Real Estate Bulletin

Official Publication of the California Department of Real Estate

RONALD REAGAN, *Governor* Winter 1969–70 BURTON E. SMITH, *Commissioner*

Commissioner's Regulations Changed Extensively

Tightened supervision of salesmen by brokers, more stringent rules for operations of advance fee rental agents, new procedures and guidelines for developers of large land projects, and initial ground rules for real estate syndicators offering public participations have been provided by an important series of Regulations of the Real Estate Commissioner, recently adopted.

The Real Estate Law and the Subdivided Lands Act give the Commissioner authority to adopt regulations to clarify, implement, interpret or make specific the various sections of these laws. The Administrative Procedure Act requires that public hearings must be held in connection with any changes in official regulations.

Frequently regulations are adopted when there are changes in the law, and policies and procedures must be established to carry out their intent. This is the case with regulation Article 12.5 relating to AB 1214, the Land Projects Act, and Article 23 relating to AB 2000, the Real Estate Syndicate Act. Both are discussed briefly below, as are other regulations not necessarily promulgated in connection with recent legislation. **Those changes summarized here and preceded by an asterisk, went into effect January 2. No asterisk means an effective date of January 11, 1970.**

*Amended was **Section 2700** to update addresses of offices of the Department of Real Estate.

*Added was **Section 2725** to provide that real estate brokers shall review and initial real estate agreements prepared and/or signed by their salesmen, with provision for delegation of authority under specified circumstances.

*Amended was **Section 2752** to

(Continued, Col. 1, Page 895)

GO DIRECT

Your license transactions will be expedited if you mail directly to the Department of Real Estate, 714 P Street, Sacramento 95814. Branch offices do not maintain bank accounts so they cannot accept cash. If you need a particular form, call the local DRE office and it will be mailed to you.

Subdividers May Reproduce Subdivision Public Reports

Cognizant that delay of even a day or so can cause subdividers serious loss in time and money, the commissioner has taken steps to facilitate issuance of public reports by permitting subdividers to reproduce their own reports.

Not only has the new policy been well received by the subdividers as a time saver, the department will benefit by substantial savings in printing costs, etc.

When a subdivision is filed, the subdivider is notified that when all is is in order, the department will furnish him with the original public report from which he may reproduce his own copies. He, in turn, notifies the department of his intent to pick up the original public report or have it mailed to him at a given address.

(Continued, Col. 2, Page 890)

Proper Real Estate Trust Fund Record Keeping Is Essential

The fiduciary responsibility of a real estate broker makes the selection and maintenance of adequate trust fund records absolutely essential. Without exception, he must keep a true record of all trust funds passing through his hands. Such records must disclose in businesslike fashion all pertinent information concerning trust fund transactions.

A recent DRE monthly report read in part, ". . . 175 trust account examinations and investigative audits were completed. Violations or items of noncompliance were reported in 120 of the audits. Funds improperly handled ran to $76,938 . . ." This type of report exemplifies why the commissioner has accelerated his program of examination and inspection of records throughout the state.

As reported in previous *Bulletin* articles, this is basically an *educational* program to acquaint licensees with the requirements for proper and accurate recordkeeping and their other obligations in handling trust funds. The program becomes regulatory in nature only when there is evidence of a possible shortage of funds or some other violation of law or when a complaint investigation is underway involving possible mishandling of moneys. Then a complete audit is conducted.

This is illustrative of the difference between an examination or inspection and an audit. The law (Section 10148, B. & P. Code) provides that a real estate broker must retain for three years copies of all listings, deposit receipts, canceled checks, *trust records*,

(Continued, Col. 1, Page 892)

REAL ESTATE BULLETIN

Official Publication of the California Department of Real Estate

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STATE OF CALIFORNIA
RONALD REAGAN, *Governor*

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Chief Assistant Commissioner

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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—October 1969–December 15, 1969

REB—Real estate broker
RRES—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, until a final determination of the court action. Names of persons to whom licenses are denied upon application are not published.

