



Real Estate Bulletin

Official Publication of the California Division of Real Estate

EDMUND G. BROWN, Governor

October 1965

MILTON G. GORDON, Commissioner

Broker Fiduciary Obligations Require Complete Disclosure When Acting As Buyer

Editor's Note: Previous *Bulletin* articles have reminded licensees that a fiduciary relationship exists between the real estate agent and his client or customer which precludes his obtaining any advantage over them by misrepresentation or concealment. The penalty for not adhering to the principle of FULL DISCLOSURE is pointed up in the following article which appeared in a recent edition of the *Sacramento Realtor* under the caption, "Broker Buying for His Own Account." The *Sacramento Real Estate Board* and the author, Archie Hefner, attorney at law, have given permission to reprint it here.

A most delicate area for a real estate licensee opens up when he purchases property for his own account from a regular client, or from a person who has listed the property with him. The rules of law with respect to liability to account for profits resulting from such a transaction as well as the rules of law affecting the right of the licensee to retain his license both impose upon him the duty of *full disclosure*.

A good example of what can happen is contained in the report of a district court of appeal decision, March 3, 1965, in *Bate v. Marsteller*, 232 ACA, p. 746. The real estate broker listed property in 1955 for a selling price of "\$50,000 or \$52,000." A salesman in the listing office found a buyer and told the buyer the property was listed for \$37,000. The buyer made an offer of \$37,000 accompanied by a \$500 deposit. The offer was presented and the owners objected to the low price but were reassured by the broker's salesman that it was the "highest price obtainable." Relying upon this, the seller accepted the offer. Before the escrow closed, the buyer became dissatisfied with the transaction and wanted to forfeit the deposit rather than complete the purchase. The broker and his salesman did not disclose this to the owners. Instead, the broker and his salesman solicited the buyer to complete the transaction in the buyer's name but to in effect hold an undivided seven-

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DRE Gives Examinations in San Bernardino Office

The Division of Real Estate has established a full-time branch office at Room 207, 157 West Fifth Street, San Bernardino, with Supervising Deputy Bernard Taylor in charge. The new office is equipped and staffed to handle licensing transactions, complaints and license examinations.

The new branch office will provide more efficient service to licensees and the public in San Bernardino, Riverside and the eastern part of Los Angeles Counties, an area formerly served by a part-time office and a deputy from the Los Angeles office. Real estate license examinations will be given at the new office as an accommodation and convenience to all license candidates in the area.

Due to traffic and parking conditions in metropolitan Los Angeles, a number of license applicants residing in outlying districts will probably ask to be examined in San Bernardino. Brokers may wish to advise prospective real estate salesmen of the new license examination location, since it may offer more convenient scheduling in some instances.

the deposit is disclosed on the depositor's records.

"Therefore, assuming that a broker maintains complete records showing the name and interest of each client and the title of the trust account specifically designates it as such, then the funds of each client in such an account would be separately insured to the maximum of \$10,000 and this insurance would be separate from the \$10,000 insurance afforded the broker's general account."

Article 15 of the California Real Estate Commissioner's Regulations requires the type of accounting referred by the F.D.I.C. counsel.

PRICE "KITING"

Investigations by the DRE of cases of price "kiting" for loan purposes have resulted in the revocation and suspension of 61 licenses within the past three years. The commissioner urges all licensees to help stamp out this unhealthy "kiting" tactic.

F.D.I.C. Insures Each Individual Client in Broker Trust Account to \$10,000

California brokers will be interested in a ruling obtained recently by the Nebraska Real Estate Commission from the Federal Deposit Insurance Corporation on the question of whether the total coverage of insurance issued by the agency is limited to \$10,000 or whether the deposit of each individual client, represented in the trust account, is covered in the amount of \$10,000.

The following are excerpts from the letter the commission received from William M. Moroney, general counsel for F.D.I.C.:

"We are enclosing a copy of Section 330.4 of our regulations, which relates to the insurance of deposits in custodial accounts. It will be noted from this regulation that funds of various owners which are placed in a custodial deposit in an insured bank will be recognized for insurance purposes to the same extent as if their names and interests were disclosed on the records of the bank, provided the account is specifically designated as custodial and the name and interest of each owner in

REAL ESTATE BULLETIN

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Published Bimonthly in Sacramento by the

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DESIST AND REFRAIN ORDERS

Issued for the Period Between July 1
and September 30, 1965

Number of orders	Violations
10	IN-STATE Safe of real property securities without permit . . . and/or failure to comply with all applicable statutes and regulations.
10	Failure to provide for subdivision public report, promised recreation facilities, proper permit or otherwise meet requirements of subdivision law.
4	OUT-OF-STATE Failure to comply with California subdivision requirements.

