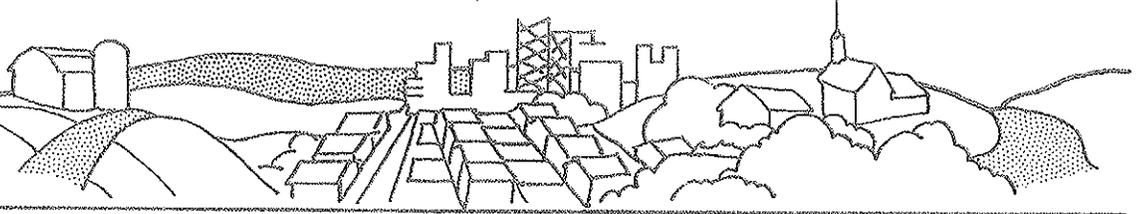




REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate



EDMUND G. BROWN JR., Governor

Fall 1978

DAVID H. FOX, Commissioner

NEW OR AMENDED REGULATIONS

New regulations and regulation changes adopted by Commissioner Fox, effective May 21, 1978, concern examinations, discriminatory conduct as a basis for disciplinary action, broker's duty to supervise, definition of "owner" and "subdivider," criteria of substantial relationship and rehabilitation, and filing deadline for course approvals.

The complete text follows.

ADOPTS SECTION 2761.5 OF ARTICLE 8 TO READ:

2761.5. Persons Not Eligible for Examination. An examination shall not ordinarily be administered to a person who has a license or the right to the issuance of a license of the class for which the examination is to be given.

REPEALS SECTION 2763 OF ARTICLE 8.

Adopts a new Section 2763 of Article 8 to read:

2763. Examination Rules. (a) A person taking an examination for a license issued by the department shall abide by all of the following rules from the time of entry into the examination room until the examinee has completed the examination and left the examination room:

(1) An examinee may not refer to any printed or written material other than that furnished by the department.

(2) Written computations by examinees shall be made only on paper furnished by the department for that purpose.

(3) An examinee may not communicate with another examinee nor with any person other than an examination proctor.

(4) The copying of questions and the making of any notes of examination materials by an examinee is prohibited.

(5) An examinee may not leave the examination room prior to completion of the examination unless express permission of an examination proctor has been obtained and all examination papers and materials have been turned over to the proctor.

(6) The only materials or devices, other than those furnished by the department, that an examinee may use during the course of the examination are pencils and slide rules or silent, battery-operated, electronic, pocket-sized calculators which are non-

programmable and which do not have a print-out capability.

(7) An examinee may not share the use of examination materials with any other examinee.

(b) A violation of any of the above rules or verbal directives of an examination proctor is ground to disqualify an examinee and to initiate appropriate administrative action to deny the issuance of a license to the examinee.

AMENDS SECTION 2780 OF ARTICLE 10 TO READ:

2780. Discriminatory Conduct as the Basis for Disciplinary Action. Prohibited discriminatory conduct by a real estate licensee based upon race, color, sex, religion, ancestry, physical handicap or national origin includes, but is not limited to, the following:

(a) Refusing to negotiate for the sale, rental or financing of the purchase of real property or otherwise making unavailable or denying real property to any person because of such person's race, color, sex, religion, ancestry, physical handicap or national origin.

(b) Refusing or failing to show, rent, sell or finance the purchase of real property to any person or refusing or failing to provide or volunteer information to any person about real property, or channeling or steering any person away from real property, because of that person's race, color, sex, religion, ancestry, physical handicap or national origin or because of the racial, religious, or ethnic composition of any occupants of the area in which the real property is located.

It shall not constitute discrimination under this subdivision for a real estate licensee to refuse or fail to show, rent, sell or finance the purchase of real property to any person having a physical handicap because of the presence of hazardous conditions or

Liquidated Damages in Real Property Transactions

Contracts for the sale of real property frequently contain a provision under which the buyer and seller agree at the time of entering into the contract that the deposit given by the buyer on account of the purchase price shall be awarded to the seller as damages should there be a breach of the contract by the buyer. In this same clause of the contract the seller usually renounces any other right to collect damages from the buyer.

This clause providing for a predetermined, fixed amount of compensation to the non-breaching party to a contract is known as a liquidated damages clause.

Under the law applicable to contracts entered into prior to July 1, 1978, a liquidated damages clause is enforceable against the defaulting buyer of real property only if the seller can prove to the satisfaction of a court that (1) from the nature of the contract it would be extremely difficult to fix actual damages for a breach and (2) the amount agreed upon as liquidated damages represented a reasonable effort by buyer and seller to fix a fair compensation for the breach.

This burden of persuasion was a difficult one for a seller to carry under any circumstances. In a rising real estate market such as has existed during the past several years, the burden has become well-nigh impossible in ordinary circumstances.

On July 1, 1978, Assembly Bill 570 (Chapter 198, Statutes 1977) became effective and it has brought about a virtual reversal in the statutory approach to the concept of liquidated damages.

The law now provides that, with the exception of contracts for the purchase of property or services for household purposes or for the lease of a dwelling place for a party or his or her dependents, a contractual provision calling for liquidated damages for a breach of a contract is valid unless the party seeking to invalidate the provision establishes to the satisfaction of a court that the provision was unreasonable under the circumstances existing when the contract was made. In other words, the burden of persuasion is now placed upon the party seeking to invalidate liquidated damages provisions other than

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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—April-June 1978

REB—Real estate broker
RBES—Restricted real estate broker
RES—Real estate salesperson
RBES—Restricted real estate salesperson
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

FOR YOUR INFORMATION

The following are brief summaries of the numerical code sections listed after each licensee's name. The full context of the various sections is found in the Business and Professions Code and the Regulations of the Real Estate Commissioner, both of which are printed in the Real Estate Law book available for purchase from the Department of Real Estate at \$2.50 plus tax. Code sections summarized will vary from issue to issue as they will correspond with the particular disciplinary listings.

Business and Professions Code

480(e)	false statement in license application		by misrepresentation or material false statement	10244.1	balloon payment violation
490	relationship of conviction to licensed activity	10177(b) 10177(d)	conviction of crime violation of real estate law or regulations	11010 11012	failure to file notice of intention to sell or lease subdivision material change in subdivision without notice
10130	performing acts for which a license is required without the appropriate license	10177(f)	conduct that would have warranted denial of a license	11018.2	illegal subdivision sales (sales of subdivision lots without public report)
10137	unlawful payment of compensation	10177(g)	negligence or incompetence as licensee		
10142	failure to deliver copy of agreement to signatory	10177(h)	failure to supervise salespersons		
10143	failure to deliver contract or receipt to prospective tenant by rental agent	10177(i)	fraud or dishonest dealing not in licensed capacity		
10145	trust fund handling		violation of restricted license condition		
10162	office abandonment	10177.5	civil fraud judgment based on licensed acts	2715	failure to maintain current address with DRE
10176(a)	making any substantial misrepresentation	10240	failure to give mortgage loan disclosure statement	2800	failure to notify DRE of material change in subdivision
10176(c)	commingling trust funds		improper mortgage loan disclosure statement	2830	failure to maintain trust fund account
10176(g)	receipt of undisclosed compensation	10241	exceeding allowable commissions, charges or interest rate on mortgage loan	2831	failure to maintain proper trust fund records
10176(i)	fraud or dishonest dealing in licensed capacity	10242		2832	improper handling of earnest money deposit
10177(a)	procuring a real estate license				

Regulations

2715	failure to maintain current address with DRE
2731	unauthorized use of fictitious business name
2800	failure to notify DRE of material change in subdivision
2830	failure to maintain trust fund account
2831	failure to maintain proper trust fund records
2832	improper handling of earnest money deposit

