



Real Estate Bulletin

Official Publication of the California Department of Real Estate

RONALD REAGAN, *Governor*

Fall 1971

ROBERT W. KARPE, *Commissioner*

Real Estate Legislation Reaches Final Processing Stage

Sale of Five or More "Undivided Interests" Falls Under Commissioner's Jurisdiction

In reporting on the status of real estate bills in the legislative mill, all four departmental bills introduced at the instance of the Real Estate Commissioner have passed. A digest of these bills and other bills affecting real estate law and procedures are summarized below:

Departmental Bills

AB 324 (Schabarum). Mainly authorizes the commissioner to prescribe lower license fees, by regulation after hearing, with the maximum fees being those listed in existing statutes.

AB 760 (Knox). Treats five or more *undivided interests* in real property as "subdivided lands" and within the jurisdiction of the commissioner. Enacted into law October 29, 1971.

Undivided interests are exempted from the provisions of the law if they are:

1. Held by persons related one to the other by blood or marriage.
2. To be purchased and owned solely by persons who present evidence satisfactory to the commissioner that they are knowledgeable and experienced investors who comprehend the nature and extent of the risks involved in the ownership of these interests.
3. Created as the result of a foreclosure sale.
4. Created by a valid order or decree of a court.
5. Subject to an investment contract and have been expressly qualified by the issuance of a permit from the California Commissioner of Corporations pursuant to the Corporate Securities Act

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"PLACE OF BUSINESS"— A REQUIREMENT OF LAW

Section 10162 of the Real Estate Law requires every licensed real estate broker to "have and maintain a definite place of business in the State of California which should serve as his office for the transaction of business". Regulation 2754 further requires that licensed brokers and salesmen, including those with cancelled or inactive licenses, file their office and residence addresses with the commissioner and notify him of any changes in those addresses.

Uncalled-for Violations

Of late, unfortunately, some licenses, through ignorance, carelessness or by design have violated these rules. In fact, approximately 5,000 copies of the *Real Estate Bulletin* recently were returned to Department of Real Estate by the postal service, due almost entirely to failure of licensees to notify the department of their current address. It should be obvious to all why law was created requiring a definite place of business and the registration of that place with the department. If you have moved recently or are planning a move soon, you are urged to protect your license right by informing the commissioner's office of the change. Should you have any questions regarding the procedure or desire assistance, please contact the nearest office of the department.

An Explanation of Broker Examination Requirements

Through the balance of 1971 an applicant may qualify for the broker examination under any of the following experiences properly documented:

● Two years full-time employment as a licensed real estate salesman.

● Less than two years full-time employment, provided the balance thereof can be completed as of December 31, 1971. Verification of balance may be submitted later. No license will be issued until the applicant has completed and verified two years of active employment regardless of the test results.

● An applicant with a four year college degree in business subjects who has completed a minimum of 12 semester units in real estate subjects. The applicant qualifying on the grounds of educational experience may not cure a qualifying deficiency (Real Estate Finance and/or Real Estate Appraisal) by taking and passing the supplementary tests. In other words, a college graduate with six units in Legal Aspects of Real Estate and Real Estate Practice does not qualify for the Basic or supplemental tests in finance and appraisal.

● All other types of related or equivalent experience qualification claims and combinations thereof will be evaluated in the light of existing criteria set by the State Real Estate Commission.

● The applicant who has not completed the two courses in Legal Aspects and Practice has two years after the filing date of his application to cure this deficiency, regardless of his successful performance on the basic

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REAL ESTATE BULLETIN

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STATE OF CALIFORNIA
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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 1971—August 1971

REB—Real estate broker RES—Real estate salesman REO—Real estate officer
RREB—Restricted real estate broker RRES—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 on the disciplinary action stayed, until the stay is dissolved. Names of persons to whom licenses are denied upon application are not published.

