



Law on Real Estate Securities Clarified

Attorney General's Opinion Eliminates Threat of Dual Jurisdiction

Since the enactment of AB 1344 (Ch. 886, Stats. 1961) establishing the classification of Real Property Securities Dealer and setting up a permit system for the sale of real property securities, the question of possible dual jurisdiction by separate agencies of State government over certain types of transactions has been raised.

In an informal opinion dated September 29, 1961, addressed to the Real Estate Commissioner, the Attorney General, in answering a series of questions, clearly defined the Commissioner's sole jurisdiction in several previously uncertain areas.

The questions were:

"1. Is the mere sale of a series of promotional notes, as defined by Section 10237.1(b) of the Business and Professions Code, subject to the provisions of the Corporate Securities Act?

"2. Is a collateral agreement, such as [the example] proposed by applicant for the transfer to the investor of a promotional note and deed of trust to replace one in default, subject to the provisions of the Corporate Securities Act?

"3. Is an investment contract consisting solely of one or more of the provisions enumerated under Section 10237.1(a) of the Business and Professions Code subject to the provisions of the Corporate Securities Act?"

"No" was the Attorney General's answer to each question; jurisdiction in these instances is solely with the Real Estate Commissioner under the appropriate sections of the Business and Professions Code.

Question 1

In considering Question 1, the Attorney General pointed out that the

dominant intention of the legislature in enacting AB 1344 was expressed in the final sentence of the bill: "*Permanent legislation is urgently needed to provide uniform and effective regulation, and to give stability to the mortgage and trust deed market.*"

The legislature evolved a specific plan of regulation over "promotional notes" as "real property securities." This plan is detailed and is of a type which does not logically indicate legislative intent that a sister agency should exercise duplicate authority.

Going on to quote from case law and from accepted authority on the harmonious construal of statutes, the Attorney General concluded that the legislature did not mean to extend the application of the Corporate Securities Law to cover the "traditional activity of real estate brokers." For this and other reasons, Section 25103(d) of the Corporations Code operates to exempt from the Corporate Securities Law all promissory notes secured by interests in single parcels of real property *which are not of a series secured by interests in the same property.* Since "promotional notes" as defined in Section 10237.1 of the Business and Professions Code fall within this exemption, they are not subject to the Corporate Securities Law.

Conversely, notes of a series secured by interests in the same property do remain subject to the Corporate Securities Law, as do the sale of notes

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Assembly Committee Weighs Out-of-State Land Problem

The problem raised by the marketing of substandard out-of-state subdivision properties within California will be the subject of study by an Assembly Governmental Efficiency and Economy Committee scheduled to meet in San Francisco, November 17 and 18.

This exploration is pursuant to House Resolution No. 446, passed at the 1961 legislative session, which suggests that many of these offerings are purely speculative in nature; and that the improvements which usually accompany the orderly development of real property are absent in many instances.

The Division of Real Estate, whose regulatory experience with this difficult-to-control area of speculative land merchandising supplied much of the basis for the legislative directive, will be at the committee's command in reaching its determination of facts and proposals for more effective regulation. As part of this process, the Assistant Commissioner, Donald McClure, and two investigating deputies have conducted a subcommittee consisting of Assemblymen Lester McMillan, John T. Knox and Harold K. Levering on an inspection tour of two such land developments in adjacent states.

One proposal to be considered by the committee may well be the issuance of a state permit to qualified subdivisions in lieu of the present Subdivision Public Report.

USE CURRENT FORMS

Don't overstock license application or other forms. The latest is a must!

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SECOND ORIGINAL LICENSE

When the holder of an original salesman license fails to qualify for his renewal salesman license, he may, by filing his application and paying the required fee (\$10), receive a second original license without the necessity of passing another examination. It should be noted, however, that this privilege is forfeited unless exercised within not more than three months after the first license expires.

Prior to the change in Section 10153.7, B. & P. Code, effective September 15, 1961, the licensee was faced with a second examination before he could get the second one-year license.

DISCIPLINARY ACTION—JUNE, JULY, AND AUGUST, 1961

NOTE: Any person whose license has been suspended or revoked, or whose license application has been denied has the right to seek a court review. This must usually be done within 30 days after the effective date of the commissioner's decision.
Therefore a list of actions is not published in this Bulletin until the period allowed for court appeal has expired; or, if an appeal is taken, until a final determination of the court action. Names of persons to whom licenses are denied upon application are not published.

