

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

GOODWIN J. KNIGHT, Governor

Sacramento, January, 1954

D. D. WATSON, Commissioner

HOW YOUR DIVISION OF REAL ESTATE FUNCTIONS

A Personal Message from the Commissioner

I receive many requests to attend meetings and to explain the policies and the functions of the Division of Real Estate.

Even though I have the desire, I find it impossible to accept all invitations because the time involved in preparation and travel would interfere with my attention to administrative details. When I do manage to attend meetings, time permits covering just a few of the highlights, and no matter what subjects I happen to emphasize, there are many who have a lot of other questions they would like to have answered officially. I believe that any message of interest and benefit to the industry should be made available to all the licensees, and not just those who are able to attend meetings.

Therefore, I am devoting this entire issue of the *Bulletin* to a general discussion of the Division of Real Estate. I hope that it will leave with you a better understanding of the responsibility of the Division to the licensees and the public, and provide a better knowledge of our policies and procedures.

I will confine myself mainly to that portion of the Division's activities relating to the licensing and regulation of those engaged in real estate transactions. I will not get into any lengthy explanation of the Division's responsibility in the sale of subdivided lands, since that subject was thoroughly explained in the May, 1953, *Bulletin*.

Purpose of the Law

The pressure for the passage of the original real estate licensing law in California did not result from an organized drive on the part of the public, nor did it result from a spontane-

ous realization on the part of the Legislature that such a law might be desirable. Actually, the agitation for the legislation and the continuing pressure to enact it, came from the ranks of the real estate people themselves.

California pioneered in real estate licensing and our law, enacted in 1919, has been amended a number of times to enlarge and strengthen the protection it was designed to give.

The purpose of the law was twofold, (1) the protection of the general public from harm at the hands of unscrupulous agents, and (2) the protection of the reputation of honest agents against the adverse publicity and public resentment often caused by the unprincipled and unscrupulous within the agents' ranks. Time has proven that the law is good and the courts have upheld it consistently.

Commissioner's Responsibility

The law imposes upon the Commissioner the responsibility of regulating and controlling the issuance and revocation or suspension of licenses. It also charges him with prevention of fraud and misrepresentation in connection with the sale of subdivided lands.

For Complete Explanation of
Subdivision Sale Regulations

Refer to May, 1953, *Bulletin*

Copies Available Upon Written
Request to

DIVISION OF REAL ESTATE
1021 O Street, Sacramento, Calif.

The duties involved in administering the provisions of the law include the thorough investigation of complaints against licensees, law enforcement involving the sale of subdivisions, the issuance of factual public reports on subdivisions, and the screening and qualifying of applicants for a license.

The Commissioner has all the powers, granted by the Administrative Procedure Act, to hold formal hearings for determination of issues involving a licensee or subdivider.

Limitations on Authority

There are definite limitations to the authority of the Real Estate Commissioner. For instance, he cannot settle commission disputes. Sometimes those seeking the return of a deposit cannot understand why he has no such authority. It must be remembered that the Commissioner does not take the place of a court of law and does not give legal advice.

Complaints Must Be Investigated

The law requires that all verified complaints *shall* be investigated. This means the Commissioner *must* make investigations, examine documents, handle interviews and prepare formal charges if warranted. Deputies must make field trips to gather complaint information, survey licensees' offices and trust accounts, and inspect subdivision sites.

Many complaints require careful analysis of deposit receipts, listing forms and escrow instructions. In some instances it is necessary to cooperate and work with other governmental agencies such as the State Contractor's Board, the Corporation Commissioner, the Attorney Gen-

(Cont. on Page 122, Col. 1)

REAL ESTATE BULLETIN

Sacramento, January, 1954

Published Bimonthly by the

DIVISION OF REAL ESTATE

STATE OF CALIFORNIA

GOODWIN J. KNIGHT, Governor

D. D. WATSON

Real Estate Commissioner

STATE REAL ESTATE BOARD

LELAND P. REEDER Beverly Hills	CHARLES B. SHATTUCK Los Angeles
MAURICE G. READ Berkeley	CHESTER MACPHEE San Francisco
FRANK WHITELOCK San Bernardino	CURTIS M. ROBBINS Stockton

