



# Real Estate Bulletin

Official Publication of the California Department of Real Estate

RONALD REAGAN, *Governor*

Spring 1971

ROBERT W. KARPE, *Commissioner*

## **DUE PROCESS**

### **As It Affects the Real Estate Licensee's Rights**

**EDITOR'S NOTE:** We have received many inquiries from concerned members of our industry who do not understand why, after several months, a "known violator" still remains in business with no apparent discipline by the Real Estate Commissioner.

Many are apparently under the impression that if a licensee violates the Real Estate Law a brief investigation by a deputy real estate commissioner is conducted and the deputy then visits the offender's office, removes his license from the wall and thereby terminates his career in the real estate business forthwith.

This article is written for the purpose of acquainting the reader with the legal procedures that must be followed by the commissioner in enforcement of the Real Estate Law.

The Real Estate Commissioner is charged with the licensing of real estate practitioners and regulating them after they are licensed. His office has the authority to investigate complaints against licensees and to discipline them by revoking or suspending their licenses after a formal administrative hearing. In this respect, the functions are similar to the courts.

In addition to regulating real estate broker and salesman licensees, the Department of Real Estate regulates the sale of subdivided land and is authorized to deny a subdivision public report, thus refusing to allow the sale of the land. We also issue Desist and Refrain Orders (after the issuance of public reports where we find violations of the subdivision law or changed conditions) which stops the sale of all lots in the subdivisions. These "D and R's" may also be issued to a licensee who violates the Real Estate Law or engages in a prohibited activity.

Before denying, suspending or revoking any license, the commissioner must proceed in accordance with the provisions of the Administrative Procedure Act. Subdividers and licensees are entitled to hearings on the Desist and Refrain Orders under this same act. [It has been held by the courts that these denials and proceedings are quasi-civil and that rules governing criminal cases are inapplicable in such administrative hearings.]

Delays of several months or years in the actual suspension or revocation of license are possible under the "due

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### **Commissioner Makes Changes in Regulations**

The Real Estate Commissioner has adopted or amended certain sections of his regulations that became effective January 29, 1971, excepting the addition of Section 2790.1. This section was filed as an emergency and became effective January 1, 1971. The full text of the new and brief summaries of the amended regulations appear below:

- **Section 2710** amended to provide that renewal of licenses can be made on other than department forms (when not readily obtainable) if sufficient information is supplied to the department.
- **Section 2752** amended to provide for an appropriate written statement by the transferring salesman as to the reason he was unable to obtain the signature of his former employing broker when transferring to a new employing broker.
- **Section 2761** deleted: Section 10153 of the B. & P. Code requires that examinations be in writing so this regulation was no longer of any consequence.

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### **Governor Reagan Names Robert W. Karpe New Head of Department**

Governor Ronald Reagan has named Robert W. Karpe of Bakersfield as California Real Estate Commissioner.



**ROBERT W. KARPE**

Mr. Karpe succeeded Burton E. Smith who, after a little over four years in the post, resigned to re-enter private business.

As Real Estate Commissioner, Mr. Karpe serves as a member of the Governor's Low Income Housing Task Force and the Governor's Interdepartmental Committee on Housing. He also becomes a member of the University of California President's Real Estate Advisory Committee, and will represent California as a member of the National Association of Real Estate License Law Officials.

The new commissioner came from the real estate brokerage business and is a second generation Realtor in the

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**REAL ESTATE BULLETIN**

Official Publication of the  
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STATE OF CALIFORNIA  
RONALD REAGAN, Governor

ROBERT W. KARPE  
Real Estate Commissioner

JOHN E. HEMPEL  
Chief Assistant Commissioner

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**Disciplinary Action—December 1970—February 1971**

REB—Real estate broker RES—Real estate salesman REO—Real estate officer  
RREB—Restricted real estate broker RRRES—Restricted real estate salesman REC—Real estate corporation

NOTE: A list of actions is not published in this Bulletin until the 30-day period allowed for court appeal has expired; or if an appeal is taken on the disciplinary action stayed, until the stay is dissolved. Names of persons to whom licenses are denied upon application are not published.

