

RONALD REAGAN, *Governor*

Summer 1973

ROBERT W. KARPE, *Commissioner*

Industry and Government Leaders Meet



Those present at the meeting were—Seated: (l. to r.) Joseph Mayfield, past president, Consolidated Realty Board; Robert Spivey, president CAREB; Kay Murray, regional vice president, NAREB; Joseph Carnahan, past president, CREA; Robert Karpe, Real Estate Commissioner; Wallace Bailey, president, Consolidated Realty Board; Gerald Harrington, assistant commissioner, DRE; Clifton Wainwright, past president, CAREB; and Richard Adams, president, Associated Real Property Brokers of Northern California. Standing: (l. to r.) Donald Tallman, chief deputy, DRE; Zan Beckstead, executive vice president, CREA; John Hempel, chief assistant commissioner, DRE; Oma Key, former state vice president of CAREB; Ray Collins, president, Oakland Board of Realtors; Barnard Adams, past president of CREA; Martin Dinkins, consultant, Community Relations Unit, Governor's Office; Richard Van Valer, president, CREA; Melvin Mould, chairman, Realtors Equal Rights Committee, NAR; Daryne Houk, legislative associate, CREA; Dugald Gillies, vice president, Governmental Relations, CREA; Henry Block, assistant commissioner, DRE.

Editor's Note: The color-blind goal of the Real Estate Commissioner—a simple lesson in human relations—is silently and gradually being accomplished within the real estate business. Little known to the rank and file real estate broker and salesman is that meetings, inspired by the commissioner, between black and white industry leaders have been quietly taking place almost routinely.

As reported in the Winter 1972 edition of the *Bulletin*, shortly after taking office Commissioner Karpe announced as one of his goals, the achievement of a color-blind industry. He has appointed black real estate brokers to some of his advisory committees as a means of obtaining their input, their viewpoints and having their problems recognized by those who are in a position to be of assistance.

He has met with the heads of the Realtor and Realtist groups and they have issued TV and radio public service announcements based on their dedication to the Golden Rule.

Realtists and Realtors attended joint meetings and contributed to the discussions resulting in the 1972 revision of the *Plan for Professionalization*.

The full realization of a color-blind real estate industry is an on-going project which can be accomplished by the positive orientation of all citizens toward this object.

(Continued on page 3)

Mortgage Loan Disclosure Statement Revised

An amendment to Section 2840 of the Commissioner's Rules and Regulations, the approved form of mortgage loan disclosure statement was filed by the commissioner on April 17, 1973.

It is permissible for licensees to use their present supply of approved broker loan statement until September 1, 1973. After September 1, 1973, only the new revised form of disclosure statement, or one substantially similar to it which has received the approval of the department, may be used.

New Provisions

The new disclosure statement is designed to provide the prospective borrower with an easily understood narrative summary of the salient features of the loan transaction. Moreover, the new approved form includes a summary of loan terms as the first item of disclosure thus affording the prospective borrower with a first-glance schedule of costs and expenses of brokering the loan, the loan brokerage commission, and the amount to be deducted from the principal of the loan for the payment of prior liens as authorized by the borrower.

In the course of revising the mortgage loan broker statement, the department made every effort to devise a combined disclosure form that would satisfy both the California Real Estate Law and the Federal Truth-In-Lending Law. These efforts were not successful primarily due to the fact that the federal regulations insist that the disclosures required by Regulation Z appear on one side of a single sheet

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REAL ESTATE BULLETIN

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Disciplinary Action—January—March 1973

REB—Real estate broker RES—Real estate salesman REO—Real estate officer
RREB—Restricted real estate broker RRES—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

