Message from the Commissioner

I t's hard to believe that it has been almost a year since my appointment as Commissioner. They say time flies when you're having fun. It has been a busy learning period, with a bit of fun thrown into the mix. One of the best parts of this past year has been to meet so many caring, professional people during my travels throughout the state. Maria Contreras-Sweet, Secretary, Business, Transportation, & Housing Agency, her staff and their other Department Directors have been a consistent and innovative leadership team. It has been a rewarding and positive experience to work with them.

Let me tell you about some of the new programs we've instituted at the Department of Real Estate (DRE)."

Part II
Ten Most Common Violations Found In DRE Audits

As the real estate industry moves into the new millennium, new things happen everyday. New terms, such as E-Loans, Internet Marketing, and E-Form have become a part of the trade. Yet, certain things have not changed - the most commonly found violations in DRE Audits. In this regard, the second half of the top ten common violations are listed below. (Part I was printed in the Summer 2000 issue.) The purpose of this article is to call your attention to these common deficiencies and provide you with procedures that you can follow to ensure compliance with these laws and regulations.

Regulation 2832.1 – Trust Fund Handling for Multiple Beneficiaries (Trust Fund Shortage)

Regulation 2832.1 requires the real estate broker to obtain written consent from every owner of the trust funds in the bank account prior to each disbursement. If the disbursement is less than the balance of the funds in the bank account, no amount shall be less than the existing trust fund liability of the broker to all owners of the funds. A trust fund shortage therefore exists when the following conditions are present:

1. The balance of the bank account is less than the total trust fund liability of the broker to all owners of the funds.
2. There is a written authorization from all owners of the trust funds allowing this action.

The most obvious reason for a trust fund shortage is the intentional misuse of trust funds. However, simple record keeping errors that result in an actual loss of funds, failure to record a disbursement, or understating the amount of funds disbursed, or overstating the amount of a deposit, the beneficiary ledger record will cause the beneficiary ledger to show a balance that is less than the true amount owed to the individual beneficiary. This overstated balance on the ledger is more likely to be paid and, consequently, the beneficiary will be paid more than what is due. Then end result is a trust fund shortage.

Performing the proper trust account reconciliation pursuant to Regulation 2831.2 should enable the broker to detect such causes of a trust fund shortage.

Regulation 2832 – Trust Fund Handling

The most common violations in this section found in audits relate to Commission’s Regulation 2832(a), which requires that a broker accept all funds, and hold them in a bank account in the name of the broker.

In this issue:
- 2000 DRE Legislative Summary
- 2001 RE Law Book
- Web site addresses
- Exam Application Processing
- Signed as per telephone
- Real estate educator conferences

Continued on page 4.
REAL ESTATE BULLETIN
Official Publication of the
California Department of Real Estate
Vol. 60, No. 1
Winter 2000
STATE OF CALIFORNIA
GRAY DAVIS, Governor
BUSINESS, TRANSPORTATION AND HUMAN RESOURCES
MARGARET W. BEIGUN, Secretary
DEPARTMENT OF REAL ESTATE
PAULA REDDISH ZINNEMANN, Commissioner

Message from the Commissioner
Continued from page 1.

Our Subdivision Section is doing its part to implement the Governor's housing policies. Staff now evaluates all qualified affordable housing projects. We have begun to review and revise the subdivision application forms to make them more comprehensive and user-friendly. We continue to work closely with the California Building Industry Association (CBIA) to address industry concerns while being mindful of consumer protections.

Seminars targeted to small and new developers took place in Los Angeles and Oakland. These were practical, hands-on, how-to seminars intended to encourage the attendees to incrementally add to the housing stock in California. They were well attended and received favorable comments.

We also offered outreach programs targeted to the inner city and minority communities regarding how to buy a home and what to expect and demand from one's real estate broker and mortgage lender. Re-x sources for financing and counseling were also provided to attendees.

By popular request, we will conduct more of these seminars and outreach programs next year. We plan to have a home-buying program presented in Spanish in the Central Valley, and possibly in Santa Ana and San Diego as well. Please check our new and improved Web site for dates, times and locations of the seminars (www.dre.ca.gov).

