or utility service may be advertised unless it has been completed or installed and is available for use, or unless completion and availability for use are assured through bonding or other arrangements approved by the Commissioner. If not completed, the estimated date of completion shall be set forth in the advertising.

❖ This includes any off-site proposed improvement which includes recreational or other facilities in addition to the utility services such as sewers, water, gas, electricity, telephone and TV cables. Representations of estimated dates of completion should be submitted as part of the application for a subdivision public report. Language in the advertising should reflect the

current status of the improvements. Those improvements not currently installed require references in the future tense such as “will be installed”, “under construction”, etc.

**§2799.1(5)** There shall be no reference to the prospective availability of private facilities outside of the subdivision for the use and enjoyment of purchasers of subdivision interests if the facilities are to be constructed or installed by the subdivider or an affiliated entity unless financial arrangements for completion or installation have been approved by the Commissioner.

❖ This applies to any type of facility advertised or represented as being available to lot purchasers or the public some time in the future. Any such proposals should be submitted as part of the application for a subdivision public report.

**§2799.1(6)** There shall be no reference to proposed or uncompleted private facilities over which the subdivider has no control unless the estimated date of completion is set forth and unless evidence has been presented to the Commissioner that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.

❖ This applies to references to any proposed facilities such as hotels, private recreational facilities of all kinds and open to the public, shopping centers, etc.

**§2799.1(7)** Unless the facilities and improvements listed below have been completed, or unless financial and other arrangements for completion have been made, subdivided land offered for residential use shall not be described as ‘improved’, ‘developed’, or by similar terms without disclosure of any facility or improvement listed below that is not included in the offering:

- (a) Paved roads within the subdivision.
- (b) A potable water system.
- (c) A sewage system.
- (d) A source of electricity at the building side.

❖ Besides “improved” or “developed”, similar terms mean any description which implies the subdivider is offering lots which do not require a homebuilder to furnish any one of the above listed facilities at his own expense. “Paved roads” means either public or private paved roads. A “potable water system” means a public or community system serving lots in a subdivision with a water supply approved by the appropriate health authority. A “sewage system” means a public or community system serving lots in a subdivision approved by the appropriate health authority. A “source of electricity at the building site” means that a home builder, having obtained a building permit and having made a proper application for electric service, is entitled to receive service without additional cost other than the normal hook-up charges, if any. If, however, the purchaser must pay to have a well drilled or electricity lines extended, then this information must be disclosed in the advertisement.

**§2799.1(8)** Reference shall not be made to a proposed public facility or project which purports to affect the value and utility of subdivided lands without a disclosure of the existing status of the proposed facility based upon information supplied or verified by the authority responsible for the public facility or project.

- ❖ This applies to such facilities as proposed lakes, parks, highways, airports, etc. Disclosure shall include the current construction status and the estimated date of completion. If the proposed project has not received approval and initial funding for construction by the appropriate public agency, references to those proposed facilities or projects will not be cleared for use.

**§2799.1(9)** A subdivider shall not advertise the availability of financing for on-site construction unless he has bona fide written expression of an intention to finance such construction by a recognized lender or unless the subdivider has established to the satisfaction of the Commissioner that financing of on-site construction will be provided by a source other than a recognized lender.

- ❖ A “written expression of intention” means that a recognized lender has advised the subdivider that the lending institution is interested in making loans on proposed or existing residences on lots in the subject subdivision and will consider loans to qualified applicants subject to the then availability of funds.

**§2799.1(10)** Pictorial or illustrative depictions of the subdivision and surrounding lands must accurately portray the land as it exists and proposed improvements as they will be constructed.

- ❖ This means that artists sketches must be based upon the existing topography and flora. An exception may be made if an artist’s depiction of landscaping is based upon plans and costs included in construction of the project. Accuracy of sketches based on such plans must be verified by the architect or engineer for the project. Depictions of “master plans” will require evidence that such plans have been filed with and received at least tentative approval by the city or county. References to “master plans” shall contain disclaimers as to any unrecorded tract maps and depicted tract improvements such as a road system for which satisfactory financial arrangements have not been made. Disclaimers shall be applicable only to the depiction of the incremental units. A sample disclaimer would state “This master plan has been filed with \_\_\_\_\_ (city or county). The plan shows Units 1 — which is currently offered for sale. The map shows the location, size and road systems of proposed additional tracts. There is no assurance of further development nor that the project will be developed as shown on this plan.”

**§2799.1(11)** Pictorial or illustrative depictions other than unmodified photographs shall bear a prominent disclosure identifying the nature of the depiction, e.g., Artists’ Conception and a legend identifying those improvements which are not then in existence.

- ❖ A legend identifying those improvements which are not then in existence means those improvements for which satisfactory financial arrangements have been made for the construction. Photos which have been modified, such as through the use of a zoom lens, are unacceptable. Stock photos with no background may be used to depict activities for which facilities have not yet been constructed. Such photos and artists’ conceptions must be captioned with the statement that they illustrate activities which maybe enjoyed when the facilities are completed.

**§2799.1(12)** If a map or diagram is used to show the location of the subdivision in relation to other places, actual road miles from each other place to the subdivision shall be shown, or the map or diagram shall be prepared to scale and shall include a scale of miles.

- ❖ Actual road miles may be shown on or adjacent to the map when the map is not to scale. Small spot maps showing the location of the subdivision and its immediate vicinity for directional purposes only, need not be to scale nor show road miles. (Generally, immediate vicinity for this purpose means less than two miles.)

