



Real Estate Bulletin

Official Publication of the California Division of Real Estate

EDMUND G. BROWN, *Governor*

October 1966

MILTON G. GORDON, *Commissioner*

Southern Regulatory Area Divided Into Coastal And Inland Zones

Organizational structures of the northern and southern regulatory areas of the DRE now parallel each other as the southern regulatory area has been divided into two zones: coastal and inland. The northern area has been operating effectively under a two-zone system for the past two years.

The coastal zone, under the immediate supervision of Lee V. Sida, chief deputy, comprises the counties of Ventura, Santa Barbara, Kern (east of the Tehachapis), and Los Angeles (excepting that portion assigned to the Santa Ana district office).



LEE V. SIDA



JOHN LAZUR

The inland zone, under the immediate supervision of John Lazur, chief deputy, includes a portion of Los Angeles County (Pacific Ocean to Artesia Blvd., Harbor Freeway to Orange county line) and Imperial, San Diego, Riverside, San Bernardino and Orange Counties. The Santa Ana, San Diego and San Bernardino offices are within the zone.

This change is in line with modern management methods calling for decentralization and pinpointing of responsibilities, and is consonant with continued efforts to streamline operations in the interest of better service to the public and the industry.

Offer of Participation in Real Estate Syndicate Requires Corporation's Permit

DRE DISTRICT OFFICE IN SAN BERNARDINO MOVED

The San Bernardino branch office of the Division of Real Estate has been moved to the State Office Building—new address, Room 446, 303 West Third Street, San Bernardino 92401—telephone number 888-9421. Bernard Taylor is the supervising deputy in charge, assisted by deputy Gale S. Huffman.

Established last year the office serves San Bernardino and Riverside Counties, handling complaints, license matters and conducting license examinations. With the growth in population and consequent increase in the number of licensees in the area, the office has filled a definite service need.

Court Holds . . .

FINDER ENTITLED TO FEE

An agreement to pay a finder's fee upon the sale of real property was valid even though the finder was not a licensed agent, a district court of appeal ruled in a recent decision which reversed a superior court dismissal after sustaining demurrers without leave to amend.

The decision (*Porter v. Cirod, Inc.*, 51 Cal. Rptr. 794) may result in the payment of a sizeable finder's fee to a person who found and introduced a prospective buyer to officials of a firm which was interested in disposing of some of its real property holdings. The finder was not licensed as a real estate broker or salesman, nor did he have a written contract calling for compensation for his service. The finder alleged that representatives of a corpo-

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Public Sale of Syndicate Interests Requires Securities License

The real estate syndicate offers a means of gathering and investing funds in real property. This brief article does not attempt to tell how a syndicate is created; it calls attention to the fact that formation of a syndicate necessitates compliance with certain basic requirements of the State Division of Corporations.

The term "syndicate" is general in nature and may cover a trust, a corporation, or a partnership, which in turn sets up the syndicate for investment purposes, according to the Corporations Commissioner. Before any offer can be made to participate in a proposed syndicate or to purchase shares in it—indeed before any negotiations can be conducted—a permit must be obtained from the Division of Corporations.

The Corporations Commissioner also says that if a broker is engaged by a syndicate to offer shares for sale to

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REAL ESTATE BULLETIN

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October 1966

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DIVISION OF REAL ESTATE

STATE OF CALIFORNIA

EDMUND G. BROWN, Governor

MILTON G. GORDON

Real Estate Commissioner

JOHN E. HEMPEL

Chief Assistant Commissioner

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DESIST AND REFRAIN ORDERS

Issued for the Period Between
July 1, 1966, and August 15, 1966

Number of
orders

Violations

IN-STATE

1 Sale of real property securities
without permit . . . and/or failure
to comply with all applicable
statutes and regulations.

1 Failure to provide for subdivi-
sion public report, promised recrea-
tion facilities, proper permit
or otherwise meet requirements of
subdivision law.

OUT-OF-STATE

3 Failure to comply with Califor-
nia subdivision requirements.

Disciplinary Action—June—July 1966

NOTE: A list of actions is not published in this *Bulletin* until the 30-day period allowed for court appeal has expired; or if an appeal is taken, until a final determination of the court action. Names of persons to whom licenses are denied upon application are not published.

