

# REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, March, 1953

D. D. WATSON, Commissioner

## "If's and But's" Weaken Brokers' Contracts

### Agent Who Permitted Contingency in Contract Loses in Suit for Commission

A real estate broker may by special agreement make his compensation depend upon the happening of a certain event but, unless this event occurs, he has no right to recovery.

Recently, a broker secured a listing for the sale of a home at \$28,500. He found a buyer who offered \$27,500. Escrow instructions were prepared but, inasmuch as there was some question as to the seller's title, seller's attorney had inserted in the escrow instructions the following provision: "Completion of this transaction is contingent upon seller's ability to perfect title and close escrow by August 30, 1950."

**The transaction was not completed by the specified date, and the seller canceled escrow instructions.**

The broker brought suit for a commission based on the grounds that he had obtained a purchaser ready, willing and able to purchase on terms acceptable to the sellers, and a valid and binding agreement to purchase and sell had been executed. However, the contract to purchase and sell was expressly made contingent upon the closing of the escrow by August 30, 1950, and the seller's ability to perfect title by that date.

#### Court Defines Issue

The court pointed out that the right of a broker to recover his commission must be measured primarily by the terms of his employment. Furthermore, the broker who made his compensation depend upon a contingency or the happening of a condition precedent had no right of recovery, as the condition did not occur.

The court pointed out that the instructions became a special contract between the parties, which contract was approved by the broker. Under the circumstances shown, the broker's claim for a commission must be based upon the escrow instructions and, as

(Cont. on Page 85, Col. 3)

## Proposed Law Changes

A few amendments to the Real Estate License Law and subdivision regulations administered by the commissioner are proposed in bills now pending before the State Legislature.

For the most part, these appear to be amendments of a minor nature designed to correct obvious errors or omissions in the law and to clarify the meaning of certain sections.

At present, these bills are being corrected for errors. We shall endeavor to have a brief summary of the various provisions in the next issue of the *Bulletin*.

## Read and Whitelock Are Reappointed to State Board

Governor Earl Warren has reappointed Mr. Maurice G. Read, Berkeley, and Mr. Frank L. Whitelock, San Bernardino, as members of the State Real Estate Board through January 15, 1957. Both men are prominent in state and national real estate circles and each is a past president of the California Real Estate Association.

Mr. Whitelock and Mr. Read have taken a constructive interest in their work as Real Estate Board members. In addition to their usual advisory duties, members now devote considerable time to the evaluation of "equivalent experience" or educational qualifications of broker applicants.

## Subdividing at High Level in 1952

California subdividers were busy in 1952. They filed 2,080 tracts with the Division of Real Estate during the year, exactly equaling the previous high total established in 1950.

## Accusation Against License Holder Must Outline Charges Administrative Procedure Act Governs Imposition of Disciplinary Action

Under the Administrative Procedure Act, which is the law governing the holding of formal hearings involving licensees, the formal statement of charges is called an accusation. Also under the governing statute, the Real Estate Commissioner must take the accuser's role when a real estate, business opportunity or mineral, oil and gas license is at stake. The accusation is only drawn after a careful preliminary investigation shows reason to believe that there may have been a violation of the Real Estate Law.

The law provides that the accusation must contain the charges against the licensee detailed specifically enough so that he, as the respondent, will know of what he is accused and what he has to answer to. A mere recital of the code section alleged to have been violated is not sufficient. The several sections of the Real Estate Law cover various types of vio-

lations, such as misrepresentation, dishonest dealing, false promises, commingling of funds, and other acts. To merely say in the accusation that the licensee is alleged to have materially "misrepresented" the facts in a certain transaction is not enough; the nature and circumstances of the alleged misrepresentation must be set forth.

