

REAL ESTATE BULLETIN

Official Publication of the California Division of Real Estate

GOODWIN J. KNIGHT, Governor

Sacramento, March, 1955

D. D. WATSON, Commissioner

Disclosure of Facts Prime Obligation of Agent Though Seller Gets Asking Price, Broker Cannot Take Secret Profit in Refinancing

How far must an agent go in disclosing facts concerning a transaction to his principal? If, in connection with the sale of a home for his principal, he does certain refinancing which results in personal profit to the agent, must he disclose the details to his principal, the owner of the house being sold?

In the light of rulings of the higher courts and opinions of leading attorneys specializing in real estate problems, the broker conceals any material facts from his principal at his peril.

An interesting case recently came before the commissioner along these lines. Names are not mentioned because they are not necessary to illustrate the point. However, the salient facts follow. There were various other ramifications to the transaction, but they have no particular bearing on the point under discussion.

Exclusive Listing Given

Smith owned a home which he listed exclusively with a broker at a sale price of \$20,000, the buyer to assume a trust deed and note of \$10,000. After securing the listing, the broker put his sign with name and address on the property. The exclusive listing was for a period of 90 days, and after about 30 days elapsed without a sale, the owner of the trust deed against the property happened to drive by it. He saw the broker's sign on the property and made note of the name and address.

The owner of the trust deed called on the broker and told him that if he could sell the trust deed and note he would discount it 10 percent, or \$1,000. The broker had him sign a memorandum to this effect.

Some time later, the broker secured an offer of \$17,500 for the property and submitted it to the owner, who refused to accept. He advised the broker that the least he would take was \$18,000. The broker said, "All right, if you will take this \$17,500 offer, I can refinance the trust deed on

(Cont. on Page 182, Col. 2)

DIRECTORY DEMAND EXCEEDS SUPPLY

There were a few 1954-55 directories left over after copies were mailed to those who had ordered prior to printing, following notice given to all licensees through the medium of the *Bulletin*.

This surplus was rapidly snapped up and we have returned over 600 remittances to those who failed to order copies before the directory was printed.

The directory runs over 1,000 pages, and is very expensive to produce, and so the size of the printing order is dictated by the number of reservation orders made by the licensees.

Next year's printing of the directory will be announced in plenty of time to allow you to request a copy.

Bulletin Index Brings Many Requests for Back Issues

The January issue of the *Bulletin* contained a subject index covering articles published during the preceding two years. As a result, many readers asked for various back issues, which were supplied as our stock allowed.

A number of people informed us that they were keeping a binder file of all *Bulletin* issues, finding it quite valuable, especially with the help of the index. The practice is recommended and all copies of the *Bulletin* are punched for easy insertion in a three-ring binder.

Covering a variety of subjects, we attempt to keep *Bulletin* articles as short as possible. Often several articles will cover different phases of the same general subject.

A note of caution—law, regulations, procedures and policies are subject to change. For example, an official procedure outlined in January, 1953, may have been considerably modified by this time. Through the *Real Estate Bulletin*, we will at all times attempt to keep licensees informed of any changes which may affect them and the conduct of their business.

Appellate Court Sustains Commissioner's Order License Revoked on Fraud Judgment; Statute of Limitations Plea Rejected

The California License Law permits the commissioner to invoke disciplinary action against a licensee who has suffered a fraud judgment in a civil suit based upon a transaction in which the licensee has acted as agent. The commissioner may also revoke or suspend a license for any conduct which would have been the basis for refusal of the original license.

Both of these provisions of the law were invoked in the recent case of a woman real estate broker who had a very elderly man as her client. As a result of the various dealings into which she guided him, he suffered a loss of many thousands of dollars. The transactions were apparently made without regard for the interests of the

principal, but solely with view to forwarding the broker's own advantage. She was sued civilly and a fraud judgment rendered.

The commissioner then issued an accusation and, following a hearing, her license was revoked. She appealed and the court sustained the commis-

(Cont. on Page 184, Col. 1)

REAL ESTATE BULLETIN

Sacramento, March, 1955

Published Bimonthly by the
DIVISION OF REAL ESTATE

STATE OF CALIFORNIA
GOODWIN J. KNIGHT, Governor

D. D. WATSON
Real Estate Commissioner

STATE REAL ESTATE BOARD

LELAND P. REEDER THOMAS R. ROONEY
Beverly Hills Los Angeles
MAURICE G. READ WILLIAM J. DAVIS
Berkeley San Francisco
FRANK WHITELOCK CURTIS M. ROBBINS
San Bernardino Stockton

