



REAL ESTATE

Bulletin

EDMUND G. BROWN, *Governor*

January-February 1962

W. A. SAVAGE, *Commissioner*

DONALD McCLURE ANNOUNCES RETIREMENT

When Donald McClure, veteran Assistant Real Estate Commissioner, announced that he would be retiring from state service March 31, 1962, the reaction of all who know and work with him was summed up by a deputy who exclaimed, "Retiring! He's too young for that. In physical stamina, in intellectual acumen, in grasp of the responsibilities before him, the Colonel is at his peak. He must be kidding!"

Although all of these things are true, including the fact that his age doesn't show—and it won't be revealed here—the Colonel isn't kidding about his retirement. However much it might be wished otherwise, that holds!

McClure came to the Division of Real Estate as a legal counsel in 1953, quickly advancing to his present administrative post. His former experi-

ence had included practice of the law in San Francisco, Oakland, and Los Angeles; he is a member of the California Bar Association, the American Bar Association, the American Society of International Law and of the American Society For Legal History. He saw service in both world wars, on the fighting fronts and in administrative, personnel, and legal capacities, retiring in 1952 as a colonel, U.S. Air Force.

Colonel McClure has been a California representative in the National Association of License Law Officials for the past eight years, during which time he has served as a member of the board of directors, as vice president, and, in 1961, as president.

During his term as the NALLO's chief executive, he pressed for more effective controls of the merchandis-



DONALD McCLURE
Colonel, U.S.A.F.

DONALD McCLURE
Assistant Commissioner

ing of speculative subdivision properties, as he earlier fought to put an end to the activities of unscrupulous advance fee operators. In both efforts, he had pronounced success.

Now as the Assistant Commissioner leaves for private practice, he has the best wishes of the Commissioner, his co-workers in the Division of Real Estate, and the real estate industry.

Fictitious Firm Names Present a Problem

Frequently a licensee will call to take the commissioner to task for issuing a license under a fictitious name which has long been the prized possession of the complaining broker.

"Look here," he explodes, "You've given my dba to another broker. You can't do that to me. It isn't legal!"

Patiently, a deputy has to explain over and over again not only can the commissioner do that, he has to do it, precisely because it is legal.

On September 27, 1957, the Attorney General issued an informal opinion holding that the Real Estate Commissioner cannot withhold issuance of a license under a fictitious business name just because that name is already being used by another licensee in the State. No opinions, court decisions, or statutory enactments have since affected the validity of this dictum.

It has been Division of Real Estate policy since 1957 to inform the applicant who proposes to do business under a name other than his own that the name is already in use, if such is the case. If, in the light of this information, the applicant still wants to use the name and otherwise complies with the Civil Code and files a certified copy of both the entry of the county clerk and the affidavit of publication with the Division of Real Estate, as stipulated in the license law (Secs. 10159.5, 10282.5 and 10522.5), the license will be issued.

This may not, however, be the end of the story! **A broker who adopts a fictitious business name which is already in use by another licensee may find himself enjoined to restrain his use of that name. In some cases, the**

courts have allowed damages as well as injunctive relief.

It would be sound judgment for a broker now doing business under a fictitious firm name to assure himself that his right to do so is fully protected by compliance with the law. Likewise, the person applying for licensure under a "dba" will want to be sure of solid legal grounds for its use. **Certainly, anyone either doing business or contemplating doing business under an assumed designation will want to have a clear understanding of what, under the law, constitutes a fictitious name. Your attorney can advise you.**

THE OFFICE SCRIBE SAYS:

That broker who tells an aspiring salesman that, "Real estate is a gold mine" should also add, "but it takes a lot of hard digging to get it!"

REAL ESTATE BULLETIN

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DIVISION OF REAL ESTATE
STATE OF CALIFORNIA

EDMUND G. BROWN, Governor

W. A. SAVAGE

Real Estate Commissioner

DONALD McCCLURE

Assistant Commissioner

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Disciplinary Action—November, December, 1961

NOTE: Any person whose license has been suspended or revoked, or whose license application has been denied, has the right to seek a court review. This must usually be done within 30 days after the effective date of the commissioner's decision.

Therefore a list of actions is not published in this *Bulletin* until the period allowed for court appeal has expired; or, if an appeal is taken, until a final determination of the court action. Names of persons to whom licenses are denied upon application are not published.

