



# Real Estate Bulletin

Official Publication of the California Department of Real Estate

RONALD REAGAN, *Governor*

Summer 1971

ROBERT W. KARPE, *Commissioner*

## COMMISSIONER EXPLAINS PREREQUISITES FOR REAL ESTATE LICENSE EXAMINATIONS

The Real Estate Commissioner, in an effort to be as equitable as possible to those latecomers attempting qualification for license, yet who were precluded from taking the examination because of inability to complete the college course requirements prior to December 31, 1971, has determined they may complete Legal Aspects of Real Estate and Real Estate Practice college course requirements after they sit for the examination.

Applicants who will complete two years full-time real estate salesman employment (or the equivalent) before December 31, 1971, will be eligible to sit for any real estate broker license examination being held during the remainder of 1971.

Applicants who are successful in the basic examination and Real Estate Finance and Real Estate Appraisal Supplemental tests will still not be eligible for the broker license unless they complete the Real Estate Practice and Legal Aspects of Real Estate courses during the two year statutory period of their *application*. They must then furnish college transcripts to the Department of Real Estate as proof of completion.

As an example: Applicants who had less than two years employment, but at least 18 months experience as of July 1, 1971, and would be expected to complete two years licensed full-time salesman employment by December 31, will be set for the examination. These candidates must submit verification of the balance of their full-time salesman employment (or the equivalent) before a license will be issued.

Passing scores on any one or more of the tests will be held to the applicant's credit for a two year period from the date of the application.

### Broker Exam Schedule

Examination	Date
• Finance/Appraisal	Sept. 8-10
• Basic	Sept. 11
• Finance/Appraisal	Oct. 15
• Basic	Oct. 16
• Finance/Appraisal	Nov. 8-12
• Basic	Nov. 27
• Finance/Appraisal	Dec. 13-17
• Basic	Dec. 18

## LICENSE FEES TO DEFLATE

In this day and era of inflation and high governmental costs, real estate licensees should soon be able to look for reduction of their license fees . . . the first in forty years . . . made possible by passage of Assembly Bill 324.

The commissioner will periodically prescribe fees lower than the maximum fees provided by law when it is deemed that lower fees are justified due to reduced administrative costs and expenses incurred in the enforcement of the real estate law. Departmental economies in operations may result in further reduction of fees over the years ahead.

The commissioner plans to hold at least one regulation hearing each calendar year to determine the prescribed lower fees. The new fee

## DRE Compiles Reference Book Into Two Volumes

A revised 1971 edition of the real estate *Reference Book* may be ordered in October to meet the continuing need for examination study material and an up-to-date reference guide for practicing real estate brokers and salesmen.

To provide room for future expansion and still maintain the selling price low enough to justify licensees keeping the current edition upon their desks, the department compiled the publication into two volumes.

Volume I will contain information relating to real estate practice and licensing, and the real estate law with its allied components will be treated in Volume II.

The first edition of the *Reference Book* was published in 1936. It contained 54 pages and was called the *Reference Book and California Real Estate Act*. The first 32 pages were devoted to reference material and the remainder contained the real estate law then in effect. By 1941 the overall size of the book had grown to 403 pages and contained a wide scope of information relating to real estate. Its title had been changed to *Reference Book and Guide*, and in 1950 it was again changed to its present title.

Both volumes of the *Reference Book* may be purchased in October at any of the department offices or ordered by mail from Sacramento. Price: \$3 (Volume I); \$2 (Volume II); plus 5 percent state sales tax if ordered in California.

schedules are scheduled to become effective January 1, 1972 and will be published in the *Bulletin* after the regulations become effective.

**REAL ESTATE BULLETIN**

Official Publication of the  
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STATE OF CALIFORNIA  
RONALD REAGAN, Governor

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Real Estate Commissioner

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Chief Assistant Commissioner

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The Real Estate Bulletin is a quarterly published by the State of California, Department of Real Estate, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the California Business and Professions Code.

From the license renewal fee, \$1 is allocated to cover subscription to the Bulletin. Second Class Postage Paid at Sacramento, California.

**Disciplinary Action—March 1971—May 1971**

REB—Real estate broker RES—Real estate salesman REO—Real estate officer  
RREB—Restricted real estate broker RRRES—Restricted real estate salesman REC—Real estate corporation

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 on the disciplinary action stayed, until the stay is dissolved. Names of persons to whom licenses are denied upon application are not published.