**Licenses Revoked From December 1970 Through February 1971**

Name	Address	Effective date	Violation R.E. Law/Regulations
Bole, Geraldine Elaine (RES)	33132 Sea Knoll, Dana Point	12/ 1/70	10177(b) (f)
Bush, George Jackson (REB)	482 E. Athens, Altadena	12/ 1/70	10177(b) (f)
<i>Dbc Cadet Realty</i>			
Long, Thomas Gust (REB) (RES)	4482 Montgomery St., Oakland	12/ 1/70	10145, 10176(c) (i), 10177(d) (f)
<i>Dbc William W. Bradley Co.</i>			
Quam, Virgil Eugene (RES)	3353 Idlewild Way, San Diego	12/ 1/70	10177(b) (f)
Rutecki, Theodore Ralph (RES)	16202 Cairo Cir., Placentia	12/ 1/70	10176(c) (i), 10177(f) (j)
McCarthy, Robert Tyrrell (REB) (RES)	1950 Camden Ave., San Jose	12/ 9/70	10176(a) (g) (i), 10177(f)
<i>(Right to RRES license on terms and conditions)</i>			
Weber, Alice Mary (REB)	24375 Sunnymead Blvd., Sunnymead	12/ 9/70	10177(f) (g)
<i>(Right to RREB license after 180 days on terms and conditions)</i>			
Wells, Robert Lee (REB)	2165 Sierra Wy., San Bernardino	12/ 9/70	10145, 10177(d) (f) (g); 2831, 2831.1
<i>Dbc Weber-Wells Realty</i>	24375 Sunnymead Blvd., Sunnymead		
<i>(Right to RREB license on terms and conditions)</i>			
Baber, William Stanley (REB)	2252 Gunar Dr., San Jose	12/10/70	10177(b) (f)
<i>(Right to RREB license after 30 days on terms and conditions)</i>			
Marian Home Loan Corp. (R.E.C.)	1770 Bonanza St., Walnut Creek	12/10/70	10145, 10176(c) (i), 10177(d) (f)
<i>Pres., William Alfred Brydon (REO)</i>			
Lommel, John Edward (RES)	20421 E. Flintgate Dr., Walnut	12/15/70	10177(b) (f)
Magselski, Frank William (RES)	6363 Sunset Blvd., Los Angeles	12/17/70	10177(a)
<i>(Right to RRES license on terms and conditions)</i>			
Citron, Josef Alwyn (REO)	8730 Wilshire Blvd., Beverly Hills	12/22/70	10177(f) (j)
<i>Pres., Citron Investment Corp.</i>			
Weldy, Ralph Owen (RES)	2557 Morrene Dr., Placerville	12/28/70	10177(b)
Poole, Harry Campbell (RES)	3815 Palos Verdes Dr. No., Rolling Hills	12/31/70	10177(b) (f)
<i>(Right to RRES license on terms and conditions)</i>			
Muellersman, Charles Richard (RES)	8595 Katella, Stanton	1/ 5/71	10177(b) (f)
Steiner, Paul Hardy (RES)	1600 Atlas Peak Rd., Napa	1/ 5/71	10177(b)
<i>(Right to RRES license on terms and conditions)</i>			
Williams, Verne Carleton (RES)	18119 San Bernardino, Bloomington	1/ 5/71	10177(a) (b) (f)
Fitzpatrick, Donald Albert (RES)	5699 E. North Ave., Fresno	1/ 6/71	10176(a) (i), 10177(d)
Young, Stanley Julian (REB)	1057 Solano Ave., Albany	1/16/71	10130, 10145, 10176(c) (i), 10177(d)
<i>(Right to RRES license after 20 days on terms and conditions)</i>			
Aguirre, Harold Clarence (RES)	1602 Grant Ave., Novato	1/19/71	10177(b)
<i>(Right to RRES license on terms and conditions)</i>			
Gervis, Bert John (REB)	2121 S. Bundy Dr., W. Los Angeles	1/19/71	10177(f), 10177.5
Taylor, Donald Eugene (RES)	723 Bridgeway, Sausalito	1/19/71	10176(a) (b) (g) (i), 10177(f)
<i>(Right to RRES license on terms and conditions)</i>			
Shevlin, John Gerald (RES)	931 Calle Margarita, Thousand Oaks	1/20/71	10177(a)
<i>(Right to RRES license on terms and conditions)</i>			
Weiner, Guttman Jerry (RES)	6200 Laurine Wy., Sacramento	1/20/71	10177(b)
Gunn, Willie E. (RES)	741 8th St., Richmond	1/26/71	10177(b)
<i>(Right to RRES license on terms and conditions)</i>			
Larson, William Ernest (RREB)	81 Fifth Ave., Ste 2, Redwood City	2/ 2/71	10177(k)
<i>Dbc Jack London Realty Co.</i>			
<i>(Right to RREB license on terms and conditions)</i>			
Mangin, Joseph Neville, Jr. (REB)	201 El Camino Real, Millbrae	2/ 2/71	10145, 10176(c) (i), 10177(d) (f)
<i>(Right to RREB license on terms and conditions)</i>			
Rodgers, Johnie Austin (RES)	4235 Hendrix Wy., San Jose	2/ 2/71	10177(b) (f)
<i>(Right to RRES license on terms and conditions)</i>			
Clark, Russell Alexander (RES)	3055 Alvarado St., San Leandro	2/ 8/71	10177(b)
Rogers, Carol Paula (RES)	6625 Sunny Lane, Carmichael	2/ 9/71	10176(a) (i)
Wilson, Ross Arthur (RES)	Box 11114, Tahoe Paradise	2/ 9/71	10177(b)
Duckworth, Margaret (RES)	4918 Presidio Dr., Los Angeles	2/11/71	10177(b), 10177.5
Hofer, Ivan John (RES)	Rt. 1, Box 38, Redwood Valley	2/11/71	10177(b)
Von Achen, Stanley Peter (REB)	6062 University Ave., San Diego	2/11/71	10177(b) (f)
Waldron, Jack G. (RES)	8030 Highland Trail, Los Angeles	2/11/71	10177(b) (f)
<i>(Stayed for 2 years on terms and conditions)</i>			
Wimberley, James Franklin (RES)	184 Mazze, Pleasant Hill	2/11/71	10176(a) (b) (g) (i), 10177(f)
Jenewein, Albert William (REB)	859 Galloway St., Pacific Palisades	2/16/71	10177.5
Stogner, Riley H. (RES)	3528 Delaware, Stockton	2/16/71	10137, 10176(c) (i), 10177(d) (f)
Bowe, Robert Patrick (REB)	228 N. Sutter, Stockton	2/23/71	10177(b)
<i>(After 30 days, right to restricted license on terms and conditions)</i>			
Critchlow, William Lloyd (REB)	3213 Fairmount Ave., San Diego	2/25/71	10145, 10176(c) (i), 10177(f) (j); 2830
Tillar, Harold Ray (REB)	444 Sixth St., San Diego	2/25/71	10177(b) (f)
Young, Milton Neal (RRES)	311 MacArthur Blvd., San Leandro	2/25/71	10177(k)
<i>(Stayed on terms and conditions; one condition, 60-day suspension)</i>			

