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

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

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

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

Federal regulators have already issued guidance on nontraditional mortgage products to federally insured and regulated entities and the state will soon be adopting similar standards. Specifically, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have also issued guidance on nontraditional loan products and the Department of Real Estate (DRE) together with the Department of Corporations (DOC) have recently drafted regulations to implement the guidance with respect to their respective licensees.

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

I encourage anyone engaged in mortgage brokerage activity to review these proposed regulations, as well as review the accompanying proposed disclosure, in the “regulation changes” section on our Web site at www.dre.ca.gov.

Whether you are new to the mortgage business or a seasoned veteran, it is more important than ever to stay on top of the rapidly changing regulatory changes as well as understanding your duties and responsibilities under existing law. I would encourage you to revisit the two previous bulletins that contained excellent articles on what it means to be a fiduciary and the broker’s obligation to fully explain the terms of a loan to a borrower. You may also wish to seek out educational opportunities, such as the upcoming forums on the new lending environment that will address current enforcement efforts, litigation and how to implement best practices, hosted by the California Bankers Association. The first will be in Emeryville on November 28th, and the second in Anaheim on November 29th. For more information, you can visit www.calbankers.com.

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

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

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

The transaction in question began with the unlicensed individual (respondent) sending a letter to a homeowner stating that he intended to relocate to the homeowner’s area and asking if the owner was interested in selling her home. The owner of the property was, at the time, experiencing personal difficulties and responded in the affirmative. A short time later the respondent met with the homeowner and informed her that he had already purchased a home for himself, but that he would be willing to help her out of her situation and purchase her home for resale. He stated he would be willing to purchase the property and make repairs for $40,000 off the top of the proceeds when the property was resold, and the remaining proceeds from the sale would be split equally between himself and the seller. The seller agreed and was asked to sign various documents including escrow instructions and a purchase option agreement.

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

Continued on page 8
The perils of dual agency

by Jeanine K. Clasen, Real Estate Counsel

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

An Agent’s Fiduciary Duties

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

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

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

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

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

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

Rules of Dual Agency

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

Civil Code § 2079.21 expressly permits dual agency, but there is an inherent possible conflict of interest because it prohibits a dual agent from disclosing either principal’s negotiating strategy. That is, the dual agent has all of the same duties discussed above except that he or she must refrain from disclosing to the buyer “that the seller is willing to sell…at a price less than the listing price” without the seller’s express written consent, and he or she must
October 1st deadline nears for conditional license repeal

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

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

Assembly Bill 2429 will be implemented as follows:

1. Original salesperson examination applications postmarked or received on or after October 1, 2007, will be required to include evidence of completion of all three required courses before they can be scheduled for an examination.

2. Salesperson examination applications are valid for a two-year period. Examination applications that are received or postmarked before October 1, 2007, that contain an acknowledgement that the applicant is enrolled in a Real Estate Principles course or has completed one, will be entitled to take the examination within the two-year period that the application is valid.

3. In order to be eligible for a conditional license, applicants who qualify for the examination as set forth in item 2, must pass the examination before October 1, 2007, and have the 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.

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

WANTED

LOCATIONS OF NEGLECTED SWIMMING POOLS
ALIAS: “GREEN” POOLS

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

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

WHAT DO I DO IF I HAVE, OR SOMEONE I KNOW HAS, A “GREEN” POOL?
- Locate the mosquito control agency in your area by visiting: www.westnile.ca.gov or calling 1-877-WNV-BIRD (1-877-968-2473).
- Contact your local mosquito control agency about the best course of action.

WHAT CAN THE LOCAL MOSQUITO CONTROL AGENCY DO?
The mosquito control agency can do the following:
- Work with the real estate agent or property owner if necessary;
- Place mosquito fish in the pool to eat the mosquito larvae;
- Put a product in the pool that kills the larvae;
- Help you decide how to manage the pool, if you own the pool, so no more mosquitoes are produced.
- These actions stop mosquito production, but the pool remains green until it is properly maintained.

WHAT IF THERE IS NOT A LOCAL MOSQUITO CONTROL AGENCY IN MY AREA?
- Contact your city government;
- Use mosquito control slow-release products available at the local garden center or hardware store.

