



REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Summer 1979

DAVID H. FOX, Commissioner

Ethics and Professional Conduct Code

The most serious problem facing you today is that the public holds real estate agents in low regard. This poor public perception is unwarranted and unjustified. Our challenge is to help consumers better understand and appreciate what a good and professional job we are doing.

The cornerstone of any well-respected profession is a code of ethics for all its members. None has existed for California real estate licensees. Although the California Association of Realtors® has a fine code, it only applies to a minority of our over 370,000 brokers and salespersons. It is time for us to fill this void.

After numerous meetings with real estate practitioners statewide, and a full public hearing, I am pleased to announce the adoption of the Code of Ethics and Professional Conduct for all California real estate licensees. The full regulation text follows. I commend it to you, and urge you to study the Code carefully, and practice your profession in accordance with its provisions.

I am confident that most of you already honor the basic tenets of this Code in your business lives. I want all consumers to realize this also.

By publicizing our Code, and adhering to it, we will make substantial progress in bettering our public image throughout California. Nothing is more important to the advancement of the real estate profession.

DAVID FOX
Real Estate Commissioner

REGULATIONS OF THE REAL ESTATE COMMISSIONER

Article 11

Ethics and Professional Conduct Code

2785. Code of Ethics and Professional Conduct. In order to enhance the professionalism of the California real estate industry, and maximize protection for members of the public dealing with real estate licensees, the following standards of professional conduct and business practices are adopted:

(a) **Unlawful Conduct.** Licensees shall not engage in "fraud" or "dishonest dealing" or "conduct which would have warranted the denial of an application for a real estate license" within the meaning of Business and Professions Code Sections 10176 and 10177 including, but not limited to, the following acts and omissions:

(1) Knowingly making a substantial misrepresentation of the likely market value of real property to its owner (1) for the purpose of securing a listing or (2) for the purpose of acquiring an interest in the property for the licensee's own account.

(2) The statement or implication by a licensee to an owner of real property during listing negotiations that the licensee is precluded by law, regulation or by the rules of any organization, other than the broker firm seeking the listing, from charging less than the commission or fee quoted to the owner by the licensee.

(3) The failure by a licensee acting in the capacity of an agent in a transaction for the sale, lease or exchange of real property to disclose to a prospective purchaser or lessee facts known to the licensee materially

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May A Mobilehome Dealer "Cooperate" With A Real Estate Broker?

by Hugo Werner
Staff Counsel

To the Bulletin's readership, the question may seem to be backwards. Read on to learn why it is not.

For years a real estate broker with a listing on a lot with an installed mobilehome had a problem. The licensee could list and sell the lot, but was prohibited by the Vehicle Code from acting as an agent in the sale of the mobilehome.

In this situation the broker had a couple of alternatives, neither of which was particularly desirable from his standpoint. The broker could either sell the lot under his real estate license and handle the mobilehome without a commission or he could call in a mobilehome dealer to handle the mobilehome sale. Frequently the real estate licensee would simply leave the negotiating of the sale of the mobilehome to owner and prospective purchaser.

Meanwhile the popularity of mobilehome living increased dramatically over the years.

In 1974 the Legislature came to the rescue. A new law authorized a real estate broker to sell a mobilehome that had been registered for at least one year if it was larger than eight feet in width and 40 feet in length and was situated in a mobilehome park or on a lot where its presence was authorized for an uninterrupted period of at least one year pursuant to a local ordinance or permit.

The new law was a boon to real estate licensees, but it did not operate to give them all of the advantages in used mobilehome sales that they enjoyed in selling real estate. The main thing lacking is the ability of a real estate licensee to cooperate with a mobilehome dealer in the sale of a used mobilehome.

Vehicle Code Section 11713.6 which was enacted in 1976 permits mobilehome dealers to engage in multiple listing and to enter into "cooperative brokering and referral arrangements" with other mobilehome dealers in the sale of mobilehomes which have been registered for at least one year. The

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Official Publication of the
California Department of Real Estate
Member, National Association of Real Estate
License Law Officials

Vol. 39, No. 2

Summer 1979

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The *Real Estate Bulletin* (USPS 456600) 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. Postmaster, send address changes to Real Estate Bulletin, 714 P St., Sacramento, CA 95814.

Disciplinary Action—January–March 1979

REB—Real estate broker
RREB—Restricted real estate broker

RES—Real estate salesperson
RRES—Restricted real estate salesperson

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

FOR YOUR INFORMATION

The following are brief summaries of the numerical code sections listed after each licensee's name. The full context of the various sections is found in the Business and Professions Code and the Regulations of the Real Estate Commissioner, both of which are printed in the Real Estate Law book available for purchase from the Department of Real Estate at \$2.50 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

Business and Professions Code

490	relationship of conviction to licensed activity	10177(a)	procuring a real estate license by misrepresentation or material false statement
10103	continuing jurisdiction over lapsed, suspended, or surrendered license	10177(b)	conviction of crime
10137	unlawful payment of compensation	10177(d)	violation of real estate law or regulations
10145	trust fund handling	10177(f)	conduct that would have warranted denial of a license
10162	office abandonment	10177(g)	negligence or incompetence as licensee
10176(a)	making any substantial misrepresentation	10177(h)	failure to supervise salespersons
10176(c)	commingling trust funds	10177(j)	fraud or dishonest dealing not in licensed capacity
10176(i)	fraud or dishonest dealing in licensed capacity	10177(k)	violation of restricted license condition
		10177.5	civil fraud judgment based on licensed acts