**New Bibliography Is Currently Available**

The "California Real Estate Bookshelf" is a bibliography of special studies and texts in the field of real estate. The latest edition has recently been published and it carries 437 entries arranged in ten subject areas. There is also a chapter devoted to publications relating exclusively to California procedures and problems.

The "California Real Estate Bookshelf" should suggest to the reader many publications of interest to him. Copies may be obtained by sending a check made payable to the Regents of the University of California in the amount of \$2.63, tax included, to University of California, Center for Real Estate and Urban Economics, 260 Stephens Hall, Berkeley, California 94720.

## Licenses Suspended From December 1970 Through February 1971

Name	Address	Effective date	Violation R.E. Law/Regulations
Lang, Peter Wall (REB)..... (Stayed for one year on condition)	Sierra Blvd., and Hwy 50, S. Lake Tahoe	12/15/70 30 days	10176(e)
Karlner, Werner Adolf Gustav (REB) Dba RO-KA Realty	6033 Geary Blvd., San Francisco	12/29/70 60 days	10176(a) (i), 10177(f)
Consulter, Reno Joseph (RES).... (All but first 15 days stayed 1 year on condition)	2850 Telegraph Ave., Berkeley	1/ 5/71 30 days	10177(f) (i)
Federal Home Mortgage Advisers (REC) Dba Hacienda Home Loans Vice Pres., Norman Kahn (REO) (Stayed for 1 year on terms and conditions)	2641 W. Olympic Blvd., Los Angeles	1/19/71 30 days	10130, 10140.6, 10177(c) (d) (f), 10235; 2848, 2848(1) (2) (6)
Kahn, Norman (REB)..... Pres., Guaranteed Mortgage Bankers Fund (REO) Vice Pres., Allstate Plan (REO) Dba Zip Realty Pres., Union Mortgage Co. (REO) Dba Union Home Loans Vice Pres., Hacienda Home Loans (Stayed for 1 year on terms and conditions)	2641 W. Olympic Blvd., Los Angeles	1/19/71 30 days	10130, 10140.6, 10177(c) (d) (f), 10235; 2848, 2848 (1) (2) (6)
Bradburn, Catherine Mae (RREB)	7144 Fair Oaks Blvd., Carmichael	2/ 1/71 90 days	10177.5
Ravizza, Edward I. (REB)..... Dba Eastman-Ravizza Agency (Stayed for 1 year on conditions)	673 Bridgeway, Sausalito	2/ 2/71 30 days	10145, 10176(e), 10177(d)
Wiener, Irving Emile (REO)..... Pres., Wiener and Associates, Inc. (All but first 10 days stayed for 1 year on terms and conditions)	2512 Noriega St., San Francisco	2/ 2/71 30 days	10176(a) (i), 10177(f) (i)
Bock, John Frederick (RES)..... (Permanently stayed)	10216 S. Prairie Ave., Inglewood	2/ 9/71 5 days	10177(b) (f)
Collins, O. D. (RES)..... (All but first 15 days stayed for 1 year on terms and conditions)	4917 Telegraph Ave., Oakland	2/10/71 30 days	10176(a) (i), 10177(f)
Caulley, Joseph Marcellus (REB).... Dba J. M. Caulley and Associates (After 30 days, remainder or any portion thereof may be stayed on condition)	3137 W. 59th St., No. 2, Los Angeles	2/11/71 110 days	10162, 10165, 10177
Farr, Darnell (RES).....	4700 Crenshaw Blvd., Los Angeles	2/11/71 15 days	10177(f), 10177.5
Demere, Carmella (RES).....	2857 Alta Laguna, Laguna Beach	2/18/71 6 mos.	10177(b) (f)
Burinda, Linda Lavelle (REB).... Dba Crest Realty (Stayed for 1 year on condition)	3470 Orcutt Rd., Santa Maria	2/23/71 10 days	10177(f) (g)
Young, Milton Neal (RRES).....	311 MacArthur Blvd., San Leandro	2/25/71 60 days	10177(k)

