



LOAN BROKERAGE LEGISLATION

During the closing hours of the 1961 legislative session, agreement was reached on long-debated points of the comprehensive mortgage loan legislation proposed by Assemblyman Richard T. Hanna in AB 1344 which, much-amended, was passed by the Assembly and the Senate. The bill was signed by Governor Edmund G. Brown, becoming effective on June 28, 1961, as urgency legislation (Chapter 886, Stats. 1961).

In general, the legislation: (1) lifts most of the old mortgage loan brokerage provisions from the Civil Code, putting them in the Real Estate Law, with certain changes and additions, and (2) establishes a new classification for real estate brokers engaged in the sale of real property securities, namely, "Real Property Securities Dealers."

This article will be confined to a discussion of the effect of the new legislation upon the broker engaging in the negotiation of mortgage loans—usually the handling of so-called hard money transactions. **Activities requiring registration as a "Real Property Securities Dealer" are described in the adjoining article so captioned.**

Loan Brokerage Requirements Incorporated in B. & P. Code

Basically many of the provisions regulating brokers engaged in negotiation of loans or sale or exchange of trust deeds remain unchanged as they are transferred from the Civil Code to the Real Estate Law (Secs. 10000-10602, B. & P.C.). The size of the loan to which regulation applies is still the same—up to \$5,000 when secured by a junior trust deed, up to \$10,000 when secured by a first trust deed. Stipulated maximum commissions and other charges made in connection with a real estate loan transaction remain the same, as do the provisions regarding balloon payments.

The real estate broker negotiating a mortgage loan is still required to prepare a statement for the borrower. However, the form to be used by the broker has been changed in some particulars. (See below "Revised Loan Brokerage Regulations.")

Law Changes Affecting Loan Brokerage Operations

● **The official designation of "real property loan broker" is done away with.** No longer is the real estate broker who engages in the negotiation of hard money loan transactions required to register as a real property loan broker. Some 18,000 real estate brokers were so registered prior to the change in the law. No action on the part of these registrants is required to drop the designation.

● **No bond is required for the handling of hard money transactions under the changed law.**

● **Specified are the ways money can be handled.** All funds received by a broker in connection with a loan transaction, which are not immediately given to his principal, must be placed at once in a neutral escrow depository or in a trust fund account maintained by the broker in a bank or other recognized depository. The funds must be so maintained until they have been disbursed in accordance with instructions from the lender or borrower. The broker must maintain a record of all moneys received

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Real Property Securities Dealers

EDITOR'S NOTE: This article is intended as a supplement to the adjoining article captioned "Loan Brokerage Legislation."

Prevention of abuses and irregularities in the bulk trust deed market and of misuse of subdivision financing devices was the major objective of the framers of AB 1344, which became law on June 28, 1961. To this end the new legislation provides, within the framework of the Real Estate Law, sections creating a new classification of "Real Property Securities Dealer" and regulating such dealers' activities.

Definition

A Real Property Securities Dealer is defined as one who sells "real property securities" to the public or accepts funds for continued reinvestment in deeds of trust.

In general, "real property securities" are defined as deeds of trust sold under an investment contract where the dealer guarantees the deed of trust in any of several ways, or makes advances to or on behalf of the investor. Also covered by the definition is the sale of one of a series of "promotional notes" or sales contracts. A "promotional note" is defined as a note secured by a trust deed on unimproved real property or a note executed after construction of an improvement on the property, but before the first sale, or executed as a means of financing the first purchase of property as so improved, and which is subordinated to another trust deed. An example of the latter: A purchase money second deed of trust on a house in a new subdivision.

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STATE OF CALIFORNIA

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WE SALUTE OLD-TIMERS

To these still active brokers we extend our gratitude for their many years of service to their communities and the field of real estate.

