

# REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, March, 1952

D. D. WATSON, Commissioner

## Court Hits Rental Schemes

**Los Angeles Jury Finds Defendants Guilty on 26 Counts—  
Operating Without License, False Advertising and Petty Theft Involved**

A Los Angeles jury sitting in the Municipal Court of Judge Vernon W. Hunt found the manager and three employees of Snappy Service Rental Agency of Los Angeles guilty of 26 of the 27 counts on which they were charged. Judge Hunt set March 19 for probation hearing and sentence.

The four were accused of the theft of \$5.00 deposits made by home seekers who claimed the rental agency failed to direct them to rentable quarters and then refused to refund the deposits.

The defendants were also accused of acting as real estate brokers without securing licenses from the Real Estate Commissioner, and of using misleading advertising in order to attract victims. The lists furnished for the \$5 fee, according to the witnesses who testified, were of no value. The prospective rentals, they claimed, had either long been rented, or were entirely unsatisfactory.

Defendants were Joseph Camp, Manager of Snappy Service Rental Agency, Mrs. Jean Barron, Cindy Kasnick, and Mrs. Clara Timmons, employees. Camp was found guilty of petty theft, unlicensed operating and false advertising. Mrs. Barron and Miss Kasnick were convicted of petty theft and unlicensed operating and Mrs. Timmons was found guilty of unlicensed operating only.

The convictions followed extensive investigation by the Real Estate Commissioner and the Los Angeles Police Department. Investigations of similar operations will continue. At this writing no information concerning the possible appeal by the defendants has been received.

The case was ably prosecuted by William Marshall Morgan, Deputy City Attorney, under direction of City Attorney Ray Chesebro. Prosecution was started after receipt of an Attorney General's opinion holding that rental agencies, which charged a fee to the prospective renter for a list of rentals, must be licensed.

## Deliver Copy of Listing

**Securing a Receipt  
Deemed Important**

In view of recent court decisions holding contracts void when the broker fails to comply with provisions of the license law, it becomes highly important to watch these matters carefully.

When a broker prepares a listing and has it signed, Section 10142 of the Real Estate Law states he shall deliver a copy to the person signing same. Failure to do so, as stated above, may seriously affect the validity of the listing, and at the same time jeopardize the broker's license.

It is therefore well for the broker to retain some proof that he has delivered a copy of the listing. The law states, "Receipt for said copy may be made on the face of said agreement." *It does not definitely state that a receipt must be taken, but infers that it should be done, and further indicates that the burden of proof is on the broker to show that he has delivered a copy.*

If the receipt for the copy is included in the listing agreement, it is preferable to have a separate receipt statement on the form and secure a second signature. When the receipt is buried in the text of the listing agreement, the signer may very well claim that the provision escaped his notice.

## Reference Book

The 1952 edition of the "Reference Book" published by the Division of Real Estate is available at all division offices at \$1.50 plus 5 cents sales tax.

The book is one of the most popular of state publications, and we believe every broker office should have one for reference purposes.

The volume is what the name implies, and is designed to answer many ordinary questions which arise in the business. While it contains data concerning the license examinations, these are incidental to the main purpose of the book, which is designed to be of value to those engaged in the business.

The "Reference Book" is mailed postpaid upon receipt of your check or money order for the above amount.

## Lender Must Be Reasonable

When the owner of a trust deed note has been a "good fellow" and permitted the home owner to be consistently late in his payments over a period of time, he cannot about face and "get tough" all of a sudden. He must give the home owner reasonable time to make good any default under these conditions.

At least an appellate court so ruled in the recent case of *Edelman v. Deavel*, and permitted the home owner a reasonable time to bring the loan in good standing before permitting foreclosure proceedings to progress.

## Do Not Remit Cash

When requesting a service of the Division of Real Estate for which the law requires a fee, please pay the fee by means of a check or money order. **Don't send cash.**

Mailing of cash is a very unbusiness-like practice and, should the cash go astray, the sender has no way of proving he made the remittance.

An estimated 16,000,000 nonfarm families own their own homes in the United States compared with 3,500,000 in 1900.

