

REAL ESTATE BULLETIN

Official Publication of the California Division of Real Estate

GOODWIN J. KNIGHT, Governor

Sacramento, May, 1957

F. W. GRIESINGER, Commissioner

Change in License Renewal Procedure

Renewable Licenses Go on Four-year Basis; Extra Fee for Late Renewal

Important changes in license fees and charges for late renewal will affect holders of renewable licenses—that is, those brokers and salesmen licensed prior to October 1, 1955. Deadline date for renewal of these licenses is still June 30, 1957.

The following instructions and reminders are not for holders of one-year original licenses or those who already hold four-year licenses.

Keep these instructions handy to help answer questions about renewal procedures.

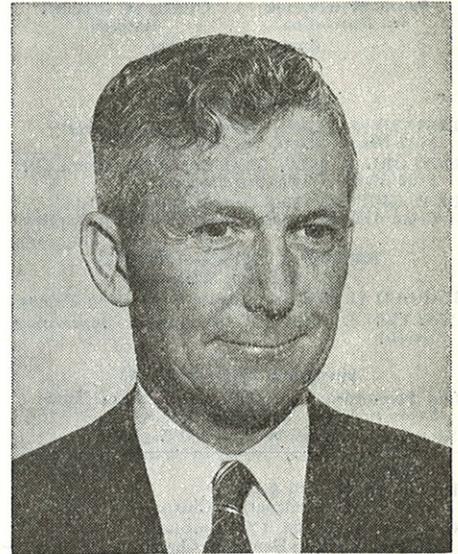
Your official license renewal application form will be mailed to you from Sacramento late in May. Wait for this official form and use it to renew.

Four-year license fees will be \$50 for brokers and \$30 for salesmen. However, most licenses will be renewed for shorter periods ranging from 6 to 47 months and prorated fees will be charged. Your renewal application form will show the length of time your renewal license will run and the amount of fee to be paid. Eventually, all renewal licenses will be renewed for four years at a time. The system of varying renewal periods will be used only at the inception of the four-year license program to stagger renewal dates so that renewals will be spread throughout the year, avoiding peaks resulting from one renewal date for all licenses.

To avoid extra cost, renewal applications and proper fees must be in the mail and postmarked not later than June 30th. Those licensees who fail to apply for renewal prior to midnight, June 30, 1957, will be required to renew for the full four-year period and pay a late renewal fee in an amount of 1¼ times the amount otherwise required for renewals. NO EXCEPTIONS!

If your name or address is changed, show the change on your renewal application and indicate in the space provided for that purpose whether the change is to be effected immediately, or as of July 1, 1957. Enclose extra \$1 fee for each license involving the change of address or name. Salesmen—if you are changing employing brokers as of July 1, send extra \$1 fee.

(Cont. on Page 299, Col. 1)



F. W. Griesinger
Real Estate Commissioner

Fred W. Griesinger New Head of Division

Governor Knight announced the appointment of Fred W. Griesinger of Arcadia as California Real Estate Commissioner effective May 1, 1957. Mr. Griesinger will succeed Dean D. Watson who, after almost 8½ years in the post, resigned to re-enter private business.

As Real Estate Commissioner, Mr. Griesinger serves as a member of the Governor's Council, and becomes a voting member of the State Public Works Board along with Mr. Frank B. Durkee, Director of the Department of Public Works, and Mr. John M. Peirce, Director of the Department of Finance.

The new head of the Division of Real Estate was born in Philadelphia, Pennsylvania, March 15, 1901, and came to Los Angeles with his parents in 1903. He was educated in Los Angeles public schools and attended the University of Southern California part time.

He engaged in the laundry business during the early part of his career and

operated his own plant in Hawaii from 1936 to 1942. He and his family were residents there on Pearl Harbor Day. As a civilian, he offered his trucking facilities and worked personally at the tragic task of transporting and tending the wounded.

Upon his return to the United States after Pearl Harbor, Mr. Griesinger entered the real estate business in Arcadia, founding his own firm, the F. W. Griesinger Company.