Licenses Revoked From October 1969 to December 15, 1969

Name	Address	Effective date	Violation R.E. Law/Regulations
*Sentinel Realty Co. (REC) John Richard Williams IV, Pres. (Right to RREB license on terms and conditions)	2613 W. Manchester Blvd., Inglewood	7/ 1/69	10130, 10177(d) (f) (h)
*Williams, John Richard IV (REO) Pres., Sentinel Realty Co. (Right to RREB license on terms and conditions)		7/ 1/69	10130, 10177(d) (f)
*Valentino, Carrie C. (RES)	1717 N. Long B'ch Blvd., Compton	9/22/69	10176(i), 10177(f) (j)
Hatten, Ben Simpson (RES) (Right to RRES license after 6 months on terms and conditions)	212 Union Ave., Los Gatos	10/ 2/69	10177(d), 11010, 11018.2
Mumbower, Richard (REB)(RES)	16696 Cypress Way, Los Gatos	10/ 2/69	10177(d), 11010, 11018.2
Woodfield, Alan George (RES)	672 S. La Fayette Park Pl., L.A.	10/ 6/69	10177(b) (f)
Billings, Dennis Clate (RES)	848 W. Holt Ave., Pomona	10/ 7/69	10177(b) (f)
Petry, Paul C. (REB) dba Petry Realty (Right to RREB license after 20 days on terms and conditions)	1906 E. Rosecrans Ave., Compton	10/10/69	10176(i), 10177(f) (j)
Field, George (REB) (Right to RREB license after 6 months on terms and conditions)	4601 Geary Blvd., San Francisco	10/13/69	10176(a) (i), 10177(f)
Buckner, Wilson Ervin (REB) (Right to RREB license after 45 days on terms and conditions)	1717 N. Long Beach Blvd., Compton	10/17/69	10176(i), 10177(f) (j)
Korbar Harry (REB)(REO)(REC) Pres., M H P Invest. Corp. Pres., Korbar Realty	2522 Sepulveda Blvd., Torrance 2603 W. 231st St., Torrance Del Amo Financial Ctr., Union Bank Tower, Torrance	10/17/69	10176(a) (d) (i), 10177(f) (j)
Bath, James A. (RES)	9029 Leedy Ln., Fair Oaks	10/20/69	10176(e) (i), 10177(d) (j)
Blozan, William (REB)(REO) Asst. Vice Pres., Universal Mgmt. Serv., Inc. (Right to RREB license after 6 months on terms and conditions)	5624 Laredo Rd., Riverside	10/21/69	10177(b) (f)
Fontaine, Jack Bisby, Jr. (REB) (RES) (Right to RREB license after 6 months on terms and conditions)	1425 Ocean Ave., San Francisco	10/21/69	10145, 10177(d) (f) (j); 2830
Babin, Norbert S. (REB) dba Landry C. Babin Co. (Right to RREB license on terms and conditions)	756 Sacramento St., San Francisco	10/22/69	10145, 10176(e), 10177(d), (f); 2832
Spielmann, Joan Patricia (RES)	5536 Lake Murray Blvd., La Mesa	10/21/69	10177(b) (f)
Artavia, Joel (REB) dba The Riteway Co. (Stayed for 2 years on terms and conditions)	1263 Madison Ave., El Cajon	11/ 4/69	10145, 10148, 10177(d) (f); 2830, 2832
Biglow, Howard Louis (REB) dba Montclair Mortgage Co. (Right to RREB license after 45 days on conditions)	302 E. Rowland Ave., Covina	11/ 5/69	10176(d) (g) (i), 10177(j)
Covina Insured Mortgage Co., Inc. (REC) Howard Louis Biglow, Pres. (REO) (Right to RREB license after 45 days on conditions)	302 E. Rowland Ave., Covina	11/ 5/69	10176(d) (g) (i), 10177(j)
Rudolph, Maxwell Alonzo (REB) (Right to RRES license on terms and conditions)	8530 Wilshire Blvd., Beverly Hills	11/ 5/69	10177(b) (f)
Pierce, Lewis (RES) (Right to reinstatement of salesman license revoked)	Willotta Ranch, Suisun	11/13/69	10177(b)
Shaw, James Ernest (RES) (Right to RRES license on terms and conditions)	4100 Broadway, Sacramento	11/13/69	10177(b)
Hammond, Matthew Henry (REB) (Right to RREB license on terms and conditions)	347 E. Toyonal, Orinda	11/18/69	10145, 10176(e) (i), 10177(d) (f)
Kosieris, Andrew John (REB)	777 N. First St., San Jose	11/18/69	10177(b)
Kelly, Denver E. (REB) dba Haynobt Realty Exchange (Right to RREB license on terms and conditions)	26605 Mission Blvd., Hayward	11/20/69	10176(a) (i), 10177(f) (j)
Coffey, Jerome William (REB)	1076 S. Monterey St., Morgan Hill	11/22/69	10130, 10139, 10176(e) (i), 10177(d) (f) (j)
Howell, Doyle Clinton (RES)	534 S. Glendora Ave., West Covina	11/25/69	10130, 10137, 10176(i), 10177(d) (f) (j)
Kapsinow, Arnold (REB) dba Cap-Arnold Realty	4322 W. 121st St., Hawthorne	11/25/69	10176(a) (i), 10177(f) (j)
Brodkin, Terry Bruce (REB) (Right to RREB license on terms and conditions)	4638 Balboa, Fremont	12/ 9/69	10177(b)
Pitman, Lawrence, Jr. (RES)	2220 Watt Ave., Sacramento	12/11/69	10176(i), 10177(j)

* Not previously reported.