Licenses Revoked During November, December, 1961

Name	Address	Effective date and term	Violation
Green, Del. dba Exclusive Investment Co. Real Estate Broker	2103 N. Fair Oaks, Altadena	11/11/61	Secs. 10176 (i); 10177 (d) & (f)
Borak, Leo. dba Borak Realty Co. Real Estate Broker	520 Taylor St., San Francisco	11/14/61	Secs. 10160; 10162; 10164 & 10177 (f)
Brown, Willis Howard Real Estate Broker Business Opportunity Broker	2016 4th St., P.O. Box 804, Santa Rosa	11/14/61 (Granted right to restricted licenses)	Secs. 10176 (a), (i); 10177 (d), (f) & 10302 (e)
Goldberg, Harold Real Estate Salesman	427 S. Oliver St., Los Angeles	11/14/61	Secs. 10177 (b) & (f)
Grier, Clarkston Edward Real Estate Salesman	1745 W. San Carlos St., San Jose	11/14/61 (Granted right to restricted licenses)	Secs. 10177 (b) & (f)
Morris, Luther Green Real Estate Broker	10732 Culbertson Dr., Cupertino 4182 Greenwood Ave., Oakland	11/14/61	Secs. 10176 (a), (b), (i); 10176.1; 10177 (d), (f), (h), (l) & Sec. 2830 of R.E. Comm. Regulations
Peterssen, William R. Real Estate Broker	34987 Yucaipa Blvd., Yucaipa	11/14/61	Secs. 10177 (d) & (f)
Willett, Philip John, Jr. Real Estate Salesman	1230 Academy Ave., Belmont	11/14/61	Sec. 10177.6
Breeding, Robert Yates Real Estate Broker	6324 Watt, North Highlands	11/20/61	Secs. 10160; 10162; 10164 & 10177 (f)
Lewis, Jay Arthur Real Estate Broker Business Opportunity Broker	P.O. Box 30, Pacific Grove	11/20/61 (Granted right to restricted licenses)	Secs. 10177 (b), (f); 10302 (b) & (c)
Frankfort, Milton Samuel Restricted Real Estate Broker	171 N. Mansfield Ave., Los Angeles	11/24/61	Secs. 10176 (a), (c), (i) & 10177 (f)
Haick, Theodore Sascen Real Estate Salesman	15217 Greenleaf St., Sherman Oaks	11/30/61 (Granted right to restricted license)	Secs. 10177 (b) & (f)
Empire Mortgage and Loan Company Real Estate Corporation	3963 Park Blvd., San Diego	12/18/61	Secs. 10176 (a), (c), (i), (l); 10176.1; 10177 (d), (f), (i) & (l)
Ernest, Martin Edward Secretary—Empire Mortgage and Loan Company Real Estate Broker	3963 Park Blvd., San Diego	12/18/61	Secs. 10176 (a), (i); 10177 (b), (d) & (f)
Guthrie, Frank Joseph Real Estate Broker	3963 Park Blvd., San Diego	12/18/61	Secs. 10176 (a), (c), (i), (l) & 10177 (f)
Haynes, Tom Howard President—Empire Mortgage and Loan Company Real Estate Broker	3963 Park Blvd., San Diego	12/18/61	Secs. 10176 (a), (c), (i), (l); 10177 (b) & (f)
Arsenian, Vaughn K. Real Estate Broker Business Opportunity Broker	Rm. 321, 510 S. Spring St., Los Angeles	12/20/61	Secs. 10176 (c), (i), (l); 10177 (d), (f); 10302 (d), (e) & Sec. 2830 of R.E. Comm. Regulations
Regalado, Julian Real Estate Broker	5478 E. Beverly Blvd., Los Angeles	12/20/61 (Granted right to restricted license)	Secs. 10176 (d), (e), (i); 10177 (f) & Secs. 2830 & 2831 of R.E. Comm. Regulations

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KNOW YOUR LICENSE NUMBER

As all active brokers know, when drawing their escrow instructions the escrow officer asks for the license number of the broker or brokers who are to receive commission checks. In a surprising number of instances the broker gives them the red Division of Real Estate audit number, which appears on the left hand margin of his license rather than his identification number which appears in the box directly above the commissioner's signature at the right center of the license form.

Attorney General Plugs For Land Sale Permits

Attorney General Stanley Mosk, in a recent report to the Governor's Council, described in general terms the type of legislation his office is urging as a basis for more effective control of out-of-state subdividers, many of whose promises have exceeded their ability to deliver.

"This office is urging a law," Mosk said, "which would require out-of-state real estate subdividers to obtain permits from the State Real Estate Commissioner for operations involving the sale of out-of-state land to California residents. The permit system would empower the Real Estate Commissioner to pass upon advertising in

advance and require bonding to insure construction of advertised improvements such as clubhouses, swimming pools and golf courses in conjunction with the property fringe benefits advertised."