## FAILURE TO SUPERVISE LEADS TO SUSPENSION

Although it may well be assumed that every real estate broker knows he is responsible for the supervision of his salesman, a recent disciplinary action taken by the Real Estate Commissioner duly reminded the salesman as well as the broker of their mutual responsibilities.

The employing broker's license was suspended for failing to supervise his salesman. The salesman's license was also suspended.

The facts of the accusation stemmed from a rather simple real estate transaction. The salesman negotiated the terms of the sale which called for the purchasers to give the seller a promissory note in the amount of \$7,000, secured by a first deed of trust on the property.

Subsequently, the sale was closed with the salesman handling the entire escrow.

Without the knowledge of the seller, the salesman failed to cause the purchasers to execute the deed of trust called for by the form of installment note executed by the purchasers. As a consequence of this failure, the pur-

chasers obtained title to the real property without giving security for the unpaid balance of \$7,000.

When Department of Real Estate personnel brought the facts of the transaction to the attention of the broker (who had no previous knowledge of the transaction), he engaged counsel at his expense and the title problem was overcome.

The hearing officer determined that the salesman was negligent and incompetent in failing to obtain and to cause recordation of a trust deed as security for the seller, constituting grounds for disciplinary action against his license for demonstrated negligence and incompetence in performing an act requiring a license.

Grounds existed for disciplinary action against the license of the broker for failing to exercise reasonable supervision over his salesman.

Had the transaction taken place subsequent to January 2, 1970, the broker would have been also charged with a violation of Regulation 2725, which requires his review of all agreements

## BAD CHECKS ARE CAUSE FOR AUDIT

Occasionally the personal check for the license renewal fee from a broker or salesman is rejected by the bank due to "Insufficient Funds."

In addition to delaying renewal of the license, a bad check raises a question about the maker's ability to properly handle a client's money. A broker who has issued a bad check to the Department can very well expect to be visited by a deputy or auditor from the Department for the purpose of reviewing his records and trust fund accounts for possible discrepancies.

The issuance of a bad check for license renewal may also cost the licensee additional fees for renewal as many times the check is not returned by the bank until after the license has expired so the licensee is then required by law to pay a penalty for late renewal in addition to replacing the dishonored check.

A good check is a better idea!

## Inactive Licensees Urged to Inactivate Their Licenses

Many licensees maintain their licenses on active status when they have not engaged in a real estate transaction for months or years. They continue to pay the full renewal fee rather than saving a substantial sum by asking the department to renew their license on an inactive basis.

Any real estate license may be renewed on an inactive basis for one-half the regular fee.

If the licensee wishes to reinstate on an active basis during the term of his license, he may do so by paying the balance of the ordinary renewal fee. For example, to become active from inactive status:

Salesman—\$30 plus \$4 reinstatement fee  
Brokers—\$42.50 plus \$4 reinstatement fee

prepared or signed by a salesman which would materially affect the rights or duties of the parties to the transactions. Had the broker reviewed the documents in this case, the difficulties encountered in this transaction would have likely been averted.

### **Broker Responsibilities Defined**

#### **DOCUMENTS TO BE REVIEWED, INITIALED AND DATED**

Current routine office and trust account surveys by department auditors have shown that some brokers had failed to comply with Section 2725 of the Commissioner's Regulations by signing or initialing the pertinent documents within the specified time limit. Violations of this regulation could subject the licensee to disciplinary actions; therefore, concern for the requirements should be well established.

Regulation 2725 requires all real estate agreements prepared or signed by a salesman, which materially affect the rights or duties of the parties to the transaction, to also be reviewed and initialed by the employing broker.

