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REAL ESTATE BULLETIN

Arnold Schwarzenegger, Governor

Dale Bonner, Secretary, Business, Transportation, & Housing Agency

Jeff Davi, Real Estate Commissioner

Department of Real Estate

Summer 2007

Deadline nears for conditional license repeal

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

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

Assembly Bill 2429 will be implemented as follows:

1. Original salesperson examination applications postmarked or received on or after October 1,

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The real estate brokerage as fiduciary: a summary review of what it means and why it matters

by Wayne S. Bell, Chief Counsel

The word “fiduciary” is derived from the Latin words *fiduciarium* and *fiducia*, relating to confidence and trust. It also appears to stem from the Latin words *fides*, meaning faith, and *fidelitas*, the equivalent of loyal. While the term fiduciary is somewhat amorphous, vague and difficult to precisely determine, it is commonly applied to a person who holds a special position of confidence, trust and responsibility towards another.

It was in the realm of trusts that the legal conceptualization of fiduciary relationships arose almost 80 years ago. Justice Benjamin Cardozo opined that “[a] trustee is held to something stricter than the morals of the market place. Not honesty alone, but the *punctilio of honor the most sensitive*, is the standard of behavior”. *Meinhard v. Salmon*, 164 N.E. 545 (N.Y. 1928). In distinguishing “trusted persons” (fiduciaries) from the general public and the market place, Justice Cardozo determined that certain conduct that is permissible in

the business world for those acting at arm’s length is impermissible to those bound by fiduciary duties.

Under California law, certain “special” relationships involving a high degree of trust, fidelity, integrity and confidence, and the exercise of professional expertise or special knowledge and discretion or power, rise to the stature of a fiduciary relationship. They include a trustee and a beneficiary, a lawyer and his or her clients, a member of a board of directors and his or her corporation, and a real estate agent and his or her principals/clients. The latter includes a mortgage loan broker licensed by the Department of Real Estate and his or her borrowers.

In the real estate transactions context, by reason of the fiduciary relationship, the brokerage, acting through its designated broker officer and the responsible real estate broker associate(s) and/or salesperson(s), owes, and its agents owe, certain special

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Tribute to former Commissioner Karpe

At the recent Department of Real Estate Forum, which was held January 19 in Monterey, Real Estate Commissioner Jeff Davi paid tribute to former Commissioner Robert W. Karpe, by presenting him with the first certificate and pocket card* to be issued. Mr. Karpe, who was appointed to the position by Governor Ronald Reagan, served as Commissioner from 1971 to 1975. During his term, Karpe also served as Vice President (1974-75) of the Association of Real Estate License Law Officials (ARELLO), and in 1981, he was appointed by President Ronald Reagan to head GNMA. Mr. Karpe also served as President of the California Association of REALTORS® (CAR) in 1968. Current CAR President Colleen Badagliacco joined Commissioner Davi in honoring Mr. Karpe.



Pictured from left to right: CAR President Colleen Badagliacco, former Real Estate Commissioner Robert Karpe & Real Estate Commissioner Jeff Davi.

*See page 3 for further details on the new license certificates and pocket cards.

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

Vol. 67, No. 2 Summer 2007

STATE OF CALIFORNIA
 Arnold Schwarzenegger, Governor

BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 Dale Bonner, Secretary

DEPARTMENT OF REAL ESTATE
 Jeff Davi, Commissioner

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CALIFORNIA RELAY TELEPHONE SERVICE

(For the deaf and hearing impaired)

From TDD phone 1-800-735-2929
 From voice phone 1-800-735-2922

Information privacy

The Department of Real Estate (DRE) understands that your privacy is important to you and is committed to promoting and protecting the privacy rights of individuals, as enumerated in Article 1 of the California Constitution, the Information Practices Act of 1977, and other state and federal statutes. DRE safeguards the privacy of personal information collected or maintained by the Department by observing the following practices:

1. We collect information that is relevant and necessary.

Personal and public information is collected to accomplish the lawful purpose of the Department, such as to identify an individual when issuing a license, gather evidence in an investigation or conduct an audit of a real estate brokerage operation.

The Department's information management practices are consistent with the Information Practices Act (Civil Code section (§) 1798, et seq.), the Public Records Act (Government Code § 6250, et seq.), Government Code §§ 11015.5 and 11019.9, and with other applicable laws pertaining to information privacy.

The Department uses information only for the specified purposes, or reasons consistent with those purposes, unless it obtains the consent of the individual, or unless otherwise required by law or regulation.

2. We observe eCommerce security practices.

Physical, electronic, and procedural safeguards are in place to protect personal information when using eLicensing.

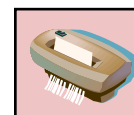
- No personal information is stored on the **eLicensing** system.
- Web servers are segregated and in a distinct network.
- Data is encrypted to ensure that information is secure when the information is transmitted.
- No credit card information is stored by the **eLicensing** system; only the authorization code provided by the secured payment processing center is maintained.



3. We use information security safeguards.

Precautions are taken to protect personal information collected and maintained by the Department.

- Personal information is stored in secured locations.
- Staff is trained on procedures relative to the proper release of information.
- Access to personal information is limited to those staff whose work requires it.
- Confidential information is shredded when no longer needed or in accordance with the records retention schedule.



You should be aware that some of the information or correspondence you provide to the DRE becomes a public record and may be subject to disclosure: to anyone who asks for it under the state Public Records Act (Government Code § 6250, et seq.); to another government agency as required by state or federal law; and/or, in response to a court or administrative order, subpoena or search warrant.

Additional information on the DRE privacy policy can be obtained from the Web site at www.dre.ca.gov/privacy.htm.

Fiduciary Responsibilities

Continued from page 1

fiduciary duties to its client(s). Fiduciary duties impose the highest standard of care, and real estate licensees must be committed to scrupulously fulfilling those obligations.

In the case of *George Ball Pacific, Inc. v. Coldwell Banker & Co.*, 117 Cal. App.3d 248 (1981), at page 256, the Court of Appeal (First District) noted that the general principles of agency combine with the statutory duties of the Real Estate Law to impose “on a real estate agent ‘the same obligation of undivided service and loyalty that [the law] imposes on a trustee in favor of his beneficiary.’ [Citations.] This relationship not only imposes [on the agent] the duty of acting in the highest good faith toward his principal but precludes the agent from obtaining any advantage over the principal in any transaction had by virtue of his agency. [Citation.]” A real estate licensee is further “charged with the duty of fullest disclosure of all material facts concerning the transaction that might affect the principal’s decision. [Citations]”.

With regard to the duty of full and truthful disclosure as it relates to a property, a real estate agent has an affirmative obligation to disclose to his or her client all material facts which are and reasonably should be known affecting the value and/or desirability of the property. In addition, the duty of full disclosure would require that an agent present all offers and counteroffers in a timely and diligent manner, unless his or her client has previously directed the agent to do otherwise. Providing a client with all of the available information permits the client to make an informed and intelligent decision in his or her best interest. Real estate licensees must also disclose the nature and full amount of any compensation, commission, or profit that they receive or will receive from the transaction.