Learning how the Department of Real Estate works has been an exciting and enlightening experience for me. I don't expect that excitement to fade. Each day, there is a new issue that must be addressed. Each time I meet with a new group, I leave with new and innovative ideas. Please keep those ideas coming! Let's make the DRE work better for all of you — licensees and consumers alike.

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2000 DRE Legislative Summary

By Dan Garrett, Manager, Legislation & Public InformationS

The brief descriptions below of 2000 Legislation are intended to alert licensees to pertinent changes of the law. We encourage you to consult the complete information. Copies of the bills can be obtained from the authors' offices or on-line at http://www.sen.ca.gov. Note: All statutes are effective January 1, 2000, unless otherwise noted.

Bill/Author | SubjectS | ChapterS
--- | --- | ---
AB 2284 (Dutra)x | Mortgage Loan Brokersx | 636x
AB 2234 (Wiggins)x | Prepaid Rental Listing Servicesx | 473x
AB 860 (Thomson)x | Common Interest Developments—Petsx | 551x
SB #395 (Montieth)x | Subdivision Salesx | 279x
AB 935 (Brewer)x | Time-sharesx | 522x
AB 1823 (Dutra)x | Common Interest Developments—Disciplinx | 257x

**AB 2284 (Dutra) Real Estate-Escrow**

This bill contains Department-sponsored provisions to authorize the Department to deny, suspend, or revoke a real estate license in cases where non-payment of charges for audit and preparation of delinquent reports. Also, the bill amends the required report format for multi-lender transactions to include the broker’s identification number, telephone number, fiscal year, loan servicer, servicing agent’s address, and telephone number. The bill also includes some technical changes and other provisions not sponsored by the Department.

**AB 2234 (Wiggins) Prepaid Rental Listing Service License (PRLS)**

Makes various changes to the PRLS law. It enables e-commerce, increases bonding amounts and doubles the amount which the licensee may retain as a service charge when a refund is demanded.

**AB 860 (Thomson) Common Interest Developments (CIDs) – Pets**

Would allow CID and mobilehome residents to have domestic pets subject to reasonable rules. Although the bill is law January 1, 2001, the bill’s provisions would only be effective for new or existing governing documents entered into or amended after that date.

**SB 1395 (Montieth) Bulk Subdivision Sales**

This bill provides that a developer need not apply to qualify for a subdivision public report if: (a) the units are not being offered to another developer/builder, and (b) the sales contract includes a statement that the purchasing developer/builder will comply with the qualification requirements and obtain a public report when ultimately selling to the consumer/buyer. It also establishes a new service whereby the Department, for a fee, would review and approve common interest development management documents voluntarily submitted by developers without their having to submit them as part of a complete application for a public report.

**AB 935 (Brewer) Time-shares**

This bill: (a) clarifies the law relating to projects with affiliated sites which are controlled through an mandatory reservation system. The affiliated site need not be individually qualified so long as it has a priority window for making reservations and a clear, one page, State disclosure provided which outlines the rights and duties of the purchaser or acquiring, and (b) provides for reasonable procedures byx which homeowners associations would use to terminate a mandatory reservation system.

**AB 1823 Common Interest Developments (CIDs) – Discipline**

This bill requires: (a) homeowners association boards to provide more thorough notice procedures when attempting to impose discipline upon homeowners, and (b) requires sellers to disclose to prospective purchasers the existence of any unpaid fines or assessments or pending rule violations.

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**Reference Book Corrections**

or those who purchased the Reference Book. Since July 1, 2000, there are a few errors in Chapter 5, “Mortgage Loans” as listed below. Owners of the Reference Book are encouraged to make these corrections in their own copies of the book. Bulk purchasers may request copies of an errata sheet by calling the Public Affairs Unit at (916) 227-0938.

- Page 308 x—Under Threshold Criteria, subsection 1, the number of transactions should be exchanged from 20 to 10 or more.
- Page 308 x—Under Tax Credits, section 3, the dollar amount should be $2,000,000 not $2,500,000.

- Page 309 x—Under Retention Fund, Funds, a broker may not retain funds for more than 30 days, not 60 days as shown.

- Page 310 x—Under Trustee, subsection 1, the dollar amount should be $2,000,000 not $250,000.

