

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, January, 1953

D. D. WATSON, Commissioner

When Court Finds Fraud, License May Be Lost Law Provision Making Fraud Judgments Basis for License Loss Upheld

Any real estate broker or salesman who is found in a civil action to be guilty of fraud in his dealings as a real estate agent may have his license revoked or suspended by the Real Estate Commissioner following a hearing.

This provision was added to the license law in 1945, and since that time several brokers and salesmen who have suffered fraud judgments in civil courts have had their licenses suspended or revoked.

A late case of this kind concerned two brokers who were sued on the grounds that they had fraudulently handled the property of a client. The court found that they were doing business together as real estate brokers, and had secured a deed to a motel property from one of their clients on the representation that they would not record the deed until they had sold the property; that they would keep up payments on trust deeds which were liens against the property, would manage it, and when they sold it would pay their clients \$5,500 clear of the debts.

Instead of doing as they had agreed to do, the brokers recorded the deed, failed to keep up the trust deed payments, permitted the property to be sold under power of sale in one of the trust deeds, and through a confederate purchased the property for themselves at the sale which followed.

Upon these facts, a superior court rendered judgment against the brokers, which they paid and satisfied in full.

Hearing and Revocation

Proceedings were commenced by the Real Estate Commissioner to revoke the licenses of these brokers. After due notice, they appeared at the hearing without counsel. They were sworn, made their statements and were cross-examined, and participated in the hearing.

As a result of the hearing, the brokers' licenses were revoked as the commissioner found that these brokers had violated various sections of the license law, including Section 10177.5, which

(Cont. on Page 79, Col. 2)

Subject Index In This Issue

A "Table of Contents" will be found on pages 79 and 80 of this issue of the *Real Estate Bulletin*, covering all issues since July, 1951, when the *Bulletin* became an eight-page publication.

It is hoped that the subject index will be helpful to those who have been keeping a "Bulletin file," and who may want to refer to various articles published in the past.

It is planned to publish such an index once each year. It is suggested you file your *Bulletins* for future reference.

Protect Your Deal by Communicating Acceptance

How a broker could lose a transaction which he might have assumed to be all "wrapped up" was pointed out by Herbert L. Breed, Esq., counsel for the California Real Estate Association, speaking at the CREA convention.

Mr. Breed was discussing the requirements of the codified law that the consent of the parties to a contract must be communicated by each to the other. He went on to say: "Applying these elementary principles of contract to your deposit receipt, we have an offer when the purchaser signs and delivers it to the broker. Assume the broker gets the seller to sign as written, there is yet no contract.

"Until its acceptance is communicated, the purchaser is not yet bound but may revoke.

"The broker should immediately deliver to the purchaser personally, or mail to him, a copy of the deposit receipt signed by the seller. Mailing is the usual method of communication. * * * I recommend to my clients both immediate mailing and a telephone call to advise the purchaser."

Commissioner Required to Investigate Complaints Investigations Necessary to Get Facts and View Both Sides of Stories

Apparently some licensees become over-apprehensive upon receipt of a letter from the Real Estate Commissioner's office calling for the licensee to clarify certain aspects of a real estate transaction in which he has participated and about which a complaint has been made. It is customary to ask the licensee for his version of the circumstances. It should be distinctly understood by all licensees that, at this stage, the Real Estate Commissioner is only seeking the facts and not attempting to prejudge the merits of any case being investigated.

Of necessity, an investigation should be thorough and complete and all the facts should be brought out. However, the commissioner does not take the position of a "prosecutor" or "persecutor" in the investigation; and every

consideration is given all parties when asked to explain the questioned situation.

In many cases, a letter from the licensee clarifies the situation and the investigation need proceed no further. However, it often becomes necessary to call a conference when the stories are conflicting, and all parties are asked

(Cont. on Page 74, Col. 2)

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Sacramento, January, 1953

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DIVISION OF REAL ESTATE

STATE OF CALIFORNIA
EARL WARREN, Governor

D. D. WATSON
Real Estate Commissioner

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DISCIPLINARY ACTION—OCTOBER, NOVEMBER

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. A list of persons to whom licenses are denied upon application is not published.

LICENSES REVOKED DURING OCTOBER AND NOVEMBER, 1952

Name	Address	Effective date	Violation
Lemey, Warren Harding Real Estate Broker	137 W. Valley Blvd., San Gabriel	9/30/52	Secs. 10176 (a), (b), (i) & 10177 (f)
Simmons, Clarence Lester Real Estate Salesman	946½ S. Atlantic Blvd., Los Angeles	10/20/52	Sec. 10177 (b) & (f)
Marks, Joseph Reginald Real Estate Broker Business Opportunity Broker (Conditional)	1730 E 14th St., Oakland	10/25/52	Secs. 10177 (b), (f); 10302 (b) & (e)
DeBiew, Clarence Charles dba DeBiew Realty Co. Real Estate Broker Business Opportunity Broker (Conditional)	1648 Newcomb Ave., San Francisco	10/31/52	Secs. 10176 (e), (i); 10177 (f); 10302 (e) & 10140 and Sec. 2830 of the Rules & Regulations of the R.E. Comm.
LeCointe, Richard Ernest dba West Land Realty Co. Real Estate Broker (Renewal Right)	1517 N. Mariposa Ave., Los Angeles	11/12/52	Sec. 10177 (b)
Barrows, Russell H. & Assoc., Inc. Real Estate Broker (Renewal Right)	3474 Liberty Blvd., Southgate	11/17/52	Secs. 10176 (e), (i) & 10177 (f); and Secs. 2830 & 2832 of the Rules & Regulations of the R.E. Comm.
Williams, Ocie Chas. Real Estate Broker	4312 Ascott Ave., Los Angeles	11/17/52	Secs. 10176 (e), (i) & 10177 (f)
Hackius, Phillip Eugene Real Estate Broker (Renewal Right)	225 Sepulveda Blvd., Manhattan Beach	11/17/52	Secs. 10176 (e), (i) & 10177 (f); and Secs. 2830 & 2832 of the Rules & Regulations of the R.E. Comm.

