



Real Estate Bulletin

Official Publication of the California Division of Real Estate

RONALD REAGAN, *Governor*

Summer 1967

BURTON E. SMITH, *Commissioner*

Section 10176(a)

Making Any Substantial Misrepresentation

Since misrepresentation is alleged in a great number of complaints received by the Division of Real Estate, it is important for the broker to have a clear understanding of the basic duties owed to his principal and to third parties and to recognize the extent of his responsibility for the actions of salesmen licensed under him by making sure they are adequately grounded in the fundamental principles of agency.

Under the provisions of Section 10176 of the license law, the Real Estate Commissioner is empowered to revoke or suspend a real estate license for certain enumerated acts performed by the licensee when acting in a capacity for which a real estate license is required. One of these acts is set forth under Section 10176(a), to wit, "making any substantial misrepresentation." This section in general makes the rules found in the law of agency specifically applicable to disciplinary proceedings undertaken by the Real Estate Commissioner. It is not necessary to show that the principal has been damaged by the agent's infrac-

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LAW CHANGES

Final Action on Some Bills Pending

When this *Bulletin* went to press, AB 1175 and AB 1176 (Schabarum) and AB 1179 (Monagan), all departmental bills, had reached the Governor's desk and AB 1179 had been signed. They would become effective 90 days after the session ends. Their provisions are summarized below.

AB 1175. Specifically exempts from the real estate licensing requirements the managers of hotels, motels or trailer parks and resident managers of apartments, residence courts and employees of all such managers.

AB 1176. Provides civil liability in an amount equal to three times the amount of unpaid fees for failure to pay filing fees on planned development, community apartment, condominium, or stock subdivision projects.

AB 1179. (1) Repeals *Section 10106* of the B. & P. Code as superfluous. (2) Amends *Section 10150*. Broker applicant requires certification to his good character only by two property owners in the county of his residence. (3) Amends *Section 10176(f)*. Specified termination date required on ALL exclusive listings involving transactions for which a license is required. (4)

(Continued, Col. 3, page 811)

First Real Estate License Law Enacted 50 Years Ago

The Division of Real Estate was created by the California Legislature in 1917, and so went into operation just 50 years ago. Approval of the act marked the first time real estate agents were required to be licensed anywhere in the United States, and it has served as a pattern for similar legislation in all 50 states, the District of Columbia, and five provinces of Canada.

This regulatory legislation was sponsored by an active group of California real estate brokers who believed reasonable regulation of those engaged in the real estate business would benefit the public and help foster and maintain higher professional and ethical standards.

50th year to be Saluted in 1969

The 50th anniversary of the Division of Real Estate might be properly proclaimed this year, but for somewhat confusing circumstances attending the first two years of its history. The original law was declared unconstitutional, although the first commissioner's term in office was not interrupted. In 1919, the 1917 enactment was repealed and new statutes were adopted, eliminating those provisions which earlier had been of questionable constitutionality. This law, amended and added to on numerous occasions, continues as the basic code.

So a question remains as to whether the Division of Real Estate should look to 1967 or 1969 as its 50th birthday. It has been agreed that 1969 should properly be the official golden anniversary of the agency, but, in the meantime, articles telling something of the history of the DRE will be published in the *Bulletin*.

REAL ESTATE BULLETIN

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California Division of Real Estate