It should be emphasized that the issuance of the accusation does not con-

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Sacramento, March, 1953

Published Bimonthly by the  
**DIVISION OF REAL ESTATE**

STATE OF CALIFORNIA  
EARL WARREN, Governor

D. D. WATSON  
Real Estate Commissioner

**STATE REAL ESTATE BOARD**

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**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, 1952, AND JANUARY, 1953**

Name	Address	Effective date	Violation
Pease, James Edward..... Real Estate Broker	1449 Fruitvale Ave., Oakland.....	12/31/52	Secs. 10176 (e), (i) & 10177 (d), (f) & Secs. 2830, 2831 & 2832 of the Rules and Regulations of the R. E. Comm.
Ross, Jack Robert..... Real Estate Salesman (and Renewal Right)	11714 San Vicente Blvd., Los Angeles	1/6/53	Secs. 10130; 10176 (i) & 10177 (f)
Salton Sea Beach..... (Prohibition of Sale of Subdivision)	Imperial County.....	1/23/53	Secs. 11013 & 11019; Secs. 2794, 2795, 2800 & 2801 of the Rules and Regulations of the R. E. Comm.

**LICENSES SUSPENDED DURING DECEMBER, 1952, AND JANUARY, 1953**

Name	Address	Effective date and term	Violation
Cooper, Daniel Edward..... Real Estate Broker	E. Cliff Dr. and Wharf Rd. Capitola	12/29/52 10 days	Sec. 10177 (b), (f)
Marsh, Paul Thomas..... Real Estate Broker	2253 Concord Blvd., P. O. Box 956, Concord	12/29/52 10 days	Secs. 10142 & 10177 (d), (f)
Lanphere, Guy Bertram..... dba Guy Lanphere & Co. Real Estate Broker	1304 Ocean Ave., San Francisco...	12/29/52 30 days	Secs. 10176 (a), (b), (i) & 10177 (f)
McKeon, Byna K..... Real Estate Broker	1304 Ocean Ave., San Francisco...	12/29/52 30 days	Secs. 10176 (a), (b), (i) & 10177 (f)
Menke, Clyde..... Real Estate Broker Business Opportunity Broker	5179 Mission St., San Francisco...	1/14/53 30 days	Secs. 10176 (a), (b); 10137; 10177 (f) & 10302 (e)
Giudice, Vincent E..... Real Estate Broker	345 15th St., Oakland.....	1/15/53 30 days	Sec. 10176 (f)

**Power of Attorney Ruling**

**Authority Cannot Be Used to Circumvent Requirements of License Law**

A "Power of Attorney" cannot be conferred upon individuals authorizing them to sell subdivision lots for a compensation, in order to eliminate the necessity for licenses.

This is the conclusion of the Attorney General in an official opinion rendered in answer to the question by the Real Estate Commissioner.

It had been reported to the commissioner that certain owners and subdividers had been authorizing unlicensed individuals to sell subdivision lots or houses without real estate broker or salesman licenses, on the theory that granting powers of attorney for this purpose would circumvent the license requirement.

While the law, in specific instances, exempts a person acting under a power of attorney from the license requirement, it does not contemplate that these instruments may be used to enable someone to engage in the business for a compensation or a commission, thus avoiding the license requirement. Persons attempting to operate in this manner will be considered by the commissioner as operating in violation of the license law.

**Procedure in Accusations**

(Cont. from Page 81, Col. 3)

demn the licensee to loss or suspension of his license; he is presumed innocent until proof of violation is presented. The burden of proving the charges is upon the accuser, who by law must be the Real Estate Commissioner. This procedure is based on the theory that the commissioner represents the people and the State of California, and accusations resulting from complaints must be brought in the commissioner's name rather than in the name of the individual who made the complaint.

The law requires that the Real Estate Commissioner must have had considerable experience in the real estate business prior to his appointment and so, naturally, it is assumed he is familiar with the manner in which real estate transactions should be handled to comply with the law. The filing of an accusation is a very serious matter

and is not undertaken lightly. Moreover, the commissioner attempts to protect the honest and innocent licensee from unwarranted accusations. The hearing itself is held before an impartial hearing officer, who is a member of the Division of Administrative Procedure's Hearing Panel and who is in no way associated with the Division of Real Estate.

The hearing officer is required to present a proposed decision to the commissioner who has the choice of making the decision as recommended or issuing an order with a lesser penalty than the recommendation made by the hearing officer. If a suspension or revocation is ordered, the respondent licensee may seek reconsideration of the penalty by the Real Estate Commissioner before the effective date of the order. Beyond this, he has the right to appeal to the courts, seeking a writ of mandate to set aside the commissioner's decision.