Licenses Revoked June 1971 Through August 1971

Name	Address	Effective date	Violation R.E. Law/Regulations
*Borror, Ruth Marcella (RES)....	1931 California St., Mountain View	3/29/71	10177(f) (j)
Vaughn, Junior Paul (RES).....	1141 E. Alameda St., Manteca....	6/ 2/71	10177(b)
Champagne, Raymond Anthony (RES)	4421 Pacific Coast Hwy., Torrance.	6/ 3/71	10177(a)
Benham, Frank G. (RES).....	508 Forbes Ave., Yuba City.....	6/ 7/71	10176(c)
(Right to RRES license after 30 days and not more than 60 days on terms and conditions)			
Beauchamp, John Dale (REB)....	1742 Grevelia St., S. Pasadena....	6/ 9/71	10177(b)
Dbu Montebello Real Estate			
Larsen, Erik Christian (RRES)....	5204 Seashore Dr., Newport Beach.	6/ 9/71	10177(b) (k)
Terry, Arvil Titus (RES).....	378 E. St., Chula Vista.....	6/17/71	10176(c)
(Right to RRES license on terms and conditions)			
Unger, Peter Charles (REB).....	4296 Menlo Ave., San Diego.....	6/17/71	10177(b)
Vlietstra, Bart P. (RES).....	411 E. McKinley Ave., Pomona....	6/18/71	10177(b) (f)
Martin, William Daniel (REB)....	11181 San Pablo Ave., El Cerrito..	7/ 1/71	10176(a) (i), 10177(b) (f) (j)
(Right to RREB license on terms and conditions)			
Chandler, Ise Elizabeth (RES)....	2100 Capitol Ave., Sacramento....	7/ 7/71	10177(b)
(Right to RRES license on terms and conditions)			
Anderson, Marie (RES).....	3141 W. Century, Inglewood.....	7/13/71	10176(c)
(Right to RRES license on terms and conditions)			
Dozar, David (RES).....	8344 Kirkwood Dr., L.A.....	7/13/71	10177(b)
Medin, Vaso (RES).....	5676 Monte Verde Dr., Santa Rosa	7/13/71	10176(a) (i), 10177(f)
Quinones, Conrad Lopez (RES)....	5233 E. Beverly Blvd., L.A.....	7/13/71	10176(c)
Striegel, Mary (REB).....	7501 Crenshaw Blvd., L.A.....	7/13/71	10177(b)
(Stayed for 2 years on terms and conditions)			
Ogburn, Kenneth Odell (RES)....	23715 Lake Dr., Crestline.....	7/14/71	10176(a) (g) (i), 10177(f) (j)
Stewart, Jene Cortez (REB).....	P.O. Box 5204, Walnut Creek....	7/14/71	10145, 10176(e) (i), 10177(d) (f); 2832
(Right to RREB license after 30 days on terms and conditions)			
Angerame, Dora Maxine (RES)....	5006 Kenneth Ave., Carmichael...	7/21/71	10177(b)
Earle, Lillian Daigle (RES).....	1719 N. Whitley Ave., Hollywood..	7/27/71	10100, 10130, 10131(b), 10177(d) (f)
(Right to RRES license on terms and conditions)			
Hill, William Franklin (RES)....	582 W. Tennyson Rd., Hayward...	7/27/71	10177(b) (f)
Horn, Robert Anderson (RES)....	8133 MacArthur Blvd., Oakland...	7/27/71	10177(b)
Juarez, Frances Gutierrez (RES)...	13921 Story Rd., San Jose.....	7/27/71	10177(a) (b) (f)
(Right to RRES license on terms and conditions)			
Murray, Paul Michael (RES).....	2077 Bush St., S.F.....	7/27/71	10177(b) (f)
Skinner, Royce Lewis (RES).....	Burnt Ranch, Ca.....	7/27/71	10177(b)
Aguilar, David Viramontes, Jr. (RES)	210 W. 20th St., Antioch.....	8/ 3/71	10177(b)
Dorando, Leonard Gene (RES)....	1024 Dillo St., San Leandro.....	8/ 3/71	10177(b)
Monroy, Ione (RES).....	2037 Las Vegas, Pomona.....	8/ 3/71	10177(b)
Nash, Emerson Donald (REB)....	12478 San Pablo Ave., Richmond..	8/ 3/71	10145, 10176(c) (i), 10177(d) (f)
(Right to RREB license on terms and conditions)			
Rodrigues, Manuel Silveira (REB)..	50 Welle Rd., Crockett.....	8/ 3/71	10177(b)
Sturgeon, Mel (REB).....	2424 Torrance Blvd., Torrance....	8/ 4/71	10177(b) (f)
Dbu Zest Realty			
(Stayed for 2 years on terms and conditions)			
Clark, James Leland (REB).....	4300 Santa Rosa Ave., Santa Rosa..	8/10/71	10145, 10176(c) (i), 10177(d)
(Right to RREB license on terms and conditions)			
Kershner, Robert Owen (REB)....	1637 Hall Brook Dr., San Jose....	8/10/71	10177(b)
(Right to RREB license on terms and conditions)			
Dunne, Patrick Joseph (RES)....	1319 N. Hacienda Blvd., La Puente	8/11/71	10177(b)
(Right to RRES license on terms and conditions)			
Gundy, Thames Warren (RES)....	812 Anacapa St., Santa Barbara...	8/11/71	10177(a)
(Right to RRES license on terms and conditions)			
Ward, Harold Clifford (REB)....	6854 Parslane, Citrus Heights....	8/17/71	10177.5
Springer, Louis Adrian (RES)....	9317 Bartola Ave., Pico Rivera....	8/24/71	10176(c) (i)

* Not previously reported.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

(Act of October 23, 1962: Section 4369, Title 39, United States Code)

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"Instructions to License Applicants" Available

Current law and policy affecting licensing and examinations are explained in a revised version of the leaflet, *Instructions to License Applicants*. It is designed primarily for the guidance of persons interested in ob-

taining a real estate broker or salesman license.

