



REAL ESTATE

Bulletin

EDMUND G. BROWN, *Governor*

August 1963

MILTON G. GORDON, *Commissioner*

SIGNIFICANT LAW CHANGES ENACTED BY 1963 LEGISLATURE

Commissioner Milton G. Gordon has characterized the legislative product of the 1963 session of the State Legislature, which ended June 21, as the most meaningful to the Division of Real Estate since the license law was rewritten in 1923. Only in 1945 and 1955 was real estate law enacted at all comparable in significance.

Almost 200 measures which were of some concern to licensees and therefore to the licensing agency—either in its regulatory or publications program—were followed as they ground through the several stages of the legislative process, until the bills outlined below won final passage and were signed into law by Governor Edmund G. Brown.

The bills passed touch on a wide range of the whole complex of real estate activity, including in-state and out-of-state subdivisions, qualification for broker license, license and examination fees, institution of a "recovery fund," agreements to procure loans, contracts of sale, condominiums, pest control, conservatorships, advance fee operation, abolishment of limited real estate salesman license, real property securities permit, Real Estate Commission members, and construction loan exemption.

While every effort has been made to make these digests definitive, there is no substitute for the law itself. The California Real Estate Law and the Commissioner's Regulations will be brought up to date and published in booklet form and made available as soon as possible after the effective date of the new legislation, September 20, 1963.

EDUCATION CREDIT IN BROKER LICENSE EXAMINATION

S.B. 926 (Ch. 921, Stats. 1963)

The trend toward professionalization of real estate was given added impetus by passage of this bill designed to strengthen broker license examinations, at the same time according credit for completion of college level real estate courses.

The examination for an original broker license, subsequent to September 20, 1963, in addition to the general subjects now being covered, will have added separate and distinct ses-

sions to determine the adequacy of the applicant's grasp of *legal aspects of real estate* and of *real estate practice*.

The applicant may be excused from either of these two added tests if he presents evidence of having completed a three-unit course in that particular subject at an approved institution of higher learning.

It should be borne in mind that these educational alternatives exempt the applicant only from either or both of the two added sessions to which they apply. The regular original broker examination, somewhat modified in content and length must still be taken and passed as a prerequisite to licensing.

The broker license qualification process will be further strengthened in that the applicant for an original broker license who bases his claim of experience qualification upon two years' full-time work as a salesman *must have achieved renewal real estate salesman license status*.

Under this enactment the holder of an original one-year salesman license can get a second successive one-year license without examination, provided he applies and pays the appropriate fee not later than three months after

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JOSEPH H. CARTER, *Member State Real Estate Commission*

Governor Edmund G. "Pat" Brown brought the State Real Estate Commission to its full complement by appointing Joseph H. Carter, real estate broker, Eureka, as the seventh member. Mr. Carter, who worked as a real estate salesman for three years before obtaining his broker license in 1957, operates an office staffed by four salesmen specializing in the sale and exchange of residential property.

The new commission member, age 44, was born in Bakersfield, and was educated in the public school system of that city, including the junior college. After three and a half years in the U.S. Navy, he went into business for himself in Eureka. He later disposed of his original business operation to go into real estate.

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Official Publication of the
California Division of Real Estate

August 1963

Published Bimonthly in Sacramento by the
DIVISION OF REAL ESTATE

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Chief Assistant Commissioner

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Disciplinary Action—April—May 1963
Licenses Suspended During April, May, 1963

