



Many Register As Loan Brokers

Approximately 9,500 real estate brokers have applied for registration as real property loan brokers as we go to press. The applications are being processed as speedily as possible and licenses bearing the additional real property loan broker insignia are being returned to their holders in a steady stream.

Some unexpected delays in processing have been encountered because a rather high percentage of applications for registration have been deficient in one or more respects. Some are incomplete, others are unsigned or signed by unauthorized persons. Some brokers neglect to send in their real estate licenses, main and branch offices. Also, many brokers do not indicate whether or not their operations would require a bond; in many instances, and quite understandably, they are not sure.

A. G. OPINION SOUGHT

A great number of questions have been sent to the commissioner concerning the application of the Real Property Loan Brokerage Law to certain specific enterprises and individual methods of operation.

Where the language of the statute does not provide a clear, uncompromising answer, the Real Estate Commissioner has referred the question to the Attorney General for his determination. The questions and the Attorney General's answers will be discussed in a future issue of the *Bulletin*.

Any real estate broker may still register simply by sending in a completed application accompanied by his real estate broker license. Applications for registration are available at

all offices; there is at present no registration fee and no examination.

Definition of a Real Property Loan Broker

A real property loan broker is defined as a real estate broker, other than a lender, who for compensation, negotiates loans to be secured by real property, or solicits a prospective borrower or lender for the purpose of negotiating such loans; or is one who maintains a regular place of business where the public may sell, purchase or exchange promissory notes secured by real property or, as a main or principal business or vocation, engages in the following described activities for compensation payable by a borrower or a lender:

(1) As principal or agent engages in the business of buying, selling, or exchanging promissory notes secured by mortgages or deeds of trust on real property (*This encompasses the activities of "trust deed exchanges" and others offering investments in trust deed notes to the public*); or

(3) Makes collateral agreements for buying and selling or for the performance of services in connection with said mortgages and deeds of trust.

Exceptions

Real estate brokers and others who are authorized representatives or loan correspondents of banks, trust companies, savings and loan associations, or insurance companies are not affected by the provisions of the Real Property Loan Brokerage Law.

Also excepted are loans negotiated in connection with the sale or exchange of real property.

Bond Requirements

A real estate broker registered with the commissioner as a real property

FEDERAL HOUSING LAW CHANGES

The 1959 housing bill increases maximum single-family FHA insured mortgages from \$20,000 to \$22,500, and \$25,000 for a two-family residence. It lowers minimum down payments to 10 percent on \$13,500-\$18,000 appraised value range and retains 3 percent on up to \$13,500 and 30 percent over \$18,000.

The Federal Housing Administration increased the interest rate ceiling on home mortgages it insures to 5¾ percent from 5¼ percent. On top of the interest rate, the borrower also pays ½ percent for the FHA's insurance of the loan.

An increase to 5¼ percent in the maximum interest rate to be charged on GI loans was previously authorized by the Veterans Administration.

loan broker is not required to be bonded if he does not "actively or constructively in any way keep, have charge of, or otherwise handle any of the funds involved in the loan."

Where the bond requirements apply, the registrant, if a corporation, must file a fidelity bond in the minimum amount of \$25,000. The bond must at all times equal the total aggregate amount of all moneys held by or under control of the mortgage broker at one time for the account of others.

In the case of the individual or co-partnership, the minimum bond must be not less than \$5,000, increasing in direct proportion to the amount of money held or controlled by the broker for the credit of others.

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W. A. SAVAGE
Real Estate Commissioner

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Calif. Claim Won By Indians

The Indian Claims Commission has ruled that the Federal Government must pay some 37,000 Indians for about 75 million acres of California—most of the State—originally held by their ancestors.

Future hearings will determine the exact amount of land and its value at the time of taking, but in other cases amounts have ranged generally from 40 to 75 cents an acre. California's total acreage is 101,563,520 and some of the land not involved in this case is claimed by other tribes.

The decision may be appealed to the U. S. Court of Claims.