LICENSES REVOKED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
*O'Carroll, James Gibbons Jr. (RES)	555 Post St., San Francisco	3/ 3/77	10177(d), 11012, 11018.1, 2800
*Robinson, Regina Jiricka (RES)	1922 The Alameda, #402, San Jose	3/ 3/77	10177(d), 11012, 2800
*Smith, Dennis Ray (REB)	1922 The Alameda, #402, San Jose	3/ 3/77	10177(d)(b), 11012, 11018.1, 2800
*Magee, Ray (RES)	1586 W. Bennett, Long Beach	8/30/77	490, 10177(b)
O'Brien, Don Edward (RES)	909 Shorepoint Ct., #D310, Alameda	4/10/78	490, 10177(b)(f)
George, Sheryl Marie (RES)	2929 Bonita Mesa, Bonita	4/11/78	180(c), 490, 10177(a)(b)
Greeley, Charles Michael (RES)	14651 Juniper St., San Leandro	4/12/78	10177(a)(f)(g)
Hanich, Mike (REB)	2222 W. Garvey Ave., West Covina	4/12/78	490, 10177(b)
Chase, Daniel Louis (REB)	P.O. Box 325, 2280 Diamond Bar Blvd., #590, Concord	4/25/78	10177.5
Cohen, Marilyn (RES)	16755 Vanowen Street, Van Nuys	5/ 2/78	490, 10177(b)
Ellis, Vernett (RES)	8331 Byrd Ave., Inglewood	5/ 2/78	490, 10177(b)
Fries, Frank Hecht Jr. (RES)	3818 Channel Place, Newport Beach	5/ 2/78	490, 10177(b)
Hall, Reddy (REB)	4927 W. Adams Blvd., Los Angeles	5/ 2/78	490, 10177(b)
Cowan, Lee (REB)	1021 W. Tamarisk, Rancho Mirage	5/ 4/78	490, 10177(b)
Nazaroff, John Michael (REB)	1289 E. Shaw, Fresno	5/ 4/78	490, 2715, 2831, 2832, 10145, 10162, 10176(e), 10177(b)(d)
Anderson, Sally Jane (RES)	714 Cabin Dr., Mill Valley	5/ 8/78	490, 10177(b)(f)
Chadwick, Richard Earl (RES)	12750 Woodmont Dr., Saratoga	5/ 8/78	490
Cunningham, Hal Austin (RES)	P.O. Box 8721, San Francisco	5/ 8/78	490, 10177(b)
Jensen, Svend Christian (RES)	63 E St., Concord	5/ 8/78	490, 10177(b)(f)
Mitchell, Mack (RES)	116 Montecito, #A, Monterey	5/ 8/78	10130, 10137, 10177(d)
Osborne, William Fisher (RES)	2168 Beverly Way, Santa Rosa	5/ 8/78	490, 10177(b)
Terry, John Stanley (RES)	3605 Tumblie Way, San Jose	5/ 8/78	490, 10177(b)(f)
Denney, Eugene C. (RES)	17367 Cugney St., Granada Hills	5/ 9/78	490, 10177(a)
Herrera, Jose Aaron (RES)	2521 Workman St., Los Angeles	5/ 9/78	490, 10177(b)
National General West Inc. (REC)	303 N. Placentia Ave., Fullerton	5/ 9/78	10177.5
Ochlin, Stanley (RES)	5412 Lindley, Encino	5/ 9/78	490, 10177(b)(f)
Standberry, Marvin Lee (REB)(REO)	900 Eleanor Ave., Yuma, AZ	5/ 9/78	490, 10177(b)
Off—Fast Rental Service Off—Turstan, Inc.			
Weinberg, Stanley William (RES)	3205 Los Feliz Blvd., Los Angeles	5/ 9/78	490, 10177(a)(f)
Whaley, Monroe Lawrence Jr. (REB)	10651 S. Brookhurst St., Anaheim	5/ 9/78	490, 10177(b)
Williams, Thomas Thorpe (RES)	P.O. Box 1014, Apple Valley	5/ 9/78	490, 10177(b)
Hannum, John Bernard (RES)	904 Murphy Dr., San Mateo	5/11/78	490, 10177(b)
Eugenio, Delfin Cervantes (RES)	3642 Georgetown Ct., South San Francisco	5/16/78	10177(b)(f)
Watters, Bobbie Frank (REB)	1730 S. Amphlett Blvd., #116, San Mateo	5/30/78	10177(b)(f)
Powers, Fred Rockwell (RES)	3221 Harbor Blvd., Oxnard	5/31/78	490, 10177(b)(f)(k)
Lanagan, Andrew David (RES)	52 Alder, Susanville	6/ 9/78	490, 10177(b)
Culet, Benjamin Lee (REB)	3900 Culet Ln., Danville	6/12/78	10177(d), 11010, 11018.2
Victor Real Estate, Inc. (REC)	769 Tuolumne St., Vallejo	6/12/78	10176(a)(g)(i), 10177(j)
Shoemaker, Marie Bonnie (REB)	3105 Kensington Dr., Modesto	6/23/78	10142, 10176(a)(g), 10177(d)(j)