Licenses Suspended During June, July, and August, 1961

Name	Address	Effective date end term	Violation
Miranda, Jose Cabigting Real Estate Broker Business Opportunity Broker	20 E. Lafayette St., Stockton	6/12/61 90 days (Last 60 days stayed on terms and conditions)	Secs. 10176 (a), (i); 10177 (f), (l) & 10302 (e)
Maillan, Joseph Albert, Jr. Real Estate Broker	630 N. San Mateo Dr., San Mateo	7/ 6/61 45 days	Sec. 10137
Pane, Lawrence Real Estate Salesman	1337 Sacramento St., Redding	7/ 6/61 30 days	Secs. 10176 (a) & 10177 (f)
Johnston, Irene Real Estate Broker	1433 Leimert Blvd., Oakland	7/10/61 90 days	Secs. 10176 (a) & 10177 (f)
Shield, Harold Joseph dba Shield Realty Restricted Real Estate Broker	P.O. Box 2, Newbury Park	7/11/61 30 days	Sec. 10177 (d); Secs. 2831 & 2832 of R.E. Comm. Regulations
Wortham, Willie Real Estate Broker	8825 S. Central Ave., Los Angeles	7/20/61 30 days	Secs. 10176 (i); 10177 (f) & (l)
Kammerman, Calton Clarence dba Busy Realty Real Estate Broker President, Columbia Mortgage & Insurance of California Inc., a Corporation	Foxley Dr. & Lake Wohlford Rd., Rt. 4, Box 903, Escondido	8/ 8/61 30 days	Sec. 10177 (d); Sec. 2830 of R.E. Comm. Regulations
Prince, John Elias Real Estate Salesman	150 S. San Jose-Los Gatos Rd., Campbell	8/ 8/61 30 days (Permanently Stayed)	Secs. 10177 (a) & (f)
Morrison, John Faris dba Premium Realty & Rentals Real Estate Broker	1448 Haight St., San Francisco	8/21/61 60 days	Secs. 10176 (a), (b), (d) & 10177 (f)
Mele, Donald Angelo Member—Mele Realty Co. Real Estate Broker	2326 N. Blackstone Ave., Fresno	8/24/61 90 days	Secs. 10141; 10176 (a), (e), (i); 10177 (d), (f), (l) & 10250
Lammy, John William Restricted Real Estate Salesman	139 W. El Segundo Blvd., Hawthorne	8/31/61 180 days	Secs. 10177 (d) & (f)
Obert, Orton Jerome Real Estate Salesman	3399 Mt. Diablo Blvd., Lafayette	8/31/61 10 days	Secs. 10177 (b) & (f)
Redditt, Theodore Wilson Restricted Real Estate Salesman	20418 S. Western Ave., Torrance	8/31/61 30 days	Secs. 10177 (d) & (f)

Licenses Revoked During June, July, and August, 1961

Name	Address	Effective date	Violation
Bigelow, Arthur Burnham Real Estate Broker	244 S. Palm Canyon Dr., Palm Springs	6/13/61 (Granted right to restricted license)	Sec. 10177 (b)
Gettelman, Eugene Clifford Real Estate Salesman	434 N. Lake Ave., Pasadena	6/13/61	Secs. 10177 (b) & (f)
Golden, Guy dba Elway Company Real Estate Broker	515 N. Los Angeles St., Anaheim	6/13/61 (Granted right to restricted license)	Secs. 10085; 10176 (d), (i); 10177 (d) & (f); Sec. 2971 of R.E. Comm. Regulations
Robbins, Frank Fredrick Real Estate Salesman	723 Paseo Grande, Corona	6/13/61	Sec. 10177 (b)
Weatherwax, Merton Andrew Real Estate Broker	E. Walker Basin Area, near Twin Oaks Community Center, Caliente	7/ 6/61	Secs. 10176 (e) & 10177 (d)
Landman, Louis Restricted Real Estate Salesman	492 S. Bascom Ave., San Jose	7/10/61	Secs. 10176 (e), (i); 10177 (d), (f) & (l); Sec. 2834 of R.E. Comm. Regulations
Crown Realty Real Estate Corporation	No. 18 The Plaza, Palm Springs	7/11/61	Secs. 10176 (a), (i) & 10177 (d); Sec. 2731 of R.E. Comm. Regulations
Fordiani, Ostilio Robert, Jr. President, Affiliated Investment Company Real Estate Broker	11235 S. Western Ave., Los Angeles 9212 S. Western Ave., Los Angeles	7/11/61 (Granted right to restricted license)	Secs. 10176 (a), (e), (i); 10177 (d); (f); Secs. 2830 & 2832 of R.E. Comm. Regulations
Keller, Molly Kay Real Estate Broker	9330 S. Avalon Blvd., Los Angeles	7/11/61 (Granted right to restricted license)	Secs. 10176 (i); 10176.1; 10177 (f) & (l)
Pugliani, Louis Real Estate Salesman	346 N. Azusa Ave., West Covina	7/11/61 (Granted right to restricted license on conditions)	Secs. 10176 (a), (d), (i) & 10177 (f)
Quier, William Mike Real Estate Salesman	P.O. Box 315, St. Thomas, Virgin Islands	7/11/61	Secs. 10176 (a), (i) & 10177 (d); Sec. 2731 of R.E. Comm. Regulations
Tuttle, Charles Walter Real Estate Salesman	2241 Pyramid Way, Sacramento	7/11/61	Secs. 10177 (b) & (f)
Sitron, Irwin Raymond dba Top Realty Co. Real Estate Broker	1826 W. Florence Ave., Los Angeles	7/25/61 (Granted right to restricted license on terms and conditions)	Secs. 10176 (e), (i); 10177 (d) & (f); Sec. 2832 of R.E. Comm. Regulations
Perez, Joel Armando Real Estate Salesman	5303 Kilgarry Ave., Pico Rivera	8/ 1/61	Secs. 10177 (b) & (f)