**Licenses Revoked March 1971 Through May 1971**

Name	Address	Effective date	Violation R.E. Law/Regulations
*Willden, Robert (REB) (RES)..... Pres., Spartan Funding, Inc. (REO) Pres., Bob Willden Associates (REO) (Right to RREB or RREO licenses on terms and conditions)	6945 Maiden Ln., San Jose 799 Fletcher Ln., Hayward	12/10/70	10145, 10176(c), 10177(d) (f) (g); 2830, 2831, 2831.1, 2832
Neufeld, William David (RES)..... (Right to RRRES license on terms and conditions)	One Robley Rd., Salinas	3/ 8/71	10177(b)
Arnold, Samuel Cleo (REB)..... Pres., Fremont Mtge. Corp. (REO) (Right to RREB or RREO licenses on terms and conditions)	6214 Thornton Ave., Newark	3/ 9/71	10145, 10176(c) (g), 10177(d) (f)
Slack, Geraldine Eva (REB)..... Dba Sun Real Estate Pres., Central Calif. Mtge. Co. (REO) Associated Home Loan Co. (REC)..... (Stayed for 3 years on terms and conditions)	1904 D St., Bakersfield	3/16/71	10176(c) (g), 10177(b) (f) (g)
Jones, Alan Leslie (REB)..... (Right to RREB license on terms and conditions)	1313 W. 8th St., L. A.	3/17/71	10176(a) (b) (g), 10177(d) (f)
Pinkus, Lee Roy (REB)..... (Stayed for 3 years on terms and conditions; one condition being 30-day suspension)	1591 El Camino Real, Millbrae	3/17/71	10177(b) (f)
Self, Clarence Henry (RES).....	1313 W. 8th St., L. A.	3/17/71	10176(a) (b) (g), 10177(d) (f)
Wilson, George Wayne (RES).....	1319 High St., Alameda	3/17/71	10177(b)
Tarrant, Frederick Albert (REB).....	708 9th St., Arcata	3/17/71	10177(b) (f)
Young, Bill Bearden (RES)..... (Right to RRRES license on terms and conditions)	9661 Skylark Blvd., Garden Grove	3/19/71	10177(b) (f)
Caine, Martin (REB)..... Dba 50 State Realty (Right to RRRES license on terms and conditions)	515 Westbourne St., La Jolla	3/19/71	10177(a) (f)
Hart, John Brooks, Jr. (RES)..... (Stayed for 5 years on terms and conditions; one condition being 60-day suspension)	1900 Ave of the Stars, L. A.	3/23/71	10177(b) (f)
Harrington, Eugene Francis (REB)..... (Right to RREB license on terms and conditions)	310 Main St., Brawley	3/23/71	10177(b)
Herman, Sidney Morton (REB)..... (Right to RRRES license on terms and conditions)	251 Southgate Ave., Daly City	3/23/71	10145, 10176(c), 10177(d) (f); 2830, 2831, 2831.1, 2832
Jenkins, Rebecca Mae (RES)..... (Right to RRRES license on terms and conditions)	7357 Van Nuys Blvd., Van Nuys	3/23/71	10177(b) (f)
Adams, William Ancel (RES)..... (Right to RRRES license on terms and conditions)	216 E. Carson, Torrance	3/25/71	10177(a)
Kennel, Vernon Clair (RES)..... (Right to RRRES license on terms and conditions)	14724 Ventura Blvd., Sherman Oaks	3/30/71	10100, 10177(b)
Keiles, Stanley (REB)..... (Right to RREB license on terms and conditions)	15224 Hawthorne Blvd., Lawndale	3/30/71	10177(b) (f)
Golden Gate Invest. & Loan Co. (REC)..... Dba Golden Gate Co. Pres., Stanley Keiles (REO) (Right to RREB and RREO licenses on terms and conditions)	1156 Arroyo Ave., San Carlos	3/12/71	10145, 10176(c), 10177(d)
Gurvis, Herbert Howard (REB)..... Dba Challenge Mtge. & Invest. Co.	1156 Arroyo Ave., San Carlos	3/12/71	10145, 10176(c), 10177(d)
Libeck, Thomas Frank (RES).....	1509 S. Brand Blvd., Glendale	4/ 7/71	10176(a) (b) (c) (g) (i), 10177(d) (f)
Wise, Louis Wayne (RES).....	311 MacArthur Blvd., San Leandro	4/ 7/71	10177(a)
McDowall, Stanley Douglas (RES).....	320 W. Latham Ave., Hemet	4/ 7/71	10177(b) (f)
Montclair Realty Co. (RREC)..... Purdy, Lawrence Arnold, Pres. (RRREO)	P.O. Box 65, Kaweah	4/13/71	10177(b) (f)
Taylor, Richard Neil (REB).....	2084 Mountain Blvd., Oakland	4/20/71	10137, 10177(d) (k); 2831, 2831.1
Mastroluca, Joseph Peter (REB)..... Dba Life Time Realty	513 15th St., Modesto	4/21/71	10177(f) (g)
Niver, Winston Henry (RES)..... (Right to RRRES license on terms and conditions)	30560 Palos Verdes Dr. East, Miral- leste	4/22/71	10145, 10176(G), 10177(d) (f) (g)
O'Donnell, John Michael (RES)..... (Right to RRRES license on terms and conditions)	4282 Beverly Blvd., L. A.	4/22/71	10177(a)
Parker, Herman James (REB).....	823 10th St., Santa Monica	4/22/71	10177(a)
Lyngaard, Charles Ejner (REB).....	4110 S. Land Park Dr., Sacramento	4/23/71	10176(a) (b) (c) (i), 10177(d) (f) (g)
Maceri, John Fortunato (RES).....	2150 Franklin St., Oakland	4/27/71	10177(b)
Mangini, Paul Edward (REB).....	18045 Saticoy St., Reseda	5/ 4/71	10177(b) (f)
Talbot, Rodger Conley (RES)..... (Right to RRRES license on terms and conditions)	22406 Ladeene St., Torrance	5/ 4/71	10177(b) (f)
Success, Inc., Real Estate (REC).....	211 Sierra, El Segundo	5/ 5/71	10177(b)
Campbell, Robert Randolph (REB).....	915 21st St., Sacramento	5/ 6/71	10176(c), 10177(d); 2831, 2831.1
Gentile, Joseph Robert (REB).....	3701 Market St., Riverside	5/11/71	10177(b) (f)
Kennedy, Marvena Jones (REB).....	19755 Sherman Wy., Canoga Park	5/11/71	10177(b)
Minoudis, Anthony George (RES).....	610 Avenida Victoria, San Clemente	5/11/71	10177(b)
Scarborough, Thomas Douglas (RES).....	10993 Roebling Ave., L. A.	5/11/71	10177(a)
Desmarais, Albert Alexis (RES)..... (Right to RRRES license on terms and conditions)	10228 Roscoe Blvd., Sun Valley	5/11/71	10177(b)
Colzani, Robert John (RES).....	218 Molino Dr., S. F.	5/18/71	10177(b) (f)
Shaffer, Estil E. (RES)..... (Right to RRRES license on terms and conditions)	113 1/2 Pearl St., Balboa Island	5/21/71	10177(b)
	4051 University Ave., San Diego	5/26/71	10177(b)

