



REAL ESTATE

Bulletin

GOODWIN J. KNIGHT, *Governor*

November-December 1958

F. W. GRIESINGER, *Commissioner*

Announcing

A COMPLETELY NEW REFERENCE BOOK

Real Estate Publication Available at Division Offices or by Mail

Have you ever seen a halfback on your favorite team dodge his way skillfully through enemy tacklers for a seeming touchdown . . . and then have the referee call the play back because someone on the team was offside? Quite a letdown, wasn't it? It isn't only in football that a skillful effort can be nullified by a simple mistake or oversight. In brokerage practice too, many an earnest and ingenious effort has been nullified because of failure to observe a fundamental rule or principle.

The point? Just this: The successful real estate broker or salesman knows the rules of the game or he knows where to find them, and he knows when to seek competent advice on their application to his problems and those of his clients. The Division of Real Estate has for some time published a *Reference Book* to meet the needs of licenses for a ready *reference* to the laws, rules and principles applying to them as agents and to aid in preparation for license examinations.

Now we announce publication of a completely new *Reference Book*, one that many brokers and salesmen are going to want to add to their libraries. The new book contains read-

To order new Reference Book use blank order form (page 375, this *Bulletin*). Price: \$2.60 (incl. sales tax) postpaid.

ily accessible information about the laws, rules, principles, theories and practices relating to real estate, real estate licensing and license examinations. It treats of some phases of real estate not covered in previous editions; the companion text, the *Supplement*, has been absorbed; material has been brought up to date to reflect changes in the real estate picture in California; and the subject matter has been reorganized in logical textbook sequence to assist those persons studying for examinations for original and renewable license.

It is generally acknowledged that the increasing complexities of our economy demand corresponding greater knowledge on the part of the practicing broker and salesman. Then, too, there have been these developments in the recent past: strengthened license laws, more subdividing and expanded controls, increased activity in specialized real estate fields, imposition of loan brokerage controls, extended government participation in financing, and others too numerous to mention here. Your commissioner believes the new *Reference Book* provides the practicing broker or salesman with a handy compendium of authoritative information on these and other topics of vital interest to him, and that it is a valuable educational aid to anyone in real estate or proposing to go into it.

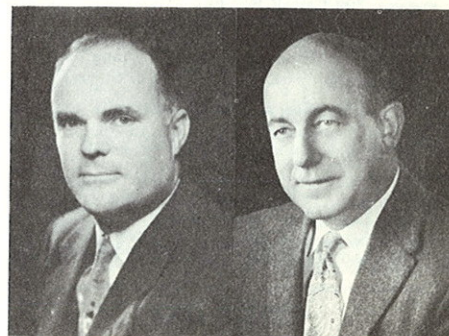
While the new *Reference Book* quite naturally stresses the responsibilities of agency and the relation of the licensee to the Division of Real Estate and its chief officer, the Real

(Cont. on Page 372, Col. 1)

Udall and Clayton Named To Lead Real Estate Groups

At the closing sessions of the state and national real estate conventions held in San Francisco, James B. Clayton, Jr. of San Jose was elected president of the California Real Estate Association for 1959, succeeding Clive O. Graham of Long Beach, and James M. Udall of Los Angeles was chosen as president of the National Association of Real Estate Boards.

The CREA convention was attended by approximately 3,500 realtors from throughout California, and the NAREB convention convened with more than 4,500 real estate leaders gathering from all parts of the Nation. Many special conferences and



JAMES M. UDALL
President, NAREB

JAMES B. CLAYTON, JR.
President, CREA

committee meetings were held and, in general sessions, authoritative speakers with nationally known business, governmental, educational and sales backgrounds brought their messages to the delegates.

NAREB President

Mr. Udall, succeeding H. Walter Graves of Philadelphia as NAREB president, heads his own brokerage firm in Los Angeles, having been in real estate since 1933.

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REAL ESTATE BULLETIN

Official Publication of the
California Division of Real Estate

November-December, 1958

Published Bimonthly in Sacramento by the

DIVISION OF REAL ESTATE

STATE OF CALIFORNIA

GOODWIN J. KNIGHT, Governor

F. W. GRIESINGER

Real Estate Commissioner

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CREDIT LINE

The commissioner has received a number of comments upon the illustrated "Hit and Run Sale" article appearing in the last issue of the *Bulletin*.

Gaylord W. Feaga, writing in the light of his experience as a deputy for 16 months and as a broker for the previous five years, is to be credited with the basic story.