Summer 1967

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DESIST AND REFRAIN ORDERS

Issued for the Period Between March 10
and May 25, 1967

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

Disciplinary Action—January—February 1967

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 January—February 1967

Name	Address	Effective date and term	Violation
Ochs, Florian Anton (RREB)	439 Joost St., San Francisco	1/ 1/67	Secs. 10177(f) and (j)
Marsden, R. H., Incorporated	2260 Pacific Coast Hwy., Lomita	1/ 3/67	Secs. 10145; 10148; 10176(i); 10177(d), (f), (g), (j); 10233 and Sec. 2831 of R.E. Comm. Reg.
Russell Hills Marsden, President			
Mitchell, Robert Ervin (REB)	141 E. Foothill Blvd., Monrovia	1/ 3/67	Secs. 10176(a), (i); 10177(d), (f) and (j)
Petrofanis, Christy James (REB)	2260 Pacific Coast Hwy., Lomita	1/ 3/67	Sec. 10177 (d), (f) and (g)
(Granted right to restricted real estate salesman license on terms and conditions)			
Blaine, James Anthony (RES)	P.O. Box 9169, Presidio	1/ 4/67	Sec. 10177(b)
Escarzaga, Charles Octavio (RES)	8550 Holloway Dr., No. 106, Los Angeles	1/ 4/67	Secs. 10176(a), (c), (i); 10177(f)
(Granted right to restricted license after 180 days from effective date of decision on terms and conditions)			
Gillhouse, Frank LeRoy (RES)	742 N. Loren Ave., Azusa	1/ 4/67	Secs. 10176(a), (c), (i); 10177(f), (l), reinstated as (j), and 11020 (repealed by Chapter 947, 1963)
(Granted right to restricted license after 60 days from effective date of decision on terms and conditions)			
Jaffe, Robert Montgomery (RES)	5832 Graves Ave., Encino	1/ 4/67	Secs. 10176(a), (c), (i); 10177(f), (l), reinstated as (j), and 11020 (repealed by Chapter 947, 1963)
(Granted right to restricted license after 120 days from effective date of decision on terms and conditions)			
Landau, John Arthur (REB)	3870 Coronado Way, San Bruno	1/ 4/67	Sec. 10177(f) and (j)
Ramsey, Kenneth Taylor, Jr. (RREB)	3028 Shattuck Ave., Berkeley	1/ 4/67	Secs. 10176(c), (i); 10177(d), (f), (j) and Sec. 2832 of R.E. Comm. Reg.
(Granted right to restricted real estate salesman license on terms and conditions)			
Stein, Robert Lewis (REB)	3708 Beverly Ridge Dr., Sherman Oaks	1/ 4/67	Secs. 10176(a), (c), (i); 10177(f), (l), reinstated as (j), and 11020 (repealed by Chapter 947, 1963)
(Granted right to restricted license after 30 days from effective date of decision on terms and conditions)			
Butcher, Grant, Jr. (REB)	4990 Mission St., San Francisco	1/ 7/67	Sec. 10177(f) and (j)
(Granted right to restricted license after 30 days from effective date of decision on terms and conditions)			
Maller, John William (RES)	19 Belleau Ave., Atherton	1/18/67	Sec. 10177(b) and (f)
(Granted right to restricted license on terms and conditions. Restricted license to be suspended for 60 days upon issuance)			
Warren, Edward Douglas (RREB)	727 E. 76th St., Los Angeles	1/18/67	Secs. 10145; 10176(c), (i); 10177(d), (f), (j), (k) and Sec. 2830 of R.E. Comm. Reg.
dba Warren Realty			
Coggins, Charles William, Jr. (REB)	1348 Spruance St., San Jose	1/25/67	Secs. 10145; 10176(c), (i); 10177(d), (f), (g), (j). Secs. 2830, 2832 and 2832.1 of R.E. Comm. Reg.
(Granted right to restricted license on terms and conditions. Restricted license to be suspended for 30 days upon issuance)			
Yerkey, Ethel Elizabeth (REB)	1056 West Ave. J-12, Lancaster	1/26/67	Secs. 10176(c), (i); 10177(d), (f), (j) and Sec. 2832 of R.E. Comm. Reg.
dePisne, Jacques Edouard (REB)	10719 Monte Vista St., El Monte	1/28/67	Secs. 10176(a), (c), (i); 10177(f), (l), reinstated as (j), and 11020 (repealed by Chapter 947, 1963)
dba Delta Properties			
(Granted right to restricted real estate salesman license after 60 days from effective date of decision on terms and conditions. Right to restricted real estate broker license after 1 year from effective date of decision on terms and conditions)			
Chatman, Cusbard Theodore (REB)	5301 E. 14th St., Oakland	1/31/67	Secs. 10145; 10162; 10176(c), (i); 10177(d) and (f)
Doak, James Weir (REB)	1601 28th St., Sacramento	1/31/67	Secs. 10145; 10162; 10176(c), (i); 10177(d) and (f)
Vice President of Reliance Realty Co., Inc.			
Reliance Realty Co., Inc.	1601 28th St., Sacramento	1/31/67	Secs. 10162 and 10177(d)
Bray, Elizabeth Russell (RES)	14933 Burton St., Panorama City	2/ 1/67	Sec. 10177(b) and (f)
Dawson, Dave Leon (REB)	5143 Calle Mayor, Torrance	2/ 1/67	Secs. 10145; 10176(c), (i); 10177(d), (f), Secs. 2830 and 2832 of R.E. Comm. Reg.
(RES)	5618 Michelle Dr., Torrance	2/ 1/67	
Banfield, Everett Colby, Jr. (REB)	Coast Rt. N-2, 12 Mi. So. of Carmel	2/ 3/67	Secs. 10177(d), (f); 11010; 11018.2 and Sec. 2795 of R.E. Comm. Reg.
dba Garrapata Coast Properties	East of State Hwy. 1, Monterey		
(RES)	4 Martin Rd., Rt. 1, Carmel		
(Granted right to restricted real estate broker license 180 days from effective date of decision on terms and conditions)			
Cameron, John Neumann (RES)	1 North Rd., Box 871, Ross	2/ 7/67	Sec. 10177(b)
(Granted right to restricted license on terms and conditions)			
Frieder, Herbert H. (REB)	1517 S. Hi Point St., Los Angeles	2/13/67	Secs. 10176(a), (c), (g), (i); 10177(d) and (g)
(Granted right to restricted license after 1 month from effective date of decision on terms and conditions)			
Wilson, Wendell Eldridge (REB)	3787 S. Western Ave., Los Angeles	2/15/67	Secs. 10130; 10137; 10176(i); 10177(d), (f) and (j)
Clark, Robert Frederick (RES)	38428 Kerlin, Fremont	2/21/67	Sec. 10177(f) and (j)
(Granted right to restricted license on terms and conditions)			
Johnson, Karl Theodore (RES)	112 E. Altern St., Arcadia	2/21/67	Secs. 10176(b), (c), (i); 10177(d), (f) and (j)
Wright, Kern Randall, Jr. (REB)	1009 Sherwood Ave., Vallejo	2/21/67	Secs. 10176(c), (i); 10177(d), (f) and Sec. 2832 of R.E. Comm. Reg.
Peck, Ralph Leslie (RES)	250 Civic Center St., Richmond	2/24/67	Secs. 10145; 10176(c), (i); 10177(d) and Sec. 2832 of R.E. Comm. Reg.
(Granted right to restricted license on terms and conditions)			
Wendschlag, William Roy (REB)	3541 Plaza Way, Lafayette	2/24/67	Secs. 10145; 10176(c); 10177(d), (f), (i) and Sec. 2832 of R.E. Comm. Reg.

