

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

GOODWIN J. KNIGHT, *Governor*

Sacramento, March, 1954

D. D. WATSON, *Commissioner*

Fiduciary Obligations of Law and Code of Ethics

H. L. Breed, General Counsel, CREA, Sets Forth Licensees' Rights and Responsibilities

(From Mr. Breed's Address Before California Real Estate Association's 49th Annual Convention, Los Angeles, November 6, 1953. Reprinted, Courtesy of CREA Magazine.)

All real estate brokers and salesmen are required by law in California and in 38 other states to have licenses. All real estate licensees, however, are not members of an organization which requires them not only to obey the law, but goes further, and requires them to obey a code of ethics applicable to their business. This class of brokers, known as realtors, has voluntarily assumed that additional government of their own practices.

Kinds of Agents

Under the general law, there are many kinds of agents. They are all governed by general principles. The real estate broker and salesman is a particular kind of an agent. He is now governed by the aforementioned statute, which may be cited as the Real Estate Law. The first obligation of licensees thereunder is to know and obey that law.

Fiduciary Relationship

Each of us in our profession and business exercises a fiduciary relationship with its corresponding duties. "Fiduciary" comprehends the idea of trust and confidence. It relates to fidelity and integrity rather than ability, wealth, or influence.

We may not obtain any advantage over our client or customer by the slightest misrepresentation, concealment or adverse pressure of any kind. "Slightest" means the remotest, something very slight, inconsiderable. One court prefers the word "any" to the word "slightest," thus enforcing the duty of an agent, whether broker, attorney, or other. Notice that these words are in the superlative form.

When confidence is reposed in another, it gives that other a special influence over the one reposing the confidence. Sometimes it is even a dominating influence. The greater the confidence, the greater the duty.

Ethics, equity and good conscience, as well as law, require an agent to act in the highest good faith.

The Realtor's Pledge

That is why in Article 13, the realtor pledges himself to be fair to purchaser as well as to owner, and why under Article 14 he may not buy for himself property listed with him, nor acquire any interest therein without making his true position clearly known to the listing owner. Article 17 demands that when acting as agent in the management of property, the realtor must not accept any commission, rebate or profit on expenditures made for the owner without the owner's full knowledge and consent.

These principles preclude an agent from obtaining any advantage over his principal in any transaction had by virtue of his agency. This means that a broker must not personally deal with the property of his prin-

cipal without a full, complete and detailed disclosure of that fact, together with the disclosure of all circumstances that impel the broker to purchase or otherwise deal with his employer's property. He must not buy at one price when he knows that he can immediately sell to another for a higher price. The broker must not misrepresent to the purchaser a higher price than the listing price, claiming that it cannot be purchased at a lower figure, and then himself pocket the difference.

Complete Disclosure Required

Not only has a broker a duty to his seller-employer, but he must disclose to the purchaser any material facts which are not known or visible to the purchaser, but are known to the broker.

In one case where there was a secret profit the owner not only recovered from the broker the secret profit, but he also procured the return of the commission he had paid to his crooked broker.

In another the broker was employed to negotiate for the purchase of land at a specific sum that was offered. He falsely represented to the buyer that the seller insisted upon a lot owned by the buyer to be conveyed in addition to the price. The

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ORDER YOUR 1954 REFERENCE BOOK NOW

Mail orders for the new, revised 1954 edition of the Reference Book published by the Division of Real Estate are being accepted now.

The 1954 edition contains fresh material on modern land title practice, preparation and interpretation of closing statements, property management, subdividing practice, land description problems and other phases of the field of real estate.

Mail your orders to Division of Real Estate, 1021 O Street, Sacramento 14. The cost of the book is \$1.55, which includes sales tax. Don't send cash—use check or money order. The book will be mailed to you postpaid.

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Sacramento, March, 1954

Published Bimonthly by the
DIVISION OF REAL ESTATE
 STATE OF CALIFORNIA
 GOODWIN J. KNIGHT, Governor

D. D. WATSON
 Real Estate Commissioner

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Subdivision Definition

A technical but important error in the May, 1953, issue of the *Real Estate Bulletin* has been called to our attention by the Los Angeles County Counsel. That issue of the *Bulletin* was the one devoted entirely to an explanation of subdivision requirements.

In the third paragraph of that issue we said, in effect, that the Subdivision Map Act did not apply unless five or more parcels were sold within one year. Actually, the need for filing under the Map Act is not controlled by the sale, but rather by the division for the purpose of sale into five or more lots within one year.

The importance of this can be seen from the following example. Suppose a man had a piece of property which he divided into five lots, which for convenience, we shall number one to five consecutively. If he then sold parcels two and four, he would have made a division into five although only two sales were made.