Walter L. Allen, deputy in the Examination Section, Sacramento, did the amusing illustrations which highlighted the article. Mr. Allen has been with the Division of Real Estate a little over two years. Formerly he was in the real estate and insurance business in Bakersfield for a number of years.

DISCIPLINARY ACTION—AUGUST, 1958, AND SEPTEMBER, 1958

NOTE: Any person whose license has been suspended or revoked, or whose license application has been denied, has the right to seek a court review. This must usually be done within 30 days after the effective date of the commissioner's decision.

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

LICENSES REVOKED DURING AUGUST, 1958, AND SEPTEMBER, 1958

Name	Address	Effective date and term	Violation
Grand, Nelly.....	1132 N. Garfield Ave., Alhambra	7/15/58	Secs. 10130, 10131, 10137, 10177(d) & (f)
Real Estate Salesman			
Lusk, Burrell Ivan.....	2450 Watt Ave., Sacramento....	8/ 5/58	Secs. 10177(b) & (f)
President of Lusk Investment & Realty Co.			
Real Estate Officer			
Popke, Theodore Tom.....	1303 Macdonald Ave., Richmond	8/ 5/58	Secs. 10176(e), (i); 10177(d), (f); Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Real Estate Broker			
Hepp, Vernon Wood.....	161 Quincy St., Long Beach....	8/ 7/58	Secs. 10177(b) & (f)
Real Estate Salesman			
Morrison, William Ferd.....	2126 Sunset Blvd., Los Angeles	8/ 7/58	Secs. 10176(i) & 10177(f)
dba W. Ferd Morrison Company			
Real Estate Broker			
Freed, Al.....	5408 Sierra Vista, Los Angeles..	8/12/58	Secs. 10177(d), (f) & 11020
Real Estate Broker			
Burnett, R. Clarice.....	1575 Draper St., Kingsburg.....	8/22/58	Secs. 10176(e), (i); 10177(d), (f); Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Restricted Member			
Erickson's Real Estate			
Clarence E. Erickson—Restricted Member	1575 Draper St., Kingsburg....	8/22/58	Secs. 10176(e), (i); 10177(d), (f); 10302(c); Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Restricted Real Estate Corporation			
Restricted Business Opportunity Broker			
Greening, Elmer Melvin, Jr.....	9947 Gaynor, Granada Hills....	8/26/58	Sec. 10177(b)
Real Estate Salesman			
Bridges, Edward Foster.....	544 W. Rosecrans, Compton....	8/29/58	Secs. 10176(i) & 10177(f)
Real Estate Salesman			
Jervis, Stanley Dale.....	6036 Atlantic Blvd., Maywood..	9/ 3/58	Secs. 10177(b) & (f)
Real Estate Salesman			
Mansfield, Walter W.....	2010 El Segundo Blvd., Gardena.	9/ 3/58	Secs. 10177(b) & (f)
Real Estate Broker			
Kott, Gerald Culver.....	229 Shoreline Dr., Mill Valley ..	9/12/58	Secs. 10177(b) & (f)
dba Cape Cod Realty			
dba United Builders Realty	227 Shoreline Dr., Mill Valley		
Real Estate Broker			
Redman, Clarence Roscoe.....	271 Alpine Ave., Chula Vista...	9/17/58	Secs. 10177(b) & (f)
Real Estate Salesman			
Coleman, Eldon B.....	8149 Garden Grove Blvd., Garden Grove, and 1545 Katella Ave., Anaheim	9/24/58	Secs. 10176(e), (i); 10177(d) & Sec. 2830 of R.E. Comm. Rules and Regulations
Real Estate Broker			