REB—Real estate broker
RREB—Restricted real estate broker

RES—Real estate salesman
RRES—Restricted real estate salesman

Licenses Revoked During June—July 1966

Name	Address	Effective date	Violation
Murphy, James Hartfield (REB) ..	223 N. 2nd St., Campbell.....	6/ 1/66	Sec. 10177 (b) and (f)
Otto, Walter Emil, Jr. (REB)	2621 K St., Ste. 8, Sacramento....	6/ 4/66	Secs. 10130; 10145; 10176 (e), (i); 10177 (d); and Sec. 2832 of R. E. Comm. Reg.
Lowenberg, Vernon Fred (RES)	2267 Concord, Pomona.....	6/ 8/66	Sec. 10177 (b) and (f)
Simpson, Claude (REB)	7231 So. Broadway, Los Angeles ..	6/11/66	Secs. 10176 (i); 10177 (d), (f) and (j)
(Granted right to restricted real estate salesman license on terms and conditions, after 90 days from effective date)			
Corporal, John Vincent (RES)	546 33rd Ave., San Francisco.....	6/14/66	Sec. 10177 (b)
Morrison, George Reid (RES)	3399 Mt. Diablo Blvd., Lafayette..	6/15/66	Sec. 10177 (a), (b) and (f)
(Granted right to restricted license on conditions)			
Bonewits, James Edwin (RES)	522 N. Newport Blvd., Newport Beach	6/23/66	Sec. 10177 (b) and (f)
(Granted right to restricted license on conditions)			
Burkhalter, Barry Leroy (RES)	45020 Lorimer Ave., Lancaster....	6/28/66	Sec. 10177 (b) and (f)
Anderson, Leonard Clyde (RES)	1112 Irving St., San Francisco....	6/29/66	Sec. 10177 (f) and (j)
Starr, David (REB)	9200 W. Olympic Blvd., Ste. 102 dba Starr Mortgage Co. Beverly Hills	6/30/66	Secs. 10175; 10176 (a), (i); 10177 (d), (f) and (j)
Garufi, James Russel (RES)	949 W. Foothill Blvd., Monrovia..	7/ 5/66	Sec. 10177 (b) and (f)
Linder, Lyle Eber (REB)	7861 Ivanhoe St., La Jolla.....	7/ 5/66	Secs. 10176 (i); 10177 (f) and (j)
Claytor, Reba Erlene (REB)	12736 San Pablo Ave., Richmond ..	7/ 6/66	Secs. 10176 (e), (i); 10177 (d), (f); Secs. 2830 and 2832 of R.E. Comm. Reg.
(Granted right to restricted license on terms and conditions)			
Hinds, James Andrew, Sr. (REB)	1525 96th Ave., Oakland.....	7/ 6/66	Sec. 10177 (b) and (f)
(Granted right to restricted license on terms and conditions)			
O'Brien, George Edison (RES)	4087 San Bernardino Way, San Jose	7/ 6/66	Sec. 10177 (b) and (f)
Miller, Melvin (REB)	4 14th Ave., San Mateo.....	7/13/66	Secs. 10176 (e), (i); 10177 (d), (f) and (j)
Perry, Wilbert, Harvey (RES)	512 E. 19th Ave., San Mateo	7/18/66	Sec. 10177(a), (b) and (f)
(Granted right to restricted license on conditions)			
Hughes, Douglas Jon (RES)	7957 E. Imperial Hwy., Downey ..	7/19/66	Sec. 10177 (b) and (f)
Lynch, Norman Ethelbert, Jr. (REB)	6640 Culvin Court, Riverside.....	7/19/66	Sec. 10177.5
Robertson, Ruben Telfro (RES)	8819 S. Central, Los Angeles.....	7/19/66	Sec. 10177 (b) and (f)
Smith, JoAnne (RES)	16147 Parthenia St., Sepulveda ...	7/19/66	Sec. 10177 (b) and (f)
(Granted right to restricted license on terms and conditions)			
Cluse, Aaron (REB)	10131 W. 62nd St., Los Angeles...	7/25/66	Secs. 10176 (a), (b), (i); 10177 (d), (f) and (j)
Glover, Charles E. (RES)	15763 Fellowship St., La Puente...	7/25/66	Sec. 10177 (b) and (f)
Faull, Donald L. (REB)	850 4th St., Santa Rosa	7/26/66	Secs. 10176 (a), (g), (i) and 10177 (f)
(Granted right to restricted license after 30 days from effective date of decision on terms and conditions)			
Green, Russ (REB)	5350 Forbes Ave., Encino.....	7/26/66	Secs. 10177 (f) and 10177.5
dba Russ Green Company (Granted right to restricted license after 120 days from effective date of decision on terms and conditions)			
Mason, Donald Edward (REB)	862 Cordilleras, San Carlos.....	7/26/66	Sec. 10177 (b) and (f)
(Granted right to restricted license on terms and conditions)			
McCullum, Marjorie Joyce (RES)	16147 Parthenia St., Sepulveda....	7/26/66	Sec. 10177 (b) and (f)
(Granted right to restricted license on terms and conditions)			