In addition to those duties of undivided loyalty, good faith and full disclosure identified in the *Coldwell Banker* decision, California law imposes the following fiduciary duties on real

License certificates and pocket cards have a new design!

We are pleased to announce that the real estate license certificate and pocket identification card have been completely redesigned and are now in production.

License Certificates



The size of the new license certificate is 8 1/2” by 11” and features an attractive new multi-colored professional graphic design.


Pocket Identification Cards



The new pocket card features the same graphic design as the certificate and is made of durable plastic similar to a credit card. It features a signature panel, a magnetic

datastrip, bar coding, and anti-counterfeit protections.

In order to facilitate an efficient mailing process, the license certificates and identification cards will be mailed in separate envelopes with the license certificates being mailed first. New and renewing license applicants will receive the new certificates and identification cards as their original or renewal licenses are issued. Existing license certificates will remain valid through their expiration date. Existing licensees may order a new certificate and card prior to license renewal on *eLicensing* for a fee of \$15. License certificates and identification cards may not be ordered separately.

As a reminder, the Real Estate Law requires that real estate salespersons must deliver their license certificates to their employing brokers, and the certificate must be maintained in the broker’s main office location. 

estate licensees:

- ❖ To diligently exercise reasonable care, diligence and skill in representing a client and in the performance of the responsibilities of the agency relationship. By reason of his or her licensure, a real estate agent is deemed to have specialized and professional expertise, knowledge and skill in real estate related matters superior to that of the average person. The nature of the fiduciary relationship is such as to cause the client to justifiably rely on the licensee/agent.
 - ❖ To fully account in a timely manner for all funds and property received in which the client has or may have an interest. This duty requires an agent to safeguard any money, deeds, and other documents entrusted to the agent that are related to his or her client.
 - ❖ To not disclose confidential information of or about the client, including the client’s business, financial or business affairs, unless authorized to do so. This duty mandates that an agent must keep confidential any information that might weaken or undermine his or her client’s position if the same were revealed.
 - ❖ To exercise the utmost honesty, absolute candor, integrity and unselfishness toward the client. This requires that an agent not compete with his or her client and act at all times in the best interests of his or her client to the exclusion of all other interests, including interests that could benefit the agent or others. In addition, this requires that a licensee refrain from dual representation in a real estate sales transaction unless he or she obtains the consent of both principals after full disclosure.
 - ❖ To obediently, efficiently and promptly follow the lawful instructions of his or her client.
- While fiduciary duties have been imposed over the years through the common law, which is the extensive non-statutory body of law reflecting general legal principles and Court-made

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Disciplinary Action: September 06 - November 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;

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
2731	Unauthorized use of fictitious business name
2472(c)	Failure of corporation to be in good standing
2752	Broker's failure to notify DRE of salesperson employment
2831	Failure to keep proper trust fund records
2831.1	Inadequate separate trust fund beneficiary records
2831.2	Failure to reconcile trust account
2832	Failure to comply with trust fund handling provisions
2832(d)	Failure of broker holding trust funds contingent on offer of acceptance to properly place funds within 3 business days of acceptance
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
2846.5	Annual independent public accountant trust fund account reporting requirements
2950	Violation of broker-controlled escrow requirements
2950(d)	Failure of broker handling escrows to maintain records and accounts
2950(f)	Failure to deposit escrow trust funds
2950(g)	Broker-handled escrow disbursement without written instructions
2951	Improper record keeping for broker handled escrows

Business and Professions Code

490	Substantially related criminal conviction
498	License obtained by fraud or misrepresentation
10130	Acting without license
10137	Unlawful employment or payment of compensation
10138	Payment of compensation to unlicensed person
10145	Trust fund handling
10145(c)	Failure by salesperson to deliver trust funds to broker
10145(a)	Trust fund handling
10147.5	Notice regarding negotiability of commission
10148	Failure to retain records and make available for inspection
10159.2	Failure by designated officer to supervise licensed acts of corporation
10159.5	Failure to obtain license with fictitious business name
10161.8	Failure of broker to notify Commissioner of salesperson employment
10162	Failure to maintain a place of business
10163	Failure to obtain a branch office license
10165	Failure to comply with specified B&P code sections
10176(a)	Making any substantial misrepresentation
10176(e)	Commingling trust funds with brokers funds
10176(f)	Exclusive listing agreement without definite termination date
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

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 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.



10177(d)	Violation of real estate law or regulations
10177(f)	Conduct that would have warranted denial of a license
10177(g)	Negligence or incompetence in performing licensed acts
10177(h)	Failure to supervise salespersons or licensed acts of corporation
10177(j)	Fraud or dishonest dealing as principal
10177.5	Civil fraud judgement based on licensed acts
10236.4	Failure to include license number or DRE license information telephone number in documents
10240	Failure to give mortgage loan disclosure statement
10240(a)	Failure to give mortgage loan disclosure statement
10241	Improper mortgage loan disclosure statement

REVOKED LICENSES

FRESNO REGION

Blueford, Marion (RES)

1185 Monroe St., #141, Salinas
Effective: 1/3/07
Violation: 490, 10177(b)

Castro, Eladio C. (REB)

9838 E. Sierra Ave., Clovis
Effective: 2/21/07
Violation: 10177(b)

Cromwell, Virginia Joan (REB, REO)

1.5 mi West of Intersection of Airport & Wellsona Rd., Paso Robles
Effective: 4/8/05
Officer of: Investments International, Inc.
Violation: 2715, 2742(c), 2831, 2832, 10145, 10147.5, 10148, 10159.2, 10162, 10176(f), 10177(d)(h)

Durazo, Suzanne Elvira (RES)

7850 White Lane, #E-116, Bakersfield
Effective: 12/4/06
Violation: 10177(b)

Investments Int'l, Inc. (REC)

2310 Dry Creek Rd., Paso Robles
Effective: 4/8/05
Violation: 2715, 2742(c), 2831, 2832, 10145, 10147.5, 10148, 10162, 10176(f)

Nicolet, John Paul (RES)

4504 N. Valentine, #175, Fresno
Effective: 1/24/07
Violation: 490, 10177(b)

Vega, Julien Andre (RES)

6009 Hartman Ave., Bakersfield
Effective: 12/4/06
Violation: 10177(b)

LOS ANGELES REGION

A Franklin Financial, Inc. (RES)

24372 Walnut St., Newhall
Effective: 1/5/07
Violation: 2742(c), 2752, 10137, 10161.8, 10177(d)(f)(g)

Acosta, Loren (RES)

9266 Timberline Ln., #G, Rancho Cucamonga
Effective: 2/13/07
Violation: 490, 10177(b)

Anderson, Blake William (REB)

3120 West 181st St., Torrance
Effective: 1/8/07
Violation: 490, 10177(b)

Astorga, Francisco Rafael (RES)

2860 Thousand Oaks Blvd., Thousand Oaks
Effective: 2/13/07
Violation: 490, 10177(b)

Berry, Lavel Edward (RES)

1026 Hipoint, Los Angeles
Effective: 12/4/06
Violation: 490, 10177(b)

Brown, Hasan II (RES)

