



# Real Estate Bulletin

Official Publication of the California Division of Real Estate

EDMUND G. BROWN, Governor

December 1964

MILTON G. GORDON, Commissioner

## "Rehabilitation"

### Factors in Hiring Discussed by Hearing Officer

Obviously a broker should not hire a salesman carelessly, because the acts, conduct and representations of the salesman are those of the broker. The broker, in recommending an applicant for salesman license makes a statement to the effect that he has ascertained upon investigation that the applicant is "honest, truthful and of good reputation." What guide should be used by a broker in determining whether he should sponsor an applicant with a criminal record?

Carl A. Pierson, Office of Administrative Procedure, discussed the question in an article in the *Administrative Procedure Bulletin*. Excerpts:

"Foremost among the qualifications for licensing are good moral character and fitness. There are individuals who possess this qualification without any question, but for the individual who has committed an act which would disqualify him as possessing good moral character and fitness the question then is, has that individual now become rehabilitated? Rehabilitation is the process of regaining the lost character trait or establishing the absent one to the extent that good moral character is regained. To be rehabilitated for purposes of licensing means that the process is completed; that it is an accomplished fact. What then are the factors by which we may attempt to determine whether rehabilitation is an accomplished fact?"

#### *Factors to be Considered*

The article went on to list questions which might be considered—questions such as: Time elapsed since disqualification? Termination of association with questionable characters? Permanent and stable residence? Reputation in community? Stable employment record? Major change in family relationships? Professional help and ad-

### Season's Greetings

It is a pleasure to extend to you best wishes for a Merry Christmas and a Happy New Year on behalf of myself and my staff.

This is a joyous season. It is also a time to express our gratitude for the past year's successes, to examine failures and to learn from them, and to think about availing ourselves of the many real estate educational opportunities making it possible to achieve a true professional orientation and competency.

Let's do all these things while continuing to expand our achievements within the framework of the Golden Rule. May 1965 be a year in which we take giant strides in our quest for professionalism!

*Milton G. Gordon*  
Real Estate Commissioner

vice? Satisfactory record in meeting financial and business commitments? Participation in youth, social, welfare, religious and other endeavors in the community? Still on probation or parole? Restitution where possible? Attitude good?

The granting of a pardon or the expunging of a record of conviction

(Continued, Col. 1, Page 687)

## CAL-VET FINANCING

To keep pace with present-day real estate trends, legislative and administrative changes have been made in the Cal-Vet Farm and Home Purchaser's Program.

The maximum farm loan available has been boosted from \$40,000 to \$80,000. Prior to the change, the qualifying California war veteran was required to make most of his living from the property. Under the present law, he has to show that the proposed farm property can net a decent profit, and that he has the background to manage the investment.

#### *Finance Existing Loans*

The law now provides that \$5,000,000 of any surplus within the Farm and Home Purchase Program can be used each year to re-finance loans for veterans whose existing home loans are not insured or guaranteed by the Federal Government, and bear more than a 5¾ percent interest rate. A priority system for making loans of this type has been established.

#### *Maximum Extension*

Loan terms have been lengthened for vets whose income will not fit into the normal 23 year Cal-Vet term, but no term can exceed forty years. Each loan is tailored to suit the needs of the individual applicant.

Qualified people may take out improvement loans for additions to homes, providing the combined total of the contract balance and improvement loan does not exceed \$15,000.

A veteran can get Cal-Vet financing a second time if all net proceeds from the sale of the previous property are applied to the new purchase.

**REAL ESTATE BULLETIN**

Official Publication of the  
California Division of Real Estate

December, 1964

Published Bimonthly in Sacramento by the  
**DIVISION OF REAL ESTATE**

STATE OF CALIFORNIA  
EDMUND G. BROWN, Governor

MILTON G. GORDON  
Real Estate Commissioner

JOHN E. HEMPEL  
Chief Assistant Commissioner

**STATE REAL ESTATE COMMISSION**

LEONARD SERLEY      JOHN H. TOLAN, JR.  
Hayward                  Richmond  
DAVID MILLER          ROGER J. ROELLE  
Riverside                West Covina  
RALPH H. MILLER      JOSEPH H. CARTER  
Upland                    Eureka

**PRINCIPAL OFFICE**

1015 L Street, Sacramento 95814

J. P. MAHONEY, Chief Legal Officer  
GERALD E. HARRINGTON, Assistant Commissioner,  
Regulatory Operations  
HAROLD H. WELLS, Assistant Commissioner,  
Licensing and Services  
WALTER J. MILLER, Assistant Commissioner,  
Education and Publications  
PAUL R. POPE, Chief Deputy, Examinations  
WALTER L. ALLEN, Senior Deputy, Editor

**NORTHERN CALIFORNIA  
REGULATORY AREA**

GAYLORD K. NYE, Assistant Commissioner, Rm.  
2033, 350 McAllister St., San Francisco 94102

**District Offices**

San Francisco, Rm. 2033, 350 McAllister St.,  
94102

Raymond M. Dabber, Chief Deputy  
Sacramento, 1228½ H Street 95814  
Thomas J. Nolan, Chief Deputy  
Fresno, Rm. 3084, 2550 Mariposa St. 93721  
Richard H. McAdoo, Supervising Deputy  
Oakland, Rm. 6040, 1111 Jackson St. 94607  
Marvin H. Wiegman, Supervising Deputy  
Bakersfield (part time), 345 Chester Ave.