Name	Address	Effective date and term	Violation
Hilton, Lee Ronald.....	4047 Wilshire Blvd., Los Angeles.	4/11/63 10 days	Secs. 10177 (d) & 10158
Secretary-Treasurer of Thrift Investment Co. dba Bank Mortgage Loan Co. Real Estate Broker.....	Ste. 205, 4047 Wilshire Blvd., Los Angeles		
Real Estate Salesman.....	133 N. Stanley Dr., Beverly Hills (Stayed for one year on terms and conditions)		
Thrift Investment Company.....	4047 Wilshire Blvd., Los Angeles.	4/11/63 45 days	Secs. 10176 (j); 10177 (d), (f), (j) and 10158
William Domash, Pres. (Stayed for two years on terms and conditions)			
Thrift Investment Company.....	4047 Wilshire Blvd., Los Angeles.	4/11/63 45 days	Secs. 10176 (j); 10177 (d), (f), (j) and 10158
dba Bank Mortgage Loan Co. William Domash, Pres. (Stayed for two years on terms and conditions)			
Steinmetz, Louis Jacob.....	1503 W. Manchester Blvd., Los Angeles	4/11/63 45 days	Secs. 10176 (i); 10177 (d), (f); Secs. 2901, 2902 and 2950 of R.E. Comm. Reg.
Real Estate Broker (Stayed for six months on terms and conditions)			
Gormley, Michael James.....	11925 Wilshire Blvd., Los Angeles	4/16/63 30 days	Sec. 10177 (f) and (g)
Real Estate Broker			
Festersen, Frederick William.....	605 Douglas St., Roseville.....	4/17/63 90 days	Sec. 10177 (f) and (h)
Vice President of Seawell and Festersen, Inc. Real Estate Broker (Last 80 days of suspension stayed one year on terms and conditions)			
Queen, Wayne Irving.....	1 block S. of Y on Hwy. 50, P.O. Box 149, Tahoe Valley	4/17/63 15 days	Secs. 10176 (a), (b), (i); 10177 (f) and (j)
Real Estate Salesman			
Scott, Alpha William.....	605 Douglas St., Roseville.....	4/17/63 90 days	Secs. 10137; 10177 (d) and (f)
Real Estate Salesman (Last 80 days of suspension stayed one year on terms and conditions)			
Wild, Carl August, Jr.....	605 Douglas St., Roseville.....	4/17/63 90 days	Secs. 10137; 10177 (d) and (f)
Real Estate Salesman (Last 80 days of suspension stayed one year on terms and conditions)			
Lively, Walter Anthony.....	7612 Sepulveda Blvd., Van Nuys	4/18/63 15 days	Secs. 10177 (d), (f), (j); 11012 and 11013.2
dba Vista Realty Real Estate Broker (Stayed one year on terms and conditions)			
Wooters, B. W., Co.....	401 Judah St., San Francisco	4/18/63 60 days	Secs. 10177.5 and 10177 (f)
Barbara White Wooters, Member Real Estate Partnership			
Hunsaker, Richard Clark.....	4405 Irwindale Ave., Covina....	5/ 7/63 180 days	Secs. 10177 (d), (f), (j); 10237.3; 10237.4; 10237.8; 10238.3; 10238.6 (c); Secs. 2795, 2795.1, 2800 and 2801 of R.E. Comm. Reg.
Real Estate Broker (Stayed for two years on terms and conditions)			
Hunsaker, S. V. & Sons.....	15855 E. Edna Pl., Irwindale ...	5/ 7/63 180 days	Secs. 10177 (d), (f), (j); 10237.3; 10237.4; 10237.8; 10238.3; 10238.6 (c); Secs. 2795, 2795.1, 2800 and 2801 of R.E. Comm. Reg.
Richard Clark Hunsaker, Pres. (Stayed for two years on terms and conditions)			
Hunsaker, Simeon V.....	15855 E. Edna Pl., Irwindale ...	5/ 7/63 180 days	Secs. 10177 (d), (f), (j); 10237.3; 10237.4; 10237.8; 10238.3; 10238.6 (c); Secs. 2795, 2795.1, 2800 and 2801 of R.E. Comm. Reg.
Real Estate Broker (Stayed for two years on terms and conditions)			
Hunsaker, Simeon V., Jr.....	15855 E. Edna Pl., Irwindale ...	5/ 7/63 180 days	Secs. 10177 (d), (f), (j); 10237.3; 10237.4; 10237.8; 10238.3; 10238.6 (c); Secs. 2795, 2795.1, 2800 and 2801 of R.E. Comm. Reg.
Real Estate Broker (Stayed for two years on terms and conditions)			
Harp, John Dean.....	2951-D Honolulu Ave., La Crescenta	5/ 8/63 90 days	Sec. 10177 (f) and (j)
dba Poothill Realty and Development Co. Real Estate Broker			

New Commission Member

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Mr. Carter is a regional vice president and a director of the California Real Estate Association, a past president of the Eureka-Humboldt County Board of Realtors, a member of the National Institute in Real Estate Brokers, the Eureka Chamber of Commerce and a former member of his city's planning commission.

Mr. Carter and his wife Ann have two children, Deborah, 13, and Mark, 11.

Some Questions From Our Correspondence File

Q. I received a notice that I had failed in my real estate examination. May I see my answers to verify the grader's accuracy?

A. No. This is not a competitive examination. You may be sure that your answers were checked with the greatest of care for their accuracy.

Q. Can I, as a broker, grant a power of attorney to someone to sign original applications or transfer applications for salesmen in my employ?

