

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, May, 1953

D. D. WATSON, Commissioner

EXPLANATION OF SUBDIVISION LAW ADMINISTERED BY REAL ESTATE COMMISSIONER

This is a discussion of what is required of subdividers under the subdivision laws, rules and regulations administered by the Real Estate Commissioner. It should be understood, however, that most subdividers are also subject to the laws, rules and regulations under the Map Act as administered by the local authorities.

Confusion in Definitions of a Subdivision—Map Act—Commissioner's Jurisdiction

There is one important difference in the definition of a subdivision as defined under the subdivision laws administered by the Real Estate Commissioner and under the Map Act as administered by the local authorities. The laws administered by the Real Estate Commissioner define a subdivision generally, as "land divided into five or more parcels for the purpose of sale or lease over any period of time." In other words, it does not specify any time limit in which sales might be made. **Therefore, a subdivider must file with the Commissioner, even though he sells or leases only one lot per year, if the total is five or more.**

The definition of a subdivision in the Map Act is similar, although it provides that unless "five or more parcels are sold in any 12 months' period," the act does not apply. For example, an owner who sells four lots per year for a period of, say five years—20 in all—is required to file with the Real Estate Commissioner, but not with the city or county unless special ordinances apply. **Some counties have ordinances that require a filing even though less than four parcels are sold during the 12 months' period; therefore, the local planning commissions should be consulted.**

Map Act Governs Physical Aspects of Subdivisions

The first logical step for any prospective subdivider to take in respect to a subdivision is to consult with his local planning commission concerning his proposed program. Under the Map Act, local authorities have control over the general layout, streets, lot size, and the improvements required in that particular area in the way of road surfacing, gutters, sidewalks, drainage, water mains and sewage disposal facilities.

It is important to understand that the physical improvement of subdivisions is regulated solely by local authorities. The Real Estate Commissioner does not have anything whatsoever to do with administration of the Map Act. The Commissioner does, however, as will be explained in more detail later on, have the responsibility of investigating the conditions surrounding the tracts and reporting on them, **so true facts may be disclosed to the buyer before he has committed himself to purchase property in the subdivision involved.**

What the Real Estate Commissioner Requires

The subdivision law which the Real Estate Commissioner enforces is intended to prevent fraud, deceit and misrepresentation, and to make sure that the buyer gets what he contracts for. It is reasonable for the buyer to assume that he will secure the usual conveniences and improvements to be expected from cities and counties, unless he is otherwise advised, and that is why the Commissioner endeavors to make sure that city and county requirements are observed.

No attempt herein will be made to go into the many details of local requirements, but discussion will be limited to what is necessary for the subdivider to do in making a filing with the Real Estate Commissioner.

When Do You Become a Subdivider?

You are a subdivider, as far as filing with the Commissioner is concerned, when you divide any piece of land into five or more lots or parcels, whether they are improved or unimproved, for the purpose of selling or leasing them, **regardless of when these five or more sales take place.** It is important to understand that before you offer for sale or do any selling or leasing, you must obtain the Real Estate Commissioner's Public Report on your subdivision, unless such requirement is waived by the Commissioner. There are some exceptions, but they do not affect the average subdivider. For example, where the parcels are to be 160 acres or over in size and where certain other conditions exist, they are not considered to be subdivided lands.

Who Must Make the Filing With the Commissioner?

When land is divided into five or more parts or parcels for the purpose of either sale or lease, either present or future, someone must make a filing with the Commissioner before any sales or leases are made. The law states this can be the owner, subdivider, or his agent. Usually the owner makes the filing. The owner and subdivider are usually the same, although sometimes the owner will turn over the land to someone to develop it and secure the necessary authority to offer it for sale. This latter person is commonly known as a subdivider. Sometimes the sub-

(Continued on next page)

IMPORTANT—Read Back Page License Renewal Information!

[May, 1953—Page 89

REAL ESTATE BULLETIN

Sacramento, May, 1953

Published Bimonthly by the

DIVISION OF REAL ESTATE

STATE OF CALIFORNIA

EARL WARREN, Governor

D. D. WATSON

Real Estate Commissioner

STATE REAL ESTATE BOARD

LELAND P. REEDER Beverly Hills	CHARLES B. SHATTUCK Los Angeles
MAURICE G. READ Berkeley	CHESTER MACPHEE San Francisco
FRANK WHITELOCK San Bernardino	CURTIS M. ROBBINS Stockton