**SOUTHERN CALIFORNIA  
REGULATORY AREA**

HENRY H. BLOCK, Assistant Commissioner  
State Office Bldg., Rm. 8003, 107 S. Broad-  
way, Los Angeles 90012

**District Offices**

Los Angeles (Main Office, Southern Area)  
State Office Bldg., Rm. 8003, 107 S. Broad-  
way 90012

JOHN LAZAR, Chief Deputy  
San Diego, State Office Bldg., Rm. 5022, 1350  
Front St., 92101

MARO B. BROWNFIELD, Supervising Deputy  
San Bernardino (part time), 175 West 5th St.

**SPRING EXTENSION COURSES**

University Extension, University of  
California, will again offer a wide  
variety of courses in its spring real  
estate educational program starting  
the second week in February, 1965.

For information, write or call  
University Extension, 2223 Fulton  
Street, Berkeley; or 813 South Hill  
Street, Los Angeles.

**Disciplinary Action—August-September 1964**

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

**Licenses Suspended During August-September 1964**

Name	Address	Effective date and term	Violation
Campbell, Robert Berry Dba Investors Realty Real Estate Broker (Stayed permanently)	19981 Stevens Creek Blvd., Cuper- tino	8/18/64 15 days	Secs. 10177 (d), (f); Secs. 2834 and 2835 of R.E. Comm. Reg.
Bruegger, Albert Henry Real Estate Broker (Last 45 days stayed for one year on conditions)	2420 University Ave., San Diego..	8/19/64 60 days	Secs. 10176 (a), (i) and 10177 (f)
Chigris, George John Real Estate Broker	5643 Paradise Dr., Corte Madera	8/26/64 to and includ- ing 6/30/66	Secs. 10160; 10162; 10164; 10177 (d), (f) and Sec. 2771 of R.E. Comm. Reg.
(After first 30 days remainder or any portion thereof may be stayed on terms and conditions)			
Kenger Properties, Inc. Howard Paul Rubin, President Real Estate Corporation (Stayed for one year on conditions)	977 E. Colorado St., Pasadena....	8/26/64 60 days	Secs. 10177 (d); 10231.1 (b); 10236.3; 10237.1 (a), Subsecs. 1, 2, 3, 7, 8; 10237.3; Secs. 2830 and 2832 of R.E. Comm. Reg.
Milbin Investment Co., Inc. Ruth Rubin, Secretary Real Estate Corporation (Stayed for one year on conditions)	977 E. Colorado St., Pasadena....	8/26/64 60 days	Secs. 10177 (d); 10231.1 (b); 10236.3; 10237.1 (a), Subsecs. 1, 2, 3, 7, 8; 10237.3; Secs. 2830 and 2832 of R.E. Comm. Reg.
Rubin, Howard Paul Real Estate Broker President, Beverly Investment Co. (Stayed for one year on conditions)	977 E. Colorado St., Pasadena....	8/26/64 60 days	Secs. 10177 (d); 10232.1 (b); 10236.3; 10237.1 (a), Subsecs. 1, 2, 3, 7, 8; 10237.3; Secs. 2830 and 2832 of R.E. Comm. Reg.
Rubin, Louis M. Louis M. Rubin, President Real Estate Corporation Real Property Securities Dealer Endorsement (Stayed for one year on conditions)	1210 E. Green St., Pasadena....	8/26/64 90 days	Secs. 10177 (d); 10231.1 (b); 10236.3; 10237.1 (a), Subsecs. 1, 2, 3, 7, 8; 10237.3; Secs. 2830 and 2832 of R.E. Comm. Reg.
Rubin, Ruth Real Estate Broker Business Opportunity Broker (Stayed for one year on conditions)	1210 E. Green St., Pasadena....	8/26/64 60 days	Secs. 10177 (d); 10231.1 (b); 10236.3; 10237.1 (a), Subsecs. 1, 2, 3, 7, 8; 10237.3; Secs. 2830 and 2832 of R.E. Comm. Reg.
Rubin, Louis M. Real Estate Broker	977 E. Colorado St., Pasadena....	8/26/64 90 days	Secs. 10177 (d); 10231.1 (b); 10236.3; 10237.1 (a), Subsecs. 1, 2, 3, 7, 8; 10237.3; Secs. 2830 and 2832 of R.E. Comm. Reg.
(Stayed for one year on conditions)			
Dina Corp. Real Estate Corporation	Room 915, 3440 Wilshire Blvd., Los Angeles	9/ 1/64 30 days	Secs. 10177 (d), (f) and 10237.3
Gardner, Edward John Real Estate Salesman	2955 Thousand Oaks Blvd., Thousand Oaks	9/ 1/64 10 days	Secs. 10130; 10131 (b); 10137; 10177 (d), (f) and Sec. 2834 of R.E. Comm. Reg.
(Execution of suspension permanently stayed)			
McLeod, Daniel Beach Real Estate Broker	4085 Miramonte Pl., Riverside....	9/ 1/64 180 days	Secs. 10176 (a), (g) and 10177 (f)
Sykes, Robert Lowell Real Estate Salesman	5101 San Fernando Rd., Los Angeles	9/ 1/64 30 days	Secs. 10176 (a) and 10177 (f)
Wilson, Lewis Dale Dba Val-E Realty Real Estate Broker Business Opportunity Broker (Any time after first 30 days, remainder of suspension may be stayed on conditions)	P.O. Box 533, Al Tahoe.....	9/ 3/64 to and includ- ing 3/31/65	Secs. 10162; 10164; 10177 (d), (f); 10285; 10287; 10302 (d) and (e)
Bone, Raymond A. Real Estate Salesman	11526 Burbank Blvd., Ste. 3, North Hollywood	9/ 9/64 90 days	Secs. 10177 (d), (f); 11010; 11013.1; 11013.2; 11018.1; 11200 and Sec. 2795 of R.E. Comm. Reg.
Goodwin, Ferne H. Real Estate Broker	11526 Burbank Blvd., Ste. 3, North Hollywood	9/ 9/64 90 days	Secs. 10177 (d), (f); 11010; 11013.1; 11013.2; 11018.1; 11200 and Sec. 2795 of R.E. Comm. Reg.
Lasky, Solomon Real Estate Broker	5243 S. Sepulveda Blvd., Culver City	9/ 9/64 90 days	Secs. 10177 (d), (f); 11010; 11013.1; 11013.2; 11018.1; 11200 and Sec. 2795 of R.E. Comm. Reg.
McAlpine, John Harold Real Estate Salesman	2166 Rivera Dr., Santa Rosa.....	9/ 9/64 60 days	Sec. 10177 (a) and (f)
Rennison, Frank Douglas Real Estate Broker Business Opportunity Broker Dba Solano County Realty-Com- pany (Execution of last 60 days of suspension stayed permanently)	3179 Cuttings Wharf Rd., Napa... 505 Merchant St., Vacaville	9/ 9/64 90 days	Secs. 10177 (d), (f); 10302 (d), (e) and Sec. 2731 of R.E. Comm. Reg.
Freligh, Harold Victor Real Estate Broker Business Opportunity Broker	5403 N. Figueroa, Los Angeles.... 319½ S. Commonwealth, Los An- geles	9/22/64 15 days	Secs. 10160; 10162; 10164; 10177 (d), (f); 10285; 10287; 10302 (d), (e); Secs. 2771 and 2772 of R.E. Comm. Reg.
Hartman, Alvin Dba A. J. Hartman Realty Com- pany Restricted Real Estate Broker	716 Calmar Ave., Oakland.....	9/29/64 (Indefinitely)	Sec. 10177 (k)
Davis, Maurice Michael Dba Duke Davis Real Estate Broker	1261 Lincoln Ave., San Jose....	9/30/64 30 days	Secs. 10177 (d), (f); 11018.2 and Sec. 2795 of R.E. Comm. Reg.
Graham, Lyle Grover Real Estate Broker	Rt. 1, San Luis Obispo.....	9/30/64 90 days	Secs. 10177 (d), (f); 10237.3; 10238.3 and 10242 (c)