LIMITS RAISED—SMALL CLAIMS COURTS

Under present law, the ceiling for small claims courts—where lawyers are not involved—is \$200. A change in the law which will become effective this fall has raised the amount to \$300.

Licenses Suspended During January–February 1967

REAL PROPERTY SECURITIES ISSUE IN COURT CASE

In what is apparently the first reported case (250 ACA 518) relating to the Real Property Securities Law of California, the First District Court of Appeal held that a cause of action based upon an alleged violation of the permit requirement of the Real Property Securities Law (Section 10238.3, B. & P. Code) is not barred by the fact that the purchaser of the promissory note in question had foreclosed upon the property under a power of sale in the deed of trust.

Facts Cited

The district court of appeal ruled that the anti-deficiency judgment statute (Section 580d of the Code of Civil Procedure) is not a bar to an action for damages allegedly sustained in connection with the purchase of a promissory note and subsequent foreclosure where the cause of action is based upon an alleged violation of the Real Property Securities Law rather than upon an obligation under the promissory note itself.

Any licensee proposing to negotiate a transaction which involves promissory notes on unimproved subdivision lots or purchase money second deeds of trust on improved subdivision lots should first thoroughly familiarize himself with the permit and licensing requirements of the Real Property Securities Dealer's Law.

Material Change?

Tract Name Must Be Filed

The Standard Subdivision Questionnaire asks that the subdivider designate the name of the tract intended for use in advertising or offering the property for sale. This is important, particularly if it differs from the name of the subdivision as filed or recorded.

If the questionnaire reflects a difference, the Subdivision Public Report will include both names. **Should the subdivider thereafter employ a different name for selling or advertising the subdivision, this usage could be construed as a material change, and under Section 11012 of the Real Estate Law an owner, his agent, or subdivider is to notify the DRE in writing of any such change.**

