



Real Estate Bulletin

Official Publication of the California Department of Real Estate

RONALD REAGAN, *Governor*

Fall 1968

BURTON E. SMITH, *Commissioner*

REAL ESTATE LAW SPELLS OUT ADVANCE FEE RENTAL CONTRACT REQUIREMENTS

Investigation of recurrent complaints against "advance fee rental agents" indicates that most are based on the agent's refusal to refund the advance fee when the person seeking living quarters believes such refund is justified, and the use of contracts not in compliance with Section 2852 of the Commissioner's Regulations.

The current shortage of available rentals may attract additional licensees and other persons into the advance fee rental business. Feigned or real ignorance of the laws defining procedures governing licensees engaged in advance fee operations will not dissuade the commissioner from taking disciplinary action nor district attorneys from taking appropriate measures.

Sections 10131(b) and 10143, B. & P. Code

Under Section 10131(b), persons or firms who (for others) are engaged in the business of leasing, renting, collecting rents, soliciting tenants or furnishing rental information to a tenant are required to be licensed as real estate brokers.

Section 10143 requires that a real estate licensee who is engaged in the business of furnishing rental information to a prospective tenant for a fee must furnish him with a contract or receipt which shall provide: (1) for repayment of any amount over \$10 if the prospective tenant does not obtain a rental; (2) that demand for refund must be made within 10 days after termination of agreement; and (3) for refund of entire fee in event rental information is not current or accurate.

Supervision of Salesman

Commissioner's Regulation 2851 specifically states that a real estate
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Further 1968 Legislation Of Interest to Licensees

The preceding issue of the *Real Estate Bulletin* carried a review of "departmental" legislation sponsored by Commissioner Burt Smith, passed by the Legislature and signed by the Governor. Discussed was SB 253, which came to be called the "Education Bill," an enactment which will become effective in part on January 2, 1970. It contains another provision further raising educational qualification standards for real estate broker license, which goes into effect January 1972. Also covered briefly were three additional bills which amend certain sections of the Real Estate Law, although these bills were not introduced at the instance of the commissioner.

With the exception noted above, 1968 statutory changes become operative November 13, except for SB 386, which provided for a raise in subdivision filing fees. That measure contained an urgency clause and went into effect on June 26, when it was signed by Governor Reagan.

This article discusses other measures enacted in 1968, which are of some moment to real estate practitioners.

AB 967—Savings and Loan Associations

Allows savings and loan associations to make loans, advance credit, and

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Tight Money Market Spawns Advance Fee Loan Schemes

Tight money cycles seem to provide ideal climatic conditions for spawning advance fee loan schemes and the apparent pinch of the continuing "tight money" market has proved to be no exception.

The Securities and Exchange Commission recently warned borrowers to be alert against deceptive and misleading offers and advertisements when seeking loans for real estate development. Large sums of money have already been lost by prospective borrowers, the SEC said.

Newspaper ads and announcements by some unscrupulous organizations or individuals have offered assistance in obtaining loans for real estate development; however, some do not have the faintest access to fund sources or have no intention of really trying to develop such sources. Investigations have disclosed that, along with ordinary property owners, many prominent companies and individuals with experience in the real estate and development field have been victimized.

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REAL ESTATE BULLETIN

Official Publication of the
California Department of Real Estate

Vol. 28, No. 3 Fall 1968

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The Real Estate Bulletin is a quarterly published by the State of California, Department of Real Estate, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the California Business and Professions Code.

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Disciplinary Action—June 15, 1968—August 1968

REB—Real estate broker RES—Real estate salesman REO—Real estate officer
RREB—Restricted real estate broker RRRES—Restricted real estate salesman REC—Real estate corporation

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 From June 15, 1968 Through August 1968

