

REAL ESTATE BULLETIN

EDMUND G. BROWN JR., Governor

Fall 1975

NEW

PEST CONTROL REGULATION

The language of Section 1099, Civil Code, pertaining to the delivery of pest control inspection reports was discussed in the Spring 1975 Bulletin on page 3.

To clarify the real estate licensee's responsibilities in connection with structural pest control aspects of a real estate transaction the following regulation has been adopted by the department effective July 15, 1975.

Section 2905. Pest Control Documentation. Whenever a licensee is an agent in a transaction in which the delivery of a structural pest control inspection report, notice of work completed or certification prescribed by Section 8519 of the Business and Professions Code is a condition of a contract effecting the transfer of the real property or a condition of financing the transfer, the licensee shall (1) cause delivery of the appropriate documents to the transferee, (2) determine that the transferor has caused such delivery, or (3) advise the transferee that Section 1099 of the Civil Code requires that the appropriate documents be delivered to the transferee.

The licensee shall maintain a record of the action taken by him to effect compliance with this regulation in accordance with Section 10148 of the Business and Professions Code.

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TRUST FUND RESPONSIBILITY

During the period April 1, 1974 through March 31, 1975, DRE auditors examined 1,454 brokerage trust records. Of those examined 6.8 percent were referred to formal disciplinary action and 30.8 percent were cited for minor trust fund discrepancies.

It would appear that something more than education is needed when more than one-third of the real estate broker trust accounts examined are deficient even though minor.

The DRE will always assist those who ask for help in the mechanics of trust fund handling but more attention will be focused upon enforcement than ever before. Violators will be subject to formal action.

Sections 10086 and 10176(e) of the Business and Professions Code provide for corrective measures should the broker commingle his money or property with the money or property of others which is received and held in trust.

Throughout this article are illustrations of actual cases investigated by DRE as the result of trust fund mismanagement.

Use your client's money? No Way!

Basic to every office operation, regardless of its size, is the requirement that detailed records be kept of client funds and other forms of deposit. Any person who obtains a license in California is examined on his or her knowledge pertinent to accounting and trust fund responsibilities. *It is fundamental in the business of real estate that you don't use money belonging to your client or anybody without his express approval.*

• Broker out over \$3,000. License in Jeopardy. Here are the facts:

Broker hired a non-licensed person as a bookkeeper to help him in the office. At first, the broker closely supervised his work. As time went by, the broker became lazy, stopped checking the bookkeeper's work and allowed bookkeeper to sign trust account checks without broker's co-signature. The broker failed to secure a fidelity bond.

After two years, the bookkeeper started to help himself to a few trust funds. At first, he kept small cash deposits. Later, he kept cash deposits and also made cash withdrawals when he deposited checks. By the time his actions were discovered, he had taken over \$3,000.

(Continued on page 4)

SOMETHING'S MISSING!

Beginning with this edition of the Real Estate Bulletin the "holes" are missing! Prior issues were three-hole punched for convenience in placing them in note binders. Eliminating the holes, however, saves several hundred dollars in printing costs thus helping to keep down bulletin expenses.

Become a "do it yourselfer" with a paper punch if you save the bulletin issues. It will help us combat higher costs.

REAL ESTATE BULLETIN

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Fall 1975

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

JOHN E. HEMPEL
Chief Assistant Commissioner

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RICHARD B. NICHOLLS, Assistant Commissioner

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94102
RAYMOND L. ROYCE, Chief Deputy
Sacramento, Rm. 1494, 714 P St. 95814
JOSEPH P. HOFMANN, Supervising Deputy
Fresno, Rm. 3084, 2550 Mariposa St. 93721
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District Offices

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San Diego, Rm. 2022, 1350 Front St. 92101
JOHN C. KAMPS, Supervising Deputy

SUBDIVISIONS

714 P St., Sacramento 95814

RAYMOND M. DABLER, Assistant Commissioner
Sacramento Headquarters
Rm. 1550, 714 P St.

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LEE V. SIDA, Chief Deputy

San Francisco,
Second floor, 1 Hallidie Plaza 94102

JOHN LAZUR, Chief Deputy
Los Angeles, Rm. 8107,
107 S. Broadway 90012

RICHARD E. RANGER, Chief Deputy
Sacramento, Rm. 1400, 714 P St. 95814
RICHARD D. CARLSON, Chief Deputy

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.