Women in Real Estate

There are about 30,000 women engaged in work as real estate brokers or saleswomen in the United States according to a recent article written by Edwin L. Stoll, Assistant Director of Public Relations of the National Association of Real Estate Boards. Tribute was paid to the professional skill and knowledge of many of the women in the business.

Mr. Stoll said that most of the 30,000 are saleswomen but estimates that at least 4,000 are real estate brokers, many of whom have their own firms. In the article, Mrs. Isabel T. Mitchell of Compton, California, 1952 President of Women's Council of NAREB, was quoted as saying: "Women are 'naturals' in the role of home sellers," and that "the best and only real security any woman can have is the confident independence of the knowledge that, come what may, she has within herself the ability to succeed in a profession tailored to her inherent abilities."

No exact figures are available as to just how many of the real estate licensees in California are women. It has been noted, however, that women comprise from 10 to 20 percent of the average group appearing for examination for license.

LICENSES SUSPENDED DURING OCTOBER AND NOVEMBER, 1952

Name	Address	Effective date and term	Violation
Collins, Lee G. Real Estate Salesman	701 Griswold Ave., Modesto	10/24/52 10 days	Sec. 10177 (b), (f)
Grandi, F. Lloyd dba Marvelous Marin Rlty. Co. Real Estate Broker Business Opportunity Broker	1314 4th St., San Rafael	11/30/52 120 days	Secs. 10176 (e), (g), (i); 10177 (f); 10301 (e) & 10302 (e)

Commissioner's Investigations

(Cont. from Page 73, Col. 3)

to be present so that the investigating deputy may interview them, hear their statements in front of each other and get "all the cards on the table." The conference is only a part of the investigation and is not a "formal" hearing.

Nature of Conferences

No one is allowed to attend the conference except the interested parties and their respective witnesses. Attorneys may attend in the interests of one or more of the parties. The conference is not a "trial," but instead a meeting of all parties to ascertain the facts of the case. The conference itself is not of a public nature and is not publicized.

At all times, licensees are welcome to discuss with the Real Estate Commissioner or his deputies any problems

arising from an investigation. In most investigations, it has been found desirable to obtain a written statement from the licensee so that there may be a written record of his version of the transaction in question and not merely a third party's interpretation of the licensee's story.

The Real Estate Commissioner will not act in an arbitrary, dictatorial or capricious manner and all licensees may be assured that any cases in which they are involved will be thoroughly, completely and fairly investigated for a determination of the facts and of what action, if any, should be taken by the commissioner.

It is an unpleasant duty to have to take disciplinary action against any licensee, but such action must be taken when warranted so that public confidence may be maintained.

Real Estate Certificate Program

This spring, the University Extension, University of California, in cooperation with the Division of Real Estate and the Educational Committees of NAREB and the California Real Estate Association, is again presenting a state-wide program of real estate courses. Upon successful completion of eight of these courses, a Certificate in Real Estate is awarded by University Extension.

By enrolling in two courses each semester, it is possible for a person to be eligible for the Certificate in Real Estate in two years. As the program has been developed for the prime purpose of assisting individual brokers and salesmen to increase and broaden their professional knowledge and through them raise the standards of the real estate business, many of them have taken advantage of the opportunities offered by the courses. The program also offers an opportunity to keep abreast of economic trends and legislation affecting real estate transactions, as well as a chance for refresher training.

Although the program is designed primarily for personnel in the real estate business, many in related fields have also found the courses of great value. The certificate in real estate is gaining in acceptance and significance, and the industry and public are recognizing the enhanced professional stature of certificate holders.

Following is the spring schedule of courses; giving starting dates and locations. There are from 12 to 18 meetings scheduled for each course.

U. C. EXTENSION DIVISION SPRING REAL ESTATE COURSE SCHEDULE

Northern Area

Berkeley Campus: Wheeler Hall
 Real Estate Practice—Feb. 9, 7-9 p.m.
 Real Estate Valuation—Feb. 10, 7-9 p.m.
 Sales Analysis and Sales Management—Feb. 11, 7-9.30 p.m.

Berkeley Campus: Engineering Building
 Construction Costs and Estimating—Feb. 24, 7.30-9.30 p.m.
 Estimating for Construction—Feb. 25, 7.30-9.30 p.m.