630 Loyola Ave., Carson
Effective: 2/13/07
Violation: 490, 10177(b)

DeSantiago, Saul Felix (RES)

14867 Genoa St., Sylmar
Effective: 2/13/07
Violation: 10130, 10177(d)(j)

Duran, Ulises (RES)

11669 Sherman Way, North Hollywood
Effective: 2/27/07
Violation: 10130, 10177(d)

Ehlers, Christian Alexander (REB) 1525 West 5 th St., San Pedro Effective: 12/11/06 Violation: 490, 10177(b)	Milroy, Steven Douglas (RES) 5480 Aurora Dr., #21, Ventura Effective: 12/5/06 Violation: 490, 10177(b)	Washington, Gregory Charles (RES) 14086 Frost Dr., Rancho Cucamonga Effective: 2/13/07 Violation: 490, 10177(b)	Figuroa, Doug Robert (RES) 4572 Nebo Dr., #D, La Mesa Effective: 2/28/07 Violation: 490, 10177(b)
Etesami, Minoo (RES) 10646 Walnut Ave., Los Alamitos Effective: 12/19/06 Violation: 10130, 10177(d)	Navarro, David Anthony (RES) 13233 Droxford St., Cerritos Effective: 12/18/06 Violation: 490, 10177(b)	Woolfolk, Herman Lee (RES) 1647 E. Palmdale Blvd., Unit 1, Palmdale Effective: 1/8/07 Violation: 490, 10177(b)	Graham, Ruth Barbara (RES) 26489 Ynez Rd., C231, Temecula Effective: 2/15/07 Violation: 490, 10177(b)
Fregosi, Sergio Esteban (RES) 8112 Dacosta St., Downey Effective: 12/5/06 Violation: 490, 10177(b)	Nunley, Lori Ann (RES) 5656 West 62 nd St., Los Angeles Effective: 1/30/07 Violation: 10130, 10176(a), 10177(d)(j), 10177.5	OAKLAND REGION	
Ghazarians, Armen Teja (RES) 1215 Old Phillips Rd., Glendale Effective: 1/29/07 Violation: 490, 10177(b)	Ocequeda, Cosme (RES) 2277 N. Forest Rd., Rialto Effective: 1/29/07 Violation: 490, 10177(b)	Fontanilla, Nino Ian Vidal (RES) 35325 Terra Cotta Cir., Fremont Effective: 1/25/07 Violation: 490, 10177(b)	Kolesnikov, Bozhena-Anna (RES) 2666 Del Mar Heights Rd., Del Mar Effective: 2/28/07 Violation: 490, 10177(b)
Gonzalez, Josue (RES) 2218 West 10 th St., Santa Ana Effective: 1/18/07 Violation: 490, 10177(b)	Perez, Louis Mario (RES) 13507 Tedemory Dr., Whittier Effective: 2/13/07 Violation: 490, 10177(b)	Kim, Myong Sik (RES) 555 John Muir Dr., #518-B, San Francisco Effective: 1/3/07 Violation: 490, 10177(b)	La Porte, Brian Andrew (RES) 2154 Shadetree Ln., Escondido Effective: 12/27/06 Violation: 10177(j)
Gutierrez, Cynthia Dominguez (RES) 397 N. Central Ave., #A, Upland Effective: 2/26/07 Violation: 490, 10177(b)	Powell, Paul James (REB, REO) 11706 Ramona Blvd., Ste. 200, El Monte Effective: 2/13/07 Violation: 2731, 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 10145, 10159.5, 10177(d)(g)	Kuschel, Scott Allan (RES) 214 Los Gatos Saratoga Rd., Los Gatos Effective: 1/3/07 Violation: 490, 10177(b)	Mayer, Laura Lynne (RES) 2600 Torrey Pines Rd., #B27, La Jolla Effective: 1/5/07 Violation: 490, 10177(b)
Haller, Natalie A. (RES) 28052 Keepsake Way, Valencia Effective: 2/20/07 Violation: 490, 10177(b)	Rosales, Rene Israel (RES) 2901 W. Beverly Blvd., Montebello Effective: 1/29/07 Violation: 490, 10177(b)	Miller, Natalie Andrea (RES) 1399 Quesada Ave., San Francisco Effective: 1/3/07 Violation: 490, 10177(b)	Ryerson, John Jr. (RES) 39572 Sun Rose Dr., Murrieta Effective: 2/6/07 Violation: 490, 10177(b)
Harrowoods, Inc. (REC) 225 Airport Dr., #240, San Bernardino Effective: 1/2/07 Violation: 10165, 10177(d)(g)	S & H Financial Group, Inc. (REC) 3660 Wilshire Blvd., Ste. 614, Los Angeles Effective: 2/13/07 Violation: 2742, 2832, 10137, 10145(a), 10177(d)(g), 10240, 10241	Pratt, Glenn I. (RES) 7246 Dover Ln., Dublin Effective: 2/24/07 Violation: 490, 10177(b)	Schroeder, Brian Alexander (RES) 2985 Camino Niquel, San Diego Effective: 2/28/07 Violation: 490, 10177(b)
Hawkins, Eleanor June (REB) 4 B Corniche Dr., Monarch Beach Effective: 1/29/07 Violation: 2715, 2725, 2731, 2831, 2831.1, 2831.2, 2832, 2834, 2835, 10145, 10159.5, 10163, 10177(d)(g)	Saavedra, Arturo Reyes (RES) 1301 E. Portner St., West Covina Effective: 12/6/06 Violation: 490, 10177(b)	Zien, Shannon Kimberly (RES) 653 S. Blackbrush Ln., San Ramon Effective: 1/25/07 Violation: 490, 498, 10177(a)(b)	Tapia, Art (RRES) 6670 Alessandro Blvd., Riverside Effective: 2/13/07 Violation: 490, 10177(b)
Healy, Pamela Ann (RES) 12534 Valley View St., #188, Garden Grove Effective: 2/8/07 Violation: 490, 10177(b)	Schofield, James Edward (REB) 2107 N. Sierra Way, San Bernardino Effective: 12/6/06 Violation: 490, 10177(b)	Lee, Frances Kay (RES) 2251 Florin Rd., Ste. 144, Sacramento Effective: 2/27/07 Violation: 10137, 10145, 10176(e)(i), 10177(d)(j)	Tarvin, Jay William (REB) 3645 Avocado Village Ct., #105, La Mesa Effective: 2/28/07 Violation: 490, 10177(b)
Jacobs, Harry Bertrand Jr. (RES) 5343 Smiley Dr., #01, Los Angeles Effective: 1/9/07 Violation: 490, 10177(b)	Serrano, Jack (RES) 24 Deerfield Pl., Trabuco Canyon Effective: 2/8/07 Violation: 10177(b)	SACRAMENTO REGION	
Karimiha, Sardar (RES) 18206 Rayen St., Northridge Effective: 2/20/07 Violation: 490, 10177(b)	Shepard, Tannya Maria (RES) 18000 Studebaker Rd., Ste. 260, Cerritos Effective: 2/21/07 Violation: 490, 10177(b)	Burden, Cherri Marie (RES) 6701 Thomas Dr., North Highlands Effective: 1/24/07 Violation: 490, 10177(b)	Deweese, Timothy Lee (RES) 2080 Columbus Parkway, Benicia Effective: 1/3/07 Violation: 490, 10177(b)
Kaur, Amarjit (RES) 6178 Clark Way, Buena Park Effective: 2/28/07 Violation: 10177(b)	Singh, Ravinesh Roshan (RES) 8320 E. Florence Ave., Downey Effective: 2/22/07 Violation: 490, 10177(b)	Seim, Shauntrell Leanne (RES) 1875 Folsom Fair Circle, Dixon Effective: 1/31/07 Violation: 10177(b)	Townley, Mikol Robert (RES) 715 Winslow Dr., Yuba City Effective: 1/4/07 Violation: 490, 10177(b)
Kennedy, Georgiann Dugan (RES) 28562 Oso Parkway, D129, Rancho Santa Margarita Effective: 1/9/07 Violation: 490, 10177(b)	Smith, James Brian (RES) 623 Carpath Pl., Simi Valley Effective: 2/13/07 Violation: 490, 10177(b)	Young, Gregory D. (RES) 336 E. Watters Rd., French Camp Effective: 1/24/07 Violation: 490, 10177(b)	Alcala, Yesica Monic (RES) 733 W. Rosecrans Ave., Gardena Effective: 1/29/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions; RRES license suspended for 30 days
Madrigal, Elizabeth M. (RES) 4297 Union Pacific Ave., Los Angeles Effective: 1/8/07 Violation: 490, 10177(b)	Sullivan, Shawn F. (RES) 14 Monarch Bay Plaza, Dana Point Effective: 1/3/07 Violation: 490, 498, 10177(a)(b)	LOS ANGELES REGION	
Maher, Ronald James (RES) 10121 Merrimac Dr., Huntington Beach Effective: 1/4/07 Violation: 10177.5		Butler, Frank Ernest (REB) 14710 Bartley Ln., Jamul Effective: 2/28/07 Violation: 490, 10177(b)	Alessandrino, Joseph Andrew (RES) 668 Avenida Loma Portal, Newbury Park Effective: 1/31/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions
		SAN DIEGO REGION	
			Anglin, Joseph (RES) 2275 Torrance Blvd., Ste. 201, Torrance Effective: 1/22/07 Violation: 490, 10177(b)

REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

FRESNO REGION

Cavalli, Kenneth Joseph (REB)
800 Isbel Dr., Santa Cruz
Effective: 1/16/07
Violation: 10177(b)
Right to RRES license on terms
and conditions

LOS ANGELES REGION

Alcala, Yesica Monic (RES)
733 W. Rosecrans Ave., Gardena
Effective: 1/29/07
Violation: 490, 10177(b)
Right to RRES license on terms
and conditions; RRES license
suspended for 30 days

Alessandrino, Joseph Andrew (RES)
668 Avenida Loma Portal,
Newbury Park
Effective: 1/31/07
Violation: 490, 10177(b)
Right to RRES license on terms
and conditions

Anglin, Joseph (RES)
2275 Torrance Blvd., Ste. 201,
Torrance
Effective: 1/22/07
Violation: 490, 10177(b)

- Right to RRES license on terms and conditions
- Donaldson, Lucille Marie (RES)**
4 Vermilion Cliffs, Aliso Viejo
Effective: 1/29/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Garcia, Robert (RES)**
11620 Ranchito St., #9, El Monte
Effective: 2/26/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Johnson, Dale William (REB)**
9701 Swallow Ln., Garden Grove
Effective: 1/30/07
Violation: 490, 498, 10177(a)(b)
Right to RRES license on terms and conditions
- Lee, Daniel David (REB)**
801 S. Figueroa St., Ste. 600, Los Angeles
Effective: 2/5/07
Violation: 490(a), 10177(b)
Right to RRES license on terms and conditions
- Mack, Alero Odell (RES)**
2403 West 132nd St., Los Angeles
Effective: 1/30/07
Violation: 10177.5
Right to RRES license on terms and conditions
- Mondev, Mario George (RES)**
PO Box 1636, Studio City
Effective: 1/2/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Nugent, Richard A. (RES)**
22700 Lake Forest Dr., #111, Lake Forest
Effective: 1/2/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Padilla, Damian C. (RES)**
2527 Andover Pl., Costa Mesa
Effective: 2/8/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Perez, Lorenzo Alan (RES)**
1460 Marshall St., Apt. 50, Redlands
Effective: 2/26/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Pineiro, Benjamin (REB)**
206 S. Stimson Ave., La Puente
Effective: 1/17/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Portillo, Lesvia Patricia (RES)**
10325 Alexander Ave., South Gate
Effective: 2/1/07
Violation: 10145(c), 10177(d)
Right to RRES license on terms and conditions
- Post, Theodore E. (REB)**
31544 Anapaca View Dr., Malibu
Effective: 1/31/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Reyes, Robert A (Arnold) (RES)**
905 Manhattan Beach Blvd., Manhattan Beach
Effective: 2/15/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Stewart, Paul Christopher (RES)**
3433 Mason Ct., Simi Valley
Effective: 1/31/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Tran, Richard Mung (RREB)**
2550 E. Amar Rd., #A-8, West Covina
Effective: 1/29/07
Violation: 2831, 2832, 2950(f), 10145(a), 10148, 10177(d), 10240
Right to RRES license on terms and conditions
- Truax, Neil Armstrong (RES)**
1233 Bramford Ct., Diamond Bar
Effective: 1/8/07
Violation: 498, 10177(a)
Right to RRES license on terms and conditions
- Utt, David Franklin (REB, REO)**
7216 Amethyst St., Rancho Cucamonga
Effective: 12/27/06
Violation: 10159.2, 10177(h)
Right to RRES license on terms and conditions
- Valdes, Reinaldo Jose (REB)**
725 W. Town & Country Rd., Ste. 100, Orange
Effective: 12/12/06
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Vukovic, Milan (REB)**
22545 Hatteras St., Woodland Hills
Effective: 1/2/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Warren, Shirley Ann (RES)**
8588 Horner St., #4, Los Angeles
Effective: 2/20/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Morton, David Byron (RES)**
2112 Tarbolton Circle, Folsom
Effective: 2/28/07
Violation: 10177(b)
Right to RRES license on terms and conditions
- Tringali, Christopher Anthony (REB)**
555 First St., #103, Benicia
Effective: 2/1/07
Violation: 10177(d)
Right to RRES license on terms and conditions