AREA ADMINISTRATORS

GAYLORD K. NYE, Chief Deputy, Northern Calif.
1021 O Street, Sacramento
RAY D. WESTCOTT, Chief Deputy, Southern Calif.
Rm. 310, 541 S. Spring Street, Los Angeles
HAROLD H. WELLS, Supervising Deputy,
Licenses (State-wide), Sacramento

DISTRICT OFFICES

SACRAMENTO, Principal Office—1021 O Street
Arthur M. Day, Deputy-in-Charge (Sacramento District)
Fresno, 308 Rowell Building
John S. McVay, Deputy-in-Charge
Oakland, Rm. 304, 1744 Broadway
Marvin H. Wiegman, Deputy-in-Charge
San Francisco, Rm. 204, 1182 Market Street
Saxon A. Lewis, Supervising Deputy
Bakersfield, 331 18th Street
LOS ANGELES (Main Office, Southern Area)
Rm. 310, Spring Arcade Building, 541 S. Spring
M. R. Griffin, Supervising Deputy
Long Beach, 531 American Avenue
San Bernardino, 633 D Street
San Diego, 613 Orpheum Theatre Building
James M. Winter, Deputy-in-Charge

APPRAISAL JOB OPENINGS WITH STATE

The position of principal real property appraiser with the Division of Assessment Standards will be open to application until April 22d, the State Personnel Board has announced. Responsible administrative or supervisory experience in major real property appraisals is required for the job. The experience must have been recent. Monthly salary range is \$676 to \$821.

An examination for positions as assistant real property appraiser and negotiator in the Department of Finance and in the Division of Beaches and Parks is also scheduled. Salaries start at \$395—go up to \$481. Application deadline is April 22d.

DISCIPLINARY ACTION—DECEMBER, 1954, AND JANUARY, 1955

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, 1954, AND JANUARY, 1955

Name	Address	Effective date	Violation
Dones, Lindell Yvonne Real Estate Salesman	2402 Alsace Ave., Los Angeles	12/ 7/54	Secs. 10176 (i) & 10177 (f)
Crump, Jack Archie Real Estate Salesman	658 E. El Segundo Blvd., Hawthorne	12/ 7/54	Sec. 10177 (f)
Ferguson, Clara Real Estate Salesman	1525 W. Yucaipa Blvd., Yucaipa	12/15/54	Sec. 10177 (a), (f)
Schuenemann, Hellmuth Real Estate Broker	2000 W. Yucaipa Blvd., Rt. 2, Box 746, Yucaipa	12/15/54	Secs. 10176 (a), (i); 10177 (f) & 10302 (e)
Reyes, Ralph Lucio Business Opportunity Broker	R. F. D. Box 462-A, Niles, Hwy. 9, 3 mi. NW., Niles	12/20/54 (Granted right to restricted license)	Sec. 10177 (b), (f)
Home Owners Mortgage and Loan Company Real Estate Broker (Corp.)	4313 Ohio St., San Diego	12/22/54	Secs. 10176 (a), (b), (g), (i) & 10177 (f)
Whitehorn, James F. Real Estate Broker	Whitehorn Ranch, 29 Palms Hwy., Joshua Tree	12/31/54	Sec. 10177 (d), (f)
Meyer, Glen Logan Real Estate Broker	41-635 E. Eighth St., Box 121, Beaumont	12/31/54	Sec. 10177 (f)
Moore, Ernest Alfred Real Estate Broker	1500 Flower St., Bakersfield	12/31/54	Secs. 10177.6 & 10177 (f)
Wilén, Teresa Mary Real Estate Broker	1334-10th St., Modesto	1/ 3/55 (Granted right to restricted licenses)	Secs. 10176 (e), (i); 10177 (d), (f); 10301 (e), (i); 10302 (e) & Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Wilén, Teresa Mary Real Estate Broker	10022 MacArthur Blvd., Oakland	1/ 3/55 (Granted right to restricted licenses)	Secs. 10176 (e), (i); 10177 (d), (f); 10301 (e), (i); 10302 (e) & Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Lepley, Flossie Ewers Real Estate Broker	10022 MacArthur Blvd., Oakland	1/ 3/55 (Granted right to restricted licenses)	Secs. 10176 (e), (i); 10177 (f); 10301 (e), (i) & 10302 (e)
Harrell, Alvin McCoy Real Estate Broker	310 W. 54th St., Los Angeles	1/ 4/55	Sec. 10177 (f)
Williams, Dick Baird Real Estate Broker	423 14th St., Modesto	1/15/55	Secs. 10176 (a), (i); 10177 (d), (f)
Smallwood, Purmon Robert Real Estate Broker	2822 S. Western Ave., Los Angeles	1/18/55	Sec. 10177 (e)
Spencer, Daniel William Real Estate Salesman	Rt. 1, Box 1561, Auburn	1/19/55	Sec. 10177.6
Parks, Cecil McNeil Real Estate Broker	2716 W. Jefferson Blvd., Los Angeles	1/25/55	Secs. 10160; 10162; 10164; 10176 (e), (i) & 10177 (d) & (f)