Regulations

2715	broker's failure to maintain current address with DRE
2725	failure of broker to review agreements
2742	failure of corporate broker to file articles of incorporation
2830	failure to maintain trust fund account
2831	inadequate trust fund records
2831.1	inadequate trust fund records
2832	improper handling of earnest money deposit
2832.1	trust fund accountability
2950(i)	broker controlled escrow violation

LICENSES REVOKED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*Zahedi, Ali G. (RES)	5431 Hazeltine Ave., Van Nuys	6/ 8/78	10145, 10176(e)(i), 10177(d)(j), 2830, 2832
Whitehouse, Helen (RES)	3655 Pruneridge Ave., Apt. 110, Santa Clara	1/ 3/79	490, 10177(b)(f)
Davidson, Darrell Conrad (RES)	2639 Renton Way, Castro Valley	1/ 4/79	490, 10177(b)
Crippen, Gerald Leon (RES)	228 Oakwood Dr., Boulder Creek	1/ 8/79	490, 10177(b)
Akins, Charles (RES)	6435 Orange Ave., Sacramento	1/16/79	490, 10177(b)
Cecchini, Joseph John (REB)	300 N. Harrison St., Ste. 200, Stockton	1/16/79	10177(j)
Nicholls, Robert Allan (RES)	5735 Falconer, Sacramento	1/16/79	490, 10177(b)
Canaya, Herbert Filamor (RES)	5125 James Ave., Castro Valley	1/17/79	490, 10177(b)
Spear, Patrick Michael (RES)	P.O. Box 31293, San Francisco	1/17/79	490, 10177(b)
Burhans, Walter James (RES)	2112 Surrey Place, Campbell	1/23/79	10177(b)(f)
Kyles, Douglas Whitney (RES)	3969 Hastings Park Ct., San Jose	1/23/79	490, 10177(b)(f)
Walker, Langston (RES)	716 56th St., San Diego	1/23/79	490, 10177(b)
Anthony, James Lynn (RES)	8259 Grandview Drive, Los Angeles	1/23/79	490, 10177(a)(b)
Arruda, Jeffrey Michael (RES)	580 Buena Vista Ave., #J, Alameda	1/24/79	490, 10177(b)
Griffin, Cheryl Ann (RES)	22632 Linda Dr., Torrance	1/24/79	490, 10177(b)
Pippin, Jack Donald (REB)	10725 Bloomfield Ave., North Hollywood	1/24/79	10177.5
Pontbriand, Linda Gaye (RES)	1535 Hamilton, Simi Valley	1/24/79	490, 10177(b)
Cooper, Michael George (RES)	520 South 2nd St., San Jose	1/25/79	490, 10177(b)(f)
Disterdieck, Alys Runner (RES)	12428 Chandler Blvd., North Hollywood	1/25/79	490, 10177(b)
Hall, Vestal Carl (REB)	5316 Berkeley Rd., Santa Barbara	1/25/79	10177(b)
Martinez, Hank V. (RES)	639 N. White Rd., San Jose	1/25/79	490, 10177(b)(k)
Stalwick, Rion William (RES)	3584 Via Terrace, San Diego	1/25/79	490, 10177(b)
Stearns, Charles Raymond (RES)	217 South Avenue 64, #22, Los Angeles	1/25/79	490, 10177(b)
Clardy, Kenneth Deaton (REB) (REO)	1607 El Centro Ave., Suite 9, Hollywood	1/30/79	2715, 2832.1, 10145, 10162, 10165, 10176(e)(i), 10177(d)
Torino, Ralph Mario Jr. (RES)	12368 Luna Pl., Granada Hills	1/30/79	490, 10177(b)
Up Trend Realty, Inc. (REC)	1607 El Centro Ave., Suite 9, Hollywood	1/30/79	2715, 2742, 2832.1, 10145, 10162, 10165, 10176(e)(i), 10177(d)(f)
Vorhes, Bob Wayne (RES)	24642 Coleford, El Toro	1/30/79	490, 10177(b)
Welch, Gary Lee (RES)	6131 Goshen, Simi Valley	1/30/79	10177(b)
Long, Richard William (RES)	3301 Baywood Ln., Napa	2/15/79	10176(a)(e)(i), 10177(d)
Wollan, Patty Jean (RES)	22035 Burbank, #314, Woodland Hills	3/13/79	490, 10177(a)
Bilello, Lawrence Joseph (RES)	8452 Fountain, #4, West Hollywood	3/14/79	490, 10177(a)
LaMadeleine, John Armand (RES)	3107 Riverside Dr., Burbank	3/14/79	490, 10177(b)
McCliman, Michael Wayne (RES)	531 Helmsdale, Valinda	3/14/79	490, 10177(b)
Reynen, John Dale (REB)	2001 H St., Sacramento	3/19/79	490, 10177(b)
	Dbas—Towne House Developers		