Disciplinary Action—June—July 1965

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

Licenses Revoked During June—July 1965

Name	Address	Effective date	Violation
Beaver, Jefferson August Real Estate Broker (Granted right to restricted license on conditions)	2400 Sutter St., San Francisco	6/ 1/65	Sec. 10177 (b) and (f)
Bloom, Harry Ervin Real Estate Broker Real Estate Salesman (Granted right to restricted real estate broker license after 6 months from effective date of decision on conditions)	2631 W. Olympic Blvd., Ste. 4, Los Angeles	6/ 1/65	Secs. 10130; 10137; 10177 (d), (f) and Sec. 2845 of R.E. Comm. Reg.
McEwen, Cecil Frederick, Jr. Real Estate Broker Real Estate Salesman	1919 Shoreline Dr., Apt. 108, Alameda	6/ 1/65	Secs. 10176 (a), (b), (g); 10177 (f) and (j)
Noble, Josef Seymour Restricted Real Estate Broker (Granted right to restricted license after 6 months from effective date of decision on conditions)	4793 Ewing Rd., Castro Valley 3855 Wilshire Blvd., Ste. 6, Los Angeles	6/ 1/65	Secs. 10130; 10137; 10177 (d), (f) and 10177.5
Reserve Mortgage Co. Harry Ervin Bloom, President Real Estate Corporation (Granted right to restricted license after 6 months from effective date of decision on conditions)	2631 W. Olympic Blvd., Ste. 4, Los Angeles	6/ 1/65	Secs. 10130; 10137; 10177 (d), (f) and Sec. 2845 of R.E. Comm. Reg.
Wade, Lois Jewel Real Estate Salesman (Granted right to restricted license on conditions)	8117 Western Ave., Los Angeles	6/ 1/65	Sec. 10177 (b) and (f)
Zachary, Stanley Business Opportunity Broker	2690 W. Pico Blvd., Los Angeles	6/ 1/65	Secs. 10301 (e), (i); 10302 (d) and (e)
Holt, Marian Faith Real Estate Salesman	1934 E. Colorado Blvd., Pasadena	6/ 3/65	Sec. 10177 (b) and (f)
Smith, Alton Miller Real Estate Salesman	101 N. Catalina, Los Angeles	6/ 3/65	Sec. 10177 (b) and (f)
Gribble, William Marion, Jr. Real Estate Broker	791 Shalimar Dr., Apt. 1, Costa Mesa	6/ 8/65	Sec. 10177 (b), (f) and (i)
Humphreys, James Selden Real Estate Salesman	14501 South Western Ave., Gardena	6/ 8/65	Sec. 10177 (b) and (f)
Jobson, James Eric Real Estate Salesman (Granted right to restricted license on conditions)	9191 Wilshire Blvd., Beverly Hills	6/ 8/65	Sec. 10177 (b) and (f)
Russell, Margaret Joyce Real Estate Salesman	565 E. Hill Ave., Escondido	6/ 8/65	Sec. 10177 (b) and (f)
Kelly, Ross Eugene Restricted Real Estate Broker	440 E. Shield, Fresno	6/10/65	Sec. 10177 (b), (f) and (k)
Vaughan, Allen Real Estate Salesman	1653 22nd Ave., Oakland	6/17/65	Secs. 10176 (a), (b), (c), (i) and 10177 (f)
Keefe, James Huber Real Estate Salesman Right to Apply (Granted right to restricted license on conditions)	2924 Via Pacheco, Palos Verdes Estates	6/22/65	Sec. 10177 (a), (b) and (f)
McNaughton, Erwin Lawrence Business Opportunity Salesman (Granted right to restricted license on conditions)	727 E. Pacific Coast Highway, Long Beach	6/22/65	Sec. 10302 (b) and (e)
Tenner, Pete Restricted Real Estate Salesman	1709 N. Fuller, Los Angeles	6/22/65	Sec. 10177 (f) and (k)
Bostrom, Olive Salome Real Estate Salesman (Granted right to restricted license on conditions)	6779 Mission St., Daly City	6/29/65	Sec. 10177 (b) and (f)
Dunn, David H. dba Dunn Realty Co. Real Estate Broker (Granted right to restricted license)	5400 Lemona Ave., Van Nuys	6/29/65	Sec. 10177 (b) and (f)
Ronista, Katherine Lincoln Restricted Real Estate Salesman	3908 Bluff Pl., San Pedro	6/29/65	Secs. 10130; 10131; 10157; 10177 (d), (f), (j) and (k)
Lewis, Albert Rudolph Right to 2nd Original Real Estate Salesman	940 Grove St., San Francisco	7/ 8/65	Sec. 10177 (b)
Mazur, Don Joseph Real Estate Salesman	3333 Midway Dr., Santa Rosa	7/13/65	Secs. 10176 (e); 10177 (f) and (j)
Hardin, Jesse E. Real Estate Salesman (Granted right to restricted license on conditions)	9601 Wilshire, Rm. 328, Beverly Hills	7/15/65	Sec. 10177 (b) and (f)
Mednick, Matthew Arnold Real Estate Salesman	111 Via La Circula, Redondo Beach	7/15/65	Secs. 10176 (e), (j); 10177 (f) and (j)
Douglas, Arietta Redon Real Estate Salesman	1653 Lone Oak Rd., Vista	7/22/65	Secs. 10176 (e), (j); 10177 (d), (f) and (j)
Reizenstein, Barbara Ann Real Estate Salesman	1839 Magnolia Way, Walnut Creek	7/27/65	Sec. 10177 (b) and (f)
McCormack, Charles Thomas Real Estate Salesman	3609 Live Oak St., Huntington Park	7/28/65	Sec. 10177 (b) and (f)