The documents to be initialed would include listings, deposit receipts, real property sales contracts, trust deeds, deeds or any other such agreement. The question as to which documents should be reviewed and initialed may be resolved by determining if a particular document *materially affects* the rights or duties of the parties to the transaction. Since most real estate agreements prepared by a licensee and signed by buyers and sellers or borrowers and lenders normally affects their rights or duties, it would be unusual for any such document to not come within the purview of the regulation.

#### ***Date of Initialing***

The review and initialing of the documents must be done within five working days after the document is prepared or by close of escrow, whichever is sooner. When initialing the document, insert the date beside the initial. The failure to insert the date of the initialing makes it difficult to prove to anyone (such as DRE auditors, deputy commissioners or to a court in case of a civil suit) the documents were reviewed within the time limit. In the absence of such date, it could be argued that the licensee was in violation of the regulation even though he had actually complied with time to spare.

The review and initialing authority may be delegated by the employing broker to a real estate broker who has entered into a written employment agreement relating thereto with the employing broker. Also, the authority may be delegated to a real estate salesman licensed in his employment. If a broker intends to delegate

#### *From the . . . Commissioner's Desk:*

W. Jerome Thomas, previously assigned as Senior Counsel in charge of the legal staff in the department's San Francisco office has been assigned the duties of Chief Legal Officer, a position recently left vacant by the death of J. P. Mahoney. As a member of Commissioner Karpe's Executive staff, Thomas will be responsible for legal matters. He will also have direct line supervision with respect to the offerings and securities program: that is, real property securities, real estate syndicates and the statewide subdivision operation. His duties will also include the supervision of the department's legal staff in trial work and other matters.

Thomas, a graduate of the United States Naval Academy, attended law school at the University of San Francisco and engaged in private law practice following admission to the bar in 1960. He entered state service with the Department of Corporations, transferring to the Department of Alcoholic Beverage Control in 1963 and to the Department of Real Estate a few months later.

The Commissioner assigned Assistant Commissioner Gerald E. Harrington to administer the law enforcement operation, as well as licensing, accounting, education and examinations. Harrington also has the primary responsibility for preparation of the department's budget.

Thomas, Harrington and Karpe's Chief Assistant Commissioner, John E. Hempel, make up the Commissioner's Executive Committee.

the authority to a salesman, he must be certain the salesman has accumulated at least two years' full-time real estate salesman employment during the preceding five-year period.

### **LICENSEES MUST NOTIFY COMMISSIONER OF CHANGE OF ADDRESS AND EMPLOYMENT**

A glance at the headline may cause the reader to think "every licensee knows that", but the department's records are to the contrary.

The responsibility for the required notification is set forth in Sections 10161.7, 10161.8 of the Real Estate Law, as well as Sections 2715 and 2754 of the Commissioner's Regulations. A review of those sections of the law and the regulations governing such changes could possibly avert, in many situations, the unnecessary cessation of a practitioner's license activities.

Section 10161.7 states the license of a real estate broker or salesman may be inactivated within the period for which the license was issued by notifying the commissioner in writing of the inactivation and by paying the prescribed fee. Section 10161.8 states whenever a real estate salesman enters the employ of a broker, the broker shall immediately notify the commissioner in writing. This is best done by using the transfer application form. When the employment of a real estate salesman is terminated, the broker must immediately notify the commissioner in writing.

#### ***Sections 2715 and 2754***

Section 2715 of the Regulations provides that the commissioner shall be notified of these changes by the *next business day*. Section 2754 of the Regulations requires all licensees, even those holding canceled or inactive licenses, to file their home and office addresses with the commissioner and to promptly furnish notification of any change of address.

Recently a broker failed to notify the commissioner of a change of address after abandoning his office of record. A formal hearing was held and his license was suspended for three years, providing that any time after 30 days from the effective date of the decision the remaining period of the suspension could be stayed if he satisfied the commissioner that he had an established place of business at the address on record with the department.

## MISLEADING ADVERTISING LEADS TO LAWSUITS

### Loan Brokers Consent to Judgments

As a result of law suits filed in Superior Court early in 1970 by the Real Estate Commissioner and the Attorney General, seven Southern California loan brokerage firms stipulated and consented to the entering of final judgments. These judgments called for payments ranging from \$1,250.00 to \$10,000.00 and totalling \$24,000 as well as providing permanent injunction against certain types of advertising and statements.

The defendants were charged with untrue, misleading advertising with regard to rates, terms and conditions for negotiating and arranging loans for a fee, in violation of Section 10235 of the Business and Professions Code and Section 2848 of the Commissioner's Regulations.