LICENSES REVOKED WITH A RIGHT TO A RESTRICTED LICENSE

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Johnson, Aaron Alexander (RES) (Right to RRES license on terms and conditions)	5949 Old Memory Ln., San Diego	4/12/78	480, 490, 10177(b)
Rasmussen, Robert Elmer (RES) (Right to RRES license on terms and conditions)	3772 E. Saginaw, Fresno	4/27/78	10176(a), 10177(g)
Hartje, John Scott (RES) (Right to RRES license on terms and conditions)	3817 El Cajon Blvd., San Diego	5/ 2/78	490, 10177(b)
Suite, Edward Paul (RES) (Right to RRES license after 10 days on terms and conditions)	102 Amarillo Dr., Vallejo	5/ 3/78	490, 10177(b)
Truitt, John Collins (REB) (Right to RREB license after 180 days on terms and conditions)	21 Leslie Ln., Oroville	5/ 3/78	490, 10177(b)
Baker, Terrel Leander (RES) (Right to RRES license after 30 days on terms and conditions)	2036 West 92nd St., Los Angeles	5/ 4/78	480, 490, 10177(a)(b)
Savage, Hugh Anthony (RES)(REB) (Right to RREB license on terms and conditions)	1287 Lawrence Station Rd., Sunnyvale	5/ 4/78	10177(d)(f)(g), 2715, 2731
Springfield, Jeffrey Leonard (RES) (Right to RRES license after 60 days on terms and conditions)	1901 N. Linwood, Santa Ana	5/ 4/78	490, 10177(a)(b)
Culmer, Clifford Harold (RES) (Right to RRES license on terms and conditions)	20940 Stevens Creek Blvd., Cupertino	5/ 8/78	490, 10177(b)
Evans, Warren La Valle (RES) (Right to RRES license after 120 days on terms and conditions)	32 Grand Ave., Oroville	5/ 8/78	490
Fearnow, Jack Allen (REB)(REO) Dba - Total Mortgage Company Off - Total Mortgage Company, Inc. Off - Total Real Estate Services, Inc. (Right to RREB license on terms and conditions)	360 N. Main St., Lakeport	5/ 8/78	10176(e), 10177(d)
Richards, Patricia Dean (RES) (Right to RRES license on terms and conditions)	180 Sea Ridge Ct., Aptos	5/ 8/78	490, 10177(b)(f)
Total Mortgage Company, Inc. (REC) (Right to RREC license on terms and conditions)	360 N. Main St., Lakeport	5/ 8/78	10176(e), 10177(d)
Whitaker, Kenneth James (REB) Dba - Shambhri & Whitaker Realty (Right to RREB license after 30 days on terms and conditions)	1445 Franklin St., Santa Clara	5/ 8/78	2715, 10145, 10162, 10176(f), 10177(d)
Fulford, Robert Manson (RES) (Right to RRES license on terms and conditions)	8425 Mercury Dr., Buena Park	5/ 9/78	490, 10177(a)
Jensen, Albert Marvin (RES) (Right to RRES license on terms and conditions)	8703 La Mesa Blvd., La Mesa	5/ 9/78	490, 10177(b)
McCall, Homer Jr. (RES) (Right to RRES license after 30 days on terms and conditions)	816 West 134th, Compton	5/ 9/78	490, 10177(a)(b)(f)
Hughes, Joel Carlton (REB) (Right to RREB license after 10 days on terms and conditions)	513 Vista Way, Oceanside	5/10/78	490, 10177(b)
Stamfer, Donald LeRoy (REB) Dba - Blue Ribbon Properties (Right to RREB license after 60 days on terms and conditions)	146 S. Main St., Milpitas	5/11/78	10145, 10176(e), 10177(d)
James, Warren Alex (REB) (Right to RREB license on terms and conditions)	2501 N. Lake Ave., Altadena	5/16/78	490, 10177(b)
Ryles, Henry Jr. (RES) (Right to RRES license after 90 days on terms and conditions)	4934 N. Long Beach Blvd., Long Beach	5/17/78	490, 10177(b)
Salas, Joseph Ignacio Jr. (REB)(REO) Off - American Federal Financial A Corp (Right to RREB license on terms and conditions)	2308 San Diego Ave., San Diego	5/24/78	490, 10177(b)
Scars, Elbert Jerome (REB) (Right to RRES license on terms and conditions)	1500 W. Slauson Ave., Los Angeles	5/30/78	2831, 10176(e)(i), 10177(d)
Folmer, Norman Doyle (REB) Dba - Foothill Properties & Investments (Right to RREB license after 30 days on terms and conditions)	3294 Royal Dr., Shingle Springs	6/ 1/78	10176(i)
Magee, Albert Alphonse (REB) (Right to RREB license on terms and conditions)	1886 W. Willow St., Long Beach	6/ 1/78	490, 10177(b)
Bauer, David Louis (REB) (Right to RREB license after 30 days on terms and conditions)	440 E. Lake Ave., Watsonville	6/ 5/78	2830, 2832, 10145, 10176(e)(i), 10177(d)(f)
DeJesus, Antonio Concepcion (RES) (Right to RRES license after 30 days on terms and conditions)	P.O. Box 737, 16661 Ventura Blvd., Encino	6/ 5/78	490, 10177(b)
Messamer, Merle Milton (RES) (Right to RRES license on terms and conditions)	5422 Karm Way, Sacramento	6/ 7/78	490, 10177(b)
Sampson, Lee O. (REB) (Right to RREB license after 15 days on terms and conditions)	9701 Wilshire Blvd., 7th Flr., Beverly Hills	6/ 8/78	490, 10177(b)
Thomas, Bernice E. (REB) (Right to RREB license after 30 days on terms and conditions)	816 W. Olive St., Porterville	6/10/78	10176(a)
Thomas, Cecil Franklin (RES) (Right to RRES license after 30 days on terms and conditions)	P.O. Box 662, Porterville	6/10/78	10176(i)
Culea, Marian (RES) (Right to RRES license on terms and conditions)	3900 Culet Ln., Danville	6/12/78	10177(d), 11010, 11018.2
Farrrel, John Franklin (REB)(REO) Off - Victor Real Estate, Inc. (Right to RREB license on terms and conditions)	621 Lockwood, Vallejo	6/12/78	10176(a)(g)(h), 10177(g)
Jekel, August Allan (RES) (Right to RRES license if applies before 8-17-78 on terms and conditions)	4393 Lemp Ave., Studio City	6/12/78	10177(d)
Jekel, William Dale (REB) (Right to RREB license after 90 days on terms and conditions)	10920 Ventura Blvd., North Hollywood	6/12/78	10177(d)
Meyer, Margaret Ann (REB) (Right to RREB license on terms and conditions)	1530 Solano Ave., Vallejo	6/12/78	10176(a)(g)(h), 10177(g)
Silva, Rolando (RES) (Right to RRES license if applies before 9-10-78 on terms and conditions)	1512 W. Alameda St., Burbank	6/13/78	490, 10177(b)
Jeneck, John Jack E. (RES) (Right to RRES license on terms and conditions)	240 W. Shaw, Suite G, Clovis	6/29/78	10177(g)
Ocaiza, Fred Ronald (RES) (Right to RRES license on terms and conditions)	420 N. Capitol Ave., San Jose	6/29/78	490, 10177(b)

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LICENSEE NOTARIES

Many real estate licensees have found that securing an appointment as a notary public provides them with an important means of serving their clients. When one considers the vast number of households in this state in which both spouses work, the ability of the licensee to notarize a deed, deed of trust, or other instrument after normal business hours not only facilitates the closing of transactions but can save those having to execute such instruments valuable time.

Despite the obvious convenience, the propriety of the performance of notarial services by the licensee who negotiates the transaction has been a subject of continuing controversy. The notary law in this state was recently the subject of substantial amendments including the addition of a provision which addresses this issue. (Government Code Sections 8200 et. seq.)

The new law makes it clear that a person acting as an agent has no *direct* financial or beneficial interest in the transaction and thus is not precluded from taking the acknowledgment of the parties having such direct interest.

The new law confirms several long-standing court decisions in regard to the conflict question. In essence the statutory law has now caught up with the holding of *Chapman v. Hicks*, 41 C.A. 164, in which, almost a half-century ago, the court stated:

" . . . One who is not pecuniarily or beneficially interested in the transaction evidenced by the deed or other instrument is not disqualified to take the acknowledgment merely because he is acting as agent . . . for the party who is beneficially interested. And, in fact, . . . such an acknowledgment may be taken before an agent even though he has, indirectly, a financial interest in the transaction"

Licensees/notaries are cautioned, however, not to construe the above to mean that the licensee may take an acknowledgment when he or she has a direct financial or beneficial interest in the transaction. Taking an acknowledgment under such a circumstance may not only invalidate the particular instrument, but also could lead to an action on the notary's bond and possible disciplinary action against the notary's real estate license.



FINDERS FEES AND RESPA

by
W. Jerome Thomas
Chief Legal Officer

Over the years California courts have consistently held that there is nothing illegal in the payment of so-called finders fees or referral fees to unlicensed persons provided that the unlicensed persons are not being compensated for activities for which a license is required. Based upon these court cases DRE has advised real estate licensees that California law does not prohibit a licensee from paying a fee to a non-licensee if the payment is merely for having introduced a prospective seller or buyer to the licensee who ultimately receives a commission for having negotiated a transaction on behalf of the person introduced. At the same time, however, DRE has been quick to caution licensees that a license is required of any person who solicits the parties to a real estate transaction or who enters into negotiations on behalf of one of the parties to a transaction. If an unlicensed person were compensated by a licensee for soliciting or negotiating in a real property transaction, the payment would constitute a violation of the Real Estate Law.

Recently the Department received information from the federal Department of Housing and Urban Development with regard to the legality under the Real Estate Settlement Procedures Act (RESPA) of the payment of referral fees to unlicensed persons. We feel obliged to bring this information to the attention of all licensees, particularly in light of the advice given by DRE in the past.

The Assistant General Counsel of the Home Mortgage Branch of HUD, which is responsible for the administration of RESPA, has recently suggested in a letter to a California attorney that HUD and the United States Department of Justice consider it a violation of Section 8 of RESPA for real estate licensees to pay fees for referrals in real property transactions to persons who are not licensees. Neither HUD nor the Department of Justice, which has the prosecutorial responsibility to enforce provisions of RESPA, has thus far declared that prosecutions will be brought based upon the payment of finders fees to unlicensed persons, but the tenor of the correspondence from HUD indicates that the possibility of prosecution cannot be ignored.

Section 8(a) of RESPA provides that "No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person."

The terms "settlement services" and "federally related mortgage loan" are very broadly defined under the Act. "Settlement services" is defined to include any service provided in connection with a real estate settlement (closing) including, by way of express example, "services rendered by a real estate agent or broker." "Federally related mortgage loan" includes any loan—other than a temporary one—secured by a first deed of trust on residential real property of from one-to-four units which is (1) made by a lender insured or regulated by an agency of the federal government or (2) made, insured, guaranteed or assisted by any federal agency or (3) intended to be sold to FNMA, GNMA or FHLMC or (4) made in whole or in part by any creditor who makes or invests more than \$1,000,000 per year in residential real estate loans.

