

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

GOODWIN J. KNIGHT, *Governor*

Sacramento, May, 1954

D. D. WATSON, *Commissioner*

Get Your License Renewed in Time

**Observe a Few Simple Rules and Instructions and Avoid Extra Costs and Delays
Keep These Instructions Handy—Annual License Renewal Time Nearing**

Your official license renewal application form will be mailed to you from Sacramento about May 25th. 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. Renewals 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. **IMPORTANT!** Enclose extra \$1 fee for each license involving the change of address or name. Salesmen—if you are changing employing brokers as of July 1st, send extra \$1 fee covering change of employers.

Brokers and salesmen—both sign the salesman renewal form. To avoid delay, mail salesman renewals and fees in same envelope with employing broker's. A salesman license cannot be issued until the salesman's employing broker's license is renewed.

Do not mail currency. Pay fees by money order or check. If currency is lost, 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.

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

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. Your check mark in the space provided for the purpose will indicate that you want to remain inactive. Your inactive license certificate will be issued and you will retain your right to become active anytime during the 1954-55 license year.

Inactive salesmen—you must also file renewal form and pay the full fee. If you want your license to remain inactive, make a check mark in the space provided on the form. Where the salesman license is to remain inactive, the renewal application need not be signed by a broker. If you do not receive a renewal form by July 10th, obtain one at any division office.

IMPORTANT REMINDER: There is a \$1 charge in addition to the renewal fee for any change of name, address or employing broker even though the change is made as of July 1st. (Applies also to "inactive" licenses.) Example: Broker changes address July 1st. Fee—\$5 for renewal plus \$1 for change. Each salesman in his employ would remit \$2 for renewal plus \$1 for change of address on 1954-55 license.

Jobs Soon Open as Deputy Real Estate Commissioners

The last session of the Legislature authorized the employment of five additional deputy real estate commissioners as of July 1, 1954. These positions are under state civil service and applicants must qualify by written and oral examination. Applications will not be accepted after May 21st.

To qualify for examination, the applicant must have had either two years of full-time real estate experience or three years of full-time paid experience in field investigation work, plus education equivalent to graduation from college. However, additional qualifying experience may be substituted for the required education on a year-for-year basis. The jobs start at \$415 per month, rising over four years to \$505, with opportunity for advancement.

Anyone interested in becoming a deputy real estate commissioner is urged to write the State Personnel Board, 1015 L Street, Sacramento, asking for an application form and further information, or inquire at the board's offices in San Francisco or Los Angeles. Applications can also be obtained at any office of the State Department of Employment.

Return Salesman Licenses

When a salesman leaves the employ of a real estate broker, the broker is required by law to return the salesman's license to the Real Estate Commissioner.

It has been found that many times brokers will turn the salesman's license over to the salesman himself to be returned to the Commissioner.

It must be pointed out that the salesman's license is under the physical control of the broker, and the salesman's acts his responsibility.

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Sacramento, May, 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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**When Renewing Your
License Do Not Remit
Cash
Renew on Time**

Had No License—Fined

A case where a caretaker could not resist helping with a real estate transaction came to light recently.

John H. Ogletree, of Los Angeles, was reputedly employed by a real estate broker to do odd jobs on properties. He became involved in the sale of the property to the extent that he was accused of operating without a license. After investigation, the division secured a complaint through the office of the Los Angeles City Prosecutor, and Ogletree was fined \$25 in municipal court by Judge Ben Koenig.

This illustrates the care that brokers must take to see that nonlicensed persons whom they employ in connection with property management and other duties do not engage in selling activities.

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 JANUARY 15 THROUGH MARCH, 1954