FOR MORE INFORMATION
- Contact your local mosquito control program or health department
- To locate the mosquito control program in your area visit: www.westnile.ca.gov or call 1-877-WNV-BIRD (1-877-968-2473)
Disciplinary Action: March 07 - May 07

A list of actions is not published in this Bulletin until the 30-day period allowed for court appeal has expired, or if an appeal is filed and the disciplinary action is stayed, until the stay is dissolved. Names of persons to whom licenses are denied on application are not published.

Licensees are listed alphabetically by the District Office region of responsibility.

The license type is listed in parentheses after the licensee’s name. [REB – Real estate broker; RREB – Restricted real estate broker; RES – Real estate salesperson; RRES – Restricted real estate salesperson; PRLS – Prepaid rental listing service; RPRLS – Restricted prepaid rental listing service; REO – Real estate officer; REC – Real estate corporation]

Below are brief summaries of various regulations and code sections. The full text of the sections is available on the DRE Web site www.dre.ca.gov 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

**Fresno Region**

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

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>480(c)</td>
<td>Denial of license on grounds of false statement in license application</td>
</tr>
<tr>
<td>490</td>
<td>Substantially related criminal conviction</td>
</tr>
<tr>
<td>498</td>
<td>License obtained by fraud or misrepresentation</td>
</tr>
<tr>
<td>10130</td>
<td>Acting without license</td>
</tr>
<tr>
<td>10131(a)</td>
<td>Performing acts for which a real estate license is required</td>
</tr>
<tr>
<td>10137</td>
<td>Unlawful employment or payment of compensation</td>
</tr>
<tr>
<td>10145(a)</td>
<td>Trust fund handling</td>
</tr>
<tr>
<td>10145(c)</td>
<td>Failure by salesperson to deliver trust funds to broker</td>
</tr>
<tr>
<td>10148</td>
<td>Failure to retain records and make available for inspection</td>
</tr>
<tr>
<td>10159.2</td>
<td>Failure by designated officer to supervise licensed acts of corporation</td>
</tr>
<tr>
<td>10159.5</td>
<td>Failure to obtain license with fictitious business name</td>
</tr>
<tr>
<td>10160</td>
<td>Failure to maintain salesperson licenses in possession of broker</td>
</tr>
<tr>
<td>10176(a)</td>
<td>Making any substantial misrepresentation</td>
</tr>
<tr>
<td>10176(c)</td>
<td>Commingling trust funds with brokers funds</td>
</tr>
<tr>
<td>10176(g)</td>
<td>Secret profit or undisclosed compensation</td>
</tr>
<tr>
<td>10176(i)</td>
<td>Fraud or dishonest dealing in licensed capacity</td>
</tr>
<tr>
<td>10177(a)</td>
<td>Procuring a real estate license by misrepresentation or material false statement</td>
</tr>
<tr>
<td>10177(b)</td>
<td>Conviction of crime</td>
</tr>
<tr>
<td>10177(d)</td>
<td>Violation of real estate law or regulations</td>
</tr>
</tbody>
</table>

Fresno Region

<table>
<thead>
<tr>
<th>Name</th>
<th>Company</th>
<th>Address</th>
<th>Effective</th>
<th>Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brager, Thomas (RES)</td>
<td>Brager &amp; Assoc, Inc. (REC)</td>
<td>3600 Sisk Rd., Ste. 4H, Modesto</td>
<td>4/18/07</td>
<td>2832.1, 10177(d)</td>
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<tr>
<td>Jaurique, Enrique (RES)</td>
<td>Jaurique, Enrique (RES)</td>
<td>4840 N. Blackstone, Fresno</td>
<td>5/3/07</td>
<td>10177(b)</td>
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<tr>
<td>Mendoza, Tiffany Michele (RRES)</td>
<td>Mendoza, Tiffany Michele (RRES)</td>
<td>1732 Dennis, Clovis</td>
<td>5/3/07</td>
<td>10177(k)</td>
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<tr>
<td>Stockdale Realty, Inc. (REC)</td>
<td>Stockdale Realty, Inc. (REC)</td>
<td>2535 16th St., Ste. 210, Bakersfield</td>
<td>4/30/07</td>
<td>2832.1, 2831.2, 2832, 10145, 10177(d)</td>
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Los Angeles Region