A. No. Your personal signature as broker is required.

Disciplinary Action—Continued

Name	Address	Effective date and term	Violation
Wagner, William Loren Real Estate Broker	3255 Fair Oaks Blvd., Carmichael	5/26/63 180 days	Secs. 10176 (a), (i); 10177 (f) and (j)
Wheaton, Leon Needham Real Estate Salesman	3255 Fair Oaks Blvd., Carmichael	5/26/63 45 days	Secs. 10176 (a), (i); 10177 (f) and (j)
Carter, Joseph, Jr. Real Estate Salesman	4100 Broadway, Sacramento	5/29/63 90 days	Secs. 10176 (e), (i); 10177 (f) and (j)

Licenses Revoked During April, May, 1963

Name	Address	Effective date	Violation
Foss, Carl Gregory Real Estate Broker (Granted right to restricted license on terms and conditions)	1250 Flora Ave., San Jose	4/ 1/63	Sec. 10177 (b)
Williams, Wayne Roger Real Estate Salesman	653 S. 11th, San Jose	4/ 1/63	Sec. 10177 (b)
Blake, Robyn White dba White Realty Real Estate Broker	6064 Skyway, Paradise	4/11/63	Secs. 10176 (a), (b), (c), (i); 10177 (d) and (f)
Blake, Robyn White Real Estate Salesman (Granted right to restricted license on terms and conditions; respondent shall not act as a restricted real estate salesman for 180 days after effective date of decision)	6060 Skyway, P.O. Box 1095, Paradise	4/11/63	Secs. 10176 (a), (b), (c), (i); 10177 (d) and (f)
Menser, Mansel Walter Real Estate Broker	3303 E. 4th St., Long Beach	4/11/63	Secs. 10176 (a), (b), (c), (i); 10177 (d), (f); 10305; Secs. 2830 and 2832 of R.E. Comm. Reg.
Simons, James Austin Real Estate Salesman (Granted right to restricted license on terms and conditions)	1020 Irving St., San Francisco	4/17/63	Sec. 10177 (a), (b) and (f)
Panting, Walter Dennis Restricted Real Estate Salesman	3567 Mission St., San Francisco	4/22/63	Secs. 10176 (a), (b), (i); 10177 (f), (j) and (k)
Krieger, Hyman dba Krieger Realty Co. Real Estate Broker (Granted right to restricted license on terms and conditions; said restricted license shall be suspended for 45 days effective date of order)	524 N. Glendale Ave., Glendale	4/30/63	Secs. 10176 (a), (i) and 10177 (f)
Poole, William Otis Real Estate Salesman	P.O. Box 396, Palm Springs	4/30/63	Sec. 10177 (f)
Woods, Jeanne Mariet Real Estate Salesman (Granted right to restricted license on conditions)	5020 S. Crenshaw Blvd., Los Angeles	5/ 2/63	Sec. 10177 (b) and (f)
Beitler, Robert Wayne dba Suburban Realty & Finance Real Estate Broker	4553 Castle Rd., La Canada	5/ 8/63	Secs. 10176 (i); 10177 (d), (f) and (j)
Fritz, Fritz Hans Real Estate Broker	2721 22d St., Sacramento	5/13/63	Secs. 10176 (e), (i) and 10177 (f)
Blodgett, Wilbur William Real Estate Broker Business Opportunity Broker (Granted right to restricted licenses on terms and conditions; respondent shall not act as restricted real estate or business opportunity broker for 180 days from and after effective date of decision)	2720 Camino Lenada, Oakland	5/14/63	Secs. 10152; 10177 (f), (j); 10277; 10302 (e) and (j)
Field, William Guerneau Real Estate Broker (Granted right to restricted license on terms and conditions; said respondent shall not act as a restricted real estate broker for 45 days from and after effective date of decision)	163 School St., Daly City	5/15/63	Secs. 10176 (a), (b), (c), (g), (i); 10177 (f) and (j)
Williams, Robert Lee Real Estate Salesman	1334 10th St., Modesto	5/16/63	Sec. 10177 (b) and (f)
Dodd, Herbert Leslie Real Estate Salesman	Rt. 1, Box 1020, DeWitt Ave., Morgan Hill	5/21/63	Secs. 10177 (d), (f); 11010; 11020; Secs. 2794 and 2795 of R.E. Comm. Reg.
Riley, Arthur Restricted Real Estate Salesman	309½ Commonwealth, Los Angeles	5/29/63	Sec. 10177 (f) and (k)
Wallis, Keith M. dba Keith Realty Real Estate Broker (Granted right to restricted license on terms and conditions)	320 Pine Ave., Rm. 601, Long Beach	5/29/63	Sec. 10177 (b) and (f)

More Questions From Our Correspondence File

Q. What category of questioning seems to present the most difficulty to examinees?

A. Simple arithmetic by a wide margin and, strange as it may seem,

broker license applicants have the greater difficulty. A word to the wise: The ability to handle the mathematical calculations involved in the everyday routine of the real estate business is considered an absolute prerequisite.