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THE INDUSTRY SPEAKS WORDS OF WISDOM

Across the *Bulletin* editor's desk flows a steady stream of printed materials of all kinds, among the more appreciated of which are the Real Estate Board publications.

From the *Sacramento Realtor*, we lift these words of Ken Stuart, Executive Vice President of the Sacramento board.

"We must remember that the basic reason for the existence of a licensed broker, is that he should be equipped to do for the client what the client can't do as well for himself. If a buyer or seller can handle all the complexities of modern real estate transactions satisfactorily, then why

the necessity of a broker? Therefore, the responsibility rests squarely on the shoulders of the broker, to be careful and wise in his selection of those who will be associated with him. . . ."

From President Gene Nebeker's series of "President's Message" columns in the Long Beach Board's *News-Realty*, these lines ". . . 'Horseback' evaluations, 'highballing' to get a listing, actually lying, only bring repercussions to us all as a business. It is much better to have fewer listings and know you have been honest and that you gave a proper market valuation of the property. You may lose a

few listings to the 'highballer,' but in the long run you will make more money and build public confidence in yourself. Deceit and dishonesty never pay off. A bad reputation travels fast, and people who operate this way eventually pay the price."

The Broker's Responsibility For Pest Control Reports

To pinpoint brokers' and escrow holders' responsibilities in the matter of structural pest control information for participants in real estate transactions, the legislature at the last session enacted Section 8615 of the Business & Professions Code.

So now the law says that where a "wood destroying organism" inspection of the property is requested by any party to a real estate transaction, the escrow holder involved in the transaction must secure from the Structural Pest Control Board a certified copy of all written inspection reports which have been made on the property and filed with the board during the preceding two years, turning the copy over to the party requesting it.

If no escrow holder is involved in the transaction, the broker handling the transaction is required to obtain the reports and furnish them to the parties requesting them.

This legislation has been implemented by the adoption of Sections 2903 and 2904 of the Commissioner's Regulations, effective September 23, 1961. Section 2903 merely spells out a general rule of agency: that the licensee is obligated to disclose to purchasers or prospective purchasers and to sellers any knowledge he may have of termite infestation or damage in the property under consideration.

Regulation 2904 requires the broker who is acting without benefit of escrow or who is handling the escrow himself to obtain receipts for copies of pest control reports furnished to buyers or sellers, under the terms of B. & P. Code Section 8615. These receipts must be retained by the broker for a period of three years.

NOTE: Standard forms for use in requesting certified "termite" report copies are available at all offices of the Department of Professional and Vocational Standards. The fee has been set at \$1 per copy.

Real Estate Securities

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or contracts under any "participating pool" or "certificate" investment plan.

Question 2

In reviewing the second question concerning a collateral agreement which would call for the transfer to the investor of a promotional note and deed of trust to replace one in default, the Attorney General said such an arrangement does not fall within the scope of the Corporate Securities Law but is a matter for regulation by the Real Estate Commissioner.

The Attorney General used some-

what the same line of reasoning as was applied to Question 1, further stating that his finding was a direct application of the rule that the terms of a later specific statute (AB 1344) operate to exclude the application of an earlier general one.

In regard to Question 3, the Attorney General concluded that this was merely an alternative form of the issue raised by Question 2, and again the Real Estate Commissioner has sole jurisdiction. He said there might be exceptions, however, such as when an "investment contract" involves undertaking to perform any act other than one of those enumerated in Section 10237.1 of the B. & P. Code.