SUBDIVIDERS MAY REPRODUCE SUBDIVISION PUBLIC REPORTS

(Continued from Col. 2, Page 889)

He returns the original copy of the report along with a designated number of copies within 10 days.

If the subdivider does not elect to reproduce the public report, he is told the usual number of copies will be reproduced in Sacramento and forwarded to him.

The following is an excerpt of the applicable regulation:

"2795. . . . The copies of the public report shall be those prepared by the Real Estate Commissioner; provided, however, that exact reproductions may also be used. Such reproductions must use the same size of type as is used for the copies prepared by the Commissioner, and a sample of such reproduction must be filed with the Commissioner prior to use . . . ."

Licenses Suspended From October 1969 Through December 15, 1969

Name	Address	Effective date	Violation R.E. Law/Regulations
*Spores, George William (REB)	201 D St., San Rafael	6/25/69 Indefinitely	10475
*Hackius, Phillip Eugene (REB) (REC) Vice Pres., Golden West Invest. Corp. (REO)	14706 Delano St., Van Nuys	9/ 2/69 Indefinitely	10475
*Welch, Clinton William (REB)	59 Vancleave Way, Oakland	9/11/69 Indefinitely	10475
*Romaine, William John (RREB)	2367 Carquinez, El Cerrito	9/26/69 Indefinitely	10156.7
Hatten, Ben Simpson (Right to reinstate revoked RES suspended)	212 Union Ave., Los Gatos	10/ 2/69 6 months	10177(d)
White, Paul Raymond (REB) Pres., Paul White, Inc. (REO) (All but 10 days stayed on conditions)	1050 Broadway, Burlingame 1816 Castenada, Burlingame	10/ 6/69 Indefinitely	10148, 10177(d)
Bower, James Allen (REB) dba Allen Realty Co.	1213 N. Highland, Hollywood	10/ 7/69 15 days	10162, 10165, 10177(f)
Ceballos, Arthur (RREB)	91 Virginia Ln., Concord	10/ 7/69 15 days	10177(k)
Williamson, John Alden II (REB) (REO) Pres., California Plan, Inc. (Last 15 days stayed for one year on conditions)	3147 Stevens Creek Blvd., Santa Clara 1882 Colleen Dr., Los Altos	10/ 9/69 30 days	10176(a), 10177(g)
Fanning, Homer Cleo (RES)	335 32nd St., Richmond	10/15/69 Indefinitely	10475
Whicher, Thomas Ryan (RES) (Renewal right suspended)	P.O. Box 325, Pollock Pines	10/15/69 180 days	10177(b)
Tice, Richard Howard (REB) (After 30 days remainder or any portion thereof may be stayed on conditions)	1752 3rd St., Napa	10/19/69 220 days	10162, 10177(d); 2754
Starling, Kenneth Floyd (RRES)	136 Gilman Ave., Campbell	10/20/69 Indefinitely	10475
Coleman, Ashton Jerome (REB) dba Data Agency Realty	4306 Crenshaw Blvd., Los Angeles	10/21/69 6 months	10177(f) (j)
Holman, Dwayne Ellis (REB) dba Security Real Estate Co.	19703 Rowan Ave., Rialto	10/21/69 30 days	10177(f) (j)
McCullough, Frances H. (REB)	608 W. 40th St., San Bernardino	10/21/69 90 days	10177(b) (f)
Yeakel, Gary Robert (RES)	3954 Conejo Dr., San Bernardino	10/21/69 90 days	10176(a) (i), 10177(f) (j)
Powers, John Francis (REB) (Permanently stayed)	980 Woodside Rd., Redwood City	10/22/69 30 days	10177.5
Cohee, William Lee (RREB)	6676 E. 14th St., Oakland	10/24/69 Indefinitely	10156.7
Ferris, Gertrude Louise (RES)	815 Parklin Ave., Sacramento	10/28/69 60 days	10177(b)
Wackerly, L. Beatrice (REB) (After 30 days, remainder or any portion thereof may be stayed on conditions)	1190 35th Ave., Sacramento	10/28/69 192 days	10162, 10177(d)
McCartin, William Edward (REB) dba Village Associates	722 Park Ct., Santa Clara 316 State St., Los Altos	11/ 1/69 60 days	10177(h)
Holland, Orah E. (REB) (Stayed for 2 years on conditions)	455 B St., Galt	11/ 3/69 60 days	10176(c) (i), 10177(d) (f)
Ikeda, Leo Ryotaro (REB)	640 Arastradero Rd., Palo Alto	11/ 7/69 Indefinitely	10475
Britton, James Craig (REB)	767 14th Ave., Menlo Park	11/14/69 Indefinitely	10475
Hurst, Darwin Victor (REB) (REO) Pres., Forsight Real Estate Corp. (Right to reinstate RES)	9465 Wilshire Blvd., Beverly Hills 229 S. Rodeo Dr., Beverly Hills	11/18/69 30 days	10177(b) (f)
Graham, Maynard Keith (REB) (Stayed for one year on conditions)	833 South St., Long Beach	11/20/69 15 days	10177(b) (f)
Raymond, Marjorie Veryl (REB) dba La Deb Mortgage Co.	499 E. Rowland Ave., Covina	11/20/69 30 days	10176(d) (g) (i), 10177(f)
Raymond, Donald Earl (RES)	499 E. Rowland Ave., Covina	11/20/69 30 days	10176(d) (g) (i), 10177(f)
Pell, Bobby Leon (RES)	9339 Rose, Bellflower	11/28/69 30 days	10137, 10177(d)
Morrison, Grant Eugene (REB) (Right to reinstate RES)	28480 Mission Blvd., Hayward 35000 Perry Rd., Union City	12/ 4/69 60 days	10177(d)
Mumbower, Ronald Edward (Right to reinstate RES)	1119 Hollyhead Ln., San Jose	12/ 4/69 60 days	10177(d)