Name	Address	Effective date	Violation R.E. Law/Regulations
Graham, Anthony Richard (RES)	4715 Cather, San Diego	1/10/73	10177(b)
Jenner, George Kenward Jr. (RES)	734 Via Ondulando, Ventura	1/10/73	10177 (b) (f)
Kiddell, Gregory Herbert John (RES)	26591 Cancion Dr., Mission Viejo	1/10/73	10177(b) (f)
Lambert, Robert Leon (RES)	2575 MacArthur Blvd., Oakland	1/10/73	10177(b)
Rader, Theodore Gene (RES)	4349 University Ave., Riverside	1/10/73	10177(b) (f)
Starr, Joseph (RES)	5690 Bramblewood, La Canada	1/10/73	10176(a) (b), 10177 (f) (i)
Roberts, Anthony Alongi (REB)	13206 Philadelphia St., Whittier	1/16/73	10177.5
Ruder, Herrn George (RES)	2312 Greenaire, Anaheim	2/ 2/73	10177(b)
Molander, George Clarence (RES)	1331 43rd Ave., San Francisco	2/ 6/73	10177(b)
Molski, Stanley Joseph (RES)	1034 Orange Grove, Burbank	2/13/73	10145, 10176(c) (f), 10177(d)
Swift, Howard Frederick (RES)	228 Poplar Ave., Hayward	2/13/73	10177(b)
Huntley, Robert Lowell (RES)	20151 Bayview Ave., Santa Ana	3/ 7/73	10177(b)
Mora, Alphonso (RES)	701 Montana Ave., El Paso, Texas.	3/ 7/73	10145, 10176(a) (c) (f), 10177(f) (g)
Albright, Lloyd Easton Jr. (REB)	222 Anapamu St., Santa Barbara	3/13/73	10177(b) (f)
Mosqueda, Solomon Frank (RES)	775 Dorrie Ave., San Jose	3/20/73	10177(b)
Sullivan, Eugene Ignatius (RES)	10613 Woodbridge, No. Hollywood	3/20/73	10177(b) (f)
Collipriest, James Edwin (REB)	2724 Elvyra Way, Sacramento	3/26/73	10177(b)
Chidester, Nita Marthenia (REB)	5221 Atlantic Ave., Long Beach	3/28/73	10177(b) (f)
Riley, William Richard (RES)	13428 Osborne St., Arleta	3/28/73	10177(a) (b)

Licenses Revoked With Right to Restricted License

Name	Address	Effective date	Violation R.E. Law/Regulations
Robinson, Ronald James (RES)	9959 MacArthur Blvd., Oakland	1/ 9/73	10177(b)
(Right to RRES license on terms and conditions)			
Kessler, Max David (REB)(RES)	832 Cochran, Los Angeles	1/23/73	10177(b)
(Right to RREB license after 180 days on terms and conditions; right to RRES license after 90 days on terms and conditions)			
Ellsworth, Newell Davisel (RES)	5200 Gage Ave., Bell	1/31/73	10177(b)
(Right to RRES license after 30 days on terms and conditions)			
Miller, James Bernard (RES)	14514 Lanark St., Van Nuys	1/31/73	10177(b)
(Right to RRES license on terms and conditions)			
Flanagan, Patrick John (RES)	3547 Imperial Hwy., Inglewood	2/13/73	10177(b)
(Right to RRES license after 30 days on terms and conditions)			
Buck, Aaron Vernon (REB)	220 Capitola Ave., Capitola	2/15/73	10177(b)
(Right to RREB license on terms and conditions)			
O'Brien, John Patrick (REB)	218 Main, Grass Valley	3/ 1/73	10177(d), 11010, 11018.2
(Right to RRES license after 1 year on terms and conditions)			
Pekarek, Arthur Leon (RES)	218 Main St., Grass Valley	3/ 1/73	10177(d), 11010, 11018.2
(Right to RRES license after 60 days on terms and conditions)			
Yankee, Donald William (RES)	4285 Lakeside Dr., Glen Ellen	3/20/73	10177(b)
(Right to RRES license on terms and conditions)			
Driver, James Edgar Jr. (RES)	Hwy. 88 Entering Town, Pine Grove	3/31/73	10176(i), 10177(d), 11018.2
(Right to RRES license after 180 days on terms and conditions)			

