

# CALIFORNIA DIVISION OF REAL ESTATE

## BULLETIN

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EARL WARREN, GOVERNOR OF CALIFORNIA

HUBERT B. SCUDDER, REAL ESTATE COMMISSIONER

### APPLICANTS WITH RECORD OF CRIMINAL CONNECTION

During the past month seven hearings have been called by the commissioner to determine the qualifications of persons who have been convicted of law violations. Some of these applicants admitted their past records in filing applications for license, while others were discovered through the checking of fingerprints taken in connection with the examination. The latter appear to have falsified their applications by stating that they had not been convicted of any violation of law. The records of these applicants show all types of crimes, ranging from a series of misdemeanors to grand theft and murder.

It is the present policy of the commissioner to hold a hearing and take testimony under oath in connection with any application of this kind. Those who deliberately falsify their applications and attempt to control their past criminal records stand little chance of securing a license according to the records of the division.

### UNEMPLOYMENT TAX

A bill to exclude service performed by certain real estate salesmen from the definition of "Employment" under the Federal Unemployment Tax Act, has been introduced by Representative Hinshaw in the House of Representatives. As the law now stands, the tax is paid for the real estate salesman by the employer, and it is maintained that the salesman is not assured of any benefit. The bill would grant the same exemption to real estate salesmen as that granted to insurance salesmen. It is known as H.R. 1589.

Legislative bills introduced at Sacramento would increase the scope of the Unemployment Insurance Act. One bill proposes to include under the act, employers of one or more workers instead of the four or more employees as now provided. Another bill would provide a 26-week uniform duration of benefits. The present law varies from a minimum of nine weeks to a maximum of nearly 26 weeks. Other bills propose a reduction in the present waiting period for benefits from two weeks to one week.

### AMENDMENTS TO REAL ESTATE LAW

Various proposals for amendment of the California Real Estate Law have now been embodied in Senate Bill 179 which was introduced by Senator Arthur H. Breed, Jr., of Alameda, and referred to Committee on Business and Professions.

Following is a brief summary of the bill's provisions prepared by Herbert L. Breed, Esq., of Oakland, with some changes to indicate amendments recently agreed upon:

10137. Adds a provision that a licensed broker may pay a commission to a broker of another State.

10141. Upon closing a real estate transaction involving title, the broker handling the transaction shall furnish or cause to be furnished to the seller and purchaser a statement, including the actual selling price.

10142. All exclusive listings must have a definite termination date, but this is not to prohibit the inclusion of a provision that if within a specified number of days after termination the owner sells the property to some person to whom the broker had previously shown it, the broker is entitled to his commission.

10143. When a broker receives a listing he must deliver copy to the person signing the same.

10144. A listing employing a broker to purchase or sell real estate can not also contain an option provision authorizing the broker to purchase the property.

10145. It is unlawful for a real estate broker to enter into an agreement authorizing or employing such broker to purchase or sell real estate for compensation or a commission unless such agreement provides that the compensation or commission of the broker shall be a specified amount of money, a specified percentage of the selling price or, in the case of exchange of real property a specified amount or percentage of the agreed value of the property to be exchanged, or any combination of the foregoing.

10146. Violations of above authorize the usual discipline.

10150.5. Unless licensed in California prior to January 1, 1942, one licensed as a broker must be either an American citizen or an alien who has received his first citizenship papers. In the latter case failure to become a citizen in due course shall be cause for revocation.

10156.5 to 10156.8. New provisions authorizing a restricted license to be issued to a licensee where the commissioner, after hearing, has found a violation of the Real Estate Act sufficient to justify suspension, revocation or denial of license. The restriction may be by term, to employment by a particular broker if a salesman, by other conditions fixed by the commissioner. Such a license does not give the holder a right to a renewal. Further violation of the law justifies revocation of a restricted license without a hearing. In such cases the commissioner may require a surety bond. Fee for restricted licenses: broker \$5; salesman \$2.

10162. Defines a definite place of business as being place where the broker's license is displayed, and where personal consultations with clients are held.

10200. Fees are payable at the time of filing application for license.

10208 et al. Authorizes commissioner to use \$2 out of examination fees to secure a credit report or investigation of an applicant.

10258 et al. Similar provisions to the above, where appropriate, added to the portion of the law governing business opportunity brokers.

10386. Same referring to cemetery broker.

10455. This section now provides that all moneys in excess of \$100,000 remaining in the State treasury to the credit of the Real Estate Fund at noon each June 30th shall, on or before July 15th, be transferred to the General Fund of the State. The bill under discussion proposes to repeal that provision and thus leave the Real Estate Fund intact.

10460. Provides that a military licensee who failed to give the commissioner notice of his going into the service, may notify the commissioner within one year following termination of his military service, so as to have the benefits given to a veteran under the act. The section also broadens the definition of persons in the military service. It will include members of the Army, Navy, Marine Corps, merchant marine, Coast Guard, public health service, and all officers of the public health service detailed for duty either with Army or Navy. It also includes those in training under the supervision of the United States preliminary to induction in the military service.

