

CALIFORNIA DIVISION OF REAL ESTATE

BULLETIN

M A R C H

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EARL WARREN, GOVERNOR OF CALIFORNIA

HUBERT B. SCUDDER, REAL ESTATE COMMISSIONER

LICENSE RENEWALS OPEN MAY 1st

On and after May 1st the Division of Real Estate will accept renewal applications for 1946-47 licenses.

Commissioner Scudder urges all licensees to submit their renewal application early, as soon after May 1st as possible. Renewal applications are attached to the back of licenses, or if for any reason they should have been lost, blank renewal forms may be obtained at any office of the division.

Please take care to see that the renewal slips are properly filled out, and the proper renewal fees submitted to the Sacramento office of the division.

The division is endeavoring to schedule its work so that renewal applications which are received during May will result in the new license being issued to the broker or salesman by June 30th. The cooperation of licensees in renewing licenses early this year will be particularly appreciated, inasmuch as the division is burdened with a large number of original license applications.

Licensees are reminded that if they fail to renew their license by the close of business on June 30th, they suffer the penalty of a double fee, \$10 for brokers, instead of the regular \$5; and \$4 for salesmen instead of the regular \$2 fee.

However, applications which are mailed to any office of the division and bear a postmark of June 30th or any prior date, will be accepted without the penalty. Those which are mailed late and bear a July postmark, must by law be returned for the additional penalty fee.

Every year there are a number of licensees who claim they mailed the application and fee on June 30th, but which bore a postmark of July 1st. Exceptions can not be made in these cases and it is incumbent upon the licensee to mail the renewal application and fee sufficiently early to avoid this difficulty.

Delay and extra work for the division may be avoided by mailing the renewal application and correct fee direct to the Sacramento Office of the Division of Real Estate, 584 Business and Professions Building, Sacramento 14, California.

REAL ESTATE DECISION

A recent decision of a New York Court will be of interest to real estate brokers and salesmen. Justice C. G. Walter imposed a fine of \$200 on a real estate broker who was found to have been handling "Dispossess Proceedings" for landlords. It is said to be the first case in New York State in which unauthorized practice of law has been punished as contempt of court.

Similar statutes prohibiting lay persons from practicing law, including the preparation of legal instruments for a compensation for others, exist in California. Just how far reaching this law is has not been definitely determined. Real estate brokers and salesmen, however, should not attempt to prepare contracts or other legal instruments for a fee, and particularly when they are not related to some real estate transaction which they are handling. Brokers have not run afoul of the law when they confine their activities to the filling out of standard contract forms incidental to the real estate business, such as listings, deposit receipts and exchange agreements. Any broadening of this activity, however, may subject them to arrest and fine for unlawful practice of law. We recall that some years ago a real estate broker who was also a Notary Public, was found guilty of unlawful practice of law in that he drew wills and other instruments for a fee.

DIVISION OFFICES ACTIVE

A new high for people engaged in the real estate business in this State was reached at the end of February, with the total licensees numbering 42,063. This is an increase of over 9,000 since the same time last year when the total was 32,984.

In February the division issued 1,371 new real estate licenses of all types and in addition effected 2,072 transfers, branch licenses, etc. The latter figure indicates a shifting about of real estate operators to a great extent.

The examination figures for February are particularly interesting, as they indicate that March will be a record month for the issuance of licenses. The number of persons examined for real estate licenses during the month totaled 2,288, which is nearly double the number of licenses issued during the month. If the division is able to process and issue all of these licenses during March, it will create an all time high for new licenses issued during any one month. The number of examination sessions in all sections of the State has doubled in most instances, with capacity attendance.

New business opportunity licenses issued during February totaled 104, which is more than double that for February, 1945. In addition, 158 new applicants for this type of license were examined, indicating a great increase in the licenses of this type to be issued during March.

SUBDIVISIONS

All records for new subdivisions in this State were broken during February, when 101 new tracts were filed for approval. These were largely distributed evenly throughout the State in proportion to population. Only 81 of these tracts were investigated and reports issued, but it is hoped that all of this work will be concluded during the following month. The great rush to file new subdivisions in February was probably occasioned by the fact that after March 1st the current year taxes must be paid in full before subdivision maps can be recorded.