OFFICES AND AREA ADMINISTRATORS

GAYLORD K. NYE, Chief Deputy, Northern Calif.
Sacramento, Principal Office1021 O Street
San Francisco, Room 204, 1182 Market Street
Saxon A. Lewis, Supervising Deputy
Oakland, Room 406, 1736 Franklin Street
Harold H. Wells, Senior Deputy
Fresno, 629 Rowell Building
John S. McVay, Senior Deputy

RAY D. WESTCOTT, Chief Deputy, Southern Calif.
Los Angeles..... Room 1101, Ninth and Hill Building
Long Beach.....531 American Avenue
San Diego, 604 Orpheum Theater Building
James M. Winter, Senior Deputy

divider does not handle the selling program, and an agent comes into the picture. The agent must be a licensed real estate broker. Anyone, except the owner himself, who sells the properties must be licensed as a broker or salesman. Even salaried employees of the owner or subdivider must be licensed.

When Must the Filing Be Made?

The filing must be made with the Real Estate Commissioner and his "Public Report" obtained before offering to sell or lease. This report will be discussed more fully later on.

The subdivider need not wait until he has complied with all the local requirements before he files with the Commissioner. He may make an incomplete filing at any time after he has made up his mind how he plans to lay out the subdivision.

When an incomplete filing is made, the subdivider can furnish additional information and documents as the arrangements progress. **Filing early, although incompletely, has a definite advantage in permitting the Commissioner to proceed with his investigation, so that the subdivider will not be delayed in receiving the final report permitting the property to be offered for sale.**

What Is a "Filing" With the Commissioner?

Filing with the Real Estate Commissioner is a method of notifying the Commissioner in writing of intention to subdivide certain land. Such notice is required by law and is called a "Notice of Intention to Subdivide." The law sets forth what information is to be included in this notice.

After receiving the Notice of Intention to Subdivide, the Commissioner may require that a questionnaire be answered. The questionnaire provides for many questions beyond what is required in the Notice of Intention. Where it is very clear a subdivision, as defined in the law, is being developed for sale or lease to the public, and there are no unusual circumstances warranting waiving the requirement, the Commissioner requires the questionnaire to be filled out and filed. **For this reason, most subdividers take a short cut and fill out the "combined notice of intention and questionnaire" to start with, thereby saving time.**

Notice of Intention to Subdivide

In certain cases where the subdivider feels that he should not be required to follow the regular subdivision requirements, he may submit a Notice of Intention to Subdivide. A special form is provided for this purpose and may be obtained at any Division office upon request. It is not necessary to submit a fee with this completed form. The form itself need not be used, if the required information is given in a letter. However, the law requires the following to be given in the Notice of Intention:

- (a) The name and address of the owner.
- (b) The name and address of the subdivider.
- (c) The legal description and area of lands.
- (d) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.
- (e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.
- (f) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.
- (g) Such other information as the owner, his agent, or subdivider may desire to present.

The Subdivision Questionnaire

The subdivision questionnaire contains a number of questions concerning

the proposed subdivision. All of these must be answered in detail.

Perhaps the most important section of the questionnaire is that requiring the subdivider to submit certain documents. These documents, together with his investigation of the tract, form the basis for the Commissioner's judgment whether to issue a public report and permit the sale or lease of the lots, or call a hearing to determine whether the sale or lease should be prevented. While the questionnaire describes the needed documents in detail, very briefly they are as follows:

- 1. A title report.
- 2. If there is a trust deed or mortgage on the land, a copy showing release arrangements for each lot.
- 3. Papers to be used in the sale, such as deed, trust deed, contract, lease, option, etc.
- 4. Conditions and restrictions affecting the lots.
- 5. Copy of recorded map, including the title sheet.
- 6. Letter from water company concerning arrangements for service.
- 7. Letter from Health Department regarding sewage disposal methods.
- 8. Letter from fire department or fire district regarding fire protection.
- 9. Report on flood hazard and drainage from Flood Control Engineer or other qualified authorities.

Comments on the questions or requirements of the questionnaire will be made later herein.

Subdivision Filing Fees—Other Costs

When a subdivision questionnaire is filed with the Commissioner, a filing fee of \$50 must be paid. The fee is the same whether the tract contains five lots or 500 lots. In unusual cases additional fees may be required by the Commissioner, as the law states the total cost of the examination shall be borne by the owner, his agent, or subdivider, on the basis of actual cost to the Real Estate Division.

Extra fees may also be charged when the subdivision is not for residential or business purposes, such as in the case of agricultural or industrial subdivisions. If the subdivision is located outside of California and is to be sold here, the Commissioner may charge additional inspection and mileage fees.

