



Real Estate Bulletin

Official Publication of the California Division of Real Estate

EDMUND G. BROWN, Governor

April 1965

MILTON G. GORDON, Commissioner

Actions Taken Against Price Manipulators

Over the past three years the Division of Real Estate has brought accusations against at least 34 licensees for misrepresentation of sales prices and dummy transactions and double escrows entered into for the purpose of showing inflated sales prices, thus inducing lenders to make higher than normal loans. Twenty-eight such cases resulted in suspension or revocation of licenses and six are still pending formal hearing.

The most common method of operation involved representation of money paid outside of escrow, when in fact no money was so paid. In other cases a dummy was used to purchase property at the asking price. A double escrow was set up and the property was ostensibly sold to the instigator of the operation at an inflated sales price. The application for loan was based on the fictitious sales price from the dummy to the promoter of the transaction. Money from the loan was used to close the first transaction and there have been instances where the loan funds exceeded the total price asked by the original seller.

This, of course, is an unwholesome and unhealthy condition. It involves not only the honesty and reputation of the agents, but has a tendency to force prices out of their true perspective. Also for income tax purposes, the seller may be held accountable for the reported sale price rather than the actual price. In addition, this practice to any great extent would weaken the fiscal position of the lending agencies. **Bearing this in mind, the State Board of Investment has organized a task force to investigate the situation. Participating are representatives of the Di-**

(Continued, col. 1, next page)

Real Estate Bills Before Legislature

At the general session of the California Legislature, held every two years, so-called "departmental" bills can be introduced at the request of a state agency, provided a legislator will offer and sponsor each such bill. Below is a review of 1965 legislative proposals affecting licensees, subdividers, the general public and the Division of Real Estate, bills which were introduced with the endorsement of Real Estate Commissioner, Milton G. Gordon, after numerous conferences with representatives of the real estate and allied industries.

Subdivision Safeguard

AB 553—Assemblyman John Knox

This would empower the Real Estate Commissioner to deny the issuance of a subdivision public report if the developer plans to include in the offering any guaranty or warranty which is not supported by adequate financial arrangements. For example, a developer-builder might give an unconditional guaranty that he will repurchase any house he sells, up to two years from the sale. **Such a guaranty could well be worthless unless financial arrangements were set up to meet demands made under the guaranty.** The bill would give the commissioner additional time in which to consider proposed decisions in formal subdivision proceedings.

Examination of Records

AB 576—Assemblyman Robert W. Crown

Presently, every licensed broker is required to retain for three years all documents connected with any transaction he has made in his capacity as a real estate broker. This includes copies of trust records. It was widely believed the Real Estate Commissioner had authority to examine trust accounts of any real estate broker, an authority not significantly different from that of the Insurance Commissioner to audit accounts of insurance licensees, or the Superintendent of Banks to audit bank records, or the Savings and Loan Commissioner to

"Settling" a Complaint May Not Stop Formal Action

Private settlement by brokers of serious complaints, after they have been filed, may not deter the Real Estate Commissioner from proceeding to formal hearing if the facts so warrant. Actually, when a complaint is brought to the attention of the Division of Real Estate and appears to be of a serious nature, the Commissioner, by law, brings the accusation against the licensee and the person or persons who brought the matter to his attention as well as others may become witnesses.

audit the books of savings and loan associations.

However, this authority was questioned by a licensee in San Francisco and the court held with him. Rather than appeal, the California Attorney General advised a clarification by the legislature of this question involving in total the handling of literally millions of dollars of the public's money.

The bill would simply add this language to the present law: "After notice, such books, accounts and records [of the real estate broker] shall be made available for examination and inspection by the commissioner or his designated representative during regular business hours; and, shall upon the appearance of sufficient cause, be

(Continued, col. 1, page 704)

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Disciplinary Action—December 1964—January 1965

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, until a final determination of the court action. Names of persons to whom licenses are denied upon application are not published.