**§2799.1(13)** If there is advertising of streets, roads, sewers, storm drains or other utilities which have not been accepted for maintenance by a public entity, that fact must be disclosed in the advertising. Rights-of-way for passenger vehicles to a subdivision or to lots within a subdivision which have not been accepted for maintenance by a public entity shall be adequately described in terms of roadbed and surfacing.

- ❖ This means that if the roads or any utilities are not to be operated and maintained by a public entity such as the city, county or a municipal-type district, or a public utility company, then disclosure must be made as to who is responsible for the operation and maintenance of the facility. For example, if there is no provision for maintenance of private roads, the individual lot owners will be responsible. A property owners’ association may be created as an organization for maintaining roads. A mutual water company, in which the property owners are the shareholders, may own and operate a water company servicing the subdivision. If any of these situations are to exist, the advertising should so state. In addition, the nature of private roads to or in a subdivision must be disclosed, as to the grading of the roads and as to the type of surfacing material.

**§2799.1(14)** If the existence of a lake, river, canal or other body of water, which is subject to a fluctuating water levels other than through natural causes, is advertised as a feature of the subdivision, any significant effect of the fluctuation upon the use of the water facility and upon the subdivision interests shall be described.

- ❖ Information regarding water level fluctuation should be furnished as part of the application for a subdivision public report. Proposed statements in the advertising of any significant effect of the fluctuation should be based upon the evidence submitted to the Department of Real Estate. Fluctuation in water level due to release of water from a dam is not considered a natural cause.

**§2799.1(15)** No advertisement shall imply that a facility is available for the exclusive use of purchasers of subdivision interests if a public right of access or use of the facility exists.

- ❖ This means, for example, that a subdivision may not be advertised as “private” or “exclusive”, etc., if the streets within the subdivision are public streets. A facility within a subdivision, or elsewhere, may be described as “private” or “exclusive” if it is indeed so. In some subdivisions, the club bar license requires the bar and food-serving areas to be open to the public. If such is the case, a disclosure of the right-of-public-access must be made.

**§2799.1(16)** There shall be no reference to the availability for use by owners of subdivision interests of private clubs or facilities in which the owner will not acquire a proprietary interest through purchase of a subdivision interest without an accompanying disclosure that the existence of the facilities and their availability for use by subdivision interest owners are at the pleasure of the owner of the facility.

- ❖ A proprietary interest through purchase of a subdivision interest is usually acquired automatically as the purchase makes mandatory membership in a property owners' association. Through membership in the property owners association, the purchaser acquires a proprietary interest in whatever property the association owns or leases. Advertising of a facility which is privately owned and is either open to the public or operated as a private membership facility where membership does not include a proprietary interest will require disclosure. A possible disclosure, for example, might be: "The owner, \_\_\_\_\_, sets the fees and conditions of use. Availability of the facilities for use by property owners is at the pleasure of (owner)". An alternative example might be: "The owner, \_\_\_\_\_, sets the fees and conditions of use and is not obligated to continue to make the facilities available".

**§2799.1(17)** An advertisement of any facility in which a purchaser will acquire a proprietary interest with his purchase of a subdivision interest must set forth the estimated costs and other obligations of the purchaser with respect to the facility or shall refer the purchaser to a fact sheet or similar source of this information.

- ❖ In an advertisement of a common interest subdivision with minimal common facilities it will be practical to state the monthly assessments in the advertising. However, for a subdivision with a variety of facilities the subdivider will usually have prepared and had approved, an information sheet and will state in the advertising; i.e., "A fact sheet on facilities including association assessments is available". An information or fact sheet may contain additional information beyond that required by this regulation. The information is advertising which may voluntarily be submitted for review, or, if the subdivision is a land project or out-of-state subdivision, it must be filed and approved prior to use.

**§2799.1(18)** No representation may be made that subdivision interests being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the interests.

- ❖ A full disclosure of the legal requirements for further division of the interests should include: a recital of the requirement of filing an application and tentative map with the city or county, the requirements of the city/county in approving the proposed plan of subdivision as provided in the subdivision improvement agreement, and the amount of cash bonds required to guarantee the construction of the roads, grading, utilities, etc.

**§2799.1(19)** Subdivision interests may not be advertised as available at a particular minimum price if the number of subdivision interests available at that price comprise less than 10% of the unsold inventory of the subdivider, unless the number of lots then for sale at the minimum price is set forth in the advertisement.

- ❖ For example, assume in a 100-lot subdivision there are 80 unsold lots. There are 10 lots at the lowest price of \$6,500.00. The advertising may state: "Lots as low as \$6,500.00" or "prices start at \$6,500.00" or "lots from \$6,500.00 to \$12,300.00". Assume there are only 4 lots at the lowest price of \$6,500.00, but there are 8 lots at the next lowest price of \$7,800.00. The advertising may state: "4 lots at \$6,500.00 and others up to \$ \_\_\_\_\_" or "4 lots at \$6,500.00 and others from \$7,800.00 and up".

**§2799.1(20)** Advertising of a discounted purchase price shall not be made unless the subdivider has established base prices for application of the discount through a substantial number of sales at base prices.

- ❖ A distinction should be made between the advertising of discounts and the advertising of lowered or reduced prices. "Lowered prices" or "reduced prices" ordinarily mean that the entire inventory price list has been reduced with the intention that the reduced price list will prevail until all lots have been sold. This type of advertising should not be described as "special", "limited", etc. "Discount" advertising is interpreted to apply to advertising which, in one form or another, offers a credit toward the purchase price of a lot. As this type of an offer is considered misleading if lot prices have been set up to provide for discount advertising or the lot prices are demonstrably overpriced, any such advertising must be based upon a substantial number of sales which established a market demand and market value. To determine if a substantial number of sales has been made at the existing price, submit a copy of the price schedule and a written statement to include the total number of lots/units offered at the existing price plus the total number sold at that price.