(Courtesy, Realty Graphic Co., Garden Grove)

Commissioner Milton G. Gordon (R) holds an honorary real estate certificate which has just been presented to him by Dr. Basil H. Peterson (L), President of Orange Coast College, at the educational achievement banquet, climaxing the first annual Orange County Real Estate Conference held on the Orange Coast campus. Certificates were awarded to 15 qualified recipients, and the commissioner addressed the assemblage on "Real Estate Education in California."

WEIGH FACTS BEFORE ESTIMATING

There is probably no greater single cause of dissatisfaction on the part of buyers of real property than the often wide differential between a broker's estimate of probable costs and the actual costs as finally computed by the escrow officer. The buyer is apt to hit the ceiling, express a desire to hit the broker, and both of them live unhappily ever after.

This is not necessarily a matter of law violation. If the broker has procured his information with care, has based his estimate upon a careful analysis of this information and has informed his client that an estimate and a fixed sum are not synonymous terms, he has fulfilled his responsibility in the matter. But all licensees should be cautioned: *An estimate is not a wild guess, created within one's imagination in order to consummate a difficult sale!*

Q. Can you recommend this or that real estate school?

A. There are some good private real estate schools in California and many fine books are available; but, as a public agency, we must refrain from singling any one of them for special recommendation.

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the expiration of his first license. Not until the second year of licensure is he eligible to apply for and take the examination for renewal real estate salesman license. He is allowed one re-examination for the renewal license if he fails the first test.

"RECOVERY" FUND

S.B. 1516 (Ch. 1426, Stats. 1963)

Introducing a new approach designed to accord financial protection to the public in dealing with licensed brokers and salesmen, this bill changes the existing Real Estate Education and Research Fund, into which one-fourth of each license fee collected by the commissioner is deposited, to the Real Estate Education, Research and *Recovery* Fund.

That portion of the fund now to be allocated to "recovery" will be used to pay unsatisfied judgments against licensees, when the judgments are based upon acts for which a license is required and which involve fraud, misrepresentation or deceit. Although the enactment becomes part of the law on September 20, 1963, it stipulates the cause of any action brought under its terms must have occurred on or after July 1, 1964. The fund will be liable in a maximum amount of \$10,000 for any one judgment and a \$20,000 ceiling is established for the obligations for a single licensee.

Fund Not a Substitute for Due Process

Among safeguards built into the legislation to prevent unjustified raids on the fund are: (1) the "aggrieved person" cannot be the spouse of the debtor or the personal representative of such spouse; (2) the claimant must have made every effort to collect from the debtor, having levied on all assets revealed by a thorough search; (3) the claimant seeking a court order to have the commissioner make a judgment settlement from the fund must post a bond equaling 10 percent of the amount he hopes to collect from the fund; (4) a false statement in connection with the claim is a punishable public offense; (5) the commissioner has the right to defend be-

fore the court any claim against the fund.

When the court orders payment of a judgment from the fund, the license of the judgment debtor is automatically suspended until he has repaid into the fund the sum in full, plus interest at the rate of 4 percent a year.

Initiation of Fund Set for 1964

Step one in creation of the fund occurs January 1, 1964, when \$600,000 of the existing fund will be allocated for "education and research" while all remaining moneys are posted to "recovery." On June 30, 1965, the "recovery" portion of the fund will be examined. If it has dropped below \$400,000, it will be augmented by adding \$10 to the broker renewal license fee and \$5 to the salesman fee. Such examination of the fund will be made at four-year intervals. Of the portion of license fees accruing to the fund after January 1, 1964, 80 percent will be allotted for education and research purposes, the remainder earmarked as "recovery" moneys.

SUBDIVISION REQUIREMENTS

A.B. 336 (Ch. 927, Stats. 1963)

This act requires the following, in addition to present content of a subdivider's notice of intention filed as the basis for the ultimate issuance of a public report by the commissioner: (1) a statement of the use or uses for which the proposed subdivision will be offered; (2) a statement of all provisions limiting use or occupancy of the property.

Commissioner Given Unequivocal Responsibility

The commissioner is explicitly charged with examination of proposed subdivisions and with issuance of factual reports thereon unless one or more of the following eight grounds for denial of the report are found: (1) failure to comply with provisions of subdivision law or regulations; (2) sale or lease of parcels would constitute misrepresentation, deceit, or fraud; (3) inability to deliver title or other interests contracted for; (4) lack of proof of adequate financing for proposed offsite improvements; (5) lack of proof of adequate financing for proposed com-

munity, recreational or other facilities; (6) failure to show that parcels can be used for the purpose for which they are offered; (7) contract fails to include proposed use or uses, together with related covenants or conditions; (8) inclusion of bylaws or agreements for management or services pertaining to common facilities in the offering, which fail to comply with Commissioner's Regulations.

