

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, May, 1952

D. D. WATSON, Commissioner

State Waives Tax on Home Sale Profit If Reinvested

Following closely recent federal legislation which waives capital gains tax on the sale of a home, provided the funds are reinvested in a new home within a certain time, the California Legislature at the special session enacted a similar provision applying to state income taxes.

Profits realized on the sale of a home as a capital gain are not taxable under state income tax laws, provided they are reinvested within 12 months in another personal residence. The new law applies to profits realized on transactions beginning with the current calendar year, January 1, 1952, and is not retroactive for 1951 sales.

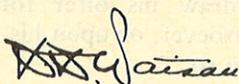
Because of this state legislation, profits on the sale of a home may, under certain conditions, be exempt from both state and federal income tax.

TO ALL LICENSEES:

Your fine cooperation during license renewal time last year was much appreciated. The fact that you followed license renewal directions given in the *Bulletin* allowed us to handle the job with dispatch.

Reissuing almost 90,000 licenses at renewal time and keeping proper records is at best no easy task. Incomplete applications or incorrect fees require that we "sidetrack" the application until the correct ones are processed. Even so, they slow the procedure and increase costs.

If you will follow the instructions given herewith, it will greatly assist us in properly renewing your license and getting it in your hands without delay.



Real Estate Commissioner

Avoid License Renewal Penalties

Keep These Instructions Handy—Time for Annual Renewal of Licenses Is Almost Here—Observe a Few Simple Rules and Save Delay and Penalties

Your official license renewal application form will be mailed to you from Sacramento about May 26th. Wait for this official form and use it to renew. If not received by June 10th, contact one of the division's offices for a duplicate form.

To avoid penalty, renewal applications and proper fees must be submitted to the division not later than June 30th, or in the mail and postmarked not later than June 30th. Those postmarked July 1st, or later, require a penalty fee.

Read the instructions on the renewal application carefully. Make sure application is complete and the proper fee is attached before mailing.

If name or address is changed, show change on renewal application. If change is to be made prior to July 1st, enclose extra \$1 fee for each license involving the change of address or name.

Brokers—submit your own application and fee with those of your salesmen. Use one envelope. Be sure that both you and the salesman sign his renewal application.

Salesmen—be sure that both you and your broker sign your renewal form. Your renewal application should be mailed in the same envelope with that of your broker. Your new license cannot be issued until your broker renews. If your renewal application and that of your broker are kept together, confusion and delay in issuing are avoided.

Do not mail currency. Pay fees by money order or check. If currency is lost in the mail, it is your loss, and in addition you may have to pay a penalty for late renewal. Make checks and money orders payable to State Division of Real Estate.

Checks—if your check is returned by the bank unhonored for any reason, you must pay a double renewal fee, unless the proper fee is mailed and postmarked prior to midnight, June 30th. In most cases the division cannot notify you of an unhonored check in time to avoid the penalty.

Inactive brokers—to keep your right to reinstate your license, you must file renewal application and remit the full renewal fee. You will receive an official form in the mail. Write "issue and cancel" across the face of the renewal form, if you desire to remain inactive.

Inactive salesmen—you must also file renewal form and pay the full fee. Remember, some broker must sign your renewal application, even though you cancel the license upon issuance. If the application is marked across the face "issue and cancel," the signing broker does not assume responsibility for you. No forms are mailed to inactive salesmen. Obtain one at any division office.

Many renewal applications are received just before the June 30th deadline. Therefore, all licenses cannot be issued to reach you by July 1st. However, you may continue to operate on the old license if you made proper renewal and paid the fee on time.

(Authority: Sections 10156.2 and 10279.2 of the Real Estate Law) "An application on the form prescribed by the commissioner for the renewal of any unrevoked and unsuspended license filed before midnight of June 30th of the year for which such unrevoked and unsuspended license was issued, accompanied by the applicable renewal fee, entitles the applicant to continue operating under his existing license after its usual expiration date, if not previously suspended or revoked, and until such date as he is notified in writing that the application has been granted or denied."

