



# REAL ESTATE BULLETIN

Arnold Schwarzenegger, *Governor*  
Barry Sedlik, *Acting Secretary, Business, Transportation, & Housing Agency*  
Jeff Davi, *Real Estate Commissioner*

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

Department of Real Estate

Winter 2006

## Message from Commissioner Davi



**A**s the number of licensees in this State rapidly approaches 520,000, the Department of Real Estate continues to exceed the highest number of licensees ever recorded since the creation of the Department in 1917.

These are amazing times for the real estate industry. We have seen record growth over the past decade, both in the number of licensees and in the market. Recently, several bond measures, which will invest over \$26 billion into much needed infrastructure, were passed by the voters of our great State. This re-investing in our infrastructure is critical and is a major step in preparing for the future.

Part of the bond package was the dedication of nearly \$2 billion for housing. I am excited to see how the State, through the leadership of Governor Schwarzenegger and the State Legislature, will dedicate these funds towards housing for Californians.

I have enjoyed my travels throughout the State when I visit consumer groups or trade associations and provide them with updates concerning the Department and the licensee population. I appreciate the helpful feedback I receive from the many members of the public and licensees about what is happening in their respective markets. The real estate market

has clearly cooled over the past year or so, and the effect of that transition can be seen by the increased market time of listings to sale and the reduction in the number of resale transactions. This has a direct impact on the Department in that the complaints submitted and filed against real estate licensees have increased, partly due to the change in the market as well as the number of licensees. We are trying to address this increase in workload with the dedication of new personnel in the enforcement, audit and legal sections for the current fiscal year. Although we have seen an increase in cases filed, we are able to keep up with them and take the appropriate action against those licensees that are violating the law. Rest assured the Department is committed to ensuring that the public is protected in real estate transactions as that is our mission, and we take it very seriously.

If you, in your activities, come across illegal activity involving a real estate licensee, please do not hesitate to file a complaint with the Department. The complaint form is easy to obtain by visiting [www.dre.ca.gov](http://www.dre.ca.gov). At the Web site you can print a complaint form (RE 519 Licensee/Subdivider Complaint Form), complete it and then mail it to the department at the district office location nearest to you.

Together we can work to ensure that the public is protected in every real estate transaction in California. 🏠

## Real estate brokers must produce records upon DRE's request – *It's The Law*

**R**eal estate brokers are required to maintain books and records that were prepared in connection with all transactions for which a real estate license is required. The Department of Real Estate retains the right to inspect a real estate broker's books and records upon reasonable notice. Although the law on this subject is clear, there are brokers who refuse to produce records when requested

to do so and it is important to note that the failure to do so constitutes a basis for disciplinary action against the broker's license.

A case in point involves an Appellate Court decision that sustained the Department's disciplinary action against a broker for willfully failing to retain records in accordance with Section 10148 of the California Business & 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 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

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**STATE OF CALIFORNIA**

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BUSINESS, TRANSPORTATION AND HOUSING AGENCY

Barry Sedlik, Acting Secretary

DEPARTMENT OF REAL ESTATE  
Jeff Davi, Commissioner

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# First-time homebuyer requirements waived

from the California Housing Finance Agency

There is a perception that most government housing programs are aimed at first-time homebuyers. First-timers tend to need the most assistance, and are most dependent on real estate agents to guide them through the process. For that reason, government programs have often been seen as a niche product for agents and their associated loan officers.

There's a catch to this, though. If a buyer purchases a home in what is known as a "Federally Designated Targeted Area" (Targeted Area), he or she can still qualify for the California Housing Finance Agency's below-market rates, without being a first-time homebuyer. That's right: the buyer can still get CalHFA's fixed rate and lower payments while buying a second, third or tenth house if the house is in a Targeted Area.

The Federal Government has set up various Targeted Areas in order to encourage development, or redevelopment of historically impoverished or under-utilized urban and rural areas. The boundaries of these Targeted Areas are set by census tracts, and boundaries are reset every ten years after the decennial census. Thirty-three of California's 58 counties contain Targeted Areas, and almost half are contained in Los Angeles County.

The technical definition of a Targeted Area is a census tract in which 70% of the families earn less than 80% of the state's median income. Keep in mind, however, that the area boundaries are set every ten years, so the last boundaries were set in 2000. Much has happened in the real estate market in the past six years, so many Targeted Areas look vastly different than before.

Not only is the first-time homebuyer requirement waived in a Targeted Area, but the two other main restrictions on income and purchase price are relaxed. In Targeted Areas, the purchase price limits are generally higher (so as to encourage more development), and the maximum allowable income is also generally higher.

The advent of high-powered search technology, in addition to the government putting more information on the Internet, has made the search for properties very simple. It's a three-step process:

1. Determine the city or cities where your borrower would like to purchase.
2. Go to the California Housing Finance Agency's Targeted Areas Web site at [www.tinyurl.com/ylls63](http://www.tinyurl.com/ylls63).
3. Follow the simple directions for finding either an address or a census tract boundary.

The Targeted Areas can be a very powerful tool for helping your clients who want to move up to the next size home while maintaining an affordable payment. Take a look into this very flexible program, and you can also get more information on CalHFA's entire range of programs for first-time homebuyers at [www.calhfa.ca.gov](http://www.calhfa.ca.gov). 

# An overview of the administrative disciplinary process

by Wayne S. Bell, Chief Counsel

One of the most important functions of the California Department of Real Estate (DRE) is to protect the public and the real estate profession from licensees who fail to adhere to their professional and legal responsibilities, from persons and entities that engage in licensed activities without being licensed, and from applicants for licensure or renewal of a license who do not have the requisite honesty, truthfulness and integrity.

DRE investigates applicants for licensure and for renewal of licensure, complaints and inquiries from the public, licensees, regulatory agencies and others regarding unlicensed activities, and unethical, deceptive, unprofessional and unlawful conduct by licensees. Sometimes DRE learns that a license applicant or licensee has had another license issued by the State or federal government suspended or revoked, discovers one or more criminal convictions, or ascertains misconduct through its own audits and compliance reviews of licensees. Or DRE might learn of a potential disciplinary violation through the media.

The Legal section of DRE, which has attorneys in Sacramento and Los Angeles, is responsible for, among other duties, the statewide prosecution of disciplinary actions. In the last fiscal year, the Legal section filed about 1900 formal actions.

California law authorizes the Commissioner of Real Estate (Commissioner) and/or DRE to revoke or suspend a person's or entity's real estate license, restrict the use of a license, or refuse to renew or grant a license. A summary list of the types of disciplinary actions and the germane laws and regulations is set forth in the "Disciplinary Action" portion of the Real Estate Bulletin. The least severe license discipline is known as a public reproof, which is a censure, rebuke or reprimand issued by DRE that is a matter of public record. The level of discipline sanction is dependent upon the violations by the individual or entity penalized.