Subdivider May Request Hearing

The subdivider objecting to the denial of a public report may within 30 days request a hearing which normally must be held within 20 days. If no decision is rendered within 45 days after submission, the order of denial is rescinded and a public report is issued.

The commissioner may issue desist and refrain orders stopping sales in tracts already reported on when the subdivider violates any part of the subdivision law or where conditions are present which would have warranted a denial of a public report. When such an order is issued, the subdivider has 30 days in which to request a hearing which normally must be held within 15 days. The order is rescinded if a decision on the hearing is not rendered within 30 days after submission.

Out-of-state Properties Particularly Affected

Two salient provisions of this act which, while applicable to all subdivided lands offered in California, particularly affect the proffering of out-of-state properties are: (1) the requirement, without exceptions, that a commissioner's public report be obtained before any subdivided lands, lots or parcels may be sold or leased or offered for sale or lease in California; and (2) the ban on false or misleading advertising relative to such properties.

The act is given teeth, not only by spelling out the commissioner's authority for issuing desist and refrain orders, but by making violators liable for fine and/or imprisonment.

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A "MUST" RULE
Know All Facts—Sell All Facts

OUT-OF-STATE SUBDIVISIONS

A.B. 2069 (Ch. 1819, Stats. 1963)

(Continued from p. 616)

Aimed directly at the long-distance, sight-unseen marketing of out-of-state subdivision parcels to Californians, this bill states that the Legislature "finds that this type of an investment requires the protection and supervision of laws designed to protect security investors" and empowers the Real Estate Commissioner to adopt such regulations as may be deemed "reasonably necessary" for enforcement of all statutory requirements pertaining thereto.

This means the commissioner may examine an out-of-state subdivision to determine whether its offering would be "fair, just and equitable."

CONDOMINIUM SYSTEM

S.B. 600 (Ch. 860, Stats. 1963)

Those who have been caught up in the swelling tide of interest in the condominium concept of property ownership will find in this act answers to many of their queries.

It begins by providing within the Civil Code a legal definition of this much used but perhaps not too clearly comprehended concept:

"A condominium," says Civil Code Section 783, "is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an apartment, office or store. A condominium may include, in addition, a separate interest in other portions of such real property."

Section 1350, added to the Civil Code, defines the elements in the condominium system, i.e., the "unit," the "project," the "common areas" and the term "to divide."

NO MORE LIMITED LICENSES

As of September 20, 1963, A.B. 1118 (Ch. 960, Stats. 1963) becomes effective, eliminating the limited real estate salesman's license. No such licenses will be issued subsequent to that date, but each one in existence will continue valid until it has run its due course of 120 days.

The new legislation provides for partition under given circumstances, for recordation of condominium "plans," for the "incidents of a condominium grant," for declaration of restrictions, including management plans, for liens for assessments made in accordance with the terms of the declaration of restrictions, for map filing and for separate tax assessments for units within the condominium project.

SEPARATE EXAMINATION FEES; OTHER FEE CHANGES

A.B. 765 (Ch. 1550, Stats. 1963)

This provides for separate examination and license fees, the broker or salesman license fee to become payable only after the applicant has passed the appropriate examination. The original broker license *examination fee* is \$25, as is the re-examination fee, if one is necessary. The original real estate broker license fee remains at \$25.

The fee for *examination* for original real estate salesman's license is \$10; re-examination, if necessary, is an additional \$10. The original real estate salesman *license fee* remains at \$10.

For any other examination required, the fee is \$10. Example: Examination for renewal real estate salesman license.

In addition, the following fee changes are made: branch office broker's license from \$1 to \$4; change of name or address from \$1 to \$4; license transfer or employer change from \$1 to \$4; duplicate license from \$1 to \$4; license reinstatement from \$1 to \$4.

These changes in fees apply to real estate, business opportunity, and mineral, oil and gas licenses.

ADVANCE FEE ACTIVITY

A.B. 1117 (Ch. 1092, Stats. 1963)

Contains technical amendments designed to clarify definitions of a business opportunity broker or a business opportunity salesman engaging in "advance fee" activities (Sections 10252.5 and 10253.5, Business and Professions Code). Section 10305 is changed to require the real estate broker who collects "advance fees" to adhere to the same method of accounting for these trust funds as must the business opportunity broker.