* Not previously reported.

Advance Fee Operator Attempts Circumvention of License Law

A fine of $100 was levied against an advance fee operator by the Municipal Court of San Diego County recently for engaging in the real estate business without being properly licensed. He was charged with three counts of violation of Section 10130 of the Real Estate Law, which defines activities for which a real estate license is required.

Due to mitigating circumstances, $75 of the fine was suspended; however, the defendant was placed on probation for two years on condition that he "not engage in real estate without a proper license."

The commissioner's deputy who investigated the defendant's business affairs found that he had offered his services for obtaining loans to be secured by liens on real property and collected fees for his services in advance.

Prior to filing a complaint with the district attorney's office, the commissioner issued a desist and refrain order, a regulatory measure in which he ordered the violator to refrain from engaging in activities requiring a real estate license until he obtained such a license.

Under Section 10139, a person acting as a real estate licensee without a license, upon conviction, may be subject to a fine of not to exceed $500, or by a county jail term not to exceed six months, or by both fine and imprisonment. If acting as a corporation, the maximum fine cannot exceed $5,000.

NO EDUCATIONAL REQUIREMENTS FOR SALESMEN APPLICANTS

Contrary to rumors based on misunderstanding, the applicant for real estate salesman license does not have to meet any educational requirements under present law. He need only be at least 18 years old and of good reputation.

After he has qualified by examination and he becomes employed—what then? It is still not mandatory for him to take advantage of educational opportunities, but doesn't he have a better chance to become reasonably successful with knowledge and perspective to be gained through the successful completion of real estate courses? Successful practitioners agree that experience alone is not enough.

Here is a list of real estate courses which are offered at most community colleges, some state colleges and university extension campus programs: real estate principles; real estate practice; legal aspects of real estate I; legal aspects of real estate II*; real estate finance; real estate appraisal I (residential); real estate appraisal II*; and real estate economics.

The salesman who intends to make a career out of the real estate business should strike a professional attitude early—and the information to be garnered in these courses involves the fundamentals of the vocation. Buyers and sellers are becoming more sophisticated and they are quick to detect the salesperson who is not knowledgeable and reject his services.

* Available fall 1970.

Proper Real Estate Trust Fun

Records Must Be Made Available For Examination and Inspection

(Continued from Col. 3, Page 889)

and other documents executed by him in connection with any transaction for which a real estate broker license is required. Records for transactions involving loans under the real property loan law or security dealer transactions must be retained for four years. **After notice, these books, accounts, and records must be made available for examination and inspection by auditors or deputies or other designated representatives of the Real Estate Commissioner and upon the appearance of sufficient cause, the real estate broker's records are subject to audit without further notice.**

One difference between the examination or inspection and the audit is the notice which must be given before an examination or inspection. From a practical standpoint, the auditor calls on a randomly selected office of a licensee. He explains the purpose of his visit and in the majority of cases, by mutual agreement, this constitutes the required notice and the auditor proceeds with his examination and inspection. However, if for some reason it is not convenient for the broker to have his records inspected when the auditor first calls upon him, an appointment is arranged for a future date and time.

There also is another practical difference between an examination or inspection and an audit. During an examination and inspection, the auditor will spot check the flow of funds in a few transactions and normally will not be at the broker's office for more than three hours. An audit is a complete check of all transactions over a given period of time and may require up to a week or even more to complete.

