



REAL ESTATE BULLETIN

EDMUND G. BROWN JR., Governor

Summer 1976

Hearings Disclose Abuses

REAL ESTATE UNIT FOR HIGH SCHOOLS

In development for about one year and now being introduced to high school senior students is a real estate individualized study unit which will give 12th graders an opportunity to learn more about their housing needs and requirements and how to meet them. These future home buyers/renters will spend about 25 percent of their incomes on housing—hence, the need for consumer training in the housing awareness program at the high school level.

We learn early about hotrods, television, stereo, and other gadgets that capture the weekly allowance but seldom learn about how to rent or buy a house until we decide to move out on our own, and then we usually learn by “hard knocks”. Young people don’t like regimentation and authority, but they sure like to eat and sleep. To do that they need to know more about

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IMPORTANT NOTICE: NEW REGULATIONS

To aid licensees in carrying out their responsibilities under Section 125.6 of the Business and Professions Code dealing with prohibitions of discriminatory acts, the DRE is in the process of developing new regulations which may be obtained at any district office after August 15, 1976.

Editorial Note: Real estate agents are in a unique position to guide the healthy development of a city. They possess a breadth of knowledge about quality of housing, neighborhood characteristics, comparative financing and appreciation of property rights. Their special knowledge and agency responsibility demand industry responsiveness.

Secretary of Business and Transportation, Donald E. Burns, directed the Department of Real Estate last April to open “immediate statewide investigations” into the practice of redlining as it involves real estate licensees.

Redlining is the practice of denying the availability of home financing without regard to the credit worthiness of the individual or the soundness of the structure.

The role of real estate licensees in contributing to redlining practices was never officially explored until the DRE held public hearings in Los Angeles and San Francisco in April.

Testimony gathered at the two hearings revealed that some licensees thrive on the hardships and discriminatory practices forced on owners who cannot obtain financing to improve their properties.

While numerous complaints of discrimination in financing were told to state officials at the hearings, it is recognized that major responsibilities in eliminating discrimination rests with all components of the residential mortgage industry and those engaged in the real estate business.

“We Have No Choice But to Move Decisively to Meet the Challenge Head-on”

The Business and Transportation Agency, the cabinet level agency, which oversees the Departments of Savings and Loan, Banking, Insurance, Corporations, and Real Estate already has proposed anti-redlining regulations called the “toughest in the nation” by the *Wall Street Journal*.

The practical challenge facing the Brown Administration is to develop and implement a far-reaching program to bring about solutions. As Burns said: “We have no choice but to move decisively to meet the challenge head-on.”

Some practices licensees and speculators have been charged with in open testimony include falsification of loan applications, inducing panic sales, and profiteering through quick property turnovers.

Testimony revealed the practice of some licensees who deliberately steer racial minorities to transitional neighborhoods in order to create a quick turnover. Channeling buyers to certain neighborhoods according to racial or ethnic background of the buyer in an attempt to maintain racial composition of neighborhoods, a federal and state offense under fair housing laws, was cited as one of many practices engaged in by some real estate agents.

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

Disciplinary Action—January—March 1976

REB—Real estate broker
RREB—Restricted real estate broker
RES—Real estate salesman
RRES—Restricted real estate salesman
REO—Real estate officer
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.
* Not previously published

