Losing Good Faith Deposits

all advertising by the salesperson? name (firm) be used in estate broker's Must the real

of the firm or broker be used in the first point of contact with a solicitation intended to be should the advertisement be however, that the licensed advertising by a salesperson. doesn't require that the name other hand, California law NAR Code of Ethics. On the REALTORS® are bound by the 10140.6 and DRE reg. 2773.) Business & Professions Code § consumers. (See California as well as the license number (agent, salesperson, REALTOR®) be in the advertisement designation of the salesperson California law does require, Yes, if the salesperson is a REALTOR® because

of Practice 12-5.) NAR Code of Ethics, Standard readily apparent manner. (See firm in a reasonable and the name of that REALTOR®'s television) without disclosing (e.g., electronic, print, radio, listed property in any medium any real estate services or REALTORS® cannot advertise amended in January 2010 and The NAR Code of Ethics was

> ing to the 4th Disfaith deposit? Accord-

the contract to purhen a buyer breaches entitled to the good seller automatically chase a home, is the

Smith (2010), the answer is no. trict California Court of Appeal in Kuish v.

into a written contract to buy the Smiths' gave a \$620,000 deposit that was described That escrow successfully closed the buyers in backup position for \$15 million. escrow. The Smiths then sold the property to Subsequently, Kuish decided to cancel of the deposit was still held in escrow was released to the sellers and the remainder escrow closing date. At that time, \$400,000 an amendment to the contract, extending the property. During escrow, the parties signed an option contract for the purchase of real damages provision and did not constitute the contract did not contain a liquidated in the contract as nonrefundable. However, Laguna Beach home for \$14 million. He The buyer, Bradford Kuish, entered

the deposits non-refundable." of their actions in freely negotiating to make people, [who] understood all the ramifications were 'big boys,' that is, sophisticated business to retain the \$600,000 "because both parties buyer sued. The trial court allowed the sellers of the buyer's good faith deposit, and the money, the sellers refused to return \$600,000 Despite selling their home for even more

plus consequential damages and interest contract price and the value of the property property is the difference between the breach of an agreement to purchase real 3307, which states that the damages for decision. The court cited Civil Code section court of appeal reversed this

> the deposit in a "rising market" constitutes damages." In other words, the retention of since the property sold for more money, the Had the property been sold to the backup an invalid forfeiture. sellers did not suffer from "loss-of-bargain been entitled to the difference. However, buyer for less money, the sellers would have

was no language in the amended escrow percent of the purchase price likely would have been entitled to retain 3 damages provision like the ones in the Thus, had the parties initialed a liquidated bound by Civil Code section 3307 damages. liquidated damages clause, the seller is indicated that without the benefit of a valid been entitled to keep the \$400,000 released the parties done that, the sellers might have extension of the escrow closing date." Had disbursement of funds in exchange for an instructions C.A.R. purchase contracts, the sellers most The court of appeal noted that there them. The court of appeal further to make "an irrevocable

Benefit Conferred Tax Assessment Must Be Proportional to

in the special district also violated the average lot sizes was unconstitutionally the assessment in zones with different special assessment; however, apportioning special benefits that could be funded by a "undergrounding" of utilities provided assessment districts to pay for placing >> The Town of Tiburon formed special Continued on page 33 constitutional proportionality requirement. benefited parcels adjacent to the district disproportionate and the failure to include Tiburon v. Bonander (2010) held that the 1st District Court of Appeal in Town of overhead power lines underground. The

NEWSLETTERS

"... The newsletter has more than paid for itself. It is the only thing I've used that works! It's awesome!"

"I get a great response from your newsletter. After sending it out half a dozen times, strangers would call me to let me know how well-written and informative it is."

-Chris Tarantino

Tarantino Real Estate, Inc.
SEE FOR YOURSELF!

www.rightsidemarketing.com 800-456-4395

PRODUCTS





SOFTWARE

Agent Business Builder Classified Simplified Provenue real estate software



SERVICES

Most Property Policies Bound In
Moments At money saving rates
Expert Service – 25 Years Experience
310-387-8400 - 888-732-1700
CA DOI Lic# OG36972

SERVICES

Simple. Easy. Free.

ClientDIRECT® Keeps Your Clients in the Know.

With ClientDIRECT®—the choice is yours. Customize your user-friendly e-newsletter with your own photo, listings, local real estate news, and more. You'll strategically reach your entire client list every month, expand your referral network, and generate more leads. Your current and potential clients will thank you.

There's no reason to wait.
Sign up for ClientDIRECT today.

For more information, please visit www.clientdirect.net.

C.A.R. We're All About You.



Legal

Continued from page 8

The California Constitution (article XIII D §4(a)) mandates that no assessment can exceed the reasonable cost of the proportional special benefit conferred on a parcel.

each districts. According to the carrying electricity, telephone signals, utility wires with underground lines finance the replacement of overhead the creation of the original district to presented to the Town of Tiburon urging project without obtaining the required needed. Tiburon proceeded with the and an assessment estimated from \$16,000 to district was split into three special construction costs rose significantly \$20,000 per parcel. Unfortunately, the A petition of 116 homeowners was cable services. homeowner additional \$3,180,000 would Ultimately, the pay petition, was the

60 percent support from the owners of the affected parcels. Twenty-one owners sued to invalidate the special district.

the special benefits pay vastly properties on a property. As a consequence of is the relative cost of constructing special districts finding that the "primary in this supplemental district. • special benefit conferred on each parcel assessments exceed the proportional certain parcels that receive a special assessments." this cost-based apportionment scheme, proportional special benefit conferred determinant of the assessment amount benefit were excluded from one The court of appeal invalidated the three assessment districts, capital that improvement, Additionally, receive not different identical because of

Sonia M. Younglove, Esq., is C.A.R. senior counsel.