Name	Address	Effective date	Violation R.E. Law/Regulations
Costello, Frank Ralph (REB)	2635 S. Western, Los Angeles	6/20/68	10177(b) (f)
Graber, Jack Eugene (RES)	120 Reeves Dr., Beverly Hills	6/20/68	10177(b) (f)
Griner, Charles Edward (REB)	10889 Wilshire Blvd., Los Angeles	6/20/68	10177(b) (f)
K-B Home Sales, Inc. (REO)			
Romaine, William John (REB)	2367 Carquinez Ave., El Cerrito	6/20/68	10177(b)
(Right to RREB license on conditions)			
Russell, James E. (REB)	1465 Burlingame Ave., Burlingame	6/20/68	10145, 10176(c) (i), 10177(d) (f); 2831, 2831.1, 2834
dba The Russell Realty Co. dba Foster City Realty Co.			
(Right to RREB license on terms and conditions)			
Swartz, Robert Norman (RREB)	1200 S. Hwy. 9, San Jose	6/20/68	10145, 10176(e) (i), 10177(d) (f); 2830
(Right to RREB license on conditions)			
Whitlock, Luther Arthur (RES)	3673 Torrance Blvd., Torrance	6/20/68	10177(f) (i)
(Right to RRRES license 60 days after effective date of decision on conditions)			
Wong, Albert Roland, Sr. (REB)	20 Marvin Ct., El Sobrante	6/20/68	10148, 10176(i), 10177(d) (f) (j)
dba Acme Realty Company			
(Right to RREB license 60 days after effective date of decision on conditions)			
Washington, Bert H. (RES)	1076 S. Cloverdale, Los Angeles	6/28/68	10176(a) (i), 10177(f) (i)
Dillon, Robert Eugene (REB)	2195 Danville Blvd., Walnut Creek	6/29/68	10177(d) (a) (b); 2830, 2831, 2835
dba Original Realty Co.			
(Right to RREB license on conditions)			
Barth, Ruby Lucille (REB)	1644 Highland, National City	7/ 2/68	10177(b) (f)
(RES)	2504 Morningside Dr., San Diego		
Hutchins, Mildred Jane (RES)	8539 Panita Dr., Santee	7/ 2/68	10177(b) (f)
(Right to RRRES license on conditions)			
Landon, Charles Edward (REB)	4782-B Appian Way, El Sobrante	7/ 9/68	10145, 10176(e) (i), 10177(d) (f); 2831
(Right to RREB license on conditions)			
Engelder, Opal Lorraine (RES)	1860 S. Bascom Ave., Campbell	7/11/68	10177(a) (b)
(Right to RRRES license on conditions)			
Strand, Carl Marion (REB)	3670 El Cajon Blvd., San Diego	7/25/68	10162, 10165, 10177(b) (f)
(Right to RREB license on conditions)			
Bonner, Mary Ellen (RES)	4413 Saugus, Sherman Oaks	8/ 6/68	10177(f), 10177.5
Elliott, Patricia Mae (REB)	1010 El Camino Real, South San Francisco	8/ 6/68	10145, 10176(c) (i), 10177(d) (f); 2831, 2831.1
(Right to RREB license on conditions)			
Fort, John R. (REB)	12103 S. Hoover, Los Angeles	8/ 6/68	10130, 10177(d) (f) (j)
Hogens, Thomas Bunyan, Jr.	16661 Ventura Blvd., Encino	8/ 6/68	10177(b) (f)
(Right to RRRES license on conditions)			
Holmes, Sidney D. (RES)	20345 Londelius, Canoga Park	8/ 6/68	10177(b) (f)
(Right to RRRES license on conditions)			
LaCombe, Albert Emile (REB)	913 Manor Blvd., San Leandro	8/ 6/68	10145, 10176(e) (i), 10177(d) (f)
(Right to RREB license on conditions)			
Matthews, Harold Theodore (REB)	4051 Foothill Blvd., Oakland	8/ 6/68	10145, 10176(e) (i), 10177(d) (f)
(Right to RREB license on conditions)			
McCully, Charles (RES)	1659 W. Florence Ave., Los Angeles	8/ 6/68	10130, 10137, 10145, 10148, 10176(e) (i), 10177(f); 2830, 2831, 2831.1
Pettigrew, Allen James (RES)	1036 S. Mayfair Ave., Daly City	8/ 6/68	10177(b)
Cowan, Sam Durward Luther	270 S. Garey Ave., Pomona	8/13/68	10177(b) (f)
(REB)			
Chavira, Paul DeAnda (RES)	1234 Downey Rd., Los Angeles	8/13/68	10145, 10176(e) (i), 10177(d) (f)
Kinkead, Frank Waldron (REB)	29 Menlo Dr., Daly City	8/13/68	10177(b) (f)
Pope, Luther Woodrow (RREB)	3745 Delmont Ave., Oakland	8/14/68	10145, 10176(e) (i), 10177(d) (f)
dba Pope's Realty (Right to RRRES license on conditions)			
Babakan, Charles Wendell (RES)	808 Comet Dr., Foster City	8/19/68	10177(a) (b) (f)
(Right to RRRES license 30 days after effective date of decision on conditions)			
Edwards, Harold B. (RREB)	Rt. 1, Box 330, Vacaville	8/19/68	10177.5
Wolfe, Ida Mae (RRRES)	1005 California Dr., Burlingame	8/22/68	10177(k)
Abell, Glenn Arthur (RREB)	4071 Rincon Ave., Campbell	8/27/68	10145, 10176(e) (i), 10177(d) (f) (k)
George, William Jennings Bryan	1648 E. Lincoln, Anaheim	8/29/68	10176(i), 10177(d) (f) (j)
(REB)			
Marshall & George, Inc. (REO)	907 S. Hilda, Anaheim		
(Right to RREB and RREO licenses 45 days after effective date of decision on conditions)			

Licenses—New Procedures for Changing Employment or Address

Starting November 13, when a salesman changes to a new employing broker, the latter will notify the commissioner in writing at the time. Likewise, the broker-employer the salesman has left will so notify the commissioner. The salesman will strike out the broker's name and address imprinted on the face of his license and write the new employing broker's name and address on reverse side with date and salesman's initials (Sec. 10161.8, B. & P. Code).