In the case of individuals and entities engaged in the practice of real estate

without being licensed, or who violate the provisions of the Subdivided Lands Act or other laws and regulations under the jurisdiction of the Commissioner or DRE, DRE issues Desist and Refrain Orders. Such administrative orders recite the results of DRE's investigation, state the reasons for the order, and command that the named person and/or entity desist and refrain from certain specified acts. Failure to obey a Desist and Refrain Order issued for the violation of certain offenses may be punishable by a fine, imprisonment, or both fine and imprisonment. See Section 11023 of the California Business and Professions Code.

Because DRE's disciplinary actions are conducted to protect the public and are not penal in nature, DRE may, when appropriate, refer matters to law enforcement authorities, or to a criminal prosecution agency, such as the Department of Justice.

## Administrative Disciplinary Proceedings

What follows is a basic primer intended to give the reader a basic understanding of, and to answer some common questions regarding, the administrative disciplinary process and proceedings brought by DRE.

The Legal section initiates formal disciplinary proceedings by filing a pleading called a "Statement of Issues" in connection with an application for license matter, or a pleading known as an "Accusation" in connection with a matter pertaining to an existing licensee. In either case, the pleading sets forth and describes the particular facts that form the basis for the disciplinary action sought, and asks for a hearing and a decision imposing discipline.

As of the date of publication of this article, the majority of formal administrative actions brought by DRE arise because an applicant for licensure or a licensee is convicted of one or more crimes that meet certain threshold tests. Yet there are many Accusation cases brought against licensees based on some malfeasance in real estate transactions,

improper record keeping, and/or some other breach of duty or violation of the law.

Not all cases where formal disciplinary proceedings have been brought will result in formal hearings. In some cases, both DRE and the Respondent (as the individual or entity named in the pleadings and against whom discipline is sought is known) agree to certain disciplinary sanctions by entering into a negotiated agreement and signing a Stipulation and Waiver in license application cases, or a Stipulation and Agreement in cases regarding an existing license.

If a Respondent fails to file a Notice of Defense, which essentially notifies DRE that the Respondent objects to the pleading filed by the department and wishes to proceed to a hearing on the merits, a default decision against the Respondent will usually result. The Commissioner will thereafter enter an Order imposing disciplinary action.

Those cases that proceed to formal hearings are decided by an Administrative Law Judge under the auspices of



the California Office of Administrative Hearings. The administrative hearing process is conducted in accordance with the California Administrative Procedure Act. See Section 11370, and those sections that follow, of the California Government Code.

### ➤ Burden and Standard of Proof

In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence, which means that the applicant must have stronger evidence

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# Disciplinary Action: June 06 - August 06

- ✓ A list of actions is not published in this *Bulletin* until the 30-day period allowed for court appeal has expired, or if an appeal is filed and the disciplinary action is stayed, until the stay is dissolved. Names of persons to whom licenses are denied on application are not published.
- ✓ Licensees are listed alphabetically by the District Office region of responsibility.
- ✓ The license type is listed in parentheses after the licensee's name. [REB – Real estate broker; RREB – Restricted real estate broker; RES – Real estate salesperson; RRES – Restricted real estate salesperson; PRLS – Prepaid rental listing service;

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



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

## Commissioner's Regulations

2715	Licensee's failure to maintain current business or mailing address with DRE
2725	Failure of broker to exercise reasonable supervision over the activities of his or her salespersons
2726	Failure to have broker-salesperson agreements
2731	Unauthorized use of fictitious business name
2752	Broker's failure to notify DRE of salesperson employment
2753	Broker's failure to retain salesperson's license at main office or return the license at termination of 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(e)	Failure of broker acting as escrow holder to deposit trust funds in trust account by next business day following receipt
2832.1	Failure to obtain permission to reduce trust fund balance in a multiple beneficiary account
2834	Trust account withdrawals by unauthorized or unbonded person
2835	Retention of broker funds in trust account
2840	Failure to give approved borrower disclosure
2950(d)	Failure of broker handling escrows to maintain records and accounts
2950(e)	Failure by broker to make escrow records available for inspection
2950(g)	Broker-handled escrow disbursement without written instructions
2950(h)	Failure to disclose interest in the agency holding the escrow
2951	Improper record keeping for broker handled escrows

## Business and Professions Code

480(c)	Denial of license on grounds of false statement in license application
490	Substantially related criminal conviction
490(a)	Substantially related criminal conviction
10130	Acting without license
10137	Unlawful employment or payment of compensation
10145	Trust fund handling
10148	Failure to retain records and make available for inspection
10159.2	Failure by designated officer to supervise licensed acts of corporation
10159.5	Failure to obtain license with fictitious business name
10160	Failure to maintain salesperson licenses in possession of broker
10161.8	Failure of broker to notify Commissioner of salesperson employment
10162	Failure to maintain a place of business
10176(a)	Making any substantial misrepresentation
10176(b)	Making false promise
10176(c)	Continued & flagrant course of misrepresentations through salespersons
10176(e)	Commingling trust funds with brokers funds
10176(f)	Exclusive listing agreement without definite termination date
10176(g)	Secret profit or undisclosed compensation
10176(i)	Fraud or dishonest dealing in licensed capacity

10177(a)	Procuring a real estate license by misrepresentation or material false statement
10177(b)	Conviction of crime
10177(d)	Violation of real estate law or regulations
10177(f)	Conduct that would have warranted denial of a license
10177(g)	Negligence or incompetence in performing licensed acts
10177(h)	Failure to supervise salespersons or licensed acts of corporation
10229(a)	Violation of multi-lender requirements
10229(j)(3)	Failure to file quarterly multi-lender trust account reports
10229(j)(6)	Violation of multi-lender requirements
10229(n)	Failure to file annual multi-lender trust account reports
10229(o)	Failure to file multi-lender threshold reports
10231	Accepting loan funds for other than a specific loan
10232(a)	Failure to notify DRE of threshold status
10232.2(c)	Failure to provide trust funds reports
10232.4(a)	Failure to give and retain copy of lender purchaser disclosure
10234	Failure by broker negotiating mortgage loan to record or cause trust deed to be recorded
10240	Failure to give mortgage loan disclosure statement
10241	Improper mortgage loan disclosure statement

## Financial Code

4973	Violation of covered loan law
4975	Violation of covered loan requirements
4979	Violation of covered loan requirements