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*Published Bimonthly by the*  
**DIVISION OF REAL ESTATE**  
 STATE OF CALIFORNIA  
 EARL WARREN, Governor

D. D. WATSON  
 Real Estate Commissioner

M. R. GRIFFIN, Administrative Assistant

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**Commissioner Cannot Usurp Powers of the Courts**

Well meaning brokers and salesmen often cause buyers and sellers in real estate transactions to be disgruntled by misleading them as to the jurisdiction of the Real Estate Commissioner over licensees.

Frequently a complainant will telephone or visit an office of the division and state that broker "Blank" told them that, if they would just contact the commissioner's office, he would see to it that the contract was canceled, or the deposit returned, or revoke the license until promises were made good. We suspect that some of these extravagant claims may be made by licensees for the purpose of "unloading" the complainant and avoiding continued discussion of their problem.

Actually, the Real Estate Commissioner is empowered only to revoke or suspend a license for some specific violation of the license law. He does not have the powers of a court and cannot order any broker or salesman to return money, cancel contracts, or otherwise perform some act. Furthermore, before the commissioner can punish a broker or salesman by revoking or suspending a license, he must make a thorough and impartial investigation, hold a hearing and pre-

**DISCIPLINARY ACTION—DECEMBER, JANUARY**

**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 DECEMBER, 1951, AND JANUARY, 1952**

Name	Address	Effective date	Violation
Hanson, Chalmers Joseph Dba Hanson Realty Real Estate Broker Business Opportunity Broker	2443 Mt. Diablo Blvd., Walnut Creek	12/11/51	Secs. 10176 (a), (b), (f); 10177 (f) & 10302 (e)
Long, Paul W.	2926 Honolulu Ave., La Crescenta	12/14/51	Sec. 10177.5
Brophy, Daniel Paul Real Estate Broker Dba Brophy's Realty (Renewal Right)	1836 Grant St., Concord	12/18/51	Secs. 10176 (i) & 10177 (b), (f)
Raymond, John Chadwick Dba Imperial Valley Realty Co. Real Estate Broker Business Opportunity Broker	316 N. Imperial Ave., El Centro	1/15/52	Secs. 10176 (i), (e); 10177 (f) & 10302 (e)

**LICENSES SUSPENDED DURING DECEMBER, 1951, AND JANUARY, 1952**

Name	Address	Effective date and term	Violation
Burton, Herbert Mayer Real Estate Broker Business Opportunity Broker	3955 Wilshire Blvd., Los Angeles	12/17/51 90 days	Secs. 10301 (i); 10302 (e) & 10177 (f)
Mitchell, Edward Jack Dba Del Monte Real Estate Co. Real Estate Broker	2107 Fremont Extension, Monterey	12/27/51 120 days	Secs. 10176 (e), (i) & 10177 (d), (f)
Alberston, Robert William Real Estate Salesman	656 Santa Cruz Ave., Menlo Park	12/31/51 15 days	Sec. 10177 (a), (b) & (f)
Grandi, F. Lloyd Dba Marvelous Marin Realty Co. Real Estate Broker	1314 Fourth St., San Rafael	1/9/52 90 days	Sec. 10176 (a), (g) & (i)
Hillier, William Charles Real Estate Broker	240 Main St., Salinas	1/21/52 60 days	Secs. 10176 (i) & 10177 (f)
McKay, Donald James Real Estate Broker	1017 J St., Sacramento	1/31/52 120 days	Secs. 10160; 10164; 10177 (f) & 10176 (e)

sent his evidence before an impartial hearing officer, who will then recommend a penalty if he feels it is deserved. All this, of course, takes time. When a complainant calls the division office frantically and states, "The escrow closes tomorrow and you must get a deputy out right away," he apparently believes the commissioner has powers to stop escrows or otherwise interfere with contractual relationships. Such is not the case.

When a violation is reported to the commissioner, he insists that it be investigated thoroughly. If he has reason to believe there is some law violation regarding which a complaint is not filed, he will investigate it on his own initiative. *In either case the complaint becomes the complaint of the Real Estate Commissioner.* He is primarily interested in the law violations, and while he may be sympa-

thetic and assist where he is able to do so, he cannot bring about settlements or adjustments by threats or persuasion, as some seem to think.

So to brokers and salesmen we say, when complainants come to your office refer them to the Division of Real Estate, *but do not lead them to believe the commissioner will solve their civil problems.* Their attorney is the man to consult for that purpose.

