



Real Estate Bulletin

Official Publication of the California Division of Real Estate

EDMUND G. BROWN, Governor

December 1966

MILTON G. GORDON, Commissioner

SECURED TRANSACTIONS

Buyers and Creditors Gain Added Protection

By Professor Kent McKee

Division 9 (entitled "Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper") of the new California Commercial Code became law on January 1, 1965. One of the primary objectives of Division 9 is to protect purchasers from and creditors of a debtor who has previously given a security interest in his personal property to someone else.

As we will see in a moment, if a business is sold the requirements of Division 9 often affect the rights of both the seller and the buyer. Thus it is essential that business opportunity brokers and salesmen be familiar with its provisions. However, before looking at the substance of the law it is necessary to review briefly the new terminology introduced by Division 9.

Terminology of Division 9

"Security Interest." This term is used to designate the interest of the creditor in the property of the debtor in all types of credit transactions. It thus replaces such terms as the following: *chattel mortgage; pledge; trust receipt; chattel trust; equipment trust; conditional sale; inventory lien; etc.*

"Secured Party." This is the party having the security interest. Thus the *mortgagee, the conditional seller, the pledgee, etc.*, are all now referred to as the *secured party*.

"Debtor." This is the party who "owns" the property which is subject to the security interest. Previously he was known as the *mortgagor* or the *pledgor, etc.*

"Security Agreement." This is the agreement between the secured party and the debtor which creates the security interest.

"Collateral." This is the property
(Continued, Col. 1, Page 786)

Season's Greetings

My staff joins me in extending best wishes to all for a Merry Christmas and a Happy New Year.

Real Estate Commissioner

Costs and Expenses Charged For Real Property Loans

Negotiation of real property loans involves some special rules and any licensee engaged in this type of activity should be familiar with the ground rules set forth in Section 10242 (a) of the Real Estate Law.

The maximum amount of costs and expenses which can be charged the borrower are set forth therein, but it is important to note that in no event shall the costs and expenses exceed *actual* costs and expenses paid, incurred or reasonably earned. This section sets the statutory limit for maximum expenses and costs, but by no means is the maximum to be construed as the minimum or prevailing charges and costs borrowers are expected to pay.

The following loan transaction il
(Continued, Col. 1, Page 787)

Disciplinary Proceedings Conducted in Accordance With Administrative Act

Many licensees think of the Division of Real Estate primarily as a license-issuing body, and are not too familiar with one of its principal functions—the duty to investigate complaints and initiate disciplinary proceedings when warranted.

This article touches briefly upon the licensee's rights, once an investigation is underway. During the course of the investigation an informal conference may be held. The complainant and the person or persons allegedly in violation of the law are invited to attend. The meeting is conducted by a Deputy Real Estate Commissioner. Each party may be represented by counsel, who is limited to questioning his own witnesses on matters being investigated. Subpoenas may be issued to compel the attendance of witnesses and the production of books, papers, and records pertinent to the investigation.

If the investigation indicates that
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REAL ESTATE BULLETIN

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California Division of Real Estate

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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 August 15
and October 31, 1966

Number of
orders

Violations

- | | |
|---|--|
| 2 | IN-STATE
Sale of real property securities
without permit . . . and/or failure
to comply with all applicable
statutes and regulations. |
| 2 | Failure to provide for subdivi-
sion public report, promised recrea-
tion facilities, proper permit or
otherwise meet requirements of
subdivision law. |
| 2 | OUT-OF-STATE
Failure to comply with Califor-
nia subdivision requirements. |

Disciplinary Action—August 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 August 1966