Fresno: Auditorium, 2123 Amador Street
 Real Estate Valuation—Jan. 19, 7-9.30 p.m.
 Salesmanship—Mar. 12, 7-9.30 p.m.

Marin County: San Rafael High School
 Real Estate Law—Feb. 16, 7-9.30 p.m.

Marin County: San Rafael City Hall
 Real Estate Valuation—Feb. 17, 7-9.30 p.m.

Menlo Park: Menlo School and College
 Real Estate Appraisal and Valuation—Feb. 10, 7.30-10 p.m.

Oakland: 1730 Franklin Street
 Real Estate Appraisal and Valuation—Feb. 18, 7-9.30 p.m.
 Real Estate Management—Feb. 17, 7-9 p.m.
 Salesmanship—Feb. 11, 7-9 p.m.

Richmond: City Hall
 City and Regional Planning—Feb. 17, 7.30-9.30 p.m.

Sacramento: 1020 N Street
 Real Estate Law—Feb. 17, 7-9 p.m.
 Real Estate Valuation—Feb. 16, 7-9 p.m.

Salinas: Salinas Union High School
 Real Estate Law—Feb. 9, 7.30-10 p.m.

San Francisco: 140 Montgomery Street
 Real Estate Fundamentals—Feb. 9, 7-9 p.m.
 Real Estate Law—Feb. 12, 7-9.30 p.m.

San Francisco: 540 Powell Street
 Real Estate Appraisal and Valuation—Feb. 18, 7-9 p.m.
 Real Estate Valuation—Feb. 17, 7-9 p.m.
 Real Estate Finance—Feb. 16, 7-9 p.m.

Salesmanship—Feb. 16, 7-9 p.m.
 Investment Policies—Feb. 19, 7-9 p.m.
 Construction Costs and Estimating—Feb. 27, 7.30-9.30 p.m.

San Mateo: San Mateo Junior College
 Real Estate Law—Feb. 9, 7-9 p.m.
 Investment Policies—Feb. 17, 7-9.30 p.m.

Santa Cruz: Santa Cruz High School
 Real Estate Fundamentals—Feb. 10, 7-9.30 p.m.

Southern Area

Long Beach: John Dewey School
 Real Estate Finance—Feb. 18, 7-9.30 p.m.

Los Angeles: Hillstreet Building
 Elements of Real Estate and Urban Land Economics—Feb. 10, 7-9.30 p.m.
 Real Estate Practice—Feb. 26, 7-9.30 p.m.
 Real Estate Law—Feb. 25, 7-9.30 p.m.
 Real Estate Finance—Feb. 24, 7-9.30 p.m.
 Valuation of Real Property—Feb. 9, 7-9.30 p.m.
 Real Estate Appraisal and Valuation—Feb. 9, 7-9.30 p.m.
 Real Estate Management—Feb. 26, 7-9.30 p.m.

Pasadena: Pasadena City College
 Real Estate Practice—Feb. 18, 7-9.30 p.m.
 Real Estate Law—Feb. 17, 7-9.30 p.m.

San Diego: San Diego High School
 Real Estate Practice—Feb. 18, 7-9.30 p.m.
 Real Estate Law—Feb. 19, 7-9.30 p.m.
 Real Estate Appraisal and Valuation—Feb. 16, 7-9.30 p.m.

San Diego: Roosevelt Junior High School
 General Insurance II—Feb. 19, 7-9.30 p.m.
 Advertising Principles—Feb. 18, 7-9.30 p.m.

San Fernando Valley: John Burroughs High School
 Real Estate Practice—Feb. 18, 7-9.30 p.m.
 Real Estate Law—Feb. 16, 7-9.30 p.m.
 Real Estate Finance—Feb. 17, 7-9.30 p.m.

San Pedro: San Pedro High School
 Real Estate Practice—Feb. 17, 7-9.30 p.m.

University Press Offers Real Estate Reading Guide

Publication of a guide to real estate reading material entitled "A Key to Readings in Real Estate" by the University of California was announced in the last issue of the *Bulletin*. The publication was commended by the Real Estate Commissioner as an important contribution to real estate education and an aid to self-study in the field.

The Bureau of Business and Economic Research of the University of California advises that there has been considerable demand for the publication. Orders for the pamphlet should be sent directly to the University Press, Berkeley 4, California. The charge for out-of-town orders is \$1.03 and checks should be made payable to the Regents of the University of California.

Trust Fund Requirement

When a deposit is received with an offer to purchase, *the entire amount* of the deposit must be placed in a neutral escrow depository or in a trust fund account, or in the hands of the principal, to comply with the Real Estate Commissioner's Rules and Regulations on this subject.

If a broker retains a portion of the deposit in his own possession on the basis that it represents his commission or his share should the deposit become forfeit, he is not complying with the requirements and could be subject to disciplinary action.

Placing of the deposit in a neutral escrow depository or in a trust fund account not only complies with the regulations but provides a safe, practical and efficient way to assure eventual proper disposition of the funds and earned payments.

Santa Monica: Santa Monica City College
 Real Estate Practice—Feb. 18, 7-9.30 p.m.
 Valuation of Real Property—Feb. 16, 7-9.30 p.m.