LICENSES SUSPENDED DURING AUGUST, 1958, AND SEPTEMBER, 1958

Name	Address	Effective date and term	Violation
Spinosa, Howard Leonard.....	1207 Wishon Ave., Fresno.....	1/7 to 1/16/58	Secs. 10176(a), (b), (i) & 10177(f)
Real Estate Salesman		7/7 to 9/24/58	
Elam, Calvin B.....	1592 Ward St., Berkeley.....	8/ 5/58	Secs. 10176(a) & 10177(f)
Real Estate Salesman		30 days	
Strom, Edwin G.....	1408 24th St., Richmond.....	8/ 5/58	Secs. 10176(e), (i) & 10177(f)
Real Estate Salesman		90 days	
Balbi, Pietro.....	244 N. El Dorado St., Stockton..	8/21/58	Secs. 10176(a), (i) & 10177(f)
Real Estate Salesman		30 days	
Miller, George Sidney.....	2357 Presidio Dr., San Diego...	8/21/58	Sec. 10177.5
Real Estate Broker		30 days	
Malpasso, Fred Salvatore.....	244 N. El Dorado St., Stockton..	8/21/58	Secs. 10176(a), (i); 10177(f) & 10302(e)
Member of Cecchini-Malpasso		30 days	
Real Estate Member			
Business Opportunity Member			
Russo, Daniel Joseph.....	4346 Laurel Canyon Blvd., North Hollywood	8/22/58	Secs. 10176(a), (i); 10177(d) & (f)
Real Estate Broker		15 days	
Kleber, Marvin.....	563 S. Murphy Ave., Sunnyvale	8/26/58	Secs. 10130, 10137 & 10177(f)
Real Estate Salesman		10 days	
		(Stayed for 1 year)	

AMENDED REGULATIONS

Handling of Trust Funds and "Commingling" Clarified

The Real Estate Commissioner has made a number of changes in official regulations, effective November 16, 1958. Two sections, dealing respectively with staggered renewal periods and character references on license applications, were repealed since they were originally adopted to meet specific situations which no longer exist under the law. Technical adjustments were made in two other sections by changing "license year" to "fiscal year."

A more important change was an amendment clarifying the proper handling of trust funds by brokers. Records must be kept disclosing in businesslike fashion all pertinent information concerning the trust fund transactions. The records are subject to inspection. (See Sec. 2831 below).

The handling of an uncashed check received as a deposit is the subject of an amendment to the regulation defining "commingling." (See Sec. 2832 below.)

Changes in Commissioner's Regulations

(Effective November 16, 1958)

(1) Section 2713 repealed.

(2) Section 2721 repealed.

(3) Section 2826 amended to read:

2826. *Limitation on Number.* No more than 10 permits shall be issued to a real estate broker licensee during a fiscal year.

(4) Section 2827 amended to read:

2827. *Expiration Date.* All permits issued under Section 10507 of the Real Estate Law, during a fiscal year, shall expire on June 30 of that year.

(5) Section 2831 amended to read:

2831. *Records to be Maintained.* Subject to inspection by Commissioner or His Deputies. Every broker shall keep records of all trust funds received by him. These records shall clearly indicate the date and from whom he received the money, date and where deposited while held by the broker, date of forwarding to others, all amounts

involved, for whose account the money is held, and other pertinent information concerning the transactions.

All records and funds shall be subject to inspection by the commissioner or his deputies.

(6) Section 2832 amended to read:

2832. *Commingling Defined.* Commingling within the meaning of Sections 10176(e), 10301(e) and 10561(e) of the Business and Professions Code is defined as failure to deposit or place trust funds received (1) into a neutral escrow depository or (2) in the hands of principals or (3) in a trust fund account in accordance with Section 2830 above, by the next business day following their receipt. However, it shall not constitute commingling to hold an uncashed check until acceptance of an offer when directed to do so by the buyer or offeror, and it shall not constitute commingling to hold an uncashed check after acceptance of an offer when directed to do so by the seller or offeree. The fact that a check is being held in an uncashed form must be specifically disclosed to the seller or offeree before he accepts the offer.

RENEWAL OF BRANCH OFFICE LICENSES

Branch office licenses expire at the same time the main office license expires. This holds true whether the main office license is a one-year original or a four-year renewal license.

The fee for renewing a branch office license remains the same—\$1.