Licenses Revoked During December 1964—January 1965

Name	Address	Effective date	Violation
Braden, Owen Bartlett Real Estate Salesman	10646 Rosehedge Dr., Whittier	12/15/64	Sec. 10177 (b) and (f)
Day, Floyd Lee Real Estate Salesman	3431 Heather Rd., Long Beach	12/15/64	Sec. 10177 (b) and (f)
Johnston, Edward Henry Restricted Real Estate Broker	13435 Riverside Dr., Sherman Oaks	12/15/64	Sec. 10177 (b), (f) and (k)
Jones, Eddie Bernard Real Estate Broker	1253 W. Jefferson Blvd., Los Angeles	12/15/64	Secs. 10176 (a), (i); 10177 (d), (f); 10302 (e); Sec. 2731 and 2732 of R.E. Comm. Reg.
Weightman, William Real Estate Salesman	13801 Hewes Ave., Santa Ana	12/15/64	Sec. 10177 (b) and (f)
Springman, Alfred Francis Real Estate Broker	1011 22nd St., Sacramento	12/16/64	Secs. 10141; 10176 (a), (b), (g), (i); 10177 (d) and (j)
Cudahy, Jerry Real Estate Salesman	1170 White Oak Way, San Carlos	12/17/64	Sec. 10177 (a), (f) and (j)
Lucas, Robert William Real Estate Salesman	4648 Eagle Rock Blvd., Los Angeles	12/17/64	Sec. 10177 (b) and (f)
Flanagan, Raymond Joseph Real Estate Broker	1616 El Camino Real, San Carlos	12/21/64	Sec. 10177 (b)
Galea, Hyman Real Estate Broker	c/o Francis Bell, General Delivery, Gardena	12/22/64	Secs. 10177 (d), (f), (j); 10237.3; 10237.4; 10238.3; 11010; 11013.1; 11018.1 and 11200
Lammey, John William Restricted Real Estate Salesman	1000 Queen Anne Ave. N., Apt. 304, Seattle, Wash.	12/22/64	Sec. 10177 (d) and (k)
Allen, Grant Wilbur Real Estate Broker	620 E. Putnam, Box 631, Porterville	12/28/64	Secs. 10176 (a), (e), (i); 10177 (d), (f), (j); Secs. 2830 and 2832 of R.E. Comm. Reg.
Phillips, F. Thomas Real Estate Salesman	630 Casanova St., Monterey	12/28/64	Sec. 10177 (b) and (f)
Williams, William Franklin Real Estate Salesman	P.O. Box 35, Lincoln	12/28/64	Sec. 10177 (b) and (f)
Garrett, Phillip Kendall Real Estate Broker	1050 Pier Ave., Hermosa Beach	12/29/64	Secs. 10177 (d), (f), (g); 11000 thru 11021; Secs. 2794; 2795.1 and 2814 of R.E. Comm. Reg.
Golden, George Fuller Real Estate Broker Business Opportunity Broker	9568 Reverie Rd., Tujunga	12/29/64	Secs. 1159.5; 10162; 10165; 10176 (a), (e), (i); 10177 (d), (f), (j); 10285; 10287; 10288; 10302 (d), (e), (j); Secs. 2731; 2771 (e) and 2832 of R.E. Comm. Reg.
Lyon, Helen H. Real Estate Broker	10864 Central Ave., Ontario	12/29/64	Secs. 10177 (b), (d), (g), (h); 11000 thru 11021; Secs. 2794; 2795.1 and 2814 of R.E. Comm. Reg.
Otten, Albert Franklin Real Estate Salesman Business Opportunity Salesman	176 S. California St., Ventura	12/29/64	Secs. 10177 (b) and 10302 (b)
Berg, Maynard LeRoy Real Estate Broker	2602 Newport Blvd., Newport Beach	12/31/64	Secs. 10145; 10176 (e), (i); 10177 (d), (f) and Sec. 2830 of R.E. Comm. Reg.
Jordan, Johnnie, Jr. Real Estate Broker	1705 Market St., Oakland	12/31/64	Secs. 10176 (e), (i) and 10177 (f)
Strosser, Charles Milton Real Estate Broker	580 Houston St., Monterey	1/ 6/65	Sec. 10177 (b), (f) and (k)
Cook, Norman Francis Real Estate Broker	314 17th St., Oakland	1/12/65	Secs. 10176 (a), (b), (i); 10177 (f) and (j)
Engle, Edward Wesley Real Estate Broker	77 Jackson St., Hayward	1/12/65	Secs. 10176 (c); 10177 (f) and (j)
Miller, Walter D. Real Estate Salesman	11644 Nan St., Whittier	1/12/65	Sec. 10177 (b)
Moore, William Allen Real Estate Salesman	77 Jackson St., Hayward	1/12/65	Secs. 10176 (a), (b), (i); 10177 (f) and (j)
Morton, Burton T. Real Estate Salesman	2533 E. Broadway, Long Beach	1/32/65	Sec. 10177 (b), (f) and (j)
Colvin, Arthur Thomas Real Estate Broker	9812 Lincoln Ave., Anaheim	1/17/65	Secs. 10176 (e); 10177 (d), (f), (g), (h); 10302 (d), (e), (g); Secs. 2830; 2832; 2834 and 2835 of R.E. Comm. Reg.
Rulon, Charles Edward Real Estate Salesman	2025 W. Balboa Blvd., Newport Beach	1/18/65	Secs. 10177 (b) and (f)
Meriwether, Jean Real Estate Broker	Box 575, Station A, Richmond	1/19/65	Secs. 10145; 10176 (a), (b), (e), (g), (i); 10177 (d), (j); 10177.5; Secs. 2830; 2832; 2900; 2901 and 2902 of R.E. Comm. Reg.
Brolley, Trevor Mark Real Estate Broker	383 San Bruno Ave. W., San Bruno	1/20/65	Secs. 10176 (e), (i); 10177 (d), (f); Secs. 2830 and 2832 of R.E. Comm. Reg.
Fisher, Walter Raymond Real Estate Broker	3610 Reposo Way, Belmont 10705 Fair Oaks Blvd., Fair Oaks	1/20/65	Sec. 10177 (f) and (j)

