



RONALD REAGAN, *Governor*

Winter 1973

ROBERT W. KARPE, *Commissioner*

New Mortgage Loan Law Enacted

Over 398,000 persons filed for real estate licenses in U.S. during fiscal 1971-72 . . . California had 61,980 of these applicants.

Name of the game is *confidence*. Play it correctly and you'll strike "pay dirt" . . . may want to add to its rules (Page 6).

Realtors and Realists adopt long range plan to achieve closer working relationship—plan calls for joint real estate educational programs 1974 . . . single lobbying office in Sacramento 1975 . . . amalgamation of organizational structure and officerships 1976 . . . full joint status 1977.

Read Commissioner Karpe's *Reflections* . . . good sales meeting topic (Page 6).

Proper procedure important when salesman terminates employment. It's in the law (Page 5).

See lead story opposite. Following is rundown on few other 1973 bills: AB 1945 (Cullen) raises market value limit on home eligible for Cal-Vet loan from \$35,000 to \$45,000.

SB 594 (Marler) extends date for adoption by cities and counties of local open space plans and date when local zoning ordinances shall be consistent with general plan. Urgency legislation . . . effective June 29, 1973.

AB 1339 (Knox) provides partnerships formed after November 1, 1973 or prior to that date that elect to do so, are subject to dissolution by retirement, death or insanity of general partner . . . unless business is continued by remaining partners under right to do so stated in certificate of partnership or with consent of all members. This amendment to existing law terminates December 31, 1975.

SB 849 (Grunsky) provides that lien arising under agreement, covenant or restriction between or binding upon owners of a title, interest, or estate in condominium, planned development, stock cooperative, or community apartment project which is homesteaded . . . may be enforced as if no homestead were declared.

AB 579 (Badham) revises time limitations of subdivided land law relating to Real Estate Commissioner's written consent to amendment or modification of instruments controlling or affecting ownership rights in community interest types of subdivisions. Subdivisions classified as land projects are to remain subject to commissioner's consent procedure for three years from date subdivider ceases to hold or directly control $\frac{1}{3}$ of votes that may be cast to effect change. Other community interests type subdivisions remain subject to commissioner's consent procedure until one more lot/unit/interest in excess of $\frac{3}{4}$ of offering have been sold.

AB 1456 (Bagley) concerns certain covenants running with land . . . provides that "land" includes an undivided interest in real property. Makes covenants respecting partition binding upon the successors in interest of original covenantee.

Effective January 1, 1974—adds to Commissioner's regulatory powers

Several bills relating to real estate licensing and practice were signed into law by Governor Reagan and become effective on January 1, 1974 (AB 231 is not operative until January 1, 1975). Two important measures amending the mortgage loan broker law, and four "departmental" bills, introduced at the instance of the Real Estate Commissioner, are summarized below.

Mortgage Loan Brokers Reform Act

SB 304 (Whetmore) adds to the regulatory power of the commissioner over mortgage loan brokers by amending and adding provisions to existing law having the following effect:

- **Provides that credit life insurance and credit disability insurance shall not be required as a condition to making a loan** and requires a statement to that effect be included in the mortgage loan broker statement approved form. Credit life insurance allowed with the borrower's consent cannot exceed an amount reasonably necessary to discharge the loan and cannot exceed the term of the loan. The licensee may collect the costs for fire and hazard insurance under certain conditions.
- **Limits late charge to 10 percent of the installment due with a minimum of \$5.** Prohibits the imposition of more than one late charge penalty for the same installment. Gives borrowers a 10-day grace period from due date before payment is deemed late.

(Continued on page 4)

REAL ESTATE BULLETIN

Official Publication of the
California Department of Real Estate
Member, National Association of Real Estate
License Law Officials

Vol. 33, No. 4 Winter, 1973

STATE OF CALIFORNIA
RONALD REAGAN, Governor

ROBERT W. KARPE
Real Estate Commissioner

JOHN E. HEMPEL
Chief Assistant Commissioner

STATE REAL ESTATE COMMISSION

WILLIAM P. BEACHEM ROBERT C. LINDSEY
Los Angeles San Jose
JOHN COTTON FRANK MACBRIDE, JR.
San Diego Sacramento
HARLAN GILDERMANN PHIL SAENZ
Danville San Diego
ART LEITCH L. H. "SPIKE" WILSON
San Diego Fresno

PRINCIPAL OFFICE

714 P St., Sacramento 95814

GERALD E. HARRINGTON, Assistant Commissioner
W. JEROME THOMAS, Chief Legal Officer
HENRY H. BLOCK, Assistant Commissioner
Education and Qualifications
GEORGE E. DUNN, Assistant Commissioner,
Licensing
LEE V. SIDA, Chief Deputy, Examinations
PAUL R. POPE, Chief Deputy, Qualifications,
Publications and Course Approvals
DONALD M. TALLEMAN, Chief Deputy, Education
WALTER L. ALLEN, Senior Deputy, Editor