Copies may be obtained at any DRE district office or by writing to the Department of Real Estate, 714 P Street, Sacramento 95814.

Licenses Suspended From June 1971 Through August 1971

Name	Address	Effective date	Violation R.E. Law/Regulations
*Sherriffe, Louis H. (REB).....	1445 Seminary Ave., Oakland.....	5/ 10/71 20 days	10176(a) (i), 10177(f)
Goodwin, George Raymond (REB) 1722 Irving St., S.F.....		6/17/71 30 days	10176(a) (i), 10177(f) (j)
Dba Sins & Goodwin (Except for first 10 days, stayed for 1 year on condition)			
Kennicott, Robert Mervin (REB) 1913 Court St., Redding.....		6/17/71 180 days	10177(d)
Silverman, Myer (REB).....	9409 W. Pico Blvd., L.A.....	6/23/71 90 days	10176(a) (d) (i)
Taylor, Arthur (RES).....	463 Brewster Ave., Redwood City.	6/26/71 60 days	10137, 10177(d) (f)
Dennce, Glenford Vincent (REB)..	369 Winchester Blvd., San Jose...	6/29/71 15 days	10176(a) (i), 10177(f) (j)
Dba Red Carpet Realtors of San Jose			
Berg, Charles (REB).....	1323 E. Balboa, Balboa.....	7/13/71 704 days	10165, 10177(d)
(After 30 days, remainder or any portion thereof may be stayed on condition)			
Bennett, Howard Douglas (REB)..	814 S. Hillward Ave., W. Covina..	7/14/71 90 days	10177(f) (h)
Dba Eastland Mortgage Company			
Lewis, Gene (REB).....	8216 Fair Oaks Blvd., Carmichael.	7/21/71 60 days	10145, 10176(c), 10177(d); 2832
(Stayed for 2 years on terms and conditions)			
Turkmany, George (RREB).....	5821 Racine St., Oakland.....	7/27/71 30 days	10177(k)
Dba Idora Realty Company (Permanently stayed)			
Woodman, Benjamin Earl (RES)..	25802 Vinedo Ln., Los Altos Hills.	7/27/71 90 days	10137, 10176(a) (i), 10177(d) (f) (j)
Reynon, John Dale (REB).....	1058 Sand Bar Cir., Carmichael...	8/ 2/71 10 days	10161.8, 10177(d); 2731, 2831
(Stayed for 6 months on condition)			
Griswold, Harold Ely, Jr. (REB)..	1323 N. Broadway, Santa Ana....	8/ 3/71 15 days	10177(d) (f); 2834
Dba Santa Ana Mortgage Co.			
Trust Deed Center, Inc. (REC)...	1323 N. Broadway, Santa Ana....	8/ 3/71 15 days	10177(d) (f); 2834
Pres., Harold Ely Griswold, Jr. (REO)			
D'Orazi, Victor William (RREB)..	362 Kearny St., S.F.....	8/ 9/71	10156.7
Dba D'Orazi Investment Co.			
Miller, Kenneth Sheldon (RES)...	3055 Alvarado St., San Leandro...	Indefinitely 8/10/71 30 days	10177(a)
Lynch, Lucy Rose (RES).....	880 Broadway Ave., Searsville.....	8/31/71 30 days	10177 (d) (f); 11010, 11018.2; 2795,
(All but 5 days stayed one year on terms and conditions)			2801.5
Megarthy, Jack (REB).....	403 Woodland Rd., Kentfield....	8/31/71 60 days	10176(a) (g) (i), 10177(f) (j)
Dba Real Estate Mortgage Exchange (All but 30 days stayed for one year on condition)			

* Not previously reported.

ABELL V. WATSON, 155 CA 2d 158

Agent Must Disclose All Material Facts to Principal

EDITOR'S NOTE: The fact that the principal doesn't care if the buyer is related to the agent, or that the principal would have sold the property even had he known of the relationship is immaterial—this case "points out" that an agent must not conceal his interest in property sold by his principal.