On Education Committee

In 1950, Mr. Griesinger served as President of the Arcadia Board of Realtors and in 1953 he was Regional

(Cont. on Page 298, Col. 1)

Sacramento, May, 1957

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DIVISION OF REAL ESTATE

STATE OF CALIFORNIA
GOODWIN J. KNIGHT, Governor

F. W. GRIESINGER
Real Estate Commissioner

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FRANK WHITELOCK CURTIS M. ROBBINS
San Bernardino Stockton
EDWARD M. LOFTUS
Los Angeles

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1182 Market Street, San Francisco
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Room 310, 541 South Spring Street, Los Angeles

PRINCIPAL OFFICE—LICENSES

1021 O Street, Sacramento
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WALTER J. MILLER, Examination Supervising Deputy

Northern District Offices

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Saxon A. Lewis, Supervising Deputy
SACRAMENTO, Room W1063, 722 Capitol Ave.
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FRESNO, 308 Rowell Building
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BAKERSFIELD (part time), 331 18th Street

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Gerald E. Harrington, Supervising Deputy
SAN DIEGO, 613 Orpheum Theatre Building
John Lazar, Deputy-in-Charge
SAN BERNARDINO (part time), 633 D Street
LONG BEACH (part time), 3747 Long Beach Blvd.

New Commissioner

(Cont. from Page 297, Col. 3)

Vice President of the California Real Estate Association. Since that time he has been active as a CREA education committeeman, and has participated in the educational and sales conference programs offered annually by the association.

The new Real Estate Commissioner has played an active role in civic affairs, assisting in writing the City of Arcadia charter and having been a member of the Arcadia Planning Commission Advisory Committee.

Mr. Griesinger has been active in church work and rehabilitation programs for many years. Married 33 years, he and Mrs. Griesinger have one son, Judson F. Griesinger.

DISCIPLINARY ACTION—FEBRUARY, 1957, AND MARCH, 1957

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. Names of persons to whom licenses are denied upon application or to whom a restricted license is granted after suspension or revocation are not published.

LICENSES REVOKED DURING FEBRUARY, 1957, AND MARCH, 1957

Name	Address	Effective date	Violation
Nystrom, Earle Helmer Real Estate Salesman	1335 N. Mansfield, Los Angeles	2/ 8/57	Sec. 10177 (f)
Webb, Lois Leone dba Lee Webb Real Estate Broker Business Opportunity Broker	2729 W. Ninth St., Los Angeles	2/15/57	Secs. 10177 (b), (f); 10302 (b) & (e)
Roberts, Nora Elizabeth Real Estate Salesman	1472 W. Vernon Ave., Los Angeles	2/15/57	Sec. 10177 (b) & (f)
Van Ackeren, La Vonne Beatrice Real Estate Salesman	815 21st St., San Bernardino	2/15/57	Sec. 10177 (f)
Peavyhouse, Clyde Real Estate Broker	300 Harrison St., Taft	2/18/57	Sec. 10177 (b) & (f)
Kelly, Ross Eugene dba Kelly's Real Estate & Insurance Real Estate Broker	304 N. Jackson St., Fresno	2/18/57 (Granted right to restricted real estate salesman license)	Secs. 10142; 10176 (e), (i); 10177 (d), (f) & Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Ringland, John Smullen Real Estate Salesman	5004 Maywood Ave., Los Angeles	3/ 1/57	Secs. 10130; 10176 (a), (e), (i); 10177 (d) & (f)
Clark, Edwin Ewing Real Estate Broker	4240 Tweedy Blvd., Southgate	3/ 8/57	Secs. 10176 (e), (i); 10177 (d) & (f)
Bergman, Harry Restricted Real Estate Broker Restricted Business Opportunity Broker	3473 W. Eighth St., Los Angeles	3/15/57	Secs. 10177 (f); 10177.5; 10301 (a), (i); 10302 (e) & 10302.5
Holt, Joe Webb Real Estate Salesman	3225 Quintara, San Francisco	3/27/57	Sec. 10177 (b) & (f)
Holman, Frank Montano Real Estate Salesman	1148 S. Rimpau Rd., Los Angeles	3/30/57	Secs. 10176 (a), (d), (g), (i), & 10177 (f)