Name	Address	Effective date and term	Violation
Shaw, Carl Norman (RREB).....	160 W. Hamilton Ave., Campbell..	8/ 2/66	Secs. 10145; 10176(e), (i); 10177 (d), (f), (k) and Sec. 2832 of R.E. Comm. Reg.
Bourke, Norman Mayo.....	352 Miller Ave., Mill Valley.....	8/ 3/66	Sec. 10177 (f) and (j)
President of Mayo Mortgage Corporation			
Delmay Investments, Inc.	1314 Lincoln Ave., San Rafael.....	8/ 3/66	Sec. 10177 (f) and (j)
Norman Mayo Bourke, President			
Brown, Douglas Pierce (REB).....	837 Jones St., San Francisco.....	8/ 5/66	Secs. 10176 (e), (i) and 10177 (f)
Arevalo, Roberto Jose (REB).....	669 Shrader St., San Francisco.....	8/16/66	Sec. 10177 (b)
(Granted right to restricted license on terms and conditions)			
Chung, Hai Syung (RES).....	878 Almarida Dr., Campbell.....	8/16/66	Sec. 10177 (b) and (f)
Haren, Charles William (REB).....	703 S. Glendora Ave., Ste. A, West Covina	8/16/66	Secs. 10176 (i); 10177 (f) and (j)
(RES).....	1213 Bubbling Well Rd., West Covina		
(Granted right to restricted licenses on terms and conditions)			
Haren, Eleanor Ruth (RES).....	1213 Bubbling Well Rd., West Covina	8/16/66	Secs. 10176 (i); 10177 (f) and (j)
(Granted right to restricted license on terms and conditions)			
Ivey, Jewett James (RRES).....	3430 W. 43rd St., Los Angeles....	8/16/66	Sec. 10177 (f) and (k)
Lawrence, Verna Rita (RES).....	9466 Badminton Ave., Whittier....	8/16/66	Sec. 10177 (f)
Wilson, Evelyn Jackson (RES).....	Airport Rd., Montague.....	8/16/66	Sec. 10177 (b) and (f)
Edwards, Doris Lafern (RES).....	6910 Lasaine Ave., Van Nuys.....	8/18/66	Sec. 10177 (b) and (f)
Schwartz, Bernard Jay (REB).....	4829 Santa Barbara Ave., Los Angeles	8/18/66	Secs. 10176 (e), (i); 10177 (d), (f) and (j)
Gold, Donald Alan (RES).....	5577 Mason Ave., Woodland Hills	8/23/66	Sec. 10177 (b) and (f)
Sloan, Harry (REB).....	1551 N. Western Ave., Los Angeles	8/23/66	Secs. 10176 (a), (i); 10177 (d), (f) and (j)
(Granted right to restricted license on terms and conditions)			
Brannon, Herbert Stafford (RES)...	130 Bryant Way, San Bruno.....	8/24/66	Secs. 10130; 10177 (d), (f) and (j)
Camino Mortgage Corporation....	Rm. 205, 363 El Camino Real, South San Francisco	8/24/66	Secs. 10137; 10158; 10176 (e), (i); 10177 (d) and (f)
Frasier, William Eugene, Jr. (RES)...	4093 17th St., San Francisco ----	8/24/66	Sec. 10177 (b) and (f)
(Granted right to restricted license on terms and conditions)			
Burrows, Wesley S. (REB).....	1654 The Alameda, San Jose.....	8/25/66	Secs. 10176 (a), (i); 10177 (f) and (j)
(Granted right to restricted license after 60 days from effective date of decision on terms and conditions)			
Baskerville, Leroy Vandiver (RES)...	732 N. Fair Oaks Ave., Pasadena..	8/30/66	Secs. 10137; 10176 (d), (e), (i); 10177 (d), (j) and Sec. 2832 of R. E. Comm. Reg.
Berry, Eb Taylor (REB).....	412 W. 6th St., Ste. 911, Los Angeles	8/30/66	Secs. 10175; 10176 (e), (i); 10177 (d), (f), (j) and 10500
Golden West Investment Corpora- tion	14706 Delano St., Van Nuys.....	8/30/66	Secs. 10145; 10176 (e), (i); 10177 (d), (f), (g), (h), (j). Secs. 2831 2832 of R. E. Comm. Reg.
Haskius, Phillip Eugene (REB).....	14706 Delano St., Van Nuys.....	8/30/66	Secs. 10145; 10162; 10164; 10176 (e), (i); 10177 (d), (f), (g), (h), (j). Secs. 2831 and 2832 of R.E. Comm. Reg.
Vice President of Golden West Investment Corporation			
Hoffman, Harry Frank (RES).....	4462 Murietta, Sherman Oaks.....	8/30/66	Sec. 10177 (b) and (f)
Jensen, Thomas Daniel (RES).....	18432 Fidalco St., Rowland Heights	8/30/66	Secs. 10145; 10176 (e), (i); 10177 (d), (f), (j) and Sec. 2832 of R.E. Comm. Reg.
Keesee, Horace Eugene (REB).....	17654 Foothill Blvd., Fontana....	8/30/66	Secs. 10145; 10176 (e), (i); 10177 (d), (f), (j). Secs. 2830, 2831, 2831.1, 2832 and 2833 of R. E. Comm. Reg.
dba Home Realty Sales			
(RES).....	703 Susanna Ave., West Covina		
Mahood, Carol Atkinson (RES)....	17800 McNab, Bellflower.....	8/30/66	Sec. 10177 (b) and (f)
Meents, Robert K. (RES).....	1208 N. Bronson, Hollywood.....	8/30/66	Sec. 10177 (b) and (f)
Nelson, Charles Gustave (REB).....	574 S. Barranca St., Covina.....	8/30/66	Sec. 10177 (b) and (f)
(Granted right to restricted real estate salesman license on terms and conditions)			
Peek, Robert Earl (RES).....	4115 E. 14th St., Long Beach....	8/30/66	Sec. 10177 (b) and (f)
Richardson, Darrell Boyd (RES)...	8509 Fallon Ave., Whittier.....	8/30/66	Sec. 10177 (f) and (j)
VanKrugel, Helen Anne (REB).....	631 Codding Dr., Santa Rosa....	8/31/66	Secs. 10177 (d), (f), (j); 11010; 11018.1; 11018.2 and Sec. 2795 of R. E. Comm. Reg.
President of Collegese Realty, Inc.	825 College Ave., Santa Rosa		
Vice President of Frontier Mort- gage Corporation			
(Granted right to restricted real estate salesman license on terms and conditions)			
Wieneke, Conrad James (REB).....	2904-06 Octavia St., San Francisco	8/31/66	Secs. 10177 (d), (f); 11010; 11018.1; 11018.2 and Sec. 2795 of R. E. Comm. Reg.
Vice President of Collegese Realty, Inc.	825 College Ave., Santa Rosa		
President of Frontier Mortgage Corporation	825 College Ave., Santa Rosa		
(Granted right to restricted license on terms and conditions)			
Williams, Howard McCullen (RES)...	3637 West St., Oakland.....	8/31/66	Sec. 10177 (b) and (f)
(Granted right to restricted license on terms and conditions)			