Although the stipulations by the seven loan brokers did not constitute admission of any of the charges filed by the Attorney General and the Real Estate Commissioner, each of the several defendants was restrained and enjoined from making or disseminating or causing to be made or disseminated or inducing others to make or disseminate directly or indirectly, statements or advertisements which state directly or indirectly several things which varied from judgment to judgment, but included:

- a. Defendant is a lender rather than a broker.
- b. Defendant can or will arrange loans in which there are no payments required for the first six months of the loan, unless such loans are in fact regularly being arranged for defendant's clients, or defendant is ready, willing and able to make such loans on a regular basis, and the conditions or qualifications of such loans are fully stated.
- c. Defendant can arrange loans in which the client has the unqualified right to choose payments that fit his budget.
- d. Defendant can get clients all the cash they need.
- e. Defendant can arrange loans without the need of refinancing one's present loan, unless such statements are fully explained in the advertisement, or the need for further inquiry by a borrower is clearly set forth.
- f. Loans can be arranged over the phone, unless such a statement is properly qualified so as to represent that only preliminary approval can be made over the phone.
- g. Loans arranged by defendant will provide lower monthly payments than other loans, unless the reason defendant can arrange such loans is specifically stated.
- h. Defendant arranges loans for a higher percentage of the appraised value of real property than "banks", "savings and

### DRE Reports Syndicate Activity in California

The first full year of jurisdiction over non-corporate real estate syndicates by the Real Estate Commissioner saw considerably more activity in syndicate formations than had been anticipated.

Syndicators filed 203 applications for permits and 111 permits were issued. Seventy permits were issued through the Department of Real Estate's Los Angeles office, reflecting the high degree of interest in this type of investment in Southern California.

Over 60 percent of the applications involved syndications of income property. Proposed acreage syndicates comprised 26 percent of the total filings. The remaining proposed syndicate filings combined income property and acreage.

The initial and additional investments required for the purchase of the syndicate security interests amounted to \$78,560,000, involving projects with estimated development costs of \$171,342,000.

Those licensees who have questioned whether syndicating can be a profitable venture should be interested to learn that total compensation to be earned by the syndicators of the 203 proposed projects was \$7,356,000; an average of over \$36,000 per syndicate.

The compensation included commissions for sale of properties to syndicates, sale of real estate syndicate security interests and management fees.

- loans" or "other lending institutions" unless such statements are true and are fully explained in the advertisement.
- i. Defendant arranges loans in which the interest rates are based on one's personal needs.
  - j. Money can be reserved in a borrower's name with no charge.

### NEW SECTION ADDED TO PEST CONTROL ACT

Section 8516.5 recently added to the Business and Professions Code reads:

"Any person who makes an inspection of any property relating to the absence or presence of wood-destroying pests or organisms on such property and makes a report of such inspection shall furnish a copy of the report either to the owner of the property, or if the owner has consented in writing, to the agent of the owner, within five days after completing the report."

Licensees should be aware that structural pest control operators are now required by law to furnish a copy of an inspection report to the owner, or if the owner consents in writing, to his agent.

As a practical matter, then, when ordering an inspection report, the licensee should furnish the pest control operator with the name and mailing address of the owner—or deliver written consent from the owner to the pest control operator, if the licensee is to receive the owner's copy of the report.

Many syndicators chose a 10 percent subordinated interest in the profits of the syndicate as a method of compensation. Over 25 percent of the syndicators expressed their faith in the outcome of their projects by acquiring shares in the syndicate.

Some experts have stated the great interest in syndicating stemmed in part from the lack of available mortgage funds from institutional lenders in 1969-70 and predict some lessening of syndicate promotions in 1971 with the present ample money supply from conventional sources. This prediction does not consider the fact that those syndicators who have assembled a profitable syndicate venture for their investors and themselves would not now be satisfied to make a conventional sale and earn only the usual commission.

Combined actions of this type by the Attorney General and the Commissioner are proving to be one of the most effective means of controlling misleading and deceptive advertising in California.

## **Due Process**

### **Real Estate Licensee's Rights**

*(Continued from Col. 1, Page 933)*

process" afforded by the Administrative Procedure Act and the laws governing all courts in California. "Due process" assures that the procedures set by law for public protection will be followed by all administrative agencies. These requirements are designed to assure licensees that no state regulatory agency may act arbitrarily in the administration of the laws it is charged with enforcing.

Regardless of the decision that results from a formal disciplinary hearing, a licensee or subdivider has the same right of appeal to the courts that is guaranteed to every other citizen.

#### **Fictitious Case**

To illustrate delays that can occur in the processing of a case from the initial investigation through the formal hearing and the possible appeal for reconsideration, writ of mandate proceedings in Superior Court and appeal through the District Court of Appeals, we offer the following fictitious case which closely parallels several actual cases handled by the department.