While it can be logically contended that Congress never intended that the negotiation of the sale of residential real property of one-to-four units would be considered to be "business incident to or part of a real estate settlement service," it can be just as persuasively argued that Congress did intend to include within the coverage of Section 8 the acts of real estate agents soliciting and negotiating sales of real property. Proponents of the interpretation that Section 8 prohibits the payment of finders fees to unlicensed persons point to subdivision (c) of Section 8 which sets forth among those payments that are not prohibited by subdivision (a), "payments pursuant to cooperative brokerage and referral arrangements or agreements *between real estate agents and brokers.*" This language does indeed suggest that Congress intended that Section 8 should cover payments made in the solicitation and negotiation phase of a real estate purchase transaction, but did not intend to prohibit payment from one licensee to another even though the payment was merely for a referral and not for services rendered.

Real estate licensees who continue to pay fees for referrals to non-licensees in transactions subject to RESPA may be risking liability for the criminal and civil penalties provided in subdivision (d) of Section 8. The criminal penalty prescribed for a violation is a fine of not to exceed \$10,000 or imprisonment for not more than one year, or both.

Licensees should also be aware of the possibility that a conviction for a violation of Section 8 could trigger a licensing disciplinary action by DRE under the provision of the Business and Professions Code which authorizes a disciplinary action for the conviction of a crime that is substantially related to the qualifications, functions or duties of a licensee.

 DRE

DON TALLMAN RETIRES

After 15 years of service Donald M. Tallman, a Chief Deputy in the education and research section of the Department, recently retired.

In his most recent assignment Tallman was responsible for educational grants to community colleges and the development of new real estate courses. Also, during the past year Don coordinated the DRE's many home buyer clinics, offered through community college contracts throughout the state.

He served as president of the National Association of Real Estate License Law Officials during 1977. While active in NARELLO he played a substantial role in activities which resulted in the DRE twice receiving the annual NARELLO Education Award.



Don holds a BS degree from California State University, Sacramento and entered public service after spending four years as a real estate licensee.

Among his other honors he has been a president of the California State Men's Club, is a life member of the PTA and has done active work with several church and civic groups.

Tallman's initial activities will be to devote his attention to a number of his private business interests.

CLARIFICATION

In the Spring 1978 issue of the *Bulletin* in an article at page 10 titled "Renting for Others Requires a License" there is a sentence which suggests that the licensing exemption available to the resident manager of an apartment building, complex or court is also available to the resident manager of a condominium development.

This is not the case. Section 10131.01 which exempts a resident apartment manager from the requirement of a real estate license to perform the acts enumerated in Section 10131(b) is not applicable to the resident manager of a condominium development. A condominium manager who leases or rents or offers to lease or rent, or places for rent, or solicits listings or places for rent, or solicits for prospective tenants, or negotiates leases of condominium units or collects rents from condominium units on behalf of another or others for compensation must have a real estate license regardless of where he or she resides. The same holds true for managers of stock cooperatives and community apartment projects.

 DRE

1978 QUARTERLY EXAM RESULTS

	SALES		BROKERS	
	Took	Passed	Took	Passed
April	10,544	4,528	1,331	670
May	8,807	3,885	1,445	646
June	10,527	4,549	1,386	713
TOTAL	29,878	12,962	4,162	2,029

LIQUIDATED DAMAGES

(Continued from Page 1)

those in contracts of the nature mentioned above.

There is a special section of the law applicable to a contract for the sale of a dwelling place—of not more than four residential units—which the purchaser intends to occupy as his or her residence. In the case of a contract to sell such residential property, a liquidated damages clause is valid to the extent of the amount actually paid toward purchase by the prospective buyer (by cash or check) up to 3 percent of the purchase price provided that certain prescribed contractual formalities have been satisfied.

These requirements are (1) that the liquidated damages clause is separately signed or initialed by each party to the contract and (2) that the clause in a printed contract form is set out in at least 10-point bold type or in contrasting red print of at least 8-point bold type.

If more than a single payment by the prospective buyer is to make up the liquidated damages in a residential property transaction, payments after the initial payment must be accompanied by a separate document meeting the separately-initialed or signed and size-of-type provisions applicable to the original contractual provision.

Even if all of the preconditions to the validity of a liquidated damages clause for the sale of residential property have been met, the seller is not necessarily home free with 3 percent of the purchase price from the buyer's deposits. The prospective buyer may still invalidate the liquidated damages provision by convincing a court that the provision was unreasonable under the circumstances existing at the time that the contract was made.

In determining whether the amount paid as liquidated damages was reasonable, the court is required by the statute to take into account

the price and other terms and circumstances of any sale or contract to sell the same property made within six months of the buyer's default. In today's market of rapidly accelerating prices, courts may still be reluctant to permit what is perceived to be a liquidated damages windfall to a seller if it is established that as a result of the default of a prospective buyer, the owner of the property has profited, or stands to profit, through a later sale at a higher price.

Telephone inquiries to DRE indicate that there are several misconceptions widely held by licensees concerning the effect upon real estate purchase and sale contracts of the new liquidated damages provisions of the law.

One of these misconceptions is that the law now *requires* that contracts for the sale of real property contain a liquidated damages provision. This is not the case. The law does not impose any such requirement upon the parties. The terms of the contract, including a liquidated damages clause, are still a matter of agreement between buyer and seller. Unless both parties agree to the provision and signify the meeting of their minds on the issue, a liquidated damages clause is not enforceable. At the same time, however, it is within the power of the owner of the property to insist that the prospective purchaser agree to a liquidated damages provision as a condition to the seller agreeing to accept the prospective buyer's offer.

Every licensee should have a basic knowledge of the new law applicable to liquidated damages, especially with respect to the sale of so-called residential property. Only with such knowledge can a licensee properly advise the prospective principals to a real estate sales transaction. The purpose of this article is to alert licensees to the salient aspects of the new law. It does not purport to be exhaustive on the subject. For detailed and specific information and for legal advice in a specific situation, licensees should consult with their attorneys.

DRE

Usury in Real Estate Sales Transactions

The Constitutional (Article XV, Section 1) and statutory (Civil Code Sections 1916-1 through 1916-3) prohibitions against usury are applicable in the case of a loan or forbearance of money, goods or things in action but not to a sale of property. Hence a seller of real property who takes back a secured promissory note as a deferred payment of part of the purchase price is not in violation of the prohibition against usury if the promissory note bears interest at a rate of more than 10 percent per year.

There are, however, sales transactions in real property in which purchase money promissory notes are given by the buyer to the seller which do involve the lending of money and are therefore usurious if the effective rate of interest exceeds 10 percent per year.

For example, assume a situation in which the prospective buyer is unable to arrange a

first loan sufficiently large to cover the deferred financing of the purchase. The buyer needs a second loan, but the seller does not desire to carry the paper. To accommodate both parties, a "sale" of the second deed of trust at a discount to a third party is arranged and the seller is then cashed out in the escrow. As a result of the discounting of the second note, the effective rate of interest on the money loaned by the third party exceeds 10 percent per year.

It is the opinion of the DRE legal staff that this prearranged discounted sale of a purchase money promissory note would be considered by a court of law to be a loan subject to the legal restrictions on interest. If, however, there were no prearrangement for financing of the transaction by a third party, the law of usury presumably would not apply, and there would be no legal limit on the interest rate that the seller could charge to the buyer. Usury would not be found to exist if the note were later sold by seller to a third party who derived more than a 10 percent per year return to the investment in the note.

REGULATIONS (Continued from Page 1)

architectural barriers to the physically handicapped which conform to applicable state or local building codes and regulations.