Name	Address	Effective date	Violation
Solis, Joseph Donald..... Restricted Real Estate Salesman	436 W. San Carlos St., San Jose.	1/18/54	Secs. 10130 & 10177 (d), (f)
Gunn, Dolores..... dba Dolores Realty Co. Real Estate Broker	858 N. Virgil Ave., Los Angeles.	1/26/54 (Granted right to restricted license)	Sec. 10177 (b)
Cly, Monte..... Real Estate Broker Business Opportunity Broker	32 Ave. 17, Venice.....	1/26/54	Secs. 10177 (b), (f) & 10302 (b), (e)
Pearson, Charles C..... Real Estate Broker	910 Westmount Dr., Los Angeles	1/26/54 (Granted right to restricted license)	Secs. 10160; 10164; 10165; 10177 (d) & Sec. 2771 of R. E. Comm. Rules and Regulations
Barber, John Milton..... Real Estate Broker	7457 La Jolla Blvd., La Jolla....	1/26/54 (Granted right to restricted license)	Sec. 10177 (b), (f)
Jose, Michael Ross..... Real Estate Broker Business Opportunity Broker	2333 Mt. Diablo Blvd., Walnut Creek	2/ 5/54 (Granted right to restricted license)	Secs. 10177 (f); 10301 (e), (i); 10302 (e); Secs. 2830, 2831 & Regulations
O'Donnell, Judson John..... Real Estate Broker	Room 202, 7906 Santa Monica Blvd., Los Angeles	2/ 9/54	Secs. 10176 (a), (b), (i) & 10177 (f)
Stephen, John Wesley..... Real Estate Broker	1603 W. Commonwealth, Fullerton	2/ 9/54 (Granted right to restricted license)	Secs. 10176 (i) & 10177 (f)
Van Zuyke, Kurt..... Business Opportunity Broker	2201 Selby Ave., Los Angeles...	2/ 9/54	Sec. 10302 (b)
McElhinney, John Arthur..... Real Estate Broker	6002½ Romaine St., Hollywood.	2/ 9/54 (Granted right to restricted license)	Secs. 10164 & 10177 (d), (f)
Westfall, Ralph Rudow..... Real Estate Broker	1008 Palm St., San Luis Obispo.	2/ 5/54	Secs. 10176 (e), (i); 10177 (d), (f); Secs. 2831 & 2832 of R. E. Comm. Rules and Regulations
Adams, Joseph..... Real Estate Salesman	10929 S. Central Ave., Los Angeles	2/12/54	Sec. 10177 (a), (f)
Blaich, Frances MacDonald..... Real Estate Broker	Rm. 902, 110 Sutter St., San Francisco	2/17/54	Secs. 10176 (a), (b), (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Ruddell, Thomas Benson..... Real Estate Broker	Hwy. 108, 11 Mi. N.E. of Sonora P.O. Box 773, Twain Harte	3/ 5/54	Secs. 10176 (a), (b), (e), (i); 10177 (b), (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Dell'Acqua, Antonio..... Real Estate Salesman	12661 Moorpark, North Hollywood	3/ 9/54	Sec. 10177 (b), (f)
Freeman, Peter Joseph..... Real Estate Salesman	16743 Alwood, Puente.....	3/ 9/54	Sec. 10177 (b), (f)
Whitley, Sarah..... Real Estate Broker	1335 E. Washington Blvd., Los Angeles	3/10/54	Sec. 10177 (b)
Melton, Charles Everett..... Real Estate Broker	1735 Lincoln Blvd., Santa Monica	3/10/54	Sec. 10177 (b)
Swenning, Leyden W..... Real Estate Salesman	1528 W. Santa Barbara Ave., Los Angeles	3/10/54 (Granted right to restricted license)	Sec. 10177 (b)
Neville, William Payne..... Real Estate Broker	2916 Bryant St., Palo Alto.....	3/15/54	Secs. 10176 (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Seikel, Joseph Quentin..... dba Seikel Real Estate Co. Real Estate Broker	7969 Crest Ave., Oakland.....	3/26/54	Secs. 10160; 10162; 10164; 10165; 10177 (d), (f) & Sec. 2771 of R. E. Comm. Rules and Regulations

LICENSES SUSPENDED FROM JANUARY 15 THROUGH MARCH, 1954

Name	Address	Effective date and term	Violation
Raymond, Leland Reuben..... Real Estate Salesman	3379 Mt. Diablo Blvd., Walnut Creek	2/ 5/54 90 days	Secs. 10176 (a), (b), (i) & 10177 (f)
Cox, John Hyde..... Real Estate Salesman	State Hwy. 9, Ben Lomond.....	2/15/54 15 days	Secs. 10176 (a), (b), (i) & 10177 (f)
McLean, Clarence Eugene..... Real Estate Broker	1721 Berkeley Way, Berkeley....	3/10/54 30 days	Secs. 10176 (a), (b), (i) & 10177 (f)

SUBDIVISION STOP ORDERS ISSUED

Name	Address	Effective date	Grounds
Que-Nie.....	Imperial County.....	2/ 4/54	Secs. 11001; 11019; Secs. 2794 and 2795 of R. E. Comm. Rules & Regulations

Second Purchase Money Deeds of Trust Discussed

Legal Authority Warns of Hazards; Suggest Safeguards in Use of Second Liens

By H. L. BREED, Attorney at Law and Counsel for CREA

(Reprinted with permission from California Real Estate Association Magazine)

I was pleased to receive one friendly criticism on a recent article of mine, and I am just as pleased to answer it. I criticized as unwise the taking of a second deed of trust given to secure payment of the purchase price of real property. Naturally I am speaking from the experience of a lawyer and not as a broker. Here are the reasons.