During the present fiscal year, 604 new subdivisions have been filed throughout the State as compared to 193 for the same period last year. In February, 1945, we reported unusual subdivision activity, but could not see the great increase which was to occur.

At the present time practically all new subdivisions are sold without any building improvement. This fact makes the great volume all the more startling. Present lumber and building materials scarcities have not resulted in any decrease in subdivision sales.

We previously reported that large tracts of excellent farm land in Los Angeles and other counties were being subdivided near the population centers. The acreage brings such attractive prices when sold as building sites, that splendid citrus, walnut and other groves are being disposed of by the subdivision method.

It has been noted that many subdividers increase the price of their offering during the course of the sale of lots. In certain sections choice tracts are becoming very difficult to secure and lot prices are rising rapidly. It is not uncommon for subdividers to raise the price of lots from \$100 to \$500 over a period of two or three months.

TIME TO FILE LICENSE RENEWAL APPLICATION AND FEE!

PROVISIONAL SALESMAN LICENSE

Provisional salesman licenses are effective for 120 days after issuance, and a provisional salesman may not transfer his employment during the effective period of the license.

There are instances when it is advantageous for an applicant to apply for this type of license. The commissioner has given them some priority in handling. The examination to qualify for this license is rather limited, covering merely the provisions of the license law, some questions on ethics, and simple arithmetic. Prospective salesmen who do not feel that they are ready to take the regular salesman examination are sometimes qualified to take the examination for provisional license. This gives them nearly four months in which to prepare for the regular salesman examination. No credit report is obtained in the case of provisional salesman applicants, thereby shortening the time in which to process this type of application.

Provisional salesman licenses are sometimes erroneously called temporary licenses. The law provides for no type of temporary license, except in cases where the commissioner refuses to issue a renewal license until the outcome of a hearing is ascertained.

INVESTIGATIONS NUMEROUS

February was an unusually active month from the standpoint of the complaint work handled by the division. A total of 196 complaints were received which resulted in holding 39 conferences. As a result of these, 18 cases went to formal hearings. During the month six licenses were denied to applicants, two licenses were suspended and two revoked. Because of the general activity, the complaint work of the division is constantly increasing. This offers a problem, as deputies ordinarily assigned to investigation work are required to spend considerable time in handling the routine business of the division such as conducting examinations, etc.

During the month of February 7,761 persons were interviewed by deputies and clerks of the division. The general public has gained the impression that the State Division of Real Estate is an agency which considers and solves all problems, legal and otherwise, which arise in real estate transactions. As a result thousands of inquiries are received from persons who have dealt in real estate in transactions where no agent was involved. Under those circumstances, of course, the division is powerless to entertain their complaints. Hundreds of complaints are received from persons who attempted to purchase certain property offered for sale by agents only to find that they were too slow in making their decisions and as a result someone else was successful in making the purchase. These bitterly disappointed persons are inclined to blame the agent for their misfortune, and make complaint to the division. The division also receives many calls monthly from tenants who wish to have their problems with the landlord solved. They are referred to the Office of Price Administration or some other agency which may have jurisdiction, but nevertheless the handling of these inquiries consumes a great amount of time and effort.

APPLICATIONS

Brokers will assist the division by checking all applications to be filed by prospective employees, to make sure that each and every question is fully answered. A great volume of correspondence and subsequent delay is caused by careless filing of applications for salesman and broker licenses. If the applicant omits to answer any question contained in the application, it can not be acted upon until it is completed. This means additional correspondence and sometimes weeks of delay.

**ON JULY 1, 1946, WILL YOU BE
LICENSED? FILE RENEWAL
APPLICATION NOW!**

NEW LICENSES

We have commented elsewhere in this bulletin about the large number of new applications for license received by the division. A recent spot check at the Sacramento office, from which all licenses are issued, revealed that approximately 13,400 applications of all types were in some stage of processing on a single day.

All of these applications were not for new licenses, although the majority of them were of that type. Many of them were requests for a change of address, addition of fictitious name, requests for branch office licenses, etc. The latter type of applications sometimes require more time and patience to process than do applications for the original license.

The division has found itself in a position where rather suddenly its work increased manyfold. Handling of license applications requires personnel with extensive experience, and new employees can not be thrown into the work without a period of training. It is for this reason primarily, that there has been delay in the issuance of new licenses.