U. C. L. A. Campus, Westwood:
 Real Estate Practice—Feb. 17, 7-9.30 p.m.
 Real Estate Law—Feb. 19, 7-9.30 p.m.
 Real Estate Finance—Feb. 19, 7-9.30 p.m.
 Real Estate Appraisal and Valuation—Feb. 18, 7-9.30 p.m.
 Real Estate Management—Feb. 17, 7-9.30 p.m.

Salesman Restricted as to His Activities Employee Is Not Permitted By Law to Accept Employment "On His Own"

May a licensed real estate salesman take a real estate listing in his own name?

Recently, a property owner reported he had given a licensed real estate salesman an exclusive listing for the sale of his property and the salesman had taken it in his own name as one of the contracting parties without any reference to his employing broker. The property owner wanted to know if he was bound by this contract.

"No real estate salesman shall be employed by or accept compensation from any person other than the broker under whom he is at the time licensed", states Section 10137 of the license law.

This section further states, "It is unlawful for any licensed real estate salesman to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he is at the time licensed.

"For a violation of any of the provisions of this section, the Commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings."

It would appear therefore that the salesman in question has violated the law, as he has permitted himself to be employed as a real estate agent by someone other than his broker. He would further violate the law if he were to accept a commission resulting from a sale. As to the liability of the property owner to pay a commission to the salesman under the exclusive listing, in event some other broker sold the property, that would be a matter for the courts to determine. However, the courts have more or less consistently ruled that when provisions of the license law are disregarded, a judgment is denied.

Broker-salesman Contract

The article "Hiring A Salesman Without A Contract Invites Disputes" appearing in the November, 1952 issue of the *Bulletin* evoked considerable interest as evidenced by the correspondence received from licensees.

A number of the correspondents discussed the difficulties they have experienced either as brokers or salesmen when there was no written contract covering the terms and conditions of employment.

A number of brokers wrote to say that they found that the suggested "Contract of Employment, Broker and Salesman," which appears on pages 259 and 260 of the 1952 Reference Book, met their needs very well. Some remarked that, with a few changes to meet their own particular purposes and the addition of a definite commission-split schedule, it is a contract form which seems to meet most contingencies.

Appraisers Conference Is Scheduled for February

The American Institute of Real Estate Appraisers will hold its fourth annual conference-seminar, February 20th-21st at the Biltmore Hotel, Los Angeles. The subject of the conference is "Current Real Estate Markets and Valuation Problems," and appraisers, brokers, builders, managers, mortgage men and all others interested in the future for real estate are invited.

Significant current trends affecting real estate markets, and consideration of possible solutions to new valuation problems created by changing social, economic and political conditions will be discussed. Outstanding representatives of every branch of the real estate vocation will discuss their specialties.

For particulars, write to the American Institute of Real Estate Appraisers, 22 West Monroe Street, Chicago 3, Illinois, or contact Mr. Farrell Walleit, 625 South Spring Street, Los Angeles 5, or Mr. Arthur J. Goard, 369 17th Street, Oakland, or Mr. Laurence Sando, 525 East Andover Drive, Burbank, conference chairman.

Workmen's Compensation Insurance for Real Estate Salesmen

The degree of control exercised by the broker over the real estate salesman is the determining factor as to whether the broker should carry Workmen's Compensation Insurance on the salesman. In most cases, it would appear that the salesman is not an independent contractor and should be covered by compensation insurance, according to a statement made to the Oakland Real Estate Board by E. A. Sarkistan, Associate Counsel, Compensation Enforcement Officer of the California Department of Industrial Relations.

In response to a query from OREB, the following information was given:

"Under the Workmen's Compensation Act 'employee' is very broadly defined and includes 'every person in the service of an employer under any appointment or contract of hire or apprenticeship.' A person rendering personal service to another is presumed to be an employee unless an independent contractor relationship or other basis for exclusion is shown. Depending upon the facts in any given situation, both the broker and the salesman may be held to be 'employees.'

"Normally the broker is an independent contractor. His contract is to produce a given result, without any control, or right to control, the activi-

ties incidental to producing that result. Associated brokers are usually associated independent contractors. The writer does not recall a single instance where a real estate broker has claimed compensation on the basis that he sustained injury arising out of and occurring in the course of his employment by another real estate broker.

"The status of salesmen is not so clear. Arrangements will vary. The usual tests must be applied to each case as it arises. Claims have been few. It is believed that Workmen's Compensation Insurance should be carried by real estate salesmen where the real estate broker exercises any substantial control over the activities of the salesman, or has a right to do so, or cooperates with the salesman in the making or closing of sales or exchanges, etc."



CHARLES B. SHATTUCK
NAREB President for 1953

Advisory Board Member Made New NAREB President

Charles B. Shattuck, who has been a member of the State Real Estate Board for the past 10 years by appointment of Governor Warren, has unanimously been chosen as 1953 President of the National Association of Real Estate Boards. This is the highest honor that can be bestowed by the realtors of America, whose association is comprised of 1,123 local realty boards with a total membership in excess of 55,000.