Licenses Suspended During June—July 1966

Name	Address	Effective date and term	Violation
LaRocca, Leslie Kaye (RES)	3030 W. Jefferson Blvd., Los An- geles	6/ 3/66 Indefinitely	Sec. 10177.1
Perry, Wilbert Harvey (RES)	6308 Woodman Ave., Van Nuys...	6/ 3/66 Indefinitely	Sec. 10177.1
Morris, Vernon Bernhart (RRES)	3818 Market St., Oakland.....	6/ 6/66 Indefinitely	Sec. 10156.7
Bender, Irvin Ruben (REB)	226 W. Pine St., Lodi.....	6/ 7/66 Indefinitely 30 days	Sec. 10176 (a) and (i)
(Last 15 days stayed for 2 years on conditions)			
Stoddard, Annis (REB & RES)	226 W. Pine St., Lodi.....	6/ 7/66 15 days	Sec. 10176 (a) and (i)
Heiner, Frank August (REB)	35 East St., Hollister.....	6/11/66 90 days	Secs. 10145; 10176 (e); 10177 (d), (g); Secs. 2832 and 2901 of R.E. Comm. Reg.
(Last 60 days stayed for 1 year on conditions)			
Armes, Edward Joseph (REB)	68 Post St., Rm. 420, San Francis- co	6/14/66 5 days	Sec. 10137
(RES)			
Becker, Solomon D. (REB)	144 27th Ave., San Francisco	6/14/66 5 days	Sec. 10177 (d), (f), (g); and Sec. 2832.1 of R.E. Comm. Reg.
dba Mill Valley Realty Vice President of Boris Gertzgen Associates, Inc. (Stayed permanently)			
Cipollina, Luigi Mario (RES)	171 E. Blithedale Ave., Mill Valley	6/14/66 15 days	Sec. 10177 (d), (f), (g); and Sec. 2832.1 of R.E. Comm. Reg.
(Stayed permanently)			
Spinney, Charles Edward (REB)	177 W. Washington, Sunnyvale...	6/14/66 11/30/68	Secs. 10160; 10162 and 10177 (d)
(After 30 days from effective date of decision, remainder to and including or any portion thereof may be stayed on conditions)			
Braverman, Sy & Associates, Inc. (REB)	14044 Ventura Blvd., Sherman Oaks	6/21/66 30 days	Secs. 10176 (a), (i); 10177 (d), (f) and (g)
Seymour Braverman (REB) President (Stayed for 1 year on terms and conditions)			

Advantages of Mortgage Loan Investments Presented To Pension Fund Trustees

Real Estate Commissioner Milton G. Gordon chaired the recent Governor's Conference on Pension Fund Investments, called to mount action toward alleviating the tight-money situation which has seriously affected California homebuilding and sales activity. Expectation is that building trade and government employees' pension fund investments in trust deeds will be accelerated as fund trustees heard experts discuss the advantages of investments in federally guaranteed or insured paper secured by real property.

The executive officer of the California State Employees' Retirement System recounted the system's favorable investment experience in the purchase of FHA and GI trust deeds. The Los Angeles County Treasurer, who heads a commission responsible for the investment of county employee retirement funds, also spoke well of the fund's experience with real property loan investments.

Governor Brown expressed the opinion that pension funds could increase their mortgage portfolios to the benefit not only of the funds, but to the homebuilder and to the real estate economy as well. He stated: ". . . investment in California real estate is sound and profitable . . . investments in mortgages by union and other pension funds could safely place millions of dollars into California's construction economy."

Real Property Loan Controls Not To Be Overlooked

During this tight-money cycle, it seems reasonable to expect licensees to search more zealously for private-loan support of sales and owner borrowing. Venturing into this area, licensees should be aware there are controls in the Real Estate Law bearing on it. Attention is directed to Article 5, "Transactions in Trust Deeds and Real Property Sales Contracts"; Article 6, "Real Properties Securities Dealers"; and Article 7, "Real Property Loans," in Chapter 3 of the law. The articles include Sections 10230 through 10248 of the Business and Professions Code of the State of California.

Without going into the details of the provisions of these sections, it may be emphasized that certain types of loan transactions fall into the special category of real property securities and require a permit from the Real Estate Commissioner, and the licensee who handles them must be designated as a real property securities dealer. **Licensees negotiating loans should also be aware of the fact that the usury law, which provides for a maximum of 10 percent interest on a real estate loan, also controls.**

Licensees intending to engage in this phase of the business would do well to become thoroughly conversant with the provisions of the law enumerated above. If there are questions—and there may well be—discuss them with a deputy in one of the DRE district offices.

A Way to Reduce Complaints

One earmark of the professional is his effort to make certain that all parties concerned understand all aspects of a transaction before it goes into escrow. More care in this respect would eliminate many misunderstandings and much dissatisfaction which reflect unfavorably, not only on the licensee at fault, but on the industry as a whole.