LICENSES REVOKED

Name	Address	Effective date	Violation Code/Commissioner's Regulations
*Colvenbach, Regina Erena (RES)	1436 12th St., #F, Manhattan Beach	12/22/75	490, 10177(b)
*Frainee, Joseph Anthony (RES)	230 Campbell Ave., Redlands	12/22/75	490, 10177(b)
*Tharaldson, Arthur Conley (REB)	7305 Arlington Ave., Riverside	12/22/75	10145, 10148, 10165, 10176(i), 10177(d)
DbA—Home Real Estate			
*King, Jane (REB)	4461 Don Felipe Dr., Los Angeles	12/23/75	490, 10177(b)
*McDonald, Lemuel Harold (REB)	4919 Indian Wood Rd., Apt. 499, Culver City	12/23/75	490, 10177(b)
DbA—Action Realty Co.			
*Thomas, Elizabeth Julie (RES)	4155 Chevy Chase Dr., Pasadena	12/23/75	490, 10177(b)
*Tintary, Joseph Abraham (REB)	15855 E. Edna Pl., Irwindale	12/23/75	490, 10177(b)
Brooks, Marjorie Mary (RES)	533 S. Cast, #5, Anaheim	1/ 6/76	490, 10177(b)
Leahy, William Albert (RES)	850 1/2 N. Van Ness, Los Angeles	1/ 6/76	490, 10177(b)
Choukair, Charles (RES)	6472 Rancho Park Dr., San Diego	1/ 8/76	10177.5
DaRuelle, Gene Harve (RES)	4258 Beeman Ave., Studio City	1/ 8/76	490, 10177(b)
McGowan, Shirley Helen (RES)	5150 S. Normandie Ave., Los Angeles	1/ 8/76	490, 10177(b)
Myers, Dolores Rodgers (REB)	11669 Santa Monica Blvd., Ste. 103, Los Angeles	1/13/76	10145, 10176(a)(e)(i), 10177(d), 2832
DbA—Dolly Myers			
Piercy, Leon Wesley (RES)	300 W. Katella Ave., Sp. 137, Anaheim	1/28/76	490, 10177(a)(f)
Ockey, Bobby Jean (RRES)	2073 Paddock Ln., Norco	2/ 3/76	490, 10177(b)(f)
Gould, Daniel Wright (REB)	10339 Zelzah Ave., #53, Northridge	2/10/76	10145, 10176(c)(i), 10177(d)(f)(j)
DbA—Welcome Realty			
Officer—El Rancho Realty			
Officer—Ski-X Realty, Inc.			
Officer—Sun Real Estate, Inc.			
Schiller, Kurt (REB)	1125 S. San Gabriel Blvd., San Gabriel	2/10/76	10176(a)(e)(i), 10177.5
Hackett, William Bostic III (REB)	521 E. Anapamu St., Santa Barbara	2/13/76	10177.5
Payne, David Leonard, Jr. (RES)	4105 E. Broadway, Long Beach	2/17/76	490, 10177(b)
Tom, Quailand (REB)	1042 Grant Ave., San Francisco	2/26/76	490, 10177(b)(f)
Nunley, Monte Joe (REB)	Rte. 3, Box 79-A, Broken Arrow, Oklahoma	3/ 2/76	490, 10177(b)
DbA—Allied Brokers			
Williams, James Monroe (RES)	1101 S. Winchester Blvd., San Jose	3/ 2/76	490, 10177(b)
Germany, Yvonne (RES)	1134 Irving, San Francisco	3/ 8/76	490, 10177(b)(f)
Sadecki, Eugene Jerome (RES)	6300 Randi Ave., #F-105, Woodland Hills	3/11/76	10177(b)
Lombardi, Henry Jay (RES)	711 Cardinal St., Lodi	3/16/76	10177.5
Vaughn, Junior Paul (RES)	620 Oregon St., Manteca	3/16/76	10176(a)(i), 10177(j)
Burney, Lois Elaine (RES)	72 Canterbury Ave., Daly City	3/23/76	490, 10177(b)(f)
McRae, John Kenneth (RES)	4141 George St., San Mateo	3/31/76	490, 10177(b)(f)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective date	Violation Code/Commissioner's Regulations
*Cotton, Irwin Joseph (REB)	573 Kernberry Dr., San Rafael	9/23/75	10176(a)(f)(g)(i), 10177(d)(f)
DbA—Apex Realty DbA—Cotton Realty			
(Right to RREB license after 90 days on terms and conditions)			
*Barros, Hernan William (RES)	820 N Bradley Rd., Santa Maria	12/23/75	490, 10177(b)
(Right to RRES license on terms and conditions)			
Young, Faye (RES)	8440 Sunset Blvd., Los Angeles	1/15/76	490, 10177(b)
(Right to RRES license on terms and conditions)			
Simmons, Richard Jr. (REB)	11022 Canon Vista, San Jose	2/ 2/76	490, 10177(b)(f)
(Right to RREB license on terms and conditions)			
Mezydlo, Julie Ann (RES)	2800 Neilson Way, Santa Monica	2/10/76	490, 10177(b)
(Right to RRES license on terms and conditions)			
Quan, Warren Fay (RES)	5161 Saddlebrook Dr., Oakland	2/10/76	490, 10177(b)
(Right to RRES license on terms and conditions)			
Bockwinkel, Dennis Bryan (RES)	4605 Lankershim Blvd., N. Hollywood	2/17/76	490, 10177(b)
(Right to RRES license on terms and conditions)			
Dibb, Edward Harold (REB)	3978 Park Blvd., San Diego	2/17/76	490, 10177(b)
(Right to RRES license on terms and conditions)			
Gettemy, Graham Hilton (RES)	36 Tiburon Blvd., Mill Valley	2/17/76	10176(a)(i), 10177(g)
(Right to RRES license after 30 days on terms and conditions)			
Jackson, Robert Franklin (RES)	9314 S. Figueroa St., Los Angeles	2/17/76	490, 10177(b)
(Right to RRES license after 30 days on terms and conditions)			
Kanig, Arnold (RES)	483 N. Palm Canyon Dr., Palm Springs	2/19/76	490, 10177(b)
(Right to RRES license after 60 days on terms and conditions)			
Josephson, Kenneth David (RES)	274 E. Hamilton Ave., Ste. A, Campbell	2/23/76	490, 10177(a)(b)(f)(g)
(Right to RRES license on terms and conditions)			
Changras, Harry Socrates (REB)	221 Highland Terrace, Los Gatos	2/25/76	10145, 10177(d)(f)
DbA—Professional Land Service Co.			
(Right to RREB license on terms and conditions)			
Judge, Duane (RES)	849 Abrego, Monterey	2/25/76	10177(b)(f)
(Right to RRES license on terms and conditions)			
Cox, Randall Glen (RES)	12246 E. Artesia Blvd., Cerritos	3/ 9/76	10176(a)(i), 10177(d)(g)
(Right to RRES license after 90 days on terms and conditions)			
Moody, John William (RES)	705 Plumosa Ave., Vista	3/11/76	490, 10177(b)
(Right to RRES license on terms and conditions)			
Radetich, Theodore Ivan (RES)	1850 Warburton Ave., Santa Clara	3/23/76	490, 10177(b)
(Right to RRES license on terms and conditions)			
Lavey, Jack Matthews (REB)	3730 Hopyard Rd., Pleasanton	3/25/76	490, 10177(b)(f)
(REO)			
DbA—Allied Brokers			
Officer—A. B. Property Management, Inc.			
(Right to RREB license on terms and conditions)			
Fournier, Lawrence Emil (REB)	2190 S. Bascom Ave., Campbell	3/30/76	490, 10177(b)
(REO)			
DbA—Allstate Realtors			
Officer—All Estates, Incorporated			
(Right to RREB license on terms and conditions)			