Not changed is the requirement that the salesman complete R.E. Form 214 (Application for Transfer or Reinstatement of Salesman License) and send it to the DRE along with a \$4 fee. Until completed form and fee are sent, the salesman is not properly licensed.

Example: Salesman Herman Caller wants to leave broker John Smith to work for broker Joe Doaks. He strikes out Smith's name and address and enters

(Continued, Col. 3, Page 854)

Licenses Suspended From June 15, 1968 Through August 1968

Name	Address	Effective date	Violation R.E. Law/Regulations
Taylor, William Howard (REB)	Box 866, Chester	6/18/68	10177(i)
Hunt, Martha Ann (RES)	10433 Wilshire Blvd., Los Angeles	5 days	10177(b) (f)
(Last 60 days stayed for 2 years on conditions)		6/20/68	
Maslin, Barry Vertner (REB)	18350 Sonoma Hwy. 12, Boyes Hot Springs	90 days	10145, 10176(e) (i), 10177(d) (i); 2831, 2831.1, 2832
(RES)	19229 Orange Ave., Sonoma	7/ 9/68	
Kourambas, Demetrios (REB)(RES)	2208 Cervantes Dr., Rancho Cordova	7/17/68	10470
Herman, Harry Oscar (REB)	7357 Van Nuys Blvd., Van Nuys	Indefinitely	10145, 10177(d) (f); 2831, 2831.1
(Stayed for 1 year on conditions)		8/ 6/68	
Spivack, Lee B. (RRRES)	780 Bradford, Redwood City	15 days	10177(k)
(RES)		8/10/68	
Lothrop, William Augustus (REB)	15820 Hesperian Blvd., San Lorenzo	10 days	10177(d) (f); 2901, 2902
dba Sunset Realty	534 "A" St., Hayward	8/13/68	
(Stayed for 1 year after effective date of decision on conditions)		30 days	
Schwartz, Edward Raymond (REB)	6331 Hollywood Blvd., Hollywood	8/13/68	10145, 10146, 10177(d); 2830
Emery, Howard, Sr. (REB)	9537 See St., Pico Rivera	60 days	
Rood, Lucile (REB)	Hwy. 277 P.O. Box 104, Anza	8/14/68	10177(d) (f) (g), 11010, 11018.2; 2795, 2795.1
Tivon, Constantin (REB)	437 Hayes St., San Francisco	80 days	10177(d) (f) (g), 11010, 11018.2; 2795, 2795.1
(Stayed permanently)		8/14/68	
Moore, Willie Thomas (REB)	2076 Hayes, San Francisco	80 days	10177(j), 10177(f)
dba The Cosmopolitan Real Estate Co.		8/22/68	
Rossi, Bernard Wallace (REB)	2897 Mills Park Dr., Rancho Cordova	15 days	10470
John McLean of California (REO)	1713 Jennifer Dr., Aptos	Indefinitely	10162, 10177(d)
(30 days after effective date of decision remainder or any portion thereof may be stayed on conditions)		8/26/68	
Brockman, Robert L. (REB)	2154 W. La Palma Ave., Anaheim	8/29/68	10145, 10176(a) (i), 10177(d) (j); 2830
dba Brockman Investment Co.		30 days	

Caution to Licensees Handling Business Opportunities

As some will recall, Section 10301-(j) of the Business Opportunity Law, which was repealed in its entirety January 2, 1966, required the business opportunity broker to have written or oral permission of the seller before sending out prospective purchasers, having them first agree to pay a commission if they purchased or else transact the purchase through the office of the broker who directed them to the seller. This was usually accomplished by the means of so-called "send-out" slips.

When the Business Opportunity Law was repealed, Section 10176(j) was added to the disciplinary action section of the Real Estate Law. It is practically identical with the repealed Section 10301(j), with the exception that the sending broker must have written authorization from the seller, the word *oral* being deleted.

In a recent case, it was found that a broker violated the terms of the current law, in that he had not obtained written permission from the seller before sending out a prospective purchaser.