NORTHERN REGULATORY AREA

RICHARD B. NICHOLLS, Assistant Commissioner

District Offices

San Francisco, Rm. 2033, 350 McAllister St.
94102
RAYMOND L. ROYCE, Chief Deputy
Sacramento, Rm. 1494, 714 P St. 95814
JOSEPH P. HOFMANN, Supervising Deputy
Fresno, Rm. 3084, 2550 Mariposa St. 93721
RICHARD H. McADOO, Supervising Deputy

SOUTHERN REGULATORY AREA

JOHN A. DI BETTA, Assistant Commissioner

District Offices

Los Angeles (Main Office, Southern Area)
Rm. 8107, 107 S. Broadway 90012
WILLIAM H. WALL, Chief Deputy
RICHARD E. RANGEB, Chief Deputy
San Diego, Rm. 2022, 1350 Front St. 92101
JOHN C. KAMPS, Supervising Deputy

SUBDIVISIONS

714 P St., Sacramento 95814
RAYMOND M. DABLER, Assistant Commissioner
Sacramento Headquarters
Rm. 1550, 714 P St.
FRANK J. RYAN, Chief Deputy
San Francisco,
Rm. 2033, 350 McAllister St. 94102
JOHN LAZUN, Chief Deputy
Los Angeles, Rm. 8107,
107 S. Broadway 90012
BERNARD E. TAYLOR, Chief Deputy
Sacramento, Rm. 1400, 714 P St. 95814
RICHARD D. CARLSON, Chief Deputy

The Real Estate Bulletin is a quarterly published by the State of California, Department of Real Estate, as an educational service to all real estate licensees in the state under the provisions of Section 10083 of the California Business and Professions Code.

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

Disciplinary Action—July—September 1973

REB—Real estate broker RES—Real estate salesman REO—Real estate officer
RREB—Restricted real estate broker RRES—Restricted real estate salesman REC—Real estate corporation

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

Licenses Revoked

Name	Address	Effective Date	Violation R.E. Law/Regulations
Kindel, Thomas Hitchcock (RES)	5145 Hollister Ave., Santa Barbara	7/3/73	10176(a) (i), 10177 (f) (j)
Redman, Marshall (RREB)	14724 Ventura Blvd., Sherman Oaks Dba Sunset Land Development Co.	7/5/73	10177 (d) (k)
Gulley, James Lawrance (REB)	3651-40th St., Sacramento	7/11/73	10176(a) (i), 10177 (d) (f) (j)
Smith, Vernald Joanis (RES)	2131½ Camino St., Anaheim	7/12/73	10177 (b) (f)
Shaw, James Ernest (RRES)	3887-12th Ave., Sacramento	7/15/73	10176(a) (c) (e)
McKenzie, Donald Walter (RES)	13540 Foothill Blvd., Sylmar	8/2/73	10130, 10137, 10145, 10176(e) (i), 10177 (d)
Nelson, Jay Burlie (RRES)	P.O. Box 126, Croveland	8/2/73	10177 (b)
Metcalfe, John Anderson, Jr. (RES)	8108 Devenir, Downey	8/7/73	10176(a) (i), 10177 (f)
Murphy, Kathleen Marie (RES)	904 Pioneer St., Yreka	8/7/73	10176 (f), 10177 (b) (g)
William Kenney, Inc. (REC)	14375 Saratoga Ave., Saratoga William Kenney, Pres. (REO)	8/8/73	10137, 10177 (d) (f) (g) (j)
Kenny, William (REB)	14370 Saratoga Ave., Saratoga	8/8/73	10137, 10177 (d) (f) (g) (j)
Andrews, Melvin Harvey (RES)	160 Grand, Pasadena	8/14/73	10145, 10176 (e) (i), 10177 (d) (f)
Edwards, Bobby Glen (REB)	1523 A St., Antioch	8/14/73	10176 (e), 10177 (d) (f)
Bishop, Elmer L. (RES)	8051 Blackhawk Dr., Sacramento	8/15/73	10177 (b)
Carpenter, William Robert (RES)	P. O. Box 405, Santa Clara	8/21/73	10177 (b) (f)
Pugnire, Cecil Paul (RES)	309 La Cuesta, Menlo Park	8/22/73	10177 (b) (f)
Johnson, Albert Edwin	1156 Rosewood Way, Alameda (Right to renew RES)	8/23/73	10177 (b) (f)
Lefler, Richard Vernon (RES)	P.O. Box 485, Healdsburg	8/23/73	10177 (b) (f)
Steil, Stephen P. (RES)	1119 Acacia Ave., Glendale	8/28/73	10177 (b)
Hamilton, Janet Elaine (RES)	6208 Oceanfront, Newport Beach	9/4/73	10177 (b)
Monnet, Alan (RES)	1436 Armacost, Los Angeles	9/4/73	480, 10145, 10176(e) (i), 10177 (b) (d) (f)
Jaffe, Barry Fredrick (REB)	P.O. Box 928, Tarzana	9/6/73	10177 (b) (f)
Jaffe, Sam (REB)	9300 Clubhouse Blvd., Desert Hot Springs	9/6/73	10177 (b) (f)
Kirst, Morris Eugene (RES)	2101 Yosemite Dr., Lodi	9/11/73	10377 (b)
Steiner, Marvin Von	7428 Arizona Ave., L.A. (Right to renew RES)	9/18/73	10177 (b)
Walmsley, Frederick William (RES)	2963-106th Ave., Oakland	9/18/73	10177 (i)
Evans, Curtis Wayne (RES)	369 Winchester Blvd., San Jose	9/25/73	10177 (b) (f)
Isenhower, Leo Manford (REB)	773 Islay Ct., Sunnyvale	9/25/73	10177 (b) (f)
Warren, David Edwin	5747 Beswick Dr., San Jose (Right to renew RES)	9/25/73	10177 (b) (f)