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Winter 2000S
Ten most common violations found in DRE audits

Continued from page 1.

business days following receipt of the fund' s by the broker or by the broker's salesperson. Two of the most common problems related to this regulation are:

1. A broker's failure to designate the cash count receiving trust funds as Trusts' fund accounts. In the name of the broker or broker's dba as Trustee(s) and

2. Failure to deposit trust funds timely received by a broker or broker's employee into trust fund accounts within three business days of receipt.

Other violations of this section relate to a broker's use of an improper interest-bearing account(s) and failure of a broker to ensure checks received from an offeror into a trust account are cleared on a timely manner following acceptance of the offer. Regulation 2832(c & d) and failure of a broker to ensure that an escrow holder is acting in the best interests of the parties and that the escrow holder is acting in accordance with the specific requirements of the regulation. Regulation 2832(c) states that a broker or broker-officer is responsible for ensuring that the escrow agreement is executed in accordance with the specific requirements of the regulation. Regulation 2834(b) also states that withdrawals may be made from a trust fund account of a corporation broker only upon the written agreement of the corporation broker and

Regulation 2834 - Trust Account Withdrawals

Commissioner's Regulation 2834(a) states that withdrawals may be made from a trust fund account of an individual broker only upon the written agreement of the broker or one of the following persons if specifically authorized in writing by the broker:

1. A salesperson licensed to the broker.

2. A person licensed as a broker who has entered into a written agreement pursuant to Section 3726 with the broker.

3. An unlicensed employee of the broker who has written agreement of the broker or one of the following persons if specifically authorized in writing by the broker:

A common example of this violation is when a broker deposits credits from the sale of a property into a trust account instead of a trust account when the broker has not yet paid the broker. Often, the reason for this violation is that the broker does not maintain a trust account or the broker was not aware of the role of a trust account. Credit report fees and appraisal fees are not trust fund fees.

B & P Code Section 10240 - Written Disclosure Statement

Another often-cited violation is Section 10240 of the code which requires brokers to provide a borrower with a mortgage loan disclosure statement within three business days after receipt of a completed loan application or before the borrower becomes obligated to the lender. The written disclosure statement must include the following information:

1. The name of the broker or the signatory officer who is authorized to provide the disclosure statement.

2. The presence of an unlicensed signatory officer the trust account does not have fidelity bond coverage.

3. Fidelity bond coverage in an inadmissible amount and/or has been deductible.

4. The failure of the broker or designee to provide written authorization permitting a salesperson to sign on the trust account.

B & P Code Section 10145/Regulation 2835 - Commingling

A broker shall not commingle with the broker's own money or property the money or property of others which the broker receives and holds. Common reasons for this violation are the deposit of trust funds received into the broker's general business account or maintaining a trust fund account holding trust funds.

Just a reminder

To keep your license records up to date, please:

- Submit renewal documents at least 30 days before your expiration date.
- Submit address and employment changes in a timely manner.

Renewal forms and change applications are available at each District Office and from our website at www.dre.ca.gov.
Disciplinary Action — June to August 2000

A list of actions is not published in this Bulletin until the 30-day period allowed for 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 after the licensee’s name. [REB – Real estate broker; RREB – Restricted real estate broker; RES – Real estate sales-person; RES – Restricted real estate salesperson; PRLS – Prepaid rental service; RPRLS – Restricted prepaid rental service; REO – Real estate officer; REC – Real estate corporation]

Below are brief summaries of various regulations and code sections. The full text of the actions is found in the Busi-ness and Professionals Code and the Real Estate Com-missioner, 2 both of which are printed in the Real Estate Law book. The Real Estate Law book is available for purchase from the Department of Real Estate.

Disciplinary actions that are “stayed” means “a delay in carrying out” all or part of the recommended discipline.