Name	Address	Effective date and term	Violation
Asin, Ray (REB) (All except first 30 days of suspension stayed for 1 year on terms and conditions)	10090 Cielo Dr., Beverly Hills	1/ 4/67 1 year	Secs. 10176(a), (c), (i); 10177(f), (l), reinstated as (j), and 11020 (repealed by Chapter 947, 1963)
Gabbert, Carlton Conrod (REB) (Last 120 days of suspension stayed for 1 year on terms and conditions)	435 Avenida Olancha, Palm Springs	1/ 4/67 180 days	Secs. 10176(a), (c), (i); 10177(f), (l), reinstated as (j), and 11020 (repealed by Chapter 947, 1963)
Evans, Andrew Shumway (REB) (Stayed for 3 years on terms and conditions)	50 Mortensen Ave., Salinas Municipal Airport, Terminal Bldg., Salinas	1/11/67 180 days	Secs. 10145; 10176(c), (i); 10177 (d) and (f)
Gillis, Charles Eugene (REB) (Stayed for 3 years on terms and conditions)	818 College Ave., Kentfield	1/11/67 90 days	Secs. 10145; 10176(c); 10177(d), (f), (g). Secs. 2831 and 2831.1 of R.E. Comm. Reg.
Spencer, Lorenzo Virgil Member of Main Realty (Last 90 days of suspension stayed permanently)	4333 S. Main St., Los Angeles	1/13/67 180 days	Secs. 10177(d), (f), (j) and 11010
Folberg, Harry (REB) dba Community Mortgage Company (Stayed for 1 year on terms and conditions)	Ste. 1, 3400 El Camino Real, Santa Clara	1/17/67 30 days	Sec. 10177(f) and (j)
Folberg, Louis (RES) (Stayed for 1 year on terms and conditions)	928 Peninsular Ave., San Mateo	1/17/67 30 days	Sec. 10177(f) and (j)
Malcolm, Melyn Meredith (RES)	3 Laurel Ave., Kentfield	1/19/67 30 days	Secs. 10176(a), (b), (i); 10177(f) and (j)
Novak, John Leroy (REB)	1780 Grant Ave., Novato	1/19/67 60 days	Secs. 10176(a), (b), (i); 10177(d), (f), (j); 10237.3, 10237.4; 10238.3; 11010; 11018.1, 11018.2 and Sec. 2795 of R.E. Comm. Reg.
Jones, Phil Realty, Inc. Phillip Wendell Jones, President (Stayed for period of 1 year on terms and conditions)	6925 Fair Oaks Blvd., Carmichael	1/28/67 30 days	Sec. 10176(a)
Jones, Phillip Wendell (REB) (RES) (Stayed for period of 1 year on terms and conditions)	Ste. C, 6925 Fair Oaks Blvd., Carmichael 3918 Maudray Way, Carmichael	1/28/67 30 days	Sec. 10176(a)
Powell, Roderick Hiram (RES)	2358 E. Main St., Ventura	2/20/67 Indefinitely	Sec. 10177.1
Secrist, Vernon H. (REB) (After 30 days from effective date of order, remainder or any portion thereof may be stayed on conditions)	7459 Topanga Canyon Blvd., Canoga Park	2/21/67 and including 7/ 2/68	Secs. 10160; 10162; 10164; 10165 and 10177(d)
Dickson, Morton J. (REB) dba Dickson Realty dba Dickson Mortgage and Investment Co.	394 Grand Ave., Oakland	2/28/67 15 days	Sec. 10177(f) and (j)
Vick, Irving Lind (RES)	394 Grand Ave., Oakland	2/28/67 30 days	Sec. 10177(f) and (j)

The CREERAC

Reviews Proposals for Education And Research Projects

The Real Estate Commissioner's role in California real estate education and research assumed vital significance with the creation 10 years ago of the special fund now called the Real Estate Education, Research and Recovery Fund. The fund is maintained by allotting to it one-fourth of all license fees and, of this amount, 80 percent is earmarked for education and research in the real estate area by the University of California, the state colleges, the junior colleges and private universities.

The Real Estate Commissioner is by law responsible for allocation of moneys appropriated from the fund and for evaluation of programs undertaken. He has the assistance of a standing committee familiarly known as the CREERAC (Commissioner's Real Estate Education and Research Advisory Committee) chaired by the assistant commissioner in charge of edu-

CLARIFICATION

Among license revocations listed in the April issue of the *Real Estate Bulletin*, was one identifying the disciplined respondent as vice president of Ashco Mortgage Corporation. **This company was not involved in the proceedings.** The respondent's connection with the firm had terminated some months prior to the revocation of his real estate broker license.

cation and publications. CREERAC's membership includes representation from the University of California, the junior and state colleges and the California Real Estate Association.

The CREERAC advises on the allocations of funds and reviews and rates proposals for financial assistance for real estate education and research. The Division of Real Estate, under the direction of the Real Estate Commissioner, supervises the execution of the contracts which help underwrite project costs.

Educational Requirements

A BASIC STEP TOWARD PROFESSIONALIZATION

Every state has a license law designed to protect the public at large and professionally minded real estate brokers and salesmen from the damage which can be caused by unscrupulous and uninformed licensees; however, very few of these laws specify educational prerequisites for licensure. At most, some require a high school education for eligibility to take the license examinations, but prelicensing course requirements are chiefly conspicuous by their absence.

Pennsylvania's graduated program of increasing educational qualification requirements for broker licensure is progressive, and offers an example of successful legislation aimed at achievement of professional stature for the real estate practitioner.

In the Keystone State, the applicant for broker license examination must have fulfilled the prescribed professional education requirements in a school approved by the State Real Estate Commission. The pertinent portion of the law reads: ". . . real estate education sufficient to qualify an individual for a broker's examination shall, effective December 20, 1963, comprise a minimum of four (4) semester credits to July 15, 1965, six (6) semester credits from July 15, 1965, to July 15, 1966, eight (8) semester credits from July 15, 1966, to July 15, 1967, ten (10) semester credits from July 15, 1967, to July 15, 1968, and twelve (12) semester credits from July 15, 1968, to July 15, 1969, and thereafter, of course work in the areas of study set forth . . ." **It might be observed that California offers unlimited opportunities for formal real estate education.**

In 1963, the California license law moved a step in this direction when legislation was enacted requiring brokers to qualify in two separate and distinct supplementary tests—one in *legal aspects of real estate*, the other in *real estate practice*—besides successfully negotiating the full-day basic examination.