Another office made the sale and earned a commission, but a demand for a full commission was placed in the title company by the broker who did not have the written authorization to send purchasers, causing delay in closing and inviting litigation. Owing to certain mitigating factors, the hearing officer imposed only a light penalty, which was adopted. However, this can be a type of transaction of more than usual concern since handling business opportunities involves a person's investment in a livelihood.

Prospective Buyer Must Receive Copy of Public Report

Owners, subdividers or real estate licensees selling properties in subdivisions are duty-bound to give the prospective buyer a copy of the Final Subdivision Public Report and provide him the opportunity to read it before he pays a deposit or enters into a binding contract. This is clearly spelled out in Section 11018.1 of the B&P Code.

Expanding on this, Section 2795 of the Commissioner's Regulations further provides that a subdivider, who has not quite met all of the requirements of local and state agencies, may, if it appears certain he will be able to meet them within a reasonable period of time, be issued a "preliminary public report."

Preliminary Public Report Issued Under Strict Conditions

Such a document does not permit sales to be made, but does allow the subdivider to accept "reservations" under the following conditions: (1) the subdivider, owner or agent must deliver a copy of the preliminary public report to each person who makes a "reservation" and obtain a signed receipt signifying the report has been read by the prospective purchaser; (2) a completed copy of the reservation agreement and any consideration taken must be placed in a neutral

escrow; and (3) the purchaser must be given the privilege of cancellation at any time as well as full and immediate return of his deposit.

Any licensee who executes a reservation which does not comply with all three of the above is in violation of Section 10177(d) of the B. & P. Code, and may subject himself to disciplinary action. An example of this would be a broker who knowingly takes a reservation when the public report has not as yet been issued. If he executes any kind of a deposit receipt before the public report has been issued, he is in violation, no matter how the deposit receipt may be conditioned. A deposit receipt is a binding contract even though it may contain a condition similar to "3" above. He has also failed to comply with "1" and "2" above since no public report is in existence and he has not executed or placed in escrow any reservation agreement.

Thus, it is imperative that persons selling properties in subdivisions realize the significance of the public report as a disclosure document and become better acquainted with the "ground rules." If they have any questions they should communicate with the nearest DRE district office.

DESIST AND REFRAIN ORDERS

Issued for the Period Between April 1, 1968, and August 31, 1968

Number of orders	Violations
9	IN-STATE Sale of real property securities without permit . . . and/or failure to comply with all applicable statutes and regulations.
9	Failure to comply with California subdivision requirements.
8	OUT-OF-STATE Failure to provide for subdivision public report, promised recreation facilities, proper permit or otherwise meet requirements of subdivision law.

FURTHER 1968 LEGISLATION

New Laws Briefed

(Continued from Col. 2, Page 849)

purchase obligations representing loans and advances of credit for financing the acquisition of mobile dwellings. This type of activity is subject to rules and regulations of the Savings and Loan Commissioner, which may have been adopted by the time this *Bulletin* is distributed.

AB 1291—Limit Raised on Cal-Vet Purchases

Permits the California Department of Veterans Affairs to acquire homes for veterans when the market value of improvements does not exceed \$35,000. Value is to be determined by an appraiser or an authorized representative of the department. This, of course, represents a very sizable increase in the maximum which had previously been \$25,000.

AB 1381—California Public Record Act

With some exceptions, this bill requires public records to be opened to inspection during the office hours of the agency and allows any citizen to acquire a copy of a public record at a reasonable cost. Records not construed as open to public disclosure under this act include:

1. Preliminary drafts, notes or interagency or intraagency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure.

2. Records pertaining to pending litigation in which the public agency is a party.

3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

4. Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes.

5. Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination.

AB 1404—Loan Cost

Amends Section 10242 of the B. & P. Code (Real Estate Law) to increase allowable loan costs and ex-

penses to \$165 (previously \$120) or 4 percent of the loan amount, whichever is greater. In no event can the cost and expenses exceed \$295. Previous maximum was \$250.

The act made a further amendment in "Article 7. Real Property Loans." Section 10245 makes the law applicable to any first deed loan of up to \$12,000. Previous limit was \$10,000. In the case of junior trust deeds, the law now applies to loans up to \$6,000 instead of \$5,000.

AB 1578—Term of S. & L. Loans

The Savings and Loan Commissioner is authorized to provide by regulation that savings and loan associations may make amortized loans upon real property other than residential real property for a term of not more than 25 years. Previous maximum term on such loans was 20 years.

The bill also provides that savings and loan associations, complying with the S. & L. Commissioner's regulations to be promulgated, may make amortized loans on improved real property up to 75 percent of its appraised value. Previous limit on such loans was 70 percent of appraised value.