LICENSES SUSPENDED DURING FEBRUARY, 1957, AND MARCH, 1957

Name	Address	Effective date and term	Violation
Harris, Louis Vernon Real Estate Salesman	4532 Market St., Oakland	2/ 9/57 60 days	Secs. 10176 (i); 10177 (f) & (j)
McGee, Jessie Lee Real Estate Salesman	4532 Market St., Oakland	2/ 9/57 60 days	Secs. 10176 (i); 10177 (f) & (j)
Wilstar Realty Company Joe Shizuo Shiegezane—Member Real Estate Broker	3500 Rodeo Rd., Los Angeles	2/19/57 60 days	Secs. 10176 (a), (b), (i) & 10177 (f)
Jessen, Andreas Peter Restricted Real Estate Broker Restricted Business Opportunity Broker	3153 Geary Blvd., San Francisco	2/28/57 120 days (part of suspension stayed permanently on conditions)	Secs. 10176 (a), (e), (i); 10177 (f); 10302 (e) & Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Myers, Iva Dean Real Estate Broker	Hotel Alameda, Alameda	3/ 4/57 14 days	Secs. 10176 (e), (i); 10177 (f) & Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Averna, John dba Land Research Realty Company Real Estate Broker Business Opportunity Broker	2626 Pasadena Ave., Los Angeles	3/12/57 10 days (stayed for 1 year on conditions)	Secs. 10176 (a); 10177 (f) & 10302 (e)
McLarin, Ernestine Leatrice Real Estate Broker	1360½ Webster St., San Francisco	3/29/57 10 days	Secs. 10176 (i) & 10177 (f), (h)

SACRAMENTO DISTRICT OFFICE MOVES

On April 1, 1957, the Sacramento *District Office* of the Division of Real Estate opened for business in new quarters handling complaint and subdivision matters and other public contacts. The licensing and examination headquarters or principal office of the division remains at 1021 O Street, Sacramento.

The new location of the *district office* is Room W 1063 on the first floor of the main Department of Employment Building, 722 Capitol Avenue; new telephone number is GILbert 2-4711, Extension 3072 or 3073.

James M. Winter, senior deputy, is in charge of the Sacramento District Office succeeding Gerald E. Harrington, who was recently appointed supervising deputy of the Los Angeles office.

New Renewal Procedure

(Cont. from Page 297, Col. 2)

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 renews his license.

Inactive brokers—to keep your right to reinstate your license, you must file a renewal application and remit the full renewal fee as indicated on the application. You will receive an official application 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 any time during the license period for which your license has been renewed.

Inactive salesmen—you must also file renewal form and pay the full fee as indicated on the application. 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.

Do not mail currency. Pay fees by money order or check. If currency is lost, it is your loss, and, also, you may have to pay an additional charge for a 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 late renewal fee, unless the valid fee is mailed and post-marked prior to midnight, June 30th.

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

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 1 (applies also to "inactive" licenses).

Dean D. Watson Honored By Industry and Associates

With D. D. Watson presiding as its chairman for the last time, the State Real Estate Commission paid tribute to his record as Real Estate Commissioner and chairman of the commission at its meeting in Los Angeles on April 26th. Several members of the commission, comprised of Frank L. Whitelock, Maurice G. Read, Curtis M. Robbins, Tom Rooney and Edward M. Loftus, and new Commissioner Fred W. Griesinger, who was also present, spoke briefly lauding Mr. Watson's dynamic leadership and his services to the industry and the public.

The commission presented Mr. Watson with a remembrance of their work together over the years. Also attending the luncheon portion of the meeting were some members of the Division of Real Estate staff; and on behalf of all the employees, Mr. Watson was presented with a gift in expression of their appreciation of his guidance and friendly concern with their problems.

Real Estate Industry

Earlier, when Mr. Watson's resignation was first announced, the California Real Estate Association Board of Directors in session at Coronado made immediate arrangements to honor him. CREA President J. Mortimer Clark expressed the association's appreciation for Mr. Watson's long service to the industry. Ray D. Westcott, retired Chief Deputy Real Estate Commissioner, was also a honored guest at this affair.

Many Resolutions

Real estate boards, throughout the State of California, have presented individual resolutions commending Mr. Watson's administration, emphasizing the fine spirit of cooperation that has existed between the Division of Real Estate and their respective realtor groups.

Presented to Press

During April at a luncheon in Hollywood, the president of the building and development organization with which Mr. Watson became associated

Use of Term "Realtor" Is Upheld in Federal Court

For the first time a federal court has handed down a decision upholding the ownership right of the National Association of Real Estate Boards to the term "Realtor." There have been 17 other court decisions upholding the ownership right of NAREB and its members to the term "Realtor" and the NAREB emblem, but this was the first judgment in a federal court.