Perhaps it is high time that prelicensing educational requirements ought to be considered by the licensee—certainly their establishment has to be a definite basic step towards professionalism and is contemplated in the commissioner's "Blueprint for Professionalization" now under wide and serious study in California.

Regulations Affect Brokers Acting as Salesmen

Sections 10162 and 10164 of the Real Estate Law require, among other things, that a broker maintain a definite place of business with a sign "in a conspicuous place on the premises" indicating he is a licensed real estate broker. When a broker is operating as a salesman under the terms of a written agreement with another broker, wherein he agrees not to engage in any activity for which a license is required independent of his employer, he can meet the sign requirement merely by displaying his license according to the provisions of Section 2771(e) of the Commissioner's Regulations.

Other Requirements

In addition, it is **important to note that this section of the regulations specifically states that a broker acting in the capacity of a salesman will be considered as a broker in respect to all other requirements the law applies to brokers.**

Thus, a broker employed by another is affected by Section 10162 which reads in part: "no real estate license authorizes the licensee to do business except from the location stipulated in the real estate license." This definitely provides that he must be licensed at the location at which he is employed. If he works out of a branch office, he is to be licensed at that address. If, for some reason, the employing broker requires the license to be issued at the main office, the employed broker has to obtain a branch office license.

Some misunderstanding of the law in this respect may stem from the fact that salesmen have their licenses posted in their employing broker's principal office although they may work out of a branch office.

Reference Book

The *Real Estate Reference Book*, considered indispensable equipment by most licensees and many attorneys and published by the Division of Real Estate, will not be revised in 1967, but will be updated and reprinted as necessary to meet demand. So, if you do not have a personal copy of the current edition (1966), or one at hand in your office, you are invited to order now without concern that the book might be rewritten in the near future. Price: \$3.25, plus 13 cents sales tax if ordered in California.

Changes in the law which might affect the content of the Reference Book will be detailed in future issues of the *Real Estate Bulletin* and covered in a supplement to the current Reference Book after the effective date of the changes.

Forecaster Predicts Leap in State's Population Growth

If Dr. Jerome P. Pickard's (Research Director, Urban Land Institute) estimate of California's future growth is correct, the real estate industry will be a flourishing one during the next 33 years, barring war, famine, pestilence, or economic setbacks.

Dr. Pickard predicts that "one-seventh of the total national population will be living in a region covering less than one-third of the State of California." This area includes the 600-mile stretch from southern to northern California with its focal points the San Francisco-Oakland and Los Angeles areas.

According to the forecaster, by the year 2000, "the two California regions will certainly merge into a California megalopolis with a total population of 44.5 million persons projected in a land area of 48,250 square miles."

FHA LOAN QUALIFICATIONS

The wife's income must be steady before it is considered family income. There are no age or U.S. citizenship requirements.

Tax Implications

SALE OR EXCHANGE OF A RESIDENCE

A licensee should have sufficient knowledge of the Federal Income Tax Law to recognize basic applications of tax provisions to the sale or exchange of homes. Indeed, license examinations include questions testing the applicant's comprehension of fundamental tax principles relating to home sales.

Most people are aware that if they sell or exchange their home at a gain, the gain is taxable. If, though, in a period commencing one year before and ending one year after a person sells his home, he should buy and occupy another house and if the cost of the new residence equals or exceeds the adjusted sales price of the old residence the gain on the sale can be postponed. And, with start of construction of a new residence within the period prescribed above, the time of occupancy may be extended to 18 months beyond the date of sale. This is the simple basic rule in these matters but there are a number of ramifications which are presented in the easily understood Document No. 5017 (10-66), available through the Internal Revenue Service of the U.S. Treasury Department.

Benefits—Age 65 or Over

Certain tax benefits accrue to the seller who is 65 or more; and apparently these are not as widely known as are the basic tax postponement privileges touched upon briefly above. These are described in part in Document No. 5017 as follows:

"If you sold or exchanged your principal residence during the year you may generally elect to exclude from your gross income part or all of the gain on that sale or exchange if:

"1. You were 65 years of age or older before the date of the sale or exchange; and

"2. You owned and used the property sold or exchanged as your principal residence for a period (whether continuous or interrupted) of time totaling at least five years within the eight year period ending on the date of such sale or exchange.

"Taxpayers who meet these require-

EDITOR'S NOTE: Readers will understand this article is deliberately confined to elementary tax situations. But even these will vary according to circumstances, and as they become more complex, assistance may well be sought from qualified tax consultants and attorneys.

ments can elect to exclude their entire gain if the adjusted sale price is \$20,000 or less. If the adjusted sale price is over \$20,000, an election may be made to exclude part of the gain. The *adjusted sale price*, defined earlier . . . , is the amount realized from the sale after commissions and other selling expenses, minus certain fixing-up expenses . . . ; however, only one election to exclude gain may be made during the taxpayer's lifetime."