WHAT'S THE ZONING?

Real estate transactions have been rescinded on the ground that broker misrepresented the zoning. In other cases, brokers have been joined in damage suits. Great care should be taken by licensees when making definite as-

surances that property is zoned to permit a particular use. General judgment and knowledge of the community cannot always be relied upon and specific information from proper city or county authorities should be sought.

Licenses Suspended During August 1966

Name	Address	Effective date and term	Violation
Bourke, Norman Mayo (REB)....	352 Miller Ave., Mill Valley.....	8/ 3/66 30 days	Sec. 10177 (f) and (j)
Colburn, Jordan Bernard (REB)...	9777 Wilshire Blvd., Ste. 518, Beverly Hills	8/ 3/66 30 days	Secs. 10145; 10176 (e); 10177 (d), (f), Secs. 2830 and 2971 of R. E. Comm. Reg.
Reedy, Curtis Wesley (REB).....	P.O. Box 24111, Los Angeles.....	8/ 3/66 90 days	Sec. 10177 (d) and (f)
Sun Associates, Inc.....	Rm. 102, 250 S. La Cienega, Beverly Hills	8/ 3/66 30 days	Secs. 10145; 10176 (e); 10177 (d), (f), Secs. 2830 and 2971 of R.E. Comm. Reg.
Harris, Irving Milton (REB).....	44807 N. Beech Ave., Lancaster...	8/ 4/66 10 days	Secs. 10176 (d), (i); 10177 (f), (g), (h) and (j)
Taylor, George Raymond (RES)...	44807 N. Beech Ave., Lancaster...	8/ 4/66 10 days	Secs. 10176 (d), (i); 10177 (f) and (j)
Barbour, Anthony Robert (REB)...	1800 Morton Ave., Los Angeles...	8/11/66 30 days	Sec. 10177 (b) and (f)
Parker, Barbara Robar (RES).....	12732 Garden Grove Blvd., Garden Grove	8/11/66 90 days	Sec. 10177 (b) and (f)
(Last 60 days stayed for 1 year from effective date of decision on terms and conditions)			
Bucher, Dorothy Riordan (REB)...	2300 Santa Rosa Ave., Santa Rosa	8/12/66 30 days	Secs. 10176 (a); 10177 (f) and (g)
(Last 20 days stayed permanently)			
Gailus, Paul, Inc.....	1889 Sutter St., Concord.....	8/16/66 10 days	Secs. 10177 (d); 11018.1 and Sec. 2795 of R.E. Comm. Reg.
Paul Peter Gailus, President (Stayed permanently)			
Greenblatt, Morris (RES).....	5139 Catalon Ave., Woodland Hills	8/16/66 30 days	Sec. 10177 (b) and (f)
(Stayed for 1 year on conditions)			
Hinshaw, Charles William (RRES)	1114 N. Bewley, Apt. 6, Santa Ana	8/18/66	Sec. 10156.7
Indefinitely			
Bucher, Dwight Alfred (RES).....	521 E. Green St., Ste. 210, Pasadena	8/22/66 30 days	Secs. 10176 (a); 10177 (f) and (g)
(Last 15 days stayed permanently)			
Coulter, Stanley Elbert (REB).....	288 Cress St., Laguna Beach.....	8/23/66 30 days	Secs. 10175; 10176 (a), (i); 10177 (f) and (j)
(Last 15 days stayed for 1 year on conditions)			
Fowler, Robert Terry (REB).....	2022 Miramar Dr., Newport Beach	8/23/66 10 days	Secs. 10175; 10176 (a), (i); 10177 (f) and (j)
(Stayed for 1 year on conditions)			
Mabry, Robert Maury (RES).....	9802 Gamble Ave., Garden Grove...	8/23/66 30 days	Secs. 10175; 10176 (a), (i); 10177 (f) and (j)
(Last 15 days stayed for 1 year on conditions)			
McDermott, Harry Albert (RES)...	8550 Garden Grove Blvd., Garden Grove	8/23/66 30 days	Secs. 10175; 10176 (a), (i); 10177 (f) and (j)
Hogg, Richard Henry (REB).....	1508 Ocean Ave., San Francisco...	8/25/66 30 days	Secs. 10176 (a), (i); 10177 (f), (g) and (j)
(Last 20 days stayed for 1 year on conditions)			
Morris, Vernon Bernhart (RRES)...	3818 Market St., Oakland.....	8/25/66 30 days	Secs. 10176 (e), (i); 10177 (f) and (k)
Bernal, Donald Claude (REB).....	5647 Ash St., Los Angeles.....	8/30/66 30 days	Sec. 10177 (f) and (j)
Magee, Ellie LaVerne (REB).....	7822 S. Western Ave., Ste. 4, Los Angeles	8/30/66 90 days	Secs. 10176 (e); 10177 (d), (f), Secs. 2828, 2830, 2831 and 2832 of R.E. Comm. Reg.
(Last 70 days stayed for 2 years on conditions)			
Maldonado, John Armendariz (REB)	5526 Fernfield Dr., Los Angeles...	8/30/66 60 days	Secs. 10176 (a), (c), (i); 10177 (f) and (j)
Pereida, Eugenio Rivera (RES)....	5460 E. Beverly Blvd., Los Angeles	8/30/66 30 days	Secs. 10176 (a), (c), (i); 10177 (f) and (j)
Steinbrook, Merle Glenn (REB)...	10831 MacArthur Blvd., Oakland...	8/31/66 90 days	Sec. 10177 (b) and (f)
(Stayed for 1 year on terms and conditions)			

