

REAL ESTATE BULLETIN

RONALD REAGAN, *Governor*

Spring 1972

ROBERT W. KARPE, *Commissioner*

Kickbacks Under Fire

HUD Regulations Preclude Practice

DRE Revokes Broker License for Nondisclosure

Entertained in the minds of many licensees is how to earn an "extra" fee honestly—how to make a dollar "on the side" to offset the cost of living. But, is it possible to receive kickbacks, extra fees and charges with clear conscience that you, the agent, have properly represented your client? Is the kickback actually being collected from your client in the form of an extra fee charged him by the lender, termite company, escrow company or any other party to the transaction? If all parties to a transaction are fully informed of the "profit" or fees being paid to their agent "on the side" then the transaction is legally proper. (In federally insured loan transactions, however, mortgagees are now prohibited from paying such fees to brokers.) Complete disclosure means just that . . . not a phrase hidden in the fine print of a lengthy document!

The commissioner has historically considered such fees, if undisclosed, as "secret profits" within the purview of Section 10176(g) of the California Business and Professions Code.

Government does not enjoy imposing restrictions and sanctioning laws to inhibit free enterprise unless it is needed. It is not the policy of the state to stand in the doorway of free business dealings, but undisclosed kickbacks and "under the table" profits are unlawful and must not be part of a real estate transaction.

Federal Action Taken

Regulations issued by HUD, effective May 1, 1972, forbid kickbacks by mortgage representatives to those who bring mortgage loan requests to them. The regulation states that approval of a mortgagee may be withdrawn at any time by notice from the (FHA) commissioner by reason of: "The payment by the mortgagee of any fee, kickback, or other consideration, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other payment or other consideration from the mortgagor, the seller, the builder, or any other person for services related to such transaction or transaction or from or related to the purchase or sale of mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the (FHA) commissioner."

The practice of giving kickbacks has been so prevalent that the Federal National Mortgage Association (FNMA) will now require lenders from whom it purchases conventional and government-backed mortgage paper to certify that no kickbacks or other illegal fees were contracted by persons, including real estate brokers, involved in closing the real estate transaction.

A Case on Point

In a recent investigation, begun through an otherwise routine audit by Department of Real Estate auditors of a lending institution which dealt with FHA-VA loans, it was

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COMMISSIONER HALTS "VACATION CERTIFICATE" SCHEMES

The Real Estate Commissioner has stopped many of the "vacation certificate" schemes operating in California. Recently he issued desist and refrain orders against two companies who were using "free vacations" in Nevada as a method of promoting land sales. His actions stem from his authority to regulate all out-of-state subdivision offerings. The subdividers had not obtained a public report and permit to offer these lots in California.

G.A.C. Properties, Inc., Arizona; International Enterprises, Inc., International Cafe, Yermo, California; and International Cafe, Las Vegas, Nevada were recently named in a complaint filed on behalf of the commissioner in a Los Angeles Superior Court. The complaint charged that G.A.C. Properties, Inc. of Arizona was using advertisements of "fun paks" and "bonus packages" to lure Californians to Las Vegas for the purpose of selling out-of-state land.

After arriving in Las Vegas the "vacationers" were treated to a sales meeting where they were strongly encouraged to buy parcels in a subdivision in Arizona.

In 1968, the department was successful in stopping the same type of promotional activity by the Gulf American Corporation, a predecessor of G.A.C. Properties, Inc., Arizona and others by filing a desist and refrain order.

During the summer of 1970 it was discovered that several other out-of-

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The Real Estate Bulletin is a quarterly published by the State of California, Department of Real Estate, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the California Business and Professions Code.

From the license renewal fee, \$1 is allocated to cover subscription to the Bulletin. Second Class Postage Paid at Sacramento, California.

Thank You!

The commissioner has been planning a major revision of the Real Estate Bulletin's format and this issue is the forerunner of a series of changes that hopefully will improve the publication's readability.

Some recommendations for improvements were received from

the field as a result of the commissioner's request for ideas. These are being given consideration.

The commissioner and members of the publication's staff thank the contributors for their interest and for taking time to write to us.

