

CALIFORNIA DIVISION OF REAL ESTATE

BULLETIN

J U N E 1 9 4 4

EARL WARREN, GOVERNOR OF CALIFORNIA

HUBERT B. SCUDDER, REAL ESTATE COMMISSIONER

BROKERS AND SALESMEN ORGANIZED TO DEMONSTRATE SALESMANSHIP ABILITY IN FIFTH WAR LOAN CAMPAIGN

The Fifth War Loan Drive officially opens June 12th, and it is expected that California's nearly 30,000 licensees of the Real Estate Division will form the greatest potential sales organization ever organized for the sale of war bonds. Every broker and salesman has been appealed to personally by the commissioner and requested to pledge himself to sell a minimum of \$500 in bonds. The response through the return postcards has been tremendous. Many licensees apparently felt that their ability was under-estimated, as they have voluntarily increased their personal quotas to \$5,000 and even \$10,000. Almost to a man (or woman) California's real estate brokers and salesmen have pledged to do their part. It appears that the \$10,000,000 real estate quota will go over the top in the early stages of the campaign.

While the campaign does not officially open until June 12th, the Treasury Department advises that all sales made by real estate people on and after June 1st will be counted in the quota. It is hoped therefore that our licensees will get an early start and will have developed a good portion of their quota before the drive officially opens. It is not too early to start planning your personal sales campaign now.

So that the Real Estate Group of California will receive due credit for all work done by it, it is urged that real estate brokers and salesmen report their sales faithfully to headquarters, so that proper credit will be received. These reports may be made to the War Finance Chairman of your particular community, your local title or escrow company, or to your local Real Estate Board, if one exists in your community. All California Real Estate Boards have pledged to assist the campaign to the limit. They also will assist in organizing the drive in your community and will assist you personally. Feel free to work with the board. Remember, this is for *your Country*, and for this purpose it does not matter if you are a member of the board or not. This is a job for all real estate people, and all should work together.

The officials of the Treasury Department realized the great value of California real estate agents as a sales force and contacted the California Real Estate Association. This organization pledged its best efforts and all of its facilities to further the drive, but pointed out that this patriotic effort was the concern of every broker and salesman in California. The plan was then presented to your commissioner. He has appealed to you and received your promise to uphold the "go-getting" tradition of the real estate profession and go over the top.

Please note that reporting your sales as a member of the Real Estate Fraternity will not detract from the credit your local community will receive in selling its quota. Credit will be given to *both* your community and to your business group.

In many localities brokers and salesmen are urged to organize meetings to discuss their sales problems. We urge

that you do your part to see that such meetings are organized and held regularly throughout the campaign. You will find that they will greatly stimulate interest and will be effective in enabling you to make more and larger sales. The chairman of your local War Finance Committee will assist you in organizing these meetings and in any other way possible. Work closely with him, and take advantage of all the service he can give you, both individually and as a group.

Some of you have written that you already have sales kits through some other group organization such as fire wardens, etc. The work involved in segregating your names from the mailing list is too great to be practical, so you will receive another kit. Enlist a helper and have him use it, or if you can't do that, turn it in to your local War Finance Committee chairman.

REPORTS ARE ENTHUSIASTIC

Of the thousands of pledge cards returned by brokers and salesmen agreeing to sell a minimum of \$500 in bonds, many contain special written notations by the broker or salesmen. To quote from some:

"I am boosting my quota from \$500 to \$5,000."

"I am glad to see our Commissioner behind this drive.

Our entire office will make its quota to a man."

"Fine work."

"I bought a bond on receipt of your letter and will do my part 100 per cent."

"I will sell \$500 in bonds and buy more myself."

Real estate brokers and salesmen have the reputation of doing a job well when they undertake it. We may confidently look for results in this campaign which will bear out that reputation.

AGENT OBLIGATION

Since the publication of the last bulletin issued by the Division of Real Estate, which was devoted largely to a discussion of the fiduciary relation which exists between the

RENEW LICENSE EARLY

Deadline is June 30th

Avoid paying a penalty of a DOUBLE FEE by renewing your license early. This also assists the division and assures early receipt of your license. As in case of most office organizations your Division of Real Estate has a clerical help shortage problem. Your consideration will be appreciated.

See page 4 for further comments and renewal form for real estate brokers.

broker and his principal, the commissioner has received encouraging response, the great preponderance of which has been favorable.