Facts—Respondent was a licensed real estate salesman. Owner told respondent he wanted \$17,500 net to him for his home. Respondent then arranged an escrow, in which the purchaser named was respondent's sister or her nominee. The escrow was closed by payment of the purchase price and a deed conveying the property to respondent's wife.

But respondent did not tell owner that the purchaser was to be either his sister or his wife.

Issue—Does the failure by respondent to disclose his relationship to the buyer constitute fraud and dishonest dealings within the meaning of Section 10176(j) of the Business and Professions Code?

Rule—An agent, being a fiduciary, is under an obligation to disclose all material facts to his principal.

Conclusion—Respondent's failure to disclose his relationship to the

buyer constitutes a breach of fiduciary duty. Such a breach of fiduciary duty comes within the definition of fraud and dishonest dealings, as these words are used in the Code. In the circumstances of this case a full disclosure prior to the sale of the property to the owner should have been made.

Rationale—General Rule 2 Am. Jur. P. 208, Section 257: "The general principle which denies the agent the right, without the knowledge and consent of the principal, to become the purchaser of property which 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 agent. It precludes the agent from selling or conveying to the agent's spouse, to a corporation in which the agent has a large concealed interest, indirectly to himself in the name of a third person, and even to a clerk of the agent who is engaged in the affairs of the vendor relating to the sale of the land."

This rule requiring full disclosure

COMMISSIONER'S MESSAGE

Wanted: A colorblind industry which can help society attain voluntary, peaceable equal opportunity and fair housing

Occasionally, the Department of Real Estate (DRE) receives letters from industry and the public which clearly demonstrate that a few licensees are violating fair employment and housing laws and applicable provisions of their industry's code of ethics. Such transgressions include the refusal of service to members of ethnic or racial minorities, pressuring licensees who do service minority interests to refrain from doing so; and inducing owners to sell or lease on the premise that ethnic or racial minority groups are integrating their neighborhood and causing an adverse change in its quality or value.

I regard this kind of behavior as a social disgrace and have assigned it top priority for correction. In assuming the duties as Real Estate Commissioner, I stated in clear, concise terms the goals of my administration. High on my list was "to help see that licensees provide full service to the public without discrimination." The relative importance of this goal has not diminished in my mind. I am still looking for a "colorblind industry" and I reiterate specifically that discrimination in housing or in servicing the housing needs of minority groups, and tactics such as "block-busting" are wrong.

In the final analysis only you, the licensee, can solve this problem. You have two very important reasons for doing so: First, it's the law; second, and more important, it's the right thing to do. Please help in every way—start today!

Robert W. Karpe

Robert W. Karpe
Real Estate Commissioner

of the agent's interest is true even if the seller makes no complaint against the agent; even if the seller doesn't care if the buyer is related to the agent; and, even if the seller would have sold had he known of the relationship.

A College Real Estate Student Profile

As a part of the continuing efforts to advance and improve real estate education, a survey was recently conducted by questionnaire to real estate students in twenty-six California community colleges.

The survey was accomplished with cooperation of the State Board of Equalization statisticians, the college real estate coordinators and, of course, the students.

The results present a reasonably accurate profile of the characteristics of the California college real estate student. This information should be valuable to the colleges, the real estate industry and the Department of Real Estate when considering the Plan for Professionalization of the industry.

Sex, Age and Educational Statistics

Three-quarters of the students are men and of the total group, men and women, sixty-five percent were over 36 years of age. Only thirty-five percent were between the ages of 21 and 35. This indicates that **the real estate business is still more attractive to the middle-aged or older person than to our youth.**

Nearly all (91 percent) were high school graduates. Over thirty-three percent had previously graduated from college!

Licensing and Earnings

Most of the enrollees (65 percent) were preparing for a broker license and over half indicated an intent to complete the real estate certificate program. **Approximately one-third of the enrollees are taking college courses for purely personal reasons involving real estate and a high percentage also intend to buy or operate income property.**

Approximately half of the students now hold a salesman's license.

Real estate teachers fared well in the study, since eighty-two percent of the students believed their teachers were well informed. About one-quarter of the students were enrolled to satisfy their local Board of Realtors' requirement. Although twenty-three percent of those employed as full-time salesmen earned less than \$5,000 per year, over twenty-eight percent earned between \$10,000 and \$20,000 per year.

Most of the students stated the college real estate courses they completed have added significantly to their knowledge of real estate.

Personnel Board Announces Deputy Trainee Examination

The State Personnel Board has announced an examination for Deputy Real Estate Commissioner Trainee with a test date of March 4, 1972. *The final date for filing is February 4, 1972.* Candidates may obtain applications and job description information from the State Personnel Board offices located at 801 Capitol Mall, Sacramento 95814; 107 South Broadway, Los Angeles 90012; and 515 Van Ness Avenue, San Francisco 94102.