Harry Grossman 142 Havenhurst Drive Los Angeles	Walter N. Gabriel 316 15th Street Oakland
Clarence Simpkins 1291 Lincoln Way Auburn	R. W. Kittrelle 1710 Franklin Street Oakland
Ralph A. Knapp 102 Magnolia Avenue Piedmont	Bruce F. Maiden 1404 Franklin Street, Ste. 415 Oakland
Paul Williamson 510 G Street Eureka	W. D. McClellan 2334 D Street La Verne
M. C. Votaw 131 N. Washington Street Whittier	Wilbur Fiske Henning 66 W. Santa Clara Street San Jose

Disciplinary Action—April, 1961, and May, 1961

NOTE: Any person whose license has been suspended or revoked, or whose license application has been denied, has the right to seek a court review. This must usually be done within 30 days after the effective date of the commissioner's decision.

Therefore a list of actions is not published in this Bulletin until the period allowed for court appeal has expired; or, if an appeal is taken, until a final determination of the court action. Names of persons to whom licenses are denied upon application are not published.

Licenses Revoked During April, 1961, and May, 1961

Name	Address	Effective date	Violation
Charles, Wilfred Errington Real Property Loan Broker	10107 Central Ave., Los Angeles	4/13/61	Secs. 10176.1 & 10177 (f)
Chase, Boyd dba Boyd Chase Realty Real Estate Broker Real Property Loan Broker	4226 Mission St., San Francisco	4/13/61 (Granted right to restricted license on conditions)	Secs. 10177 (b) & (f)
Renninger, Joseph Dale Real Estate Salesman	5784 Paradise Dr., Corte Madera	4/13/61 (Granted right to restricted license on conditions)	Secs. 10177 (b) & (f)
Sweet, John Lee Real Estate Broker	1638 W. Vernon Ave., Los Angeles	4/13/61	Secs. 10103; 10176 (j); 10177 (d) & (f); Secs. 2830 & 2831 of R.E. Comm. Rules and Regulations
Heck, Merlin Paul Real Estate Broker	225 W. Winton Ave., Suite 106, Hayward	4/17/61	Secs. 10177 (d), (f); 11012; 11013.2 (a) & 11020
Heck, Paul, Co., Inc. Merlin Paul Heck, President Real Estate Corporation	5 Lakeview Way, Lakeshore Village, Clearlake Highlands	4/17/61	Secs. 10177 (d), (f); 11012; 11013.2 (a) & 11020
Harris, Harry Real Estate Broker Business Opportunity Broker	606 S. Hill, Rm. 210, Los Angeles 939 S. Gramercy Place, Los Angeles	4/18/61	Secs. 10160; 10162; 10164; 10177 (f); 10283; 10285; 10287; 10302 (c) & Sec. 2771 of R.E. Comm. Rules and Regulations
Poe, Edgar Allen Real Estate Salesman	124 E. Foothill Blvd., Arcadia	4/18/61 (Granted right to restricted license on conditions)	Secs. 10176 (j); 10177 (d) & (f)
Soxman, J. Floyd Real Estate Salesman	302 E. Foothill Blvd., San Dimas	5/ 3/61	Secs. 10176 (a), (j) & 10177 (f)
Williams, John Robert Real Estate Broker	4493 Mission St., San Francisco	5/ 8/61 (Granted right to restricted license)	Secs. 10176 (b) & (f)
Gussman, George Real Estate Salesman	21836 Rashdall St., Torrance	5/ 9/61 (Granted right to restricted license on conditions)	Secs. 10177 (b) & (f)
McManus, Philip Newton Real Estate Broker Real Estate Salesman	519 Harbison Ave., National City	5/ 9/61	Sec. 10177 (b)
Rathjen, Kurt Real Estate Salesman	15461 Moorpark St., Sherman Oaks	5/ 9/61	Secs. 10177 (b) & (f)
Wahlen, Ruth Evelyn Real Estate Broker	13031 Ventura Blvd., Studio City	5/ 9/61	Secs. 10177 (b) & (f)
Guardian Trust Deed Corporation Roger R. Richardson, Vice-President Real Estate Corporation Real Property Loan Broker	1264 Lincoln Ave., San Jose	5/10/61	Secs. 10176 (c), (i); 10176.1 & 10177 (f)
Jones, Albert Henry, Jr. Real Estate Salesman	4490 W. Adams Blvd., Los Angeles	5/11/61 (Granted right to restricted license)	Secs. 10177 (b) & (f)
Jorgensen, Ralph Henry Real Estate Salesman	905½ North Harbor, Fullerton	5/11/61	Secs. 10177 (a) & (f)
Koett, John Robert Real Estate Salesman	134 E. 218th St., Torrance	5/11/61	Sec. 10177 (b)
Lerner, Bert Real Estate Broker	9176 Sierra Ave., Fontana	5/11/61	Secs. 10176 (a); 10177 (d) & (f)
Proctor, Foster Carl Real Estate Salesman	2681 Florence Ave., Huntington Park	5/12/61	Secs. 10177 (b) & (f)
Quistgard, Hunter C. Real Estate Broker Business Opportunity Broker Real Property Broker	Flamingo Hotel Lobby, Santa Rosa	5/30/61	Secs. 10176 (e), (i); 10177 (d), (f); 10302 (e); Secs. 2830 & 2832 of R.E. Comm. Rules and Regulations