(Continued, col. 1, next page)

Price Manipulators

(Continued from col. 1, first page)

visions of Real Estate, Corporations and Savings and Loan, as well as personnel from the Office of the Attorney General.

It is also worthy of note that when a real estate licensee is disciplined for participation in the type of transaction described above, the Savings and Loan Commissioner is notified so that an investigation of the lender's position in the transaction may be undertaken.

Disciplinary Action—December 1964—January 1965 Licenses Suspended During December 1964—January 1965

Law Allows For Interstate Cooperation by Brokers

The Real Estate Law provides that California brokers may pay commissions to brokers of other states. This equitably takes care of situations which crop up frequently; for example, a California broker is allowed to compensate an Illinois broker who refers to him a buyer of California real property.

A California licensee seeking a real estate license in another state must meet all of that state's requirements, since California has no reciprocal agreement with any other state for exchange of licenses. As the law sanctions the cooperation of California brokers with those of other states by permitting them to divide commissions, it follows that they, as agents, may sell properties located in other states, provided negotiations in connection with the transactions are conducted in California. When parcels in newly subdivided out-of-state lands are involved, the broker must be prepared to give copies of the commissioner's subdivision public report and permit to prospective buyers.

A broker licensed in another state cannot come to California and perform any act for which a license is required without first obtaining a license here; the same is true of the California licensee's acts in another state.

Broker's Responsibilities and Obligations

The broker's responsibilities are perhaps greater in handling out-of-state properties, and he should be watchful and alert in selling such properties, particularly sight unseen, or on an "as is" basis. The principle of "caveat emptor" has been outmoded for years, and there is no longer any protection to the broker and his principal against charges of fraud and unlawful concealment of material information, even if the buyer agrees to accept the property in its "present state and condition." *Certain definite obligations to make full disclosure and to deal in all fairness with sellers and buyers are imposed upon the broker.*

Name	Address	Effective date and term	Violation
Borelli, Eugene Victor Real Estate Salesman (Execution of last 30 days of suspension stayed permanently)	2261 Market St., San Francisco	12/14/64 60 days	Secs. 10176 (a), (i); 10177 (f) and (j)
Cotino, Emmanuel Real Estate Salesman	1681 S. Catalina St., Los Angeles	12/15/64 10 days	Sec. 10177 (b) and (f)
Scott, Marvel Bernadine Real Estate Salesman	6521 Forum St., San Diego	12/17/64 6 months	Sec. 10177 (b) and (f)
Menighan, John Anthony Real Estate Broker	10850 Atlantic, Lynwood	12/18/64 45 days	Secs. 10176 (a), (c), (i); 10177 (d), (f) and Sec. 2832 of R.E. Comm. Reg.
Bradford, Samuel Joseph Real Estate Broker	707 E. Shields, Fresno	12/21/64 30 days	Sec. 10177 (b) and (f)
Becky, John Otto Real Estate Salesman	2125 Rassy Way, Sacramento	12/28/64 45 days	Secs. 10176 (a), (b); 10177 (d), (f), (j) and 10238.3
Reynolds, Harold George Real Estate Salesman	211 Lincoln St., Bakersfield	12/28/64 60 days	Sec. 10177 (b) and (f)
Stephens, Donald Lewis dba Don Stephens and Co. Real Estate Broker	3825 Marconi Ave., Sacramento	12/28/64 15 days	Secs. 10177 (d), (f) and 10238.3
President, Ben Lomond Investment, Inc. (Permanently stayed)	3827 Marconi Ave., Sacramento		
Wisniewski, Edward John, Sr. Real Estate Salesman (Last 60 days of suspension stayed for 3 years on conditions)	440 N. Garey Ave., Pomona	12/29/64 90 days	Secs. 10177 (d), (f), (g); 11000 thru 11021; Secs. 2794; 2795; 2795.1, and 2814 of R.E. Comm. Reg.
Engelhardt, Donald William Restricted Real Estate Salesman	14044 Ventura Blvd., Sherman Oaks	12/31/64 30 days	Sec. 10177 (d) and (k)
Pigott, Robert dba Quick Sale Realty Co. Real Estate Broker	600 Haight St., San Francisco	12/31/64 60 days	Sec. 10177 (a) and (f)
Blachonnett Realty, Inc. Marvin I. Karnofsky, President Real Estate Corporation	6148 Madison Ave., Carmichael	1/ 4/65 30 days	Secs. 10176 (a), (i) and 10177 (f)
Karnofsky, Marvin I. Real Estate Broker	6148 Madison Ave., Carmichael	1/ 4/65 30 days	Secs. 10176 (a), (i) and 10177 (f)
Matthews, Harold Theodore Real Estate Broker	2278 E. 14th St., Oakland	1/12/65 90 days	Secs. 10176 (a), (b), (i); 10177 (f) and (j)
Isom, William Dean Real Estate Broker	4500 Auburn Blvd., Sacramento	1/25/65 30 days (next succeeding effective date)	Secs. 10145; 10176 (a), (i); 10177 (d) and (f)
Money, John Richie Real Estate Salesman	6416 Watt Ave., North Highlands	1/25/65 15 days (next succeeding effective date)	Secs. 10176 (a), (i) and 10177 (f)
Kelly, Ross Eugene Restricted Real Estate Broker	440 E. Shields, Fresno	1/26/65 (Indefinitely)	Sec. 10177 (k)
Green, Russ dba Russ Green Company Real Estate Broker	5350 Forbes Ave., Encino	1/27/65 90 days	Secs. 10176 (a), (i); 10177 (d), (f), (j); 10237.3; 10237.8 and 10238.3