Mr. Shattuck, a native son of California, was born in Los Angeles in March, 1900, has been a director of the Los Angeles Realty Board since 1927, active in affairs of the California Real Estate Association and the national association, Chairman of the Southwest Branch of the Los Angeles Realty Board in 1929, President of the California Real Estate Association in 1936 and President of the American Institute of Real Estate Appraisers in 1948. He is now a member of the Advisory Committee on Real Estate Education for the University of California, and Director of the Los Angeles Building Owners and Managers Association.

Importance is added to the election of Mr. Shattuck as 1953 national association president, as Los Angeles has been selected the convention city for the 46th Annual Convention of the National Association of Real Estate Boards which will be held next November.

Leasing Practice Brings M.O. & G. License Ruling Special License Needed to Solicit Filings on Federal Oil Lands

Those persons who solicit others to apply for oil leases on federal lands, and charge a fee, need a mineral, oil and gas broker or salesman license.

This is the opinion of the State Attorney General rendered December 1, 1952, in his Opinion No. 52/67. Previously, the Attorney General's Office had given an informal opinion on the question to the same effect.

During the past few years, a practice has developed in connection with the procuring of oil and mineral leases on public lands of the United States which are located in California and other states. A number of individuals and firms have engaged in the business of soliciting California residents to file applications for oil and gas leases on such public lands with the Office of the Bureau of Land Management, U. S. Department of Interior.

The solicitor as a rule enters into a contract with the applicant for a lease whereby the solicitor undertakes to select certain areas within the public domain which are subject to leasing for oil and gas and to prepare the necessary application form for the applicant's signature. A fee is charged for this service.

Solicitor Makes No Guarantee

In addition, the solicitor usually agrees to pay any legal or geological expenses incident to the application, as well as the lease rental for a specified period on any lease which may be issued. The solicitor is careful to point out in this agreement that no guarantee is made as to development of oil and gas on the land selected. **A further provision is contained in the contract which terminates the solicitor's obligations when he has selected the lands for leasing and has filed the application for a lease with the proper authorities. In some cases the solicitor agrees to select other lands in event the original lands selected in the application are not open for filing.**

The Attorney General points out that a mineral, oil and gas broker or salesman, as defined by the law, is one who "offers to lease," among other things. He further points out that the application form to which he secures the investor's signature constitutes an offer to lease and therefore makes the solicitor subject to the license provisions.

California Gets NALLO Convention

The National Association of License Law Officials, which held its 1952 convention in Miami Beach, Florida, accepted the California Real Estate Commissioner's invitation to convene in Los Angeles in 1953. Members of NALLO will gather in California for several days prior to the meeting of the National Association of Real Estate Boards in Los Angeles in November.

The membership of NALLO is composed of licensing officials from the states having real estate license laws and of representatives from several provinces of Canada and from the Territory of Hawaii. The purpose of the group is to exchange ideas on the operation and administration of licensing laws and rules and regulations, and to prevent persons whose real estate activities in one state have been objectionable from moving to another state and setting up operations.

Big Year for Housing

Despite some material shortages and credit restrictions in effect most of the year, 1952 was the second biggest year for home building in history. Builders throughout the Nation started about 1,125,000 dwelling units in 1952, a total exceeded only in 1950.

Further indication of the building pace in California is the number of subdivisions filed with the Division of Real Estate during 1952. The total reached 2,080, exactly equalling the figure for 1950, the previous record year. However, the average subdivision was somewhat smaller in 1952, containing fewer parcels than the average in the preceding few years.

Future Advances on Trust Deed Protected

Additional Sums Loaned After Original Advance May Be Prior to Later Liens

If the title report states that property is subject to a first trust deed securing a certain amount of money, can you be sure that the lien is no greater than the sum set forth?

The answer seems to be "No," as an appellate court recently made an interesting ruling that where the trust deed recites that future amounts may be loaned after the original amount, these additional amounts are protected against the filing of subsequent liens. This is true when the mortgage or trust deed discloses on its face that it is to stand as security for future advances. The amount of such future advances need not be set out. It is sufficiently definite to put subsequent encumbrancers on inquiry to ascertain the extent of the lien or suffer the consequences.

In the case in question, the additional advances provided for in the first trust deed were actually covered by a second trust deed, and in the interim another lien had been filed. Even so, the court held that the later advances of money were given priority because they were provided for in the first trust deed.

As a matter of actual practice, any such provision in a trust deed would probably be mentioned in the title report, so that anyone dealing with the property would have notice of the situation.

The case presented to the court was complicated further by the fact that the original trust deed note had been assigned, and the assignee had actually made the additional advances. Even though there had been a change in the beneficiary, the further advances were protected.

Loan Made for Construction

The background of the case was developed as follows.

The owner of the lot in Long Beach borrowed money on a trust deed to build a house. The arrangement was that he was to get further sums when needed. In the meantime, the beneficiary sold his note to another, and the new owner of the trust deed made additional loans, in accordance with a provision in the trust deed that further sums would be advanced.

In the meantime, a plumber filed a mechanics' lien.

The beneficiary under the trust deed eventually had to foreclose, and the property was sold. There was no more money realized than enough to pay the beneficiary for the original loan and subsequent loans. The plumber claimed his mechanics' lien came ahead of the

subsequent loans, and therefore he was entitled to part of the proceeds from the foreclosure sale.

The court found that the sums of money mentioned were valid liens against the funds received from the foreclosure sale, and all advances under the trust deed were prior to the mechanics' lien.