Licenses Suspended During April, 1961, and May, 1961

Name	Address	Effective date and term	Violation
Barr, Samuel President, The Greater Trust Deed Corporation of California Restricted Real Estate Broker Restricted Business Opportunity Broker	7823-25 Santa Monica Blvd., Los Angeles	4/13/61 (Indefinitely)	Sec. 10279.7
Charles, Wilfred Errington Real Estate Broker	10107 Central Ave., Los Angeles	4/13/61 10 days	Secs. 10176.1 & 10177 (f)
Dillard, Theatrice Restricted Real Estate Broker	538 W. Compton Blvd., Compton	4/28/61 (Indefinitely)	Sec. 10279.7
Harvey, Hurlen G. dba Harvey Realty Restricted Real Estate Broker Real Property Loan Broker	1135 F St., Fresno	5/22/61 (Indefinitely)	Sec. 10156.7
Benbo, Eddie Lee Real Estate Broker	1413 W. Vernon Ave., Los Angeles	5/23/61 30 days	Sec. 10177 (b)

Numerous Law Changes Important to Licensees

The 1961 legislative session, which came to a close on June 16, wrought a number of changes in the Real Estate Law and related subdivision law, and, in addition, made changes in other statutes which affect the practice of real estate.

Outlined below is the substance of much of the legislative action of importance to real estate practitioners. The major effects of AB 1344 are treated in other articles in this Bulletin. The legislation discussed below becomes effective September 15, 1961, except those portions which were enacted as the result of the passage of AB 1344 as an urgency measure.

AB 929 (Chapter 259, Stats. 1961)

This provides a major change as it does away with the special or "final" examination for renewal broker license. Instead the applicant for original broker license takes the comprehensive, all-day examination at the start. If he obtains his original broker license, he may at the end of one year receive his four-year renewal broker license without examination.

The original real estate, business opportunity, and mineral, oil, and gas broker fee is set at \$25.

Current Applicants Bound by Present Law

For at least one year following the effective date of the new law, it will be necessary to continue administering the second or "final" examination for renewal broker license to those persons who qualified for original real estate broker license prior to September 15, 1961. This is in compliance with an Attorney General's opinion to the effect that no candidate for a renewal broker license shall qualify for that license without having proved his qualification by passing the prescribed comprehensive examination—the test presently required to establish eligibility for renewal status.

Any original broker application filed after September 15, 1961, will be processed under the amended law.

Should a person who filed his application prior to September 15, desire to file a new application under

the new law after that date he may do so by requesting a cancellation of his previous application. In the event this option is exercised, however, there can be no refund or transfer of fees. The full \$25 fee must accompany the new application.

Those who have failed two successive original examinations under the existing law may not avail themselves of this option, but must wait the required year before they can again apply.

AB 931 (Chapter 261, Stats. 1961)

Provides that the two years of experience as a salesman upon which a person might base a claim of qualification for real estate or business opportunity broker license must have been acquired within the five year period immediately preceding application for broker license.