The Defense Housing Act provides that veterans who have used their guaranty entitlement prior to April 20, 1950, to purchase or contract for a home, or have used it for a non-real estate loan, have now available the difference between \$7,500 and the amount used on account of prior loans. The details of this may be secured from your local VA office.

## Building Loans Priority Upheld

### Loans Recorded Prior to Work Are Prior to Mechanics' Liens

It was thought to be a well established rule in California that trust deeds and mortgages, placed of record against property for the financing of a building project before work is started, have priority over mechanics' liens subsequently filed. This principle was recently upheld in the case *Barr Lumber Company v. Shaffer*, 108 A.C.A. 13.

Both workmen and material men are entitled to file mechanics' liens. In this case the company which had furnished lumber to construct a house claimed its mechanics' lien was superior to the lien of the trust deed which was placed of record before any work commenced.

The basis for the claim was Article XX, Section 15, of the California Constitution, which reads:

*"Mechanics, material men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished materials for the value of such labor done and material furnished; the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."*

The court refused to change previous rulings to the effect that mechanics' and material men liens are liens upon the owner's interest in both the land and buildings, and if the owner's interest is subject to the lien of a deed of trust, the mechanics' and material men's lien is also subject to the lien of such a deed of trust.

Certain requirements are apparently necessary to make such a trust deed prior to the mechanics' lien: (1) the holder must have advanced or be obligated to advance the money secured; (2) the trust deed must attach prior to the time when the building or improvements were commenced; (3) the trust deed must be one of which the lien claimants had notice and which was recorded at the time the building or improvement was commenced.

The court concluded "that if there were any good reason for a change in the rule with reference to trust deeds, the Legislature had abundant opportunity for an unequivocal declaration of such a change. We find no statute that has been enacted with a view to the alteration of the declared doctrine."

Property-owners in France pay approximately a 25 percent transfer tax whenever property is sold.

### COURT CASES

The *Bulletin* has been commenting on court decisions which affect ownership of real estate, realty transfers and possibly your commissions.

Some of these cases are very recent, while others are older cases which rule upon points of particular interest to the broker.

The application of the law by the courts is the thing which determines where an owner or a broker stands in certain circumstances. It must be borne in mind, however, that **even a slight change in a set of facts may greatly change a person's position.**

We trust our readers will find these comments on court cases of interest, however we would appreciate your comments.

### Own Your Own Home Contest Winner Honored at Capitol

Allene Hammond, a senior at the Edwin Markham Junior High School, San Jose, has been adjudged the winner of an essay contest, sponsored by the San Jose Real Estate Board, on the subject "Why We Should Own Our Own Home." Miss Hammond won a \$500 government bond, plus a trip to Sacramento where, conducted by Senator Jack Thompson, she was to be the honored guest of both houses of the Legislature and visit state departments.

On March 19th, the California Senate was to recess to hear from Miss Hammond, who was to be greeted by Senator Arthur Breed, Jr., and Real Estate Commissioner D. D. Watson.

Plans called for the youthful contest winner to stay in Sacramento three days, and included luncheon with Lt.

### Be Sure They Read Contract

Too much reliance cannot always be placed on the fact that a party signs a contract, particularly if the circumstances permit him to claim that he was dissuaded or fraudulently influenced not to read the instrument. A principal or customer often tells the broker that he will not bother to read the contract before signing, as he has implicit confidence in the broker, and he might not understand it anyway. **Under these circumstances it is still good business to make sure the terms are understood.**

There are California cases which have held that the person who was lulled into a false sense of security and influenced to sign a contract without reading it is relieved of its obligations. In *Fleury v. Ranacciotti*, 8 Cal. 2d 660, plaintiff contended that defendant could not set up fraud as a defense because of his carelessness in failing to read an instrument before signing it, and furthermore that he was an experienced business man and not entitled to rely upon another's representations; further that confidential relations between the parties must exist. The court held that where failure to read an instrument is induced by fraud of the other party, the fraud is a defense even in the absence of fiduciary or confidential relations, and cited *California Trust Company v. Cohn*, 214 Cal. 619.

