

NEW LAWS AFFECT YOU

REAL ESTATE LAW CHANGES AND OTHER 1974 LEGISLATION OF INTEREST

This is a brief summary of some of the 1974 legislative actions of interest to real estate licensees. The operative date of these bills is January 1, 1975 unless otherwise indicated.

DRE Sponsored Bills

- AB 3692 (Bannai)—Amends Section 10465.4 and adds Sections 10465.5 and 10465.7 of the Business and Professions Code. Appropriates the sum of \$1,900,000 from the Real Estate Fund for real estate programs in California community colleges. The earnings from a \$1,500,000 endowment are to be used to maintain a widely diversified real estate education program within the California community colleges. The earnings from a \$400,000 endowment will be used for scholarship awards for worthy and disadvantaged students enrolled in real

Season's Greetings

All the personnel at the department join me in extending best wishes to all for a Merry Christmas and a Happy New Year.

Robert W. Karpe

ROBERT W. KARPE
Real Estate Commissioner

! FLASH ! Salesman license fee reduced to \$45 effective January 1, 1975

- ✓ See page 4 . . . progress report on multi-state examination program.
- ✓ *1974 Reference Book is available* . . . be sure you have a copy—see page 6.
- ✓ If you are a “tax preparer” read the article on page 3 for important information.
- ✓ During the CAR/CAREB convention in San Francisco, September 30 to October 2, the DRE maintained an education and research booth with displays and explanations of educational materials and research projects. See photo page 5.
- ✓ More on “Probate”—see page 6.
- ✓ *Townhouse? Condominium?—Which is which?* See page 3 for the difference.
- ✓ *Time-Sharing* . . . a new concept in recreational real estate . . . new opportunity for licensee services—see page 7.
- ✓ A California Supreme Court case of interest—see page 7.

estate career oriented programs in the California community colleges. Adds to the Real Estate Education Advancement Advisory Committee a representative of the Chancellor's Office of the California Community Colleges and an additional public member.

- SB 2159 (Carpenter)—Amends Section 10131.1 of the Business and Professions Code. Allows the sale of up to and including seven real property sales contracts or promissory notes secured by liens on real property during a calendar year, without the necessity of the seller being a licensed real estate broker or selling such contracts or notes through a licensed real estate broker.
- AB 3691 (Bannai)—Amends Sec-

tions 10474 and 10474.5, adds Section 10470.1 and repeals Sections 10451.6 and 10470.1 of the Business and Professions Code. Provides for the increase of the maximum liability of the Recovery Fund from the present \$20,000 to \$40,000 for any one licensee. Allows the Real Estate Commissioner to transfer funds from the Real Estate Fund to the Real Estate Education, Research and Recovery Fund (to be allocated for recovery purposes) such amount or amounts that he deems necessary to cover any increased liability.

Legislation of Interest

- AB 2194 (Maddy)—Amends Section 10131.6 and adds Sections 10131.7, 10132 and 10177.2 of the