Licenses Suspended With Stays

Name	Address	Effective date	Violation R.E. Law/Regulations
Hayes, Stanley Cameron (RES)	5730 Hollister Ave., Goleta	1/10/73	10176(i)
(Stayed for 2 years on terms and conditions)			
Baker, George Aaron (REB)(RES)	200 Colorado, Monrovia	1/23/73	10176(a) (d) (i)
(Stayed for 2 years on condition)			
Glascocek, William Robinson III (RES)	19843 Gilmore, Woodland Hills	1/23/73	10177(b)
(Stayed for 1 year on terms and conditions)			
Hidalgo, Richard (REB)	13 Figueroa St., Santa Barbara	2/2 /73	10176(i)
(40 days stayed for 2 years on terms and conditions)			
Crowell, Cecil Edward (REB)	13 Figueroa, Santa Barbara	2/ 9/73	10176(i)
Db a El Camino Realty (20 days permanently stayed)			
Baron, Robert Richard (REB)	4627 Park Mirasol, Calabasas	2/13/73	10177(d), 11010, 11018.2
Pres., Esquire Land Co., Inc. (REO)		90 days	
(45 days stayed for 3 years on terms and conditions)			
Young, Clifford Brownie (REB)	129 Hillside Way, Redlands	2/20/73	10177(b)
(Stayed permanently)			
Baron, William Travis (RES)	218 Main St., Grass Valley	3/ 1/73	10177(d), 11010, 11018.2
(All but 60 days stayed on terms and conditions)			
Griswold, Harold Franklin (RES)	5430 Van Nuys Blvd., Van Nuys	3/ 1/73	10177(d), 11010, 11018.2
(All but 90 days stayed on terms and conditions)			
Mettling, Curtis Joseph (REB)	25362 Bowsprit Ave., Dana Point	3/ 1/73	10177(d), 11010, 11018.2
(All but 90 days stayed on terms and conditions)			
Patrick, Curtis Colyear (REB)	10250 Sunset Blvd., Los Angeles	3/ 1/73	10177(d), 11010, 11018.2
(All but 2 years stayed on terms and conditions)			

Licenses Suspended

Name	Address	Effective date	Violation R.E. Law/Regulations
Krasny, Larry Alan (RRES).....	3547 Imperial Hwy., Inglewood...	1/18/73 30 days	10177(k)
Pompei, Hope Luby (RES).....	9409 Pico Blvd., Los Angeles.....	2/ 2/73	10177(b)
Haveson, Bertram Murray (RES).....	18075 Ventura Blvd., Encino.....	5 days 2/13/73	10177(f) (j)
O'Brien, John Patrick (REB).....	218 Main, Grass Valley.....	10 days 3/ 1/73	10177(d) (g), 11010, 11018.2
Myers, Elizabeth Hanscom (RES).....	1477 Manchester Ave., Anaheim...	15 days 3/ 7/ 73	10176(a)
Wilkus, James David (RES).....	4723 College Ave., San Diego.....	30 days 3/ 8/73	10177(b) (f)
Jurado, Manuel Jr. (RRES).....	6460 Whittier Blvd., Los Angeles..	30 days 3/21/73	10130, 10177(d) (k)

Misrepresentation

THE PATH TO LOSS OF LICENSING PRIVILEGES

The following questions appear in broker and salesman real estate license application forms: "Have you ever been convicted of any violation of law other than a non-moving type of traffic violation?"—"Are there any criminal charges pending against you at this time?". In an explanatory note, the application states: "Convicted"... includes a verdict by judge or jury, a plea of guilty or of nolo contendere or a forfeiture of bail.

In answering these questions, an applicant who has been convicted of criminal charges should realize that the convictions must be disclosed even if the plea or verdict was later set aside and the charges were dismissed or expunged from the record, or if there has been a pardon. If applicant were a minor when the conviction occurred, it "must still be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code."

Anyone completing the license application should be aware that the department sends all fingerprint cards, as a matter of routine, to the Bureau of Identification—a branch of the State Department of Justice. Fingerprint experts classify the prints and check to see if any criminal record is involved. The bureau's records are very complete and contain data received from points throughout the nation (including the FBI).

Under Section 10177.1 (Business and Professions Code) the Real Estate Commissioner may, without a hearing immediately suspend the license of any person who obtained a real estate license by fraud, misrepresentation, deceit, or by making any material misstatement of fact in his application for such a license.

Foremost among the qualifications for licensing are good moral character and fitness—certainly an individual who admits that he has committed an overt act in the past measures up to these qualifications far better than the person who knowingly made any false statement or fact which is required to be revealed in his application for a license—a factor given serious consideration when the applicant's rehabilitation is under determination.

BROKER AND SALESMAN CONTRACT OF EMPLOYMENT

Salesman transfer and reinstatement forms have been revised to provide for certification by new employing broker that a written agreement of employment provisions has been entered into between the broker and his salesman.