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulation
Newnham, Patricia R. (REB) Dbas—Continental Realty (Right to RRES license after 90 days on terms and conditions)	P.O. Box 1133, 1 Redlands Plaza, Newport Beach	1/ 2/79	10177(d)(j)
Ellsworth, Judith MacKinnon (RES) (Right to RRES license after 30 days on terms and conditions)	5638 Lake Lindero Dr., Agoura	1/ 4/79	2832, 10145, 10176(i), 10177(d)(g)
Hartness, Charles Thomas (RES) (Right to RRES license after 60 days on terms and conditions)	7435 Bella Vista Rd., Atascadero	1/16/79	490, 10177(b)
Jackson, Marian Murrill (REB) (Right to RREB license on terms and conditions)	450 Fresno St., Fresno	1/16/79	2830, 2831, 2831.1, 2832, 2950(i), 10145, 10176(e), 10177(d)(g)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
<i>(Continued from page 2)</i>			
Pounds, Steven Douglas (REB) (Right to RREB license on terms and conditions)	P.O. Box 343, 520 Grand Ave., Tahoe Pines, Homewood	1/16/79	490, 10177(b)
Beauchamp, Robert Francis (REB) (REO) Dba—TAB Management Dba—TAB Properties Dba—TAB Rentals Off—1 H F Management Corporation (Right to RREB license on terms and conditions)	3078 El Cajon Blvd., San Diego	1/23/79	10176(i), 10177(d)
Cherrier, Jacqueline Jeanette (RES) Right to RRES license on terms and conditions)	2924 W. El Segundo Blvd., Gardena	1/23/79	490, 10177(b)
Evans, Norma Jean (RES) (Right to RRES license on terms and conditions)	703 Bay Rd., Menlo Park	1/23/79	490, 10177(b)
Kalpakoff, Anna Louise (RES) (Right to RRES license on terms and conditions)	14242 Flomar Dr., Whittier	1/23/79	490, 10177(b)
Dela Cruz, Gumerindo Maiquez (REB) Dba—Great Western Realtors (Right to RREB license on terms and conditions)	5401 Mission St., San Francisco	1/29/79	2725, 10176(a)(i), 10177(d)(g)(h)
Walker, Errol Jaunes (RES) (Right to RRES license on terms and conditions)	3600 Center Ave., Richmond	1/29/79	490, 10177(a)(f)
Ashworth, Robert Emmet (RES) (Right to RRES license after 90 days on terms and conditions)	11982 Skylane, Santa Ana	1/30/79	10177(b)
Weisberg, Nancy Lee (RES) (Right to RRES license on terms and conditions)	3215 Casitas Bonito, Sacramento	2/ 5/79	490, 10177(b)
Shah, Surendra Chandulal (RES) (Right to RRES license after 120 days on terms and conditions)	17320 Mapes Ave., Cerritos	2/ 7/79	10177(f)(j)
Ray, Gene Earl (RES) (Right to RRES license on terms and conditions)	7021 Hampton Way, Stanton	2/27/79	490, 10177(b)
Miller, Leon Leonard (REB) (Right to RRES license on terms and conditions)	2730 73rd Ave., Oakland	3/12/79	490, 10177(b)
Aitken, Malcolm Darroch (RES) (Right to RRES license after 6 months on terms and conditions)	977 Lakeview St., South Lake Tahoe	3/13/79	10176(a)
Page, Donald Leroy (REB) Dba—Sierra Realtors (Right to RREB license on terms and conditions)	29460 Auberry Rd., Prather	3/13/79	490, 10177(b)
Haworth, Mickie Jean (RES) (Right to RRES license on terms and conditions)	4341 Dogwood Ave., Seal Beach	3/14/79	490, 10177(b)
Names, Byron Calvin (REB) (REO) Dba—International Properties Off—Investors Research Systems, Inc. Off—P. M. L., Inc. Off—Ken Root Realty, Inc. (Right to RREB license after 15 days on terms and conditions)	1122 Vanessa Dr., San Jose	3/14/79	10145, 10176(e)(i), 10177(d)
Davis, Ida M. (RES) (Right to RRES license on terms and conditions)	6980 Lisbon St., San Diego	3/15/79	490, 10177(b)
Dodson, Wallace Andrew (REB) (Right to RRES license after 90 days on terms and conditions)	1705 W. Centinella, Inglewood	3/20/79	490, 10177(b)(f)

LICENSES SUSPENDED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Petersen, Lucile Marie (RES) 30 days	500 Avenue G, #16, Redondo Beach	1/ 4/79	10145, 10176(i), 10177(d)
Coopman, James Perfect (REB) (REO) Dba—Coopman Realty Off—Coopman Corporation 60 days	3930 S. Mooney Blvd., Visalia	1/17/79	10176(a)(i)
Furness, Marjorie Phyllis (REB) 10 days	2210 Watt Ave., Sacramento	1/17/79	490, 10177(b)
Mathis, James Ronald (REB) Dba—Allied Realtors 30 days	920 S. Mooney Blvd., Visalia	1/17/79	10176(a)(i)
Trant, Daniel Wesley (REB) (REO) Dba—The Trant Company Off—Davids Group Ltd. 30 days	480 62nd St., Newport Beach 1300 Quail St., Ste. 102A, Newport Beach	1/23/79	490, 10177(b)

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
McBride, Albert (REB) (REO) Dba—Manhattan Realty Co. Off—Mac Fear Corp (All but 15 days stayed 2 years on terms and conditions)	713 S. Pacific Coast Hwy., Redondo Beach	1/ 4/79 45 days	10145, 10176(i), 10177(d)
Alsop, Jewell LaVelle (REB) Dba—Red Carpet Realtors (Stayed for 1 year on conditions)	6761 N. Cedar Ave., Fresno 322 E. Shields	1/16/79 5 days	10177(h)
Brocchini, Alfred (REB) (REO) Off—Brocchini Realty Inc. (All but 15 days stayed 3 years on conditions)	821 E. Yosemite Ave., Manteca	1/16/79 90 days	10177.5
Raymus, Antone Edward (REO) Off—Raymus Real Estate & Ins., Inc. (All but 20 days stayed 1 year on conditions)	544 E. Yosemite Ave., Manteca	1/16/79 90 days	10176(a), 10177(g)
Raymus Real Estate & Ins., Inc. (REO) Off—Raymus, Antone Edward (All but 20 days stayed 1 year on conditions)	544 E. Yosemite Ave., Manteca	1/16/79 90 days	10176(a), 10177(g)
Lee, Ronald (RES) (Stayed for 1 year on terms and conditions)	240 Drake St., San Francisco	1/29/79 30 days	10176(a)
Lopez, John Richard (REB) (REO) Dba—Great Western Real Estate Off—Real Estate Unlimited, Inc. (All but 30 days stayed 1 year on conditions)	2201 Jefferson St., Napa	2/23/79 90 days	10177(f)(j)

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Clemens, William Leander Jr. (REB)	3176 Pullman St., Ste. 117, Costa Mesa	1/ 3/79

Paul Pope Retires



Paul Pope, Chief Deputy in the Education and Research Section of the Department of Real Estate, recently retired after more than 24 years of service.