REAL ESTATE BULLETIN

Sacramento, May, 1952

Published Bimonthly by the
DIVISION OF REAL ESTATE

STATE OF CALIFORNIA
EARL WARREN, Governor

D. D. WATSON
Real Estate Commissioner

M. R. GRIFFIN, Administrative Assistant

STATE REAL ESTATE BOARD

LELAND P. REEDER Beverly Hills	CHARLES B. SHATTUCK Los Angeles
MAURICE G. READ Berkeley	CHESTER MACPHEE San Francisco
FRANK WHITELOCK San Bernardino	CURTIS M. ROBBINS Stockton

OFFICES AND AREA ADMINISTRATORS

GAYLORD K. NYE, Chief Deputy, Northern Calif.
Sacramento, Principal Office.....1021 O Street
San Francisco, Room 204, 1182 Market Street
Saxon A. Lewis, Supervising Deputy
Oakland.....Room 406, 1736 Franklin Street
Fresno.....1312 Blackstone Avenue

RAY D. WESTCOTT, Chief Deputy, Southern Calif.
Los Angeles..... Room 1101, Ninth and Hill Building
Long Beach..... 531 American Avenue
San Diego.....604 Orpheum Theater Building

DISCIPLINARY ACTION—FEBRUARY, MARCH

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 FEBRUARY AND MARCH, 1952

Name	Address	Effective date	Violation
Heapy, Lawrence M. Real Estate Broker Business Opportunity Broker	2200 Bayshore Blvd., San Francisco	2/18/52	Secs. 10177 (b), (f) & 10302 (b), (c).
Dauphin, Coleman Coston Real Estate Salesman	1915½ 16th St., Sacramento	2/18/52	Sec. 10177 (b) & (f)
Rose, Charles Leslie Real Estate Salesman & Business Opportunity Salesman (Renewal Right)	402 Balboa St., San Francisco	2/18/52	Secs. 10301 (e), (i); 10302 (e) & 10177 (f)
Pillars, Ina Mae Real Estate Broker (Renewal Right)	1223 Park St., Alameda	3/21/52	Secs. 10176 (i); 10177 (f) & Secs. 2830, 2831 & 2832 of Commissioner's Rules & Regulations

LICENSES SUSPENDED DURING FEBRUARY AND MARCH, 1952

Name	Address	Effective date and term	Violation
Kent, Augusta Talley Db a Kent's Realty Co. Real Estate Broker	3646 Grove St., Oakland	2/18/52 6 months	Secs. 10176 (e) & (i); 10177 (f) & Secs. 2830, 2831 & 2832 of Commissioner's Rules & Regulations
Rutledge, Frank B., Jr. Real Estate Broker	933 Beech Ave., Lancaster	2/28/52 10 days	Sec. 10176 (a)
DeBiew, Clarence Charles Real Estate Broker Business Opportunity Broker	1648 Newcomb Ave., San Francisco	3/24/52 90 days	Sec. 10176 (a), (i); 10177 (f) & 10302 (e)

Appraisement of Estates

An inheritance tax appraiser placed a value on land and a business building for inheritance tax purposes which the executor claimed was too high. The executor brought an action in superior court to have the appraised value set aside. He was unsuccessful, and appealed to the appellate court.

Among other things, the executor maintained that the court had based its ruling on evidence outside of the record. The superior court had stated it could not accept the statement of an expert witness that the building was four-fifths depleted, "knowing the high values that have been allowed on buildings much older in many cases in this court in the last few years."

The appellate court held that the statement of the judge did not mean that he was basing his ruling on evidence outside the record, but was using his local knowledge to meet and refute the argument presented to him on motion for a new trial.

In this case the testimony of the appraisal experts conflicted as to the value of the building, and the trial court accepted the appraisal of one of the experts, which the appellate court held the lower court was entitled to do in view of the conflict of evidence.

(Reported in 108 A. C. A. 498—*Estate of Giubbani*.)

Acceptance Must Be Communicated

Otherwise, Buyer May Elect to Withdraw From the Transaction

Although it has been an established principle of law in this State that an offer to purchase may be withdrawn prior to the time it is accepted, it is perhaps well to emphasize this point again. Complaints are still received by the Division of Real Estate to the effect that, although a signed offer with which the buyer submitted a deposit had been withdrawn due to the seller's failure to accept, the agent refused to refund the deposit. *In a few of these cases investigations show that the deposit was not placed in the broker's trust account.*

Where the signed offer provides for written acceptance by the seller, as is the case in most standard sales agreements and deposit receipts, notice of the acceptance of the offer must be communicated to the buyer. The best way to do this, of course, is to furnish the buyer with a signed copy of the sales agreement executed by the seller. The real estate departments of many states by law or rule consider that the broker is wrongfully withholding a deposit if he has not complied with this procedure.