## Proper Use of Trust Fund Account Stressed

### Brokers Have Clear-cut Responsibility for Strict Safeguarding of Clients' Funds

Are you maintaining a trust account? Are you placing in this trust account all money received from clients and held by you?

If you are not, you may be guilty of commingling and are subjecting your license to action for revocation or suspension.

The commissioner's rules require not only that you maintain a trust account, but that you place all money you receive in connection with your real estate business in this account, unless you immediately place it in a neutral escrow depository or in the hands of principals entitled to the money.

The law gives the commissioner the authority to investigate the trust account of any real estate broker and spot checks are being made for compliance. Whenever there is any indication, through a complaint or otherwise, that possibly a broker is not following the rules, a check of his trust account will be made. Severe penalties are provided for violation.

As a matter of plain fact, the commissioner does not have the manpower to investigate the trust account of every broker in the State. Usually vio-

lations cannot come to light until there is some complaint; the broker gives a check for the return of a deposit which "bounces," or there is some other sign of irregularity. Then, immediate action is taken.

Sometimes, unfortunately, a violation of the trust account rule is discovered too late for the commissioner to take action. For instance, there was a recent case where, after a broker's death, his trust funds were found short many thousands of dollars.

Conscientious use of the trust fund can save brokers from many difficulties. For example, the broker who carelessly deposits trust funds in his private bank account may unexpectedly find the account attached and be in a highly embarrassing position.

The trust fund account is for your protection, as well as the protection of your clients. Use it faithfully.

## Agents Cautioned to Stay Within Limits of Authority

### Last Minute Explanations to Parties at Escrow Often Undesirable

(From Oroville Title Company "News Letter")

The dictionary defines the word "Agent" as "One who or that which acts or has power to act for another." An escrow agent therefore should only act in the capacity which is desired by his principals.

In the absence of specific instructions, an agent exceeds his authority, and is personally liable for so doing, if he delivers funds or documents to an escrow and also gives the escrowee instructions as to the delivery or disposal of the money and papers. Escrow instructions should only be given by an agent when he has written authority to give them. In the absence of this written authority from all parties for whom he is attempting to act, the agent should insist upon the parties themselves, both husbands and wives, signing the escrow instructions. A buyer can be acquainted with the conditions of the title he is to receive before he gives his escrow instructions. Last minute explanations of small matters sometimes cause buyers to feel that the small matters must be

important or he would have been advised about them sooner.

When outlining the expense which parties to a transaction are to be called upon to pay, one finds that an over quotation is much safer, and leads to a happier ending of the story, than underestimating the charges. A refund of an overage is practically always appreciated, while no one appreciates the receipt of a further bill in connection with closing.

Avoid all last minute and hurried explanations concerning a deal. An agent is the hub around whom the transaction is built. His job, if done with precision and foresight, leads to a fine reputation for him and the return to him of real estate minded clients.

## One Dollar Fee For License Change At Any Time

Are you going to change your license address? Are you going to transfer to another broker?

If so, the change will cost you \$1, regardless of the time of year, and even though you make it at the time you renew your license.

*Example:* A broker changes his office address as of July 1 and so indicates on his renewal application. His renewal license is \$5, and the change of address is \$1—total \$6.

*Another example:* A salesman changes employing brokers as of July 1. He renews his license under the new broker. Renewal license is \$2, plus \$1 for change of broker—total \$3.

The above is in accordance with the provisions of the Real Estate Law and State of California Department of Finance regulations.

Expense amounting to more than \$1 is involved in changing records, preparing new addressograph plate, etc.

## Husband Deeds Property

### Wife Must Contest Any Conveyance Without Her Consent Within One Year

It is generally known in real estate circles that when community real property is being conveyed the signatures of both husband and wife are required.

It is not generally known that a deed to community property executed by the husband alone may convey good title under some circumstances. If a wife under such a condition should fail to commence some action to avoid the conveyance within one year after date of recordation of the deed, the deed given by the husband becomes a good one.

From the time the deed is recorded until the wife brings an action in court, the deed merely serves as a cloud on the wife's title and does not ripen into an effective conveyance, unless the wife fails to take steps to avoid it within the period specified in Civil Code No. 172a.