Licenses Revoked With Right to Restricted License

Name	Address	Effective Date	Violation R.E. Law/Regulations
Azizian, Vic Joseph (RES)	3056 Arizona St., Oakland	7/12/73	10152, 10177 (b) (f)
(Right to RRES license on terms and conditions)			
Frazier, Clifford Benjamin (REB)	921 Grand Ave., Sacramento	8/2/73	10176 (a) (i)
(Right to REB license within 30 days on terms and conditions)			
Albright, James W. (REB)	604 Arballo Dr., San Francisco	8/15/73	10176 (a), 10177 (g)
(Right to RRES license on terms and conditions)			
Splendorio, Ronald Joseph (RES)	3735 McClelland St., Oakland	8/22/73	10177 (b) (f)
(Right to RRES license on terms and conditions)			
Wohl, Richard Joseph (RES)	1503 Fulton Ave., Sacramento	8/22/73	10177 (a) (b)
(Right to RRES license within 30 days on terms and conditions)			
Tepper, David (REB)	1901 Ave. of the Stars, L.A.	9/11/73	10177 (d), 11010, 11013.1, 11013.2, 11018.2
(Right to RREB)			
Tepper, Rosalie (RES)	1901 Ave. of the Stars, L.A.	9/11/73	10177 (d), 11010, 11013.1, 11013.2, 11018.2
(Right to RRES license on terms and conditions)			
Barr, John Rutherford (REB)	90 Fountain St., San Francisco	9/18/73	10177.5
(Right to RREB license on terms and conditions)			
Morton, Charles Louis (RES)	2734 Barkley Ave., Santa Clara	9/18/73	10177 (b)
(Right to RRES license on terms and conditions)			
Naucke, Thomas Walter (REB)	654 Geffrey, Campbell	9/22/73	10176 (a) (g)
(Right to RREB license on terms and conditions)			

Statement on Real Estate Bulletin issued quarterly was filed with postmaster on September 20, 1973. Location of office of publication and headquarters of publishers is 714 P Street, Room 1550, Sacramento, California 95814. Publisher: Robert W. Karpe, Real Estate Commissioner, State of California; Editor: Walter L. Allen, Deputy Commissioner, Department of Real Estate; Managing Editor: Henry H. Block, Assistant Commissioner, Department of Real Estate; all with offices at the address given above. Owner: Department of Real Estate, State of California, 714 P Street, Sacramento, California 95814. Bondholders, mortgagees and other security holders: none. Average number of copies each issue during preceding 12 months: 189,500; paid circulation through dealers, etc.: none; mail subscriptions, 184,745; total paid circulation: 184,745; free distribution: 2,750; total distribution: 187,495; office use, left over, etc.: 1,805; total press run: 189,500. Actual number of copies of single issue published nearest to filing date: 196,000; sales through dealers and carriers, etc.: none; mail subscriptions: 191,339; total paid circulation: 191,339; free distribution: 2,500; total distribution: 193,839; office use, left over, etc.: 2,161; total press run: 196,000.

Licenses Suspended

Name	Address	Effective Date	Violation R.E. Law/Regulations
Lievsay, John Winslow (RES)	242 Forest Ave., Laguna Beach	7/5/73 30 days	10177(b)
Stayton, Shirley M. (RES)	12400 Euclid, Garden Grove	7/10/73 30 days	10137, 10177(d)
Kochman, Mercedes (REB)	5744 LaSaine Ave., Encino	7/13/73 indefinitely	10475
Rahn, Arthur George (RES)	2010 Sloat Way, Sacramento	8/6/73 90 days	10176(a) (i)
Murphy, Kathleen Marie (RES)	904 Pioneer St., Yreka	8/7/73 30 days	10176(f), 10177(g)
William Kenny, Inc. (REC)	14375 Saratoga Ave., Saratoga	8/8/73	10176 (i), 10177(d) (f) (j); 2731
Pres., William Kenny (REO)		6 months	
Kenny, William (REB)	14370 Saratoga Ave., Saratoga	8/8/73	10176(i), 10177(d) (f) (j); 2731
Hebert, John F. (REB)	1901-8th St., Los Angeles	6 months 8/13/73	480, 10177(b) (f)
Richardson, Ray (RES)	11260 San Pablo Ave., El Cerrito	120 days 8/22/73	10130, 10177(d)
Lee, Robert Edward (RES)	263 Woodrow St., Daly City	10 days 9/5/73	10176(a) (b) (i), 10177(f)
Tackes, Robert Thomas (RES)	2416 Clement St., San Francisco	60 days 9/5/73 10 days	10177(b) (f)