LICENSES SUSPENDED DURING AUGUST, 1958, AND SEPTEMBER, 1958—Continued

Name	Address	Effective date and term	Violation
Sunnyvale Realty Company Robert Warner Phillips—Member Real Estate Corporation Business Opportunity Corporation	563 S. Murphy Ave., Sunnyvale	8/26/58 3 days (Stayed permanently)	Secs. 10177(d), (f) & 10302(c)
Matthews, Burr Montrose Member of Sunnyvale Realty Company	563 S. Murphy Ave., Sunnyvale	8/26/58 3 days (Stayed permanently)	Secs. 10177(d) & (f)
Reitzel, Frank Carl, Jr. Real Estate Broker Business Opportunity Broker	2043 E. Main St., Ventura	9/ 3/58 60 days	Secs. 10177(c), (d), (f); 10258, 10259 & 10302(e)
Beard, Kenneth Jay dba Home Rentals & Realty dba Marinwood Realty Real Estate Broker	2465 Lombard St., San Francisco and 372 Peachstone Terrace, San Rafael	9/16/58 6 months	Secs. 10176(a), (b), (i); 10177(c), (d), (f) & Sec. 2852 of R.E. Comm. Rules and Regulations
Naegle, Mary Cassey Real Estate Broker Vice Pres. of Research Sales Co. Real Estate Officer	1263 W. D St., Ontario, and 308 Monterey Rd., South Pasadena	9/24/58 60 days	Secs. 10176(a) & (i)
Naegle, Clarence Paul Real Estate Broker Business Opportunity Broker	1263 W. D St., Ontario	9/24/58 30 days	Secs. 10176(a) & 10302(e)
Hastey, Junie Hastey Restricted Real Estate Broker	385 Ridge Way, Yuba City	9/29/58 Indefinitely	Sec. 10156.7

Cal-Vet Backlog Reduced Materially

The waiting period for California veterans filing with the State Department of Veterans Affairs for Cal-Vet home loans has been trimmed to not more than three months in virtually all district offices.

The department reports in its monthly *News Bulletin* that the 17 district offices accepting loan applications have been authorized to process those filings received since last June 30th and as late as September 30th. In some offices, the waiting period is reported as considerably less than three months. The backlog of active applications has been reduced to 13,000, whereas at the start of the year it was more than 46,000. Only new purchase applications are now being processed.

New Realtor Leaders

(Cont. from Page 369, Col. 3)

The new NAREB president has long been active in organized real estate. He is a Certified Property Manager, NAREB director and member of the Society of Real Estate Counselors. He has served as president of the California Real Estate Association, the Los Angeles Realty Board, the Apartment Association of Los Angeles County and as a regional vice president of NAREB.

CREA President

For the first time in the California Real Estate Association's history, a father and his son will both have served as president of the association. In 1929 J. Bradley Clayton headed the CREA; his son, James B. Clayton, Jr., has been elected as 1959 president.

The new CREA president, whose brokerage firm was established in 1867, was president of the San Jose Real Estate Board in 1941, honorary director in 1942 and district vice president of CREA in 1951.

Mr. Clayton is well known for his active participation in community affairs—to name a few: chairman of Cub Pack and Boy Scout troops with a total of 12 years in scouting, organizer and secretary of Los Gatos High School Athletic Boosters' Club and charter member of the University Club of San Jose.

New Reference Book Ready

(Cont. from Page 369, Col. 2)

Estate Commissioner, it also devotes considerable coverage to a broad variety of related subjects, some of which are: the development of the real estate business, trade and professional associations, transfer of interest in real property, landlord and tenant, lending institutions, valuation, taxation and assessments, general brokerage, land development, examinations, etc.

How to Order

The new *Reference Book* is priced at \$2.50 (plus 10¢ tax) and can be obtained from any office of the division or will be mailed postpaid from the Sacramento office, 1015 L Street, upon receipt of order and remittance. On page 375 of this *Bulletin*, there is a blank form which you may use to order the new *Reference Book*.

Use Verification Forms If You Are Planning to Apply for Broker's License

When a salesman applies for a real estate broker license, he must obtain and present verification of two years' full-time work as a salesman unless he has supplementary experience or education. Often the applicant has worked for several different brokers and he encounters difficulty when trying to go back to each for verification of exact dates of employment, number of transactions, amount of commissions, etc.

If you are planning to apply for a broker license in the future, secure verification from your broker when you leave his employ. Use the verification forms available at any division office.

Present Employing Broker Notified

Sometimes a salesman can produce evidence of two years' full-time work as such without calling on his current employing broker for verification of his latest experience. In these cases, the applicant is usually approved for examination for broker license and the examination scheduled. However, in fairness to everyone concerned, the division informs the salesman's present employing broker of the salesman's application for broker license.

Distribution of Licensees by Counties

In the last issue of the *Bulletin*, a summary of licenses issued and in effect as of June 30, 1958, was published. The total amounted to 119,262 licenses of which 111,366 were real estate, 7,781 were business opportunity and 115 were mineral, oil and gas licenses.

We have received a number of requests for a breakdown of the total by area, and presented below is a tabulation of licensees by county. The tabulation includes only real estate licenses because practically all holders of business opportunity licenses and most of the mineral, oil and gas licensees also have real estate licenses.