OFFICES AND AREA ADMINISTRATORS

GAYLORD K. NYE, Chief Deputy, Northern Calif.
Sacramento, Principal Office.....1021 O Street
San Francisco, Room 204, 1182 Market Street
Saxon A. Lewis, Supervising Deputy
Oakland, Room 304, 1744 Broadway
Marvin H. Wiegman, Senior Deputy
Fresno, 308 Rowell Building
John S. McVay, Senior Deputy
RAY D. WESTCOTT
Chief Deputy, Southern Calif.
Los Angeles
Room 310, Spring-Arcade Building, 541 S. Spring
Long Beach.....531 American Avenue
San Diego, 604 Orpheum Theater Building
James M. Winter, Senior Deputy

eral's Office, the city or district attorney's office and the local police departments.

All complaints require sufficient investigation to determine whether or not a formal hearing is justified. Many conferences result in clearing up misunderstanding or in determining that there has not been a violation of the law justifying a formal hearing or action against the licensee.

Complaints generally involve such matters as secret profits, commingling of funds, false advertising, false promises, failure to maintain proper trust accounts, a crime involving moral turpitude or just plain fraud and misrepresentation.

The most difficult cases we have involve those individuals and organizations who devise all sorts of schemes to bilk the public. Usually such schemes are set up in an attempt to keep just within the law or outside our jurisdiction.

These undesirable or racketeering type of operations must be eliminated, but to do so effectively sometimes requires months of concentrated investigation and collection of substantial evidence.

Many Complaints Unwarranted

Often we find that a complaint is lodged against a licensee for the ap-

parent purpose of coercing or worrying the broker into returning a deposit or cancelling a deal simply because the purchaser changed his mind after he had entered into a bona fide agreement.

In other cases, unwarranted complaints are received from the public and even from brokers against other brokers based on an erroneous impression of the scope or meaning of the law, or sometimes based upon the complainant's desire to merely annoy the licensee after a personal difference of some nature.

Justifiable complaints are received against less than one-half of 1 percent of the licensees. However, all complaints must be properly investigated to determine whether or not they are justifiable, which creates a heavy work load.

Formal Hearings—How They Are Conducted

When evidence indicates violation of the law, we proceed to take action against the licensee by issuing a formal accusation.

The Administrative Procedure Act prescribes the manner and procedure which must be followed on all formal hearings. A Hearing Officer, independent of the Division, is assigned to hear the case. After full consideration of all facts brought forth by the Division and the accused, the Hearing Officer renders a proposed decision. The Commissioner may adopt the proposed decision in its entirety, or may reduce the proposed penalty.

However, if the Commissioner feels that the penalty is not severe enough, he may reject the proposed decision, in which event the Commissioner must rehear the case himself and then make his decision. If a hearing results in a decision penalizing the licensee, he has the right of appeal to the courts.

Last year we held 331 formal hearings. A tremendous amount of the time and effort of the Division's personnel had to be expended in preparing and presenting these cases. **The hearing calendars are so crowded, sometimes we have to wait for two or three months before a Hearing Officer can be assigned, and many**

weeks more before a decision is rendered to the Commissioner. The Commissioner must then have time to study the facts that were brought out at the hearing before making his own final decision.

During the year this involves the reading and study by the Commissioner of hundreds of pages of testimony which in itself is a time-consuming task.

Restricted Licenses—How Used

In some cases, after a license has been revoked, the Commissioner issues a restricted license to those whose offense was primarily due to ignorance or semi-incompetence rather than wilful dishonesty or violation of law. The Commissioner can impose any restriction he feels appropriate, such as employment by a particular broker, if a salesman, or other provisions which he feels are warranted.

The restricted license grants no property right, is not automatically renewable, and it may be suspended pending a formal hearing. **Restricted licenses are sometimes also issued to applicants for an original license where, after a hearing, there still remains some doubt as to the applicant's fitness.** This permits keeping close watch over such restricted licensee until such time as he has proven worthy of a regular license.

The names of those whose licenses have been revoked or suspended are published in the *Bulletin*, not for the purpose of embarrassing those who have had a penalty inflicted on them, but rather to let all brokers, title companies and others know that these licenses have been revoked or suspended. It would be illegal to pay these persons any commissions or cooperate with them in real estate transactions.