The decision was made in a case filed in San Francisco. It had been charged that another real estate association had infringed on the rights of NAREB and the local boards by using the words "Realter" and "Realters" and a symbol similar of that of NAREB in its advertising and promotion.

Is a Trademark

In the decision, Federal Judge Michael J. Roach reaffirmed that the term "Realtor" is a trade-mark owned exclusively by NAREB and its members and that neither a "colorable variation" of it nor the seal emblem may be used by others.

Judge Roach said that "he found that NAREB had complied with all requirements concerning the registration of Realtor, Realtors and its seal emblem as trade-marks under the Federal Trade Mark Act and that "they are good and valid in law."

The term "Realtor" was coined and adopted by NAREB in 1916.

on relinquishing the commissioner-ship, presented him to Southern California's press, radio, and television newsmen. Mr. Watson's official title in his new affiliation is vice president in charge of new developments.

Home Builders

At a meeting of the Home Builders Council of California on April 5th in Sacramento, President John A. Jacobson commended Mr. Watson for his cooperative and practical approach to the solution of problems facing subdividers and homebuilders and for his establishment of the Commissioner's Home Builders and Subdividers Advisory Committee.

Commissioner's Forum

Many questions have been received about the final examination for renewable license.

Previous issues of the *Bulletin* have run several articles dealing with the procedures and requirements for taking this examination. The most comprehensive article on this subject was written as the Commissioner's Message in the November, 1956, *Bulletin*.

The following series of questions and answers deal mainly with specific situations involving the final examination for renewable license.

We would again like to remind you that if you have any question dealing with the real estate law that you would like to have answered in the *Bulletin*, address the Editor, Real Estate Bulletin, 1021 O Street, Sacramento 14.

Q. I have been scheduled to take my renewable examination but an emergency operation will prevent me from taking the examination until after my original license has expired. May I receive an extension of time to take the renewable examination?

A. Unfortunately, the commissioner is prevented by law from scheduling you for a renewable examination after the expiration of your original license. However, you may apply for another one-year original license.

Q. May I take my renewable examination in two separate parts on two different days due to a broken arm?

A. Before we could submit such a request to the commissioner, we would need a letter from your physician setting forth your physical disability and the recommendation that you be given the examination under special conditions.

Q. Should I keep my salesman license on a renewable status when applying for an original broker license?

A. Yes, it is advisable to retain your salesman license in the event you do not pass the final examination and qualify for a renewable broker license.

Q. May I take my final examination a few months after receiving my original license?

A. The commissioner is prevented by law from giving an examination for a renewable license sooner than three months prior to expiration of an original license.

Q. If I fail two successive examinations for original license, may I try again?

A. By law you must wait one year before you can be scheduled for another examination.

Q. My original license expires May 15, 1957. May I engage in the real estate business after that date until such time as I can

qualify for a renewable four-year license or, failing to do this, may I take out another original one-year license?

A. You will not be able to engage in the real estate business after your original license expires unless you have qualified and received your new license.

Q. I have just been notified that I passed my license examination. A mixture of pride and curiosity prompts a request for information on my score.

A. Since the examination is a qualifying examination we do not keep a record of exact scores once an applicant has qualified. Therefore, we are unable to give you your score.

Q. Are all examination questions derived from subject matter in the Reference Book?

A. No, at the present time there are questions in the license examinations on subjects not covered in the Reference Book. A supplement to the Reference Book is now being prepared which will further aid those preparing for their final examination.

Q. Do I have to take my renewable real estate and renewable business opportunity examination at the same time if both original licenses expire together?

A. You may send your completed applications and fees for examination for renewable four-year real estate and business opportunity licenses at the same time with a letter requesting that the real estate examination come first with the business opportunity examination scheduled later. We will try to arrange the tests conveniently.

Q. May an examination for real estate license be taken anywhere outside the State of California?

A. No; all license examinations must be taken at one of the offices of the Division of Real Estate in California.

NOTICE TO 1955-56 LICENSEES WHO DID NOT RENEW

Several thousand persons who held 1955-56 licenses did not renew them for the 1956-57 year.

Their license rights expire on June 30, 1957, unless on or before that date the licenses are renewed either on an active or inactive basis.

Renewal can be made on application and payment of double the regular renewal fee. At the same time the renewal fee for the next license period should be paid.