SB 279—Cal-Vet Home Loan Maximum Raised

The Department of Veterans Affairs is authorized to advance up to \$20,000 in a home purchase. Previous maximum \$15,000. Veterans now limited to one loan and, after November 13, 1970, applications acceptable only within 15 years of date of discharge from service.

SB 434—Real Estate Commission

Adds two "public members" to the commission, one to be an attorney, the other a public planning official.

SB 435—Subdivision Map Act

Amends Section 11535 of the B. & P. Code which section defines subdivisions for the purposes of the Subdivision Map Act. Several new exemptions have been added. Example: When land is zoned for commercial development with approved access to a city street and has approval of interior street alignment, it is not defined as a subdivision.

A POINT TO PONDER

The following excerpt from a recent issue of AIREA's *The Appraiser* is food for thought for all licensees. "Whether selling, leasing, or managing property, a Realtor without a modern sense of real estate values would be like an old-time airplane pilot lacking knowledge of modern technology. While he still might be able to fly by the seat of his pants and close some transactions, his service to buyers and sellers alike would be subprofessional, and in some instances might constitute a disservice and indirectly reflect discredit on all Realtors."

It also spotlights the appraisal educational requirement (or special test) enacted into the license law this year (effective January 2, 1970).

SB 833—Administrative Procedure Act

Provides for "discovery procedures" to be applied in formal actions or hearings initiated under the Administrative Procedure Act.

SB 665—Loan Prepayments

Adds Section 2985.6 to the Civil Code. It provides that a buyer shall be entitled to prepay all or any part of the balance due on any real property sales contract with respect to the sale of land which has been subdivided and improved with residences. Specific waivers of nonprepayment provisions are voidable and unenforceable, although voidability or unenforceability of a no prepayment clause does not affect the validity of the balance of the contract. This section applies only to contracts entered into on or after January 1, 1969.

Governor's Reorganization Plan No. 1

Formally reorganizes executive branch of state government. Under the plan, the *Division of Real Estate* becomes the *Department of Real Estate* within the *Business and Transportation Agency*. Other departments within the agency include: Aeronautics, Highway Patrol, Motor Vehicles, Public Works, Banking, Corporations, Housing and Community Development, Insurance and Savings and Loan.

"LOAN" SCHEMES . . .*(Continued from Col. 3, Page 849)*

The SEC said a typical scheme requires the borrower to pay a substantial nonrefundable service fee before he receives a written commitment for the advance of loan funds. Another method: The prospective borrower pays an advance fee for "front-end money" pursuant to an agreement which avoids the question as to whether the fee will be refunded if the loan is not obtained within a reasonable period.

Here in California, numerous complaints have been received from would-be borrowers who have paid sizable advance fees to both brokers and nonlicensees for assistance in obtaining loans, only to find that the funds were not forthcoming nor were the fees returned. As these activities become more prevalent, the DRE has intensified its drive against the operators engaging in them.

In a number of cases investigated by the DRE, files have been turned over to local district attorneys, resulting in arrests and criminal convictions of unlicensed persons. In other cases, serious penalties were imposed, following administrative hearings, when licensees proved to be the culprits.

Two recent cases are here briefly outlined. In one, a check for \$7,500 represented a two-point advance fee on a \$375,000 loan which the operator was to obtain for his client on two pieces of business property. The money was deposited in a bank by the operator under his name. Investigation revealed that the funds had been dissipated for personal purposes, and the prospective borrower has never received a loan or a refund of his advance fee.

The commissioner issued an order to the operator, a nonlicensee, to desist and refrain from engaging in activities requiring a real estate license; the matter is being pursued through the local district attorney's office as a criminal complaint.

The other operator scanned foreclosure notices appearing in a legal newspaper. Using the information thus garnered, he sent letters offering his assistance to obtain refinancing. He would then visit the distressed parties



California's civilian population was 19,662,000 on July 1, 1968, according to a report compiled by the State Department of Finance. The population has increased by 447,000 over the past fiscal year and by July 1, 1969, 20,154,000 persons will reside in this state, said the report. The study, based on projections, does not claim to be predictive, but it is of considerable interest to anyone concerned in any way with real estate, be he broker, salesman, builder or lender.

The figures are awesome, including this one: If net migration to California continues at the level established over the past five years, and birth rates continue at recent comparatively low levels, the state's population will practically double by the year 2000 to a total of 38,570,000 persons. If a higher birth rate is assumed and migration stays much as it has, California's

facing foreclosure, offer to obtain new financing, if a fee could be paid to start the procedure. He would accept varying sums from the prospective borrowers, as little as \$25. He neither obtained the refinancing nor refunded the advance fee. He apparently ignored the desist and refrain order issued by the commissioner, since subsequently additional complaints were received. These cases were submitted to the district attorney and a warrant was issued for the arrest of the operator.