In order for expenses to qualify as "fixing-up expenses" they must (1) be for work performed during the 90-day period ending on the day on which the contract to sell was made; (2) be paid within 30 days after the date of the sale; (3) be otherwise non-deductible in computing taxable income; and (4) not be capital expenditures or improvements.

Now this is important. Contrary to a widely held impression, this tax-saving opportunity is apparently *not* limited to taxpayers in limited economic circumstances, widowed or drawing social security. Nor is it necessary that the proceeds be used to purchase another home.

LICENSE TESTS

WHAT ABOUT CURRENT EXAMINATION FAILURE RATES?

Yes, how are people faring in license examinations? There seems to be a widespread misconception that two-thirds or more of the applicants for real estate license are failing the test. This is not the case.

Over the past six months, just short of 40 percent of the applicants for real estate salesman license have failed the examination; 50 percent have failed the broker license test.

It is true that over the years license examinations have become more searching, reflecting the increasing

Broker Must Maintain Definite Place of Business

A broker intending to leave the real estate business for a time should, for his own protection, inactivate his license. After such a step is taken, the license can remain inactive indefinitely, as long as it is properly renewed each renewal period. It can be reactivated any time within the license period for a fee of \$4, and thereafter within two years upon application and payment of a late renewal fee in an amount 1½ times the regular renewal fee. This also applies to the license which has been returned to the DRE for cancellation.

Case Cited

The broker who fails to inactivate or cancel his license when he discontinues activity in real estate becomes, by reason of his negligence, in violation of Section 10162 of the Real Estate Law, and a possible result is illustrated by the recent suspension of a broker's license for failing to inform the DRE that he was no longer maintaining his place of business. He did not apply for an inactive license.

The broker, in this instance, abandoned his office and moved to a new community where he had taken employment outside of real estate. In his own words, he had been carrying his license around in "his hip pocket," condoning his action on the grounds that he had not been doing any selling. **Had he inactivated his license (\$4 fee) there would have been no problem.**

complexity of transactions in the real estate market, the greater demand for professionally geared service to the public and the augmentation of knowledge and its availability. This has, quite naturally, affected the examination failure rate, influencing its rising trend. The trend will not diminish until all candidates for license face up to the fact that they cannot take a perfunctory approach to the examinations—most must prepare thoroughly and conscientiously to improve their chances of success.

PROPERTY MANAGEMENT

Maintaining Proper Records

Although property management has developed into a highly specialized field in metropolitan areas, some licensees participate in this activity as one of their general brokerage services, particularly with respect to single-family homes, duplexes and small apartment houses.

Even though his property management operation may be minor, the broker is required to select and maintain an adequate trust fund accounting system. A record must be kept of all trust funds passing through his hands.

From the accounting standpoint, the property manager broker needs a more sophisticated knowledge of accounting procedures and cost accounting. If the records he maintains are too minimal, they adversely affect the efficiency of his performance, at least so say the experts.

The basic system of accounting methods illustrated in the section on trust fund records beginning at page 455 of the 1966 edition of the *Reference Book* could serve as guidelines.*

Trust Journal

The Trust Cash Receipts and Disbursement Journal requires more information for property management accounting than provided for in the basic Record of All Trust Funds Received (Sample Form A, page 461, *Reference Book*). This may be accomplished by adding to the form a description column for the account number, address of property or the name of the property owner.

Separate Record for Each Property Managed

The entries from both the Trust Cash Receipts and Disbursement Journals should be posted daily to a separate record for each property managed so that each property account is on a current basis. The balance on each property record should be watched closely to prevent the payment of funds in excess of the available balance.

Maintaining adequate records provides a firm foundation for effective property management enabling the broker to do a better job of planning,

Broker Judged Liable for Salesman's Illegal Act

As a result of fraudulent misappropriation by his salesman, a mortgage loan broker's clients were awarded damages in the amount of \$2,905 in a recent appellate court decision (249 A.C.A. 831), reaffirming the principle that a broker shoulders civil responsibility for the acts of his salesmen and may be held liable for damages resulting from their illegal actions.

When the investors (husband and wife) were first introduced to the broker, he assured them that his salesman "could take full responsibility and care of their account, whatever further dealings they had with the office."

Gaining the confidence of the investors by arranging two profitable transactions, the salesman shortly thereafter proposed another investment opportunity calling for immediate action. They accepted the proposition and gave the salesman a check for \$1,250 made payable to him. He made out a receipt on a plain piece of paper, claiming no office stationery was available. Trusting the salesman, the investors did not consider his action irregular. The receipt led them to believe that they were buying on account a \$2,500 trust deed for \$2,300.