A typical California case is found in *Barsotti v. Vedovi*, 108 Cal. App. 308. In this case the buyer sued the broker for return of a \$4,500 deposit made on the offer to purchase a \$46,000 garage

in San Francisco. The question at issue was this: As the seller's written or verbal approval was not communicated to the buyer before his written notice of rescission was delivered, was the agreement complete? The court held that since there was an understanding between the parties that the written acceptance of the seller would be obtained and delivered to the buyer, the agreement was never completed, and until such acceptance by the seller was delivered, the buyer had the right to withdraw his offer for any reason whatsoever, or upon his mere election to do so.

The fact that other matters were in dispute apparently did not offset this fundamental requirement.

Are Salesmen Properly Insured?

Workmen's Compensation Insurance Required in Most Cases, Official States

The exclusion of real estate salesmen from coverage in some laws does not apply to the workmen's compensation laws, according to Alvin L. Dove, Associate Counsel for the Compensation Enforcement Officer, Department of Industrial Relations.

Some laws make certain exceptions in regard to salesmen on the theory that they are independent contractors. Mr. Dove states such exception does not apply to the required coverage under the workmen's compensation and insurance laws of California. Every employer, with certain few nonrelevant exceptions, must secure the payment of compensation to all employees by purchasing a workmen's compensation insurance policy in a company authorized to sell such insurance in California, or by becoming permissibly self-insured. The latter requires obtaining permission from the Director of Industrial Relations and the posting of a very substantial bond.

Under the workmen's compensation laws of this State, whether a real estate salesman is an employee or independent contractor depends upon the specific facts of each case. If the broker has the right of control over the manner in which the work is done, the salesman is still an employee. Under the Compensation Act, the burden is on an alleged employer to prove that one rendering service for him does so other than as an employee. Further, the act is liberally construed in favor of "employment" rather than "independent contracting."

It is pointed out that severe penal and civil liabilities attach to an uninsured employer. It has therefore been the policy of the Office of the Compensation Enforcement Officer to advise the purchase of a compensation policy in every case where any doubt may arise as to the relationship.

Mr. Dove states that his office has had many inquiries from real estate brokers as to their need to continue workmen's compensation insurance on their salesmen, in view of provisions in certain revenue and tax laws, such as the California Unemployment Insurance Act, defining real estate salesmen as independent contractors.

To summarize, the burden of proof is on the employer to show that the real estate salesman is not an employee.

COURT CASES

We comment in this issue on additional court decisions involving real estate problems. Apparently these comments are of interest to licensees, according to letters received.

We must stress that "a little knowledge is dangerous" when the layman tries to apply this information to his own problems.

A prominent Los Angeles Realtor writes, "Stress the fact that a lawyer should be consulted in the determination of any legal questions affecting a broker."

While we comment broadly on some of these cases for your general information, the stories should impress you with the advisability of "consulting your attorney" when a legal problem arises.

Experience Qualifications for Original Broker Licenses

When anyone applies for an original real estate broker license in this State, he must show that he has been licensed for two years as a real estate salesman and that, during that time, he has been actively engaged in the business on a full-time basis. *Active engagement must be certified to by the broker or brokers by whom he was employed.*

As an alternative way of qualification, the applicant might show that he has had experience in general real estate equivalent to the two-year salesman requirement. Making such a claim, he must set forth in detail the experience he has had relating to real estate. This claim must be supported by valid evidence substantiating the statements made. A committee of State Real Estate Board members then appraises the claim of qualification. In borderline cases, the applicant may be called for a personal interview before the committee.

Subdivider Must Obey Law Or Face Jail Sentence

A subdivider in the town of Arvin, Kern County, was given six months in which to comply with the California subdivision laws, or face a 30-day jail sentence. The "subdivider" was charged with selling lots in his tract at Arvin without complying with the county planning laws or making the necessary filing with the State Real Estate Commissioner.

The sentence was imposed by Judge O. F. Parish of the 15th Township Justice Court, Kern County, giving the defendant until June 19, 1952, to comply with all the necessary laws.

The subdivider must clear his project with the fire department, the county surveyor, and health department as to safety, map plans and sanitation. Furthermore, he must meet the requirements of the Real Estate Commissioner, and present a suitable map for approval to the Kern County Board of Supervisors.

The complaint was issued after the Real Estate Commissioner had investigated the project at the request of dissatisfied lot purchasers.