SAN DIEGO REGION

- Arrowood, Lourena Mae (REB, REO)**
41120 Elm St., #103, Murrieta
Effective: 12/7/05
Officer of: Harrowoods, Inc.
Violation: 2725, 2832.1, 10145, 10159.2, 10177(d)(g)(h)
Right to RRES license on terms and conditions
- Garay, Gregorio (REB)**
23066 Golden Eye Ln., Moreno Valley
Effective: 12/26/06
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Trakas, Susan M. (RES)**
1959 Courage St., Vista
Effective: 12/20/06
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Wardell, Armand Gregg (REB)**
29414 Masters Dr., Murrieta
Effective: 1/2/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions
- Suspended for 60 days-stayed for 2 years on terms and conditions
- Bullard, Timothy D. (REB, REO)**
120 Columbia, Ste. 600, Aliso Viejo
Effective: 1/29/07
Violation: 10177(g)
Suspended for 90 days-stayed for 1 year on terms and conditions
- Butler, Charles Bailey (REB, REO)**
1635 State St., Santa Barbara
Effective: 1/2/07
Officer of: Century 21 Butler Realty, Inc.
Violation: 2731, 2831, 2831.2, 2832.1, 2835, 2840, 10145, 10159.2, 10177(g)(h)
Suspended for 90 days-stayed for 2 years on terms and conditions
- Cardona, Glenis L. (REB)**
303 E. Country Club Ln., San Bernardino
Effective: 2/1/07
Violation: 10177(g)
Suspended for 30 days-stayed for 1 year on terms and conditions
- Century 21 Butler Rlty, Inc. (REC)**
1635 State St., Santa Barbara
Effective: 1/2/07
Violation: 2731, 2831, 2831.2, 2832.1, 2835, 2840, 10145, 10177(g), 10240
Suspended for 90 days-stayed for 2 years on terms and conditions
- Ellis, Ronald Lloyd (RES)**
9766 19th St., #308, Alta Loma
Effective: 12/27/06
Violation: 10130, 10177(d)
Suspended for 30 days-stayed for 2 years on terms and conditions
- Kim, Charles Chul Ho (REB)**
9944 Garden Grove Blvd., Garden Grove
Effective: 2/1/07
Violation: 2831, 2831.1, 2831.2, 10145(a), 10177(d)
Suspended for 60 days-stayed for 2 years on terms and conditions
- Kim, Melvin Lee (REB)**
9 Son Morell, Laguna Niguel
Effective: 12/12/06
Violation: 10177(d)(g), 10240(a), 10241
Suspended for 30 days-stayed for 2 years on terms and conditions
- Nguyen, Kim Dang (REB)**
11718 Lower Azusa Rd., El Monte
Effective: 12/18/06
Violation: 2840, 10145, 10177(d), 10240
Suspended for 90 days-stayed for 2 years on terms and conditions
- Norris, Dwight Edward (REB)**
3225 Watermarke Pl., Irvine
Effective: 1/6/07
Violation: 2731, 2832.1, 2834, 2950(d)(f)(g), 10145, 10177(d)
Suspended for 90 days-60 days stayed for 2 years on terms and conditions

SUSPENDED

LOS ANGELES REGION

- Lanam, George Joseph (REB)**
210 E. Highland Ave., San Bernardino
Effective: 1/5/07
Violation: 2831, 2832(d), 10145, 10159.2, 10177(d)(g)(h)
Suspended for 30 days

SUSPENDED WITH STAY

LOS ANGELES REGION

- American Benefit Mtg., Inc. (REC)**
120 Columbia, Ste. 600, Aliso Viejo
Effective: 1/29/07
Violation: 10177(g)
Suspended for 90 days-stayed for 1 year on term and conditions
- Bona Real Estate #1, Inc. (REC)**
259 Sierra Madre Villa, Ste. 106, Pasadena
Effective: 2/5/07
Violation: 2742(c), 2832.1, 2950, 2951, 10145, 10177(d)

OAKLAND REGION

- Herrmann, John William (RES)**
PO Box 13, San Carlos
Effective: 9/28/06
Violation: 490, 10177(b)
Right to RRES license on terms and conditions

SACRAMENTO REGION

- Bones, Nathan Michael (RES)**
523 13th St., Fortuna
Effective: 1/23/07
Violation: 490, 10177(b)
Right to RRES license on terms and conditions

Roman, Enrique (REB)
8990 Limonite Ave., Riverside
Effective: 1/2/07
Violation: 2832, 10145,
10177(d)
Suspended for 45 days-stayed for
2 years on terms and conditions

Suarez, Jaime G. (REB)
259 Sierra Madre Villa, Ste. 104,
Pasadena
Effective: 2/5/07
Violation: 2742(c), 2832.1,
2950, 2951, 10145,
10159.2, 10177(d)(h)
Suspended for 60 days-stayed for
2 years on terms and conditions

SAN DIEGO REGION

Crouch, Sandra Lee (REB, REO)
73-965 B Hwy 111, Palm Desert
Effective: 2/8/07
Officer of: Trust Deed Svcs, Inc.
Violation: 10159.2,
10177(d)(g)(h)
Suspended for 60 days-30 days
stayed for 2 years on terms and
conditions

Levine, Jay Edward (REB, REO)
3081 Madison St., Carlsbad
Effective: 12/18/06
Violation: 2752, 10130,
10137, 10159.2,
10161.8, 10165,
10177(d), 10240
Suspended for 60 days-stayed for
2 years on terms and conditions

Loanstar Financial Corp. (REC)
3081 Madison St., Carlsbad
Effective: 12/18/06
Violation: 2752, 10130, 10137,
10161.8, 10165,
10177(d), 10240
Suspended for 60 days-stayed for
2 years on terms and conditions

Peoples Discount Mtg., Inc. (REC)
299 W. Foothill Blvd., #202,
Upland
Effective: 12/27/06
Violation: 2831, 2831.1,
2831.2, 2832.1,
2950(d)(g), 2951,
10137, 10145,
10177(d)(g)
Suspended for 30 days-stayed for
2 years on terms and conditions

Sill, Jeffrey Nelson (RES)
6416 Friars Rd., #315,
San Diego
Effective: 12/12/06
Violation: 10177(g)
Suspended for 60 days-30 days
stayed for 2 years on terms and
conditions

Suh, Wangsug (REB)
4698 Convoy St., #204,
San Diego
Effective: 12/18/06
Violation: 2731, 10130,
10159.5, 10177(d)
Suspended for 45 days-stayed for
2 years on terms and conditions

Trust Deed Services, Inc. (REC)
73-965 B Hwy 111, Palm Desert
Effective: 2/8/07
Violation: 2831, 2831.1,

2831.2, 2832.1,
2840, 2846.5,
2846.8, 2950(d)(g),
2951, 10145,
10177(d)(g), 10232,
10238, 10241(i)

Suspended for 60 days-30 days
stayed for 2 years on terms and
conditions

Ventura, Ignacio Raul (RES)
943 Parkwood Ave., Vista
Effective: 12/18/06
Violation: 10130, 10177(d)
Suspended for 40 days-stayed
for 2 years on terms and condi-
tions

LICENSE SURRENDERED

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

LOS ANGELES REGION

Acosta, Gene Michael (RES)
14462 Bronte Dr., Whittier
Effective: 12/11/06

Archuleta, Alonzo Richard (RES)
10805 Valley Blvd., El Monte
Effective: 1/4/07

Chase Management, Inc. (REC)
964 W. Flora, Ontario
Effective: 1/24/07

Gale, Terry Alan (RES)
8100 Colegio Dr., Los Angeles
Effective: 1/30/07

McCullough, Ward Spencer (RES)
24827 San Fernando Rd., #160,
Santa Clarita
Effective: 12/20/06