LOANS NOT CONSUMMATED

A.B. 707 (Ch. 1245, Stats. 1963)

This amendment to Section 10243, Business and Professions Code, clarifies existing language and adds these provisions: (1) limits to 45 days the term of any exclusive agreement employing a licensee to negotiate a loan secured by a lien on real property if the principal amount of the loan is \$2,000 or less; (2) stipulates the procedure a broker must follow to record a lien or encumbrance against a borrower's property to secure payment of incurred costs, expenses and changes in the event a loan is not consummated for stated reasons.

CONSTRUCTION LOAN EXEMPTION

A.B. 2200 (Ch. 1978, Stats. 1963)

Amends Section 10244 of the Business and Professions Code, exempting bona fide construction loans from the mortgage loan brokerage provisions therein imposed.

CONTRACTS OF SALE

A.B. 880 (Ch. 560, Stats. 1963)

Business and Professions Code Sections 11201 and 11202, which prohibit overencumbrance of properties sold under contract of sale and define and prohibit misappropriation of installment payments, have been repealed. These sections have applied only to contracts of sale on subdivision properties. Now they have been rewritten to cover all types of land contracts of sale and the new sections are included in the Civil Code (Civ.C. 2985.2 and 2985.3).

Violators are subject to a stiff penalty—a fine not exceeding \$5,000 or imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by both such fine and imprisonment.

New sections 2985 and 2985.4 are added to the Civil Code. Section 2985 defines a real property sales contract. Section 2985.4 requires the seller of real property under sales contract who receives pro rata payments for insurance and taxes to hold these amounts in trust for the purpose designated.

(Continued on p. 620, col. 1)

Positive Assertions Without Knowledge of Facts Can Be Hazardous

In deciding a recent case involving fraudulent representation in a real estate transaction, the Ohio Supreme Court dwelt at some length on the real estate agent's responsible position when he makes representations about a property he is offering.

The evidence was to the effect the selling broker answered in the affirmative when the purchasers asked him if the walls of the house were constructed of tile. As a matter of fact as was revealed later, the walls had been built of compacted clay and straw erected between forms until quite hard, and later the walls were coated with a cement plaster on the outside.

The house had been a multiple listing service offering and the selling broker, the defendant, arranged a loan on the property through a financial institution and had an appraisal made. The appraisers listed the walls as being of masonry construction. A substantial loan was granted to the purchasers, later the plaintiffs in the case.

After the purchasers had lived in the house for about six months, they had occasion to remove some wall-board in the attic to drill a hole in the wall and thus discovered the walls were made of compacted clay and straw.

On these facts the court quoted with approval excerpts from prior opinions concerning the duty of the broker to know as fact that which he represents as fact:

"When one asserts a fact of his own knowledge, or says positively so as to imply that he has knowledge, when he knows that he has not sufficient information to justify his statement, he may be found to have the intent to deceive."

Further:

"It was the duty of the selling broker to know whether (the representation regarding the construction of the walls) were true, and his belief will not excuse him from liability to the person injured thereby."

Quoting from Bigelow on Fraud:

"If the party made the representation not knowing whether it was true or false, he cannot be considered as innocent. . . ."

Antidiscrimination Law

It is doubtful if any citizen of California who maintains even a cursory contact with any of our major media of communication could possibly remain unaware of the general import of Assembly Bill 1240 signed into the law by Governor Brown as Chapter 1426, Statutes 1963. Its specific requirements, however, may not be so well understood. This is a brief summary of some of the principal aspects.

New Section 35700 of the Health and Safety Code lays the cornerstone for the provisions enacted, stating: "*The practice of discrimination because of race, color, religion, national origin, or ancestry in housing accommodations is declared to be against public policy*" and therefore the ban on such acts spelled out in the bill constitutes a valid exercise of the State's police power for the protection of the welfare, health and peace of all its people.

It is declared unlawful for the owner (or the real estate broker or salesman) of any publicly assisted housing accommodation, single family (if owner occupied) or multiple dwelling (three or more units) to withhold such housing or to discriminate as to terms, conditions or privileges, accommodations, or services with respect to such housing because of the race, color, religion, national origin or ancestry of a person seeking to purchase, rent, or lease such housing. Further, it becomes illegal to make written or oral inquiry concerning the race, color, etc.

"Publicly assisted" refers to housing financed in whole or in part with federal or state assistance, also to housing in certain areas improved with government help.

Privately owned housing of five or more units, regardless of the type of financing or degree of ownership, is covered by the new law.

Persons subject to the provisions of Civil Code Section 51 (Unruh Act) insofar as that statute applies to housing and to sale, rental, lease, or other acquisitions of housing accommodations are specifically included among those within the purview of the new act.

Discrimination by persons or financial institutions because of race, color,

Accuracy in Advertising

"Truth in advertising" is an inescapable responsibility of the licensed real estate broker, imposed upon him both by his conscience and the law.

