



Real Estate Bulletin

Official Publication of the California Division of Real Estate

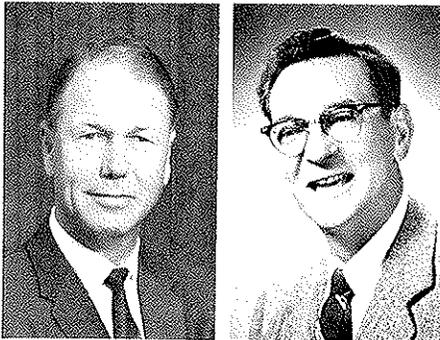
RONALD REAGAN, *Governor*

April 1967

BURTON E. SMITH, *Commissioner*

Governor Appoints MacBride And Cotton to State Real Estate Commission

Governor Ronald Reagan announced the appointment of Frank MacBride, Jr., of Sacramento and John Cotton of San Diego as members of the State Real Estate Commission, succeeding



JOHN COTTON

FRANK MacBRIDE, JR.

Joseph H. Carter of Eureka, whose term as a member of the commission has expired, and Roger J. Roelle of Covina, who recently passed on.

A native of Colorado, Mr. MacBride was educated in the Sacramento public school system. He has been active in the real estate business in the Sacramento area since 1931. On January 1, 1936, he established the MacBride Realty Co. in which he is engaged in residential construction and sales, land development, commercial, industrial and farmland merchandising.

He is an honorary director for life in CREA and has served as its president. He also served as a vice president for NAREB. He has been active in the civic affairs of his city, presently serving, among other committees, as the president of YMCA, and a member of the executive committee, Golden Empire Council, Boy Scouts

(Continued, col. 2, page 801)

A Preview of

PROPOSED REAL ESTATE LEGISLATION

A number of proposed measures of direct interest to licensees have been introduced in the 1967 legislative session. The final outcome of the proposed legislation will be reported in a later edition of the *Bulletin*. The recommended Business and Professions Code legislation is briefed as follows:

Amendment to Section 10086— Desist and Refrain Orders

Out-of-state subdivision offerings in California constitute real property securities as well as being subdivisions.

The proposed amendment clarifies that the subdivision desist and refrain authority emanates from the subdivision D & R statute.

An Act to Amend the Mineral, Oil and Gas Law

This bill seeks to eliminate the mineral, oil and gas salesman license status. Mineral, oil and gas salesmen have been licensed by the Real Estate Commissioner since 1943.

Mineral, oil and gas practice is highly technical; therefore, the Legislature established virtually identical requirements for licensure for mineral, oil and gas brokers and salesmen. There is no experience requirement for mineral, oil and gas salesmen. There have been very few applications filed, and the Real Estate Commissioner has issued only one mineral, oil and gas salesman license since inception.

Repeal of Section 10106— Certified Transcripts

Provision of certified transcripts is contained in another code. This section is unnecessary.

Addition of Section 10133.3—Residential Apartment House Managers Exemption

This bill provides a limited exemption from real estate licensing law requirements for managers of hotels, motels, and auto and trailer parks, as

(Continued, col. 2, page 800)

Real Estate Commissioner Forms Subdivision Advisory Committee

Commissioner Burton E. Smith has formed a Subdivision Advisory Committee to establish and maintain lines of communication with the homebuilding industry. It was felt such a committee would be a source of constructive suggestions for improving subdivision processing operations and, at the same time, prove instrumental in a better understanding of the administration of Subdivision Law.

The committee is comprised of members from the Homebuilders Council, members from allied industries, attorneys who have been active in subdivision activities, members of the real estate industry, and members of the commissioner's administrative staff.

Inside This Issue . . .

| | |
|--|-----|
| • Accusation and Statement of Issues.. | 803 |
| • Chief Assistant Commissioner Reappointed | 802 |
| • Commissioner's Public Report..... | 799 |
| • Employment and Population Forecasts | 801 |
| • Future Bulletin Articles | 803 |
| • Licensee Points to Wrong Boundary | 804 |
| • Misleading Terminology | 802 |
| • Notary Public Liable..... | 803 |
| • Office Moves in July..... | 800 |
| • Partnership Pointers | 799 |
| • Questions on License Exams..... | 802 |
| • "Renting" Broker's License..... | 800 |
| • Restricted Licenses | 801 |
| • Sales and Use Tax Records..... | 801 |
| • Uniformity in Record Keeping | 804 |
| • Vacancy Rates in Santa Clara County | 803 |
| • Veteran Administration Loans | 798 |

REAL ESTATE BULLETIN

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California Division of Real Estate

April 1967

Published Bimonthly in Sacramento by the

DIVISION OF REAL ESTATE

STATE OF CALIFORNIA

RONALD REAGAN, Governor

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JOHN E. HEMPEL

Chief Assistant Commissioner

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DESIST AND REFRAIN ORDERS

Issued for the Period Between January 1
and March 10, 1967

| Number of orders | Violations |
|------------------|---|
| 8 | IN-STATE Sale of real property securities without permit . . . and/or failure to comply with all applicable statutes and regulations. |
| 10 | Failure to comply with California subdivision requirements. |
| 7 | OUT-OF-STATE Failure to provide for subdivision public report, promised recreation facilities, proper permit or otherwise meet requirements of subdivision law. |

Disciplinary Action—November—December 1966

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.