FINDER'S FEE

(Continued from Col. 2, Page 773)

ration which owned a chain of hotels and motels orally offered him "reasonable compensation" for finding and introducing a buyer capable of purchasing all or a part of the corporate holdings.

Introduced Prospective Buyer

The plaintiff, in suing for compensation, said he had found and introduced a prospective purchaser—a well-known theatrical figure—and thereupon the parties entered into negotiations which resulted in a contract for the sale of property owned by the defendants for well over two million dollars. The corporation refused to pay the finder and he thereupon sued for reasonable compensation, claiming \$119,000. The plaintiff was unsuccessful in a superior court action, but the appellate court reversed the trial court's judgment.

In its findings the court said the plaintiff did not need a real estate license to enter into an agreement to be compensated merely for finding and introducing a prospective buyer, providing his services were confined to introduction of the parties, leaving them to conduct the negotiations. The fact that the agreement was oral did not alter the court's conclusions.

Brokers enter a danger zone when they avail themselves of finders' services because it is difficult, if not impossible, to know if the finder slips over the thin line and does some negotiating. If so, the broker may find himself compensating an unlicensed person, imperiling his own license.

Licenses Suspended During June-July 1966—Continued

Name	Address	Effective date and term	Violation
Thompson, Charles Robert (RES)--- (Last 150 days stayed for 1 year from effective date of decision on terms and conditions)	444 N. Camden Dr., Beverly Hills	6/21/66 180 days	Secs. 10176 (a), (i); 10177 (d) and (f)
Bonetto, Jeanne Mae (RES)-----	8238 Sepulveda Blvd., Van Nuys--	6/28/66 90 days	Sec. 10177 (b) and (f)
Jones, Zorado Catherine (REB)---- dba Exclusive Realty President of Star Mortgage Corporation	5375 Wilshire Blvd., Los Angeles--	7/ 1/66 90 days	Secs. 10176 (i); 10177 (f) and (j)
(RES)----- (Last 80 days stayed for 2 years on terms and conditions)	3913 W. 27th St., Los Angeles		
Phillips, Elwood Yates (RES)-----	560 E. Rowland Ave., Apt. D-2, Covina	7/ 5/66 Indefinitely	Sec. 10177.1
Cano, Albert Quiroz (REB)----- dba Mt. Aetna Realty Co.	1184 E. Santa Clara St., San Jose 2359 Thompson, Santa Clara	7/ 8/66 30 days	Secs. 10162; 10176 (e); 10177 (d), (f); and Sec. 2832 of R.E. Comm. Reg.
Wicand, Robert Anthony (RES)--- (Stayed permanently)	P.O. Box 471, 100 El Camino Real, Burlingame	7/19/66 15 days	Sec. 10177 (f)
Ginn, Grace Fisher (REB)----- dba Atkins Properties (Stayed permanently)	3734 W. Adams Blvd., Los Angeles	7/22/66 5 days	Secs. 10176 (e); 10177 (d), (f); and Sec. 2831 of R.E. Comm. Reg.
Sioussat, Herbert Parker (RES)---	1535 E. 17th St., Ste. C, Santa Ana	7/25/66 15 days	Secs. 10130; 10137; 10176 (a), (i); 10177 (d) and (j)

SUBDIVISION

Land Frauds . . .

DRE "CATCHES UP" WITH SUBDIVISION LAW VIOLATOR

Mail-order sale of worthless land flourished late in 1961 and in most of 1962, when thousands upon thousands of parcels of land, located chiefly in New Mexico, Arizona, Nevada, Oregon, Florida and Utah were sold to buyers residing elsewhere.

As "peddling land by mail" reached monumental proportions, adverse publicity began to appear in news media. One promoter, whose operations resulted in a spate of notoriety, was Robert Golubin, whose Great South Western Land Co., Inc., according to a national magazine, took in over \$1 million on two so-called subdivisions located in New Mexico.

Method of Operation

It was Golubin's practice to set up booths at fairs throughout California and other states and he maintained a large booth at the Seattle World's Fair. At county fairs in California, he dangled the possibility of a prize to persons who completed a coupon with their name and address. Most, if not all, of these "lucky" people shortly thereafter received a letter congratulating them as winners of free lots providing they paid certain "actual costs" (from \$49.30 to \$59.30). Attempts were then made to sell additional lots to the free-lot recipients for prices ranging from \$495 to \$600 per lot, depending on the subdivision.

It was estimated that the actual costs to the promoter per quarter acre, which was the size of most lots, was approximately \$12 to \$15, including the advertising and securing of the leads. The postal inspectors who worked on this case, and cooperated with the Division of Real Estate, estimated a total cost of approximately \$12 per quarter acre.