Occasionally the board committee will find that the broker applicant does not have sufficient "equivalent" experience to match the two-year salesman requirement, and will notify the applicant that he is considered to have had the equivalent of one year or possibly of 18 months of salesman experience. In such cases, the committee sometimes suggests that he operate as a licensed salesman for a sufficient time to make up the difference. When the board committee does this, it does not assure the applicant that such additional salesman experience will satisfy the qualification requirements. But at least under such conditions the application can be revived for reconsideration by the board.

California population is estimated at 11,236,900, an increase of 441,120 over the estimated population for January 1, 1951.

Revised
on appeal
Civ. A.
8030.

Both Joint Tenants Must Sign Sales Contract

Reliance on One Owner's Assurance That Title Can Be Delivered May Bar Commission Claim If Broker Is Aware of Joint Tenancy Title

A real estate broker who represents owners of property he knows to be held in joint tenancy must see to it that the sales contract is signed by both joint tenants, in order to safeguard his commission. This seems to be the basis of a decision made in Los Angeles Municipal Court Case No. 1027441 by Judge Morton L. Barker recently.

The highlights of the case were substantially as follows. The broker secured a listing on property owned by a man and wife as joint tenants. The selling price was to be \$35,000. He found a buyer who made a lower offer which was submitted to the wife, who signed a sales agreement consenting to accept the lower offer. The husband, however, refused the offer.

The court decided that *the broker was not entitled to a commission from the wife inasmuch as he was aware of the fact that the property was held in joint tenancy*, and it was evident that the buyer was not interested in obtaining only her half interest in the property. The court pointed out that a sale could not be made on the entire property unless the husband joined in the sale.

Judge Barker points out that this decision does not conflict with the line of cases ending with *Kaufman v. Haney*, where the agent justifiably may rely on the seller's representation that he can deliver the property.

In line with this decision, the broker selling joint tenancy property, when submitting an offer less than the listed price, should make sure he gets the acceptance of both man and wife.

Real Estate Men Named to Metropolitan Transit Authority

Governor Earl Warren has appointed B. O. Miller, Past President of the Los Angeles Real Estate Board and Lloyd S. Whaley, prominent real estate man and subdivider-builder, as members of a seven-man Los Angeles Metropolitan Transit Authority. This group will study the construction of a monorail system between San Fernando Valley and Long Beach under regulation by the State Public Utilities Commission.

Governor Signs Joint Tenancy Bill

The 1951 statute requiring a court decree to dissolve a joint tenancy upon the death of one of the parties has been repealed. Governor Warren signed the repeal bill on March 25th, to be effective immediately.

With the law restored to substantially its original form, a surviving joint tenant may now be able to accomplish the dissolution of the joint tenancy by filing an affidavit. This procedure was formerly followed in the southern portion of the State.

In other parts of the State where it has been an established custom, the practice of securing a court decree may be continued.

Zoning and Deed Restrictions Are Enforced Separately

Recently, a case came to attention wherein the "use restrictions" imposed by the original subdivider on a tract were altered by an amended zoning ordinance. In other words, certain lots in the tract which had been restricted by the subdivider to single family residential use had been zoned by the city to permit business use. The act on the part of the city resulted in complaints by residents of the tract. The original subdivider had recorded a declaration of restrictions.

What was the effect of this action by the city? *It merely means that as far as the city is concerned, it will permit the erection of business structures and the conduct of businesses on those particular lots. It does not invalidate the original tract restrictions.* No doubt, a civil action by those tract residents who feel they have been injured would give them relief in the courts.

Examination Schedule Change

Following the last scheduled examinations in April, no further examinations for license will be given in Oakland, Long Beach or San Bernardino. Improved service for applicants in these areas will result because of the "stepped-up" schedule of tests offered in San Francisco and Los Angeles.

Where license applicants in the affected areas had to wait for tests given only once a month, they now have the advantage of the following schedules. It means shorter waits for examination and less crowded conditions while taking the tests.

Los Angeles: Examinations given every working day, although brokers are scheduled on Wednesdays only, due to relatively few qualifiers for that license.

Address: 7th Floor, R.K.O. Building, 8th and Hill Streets.

San Francisco: Examinations given twice a week.

Address: Room 402, 1182 Market Street.

For the time being, at least, examinations will continue to be scheduled in San Diego and Fresno once a month, and in Sacramento twice a month.

Tract restrictions created by rec ordation of a declaration of restrictions by the subdivider, or by his putting them in the deeds, are for the benefit of lot purchasers and, when these restrictions are violated, it usually means that the responsibility of enforcing them rests with the owners in the tract. If a violation occurs, the remedy is a court action to enjoin the would-be violators.

