



The Division of Real Estate Experiences Major Organizational Changes

Climaxing a major reorganization of the Division of Real Estate, Commissioner Gordon on July 1 announced the promotion of Gerald E. Harrington to the newly created position of Assistant Commissioner, Regulatory Operations, with headquarters in Sacramento. He will also be directly in charge of the new "Recovery Unit". In his new assignment, Harrington will work closely with Chief Assistant Commissioner, John E. Hempel.

The reorganization will make for uniform law enforcement procedures and policies throughout the state, and is a logical follow-up to the establishment of a central Subdivision Section in Sacramento in September, 1963. This section works with the six regional offices on subdivision filings and public reports.

Harrington, a veteran of 11 years with the Division of Real Estate, has been in charge of the agency's southern area with headquarters in Los Angeles. Henry Block, who had been in charge of the Los Angeles office operation for the past several years, moved up to replace Harrington while John Lazur, Deputy-in-Charge of the San Diego regional office for a number of years, was promoted to fill the position vacated by Block. M. B. Brownfield, formerly Senior Deputy in the

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REGULATION CHANGES

See page 674, column 1, for important changes in Commissioner's Regulations.

"Recovery" Law Now Effective

Pioneering a new concept in California, an operation designed to furnish an added degree of financial protection to the public when dealing with licensees went into effect on July 1, under the terms of legislation enacted in 1963 (Ch. 1426—SB 1516, Burns). Under certain circumstances the law will allow satisfaction of unpaid judgments against licensees from a special state fund created by allocating to it a percentage of all license fees collected by the Real Estate Commissioner. Claimants against the fund must have been financially

harmed in a transaction in which a real estate, business opportunity, or mineral oil or gas licensee **participated in his capacity as a licensee.**

The precedent-making law operates in this way. Suppose suit for damages is brought against a licensee based on a cause of action arising from a real estate transaction taking place on or after July 1, 1964. If a court of competent jurisdiction, upon grounds of fraud, misrepresentation, or deceit, finds against the licensee and awards a judgment, the "aggrieved party"

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Real Estate Commissioner

JOHN E. HEMPEL
Chief Assistant Commissioner

GERALD E. HARRINGTON
Assistant Commissioner
Regulatory Operations



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DIVISION OF REAL ESTATE

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Real Estate Commissioner

JOHN E. HEMPEL
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Disciplinary Action—April-May 1964

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, 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-May 1964