In short, Mr. Mosk is saying that the California citizen who relies upon a vividly illustrated brochure or the equally vivid word picture of an agent, has the same right to protection as the purchaser of labeled goods at the corner drug store; or, to paraphrase an oft-quoted aphorism to apply it to subdivision sales, "give us lots to match our sales talk!"

BROKER BETS LICENSE ON SALES EMPLOYEES

A popular song of some years ago contained the interrogation: "Is you or is you ain't?" The composer could well have been referring to the prevalent current confusion of concepts as to whether a real estate salesman is or is not an independent contractor.

So far as license law is concerned, the confusion may be quickly resolved. The salesman is an employee and the employing broker is responsible for his acts. Even though a broker might conceivably, under a particular set of circumstances, escape civil liability on the grounds that a salesman's culpable action occurred without his personal knowledge, he would still have to justify his claim to the commissioner by proof that he had exercised "reasonable supervision" of his errand agent.

Section 10151, of the Business and Professions Code, says that the salesman's application and fee ". . . shall be accompanied by . . . the recommendation of the broker *who is to be his employer*. . . ."

Section 10177 includes, among an extended list of acts and omissions for which a license may be suspended or revoked, the failure of a broker "to exercise reasonable supervision over the activities of his salesmen."

Section 10132 (B. & P.C.) defines a real estate salesman as ". . . a natural person who . . . is employed by a real estate broker to do" any of the acts specified in various other sections of the code.

So far as his authority and responsibility under his license are concerned, the broker's scope of action is clear. He can hire; he can fire; and *he must supervise*, any and all employment contract clauses to the contrary notwithstanding!

This is a question every employing broker should ask himself as he interviews an applicant salesman: "Is **this the calibre of person upon whose performance and integrity I would be willing to stake my license?**"

THE OFFICE SCRIBE SAYS:

"Every transaction is an examination which the licensee either passes or fails. Have you checked your grades lately?"

Serra, Michael Real Estate Salesman	400 S. 8th St., Alhambra	12/21/61	Secs. 10177 (b) & (f)
Black, Clarence William dba Oak Hills Realty Real Estate Broker	50 N. First Ave., Arcadia	12/27/61 (Granted right to restricted license)	Secs. 10176 (i); 10177 (d), (f) & Secs. 2830 & 2831 of R.E. Comm. Regulations
Cassel, Ernest Louis Real Estate Broker Business Opportunity Broker	384 Pebble Beach Dr., Crescent City	12/27/61	Secs. 10176 (e), (i); 10177 (d), (f) & 10302 (e)
Frisone, John Frank Real Estate Salesman	595 D St., San Bernardino	12/27/61	Secs. 10177 (b) & (f)
Marquez, Louis Real Estate Salesman	6306 W. Coast Hwy., Newport Beach	12/27/61 (Granted right to restricted license on conditions)	Sec. 10177 (b)
Ulan, Alex Paul Real Estate Broker	1835 Haight St., San Francisco	12/27/61	Sec. 10177 (b)
Garcia, Manuel Everett Real Estate Salesman Real Estate Broker	2068 Lincoln Ave., San Jose 195 Mt. View, Tulare	12/28/61	Secs. 10176 (e), (i); 10177 (e), (f) & Sec. 2832 of R.E. Comm. Regulations
Green, Joseph Arthur Real Estate Salesman	2172 Solano Way, Concord	12/28/61	Secs. 10177 (d), (f); 11012; 11013.2 (a) & 11020