LICENSES SUSPENDED DURING DECEMBER, 1954, AND JANUARY, 1955

Name	Address	Effective date and term	Violation
Milligan, Moses Lee, Sr. Real Estate Broker	4609 S. Avalon Blvd., Los Angeles	12/ 3/54 6 months (Terms & Conditions)	Secs. 10176 (i) & 10177 (d), (f)
Potter, Joe Wheeler Real Estate Broker	2135 Kelton Ave., Los Angeles	12/ 7/54 10 days (Stayed)	Sec. 10160 & Sec. 2771 of R.E. Comm. Rules and Regulations
Couron, Edward Louis Member of Couron and Coats Realty Real Estate Broker	9602 Garden Grove Blvd., Garden Grove	12/22/54 30 days (Stayed until 6/24/56 on terms and conditions)	Sec. 10177 (f)
Fishman, Frederic Jay Real Estate Broker	4324 Meade Ave., San Diego	12/22/54 60 days	Secs. 10176 (a), (d), (i) & 10177 (f)
Tyler, James Rue Real Estate Salesman	1857 Newport Ave., Costa Mesa	12/31/54 90 days (60 days stayed until 7/2/55 on terms and conditions)	Sec. 10177 (b), (f)
Martinson, Anne Hinton Real Estate Salesman	315 15th St., Oakland	1/20/55 30 days	Secs. 10142; 10176 (a), (i); 10177 (f); 10250 & 10263
La Rosa, Antone Real Estate Broker	29 Cortland Ave., San Francisco	1/26/55 60 days	Secs. 10177.5 & 10177 (f)
Hopp, Augustine Peter dba A. P. Hopp & Co. Real Estate Broker Business Opportunity Broker	2536 Eastland Ave., Los Angeles	1/28/55 10 days (Stayed for one year)	Secs. 10142; 10177 (d) & 10302 (d)

Subdivision Impound Rule Out—Att'y. General's Opinion

The future effect of Section 2792.1 of the Real Estate Commissioner's Rules and Regulations was nullified by an opinion of the Attorney General delivered late in February.

The section in question required the subdivider to file with his subdivision questionnaire a verified statement in which he agreed to impound in a neutral depository deposit moneys received from prospective purchasers. These moneys, under the agreement, could not be withdrawn for the use of the seller until delivery of title or other agreed interest to the purchaser.

The Attorney General said that the present law, giving the Real Estate Commissioner certain jurisdiction over subdivisions, does not extend to the power to promulgate this particular rule. The Attorney General went on to state that: "*The glaring inadequacies of the (present) subdivision law have been brought into high visibility by the exposures that purchasers have lost their deposit payments in certain tract operations in Southern California.*"

The Attorney General did not criticize the purpose of the rule, only the statutory power to make it. He advocated legislation which would close the loopholes revealed.

In the meantime the Attorney General advised the commissioner to put prospective purchasers on notice in his Public Report when the subdivider does not voluntarily agree to impound deposits until delivery of agreed title or other interest.

The commissioner was further advised: (1) That subdividers, who have accumulated impounds under their present agreements, cannot use these moneys in violation of the agreements under which the deposits were accepted. To do so would possibly create a fraud to the purchasers who had paid their deposits under the conditions set forth in the Commissioner's Public Report, calling for placement of the deposit moneys in a neutral depository.

(2) If a subdivider wants to repudiate his present agreement to impound deposits, he may do so by

California Has No Licensing Reciprocity Pacts

Position of Broker Selling Out-of-state Property; Can Split Commissions

California brokers often inquire as to their position when they have the opportunity to list and sell a property in another state.

Forty states now have license laws; each prohibits the maintenance of a suit for commission on property located within the state unless properly licensed by that particular state. Of the states which still have no license law, Massachusetts and Minnesota are the most heavily populated.

California has no reciprocal agreement with any of the other license states for exchange of licenses; therefore any California licensee seeking a real estate license in another state must meet all of that state's requirements. In some cases a term of residence is necessary.

While we have no formal legal advice on the particular point, it is quite possible that a California broker might properly sell a property located in another state and properly accept a commission on the sale, provided all negotiations in connection therewith are conducted in California. In reverse, the same would probably be true of an out-of-state broker with respect to California property.

California law contemplates California brokers cooperating with those of other states, and specifically permits a California broker to divide commissions with a broker licensed in another state.

