



Real Estate Bulletin

Official Publication of the California Division of Real Estate

EDMUND G. BROWN, *Governor*

June 1966

MILTON G. GORDON, *Commissioner*

BUSINESS OPPORTUNITIES

LISTING, ADVERTISING AND SHOWING

By Ralph W. Pann, Licensed Real Estate Broker, Los Angeles

Real estate licensees are far more restricted by law and ethical standards in their operations than is the average businessman. Because this is so, a person should not jeopardize the vested right he has in his license by hastily engaging in the sale of business opportunities merely because he has the license. Such a move calls for proper preparation, patience and common sense. Normally, only after one has become well grounded in the fundamentals and precepts peculiar to business opportunity practice should he venture forth.

EDITOR'S NOTE: Ralph W. Pann turned to real estate after having been a teacher, and currently he is an instructor in *Real Estate Salesmanship* and *Real Estate Law* in the Los Angeles area.

In this article, Mr. Pann gives the neophyte an insight into three important phases of business opportunity practice — *listing, advertising and showing*, and suggests specialization is the key to success in handling business opportunities.

Mr. Pann's statements and opinions are his own and are not to be regarded as an official expression by the Division of Real Estate.

Where a person's livelihood is at stake there is no room for even a single careless transaction. This is an area where people expect to find competence in an agent. For this reason, I am a strong advocate for specialization. I do not believe a person should attempt to handle all types of business opportunities, but should specialize in a few. People like to know that an expert is handling their affairs. They are entitled to advice based on a fund of knowledge and experience.

In this article, I touch on three important topics: LISTING, ADVERTISING and SHOWING. Although space will not permit me to go into abundant detail, the following suggestions have been gleaned from actual

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Recovery Fund Payments Restricted by Law

In 1963, Sections 10450.6 and 10451.5 of the Business and Professions Code were amended, and Sections 10470 through 10483 were added to the same code. The amendments and additions provided for setting aside a specified portion of the Real Estate Education, Research and Recovery Fund and earmarking it as available for satisfaction of certain final unsatisfied judgments obtained against real estate licensees, judgments based on fraud, misrepresentation or deceit practiced in their capacity as agents. The statutes limit payments from the recovery portion of the fund to \$10,000 per plaintiff and to \$20,000 per licensee.

Two plaintiffs have each received \$10,000 from the recovery fund, and in both cases judgment against the broker was in excess of \$10,000. The \$10,000 limitation precluded the Real Estate Commissioner from satisfying each judgment in full.

The other restriction limiting payment to \$20,000 per licensee led to the filing of a novel and interesting superior court action. A real estate broker converted trust funds. Based on six separate transactions, six separate fraud judgments were entered against him. All the judgment credi-

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DRE District Office To Open in Santa Ana

In July the Division of Real Estate will open a full-time branch office at 2215 North Broadway, Santa Ana, to provide service to licensees and the public in Orange County and in Los Angeles County south of Artesia and east of the Harbor Freeway.

Fred Zuhlke, of the Los Angeles district office, will be supervising deputy in charge of the new office which will handle investigations and license matters. For the time being at least, the Santa Ana office will not process subdivision filings or conduct license examinations.

Other full-time district offices are located at San Diego, Los Angeles, San Bernardino, Fresno, Oakland, San Francisco and Sacramento.

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MILTON G. GORDON
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DESIST AND REFRAIN ORDERS

Issued April 1966

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

Disciplinary Action—February—March 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.