Commissioner’s Regulations

2715n Licensee’s failure to maintain current business or mailing address with DRE

2725n Failure of broker to exercise reasonable supervision over their activities or his or her salespersons

2726n Failure to have broker-salesperson agreements

2731n Unauthorized use of fictitious business names

2752n Broker’s failure to notify DRE of salesperson employment

2753n Broker’s failure to retain salesperson’s license at main office or return the license at termination of employment

2831n Failure to keep proper trust fund record

2831.1n Inadequate separate trust fund beneficiary records

2831.2n Failure to reconcile trust accounts

2832.2n Failure to comply with trust fund handling provisions

2832.3n Failure of broker to place trust funds into hands of owner, into a neutral escrow depository or trust fund account within three business days of receipt

2832.1n Failure to obtain permission to reduce trust fund balance in a multiple beneficiary account

2834n Trust account withdrawals by unauthorized or unbound person

2835n Retention of broker funds in trust account

2840n Failure to give approved borrower disclosures

2970n Failure to submit advance fee material for review

2972n Advance fee accounting

Business and Professionals Code

490n Denial of license based upon certain grounds

498n Substantially related criminal conviction

10085n License obtained by fraud or misrepresentation

10130n Acting without license

10137n Unlawful employment or payment of compensation

10145n Trust fund handling

10145(a)n Trust fund handling

10145(c)n Failure by salesperson to deliver trust funds to broker

10146n Advance fee handling

10148n Failure to retain records and make available for inspection

10159.2n Failure by designated officer to supervise licensed acts of corporation

10159.5n Failure to obtain license with fictitious business name

10161n Failure of broker to notify Commissioner of salesperson employment/termination

10161.8(a)n Failure of broker to notify Commissioner of salesperson employment/termination

10161.8(b)n Failure of broker to notify Commissioner of salesperson termination

10162n Failure to maintain a place of business

10163n Failure to obtain a branch office license

10176(n) Making any substantial misrepresentation

10176(e)n Conspiring with others to misrepresent

10176(i)n Fraud or dishonest dealing in licensed capacity

10177a(n) Procuring a real estate license by misrepresentation or material false statement

10177b(n) Conviction of crime

10177(d)n Violation of real estate law or regulations

10177f(n) Conduct that would have warranted denial of a license

10177g(n) Negligence or incompetence in performing licensed acts

10177h(n) Failure to supervise salespersons or licensed acts of corporation

10177j(n) Fraud or dishonest dealing as principal

10177k(n) Violation of restricted license condition

10177.4n Acceptance of compensation for referral of customers to certain service providers

10177.5n Civil fraud judgment based on licensed acts

10234n Failure to broker negotiating mortgage loan to record or cause trust deed to be recorded

10236-4n Failure to include license number or DRE license information telephone number in documents

10240n Failure to give mortgage loan disclosure statements

REVERSED LICENSEES

Fresno Region

Burrell, Bette (RREB)J
1665 W. Shaw, #104, Fresno
Effective: 8/10/00
Violation: 10130, #0131(a)(b)n
10177(d)j

Lockhart, Tesa Anne (RES)J
1814 June Ave., Bakersfield
Effective: 7/10/00
Violation: 498, 10177(a)n

Los Angeles Region

Adam, Jessica M. (RES)J
13921 Tustin E. Dr., #62, Tustin
Effective: 8/8/00
Violation: 480, #0198, 10177(a)n

Apo Property Mgmt., Inc. (REC)J
5200 Warner Ave., #105n
Huntington Beach
Effective: 8/19/00
Violation: 10176(c)(i), 10177(d)g

Ayoade, Tubosun Toyose (RES)J
206 Long Beach Blvd., #217, Long Beach
Effective: 7/19/00
Violation: 490, #0177(b)n

Beardens, Clark Smith (REB, REO)J
5200 Warner Ave., #105n
Huntington Beach
Effective: 8/22/00
Violation: 10176(c)(i), 10177(d)g

Berduo, Henry Lisandro (RES)J
2168 S. Atlantic Blvd., PMB #485, Monterey Park
Effective: 6/14/00
Violation: 10177(a)(b)n

Berumen, Alonso Rivera (RES)J
2515 Mathews, Apt. Cn
Redondo Beach
Effective: 7/11/00
Violation: 10177(j)n

Brumbaugh, Tremora Lorraine (RES)J
632 C El Camino Real, Tustin
Effective: 8/3/00
Violation: 490, #0177(b)n

Brunette, Daniel Marc (RES)J
1273 Sheffield, Thousand Oaks
Effective: 6/22/00
Violation: 498, 10177(a)n