The Commissioner's Public Report

After the Commissioner has completed his investigation of any subdivision, the law requires that he shall publish a Public Report of his findings. In effect, this report is a "permit," as no

subdivider may legally offer any lots for sale until this Public Report has been obtained. The Commissioner has two alternatives: (1) To issue the Public Report following his investigation, or (2) to call a hearing to determine whether the sale should be stopped. If his investigation indicates that the sale would work a fraud upon the public, he is required to hold the hearing.

Important Material Change Must Be Reported

Any material change in the subdivision or its handling after the Public Report is issued must be reported to the Commissioner. This not only includes physical changes, such as changing the lot or street lines, but changes in the contracts, deeds, etc., used in the sale. Failure to report these changes may result in a hearing and possibly a Stop Order, or even a criminal prosecution. It may also furnish basis for the lot buyer to rescind his purchase through court action. This happened recently in a case where the subdivider changed his sales contract after submitting a copy to the Commissioner with his filing and failed to notify him of the change. The purpose of reporting is to enable the Commissioner to revise the Public Report if warranted.

Subdivider Must Give Copies of Report to Buyers

It is not enough for the subdivider to receive the Commissioner's Public Report, but he is charged with furnishing a true copy to each buyer before committing him to the purchase. **He must not only furnish the copy, but also give the prospective buyer an opportunity to read it, and in addition must obtain a signed receipt for the copy and keep the receipts on file for the Commissioner's inspection for at least three years.** Failure to do this may be basis for stopping the sale of the subdivision and revoking the licenses of the subdividers and sales agents.

Purpose of the Public Report

The whole purpose of the Commissioner's report is to acquaint the buyer with the information the Commissioner has secured through his investigation of the tract. If the buyer does not get the information, the report is of doubtful value. It is for this reason the subdivider is charged with handing the

prospective buyer a true copy of the report and allowing him a chance to read it before he commits himself to the purchase.

Not only must a copy of the Commissioner's Public Report be given to the purchaser, but the copy must be that furnished by the Commissioner or an exact reproduction approved by him. For this reason, the Commissioner furnishes free copies for the use of the subdivider. The number furnished free is one and one-half times the number of parcels involved. For instance, if the subdivision has 50 lots, the Commissioner furnishes 75 copies of his report. If the subdivider wants still more copies, he must pay for them at the rate of \$5 for the first 100 copies and \$1 per hundred for each additional 100 copies.

What if the Subdivision Appears Fraudulent?

The purpose of the Commissioner's investigation and report is to disclose to the purchaser the pertinent facts concerning the project, particularly those which may be undesirable from the individual purchaser's viewpoint. **If the buyer goes ahead knowing the facts, there should be no fraud involved, and ordinarily no basis for complaint.** If the purchaser doesn't get the information due to failure to receive the report, or because of misrepresentation, that is another matter.

The Commissioner is interested in determining that the subdivision is suitable for the purpose for which it is sold. If it is to be sold for residential purposes, he wants to know if the fundamental requisites are present, such as domestic water and a means of sewage disposal, and that health requirements are being complied with. He also wants to know if the owner can get in and out of his property, that is, having ingress and egress. This is on the assumption that the average person would not purchase property for residential use if water, sewerage, means of getting in and out, and similar facilities were not available.

If any of these fundamental requirements are lacking in residential property, the Commissioner may hold a hearing to determine whether the sale would or would not work a fraud upon the ordinary buyer.

Other than for the fundamental requisites permitting the purchaser to use the property for the purpose indicated, the Commissioner does not concern himself, provided the improvements meet with local requirements. For instance, he does not insist that roads be surfaced unless the city or county requires it, but does ordinarily insist that local laws and requirements are being met before issuing the Public Report.

How Does the Commissioner Stop Sales?

If it appears that the sale of particular subdivided land may result in fraud, misrepresentation or deceit, the Commissioner has two recourses. He may call a hearing and order the sale stopped, if the evidence warrants; or, he may bring a suit in the courts to enjoin the subdivider from making sales.

What Is a "Preliminary" Subdivision Report?

Sometimes a subdivider has not quite met all of the requirements of local and state agencies, but it appears fairly certain he will be able to meet them within a reasonable period of time.

For example, a situation might arise when the land in a subdivision is being annexed to a city in order that the subdivider's sewer system can tie in with the city system. Annexations take time, and the delay in going through the formalities of annexation might cause the subdivider a serious loss in time and money. He might even lose his market in the meantime.