From the license renewal fee, \$1 is allocated to cover subscription to the *Bulletin*, Second Class Postage Paid at Sacramento, California.

Disciplinary Action—April—June 1975

REB—Real estate broker
RREB—Restricted real estate broker

RES—Real estate salesman
RRES—Restricted real estate salesman

REO—Real estate officer
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.

* Not previously published

LICENSES REVOKED

Name	Address	Effective date	Violation Code/Commissioner's Regulations
Jordan, Darrel Robert (RES)	9438 Hillside St., Oakland	4/ 1/75	10177(b)
Spencer, LaVeta Iris (RES)	3136 Bakula Way, Sacramento	4/ 1/75	10137
Wilkes, Meigia Lee, Jr. (RES)	479 Albert Way, Marina	4/ 1/75	10177(b)
Durkin, Peter Joseph (REB)	1038 Alta Pine Dr., Altadena	4/ 3/75	10145, 10176(e)(i), 10177(d), 2831.1
Morgan, Richard Thomas (RES)	2161 N. Winery, Ste. C, Fresno	4/ 8/75	10177(b)
Hope, Larry Douglas (RES)	3253 Macy, San Bernardino	4/15/75	490, 10177(b)
Coffin, John Thomas (RES)	900 N. Cuyamaca St., Ste. 109, El Cajon	4/17/75	10176(a)(i), 10177(f)
Joplin-Carlson-Holtscaw, Inc. (REC)	900 N. Cuyamaca St., Ste. 109, El Cajon	4/17/75	10176(a)(i), 10177(f)
Joplin, Troy Marion (REB)(REO)	900 N. Cuyamaca St., Ste. 109, El Cajon	4/17/75	10176(a)(i), 10177(f)
Officer—Joplin-Ashton-Claxton Corporation			
Goodhouse, Betty Ann (RES)	Box 322, Walnut	5/ 6/75	10130, 10177(d)
Roekle, David Lee (RES)	14932 Doheny Circle, Irvine	5/ 6/75	475, 490, 10177(b)
Swift, Kermit Schofield (REB)	225 Mattson Ave., Los Gatos	5/ 6/75	10177.5
Zogaib, Philip Louis (RES)	3129 Glendale Blvd., Los Angeles	5/ 6/75	475, 490, 10177(b)
Garcia, Martin Yturriaga (REB)	1083 El Camino Real, Santa Clara	5/21/75	10177(b)(f)
Turbeville, Allen K. (RES)	13262 McKinley Circle, Westminster	5/27/75	10177(b)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective date	Violation Code/Commissioner's Regulations
*Tieger, Robert (REB)	2102 S. Myrtle Ave., Monrovia	11/19/74	10177(b)(f)
Db—Changing Times Real Estate			
(Right to RREB license on terms and conditions)			
Straub, Donald Acton (REB)(REO)	5199 E. Pacific Coast Hwy., Ste. 606, Long Beach	4/ 8/75	10177.5
Officer—Straub Investment Company, Inc.			
(Right to RREB license after 90 days on terms and conditions)			
Furman, John Marcel (RES)	556 Mills Way, Goleta	4/ 9/75	490, 10177(b)
(Right to RRES license on terms and conditions)			
Loneragan, Robert Lee (REB)	4005 Poothill Blvd., La Crescenta	4/10/75	490, 10177(b)
(Right to RREB license on terms and conditions)			
Whitney, Earl Raymond (REB)	Tamarack Lane, Lake Hodges, Escondido	4/10/75	490, 10177(b)
(Right to RREB license on terms and conditions)			
Burlin, Rudy Melvin (REB)	P.O. Box 1246, 1123 High St., Auburn	4/17/75	10177(d), 11010, 11018.2
(Right to RREB license on terms and conditions)			
Rogers, Adriane T. (RES)	4560 Admiralty Way, Marina Del Rey	4/21/75	490, 10177(b)
(Right to RRES license on terms and conditions)			
Walker, Richard Lee (RES)	6872 Akins Ave., San Diego	4/24/75	490, 10177(b)
(Right to RRES license on terms and conditions)			
Hamilton, William Clayton (REB)	201 East Chapman, #34A, Placentia	5/ 6/75	490, 10177(b)
(Right to RREB license on terms and conditions)			
Kessler, Thomas Edward (REB)	1867 Anton Way, Upland	5/ 6/75	10177(f)(h)
Db—San Fernando Valley Rental Service			
(Right to RREB license on terms and conditions)			
Triplett, Judy Ann (RES)	6831 Tillamook, Westminster	5/ 6/75	475(a)(1), 490
(Right to RRES license on terms and conditions)			
Holm, Raymond Donald (RES)	9800 S. Sepulveda, Ste. 18, Los Angeles	5/13/75	490
(Right to RRES license on terms and conditions)			
Kanno, George (RES)	16690 Mt. Acoma Circle, Fountain Valley	5/28/75	490, 10177(b)
(Right to RRES license on terms and conditions)			