Bugna, Randolph Charles (REB)J
P.O. Box 17718, Irvine
Effective: 7/5/00
Violation: 2715, 10162, 10165, 10177(d)n

Coastline Mortgage Corporation (REC)J
One Civic Plaza, Ste. #75, Carson
Effective: 8/2/00
Violation: 10137g

Corrella, Juan Alberto (RES)J
8124 San Carlos Ave., South Gate
Effective: 7/18/00
Violation: 10177(g)n

Debose, Carmen (RES)J
14431 Ventura Blvd., #359, Sherman Oaks
Effective: 7/19/00
Violation: 10177(f)j

Missioner, 2 both of which are printed in the Real Estate Law book. The Real Estate Law book is available for purchase from the Department of Real Estate.

Disciplinary actions that are “stayed” means “a delay in carrying out” all or part of the recommended discipline.
Shim, Jong M. [REBJ]
3700 Wilshire Blvd., #282, n
Los Angeles
Effective: 8/22/00
Violation: 2726, 2831, 2831.1, n
10137, 10177(d), 10240n
Suspended for 90 days-stayed form
2 years on terms and conditions

Soni, Vijay [REBJ, REO]J
4662 Barranca Pkwy, Irvine
Effective: 7/5/00
Violation: 2831, 10130, 10163, n
10177(d), d10240n
Suspended for 60 days-stayed form
1 year on terms and conditions

Wilson, Gerald Anthony [REBJ, REO]J
27785 Santa Margarita Pkwy., n
Mission Viejo
Effective: 8/29/00n
Violation: All Homes &
Investments, Inc. n
Effective: 8/1/00n
Suspended for 90 days-stayed form
1 year on conditions

Moyihman, Bryant R. [REBJ, REO]J
1241 N. McDowell Blvd., n
Parma, Utah
Effective: 8/4/00n
Violation: 10176(f)n
Suspended for 60 days-stayed form
1 year on terms and conditions

Nexus Realty Group, Inc. [REO]J
1241 N. McDowell Blvd., n
Parma, Utah
Effective: 8/4/00n
Violation: 10176(f)n
Suspended for 60 days-stayed form
1 year on terms and conditions

Wood, Barry James [RES]J
P.O. Box 1194, San Ramon
Effective: 8/24/00n
Violation: 10130, d10176(f), d10177(d)n
Suspended for 60 days-stayed form
1 year on terms and conditions

San Diego Region

Flaherty, Gregory Shawn [REBJ, REO]J
4444 Mission Blvd., San Diegan
Effective: 7/1/00
Violation: 2752, 2826, 2831, n
2831.1, 2832.1, 2834, 2835, n
10145, 10176(e)(a)(i), 10177(d)n
Suspended for 60 days-stayed form
1 year on terms and conditions

Penny Realty, Inc. [REC]J
4444 Mission Blvd., San Diegan
Effective: 7/11/00
Violation: 2752, 2826, 2831, n
2831.1, 2832.1, 2834, 10145, n
10176(a)(i), d10177(d)n
Suspended for 60 days-stayed form
1 year on terms and conditions

Schlofield, Joseph Ray [REBJ, REO]J
1507 Gold Rush Way, Oceansiden
Effective: 8/4/00
Violation: 10148, d10161.8(b), n
Violated: 10177(d)n
Suspended for 20 days-stayed form
1 year on terms and conditions

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

Los Angeles Region

Caley, Shawn [REBJ]J
901 S. Lone Pine Ln., n
Anahiem Hills
Effective: 8/1/00n
Jansen, Diana Lynn [REBJ, REO]J
11 Vista Del Ponto, San Clementen
Effective: 6/7/00n
Rubow, Terre Lynne [RES]J
1455 Via Vallarta, Riverside-
Sider
Effective: 7/25/00n
Secured Investment Capital [REC]J
7343 Vantage Ave., n
San Diego
Effective: 8/10/00n

Oakland Region

Magiano, Randall James [RES]J
1600 S. Main St., Ste. 115, n
Walnut Creek
Effective: 8/24/00n
Violation: 10130, d10176(f), d10177(d)n
Suspended for 60 days-stayed form
1 year on conditions