## Licenses Revoked During August-September 1964

Name	Address	Effective date	Violation
Carter, Orlin Earl..... Dba Carters Opportunities Business Opportunity Broker	4311 E. Carson St., Long Beach...	8/ 6/64	Sec. 10302 (b) and (c)
Betenbaugh, Neal Harden..... Dba Center Realty Real Estate Broker (Granted right to real estate salesman license)	5648 Hazel Ave., Orangevale.....	8/11/64	Secs. 10137, 10158, 10176 (a), (b), (c), (g), (i); 10177 (d), (f) and 10305
Betenbaugh, Neal Harden..... President, Mission Realty, Inc.	5737 Ensign St., Fair Oaks.....	8/11/64	Secs. 10137, 10158, 10176 (a), (b), (c), (g), (i); 10177 (d), (f) and 10305
Tonoyan, John, Jr..... Real Estate Salesman	7322 Avalon Blvd., Los Angeles...	8/11/64	Secs. 10176 (a), (i); 10177 (d), (f) and (j)
Waterman, H. C., Inc..... Neal Harden Betenbaugh, President	Ste. 12, 5738 Marconi Ave., Carmichael	8/11/64	Secs. 10137, 10158, 10176 (a), (b), (c), (g), (i); 10177 (d), (f) and 10305
D'Orazi, Victor William..... Dba D'Orazi Investment Co. Real Estate Broker Business Opportunity Broker (Granted right to restricted licenses on terms and conditions)	340 Kearney St., San Francisco...	8/14/64	Secs. 10177 (d), (f), (j); 10301 (c), (i); 10302 (d), (c), (j) and Sec. 2380 of R.E. Comm. Reg.
Kelley, Hoyt Frank..... Restricted Real Estate Broker	1127 Culligan Blvd., San Jose.....	8/24/64	Sec. 10177 (k)
Dorsett, Orval Dean..... Right to Real Estate Salesman	1105 Keltner Ave., San Jose.....	8/26/64	Sec. 10177 (d), (f), (j) and Sec. 2763 of R.E. Comm. Reg.
Faucher, Henrietta May..... Real Estate Broker	3268 Bennett Dr., Hollywood.....	8/26/64	Sec. 10177 (b)
Loeffering, Eleanor Wilson..... Real Estate Salesman	4402 Los Feliz Blvd., Los Angeles...	8/26/64	Sec. 10177 (b) and (f)
Binford, William Darwin..... Real Estate Salesman (Granted right to restricted license on conditions)	2273 Vancouver Dr., Apt. 4, Anaheim	9/ 9/64	Sec. 10177 (b)
Lewis, Jay Arthur..... Restricted Real Estate Broker Right to Restricted Business Opportunity Broker	574 Lighthouse Ave., Pacific Grove...	9/ 9/64	Sec. 10177 (k)
Burks, Norma Jean..... Real Estate Broker	2775 Gobat Ave., San Diego.....	9/10/64	Secs. 10176 (a), (i); 10177 (f), (g) and (j)
Wilson, Robert Clayton..... Real Estate Salesman (Granted right to restricted license after termination of 90-day period commencing on the effective date of Order)	8815 South Western Ave., Los Angeles	9/10/64	Sec. 10177 (f) and (j)
Selmi, Richard Paul..... Real Estate Salesman	260 Kavanaugh Way, Pacifica.....	9/12/64	Sec. 10177 (f) and (j)
Kuns, Don H..... Real Estate Broker Real Estate Salesman	1759 E. 2nd St., Long Beach.....	9/15/64	Secs. 10176 (c), (i); 10177 (d), (f) and Sec. 2830 of R.E. Comm. Reg.
Wallace, Booker Talifero..... Dba Tip Top Realty Real Estate Broker (Granted right to restricted license on conditions)	4709 Telegraph Ave., Oakland....	9/15/64	Secs. 10145; 10176 (c), (i); 10177 (d), (f) and Sec. 2831 of R.E. Comm. Reg.
Benjamin, John Lewis..... Real Estate Salesman	2334 W. 241st, Lomita.....	9/24/64	Sec. 10177 (b) and (f)
Hirshorn, Jack Morris..... Dba J. Morris Real Estate Broker	19563 Ventura Blvd., Tarzana....	9/24/64	Sec. 10177 (b) and (f)
Manning, Joseph William Ellis..... Restricted Real Estate Broker	1549 Kingswood Dr., Hillsborough...	9/24/64	Sec. 10177 (f), (j) and (k)
Tri-County Mortgage Company..... Real Estate Corporation	970 Foothill Blvd., San Luis Obispo	9/30/64	Secs. 10177 (d), (f); 10237.3; 10238.3 and 10242 (c)
Westfall, Ralph Rudow..... Vice President, Tri-County Mortgage Company Restricted Real Estate Broker	970 Foothill Blvd., San Luis Obispo	9/30/64	Secs. 10177 (d), (f); 10237.3; 10238.3 and 10242 (c)
	86 Lilac Dr., San Luis Obispo		