(c) Discriminating because of race, color, sex, religion, ancestry, physical handicap or national origin against any person in the sale or purchase or negotiation or solicitation of the sale or purchase or the collection of payment or the performance of services in connection with contracts for the sale of real property or in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(d) Discriminating because of race, color, sex, religion, ancestry, physical handicap or national origin against any person in the terms, conditions or privileges of sale, rental or financing of the purchase of real property. This subdivision does not prohibit the sale price, rent or terms of a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

(e) Discriminating because of race, color, sex, religion, ancestry, physical handicap or national origin against any person in providing services or facilities in connection with the sale, rental or financing of the purchase of real property, including but not limited to: processing applications differently, referring prospects to other licensees because of the prospects' race, color, sex, religion, ancestry, physical handicap or national origin, using with discriminatory intent or effect, codes or other means of identifying minority prospects, or assigning real estate licensees on the basis of a prospective client's race, color, sex, religion, ancestry, physical handicap or national origin.

(f) Representing to any person because of his or her race, color, sex, religion, ancestry, physical handicap or national origin that real property is not available for inspection, sale or rental when such real property is in fact available.

(g) Processing an application more slowly or otherwise acting to delay, hinder or avoid the sale, rental or financing of the purchase of real

(Continued on Page 10)

A recent circular letter from the Department of Housing and Urban Development reiterates that a HUD-FHA real property appraisal is made to determine the maximum amount of mortgage which may be insured and is for mortgage insurance purposes only. An appraisal does not warrant or certify, or imply approval of, the condition of the improvements nor set a sales price. Although the appraiser observes the general condition of a house and lot and notes serious visible defects which need correction, other defects may exist. Homebuyers should satisfy themselves as to the soundness of the property.

As of August 1, 1978, new language is required in FHA loan transactions which specifically informs the mortgagor of this.

UNDERSTANDING YOUR REAL ESTATE EXAMINATION

by
Frank E. Helland
Chief Deputy,
Examinations

Throughout the years, many changes for the better have taken place in testing methods in all phases of industry and education. The same progress has made itself felt in real estate licensing examinations for broker and salespersons.

Prior to 1966 the Department of Real Estate administered exams for licensure composed of a combination of multiple choice, essay and fill-in type questions. As a result of extensive research requested by the Department and conducted by the University of California, a program was started whose purpose was to bring the real estate licensing examination to an all multiple choice question format.

Many conferences were held with test specialists, industrial psychologists, members of the testing services of the California State Personnel Board, and faculty members of various state colleges. These persons brought to us their wide experience and knowledge of test techniques, types of multiple choice questions and their use, machine methods of scoring, and statistical analysis of results. Based on information provided by the research program, the Department initiated administration of an examination constructed of all multiple choice questions.

Before use, each question is subjected to a comprehensive screening process which includes four separate reviews within the Department, as well as by a committee composed of broker members of the industry who are also active as real estate educators. These members of the committee are joined by industry specialists in five major areas, including real estate law, public control, real estate finance, real estate appraisal and miscellaneous subjects such as escrow, title insurance, etc. Questions are examined for relevancy, correctness, and to determine if subject matter is in an applicant's "need to know" category.

At various times during the year the library bank of questions and format of examinations may be reviewed by representatives of interested Federal agencies, such as the Department of Housing and Urban Development. Their review is concerned mainly with subject matter relating to discrimination in housing and possible cultural bias of questions. Several changes in exam structure were brought about as a result of their reviews.

After each license examination is administered it is rated as to its actual reliability. The rating is accomplished through computer use of the Kuder-Richardson formula 21, which gives a lower estimate than some of the other formulas sometimes used in the broad field of testing but is sufficient for measuring most power achievement tests. Although a low test reliability score of .7 is deemed sufficient by some experts, our examinations consistently rate .8 or more. During the exam analysis each individual question is rated as to its difficulty level and discriminating coefficient. If the difficulty level of the question exceeds 90% (easy) or is less than 35% (hard), or if the discriminating coefficient falls below .15, the



question is reviewed for possible re-write or discard.

Information developed by the item analysis is then entered on each question. New examinations made up monthly are averaged to a difficulty level of 70%. This average is important. It is designed to help assure each applicant a test which overall is neither more nor less difficult than tests administered to all other applicants.

Questions tend to show a decreasing level of difficulty with each successive use. This causes many questions to become valueless after several uses and necessitates a continual program of writing new and restructuring used questions.

Reading ease analysis of exams are conducted by using the Flesch reading ease index table and instructions. Our analyses show the reading level of the broker exams to range from 13th to 14th grade and sales exams from 10th to 11th grade. Instructions to examinees contained on the first two pages of the sales examination are written at a reading level of grade 8 to 9.

Salesperson examinations include 150 questions and brokers' contain 200. Although the examination is written in California for California applicants, 100 questions in each exam have national applicability. This portion of the examination is shared with other states such as Alabama, Colorado, Georgia, Guam, Idaho, New Mexico, Oklahoma, Arkansas, Illinois, Utah and Washington. This part of the California exam is called the "multistate examination" and a person having taken and passed it in one of the participating states, and who obtained a license in that state, need not retake that portion of the exam when applying for licensure in any of the other participating states.

The number of licensees in California has steadily increased since 1967. During the 1977 calendar year, 114,225 real estate broker and

(Continued on Page 8)

"SEASONED CITIZENS"

by
E. B. Neufeld
Supervising Deputy
Santa Ana
District Office



During the first six months of 1977, the Los Angeles District Office was required to provide examination space for 34,454 license examination applicants, or space for approximately 266 examinees per regular work day. By projecting the number of sales applicants through 1977 and 1978 it became apparent that revisions in the actual testing procedures were needed, principally because of the sheer number of examination applicants.

Commissioner David Fox, Director of the Department of Real Estate, instituted three major revisions in the Department's testing program:

- testing brokers on a monthly basis
- daily testing in Los Angeles for salespersons
- hiring senior citizens to proctor these examinations.

The results of this latter change on the senior citizen community appear to be most rewarding. After working closely with the California Department of Aging and other local senior citizen groups the program progressed from a wonderful and exciting idea to a wonderful and exciting reality.

In establishing a criteria for the hiring of senior citizens, a pilot program began in Sacramento and expanded to Los Angeles. One of the qualifications established, perhaps the most important, is that those over the age of 55 will be given preference and that there will be *no maximum age limit*.

As a result of the fine recruiting program of the City of Los Angeles and other senior citizen groups providing us with applicants, 27 seniors were selected to begin the program. Of those initially hired, one applicant had just turned 55 and, on the other end of the scale, 2 applicants had just attained their 74th year.

In a very short time the Los Angeles group of senior citizens became very knowledgeable

(Continued on Page 8)

Continuing Education



CALIFORNIA DEPARTMENT OF REAL ESTATE APPROVED CONTINUING EDUCATION OFFERINGS

The following list of continuing education offerings has been approved as of July, 1978 for credit toward the 45 hour license renewal requirement. Credit hours are set inside the parenthesis () following the offering title. The address of the sponsoring entity does not necessarily mean the offering is being conducted in that particular location. Most offerings are regional or national in scope. For dates and places, write or telephone the offering entity. The offering title (or titles) appears in italics immediately above the name of the offering entity.

Advanced Investment and Exchange Practices (30)

Agricultural Land Transactions (03)

Introduction to Investment and Exchange Practices (12)

Real Estate Purchase Contracts (03)

Mr. Lynn Knorr
California Association of Realtors
505 Shatto Place
Los Angeles, CA 90020
(213) 380-7190

Business and Intangibles Valuation Seminar (07)

Mr. Glenn M. Desmond
Business Valuation Institute
1005 E. Palmdale Boulevard
Palmdale, CA 93550
(805) 947-0148

Real Estate Tax Seminar (05)

Ms. Wendy Lieb
Southwest Seminar Group
P.O. Box 3750
5474 Woodbury
Ventura, CA 93003
(805) 648-1111

Annual Income Tax Update for Real Estate Brokers and Agents (07)

Mr. Leonard Williams
Tax Seminar Associates
4250 Williams Road
San Jose, CA 95129
(408) 996-9505

Real Estate Law for Brokers (12)

Mr. James L. Beyers
Edixis Corporation
900 College Avenue
Santa Rosa, CA 95404
(707) 545-0142

Tax Deferred Exchanges of Real Property (06)

American Institute for Continuing Education
446 Collingwood Street
San Francisco, CA 94117
(415) 285-4200

