



# MORTGAGE LOAN BULLETIN

Serving Californians Since 1917

Arnold Schwarzenegger, Governor  
Dale Bonner, Secretary, Business, Transportation and Housing Agency  
Jeff Davi, Real Estate Commissioner

Spring/Summer 2008



## Commissioner's Message **Advance warning about advance fees**

**T**here were over 84,000 foreclosures in California in 2007.

That number is likely to double in 2008. The vast number of foreclosures has created new opportunities; Many are legitimate, while others are illegal. It is unfortunate, but some have seized the opportunity to take advantage of vulnerable homeowners facing foreclosure. At risk are homeowners who either want to stay in their home, or who are desperate for an exit strategy that will leave their credit intact, and at the same time relieve them of their home and loan. Foreclosure rescue scams are on the rise and at the heart of these schemes are the collection of advance fees.

Unscrupulous operators comb the public records to obtain information on the properties against which a notice of default has been filed. These operators then contact the borrowers with promises of rescue, the only catch being is the payment of an advance fee. Often, the advance fee is collected by credit card and range from several hundred dollars to several thousands. To induce the borrower to pay the fee, scammers tell the borrower they have the expertise and connections to ensure a loan modification can be negotiated with the borrower's lender to permanently reduce payments to sustainable levels. Or, the borrowers are told that by deeding the properties

*Continued on page 10*

## Covered loans and new government sponsored enterprises loan limits

**F**inancial Code Section 4970 et seq. regulates certain high cost, high fee loans known as "covered loans" and imposes certain requirements, prohibitions and limitations on these loan transactions. Financial Code Section 4970(b) states that a "covered loan" means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust, and where one of the following conditions are met:

- (1) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.
- (2) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

See Financial Code Section 4970 for a complete definition of a "covered loan". The previous Fannie Mae single-family first mortgage conforming loan limit was \$417,000, however Fannie Mae has increased its loan limits temporarily to 125%

*Continued on page 5*

## New regulations expected to become final

**O**n January 14, 2008, the Department of Real Estate (DRE) issued emergency regulations 2840, 2842 and 2844 to:

- ❖ Amend the three versions of the Mortgage Loan Disclosure Statement
- ❖ Create rules for DRE licensees who make loans

The emergency regulations were placed into effect in order to comply with the provisions of Senate Bill 385 (Machado) which became operative on January 1, 2008. The legislation, among other things, requires real estate brokers to adopt and adhere to the objectives set forth in the "Guidance on Nontraditional Mortgage Product Risks" (the Guidance) and the "Statement on Subprime Lending" (the Statement) issued by the Conference of State Bank Supervisors and the Association of Residential Mortgage Regulators.

On March 11, 2008, the DRE held a hearing on the emergency regulations and received comments from industry and other interested persons. After reviewing and considering those comments, the DRE made appropriate amendments to the regulations and the forms and has submitted them to the Office of Administrative Law for approval. Real Estate licensees should review the current emergency regulations which are available on the DRE Web site at [www.dre.ca.gov/gen\\_regs.html](http://www.dre.ca.gov/gen_regs.html). The final revised regulations and forms are expected to be available within

*Continued on page 9*

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STATE OF CALIFORNIA  
ARNOLD SCHWARZENEGGER  
Governor

BUSINESS, TRANSPORTATION AND  
HOUSING AGENCY  
DALE BONNER  
Secretary

DEPARTMENT OF REAL ESTATE  
JEFF DAVI  
Real Estate Commissioner

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Mortgage Lending Advertising

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DRE's Internet address is:  
<http://www.dre.ca.gov>



## The fiduciary duties of California real estate licensees engaged in mortgage loan brokering

by Wayne Bell, Chief Counsel

In California, Department of Real Estate licensees who broker mortgage loan transactions act in an agency capacity and have fiduciary duties to their client borrowers.<sup>1</sup>

That was the holding of the California Supreme Court in a case known as *Wyatt v. Union Mortgage Company*, 24 Cal. 3d 773 (1979). In that case, the plaintiffs brought an action against a mortgage loan broker and certain of its affiliates for breach of duties owed to the plaintiffs in connection with the negotiation of a mortgage loan.

The plaintiffs alleged that the broker used misleading advertising claims by misrepresenting the terms of the loan; including the interest rate, the policy on late charges, and a “swollen” balloon payment, which added unconscionable late charges, despite the timely payment of all installments.

In this context, the California Supreme Court stated that a loan broker acts as the borrowers’ agent and has fiduciary duties toward borrowers, including a duty to disclose fully the loan terms and conditions. The Court was clear in applying the fiduciary duties to the Department’s licensees operating as mortgage brokers because of the long line of cases applying fiduciary duties to real estate licensees.

In discussing the applicability of fiduciary obligations to real estate licensees, the California court cases specifically note that the general principles of agency combine with the statutory duties of the Real Estate Law to impose on a real estate agent the same obligation of undivided service and loyalty that the law imposes on a trustee in favor of his or her beneficiary.

Implicit in the court cases applying fiduciary duties is the notion that the parties to a real estate transaction (whether it is a straight real estate sale, or a loan in connection with the real estate) do not deal on equal terms. On the one side is the licensee with specialized knowledge and skills. On the other is the client who has a disadvantage going into the marketplace and who must trust, and is justifiably dependent on, the licensee.

### ***Fiduciaries – A Historical Overview***

The word “fiduciary” is derived from the Latin words *fiduciarus* and *fiducia*, relating to confidence and trust. Interestingly, both of those terms were used in Roman law. It also appears to stem from the Latin words *fides*, meaning faith, and *fidelitas*, the equivalent of loyal.

While the term fiduciary is somewhat vague and difficult to precisely define, it is commonly applied to a person who holds a special position of confidence, trust, and responsibility towards another.

It was in the area of “trusts” that the modern legal concept of fiduciary relationships and obligations arose 80 years ago.