The compilation of material pertaining to the responsibility of the agent was made and published so that brokers and salesmen might have a better insight into the dangers surrounding certain practices. The comments received from leading brokers throughout the State indicate that the effort was worthwhile. The number of complaints received involving secret profits obtained by brokers while posing as agents has decreased materially since the bulletin was issued. It is to be hoped that the bulletin material has been responsible for this situation.

A few complaints of this nature still come to the commissioner's attention, however. Recently there was an interesting hearing held involving a broker who had over a period of time listed various properties and had sold them to a dummy, his secretary. These properties were later resold at a profit. In making the original sales to his secretary, however, the broker secured a commission from the sellers, but failed to advise them that in reality he was purchasing the properties for his own account. This particular broker when confronted with charges that he had acted dishonestly and had violated the fiduciary relation created by his agency, attended a hearing with his attorney and frankly disclosed his entire operation. His principal plea for clemency was based on the fact that what he had done was a usual procedure among brokers. He argued that because the practice was so widespread that he should not be singled out for punishment. The license of the broker was suspended.

A portion of the testimony at this particular hearing is of interest, and is set forth here, omitting, of course, the names of the persons involved.

Broker: Whereas attorneys have only one master to serve, they take a client and they serve them to the best of their ability, but we fellows, a fellow comes in our office as a prospect and we have to smile sweetly and we have got to win his confidence and we have got to make him think before we can sell him we are all right; we have got to work for his interest. Yet we have a seller on the other side of the fence, who says "Sure he is our representative and he must be working for our interest." The point is, how can you serve two masters? I realize now what the situation is, and as to the relationship supposed to exist between the seller and the agent, but it is kind of tough proposition, it would seem to me.

Broker's Attorney: I did want to say simply this, that I understand this practice of using dummies and of not disclosing the fact to the seller has been very general and almost a universal practice among real estate men for a long time past, so that this broker in engaging in that practice, while he may have engaged in a practice which he would have abstained from, was at least doing the same thing most others have been doing. Therefore, perhaps he didn't criticize himself so severely for it, at least so long as he felt he was giving the seller a fair deal. Now, in that situation it doesn't seem to me hardly just to punish him very substantially when he comes in here and lays his cards on the table and says "Yes, everything you say is true." Now, if the other real estate brokers in the State would be equally frank it seems to me what ought to happen would be a general reprimand of the whole bunch and sort of a probationary period, assuming then that the house had been cleaned generally. From that time on if any one steps out of line he should be punished for it. This broker has come here and laid his cards on the table and says he knows he is wrong. Because he has done so it

doesn't seem he alone should be punished. Others have been equally guilty, or perhaps more so, where they have used the method of purchasing property with known buyers in advance, and most of those who have been doing that sort of thing are not here before you, and the evidence is most difficult to obtain. And they perhaps are not going to be punished at all, in most cases. I therefore wish to make a plea that the fellow who is fair and open about the thing should not be singled out for punishment.

Deputy: (Addressing the broker) In most of these transactions that you cited, you were employed by the seller as his agent to sell the property for him. When you accepted that employment there was a fiduciary relationship created between you and him as principal. In these transactions you purchased the property yourself through a dummy without disclosing that fact to your principal, and at the same time collected a commission from your principal. That is where the offense occurred. Your attorney has stated that there are numerous brokers who do the same thing through the State, and that you should not be singled out for punishment. However, I will say that the Division of Real Estate is making every effort to ferret out these violators and to punish them when caught. You know and we all know that there are hundreds of people every day violating the Motor Vehicle Act. Some few of them are caught, and those who are caught are punished. Now unfortunately in these transactions you are one of the brokers who was caught. Therefore, we can't pass the entire matter over and say "We haven't caught all of them and therefore we must let you go." We must impose some punishment or penalty upon you for the act you performed. I think you can appreciate that. I will say this, I think it was very honest of you to come into this office and * * * making a complete and voluntary statement of all the transactions. I am going to lay these facts before the commissioner, that is, your coming in here and voluntarily telling the whole story.

Broker's Attorney: One thing I wanted to say in response to the statement made a moment ago is this. This broker happens to be one of the ones who has been caught, and therefore perhaps is the only one who will be punished, but there is this difference. There has been a continuous effort to enforce the Motor Vehicle Code. There has not been a continuous effort to enforce this code. I think now for the first time the brokers know you are starting on an enforcement program, and I think this broker and all the other brokers are glad you are carrying out that program and welcome it. But in the instances where the violation, as in this particular case, has been unintentional and where the sellers have not been hurt, it does seem a little bit tough on the fellow that is first.