REB—Real estate broker
RREB—Restricted real estate broker

RES—Real estate salesman
RRES—Restricted real estate salesman

Licenses Revoked During November—December 1966

| Name | Address | Effective date and term | Violation |
|--|--|-------------------------|--|
| Tyler, Robert George (REB)..... | 5450 Thunderbird Lane, La Jolla; President of Bel Air Properties, 7755 Fay Ave., La Jolla Inc. | 11/ 1/66 | Sec. 10177 (f) and (j) |
| Executive Vice President of Del Mar Harbour, Inc. | 1700-110 W. C St., San Diego | | |
| DuCarne, Howard Francis (RES)... | 4629 W. 118th St., Hawthorne.... | 11/ 3/66 | Sec. 10177 (b) and (f) |
| Edwards, Arthur Stanley (REB)... | P.O. Box 471, 1806 Los Angeles dba Valley Star Realty Co. Ave., Simi | 11/ 3/66 | Secs. 10148; 10160; 10162; 10177 (d) and Sec. 2831 of R.E. Comm. Reg. |
| Mosher, Francis Eugene (RES).... | 9704 Rhea Ave., Northridge..... | 11/ 3/66 | Sec. 10177 (b) and (f) |
| (Granted right to restricted license on conditions) | | | |
| Noel, Norman Humphrey (REB).... | 1550 N. Garey Ave., Pomona..... | 11/ 3/66 | Secs. 10176 (a), (i); 10177 (f) and (j) |
| President of Loyalty Loan & Investment Company, Inc. | | | |
| President of Lisco Corporation | | | |
| (Granted right to restricted real estate salesman license 30 days from effective date of decision on terms and conditions) | | | |
| Statham, Douglas Ross (RES)..... | 9545 Lemon Ave., Sepulveda..... | 11/ 9/66 | Sec. 10177 (b) and (f) |
| Switzer, Bruce Elbert (RES)..... | 8776 Brookhurst St., Anaheim..... | 11/10/66 | Sec. 10177 (b) and (f) |
| Almendares, Gerald (REB)..... | 4400 25th St., San Francisco..... | 11/15/66 | Sec. 10177 (b) |
| Knettle, Lemyr Dix, Jr. (RES)..... | 873 Turquoise St., San Diego..... | 11/15/66 | Sec. 10177 (b) and (f) |
| Weeks, Lawrence Oscar (REB).... | 2389 El Camino Ave., Sacramento. | 11/15/66 | Secs. 10145; 10176 (i); 10177 (d), (f) and (j) |
| Woodlake Investment Co..... | 1911 Del Paso Blvd., Sacramento | 11/15/66 | Secs. 10145; 10176 (i); 10177 (d), (f) and (j) |
| Lawrence Oscar Weeks, Vice President | | | |
| Braverman, Sy. & Associates, Inc.... | 14044 Ventura Blvd., Sherman Oaks | 11/16/66 | Secs. 10175; 10177 (f) and (j) |
| Seymour Braverman (REB), President | | | |
| Allman, Alicemae Isabel (REB).... | 1634 Hauser Circle, Thousand Oaks | 11/23/66 | Secs. 10145; 10176 (e), (i); 10177 (d), (f) and (j) |
| Linnier, Peter (REB)..... | 9234 E. Whittier Blvd., Pico Rivera | 11/23/66 | Sec. 10177 (b) and (f) |
| Lytle, Arthur Lee (REB)..... | 3588 Mt. Lawrence Dr., San Diego | 11/23/66 | Secs. 10176 (e), (i); 10177 (d), (f), (g) and (j) |
| Roberts, Herbert Louis (RES)..... | 4984 Brewster Dr., Tarzana..... | 11/23/66 | Sec. 10177 (b) and (f) |
| Strader, Virgil J. (RES)..... | 2797 Machado St., Simi..... | 11/23/66 | Sec. 10177 (a) and (f) |
| Cuyle, Immanuel Arthur (REB).... | 53 S. Main St., Milpitas..... | 11/29/66 | Secs. 10176 (e), (i) and 10177 (f) |
| Leader, Morris (RES)..... | 2431 Carlmont Dr., Belmont. | 11/29/66 | Sec. 10177 (b) |
| (Granted right to restricted license on terms and conditions) | | | |
| Rispoli, Irene Erma (RES)..... | 21618 Ventura Blvd., Woodland Hills | 11/29/66 | Sec. 10177 (f) |
| Rubio, Joseph (REB)..... | 2113 Biglow Dr., Antioch..... | 11/29/66 | Sec. 10177 (b) |
| Thomas, Morris Cleaves (REB).... | 1328 Main St., Delano..... | 12/ 7/66 | Secs. 10145; 10176 (e); 10177 (d) and (f) |
| dba Delano Realty Co. | | | |
| (Granted right to restricted license on terms and conditions) | | | |
| Hopkins, Ted Gray (RES)..... | 1870 Elderwood, Concord..... | 12/ 8/66 | Sec. 10177 (b) |
| Anvin Corporation..... | Suite 626, 9460 Wilshire Blvd., Beverly Hills | 12/13/66 | Secs. 10176 (e), (i); 10177 (d) and (j) |
| Anna Emilie Winter, President | | | |
| James, Dorothy Emerald..... | 100 Washington St., Venice..... | 12/13/66 | Secs. 10148; 10160; 10162; 10164; 10176 (e), (i); 10177 (d), (f), (j) and Sec. 2830 of R.E. Comm. Reg. |
| President of Venice Harbor Realty, Inc. | | | |
| (Granted right to restricted real estate broker license after 15 days from effective date of decision on terms and conditions) | | | |
| Starling, Kenneth Floyd (RRES)... | 136 Gilman Ave., Campbell..... | 12/13/66 | Secs. 10176 (i) and 10177 (f) |
| Venice Harbor Realty, Inc..... | 100 Washington St., Venice..... | 12/13/66 | Secs. 10148; 10160; 10162; 10164; 10176 (e), (i); 10177 (d), (f), (j) and Sec. 2830 of R.E. Comm. Reg. |
| Winter, Anna Emilie (REB)..... | 9460 Wilshire Blvd., Beverly Hills. | 12/13/66 | Secs. 10176 (e), (i); 10177 (d) and (j) |
| President of Winterland Investment, Inc. | | | |
| Winterland Investment, Inc..... | 9460 Wilshire Blvd., Beverly Hills. | 12/13/66 | Secs. 10176 (i); 10177 (d) and (j) |
| Alaimo, Carl Francis (REB)..... | 1st Valley Bank Bldg., Suite 324, San Jose | 12/15/66 | Secs. 10145; 10146; 10176 (i); 10177 (d) and (f) |
| Vice President of Ashco Mortgage Corporation | 3757 Vienna Dr., Aptos | | |
| Amo Mortgage Company..... | 3550 Stevens Creek Blvd., Suite 322 and 324, San Jose | 12/15/66 | Secs. 10145; 10146; 10176 (i); 10177 (d) and (f) |
| Carl Francis Alaimo, Secretary-Treasurer | | | |
| Maldonado, John Armendariz (REB)..... | 5645 1/2 E. Beverly Blvd., Los Angeles | 12/22/66 | Secs. 10176 (a), (i); 10177 (d), (f) and (j) |
| Carpenter, Richard Vernon (RES)... | 1310 W. 221 St., Torrance..... | 12/28/66 | Secs. 10177 (b) and (f) |