Licenses Revoked During June, July, and August, 1961—Continued

Brower, Glenn H. Real Estate Broker Business Opportunity Broker	12940 Riverside Dr., Sherman Oaks	8/ 2/61	Secs. 10176 (a), (i); 10177 (f) & 10302 (e)
Canada, Squire Kenneth Real Estate Salesman	1283 W. 35th St., Los Angeles	8/ 8/61	Secs. 10160; 10162; 10164; 10165; 10176 (e); 10177 (d), (f) & (l)
Capobianco, Frank John Real Estate Salesman	134 Louise Lane, San Mateo	8/ 8/61 (Granted right to restricted license)	Secs. 10177 (b) & (f)
Sweepston, James Vann, Jr. Real Estate Salesman	807 S. Pyncheon St., San Diego	8/ 8/61 (Granted right to restricted license on terms and conditions)	Secs. 10177 (d) & (f); Sec. 2830 of R.E. Comm. Regulations
Emerson, Herbert Winter Real Estate Salesman Business Opportunity Salesman	48 S. Fourth St., San Jose	8/ 9/61 (Granted right to restricted licenses on conditions)	Secs. 10177 (b), (f); 10302 (b) & (e)
Gustafson, Theodore McKinley dba Ted Gustafson Company Real Estate Broker Business Opportunity Broker	3963 Wilshire Blvd., Los Angeles	8/22/61 (Granted right to restricted licenses)	Secs. 10177 (d), (e) & 10305
Johnston, Ralph Abraham, Jr. Real Estate Salesman	11291 Stratford Way, Garden Grove	8/22/61	Secs. 10176 (e), (i); 10177 (d), (f) & (l); Secs. 2830 & 2832 of R.E. Comm. Regulations
Walker, Lloyd Leland Real Estate Salesman	360 Bundy Ave., San Jose	8/22/61	Secs. 10177 (b) (f)
Mele, Donald Angelo Member—Mele Realty Co. Real Estate Broker	2326 N. Blackstone Ave., Fresno	8/24/61	Secs. 10141; 10176 (a), (e), (i); 10177 (d), (l), (f) & 10250
Pappas, Peter Stanley Member—Jacobson and Pappas Realty Real Estate Broker Real Estate Salesman	2920 N. Blackstone Ave., Fresno	8/24/61	Secs. 10176 (a), (i) & 10177 (f)
Rust, George Eben, Jr. Real Estate Broker	629 Webster St., Fairfield	8/31/61	Secs. 10160; 10162; 10164; 10176 (e), (i); 10177 (d) & (f)

EDUCATIONAL QUALIFICATION AND APPRAISER CERTIFICATION BILLS FAIL TO PASS

“What happened to proposed legislation designed to establish educational prerequisites to licensure” is a question frequently asked of the Real Estate Commissioner. This is the story.

Two such measures were introduced in the 1961 Session, one in the Assembly, the other in the Senate. Assembly Bill 1411 (authors—Monagan, Holmes, Dahl and Coolidge) would have required: (1) completion of a three-unit course in fundamentals or principles of real estate before one could take the examination for an original real estate salesman license; (2) completion of a three-unit course in real estate practice to qualify for renewal salesman license examination, and (3) a three-unit course in legal aspects of real estate to qualify for original real estate broker license examination.

The qualifying courses could be taken in residence at, or through the extension or correspondence division of, colleges or universities recognized by appropriate state authorities.

At all three stages of licensing, the proposed statute provided for the substitution, subject to the commissioner's judgment, of equivalent education or experience.

Educational Qualification for Broker License—Senate Bill

Senate Bill 834 was introduced by Senator Thompson at the behest of a group interested in professional status for real estate practitioners. As amended in committee, it received wide support from organized real estate industry, as did Assembly Bill 1411. In its amended form Senate Bill 834 would have required applicants for a real estate broker license after 1962 to take 150 hours of specialized real estate study at accredited colleges or universities in order to qualify.

Both bills were supported by many real estate leaders and organizations interested in elevating the industry's standards of practice, who argued that real estate is a business or vocation which, particularly at the broker level, is highly complex and growing ever more so; that it involves an agency relationship with tremendous responsibilities to principals and public alike.

Proponents further contended that the proposed requirements would simply bring the process of qualification for real estate broker license to somewhere near the standards in effect for years for other less demanding vocational fields.

The bills were defeated, the one in committee and the other on the Senate floor. But the proponents have shown no sign of relaxing their efforts to obtain some degree of educational qualification for licensure so that the public might have a stronger guarantee of competence on the part of licensees. The examination process, however effective it may be or may become, they are convinced, cannot alone accomplish this purpose.

Senate Measure for Certification of Real Property Appraisers

A third measure (Senate Bill 848, authors—Gibson, Byrne, Grunsky, Thompson and Johnson) whose passage would have affected a great many people in the real estate business provided for the certification of real

property appraisers. Application for certification would have been a voluntary act on the part of the candidate and lack of the certificate would not have prevented anyone from acting as an appraiser. Certification would have been accomplished by examination conducted by the Real Estate Commissioner and the State Board for the Certification of Real Property Appraisers, which would have been created under the terms of the act.

This act, after several amendments, was passed by the Senate, but it failed to receive approval in the Assembly. Proponents of the bill avowed their intention of introducing similar legislation at the next regular session.