Why So Many Licenses

I am asked many times why it is that we license so many people to go into the real estate business. You might be interested to know that prior to the law being amended in 1949, requiring broker applicants to have certain prior experience or educational background to qualify for a license, we were issuing about 1,000 broker licenses each month. After the amendment went into effect, this dropped

off to less than 100, but the number of salesman licenses, the first year after the amendment, increased by about 5,000.

Some ask, "Why issue all these salesman licenses"? It should be kept in mind that no salesman can secure a license unless he has a broker who will employ him. **As long as brokers are willing to hire salesmen, either full-time or part-time, or hire a salesman for the purpose of possibly participating in one sale, the Commissioner cannot do anything about it.** If the applicant for a salesman license is found to be honest, truthful and of good reputation and satisfactorily passes the real estate salesman examination, he cannot be denied a license.

License Examinations Continually Strengthened

During recent years, we have continuously strengthened our examinations, and an applicant must make at least a 75 percent grade to pass the test. During the past six months we have completely revised all our examination questions. All questions have been carefully studied by a competent committee, to make sure they are appropriate, reasonable and fair. We have eliminated questions that might be termed technical or too legalistic. We have tried to keep the questions practical and covering matters those intending to engage in the real estate business should know.

It must be kept in mind that with an average of close to 1,500 examinations being given each month, the type of examination must be such that it can be graded mechanically. We cannot use the essay or written answer type of questions because we do not have the technical manpower to grade that type of question. Furthermore, essay question-answers leave too much to the interpretation of the individual grader.

Education Should Assist in Reducing Enforcement Problems

Some may ask why the Division should be interested in educating the public and the licensees concerning real estate practices.

Our experience clearly indicates that the volume of complaints would

be materially decreased if the public and the licensees were better informed when engaging in real estate transactions. Sometimes revoking or suspending a license is like closing the barn door after the horse is stolen. Real estate education is a means of avoiding trouble or misunderstandings before they happen.

A great many licensees are not sufficiently skilled in the practice of real estate to avoid awkward situations which can arise. This often means serious trouble for the broker and a heavy loss for his clients. Our experience has been that a large proportion of complaints result from a lack of knowledge and experience rather than from deliberate dishonesty.

It is just as important that the licensee has an understanding of what the law means as it is for him to possess expert technical skill. Perhaps the greatest lack of knowledge on the part of the licensee is his failure to clearly understand his obligation to his principal.

The purchase of a home is usually the largest single investment which a family makes during a lifetime. Many a home buyer knows what he is doing when he buys a lawnmower, radio, television or an automobile, but has only meager knowledge when it comes to a real estate transaction. Therefore, a real estate licensee has an obligation to be worthy of the reliance placed upon his knowledge, experience and competence to handle the transaction properly.

I feel the Division should be permitted to use its funds and resources to the fullest extent possible in furthering educational programs. While the *Bulletin* and *Reference Book* are steps in that direction they do not go far enough.

University of California Offers Expanding Real Estate Program

Becoming keenly aware that the public and licensees should be provided the opportunity to acquire more knowledge concerning real estate transactions, a 1951 budget appropriation was sponsored by Senator Arthur H. Breed, Jr., and wholeheartedly concurred in by the Real Estate Commissioner, the State Real

Estate Advisory Board, and the industry itself.

The transfer of \$150,000 from the Real Estate Division's funds to the University of California budget was authorized for the purpose of initiating real estate education at its university campuses in Berkeley and at Los Angeles. Provisions were also made for university real estate extension courses which are now available throughout the State.

Certain controls were placed over the use of these funds through the appointment of a Real Estate Advisory Board by Dr. Robert G. Sproul, President of the University, and this Board must approve the educational programs for which these funds are used.

The program proved so successful that an additional \$300,000 was made available to the University from the Division's funds by the 1953 legislature.

It is significant that this \$450,000, made available from the fees paid in by the licensees and subdividers, is by the greatest step ever taken by any State to establish a recognized real estate educational program on the university level.

Advantages of the University of California Program

Your youngster can now go to the University of California and secure a complete and thorough college education in matters concerning real estate.