(Continued col. 1, opp. page)

VETERANS ADMINISTRATION LOANS

A fee of one-half of 1 percent of the loan amount must be paid to VA in the case of loans for post-Korean veterans and servicemen. Under certain conditions, the fee will not be required if, when a loan is closed, the veteran or serviceman was also eligible for a loan based on World War II or

Korean conflict service. The loan fee may be added to the loan amount except that it cannot increase the maximum direct loan amount beyond \$17,500. This fee is in addition to the allowable closing costs, and 1 percent discount (point) that buyers may be charged by lenders in making a VA loan.

Licenses Suspended During November–December 1966

| Name | Address | Effective date and term | Violation |
|---|--|--------------------------|--|
| Carrillo, John Henry (REB)..... (Last 30 days stayed for 1 year on conditions) | Box 163, Bel Air Lodge and Hwy. 50, Stateline | 11/ 1/66 90 days | Secs. 10176 (a) and 10177 (f) |
| Butler, Jack Luther (REB)..... dba East Bay Real Estate (RES) | 12724 San Pablo Ave., Richmond. 3641 Dam Rd. No. 6, El Sobrante | 11/15/66 30 days | Sec. 10177 (f) and (j) |
| Dickson, James Clinton (RES)..... (Last 10 days stayed permanently) | 394 Grand Ave., Oakland..... | 11/15/66 15 days | Sec. 10177 (g) |
| Lenhart, Leroy Joseph (REB)..... dba Standard Real Estate dba Casa Realty | 2676 El Camino, Santa Clara..... 1508 E. Santa Clara St., San Jose (RES)..... 2327 Stanford Place, Santa Clara | 11/15/66 30 days | Sec. 10177 (d), (g), Sec. 2950 (h) and (i) of R.E. Comm. Reg. |
| (Stayed for 1 year on terms and conditions) | | | |
| Vistica, Jerrold Francis (REB)..... (Stayed permanently) | 235 Montgomery St., Rm. 1204, San Francisco | 11/15/66 5 days | Secs. 10162 and 10177 (d) |
| Cohen, Norman H. (RES)..... (Stayed permanently) | 8400 Sunset Blvd., Rm. 4c, Los Angeles | 11/22/66 30 days | Secs. 10176 (a) and 10177 (f) |
| Hyman, Stanley Daniel (REB)..... (RES)..... | 5375 Wilshire Blvd., Los Angeles.. 14001 Addison St., Sherman Oaks | 11/22/66 30 days | Secs. 10176 (a) and 10177 (f) |
| President of Executive Financial Corporation (Stayed permanently) | Rm. 4c, 8400 Sunset Blvd., Los Angeles | | |
| Munch, Arthur (REB)..... dba World Mortgage Company (Stayed permanently) | 5406 W. 99th St., Los Angeles.... | 11/22/66 90 days | Secs. 10176 (a) and 10177 (f) |
| Smith, David (REB)..... dba Title Index Service (Stayed permanently) | 9526 Monte Mar Dr., Los Angeles.. | 11/22/66 30 days | Secs. 10176 (a) and 10177 (f) |
| Commercial Mortgage Corporation. (Stayed permanently) | P.O. Box 2695, Oakland Airport Building 142 on Earhart Rd., Oakland | 11/29/66 30 days | Secs. 10145; 10176 (c); 10177 (d); 10305, Secs. 2832, 2970 and 2971 of R.E. Comm. Reg. |
| Leschine, Paul (REB)..... President of Commercial Mortgage Corporation (Stayed permanently) | P.O. Box 2695, Oakland Airport Building 142 on Earhart Rd., Oakland | 11/29/66 15 days | Secs. 10145; 10176 (c); 10177 (d); 10305, Secs. 2832, 2970 and 2971 of R.E. Comm. Reg. |
| Young, Kenneth Leroy (REB)..... (Stayed for 1 year on terms and conditions) | 3062 Bostonian Dr., Los Alamitos. | 12/ 8/66 90 days | Sec. 10177 (b) and (f) |
| Levens, Curtis Warren (REB)..... (After 30 days from effective date of decision, remainder or any portion thereof may be stayed on conditions) | 1400 Lincoln Ave., San Rafael.... | 12/13/66 5/28/68 | Secs. 10162 and 10177 (d) |
| Cookerow, Martin William (RREB) | 817 S. Gretna Green Way, Los Angeles | 12/14/66 Indefinitely | Sec. 10156.7 |
| Follendore, Lee Lester (REB)..... President of Greater Western Mortgage Company | 2670 Huntington Dr., San Marino. | 12/22/66 30 days | Secs. 10085; 10146; 10177 (d), (f) and Sec. 2971 of R.E. Comm. Reg. |
| Shirley, Thad Smith (REB)..... (Stayed permanently) | 38000 Sierra Hwy., Palmdale.... | 12/22/66 10 days | Secs. 10137; 10177 (d), (f) and (g) |
| Williams, Jimmie Seymour (RREB) dba J. S. Williams Co. | 1417 Sierra Creek Way, San Jose.. | 12/30/66 Indefinitely | Sec. 10156.7 |