Licenses Revoked During February—March 1966

Name	Address	Effective date	Violation
Oland, Ronald Douglas	9426 S. Western Ave., Los Angeles	2/ 1/66	Sec. 10177 (b) and (f)
Real Estate Salesman			
Scott, James Weldon	968 W. 88th St., Los Angeles	2/ 1/66	Secs. 10160; 10162; 10164; 10176 (a), (b); 10177 (d), (f), (i) and (j)
Real Estate Broker			
Realmuto, Joseph Paul	2612 J St., Sacramento	2/ 3/66	Secs. 10176 (a), (b), (d), (i) and 10177 (f)
Real Estate Salesman			
Wittig, Donald Paul	20935 Roscoe Blvd., Canoga Park	2/ 4/66	Sec. 10177 (b) and (f)
Real Estate Salesman			
(Granted right to restricted license after 30 days from effective date of decision on terms and conditions)			
Healy, Earl Edward	27374 Sierra Hwy., Mint Canyon	2/15/66	Secs. 10176 (a), (d), (e), (i); 10177 (f) and (j)
Real Estate Salesman			
Tancredi, Harry Joseph	1104-G E. 17th St., Santa Ana	2/15/66	Sec. 10177 (d) and (f)
Real Estate Broker			
(Granted right to restricted license on terms and conditions)			
Pope, Luther Woodrow	10122 E. 14th St., Oakland	2/17/66	Secs. 10176 (e), (i); 10177 (d), (f); Secs. 2830 and 2832 of R.E. Comm. Reg.
dba Pope's Realty			
Real Estate Broker			
(Granted right to restricted license on terms and conditions)			
Kennedy, Merrill William	7920 E. Orangethorpe, Rm. 207, Buena Park	2/23/66	Secs. 10160; 10162; 10164; 10177 (b) and (d)
Real Estate Broker			
Taylor, Cameron Robert	Happy Hollow, Rt. 1, Box 535, Arroyo Grande	2/23/66	Sec. 10177 (f) and (j)
dba Grandee Realty			
Real Estate Broker			
Lundquist, Alyce Louise	4642 Russel, Los Angeles	3/ 1/66	Sec. 10177 (b) and (f)
Real Estate Salesman			
(Granted right to restricted license on terms and conditions)			
Martin, Cecil Henry	753 Walnut St., San Carlos	3/ 1/66	Secs. 10176 (a), (i) and 10177 (f)
Real Estate Salesman			
Popovich, Frank Joseph	14638 Wedgeworth, Hacienda Heights	3/ 8/66	Sec. 10177 (b) and (f)
Real Estate Salesman			
Leshner, Donald David	7741 Clearfield Ave., Van Nuys	3/10/66	Sec. 10177 (b) and (f)
Real Estate Salesman			
Traylor, Arilla Mae	5800 Grove St., Oakland	3/15/66	Secs. 10145; 10176 (e), (i); 10177 (d), (f) and Sec. 2832 of R.E. Comm. Reg.
dba Traylor's Investment Agency			
Real Estate Broker			
Bonds, William Powell	17 Mi. fr. Caliente, appr. 19 Mi. S. of Lake Isabella, Kern Co.	3/16/66	Secs. 10176 (e), (i); 10177 (d), (f); Secs. 2830, 2831, 2831.1 and 2832 of R.E. Comm. Reg.
dba Billy Bonds			
Real Estate Broker	Mail Address: Star Route, Caliente		
Keeley, Lerman	685 W. Harriet St., Altadena	3/16/66	Secs. 10145; 10176 (a), (e), (i); 10177 (d), (f), (j); and Sec. 2832 of R.E. Comm. Reg.
Real Estate Salesman			
Riley, Franklin L.	1560 California St., San Francisco	3/17/66	Secs. 10176 (a), (b), (i); 10177 (f) and (j)
Real Estate Broker			
Real Estate Salesman	611 Hateree St., Sausalito		
Langley, Arlington Raymond	800 N. 1st St., San Jose	3/18/66	Secs. 10176 (e), (i); 10177 (d), (f), (g), (j); Secs. 2831.1 and 2832 of R.E. Comm. Reg.
dba A. R. Langley Co.			
Real Estate Broker			
(Granted right to restricted license after 30 days from effective date of order on terms and conditions)			
Hama, Masakazu	4759 N. Muscatel, Rosemead	3/23/66	Secs. 10176 (a), (e), (i); 10177 (d), (f), (j); Secs. 2830 and 2832 of R.E. Comm. Reg.
Real Estate Salesman			
Jinane, Lawrence Leo	3970 Will Rogers Dr., San Jose	3/29/66	Sec. 10177 (d), (f), (j) and Sec. 2754 of R.E. Comm. Reg.
Restricted Real Estate Salesman			
Lund, Frederic Mayhew Eno	5041 Narragansett St., San Diego	3/29/66	Sec. 10177 (b) and (f)
Real Estate Salesman			
O'Neill, Edward Francis	890 N. Campus Ave., Upland	3/29/66	Sec. 10177 (b) and (f)
Real Estate Salesman			
Sharp, Forrest Devore	1222 Center St., Riverside	3/29/66	Sec. 10176 (a) and (i)
Real Estate Salesman			

NARELLO Western District Conference Slated in June

Commissioner Milton G. Gordon, Western District regional vice president of the National Association of Real Estate License Law Officials, convened the annual district conference on June 16 and 17 in Reno, Nevada.

Among the scheduled highlights were work sessions on license law and subdivision legislation, competency standards, real estate education and law enforcement problems of an interstate nature.

The Western District of the NARELLO includes the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah and Washington, and the Provinces of Alberta and British Columbia.

California is honored in that it occupies two seats of the four allotted for the Western District on the board of directors of the association. As regional vice president, Gordon is a director, and his chief assistant, John E. Hempel, also serves in that capacity.