It means that 10 or 20 years from now we will have a large number of well-equipped college men and women capable of engaging in the more technical phases of the real estate business, such as appraising, property management, finance, or land development. Specialization in the real estate field requires an extensive background of training.

The University of California extension courses are designed primarily for the benefit of the real estate licensees themselves. By taking advantage of the courses offered by the University, any licensee can improve his knowledge and methods. For example, if he decides that he wants to get into property management or some other specialized field, the ex-

tension courses offer the very finest of instruction and training.

Several thousand licensees throughout the State are already taking advantage of these extension courses. The University educational program continues to be of great benefit and the funds are being used wisely.

Direct Education

There is a certain type of real estate educational activity highly important to licensees which could be more effectively handled by the Division of Real Estate direct, than by any other means. I have in mind a more direct contact with both applicants for license and those already engaged in the business.

Thousands of licensees, for one reason or another, are not in a position to take full advantage of the University of California's educational program. This group represents a large segment of the licensees engaged in the real estate business. It is vitally important that they be kept informed regarding proper real estate practices and the application of the laws under which they must operate.

It is important that the new licensees get started right. The simplest and most effective method of doing this would be at the time they take their qualifying examinations. **At that time they should be impressed with the value of adhering to a code of ethics and cautioned against those pitfalls that can lead to serious consequences for both the licensee and the public.**

The idea is by no means a new one. It is being done with great success in many other states. A prepared lecture is given covering the points mentioned, followed by a discussion of proper practices and procedures. However, in these other states, the volume of new applicants is relatively small, as compared with California, and it would not be practical for our regular staff to undertake this duty.

We examine more than 17,000 applicants each year, and a plan should be developed to get these people started right.

How Direct Education Would Help

A simple but constructive plan of education could be developed and

made available to all licensees which would not only be helpful to those engaged in the business, but would also help the Division in its law enforcement problems. It would be of great benefit to the public. Such a program could best be developed and carried out by our Division and would not be a duplication of the University program. As a matter of fact, I doubt if the University would have the personnel qualified to handle the type of program I have in mind.

I am satisfied that such a direct contact educational program is highly desirable. I want to emphasize that I believe the \$450,000 of our funds which have been allocated to the University is not only money that is being well spent, but is going to help the licensees and the public in many different ways. **However, since the funds come from all the licensees, I feel those other thousands of licensees who receive no benefit from the University courses should also be given some consideration.**

Space will not permit going into the details, but I am positive our Division personnel with the advice and guidance of the Real Estate Advisory Board could develop a most constructive plan that would be of great benefit, not only to this Division, but also to the licensees and, most important, to the public. It would also be helpful to the University of California in its real estate education program.

Great Credit Due Licensees

The real estate men and women of California are largely responsible for—and to them is due much of the credit for—the progress and development of our great State. **People in all walks of life receive the benefits of real estate licensees' efforts and anything we can do to help real estate people and to put the real estate profession on a higher plane indirectly helps all citizens.**

Subdivision Sale Regulations

The most interesting period of California's subdivision development is that extending from the close of World War II to the present. Never before in the history of the world has such great land development and homebuilding activity been witnessed.

For instance, last year there were 2,418 new subdivisions put on the market in California, as compared to 176 back in 1934.

So important has the subdivision function of the Division become that nearly half of the time and efforts of the staff are now devoted to it. There is much room for improvement in the regulation of the sale of subdivisions, but the Division is presently hampered by a lack of man power to do the job.

These controls are vitally important to the investing public and to the homebuilders and subdividers.

Homebuilding and subdividing is today one of the State's largest and most esteemed industries. The Commissioner has the responsibility of investigating and issuing factual reports each week on projects with an average total sales value of more than thirty million dollars.

These controls are exercised with a minimum of expense to the subdivider, and none at all to the general public or taxpayer.

Projected Subdivisions Investigated

What does the Commissioner do about subdivisions? Briefly, he investigates all phases of the project to determine that there shall be no fraud, misrepresentation or deceit in the sale. The representations of the subdivider must be looked into and verified. We must check to see that maps are filed, if streets are dedicated or to be improved, extent of flood or drainage hazards, the effect of filled ground, and we also must look into the financial and sometimes the economic features.