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<th>Address</th>
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<th>Violation</th>
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<tbody>
<tr>
<td>Allen, Fabian Fonta (RES)</td>
<td>Allen, Fabian Fonta (RES)</td>
<td>1060 North 13th Ave., Upland</td>
<td>5/24/07</td>
<td>10177(b)</td>
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<tr>
<td>American Network Financial, Inc. (REC)</td>
<td>American Network Financial, Inc. (REC)</td>
<td>31877 Del Obispo St., Ste. 204, Costa Mesa</td>
<td>5/24/07</td>
<td>10177(b)</td>
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Financial Code

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<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>4975</td>
<td>Violation of covered loan requirements</td>
</tr>
</tbody>
</table>

REVOKE LICENSES

San Juan Capistrano

Armand, Anthony Victor (REB, REO)

Baker, Tammy Lee (RES)

Buehler, Dale Lawrence (REC)

Castelan, Erica Socorro (RES)

Castillo, Andina Victoria (RES)

Chavez, David Fernando (RES)

Chow, Michael Eugene (RES)
Lucerne Valley
Effective: 5/9/07
Violation: 490, 10177(b)

Clark, Jeffrey Kel (RES)
5396 Crescent Ave., Cypress
Effective: 5/20/07
Violation: 490, 10177(b)

Clayton, Laverne Smith (RES)
PO Box 2332, Culver City
Effective: 4/23/07
Violation: 10130, 10177(d)

Coughlin, Justin Michael (REB, REO)
9849 Foothill Blvd., Ste. G, 1443 Cloudview Dr., Pleasant Hill
Effective: 4/12/07
Violation: 490, 10177(b)

Crow, Robert Fredrick (RES)
PO Box 3181, Cresteine
Effective: 4/26/07
Violation: 490, 10177(b)

Deluccia, James Anthony (RES)
8571 Kelso Dr., Huntington Beach
Effective: 5/7/07
Violation: 490, 10177(b)

Elhuzayel, Ausama Salem (RES)
1845 W. Lullaby Ln., Anaheim
Effective: 4/25/07
Violation: 490, 10177(b)

Ewell, Nicholas Albert (RES)
9849 Foothill Blvd., Ste. G, Rancho Cucamonga
Effective: 4/12/07
Violation: 490, 10177(b)

Fichera, Michael Gerard (RES)
53 Mercantile Way, Ladera Ranch
Effective: 5/8/07
Violation: 490, 10177(b)

Fonseca, Sergio J. (RRES)
1913 East 17th St., #100, Santa Ana
Effective: 5/4/07
Violation: 490, 10177(b)(k)

Garman, Jody Gibbons (RES)
1699 Amarelle St., Newbury Park
Effective: 5/7/07
Violation: 490, 10177(b)

Guinto, Elizabeth Candela (RES)
22355 Starwood Dr., Yorba Linda
Effective: 4/30/07
Violation: 490, 10177(b)

Hagedorn, Christopher Alan (RES)
25228 Orange Ave., #1, Lake Forest
Effective: 5/4/07
Violation: 490, 10177(b)

Justason, Larry Jay (RES)
4830 West 116th St., #B, Hawthorne
Effective: 5/31/07
Violation: 490, 10177(b)

Kutzner, Robert Damian (RES)
1401 W. Carriage Dr., Santa Ana
Effective: 4/4/07
Violation: 490, 10177(b)

Linares, Lupe (REB)
5612 Passons Blvd., Pico Rivera
Effective: 4/9/07
Violation: 490, 10177(b)

Meola, Christopher Michael (RRES)
220 Huenene Rd., Port Huenene
Effective: 5/9/07
Violation: 490, 10177(b)

Michaels, Ed (RES)
1273 Lands Burn Circle, Westlake Village
Effective: 5/4/07
Violation: 490, 10177(b)

Nunez, Gildardo Jr. (RES)
8222 Wisner Ave., Van Nuys
Effective: 5/7/07
Violation: 490, 10177(b)

Nguyen, Rebecca Quynh-Giao (RES)
9315 Bolsa Ave., #70, Westminster
Effective: 4/4/07
Violation: 490, 10177(b)

Pacheco, Angela Marie (RES)
12691 Luna Rd., Victorville
Effective: 5/8/07
Violation: 490, 10177(b)

Pho, Anthony T. (RES)
28014 Marguerite Pkwy, Mission Viejo
Effective: 4/26/07
Violation: 490, 10177(b)