## REVOKED LICENSES

### Fresno Region

<b>Arias, Irene V. (RES)</b>	9810 N. Rowell, Fresno
<i>Effective:</i>	7/6/06
<i>Violation:</i>	490, 10177(b)
<b>Caughell, Christopher W. (RES)</b>	6449 N. Millbrook, Fresno
<i>Effective:</i>	6/26/06
<i>Violation:</i>	490, 10177(b)

### Los Angeles Region

<b>Caposino, Brian (RES)</b>	235 N. Citrus St., West Covina
<i>Effective:</i>	6/12/06
<i>Violation:</i>	490, 10177(b)
<b>Chandra, Jagdish (REB)</b>	1937 Avenida del Ossa, Fullerton
<i>Effective:</i>	6/5/06
<i>Violation:</i>	490, 10177(b)
<b>Fiscus, William H. II (RES)</b>	6252 Royal Oak, Huntington Bch
<i>Effective:</i>	8/16/06
<i>Violation:</i>	490, 10177(b)

### Kashanchi, Ashkan Seyed (RES)

29123 Whites Point Dr.,  
Rancho Palos Verdes  
*Effective:* 8/28/06  
*Violation:* 490, 10177(b)

### Lee, Edwin Sunmin (RES)

15744 La Moine St.,  
Hacienda Heights  
*Effective:* 7/31/06  
*Violation:* 490, 10177(b)

### Majidi, Mohammad (RES)

17947 Bullock St., Encino  
*Effective:* 6/1/06  
*Violation:* 490, 10177(b)

### Martinez, Frank Richard (RES)

49 Corte Vioriosa, San Clemente  
*Effective:* 6/30/06  
*Violation:* 490, 10177(b)

### Rillamas, Christopher John (RES)

12392 Redwing, Apt. 2,  
Apple Valley  
*Effective:* 6/22/06  
*Violation:* 490, 10177(b)

### Romo, Brandon Carl (RES)

11 West Ave. Junipero,  
San Clemente  
*Effective:* 7/25/06  
*Violation:* 490, 10177(b)

**Smith, Leslie Greer (RES)**  
PO Box 519, Bellflower  
Effective: 8/10/06  
Violation: 10176(a)(b)(c)(i),  
10177(g)

### Oakland Region

**Bittner, John William Von (RES)**  
3535 Pruneridge Ave., Santa Clara  
Effective: 6/14/06  
Violation: 490, 10177(b)

**Chen, Cindy (RES)**  
2935 Van Ness, #6, San Francisco  
Effective: 6/13/06  
Violation: 490, 10177(b)

**Chu, Chiu Wah (RES)**  
490 16<sup>th</sup> Ave., San Francisco  
Effective: 8/10/06  
Violation: 490, 10177(b)

**Dickman, Brett Francis (RES)**  
6435 Montego Ct., San Jose  
Effective: 6/22/06  
Violation: 490, 10177(b)

**Do, Mike (RES)**  
1800 Evans Ln., #3103, San Jose  
Effective: 6/13/06  
Violation: 490, 10177(b)

**Glidden, Steven K (RES)**  
181 Henry St., San Francisco  
Effective: 6/13/06  
Violation: 490, 10177(b)

**Heard, Johnny Lewis Jr. (RES)**  
2332 Harrison St., #509, Oakland  
Effective: 6/13/06  
Violation: 490, 10177(b)

**Katami, Adan Farrid (RES)**  
586 Somerset St., San Francisco  
Effective: 7/21/06  
Violation: 490, 10177(b)

**Montez, Summer Breeze (RES)**  
2845 Modesto Ave., Oakland  
Effective: 8/10/06  
Violation: 490, 10177(b)

**Vanderostyne, Ruth Ann (REB)**  
1253 Madalen Dr., Milpitas  
Effective: 6/30/06  
Violation: 490, 10177(b)

**Watson, Milton Ray (RES)**  
380 Morris Phelps Dr., Tracy  
Effective: 6/27/06  
Violation: 490(a), 10177(b)

### Sacramento Region

**Bundy, Jason Free (RES)**  
9292 Airhill Way, Orangevale  
Effective: 7/17/06  
Violation: 490, 10177(b)

**Coldani, Kimberly Ruth (RES)**  
14090 Hwy 160, Walnut Grove  
Effective: 6/22/06  
Violation: 490, 10177(b)

**Kenneth Amaradio Inc. (REC)**  
2815 Bechelli Ln., Redding  
Effective: 8/29/06  
Violation: 2731, 2831.2, 2832,  
2832.1, 10177(d)

**Renteria, Jesus (RRES)**  
74 McDermott Ave.,  
Mountain House  
Effective: 8/23/06  
Violation: 10176(a)(i)

**Shields, Robert Daniel (RES)**  
288 John Kamps Way, Ripon  
Effective: 7/12/06  
Violation: 490, 10177(b)

### San Diego Region

**Bohrer, Jeremy Jason (RES)**  
2020 Camino Del Rio North,  
#803, San Diego  
Effective: 7/27/06  
Violation: 490, 10177(b)

**Grubba, Keith Gregory (REB, REO)**  
3276 Belgian Dr., Norco  
Effective: 7/6/06  
Violation: 490, 10177(b)

**Haghighi, Mansour (RES)**  
4706 Blackfoot Ave., San Diego  
Effective: 7/19/06  
Violation: 490, 10177(b)

**Orozco, Heriberto (RES)**  
669 Rue La Blanc, Chula Vista  
Effective: 6/21/06  
Violation: 490, 10177(b)

**Pasto, John R. (REB)**  
4402 Fairmount Ave., San Diego  
Effective: 6/22/06  
Violation: 490, 10177(b)

**Peltier, Daniel Joseph (RES)**  
2943 Unicornio St., #14, Carlsbad  
Effective: 8/28/06  
Violation: 490, 10177(b)

**Rubi, Gilberto (RES)**  
736 Elsa Dr., Chula Vista  
Effective: 6/8/06  
Violation: 490, 10177(b)

**Scott, Mark A. (RES)**  
1321 Granite Springs Dr.,  
Chula Vista  
Effective: 7/26/06  
Violation: 490, 10177(b)

**Shaw, Rhett C. (RES)**  
4545 Saddle Mountain Ct.,  
San Diego  
Effective: 7/26/06  
Violation: 480(c), 10177(a)

**Stevens, Clifford Robert (RES)**  
3378 Hopi Place, San Diego  
Effective: 7/19/06  
Violation: 490, 10177(b)

**Stoligrosz, Trevor Lee (RES)**  
190 Belflora Way, Oceanside  
Effective: 7/27/06  
Violation: 490, 10177(b)

**Verdugo, Haydee Jerez (REB)**  
44100 Monterey Ave., Ste. 216T,  
Palm Desert  
Effective: 7/31/06  
Violation: 2831.1, 2831.2,  
10145, 10176(i),  
10177(d)(g)

## REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

### Fresno Region

**Armstrong, Irma Aldana (REB)**  
422 Salinas St., Salinas  
Effective: 7/6/06  
Violation: 10176(a), 10177(g)

Right to RREB license on terms  
and conditions

**Combs, Lewis Scott (RES)**  
7944 N. Maple, #102, Fresno  
Effective: 7/5/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

### Los Angeles Region

**Aguilar, Julio Cesar (RES)**  
11716 Rosecrans Ave., Norwalk  
Effective: 7/5/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Arndt, Cathryn Lynn (RES)**  
PO Box 1248, Cedar Glen  
Effective: 8/14/06  
Violation: 10177(f)  
Right to RRES license on terms  
and conditions

**Brown, Ronald John (REB)**  
28564 Williams Canyon Rd.,  
Silverado  
Effective: 6/15/06  
Violation: 490  
Right to RRES license on terms  
and conditions

**California Empire Financial  
Group, Inc. (REC)**  
10681 Foothill Blvd., Ste. 200,  
Rancho Cucamonga  
Effective: 7/24/06  
Violation: 2831.1, 2831.2, 2832,  
2832.1, 2834,  
2835, 2950(d), 2951,  
10145, 10176(e)(i),  
10177(d)(g)  
Right to RREC license on terms  
and conditions

**Correia, Michael (REB)**  
700 S. Flower St., Ste. 1100,  
Los Angeles  
Effective: 8/16/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Crane, James Louis (RES)**  
6922 La Presa, Los Angeles  
Effective: 6/15/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

**CRE, Inc. (REC)**  
8407 S. Vermont Ave.,  
Los Angeles  
Effective: 6/20/06  
Violation: 2831.1, 2831.2,  
2832, 10177(d),  
10240  
Right to RREC license on terms  
and conditions

**Day, Nathan Andrew (RES)**  
900 Citrus Pl., Newport Beach  
Effective: 8/31/06  
Violation: 490  
Right to RRES license on terms  
and conditions

**Easley, April Anne (RES)**  
10705 Slater Ave.,  
Fountain Valley  
Effective: 6/28/06

Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Grahl, Earl Jonathan (RES)**  
2109 Apricot Dr., Irvine  
Effective: 7/5/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Hand, Jehu T. (REB)**  
24351 Pasto Rd., Apt. B,  
Dana Point  
Effective: 6/12/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Ingallinera, Albert Joseph (RES)**  
12534 Valley View St., Ste. 310,  
Garden Grove  
Effective: 6/19/06  
Violation: 4973, 4975, 4979,  
10130, 10176(i),  
10177(d)(g)  
Right to RRES license on terms  
and conditions

**Shugar, Allen David (REB)**  
520 Washington Blvd., #106,  
Marina Del Rey  
Effective: 7/12/06  
Violation: 490  
Right to RRES license on terms  
and conditions

**Thantron, Jack (REB)**  
3407 S. Main St., #N, Santa Ana  
Effective: 7/12/06  
Violation: 490, 10177(b)  
Right to RREB license on terms  
and conditions

**Vallarino, Thomas (RES)**  
1214 Tennyson St., Ste. 4,  
Manhattan Beach  
Effective: 6/27/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

### Oakland Region

**Brereton, Brandt Eugene (REB)**  
1500 E. Hamilton, #102,  
Campbell  
Effective: 7/13/06  
Violation: 490, 10177(b)  
Right to RREB license on terms  
and conditions

**Haniff, Al (RES)**  
P.O. Box 56187, San Jose  
Effective: 8/29/06  
Violation: 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Medina, Miguel (RES)**  
2833 Junction Ave., #202,  
San Jose  
Effective: 8/30/06  
Violation: 490(a), 10177(b)  
Right to RRES license on terms  
and conditions



**Overgaard, John Peter (REB)**  
50 Sand Creek Rd., #330,  
Brentwood  
*Effective:* 7/13/06  
*Violation:* 2831, 2831.1, 2831.2,  
2832, 10145, 10177(d)  
Right to RREB license on terms  
and conditions

### Sacramento Region

**Bourdanotis, Konstantinos G. (RES)**  
110 Ruth Ct., #6, Sacramento  
*Effective:* 7/18/06  
*Violation:* 490, 10177(b)  
Right to RRES license on terms  
and conditions

### San Diego Region

**AJPROP.com, Inc. (REC)**  
3358 30<sup>th</sup> St., San Diego  
*Effective:* 8/24/06  
*Violation:* 2831, 2832, 2832.1,  
2835, 10145,  
10176(f), 10177(d)  
Right to RREC license on terms  
and conditions

**Apessos, James D. Jr. (REB, REO)**  
1019 Laguna Seca Loop,  
Chula Vista  
*Effective:* 6/27/06  
*Violation:* 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Boucher, Mark Joseph (RES)**  
612 California Oaks Dr., Vista  
*Effective:* 6/28/06  
*Violation:* 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Burrell, James Patrick (REB, REO)**  
3358 30<sup>th</sup> St., San Diego  
*Effective:* 8/24/06  
*Officer of:* AJPROP.com Inc.  
*Violation:* 2831, 2832, 2832.1,  
2835, 10145, 10159.2,  
10176(f), 10177(d)(h)  
Right to RREB license on terms  
and conditions

**Conrad, Antonia Vesslinova (RES)**  
13715 Rosecroft Way, San Diego  
*Effective:* 8/8/06  
*Violation:* 490, 10177(b)  
Right to RRES license on terms  
and conditions

**Dillon, Shawn David (RES)**  
37686 Newcastle Rd., Murrieta  
*Effective:* 7/5/06  
*Violation:* 490, 10177(b)  
Right to RRES license on terms  
and conditions



## SUSPENDED

### Los Angeles Region

**Villacorta, Jaime Salvador (RES)**  
5009 York Blvd., Los Angeles  
*Effective:* 7/26/06  
*Violation:* 10137, 10177(d)  
Suspended for 30 days

## SUSPENDED WITH STAY

### Los Angeles Region

**Vandermark, Pieter Maarten (REB, REO)**  
8141 East 2<sup>nd</sup> St., Ste. 208,  
Downey  
*Effective:* 7/21/06  
*Officer of:* E-Mortgage  
Loans.Com Inc.  
*Violation:* 10159.2, 10177(h)  
Suspended for 90 days-stayed  
for 2 years on terms and  
conditions  
Suspended Indefinitely

### Fresno Region

**Nilsen, David Arthur (REB)**  
211 Pearl St., Monterey  
*Effective:* 7/20/06  
*Violation:* 2831, 10177(d),  
10229(j)(3),  
10229(j)(6),  
10229(n)(o), 10231,  
10232(a)(c), 10234  
Suspended for 100 days-stayed for  
2 years on terms and conditions