AB 928 (Chapter 259, Stats. 1961)

Makes changes which are primarily technical in nature, the most important being:

a) The holder of an original salesman license may, without examination, obtain a second original license, upon application and payment of the required fee, up to within three months of expiration of his first original license.

b) Allows a grace period of up to two years within which a lapsed renewal broker or salesman license may be renewed.

c) Clarifies definitions of business opportunity and mineral, oil and gas brokers and salesmen.

AB 932 (Chapter 262, Stats. 1961)

Provides that a non-resident applicant for any type of license issued by the real estate commissioner must file, along with his application, an irrevocable "consent to service of process," which would make it possible to reach him in an action filed against him in this state no matter where in the United States he might be residing. Also extends to the mineral, oil, and gas broker the present requirements with respect to use of a fictitious name.

AB 1083 (Chapter 443, Stats. 1961)

Provides that broker, under any type of license issued by the commissioner, must retain for three years documents and records executed or obtained by him in connection with any transaction covered by his license. Adds the phrase, "or deny the issuance of a license to an applicant" to the commissioner's present power to suspend or revoke the license of a licensee adjudged insane or mentally ill.

AB 1084 (Chapter 188, Stats. 1961)

Provides that, regardless of circumstances, the holder of a renewal license who fails to renew it prior to its expiration has only a two year grace period within which he may do so by proper application and payment of a late renewal fee of 1½ times the regular fee.

AB 930 (Chapter 260, Stats. 1961)

Repeals obsolete sections and corrects typographical errors in the law.

AB 1081 (Chapter 1035, Stats. 1961)

Amends Section 11011, B. & P. Code, relating to the commissioner's subdivision questionnaire by setting the filing fee at \$50, plus \$1 for each lot in excess of 50, with a maximum of \$250 per subdivision. Further amends Section 11015, B. & P. Code, relating to inspection costs of out-of-state subdivisions.

AB 1344 (Chapter 886, Stats. 1961— as affecting subdivision regulation only)

Adds the words "or financing" to the present definition of "subdivided" land or "a subdivision" in Section 11000 of Part 2 of the B. & P. Code.

Provides that "prior to the issuance of promissory notes secured by individual lots in an unrecorded subdivision the owner, his agent or subdivider shall notify the commissioner in writing of his intention to issue such notes" and specifies the minimum contents of this notification.

AB 94 (Chapter 1175, Stats. 1961)

Amends Section 11012 of the B. & P. Code, making it unlawful for an owner, his agent or subdivider to make any material changes in an offering

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Real Property Securities Dealers Regulations

2975. Application for Permit. Application for a permit to sell any form of real property security, as defined in Section 10237.1 of the Business and Professions Code, shall be in writing, shall be verified as provided in the Code of Civil Procedure for the verification of pleadings, and shall be filed in the office of the real estate commissioner.

2975.1. Application for Permit, Contents of. In such application, the applicant shall set forth all of the following:

- a) The name, residence, and post office address of the applicant;
- b) If applicant is a corporation, the names, residences, and post office addresses of all officers, together with a copy of all minutes of any proceedings of its directors, stockholders, or officers relating to or affecting the subject matter of the application;
- c) An itemized account of applicant's financial condition, including the amount and character of all assets and liabilities;
- d) A detailed statement of the plan or of the real property security involved including, but not limited to, the number, kind and amount of real property securities which applicant proposes to sell;
- e) A copy of the form of any agreement, contract or other writing relating to or pertaining to the plan of business, together with a copy of the type of note and security instrument to be used;
- f) A copy of any prospectus, advertisement or other description of the plan of business or real property security prepared by or for the applicant for distribution or publication;
- g) If the application is for a permit for the sale of specific existing notes or real property sales contracts, the application shall set forth the following additional information:
 - 1) Legal description of the real property, including a description of improvements, if any;
 - 2) Appraisal of real property;
 - 3) Title report;
 - 4) Credit report on the maker or person obligated to pay on the note or contract;
 - 5) A copy of the form of each instrument relating to the security.
- h) Such other additional information as the commissioner may require.

2975.2. Permit Application: If Applicant Is a Principal. If applicant is a principal proposing to sell any of the types of securities detailed in Regulation 2975.1(g), the application shall show the total amount paid or to be paid by the applicant for the purchase of such securities or, if the securities are issued by applicant, a detailed statement of the use and disposition of the proceeds from the sale of such securities shall be provided.