Broker Refuses to Submit Records

Recently in the bay area the commissioner suspended a broker's license for violation of Section 10148, B. & P. Code. The broker was scheduled for a trust account examination. After receiving due notice, he refused to present his records for examination. A formal action followed, and as a result of the hearing, his broker license was suspended indefinitely, with all but 10 days of the indefinite suspension stayed providing he made his books, accounts and records available for examination and inspection by the commissioner's auditors. The broker's license privilege was restored when he permitted his records to be examined.

Brokers should realize that the commissioner is acting within the framework of the real estate law, and they cannot vitiate his right to enforce Section 10148 relating to the examination, inspecting and auditing of their records.

Trust Fund Bank Account

In order to decide what records must be maintained, it is easier to separate trust funds which go into a trust fund account from those which do not. In a limi number of circumstances a broker must deposit funds directly into *escrow.*

For instance, a broker who is in the business of buying and selling notes secured by liens on real property as defined in Section 10131.1 of California Real Estate Law must place all purchase funds in such transactions in a neutral escrow depository, as must a real property securities dealer. When a licensee is acting as sales agent in a subdivision the impound requirements under the subdivision law prevail.

These required escrow depositories are the exception and **general real estate brokerage is governed by the law provision requiring the broker licensee who does not immediately place all funds entrusted to him by his principal or others in a neutral escrow depository or in the hands of his principal to maintain a trust fund account with some bank or other recognized depository and place all such entrusted funds therein upon receipt.** Therefore, according to the Real Estate Law, it is not mandatory for a broker to maintain a trust fund account or place funds directly into escrow except in the circumstances mentioned.

However, a prudent and responsible broker should keep in a special bank account, separated from his own funds, moneys coming into his possession in trust for other persons. At this point, it is also well to bear in mind that the California Insurance Commissioner quires insurance trust funds be kept separate from other funds. This precludes deposit of insurance fund collections and real estate funds in the same "trust account."

Trust Account Withdrawals

The regulations of the Real Estate Commissioner (Section 2834) specify the conditions of withdrawal from a trust fund account. The real estate broker must be designated as trustee of the account, and all trust fund accounts must provide for withdrawal of the funds without previous notice. Withdrawals cannot be made excepting on the signature of the broker or upon the signature of one or more of the following persons when authorized by the broker:

1. A salesman in the broker's employ;
2. Any corporate officer of a corporation licensed as a broker;
3. Any unlicensed employee, provided such employee is covered by a fiduciary bond indemnifying the broker against loss of money or property by act of such employee in an amount sufficient to cover funds or property held in trust.

Even though the broker may delegate the authority to withdraw trust funds or by other methods handle trust funds, he cannot delegate his accountability under the statutes. The mere fact of the employee's irresponsibility or negligence does not relieve the broker of complia with the law.

d Record Keeping Is Essential

Although the law requires a fiduciary bond only when the broker has authorized an unlicensed employee to withdraw funds from the trust account, as a further protection for his principals as well as himself, the broker may decide to bond anyone he authorizes to withdraw moneys from the trust account. As added protection some may bond, or otherwise insure against negligence or fraud, sales people and anyone else who may handle trust funds even though they are not authorized to withdraw from the trust account.

Why a Trust Fund Account?

In any discussion of trust funds, it is necessary to ascertain the legal reasons for the trust account. Basically it is set up to separate trust moneys from a broker's money in his own general account so that they will not be commingled. But the legal theory of a trust account as opposed to a general account containing the broker's own funds and those of his clients goes far beyond that consideration.

One important difference goes to the consequences of legal action which might be taken against the broker. **It is possible his general account could be tied up during the course of the legal action by a writ of attachment filed against the account. If the trust account is a true trust account, a possibility of attachment should not even be a concern, but even if a broker has a sepa-te trust account, if it is not in fact a true trust account, ne money of his clients could be "frozen" during a legal battle. If the broker should become incapacitated or die, the same thing could happen to clients' funds during probate.**

There is one other major advantage for clients. The general counsel of the Federal Deposit Insurance Corporation in an opinion in 1965 held 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 the deposit is disclosed on the depositors' records.

To sum up, if a broker maintains a true trust account and has accurate records, his clients' funds are better protected from attachments and probate action. If the funds are attached they would be released more readily with proper records and a true trust account. Also each client is insured up to $15,000 by the Federal Deposit Insurance Corporation. **Strictly speaking, a true trust account would be one which not only was labeled a trust account but which named the broker as a trustee and one which contained *only* funds of clients.**

It is sometimes difficult for the broker to abstain from having any of his funds in the trust fund account, gely for two reasons. First, many banks have a service charge. To cover this contingency, the broker is permitted to have not more than $100 of his personal funds in a trust fund account for the sole purpose of covering the bank service charges. Even though this is permitted, it is preferable for a broker to make arrangements to have the bank charge the broker's commercial account for trust account service charges. Most banks will do this. Secondly, from time to time, brokers have earned commissions in their trust account. Brokers are urged to transfer any earned commissions to their general account promptly. Sometimes it is not practical to transfer immediately earned commissions. Earned commissions may remain in the trust account for a period not to exceed 30 days.