1. It is rare that a second deed of trust, particularly a purchase money deed of trust, has a market value equivalent to its face value. In my experience, seconds when sold are sold at a discount from 20 percent to 50 percent.

2. In order to protect himself, the holder of a second must always be ready to protect himself against the foreclosure of the first. (a) In the event of a default on the first, he must have at least enough money to pay all arrearages, and thereafter maintain the monthly payments under the first deed of trust, like principal, interest, taxes, insurance premiums, and possible repairs, etc. (b) Sometimes a default under the first has gone so far that it is noticed for sale. In such cases the holder of the second must be prepared to buy at the sale or make arrangements with the owner of the first.

When Payments Not Made on First

3. There are cases where the second owner is lulled into security by receiving his monthly payments while the payments upon the first are not being made and the foreclosure is proceeding.

4. The foreclosure sale of the first may proceed and the holder of the second know nothing about it. This is because he does not know or has not been advised that the holder of a second may and should record a proper request for notice of proceedings under the first—I mean the proceeding of filing notice of default and intention to sell, and the published notice of sale.

5. Where the second is a purchase money deed of trust, and I am especially referring to those, and the first is foreclosed, the seller, who is the holder of the second, may not successfully bring an action on the note

secured by that second. Since his security became valueless by the foreclosure of the first, the note is valueless. The seller is presumed to know this law. How many brokers, if they know it, tell him the law? The holder of the second is supposed to know the value of his security and be able to protect it when he is taking a purchase money second.

Case On the Point

Let's take an actual case from the books. These are the lawyer's tools. Owners sold their property. Buyers borrowed \$11,300 from a lending institution. Sellers took a second note for \$7,200 secured by a second deed of trust on the property. Buyers defaulted on both notes. The lending institution sold the property pursuant to power of sale, and bid it in for \$11,896.63. Seller, holder of the second, brought suit against the purchasers on the note for \$7,200. He lost out in the Supreme Court. The seller lost his \$7,200, interest thereon, together with his court costs and attorney's fees in making the attempt.

6. If the seller gets some cash down from the buyer and takes a second, it is very often that the buyer gets his cash from borrowing on the seller's property. The seller could do that himself if he wanted to get some cash. If he had the property clear he would get all of the loan except expenses. If he has a second already on the property, the buyer is usually borrowing all he can on it to give the seller more cash. In any event, the seller got his second subject to the above hazards.

Should Know the Hazards

The ordinary home owner or real property owner very frequently does not know the law or realize the hazards set forth. How many of the

(Cont. on Page 141, Col. 3)

Buyer and Seller "Conspire"

Sellers Lure Broker Into Presenting Buyer Before Signing Listing

The records of the courts in California seem to be filled with cases where real estate brokers have sued for a commission and have been unsuccessful because they did not have an authorization to sell the property signed by the party to be charged. This requirement is a specific provision of the Statute of Frauds.

Even under a set of circumstances where it appears that the buyer and seller have unfairly misled the broker into a feeling of false security, the statutory law still seems to hold fast.

In a recent case before the appellate court two property owners entered into an oral agreement with the broker whereby his services were retained to obtain a purchaser. They agreed to pay the broker 5 percent of the sales price for his services in event the property was sold, and further agreed that they would furnish him with the signed listing at a later date. The broker went ahead and found a prospective purchaser and told the owners about it. At the same time he submitted a listing for their signatures. The owners assured him that they would deliver the signed listing to him, but requested him to introduce them to the prospective purchaser, so that the transaction might proceed in the interim.

This the broker did and a sale resulted. The owners then refused to pay the commission.

The broker then brought suit for the commission, but was unsuccessful. The property owners demurred, contending that their oral agreement was void and unenforceable because of the provision of the Statute of Frauds (Subdivision 5 of Section 1624 of the Civil Code).