HOLDING CHECKS MAY CONSTITUTE NEGLIGENCE

Section 2832.1 has been in the Commissioner's Regulations since 1963. It defines negligence as it applies to the holding of checks received by brokers in the course of business. The effect of the regulation seems to be misunderstood by some, and this is an attempt to clarify its import.

When a broker fails to deliver a check to the named payee, or his principal, within one business day following its receipt, a negligent act has been committed. But suppose, as frequently happens, the buyer or offeror directs the broker to hold the check for a certain length of time before presenting it for payment. Under these circumstances the broker is not considered negligent if he so holds the check. But he must disclose to the seller the fact that the check is being held uncashed before he secures the seller's acceptance of the offer.

A PROFESSIONAL'S APPROACH

Ignorance creates fear, but familiarity with real estate procedures offsets gloomy predictions and faulty advice often given by well meaning relatives and friends to families who have purchased or may be considering an investment in a home.

The licensee who renders a professional service knows that a home well selected and adequately financed which properly fits the need of his clients is a great source of joy and satisfaction to the family acquiring it. His sales are predicated upon this philosophy, and he makes the effort to see that his clients have a general understanding of real estate procedure, values, closing costs and taxes. He seldom has to handle a familiar malady sometimes called "buyer's remorse."

REED ROBBINS NAMED 1967 CREA PRESIDENT

Reed Robbins of Stockton has been elected 1967 president of the California Real Estate Association, succeeding Burt Smith of Bellflower.



REED ROBBINS

The president-elect is the owner of a Stockton real estate brokerage firm founded by his father. He is a native of Stockton and has a B.S. degree from the University of California at Berkeley. He pursued graduate studies there and went on to the University of Wisconsin for special real estate work.

Mr. Robbins entered the real estate business in 1947, and has been a director of CREA since 1958. Other offices held in the association include vice president, member of the executive committee, chairman of the political affairs committee and chairman of the legislative committee.

He is a director of the National Association of Real Estate Boards and a member of the International Real Estate Foundation. In tribute to his dedicated work in civic affairs, he was named "Mr. Stockton," 1964, for "outstanding contributions toward the betterment of our city."

Curtis M. Robbins, deceased father of the President-Elect was also extremely active in the affairs of the local, state and national real estate affairs. For 12 years he served as a member of the State Real Estate Commission.

SUBDIVISION

DEVELOPMENTS • LAW • PROCESSING • CONTROLS

PROBLEMS AND SOLUTIONS

ENGINEERING EXPERTS TACKLE PROBLEM OF HILLSIDES

The past, present and future of hillside development was the subject of discussion at a public affairs seminar held in southern California, sponsored by the American Society of Civil Engineers. The topic is pertinent to many areas in California.

The problems and solutions of hillside development are multiple with soil erosion being the principal problem to be solved. Speaking of Los Angeles County, one of the panelists pointed out that the incidence of landslide on new construction should be greatly lessened due to extensive surface and subsurface investigations now required of the engineering and geological professions.

The following excerpts were taken from an article carried by the *Building News*, reporting on the seminar:

Warning

“... A leading engineering expert in planning hillside homesites had some stern words of advice for owners of hillside homes, who frequently create their own drainage problems by not observing simple rules.

“Owners of new hillside homes frequently disturb hillside lot drainage by removing the supporting earth and by changing the lot’s drainage pattern.