TRUTH IN LENDING CASE

Editor's note: Also see Regulation Z article elsewhere in this *Bulletin* for terms that trigger truth in lending disclosures.

The Federal Truth in Lending Law which became effective on July 1, 1969, as a portion of the Federal Consumer Protection Act, together with Regulation Z issued pursuant to the act, applies in transactions involving a real estate security instrument executed by a real estate broker who regularly extends credit to real estate

buyers by way of mortgages or trust deeds.

In the Arizona case of *Eby v. Reb Realty, Inc.*, 9th Circuit US Court of Appeals (1974), the court held that where realty sales on its own account were significant aspects of a broker's business and he extended credit to buyers in nearly half of such sales, the broker was a "Creditor" subject to the disclosure requirements in the Truth in Lending Act.

LICENSES SUSPENDED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Rebel, Richard Raymond (RES)	6731 Via Angelina Dr., Huntington Beach	4/ 1/75	10137, 10177(d)
Balmat, Harold Joseph (REB)	23519 Robertson Blvd., Chowchilla	5 days 4/17/75	10176(a)
Brookshier, Glen Harry (RES)	409 S. Gateway Dr., Madera	15 days 4/17/75	10177(g)
		15 days	

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Klatt, Margaret Elizabeth (REB)	14819 E. 14th St., San Leandro	4/19/75	10162, 10177(d)
Dbk K Realty (After 30 days, may be stayed on conditions)		to and incl. 10/ 6/75	
Lang, Frank Oscar (RES)	500 S. LaVeta Park Cir., Apt. 41-A, Orange	4/22/75	490, 10177(b)
(Stayed for 2 years on terms and conditions)		30 days	
Jackson, Frances Katherine (REB)	4671 Market St., San Diego	4/23/75	10145, 10176(c)(i), 10177(d)(f)(g)(i)
(Stayed for 3 years on terms and conditions)		30 days	
Browne, Harry Langworthy (REB) (REO)	1399 Forest Ave., Palo Alto	5/ 6/75	10143, 10177(d)
		95 days	
Dbk—National Rent A Home System of Santa Clara and San Mateo Counties Officer—National Rent A Home System Officer—General Resource Development (Stayed for 1 year on terms and conditions)			
National Rent A Home System (REC)	1524 Camden Ave., Campbell	5/ 6/75	10143, 10177(d)
(Stayed for 1 year on terms and conditions)		95 days	
Barton, Johnnie Wilson (RES)	6525 N. Bethel, Clovis	5/13/75	10176(a)(b)
(Stayed for 3 years on terms and conditions)		1 year	
Barton, Marybelle (REB)	6525 N. Bethel, Clovis	5/13/75	10176(a)(b)
(Stayed for 3 years on terms and conditions)		1 year	
Farrell, John Franklin (REB) (REO)	621 Lockwood, Vallejo	6/14/75	10145, 10177(d)
Officer—Victor Real Estate, Inc. (Stayed for 2 years on terms and conditions)		60 days	
Victor Real Estate, Inc. (REC)	769 Tuolumne St., Vallejo	6/14/75	10145, 10177(d)
(Stayed for 2 years on terms and conditions)		60 days	

Things And People...

The Real Estate Bulletin

Four times a year the DRE staff members combine their efforts to prepare a Real Estate Bulletin for publication. Authors and editors prepare articles and gather information they believe will interest its over 210,000 readers. Assistants proof and lay out each issue of the copy.

The Real Estate Commissioner's Education and Publications Section provides secretarial and editorial support for the bulletin. Senior Deputy Larry Smith is the Bulletin editor. Paul Pope, Chief Deputy, Qualifications and Publications is its feature writer and Henry Block, Assistant Commissioner in charge of Education is senior editor.