### University Pursues Realty Research

As a part of the intensified interest in real estate education in our State University, various real estate projects are being carried on which may prove to be of definite importance.

**Studies of the industrial growth of various areas of the State are being undertaken, and the consequent blight of various urban communities.**

Such things as the "shifting about" of home purchasers under the Veterans Administration plan are being contemplated at U.C.L.A.

At the Berkeley campus, studies are being made of the San Francisco Bay area mortgage market, and the organization and operation of the home-building industry in the Bay area.

Governor Knight, Mrs. Knight, Senator Thompson and Mrs. Thompson.

## Furnishing Closing Statement Important

### Report on Net Listing Must Include Broker Earning

Again we stress the fact that the total selling price which a buyer pays for property "net listed" must be disclosed to the seller; regardless of the fact that the sale is on a net listing. The seller in effect is paying the broker's commission and is entitled to know what he is paying.

**Failure to reveal the total sales price is in violation of two different sections of the license law, either of which violations is sufficient for revocation or suspension of license.**

Failure of a broker to reveal to his employer (usually the seller) the full amount of his commission prior to (or at the time of) binding the employer to a sales or exchange contract, is one basis for action by the Real Estate Commissioner under Section 10176(g) of the license law.

Furthermore, failure to reveal the amount of the broker's commission on a net listing, when he furnishes the seller the closing statement provided for by Section 10141 of the law, is an additional basis for action by the commissioner.

Recently, it has come to the attention of the division that many closing statements to the buyer and seller, in connection with deals handled on a net listing basis, do not account to the seller for the broker's commission. Such a closing statement does not comply with the provisions of Section 10141 of the law, which requires the broker to advise "the seller and purchaser in writing of the selling price thereof. . . ."

*Even though the broker relies upon statements furnished by the escrow to the buyer and seller, it is still his responsibility to make sure that such statements fully comply with the legal requirements, otherwise he is in violation as the responsibility is definitely placed upon him.*

While all money and property involved in the transaction must be accounted for in the statement to the buyer and seller, it is ordinarily not necessary for the broker to reveal to the buyer the amount of commission he is receiving from the seller. Payment of the commission is not strictly a part of the transaction, and is a matter of contract between the seller and agent. The amount of commission, as above stated, must be revealed to the principal who pays it, even though it

### REAL ESTATE PUBLICATIONS BEING LISTED

A list of reading references on the subject of real estate will soon be completed by the University of California staff and will be available to those engaged in the business.

This bibliography is annotated and divided into sections concerned with the real estate business. Legal phases of real estate, property valuation, housing, building, and urban development are classifications under which the various publications will be listed.

### U. of C. Certificate Program Classes Planned for Spring Season

About 50 classes are scheduled in more than 20 different California cities by University of California Extension Division this coming spring. Details regarding the times and places of the classes may be obtained from local Real Estate Boards or from University of California Extension Division, 140 Montgomery Street, San Francisco, or 813 South Hill Street, Los Angeles. A tentative schedule was published in the January *Bulletin*.

In our last issue we announced that Charles W. Corbitt, of San Francisco, was the first to receive the university certificate. Now it appears that Edwin E. Raphael, of Coldwell-Banker and Company, has also completed the necessary work to make him eligible. It is expected that other candidates will soon complete sufficient work to entitle them to certificates under the program which started in 1950.

is the excess over the net figure to be received by the seller.

## Real Estate Ownership Class Really Investment Courses Planned for Bay Area

Due to popularity of the University Extension courses in Real Estate Ownership last year, another such course was held the forepart of March this year. Those who failed to enroll in this early spring course should watch for future announcements. The course in Real Estate Ownership consists of four meetings, and is designed primarily for property owners interested in real estate investments.

**Stressed in the course is information for prospective owners of income-producing real property, and it should provide valuable information to improve operating and maintenance policies of present owners and outline a sound program for those contemplating real estate investment.**

It is also felt that the course will offer the real estate salesman or broker much valuable information which will be of assistance to him in his daily practice. A nominal charge of \$5 for the four sessions, is charged.

### U.C.L.A. Develops Real Estate Program

The Dean of the School of Business Administration at U.C.L.A., George W. Robbins, recently announced an expanded real estate curriculum for U.C.L.A. Among the credit courses offered in Business Administration are (1) Elements of Real Estate and Urban Land Economics, (2) Valuation of Real Property, (3) The Building Industry and Urban Land Use, (4) The Management of Urban Real Estate Operations.