DISCIPLINARY ACTION—JUNE, 1959, AND JULY, 1959

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 June, 1959, and July, 1959

Name	Address	Effective date	Violation
Levy, Lew..... Real Estate Salesman	850 S. Palm Canyon Dr., Palm Springs	6/ 5/59 (Granted right to restricted license)	Sec. 10177.5
Saulter, Macfel Ellen..... Real Estate Broker	10516 S. Main St., Los Angeles..	6/ 6/59	Secs. 10176(i); 10177(d) & (f)
Saulter, Samuel..... Real Estate Salesman	10516 S. Main St., Los Angeles..	6/ 6/59	Secs. 10176(i) & 10177(f)
Moore, Rose Ada..... dba Opportunity Realty Real Estate Broker Business Opportunity Broker	1235 Van Ness, San Francisco...	6/10/59 (Granted right to restricted licenses)	Secs. 10176(e), (i); 10177(d), (f); 10302(e) & Sec. 2830 of R.E. Comm. Rules and Regulations
Lopes, Ralph Elbert..... Real Estate Broker	2215 Alum Rock Ave., San Jose.	6/17/59	Sec. 10177.5
Miles, Thomas James..... Real Estate Salesman	3251 Grove St., Oakland.....	6/17/59 (Granted right to restricted license on conditions)	Secs. 10130; 10131; 10134; 10176(e); 10177(d), (f); Secs. 2770, 2832 & 2834 of R.E. Comm. Rules and Regulations
Plant, Thomas Oliver..... dba Tom Plant Realty Real Estate Broker Business Opportunity Broker	1657 E. Santa Clara St., San Jose	6/17/59	Secs. 10177(f) & 10302(e)
Varble, Kenith David..... Real Estate Broker	800 Pinedale Ct., Hayward.....	6/17/59 (Granted right to restricted license on conditions)	Secs. 10176(e), (i); 10177(d), (f) & Sec. 2831 of R.E. Comm. Rules and Regulations
Long, Ella Maybelle..... dba San Joaquin Land Company Real Estate Broker Business Opportunity Broker	3100 Fulton Ave., Sacramento..	6/20/59	Secs. 10176(e), (i); 10177(f); 10302(e); Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Botts, Ernest Jasper..... Real Estate Broker	2700 Imperial Ave., San Diego..	6/22/59	Secs. 10176(e), (i); 10177(d) & (f)
Cookerow, Martin William..... Real Estate Broker	11832 Goshen Ave., Los Angeles.	6/24/59 (Granted right to restricted license on terms and conditions)	Secs. 10177(b) & (f)
Cannady, Ivan Caldwell..... Real Estate Broker	2501 W. 54th St., Los Angeles..	6/26/59	Secs. 10130; 10161.7; 10176(i); 10177(d) & (f)
Vaughan, Allen..... Real Estate Salesman	2370 E. 24th St., Oakland.....	6/26/59	Secs. 10176(e), (i); 10177(b), (d), (f) & Sec. 2834 of R.E. Comm. Rules and Regulations
Willett, Lorraine Frances..... Real Estate Salesman	11801 Burbank Blvd., North Hollywood	7/ 2/59 (Granted right to restricted license on conditions)	Sec. 10177(b)
Young, Hortense Bratton..... Real Estate Salesman	3223 Montclair, Los Angeles....	7/ 2/59 (Granted right to restricted license on conditions)	Secs. 10177(b) & (f)
Miller, Wayne Dudley..... Real Estate Broker	1159 1/2 Acoma St., North Hollywood	7/11/59	Secs. 10160; 10162; 10176(e), (i); 10177(d), (f) & Sec. 2830 of R.E. Comm. Rules and Regulations
Clayton, Earle Cleveland..... Real Estate Salesman	1122 Santa Barbara St., Santa Barbara	7/14/59 (Granted right to restricted license)	Secs. 10177(b) & (f)
George, Norman Theodore..... Real Estate Salesman	15002 Kingsbury St., San Fernando	7/14/59	Secs. 10177(b) & (f)
Reilly, Henry Anthony, Jr..... dba Harry A. Reilly, Jr. Real Estate Broker	500 Church St., San Francisco..	7/14/59	Secs. 10176(e), (i); 10177(f); Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Relihan, Miriam Dorothea..... Real Estate Salesman	2304 W. Manchester Blvd., Inglewood	7/14/59	Secs. 10177(b) & (f)
Hill, Lloyd Vernon..... Real Estate Salesman	4840 Del Monte, Apt. E, San Diego	7/16/59 (Granted right to restricted license on conditions)	Sec. 10177(b) & (f)
Bolton, Bessie..... Real Estate Broker	3792 Richmond, San Diego.....	7/18/59 (Granted right to restricted license on terms and conditions)	Secs. 10176(a), (i) & 10177(f)
Cason, William Erwin..... Real Estate Salesman	311 W. Century Blvd., Los Angeles	7/21/59 (Granted right to restricted license on conditions)	Secs. 10177(b) & (f)
Heavilin, Verna Irene..... Real Estate Salesman	PO Box 14031, Encanto Station, San Diego	7/21/59	Sec. 10177.6
Geandrot, Walter Francis..... dba Tunnel Realty Co. Real Estate Broker	Cinnabar St., PO Box 323, Guerneville	7/29/59	Secs. 10177(b) & (f)
Hill, Raymond Rovira..... Real Estate Salesman	4097 Pepper Tree Lane, San Jose.	7/29/59	Secs. 10177(b) & (f)
Adams, Lloyd Glen..... Real Estate Broker	Star Rt., Box 735, Lakewood....	7/30/59	Secs. 10177(d), (f); 11010; 11020; Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations
Helwig, Emil..... Real Estate Broker	Woodleaf Star Rt., Forbestown..	7/30/59 (Granted right to restricted license on terms and conditions)	Secs. 10177(b) & (f)
Graham, Inas Moore..... Real Estate Salesman	2080 Middlebrook Rd., Torrance	7/31/59	Secs. 10177(b) & (f)