\* Not previously reported.

**SALE OF NON-EXEMPT FRANCHISE REQUIRES LICENSE**

Section 31210 of the Corporations Code prohibits any person from effecting or attempting to effect the sale of a non-exempt franchise unless such person is identified in an application or amended application filed with the Corporations Commissioner as a California licensed real estate broker or salesman or is licensed as a securities broker-dealer or agent by the Corporations Commissioner.

## Licenses Suspended From March 1971 Through May 1971

Name	Address	Effective date	Violation R.E. Law/Regulations
McGraw, Robert Thomas (RES) (Stayed for 2 years on condition)	10625 Kinnard Ave., West L. A.	3/ 9/71 6 months	10177(b) (f)
Brown, Billy Dean (REB) Dba Brown and Brown Real Estate Company	4917 Telegraph Ave., Oakland	3/12/71 45 days	10176(a) (i), 10177(f)
(All but first 30 days stayed for 1 year on condition. Right to renew RES)			
Galitzen, David M. (REB)	527 S. Atlantic Blvd., Monterey Park	3/16/71 30 days	10177(b)
(Stayed for 1 year on terms and conditions)			
Pinkus, Lec Roy (REB)	1313 W. 8th St., L. A.	3/17/71 30 days	10176(a) (b) (i), 10177(d) (i)
Polizzi, Paul Henry (RES) (Stayed permanently)	22 Almaden Fashion Plaza, San Jose	3/17/71 15 days	10177(b)
Hart, John Brooks, Jr. (RES)	310 Main St., Brawley	3/23/71 60 days	10177(b)
Levine, Meyer (RRES)	75 Hemlock Ln., Santa Barbara	3/25/71 10 days	10177(k)
Peters, Doris I. (REB) (Right to renew RES)	1150 N. Garey, Pomona	3/31/71 30 days	10176(i)
Blanchet, Jack (RES)	7650 Balboa Blvd., Van Nuys	4/ 1/71 90 days	10177(b)
O'Brien, John Patrick (REB) (Stayed for 1 year on conditions)	218 E. Main St., Grass Valley	4/ 5/71 15 days	10177(g)
Collier, Louis William (REB)	Coffee Creek Ctr., St. Hwy 3, 8 mi. No. of Trinity Ctr.	4/ 6/71 90 days	10176(a) (i), 10177(f)
Blair, Robert William (REB) Dba B'AR Realty	1601 Blossom Hill Rd., San Jose	4/ 8/71 30 days 30 days 60 days	10176(a) (i), 10177(d) (f) (j); 2901 10176(a) (i), 10177(f) 10176(i), 10177(d) (f); 2901 10177(f) (j)
Oppenheimer, David (RES) (Stayed for 1 year on terms and conditions)	311 MacArthur Blvd., San Leandro	Concurrently 4/22/71 1 year	10177(b)
Strasburg, Robert Simmonds Pres. Call Realty Co., Inc. (REO)	433 Via Corta, Palos Verdes Estates	4/23/71 30 days	10177(d), 11010, 11018.2
(All but first 15 days stayed for 1 year on condition)			
Clagett, Thomas John (RES) (Permanently stayed)	1027 Del Norte, Menlo Park	4/27/71 5 days	10177(b)
McKee, Albert Lewis (REB) Dba Fidelis Real Estate	3244 Telegraph Avenue, Oakland	4/27/71 60 days	10145, 10176(a) (e) (i), 10177(d) (f)
(Stayed for 2 years on terms and conditions)			
McKean, David Leslie (REO) Pres., Success Inc., Real Estate	1727 Seventh Ave., Sacramento	5/ 6/71 60 days	10176(e), 10177(d); 2831, 2831.1
(Stayed for 3 years on condition)			
Sins, George Charles (REB) Dba Sins & Goodwin	1722 Irving St., S. F.	5/18/71 30 days	10176(a) (i), 10177(f) (j)
(All but first 10 days stayed for 1 year on condition)			