Undoing

“Often the first thing a homeowner does after he moves in is to wreck the careful planning on his hillside lot done by the engineer and grader. Up goes the fence and down goes the berm that the grader left in to keep the water drainage from flowing into the neighbor’s yard. When landscaping, gravel walks, patios or fences are added, these often change the pitch of the lot and ponded (standing) water results.

“He listed 12 points that prospective homeowners should observe in purchasing a hillside home.

The Lot

“With respect to the lot, he said:

- 1) Be certain the lot has positive drainage away from the house.
- 2) Do not construct patios or fences, or install landscaping which impairs the lot drainage.
- 3) California common law requires you to accept the natural flow of storm water, and prohibits you from diverting these flows away from their natural path.
- 4) Typically, storm water concentrates in the driveway, where it can cause erosion behind the curb or sidewalk unless properly controlled.
- 5) Inspect the slope banks on adjacent lots for evidence of undercutting which may affect your property.
- 6) Improved drainage devices, such as paved swales, must be cleaned and repaired by the owner to avoid the consequences of a failure.
- 7) Graded slopes must be planted and maintained. Indiscriminate planting and watering is a major cause of slope failures.
- 8) Avoid disturbing the compacted surface of slope banks by digging tree wells or deep planting.

The House

“With respect to the house, he cautioned:

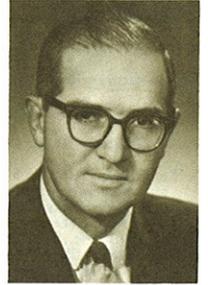
- 9) Eaves should not overhang slope banks unless roof gutters convey storm water away.
- 10) The floor of the house should be a minimum of six inches above the ground adjacent.
- 11) If expansive soil is present, the building department has a report on file indicating its extent and properties. Ask for an explanation of the effect of this condition.

CHIEF ASSISTANT COMMISSIONER ELECTED VP OF NARELLO

The National Association of Real Estate License Law Officials, whose membership is comprised of real estate license law administrators and commission or board members, held its annual conference

November 8–11 in Miami Beach, Florida, with representatives of 47 states, the District of Columbia and three Canadian provinces in attendance.

California Commissioner Milton G. Gordon, Western



JOHN E. HEMPEL

District regional vice president of NARELLO in 1966, and Chief Assistant Commissioner John E. Hempel attended the November meeting as directors of the association. Gordon served as moderator for the panel, “Central Administrative Agency vs. Individual Commission,” and Hempel spoke on the possibilities of a one-license approach as related to the concept of professionalization.

Hempel was named regional vice president for the Western District of NARELLO for 1967, bringing the honor to California for the second successive year. The district includes 11 western states and Canadian Provinces Alberta and British Columbia.

Among the areas explored at the conference were formal real estate education programs, investigative techniques and hearings, legal and professional conduct of licensees, legislation in various jurisdictions, court decisions, the professionalization concept, competency standards and subdivision controls.

DISCLOSURE OF FACTS

In the light of rulings by higher courts, the withholding of material facts from his principal is a breach of the broker’s fiduciary duty.

- 12) In expansive soil, planter boxes should have weep holes, and flower beds should drain away from the building.”

Education & Research Program

University of California

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● Junior Colleges

Mortgage Lending and Retail Shopping Patterns Treated in Two New Research Reports

Mortgage Lending by Commercial Banks in the Nine Bay Area Counties is the title of one of two newly completed research reports now available for distribution on a limited scale by the Division of Real Estate.

The study, authored by Drs. James C. Ma and Robert W. Travis, San Jose State College, is in two sections, **the first being a general survey of the mortgage market in the nine-county bay area, with special attention devoted to the relative importance of commercial banks as a source of mortgage funds. The second is an examination and review of responses to questionnaires sent to commercial banks in the San Francisco bay area.** This latter section specifically deals with the relative importance of real estate financing as a part of commercial bank activities, mortgage lending policies, the use of certain clauses in mortgage instruments, and other related factors.

Major Findings

Major findings are (1) that the relative importance of commercial banks as a source of mortgage money had been declining even prior to the decline in volume of lendable funds; (2) that local banks follow a mortgage lending pattern set by the nation's commercial banks and have not developed a defined regional pattern; (3) that local banks prefer to extend credit on single-family homes rather than income producing properties and show a preference for conventional loans over FHA or VA loans; (4) that a median loan-to-value ratio of between 70 percent and 79 percent was most common for the surveyed banks, which is somewhat higher than the 64 percent ratio for all U.S. commercial banks; (5) that most local banks are using a "rule of thumb" method in the initial valuation of FHA and VA mortgage loan applications, although they do not extend the practice to conventional loan applications; (6) that most local banks charge a service fee when making a loan, though only

a small percentage charge a separate appraisal fee; (7) that most local banks neither sell conventional mortgages from their portfolios to other investors nor perform loan servicing functions for other lenders; and (8) that while most local banks extend considerable amounts of money in construction loans, their volume of "warehoused" lines of credit is nevertheless quite small.