### Los Angeles Region

**1<sup>st</sup> Realty Funding, Inc. (RREC)**  
925 N. Unruh Ave., Ste. 3,  
La Puente  
*Effective:* 7/26/06  
*Violation:* 2840, 10137, 10145,  
10161.8, 10177(g),  
10240  
Suspended for 120 days-stayed for  
2 years on terms and conditions

**Carrillo, Saul (RES)**  
7173 Luxor St., Downey  
*Effective:* 6/20/06  
*Violation:* 10130, 10177(d)  
Suspended for 60 days-stayed for  
2 years on terms and conditions

**Ceniza, Dolores Espina (REB)**  
2937 Elda St., Duarte  
*Effective:* 6/22/06  
*Violation:* 10159.2, 10177(h)  
Suspended for 90 days-60 days  
stayed for 2 years on terms and  
conditions

**Downing, Peter Michael (REB)**  
5561 Lockhaven Dr., Buena Park  
*Effective:* 7/3/06  
*Officer of:* Fidelity National  
Mortgage Corp.  
*Violation:* 2832.1, 2834, 10145  
Suspended for 90 days-all but  
30 days stayed for 2 years on  
terms & conditions

**E-Mortgage Loans.Com Inc. (REC)**  
8141 East 2<sup>nd</sup> St., Ste. 208,  
Downey  
*Effective:* 7/21/06  
*Violation:* 2831, 2831.2, 2840,  
2950(d)(e)(h), 10145,  
10148, 10177(d)(g),  
10240  
Suspended for 90 days-stayed for  
2 years on terms and conditions

**Farias, Ruth Georgette (REB, REO)**  
131 N. Tustin Ave., Ste. 210,  
Tustin  
*Effective:* 6/22/06  
*Violation:* 2731, 2840, 10145,  
10159.2,  
10177(d)(g)(h), 10240  
Suspended for 60 days-stayed for  
2 years on terms and conditions  
Suspended Indefinitely

**Fidelity National Mortgage Corp. (REC)**  
2001 East 4<sup>th</sup> St., Ste. 120,  
Santa Ana  
*Effective:* 7/3/06  
*Violation:* 2832.1, 2834, 10145  
Suspended for 90 days-all but 30  
days stayed for 2 years on terms  
& conditions

**Higgins, Edward Theodore (REB, REO)**  
22722 Lambert St., Ste. 1712,  
Lake Forest  
*Effective:* 7/26/06  
*Violation:* 2731, 10137,  
10177(d)  
Suspended for 90 days-stayed for  
2 years on terms and conditions

**International Millennium Assoc. (REC)**  
7320 Firestone Blvd., #214, Bell  
*Effective:* 6/20/06  
*Violation:* 2831.1, 2832, 2834,  
10177(d), 10240  
Suspended for 250 days-stayed for  
2 years on terms and conditions

**Luster, Jeffrey L. (REB, REO)**  
1200 W. Olympic Blvd.,  
Los Angeles  
*Effective:* 7/20/06  
*Violation:* 2725, 2831, 2831.1,  
2831.2, 10145,  
10177(d)(g)(h)  
Suspended for 90 days-stayed for  
2 years on terms and conditions

**Mark 1 Mortgage (REC)**  
11911 Artesia Blvd., Ste. 100,  
Cerritos  
*Effective:* 7/26/06  
*Violation:* 10177(d)(h), 10240  
Suspended for 60 days-stayed for  
2 years on terms and conditions

**McCullough, Robert Bruce (REB, REO)**  
13310 Ramona Blvd., Unit E,  
Baldwin Park  
*Effective:* 8/7/06  
*Violation:* 10159.2, 10177(h)  
Suspended for 60 days-stayed for  
2 years on terms & conditions

**Moore, Jason Christopher (REB)**  
2235 Lemon Ave., Long Beach  
*Effective:* 6/20/06

*Violation:* 2831.1, 2831.2, 2832,  
10177(d), 10240  
Suspended for 250 days-stayed for  
2 years on terms and conditions

**Pacific Financial Network, Inc. (REC)**  
22722 Lambert St., Ste. 1712,  
Lake Forest  
*Effective:* 7/26/06  
*Violation:* 2731, 10137,  
10177(d)  
Suspended for 90 days-stayed for  
2 years on terms and conditions

**Perez, Vincent O. (RES)**  
2664 Punta Del Este Dr.,  
Hacienda Heights  
*Effective:* 7/26/06  
*Violation:* 10177(g)  
Suspended for 120 days-stayed for  
2 years on terms and conditions

**Polanco, Ernesto (REB)**  
5015 Birch St., Newport Beach  
*Effective:* 6/12/06  
*Violation:* 2715, 2731, 2831,  
2832, 10145,  
10161.8, 10162,  
10177(d)(g)  
Suspended for 90 days-60 days  
may be stayed for 2 years on  
terms and conditions

**Prather, Fletcher Lee (REB, REO)**  
11911 Artesia Blvd., Cerritos  
*Effective:* 7/26/06  
*Violation:* 10177(h)  
Suspended for 60 days-stayed for  
2 years on terms and conditions

**Ramirez, Maria (REB, REO)**  
3633 Long Beach Blvd., #300-A,  
Long Beach  
*Effective:* 6/20/06  
*Violation:* 2831.2, 2832, 2834,  
10177(d), 10240  
Suspended for 250 days-all but 50  
days stayed for 2 years on term  
and conditions

**Rico, Jose Antonio (REB, REO)**  
11822 Downey Ave., Downey  
*Effective:* 6/20/06  
*Violation:* 2831.2, 2832, 2834,  
10177(d), 10240  
Suspended for 250 days-stayed for  
2 years on terms and conditions

**Riley, Michael James (REB)**  
366 Camino De Estrella, #253,  
San Clemente  
*Effective:* 7/10/06  
*Violation:* 10159.2, 10177(h)  
Suspended for 90 days-all but 15  
days stayed for 2 years on terms  
and conditions

**Ruvalcaba, Yesenia Emma (REB, REO)**  
1427 N. Hacienda Blvd.,  
La Puente  
*Effective:* 8/7/06  
*Violation:* 10159.2, 10177(h)  
Suspended for 120 days-stayed for  
2 years on terms and conditions  
Suspended Indefinitely

**Sauder Real Estate Inc. (REC)**  
940 W. Foothill Blvd., Claremont  
*Effective:* 6/22/06  
*Violation:* 2731, 2831, 2831.2,

2832(e), 2832.1,  
2834, 2950(d),  
10145, 10159.5,  
10177(d)(g)  
Suspended for 180 days-stayed for  
2 years on terms and conditions