Desist and Refrain Order

In 1962 the Real Estate Commissioner had issued a desist and refrain order restraining the Golubin organization from offering lots to California

DRE Revises Receipt Form For Subdivision Public Report

The approved form, to be used to verify that a prospective purchaser had been given and had read a copy of the Subdivision Public Report before his deposit was accepted, is set out in Section 2795.1 of the Regulations of the Real Estate Commissioner.

This clause was added to the form as of September 2, 1966: *I [the prospective purchaser] understand the report is not a recommendation or endorsement of the subdivision but is informative only.*

If a subdivider has a supply of receipt forms on hand, the added statement may be stamped on the form over the signature line. Prospective purchasers signing the receipt should initial the stamped insert.

buyers without first obtaining a commissioner's public report. Further action followed. Complaints were filed in nine counties in California in March of 1963, charging violations of Sections 10185 and 11020 of the Business and Professions Code. Hundreds of people were interviewed, and strong cases developed in each of the counties, and district attorneys readily agreed to prosecute the state's complaints. However, about this same time, the postal authorities indicted Golubin in Albuquerque, New Mexico, for mail fraud. At that time, subdivision violations were only a misdemeanor, so the State of California did not extradite in view of the federal indictment.

A. G. Rules on Out-of-State Subdivisions

The Real Estate Commissioner's subdivision public report and permit must be obtained before lots in an out-of-state subdivision may be offered for sale to California residents, even though all the parcels are 160 acres or more in size, said the Attorney General in a recent opinion. Section 11000 of the Business and Professions Code exempts from the filing requirement a California subdivision in which all parcels are at least 160 acres in area.

The Attorney General reasoned that regulation of the sale of lots and parcels in subdivisions situated outside the State of California is based not only on the usual statutes applying to subdivided lands (Section 11000 et seq., Business and Professions Code) but also on the special statute entitled "Out-of-state Land Promotions." In this statute out-of-state subdivisions are defined as improved or unimproved land divided or proposed to be divided for the purpose of sale or lease into five or more lots or parcels. The statute does not accord an exemption to subdivisions where the parcels are 160 acres or more in size.

Under the statute a subdivider of out-of-state lands must, in addition to the requirements applying to California subdivisions, comply with the strict rules relating to real property securities.

The first federal trial, which resulted in a hung jury, was held in May 1964. In August of 1965, following a second trial, Golubin was found guilty of 16 counts of mail fraud, and given three years on each count, sentences to run consecutively. His case is presently on appeal.

While residing in northern California, Golubin was arrested on a motor vehicle code violation charge last March, and the outstanding complaints and warrants came to light. The commissioner then pressed his initial criminal charges against Golubin, who pled guilty to violations of Sections 10185 and 11020, Business and Profes-

(Continued, Col. 3, Page 779)

Forfeiture Clause Validity Subject to Question

By Alvin S. Kaufer, Attorney-at-Law
Los Angeles, California

Many deposit receipts contain this or a similar clause: "If buyer fails to pay the balance of said purchase price, or to complete said purchase as herein provided, the amount paid hereon may be retained by seller at his option as consideration for the execution of this agreement by seller." Such a provision is void, at least insofar as it purports to allow the seller to retain any amounts paid which are in excess of the amount of the seller's actual damages suffered by the buyer's breach.

In this article by Alvin S. Kaufer, attorney at law, he sets forth his own opinions about the validity of forfeiture clauses, and his statements are not to be regarded necessarily as an official expression by the Division of Real Estate.

In the case of *Caplan v. Schroeder* (1961), 56 Cal. 2d 515, the plaintiffs agreed to buy certain land and delivered their promissory note for \$15,000 to the defendant sellers outside of escrow. The purchase and sale contract provided in part as follows:

"This note . . . is given to **SELLERS** as consideration for **SELLERS'** entering into this agreement, but when said note is paid . . . the **BUYERS** shall have credit for the principal sum thereof . . . against the purchase price. . . . **If, however, the sale is not consummated by reason of some default of the BUYERS, said note and/or the moneys received in payment thereof shall be retained and collected by the SELLERS as agreed consideration for entering into this agreement.**" (Emphasis added.)

Pursuant to the contract, the buyers delivered their \$15,000 promissory note to the sellers. Thereafter they refused to complete the purchase and within a year the owners sold at a higher price. The parties who delivered their note a year previously then commenced an action to recover their down payment on the theory that the sellers were not damaged and therefore could not keep the down payment. The court held the above-quoted provision to be void and allowed the plaintiffs to recover their total down payment less the damages incurred by the sellers (but not including the seller's attorney's fees which the sellers had to pay themselves).

In light of this decision, it must be concluded that the deposit receipt provision quoted above is invalid.

Successful Exam Candidates May Forfeit Rights

A sizeable number of persons who have passed real estate license examinations have not applied for their licenses, seemingly under the impression they have an unlimited time in which to do so. This is not the case.