All articles and other items of copy are submitted to the editorial staff, the editor determines important details such as format, type styles, spacing, line length, design etc. A job estimate is filed with the Office of the State Printer detailing this information and the manuscript is forwarded to the OSP. The state printer then types the copy and prepares art work or illustrations requested.

The copy is then reviewed by the editorial staff, the commissioner gives it a final look, and it is then returned to the OSP which prints the bulletin and mails it to the licensees and other subscribers.

The editor is always pleased to receive "letters to the editor" and enjoys receiving ideas for articles to be printed in the bulletin. On occasion outside authored articles are included in the bulletin, but bylines are avoided.

Not only do real estate licensees receive copies of the bulletin, but the bulletin is mailed to newspapers, subdividers, colleges and many others throughout the United States and overseas.

New Exam Location in San Francisco

Ray Royce, Chief Deputy, San Francisco Regulatory Operations reports that real estate salesmen and broker examinations are now administered at the Holiday Inn on Van Ness Avenue. The new facilities offer free parking for license examinees.

Abandoned Subdivision Filings

Ray Dabler, Assistant Commissioner in charge of Subdivisions, said recently that 347 subdivision filings were abandoned during the 1974-75 fiscal year. A total of 1,980 subdivision filings were made during the same period ending June 31, 1975.

PERFORMANCE OF LICENSED SERVICES

A new section was added to the Business and Professions Code effective January 1, 1975 that relates to discrimination in the performance of licensed activities.

This new law, Section 125.6 makes every person licensed under the Business and Professions Code subject to disciplinary action if, because of another's race, color, sex, religion, ancestry, or national origin, he refuses to perform his licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or makes any discrimination, distinction, or restriction in the performance of his licensed activity.

Real estate brokers and salesmen are among those who are licensed under the Business and Professions Code and are therefore subject to the provisions of the new law.

TRACT NAME AND NUMBER PLEASE

Many residential subdivisions are advertised with flowery names rather than tract numbers—legal description. Admittedly, there is little romance in a tract number. Consequently, many subdividers identify a subdivision community with a popular name other than the legal title.

Regulation 2799.1(2) states "A subdivision shall not be advertised under a name designation or appellation that is not set forth in a Notice of Intention and Questionnaire." When both official name or tract number and the advertising name are set forth they will both be included in the subdivision public report. When done in this fashion only the designated advertising name need be used. When only the official tract name or number is filed with the department, the use of other names violates the regulation.

TRUST FUNDS

(Continued from page 1)

The broker made restitution from his own personal funds but faced disciplinary action for negligence, and, of course, is more than \$3,000 poorer for the experience.

Handle Trust Funds in Accordance With Regulations, Supervise All Your Employees, and Keep a Watchful Eye on Your Trust Account . . . Lest the Next Shortage Be Yours.

- Broker's interest free loan cause of disciplinary action. Broker needed some cash for personal reasons. He could have borrowed the money from a bank, but instead he borrowed from his trust funds. He said he didn't want to pay interest on the "loan". Shortage in the trust account was revealed during a routine DRE audit investigation. The broker now faces disciplinary action.

Don't Borrow Funds From Your Trust Account. It Could Lead To The Loss Of Your License.

Time for Rigid Enforcement

In the future when improper money handling procedures by licensees pose a potential loss to the public, formal administrative action will be taken, even if loss has not yet occurred. Policing through education is one thing, but without enforcement through a disciplinary hearing when necessary the message may not get through.

There is no justifiable reason why a broker cannot maintain adequate records of his transactions. The DRE sells approximately 3,000 copies of the *Reference Book* each month in which a complete chapter is devoted to the mechanics of

trust accounting. How many look at the *Reference Book* once licensed? The chapter on *Trust Fund Records* would be excellent review for Monday morning sales meetings, wouldn't it?

Careless Records and Careless Supervision Cited

A detailed review of trust fund records has convinced the staff of DRE that some violations could not have been "prevented" because they obviously were intentional acts, but there are a large segment of cases which indicate a lack of knowledge or carelessness on the part of the licensees rather than intentional dishonest acts. *A lack of accountability for trust funds is a serious violation of law even if it is unintentional.* The fiduciary responsibility of a real estate broker makes the selection and maintenance of adequate trust fund records absolutely essential. A review of three additional cases may demonstrate how lack of knowledge and carelessness could cause a broker to lose his license.