All employing real estate brokers and their salesmen are required to have a written agreement covering the material aspects, including supervision, duties, and compensation of

the salesman. These requirements are contained in Real Estate Commissioner's Regulation 2726 which became effective early in 1972.

The Department of Real Estate does not furnish the agreement and there is no prescribed form for the agreement.

Both parties to the agreement are required to retain their signed copy until three years after the salesman leaves the broker's employ.

Industry and Government Leaders Meet

(Continued from page 1)

On February 7, the Realtor/Realist committee met in Sacramento to discuss a number of cooperative undertakings which are helping real estate practitioners move toward a color-blind real estate industry in California.

The highlight of the meeting was the luncheon attended by legislators who were told of the efforts made by Realtors and Realists working together in furtherance of the Plan for Professionalization.

Those who were present at the luncheon were deeply touched and inspired by the following invocation given by Ray Collins, President of the Oakland Real Estate Board: "Eternal One who has reconveyed the lien of failure from our past; And who has highly appraised the value of our lives; And who has granted us a stay of execution on this earth; And who has given us a no down payment on thine unlimited mercy; Accept our collateral of gratitude for the organization and purpose that brings us together today. We thank thee for the full content of character of the Legislators, Realtors and Realists. Relieve our hearts, O' God, from the jail of sin; And place our hearts in the escrow of thine truth; And may our thanks for the blessings and bounties of this table be recorded in your memory bank without interest; And when our mission on earth is finished, O' Divine Legislator, O' Divine Broker, O' Divine Commissioner, May we possess fee simple estate in that invisible city where color-blindness and professionalization will be a reality and the Trustor and Mortgagor will be at rest. Amen."

Mortgage Loan Disclosure Statement Revised

(Continued from page 1)

of paper. Consequently, brokers who negotiate mortgage loans subject to the California Real Estate Law must continue to furnish the prospective borrower with the Truth-In-Lending disclosure statement as well as the Mortgage Loan Disclosure Statement.

Sample copies of the new form of Mortgage Loan Disclosure Statement are available at any office of the department.

Environmental Impact Report May Be Required

Most new California subdivisions will be subject to environmental impact evaluation under the California Environmental Quality Act as amended by the 1972 Legislature.

In a large majority of cases, this evaluation will be made by the city or county in connection with the approval of maps pursuant to provisions of the Subdivision Map Act. If it is determined that a project will have a significant effect upon the environment, then the developer must submit a draft environmental impact report for review by the appropriate agency.

After additional comments from public agencies, the public and others with special expertise, a final environmental impact report will be written and the responsible agency will determine whether or not the project is approved or disapproved. Under guidelines established by the Resources Agency of the State of California, this environmental study will take place in connection with the local government's approval of the tentative subdivision map or parcel map.

Department of Real Estate

There will be a few instances when the Department of Real Estate rather than local government will be the agency responsible for preparation of the environmental impact report or for making a determination that the subdivision project will not have a significant effect upon the environment. For example, the department may be required to act in the capacity of re-

sponsible agency in the case of applications for public reports for land divisions that are not subject to subdivision map or parcel map approval under the Subdivision Map Act or

Regulations: Under the provisions of Section 21082 of the Public Resources Code, the Real Estate Commissioner has adopted regulations 2820 through 2823.1 effective April 5, 1973 concerning the criteria and preparation of Environmental Impact Reports.

local ordinances implementing the map act. Moreover the department frequently receives applications for public reports from persons who have purchased five or more lots in subdivisions with maps recorded before the date of effective local control over design and improvement of subdivided lands. Since in these cases, no local governing authority has issued approval or entitlement under provisions of the Subdivision Map Act, the department must assume the responsibility for environmental impact evaluation.

The processing of "EIRS" by department personnel will involve most of the same procedures followed by city or county authorities. The department's Subdivision Section will incorporate the environmental impact evaluation procedures into its normal processing of applications for public reports.

Earned Commissions Do Not Belong in Trust Account

Since a portion of a real estate broker's earned commission sometimes belong to one or more participating salesmen, the question arises as to the proper depository for earned commissions pending their disbursement.

After a transaction has been properly closed and a broker is entitled to the receipt of his fee, he should deposit the amount to his business account as distinguished from his trust account. He may then properly disburse his share to himself and the remainder according to his agreement with his salesmen. Actually the gross commission belongs to the broker subject to his business obligation to pay his salesmen in accordance with their broker-salesman relationship agreement.