The law requires the Commissioner to see to it that proper release clauses exist in any lien, encumbrance, option, contract or trust agreement, and that the financing is otherwise sound so that the purchaser will get what he pays for. Each tract must be field-inspected by a deputy and each set of documents, including title information, financing information and any contract used in connection with the sale, must be closely scrutinized.

Commissioner's Subdivision Report

The public report issued by the Commissioner is the key to the prevention of fraud and to the protection

of the public. Until this report is issued, no tract can be legally offered for sale. In effect, it is a permit, and when issued, the public has a right to assume that the Commissioner has made at least a reasonable investigation of the offering and has found no fundamental objections to it.

Furthermore, if there is any change in the setup of a subdivision after the report is issued, the subdivider is required by law to notify the Commissioner. The Commissioner has had to rely almost entirely upon the subdivider to do this, because the Division has no manpower to follow up these projects except in those cases called to our attention.

The subdivider also has problems, and we have taken steps to aid him by avoiding delays whenever it is consistent with the protection of the public. For instance, we have devised a preliminary report which permits the subdivider, in certain cases, to take reservations before his tract meets all requirements.

The Commissioner feels that every effort should be made to assist the subdivision and homebuilding industry and that all costly delays should be eliminated wherever possible. More than 1,500,000 citizens have bought new homes in California since World War II, representing an investment of more than fifteen billions of dollars.

During the next 10 years, the subdivision problem is going to be more acute and its regulation more complex because much of the prime subdivision land in the State has been used up during the past 10 years. We must provide homes during the next 10 years for another 3½ or 4 million people.

Senate Committee on Subdivision Control

Recognizing the importance of subdividing and homebuilding, the last session of the Legislature authorized a Senate Interim Committee to make a thorough study of all phases of subdivision regulation and control in California. This committee is comprised of Senators Arthur H. Breed, Jr., Chairman, Luther E. Gibson and Jack B. Tenney.

A 60-member advisory committee has been selected from various inter-

ested industry groups and public agencies to help solve the many problems which will be given consideration.

Every unwarranted requirement and obstacle standing in the way of the subdivision and homebuilding industry should be removed. On the other hand, the protection of the public by insuring proper drainage, sewage and flood control facilities must be provided for.

I feel confident that the results obtained from Senator Breed's committee will go far in solving the perplexing problems which are confronting the subdividing industry and will inure to the benefit of the State for years to come.

Law Has Been Amended Many Times

Changing conditions and weaknesses in the law, which from time to time become evident, bring about requests for amendments. Those engaged in the real estate business are responsible for most of the changes. For example, the amendment requiring two years' salesman experience to qualify for broker license was advocated by the licensees themselves.

Weaknesses in the law which curtail its enforcement may be brought to the attention of legislators by the Commissioner himself. For instance, the law formerly prohibited commingling of the seller's money, but did not prohibit commingling of the buyer's money. Therefore, the Commissioner advocated an amendment to correct this weakness.

Regulation of the use of net listings, combination option and listing agreements and other provisions were brought about due to growth of practices surrounding their use which were detrimental to the public.

Perhaps the most important amendment to the Real Estate Law adopted at the last Legislature is one which requires a licensee to deliver a copy of any contract to which he secures a signature to that person who signs the document. Formerly, this provision applied only to listings, but it is now broadened to include all other instruments used in the business, such as deposit receipts, exchange agreements, etc.

Real Estate People Propose Amendments

Organized real estate groups are constantly studying and weighing new proposals for amending the license law. Many suggestions are discarded after serious study because, while they may be helpful in some ways, they would be harmful in others. At the present time there are many legislative proposals receiving study because so many brokers and salesmen have urged their consideration.

Such ideas as eliminating part-time operators, increasing the responsibility of the broker for his salesman, bonding brokers and a requirement that all deposit money be placed in escrow are just a few. The Commissioner is always glad to consult with various groups concerning such proposals, and inform them of his observations made on a state-wide scale.

It must be kept in mind that whenever the law is amended throwing additional responsibility on the Division, sufficient manpower must also be provided to carry out the new law. If this is not done, it is like authorizing the construction of highways or buildings without providing any money to build them.