2975.3. Supplementary Filings. Within 30 days after the end of each calendar quarter the dealer shall file with the commissioner copies of all statements required

by Section 10237.5 of the Business and Professions Code, which were given to the purchasers of the securities during such quarter.

2976. Duration of Permit. No permit granted by the commissioner pursuant to Section 10238.4 of the Business and Professions Code shall be issued for a term of more than six months, provided, however, that upon proper application made prior to expiration of said permit, the commissioner may grant renewals thereof for additional terms of not more than six months each.

2976.1. Use of Permit in Advertising. No permit issued by the commissioner pursuant to Section 10238.4 of the Business and Professions Code shall be used by the permittee for advertising purposes unless the permit is used in its entirety. No part of the permit shall be underscored, italicized or printed in larger or heavier type than the balance of the permit unless the permit issued by the commissioner is so underscored, italicized or printed.

2976.2. Permit Is Not An Endorsement. Any permit issued pursuant to Section 10238.4 of the Business and Professions Code is permissive only and does not constitute a recommendation or endorsement of the plan or of the real property security involved.

2977. Approved Form. The following form is approved by the real estate commissioner for use as the statement required by Section 10237.4, Chapter 3, Part 1, Division 4 of the Business and Professions Code of the State of California:

(Error's Note: Space does not permit reproduction of the form here. Copies may be obtained from any office of the Division of Real Estate)

2977.2. Type Size for Dealer's Statement Form. The type used in reproducing the form specified in Regulation 2977 shall not be smaller than 10-point.

2978. Advertising Criteria for Real Property Securities Dealers. With reference to Section 10237.7 of the Business and Professions Code, the conditions set forth in Regulation 2848 shall apply to all advertising sought to be used by real property securities dealers.

2978.1. Advertising Material to Be Submitted. The reference in Section 10237.7 to material enumerated in Section 10236 shall apply to material enumerated in Section 10235.

2979. Term of Securities Dealer Endorsement. The endorsement as a real property securities dealer runs for the term of the license to which the endorsement is affixed, and the full fifty dollar (\$50) fee required by Section 10222 (as added by Chapter 886, Statutes of 1961), Business and Professions Code, shall be paid each time the license is renewed.

2979.1. Corporation or Partnership Securities Dealer. In the case of a corporation or partnership intending to operate as a real property securities dealer, each licensed officer or member must file an application, pay the required fee, and have the endorsement affixed to his license.

2980. Bonds Pledged in Lieu of Surety Bond. Before an applicant for endorsement as real property securities dealer deposits bonds with the State Treasurer in lieu of a

LOAN BROKERAGE

(Continued)

in connection with individual loan transactions.

⊗ Prohibited is false, misleading or deceptive advertising in connection with making, purchasing or negotiating loans or real property sales contracts. Indicating or implying any specific yield or return on any note, other than the interest rate specified in the note, shall be regarded as misleading unless the advertisement sets forth the actual interest rate specified in the note and the discount from the outstanding principal at which it is being offered for sale.

⊗ The real estate broker is not to accept funds in advance from a prospective purchaser or lender with the intention of purchasing notes or real property sales contracts or financing same as they may become available. Moneys may be accepted only for specific loans or specific sales contracts which the broker has a bona fide authorization to negotiate or to sell or which he owns in their entirety himself.

⊗ The broker collecting funds payable according to the terms of a note or real property sales contract is not to retain such funds for a period longer than 30 days except pursuant to written agreement with the purchaser or lender. If such an agreement is made, it cannot call for the payment of interest on the retained funds.

⊗ The real estate broker can service a note or a sales contract—that is, make a collection thereon as an agent—only if he holds a written authorization from the borrower or lender or holder of the contract.

⊗ The real estate licensee, who is an authorized representative of a bank, savings and loan association, industrial loan company, insurance company, etc., who is charging a commission of not more than two percent, is

(Continued next page)

surety bond as provided by Section 10238 of the Business and Professions Code, he must submit to the commissioner a full description of the bonds (title — interest rate — maturity date — bond numbers)

Loan Brokerage—Continued

not required to fill out the broker's loan statement.