We are continually mentioning these cases in the *Bulletin* to impress upon brokers that they are virtually helpless in recovering a commission unless they have a signed listing. Nevertheless, the commissioner continually gets calls from brokers who have lost commissions for this reason.

Case reported in 94 C. A. 2d 5.

Exclusive Agency Listing Confirmed in Court Action

Broker Recovers Fee When Owner Failed to Make Sale Before Offer

It is generally understood that when a broker is given an exclusive agency listing for a certain period of time, the sale of the property by any other agent during this period does not relieve the seller from compensating the exclusive agent. However, under such a listing the property owner may sell his property through his own efforts without compensating the agent.

The case of *Houston v. Williams*, 53 Cal. App. 267, deals with some rather interesting features concerning an exclusive agency listing. The broker under such a contract, found a purchaser ready, willing and able to buy and presented the offer to the owner. The owner claimed that he also had found a purchaser ready, willing and able to buy, but that the contract of sale had not been entered into. For this reason he refused to accept the broker's purchaser or compensate the broker.

The court held that the broker was entitled to his compensation, notwithstanding that prior to submitting his offer, the owner, through his own efforts, had found a purchaser who he claimed was ready, willing and able to buy. Judgment was given the broker on the grounds that the owner had not actually contracted a sale through his own efforts when the broker presented the offer. Inasmuch as an actual sale had not been made, the owner was responsible to the broker for a commission.

The judgment in this case is particularly interesting when its facts are compared with those in *Strout v. Gregoire*, mentioned in the July, 1951, *Bulletin*. In that case, the broker used a different contract form and lost his suit when the court made a distinction between "an exclusive right to find a purchaser" and "an exclusive right to sell."

Once again, the value of time tested forms carefully filled out is demonstrated.

During the first quarter of 1954, a record breaking 647 new subdivisions were started in California.

Certificate Program in Real Estate

University Extension of the University of California will offer real estate courses in Southern California this summer. The courses are part of the continuing program leading to the Certificate in Real Estate and are designed as professional level education for the working real estate broker and salesman.

Sponsoring the courses with University Extension are the California Division of Real Estate; the Educational Committee, National Association of Real Estate Boards; and the California Real Estate Association.

For complete information, get in touch with University of California, University Extension, 813 South Hill Street, Los Angeles 14, or inquire of your local real estate board.

SUMMER PROGRAM

Los Angeles: Hillstreet Bldg.

Elements of Real Estate and Urban Land Economics (Formerly, Real Estate Principles)—Tues., Thurs., 7-9.30 p.m.; starts June 22

Real Estate Practice—Mon., Wed., 7-9.30 p.m.; starts June 21

Real Estate Finance—Tues., Thurs., 7-9.30 p.m.; starts June 22

General Insurance—Tues., Thurs., 6.30-9 p.m.; starts June 22

Construction Costs and Estimating—Tues., Thurs., 7-9 p.m.; starts June 22

Salesmanship—Fri., 6.30-9.30 p.m.; starts June 25

Westwood: U. C. L. A. Campus

Real Estate Practice Sec. II—Tues., Thurs., 7-9.30 p.m.; starts June 22; Room 50, B. A. E.

Real Estate Law—Mon., Wed., 7-9.30 p.m.; starts June 21; Room 154, B. A. E.

San Diego: San Diego High School, 12th Avenue and Russ Street

Real Estate Practice—Tues., Thurs., 7-9.30 p.m.; starts June 29; Room 312

Rooney Succeeds Shattuck On State Real Estate Board

Recently Governor Goodwin J. Knight announced that Mr. Charles B. Shattuck had asked to be relieved of his duties as a member of the State Real Estate Board because of the press of his private business and other responsibilities. Mr. Shattuck had served on the board for eight years, and the Governor accepted his resignation with regret.

Shortly thereafter Governor Knight appointed Mr. Thomas Raymond Rooney—or Tom Rooney, as he prefers to be called—to the post. Mr. Rooney has spent 35 years in the real estate business in Chicago and Los Angeles. He was active in Los Angeles as early as 1920, and has been continuously in the real estate business in that city since 1938. He specializes in industrial and commercial property.

Mr. Rooney is a member of NAREB's International Traders Club, a member of the Exchange Advisory Committee of the California Real Estate Association and has served as a director of the Wilshire Chamber of Commerce for the last four years. He is First Vice Commander of the Wilshire Post of the American Legion and a member of the Wilshire Sertoma Club.