Fresno State College Report

The second report is entitled *Patterns in Retail Shopping With Special Reference to the Fresno Central Business District*, researched and written by Drs. Donald G. Halper and Sarah G. Bedrosian of Fresno State College. Significant findings include: (1) the position of the central business district as a retailing center vis-à-vis outlying retailing areas is showing relative decline; (2) in some cases, the central business district is losing retailing ground to outlying areas not only measured by slower growth rates but in absolute sales as well; and (3) the central business district "retailing mix" is changing as to store types and product lines.

Factors In Decline

Important reasons for the decline of central business district are grouped under three headings: (1) **Population Changes**, (2) **Competing Retailers**, and (3) **Urban Transportation Changes**. Planned shopping centers represent the most widely publicized explanation for problems of the central business district. Other retailers, who are also described as strong com-

BERKELEY STUDY EXAMINES REPLACEMENT DEMAND FOR RESIDENTIAL CONSTRUCTION

In theory at least, one of the ways in which a nation's housing standards may be improved is by replacing old units at a faster rate. However, housing market analysts have been uncertain about the ability of real estate markets to facilitate this process. Particular argument has revolved around the meaning and workability of the "filtering" concept.

These issues are the subject of a recent article by A. H. Schaaf of the Berkeley Center entitled "Some Theory and Policy Implications of the Postwar Housing Boom." Professor Schaaf observes that the first requisite and manifestation of a faster replacement rate, housing production substantially in excess of net household formation, has been very much the case in the years since 1950. He finds little evidence that this "overproduction" has as yet directly resulted in greater demolition of old dwelling units. He argues that such a process is possible, however, if there is a voluntary market absorption of a faster depreciation rate of the housing stock. Some of the theoretical and empirical aspects of such an absorption are examined and policy conclusions are drawn.

Schaaf's article appears in the May, 1966, issue of *Land Economics*. Reprints may be obtained from the Center for Real Estate and Urban Economics, University of California, Berkeley.

petitors, are listed as local stores not located in either the central business district or in major shopping centers.

Reports Available

These studies are interesting and informative to real estate brokers and others particularly concerned with commercial bank financing or the effect of retailing trends on property values. Both were financed in part, at least, by grants from the Real Estate Education, Research and Recovery Fund administered by the Real Estate Commissioner. Each can be ordered from DRE headquarters at a price of \$1.04 (includes sales tax).

SECURED TRANSACTIONS LAW HAS ADVANTAGES FOR PURCHASERS AND CREDITORS

Secured Transactions

(Continued from Col. 1, 781)

subject to the security interest.

"*Financing Statement.*" This is the instrument which is filed in order to give public notice of the security interest.

Basic Objective of Division 9

The objective of Division 9 is the protection of purchasers of certain types of personal property and of creditors who attempt to obtain a security interest in such property. From what are they protected? They are protected from the rights of prior secured parties having a security interest in the property. This is accomplished by requiring the secured party to file a "*financing statement*" with the appropriate public official. **If a financing statement is not filed, subsequent purchasers and secured parties without actual knowledge of it take the property free of the prior security interest. On the other hand, if a secured party does file he is in most cases protected from the interests of subsequent purchasers and secured parties.**

The basic theory involved here is a familiar one. The concept is essentially the same as that applicable to real estate mortgages and trust deeds. If the mortgagee properly records he is protected from subsequent parties. If he does not, protection is lost.

Transactions Covered by Division 9

Viewing Division 9 only in terms of its applicability where a business is sold, we can get an idea of the types of property covered from the following four points:

- (1) Security interests in the inventories of manufacturers and wholesalers are covered by Division 9.
- (2) Security interests in the inventories of retail merchants are covered by Division 9 only in two circumstances: (a) where the security interest is a purchase money security interest (basically this means a security interest which is created in order to finance the debtor's purchase of the goods); (b) where the security

interest is in inventory consisting of durable goods having a unit retail value of at least \$500, or in motor vehicles, house trailers, semitrailers, farm and construction machinery and repair parts thereof, or aircraft.

EDITOR'S NOTE: This article on Secured Transactions by Professor Kent McKee concludes the series on business opportunities intended to acquaint real estate brokers and salesmen with some of the ramifications of these transactions.

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Professor McKee's statements and opinions are his own and are not to be regarded as official expressions by the Division of Real Estate.

- (3) Security interests in the equipment and fixtures of any business are covered by Division 9.
- (4) Division 9 does not apply to the sale of accounts receivable, contract rights or chattel paper (i.e., a writing which evidences both a monetary obligation and a security interest in or a lease of specific goods) where they are sold as part of the sale of the business out of which they arose.