In the second group of subjects the following are covered: (1) General Laws Relating to Property, (2) Principles of Insurance, (3) Urban Geography, (4) Urban Sociology, (5) Investment Principles and Policies.

It is encouraging to note the expanded program in real estate being developed by the State University at Los Angeles. The appointment of Dr. Fred E. Case and Mr. James Gillies to the staff at U.C.L.A. is a great contribution to real estate education in that area.

## Additional Law Changes

In our November issue, we listed various changes in the law made at the last session of the State Legislature. As space did not permit use of all the material we had prepared, we published what we felt were the more important changes to those in the real estate business. The response we have received indicates they were of general interest.

Now we publish the balance of the material. Bear in mind our report on this legislation is necessarily sketchy and those desiring more detailed information should secure a copy of the amended laws.

### Notaries

Any certificate of proof or acknowledgment given by a notary or any deposition, affidavit, oath or affirmation given by him shall be signed by him in his own handwriting. This was required by amendment to Section 8205 of the Government Code.

### Notices

Section 6066 was added to the Government Code to provide that publication of notice pursuant to this section shall be once a week for two successive weeks. Two publications, whether in a daily or weekly, are sufficient. The period of notice commences upon the first day of publication and terminates at the end of the second week thereafter.

### Partnerships

The certificate of a person or partnership transacting business under a fictitious name and the certificate of a person or partnership ceasing to do business under a fictitious name must be published pursuant to Section 6064 of the Government Code, which provides publication once a week for four successive weeks with four publications, whether in a daily or weekly newspaper. This is provided for by amendments to Sections 2466 and 2469.1 of the Civil Code.

### Personal Property Taxes

The tax collector may no longer collect a cost of \$1 for preparing the delinquent tax roll and publishing the delinquent list on each separate valuation of personal property shown on the secured roll. This was brought

## SINGLE TYPE OF LICENSE?

From time to time the suggestion is made that the State issue a single type of license to real estate agents rather than the three types now issued, namely broker, regular salesman, and provisional salesman. Those who advanced the idea have pointed out that the same standard of knowledge should be required of all those dealing with the public, as in the case of the various professions. They further point out that broker licenses are in the great majority and that most persons working as salesmen do so with broker licenses.

The idea arouses some interesting speculation. However, of the 38 states having real estate license laws, all have adopted the two license system, broker and salesman. This may be accounted for by the fact that the early laws provided for the two licenses, and others have adopted the system as a matter of course.

about by amendment to Sections 2621 and 2706 of the Revenue and Taxation Code. Section 2189 of the Revenue and Taxation Code was amended to provide that a tax on personal property is a lien on any real property on the secured roll also belonging to the owner of the personal property and located in the same county as the latter on the lien date, if the fact of the lien is shown on the secured roll opposite the description of the real property. This amendment makes it clear that personal property taxes on the unsecured roll are not a lien on any real property.

### Holidays

If the last day of the performance of any act provided by law to be performed within a specified period of time shall be a holiday, then such period is extended to and including the next day which is not a holiday. The term "holiday" means all holidays specified in Sections 6700 and 6701 of the Government Code and, to the extent provided in Section 12b of the Code of Civil Procedure, all days which by the terms thereof are required to be considered as holidays.

## Explain What Your Remittance Is For

When sending in a fee to the Division of Real Estate for change of address, establishment of a branch office, change of name, transfer of a salesman's license from one broker to another, or any other service, please see that the remittance is accompanied by a letter of transmittal explaining what the fee is supposed to cover. The letter must be signed by the person who is authorized to request the change.

The division often receives checks unaccompanied by any explanation as to what they are for. Sometimes the checks will have a note on them, such as "Branch Office" or "Transfer of license," etc. Result: Unnecessary correspondence and delay in fulfilling the licensee's request.