No less an authority than the United States Supreme Court, in affirming a postal fraud order against a leading national magazine for illegal advertising practices, set forth the following five principles for measuring valid copy:

- Advertising as a whole must not create a misleading impression even though every statement separately considered is literally truthful.
- Advertising must be written for the probable effect it produces on ordinary and trusting minds, as well as for those intellectually capable of penetrating analysis.
- Advertising must not obscure or conceal material facts.
- Advertising must not be artfully contrived to distract and divert readers' attention from the true nature of the terms and conditions of an offer.
- Advertising must be free of fraudulent traps and stratagems which induce action which would not result from a forthright disclosure of the true nature of an offer.

etc., in the granting of financing related to housing is defined as unlawful.

The State Fair Employment Practices Commission is increased to seven members and assigned the responsibility for enforcement of discrimination interdicts.

Among its other powers and duties, the commission may receive complaints; make investigations; conduct conferences* or conciliation meetings; hold hearings; bring action in superior court to secure temporary restraining order against sale or lease; issue desist and refrain orders; and prescribe specified course of amendatory action for a respondent or order payment of damages up to \$500.

* When an owner is contacted by the commission, a commissioner, or a member of the staff, it would be required that he be informed whether the contact is for the purpose of investigation or conference, conciliation, or persuasion; and if for conference, conciliation, or persuasion, it would be required that he be informed that all matters relating thereto are privileged.

ADEQUATE SUPERVISION A BROKER'S MUST

A question often provoking contentious discussion—the status of a real estate salesman as an employee or agent of his broker or as an independent contractor—is answered again explicitly and definitely in a case involving a realty company (215 A.C.A., No. 1, pp. 203-227).

Suit was brought against the realty company for damages as the result of a death allegedly caused by an automobile accident involving a salesman for the defendant firm. The firm was sued and the lower court found for the defendant, a decision which was reversed by the appellate court.

The specific details of the incident, while obviously relevant to the basis for the appeal and the decision upholding it, are not important to the question of independent agent vs. employee or principal's agent.

Speaking directly to the debated question the court stated:

"Though it may be a question of fact whether in each case a real estate salesman is an employee of his broker within the common-law definition of master and servant, the Legislature, by virtue of Business and Professions Code, Section 10177(h), concerning the suspension or revocation of the license of any real estate licensee where the broker licensee fails to exer-

cise reasonable supervision over the activities of his salesman, has made a *real estate salesman an agent of the broker as a matter of law.*

"A real estate salesman can act only for, or on behalf of, and in the place of the broker under whom he is licensed; his acts are limited to those that he does and performs as an agent for such broker.

"A real estate salesman, so far as his relationship with the broker who employs the salesman is concerned, cannot be classed as an independent contractor. Any contract that purports to change that relationship from that of agent to independent contractor is invalid as being contrary to the provisions of the Real Estate Law (Civil Code, Sections 1608, 1667)."

The phrase, "*so far as his relationship with the broker who employs the salesman is concerned*" should be carefully noted. In this area his professional acts are held to be those of his employer or principal; hence, the vital importance—indeed the necessity—of exercising supervision. The law may qualify the requirement by affixing the adjective "reasonable," but this cannot be construed as anything but actual, knowledgeable supervision of the salesman by the broker!

University Extension Sets Fall Real Estate Schedule

Again this fall the University of California offers through Extension Division its continuing education in real estate program throughout the State. This was formerly known as the real estate certificate program; but while the certificate is still offered and is the goal of a large percentage of enrollees, the program has been re-named as its objectives and offerings have been extended.

Among the courses to be offered this fall are: trends and factors influencing real estate, real estate practice, legal aspects of real estate, real estate finance, intermediate real estate appraisal, the essentials of income property transactions, property management, advanced real estate appraisal, the essentials of real estate syndication, primary and secondary mortgage markets, mathematics of real estate,

commercial and investment properties, tax planning for real estate transactions, creating income property, principles of residential appraisal, industrial real estate, case studies in real estate appraisal, personal selling, persuasion and consumer behavior in real estate.

University extension will not, of course, offer all these courses in each of the cities scheduled for classes. Any course, however, will be offered in any city where the demand warrants. For information on courses scheduled for Southern California, write Continuing Education in Real Estate, University Extension, 813 South Hill Street, Los Angeles 14. For information regarding Northern California offerings, write Continuing Education in Real Estate, University Extension, 2223 Fulton Street, Berkeley 4.