Recently a case involving this rule was heard (115 A. C. A. 449).

## State-wide Interest In Educational Program

### Real Estate Certificate Program Gains in Recognition and Enrollment

Increased interest on the part of those already in the business in advanced real estate education is revealed by the rapid increase in enrollment for courses given in connection with the University of California Extension Division Real Estate Certificate Program.

In recognition of this trend and to allow instruction on a completely professional level, it is planned to limit enrollment in future program courses to real estate licensees. The only exceptions to this rule will be persons who are engaged in allied fields of endeavor or any who can show a valid reason for taking any particular course or the series of courses.

With a rather small beginning some three years ago, the growing acceptance of the Real Estate Certificate Program has surprised even its most enthusiastic supporters. At the end of the last fall term, close to 5,000 persons had taken the offered courses in 20 districts throughout the State. In addition to those interested in real estate, mortgaging and brokerage, a large number of persons in fields related to real estate have taken the courses. Mortgage loan, building construction, escrow and title company, and bank officials and employees account for about 20 percent of the enrollees.

#### *Reasons for Interest*

Several factors have contributed to more interest in real estate study on a university level. Keener competition caused by more people entering the business has made many brokers and salesmen realize that it is to their advantage to advance professionally through further study. Furthermore, as time goes on and the population of California increases, real estate problems become more complex. As examples, community development problems and more intricate real estate financing require better understanding and greater knowledge of the factors involved.

Many who are experienced in the real estate business have found that one means of becoming a successful operator is to gain more knowledge of some special branch of the business than his competitors. They have found that "straight selling" of homes and income properties in many areas is a highly competitive undertaking, so

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they undertake to develop special skill in property management, appraising, financing or one of the several other specialties. Industrial property brokers, for instance, have found that to deliver good service they must have a broad understanding of transportation, marketing, the employment market and many other phases of the whole problem.

Then there are always those who are not satisfied to work along in a business without exploring all fields of information available. They have a pride in their vocation and take every means of improving themselves to render better service. The University of California Extension Division program is designed to help this latter group. Its program is designed for the licensee who wants to expand his professional knowledge and skill. The program is not designed to compete with courses conducted to give property owners general information regarding real estate investments or to prepare newcomers for license examinations.

#### *Certificates Awarded*

At the present time there are 34 instructors teaching classes in the real estate program and classes have been offered in the following areas: Berkeley, Fresno, Long Beach, Los Angeles, Marin County, Menlo Park, Montebello, Oakland, Pasadena, Sacramento, Salinas, San Bernardino, San Diego, San Fernando Valley, San Francisco, San Mateo, San Pedro, Santa Cruz, Santa Monica, Westwood.

Up to now 10 Real Estate Certificates have been presented to individuals who have completed the prescribed work. About 20 more certificates should be awarded at the end of the current spring semester and another 20 persons have indicated their intention to complete the certificate program by placing their certificates on file in the University Extension offices.

## Canada's Educational Plan

### Numerous Courses for Members Sponsored by Dominion Boards

All candidates for active membership in the Toronto Real Estate Board must successfully complete the "newcomers course" prior to being admitted to board membership. There are 15 sessions to this course, usually three sessions a day for five consecutive days.

The course is very comprehensive, covering a wide variety of subjects pertaining to the real estate business. It goes into such diversified matters as ethics, obtaining listings, architecture, signs, standard forms used in the business, telephone techniques, classified advertising, and so on.

Canadian real estate boards are conducting an active educational program throughout the country. This last fall 40 real estate courses on a preliminary level were given in Toronto and the western provinces, with about 850 students participating. The average experience of the candidates was about 2½ years for salesmen and about nine years for brokers. Approximately 15 percent of the candidates were brokers, 75 percent were salesmen and the rest were interested members of the general public.

## California's Housing Growth

In the 10-year span from 1940 to 1950, the number of dwelling units in California increased 53 percent, while the Nation as a whole showed a 23 percent rise, according to figures released by the U. S. Department of Commerce in connection with the 1950 census.

In 1940, California had 2,340,373 dwelling units, a figure which grew to 3,590,660 in 1950 and this growth corresponds exactly with California's 53 percent increase in population. The Nation's population increased 14 percent in the same decade.