Section 10201.6 of the Real Estate Law which became effective January 2, 1966 reads: "Any person who has qualified in an examination for a real estate license shall file the required application and fee for the license within one year thereafter."

At the latest count, 1,318 persons, including 362 broker license applicants, had been successful in examinations but had failed to apply for license and pay the appropriate fee. Each will forfeit the right to apply for license after one year. Should you know of any person in this situation, and apparently unaware of the possibility of losing his license privilege, please pass the word.

Brokers should be particularly aware of this rule of law. Whether or not a broker will ever be held liable in damages because his principal relied on the invalid provision without being properly advised is difficult to predict, but the case of *Biakanja v. Irving* (1958), 49 Cal. 2d 647 provides a warning. The California Supreme Court there held that a notary public, who prepared a will which was invalid because he negligently failed to have it properly attested, was liable in damages to a beneficiary who did not receive the intended bequest.

It is possible that a differently worded provision may be valid as a "liquidated damage" clause, but if a deposit receipt contains the provision quoted above, it is suggested that brokers and salesmen advise their principals so that they may act accordingly.

Real Estate Law Curbs "Blind Advertising" Practice

"Blind advertising" refers to advertisements, usually classified, which do not reveal the name or address of the advertiser. A newspaper box number or a telephone number in the advertisement allows the reader to get in touch with the advertiser.

In the past, the Division of Real Estate has received numerous complaints concerning advertising by licensees who do not identify themselves as agents, perhaps giving the misleading impression they are selling as owners. Others have used blind advertising as a device to procure listings, and some rental agents try to reach prospective renters in this manner.

Legislation to curb these practices was enacted in 1965 when Section 10140.6 was added to the Real Estate Law. It precludes a licensee from advertising in relation to any activity for which a license is required without making it clear he is engaged in performing acts for which a license is necessary. Classified rental advertisements reciting the telephone number at the premises or the address of the property for rent are exempt from the provisions of this section, as are licensees who include in the advertisements mention of their licensed corporate or their fictitious business names.

"Use of the terms broker, agent, Realtor, loan correspondent or the abbreviations bro., agt., or other similar terms or abbreviations, is deemed sufficient identification to fulfill the designation requirements of Section 10140.6 of the B. & P. Code," states Section 2770.1 of the Regulations of the Real Estate Commissioner.

SELLS—BUT NO COMMISSION

Franklin v. Hansen (1963), 59 Cal. 2d, 570. Broker, without listing, had offer from prospective buyer and telephoned to seller, who verbally agreed to sell and pay broker a five percent commission. Seller confirmed sale price by telegram to broker but telegram did not confirm employment or commission agreement. Broker was denied recovery of commission because employment agreement was not in writing.

Education & Research Program

University of California • State Colleges • Junior Colleges

Qualifications, Recruitment, Training . . .

Real Estate Salesmen: Santa Clara County State College Education and Research Program

This is the first of a series of proposed articles designed to acquaint readers with the continuing real estate education and research programs conducted at 13 of the California state colleges. The statewide program will be discussed as will the relation of research to building and enriching a college real estate curriculum. This story treats of San Jose State College, which was one of the first schools to enlist in the program developed by the Division of Real Estate, the industry and educational advisers in 1958. Though the state colleges receive no direct support for curriculum development, equipment or teaching aids, they are eligible for grants from the Real Estate Education, Research and Recovery Fund for conducting research projects of a statewide or regional nature, with the end product of use to the industry.

San Jose State College currently offers six different real estate courses, both day and night classes, and the bachelor of science degree with a concentration in real estate. **Between inception of the program in 1958 and June 1966, some 182 persons have graduated with this degree and concentration, and 448 more have registered for real estate classes this school year.** This is an imposing record and only San Diego State College boasts more real estate degrees awarded—480. Much of this achievement is directly attributable to encouragement and broadened study opportunities provided by real estate research projects.

The Oldest State College

San Jose is the oldest of California's state colleges and has one of the oldest business administration departments, and has long offered real estate courses. The real estate program has been strengthened and developed broadly since 1958.

One of the outstanding products of the San Jose program is a quarterly

research bulletin published for the benefit of all in real estate or related industries. The bulletin is titled the *Realty Review*, and Volume III, No. 3, published in the summer of 1966, is an outstanding issue. **(A limited number of copies are available upon request directed to the college).** The summer issue dealt with real estate salesmen in Santa Clara County and covered such subtopics as the hiring of men or women, the variation of educational backgrounds of salespeople, their age, employment duration, problems of recruiting new salesmen and selection and training of salespeople.

Some of the San Jose findings reflect opinions of brokers who were interviewed and who are acutely aware of what is quite generally their toughest problem—personnel.