Among the First Licensed

Again we pay our respects to some longtime licensees, those who had real estate licenses in 1917 and are still licensed by the division. Continuing the list of "oldtimers" from the last *Bulletin*, we cite the following:

- Carrie Cahill
16 S. San Geronio Ave., Banning
- John Drew Funk
248 W. 5th St., Beaumont
- C. H. G. Runde
5012 H Parkway, Sacramento
- Chas. A. Park
2214 Grove St., Berkeley
- S. L. Griffiths
1221 Burlingame Ave., Burlingame
- John Andrew McManus
149 W. Sycamore St., Willows
- S. L. Bainbridge
468 E. 5th St., Chico

Dealers in Trust Deeds to Be Regulated

Many dealers in notes secured by trust deeds—dealers sometimes called "ten percenters" or "trust deed exchangers"—are currently advertising that the public can receive 10 percent or more interest on "secured" investments in real estate loans. To those members of the public not familiar with mortgage loan terminology and practice, the word "secured" has the connotation of "guaranteed," which can be a mistaken impression. The investment is "secured" only in the sense that it is backed by a second or third lien on real property.

Undoubtedly, such advertising carries a built-in warning to informed people who are aware that extremely high interest rates on real property loans usually signal proportionate in-

creases in risks. However, most people do not know that in many cases the "investments" involved actually will have returned a much higher rate than 10 percent if no default occurs. But the extra return on the investment does not go to the investing member of the public—it has already been skimmed off by the trust deed dealer who garners a sizable profit, but at the same time unloads all risks.

The Real Estate Commissioner intends to scrutinize carefully the advertisements of the "ten percenters" or trust deed dealers. It is believed that the public as "investors" should be informed as to the relative security of their investments. The 1959 State Legislature extended the commissioner's jurisdiction to include "ten percenters" or "trust deed exchangers" by defining them as real property loan brokers and requiring registration as such.

Licenses Suspended During June, 1959, and July, 1959

Name	Address	Effective date and term	Violation
Nardello, John dba Starlite Estates Real Estate Broker Business Opportunity Broker	3251 Grove St., Oakland	6/17/59 180 days	Secs. 10302(d), (e), (h); 10177(d), (h); Secs. 2830, 2831, 2832 & 2834 of R.E. Comm. Rules and Regulations
Varble, Kenneth David Restricted Real Estate Broker	800 Pinedale Ct., Hayward	6/17/59 10 days	Secs. 10176(e), (f); 10177(d), (f) & Sec. 2831 of R.E. Comm. Rules and Regulations
Bourke, Norman Mayo dba Mayo Mortgage Company Real Estate Broker	1177 University Dr., Menlo Park	7/ 2/59 30 days	Secs. 10177(d), (f); Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations
Harrington, Thomas Gerald Real Estate Broker	1815 S. Hill St., Oceanside	7/ 2/59 30 days Stayed for 1 year (on conditions)	Secs. 10176(i); 10177(d), (f); Secs. 2794 & 2830 of R.E. Comm. Rules and Regulations
Hiatt, Paul Cleo Real Estate Broker	2337 Roosevelt Ave., Richmond	7/ 2/59 90 days	Secs. 10176(e), (f) & 10177(f)
Kyne, Stephen Edward dba California Mortgage Investment Company Real Estate Broker	3483 Thomas Dr., Palo Alto	7/ 2/59 30 days	Secs. 10177(d), (f); Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations
Stette, Ole Real Estate Broker	1234 N. Hwy. 101, Leucadia	7/ 2/59 60 days (Stayed for 1 year on conditions)	Secs. 10176(a), (e), (f), (g); 10177(f) & Sec. 2830 of R.E. Comm. Rules and Regulations
Miles, Thomas James Restricted Real Estate Salesman	3001 Grove St., Oakland	7/13/59 10 days	Secs. 10130; 10131; 10134; 10176(e); 10177(d), (f); Secs. 2770, 2832 & 2834 of R.E. Comm. Rules and Regulations
Chapman, John Morton dba J. M. Chapman Co. Real Estate Broker Business Opportunity Broker	3822 Grand Ave., Oakland	7/14/59 60 days	Secs. 10177(d), (f); 10302(d), (e); 11010; 11020; Secs. 2794, 2795 & 2796 of R.E. Comm. Rules and Regulations
Jones, Robert Madison Real Estate Salesman	1905 16th St., Sacramento	7/14/59 10 days (Stayed permanently)	Sec. 10177(d); Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations
Larson, John Gilbert Real Estate Salesman	3822 Grand Ave., Oakland	7/14/59 90 days	Secs. 10177(d), (f); 11010; 11020; Secs. 2794, 2795 & 2796 of R.E. Comm. Rules and Regulations
Osterholt, Francis Norbert Real Estate Salesman	394 Grand Ave., Oakland	7/14/59 30 days	Sec. 10177(d); Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations
Rogers, Frank Aubrey Real Estate Salesman	5426 Plumas Ave., Richmond Annex	7/14/59 10 days (Stayed permanently)	Sec. 10177(d); Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations
Hermansen, Wilford Real Estate Salesman	239 S. B St., San Mateo	7/20/59 10 days	Secs. 10176(a), (f) & 10177(f)
Read, Milton dba Village Broker dba Bel-Mateo Realty Real Estate Broker	341 E. Hillsdale Blvd., San Mateo and 2 E. Hillsdale Blvd., San Mateo	7/20/59 10 days	Secs. 10176(a), (f) & 10177(f)
Ide, Lee H. Real Estate Salesman	Hwys. 88 & 49, 500' SE of Intersection, PO Box 64, Jackson	7/30/59 30 days	Secs. 10177(d), (f); Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations
McPherrin, Alexine dba Golden Chain Realty Real Estate Broker	Hwys. 88 & 49, 500' SE of Intersection, PO Box 64, Jackson	7/30/59 30 days	Secs. 10177(d), (f); Secs. 2794 & 2795 of R.E. Comm. Rules and Regulations