Licenses Suspended During February–March 1966

Name	Address	Effective date and term	Violation
Montero, Virginia Shiller Real Estate Salesman	626 Jefferson Ave., Redwood City	2/ 2/66 30 days	Secs. 10176 (a), (b), (i); 10177 (d), (f), (j) and 10242 (c)
Simons, Charles Sherl dba Peerless Mortgage Co. Real Estate Broker (Last 20 days permanently stayed)	626 Jefferson Ave., Redwood City	2/ 2/66 30 days	Secs. 10176 (i); 10177 (d), (f) and 10242 (c)
Able Realty, Inc. Cletus James Hanifin, Secretary-Treasurer Real Estate Broker	5644 N. Rosemead, Temple City	2/15/66 60 days	Sec. 10177 (f)
Browning, Roy Ernest Real Estate Broker (Stayed for 2 years from and after effective date of decision on terms and conditions)	4626 Hollywood Blvd., Los Angeles	2/15/66 15 days	Secs. 10145; 10176 (e); 10177 (d), (f) and Sec. 2832 of R.E. Comm. Reg.
Roehn, William Robert Real Estate Broker (All except first 30 days stayed for 1 year on terms and conditions)	8820 S. Sepulveda Blvd., Rm. 102, Los Angeles	2/15/66 1 year	Secs. 10176 (a), (i); 10177 (f) and (j)
Swenson, Harlan Lee dba Lee Swenson Investment Co. Real Estate Broker (Last 150 days stayed for 2 years on conditions)	169 E. College St., Covina	2/15/66 180 days	Secs. 10137; 10176 (a), (i); 10177 (d), (f) and (j)
Mullins, Arthur Joe, Jr. Real Estate Broker	787 Haight St., San Francisco	2/24/66 15 days	Sec. 10176 (a), (i); 10177 (f) and (j)
Shaw, Carl Norman Restricted Real Estate Broker	1120 Ranchero Way, San Jose	2/28/66 Indefinitely	Sec. 10177 (k)
Litz, Frank C., Jr. Real Estate Broker	833 Dover Dr., Ste. 4, Newport Beach	3/ 8/66 5 days	Sec. 10177 (b) and (f)
Benson, David Frederick Real Estate Salesman	1020 Los Gatos Rd., Apt. G, San Rafael	3/ 9/66 20 days	Sec. 10176 (i); 10177 (d), (f), (j); 10237.3 and 10238.3
Rodin, Morton G. Real Estate Salesman	289 S. Robertson Blvd., Beverly Hills	3/10/66 5 days	Secs. 10145; 10176 (e); 10177 (d), (g); Secs. 2830, 2832 and 2832.1 of R.E. Comm. Reg.
Tutterrow, Gary Lee Real Estate Salesman	11545 Bartlett, Adelanto	3/15/66 1 year	Sec. 10177 (b) and (f)
Wilson, James Andrew Real Estate Salesman (Stayed for 3 years on terms and conditions)	4623 Eagle Rock Blvd., Los Angeles	3/15/66 90 days	Sec. 10177 (b) and (f)
Moffitt, Marie Diamond aka Marie Diamond Walker Real Estate Broker	356 Coddlingtown Center, Santa Rosa	3/22/66 30 days	Sec. 10177 (d), (f), (j) and Sec. 2901 of R.E. Comm. Reg.
Redford, Charles Henry Real Estate Broker (Last 30 days stayed for 1 year from effective date of decision on conditions)	16431 Shadyview Lane, Los Gatos Hill	3/23/66 60 days	Sec. 10177 (d), (f) and (j)
Schaub, Charles Osborne Real Estate Broker (Last 30 days stayed for 1 year from effective date of decision on conditions)	44315 N. 4th St., East Lancaster	3/23/66 60 days	Sec. 10177 (d), (f) and (j)
Baker, Katherine Severin Real Estate Broker	10801 MacArthur Blvd., Oakland	3/29/66 60 days	Sec. 10176 (a), (b), (i); 10177 (d), (f), (j) and Sec. 2903 of R.E. Comm. Reg.
Eisner, Alexander Real Estate Broker (Stayed permanently)	600 16th St., Oakland	3/29/66 30 days	Sec. 10177 (b) and (f)
Littrell, Margaret Jean Real Estate Broker (Stayed 1 for year on conditions)	1572 N. Waterman St., San Bernardino	3/29/66 20 days	Sec. 10177 (a)

HOW LONG DOES IT TAKE TO SELL A HOUSE?

Following are excerpts taken from a report in a recent issue of the *Contra Costa Board of Realtors Research Newsletter* which attempts to answer the frequently asked question, "How long will it take to sell my home?"