## RECENT PUBLICATIONS

The National Bureau of Economic Research reports that it has just published a monograph on *Urban Real Estate Markets: Characteristics and Financing* by Dr. Ernest Fisher, professor of urban land economics in the Columbia University Graduate School of Business. The study analyzes data bearing upon the effects of rent control on the market for rented dwellings and apartments and presents comprehensive evidence indicating that, under certain market conditions, the liberalization of credit terms easily tends to become capitalized in higher prices for homes, with a consequent reduction in housing standards. Other discussions in the study are devoted to the market in which homes are bought, sold or exchanged and the means for financing home ownership. The monograph is one of a series of studies in urban real estate finance carried on by the National Bureau of Economic Research.

A recent pamphlet published by the Cornell University Agricultural Experiment Station is of interest to realtors. *Housing and Journey to Work* by Glenn H. Beyer, director of the Cornell University Housing Research Center, is a study undertaken to provide new facts about the housing and journeys to work of families in a rural area around a middle-sized industrial city, in this case, Rochester, N. Y.

## Seller Must Disclose That Lots Contain Fill Old Fills May Not Be Apparent From Surface Inspection

Erosion of filled ground as a result of recent heavy rains has brought the subject to the forefront. An examination of court cases reveals that the problem is by no means a new one, and the matter of selling a filled lot without disclosing the fact it is filled could put the seller on the short end of a law suit.

It seems that it makes little difference if the buyer has made no inquiry relative to whether or not the property has been filled, provided the fill condition is not within the reach of the diligent attention and observation of the buyer; in other words, if the fill condition is not readily discernible upon examination of the property. Where the fill has existed for a number of years, often it cannot be detected without actually penetrating the ground.

In the case of *Clouser v. Taylor*, 44 C.A. 2d 453, the buyer bought two lots in Alhambra which the seller knew had been filled with debris many years previously. This was not apparent upon inspection. The cost of building on them would have materially increased.

The trial court ruled, confirmed by the appellate court, that when a seller disposes of real estate which he knows has been filled and the value of which is materially affected by such filling, without disclosing it to the buyer, and the buyer makes no inquiry relative to whether or not the property has been filled, the buyer may rescind the transaction upon learning the true facts.

## Negotiations Not Enough Commission Denied in Unusual Case

A broker in the northern part of the State sued for a commission and lost under circumstances briefly as follows.

Owners listed land for sale with a broker. They were buying the land from a land company on a conditional sales contract. An exclusive listing for 30 days was given, which provided that the broker was to get a commission if a sale was made within a year to anyone the broker was negotiating with during the 30 days, if he so notified the owner.

After the 30 days, the contract owner quitclaimed the land to the land company. Apparently the broker had had some dealings with the land company concerning the property, but could not get together with them on

### Lease Service Requires License

Charging a fee for service in assisting persons to secure an oil lease on public domain requires the operator to hold a mineral, oil and gas license issued by the Real Estate Commissioner. A number of inquiries have been received of late on the subject, which caused the commissioner to seek advice from the office of the Attorney General.

Certain operators in this field have questioned the necessity of the license on grounds that they are merely charging for personal services in assisting the applicant to file the application.

As a matter of fact, such operators who have come to the attention of the division, actually perform the services of an agent for which they make a charge. They influence the prospect to file an application for a lease, suggest the location of the land upon which to file, and in many cases profess to have favorable information on a certain area furnished by a geologist. Their sales talk and literature, if used, usually paint a rather glowing picture of the possibilities of securing large returns from the venture.

what they were to pay the contract owner for a quitclaim deed.

The court held that since there was no evidence of a sale, either by the contract owner or the broker, the fact that there may have been negotiations conducted by the broker prior to the execution of the listing agreement, was not material to the issue of performance of the brokerage agreement. Judgment was denied. The case is *Longo v. Freitas*, 107 A. C. A. 12.

## Your Relations With the Public Basic Rules of Conduct Form Good Guide to Building Business

Here are a few "do's and don'ts" for brokers and salesmen. They have been recognized for years as proper practice when dealing with the public.

1. Ascertain all pertinent facts concerning every property for which you accept the agency, so that in offering the property you may avoid error, exaggeration, and misrepresentation.
2. Never offer a property without the authorization of the owner.
3. Never offer property at a higher price than the owner has openly agreed to take.
4. Before you sell property in which you personally have an interest, disclose your interest to all parties to the transaction.
5. Don't take a commission or anything of value from more than one party to a deal without the full knowledge and consent of all the parties.
6. In closing a deal, advise the use of legal counsel when the interest of any party to the transaction appears to require it.
7. Always recommend the examination of title and conveyancing papers.
8. Have all contracts and agreements to which you are a party in writing and see that they are complete and exact.