Licenses Suspended During June—July 1965

Name	Address	Effective date and term	Violation
Lane, John Robert Real Estate Broker	812 Jack London Dr., Santa Rosa	6/ 1/65 10 days	Secs. 10177 (d), (f); 1012 and Sec. 2800 of R.E. Comm. Reg.
Licata, Benedict dba Bennell Realty Business Opportunity Broker (After 30 days from effective date, remainder or any portion thereof, may be stayed on conditions)	3599 Almaden Rd., San Jose	6/ 1/65 to and including 8/10/65	Secs. 10160; 10162; 10164; 10177 (d); 10283; 10285; 10287 and 10302 (d)
Licata, Benedict dba Bennell Realty Real Estate Broker (After 30 days from effective date, remainder or any portion thereof, may be stayed on conditions)	3599 Almaden Rd., San Jose	6/ 1/65 to and including 6/ 3/68	Secs. 10160; 10162; 10164; 10177 (d); 10283; 10285; 10287 and 10302 (d)

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Licenses Suspended During June-July 1965—Continued

WYNNE SAVAGE PASSES

Sharing the shock and sorrow of his many friends, we must report the sudden passing of Wynne A. Savage, who served as Real Estate Commissioner from 1959 to 1963, having been appointed to the post by Governor Edmund G. Brown.

Mr. Savage started in the real estate brokerage and appraisal business in 1936 in San Bernardino. He served as president of the San Bernardino Real Estate Board and as regional vice president of the California Real Estate Association. In 1949, the association made him an honorary director-at-large for life. He was a director of the National Association of Real Estate Boards, and was a member of the American Institute of Real Estate Appraisers, having been secretary of its southern California chapter in 1956, and president of the chapter in 1958. He was a past exalted ruler of the Alhambra Elks Lodge, and an active member of the Masonic Lodge, Shrine and Rotary Club of San Bernardino.

He is survived by his wife, Peggy, a daughter, Virginia, two granddaughters and three brothers in the Los Angeles area.

Few Changes Made in Broker License Procedures

Judging from calls received, many persons are unaware that the changes in the law effective January 2, 1966, will not affect procedures for obtaining a broker license, except that:

(1) After January 1, 1966, no more original one-year licenses will be issued. After that date the applicant who passes the examination for real estate broker license and otherwise qualifies for it will be eligible for a four-year license (not a one-year license). The fee for the four-year license will be sixty-five dollars (\$65).

(2) Some questions relating to transactions involving business opportunities will be substituted for real estate test material.

(3) There will be no limitation on the number of reexaminations which the broker license candidate may take under the changed law, although the