Licenses Revoked During November–December 1966—Continued

(Continued from col. 3, opp. page)

| | | | |
|--|--|----------|---|
| Chavez, Felipe Olvera (RES)..... (Granted right to restricted license after 6 months from effective date of decision on conditions) | P.O. Box 665, 10404 Laurel Canyon Blvd., Pacoima | 12/28/66 | Secs. 10145; 10176 (c), (f); 10177 (d), (f), (j), Secs. 2830 and 2832 of R.E. Comm. Reg. |
| Craig, Marilyn Gayle (RES)..... | 620 N. Azusa, West Covina..... | 12/28/66 | Secs. 10176 (j); 10177 (d) and (f) |
| Miller, Victor Leo (RES)..... | 715 Glen Allen, West Covina..... | 12/28/66 | Secs. 10176 (j); 10177 (d) and (f) |
| Powell, Charles William (RES)..... | 63 Knollview Way, San Francisco.. | 12/28/66 | Sec. 10177 (b) |
| Riggs, Gordon Leonard (REB)..... dba Riggs Realty (Granted right to restricted license on terms and conditions) | 2060 3rd St., Oroville..... | 12/29/66 | Sec. 10177 (b) |
| Merritt, Russell Lamar (REB)..... (RES)..... | 427 Haight St., San Francisco.... 45 Sadowa St., San Francisco | 12/30/66 | Secs. 10145; 10176 (a), (b), (c), (i); 10177 (d), (f), (g), (j), Secs. 2830, 2831, 2831.1 and 2832 of R.E. Comm. Reg. |

COMMISSIONER'S PUBLIC REPORT IS NOT AN ENDORSEMENT

A recent change in Section 2795.1 of the Commissioner's Regulations pertaining to the approved form for receipt of public report was adopted last year, adding the following statement: "I understand the report is not a recommendation or endorsement of the subdivision but is informative only."

This sentence spells out with certainty that the report is not an official stamp of approval, which some buyers are led to believe, but merely acquaints the buyer with the information secured through the commissioner's investigation.

This thus clarified regulation, as every licensee should know, requires that the buyer be given a true copy of the report and the opportunity to read it before commitment to purchase. That phrase, "the opportunity to read it," carries the direct implication that, in presenting the report, a licensee should make certain that the recipient knows the nature and purpose of the document presented.

Receipts taken for any public report must be kept on file for a least three years and are subject to inspection by the commissioner or his deputies.

PARTNERSHIP POINTERS

The following highlights of present policy in licensing partnerships may be helpful to those brokers contemplating such a move.

Partnerships engaged in real estate negotiations may be composed of two or more brokers, or a broker and some person employed in a closely related field. The non-broker is listed on the application as "inactive," and must submit a signed statement that he will not engage in the real estate business.

Where all members of the partnership are licensed as real estate brokers, a partnership license is not required—however, if they wish, a partnership license may be obtained.

A salesman who is employed by a licensed partnership cannot be a member of the firm.

Until dissolved, the partnership is in existence as long as the individuals who compose it remain associated. Any change in the status quo of the membership terminates the partnership. In case the association continues under its new status, a new partnership is created; however, when the change first occurs, all licenses issued under the old partnership are terminated and new licenses must be secured at the full fee.

This rule will not apply when there is an agreement in writing, signed by all partners before any change is made, providing that any such occurrence will not result in dissolution of the partnership. A certified copy of such an agreement must be submitted to avoid the re-licensing requirement.

An individual partner in such a licensed entity may secure a separate additional license to transact business as an individual or for another firm.