One week later, the salesman obtained two additional sums of money amounting to \$1,650 from his clients. None of this money was invested as they had been led to believe; instead it was converted to the salesman's own purposes.

The court said there was no suggestion in the evidence that the broker had any knowledge of his salesman's defalcations until the investors later complained to him.

The judgment is founded upon the doctrine of ostensible authority. Civil Code Section 2334 provides: "A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof."

budgeting and meeting his fiduciary obligations.

Removal of Restrictions

If a license has been revoked and a restricted license granted, the licensee can petition for reinstatement of the revoked license after one year from date of order.

On the other hand, if the restricted license is issued after a hearing on the applicant's fitness for license, the holder of that license properly petitions for the issuance of an unrestricted license—not for the removal of restrictions.

In either case, affirmative action must be taken by the licensee and his first move is to obtain a petition form from any office of the DRE.

Before any new license can be issued as the result of a successful petition, the petitioner must file a formal application for that license (pages 1 and 3 of an original application), together with the full four-year license fee.

PROMOTER CANNOT PROFIT AT EXPENSE OF ASSOCIATES

An appellate court of the State of California has just handed down a decision reaffirming some of the rules governing the position of promoters of a corporation formed for the express purpose of purchasing a particular piece of property.

The reported case (249 A.C.A. 782) holds that promoters in situations of this kind occupy a fiduciary relationship to their cosubscribers, requiring that they truthfully disclose to their associates any personal interest they may have in the matter of the purchase.

Such promoters cannot avoid the requirement of disclosure to cosubscribers of all material facts, and they may not profit at the expense of their associates. If the originators are guilty of misrepresentations of fact or suppression of truth in relation to their personal interest in the property, the corporation is entitled to set aside the transaction or recover damages for any loss suffered.

In this case the court upheld the first court's decision that stock in the corporation be redistributed in accordance with the true contributions of the original stockholders and that the case for damages be reheard and redetermined.

* *Real Estate Reference Book*—\$3.38—obtainable from any DRE office.

SECTION 10176(a)**MISREPRESENTATION***(Continued from Col. 1, page 805)*

tion when bringing a disciplinary action under Section 10176(a), but this is often alleged.

EDITOR'S NOTE: This is the first of a series of articles intended to acquaint real estate brokers and salesmen with the application of specific regulatory sections of the Real Estate Law. Most readers, perusing the list of license revocations and suspensions published regularly in the *Bulletin*, quite naturally wonder just what Elmer Zilch's infractions actually were, when they see the series of sections and subsections of the code and regulations following his name and address.

Manifestly, space limitations make it impossible to publish a complete history of each disciplinary action, reciting just how and to what extent the offender was in violation. Thus, only the hearing officer's findings as to sections violated can be printed.

Commissioner Burt Smith believes that illustrations of typical infractions of each of the regulatory sections of the law will be enlightening to licensees and helpful in interpreting types of violations which may be involved in the revocation or suspension of a license. That is the "why" behind this article and those we intend to publish in the future.

The section applies to a variety of acts and courses of conduct by the licensees. It has been applied to affirmative acts of misrepresentation, such as the giving of false information with respect to the real property or the transaction. This applies to positive assertions by the licensee which prove to be false, even though the licensee had no reason to believe they were false.

It has also been applied in the situation where the agent failed to disclose a material fact to the parties. Examples are: the sale of a lot containing filled ground when the degree of the fill is not known or apparent to the purchaser; the taking of a promissory note by a broker in lieu of cash without the consent of his principal; the failure of the agent to obtain the consent of the principal in selling to a near relative; and the failure to obtain the consent of the principal on the sale to the agent's employee.

Recent Examples

Two examples of recent cases on which discipline was imposed for violation of Section 10176(a) are briefed as follows:

**STATE MAP ACT AND
LARGE PARCEL TRACTS**

The California Subdivision Map Act addresses itself to the matter of regulation of subdivisions by local government entities, i.e., cities and counties. The act does not apply when land is divided into parcels each having a gross area of 40 acres or more. This does not mean such division cannot be regulated by local bodies through the means of lot-split ordinances. Commonly, however, such ordinances are meant to regulate those divisions of land which result in the creation of four or fewer parcels.

Licensees should know that the definitions and exemptions incorporated in the Subdivision Map Act do not apply to the Subdivided Lands Act administered by the Real Estate Commissioner.

Sales agents for a subdivision represented to purchasers that a recreational center was included in the offering. Actually, at the time a number of sales were made, the agents knew the developer had abandoned all plans for building the recreational center.

In another case, a broker obtained a listing on 90 acres of lakefront property which he felt would be an interesting property for consideration by a syndicate. To start the ball rolling, he decided to use his son as a purported purchaser under a fictitious name. He did not disclose this to the seller and was found in violation by failing to disclose a material fact to the seller.