LICENSES SUSPENDED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Bates, William L. (REB)(REO) Officer—Mutual Development Corporation	18387 Hwy. 18, Apple Valley	12/19/75 60 days	10177(d), 11010, 11018.2
*Mutual Development Corporation (REC)	14937 Ventura Blvd., Sherman Oaks	12/19/75 30 days	10177(d), 11010, 11018.2
*Byerley, Delores Irene (REB)	8572 Westminster Ave., Westminster	12/23/75 30 days	490, 10177(b)
Bernstein, Hayes Alan (RES)	3415 Midvale Ave., Los Angeles	1/ 6/76 45 days	490, 10177(b)
Boling, Carole Lee (RES)	1044 Manhattan Beach Blvd., Manhattan Beach	1/ 8/76 30 days	490, 10177(b)
Kaelin, Henry William (RES)	16665 Hwy. 238, Grants Pass, Oregon	1/ 8/76	490
Kaye, Harry (REB)(REO)	6861 Beach Blvd., Buena Park	1/ 8/76 60 days	10176(a)(i), 10177(d)(g), 2831(6), 2382
Sharp, Edward Yale (REB)	14023 Crenshaw Blvd., Hawthorne	1/ 8/76 60 days	490
Alger, Charlotte Ann (RES)	P.O. Box 419, 279 W. Main, Quincy	1/13/76 30 days	10145, 10177(d), 2832
Dixon, Jacquelin (RES)	6210 Leona St., Oakland	1/13/76 30 days	10176(e), 10177(g)
Blair, Donald James (REB)	3706 Stone Rd., Bethel Island	1/29/76 15 days	10176(a)(i), 10177(f)
Tinkler, Leo (REB) Db—Leo Real Estate Co. Db—Marin County Multiple Listing Service Db—Marin County Rentals	1561 4th St., San Rafael	3/15/76 30 days	10176(a)(i), 10177(f)
Rathel, Dolores Anne (RES)	1035 Sutter St., Apt. 34, San Francisco	3/18/76 30 days	490, 10177(b)