RECOMMENDED PRESCRIPTION

Disease: Licensee malpractice;
Antidote: Knowledge of the law and a professional concept of ethical practice; Alternative: Legal surgery for removal of license.

Licenses Grow at Faster Pace Than Population

No matter how fast California's population expands, the number of real estate licenses seems to grow at a quicker pace. So it has been over the past three years, as witness the statistical table below.

Each fiscal year shows a greater number of licensees serving a proportionately smaller number of people. Many implications, vital to the industry and to government, are inherent in this picture, only one of which might here be pointed out: When a market is divided among a multitude of agents, only the qualified and competent may be expected to survive!

COMPARISON OF LICENSES * AND POPULATION BY AREA IN 1959-1960-1961

Real Estate, Business Opportunity, and Mineral, Oil and Gas Licenses Issued and in Effect at Fiscal Year's End

Regulatory District	Population			Licenses			License to Population Ratio		
	June 30, 1959	June 30, 1960	June 30, 1961	June 30, 1959	June 30, 1960	June 30, 1961	June 30, 1959	June 30, 1960	June 30, 1961
Sacramento.....	1,423,200	1,518,630	1,586,532	7,659	8,397	9,177	1 to 186	1 to 181	1 to 172
Fresno.....	891,566	938,480	959,166	3,573	3,934	4,146	1 to 250	1 to 239	1 to 231
Oakland.....	1,446,300	1,478,780	1,544,268	9,523	10,248	11,085	1 to 152	1 to 144	1 to 139
San Francisco.....	2,581,300	2,602,170	2,710,700	19,337	20,865	22,239	1 to 155	1 to 125	1 to 122
Northern Area Totals	6,342,366	6,538,060	6,800,666	40,092	43,444	46,647	1 to 158	1 to 150	1 to 146
Los Angeles.....	7,859,434	8,171,640	8,459,084	75,761	81,512	86,606	1 to 104	1 to 100	1 to 98
San Diego.....	1,078,200	1,120,300	1,185,300	8,377	9,527	9,703	1 to 128	1 to 118	1 to 122
Southern Area Totals	8,937,634	9,291,940	9,644,384	84,138	91,039	96,309	1 to 106	1 to 102	1 to 100
Statewide Totals.....	15,280,000	15,830,000	16,445,050	124,230	134,483	142,956	1 to 123	1 to 118	1 to 115

* NOTE: Three qualifying factors should be considered: (1) Above statewide totals do not include non-resident licensees; (2) Each year's totals include inactive licenses—33,144 or 23% in 1961; (3) The ratio is of licenses and not licensees to population (some licensees have more than one license). Population source: Department of Finance—Financial Research Section.

Lost License in Advance Fee Case

Real estate and business opportunity auctioneers who collect fees in advance for advertising and other expenses involved in their operations, as well as other licensees who do business with them, would do well to re-examine those sections of the Real Estate Law and the Commissioner's Regulations dealing with the acceptance and handling of advance fees.

The Division of Real Estate, holding these practices to be clearly covered by what is commonly called the "Advance Fee Law" and the commissioner's implementing regulations, recently proceeded to a formal hearing on a complaint against a real estate and business opportunity auctioneer, which resulted in a final revocation of his licenses to practice.

Laws to Look Up

Definitions of "advance fee" and "advance fee listing" are contained in Sections 10026 and 10027(c) of the Business and Professions Code. Section 10085 provides for the submission of advance fee agreements and advertising to the commissioner for approval prior to their use. And Section 10305 includes the requirements for the handling of such fees and the maintenance of a trust account

in which they are to be placed. It also calls for an accounting by the auctioneer to clients who pay such fees.

Sections 10252.5 and 10253.5 of the code define the applicability of the advance fee law to business opportunity brokers and their salesmen.

A new section of the Real Estate Law, 10131.2 tightens and makes more explicit the inclusion of advance fee activities within the scope of a real estate broker's license responsibility.

"A real estate broker . . . is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property, or to obtain a loan or loans thereon."

The commissioner has implemented these statutory controls with Regulations 2970, 2971, 2972 and 2974, by setting forth definite requirements as to records, advertising, forms of agreement, and content of accountings for such funds by the auctioneer to his clients who pay such fees.

IMPORTANT NEW SALES CONTRACT REGULATION

Section 2819 of the Commissioner's Regulations, made effective October 6, 1961, to implement the administration of Section 11202 of the B. & P. Code, reads:

"Provisions in Conditional Sales Contract. Contract of sale forms to be used in connection with the offering of single family dwellings, within a subdivision, shall include a provision whereby the contract purchaser may remit his payments to the seller in such a manner that they will be payable to the order of the holders of any encumbrances against the property."