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Name	Address	Effective date and term	Violation
Price, Ronald Eugene Real Estate Broker	396 E. William St., San Jose	6/ 1/65 5 days	Secs. 10177 (d), (g) and 10242 (b) (2)
Hoag, Van Real Estate Broker (After 30 days from effective date, remainder or any portion thereof, may be stayed on conditions)	P.O. Box 471, Mountain View	6/ 8/65 to and including 7/25/65	Secs. 10160; 10162; 10164; 10177 (d), (f) and Sec. 2771 of R.E. Comm. Reg.
Taub, Leonard Irving dba Key Realty Co. dba Key Mortgage Co. Real Estate Broker	1440 Webster St., Oakland	6/10/65 30 days	Secs. 10176 (i); 10177 (f) and (j)
Barker, Willie Real Estate Broker Real Estate Salesman	5700 Edmunds Way, Sacramento	6/15/65 180 days	Secs. 10176 (a), (b), (i); 10177 (f), (g) and (j)
Cunningham, Byron Ross Real Estate Salesman	201 N. El Camino Real, San Clemente	6/15/65 30 days	Secs. 10145; 10176 (e), (i); 10177 (d), (f), (g) and (h)
Pearce, C. J. dba Resort Realty Co. Real Estate Broker	625 Del Mar Ave., San Clemente	6/15/65 30 days	Secs. 10145; 10176 (e), (i); 10177 (d), (f), (g), (h) and Sec. 2835 of R.E. Comm. Reg.
Hogan, Edward Real Estate Salesman (Last 15 days permanently stayed)	618 Santa Cruz Ave., Menlo Park	6/16/65 30 days	Secs. 10177 (d), (f); 11018.1; 11018.2 and Sec. 2795 of R.E. Comm. Reg.
Willis, Earl Lee dba Alpine Realty Real Estate Broker (After 30 days from effective date, remainder or any portion thereof, may be stayed on conditions)	22 N. Cherokee Lane, Lodi	6/16/65 to and including 6/13/66	Secs. 10162 and 10177 (d)
Willis, Earl Lee dba Clements Realty Real Estate Broker (After 30 days from effective date, remainder or any portion thereof, may be stayed on conditions)	1555 E. Armstrong Rd., Lodi	6/16/65 to and including 6/20/66	Secs. 10162 and 10177 (d)
Blackwell, James George Real Estate Salesman	501 Atkins St., Ridgecrest	6/29/65 20 days	Secs. 10177 (d), (f); 11010 and 11018.2
Graham, George Joseph Real Estate Salesman (Last 15 days stayed permanently)	110 S. China Lake Blvd., Ridgecrest	6/29/65 20 days	Secs. 10177 (d), (f); 11010 and 11018.2
Harrison, Eli E. Real Estate Salesman	501 Atkins St., Ridgecrest	6/29/65 20 days	Secs. 10177 (d), (f); 11010 and 11018.2
Larson, Harold Reese Vice President, Secretary and Treasurer of L.O.V.E. International, Inc.	1481 34th St., Sacramento	6/29/65 15 days	Secs. 10130; 10177 (d) and 10185
Real Estate Broker Business Opportunity Broker	2014 F 28th St., Sacramento	6/29/65 15 days	Secs. 10130; 10177 (d); 10185 and 10302 (d)
Richardson, Kenneth President of K/R Sales Real Estate Broker (After 30 days from effective date, remainder or any portion thereof, may be stayed on conditions)	Rm. 1506, Latham Square Bldg., Oakland 808 Ninth St., Oakland	6/29/65 to and including 12/ 1/65	Secs. 10162; 10164 and 10177 (d)
Rukasin, Morris dba Sunview Realty dba Marina Realty Real Estate Broker (Last 60 days stayed for 2 years on terms and conditions)	1720 N. Walnut, La Puente	6/29/65 90 days	Secs. 10176 (e), (i); 10177 (d), (f), (j) and Secs. 2830 and 2832 of R.E. Comm. Reg.
Stark, Wilbur Howard dba Indian Wells Valley Realty Company Real Estate Broker	501 Atkins St., Ridgecrest	6/29/65 180 days	Secs. 10177 (d), (f); 11010 and 11018.2
Temp, Conrad Robert dba Temp Real Estate Real Estate Broker Business Opportunity Broker (Next succeeding the effective date of the decision)	1481 34th St., Sacramento	6/29/65 15 days	Secs. 10130; 10177 (d); 10185 and 10302 (d)
Temp, Conrad Robert President of L.O.V.E. International, Inc. (Next succeeding the effective date of the decision)	1481, 34th St., Sacramento	6/29/65 15 days	Secs. 10130; 10177 (d) and 10185
Wiruth, Alvin Delmer Real Estate Salesman	501 Atkins St., Ridgecrest	6/29/65 20 days	Secs. 10177 (d), (f); 11010 and 11018.2
Hansen, Warren Philip Real Estate Salesman City	2790 Junipero Serra Blvd., Daly City	7/ 8/65 15 days	Sec. 10177 (g)
Willis, William Robert Real Estate Broker	5500 Whitfield Way, Carmichael	7/ 8/65 30 days	Secs. 10176 (i); 10177 (f) and (j)
Adobe Realty Thomas Tracy Gaffey, President Real Estate Corporation (Stayed permanently)	725 E. Washington St., Petaluma	7/13/65 30 days	Secs. 10137 and 10177 (g)
Gaffey, Thomas Tracy Real Estate Broker (Stayed permanently)	34 Washington St., Petaluma	7/13/65 30 days	Secs. 10137 and 10177 (g)
Traylor, Arilla Mae dba Melrose Realty Traylor's Investment Agency Restricted Real Estate Broker	5718 E. 14th St., Oakland 5800 Grove St., Oakland	7/14/65 Indefinitely	Sec. 10177 (k)
Douglas, Richard Browne Real Estate Broker (Stayed 1 year on conditions)	1653 Lone Oak Rd., Vista	7/22/65 60 days	Secs. 10176 (e), (i); 10177 (d), (f), (h) and (j)
Boyajian, Earl Owen Real Estate Salesman	7755 S. Cedar, Fresno	7/27/65 30 days	Secs. 10145; 10176 (e); 10177 (d), (f) and Sec. 2832 of R.E. Comm. Reg.
Boyajian, York Nazareth dba B and B Realty Real Estate Broker (After 15 days from effective date, remainder or any portion thereof, may be stayed on conditions)	7755 S. Cedar, Fresno	7/27/65 to and including 3/31/66	Secs. 10162; 10164; 10177 (d) and Sec. 2731 of R.E. Comm. Reg.
Kastoras, Constantine Theodore Real Estate Broker Real Estate Salesman	2831 Fruitridge Rd., Sacramento 1150 Seventh Ave., Sacramento	7/30/65 90 days	Sec. 10176 (a)
Williams, Daniel Trueman dba Westchester Realty Real Estate Broker	7135 W. Manchester Ave., Los Angeles	7/31/65 15 days	Secs. 10142; 10177 (d), (f); and Secs. 2835 and 2902 of R.E. Comm. Reg.