Summation

The principle to keep in mind is that agents, including real estate brokers and salesmen, are under a general fiduciary duty to their principals to make full and complete disclosure of all the facts which the agent knows and which might influence the principal in making a decision regarding the sale of the property; and that the duty is also owed to the other party or parties in the transaction, generally the buyer, to disclose facts materially affecting the value or desirability of the property where the agent knows the buyer is not aware of these facts.

NOTE TO SALESMEN**Obtaining Broker's Certification**

Do you hope one day to qualify for real estate broker license? If so, you undoubtedly know you will be required to obtain verification of past employment and experience from a broker or brokers to evidence you have worked full time as a salesman for at least two years within the five years preceding the date you make application. DRE experience shows that most salesmen applying for broker license have had more than one employing broker. So, it might be advisable to follow this suggestion.

If you are leaving a broker's employ and if you think you might sometime in the future apply for a broker license for yourself, secure the broker's certification of employment at the time you leave his service. Certification of Employment Form RE-226 is obtainable from any DRE office. If you wait until a later date to obtain the certification, you may encounter difficulties—the broker may be hard to locate, he may have maintained inadequate records, or may have destroyed them—the reasons are endless.

When obtaining the broker's certification, make sure he completes every item on the form furnished by the DRE and that his signature is notarized.

REAL ESTATE LEGISLATION*(Continued from Col. 2, page 805)*

Amends *Section 10238*. Raises bond face amount to \$6,000 when government bonds are posted. (5) Amends *Section 10238.7*. Provides three-year limit period for causes of action arising under Real Property Securities Act. (6) Amends *Section 10474.5*. Authorizes proration or other equitable distribution by a court of the statutory \$20,000 recovery claim maximum when total of confirmed claims against a single licensee exceeds that amount.

The fall issue of the *Bulletin* will contain more on the final disposition and effect of additional bills relating to real estate licensing and practice, including the balance of the DRE departmental packet.

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Correspondence Courses Meet Exam Requirements

An applicant for real estate broker license is excused from that part of the examination dealing with legal aspects of real estate if he has successfully completed a course in this subject offered by an accredited institution of higher learning. Likewise, completion of a course in real estate practice means he doesn't have to take that special portion of the license examination.

How about correspondence courses? Correspondence courses offered by University Extension, University of California, specifically Principles of Real Estate Law (X405.9) and Real Estate Administration and Practice (X406) are acceptable.

The application to take one or both of these courses is made to the University of California Extension, Department of Correspondence Instruction, Berkeley, California 94720. A course can be completed in a minimum of six weeks or a maximum of 18 months, according to University Extension; however, the broker license applicant who intends to offer course credit toward the license examination should figure on a minimum of 12 weeks to complete a course and obtain credit certificates or transcripts for presentation to the Division of Real Estate.

Timing Essential

An applicant who has failed one or both of the special supplemental tests administered as part of the real estate broker license examination, but did pass the basic, all day portion, should

make certain he has ample time to complete the appropriate real estate course or courses and obtain credit certificates or transcripts within the remaining "life" of his application and examination privileges—that is, if he wants to avoid reexaminations. Full "life" runs for one year from the initial filing date of the application. After that, evidence of course completion cannot be accepted nor can reexaminations be taken. The applicant starts again from scratch, having lost all examination credit he may have gained during the course of the year following the date he made application. The broker applicant would be well advised to take his test as early as feasible. The results will allow him to determine appropriate further action.

Presently over 50 percent of the applicants have already completed approved courses in real estate law and practice before taking the license test, and the number increases steadily. Thus they have established unlimited exemption from the special tests and gained broader knowledge of inestimable value in their chosen careers.

Incidentally, U.C. Extension also offers these four units correspondence courses:

Real Estate Economics, X406.9

Real Estate Finance, X407

Principles of Residential Appraisal, X408

Tax Planning for Real Estate Transactions, X449.1

ADVANCE FEE LOAN OPERATIONS

Numerous complaints have been received from prospective borrowers who have paid advance fees to brokers in connection with applications for sizable loans. In some instances, such fees have been transmitted by the broker to lending agencies or brokers in other states and beyond the present control of the local broker. Thereafter, when the loan applications failed, difficulty has been experienced by the borrowers in obtaining refunds.

Licensees should become thoroughly familiar with the advance fee statutes and regulations so that they do not jeopardize their licenses by participating in transactions which may result in disciplinary action. A number of such actions have recently been filed and serious penalties imposed.

The sections referred to are 10085 and 10146 of the Business and Professions Code and Sections 2970 through 2974 of the Commissioner's Regulations.

In substance, these sections provide that before accepting advance fees the broker must have an agreement approved by the Real Estate Commissioner and, further, that such advance fees are trust funds and must be retained in a trust account until properly accounted for. In addition to these fiduciary safeguards, such brokers must file an annual report with the commissioner of all advance fees collected and the disposition made.