**§2799.1(21)** A prospective increase in the price of a subdivision interest other than an interest offered with an on-site residential, commercial or industrial structure may not be implied nor shall a price increase of such a subdivision interest be announced more than sixty days prior to the date that the increase will be placed into effect.

- ❖ This regulation applies to vacant lot subdivisions only.

**§2799.1(22)** If the phrase "closing costs only" or similar terminology is used to describe the price of a subdivision interest, the estimated dollar amount of the costs must be set forth in the advertisement.

- ❖ This regulation provides for a disclosure of the normal closing costs of a transaction, consistent with the customs in the area in which the transaction takes place.

**§2799.1(23)** The total amount of any special bonded indebtedness or the range of such bonded indebtedness, against the subdivision interests shall be set forth in any advertisement which states or implies that off-site improvements for the subdivision have been completed and paid for in connection with the development of the project. If the selling price of a subdivision interest is advertised, the special bonded indebtedness against that subdivision interest shall be given equal prominence with the selling price unless the bonded indebtedness is included in the advertised selling price.

❖ This applies to subdivision for which the off-site improvements, (e.g. streets, sewer and water systems, etc.) are constructed using special district bond revenues. One type of special district is a (Mello-Roos) Community Facilities District. This would also apply in instances when the lot purchaser is obligated to pay fees to a special district for services rendered by the district, e.g. a landscape and lighting district or a county service area. Where the dollar amount of the assessment bonds or other charges vary, the disclosure may be in the form of a range from low to high, i.e. - “ranging from \$3,500.00 to \$4,700.00.”

**§2799.1(24)** No representation shall be made as to the availability of a resale program offered by or on behalf of the subdivider unless the resale program has been made a part of the offering as submitted to the Commissioner.

❖ Advertising of a “resale program” would be limited to the representations made by the subdivider in the application for a subdivision public report.

**§2799.1(25)** An asterisk or other reference symbol may be used to explain, but not to contradict or to change the ordinary meaning of the material in the body of the advertisement.

❖ Asterisks shall not be used in any headlines. The explanatory material which is the subject of the asterisks shall be in a type size not smaller than the type size in the body of the advertisement. The explanatory material also must be on the same page as the reference asterisk.

**§2799.1(26)** Unless an offer made in connection with a sales promotion is unequivocally without conditions, the terms “free”, “no obligations” or terms of similar import may not be used to describe that which is offered.

❖ Conditions of one sort or another prevail in most sales promotions. For example, the offer of a book is not “free” if the offeree must do anything as a condition of receiving the book, such as listening to a sales presentation. If itineraries of travel offers include a presentation designed to sell or lease subdivided interests then travelers are under obligation. An offer may be represented as “no cost” or “without charge”.

**§2799.1(27)** Offers of travel, accommodations, meals or entertainment at no cost or reduced cost, the purpose of which is to promote sales, shall not be described as “awards”, “prizes” or by words of similar import.

❖ This means there may not be contests or any “winning” of any offers of travel, accommodations, meals or entertainment which are supplied as a means of inducing travel to the subdivision or elsewhere where a sales presentation may be made. Such offers may not be described as vacations or holidays if the purpose of the offer is to promote sales.

**§2799.1(28)** Offers or solicitations of trip reservations to visit subdivided property or any other place where a sales presentation for subdivided property is to be made shall set forth all conditions, limitations or qualifications that will be applied before the recipient will be allowed to make the trip.

❖ This applies to any conditions of the offer including requests

or requirements for: a deposit of any kind, travel by both husband and wife, age limits, financial ability to purchase, any expenses to be borne by the prospective purchasers, in-home sales presentations and sales promotions as part of the itinerary of the travel offer, etc. Travel offers are subject to §17533.8 of the B&P Code as stated in these guidelines. This law would be applicable to so-called “validation” or “confirmation” of travel reservations where sales procedures provide that the salesperson is the validator and visits the home to present the “validation” and a sales presentation.

**§2799.1(29)** The approximate retail value of any gift, prize and premium offered through an advertisement to prospective purchasers shall be set forth in the advertisement.

❖ The description of the gifts and the approximate retail value shall appear on any piece of advertising which refers to a gift. Availability of the estimated number of gifts required to meet the demand should be assured by prior purchase or by financial arrangements. Substantiating proof of compliance with these requirements must be submitted with the filing of each proposed advertisement.

Financial Arrangements — Proof of prior purchase or other acceptable arrangement (bond, letter of credit, cash deposit or RE 631A) to insure availability of - “prizes” (including any bonus) to meet the anticipated demand, are required. The Department of Real Estate accepts, as typical, a 1% response rate for this type of direct mailers. Normally, the subdivider purchases and stocks the commonly-awarded inexpensive gift(s) and acquires a bond to cover the possibility of liability for the major, expensive items. The bond (or letter of credit or cash deposit) must be in an amount sufficient to satisfy expected demand for major gifts, as indicated by the odds and anticipated response. In no event, however, will the Department accept financial arrangements for less than one each of the major prizes. The financial arrangements must cover the entire promotion (e.g., one hundred thousand letters) and be accompanied by escrow instructions (RE 609). The bond or other arrangement must be in favor of the escrow depository.

The developer must inform the Department as each segment of a mailing program is accomplished (e.g., ten thousand letters per month) and furnish the Department with invoices proving purchase of the minor gifts necessary to meet the demand anticipated from that mailing.

**§2799.1(30)** Complete rules and procedures for any contest or drawing advertised in connection with the marketing of subdivision interests shall be included in the advertisement, or the advertisement shall state the means by which a person can secure full information concerning said rules and procedures prior to his participation in the contest or drawing.