Where the partnership is composed of brokers licensed as individuals operating under a fictitious name or some designation which does not show the names of all members involved, each is required to file a fictitious name.

A last potent remark: Partnership licenses can be canceled at the request of any one member.

“Renting” Broker’s License Results in Suspensions

Many local real estate groups are cooperating in the Real Estate Commissioner’s continuing campaign to eliminate “renting” of licenses. In effect, this is done through a tacit agreement allowing salesmen to operate pretty much as they please. Some boards have asked members to report flagrant violations. This is in keeping with the commissioner’s belief that licensees have a vested interest in maintaining high standards and should not hesitate to report such unlawful practice.

Previous *Bulletin* articles called attention to the perils of nonexistent supervision of salesmen and to disciplinary action which can ensue. Furthermore, a broker who employs either salesmen or brokers acting in that capacity shoulders civil responsibility for their acts as licensees and may be held liable for damages should they be adjudged legally culpable.

Recently the licenses of a real estate broker and salesman were suspended by the commissioner when investigation revealed that the broker had “rented” his license to a salesman.

Facts Cited

A routine broker office survey by a deputy real estate commissioner revealed no visible broker supervision over the real estate salesmen in a particular office. Further investigation disclosed that the broker resided in a distant community, and had entered into an agreement with the salesman in charge, allowing him the privilege of operating under the broker’s firm name and address in return for a certain percentage of all the commissions, less the minimum monthly rental.

This salesman, performing the functions of a broker, established both general and trust fund bank accounts for which his broker was not an authorized signatory; hired another salesman; and disbursed fees and commissions without the knowledge or authorization of the broker.

Fortunately for the licensees involved, an audit showed the trust account was properly kept, and no member of the public had been hurt

PROPOSED REAL ESTATE LEGISLATION

(Continued from col. 2, page 797)

well as resident managers of apartment buildings and apartment complexes.

Amendment to Section 11011.6— Subdivision Filing Fee Penalty

This is a technical conforming proposal relating to the existing provision for civil penalty for failure to pay subdivision filing fees.

OFFICE MOVES IN JULY

The part-time office maintained by the Division of Real Estate at 345 Chester Avenue, Bakersfield, will be moved to 520 Kentucky Street on July 1, 1967.

Addition of Section 10081.5— Temporary Restraining Orders

Section 10081 presently affords the Real Estate Commissioner the authority to civilly enjoin violations of the Real Estate Law. A limitation on this authority is the requirement that the respondent be given five days’ notice before a temporary restraining order may issue.

This bill proposes to delete the five-day notice requirement insofar as commingling or conversion of trust funds is involved.

Amendment to Section 10470 and Addition of Section 10470.1—Real Estate Education, Research and Recovery Fund

This bill would permit the Real Estate Commissioner to transfer recovery funds in excess of \$400,000 to the Real Estate Fund.

Estimated future Recovery Fund receipts and disbursements are in approximate balance, and the sum of \$400,000 is considered ample to sustain normal Recovery Fund operations.

Amendment to Section 10150— Broker Applications

Existing law requires a real estate broker application to contain the recommendation of two property owners in the county in which the applicant

in any way by the actions of the broker and salesman. **The point at issue was expressly—complete lack of supervision.** These mitigating factors were considered in the hearing officer’s decision with respect to the penalty.

resides certifying to the honesty, truthfulness and good reputation of the applicant; and alternatively, in event the applicant has not been in the county for one year, similar certifications are required from property owners in the counties in which he formerly resided. The proposal seeks to delete the latter alternative.

Recommendations from property owners in which the applicant presently resides is most meaningful and is subject to ready verification.

Amendment to Section 10176(f)— Exclusive Listing Termination Date

Amendment proposes to require a specific termination date for all exclusive listings relating to transitions for which a real estate license is required, including loan authorizations and leases; not just exclusives for sale, purchase or exchange of real estate or business opportunities.

Amendment to Section 10238— Real Property Securities Bonds

Technical amendment relating to filing United States or California bond to obtain endorsement as a real property securities dealer. Raises bond from \$5,750 to \$6,000 to conform law to existing practice—\$5,750 bonds are unobtainable.

Amendment to Section 10238.7— Real Property Securities Cash Bonds

Provides a definite three-year statute of limitation for exposure of the real property security dealer cash bond, to afford the real property security dealer an opportunity to obtain release of the cash bond after three years.

Amendment to Section 10474.5— Recovery Proration

This bill relates to the situation where a number of recovery applicants obtain fraud judgments against the same licensee and where the total petitioned for exceeds \$20,000; and authorizes prorated or equitable distribution by the court of the \$20,000.

License Fees

This bill relates to raising real estate license fees \$10 over a four-year period. If it is passed, the increase would not be effective until January 1, 1968.

NEW STUDY UNDERWAY**Employment and Population Forecasts in Bay Area**

The State Water Quality Control Study of the San Francisco Bay-Delta area was awarded to a consortium of firms and organizations headed by Kaiser Engineers. Kaiser, in turn, asked Dr. E. A. Pearson, vice chairman of the Division of Hydraulic and Sanitary Engineering at the University of California, to serve as principal consultant to the study, and requested the U.C. Berkeley Center for Real Estate and Urban Economics to furnish future growth projections of this region.