This is not a normal broker trust obligation and the trust fund account should not be utilized for the purpose of holding licensees' money.

All earned fees and commissions should be deposited in the broker's business account. As an exception, small fees from rental collections may be accumulated in the trust account for no more than 30 days, at which time they should be transferred to the business account.

The placement of earned commissions in the trust account, the retention of commissions therein after a transaction is closed, and the retention of small fees in the trust account for over 30 days is a form of commingling and subjects a broker to possible disciplinary action by the commissioner.

OUT-OF-STATE SUBDIVISION OFFERINGS MUST MEET "FAIR, JUST AND EQUITABLE" TEST

Subdivision legislation directed toward regulation of marketing of out-of-state parcels to California buyers became effective September 20, 1963. The act spelled out the Real Estate Commissioner's authority in enforcing more stringent subdivision laws, and provided that the offerings must meet a *fair, just and equitable* test before a public report and permit may be issued permitting advertising of land for sale or lease in California.

Other requirements include full disclosure, adequate financial arrangements or guarantee for installation of promised improvements or amenities.

The developer is required to submit a current appraisal of the offerings, prepared by a qualified independent appraiser. In addition, an appraisal is made by a staff appraiser of the Department of Real Estate.

Since the inception of the new law, many inquiries have been received by the department relative to intentions to advertise and sell *out-of-state* subdivisions in California which is indicative of the out-of-state developers' interest in reaching the California market. Approximately one-third of these inquiries actually result in a filing, due primarily to the rigorous require-

ments of the subdivision law.

Department appraisers have appraised subdivision offerings located in the following states and countries, to-date: Arizona, Florida, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Australia, Brazil, Fiji Islands, Mexico and Spain.

During the period of September 20, 1963-June 30, 1972 there were 201 out-of-state public reports and sales permits issued, involving 70,808 acre divided into 53,743 lots.

The following states lead in number of permits issued: Arizona, 76; Oregon, 48; Nevada, 43; and Hawaii, 17.

GOVERNOR APPOINTS LINDSEY TO STATE REAL ESTATE COMMISSION

Governor Reagan on April 24, 1973 named Robert C. Lindsey of San Jose to the State Real Estate Commission and announced the reappointments of Arthur S. Leitch of San Diego and Laurance H. Wilson of Fresno.



ROBERT C. LINDSEY

Mr. Lindsey fills the vacancy created by the death of Grant B. Potter of Dinuba and will serve as a public member of the commission. His term will expire January 15, 1977.

He has been active in the transportation business for the past 20 years and is president of the Yolo Transport Company in San Jose since 1962.

Lindsey attended Long Beach City College. During World War II he served as a Naval Aviator, and is a Lieutenant Commander in the United States Naval Reserve (Air).

He has been active in the civic affairs of his city, and is presently a member of the advisory board of the Salvation Army.

Leitch and Wilson Reappointed

Leitch and Wilson were reappointed to four-year terms. Other members of the commission are William P. Beachem, Los Angeles; John Cotton, San Diego; Harlan Geldermann, Danville; Frank MacBride, Jr., Sacramento; and Phil Saenz, San Diego, serving as the other public member of the commission. The Real Estate Commissioner serves as chairman.

"We Have Buyers for Your Property"

An order was filed recently against a Southern California broker because he was sending out postcards to homeowners which solicited listings of their properties based upon the statement, "We have buyers for your property".

The facts were, broker had inquiries for a particular size home or one with certain features, but he did not have a bona fide buyer to purchase the properties solicited.

Warning: Misleading statements to obtain business are as much violations of the real estate law as are misleading statements to make a sale!

Farm Real Estate Values

The U. S. Department of Agriculture reports sharpest increase in farm real estate values since 1951 was recorded for the year ending November 1, 1972. Average value per acre shot up 10 percent nationally.

Date	Total Value	Value Per Acre
Nov. 1972	\$249.6 billion	\$230.00
Mar. 1972	\$228.1 billion	\$216.00
Nov. 1971	\$221.1 billion	\$207.00

In the past year, as in 1951, much of the increase was attributable to the substantial rise in farm commodity prices which helped to boost both gross and net farm income. Other factors which stimulated the jump in land values in 1972 were the plentiful supply of loanable funds, continued strong non-farm demand for land, and a slight downturn in the quantity of land offered for sale.