In his most recent assignment Pope was responsible for screening instructor qualifications, course materials and curriculum designed to improve the level of competence of real estate broker applicants and licensees under the Department's authority pertaining to real estate broker required courses and real estate licensee continuing education offerings.

Pope was assigned to a real estate education liaison position during the early 1960s and in this capacity he was instrumental in assisting with the establishment of quality real estate courses throughout the California Community College and the State College Systems. Prior to that time such courses were available in only a few locations around the state.

Earlier he was in charge of the department's examination program for several years. This included establishing criteria for the expeditious review of many thousands of broker applications. Later he supervised the department's publications section. His creative writing ability was well known and he was responsible for the preparation of many articles that appeared in the Real Estate Bulletin as well as articles in other real estate publications.

Paul holds a J.D. degree and entered state service after working several years as a real estate licensee, the last two years in the capacity of broker.

Pope will continue to make his home in Sacramento. He expects to be active in real estate education in the private sector.

In Memoriam

Harlan Geldermann, three times appointed to serve on the California State Real Estate Commission between the years 1967 and 1976, recently passed away in Walnut Creek after a short illness.

Mr. Geldermann was a major real estate developer in California and is survived by his wife, Audrey, and two sons.

USURY: In the Spring 1979 *Bulletin* article entitled *One More Time—On Usury*, there is a discussion of the holding by the California Supreme Court in the case of *Boerner v. Colwell Co.* and of the possible impact of that case upon the question of whether the prearranged sale to a third party of a purchase-money promissory note taken back by the seller of real property would be considered by a court of law to be a loan or a credit sale. If considered to be a loan, the prohibitions against usury will apply whereas if the financing is deemed to be a credit sale, there is no usury even though the effective rate of interest on the money actually obtained by the purchaser of the real property exceeds 10 percent per annum.

The article includes a statement to the effect that it is "doubtful" in light of the *Boerner* decision that a California court will characterize the prearranged sale of a promissory note carried back by the seller as a loan unless the sale itself was not a bona fide one. Several knowledgeable real estate attorneys have expressed their concern with that statement, feeling that licensees may rely upon the statement and become involved in such prearranged third-party financing of purchase and sale transactions without first obtaining private legal advice.

On reflection we agree that it would have been better if the article had simply stated that the law is presently such that there is no way of predicting how a court is likely to rule on the usury issue in the case of the prearranged discounted sale of a 10 percent promissory note taken back by the seller.

In deciding whether a transaction is a loan or a credit sale, courts have consistently held that it is the substance of the transaction not the form that controls. This legal maxim is reaffirmed by the Supreme Court in the *Boerner* decision. While the court does hold that application of the usury law "must be limited to those cases in which . . . the substantial intent of the parties was to effect the hire of money at an excessive rate of interest rather than to finance a bona fide sale of the property," the opinion does not specify to which party in a three-party transaction the court will look in determining whether there was an intent to loan money at an excessive rate of interest. If, in the case of the prearranged discounted sale of a purchase money promissory note taken back by the seller, the court looks to the intent of the third party financier, there is a distinct possibility of a holding that the financing of the transaction constituted a loan subject to the constitutional prohibition against usury.

The Department strongly recommends that licensees obtain private legal advice before entering into arrangements for financing the purchase of real property which involve the prearranged discounted sale of second deeds of trust to be taken back by sellers where the effective rate of interest to the third party financier will exceed 10 percent per annum.

From July 1973 to May 1979 the Multi-State Examination Participants (12 states) administered 731,826 real estate license examinations.

SOLAR MARKETING SEMINARS PLANNED

provided by
SolarCal Office

Solar energy is on many minds today—that of the consumer paying rising utility bills, of the homebuyer looking to beat the inflating cost of energy, of the homebuilder trying to provide the best service to customers. Recent trends in the use of solar systems in new construction, along with various kinds of governmental support for solar use, point to solar energy remaining an important consideration for the conscientious homebuilder.

The SolarCal Office has officially predicted an increase of 50,000 new solar installations in 1979 alone—water heating systems for pools and household water and passive space conditioning systems both new and retrofit—better than double the estimated 35,000 solar systems already installed in California. The number of solar water heaters in the state more than quadrupled in 1978, increasing from 2,500 to 11,000. The number of pool heaters increased five-fold, from 3,500 to 15,000. Active solar space heaters doubled in number, from 500 to 1,000, and the use of passive solar space heating and cooling techniques trebled, from 500 such applications to 1,500.

Partially accounting for such a dramatic rise in solar applications are homebuilding companies that incorporate such passive solar design features as site orientation, double-glazing and shading as well as solar water heating systems.