Property management brokers have pointed out another problem in trust account management when a broker is involved in a large property management business. It becomes awkward for him to transfer moneys from the trust account to his general account in order to pay bills on property he is managing. Therefore, he is allowed to draw checks against a specific rental collection in his trust account to pay bills incurred in connection with a property he is managing when he has authorization to pay the bills by a written management agreement. He may not pay bills out of his trust account in anticipation of rental collections. In such cases, payment should be made from his personal or business account which can be reimbursed after he has deposited the rental collections in his trust account. **He should never pay his personal obligations out of a trust account even if they are drawn against earned commissions. For instance, if he wants to pay the rent on his office or electricity charges and has earned commissions in his trust account, he should transfer the total of the commissions to the general account and then pay the personal obligations.**

Trust Fund Records

As discussed above, the broker in order to protect his clients must have a true trust account and must maintain records to show to whom the money belongs in that trust account. The first phase, the true trust account has been covered. The necessary records to protect clients' moneys is the second phase. The Regulations of the Real Estate Commissioner (Section 2831) spell out records which must be maintained for both trust funds which go into a trust account and trust funds which do not go into a trust account.

In connection with funds which go into a trust account, the records must set forth in columnar form the date funds are received, from whom received, and the amount. The records must also show the date of the deposit and check number or date of related disbursements. Finally, they must show the daily balance of the trust bank account.

In addition to these records, for all transactions involving moneys deposited in the trust account, the

(Continued, Col. 1, Page 894)

Reorganization Plan Implemented by Commissioner

In keeping with his policy to increase steadily the effectiveness and efficiency of departmental operations, Commissioner Smith recently announced the promotion of Thomas J. Nolan to the post of assistant commissioner, Headquarters Subdivisions, as part of a move to strengthen administration and enforcement of the Subdivided Lands Act.

Nolan, a 23-year veteran in state service, will be responsible for statewide uniform preparation of subdivision public reports by the department's three regional offices handling subdivision filings. In addition, he is administering the state's stringent law applying to out-of-state subdivisions. Richard B. Carlson has moved up to replace Nolan as chief deputy, Headquarters Subdivisions.

William H. Wall of the Los Angeles District Office was promoted to chief deputy of the Southern Regulatory Area subdivision section in Los Angeles. John Lazur, chief deputy in charge of the San Francisco District Office, has taken over the administration of the Northern Regulatory Area subdivision section in San Francisco.

George E. Dunn was promoted to the post of chief deputy in charge of licensing and accounting and will be responsible also for the upcoming changeover to a computer system for handling most of the department's recordkeeping. Dunn has been in state government for 32 years.

Richard Nicholls, deputy in charge of the San Diego District Office, moves up to the position of chief deputy and, based in Sacramento, will be directly responsible for coordinating the department's education and research program. John A. DiBetta of the Los Angeles District Office was promoted to chief deputy and transferred to San Francisco in charge of that district office. Richard Ranger, formerly stationed in Sacramento, has been moved to take charge of the San Diego District Office—a promotion for him.

This partial reorganization is in line with modern management methods and long-range planning aimed at creating an improved chain of supervision and control of operations. It pinpoints responsibility, and blends with continued efforts to streamline operations in the interests of better service to the public and the industry.

ATTENTION SUBDIVIDERS!

If you have a subdivision on which a public report has been issued and the subdivision involves 50 or more unimproved lots, the tract may be considered a land project as defined by Section 11000.5 of the Business and Professions Code.

This section became effective January 2, 1970 and, in order to determine whether you are complying with current law, you should contact the nearest office of the Department of Real Estate.

REASONABLE SUPERVISION

In an effort to define *one area* of reasonable supervision, the Commissioner has adopted a regulation requiring a broker to review all real estate agreements prepared or signed by a salesman which would materially affect the rights or duties of the parties to the transaction. **This would include all listing agreements, deposit receipts, leases, exchange agreements and other agreements, or amendments to agreements, *prepared or signed* by a salesman.**

These documents must be reviewed and *initialed* by the broker within 5 working days of the execution of the documents or before the close of escrow, whichever occurs first. The initialing becomes evidence of having seen the document and does not affect its validity. "Working days" do not include Saturdays, Sundays, and holidays. Although the broker may not be relieved of responsibility of supervision, he may delegate specific authority to review and initial agreements to a licensed real estate broker in his employ. Similarly, it may also be delegated to a real estate salesman who has at least two years full-time real estate salesman experience during the preceding five-year period. The broker or the salesman must enter into a written contract with the employing broker relating to the delegation.

Since the broker is ultimately responsible, regardless, he protects his reputation and his license best by personally reviewing agreements.