- Over a five month period broker received in trust for the benefit of owners of various parcels of real property funds from tenants in accordance with property management agreements between the broker and the owners. At the end of the five month period, trust funds received by the broker exceeded trust funds in his possession by about \$483.

The broker had been licensed as such for five years and as a salesman for nine years with no prior disciplinary record. The commingling involved was of a technical nature in that he, at all times, had sufficient funds in other accounts to cover his trust obligations. Part of his difficulty arose from the fact that he *kept his trust account and general account in the same bank* and failed to employ proper bookkeeping methods in keeping those accounts segregated.

At the suggestion of the DRE, he prepared records necessary to comply with the Real Estate Law and Regulations of the Commissioner governing proper accounting for trust funds. His license was suspended for a period of 90 days although stayed for three years conditioned upon his meeting certain terms and conditions.

TV—RADIO R.E. CONSUMER EDUCATION

As a result of funding by DRE the California Broadcasters Association has produced and distributed to TV and radio stations throughout California several short, 30/60 second, real estate consumer oriented public service announcements.

The purpose of these announcements is to provide real estate consumer education to the general public so they can better evaluate their own housing needs; better understand common real estate concepts and terms; and be better equipped to enter into basic real estate transactions.

If you have heard/seen these announcements, please let the station management know whether or not you liked them.

- A military man was transferred overseas. He left his home in the care of a real estate broker. The broker was instructed to rent the home and pay all bills. DRE received a letter from the owner asking us to find out why he hadn't heard from the broker.

An audit investigation revealed the broker had moved into the home himself, and he had not paid the property taxes or insurance. The broker says the matter is none of our business, that it is just a civil matter in which his real estate license is not involved. We think differently. The broker faces disciplinary charges for fraud and dishonest dealing.

Don't Breach Your Fiduciary Duty.

- In another case, during a nine month period a broker was short \$1,050 which he had received in trust. His difficulty arose, in part, from a salesman making improper entries and deposits in the trust account, and in part from inadequate records.

Broker subsequently made restitution of converted funds and on the advice of the DRE auditor corrected his bookkeeping. License revoked with right to a restricted license granted upon certain terms and conditions.

(Continued on page 5)

REIT'S

Goals, Investment Policies, Patterns of Success of Real Estate Investment Trusts is a new research report by C. E. Elias Jr., Harold Davidson, and Donald Valachi of U.S.C. now available from the DRE, 714 P Street, Sacramento, California 95814 for \$1.50 plus tax.

TRUST FUNDS

(Continued from page 4)

Accountability Cannot be Delegated

Even though a broker may delegate authority to withdraw trust funds, a broker cannot delegate his accountability under the statutes. The mere fact of an employee's irresponsibility or negligence does not relieve the broker from compliance with the law. Here are additional cases on point!

- Broker agreed to employ a salesman to open and operate a branch office. The broker authorized his salesman to keep and maintain all records of trust funds and withdraw and disburse funds from the trust account. For a period of over six months, the broker did not examine any of the trust fund records for the branch office operations. At the end of the sixth month, it was discovered the salesman had converted over \$10,000 of trust funds. During this entire period, the trust account for the branch office was never used by the broker and he never wrote a check on the account nor saw a bank statement. In this case, both broker and salesman licenses were disciplined.
- Broker in a mountain community operated a cabin rental business for owners. A salesman for the broker located a tenant and rented one of the cabins, but for less than the rental amount specified by the owner. The owner did two things: sued in civil court and complained to DRE.

As a result of the civil court case, the broker paid the difference between the two rental amounts. Broker also had to pay the owner's legal fees, as well as his own legal defense fees.

An audit investigation by the DRE based on the complaint revealed the broker was not in the habit of reviewing any of the rental agreements signed by his salesmen, and in addition, several of the agreements had terms at variance with the listings.

His lack of paying attention to details has already cost the broker over \$1,000, and he now faces possible disciplinary charges for his negligence.

Are You Paying Enough Attention to "Minor" Details?

REGULATION "Z" TRUTH IN LENDING

The relevant advertising requirements are found at Section 226.10 (d) (1) and (2) of Regulation Z. Briefly, this section sets out (1) credit terms which may be used with no further disclosures and (2) credit terms which, when mentioned in real estate ads, trigger the requirement of other disclosures.