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Basen, Wilber Henry (REB) Db—Saturn Realty (All but 15 days stayed for 1 year on terms and conditions)	22918-B Crenshaw Blvd., Torrance	12/23/75 45 days	10177(d), 11018.2, 2795
*Ferris, Geneva May (RES) (Stayed for 1 year on terms and conditions)	4126 W. Sepulveda Blvd., Torrance	12/23/75 15 days	10177(d), 11018.2, 2795
*Hanback, George Franklin (REB) (REO) Officer—Arrow Realty (All but 15 days stayed for 1 year on terms and conditions)	4126 W. Sepulveda Blvd., Torrance	12/23/75 45 days	10177(d), 2795
Cal Francisco Investment Corporation (REC) Db—West Coast Properties (All but 30 days stayed for 2 years on terms and conditions)	1336 Polk St., 2nd Fl., San Francisco	1/ 2/76 12 months	10176(a)(b)(i), 10177(f)(j)
Couch, George James (REO) Officer—Cal Francisco Investment Corporation (All but 30 days stayed for 2 years on terms and conditions)	1336 Polk St., 2nd Fl., San Francisco	1/ 2/76 12 months	10176(a)(b)(i), 10177(f)(j)
Dagovitz, Melvin (REO) Officer—Cal Francisco Investment Corporation (All but 30 days stayed for 2 years on terms and conditions)	1336 Polk St., 2nd Fl., San Francisco	1/ 2/76 12 months	10176(a)(b)(i), 10177(f)(j)
Collins, Mary Louise (REB) (Stayed until July 1, 1976 on conditions)	2060 Hilltop Dr., Redding	1/ 7/76 30 days	10177(g)
Walker, Bryce Nimocks (REB) (After 30 days, may be stayed on terms and conditions)	34618 Fremont Blvd., Fremont	1/ 7/76	10162, 10177(d), 2715, 2754
Mott, William Henry III (REB) Db—Century 21-Wm Mott & Associates (Stayed for 1 year on condition)	25-28th Ave., #306, San Mateo	1/12/76 30 days	10177(j)
DeMey, Mary LaRee (RES) (Stayed for 1 year on condition)	2015 Redwood Rd., Napa	1/26/76 30 days	10177(a)(b)
Donnell, Thomas King (RES) (Stayed for 1 year on terms and conditions)	2909 W. Florence Ave., Ste. 2, L.A.	1/28/76 30 days	490, 10177(b)
Cadwalader, Harry Leon (REB) (All but 30 days stayed for 3 years on condition)	14190 Llagas Ave., San Martin	2/ 9/76 180 days	10177(d)(j), 11010, 11018.2
Miller, Jaleh T. (RES) (Stayed for 1 year on terms and conditions)	944 Noe St., San Francisco	2/ 9/76 60 days	490, 10177(b)
Graves, Larry Andrew (RREB) (Stayed on terms and conditions)	1586 Bay Rd., E. Palo Alto	2/10/76 30 days	10177(k)
Figoni, Frank Dennis (RES) (Stayed for 1 year on terms and conditions)	1001 S. El Camino Real, San Mateo	2/17/76 30 days	490, 10177(b)
Sherwood, Jeffrey Michael (RES) (All but 15 days stayed for 2 years on conditions)	4014 Geary Blvd., Studio City	2/17/76 60 days	490, 10177(b)
Kidd, William Albert (REB) Db—Terrace Properties (All but 30 days stayed for 1 year on condition)	2345 4th St., Santa Rosa	2/23/76 90 days	10177(d), 11010, 11018.2
Schlangen, William (REB)(REO) Db—Terrace Properties (All but 30 days stayed for 1 year on condition)	2345 4th St., Santa Rosa	2/23/76 90 days	10177(d), 11010, 11018.2
Bennett, Geoffry (RES) (Stayed for 2 years on condition)	211 W. 3rd Ave., San Mateo	3/ 1/76 90 days	490, 10177(b)(f)
Massy, Robert Edward (RES) (Stayed for 2 years on condition)	817 Kearney St., El Cerrito	3/ 1/76 120 days	490, 10177(b)(f)
Malone, Charles Fredrick (RES) (All but 15 days stayed for 1 year on condition)	5700 Stockdale Hwy., Bakersfield	3/16/76 180 days	10177(d)

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date	Fund Payout
*Romero, Roger Ivan (REB)	309 Valencia St., San Francisco	9/29/75	\$5,037.86
Dodson, Ronald Lee (REB)(REO) I E M Financial Inc., (REC)	1900 Ave. of the Stars, Ste. 1601, Los Angeles	1/ 2/76	\$4,948.87
McCoy, Ray Sumpter, Jr. (RES)	1900 Ave. of the Stars, Ste. 1601, Los Angeles	1/ 2/76	\$4,948.87
Haan, Anthony Michael (RES)	2056 Wickshire, Hacienda Heights	1/28/76	\$5,875.58
Schwert, Joseph George, Jr. (REB)	4014 Geary Blvd., San Francisco	1/28/76	\$10,000.00
Tripp, Frank Peter (REB)	405 14th St., Ste. 10-C, Oakland	2/ 4/76	\$5,991.87
Gervis, Bert (REB)	6151 Orange, Los Angeles	3/ 2/76	\$9,000.00
Walsmith, Frederick William (RES)	2963-106th Ave., Oakland	3/ 3/76	\$3,430.00
Lombardi, Henry Jay (RES)	7318 Nob Hill Dr., Carmichael	3/16/76	\$10,000.00

Things And People...

DRE RETIREMENTS

Five long time employees announce 1976 retirement: in alphabetical order, *Marcia L. Brown*, Senior Clerk Typist, Education and Publications Section, Sacramento; *John E. Edwards*, Senior Deputy Commissioner, Subdivision Section, Los Angeles; *Kathleen R. Farley*, Senior Legal Stenographer, Legal Section, Sacramento; *John N. Laliberte*, General Auditor III, Los Angeles; and *Burton P. Porter*, Chief Deputy Commissioner, Subdivision Advertising Section, Sacramento.

Edwards, Rear Admiral, U.S. Navy, Retired, worked for the Department of Real Estate over 10 years. Brown, Laliberte and Porter will leave mid-year each with well over 20 years service. Farley worked for the DRE 5 years after 25 years with other state agencies. Their combined 100 years of state experience will be difficult to replace.

REALTOR EMERITUS

Dudley D. Watson, Walnut Creek Realtor and Real Estate Commissioner from 1948 to 1957 was recently designated Realtor Emeritus of the National Association of Realtors. Watson was commissioner under three governors. The designation is one of the highest honors bestowed by NAR and means that Watson has devoted more than 50 continuous years to organized real estate activities.

ETHICS

Professional courtesy and ethics should not stop at those things which have been sanctioned by law. The man who tries only to stay on the border of law inevitably at some time steps across. The code of conduct of which we call law is that which a broker must observe. Ethics is that which he ought to observe.