● **Commissioner Assumes Sole Jurisdiction Over Subdivisions**

AB 2000—popularly known as the Condominium Bill—was passed by the 1965 Legislature, becoming effective on September 17, 1965, and on that date the Real Estate Commissioner assumed sole jurisdiction over new subdivisions at the state level. For developments such as condominiums, subdividers are relieved from the onerous and often vexatious and time-consuming necessity of being obliged to submit the data on their projects to two separate state offices, those of the Real Estate Commissioner and the Corporations Commissioner.

The bill as presented to the Legislature by Assemblyman John Knox of Richmond was finally drafted only after discussion at numerous meetings extending over 20 months, meetings attended by representatives of the real estate, building, lending, title and other interested industries. Participating also in these deliberations were representatives of the governmental agencies involved.

The meetings were called by Real Estate Commissioner Milton G. Gordon and Corporations Commissioner Charles Rickershauser, Jr., who, with representatives of the Attorney General, were guided by the Governor's expressed desire to find a solution to the dual jurisdiction problem without sacrificing public safeguards.

Some of the new statutory definitions are discussed below.

Condominiums

"Condominium" is defined in Section 783 of the Civil Code. In general, for a development to be classified as a condominium there must be an undivided fee ownership of all the underlying land, in addition to the fee title to the airspace encompassing the purchaser's particular living area, which is legally described as a **unit**.

The **condominium** is the owner's fee title to the airspace and his undivided interest in the underlying land, plus common areas within the improvement. The **project** is the entire parcel of real property, including all the condominiums. The project can be either

a high-rise development or a cluster of one or more storied buildings.

It is important to note the law now defines as a subdivision any condominium project containing two or more condominiums. In other words, filing of the condominium project must be made with the Real Estate Commissioner and a public report received before offerings can be made, even though the project contains only two, three or four condominiums.

Planned Development—Definition

A "planned development" is a real estate development other than a community apartment, condominium or stock cooperative project containing five or more lots or parcels which has either or both of these features:

(a) Contiguous or noncontiguous areas or parcels owned in common by the owners of the separately owned lots, with the common areas reserved to the beneficial use of some or all of the owners.

(b) Any power exists to enforce any obligation in connection with membership in an owner's association, or any obligation pertaining to the beneficial use and enjoyment of any portion or interest in either the separately or commonly owned lots by means of a levy or assessment which may become a lien on the separately owned parcels.

Examples of a common facility would include a swimming pool, playground, community building, club or golf course.

Earlier it was noted that condominiums, stock cooperatives and community apartments were excluded from the definition of a "planned development." Now let us consider some more definitions.

Stock Cooperatives

The new statutes define a "stock cooperative" as a corporation formed for the purpose of holding title to improved real property, with all or substantially all of the shareholders receiving the right of exclusive occu-

pancy in designated portions of the property. The title is held by the corporation and the right of occupancy is transferable only concurrently with the transfer of the share or shares of stock in the corporation held by the person having the right of occupancy. Some of the largest developments in California are being marketed under a stock cooperative plan.

As with the condominium project, a stock cooperative project having two or more shareholders is considered a subdivision, and a filing is made with the Real Estate Commissioner.

Community Apartment Project Defined

One more definition—a *community apartment project* is one in which an undivided interest in the land is coupled with the right of exclusive occupancy of any apartment located thereon. Again, a community apartment project only needs to contain two or more apartments to be defined as a subdivision and require filing with the Real Estate Commissioner.

Conditions Under Which a Subdivision Public Report Issues

Formerly, the law (Section 11018 of the Business and Professions Code) set forth eight separate grounds for denial of a public report on a subdivision. By the terms of AB 553, introduced by Assemblyman Knox, a ninth ground for denial became effective on September 17. This empowers the Real Estate Commissioner to deny the issuance of a subdivision public report if the developer plans to include in the offering any guaranty or warranty which is not supported by adequate financial arrangements. For example, a developer-builder might give an unconditional guaranty that he will repurchase any house he sells, up to two years of the sale. Such a guaranty could well be worthless unless the financial arrangements were set up to meet demands made under the guaranty.

Condominium Law

● Legislature Defines Various Types of Subdivisions

Commissioner's Obligations

In passing AB 2000 the Legislature reaffirmed the grounds for denial of a public report on the newly defined or redefined types of subdivisions, i.e., planned development, community apartment, condominium and stock cooperative projects.

However, with respect to these types of developments the statute says if none of these grounds for denial exist the commissioner shall issue a public report if he finds that reasonable arrangements have been made to assure completion of the subdivision and all off-site improvements included in the offering. If, in any one of these types of subdivisions, the improvements, including those attaching to the common facilities, are not completed prior to the issuance of the final subdivision report, the subdivider is required to specify a reasonable date for completion and must comply with one of the following conditions:

(a) Arrange for lien and completion bond or bonds to assure completion.

(b) Impound funds from sales or a portion thereof until the improvements are completed.

(c) Deposit an amount sufficient to cover the cost of construction in a neutral escrow depository with a written agreement providing for disbursements from the escrow as work is completed.