Name	Address	Effective date	Violation
Hammond, Wesley James	12027 Paramount Blvd., Downey	4/ 2/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
Horton, Russell Lee	7396 W. 81st St., Los Angeles	4/ 2/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
Joyce, Robert Henry	3214 Adams St., San Diego	4/ 2/64	Sec. 10177 (f) and (j)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Hughes, Edan Milton	2154 Broderick St., San Francisco	4/ 6/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Cren Crest Co.	10507 S. Vermont, Los Angeles	4/ 7/64	Secs. 10176 (a), (i) and 10177 (j)
Florence Blanford Kapsinow, Member			
Arnold Kapsinow, Member			
Real Estate Partnership			
Kapsinow, Arnold	1030 W. 103d St., Los Angeles	4/8/64	Secs. 10176 (a), (i) and 10177 (f)
Real Estate Broker and any right thereto			
(Stayed for 3 years on terms and conditions, respondent shall not exercise any of the rights conferred by his license for a period of 30 days following the effective date hereof)			
Legnon, Andrew John	3460 Cheshire Dr., San Jose	4/ 8/64	Sec. 10177 (f) and (g)
Real Estate Broker			
(Granted right to restricted real estate salesman license on terms and conditions)			
Olpin, Roger Dec	610 E. Acacia, II, Glendale	4/ 8/64	Sec. 10177 (a), (f) and (j)
Real Estate Salesman			
Franklin, Harold Turner	16106 Bullis Rd., Compton	4/ 9/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Whitman, Ronald Brown	8520 Emporor Dr., Fair Oaks	4/ 9/64	Secs. 10176 (a), (b), (c), (i); 10177 (d), (f), (j); 11012; 11013.2 (a) and Sec. 2811 of R.E. Comm. Reg.
Real Estate Broker			
(Granted right to restricted license on terms and conditions)			
Harris, Robert	11850 Braddock Dr., Los Angeles	4/21/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
Held, Joseph Charles	13743 Victory Blvd., Van Nuys	4/21/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Kidney, Jack D.	2102 Sunset Blvd., Los Angeles	4/21/64	Sec. 10177 (f)
Real Estate Salesman			
Bolliger, Fred	1217 Sebastopol Rd., Santa Rosa	4/23/64	Secs. 10177 (d), (f), (g) and 10250
Real Estate Broker			
(Granted right to restricted license on terms and conditions)			
Purcell, Louis	801 W. Beverly Blvd., Montebello	4/23/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
Stewart, William Bough	1146 Lotus Ave., Anaheim	4/29/64	Sec. 10177 (b)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Sharpless, Leonard Monroe	106 W. Chapman Ave., Orange	5/ 1/64	Sec. 10177 (b) and (f)
Real Estate Broker			
(Granted right to restricted license on terms and conditions)			
Simon, Lee Alan	15001 Ventura Blvd., Sherman Oaks	5/ 2/64	Sec. 10177 (b) and (f)
Real Estate Broker			
Simon, Lee Alan	5430 Corteen Pl., North Hollywood	5/ 2/64	Sec. 10177 (b) and (f)
President, Red Lion Properties, Inc.			
Real Estate Salesman			
(Granted right to restricted license on terms and conditions)			
Balc, John William	16704 Hawthorne Blvd., Lawndale	5/ 7/64	Secs. 10177 (d), (f); 11000 through 11021; Secs. 2794 and 2795 of R.E. Comm. Reg.
Real Estate Salesman			
(Granted right to restricted license on terms and conditions)			
Jackmon, Marian Murrill	1526 Fresno St., Fresno	5/11/64	Secs. 10176 (c); 10177 (d) and (f)
Real Estate Broker			
(Execution of said order of revocation stayed for 3 years on conditions)			
Teresi, Joseph Anthony	12 Valencia St., San Francisco	5/11/64	Sec. 10177 (b)
dba Philip Teresi & Son			
Real Estate Broker			
(Granted right to restricted license on terms and conditions)			
Kramer, Melvin Edward	18055 Ventura, Encino	5/13/64	Sec. 10177 (b)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Rehmer, Wilbur Dean	11391 Gardenaire Lane, Garden Grove	5/13/64	Sec. 10177 (f) and (j)
Real Estate Broker			
Cody, Richard Rolland	P.O. Box 774, Huntington Park	5/19/64	Sec. 10177 (b) and (f)
Real Estate Broker			
Hagaman, George Ketcham	627 S. Brookhurst St., Anaheim	5/19/64	Secs. 4230 and 4238 of B. & P. Code
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Singer, Randolph	13743 Victory Blvd., Van Nuys	5/19/64	Sec. 10177 (f) and (j)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Weston, James Lee	8214 Sunset Blvd., Los Angeles	5/19/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
(Granted right to restricted license on terms and conditions)			
Welch, Michael Gilbert	9244 Olympic Blvd., Beverly Hills	5/20/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
(Granted right to restricted license on conditions)			
Butler, Jack L.	1745 W. San Carlos, San Jose	5/21/64	Sec. 10177 (b) and (f)
Real Estate Broker			
(Granted right to restricted license on terms and conditions)			
Browning, Loretta Marion	2015 W. 253d Pl., Lomita	5/27/64	Sec. 10177 (b) and (f)
Real Estate Salesman			
Woodhall, Edward	2490 Whetman Way, San Bruno	5/27/64	Sec. 10177 (d), (f), (j) and Sec. 2763 of R.E. Comm. Reg.
Real Estate Salesman			

**THE YEAR THAT
WAS**

7,623 complaints were filed alleging illegal activities on the part of licensees during the past fiscal year. Many of these proved to be invalid, many resulted in necessary disciplinary action, but all of them indicate defective communication between licensee and client. Each of them is significant!