Licenses Suspended with Stays

Name	Address	Effective Date	Violation R.E. Law/Regulations
Koopman, Fred Peter (REB)	2045 Polk St., San Francisco	7/26/73 90 days	10145, 10176(e), 10177(d)
Dbas Security Management Company			
Dbas Ward & Company	1500 Vallejo St., S.F.		
Pres., R. Lea Ward Co. (REO)			
Dbas Certified Rentals			
(Stayed for 1 year on terms and conditions)			
Briggs, Theo Docia (RES)	Rte. 1, Box 273-E, Oroville	8/6/73 15 days	10177(g)
(Stayed permanently)			
Farrell, Margaret Angeline (REB)	96 Hamilton Pl., Oakland	8/7/73 90 days	10143, 10177(d) (f); 2852, 2853
Dbas Telegraph Realty			
(60 days stayed on terms and conditions; restitution to be made within 30 days)			
Cicerone, Raymond Silvio (REB)	1542-20th St., San Francisco	8/8/73 30 days	10145, 10177(d); 2830, 2831, 2831.1, 2834
(Stayed for 2 years on terms and conditions)			
Ivey, William Loyce	14855 Adelfa Dr., La Mirada	8/14/73 90 days	10145, 10176(e) (i), 10177(d) (f)
(Right to renew RES) (REB)			
(Stayed for 2 years on terms and conditions; shall refrain from using broker license for 5 days)			
Cook, Robert Chalk (REB)	18327 Colima Rd., Rowland Heights	8/23/73 & incl 6/30/76	10162, 10165, 10177(d)
(After 30 days, remainder or any portion thereof may be stayed on terms and conditions)			
Jones, John William (RES)	190-2nd St., Los Altos	8/28/73 14 days	10130, 10137, 10177(d)
(Stayed permanently)			
Campbell, Edward Earl (REB)	294 Capitol Ave., San Jose	9/18/73 30 days	10176(a) (i), 10177(f) (h) (j)
(Stayed for one year, probation on terms and conditions)			
Hathorn, Willie Marvis (RES) (REB)	1091 McCreery Ave., San Jose	9/18/73 45 days	10176(a) (i), 10177(f) (j)
(Stayed for one year, probation on terms and conditions)			
Wong, Lillie (REB)	688 Guerrero St., San Francisco	9/18/73 30 days	10145, 10176(e), 10177(d) (f); 2830, 2831, 2832
Dbas Skyway Realty			
(Stayed for two years, probation on terms and conditions)			
Crider, Harry Jr. (REB)	11141 E. Church Ave., Sanger	9/22/73 30 days	10176(i), 10177(d); 2831, 2831.1
(All but first 10 days stayed for 3 years on terms and conditions)			

Commissioner suspends advance fee rental agent's license

While engaged as an "advance fee rental agent" a broker entered into written contracts with two prospective tenants, and in turn, collected \$20 from each person as an "advance rental fee".

Both parties had been attracted by the broker's newspaper advertising relative to available rental units in certain described property. When they were unable to obtain rentals, demands were made to the broker to return the \$10 portion of the initial fees. The rental agent refused to return the fees.

The prospective tenants filed complaints with the commissioner, an investigation was conducted and a hearing held. At the hearing, it was established that the rental information provided by the broker was not current or accurate in regard to the type of rentals desired nor the approximate dates of the availability of the rentals. One of the complainants was not furnished an exact copy of the contract.

The statutes referred to require advance fee rental agents to give the prospective tenant a "contract or receipt, and in such contract or receipt shall undertake to repay any amount over and above the sum of ten dollars (\$10) service charge . . . if the prospective tenant does not obtain a rental . . ." and provide for suspension or revocation where the licensee "willfully disregarded or violated any of the provisions of the Real Estate Law . . ."

In the above instance the license of the real estate broker was suspended for 90 days for violation of Sections 10143 and 10177(d) of the Real Estate Law and Sections 2852 and 2853 of the Commissioner's Regulations.

Report of Residential Building Record Required

Both San Francisco and Los Angeles now have city ordinances requiring owners or their agents to supply single family dwelling buyers with a report before a sale closes which shows present authorized use, zoning, expiration date of non-conforming use (if any), construction date, altera-

tion permits issued and similar information.

Information on "RRR" Reports

Information on each city's procedure and requirements may be obtained as follows:

In San Francisco from Department

of Public Works, Bureau of Building Inspection, Residential Requirement Record Division, Room 101, 450 McAllister Street, San Francisco 94102.

In Los Angeles from Department of Building and Safety, Room 425, City Hall, 200 North Spring Street, Los Angeles 90012.