Brokers Point Out Problems

One broker stated that the real estate business is faced with a challenge to hold good people by building more stability of income and better fringe benefits into the salesman's job. The report said that some brokers interviewed in connection with the basic study appear to recognize that too strong a mix of determination, drive and aggressiveness, self-starting ability and willingness to take risks and act independently can conflict with the need to inspire trust in prospective buyers. In this situation, it is recognized that salesmen find difficulty in keeping the buyer's "real need" uppermost in their minds.

DISTRIBUTION OF RESEARCH REPORTS

Reports of research studies financed in part, at least, by the Real Estate Education, Research and Recovery Fund, are distributed to California institutions of higher learning and to a selected list of libraries and made available to licensees and to the public.

After the original supply of a report is exhausted, it is reprinted if demand warrants. Otherwise, copies may be consulted at California State Library, Sacramento; Fresno County Free Library, Fresno; Los Angeles, Oakland, San Diego, and San Francisco Public Libraries; state college libraries; University of Pacific Library; University of California Libraries at Berkeley, Davis and Los Angeles; and the Education and Publications Section, Division of Real Estate, Sacramento.

The basic cause of this problem may lay in the prevailing compensation policy for new salesmen, the report said, almost universally the new salesman is on straight commission from the beginning. As the *Review* states, he is usually inexperienced in real estate and is unable to produce at a rate which will earn the higher bonus commission percentages, often rewarding the more experienced sales people.

Stabilizing and Improving Practices

In conclusion, the *Realty Review* says many factors are involved in stabilizing and improving practices in the real estate sales field. Brokers interviewed expressed their concern and evidenced they were groping for means to achieve this end. As a representative of one firm put it, "we do not have a good enough systematic method in our business for preparing and training people. Our present way of recruiting new salesmen is too haphazard." A suggestion for better results was offered: **"To combine better educational preparation of prospective salesmen with part-time on-the-job training of these people with established real estate firms" before they enter the field on a full-time basis.** This was presented as a suggestion, not a conclusive answer.

DISCOUNTED LOANS CAN BE USURIOUS

The present-day shortage of funds for home financing will tend to create an increase in the sale of trust deeds and notes.

In the face of a similar tight market eight years ago, the 1958 July-August issue of the *Bulletin* carried an article on discounting loans. It dealt with the possibility of a licensee becoming involved in a usurious transaction in a sale that depended on discounting a loan to complete the escrow. Portions of that article bear repeating today.

At that time, an Attorney General's opinion was based on the following set of circumstances:

"An owner wants to sell his home and lists it with a real estate broker at \$10,000. The home is encumbered by a first deed of trust securing an \$8,000 note. The broker interested a buyer who is willing to assume the existing trust deed and note, but who does not have the necessary \$2,000 to complete the transaction. In order to get the \$10,000 price, the broker has the parties agree to a fictitious selling price of \$12,000 and the purchaser executes a note for \$4,000, bearing 10 percent interest, secured by a second deed of trust upon the same property. A third party deposits \$2,000 in the escrow, which \$2,000 is paid to the seller upon the seller assigning the \$4,000 note to the third party. The seller has no intention of holding the \$4,000 note which passes directly from escrow to the third party."

In determining whether such an arrangement constitutes usury, the Attorney General said:

" . . . Where the nominal assignee of the purchase note paid the money into the real estate escrow and received the note directly from said escrow, the probable finding of fact would be that the substance of the transaction was a loan from said assignee to the buyer of the real estate and that such was the intent of the parties. Where a \$4,000 note bearing 10 percent interest and secured by real property is given for a loan of \$2,000, the return to the lender is in excess of that allowed by Section 3081.3(c) of the Civil Code

TRUST FUND RECORDS

There are brokers, unfortunately, who persist in sticking to "hip-pocket" methods of maintaining records which fall short of the law and regulations and of acceptable business practice. The commissioner urges brokers to review their practices in this respect to make sure they understand and recognize their obligations under Section 10145 of the law and supplementing regulations—Sections 2830 through 2835. Brokers having doubts about their trust-fund accounting methods might well consult pages 461-463 of the 1966 Reference Book wherein guidelines for setting up at least a basic system are described.

Irregularities are being uncovered by DRE auditors in their spot checks of brokers' trust accounts.

Public Sale of Syndicate Interests Requires Securities License

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the public, he must have a securities license from the Division of Corporations; if he hires salesmen, an agent's certificate for each must be obtained. If the syndicate wants to do its own selling through hired salesmen, each salesman would need an agent's certificate issued by the Division of Corporations.

Anyone having questions on this subject should get in touch with the Division of Corporations at one of its offices which are located in Sacramento, San Francisco, Los Angeles and San Diego.

and is in violation thereof . . . any real estate broker who arranges for a loan in violation of said section is subject to disciplinary action . . ."