While he was the Chief Judge of New York’s highest State court, Justice Benjamin Cardozo<sup>2</sup> wrote that “[a] trustee is held to something stricter than the morals of the market place. Not honesty alone, but the “*punctilio of honor*” the most sensitive, is the standard of behavior”. *Meinhard v. Salmon*, 164 N.E. 545 (N.Y. 1928). In distinguishing “trusted persons” (fiduciaries) from the general public and the market place, Justice Cardozo determined

*Continued on page 7*

# Disciplinary Action: October 07 - April 08

- The following individuals and real estate corporations engaging in mortgage loan activities were the subject of license disciplinary actions or the issuance of a Desist and Refrain Order for one or more violations of the Real Estate Law, the Regulations of the Real Estate Commissioner or the conviction of a crime.
- 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 District Office region of responsibility.
- Where the type of discipline indicates “*Suspended*” the license may be indefinitely suspended, suspended with a stay, or the suspension released upon payment of a monetary fine. Details of the suspension of a real estate license may be found on the Department’s Web site at [www.dre.ca.gov](http://www.dre.ca.gov) and using the “Check License Status” function to look up the license of an individual corporation, broker or salesperson.

<i>License Type:</i>	Corporation
<i>Effective Date:</i>	10/01/07
<b>Pena, Andy Alexander</b>	
<i>License ID:</i>	956706
<i>License Type:</i>	Broker
<i>Effective Date:</i>	10/30/07
<b>Sea Shore Enterprises, Inc.</b>	
<i>License ID:</i>	1294435
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	01/31/08
<b>Valenzuela, Guillermo</b>	
<i>License ID:</i>	1239843
<i>License Type:</i>	Sales
<i>Effective Date:</i>	10/30/07
<b>Wings Realty, Inc.</b>	
<i>License ID:</i>	1398964
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	01/02/08

<b>Morgan, Michael</b>	
<i>License ID:</i>	1416655
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	01/03/08
<b>Mortenson, Eric Robert</b>	
<i>License ID:</i>	1450897
<i>License Type:</i>	Sales
<i>Effective Date:</i>	10/23/07
<b>Wikoff, Shawn</b>	
<i>License ID:</i>	1365744
<i>License Type:</i>	Sales
<i>Effective Date:</i>	11/06/07

## OAKLAND REGION

<b>Barrionuevo, Jose</b>	
<i>License ID:</i>	1372238
<i>License Type:</i>	Sales
<i>Effective Date:</i>	12/06/07
<b>Blardony, Bruce</b>	
<i>License ID:</i>	1216572
<i>License Type:</i>	Broker
<i>Effective Date:</i>	10/24/07

<b>Butler, Helen Rosalind</b>	
<i>License ID:</i>	975292
<i>License Type:</i>	Broker
<i>Effective Date:</i>	12/10/07

<b>Candila, Lydia</b>	
<i>License ID:</i>	1172984
<i>License Type:</i>	Sales
<i>Effective Date:</i>	11/08/07

<b>Contreras, Jesus</b>	
<i>License ID:</i>	1237731
<i>License Type:</i>	Sales
<i>Effective Date:</i>	12/10/07

<b>Fobbs, Trina Arnette</b>	
<i>License ID:</i>	1428441
<i>License Type:</i>	Sales
<i>Effective Date:</i>	12/10/07

<b>Gao, Yu</b>	
<i>License ID:</i>	1349768
<i>License Type:</i>	Sales
<i>Effective Date:</i>	11/06/07

<b>Peavey, William</b>	
<i>License ID:</i>	1340810
<i>License Type:</i>	Broker
<i>Effective Date:</i>	01/24/08

<b>Qi, Weiguo</b>	
<i>License ID:</i>	1401171
<i>License Type:</i>	Broker
<i>Effective Date:</i>	11/06/07

<b>Strategic Lending Corp.</b>	
<i>License ID:</i>	1253944
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	10/24/07

<b>Union City Mortgage Co. Inc.</b>	
<i>License ID:</i>	1172895
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	12/06/07

## SACRAMENTO REGION

<b>Davis, Lawrence S.</b>	
<i>License ID:</i>	1441471
<i>License Type:</i>	Sales
<i>Effective Date:</i>	10/23/07

## SAN DIEGO REGION

<b>Rice, Justine</b>	
<i>License ID:</i>	1307389
<i>License Type:</i>	Sales
<i>Effective Date:</i>	10/29/07

<b>Welcome Home Realty</b>	
<i>License ID:</i>	1109668
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	04/21/08

<b>Wurth, William Edward</b>	
<i>License ID:</i>	1370827
<i>License Type:</i>	Sales
<i>Effective Date:</i>	04/21/08

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RESTRICTED LICENSE**

## FRESNO REGION

<b>Sill, Andra</b>	
<i>License ID:</i>	1215352
<i>License Type:</i>	Sales
<i>Effective Date:</i>	10/17/07

## LOS ANGELES REGION

<b>Franco, Coby</b>	
<i>License ID:</i>	1328124
<i>License Type:</i>	Sales
<i>Effective Date:</i>	04/28/08

<b>Hsu, Jacob</b>	
<i>License ID:</i>	908426
<i>License Type:</i>	Broker
<i>Effective Date:</i>	12/04/07

## OAKLAND REGION

<b>De la Merced, Ochie R.</b>	
<i>License ID:</i>	994458
<i>License Type:</i>	Broker
<i>Effective Date:</i>	10/01/07

<b>Diaz, Molly</b>	
<i>License ID:</i>	609348
<i>License Type:</i>	Broker
<i>Effective Date:</i>	12/06/07

<b>Duncan, Clay</b>	
<i>License ID:</i>	233461
<i>License Type:</i>	Broker
<i>Effective Date:</i>	04/22/08

<b>Hall, Juan Mario</b>	
<i>License ID:</i>	888453
<i>License Type:</i>	Broker
<i>Effective Date:</i>	04/21/08

<b>Lafayette Capital Group, Inc.</b>	
<i>License ID:</i>	1391225
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	12/31/07

<b>Ruegg, Steven</b>	
<i>License ID:</i>	988991

## REVOKED LICENSES

### FRESNO REGION

<b>Arfa, Mehdi</b>	
<i>License ID:</i>	1439045
<i>License Type:</i>	Sales
<i>Effective Date:</i>	12/31/07

<b>Dubinsky, Louisa Katrina</b>	
<i>License ID:</i>	933555
<i>License Type:</i>	Broker
<i>Effective Date:</i>	02/08/08

<b>Thomsen, Steven Lee</b>	
<i>License ID:</i>	800303
<i>License Type:</i>	Broker
<i>Effective Date:</i>	02/14/08

<b>Vision Lending &amp; Investment, Inc.</b>	
<i>License ID:</i>	1301398
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	02/08/08