The Commissioner, in those cases, may issue a "Preliminary Subdivision Report." **These reports do not permit sales to be made, but do permit the subdivider to take "reservations." The subdivider must deliver a copy of the Preliminary Report to each person who makes a lot "reservation" and obtain a receipt therefor.**

When the subdivider takes a deposit in connection with such a reservation, other requirements are also imposed. He must deposit all such money in a neutral depository, together with a receipted copy of the Preliminary Subdivision Report. The money must be deposited with written understanding that the person who paid it can have it refunded to him upon demand without

(Continued on next page)

any deductions, up until the time he has signed a binding contract to purchase. The binding contract, of course, cannot be made until the Commissioner's Final Public Report is issued and the purchaser is given a copy of same with opportunity to read it and his receipt is taken for it.

"Reservation Form" Must Contain Standard Provisions

When deposits are taken on "reservations" where a Preliminary Subdivision Report is issued, the reservation agreement must set forth the circumstances under which the deposits are taken. The essentials are as follows: (1) Agreement must recite that it is a tentative agreement and not a contract to purchase; (2) owner must agree that deposits shall be placed in a neutral escrow depository, together with a copy of the Real Estate Commissioner's Preliminary Public Report on the tract, bearing prospective buyer's signature acknowledging receipt of a copy and that he has had an opportunity to read it; (3) deposit must be subject to withdrawal by prospective buyer at any time without deductions until latter's approval of the Commissioner's Final Public Report, and an executed contract of purchase and sale is substituted for the reservation; (4) provision for canceling the reservation by the buyer or owner without liability prior to completion of the acts set forth above, provided that in event of cancellation the deposit shall be returned without interest.

NOTE: In cases where it appears there will be no unusual delay in the issuance of the Final Public Report, the Preliminary Report serves no real purpose. It is only in cases where the delay may be substantial that it is of value to the subdivider or those desiring to make a reservation.

Short Form FHA-VA Questionnaire (Note—This Is an Experimental Procedure and Subject to Modification)

Many subdivisions in recent years have been developed for the purpose of building tract homes financed by Federal Housing Administration insured loans or Veterans Administration guaranteed loans. The Commissioner has developed a short form questionnaire to be used solely in connection with such tracts, which eliminates

many of the questions asked in connection with the usual run of subdivisions.

The questionnaire used in connection with FHA and VA financed tracts with building programs is greatly abbreviated, and only three supplementary documents are required, namely: (1) A title report, (2) a copy of the recorded map, and (3) proper certifications that all improvements will be in accordance with FHA or VA standards or requirements and that only such sales will be made. In some cases, further information may be required by the Commissioner after the filing is received and the investigation is made. For example, supplementary reports in connection with filled ground, drainage, flood hazard, fire protection, etc., are not required unless a questionable situation arises from the investigation of the tract.

The short form questionnaire was developed with the belief that it would save homebuilders and subdividers much time and effort in most instances, and at the same time would not lessen the protection given to the home buyer which is contemplated by the subdivision laws.

Bear in mind that this form of questionnaire is to be used only for subdivisions in which all parcels to be offered for sale are to be sold complete with houses, meeting FHA or VA standards. Tracts in which any lots are to be sold unimproved, or in which lots are improved with homes not meeting FHA or VA standards, cannot be filed by using the short FHA-VA form.

In using the short form, the subdivider, owner or agent must swear or affirm that "each lot to be sold as residential property is to be improved with a house and sold only with an FHA insured or VA guaranteed loan, that he is owner of the tract, or will be the owner at the time lots and houses are offered for sale and are sold to the general public—or that he is the agent authorized by such persons to complete the questionnaire."

A Public Report is issued by the Commissioner in the usual manner in connection with such tracts, and all rules regarding sales and the issuance of the report apply. It must be understood, however, that this plan is still in an experimental stage and may have to be modified.

Agricultural Subdivisions

Agricultural subdivisions are those in which parcels are to be sold primarily or substantially for agricultural use. These tracts include not only those to be used for farming in the usual sense, but those tracts which are sold for part time or "semi-subsistence" gardening or farming. In past years, many such tracts have been sold surrounding the population centers, with the appeal to buyers that they can raise much of the family food or raise specialized crops such as berries, flowers, and other items for the market. In some cases they are sold for raising small animals, such as rabbits, chinchillas, poultry, etc.

Resort Type Subdivisions

A large number of subdivisions are launched in California and sold on the recreation and health appeal. These consist mainly of cabin sites in the mountains and lots in desert areas.

The usual requirements apply to resort type subdivisions. Local requirements must be observed, as well as health requirements pertaining to water and sewage.