CIVIL RIGHTS

Two bills relating to civil rights were enacted into law at the 1959 legislative session.

Assembly Bill 890 (Hawkins) prohibits discrimination because of race, color, religion, national origin or ancestry in any publicly assisted housing accommodation constructed or otherwise aided with public funds, Federal or State mortgage guarantees, or insurance, certain tax exemptions, or other specified public assistance (Ch. 1681, Stats. 1959). Any person aggrieved by violation of this statutory prohibition is entitled to sue for affirmative relief and also for damages of not less than \$500.

Assembly Bill 594 (Unruh) specifies that all citizens within the State are entitled to full and equal facilities and services in all business establishments of every kind whatsoever. Denial of these rights by discrimination on account of race, creed or color is punishable by a levy of actual damages and an additional \$250.



You Be The Commissioner!

Let's take five current complaint cases now pending before the commissioner and see what disciplinary action, if any, you would take if you were the commissioner.

Case of the Withheld Deposit

The broker received \$1,000 in deposit money and opened an escrow for the transaction. He withheld \$625, which was the amount of his commission, and placed it in his trust account; the remaining \$325 went to escrow. Seller demanded that all the money be placed in escrow. Broker flatly refused.



Case of the Uninformed Broker

After a salesman had left his employ, a broker learned the salesman had carried on negotiations never reported to him. As an example, the salesman had



accepted a note for \$2,000 payable to the broker, later returning the note to

the buyer when the transaction could not be completed. In checking other transactions, the broker did not find any dishonest acts, but felt the salesman should be disciplined by the commissioner for failure to consult with his employer and get his consent for these actions.

Case of the Unknown Loan Fee

Seller was taken to escrow on an FHA-financed transaction. While in the escrow office, he learned he would have to pay 2 percent as a charge for obtaining the loan. He complained to the commissioner, claiming the broker should know current loan practices and that he should be required to pay the 2 percent out of his commission as a penalty for his ignorance. Broker



replied the 2 percent charge was a new custom and he did not know of it until told by the seller.

Case of the Unanticipated Tax

Seller claimed the broker had encouraged him to participate in a subterfuge whereby a large enough loan could be obtained on his property to complete the transaction. The scheme was to set the selling price higher, satisfying the buyer by giving him credit equal to the amount of the increase. The seller later woke up to the fact

that the transaction showed a profit he did not receive. Result: More income tax than he expected to pay. The seller



wants disciplinary action taken against the broker.

Case of the Unqualified Buyer

Buyer had \$500 in cash, earned only \$410 per month and wanted to purchase a \$15,250 home. Salesman assured both buyer and seller that the transaction could be consummated. The offer wasn't specific about terms of



financing—stating “on terms satisfactory to the buyer.” The offer and its acceptance were placed in escrow; seller moved out of the house and buyer moved in. When the buyer learned the exact financing terms, he decided that payments would be much too burdensome for his limited income; he wanted his deposit returned, possession of the house to revert to the seller. Both buyer and seller complained to the commissioner about the salesman's actions.