The principles expressed in the above opinion are just as valid now as they were then. The "Usury Law" prohibits an interest rate in excess of 10 percent on loans secured by real property. As one court put it: ". . . Any benefit or advantage exacted by the lender from the borrower, whatever be its name or form, which, added to the interest taken or re-

LAND FRAUDS . . .

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sions Code, in San Francisco, Santa Clara, Alameda and San Mateo Counties, receiving suspended jail sentences ranging from 25 days to 6 months. He also paid fines on each count.

Legislature Puts Teeth in Law

Unscrupulous but flourishing land promotional activities played a large part in the decision of the 1963 California Legislature to enact more stringent subdivision laws. The subdivision legislation which became effective September 20, 1963, was directed toward regulation of marketing of out-of-state parcels to California buyers. The act spelled out the commissioner's responsibility and authority to enforce these laws which provide for examination of properties to determine whether the offerings can meet a "fair, just and equitable" test. And now a subdivision violation is no small matter—it constitutes a public offense, punishable by a fine not exceeding five thousand dollars or by imprisonment in state prison for a period not exceeding five years or in a county jail for not more than one year, or by both such fine and imprisonment.

Promoters operating outside of the state borders are still reaching non-professional investors—people generally of modest means—but federal postal inspectors have the "land peddlers" on the defensive and federal legislation, designed to protect mail-order land buyers against unscrupulous promoters, is under consideration.

Licensees Can Help

Meanwhile, licensees can play a helpful role, if they are consulted by anyone anxious to make some kind of "get-rich-quick" land investment, by advising personal examination of any property under consideration, even if this involves travel, inconvenience and expense. Buying property sight unseen opens the door to exaggeration, misrepresentation, deception, heartbreaking disillusionment and financial loss.

served, would yield to the lender a greater profit upon his loan than is allowed by the law is deemed usury."

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Care Should Be Exercised In Use of Net Listings

A net listing is a contract to find a buyer or lessee for property at a certain net price to the seller, and the broker's compensation is any amount paid over and above the seller's stipulated price.

Offhand this looks all right, but in practice the net listing can be confusing to the prospective buyer, particularly if the listing was given to several different brokers, and they offer the property to the same prospect at different prices. And when the overage accruing to the broker is more than the normal commission, the seller is inclined to feel he has been injured.

So, while a net listing is legal, its use can subject the broker to criticism, warranted or not. If a net listing is used—as it is infrequently—its meaning should be fully explained to the seller, with emphasis on the fact that all moneys over and above the net price set by the seller will go as compensation to the broker.

The broker, working under the terms of a net listing, is bound by the Real Estate Law to disclose the amount of his compensation to the seller "prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties." This can be a formidable obstacle to completion of a transaction on satisfactory, friendly terms, but failure to observe the requirement is grounds for disciplinary action.

AVOID DELAY IN TRANSFERS OF SALESMAN LICENSES

Brokers and salesmen can expedite transfers of valid current licenses by exercising a little more care in requesting changes, and the salesman should recognize that getting in the application and \$4 fee is primarily his responsibility. When an application for transfer of a salesman license to a new employing broker is made, the changed license is ordinarily issued effective the date the application is received by the Division of Real Estate.

If an application for transfer is delivered personally to a district office where it can be checked for completeness and a receipt issued for the fee, the salesman can immediately operate under the new employing broker, even though there is a time lag before issuance of the amended license.

Mailing Transfer Application

However, the salesman may mail the transfer form and fee to Sacramento and continue on with his work under his new employer. But, using this route, he cannot be positive he is properly licensed as occasionally mail does go astray or his application may be faulty in some respect. Thus the person who

relies on a mailed application operates at his own risk, taking a chance on loss of earned commissions due to a technically deficient license. One common cause for delay in issuance of a changed license is the salesman's failure to make certain the signatures and the addresses of both former and new employing brokers correspond to the names and addresses appearing on their licenses.

Although space for signatures of both former and new employing brokers appear on the application form, the signature of the broker whose employ the salesman is leaving may be waived if he refuses to sign the application. When the former broker does sign the application, the DRE does not send him a notice of consummation of the transfer.

If a salesman transfers to a new broker at the time he renews his salesman license, no transfer form is required. The new employing broker merely signs the renewal form. However, the usual transfer fee of \$4 along with the renewal fee is required. When activating an inactive salesman license, only the employing broker's signature is necessary.

Broker Performed, Court Says Awarding Commission

It is not necessary that a broker personally conduct the negotiations between his principal and the other party to a transaction, or that he be present personally when the bargain is completed, in order to be entitled to a commission.

After the broker procures a cus-

tommer able, ready and willing to enter into the transaction on terms acceptable to the principal, neither the principal nor the customer may defeat the broker's claim to compensation by concluding the transaction without his aid. *Justice v. Ackerman* 183 C.A. 2d 649.