Disciplinary Action—January—March 1972

REB—Real estate broker RES—Real estate salesman REO—Real estate officer
RREB—Restricted real estate broker RRES—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

Name	Address	Effective date	Violation R.E. Law/Regulations
Focht, Don Robert (REB)	144 W. D St., Lemoore	1/ 4/72	10176(e), (i), 10177(b)
D'Orazi, Victor William (RREB)	362 Kearny St., San Francisco	1/ 5/72	10145, 10176(e), 10177(d), (f), 2830, 2832
Miller, Sterling Perry (REB)	6255 Broadway Terr., Oakland	1/ 5/72	10177(b)
Wortenberg, Kenneth Leslie (RES)	710 Cypress Ave., San Bruno	1/ 5/72	10177(b)
Dye, Joseph Watson (REB)	529 S. Main St., Milpitas	1/ 6/72	10176(a) (b) (i), 10177(f) (j)
Kanney, James Laurence (RES)	1725 Via Boronada, Palos Verdes Estates	1/ 6/72	10177(b)
Cressey, Arthur R. (REB)	198 Taraval St., San Francisco	1/11/72	10177(f) (j)
Delmonte, James Richard (REB)	280 S. Beverly Dr., Beverly Hills	1/11/72	10177(b)
Hebert, Cecil Dominic (REB)	6244 Agnes Ave., North Hollywood	1/18/72	10176(a), 10177(j)
Johnson, Kenneth Melvin (RES)	4036 Republic Ct., North Highlands	1/25/72	10177(b)
Sioussat, Herbert Parker (RRES)	415 N. Glenwood Pl., Burbank	2/16/72	10177(k)
Bowen, Charles Ray (RES)	4729 Lankershim Blvd., North Hollywood	2/25/72	10177(b) (f)
Jurado, Manuel, Jr. (RRES)	6460 Whittier Blvd., Los Angeles	2/25/72	10130, 10177(d) (k)
Hillmuth, Edward Alexander, Jr. (REB)	2737 Bromley Dr., San Carlos	3/ 1/72	10145, 10176(e) (i), 10177(d) (f)
Hutterer, Brigitte Christine (RES)	5117 Santa Monica Blvd., Los Angeles	3/ 1/72	10177(a)
Kegel, Gary Jack (RES)	750 Welch Rd., Palo Alto	3/ 1/72	10139, 10177(d) (f) (j)
Barnes, Harry Allen (RES)	14006 Ventura Blvd., Sherman Oaks	3/ 2/72	10177(b)
Detmers, Donald Maynard (RES)	1464 W. San Carlos St., San Jose	3/ 8/72	10177(b)
Little, Neil B. (RES)	Box 631, Sausalito	3/ 8/72	10177(b)
Sanders, Timothy Blake (RES)	25227 Gould St., San Bernardino	3/ 8/72	10177(b)
Smith, Amy Darylene (RES)	P.O. Box 844, Aptos	3/ 8/72	10177(b)
Long, Lester Joseph (RES)	2812 1/2 W. 42nd St., Los Angeles	3/ 9/72	10177(b) (f)
Pierce, Richard Eugene (RES)	1143 E. Lynwood Dr., San Bernardino	3/ 9/72	10177(b)
Hemenway, Ira DeForest (REB)	1241 E. 34th St., Oakland	3/16/72	10177(b)
Tremayne, Walter Francis (RES)	2426 Yolanda Pl., San Diego	3/21/72	10177(b)
Coit, Leonard Clarence (REB)	55 S. 11th St., San Jose	3/28/72	10145, 10176(e) (i)

Licenses Revoked With Right to Restricted License

(On Terms and Conditions)