FHA Insured Cooperative Subdivisions

While this type of subdivision starts out on a plan whereby title is not actually distributed to members of the cooperative, it has been held that these constitute subdivisions as contemplated by the law. Under this plan an association is formed of members, each issued a share of stock in the enterprise and given the right to occupy a particular dwelling erected on the tract. After certain conditions are met, the title is distributed to members covering the homes they individually occupy. The giving of a deed occurs shortly after the home is completed, and an FHA insured trust deed covers the greater part of the purchase price. All of these arrangements are made through escrow. **This type of subdivision must also be cleared with the Commissioner of Corporations and a permit from that agency secured.**

The Real Estate Commissioner does not permit the release of money from the escrow in connection with such subdivisions until all requirements of FHA are complied with and the Pub-

lic Report is furnished to the purchaser. Completion of such projects depends upon the sale of a certain percentage of the stock, which means that a certain number of potential home purchasers must be obtained before the project can be closed.

Community Apartment House Projects

Community apartment house projects or "cooperative apartment houses," also known as "own-your-own" apartments are ruled to constitute subdivisions unless they are set up as a corporation and the ownership of units evidenced by stock. In the latter case they come under the jurisdiction of the Commissioner of Corporations.

However, in those cases where an undivided interest in the property is deeded, coupled with the right to occupy a certain unit or apartment, the Attorney General has ruled that these constitute subdivisions. Filings must be made with the Commissioner and his report received and given to purchasers before the latter are bound to the sale. A special questionnaire has been prepared for use of subdividers of community apartment house projects.

The usual arrangement required by the Commissioner is that all money deposited by purchasers must be impounded in a neutral escrow until the subdivider is ready to convey title free of encumbrance to purchasers. If there is a trust deed or mortgage on the property, it must be liquidated prior to the time that deeds are given. This is assuming that the trust deed or mortgage does not contain a release provision giving the owner of an undivided interest the opportunity to secure title free of the blanket encumbrance. As a matter of practice, lending institutions are reluctant to release undivided interests from the encumbrance.

In event the apartment building to be thus subdivided does not already exist, but is proposed to be constructed or is under construction, somewhat different regulations are imposed by the Commissioner.

In such cases, the promoter must show that the project is adequately financed and agree that all funds will be impounded in escrow until the loans can be liquidated. Under certain cir-

cumstances arrangements can be made with the Commissioner to release the funds of purchasers from escrow to defray building costs, but usually only with the purchaser's consent and upon his full understanding of the hazards.

Due to the numerous ramifications and variations connected with such cooperative apartment projects, preliminary submission of plans for the program to the Commissioner for study and advice is advisable.

Mineral, Oil and Gas Subdivisions

Anyone contemplating the sale or lease of mineral, oil or gas subdivision lands is counseled to present his proposal to the Real Estate Commissioner for study and advice before proceeding too far with the plan. Due to the abuses which have attended such projects in the past, careful study and close scrutiny are given to them. No such subdivision promotion has been approved for many years. In most cases, such projects may also constitute the sale of a security and be subject to regulation by the Commissioner of Corporations and the Securities and Exchange Commission. This is particularly true where any development is planned for the benefit of purchasers or where the unit sold must of necessity be incorporated under one agreement for exploration or development.

As a matter of general information, the following is given. A special questionnaire must be filed in triplicate, together with all supplementary documents and reports in triplicate. Copies are then furnished by the Commissioner to the Commissioner of Corporations and to the Securities and Exchange Commission. The filing fee is \$150, and additional mileage and inspection fees may be required.

The subdivider of such lands must submit in triplicate geological reports by geologists acceptable to the Commissioner. These reports must rather conclusively indicate that there is a reasonable chance of developing oil, gas or minerals in commercial quantities from the land in question.

Agents who sell such mineral, oil and gas lands or leases for a compensation are required to hold a mineral, oil and gas broker or salesman license issued by the Real Estate Commissioner. This special license requires an

examination and the posting of a \$5,000 faithful performance bond issued by a corporate insurer. Provision is made whereby real estate brokers may sell a limited number of such parcels under special permit.

The definition of an oil and gas subdivision includes parcels of any size, even those over 160 acres which are excluded in the case of other types of subdivisions. The parcels in this type of subdivision need not necessarily be contiguous, but if they are a part of the same project they may form a subdivision even though scattered.