Licenses Suspended During April-May 1964

Name	Address	Effective date and term	Violation
Scanlan, Eugene Joseph dba Gene Scanlan Real Estate Broker Business Opportunity Broker	Room 1017, 520 W. 7th St., Los Angeles	4/ 1/64 15 days	Secs. 10177 (f), (h) and 10302 (e)
Kapsinow, Florence Blanford Real Estate Broker and any right thereto	1030 W. 103d St., Los Angeles	4/ 7/64 30 days	Secs. 10176 (a), (i) and 10177 (j)
Myers, Jacquelyn Gwyneth Real Estate Salesman	1029 W. 103d St., Apt. 3, Los Angeles	4/ 7/64 90 days	Secs. 10176 (a), (i) and 10177 (j)
Brodsky, Alex. Real Estate Broker (Stayed for 3 years on conditions)	8640 W. 3d St., Los Angeles	4/ 9/64 6 months	Sec. 10177 (b) and (f)
Phillips, Joseph Ronald Real Estate Salesman (Execution of suspension stayed for 2 years on terms and conditions)	1018½ State St., Santa Barbara	4/ 9/64 90 days	Sec. 10177 (b) and (f)
Silvani, Leonard Charles Real Estate Salesman	Ste. 102, 2321 P St., Sacramento	4/ 9/64 30 days	Secs. 10176 (a), (b), (c), (i); 10177 (f), (j); 11012, 11013.2 (a) and Sec. 2811 of R.E. Comm. Reg.
Heckley, Charles Edward Real Estate Salesman (Execution of suspension stayed for 3 years on conditions)	1418 Sacramento St., Redding	4/14/64 120 days	Sec. 10177 (b) and (f)
Parson, Alexander C. Real Estate Salesman (Except for the first 2 days thereof, said suspension shall be permanently stayed)	1060 S. State St., Ukiah	4/14/64 10 days	Secs. 10176 (c); 10177 (f) and Sec. 2832 of R.E. Comm. Reg.
Rhodes, Charles Benjamin dba Stanford Properties Real Estate Broker (Stayed for 60 days on terms and conditions)	3221 Fillmore, San Francisco	4/14/64 60 days	Secs. 10176 (c), (i) and 10177 (d)
Cook, Junior Lee Real Estate Broker	Ste. 3, 209 S. Citrus St., Covina	4/21/64 15 days	Secs. 10164; 10176 (j); 10177 (j) and Sec. 2830 of R.E. Comm. Reg.
Jahn, Kurt Johannes Real Estate Broker Business Opportunity Broker	340 Sebastopol Rd., Santa Rosa	4/23/64 20 days	Secs. 10258 and 10302 (e)
Sims, James Lee, Jr. Real Estate Salesman	4540 W. Washington Blvd., Los Angeles	4/28/64 15 days	Secs. 10130; 10137; 10177 (d) and (f)
Kelley, Hoyt Frank Restricted Real Estate Broker	1261 Lincoln Ave., San Jose	4/29/64 (Indefinitely)	Sec. 10177 (k)
Rivers, Edwin Bagnall Real Estate Salesman	2250 E. 14th St., San Leandro	5/13/64 30 days	Secs. 10176 (e), (i); 10177 (d), (f); Secs. 2830 and 2832 of R.E. Comm. Reg.
Russell, Manilla Zoeta Real Estate Broker	6427 DeLongpre Ave., Hollywood	5/13/64 (Until 8/31/64)	Secs. 10162; 10177 (d); Secs. 2771 (b) and 2772 of R.E. Comm. Reg.
Vidalin, Herbert Vernon dba Progress Realty and Investment Co. Real Estate Broker	2250 E. 14th St., San Leandro	5/13/64 60 days	Secs. 10176 (e), (i); 10177 (d), (f), (h); Secs. 2830; 2832; 2834 and 2835 of R.E. Comm. Reg.
Marden, John Victor Real Estate Broker President, Manhattan Investment Corp.	616 Ramona St., Ste. 4, Palo Alto	5/20/64 60 days	Sec. 10176 (a)
Brown, Gary Claude Real Estate Broker President, Gary Brown, Inc.	900 Mission Ave., San Rafael	5/22/64 20 days	Secs. 10176 (a) and 10177 (f)

Seller Loses When He Remodels Without Permit

An interesting case highlights a significant facet of fraudulent failure to disclose facts. The owner listed his property with a real estate broker, describing it as consisting of two two-room flats and one two-room garden apartment, each with separate electric and gas meters, and stated further that the property had been "completely remodeled."

Subsequent to sale consummation, the buyer found that the property had been constructed in violation of the building codes in several particulars, that no permit had been secured, that the garden apartment had no gas or electric meters, and that it could not therefore be lawfully used or rented as a residential unit.