Name	Address	Effective date	Violation R.E. Law/Regulations
Barnett, Richard Wilson (REB)	405 Serrano Dr., San Francisco	1/ 5/72	10177(b)
Cullen, Marion Elizabeth (RES)	125 El Porton, Los Gatos	1/ 6/72	10177(b)
Dabbs, Jeffrey Ross (RES)	1501 W. Magnolia, Burbank	1/11/72	10177(a)
Sacks, Robert Thomas (RES)	9100 Wilshire Blvd., Beverly Hills	1/18/72	10177(b)
Dunlap, Margaret May (REB)	311 Capitol Rd., Capitola	2/ 1/72	10145, 10176(e), 10177(d) (f)
Ferguson, Paul Josiah (REB)	1331 12th St., Modesto	2/ 1/72	10176(a) (i)
Lau, Jeffrey (RES)	705 Columbus Ave., San Francisco	2/ 1/72	10177(a) (f)
Lau, Sophie (RES)	705 Columbus Ave., San Francisco	2/ 1/72	10177(a) (f)
Wirth, George Baker (RES)	1331 12th St., Modesto	2/ 1/72	10176(a) (i)
Jenkins, Othel Lee (RES)	1268 Stellar-Way, Milpitas	2/ 2/72	10177(b)
Baughman, Allen Kent (REB)	1081 Island Dr., Alameda	2/16/72	10177(b)
Donovan, Robert Alfred, Jr. (RES)	1444 S. Main St., Walnut Creek	2/16/72	10177(b)
Sharp, William Bryan (RES)	761 Nevin Way, San Jose	3/ 1/72	10177(b)
Skiba, Joseph Matthew (REB)	438 E. Broadway, Long Beach	3/ 7/72	10176(a) (i)
Eiselt, Richard Max (REB)	Beacon Hill Lodge, Hwy. 40, Soda Springs	3/21/72	10176(e), 10177(d)
Brown, Dorothy Helen (REB)	16766 Farley Rd., Los Gatos	3/28/72	10176(a) (b) (i), 10177(f)

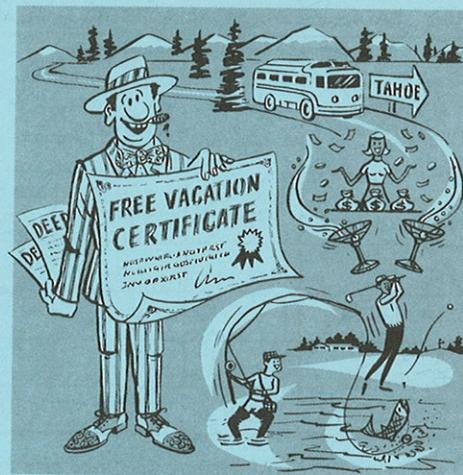
Commissioner Halts "Vacation Certificate" Schemes

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state land developers had entered this state with various types of vacation certificates in which California residents were enticed to Reno, Lake Tahoe and Las Vegas, Nevada. The "certificates" usually promised several prizes such as bottles of champagne, free shows, as well as three days and two nights at a first-class hotel or motel. Complaints received by the

commissioner from several vacationers indicated that quite often they found the hotel or motel would not honor their reservations. Also, they were often shifted to lower class accommodations; there were extra service charges not mentioned in the vacation certificate and on some occasions the "prizes", "bonuses" and other promised refunds were not received or if they were received, it was only on the

condition that the certificate holder attend an out-of-state land promotional sales meeting.



Licenses Revoked With Stays

Name	Address	Effective date	Violation R.E. Law/Regulations
Goldberg, George Sanders (REB) - Vice Pres. Max Rouse and Sons, Inc. (REO) (Stayed 5 years on terms and conditions)	15233 Ventura Blvd., Sherman Oaks	1/25/72	10177(f) (j)

Licenses Suspended

Name	Address	Effective date	Violation R.E. Law/Regulations
Raskin, Marge (RES)	6784 E. Cedar Ave., Denver, Colo.	1/ 5/72	10177(b)
Nunn, Wayne Hampton (RES)	3970 1/2 Gresham, San Diego	90 days 1/ 6/72	10177(b)
Schick, Frances Jesse (RES)	410 E. Gladstone St., San Dimas	30 days 1/12/72	10177(b)
Anderson, Iva Lee (RES)	1118 W. Orangethorpe, Fullerton	30 days 1/21/72	10176(i)
Garner, Robert Lee (RES)	3171 Cropley, San Jose	30 days 3/ 1/72	10177(b)
Fandrich, Richard Allen (RES)	251 Park Rd., Burlingame	30 days 3/ 8/72	10137.1, 10177(d); 2731
Grisolio, James (REB)	251 Park Rd., Burlingame	30 days 3/ 8/72	10137.1, 10145, 10176(e) (i), 10177(d); 2731
Harris, Robert Edward (RREB)	5000 Coast Hwy., Pacifica	30 days 3/17/72 Indefinitely	10156.7