NOTE: The foregoing is based on Part III of the "Realtor's Code of Ethics" entitled "Relations to Customers and the Public." In the last issue we commented on "Relations to Clients."

## Real Estate Books and Schools

It is reported that less than 30 years ago there were no books on real estate business methods and only a few on land economics. Today it is estimated that there are at least 3,000 publications on real estate. Twenty years ago there were no educational institutions giving special attention to real estate and its affiliated problems. Today real estate courses are established in 74 universities and colleges in the United States.

## Subdivision Court Case

The seller, on contract, of land to be subdivided was not unreasonable in requiring that the subdivision plan be approved by local and state authorities before agreeing to release parcels. This, in effect, is held in the case of "*Hiller v. King*, 105-ACA-193."

In this case a prospective subdivider bought a tract under a contract providing for "partial release of any portion or portions of the property sold on such basis as may hereafter be mutually agreeable" to the parties.

The subdivider built roads through the tract and offered the sellers a release plan which they rejected. The subdivider brought an action to rescind and recover payments made and damages, but was unsuccessful.

It was found by the court that the subdivider's plan failed to provide the sellers sufficient security, since the construction of roads was without city approval and left no means of ingress and egress to and from certain parcels. The sellers tried for two years to work out a suitable plan with the subdivider. They did insist, however, that any plan must be first approved by city and state authorities. It was further brought out that the Real Estate Commissioner had informed the sellers that any attempt to sell lots without permission might be subject to an injunction suit.

## BUILDING SALE—FIRE LOSS

An interesting court case involves the liability of the parties during the sale of a house to be moved.

Buyer agreed to pay for a house when moved and placed on the foundation the buyer should lay for it. The house was moved but the foundation was not ready and in the meantime the house was destroyed by fire. The buyer won judgment for the amount he had paid down on the house.

*With certain exceptions, the risk of loss falls on the seller if title has not passed; on the buyer if it has.* Delivery in this case was not consummated, since the final payment was not due until the house was lowered onto the foundation, and no time was fixed for completion of the foundation. Case reported in 37-AC-58.

## Regulations for Cancellation of License

Whenever a broker wishes to cancel or "inactivate" his license by mail, a letter making the request over the broker's signature should be forwarded to the division. *A request by any other person to cancel a broker's license will not be honored.*

Cancellation or "inactivation" of a salesman license requires either the written and signed authorization of the salesman or his employing broker. The same rule applies on cancellations made in person at the division's offices.

While mail requests for cancellation of license will be processed at any division office, time will be saved and possible confusion eliminated if they are directed to the principal office at Sacramento, 1021 O Street.

## BROKER EARNED HIS COMMISSION

A commission suit which is interesting is found recorded at 105-ACA-442, *Lipton v. Johansen*.

The real estate broker sued for a commission on the sale of property, based on bringing the parties together and having the purchaser agree to buy the property, the seller having agreed to pay a commission. The buyer made a deposit but failed to buy. The court found that since the deposit receipt constituted the purchase contract in full, the broker was not bound by differing terms of the escrow instructions, in the absence of actual or implied consent to them. Judgment for the commission was awarded to the broker.

## Local Subdivision Control

Some of California's less populated counties are starting to take steps to regulate subdividing more closely under the authority granted in the Subdivision Map Act. The more heavily populated counties of California have been faced with the necessity for some time.

Many counties were not prepared for the great influx of population the last 10 years, and for some time allowed subdividers to proceed with minimum control. However, the problems of water, drainage, sewage and planning, common to all growing areas, made themselves felt and county after county has had to strengthen regulatory ordinances governing subdividers.

## WHY LAW REQUIRES DOUBLE FEE FOR LATE RENEWAL

Each year at renewal time a number of licensees miss the "deadline" and must pay a double renewal fee in order to put their licenses in good standing. For example, as of July 31st, 887 licensees had paid double renewal fees for their 1951-52 licenses. Any renewal application accompanied by the proper fee and postmarked before midnight of June 30th was acceptable without penalty no matter when it reached the Sacramento office.