### LOS ANGELES REGION

<b>4 Percent Broker Inc.</b>	
<i>License ID:</i>	1271075
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	01/28/08

<b>Anderson, George D.O.</b>	
<i>License ID:</i>	631925
<i>License Type:</i>	Broker
<i>Effective Date:</i>	01/31/08

<b>Bankers Capital, Inc.</b>	
<i>License ID:</i>	1254839
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	01/28/08

<b>Brown, Fred</b>	
<i>License ID:</i>	353435
<i>License Type:</i>	Broker
<i>Effective Date:</i>	10/01/07

<b>Chavez, Christopher David</b>	
<i>License ID:</i>	1239387
<i>License Type:</i>	Sales
<i>Effective Date:</i>	01/30/08

<b>Coto, Walter G.</b>	
<i>License ID:</i>	1236326
<i>License Type:</i>	Sales
<i>Effective Date:</i>	03/18/08

<b>Eagle Uno Mortgage</b>	
<i>License ID:</i>	1378106
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	10/01/07

<b>E-Mortgage Loans.com</b>	
<i>License ID:</i>	1307810
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	10/30/07

<b>Frias, Manuel Adrian</b>	
<i>License ID:</i>	924617
<i>License Type:</i>	Broker
<i>Effective Date:</i>	03/05/08

<b>Hearthside Lending Corp..</b>	
<i>License ID:</i>	1460687
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	01/28/08

<b>Home Settlers Real Estate Corp.</b>	
<i>License ID:</i>	1345645
<i>License Type:</i>	Corporation
<i>Effective Date:</i>	01/28/08

<b>Jordan, Joseph</b>	
<i>License ID:</i>	1294360
<i>License Type:</i>	Sales
<i>Effective Date:</i>	11/21/07

<b>Liu, Jeffrey Yu-Chi</b>	
<i>License ID:</i>	975175
<i>License Type:</i>	Broker
<i>Effective Date:</i>	01/28/08

<b>Masri, John J.</b>	
<i>License ID:</i>	1063505
<i>License Type:</i>	Broker
<i>Effective Date:</i>	01/28/08

<b>Merrill, Hildegard</b>	
<i>License ID:</i>	378794
<i>License Type:</i>	Broker
<i>Effective Date:</i>	10/15/07