One of the important duties of the new board member will be service on the committee which evaluates experience and educational claims of qualification for real estate broker license. A meeting of all seven members of the board is slated for Los Angeles on May 26th.

Trust Accounts Are Checked

Recently a marked increase in the number of complaints involving commingling has been noted. As a result the Commissioner has ordered his deputies to carry out an intensive program of spot checks of licensees' office records to determine whether or not trust accounts are being maintained by every broker in accordance with Article 15 of the rules and regulations of the Real Estate Commissioner.

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Real Estate Moves Toward Professional Status

University Real Estate Certificate Program Plays Prominent Part in Advance

By KARL VENTER, State-wide Field Coordinator, U. C. Extension Real Estate Program

As you all know and have been constantly reminded, the Commissioner's office has constantly striven for the professionalization of real estate brokerage in California. In the past we have attempted through legislation to first set up a program of examination of those salesmen and brokers and business opportunities persons who practice the profession of real estate in California. Secondly, we have attempted to maintain high ethical standards in the performance of these persons during their business activities.

We feel that many of the inadequacies that yet exist are being overcome and problems are being solved through the fine efforts of the University of California in its real estate certificate program.

All professions, historically, have their origin in high level vocational activities. But human endeavor—to become a profession—must evolve slowly from a standard fund of knowledge where training at a high level can take place under the guidance and direction of professional instructors.

Professional Talent Available

At the instructors' meeting which I attended at the University of California in Berkeley on January 6th, I was greatly impressed with the talented group of professional people that were present. I felt that real estate brokerage was fast becoming the profession that it deserves to be.

In the past three years since the inception of the program by the University, over 8,000 persons have availed themselves of the courses with reference to the program.

In spite of the fact that two and a half years are normally required for the average person to complete the program of eight courses, 64 persons have already received the certificate of completion, with 25 more finishing during the current semester. Approximately 250 persons have completed six of the eight courses, or 75 percent of the program at the present time.

California is recognized, and rightly so, as the largest real estate market in the world today. With the influx of permanent residents, the demands for intelligent real estate development in balance with the economy of the State is an ever-

CHANGE MADE IN EXAMINATION SCORING

A slightly different method of scoring examinations taken by applicants for licenses was put into effect recently. The license candidate is now required to obtain a minimum grade of 75 percent on the deposit receipt and listing problems. Unless he does so, he will fail the whole examination no matter what his score is on the rest of the test.

This is being done because the ability to fill out such forms is so fundamental and so necessary in the real estate business. The Commissioner does not believe that a person should be licensed unless he is able to handle these basic "tools of the trade."

increasing problem and in order to intelligently maintain our over-all economy on a sound financial basis, it is vital that facts be gathered and analyzed and intelligent conclusions be reached.

Research Program Proceeds

The process of seeking out the facts and making them available to the leaders in real estate has become a vital part in the university research program.

I am indeed grateful to observe that the work thus far has been unique in this country and that the research published has been not only academically sound, but has been placed in a practical, useful form for the consumption of our real estate brokers.

What is needed now is greater recognition and support for this rather remarkable program by the leaders of the realty profession who make up the organized board groups and

Code of Ethics Important Says Board Member Rooney

In accepting appointment by Governor Goodwin J. Knight to the State Real Estate Board, Mr. Tom Rooney called upon licensees to conduct their operations in accord with the guiding principles set forth in the code of ethics. Mr. Rooney said:

"It is with justifiable pride that I accept appointment as a member of the California Real Estate Board, and I will strive to do all within my power to make the real estate profession highly regarded by the public as well as by its members.

"My only suggestion at this time is that all of us not only read, but observe, the code of ethics.

"Anyone who violates the code is not only injuring himself, but everyone else in our profession. Every broker should insist that each of his salesmen not only read the code, but conduct himself according to its principles.

"Also in event the broker himself has not read the code of ethics since receiving his license, it would be well for him to study it again because, as we get busy, we may be too prone to forget the rules of fair play it expresses.

"Let us all help our hard working Commissioner by policing our own group. If you are proud of our profession you will do this; if you don't, you must accept the consequences."