**MAURICE G. READ**  
President NAREB, 1965

### Former Commission Member Named NAREB President

Maurice G. Read, general manager of a large Northern California real estate firm was elected President of the National Association of Real Estate Boards at its 1964 Convention held in Los Angeles in November. Mr. Read is well known to many of the Division of Real Estate staff, as he had the distinction of serving a record four consecutive terms as a member of the State Real Estate Commission. One of his prime interests has been the advancement of real estate education and he was one of the several men who played a leading part in persuading the University of California to institute a real estate curriculum.

The new NAREB President, who was 1945 President of CREA, is head of a sales staff of over two hundred people, manning fourteen branch offices throughout Northern California and Nevada. Graduating from the University of California, Berkeley, in 1929, Read went to work as a residential salesman for the firm he now heads.

In addition to his wide range of civic activities, he has served as president of the Berkeley Chamber of Commerce, the Bay Area Council, the

(Continued, Col. 3, Page 689)

### REHABILITATION FACTORS

(Continued from Col. 2, Page 685)

is a factor to be considered in relation to rehabilitation, but neither of these, in and of itself, is sufficient to constitute rehabilitation.

Pierson resumed, "Rehabilitation may be manifested solely by a 'state of mind' which may not be disclosed by any certain or unmistakable outward sign. Its existence may be difficult to establish, but its nonexistence may be established by a single act."

"Mitigation is the showing of facts which would prove that, although a disqualifying act was apparently committed, the facts and circumstances surrounding said act are of such a nature as to take away from the severity of the act, to lessen its harshness. There may be such mitigating factors

that what may appear on the surface to be a disqualifying act, may in fact not be disqualifying." In that case, Pierson said, the above questions need not be applied.

Referring to licensing agencies: "After all the factors have been considered and it is found that rehabilitation is not an accomplished fact, then the license must be denied; it is not the function nor duty of licensing agencies to be a part of the rehabilitation process itself. The argument is also frequently made that 'The applicant should be given a chance to make good.' Licensing is not the field to use as a testing ground for various theories of rehabilitation. Protection of the public is the primary concern. The applicant must present himself as and prove that he is rehabilitated."

# SUBDIVISION

## DEVELOPMENTS AND ITEMS OF SIGNIFICANCE

### License Suspended for Subdivision Violation

Disciplinary action resulted in a subdivision case when a broker-subdivider stipulated and admitted that all of the allegations contained in the accusation filed against him were true and correct. Investigation revealed that, prior to the issuance of a final subdivision public report, he had sold twenty-one lots in his proposed subdivision to builders.

The broker's license was suspended for violation of Sections 10177 (d), 10177 (f) and 11018.2 of the Business and Professions Code, and Section 2795 of the Commissioner's Regulations, which provide for disciplinary action when a licensee willfully disregards or violates any of the provisions pertaining to the development and sale of subdivisions or is guilty of misconduct, which in this case consisted of selling lots or parcels in a subdivision without first obtaining a public report.