Source—DRE Reference Book



SUBDIVISION ADVERTISING

The commissioner's subdivision advertising regulations provide that no improvements to subdivided land such as utilities or recreational facilities may be advertised unless the improvements are installed and available for use. An acceptable alternative to the actual existence of such improvements is assurance of completion through bonding or other appropriate financial arrangements for completion.

The subdivision law requires a subdivider to notify the Department of Real Estate in writing whenever an intended material change is to be made to the subdivision.

Case in Point

A recent case illustrates what may happen when a subdivider fails to comply with these laws and regulations.

The Department of Real Estate issued a final subdivision public report on a development which contained only a limited number of improvements in addition to "spec-built" houses. When the market turned sluggish, the subdivider decided to offer additional recreational facilities as incentives to prospective purchasers. The subdivider's sales agent then made a number of sales in which representations of the additional land and facilities were part of the inducement to purchase. No financial arrangements to complete the facilities were ever made. The developer then filed in bankruptcy before the promised facilities could be constructed. The broker is now subject to disciplinary action against his real estate license as well as civil action by purchasers of lots in this subdivision.

Check The Public Report

It is recommended that licensees carefully read the final subdivision public report for any subdivision in which they are selling lots. Any apparent variance between the subdivision as it exists and as it is described in the public report should be checked out with the Department of Real Estate to determine if the subdivider has complied with all of the department's requirements. If the broker had followed this procedure in the case in question, he would have found that

HEARINGS DISCLOSE ABUSES

(Continued from page 1)

The DRE has already mustered several investigative teams to gather evidence for disciplinary actions.

Data collection, a primary reason for public hearings, is essential if discrimination in residential financing is to be eliminated. The pilot hearings data are being studied through a continuing series of meetings in an endeavor to make judgments for responsive regulation.

Analysis of the voluminous data gathered at the hearings will undoubtedly raise questions as to the most effective ways to stop discriminatory practices. Some of the areas being explored include:

- Use of the information by DRE staff in the investigation of individual complaints of discrimination.
- Use of the information to determine the existence of a pattern of discrimination.
- Utilization of data to determine assurance of nondiscrimination in obtaining housing.
- Utilization of data and information which delineate major areas of deterioration in certain metropolitan sectors for on-going compliance reviews.

Regulations aimed at halting discriminatory marketing practices are being formulated. More on regulations in next bulletin.

In looking forward to the future enforcement activities of the DRE, it can truly be said that the activities of the past few months in making redlining practices of licensees a public issue has added a new dimension to chart the path for the future. Licensees and speculators engaged in illegal discriminatory practices are publicly warned that the administration means to accomplish what it set out to do—**eliminate redlining and practices that lead to redlining.**

TEST YOUR KNOWLEDGE

A real estate broker listed for sale a residence which he had sold as agent on a previous occasion. He was and is aware of extensive damage to the house caused by dry rot and termite infestation. A prior owner covered the access to the damaged area by carefully installing attractive plywood fascia board which hid, and inhibited an inspection of the damaged area.

The present seller is unaware of the structural defects although he received a pest control inspection report at the time he purchased the property calling attention to the inaccessible area which prevented inspection.

the subdivider had not made financial arrangements acceptable to the commissioner for completion of the advertised facilities. Upon receipt of this information, the department would certainly have ordered the subdivider to desist and refrain from further sales until satisfactory financial arrangements for completion of the facilities had been made and until the public report had been amended to reflect this change in the offering.

The listing broker obtained a potential buyer of the above described property on the exact terms at which it is listed. The purchase contract included an "as is" clause to which the purchaser was prepared to agree.

Which of the following course(s) of action should the broker take in order to avoid liability and represent the seller's best interest?

- A. The broker should merely present the offer to seller for acceptance. The "as is" clause protects the seller and broker from liability.
- B. The broker should tell the seller about the infested and unsound area even though it may cost a considerable amount to remedy the situation.
- C. The broker should tell the buyer about the infested and hidden area and advise him of the availability of a pest control inspection.
- D. The broker should remain silent because the seller has no knowledge and the law does not require a pest control inspection.

Answer on Page 8.



License Expired?

Have you taken a look at your license certificate lately? When does it expire? If it is about to expire, here are some reminders:

- Send renewal application or letter to DRE, Sacramento along with the fee—Salesman Active \$45.00, Inactive \$22.50; Broker Active \$75.00, Inactive \$37.50.

Contract In Spanish

AB 2797 requires any person engaged in a trade or business who negotiates primarily in the Spanish language, orally or in writing, during the course of entering into specified contracts or agreements, except where customer negotiates through his own interpreter, to furnish upon request of any party to such contracts or agreements prior to execution thereof, an unexecuted Spanish-language translation of the contract or agreement. *The law, effective January 1, 1975, applies to contracts or agreements entered into on or after July 1, 1976.*

Rental agreements for a period longer than one month, such as a lease, sublease, etc., are specifically mentioned in the new law.