10462. Military licensee must have an honorable discharge, and must apply for such discharge immediately upon termination of the war. The beneficial provisions of no fee, etc., shall not apply to one who voluntarily remains in the military service following termination of the war.

10525. The above provisions affecting the real estate broker, so far as appropriate, are applied to mineral, oil and gas brokers.

## COMMISSIONER'S ACTIVITIES

There is no eight-hour work day for the California Real Estate Commissioner. Commissioner Scudder at certain times of the year attends an average of five real estate meetings, or more, each week, the greater part of them being held in the evening. His duties require him to spend at least two weeks of the month in the San Francisco and Los Angeles offices where he holds almost continuous conferences with licensees regarding their problems, and applicants whose eligibility for licenses is questionable for some reason. Study of the division's problems, preparation of addresses, and other duties must be sandwiched in.

## COMMERCIAL RENTAL CONTROL

New York State's experiment in commercial rent control is receiving nation-wide attention. Under the law rents on all commercial property, except retail stores and office buildings, were frozen at not higher than 15 per cent above the levels of March 1, 1943. The pressure for National commercial rent control will be determined largely by the results of the New York experiment.

## COMMON INQUIRIES

Each month hundreds of inquiries are made by our licensees by telephone and visit to some office of the Division regarding license matters. Some of the more typical are given here for your information.

- Q. What restrictions are placed by the Division upon a broker being licensed under a fictitious name?
- A. If a broker applies to be licensed under a fictitious name, and it is found that this same fictitious name is already in use by any other broker within the State, the license will be refused. One exception is made, namely, when the fictitious name contains the name of the broker, as per example: "John Smith, doing business as Smith Realty Company."
- Q. Will the Division license a broker to do business under more than one fictitious name?
- A. No.
- Q. Are examinations to qualify for license given on a definite schedule?
- A. Yes, in Los Angeles, San Francisco and Sacramento examinations are given weekly. In Fresno, Long Beach, San Bernardino and San Diego they are given once or twice per month on definite scheduled days.
- Q. May a license applicant from Long Beach take his examination in Los Angeles?
- A. Yes. He should indicate his preference on his application, or letter accompanying it, otherwise he would probably be scheduled for Long Beach.
- Q. How long after filing my license application must I wait before taking the examination?
- A. All applicants are scheduled by the Sacramento office to take their examinations at a definite time and place. Ordinarily, the applicant will receive his examination from 10 days to two weeks after the application is received.
- Q. How long after taking the examination will it be before I receive my license?
- A. An average of two weeks. It depends largely upon the volume of work in the Division and the number of examinations to be graded, etc. At certain times of the year, as during renewal period, the work is slowed up somewhat.
- Q. Can I secure the grade on my examination paper?
- A. Yes. It can be secured from the office of the Division in the area where the examination was taken.
- Q. If I fail the examination, may I review my paper to determine where I fell down?
- A. Yes. You may write the Sacramento office requesting that your paper be forwarded to the branch office which conducted the examination. You will be permitted to look over your paper under supervision of a deputy to determine what sections you failed upon.
- Q. As an individual I hold a real estate broker license. May I secure an additional broker license as an officer of a corporation?
- A. Yes. Some brokers are licensed as officers of two or three corporations.
- Q. I am a licensed real estate broker and have entered into a partnership agreement with another licensed broker. Is it permissible?
- A. Yes. However, the partnership must secure a copartnership broker license. The individual members may retain their individual broker licenses if they desire.
- Q. Are the examinations for licenses going to be made more difficult?
- A. The Real Estate Board members feel that more careful qualification of persons entering the business should be made, not only in the examination, but in the matter of

their background and reputation. The examinations will probably not be changed overnight, but present sentiment makes it appear that it will be gradually increased in the scope of information required.

- Q. I am a real estate broker and have an established office. A licensed broker wishes to enter my office in the capacity of a salesman. Is this permissible?
- A. Yes, but the employed broker must comply with the law by maintaining his license and sign. The fact that he is operating as a salesman does not relieve him of the obligation to comply with the requirements imposed upon a licensed broker.

(To be continued in next bulletin)

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## COMMISSIONER APPOINTED WAR BOND CHAIRMAN

Commissioner Scudder has been notified of his appointment, for the war's duration, as overall State Chairman of the California Real Estate War Bond Committee. The notice was signed by the executive vice chairman of the War Finance Committee, M. E. Cooley for northern California and M. Penn Phillips for southern California. With the appointment, tribute was paid to the 30,000 real estate licensees who have made a remarkable record in the fifth and sixth war loan drives.

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## LAWSUITS

The commissioner is constantly being made defendant in lawsuits, usually writ of mandate proceedings, brought by former licensees whose licenses have been revoked or suspended. These writs are brought in the superior court for the purpose of having the decision of the commissioner reviewed to determine if he acted within his jurisdiction and had sufficient basis for depriving the person of a license. These petitions for writs are the proper recourse for any ex-broker or ex-salesman who feels that he has been dealt with unfairly or had his license revoked, or suspended, without due process of law.

An action is now pending in the Superior Court of San Diego County brought by a suspended broker and salesman. The licenses of these two men were suspended for six months on the grounds that they had secured secret profits in real estate transactions while acting as agents.