Applicants may qualify if they are college graduates with majors in law, business administration, real estate or a related field; or, if they have two years of college they may qualify by substituting two years real estate experience or two years field investigation experience for two years of college.

Deputy trainees may advance to the Deputy I and II levels within a reasonable time. They may also qualify for supervisory positions after a few years' experience.

The monthly salary levels are: Deputy Real Estate Commissioner Trainee, \$676-\$783; Deputy Real Estate Commissioner I, \$791-\$959; Deputy Real Estate Commissioner II, \$870-\$1,058. Other civil service supervisory positions pay up to \$1,793 per month.

. . . Subdivision Public Report Closely Scrutinized

Over 131,000 subdivision lots were carved out of a quarter million acres in California last fiscal year. Before each lot buyer was legally bound to the purchase, the subdivider or agent was required to give the buyer a copy of the Real Estate Commissioner's subdivision public report which was prepared from exhaustive investigations and research to inform the purchaser of street improvements, water, utility services, money handling and other conditions vital to the buyer and for the protection of the public.

The commissioner, recently, asked a statewide random selection of lot purchasers for their opinions on the effectiveness of the report.

Some of the questions asked of the buyers with a summary of conclusions were as follows:

1. Was the public report helpful to

you in arriving at your decision to purchase a lot in the subdivision?

2. Was the form of the report such that it was easily readable?
3. Was there anything in the report which you did not understand?
4. Was there anything which was not in the public report which you would have liked to have seen included in the report?
5. Would you like to discuss the public report with a representative of the Department of Real Estate?

Comments elicited would indicate that over two-thirds of those surveyed were influenced by the Commissioner's Public Report in deciding to purchase the property. Ninety-three percent indicated that it was readable; many felt the terms and phrases used

in the report were rather technical real estate matters. Over 85 percent said the report was easily understood.

About 30 percent of the participants suggested additional information should be incorporated in the public report, such as proposed schools to be constructed in the future. Some commented that there are too many forms and contractual documents involved in the purchase, lessening the ability of the buyer to review and comprehend each obligation at the time of the sale.

All of the comments are being considered by the commissioner to improve procedures and for a better more informative report. The result of the survey will enable the department to examine its subdivision program in the interest of better public protection.

Loan Agent Needs Real Estate License to Solicit Loans

Savings and loan association members, who employ agents to solicit loans even though licensed by the Savings and Loan Commissioner, must also be licensed by the Real Estate Commissioner.

The definition of a real estate broker specifically includes persons engaged in loan solicitation activities and requires a real estate license. Performing these acts without a license would be a violation of Section 10131(d) of the Real Estate Law which states in part that a real estate broker is one who: "Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property."

The exemption provision of Section 10133.1(b) of the Real Estate Law applies to the lender only and not to its agents even though they are licensed as agents or salesmen by the Department of Savings and Loan.

The real estate license law extends to any mortgage producer, agent, solicitor, salesman or independent contractor who is paid a compensation or commission for his services. The mortgage producer generally takes loan applications from prospective borrowers who are frequently referred by licensed real estate brokers. In many cases, the loan application is for either an FHA insured loan or a VA guaranteed loan. The mortgage producer then submits the loan application to a mortgage banker or other lending institution. If the borrower qualifies for a VA or FHA loan, the mortgage company will originate the loan as the lender, take a first deed of trust as security and make charges and fees as authorized by FHA or VA. A commission or fee is then paid to the mortgage producer on the basis of an agreed fee schedule. This activity requires a real estate license.

If there is any doubt in the reader's mind that a real estate license is required despite the issuance of an agent's license by the Department of Savings and Loan, he would be well advised to consult with a deputy commissioner of the Department of Real Estate.

The loan representative must be licensed as a salesman to a broker having knowledge of and supervision over his loan business, or, if he acts independently, he must be licensed as

"A POINT IN TIME"

The objective of this article is to clarify the meaning of Section 10176(f) of the Real Estate Law—possibly in time to save some misinformed agents from disciplinary action.

Section 10176(f) states in essence that all exclusive agency agreements, such as listings, must contain "definite, specified dates of final and complete termination", and the quoted phrase means *month, day and year*.

Sale of Non-exempt Franchises

There are three separate and distinct categories of persons authorized to sell non-exempt franchises under Section 31210 of the Corporations Code. They are:

1. A person identified in an application registered with the Commissioner of Corporations for an offering of a franchise in California.
2. A person licensed as a real estate broker or a real estate salesman.
3. A person licensed by the Commissioner of Corporations as a broker-dealer or agent under the Corporate Securities Law of 1968.