#### Facts are Cited

The broker had been a subdivider for the past several years and subdivided the land in partnership with a corporation. He found himself in financial difficulties after filing his request for a public report. It became necessary for him to raise funds in order to protect his interest in the subdivision. In discussing this problem with others, he was informed, or rather misinformed, that he could sell lots in the tract prior to issuance of the public report, providing the sales were made on the basis of a joint venture with the purchasers. Later, a document was submitted to the Division of Real Estate signed by the various purchasers stating they had entered into a joint venture with the subdividers for the purpose of developing a subdivision. Nevertheless, in view of the direct violation, the license suspension was imposed.

### Old Subdivisions

From time to time the question is asked as to whether it is necessary to notify the commissioner of intention to sell an old subdivision, a map of which was recorded prior to 1933 when the law first applied to residential subdivisions.

This question is answered in Section 2796 of the Commissioner's Regulations, which reads: "The owner, subdivider, or agent of a subdivision, a map which was filed of record or which was originally offered for sale prior to August 11, 1933, shall file a questionnaire and pay the prescribed fee and secure the commissioner's public report thereon prior to offer for sale any parcels in said subdivision subsequent to that date."

### Brokers Holding Escrows

Escrow agents, with certain exceptions, must be licensed by the Commissioner of Corporations. The Escrow Act exempts the real estate broker holding escrows, "while performing acts in the course of, or incidental to, his real estate business." This exemption has been interpreted as applying only to real estate transactions in which the broker represents the buyer or seller or both.

A real estate broker can not advertise that he conducts an escrow department unless he specifies in the advertisement that such services are only in connection with his real estate brokerage business.

All brokers who hold escrows without being licensed under the Escrow Act are advised to follow the provisions of Section 2950 of the Commissioner's Regulations without exception, since failure to do so will subject them to disciplinary action.



Coy Sanders, Senior Deputy, Education, Division of Real Estate, explains the scope of real estate education and research projects supported by the Real Estate Education, Research and Recovery Fund, as he hands a recently published study to Mrs. Ethel Detrick of Los Altos as Joseph B. Garrett of Oakland looks on. Sanders cooperated with Albert M. Wray, CREA Director of Education, in coordinating the Third Annual Conference on Education, held in San Francisco on September 26.

## EDUCATION - RESEARCH PROGRAM

University of California — State Colleges — Junior Colleges

### Residential Construction Cost

San Jose State College recently completed and published a real estate research project titled *Methods for Compiling an Index Number Series of Residential Construction Cost For A California Community*. The study, undertaken with the help of the Real Estate Education and Research Fund, details construction and labor costs as applied to residential construction, and offers a method which might be used to compile such an index in any California community.

The author, Dr. T. J. Sielaff, found that since June, 1962, cost of residential construction in San Jose rose by 4 percent. Separate indexes were compiled for labor and material costs. Most of the rise can be attributed to increases in labor costs and comparatively little to material costs. In the period studied, labor costs went up 12 percent; materials increased only 1 percent.

Cost changes in the major elements of residential construction were considered. The three showing the greatest increase in the last two years were

framing, electrical work, and flooring. Smallest increases were noted in appliances, aluminum windows and heating-sheetmetal work.

Major elements varied greatly in cost rise. Some increased by 16 percent; whereas, some stayed about the same in the last two years.

This index is based on a representative sample of 62 major items of labor and materials used in the construction of a typical house. While they do not represent all cost factors in building a house, they do cover roughly 70 percent of the construction cost, according to Sielaff.

The index is kept current by pricing the 62 items periodically, properly weighting them, and then relating the total to the base period. In the index series, June, 1962, was designated as the base period, represented by the figure "100." The same items are to be priced each time the index is prepared and the changes can be attributed to the changes in the price of items in the representative sample.

### STATE COLLEGE RESEARCH STUDIES

The following state college real estate research publications are available in limited supply through the State Division of Real Estate, 1015 L Street, Sacramento, 95814. Copies: \$1.04 each.

- Changing Pattern of Industrialization, Land Use and Values*, Sacramento State College, B. E. Tsagris, Robert K. Coe;
- Effects of Planning on Residential Valuation and Financing*, Humboldt State College, Russell Connert, Lincoln Chao;
- Housing Market Analysis—Sacramento Metropolitan Area*, Sacramento State College, B. E. Tsagris, A. Coskin Samli, Robert M. Roesti;
- Merced-Atwater Economic Area*, Fresno State College, Robert A. Carr, Sarah G. Bedrosian, Marlynn K. Bohman, Robert J. Piersol;
- Methods for Compiling an Index Number Series of Residential Construction Costs for a California Community*, San Jose State College, Theodore J. Sielaff;
- Money and Finance*, San Diego State College, Don C. Bridenstine and Robert P. Hungate;
- A Pilot Study of Real Estate Education and Research Needs in the South Coast Region*, San Jose State College, Paul Kenyon;
- San Diego County Real Estate Investment Groups*, San Diego State College, William H. Hippaka, Oscar J. Kaplan;
- San Diego Housing Market* (Available in Volumes I, II, and III), San Diego State College, E. Alan Hale, Gerald K. Sharkey;
- South Angus Street Redevelopment Project*, Fresno State College, Robert J. Piersol, John A. Crosby, Barry L. Logan;
- Statistical Approach to Farm Land Value*, Fresno State College, Irving F. Davis;
- Trends in Urban Residential Development*, San Diego State College, W. H. Hippaka, Lawrence J. Rink.