A mortgage loan or extension thereof negotiated by a mortgage loan broker is also covered by the law. A reproducible sample Mortgage Loan Disclosure Statement form translated to Spanish language may be obtained from any office of the department.

Further requirements include the conspicuous display of the Spanish translation service and notice that such translated form is available upon request.

The entire bill may be obtained by writing Legislative Bill Room, State Capitol, Sacramento CA 95814 and asking for AB 2797, Chapter 1446, 1974.

- Fee and request for renewal must be postmarked before midnight of the expiration date to avoid late penalty fee.
- Although renewal applications are mailed to all licensees, there is no assurance of delivery.
- Not renewing on time requires an additional late fee.

Research Report Available

"THE IMPACT OF REAL ESTATE FRANCHISE ON THE REAL ESTATE INDUSTRY"

by

Peter Mlynaryk,
Associate Professor of Finance
California State University
Fullerton

Cost \$1.50 + tax. Order from
Department of Real Estate, 714
P Street, Sacramento, CA 95814

MULTI-STATE EXAMS PASS 200,000 MARK

During April the number of multi-state exams administered by all participating states passed 200,000.

At the outset of the program in October 1973, Colorado, Washington and California were participants. In 1974, Idaho, Oregon and Utah joined the program. 1975 saw Georgia and Guam become involved.

The department is corresponding with several other states that have expressed a current interest in the multi-state examination program. The program allows a partial waiver of the real estate licensing exam for those persons who took and passed the multi-state portion in one of the participating states; it means each state using the exam has a uniform comprehensive segment dealing with real estate matters of national scope.

Hopefully, the program will contribute to raising standards to better protect the public here and elsewhere.

FRIENDSHIP DOES NOT DIMINISH DUTY

A homeowner transferred overseas by his employer, asked his friend, a real estate salesman, to look after his home and to rent it out during his absence. The homeowner and the real estate salesman opened a joint savings account to handle receipts and disbursements for the property. The real estate salesman made all deposits to and withdrawals from the account and retained the passbook. According to his agreement with the homeowner, the real estate salesman regularly paid himself a commission equal to 10% of the rents collected from the property. The real estate salesman irregularly remitted funds from the account to the homeowner.

As income tax time approached, the homeowner demanded an accounting from the real estate salesman. The real estate salesman could not comply as he had failed to maintain adequate records of income and expenses.

When the IRS disallowed income property deductions to the homeowner on account of inadequate substantiation, the homeowner complained to the DRE. After an investigation, an accusation was filed against the license of the real estate salesman.

As a result of the hearing on the accusation, the real estate salesman was found to have violated the Real Estate Law, in the following respects:

1. Failure to use a broker's trust account.
2. Receiving compensation for performing acts for which a real estate license is required from a person other than his employing broker.
3. Failure to keep books and to render an accounting to the homeowner.

The real estate salesman's license was revoked even though there was no proof that he actually misappropriated any of the rent money collected on behalf of the homeowner.

If there is a moral to be drawn from this case, it is that a licensee's personal friendship with a principal in a real estate transaction does not diminish the licensee's duties and responsibilities under the Real Estate Law.



Have Buyers!

BETTER PRODUCE THEM

A real estate licensee's duty to his principal in the transaction is a fiduciary one. The licensee also has an obligation to deal fairly and honestly with the party to the transaction who is not his principal. Failure to conform to that standard of conduct recently led to disciplinary action against a broker and salesman.

The salesman learned through a friend that the friend's sister had funds which she desired to invest in real property. At the time, the licensees who were husband and wife were seeking money to purchase a 500-acre ranch. They approached the prospective investor with a proposal under which her funds would be used and she would acquire 80 acres of the ranch. She was assured by the licensees that this was a safe investment since the licensees had many buyers waiting to purchase the 80 acres. They also represented to her that they would resell her 80 acres before selling any portion of the remainder of the ranch property.

The investor provided the funds as a down payment toward purchase of the ranch. After some time, she demanded that she be cashed out through a resale of her 80 acres. The investor complained to the DRE when the licensees ignored her requests. An accusation was filed against both licensees alleging misrepresentations and false promises.

The hearing officer assigned to the case found a basis for disciplinary action against both licensees in that the representations made to induce the investor to make a down payment toward the purchase of the ranch were irresponsible and unjustified. The hearing officer found that the licensees did not have any prospects as purchasers of the 80 acres when they so informed the investor. He also found that the licensees did not make a bona fide effort to sell the investor's land before disposing of the balance of the ranch.

BROKER AGENT OF WHOM?

A broker is ordinarily the agent of the party who first employs him. Thus, a listing broker is the agent of the seller of the property in virtually every instance.

There are, however, many complicating factors in applying the law of agency to real estate brokerage transactions. As Miller and Starr observe in *Current Law of California Real Estate*, the problem is "not one of determining whose agent he (the broker) is with reference to the transaction as a whole, but of determining on whose behalf he is acting as to each particular aspect of the matter." For example, a listing broker who accepts a deposit toward purchase from an offeror holds the deposit as agent for the offeror until there is an acceptance of the offer by the seller.