● **Required to have a real estate broker license is any person who acquires for resale to the public, and not as an investment, three or more real property sales contracts or notes secured by real property during a calendar year; or sells to or exchanges with the public three or more such contracts or notes during the calendar year.** However, if the principal makes the transaction through a real estate broker, it is not counted in determining whether he needs a broker license.

● **Responsibilities are imposed on the real estate licensee in regard to recordation.** Section 10234 of the B. & P. C. reads:

"Every real estate licensee who negotiates a loan secured by a trust deed on real property shall cause such trust deed to be recorded, naming as beneficiary the lender or his nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located prior to the time that any funds are disbursed, except when the lender has given written authorization for prior release.

"If funds are released on the lender's written authorization, the trust deed shall be recorded, or delivered to the lender or beneficiary with a written recommendation that it be recorded forthwith, within ten (10) days following release.

"Every real estate licensee who sells, exchanges, or negotiates the sale or exchange of a real property sales contract or a promissory note secured by a trust deed on real property shall cause a proper assignment of such real property sales contract or trust deed to be executed and shall cause such assignment to be recorded, naming as assignee the purchaser or his nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located within ten (10) working days after the licensee or seller receives any funds from the buyer or after close of escrow; or shall deliver such real property sales contract or trust deed to the purchaser with a written recommendation that the assignment thereof be recorded forthwith."

● **The real estate licensee is prohibited from offering or giving premiums or gifts as an inducement for making real property loan or real property sales contract transactions.**

● **The Real Estate Commissioner is empowered to issue an order directing any person to desist and refrain from an activity which appears to be in violation of the law. If within 30 days after the issuance of such order**

the respondent alleges that it precludes him from doing a substantial proportion of his business as a real estate licensee, the commissioner must seek court injunction of the activity, pending hearing, or the order is dissolved. As an alternative the respondent may request a hearing within 30 days after issuance of the order. Within 15 days thereafter, the Commissioner must hold a hearing. If he does not, or if he does not render a decision within 45 days after the hearing, the Commissioner's order is rescinded.

MORTGAGE LOAN REGULATIONS

As a consequence of the enactment of AB 1344, the Real Estate Commissioner's Regulations relating to loan brokerage operations (exclusive of Real Property Securities Dealers operations) were revised and they appear below in full text.

2840. **Approved Form.** The following form is approved by the State Real Estate Commissioner for use as the statement required by Section 10240 of the Business and Professions Code.

(Sample Form)

.....
 (Name of Firm)

 (Address)

BROKER'S LOAN STATEMENT

Street and address number and/or legal description of property:

Statement of all liens against property as disclosed by borrower:
 \$
 \$
 \$

1. Description of loan to be secured:
 Principal sum of the note \$
 Rate of interest per annum %
 Term of note Number of installments
 Amount of each installment which includes
 interest and principal \$
 Approximate balance due at maturity \$
 Terms of prepayment privileges and penalties, if any

2. Deductions from principal sum of the note:
 a) Maximum costs and expenses
 estimated by broker:
 1) Appraisal fees \$
 2) Escrow fees \$
 3) Costs of investigating or
 guaranteeing title \$
 4) Notary fees \$
 5) Recording fees \$
 6) Credit investigation fees \$
 7) Any premium or other charges for
 insurance, other than fire insurance \$

2841. **Type Size for Form.** The type size used in reproducing the form specified in Rule 2840 shall not be smaller than 10-point type.

2842.5. **Time of Signing Statement.** No broker or salesman shall obtain a signature from a borrower to any compensation agreement for negotiating a loan or to any paper obligating the borrower to complete the loan prior to the time the Broker's Loan Statement is signed by the borrower and the person negotiating the loan, in accordance with Section 10240 of the Business and Professions Code.

2843. **Costs and Expenses.** The costs and expenses specified in Section 10242(a)

of the Business and Professions Code are the maximum rates chargeable and are to be levied only when such costs and expenses can be supported in fact. Such costs and expenses shall not exceed charges made for similar services in the community where such services are rendered.