### A Thirty-Year Study of California Subdivision Development

A recent compilation of statistics pertaining to California subdivision development during the past 30 years has revealed some interesting information.

During the period of 1941-70, the Department of Real Estate published 55,326 final subdivision public reports, qualifying subdivisions for sale to the public.

These reports covered 1,932,373 acres of subdivided lands, comprising 2,819,279 lots. Los Angeles County accounted for one-third of the state's total with 641,525 lots created by subdivision during the 30-year survey period. During the war years of 1942-43, only 443 subdivision lots were created in Los Angeles County in comparison to 56,647 during the 1950-51 fiscal year.

Fiscal year 1942-43 saw the least subdividing, when only 172 public reports were issued statewide, representing only 2700 parcels carved from 1,568 acres.

During 1955-56, the most subdivisions were developed when 3,110 public reports were issued. However, the

acreage subdivided that year was considerably less than 1969-70 when 1,849 subdivisions included 255,073 acres. The greatest number of lots (176,102) were developed in 1954-55 from only 65,268 acres, reflecting a high percentage of "city size" lots for homes in urban areas.

#### Recreational Land Boom

The acreage subdivided in 1969-70 compared to the relatively small number of subdivisions and parcels reflect the current recreational land boom where each development contains many parcels which are normally larger than the usual urban residential lots.

The least activity was in Glenn County where only 547 lots were developed over the 30-year span.

Another statistic of some interest shows that in 1969-70, 15,501 acres of Lassen County land was divided into only 724 parcels for an average parcel size of 21 acres. In comparison, Los Angeles County had 15,352 acres subdivided into 14,312 parcels for an average parcel size of slightly over one acre.

### PRIVATE REAL ESTATE SCHOOLS

The Bureau of School Approvals, State Department of Education, is charged with enforcement of general standards applicable to private nonaccredited real estate and other schools. The Bureau has advised that real estate brokerage firms who advertise and recruit salesmen through the public news media or U.S. mail as a school or "training course" either for a fee or gratuitously, are required to obtain approval from the State Superintendent of Public Instruction.

Whether or not fees, tuitions, book charges and costs are refundable, the real estate firm holding itself out as a school of real estate must comply with appropriate provisions of Section 29007.5, Division 21 of the California Education Code. This applies to all schools offering courses of instruction to the public in vocational and technological subjects, which would include courses of instruction furthering the real estate training of applicants qualifying for the state license examination. The penalty for violation could be a felony.

For additional information relative to filing, prospective real estate school operators should contact the Bureau of School Approvals, Department of Education, 721 Capitol Mall, Sacramento 95814.

### APPRAISERS TAKE NOTE!

In the real estate study, *A Compilation of Real Estate Investment Valuation Tables*, by Paul F. Wendt, David W. Walters, and Wallace F. Smith, of the Berkeley Center, tables of multipliers, based upon computer programs, have been adapted for use in estimating approximations of value for real estate investments under varying loan, holding period and investor yield requirements. The tables were devised for use in determining values based upon net income before income tax, a measure commonly used in real estate market transactions.

These tables, however, were planned primarily to meet the needs of those without access to computer facilities, and bridge the gap between those using simple tables of thumb techniques such as gross income multipliers, and those using more sophisticated computer analyses.

Copies of this publication, at \$7.35, including state sales tax, may be ordered from:

Center for Real Estate and Urban Economics  
University of California  
260 Stephens Memorial Hall  
Berkeley, California 94720



## *Realtists Convene in Atlanta*

Bill Brown, President of the National Association of Real Estate Boards, is shown accepting an invitation from Willis E. Carson, President-Elect of the National Association of Real Estate Brokers to attend its 1971 Installation Banquet. Carson is the founder of the Consolidated Realty Board and the California Association of Real Estate Brokers. The association, whose membership is comprised primarily of black real estate brokers, held its 24th convention August 8-13, 1971, in Atlanta, Georgia.