The cooperating or selling broker in a transaction is not usually considered an agent of the prospective purchaser even though the broker may think of himself as such. There are several reported appellate decisions in California which hold that the co-

operating broker has a fiduciary duty to the seller of the property under a subagency theory. Even if the cooperating broker is not legally the agent of the prospective buyer in a transaction, he has an obligation to deal fairly and honestly with the offeror which arises out of his status as a licensee.

If, without the knowledge and consent of his principal (seller), the listing broker acts for the prospective purchaser, the principal may, when he discovers this fact, declare the contract void. This is true even though the transaction is a good one for the seller and even though the buyer acts in good faith and was unaware of the double agency. It is to the interest of the seller to obtain the highest possible price and of the buyer to pay the least. Clearly, no single agent can serve both these interests.

Although the broker owes the utmost duty and loyalty to the one who first employs him, his agency role is unique—he must deal fairly and honestly with both his client and customer/buyer at all times.

DISHONEST DEALING BY BROKER ACTING AS A PRINCIPAL

A licensed real estate broker, was the owner of an apartment house located in Southern California. He decided to sell the apartment house and gave an exclusive listing to an independent broker. In furnishing this broker with information to complete the listing agreement, the owner-broker described the real property as an 18-unit apartment house. **He knew that the property was approved by the local building department for only 14 units and failed to disclose this information to the listing broker and to the buyer that the listing broker procured for the property.**

Shortly after taking possession of the apartment house, the buyer discovered that four of the 18 units were illegal and complained to the Depart-

ment of Real Estate. An accusation was filed against the owner-broker alleging fraud and dishonest dealing as a principal in the transaction. At the hearing on the accusation, the Administrative Law Judge found that the owner-broker's conduct in the transaction was prompted by the desire to induce the buyer to purchase the property at a price that a 14-unit apartment house would not have commanded. The Administrative Law Judge concluded that the actions and omissions of the owner-broker constituted dishonest dealing. The Real Estate Commissioner adopted the Proposed Decision calling for a 60-day suspension of the owner-broker's license even though he was a principal in the transaction.

Cal-Vet Loans

ELIGIBILITY MISREPRESENTED

When Sellers listed their house, they told the listing Salesman and wrote into the listing that they wanted cash but would consider taking back a short-term, purchase-money trust deed.

Later the Salesman presented an offer received through the selling broker's office for \$6,250 cash down, "balance in the form of a new Cal-Vet loan . . ."

The Salesman represented to Sellers that if they accepted the offer as written, the escrow might not close for from six to nine months, the period it could take to obtain Cal-Vet financing. The Salesman further represented that Buyer was eligible for a Cal-Vet loan even though he had not seen any document indicating the Buyer was eligible.

The Sellers rejected the offer and submitted a counteroffer, *as proposed by the salesman*, which provided in part: (1) Buyer to apply for Cal-Vet loan within three days, (2) Seller to carry first T.D. payable in fifteen years with no prepayment penalty when buyer substituted Cal-Vet financing.

According to the Salesman, this method of handling avoided a lengthy escrow period and assured a payoff of the purchase money T.D. within a short period of time after closing. Relying on these representations, Sellers made the counteroffer which Buyer accepted.

Buyer was in fact not eligible for a Cal-Vet loan. On Seller's complaint, an accusation was filed against the Salesman and the listing Broker.

The Hearing Officer found that the Salesman had misrepresented the Buyer's Cal-Vet eligibility and had further misrepresented to Sellers that they would be taking back the first T.D. only for an interim period until the Cal-Vet loan came through.

As against the listing Broker, it was found he had failed to initial the counteroffer prepared by the Salesman

TRUST FUND

D & Rs HAVE SALUTARY EFFECT

Probably no single aspect of the real estate business is more fundamental than the subject of trust fund recordkeeping. Admittedly, there is little glamour to the office record book. Most of us, particularly the enthusiastic salesman, are quickly bored by the recital of transaction figures in an accounting ledger. But, nonetheless, records are vital to the real estate business and a needful supplement to record the activities of a successful transaction.

AUDIT STATISTICS

In the Summer, Fall, and Winter 1975 Editions of the Bulletin, its editors gave special coverage to trust fund responsibility and warned that the DRE was cracking down on brokers who failed to maintain adequate or proper records.

The Bulletin, Fall 1975, reported that a little over 30 percent of audit examinations made during a previous 12-month period, were cited for minor trust fund discrepancies. The warning apparently sunk in.

From August 1975 to date, department auditors examined roughly 1000 trust accounts throughout the state. Of those examined, about 18% were in violation of some aspect of the real estate law for failure to maintain proper records and received Desist and Refrain Orders. Several accusations were filed.

VIOLATIONS DECLINE

This is an encouraging trend down from the 30 percent reported in violation last Fall, when the DRE was primarily "educating" licensees rather than issuing D & R's.