(d) Submit an alternative plan which meets the approval of the Real Estate Commissioner.

Commissioner Weighs Ability to Perform

Before issuing the public report, the commissioner must also be satisfied that the deeds, conveyances, leases, etc., to be used are adequate to transfer to the purchasers the legal interests and amenities which the owner or subdivider represents the purchasers will receive.

Satisfied, too, must be the requirements that, upon transfer of title to the first lot, apartment or condominium to a purchaser, the provisions of the plan for use, enjoyment, maintenance or preservation of the subdivision become binding upon the purchaser and subsequent purchasers.

The commissioner must be satisfied that reasonable arrangements have been made for delivery to the purchasers of control over the subdivision and off-site land and improvements included in the offering; also that reasonable arrangements have been made to protect the interest of the purchasers in respect to management, maintenance, etc. In addition, the law provides that material modifications may not be made in the instrument spelling out the interests of purchasers in planned development, community apartment, condominium or stock cooperative projects without prior written consent of the Real Estate Commissioner. Before written solicitation of the owners to effectuate such a change, the proposal must be submitted to the commissioner for approval.

Fees

Before going into the matter of fees, consideration might be given to the relative importance, measured numerically, of the common interest subdivisions, i.e., planned developments, community apartments, condominiums and stock cooperatives as compared to what we might call "conventional subdivisions," in which there is no interest in common. Of the 2,809 in-state subdivisions filed with the Real Estate Commissioner during the fiscal year 1964-65, approximately 300 were of the type having some interest in common. Surveys show these developments are increasing in popularity; and processing of common interest filings takes many more man hours than are usually devoted to "conventional subdivisions." This did not include, of course, any filings on stock cooperatives because such developments had to be cleared only by the Commissioner of Corporations.

On January 2, 1966, and thereafter the filing fee for a "conventional" subdivision will be \$50, plus \$2 for each lot. When an amended report is required, the charge will be \$25 (AB 2717, Chapter 1191, Stats. 1965).

The filing fee for a planned development, community apartment, condominium or stock cooperative project has been \$200 plus \$1 for each lot, parcel, apartment or unit in the subdivision, since September 17, 1965. The fee accompanies the completed questionnaire.

Regulations

The Real Estate Commissioner is empowered to adopt regulations to implement, interpret or make specific the terms of the statutes. Such a far-reaching and rather involved change in the law relating to the development industry, which is of utmost importance to the economy of the state, made it imperative to adopt, amend and repeal regulations to ease the transition.

Again Commissioner Gordon called for the advice and assistance of representatives of the industries involved. A series of proposed regulations was hammered out. They were adopted in official action, becoming effective October 17, 1965. The regulations are designed to provide guidelines for the prospective subdivider or developer. They are designed to answer these questions: What does the prospective subdivider or developer do in a specific set of circumstances? What in the way of documentation and safeguards will he be expected to provide? What instruments should be included under certain given circumstances?

Subdivision Fee Changes

Since September 17, 1965, the filing fee for condominium, planned development, stock cooperative and other community type subdivisions has been \$200 plus \$1 for each lot.

Effective January 2, 1966, the fee for all conventional subdivisions will be \$50, plus \$2 for each lot in the subdivision.

Effective January 2, 1966, the fee for all preliminary public reports will be \$25, plus \$5 for each 100 copies in addition to the first 100.

Effective January 2, 1966, the amended public report fee will be \$25 plus \$5 for each 100 copies in addition to the first 100.

SUBDIVISION

DEVELOPMENTS AND ITEMS OF SIGNIFICANCE

LAW TIGHTENED

Soil and Filled Ground Requirements Spelled Out

As prime subdivision property becomes scarcer in California, subdividers have been leveling hills and filling gulleys to create subdivisions. Properly engineered, these "cut and fill" areas offer no unusual hazards to lot or home purchasers, but if natural water courses are obstructed without providing for proper drainage or the fills are not properly impacted, lots and housing alike are subject to serious undermining and wash damage.

Taking cognizance of these conditions, the Legislature amended the subdivision law to require the subdivider to furnish a true statement of the maximum depth of fill used (or to be used) prepared by a registered civil engineer and, *unless waived by the local governing body*, a statement on the soil conditions in the subdivision. The statement must be supported by engineering reports showing the soil has been or will be prepared in accordance with the recommendations of a registered civil engineer.

If Local Waiver Is Not Obtained

In the event a waiver is not obtained from the local governing body and the subdivider proposes to sell subdivision lots without structural improvements, he is required to submit with the engineer's report an estimate of the costs purchasers can expect to meet in preparing the soil in a way that structural damage is not likely to result to buildings erected on the property. The cost estimate must be verified by a registered civil engineer.

If the subdivider fails to demonstrate that the soil within the subdivision has been, or will be, prepared in accordance to the recommendations of the engineer, the public report will not be issued.