A TIP FOR SALESMEN

Keep Your License Records Up-to-Date

When you apply for a real estate broker examination, will your application be delayed by needless correspondence? It is your responsibility as well as your employing brokers to see that your license record is kept up-to-date on department records.

Of the several hundred broker applications filed each month based on salesman experience, approximately two-thirds are defective for lack of proper experience verification by employing brokers. This defect causes a variety of correspondence and delays for the broker applicant.

A good way to have records of your salesman experience is to follow the law. On the day you enter the employ of a new real estate broker mark out the name of your former broker on the face of the license certificate and type or write the name of the new employing broker in ink on the reverse side and date and initial same.

Remind your broker to notify the commissioner in writing of your new employment.

Whenever you leave the employ of a broker, notify the broker so he can fulfill his responsibility of notifying the commissioner of your termination.

Whenever you leave a broker's employ, a good idea is to request him to complete the verification of employing broker form at that time so

Conversion of Apartments To Condos Continues

The divided ownership of units of horizontal or vertical space into condominiums is the fastest growing subdivision concept to reach California buyers in decades. Apartment conversions, headlined in the *Spring Bulletin*, appear to be a partial solution to the housing need and still retain "pride of ownership".

The need of environmental impact reports for new projects has apparently speeded the recent trend to convert apartments. The existing residential apartment, categorically exempt from environmental control, offers a wide range of successful development potential. The "wave of the future", according to authorities, "goes so far as to predict replacement of the regular apartment".

Certainly It's More Than a Fad

These statistics bear watching. About 13 percent of the total number of condominium applications, filed in 1970, were apartment conversions. In 1971, the number jumped to 26 percent; in 1972, 33.6 percent; during the first quarter of 1973 a whopping 46 percent of all condominiums filed with the DRE were conversions.

Conferences and Meetings

Condominium conversions are not limited to apartments. They may involve duplexes, fourplexes, industrial and commercial projects. Office buildings and shopping centers are also areas in the process of conversion.

One Southern California developer has filed over 40 separate projects in which conversions of existing properties were involved. A recent condominium conversion conference was reported to have over 850 people in attendance. So it looks like the "conversion fever" is a lasting one.

when your two years experience is fulfilled you won't have to reconstruct your licensed history by guesses of "historical facts".

If you keep good records, obtain proper verification of your experience on department verification forms you will be able to submit a broker application that can be promptly processed and not be one of the many whose application is needlessly held up because the application "facts" do not coincide with department records.

False Advertising Actions Against Real Estate License Prep Courses

Early in March 1973, the Real Estate Commissioner filed Superior Court complaints against four mail order operations charging false or misleading advertising of real estate examination preparation services offered by the defendants. The complaints seek injunctions and civil penalties.

Included in the allegedly false or misleading representations by the firms were such statements as:

- These questions are taken from the the latest state exams.
- You will see these questions on your state exam.
- Through our special sources, these questions have been made available to us.
- Over 1,000 questions and answers taken from recent California real estate examinations.
- An up-to-date full length sample state exam.

In the opinion of the commissioner, these representations and others were made to induce prospective license examinees to conclude that the defendants had somehow been able to obtain from the department questions and answers regularly used in the real estate broker and real estate salesman license examinations.

Question Bank

No private school or examination preparation service has access to the question bank of the department from which questions are selected at random for real estate license examinations. The commissioner is aware that many schools debrief their former students after examinations for the purpose of reconstructing questions and answers in the bank. While the commissioner disapproves of this practice, he does not have the authority to prohibit it. However, licensees and prospective licensees should know that the questions and multiple choice answers are constantly being revised by the department in substance or in form to the end of assuring that only those examinees who have a thorough grounding in all aspects of real estate will be able to pass the license examination.

Commissioner Denies Permit for Arizona Offering

Perhaps one of the most salient laws the California public has for protecting itself against overpricing of subdivision lots located in our neighboring states is the *fair, just and equitable* provision in the California Business and Professions Code that governs the sale of real property securities.

In its broadest sense the term *fair, just and equitable* denotes fairness, justice and right dealing. These provisions of the law give the Real Estate Commissioner jurisdiction over the sales prices of the offering determined by both independent and department appraisers.