Filing Requirements of Division 9

The following are necessary to fully protect the secured party where the security interest is covered by Division 9:

- (1) There must be a security agreement which adequately describes the collateral and which is signed by the debtor. A chattel mortgage form, for example, would amount to such a security agreement; and
- (2) There must be an agreement by the debtor and secured party that the security interest is effective and value (usually money or the collateral itself) must be given to the debtor, and he must have rights in the collateral (for example, ownership subject to the lien of the chattel mortgage); and
- (3) A financing statement (this is not the security agreement, but rather

a specifically designed form) must be filed. The financing statement, with a few exceptions, is usually filed in the office of the Secretary of State. It is not a complicated form. Basically the requirements are satisfied if it is signed by the debtor and secured party, gives their mailing addresses and adequately describes the collateral. **The financing statement may be filed even before the security agreement is entered into, and, of course, the sooner it is filed the better so far as the secured party is concerned since he is protected only from the date of filing.**

Importance of Division 9 Requirements to Buyers and Sellers of Businesses

To the buyer of a business it is imperative that he assure himself before becoming bound that there is no existing security interest in the property he is purchasing. If there is, and if the existing secured party has fulfilled all the requirements of Division 9, then the buyer will be taking the property subject to the rights of the secured party in the property even though he pays full value for the property to the seller.

The buyer can protect against this with respect to the types of security interests which require filing by sending a "*request for information*" form to the Secretary of State. If this reveals that no security interest is on file, then the buyer will get clear title to the property so long as he does not have actual knowledge of an existing security interest.

The seller of a business who receives from the buyer a purchase money security interest in inventory and equipment must satisfy the filing requirements described above if he is to protect himself to the fullest extent possible. If the requirements are satisfied he is protected against any sale of or subsequent security interest in the equipment, and against bulk sales (i.e., sales that are not in the ordinary course of business) of or subsequent bulk security interests in the inventory.

Sales and Use Tax Law Requires Seller to Notify Board of Equalization

The licensee consummating the sale of a business opportunity having a sales tax permit should advise the seller to notify the Board of Equalization without delay. If it is necessary to examine his records, the board will so notify the seller. The seller should prepare to make the following items available for inspection: books and records, including receipts and invoices, duplicate copies of all tax returns, evidence of payment of the last three reporting periods and all supporting documents.

The purchaser of a business may withhold in escrow a part of the purchase price sufficient to cover any amount of sales or use tax liability which might be due from the seller until the latter produces a receipt from the board showing that tax liability has been paid or a certificate stating that no amount is due.

Costs and Expenses Charged For Real Property Loans

(Continued from Col. 2, Page 781)

illustrates this principle:

Broker Smith negotiates a \$2,500 loan for Jones secured by Jones' home. Costs and expenses actually and necessarily expended on Jones' behalf are:

1. Appraisal fee	\$10.00
2. Escrow fee	25.00
3. Title charge	19.00
4. Notary fees	2.00
5. Recording fees	2.80
6. Credit investigation fee	25.00
	<hr/>
	\$83.80

The maximum amount of costs and expenses that Mr. Jones may be requested to pay is \$83.80—the actual costs and expenses; not 4 percent of \$2,500, or \$100; and certainly *not* the upper limit \$120 recited in 10242 (a) for loans of less than \$3,000.

This section was enacted for the protection of borrowers against inordinate charges and is not to be utilized by real estate licensees to exact charges from borrowers over and beyond actual costs and expenses.

ADMINISTRATIVE PROCEDURE ACT

(Continued from Col. 3, Page 781)

good cause exists, an accusation is filed initiating a formal hearing before an independent hearing officer.

The Administrative Procedure Act prescribes the procedures which must be followed in all formal hearings. The hearing officer assigned to hear the case is a member of the staff of the Office of Administrative Procedure, an independent body provided for by statute. After full consideration of all facts brought forth by the DRE and the accused, the hearing officer renders a proposed decision. The commissioner may adopt the proposed decision in its entirety, or may reduce the proposed penalty.

If the commissioner does not adopt the proposed decision, he may decide the case on the record including the transcript of the hearing. He may

choose to take additional evidence, but has no legal obligation to do so. Or he may refer the entire proceeding to the same or another hearing officer to take additional evidence.

Should the licensee take exception to the ultimate penalty order, he may seek reconsideration by the commissioner and finally can appeal to the courts.

Space does not permit discussion of this subject in greater detail and licensees are urged to read pages 692 through 701 in the 1966 edition of the *Reference Book* which contain extracts from the *Administrative Procedure Act* covering the rights of the individual.

In a future *Bulletin* article the accusation and notice of defense will be discussed.

DECREASE IN LICENSES IN 1965-66

For only the second time in over two decades, the total of outstanding licenses issued by the Real Estate Commissioner was off from the previous fiscal year. At the end of 1965-66, there were 151,301 licenses outstanding, which represented an 8 percent decrease from the all-time high reached at the end of the preceding year. Inactive licenses increased by 6.08 percent.