DAVID M. ROBINSON  
President CREA, 1965

### David M. Robinson Elected CREA President

David M. Robinson of Berkeley was elected 1965 President of the 45,000 member California Real Estate Association succeeding Art S. Leitch, San Diego, and he will be installed in office at a meeting of the association early in January.

Robinson is currently Regional Vice President of District 6 (Alameda County) and serves on the ten-man Executive Committee for the association. He has been president of the Berkeley Realty Board and was named "Realtor of the Year for 1964." Currently chairman of the East Bay Realtors Council, Robinson has headed many CREA activities including this year's Office Administration Conferences at the University of California, Berkeley and the University of Southern California. He has also been an instructor in the University of California, Extension Division, Continuing Education in Real Estate.

### READ NAREB HEAD

(Continued from Col. 3, Page 687)

Associated Homebuilders of the Greater Eastbay, NAREB's Urban Land Institute, and was founding president of NAREB's American Chapter of the International Real Estate Federation.

## Deposit Receipt

# 14 Points of Importance to the Licensee

By Katherine Boole Legge, A.B., M.A., J.D.

The standard deposit receipt is a contract for the sale of real estate and is construed as such by the rules of contract law.<sup>1</sup> In addition, it is a receipt for moneys. When the real estate licensee is making out a deposit receipt, he must assume the major responsibility for the transaction. He must be sure that there is a "meeting of the minds" of the parties concerned and that the terms and conditions are clearly and concisely stated so that a reasonable man, acting in good faith, can understand and interpret them.

A careful examination of the deposit receipt reveals there are 14 areas requiring thoughtful and careful preparation. Each point will be briefly discussed in relation to the deposit receipt. (See abbreviated deposit receipt on opposite page. Clauses are numbered to correspond with points in the following discussion.)

1. Always insert the name of the town or city where the buyer actually signs the offer.  
2. *An adequate deposit can be very important if the deposit is held to be liquidated damages.* Be careful to check the correct box, noting cash, personal check, cashier's check, or if a note or postdated check so indicate. The licensee can subject himself to disciplinary action for failure to fill in this section correctly.<sup>2</sup>

The check should be made out to your company for deposit in your trust account, or to a title or escrow company.

3. Property description can be by address, "all that real property commonly known and designated as 125 High Street." Of course, if one has the legal description, this is the best way to complete this section. With vacant lots or raw land it is virtually a must.

Personal property to be included in the sale should, if only one or two items are included, be listed in this space. Appliances should be referred to by make and serial number where possible, or the phrase should be added, "now installed on premises" in order to eliminate "moving-day blues" when the buyer discovers a 1920 model in place of the new electric range which stood in the kitchen when the home was inspected. Of course the seller assures one and all that the electric range "belongs to my Aunt Sally." If the personal property items are extensive, an inventory of same should be attached and reference made to the attachment in the body of the contract. All parties should sign the inventory.

<sup>1</sup> There must be competent parties, consideration, meeting of the minds and a legal object.

<sup>2</sup> *De St. Germain v. Watson* (1950) 95 C.A. 2d 863.

If there are a number of items of personal property, the loan companies will request they be included in a separate contract with the consideration segregated. Remember they are lending on real property, not personal property. Also where income-producing property is involved, this segregation is important for income tax purposes, as personal property is depreciated over a shorter period of time than real property.

4. In this paragraph the contract terms must be set out. To be enforceable they must be clear and concise, not vague and illusory. Stipulate:

a. "Cash including above deposit in the amount of \$....." Usually the financing terms follow. As the contract is, in most cases, contingent upon certain financing, this fact should be stated as in the following example.

b. "This contract is contingent upon buyer obtaining a loan of not less than 80 percent of the selling price at not more than 6¼ percent interest for not less than 25 years at not more than 1½ points and with not more than a 2-percent prepayment penalty."<sup>3</sup>

With such a stipulation the licensee can work within these maximums to give the best service possible to the client. In fairness to the seller, there should be a time limitation on this condition with a provision for termination of the contract and return of the deposit in the event the requisite financing can not be obtained.

c. Example if second trust deed is involved: "Seller to carry balance of approximately \$..... represented by a note secured by a second deed of trust, bearing interest of 7½ percent on a declining balance. Payments of one percent a month or more on the balance with remainder all due and payable seven years from date."

d. In the case of the average contract, at this point reference is usually made to a standard clause for the inspection of substructure, etc. Also reference should be made to an attached form bearing an explanation of Sections 8614 and 8616 of the Business and Professions Code. This form must be signed by buyers and sellers and a copy given to all parties concerned in

<sup>3</sup> See "Secured Real Estate Loan Prepayment and the Prepayment Penalty," by Ellis J. Harmon, *California Law Review*, Vol. 51 (1963), pp. 923-938.

EDITOR'S NOTE: Of the complaints coming to the Division of Real Estate, a high percentage stems from deposit receipts which have been improperly completed by a broker or salesman.

Mrs. Legge, a licensed real estate broker, is a part-time instructor in the University of California Extension Division's Continuing Education in Real Estate program, and at Merritt College (Peralta). In teaching she emphasizes the importance of the deposit receipt and the care which must be exercised by the broker or salesman when filling it out. We have heard that she "gets the message across," and for that reason we asked her to contribute this article so that all licensees might have an opportunity to refresh or add to their knowledge of the deposit receipt as a contractual instrument.