Licenses Suspended During November, December, 1961

Name	Address	Effective date	Violation
Saxton, Glenn Everett Real Estate Salesman	6434 Foothill Blvd., Tujunga	11 / 8/61 30 days (Stayed for one year on conditions)	Secs. 10177 (a) & (f)
Coats, Harry Gordon Real Estate Broker	San Carlos bet. 5th & 6th, P.O. Box 3624, Carmel	11/16/61 60 days	Secs. 10176 (e); 10177 (d), (f), (i) & Secs. 2830, 2831 & 2832 of R.E. Comm. Regulations
Giuntini, Carlo Peter Real Estate Salesman	742 N. Loren St., Azusa	11/24/61 180 days	Sec. 10176 (a)
McGuire, Lester Alden Real Estate Salesman	547 S. Fairfax Ave., Los Angeles	11/24/61 60 days	Secs. 10176 (a) & 10177 (f)
Phillips, M. Penn Company M. Penn Phillips, President Real Estate Corporation	742 N. Loren St., Azusa	11/24/61 180 days	Secs. 10176 (a) & 10177 (b)
Rudin, David Real Estate Salesman	5820 Wilshire Blvd., Los Angeles	11/24/61 30 days	Sec. 10176 (a)
Schwartz, Leon Real Estate Salesman	16525 Lakewood Blvd., Bellflower	11/24/61 30 days	Sec. 10176 (a)
Singer, Edward Eli Real Estate Salesman	Rm. 308, 8111 Beverly Blvd., Los Angeles	11/24/61 30 days	Sec. 10176 (a)
Washington, Phillip Oliver Real Estate Broker	742 N. Loren Ave., Azusa	11/24/61 90 days	Sec. 10176 (a)
Roberts, Sherman Alan dba City Realty Co. Real Estate Broker	200 Anguello Blvd., San Francisco	11/27/61 30 days	Secs. 10176 (a), (i); 10177 (f) & (j)
Cassidy, Francis Joseph Real Estate Broker Real Estate Salesman Business Opportunity Salesman	491 Guerrero St., San Francisco 2420 Market St., San Francisco 3362 24th St., San Francisco	11/28/61 30 days	Secs. 10176 (a), (b), (c), (i); 10177 (f); 10302 (e) & Sec. 2832 of R.E. Comm. Regulations
Dolman, Robert Dexter Real Estate Salesman	314 W. Portal Ave., San Francisco	12/15/61 30 days	Secs. 10176 (a), (i); 10177 (f) & (j)
Overman, Iris Elaine Restricted Real Estate Salesman	3445 Dam Rd., El Sobrante	12/19/61 60 days	Secs. 10176 (a), (b), (i) & 10177 (f)
Warner, Harry John President, Warner Realty Corporation Business Opportunity Officer	501 N. Hunter, Stockton	12/22/61 3 years	Secs. 10177 (b) & 10302 (b)
Schwet, Joseph George, Jr. Real Estate Salesman	1920 Irving St., San Francisco	12/27/61 15 days (Stayed permanently)	Secs. 10177 (a) & (f)

Out-of-staters Out-acre In-state Land Offerings

A surprising fact looms up in the statistical report of Division of Real Estate activity for the first six months of the current fiscal year. The 1,283 final reports issued for in-state subdivisions covered 29,125 acres proposed to be sold in 58,683 lots. Out-of-state, tracts, however, while described in only 42 reports, included the impressive total of 65,374 acres offered in 21,795 parcels.

In other words, newly subdivided out-of-state acreage proffered to California citizens during the last six months was more than double the acreage subdivided within the state during the same period.

For those licensees who may be interested in the distribution of in-state subdivision activity we list the five leading counties:

Kern County leads all others in acres of land placed on the subdivision market with 5,909 acres broken down into 4,569 lots. Los Angeles County is second with 2,935 acres subdivided into 8,974 lots. San Luis Obispo achieves a close third with its 2,263 acres offered in 1,127 parcels. Orange County places fourth with 2,169 acres converted into 7,091 lots. And San Diego stays in the race with 2,441 acres becoming 3,412 parcels.

Real Estate Curriculum for Junior Colleges

A cherished objective of those interested in raising the standards of real estate practice was brought a step nearer when a real estate curriculum conference held on the Alta Loma campus of Chaffey College drafted a real estate program as a suggested pattern for junior colleges.

Sponsored jointly by the college and the Division of Real Estate, a widely representative group of real estate instructional specialists considered related matters, including: (1) possible legislative enactment of minimum educational prerequisites for real estate licensees; (2) more effective co-ordination of junior college and university extension programs with emphasis upon reciprocal transfer of real estate certificate credits; and (3) the current needs and desires of the industry as to training essentials.

Curriculum Pattern

On a foundation of general education requirements and electives, the conference drafted the following recommended curriculum structure leading to the association in arts degree with a major in real estate:

- A. Required real estate courses
 1. Principles of real estate
 2. Real estate practice
 3. Real estate finance
 4. Real estate law
 5. Trends and factors in real estate
- B. Courses for those specializing in appraising
 1. Real estate appraisal I
 2. Real estate appraisal II
 3. Building cost estimating
 4. Residential design and construction
- C. Additional courses for brokers
 1. Property management
 2. Real estate taxation
 3. Escrow procedure
- D. Related business education courses required for the AA degree
 1. Business law
 2. Business math or equivalent
 3. Business communications
 4. Salesmanship
 5. Accounting, bookkeeping or equivalent
- E. Business education courses related to real estate, acceptable as electives

1. Insurance (an equally divided house as to whether this should be required or elective)
2. Small business organization and management
3. Advertising and sales promotion
4. Sales management
5. Introduction to business

Some Personal Points of View

In an excellent summary of conference findings, Louis J. Gentile, Chairman, Business Division, of Chaffey College, listed the following personal reflections:

1. In planning two-year programs, we should not only consider our youth but also the potential among our full-time day students over 21 years of age.