(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. 34, No. 4

Winter, 1974

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

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 1974

REB—Real estate broker
RREB—Restricted real estate broker

RES—Real estate salesman
RRES—Restricted real estate salesman

REO—Real estate officer
REC—Real estate corporation

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

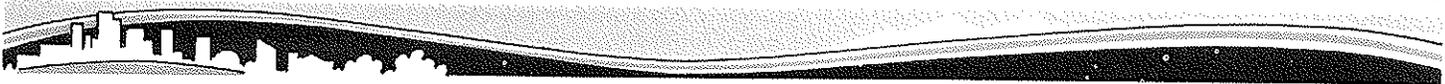
Licenses Revoked

Name	Address	Effective date	Violation R.E. Law/Regulations
Clark, Craig Richard (RES)	Washington School Rd., Asti	7/10/74	10177(b)(f)
Thornton, Francis Leroy (RES)	360 S. 15th, San Jose	7/10/74	10177(b)(f)
Buckley, Cornelius F. (RES)	177 Canal St., San Rafael	7/27/74	10177(b)(f)
Lindquist, B. Fred (RES)	2287 E. Washington Blvd., Pasadena	7/30/74	10177(b)
King, Leona Marie (RES)	6793 Moselle Dr., San Jose	8/ 6/74	10177(b)(f)
Burnett, Ronald Lester (RES)	303 Dean Way, Folsom	8/ 7/74	10177(b)
Bieler, Edwin James (RES)	5945 Kentland Ave., Woodland Hills	8/13/74	10177(b)
Incal Investments, Inc. (REC)	3435 Camino Del Rio South, Ste. 112, San Diego	8/13/74	10145, 10176(e)(i), 10177(f)
Tripodes, George Peter (REB)	818 N. Delaware, San Mateo	8/20/74	10177.5
(REO) Off., Priority Investments, Inc.			
Montgomery Financial Consultants, Inc. (REC)	155 Montgomery St., Ste. 311, San Francisco	8/27/74	10137, 10146, 10176(b)(e)(i), 10177(d)(f)
Allen, Dorothy Louise (RES)	819 Sunset Cliffs Blvd., San Diego	9/ 4/74	10177(b)
Cassin, Richard Clark (RES)	107-A Marion Ave., Sausalito	9/ 4/74	10177(b)(f)
Estrada, Dennis Richard (RES)	8065 El Extensio Ct., San Diego	9/ 4/74	10177(b)
Bruhl, James Maclyn (REB)	1021 Sibley St., Apt. B, Folsom	9/ 6/74	10148, 10162, 10165, 10177(d)
Rowell, A. Joe (RES)	11917-D Royal Rd., El Cajon	9/10/74	10177(b)
Polson, Donald Stuart (REB)	11851 Gilbert St., Garden Grove	9/11/74	10177(b)
Damato, Anthony (REB)	181 E. Cornell Dr., Rialto	9/16/74	10176(e), 10177(d)
Db a Inland Mortgage and Sales			
Hathaway, Harold Adelbert (RES)	1309 Ocean Ave., Seal Beach	9/17/74	10177(b)
Pritchard, James Benard (RES)	3398 Esteros Dr., San Ramon	9/17/74	10177.5
Vogelsang, Vicki Lee (RES)	1010 La Rue Ave., La Verne	9/17/74	10177(b)
Klein, Eugene A. (RES)	650 Capistrano Way, San Mateo	9/24/74	10177(b)(f)

Licenses Revoked With Rights to a Restricted License

Name	Address	Effective date	Violation R.E. Law/Regulations
Currier, Charles Donald (RES)	14203 Red Hill Ave., Tustin	7/23/74	10177(b)
(Right to RRES license on terms and conditions)			
Beck, Robert Patrick (RES)	4467 Clairemont Mesa Blvd., San Diego	7/25/74	10177(b)
(Right to RRES license on terms and conditions)			
Borre, Gene Paul (REB)	9638 E. Ashlan, Clovis	8/ 6/74	10137, 10176(a)(b)(i), 10177(d)(f)(g)
(Right to RREB license after 30 days on terms and conditions)			
Luera, Peter Vernard (RES)	3061 Rivera, Burlingame	8/ 6/74	10137, 10176(a)(b)(i), 10177(d)(f)(g)
(Right to RRES license after 30 days on terms and conditions)			
Love, Betty Lou (RES)	1834 1st St., Napa	8/ 7/74	10176(a)(i), 10177(f)(g)
(Right to RRES license after 30 days on terms and conditions)			
Powers, Jesse Wood (REB)	3537 Adams Ave., San Diego	8/13/74	10145, 10177(f)(g)
(REO)			
(Right to RREB license after 60 days on terms and conditions)			
Foley, Thomas Austin (RES)	1623 W. Cambridge, Fresno	8/21/74	10177(b)
(Right to RRES license on terms and conditions)			
Wilson, Robert Lee (REB)	1243 High St., Auburn	8/21/74	10177(d)
(Right to RREB license after 90 days on terms and conditions)			
Bowen, Arthur Lorenzo (REB)	1834 1st St., Napa	9/ 5/74	10176(a)(g)(i), 10177(f)(i)
(REO)			
(Right to RREB license on terms and conditions)			
Home Finders, Inc. (REC)	1834 1st St., Napa	9/ 5/74	10176(a)(g)(i), 10177(f)(i)
(Right to RRES license on terms and conditions)			
Kanights, Daniel (REB)	39 Sutter St., San Francisco	9/11/74	10145, 10176(e)(i), 10177(d)(f)
Db a Sterling Realty			
(Right to RREB license on terms and conditions)			
Gerring, Paul L. (RES)	1477 S. Manchester, Anaheim	9/17/74	10177(b)(f)
(Right to RRES license on terms and conditions)			
Cusick, Jean Lois (REB)	374 Diablo Rd., Danville	9/24/74	10177(b)
(After 10 days, right to RREB license on terms and conditions)			