1. The only term of credit which may appear in an ad without further disclosures is the Annual Percentage Rate of Interest. The figure given must be an accurate expression of the complete finance charge on the transaction, and the words "Annual Percentage Rate" must be spelled out. (A November 1973 amendment lets advertisers state the simple annual rate where the finance charges include it, provided that A.P.R. is more conspicuous.)

2. Certain credit terms when mentioned in an ad trigger the required disclosure of other terms. The purpose of this requirement is to give the prospective purchaser a complete and accurate picture of the transaction being offered. The trigger terms and required disclosures are shown below:

Column I <i>Trigger Terms</i>	Column II <i>Required Disclosures</i>
Appearance of any of these requires inclusion of everything in Column II.	—the cash price
—the down payment or "no down payment"	—the down payment or that there is no down payment
—the amount of any installment	—the number of payments
—the finance charge in dollars or that there is no charge for credit	—the amount of each payment
—the number of installments	—the period of payment, i.e., monthly
—the period of repayment	—the Annual Percentage Rate

Any advertisement that mentions an interest rate, but omits the annual percentage rate or omits the words "Annual Percentage Rate" is in violation. Any advertisement which includes any trigger term (column I) without all of the required disclosures (everything in column II) is in violation.

Holding Checks Uncashed

Some brokers complain about problems which flow from a transaction which is cancelled before an earnest money check clears. If a broker accepts a check from a prospective purchaser and places it directly in his trust account and the offer is subsequently not accepted, the broker then must return the money to the buyer. The buyer usually wants his money immediately, but his check may not have yet cleared. The broker finds himself with the unhappy choice of antagonizing his buyer by telling him he has to wait until his check clears or writing a check to the buyer and taking a chance the buyer's

check will be good. What if the buyer's account turns out to have insufficient funds to cover the check? If the broker has already written a check against his trust account, he is in the untenable position of being short of accountability in his trust account. If he has other trust moneys in the trust account against which he wrote the check he has, in effect, used someone else's money when he wrote the check to the buyer.

The Key To Holding Uncashed Checks Is Written Instructions To Do This From The Buyer And Full Disclosure To The Seller.

(Continued on page 7)

WHAT TO DO WITH YOUR LICENSE

If you are one of more than 22,000 new real estate salespersons joining the ranks of real estate licensees each year, here are a few answers to questions which may disturb you.

What do you do with the license certificate? Does the broker keep it? How often is a new license issued to you? What if it is lost or stolen? These are the kinds of questions often asked our licensing staff.

It is your license and proves that you are authorized to negotiate real estate transactions. Here are the answers:

- Original or renewed license certificates are mailed either to the inactive address furnished by you or to the main office address of your employing broker; the pocket card attached to the license and printed at the same time may be carried in your wallet.
- During the time you are actively engaged in real estate under a licensed real estate broker the certificate remains in your broker's main office. While you are inactive keep the certificate at home in a safe place.
- Take your license certificate with you when your employment with your broker terminates and you plan on being inactive; notify the DRE of your home address and pay a \$4 fee to place the license on inactive status.
- If you change employing broker(s), give the certificate to your new employer, be sure to send DRE a \$4 fee and transfer application containing your signature and the new employing brokers signature.
- Record in ink or type the change on the license then date and initial. Use the same care you would for your driver's license.
- If the certificate gets lost, stolen or damaged, a duplicate may be obtained by payment of another

New Educational Materials

For some years the teacher's guides and student workbooks in real estate subjects published by the Department of Real Estate have been used extensively in California institutions of higher learning.

In the summer of 1974 Erik Jorgensen, a San Francisco attorney and Realtor, gave a speech at a joint luncheon of the California Association of Real Estate Teachers and the Real Estate Certificate Institute. Jorgensen called for a new look at California real estate education.

Communication between the department and Jorgensen resulted in appointment of Erik Jorgensen, Frank Battino (Berkeley Realtor and coordinator of real estate program at Merritt College) and Lowell Anderson (coordinator of real estate program at Cerritos College) as a three member real estate curriculum editorial board.

The Real Estate Curriculum Editorial Board is charged with developing outlines, parameters, and procedures for producing new instructor guides and companion student study guides in the following courses: Real Estate Principles, Real Estate Practice, Real Estate Finance, Real Estate Office Administration, Legal Aspects of Real Estate and Real Property Management.

The board also was to recommend a proposed budget for each of the above guides and recommend principal authors and consultants for each of the guides.

Principal authors and consultants have been named and the board is now providing overall coordination and continuing editorial review of all materials in production so that they are college level and contain real estate subject matter of statewide application.