LICENSES REVOKED DURING DECEMBER 1964—JANUARY 1965

(Continued from col. 2, opposite page)

Goode, James Mortimer Real Estate Salesman	3453 Idaho Dr., Santa Rosa	1/26/65	Sec. 10177 (b) and (f)
*Budd, Robert Richard Real Estate Broker	38461 N. Sierra, Palmdale	1/ 2/64	Secs. 10176 (a), (d), (i); 10177 (f) reinstated as (j), (f) and 11020 (repealed by chapter 947, 1963)

*Not previously published.

Commissions Are Not to Be Withheld From Deposits

Offices are still found where the practice is "hold deposits to protect your commissions" and it is surprising that the brokers involved appear to have the impression that deposit money is their money up to the amount of commission, and they have the right to hold it back, providing they deposit the balance, if any, into an escrow or a trust fund.

Most licensees are aware that usually the deposit belongs to either the buyer or seller during the course of the transaction. Ordinarily, a broker accepts a deposit as the agent of the

seller, providing he has a listing authorizing him to accept a deposit.

If the listing contains no such clause, then the broker takes the deposit as the agent of the buyer. When the seller accepts the offer, the broker holds the deposit as agent for the seller. In both circumstances the broker has no legal right to retain any portion of the deposit in his own possession, unless his employment agreement specifically gives him the right to hold the deposit to apply towards his commission.

Legislature Has Bills Backed By Commissioner

(Continued from col. 3, page 701)

subject to audit without further notice." Section 10184 of the Business and Professions Code relating to the same subject would be repealed.

The Attorney General, in an informal opinion, has said that real estate brokers are exempt from operation of the escrow law if they handle escrows in which they represent either the buyer or seller or both. Lack of audit authority would doubtless raise serious question as to whether this exemption could be continued.

The commissioner estimates that the audit authority is not needed for the vast majority of California real estate brokers, but he believes it would be an effective deterrent to the questionable activities of shady operators of the type who cloud the image of any business or profession.

Identification in Advertising
AB 753—Assemblyman
Lester A. McMillan

The Division of Real Estate has entertained a number of complaints from the public and licensees concerning advertising by some licensees who do not identify themselves as agents, giving the misleading impression they are selling as owners. The proposed legislation would preclude a licensee from advertising in relation to any activity for which a license is required without making it clear he is performing acts for which a license is necessary. Certain advertising of rental units would be exempted.

License Requirements in Lending
AB 756—Assemblyman
Lester A. McMillan

This would clarify exemption from the licensing requirement of employees engaged in lending activities in banks, savings and loan associations, credit unions, insurance companies, etc. It would amend the present clerical exemption to make clear that it applies only when the employee is confining activities strictly to work of a clerical nature.

This bill would amend present exemption to make it clear that loan correspondents for regulated financial in-

stitutions are required to be licensed as real estate brokers, but are exempt from loan limits and other provisions of the real estate law pertaining to real property loans.