2. In the certificate area, a demand exists for a *State Certificate Program*. (A real estate certificate conference was held in February. See next *Bulletin*.)

3. University extension may concentrate on a postlicensing program, but the prelicensing area is a must for the junior college if real estate practice is to be upgraded. A sound educational program for those who may enter the field is the only guarantee of upgrading toward professional stature as the challenge of the newcomers will demand added skills and information gathering by those already in the field.

4. Differences in units of credit for comparable courses may need study and adjustment.

Constant Re-evaluation Is Needed

5. No syllabus can be written which can successfully resist the obsolescence built into anything man creates. An evaluation of the available syllabi is being conducted by those who have used them in teaching situations and needed revisions are contemplated.

6. Constant attention to quality of instruction is required, as is the continuing search for and training of qualified instructors.

One Reason To Fight For Higher Standards

There are unquestionably many motives driving those who call for more demanding qualifications for the attainment of a license to practice real estate, including, undoubtedly, some selfish ones. But, regardless of the stimulus behind some cries for professionalism, there remains only one *reason*—one inescapably valid cause, soundly anchored in fact, which calls responsible licensees, educators, and governmental representatives to the fight for higher prelicense requirements and post license standards of practice: The public interest must be more effectively served and protected.

This is the philosophy which runs like a binding thread through every section of the license law, through every planning conference considering legislation or the application of legislation, through every implementing act of the commissioner and his regulatory personnel.

Well-Defined Goal Is Best Assurance Of Attainment

The public must be protected. And there is no better means of insuring that protection than the statutory insistence that each person granted the privilege of a license shall have proved his possession of a body of knowledge equal to the responsibility assigned by that license, together with the capacity to use such knowledge effectively, and the integrity to use it ethically.

The Public Has Right to Justified Confidence

When a citizen assumes that, because brokers and salesmen have authorizations to practice bearing the Great Seal of the State of California and the signature of the Real Estate Commissioner, these licensees may be depended upon to serve his interests with both technical skill and a high level of professional concern, he has a right to know that his assumption is true.

This achievement cannot but be considered a significant milestone in the never-ending drive for a professionalized industry serving a satisfied public.

Case Study Proves Value of Research

Some years ago a red suspended member of the Pot Bellied Stove League in Tuning Fork, Texas, might well have posed the question "What good does it do a country doctor in these parts to read about them experiments with white rats and things up at that Harvard University?"

The answer, of course, is elementary. He could well save a life by the use of medicines or techniques perfected through the faraway, and seemingly unrelated, research.

The fact is mentioned here because similar questions are being asked today about areas of real estate research. "Of what value to me," a broker in San Diego might well ask, "are the results of a study of a directional growth problem in Northern California?"

Practical Value of Research

The answer again is elementary. The studied community becomes the laboratory wherein the interplay of forces in an expanding area, together with their economic repercussions, may be observed and the principles involved noted, so that the broker anywhere may more effectively and remuneratively relate himself to the same process in his own community.

Such a study, "Trends in Multi-family Housing, Sacramento Metropolitan Area, 1950-1970," has recently been completed by Professor B. E. Tsagris of Sacramento State College, assisted by a grant from the Real Estate Education and Research Fund. The study, among other things, highlights these facts:

According to a projection by the Real Estate Research Bureau of the college, Sacramento County will reach 796,000 by 1970. This is based on an actual average annual rate of population growth during 1950-1960 of 6.1 percent and an expected continued growth at a decreasing rate during

the 1960-1970 period to average out at 4.7 percent per year.

During this 10-year period studied, dwelling units authorized to be built all but equaled the total number in existence in 1950. The 1950 census showed 76,440 occupied dwelling units in Sacramento County; 73,512 were authorized to be built during the following 11 years.

Apartment to Dwelling Unit Total Is Constant

A significant relationship is shown in that the number of units authorized to be built during the 1950-1960 period of intense activity and growth bears almost the same ratio of apartment units to total dwelling units as existed prior to 1950. To be specific, the pre-1950 ratio of occupied apartment units (in structures containing three or more) to all dwelling units was 14.7 percent; the 1960 ratio was 14.6 percent.

The conclusion from this would seem to be that the obviously accelerated apartment construction activity since 1957 has been a "catching up process." The law of supply and demand, however, is still operative; and if this construction rate is continued without an equal increase in absorption rate, it may lead to an oversupply of apartment units, an increased vacancy factor, a slower market and all of the other negative factors related to that condition.

Another phase of the study points up the high mobility of loan funds and the degree to which the magnet of an expanding area attracts them. At least 185 firms made real estate loans in Sacramento County during 1954-1960, 10 local banks, 8 local savings and loan associations, 37 out-of-county banks, 39 out-of-county savings and loan associations, 41 insurance companies, and 60 mortgage companies.