The Commissioner in adopting this regulation made it effective immediately upon its filing with the Secretary of State by reporting a "Finding of Emergency" which stated:

"Recently several cases have come to light where the sellers of parcels, with improvements, in a subdivision have received regularly contracted for payments from the purchasers under conditional land contracts of sale. Instead of remitting a portion of these payments to the holders of trust deeds encumbering the property for application toward the amortization of the trust deed notes, the sellers have appropriated the payments for their own or other purposes. This has placed the innocent purchasers in a position where their equity can be foreclosed from under them through no fault of their own. The foregoing regulation will allow the purchaser under a conditional land contract of sale to protect his interest by servicing trust deed encumbrances directly.

**REAL ESTATE, BUSINESS OPPORTUNITY, AND MINERAL, OIL AND GAS LICENSES
Issued and in Effect June 30, 1961, Compared With Previous Year's Totals**

Type of License	Corporations		Partnerships		Salesmen		Brokers		Limited		Branches	Total	
	Inactive	Active	Inactive	Active	Inactive	Active	Inactive	Active	Inactive	Active		Inactive	Active
Real estate originals		129	1	61	2,047	18,776	150	3,650		467	512	2,198	23,083
Real estate renewals	1	3,070	71	1,633	21,364	36,095	8,242	40,660			9,040	29,678	81,458
Business opportunity originals		14	1	5	48	297	1	252			39	50	568
Business opportunity renewals		249	6	162	600	719	575	4,739			525	1,181	5,869
Mineral, oil and gas originals							1	4				1	4
Mineral, oil and gas renewals		1		1			38	52			1	36	57
Total	1	3,463	79	1,862	24,059	55,887	9,005	49,357		467	10,117	33,144	111,039
GRAND TOTAL (1960-61)		3,464		1,941		79,946		58,362		467	10,117		144,183
GRAND TOTAL (1959-60)		3,166		1,934		73,486		56,342		713	9,485		135,641
GRAND TOTAL (1958-59)		2,608		1,936		64,777		55,170		878	8,504		125,369
1960-61 over 1959-60													
Numerical change		+298		+7		+6,460		+2,020		-246		+632	+8,542
Percentage change		+9.4%		+0.036%		+8.79%		+3.58%		-34.5%		+6.63%	+6.29%
1960-61 over 1958-59													
Numerical change		+856		+5		+15,169		+3,192		-411		+1,613	+18,814
Percentage change		+32.8%		+0.025%		+23.4%		+5.78%		-46.8%		+18.96%	+15%

WHAT HAPPENS AT HEARINGS

Dispositions of formal disciplinary hearings held during July and August included the following: Outright revocation—30; revocation with restricted license granted—11; license suspended—12; license denied—47.

Creation of Agency Legally Considered

In *Price v. Eisan* (194 A.C.A. 374-377), the California Third District Court of Appeals handed down a decision clarifying the question of what does or does not constitute valid agency.

The defendants, hereafter called sellers, had not listed their property with the broker involved, but had orally agreed that he could attempt to find a buyer and, if successful, they would pay him a 6 per cent commission.

On the strength of this uncontested authorization, the broker had shown the property to a number of prospective buyers over an extended period, when the plaintiff dropped into his office inquiring about property, was shown the property in question and had the broker submit an initial offer of \$19,000, followed by subsequent negotiations leading to a final offer of \$23,000 which was accepted and a sales agreement executed.

Sellers Seek to Evade Commitment

Thereafter, the sellers refused to convey and submitted a written notice of rescission. The buyer sued for specific performance, and the sellers sought to justify their cancellation on the grounds that the broker, although purporting to be their agent, was acting as the buyer's agent at the time of the contract's execution. They submitted that: (1) the broker had testified that he was representing both parties; and (2) he was representing the buyers in that he failed to discuss land values with sellers and persuade them to ask a higher price based upon prices then allegedly being obtained for comparable properties.

Court Holds for the Buyer

The court held for the buyer and, on appeal, this judgment was affirmed on the basis of the following findings:

(1) "Consideration is not a requisite to the creation of an agency, but lack of consideration between a buyer of realty and a broker is evidence against the existence of an agency;" (2) "The mere fact that a man enters the office of a real estate broker to make inquiry and the broker submits property to him does not create an agency;" (3) "A broker's testimony that he was representing both parties . . . did not establish a dual agency where the record showed that the broker, in making such statement" was referring to his efforts to

COMMISSION MUST BE EARNED

In sales or golf as old pros know
Addressing the ball can't win for you;
The champ whose stroke count totals
"low"
Is always the man with "follow
through!"

Coy Sanders

The Real Estate Commissioner is not ordinarily involved with commission disputes unless an element of fraud or other law violation is alleged on the part of a licensee. Brokers and salesmen are always vitally concerned, however, as their many telephone calls and letters prove.