1973 LEGISLATION

- Prohibits a prepayment penalty on loans secured by real property consisting only of a single-family, owner-occupied dwelling unless prepayment is made within seven years of the date of the execution of the loan. Limits penalty application to amount prepaid in any 12-month period in excess of 20 percent of the unpaid balance. The charge is not to exceed six months advance interest on such excess amount.
- Prohibits balloon payments for loans having a term of six years or less, this is applicable to interest only loans as well as ordinary principal and interest loans. Applies to owner-occupied dwellings of less than three units.
- Expands the jurisdiction of mortgage loan law from loans negotiated by brokers from \$12,000 up to \$16,000 on first trust deeds and from \$6,000 up to \$8,000 on any junior lien. Thus, the provisions do not apply to loans of \$16,000 and \$8,000 or greater.
- Extends existing law relating to triple damage remedy of borrowers to apply in cases where charges are made that are prohibited by or in excess of those provided in the law except in cases of bona fide error, in which event the borrower may recover only the excess amount.
- If a loan is negotiated in violation of any provision of the mortgage loan broker law, the licensee is obliged to return any bonus, brokerage or commission on demand of the borrower. Failure to comply within 20 days of a written demand will subject the broker to a suit in which the borrower may recover actual damages or twice any bonus, brokerage or commission except in the case of a bona fide error.
- Violation of the insurance provisions requires the broker to pay over any commission received to the borrower in addition to any premium loss due to short rate cancellation of insurance.

Annual Report Required

SB 310 (Whetmore) applies to real

estate licensees in a class having all of the following characteristics:

- Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners

A STATEMENT OF APPRECIATION

Since the inception of the real estate license law in 1919, enormous advances have been made in California in raising the framework of the law to its present level. The state legislature has played a major part in drafting legislation which is binding upon citizens—but still observing their basic rights.

As Real Estate Commissioner, I have gained a clearer insight into the legislature's role of helping to keep the balance between increasing encroachment of government administration and the citizen's rights. I have become more appreciative of the Assemblymen and Senators who have authored and carried the department's bills down through the years. Little did I realize the time they spend in checking the history and background of a piece of legislation and the efforts they make in giving balanced consideration of all of the facts involved.

Accordingly, I would like to express my gratitude to Senators Deukmejian, Schrade, Song and Whetmore, and Assemblymen Bannai, Lancaster, Powers, and Russell for their helpfulness and cooperation in the enactment of laws during the 1973 legislature which affected the real estate business.

Robert W. Karp

Real Estate Commissioner

in connection with loans secured directly or collaterally by liens on real property or on a business opportunity where loans are less than \$16,000, 1st t/d or \$8,000, 2nd t/d.

- Negotiates or intends to negotiate loans of which 50 percent are \$16,000 or less secured by a first trust deed or \$8,000 or less secured by a junior trust deed.

- Negotiated in excess of 400 loans during prior year or intends to negotiate in excess of 400 loans in the next calendar year or whose mortgage loan advertising activities amount to more than 5 percent of gross revenue obtained from licensed activities and which cost exceeds \$10,000.

Such licensees must submit a true copy of proposed advertisements for clearance by the commissioner prior to use and submit an annual report to the commissioner (within 30 days after the close of their calendar or fiscal year) containing information relating to their advertising and promotion; costs attendant to negotiating loans, charges, and late payments; and foreclosure, loan negotiations, balloon payment experiences and such other related information as the commissioner may require.

Broker Applicants Need Two More Courses in 1975

AB 231 (Powers) calls for two more three unit college level courses in addition to the existing four real estate course requisites now imposed on applicants for the real estate broker license.

The new requirement will not be effective until January 1, 1975, and will cover all applications pending on the effective date.

One course may be either real estate economics or accounting. The other course may be business law, escrows, real estate principles, property management, real estate office administration, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal.

Private vocational schools may offer the courses when approved as equivalent. California attorneys are exempt from the course requirements.

The courses are already generally available throughout the state.

Real Estate License Change

AB 452 (Lancaster) amends Section 10218. It deletes the fee salesmen remit to the Department of Real Estate when a broker changes his business address. The amendment will re-

(Continued to page 7)

PROBATE TRANSACTION

Broker conspires with another to realize commission

EDITOR'S NOTE: In the case of Byrens v. Department of Real Estate, (unpublished decision) the broker's license was suspended for 120 days. Prior to the effective date of the order of suspension, the broker instituted a mandamus action to obtain judicial review of the administrative order. The trial court denied the peremptory writ and the broker appealed the judgment to the Appellate Court. The judgment was affirmed by the higher court.

* * * * *

A bank was acting as executor of the cash assets of an estate which included a commercial building. A real estate broker responded to an advertisement of the property by the executor. The broker asked the bank's trust officer whether the bank would give him a commission if he bought the property for himself. The banker said yes. The broker then submitted a bid to buy the building for \$70,000. The bank accepted the offer and agreed to pay the broker a 5 percent commission, subject to confirmation by the probate court.

At the hearing for confirmation of the sale in probate court, the broker recognized another party present from a previous business transaction and learned from him that he intended to bid \$80,000 or more for the building. The broker informed him that he had already bid \$70,000 and proposed that they acquire the property as partners on the following terms:

Since it would require a minimum of \$4,000 to raise the broker's bid, the broker would take that amount as profit. Each would then pay half the cost of the property. If further bidding were necessary, one would bid in the other's name for both of them. The proposal was confirmed in writing by means of a memorandum prepared by the broker.

There were other bids, but the broker and his associate obtained the property for \$79,000. A formal order confirmed the sale and title passed to the broker with \$3,950 payable to him as commission from the proceeds of the sale.