<b>Niblick Investments</b>	
<i>License ID:</i>	1250969

License Type: Broker  
Effective Date: 12/31/07

**Saxe Mortgage & Financial Services**

License ID: 1390467  
License Type: Corporation  
Effective Date: 04/22/08

**Supp, Janette Marie**

License ID: 839277  
License Type: Sales  
Effective Date: 10/03/07

**SACRAMENTO REGION**

**Huang, Yajen**

License ID: 1402269  
License Type: Sales  
Effective Date: 04/21/08

**Roberts, Melissa Rae**

License ID: 1727247  
License Type: Sales  
Effective Date: 10/18/07

**SAN DIEGO REION**

**Kruse, Patrick Eugene**

License ID: 1113554  
License Type: Broker  
Effective Date: 04/21/08

**Rusin, Craig William**

License ID: 1255716  
License Type: Broker  
Effective Date: 02/12/08

**SUSPENDED**

**FRESNO REGION**

**Hanson, Wade**

License ID: 1052469  
License Type: Broker  
Effective Date: 10/22/07

**Lewis, Craig**

License ID: 702172  
License Type: Broker  
Effective Date: 10/17/07

**Lifestyle Mortgage Inc.**

License ID: 1176603  
License Type: Corporation  
Effective Date: 10/22/07

**Stone Real Estate Inc.**

License ID: 1036733  
License Type: Broker  
Effective Date: 10/17/07

**LOS ANGELES REGION**

**Adhami, Alex**

License ID: 1272643  
License Type: Broker  
Effective Date: 10/09/07

**Alaniz, Cesar**

License ID: 1315756  
License Type: Sales  
Effective Date: 10/01/07

**Beans, Daryl Scott**

License ID: 1191409  
License Type: Broker  
Effective Date: 01/02/08

**Bringham, Jayson Grose**

License ID: 704114  
License Type: Broker  
Effective Date: 10/29/07

**Canyon Crest Mortgage**

License ID: 1431102  
License Type: Corporation  
Effective Date: 10/09/07

**Cisneros, Laura P.**

License ID: 1163886  
License Type: Broker  
Effective Date: 01/02/08

**Downing, Peter Michael**

License ID: 337370  
License Type: Broker  
Effective Date: 11/13/07

**Emerald Home Loans, Inc.**

License ID: 1310830  
License Type: Corporation  
Effective Date: 10/29/07

**Esna, Ali**

License ID: 1320694  
License Type: Broker  
Effective Date: 10/09/07

**Fierro, Enrique**

License ID: 1165580  
License Type: Broker  
Effective Date: 10/15/07

**Home Loan Lending Inc.**

License ID: 1326004  
License Type: Corporation  
Effective Date: 11/13/07

**Jimenez, Jose Reynoso**

License ID: 544355  
License Type: Broker  
Effective Date: 12/28/07

**Milligan, Robert**

License ID: 1320443  
License Type: Broker  
Effective Date: 10/09/07

**Money Plus Financial, Inc.**

License ID: 1261078  
License Type: Corporation  
Effective Date: 01/02/08

**Nuestra Casa Mortgage**

License ID: 1222958  
License Type: Corporation  
Effective Date: 10/15/07

**Ochoa, Jorge**

License ID: 1163080  
License Type: Broker  
Effective Date: 01/02/08

**Platinum Equity Corp.**

License ID: 1391102  
License Type: Corporation  
Effective Date: 03/05/08

**Pridemark Mortgage & Investment Inc.**

License ID: 1398032  
License Type: Corporation  
Effective Date: 10/18/07

**Prime Choice Escrow**

License ID: 1357149  
License Type: Corporation  
Effective Date: 01/02/08

**Trinh, Son Khanh**

License ID: 1326924  
License Type: Broker  
Effective Date: 10/18/07

**Williams, Steven T.**

License ID: 1217088  
License Type: Broker  
Effective Date: 03/05/08

**OAKLAND REGION**

**Baycal Financial Corp.**

License ID: 1116696  
License Type: Corporation  
Effective Date: 10/12/07

**Filippa, John**

License ID: 1012448

License Type: Broker  
Effective Date: 11/05/07

**Kenney, Michael**

License ID: 418730  
License Type: Broker  
Effective Date: 10/24/07

**Liu, Sun Yuen**

License ID: 860600  
License Type: Broker  
Effective Date: 04/25/08

**Ravella, Bruce**

License ID: 1049030  
License Type: Broker  
Effective Date: 12/31/07

**Santa Rosa Investment Group**

License ID: 1176690  
License Type: Corporation  
Effective Date: 12/31/07

**Tsia, Anthony**

License ID: 1004670  
License Type: Broker  
Effective Date: 10/12/07

**United American Investment**

License ID: 1066884  
License Type: Corporation  
Effective Date: 04/25/08

**United Home Loan**

License ID: 490361  
License Type: Corporation  
Effective Date: 10/24/07

**Yuan, Gloria**

License ID: 992867  
License Type: Sales  
Effective Date: 04/25/08

**SACRAMENTO REGION**

**Bell-Zehnder, Jennifer**

License ID: 1190630  
License Type: Broker  
Effective Date: 04/23/08

**Holt & Company Inc.**

License ID: 528896  
License Type: Corporation  
Effective Date: 10/17/07

**Holt, Donald**

License ID: 303767  
License Type: Broker  
Effective Date: 10/17/07

**Titan Realty Services**

License ID: 1430765  
License Type: Broker  
Effective Date: 10/16/07

**Tran, Dylan**

License ID: 1297822  
License Type: Broker  
Effective Date: 10/16/07

**SAN DIEGO REGION**

**Batakovic, Dragan**

License ID: 1192046  
License Type: Broker  
Effective Date: 02/21/08

**LICENSE SURRENDERED**

**LOS ANGELES REGION**

**Benesch, Rosemary**

License ID: 1205697  
License Type: Sales  
Effective Date: 10/30/07

**Crystalview Mortgage Corporation**

License ID: 1326054

License Type: Corporation  
Effective Date: 03/17/08

**Elkins, Kurt Duane**

License ID: 903237  
License Type: Broker  
Effective Date: 12/19/07

**Lambert, Rockne Francis**

License ID: 1336903  
License Type: Broker  
Effective Date: 01/22/08

**Laughrey Jr., Raymond Leroy**

License ID: 1131833  
License Type: Broker  
Effective Date: 03/17/08

**Mi Agente Mortgage Inc.**

License ID: 1508072  
License Type: Corporation  
Effective Date: 10/09/07

**Mowry, Charles Barry**

License ID: 970562  
License Type: Broker  
Effective Date: 01/07/08

**Priority Lending Inc.**

License ID: 1432048  
License Type: Corporation  
Effective Date: 01/07/08

**Quintero, Ruben Moreno**

License ID: 925818  
License Type: Broker  
Effective Date: 10/17/07

**RC Brokerage, Inc.**

License ID: 1370621  
License Type: Sales  
Effective Date: 01/22/08

**VTP/TBN, Inc.**

License ID: 1237216  
License Type: Corporation  
Effective Date: 01/08/08

**OAKLAND REGION**

**Coleman, Kanya**

License ID: 1281600  
License Type: Broker  
Effective Date: 01/30/08

**Dewey, David J.**

License ID: 1280662  
License Type: Broker  
Effective Date: 04/28/08

**Mejia, Pedro Pascual**

License ID: 575618  
License Type: Broker  
Effective Date: 10/25/07

**SACRAMENTO REGION**

**United Funding Solutions**

License ID: 1468498  
License Type: Corporation  
Effective Date: 04/23/08

**PUBLIC REPROVAL**

**LOS ANGELES REGION**

**Investfund Corp.**

License ID: 1240840  
License Type: Corporation  
Effective Date: 10/03/07

**Sandoval-Cook, Alfoncina**

License ID: 817443  
License Type: Sales  
Effective Date: 10/03/07

**Ward, Mildred**

License ID: 396273

License Type: Broker  
Effective Date: 10/30/07

License Type: Broker  
Effective Date: 04/11/08

License Type: Unlicensed  
Effective Date: 11/08/07

License Type: Broker  
Effective Date: 12/18/07

## DESIST & REFRAIN

### FRESNO REGION

**Carlos, Cynthia**  
License ID: Unlicensed  
License Type: Sales Applicant  
Effective Date: 03/25/08

**Rains, Leslie**  
License ID: Unlicensed  
License Type: Unlicensed  
Effective Date: 02/27/08

**Sandoval, Robert**  
License ID: Unlicensed  
License Type: Unlicensed  
Effective Date: 03/25/08

**Santos, Noriel**  
License ID: 1702564  
License Type: Sales  
Effective Date: 03/25/08

### LOS ANGELES REGION

**Absolute Mortgage Management, Inc.**  
License ID: 1403138  
License Type: Corporation  
Effective Date: 12/21/07

**American Lending Institute, Inc.**  
License ID: 1305997  
License Type: Corporation  
Effective Date: 04/17/08

**Beck, Shannon Todd**  
License ID: 1151716  