Proper Real Estate Trust Fund Record Keeping Is Essential

(Continued from Col. 2, Page 893)

broker must keep a separate record for each beneficiary or transaction. These records also must be in columnar form and set forth information sufficient to identify the transactions and the parties to the transaction. Columnar information must include the date and amount of funds deposited, the date, check number and amount of each related disbursement.

If each broker who uses a trust account will keep the above records and have a true trust account, his clients' funds will be well protected.

What about trust funds which do not go into the trust account? Examples would be instruments which are given to the broker for delivery to a third person, such as checks made payable directly to a title company or escrow company, personal notes, or a check representing the sales proceeds from the title company or escrow company made payable to the seller. Such checks or notes which pass through the broker's hands and are held by him for any period of time for the benefit of a third person are trust funds. **A record must be kept of these trust funds in columnar form showing the date, amount and from whom the trust funds were received and the date and to whom the funds were forwarded.**

Special forms for keeping the above records are not required. However, there are suggested forms and documents which may be used and are especially adaptable for use in a small brokerage office. **Space will not permit reproducing them, but they may be found in completed form in Chapter 22 (Trust Fund Records) of the**

(Continued Col. 1, Page 896)

COMMISSIONER'S REGULATIONS CHANGED EXTENSIVELY

(Continued from Col. 1, Page 889)
provide that a salesman transferring from one broker to another shall certify in writing he has notified the broker whose employ he is leaving of his intention, except when that broker has signed the transfer form (RE 214).

*Repealed was **Section 2771** relating to signs and their location (signs no longer necessary).

*Repealed was **Section 2771.6** relating to sign requirements for partnerships.

*Repealed was **Section 2772** relating to wording of signs.

*Repealed was **Section 2775** relating to filing of complaints.

*Repealed was **Section 2776** relating to investigations of written complaints.

*Repealed was **Section 2777** relating to hearings.

Amended was **Section 2790.7** to provide out-of-state land promotions shall comply with such provisions of the Subdivided Lands Act and pertinent regulations as the Commissioner deems applicable to the particular subdivision.

Added was ARTICLE **12.5,** entitled "Land Projects." (Land Projects Act, AB 1214, Chapter 763, Stats. 1969). The article includes the following added sections:

Section 2819.5 to define "registered voters", "builders" and "developers".

Section 2819.6 to outline acceptable methods of rescission under Section 11024, newly added to the law.

Section 2819.7 to require developer to furnish purchaser prescribed notice disclosing right of rescission.

Section 2819.8 to define "Cash Deposit" by the developer.

Section 2819.9 to spell out satisfactory methods of meeting the requirements of Section 11018.6(b), newly added to the Subdivided Lands Act.

Section 2819.95 to define "acceptance for maintenance" used in Section 11018.6(c), newly added to the statutes.

Section 2819.96 relating to the period within which the developer shall report withdrawals by contract purchasers.

*Amended was **Section 2840** to provide alternative forms of Broker's Loan Statements (subject to approval by the Commissioner).

*Amended was **Section 2843** to specify further limitations on mortgage loan costs and expenses.

*Amended was **Section 2852** to specify that (a) advance fee rental contracts shall reasonably describe the rental involved; (b) the contract form shall be filed with the Commissioner prior to use, and; (c) the name and address of the "advance fee rental agent" shall appear on the form.

*Amended was **Section 2856** to provide that an advance fee rental agent shall not refer a prospective tenant to a rental listing unless the availability of the listing has been verified within the preceding three business days.

* * *

Added was ARTICLE **23,** entitled "Real Estate Syndicate Securities" (Real Estate Syndicate Act, AB 2000, Chapter 928, Stats. 1969). The article includes these added sections:

Section 2990 to define terms.

Section 2990.5 to exempt syndicates qualified under the California Corporate Securities Law of 1968.

Section 2991 to provide for a permit application form prescribed by the Commissioner containing all matters set forth in Section 10271 of the B&P Code, plus other pertinent information and documents.

Section 2991.5 to provide for an application form written by the Commissioner for a negotiating permit allowing the offer of real estate syndicate securities before "effective" qualification.

Section 2992 to provide for a prospectus or offering circular which should be given to each investor at earliest stage of solicitation, disclosing all material information relating to the investment.

Section 2992.5 setting forth a policy statement regarding application of regulations to individual situations.

Section 2993 to establish guidelines for judging reasonableness of compensation of real estate syndicators.

Section 2993.5 to provide syndicator's promotional interest in profits should be subordinated. Also outlines conditions under which such profit should become payable to syndicator.

Section 2994 to clarify "fair" selling expenses, real estate brokerage commissions and management fees.