Apparently some people have been misled by our article. To them we wish to apologize, and again repeat that in regard to the Subdivision Map Act and local ordinances, the local city or county authorities should be contacted.

DISCIPLINARY ACTION

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 FROM SEPT. 1, 1953, THROUGH JAN. 15, 1954

Name	Address	Effective date	Violation
Hunter, John Arthur Real Estate Salesman (Right to reinstate)	3949 Kansas St., San Diego	9/29/53	Sec. 10177 (b), (f)
Kermath, John Real Estate Salesman (Right to renew)	1224 E. Main St., El Cajon	9/29/53	Sec. 10177 (b), (f)
Denny, Delmer Elvy Real Estate Broker	295 Elizabeth, Pasadena	11/14/51 (Appealed to U. S. Supreme Court 4/6/53. Appeal dismissed 10/12/53)	Secs. 10176 (i); 10177.5 & 10177 (f)
Denny, Truman Elvy Real Estate Broker	191 N. Hill Ave., Pasadena	11/14/51 (Appealed to U. S. Supreme Court 4/6/53. Appeal dismissed 10/12/53)	Secs. 10176 (i); 10177.5 & 10177 (f)
McCabe, Patrick Real Estate Salesman (Right to renew)	773 Juana Ave., San Leandro	10/13/53 (Granted right to restricted license)	Sec. 10177 (f)
Bohn, Claire F. Real Estate Broker	7462 Lankershim Blvd., North Hollywood	10/19/53	Sec. 10177 (f)
Hammond, Bryan E. Real Estate Broker Business Opportunity Broker	3810 Broadway, Oakland	10/20/53 (Granted right to restricted licenses)	Secs. 10176 (a), (b), (g), (i); 10177 (f) & 10302 (e)
Cotton, Joseph Anthony Real Estate Broker	4014 Geary Blvd., San Francisco	10/26/53	Secs. 10176 (a), (c), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Dean, Douglas Duff dba Dean Realty Co. Real Estate Broker	4656 Davenport Ave., Oakland	10/30/53 (Granted right to restricted license)	Secs. 10160, 10162 & 10164
Taylor, Harold David Real Estate Salesman	1705 Fairview St., Berkeley	10/30/53	Sec. 10177.6
Trout, Larry Emory, Jr. Real Estate Salesman (Right to renew)	147 Gary Circle, Vallejo	10/30/53	Secs. 10176 (e), (i) & 10177 (f)
George, Hazel Carr Member of Hazelcrest Realty Real Estate Broker	2117 Cedar St., Berkeley	10/30/53	Secs. 10176 (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
George, Hazel Carr dba Hazelcrest Real Estate Real Estate Broker	Suite 1128 Central Bank Bldg., Oakland	10/30/53	Secs. 10176 (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Culley, William Walter dba Ashby Realty Real Estate Broker	1212 Ashby Ave., Berkeley	11/ 4/53 (Granted right to restricted license)	Secs. 10176 (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Culley, William Walter Real Estate Broker	3481 38th Ave., Oakland	11/ 4/53 (Granted right to restricted license)	Secs. 10176 (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Dyer, Cornelia Rita dba Guaranteed Rentals Real Estate Broker	3716 W. 54th St., Los Angeles	11/ 4/53	Sec. 10176 (b), (i)
Dyer, Cornelia Rita Real Estate Broker	3716 W. 54th St., Los Angeles	11/ 4/53	Sec. 10176 (b), (i)
Jackson, Charles James Real Estate Broker	1914 Sutter St., San Francisco	11/12/53	Secs. 10176 (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Walker, Warren Burton Real Estate Salesman	614 10th St., Richmond	11/16/53	Secs. 10137; 10176 (e), (i) & 10177 (f)
Howard, Eugene Limited Real Estate Salesman	4305 S. Western Ave., Los Angeles	11/27/53	Sec. 10177 (a)
Santa Cruz, Joe Real Estate Salesman	3839 Whittier Blvd., Los Angeles	12/ 8/53 (Granted right to restricted license)	Sec. 10177 (b), (f)
Hall, Gaddis Campbell dba The Golden City Company Real Estate Broker	239 W. Vernon Ave., Los Angeles	12/11/53	Secs. 10177 (b), (f) & 10177.6
Wong, Duke Real Estate Broker	758 Sacramento St., San Francisco	12/14/53 (Granted right to restricted license)	Sec. 10177 (b), (f)
Storeby, Carl August Real Estate Salesman	Lucerne	12/24/53 (Granted right to restricted license)	Secs. 10176 (a), (b), (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Bufford, Ernest Castro dba Bufford Realty Co. Real Estate Broker	3009 W. Jefferson Blvd., Los Angeles	1/ 4/54	Sec. 10176 (a), (g), (i) & 10177 (f)
Jarkevich, Valentin Hector Real Estate Salesman (Rights to reinstate or renew)	Rm. 207, 15 N. Oakland St., Pasadena	1/ 6/54	Sec. 10177 (b)
Anderson, Eric W. Real Estate Broker	6015 Sunset Blvd., Hollywood	1/ 6/54	Sec. 10177 (b)