In addition, the bill would require the mineral, oil and gas licensee to observe the same trust fund rules as does the real estate licensee.

License Examinations
AB 763 and 764—

Assemblyman Jerome R. Waldie

The major effect of this bill would be to change the method of examination for real estate salesman license and the issuance of that license. Under existing law, to become a licensed real estate salesman a person must take and pass a 3¼-hour examination. His license is issued for one year and simply by paying a \$10 fee the license can be issued for a further year. During this second year the salesman may take the all-day examination for a four-year renewable license. Failing to pass the examination for renewable license some time during the second year means that he is abruptly out of the business for at least a year. The proposed legislation contemplates doing away with the concept of the *original* one-year licenses for brokers and salesmen. **The entrance examination given at the salesman level would be similar to the present all-day examination for renewable license. Passing this entrance examination would entitle the candidate to receive his four-year license with no prospect of further examinations to retain the license.**

This would tend to attract career people to real estate work, give it stability, and aid the professional aspirations of practitioners. Presently, a sizable percentage of the people holding original one-year salesman licenses fail to qualify for the renewal license. Many do not bother to take the necessary examination or, taking it, a number fail to pass.

The bill would repeal the present provisions limiting the number of re-examinations. It would also reduce from three years to one year the time applications for examination must be maintained by the Division of Real

Estate and would limit to one year the time during which the applicant can pay his license fee and request issuance of the license after qualifying by examination.

The bill, if enacted in its present form, would make the legislation effective January 2, 1966.

Education and Research
AB 1155—Assemblyman
Jesse M. Unruh

This bill would make it possible for the Division of Real Estate and private universities located in the state to enter into contracts forwarding the state-wide real estate education and research program. The statute presently limits the commissioner to assistance in the advancement of real estate education and research at the University of California, the state colleges, and the junior colleges, that is, public institutions of higher learning. **The author of the bill and the commissioner believe certain projects, enriching the real estate education and research program, could be undertaken at private universities.**

Control of Planned Developments
AB 2000
Assemblyman John Knox

Under present law the Real Estate Commissioner and the Corporations Commissioner exercise dual jurisdiction over the offering of planned residential developments, community apartment projects and condominium projects. Reserved to the Corporations Commissioner is control over the offering of units when title is evidenced by shares of stock, i.e., the so-called stock cooperatives. Dual jurisdiction has created many problems for builders, developers and agents, and has proved costly and complicated.

After numerous conferences with representatives of affected industries the Real Estate Commissioner and the Corporations Commissioner agreed on a bill which would vest exclusive jurisdiction over planned residential developments, community apartment projects, condominium projects and stock cooperatives with the Real Estate Commissioner. The bill in its present draft defines planned developments and stock cooperatives and

— Proposed Legislation Reviewed

cites the definitions of community apartment projects and condominium projects. The bill also enumerates the several grounds for denial of a public report on such projects, and provides other safeguards for the purchasing public.

License and Subdivision Fees

SB 352 and 353—Senator Alan Short

As the Legislature has given the Real Estate Commissioner and the Division of Real Estate more responsibilities and duties under the law and as real estate licensees requested broadened and improved services, expenses of the Division of Real Estate have increased proportionately and for the past five years expenses have exceeded income. The Division of Real Estate's operation is supported, not out of the General Fund, but by the Real Estate Fund which accrues from license, subdivision, and other fees and income received by the agency. Because this fund would soon be exhausted if trends of the past five years continue and because if the merger of the business opportunity and real estate licenses becomes a fact there will be a further reduction in revenue, it became necessary to seek a change in the fee structure. Under the provisions of the bills, the four-year salesman license fee would go from \$30 to \$40 and the four-year broker license fee would be raised from \$50 to \$65.

It has been noted that, if license fees in California were raised to this extent contemplated, they would still be as low as, or lower than, all but 1 of the other 11 western states.

Another section in SB 353 would provide that when a candidate for license fails to appear for the scheduled examination, a fee of \$4 would be charged for rescheduling.

Research into costs within the Division of Real Estate shows that subdivision fees are not supporting the activities of the Division of Real Estate in this area. In effect, a portion of the license fees has been making up the deficit. One bill would seek the approval of the Legislature for a raise in subdivision fees to the follow-

ing extent: The present subdivision filing fee is \$50 plus \$1 for each lot in excess of 50 lots, with a maximum of \$250. The new structure would provide for a filing fee of \$50 plus \$2 for each lot with no maximum set. Also, the bill would set a charge of \$25 plus \$5 for each 100 copies beyond the first hundred when an amended public report is required.