A Better Measure of An Agent's Age

The office gremlin was looking through the files of some of our still active real estate old timers when he came across a letter from this 82-year-old broker who, after 50 years of active practice was still looking ahead, "Just in case I should be able to consummate a \$10 million deal in the future.

"And as I look back," he continued, "I believe I have helped a little to promote the real estate business as a profession. . . ."

"Now, there's a challenge to every person who holds one of our 138,000 California real estate licenses," mused the gremlin, "50 years of service and still possessed of eagerness for the next escrow and the satisfied clients its consummation represents."

This brings to mind these paragraphs which hang on the wall above the desk of General Douglas MacArthur:

"Youth is not a time of life. It is a state of mind. It is a temper of the will—a quality of the imagination—a vigor of the emotions. Nobody grows old by merely living a number of years. People grow old only by deserting their ideals.

"Years wrinkle the skin but to give up enthusiasm wrinkles the soul.

"Worry, doubt, self-distrust, fear and despair—these are the long, long years that bow the heart and turn the greening spirit back to dust, whether 60 or 16, there is in every human being's heart the lure of wonder, the undaunted challenge of events, the un-failing childlike appetite for what is next, and the joy of the game of living.

"We are as young as our self confidence; as old as our fear; as young as our desire; as old as our despair."

"I think," said the gremlin, "I'll just address this to every California licensee and close it by asking 'have you checked your age lately?'"

THE OFFICE SCRIBE SAYS:

"Aspiration + education + inspiration + perspiration = a sure-fire formula for attainment in real estate or any other worthwhile area of endeavor!"

DON'T OVERSTOCK

License application blanks. They change from time to time. Only current forms are to be used.

The Industry Pays For Each Agent's Malpractice

A real estate broker license is not only a key to potential monetary returns, it is a valuable symbol of professional achievement and status. And yet, how cheaply is this prized possession sometimes forfeited.

A typical example is that of broker—let us call him—C. O. Mingle who, on November 11, 1961, had his broker career terminated with the fateful words “. . . *the real estate broker license of respondent . . . together with rights of renewal or reissuance of said license, shall be . . . hereby revoked.*”

Why? First, he represented to a client that on a given date he would have for sale at \$2,500 a \$3,800 second trust deed, executed by himself, secured by real property to which he had title. The information was passed to a third party who, on the strength of the representation and for no other reason, proffered a check for \$2,500.

Mingle did not own the specified property and he never executed the trust deed in question although he did open a loan escrow and, under pressure, issued an unsecured note.

Second, acting in his capacity as a real estate broker, Mr. Mingle nego-

tiated the sale of a property and collected the first payment of \$175 as provided in the sales contract but failed to deliver this money to the seller.

Third, the broker again violated the responsibilities of an agent by obtaining an offer and a deposit of \$150 on a property, contingent upon the purchasers' ability to secure an FHA loan and also to sell a specified property which they then owned.

When the purchasers were unable to meet the second contingency within the agreed upon time limit, they demanded the return of their deposit and were refused.

It was established upon investigation that not only did C. O. Mingle fail to place the moneys “*in the hands of his principals, in a neutral escrow depository or in a trust fund account maintained by him for that purpose,*” but that he actually converted the funds to his own use.

This broker is out of business but, unfortunately, all brokers and salesmen pay in some measure for acts like his. The injured and their friends and acquaintances are apt to think of the misdeeds of the few as typical of the many.

Division Policy Insures Objectivity

The current flurry on the national scene and past storms of a similar nature raised over the conflict of interests on the part of those chosen for positions of public trust underscores the wisdom of Section 10074 of California Real Estate Law which, in essence, holds that neither the commissioner nor any of his deputies, staff members, or employees may have any interest in any real estate business or engage in any outside activity within the scope of regulation by the Division of Real Estate.

The commissioner has complied with the intent of this statutory requirement and the specific provisions of the Government Code (Sec. 19251) by spelling out in detail the outside activities from which all employees must abstain. For example, no employee may participate in the development or operation of a subdivision.

A Daily Count to Test Sales Activity

For years brokers have sought some simple but dependable technique for measuring the day's activity of their salesmen, short of the obviously impractical practice of keeping them under constant surveillance.

After exhaustive research, we are proud to announce that at last we have the answer. And, considering the major proportions of the problem, this answer is amazingly simple.

For an accurate and invulnerable evaluation of his sales staff's activity during any given day, the broker has only to make the rounds of desks, checking the contents of the ash tray beside each telephone. If the trays are full of butts, then he may be sure that the swivel chairs have been similarly loaded for altogether too many hours on that particular day.