(Cont. on next Page)

DISCIPLINARY ACTION—Continued

Name	Address	Effective date	Violation
Brockbank, Roy Russell Real Estate Broker Business Opportunity Broker (Rights to reinstate or renew)	6088 University Ave., San Diego.	1/ 6/54	Secs. 10177 (b), (f) & 10302 (b), (c)
Haskell, John Newman, Jr. Real Estate Salesman (Right to renew)	3909 El Cajon Blvd., San Diego	1/ 6/54	Sec. 10177 (b), (f)
Cosgrove, Chris Augustus Real Estate Broker (Right to renew)	6197 University Ave., San Diego.	1/ 6/54	Sec. 10177 (b), (f)
Cosgrove, Chris Augustus Pres., Cosgrove Real Estate & Investment Co., Inc. Real Estate Broker (Right to renew)	6197 University Ave., San Diego.	1/ 6/54	Sec. 10177 (b), (f)
Overbay, Leon Thomas Real Estate Salesman (Right to renew)	11858 E. Carson St., Artesia....	1/ 8/54	Sec. 10177 (b), (f)
Beggins, Robert Thomas dba Bob Beggins Real Estate Real Estate Broker	13754 Van Nuys Blvd., Pacoima	1/ 8/54	Sec. 10177 (b), (f)

LICENSES SUSPENDED FROM SEPT. 1, 1953, THROUGH JAN. 15, 1954

Name	Address	Effective date and term	Violation
Paglia, Nick Frank Real Estate Salesman	2823 N. Santa Fe Ave., Compton	9/ 4/53—60 days	Sec. 10177 (f)
Furlow & Associates Albert Edward Furlow, Pres. Real Estate Broker Business Opportunity Broker	1707 University Ave., San Diego.	9/15/53—30 days	Secs. 10177 (d), (f); 10302 (e); Secs. 2794 & 2795 of R. E. Comm. Rules & Regulations
Kent, Augusta Talley Real Estate Broker	3615 Grove St., Oakland.....	10/11/53—30 days	Secs. 10176 (e), (i); 10177 (d); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Anderson, Frances Roberta Real Estate Broker	2351 Foothill Blvd., Oakland ...	10/14/53—30 days	Sec. 10176 (i)
Gillaspey, Russell Miller Real Estate Salesman	3820 Broadway, Oakland.....	10/20/53—30 days	Secs. 10176 (b), (f) & 10177 (f)
Weldon, Daniel Morgan Real Estate Broker	3221 Mission St., San Francisco.	11/20/53—180 days	Secs. 10176 (e), (g); 10177 (f) & 10302 (e)
Weldon, Daniel Morgan Business Opportunity Salesman	3221 Mission St., San Francisco.	11/20/53—180 days	Secs. 10176 (e), (g); 10177 (f) & 10302 (e)
Oles, Robert Arthur dba Oles Realty Co. Real Estate Broker Business Opportunity Broker	3221 Mission St., San Francisco.	11/20/53—180 days	Secs. 10176 (e), (g); 10177 (f) & 10302 (e)
Burton, Robert McKay dba Lakeshore Realty Real Estate Broker	Rm. 710, Latham Square Bldg., Oakland	12/15/53—30 days	Secs. 10176 (b), (i) & 10177 (f)
Clark, Willard Perry Real Estate Salesman	2101 Capitol Ave., Sacramento..	1/11/54—15 days	Sec. 10176 (a)
Van Wormer, Norwood Hungerford dba Rebor Realty Company Real Estate Broker Business Opportunity Broker	Rm. 412, 830 Market St., San Francisco	1/11/54—30 days	Secs. 10176 (e); 10177 (f); 10302 (e); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Van Wormer, Norwood Hungerford dba Rentals Unlimited Real Estate Broker	Rm. 412, 830 Market St., San Francisco	1/11/54—30 days	Secs. 10176 (e); 10177 (f); 10302 (e); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Van Wormer, Norwood Hungerford dba Rebor Rentals Real Estate Broker	Rm. 412, 830 Market St., San Francisco	1/11/54—30 days	Secs. 10176 (e); 10177 (f); 10302 (e); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Van Wormer, Norwood Hungerford dba A A A Rentals Real Estate Broker	Rm. 412, 830 Market St., San Francisco	1/11/54—30 days	Secs. 10176 (e); 10177 (f); 10302 (e); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations

SUBDIVISION STOP ORDERS ISSUED

Name	Address	Effective date	Grounds
Tract No. 17341.....	Pomona.....	9/ 3/53	Secs. 11012; 11013; 11019; 11020; Secs. 2800 & 2801 of R. E. Comm. Rules and Regulations
Tract No. 17578.....	Pomona.....	9/ 3/53	Secs. 11012; 11013; 11019; 11020; Secs. 2800 & 2801 of R. E. Comm. Rules and Regulations
Tract No. 17751.....	Pomona.....	9/ 3/53	Secs. 11012; 11013; 11019; 11020; Secs. 2800 & 2801 of R. E. Comm. Rules and Regulations

**Important Examination Change
Examinees Must Understand Meaning
And Know Use of "Tools of the Trade"**

Under present plans, candidates for real estate salesman and broker licenses will be required not only to get a minimum 75 percent grade over-all on the examination, but they must also have at least 75 percent of the work on the Authorization to Sell and Deposit Receipt sections of the examination correct.

It works like this. Suppose a candidate for a real estate license makes a grade of 79 percent on the entire test. So far, he is all right. Suppose also that the combined weight of the sections dealing with the proper filling out and effects of Authorization to Sell and Deposit Receipt instruments is 20 percent of the entire examination. Now if the candidate made 15 percent or more out of a possible 20 percent on the form sections, he has made a grade of at least 75 percent on those sections, considered alone, and he has passed the examination.

However, suppose the candidate, who has made 79 percent over-all on the test, only makes 14 percent, or less, out of the total 20 percent weight assigned to the form sections. In this case he has not made 75 percent on these two sections alone, and he fails the examination even though his over-all score was 79 percent.

The important reason for this new requirement is that too many complaints arise from carelessness, ignorance and incompetence in the use of Authorization to Sell and Deposit Receipt forms by licensees.

The commissioner feels that if every licensee thoroughly understands the purpose of these forms and fills them out properly it will go a long way toward eliminating many misunderstandings which result in complaints being filed with the division. Authorizations to Sell, Offers to Purchase, Deposit Receipts and such related forms are "tools of the trade," and all licensed to engage in the business should know how to use them properly and understand them thoroughly.

Plan to "Raise Your Score in '54"

Theme for State Association Educational and Sales Conference Program

Announcement of 15 all-day Educational and Sales Conferences, to be held during March and April throughout the State under the auspices of the California Real Estate Association, was recently made by John Cotton of San Diego, chairman of the state association's Committee on Education. All licensees, whether or not affiliated with the association, are invited to participate.

The program this year has the unusual advantage of having been built around a state-wide survey made to determine the reaction of the public to the services, advertising and general public relations of the real estate broker and salesman. The real estate buying and selling public has been consulted and its reactions have shaped the program, giving it a most practical flavor.

Of particular interest is a "Business Outlook Panel for 1954" which indicates a continuation of good real estate activity in California. This panel has been developed through the assistance of Walter E. Elieson, Business Specialist of the U. S. Department of Commerce, Los Angeles District, and Dr. Phillip Neff, Associate Professor of Business Economics and Associate Research Economist, University of California at Los Angeles. This panel team will use information available from President Eisenhower's Economic Advisory Committee, including 21 charts reflecting business conditions and trends. The charts will be reproduced for distribution to those who attend the conferences.

The panel members are making a further study which will provide discussion on the specific business for each of the 15 areas in which conferences will be held. It is expected this panel will provide a wealth of information of great value to all licensees for future sales knowledge.

Through a study of business conditions and research of available national publications, the state association's educational committee has developed a series of four lectures on the following subjects:

"Why People Do or Do Not Do Business With a Broker"—Particular attention is paid in this talk to better public relations and service to the public. The material for the lecture has been developed as a direct result of the state-wide survey.

"Finding the Selling Points of Your Listing"—The final test in selling a property rests upon your listing ability. This talk was developed in the interest of establishing listing techniques, information for the proper handling of the listing and will include a discussion of the proper use of the various listing forms.

The University Extension of the University of California has prepared, in cooperation with the State Division of Real Estate and the California Real Estate Association, a new film strip, *"Listing and Evaluating a Property."* The film, the first of its kind, emphasizes the proper listing and evaluation procedures to be followed in the best interests of the seller, the buyer, and good real estate office procedures.

"Emotional Psychology of Servicing the Seller"—Details affecting the emotional attitudes and psychological effects in servicing the seller's property and preparing the listing presentation to the prospects will be given. This talk has been prepared to help you avoid mistakes frequently made in merchandising properties.

"Analyzing Our Prospects' Needs"—The needs of both the buyer and

25 Years in State Service

Mrs. Corinne Perrin, senior clerk in the division's San Francisco office and well-known to a generation of real estate licensees in that city, is the latest employee of the Division of Real Estate to become eligible for membership in the Twenty-five Year Club of state employees.