Statement on *Real Estate Bulletin* issued quarterly was filed with postmaster on September 26, 1974. 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: Larry W. Smith, 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: 206,500; paid circulation through dealers, etc.: none; mail subscriptions: 201,954; total paid circulation: 201,954; free distribution: 2,600; total distribution: 204,554; office use, left over, etc.: 1,946; total press run: 206,500. Actual number of copies of single issue published nearest to filing date: 214,000; sales through dealers and carriers, etc.: none; mail subscriptions: 210,000; total paid circulation: 210,000; free distribution: 2,500; total distribution: 212,500; office use, left over, etc.: 1,500; total press run: 214,000.



Licenses Suspended

Name	Address	Effective date	Violation R.E. Law/Regulations
Rook, Donald Lee (REB).....	405 Finley Dr., Taft.....	7/ 9/74 30 days	10176(a)
Burt, Richard Norman (RES)...	833 N. Humboldt Ave., #309, San Mateo	8/ 6/74 60 days	10137, 10176(a)(b)(i), 10177(d)(f)(g)
Dunn, John Gordon (REB) (REO)	1251 3rd Ave., #101, Chula Vista.....	8/13/74 30 days	10145, 10177(f)(g)
Murray, Joseph Patrick (RES)	1508 150th Ave., San Leandro.....	9/11/74 120 days	10176(i)(j), 10177(d)(f)
Kohler, Dolores Marie (REB)...	15439 Chatsworth St., Mission Hills...	9/26/74 60 days	10177(f)(j)
McBride, Miriam W. (RES)...	29941 Hawthorne Blvd., Palos Verdes Peninsula	9/27/74 30 days	10176(a)(i), 10177(f)(j)

Licenses Suspended With Stays

Name	Address	Effective date	Violation R.E. Law/Regulations
*Awbrey, Marilyn Annice (REB) Dba Pine Realty (Stayed for 3 years on condition)	P.O. Box 158, Hwy. 88 entering town, Pine Grove	6/30/74 180 days	10177(g)(h)
Nicolson, Angus G. Jr. (REO) Off., Miramonte Land & Development Co., Inc. Dba The Miramonte Company (10 days stayed for 1 year on terms and conditions)	23 Orinda Way, Orinda.....	7/ 9/74 15 days	10145, 10176(e), 10177(d)
Quinn, Donald Joseph (REB)....	914 Anacapa St., Santa Barbara.....	7/16/74 60 days	10148, 10177(d)(h)
Saito, John Taizo Ty (REB)....	Dba Saito Realty Co. (Stayed for 1 year on condition)	8/ 1/74 20 days	10176(a)(i)
Figearo, Bernadine L. (RES)...	499 N. Canon Dr., Beverly Hills.....	8/ 9/74 60 days	10176(a)(i), 10177(f)(j)
Kessler, John Edward Jr. (REO) Officer, Kessler & Roberts, Inc. Dba San Francisco Real Estate Co. (150 days stayed for 2 years on terms and conditions)	23 Stanton Way, Mill Valley.....	8/15/74 180 days	10130, 10177(d)
Dwyer Associates, Inc. (REO)....	1240 Merkley Ave., W. Sacramento....	8/19/74 45 days	10145, 10176(e), 10177(d)
Dwyer, William Patrick III (REB) (REO)	1240 Merkley Ave., W. Sacramento....	8/19/74 45 days	10145, 10176(e), 10177(d)
Pargett, Edward Joseph (RES)...	1770 Lynwood Dr., Concord.....	8/21/74 30 days	10177(d)
Boasberg, Albert Loeb (REB) (REO) Dba Kona Pacific (15 days stayed permanently)	155 Montgomery St., Ste. 1500, San Francisco	8/27/74 30 days	10137
Espinosa, Juan Rosales (REB) Dba 1st Security Realty (10 days stayed for 1 year on terms and conditions)	3142 Senter Rd., San Jose.....	8/27/74 20 days	10145, 10176(e)(i), 10177(d)(f)(j)
Katz, Martin David (REB) (REO) (20 days stayed for 2 years on terms and conditions)	5137 Riverside Dr., Chino.....	9/ 3/74 30 days	10176(i)
Bruce, Jean Lewis (REB)(REO) Dba Century 21—Fairfield Realty (Stayed for 3 years on condition)	1935 N. Texas St., Fairfield.....	9/15/74 90 days	10176(a)(i), 10177(h)
Cady, William Francis (RES)....	1935 N. Texas St., Fairfield.....	9/15/74 90 days	10176(a)(i)
Yancey, Wallace (REB).....	Dba Select Properties (20 days stayed permanently)	9/17/74 30 days	10176(a), 10177(d)