Licenses Suspended With Stays

Name	Address	Effective date	Violation R.E. Law/Regulations
Petersen, Kenneth Otto (REB) - (Right to renew RES) (10 days stayed for 1 year on terms and conditions)	1451 Revelstoke, Sunnyvale	1/ 4/72 30 days	10137, 10177(d) (f)
Mele, Donald Angelo - Pres., Clovis Western Realty-Inc. (RREO) Pres., Manchester Associates (RREO) (10 days stayed for 1 year on conditions)	617 4th St., Clovis	1/ 5/72 15 days	10177(k)
DiBenedetto, Ralph Richard (REB) Dba Ralph's Realty (Stayed for 2 years on terms and conditions)	1080 Saratoga Ave., San Jose	1/12/72 30 days	10176(b), 10177(d) (g)
Archibek, Ben, Jr. (REB) Pres., Nu-View Development Corp. (REO) (60 days stayed for 3 years on terms and conditions)	1048 Lakeview Ave., Nuevo Cor. Hwy. 395 & Markham, Perris	1/17/72 90 days	10176(a) (i), 10177(f)
Frontier Mortgage Co. (REC) Ben A. Karbelnig, Pres. (REO) (Stayed 1 year probation on terms and conditions)	5100 Wilshire Blvd., Los Angeles	2/ 3/72 1 year	10177(d) (f) (i)
Karbelnig, Ben A. (REB) Dba Miracle Properties (REB) Pres., Hallmark Service Co., Inc. (REO) Pres., National Trust Deed Corp. (REO) (Stayed, 1 year probation on terms and conditions)	5100 Wilshire Blvd., Los Angeles	2/ 3/72 1 year	10177(d) (f) (i)
Kuty, Lester James (REB) (After 30 days, remainder or any portion thereof may be stayed on terms and conditions)	627 W. Valley View Dr., Fullerton	2/ 9/72 to and including 12/15/73	10162, 10165, 10177(d)
Bradley, Wallace (REB) (After 30 days, remainder or any portion thereof may be stayed on terms and conditions)	12642 Buaro, Garden Grove	2/14/72 to and including 2/20/73	10162, 10165, 10177(d)
Essay, Christopher (REB) (After 30 days, remainder or any portion thereof may be stayed on terms and conditions)	9601 Wilshire Blvd., Beverly Hills	2/14/72 to and including 9/24/72	10162, 10165, 10177(d)
Ammons, Raymond Harold (REB) (After 30 days, remainder or any portion thereof may be stayed on terms and conditions)	1598 N. E St., San Bernardino	3/28/72 to and including 7/28/72	10162, 10165, 10177(d)
Schnurr, John (RES) (All but 60 days stayed for 2 years on terms and conditions)	2915 S. Bascom Ave., Campbell	3/28/72 240 days	10176(a), 10177(f) (g)

When faced with legal action by the commissioner, most of the developers filed agreements with the department to cease such activity.

Subsidiary Corporations

The commissioner has reason to believe that the land developers who use this "vacation certificate" scheme use various distributing entities, and the "Nevada vacation" promotion may be under any of a variety of names, any of which may be suppliers of persons to land sales meetings of one of the large out-of-state land companies.

The commissioner urges all licensees to notify him if they become aware of any one who has had recent unfortunate experiences involving a "vacation certificate" land sales scheme. Such information will help to determine if others are still promoting out-of-state land by bringing Californians to sales offices in other states.

Research Study

Dr. B. E. Tsagris, School of Business Administration and Economics, California State College, Fullerton, has recently completed a research study on *Urban Growth and Development—An Urban Economist's Viewpoint* in which he reviews selected theories of urban growth and development and appraises several which have been advanced during the last 20 years. He concludes that the shape of our cities will be influenced, in the future, by modified British and American New Town concepts.

Ledger Card Makes Bookkeeping Simple

SEPARATE RECORD FOR EACH BENEFICIARY OR TRANSACTION FOR CLIENT'S FUND PLACED IN TRUST FUND BANK ACCOUNT						
SALE— 728 P Street, Sacramento						
S. S. Smith (Seller) J. J. Jones (Buyer)	Discharge of Trust Accountability For Funds Paid Out			Trust Accountability For Funds Received		Account Balance
	Date of Check	Check Number	Amount	Date of Deposit	Amount	
				1-5	500	500
				1-10	2000	2500
XYZ Escrow	2-11					
No. 11227		243	2500			0

Trust account record keeping need not be a burdensome chore. The records required by law and regulation are relatively simple. The illustration demonstrates a convenient 3"x5" ledger card that serves as the separate record required by Section 2831.1 of the Commissioner's Regulations.