Merger of Real Estate and Business Opportunity Licenses

SB 269—Senator Thomas M. Rees

This would repeal the business opportunity license section of the Real Estate Law, providing that a real estate license would cover the handling of business opportunity transactions. It would provide that the examinations for real estate salesman and broker license contain questions regarding activity in the business opportunity field. It would also provide that persons collecting advance fees must deposit them in a bank or other recognized depository and would clarify license requirements for rental agents.

Under the present law most business opportunity transactions negotiated by a business opportunity broker or salesman also require a real estate license. This is evidenced by the fact that fewer than 100 business opportunity licensees do not also have a real estate license.

The merging of real estate and business opportunity licenses would clarify the application of the law to the benefit of licensees and the public alike. At the present time there is a considerable gray area in which this question is frequently raised: Does this particular transaction require a business opportunity license or, using the criterion provided by the Attorney General, is the business opportunity portion of the transaction less than the value of the real property involved, in which case a business opportunity license is probably not required.

The merging of real estate and business opportunity licenses would not affect the jurisdiction of the Real Estate Commissioner nor lessen his enforcement powers.

BROKERS SHOULD CHECK SALESMAN'S APPLICATIONS THOROUGHLY BEFORE ENDORSING

Brokers are again reminded that the Division of Real Estate still receives applications for salesman license, endorsed by brokers apparently without consideration of Item 5—the question relative to criminal record. In other instances, the answer given proves to be false and the salesman applicant has a criminal record. Such was the case recently, when a broker admitted he had signed a blank application.

The broker, in recommending the salesman applicant, makes a positive statement to the effect that he has ascertained upon investigation of the applicant that the applicant is truthful, and of good reputation. Records indicate some brokers sign salesman license applications without any investigation.

J. Mortimer Clark Passes

J. Mortimer Clark, former Real Estate Commissioner, died March 5, 1965, leaving a great gap in the real estate community of the state and nation. He was president of the San Francisco Real Estate Board in 1956, and his titles and honors extend in both directions from that year.

A native of Illinois, he had been a California Realtor since 1921. He was Real Estate Commissioner of the State of California from 1934 to 1939, serving under both a Republican and a Democratic Governor. An expert appraiser, he was president of the California Chapter of the Institute of Real Estate Appraisers in 1934 and 1949 and was a charter member of the Society of Real Estate Appraisers. He was the 50th president of the California Real Estate Association in 1957 and served as a director on the National Association of Real Estate Boards for many years. In 1929, 1930 and 1940, he was president of the Long Beach Board of Realtors. He served as a colonel in the U.S. Army during World War II.

He is survived by his wife, Verna Brown Clark; their sons, Ralph F. Clark and Bruce V. Brown; and their daughter, Mrs. Nancy J. Huppert.

CREA Attorneys' Report on Agents' Position In Respect to Practical Application of Prop. 14

Editor's note: Passage of Proposition 14 left some licensees wondering as to their position as agents under the Unruh and Rumford Acts which were not repealed by Proposition 14. With the consent of the California Real Estate Association and the Beverly Hills Realtor, which carried the report, we print extracts from a digest of an analysis of the situation prepared by Gibson, Dunn & Crutcher, legal advisers of the association. It sums up for real estate brokers and salesmen the attorneys' opinion of the practical application of the new initiative constitutional amendment which went before the voters as Proposition 14 (Section 26, Article I of the California Constitution). On the opposite page is reprinted a portion of a statement which reflects the views of the FEPC in the matter.

* * * * *

"Of prime importance to Realtors is the fact that carrying on the occupation of a real estate broker constitutes carrying on a "business" under the Unruh Act, and the new initiative constitutional amendment DOES NOT purport to change that fact. Accordingly, Realtors must not themselves discriminate in affording their services on grounds of race, color, religion, ancestry, or national origin. The right of refusal to sell or rent is that of the owner of residential real property and his authorized representatives acting on his instructions, and the Realtor should protect himself by limiting his activities to carrying out the instructions of that owner, whatever they may be.

. . . under the Unruh Act, it would be unlawful to engage in the business of renting space in an office building and to exclude tenants on grounds of race, color, religion, ancestry or national origin. . . . We feel it likely that any action by a real estate broker in suggesting a restrictive listing, particularly to any real or alleged plan to segregate a neighborhood, might well itself be held to be a discriminatory manner in violation of the Unruh Act.

The contract between a broker and his principal with respect to the sale of real property must be in writing to be enforceable, if the seller does desire to restrict the class of prospective offerees, it would be appropriate to include this restriction among the other terms of sale, as the practice is solely a product of the normal contractual relations between a broker and his principal. . . .