It should be understood that there is also some duplication in the lists of real estate licenses because (1) the majority of brokers licensed to do business as officers of corporations or members of partnerships also hold individual broker licenses and (2) a number of the newer broker licensees also hold inactive renewable real estate salesman licenses.

The tabulation below includes both active and inactive real estate licenses, original and renewable. About 23 percent of the licenses are inactive, leaving a total of 85,769 ostensibly active real estate licenses. What part of this total actually represents individuals engaging full time in real estate work, we do not know. There is little variation between counties in percentage of inactive licenses.

TOTAL REAL ESTATE LICENSES, JUNE 30, 1958

County	Individual brokers	Salesmen	Corporation and partnership		Total licenses
			brokers	Limited salesmen	
Alameda	2,412	3,390	257	9	6,068
Alpine	---	1	---	---	1
Amador	11	10	---	---	21
Butte	194	264	25	1	484
Calaveras	11	13	---	---	24
Colusa	9	8	2	---	19
Contra Costa	793	1,159	80	12	2,044
Del Norte	18	13	---	---	31
El Dorado	92	131	5	2	230
Fresno	593	744	70	2	1,409
Glenn	23	26	---	---	49
Humboldt	111	110	7	---	228
Imperial	71	67	5	---	143
Inyo	23	8	1	---	32
Kern	512	465	48	1	1,026
Kings	47	48	3	---	98
Lake	58	37	2	---	97
Lassen	6	4	---	---	10
Los Angeles	25,414	27,417	1,639	641	55,111
Madera	51	73	8	---	132
Marin	448	640	54	---	1,142
Mariposa	8	4	---	---	12
Mendocino	59	52	7	1	119
Merced	84	87	10	---	181
Modoc	6	4	5	---	15
Mono	5	1	---	---	6
Monterey	349	427	34	1	811
Napa	112	152	9	2	275
Nevada	63	50	4	1	118
Orange	2,069	2,483	136	75	4,763
Placer	94	128	16	1	239
Plumas	17	14	---	---	31
Riverside	1,178	1,152	66	20	2,416
Sacramento	908	1,640	108	10	2,666
San Benito	16	12	---	---	28
San Bernardino	1,510	1,781	69	269	3,629
San Diego	2,980	3,723	211	38	6,952
San Francisco	2,638	2,845	314	13	5,810
San Joaquin	318	465	48	1	832
San Luis Obispo	156	164	2	---	322

Commission Earned Even Though Listing Expired

Owner Encourages Broker to Continue Selling, Thereby Extending Agency

In an action to recover a broker's commission on the sale of real property, an appellate court recently upheld a judgment in favor of the broker against the seller, where the latter had urged and encouraged the broker to continue his efforts to find a purchaser after the time limit in the listing contract had expired and the broker produced a prospect who eventually bought.

The facts are cited as follows: An owner of timberland and a real estate broker entered into a written contract whereby the broker was given the exclusive right to sell. Shortly thereafter, the broker and a co-operating broker orally agreed that if a sale was consummated with any prospect obtained by the co-operating broker, the commission would be equally divided between them. This arrangement was communicated to the seller who evidenced his agreement to it.

Broker Encouraged to Continue

Subsequently, the original brokerage contract was extended by a written amendment for a period of 90 days. On several occasions after that extension had run, the broker talked with the seller regarding the sale of the property, and the seller instructed him to continue his efforts to sell. Similar instructions were given to the co-operating broker.

In the trial, the seller himself testified that he knew the co-operating

broker was continuing his efforts to sell the property.

Approximately a month after the expiration of the listing contract, the co-operating broker showed the property to a prospective purchaser. Following the second showing of the property, the co-operating broker telephoned the seller requesting him to arrange a meeting with the prospective purchaser, and shortly thereafter, the seller and the purchaser executed a written contract by which the latter agreed to purchase the property.

Opinion of Appellate Court

In the words of the appellate court, "it was apparent from the evidence as summarized that it was amply sufficient to support the finding that the seller had waived the termination date of the contract here, as in *Baker v. Curtis*, 105 Cal. App. 2d 663. The owner, after the time limit provided in the contract had expired, urged and encouraged the broker to con-

tinue his efforts to find a purchaser for the property, and the broker did so continue with the knowledge, approval and encouragement of the owner, and, as a result of the broker's efforts, a purchaser to whom the owner sold the property was produced; under such circumstances the time limit in the written contract must be considered as having been waived and the broker is entitled to his commission. To hold otherwise would in our opinion permit the use of the Statute of Frauds to perpetrate a fraud. Such a holding would not only be inequitable, but is not required or justified by either reason or authority."