Individual members are known as Realtists and a broker must be a member of a local board as well as a member of the national organization to obtain the right and privilege to use the term.

**Both nationally and locally, Realtists take a stand against racial discrimination and work for better housing for minority groups in the communities they serve and for the professionalization of the real estate industry.**

In this state, the California Association of Real Estate Brokers, an affiliate of the National Association of Real Estate Brokers, was organized in 1955 and now has four board affiliates namely: Associated Real Property Brokers, Oakland; Consolidated Real Estate Brokers, Sacramento; Consolidated Realty Board, Los Angeles; and Logan Heights Realty Board, San Diego.

California has many brokers who are both Realtists and Realtors by virtue of dual membership in a board in the California Association of Real Estate Brokers and the National Association of Real Estate Brokers and a board in the California Real Estate Association and the National Association of Real Estate Boards.

## **Advertised Seminars May Result in Public Offering**

The Real Estate Commissioner is concerned with what appear to be abuses of the non-public offering permit exemption in Section 2990(d) (1) of Department of Real Estate regulations. There are indications that many syndicators are ignoring or misconstruing that element of the definition of a non-public offering that "offers are not made to more than 25 persons" and are relying entirely upon the fact that there will be ten or less sophisticated owners when the syndicate is formed.

This misconception of the exemption has given rise to the practice of using a publicly advertised seminar, ostensibly for the purpose of educating the participants in real estate investment, but actually for the purpose of ultimately soliciting certain of the participants for investment in a "private real estate syndication" of ten or less owners.

The position of the commissioner is that the bringing together of group of persons through a public advertisement or announcement with the intent of ultimately soliciting from among the group for investors in a syndicate makes the offering a public one regardless of the number of persons from among the group who actually purchase interests. This position is consistent with that of the SEC as announced in its Release No. 4552 which reads "Negotiations or conversations with or general solicitations of an unrestricted and unrelated group of prospective purchasers for the purpose of ascertaining who would be willing to accept an offer of securities is inconsistent with a claim that the transaction does not involve a public offering even though ultimately there may be only a few knowledgeable purchasers."

## **LAW CHANGES REFLECTED BY CHANGES IN REGULATIONS**

The Real Estate Law and the Subdivided Lands Act give the commissioner the responsibility of adopting regulations to clarify, implement, interpret, or make specific the various sections of these laws. Usually, regulations are adopted when there are

changes in the law, and policies or procedures must be established to carry out their intent. The Administrative Procedure Act requires that agencies adopting regulations must give an advance notice to the public and published in a newspaper of gen-

eral circulation.

**Duly adopted regulations have the force and effect of the law itself,** and regulations have been promulgated mostly in the field of subdivisions, real estate syndicate securities and mortgage loan brokers.

## Broker Sells Corporate Stock Without Securities License and Wins Commission

EDITOR'S NOTE: Articles of this nature appear in the *Bulletin* from time to time to alert the licensee to court interpretations and precedent. However, brokers and salesmen are cautioned not to accept these articles at full face value; this reported case could have been resolved differently had other factual elements entered into the transaction.

"In this era of burgeoning growth and expansion of real estate development, in which many owners of investment property often adopt the corporate form of ownership and organization for tax and other purposes, and in which the services of real estate brokers as well as many other specialists are so often essential to the guidance of property owners in the handling and disposition of their property . . ." it is not against public policy for a real estate broker to negotiate the sale of all of the corporate stock and assets when the transfer of the stock is "an *incident* to the transfer of the property". This was one of the chief findings of the District Court of Appeal in the case of *Weber v. Jorgensen* recently reported in 16 C.A. 3d 74.

### Facts

A real estate broker had obtained an exclusive listing to find a purchaser for a marina and resort business. The sole owner and shareholder in the corporation that held the proprietary interest in the property, agreed to pay the broker a 10 percent commission. At the time of the listing, the seller instructed the broker that title to all real and personal property would be "transferred by transferring all the stock of the corporation, as an incident to the sale of the property," and that the stock transfer agreement would be prepared and handled by an attorney.

Within the time period of the listing, the broker obtained a buyer and communicated the offer which substantially conformed to the terms of the listing agreement.

### Issue—Conclusion

The prime contention made by the seller was the fact that the real estate broker did not allege and prove his possession of a securities broker's certificate and that the transaction was a sale of corporate securities and hence any claim to commission was void for lack of proper licensing of broker.

Under provisions of the Corporations Code, no person can legally sell, negotiate for the sale of, or otherwise deal in any security issued by others, or act in the capacity of a broker or

### Investment of Impound Funds

Section 2955 (AB 2299 (Wilson)) was added to the Civil Code by the 1970 Legislature. It requires that *impound account* funds (advance mortgage payments for taxes and insurance) must be retained in California, and if the funds are invested, invested with California residents or with businesses operating in California.

agent without a certificate as a securities broker (similar to the Real Estate Law). The appellate court, basing its judgment on established case law, found that the real estate broker was effecting a transfer of the realty and other assets and the "stock" was a mere "incident" since the new buyer could dissolve the corporate structure and operate in a proprietary capacity if he so desired.