If the contract between the prospective seller and his broker specifies that the broker is to be paid a certain commission upon producing a buyer ready, willing and able to purchase at price and terms stated without reserving the right of refusal on the grounds of their personal taste, the broker has fulfilled his part of the bargain by producing such a buyer. Although the

seller may refuse to sell to the ready, willing and able buyer, he is obligated by contract to pay the broker a commission.

If a restriction is imposed upon the listing, it is the broker's duty to tell the prospective buyer. Under Business and Professions Code Sections 10176(i) and 10177(l) a broker's license may be suspended or revoked for any conduct constituting 'fraud.' . . ."

In Summary

1. Real estate brokers and their salesmen are subject to the Unruh Act and the broker is responsible for his salesman's conduct.

2. Brokers may not discriminate against any person in the sale or rental of real property because of "minority status."

3. Brokers may not, because of a person's minority status, refuse to act for him in selling his property, nor refuse, because of a person's minority status, to act for him in finding property for purchase if requested or buying it for him. This does not mean that a broker must act for a member of a minority group, only that he may not refuse to do so because of that person's minority status.

4. If the listing is unrestricted the act forbids the broker from discriminating and refusing to show the property to persons of a minority group.

5. Brokers may refuse to accept a restricted listing.

6. Brokers may accept a restricted listing of residential property regard-

Unlawful Subdividing Hit by Court

After investigating what turned out to be unlawful subdividing in Nevada County, a deputy real estate commissioner presented the facts to the district attorney who, in turn, obtained a grand jury indictment against the alleged violator, a real estate broker.

After having prepared a map of a seven-acre piece of land, showing it divided into 12 parcels, the broker deeded groups of these parcels to four other parties. Following the change of ownership, parcels comprising parts of the four groups were sold through the broker's office.

Before a superior court, the broker pled *nolo contendere* to three counts of offering and selling subdivision parcels without first having obtained a commissioner's public report on the tract.

He was sentenced to a fine of \$150 on each count and will face a hearing on his license.

less of whether the premises include public-assisted housing or dwellings containing more than four units.

7. The Rumford Act, like the Unruh Act, declares it to be unlawful for any person to aid, abet, incite, counsel, or coerce the doing of any of the acts or practices declared to be unlawful or to attempt to do so.

8. It is the broker's duty to tell the prospective buyer of any such restriction.

9. If the owner has specified that his broker not show the property to persons of minority status then he must not do so or run the risk of trespassing.

10. If a prospective buyer of minority status insists on submitting an offer on a restricted listing the broker is not obligated to submit the offer to his principal.

11. Brokers receiving restricted listings may place them in the listing service, however, it must be noted that it is a restricted listing or be guilty of concealing pertinent information.

12. The listing service may adopt a rule that a restricted listing may not be placed with the service."

FEPC Issues Statement to Brokers Clarifying Effects of Proposition 14 on Rumford Act

Editor's note: As indicated in the introduction to the story on the opposite page, many licensees have been confused about their legal positions and duties following the passage of Proposition 14. The Fair Employment Practices Commission recently issued a statement setting forth the commission's viewpoint. At the request of Clive Graham, Chairman of the FEPC, extracts from the statement are printed below. Please see the companion article on the opposite page which was extracted from a position statement written by the legal advisers to the California Real Estate Association.

* * * * *

... "We note that the California Real Estate Association (CREA) concurs essentially in our view and that of the Attorney General and Legislative Counsel that real estate brokerage firms, as business establishments, are still forbidden by law to discriminate because of race, religion, or ancestry.

Important questions remain, however, as to just what the realty broker and salesman may or may not do as agent for the residential property owner, and how the Realtor could best serve the stated purpose of his association's new "Code of Practices"—promotion of nondiscriminatory housing opportunity. We now offer guidelines and suggestions relating to these questions.

CREA took a first step of potential significance in promulgation of its Code of Practices. As local realty boards adopt the code, the critical test of actual impact on restrictive practices lies ahead: whether there is to be full and decisive implementation of this policy by each board, and whether meaningful action will be taken by the other main divisions of the housing industry, the homebuilders and apartment house owners. . . .

First and foremost, we remind all brokers that they have the right not to accept discriminatory listings, and that if they would together exercise that right the impact on race barriers in the housing market would be tremendous. . . .

If, however, brokers should fail to make this clean break from the old restrictive practices, and continue to serve as agents for discriminatory owners, we strongly recommend that at least the following guidelines be observed. (Editor's note: Following 10 items quoted from FEPC news release.)

1. A prospective buyer or tenant should be advised of all listings that might interest him.

2. In keeping with the CREA code of 'equal service to all clients' the broker must not volunteer information on race to either buyer or seller.