The above case is summarized from *Lewis v. Foppiano*, No. 150 A. C. A. No. 5.

Suspension of License Can Terminate Listings

"What happens to my listings if my license is suspended for 10 days? Can a property owner rescind the contract employing me as a broker in such case?"

Since property listings or employment contracts with a broker are based on the assumption that the broker holds a valid license to perform as an agent for the sale of real property, it follows that his listings would be terminated if his license were suspended.

A suspended license—even though suspension is of short duration—is not a valid license to act as a broker. Attempting to operate without a license is a misdemeanor, and such an attempt on the part of a person whose license is suspended would probably lead to more severe disciplinary action. When a broker's license is revoked, his listings terminate of course, as they also do when a broker's original license runs out and he has failed to obtain either another one-year original license or a four-year renewable license.

Strictly speaking, the commissioner cannot rule as a court on the validity of individual property listings, but it is within his province to determine if a person is properly licensed and entitled to act as an agent in real estate transactions.

TOTAL REAL ESTATE LICENSES—Continued

County	Industrial brokers	Salesmen	Corporation and partnership brokers	Limited salesmen	Total licenses
San Mateo	1,065	1,898	162	6	3,131
Santa Barbara	481	553	18	4	1,056
Santa Clara	1,456	2,362	182	10	4,010
Santa Cruz	297	363	21	2	683
Shasta	91	109	8	2	210
Sierra	4	—	—	—	4
Siskiyou	35	19	—	—	54
Solano	139	197	19	2	357
Sonoma	370	442	33	1	846
Stanislaus	244	322	21	5	592
Sutter	32	71	4	1	108
Tehama	35	56	7	—	98
Tulare	166	236	28	2	432
Tuolumne	24	32	2	—	58
Trinity	3	2	—	—	5
Ventura	382	389	14	2	787
Yolo	61	74	5	1	141
Yuba	40	66	1	1	108
Out-of-State	549	513	—	—	1,062
Total	48,941	57,516	3,770	1,139	111,366

JUST FOR THE RECORD

. . . **A Summary of Selected Items of Interest
Concerning Activities of the Division of Real Estate
As Reported Monthly to the Governor . . .**

Advance Fee Problem

U. S. Senate Bill 3889, which would have made certain practices in connection with advance fee real estate activity a federal offense, did not advance beyond the Senate Permanent Investigating Subcommittee during the 1958 Session of Congress.

However, it is reported that new bills designed to curb advance fee activities on an interstate scale are being readied for introduction in Congress in 1959, one in the Senate and a companion bill in the House. The proposed legislation would apply to persons or firms purporting to be engaged in the business of obtaining listings, selling advertising, offering to secure loans, or rendering any other services incident to the sale of real property to purchasers residing in any state (or in any foreign country) other than the state in which such property is situated. The person or firm making false representations while engaging in such business would be guilty of a felony under the terms of the proposed legislation.

Meantime, your commissioner has been advised that the U. S. Department of Justice will rely on relevant sections of the U. S. Criminal Code to combat the interstate racket and will put into effect a program to eliminate unlicensed advance fee operators.

Here in California, the Attorney General's Office, the Legislative Counsel's Office, and the counsel for the Assembly interim committee investigating the advance fee problem soon expect to complete studies of the suggested amendments to existing law relating to control of advance fee activities.

Division of Real Estate Revenue and Expenditures in Balance

Pursuant to your request to all state agency heads, a "hold the line" policy has been maintained by your Real Estate Commissioner in the Division of Real Estate budgets for 1957-58, 1958-59, and 1959-60.

As of the end of September, 1958, the Real Estate Fund had an operating balance of approximately \$1½ million. The budgets for 1958-59 and 1959-60

contemplate expenditures of approximately \$1½ million per year. * * * Our experience would seem to indicate assurance of a continuing complete balance between division revenue and expenditures.

Purchasers' Deposit Money Protected by Subdivision Bonds

Relatively new legislation requires California's subdividers to impound purchasers' deposit money, or put up a bond, or otherwise protect such money until some sort of title can be delivered to the purchaser. The subdivider can choose any of these alternatives as set forth in the Real Estate Law.

At this date, 300 subdivision bonds totaling \$7,094,900 of possible indemnity are posted with the Real Estate Commissioner for the benefit and protection of purchasers of subdivision lots.