According to the U. S. Department of Commerce, more than one-third of all dwelling units existing in California in 1950 were built between 1940 and 1950, and 49 percent of the nonfarm dwelling units in rural areas were constructed in this decade as compared with 29 percent of the farm units.

## Delaware Agency Requires Educational Qualification For Real Estate Salesmen

As a straw in the wind indicating more emphasis on educational qualification for real estate licensees, the recent action of the Delaware Real Estate Commission which moved to require minimum educational qualification for real estate salesman license is interesting.

The Delaware licensing agency has made the following rule:

**"Be it resolved, That on and after September 1, 1952, the Delaware Real Estate Commission will not consider the application of any person for real estate salesman's certificate until said person has successfully completed a course in real estate practice; said course to be given by an accredited institution approved by the Delaware Real Estate Commission."**

This is believed to be the first time that a state real estate licensing agency has made specific real estate education, other than perhaps a lecture by a member of the agency or commission, a prerequisite to obtaining a real estate salesman license. Advocates of the measure feel that it is another step toward eventual professionalization of the real estate business and hope that it will supplement the written examination in elimination of the unqualified.

**In the long run, they feel that this will be good for the business and for the public served by real estate licensees.**

## Master's Degree in Real Estate

Courses leading to a master's degree in Business Administration with emphasis in the field of real estate will be available to UCLA students commencing with the 1953 fall term, according to a report by Dr. Fred Case, real estate specialist on the university's Business Administration staff.

The announcement was made during the course of a meeting of U. C. President Sproul's Real Estate Advisory Committee where progress of on-campus and off-campus real estate education was checked and plans were made for continuing expansion.

## CREA Schedules Educational and Sales Conferences

### Nationally Prominent Speakers to Be Featured at 1953 Meetings

Again this year, the California Real Estate Association is offering a series of sales and educational conferences throughout the State. While association sponsored, it is to be emphasized that attendance is not restricted to CREA members. **The Real Estate Commissioner gives his unqualified approval to these conferences because of their demonstrated educational and inspirational value, and urges all licensees to attend if possible.**

The Educational Committee of the California Real Estate Association is sparing no effort in preparing one-day programs packed with sales and educational features. Among the topics slated for discussion and exposition is "Your Future In Real Estate."

Profits through service will be emphasized by the speaker and he will cover service methods and the importance of good ethical practices. He will stress and explain the proper use and importance of the forms commonly used by real estate brokers and salesmen in the course of their daily work. Mr. Mortimer Clark, former Real Estate Commissioner and well-known San Francisco broker and appraiser, will be the speaker on this phase.

### Creative Selling Stressed

Other topics will be "Why Sales Are Lost," "Creative Selling in Today's Market," "New Methods of Selling," and "Human Relations in Selling." A feature of each conference will be the "1953 Sales Clinic" led by five men, each a specialist and a member of one of the five national institutes, who will talk on trends and business conditions within their specialized fields.

Modern selling methods will be

stressed throughout the conferences and feature speakers have been selected from among nationally prominent business executives. Scheduled to address the conferences is N. Henry Gellert, outstanding corporation executive, and Dr. Neal Bowman, well-known sales authority and lecturer.

### Tickets in Advance

Tickets to the Sales and Educational Conference in your area are available at local board headquarters. For details consult the local real estate board president or secretary nearest you, or get in touch with the California Real Estate Association, 1100 W. M. Garland Bldg., 117 W. Ninth St., Los Angeles (15).

### TENTATIVE SCHEDULE 1953 SALES AND EDUCATIONAL CONFERENCES

April 6	Santa Rosa
April 7	San Francisco
April 8	Richmond
April 9	San Jose
April 10	Stockton
April 21	San Bernardino
April 22	San Diego
April 23	Los Angeles
April 24	Burbank
April 28	Southeast (Los Angeles)
April 29	Inglewood
April 30	Pasadena
May 1	Fresno
June 1	Eureka
June 3	Redding
June 5	Oroville

## Contract Contingency Loses Suit

(Cont. from Page 81, Col. 1)

one of the conditions was unfulfilled, he could not recover the commission.