Forecasts by Decade

Drawing upon their experience in developing the Bay Area Simulation Study model for the Association of Bay Area Governments, a team of researchers at the center, under the direction of Dr. Louis K. Loewenstein, is preparing detailed employment and population forecasts by decade to the year 2020 for 742 subareas within this 13-county region. It is envisioned that a number of alternative forecasts will be made based on differing assumptions concerning spatial configurations and technological change. These forecasts will be converted into waste loading flows so that physical systems might be designed to accommodate these growth patterns. A six-month contract has been awarded to the center for this purpose.

It is expected that the center will then be asked to analyze the costs and benefits associated with each physical scheme. This will be done sometime next year, whereas the growth forecasts are to be completed by July 1, 1967. Professor Paul F. Wendt, chairman of the Center for Real Estate and Urban Economics, maintains overall supervision of this project, which is called BASS III.

This study, so significant to the bay area economy, is illustrative of the practical dollars-and-cents value of the university's research program, supported to a substantial degree by allocations from the Division of Real Estate administered Real Estate Education, Research and Recovery Fund.

Destruction of Sales and Use Tax Records Must Be Authorized

Licensees engaged in selling business opportunities should know that business firms registered with the California State Board of Equalization must keep adequate and complete records showing:

1. The gross receipts from sales of tangible personal property (including any services that are a part of the sale) made within California, irrespective of whether the seller regards the receipts as taxable or nontaxable.
2. All deductions allowed by law and claimed in filing returns.
3. Total purchase price of all tangible personal property purchased for sale or consumption in California.

If an owner-retailer informs you that he has not retained past records required under the Sales and Use Tax Law, he is in violation of the law, unless he has obtained from the board written authorization to destroy the records. This authorization may be obtained upon request from the nearest Board of Equalization office.

RESTRICTED LICENSES**A Full License Fee Is Required**

When a real estate license has been revoked or denied after a hearing, in some instances the commissioner will issue a restricted license. The restriction can be by term; to employment by a particular broker (for a salesman); by limitation to a certain area or type of activity; by requiring detailed reports of each transaction; by the filing of a surety bond; or by other conditions or combinations of conditions.

Under the law, a restricted license is treated as a separate and distinct license and is issued on a four-year basis, unless the restriction is for a shorter term of duration.

It also follows that when the holder of a restricted license successfully petitions for reinstatement of a revoked license, a new unrestricted license is issued for a four-year term.

In both instances, before issuance of either a restricted license or an unrestricted license, a proper application for that license (pages 1 and 3 of an original application whether broker or salesman), together with the full license fee must be on file.

Governor Appoints New Commission Members

(Continued from col. 1, page 797)

of America. He is the proud recipient of the Silver Beaver Award—Boy Scouts of America.

Mr. Cotton was first licensed as a real estate salesman in 1934 and presently divides his time between real estate brokerage, appraisal and counseling, management and Real Estate Association activities. He is a partner in the commercial and investment brokerage firm of O. W. Cotton Co., Realtors, in San Diego; president of the Cotton Property Management Co., real estate management; and sole owner of O. W. Cotton Co. Appraisal Dept., appraising and counseling.

He is widely known both for his active participation in community projects and in the affairs of organized real estate.

The following posts are representative of his extremely busy professional

life: president of the San Diego Real Estate Board, 1951; president of the California Real Estate Association, 1956; vice president of the National Association of Real Estate Boards, 1959—currently serving on the board's Long Range Planning Committee; vice president of the American Institute of Real Estate Appraisers, 1966—now serving as chairman of its Appraisal Review Committee.

In spite of the demands upon time and energy of these official responsibilities, Mr. Cotton has managed to devote time to educational activities, having lectured on appraising, management, sales or exchange subjects before: NAREB, CREA, San Diego Realty Board, American Institute of Real Estate Appraisers, University of California Extension, San Diego State College, as well as for various conventions and seminars.

A Professional Broker Defines His Terms

With little or no understanding of the procedure entailed in selling or in acquiring property, the average buyer or seller must place trust in those who have a presumed right to be considered experts in this field. He expects first class, knowledgeable service and due regard, on the agent's part, for the factors of honesty and full disclosure. The caliber of service in any particular sale should justify this confidence.

A substantial number of complaints have been received from sellers and buyers concerning the practice of employing a misleading use of the terms "recurring" and "nonrecurring" in relationship to closing costs. In the deposit receipt the statement "seller shall pay all nonrecurring closing costs and the purchaser shall pay all recurring closing costs" is usually incorporated.

The apparent intent of this phrase is to "saddle" the sellers with practically all of the closing expenses, in order to facilitate putting together a sale, particularly when the buyers are "short on cash."

The sellers are led to believe that this is the normal method used in "splitting closing costs."

If the broker is called upon to define the terms, he is so vague in his explanation that the sellers do not know what he means. They are apt to feel that the division must be fair since the wording makes it appear as if each party is splitting the "closing costs" half and half.

FHA Terminology

In connection with FHA insurance on one- to four-family homes, the acquisition cost of the property has a bearing on the downpayment. This is defined by FHA as the purchase price of the property, *plus all nonrecurring expenses in connection with closing the loan*, excluding the impounds or trust funds. These nonrecurring expenses include the FHA fee, title search, survey, discounts, credit reports, etc.