Each license application as received must require many inspections and checks. The records of the division are examined to determine whether the applicant has ever been subjected to complaints for which he has not been called to account. Each question on the application is carefully examined to see that it is fully answered, and these answers many times result in further investigation. The applicant's examination paper must be graded, his fingerprints checked with the proper authorities, and a report received upon his credit rating. With thousands of applications going through the mail at all times, there is necessarily some delay before the applicant finally receives his license.

The correspondence in connection with incomplete applications, fictitious names, faulty recommendations, etc., is tremendous.

With this growing burden, the division now faces its renewal period. On and after May 1st it will accept applications for renewal of licenses. It may be realized from the foregoing comments, that the applicant will do well to file his renewal application for 1946-47 license as early as possible after May 1st. These renewal applications are to be found attached to the current year's license. If it has become lost, renewal blanks may be secured from the nearest office of the division.

SAN DIEGO CASE

Recently the Superior Court of San Diego County upheld the commissioner in a writ of mandamus proceeding brought by S. D. Jones, of San Diego, in an effort to secure reinstatement of his real estate broker license.

A license had been denied to Jones after a formal hearing, on the grounds that he had subdivided a bungalow court property without complying with the subdivision regulations of the Real Estate Law, and further that he had been guilty of misrepresentation to a purchaser of one of these units when he had promised a deed to the property within a specified time, provided that she pay a specified percentage of the purchase price. Testimony at the hearing indicated that Jones did not hold title to the property at the time said promise was made, and had no assurance that he could deliver title within the time specified.

BROKERS! CHANGE OF ADDRESS

Attention is called to Section 10162 of the California Real Estate Law as amended which reads as follows:

"Notice in writing shall be given the commissioner of change of business location of a real estate broker, whereupon the commissioner shall issue a new license for the unexpired period. The change or abandonment of business location without notification to the commissioner shall automatically cancel the license theretofore issued."

This is called to your attention so that because of having moved your business address, you may not find yourself unable to collect an earned commission.

WHOSE LISTINGS?

Recently a salesman called on us and complained that his employing broker had refused to sign his license transfer request until the salesman had furnished him with a complete list of all prospects secured while in this particular broker's employ. The salesman's question in effect was "Can he do this to me?"

This gives rise to an interesting subject. The real estate law, under which broker and salesman licenses are issued, makes it rather plain that the salesman is the employee of the broker. The broker must agree to employ the prospective salesman before the salesman files his application for license. Recent Court decisions have further strengthened the fact that a licensed real estate salesman has the status of an employee of the broker, and the broker must account for Social Security taxes, Workmen's Compensation fees and other demands that are made upon an employer.

Many salesmen have felt that they are not employees in the true sense of the word, for the reason that as a rule their compensation is based upon the amount of business they produce. This apparently does not alter the circumstances.

Getting back to the demand of the broker that the salesman furnish a list of prospects secured while under his employ, it would appear that in view of the foregoing the broker was within his rights. No doubt the prospects have been obtained through the advertising of the broker, because of the fact that his office was established in the community, and because his office had built a certain amount of goodwill over a period of years. The fact that this particular employee happened to come into direct possession of the information does not entitle him to keep it as his own. Ordinarily this information belongs to the office and is one of the assets of the broker's business.

As a practical matter, the salesman probably would endeavor to do business with these prospects after he had made his new connection. Nevertheless his old broker is entitled to an even break with the new employer on this business, as the prospect list is really his property. There is a serious question of ethics involved if the new broker, to whom the salesman has changed his employ, uses this prospect list.

When there is adequate proof that the salesman has secured a list of prospects through a particular office, and fails to divulge them upon demand, this act might bear investigation by the Division of Real Estate.

In this connection we again call your attention to the desirability of having an adequate employment contract between the broker and salesman. Matters of this kind should be clearly set forth.

CODE OF ETHICS

Professional courtesy and ethics should not stop at those things which have been sanctioned by law. The man who tries only to stay on the border of the law inevitably at some time steps across. The course of conduct set forth in the Real Estate Law is that which a broker *must* observe. There are other matters of conduct which he *ought* to observe.