On the basis of these facts, the buyer filed suit against the owners,

alleging misrepresentation and fraud. The sellers, in defense, sought to show that the buyers had had previous experience in real estate transactions and that, as a neighbor, she had actually observed the seller doing the remodeling now at issue.

The court held that the buyer's observation of the construction did not constitute knowledge of its illegality. The seller's further defense that he did not make any misrepresentations with intent to deceive was countered not only by his admission that he had failed to disclose his failure to get a permit, but also by the court's holding that the buyers were privileged to assume compliance with the building codes and that said failure to disclose the lack of a permit constituted fraud.

Be Sure When You Say The Buyer Can Refinance

From here and there throughout the state come reports of brokers making unsupported promises to purchasers of subdivision properties, that "at the end of a year you can refinance with an FHA or (as the case may be) a VA Loan." There is obviously nothing to be criticized in the making of such a promise if the one making it knows all the factors involved and has made sure that his statement is correct, should the purchaser choose to refinance.

An Illustrative Example

Perhaps the picture may be brought into better focus by posing a hypothetical situation. A tract builder engages a broker to handle the sale of houses which have been financed by conventional loans. There is an existing 25-year first trust deed on the property based upon 90 per cent of the estimated market value, bearing an interest rate of 6¾ per cent. Sale is proposed to be consummated with 3 per cent down and a second trust deed to the builder for the balance of the purchase price, bearing a 7 per cent interest rate, interest payable monthly, the principal due in one year. The assurance that the whole amount may be refinanced within one year, that much lower payments and easier terms may be secured, with the implication that this can be done easily and at no added cost, induces the purchaser to enter into the transaction.

Promises Should Be Based On Factual Knowledge

Unfortunately for the buyer who swallows this bait, however, the hook of reality can very well land him in a financial predicament. His credit rating may not meet VA or FHA standards. The VA or FHA may reject the building construction as not measuring up to required minimum standards. The VA or FHA appraisal of the property may not—indeed, more than likely will not—be high enough to permit a full payoff on the existing first and second trust deeds; or the combination of the several costs involved in paying off the old

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SUBDIVISION

DEVELOPMENTS AND ITEMS OF SIGNIFICANCE

Transfer of Five or More Lots Constitutes Material Change in Subdivision

Section 2801 of the Commissioner's Regulations states that the Commissioner must be notified of any material change in a subdivision. The regulation reads: "*If the owner of any subdivision options, or sells to another, five or more parcels from said subdivision, such option or sale shall constitute a material change within the meaning of Section 11012 of the Business and Professions Code, and such owner or original subdivider shall immediately notify the Commissioner of such options or sales*".

It is important that subdividers, owners (builders) and licensees grasp the full import of this regulation and the law which it implements, and realize that anyone who purchases or options five or more lots in a subdivision for the purpose of resale is subject to the subdivision law.

Prior to offering the parcels for sale or lease they must comply with the law by obtaining amended Subdivision Public Reports. A copy of the amended public report must be presented to the prospective purchaser or lessee and he must be given an opportunity to read it before any deposit or written offer to purchase or lease can be accepted. Furthermore, the subdivider must maintain a file reflecting receipt of the public reports by the purchasers. In brief, the same rules and procedures governing original public reports are followed.

REFINANCING?

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loans and securing the new ones, when added to the VA or FHA down payment requirement may be beyond the owner's financial reach.

There are other negative possibilities here, but the ones mentioned are adequate to illustrate the pitfall into which our hypothetical broker may be leading his hypothetical buyer. A case involving similar circumstances has resulted in the filing of accusations against several licensees.

How to Apply for an Amended Report

It is a relatively simple matter for a licensee to comply with the procedures necessary to acquire amended public reports for his client, or for himself, when engaged in development work.

The first step is to submit to the nearest Division of Real Estate office a form entitled STATEMENT BY PURCHASER OF FIVE OR MORE LOTS. It calls for a list of the lots and parcels acquired; notice to the Commissioner of any material change from the information set forth in the original Subdivision Public Report issued on the tract; and notice of the subdivider's election as to the handling of deposit and purchase moneys.