The board's 1965 multiple listing record revealed the overall time average for selling a house—if it was sold—was 46 days, and variations by price, area and season did not wander far from that figure except for more expensive homes priced over \$40,000.

Reasons given for the variation among individual houses were: (a) price range; (b) location; (c) season of the year when house was listed; (d) extent to which list price exceeded market value.

Percent list price above sales price	Average number of days to sell
0%–2%	33
2%–4%	41

4%–6%	46
6%–8%	49
Over 8%	60

On those houses which did not sell during the period they were listed, the average listing price exceeded the average estimated market value by 10 percent.

Other reasons for variations were more difficult to determine statistically. They involve such matters as condition of the house and landscaping, eye appeal, floor plan, size, location (in relation to schools, shopping and transportation), price in relation to the neighborhood, architectural style, degree to which the house fitted market demand and the degree of urgency to sell. Other reasons, not directly related to the house itself were availability and cost of financing and general market demand.

California Supreme Court Rules Proposition 14 Is Unconstitutional

Section 26 of Article I of the State Constitution, known as Proposition 14, is violative of the U.S. Constitution, the California Supreme Court recently ruled in a 5-to-2 decision. The section declared that no state or municipal agency could abridge the right of a private owner of residential real estate to refuse to sell or rent his property to whomever he chooses.

The court held the law must be measured against U.S. constitutional standards. Justice Paul Peek, writing the majority opinion, said the law violated the equal protection clause of the U.S. Constitution because it "significantly involved" the state in private acts of discrimination.

Justice Marshall F. McComb, dissenting, wrote, "To me, Section 26 is a restatement of a fundamental principle that all property owners have a right to enjoy or to dispose of their property in any lawful manner, in their absolute discretion."

State agencies involved—principally the Fair Employment Practice Commission—will conduct their operations with due regard for the law as set forth in the Rumford Act which had been nullified by Proposition 14. CREA President Burt Smith advised the organization's members to consider the Rumford Act back in full force and effect.

A petition for rehearing has been filed with the California Supreme Court. If this is acted upon unfavorably, the question may reach the U. S. Supreme Court.

Correction!

Among the license revocations listed in the April issue of the *Real Estate Bulletin*, was one describing Edward Joseph Buckie as vice president of Bonded Contractors, Inc., 3936 Mayette Avenue, Santa Rosa. This was in error. Actually Mr. Buckie's connection with that firm had been severed by its president some months prior to the revocation of Buckie's real estate broker license.

Business Opportunities

BUSINESS OPPORTUNITIES

(Continued From Col. 1, Page 757)

experience. Reducing them to practice may save you a few steps and headaches along the way.

LISTING

In taking a listing, the licensee must never forget that he is charged with responsibility for the accuracy of all information material to the business being sold—information furnished to him by the seller. Therefore, the owner's motive for selling is important. If he isn't making a go of the business and appears to be padding his statements to you, point out that nondisclosure on his part of any material fact concerning the business may constitute fraud. You want facts, not fables.

The sale of a business opportunity should begin with an exclusive authorization to sell form, adequately and properly completed by the agent. The authorization I use contains the terms; conditions; duration of listing; financing; how and when the business can be shown; name and address of accountant; pending citations on violations, if any, from governmental agencies against the business opportunity and/or owner that would prevent the selling or transferring of any licenses and/or permits; health and welfare and paid vacation provisions, etc., for employees, if there is a union contract in force; legality of any structural changes made (check to see if all necessary permits have been issued, final inspections made and jobs approved); days of the week business is open or closed; open hours; number of employees; square footage of business area and parking area; dba of business, if any, and whether it is registered if the name of the business is to be included as consideration; gross income and average per month; net income and average per month; and list of expenses averaged per month. Attempt to verify the figures. If this cannot be done, so indicate: "not verified by agent."

Complete Understanding With Seller

It is my practice to inform the seller he must certify that all equip-

ment used in the operation of the business will be in working order on the day the buyer takes possession. It is also his responsibility to see that clearances from all governmental agencies, necessary to transfer the business legally, are secured. Have him understand clearly that any sale will be subject to the buyer receiving all required licenses and/or permits.

As the agent, it is your duty to remind the seller that no funds will be released to him from escrow (when sales and/or social security and unemployment taxes are involved in the transaction) until such time as he has furnished to the escrow clearances from the State Board of Equalization and Department of Employment. Remember, your buyer can be held responsible for the unpaid taxes of his predecessor; this is called, "successor's liability." A buyer can be held responsible for taxes of his predecessor up to the amount he paid to purchase the business. Sales tax must also be paid on the fixtures and furniture of the business when sold to a new owner. The tax must be paid by the buyer to the seller, and the state will look to collect it from the seller.