2845. **No Lending of Agent's Money.** No broker or salesman employed by a borrower for compensation to negotiate a loan shall directly or indirectly advance his own funds to the borrower as a part or all of the funds to be loaned either temporarily or permanently, without written consent from the borrower to do so.

2846. **Records of Commissions, etc., Paid.** All payments of commissions, finder's fees,

referral fees or other forms of compensation for services rendered in connection with a loan transaction subject to the provisions of Article 7, Chapter 3, Part 1, Division 4 of the Business and Professions Code shall be recorded in such a manner as to provide specific reference to the particular loan transaction concerned. Such records will be kept available for investigation by the commissioner or his deputies for a period of at least three years.

2847. **Advertising May Be Filed.** A real estate licensee acting within the meaning of subdivisions (d) or (e) of Sections 10131 or 10131.1 of the Business and Professions Code, may file with the real estate commissioner, for prior review and approval of the subject matter, any advertisement, display, brochure, radio broadcast or telecast which concerns (a) the use, terms, rates, conditions, or the amount of any loan, real property sales contract or promissory note secured directly or indirectly by a deed of trust or mortgage on real property; and/or (b) the security, solvency, or stability of any person, firm or association engaged in negotiating loans on real property or engaged as principal or agent in the business of buying, selling or exchanging real property sales contracts or promissory notes secured directly or indirectly by deeds of trust or mortgages on real property. Filings are to be in triplicate. The advertising shall be deemed approved unless objection to the material submitted is transmitted within seven days.

2848. **Advertising Criteria.** Pursuant to Sections 10235 and 10237.7 of the Business and Professions Code, publication, distribution or use of advertising containing any of the following shall be considered to be false, misleading or deceptive:

- a) The terms, "lowest", "highest", "oldest", "strongest", "the largest", "unlimited", and other terms of superlative degree unless the advertisement fully explains how and in what manner such superlative applies;
- b) The terms, "lower", "higher", and other terms of comparative degree in regard to the rates, terms and conditions of any real property loan without fully explaining how and in what manner such term applies;
- c) The terms "guaranteed", "assured", "secured", and similar terms relating to the security of the funds of lenders or investors without fully explaining to what extent funds and earnings are secured;
- d) The terms, "sure", "positive" or other terms indicating that there is no possibility of loss;
- e) The terms "bonded", "insured", or similar terms without fully explaining the conditions and limitations of any such bond of insurance;
- f) Any statement relating to a history or record of absence of loss to investors or lenders without fully explaining the period of time and the volume of business which such statement covers;
- g) Any statement of a specific interest rate without specifying whether it applies to first or junior loans;
- h) Any statement of a specific interest rate when interest is charged other than on the unpaid balance without

(Continued next page)

Give below any other costs and expenses:

8) \$

9) \$

10) \$

Total costs and expenses (1 to 10, inc.) \$

b) The total of the bonuses, brokerage or commissions contracted for or to be received by any person for negotiating, procuring, or arranging or making such a loan \$

c) Estimated amounts to be paid on order of borrower:

1) Fire insurance premiums \$

2) Due on prior liens, including reconveyance, etc., fees \$

3) Due other creditors \$

4) Assumption, transfer, forwarding and beneficiary statement fees \$

Other payments on order of borrower:

5) \$

6) \$

7) \$

Total estimated payments on order of borrower \$

TOTAL DEDUCTIONS FROM PRINCIPAL SUM OF NOTE \$

3. Estimated balance to be delivered to borrower \$

(Based upon borrower's representations as to liens and debts)

LIST BELOW SERVICES WHICH MAY BE PERFORMED BY BROKER UNDER ITEM 2a ABOVE

.....

.....

.....

The undersigned broker or representative hereby states that the broker is not the lender and that the above described loan is being made in compliance with the California Real Estate Law.

.....
(Broker)	License No.	Business Address
.....
or (Designated Representative)	License No.	Business Address
.....