(Cont. on Page 413, Col. 1)

Complaint Cases

(Cont. from Page 412, Col. 3)

Analysis of Complaints

One element common to all five complaints is that each made one or more people very unhappy. Some of the unhappiness may be due in part to the actions and motivations of the people themselves; yet, in each case, there is an element of carelessness or overeagerness on the part of the licensee. Perhaps training and knowledge were lacking, with resulting ineptness in handling the transactions.

At this stage of investigation of the cases by the commissioner's office, no final determination can be made. After the initial "anger reaction," the complainants' stories sometimes change. Complete interviews with all parties concerned may reveal totally different versions of the pertinent conversations. Cases such as these cited are usually difficult to analyze. In other types of cases involving outright dishonesty, it is often easier to gather evidence and check out conflicting stories. The majority of cases investigated by the division do not involve outright dishonesty or willful violations of the law, but are similar to the above complaints.

Oftentimes, people who file complaints with the commissioner do not realize that he is not empowered to simply order a licensee to return money or make certain settlements. These decisions a licensee must make for himself. If there is evidence that the law has been violated, then a formal disciplinary hearing is held to determine whether the license should be suspended or revoked.

Good Business Practices Will Help Avoid Complaints

When the number of complaints is compared with the number of real estate transactions handled by brokers, the ratio might not seem alarming; yet the probability is that no active licensee can consider himself immune to the possibility of having a complaint lodged against him or his salesmen. **You—the reader—may find your actions complained of. If so, the necessary investigation may upset you, especially when you know or feel your actions were above reproach.** However, longtime experience with investi-

M. R. Griffin Resigns, Harrington Is Successor

Assistant Real Estate Commissioner M. R. Griffin, who has headed up law enforcement and operations for the Division of Real Estate in Southern California since 1957, resigned October 9th. He was succeeded by G. E. Harrington, who has been Supervising Deputy-in-Charge of the Los Angeles office under Griffin.



M. R. GRIFFIN

Bob, as Griffin is known to his associates in the Division of Real Estate, the real estate business, and in private life, started his service with the State in 1949 as a deputy real estate commissioner. He was well acquainted with the real estate business and many of the people in it and this aided him in developing a thorough understanding of the problems of the business and of the Division of Real Estate. His emphasis on impartial enforcement of the regulatory provisions of the Real Estate Law was highly instrumental in maintaining and improving public confidence in the real estate business.

Mr. Griffin, while working for the Division, attended law school at night. He was awarded an LL.B. by Loyola University School of Law and admitted to the California Bar last spring.

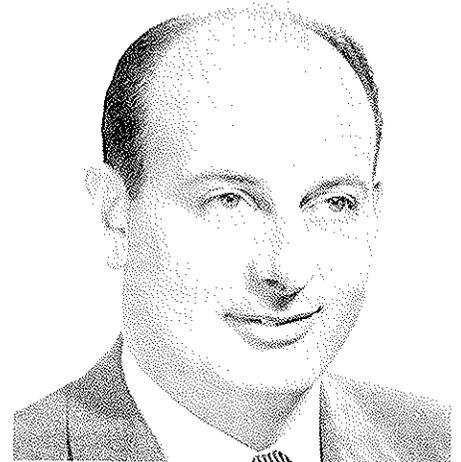
gations shows that complaints rarely originate unless there is at least some small degree of blame that can be traced to the licensee. It should be the resolve of all licensees to avoid this experience even though resultant investigation of the transaction fails to reveal any evidence of culpability.

He resigned from the Division to accept a responsible executive position with a large California real estate and financing firm.

G. E. Harrington Is Appointed

G. E. Harrington, the new Assistant Real Estate Commissioner for Southern California, has been in charge of the Los Angeles office since 1957, and responsible for supervising complaint investigation and subdivision regulation in the area served by that office.

Harrington was born in Watertown, New York, in 1921, and was educated in New York, Michigan and California, receiving his B.S. degree in business administration from the University of Southern California in 1948. His graduate studies include public administration and law.



G. E. HARRINGTON

After World War II, Harrington was in the real estate business for three years. He joined the Division of Real Estate in 1953, and served as a deputy commissioner in the Los Angeles area, and as deputy-in-charge of the Sacramento district office. Before his promotion to Supervising Deputy-in-Charge of the Los Angeles office in 1957, Harrington was Senior Examination Deputy in Sacramento.