RIGHT TO PRACTICE

In the case of salesman transfer, change of address, and branch office applications, when the fee is paid and a *stamped receipt obtained from a Division of Real Estate office*, this receipt may be considered an authorization to practice pending the processing of the license. A money order receipt or check stub may not be so used!

HIGH COST OF MISREPRESENTATION

In a recent court case, a broker was severely penalized for misrepresentation and withholding of information.

The agent sold the plaintiffs an older house built in 1908, in which the attic had subsequently been converted into living quarters. The agent had full knowledge that the quarters were constructed in violation of the Housing and Safety Code and could not be rented legally as the purchasers intended. Moreover, he knew that, because of infirmities, they could not live in the attic apartment while renting out the lower floor.

Despite this and knowing that the rental income was the primary reason for making the purchase, the agent assured the buyers the upstairs area could be rented.

The court held for the plaintiffs, awarding them exemplary damages, and the appellate court affirmed the decision.

Send A Letter

From time to time the division receives a check on which is written all the information as to what the licensee wants. The check goes promptly to the bank, bearing its list of paid-for services with it, and eventually returns through banking channels to its source. The result: The licensee is frustrated and our processing section is helpless to do anything about it. We must have a letter, a form, or a memorandum accompanying every check indicating its purpose.

Attorney General Issues Sales Contract and Subdivision Opinion

The question as to whether the Real Estate Commissioner is given authority to enact and enforce regulations of sales contract financing is dealt with affirmatively by Attorney General Stanley Mosk in a formal opinion—No. 62/1—issued January 12, 1962.

In addition, his opinion clarifies Section 11010.5, B. & P.C., relative to commercial agricultural subdivisions; Sections 10080 and 11001 dealing with the Commissioner's authority to adopt rules and regulations; Section 11020 related to false or fraudulent advertising; and the Commissioner's power to issue a stop order under Section 11019 without a showing of material change.

The rulings were in answer to 11 questions submitted by Commissioner W. A. Savage as to the extent of his power to act under specified sections of the Business and Professions Code. In his opinion, the Attorney General devotes some 19 pages to an analysis of the questions in consecutive order, followed by a summation of his answer to each.

For the convenience of readers, we list each of the Commissioner's queries with the summary of the related Attorney General's conclusion immediately following:

Q. Must the Real Estate Commissioner under Business and Professions Code Section 11013.4(a) require all installment payments made under a contract of sale to be maintained in an escrow or trust account until legal title is transferred to the contract vendee?

A. Where subdivision homes and lots are being sold under conditional land sales contracts, the Subdivision Law requires the impoundment of all installment payments until title is delivered to the purchaser unless alternative procedures authorized by said law are followed, all to the purpose of assuring the purchaser that he will either receive free and clear title when payments are completed or have his purchase money returned.

Q. If this is required, can the real estate commissioner authorize the escrow holder or trustee to disburse from such escrow or trust account a sufficient portion to meet current payments on encumbrances against the

property subject to the contract of sale?

A. The Commissioner may authorize an escrow holder or trustee to disburse from an escrow or trust account a sufficient portion of the contract payments to meet the current payments on encumbrances against the property which is the subject of the contract of sale.

Q. In view of Section 11202, can the commissioner refuse to grant authority to the escrow holder or trustee to disburse a sufficient portion of the funds impounded in an escrow or trust account to meet the current payments on encumbrances against the property?

A. Section 11202 requiring the seller to transmit current payments is no bar to this.

Q. Under Section 11013.4, does the commissioner have the authority to waive the impound of installment payments made under a contract of sale in an escrow or trust account, if the vendor records the contract of sale?

A. As recordation of the contract would afford some of the protection sought to be provided by the Subdivision Law, it could be part of the "alternative requirement or method" which the commissioner might adopt, as a basis for waiving the impoundment of installment payments.

Q. If a subdivision is subject to a blanket encumbrance containing an unconditional release clause, as defined by Section 11013.1, can the real estate commissioner require the impound of contract installment payments in an escrow or trust account until the title is transferred to the contract vendee?

A. Although there is a release clause in a blanket encumbrance, the statute requires impoundment of installment payments to protect against other liens until clear title is delivered.

Q. Under Section 11013.2(a), after the property has been released from the blanket encumbrance, can the commissioner require impound of all installment payments made under a contract of sale in an escrow or trust account until legal title is transferred to the contract vendee?

A. Likewise, after a discharge from a blanket encumbrance, impoundment is required, to achieve the objective of the statute that the purchaser under a contract of sale shall receive title free and clear of both the blanket and other liens. The commissioner, in lieu of impounding, may establish an alternative method to secure the delivery of clear title to the contract purchaser.