It has been pointed out in this *Bulletin* previously that whenever a broker consents to contingencies in his contracts, he weakens his position. Offers to purchase which are "Subject to certain financing," or "subject to approval by the buyer's wife," etc., create avenues by which the parties may escape compliance with the contract.

The case in question, *Dale v. Raines* is reported in 115 A. C. A. 387.

### A "TIP" ON LISTINGS

When a broker wishes to bind a principal in a manner whereby the principal may not sell his own property during the term of the employment contract without compensating the broker, an "exclusive right to sell" contract must be entered into.

Court decisions in the past seem to hold that where there is doubt as to whether the employment is an "exclusive agency" or an "exclusive right to sell," then the exclusive agency features will hold.

## Court Decides Zoning Problem In Monterey County Contest Expansion of Improvements Illegal When Nonconforming Use Is Permitted

When certain areas of a city or county are zoned for a particular use, usually that property included in the area which is already used for other purposes is not disturbed. However, if the zoning ordinance so provides, these nonconforming improvements cannot be expanded.

A decision recently handed down by the First District Appellate Court, reported in 113 ACA 138, holds, in effect, that if an ordinance is passed zoning an area for residential use, and some of the land is already used for other purposes, the use may continue, but the facilities may not be expanded.

### Resort Property Affected

The person bringing the appeal in this case owned about 50 acres of land located adjacent to the City of Carmel, in Monterey County. The property was improved with numerous buildings and was devoted to resort purposes, and it held a license for the sale of alcoholic beverages since 1935. Food, lodging, entertainment, sports and recreation generally were furnished to the public.

The property was situated in a residence zone, as established by a zoning ordinance which contained a provision permitting the continued lawful use of land devoted to uses other than residential, which existed at the time of the adoption of the ordinance, even though the use did not conform to the regulations specified by the ordinance for the district in which the land was located. **The ordinance went on to provide that no such nonconforming use should be enlarged or increased or be extended to occupy a greater area of land than occupied by such use at the time of the adoption of the ordinance.**

### Plans to Expand Use

Adjacent to one of the buildings on the land, the owner paved an area approximately 30 x 52 feet, in which pipes were laid for the purpose of providing heat to the area. The owner also built a wall of wood and glass on three sides of this pavement.

The court found that this construction expanded the nonconforming use in violation of the zoning ordinance.

**The court commented that the ultimate purpose of zoning is to confine**

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certain classes of buildings and uses to particular localities, and to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. Any change in the premises which tends to give permanency to, or expands the nonconforming use would not be consistent with this purpose.

The court considered the case *County of San Diego v. McClurken*, 37 Cal. 2d 683, 687, which states, "Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement."

This case should impress upon brokers that care should be taken in checking the zoning carefully for special provisions, and not take zoning matters for granted based upon present usage of the property.

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## Broker's Responsibility for Acts of Salesman Definite

An occasional broker seems to feel that he can protect his own license in a shady venture by letting a salesman make the actual "misrepresentation" or conduct the "dishonest dealing." The broker relies upon the provision of the law (Sec. 10179) to the effect that no real estate broker shall have his license revoked because of the actions of his salesmen or employees unless it appears that the employer had guilty knowledge of such violation. However, attributing "guilty knowledge" to the broker may not be as difficult as it sounds.

Many cases over the years show that hearing officers and courts will impute "guilty knowledge" to the broker if that seems a reasonable assumption from the nature of the "broker-salesman relationship." The broker cannot divorce himself from the actions of his salesmen and isolate himself behind a brick wall. The salesman might have been the one actually in contact with

## Direct Deals Surveyed

What percentage of real estate transactions in your community are made direct between buyer and seller without the services of an agent?

To secure information on this and other related items, a program of investigation is being launched by the California Real Estate Association through its membership. The realtors expect to work with local title and escrow organizations to get information on "direct deals" for the months of February and March.

It is planned to select committees whose members will interview a cross-section of the buyers and sellers involved in both agent and nonagent transactions and find out the reasons for dealing direct or for employing the services of a broker, as the case may be.

The program may develop some interesting information of benefit to both agents and principals.