He is a retired captain in the U.S.A.F. and saw military service as a navigator and management analysis officer. He is married, has four children, and is a resident of Whittier, California.

Commissioner's Forum

Verification of Salesman's Experience

Q. Recently, a salesman asked me to sign his experience verification form for him to qualify for broker's examination. He has not spent a full 40 hours a week working as a real estate salesman, but has averaged approximately 20 hours a week. My question is: Can I verify the actual time he did work and will it count toward him qualifying for the broker examination?

—C. F. G., Broker

A. A person depending upon experience as a real estate salesman to qualify for real estate broker license examination must show that he was "actively" engaged as a full-time real estate salesman for at least two years. However, the verification forms which are to be signed by the employing broker provide for attestation of less than full-time work in hours and percentage of a 40-hour week.

In this case, the salesman's part-time experience could be verified and it would count toward completing the equivalent of two years of full-time employment as a salesman. The salesman would have to have at least four years of 20-hour a week work to qualify.

Collection of Commissions

Q. Is it lawful for a salesman to complete a sale and collect the commission in his own name and then give the broker his agreed share?

—E. L. P., Salesman

A. No. It is unlawful for a real estate salesman to be employed by or accept a commission from any person other than the broker under whom he is licensed (Section 10137, California Real Estate Law).

Handling of Deposit Money

Q. What should a real estate salesman do with deposit money received from a purchaser?

—E. L. P., Salesman

A. The salesman should turn it over to his employing broker at once. All checks should be drawn to the order of the broker or escrow and all receipts for deposit money should be executed in the broker's name as "Agent for seller" followed by the name of the salesman. The words "Subject to acceptance and approval of seller" should appear on the receipt.

The broker should put the money in a separate trust account or a neutral escrow depository.

Closing Statement

Q. Is a broker required to furnish a closing statement to both parties to a completed transaction?

—A. J., Seller

A. Within one month after the closing of a transaction in which title to real property passes, the broker is required by law to inform both parties in writing of the selling price and,

in the event of an exchange, any additional monetary consideration. If the transaction is closed through an escrow, the escrow holder's closing statement delivered to buyer and seller is effective compliance (Section 10141, California Real Estate Law).

This section is open to letters from licensees on matters of general interest concerning the Real Estate Law, subdivisions, and mortgage loan laws.

Address your letter to the Editor of the *Bulletin*, Division of Real Estate, 1015 L Street, Sacramento.

Net Listings Can Be Dangerous!



stated his selling price at \$64,000, but *he forgot* about the broker's commission. Result? The prospect had pretty good reason to think there was something wrong. Why should there be two prices?

Dangers of Net Listing

When property is listed with the net stated price to the seller and the broker's commission is any amount paid over and above the seller's price, we have a "net listing." Offhand this looks all right, but in practice it can be very confusing to the prospective buyer, embarrassing to the broker and can even cause the loss of a sale, as in the example above. In other instances where the overage to the broker is more than a normal commission, the seller is inclined to feel his interests have suffered.

Net listings are legal and have been upheld, but they can be open to criticism. If a net listing is used, the meaning should be fully explained to the seller and he should be informed that all moneys over and above the net price will be kept as the commission in the transaction.

According to the Real Estate Law, the failure of the broker to disclose the amount of his compensation to the seller in connection with a net listing "prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties" is cause for revocation or suspension of his license.

You have just about closed a nice deal. The new apartment house on Main and Eastern Streets has been shown to the prospect and he liked everything he saw. The owner had done a good job in building the \$64,000 apartment house. You quoted the price as \$67,200 cash—that is, with your commission—and all's well and you're sure that you've got the sale cinched.

You go back to the office. The phone rings and you pick up the receiver. "The deal's off," your prospect says . . . Why? — "Because you're trying to pull a fast one! That apartment house on Main Street is only worth \$64,000 . . . and the owner told me so." Before you can explain, the prospect hangs up. Your reputation with him is shot!

This is quite a spot to be in. You hadn't tried to cheat your prospect: Of course not! The apartment building—*net*—was a \$64,000 building (the additional \$3,200 was your commission) and the owner had honestly

Commissioner Adopts New Regulations

A number of new regulations or amendments to existing regulations affecting most California real estate brokers and salesmen have been adopted by the Real Estate Commissioner. For the most part, the additions will implement legislation enacted by the 1959 State Legislature. The new regulations relate to the following matters.

- (1) License applications under fictitious names (Article 5).
- (2) Handling of escrows in subdivision sales (Section 2818).
- (3) Bond for real property loan brokers (Section 2847).
- (4) The written contract required for advance fee agents when dealing with prospective renters (Section 2852).
- (5) The written contract required for land locators (Article 20).
- (6) Advance fee agreements (Article 21).