* Not previously published

Indefinite Suspensions Under Recovery Fund Provisions

Name	Address	Date	Fund payout
Traphagen, Lee Harmon (REB) (REO)...	11351 Jacalene Lane, Garden Grove.....	8/26/74	\$10,000

NOTICE TO TAX PREPARERS

Effective January 1, 1975, all tax preparers (except CPAs, PAs, members of the California Bar, banks and trust companies, or persons authorized to practice before the Internal Revenue Service) must be registered with the State Department of Consumer Affairs. This requires a

\$50 fee payable yearly and the posting of an \$1,000 bond. For instructions and applications, contact the California Department of Consumer Affairs, Tax Preparer Program, 1020 N Street, Sacramento, California 95814, telephone (916) 322-3590.

CONDO OR TOWNHOUSE?

What is the difference between a *condominium* and a *townhouse*?

A condominium is a creature of statute, defined in Section 783 of the Civil Code to consist of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space, such as an apartment, office or store.

In the vast majority of cases, a condominium owner acquires a fee simple interest in a cubicle of air space and the interior surfaces of the walls, floors, ceilings, windows, etc., which define the air space. The underlying land and virtually all of the rest of the structure which houses his condominium unit is owned in tenancy in common with other owners in the development.

If a residential living unit satisfies the statutory definition of "condominium", it can be insured as such by a title insurance company. Moreover, a development which satisfies the statutory definition of "condominium" is accorded special treatment under the Subdivision Map Act.

"Townhouse" is not a legal term. The term describes a residential development plan where the individual dwellings are in very close physical proximity, sometimes separated only by party walls. It is quite conceivable that a residential development utilizing the townhouse design could be legally structured as a condominium. For the most part, however, this is not done.

Townhouse developments are normally planned developments with each individual owner having fee title to the structure and the land underlying the structure. Ownership in common with others is usually confined to the land that does not underlie the residential structure, frequently including private streets, sidewalks, green areas and a separate parcel improved with recreational facilities.

MULTI-STATE EXAM PROGRESS REPORT

California and Washington Expand Agreement

The Commissioner reports progress in the multi-state examination program since the Fall of 1973 when a change in the real estate examination process was initiated in California to effectively separate the entire examination question library into two major categories. One consists of questions found to be multi-state in application and the other of questions peculiar to law and practice in California.

States Participating

Other states were invited to join California in administering the same multi-state segment of the examination so that standards could be raised uniformly.

The multi-state examination program began with agreements between California, Washington and Colorado. During the past year the states of Oregon, Idaho and Utah have joined the growing multi-state examination program. California provides the multi-state exam segment to all the participating states and each state administers the whole exam which includes their own local segment of questions peculiar to their own state. If a licensee then has successfully passed the multi-state portion with a grade as high as required in a participating state he will only be required to successfully complete the local segment in the participating state where he desires licensure providing, of course, he meets the other requirements of that state.

Since inception of the program over 75,000 examinations have been administered as shown by the following chart:

MULTI-STATE EXAMINATION PROGRAM			
State	Date	Broker	Salesman
California.....	10/1/73-9/30/74	10,532	47,369
Washington.....	10/1/73-9/30/74	429	6,318
Colorado.....	10/1/73-9/30/74	1,653	5,414
Oregon.....	1/1/74-9/30/74	132	1,953
Idaho.....	4/1/74-9/30/74	133	402
Utah.....	5/1/74-9/30/74	40	873
Total.....		12,919	62,329

Other states continue to express interest in the multi-state examination program and its record of success.