One of the main considerations for builders planning to incorporate solar features is the legal aspect of solar use, particularly the implications of AB 3250 (Levine), the "Solar Rights Act," passed last year. This law defines and provides for solar easements, prohibits any covenant or ordinance restricting the use of solar systems, and requires tentative subdivision maps to provide solar easements and otherwise facilitate future passive heating or cooling opportunities in the subdivision.

This far-reaching landmark legislation settles several of the more burning issues surrounding many people's decision to use solar energy. Homeowners wishing to install a solar system in new subdivisions will no longer be inhibited by their Homeowners Association on the grounds that the system is "aesthetically unacceptable." Owners and lessors of real property may negotiate with their neighbors to guarantee themselves "access to sunlight" sufficient enough to operate a collector. Subdivision planning is at last taking into account sensible energy use on a large scale. Energy planning becomes a local responsibility, responsible to local needs and considerations.

To help real estate professionals to take advantage of the rapidly growing market in solar homes, the SolarCal Office will be offering seminars for realtors later this year on "How to Sell a Solar Home." For more information on the seminars, contact Ms. Ann Bartz, Program Analyst, at the SolarCal Office, (916) 322-9725, (Business and Transportation Agency, 921 10th Street, Sacramento 95814).

 DRE

A single copy of the 33 page 1979 Supplement to 1978 Real Estate Law Book may be obtained in person at no charge from any DRE office, or by mailing a self-addressed, stamped, return envelope size 6" x 9" bearing \$.41 first class postage to:
Department of Real Estate
714 P Street
Sacramento, CA 95814
ATTENTION: LAW SUPPLEMENT

Bad Check Charge Begins

Over the years the DRE has attempted to handle dishonored checks received by it without adding a service fee for doing so. An increasing number of such checks and the expense in handling them has, however, necessitated that a service fee be charged.

On May 1, 1979, the DRE began assessing a \$10 charge on all dishonored checks received. Whenever a request for a service that requires a fee is accompanied by a dishonored check, the requested service will not be performed until the dishonored check is made good and the \$10 dishonored check charge is paid.

The DRE regrets that this step has to be taken but it has become economically necessary to off-set the growing expense of handling dishonored checks.

 DRE

A Look at Business and Professions Code Section 10103

Pursuant to Business and Professions Code Section 10103, the Real Estate Commissioner retains full jurisdiction for disciplinary action against licensees whose real estate licenses are inactive. The fact that a license is inactive will not deprive the commissioner of the right to proceed with any investigation or disciplinary proceeding against such licensee. *Section 10103 states:* "The lapsing or suspension of a license by operation of law or by order or decision of the commissioner or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the commissioner of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such license."

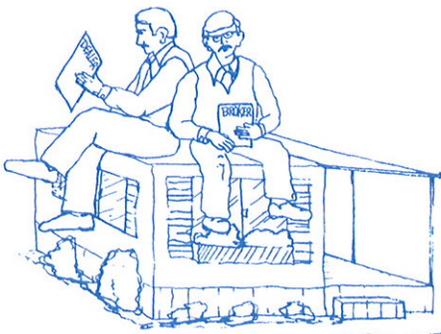
Recently the holder of an inactive license was convicted in a California court, after jury trial, of a violation of Penal Code Section 459 (burglary). This crime involved moral turpitude.

(Continued on Page 8)

MOBILE HOME (Continued from Page 1)

Department of Motor Vehicles interprets this section to prohibit mobilehome dealers from entering into such cooperative arrangements with anyone who is not licensed as a mobilehome dealer. Hence it is not possible for a real estate broker to cooperate and share a commission with a mobilehome dealer in a used mobilehome transaction unless the mobilehome dealer also has a real estate license and acts solely in the capacity of a real estate licensee in the transaction.

If a mobilehome dealer is also licensed as a real estate broker, it will be up to him to determine how to act solely as a real estate broker in the transaction so as not to violate a provision of the Vehicle Code or the regulations of the Department of Motor



Vehicles. One factor that is mentioned by DMV as a significant procedural difference between the sale of a used mobilehome effected by a mobilehome dealer and one arranged by a real estate broker is that the mobilehome dealer issues a DMV Report of Sale whereas a real estate broker does not.

The Department of Real Estate does not construe the Real Estate Law to prohibit a real estate broker from sharing his commission in a used mobilehome transaction with a cooperating licensee of the Department of Motor Vehicles. Cooperation between the two classes of licensees is not possible at the present time however in light of DMV's interpretation that mobilehome dealers may cooperate in used mobilehome sales transactions only with other mobilehome dealers. 

CHEATERS FORFEIT LICENSURE

Cheating to obtain real estate licenses recently led to the following actions by DRE:

- The simple scheme of referring to notes written on her wrist during an examination resulted in denying a salesperson license to an applicant from La Mesa.
- Criminal charges were filed against a husband and wife from Riverside for soliciting ringers to take real estate examinations for them.
- A salesperson in San Leandro had his license revoked after taking the broker examination for his wife.
- The licenses of a broker and salesperson from Ventura County were revoked when the broker impersonated the salesperson and took the broker examination for the salesperson after three unsuccessful attempts by the salesperson to pass the exam.

Purchasing real property is probably the largest and most important investment a person makes in his or her lifetime. Whether an individual's savings are used as a downpayment on a home or other real property or invested in a business venture, a consumer expects and deserves to conduct real estate business with an agent who is honest and truthful and who has demonstrated to licensing officials that he or she has the required knowledge to deal with and for others in the broad field of real estate.

To help insure this public trust, all applicants for licensure are required by law to pass a written real estate examination.