Second Trust Deeds

(Cont. from Page 139, Col. 2)

over 53,000 licensed brokers, and over 44,000 licensed salesmen in California know all the above law? How many think to tell the seller all of these things and all of this law and these hazards? The ethical Realtor will, or at least should, know and tell. If there be anything new to my readers in the above, I am very pleased to have written the educational letter, the law of which applies in every case, and the facts of which will apply in many cases.

others interested in real estate, such as mortgage lending, construction industries and similar guild groups.

Reason for Canceling Escrow Must Be Good

Law Does Not Protect Against Deposit Forfeiture for Frivolous Reasons

When a purchaser has signed a binding escrow agreement and then for no good reason asks for a cancellation of the escrow and the return of his deposit, it is pretty likely that he may lose the deposit.

In a fairly recent case, a Mrs. W— deposited the sum of \$2,750 in escrow on the purchase of an apartment building and signed escrow instructions along with the seller. Then for no apparent reason, other than she had changed her mind, she ordered cancellation of the escrow and the return of her money. The seller refused to permit cancellation of the escrow, and demanded the deposit as a forfeiture.

California laws seem to be designed to protect persons against unreasonable forfeitures. Section 3275 of the Civil Code gives protection under many circumstances, but not when the purchaser's breach is voluntary, intentional and deliberate. The prospective buyer in this case relied upon this section of the code.

The appellate court held that the seller in the case was entitled to the deposit as a forfeiture, inasmuch as the seller had defaulted in no way and was ready, willing and able to proceed under the agreement. The court held that a purchaser who has made an unexcused default under a contract for the sale of real property cannot maintain an action to recover money paid under the contract.

Another interesting point in this case was the position of the broker. He apparently did not have a signed listing, but relied upon a provision in the escrow instructions that he was to be paid a commission at the close of escrow. The court held that inasmuch as the escrow never closed, he was not entitled to a commission, even though the seller secured the forfeiture.

Case is reported in 84 C. A. 2d, 427.

Commission Earned When Buyers Accepted

Where Broker Does Not Mislead Seller, He Earns Fee When Contract Is Signed

A commission suit which involved the eligibility of a purchaser of a cocktail bar to hold a liquor license issued by the State Board of Equalization, was heard by the Appellate Department, Superior Court, San Diego County, (Civ. A No. 177538, Feb. 18, 1953).

The owners of the cocktail bar gave the business opportunity broker a 30-day exclusive listing to sell their cocktail bar, with equipment, and an "on sale" general liquor license to any purchaser acceptable to them. They agreed to pay a 10 percent commission.

The broker found a buyer, and through escrow instructions executed a purchase and sale contract for the property. The seller directed the escrow agent to pay \$1,000 as commission to the broker.

Before the sale was consummated, a question arose as to the ability of the buyers to qualify under the law to hold an "on sale" liquor license. As a result, a second escrow was opened and the property was eventually transferred to another buyer, and the deal closed.

The original sellers sued the broker and the escrow company for return of the \$1,000 commission. The court held in favor of the escrow company and the broker.

The court stated: "We think the employment contract was fully performed when the plaintiffs executed a valid contract with the purchaser produced by the broker; that from that time the owner carried all the responsibility for the purchaser's qualifications, barring fraud or actionable mistake."

The court pointed out that the execution of the contract of sale by the owner was proof that he was satisfied as to the qualifications of the purchaser and of his ability to perform the contract.

Brokers and Options Discussed

By HERBERT L. BREED,
Attorney-at-Law

(Reprinted from California Real
Estate Association Magazine)

Q. Under what circumstances can a licensed broker conform to the state law and to the code of ethics in taking an option upon property offered to him to sell as an agent?

A. At the outset, the broker must remember the 1945 amendment to Business and Professions Code Section 10176, subdivision (h). This is one of the sections giving grounds for suspension or revocation of licenses. It reads as follows:

"The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission, except when such licensee prior to or coincident with election to exercise such option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of such profit."

This amendment was adopted to specifically call the attention of the broker to the risk of breaching his duty as an agent and also to protect further an owner.

It is an elementary principle that an agent or broker must make no personal profit out of the subject of his agency. This does not mean that a broker may not deal as a principal. However, most persons come into a broker's office because he is a licensed broker. They think of him as a broker to be employed to accomplish a client's purpose. Therefore, if the broker wants to deal with the owner's property, he must make a full, clear and complete disclosure of that circumstance, so that his prospect knows that he is no longer a prospect, but that he is dealing directly with the broker as a principal.