Expanded Agreement

Recognizing the increased mobility of population and the degree to which licensees are required to have knowledge of a uniform nature, California and Washington on November 1, 1974, took another step forward on the road to greater reciprocity.

It was found that for many years both states paralleled each other in the required knowledge level when examining license applicants.

This, plus the fact that both states are participants in the multi-state examination program led to the new agreement. It is now possible for any licensee of California or Washington to obtain a license in the other state on the following conditions; the sales license applicant must have an active, current, unrestricted license in his home state with three or more years of full-time active experience. A broker applicant must have five or more years of full-time active experience. Both classes of applicants, *providing all other requirements of the state are met*, may have the multi-state portion of the examination waived, facing only the state's local segment.

This new agreement applying to experienced Washington and California licensees is a logical expansion of the original multi-state examination concept that ultimately moves toward professionalization of the real estate industry.

FOREIGN SUBDIVISION LAND SALES... BIG BUSINESS IN CALIFORNIA

In the past ten years the DRE has received 372 applications to sell out-of-state subdivision properties to California residents. During the same period, 239 public reports and permits were issued allowing the sale of over 75,000 acres of land appraised at over a half billion dollars.

These permits covered subdivisions located in 11 states, the countries of Australia, Spain and the Fiji Islands.

Each permittee was required to meet "fair, just and equitable" standards before issuance of the public report and permit which allows offering of the property in California. To establish fair market value the applicant is required to furnish a qualified independent appraisal which is correlated with the DRE appraisal.

Arizona ranked first with 83 permits issued during the reporting period covering 13,819 acres with 23,850 lots/units, appraised at \$136,280,268 Oregon offered the greatest total acreage under 54 California permits—47,050 acres with 17,290 lots/units valued at \$24,528,200.

REAL ESTATE LAW

(Continued from page 1)

Business and Professions Code. Permits a real estate broker to deal in mobilehomes which have been registered for at least one year. Prohibits a real estate broker from maintaining any place of business where two or more mobilehomes are displayed for sale unless also licensed as a vehicle dealer. Authorizes the Real Estate Commissioner to investigate complaints and take action against the license of a real estate licensee for the performance of certain enumerated acts. *This bill is to be operative July 1, 1975.*

- SB 977 (Gregorio)—Repeals Subdivision Map Act under the Business and Professions Code and enacts new map act under the Government Code. (Section 65000 etc.)

(Continued on page 8)

THE FUTURE WILL FLOURISH

by Robert W. Karpe

About four years ago, I was asked to become your Real Estate Commissioner. Knowing full well the responsibility of the position prompted me to outline my primary objectives for performance and action by the Department of Real Estate during my administration.

After advice and counsel from many industry and public leaders, and much thought and study during my first weeks as commissioner, I established four goals for the DRE to guide its actions. They were:

- Protect California's rich natural landscape while guarding against erosion of competitive free enterprise system.
- Achieve a color-blind real estate industry.
- Enhance and encourage the industry's plan for professional stature.
- Reduce costs of government while maintaining public service at its highest level.

My quarterly Bulletins have reported the progress made within these goals; the Bulletin articles have described our investigations of illegal subdivisions; the coming together of Realtors and Realtists; the advancements made in licensing requirements and the fact that the DRE operates with less authorized employees today than it did seven years ago, despite an increased work-load.

On Professionalism

The real estate society is known for its ability to triumph in the face of social and economic change. Its vision was amply demonstrated when the industry allocated part of its license fees in the early 50's to establish a real estate education program.

When Oliver Wendell Holmes said, "Every calling is great when greatly pursued", he must have envisioned California real estate people. Where



Richard C. Van Valer, past president of CAR, and Donald M. Tallman, Chief Deputy Education and Research, at the DRE Education and Research booth during CAR/CAREB Convention in San Francisco. Under discussion is the idea questionnaire circulated among convention delegates for possible future research projects.

else can one find over 100,000 enrollments in real estate subjects in its colleges, universities and private schools—a tremendous pursuit of the "calling".