Portillo, Maritza (RES)
14029 Bancroft Ct., Fontana
Effective: 3/23/07
Violation: 490, 10177(b)

Rawleigh, Evelyn Basilia (RES)
1039 West H St, Colton
Effective: 3/21/07
Violation: 490, 10177(b)

Riganian, Greg (RES)
1925 S. Church St., Burbank
Effective: 5/2/07
Violation: 490, 498, 10177(a)(b)

Rivero, Adelina N. (RES)
10911 Pioneer Blvd., Santa Fe Springs
Effective: 5/22/07
Violation: 10145(c), 10176(a)(i), 10177(d)

Rogers, Toni Lenae (RES)
7543 W. Liberty Pkwy, Unit 621, Fontana
Effective: 5/3/07
Violation: 490, 10177(b)

Ryan, Pamela Lynn (RES)
2111 East 1st St., #206, Santa Ana
Effective: 4/26/07
Violation: 490, 10177(b)

Sady-Kennedy, Alejandro (REB)
27758 Santa Margarita Pky, #118, Mission Viejo
Effective: 3/28/07
Violation: 490, 10177(b)

Sarup, Raj Prem Peter (REB)
350 S. Figueroa St., Ste. 190, Los Angeles
Effective: 3/15/07
Violation: 2742, 2832, 10137, 10145(a), 10159.2, 10177(d)(g)(b), 10240, 10241

Silverton, Ronald Robert (REB)
1568 Michael Ln., Pacific Palisades
Effective: 4/9/07
Violation: 10177(g)(j)

Stevens, Ryan (REB)
801 S. Grand Ave., Ste. 275, Los Angeles
Effective: 4/2/07
Violation: 490, 10177(b)

Testa, Caspar Paul (RES)
3001 Beverly Glen Cir., Los Angeles
Effective: 5/7/07
Violation: 490, 10177(b)

Clalhoun, Debra Marie (RES)
5612 Harvard Dr., San Jose
Effective: 3/1/07
Violation: 490, 10177(b)

City Home Loans, Inc. (REC)
3111 McLaughlin Ave., San Jose
Effective: 5/23/07
Violation: 2726, 2831, 2831.1, 10177(d), 10240, 10241

Eng, Alvin (RES)
210 Highland Oaks Dr., Los Gatos
Effective: 5/3/07
Violation: 490, 10177(b)

Guerra, Francisco J. (RES)
2020 S. Bascom Ave., Ste. C, Campbell
Effective: 3/8/07
Violation: 490, 498, 10177(a)(b)

Rodriguez, Nicholas Abel (RES)
3811 Quimby Rd., San Jose
Effective: 3/14/07
Violation: 490, 10177(b)

Smith, David Leroy (RRES)
1475 W. Walnut St., Stockton
Effective: 5/10/07
Violation: 490, 10177(b)

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

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

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

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

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

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

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

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

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

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

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

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

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

Schmied, Alexandria Maria (RES)
1822 Polk Ave., San Diego
Effective: 3/14/07
Violation: 490, 10177(b)

Spruill, Daniel Lee (REB)
22353 Hillview Dr., Perris
Effective: 5/8/07
Violation: 490, 10177(b)

Sullivan, Catherine Mary (REB)
6924 Town View Ln., San Diego
Effective: 4/23/07
Violation: 490, 10177(b)
REVOKED WITH RIGHT TO A RESTRICTED LICENSE

**Fresno Region**

Brager, Robert Joseph (REB, REO) 3000 Edgeview Dr., Modesto Effective: 4/15/07 Violation: 2831.2, 2832.1, 10145, 10159.2, 10177(d)(h) Right to RREB license on terms and conditions

Hernandez, Manuel Jose (RES) 13309 Elmore St., Pacheco Effective: 5/7/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Khairzada, Masood Aristotle (RES) PO Box 151, Ventura Effective: 4/29/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Lopez, Hector (RES) 530 Foxglove Pl., Oxnard Effective: 4/24/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Lopez, Martin Alberto (RES) 6125 Archwood Way, Palmdale Effective: 3/7/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Mai, Tom T. (REB) 10161 Bolsa Ave., #204-A, Westminster Effective: 5/22/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Miller, Thomas Bruce (REB) 3121 W. Coast Hwy, Newport Beach Effective: 3/1/07 Violation: 10148, 10177(d) Right to RREB license on terms and conditions