Generally the only other documents required are copies of: (1) the preliminary title report or title insurance policy showing the purchaser as the vested owner of the lots, and (2) the deed or forms to be used to convey interest, completed in sample form with reference made to the recorded tract restrictions, if any. If additional documents are required, the subdivider will be notified immediately. The fee for an amended report is \$10, rather than the full fee charged for the original filing.

The Commissioner adopted the above described procedure in an effort to minimize delays in the issuance of public reports, recognizing that delays can be extremely costly. Every effort is made to assist subdividers in complying with the law and regulations.

Transcripts Needed to Justify Exam Waivers

In requesting waiver of the special examinations on the subject of *Legal Aspects of Real Estate* or *Real Estate Practice*, or both, the applicant for real estate broker license is reminded he must submit proof of satisfactory completion of one or both courses. Letters from teachers or coordinators of school programs are not acceptable as proof.

To obtain a waiver of the added special examinations for broker license, the applicant must submit official transcripts from accredited institutions of higher learning indicating the credit earned. The transcript should be signed by a responsible official, usually the recorder or registrar. Submitting letters without the required documentation only causes delay in processing the application.

Subdivision Law Infraction . . . Brings Penalty

In a court action brought in El Dorado County the defendant, pleading guilty to infraction of the subdivision law administered by the Real Estate Commissioner, was sentenced to pay a fine and was placed on probation for three years. **Over a period of time, the defendant had divided his land into five or more parcels for purpose of sale or lease and had violated Section 11010 of the B. & P. Code by failing to file a notice of intention to create and market a subdivision.**

The prosecution was brought under the law as it existed before the comparatively recent changes which provide much stiffer penalties for violation of the subdivision statutes. Applying the current statutes a violator is guilty of a public offense which can be a felony punishable by a fine not exceeding \$5000, or by imprisonment in the state prison for a period not exceeding five years, or in the county jail not to exceed one year, or by both such fine and imprisonment.

License Required

Condominium Sales and the Corporate Securities Law

"Do I need some special license in addition to my real estate license to handle the sales of condominiums?", is a question frequently asked in recent months. The answer is "yes". Under the provisions of the Corporate Securities Law, offerings of units in condominium projects are termed "securities." (These are corporate securities and should not be confused with real property securities as defined in Section 10237.1 of the Real Estate Law).

Since these offerings are classified as securities, the developer of such a project is required to obtain a permit for the sale of securities from the Division of Corporations before offering any units for sale. Also, the agent who handles the sales is required to obtain a securities license (referred to in the Corporate Securities Law as a "certificate"). The law provides for two such licenses—broker and agent.

Function of Securities Broker or Agent

The function of a securities broker is similar, in many respects, to that of a real estate broker. He may be employed to negotiate the sales of any securities issued by others, just as a real estate broker may enter into listing agreements to sell the property of others. He may employ agents authorized under the Corporate Securities Law to represent him in the sales of securities which he has been commissioned to offer.

A person, appointed or employed by a company or another person to negotiate the sale of securities which they issue or one employed by a security broker to represent him in the sales of any securities, is a securities

agent and must be so licensed by the State Division of Corporations. An agent who is employed by a broker may negotiate the sale of any securities which the broker is authorized to offer. Thus, he is in a position somewhat similar to that of a real estate salesman. However, an agent who is appointed or employed by another person or a company may offer only those securities which are issued by his employer.

Sales Opportunities

It is apparent that a real estate broker who is employed by a developer to offer units in condominium projects must obtain a securities broker license. Each of his real estate salesmen working on condominium sales would need a securities agent license.

The rapidly increasing interest in the development of condominium projects indicates that more and more licensees will be called upon to offer such units or lots for sale. The alert licensee will familiarize himself with the many aspects of such offerings and will obtain a proper license so that he may take advantage of these new opportunities.

The above requirements sometimes apply to community apartment projects or the sale of undivided interest in common facilities in standard subdivisions.

Any person interested in obtaining a license (certificate) issued by the Corporation Commission may write to the nearest office of the State Division of Corporations, indicating the type of license desired—broker or agent, and whether the license is to be issued to an individual, a corporation, or a partnership. The appropri-

ORGANIZATION

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Los Angeles office became Deputy-in-Charge in San Diego.