Following is a listing of the principal authors and consultants by subject:

Subject	Principal Authors	Consultants
Principles.....	Dennis McKenzie.....	Cecilia Hopkins Joseph Villa Warren Ringer
Practice.....	George Engstrom.....	Bruce Mulhearn Philip A. Yeager Wallace Dodson
Finance.....	Robert J. Bond.....	Al Gavello Jerome Blank Randolph Howe
Law.....	Denny Milligan.....	Lawrence Harper James Hillman Louis Mallette
Office Administration.....	Dave Conger.....	John Cyr Keith Wheeler Jerome Blank
Property Management.....	Edward Clare.....	Raymond Salinas Lloyd Hanford, Sr. Eugene Burger

Present plans call for the above guides to be prepared in time for the Spring 1976 semester/quarter.

\$4 fee when accompanied by your signed written request. License certificates are to be returned to DRE only on request, death of the licensee or when the whereabouts of the licensee is not known by the broker.

APARTMENT—CONDO CONVERSIONS

A new research study titled *An Investigation into the Success and Failure Factors of Apartment-Condominium Conversions in Northern California* has been completed by San Jose State University. Copies are available from the DRE, 714 P Street, Sacto., CA 95814 for \$1.50 plus tax.

TRUST FUNDS

(Continued from page 5)

Nature of Trust Funds

Non-disclosure of the exact nature of entrusted funds has caused a large number of disciplinary actions as illustrated by the following case:

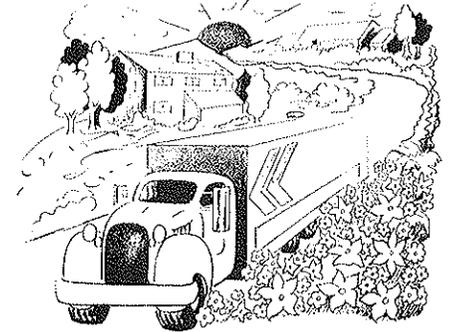
- It has been held that a broker may not accept a promissory note without disclosure to his principal. In one appellate court case, the broker prepared and executed a deposit receipt for the sale of property acknowledging the receipt of \$1,000 from the buyer without detailing the form of the deposit. The broker had suggested the buyer sign a demand promissory note for the \$1,000. Nothing was said to the seller about the nature of the deposit when the offer was presented to him. The seller learned about the nature of the deposit sometime thereafter and even acquiesced provided the transaction went through. The buyer failed to complete the transaction.

In this case, the court held even though the broker acted in good faith and did not act in a fraudulent or dishonest manner he still violated the spirit and letter of the Real Estate Law. The court said the undisclosed acceptance of a promissory note may be likened to commingling of money. It does not necessarily mean the client will be defrauded but such a practice may result in injury. Even though the misrepresentation and alleged dishonesty were passive rather than active, the seller might have to resort to litigation to collect the note and he was entitled to know from his own agent that this could be the situation before he signed the agreement of sale.

Not Knowing What the Salesman Does is No Excuse.

Another major area which involves disciplinary action against many licensees is lack of proper supervision by the broker. The Real Estate Law provides that a real estate broker cannot be held accountable in a disciplinary action for unlawful acts of his salesmen or employees unless the broker knew or should have known of the violation. This does not relieve the broker's civil liability for acts of his salesmen. If, in fact, he does not have the knowledge—guilty or otherwise—of the violation, the question arises as to whether he is exercising reasonable supervision over his salesmen. This does

ON THE MOVE



1973 legislation (Senate Bill 1158, Schrade) authorized the DRE to carry out a real estate consumer education program.

One of the several accomplishments under this authority was the production of a 27 minute 16mm sound/color film titled "On the Move", and collateral materials which allow the film to be used as a springboard for discussion in public information programs dealing with real estate.

The purposes of "On the Move" are:

1. To promote better understanding of the subject of real estate.
2. To encourage people to seek more information to meet their real estate and housing needs.
3. To clarify certain basic popular misconceptions.
4. To suggest ideas which will precipitate questions. Generally, "On the Move" should be presented as part of an open forum type of meeting.