Sahban, Ibrahim Mohamad (REB, REO) 1125 W. Foothill Blvd., Ste. 205, Upland Effective: 3/5/07 Violation: 4975, 10137, 10159.2, 10176(d), 10177(d)(g)(h) Right to RREB license on terms and conditions

Nagy, Julius Laszlo (REB) 8800 Eton Ave., Space 79, Canoga Park Effective: 4/25/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Petruolo, Michael August (REB, REO) 7518 Penobscon Dr., West Hills Effective: 5/23/07 Violation: 490, 498, 10177(a)(b) Right to RREB license on terms and conditions

Porizek, Kevin Mathew (RES) 15516 Gerkin Ave., Lawndale Effective: 5/23/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Portillo, Luis Jr. (REB) 19030 Valley Blvd., Bloomington Effective: 5/28/07 Violation: 2831.1, 2831.2, 2832, 10145(a), 10177(d) Right to RREB license on terms and conditions

Rojas, Dora (RES) 13333 Paramount Blvd., South Gate Effective: 5/8/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Sarhangan, Arash (RES) 2305 West 190th St., Redondo Beach Effective: 4/24/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Schumacher, Charles Gerald (REB, REO) 1136 Larrabee Street, West Hollywood Effective: 5/29/07 Officer of: Carmel Business Sales, Inc. Peninsula Business Sales, Inc. Violation: 10177(h) Right to RREB license on terms and conditions

Smith, Scott Joseph (REB, REO) 10 Monarch Bay Plaza, Monarch Beach Effective: 4/19/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Stockton, Robert Glen (RES) 412 E. Freedland St., Apt. 3, Long Beach Effective: 5/29/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Watanabe, Bryan S. (RES) 724 North 6th St., Montebello Effective: 4/30/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

**Los Angeles Region**

Bak, Paul H. (RES) 15018 Hartsook St., Sherman Oaks Effective: 3/6/07 Violation: 498, 10177(a) Right to RRES license on terms and conditions

Bunn, Marco Jr. (RES) 8729 Beekemarn Ln., #B, Inglewood Effective: 5/8/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Cervantes, Joe Louis (RREB, RREE) 520 West 5th St., Ste. H, Oxnard Effective: 4/23/07 Officer of: El Rancho Home Loans, Inc. Violation: 10159.2, 10177(d)(g)(h) Right to RREB license on terms and conditions

Chang, Andy (REB) 12209 Central Ave., Chino Effective: 5/29/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Conklin, Glen C. (RES) 384 Knollglen, Irvine Effective: 5/21/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Coronel, Mercedes Santos (RES) 1230 Westholme Ave., #103, Los Angeles Effective: 5/7/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Conklin, Glen C. (RES) 1230 Westholme Ave., #103, Los Angeles Effective: 5/7/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Current, Gerard Paul (REB) 524 S. Grand Ave., Pasadena Effective: 5/22/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

El Rancho Home Loans, Inc. (RREC) 520 West 5th St., Ste. H, Oxnard Effective: 4/23/07 Violation: 2831, 2831.2, 2842.5, 2846.7, 2950(d)(g), 10145, 10176(a), 10177(d)(g), 10231.1, 10232.2, 10236.4, 10240, 10242 Right to RREC license on terms and conditions

**Sacramento Region**

Gregory, Cathryn Jean (REB) 150 Camino Vista, St. Helena Effective: 3/21/07 Violation: 10145, 10177(d) Right to RREB license on terms and conditions

Humackich, Kasey John (RES) 14769 Sutter Island Rd., Courtland Effective: 4/9/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Keenan, Jenifer Marie (RES) PO Box 2653, Weaverville Effective: 5/9/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Kirchen, Cynthia Louise (REB) 2836 Watson Ct., Montague Effective: 3/14/07 Violation: 490, 10177(b)(f) Right to RREB license on terms and conditions

Pera, Cinzia Rita (RES) 11527 Snowpeak Way, Ste. 617, Truckee Effective: 4/30/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

**San Diego Region**

Delman, Brian Marc (RES) 611 S. Palm Canyon Dr., Suite 7112, Palm Springs Effective: 4/30/07 Violation: 10177(f) Right to RREB license on terms and conditions