This article is offered merely as a guide to good, businesslike practice and is not to be regarded as the expression of an official position which might be applied to specific cases in disciplinary or other legal actions.

any case where such report has been requested by any person.

e. All contingencies should be clearly set out, and should also designate the number of days for performance. Contingencies such as sale of the buyer's home with a 48- or 72-hour release clause, the inspection of books, maps, granting of zoning variances, etc., must be briefly and accurately outlined.

5. In the event there is a contingency and there is a possibility the transaction will not be consummated because of failure to meet the contingency, the disposition of the deposit should be clearly set forth.

6. This is a problem area and ideally should not be completed and accepted by buyer until he has inspected a preliminary title report and other documents showing and/or outlining the contents of covenants, conditions, easements, and restrictions of record as well as other liens and encumbrances. Therefore, it is well for the licensee to have this information available when the buyer makes his offer. Otherwise, provision for inspection of a preliminary title report may be inserted in the agreement.

7. The assessment item can be a dangerous area. The licensee should remember that assessments do not become a lien until they have gone to bond. Hence, they may not appear of record.

8. It may not be possible for possession and closing of escrow to be concurrent acts. If seller is to remain in possession, the buyer should beware of giving him the status of a monthly tenant. If the seller becomes a tenant, Civil Code Section 1946, requiring written notice and a period of time to quit, is applicable. Let the stipulated period of hold-over, say five days, be reflected in the sale price or in the proration dates. If the buyer must have compensation, he might well stipulate a per diem rate. This, of course, will

(Continued, Col. 1, Page 691)

## Deposit Receipt

CALIFORNIA REAL ESTATE ASSOCIATION STANDARD FORM

Received from....., California....., 19.....  
 herein called Buyer, the sum of.....  
 Dollars (\$.....) evidenced by cash , personal check , cashier's check , or.....  
 as deposit on account of purchase price of..... Dollars (\$.....)  
 for the purchase of property, situated in.....  
 County of....., California, described as follows:  
 Buyer will deposit in escrow with.....  
 the balance of the purchase price within..... days from date of acceptance hereof by Seller, as follows:  
 (1) If Buyer fails to pay the balance of said purchase price, or to complete said purchase as herein provided, the amounts paid hereon may be retained by Seller at his option as consideration for the execution of this agreement by Seller.  
 (2) Title is to be free of liens and encumbrances other than those set forth herein. Title subject to.....  
 Evidence of title shall be a California Land Title Association standard coverage form policy of title insurance issued through..... to be paid for by..... If Seller is unable to convey a marketable title, except as herein provided, within three months after acceptance hereof by Seller, or if the improvements on said property be destroyed or materially damaged prior to transfer of title or delivery of agreement of sale, then upon the demand of Buyer, said deposit and all other sums paid by Buyer shall be returned to Buyer, and this agreement as between Buyer and Seller shall be of no further effect, and Seller thereupon shall become obligated to pay all expenses incurred in connection with examination of title.  
 (3) Taxes, premiums on insurance acceptable to Buyer, rents, interest and other expenses of said property shall be pro-rated as of the date of transfer of title or delivery of agreement of sale. The amount of any bond or assessment which is a lien shall be paid by....., except that the amount of any delinquency now existing shall be paid by Seller. Seller shall pay cost of revenue stamps on deed and any expense connected with the removal of title defects.  
 (4) Possession of said property to be delivered to Buyer on closing escrow , or not later than..... days after closing escrow .  
 (5) This offer shall be deemed revoked unless accepted in writing within..... days after date hereof, and such acceptance is communicated to Buyer within said period.  
 (6) Time is of the essence of this contract, but Broker may, without notice, extend for a period of not to exceed one month the time for the performance of any act hereunder, except the time for the acceptance hereof by Seller and date of possession.

Real Estate Broker By.....  
 Address..... Telephone.....  
 The undersigned Buyer offers and agrees to buy the above described property on the terms and conditions above stated and acknowledges receipt of a copy hereof.  
 Address.....  
 Telephone.....  
 Buyer

Buyer to take title in name of.....  
 Please Print  
 ACCEPTANCE

The undersigned accepts the offer on the reverse side hereof and agrees to sell the property described thereon on the terms and conditions therein set forth.  
 The undersigned agrees to pay Broker therein named and employed by the undersigned to sell said property as commission the sum of..... Dollars (\$.....) or one-half of the amounts paid by Buyer in the event the same is forfeited, provided such one-half shall not exceed the full amount of said commission.  
 The undersigned acknowledges receipt of a copy hereof.  
 Dated....., 19.....  
 Copyright, 1954, by California Real Estate Association. All Rights Reserved.  
 Seller

### DEPOSIT RECEIPT

(Continued from Col. 3, Page 690)

involve the buyer in showing rental income, depreciation, etc., on his personal income tax return.

9. The number of days designated for acceptance is chiefly of psychological importance as this is not an option contract. The time period does serve as a cutoff date for acceptance by the seller. Buyers and sellers should be informed the buyer may withdraw his offer at any time until it is accepted by the seller and the acceptance is communicated to the buyer.

10. This item should be given close attention by both buyers and sellers, particularly if time for performance is of the essence of the contract. If this paragraph is deleted, it should be initialed by both buyers and sellers.

11. The licensee should *not* advise buyers on how to take title. If the licensee is well informed, he can outline the methods of holding title and the consequences that flow therefrom. However, he should refer the parties to their attorneys for specific advice on how the deed should be made out. Survivorship, power to dispose of the property by will, and tax consequences are involved, particularly where the purchasers are a married couple.