By filing a bond with the commissioner, a subdivider can use, up to the amount of his bond, deposit moneys received by him from purchasers. Usually obtained at a nominal cost, more and more subdividers are taking advantage of the bond provision of the law since the cost of borrowing money usually exceeds the cost of the bond by a considerable margin. Thus, the subdividers do not have to borrow so much money in the development and sales stages of their operation; and, at the same time, funds advanced by the purchasers are adequately protected.

Noteworthy Increase Recorded in California Subdivision Activity

The total of 256 subdivision filings registered in October was the largest for any month since July, 1956. It almost equaled the all-time October record reached in 1955, and was 30 percent above the October, 1957, figure.

Seasonally adjusted, subdivision filings in October were at an annual rate of 2,510, compared with 2,371 in 1957.

ENDORISING APPLICATIONS

Before endorsing an applicant for real estate salesman license, the employing broker should see that the application form is *completely filled out*. Furthermore, the broker is well advised to note carefully the facts revealed therein.

After all, the broker, when he signs the application, certifies that "upon investigation" he has ascertained the applicant is "honest, truthful and of good reputation."

Original License Examination Volume at High Level

Original license examinations were given to 1,845 candidates during October, compared with 1,095 in the same month last year. More persons took examinations for original license in October than in any month since April, 1958. Ninety-six examination sessions were held this month and the number of examination sessions during the fiscal year to date has risen 25 percent above the same period last year. Limited real estate license examinations are approximately 30 percent below last year. This is because the commissioner recently took steps to control the indiscriminate sponsorship of the limited salesman's license.

Education Section Created Within the Division

The University of California and the state and junior colleges have displayed a great deal of interest in participating in the program for the advancement of real estate education and research in California's institutions of higher learning. This program was made possible by the establishment of the Real Estate Education and Research Fund into which goes one-fourth of all license fees collected by the commissioner.

An Education Section with a director has been created within the State Division of Real Estate to assist the commissioner in carrying out the mandates of the Legislature regarding the program. The section is headquartered in Sacramento.

Keep the Division Informed Of Change in Business Address

Each month approximately 2,000 license renewal notices are mailed out from the Sacramento office of the Division of Real Estate, and each month the post office returns 25 to 50 of these notices with "Moved" marked on the undelivered envelope.

Some of the "movers" apparently overlook the imminent expiration of their licenses. Reminded too late, they must pay the additional fee required for late renewal. In some cases commissions, which otherwise might have been earned, have been lost during the period no license was in effect. In a few extreme cases, people have allowed a year to pass without renewing and, as a result, have lost their license status.

Commission Claim Can Be Disputed

In any event, licensees who move without properly notifying the commissioner are in technical violation of the license law. Commissions have been jeopardized and, in some instances, lost, because of this technicality—that is, the licensee was not actually operating from the place of business shown on his license.

The commissioner and the staff of the Division of Real Estate dislike seeing earned commissions and even license status jeopardized by carelessness in the observance of technical but necessary provisions of the license law. It is a simple matter to keep the license, whether active or inactive, in good standing when a change of address is contemplated. Merely send a request for the change to the commissioner along with a \$1 fee.

SENIOR ATTORNEY BLUSHES WITH PRIDE

Pamela Elaine Prather, daughter of William Prather, a Senior Attorney for the Division of Real Estate, was chosen Queen of the Tournament of Roses.

The lucky girl will reign over the New Year's Day rose parade and the Rose Bowl football game.

ORDER FORM

DIVISION OF REAL ESTATE

1015 L Street

Sacramento 14, California

Please send me Reference Book(s)

Price of Reference Book—\$2.60 (incl. sales tax)

I enclose my check money order in the sum of \$.....

NAME (please print)

ADDRESS (please print)

Street

City

State

Court Looks Beyond Documents for Determination

When dealing with his friends a broker should, if anything, clarify the transaction more fully and even be more explicit in his agreements than in dealing with a client in the ordinary course of his business. Where the parties have been friends over a period of years, an inference may frequently be drawn by the courts that a fiduciary relationship exists imposing upon the broker a greater responsibility than if he were dealing at "arm's length."

A recent disciplinary action before the Real Estate Commissioner involved a complaint made by a friend of a broker. The friend had owned some real property and was desirous of purchasing other property. He called upon the broker for advice and information and as a result of this advice executed a purchase and sale contract.