As evidence of the Legislature's and the DRE's seriousness about putting an end to exam cheating, the following events have recently occurred:

- The Legislature passed Assembly Bill 3588 (Suitt) sponsored by DRE which declares it to be a misdemeanor for a person to practice deception or fraud with regard to the identity of a person in connection with an examination or application for examination for a real estate license.
- Commissioner Fox adopted two new regulations, effective May 21, 1978: *Regulation 2761.5, Persons Not Eligible for Examination and Regulation 2763, Examination Rules.* (See Regulation text printed in Fall 1978 Real Estate Bulletin.)
- Examination security has been tightened by requiring positive photographic identification, and in certain situations complete sets of fingerprints (in addition to the fingerprint sets required with license application). 

Homestead Limits Raised

As of January 1, 1979, Section 1260 of the Civil Code stands amended to provide:

Homesteads may be selected and claimed:

1. By any head of a family, of not exceeding * * * *forty thousand dollars* * * * (\$40,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon.
2. By any person 65 years of age or older, of not exceeding * * * *forty thousand dollars* * * * (\$40,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon.
3. By any other person, of not exceeding * * * *twenty-five thousand dollars* * * * (\$25,000) in actual cash value, over and above all liens and encumbrances.

Any declaration of homestead which has been filed prior to January 1, 1977 shall be deemed to be amended on such date by increasing the value of any property selected and claimed to the value permitted by this section on such date to the extent that such increase does not impair or defeat the right of any creditor to execute upon the property which existed prior to such date. 



Realty Board bulletins frequently contain warnings to their members that tighter security controls should be exercised in connection with lock box systems—and for good reason.

If a licensee allows the lock box key to fall into the hands of a person who uses it to enter the property for burglary or other unlawful purposes, the licensee may be civilly liable for any resultant injury to the property or its contents.

On a case by case determination actionable negligence might include:

- losing the key
- failure to promptly notify the police and Board if a key is lost/stolen
- failure to adequately warn homeowner of the risks involved in using the lock box or misrepresenting to an owner the security value of the box
- placing a lock box in a conspicuous place on a home, calling attention to the probable presence of the house key.

Potential liability exists for agents participating in a lock box system. Constant vigilance exercised over the use and whereabouts of keys can reduce liability exposure.

Location Change For San Francisco District Office

As of April 1, 1979, the San Francisco District Office address and telephone number are:

Room 5816
185 Berry Street
San Francisco, CA 94107
(415) 557-2136

QUARTERLY EXAM RESULTS

1979

	SALES		BROKERS	
	Took	Passed	Took	Passed
January	8,649	3,671	1,707	851
February	8,400	3,250	1,048	508
March	8,698	3,616	1,279	577
TOTAL	25,747	10,537	4,034	1,936

ETHICS (Continued from Page 1)

affecting the value or desirability of the property, when the licensee has reason to believe that such facts are not known to, nor readily observable by, a prospective purchaser or lessee.

(4) When seeking a listing, representation to an owner of the real property that the soliciting licensee has obtained a bona fide written offer to purchase the property, unless at the time of the representation the licensee has possession of a bona fide written offer to purchase.

(5) The willful failure by a listing broker to present or cause to be presented to the owner of the property any offer to purchase received prior to the closing of a sale, unless expressly instructed by the owner not to present such an offer, or unless the offer is patently frivolous.

(6) Presenting competing offers to purchase real property to the owner by the listing broker in such a manner as to induce the owner to accept the offer which will provide the greatest compensation to the listing broker, without regard to the benefits, advantages, and/or disadvantages to the owner.

(7) Knowingly underestimating the probable closing costs in a transaction in a communication to the prospective buyer or seller of real property in order to induce that person to make or to accept an offer to purchase the property.

(8) Failing to explain to the parties or prospective parties to a real estate transaction the meaning and probable significance of a contingency in an offer or contract that the licensee knows or reasonably believes may affect the closing date of the transaction, or the timing of the vacating of the property by the seller or its occupancy by the buyer.

(9) Knowingly making a false or misleading representation to the seller of real property as to the form, amount and/or treatment of a deposit toward purchase of the property made by an offeror.

(10) The refunding by a licensee, when acting as an agent or sub-agent for seller, of all or part of an offeror's purchase money deposit in a real estate sales transaction after the seller has accepted the offer to purchase, unless the licensee has the express permission of the seller to make the refund.

(11) Failing to disclose to the seller of real property in a transaction in which the licensee is acting in the capacity of an agent, the nature and extent of any direct or indirect interest that the licensee expects to acquire as a result of the sale. The prospective purchase of the property by a person related to the licensee by blood or marriage, purchase by an entity in which the licensee has an ownership interest, or purchase by any other person with whom the licensee occupies a special relationship where there is a reasonable probability that the licensee could be indirectly acquiring an interest in the property, shall be disclosed.

(b) Unethical Conduct. In order to maintain a high level of ethics in business practice, real estate licensees should avoid engaging in any of the following activities:

(1) Representing, without a reasonable basis, the nature and/or condition of the

interior or exterior features of a property when soliciting an offer.

(2) Failing to respond to reasonable inquiries of a principal as to the status or extent of efforts to market property listed exclusively with the licensee.

(3) Representing as an agent that any specific service is free when, in fact, it is covered by a fee to be charged as part of the transaction.

(4) Failing to disclose to a person when first discussing the purchase of real property, the existence of any direct or indirect ownership interest of the licensee in the property.

(5) Recommending by a salesperson to a party to a real estate transaction that a particular lender or escrow service be used when the salesperson believes his or her broker has a significant beneficial interest in such entity without disclosing this information at the time the recommendation is made.