The plumber claimed that later advances made by the trust deed holder were made with notice of his mechanics' lien, and therefore subordinate to it. The court, however, held that this was not true, as the terms of the original trust deed provided for the future advances.

Other Cases in Point

The case under discussion is *Imhoff v. Title Insurance and Trust Company*, reported in 113 ACA 160. There have been other cases involving this same point, including *Oaks v. Weingartner*, supra, 105 Cal. App. 2d 598. The appellant contended that his materialman's lien was superior to the lien of the deed of trust securing certain advances made after the deed was recorded, since the beneficiaries were not obligated by the terms of the trust deed to make any additional advances. The court in that case held the advances were superior to the materialman's lien, and it stated that the rule which applies to mortgages is applicable to trust deeds.

In *Tapia v. Demartini*, 77 Cal. 383, the court stated, "If the mortgage discloses upon its face that it is to stand as security for future advancements, the amount of the advances to be made need not be set out. It is sufficiently definite to put subsequent encumbrancers on inquiry, and they must ascertain the extent of the lien, or suffer the consequences."

Directory Corrections

The 1952-53 Directory of Licenses published by the Division of Real Estate contained more names than any previous issue, but only a very few typographical errors or other mistakes in its compilation have been reported.

It should be pointed out that a slightly different method of alphabetical arrangement was used in the new directory. Previously, when a town name contained two words, the name appeared in alphabetical sequence just as if the town name were spelled as one word. This system was changed in the 1952-53 directory and the first word of a two-word town name controlled its place in the alphabetical sequence.

As an example, in preceding directories, the town "Oak View" appeared after "Oakley." Using the new method, it appears after "Oak Run" and precedes "Oakdale."

CORRECTIONS: In the 1952-53 directory, *Frank M. Suzukida*, 1215 S. Mariposa Avenue, Los Angeles, and *Laurence A. Dailey*, 11 W. Huntington Drive, Arcadia, should have been listed as real estate brokers rather than as salesmen; *Della A. Cook*, 5504 Sepulveda Boulevard, Van Nuys, is a licensed real estate broker at that address; and the name of *Tom D. Hutchison*, 2436 W. Valley Boulevard, Alhambra, was misspelled.

Zoning Ordinance Enforced

The City of Stockton will enforce a ban on real estate offices located in residential areas, according to report.

The city attorney has given notice to various real estate offices in residential districts, pointing out that they are in violation of the city zoning ordinance. He warned that action would be taken in connection with violations continuing after January 1, 1953.

The city council referred the problem to the city planning commission, which held lengthy discussions and hearings before deciding to uphold the present ordinance.

During December, 1,455 persons took examinations for licenses issued by the Division of Real Estate.

No Disclosure—No Fee Another Court Case Stresses Rule That Broker Must Reveal All Facts

The real estate broker and salesman stand in a fiduciary relationship with their principals, and as such are under a duty to make a full disclosure to the principals of all material facts concerning the transaction that might affect the principal's decision.

This is not merely a statement of good ethics, but has been the basis of numerous court decisions in which the commission of the broker is involved (*Ratray v. Scudder*, 28 Cal. 2d 214, *Darrow v. Robert A. Kline and Co., Inc.*, 111 Cal. App. 310). This principle is so important that we have repeated it from time to time in this *Bulletin*, as new court decisions are reported which have a bearing on it.

In a recent case, *Quistgard v. Derby*, 111 ACA 326, the plaintiff broker lost a substantial commission because the court found that he had failed to disclose the truth concerning certain points which arose in an exchange transaction, and that the misrepresentations were made with actual knowledge of the true facts.

The court held that by misrepresenting to his clients that he had secured a certain consent which was necessary to consummation of the real estate exchange agreement effected by him, the broker was precluded from recovering any compensation on his client's failure to carry out the agreement.

Reference Book Available

The 1952 edition of the Reference Book, containing laws and information relating to real estate and real estate licensees, is still available at all offices of the Division of Real Estate.

Quite a few orders and remittances are received specifying delivery of the "1953 Reference Book." The present Reference Book will not be revised until the 1953 Session of the State Legislature has completed its work. This will allow incorporation into the new edition of any revisions made necessary by new legislation.

Because of these circumstances, it is probable that a revised Reference Book will not be available until late in 1953.

BULLETIN SUBJECT INDEX—JULY 1, 1951, THROUGH 1952

EDITOR'S NOTE: This "Table of Contents" covers all issues of the *Real Estate Bulletin* since July 1, 1951, when it became an eight-page publication issued every two months.

The pages of the July, 1951, issue were numbered 1 through 8. The next issue, September, 1951, started with page 9 and continued through page 16. The following issue contained pages 17 through 24, and so on.

For that reason, this subject index contains no reference to the month of issue, but merely gives the page on which any specific subject or article can be found.