This provision of the law was added a few years ago, when it became apparent that brokers in eastern states were sending prospects to California and referring them to particular brokers here. The California broker, so blessed with business, naturally wished to compensate the referring Eastern broker, but technically

notice in writing to the commissioner. **However, with repudiation, he may not continue to sell using the Public Reports which state that deposits are impounded. He may seek an amended report which will give the prospective purchaser the true picture.**

The situation in regard to impounds and the protection thus afforded to the buying public is not quite clear at the present time, but the subdivision industry and the commissioner are studying various proposals, and hope to develop methods of control which will be fair to all concerned.

could not do so under the law as written before amendment.

Bemis Lawrence, Secretary-Counselor of the Kentucky Real Estate Commission, recently reported an interesting case. It is *Schultz v. Palmer et al.*, decided by the United States Court of Appeals, Third Circuit, late in 1953. Schultz was a Cleveland, Ohio, broker who specialized in manufacturing plants. He was authorized by the defendants to negotiate the purchase of a manufactory in Meadville, Pennsylvania, which Schultz did although he was not licensed in the Quaker State.

The Pennsylvania License Law (as does the California law and others) provides that no action should be brought by any individual for negotiating the sale or purchase of real property for another without being licensed in the State. The purchase involved real property.

Schultz, refused a commission, brought this action. He contended that the sale was of a business, and that the real property was merely incidental thereto. The appeal court upheld the United States District Court, and ruled that the plaintiff could not recover because he was not licensed.

BUMPER BABY CROP IN 1954

At the rate American families are expanding the "little cottage built for two" just isn't large enough any more. More babies were born in 1954 than in any previous year in our history.

The United States Surgeon General has estimated that births totaled over 4,000,000 in the United States in 1954. This is a new record, although the birthrate per 1,000 population falls somewhat below the 1947 record.

"How to Thrive in '55"

Theme for Educational and Sales Conference Program Presented by CREA

The California Real Estate Association has announced a series of one-day educational and sales conferences to be held in a number of localities throughout the State. CREA has been conducting such conferences successfully for a number of years, and this past experience was drawn upon to plan an outstanding, inspirational program for this year.

A new plan has been adopted for conducting the conferences which should give those attending a chance to get the most out of the one-day sessions. After an opening address in which business conditions and the local outlook will be reviewed, enrollees will split into two groups, each group attending meetings independent of the other. Group I will be comprised of salesmen and brokers interested in direct sales activities. Group II will be a discussion group for sales managers and brokers maintaining office staffs and involved in administrative problems.

Group Programs

Group I will hear discussions on "The Art of Customer Prospecting," "Selling by Telephone," "Common Problems in Closing the Deal" and "Determining the Sales Price."

Group II will attend a management seminar covering administrative procedures in general use throughout the State and hear a review of "Resources For Mortgage Financing."

In midafternoon the two groups will assemble together to see a film strip on "Completing the Sale." The film demonstrates negotiations with the buyer and seller and it was developed by the University of California in cooperation with CREA's Visual Aids Committee. Topping off the day's program will be an address by a featured speaker.

This year CREA is furnishing three different pamphlets available only to enrollees in the conferences. These will include the sales manual, covering material presented during the day; a brochure, "Selling by Telephone"; and the third one entitled "Planned Selling."

Because of space limitations, enrollment in the conferences will be limited to CREA members. Those eligible to attend are urged to make early reservations through their local boards.

BULLETIN ISSUED EVERY OTHER MONTH

Licensees often call or write, stating that they are not receiving copies of the *Real Estate Bulletin* regularly. It develops that quite a number think the *Bulletin* is issued more frequently than is actually the case.

The *Real Estate Bulletin* is published bimonthly; that is, every other month, starting with January. *Bulletins* are mailed to office addresses; to the home address only when a license has been properly inactivated. *Bulletins* are sent to active salesmen at the employing broker's office.

DO NOT SEND CASH

When mailing remittances to the Division of Real Estate for any services, please use check or money order. Personal checks are acceptable. Please don't mail cash.

Mailing cash is unbusinesslike and the sender has no recourse if the money goes astray.

Oil Rights Revert in Land Condemned by City, Court Says

What happens when a city or county condemns land, acquiring fee simple title, and later the land proves oil rich?

Political subdivisions may exercise the right of eminent domain to acquire title to lands for some definite public need. Of course the landowner must be adequately compensated.

An Oklahoma city condemned certain land for the purpose of enlarging a water reservoir. About 27 years later it developed that the land had oil value, and a court action was undertaken by certain heirs and successors of the original owner to recover the mineral rights. They were successful in their suit, the judgment being affirmed by the Supreme Court of Oklahoma.