On Color-Blind

The real estate society cannot achieve true professional status with a divided house. By the same token, it cannot develop neighborhoods for you and different neighborhoods for me and then speak to our children of brotherhood.

An overriding consideration to which each and every one of us should direct substantial energies is that of eliminating the remnants of prejudice toward our fellow man.

On Prosperity and Spending

The real estate industry has on many occasions given this administration its support and vote of confidence. We appreciate, too, that no business touches so many human beings, involves so much capital, and at the same time offers the individual so much opportunity.

Although the taste for higher spending is a dominant feature of our times,

it has no priority in our scheme of things. I know, as a businessman and now in state service, that heavy government spending can only fan further the inflationary flames.

A Dower for the Future

Of all our plans and creative thought for the industry and the people it serves, the most noble rests within a framework of knowledge, and a desire for improvement.

We have endowed our learned institutions with over three million dollars so they can perpetuate and enrich our existing real estate knowledge. Common sense may suit itself to the ways of the average real estate agent, wisdom can conform it to well-being.

I am extremely delighted with our partnership of the University of California, the state universities, the community colleges and the hundreds of active licensees who made the endowments a reality.

The earnings from this sizeable "investment in wisdom" will appropriately motivate the learning of real estate and carry on its academic process from this point on.

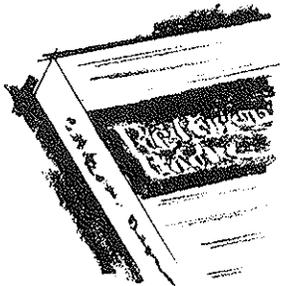
WHAT IS PROBATE?

Editors Note: In the Fall 1974 issue of the *Bulletin* an article entitled "Disclosure Keeps Broker Out of Trouble" involved full disclosure in probate sales. Since then, we have had a number of inquiries concerning probate thus, the following article.

The owner of property must be a person. When one dies, he ceases to be a person. He can no longer own property so the title to what he has owned has to pass on to other persons.

To whom will it pass? If the person who has died has left a will, the title to his property will pass to those whom he has designated as the devisees (of his real property) or legatees (of his personal property). If he did not leave a will, his property will pass to those who are his heirs under the laws of succession. Sometimes, a person leaves a will that does not dispose of all of his property. The property that is not disposed of will pass as if he had left no will.

We come then to what is the first purpose of probate—to obtain a court judgment in regard to whether the deceased person left a will. He may have left a paper that looks like a will, or even several of them, but there really is nothing that is effective as a will until a court has reviewed it and "admitted" it to probate. Then it is documentary evidence of title, and we know whether the property of the deceased person has passed under a will to his devisees and legatees, or under the laws of succession to his heirs.



**IT'S
HERE!**

The 1974 Reference Book is now available to replace your old one(s). The new book in addition to being updated combines the two previous volumes, both narrative and law, into a single edition for easier use and reference. A copy can be obtained at any DRE office or by mail for \$4 (plus tax if ordered in California) check or money order.

The deceased person may also have left behind unpaid debts, including unpaid taxes; and other taxes may have become payable by virtue of his death. The deceased person can no longer be made to pay them, but the property that he owned before he died can be charged with their payment. So those who get this property find that it is really encumbered with something like a floating mortgage in favor of unknown persons and in unknown amounts. They do not have a clear title to the property until the charge has been removed. So the second purpose of probate then is to clear this up. Through probate procedures, those who assert claims as creditors of the deceased person, are required to present them for court approval before they are paid. Through other legal procedures, the tax liabilities of the deceased person, and those arising out of his death, are identified, calculated and settled.

All of this takes time, and during that time, the deceased person's property needs to be preserved and managed. Some of it may even need to be sold to raise money to pay debts or taxes or expenses of administration. A third purpose of probate then, is to select some living person to do all of this as the representative of the deceased person.

If the deceased person left a will, he may have selected his own representative. Such a person is called an executor. If he left no will, or made no selection of a representative in a will that he left, then the court selects a representative who is called an administrator.

Probate then in the fullest sense of the word is a judicial procedure for the identification of the new owners of the deceased person's property, for the clearing of that property of the charges that death has created against it, and for the preservation and management of the property while all of this is going on.

Any licensee who plans to deal with properties in an estate should acquaint himself or herself with the California Probate Code and be cognizant of the need for legal advice in this specialty field.