Remind your seller that the buyer has the right to inspect records and in most cases will make his offer to purchase contingent upon inspection and approval of the records within a given period of time. The seller should also be informed of his escrow costs and of any other legal fees he will be expected to pay. In most cases, the seller and buyer share the closing costs on a fifty-fifty basis.

Listing the Business at a Salable Price

Unfortunately, there is no magic formula for determining the equitable "salable price" of a business. Some brokers, like myself, have drawn from our own experiences and devised rule-of-thumb price guides. They are only rough guides at best, and should be so regarded. Normally, such price guides will not include inventory value, for reasons already made apparent. Major factors in adjusting any price guide, up or down, is the age, appearance and usefulness of furniture, fixtures and equipment, and the exterior and

interior physical appearances of the business under consideration.

When a broker has evolved a rule-of-thumb price guide for possible use as a starting point in his negotiations, he will know—or he will find out—that market prices of like businesses in the same general area are subject to considerable variation. Some of the factors making for this variation are location, net earnings, open hours of business, terms and conditions of lease, number of employees, etc. Specialized experience will assist you in arriving at a fair and just price.

Lease

If there is a lease involved, what is its status? Will the landlord permit the present lease to be assigned and, if so, under what terms and conditions? What are the provisions in the lease itself regarding same? If the present lease has only a few years to run until the expiration date, is a new lease for a longer term possible and under what terms and conditions? Will the lessor demand payment of a bonus for a new lease and if so, who will pay it? What is the lessor's name and address and who is to be held responsible for dealing with the lessor regarding a new lease, transferring or extension of the present lease? If it is a percentage lease, how is the payment and accounting of same to be handled? Most leases will provide that they can be transferred but only with the written consent of the lessor. The buyer should reimburse the seller through escrow for any prepaid rent and/or security money on the lease. I suggest that you carefully read any lease which is part of the transaction, and train yourself to note all pertinent facts therein before you quote what you thought were the facts to a buyer.

Appraisal

In appraising, it is inevitable that there will be differences of opinion because of the varying degrees of knowledge and skill of the appraisers and of the approaches they utilize. However, the neophyte should realize that the first step towards attainment of a professional status in this field is

Lending, Advertising and Showing

to acquire the necessary skill and knowledge to appraise smaller types of businesses. Where the business is large and involved, you should attempt to persuade the seller to bear the expense of having it appraised by a sound professional. In either case, make certain the seller understands the appraisal, is in complete agreement with it and approves it by affixing his signature thereto. Give him a copy and retain one for yourself. Having done this, you have a written expression of a meeting of minds regarding the value of the seller's business.

Furniture, Fixtures and Equipment

Value of furniture, fixtures and equipment can be determined by age, appearance and expectation of usefulness. As a general rule, new furniture and fixtures depreciate 50 percent as they are put into use. After a few years of service they are not worth much more than 35 percent of the original cost. If they are not to be used in the operation of the business and are sold on the open market, they would bring hardly more than 15 percent of the original cost.

Equipment is somewhat more stable and value depends on age, usefulness and how well it has been maintained. The value of used or rebuilt equipment can best be obtained from wholesale equipment suppliers.

Inventory

Inventory is usually handled on a cost price basis, but may be valued at retail price less the average markup. Obsolete merchandise, in quantity exceeding demand probabilities, and unsalable items should be specially noted. If the inventory is taken by a neutral party, the expense is usually shared by the seller and buyer on a fifty-fifty basis. **The inventory of most small businesses is taken by the principals, but the agent who assists is well advised. The latter will avoid additional expenditures in this phase of the transaction, if at all possible.**

Goodwill

"Goodwill" has been defined briefly as the expectation of continued public patronage. Seldom will you find the goodwill of a business equaling or ex-

ceeding the value of the physical stock, furniture, fixtures and equipment. However, there are rare instances when it is possible. (See third and fourth factors below.)

Some factors to consider in establishing a value for goodwill are:

- How long has business been established in its present location?
- Is the location such that with a few changes the business can be increased, or is it presently at its maximum peak?
- What is the present or future situation regarding competition? Where a business has a location or license which, in effect, grants a monopoly, it is possible to obtain a premium for goodwill. Example: where the number of liquor licenses is restricted to a set maximum and all licenses authorized have been issued.
- Is the business name to be included as part of the transaction? If it has become well known and enjoys a good reputation for quality, service, dependability, etc., the goodwill value of the name is a definite asset and should be reflected in the price paid by the buyer.
- Will the seller agree not to compete within the limitations of the law?
- What are the characteristics of the business in reference to: *customer traffic*, foot, automobile or both; *repeat business*—what are the customer habits for this location; *personality and ability* of the owner and/or key personnel—what effect would their absence have on business—would gross sales go up, down or remain the same; what is the general reputation of the business in the community?