Operations of the type discussed above cast a shadow on the many reputable mortgage brokers whose business it is to obtain financing for their clients and to service the financing. Unquestionably, these individuals and firms provide a valuable service to borrowers. Their knowledge and experience are especially valuable in a "tight money" market. In this state, under Sections 10131 and 10131.2 of the B. & P. Code, they are required to have a real estate license, and they operate within exacting regulations.

Licensees, especially those who engage in or are contemplating engaging in practice of finding loan funds

population could rise to a high of 41,300,000 at the beginning of the next century. Projected is an increase in population of 2,500,000 over the next five years; by 1980, California will have approximately 26,000,000 residents.

The report contains some interesting projections about population makeup as it may change over the next 32 years. Using the level migration base with a continuance of the lowered birth rate, the median age of the population will decline to 28 years in 1973 but will increase to 31 years by the year 2000. Using the same set of assumptions and 1965 as the base date, elementary school age children, ages 5-13, will have increased 77 percent; high school youths, aged 14-17, 93 percent and that part of the college age between 18-21 years by 126 percent, as A.D. 2000 dawns.

EMINENT DOMAIN**Owner May Recover Expenses**

If negotiations to acquire property by a public body are unsuccessful, a formal proceeding in eminent domain is brought in court to adjudicate the differences.

Enacted this year was a law which provides that a defendant property owner in a condemnation action, which is later abandoned, may recover expenses reasonably and necessarily incurred in preparation for trial, during the trial, as well as expenses subsequent to the proceeding, whether rendered before or after the filing of the action. Such expenses include reasonable attorney fees, appraisal fees, and fees for the service of other experts who may have been consulted.

are urged to familiarize themselves with the advance fee statutes and the commissioner's implementing regulations. A review of Sections 10026, 10027, 10146 of the B. & P. Code and Sections 2970 through 2974 of the Commissioner's Regulations might well be in order.

Real Estate Law Spells Out Advance Fee Rental Contract Requirements

(Continued from Col. 1, Page 849)

salesman cannot operate a rental agency unless the salesman's employing broker: (1) is actively engaged in the real estate or rental business at the same address; (2) is familiar with all rental listings; (3) maintains immediate and close supervision over salesman; and (4) approves all listings.

Investigations reveal that some real estate brokers have "rented" their licenses to salesmen, who conduct an advance fee rental business at a different address or in a different community, with little or no supervision.

Other Pertinent Regulations

Commissioner's Regulations 2852-2856 set forth the language which must be included in all contracts with prospective tenants as well as prescribing the type of records to be maintained; i.e., lists of addresses given to all prospective tenants, registry of advertisements published by the licensee, and the retention period for records.

Regulation 2852 relates to the written agreement which shall set forth: (1) conditions upon which service is to be furnished; (2) type of rental to be furnished; (3) date property is to be available; (4) termination date of agreement; and (5) provision for refund of amount in excess of \$10 if a rental is not obtained, and for the refund of the entire fee if rental information is not current or accurate.

The provisions referred to in item 5 are embodied in the law and must be incorporated in each contract. If similar, but not the exact, language is to be employed, the language must be approved by the commissioner in writing, prior to use.

Section 2853 provides that an exact copy of the agreement must be furnished to the prospective tenant and the original kept on file by the licensee for three years.

Under Section 2854, the lists of addresses furnished to a prospective tenant must be prepared in duplicate and must show the address and description (i.e., two-bedroom home, five-room flat, etc.) of the property

License Examination Questions

This is the third of a series of articles intended to acquaint real estate brokers, salesmen and other interested persons with the type of multiple choice questions used in the DRE's license examinations. The following samples were taken from the DRE's "Item Bank." Answers are on page 856.

1. *Alienation expresses a meaning most completely opposite to:*

- (a) Acquisition.
- (b) Ad valorem.
- (c) Acceleration.
- (d) Amortization.

2. *The Real Estate Commissioner has primary regulatory authority over subdivision matters involving:*

- (a) Alignment of streets within a tract.
- (b) Design and improvement for drainage.
- (c) Financial arrangements to insure completion of community facilities.
- (d) All of the above.

3. *In the appraisal of residential*

property, the cost approach is most appropriate in the case of:

- (a) New property.
- (b) Middle-aged property.
- (c) Older property.
- (d) Multifamily property.

4. *A promissory note that provides for payment of interest only during the term of the note would be:*

- (a) An installment note.
- (b) A straight note.
- (c) An amortized note.
- (d) A nonnegotiable note.