The Commissioner has set up definite rules and regulations governing mineral, oil and gas subdivisions. No subdivision shall contain more than 640 acres if the parcels are scattered. No one subdivision shall consist of the sale of lands and also the sale of leases, mineral rights, surface rights, etc. In other words, the interest in each parcel must be the same. The subdivider must report to the Commissioner every 90 days on any development in the area of the subdivision which has any bearing on the subdivision.

The subdivider of mineral, oil and gas lands or leases must agree in writing that the purchaser of interests in the subdivision will be advised that they are being sold for speculation only. No lots of less than one acre may be sold or any lease interest on parcels less than 2½ acres. A report of sales in such subdivisions must be filed monthly with the Commissioner. The report shall give the description of the property, date of transaction, and the name and address of the buyer.

The Standard Subdivision Questionnaire

The standard questionnaire is used in connection with all subdivisions, except for community apartment house projects and mineral, oil and gas subdivisions. Special questionnaires are provided for those classes of subdivisions. The FHA-VA short form subdivision questionnaire may be substituted for the standard questionnaire when applicable.

Information the Commissioner Needs

Certain information concerning a new subdivision is required to be furnished to the Commissioner by law.

(Continued on next page)

These items were pointed out in our discussion of the "Notice of Intention to Subdivide." The standard subdivision questionnaire includes the "Notice of Intention," so a separate filing of the notice may be eliminated if desired.

Some of the information required by the questionnaire must be in documentary form. Other information can merely be filled in from the subdivider's records in the appropriate spaces.

It should be remembered that it is the Commissioner's duty to see that no fraud is worked upon the buying public and that material facts are disclosed by means of his Public Report. It is for this reason that certain basic information is required. For the Commissioner to secure this information independently would greatly delay the processing of the subdivision, and cause a subdivider to lose months of time.

As stated previously, if all of the documents and information are not available, the subdivider may make his filing, furnishing a substantial amount of the information, and complete it as he is able to do so. This permits the Division to start processing the filing and saves the subdivider considerable time in many cases.

Documents Required With the Questionnaire

1. **A title report** showing record owners and all liens and encumbrances is required. The report must be issued after the map is recorded. It may be a preliminary report, a certificate of title, or a policy of title insurance. Furnishing a preliminary title report covering the land, issued before the map is recorded, is also helpful, as often it reveals items which can be corrected during the processing of the map. A "Subdivision Guarantee" which merely lists the persons of interest who must sign the map is of little value to the Commissioner, as it does not list the nature of all encumbrances. Some title companies which are retained in connection with subdivision title work will issue a report for the benefit of the Commissioner prior to recording the map at no extra cost. A preliminary title report issued before the map is filed is needed where the Commissioner issues a Preliminary Report enabling the subdivider to take reservations.

2. **Copy of any mortgage or trust deed against the land**, including a verified copy of release provisions; or if land is being purchased on contract or by option, a verified copy of these documents including release arrangements for individual lots.

These documents are required by law and the Attorney General has ruled that the release provision must be unconditional, that is, it cannot be effective only when the lien, contract, or option is in good standing. The owner of the land sold under contract or option must unconditionally agree to release any parcel upon the payment of a specified sum of money regardless of any default on the part of the subdivider, and even though he acquires title through foreclosure or forfeiture. This ruling has the effect of protecting the purchaser of a lot on long-term contract against loss of his interest due to foreclosure or loss of title by other means on the part of the subdivider.

The Attorney General has advised that the sum of money required to release any lot from the blanket encumbrance should be specifically set forth in the release provisions, or some definite method of computation of the amount be provided. The specific amount provided should be approximately proportionate to the value of the lot compared to the value of all lots in the tract.

3. **Copies of all documents used in effecting a sale**, including preliminary and final contracts, deeds and trust deeds to be used; or the lease or option, if used. Once the subdivider has filed these documents, he must use them in the sale, unless he notifies the Commissioner of a change and furnishes copies of the new forms.

4. **Copy of conditions, reservations and covenants**, and any restrictions that affect building, use or occupancy. The Commissioner ordinarily is not concerned with the nature of these conditions, reservations, etc., provided the purchaser is put on notice concerning them. He recommends that the subdivider furnish each purchaser with a complete copy thereof.

5. **Complete copy of the recorded map** or of the record of survey map which is filed. This must include the

title sheet, as the information it contains is necessary to determine whether the streets are dedicated and accepted or whether there are any reservations to the recording of the map.