Benefits From Reading Bulletin

The response I have had from licensees indicates that the *Real Estate Bulletin* is one of the most valuable and appreciated services given by the Division. I devote considerable time to the preparation of the *Bulletin* and am constantly on the lookout for material which I believe will be helpful to the industry.

We try to have all articles short and in plain, simple language. We hold to factual material and avoid such controversial subjects as predictions on the outlook of the real estate market, suggested sales methods and similar subjects.

On the other hand, we dwell on general application of the laws affecting real estate transfers, how to avoid violations of the license law and other laws affecting property transfers. From time to time we present brief summaries of court cases which interpret the law, believing

such information will be helpful to licensees in avoiding costly pitfalls.

We avoid telling you how to run your business, but try to give information which will help you make money and protect your commissions. We try to emphasize certain subjects, even to the extent of repeating from time to time. There are certain fundamental requirements of law in real estate transactions which are extremely important, and we do everything we can to impress this importance on licensees.

Court Decisions in Real Estate Cases

Court decisions affecting the handling of deposit money by the broker are especially important. The procedure for submitting offers to purchase, getting an acceptance, and communicating the acceptance to the buyer cannot be stressed too much.

We are constantly pointing out the dangers of commingling the client's money and property with your own, and the proper use of a trust account. We do this because we receive a large number of complaints involving commingling.

Then there is the matter of representing more than one party to a transaction without the knowledge and consent of all parties. This is a fundamental rule of agency, but there are still many violations.

Proper use of common standard forms used in the business, such as listing agreements, sales agreements, and exchange agreements, are often discussed. These forms are the "tools of the trade" and their proper use should be clearly understood by anyone in the business. This is important from the standpoint of not only protecting your clients, but also protecting your commissions.

Avoid Giving Legal Advice

And then there is the matter of giving legal advice or preparing legal forms for your clients. The penalties for unlawful practice of law are severe. While comparatively few of our licensees are found guilty of this practice, still every once in a while someone gets into trouble by giving legal advice.

I want to particularly stress the importance of advising your clients to see their attorney when problems

arise in transactions which may require legal advice.

Suggestions and Criticisms Solicited

We always welcome suggestions and constructive criticism of the *Bulletin*. We shall constantly endeavor to keep the *Bulletin* interesting and of value to those of you engaged in the business of selling real estate.

Commissioner's Problems and Duties

The most serious responsibility of the Commissioner is to make sound, "common sense" decisions. These decisions may be far-reaching, and in many respects far more important than civil courts make in determining the extent of damages suffered by persons in individual cases.

The decisions of the Real Estate Commissioner may determine the course of lives and family welfare. Thousands of persons seek licenses to enter the real estate business in California each year. The standards which must be met by these persons are established by law.

Each application must be given careful consideration. Each applicant is seeking a means of gaining a livelihood, and the license is of great importance to him. While a great deal of the screening is done by the deputy force, the final decision as to fitness of the applicant must be that of the Commissioner, subject to review by the courts.

Fingerprints Serve Practical Purpose

The law requires the Commissioner to determine that an applicant is honest, truthful and of good reputation before issuing him a license. For many years this was done in a "hit and miss" fashion and, as a result, some ex-convicts and confidence men and other undesirables secured licenses.

The Division started requiring fingerprints about 1945, but there was no follow-through, and licenses were issued before the report on the fingerprints was made known. Since 1948, licenses are not issued until the applicant's fingerprints are cleared. (*Exception*: Limited Real Estate Salesman License.) Careful investigation is made in any case where there is a background of arrests or convic-

tions. As a result, a large number of applicants have been denied licenses because they could not demonstrate they were qualified to act in a fiduciary capacity.

To License or Refuse to License

What do these decisions involve? First of all, it must be determined that the applicant is truthful, honest and has a satisfactory moral background. Those who have these qualifications present no particular problem. Nor is it difficult to come to a decision where the applicant's background is extremely bad or unsavory. It is the borderline cases that must be weighed most carefully to make sure we are being fair to both the applicant and the public.

How would you feel if the Commissioner gave a person with a bad drunken driving record a license and it resulted in the death of one of your family? How would you feel if the Commissioner issued a license to a known sex offender and it resulted in some innocent member of your family being molested while being shown a home? What would you do about issuing a license to a former bank employee who had been convicted of embezzlement?