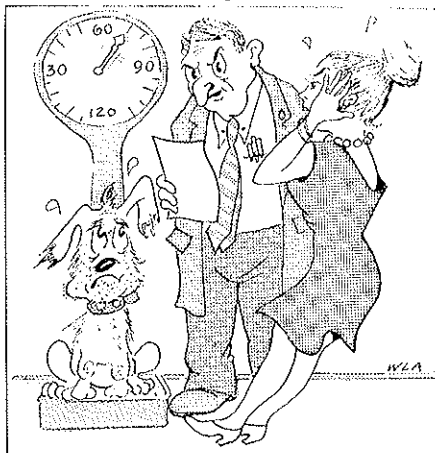
Since subdivision expansive soil and fill conditions have proved a fertile source of litigation and complaints, the commissioner requires engineering reports to be positive and definitive in nature. No matter how the report is worded, it should leave no question of doubt that, in the opinion of the reg-

istered engineer, the fill materials were placed and compacted to certain densities, under his inspection and testing, and are capable of supporting proposed construction loads without postconstruction distress.

Buy Now, But Consult Pets

A new demand for diet foods for pets may be created, further enlivening TV commercials, if a condition recited in the declaration of restrictions for a condominium development recently filed with the Division of Real Estate, becomes common. The condition reads:

"Not more than one talking bird may be kept in any one dwelling element, except as to parakeets, of which two may be so kept. Not more than



"It looks like you're going to have to take the three-bedroom unit, if you want to live here, or . . .!"

two songbirds may be kept in any one dwelling element.

"Other than such fish and birds, pets shall be limited to domesticated mammals of a total weight per one bed-

Commissioner Revokes Restricted Licenses

The Real Estate Commissioner revoked two restricted licenses for violation of Sections 10177(d) and (k) of the Business and Professions Code, that is on the grounds the licensees willfully disregarded or violated provisions of the Real Estate Law and the terms, conditions, restrictions and limitations contained in the orders granting restricted licenses.

Failure to File Reports

The two licensees were officers of a corporation, and when their brokers' licenses were revoked in 1959, restricted licenses were issued to them. In part, the restrictions provided that each of them file written reports with the DRE district office during the first month of each calendar quarter following the issuance of the restricted license, showing each real estate transaction completed during the preceding quarter. Failing to file reports in accordance with the orders, they were brought to hearing.

Cheater Denied License

An applicant was denied a renewal real estate salesman license recently because he violated Section 2763 of the Commissioner's Regulations, which spells out four specific examination rules to be observed by examinees.

In this instance, the candidate did not heed the examination proctor's instructions to place all books, notes and papers on the floor or at the front desk of the examination room. Instead, he had notes and memoranda on his desk and on his person and, during the course of the examination, he was observed referring to them.

room dwelling element of 40 pounds, of a total weight per two-bedroom dwelling of 60 pounds and of a total weight per three-bedroom dwelling element of 80 pounds, and may not exceed two in number in any one dwelling element, except that a litter of progeny may be kept until weaning, provided the weight limit be not exceeded."

Full Disclosure Required

(Continued from col. 1, page 725)

eighths interest in the property for the broker and his salesman who provided their seven-eighths share of the funds. The escrow closed and a broker's commission of \$1,500 was paid by the sellers. In 1960 the property was sold for a net profit of \$26,000.

The original owners sued the broker and salesman, and the court awarded damages in the sum of \$14,000 (approximately the difference between the fair market value and the sale price of \$37,000) plus punitive damages in the amount of \$5,000.

The broker and salesman argued that once the buyer had made an offer which was accepted by the seller, the broker could even undertake to resell the property at the request of the new buyer (this is the law) or, if they wish to do so, to purchase themselves. The court admitted that this might well be a correct proposition of the law in the usual case, however, here it said:

"At no time either before, during or after the sale did the broker perform the duty required of him as a real estate broker, namely to disclose to his client the true facts concerning the sale, nor did the broker act ethically."

The court noted the broker had represented the \$37,000 price to be the highest price obtainable. The court further stated that this certainly was not a case of a good-faith second sale by a broker on behalf of a purchaser of property by reason of the fact that the broker had been an undisclosed purchaser in this transaction from practically the inception.

Agreement as to Market Value

When you list property you necessarily discuss market value with the owner. If you come back at a later time and agree to purchase at the listed price or at a lower price, prudence would suggest that the seller have independent advice as to the market value of this property. If he does not, or even if he does, the seller may later claim that you had information which your position as broker required that you disclose. They will also contend that your information puts you in a better position to know

Advance Fee Operators Receive Setback

Unlicensed activity on the part of advance fee operators received a setback in a recent criminal court action in the bay area. In this case, an unlicensed operator entered into an agreement with a property owner, which provided for the payment of an advance fee of \$600 to negotiate a loan to be secured by a lien on the owner's real property. The operator failed to obtain the loan and refused to return the money.

Complaint Filed

The investigation which followed established that the operator had violated Section 10139 of the Real Estate Law—acting as a real estate broker or salesman without a license.

A complaint was filed by the DRE with the district attorney's office which resulted in a misdemeanor prosecution of the operator, who was convicted and given a 30-day suspended jail sentence. He was put on one-year probation and ordered to pay back the \$600 advance fee he had collected.