OAKLAND REGION

Chang, Suk Cha (RES)
1679 Via Campagna, San Jose
Effective: 1/31/07

SAN DIEGO REGION

**Jamison-Dixon, Antwuanne Franklin
Otto (REB)**
12926 Oakdale St., Corona
Effective: 12/19/06

Labat, Monique Latrice (RES)
25436 Sand Creek Trail,
Moreno Valley
Effective: 1/31/07

**Lofton-Puckett-Jamison-Dixon,
Dorethia Courtney Jameigh (RES)**
12926 Oakdale St., Corona
Effective: 12/19/06

PUBLIC REPROVAL

LOS ANGELES REGION

Butler, Sylvia (RES)
637 E. Micheltorena St.,
Santa Barbara
Effective: 1/2/07
Violation: 10177(g)

**Secured Horizon Financial Grp, Inc.
(REC)**
23635 Golden Spring Dr., #B9,

Diamond Bar
Effective: 1/30/07
Violation: 2715, 10177(d)

Smith, Clement G. (REB)
8259 Archibald Ave.,
Rancho Cucamonga
Effective: 12/11/06
Violation: 2725, 2752, 2840,
10137, 10161.8,
10177(d), 10236.4,
10240

INDEFINITE SUSPENSIONS

(under Recovery Acct. provisions)

OAKLAND REGION

Alex, Anthony Paul (RES)
33 Bayview Dr., San Rafael
Effective: 1/16/07

LOS ANGELES REGION

Werner, Jeffrey Douglas (REO)
213 Triunfo Canyon Rd., 198,
Westlake Village
Effective: 2/2/07

**Werner Financial Group, Inc.
(REC)**
213 Triunfo Canyon Rd., 198,
Westlake Village
Effective: 2/2/07

Raise Your Energy Efficiency I.Q.: a booklet to benefit buyers and sellers

from the California Energy Commission


To help real estate agents describe the value and benefits of energy efficiency, the California Energy Commission recently created *Raise Your Energy Efficiency I.Q.*, a 16-page color booklet. Available for free on the Web, this easy-to-understand booklet describes how a home's energy efficiency characteristics may be material facts that should be disclosed by sellers prior to a sale, as well as how to showcase existing energy efficiency improvements to make their home more attractive to buyers.

Raise Your Energy Efficiency I.Q. suggests what sellers and buyers may do to address energy efficiency, such as providing/obtaining recent utility bills for the property,

having a home energy inspection performed, or making use of home energy rating services. The booklet contains a handy checklist of questions a buyer may ask the seller to help identify additional useful information on the home's energy efficiency.

While new homes are built to comply with current energy efficiency standards, older homes — especially those built before 1982 — often have room for improvement. Unless the owner has upgraded such features as appliances or attic insulation or windows over the years, an older home will probably use more energy and generate higher utility bills than a similarly sized new one. The booklet proposes simple energy efficiency upgrades that may increase the marketability of a property.

Raise Your Energy Efficiency I.Q. explains the differences between home inspections, home energy ratings and details the benefits of each. Ways to fund energy improvements — ideas like energy efficiency mortgages, tax credits, or utility rebates, for example — are covered, along with information about powering homes with solar energy. The importance of the code requirement for sealing ducts when heating and cooling systems are replaced is explained, as well as important seller obligations with respect to this requirement.

This booklet can be downloaded from the Energy Commission's Web site: www.energy.ca.gov. 

Are real estate & loan agents required to provide translated documents?

Section (§) 1632 of the California Civil Code was enacted in 1976 to increase consumer information and protections for California's sizeable and growing non-English speaking population. The law requires certain documents to be translated. The statute was amended effective July 1, 2004 to include a number of other languages. The Assembly Bill that implemented the change cited data from the United States Census of 2000 that more than 12 million Californians speak a language other than English in the home and approximately 4.3 million speak an Asian dialect or language other than Spanish. The top five languages other than English spoken by Californians that were cited were Spanish, Chinese, Tagalog, Vietnamese, and Korean. The four Asian dialects were added to the provisions of §1632 to provide the same protections for those consumers.

Civil Code §1632(b) states, in part, that any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean, whether done orally or in writing, shall deliver a translation of the contract or agreement to the consumer prior to the execution of the contract or agreement. This applies whether the negotiation occurs orally or in writing. The translation must include every term and condition in that contract or agreement.

For real estate licensees, this Civil Code section applies to leases; subleases; rental contracts or agreements; other terms of tenancy contracts or agreements; real estate loans primarily for personal, family or household purposes subject to Article 7 (see Business and Professions Code starting with § 10240); and reverse mortgages.


Section 1632(c) states the requirement is met in a *real estate loan transaction* by delivering a translation of the Mortgage Loan Disclosure Statement to the borrowers. Mortgage Loan Disclosure Statements are available in Spanish (RE882A and RE883A), Chinese (RE882E and RE883E), Tagalog (RE882B and RE883B), Vietnamese (RE882C and RE883C) and Korean (RE 882D and RE883D) on the DRE Web site: www.dre.ca.gov/mlbforms.htm.

For rental or lease transactions negotiated primarily in one of the languages, the broker or salesperson must provide the contract or agreement translated into these languages. Section 1632(d) also requires that a notice be provided to the tenant or lessee in the language used to negotiate the lease, sublease or rental contract or agreement and at the time and place it was executed.

The broker must abide by these requirements if the broker or salesperson negotiated the transactions in non-English language, or provided the translations. The broker or salesperson will not be required to provide the documents in the non-English language if the negotiation was completed through an interpreter provided by the consumer. This interpreter must be 18 years or older, understand English and the other language well, and must not be employed by or made available through the broker or the broker's agent.

Failure to comply with these provisions may allow the aggrieved person to rescind the contract or agreement in a specified manner. Therefore, it is important all brokers be aware that if they hire non-English speaking brokers or salespersons to negotiate real estate mortgage loans in Spanish, Chinese, Tagalog, Vietnamese or Korean, then he or she would be required to provide the Mortgage Loan Disclosure Statement to the borrower in the language in which the loan was negotiated.

If a broker hires brokers or salespersons to negotiate rental or lease agreements primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, then he or she must make certain the tenants or lessees are provided with a copy of the rental or lease contracts or agreements which have been translated into the languages in which they were negotiated.

Brokers and salespeople who provide these specified real estate services and/or mortgage loan services to non-English speaking consumers should carefully review and have a complete understanding of Civil Code §1632. 

A resource for property taxpayers

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


The Board of Equalization's Taxpayers' Rights Advocate Office (TRA) helps taxpayers when they are unable to resolve a matter through normal channels, when they want information regarding procedures, or when there are apparent rights violations in property tax areas. Some taxpayers call to complain about aspects of the property taxation system or to seek confirmation that they have been treated lawfully and fairly by a county.