If the above terminology was borrowed from this source, then it is being used indiscriminately, and brokers who employ these terms to-

QUESTIONS AND ANSWERS ABOUT LICENSE TESTS

The questions listed below are repeatedly asked by mail and in person at Division of Real Estate offices. Perhaps reference to them and the answers will save correspondence and time, particularly for the candidate for real estate broker license.

Q. I passed my basic real estate broker license examination and the supplementary test on "real estate practice," but failed the special supplementary test on "legal aspects of real estate." Can I be excused from retaking the "legal aspects" test by completing a course on this subject?

A. Yes, but there are qualifying conditions:

1. The course must be an approved three-unit real estate course given by a junior college, state college, private university or college, accredited by the Western Association of Schools and Colleges.
2. The course credit certificate or transcript must be received by the DRE within one year from date of filing the application.

Q. How can I find out where and when courses will be given in my locality which will qualify for waivers from the "legal aspects of real estate" and "real estate practice" supplementary tests for real estate broker license?

A. Write or telephone the nearest junior college or the Continuing Edu-

cation in Real Estate Program, University of California, University Extension, 2223 Fulton Street, Berkeley 94704, or Room 315, 1100 South Grand Avenue, Los Angeles 90015.

Q. I submitted a real estate broker license examination application and fee but did not appear for the examination. Do I lose my fee?

A. No part of any examination fee is refundable, as it is deemed earned upon its receipt; however, under the provisions of Section 10208.5 of the Real Estate Law, if an applicant fails to appear for the examination within two years from the date of filing his application and fee for the examination, "his application shall thereupon lapse and no further proceedings thereon shall be taken." Thus, you would not lose your fee until after two years, but you could lose some reexamination rights, for, if a broker delays taking the examination, his right to a reexamination is governed by Section 10153.8. **Any reexamination must be taken during the 12-month period counted from the initial file date of the formal application.** For example, an applicant who prematurely files his application for the broker examination, and who may not qualify for the examination, or any applicant (broker or salesman) who delays beyond the one-year period from the application file date, is not eligible for a reexamination regardless of circumstances or previous performance scores.

REAL ESTATE COMMISSIONER APPOINTS CHIEF ASSISTANT

Commissioner Burton E. Smith recently announced the reappointment of John E. Hempel as chief assistant commissioner, a position held by the appointee under Smith's two predecessors.

Hempel, a civil service career man with better than 12 years' experience with the DRE, started as an investigating deputy and moved up through the ranks.

gether with escrow officers who aid and abet them should spell out their meaning in language laymen will understand.

He received national recognition last year when the National Association of Real Estate License Law Officials (NARELLO) elected him Western District regional vice president.

For 12 years prior to entering state service, the chief assistant commissioner was a California real estate licensee. He served as president of his local real estate board and as a vice president of the California Real Estate Association, and was a member of the San Clemente Planning Commission and City Council. In 1953-54 he was postmaster of San Clemente and part owner of a local publishing company.

ACCUSATION

Formal Hearing Preceded by Thorough Investigation

The accusation and notice of defense will be discussed in this second of a series* of articles intended to acquaint licensees with the responsibilities of the Real Estate Commissioner and his staff in the law enforcement field.

After a thorough preliminary investigation of a complaint indicates evidence of a violation of the Real Estate Law, the results are carefully reviewed before a formal hearing is authorized.

The charges against the licensee are formulated in an accusation—the first step towards initiating a hearing to determine whether a license or right should be suspended, revoked, or revoked with the right to apply for a restricted license.

STATEMENT OF ISSUES

Before denying any license, a hearing on the application must be held in accordance with provisions of the Administrative Procedure Act.

A statement of issues is filed to initiate a hearing to determine whether a license should be issued. It is a written statement specifying the statutes and rules with which the applicant must show compliance by producing proof at the hearing and, in addition, any particular matters which may have come to the attention of the commissioner and which would authorize denial of the license.

In application cases, the burden is upon the applicant to prove his honesty, truthfulness, and good reputation to be entitled to become a licensee.

Once a license has been issued, however, the licensee has a vested right in it, and it can be suspended or revoked only by proper disciplinary proceedings.

The allegations must briefly and plainly set forth the actions or omissions with which the licensee is accused, and contain sufficient information to enable him to properly prepare his defense. It must also specify the statutes and regulations which the licensee is alleged to have violated.

Notice of Defense

Service of the accusation may be either personal or by registered mail and included with it is a statement to

* NOTE: First article, "Disciplinary Proceedings Conducted in Accordance with Administrative Act," December 1966 *Bulletin*, page 781.

the licensee advising him of his rights under the Administrative Procedure Act and a notice of defense, which, when filed, constitutes a specific denial of all material allegations of the accusation.

The licensee is entitled to a hearing if he files the notice of defense within 15 days after service upon him of the accusation. If he fails to file the notice within the 15-day grace period after service, a default hearing is held without further notice being served on him.

After the licensee files a notice of defense, a notice of the time and place of hearing is served at least 10 days prior to the hearing. The licensee is advised that he may be represented by counsel, may present any relevant evidence, may cross-examine witnesses and that he is entitled to the issuance of subpoenas.

These carefully detailed procedures offer proof that an accusation is never issued lightly, and its issuance does not condemn the licensee; the charges against him must be proved.