All moneys received and disbursed in one transaction are usually entered and the disposition of the funds can be determined at a glance. Other regulations of the commissioner require a cash receipt and disbursement journal or similar records.

ASSISTANT COMMISSIONER HONORED FOR 25 YEARS SERVICE

Thomas J. Nolan, Assistant Commissioner for Subdivisions at the State Department of Real Estate recently completed 25 years of service with the State of California. He received the traditional pin and certificate for his achievement.

Nolan joined the department in 1955 as a regulatory deputy in Sacramento. He subsequently served as the deputy in charge of the examinations program. Later he became the deputy responsible for the Sacramento district office of enforcement, with jurisdiction over 24 of California's counties. In 1964 he became chief deputy in charge of subdivisions for the Sacramento and Fresno districts, and three years later, took charge of all subdivisions in the state and out-of-state offerings. Nolan assumed his present position in 1969.

His 25-year state service began with the California Department of Employment in 1946. Earlier that year he worked for the U.S. Employment Service.

A native of New York City, Nolan received a BBA degree from Manhattan College in 1935 and later a JD degree from McGeorge College of Law in Sacramento. After college, he then worked as an accountant with the U.S. Rubber Company and during World War II was a technical sergeant with the Signal Corps.

Nolan has served as president of the California State Men's Club, the Sutter Lawn Tennis Club, and the Sacramento branch of the United World Federalists. He is also a member of the Commonwealth Club of California. Nolan is a recipient of the Building Industry Advancement Award presented by the Associated Home Builders of the Greater Eastbay, Inc., of San Francisco.

He and his wife, Jeanada, reside in Sacramento. They have two sons, Thomas, Jr., who is an attorney in Menlo Park, and Jay, an assistant professor of anthropology at Yale.

In his present capacity, Nolan has helped with recent legislation permitting undivided interests in one piece of property. He has played a prominent role in departmental legislative works.

Real Estate Broker Applications Spurt to Record Highs

About 7,000 real estate broker examinees read well over 2½ million examination questions during the six months following July 1, 1971.

These broker examinees and an additional 21,000 real estate salesman license applicants were qualified and examined during the period July 1 through December 31, 1971.

The huge volume prompted the commissioner to assign most of his district office deputy and clerical staff to administering examinations during peak periods in November and December.

Special testing centers were arranged to accommodate the unusual volume. At one time, over 667 candidates were examined in the Glendale Civic Auditorium. The reason behind the big spurt . . . to beat the added qualification requirements which went into effect January 2, 1972 at which time 12 semester-units of college level courses were required in addition to the two year salesman experience.

The candidate for a broker license should be better prepared to cope with the rather formidable examination after completing college level courses. In short, the new applicant must show proof of formal training—180 hours of classroom work in a field relevant to his future practice.

REAL ESTATE INTERN SPONSORS NEEDED

Sponsors are now being sought to employ business students during July and August. The program is being coordinated by the commissioner and the California Real Estate Association.

The goal is to encourage young people to consider real estate as a career. To achieve this objective a representative group of real estate brokers is needed to hire interns.

Details are available from the business department of most colleges, from local Boards of Realtors or by writing directly to:

*Real Estate Intern Program—1972
Department of Real Estate
714 P Street
Sacramento, California 95814*

EDUCATION AND RESEARCH

In 1959 the University of California published a research study showing the needs of real estate education and research in California. This study was the first use of the education fund created by a portion of the license fees authorized by the 1956 Legislature and earmarked specifically for the advancement of real estate education and research.

Since 1959 over 280 real estate research studies have been published. The number of enrollments in real estate classes in the community colleges has grown from about 10,000 in 1959 to current enrollments in excess of 50,000.

Although the structure of the real estate education program remains essentially the same, recent changes in its administration have strengthened individual programs considerably.