There isn't any yardstick which accurately measures the value of goodwill in terms of dollars. A good rule to follow is to place a minimum value for each factor. Eventually experience and a thorough knowledge of the businesses you undertake to list and sell will give you a sound footing and understanding of values to be placed on each factor for like businesses and otherwise.

Commission to Agent

Most agents work for 10 percent on business opportunities. Customarily they also have a minimum flat commission agreement with the seller, regardless of what the business eventually sells for. With some, the minimum is \$500, while others are not interested in less than a \$1,000 minimum. Whatever the case may be with you, be sure that your seller knows what is expected of him. Further, is a commission to be paid on the inventory? If so, how much? **Be sure you have a complete understanding as to when you have earned your commission and when it is payable. All of these agreements should be a part of your listing agreement, deposit receipt and escrow instructions.**

ADVERTISING

The very same advertising mediums used for selling real properties can be used for business opportunities such as classified and display advertising, direct mail (brochures with photos and facts), multiple listing services and signs. However, one major difference will be that the address of the business opportunity will seldom, if ever, be given in the ad or over the phone. A telephone caller should be given the facts, but not the name or address of the business. Nothing irritates an owner more than to have a curiosity seeker drop in on him, usually during his rush hours, and besiege him with a lot of questions. If the caller is interested have him make an appointment and come to your office. If he qualifies, you show him the business opportunity.

SHOWING

There are certain favorable methods and techniques in showing different types of businesses that only time and experience can teach you. **Don't attempt to show a business as you would a piece of real property. In the first place, you should qualify your prospects before showing; always remembering that you should be absolutely convinced in your own mind that the prospect is qualified and has better than an even chance to succeed in the business.**

(Continued, Col. 1, Page 764)

SUBDIVISION

DEVELOPMENTS • LAW • PROCESSING • CONTROLS

HOW THEY EVOLVED

Subdivision Controls Provide Protection for Public

The law defining the Real Estate Commissioner's responsibilities in the offering for sale or lease to the public of newly subdivided lands has undergone major changes in its 43-year history. From its inception in 1923, the purpose of legislation applying measures of control over the sale of subdivision lots has been an increased degree of protection for the individual buyer.

Prior to 1933, the commissioner's authority extended only to the investigation of subdivided agricultural lands and the issuance of public reports thereon. At that time coverage was broadened to include business and residential subdivisions.

The philosophy of the subdivision control statutes was originally based on the principle of "full disclosure." The developer was, and is, required to disclose both favorable and adverse features and conditions of the project. Also, the commissioner was, and is, empowered to halt offerings upon evidence of misrepresentation, deceit or fraud in connection with the proposed sale or lease of parcels.

Except for the addition of impound requirements in 1955, the subdivision law administered by the Real Estate Commissioner was little changed until 1963 when the intent of subdivision control became not mere full disclosure, but full disclosure plus positive commitments on the part of the subdivider.

In that year—1963—the Legislature added a requirement that the subdivider provide adequate financial arrangements to assure completion of any promised off- or on-site improvements, including common facilities. The developer or seller must furnish assurance he can deliver title or other interests contracted for.

Fair, Just and Equitable Test

Cognizant of the long-distance, sight-unseen marketing of out-of-state subdivision parcels in California, the Legislature equated the sale of such land to the sale of securities, on the premise the individual purchaser could have no accurate knowledge concern-

ing the actual value of the property and was largely dependent upon information furnished by the seller.

It decided that this type of subdivision lot sale be classified as disposition of *real property securities* and a *fair, just and equitable* concept was adopted, similar to that characterizing the California Corporate Securities Act. Thus, the commissioner is obligated to make a determination that the offering of parcels in an out-of-state subdivision to Californians meets the "fair, just and equitable" test. Before such parcels are offered, the subdivider must secure a real property securities permit in addition to the public report required for in-state offerings.

A false advertising section was added to the subdivision law, making it a felony to promote sales of subdivided lands with advertising containing any statement, pictorial representation or sketch, false or misleading in nature.

The Legislature also gave its attention to condominium legislation. In effect, statutory recognition was accorded to the condominium as a legal estate in California.

Stock Cooperative, Community and Condominium Developments

The cooperative or community type of apartment house subdivision became increasingly popular during the early 1960's. Then too, many subdividers were adding common recreational and other facilities to their subdivision offerings. Typically, these facilities were owned in common by individual lot buyers and required an organizational device for management, operation and control.