This law of 1945 protects the broker from the temptation of seeking a low price in the event of a sale that he may buy for himself and thereafter sell to another at a higher price. Usually this is higher than the customary commission. Since the licensee is primarily a broker, he should remain a broker. Not that the law for-

(Cont. Next Page, Col. 1)

Builder Protected Neighbor However Court Refused to Award Cost of Work Done Without Consent

If you own property in a business block and expect to excavate for a basement when erecting a new building, what is your liability to adjoining property owners?

There is a section of the law, Civil Code 832, which is designed to enable an excavator to relieve himself from liability by giving the adjacent landowner an opportunity to protect his property from possible damage. It does not create any liability in the adjacent landowner for money the excavator might spend to protect the adjoining property, as the following case will show.

A chain store in San Diego was building a new building, and excavating 12 feet below the surface for basement purposes. They gave notice to the adjoining owner so that he could protect his building and foundation, but no action was taken. Therefore, the builders went ahead and spent over \$4,000 in constructing a concrete wall to avoid any damage to the adjoining property. They made demand for reimbursement, which was refused. They lost suit for the sum in superior court, and appealed with the same result. The case is reported in 120 A. C. A. 980.

The court pointed out that the law provided means of avoiding liability by notifying the adjacent owner, but did not entitle the builder of a new building to go ahead and do precautionary work and then charge the adjoining landowner.

The Agent Using an Option

(Cont. from Page 142, Col. 3)

bids him from dealing as a principal, but most often he is considered by his customers and clients as a broker and not as a principal. When he does act as a principal, he must make full, thorough, honest and complete disclosure of the situation and of all the elements of the transaction, particularly those which would influence the principal in the deal.

Some Case Histories of Lost Licenses

In the past, *Bulletin* readers have exhibited considerable interest in brief accounts of cases which have resulted in revocation or suspension of licenses.

The cases recounted below have been decided fairly recently by the Real Estate Commissioner, but are not necessarily connected with the names of disciplined licensees published in this issue of the *Bulletin*.

Had Trust Account—But Misused It

A broker accepted substantial deposits on a real estate transaction and deposited the same in his trust account. He refused to place this money into the several escrows involved but used the funds in his business operations. Result—revocation of his license.

Sold Bad Lists of Rentals

A young lady broker had operated a rental agency, receiving small payments ostensibly for lists of rentals to be furnished. The broker never knew whether or not these places were available for rent at the time she took the money. For failing to make a full disclosure of all facts, license was revoked.

Salesman Operated Before License Issued

A broker operated a rental agency and employed licensed personnel. He signed the application for one of his girls to become a salesman. Prior to the issuance of the salesman's license he permitted the young lady to operate in his office, accepting fees, executing contracts, and giving out rentals. Result—suspension of broker's license.

Can't Work With Inactive License

A real estate salesman had made his license inactive and then attempted to negotiate a sale of property without an active license. This was held to be a violation of Section 10130—unlawful practice—and his license right was revoked. His purported broker had no knowledge of the transaction and the case against him was dismissed.

Failed to Disclose Commission On Net Listing

Brokers had a net listing for \$7,500. They sold the property for \$9,750 and did not reveal to the seller the amount of compensation, profit or commission received by them, as required by Section 10176(g) of the Real Estate Law. A suspension followed.

Sold to Husband Without Disclosing

A woman broker submitted a written offer to purchase a certain real property, the offer to purchase containing a provision that the seller would pay a commission to the broker. The seller accepted the offer and after going into escrow learned for the first time that the buyer was, in fact, the husband of the respondent. Respondent had been licensed under her maiden name. Her failure to disclose a material fact, constituted a violation of her fiduciary relationship and resulted in revocation.

Broker Handled Escrows —But Not Well

A broker handled a number of transactions and received deposits. At the same time he escrowed the transactions himself, setting up regular forms for that purpose. He was dilatory in carrying these transactions through to a successful conclusion, with the result that a number of the purchasers were forced to file suit for completion of the transactions or return of their money. License revoked.

Tried to Conceal Money Paid for Furnishings

This broker, employed to sell real property for some out-of-town residents, received several hundred dollars for the furnishings but did not deliver the proceeds to the sellers. At the same time he had promised the purchasers a credit, being part of his commission, which was not forthcoming, and he also failed to inform the sellers of all details. His license was revoked.