Many years ago the National Association of Real Estate Boards, comprising hundreds of local real estate boards throughout the United States and Canada, adopted a code of ethics for the guidance of its individual members. This code of ethics has been recognized as a document of unusual merit. This code which was set forth many years ago for the conduct of real estate brokers and salesmen is applicable in every respect today. While the code was created for the conduct of members of the National Association of Real Estate Boards, it is generally accepted by brokers and salesmen engaged in the real estate business. It has been suggested that we discuss a few articles of this code in each bulletin published by the division. The commissioner has felt that this might result in great good and he is pleased to comply with the suggestion.

The following articles are not in each instance quoted verbatim, and in certain instances some portions are omitted, particularly when those portions apply only to the

relation of a realtor to his local real estate board and fellow members.

ARTICLE II. The realtor should so conduct his business as to avoid controversies with fellow-realtors; but in event of a controversy between realtors who are members of the same Real Estate Board such controversy should be submitted for arbitration in accordance with the regulations of their board and not to a suit at law, and the decision in such arbitration should be accepted as final and binding.

Brokers who are not members of any Real Estate Board, of course, do not have the advantage of arbitration except in some instances when the dispute is with a board member and they submit to arbitration. Lacking this advantage, the broker can at least endeavor to be broad-minded and work out his differences with his competitors without resorting to litigation. There is an old saying that no one ever wins a lawsuit. This is no doubt untrue, but usually when matters between brokers result in recourse to the courts, certain ill-feeling is developed. When a real occasion for a lawsuit develops, of course, that is the course to follow. Many petty suits might be avoided by an open-minded approach to the problem on the part of both brokers.

ARTICLE V. A realtor should never publicly criticize a competitor; he should never express an opinion of a competitor's transaction unless requested to do so by one of the principals, and his opinion should then be rendered in accordance with strict professional courtesy and integrity.

This is an important article. Have you ever heard a doctor or attorney openly criticize a competitor? If you have, it was indeed a rare occasion. Unfortunately this can not be said with respect to real estate agents, as it is all too frequently indulged in. Open criticism of your competitors, no matter how well deserved you believe it to be, is an open indictment of persons engaged in the real estate business. Nothing will do more to drag down the respect of the public for your vocation. And another thing to remember, this type of conduct will never help you build respect for yourself by the public, and will never assist you in selling properties you have to offer in competition with others. The average person resents criticism and suspects the perpetrator.

ARTICLE VI. A realtor should never seek information about a competitor's transaction to use for the purpose of closing the transaction himself, or diverting the customer to another property.

This old practice is commonly known as "raiding." If you wish to make enemies among your competitors and have them do everything possible to divert business from your office and undermine your standing in the community, this is the practice to follow.

ARTICLE VII. When a realtor accepts a listing from another broker, the agency of the broker who offers the listing should be respected until it has expired and the property has come to the attention of the accepting realtor from a different source, or until the owner, without solicitation, offers to list with the accepting realtor; furthermore such a listing should not be passed on to a third broker without the consent of the listing broker.

Here is discussed a situation which often gives rise to distrust among brokers who have cooperated profitably for many years.

It is a very delicate matter to secure for yourself a listing which was originally given to you by another broker. This is true even though the listing of the other broker has expired and the owner voluntarily lists it with you. Some brokers have told us that under these conditions, they immediately contact the original listing broker and lay the cards squarely on the table. This in our opinion is a splendid practice, and will often avoid controversies and ill-feeling in event of a sale. Unless the matter is thoroughly thrashed out with the original broker, he may feel that you are guilty of sneaky practice and deeply resent it. Of course, peddling listings which are entrusted to you by a competitive broker is a dangerous and unsound practice. It often results in splitting the commissions so finely that the selling broker and his salesman become disgruntled and will refuse to cooperate with you further.

ARTICLE VIII. Negotiations concerning property which is listed with one realtor exclusively should be carried on with the listing broker, not with the owner.

The broker who obtains an exclusive listing has the right to feel that the owner has entrusted him with the matter of procuring a purchaser. To "go around" the broker who has the exclusive listing may create suspicion and might result in the acceptance of an offer which the original broker does not believe advantageous to his client.