12. At this point the buyers should sign the contract. The licensee is faced with problems respecting authority to sign if a corporation or a partnership or a syndicate is the buyer. Who has the authority to bind a group? If the buyers are a married couple, both husband and wife should sign. In California the husband is manager of the com-

## Salesman License Cancellation

When a salesman leaves his employ, the law requires the employing broker to notify the Real Estate Commissioner immediately and return the salesman license for cancellation.

Cases have been investigated where the former employing broker held the salesman's license, refusing to send it to Sacramento until the salesman performed some act or acceded to some demand on the part of the broker; but the former employing broker's refusal to sign a salesman transfer application does not stop the issuance of the salesman's license under a new employing broker. The license change will be effective on the date the application and fee (\$4) are received in any Division of Real Estate office, providing the application is complete and in order. The former employing broker is notified of the transfer by the Division of Real Estate.

If a broker discharges a salesman for an act amounting to violation of any provision of the license law, the broker is required to furnish a certified written statement of the facts to the Commissioner.

munity assets of the parties, and as such can manage, sell or deal with such assets. Therefore, liability for damages for breach of contract, etc., can be incurred by the husband alone. However, when the wife refuses to sign a note and deed of trust, difficulties often arise. Some title companies will refuse to insure without the wife's signature.

13. Before the seller affixes his signature, the licensee should fill in the space relating to the commission. If the office has a listing agreement, the rights of the licensee may be more secure if he states that commission is to be paid as per listing agreement dated....., 1964. If this method is not used, the commission may be indicated in dollars or as a percentage of the selling price. This latter provides flexibility, particularly if the selling price is not determined at this time. The seller may counter with a higher price.

14. If the seller makes a counter offer, it would seem, in view of some of the recent cases, that the counter offer should be written in full on the back of the contract. It should include a sentence to the effect that the seller retains the right to withdraw his offer at any time until it is accepted in writing by the buyer and the acceptance communicated to the seller. Also, this clause might be added, "However, in any event the time for such acceptance expires at midnight,....., 1964."

BULK RATE  
U. S. POSTAGE  
**PAID**  
Permit No. 157  
SACRAMENTO, CALIF.

## Legal Aspects

**Editor's Note:** *This feature is not planned to give legal advice or to make lawyers out of brokers, but is designed to give licensees some background on interesting California court decisions and opinions of the Attorney General.*

### Duty of Disclosure and Other Fiduciary Obligations of Licensee

*Parkman v Savage*, 227 ACA, 474. The Real Estate Commissioner suspended the license of a real estate broker for knowingly receiving a commission on the sale of estate property to the executor through a dummy. Although the beneficiary claimed no damage, the court sustained the Commissioner's action.

*Estate of De Hart*, (1961) 196 CA 2d, 452. A broker acts in a *fiduciary capacity*, must act in the *highest good faith* and *must disclose all material facts to his principal*, said the court in this case. Hence, a broker breaches his duty when he receives a commission from a decedent's estate on a sale of the property to his mother (highest bidder) without disclosing to the estate representative that the buyer was his mother.

*Rodes v Shannon*, (1963) 222 ACA, 794. A *gratuitous* agent owes the same obligations of good faith to his principal as any other agent — fiduciary duties, full disclosure, no secret profit, etc. Here the broker bought client's property through a dummy, and the listing was given with the understanding that the broker would not charge

the seller a commission because of a past favor done by seller for the broker.

### Real Estate Salesman Agent of Broker

*Gipson v Davis Realty*, (1963) 215 CA 2d, 190. Real estate salesman is an "agent" of employing broker as a *matter of law*, and not an independent contractor.

### Power-of-Attorney

*Richardson v Roberts*, (1962) 210 CA 2d, 603. A power-of-attorney under Sec. 10133 (b) of the Real Estate Law cannot be used to circumvent the law. A broker who shares commissions with a person holding a power-of-attorney violates Sec. 10137 prohibiting compensation to unlicensed persons.

### Broker's Commission

*Tushner v Savage*, (1963) 219 CA 2d, 71. Broker's commission is interest where broker is lender and, if aggregate of commission plus interest exceeds ten percent interest rate, the loan is usurious and subjects broker to discipline for violation of Sec. 10242 of the Real Estate Law. Also, the "interim lending" concept under which the broker's commission is not treated as interest when the broker temporarily advances his own money to the borrower pending negotiations for a loan by a third party lender is not up-

held by the California law. Maximum charges of broker in connection with loan cannot exceed *actual* costs and expenses paid, incurred or reasonably earned by him (Sec. 10242 (a)), said the court.

### Broker and Contract of Employment

*Preston v Carnation Co.*, (1961) 196 CA 2d, 43. Broker had an exclusive listing with a definite termination date, and the property was purchased after the termination date by a city exercising eminent domain. Broker could not recover a commission as there was no writing continuing his employment after the listing expired, and he could not base a right to recover on an oral contract.

*Bezell v Schrader*, (1963) 50 Cal. 2d, 577. Seller orally agreed to pay broker \$10,000 commission but only thing in writing was escrow instructions providing for \$2,500 commission. Held: Broker limited to \$2,500 commission as agreement for \$10,000 was verbal.

### Recent Attorney General Opinion

In opinion 64/49 issued August 28, 1964, the California Attorney General ruled that where a real estate broker negotiates the sale or lease of a ranch property, including livestock, he does not need a produce broker's or commission merchant's license.