Mrs. Perrin, upon completion of 25 years of work for the division, was awarded a gold pin and an appropriate scroll in honor of her years of service. She is the 17th employee of the division entitled to membership in the Twenty-five Year Club.

the seller must be analyzed to determine the procedure to be followed in arriving at the most satisfactory results in servicing your customers.

"The Man Who Sells"—A featured speaker known throughout the Nation has been selected and will share his time to tell others how to improve and better their selling ability. This talk will be inspirational, factual, educational and could be well termed "a million dollar shot in the arm."

An enrollment fee is charged all licensees. Advance reservations should be made for conference attendance. Tickets will be available through real estate board secretaries as indicated, or requests may be sent to the Educational Director of the California Real Estate Association, 117 West Ninth Street, Los Angeles 15. As the conferences are all-day sessions, tickets in most cases include the cost of luncheon; however, tickets for enrollment only may be purchased.

EDUCATIONAL AND SALES CONFERENCE SCHEDULE

Place	Date	For information contact	Phone
Bakersfield.....	March 29.....	Dorothy E. Ennis, P.O. Box 902, Bakersfield.....	Bakersfld 5-7221
Los Angeles.....	March 30.....	Earl S. Anderson, 900 Wilshire Blvd., Los Angeles.....	MADison 9-2331
San Diego.....	To be announced		
Santa Ana.....	April 1.....	LeRoy Burns, 314A W. Fourth St., Santa Ana.....	KI 3-3935
Santa Barbara area (Location to be announced)	April 2.....	L. B. McFadden, P.O. Box 269, Santa Barbara.....	S. Barbara 7129
Monterey.....	April 12.....	P. M. Dinkel, 208 Forest Ave., Pacific Grove.....	Pacific Grove 2-2363
Santa Rosa.....	April 13.....	Ralph H. Brown, 525 Fifth St., Santa Rosa.....	S. Rosa 4851
Berkeley.....	April 14.....	Helen H. Greely, 2054 University Ave., Berkeley.....	ASHberry 3-4288
Palo Alto.....	April 15.....	C. R. Henshel, 3700 El Camino Real, Palo Alto.....	DA 3-5282
Sacramento.....	April 16.....	Nina Nelson, 815 J St., Sacramento.....	HU 1-2786
San Bernardino.....	April 26.....	Rita Higley, 633 D St., San Bernardino.....	SBdno 828-100
Culver City.....	April 27.....	Nathan S. Vener, 2651 S. Fairfax, Culver City.....	VE 8-9464
Pasadena.....	April 28.....	Alfred S. Pratt, 181 S. Los Robles Ave., Pasadena.....	SU 5-4111
North Hollywood.....	April 29.....	Marguerite Hanson, 6214 Lankershim Blvd., North Hollywood.....	SU 2-0645
Long Beach.....	April 30.....	Barbara Moss, 531 American Ave., Long Beach 12.....	Long Beach 712-29

University Extension Offers Spring Real Estate Courses

The spring schedule of courses in real estate offered by University Extension, University of California, is under way. Some of the courses started early in February, others were not slated to begin until late in February or early in March.

A variety of courses accredited under the Certificate Program in Real Estate are being given in a number of areas throughout the State. For special information on this spring's schedules, call an officer of your local real estate board or get in touch with the nearest University of California Extension Division office.

The program of continuing education leading to a certificate in real estate has been designed for the purpose of aiding individual brokers and salesmen to increase and broaden their knowledge of their profession and through them to raise the standards of the real estate business. The program is sponsored by the Division of Real Estate and by organized real estate.

It is designed for personnel in the real estate business, giving them an opportunity to keep abreast of economic trends and legislation affecting real estate transactions, as well as acting as refresher training. This is a state-wide program which University Extension will bring to your community when sufficient demand makes itself felt.

Unlawful Subdividing Hit

Upon their plea of guilty to a charge of violation of Section 11010 of the Business and Professions Code, Joseph and Grace Sciabica, Modesto, California, were fined \$25 each. They also pleaded guilty to a violation of the Stanislaus County Subdivision Ordinance and were fined in that case.

The Stanislaus County Planning Commission cooperated with the Division of Real Estate in this matter. The defendants subdivided their property and offered it for sale without complying with the subdivision law administered by the Real Estate Commissioner or with the requirements of the Stanislaus County Subdivision Ordinance.

Signs on Public Property

Open house signs, flags, arrow pointing signs, and so forth, on lamp posts, telephone poles and sidewalk parkways are in violation of Los Angeles Municipal Code No. 77000 which defines such practice as "conducting business on city property."