The trial court found that despite the written agreement providing for a commission, the bank did not consider the broker to be its agent or broker in fact. The agreement was merely incident to the bank's policy to give brokers a more favorable deal

than non-licensees in purchasing estate property.

The broker made this finding the principal basis of his argument on appeal. He contended that it constituted a determination that he was not acting as an agent. Thus, he claimed he owed no duty of disclosure to anybody, including the written memorandum he gave his associate.

The Appellate Court held that the broker's claims were contradicted by the probate court's proceedings on confirmation of the sale. Under the agreement he was to receive a 5 percent commission as a broker, and the probate court entered its order containing this concluding language:

"The sum of \$3,950 is fixed and allowed by the court as commission to . . . , real estate broker, and the executor is authorized and directed to pay said sum to said broker from the proceeds of sale".

The court held that the following principle governed: "Where an agent to sell property buys it himself, the burden is upon him to show affirmatively that he acted in the highest good faith and without concealment". The broker received a commission while inducing a potential bidder to forego bidding so that he might purchase the property himself at a lower price. He concealed the fact of such agreement not only from the executor of the estate, but also from the court, leading both to believe that he was the sole purchaser. He engaged in dishonest dealings by forming a joint venture with a fellow bidder.

Conspiracy may be costly

Over the years, many reported cases have dealt with abuses in probate sales involving the payment of real estate commissions to brokers who are purchasing the property for their own account, without a proper disclosure to the representative of the estate and the court. The policies against this practice are clearly explained in *Batson v. Strehlow* 68 C 2d 662, at pages 676 and 677.

In an effort to avoid the disclosure demanded of him by law, a broker

DRE Earns Award U.S. Savings Bond Drive

Employees of the Department of Real Estate earned the US Treasury coveted minute man flag award for purchasing U.S. Savings Bonds for the eighth consecutive year. Only one other state department tied with DRE for top honors. The award was presented in ceremony in which US Treasury officials and Governor Reagan participated.

California state employees regained the lead in percentage of participation in the payroll savings plan by members of all other states in the union. Governor Reagan complimented the employees for their support of the program.

Broker's responsibility for salesman licenses

Brokers should recognize the responsibilities imposed upon them by law in regard to their salesmen.

Section 10161.8 of the Real Estate Law states in brief: (a) Broker shall notify the commissioner immediately in writing when he employs a new salesman; (b) immediately after termination of a salesman, the broker shall notify the commissioner in writing; (c) upon change of business address the licensee shall mark out former address on the face of the license and type or write in ink new main office address on the reverse side, and date and initial; and, (d) when a salesman enters the employ of a new broker he shall mark out the name of his former broker on the face of the license and type or write name of the new employing broker in ink on the reverse side, and date and initial.

acting for himself may be tempted to use another broker as the purported agent in the sale. After his fellow broker receives the commission, he then turns an agreed amount over to the purchasing broker under the theory that it is legal to share fees with another licensee.

Such action would clearly present grounds for disciplinary action against both brokers' licenses, as a subterfuge to evade requirements of honesty and fair dealing.

Reflections...

A real estate transaction usually begins the moment a broker secures an agency contract in form of a listing. As an employment agreement, the listing is undoubtedly one of the most important instruments in the handling of a real estate transaction, and as such, no real estate practitioner can afford to be lax in filling out the form.

Since listings are the broker's "stock in trade", obviously they should contain all the terms and conditions under which a sale should be negotiated. It is important that the wording should be clear and unequivocal.

An Agency Contract

I'll not dwell on pitfalls, such as how poor draftsmanship can lead to possible litigation and misunderstanding caused by an imperfectly prepared document. My purpose is to remind the real estate agent a listing agreement is an agency contract; the basic laws of agency are applicable.

When a broker or his salesman accepts a listing he is duty bound to render knowledgeable and conscientious service. If not expecting to render real service, he should not, in fairness to his principal and himself, accept the listing—for when he signs the listing agreement he promises to use diligence in procuring a buyer.

Diligence implies constant and persevering effort to accomplish what is undertaken.

Superimposed on every listing taken by an agent is the responsibility to ascertain all pertinent and material facts concerning the property for which he accepts the agency. In offering the property he must avoid error, exaggeration and misrepresentation. This includes advising his principal honestly and intelligently regarding the fair market value of the property.

In retrospect, "whatsoever ye would that men should do unto you, do ye also unto them."

Robert W. Karpe

Robert W. Karpe
Real Estate Commissioner

how to be a winner!

Number of Players—The confidence game requires players, a real estate license and a buyer or seller.

Rules of The Game—This game is not to be confused with any other game popularly known by the same name. It does not require poor real estate investments, old ladies from Pasadena, or meetings in the corner bar. It is generally played in the broker's office, sometimes in the front seat of his car, but conducted with highest ethical and moral standards.

Object of The Game—The objective is to build confidence in the buyer/seller. If the broker succeeds in winning, then his negotiations will be readily accepted—his sales efforts will proceed without resistance—principals will be cooperative, and the broker can proceed to the next space, landing eventually on the **EARNEST MONEY**. If the principals are satisfied, other contestants will want to join in and if the broker continues winning, he can soon land in the **BUY PROPERTY** space and then he becomes a principal. Of course, buying condominiums, motels, and corporate businesses is for the most advanced players.