Application of the *fair, just and equitable* principle (exclusively used in out-of-state subdivision and syndication control) was capably demonstrated in a recent hearing.

An Arizona subdivider (a corporation) filed a supplemental questionnaire and application for Public Report and Permit on two tracts of land containing 299 and 227 lots respectively. The two tracts were located within a subdivision comprising over 2,000 lots. **A Subdivision Public Report and Permit was required before the offerings could be made to the California public.** The commissioner denied the permit on the ground that the proposed sale prices of the out-of-state lots would not be *fair, just and equitable*.

Subdivider Sought a Hearing

At a formal administrative hearing, the subdivider submitted appraisals covering the two tracts, which concluded the fair market value of the 299 lots contained in one tract as \$2,570,300. The other tract, consisting of 227 lots, was valued by the subdivider's appraiser at \$2,156,700.

The appraisals were based on comparative values, that is, the price at which comparable lots in adjacent subdivisions were previously sold by the subdivider.

The proposed selling price of the new lots to California residents was actually in excess of the values placed on them by the independent appraiser. The subdivider had initially sold approximately 96 percent of several hundred lots in previously approved subdivisions which were cited as comparable. **The appraisal failed to mention the value of resale lots being offered in that area by individual lot owners which were readily available for substantially less money.**

Comparables?

At the hearing the department proved the prior sales made by the subdivider did not constitute a reliable market upon which to base comparables.

The application of the "market data approach" produces an estimate of value of a property by comparing it with similar properties of the same type and class which have been sold recently or are currently offered for sale in the same or competing areas.

If comparables are to be used in establishing fair market value then consideration must be given to all available market data which must be properly evaluated.

Since the subdivider controlled the sales in his previous subdivisions, the comparables submitted did not justify a *fair, just or equitable* sales price of the lots being offered in California.

The state hearing officer upheld the commissioner's original denial.

Relying on Oral Listings is Risky

The *Bulletin* periodically alerts brokers that they are presumed to be more familiar with the requirements of the *Statute of Frauds* than laymen and, therefore a broker cannot expect to receive much sympathy from the court when he relies on an oral contract to claim a commission.

The Statute of Frauds spells out the contracts that are invalid, unless they are in writing, and subsection 5 reads:

"An agreement authorizing or employing an agent, broker, or any

other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where such lease is for a longer period than one year, for compensation or a commission."

Thus, licensees claiming a commission in a real estate transaction should have some written memorandum of agreement.

Your Responsibility: Tell The Whole Truth

A real estate agency is created primarily for the benefit of the principal and, although the agent incidentally benefits by receiving compensation for his work, compensation is not the purpose of the agency. There are times when a little dramatizing may be needed to consummate a sale and earn a commission, but **false and inaccurate statements have no part in today's real estate transactions.**

The fiduciary relationship between the agent and his principal imposes the duty of acting in the highest good faith toward his principal. This relationship is the most important obligation the salesman or broker is vested with. The courts have always sustained this relationship and go so far as to treat the agent virtually the same as a trustee.

Actionable Fraud

In a California case several years ago¹ the sellers of real property brought an action based on fraud against the real estate broker. The broker, in showing the property to prospective purchasers, represented that the residence was not built on a filled lot. Later the house settled and was damaged. The purchasers bought in reliance on the agent's representation and later brought action against the sellers for rescission. The purchasers prevailed. The seller sued the broker and recovered damages including commission, charges, attorney fees and loss of earnings during the time spent in defending the action of the buyer. The court said that the broker violated his duty to his principals by not informing them of the representations he had made to the purchasers that the lot was not a filled lot, and thereby perpetrated a fraud upon the confidence bestowed upon him by the sellers.

The elements of fraud and misrepresentation ordinarily comprise affirmation of fact, not of mere opinion. **Despite this general rule, misrepresentation of opinion is actionable in many situations and particularly when the agent is clothed with a real estate license, his badge of authority, which advertises that he possesses superior knowledge or special infor-**

mation regarding real property. A statement by an agent to his buyer that a certain lot is an excellent investment and will increase in value, when there is no sound basis in fact, may be actionable because he is presumed to have superior knowledge and what he thought was opinion may well be affirmation of fact. **The same statement made by a layman, on the other hand, may be treated as opinion.**

It is needless to write about the outright reckless, careless or intentional lie made by a real estate agent. All the books and words of wisdom will not prevent the liar from deceiving. When the agent knows what he said is false, it is material to the purchase and the buyer relies on his statement, even though there may be no loss, the licensing authority will mete out discipline.