Garcia, Jesus Arturo (RES) 6960 Magnolia Ave., Ste. 103, Riverside Effective: 5/30/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Hiley, Jay Michael (RES) 16190 Turtletack Rd., San Diego Effective: 5/8/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Meyer, Wendy Dana (RES) 4 Meyer Place, Kentfield Effective: 5/30/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions

Valentine, Heather Feather (RES) 5459 Poinsett Ave., El Cerrito Effective: 3/21/07 Violation: 490, 10177(b) Right to RRES license on terms and conditions

Wainwright, Wayne Taylor (REB) 1970 Broadway, #700, Oakland Effective: 5/22/07 Violation: 490, 10177(b) Right to RREB license on terms and conditions
### Oakland Region

**Nguyen, Ha Thu Thi (RES)**  
3422 Piemonte Ct., San Jose  
**Effective:** 5/20/07  
**Violation:** 10137, 10177(d)  
Suspended for 90 days

### San Diego Region

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

### Fresno Region

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

### Los Angeles Region

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

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

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

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

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

**Hoaglund, Wesley Craig (REB, REO)**  
16802 Aston St., Irvine  
**Effective:** 5/8/07  
**Violation:** 2726, 2831, 2831.2, 2831.3, 2834, 10145(a), 10177(d), 10240  
Suspended for 90 days-stayed for 2 years on terms and conditions

**Jara, Francisco Javier (REB, REO)**  
2400 E. Katella Ave., #1220, Anaheim  
**Effective:** 5/18/07  
**Violation:** 2753, 2831, 2831.1, 2831.2, 2834, 10145(a), 10177(d), 10240  
Suspended for 120 days-stayed for 2 years on terms and conditions

**Lares, Gudelina (RES)**  
1915 S. Rosita Ave., Santa Maria  
**Effective:** 3/7/07  
**Violation:** 2831, 2831.1, 2832(d), 2840, 10145, 10177(d)(g), 10177(d)(g)(h), 10240  
Suspended for 90 days-stayed for 2 years on terms and conditions

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

**Lenoir Financial Mtg. Corp. (REC)**  
16802 Aston St., Irvine  
**Effective:** 5/8/07  
**Violation:** 2726, 2831, 2831.2, 2832.1, 2834, 10145(a), 10177(d), 10240  
Suspended for 90 days-stayed for 2 years on terms and conditions

**NFN Group Inc. (REC)**  
22470 Barton Rd., Grand Terrace  
**Effective:** 5/28/07  
**Violation:** 2831.2, 2831.1, 2832.1, 2832, 10177(d)  
Suspended for 90 days-stayed for 2 years on terms and conditions

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

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

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

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

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

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

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

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

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

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

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

Now this little trick worked pretty well for the respondent for about 9 months or so, until the doctor was ready to take another vacation and wanted to lease the property again. Once again, he contacted our respondent to negotiate another lease on the property with the same terms as the previous year. To refresh his memory as to the specifics of the terms he agreed to the year before, he asked our licensee for a copy of the previous lease that he signed. Unfortunately for our licensee, he sent the doctor a copy of the wrong lease, or depending on your point of view, the right lease. When the doctor received the lease, he noticed that his signature was forged on the $8,000 per month rental as well as the $28,000 up front payment. He then put the pieces together. He filed a complaint with the Department, an investigation ensued, and the respondent’s real estate license was revoked for fraud and misrepresentation.

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

Unlicensed – Fines

Continued from page 1

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

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

PUBLIC REPROVAL

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

Additional information:
Storage of real estate records on electronic media?

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

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

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

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

Licensing report

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

Licensing and Examination Activity

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

Population

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

As to the continuing education program, the DRE has been charged with implementing AB 223. Under the provisions of this bill, all licenses which have an expiration date of June 30, 2007, or later, or file a renewal application on a late basis after that date, are required to complete a DRE approved 3-hour course in Risk Management as a part of the mandatory continuing education requirement. The continuing education requirement for salespersons who are completing their first renewal on and after July 1, 2007, increased from 12 to 15 hours with the addition of a Risk Management course.