License Type: Broker  
Effective Date: 04/17/08

**Bedford Settlement Services**  
License ID: 1426444  
License Type: Corporation  
Effective Date: 03/24/08

**Briarcliff**  
License ID: 1426444  
License Type: Corporation  
Effective Date: 03/24/08

**Brown, Robert Lee**  
License ID: 1214120  
License Type: Broker  
Effective Date: 04/11/08

**Cornish, Jeffrey Michael**  
License ID: 983752  
License Type: Broker  
Effective Date: 02/15/08

**De Nunzio, Joseph dba Amex Financial Services**  
License ID: 937550  
License Type: Broker  
Effective Date: 01/11/08

**Diaz, Alejandro Israel**  
License ID: 942039  
License Type: Broker  
Effective Date: 04/08/08

**Goocher, William Eugene**  
License ID: 1350928  
License Type: Broker  
Effective Date: 02/27/08

**Greenberg, Howard James**  
License ID: 1048034  
License Type: Broker  
Effective Date: 02/25/08

**Hartman, Larry Lee**  
License ID: 240417

**Howard Management Group**  
License ID: 1521497  
License Type: Corporation  
Effective Date: 02/25/08

**Icorp Industries**  
License ID: 1522407  
License Type: Corporation  
Effective Date: 04/29/08

**J&J Financial Services Inc.**  
License ID: 1262633  
License Type: Corporation  
Effective Date: 02/15/08

**Kay, James Grady**  
License ID: 1346880  
License Type: Broker  
Effective Date: 04/11/08

**Leclair, Ron John**  
License ID: 956248  
License Type: Broker  
Effective Date: 04/11/08

**Lizarraga, Anna Marie**  
License ID: 785027  
License Type: Broker  
Effective Date: 04/29/08

**M&H Partners, Inc.**  
License ID: 1325622  
License Type: Corporation  
Effective Date: 04/11/08

**McAfee, Jason Joseph**  
License ID: 1384221  
License Type: Broker  
Effective Date: 03/04/08

**Miller, Lawrence Robert dba TL Escrow**  
License ID: 1301550  
License Type: Broker  
Effective Date: 01/21/08

**Moore, Joseph Michael**  
License ID: 1164382  
License Type: Broker  
Effective Date: 04/11/08

**Mortgage Sense, Inc.**  
License ID: 1333905  
License Type: Corporation  
Effective Date: 04/11/08

**New Century Home Loan Corp.**  
License ID: 1252247  
License Type: Corporation  
Effective Date: 12/13/07

**Newport Capital Group, Inc.**  
License ID: 1495362  
License Type: Corporation  
Effective Date: 03/04/08

**Premier Home Finance Inc.**  
License ID: 1801831  
License Type: Corporation  
Effective Date: 04/10/08

**Santibanez, Nathan**  
License ID: Unlicensed  
License Type: Unlicensed  
Effective Date: 04/11/08

**Silverman, Robert Bruce**  
License ID: 1810245  
License Type: Broker  
Effective Date: 04/10/08

**Smith, Mark A.**  
License ID: Unlicensed  
License Type: Unlicensed  
Effective Date: 11/14/07

**Smith, Michael**  
License ID: Unlicensed

**SMR Financial Services Inc.**  
License ID: 1473856  
License Type: Corporation  
Effective Date: 04/11/08

**Statewide Bancorp Inc.**  
License ID: 1318868  
License Type: Corporation  
Effective Date: 04/08/08

**Sunfield Financial Inc.**  
License ID: 1426444  
License Type: Corporation  
Effective Date: 03/24/08

**Sunwest Lending Group**  
License ID: 1523241  
License Type: Corporation  
Effective Date: 04/11/08

**The Loan Corporation**  
License ID: 1305117  
License Type: Corporation  
Effective Date: 04/11/08

### OAKLAND REGION

**Atabakhsh, Yousef**  
License ID: 920726  
License Type: Broker  
Effective Date: 11/07/07

**Diablo Funding Group, Inc.**  
License ID: 1183856  
License Type: Corporation  
Effective Date: 12/18/07

**First City Bancorp Mortgage, Inc.**  
License ID: 1795271  
License Type: Corporation  
Effective Date: 11/07/07

**Jafri, Asad**  
License ID: Unlicensed  
License Type: Unlicensed  
Effective Date: 03/24/08

**Kashif, Mohammed**  
License ID: Unlicensed  
License Type: Unlicensed  
Effective Date: 03/24/08

**Kerston, Peter Guy**  
License ID: 621929

**Mitchell, Alexander Vincent**  
License ID: Unlicensed  
License Type: Unlicensed  
Effective Date: 03/24/08

**Saunders, Thelma Margaret**  
License ID: 1315654  
License Type: Broker  
Effective Date: 12/28/07

**Syed, Ali**  
License ID: 1831306  
License Type: Sales App  
Effective Date: 03/24/08

### SACRAMENTO REGION

**Amaral, Dennis W.**  
License ID: 806153  
License Type: Broker  
Effective Date: 12/18/07

**Davis & Amaral Mortgage Consultants, Inc.**  
License ID: 1193140  
License Type: Corporation  
Effective Date: 12/18/07

**Foster, James M.**  
License ID: 1296993  
License Type: Broker  
Effective Date: 12/18/07

### SAN DIEGO REGION

**1st American Mortgage & Realty**  
License ID: 1316951  
License Type: Corporation  
Effective Date: 02/12/08

**American Premier Funding, Inc.**  
License ID: 1820815  
License Type: Corporation  
Effective Date: 02/15/08

**Schiller, Jaydee Ray**  
License ID: 1185526  
License Type: Broker  
Effective Date: 02/12/08

**Vaca, Eric Williams**  
License ID: 1331749  
License Type: Broker  
Effective Date: 02/15/08

## Covered Loans

Continued from page 1

of the area median home price in high cost areas not to exceed \$729,750. These loan limits are for high cost areas as defined by the U.S. Department of Housing and Urban Development and will vary depending on which county the property securing the loan is located. Some counties remain at the previous level of \$417,000 and some have increased to \$729,750. For example, Tulare County remains at \$417,000, Santa Clara County increased to \$729,750 and Sacramento County has increased to \$580,000. According to Fannie Mae Announcement #08-05, the temporary loan limits apply to loans originated (based on the date of the mortgage note) on or after March 1, 2008 up to and including December 31, 2008.

The loan limits can be found on Fannie Mae's Web site, [www.efanniemae.com](http://www.efanniemae.com). When arranging or making a loan that may be "covered", brokers must take the temporary loan limit increases into consideration. Questions regarding "covered loans" should be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 

## Lender notification reminder

The lender notification that became an annual requirement as of January 1, 2005 is again due from direct lenders who meet specific criteria.

The criteria, excerpted from Business and Professions Code Section 10131.8, are as follows:

(a) A real estate broker who acts pursuant to subdivision (d) of Section 10131 and who meets ***all*** of the following requirements shall notify the Department annually in writing on a form that is acceptable to the commissioner:

(1) The real estate broker is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Administration, or the Federal Home Loan Mortgage Corporation.

(2) The real estate broker makes residential mortgage loans to a loan applicant for a residential mortgage loan by using or advancing the broker's own funds, or by making a commitment to advance the broker's own funds.

(3) The real estate broker makes the credit decision in the loan transaction.

(4) The real estate broker at all times maintains a tangible net worth, computed in accordance with generally accepted accounting standards, of a minimum of two hundred fifty thousand dollars (\$250,000).

(b) As used in paragraph (2) of subdivision (a), "own funds" means

(1) cash, corporate capital, or credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the real estate broker's financial

statements, whether secured or unsecured, or

(2) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the financial statements of an affiliate of the real estate broker, whether secured or unsecured. "Own funds" does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.