Among the reasons for affirming judgment, the court said neither the applicable statute nor the public need required the taking of a fee simple title; that the condemnation proceedings did not show a clear intent to take such title; and that an instruction that the minerals did not pass was in effect given to the jury, which presumably based its assessment of damages thereon.

The case is *Cushing v. Gillespie*, 208 Okla. 359, 256 P2d 418, 36 ALR2d 1420.

EDUCATIONAL AND SALES CONFERENCE SCHEDULE

City	Date	Location
Ventura.....	April 4	Elks Club, 11 S. Ash St.
Los Angeles.....	April 5	Hancock Hall, University of Southern California Campus
San Fernando.....	April 6	Encino Community Center, Cor. of Ventura Blvd., and Balboa, Encino
Riverside.....	April 7	Mission Inn
San Diego.....	April 8	Grant Hotel
Fresno.....	April 12	Hacienda Motel, 2515 Hwy., 99, North of Fresno
Stockton.....	April 18	North Hall, Municipal Auditorium
Santa Rosa.....	April 19	Memorial Building, 1351 Bennett Ave.
Berkeley.....	April 20	Little Theatre, Berkeley High School, 1900 Allston Way
San Francisco.....	April 21	Fairmont Hotel
San Jose.....	April 22	Montgomery Theatre, Civic Auditorium
Long Beach.....	April 26	Town Hall
Pasadena.....	April 27	Huntington-Sheraton Hotel
Hawthorne.....	April 28	Odd Fellows Temple
Laguna.....	April 29	To be announced
Grass Valley.....	June 7	To be announced
Eureka.....	June 9	To be announced
Ukiah.....	June 11	To be announced

Law Must Be Observed in Selling Old Subdivisions

Anyone interested in "reactivating" an old subdivision should understand that the owner of such property or his sales agent is not relieved from filing a "Notice of Intention" to sell with the Real Estate Commissioner before embarking on a sales program. This is true even though a subdivision map of the land might have been placed of record many years ago.

The same is true when one purchases five or more lots in such tract and offers them for sale either as vacant lots or with a building program. The requirements hold even though the lots are not contiguous. For instance, the purchase of 20 scattered lots in an old subdivision for the purpose of resale or for launching a home building program would require that a "Notice of Intention" be filed with the commissioner.

The filing of a "Notice of Intention" to sell in the above instances is required by the provisions of Sections 2796 and 2801 of Title 10 of the California Administrative Code (Commissioner's Rules and Regulations).

After receiving a "Notice of Intention" to sell in cases where an old subdivision is being reactivated, the commissioner decides whether or not more detailed information (a questionnaire, filing fee, and supplementary documents) should be presented to clarify the details of the offering and afford the public the protection intended by the law.

Unless the procedures indicated by the law are followed, sales in these old subdivisions may be voided by court order. Cases bearing on this point are *Murphy v. San Gabriel Manufacturing Company*, 99 CA 2d 365, and *Bachbenheimer v. Palm Springs*, 116 CA 2d 580.

If you are thinking of marketing all or a portion of an old subdivision—even though a map of it has been of record for many years—play safe and file a "Notice of Intention" to sell such property. The requirements for the notice are simple (see Section 11010 of the Business and Professions Code). In the long run filing will probably save time, expense and confusion.

Power of Attorney

Cannot Be Used as Scheme to Evade Licensing

From time to time, we learn of some individual who, without being licensed, attempts to operate as a real estate agent for compensation by virtue of a power of attorney. It will be recalled that the person who holds a bona fide power of attorney is exempt from the requirements of the license law.

The Term "Realtor"

Using Without Right Is Violation

Wilfully describing oneself as a *realtor* without the legal right to do so is grounds for suspension or revocation of a real estate license. Strangely enough, there are persons in the real estate business who are not aware of this provision of the law. Many do not know the significance of the term.

The term *realtor* is the property of the National Association of Real Estate Boards, an organization comprised of 1,200 real estate boards throughout the United States, its territories, and Canada, the Philippines, and Puerto Rico. Permission to use the designation *realtor* is granted only to active members of these chartered boards who are in good standing. Usually "active" membership is restricted to real estate broker members.

Membership Is Voluntary

Whether or not a broker becomes an active member of a real estate board is a matter of his personal choice. Membership is voluntary. In California there are 145 such local real estate boards, one in nearly every sizable community. **Besides giving direct business aids to their membership, the boards' objectives are to promote high standards of business ethics, education and beneficial legislation.** Just as doctors, architects and other professional people regard membership in their professional organizations as a distinct asset, so does the *realtor* regard his board membership.

While it would seem unnecessary to make this explanation, the foregoing is set forth for the benefit of those licensees who do not understand the purpose of the license law provisions which prohibit unauthorized use of the term *realtor*.