### Make Checks to Proper Payee

When ordering publications or making any remittance to the division for change of licenses, branch office, etc., please make your checks payable to the DIVISION OF REAL ESTATE.

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the public—contacts which have brought the complaints—but the responsibility does not end with the salesman. The common-sense conclusion is that if the broker fails to curb the salesman's malpractices the presumption of "guilty knowledge" might reasonably follow.

In civil cases, the courts have ruled the broker is not shielded in any way from responsibility for the acts of his salesman done in the course of his work as agent. The broker stands before the court equally liable for the salesman's actions which have defrauded a customer or client.

These are important considerations for the broker who takes on "occasional" salesmen whose conditions of employment are such that they are not readily supervised. This also applies to the broker who allows a salesman to operate an office with little or no supervision.

### LOOK INTO THE MIRROR (From the National Real Estate and Building Journal)

Most men in the real estate industry have built up reputations for personal integrity. That means giving opinions on such things as price trends or high prices even when it hurts. They handle a sale with all the cards face up; they build their houses honestly. They have learned their job as well as they know how and they expect to get paid for it reasonably. But they do not gouge, they do not chisel.

Many real estate men and home builders imbue the receptionists and clerks in their offices with hospitality for callers so that it becomes a pleasure to do business with them.

Finally, the deepest respect is due those men who are trying, unselfishly, to better their profession, locally and nationally. In the editor's opinion, most men in the industry measure up—and a greater percentage is gaining stature every year.

### Rulings on Unemployment Insurance Exemptions

We previously commented on an amendment to the California Unemployment Insurance Act, which exempted compensation paid for services performed as a licensed real estate salesman and remunerated solely by way of commission.

Further interpretation of the law has been made by the State Department of Employment. This department interprets the law as meaning the new exemption applies not only to the services performed by real estate salesmen, but also to services performed by real estate brokers.

The exemption does not apply to services performed by persons licensed as business opportunity brokers and salesmen, or under the mineral, oil and gas section of the law.

The exemption applies to services of real estate salesmen and brokers only if they are remunerated "solely by way of commission." This includes overriding commissions received by sales managers, but not overrides received by other employees not engaged directly in selling activities.

### Case Involving Claim of Usury in Real Estate Loan

A recently reported appellate court case, *Knoll v. Schleussner*, 112 A. C. A. 984 summarizes various points which must be considered in usury cases.

The maximum interest which may be charged in California is 12 percent on most obligations. This particular case brings out that in determining whether a contract is usurious, the entire transaction of which the contract is a part must be considered, and that a doubt as to the usuriousness of a transaction will be resolved in favor of its legality.

A contract which does not at its inception require usurious payments is not rendered usurious by subsequent bonus payments which, coupled with the interest paid, amount to a sum in excess of the legal rate of interest. Furthermore, the case points out a party charging usury has a burden to prove it by a preponderance of evidence.

The plaintiff in this case claimed usury because in addition to signing a note for the money he borrowed, he was obligated to do certain work for the lender. The work was done at a cost far in excess of the original estimate.

Suit was brought on the basis that the value of the work plus the note the borrower signed equalled a sum which amounted to more than 12 percent interest on the loan. Other evidence was presented at the trial to show that the borrower already owed the lender \$700 in connection with a previous transaction.

Both the trial court and the appellate court held that the transaction was not usurious, considering the entire transaction. It was also held that the transaction was not usurious at its inception, and simply because costs later developed which increased the ultimate sum required to take care of the loan, this did not constitute usury.

"The burden is upon one, who charges the exaction of usurious interest to prove such charge by a preponderance of evidence." The court cited the case *Goldenzweig v. Shaddock*, 31 Cal. App. (2) 719.

### Neighborhood Row Over Tree Is Taken to High Court

If a neighbor's tree is overhanging an adjoining land owner's property, the latter may remove the limbs and roots as they extend over his property and create a nuisance, according to a District Court of Appeal decision in the case *Conde v. Bishop* (112 A. C. A. 1). The court had under consideration rights between neighbors where one party's tree had branches which extended over and above his neighbor's yard.

The tree, which brought on the litigation, was described as quite large, old and diseased. It was represented as shedding leaves and debris into the plaintiff's yard and, because the owner did nothing about this situation, a neighborhood row finally developed which took the parties into court.