About half of the total decrease of approximately 13,000 licenses was accounted for by the discontinuance of the business opportunity license, merged with the real estate license, as of January 2, 1966.

Strengthened examination standards and the tight money market which has characterized much of 1966 undoubtedly played their parts in the dropoff in licenses, particularly in the salesman category. Brokers report it is generally more difficult to recruit new sales personnel than it has been in the past.

Type of license	Corporations		Partnerships		Brokers		Salesmen		Branches	Total	
	Inactive	Active	Inactive	Active	Inactive	Active	Inactive	Active		Inactive	Active
Real estate originals.	1	100		13	48	1,559	3,173	14,725	165	3,221	16,397
Real estate renewals.	146	4,310	81	1,450	8,187	47,176	22,988	47,279	9,494	31,402	100,215
Mineral, oil and gas originals.											
Mineral, oil and gas renewals.	1		1	1	20	43				22	44
Total	147	4,410	82	1,464	8,255	48,778	26,161	62,004	9,659	34,645	116,656
GRAND TOTAL (1965-66)	4,557		1,546		57,033		88,165				151,301
GRAND TOTAL (1964-65)	4,699		1,847		60,691		97,518		11,048		164,755
GRAND TOTAL (1963-64)	4,380		2,016		59,633		87,647		11,214		153,676
GRAND TOTAL (1962-63)	4,039		1,986		56,950		80,745		10,999		144,246
GRAND TOTAL (1961-62)	3,733		1,913		57,281		78,046		10,225		141,443
GRAND TOTAL (1960-61)	3,464		1,941		58,362		79,946		10,117		144,183

* The June 30, 1966 total includes 1,359 out-of-state licenses, plus 52 out-of-country licenses.

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



BROKER HOLDING ESCROW MUST COMPLY WITH COMMISSIONER'S REGULATIONS

"While performing acts in the course of, or incidental to, his real estate business" a real estate broker is exempt from the Escrow Law and need not be licensed by the Commissioner of Corporations. However, rendering such a service is beset with danger if the broker fails to follow the provisions of Section 2950 of the Commissioner's Regulations.

Recently a broker had his license suspended for 30 days (stayed) for violating Pars. (h) and (i) of Sec. 2950 while holding an escrow. **Under these sections a broker must advise all parties connected with the transaction that he is holding the escrow, and deliver to them a written statement of all receipts and disbursements.**

Facts Cited

Selling a property, the broker had the buyers sign escrow instructions directed to a certain title company, although he went on to handle the escrow himself. Although still under the impression the title company was handling the transaction, the buyers thought the escrow was defective and they filed a complaint with the DRE.

The broker failed to notify all parties he was going to act as the escrow agent and he neglected to send the buyers a written statement of receipts and disbursements. Investigation revealed that the broker had properly accounted for all moneys, but, nevertheless, he had failed to comply with the provisions of the regulations noted above.

UNIVERSITY EXTENSION SETS PROGRAM

The University Extension, University of California, will offer a wide variety of courses in its winter schedule for the Continuing Education in Real Estate Certificate Program.

Classes, starting early in January, will be organized at Berkeley, Buena Park, Davis, Hayward, Irvine, Los Angeles, Oxnard, Palo Alto, Riverside, Salinas, Sacramento, Santa Barbara, San Diego, San Francisco, Torrance and UCLA.

For further information concerning courses get in touch with:

Northern California

University of California
University Extension
2223 Fulton Street
Berkeley 94704
Phone: 845-6000

Southern California

University of California
University Extension
1100 South Grand Avenue, Room 315
Los Angeles 90015
Phone: 747-4321, Ex. 33

Make Sure Your Clients Read the Contract

Real estate by its very nature is a special, perhaps quite personal, kind of vocation. This is one reason for the careful screening of the backgrounds of license applicants to make sure that they meet sound moral standards, along with the other prescribed qualifications.

Because of the personal relationship that frequently evolves between client and licensee, it is not unusual for a principal or customer to say something like this: "I have implicit confidence in you, I don't need to read the contract, and I might not understand it anyway." Under these circumstances, it is still good business to make sure terms are read and understood.

The fact that a party signs a contract does not always bind him to its terms, particularly if circumstances permit him to claim that he was dissuaded or fraudulently influenced not to read the instrument. There are California cases which have held that the person who was lulled into a false sense of security and influenced to sign a contract without reading it is relieved of its obligations.

Make sure that all parties concerned understand the transaction. From a professional viewpoint, it is doubtful that so-called "excusable neglect" has any place in the business.

In properly discharging fiduciary and moral obligations, one gains a reputation for fairness and competency, which leads to referrals—a professional merit badge of distinction.

YOUR SIGNATURE _____ X _____ !

Please observe that requests to the DRE for change of address, cancellation of license, addition of branches, etc., must be signed personally by the affected licensee. Unsigned requests, typewritten signatures, or any signature other than that of the licensee himself cannot be honored, and they result only in additional correspondence.