How to Score—The broker keeps the score card. He can score in the following ways:

1. **Office appearance:** The seller or buyer receives his first impression of the broker from the reception room. If its dirty, and has a shoddy appearance, broker scores no points and may lose points. To gain points and the buyers confidence, the office should be neat and clean.

Broker can pile up a lot of points if everything looks efficient, neat and orderly. How can the buyer have confidence if everything is in disorder? Where is that listing? Where's the deposit receipt pad? Is the desk loaded with paper? Are salesmen hanging around?

2. **Personal appearance:** The confidence game requires good taste to gain points. A professional appearance instills confidence.

3. **Communication:** To be a winner requires patience and good open honest communication—not only what you say but how you say it adds points. The broker's objective is to win over the principal. If the broker is hesitant and uncertain, how can he gain confidence? A good rule for the broker is to prepare before presentation to the buyer, seller, lessor, lessee, etc. If he scrounges through his multiples, how can the buyer gain confidence? If the broker is arrogant, boastful, talks negatively about competitors, or even tries too hard, he loses points.

Directness, clarity, positiveness, honesty. These are some broker characteristics that gain confidence points and make a winner. For the broker to move to space **SHOWHOUSE** he first needs to qualify his buyer, know the buyer's desires and abilities to buy. If the buyer knows what the broker is going to do for him, the broker gains points. A buyer who understands is certainly more appreciative of the broker's efforts to solve his housing problem.

4. **Sales habits:** As the broker begins to move from space to space and appears to be winning the game, he can still lose. Be careful. Nothing can destroy a buyer's growing confidence as quickly as a poor sales pitch. Hesitating in selecting the proper home to show, rummaging through a drawer looking for a listing and off-hand remarks about the economy can certainly spell failure. Preparing a *set-up* before the buyer comes in can eliminate a lot of problems. For example, if you do misjudge the buyer and show him the *wrong house*, experienced players say, don't apologize, make use of the *wrong house* by comparing it with the *right house* or say this is not for you, but here's one that appears to meet your needs.

The Winner—When you, the broker, enjoy the real estate confidence game, when you practice the game over and over, everybody wins, including your clients.



In recent months the department has ordered the cessation of sales in three subdivisions in Northern California due to failure of the developers to pay assessments for operation and maintenance of the common areas and facilities of the subdivisions in accordance with the plan approved by the department before issuance of the public reports for these subdivisions. These actions by the department have resulted in the aggregate payment of more than \$50,000 by the developers named in the desist and refrain orders, to the respective owner associations.

The department will not ordinarily approve a plan for financing operation and maintenance of commonly-owned areas and facilities in planned developments and condominium developments unless the plan provides for the developer to pay a share of the operating expenses of the common areas prorated according to the number of lots in the subdivision to which the subdivider has title at the time that the assessment is levied.

Facts Are Cited

For one reason or another, the three subdividers in question deviated from the plan established under the tract restrictions and by-laws of the owners association and sought to finance the common area operations through other means less costly to them. Certain owners in these subdivisions were alert to the obligations of the developer under the restrictions and the by-laws and these owners complained to the department when they learned of the developers' deviations from the common area financing plan. Desist and refrain orders based upon material changes in the setup of the subdivision offering ensued.

These three cases illustrate how important it is for each owner in a common-interest subdivision to understand fully his rights and obligations as an owner and member of the owners association.

1973 LEGISLATION

(Continued from page 4)

duce business expenses of licensees and is in line with other fee reductions of recent date.

Thus, when the law becomes effective, a broker may change his business address on the department's records for \$4. No fee, however, is required for any salesman licensee employed by the broker when the change of address is made.

The amendment does not effect salesmen transferring from one broker to another or inactive licensees who change address with the department. Four dollars will still be required for any individual licensee who changes address. It should also be emphasized that only active salesmen licensees are affected by the amendment. Brokers who work for other brokers must still pay the \$4 fee if their business address is changed.

Real Estate Educational Advancement

SB 1158 (Schrade) appropriates the sum of \$1,450,000 from the Real Estate Fund for the advancement of real estate education. This objective is to be achieved by the following:

- The earnings from a \$1,000,000 endowment is to be used to further real estate education in schools in the state university and college system which agree to develop and maintain a real estate degree, specialization or certificate program and which will accept credit for real estate courses taken in community colleges.
- The carrying out of a real estate consumer education program in the amount of \$250,000. Contracts to be entered into are to be designed in such a manner that any materials developed can be utilized by the private sector.
- Endowing a program at the State Scholarship and Loan Commission in the amount of \$200,000 for worthy and disadvantaged students enrolled in a real estate career oriented program. Criteria for scholarship awards include consideration of the ethnic, cultural and geographic balance of the student population who would apply therefor.

STEVENS ON RECEIVES 25 YEAR AWARD

Robert L. Stevenson, Associate Property Appraiser for the department was recently awarded a certificate and pin for 25 years of state service.