STATUS OF SALESMEN

An important court decision from the standpoint of all real estate brokers was recently made by Division II of the District Court of Appeal. The opinion was rendered in an action brought by the California Employment Stabilization Commission to recover contributions alleged to be due and unpaid on account of earnings of salesmen.

This decision may finally answer the question which has been asked repeatedly of the division since the unemployment insurance measures were enacted. It would appear that the real estate broker who employs one or more salesmen must comply with all of the requirements imposed by law upon an employer. The decision was written by Justice Emmett H. Wilson and concurred in by the court unanimously.

The effect of this decision upon the applicants for real estate licenses will be interesting to observe. At the present time the applications for real estate broker license outnumber the salesman applications nearly two to one, despite the greater delay in securing the license and the more difficult examination imposed. From our observations the average real estate broker is reluctant to burden himself with the many requirements imposed by law upon employers. Many formerly took the attitude that the salesmen operated more or less independently and were in effect independent contractors.

However, the State Supreme Court has granted a hearing and will set this case down for further argument.

In the meantime, the effectiveness of the decision of the District Court of Appeal will be unenforceable until the Supreme Court has reviewed this case and handed down its decision.

FORMAL HEARINGS

As a result of formal hearings duly set or held, the following action was taken by this division during the months of January and February, and a portion of March, 1946:

Revocation of 2 licenses;
Suspension of 3 licenses;
Denial of 15 applications.

The following is a brief summary of most of the cases:

1. Los Angeles County. *Suspended* real estate broker license for dishonest dealing in that, while acting as agent, said broker sold owner's property for \$1,700 cash and accepted commission from said owner, while at the same time said broker was negotiating a resale at \$2,350 and accepting one-half commission for making said resale without full disclosure to his principal.
2. Los Angeles County. *Denied* application for real estate broker license for dishonesty in that said broker had sold property as agent for owner for \$6,250, reserving furniture for himself when the price included the furniture.
3. Los Angeles County. *Denied* application for provisional real estate salesman license because of criminal record.
4. Los Angeles County. *Denied* application for real estate broker license by reason of former denial and criminal record involving Federal offense.

5. Los Angeles County. Real Estate Broker license *revoked* for commingling money of his principal with his own, and for dishonest dealing in that said broker received \$500 deposit from purchaser and was not accepted by owner and broker converted it to his own use.
6. Los Angeles County. *Denied* application for real estate broker license because said respondent in a former application falsely stated he was not convicted for violation of law; that as a matter of fact said respondent had been convicted on criminal charges.
7. Los Angeles County. Real estate broker license *revoked* for dishonest dealing in that said broker accepted \$200 deposit, could not make deal, and converted said deposit to his own use.
8. Los Angeles County. Application for real estate salesman license *denied* because of former denial record and criminal record.
9. Los Angeles County. Real estate broker license *suspended* because said broker obtained his license by fraud in that he did not fully disclose criminal record.
10. San Francisco. Real estate broker license *suspended* for making substantial misrepresentations in transaction.
11. San Francisco. Application for business opportunity salesman license *denied*. Commissioner not satisfied as to honesty and truthfulness of respondent.
12. San Francisco. Application for business opportunity broker license *denied* because respondent did not meet requirements as to honesty, truthfulness and good reputation.
13. San Francisco. Application for business opportunity broker license *denied* because respondent did not meet requirements as to honesty, truthfulness and good reputation.
14. San Francisco. Application for real estate broker license *denied* because respondent did not meet requirements as to honesty, truthfulness and good reputation.

The following applications were *denied* because applicants did not meet requirements as to honesty and truthfulness:

15. San Francisco. Application for individual real estate broker license.
16. San Francisco. Application for individual business opportunity broker license.
17. San Francisco. Application for real estate broker (Corporation) license.
18. San Francisco. Application for real estate broker (Corporation) license.
19. San Francisco. Application for real estate salesman license *denied* because respondent had a criminal record and did not satisfy the commissioner as to his honesty, truthfulness and good reputation.
20. Oakland. Application for real estate salesman license was *denied* because respondent did not satisfy the commissioner as to requirements of honesty and good reputation.

**IF YOU WANT YOUR LICENSE IN TIME,
FILE RENEWAL APPLICATION AND
FEE NOW AND AVOID PENALTY!**

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