The Basic Steps in Real Estate Exchanging and Creative Marketing (24)

Mr. R. Royce Ringsdorf
R. Royce Ringsdorf Real Estate Seminar
P.O. Box 3207
1700 West Mineral King
Visalia, CA 93277
(209) 734-2006

Reducing the Risk of Malpractice in Real Estate (24)

Mr. P. Roy Vallarino
Chatham Educational Corporation
55 Professional Center Parkway
San Rafael, CA 94903
(415) 472-3434

Real Estate Exchanges (12)

Mr. Harley Smith
Harley Smith Investments, Inc.
1050 Ralston Avenue
Belmont, CA 94002
(415) 592-3960

Real Estate Exchanges & Taxation (45)

Ms. Evelyn Daniels
Santa Ana College
17th at Bristol Streets
Santa Ana, CA 92706
(714) 835-3000

Consumer Escrow Seminar (07)

Mr. T. Leslie Shelton
California Escrow School
2995 Fulton Avenue
Sacramento, CA 95821
(916) 481-7476

Acquisition of Apartment Complex as a Teaching Tool for Varied Real Estate Transactions (03)

Consumer Tax Saving Techniques (03)

Contemporary Financing Techniques to Benefit the Consumer (03)

Legal Obligations, Ethical Considerations and Negotiations in the Purchase of Real Property (03)

Public and Private Solutions to Consumer Housing Needs (03)

Tax Saving Objectives of Real Estate Investment (03)

The Process of Syndication: Benefits for the Professional and the Consumer (03)

Dr. Carl S. Werthman
Center for Continuing Education in Real Estate
13735 Victory Blvd., Suite 1
Van Nuys, CA 91401
(213) 761-3633

Real Estate Finance Seminar (03)

Joseph E. La Liberté
California Mortgage Service
17862 E. 17th Street
Tustin, CA 92680
(714) 832-8600

Continuing Education in Real Property Transactions (45)

Mr. Les McCabe
Merced College
3600 M Street
Merced, CA 95340
(209) 723-4321

Income Tax Aspects of a Real Estate Investment (16)

Nathan Brenner
Seminars Unlimited
12709 Byron Avenue
Granada Hills, CA 91344
(213) 360-0582

Tax Benefits of Acquisition, Ownership, and Disposition of Real Property (07)

Leonard B. Hankins
Hankins' Educational Seminars
100 Oceangate, Penthouse Suite
Long Beach, CA 90802
(213) 435-2481

Business Opportunities (28)

Mr. Arthur Hamel
Business Marketing Corporation
5120 Campbell Ave., Ste. 118
San Jose, CA 95130
(408) 374-9180

Industrial Real Estate Workshop '78 (06)

Mr. Bob Lipson
American Industrial Real Estate Assoc.
5670 Wilshire Blvd., #1250
Los Angeles, CA 90036
(213) 933-5749

Tax Aspects of Real Estate Investments (10)

Ms. Claudia Hill
Tax Practitioner
20823 Stevens Creek Blvd., #C-4
Cupertino, CA 95014
(408) 446-4451

Maximizing the Use of Today's Real Estate Resources

Mr. William Goodglick
Southern California Chapter of the Society of Industrial Realtors
11203 South La Cienega Boulevard
Los Angeles, CA 90045
(213) 776-5566

The Principal Government Agencies Who Regulate Mortgage Loan Brokers and Nature of Their Regulations (03)

Overview of Basic Documents Used in Broker Arranged Mortgage Loan Transactions (06)

Mr. William R. Coart
California Independent Mortgage Brokers Association
13135 Ventura Boulevard #304
Studio City, CA 91604
(213) 872-0265

DRE

An up-to-date list of offering entities as they continue to be approved by DRE may be obtained by writing Department of Real Estate, 4433 Florin Road, Suite 200, Sacramento, CA 95823, Attn: Paul Pope, Chief Deputy, Continuing Education.

(Continued from Page 3)

LICENSES SUSPENDED

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Brees, Greg O. (RES)	3133 Maddux Dr., Palo Alto	4/17/78 5 days	490, 10177(b)(f)
DeLappe, Clarence Edward Jr. (REB)	1052 Cass St., Monterey	5/ 4/78 30 days	2715, 2731, 10177(d)(f)(g)
Hetchart, Joseph (REB)	3794 Peralta Blvd., Fremont	6/ 9/78 30 days	10177(h)

LICENSES SUSPENDED WITH STAYS

Name	Address	Effective date	Violation Business and Professions Code/Commissioner's Regulations
Wilsford, Martha Gibson (REB) (Stayed for 1 year on condition)	1534 Taylor St., San Francisco	5/ 1/78 10 days	10176(e)
Grigor, William Robert (REB) Dba—Associated California Real Estate Sales (After 30 days may be stayed on condition)	125 S. Main St., Fallbrook	5/ 4/78 to & incl 11/ 1/80	10162, 10165, 10177(d)
Banks, William Ray (REB) (Stayed for 1 year on terms and conditions)	2006 A St., Antioch	5/ 8/78 45 days	10177(d), 10240, 10241, 10242, 10244.1
Hartmann, Robert Der (RES) (Stayed for 1 year on condition)	1634 Russ Ave., San Leandro	5/ 8/78 30 days	490, 10177(b)
Nelson, Lionell Herbert (REB) Dba—Bill Campbell Realty (Stayed for 1 year on condition)	1082 Bolsa Ave., Seal Beach	5/ 17/78 10 days	10177(g)
Howard, James Francis (REB) Dba—Harris Realty (Stayed for 1 year on condition)	2449 Santa Clara Ave., Alameda	5/ 25/78 15 days	10176(a), 10177(g)
Smith, Ernest H (RES) (Stayed for 1 year on condition)	13620 Daphne Ave., Gardena	6/ 6/78 60 days	490, 10177(b)
Hatter, Wiley Bryant (REB) Dba—Look Realty (Stayed for 1 year on condition)	38463 Fremont Blvd., Fremont	6/ 12/78 60 days	10177(d), 11010, 11018.2

INDEFINITE SUSPENSIONS UNDER RECOVERY FUND PROVISIONS

Name	Address	Date
Bodden, Edward Michael (REB)	1176 Boulevard Way, Walnut Creek	4/24/78
Phillips, Calvin (REB)	4828 S. Figueroa St., Los Angeles	4/26/78
Krakover, Ted (REB)	1411 W. Olympic Blvd., Los Angeles	5/ 3/78
Mazel, Eugene Frank (REB)	1029-56th St., Sacramento	5/ 3/78

THINK C.E.

On and after January 1, 1981 all active real estate license *renewals* must evidence completion of 45 clock hours of Commissioner approved Continuing Education (C.E.) offerings.

You may choose to enroll in several offerings to obtain the needed 45 hours of Continuing Education credit. If 60,000 active licensees statewide renew annually, then 60,000 persons should not wait until the eleventh hour to try to enroll in approved offerings. You should plan your Continuing Education schedule well in advance of your license renewal date to assure compliance with the needed 45 hours of approved Continuing Education Credit.

January 1, 1981 will be upon us soon. Don't let its arrival put your real estate license renewal in jeopardy. Think Continuing Education. (See page 7 for partial Continuing Education offering list.)

SEASONED

(Continued from Page 6)

in their responsibilities and duties as proctors of real estate examinations. Not only are they now used for our daily salesperson examinations, but they also make up the major work force for DRE's real estate broker examinations.

In working with these capable people, who laughingly refer to themselves as "seasoned citizens," there has been nothing but praise

from both Department personnel and the examinees.

The rich life experiences of our proctors are far reaching and include persons with backgrounds as legal stenographers, attorneys, and a former real estate licensee.

As a result of the success of this program in the Los Angeles and Sacramento District Offices, it is anticipated the examinations being conducted in other California cities will include senior citizens on their proctoring staffs. "Seasoned Citizens" are proving to be a real support system in administering the required examination program.

EXAMINATIONS

(Continued from Page 6)

sales examinations were administered in California. When this is compared to the 52,751 examinations administered in 1975, it is clear that in just two years the number has more than doubled.