Q. Does the real estate commissioner have the burden of establishing that parcels of 20 acres or more offered solely for commercial agricultural purposes are subdivided lands within the purview of Section 11000 or, in the alternative, is the owner or developer required to establish that the offering is not a subdivision under the provisions of Section 11000.5?

A. A subdivider dividing land into parcels of 20 acres or more has the burden of establishing that parcels being sold "solely for commercial agricultural purposes" are within the exception to the Subdivision Law. "Agricultural purposes" refer to the growing of crops as distinguished from animal husbandry.

Q. Can an offering for sale or lease of parcels of 20 acres or more for commercial agricultural purposes improved, or to be improved, with a residential structure be an offering for sale or lease solely for commercial agricultural purposes under Section 11000.5?

A. The sale of parcels, otherwise qualifying for the exception, each with a structure thereon for use by the farmer, would not prevent such parcels from being considered as being offered for sale solely for commercial agricultural purposes.

Q. Does the phrase, "for commercial agricultural purposes," as used in Section 11000.5, exclude all agricultural operations which cannot be demonstrated to have a reasonable probability of being operated profitably?

A. The exception applies to agricultural operations which have a reasonable commercial possibility.

(Continued Next Page, Col. 1)

BULK RATE
U. S. POSTAGE
PAID
Permit No. 157
SACRAMENTO, CALIF.

ATTORNEY GENERAL ISSUES OPINION

(Continued from Page 535)

Q. Can the real estate commissioner under the provisions of Section 11080, 11000.1 and 11020 adopt a regulation prohibiting the use of radio broadcasts, telecasts or advertising brochures, etc., concerning any subdivision, which tend to be false or fraudulent?

A. The commissioner is empowered to adopt a regulation which would prohibit the use of radio broadcasts, telecasts or advertising brochures concerning subdivision promotions, which tend to be false or fraudulent.

Q. After a public report has once been issued, can the real estate commissioner re-evaluate the offering and proceed under Section 11019 and without a showing of any material change in the offering and on the same facts on which the public report was published, issue an order prohibiting the sale or lease, on the ground that the further sale would be a fraud on the purchasers thereof?

A. After the commissioner has issued a public report he is not authorized, without a showing of a material change in the offering, to re-evaluate the facts stated in the report as a basis for issuing an order stopping further sales because of fraud or deceit. If he later determines that the subdivider either concealed or misrepresented facts, he has implied authority to recall the report and issue a stop order.

FACTS THE BASIS FOR DISCIPLINARY ACTION

The filing of a complaint against a licensee does not necessarily mean there are adequate grounds for the complaint nor does it imply that disciplinary action is in order. It does mean that an investigation will be made to determine the actual facts and that further action will depend on this finding.

It is not the intent or the prerogative of the Division of Real Estate to harass the industry. Quite the opposite, every effort is made to help raise the status of the industry by improving the licensing requirements, by providing more educational opportunities and lending a higher quality to the education available, and by continuous re-evaluation and improvement of real estate law and regulations in the light of experience.

The spread between infractions formally alleged and the final disposition of the complaints is illustrated by a San Francisco District Office report, which indicates 15 formal hearings held for each 100 complaints filed.

This, of course, does not mean 85 of those complaints were found to be baseless. Not at all. Investigation may have proved some of them so conclusively that the respondent licensee did not appear for hearing, accepting disciplinary action with contest. Others may have been of such a nature as not to demand the necessity of a formal hearing, or the infraction may have been of a minor nature and promptly rectified by the licensee in question.

Fingerprinting Part of Character Check

Some licensees are still asking why it is thought necessary to take their fingerprints when applying for a license and what bearing these prints have on the application. An even larger number of applicants are puzzled by the practice of taking two sets of prints.

The answer, of course, is that they play an important part in the required check of the applicant's honesty, truthfulness and good reputation.

The practice of taking two sets of fingerprints has been in effect since June 1, 1960. One set, as in the past, goes to the State Bureau of Criminal Identification and Investigation. The extra set is forwarded to the Federal Bureau of Investigation. The checkout by the F.B.I. does not delay issuance of a license. If the federal check shows a criminal record not reported on the original application for license, then further investigation and possible action against the license would be in order.

A good deal of work is involved in checking fingerprint cards and searching records for evidence of an applicant's unworthiness for licensure. But it is not wasted—many unsavory backgrounds have been uncovered and unquestionably many undesirable characters are deterred from applying for license when they discover their prints will be thoroughly checked.

In any event, it should be clearly noted that disciplinary actions are based not upon allegations but upon facts established by investigation.