Nexus Realty Group, Inc. [REC]J
1241 N. McDowell Blvd., n
Parma, Utah
Effective: 8/4/00n
Violation: 10176(f)n
Suspended for 60 days-stayed form
1 year on terms and conditions

Whittle, Jennifer [RES]J
P.O. Box 422, Woodland
Effective: 7/19/00n

San Diego Region

Combs, Joe [REBJ]J
10789 Carrizo Ct., San Diegan
Effective: 6/12/00n
Home Buyers Financial, Inc. [REC]J
1507 Gold Rush Way, Oceansiden
Effective: 8/4/00n

INDEFINITE SUSPENSIONS
(under Recovery Acct. provisions)

Los Angeles Region

Ahm, John [REBJ]J
1136 Flanders Rd., La Canada-n
Flintridge
Effective: 7/17/00n
Diaz, Arthur [RES]J
908 Calle Primavera, San Dimas
Effective: 8/22/00n
Greenly, Jack R. [REBJ]J
121 W. Coast Hwy., #402, n
Newport Beach
Effective: 8/22/00n
Johnson, George Albert [REBJ]J
816 North O St., #55, Lompoc
Effective: 8/1/00n
Kaneshiro, Russ Alan [REBJ]J
20311 Valley Blvd., Ste. A,n
Hacienda Heights
Effective: 8/8/20n
Lopez, Alexander Portillo [REBJ]J
5315 E. Beverly Blvd., Ste. n,n
Los Angeles
Effective: 8/31/00n
Miller, Stephen Cotter [REBJ]J
Bansa Corporation [REC]J
11150 W. Olympic Blvd., #860,n
Los Angeles
Effective: 7/17/00n
Riedy, Gerald Allen [REBJ]J
1411 W. 1908 St., Ste. 200, n
Gardenan
Effective: 6/27/00n
Rocco, Gian (RES)J
9831 Cabanas Ave., Tujungan
Effective: 6/27/00n
Watson, Wayne Hayes Jr. [REBJ]J
10245-B La Hacienda,n
Fontain Valleyen
Effective: 8/2/00n

Oakland Region

Baseline Capital, Inc. [REC]J
15951 Los Gatos Blvd., #11A
Los Gatos
Effective: 8/1/00n
Parkinson, Michael William [REBJ]J
2939 Old Almaden Rd., #14,n
San Jose
Effective: 8/1/00n
Redwood Empire Mortgage [REC]J
Company, Inc. [REC]J
725 Farmers Ln., Ste. 9,n
Santa Rosan
Effective: 6/27/00n
Santiago, Rudolph [REBJ]J
19195 Bellizwon AVE., n
Salinas
Effective: 5/27/00n

SUSPENDED

Los Angeles Region

Glendora Mortgage, Inc. [REC]J
1920 E. Alosta Ave., Glendoran
Effective: 8/23/00
Violation: 2715, 10162, 10165,n
10177(d)n

Image Mortgage, Inc. [REC]J
28751 Rancho California Rd., n
Ste. 201, Temeculan
Effective: 8/23/00
Violation: 2715, 10162, 10165,n
10177(d)n

Mortgage Lenders Acceptance Corporation [REC]J
211 E. Imperial Hwy, Ste. 211,n
Fullerton
Effective: 8/29/00
Violation: 2715, 10162, 10165,n
10177(d)n

Available in January
2001 Real Estate Law Book

The Department anticipates availability of the 2001 Real Estate Law Book in January of 2001. The Law Book contains the Real Estate Law (from the Business and Professions Code), the Regulations of the Real Estate Commission (from the California Code of Regulations), portions of the Administrative Procedures Act, and pertinent excerpts from various California Codes.

Electronic version

The electronic version of the 2001 Law Book will be available on CD (Windows and Macintosh) and diskette (Windows only) in a Rolio VIEWS information processing program providing users with powerful search, bookmarking and annotation features.

Ordering

Purchasers should delay sending orders for the Law Book until early January of 2001. This applies to both the paper and electronic versions of the book.

Cost

The price of the book will remain $20, plus sales tax. We will also continue the discounted price of $35 (plus tax) for the purchase of a paper book and an electronic version (CD or diskette).
Web Site Addresses
When are they fictitious business names?