In March 1964, the initial complaint was lodged against the licensee by his principal, alleging violations that occurred in December 1963. Although most investigations are completed within 60 days, the deputy commissioner assigned to this case experienced much difficulty in locating and obtaining the cooperation of key witnesses, thereby delaying completion of the investigation until August 15, 1964. The "case" was then assigned to the department legal staff, who were able to process the case and file the formal accusation (described in Section 11503 Government Code) by August 31, 1964. Due to a very crowded calendar, the first hearing dates available were November 12 and 13, 1964.

One week prior to the scheduled hearing date, the licensee released his original attorney and hired another. The new attorney asked for a continuance to familiarize himself with the case. A continuance was granted since it would not be fair to the respondent to deny his defense counsel a reason-

able amount of time to acquaint himself with the case and prepare a defense. The next hearing date available that was mutually agreeable to the hearing officer and the defense counsel was December 20-21, 1964. However, the department's legal officers were tied up in other hearings on those dates. The case was rescheduled for January 27-28, 1965.

The hearing began on those dates. However, one key witness was too ill to testify and a new date was set (March 3, 1965) for the conclusion of the hearing. The hearing was actually concluded on that date. The hearing officer asked department counsel and defense counsel to submit written briefs concerning an important point of law questioned by the defense during the hearing. Briefs were submitted by the deadline, April 10, 1965, and the hearing officer prepared his proposed decision. The proposed decision was received by the then commissioner on April 25, 1965. Prior to adoption of the order, the hearing officer's proposed decision is reviewed by the department's Chief Legal Officer and the Chief Assistant Commissioner, who then forward their recommendations to the commissioner. The decision was adopted May 1, 1965. The order provided for the broker's license to be suspended for a period of 90 days with the suspension to become effective May 25, 1965.

#### **Further Appeals**

Under Section 11521 of the Government Code, the licensee is entitled to appeal for reconsideration, but this appeal must be filed within 30 days. The petition for reconsideration was filed on May 23, 1965, and after careful study of the petition, the commissioner signed an order denying reconsideration with the order becoming effective June 10, 1965.

As a further appeal, the licensee-respondent was entitled to petition in Superior Court for a writ of mandate to obtain judicial review under the provisions of the Code of Civil Procedure. The petition was filed by the defense counsel within the time limits specified by law and the Superior

Court scheduled the hearing on the writ for July 20, 1965. After the writ of mandate was filed, the commissioner lost jurisdiction. Throughout the court appeals, the commissioner was represented by the State Attorney General, who encountered delays in civil court similar to those which were set forth above in relation to the administrative hearing. Judges must give utmost consideration to every legal issue involved. If a technicality is not properly adjudicated, this flaw may leave an avenue of appeal to the next higher court. As a result, such deliberations may consume more time than is understandable to the layman.

#### **DCA Ruling**

In referring to our example again, the Superior Court adjudicated the writ of mandate on September 20, 1965, and the licensee's attorney promptly appealed this decision to the District Court of Appeal. The Justices of the DCA were unable to handle the case until April 1966.

The decision of the DCA was handed down in May 1966. The DCA upheld the commissioner's decision and the 1965 order was made effective 30 days later. The licensee finally began serving his 90 day suspension on June 5, 1966—over two years from the date the complaint was filed.

The fictitious example mentioned here is not an extreme case. One actual San Francisco Bay Area case required over four years to be processed through the courts following the commissioner's order of suspension in 1965. Others are now approaching three years in the "appeals stage."

Other California administrative agencies, such as Department of Alcoholic Beverage Control, and the many Boards within the Department of Professional and Vocational Standards, have had the identical experience with "due process" as it relates to hearings under the Administrative Procedure Act where the decisions are then appealed to the courts. **The appellants sometimes find it is not feasible to incur the expense involved in following some of the complicated legal procedures required to expand the**

*(Continued, Col 2, Page 939)*

## Changes in Regulations

(Continued from Col. 2, Page 933)

• **Section 2763** amended to conform this regulation to current examination procedure. That is, any additional materials to aid the examinee in preparing his responses to the questions during the examination will be furnished by the department, and in the interest of security control must be retained by the department.

• **Section 2790.1** added to read: **Filing Fees.** All subdivision filing fees shall be the maximum set forth in the Real Estate Law except the following:

- (1) The filing fee under Section 11011 of the Business and Professions Code shall be \$50 plus \$2 for each lot in the subdivision.
- (2) The filing fee under Section 10249.5 of the Business and Professions Code shall be \$100.

Note: Under Section 11011.8, B. & P. Code, (Subdivided Lands Act), the Commissioner has authority to lower subdivision fees by regulation, when the revenues produced exceed the costs of administering the subdivision law. Since current revenues now exceed the costs of administration, the commissioner has taken steps to reduce filing fees.

• **Section 2795.3** amended to conform regulation with existing subdivision fee statutes.