So, in spite of the slogan "it's cheaper to educate," the use of formal actions has reduced the ranks of violators. Now the job is to somehow get to the non-believers who feel that recordkeeping is an unimportant task. This may require more emphasis on accusations which can lead to suspensions or revocations.

In the meantime, for those who have the knotty problem of unravelling their transaction recordkeeping, the editors have extracted the Trust Fund Records Chapter from the 1976 *Reference Book* (Bicentennial Issue) and will furnish it free of charge. Of course, if you prefer you may purchase the entire *Reference Book* for \$3.00 plus tax which is still one of the best bargains in the state.

as required by Regulation 2725 of the Commissioner.

The licenses of both Broker and Salesman were suspended for these infractions.

The Salesman should not have told Sellers that Buyer was eligible for the loan unless he had actual knowledge or a reasonable basis for believing that this was the case. While the Hearing Officer found that the Salesman had relied upon statements by the selling Salesman concerning Buyer's eligibility for a Cal-Vet loan, this did not excuse the Salesman's failure to ascertain for himself whether the information was correct before repeating it to his principal as an assertion of fact.



The 1976 *Real Estate Reference Book* and the *Real Estate Law* can be purchased from any office of the department for \$3.00 and \$2.00 respectively (plus 6% sales tax if ordered in California).

REAL ESTATE UNIT FOR HIGH SCHOOLS

(Continued from page 1)

society's housing and rental requirements.

IT'S YOUR MOVE

Over 350,000 copies of the high school unit, called *It's Your Move* were delivered to California's 1200 high schools in the Spring. Secondary teachers were invited to one of ten workshops scattered throughout the state to explain the new unit. Instructors say the housing unit is needed at the secondary level particularly when young people are approaching the time to break away from many prior family ties.

WHAT THE PROGRAM OFFERS

The student manual of *It's Your Move* contains a pretest and posttest which allows each student to measure knowledge gained from the information studied. The manual has 13 real estate case problems to be solved and 12 real estate activities. Some of the topics covered are:

- Importance of housing.
- What to consider before deciding to rent, lease, or buy.
- How to determine individual housing needs.
- Oral agreements.
- Written agreements.
- Different types of fees and deposits.
- Landlord/tenant responsibilities and points of view.
- How to read real estate want ads; renting, leasing, subleasing, terminating a lease.

ANSWERS: (from Test Your Knowledge, Page 4)

Both B and C are the correct course of action for the broker to take. Loyalty to his principal's interest requires that an agent make known to his principal every material fact concerning his transactions and the subject matter of the agency that comes to his knowledge or is in his memory in the course of his agency. If he fails to do so, the agent's license could be disciplined and he is liable in damages to his principal for any injury incurred or loss suffered in consequence of such failure. (McPhetridge v. Smith (1929) 101 CA 122, 281 p. 419)

Answer A is incorrect. The courts of California have consistently held that an "as is" or other hold-blameless provision in a contract for the sale of real property will not extend protection to the seller from liability beyond a defective condition which is visible to or observable by the purchaser. Even if the seller made no actual misrepresentations to the buyer, the seller would still be liable upon proof that the buyer was induced to purchase the property through the seller's or his agent's nondisclosure of a fact materially affecting the value of the property.

Answer B standing alone is incorrect. The broker owes a fiduciary duty to disclose to his principal (the seller) all facts within the knowledge of the broker which could affect his principal's decision in the transaction. The broker also owes a duty of fair and honest dealing to the prospective purchaser in the transaction. Concealing a known defect in the property from a prospective purchaser would clearly not satisfy either the letter or the spirit of the law in this regard.

Answer C standing alone is incorrect because the combination of the "as is" clause in the purchase contract and the mere advising about a pest control inspection may or may not expose hidden defects and does not amount to a full disclosure.

Answer D is incorrect. Silence when there is a duty to speak does not relieve liability.

Answer A and D are incorrect. If either answer is incorrect, standing alone, the combination of two negatives does not equal a positive course of action.

- The housing cycle including personal tastes and needs.
- Kinds of housing in the market.
- Considerations for buying/building a new/old house.
- Functions of the real estate agent.
- Real estate financing.
- "For Sale by Owner."
- Zoning, contingencies, contracts.
- Need for savings, cost of money, tax records to keep.
- Considerations before deciding to remodel or sell.
- Real estate formulas, tax shelters, and investments, future of housing, etc.

THE NEED REALIZED

Last year the DRE authorized the California State University, Fullerton, to conduct a study on housing education. Excerpts of that study, *The Need for Real Estate and Housing at the Secondary Level*, were summed up by researcher Norman Townshend-Zellner in these words: "Real estate and housing instruction is an insignificant part of the high school unit . . . it is an orphan in the high school curriculum. Real estate topics, understandings, and performance objectives essential to minimal real estate and housing literacy . . . are not being adequately covered in a large majority of California secondary schools".

You can help having this R.E. resource unit used in your local high school by asking your local educators how they are using *It's Your Move* in your son's and daughter's programs. The experimental unit is not planned to be sustained by the state.