Q. Has there been a change in methods of grading examinations for original real estate licenses?

A. No. The minimum passing grade is still 75 percent.

Q. Can the holder of an original license place his license on inactive status and delay his "final" examination?

A. The final examination must be taken prior to the expiration of the original license whether on active or inactive status.

Q. I now hold two original real estate broker licenses. Each license has a different fictitious name. If I receive two applications for renewal examination, may I take or need I take both examinations?

A. No. Even though you receive two applications for examination of a renewable license, you can take only one examination.

Q. I now hold an individual original broker license and I am a licensed member of a real estate partnership. Having just passed the renewable broker license examination, may I send in an application plus a \$50 fee and receive both renewable licenses?

A. No. If you wish both renewable licenses, one as an individual broker and the other as a member of a partnership, a \$50 fee for each license will be necessary.

Q. Why was the license law changed to require the additional examination and higher fees?

A. The change was sponsored by licensees themselves, and not by the Division of Real Estate. The thought behind it was better qualifying applicants for license. Higher fees were proposed in line with rising costs and expenses.

Negligence Proved in Real Estate Transaction

Agents Held Liable for Not Exercising Proper Skill and Diligence

An appellate court has sustained a trial court's award of damages to a buyer and held the agents liable for negligence. Evidence was offered that the defendant real estate agents representing the buyers in a realty purchase were negligent in failing to recommend a title search and in representing, without information as to the true facts, that there was only one trust deed against the property and that the specified monthly payment included interest, whereas in fact there was a second deed of trust and the payment did not include interest.

The facts in the suit for negligence are briefly summarized as follows: Buyers called at the real estate office and discussed the purchase of a chicken ranch with a real estate salesman. The office had a ranch listed, but the listing had expired a few days before. The listing described the ranch and provided that the buyer was to assume an existing trust deed balance of approximately \$19,000, payable \$250 or more monthly with 6 percent interest included. The buyer asked the salesman if there were any other encumbrances on the property except this trust deed, and the salesman told the buyers—man and wife—that there were none.

Lease and Option Executed

After some negotiations, the buyers agreed to a lease and option to purchase the chicken ranch. On behalf of the buyers, the employing broker and salesman prepared the combination written lease and option which was executed and delivered.

Moving onto the ranch, the buyer left his employment as a service engineer and purchased approximately 2,000 chickens to raise thereon.

Second Trust Deed Discovered

Within a week or 10 days thereafter the buyers received information that there was a second trust deed on the property, and that the first trust deed called for the payment of \$250 monthly plus interest.

At the trial court the buyers testified that if they had known there was a second trust deed against the property and that the payment on the first trust deed required the payment of \$250 plus interest at 6 percent on about \$19,000, they would not have entered into the transaction.

Finding of Negligence

The trial court found, among other facts, that the defendant agents failed to exercise the amount of care and diligence required of them in negotiating, preparing, and writing the lease and option. It was also found that the agents did not suggest or advise that a title search be made on the ranch and did not advise that an escrow be opened for the consummation of the transaction.

It was further found that at no time did they check to ascertain the true status of the title of the property in question or the nature or extent of the obligations which were encumbrances against the property, other than to accept as true the statements of the owners of the property with respect thereto. It was thus found that the agents were negligent in the discharge of their duties as agents of the plaintiffs.

Opinion of District Court

The district court of appeals affirmed the judgment of the trial court and stated "the question whether the defendants were negligent was one of fact for the trial court and its finding that the defendants were negligent in the discharge of their duties as agents for plaintiffs is supported by substantial evidence. Defendants, as agents for plaintiffs were required to exercise reasonable skill and ordinary diligence and not to act negligently. They were required to exercise the particular skill to be reasonably expected of them and to have special knowledge with respect to the agency assumed." (Article based on *Wilson v. Hisey*, 147 A.C.A. No. 3)

License Fees Once Paid Are Not Refundable

Some licensees apparently seem to think that all or part of the \$30 or \$50 four-year license fee may be refundable under certain conditions. This is not the case; the law specifically bans refund of application or license fees in whole or in part.

Letters have been received asking if the licensee may receive a refund of a proportionate part of his four-year license fee should he decide to quit the real estate business and cancel his license before the four years are up. This cannot be done. Other questions come from oldsters who doubt whether a four-year investment is warranted at their age, and they want to renew on a yearly basis. Again there is no way this can be accomplished.