❖ To comply with this regulation, a complete disclosure of the rules and procedures either in the advertisement or an alternative method prior to participation in the contest, drawing or gift program must be made. This includes direct mail giveaway programs in which “winning” numbers are pre-assigned and all eligible respondents receive some gift. Per this

regulation, a minimum of basic information concerning the contest or gift program is to be described in the advertising. The basic information to be stated is (a) the nature of the contest, drawing, or gift program, (b) the description and retail value of the prizes or gifts, (c) the date the prizes will be distributed, (d) the means of entering the contest, drawing, or gift program, (e) any conditions as to eligibility, and (f) the odds of receiving each prize, gift, or award. For contests or drawings, the above and the balance of the information on rules and procedures should be contained in an information sheet. The balance of the information should include such details as how and where the drawing will be conducted; and how and where winners will be judged in a contest; the name of the designated person who will be responsible for the supervision and conduct of the drawing; a written statement from a designated person who will submit a list of names and addresses of prize winners at 30-day intervals or at the termination of the drawings, whichever first occurs; how and when the prizes will be delivered to the winner, etc. Per the regulation, complete information concerning participation in the contest or drawing will have to precede or accompany any advertising containing entry coupons, tickets, etc. For example, any announcement of a contest or drawing may include a return coupon requesting an entry form and the complete rules and procedures of the contest. Contests and award or gift programs which require the meeting of conditions which appear to be unlikely or virtually impossible to achieve by the participants, will not be cleared for use.

**§2799.1(31)** Advertising shall not include testimonials or endorsements which contain matters which the subdivider would be precluded by law or regulation from making in his own behalf.

- ❖ An example of an unacceptable testimonial would be a purchaser's comment about a vacant lot in a subdivision, that he "bought it because he thought it was a good investment". This opinion would have to be deleted from the advertisement. Also if an endorser says he owns the property, the advertisement must disclose that ownership was acquired as compensation for the endorsement, if such was the case.

**§2799.1(32)** An offer or inducement to purchase which purports to be limited as to quantity or restricted as to time shall set forth the numerical quantity and/or time applicable to the offer or inducement.

- ❖ There is no objection to the use of the word "limited" or similar terms if the limits are also stated with equal prominence.

**§2799.1(33)** An advertisement or an offering of undivided or fractional interests in a subdivision, which does not include a right of exclusive ownership or occupancy of a particular lot, parcel or unit by the purchasers, shall disclose the total number of undivided or fractional interests to be offered for sale in the subdivision.

- ❖ This may apply to time-shares, to condominium projects and to any other undivided interest subdivisions. For example, the subdivider of a condominium project may offer a 1/12 fee interest in a condominium unit coupled with a right to occupy the unit for a one month per year. This use limitation must be set forth in the advertising.

**§2799.1(34)** If the subdivision offering involves something less than a fee interest with an exclusive and perpetual right to occupy a lot, parcel or unit, e.g., a leasehold or timesharing-ownership interest, the limitations and restrictions on occupancy rights shall be included in the advertisement or the advertisement shall refer the purchaser to a fact sheet or similar source of this information.

- ❖ Advertising of a leasehold interest should include the term of the lease: e.g., 55 years. Advertising of a time-share must include the specific period of time for which there is the right of exclusive occupancy. Additional limitations and restrictions on occupancy rights can be contained in a fact sheet or information sheet. These are considered advertising and may be submitted for review along with other advertising.

**§2799.1(35)** No direct mail advertisement purporting to have resulted through a referral shall be used unless the solicitation includes the name of the person making said referral.

- ❖ This regulation is intended to eliminate the bulk mailing of letters that start out: "a friend of yours ...", or similar phrases without disclosing the actual name of the person."

**§2799.1(36)** Investment merit or profit potential of a subdivision interest other than an interest which is offered with an on-site residential, commercial or industrial structure shall not be expressed or implied unless the Commissioner has determined from evidence submitted by or on behalf of the subdivider that the representation is neither false nor misleading.

- ❖ Every proposed advertisement of a Land Project subdivision must be approved prior to use, whether or not "investment" merit/potential has been established in the application for a subdivision public report.

Approval of advertising for non-land project vacant lot subdivisions is not required. However, if the subdivider intends to include investment representations in the advertising, substantial investment representations must be submitted as part of the application for a public report.

Ordinarily, there is no objection to valid statistical material nor to the use of any valid area research studies which are limited to references to existing facilities and are not keyed to profit potential of lots in the subdivision.

Material which in any way attempts to relate or compare the purchase of a subdivision offering to a "savings" or "investment" program would be considered investment advertising.

**§2799.1(37)** Statements appearing in the public report for a subdivision shall not be quoted, paraphrased or cited out of context nor shall any part of the public report be underscored, italicized, bold faced or otherwise highlighted except in strict conformance with highlighting in the public report itself.

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**PART IV — BUSINESS & PROFESSIONS CODE**
**§17500.**

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

**§17530.**

It is unlawful for any person, firm, corporation or association, or any employee or agent therefor, to make or disseminate any statement or assertion of fact in a newspaper, circular, circular or form letter or other publication published or circulated in any language in this State, concerning the extent, location, ownership, title or other characteristic, quality or attribute of any real estate located in this State or elsewhere, which is known to him to be untrue and which is made or disseminated with the intention of misleading. Nothing in this section shall be construed to hold the publisher of any newspaper, or any job printer, liable for any publication herein referred to unless the publisher or printer has an interest either as owner or agent, in the real estate so advertised.