Reflections . . .

Jim had worked hard, he was exceptional. Every day he planned his work and set out to fulfill his assignments. Didn't say much, just kept busy doing his thing. His work was acceptable and his superiors liked what he did.

Some months later, I noticed that Jim's work was slipping, his work wasn't well organized, he seemed to "goof off" a lot, so I called him to my office.

"Jim, what's the matter?" I said. "Your work used to be real good. You were what I call a 'good' employee. But now your work is just barely satisfactory. Do you want to discuss it?"

Jim hesitated for a moment, then quipped, "In all the months I've knocked myself out trying to do the best job I could; never, not once, did anyone say 'thank you'."

Well, it's not too late to say it, and it is so easy to say.

When Henry Fielding wrote his classic "Tom Thumb the Great" (1730) he penned these words, "When I'm not thanked at all, I'm thanked enough, I've done my duty, and I've done no more."

Why is it that we are often better at scolding than thanking? Even the little honey bee that sips nectar from the flower hums his thanks when he flies away.

If we have nothing better to say, say "thank you" . . . two small words that mean so much . . . it's even better in writing.

Robert W. Karpe

ROBERT W. KARPE
Real Estate Commissioner

Listing Canceled . . .

Broker Gets Commission

The Supreme Court of California (Blank v. Borden, 11 Cal 3rd 963) has recently reaffirmed an 1892 decision upholding the enforceability of an owner's promise in a listing contract to compensate a real estate agent by payment of a sum certain if the property is withdrawn from sale during the term of the listing.

In this particular case, defendant-seller had entered into an exclusive right-to-sell contract with plaintiff broker. The listing contract was a CREA Standard Form Contract in which the seller agreed to compensate the broker by the payment of 6% of the listing price of the property "if said property is withdrawn from sale . . . during the term hereof or any extension thereof".

Prior to expiration of the listing, the seller withdrew the property from sale and the broker brought action for recovery of his compensation under the listing agreement.

The trial court found that the broker had made diligent efforts to sell the property and that the seller had withdrawn the property from sale "in direct violation" of the listing contract.

In holding that a withdrawal-from-sale clause in an exclusive right-to-sell listing contract is enforceable as a claim of indebtedness, the majority of the court rejected the property owner's argument that the withdrawal-from-sale clause constituted an unenforceable agreement by the seller to pay a penalty for a breach of the contract. The court rejected the seller's efforts to analogize provisions of the listing contract to provisions for charges for late payments in promissory notes. The majority opinion observes that listing contracts are ordinarily "freely negotiated by parties dealing at arm's length" with neither party to the contract having any distinct bargaining advantage over the other. Moreover, the withdrawal-from-sale clause in the listing contract presents the owner with a true alternative, i.e., if during the

term of the listing, the owner changes his mind and decides not to sell the property, he retains the power to terminate the agent's rights under the contract through the payment of a sum certain as set forth in the contract.

While this decision by the Supreme Court merely re-asserts the existing law of California with respect to listing contracts with real estate licensees, it is significant in two respects. First, it appears to be contrary to a trend in recent Supreme Court decisions to declare similar clauses unenforceable as penalties. Secondly, this holding by the California Supreme Court is almost diametrically opposed to a 1972 decision by the Oregon Supreme Court in a similar fact situation.



In essence the time-sharing concept involves communal ownership with term occupancy for a specified time interval each year, a period commonly amounting to one to four weeks that is geared to the actual use of the unit by the buyers, at a fraction of the whole unit cost. The form of ownership most commonly used is a condominium in a resort area. (The concept is also known as multiple ownership, interval ownership, etc.)

No time-sharing programs are identical and, in fact, probably the most noteworthy feature of the general concept is its flexibility. Most of these programs reached the marketplace during this last year. Unquestionably there would be at least two or three times the present number were it not for the adverse financing situation. Developers in this field are not only inhibited by tight money, but must

also sell lenders on a new idea, a process that moves slowly even in the best of times.

Most typical are the time-sharing units being marketed in which 12 buyers each become the owner of one unit for one month out of each year.