It is encouraging for the broker to note that the appellate court took the view that the beneficiaries of the "isolated transaction doctrine" have not been buyers mulcted by fraudulent brokers, but principals who have successfully defended against commission suits to recover an earned fee on the ground that the brokers were not properly licensed under the Corporate Securities Law.

Since the court found no public policy objection a claim for a commission was in order despite the fact that the licensed real estate broker made no allegation that he possessed a securities broker's certificate. It was the transfer of realty which earned the commission and not the "incidental" or "isolated" transfer of the stock.

## Buyer Says... 'Hold On to My Check!'

The commissioner's deputies frequently receive inquiries from licensees who ask how to handle a buyer's check (deposit on the purchase of real property) when the buyer makes the check payable to the broker and instructs the broker to hold the check uncashed for a certain period of time, up to and after the seller has accepted the offer.

The buyer's instructions should be followed. Brokers should enter the check in their trust fund records and then hold the check in a safe place. When presenting the offer and tendering a deposit to the seller, make certain that he is informed that the buyer's check is now being held uncashed. To avoid possible disputes, it would certainly be preferable to make the disclosure in writing in the deposit receipt. This disclosure must be made when the offer is submitted to the seller and prior to acceptance.

When a buyer furnishes instructions to a real estate agent to hold a deposit check uncashed for a set period of time, the check also takes on some aspects of a promissory note although there is a distinct difference. A basic law case on the subject of acceptance of promissory notes states a broker may not accept a promissory note in lieu of cash without express consent of his principal (*de St. Germain v. Watson* (1950), 95 Cal. App. 2d 862). The same logic applies to checks intended to be held uncashed at the direction of an offeror.

Under these conditions, a seller should realize that a check may not be honored even after the date specified by the buyer. He should also realize that civil action may be his only method of collection in case the buyer stops payment on the check and defaults under the contract. If the licensee has handled the check properly and made the required disclosure, a complaint to the commissioner by a disgruntled seller would not be actionable. In the case of improper handling of the check and the failure to make a complete disclosure to his principal, a similar complaint could result in disciplinary action by the commissioner.

## Commissioner Revokes Salesman's License for Dishonesty

**THE FACTS:** In this case, a real estate salesman, while employed by a real estate broker, negotiated the sale of a \$62,000 residence; executed a deposit receipt and agreement of sale providing, among other things, for a 6% sales commission; received a cash advance toward the commission; and opened an escrow.

Unknown to the employing broker, the salesman promoted a \$750 check out-of-escrow from the buyer toward the salesman's share of the commission. At the same time, he assured the buyer that the check would be credited toward the purchase price at the close of escrow and also assured the buyer that his employing broker was aware of the arrangement.

The salesman told his employer the buyer was short \$750 and requested that his broker take an unsecured \$750 note from the buyer, all the time concealing the fact that he had already received that sum from the buyer. Although the broker agreed to accept the note, it was never executed.

The salesman then arranged for the buyer's escrow to be credited with the \$750 advance to the salesman separately. The escrow closed, *BUT* subsequent to the closing, the buyer rescinded because of substantial termite and dry rot damage to the property (not a matter under consideration). The property was reconveyed to the seller. All purchase money was refunded to the buyer, including brokerage commissions. The \$750 that had been advanced to the salesman was paid by the broker.

The broker then demanded the \$750 from the salesman and as of the date of the hearing, the salesman had not completely paid this obligation.

### Dishonest Conduct

The hearing officer held that the salesman made substantial misrepresentations to both the broker and the buyer; that he had taken a secret or undisclosed commission unrevealed to his employing broker; and that his conduct was dishonest.

The Real Estate Commissioner then revoked the salesman's license with provisions for issuance of a restricted license under certain conditions.

This case is published to point out that the failure of a salesman *not only to disclose all matters to his principal, but also to fully disclose material facts to his employer* is a cause for disciplinary action. In the instant case, had the transaction been successful and despite the lack of any apparent financial damage sustained by the buyer, a disciplinary action would lie against the salesman.

### DCA RULING

#### Services of Person Obtaining Termination of an Option

The Court of Appeals has recently ruled that the services of a person in obtaining the termination of an option to purchase real property are of a nature as to require the involvement of a licensed real estate broker.

The principle of law was demonstrated in the *Hoar vs. Tuley* case (12 C.A. 3d. 344) wherein a man named French who held a real estate salesman's license received \$2,000 in cash and a \$3,000 promissory note as payment for his services in obtaining the termination of an option to purchase real property. The property was owned by optionor Tuley. The court held that the services rendered by French were those that could be legally performed only by a licensed real estate broker or a licensed salesman on behalf of a licensed broker, and French did not perform such services on behalf of the real estate broker by whom he was then employed. The note given in consideration of the services was thus void.