(6) Claiming to be an expert in an area of specialization in real estate brokerage, e.g., appraisal, property management, industrial siting, etc., if, in fact, the licensee has had no special training, preparation or experience in such area.

(7) Using the term "appraisal" in any advertising or offering for promoting real estate brokerage business to describe a real property evaluation service to be provided by the licensee unless the evaluation process will involve a written estimate of value based upon the assembling, analyzing and reconciling of facts and value indicators for the real property in question.

(8) Failing to disclose to the appropriate regulatory agency any conduct on the part of a financial institution which reasonably could be construed as a violation of The Housing Financial Discrimination Act of 1977 (anti-redlining)—Part 6 (commencing with Section 35800) of Division 24 of the Health and Safety Code.

(9) Representing to a customer or prospective customer that because the licensee or his or her broker is a member of, or affiliated with, a franchised real estate brokerage entity, that such entity shares substantial responsibility, with the licensee, or his or her broker, for the proper handling of transactions if such is not the case.

(10) Participating in the organized disclosure to a representative, agent, or employee of a public or private school, firm, association, organization or corporation conducting a real estate preparatory course the language of any question used in a state real estate license examination, at the request of such person or entity.

(11) Demanding a commission or discount by a licensee purchasing real property for one's own account after an agreement in principle has been reached with the owner as to the terms and conditions of purchase without any reference to price reduction because of the agent's licensed status.

(c) Beneficial Conduct. In the best interests of all licensees and the public they serve, brokers and salespersons are encouraged to pursue the following beneficial business practices:

(1) Measuring success by the quality and benefits rendered to the buyers and sellers in real estate transactions rather than by the amount of compensation realized as a broker or salesperson.

(2) Treating all parties to a transaction honestly.

(3) Promptly reporting to the California Department of Real Estate any apparent violations of the Real Estate Law.

(4) Using care in the preparation of any advertisement to present an accurate picture or message to the reader, viewer, or listener.

(5) Submitting all written offers as a matter of top priority.

(6) Maintaining adequate and complete records of all one's real estate dealings.

(7) Keeping oneself current on factors affecting the real estate market in which the licensee operates as an agent.

(8) Making a full, open, and sincere effort to cooperate with other licensees, unless the principal has instructed the licensee to the contrary.

(9) Attempting to settle disputes with other licensees through mediation or arbitration.

(10) Complying with these standards of professional conduct, and the Code of Ethics of any organized real estate industry group of which the licensee is a member.

Nothing in this regulation is intended to limit, add to or supersede any provision of law relating to the duties and obligations of real estate licensees or the consequences of violations of law. Subdivision (a) lists specific acts and omissions which do violate existing law and are grounds for disciplinary action against a real estate licensee. The conduct guidelines set forth in subdivisions (b) and (c) are not intended as statements of duties imposed by law nor as grounds for disciplinary action by the Department of Real Estate but as guidelines for elevating the professionalism of real estate licensees. 

Q. What is the established real estate broker commission rate in California?

A. There is no "established" or "customary" or "scheduled" or "recommended" commission rate—nor has there ever been. There is only the "negotiated" rate.

Payday for the broker is the result of a bargaining process, usually at listing time, between the party agreeing to pay for designated services and the party (broker) to receive the compensation for performing the designated services.

Price fixing is against the law. Violators are subject to both civil and criminal penalties.



Real Estate Advisory Commission members and Commissioner Fox at quarterly meeting held in Sacramento at Veterans Administration Auditorium on March 27th. Section 10055 of the B & P Code sets forth the Advisory Commission functions. Seated left to right are: Emmette T. Gatewood, Jr., real estate broker; Commissioner David H. Fox; George M. Marcus, real estate broker; Clark E. Wallace, Chairperson and President of California Association of Realtors; and Alberta Mayer, real estate broker. Also present at the meeting and shown in the two photos below, left to right, are DRE Assistant Commissioners William A. Wiggins (Administration); Henry H. Block (Education and Research); John A. DiBetta (Transaction Activities); and W. Jerome Thomas (Chief Legal Officer). Photos by Larry Alamao

Notes from Licensing

by Senior Deputy
Larry W. Smith



The DRE has been engaged during the past year in preparing for a substantial internal reorganization of its license record-keeping and processing functions. The current system is in excess of 20 years old and is simply unable to handle the volume of data imposed upon it from sources such as changing records, examinations, and license issuance.

Plans call for computerizing certain aspects of the licensing and examination functions and a substantial microfilming of existing paper records. The processing of such items as examination applications, scheduling of applicants into exam sessions, exam results, records updating, original license issuance and renewals is expected to be greatly simplified with much less dependence on human effort. The new procedures should in all respects result in increased accuracy achieved at greater speed and with much less time required to respond to public inquiries. Licensees will soon see changes made in various forms used by the DRE as they are redesigned to conform with the new system's requirements, including a revised real estate license certificate.

Also of interest to most readers will be the inclusion in the computer record of a current mailing address as selected by each licensee. In the past the only official address of record and the address used by DRE for the mailing to active licensees of department correspondence, renewal notices, and quarterly Real Estate Bulletin was the licensee's business address. Receipt of these mailings by licensees sometimes proved difficult, particularly for the salesperson who may have worked from a broker's distant branch office. **When the new system becomes operative**, the mailing address may be any address selected by the licensee (residence, post office box, or the business address).

These and other changes will occur as the **new system is implemented**. Licensees will be advised by future Bulletin articles and/or the revised department real estate forms themselves as they are mailed out and used.