For the most part, the requirements for a public report for a time-sharing offering are the same as imposed on any common-interest subdivision offering, namely; condominiums, community apartments, stock cooperatives and planned developments. Among the more significant points are:

- There must be an organization of owners (the management) for the collective decision making that is essential where interests are held in common with others. This is of chief concern because most time-sharing owners are many miles away.
- There must be an assessment right to provide the funds necessary to any real property ownership in operation and there must be a means for enforcing the payment of these assessments. The means of enforcement usually take the form of lien and foreclosure rights against the interest of a delinquent time-sharing owner. Again, management is essential.
- The buyer must have assurance that title insurance is available to insure the interest that he will acquire.
- The developer or seller must be obligated to pay assessments prorated on the basis of the number of time-sharing units that he has not sold to the total number of time-sharing interests in the living unit.

Activity in the time-sharing field has stepped up sharply in the last few months according to developers. Time-sharing may become the hottest thing in recreation real estate. Because this trend is of vital significance to every licensee seeking outlets for his services, he should seek out explicit information concerning the rights and obligations of potential buyers prior to offering any time-sharing plans which are rather complicated real estate transactions.

Official Publication

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

Second-Class Postage
paid at
Sacramento, California

△86949—805 10-74 215M

printed in CALIFORNIA OFFICE OF STATE PRINTING

REAL ESTATE LAW

(Continued from page 4)

- Provides for comprehensive revision of procedures for approval of subdivisions. Defines every division of land for purpose of sale, lease or financing as a subdivision.
- AB 1774 (Dixon)—Adds Section 125.6 to the Business and Professions Code. Provides for disciplinary action against persons licensed under the Business and Professions Code if, because of the race, color, sex, religion, ancestry or national origin of the person applying for the licensed services: He refuses to perform his licensed activity, or, aids or, incites the refusal to perform such licensed activity by another licensee, or makes any discrimination, distinction or restriction in the performance of his licensed activity.
 - AB 3162 (Powers)—Amends Section 10161.7 of the Business and Professions Code. Provides that on or after July 1, 1980, real estate licensees who have been inactive for a continuous period of five years (rather than present ten years) may be reinstated or renewed if the licensee has met the examination requirements of an original applicant.
 - SB 1675 (Deukmejian)—Amends Sections 10209.5, 10210, 10214.5 and 10215 of the Business and Professions Code. Provides that the delinquency or late fee for any active

real estate licensee shall be 50 percent of the renewal fee but not to exceed \$25 unless statute provides for a lesser fee in which event that fee shall be charged.

- AB 3629 (Lancaster)—Adds Section 8519 to the Business and Professions Code and Section 1099 to the Civil Code. Defines certifications as related to presence or absence of pests or damage caused by such pests. Requires delivery to purchaser (transferee) of a copy of any struc-

New Research Report

The Effect of the 1966 Real Property Tax Reform Legislation Upon Real Estate, by William H. Hippaka, San Diego State University is available from the DRE for \$1.50 plus tax.

tural pest control inspection report certification as soon as practical prior to the transfer of title of real property or execution of the real property sales contract provided that preparation of a report or certification is a condition of the contract affecting that transfer or required for financing. Provides that if a notice of work completed pursuant to an inspection report or certification has been received

by the seller or his agent, prior to transfer of title or execution of real property sales contract, it shall be delivered to the purchaser prior to title transferring. Delivery may be made in person or by mail to the transferee or his agent. Delivery to either husband or wife satisfies delivery. *This bill is to be operative July 1, 1975.*

- SB 2131 (Whetmore)—Adds Section 10248.3 to the Business and Professions Code. Limits the application of the mortgage loan law to loans negotiated by real estate licensees.
- SB 2422 (Alquist)—Amends Section 2623 and 2625 of the Public Resources Code. Requires cities and counties to charge a reasonable fee to an applicant for a site approval for a proposed new real estate development (defined to include a subdivision) or structure for human occupancy located within a special studies zone delineated pursuant to the Alquist-Priolo Geologic Hazard Zones Act. Deletes provision specifying the fee based upon total valuation of the proposed development.
- SB 1960 (Carpenter)—Amends Section 11018.2 of the Business and Professions Code. Requires the Real Estate Commissioner to waive in writing the requirement for a public report for expressly zoned industrial/commercial subdivisions which are limited in use to industrial/commercial purposes.