Applicable to Only One License

Others ask if a paid license fee can be applied to another type of license, for instance where the \$50 fee for a four-year broker license is paid and then the broker decides to work for another broker as a salesman. Where the broker license is surrendered to secure a salesman license, no credit from the unused time as a broker can be applied to the salesman license fee. The full four-year salesman license fee of \$30 would have to be paid.

Another question concerns the person who obtains an original salesman license. After one year he passes the examination for renewable license and pays the \$30 fee for a four-year salesman license. After another year as a salesman, he applies and qualifies for a broker license. Can he receive any refund for the unused time as a salesman? Under the law, the answer is "No."

In all of these cases, the law applies explicitly and will have to be followed. The pertinent section of the Business and Professions Code provides that "No part of any fee paid (for license, etc.) is refundable. It is deemed earned by the division upon its receipt."

**Don't Send Cash
When Renewing License**

When Taking Back Second or Other Junior Lien, Seller Is Entitled to Facts From Agent

Is the seller entitled to know the possible consequences of a foreclosure when he agrees to take back a second deed of trust on the sale of his property? If those consequences are unknown to a seller, an agent will disclose those material facts regarding a foreclosure, which would be likely to affect the seller's judgment in agreeing to take a second.

What are the possible consequences of a foreclosure on a purchase money deed of trust? They have been listed as:

(1) There is no deficiency judgment allowed after a foreclosure. By law, deficiency judgments are not allowed upon foreclosure of a purchase money deed of trust. The holder must be content with the proceeds obtained from the sale of the property. He must look alone to the security for payment of the debt. He can recover no more than the value of that security.

(2) Where the seller takes a second deed of trust as part payment of purchase price, the holder of the first

may foreclose and entirely wipe out any value to the second.

(3) In the event of a default on the first, the holder of a second must have at least enough money to pay all arrearages and thereafter maintain the monthly payments under the first deed of trust such as principal, interest, taxes, insurance premiums and possible repairs. In some cases, the holder of the second must be prepared to buy at a foreclosure sale or make arrangements with the owner of the first. In any case, the seller should stand ready to protect himself in the event of a foreclosure.

(4) The foreclosure sale of the first may proceed and the holder of a 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 default*. 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 a foreclosure is proceeding.

Note of Restrictions Must Appear in Deed, Judge Says

Just how good are building restrictions created by recording a declaration of restrictions affecting a tract? Light is thrown on this question by a recent memorandum opinion returned by a superior court judge in a case involving a tract in Yolo County.

A West Sacramento building contractor has apparently won the right to build his own type of homes in a subdivision in the east Yolo community. A declaration of restrictions affecting the tract had been recorded, requiring, among other conditions, approval of structures by a three-member architectural committee. The builder went ahead and built to his own plans, furthermore removing trees from the property, to which other land owners objected.

A temporary restraining order was granted last fall by the superior court

to restrain the builder from erecting nonconforming home units and enjoining him from removing trees from the land. As to the petition for a permanent order, however, **the court allowed the builder's contention that the recorded subdivision building restrictions were not enforceable in that they were not referred to in the individual deeds to the property**, citing an appellate court decision. The petitioners had taken the position that recording the declaration of restrictions was sufficient grounds for enforcement.

This decision raises an important point as far as subdividers are concerned. It will affect the status of declarations of restrictions as far as that particular area is concerned at least. The appellate case referred to is *Murray v. Lovell*, 132 C. A. 2d 30 (March, 1955).

Agent Cannot Choose Between Pest Control Reports

Many purchasers will not complete a real estate transaction until a satisfactory pest control report is obtained. It thus becomes the agent's task to order a report and, in many cases, arrange for repairs to be made. This may also be true when obtaining loans on real estate.

In more than one instance a licensee has been accused in a complaint of not turning over an unfavorable pest control report to the buyer or seller who instructed him to order the report as a condition of the agreement.

Instead, the agent will hold the unfavorable report and order another pest control report from a different company calling for inspection of a different area of the property which may not be infested. He will then give the new favorable report to the buyer or seller.

The pest control company generally gives its report to the person who orders it, who, in these cases, is the real estate agent. The term "termite clearance" in an inspection report can only apply to those structures described in the report as meeting certain standards.

It is obvious that a licensee is duty-bound to furnish a copy of any and all termite reports which he may receive to the buyer or seller who authorized him to obtain the report. Failure to do so may amount to material deception; and, proved in a hearing, the license of the real estate broker or salesman involved would be subject to revocation or suspension.