Thus, a real estate broker, real estate salesman, broker-dealer or agent can sell franchise interests without being identified in the registration application, while a person identified in the registration application can sell the franchise interest even though he is not licensed as a real estate broker, real estate salesman, broker-dealer or agent.

a real estate broker. The mere possession of a real estate salesman license does not authorize the loan agent to receive supervision and payment of commissions directly from the lender or any one other than the real estate broker with whom the salesman is licensed.

Petitioning for Issuance of an Unrestricted License

If a license has been revoked and a restricted license granted, the licensee can petition for reinstatement of the revoked license after one year from the effective date of order.

On the other hand, if the restricted license is issued after a hearing on the applicant's fitness for license, the holder of the license properly petitions for the issuance of an unrestricted license—not for the removal of restrictions.

In either case, affirmative action must be taken by the licensee and his first move is to obtain a petition form from any office of the Department of Real Estate.

Before any new license can be issued as the result of a successful petition, the petitioner must file a formal application for that license (pages 1 and 3 of an original application), together with the full four-year license fee.

Since restricted licenses do not confer any property right, and the holder does not have the right of renewal of such license, it is to the licensee's advantage to petition for reinstatement of his revoked license, providing he has complied with the special conditions set forth in the order granting the restricted license.

Special Conditions

Special conditions may require: A surety bond, regular reports of all transactions, special reports of transactions, special treatment of trust funds, or any other condition appropriate to the circumstances.

A restricted license is not granted lightly, and the holder of such a license should be *very prompt and meticulous in submitting his reports to the department*. Petitions for reinstatement of the revoked license will be closely screened and if the petitioner has a good reporting record it could be the deciding factor in the agency's decision. A restricted licensee's failure to comply with terms of the commissioner's order is a cause for suspending or revoking the restricted license.

Licensees Must Disclose Total Compensation

One of the most basic rules attaching to the fiduciary relationship of a licensee and his principal is the prohibition against the licensee personally profiting by virtue of his agency except by the agreed compensation for his services.

The courts regard the licensee-principal relationship in the same general manner and with nearly the same strictness as that of trustee and beneficiary. When exercising the authority of an agent, the broker or salesman is dealing with property and other matters of grave concern to his principal. He has his principal's confidence and is not permitted to enjoy the fruits of any advantage which he could take of the confidential relationship.

This rule applies to undisclosed commissions or other forms of compensation that may be received by an agent in addition to the amount his principal has agreed is payable.

Undisclosed Compensation

Undisclosed compensation cases range from the *classic* secret profit to the *kick-back* received by an agent from lenders for referring borrowers. In some cases, a buyer will give an agent some additional type of compensation for finding him a *good buy*. In any such transaction, the licensee's failure to reveal the full amount of compensation to be received from both buyer and seller is a reason for disciplinary action by the commissioner.

Some large corporations make it a practice to keep their land purchasing activities confidential and pay licensees to purchase properties for themselves or a *nominee* in order that the seller will not escalate the asking price upon learning the identity of the company. Brokers who have listings on such properties and receive compensation from *both ends* of the transaction are bound by law to disclose their extra compensation and obtain the principal's consent prior to binding him to a sales contract.

Where a licensee is acting as the agent of the seller he is obligated by law to disclose the identity of the purchaser.

Any time a broker is acting as agent strictly for the buyer, he would be prudent if he makes it abundantly clear to the seller that he is acting as the buyer's agent.

It's The Law!

ACTIONABLE DECEIT. To be actionable deceit, the representation need not be made with knowledge of actual falsity, but need only be an assertion, as a fact, of that which is *not true*, by one who has *no reasonable ground for believing it to be true*.

Broker Should Provide Client With Written Rental Agreement

A frequent complaint received by the commissioner concerns the buyer who has been given possession of property prior to close of escrow without agreement or discussion as to whether there will be rental payments between the date of possession and the close of escrow. In a typical case the buyer is not aware that there is a demand for rent until escrow instructions are presented to him for signature.

A licensee should be certain that buyer and seller understand the time set for physical possession of the home and the rent, if any, to be paid. This understanding should be reduced to writing in the deposit receipt, or in a separate rental agreement.

Insisting that the rental agreement be in writing will avoid placing the agent in a position of making representations about physical possession or amount of rental payments which he may be powerless to carry out and should forestall litigation, friction and ill will.