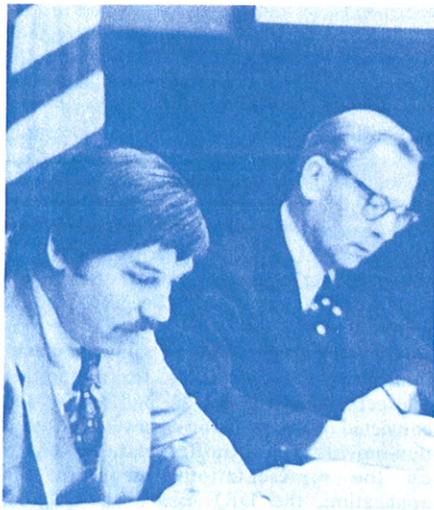


TABLE A
FORMAL EDUCATION OF BROKERS AND SALESPERSONS

Year	Did Not Complete High School	Completed High School	University Studies		Graduate Study	Total
			But Less Than Four Years of College	Four Years of College		
Brokers						
1964	14.1	25.2	29.7	22.7	8.3	100.0
1970	8.1	24.0	31.2	24.1	12.6	100.0
1972	6.1	24.2	31.6	26.7	11.4	100.0
1975	5.4	22.6	31.1	26.5	14.4	100.0
1978	3.5	23.2	30.9	27.1	15.3	100.0
Salespersons						
1975	4.7	24.1	33.5	24.7	13.0	100.0
1978	2.8	26.9	37.8	19.5	13.0	100.0

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1978 Real Estate Law Book and 1979 Supplement are both available now from any office of the Department of Real Estate for \$2.50 plus 6% sales tax if purchased in California.



The book and supplement can be obtained in person or by mail. If ordered by mail send check or money order payable to Department of Real Estate at 714 P Street, Sacramento, CA 95814. Attention: LAW BOOK.

CONTINUING EDUCATION NOTICE



As you may know, Department representatives monitor continuing education offerings to determine such things as whether or not:

- approved instructors conduct the seminar or program
- the program follows the offering outline submitted to the Department
- attendance controls insure that continuing education credit certificates are issued only to those licensees who meet the continuing education attendance requirements.

A recent review of the attendance record for a 5-hour-credit continuing education seminar disclosed that a real estate salesperson attending the seminar prepared two attendance verification forms. He completed one form showing his own name, address, phone number, and identification number taken from his own admittance card. He then completed a second attendance verification form for another real estate salesperson, who licensee knew was not in attendance at the seminar, by using the identification number taken from an unused admittance ticket.

The Department of Real Estate has filed an Accusation which seeks to suspend or revoke the real estate license of the licensee who prepared the fraudulent attendance verification form. The alleged conduct constitutes violation of the Business and Professions Code as follows:

- the making of a substantial misrepresentation and conduct constituting fraud and dishonest dealing by a licensee while engaged in acts within the scope of Chapter 3, Part 1, Division 4 of the Business and Professions Code [Sec. 10176(a), 10176(i)]
- fraud and dishonest dealing [Sec. 10177(j)]

- an attempt to procure a real estate license renewal for another by fraud, misrepresentation or deceit [Sec. 10177(a)]
- a willful disregard or violation of the Continuing Education provisions of the Real Estate Law or Commissioner's Regulations for the administration or enforcement of the Continuing Education provisions of the Real Estate Law [Sec. 10177(d)]

It is hoped that licensees will concentrate fully on the opportunity aspects of continuing education and avoid jeopardizing the licenses they seek to renew.



CALIFORNIA WITHDRAWS

FROM MULTI-STATE EXAMINATION PROGRAM

Since October 1973 the California Department of Real Estate has been a leading participant in the Multi-State Examination Program that extended to participating states a degree of reciprocity in the real estate exam process.

Rising workload demands, coupled with substantial reductions in funding and staffing throughout the Department, has resulted in California withdrawing from participating in the Multi-State Examination Program, effective July 1, 1979.

For those licensees who received a passing examination score and obtained a license in one of the other eleven participating states, California will honor that multi-state exam score when such licensees apply for licensure in California under the partial exam reciprocity aspect of the program. Such scores will be honored until July 1, 1980.

The California real estate examinations will undergo some realignment of questions with no change in subject matter as a result of phasing-out the multi-state program.

The publishing by DRE of the *Real Estate License Examination Study Manual* has been discontinued. Copies are no longer available through DRE.

LOOK (Continued from page 4)

The circumstances surrounding the crime were that licensee entered a home with a lock box key when the owners were absent with the intent to commit larceny. The owners returned home and caught the licensee inside. Licensee fled but later was arrested. Following the arrest, licensee voluntarily placed his real estate salesperson's license on inactive status. Grounds existed for suspension or revocation of salesperson's license pursuant to Sections 490 (relationship of conviction to licensed activity) and 10177(b) (conviction of a crime) of the Business and Professions Code, and Section 10103 of the Code conferred the commissioner's jurisdiction for disciplinary action against the inactive licensee. License was revoked.

Another case in point: an applicant stated in his original application for real estate salesperson license that he had never been convicted of any violation of law other than a non-moving type of traffic violation. Relying on the representations made in the application, the DRE issued the original license. It was then inactivated by licensee some 60 days later.

More than five years before filing the above application, licensee was convicted in the court of another state of violating that state's Penal Code. The crime involved moral turpitude—defrauding by illegal use of a credit card issued to another party.

Following a hearing wherein it was proved that the license was procured by fraud, misrepresentation and deceit, the inactive license was revoked pursuant to Business and Professions Code Sections 490, 10177(a) and 10103.



Good business relations should not be pursued only by the top professionals, but by every individual who needs and depends upon the support and good will of others.