Facts Cited

The defendant claimed he had entered into an employer-employee agreement with the property owner and that the contract between them represented a duly executed power of attorney, under which he was acting. He failed in this attempt to obtain exemption under Section 10133 of the Real Estate Law for the court said that the document not only lacked the formal terminology and acknowledgments required for a power of attorney, but the intent of the parties was not, in the courts' opinion, sufficient to create a power of attorney. The court added that allowing such terminology to be binding would violate the intent and purpose of the Real Estate Law.

the value of the property than the seller.

This sort of transaction demands careful documentation if you purchase from or sell to a client.

LICENSE AND EXAMINATION FEE SCHEDULE

Effective January 2, 1966

Examinations (fees apply to real estate and mineral, oil and gas licenses)

Broker	\$25
Broker reexamination	\$25
Salesman	\$10
Salesman reexamination	\$10
Reschedule examination date	\$4

Licenses (fees apply to real estate and mineral, oil and gas, active or inactive, restricted and reinstatement of revoked license)

Broker (four years)	\$65
Salesman (four years)	\$40

Note: In case of original applicant, the fee is payable after applicant is notified of passing the examination.

Commissioner Suspends Broker's License for Demonstrated Negligence

Under Section 10177(g) of the Real Estate Law, the Real Estate Commissioner may proceed against a license in a case where demonstrated negligence or incompetence is shown by the agent. Webster says the word negligence "implies inattention to one's duty or business," "incompetence implies inadequacy."

Recently the commissioner ordered suspension of a real estate broker's license when the broker represented to the buyers that the lot frontage of the property purchased from him was 25 feet, when, in fact, the property had only 20 feet of front footage.

Despite certain mitigating circumstances, the hearing officer held that the broker "should have ascertained the true lot frontage dimensions prior to making any representation in this regard."

When an agent fails to use ordinary care in the conduct of his business, causing an unreasonable risk of harm to others, his actions can have far-reaching effects. There is a possibility that his negligent statements may be construed as a form of deceit and, if made carelessly with full knowledge that they were not justifiable, may constitute fraud. Fraud can subject the broker to both civil and disciplinary action. It may affect the enforceability of the contract between buyer and seller.

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printed in CALIFORNIA OFFICE OF STATE PRINTING

Summary of Changes Made in Licensing Procedure

Although past *Bulletin* articles have dwelt on the significant changes in real estate salesman licensing procedure which go into effect January 2, 1966, the changes are summarized below in an effort to clear up any misunderstandings.

Applications for first original real estate salesman license examination currently received will probably be processed in accordance with the law which becomes effective January 2, 1966. There may not be time to process the applications, schedule the examinations, and check fingerprints so that licenses can be issued under the present law. **No original one-year real estate salesman licenses will be issued after January 1, 1966. However, existing one-year original licenses with a termination date later than January 1 will continue valid until the termination date appearing on the license is reached.**

The applicant who passes the examination at the "entrance" level under the amended law and otherwise qualifies will be eligible for a four-year real estate salesman license (not a one-year license as at present). This license will be renewable indefinitely without further examination. The four-year li-

cence fee will be \$40. The examination fee remains as it is—\$10.

No Limitation on Reexaminations

There will be no limitation on the number of reexaminations which the real estate salesman license candidate may take under the changed law, although the application will be good for only one year. After that, if the candidate has failed to pass the examination, he may submit a new application.

What is the situation where an individual has a one-year real estate salesman license expiring after January 1, 1966? Suppose a person has a first original license which will expire August 10, 1966. He will not be entitled to the issuance of a second one-year license. An application to take the examination for the four-year license may be submitted before that date. The holder of a second one-year license is, of course, eligible to take the examination for a four-year license at any time within the term of that license.

After January 1, 1966, the applicant for license who requests rescheduling of his examination date will pay a \$4 charge.

Few Changes Made in Broker License Procedures

(Continued from col. 3, page 727)

application will be good for only one year. After that, if the candidate has failed to pass the examination, he may submit a new application. Previous test score results will not be considered in these circumstances.

(4) License examination fees will remain the same (\$25).

(5) After the examination is scheduled, if the candidate requests a different date, a rescheduling fee of \$4 will be charged.

Business Opportunity Licenses

After January 1, 1966, there will be no more business opportunity licenses. Possession of a real estate license will allow one to negotiate business opportunity transactions; no longer will a person need to hold and pay for two licenses in order to participate, for compensation, in a sale or a lease involving a business opportunity.

Should the Division of Real Estate receive an application for business opportunity license examination during the 90-day period preceding the repeal of the business opportunity license law, the applicant will be notified of the impending abolition of the license.

Any person holding an unrevoked or unsuspended business opportunity license 90 days prior to repeal of the business opportunity license law can apply to the Division of Real Estate for a real estate license of the same class, i.e., broker or salesman as the case may be. Under these conditions, the real estate license will be granted with no examination or fee and will have the same termination date as the surrendered business opportunity license. This does not apply when the holder of a business opportunity license already has a real estate license of the same class.