Broker Is Purchaser

The contract provided that the broker was the purchaser at a figure of "\$5,800 net or more." The broker thereafter sold the property for \$7,500. The testimony of the seller was that the broker had agreed, if he sold the property, to pay to the seller some portion of the excess received over and above the usual broker's commission. The broker refused to make any payment to the complainant, testifying that he never told the seller he would give him all the profit on the property over and above the commission. His testimony was further that, if he got a real good price for the property, he wanted the seller to

have some extra compensation, but that was all.

The broker's license was suspended for a period of 90 days for violations of Sections 10176(g) and 10177(f) of the California Real Estate Law. Section 10176(g) authorizes the Commissioner to revoke or suspend for any secret profit or for failure to reveal to his principal the full amount of his compensation, commission or profit.

Suspension Affirmed

The case was appealed and in affirming the decision, the court found that there was sufficient evidence to establish the violations. The court quoted with approval from another case: "The real estate broker is brought by his calling into a relation of trust and confidence. Constant are the opportunities by concealment and collusion to extract illicit gains. We know from our judicial records that the opportunities have not been lost. * * * He is accredited by his calling in the minds of the inexperienced * * * with a knowledge greater than their own." (Cardoza, J. in *Roman v. Lobe*, 243 N. Y. 51 (152 N.E. 461, 50 A.L.R. 1329).)

This case once more affirms the principle that the courts will, when the occasion arises, look beyond the form of the documents which the parties execute to determine whether or not an agency relationship exists. (See 144 A. C. A. 395.)

Sec. 34.66, P. L. & R.
U. S. POSTAGE
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SACRAMENTO, CALIF.

Commissioner's Forum

Oral Examination

Q. I get very nervous at the thought of taking a written examination. Is there any way I can be tested for a license besides taking the written examination?

—K. A. M., Student.

A. Under Section 10153 of the California Real Estate Law, the commissioner cannot waive the requirement for a written examination as outlined in the law. To insure utmost fairness in the examination for renewable four-year license, provision has been made for supplementary oral examination of those persons whose written test results fall in a defined "borderline" area. But the written test is not waived and the examinee who scores too low does not have the privilege of the supplementary oral examination.

Unlicensed Activity

Q. What is the penalty for operating without a license?

—G. E. D., Contractor.

A. Under provisions of the Business and Professions Code, any person acting as a real estate broker or salesman without a license, or who advertises using words indicating that he is a licensee, shall, upon conviction, be punished by a fine of up to \$500 or by six months' imprisonment in the county jail or by both.

Oil and Gas Transactions

Q. Is there a license requirement for one who deals in oil and gas transactions?

—W. B. A., Driller.

A. While Section 10501 of the Business and Professions Code defines a mineral, oil and gas broker as a person acting as agent for a compensation, Section 10504 includes principals in certain cases. For example, one who

This section is open to questions from licensees on matters of general interest concerning the Real Estate Law, subdivisions, and mortgage loan laws.

Address your letter to the Editor of the *Bulletin*, Division of Real Estate, 1015 L Street, Sacramento.

buys and sells mineral, oil and gas properties or leases or who deals in options, etc., for the purpose of resale or exchange requires a license. In this respect, mineral, oil and gas licensing differs materially from real estate and business opportunity licensing requirements.

The Mineral, Oil and Gas Brokerage Chapter of the Real Estate Law was enacted in 1943 as the result of extensive misrepresentations in promotions of oil and gas lands and leases. The public lost heavily in such "investments" during the period prior to

1943, bringing on a statewide investigation and legislation aimed at the regulation of offerings and dealings in oil or gas lands or leases.

Advance Fee

Q. Can a licensed real estate broker collect a fee in advance to list and sell a residence?

A. Yes, a licensed real estate broker may collect a fee in advance to list and sell a residence. As a practical matter he is not likely to get an advance for his services except in those unusual cases where special illustrated brochures and display advertising are to be prepared and used in effecting the sale.

Recent *Bulletin* articles have commented on the activities of certain "advance fee operators" who collect advance fees for what they call "advertising." Their agents are alleged to have made oral representations of eager lists of buyers with bulging assets. The "buyers" do not materialize and the "advertising" is far short of the effect promised. But the bill comes through just the same. This type of unscrupulous operation is not to be confused with the services offered by some licensed brokerage firms which offer established services legitimately commanding an advance fee.

The important considerations are that the brokers' client should understand completely the circumstances under which an advance fee is being collected and know what services are to be rendered, and that the services be faithfully performed as represented.