The governing authorities of a city or a county have the right to adopt ordinances establishing zones for various types of use. These zoning restrictions, however, to be valid, should be substantially related to the public health, safety, morals or general welfare, and must be uniform in their operation for the general public welfare. If they are created for the benefit of any particular group and discriminate against particular owners, a court would probably set them aside.

Sales Conferences Successful North-State Sessions Set for June

With attendance running far greater than anticipated, the series of Educational and Sales Conferences sponsored by the California Real Estate Association and conducted by local boards throughout the State have been enthusiastically received.

While association sponsored, it has been stressed that they are open to all people in the business. "Seven keys to more business for you in '52" is the theme of the one-day sessions.

The Real Estate Commissioner is particularly interested in the program because of its educational aspects. The proper use of practical forms in the business, which comprise the "tools of the trade," is one of the subjects covered at the conferences. It is felt that this information will lessen complaints resulting from careless and ignorant practices in the use of forms.

While most of the conferences will have been held by the time this issue of the *Bulletin* reaches you, there are still three conferences to be held in the northern part of the State in June, at Chico, Ukiah, and Eureka.

Brokers and salesmen in that area who are interested may contact the secretaries of the local Real Estate Boards for the exact time and place. All three conferences will be held between June 5th and June 10th. The secretaries are as follows: Chico—Connie J. Smith, 110 Salem Street; Ukiah—Harriet McLeland, 105 North Main Street; Eureka—Victory Williamson, P. O. Box 665.

These conferences start at 9 a.m. and run through until 4:45 p.m. A reasonable charge is made to cover expenses. Some of the Nation's outstanding sales experts are on the program.

Ordering Publications by Mail

Those who order publications issued by the Division of Real Estate by mail must realize that the commissioner's office cannot assume responsibility for delivery of the material after it has been properly posted. Every care is taken to assure proper mailing and delivery, but apparently publications sometimes go astray.

Rescinds Contract In Suit Over Filled Ground

Court Holds Failure to Reveal Fill May Evidence Fraud or Deceit

In view of the extensive fill in many subdivisions now being offered for sale, an appellate court case dealing with the failure of the seller to reveal that ground had been filled, may be worthy of review. The case is reported in 45 C.A. 2d 64.

In this case the purchasers bought some land through a salesman who, they alleged, represented the lot to contain solid ground. The purchase document signed by them, recited "I have personally inspected the above described property. . . ." Later, when the purchasers had entered into a contract for the purpose of excavating the said lot and constructing a dwelling, they discovered that the lot contained a fill of some 19 feet. Suit was brought to rescind the purchase.

The court found in favor of the buyers, holding that evidence to show the fraud was admissible notwithstanding provisions in the contract to the effect that the purchasers had inspected the property, and that the seller's agents had no power to modify it or make representations not contained therein.

The court further held that a personal inspection of property by a purchaser is no defense to an action for fraud when and where the conditions are not visible and are known only to the seller. Where the material facts are accessible to the vendor only, as in this case of the filled ground, and he knows them not to be within the reach of the diligent attention and observation of the buyer, the seller is bound to disclose such facts to the buyer. Furthermore, the court stated that the buyer who was induced to purchase property through fraud or deceit may, upon discovery, repudiate and rescind the contract, or he may be allowed to keep the property and sue for damages.

It is important, therefore, that any owner or subdivider of land which contains filled ground makes sure that the buyer is acquainted with the fact. He cannot rely upon the fact that the buyer personally inspected the property, as filled ground may not always be evident to the person inspecting the property.

The Commissioner's Subdivision Reports make it a point to call attention to filled ground, and therefore compliance with the rule that the buyer be given a copy and his receipt obtained, is a definite protection to the seller.

PUT IT IN WRITING

An Agreement Worth Making Is Worth Writing

Disputes arise over agreements when they are not written. It is your word against the other fellow who claims, right or wrong, that you did not understand him. More suits are started and brought into courts, involving expenses and time and ill-will, over verbal agreements than for any other reason.

Listings to sell real property are often referred to somewhat glibly as "open listings," "verbal exclusive," with the explanation, "He is a man I can rely upon. He will not let others talk him into selling before he sees me."

Fortunately, open and verbal listings are in the fade-out stage. A broker who values his time and that of his salesmen realizes that a listing is worth nothing (except potential pain and trouble) when it is not in writing.