(NOTE TO BORROWER: DO NOT SIGN THIS STATEMENT IN BLANK. ALL PARTS OF THIS FORM MUST BE FILLED OUT BEFORE YOU SIGN.)

The borrower hereby acknowledges receipt of a copy of this statement.

Dated: (Borrower)

..... (Borrower)

BULK RATE
U. S. POSTAGE
PAID
Permit No. 157
SACRAMENTO, CALIF.

MORTGAGE LOAN REGULATIONS—
(Continued)

- fully explaining how and on what basis the interest is paid;
- i) Any statement of a specific monthly or installment payment without stating the amount of the loan, the term, and the balance due at maturity;
 - j) Any statement of a specific interest rate, amount of installment payments, the number of visits to obtain a loan, the time within which a loan may be secured, or that loans are available up to a specific percentage of value unless such terms and conditions are generally available through said broker or dealer;
 - k) Any statement that no commissions or fees are charged, without limiting the statement to those services actually offered free of charge;
 - l) Any statement or inference that the broker is acting as a principal when, in fact, he is acting as an agent; or is acting as an agent when, in fact, he is acting as a principal;
 - m) Any statement or inference that the broker or dealer is a representative of a financial institution unless he is a duly authorized representative;
 - n) Any statement or inference that any particular loan or promissory note secured by a lien on real property, or the operation of any investment program or plan described in the offering, has the approval of the Division of Real Estate;
 - o) The terms "investment plan", "growth earnings", or similar terms unless the broker has registered as a real property securities dealer;
 - p) The terms "savings", "savings plan" or any other terms that directly or indirectly implies that the broker is in the banking, savings and loan industrial loan business, or any other similarly regulated financial business;
 - q) The terms "worth", "value" and "appraisal", with relation to the value of the real property without disclosing the source of the estimate;
 - r) Any statement that a broker or dealer is able to make cash available to a borrower within a specified time without disclosing the conditions under which the advances may be made.

In addition to a literal compliance with the above rules, the form, make-up, text, color, art, and all features of a presentation shall not be so combined as to circumvent the requirements of these rules or the law. The explanation of any statement or terms as required shall be included in that statement and shall be clearly set forth.

2849.7. Dishonest Dealing Defined. With respect to any real estate licensee, whether acting as principal or agent, dishonest dealing within the meaning of Sections 10176(i) and 10177(j) of the Business and Professions Code shall include but not be limited to:

- a) Any representation at the time of the offering to sell or exchange a note, with respect to the value of the real property securing such note, without a reasonable basis for belief that such property is then of a fair market value not less than the amount so represented;
- b) The offering to sell or exchange any note or interest therein secured by real property when security instrument contains a subordination clause without a full disclosure to the purchaser of said note of the terms and conditions of such clause;
- c) The offering to sell or exchange any note or interest therein secured by real property which is junior to a note containing a blanket encumbrance on the property and other properties without a full disclosure to the purchaser of said note of the amount of the blanket encumbrance.

LAW GOES TO PRESS

The revised booklet on California Real Estate Law and the Commissioners Regulations is at the printers and should be available thru any Division office about September 15, 1961, at 52¢ per copy including tax.

Save This Copy
Use this Law and Regulations Digest as a helpful supplement to your Real Estate Reference Book.

Real Property Sales Contracts

By adding two sections to the Civil Code, AB 1344 defines real property sales contracts and regulates their transfer.

The new sections in the Civil Code read:

Sec. 2985. *A real property sales contract is an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract.*

Sec. 2985.1. *A real property sales contract may not be transferred by the fee owner of the real property unless accompanied by a transfer of the real property which is the subject of the contract, and real property may not be transferred by the fee owner thereof unless accompanied by an assignment of the contract.*

Our Problems Are Mutual

The mutuality of problems facing both the real estate industry and various state regulatory agencies is illustrated by the number of times articles carried by the *Real Estate Bulletin* are reprinted, quoted or referred to by the official publications of other license law bodies.

The use of a *Bulletin* article on the proper completion of basic forms in real estate transactions in the June issue of the *Washington Real Estate News* and the July issue of the *Oregon Real Estate News* are but two of several instances of this sharing.