Other Sacramento Assignments

In Sacramento, as part of the reorganization, these further changes were made. Donald Tallman was promoted to Senior Deputy, Administration; Burton Porter, formerly with Education and Publications, was assigned as Senior Deputy, Recovery Unit; Irving Halpern, formerly Associate Counsel in San Francisco, was assigned to the Recovery Unit; and Coy Sanders, formerly Senior Deputy, Publications, was assigned as Senior Deputy, Education. Walter L. Allen and Richard B. Nicholls, deputies in the San Francisco and Los Angeles office, respectively, were promoted to Senior Deputy assignments in the Education and Publications Section in Sacramento.

Other Los Angeles and San Francisco Changes

In the Los Angeles office, Fred Zuhlke and John Miles, formerly associated with the examination program, were assigned as Senior Deputies, Regulation. Also announced was the appointment of W. Jerome Thomas as Attorney in Charge, Northern Regulatory Area, with headquarters in San Francisco.

New Trainee Classes Established

In another move connected with reorganization, a new Deputy Real Estate Commissioner class was established for trainees intending to make a career in state service. Previously, job specifications for the entering deputy class included two or more years of work experience. For the new class, specialized education is the paramount factor in qualification, making it possible for college graduates who have majored in real estate, law, business administration, or kindred subjects to be employed by the Division of Real Estate directly from college.

ate application form and instructions for filing will be sent to the prospective applicant.

Comment on Responsibility!

During May, 1964—a quite typical month—3,901 original and renewal salesman license examinations were scheduled and 1,833 such test dates either had to be re-set by request or the applicants failed to appear at the appointed time and place!

Changes in Commissioner's Regulations

Several changes in, and additions to, the Regulations of the Real Estate Commissioner became effective August 15, 1964. One added regulation—Section 2715—should be particularly interesting and welcome to licensees, as it means better service in regard to license changes, and lets the licensee know just where he stands so far as effective date of his new license is concerned.

In the future when an application for a branch office license, for a change of name, for a change of address or for the transfer of a salesman license is received in any office of the Division of Real Estate, the new license becomes effective immediately. This is, of course, true only if the request is complete and in good order and is accompanied by the appropriate fee.

Another change of consequence to brokers, relates to trust account withdrawals—Section 2834 of the Regulations. It sets forth the means whereby a broker may authorize someone other than himself to make trust account withdrawals. The complete text of the changes in the Regulations follows:

Section 2715 is added to read: *Effective Date of License Change.* Requests for a branch office license, for a change of name, for a change of address or for the transfer of a salesman's license, if complete and in order, will be effective on the date the application and fee therefor are received in any office of the Division.

Section 2753 is repealed. Effective August 15, 1964.

Section 2832 is amended to read: *Commingle Defined.* Commingle within the meaning of Sections 10176(e), 10301(e) and 10561(e) of the Business and Professions Code includes but is not limited to failure to deposit or place trust funds received (1) into a neutral escrow depository or (2) in the hands of principals or (3) in a trust fund account, in accordance with Section 2830 above, by the next business day following their receipt.

AND STILL THEY APPLY!

47,799 examinations of all kinds were given by the Division of Real Estate during the fiscal year 1963-64.

Section 2832.1 is added to read: *Negligence Defined.* The term negligence as used in Sections 10177(g), 10302(g) and 10502(g) of the Business and Professions Code shall include but not be limited to failure to deliver a check to the named payee, his principal or his agent within the next business day following receipt. However, it shall not constitute negligence to hold an uncashed check until acceptance of an offer when directed to do so by the buyer or offeror, and it shall not constitute negligence to hold an uncashed check after acceptance of an offer when directed to do so by the seller or offeree. The fact that a check is being held in an uncashed form must be specifically disclosed to the seller or offeree before he accepts the offer.

Section 2834 is amended to read: *Trust Account Withdrawals.* Withdrawals shall not be made from a trust account maintained as provided in Section 2830 of these regulations except upon the signature of the broker or at least one or more of the following persons when authorized by the broker:

- (1) a salesman in the broker's employ;
- (2) any corporate officer of a corporation licensed as a broker;
- (3) any general partner of a partnership licensed as a broker;
- (4) any unlicensed employee, provided such employee is covered by a fiduciary bond indemnifying the broker against loss of money or property by the act of such employee in an amount sufficient to cover funds or property held in trust.