The plaintiff sued to abate the nuisance and was successful in obtaining a court order allowing the removal of the overhanging limbs. In its decision, the court said, "Trees whose branches extend over the land of another are not nuisances, except to the extent to which the branches overhang the adjoining land. To that extent they are nuisances, and the person over whose land they extend may cut them off or have his action for damages, and an abatement of the nuisance against the owner or occupant of the land on

which they grow, but he may not cut down the tree, neither can he cut the branches thereof beyond the extent to which they overhang his soil."

The court in discussing the damages incident to the case said the general rule is, "The owner of a tree, the branches of which overhang the premises of an adjoining land owner, is liable for damages caused by the overhanging branches. And this is so without regard to the extent of the damage resulting therefrom, the insignificance of the injury going to the extent of the recovery, and not to the right of action \* \* \* but it has been held that no land owner has a cause of action from the mere fact that the branches of an innocuous tree belonging to an adjoining land owner, overhang his premises, his remedy is to cut the overhang."

## Contract Termination Dates Authority Discusses Point as to Whether or Not Last Day Is Included

The old question as to when a listing contract or a term for acceptance terminates has been a subject for general discussion in real estate offices for a long time. Mr. Herbert L. Breed, counsel for the California Real Estate Association, commented on the subject in the December, 1952, issue of the association magazine. We quote the following with the consent of Mr. Breed and the C. R. E. M.

**“Q. If a contract, order or obligation runs ‘until’ a definite date, like October 1, 1952, is that date included for the performance of the obligation or the authority given, or is it excluded?”**

**“A. The courts have interpreted the word ‘until’ both ways, that is, sometimes as excluding the day mentioned, which means that it would expire at 12.01 a.m. or in other cases that it is inclusive and therefore gives the party until midnight of the day mentioned. It depends upon its use and upon circumstances.**

**“The broker-reader will know how it is generally intended in the real estate business. I think it is generally considered that the specified day for the termination of a listing, for example, is inclusive of the last day. Since the word may be interpreted either way and is to that extent ambiguous, it is much better to beg the question by pro-**

## Sales and Educational Conferences

The 1953 CREA Sales and Educational Conference program and schedule are covered in detail on page 85 of this *Bulletin*.

The Real Estate Commissioner urges you to get in touch with your nearest local board or with CREA headquarters and make arrangements to attend one or more of the conferences.

But if you cannot make prior arrangements, don't let that keep you away from the conferences. Last minute registrations will be accepted whenever available space allows.

## Home Ownership Throughout Nation

What percentage of families own the dwellings they live in? The Bureau of Census has released some interesting figures on the subject, compiled from the 1950 census of housing.

Checks in the various states show that the percentage of home ownership runs from 37.9 percent in New York up to 67.5 percent in Michigan. Second highest state was Minnesota with 66.4 percent, followed by North Dakota. California was about half way down the list with 54.3 percent.

**viding the hour on the last day. For example, if it is ‘until 10-1-52,’ it is very simple to add some sensible hour, like 6 p.m. Any other hour can be named. If brokers are using forms that do not have any hour, I recommend inserting the hour.”**

## Land Description Is Issue Difference in Requirements For Deeds and Contracts Discussed

When drawing a deposit receipt or listing agreement, the careful broker describes the real property concerned so that it may be identified without any question of doubt. If an exact technical description is not available, the description used in the contract may be sufficient if it is consistent as far as it goes and identifies the property intended, even though testimony may be necessary to explain and interpret technical expressions in the contract or the expressed intentions of the parties at the time the contract was drawn.

The District Court of Appeal in a case reported at 141 A. C. A. 25 considered whether the description of real property contained in a certain deposit receipt was sufficient to support a claim of specific performance based on the agreement. **The court commented it is now the general and well established rule that less strictness in the description of the property is demanded in a contract than in a deed of conveyance.**

The court went on to say: “The usual rigid construction given to deeds has not been adhered to in the character of contracts under consideration here. The description (in the contract of sale) may be supplemented by extrinsic evidence showing its application to particular property to the exclusion of all other property.”

The court cautioned that oral evidence cannot be used to inject a new description in the contract.