If you are a lender that meets ***all*** of the above criteria you should have submitted the notice to the DRE no later

than March 31, 2008 stating whether it is your initial notification or your annual notification. If you have not already submitted the notification, please do so immediately. If you are a lender that previously met the above criteria but no longer do, the notification you submit will indicate you no longer meet the criteria. The Residential Mortgage Lender Notification (RE 859) form is available on the DRE Web site [www.dre.ca.gov](http://www.dre.ca.gov).

Please note that this notice is separate from, and should not be confused with, the report entitled "Residential Mortgage Loan Report" for which there is also a reminder in this Bulletin. Questions regarding this or any other mortgage loan compliance issue should be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 

## Voluntary advertising submissions

Brokers may voluntarily submit a mortgage loan advertisement for review by the Department using the procedure outlined in the Mortgage Loan Advertising Submittal form, RE 884. The form is available online at the following Web site: [www.dre.ca.gov](http://www.dre.ca.gov). A "Complete List of Forms" is available in the blue ribbon directly under the "Publications" tab. This list allows a search for the form by function or by form number.

The RE 884 must be submitted by the broker who will distribute the ad or by the designated officer if the ad will be distributed by a licensed real estate corporation. Note: advertisements submitted by salesperson licensees will be returned without being reviewed. Each ad must be submitted separately and a \$40 fee included for each ad. The fee may be paid by accompanying check, cashier's check or money order, or by authorizing a credit card payment with form RE 909.

A total of three copies of the ad must accompany the form. If the ad is a radio or TV ad, the audio or video ad must be accompanied for our review by three copies of a written transcript. The ad will be reviewed by the Mortgage Loan Activities Unit within 15 calendar days of receipt by the Department if the ad is properly submitted. If disapproved, the ad will be returned to the broker with a brief description of the reason it could not be approved. The broker will also be notified once the advertisement has been approved for use stating any conditions that must be met prior to distribution.

The current RE 884 was revised January, 2008 and includes some of the Real Estate Laws and Regulations of the Commissioner that relate to mortgage loan advertising, including Sections 14701 and 14702 of the Business and Professions Code and new Sections 2848 (17) and 2848 (18) of the Commissioner's Regulations. Therefore, the form can be used as a resource for brokers who are designing new ads even when they choose not to submit the ads for review by the Department.

Questions regarding mortgage loan advertising should be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 

# Fiduciary Duties

*Continued from page 2*

that certain conduct which is permissible in the business world for those acting at arm's length is impermissible to those bound by fiduciary duties.

What this means is that the standard ethics of the marketplace — where one party can take a competitive advantage of others and not disclose what is earned or made in terms of profits — are not sufficiently high for fiduciaries.

Under California law, certain “special” relationships involving a high degree of trust, integrity and confidence, the exercise of professional expertise or special knowledge, and discretion or power, rise to the stature of a fiduciary relationship. In Black’s Law Dictionary, a fiduciary relationship is defined as “[a] relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship”.

In California, such relationships include a trustee and a beneficiary, a lawyer and his or her clients, a member of a board of directors and his or her corporation, and a real estate agent and his or her principals/clients.

The latter (a real estate agent) includes mortgage loan brokers, operating under licenses issued by the Department of Real Estate, and their principals.

And of great importance, fiduciary duties impose the highest standard of care found in the law — greater than the negligence or ordinary standard of care. Thus, a mortgage broker can be professionally competent without satisfying the greater duties of a trusted fiduciary.

The fiduciary relationship not only imposes on the mortgage broker the duty of acting in the highest good faith toward his principal but precludes the broker from obtaining any advantage over the principal in any mortgage loan transaction by virtue of his or her agency.

A real estate licensed mortgage broker is further charged with the duty of fullest disclosure of all material facts concerning the transaction that might affect the principal’s decision.

With regard to the duty of disclosure as it relates to a mortgage loan, a real estate licensed mortgage broker has an affirmative obligation to make a full and

accurate disclosure of the terms of a loan to borrowers and to act always in the utmost good faith toward their principals.

Further, the duty of disclosure would require that a mortgage loan broker provide a client with the available information to permit the client to make an informed and intelligent decision in his or her best interests.

Real estate licensed mortgage brokers must also disclose the nature and full amount of any compensation, commission, or profit that they receive or will receive from the loan transaction.

In addition to those duties of undivided loyalty, good faith and full disclosure identified in the case law, California law imposes the following fiduciary duties on all real estate licensees acting as mortgage brokers:

1. *To diligently exercise reasonable care, diligence and skill in representing a client and in the performance of the responsibilities of the agency relationship.*

By reason of his or her licensure, a real estate licensed mortgage broker is deemed to have specialized and professional expertise, knowledge and skill in real estate and mortgage related matters superior to that of the average person.

In fact, the nature of the fiduciary relationship is such as to cause the client to justifiably rely on the licensee/agent.

2. *To exercise the utmost honesty, absolute candor, integrity and unselfishness toward the client.*

This requires that a broker avoid self-interest in brokered transactions, not compete with his or her client, and act at all times in the best interests of his or her client to the exclusion of all other interests, including interests that could benefit the agent or others.

This duty would obviously preclude a mortgage broker from intentionally delaying the closing of a loan for the purpose of increasing the interest rate or costs of a loan, and from obtaining secret or undisclosed fees/compensation.

3. *To obediently, efficiently and promptly follow the lawful instructions of his or her client.*

This would, for example, require a mortgage loan broker to disburse funds in strict accordance with a commitment to make a mortgage loan. Or to obtain a fixed rate loan if directed to do so by a borrower, rather than an adjustable rate loan.

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## **Practical Significance — Available Remedies**

In light of the foregoing discussions about fiduciary duties, what is the practical significance of the imposition of those duties on Department of Real Estate (DRE) licensees acting as mortgage loan brokers?

This section of the article will familiarize you with the general range and variety of remedies available when a client feels wronged by his or her real estate mortgage broker.

Often times, clients file lawsuits seeking damages and other remedies on theories ranging from breach of contract, intentional misrepresentation, negligent misrepresentation, negligence, constructive fraud, breach of fiduciary duty (or duties), and various others.

It is the nature of the breach, the wrong and the loss (or the harm suffered) that will determine the scope and the applicability of remedies.