Another action is pending in Los Angeles County brought by an ex-broker whose license was originally revoked by the commissioner for having secured 10 lots in a real estate transaction without the knowledge of his principal. Subsequent applications for license were denied based upon the original findings and further that he had continued to act as a real estate agent after the revocation.

Another petition for writ of mandate is being defended in Kern County, the action having been brought by a broker whose license was revoked on the grounds that while acting as an agent, he sold

a property for more than the listed price and failed to account to his principal who is serving in the Army.

According to law, the Attorney General is appointed to act as legal advisor to the commissioner and defends these actions for him.

An action was recently brought by the commissioner to enjoin a subdivider from selling parcels in a subdivision without first complying with the California Real Estate Law. An injunction was secured by consent of the defendant.

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## RECORD EXAMINATION

An all-time high for the number taking examinations for license by the division was reached during the first seven months, ending January 31st, of the fiscal year 1944-45 during which time a total of 6,143 applicants presented themselves for examination. That this high rate will probably continue is indicated by the recent examinations held in Los Angeles on February 2d and 9th when 210 and 187 applicants, respectively, presented themselves at the examination classroom.

This increased activity throws a burden upon the limited staff of the division, and it is quite likely that the numbers will run even higher. As pointed out previously, the total number of licenses issued by the division is now more than one-half of those issued in 1924 when the total reached 66,000, and the population of the State was much less. The more careful qualification of applicants through examination and investigation, however, may keep the total from ever approaching that figure again.

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## HIRING BROKERS

Almost daily our offices receive inquiries from real estate offices in connection with the employment of licensed real estate brokers in the capacity of salesmen.

Employment of brokers in a real estate office in the capacity of salesmen is a matter of contract, and it is good policy to have such employment agreements in writing and cover all the contingencies which can be foreseen. In some instances the employed broker is expected to work on the same basis as salesmen in employ of the broker who conducts the office. In other cases the employed broker operates more or less independently and merely pays the office a percentage of his earnings to cover desk space, telephone service, etc. It may be seen that disputes may arise under these conditions over such things as listings, prospects and clients, unless definite written agreements are secured.

The Division wishes to make clear that any person who holds a real estate broker license is required to comply with all of the provisions of the Real Estate Law pertaining to brokers, regardless of what

employment contracts he enters into. Each licensed real estate broker must maintain a sign in a conspicuous place at his office, even though by contract he is the employee of another broker. His name and the wording indicating that he is a licensed real estate broker should be displayed on the door, window, or other conspicuous place. His license must be displayed at the office.

Some offices which employ other brokers have voiced objection to placing such brokers' names on their doors and windows. We repeat that they must comply with the law. The sign of the employed broker may be less prominently displayed than that of the owner of the office, but nevertheless must be displayed.

It is almost needless to say that the Commissioner can not enter into disputes arising from such employment agreements, such as the division of commissions, right to listings, etc.



### HEARINGS

The following actions have been recently taken by the commissioner to revoke, suspend or deny licenses following a formal hearing. These actions were taken since publication of the last bulletin.

(1) Los Angeles County. Broker license was denied to applicant. Police records of Washington, D. C., and New York showed long lists of misdemeanor convictions.

(2) San Diego County. License of real estate salesman suspended for misrepresenting that tenants in a property were going to move.

(3) Los Angeles County. Application for real estate salesman license was denied to former licensee who was found guilty of withholding money as commission on a transaction which could not be consummated.

(4) Los Angeles County. License of real estate broker was suspended for moving tenant into property without knowledge or consent of the owner.

(5) Los Angeles County. License of real estate broker was suspended for withholding deposit

on a transaction, said deposit being tendered with an offer which was not accepted.

(6) Los Angeles County. Business opportunity broker license was suspended for the same reason as outlined in No. 5.

(7) Los Angeles County. Real estate broker license was suspended for making a secret profit on a transaction through a dummy deal.

(8) San Francisco City and County. Real estate broker license was revoked on the grounds that he made false representations regarding oil lands.

(9) San Francisco City and County. Application for real estate broker license was denied on the grounds that the applicant's reputation for honesty and truthfulness did not meet the standards required.

(10) San Francisco City and County. Application for business opportunity broker license was denied on the same grounds as set forth in Paragraph 9.

(11) San Francisco City and County. License of real estate broker was suspended for employing and compensating an unlicensed salesman.

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A misdemeanor complaint was secured in January against Howard Bullock & Associates, Howard Bullock and Harry E. Stead, Manager of the Beverly Hills Office of the firm. This firm was charging \$5 as a nonrefundable advertising and registration fee, with the understanding that an additional \$20 would be charged if a suitable rental were located. Complaints had been received by the division from people desperate for housing, who had paid the fee, but who had never been again contacted by the firm.

Stead was found guilty on two counts of violation of the Business and Professions Code in the court of Judge Charles J. Griffin, fined \$250, of which \$150 was suspended and will be canceled in two years if there is no further violation.

Bullock was not convicted as witnesses were lacking who paid money directly to him. Other similar operations are now under investigation.



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