**Sauder-Ruest, Nanci J. (REB, REO)**  
940 W. Foothill Blvd., Claremont  
*Effective:* 6/22/06  
*Officer of:* Sauder Real Estate, Inc.  
*Violation:* 10159.2, 10177(h)  
Suspended for 180 days-stayed for  
2 years on terms and conditions

**Oakland Region**

**Khan, Arif I. (REB)**  
731 A St., #100, Hayward  
*Effective:* 6/12/06  
*Violation:* 10176(a), 10177(g)  
Suspended for 100 days-stayed for  
2 years on terms and conditions

**Sacramento Region**

**American Home Realty Services, Inc. (REC)**  
363 G St., Ste. A, Lincoln  
*Effective:* 6/12/06  
*Violation:* 10177(g)  
Suspended for 90 days-stayed for  
2 years on terms and conditions

**Swenson, Scott Douglas (REB, REO)**  
363 G St., Lincoln  
*Effective:* 6/12/06  
*Violation:* 10177(h)  
Suspended for 90 days-stayed for  
2 years on terms and conditions

**San Diego Region**

**All Lenders Mortgage Services, Inc. (REC)**  
27420 Jefferson Ave., Ste. 101-A, Temecula  
*Effective:* 6/26/06  
*Violation:* 10177(d)(g)  
Suspended for 30 days-stayed for  
1 year on terms and conditions

**Payne, Grady F. (REB)**  
3965 Mission Ave., #5, Oceanside  
*Effective:* 8/30/06  
*Violation:* 2726, 2731, 2752, 2831.2, 2832, 2834, 10145, 10159.5, 10161.8, 10177(f)  
Suspended for 90 days-stayed for  
2 years on terms and conditions

**Skelton, Kenneth Dee (REB)**  
591 Camino De La Reina, Ste. 1050, San Diego  
*Effective:* 8/8/06  
*Violation:* 2832.1, 10145, 10159.2, 10177(d)(g)(h)  
Suspended for 130 days-stayed for  
2 years on terms and conditions

**Widle, Frank (REB, REO)**  
27420 Jefferson Ave., Ste. 101-A, Temecula  
*Effective:* 6/26/06  
*Officer of:* All Lenders Mortgage Services, Inc.

*Violation:* 10177(d)(g)  
Suspended for 30 days-stayed for  
1 year on terms and conditions

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

**Los Angeles Region**

**Clignett, Rick E. (REB, REO)**  
9879 Foothill Blvd., Ste. A, Rancho Cucamonga  
*Effective:* 7/24/06

**Hout, Barbara Jean (REB)**  
735 El Rodeo Rd., Santa Barbara  
*Effective:* 8/2/06

**Moore, Edward Lopaka Kaho'okano (RES)**  
4522 Woodman Ave., C332, Sherman Oaks  
*Effective:* 8/24/06

**Shalbey, Nancy C. (RES)**  
425 Wing St., Glendale  
*Effective:* 6/5/06

**Vu, Kim Phuong Thi (RES)**  
4719 Narrot St., Torrance  
*Effective:* 8/24/06

**Sacramento Region**

**Dresser, James Dennis (RES)**  
7575 Madison Ave., #218, Citrus Heights  
*Effective:* 7/13/06

**San Diego Region**

**Henderson, Lisa Anne (RES)**  
11423 Oculito Rd., San Diego  
*Effective:* 6/20/06

**Paik, Phillip C. (RES)**  
7750 Dagget St., #108, San Diego  
*Effective:* 6/20/06

**Pickens, Evan T. (RES)**  
673 Maybritt Cir., San Marcos  
*Effective:* 7/27/06

**Ramoran, Paterna E.U. (RES)**  
3933 Camino San Miguel, Palm Springs  
*Effective:* 6/15/06

**Warnock, Lyman Ray (REB)**  
300 Leone Ave., Enterprise  
*Effective:* 8/10/06

**Yoss, Barry Lee (RES)**  
32565 Favara Dr., Temecula  
*Effective:* 7/26/06

**PUBLIC REPROVAL**

**Los Angeles Region**

**Brown, Gregory Steven (RES)**  
1200 W. Olympic Blvd., Los Angeles  
*Effective:* 7/10/06  
*Violation:* 10177(g)

**Dana Capital Group, Inc. (REC)**  
8001 Irvine Center Dr., Ste. 1200, Irvine  
*Effective:* 6/22/06

*Violation:* 2731, 2752, 2950(d)(g), 2951, 10145, 10161.8, 10177(d)(g)

**Grant, Theodore (REB)**  
24118 Lake Dr., Lake Gregory  
*Effective:* 7/31/06  
*Violation:* 10159.2, 10177(h)

**Leahy & Walker Financial Services, Ltd. (REC)**  
575 Anton Blvd., Ste. 1050, Costa Mesa  
*Effective:* 7/20/06  
*Violation:* 10177(g)

**Leahy, Timothy Edwin (REB)**  
575 Anton Blvd., Ste. 1050, Costa Mesa  
*Effective:* 7/20/06  
*Officer of:* Leahy & Walker Financial Svcs. Ltd.  
*Violation:* 10177(g)

**Prather, Mark Douglas (REB, REO)**  
11911 Artesia Blvd., Ste. 200, Cerritos  
*Effective:* 7/26/06  
*Violation:* 10160, 10177(d)

**Pro, Roger David (REB)**  
27200 Tourney Rd., Ste. 140, Valencia  
*Effective:* 6/15/06  
*Violation:* 2831, 2831.1, 10145, 10177(d)

**Rodriguez, Miriam Jeanette (REB)**  
504 East 6<sup>th</sup> St., #A, Corona  
*Effective:* 6/12/06  
*Violation:* 2831, 10145, 10177(d)

**San Moritz Enterprises Ltd. (REC)**  
24118 Lake Dr., Lake Gregory  
*Effective:* 7/31/06  
*Violation:* 2831, 2831.1, 2831.2, 2832.1, 2950(d), 2951, 10145, 10177(d)

**INDEFINITE SUSPENSIONS**  
*(under Recovery Acct. provisions)*

**Los Angeles Region**

**Perez, Jesse D. (RES)**  
12873 Mountain Ave., Ste. A-1, Chino  
*Effective:* 06/21/06

**Have you used eLicensing lately?**



**It's the fastest, easiest way to manage your real estate license!**

*Use it for license renewals, address updates, duplicate license requests, examination services and more...*

**Continuing education reminder**

Under the provisions of AB 223, all licensees who have a license expiration date of June 30, 2007, or later, or who file a renewal application on a late basis after that date, will be required to complete a DRE approved 3-hour course in Risk Management as part of their mandatory continuing education requirement. The continuing education requirement for salespersons who are completing their **first renewal** on and after July 1, 2007, will increase from 12 hours to 15 hours with the addition of a Risk Management course. All other salespersons and all brokers with a license expiration date of June 30, 2007, or later, or who renew on a late basis after that date, will be required to complete a course in Risk Management as part of their 45 hour continuing education requirement. 🏠



## Disciplinary Process

Continued from page 3



of fitness for licensure, however slight the edge in evidence might be. This is the standard of proof in civil trials.