NOTARY PUBLIC HELD LIABLE FOR DAMAGES

A successful suit was brought against a notary public as a codefendant with a mortgagee who was held to have committed fraudulent acts in a recent Alabama case, *Butler v. Olsham*, 191 So. 2d 7 Ala. 1966. The mortgagees were induced to sign a mortgage and deed, which was later certified by the notary without his having actually witnessed the acknowledgment. The court held that the act of the notary public, which rendered the conveyance valid in the hands of a bona fide purchaser, was at least a concurring cause of the damage along with the fraud of the mortgagee. The court stated that there is an implied responsibility to the public by a notary's statutory duty to certify signatures

REALTY REVIEW

Since the last *Real Estate Bulletin* article on San Jose State College (October 1966, page 778), the college researchers have published two additional issues of *Realty Review* (four-page summaries of their research findings), and the spring issue of a wall chart which shows the economic condition of Santa Clara County.

Realty Review (fall 1966) is devoted to a discussion of building activity (down), surplus housing (down), and the outlook for Santa Clara County this spring (continued prosperity). This issue contains an excellent review of a recent survey of vacancy rates in the county.

Bulletin to Feature Articles on Regulatory Sections of the Law

With its next issue, scheduled for release in July, the *Bulletin* becomes a quarterly publication.

Readers may look forward to seeing in this edition the first of a series of articles citing specific cases illustrating the application of regulatory sections of the Real Estate Law—Sections 10176 and 10177. These two sections constitute the basis for most license suspensions or revocations.

As a general rule, under Section 10176, the licensee must have been acting as an agent in a real estate transaction.

Section 10177, on the other hand, applies to situations where the party proceeded against may not necessarily have acted as an agent or as a licensee.

only after acknowledgment in his presence, and that damages will lie against a notary who intentionally certifies an acknowledgment not made in his presence.

Many brokers and salesmen in this state have notary public licenses, making this out-of-state case of considerable significance to California licensees. Most brokers realize that an extremely valuable, though intangible, asset in their business is a good reputation, and this is far too difficult to come by to be sacrificed for a notary fee or a fraudulent transaction.

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ACCOUNTING PROFESSOR FINDS REAL ESTATE FIRMS NEED UNIFORMITY IN THEIR RECORD KEEPING

In a new and succinct report just released from Sacramento State College, author Elmer R. McNece, assistant professor of accounting, concludes that a need for an annual survey of revenue and expenses for real estate firms exists—this survey to be provided on a local basis and at a modest cost to its sponsors.

This is the end product of one of Sacramento State College's "optional activity" studies for 1966-67. Such a survey, McNece believes, would provide a real estate firm manager with comparative statistics for other firms, and allow the manager to improve his performance through analysis of the difference between comparative items of revenue and expense. Such data would also be useful to individuals contemplating entry into the industry.

After mailing questionnaires to 386 real estate firms in the Sacramento area, Mr. McNece found that, though

most brokers recognize the need for this type of information and would cooperate in such studies on a continuing basis, they couldn't supply useful data to him because they fail to classify similar items of revenue and expense in a uniform manner in their records. To correct this recordkeeping deficiency, the report suggests a uniform and flexible chart of accounts should be developed, along with a manual explaining its use. **The author noted that mass use of a uniform chart of accounts would also be helpful to licensees in appraising businesses for mergers, sales, etc.**

Mr. McNece emphasized that the publication of annual operating statistics, as valuable as such information would undoubtedly be, would need to be locally sponsored since the response from nonlocal firms indicated statewide data collection to be impracticable.

REPORTS AVAILABLE

Although Professor McNece's study, "Revenue and Expense," reported separately in this issue, is not available for purchase, a limited number of copies of the following research reports are obtainable from DRE's principal office, P.O. Box 2407, Sacramento 95811, at \$1.50 per copy plus 4 percent sales tax, if ordered in California:

- *Chico State College—Management Practices and Personality Traits of Small Real Estate Brokers in Northern California*
- *Fresno State College—A Statistical Approach to Real Estate Value with Applications to Farm Appraisal . . . Merced-Atwater Economic Area*
- *Humboldt State College—A Study of Mobile Home Parks, Spaces and Residents in Humboldt County . . . Multi-Family Inventory and Vacancy Study . . . The Broker's Role in Attracting Industrial, Commercial and Recreational Development*
- *Sacramento State College—Housing Market Analysis, 1962-1965*
- *San Jose State College—Mortgage Lending by Commercial Banks in the Nine Bay Area Counties . . . The Characteristics and Home Buying Intentions of Apartment Residents in San Jose*

Do Not Treat Boundary Lines Casually

A reminder to licensees not to give out information or provide a positive answer to a question unless they are reasonably certain it is accurate is set forth in 244 ACA 653.

A real estate salesman directed attention to the supposed corner of a 40-acre parcel when the true corner was a quarter of a mile south and some distance east. The purchaser had actually sold some of the acreage and was mistakenly improving additional

land which he thought to be his when the mistake was brought to his attention. He sued the broker and his agent for damages and the commission paid them. Since evidence did not reveal that "bad faith," requisite for depriving the broker and salesman of their commission, existed, their negligence in not determining facts was ruled constructive—not actual—fraud and this adjudged carelessness proved expensive. **The purchaser was shown to**

have lost \$17,000 by getting the wrongly designated acreage and the broker and salesman were required to pay the "out-of-pocket" difference because of the reduced value of the property sold.

It can be reasonably assumed that there are at least two more licensees in California who are convinced that one should know precisely what he is selling before he sells it.