When a licensee binds himself to an agency relationship and agrees to accept a particular compensation from his principal, he is not entitled to receive more than agreed upon, regardless of whether the compensation is in the form of cash, merchandise, personal services, trading stamps, or anything of value, unless he fully informs his principal and the principal consents to the extra compensation.

WHEN IS A DEFICIENCY JUDGMENT POSSIBLE?

Anti-deficiency judgment legislation, which is applicable only to obligations secured wholly or in part by a lien on real property dates back to 1933. Its purpose was to preclude a personal judgment on a real property purchase money obligation against a mortgagor who had lost his home or other real property through foreclosure and the proceeds from the sale were not sufficient to satisfy the obligation.

In most real estate transactions, the buyer executes a note to the beneficiary under a deed of trust. Unforeseen circumstances may prevent the buyer from meeting the payments due on the note. Is he personally liable for a deficiency judgment in case the seller or beneficiary brings an action for judicial foreclosure of the deed of trust and the property is sold for less than the amount due on the note? **Cases will vary as to facts, but judgments for a deficiency are possible only in very limited situations.**

The general rule is that when there is an actual loan of money specifically for the purpose of purchasing the property there cannot be a deficiency judgment. This rule is subject to the following important exceptions:

1. A third party lender may secure a deficiency judgment when the purchase money loan was made on a dwelling designed for more than four families.
2. A third party lender may secure a deficiency judgment when the purchase money loan was made on a dwelling of four units or less which was not occupied entirely or in part by the borrower.

The other provisions applying to denial of deficiency judgments have not changed. **The lender who avails himself of the power of sale in a purchase money deed of trust or mortgage may not secure a deficiency judgment.**

Those real estate agents who remember and practice this basic agency obligation should have no problems in determining whether they are faithfully serving their principal.

Broker Applicants: Eliminate Processing Delays

If you are one of hundreds filing for the broker examination here are a few simple **IF's** which will save your time as well as ours:

- **IF** you claim two years full time employment as a salesman, **make certain your present and all past employing brokers verify your experience on Form 226—Verification of Employing Broker.**
- **IF** you will not acquire 24 months of full time sales employment before December 31, 1971, you will not be eligible for the examination until next year or later. At that time you will need to complete courses in Legal Aspects, Practice, Finance and Appraisal.
- **IF** you *think* you are qualified, file an application and \$25 fee. Résumé letters setting forth qualifications serve little purpose since an evaluation cannot be made, nor approval given, until all evidence of claimed qualification has been

examined. This evidence will not be reviewed until the application and fee are received.

- **IF** you are claiming a *combination* of licensed salesman employment and other "equivalent" type experience, it must be supported by evidence from your employing broker (Form 226) as well as detailed job description letters from other employers. (Please allow thirty to sixty days to process this type of experience to the Real Estate Commission.)
- **IF** you claim any educational background or real estate courses completed, submit college transcripts with your application and any other evidence.

REMEMBER—If you desire expediency in processing your application, please take a little extra time and make certain that your application is complete, all supporting evidence is submitted and fee is paid.

Examination Requirements

(Continued from Col. 3, Page 949)

examination and finance and appraisal supplements. **The commissioner has no authority to waive or exempt the applicant from this requirement.**

- On and after January 2, 1972, **ALL** applicants for the real estate broker license examination, those who were *unsuccessful* on previous examinations as well as original applicants, will be required to verify two years of active, full-time employment (or its equivalent) as well as furnish evidence of successful completion of the four statutory real estate courses *prior to eligibility* to sit for the basic exam.

- The change of policy pertinent to the law and practice courses was intended to lessen the hardship on those applicants who had not completed the courses prior to being faced with additional statutory educational requirements. **After December 31, 1971, both employment and education will become conditions precedent to eligibility for the examination.**

REAL ESTATE LEGISLATION REACHES FINAL PROCESSING STAGE

(Continued from Col. 1, Page 949)

or from the commissioner under the Real Estate Syndicate Act.

6. Are in improved real property and the current assessed value of the land does not exceed the current assessed value of the structures thereon.

This legislation was needed to clarify that the marketing of undivided interests in land is to be regulated. Unless an "investment contract" was involved, there was a question whether state jurisdiction over such transactions existed. Numerous inquiries concerning the sale of tens of thousands of undivided interests in real property have been received. Many of these involved interests in raw acreage with a potential for many abuses which provisions of law related to subdivided lands were meant to prevent. **This constituted a large unregulated area which was vulnerable to the unscrupulous promoter, was susceptible to deceptive advertising, was detrimental to the stability of the**

subdividing industry and, therefore, warranted the disclosure and other protections of the law relating to subdivided lands.