Resolution of such problems inevitably hinges upon a determination of whether the commission was actually earned by the complainant. To contact a potential buyer, to tell him about a listed property, even to drive him by and point it out is not enough. The crux of the matter is always, "did the claimant follow through to the point of establishing beyond any reasonable doubt the fact he was 'the procuring cause' of the consummated sale."

Single shot sales efforts all too often merely light the way for another to make the sale and lead to disputation, disappointment, and a drought in the commission department.

Almost without exception, when these conflicting commission claims are resolved, the truth is re-emphasized that in selling real estate, as in all service callings, the man who follows through gets the reward.

resolve a contingency in the already executed contract; (4) As to the alleged refusal to discuss land values, the trial court had held, as was its province, that sufficient evidence had been submitted to establish the sales price as a fair and equitable one.

It's About Time

Several brokers gathered during the "drag" break outside one of the University Extension course sessions.

"Real estate people," exclaimed one, firing up his cigarette and the conversation with the same series of puffs, "are the only group I know of trying to turn every housewife and bored retiree into a competitor for their commission checks."

"That's for sure," said another, "why it's getting so bad that you can't take a prospect into a home without every adult in the place flashing a license identification card and laying claim to his fractional share of your fractional share of the commission you probably aren't going to get in the first place!"

"Check!" said broker number three, "*It's about time* we started doing something about these part-time salesmen. Man, everybody—and I do mean everybody—is getting into the act, qualified or not!"

Point of Responsibility

Yesterday, today, tomorrow, such conversations take place and yet the complainers hold the key to the problem in their own hands. No salesman can acquire a license under the law without a broker being his sponsor. No salesman can continue to be licensed "actively" without a broker's sanction. This includes every licensee subject to disciplinary action, every licensee whose incompetence or unprofessional attitude indicates the probability of disciplinary action, every licensed hanger-on whose sole relationship to the real estate business is an official looking piece of paper hanging on some so called "employing broker's" wall and an identification card in his wallet. All of them were lifted into that status by the grace of broker sponsorship.

Yes, *it's about time*, as the man said, to do something about it. How careful have you been in signing applications? How close are you to those in your employ? Have you looked at your office wall lately or—better yet—at the performance and promise of those whose names appear there?

THOSE TROUBLESOME OPEN LISTINGS

An open listing is a legal contract, binding upon both the listing party and the agent and, unless so treated, may turn out to be costly to either or both in terms of money and loss of professional reputation.

By definition, an open listing is a general authorization by an owner to an agent or agents to sell his property on specified terms for a specified commission. It may be given to one or many agents and does not preclude the owner from selling his own property. A sale by the owner or any contracting agent by the very nature of the contract automatically terminates other existing listings of a like kind.

May Be a Pandora's Box

It is termed "troublesome" in the heading of this article, not because of any lack of legality, but rather because it opens the door, not only to multiple agencies, but to misunderstandings, wasted time and effort, payment of double commissions and expensive civil litigation.

The confusion which exists among many brokers in regard to the use of this type of employment-to-sell contract is illustrated by a list of questions recently submitted to the Commissioner by the multiple listing committee of a real estate board.

Some Questions Answered

Does an exclusive listing cancel out all open listings? Not at all. However, a broker taking an exclusive right to sell upon a property would be remiss in his fiduciary responsibility to his principal did he not: (1) inquire as to any possible outstanding listings; and (2) advise his seller to notify the contracting agents of the cancellation of their agreements.

Failure to do so could very well subject the seller to litigation and the payment of two commissions, one to the holder of an uncancelled "open" who had procured a buyer ready, willing and able and the other to the holder of an exclusive.

Moreover, in the event evidence could be produced that the latter agent took the exclusive listing, know-

ing that other brokers were working on the property under "open" authorizations, and neither notified them nor advised his client to do so, disciplinary action might well be in order.

Owner May Not Cancel to Avoid Paying Earned Commission

Is it possible for a property owner to cancel an open listing at any time without the consent of the agent? Certainly, the only restriction being that this cannot be done to escape paying an earned commission. Even though signed by both owner and agent, such a listing is generally held to be a unilateral contract and may be cancelled by either party at any time prior to actual performance—in this case the procurement of a buyer ready, willing and able to perform according to the terms of the listing.

Is an expiration date necessary on open listings? No such requirement exists. All such listings are taken with the knowledge that the same authorization applies or may be subsequently granted to other agents from which the inference may be drawn that the first one to produce a buyer under the terms of the contract terminates all other similar agreements.

A Professional Attitude Begets Professional Performance

The answers to supplementary questions have been incorporated in the preceding queries. In essence, the answer to all of them and all that may occur to others may be summed up in the statement that he who does the considerate thing—he who is solicitous to serve and protect the best interests of the client whom he contracts to serve—he who is concerned for the status of the industry within which he has chosen to earn his livelihood—will conduct himself properly and counsel his client properly as to all the implications of the particular type of listing he is negotiating.