In a letter to its membership, the Los Angeles Real Estate Board urged that the illegal practice be stopped and all violations be reported to the Street Use Inspection Division, Los Angeles City Hall. The Board of Directors of the Los Angeles Real Estate Board, in recommending that the letter be sent to the membership, stated: "The illegal use and display of signs in residential areas is unethical, has a detrimental effect on the real estate business and involves possible liability."

Persons found guilty of such practices are subject to a maximum fine of \$500 or six months in jail. Other cities in California have similar ordinances, and more cities are considering their adoption.

Certificate Holders Honored

Before a large group of "Old Timers" gathered for their annual banquet held in connection with the CREA convention in Los Angeles, nine persons were presented with their certificates in real estate, awarded by the University of California, University Extension. The names of 15 other persons, newly entitled to real estate certificates, but who could not be present for the awards, were announced.

Mr. Karl F. Venter, State-wide Field Coordinator, Real Estate Program, University Extension, made the awards, and expressed the university's appreciation for the "fine and continued cooperation" that the real estate program has received from the Real Estate Commissioner's office as well as from the California Real Estate Association.

It was announced that 64 Californians now hold certificates in real estate as a result of the program which is now a little over three years old. Over 7,000 persons have taken one or more of the real estate courses.

When Cash Is Promised It Must Be Produced

Taking Trust Deed in Lieu of Cash Without Seller's Consent Dangerous

If a broker or salesman secures a listing from a property owner on the positive representation that he will secure \$7,000 in cash for the equity, and later it develops that the seller at close of escrow secures only \$1,000 and the balance in the form of a second deed of trust, what is the broker's position?

Of course the answer depends on any number of things, but one thing is certain—the broker should make sure that the seller knows he must take a second trust deed as part of the payment for his equity. Otherwise, as happened in a recent case, the seller may show that the second trust deed is not worth face value and sue the agent to recover the amount lost through selling the second trust deed at a discount.

In the case of *Hartzell v. Myall*, 115 A.C.A. 784, the foregoing is about what happened. The court found that the salesman had promised he would secure \$7,000 cash for the seller's equity in certain property valued at \$15,000 and subject to a first trust deed of about \$5,400. Actually, the seller received \$1,000 in cash and a second trust deed for about \$8,500. Evidence was submitted in court that this second trust

deed had a cash value of only \$3,750 on the market.

The agent made the mistake of not having the seller fully understand the details of the offer and induced seller to sign the necessary papers in such a manner that she had no opportunity to study them or learn their significance. The upshot was that the seller was given judgment against the agent for the amount of cash lost, plus an additional \$1,000 as exemplary damages. Again it can be stressed that when an agent presents an offer carrying less cash than he agreed to secure when he obtained the listing, he should make sure that the record shows the seller fully understands the situation.

More on Agents' Ethical and Legal Responsibilities

(Cont. from Page 129, Col. 3)

broker took deed to the lot in his own name, thereby defrauding both parties.

Another broker filed out his deposit receipt showing that the deposit was cash, when as a matter of fact it was the prospect's promissory note. Obviously, cash is more valuable than a mere promise to pay cash. He thus concealed the truth from the owner. **Suspension of his license by the commissioner was upheld by both the District and the Supreme Courts.**

Standard Forms

Your association's standard form makes it easy to avoid this error by checking the square in which the deposit is received, whether cash, certified check, personal check, etc. **For your own sake, do not recite receipt of cash when you are receiving a check.** A check is only an order which can be canceled by stop payment, and is automatically canceled by death.

Law and Ethics Are Partners

The code of ethics clearly recognizes the law. The realtor must protect the public against fraud, misrepresentation or unethical practices. (Art. 21.) The realtor should only offer property on its merits, without exaggeration, concealment or any form of deception or misleading representation. (Art. 22.) To do that the realtor must ascertain all pertinent facts concerning the property. (Art. 23.) The realtor may not offer a property at a price higher than that which the owner has openly agreed to take. (Art. 24.)

Saving Clauses Attempted

Court reports give illustrations of how brokers have tried to avoid the effect of these salutary principles by inserting clauses. These clauses state that neither party is bound by any representation not contained in the contract, and add that the purchaser has purchased the property not upon the representation of the seller or of any agent. They attempt to provide that the purchaser waives any and all claims for damages or the right to

rescind the contract because of any representation made by the selling agent. They attempt to limit the agent's authority.

Even though the selling owner was innocent and ignorant of the misrepresentations made by the agent, that owner will not be allowed to retain the consideration which the purchaser made by reason of the fraud of the owner's agent. Such a contract is subject to rescission at the election of the person deceived, even though he knows that the agent's authority is limited. If the purchaser knew of the agent's limited authority, the purchaser by reason thereof could not sue for damages, but he could sue for rescission to cancel the contract and recover what was paid.