California state college research contracts are now drawn at the time research proposals are approved for funding by the Real Estate Commissioner, speeding the processing of research proposals by as much as twelve



months. Lag time caused by previous procedures often resulted in reports on subjects that were no longer topical.

A series of workshops for coordinators of the college real estate programs and the real estate teachers were conducted in 1972 at four strategic locations in the state for the purpose of reaching the teachers at a "grass roots level". This is a departure from former workshops for real estate coordinators only and is a definite means of improving communications between the teachers and the department's Education and Research section. About 400 persons involved with real estate education took part in this year's program as opposed to the typical 60 or 70 coordinators in prior years.

The department is now exploring a new concept in learning with the hope of initiating a pilot program in selected community colleges within the next two or three years. The system is known as Modular Learning or Learning Activity Packages (LAP) consisting of taped lectures and instructions used in connection with filmstrips and workbooks. This system has proven to be successful in several other fields, but to date has not been employed in the field of real estate education. The LAP system embraces the theory that some students learn more rapidly than others and can complete courses on their own initiative with limited individual assistance from the instructor. Community colleges currently using this new concept (in subject areas other than real estate) include Mt. San Jacinto, Gilman Hot Springs; Columbia College, Sonora; and Yuba College, Yuba City.

In an effort to produce research studies that are more easily understood by licensees and laymen, department personnel will review all state college research reports prior to accepting final copies. Hopefully this will result in reports that will be digestible to the practitioner. Under this system the college may separately reproduce the technical paper for consumption within the academic community.

The commissioner recognizes real estate education and research programs must continue to meet industry and the public's changing needs and has stressed an ongoing review of procedures and policies.

Kickbacks Under Fire

Continued from page 1

found that nearly every loan transaction resulted in a check-rebate being issued to a real estate broker for "services rendered". Quite obvious . . . it was a commission or kickback. The lender freely informed the auditor that rebates to brokers for loan referrals were customary and a very common practice. In the instant case a hearing officer ruled that a partial attempt to "disclose" the kickback fees in language which the client did not have critical awareness was ruled an insufficient disclosure. The mere fact that escrow instructions are signed by a seller or buyer which among many other things mentioned: "All parties in this escrow are aware that the broker herein may receive a commission in connection with the above mentioned loan" is not adequate disclosure of the fees earned or from whom they were earned. As a result of the non-disclosure, the broker's license was revoked with a restricted license authorized after 30 days. The hearing officer determined the receipt of the kickbacks in this set of facts constituted secret profits.

Maximizing Disclosure is the Best Practice

Some real estate licensees have taken the position that any extra fees over and above the normal commission are not in good taste. They feel that they are paid in good will and repeat business for any extra services they can provide their clients. Needless to say the practice of adding such fees to usual charges in a real estate transaction which are already high is only one more cause of the upward spiral of costs to the home buying and selling public.

However, there is nothing "wrong" under the state real estate license laws with receiving additional fees for earned services. If a broker receives a referral fee or kickback for negotiating a conventional loan or from some other party to the transaction and fully discloses the fee to his principal before the buyer and seller are bound the practice is not illegal. The wrong generally manifests itself when the agent's client learns first from another source that his agent received an additional fee.

PERILS OF PUFFING

The dictionary defines "puffing" as the expression of insincere exaggerated praise; a more precise legal definition is an opinion by a seller not made as a representation of fact. In real estate transactions licensees ordinarily act as agents or sub-agents of sellers.

Salesmen, no matter what the product, often tend to "puff" in their eagerness to close sales. Examples of puffing are that the asking price of a television set is a "steal," or that "this is the nicest house in the city." If obviously exaggerated opinions on which a buyer should not rely, they constitute puffing statements.

Despite the common use of some exaggeration by salesmen in all lines of endeavor, real estate licensees are advised to eliminate puffing from their sales techniques. Puffing statements are unprofessional; they tend to be misunderstood or resented by the public; but more importantly the licensee may easily stray across the line into misrepresentation which may

subject his license to discipline. The courts now tend to require strict accountability for representations.