The court stated the services rendered by French classified him as a person who "negotiates the purchase, sale or exchange of real estate" and referred to other cases where it had been settled that a contract employing a broker to obtain an option for the purchase of real property came within the purview of the statute of frauds and must be in writing. The nature of the services which would bring an employment contract within the statute was defined and it was held that the phrase "to sell or purchase" includes "to aid or assist in the purchase or sale" of real estate.

In the *Hoar vs. Tuley* case, French was held to have aided and assisted in the purchase or sale of real property.

## Agent's Conduct Outside License Activities May Jeopardize License

Honesty, truthfulness and good reputation are characteristics required of every applicant for a real estate license, although no infallible tests for these qualities have ever been devised. Notwithstanding, the commissioner's interest in these qualifying characteristics must necessarily continue after the issuance of a license. If a licensee's conduct, either within or beyond the scope of his activities as an agent demonstrates a definite disregard for honesty, truthfulness, or nullifies his good reputation, the commissioner may take action against his license. Authority is provided by Section 10177(f) of the Business and Professions Code, which reads:

"The commissioner may suspend or revoke the license of any real estate licensee, or may deny the issuance of a license to an applicant who has acted or conducted himself in a manner which would have warranted the denial of his application for a real estate license."

Further support of the commissioner's position is found in Section 10177(j) of the B. & P. Code concerning licensees acting as principals rather than as agents. This section provides that the commissioner may suspend or revoke the license of any real estate licensee, or may deny the issuance of a license to an applicant whose conduct, whether of the same or a different character than specified in Section 10177 et seq., constitutes fraud or dishonest dealing. For example, the licensee who conducts the sale of his own real property in a fraudulent or dishonest manner has violated Section 10177(j).

The commissioner's interest in a licensee's total activities is guided by a "practical common sense" approach and he will regard any act by a licensee, which involves a willful perversion of truth in order to deceive, cheat or defraud, as having an effect on a licensee's right to and qualifications for a real estate license.

This case leaves no doubt as to the strict interpretation of the real estate law by California's higher courts.

## Public Official

### NOTARY PUBLIC MUST CONFORM TO STATE LAWS

EDITOR'S NOTE: Since there are over 135,000 Notaries Public in California (in excess of 100,000 are active) of which a substantial number are real estate licensees, the Secretary of State has provided some salient matters which Notaries Public and those dealing with notaries should be familiar. Because of limited space in this Bulletin the basic prerequisites for appointment have not been reported.

It is the function of the Notary Public to attest and certify by his hand and seal, certain classes of documents in order to give them recognition, credit and authenticity, to take acknowledgments of deeds and other conveyances and to perform certain matters. In California a Notary Public does not exercise any judicial functions. His acts are merely *ministerial* in nature.

The appointment of a Notary Public may be suspended or revoked on any of the following grounds: For conviction of a felony or of a lesser offense involving moral turpitude or of a nature incompatible with the duties of a notary; for revocation or suspension of a professional license, if such revocation or suspension was for misconduct or dishonesty; failure to fully and faithfully discharge any of the duties required of a notary; and, when adjudged liable for damages in any suit grounded in fraud, misrepresentation or violation of the state regulatory laws or in any suit based upon the notary's failure to discharge fully and faithfully his duties as a notary.

#### *Complaints Against Notary*

The Secretary of State often receives complaints concerning omissions or improper service on the part of notaries. The most frequent complaint concerns the certificate of acknowledgment, in which on a specified date, the person who executed the document personally appeared before the notary was known to him to be the person whose name is subscribed to the document and that he acknowledged execution of the document. The complainant often alleges that he did not personally appear before the notary to acknowledge execution of the document and frequently alleges that his signature on the document is forged. *Such complaints often relate to Grant Deeds on real property.*

Where it is found that a notary has not rendered proper service, he often gives one of the following explanations for his actions: He was familiar with the signatures on the documents because they also appeared on other documents in his files; where more than one person executed the document yet only one of them personally

appeared before the notary, he prepared the certificate of acknowledgment because the person appearing before him represented that the other signatures were those of the other persons named in the document; because the parties who purportedly signed the document were husband and wife he did not believe it was necessary for both parties to personally appear; he personally knew the persons whose names and signatures appeared on the document and therefore verified the execution of the document over the telephone; and, he inadvertently did not ask for identification and assumed that the persons appearing before him were in fact the persons who executed the document.

Any notary who prepares and signs a certificate of acknowledgment under the above circumstances is signing a false statement. If he officially certifies that certain persons personally appeared before him and acknowledged execution of a document, such certification means just that, and nothing else. He cannot, under any circumstances, properly prepare a certificate of acknowledgment if the facts stated therein are not true.