Regulations of the Real Estate Commissioner

The full text of the new regulations which are now effective appears below:

Article 5. Applications Under Fictitious Names

2730. **Definition of Fictitious Name.** A fictitious name as referred to in this article is one which does not identify the individual or the members of a partnership, or, in the case of a corporation, differs from the firm name as filed with the Secretary of State.

2731. **License Bearing Fictitious Name Required.** No fictitious name shall be used by a broker in the conduct of any business for which a license is required under the Real Estate Law, unless a license bearing such fictitious name has been issued to said broker.

2732. **True Name or Registered Fictitious Name on License.** No name will be placed on a license except the true name of the licensee or a name which has been registered as a fictitious name in accordance with Section 10159.5 or 10282.5.

2733. **Grounds for Refusal of Fictitious Name.** The commissioner may refuse to issue a license showing a fictitious name if the fictitious name:

- a. Is misleading or would constitute false advertising.
- b. Implies a partnership or corporation when a partnership or corporation does not exist in fact.
- c. Includes the name of a salesman.
- d. Is in violation of law.

* * * * *

2818. **Escrow Acceptable to the Commissioner.** Licensed escrow companies, banks, savings and loan associations and title companies shall be escrow depositories acceptable to the commissioner under Sections 11013.2 and 11013.4 of the Business and Professions Code.

The commissioner's approval in writing must be received prior to the use of any other escrow depository.

2847. **Amount of Bond Required.** The individual or co-partnership required by the provisions of Section 3081.05 of the Civil Code to file a bond with the Real Estate Commissioner shall file and maintain with the commissioner a surety bond issued by an admitted corporate surety insurer in a sum of not less than Five Thousand Dollars (\$5,000), and at all times in a principal amount that is equal to the total aggregate amount of all moneys held by or under the control of the real property loan broker at any time for account of others.

2852. **Written Contract Required.** Any real estate broker who acts as an "advance fee rental agent" shall enter into a written contract with each prospective tenant which contract shall state clearly:

- (1) Upon what conditions the service is to be furnished.
- (2) The type of rental to be furnished to said prospective tenant.
- (3) The date said property is to be available for occupancy.
- (4) The conditions, if any, under which said fee is refundable. Said contract shall be signed by all parties and dated as of the date of signing such agreement. Said contract shall be signed in the name of the employing broker and the salesman if negotiated by a salesman and shall state the license number of the broker and of the salesman if negotiated by a salesman. A written receipt shall be given by the real estate broker or salesman to the prospective tenants for any moneys received for advanced rental listings, and shall contain the information which is required herein.

Article 20. Land Locators

2960. **Written Contract Required.** Any real estate or mineral, oil and gas licensee (hereinafter referred to as locator) who assists another (hereinafter referred to as

applicant) in filing an application for the purchase or lease of, or in locating or entering upon lands owned by the State or Federal Government shall enter into a written contract with such applicant before accepting any compensation, and such contract shall contain the following information:

(1) The services to be rendered to the applicant including but not limited to:

(a) Whether the locator's responsibility to the applicant terminates after the filing of application, or whether services subsequent to that date will be rendered, and, if so, the nature of said services.

(b) What engineering and other technical services are to be furnished, and the qualifications of the person or persons furnishing such service.

(2) Either a statement that a search of the official records has been made by the locator or his agent and:

(a) The number and type of applications previously rejected, with a statement of the reason for rejection in each case.

(b) The number and type of pending applications on file for the same land.

(c) That the land is classified for a specific purpose, or is unclassified.

(d) That the land has not been withdrawn from entry or sale. Or a statement, underlined or in boldfaced type, that the locator does not know whether any other person has filed an application for the land, whether any previous application has been rejected, whether the land is classified, or whether the land has been withdrawn from entry or sale.

(3) The amount of money to be paid by the applicant to the locator and a breakdown of the use of the fee into the following categories:

(a) State or government filing fee.

(b) Advance payments, if any, required by the State or Federal Government, with specific type applications.

(c) The locator's fee.

(4) What portions, if any, of the locator's fee will be returned to the applicant in event his application, when filed, is rejected by proper officials of the State or Federal Government.

(5) The approximate cost of meeting state or federal requirements for obtaining title to or retaining an interest in lands, subsequent to allowance of applications.

(6) The basic requirements of the State or Federal Government in making the application and for obtaining title, lease, or an interest in the land being considered after an application is allowed.