DRE has the burden of proof if the case involves disciplinary action against a real estate licensee. The standard of proof is also greater in a case such as

this because a licensee is considered to have a property right in the license. Here DRE must have “clear and convincing proof to a reasonable certainty”. In order to prevail, DRE must have evidence indicating that the matters to be proved are reasonably certain.

### The Hearing Process

An administrative hearing is a quasi-judicial, contested proceeding where evidence is introduced and argument is made, and the hearing rooms generally look like courtrooms. Some Respondents mistakenly believe that administrative hearings are informal. They are evidentiary trials with only a slight relaxation of evidentiary rules. A Respondent is entitled to be represented by an attorney at all stages of the disciplinary process, including the hearing and any appeals.

Respondents should be fully prepared to litigate and pursue their side of the case by presenting evidence and facts favorable to them and/or by challenging DRE’s charges and claims. In the case where criminal convictions form the basis for DRE’s request for disciplinary action, Respondents are permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation. Section 2911 and Section 2912 of Title 10, Chapter 6, Article 18.5 of the California Code of Regulations (Regulations of the Commissioner) provide criteria for determining rehabilitation.

### After the Formal Hearing

After the formal hearing is conducted, the Administrative Law Judge issues what is known as a “Proposed Decision”, which contains findings of fact, factors in aggravation, mitigation, justification and rehabilitation, conclusions of law, and recommended disciplinary action, if any.

The Commissioner examines each case, and may adopt or reject (which is sometimes stated as “non adopt”) the Proposed Decision, or he or she may reduce the recommended disciplinary penalty.

If the Commissioner rejects the Proposed Decision, he or she may not increase or enhance the penalty unless he or she reviews the record including the transcript of the hearing, and decides the matter himself or herself by issuing a Decision After Rejection, or unless another hearing is held.

If dissatisfied with the Commissioner’s decision, the Respondent has a right to petition the Commissioner for reconsideration, the right of appeal, by what is known as a writ of mandate, to the Superior Court, and, if necessary, to the appropriate California Court of Appeal, or to the California Supreme Court.

The administrative hearing process is lengthy, but it is designed to ensure due process and to protect the rights of the individuals and entities involved.

Applicants for a real estate license who are denied a plenary (or unrestricted) license but granted a restricted license, and licensees who have their licenses suspended, revoked or revoked with the right to a restricted license, can petition the Commissioner for reinstatement of that license, or for removal of restrictions pertaining to any restricted license, after a period of time has elapsed from the effective date of the decision. The procedure and process of petitioning for reinstatement or removal of restrictions will be described in a future article in the Real Estate Bulletin.

## Summary of 2006 Legislation

September 30, 2006 marked the end of the two-year legislative session during which 1,871 bills wound their way through the process and landed on the Governor’s desk. Of these bills, 1,378 were signed into law and 493 were vetoed. The following brief legislative summaries are of legislation from the 2006 session that affect real estate licensees and subdividers. These summaries are intended to alert you to pertinent changes to the law. We encourage you to consult the statutes for complete information. Copies of the bills can be obtained on-line

at [www.leginfo.ca.gov](http://www.leginfo.ca.gov). Please note that “SB” refers to a Senate bill and “AB” to an Assembly bill and the Chapter number refers to the sequence that the bill was filed with the Secretary of State. The name appearing after the bill number is the name of the author. All statutes are effective January 1, 2007 unless otherwise noted.

### **SB 504 (Torlakson) Real property sales contracts (Chapter 51)**

Existing law defines a real property sales contract (RPSC) as an agreement

in which one party agrees to convey title of real property to another party upon the satisfaction of specified conditions set forth in the contract and that does not require conveyance of title within one year from the date of formation of the contract. Existing law makes it a misdemeanor for the seller to increase the encumbrances/loans on a property sold under a RPSC without the buyer’s consent.

SB 504 excludes from the definition of a RPSC a contract that involves the purchase of a condominium and the

*Continued on page 9*

## Legislation Update

Continued from page 8

project is subject to a conditional public report issued by the DRE. This bill was an urgency measure and became effective June 30, 2006.

### **SB 983 (Lowenthal) Subdivisions; conversions (Chapter 636)**

The Subdivision Map Act requires a subdivider, prior to the filing of a tentative map to convert apartments to condominiums, to give a 60-day notice to each tenant of the subject property and to each person applying after the date for rental of a unit of the subject property. The act also requires a subdivider who fails to give the required notice to pay each prospective tenant his or her actual moving expenses and the first month's rent in an amount not to exceed \$500 for each expense. SB 983 increased the expense amount to \$1,100.

### **SB 1560 (Battin) Homeowners associations: elections (Chapter 310)**

Last year, SB 61 (Battin) established new election procedures for CIDs. A complementary bill, AB 1098 (Jones) established a specified list of documents that an HOA must make available to an association member. SB 1560 is a non-controversial clean-up measure to clarify last year's measures. Both AB 1098 and SB 61 passed with a delayed effective date of July 1, 2006. SB 1560 was an urgency measure and was effective September 18, 2006.

### **SB 1609 (Simitian) Reverse Mortgages: annuities (Chapter 202)**

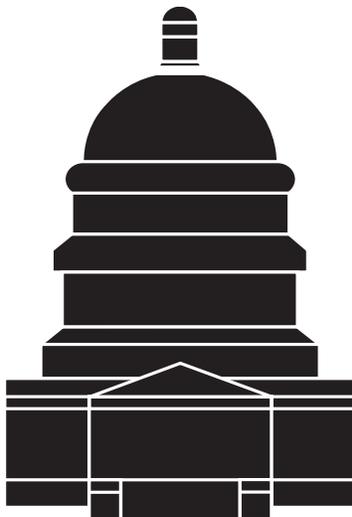
This bill requires applicants for reverse mortgages to obtain financial counseling and receive certification of such prior to making an application. SB 1609 also prohibits a lender from requiring the purchase of an annuity as a condition of obtaining a reverse mortgage loan. With respect to annuities, this bill prohibits a reverse mortgage lender or a broker arranging a reverse mortgage loan from offering an annuity to the borrower or referring the borrower to anyone for the purchase of an annuity prior to the closing of

the loan or before the expiration of the borrower's right to rescind. In addition, the bill requires a reverse mortgage contract be translated into the appropriate language when negotiations for the reverse mortgage contract were conducted in that language. The bill was suggested by the Community Legal Services in East Palo Alto and the Elder Financial Protection Network.