Fraud Defined

In its broad, general sense fraud includes everything intended to deceive, including statements, acts, concealments and omissions resulting in injury to the person who justifiably relies thereon. The misrepresentation of even a single fact on which the purchaser of real property had the right to and did rely is sufficient to support an action by the purchaser to recover damages for fraudulent misrepresentation in the sale. A defense that a questioned representation was merely the expression of an opinion—puffing—and therefore there was no right to rely on it may be inadequate. An expression of opinion is actionable where the party expressing it does not honestly entertain that opinion, or where the party making the representation has superior knowledge or information. This would also apply

where the declarant in the course of his business or profession supplies information for the guidance of others in their business transactions in which event such representation will not be excused if it is false, though it might be regarded as but the expression of an opinion if made by another person.

Real estate licensees often occupy a position of superior knowledge; they normally supply information for the guidance of others in their business transactions. These conditions tend to impose upon them a stricter accountability for their statements. Agents are especially vulnerable if the person with whom they are dealing is ignorant or inexperienced with the subject matter of such statements and the licensee knows that the facts are not and cannot be expected to be within the first party's knowledge.

Independent Investigation

A defense that the complaining party had opportunity to inspect the property or to obtain independent information, or even that claimant did so, may be inadequate. Actual fraud as defined by statutes includes the positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true. The independent investigation or examination of property by a purchaser does not preclude his reliance upon the misrepresentation where the falsity is not disclosed by the inspection or where the relying party is not competent to judge the facts without expert assistance.

A real estate agent may be culpable even if he thought the statement was true at the time he made it. Also if a statement has later become false through a change of circumstances, the agent has the duty before his statement is acted on to disclose the new condition to the party that relied on his original representation.

The public and the courts are becoming increasingly less tolerant of consumer frauds. Agents should examine their sales techniques to be sure they have instituted adequate safeguards against misrepresentation and that they are not acting and will not act as conduits to the public of misrepresentation and deceit by sellers.

Commissioner Makes Organizational Changes

Major changes in the department's organizational structure aimed primarily at the need for greater emphasis on investigations of promotional subdivisions became effective May 1. The commissioner also rotated jobs to give personnel additional experience in various functions in the department.

Frank Ryan has replaced Richard Carlson as Chief Deputy in charge of out-of-state subdivisions in Sacramento. Ryan was formerly in charge of law enforcement in the Los Angeles District Office. Carlson moved to the Sacramento District Office to be in charge of the subdivision section and Lee Sida assumed the duties of Chief Deputy in charge of license examinations. Paul Pope, who was in charge of examinations for nine years, now heads the private real estate

course approvals and broker qualifications section. William Wall rotated to Ryan's former position from Wall's former assignment as Chief Deputy in charge of subdivisions in Los Angeles. Bernard Taylor, experienced in law enforcement, was promoted to Wall's former position. In turn, Taylor's position in the enforcement section was transferred to subdivisions and filled by the promotion of Peter Patrician to Senior Deputy. John E. Edwards was promoted to Senior Deputy in the subdivision section and Henry Gonzell will remain in the law enforcement section with a promotion to Senior Deputy.

The accent is on more enforcement experience moved into subdivision handling and more subdivision experience moved into law enforcement.



We Do Business in Accordance With the Federal Fair Housing Law

(Title VIII of the Civil Rights Act of 1968)

IT IS ILLEGAL TO DISCRIMINATE AGAINST ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services

Blockbusting is also illegal

Anyone who feels he has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development
Assistant Regional Administrator for Equal Opportunity
Region IX
450 Golden Gate Avenue P.O. Box 36003
San Francisco, California 94102

or
U.S. Department of Housing and Urban Development
Assistant Secretary for Equal Opportunity Washington, D.C. 20410

Federal Department of Housing and Urban Development Requires Display of Poster

HUD has issued regulations which require that a "Fair Housing Poster" be displayed in the offices of mortgage lenders and real estate brokers throughout the nation.

The regulations which were printed in the Federal Register of February 16, 1972, require that the poster reproduced above be displayed in brokerage offices, model homes in subdivisions, and mortgage lending institutions. Failure to display the poster will constitute *prima facie* evidence that the firm is discriminating in housing.

The poster must be of a size 11x14 inches and may be obtained at regional and area offices of HUD.

Its the Law...

The definition of a real estate broker and salesman found in the Real Estate Law includes one who solicits prospective sellers or purchasers of real property.

The department interprets the law to include those persons who solicit prospective purchasers via telephone. They must be licensed.