**§17533.6**

It is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit information, or to solicit the purchase of or payment for a product or service, or to solicit the contribution of funds or membership fees, by means of a mailing that contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval or endorsement, unless:

- (a) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a state or local government entity, if permitted by other provisions of law.
- (b) The solicitation bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, the following notice: “THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENT AGENCY, AND

THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT.”

- (c) The envelope or outside cover or wrapper in which the matter is mailed bears on its face in capital letters and in conspicuous and legible type, the following notice: “THIS IS NOT A GOVERNMENT DOCUMENT.”

**§17533.8**

- (a) It is unlawful for any person to offer, by mail, by telephone, in person, or by any other means or in any other form, a prize or gift, with the intent to offer a sales presentation, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent to offer such sales presentation.
  - (b) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communications who broadcasts or publishes an advertisement or offer in good faith, without knowledge of its violation of subdivision (a).
- ❖ This means that the advertising must clearly disclose at the onset that there is a requirement to attend a sales presentation prior to receiving any prize or gift. §17537.1(a)(4)(B) further address this subject.

**§17536.**

- (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.
- (b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant’s misconduct, and the defendant’s assets, liabilities, and net worth.
- (c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.
- (d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action. Before any penalty collected is paid out pursuant to subdivision (c), the amount of such

reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

- (e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

### §17537

- (a) It is unlawful for any person to use the term “prize” or “gift” or other similar term in any manner that would be untrue or misleading, including, but not limited to, the manner made unlawful in subdivision (b) or (c).
- (b) It is unlawful to notify any person by any means, as a part of an advertising plan or program, that he or she has won a prize and that as a condition of receiving such prize he or she must pay any money or purchase or rent any goods or services.
- (c) It is unlawful to notify any person by any means that he or she will receive a gift and that as a condition of receiving the gift he or she must pay any money, or purchase or lease (including rent) any goods or services, if any one or more of the following conditions exist:
- (1) The shipping charge, depending on the method of shipping used, exceeds (A) the average cost of postage or the average charge of a delivery service in the business of delivering goods of like size, weight, and kind for shippers other than the offeror of the gift for the geographic area in which the gift is being distributed, or (B) the exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift.
  - (2) The handling charge (A) is not reasonable, or (B) exceeds the actual cost of handling, or (C) exceeds the greater of three dollars (\$3) in any transaction or 80 percent of the actual cost of the gift item to the offeror or its agent, or (D) in the case of a general merchandise retailer, exceeds the actual amount for handling paid to an independent fulfillment house or supplier, either of which is in the business of handling goods for businesses other than the offeror of the gift.
  - (3) Any goods or services which must be purchased or leased by the offeree of the gift in order to obtain the gift could have been purchased through the same marketing channel in which the gift was offered for a lower price without the gift items at or proximate to the time the gift was offered.
  - (4) The majority of the gift offeror’s sales or leases within the preceding year, through the marketing channel in which the gift is offered or through in-person sales at retail outlets, of the type of goods or services which must be purchased or leased in order to obtain the gift item was made in conjunction with the offer of a gift.

This paragraph does not apply to a gift offer made by a general merchandise retailer in conjunction with the sale or lease through mail order of goods or services (excluding catalog sales) if (A) the goods or services are of a type unlike any other type of goods or services sold or leased by the general merchandise retailer at any time during the period beginning six months before and continuing until six months after the gift offer, (B) the gift offer does not extend for a period of more than two months, and (C) the gift offer is not untrue or misleading in any manner.

- (5) The gift offeror represents that the offeree has been specially selected in any manner unless (A) the representation is true and (B) the offeree made a purchase from the gift offeror within the six-month period before the gift offer was made or has a credit card issued by, or a retail installment account with, the gift offeror.
- (d) The following definitions apply to this section:
- (1) “Marketing channel” means a method of retail distribution, including, but not limited to, catalog sales, mail order, telephone sales, and in-person sales at retail outlets.
  - (2) “General merchandise retailer” means any person or entity regardless of the form of organization that has continuously offered for sale or lease more than 100 different types of goods or services to the public in California throughout a period exceeding five years.
- (e) Each violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.
- ❖ This means that there must be no required purchase of any services through the developer or an agent of the developer. If the gift is three nights in a hotel in Las Vegas, accommodations only, then it cannot be required that the recipient purchase airline tickets on a specific airline or through a specific travel agent. This does not mean, though, that the gift must include transportation. As long as it is clearly stated in the advertisement, it is acceptable to give only accommodations with the recipient providing his/her own transportation to the accommodation.

### §17537.1

- (a) It is unlawful for any person, or an employee, agent or independent contractor employed or authorized by that person, by any means, as part of an advertising plan or program, to offer any incentive as an inducement to the recipient to visit a location, attend a sales presentation, or contact a sales agent in person, by telephone or by mail, unless the offer clearly and conspicuously discloses in writing, in readily understandable language, all of the information required in paragraphs (1) and (2). If the offer is not initially made in writing, the required disclosures shall be received by the recipient in writing prior to any scheduled visit to a location, sales presentation, or contact with a sales agent. For purposes of this section, the



term “incentive” means any item or service of value, including, but not limited to, any prize, gift, money, or other tangible property.

(1) The following disclosures shall appear on the front (or first) page of the offer:

(A) The name and street address of the owner of the real or personal property or the provider of the services which are the subject of the visit, sales presentation, or contact with a sales agent. If the offer is made by an agent or independent contractor employed or authorized by the owner or provider, or is made under a name other than the true name of the owner or provider, the name of the owner or provider shall be more prominently and conspicuously displayed than the name of the agent, independent contractor, or other name.