What Legally Is Fraud

What constitutes fraud? In making a contract the consent of the parties must be free, mutual and communicated by each to the other. A consent is not free when obtained through fraud, duress, menace, undue influence or mistake. So far as it is important here, fraud includes (a) the suggestion as a fact of that which is not true by one who does not believe it to be true; (b) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; (c) the suppression of that which is true by one having knowledge or belief of the fact; and (d) any other fact fitted to deceive.

Fraud may also consist of any breach of duty which, without an actual fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice.

Exclusive Listings

Article 18 of the code of ethics urges the exclusive listing of property as a means of eliminating misunderstanding and dissensions and assuring better service to the owner. Article 19 declares that the acceptance of an exclusive imposes upon the broker the obligation of rendering skilled and

conscientious service. If he cannot render such service he should not accept the listing.

These two articles bring to mind the question of the broker having for sale or lease competing properties, either by way of listing from other owners or owning such property himself, which he desires to sell.

Although probably not unlawful, I would recommend that if the broker thinks that the interest in his own property for sale or lease is so overwhelming that he cannot perform his duty to the owner, it would be better to reject the listing. I so interpret these two articles.

If the broker accepts an open listing, he is not doing anything unlawful or unethical in accepting it although he has for sale his own property or competing properties. The subject matter of his agencies are different properties, and more duty is implied from an exclusive than from an open listing.

Although I know of no California case on the subject, it has been held elsewhere that a broker is not precluded from recovering his commission for a deal that he has procured merely because he had a listing to sell competing properties.

Escrow Holders

It is a general rule of agency that notice to or knowledge of the agent is imputed to his principal. An escrow holder is usually the agent of both parties until the transaction is closed. Some brokers have attempted to use that rule against their employing principal to claim that knowledge on the part of the escrow holder was a sufficient disclosure. The courts have held that as between the principal and the agent guilty of fraud that knowledge of another agent should not be imputed to the principal.

Usually legitimately, but sometimes for concealment, brokers open two escrows. It is held that the doctrine of imputed knowledge has no application to documents deposited in the other escrow. The facts disclosing the fraud of the agent may not appear in both escrows.

(Cont. on next Page)

Furthermore, it is a general principle that a fraudulent broker should not be relieved from the consequences of a plain fraud in violation of duty on a technical constructive notice. **The agent should not be protected in the violation of his duty in perpetrating a fraud by the misuse of the general rule.**

Arbitration of Disputes

"The realtor should so conduct his business to avoid controversies with his fellow realtors," says Article 2. Article 3 makes the declaration that in the event of controversy between realtors, the controversy should be submitted to arbitration.

When individuals have controversies to settle among themselves, each desires an impartial and learned judge or tribunal. In disputes between realtors, no better judges can be found than fellow realtors. They know the real estate business and the problems of brokers and salesmen.

Normally, the disputants can get a more equitable decision from their fellows than by civil action. **No matter how fair a court may be, few know better the "ins and outs" and problems of their business than do brokers themselves.** It is fellow realtors who make up the arbitration committee.

In addition, the disputants get decisions more promptly, and at almost no expense compared to court costs and attorneys' fees. Impartial, prompt, inexpensive and understanding arbitration is one of the great services of real estate boards to their member realtors.

Listings to Be Respected

I am told that boards have complaints for violation of Article 7. It is so sound that I am constrained to quote it and emphasize its value among realtors.

"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."

This reminds me of the ethics of attorneys. An attorney will not knowingly accept employment when the case or other matter has been started by another attorney, without a complete release from the former attorney, or an association mutually agreeable to both and to client.

Appraisements, Professional Service

Article 15 recognizes that the broker's counsel on appraisements constitutes a professional service. It requires the realtor to render a written report over his signature and only after having ascertained and weighed the facts. **It declares in addition that the realtor under no circumstances should undertake to give an appraisal or opinion when his employment is contingent upon the amount of his appraisal or the character of his opinion.** Further, he should not give an appraisal on property in which he is otherwise interested, unless such interest is specifically disclosed in the appraisal report.

Penalties for Violations

Unfortunately many a broker, by concealment of facts and misrepresentation or other elements of fraudulent dealing, may have obtained in one way or another a profit, secret or otherwise.

All of us agree it is very proper for the commissioner to follow the law and suspend a license or even revoke it in these circumstances, as well as for the court to give judgment to the principal for the amount of money secretly or wrongfully procured, and also for damages where damages are proven.

A crooked agent may also be guilty of the crime of embezzlement or grand theft, and therefore subject to fine or imprisonment. And the worst of all penalties—there must also be the personal, gnawing penalty of a guilty conscience.

The Designation, "Realtor"

To be able to use the word "realtor" in your vocation is a great privilege and a valuable asset. It increases the dignity of the individual and of his business, at the same time increas-

ing the responsibility of the user in his duty to the public, to his customers and clients, and toward other realtors.