	Page		Page
ACCEPTANCE MUST BE COMMUNICATED	42	CODE OF ETHICS	26, 27, 38
ADVERTISING		COMMISSION	
Blind	48	Agreements	18
By Salesmen	32	Broker successful in action for	22
Classified	56	Broker successfully sues purchaser for	51
Misleading	19	Denied in unusual case	38
Scare	32	Held earned on completion of deposit receipt	39
Tips on good	58	Owner promises to pay	14
Watch carefully for accuracy	14	Paying delayed	57
ANONYMOUS LETTERS	13	To eastern brokers	46
APPLICANTS AND APPLICATIONS	3, 26, 30	Withholding from purchase money	7
APPRAISAL COURSES, UNIVERSITY OF SOUTHERN CALIFORNIA	4, 51	COMMISSIONER, REAL ESTATE	
APPRAISEMENT OF ESTATES	42	Appreciates cooperation	49
ATTORNEY POSITION IN DIVISION OF REAL ESTATE	60	Bulletin suggestions	9, 17
BAY AREA MORTGAGE MARKET STUDY	12	Cannot assume power of courts	34
BRANCH OFFICE LICENSES FOR PARTNERSHIPS	3	Deputy	8
BREED, ARTHUR H., JR., SENATOR	28	Thanks licensees	1, 41
BREED, HERBERT L.	7, 69	Welcomes service suggestions	62
BROKER		COMMUNITY PROPERTY LAW CHANGE	17
Accepting fees from both parties	67	COMPLAINTS	
Changing location without notification	11	Again licensees	15
Participation in state property sales	9	Can be reduced	5
Responsibility for employed salesmen	11	CONTRACTS	
Social Security for	21	Be sure signers read	35
Working as salesman	11	Delivery of	63
BUILDING LOANS PRIORITY	35	Drawing of	69
BULLETIN	1, 9	Installment payment	8
CALIFORNIA REAL ESTATE ASSOCIATION		Put in writing	45
Convention	15, 64	Termite problem	54
Selects MacBride	68	COURT CASES (GENERAL)	35
CASH, DON'T REMIT	13, 33	DEED	
CHECKS		Delivery of gift	61
Received without explanation	7	Foreclosure of trust	33
Unhonored	48	Priority of trust	35
CITIES, FUTURE OF	69	DEPOSIT	
CLOSING STATEMENTS	36	Reveal nature of	63
		To whom does it belong	25
		DIRECTORY	3, 11, 25, 49, 57
		DISCIPLINARY ACTION	
		2, 10, 15, 18, 23, 26, 34, 42, 50, 58, 66	

(Cont. Next Page)

Court Sustains Revocation

(Cont. from Page 73, Col. 1)

reads: "Whenever a final judgment is obtained in a civil action against any real estate licensee upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required * * * the commissioner may, after hearing in accordance with the provisions of this part relating to hearings, suspend or revoke the license of such real estate licensee at any time within three years subsequent to said judgment."

The brokers brought a writ action in superior court, claiming that the law was unconstitutional and that it was improper for the commissioner to impose disciplinary action based upon results of a trial of a civil action in the courts.

Sustained by Appellate Court

The superior court found for the Commissioner, and was upheld when the appellate court heard the matter on appeal. The latter court held that the brokers had had their day in court, and there was no good reason to have the evidence in fraud actions against real estate brokers in superior court taken all over again in the Commissioner's hearings to revoke or suspend their licenses. The court pointed out that the broker could appear at the Commissioner's hearing and defend himself, and that the Commissioner had discretion respecting his final conclusion, and was not required to revoke or suspend the license unless the results of the hearing indicated it was the proper thing to do.

This case is reported in 114 A. C. A. 620, *Denny v. Watson*.

BULLETIN SUBJECT INDEX—JULY 1, 1951, THROUGH 1952

(Cont. from Preceding Page)