Changes in Map Act Do Not Affect Commissioner's Jurisdiction

The Map Act, which was amended rather substantially in 1965, does not require a formal map filing if the parcels in a five or more lot subdivision meet specified conditions as to size and, in certain circumstances, have approved access to maintained public streets or highways.

These exemptions under the Map Act do not extend to the provisions of Sections 11000 et seq. of the Business and Professions Code which define the Real Estate Commissioner's responsibilities in connection with the offering for sale or lease of newly created subdivisions.

Some licensees and subdividers have apparently been confused by the exceptions set forth in the Map Act, and have concluded that the same exceptions apply to the subdivision law administered by the Real Estate Commissioner. This is not the case.

Notwithstanding exceptions in the Map Act, if land is divided or proposed to be divided into five or more parcels for the purpose of sale or lease, a notice of intention to subdivide must be filed with the DRE, and other applicable requirements of the Real Estate Commissioner must be satisfied.

In 1965 statutes were passed defining stock cooperative, community apartments, condominiums and planned developments. Provided for were standards relating to reasonable proof and support of promised performance and suitable organizational control.

Legislative provision was made in 1965 for a limited kind of continuing jurisdiction over some types of subdivisions by the Real Estate Commissioner. No amendments, alterations, modifications or revocations of any of the provisions contained in conveyances, restrictions, organization and management or other documents may be made which materially change the rights, preferences and privileges of any person without the prior written consent of the Real Estate Commissioner. This continuing jurisdiction applies only to cooperative, community and condominium developments.

EDUCATION-RESEARCH PROGRAM

University of California — State Colleges — Junior Colleges

Guide to Real Estate Readings Now Available

The Center for Real Estate and Urban Economics, Berkeley, is now filling orders for the 1966 edition of its *California Real Estate Bookshelf*, a comprehensive guide to readings in real estate and allied fields.

The bibliography is compiled and published at Berkeley every two years as a service to real estate brokers and salesmen and others in closely related occupations such as mortgage lending, appraisal and teaching.

The new *Bookshelf* retains much of the format of past editions. There are chapters on the general real estate business, selling, advertising and public relations, management, exchanges and taxation, finance, insurance, real estate law, valuation, housing, building, income properties, urban planning and land economics. There is also a special section devoted to California practice and problems.

In all, the 1966 *Bookshelf* lists 500 publications. Included for each one are place and date of publication, name of author, title, number of pages, price and a short description of the contents. All entries are cross-indexed by title and author.

Like past editions, the latest *Bookshelf* includes both standard works from many fields and a large number of newly published volumes. **The reader will find numerous citations for publications produced by the California Division of Real Estate, the California Real Estate Association and the National Association of Real Estate Boards.**

Author of the *Bookshelf* is Harry O. Bain, editor at the Berkeley Center, who compiled the previous version of the bibliography released in 1964. To order a copy of the publication, write: Center for Real Estate and Urban Economics, 260 Stephens Memorial Hall, University of California, Berkeley 94720. Price is \$1.50 plus 4 percent state sales tax if ordered in California.

This report can be obtained from the Division of Real Estate, Education and Publications Section, P.O. Box 2407, Sacramento 95811. It is priced at \$1 per copy, plus sales tax.

SAN FRANCISCO

Price Movements and Trends in Residential Property

With the advice and encouragement of a number of leading real estate brokers in the area, Leonard P. Vidger, professor of business at San Francisco State College, has completed a research report on *Residential Property in San Francisco: A Study of Price Movements and Trends in Financing 1960-1964*.

The seven chapters of the report deal with recent mortgage lending on San Francisco improved real estate, marketing and financing of vacant land designated for residential use, selling prices and financial characteristics of single-family dwellings, price movements and financial patterns characteristic of small multifamily properties, and financing purchase of apartment buildings in a period of rising prices and dwindling financing.

Significant findings of the study are:

1. In making an intracity analysis, it is noted that considerable variation in patterns and trends prevails from one area in a city to another. Differences in price movements between local markets (neighborhoods) emphasize the fact that businessmen should exercise caution in formulating conclusions and decisions based on aggregate urban housing market performance.

Market Values Rise

2. Market values of San Francisco realty rose impressively during the period 1960-1964. The average price of vacant residential-use lots increased approximately 150 percent during this period. This increase in property values occurred even though San Francisco's population rose only 10,000 during the reporting period. Dr. Vidger explains this phenomenon on page 64 of the report.

3. Mortgage credit was readily available in San Francisco during most of the period covered by the report; the city has an abundance of financial institutions which normally vie for local and remote savings and pay premium rates for them.