**If the persons appearing before a notary cannot identify themselves to his satisfaction, he should not render notarial service.**

When the person who executed a document cannot personally appear before the notary or cannot identify himself satisfactorily, he may notarize the document through a proof of acknowledgment. This may be accomplished through a witness in one of two ways. When the person appearing before a notary cannot identify himself satisfactorily, his identity may be proved through a witness who personally knows him and the notary. When

### Broadening of Homestead Law

Sections 1237 and 1238 of the Civil Code pertaining to the type and nature of the interests in property which may be homesteaded were amended in 1970 to permit the homesteading of a dwelling house which is in a condominium, a planned development, stock cooperative or community apartment project, or on leased ground (providing the lease runs 30 years or more). The homestead includes interest in and right to use common areas and other appurtenances subject to terms and conditions of the organization.

the person who signed the document cannot appear before a notary, his signature may be proved through a person who witnessed the document being signed, provided he personally knows him and the notary. Under such circumstances, the witness is required to take an oath administered by the notary, who then prepares a special form of certificate of acknowledgment which sets forth the facts as to the witness.

#### *Certificate of Acknowledgment*

In preparing a certificate of acknowledgment, the notary should carefully compare the names of persons appearing in the document with their signatures, making sure that all of the required signatures are present, and that they agree with the names as they appear elsewhere in the document. The names entered in the certificate of acknowledgment should be entered exactly as they appear in the document being notarized. In signing the certificate of acknowledgment, the notary must sign his name *as it appears in his appointments* and must authenticate the certificate and document with his notarial seal.

Notaries could at times incur problems rendering improper services such as: **Notarizing his own signature; notarizing a document concerning a matter in which he has substantial beneficial or financial interest; notarizing documents written in a foreign language with which he is not familiar; making and notarizing copies of naturalization certificates; performing acts which constitutes the practice of law.**

## Commissioner Disciplines Brokers for Probate Violations

Seven Bay Area real estate brokers were charged by the Department of Real Estate in connection with the sale of properties in probate in San Francisco and Alameda County Superior Courts, and after formal hearings, six of the brokers' licenses were suspended and one was revoked with a restricted license authorized by the commissioner after six months.

One case, involving two of the brokers whose licenses were suspended, is now on appeal. The others are final.

In all transactions, the respondents were acting as agents, claimed commissions from the estates and failed to disclose to the attorneys, guardians, executors, or administratrix of the estates or to the judge of the superior court that they were somehow involved in the purchase of the properties.

Four violations occurred when a broker earned commissions and failed to disclose the sales were to his wife who utilized her maiden name as offeror.

In the case now being appealed, the findings indicated the brokers earned commissions from two estates while selling the properties to a corporation of which they were officers and directors, which information was not disclosed by them to the probate judge or executor of the estate.

In a separate action, a broker and his wife along with another couple purchased an undivided one-half interest in an estate and at the hearing for confirmation of the sale the broker represented to the court that he was not bidding for himself but was representing the other couple. He ob-

tained a 6% commission by virtue of his false representations.

The facts in another situation show the broker obtained a commission from a probate sale when he failed to disclose that the purchaser was actually his real estate brokerage firm operating under a fictitious name.

Two brokers joined in the use of a corporation as their nominee to act as purchaser of four separate estates and represented to the court they were acting as agents for the corporation when as a matter of fact they acquired the properties for their own account for the purpose of re-sale at a profit. In addition thereto, they were awarded their full commissions by the court.

As in most probate violations uncovered over the years, these licensees followed the pattern of failing to disclose the true identity of the purchasers to the court or to the representatives of the estate, thereby earning commissions they would not have ordinarily been entitled to receive, while purchasing property for their own account.

These violations were similar to a case recently decided by the California District Court of Appeals and which was reported in the Summer 1970 issue of the Real Estate Bulletin. In this case, the DCA held there was no doubt the broker is a fiduciary who has the duty to disclose to the personal representatives of an estate and the probate court his interest in the transaction as he does in all other real estate transactions.

These disciplinary actions resulted from probate record examination procedures followed by the department.

### Special Report

Original broker applications numbered 1,536 during Calendar year 1970. Of the total, 605 (38%) qualified on the grounds of a combination of licensed salesman employment, education and related experience.

Three hundred thirty eight, or 22 percent, qualified on the grounds of education alone which would indicate a considerable increase of applicants take advantage of the educational opportunities currently available in over 100 California institutions of higher learning.

### RESEARCH STUDY

The research study, "The San Francisco Real Estate Market, 1958-1970: A Statistical Study of Activity and Trends", by Dr. Leonard P. Vidger is now available from the DRE, 714 P Street, Sacramento 95814, at \$1.58 per copy. This report documents the list of "happenings", both favorable and unfavorable, in the last two decades which have affected urban realty values in the San Francisco aggregate real estate market. No attempt was made to assess the precise impact that each of the factors may have had on the volume of real estate activity in San Francisco, but an attempt was made to identify and examine the most influential considerations.

The findings and conclusions of the report stemmed from data based on real estate transactions reported to the San Francisco Multiple Listing Service.