While the Commissioner wants to give every license applicant a fair opportunity, he must still consider the protection of the public and the good name of the industry, as well as the welfare of the applicant.

When should a license be reinstated after it is revoked? If a broker has flagrantly misused deposit money, he usually loses his license. After a year or two, he urges the Commissioner to reinstate his license. What would you do?

Effect of Decisions on Subdivisions

Similar problems arise in subdivision investigation. Sometimes a decision of the Commissioner involves millions of dollars in investments. **Stopping the sale of a subdivision may mean financial ruin for the subdivider. On the other hand, failure to stop the sale until certain bad features are corrected may mean financial ruin for hundreds of investors.** Would you take the responsibility of making these decisions lightly, or would you want to make

sure that you had all the facts? It takes time and manpower to assemble such facts and information so that a just decision can be reached.

Judging the Merits of a Complaint

Then there is the matter of complaints against real estate brokers and salesmen. Last year, we received 3,300 complaints. So far this year complaints are up about 25 percent over last year.

Many complaints are without any real foundation, but until they are investigated, this cannot be determined. This takes hundreds of man-hours of deputy time.

In handling complaints, we must separate the wheat from the chaff. Hundreds of complaints are inspired through selfish motives. **The parties wish to get out of the deal, or avoid paying a commission, or have some other selfish reason for complaining. While many complaints have no real basis, it must be understood all must be considered to determine which have merit.**

The final decision as to whether or not to proceed with a complaint is that of the Commissioner. This is also a serious responsibility. The reputation of the one making the complaint is not affected, whereas an unjustified accusation against an innocent broker can do irreparable harm to that broker and his business. **Every precaution must be taken to avoid hurting innocent people.**

Determination of Experience Qualifications

Recently, the Legislature imposed another burden upon the Commissioner and his Board. They must now determine whether or not a person seeking a broker license has sufficient qualifying experience. There are many borderline cases which must receive the careful consideration of the Commissioner and his advisory board, and this responsibility cannot be taken lightly. Again the final decision may affect the entire career of the applicant.

Then there are the numerous responsibilities in conducting the Division efficiently and in a business-like manner. By and large, they are the same problems encountered by any business executive with the excep-

tion that the Commissioner is bound by many legal restrictions not imposed on private business.

The Commissioner is burdened with the responsibility of determining what force is necessary to do an efficient job without waste of the Division's funds. He must make this determination and then seek sufficient funds and manpower through the budget so that he may be enabled to do the job the law requires, and that which the public and licensees might reasonably expect.

Rules and Regulations

Rules and regulations are not to make law but to clarify the intent of the law and aid in its administration. The Legislature cannot provide the language in the law to fit every situation, and it is for that reason that the Commissioner is given the authority to make rules and regulations to enforce the intent of the law.

Under no circumstances can the Commissioner make rules and regulations which change the intent of the law or make additional law. That is up to the Legislature itself. **For this reason, the Commissioner insists that the Attorney General pass upon the legality of all rules and regulations.**

The Division functions only under the law. When a rule and regulation is put into effect it is actually law itself; either a rule is legal or it is illegal, and if legal, it is law. If there is any question about any rule or regulation, it can be tested in the courts the same as the law itself.

Constructive Criticism Welcomed

These are but a few of the responsibilities the Commissioner faces. I can assure all licensees as well as the public that our Division does everything it can to avoid any semblance of bureaucratic methods or conduct. We also take every precaution against treating any segment more favorably than another. Politics, personal friendships, favoritism and all such influences are completely avoided.

Contact Commissioner Direct

I do want to ask one particular favor of each of you. **If at any time you have any criticism of the Division or of the Commissioner's policies—what is being done that should**

not be done and vice versa—will you please call it to my personal attention. All should understand that methods and policies cannot be improved if you merely discuss them on street corners or among yourselves. **In other words, I cannot do anything to correct a situation unless I know about it.**

Budget Appropriations Discussed

All the expenses of the Division of Real Estate are paid by the real estate licensees and subdividers.