Honesty and Truthfulness

In a fraud case about ten years ago² a principle of law was clearly manifested when the court said that **"Honesty" as used in the licensing provisions of the Real Estate Law has the broadest possible meaning. "Truthfulness means the truth, the whole truth and nothing but the truth."** A broker's ignorance of his duty of fidelity to his principal does not excuse a violation of that duty.

Mere silence can also be misrepresentation when under a duty to know and the cruelest lies are often told in silence.

Negative Fraud

In another pertinent case³ it was held that deceit may be negative and facts not known by the buyer or within the reach of his diligent attention must be disclosed to him by the seller, and by the broker representing him if they materially affect the desirability of the property and if the broker is aware that the facts are unknown to the buyer. The court referred to non-disclosure as "negative fraud" and did not excuse the broker because of an "as is" provision in the deposit receipt.

A reasonably prudent buyer of real estate has every right to rescind a



contract where the agent by his mere silence has allowed the transaction to be closed without properly informing the buyer. The agent who is not aware of public and private restrictions and controls such as zoning setbacks, four-family use in a single dwelling zone, safety and health regulations, freeway condemnations, school districts and a variety of other restrictions, has not properly performed his obligation to buyer on the premise that the buyer is also presumed to know the law and the transaction he entered into.

Whenever the agent knows the circumstances under which the buyer is buying, he has a duty to disclose matters which would change the course of the transaction. The physical condition of the premise and other relevant information must be fully, not partially, disclosed. The ultimate conclusion for all agents to follow is that full disclosure must be made whenever elementary fair conduct demands it.

No matter what is said or not said in a real estate transaction, whether intentional, reckless, careless or non-disclosure through silence, the buyer must of course have believed it to be true and to have relied upon it. The so-called test of reliance—that which a reasonable, prudent person would do—is no longer reliable since the courts today apply many subjective standards in assessing the buyer's experience and knowledge.

Case Citations:

Kruse v. Miller, 143 Cal. App. 2d 656¹
Rhoades v. Savage, 219 Cal. App. 2d 294²
Lingsch v. Savage, 213 Cal. App. 2d 729³

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Wife Respects Husband, But . . .

Copying license exam answers from your husband makes no difference—it's still dishonest.

That's what a hearing officer decided when he recommended to the commissioner that the license be denied the wife, who, during the course of the real estate salesman license examination, answered each question after observing the answer marked by her husband.

Section 10141

BROKER MUST REVEAL SELLING PRICE TO BUYER AND SELLER

Since most real estate transactions are handled through escrow, few real estate practitioners are affected by Section 10141 of the Real Estate Law which requires a broker to disclose the sales price to both buyer and seller.

There is a chance, however, that the statutory provision could apply, under isolated circumstances, so licensees should at least be reminded of the existing law.

In essence, the law requires a broker to render to both buyer and seller a written statement setting forth the selling price of the property within one month after closing the transaction. In an exchange situation, he must furnish both parties a description of the property as well as the amount of added money consideration.

When the transaction is closed through escrow, the disclosure obligation is met providing the required information is embodied in the closing statement.

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Should You Have a Corporation License?

A real estate broker may find it advantageous to conduct some or all real estate business through a corporation or he may desire to become an officer of an existing licensed corporation.

The common conception that the holder of an individual license simply transfers into the corporation is not correct. The law requires that a new license be obtained on behalf of the corporation. A corporation application, furnished by the DRE, is required and generally the full license fee. In effect, the corporation is applying for the license; qualifying through one or more of its officers which permits the corporation to engage in business as a broker.

A broker may have more than one license. To illustrate, he may be licensed with the corporation and also hold an individual license. Each license is considered separate and distinct with respect to changes in address, renewals, salesman employment, etc. Fees and time remaining on any one license may not be transferred to another.

A corporation license permits the broker to engage in activity on behalf of the corporation only. The individual license permits activity on his own behalf. If a broker has a corporation license he need not maintain an individual license. Without it, he may not engage in any agency activity except through the corporation.