1956-57 Directory Omissions

Your 1956-57 Directory of Licensees should contain the following addition and correction:

Rodney Rose, dba Rodney Rose & Company, is a properly licensed real estate broker at 269 South Western Avenue, Los Angeles 4, California.

Dorothy Rix is a properly licensed real estate broker at River Road, P. O. Box 101, in Windsor, California, instead of Winterhaven as listed in the directory.

When Making Remittances Don't Send Cash

When making a remittance for any publication or service provided by the Division of Real Estate, please don't send cash. Personal checks or money orders are acceptable. Applications are still being filed in which the amount of the remittance is incorrect. In such cases, a certain amount of correspondence is involved which delays fulfillment of the request.

The following schedule is for guidance in determining the amount that should be remitted:

FEE SCHEDULE

ORIGINAL LICENSE (includes first examination)	
Broker—Real Estate, Business Opportunity, Mineral, Oil and Gas (regular or restricted).....	\$20.00
Salesman—Real Estate, Business Opportunity, Mineral, Oil and Gas (regular or restricted).....	10.00
Limited salesman	5.00
RE-EXAMINATION	
Broker—Real Estate, Business Opportunity, Mineral, Oil and Gas	10.00
Salesman—Real Estate, Business Opportunity, Mineral, Oil and Gas	5.00
ADDITIONAL EXAMINATION (four-year renewable license)	
Broker or salesman (any type).....	5.00
RENEWAL LICENSE (four years)	
Broker—Real Estate, Business Opportunity, Mineral, Oil and Gas (regular or restricted).....	50.00
Salesman—Real Estate, Business Opportunity, Mineral, Oil and Gas (regular or restricted).....	30.00
CHANGES	
Name or address (broker or salesman—active or inactive), or Add branch office, or Add or drop fictitious name, or Salesman transfer, or Reinstatement (inactive or canceled license within license period), or Duplicate license	1.00
SUBDIVISIONS	
Filing fee	50.00
M. O. and G. filing fee (includes supply of reports to 1½ times number of lots).....	150.00
Additional copies of reports, or Preliminary reports, or Revised reports, or Duplicated copies	
First one hundred.....	5.00
Each additional hundred.....	1.00

"Time Is the Essence"

Written Phrase in Contract Is Modified

The phrase "time is of the essence of this contract" has frequently been incorporated into contracts from time immemorial. It has great usage in the real estate profession, being a part of a standard deposit receipt form as a general rule. Many brokers use the form under the belief that their clients are protected to the extent that if an act is not performed at a stated time the contract is then breached or nullified as the case may be. This may be true with some contractual forms, but at other times other modifying provisions in the contract or the acts of the parties themselves may modify the contract and be sufficient in a court of law to show that "time is not of the essence of the contract" even though the contract says it is.

Consider the case of *Katemis v. Westerlind*, a California case reported in 142-ACA at Page 889.

The transaction involved a parcel of realty in Los Angeles improved with a furnished apartment house. A deposit receipt form was used and executed on February 23, 1952, in which the sale price was set at \$35,000. A deposit of \$1,000 was given, the instrument providing that the balance of the purchase price was to be placed into escrow within two days. The deposit receipt provided that time was of the essence of the contract but also contained a provision that "the time for any act required to be done may be extended not longer than 30 days by the undersigned agent."

An escrow was opened on the second day, the escrow instructions providing that the buyer would hand to the escrow company the sum of \$20,100 prior to March 1, 1952. The escrow instructions also contained the following provision: "If the conditions of this escrow have not been complied with prior to * * * (March 1, 1952), or any extension thereof, you are nevertheless to complete the escrow as soon as the conditions, except as to time, have been complied with, unless written demand shall have been made upon you not to complete it."

PUBLICATIONS

Reference book (paper cover)	
	2.00 + tax .08 = 2.08
Reference book (stiff cover)	
	2.50 + tax .10 = 2.60
Real estate law.....	.25 + tax .01 = .26
Subdivision manual.....	.25 + tax .01 = .26

The buyers complied with all the terms of the escrow except as to the amount of money deposited. Living in Chicago, they mailed \$19,350 to the escrow-holder on February 29th; this sum was received on March 3d. On March 5th the sellers instructed the escrow-holder to cancel the escrow because the buyers had not made a full deposit prior to March 1st.