(B) A general description of the business of the owner or provider identified pursuant to subparagraph (A), and the purpose of any requested visit, sales presentation, or contact with a sales agent, which shall include a general description of the real or personal property or services which are the subject of the sales presentation and a clear statement, if applicable, that there will be a sales presentation and the approximate duration of the visit and sales presentation.

(C) If the recipient is not assured of receiving any particular incentive, a statement of the odds of receiving each incentive offered or, in the alternative, a clear statement describing the location in the offer where the odds can be found. The odds shall be stated in whole Arabic numbers in a format such as: “1 chance in 100,000” or “1:100,000.” The odds and, where applicable, the alternative statement describing their location, shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer.

(D) A clear statement, if applicable, that the offer is subject to specific restrictions, qualifications, and conditions and a statement describing the location in the offer where the restrictions, qualifications, and conditions may be found. Both statements shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer.

(2) The following disclosures shall appear in the offer, but need not appear on the front (or first) page of the offer:

(A) Unless the odds are disclosed on the front (or first) page of the offer, a statement of the odds of receiving each incentive offered, printed in the size and format set forth in subparagraph (C) of paragraph (1).

(B) All restrictions, qualifications, and other conditions which must be satisfied before the recipient is entitled to receive the incentive, including but not limited to:

(i) Any deadline by which the recipient must visit

the location, attend the sales presentation, or contact the sales agent in order to receive an incentive.

(ii) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive the incentive. Any financial qualifications shall be stated with a specificity sufficient to enable the recipient to reasonably determine his or her eligibility.

(C) A statement that the owner or provider identified pursuant to subparagraph (A) of paragraph (1) reserves the right to provide a raincheck, or a substitute or like incentive, if those rights are reserved.

(D) A statement that a recipient who receives an offered incentive may request and will receive evidence showing that the incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient.

(E) All other rules, terms, and conditions of the offer, plan, or program.

(b) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to offer any incentive when the person knows or has reason to know that the offered item will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

(c) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to fail to provide any offered incentive which any recipient who has responded to the offer in the manner specified therein, who has performed the requirements disclosed therein, and who has met the qualifications described therein, is entitled to receive, unless the offered incentive is not reasonably available and the offer discloses the reservation of a right to provide a raincheck, or a like or substitute incentive, if the offered incentive is unavailable.

(d) If the person making an offer subject to subdivision (a) is unable to provide an offered incentive because of limitations of supply, quantity, or quality that were not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient’s right to receive a raincheck for the incentive offered, unless the person making the offer knows or has reasonable basis for knowing that the incentive will not be reasonably available and shall inform the recipient of the recipient’s right to at least one of the following additional options:

(1) The person making the offer will provide a like incentive of equivalent or greater retail value or a raincheck therefor.

- (2) The person making the offer will provide a substitute incentive of equivalent or greater retail value.
- (3) The person making the offer will provide a raincheck for the like or substitute incentive.
- (e) If a raincheck is provided, the person making an offer subject to subdivision (a) shall, within a reasonable time, and in no event later than 80 days, deliver the agreed incentive to the recipient's address without additional cost or obligation to the recipient, unless the incentive for which the raincheck is provided remains unavailable because of limitations of supply, quantity, or quality not reasonably foreseeable or controllable by the person making the offer. In that case, the person making the offer shall, not later than 30 days after the expiration of the 80 days, deliver a like incentive of equal or greater retail value or, if an incentive is not reasonably available to the person making the offer, a substitute incentive of equal or greater retail value.
- (f) Upon the request of a recipient who has received or claims a right to receive any offered incentive, the person making an offer subject to subdivision (a) shall furnish to the person sufficient evidence showing that the incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient.
- (g) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to:
- (1) Use any printing styles, graphics, layouts, text, colors, or formats on envelopes or on the offer which, implies, creates an appearance, or would lead a reasonable person to believe, that the offer originates from or is issued by or on behalf of a government or public agency, public utility, public organization, insurance company, credit reporting agency, bill collecting company or law firm, unless the same is true.
  - (2) Misrepresent the size, quantity, identity, value, or qualities of any incentive.
  - (3) Misrepresent in any manner the odds of receiving any particular incentive.
  - (4) Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular incentive unless that is the fact.
  - (5) Label any offer a notice of termination or notice of cancellation.
  - (6) Misrepresent, in any manner, the offer, plan, program or the affiliation, connection, association, or contractual relationship between the person making the offer and the owner or provider, if they are not the same.
- (h) If the major incentives are awarded or given at random, by the assignment of a number to the incentives, that number shall be actually assigned by the party contractually responsible for doing so. The person making an offer subject to subdivision

(a) hereof, or the agent, employee, or independent contractor employed or authorized by that person, if any, shall maintain, for a period of one year after the date the offer is made, the records that show that the winning numbers or opportunity to receive the major incentives have been deposited in the mail or otherwise made available to recipients in accordance with the odds statement provided pursuant to subparagraph (C) of paragraph (1) of subdivision (a) hereof. The records shall be made available to the Attorney General within 30 days after written request therefor. Postal receipt records, affidavits of mailing, or a list of winners or recipients of the major incentives shall be deemed to satisfy the requirements of this section.

❖ **Retail values of premiums or gifts**

The initial description of every premium or gift must include its retail value or fair market value.