SB 933 (Burgener). Provides for a civil penalty up to \$2,500 for each willful violation of specified sections of the subdivision law. Provisions of the bill are limited to "land projects" and limit civil action suits to those sections which are the most serious; many of which would fall within the felony penal section relating to subdivisions if criminal charges were filed. **The commissioner has filed civil actions previously on suits based upon false advertising.**

SB 630 (Cologne). Provides for notice to be sent to respondents (license-judgment debtors) in recovery fund actions. It clarifies the right of the judgment debtor to defend the action on his own behalf. A real estate licensee is summarily suspended until such time as the recovery fund has been repaid in full.

Non-departmental Legislation

AB 1746 (Chappie). A \$4 change of address fee cannot be charged by the department if there is no change in the physical location of the office. This covers situations where names of streets or numbers were changed by some governing authority.

AB 1083 (Gonsalves). Establishes standards for separate assessment of interest holders in planned developments.

AB 1578 (Ralph). Provides for specific approval by the commissioner of courses given by private educational institutions and under a "supervised course of study". These are in addition to those given at institutions of higher learning. **The bill also permits a legally registered alien (in the process of applying for citizenship) to obtain a real estate broker license.**

The final outcome of bills that are pending and other pertinent legislation will be covered in the Winter edition of the *Bulletin*.

More on the Plan for Professional Development

Most readers of the *Real Estate Bulletin* know that there is a Plan for professional development of the real estate business in California. The Plan is officially supported by the Office of the Real Estate Commissioner and enjoys substantial industry support. It is designed to lead toward eventual professionalization of the real estate industry.

Completion of the Plan bears a target date of 1980, at which time all existing real estate broker licensees would be grandfathered into a new category to be known as a "Certified Real Property Broker". All new licensees after that date would be required to meet certain educational requirements which have been outlined in full detail in prior issues of the *Real Estate Bulletin*. Between now and 1980 gradual steps toward that degree-oriented educational requirement would be taken through submis-

sion of such proposals to the legislature.

The Plan, in the final analysis, would include the degree requirement or several alternatives similar to those under the CPA Program. These would include an AA degree plus supervised instruction in real estate and related business administration subjects or a general showing of educational equivalent or the passing of a battery of tests to show educational accomplishment similar to that attendant a baccalaureate degree.

The road to professionalization is long, and it must be traveled one step at a time. Between now and 1980 it is anticipated that several intermediate steps would be taken so that in no particular year would any applicant for broker license see the requirements dramatically changed. The existing course completion requirements are early steps along this road.

Recovery Fund Pays Off

Since enactment of the Recovery Fund in 1964, almost one-half million dollars has been paid to 137 aggrieved persons.

Claims, as might be expected, exceed pay-outs. Fifty-six claims were made against the fund during Fiscal Year 1970-71 amounting to \$426,144. Thirty-six claims were satisfied for a total payment of \$153,453 which cost the individual licensee about \$1.00.

Sixty-four percent of the claims were paid. Thirty-six percent of the amount claimed was paid or scheduled for payment during FY 70-71. The FY 70-71 pay-out percentages are historically consistent with previous years.

The average paid claim was \$2,915. Less than one percent of the Recovery Fund pay-out has since been recovered from respondent licensees.

Twenty-nine College Students Win Real Estate Intern Rewards

Twenty-nine college students participated in the 1971 real estate intern summer program. Thirteen were from northern California; sixteen from southern California. They were located in eighteen cities throughout the state, with eleven real estate boards represented. Antelope Valley Board led the state with eight internships; Marin County Board had six; Sacramento Board had four. The program was coordinated by the commissioner.

The purpose was to interest and encourage career-oriented non-licensed college students to enter the real estate business. Students enrolled in business majors were given an opportunity to participate in a full-time paid work

experience in a real estate office, during the months of July and August.

A representative from the commissioner's office made at least one visit to the sponsoring broker's office during the intern period to determine the progress of the intern. Upon completion, the interns and sponsoring brokers were asked to evaluate the program without "pulling any punches." When asked for their overall rating, 76 percent of the participants rated it in the "above average" to "excellent" category.

When asked to rate the "growth-on-the-job" aspects of the work experience, or, how much was learned, the brokers believed it was more

successful than did the students. Eighty-two percent of the brokers gave it a rating of above average to excellent; the students—74 percent.

Participants who were officially enrolled in the program will receive written recognition from the commissioner. The interns will also receive a "Certificate of Completion" and the sponsoring brokers will be presented with a "Certificate of Appreciation". These will be awarded at Board of Realtors meetings in the near future.

Another intern program is planned for next summer. A year-round intern program is now being encouraged via the existing "work experience" programs used by the colleges.