

REAL ESTATE BULLETIN

GRAY DAVIS, *Governor*
PAULA REDDISH ZINNEMANN, *Commissioner*

Spring 2000

Official Publication of the
California
Department of Real Estate
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Commissioner's message

It is with great pleasure that I write my first message as your new Commissioner.

The two months since my swearing-in have been very busy. With thanks to the patient and capable Chief Deputy Commissioner John Liberator and the Department staff, I've been learning how the Department operates. I have also learned that Governor Davis' Administration puts a high priority on housing related issues in California. I have listened to the varied concerns of consumers, subdividers and licensees. What I have heard and learned will form the framework for the pro-active position I envision for the Department. In that regard, I welcome your comments and suggestions.

In addition, I have visited each of the five Department offices and staff throughout the state, and met with the various trade associations and organizations that generally interact with the Department. I have also met with a pool of potential candidates for the Real Estate Advisory Commission.



Commissioner Reddish Zinnemann and Secretary Contreras-Sweet at swearing in ceremony.

We are all aware of how rapidly the real estate industry and technology are changing. Therefore, during the next several months, we will analyze the programs that are currently in place to determine whether or not they work well, need to be fixed, replaced or eliminated. Together with your input and some hard work, we will be able to move the Department smartly into the new millennium! 🏠



Commissioner Reddish Zinnemann

Master Planned Developments and their Associations

by Robert Gilmore, *Managing Deputy Commissioner III*

Common interest developments in California, such as condominiums and planned developments, may consist of as few as two residential units or as many as several thousand homes. No matter how many or few the number of members in a homeowner association, all owners within the development are obligated to manage and maintain all common areas and amenities in the overall project. However, the management needs will vary depending on the project type and size.

Usually the larger projects containing in excess of five hundred homes with a diversity of residential unit types are known as "master planned developments" and are governed by the owners through a "master association" structure. These large developments are commonly being used in order to assure there is a sufficient owner base to provide for the maintenance of expensive infrastructure, central recreational areas, landscaping, private roads and possibly golf courses, all of which benefit the entire community. Due to a variety of product type within the overall project, including attached condominiums along with detached single family homes, maintenance and management needs may necessitate additional associations known as "sub-associations" to be created to effectively meet the needs of specific neigh-

Payment of Commissions

We are receiving many inquiries from salespersons and their attorneys on the subject of incorporation for salespersons and the payment of commissions. These inquiries appear to stem from the desire of salespersons to obtain tax benefits from incorporation and to have their commissions paid to another person or a corporation wholly owned by the salesperson.

will license a corporation as a real estate salesperson. Usually, the corporation is wholly owned by an individual who is licensed as a salesperson or is qualified for that license.

The answer is no. Business and Professions Code Section 10132 defines a real estate salesperson as "... a natural person who, for a compensation or in expectation of a compensa-

The first question is whether DRE

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STATE OF CALIFORNIA
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BUSINESS, TRANSPORTATION AND HOUSING AGENCY
MARIA CONTRERAS-SWEET, *Secretary*

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Commissions

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tion, is employed by a licensed real estate broker..." Thus, DRE cannot and does not issue a salesperson license to a corporation.

The second question is whether it is permissible under the Real Estate Law for the broker to pay the salesperson's commission to a corporation wholly owned by the salesperson or to some other person. Section 10137 makes it unlawful for a broker to compensate, directly or indirectly any person for performing any licensed acts unless that person is a licensed broker or a salesperson licensed under the broker employing or compensating him. A careful analysis of Section 10137 has led the DRE to conclude that it would not be a violation of this Section if after a commission has been earned, the employing broker submits written instructions to the escrow directing it to pay the salesperson's share of the commission to the salesperson's corporation. Such instructions must be sent each time the salesperson earns a commission. Thus, a real estate broker can pay a commission, once earned by his or her salesperson, to the salesperson's corporation in accordance with the broker's instructions.

The purpose of Section 10137 is twofold. First, it stops a broker from employing or paying compensation to an unlicensed person for the person's

performance of acts for which a license is required. Second, it stops a broker from directly compensating a salesperson for his or her acts for which a license is required while not licensed to the broker-payor.

Neither of these purposes will be subverted by the broker's instructions for payment of a commission, earned by his or her salesperson, to the salesperson's corporation, if so requested by the salesperson. As the equitable owner of the earnings in the custody of the broker, the salesperson is entitled to control the ultimate disbursement of the funds. The broker would not be in violation of the law when following the salesperson's directions for disbursement.

A danger to the employing broker occurs if the corporation receiving the compensation actually did perform licensed acts. This would place the broker in violation of the law and subject his or her license to discipline. The broker should exercise caution in this regard. Moreover, the broker must submit individual instructions for each and every commission earned. This is not a responsibility the broker can delegate.

The Department cannot offer tax advice. For guidance in this area, licensees may wish to seek the advice of an attorney or accountant who is well versed in this field. 🏠

Clarification of SB 820**Electronic signatures**

In last quarter's edition of the *Real Estate Bulletin*, we presented a brief description of significant legislation passed in 1999. We want to clarify that SB 820, which deals with electronic signatures, does not prohibit *all* electronic real estate transactions. Specifically, a real estate sales agreement, including the liquidated damages and arbitration acknowledgments, can be completed electronically. 🏠