Real Estate Law requires the Real Estate Commissioner to ascertain by written examination the competency of applicants for real estate licensure. (See Business and Professions Code Section 10153.) However, passage of the examination does not insure success in the real estate business. The exam measures only that knowledge necessary to an applicant for entry into the profession. Real estate brokers are held responsible for exercising reasonable supervision over all real estate agency activities of their salespersons (Business and Professions Code Section 10177(h)). A successful real estate broker will provide training and guidance for the new salesperson in an effort to insure each has an equal chance at success.

Real Estate Commissioner Fox, the Deputy Staff of the Department of Real Estate, members of the real estate industry, and educators at colleges and universities throughout the State continue to search for new and better ways to upgrade and professionalize the real estate business to the end that the public will be protected as completely as possible in real estate transactions involving licensees and every member of the profession will be justifiably proud of their service to that public. Upgrading the licensing examination is an important part of the process.

CHARACTERISTICS AND PROFESSIONAL EXPERIENCES OF CALIFORNIA REAL ESTATE LICENSEES

This recently completed research study from California State University, Los Angeles by Dr. Marshall E. Reddick, Chairman of Department of Marketing, is now available for \$1.50 plus tax from the Department of Real Estate, 714 P Street, Sacramento, CA 95814. ATTENTION: Book Purchase.

Question—What sales price should a listing agent or cooperating agent acting in a sub-agency capacity quote for property that has been listed for sale?

Answer—The listed price. The agent should not state or imply to a potential buyer that the owner will accept less than the price at which the property has been listed. If after listing the property, the listing agent concludes that the property is overpriced—or for that matter underpriced—he should bring this to the attention of the owner and the listing contract should be amended if agreement is reached on a new listing price.

A PROVEN CIVIL CASE OF USURY— BROKER ACTING AS PRINCIPAL

by
Deputy
Randolph Brenda



Based upon an investigation by Commissioner Fox's Los Angeles District Office, the results of which were turned over to the Los Angeles District Attorney's Office for prosecution, a Downey real estate broker, acting as a principal, was charged in a formal civil complaint with violating state laws. The complaint alleged the broker made usurious real property loans, failed to provide Truth-in-Lending information to the borrowers, and made false and misleading representations in the course of the transactions. (This last allegation violative of Section 17500 of the Business & Professions Code.)

The loans of money, on which interest was charged in excess of ten percent (10%) per annum, were usurious within the meaning of the California Constitution, Article XV, Section 1. As such they constitute unfair competition within the meaning of Section 336, Subdivision 3 of the Civil Code and constitute unlawful acts and practices under Section 1916-3 of the Civil Code.

In a stipulated final judgment the Court ordered, adjudged and decreed that broker, among other things:

- refund all interest in excess of 10% per annum collected by broker on usurious loans from approximately October, 1973 to July, 1976
- cease making illegal usurious loans
- be restrained and enjoined for a period of six months from the date of entry of judgment from exercising any of the rights and authority provided by the defendant's real estate broker license in connection with any *new real estate transactions for which a license is required*
- pay to County of Los Angeles as a civil penalty the sum of \$15,000
- pay to California Department of Real Estate as costs the sum of \$1,500.

What price usury?? *Add it up.*



Investigative hearings by the Joint Committee on Abusive Practices Within the Structural Pest Control and Real Estate Industries concluded July 13, 1978, at San Diego. This investigative probe was the third in a statewide series held by the state departments of Consumer Affairs (DCA) and Real Estate (DRE). Based on evidence produced by the hearings, appropriate legislative, regulatory, and consumer education actions will be taken. Committee members hearing public testimony in San Diego are left to right: Rodney Sline, Registrar of Structural Pest Control Board; Neil Good, Chairperson and Public Member of the Board; Larry Alamao, DRE Staff Counsel; and Ralph Rowe, DRE Auditor.

Notes from Licensing

by Senior Deputy
Larry Smith



You mailed the appropriate fee and an application for a real estate license, address change, change of employing broker, or similar item to the Department and in reply you received a letter from the DRE telling you something is wrong with the application. Troublesome and time consuming? Yes. Avoidable? Also yes!!!

The U.S. Internal Revenue Service points out that one of the most frequent causes for delay in processing tax returns (including refunds) is the lack of any signature or an improper signature. This very same problem causes uncalled for delay and additional correspondence with licensees when faulty applications are received by the DRE. Original license applications and salesperson transfer applications not signed at all, signed by someone other than the employing broker, or evidencing facsimile signatures, automatically mean delays in processing, double handling, and unnecessary correspondence.

Only the employing broker's signature, or that of a licensed broker/officer of a corporation, is acceptable. Signatures of secretaries, office or sales managers, or other salespersons in lieu of the broker are not acceptable.

A real state broker working for another broker as a "broker/salesperson" should personally sign all requests for changes to his or her personal license record to avoid later misunderstandings. Too many times a change of some type has been made by the DRE to a broker's record at the request of someone purportedly authorized to act for the broker, only to be advised later by the broker/salesperson that the change was not correct.

Remember—the majority of problems can be avoided if you recheck your letters and applications *before* they are mailed for correct and complete information, appropriate fee or fees, and *proper signatures*.

The following revised list of telephone numbers are available to the public and licensees when calling the Sacramento Headquarters Section:

- Original license issuance . . . (916) 445-5971
- Real estate broker qualifications (916) 445-4011
- Examination scheduling . . . (916) 445-6587
- Corporation licensing (916) 445-4640
- License information (916) 445-5741

REGULATIONS*(Continued from Page 5)*

property on account of the race, color, sex, religion, ancestry, physical handicap or national origin of a potential owner or occupant.

(h) Making any effort to encourage discrimination against persons because of their race, color, sex, religion, ancestry, physical handicap or national origin in the showing, sale, lease or financing of the purchase of real property.

(i) Refusing or failing to cooperate with or refusing or failing to assist another real estate licensee in negotiating the sale, rental or financing of the purchase of real property because of the race, color, sex, religion, ancestry, physical handicap or national origin of any prospective purchaser or tenant.

(j) Making any effort to obstruct, retard or discourage the purchase, lease or financing of the purchase of real property by persons whose race, color, sex, religion, ancestry, physical handicap or national origin differs from that of the majority of persons presently residing in a structural improvement to real property or in an area in which the real property is located.

(k) Performing any acts, making any notation, asking any questions or making or circulating any written or oral statement which when taken in context, expresses or implies a limitation, preference or discrimination based upon race, color, sex, religion, ancestry, physical handicap or national origin; provided, however, that nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes; or in the case of a physically handicapped person, making notation, asking questions or circulating any written or oral statement in order to serve the needs of such a person.

(l) Making any effort to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by a federal or state law, including but not limited to: assisting in any effort to coerce any person because of his or her race, color, sex, religion, ancestry, physical handicap or national origin to move from, or to not move into, a particular area; punishing or penalizing real estate licensees for their refusal to discriminate in the sale or rental of housing because of the race, color, sex, religion, ancestry, physical handicap or national origin of a prospective purchaser or lessee; or evicting or taking other retaliatory action against any person for having filed a fair housing complaint or for having undertaken other lawful efforts to promote fair housing.

(m) Soliciting of sales, rentals or listings of real estate from any person, but not from another person within the same area because of differences in the race, color, sex, religion,

ancestry, physical handicap or national origin of such persons.

(n) Discriminating because of race, color, sex, religion, ancestry, physical handicap or national origin in informing persons of the existence of waiting lists or other procedures with respect to the future availability of real property for purchase or lease.

(o) Making any effort to discourage or prevent the rental, sale or financing of the purchase of real property because of the presence or absence of occupants of a particular race, color, sex, religion, ancestry, physical handicap or national origin, or on the basis of the future presence or absence of a particular race, color, sex, religion, ancestry, physical handicap or national origin, whether actual, alleged or implied.

(p) Making any effort to discourage or prevent any person from renting, purchasing or financing the purchase of real property through any representations of actual or alleged community opposition based upon race, color, sex, religion, ancestry, physical handicap or national origin.