If you are looking for a consumer interest subject for a group meeting, copies of the film and its collateral materials are available for use free from Association—Sterling Films distribution offices at 6644 Sierra Lane, Dublin, California 94566 and/or 7838 San Fernando Road, Sun Valley, California 91352.

not mean the broker is going to know every time one of his salesmen steps over the line into a law violation. This would be impossible. But, if a broker allows a salesman to handle trust funds without supervision, he is, indeed, asking for trouble.

- Here's a case in point: A salesman took an offer with a \$250 counter check which the buyer asked to be held uncashed until it was replaced by a formal company check. The salesman caused the offer to be presented to the seller without disclosing that the check was held uncashed. The next day the salesman opened an escrow, providing for an immediate \$250 placement with an additional \$750 deposit upon signing of the instructions. Two days later the salesman allowed the buyer to void the \$250 check and accepted a \$1,000 promissory note in lieu of the \$1,000 to be deposited in escrow. The \$1,000 note was held in the broker's office and the seller was not informed of the note or the voiding of the check. Approximately one week

later the broker discovered the manner in which the transaction had been handled. The broker then notified the escrow company of the substitution of the note for a presumably cash deposit, feeling this constituted sufficient notice to the seller.

The hearing officer, in the proposed decision, found that both the salesman and the broker had violated the Real Estate Law.

Trust Funds May Not Be Used as an Offset

Sometimes when a licensee thinks he has moneys due him either from his broker or from a third party, he attempts to withhold trust funds as an offset against the debt. Even if licensee has a valid civil claim, trust funds may not be used as an offset. Disciplinary action was taken against several licensees under these circumstances.

- The owner of property owed the broker \$1,000 and had signed a personal note for this amount. The note was overdue. The owner listed his

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STATE TEST QUESTIONS FOR SALE ? ? ?

UNDER NO CIRCUMSTANCES!

No matter what you are told about the state license examination and its questions, you may be assured that we allow no individual, school or firm to have copies of the salesman or broker real estate license examination questions.

There are many good and legitimate private vocational schools offering license training courses, but unfortunately there are a few schools which intimate they have the DRE test questions in order to promote sales.

An applicant recently presented DRE with a prep school book containing 1300 questions and answers. The school proprietor had suggested to the applicant the questions were taken from the DRE library of questions. DRE staff examined each question. None of the questions were the same as in the DRE examination library.

Two years ago the DRE filed civil injunctions against four private schools for falsely advertising that they had the state exam material.

There is nothing wrong with studying questions and answers, but don't rely on them as being exact examination questions.

TRUST FUNDS

(Continued from page 7)

property with the broker and the broker obtained an offer with a \$1,000 deposit which he placed in his trust account. The escrow instructions called for a portion of the \$1,000 in order to close. The broker refused to release the money on the theory that the owner owed him this money and he could use it as an offset.

This is not so. Even though the owner did owe the money and there was no dispute about this indebtedness, it was separate and apart from the trust funds involved in the transaction. The broker should have turned the entire \$1,000 over to the escrow as instructed by the seller. To collect on the note, the broker's recourse would be action in the civil courts.

● A broker acting as manager of an apartment building collected \$3,500 in rents. The owner terminated the management agreement and demanded the rent money from the broker who failed to pay, having converted it to his own use. He also failed to keep records showing receipts and disbursements of funds.

The broker defended his actions by showing that the owner owed him \$4,000 in commissions from a previously negotiated exchange of property and the broker felt that the \$3,500 in rental money was rightfully his. Disciplinary action resulted in the revocation of his license.

In Summation

The department's auditors and deputies could relate hundreds of cases brought to their attention but it is hoped

PRINCIPAL TRANSACTIONS BY SALESMAN

Since 1972 each active real estate salesman has been required to have a written agreement with his broker covering material aspects of their relationship, including supervision, duties and compensation.

Since January 1, 1975, when Regulation 2727 became effective, each real estate salesman (including brokers acting in the capacity of a real estate salesman) who enters into an agreement as a principal involving the purchase or sale of real property while licensed to—or in the case of a broker/salesman, while subject to the supervision of—a broker, is required to make a written disclosure of the fact of purchase or sale of real property to the supervising broker within five days from the execution of the agreement or before the closing of the transaction, whichever occurs first.

It would be wise to update your broker/salesman relationship agreement to encompass this new requirement.

the reader will be impressed with these points and illustrations.

Merely having a license does not make one a professional; merely keeping a trust account does not relieve liability. It is only after one functions and carries out his duties in strict compliance with the law that he can satisfy his licensed responsibilities.