This regulation in no way is intended to limit the responsibility or liability of a broker as provided by law in his handling and disbursement of trust funds in his custody and control.

Condominium Concept New In State Law

When one considers the widespread interest in condominiums and the growing number of such developments in California, it is rather surprising to note that prior to 1963 no such word as condominium appeared in the statutes of the State of California; and, while they were considered subdivisions under section 11004 of the B. & P. Code as they still are, no specific legislation had been passed to provide answers to the several legal problems presented to title companies, to tax authorities, to insurance companies and others by this new concept in ownership.

The 1963 Legislature moved to fill this legislative vacuum by passing A.B. 600, which defined "condominium" and added provisions to the Civil Code, Business and Professions Code and the Revenue and Taxation Code dealing specifically with this particular type of title investiture.

Section 783 of the Civil Code defines a condominium as "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, it continues, "may include, in addition, a separate interest in other portions of such real property."

This means, in simpler terms, that a purchaser of a condominium owns in fee simple the air space in which his particular unit is situated, has a deed thereto, gets a separate tax assessment and may apply for and acquire a title insurance policy on his property. In addition to this, he has an undivided interest in common in certain other defined sectors of the whole property involved.

So far as the developer, owner and the agent handling the sale of such units are concerned, the Real Estate Commissioner, under section 11004 of real estate law, has jurisdiction to the extent of requiring a subdivision public report with all of the statutory

(Continued on col. 1, page 675)

Honesty and Truthfulness Given Court Definitions

Most of us are probably inclined to have our own private definitions of "honesty" and "truthfulness", and we may also be inclined to interpret these terms rather loosely leaving room for some deviation in meaning according to our own viewpoints and interests. Not so in the courts.

In a recent case the Appellate Court affirmed the decision of a lower court which had refused to annul an order of the Real Estate Commissioner suspending an individual's real estate and business opportunity broker licenses. The suspensions were based upon grounds of substantial misrepresentation, engaging in conduct which constituted fraud and dishonesty, and acting in a manner which would have warranted denial of application.

In defining "honesty" and "truthfulness" as these qualities are referred to in the Real Estate Law the court said: "... the word 'honesty' as used in these sections has the broadest possible meaning. It has been defined 'as a fastidious allegiance to the standards of one's profession, calling or position; fairness and straightforwardness of conduct, speech, integrity, truthfulness; freedom from fraud' ... Truthfulness means 'the truth, the whole truth and nothing but the truth'." (219 A.C.A. 359)

CONDOMINIUM

(Continued from page 674, col. 3)
and regulatory provisions pertaining thereto. In addition to this, the Corporations Commissioner requires that a permit to sell securities be qualified for and obtained before such properties may be sold in California.

"Recovery" Fund

(Continued from page 669, col. 3)
may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, petition the court for an order for reimbursement from the fund. This avenue is open only if the judgment is otherwise uncollectible. The order could issue for the amount of actual damages up to \$10,000 of the amount unpaid on the judgment. (Next Col.)

FALL EDUCATIONAL OPPORTUNITY

Again this fall the University Extension, University of California, will offer a wide variety of courses in its real estate educational program.

Classes will be given in the following communities: Berkeley, Buena Park, Burbank, Burlingame, Chico, Downey, Fresno, Glendale, Hayward, Inglewood, Lompoc, Los Angeles, Merced, Monterey, Oxnard, Palo Alto, Redwood City, Riverside, Rosemead, Sacramento, Salinas, San Diego, San Francisco, San Jose, San Rafael, Santa Barbara, Santa Cruz, Santa Maria, Saratoga, Stockton, Torrance, Ukiah, Van Nuys, Ventura, Walnut Creek.