Condensed from—Iowa Realtor

Brokers Who Sell Subdivisions Must Deliver Reports

Licensed real estate brokers who sell improved or unimproved subdivision lots for subdividers and builders are cautioned to furnish each purchaser a copy of the Commissioner's Public Report on the subdivision and give him an opportunity to read it, prior to securing his signature to a sales contract.

Cases have been encountered where the brokers selling the properties admitted they were not furnishing copies of the public report, but "thought the subdivider was taking care of it."

Failure of brokers and salesmen to furnish the reports may subject them to penalties imposed by the law.

Real Property "Ownership" Explained For Buyers Common Hazards to "Clear Title" Avoidable, Says Title Company

When the parties to a transaction show lack of interest in securing a title report, perhaps you can advantageously read them the following excerpt from Oroville Title Company "News Letter."

"Some people who are unacquainted with real estate transactions suppose that, when they have a deed, there can be no further question as to who owns the deeded property. They simply assume that they do. Actually, however, no individual 'completely owns' real estate; even if he has paid for it in full, there always are some others who also have rights against that property—at least, the taxing authorities.

"If you buy a hat, you may pay for it, take it with you, and not even bother with a sales slip. It has become your personal property.

"Not so with land. You can't take it with you. It stays where you found it. The courts call land 'real property'; the everyday term is 'real estate.'

"A transfer of the ownership of real estate involves not only the preparation of necessary papers, but also an examination and interpretation of public records for matters affecting that property, in order to ascertain rights or interests or liens of others.

"As the new owner, you will have certain unavoidable obligations—for example, to pay taxes. Possibly to pay street assessments. If someone has loaned money with that land as secur-

ity, he has a claim possibly in the form of a deed of trust or a mortgage. Someone may have a lease on the property. Others may have acquired legal rights and interests by contract with parties who were once owners or who possessed interests in or charges against the land—or possibly their rights and interests were created by operation of law.

"Possibly a right-of-way 'easement' has been granted to cross your land with irrigation or flood-control ditches, sewer or other pipelines, electric power lines, or other utilities. Some of these installations are visible when you view the property, but the right to establish others may be determined only by inspection of records. Or, liens against the property may exist because bills were not paid for building materials which sometime were delivered to the property, or for services performed there by mechanics.

"You have the obligation to yourself and your family to take precautions against others crowding into the picture with claims you did not anticipate having presented to you as new owner. You want to safeguard against certain avoidable hazards, which, if you did not have proper protection against them, might result in loss or impairment of the ownership of the property for which you had paid. What you want is 'clear title'—that is ownership—to your land."

Suspensions Result From Secret Profits

The Real Estate Commissioner suspended the license of a broker and that of his salesman for handling a transaction in such a manner that they received a secret profit without the knowledge of the seller.

The salesman did not contest the suspension beyond the superior court, but the broker brought a mandamus proceeding to annul the suspension order. The superior court upheld the commissioner's position, and was affirmed by the appellate court.

The facts were substantially as follows. The seller listed his property at \$2,250, the broker's commission to be

10 percent. When the agents found a prospect who offered \$2,100, the seller refused the offer, saying he must obtain \$2,000 net. The salesman, apparently assuming that the seller would be willing to accept \$2,000 under any conditions, made a sale for \$2,950, remitting only \$2,000 to the seller. The seller's position was that he naturally wanted the property sold for all that it would bring, but he would refuse anything less than \$2,000 net to him.

The courts held that the broker had knowledge of the facts of the transaction, and therefore had guilty knowledge of any wrongdoing on the part of the salesman.

(The case is reported in 107 A. C. A. 525.)

COMMISSIONS TO EASTERN BROKERS

There is one exception to the provision of the law that a California broker cannot split commissions with anyone except salesmen employed by him, or with another licensed broker.

A licensed broker in this State may pay a commission to a broker of another state. This is provided for in Section 10137 of the Real Estate Law.

This provision does not permit the broker from another state to enter California and negotiate personally or through a salesman. It is designed to cover situations where brokers of other states refer clients to California brokers, and a transaction results. The participation of the out-of-state broker must be by "remote control."

REINSTATEMENT RULE MODIFIED

Formerly, any salesman who voluntarily canceled his license, or had his license canceled at the request of his employing broker, was required to get his former broker's signature to a reinstatement request. This is no longer necessary.

When a salesman license is reinstated, it necessarily must be done in the employment of some broker. Therefore, it is in the nature of a transfer, and a transfer request form is used. As these transfer forms require the signatures of both the old and new broker, it has been the practice to require the salesman to secure the old broker's signature when reinstatement in the employ of a new broker was requested. This was true even when the salesman had been out of the old broker's employment for nearly a year.