### **AB 790 (Yee) Real estate licenses: discipline (Chapter 199)**

Existing law allows the Department of Real Estate (DRE) to suspend or revoke a real estate license or deny issuance of a real estate license to a real estate license applicant who has knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business, or *concerning* any business opportunity or any land or subdivision offered for sale.

AB 790 amends existing law to allow the DRE to also suspend or revoke a real estate license or deny issuance of a real estate license to a real estate license applicant who has knowingly authorized or distributed any material false statement or representation concerning his or her designation or certification of special education, credential, or trade organization membership. The California Association of Mortgage Brokers sponsored AB 790.



### **AB 2100 (Laird) Homeowner associations: reserves (Chapter 188)**

Existing law requires a homeowners association (HOA) to annually prepare an operating budget and every three years to perform a reserve study to assess the adequacy of reserves earmarked to fund the repair or replacement of major common interest components within the development, such as the roof(s) or re-plastering of a pool. AB 2100 requires that the board of directors of a HOA adopt a reserve-funding plan based on the reserve study. This bill also establishes new requirements for the review of contracts.

### **AB 2429 (Negrette McLeod) Conditional Salesperson License; repeal (Chapter 278)**

Existing law authorizes DRE to issue, under specified conditions, an 18-month conditional real estate salesperson's license to persons who have successfully completed a college level course in real estate principles and passed the real estate salesperson's license examination.

Effective October 1, 2007, AB 2429 repeals the DRE's authority to issue a conditional license, thus effectively mandating that all real estate salesperson license applicants complete three college level real estate courses, as specified, prior to taking the real estate salesperson's license examination. The California Association of Realtors® sponsored AB 2429.

### **AB 2591 (Keene) State agencies: accounts: reports. (Chapter 506)**

AB 2591 Requires the Department of Finance (DOF) to collect data on uncollected debt from specified state agencies, including the Department of Real Estate, and submit this information to the Legislature in an annual report. The California Association of Collectors sponsored AB 2591.

### **AB 2602 (Leiu) Interest bearing trust accounts (Chapter 107)**

Existing law allows a real estate broker to place trust funds in an interest

Continued on page 10

## DRE Records Request of Brokers

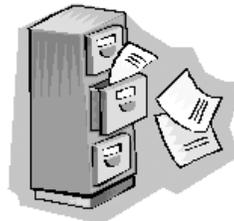
Continued from page 1

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.

After being contacted by the Department, the broker maintained he 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 corresponding records. Instead of producing the required 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 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 of the B&P Code.

Approximately seven months later, the broker found the corresponding records. The Department proceeded with its charge that the broker had failed to produce the trust account records upon request. At the hearing, the Administrative Law Judge found in a proposed decision 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



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. His license was revoked with a right to a restricted broker license. The Department adopted the decision, and the broker petitioned for a Writ of Administrative Mandate to appeal the Department's decision in Superior Court. A Superior Court judgment was subsequently issued upholding the Commissioner's findings and discipline and formally denied the broker's petition for Writ of Administrative Mandate.

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 they can be readily 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 the Department's request 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.

When a representative from the Department requests records in connection with a specific transaction, or for an audit or office survey, the best course of action is to comply in the spirit of cooperation. Further, the records produced must be full, complete and unaltered. As was made clear in the case described above, to do less could establish a basis for disciplinary action. 🏠

## Legislation Update

Continued from page 9

bearing trust account in specified circumstances. AB 2602 expands these circumstances to allow real estate brokers who service commercial loans to place trust funds (loan payments) into an interest bearing trust account with the permission of the investor (note owner). The California Mortgage Bankers Association sponsored AB 2602.

### **AB 2624 (Houston)** **Homeowner associations;** **foreclosure (Chapter 575)**

Last year SB 137 (Ducheny) established, among other things, a 90-day redemption right on property that was foreclosed on by a homeowners association for delinquent assessments. AB 2624 establishes procedures governing the 90-day redemption

period in a non-judicial foreclosure in a common interest development. The United Trustee's Association sponsored AB 2624.

### **AB 2800 (Laird) Housing** **discrimination: real estate** **licensee discipline (Chapter 578)**

AB 2800 enacts the Omnibus Housing Nondiscrimination Act by which various non-discrimination provisions in existing law related to housing would be made consistent with the protections against discrimination afforded by the Fair Employment and Housing Act (FEHA).

With respect to the real estate law, AB 2800 expands the provisions for which a real estate licensee can be disciplined. Specifically, existing law states it is

unlawful for a licensee to induce "panic selling" due to the present or prospective entry into a neighborhood of a person of another race, color, religion, ancestry or national origin. This bill expands the class of protected characteristics to include sex, sexual orientation, marital status, familial status, source of income, or disability.

The author sponsored AB 2800.

### **AB 3020 (Montanez) Real estate:** **time-share developments.** **(Chapter 429)**

The Vacation Ownership and Time-Share Act of 2004 (VOTA) was enacted on July 1, 2005. VOTA effectively changed how time-share offerings are regulated in California. AB 3020 made several clarifying changes to VOTA. The American Resort Development Association sponsored AB 3020. 🏠

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Real Estate Bulletin — Winter 2006

## Real Estate Law Book and CD

Each year, the *Real Estate Law Book and CD* is updated to reflect changes in laws and regulations.

The 2007 *Real Estate Law Book and CD* will be available for purchase in January 2007. This important reference for licensees contains:

- The Real Estate Law (from the Business and Professions Code);
- The Real Estate Commissioner's Regulations (from the California Code of Regulations);

- Portions of the Administrative Procedure Act (from the Government Code); and
- Pertinent excerpts from various California Codes.

The cost will be \$25, plus tax. Orders will be accepted after January 1, 2007. Use the order form on page 11 or submit a Publications Request (RE 350). (*The RE 350 is available on the DRE Web site or from any District Office.*)

The 2007 Real Estate Law will also be available on the DRE Web site at [www.dre.ca.gov](http://www.dre.ca.gov). 🏠

### Did You Know....

- There are nearly 520,000 real estate licensees in California.
- *There are only four registered licensees in Alpine County or one licensee for every 290 people in the county.*
- The county with the most licensees is Los Angeles County with 124,651 or one licensee for every 80 people.
- *The highest density of licensees per capita is in Mono County with one licensee for every 41 people.*
- Of counties with more than a million people, San Diego has more licensees per capita with one licensee for every 58 people.
- *The counties of Alpine, Colusa, Modoc, Sierra, and Trinity all have fewer than 100 registered licensees.*



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