Apprehends exam "ringer," license applicant convicted

Deputies from the Los Angeles office recently cooperated with the State Police in apprehending an impostor who was attempting to take the real estate salesman license examination for another person.

Based on a lead received before the examination session, the commissioner's deputies allowed the impostor to begin the examination and he was then removed from the room for questioning.

The commissioner's deputies then contacted and interrogated the applicant. He stated that he had been attending a real estate school and while in school took some tests with very poor results. Doubting his ability to pass the state examination, but being very desirous of obtaining a salesman license, he contacted an acquaintance who was taking real estate courses at a local community college. He convinced the acquaintance to take the state license examination for him, using the applicant's admission card.



The "ringer" was to receive \$300 for his efforts only if he passed the examination.

Misdemeanor violation

As a result of his attempt to procure a license through the use of a "ringer", the applicant was arraigned in the Los Angeles Municipal Court and plead guilty to a misdemeanor violation. He was sentenced to a \$300 fine or 30 days in the county jail, with the imposition of the jail sentence suspended, provided he obey all laws and refrain from similar offenses during a two-year period of probation.

Based upon these facts, if either the applicant or the "ringer" would make future application for a real estate license, the commissioner would take administrative action toward denying the license.

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Land Project Withdrawal Reports— Consumer Protection

To further protect the consumer, the Subdivided Lands Act now requires a subdivider to submit quarterly reports to the department relating to the number and names of persons withdrawing from purchases of lots or parcels in subdivisions which are classified by law as land projects.

This is one of the consumer protection measures which allows the commissioner to review the status of previous sales. The developer must report the total number of lots sold in the tract since the final subdivision public report was issued and include the number of lots or parcels and the names and addresses of purchasers who have cancelled out or failed to make payments during a ninety-day period.

The subdivider's reporting obligation terminates three years after issuance of the public report or 13 months after 90 percent of the land project subdivision interests have been conveyed—whichever comes first.

Unusually high withdrawal or rescission rates will be reasonable cause for the commissioner's regulatory staff to investigate the developer's sales methods. This will involve an interview of withdrawing purchasers to determine their reasons for such actions. When this discloses that their reason for withdrawing from a purchase is because of misrepresentations or because they did not receive what they bargained for, then some formal action by the commissioner can be expected.

Initialing of Real Estate Agreements Required in All Transactions

Although the review and initialing of real estate agreements prepared by a salesman may seem to be a burden to the employing broker, it is a legal responsibility designed to call the broker's attention to the details of the agreements prepared by his salesmen.

Such close supervision by brokers over salesmen who are often inexperienced offers the additional protection to the public desired by the industry as well as the consumer.

Hence, it is manifest that the real estate agreements prepared by the subordinate be reviewed and initialed by the superior in accordance with both law and the normal agency relationships.

Frequently argued is the "burden" and "inconvenience" of the busy broker in performing such a "trite" administrative function, especially where the salesman is located considerable distance from the principal office such as the remote recreational land development. This may well be an inconvenience and a burdensome responsibility but "trite" it is not. The law effectively imposes the burden of close supervision regardless of the distance between the sales site and the office of operation.

To do otherwise would place an unfair burden of supervision on the urban residential broker and would relieve the land broker who recruits large sales forces of newly licensed salesmen and scatters them throughout the deserts and mountains.

The real estate law is not unmindful of the burden of adequate supervision. In its regulatory provisions, the employing broker is granted authority to *delegate* the review and initialing of real estate agreements to *any* licensed broker who has entered into a written agreement pertinent to the supervision of salesmen or where circumstances warrant. The broker may even delegate the supervisory functions to a salesman who has at least two years of recent full-time licensed sales employment.

Even though the employing broker may delegate these supervisory or administrative functions, he may not delegate his responsibility for making certain that his sales force complies with the real estate law regardless of personal inconvenience or distance between offices. The five-day (or before close of escrow) review and initialing period established by the regulation is not designed to be oppressive. However, if this proves to be a handicap, the broker should be prepared to delegate his supervision to authorized persons.



LIMITS RAISED— SMALL CLAIMS COURT

A small claims court is confined to cases for the recovery of money only when the amount does not exceed \$500. The ceiling formerly was \$300.