5. *A property produced an 8% gross return on a \$10,000 purchase price for a one-year period. The owner's only expense resulted from a 6% annual interest charge on a \$9,000 lien against the property. What is the percentage of return the owner is realizing on his equity?*

- (a) 8%.
- (b) 10%.
- (c) 12%.
- (d) 26%.

and the amount of monthly rental. If any subsequent rental possibilities are furnished to a prospective tenant by telephone, licensee must note addresses on his copy of the list.

Section 2855 provides that the rental agent must keep and maintain a registry of all advertisements, together with (1) address of the property advertised and (2) name and telephone number of the person who offered the property to him for rent.

In the past, many disciplinary actions involving advance fee rental agents have resulted from supplying prospective tenants with an address of a property, allegedly for rent, when the owner of the property had never furnished the agent with any authorization to send tenants to view the property. This is precluded by Section 2856, which provides that a rental agent shall not furnish a rental listing to a prospective tenant unless the licensee has specific authorization to offer the property for rent.

Brokers should be conversant with these sections of the Real Estate Law and the regulations for the commissioner has indicated they are to be strictly enforced.

New Procedures for Changing Employment or Address

(Continued from Col. 2, Page 850)

Doaks' name and address on reverse side with date and his own initials. He sends the completed R.E. Form 214 with \$4 fee to the DRE.

A broker changing his business address will strike out the old address appearing on the face of his license, entering the new address on the reverse side with date and his initials. **Again, the broker is not properly licensed until such time as written notice of change along with a \$4 fee is forwarded to the DRE.**

In the future, the DRE will issue a new license certificate only when it is an "original," or when it is a renewal or when it has been lost. The new procedure should be convenient to all, while control is maintained and economy achieved.

LICENSES ISSUED DOWN 6 PERCENT

In the first eight months of 1968 a total of 24,040 original and renewal broker and salesmen licenses were issued, a 6-percent decrease from the 25,582 issued during the same period last year.

New State College Reports

The following are summarizations of research projects recently completed under the DRE's education and research program at California State College at Fullerton:

Potential Market for New Housing, project directed by Irene Lange.

The purpose of the study was to determine the composition of the market for lower-priced homes (\$19,000-\$25,000) in the Orange County and Los Angeles area. The research concentrated on identifying the characteristics of potential consumers and the best promotional approaches.

Sources and Costs of Funds for Regional Shopping Center Construction in Orange County, Norman W. Goodwin.

This study was an effort to determine the cost and sources of funds for financing the construction of regional shopping centers in Orange County and the location and investment incentives. The report discloses that regional shopping center financing is of such magnitude as to require large investors on the scale of insurance companies, pension fund services, etc. It so happened that the projects investigated in this study resorted to external financing, supplied by insurance companies in each case. Also, the funds for the particular center's studied came from out of state. Funds were invested in Orange County, and in each center specifically, primarily because of the extremely high growth rate experienced in the county during the past two decades.

Urban Model Synthesis: A Review, Peter M. Mlynaryk.

The object of the study was to bring together all of the research that has been undertaken on urban models. Thus far, a bibliography has been compiled and this report, which describes the models currently utilized in research on urban areas, has been completed.

An urban model provides an explanation of the economic base of a region. It generally allows one to de-

STATE COLLEGE RESEARCH REPORTS AVAILABLE

A limited supply of the following research reports are obtainable from the DRE's principal office, P.O. Box 2407, Sacramento 95811, at \$1.50 per copy, plus 5 percent state sales tax, if ordered in California.

- California State College at Fullerton—Effect of the Property Tax on Manufacturing Location.
- Chico State College — Economic Feasibility of Real Estate Management in Chico, California.
- Fresno State College — Dynamic Model of Residential Extension in the Fresno - Clovis Metropolitan Area.
- Humboldt State College—Broker's Role in Attracting Industrial, Commercial and Recreational Development.
- Sacramento State College—Effectiveness of Salesmanship in Selling Real Estate.
- San Jose State College—Characteristics, Preferences, and Home Buying Intentions of Apartment Residents in San Jose.

termine the sources of income and employment and living and growth patterns within a geographical or economic area. The region usually used for studies is the standard statistical metropolitan area.

A Pilot Study of "Saving" Behavior in Orange County, Edward P. Shaw.

The intent of the study was to learn about the attitudes and behavior in Orange County with regard to a number of aspects of savings. It concluded that convenience and rates of interest, in that order, were the two most important factors in the selection of a particular savings institution. The same two, in reverse order, were most persuasive in causing a relocation of savings.

Most individuals responding regarded contributions to profit sharing and pension plans, the purchase of real property, stocks and bonds, and the payment of life insurance premiums (quite correctly, according to the author) as "savings". This resulted in a broad dispersion of the "savings" dollar.

Note: Reports available from DRE, Sacramento. Price per copy \$1.58 (tax included).