For commonly furnished gifts, i.e., the gifts with the highest odds of being delivered, the advertiser (i.e. the subdivider) must do one of the following:

- For commonly furnished gifts, the retail value may be set at three times the advertiser's cost of the item. The advertiser must be prepared to furnish satisfactory proof of the advertiser's cost to the Department of Real Estate.
- If the advertiser believes that a higher price is justified, the subdivider must cause a telephone survey or personal shopping survey to be made in a "major metropolitan area," (see definition below) which includes all of the following types of stores: one major department store (such as Macy's, Capwells, Broadway, Nordstroms, etc.), two discount stores (such as Longs, Payless, Thrifty, Raley's, etc.) and one catalog store. The so-called "suggested retail price" is not sufficient. "Suggested retail prices" are frequently inflated over the prevailing market prices and will not be recognized as indicating anything less they coincide with the "prevailing market prices".
- B&P Code §17501 states:

"Worth or value; statements as to former price. For the purpose of this article the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

- "Major metropolitan area" means any "metropolitan statistical area" as designated by the U. S. Department of Commerce, Bureau of the Census.

### **Availability of Prizes**

The advertiser must have a sufficient supply of the commonly awarded gifts on hand to meet the expectable demand. The Department of Real Estate may make some exceptions, such as for a certificate to be traded for cash. Prearrangements relative to such exceptions must be made with the Department of Real Estate.

The major gifts (and common gifts for which exception arrangements have been made with Department of Real Estate) need not be on hand and paid for, so long as adequate security, e.g. a bond, has been posted with DRE, escrow instructions (RE 609) must accompany the financial security.

### **Clear and Conspicuous**

B&P Code §17537.1 et seq. refer to disclosures which must be “clear and conspicuous” in the advertising piece. Because there are so many required disclosures and because not all can be put on the front page of any solicitation, the following items are deemed to be of most significance and importance to the consumer and must be set forth on the front page of the solicitation:

- The true name and address of the subdivider or operator and the name of the particular subdivision, the subdivider or operator’s address at the subdivision or offering in question. A main office address of the subdivider or operator may also be listed.
- The name of the subdivider or operator must be more conspicuous and more prominent than the name of the advertising company or advertising name utilized by the operator or subdivider, otherwise it will not be considered sufficiently “clear and conspicuous”.
- A general description of the business of the subdivider or operator and the purpose of the requested visit (e.g. sales presentation).
- The approximate duration of any visit and sales presentation. The total time of the tour and sales presentation must be combined.
- The balance of the other information required by §17537.1 B&P Code including the odds of receiving the various gifts, may be included elsewhere on the mail piece, but the odds must be clearly stated in at least 10 point type size. The preferred format is:

5 chances in 50,000

1 chance in 100,000

999,995 chances in 1,000,000

or similar understandable terms. Odds stated in decimals such as “1:100,000” or .000001 are not acceptable since they are not “readily understandable” to many recipients.

### **Rainchecks**

Per §17537.1 the advertiser is required to disclose that he/she reserves the right to provide a raincheck, or a like item or

a substitute item. But, the advertiser must also make a good faith attempt to have a sufficient supply of the “offered item” (commonly awarded item or bonus gift) on hand to meet the expected response to the advertising.

### **§17537.2.**

The following, when used as part of an advertising plan or program defined in §17537.1, are deceptive and constitute unfair trade practices:

- (a) When, in order to utilize the incentive, the recipient is requested to pay any money to any person or entity named or referred to in the offer, or to purchase, rent, or otherwise pay that person or entity for any product or service including a deposit, whether returnable or not, whether payment is for an item, a service, shipping, handling, insurance or payment for anything.

Notwithstanding the preceding paragraph, when the offered incentive is a certificate or coupon redeemable for transportation, accommodations, recreation, vacation, entertainment, or like services, the offer may place a condition on the use of the incentive which requires the recipient to pay directly to the transportation company, the accommodation, recreation, vacation or entertainment facility, or similar direct provider of like services, a refundable deposit, not to exceed fifty dollars (\$50), to reserve space availability or admission, only if the deposit shall be returned in United States dollars immediately upon the recipient’s arrival at the location of the provider to whom the recipient paid the deposit. If the incentive is such a certificate or coupon, and if government-imposed taxes directly related to the service being provided are not included in the incentive, the offer itself, in close proximity to the description of the incentive which is evidenced by the certificate or coupon, shall disclose those government-imposed taxes which will be the recipient’s responsibility and the approximate dollar amount of those taxes. A deposit from the recipient may be collected to cover the cost of those government-imposed taxes.

- (b) Stating or implying in the offer that the recipient is one of a selected group to receive a particular incentive or one or more of a group of incentives, without clearly and conspicuously disclosing in close proximity to the statement or implied statement of selection the total number of persons in that select group or the odds of receiving the incentive or incentives. Statements of selection which require such disclosure include such phrases as “you are a finalist,” “we are sending this to a limited number of people,” “either you or another named person has won the major prize,” “if you do not respond, your incentive will be given to someone else.”
- (c) Stating or implying in the offer that the recipient is likely to receive one or more of the offered incentives because other named people have already received other named incentives, unless the offer clearly and conspicuously discloses in close proximity to the statement the recipient’s odds of receiving the identified incentive.
- (d) When the solicitation states or implies that the recipient is likely to receive an incentive which has a normal retail price

which is higher than that of another named incentive unless that statement is true. For purposes of this section, a list of incentives implies that the incentives are in descending or ascending order of value unless the solicitation clearly and conspicuously negates the implication in close proximity to the list.