3. The broker must not raise the question of race in taking a listing from an owner.

4. The broker should attempt to dissuade any owner who wants to make a restrictive listing.

5. Even if he accepts a restrictive listing, the broker should 'keep the situation flexible,' and try not to have the restriction formalized in writing, thus preserving for the owner a wider range of choice. Or he may decline the listing.

6. If an owner insists on a discriminatory listing he must make it explicit and in writing. The broker, however, should not have a prepared or printed form to accommodate such discrimination.

7. Since 'discriminatory inclinations often evaporate' on a face-to-face meeting, the broker is advised to bring the minority prospect into contact with the seller, even if the listing is restricted.

8. The fact of the restriction should appear only in the formal listing document, and nowhere else in the broker's records or advertising.

9. Multiple listing services should not handle restrictive listings, since such action is of doubtful legality.

10. 'Careful study' should be given to the questionable legality of brokers handling discriminatory listings on behalf of tract builders or others engaged in housing as a business.

These are some of the ways—under existing law and pursuant to CREA's declared opposition to housing discrimination—in which California brok-

STATE COLLEGE COMPLETES ZONING STUDY

Zoning symbols and definitions, as used in California, vary widely with a distinct and confusing lack of uniformity, reports Dr. James Bell of Sacramento State College, in a recently completed analysis of the subject.

Dr. Bell, from a sample of 79 governing bodies, indexed and tabulated zoning symbols and definitions, examining each for similarity as well as variations. The researchers conclude that uniformity in zoning symbols and definitions would be highly practicable and desirable from the standpoint of those real estate licensees, builders and appraisers who have dealings in several cities and counties. They further conclude that uniformity through voluntary means is not likely and that such uniformity will come about only through the cooperative efforts of local municipalities and state government.

This study was suggested by the CREA Planning and Zoning Committee with a membership of representative brokers from all parts of the state and was financed by the Real Estate Education, Research and Recovery Fund administered by the Real Estate Commissioner.

Upon request, single copies of this report may be obtained from the Division of Real Estate, Education and Publications Section, 1015 L Street, Sacramento 95814.

TIME

The most valuable asset of anyone in the real estate business is time. The broker or salesman who puts it to best use will accomplish the most.

ers could generate substantial progress toward equal housing opportunity. Their example could spark similar actions on the part of homebuilders and apartment house owners. Should the housing industry as a whole move ahead in such fashion and achieve meaningful results, all Californians who sincerely support the right to residence without discrimination would heartily applaud."

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ACCOUNTING SECTION

Mrs. Mary T. Jordan and her assistant, W. Oscar Miller, supervise the accounting, personnel, cashing and supply units of the Division of Real Estate. Responsibilities of the section include receipt and accounting for all revenue, maintaining the records of employees from hiring to separation from the DRE, handling all purchases, authorizing payment of invoices and maintaining complete accounting records for the Real Estate Fund and the Real Estate Education, Research and Recovery Fund. Having served the state in various capacities for the past 28 years and the DRE for over 16 years, Mrs. Jordan will retire from state service this month. Mr. Miller will succeed her as Accounting Officer.

Brokers—Check Status of Your One-Year Salesman Licensees

The person who has qualified for an original one-year salesman license may receive a second one-year original license, *but the second license is not automatically awarded.* Within three months after the expiration of the first license, application for the second license must be made or the right expires. The fee for the second license is \$10 and no examination is necessary.

Obviously, misunderstanding exists in regard to the second one-year license and cases have been reported where the salesman goes right on working in that capacity without bothering to apply for the second one-year license.

This might be attributed to misunderstanding or lack of knowledge on the part of the salesman, but his employing broker is expected to know

Important Notice to Second One-Year Salesman Licensees

The holder of a second successive one-year original salesman license who intends to continue in the business is cautioned to file application for examination for renewal four-year license at least 90 days before his current license expires. Doing this will give him an opportunity to take the one reexamination allowed should the first test be failed.

There has been a steady increase in applications for examination for renewal salesman license and a proportionate increase in the time required to schedule the examinations and grade them.

The failure rate on the first examination for renewal license is quite high and prospective applicants should keep this in mind, giving themselves plenty of time to take a reexamination if one should be necessary.

To repeat, file for examination for renewal real estate salesman license examination at least 90 days before your current license expires. Indeed, an earlier filing would be advisable. Remember, you can take the test for renewal license anytime after you receive your second one-year original license.

better. When this happens the broker is employing an unlicensed person and his own license thus is subject to disciplinary action. *It is strongly suggested that brokers check their salesmen's licenses to make sure they are in order.*