It is recognized that a power of attorney is warranted and essential in some instances; however, in other cases its use is merely a ruse to evade the license law. **The California Attorney General has advised that the use of a power of attorney to circumvent the necessity of having a real estate broker or salesman license, does not come within the exemption contemplated by the law.**

The Supreme Court of the State of Tennessee has held similarly in *Brown et al. v. Van Pelt*, 263 S. W. 2d 956. Van Pelt represented that he was a licensed and qualified real estate agent and persuaded Brown, the owner of a house and lot in Memphis, to execute an instrument designated as a "Power of Attorney," which authorized Van Pelt to negotiate the sale of Brown's property and to handle all business pertaining to the sale.

Seller Sues for Recovery

A sale was made, but seller discovered that Van Pelt was not a licensed broker and filed suit against him for recovery of rental and earnest money being held by Van Pelt. Van Pelt denied he had represented himself to be a licensed broker and defended on the ground that he was acting as an attorney in fact and was exempt from the license law.

The Supreme Court ruled, in substance, that the power of attorney in question was not such as was contemplated by the license law, and that the activities of Van Pelt in this transaction, including collection of rents and negotiating a sale of the house and lot, constituted him as a real estate broker as defined by the license law itself. **This required him to have a license in order to do business and to collect a commission legally.**

Van Pelt was denied any commission because of his fraud.

Personal Property Taxes

A Case Where Buyers Suffered Loss Through Fault of Seller

Occasionally, the buyer of a home suffers an unwarranted hardship when held responsible for the unpaid personal property taxes of the seller.

This is more likely to happen in the spring of the year, after the first Monday in March. At that time of the year it is difficult—almost impossible—to determine what, if any, unpaid personal property taxes have become a lien against the home being purchased.

The title report will recite that the property is subject to any unpaid real or personal property taxes, but this usually does not sound a warning signal to the purchaser.

Recently, a rather pitiful case was called to the commissioner's attention. The family had purchased a home in the month of March. They had no specific warning that the property was subject to a rather heavy sum for unpaid personal property taxes. In this case the amount was approximately \$250, as the seller had owned a business and failed to pay personal property tax on his equipment. The business was located in the same county as the home, and so the unpaid taxes attached to all the seller's property, including the house under sale.

Buyers in Difficulty

To make matters worse, the buyers had stretched their resources to the limit in acquiring the home. When the unpaid tax item developed, the owner of the trust deed threatened foreclosure unless it was taken care of immediately. The buyers had no money to pay the taxes. At this writing it looks as though they might suffer foreclosure of the home.

The problem is brought to the attention of brokers and salesmen so that they may be aware of this danger. No doubt there are measures which can be taken to afford certain protection to buyers, and it may be well to consult an attorney in this connection.

Fortunately, in most instances the seller is glad to adjust the matter when it comes to light, and in most cases where the seller will not adjust, the unpaid taxes are relatively small and no great hardship is worked upon the buyer if he has to pay them. It can be seen, however, that there is a possibility of an extremely heavy lien existing.

Principal Must Be Informed By Full Disclosure of Facts

(Cont. from Page 177, Col. 1)

the property and get you another \$500, which will give you \$18,000." To this the property owner agreed.

The broker was able to refinance the first trust deed at the face amount of the note, thereby securing a profit of \$1,000. He put \$500 of this amount into escrow, which together with the \$17,500, which the buyer agreed to pay, made the \$18,000 the owner agreed to take. The transaction was completed.

Seller Learns of Discount

Some time later, the seller of the home learned about the \$1,000 discount on the note and the fact that the broker had secured, in addition to the regular commission, a \$500 profit on the refinancing of the trust deed. He complained to the commissioner.

At the resulting hearing, the broker contended the trust deed refinancing was a separate and distinct transaction, and that he did not feel it was necessary to disclose the facts to the home owner who had given him the listing on the property. The hearing officer looked upon it differently, holding that, at the time the trust deed refinancing took place, the broker was the agent of the seller and owed him the duty of full disclosure.

No Excuse for Secret Profit

Too many times when brokers are accused of taking a secret profit, they state: "I don't see anything wrong, the seller got what he was asking for." This is no excuse for taking a secret profit. When a broker is employed by a property owner to act as his agent, he cannot use the subject of his agency for personal gain. He must keep his principal fully informed of everything that goes on.