THE POSITIVE APPROACH TO LAW IMPLEMENTATION

The *Beverly Hills Realtor* published the following account of a forward-looking approach to compliance with the State Fair Housing Act (A.B. 1240):

The Apartment Association of Los Angeles County announced Monday a five-point agreement with the NAACP-United Civil Rights Committee aimed toward voluntary compliance with the law rather than waiting for enforcement. The agreement, in brief, calls for:

1. Establishing standard qualifications governing policies on rental of units and eviction of tenants as applied without regard to race, creed, or color.
2. Forming permanent liaison committee composed of three members, each from UCRC, Apartment Association and a chairman from the county commission on human relations.
3. Launching educational campaign by the Apartment Association and liaison committee to acquaint apartment owners, managers, and tenants to rights and responsibilities under "Fair Housing Act."
4. Agreement between NAACP and UCRC to work for universal application throughout housing industry of standards established by State Fair Housing Act (A.B. 1240).
5. Agreement, in principle, for liaison committee to aim for eventual establishment of central clearing house on available rentals and request news media publish all rental classified ads on nondiscriminatory basis.

ORDERS FOR APPLICATION BLANKS

Brokers: Application forms are being changed in line with Legislation effective September 20, 1963, and only up-to-date, properly filled in, forms will be acceptable.

Keep up to date by ordering forms sparingly, replacing them often.

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

REAL PROPERTY SECURITIES

A.B. 2230 (Ch. 1291, Stats. 1963)
(Continued from p. 617)

Provides for exemption of construction loans from the provisions of the Real Property Securities Law; also adds Section 10225 to that law, making provision for the collection of inspection costs from the subdivider when he applies for a permit to sell real property securities secured by liens on property situated outside the State of California.

A change in the law makes it clear that the person who sells or exchanges a real property security through a real property securities dealer shall not himself be deemed to be a dealer. Also, when promotional notes are sold to real estate licensees or to attorneys, these transactions are not considered "sales to the public," and do not require real property securities permits. This is an extension of the exemption already accorded to sales to trust funds, corporations and institutional lending agencies.

CONSERVATORSHIP PROCEEDINGS— REAL PROPERTY SECURITIES DEALERS

A.B. 925 (Ch. 791, Stats. 1963)

This act, largely technical in nature, clarifies the authority of, and defines the procedures to be employed by, the Real Estate Commissioner in conservatorship and liquidation proceedings affecting real property securities dealers. Business and Professions Code Section 10239.4 is amended and renumbered as Section 10238.7; Secs. 10238.8, 10238.9, 10239, 10239.1, 10239.2, 10239.3 are repealed but many of their provisions are re-incorporated, with additions, in an added Article 6.5.

PEST CONTROL REPORTS

A.B. 919 (Ch. 1960, Stats. 1963,
effective 9/1/64)

This amends sections of the Business and Professions Code relating to pest control reports, more commonly referred to in the industry as termite reports. It adds Section 8614, which states that any person has the right to request from the Structural Pest Control Board a certified copy of reports and notices filed by pest control operators on a particular property during the two preceding years.

Section 8616 goes on to say that when a party in a real estate transaction requests a "wood destroying organism" inspection, the real estate broker is required to give a separate written notice of the provisions of Section 8614 to each party and obtain written acknowledgment of this notification.

An addition to the Real Estate Law (Sec. 10177(1)) makes violation of Business and Professions Code Section 8616 grounds for disciplinary action.

COMMISSION MEMBERS

A.B. 1763 (Ch. 1573, Stats. 1963)

Makes it possible for a Real Estate Commission member, who serves without compensation, to receive "actual and necessary expenses in the discharge of his duties."

TECHNICAL CORRECTION

A.B. 1119 (Ch. 961, Stats. 1963)

A series of technical amendments removing obsolete portions of the law and correcting section numbering.

PREP SCHOOL ADVERTISING

A good many candidates for license are disturbed at receiving solicitations from schools or correspondence services which purport to offer assistance in passing the license examination.

According to the complaints and inquiries received—and some are quite indignant—resentment is not necessarily directed at the importunities of the schools or study services; the real sore point is the receipt of these solicitations well before the Division of Real Estate has acknowledged the application by scheduling an examination.

Some candidates even go so far as to imply that the Division of Real Estate must be in league or otherwise maintain close association with these schools or services; otherwise, their advertising would not be in the mail so quickly. *Emphatically, this is not the case!*

Here's what happens. The names and addresses of applicants for license are a matter of public record and must be disclosed upon request. Rather than have agents of the schools scanning applications or card files, a list of license applicants is prepared each day in the Sacramento office and made available to the other offices. If a representative of a school or, indeed, anyone wishes to look over these lists and make notes from them he may do so. This is how the schools and services obtain the names and addresses of license candidates and deluge some of them with mailings, advertising their services.