Many ask why a penalty fee is assessed for late renewal, explaining that "my secretary forgot to mail the renewal application," "the mail was picked up, but the post office did not post mark in time," "I merely forgot to sign the check," etc.

Undoubtedly the majority of these excuses are valid in that carelessness on someone's part was the cause of late renewal. However, the drafters of the Real Estate Law undoubtedly inserted the penalty provision for late renewal because they knew that, without an established "deadline" and consequent penalty, licensees would be inclined to spread their renewals over most of the year.

Practically all license laws in this and other states, motor vehicle licensing agencies, tax statutes and agencies, etc., provide for a definite payment date, beyond which date a penalty is levied. The 10-day discount is another example. Without a "deadline" which is costly to miss, collections would be haphazard and expensive.

## "Free Drawing" Practice Such Schemes to Be Carefully Scrutinized, Commissioner States

During the period of the subdivision activity during the 1920's, many subdividers resorted to drawings at county fairs, public exhibits, and similar gatherings whereby the "lucky winners" were given a "free lot" or a "credit" toward the purchase of a lot in a subdivision. Usually the subdivision was of the mountain resort type or the desert retreat variety. The practice was used concurrently with sightseeing tours and free lunches in order to entice the prospect to the tract.

Many of the subdividers got into serious trouble and, as a result, the practice has died away along with many other questionable sales methods. From time to time, however, some subdivider comes up with a "credit check" or "cash certificate" toward the purchase of a lot as a result of a drawing at some fair or show.

The Real Estate Commissioner is definitely opposed to any practice where experience has shown that it easily leads to misrepresentation and deceit, and is frequently a forerunner to high-pressure sales methods. Based upon any complaints received, the commissioner states he will vigorously investigate such cases and use every method at his command to stop the practice.

Those contemplating such an advertising program should also consider Section 532-c of the Penal Code which in effect states that anyone, who offers or gives with winning numbers at any drawing of numbers, or with tickets of admission to places of public assem-

blage, any lot or parcel of real property, and charges or collects fees in connection with the transfer thereof, is guilty of a misdemeanor.

### NEW F. H. A. RULES

The Federal Housing Commissioner has announced a new amendment to his rules governing the amount which may be charged for financing fees in connection with loans insured by F. H. A. The amendments cover several sections and titles of the National Housing Act.

Briefly, the lender shall certify to the commissioner that he has not collected from the borrower a service charge in excess of one percent of the original principal amount of the loan or charges other than a customary cost of title search and recording fees, and the application fee, mortgage insurance premium and other fees and charges which the lender is required to pay the commissioner under the rules.

The borrower is not prohibited from dealing through a broker, who does not represent the lender, if he prefers to do so, and paying the broker such compensation as is satisfactory to the mortgagor.

The Real Estate Commissioner, by law required to regulate the sale of subdivisions and guard against fraud or deception of the purchasers, has made it a policy to cooperate with county officials.

### Management Course

The Institute of Real Estate Management will hold its regular one-week management school at the Chase Hotel in St. Louis starting April 21st.

## Charges for Subdivision Reports

### Additional Investigation May Require Extra Fees

Often after the commissioner's subdivision public report is issued, the subdivider finds himself in a position to correct unfavorable conditions reported upon. When this happens, an amended report may be issued showing the present condition of the tract.

A charge of \$5 for the first 100 copies of such amended report, and a charge of \$1 for each additional 100 copies (or fraction thereof) is made. If the changes require further investigation, an additional charge may be made to cover the actual expense involved.

When the commissioner's subdivision public report is originally issued, the subdivider is furnished a number of copies equal to 1½ times the number of lots in the subdivision. For instance, if the subdivision has 100 lots, 150 reports are issued. If this initial supply proves insufficient, the subdivider can order more from the division upon payment of the same charges mentioned above.

### Noncitizens Employment Prohibited

Persons who are not citizens may not be legally employed by any city, county, or the State according to a recent ruling of the Attorney General.

During the war an exception was made by special act of the Legislature, to last until the cessation of hostilities. The President's Order ending World War II at noon December 31, 1946, ended the Legislature's Emergency Law adopted in 1944.

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