6. **Information concerning water supply.** All subdivisions to be sold for residential use must have definite provisions for furnishing domestic water. Water supply and installations must meet with health standards. A letter from the water company which is to provide service must be secured, stating that ample water and service are available, and that the same will be furnished to each individual lot on demand without exceptions; or if there are any exceptions or reservations to the commitment, the water company should outline them. This arrangement, in effect, means that the subdivider should make his own arrangements with the water company satisfactory to the company, about the installation of the water mains.

The Commissioner may require, when he feels it is necessary, evidence that the water supplier has the necessary health permit or clearance from the State Board of Public Health or the local health officer, whichever has jurisdiction.

7. **Approval by the appropriate health department of subdivider's sewage disposal plan**, if public sewers are not available. If cesspools or septic tanks are proposed for sewage disposal on the tract, permission to use such methods must be given by the health officer.

8. **Fire protection, if any.** Letter from the fire department or fire district outlining the protection afforded, must be furnished. If there is none, subdivider may so state.

9. **Flood hazard and drainage.** A report on flood hazard and drainage conditions must be secured by the subdivider from local flood control engineers or the city or county engineer if under their jurisdiction. Lacking information from official sources, the subdivider may be required in some instances to furnish reports from qualified engineers, at his own expense.

10. **When mineral rights are reserved.** When mineral rights of any nature are reserved by the subdivider

or have been reserved by some previous owner, or when a tract is subject to an oil, gas or mineral lease, further information will be required. The Commissioner is particularly interested in knowing whether the owners of the mineral or lease rights have any right to enter the surface of the land for exploring or development purposes. If the owners of these interests do have the right to enter, the Commissioner requires that these cases be brought to his personal attention.

General Information Required In the Questionnaire

The greater part of the information requested in the questionnaire proper can be furnished without difficulty by the subdivider. Every effort has been made to limit the questions to essentials. Questions asking the name of the subdivision, the type, location, description, number of acres involved, etc., should not be burdensome.

Information concerning the owners, the record title holder if different from the owners, condition of title, can be copied in part from the title report. Sometimes the actual owner is not the record title holder, such as when title is put in trust.

The subdivider is asked to describe his plan of marketing the lots. He is asked whether he will sell vacant lots, or lots improved with houses. If he plans to sell groups of lots to builders, he must so state. If he intends to sell five or more lots to any one person, he is required to advise the Commissioner, as such a sale constitutes a material change in setup.

A number of questions are asked concerning the proposed water supply. The subdivider must advise of the source of supply and the nature of the company that will service the tract, whether it is a public utility, mutual water company, water district, etc. He is asked what provision is made to install water mains and who defrays the cost of connecting the water supply to the dwelling. All of these things often result in disputes if they are not definitely determined.

If the water is to be supplied by a mutual water company, a series of questions is asked, concerning the number of shares of stock to be issued, the source of water, type of installation

used for water mains, and various other questions. Evidence that the Commissioner of Corporations has approved the issuance of shares and that shares are available must be furnished.

Public utility services, such as electricity, gas or telephone service, if they exist, must be described by the subdivider so that the purchaser may know what he will or will not have in the way of services.

Streets and roads giving ingress and egress to lots are essential. The Commissioner is not concerned with how they are improved, as long as they meet local requirements and the purchaser knows what to expect in the way of road improvements and who is going to have to pay for upkeep.

Information concerning other facilities and conveniences is required. This includes a statement about public transportation, availability of schools, shopping center, etc.

Verification of the Questionnaire

The owner of the land is required to sign the questionnaire and must swear or affirm that the information given is correct and that the attached documents are full, true and complete.

In verifying the questionnaire, the owner also agrees to abide by the regulations of the Division of Real Estate and the provisions of the Business and Professions Code. He must agree that no lots will be offered for sale or lease until a true copy of the Commissioner's Public Report has been given to the prospective purchaser, the purchaser given an opportunity to read it, and his receipt taken for it. He agrees to keep the receipts for the reports on file for the Commissioner's inspection.

The owner also agrees that the Commissioner's Public Report shall not be used for advertising purposes, unless it is used in its entirety.

If there is any change in the subdivision or any new condition or development which might affect its value or utility, the owner agrees to notify the Commissioner. He also agrees to give notice if he options or sells five or more parcels to any one buyer.

Penalties for Noncompliance Are Severe

The law provides that anyone who wilfully violates or fails to comply with

the provisions of the subdivision law administered by the Commissioner, or any order, permit, decision, demand or requirement of the Commissioner, is guilty of a public offense and shall be punished by imprisonment in a county jail for a term not to exceed two years, or by a fine of not to exceed \$2,000.