The case was brought by the buyers on a suit for specific performance and for damages. During the course of the trial the seller attempted to show by other evidence that time was considered an important element of the contract. This evidence would have consisted of testimony of witnesses that, prior to the signing of the deposit receipt, the seller told the buyers she had another deal pending and that the balance of the purchase price had to be paid before March 1st and that that was the only reason for making the sale. The trial court excluded this evidence on the ground that it was an attempt to vary a written contract by oral evidence.

The general law is discussed in the decision and legal authority cited to show the general rule that time is not of the essence unless it is made so by express terms or is necessarily so from the nature of the contract. Where the time for performance is stated and if the time is not expressly made of the essence by a written contract, then outside or oral evidence may be introduced to show that time was considered by the parties as of the essence. The court stated that "such evidence does not contradict or vary the writing, but confirms it by showing that it means just what its terms provide." The court then goes on to say that where the contract itself is explicit and shows that time is not of the essence, then, of course, evidence cannot be

(Cont. on Page 304, Col. 3)

Salesman Pleads for "On-the-Job" Training

Getting a real estate license is by no means a guarantee that one is going to be a success in the business of real estate, as many have found out. Brokers and salesmen both may be interested in the point of view revealed by a somewhat disappointed licensee who apparently believes her services could be worth while to the broker who would take time to give her the on-the-job training she lacks.

There may be food for thought in the following excerpts from a "Letter to the Editor." Further comments from brokers and salesmen would be welcome and published if possible.

The salesman writes: "This may or may not interest you, but I have heard many complaints from real estate salesmen * * * now 'inactive' principally because the brokers they were associated with gave little or no time to training on the job. To be successful in real estate takes a lot of varied training. Most active salesmen get their licenses for one reason—to be successful salesmen. They don't switch from one broker to another unless they are disappointed.

"I know that if I were a broker, I would set up a 'training course.' The average broker may think this is a waste of time but they fail to realize that if they train their people well, that person will make money for him. When you don't know where you're going with some brokers, isn't it likely that one would get discouraged? Time is of great importance to brokers and no doubt they don't have the time to train their staff. It isn't their fault,

Another State License Law

Recently, North Dakota became the forty-fifth state with a Real Estate License Law when Governor John E. Davis signed an act passed by the 1957 State Legislature. A feature of the new license law is the bond requirement—\$2,000 for brokers, \$1,000 for salesmen.

It was only through strenuous efforts that the bill was passed, as it met opposition in both house and senate. Amendments to eliminate examination requirements had to be accepted to secure enactment.

Passage of this act leaves Massachusetts, North Carolina, and Rhode Island as the only states without real estate licensing laws.

Your License Renewal Form Will Be Mailed Late in May

it's just circumstances. Just when you think they will finally give you 15 minutes of their valuable time, the phone rings and off they go.

"What I'm getting at is this * * * do you suppose there could be one or two schools in leading cities to help train salesmen so that they would actually be familiar with various real estate transactions; to actually have them perform a simple transaction—a complicated transaction, and the like?

"I realize each office has its own rules and regulations and would probably frown on the above suggestion. But I strongly feel that salesmen need more extensive training. It isn't enough to pass the test and proclaim that you have a license.

Brokers' Responsibility When Discharging Salesmen

When a licensed salesman is discharged for any cause which constitutes a violation of the law, the broker must send to the Commissioner a certified statement describing the alleged offense or misconduct of the discharged salesman. Failure of the broker to comply with this requirement could be basis for suspension or revocation of his license.

Brokers are reminded on this point of the license law because there have been several recent instances where salesmen have been convicted of criminal offenses involving moral turpitude. They were discharged by the brokers concerned, but the Commissioner was not notified of the circumstances.

The provision of the license law here discussed was enacted to aid the industry in self-regulation and rid its ranks of those whose actions hurt all licensees. By not reporting violations of law committed by a discharged salesman, the broker may be allowing the salesman to go on to further damage.

Court Case Reported

(Cont. from Page 303, Col. 3)
introduced to establish that time is of the essence.

Judgment was given for the buyers in this case and the case affirmed on appeal. If any conclusion is to be drawn for our business, it would appear that if we want to make a contract to be performed by a specific time, let us not modify that contract by providing some means or method wherein that time may be extended.

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