• **Section 2799.1** amended to update and clarify list of areas of abuse that constitute misleading subdivision advertising.

• **Section 2819.7** amended to conform regulation with Section 11024 of the B. & P. Code, (Subdivided Lands Act). Clarifies the rescission right provisions provided by Section 11024 pertaining to "Land Project" subdivisions.

• **Section 2819.55** added to read: **Land Project Subdivision Advertising Criteria.** In addition to the subdivision advertising criteria contained in Article 12 of this Title, the use of any advertisement, radio broadcast or telecast concerning land project subdivisions, which contain any of the following, may be held by the commissioner to be misleading as provided in Section 11022 of the Business and Professions Code.

- (1) Any projection as to profit ap-

## DUE PROCESS

(Continued from Col. 3, Page 938)

period of time between the commissioner's order and the actual effective date which can be postponed by taking full advantage of our state's legal and court system.

Only a small percentage of those found in violation after a formal hearing choose to follow the extensive, expensive court appeal procedure and most accept the initial decision.

For those who feel deeply about their own innocence, or those who may feel the law or the regulatory agency is unjust or unreasonable, it should be comforting to realize such safeguards as "due process" have been established and are carefully followed by judges and counsels.

### IMPORTANT CORRECTION

The article *Broker Exam Dates* (Winter 1970-71 issue of the *Real Estate Bulletin*, page 924) implied that courses in Real Estate Finance and Appraisal would become requirements after July 10.

*This is not true.* The additional courses become effective January 1, 1972 by operation of law.

preciation in dollar value or resale potential.

- (2) Reference to any clubs, clubhouses or recreational facilities unless the costs and any limitations or restrictions on use are fully disclosed; or a statement that information regarding the facilities will be supplied on request is clearly set forth in the same advertising.
- (3) Use of the words "exclusive" or "private" or words connoting the same when the general public has the right to access of any kind to any portion of the subdivision, unless the public rights to access are fully disclosed.

Nothing contained herein shall limit the authority of the Real Estate Commissioner to take formal action against an owner, subdivider, or his agent for the use of false or misleading advertising of a type not specifically described herein.

## Karpe Appointed Commissioner

(Continued from Col. 3, Page 933)

firm founded by his father, Elmer F. Karpe, in 1926. At the time of his appointment he was president of the Karpe Real Estate Center. Both Karpe and Smith have served as president of the California Real Estate Association; Smith in 1966 and Karpe in 1968. Karpe also was chairman of the CREA Educational Committee and has been active in many real estate educational conferences, seminars and workshops. He served as president of the Bakersfield Real Estate Board in 1959, and he was a director of National Association of Real Estate Boards.

Karpe graduated from the University of California at Berkeley and was a member of the Golden Bears football team, playing tackle in the 1951 Rose Bowl game. He was chosen to the "All Coast" team for two years and pre-season All American for 1952, then was sidelined for a knee injury and consequent surgery. He was valedictorian of the class of 1953.

In recent years, Mr. Karpe was director of the Bakersfield Chamber of Commerce, YMCA and Children's Home Society, president of the Kiwanis Club and founder and officer of the Big Brother project.

He and his wife, Phyllis, have three children.

The new commissioner was the recipient of a real estate scholarship award from CREA while in college and will lend his encouragement to the college intern program as education and research continue to grow throughout California's community and state colleges.

• **Section 2819.85** added to read: **Submission of Advertising.** The owner, agent or subdivider of a land project as defined in Section 11000.5 of the Business and Professions Code shall submit a true copy of any advertisement proposed to be used in connection with the offering, as part of the documentation required prior to the issuance of the public report.

Any material change to advertising previously filed or any new advertising matter subsequent to the issuance of the public report shall be submitted to the commissioner prior to use.

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## Brokers Urged to Broaden Their Recruiting Methods

The "Master Plan for the Professional Development of the Real Estate Industry in California" was discussed in the Winter issue of the Real Estate Bulletin. This plan envisions professionalization through education by 1980.

If the industry intends to move forward toward the full realization of this goal, it should begin a campaign to attract young college graduates who have specialized in real estate. These graduates are now finding general lack of interest among established practitioners in utilizing their education and potential skills. The average broker apparently prefers to employ the middle-aged who have a selling background, regardless of their degree of education. The criteria for employment among a high percentage of practitioners is "What have you sold?" or "How well can you sell?"

### Accent on Youth

To achieve professional status, the industry must not only utilize qualified young college graduates who want to enter the business as a career, but must also sell itself to the academicians and college administrators. The academicians will play the most active role in influencing college students to make a career in real estate instead of computer programming, electronics or some other field that supplies the appeal of "tomorrow" that is so attractive to youth. The real estate industry can begin to cope with its responsibilities in this area by surprising students of the opportunity in all phases of real estate activities.