Even though this is so, and even though the Division has \$1,200,000 in reserve, these moneys are public funds and must be carefully budgeted. One of the Governor's most difficult problems is the preparation of the over-all state budget. He demands the elimination of all unnecessary expenditures. At the same time, he does want to see that all departments are adequately staffed to carry out the legislative mandates, such as in our case, proper regulation of real estate licensees and the sale of subdivisions.

The entire budget is also analyzed in detail by the Legislature which must approve all expenditures before they are made.

Added Duties Mean More Work

Because of the reduced value of the dollar and delegation of additional responsibilities, the Division of Real Estate's expenses are increasing. All of the additional responsibilities which have been added to the work load of the Division since 1929 are not generally recognized. Here are a few:

1. **Licensing and regulation of business opportunity and mineral, oil and gas agents has been assigned to the Division.**
2. **Regulation of the sale of all types of subdivisions has been added.**
3. **Fingerprinting and more thorough investigation of applications has been established.**
4. **Written examinations are now required.**
5. **A new hearing procedure has been adopted which is much more elaborate and time consuming.**

6. New types of projects have been assigned to the Commissioner for regulation, such as cooperative apartment buildings, trailer court subdivisions, and cooperative subdivision projects.
7. Investigation of experience requirements for applicants has been added to the duties.
8. Requirement for maintenance of trust accounts.
9. There have been many other amendments to the license law imposing additional regulations upon brokers and salesmen. To illustrate, the law was amended by adding a new section which provides that, if a judgment based on fraud, misrepresentation or deceit in a real estate transaction is rendered against a broker or salesman, his license may be revoked or suspended.
10. The section of the law which provides that definite release clauses must exist in any lien, encumbrance, option, contract or trust agreement on subdivided lands creates many complex situations which take a lot of time to work out in fairness to all parties concerned.
11. One of the greatest demands on the time of our men comes from those new problems and unusual situations that are constantly cropping up. These are the matters we rarely provide for in the allocation of our time. But, over the year, they represent a tremendous volume of special handling by our most qualified deputies.

Growth of Responsibilities

Besides these added duties we now have the greatest number of licensees in history and the volume of subdivisions reached an all-time high last year and continues to climb.

All this and the policy which requires our responsibilities to be taken seriously, and that each job be done well, have caused tremendous increases in work load. They are estimated to have thrown additional burdens two or three times what they used to be on our deputies and enforcement personnel.

Comparison With Previous Years

I have made a personal study in comparison of the number of enforcement personnel which we have now as compared with previous years. I have found that back in 1929 the Division had 27 deputies and 6 hearing officers and we issued and regulated 55,000 licenses. Now, compare this with 1952. Last year we issued 105,730 licenses, yet the Division's enforcement staff numbered only 38 including one hearing officer.

For fairness in comparison, it should be noted that impartial hearing officers provided by the Administrative Procedure Division are now hearing most of the Division's cases, whereas back in 1929 the Division had to hear all its own cases and therefore had to have a larger number of hearing officers.

During the war years—take 1942-43 for example—the number of licenses issued dropped down to 30,854 and our deputies dropped down to 14.

It appears that in the past few years we have mainly been adding deputies to replace those who left the Division during the war years.

We have not been able to provide sufficiently for all of the work that has been added to the pre-war load.

What Does This Mean?

It all comes down to how far the Division should go in carrying out its responsibilities to the public and to the licensees and subdividers. To do each job reasonably well, does take manpower, and manpower means increased budget, and of course the problem that everyone is concerned with is keeping the budget to a minimum.

Incidentally it should be noted that license fees for the real estate business have never been increased since the law was first adopted in 1919. Actually annual license fees since that time have been cut 50 percent. This, in spite of the reduced value of today's dollar. California real estate license fees are the lowest of any state in the Nation.

Conclusion—Policy Restated

Those of you who have taken the time to read my remarks in this issue of the *Bulletin* will, I hope, agree with me that the level of confidence and respect which the real estate licensee now enjoys is not the result of accident or chance. The untiring efforts of leaders in the business to raise the standards of their profession are to be commended.

You can be assured that the policies of the Division will continue to be the lifting of standards, protection of the public, protection of the licensee, and the fostering of continued education in the field of real estate.

Respectfully,



SACRAMENTO, CALIF.
Permit No. 157
PAID
U. S. POSTAGE
Sec. 34.66, P. L. 8 & R.