In cases where the law, policy, or procedure does not allow any change to the staff action, but a change appears justified, TRA tracks potential areas of the law that may need clarification or modification. Several recommendations for policy, procedural and legislative changes have resulted from TRA cases.

The TRA office facilitates communication between taxpayers, Board of Equalization Board Members and county staff to eliminate potential misunderstandings. Taxpayers are provided information which improves their understanding of their issues and increases the opportunity for a satisfactory resolution.

For information on property tax programs, we suggest you contact the county offices listed below:

- *Assessor* for assessment, exemption, and valuation questions;
- *Clerk of the Board of Supervisors* for assessment appeals questions;
- *Tax Collector* for questions about taxes and liens; and
- *Auditor-Controller* about refunds and tax rates.

Please see the Board of Equalization's "Understanding Your Rights as a California Taxpayer," for more information on your rights and the assistance available from TRA. The "California Taxpayer Advocates" publication provides contact information for advocate offices in the Board of Equalization, Employment Development Department, Franchise Tax Board, and IRS. To contact TRA, call toll free at **1-888-324-2798** or visit our Web site: www.boe.ca.gov/tra.htm. 

Fiduciary Responsibilities

Continued from page 3

case law and precedent, they can also be undertaken by agreement and imposed by statutory and regulatory law. But the California statutory and regulatory scheme does not restrict the broader fiduciary duties owed by licensees existing under the common law. See, for example, the Legislature's statement of its intention in adopting the legislation which became Section 2079 of the California Civil Code, which section is titled "Real estate brokers and salespersons; inspections and disclosures; standards of professional conduct".

Breaches of Fiduciary Duties and Remedies

The following discussion is not intended to be an exhaustive discussion of all the remedies available for the breach(es) of fiduciary duties, or an analysis of the distinctions and boundaries between the common law and statutory and regulatory law, legal and equitable remedies and/or contract and tort law. Rather, the purpose of the discussion is to familiarize real estate licensees with the general range and variety of remedies available.

When a client feels wronged by his or her real estate brokerage and agent, the client oftentimes files a lawsuit seeking damages and other remedies on theories ranging from breach of contract, intentional misrepresentation, negligent misrepresentation, and various others. It is the nature of the breach, the wrong and the loss (or the harm suffered) that will determine the scope and the applicability of remedies. In an action for an alleged breach of fiduciary duty(ies), a presumption of unfairness and undue influence arises when a fiduciary self-deals or gains an advantage in a transaction.

Depending on the facts of a particular case, a client suing for breach(es) of fiduciary duties can recover a full range of damages, including actual as well as punitive and exemplary damages. Moreover, when a client is defrauded by a fiduciary, the client is entitled to the benefit of his or her bargain and is awarded compensation for all of the detriment proximately caused by the breach, whether it could be anticipated or not. See §§§ 1709, 3333 and 3343 of the

California Civil Code. Also, a real estate agent who breaches his or her fiduciary obligations may forfeit and be deprived of his or her commission. *Sierra Pacific Industries v. Carter*, 104 Cal.App.3d 579 (1980), at page 583.

In appropriate cases, such as where there is no adequate legal remedy capable of providing a client with a complete measure of justice, or where necessary to prevent irreparable injury, the client may obtain equitable relief, including an account of profits, the disgorgement of "secret" profits, the imposition of a constructive trust, the grant of an equitable lien, the setting aside,

The word "fiduciary" is derived from the Latin words *fiduciaris* and *fiducia*, relating to confidence and trust.

rescission or voiding of unconscionable transactions, and the delivery and/or cancellation of documents. When applying equitable remedies, the Courts endeavor to shape and design a judgment to provide substantial justice to the client who has been wronged and has suffered harm by the breach(es).

Administrative Discipline Because of Breach(es) of Codified Fiduciary Duties

As mentioned above, fiduciary duties can be imposed by statutory and regulatory law. Some of the fiduciary duties that arose through common law principles have been codified in certain of the California statutes and regulations that are enforced by the Department of Real Estate. For example, the duty to fully account for client funds is reflected in

§10176 (e) of the California Business and Professions Code prohibiting the commingling of trust funds belonging to a client with the funds of a broker, and Real Estate Commissioner's Regulation 2831.1, which pertains to the requirement that agents must adequately separate trust fund beneficiary records. Similarly, the duties that preclude an agent from obtaining any advantage over the principal by virtue of the agency, and that require that an agent act in his or her client's best interests are incorporated into §§ 10176(g) and 10176(i) of the Business and Professions Code, dealing with secret profits or undisclosed compensation, and fraud or dishonest dealing in a licensed capacity, respectively. There are more examples of such statutory and regulatory codification, but a further discussion of the same is beyond the scope of this article.

Violations of the statutes and regulations enforced by the Department of Real Estate form the basis for administrative discipline against the offending real estate licensees. For a violation of one or more of such statutes and/or regulations, a licensee can have his or her license revoked or suspended.

What Does This Mean in Practical Terms?

California real estate agents, as fiduciaries, owe special duties to their clients. Agents must be continuously aware of their important fiduciary duties and must perform them responsibly, diligently and completely. If they fail to do so, they risk significant civil liability and remedies, in addition to administrative discipline where their misconduct also violated the statutes and/or regulations enforced by the Department of Real Estate. 🏠

Conditional License Repeal

Continued from page 1

- 2007, will be required to include evidence of completion of all three required courses before they can be scheduled for an examination.
2. Salesperson examination applications are valid for a two-year period. Examination applications that are received or postmarked before October 1,

2007, that contain an acknowledgement that the applicant is enrolled in a Real Estate Principles course or has completed one, will be entitled to take the examination within the two-year period that the application is valid.

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Predatory lending audits

In California, thousands of lower-income families became homeowners during the housing boom by getting non-traditional “sub-prime” loans. Those loans, which carry higher interest rates, typically have been given to borrowers who are higher credit risks or have income that is difficult to verify. But as lenders face a wave of defaults, their underwriting standards are getting stricter just as borrowers are trying to refinance their way out of mortgages they can’t afford. Desperate borrowers, whether in need of a loan for refinance or for other reasons, often become easy prey for predatory lending.

The term “predatory lending” encompasses a variety of home mortgage lending practices. Homeowners, particularly the elderly and minorities in certain communities, are targeted with offers of high-cost, home-secured credit. Elderly homeowners targeted for predatory lending typically are living on fixed incomes and have little or no home-secured debt (they are often “equity rich” but “cash poor”). Most borrowers use the collateral in their homes for debt consolidation, home improvement, or other consumer credit purposes. Most predatory lending occurs in the “sub-prime mortgage market” — the segment of the mortgage market dedicated to borrowers who do not qualify for prime rates due to prior or present credit problems.

Predatory loans may carry high up-front fees that are added to the balance, which decreases the homeowner’s equity. If borrowers have trouble repaying the debt, they are encouraged to refinance the loan into another unaffordable, high-fee loan that rarely provides economic benefit to the consumer. The cycle of high-cost loan refinancing can ultimately deplete the homeowner’s equity and result in foreclosure.