Stevenson entered state service in 1947 with the Department of Veteran Affairs. Later, he worked for the State Controller's office in their disbursement section, and rejoined the DVA as an appraiser.

In 1960, he transferred to the Department of Real Estate where he was initially assigned to regulations. In 1962 he was appointed to a senior deputy assignment in the examination section where he wrote and revised examination items for the department's question bank.

Because of his background in appraising, he was promoted to an Associate Property Appraiser in 1970. In this capacity he has appraised in-state and also out-of-state subdivision offerings in both hemispheres (Spain, Fiji Islands) for the department, to determine if the offerings meet the "fair, just and equitable" test.

A long-time resident of Sacramento, Stevenson graduated from Sacramento State University, where he earned an A.B. degree in Business Administration. He served three years in the infantry during World War II in the Pacific Theatre of Operations.

He and his wife Margaret have a daughter, Sharon, and a son, Blake.

An advisory committee to assist the commissioner consisting of ten members is to be created and must complete its function by December 31, 1975 at which time the entire article is abolished.

Subdivision Desist and Refrain Orders

AB 1186 (Russell) clarifies wording in the Subdivided Lands Act relating to desist and refrain orders to expressly provide for compliance, and provides that service of the D & R Order may be made in the same manner as the service of summons. It also reduces the time to complete the hearing and issue the final decision from 60 days to 45 days.

Official Publication
 CALIFORNIA DEPARTMENT OF REAL ESTATE
 714 P Street
 Sacramento, California 95814

Second-Class Postage
 paid at
 Sacramento, California

△85434—805 10-73 196M

Printed in CALIFORNIA OFFICE OF STATE PRINTING

Pro and con of condominiums

A 208 page research report entitled, *The Development, Marketing, and Management of Residential Condominiums*, by William H. Hippaka of San Diego State University was recently released.

In this report consideration is given to various facets of condominiums such as: (1) the legal structure of the condominiums, (2) factors contributing to the decision to develop condominiums, (3) financing condominiums, (4) factors determining public acceptance of condominiums, (5) solution to the problems of the apparently unsuccessful condominium, and (6) factors significant to the success or failure of condominium developments. Also included in the publication is a series of case studies dealing with matters such as: (1) the economic feasibility, design, financing, and marketing aspects of a specific property, (2) experience of owners living in condominium units, (3) the operation of homeowner's associations, and (4) conversion of rental properties into condominium developments.

Several conclusions are arrived at in the report concerning aspects of condominiums such as basic principles of successful condominium development, motivation for people to purchase condominium units, causes of residential condominiums failing, managing such properties, marketing condominiums, and the condominium as a place to live.

Copies are available at a cost of \$1.50 each, plus sales tax, from the Department of Real Estate, 714 P Street, Sacramento, California 95814.

RESEARCH REPORT

A report on *Forecasting Models for Housing Markets* by Dr. Tom Doyel at California State University, Fresno is now available from the Department of Real Estate, 714 P Street, Sacramento, CA 95814, at \$1.58 per copy (includes sales tax). The report was developed through the Real Estate Education and Research Fund administered by the Real Estate Commissioner.

The study contains an analysis of forecasting issues and alternatives for those real estate agents, investors, and builders who are interested in formulating their own forecasts of future housing conditions for their particular market areas. Topics covered include: market definition and measurement, demand and supply forces in housing markets, housing cycles, and different methods of forecasting.

For those concerned with forecasting the demand for new housing units, a model which separates total demand into specific housing needs is proposed and then demonstrated using the Fresno housing market as an example. Some guidelines are also offered for measuring and evaluating demand-supply imbalances and assessing their impacts upon future conditions.

A NOTE IS NOT "CASH"

A real estate broker, like a trustee, has an affirmative duty to disclose all material facts which might influence his principal's decision. Any broker who represents to his principal that he has received cash from a buyer as a downpayment and did not disclose that he actually accepted a promissory note has violated the Real Estate Law, regardless of his intent to defraud or ability to make good on the note.

His principal is entitled to determine for himself whether he is satisfied with the note before agreeing to a sale.

State deputy commissioners retire

Commissioner Karpe recently announced the retirement of Cy O'Connor of San Francisco and Coy Sanders of Sacramento.

A veteran of 37 years of state service, Cy O'Connor was senior deputy in charge of the San Francisco District Office's investigation and complaint operations at the time of retirement. He joined the DRE in 1951 after 14 years service with the State Department of Employment.

During his 22 years of service with the department Cy made a substantial contribution toward carrying out the mission of the department.

He was a member of the Law Society of the University of San Francisco where he acquired his A.B. and LL.B. degrees.

Coy Sanders

Coy Sanders, senior deputy commissioner joined the department in 1959 as a deputy real estate commissioner. His first assignment was in the examination section. With his demonstrated writing ability he soon became responsible for the department's publications.

In 1964 he became the department's liaison for its state-wide education and research program and his final assignment was with headquarters subdivision section in its state-wide advertising, screening and review unit.

A native of Missouri, he is a graduate of Pomona College and Claremont Graduate School with honors. Prior to entering state service, he was engaged in the real estate business in Long Beach.