(q) Providing information or advice to any person concerning the desirability of particular real property or a particular residential area(s) which is different from information or advice given to any other person with respect to the same property or area because of differences in the race, color, sex, religion, ancestry, physical handicap or national origin of such persons.

This subdivision does not limit the giving of information or advice to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(r) Refusing to accept a rental or sales listing or application for financing of the purchase of real property because of the owner's race, color, sex, religion, ancestry, physical handicap or national origin or because of the race, color, sex, religion, ancestry, physical handicap or national origin of any of the occupants in the area in which the real property is located.

(s) Entering into an agreement, or carrying out any instructions of another, explicit or understood, not to show, lease, sell or finance the purchase of real property because of race, color, sex, religion, ancestry, physical handicap or national origin.

(t) Making, printing or publishing, or causing to be made, printed or published, any notice, statement or advertisement concerning the sale, rental or financing of the purchase of real property that indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap or national origin, or any intention to make such preference, limitation or discrimination.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(u) Using any word, phrases, sentences, descriptions or visual aids in any notice, statement or advertisement describing real property or the area in which real property is located which indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap or national origin.

This subdivision does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

(v) Selectively using, placing or designing any notice, statement or advertisement having to do with the sale, rental or financing of the purchase of real property in such a manner as to cause or increase discrimination by restricting or enhancing the exposure or appeal to persons of a particular race, color, sex, ancestry, physical handicap or national origin.

This subdivision does not limit in any way the use of an affirmative marketing program designed to attract persons of a particular race, color, sex, religion, ancestry, physical handicap or national origin who would not otherwise be attracted to the real property or to the area.

(w) Quoting or charging a price, rent or cleaning or security deposit for a particular real property to any person which is different from the price, rent or security deposit quoted or charged to any other person because of differences in the race, color, sex, religion, ancestry or national origin of such persons.

This subdivision does not prohibit the quoting or charging of a price, rent or cleaning or security deposit for a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

(x) Discriminating against any person because of race, color, sex, religion, ancestry, physical handicap or national origin in performing any acts in connection with the making of any determination of financial ability or in the processing of any application for the financing or refinancing of real property.

Nothing herein shall limit the administering of forms or the making of a notation required by a federal, state or local agency for data collection or civil rights enforcement purposes. In any evaluation or determination as to whether, and under what terms and conditions, a particular lender or lenders would be likely to grant a loan, licensees shall proceed as though the lender or lenders are in compliance with Sections 35800 through 35833 of the California Health and Safety Code (The Housing Financial Discrimination Act of 1977).

(y) Advising a person of the price or value of real property on the basis of factors related to the race, color, sex, religion, ancestry, physical handicap or national origin of residents of an area or of residents or

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potential residents of the area in which the property is located.

(z) Discriminating in the treatment of, or services provided to, occupants of any real property, in the course of providing management services for the real property because of the race, color, sex, religion, ancestry, physical handicap or national origin of said occupants.

This subdivision does not prohibit differing treatment or services to a physically handicapped person because of the physical handicap in the course of providing management services for a housing accommodation.

(aa) Discriminating against the owners or occupants of real property because of the race, color, sex, religion, ancestry, physical handicap or national origin of their guests, visitors or invitees.

(bb) Making any effort to instruct or encourage, expressly or impliedly, by either words or acts, licensees or their employees or other agents to engage in any discriminatory act in violation of a federal or state fair housing law.

(cc) Establishing or implementing rules that have the effect of limiting the opportunity for any person because of his or her race, color, sex, religion, ancestry, physical handicap or national origin to secure real property through a multiple listing or other real estate service.

(dd) Assisting or aiding in any way, any person in the sale, rental or financing of the purchase of real property where there are reasonable grounds to believe that such person intends to discriminate because of race, color, sex, religion, ancestry, physical handicap or national origin.

AMENDS SECTION 2782 OF ARTICLE 10 TO READ:

2782. Duty to Supervise. A broker licensee shall take reasonable steps to become aware of and to be familiar with and to familiarize his or her salespersons with the requirements of federal and state laws and regulations relating to the prohibition of discrimination in the sale, rental or financing of the purchase of real property. Such laws and regulations include but are not limited to the current provisions and any amendments thereto of:

(a) Sections 35700 through 35745 of the California Health and Safety Code (Rumford Act).

(b) Sections 51 and 52 of the California Civil Code (Unruh Civil Rights Act).

(c) Title VIII and IX of the United States Civil Rights Act of 1968 (Fair Housing).

(d) Sections 35800 through 35833 of the California Health and Safety Code (The Housing Financial Discrimination Act of 1977).

(e) Sections 54 through 55.1 of the Civil Code (Blind and Other Physically Disabled Persons).

AMENDS SUBSECTION (c) OF SECTION 2800 OF ARTICLE 12 TO READ:

(c) Change in purchase money handling procedures under Section 11013.2 or 11013.4 of the Code including but not limited to a change in name or location of escrow or trust account depository or the creation of a blanket lien or encumbrance affecting a lot, parcel or unit of subdivided land being offered for sale.

REPEALS SECTION 2801.5 OF ARTICLE 12.

Adopts a new Section 2801.5 of Article 12 to read:

2801.5. "Owner" and "Subdivider" Defined. The terms "owner" and "subdivider" as used in Sections 11010, 11012, 11018.1 and elsewhere in Part 2, Division 4 of the Business and Professions Code include any person, who at any point in time, owns, or has an option or contract to acquire, the subdivision interests listed in (a) or (b) below for purposes of sale, lease or financing if the subdivision interests were acquired or are to be acquired from the original subdivider of the property or from a person who succeeded to the interest of the original subdivider in five or more lots, parcels or undivided interests in a conventional subdivision, planned development or undivided interest subdivision or in two or more units or shares in a community apartment project, condominium project or stock cooperative:

(a) Five or more lots, parcels or undivided interests in a conventional subdivision, planned development or undivided interest subdivision.

(b) Two or more units or shares in a community apartment project, condominium project or stock cooperative.

Except as provided in Section 11010.5 of the Code, an "owner" or "subdivider" as herein defined shall not offer for sale or lease, nor cause to be offered for sale or lease, any of the subdivision interests hereinabove referred to unless a subdivision public report has been issued by the department expressly authorizing the sale or leasing of the interests by or on behalf of said owner or subdivider.

ADOPTS A NEW ARTICLE TO READ:

Article 18.5. Substantial Relationship and Rehabilitation Criteria

ADOPTS SECTION 2910 OF ARTICLE 18.5 TO READ:

2910. Criteria of Substantial Relationship.

(a) When considering whether a license issued by the department should be denied, suspended or revoked on account of a crime, or act done in perpetration of a crime, by licensee or applicant for a license, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the department within the meaning of Sections 480 and 490 of the Code if the crime or act involves:

(1) The fraudulent taking, obtaining,

appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state or local government.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(5) Sexually related conduct causing physical harm or emotional distress to a person who is an observer or non-consenting participant in the conduct.

(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit, or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

ADOPTS SECTION 2911 OF ARTICLE 18.5 TO READ:

2911. Criteria of Rehabilitation (Denial).

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

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(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Successful completion or early discharge from probation or parole.

(e) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(f) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(g) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(h) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(i) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(j) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(k) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(l) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(m) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's

previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuro-psychiatric or emotional disturbances.

ADOPTS SECTION 2912 OF ARTICLE 18.5 TO READ:

2912. Criteria of Rehabilitation (Revocation or Suspension). The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Successful completion or early discharge from probation or parole.

(e) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(f) Payment of any fine imposed in connection with the criminal conviction that

is the basis for revocation or suspension of the license.

(g) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(h) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(i) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(j) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(k) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(1) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuro-psychiatric or emotional disturbances.

REPEALS SECTION 3007.1 OF ARTICLE 24.

ADOPTS A NEW SECTION 3007.1 OF ARTICLE 24 TO READ:

3007.1. Filing Deadline for Course Approvals. Application for course approval shall be made to the department not less than ninety (90) days prior to the commencement date of the offering.