Did Not Build—But Kept Money

Respondent corporation, acting as a principal, accepted deposits binding a written agreement to lease a market building to be constructed. The construction was never completed and the corporation was dilatory in returning the deposits, and in some instances used the funds for its own purposes. This was held to fall under the provisions of Section 10177(f), constituting acts or conduct which would permit the Commissioner to revoke for the same reasons for which he would deny a license.

Hid Facts From Seller—Lost License

A broker had a listing to sell a trailer park. An offer was made to purchase the park in its entirety, but the broker told the buyer that a corner portion of it, which might be good commercial property, was not included. The offer was made then with the corner property excluded. The broker then communicated with the seller and bought the entire park, not revealing that an offer had been made by someone else. He conveyed to the buyer, pursuant to the buyer's offer. His license was revoked for failing to disclose all material facts.

Broker Guessed and Lost

Broker represented to a purchaser that certain property could be used for the raising of chickens. The property had been zoned against commercial chicken-raising and the representation was made by the broker without any basis of fact. The foregoing plus his failure to return the deposit resulted in revocation of license.

Broker Must Follow Through Commission Not Earned If Broker Ceases Efforts, Court Rules

To earn a commission for the sale of property, the broker must pursue his employment. He cannot merely show the property and then abandon his efforts, if he expects to obtain a commission, even though the property is eventually sold to the customer he first showed the property to.

So ruled the Appellate Division of the Superior Court in Los Angeles County in a decision handed down recently. The appeal was taken from a decision of the superior court, which had held the broker was entitled to the commission.

The original plaintiff, a real estate broker, had an open listing on a four-unit court which was also listed for sale with several other brokers in the community. She showed it to a prospective buyer who told her he did not want it. She did nothing further to persuade him to buy the property, in fact never mentioned it to him again, but did attempt to sell him other property. About a month later he contacted the owner direct and purchased it, securing a reduction in price equivalent to the amount of commission a broker would have received.

The seller contended she did not know that the broker had ever shown the property to the buyer, although the broker maintained otherwise. In her suit, the broker claimed that she was the procuring cause of the sale, having produced a buyer who was ready, willing and able to purchase,

Georgia Puts Responsibility Squarely on Brokers

It is generally understood that the licensed real estate broker is responsible for the actions of his salesmen in the course of his agency. **What about the broker's responsibility for the applicant for license whom he recommends and introduces into the real estate business?**

Under the California licensing law, the position of the broker who knowingly recommends an undesirable is probably not too clearly defined. Apparently the Georgia Real Estate Commission has been confronted with the same problem and it has adopted a regulation clearly setting forth the broker's responsibility for the new people he brings into his firm. The new regulation reads as follows:

"It shall be a violation for any broker to furnish the Real Estate Commission with information or advise the Commission that any applicant for license as real estate salesman or real estate broker is honest and competent and at the same time know or have information to lead him to believe that such applicant is incompetent or dishonest and a violation of this rule shall be grounds for suspension or revocation of the license of said broker making such misrepresentations."

Many of California's real estate leaders have indicated that such a regulation in this State might serve a very worth-while purpose in the continuing struggle to give professional status to real estate brokerage.

and who in fact did purchase. Although the superior court agreed with her, the appellate division held that she was required to follow through in her efforts to make a sale.

Part-time Realty Salesmen

There is a lot of discussion going on within the profession as to whether or not part-time real estate salesmen should be permitted to have licenses. Many in the profession are not in favor of the part-time salesman who is gainfully employed in some other occupation which provides the major source of his income.

It must be borne in mind the Real Estate Law as now written does not permit denying any citizen the right to apply for and obtain a real estate salesman's license if he meets all the legal requirements. The Real Estate Commissioner cannot read into the law something that is not there.

Under the present California law, no one can secure a real estate salesman's license unless he can find a broker who will employ him. Therefore, it would seem that the real estate brokers are the only ones who can eliminate part-time salesmen under the present law.

In this connection, the Commissioner would like to point out that the law clearly states that the real estate salesman license application must contain a statement from the prospective employing broker that the applicant is honest, truthful and of good reputation. It appears that in many cases the broker is hardly acquainted with the salesman applicant; yet he makes these broad statements and swears to them, without even making a reasonable investigation as to the man's honesty, truthfulness and general reputation.

We merely point out that, under the present law, brokers themselves make the decision as to part-time salesmen.

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