T he use of an Internet Web site by a real estate broker in connection with marketing efforts and customer support is becoming a standard practice in the real estate industry. This article will present general guidelines as to when the use of a Web site would simply be considered an address by the Department, and when it will be considered a fictitious business name.

The determination as to whether or not a Web site address filed by a real estate broker is to be filed with the Department as a fictitious business name depends primarily on how the address appears when it is displayed on the Web address. A Web site address will not be considered to be a fictitious business name by the Department if it is clear when it is displayed that it is only a Web site address, and not the name of the business that will be reached when the site is accessed. In order to comply with this requirement, the following criteria should be met:

- The Web site address should be set forth in full wherever it is displayed. An example of this would be www.daytimerealty.com. Any abridged version of the address, such as daytimerealty.com for some other variation, may be considered fictitious and therefore would require the broker to obtain a license to use the name.
- Any advertisement that displays the Web site address should include the licensee’s actual name, and/or a fictitious business name if applicable, so that the public will know the name of the business that is being contacted when the site is accessed.
- There should be information for use of the Web site address on the Web site itself that will not mislead the public as to the name of the business that they have contacted.

Although the licensing of a Web site address as a fictitious business name will not be required by the Department in cases where the above-referenced criteria is met, there is nothing in the Real Estate Law that would prevent a licensed real estate broker from doing so. A good practice for a broker would be to file a fictitious business name with the Department if there is any question with respect to compliance in this area. In order to accomplish this, a Broker Change Application (RE 204) will need to be filed with the Department, along with a copy of the fictitious business name statement that was filed with the county clerk in the county where the broker’s main office is located.

Examination Application Processing

T he Examination Unit in the Licensing Section receives a high volume of examination applications. Over the past four years, there has been an increase in the number of salesperson examination applications filed. Processing times are increased when examination applications are not properly completed. The remainder of this article will cover some of the common problems that are found in documents submitted to the Examination Unit for processing.

Incomplete Applications

One common problem that causes delays in processing is the submission of incomplete or unsigned applications forms. To avoid delays, examinees should carefully read the instructions that accompany the examination forms, and ensure that the form is completed in full, including a signature. Exam applicants should ensure that all qualifying documentation is submitted with the application. The best way to cut processing time is by carefully including all of the required information, the first time that the application is submitted. When it becomes necessary to submit additional qualifying information at the request of the Department, applicants should include a copy of DRE’s correspondence with their reply. This will assist the Department in matching the information with the previously submitted application.

Duplicate Paperwork

Examinees should avoid submitting the same examination application twice. In many cases, examinees submit an application by fax, and then mail the original application to the Department. In other cases, examinees fax the application twice, some time apart. When this happens, it can result in duplicate charges to the examinee’s credit card and unwanted changes to the scheduled examination date. If it does become necessary to resubmit an application, the applicant should make a note of the application number that is printed on the examination.

Processing Time

The processing time for examination applications can range from two to four weeks, depending on the workload in the Examination Section. Exam applicants should allow sufficient processing time before contacting the Department or submitting duplicate applications and fees.

Continued on page 10.
Signed …
“As per telephone conversation”
by Larry Alamao, Assistant Chief Counsel

In a fast paced market where mul-
tiple offers and counter offers ap-
ppear to be flying past, there is often a temptation to cut corners or take short-cuts in order to keep up with the flow off business. Some shortcuts, however, should not be taken. A Southern Cali-
fornia Real Estate Attorney Advises his clients that he is seeing an increasing number of offers, counter offers, requests for repairs, Responses to Requests for Fe-
F pairs, and other documents signed by F real estate agents for their clients “asF per telephone conversation.” The attor-
ney expressed some concern about this practice and we share his concern.

CaliforniawillhavehissubjectbeF very basic and very clear: No contractF for the sale of real property is enforce-
fundless it is signed by the per-
son against whom enforcement is sought (Civil Code Section 1624). Under the legal doctrine known as the “equal fig-
ities rule,” whenever a statute requires a contract to be in writing, the authority of an agent to sign that contract for the principal must be in writing also. TheF written authority is in the form of a power of attorney. Absent a writtenF power of attorney or ratification by theF client, a contract signed “as per tele-
phone conversation” is not enforceable. The consequences to the parties off not having an enforceable contract are obvious. If one party decides not to proceed with the transaction, the other party is left with prac-
Xically X remedy.