The public has come to think of a realtor as tops in the real estate business, both in the knowledge of his business and in his dependability and integrity under the code of ethics and the Real Estate Law.

As a realtor you have agreed to abide by the code of ethics. That means supporting it and practicing according to it. **Whether it be a realtor, a lawyer, or anyone else bound by a code of ethics, I feel that he is not only a traitor to himself but to his fellows in the same profession if he does not live up to his code of ethics.** Too often the public fails to distinguish between the faithful and the faithless and unfairly condemns a whole profession for the offenses of one member.

All of us expect the law to be administered fairly and fearlessly. The code of ethics should be enforced with equal alertness and fairness.

Realtors are dealing with the commodity which probably constitutes over one-half the wealth of our Nation. That thought reminds every realtor of his responsibility and duty to those who are selling and otherwise dealing in real property. To trade principle for dollars is the worst deal an agent of any kind can be guilty of or transact.

Ethical deals tend to our own happiness and contentment, as well as to raise our standing in the community. It is really fun to follow the law and the code of ethics, not only scrupulously but cheerfully. We thereby increase our contentment, our dignity, the confidence of the public in us. It strengthens the entire real estate business in the community and attracts customers.

NEW SUBDIVISIONS

During January, 1954, 191 new proposed subdivisions were filed with the Division of Real Estate, exceeding by 11 percent the number filed in January, 1953. In the first seven months of the current fiscal year, 1,284 new subdivisions were filed, compared with 1,246 in the corresponding period of last year.

Court Defines Requirements for Commission Merely Putting Prospect on Track of Property Is Not Sufficient, Court Holds

To entitle a broker to a commission, the evidence must show that his efforts were procuring cause of sale and not merely one in a chain of causes.

So ruled the Fourth District Appellate Court in *Nelson v. Mayer*, 122 A. C. A. 476. The case is of particular interest because it rules upon the position of a real estate broker who is performing on the basis of a nonexclusive written listing.

The broker, by letter written by the manager of a large ranch, was authorized to offer the ranch for sale at a stated price. A friend of a prospect eventually bought the ranch. The broker, now deceased, sued for commission and, upon denial by a superior court, his widow appealed the decision. The appellate court decision clarifies the following points.

"Where broker's authority to sell property is not exclusive, the owner reserves the right to sell the property by his own unaided efforts without becoming liable to the broker for commission."

"A broker, to be the predominant effective cause of a sale, must set in motion a chain of events which, without break in their continuity, cause buyer and seller to come to terms as proximate result of his peculiar activities; it is not enough that he contributes indirectly or incidentally to the sale by imparting information which tends to arouse interest."

"Merely putting a prospective purchaser on track of property which is on the market will not entitle broker to agreed commission if he finally fails in his efforts, though owner may subsequently sell property to the same individual at price and terms for which property was originally offered for sale."

1953-54 DIRECTORY CORRECTIONS

In printing the 1953-54 Directory of Brokers and Salesmen, the following names were inadvertently left out:

Marie Bernice Goodner, Licensed Real Estate Broker, 526 Carolina Street, Vallejo.
Nellie Mae Wellet, Licensed Real Estate Broker, 11015 S. Broadway, Los Angeles.

Revoked Broker Found Guilty Of Operating Without License

Conviction of a former real estate broker whose license had been revoked by the commissioner was obtained in the San Bernardino Municipal Court recently.

Chester R. Bunker was found guilty on December 9, 1953, on two counts charging him with operating without a license after his license had been revoked.

He was sentenced by Judge C. O. Thompson to pay a fine of \$100 on the first count, and \$250 on the second count. He was given the option of serving one day in the county jail for each unpaid \$5 on the first count, or serve one day in the county jail for each unpaid \$5 on the second count.

Board Adopts Rental Service Plan Follows Former Practice Of Charging Owner Commission

An innovation in the way of service to members has been established by the Pasadena Realty Board. Based on the multiple listing principle, the board has established a cooperative rental service among a group of its members.

The participating members send in the listing of the available rental, which is distributed without charge to the broker members. No charge is made to the renter-applicant, and the landlord pays the usual rental commission.

Over the past few years, numerous rental agencies which secured their fees from the prospective renter have started operations. In former years, before the critical rental shortage, it was a long established custom for the landlord to pay the commission for the securing of a tenant.

Some of the so-called rental agencies which have developed recently, have been the subject of much public complaint, over the fact that they secured fees without rendering any service. Some merely sold a list of prospective rentals, which in most cases was of little value to the person who parted with his money.

The Real Estate Commissioner, with the cooperation of other law enforcement agencies, has waged a campaign against such unprincipled agents.

The Pasadena Board has hopes that its new service will combat unfavorable practices in the rental field, and offset the ill repute which has surrounded the rental business of late.

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