In an action for an alleged breach of fiduciary duty or duties, a presumption of unfairness and undue influence arises when a fiduciary self-deals or gains an advantage in a transaction.

And in jury cases, plaintiffs get favorable jury instructions.

Depending on the facts of a particular case, a client suing for a breach or breaches of fiduciary duties can recover a full range of damages, including actual as well as punitive and exemplary damages.

Moreover, when a client is defrauded by a fiduciary, the client is entitled to the benefit of his or her bargain and is awarded compensation for all of the detriment proximately caused by the breach, whether it could be anticipated or not. [See Sections

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*Continued on page 8*

## Fiduciary Duties

*Continued from page 7*

1709, 3333 and 3343 of the California Civil Code].

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

In appropriate cases, such as where there is no adequate legal remedy capable of providing a client with a complete measure of justice, or where necessary to prevent irreparable injury, the client may obtain what is known as “equitable relief”, including an account of profits, the disgorgement of “secret” profits, the imposition of a constructive trust, the grant of an equitable lien, the setting aside, rescission or voiding of unconscionable transactions, and the delivery and/or cancellation of documents.

When applying equitable remedies, the Courts endeavor to shape and design a judgment to provide substantial justice to the client who has been wronged and has suffered harm by the breach or breaches.

### **What About License Discipline?**

While fiduciary duties have been imposed over the years through the common law, which is the extensive non-statutory body of law reflecting general legal principles and Court-made case law and precedent, such high standards can also be imposed or prescribed by statutory and regulatory law.

The California statutory and regulatory scheme that makes up the Real Estate Law, and which the DRE enforces, codifies (reduces into the codes) certain fiduciary -- and imposes fiduciary-like -- duties on real estate licensees.

For example, the duties that preclude an agent from obtaining any advantage over the principal by virtue of the agency, and that require that an agent act in his or her client’s best interests are sown into Sections 10176 (g) and 10176(i) of the Business and Professions Code, dealing with secret profits or undisclosed compensation, and fraud or dishonest dealing in a licensed capacity, respectively.

Further, the obligation of a DRE licensee acting as a mortgage broker to exercise unselfishness toward the client is implicitly put into the code at Section 10176 (l) proscribing the intentional delay of a loan’s closing to increase borrower costs.

Also, the fiduciary duty of full disclosure imposed on real estate licensees (and mortgage brokers operating under such a license) by the common law is the same general obligation to disclose under the statutory/regulatory law.

Interestingly, in certain of the California Financial Code Sections dealing with “covered loans” (a topic which is too far afield to discuss in this article), the statutory law specifically imposes a fiduciary duty.

In Section 4979.5(a) of the California Financial Code, it specifically states that a person who provides brokerage services to a borrower in arranging a covered loan transaction “owes a fiduciary duty to the consumer” and that “any violation of the person’s fiduciary duties shall be a violation of this section”.

Suffice it to say, violations of the statutes and regulations enforced by the DRE form the basis for administrative discipline against the offending real estate licensed mortgage loan brokers.

For a violation of one or more of such statutes and/or regulations, a licensee can have his or her license revoked or suspended.

Moreover, it may be that a breach of the common law fiduciary duty just might be the basis for administrative discipline in the right case with the right facts. Constructive fraud was mentioned above in connection with possible remedies to a wronged client. Such fraud arises in any breach of duty by one in a fiduciary relationship to another which induces reliance by the other to his or her prejudice.

California Civil Code Section 1573 states in pertinent part that constructive fraud consists “[i]n any breach of duty which, without an actually fraudulent intent, gains an advantage to the person

in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him”.

In order to get a finding of constructive fraud, one need only prove the existence of a fiduciary duty, justifiable reliance by a principal, and resulting injury. There is no need to show actual fraud or intent to defraud.

So with the right facts, a proven breach of fiduciary duty can constitute constructive fraud, a species of fraud, which is most probably a violation of Section 10176 (i) of the Business and Professions Code (the Real Estate Law) pertaining to “fraud or dishonest dealing”.

In conclusion, mortgage loan brokers who are operating under their real estate licenses owe special duties to their clients/principals as fiduciaries. That is because all real estate licensees occupy a unique position of trust, confidence and responsibility toward their principals.

If they fail to perform their fiduciary duties responsibly, diligently and completely, they risk significant civil liability and remedies, in addition to administrative discipline where their misconduct also violates the statutes and/or regulations enforced by the Department of Real Estate. 

### Endnotes

1. Under the law of agency, an agent acts on behalf of his or her principals. Because mortgage loan brokers receive compensation from and do work for lenders, such brokers can be agents for, and have fiduciary duties to, lenders (who would be principals) as well. The laws in this area, including those that pertain to the creation and termination of agency relationships, sub-agencies, dual agencies, and related matters, have many complexities and nuances, and an exhaustive discussion of the same — as well as other State licensing regimes under which mortgage brokering is authorized -- is beyond the scope of this piece. This article, which is a variant of a previous one written by the same author for the Summer 2007 Real Estate Bulletin, has been written to give licensees of the Department of Real Estate who function as mortgage brokers a general overview of fiduciary duties and why they are important to understand and fulfill.

2. Benjamin Cardozo was an Associate Justice of the United States Supreme Court from 1932 to 1938.

## New Regulations

*Continued from page 1*

approximately 45 days and will be announced on the DRE Web site.

After considering comments received during the regulation hearing process, a number of further changes have been made to the final forms and an informational sheet has been created with tips on when and when not to use each MLDS form and other pertinent information.

### **COMMISSIONER'S REGULATION 2842 – APPROVED BORROWER DISCLOSURE STATEMENT FOR NONTRADITIONAL AND SUBPRIME MORTGAGE PRODUCT**

#### **Mortgage Loan Disclosure Statement/Good Faith Estimate – Nontraditional Mortgage Loan Product (One to Four Residential Units), RE885**

This form must be used when the loan being proposed to the borrower is a “nontraditional” loan product and is secured by a one to four unit residential property whether owner or non-owner occupied. Pursuant to Commissioner’s Regulation 2842 a “nontraditional” loan product is “a loan that allows borrowers to defer repayment of principal or interest. Such products include, but are not limited to, interest only loans where a borrower pays no loan principal for a period of time and payment option loans where one or more of the payment options may result in negative amortization. A “nontraditional mortgage product” does not include reverse mortgages or home equity lines of credit (other than simultaneous second lien loans).” Many, but not all, of these nontraditional loan products are considered to be “subprime” loans.