Under the new rule adopted by the commissioner, a salesman need not secure the old broker's signature to the transfer request, if the license was turned in for cancellation prior to the request.

The Second Annual Conference of the International Federation of Real Estate Agents will be held in Brussels, Belgium, June 18-21, 1952. Last year's conference was held in Paris.

Best Offer Not Revealed Agent Can't Hide Behind Option

Usually one who holds an option and later purchases the optioned property is a principal, and the relationship between the parties is that of vendor and purchaser. They deal at arms' length without fiduciary obligations.

However, if the optionee is a real estate broker or salesman and, in effect, uses an option as an exclusive right to sell for a definite period, then the courts have held that he is acting as an agent and cannot escape his fiduciary obligations, and he must disclose all material facts to the optionor, who in truth and in fact is his principal.

This principle is set forth in a case (reported—28 Cal. 2d, 214) where the broker took the option in his firm's name and exercised it without disclosing the fact that he had a prospect who was paying more for the property. It was held that the broker was guilty of fraudulent conduct justifying the revocation of his license by the Real Estate Commissioner. The court approved the following statement of the rule from "American Jurisprudence": "If a broker employed to sell property is also given * * * an option to purchase the property himself, he occupies the dual status of agent and purchaser and he is not entitled to exercise his option except by divesting himself of his obligation as agent by making a full disclosure of any information in his possession as to the prospect of making a sale to another."

El Centro Broker Sentenced

An El Centro man, whose real estate broker license was recently revoked, has been tried on charges of grand theft and pleaded guilty to 13 counts. John Chadwick Raymond, the one-time broker, has been sentenced to state prison on all 13 charged counts, sentences on counts 1 and 2 to run consecutively.

In the hearing brought by the Division of Real Estate, it was proved that Raymond used deposits from his trust fund in connection with a building venture which was unsuccessful.

More Case Histories of Lost Licenses

Readers of the *Bulletin* have expressed their interest in the case histories of actions resulting in revocation or suspension of licenses. In this issue, we again outline a few typical cases.

In another section of the *Bulletin*, where the names of disciplined licensees are published, violations are described only by reference to specific sections of the Real Estate Law. Answering the questions some readers have asked: The cases below by no means necessarily tie in with the names in this issue; these cases are taken from the files of the past couple of years.

True Copy of Listing Not Delivered to Seller

Licensed real estate broker, acting in the capacity of office manager for a brokerage firm, succeeded in getting the owners of a residential property to assent to a 30-day exclusive right listing. However, he actually drew up two listings—one to terminate in 30 days, which copy was left with the listing parties, the other written with the listing to terminate in 90 days, which copy he took back to his office. The 90-day listing was recorded but the employing brokers quit-claimed the property when they found out the facts. License of the offending real estate broker suspended.

Attempts to Cheat Veteran

A United States District Court found a licensed real estate broker guilty of disregarding plans and specifications in a residence the broker had built for sale to a veteran. The broker had obtained priorities by making certain representations which he did not live up to. Real estate broker license suspended.

Misuses Clients' Funds

Over a comparatively short period of time, a real estate and business opportunity broker took deposits and down payments on a number of parcels of real property. He placed the funds in his own real estate trust fund account but, on demand, was unwilling or unable to transfer the moneys to escrow. Real estate and business opportunity broker licenses revoked.

Contract Changed Without Client's Knowledge

A licensed real estate and business opportunity broker, using a "send-out slip," executed an agreement with a prospective buyer calling for the payment of a commission should the prospect purchase a certain business. The prospect was not given a copy of this agreement. Sometime thereafter, the broker inserted in the agreement held in his possession the names of two other businesses, one of which was subsequently bought by the signer of the agreement. Thereupon, the broker and his firm assigned claim to a collection company which instituted suit for commission. The suit was dismissed. Real estate and business opportunity broker licenses suspended.

False Certification

Federal court found a licensed real estate broker guilty of causing a lending institution to certify to the Veterans Administration that the purchase price of a home to a veteran was \$4,954, whereas in fact the price paid was \$6,654. Real estate broker license suspended.

Careless Handling of Accounts

A licensed real estate broker, who was involved in the pressure of other business which he claimed was more important to him, improperly handled a deposit and part payment on a property which he sold as an agent. He also failed to keep proper account of certain rentals he was collecting and of repair and maintenance bills on rental property he was managing. The broker eventually made restitution of all sums for which he might reasonably have been considered responsible. During part of the time he was licensed, he failed to maintain a sign and display his license as required by law. Real estate broker license suspended.