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

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

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

Through the public report process, DRE oversees the creation of new standard, common interest and timeshare developments. To protect purchasers from fraud and misrepresentation in subdivision sales, DRE maintains uniform minimum statewide standards for site suitability, financing of improvements and facilities, sales agreements, purchase money handling, the release of blanket encumbrances, and vital disclosures concerning the availability of fire protection, water supply and quality, vehicular access, latent natural hazards, reservations of mineral rights and easements, and community association assessments. The DRE’s subdivision program also seeks to ensure that the intricate arrangements required for managing common interest developments, including association budgets and governing instruments, are established in a way which balances the needs of the builder with those of purchasers.

Statistics

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

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

Perils

Continued from page 2

Perils of Dual Agency

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

Even where a dual agent carefully complies with all of the applicable statutory disclosure and consent requirements, pitfalls remain. One major problem is that a dual agent's traditional fiduciary duties to both principals remain in effect throughout the term of the agency, and are not necessarily fulfilled by the agent’s proper use of required written disclosures early in the transaction. Except for price negotiation strategy, all agents must affirmatively notify their principals of potentially material facts they discover during the transaction. But what if a dual agent learns of “confidential” information - unrelated to price negotiation strategy - from “Principal A” (A) which would clearly be material to the interest of “Principal B” (B) in the transaction? Under the rules discussed above, the agent may be violating his duty of disclosure to B if he remains silent, and he may be violating his duty of confidentiality to A if he discloses the information to B. Unless the agent can obtain express written consent from A authorizing disclosure, and subsequently disclose the information to B, the law provides no clear solution to this problem or protection for the agent who violates his or her duties.

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

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

1. Sellers informed Smith that they were working on a compromise settlement of the tax liens with the I.R.S., and that if a settlement could not be reached, the sellers would not be able to transfer title to the buyers at close of escrow.
2. Buyers learned independently of the tax liens, and inquired of Smith about them. Smith said the sellers were “working on compromising” the tax liens, which would not be a problem.
3. Sellers were unable to compromise the liens and could not transfer title at time of escrow.

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

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

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

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ordering information

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**PART A**

**PUBLICATIONS**

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<td>Trust Deed Investments — What You Should Know!!</td>
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<td>35A</td>
<td>Using the Services of a Mortgage Broker</td>
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<td>39</td>
<td>Living in a California Common Interest Development</td>
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<tr>
<td>51</td>
<td>A Consumer Guide to Filing Real Estate Complaints</td>
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<tr>
<td>52</td>
<td>Reverse Mortgages — Is One Right for You?</td>
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**PART B**

**SHIPPING INFORMATION**

<table>
<thead>
<tr>
<th>NAME OF COMPANY</th>
<th>LICENSE OR EXAM ID#</th>
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<tbody>
<tr>
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</table>

<table>
<thead>
<tr>
<th>SHIPPING ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CITY</td>
</tr>
<tr>
<td>STATE</td>
</tr>
<tr>
<td>ZIP CODE</td>
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</table>

<table>
<thead>
<tr>
<th>SUBTOTAL</th>
<th>CA SALES TAX*</th>
</tr>
</thead>
<tbody>
<tr>
<td>$________</td>
<td>$________</td>
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</table>

(Tax rate used* ______ %)

<table>
<thead>
<tr>
<th>TOTAL ENCLOSED</th>
<th>$________</th>
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* See tax information above.

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**PART C**

**CREDIT CARD PURCHASE**

To purchase publication by credit card, complete the following:

**METHOD OF PAYMENT**

- [ ] VISA
- [ ] MASTERCARD
- [ ] AMERICAN EXPRESS

<table>
<thead>
<tr>
<th>ACCOUNT NUMBER</th>
<th>EXPIRATION DATE OF CARD</th>
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<tbody>
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<table>
<thead>
<tr>
<th>AMOUNT AUTHORIZED</th>
<th>SIGNATURE OF CARDHOLDER</th>
<th>DATE</th>
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<table>
<thead>
<tr>
<th>PRINTED NAME OF CARDHOLDER</th>
<th>TELEPHONE NUMBER</th>
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</table>
Perils
Continued from page 10

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

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

Property tax tips

Moved or moving? New address? Use the eLicensing online system at www.dre.ca.gov to make the change or submit the appropriate "change" form: RE214 for salespersons; RE 204 for brokers; RE 204A for corporations.

from Board of Equalization’s Taxpayers’ Rights Advocate Office

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

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

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

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