The only remedy x the injured party is x possible civil action for negligence or misrep-
X X xent x agent based upon negligence or misrep-
X xent.

An agent who receives a document from another agent “signed x behalf of the client” should ask the signing agent if that agent has written authority for the client. If there is x written authority, the receiving agent should advise his or her client that the docu-
X ment is probably not enforceable. X x x x x

Fax machines, email and courier services have made delivery of docu-
X X x documents to clients even in remote loca-
X X X X tions relatively easy. Even if the client x

X X X X X has a home fax machine that provides those services. Remember, a real estate agent should never sign contracts “on behalf of the client” without written authorization to do so from the client. The best advice we can give is to X X x x

X X X X x a real estate agent tempted to sign documents x behalf of the client without written authority is don’t do it.

Seasons Greetings

Om he staff at DRE

Transitions

Bob Baker

Bob Baker, Assistant Chief Counsel, retired in November. Bob started with DRE in 1984 and has spent his entire career in the Los Angeles Legal Section. Replacing Bob will be Darlenexx Averetta. Darlene has been with the Legal Section for over eight years and has a wide variety of experience handling Department related legal matters. She has also had experience as a Deputy Commissioner assigned to the Enforcement Section.

Dan Garrett

Dan Garrett, Assistant Commissioner for legislation and Public Information, will be retiring in January. Dan has 26 years of State service, 20 of it with DRE. As of press time, no successor has been named.

Exam Applications

Continued from page 9.

Mailing Address

The Department recommends that examinees use a personal mailing address when corresponding with the Department. The use of a real estate school or business mailing address can cause a delay in mail delivery. It should be noted that examinees are able to determine their scheduled examination date, as well as their examination results, from the convenience of their home computer by accessing the Department’s Web site via the Department’s Web site at www.dre.ca.gov. By regularly checking this site, examinees will be able to determine their scheduled examination date or results without waiting for mail delivery.

The Department’s staff makes every effort to ensure that the examination and licensing process run smoothly so that individuals entering the field of real estate do not incur unnecessary delays. Please help us by taking care with the application forms that are submitted.
Real Estate Publications

Ordering Information

• To order one or more of DRE’s publications, photocopy and remove this page from your Bulletin. Complete and submit all information requested.

• Prices are subject to change.

• Orders originating in California and over-the-counter sales must include the state sales tax (7.75% for mail orders). Re-2 requests and res will be returned if the appropriate sales tax is not included.

• Orders received with incorrect amounts will be returned.

• Volume discounts are available. Contact DRE prior to ordering.

• Please do not send cash. Make check or money order payable to: Department of Real Estate or complete credit card information below.

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2 Minimum requirements for Windows —
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2 Minimum requirements for Macintosh — 8MB physical RAM; Macintosh System 7; 8MB2 available hard disk space; CD drive.

Miscellaneous

2 Refer to DRE’s Web site for downloadable forms and brochures.

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

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February and April conferences scheduled
Real estate educators

The California Community Colleges Real Estate Education Center will sponsor a mid-winter Real Estate Educators’ Conference on Friday, February 23, at the University of San Diego. Please contact the Center for the location of the conference.

The conference is open to public and private school educators and others interested in real estate education. Advance registration is $25 for educators affiliated with a Community College and $30 for noncommunity college persons. After February 14, regular registration is $35 for educators affiliated with a Community College and $40 for noncommunity college persons. Participants may also register at the door. The conference will begin at 9 a.m.

Speakers include:
- Leslie Appleton-Young, Chief Economist and Vice President, California Real Estate Education Center
- Robert Bruss, The Bruss Report
- Janice Waddell, California Department of Real Estate Deputy Commissioner
- John Brennan, California Office of Real Estate Appraisers Licensing and Enforcement Division
- Chancellor’s Office and the Real Estate Education Center
- California Community Colleges Real Estate Education Center, Yosemite Community College District, PO Box 1065, Modesto CA 95352, phone (209) 575-6965, fax (209) 575-6306.