If he is a real estate licensee, his license may be revoked or suspended. The same penalties apply to anyone who falsely advertises subdivision lots. The district attorney of each county in the State is charged with prosecuting violations.

While the Commissioner must take steps to prosecute violations, or to revoke or suspend licenses of those engaged in the violations within three years, the three-year period does not start until a deed to a subdivision lot is placed of record with the county recorder.

In Conclusion

While the foregoing discussion may seem to the reader to be rather detailed, as a matter of fact the points covered are common and not of an unusual nature. All sorts of different problems might arise in connection with a particular subdivision. For this reason personal consultations are often necessary. This is particularly true in connection with those rather unusual types of subdivisions, such as community apartment houses, cooperative tracts, and mineral, oil and gas projects.

If you want to look up the laws on subdivisions, you will find both those administered by the Real Estate Commissioner and those administered by the local authorities in the Business and Professions Code. Both are state laws, although the latter (known as the Subdivision Map Act) is administered by the city or county concerned.

The laws administered by the Real Estate Commissioner are Sections 11000 to 11021 of the B & P Code, and the Map Act is contained in Sections 11500 et seq. of the B & P Code.

NOTE: The Commissioner would welcome any constructive suggestions for improvement in his policies and procedures in the application of the present law, or suggestions as to how the law itself might be changed for the better.

Renew Your License in Time

Observe a Few Simple Rules and Instructions and Avoid Extra Costs and Delays Keep These Instructions Handy—Annual License Renewal Time Nearing

Your official license renewal application form will be mailed to you from Sacramento about May 25th. Wait for this official form and use it to renew. If not received by June 10th, contact one of the division's offices for a duplicate form.

To avoid penalty, renewal applications and proper fees must be submitted to the division not later than June 30th, or in the mail and postmarked not later than June 30th. Those postmarked July 1st, or later, require a penalty fee.

Read the instructions on the renewal application carefully. Make sure application is complete and the proper fee is attached before mailing.

If name or address is changed, show change on renewal application. **IMPORTANT!** Enclose extra \$1 fee for each license involving the change of address or name. Salesmen—if you are changing employing brokers as of July 1st, send extra \$1 fee covering change of employers.

Brokers and salesmen—both sign the salesman renewal form. Mail salesman renewals and fees in same envelope with employing broker's. 1953-54 salesman license cannot be issued until the salesman's employing broker's license is renewed.

Do not mail currency. Pay fees by money order or check. If currency is lost, it is your loss, and in addition you may have to pay a penalty for late renewal. Make checks and money orders payable to State Division of Real Estate.

Checks—if your check is returned by the bank unhonored for any reason, you must pay a double renewal fee, unless the proper fee is mailed and postmarked prior to midnight, June 30th.

Many renewal applications are received just before the June 30th deadline. Therefore, all licenses cannot be issued to reach you by July 1st. Continue to operate on the old license if you made proper renewal and paid fee on time.

IMPORTANT REMINDER: There is a \$1 charge in addition to the renewal fee for any change of name, address or employing broker even though the change is made as of July 1. Example: Broker changes address July 1. Fee—\$5 for renewal plus \$1 for change. Each salesman in his employ would remit \$2 for renewal plus \$1 for change of address on 1953-54 license.

Instructions for Renewing "Inactive" Licenses

Inactive brokers—to keep your right to reinstate your license, you must file renewal application and remit the full renewal fee. You will receive an official form in the mail. Your check mark in the space provided for the purpose will indicate that you want to remain inactive. Your license will be issued and canceled and you will retain your right to reinstate again.

Inactive salesmen—you must also file renewal form and pay the full fee. If you want your license to remain inactive, make a check mark in the space provided on the form. Where the salesman license is to remain inactive, the renewal application need not be signed by a broker. *Renewal forms are not mailed to inactive salesmen.* Obtain one at any division office.

Appraisal Courses

The American Institute of Real Estate Appraisers announces two concentrated case-study courses, Real Estate Appraisal I and Real Estate Appraisal II (Urban), will be given at Stanford University this summer.

Real Estate Appraisal I is scheduled June 22d to July 4th, and Real Estate Appraisal II, from July 6th to July 18th.

M.A.I. credit is given. The tuition fee is \$85 per course, plus a text material charge of \$8.50. For further information write the American Institute of Real Estate Appraisers, 22 W. Monroe Street, Chicago 3, Illinois.

79166 5-53 97,500

printed in CALIFORNIA STATE PRINTING OFFICE

SACRAMENTO, CALIF.
Permit No. 157
PAID
U. S. POSTAGE
Sec. 34.66, P. L. & R.