- (e) Describing an incentive or incentives in an untrue or misleading manner. Untrue or misleading descriptions include those which imply that the incentive being offered is of greater fair market value or of a different kind or nature than a recipient would be led to believe from a reasonable reading of the offer, or which lists the recipient's name in close proximity to a specific incentive unless the offer clearly and conspicuously discloses immediately next to or immediately under or above the recipient's name the recipient's odds of receiving the specific incentive.
- (f) Subdivision (a) shall not apply to an incentive constituting an opportunity to stay at a hotel or other resort accommodations at a discount from the standard rate for the hotel or resort accommodations, if all of the following conditions are met:
- (1) The fee to utilize the incentive and the requirement, if any, to attend a sales presentation are clearly and conspicuously disclosed in close proximity to the description of the offered incentive.
  - (2) A statement appears in close proximity to the description of the offered incentive and in substantially the following form: The recipient is responsible for payment of any government-imposed taxes directly related to the service being provided and any personal expenses incurred when utilizing this offer.
  - (3) The accommodations to be occupied by the recipient of the incentive are within a 20-mile radius of the property on which the accommodations offered for sale are located.
  - (4) If the incentive is offered in conjunction with any additional incentive or incentives or as one or more of a group of incentives, the offer of such additional incentive or incentives shall comply with Section 17537.1 and the following:
    - (A) The additional incentive or incentives are typically and customarily included in a vacation package and may include, but not be limited to, transportation, dining, entertainment, or recreation.
    - (B) The fee and additional requirements, if any, to use the additional incentive or incentives are clearly and conspicuously disclosed in close proximity to the description of the offer of them.

**§17539.1.**

- (a) The following unfair acts or practices undertaken by, or omissions of, any person in the operation of any contest are prohibited:
- (1) Failing to clearly and conspicuously disclose, at the time of the initial contest solicitation, at the time of each precontest promotional solicitation and each time the

payment of money is required to become or to remain a contestant, the total number of contestants anticipated based on prior experience and the percentages of contestants correctly solving each puzzle used in the three most recently completed contests conducted by the person. If the person has not operated or promoted three contests he shall disclose for each prior contest if any, the information required by this section.

- (2) Failing to promptly send to each member of the public upon his request, the actual number and percentage of contestants correctly solving each puzzle or game in the contest most recently completed.
- (3) Misrepresenting in any manner the odds of winning any prize.
- (4) Misrepresenting in any manner, the rules, terms, or conditions of participation in a contest.
- (5) Failing to clearly and conspicuously disclose with all contest puzzles and games and with all promotional puzzles and games all of the following:
  - (A) The maximum number of puzzles or games which may be necessary to complete the contest and determine winners.
  - (B) The maximum amount of money, including the maximum cost of any postage and handling fees, which a participant may be asked to pay to win each of the contest prizes then offered.
  - (C) That future puzzles or games, if any, or tie breakers, if any, will be significantly more difficult than the initial puzzle.
  - (D) The date or dates on or before which the contest will terminate and upon which all prizes will be awarded.
  - (E) The method of determining prizewinners if a tie remains after the last tie breaker puzzle is completed.
  - (F) All rules, regulations, terms, and conditions of the contest.
- (6) Failing to clearly and conspicuously disclose the exact nature and approximate value of the prizes when offered.
- (7) Failing to award and distribute all prizes of the value and type represented.
- (8) Representing directly or by implication that the number of participants has been significantly limited, or that any particular person has been selected to win a prize unless such is the fact.
- (9) Representing directly or by implication that any particular person has won any money, prize, thing, or other value in a contest unless there has been a real contest in which a meaningful percentage, which shall be at least a majority, of the participants in such contests have failed to win a prize, money, thing, or other value.
- (10) Representing directly or by implication that any particular

person has won any money, prize, thing, or other value without disclosing the exact nature and approximate value thereof.

- (11) Using the word “lucky” to describe any number, ticket, coupon, symbol, or other entry, or representing in any other manner directly or by implication that any number, ticket, coupon, symbol, or other entry confers or will confer an advantage upon the recipient that other recipients will not have, that the recipient is more likely to win a prize than are others, or that the number, ticket, coupon, symbol or other entry has some value that other entries do not have.
- (12) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose in connection with a mailing to a third person.
- (13) Using or distributing simulated checks, currency, or any simulated item of value unless there is clearly and conspicuously printed thereon the words: SPECIMEN—NONNEGOTIABLE.
- (14) Representing, directly or by implication, orally or in writing, that any tie breaker puzzle may be entered upon the payment of money qualifying the contestant for an extra cash or any other type prize or prizes unless:
- (A) It is clearly and conspicuously disclosed that the payments are optional and that contestants are not required to pay money, except for reasonable postage and handling fees, to play for an extra cash or any other type of prize or prizes; and
- (B) Contestants are clearly and conspicuously given the opportunity to indicate they wish to enter such phase of the contest for free, except for reasonable postage and handling fees the amount of which shall not exceed one dollar and fifty cents (\$1.50) plus the actual cost of postage and which shall be clearly and conspicuously disclosed at the time of the initial

contest solicitation and each time thereafter that the payment of such fees is required. The contestants’ opportunity to indicate they wish to enter for free shall be in immediate conjunction with and in a like manner as the contestants’ opportunity to indicate they wish to play for an extra prize.

- (b) This section does not apply to an advertising plan or program that is regulated by, and complies with, the requirements of Section 17537.1.

#### **Simulated Checks**

***Per §17539.1(13) the use of simulated checks or currency is allowed if “there is clearly and conspicuously printed thereon the words: SPECIMEN-NONNEGOTIABLE”. These words must be visible through the envelope’s window and immediately beneath the name and address of the addressee. Use of envelopes which appear to resemble government envelopes, is forbidden. Factors which will be considered in concluding that the envelope might be mistaken for a government envelope are: the color of the envelope, the color of the printing on the outside of the envelope, the type used, official looking references to government regulations covering the delivery of mail, the name used for the return address, e.g., “Office of the Treasurer.”***

***When submitting advertising for review which includes any simulated checks, always submit therewith a copy of the envelope that will be used in the mailings.***