Takes Church Funds

A licensed real estate broker was convicted of the crime of grand theft in connection with the felonious taking of some \$200 in church funds. Real estate broker license revoked.

Judgment Based on Fraud and Misrepresentation

A judgment was entered against a licensed real estate broker—the judgment based on findings that the broker had been guilty of fraud and misrepresentation in a sale of real property in which he had acted as agent. Real estate broker license suspended with the possibility that a restricted license would be granted to him sometime in the future.

True Copy of Listing Not Delivered

Licensed real estate broker, representing to the owner of a property that a buyer was immediately available, obtained a three-day exclusive right listing. Several pertinent blank spaces in the listing were not filled out. Later it was demonstrated that the broker subsequently filled in the spaces to indicate the amount of the listing price and to show the term of the listing as 120 days. When the property was sold through the efforts of another agent, this broker used the altered listing to support a claim for commission. Broker's license suspended.

Broker License Reciprocity California Has No Such Agreement

From time to time the question comes up as to whether California has any arrangements with other states to qualify California brokers for licenses in those states, and vice versa. *The answer is "no."* The California broker may, however, pay part of his commission to a licensed broker of another state in a cooperative transaction. **The out-of-state broker, however, cannot negotiate the transaction within the borders of this State.**

A recent survey made by the National Association of License Law Officials shows that some states have interstate arrangements for issuing licenses. Nearly all of these are in the East or Middle West.

The following states and provinces have no reciprocal arrangement: Alabama, Arizona, British Columbia, California, Florida, Georgia, Hawaii, Maine, Montana, Nevada, New Mexico, Vermont, and Wisconsin.

The following states have entered into a reciprocal agreement with certain other designated states: Arkansas, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, West Virginia, and Wyoming.

The reciprocal agreements of the latter states are usually with neighboring states only.

PLEASE—DON'T REMIT CASH! Loss of cash is your own loss, if mailed. Use a personal check or money order made out to the Division of Real Estate.

Lessee Assumes Obligations

A lease is a contract between a lessor and a lessee. The parties are bound not only by rights and obligations arising from the landlord-tenant relation, but also those growing out of express stipulations contained in the lease contract. Where doubt arises as to what the rights, duties, and obligations of the parties are under the lease, the statutory rules of interpretation of contracts apply.

An owner leased the second floor of his building to a lessee, the lease providing that the lessee should comply with all requirements of city, state, and federal authorities, and that he would maintain the premises in good repair and keep all elevators in good order.

As a result of a state inspection, the renter learned that the elevator did not meet the necessary safety requirements, and he had to spend considerable money to bring it up to standard. Thereafter he sued the owners to recover the expense, but was unsuccessful. Inasmuch as the terms of the lease contract appeared to cover the situation, the court ruled that in the absence of fraud or concealment, the landlord had no duty to make repairs, and that the tenant took the premises in the condition in which he found them. The case is reported in 109 A. C. A. 145—*Strecker v. Barnard*.

First Quarter Tract Filings Up

Subdivision filings with the Division of Real Estate for the first three months of 1952 totaled 425, as compared with 360 in the first quarter of 1951. During March, 1952, 154 tracts were filed.

USE OF BLIND ADVERTISING Careless Handling Leads to Complaints

"Blind advertising" is a term used to describe advertisements, usually of the classified variety, which do not reveal the name or address of the advertiser. A newspaper box number or a telephone number in the advertisement allows the interested prospect to get in touch with the advertiser.

The advisability of using this type of advertising has long been debated in real estate circles pro and con. Some California newspapers will not allow such advertising to be placed unless the advertiser identifies himself as either owner or agent. The real estate license laws of a number of states specifically prohibit licensees from using blind advertising. Neither the California Real Estate Law nor the Commissioner's Rules and Regulations at present prohibit the use of such advertising in California by licensees. However, the broker must be careful of its use.

In answering any inquiry resulting from such an advertisement, he must be careful not to mislead the caller in any particular, and state his true position.

If Your Check "Bounces"

If the personal check you remit for renewal fee is returned to the Division of Real Estate unhonored by the bank for any reason and you fail to make the amount good by June 30th, *it will mean you must pay a double fee.*

When checks are received late in June, time does not allow the division to advise the sender in time for him to "make good" the returned check.