Don't Make Assurances Unless You Are Sure of Your Ground

Perhaps all of us are inclined at times to make definite statements or give definite assurances when the basis for such statements is merely hearsay. Many a broker has gotten into difficulties by personally making promises or reciting statements as facts, when he has no firsthand knowledge of the conditions or the source of the report. **It's a good idea to qualify any statement, particularly a written one, when you have no firsthand knowledge of the facts.**

As a case in point, a broker, to sell a certain home, found it necessary to secure refinancing of the first trust deed in a somewhat larger amount than the existing balance. There was a second trust deed on the property, and it was necessary to get the holder's consent to subordinate it to the new first.

Agree to Subordinate Lien

The owners of the second lien couldn't see why they should permit a greater lien to be placed ahead of theirs, and so advised the broker in a letter. He wrote back a very reassuring letter, stating that the buyers of the property were going to inherit money and certainly would have the second trust deed paid off within a couple of years. He pointed out that, if it paid off at the current monthly rate, it would take many years to liquidate it.

Relying upon the broker's written statement, the owners of the second consented to the subordination. Later, they found out that the trustors had no expectations of inheriting money. A complaint was made to the commissioner and a hearing was held.

The broker attempted to explain away the definite statement in his letter by blaming it on an associate broker in the office. He said this associate had told him that the buyers were going to inherit money and would be able to pay off the trust deed. The buyers denied they had ever assured anyone they were going to inherit money.

You can't explain away a definite promise or statement on the basis that "someone else told you so."

Trust Deed Subordination Clauses

By E. G. MERRILL, JR., General Counsel, Union Title Insurance and Trust Co., San Diego
(Reprinted with permission from Union Title—Trust Topics)

There is some value in repetition. We have previously commented on the too-frequent occurrence of lack of certainty in the terms of written contracts by reason of which our courts have denied recovery. These instances were offers to purchase, listings, and agreements of sale, where lack of certainty in their terms has prevented recovery. Valuable rights have been lost.

The recent case of "*Gould v. Callan*" reported in 127 A. C. A. at page 1 is of interest, not only because the plaintiff was denied specific performance of an agreement to sell real property because of the lack of certainty in its terms, but also because the lack of certainty was in its provisions relative to a subordination agreement.

Agreement for Construction Loan

We frequently find that a seller of real property who takes back a purchase price deed of trust will agree with the buyer that he may place a construction loan on the property and that the deed of trust securing such a loan, although recorded subsequently, will constitute a lien on the property prior and superior to the previously recorded purchase price deed of trust.

This agreement on the part of the seller and buyer is set forth in the purchase price deed of trust and is called a "subordination agreement."

It is a satisfactory arrangement and permits the buyer to go ahead with the financing of his building program and enables a title insurance company to insure the priority of the subsequently recorded construction loan. Frequently these are so worded that all this can be done without any further act on the part of the seller.

In the case cited, Callan agreed to sell certain real property to Gould and the contract contained the following provision: "The Second Trust Deed mentioned on page 1 hereof (the purchase price trust deed) to provide for subordination on the following basis: In the event the trustor (Gould) should erect a building on subject property at a total building cost of not less than \$75,000 or more than \$300,000, then beneficiary (Callan) agrees to subordinate said trust

DIRECTORY ERROR

The name of BRYAN HAMMOND, real estate broker, 3810 Broadway, Oakland, was inadvertently omitted from the 1954-55 directory.

Thus far, this is the only error called to our attention. If you are aware of other mistakes, please let us know of them for mention in the *Bulletin*.

deed to the lien of a first trust deed not to exceed 60 percent of the true building cost. In the event of such subordination then the payments on said second trust deed loan to be \$400 or more per month, including 5 percent interest."

Subsequently Callan canceled the escrow and Gould brought this suit for specific performance of the contract.

Terms Too Uncertain and Indefinite

The court gave judgment in favor of the defendant Callan on the grounds that the contract was too uncertain and indefinite to constitute an enforceable or binding agreement.

Said the court: "The failure of the subordination clause to state the amount of interest and the terms and conditions of payment of the obligation to be secured by the first deed of trust makes the contract uncertain and indefinite. The provisions are material and essential to a contract providing for a deed of trust as security for an obligation, and their absence is fatal to the claim for specific performance."

Too frequently, parties enter into involved contracts without the advice and counsel of their attorneys, only to find, when seeking the assistance of our courts, they do not have an enforceable contract.

Difficulties Are Avoided By Observing Fundamentals

Perhaps we discuss fundamentals of the real estate business too much in the *Bulletin*, but, after all, they are highly important. Nearly every day, we hear reports that presumably experienced brokers have broken fundamental rules of the business. So, like a football coach, we will continue to hammer on fundamentals.

We have in mind a particular case. A prominent and experienced broker carelessly collected a commission from each side of a deal without acquainting both principals with the fact. In this particular case we can see how he was led rather unwittingly into the situation, but, nevertheless, he should have been well enough acquainted with the law to see the error of his position.