Search and Research

In Real Estate "Perfection" is another word for constant pursuit of knowledge and improved service.

Cal-Vet Bond Sale Gives Economic Encouragement

When State Treasurer Bert A. Betts announced a winning bid of 3.7596 percent on \$100 million of State of California bonds on September 13, he paid tribute to the soundness of the State's economy, offered encouragement to home and farm seeking California veterans, and sounded a challenge to real estate agents through whose services many of these properties will be acquired.

These veteran's bonds are the second issue in a series of \$400 million authorized by the voters of the State in June of 1960.

Betts in announcing the offering for sale said, "The quick acceptance of our August 16 \$100 million sale of school building aid bonds made it possible for us to come back on the market within 30 days with this \$100 million offering . . . we are expecting some competitive bidding."

The proceeds from the sale of veteran's bonds are used for financing the construction of homes and purchase of farms under the California Veteran's Loan Program.

THE BROKER'S CERTIFICATION

Most applicants for original broker license qualify for examination on the basis of having worked full time for two years as a licensed salesman. Full time means a minimum of 40 hours per week on the job.

The employing broker certifies to this experience and the broker is well advised who takes seriously this matter of "certifying." He puts himself on record as stating that his account of the salesman's experience is true and correct, "realizing that a false certification is basis for suspension, revocation or denial of my license. . . ."

SUBDIVISION STIMULANT

The 14.3 percent increase of August subdivision totals over the same month in 1960 indicates a possible shot in the arm of the state's economy.

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

STATE SERVICE OPPORTUNITY

A civil service examination for Deputy Real Estate Commissioner I positions will be held on January 13, 1962, the State Personnel Board has announced. Applications will not be accepted after December 22, 1961.

Starting pay for the job is \$530 a month, with yearly raises for satisfactory performance to a maximum of \$644 at the end of the fourth year. There are opportunities for promotion.

To qualify for examination, the candidate must have had 2 years of full-time paid real estate experience (sales or exchanges, management, loans or escrows) or 3 years of full-time experience as a field investigator, plus education equivalent to graduation from college. Experience may be claimed in lieu of education on a year-for-year basis.

If interested, request application from the State Personnel Board, 801 Capitol Avenue, Sacramento.

LAW BOOK AVAILABLE

The Division of Real Estate's publication, *California Real Estate Law, the Regulations of the Real Estate Commissioner and Other Pertinent Excerpts From the California Codes*, including all statutory changes enacted by the 1961 Legislature is available through all Division offices at \$1.04 including tax.

Promises and Facts Should Always Agree

Many a "promising" and ardent suitor whose sole concern at the time was to persuade the girl to say "yes" has subsequently had those promises return to haunt him.

"You swore to share everything fifty-fifty, you four flusher," screams his frustrated frau some years later as she burps the baby, sets the table for the family's evening meal, hurdles a sprawled teenager reading the day's comic page and tries to keep the roast from burning—all in one simultaneous housewifely effort. "That's what you said, and don't you deny it!"

The real estate agent, in altogether too many cases, goes through a similar cycle of experience, but with far more serious—and more quickly realized—consequences to his privileged status as a licensee.

Motivation Needs a Safety Valve

He too is extremely anxious to have the client say "yes." No "yes's," no consummated transactions, no com-

mission checks! He too lets that anxiety pressure him to the point of misrepresentation in pleading the merits of his proposition, either by alleging qualities which do not exist or by denying facts which do exist.

The client proves vulnerable. The "yes" is forthcoming. The sales contract is signed, escrow closed, commission check delivered, and then—boom! The whitewash of allegation dissolves with the weathering of reality. Complaints are filed with the commissioner—no license; civil action is filed with the court—damages exacted!

In romance or salesmanship, the reward which cannot be won within the bounds of truth, is neither worth the winning nor, for that matter, really capable of being won. He who woos with falsehood wins proportionate regret.

In selling, it is well to remember that promises may close the door of a sale, but only facts turn the lock of assurance!

License Examination Rates Commendation

Examinations of any kind are more often condemned than praised. So it becomes a matter of some moment when an applicant for a renewal salesman license finishes his examination and then writes, among other things:

"Your examination, the toughest single one this applicant has ever taken, certainly reflects a world of credit on the people in your office who handled its preparation.

It seems, in my humble opinion, that your present testing program is going to materially benefit the real estate business and the public."

Sincerely,
(Name withheld)

ADVICE TO TEN PERCENTER VICTIMS

The Attorney General has issued a warning, and it is re-emphasized here, to investors in ten percent trust deed companies, who are now having their trust deeds delivered to them, to beware of sharp operators seeking to purchase their interests for as little as ten cents on the dollar. The Aid to Investors Program is available to assist the investor in getting an idea of the worth of his trust deeds. Hasty sellers could get bit twice in the same budget!