The Covered Loan Law, which took effect on July 1, 2002, added Sections (§§) 4970 through 4979.8 to the California Financial Code. The law imposes restrictions and limitations on specified consumer loans secured by real property for which an application is made on or after July 1, 2002. It currently defines a *covered loan* as a consumer loan in which the original principal balance is less than \$417,000 **and** either the annual percentage rate or the total points and fees, as defined, exceed specified limits. A *consumer loan* is defined as a consumer credit transaction secured by real property located in this state and that property is used, or is intended to be used, as the principal residence of the consumer and is improved by one to four residential units. Consumer loans do not include reverse mortgages, open lines of credit (as defined), loans secured by rental property or second homes, and bridge loans (as defined).

Covered loans arranged or made by real estate brokers, finance lenders, residential mortgage lenders, as well as commercial banks, industrial banks, savings associations and credit unions organized in this state are subject to the provisions of the Covered Loan Law. It establishes remedies available to victims (borrowers) for a violation of its provisions and authorizes the licensing and regulatory agencies

with jurisdiction over the person or entity making or arranging a covered loan to take license disciplinary action.

The Department of Real Estate has developed and implemented audit procedures to determine compliance with the Covered Loan Law by mortgage loan brokers.

The audit procedures first determine if a loan meets one of the following two conditions to be subject to the Covered Loan Law:

- (1) The loan must be a “*consumer loan*” as defined in Section 4970(d) of the Financial Code.

and

- (2) The “*consumer loan*” must also be a “*covered loan*.”

The audit procedures further determine whether the auditee violated the *prohibited acts and limitations* for covered loans.

The following are examples:

- ✓ Prepayment fees or penalties that occur during the first thirty-six months after the date of the loan closing are prohibited. A prepayment penalty may be included for the first thirty-six months only under specified conditions.
- ✓ Loans with terms of five years or less must be fully amortized.
- ✓ Loans other than first liens may not include negative amortization. First lien loans may include negative amortization only with proper disclosure of the terms.
- ✓ Advance payments required to be paid from the proceeds are prohibited.
- ✓ Increases of the interest rate as the result of a default are prohibited.
- ✓ Persons originating covered loans must reasonably believe that the consumer(s) obtaining the loan will be able to make the specified payments from resources other than the consumer’s equity in the dwelling. The law establishes the criteria upon which the person may rely.
- ✓ Payments from the proceeds of the loan made directly to contractors under a home-improvement contract are prohibited. Payments made jointly to the consumer and contractor or into a third-party escrow are allowed with specified requirements.
- ✓ Encouraging or recommending to the consumer to default on an existing loan or other debt is prohibited.
- ✓ A loan that contains a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness unless under specified conditions, is prohibited.
- ✓ Refinancings that do not result in an identifiable, tangible benefit to the consumer are prohibited.

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Real estate publications

Ordering information

DRE publications are available:

On the Internet — All DRE publications are available free of charge on the DRE Web site at www.dre.ca.gov.

In person from District Offices — Complete Parts A, B, and C (if appropriate). Offices are located in Sacramento, Los Angeles, Oakland, Fresno, and San Diego.

By mail — Photocopy or remove this page from your *Bulletin*. Complete Parts A, B, and C (if appropriate). Mail it with the proper fee to:

Department of Real Estate
 Book Orders
 P.O. Box 187006
 Sacramento, CA 95818-7006

By fax — Complete Parts A, B, and C. Fax form to (916) 227-0361.

By phone — Have credit card information ready, then call Book Order desk at (916) 227-0852.

Acceptable payment methods

- Personal check, cashier's check or money order should be made payable to: Department of Real Estate.
- VISA, MasterCard, and American Express credit cards may be used to purchase DRE publications.
- Cash is acceptable only if purchasing in person and only if it's the exact amount of purchase.

California sales tax

Use 7.25% tax rate, unless purchase location or delivery address is in the following counties:

Alameda (8.25%), Fresno (7.875%), Los Angeles (8.25%), Marin (7.75%), Sacramento (7.75%), and San Diego (7.75%). Requests and fees will be returned if the appropriate sales tax is not included.

Miscellaneous information

- **Publications noted as free are limited to one copy**; DRE grants requestor permission to reproduce these publications for complimentary distribution only.
- Prices are subject to change.
- Orders received with incorrect payments will be returned.
- **All sales are final — no refunds.**
- Allow 4–6 weeks for delivery.
- Volume discounts are available. Contact DRE at (916) 227-0852 prior to ordering.

PART A PUBLICATIONS

DRE	RE#	Title of Publication	Cost	Quantity	Your Cost
	1	Reference Book — A Real Estate Guide (Rev. 2000)	\$20		
	2	2007 Real Estate Law Book & CD set	\$25		
	6	Disclosures in Real Property Transactions	\$10		
	8	Operating Cost Manual for Homeowner Associations	\$10		
	25	Reserve Study Guidelines for Homeowner Association Budgets	\$10		
	4	Instructions to License Applicants	free		
	13	Trust Funds	free		
	34	A Guide for Residents Purchasing Their Mobile Home Park	free		
	35	Trust Deed Investments — What You Should Know!!	free		
	35A	Using the Services of a Mortgage Broker	free		
	39	Living in a California Common Interest Development	free		
	51	A Consumer Guide to Filing Real Estate Complaints	free		
	52	Reverse Mortgages — Is One Right for You?	free		

PART B SHIPPING INFORMATION

SHIPPING NAME	LICENSE OR EXAM ID#	
SHIPPING ADDRESS		SUBTOTAL \$ _____
CITY	STATE	ZIP CODE
		CA SALES TAX* \$ _____ (Tax rate used* _____ %)
		TOTAL ENCLOSED \$ _____

* See tax information above.

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 P.O. Box 187000
 Sacramento, California 95818-7000


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Audits

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- ✓ A specified “Consumer Caution and Home Ownership Counseling Notice” must be given to the consumer no later than three days prior to the signing of the loan documents.
- ✓ Steering, counseling, or directing a consumer to accept a loan product with a risk grade less favorable than the consumer would otherwise qualify or with higher costs than the consumer would qualify is prohibited.
- ✓ Structuring the transaction as an open line of credit, or otherwise, in an attempt to avoid or circumvent the statute is prohibited.
- ✓ Acting in a manner that constitutes fraud is prohibited.

The law requires that any non-willful failure to comply be corrected not later than forty-five days after receipt of a complaint or discovery of the error. The law further provides for both substantial civil and administrative remedies against any person who willfully and knowingly violates the law.

For details of the prohibited acts under the Covered Loan Law, please refer to the DRE Web site at www.dre.ca.gov (see Real Estate Law, Excerpts from the California Codes, Financial Codes §§ 4970–4979.8). Also available on the DRE Web site is the article, “Protect Yourself in the Loan Process,” which provides more information regarding predatory lending and the loan process. It was developed as a guide to consumers to help keep them from falling prey to predatory lending practices. 

Conditional License Repeal

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



Moved or moving? New address? Use the *eLicensing* online system at www.dre.ca.gov to make the change or submit the appropriate “change” form: RE 214 for salespersons; RE 204 for brokers; RE 204A for corporations.