Broker's Role in Attracting Industrial, Commercial and Recreational Development

Additional copies of *The Broker's Role in Attracting Industrial, Commercial, and Recreational Development*—by Drs. Russell R. Connett and Jasper J. Sawatsky of Humboldt State College, are still available for purchase from the DRE.

This study, as its title implies, treats with the methods and techniques used by successful brokers in attracting industrial, commercial, and recreational development to their communities. It should be of significance to brokers, developers, managers of commercial-industrial enterprises who are seeking locations, chambers of commerce, and community leaders throughout California.

Some of the authors' conclusions are:

(1) That the broker's role in attracting development has been underestimated.

(2) That to be successful in luring development, a broker must be creative, imaginative, able to recognize a need, and alert to potential uses for vacant properties.

(3) That often the combined efforts of an entire community are involved and the successful brokers or developers are those who participate in the activities of chambers of commerce, planning commissions, etc., and bring them into cooperative endeavors with financial institutions, utility companies and railroads.

(4) That the research and factfinding activities of brokers and developers are perhaps their most important functions.

(5) That most brokers underestimate the potential for industrial or commercial real estate business in their area and that though the financial rewards can be great, the initial period of developing an industrial/commercial brokerage is long, demands full-time devotion to the job, and may be slow to produce earnings.

For the authors' other findings and the data from which these conclusions were developed, send DRE, Sacramento, California 95811, check or money order for \$1.58 (tax included).



Abandoning Agency Agreement Calls for Full Disclosure

A real estate broker employed to negotiate the sale of the property of his principal cannot purchase the property for himself unless (1) he has first made a full and fair disclosure to his principal of intention to abandon the position of agent and act as a principal, and (2) he has received his principal's permission to do so.

ANSWERS TO EXAMINATION QUESTIONS

1 (a); 2 (c); 3 (a); 4 (b); 5 (d).

The general principle that denies a broker the right, without the knowledge and consent of his principal, to become the purchaser of property he is employed to sell is aimed at an indirect or collusive sale or transfer, as well as a direct sale or transfer to the broker (*Bate v. Marsteller*, 232 CA 2d 605).

Example: A broker who had an exclusive listing represented to his principal that he had sold the property to a third person. In truth, the third person was taking title for the broker, and the broker failed to reveal this and did not notify the seller that he was no longer acting as her agent but was actually the intended "circuitous" buyer. The property was subsequently conveyed to the broker's wife and then to a company owned and controlled by the broker. The court held the broker's acts were fraudulent and that the seller was entitled to rescind the contract (*Slusher v. Buckley*, 174 CA 2d 324).

In a fraud action against brokers who purchased their principal's property without making full disclosure of

all the facts of the transaction to the principals, it was held that although the price paid might have been the

SELLER'S PERMIT

Sellers' permits under the California Sales and Use Tax Law are good until revoked, unless:

1. The merchant moves his place of business.
2. He reorganizes; e.g., changes from an individual proprietorship to a partnership or corporation, adds or drops a partner.

highest price obtainable, the principals were damaged at least to the extent of the commission paid by them to the brokers. (*Bate v. Marsteller*, 175 CA 2d 573). But a showing of actual damages is not required as a condition to rescission under the circumstances (*Slusher v. Buckley*).

The fact that an employing broker notified the sellers he was exercising his option to buy the property and was acting, together with associates, as a principal in negotiating the purchase for the group did not suggest that the brokerage contract had been abandoned or that the broker was no longer observing his fiduciary capacity as agent. Thus the court held the broker was obligated to disclose to the sellers all facts within his knowledge which were cogent to the sale and which might have influenced the sellers' willingness to sell, such as the fact the broker had received an offer for the property at a higher

Business Opportunities Closing Pointers

When you sell a business, advise the seller to notify the nearest office of the State Board of Equalization immediately in person, by telephone or letter.

His books and records including receipts and invoices, duplicate copies of all tax returns, evidence of payment over the last three reporting periods, and all supporting documents should be available for inspection. The board will advise him if it is necessary to examine his records and will let him know when and where it wishes to make the examination.

The seller should make a written request to the board's local office for a **certificate of payment of sales and use tax**. It will protect the purchaser and expedite the closing of escrow.

Under the provisions of the Sales and Use Tax Law, the buyer shall withhold sufficient of the purchase price to cover any amount of sales or use tax the seller may owe until the latter produces a receipt from the board showing that tax liability has been satisfied.

price than he was paying the sellers (*Zikratch v. Stillwell*, 196 CA 2d 535).

Brokers and salesmen who engage in acts such as illustrated above are in violation of the Real Estate Law and face discipline—suspension or revocation of their licenses. The cited cases consistently illustrate the dim view courts take of violations of the fiduciary responsibility assumed by the broker.