One notable addition to the form is a certification which must be signed by the broker if any of the columns in the “Typical Mortgage Transactions” comparison on page 4 of the form are not completed. An informational sheet has also been developed with tips on completing the form and the Instructional Guide for completing the comparison of sample mortgage product columns on page 4 is also available.

### **COMMISSIONER'S REGULATION 2840 – APPROVED BORROWER DISCLOSURE STATEMENTS**

#### **Mortgage Loan Disclosure Statement, RE882**

#### **Mortgage Loan Disclosure Statement/Good Faith Estimate, RE883**

These forms are used when the loan being proposed to the borrower is a “traditional” loan product – i.e., a loan product that does not allow the borrower to defer repayment of principal or interest and the proposed loan. The loan may be secured by any type of real property including raw or unimproved land or parcels, commercial, multi-family, one to four units, etc. Whether the loan is considered to be a “subprime” loan or not, if the loan does not allow the borrower to defer repayment of principal or interest, the loan is not a nontraditional loan product and the RE882 or RE883 are given. A broker may use either version of the form. These forms cannot be used when the loan being proposed to the borrower is a “nontraditional” loan product and secured by a one to four unit residential property.

### **COMMISSIONER'S REGULATION 2844 – LENDING PRACTICES FOR NONTRADITIONAL AND SUBPRIME PRODUCTS**

This regulation affects real estate licensees who make loans secured by one to four unit residential properties from their own funds as defined in Business and Professions Code Section 10131.1. The regulation requires those licensees to adopt and adhere to minimum:

- ❖ Risk Management Practices
- ❖ Underwriting Standards
- ❖ Control Systems
- ❖ Consumer Protection Policies

It is highly recommended that each and every licensee review and become familiar with the regulations. Until the final revised forms are approved, brokers must use the forms currently in effect and available at the DRE Web site at [www.dre.ca.gov/firm\\_mlb.html](http://www.dre.ca.gov/firm_mlb.html). Questions regarding the forms and regulations should be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 📞



# Residential mortgage loan report reminder

Reminder! Real estate brokers who are **direct lenders** in certain types of loan transactions are required, pursuant to Health and Safety Code §35815 and §35816, to report to the Department of Real Estate activities related to the number of applications received from, and number and dollar amount of loans made to, the public for home purchase and/or home improvement purposes.

If a real estate broker reports such lending activity to the U.S. Department of Housing and Urban Development (HUD) under the provisions of the federal Home Mortgage Disclosure Act (HMDA), **it is NOT necessary for the real estate broker to report to the Department of Real Estate.**

Please review the following criteria from the **federal HMDA** Web site to determine if you meet the following federal 2007 reporting criteria for nondepository institutions:

Use information and data from the preceding December 31 date when determining whether you meet the reporting criteria. The following questions for a nondepository institution should be answered to determine if you should report CY 2007 HMDA data in 2008.

1) Is the nondepository institution a for-profit lender?

2) In the preceding calendar year, did the institution's home purchase loan originations (including refinancings of home purchase loans) equal or exceed 10 percent of its total loan originations, measured in dollars, or equal \$25 million or more?

3) Did the nondepository institution either: (a) have a home or branch office in an MSA/MD on the preceding December 31, or (b) receive applications for, originate, or purchase 5 or more home purchase or home improvement loans on property located in an MSA/MD in the preceding calendar year?

4) Did the nondepository institution either: (a) have assets (when combined with the assets of any parent corporation) exceeding \$10 million on the preceding December 31, or (b) originate 100 or more home purchase loans (including refinancings of home purchase loans) in the preceding calendar year?

If a nondepository institution responds 'YES' to question 1 above and 'YES' to at least one question in 2, and one question in 3, and one question in 4, then HMDA applies to the institution's loan originations, purchases, and applications in the current calendar year. A negative response to question 1, or to all the questions in 2, 3, or 4 exempts

the institution from filing HMDA data for the current calendar year.

For nondepository institutions, a branch office is any office of the institution that takes applications from the public for home purchase or home improvement loans. It does not include offices of affiliates or other third parties such as loan brokers.

If you are a **lender** and **do not meet** the above **federal HMDA** reporting criteria please review the following:

The State of California Residential Mortgage Loan Report (RE857) must be submitted to the DRE by all real estate brokers whose assets total \$10 million or less and who regularly **make** real estate purchase and/or home improvement loans. "Regularly" is defined to mean twelve or more transactions annually during the immediately preceding calendar year that, in aggregate, total more than \$500,000. **Licensees who only broker, and do not make, loans are not required to report.**

Mortgage lending data is to be collected annually and reported on the RE 857 by March 31 of the following year. The form and instructions are available on the DRE Web site at [www.dre.ca.gov](http://www.dre.ca.gov). If you qualify to file the Residential Mortgage Loan Report for calendar year 2007 and have not yet done so, or if you have any questions, please contact the Mortgage Loan Activities Unit at (916) 227-0770. 📞

## Commissioner's Message

*Continued from page 1*

over (typically to an associate of the scammer) that they are no longer responsible for making payments and that their credit will not be affected. Once the property is deeded over to a third-party, the scammer then rents the property back to owner and collects rent on top of the advance fee that was paid by the borrower. However, once the money is collected, no work is performed or loan payments made, and the victim loses their home to foreclosure.

Of course, there are many legitimate businesses that engage in foreclosure consulting and in fact collect perfectly legal advance fees. Often, a real estate broker's foreclosure consulting services consists of assisting a borrower with a loan modification. However, any real estate broker contemplating collecting advance fees must proceed with caution. The



real estate law requires that all advance fee contracts used by a broker must first be approved by the Department prior to use. The law also requires the broker to hold the money in a trust account until such time the agreed upon services are rendered. For more information, you may review Business & Professions Code Section 10085 as well as Commissioner's Regulations 2970 and 2972.

However, in cases when a notice of default has been filed, the collection of an advance fee (even under an approved contract) to perform services to save a homeowner from foreclosure is generally precluded by the Foreclosure Consultant law, found in Civil Code Sections 2945 et seq. So, while advance fees are not necessarily indicative of a scam, they may be an indicator of trouble. Knowing the rules in advance may save you or your client from being victimized. 📞