Article 21. Advance Fee Agreements

2970. **Advance Fee Advertising Material.** As authorized by Section 10085 (Ch. 2117, Stats. 1959) of the Business and Professions Code, the commissioner hereby requires that any or all materials used in obtaining advance fee agreements, including but not limited to contract forms, letters, or cards used to solicit prospective sellers, and radio and television advertising shall be submitted

(Cont. on Page 416, Col. 1)

FIRST RECORDED REAL ESTATE SALE

Sometimes cited as the first recorded real estate sale is the transaction described in the Bible which tells how Abraham bought the cave and field from Machpelah for 400 shekels of silver in the presence of the sons of Heth, who were witnesses to the transaction. This is estimated to have been in 1860 B.C.

Sec. 34.66, P. L. & R.
U. S. POSTAGE
PAID
Permit No. 157
SACRAMENTO, CALIF.

New Regulations

(Cont. from page 415, col. 3)

to the commissioner at least five days before they are used. The commissioner shall not approve any such material which would tend to mislead or which:

(a) In any manner makes statements which are false, misleading or deceptive;

(b) In any contract does not set forth in its terms a definite, specified, full and complete description of the services to be rendered;

(c) In any contract does not set forth the total amount of any fee involved with a clear and definite statement of when and on what date the fee shall become due and payable;

(d) Contains any provision, clause, or wording, which relieves or exempts the person or entity charging or collecting the advance fee from performing, accepting, or being bound to perform oral promises or representations made by their field representatives, sales agents, or other employees or agents to any person or persons contracting for the services offered;

(e) Contains any provision, clause, or wording which implies or purports to give any guarantee that the real property involved will be purchased, sold, rented, leased, or exchanged or that a loan will be obtained as a result of the services rendered or through some other means;

(f) Does not set forth a definite, specified and complete date of full performance of the services contracted for;

(g) Contains any provision, clause, or wording which implies or purports to represent to purchasers and prospective purchasers of the advertising or promotional services offered that buyers or purchasers for their businesses or properties will be immediately available, or available within a short time;

(h) Is not in a form and manner which he determines is necessary to carry out the provisions of the Real Estate Law, and in this regard the form, makeup, text, color,

art, and features shall not be so combined as to circumvent the requirements of these rules or the law.

2971. Form of Advance Fee Agreements. As authorized by Section 10085 (Ch. 2117, Stats. 1959) of the Business and Professions Code, the commissioner hereby requires that the form of all advance fee agreements be determined by him. For the purposes of such determination, the desired contents of such agreements and a proposed form may be submitted to him. In any event, not less than 10-point type size shall be used for such agreements.

2972. Content of Advance Fee Accountings. Each verified accounting to a principal or to the commissioner as provided for in Section 10305 of the Business and Professions Code shall include at least the following:

(a) The name of the agent;

(b) The name of the principal;

(c) The nature of the services rendered or to be rendered;

(d) The name of the depository in which the trust account is maintained;

(e) The amount contracted for;

(f) The amounts paid and when received;

(g) The amounts, dates, and purposes of disbursements, together with the names of the recipients or payees;

(h) In the case of advance fee advertising contracts, certificates of publication showing a copy of the advertisement, the number of insertions, the dates of insertion, and the name of the publication where the advertisement is inserted;

(i) In case of such services pertaining to loans on real property or business opportunities, a verified list of the firms and/or individuals to whom information relating to the principal's loan requirements have been referred and the dates of such referrals;

(j) The addresses of any or all persons mentioned in the verified account, if requested by the principal or the commissioner.

2973. Retention of Advance Fee Records. In reference to Section 10305 of the Busi-

ness and Professions Code, and in order to regulate the method of accounting and to accomplish the purpose of the provisions of that code relating to advance fees, the commissioner hereby requires that the books, ledgers, accounts and all other records of the broker, which support the verified accountings furnished to principals or to the commissioner, shall be retained by the broker for at least three years after the time at which such accounting was made, or was required to be made, and shall be subject to inspection by the commissioner, his deputies or his authorized representatives.

2974. Advance Fee Statement of Accounts Required. In reference to Section 10305 of the Business and Professions Code, and in order to accomplish the purpose of the provisions of that code relating to advance fees, the commissioner requires that all persons who contract for or collect advance fees from other persons shall file a statement of accounts at least annually with the commissioner. Such statement shall be certified or declared by the person filing to be true under penalty of perjury, and shall contain the following information unless otherwise specified by the commissioner:

(a) The name and address of the person or entity reporting;

(b) A list of the individual fees being reported, showing the amount and the name and address of the person charged or collected from;

(c) The total amount of the fees being reported;

(d) The actual amount, in dollars and cents, spent from each individual fee in providing each of the services enumerated or listed in the advance fee agreement pertaining to that particular fee;

(e) The actual amount, in dollars and cents, allocated from each individual fee to commissions paid to field agents or representatives;

(f) The actual amount, in dollars and cents, allocated from each individual fee to overhead costs and to profit.