	Page		Page
EDUCATION		LICENSEE, RESPONSIBILITIES OF	4
Appraisal courses	4	LICENSES	
Certificate program, extension division	61	Business opportunity	7, 24, 64
Real Estate Advisory Committee	20	Cancellation of	39
Real estate ownership classes	36	Double fee for late renewal of	39, 41
Round Table Meeting	50	Experience qualification for broker	43
Teachers and realtors cooperate	5	Failure to transfer salesman's	57
University of California	4, 53, 68	Fee receipts and expenditures	65
on-campus program	5, 28, 35, 68	For widows of deceased brokers	60
University of California at Los Angeles program	35, 36, 68	Mineral, oil and gas	38
EDUCATIONAL AND SALES CONFERENCES	5, 45	Provisional salesman	24
EMPLOYEES, TWENTY-FIVE YEAR	65	Qualification for broker	9, 49
Photograph	72	Reciprocity	48
ENCROACHMENT OF IMPROVEMENTS	51	Reinstatement of salesman	46
ESCROW		Renewal record for 1952-53	57
Held by broker	19, 59	Required for combination sale	52
Operations of licensed agents	59	LICENSING LAWS, SURVEY OF LISTING	19
ETHICAL CONDUCT	26, 38	Altering forms, caution against	16
EXAMINATION		Closing report on net	36
Business opportunity	24	Deliver copy of	5, 33
No extra credit given veterans	16	Exclusive	3, 8, 10, 23
Number of	14	Full disclosure on securing	55
Pass notice is not license	13	General discussion of	49
Schedule change	44	Net use restricted	62
EXPERIENCE QUALIFICATIONS FOR BROKER LICENSE	43	Not extended by verbal pact	65
FEDERAL HOUSING ADMINISTRATION	40	Open	3, 60
FICTITIOUS NAMES	21	Racket condemned	52
FILLED GROUND	20, 38, 45	MAP ACT, CHANGE IN	22
FINGERPRINTS	25, 64	METROPOLITAN TRANSIT AUTHORITY	44
FIRE LOSS	39	MORAL TURPITUDE	6
FORMS, CARELESS USE OF	52	MORTGAGE MARKET STUDY	12
FREE LOT DRAWINGS	40	NATIONAL ASSOCIATION OF LICENSE LAW OFFICIALS	66
FRESNO OFFICE, DIVISION OF REAL ESTATE	56	NATIONAL ASSOCIATION OF REAL ESTATE BOARDS	66
FUNDS, INSURANCE AND REAL ESTATE KEPT SEPARATE	16	NEW MEXICO BOARD ESTABLISHED	25
GOVERNOR EARL WARREN	1, 9	NOTARIES (LAW CHANGE)	37
HOLIDAYS, COMPUTATION OF	37	NOTICES (LAW CHANGE)	37
HOME		OFFER OF PURCHASE	
Buying costs	70	Delivery of signed acceptance	30
Own Your Own Contest	35	Revealed	47, 62
Owners Loan Corporation discontinued	6	OFFICE OF PRICE STABILIZATION	6
Ownership gains	14	OFFICES, SURVEY OF	1
Sellers Benefit by tax change	19	OWNER OCCUPIED HOMES (CENSUS STATISTICS)	26
HOMESTEAD, CHANGE IN LAW	22	PARTNERSHIPS (LAW CHANGE)	37
IDAHO LICENSE LAW	17	POWER OF ATTORNEY	18
INSTITUTE OF REAL ESTATE MANAGEMENT	40	PROFESSIONAL RELATIONS	11, 55
INSURANCE		PUBLIC, RELATIONS WITH	38
Law change	17	PUBLICATIONS (See also BULLETIN, DIRECTORY, REFERENCE BOOK)	
Unemployment release important	63	And schools	38
Workmen's compensation	43, 63	Key to reading in real estate	69
JOINT TENANTS		New	37
Bill signed	44	REAL ESTATE COMMISSIONER (See COMMISSIONER)	
Both must sign sales contract	44	REAL ESTATE EDUCATION (See EDUCATION)	
Deals need special care	62	REAL PROPERTY	
Law change	17	Agents (Right of Way)	29
Procedure in death of tenant	32	Contracts, See Contracts, Listing, Offer of Purchase	
LACHES PLEADED	13	Ownership of	46
LAW CHANGES AFFECTING REAL ESTATE	17, 37	REALTORS	
LEASE. See also RENTAL		And professors confer	21
Obligations of lessee	48	Code of Ethics	26, 27, 38
Service requires license	38		
LENDER MUST BE REASONABLE	33		
		RECORDING LAW, CHANGE IN	22
		REFERENCE BOOK	
		1952 Edition	33
		Revised	19
		Used in evidence	3
		REFUNDS	26
		REGULATION X	2
		RENTAL	
		Agencies need license	17
		Agencies prosecuted	33
		And ownership in Los Angeles	70
		Cost of	54
		REVOCACTION	
		Stories of	31, 47
		Sustained by court	59
		Upheld	14, 55
		SALESMAN	
		Advertising by	32
		Contract of employment	67
		Employing of	15
		Exemption from unemployment insurance tax	1
		Inactive license renewal	58
		Leaving employ	20
		Proper insurance of	43
		Supervision necessary	30
		SECRET PROFIT IN SALE TO AGENT'S WIFE	21
		SIGN, OFFICE	7
		SOCIAL SECURITY FOR BROKERS	21
		STOCK, LICENSES FOR SELLING	7
		SUBDIVISION	
		City and county regulations	62
		Contract on land for	39
		Filled lots in	38
		Law violator	8
		Local control of	39
		Map not approved	56
		Regulations modified	9
		Stop orders issued	2
		SUBDIVISION PUBLIC REPORTS	
		Charges for extra	40
		Must be delivered	45
		Must go to purchasers	7
		Preliminary (reports)	9, 20
		SUSPENSIONS	
		Secret profits result in	46
		Stories of	31, 47
		TAX	
		And interest deductible	55
		Change benefits home sellers	19
		Change in delinquent date	22
		On home sale profit waived by state	41
		Personal property	37
		TERMITE PROBLEM IN CONTRACTS	54
		TOURIST TRAVEL IN CALIFORNIA	71
		TRUST DEED (See DEED)	
		UNDUE INFLUENCE	60
		UNEMPLOYMENT INSURANCE TAX	1
		UNIVERSITIES (See EDUCATION)	
		UTAH LICENSE REQUIREMENTS	30
		VETERANS	
		Allowed treble damages	23
		Farm and Home Purchase Act	3, 22
		Tax exemption	22
		VETERANS ADMINISTRATION GUARANTEED LOANS	24, 34, 70
		WARANTY, HOME OWNERS SERVICE	70
		WATER DISTRICTS	56
		WIDOWS OF DECEASED BROKERS	60
		ZONING	
		Deed restrictions enforced separately	44
		Should be known	54

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