4. Sixty-nine percent of the San Francisco residents interviewed ex-

REPORTS AVAILABLE

A limited supply of the following research reports are obtainable from the DRE's principal office, P.O. Box 2407, Sacramento 95811, at \$1 per copy, plus 4 percent state sales tax, if ordered in California:

- Fresno State College—*Statistical Approach to Real Estate Appraisal with Applications to Farm Lands*
- Fresno State College—*Merced-Atwater Economic Area*
- Humboldt State College—*Broker's Role in Attracting Industrial, Commercial and Recreational Development*
- Sacramento State College—*Housing Market Analysis, Sacramento Metropolitan Area*
- San Diego State College—*Factors Contributing to Successful Real Estate Investment Experience in Multiple Unit Housing*
- San Diego State College—*San Diego County Real Estate Investment Groups*
- San Jose State College—*Characteristics, Preferences and Home Buying Intentions of Apartment Residents in San Jose*

pressed a preference for home ownership as opposed to renting. San Franciscans are highly optimistic about their future; their incomes are above average and climbing, their purchasing power is high and their savings deposits have been increasing.

This research project was devoted to analyzing sales transactions involving various types of residential real estate in San Francisco. Findings were based on empirical data gathered from the files of various real estate brokerage firms located within the city, and they are on point for real estate licensees. Although the data were gathered in San Francisco, much of the background information, study methodology, and economic trend information should be useful to licensees throughout California.

BULK RATE
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Obituary

FRED E. REED

Fred E. Reed, 86, proud holder of real estate broker license No. 1, was stricken with a fatal heart attack in Oakland on April 26.

He will be remembered as a co-author of the original Real Estate Law in California and as chairman of CREA's Committee on License Law, 1917-1919, which was instrumental in the success of the bills which established the license law.

Mr. Reed was president of the California Real Estate Association in 1920 and 1921, and he held many other important local, state and national real estate and civic posts during his 60 years in real estate.

All throughout his long and colorful career he was a strong advocate of real estate education and he constantly strove to raise professional standards for real estate practitioners.

He is survived by a sister, Mrs. Zura Bells and a nephew, E. Reed Bells, both of Oakland.

BUSINESS OPPORTUNITIES

(Continued From Col. 3, Page 761)

One important factor is the employee situation. The owner may have requested that his employees not be alerted that the business is for sale. This in itself can create quite a problem for the agent attempting to show the business opportunity to a prospect. There should be a definite understanding between agent and seller as to the hours the business can and cannot be shown.

Recovery Fund Payments Restricted by Law

(Continued from Col. 2, Page 757)

tors petitioned for payment from the recovery fund, and the court entered judgment against the Real Estate Education, Research and Recovery Fund on the indicated dates, ordering payment of the following sums:

1. **November 8, 1965**-----\$6,000.00
2. **November 8, 1965**----- 6,000.00
3. **November 8, 1965**----- 6,000.00
4. **December 21, 1965**---- 4,200.00
5. **December 30, 1965**--- 1,041.71
6. **January 10, 1966**----- 8,960.00

All of the above listed orders for payment from the fund had their original basis in the acts of one licensee, and the total of the orders exceeded \$32,000. But the code provides the liability of the fund shall not exceed \$20,000 with respect to any one licensee. The statutes do not establish rights of priority of payment from the fund in such a situation.

The three claimants who obtained judgment against the fund on November 8 contended payments from the fund should be made in the full amount of each court order in the priority of the dates of the entry of court orders until the maximum of \$20,000 was reached.

In conclusion, remember not to volunteer information or answer questions unless you are certain of the accuracy of your positive assertions. The courts will not treat you as an amateur. Learn the art of asking questions. Gather and quote only the facts,

The Real Estate Commissioner and the other claimants contended payments from the fund to the total extent of \$20,000 should be prorated among all of the various claimants in the proportion that each claim bears to \$20,000.

The practical effect of applying the alternative contentions is vividly illustrated by comparing how the first and last claimants would fare. Under the first theory, the first claimant would receive \$6,000 and the last claimant would receive nothing. Under the commissioner's contention the first claimant would receive \$3,725.50 and the last claimant \$5,564.95.

To resolve this controversy a suit for declaratory relief was filed in superior court. On May 6, 1966, in a memorandum opinion, the court advised it concluded the \$20,000 available "... should be prorated among all of the various claimants in the proportion that each claim bears to the total..." available, and judgment ordering proration was entered in conformity with the opinion.

This judgment is not yet final and may be appealed. In event there is an appeal, *Bulletin* readers will be told of the decision of the appellate court.

and in this manner you will render proper and competent service. Be ethical and honest in all your transactions; earn the implicit faith and confidence people will place in you. I repeat: concern yourself with *facts and service*—the commissions will automatically follow.