Section 2994.5 to provide that a syndicator may sell property in which he has an interest to a syndicate at a profit, or sell one syndicate to a new syndicate, when he is involved in both syndicates, providing the price is clearly substantiated as being the fair market value of the property.

Section 2995 reading: "Ordinarily, an initial capital investment for a security interest of less than $1,000 will not be considered fair."

Section 2995.5 to enumerate a series of minimal safeguards in the syndicate agreement.

Section 2996 to provide that investor must receive a copy of the syndicate agreement prior to execution.

Section 2996.5 to provide guidelines for measurement of suitable financial resources on the part of interested investors.

Section 2997 to require, in ordinary practice, a legend condition restricting transferability.

Section 2997.5 to provide that application for written consent of the Commissioner for the transfer of syndicate securities shall be made on forms provided by the Commissioner, who may also require additional information and documentation.

Section 2998 to provide the irrevocable consent to service of process required by Section 10287 of the B&P Code shall be furnished on designated forms.

Section 2998.5 to provide that agreements for the subscription to, or sale of, real estate syndicate securities shall be made only on forms approved by the Commissioner, with a signed copy given to each investor. Syndicators shall preserve signed copies of agreements for three years.

(Continued, Col. 1, Page 896)

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Commissioner's Regulations Changed Extensively

(Continued from Col. 3, Page 895)

Section 2999 to require that application for an amended permit or for written approval by the Commissioner under Section 10297 of the B&P Code shall be on a form provided by the Commissioner.

Section 2999.5 to provide that applications for renewal of permit, or a change in the rights, preferences, privileges or restrictions on outstanding securities must be on forms furnished by the Commissioner.

Section 2999.6 to provide that real estate syndicate advertising should disclose all relevant facts fairly and accurately and comply with a series of specific standards enumerated in the section.

***Editor's Note:* A printing of the Real Estate Law and the Regulations of the Real Estate Commissioner is due early in March. It will be up to date. Cost: $2, plus state sales tax if ordered in California.**

NUMBER OF LICENSES INCREASES 5.4 PERCENT

Real estate and mineral, oil and gas licenses issued and in effect as of October 10, 1969, totaled 152,179, a 5.4-percent increase over the 144,365 reported on November 1, 1968. Of the licenses, 26.7 percent were inactive as compared to 26.2 percent last year. The percentage of inactive licenses has risen steadily during the last five years from 19.8 percent to 26.7 percent.

There is one real estate license for every 131 individuals in California, including minors and the aged. If only "active" licensees are taken into account, the ratio becomes 1 to 186.

REAL ESTATE AND MINERAL, OIL AND GAS LICENSES
Issued and in Effect October 10, 1969

Type of license	Corporations		Partnerships		Brokers		Salesmen		Branches	Total	
	Inactive	Active	Inactive	Active	Inactive	Active	Inactive	Active		Inactive	Active
Real Estate	97	4,349	16	693	8,786	48,985	31,728	57,462	9,774	40,627	111,489
Mineral, oil and gas	0	6	0	0	17	40	--------	--------	1	17	46
Total	97	4,355	16	693	8,803	49,025	31,728	57,462	9,775	40,644	111,535
Grand total (Oct. 10, 1969)	4,452		709		57,828		86,490		9,775	*152,179	
Grand total (Nov. 1, 1968)	4,234		1,086		56,447		82,598		8,980	144,365	
Grand total (June 30, 1967)	4,377		1,310		57,171		78,092		9,109	140,950	
Grand total (June 30, 1966)	4,557		1,546		57,033		88,165		9,659	151,301	
Grand total (June 30, 1965)	4,699		1,847		60,691		97,518		11,048	164,755	

* The Oct. 10, 1969, total includes 1,847 out-of-state licenses plus 69 out-of-country licenses.

Proper Real Estate Trust Fund Record Keeping Is Essential

(Continued from Col. 3, page 894)

***1969 Reference Book.* The commissioner urges all licensees to study this chapter and to become thoroughly familiar with Sections 10148 and 10240 of the B. & P. Code and those sections of the Commissioner's Regulations having to do with trust fund handling and records.**

The California Real Estate Association now publishes a looseleaf binder entitled *Real Estate Trust Fund Records and Requirements* which includes a limited supply of forms designed primarily for a small brokerage office. A supply of these forms may be purchased from CREA in pads of 50.

A detailed review of recent formal hearings involving commingling and conversion has convinced the commissioner and his staff that some of the violations could not have been prevented because they obviously were intentional acts, but there were a large segment of the cases which indicated a lack of knowledge or carelessness on the part of the licensees rather than intentional dishonest acts. A lack of accountability for trust funds, however, is a serious violation of law even if it is unintentional. **The commissioner's motive for the spot-check audit and office survey program is to help reach a professional level in trust account record keeping. This is one of the fundamental prerequisites in obtaining professional status.**