As we get the story, a business man, who had a certain building under lease, approached this broker to buy the building for him. The lessee suspected the price would go up if he approached the owner himself. He agreed to pay the broker 5 percent commission on the price paid up to a certain maximum. The broker knew the seller to be a hard person to deal with, and expected no commission from him. Unexpectedly, when the seller signed the escrow instructions, he provided for a commission to the broker. As a result, two commissions were paid to the broker without full knowledge and consent of both buyer and seller.

Instead of making the fact known to both his principals, the broker said nothing and collected the two fees. As usually happens, buyer and seller got together some time later and discovered the facts. They jointly retained an attorney who demanded return of both commissions.

As stated, if this agent had been a newcomer to the business, his carelessness could be understood; however, it is hard to realize that an experienced broker would make this mistake, thereby jeopardizing not only his commission but his license as well.

Speaking of lack of knowledge of fundamentals, nearly every day some broker or salesman inquires how he is to force collection of a commission when he worked on a verbal listing.

"Carried Away" at Auction Broker Bids But Bungles Buy

Do you ever attend real estate auctions? Have you ever bid on property at an auction? If so, you will agree you need good judgment and considerable control. This is the unhappy story of a broker who was short on both.

This real estate broker started out one Sunday morning to attend the auction of a mansion formerly owned by a celebrity. It was a nice day, so he decided to walk to the property. He fortified himself along the way by dropping into various bars, and by the time he reached the auction his thinking seemed at least slightly affected, judging from his subsequent conduct.

Although he had a very modest sum in the bank, he began to bid generously on the property. Turning out to be the high bidder, he wound up by giving a check for over \$100,000 to the auctioneer.

Of course, the check bounced, the auctioneer was unhappy, and complained to the district attorney. Conviction of our broker followed.

The matter came to the attention of the commissioner, who set it for hearing. Repeated was the sad tale previously told in court. Now our broker friend has a restricted license.

Commissioner's Order Upheld

(Cont. from Page 177, Col. 3)

sioner. The appeal was then carried to the appellate court, a court of record, and the commissioner was also sustained by that court.

The broker in her petition to the appellate court, for the first time raised the statute of limitations in defense, alleging that her acts were over

Examination Room Is Not The Place to Study for Test

Despite numerous warnings to license applicants that they must not bring books, papers, or notes to the examination room, occasionally an applicant is discovered referring to such material during the examination. We are glad to report that these instances are few and far between.

Recently, a lady, over-anxious to pass the examination, was caught referring to some notations which she had written and carried to the room in her handbag. The deputy proctoring the examination was required to confiscate her paper, and a hearing was called on her application. She did not appear for the hearing—probably too embarrassed—and her application for license was denied.

Another applicant, this time a man, was found to have in his possession a plat and land description apparently prepared by a real estate school which he had attended. The plat and description were quite similar to the one appearing in the examination. A hearing has also been called to consider this man's qualifications for license. These hearings are based on the theory that, if the applicant shows dishonesty in acquiring a license, he will probably keep on that way.

three years old and therefore could not be considered by the commissioner. She had not raised this issue at the administrative hearing, nor before the lower court. **The appellate court ruled that, as she did not use this defense at the commissioner's hearing or during the appeal before the lower court, she could not inject it in her petition to the appellate court.** The court stated: "It is well established that the statute of limitations is a per-

Sold Same Trust Deed More Than Once Without Delivery

A Southern California broker engaged in the mortgage loan business as part of his over-all operation. He negotiated the sale of existing trust deeds from one owner to another. In some cases his clients had great confidence in him, and permitted him to hold the trust deed and note and service collections.

The broker apparently got into financial difficulties and needed cash, so he proceeded to sell the notes left with him for collection. Evidence showed that he sold the same note to as many as three buyers.

To keep everyone happy, he would pay interest out of his own pocket on a note to the different purchasers of the note.

When the matter came to the commissioner's attention, a hearing was called and the broker admitted the facts of the accusation. He pleaded, however, that it was all a bookkeeping mistake. He didn't quite explain why he paid monthly interest to several people on the same note. The broker's license was ordered revoked.

Later he was indicted and the trial judge sentenced him to imprisonment on grand theft and forgery charges. The court denied pleas for probation.

sonal privilege which is waived unless asserted at the proper time and in the proper manner, whether it be a general statute of limitations or one relating to a special proceeding. This general rule applies to proceedings before an administrative tribunal."

The appeal was made before the District Court of Appeal, 2d Appellate District, Division 2, Civil No. 20257, *Bohn v. Watson*.

SACRAMENTO, CALIF.
Permit No. 157
PAID
U. S. POSTAGE
Sec. 34.66, P. L. & R.