For further information relative to courses to be given within your area, contact either the Northern or Southern California office as shown:

Northern California
University of California
University Extension
2223 Fulton St., Berkeley 94704
Phone: TH orwall 5-6000

Southern California
University of California
University Extension
813 S. Hill St., Los Angeles
Phone: MA dison 3-6123

Safeguards in the Law

The law sets up numerous safeguards to discourage unjustified attempts to collect from the fund. The petitioner for payment from the fund will be required to make a showing to the court that he has satisfied points enumerated in the law which include:

- (1) That he is not a spouse of debtor or the personal representative of such spouse.
- (2) Submission of statement of proof of judgment, amount thereof and amount owing.
- (3) Submission of proof of issuance of writ of execution and a statement detailing returns thereon.
- (4) That he has obtained issuance of an order pursuant to Section 714 of the Civil Procedure Code and that judgment debtor has been examined under oath concerning his property which might be liable for levy.
- (5) That all reasonable searches and inquiries have been made to ascertain whether judgment debtor is possessed of property which might be applied to satisfaction of judgment.
- (6) That such search has been complete and the amount realized, if any, was insufficient to satisfy the judgment.
- (7) That the application for payment from the fund is made no

more than one year from termination of all procedures, including reviews and appeals, in connection with the judgment.

(8) That he has posted a bond in the amount of 10 per cent of the actual damages he seeks from the fund to guarantee court costs, including reasonable attorney fees, should his application be denied.

Commissioner May Defend

The Real Estate Commissioner has the right to answer and defend any action by an "aggrieved party" against the fund on behalf of the fund. This may include examination of witnesses, introduction of evidence, and any such action that may be appropriate before the court.

The fund referred to is the Real Estate Education, Research and Recovery Fund, previously known as the Real Estate Education and Research Fund. On January 1, 1964 this fund was in effect divided—one portion earmarked for real estate education and research, the other for the purpose of "recovery" as outlined above. The fund is sustained by diverting to it 25 per cent of all license fees. The collections after January 1, 1964 have been divided within the fund—80 per cent for education and research, and 20 per cent for "recovery" purposes.

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Questions and Answers for Broker Applicants

The specific form required for broker application has to be completely filled out exactly as indicated. Any short cuts, however rational or convenient they may seem to the applicant, will result in lost time, in additional correspondence, and finally in resubmitting the completed application. To assist those who contemplate applying for original broker license examination the following questions and answers have been prepared:

Q. In qualifying for the broker license examination, will letters from my brokers be sufficient to verify full-time employment as a salesman?

A. *No. Your experience as salesman must be verified by the broker on the forms furnished by the Division of Real Estate; the verification of employment must also be notarized.*

Q. If my broker certifies full-time employment, yet I made few or no commissions, is this adequate?

A. *Before your application can be processed, your broker will be questioned as to why you supposedly worked full-time or part-time for the requisite period and still earned nothing. The fact you earned little or nothing tends to make a claim of full-time employment questionable.*

Q. Is the all day (basic) broker examination ever waived?

A. *No. The law requires that all applicants for broker license take and pass the written basic examination before a license can be issued.*

Q. If I should fail either of the additional 1½-hour examinations in Real

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Estate Law and Real Estate Practice, may I later submit evidence of completing a three unit course in the failed subject at an accredited institution of higher learning in lieu of taking the special test again?

A. *Yes. By submitting an official college transcript of credit covering either Real Estate Law or Real Estate Practice from an accredited institution of higher learning, the appropriate special test will be waived.*

Q. If I take the re-examination for broker license and fail either or both the law and practice sessions, may I submit evidence of course completion and have these tests waived?

A. *No, once you have failed the re-examination in one of the special subjects, you are ineligible to qualify on the basis of special courses.*

Q. I failed the examination and re-examination in one section of the test. After waiting the required one year, must I take the entire broker examination, or will I be excused from those portions previously passed?

A. *You will be required to take the entire examination except for those tests in special subject areas for which you have completed relevant courses.*

FALSE STATEMENTS TO LENDERS RESULT IN LICENSE SUSPENSIONS

In the continuing campaign to suppress the practice of "kiting" actual sales prices or otherwise making false representations to lenders in order to secure higher loans, an accusation and subsequent hearing based on misrepresentations of this nature resulted in a 90-day suspension of a corporate real estate broker license and a like suspension for each of the officers of the corporation.

The hearing officer found that false statements were made by the respondents in a number of transactions to induce lenders to make inflated loans based upon fictitious sales prices. The investigation of the transactions stemmed from the examination of certain notes which were proposed for sale as real property securities and did not result from a complaint.

The respondents claimed discontinuance of practice before the accusation was filed and also stated they were following what they considered a customary practice at the time.

Zip Codes Please!

Again, we add our request to that of the post office. Put your zip code number on all communications of any kind addressed to the Division of Real Estate. You help us to help by giving your complete present address!