The attorney was not correct in stating that his client was the first to be the subject of a hearing involving the violation of his duties as an agent. Hearings of this nature have been held for many years. However, at the present time, rather than to merely inflict a penalty upon some unknown broker, the commissioner has endeavored to air the entire matter and point out to all brokers in the State the fact that when they undertake to represent a client and accept compensation from him, they are doing wrong to gain possession of their client's property without his knowledge, so that they may make a further profit through a resale. This practice unfortunately has gained some momentum during the past year because of the continuously rising real estate market. A property purchased this month could in many cases be marketed next month at a

profit. The active broker who keeps abreast of conditions is aware of this fact and he is in a position to profit by personally acquiring his client's property at a low figure. The broker in question not only pursued this practice, but in addition secured a commission from his client for what the client assumed was a disinterested sale.

As heretofore stated, we like to believe that most of these complaints are brought about through the failure of the broker to understand his position, rather than through dishonest intent. It is to be hoped that complaints of this nature will be few and far between in the future.

COURT RULING UPHOLDS COMMISSIONER BROKER HELD LIABLE FOR ACTS OF AGENT

In a decision handed down May 15, 1944, Superior Judge Emmet H. Wilson sustained an order of Commissioner Scudder in refusing licenses to the Sunrise Land Company and its officers, Long and Bergere, for the year 1943-44.

The decision held that a real estate broker is responsible for misrepresentations made by his salesmen, and when the latter has made misstatements to purchasers of property in order to induce sales, the Real Estate Commissioner is justified in refusing to renew the license of the broker as well as that of the salesman.

The Sunrise Land Company had secured lands in Imperial County lying to the east of the Salton Sea. Although these lands were located adjacent to and below the level of an irrigation canal which was a part of the All American System, the land had not been included within any irrigation district and the possibility of ever securing water from the canal system was questionable.

The company originally proposed to sell the land as agricultural land, but later agreed that this would not be done. As the land was in the vicinity of the area producing carbon dioxide gas near the southeast edge of the Salton Sea, and their geology indicated there might be some possibility of securing gas on the land, they launched a sales campaign based upon the gas possibilities.

Information obtained by the commissioner indicated that the salesmen of this company were making representations regarding the agricultural value of the property and the possibility of getting water from the All American Canal, which had no basis. As a result a hearing was called on the application of the company, its officers and salesmen, and after testimony of various witnesses had been taken, the commissioner refused to issue further licenses to them on the grounds that he was not satisfied as to the honesty, truthfulness and good reputation of the applicants.

The officers of the company, Long and Bergere, petitioned the superior court for a Writ of Mandate alleging that the commissioner's findings were not supported by the evidence taken at the hearing and that there was no evidence of misconduct, misrepresentation, false promises or fraud on the part of the officers of the company, or on the part of any one acting within the knowledge and consent of said officers. The salesmen had not applied to the court for relief from the commissioner's order denying their licenses.

The proceeding was submitted to the court on the evidence taken at the hearing before the commissioner, the transcript of which was filed as a part of the petition. The court commented in its decision as follows:

"As might be expected in a hearing of this character there are contradictions by some witnesses of evidence given by others. Such is the case in nearly every trial in a court of law and the judge must winnow the chaff from the grain and decide the case on what he deems

to be most reliable and satisfactory evidence. The record indicates that the commissioner did the same. His decision seems to have been fairly and justly rendered. There is ample competent evidence that salesmen who were engaged in selling real estate for and under plaintiff made statements to purchasers and prospective purchasers knowing they had no foundation in fact and that the statements were made with the end and aim of inducing and effecting sales of property at fancy prices, much of which was of doubtful or no value for the purpose for which it was sold. Plaintiffs (Long and Bergere) assert that they had no knowledge that false statements were being made by their salesmen. Plaintiffs, Long and Bergere, were president and secretary of plaintiff corporation and as far as the records show were solely responsible for its acts. The purchasers were not in contact with plaintiff. They had the right to rely on those to whom plaintiffs had entrusted the sale of the property. A principal is liable for the torts of his agent committed within the scope of the latter's authority.
* * *

Letters were filed testifying to the good reputation of plaintiffs and were received with a stipulation that if the witnesses had been produced they would have testified substantially as stated in the letters. 'Reputation' consists in the estimation in which one is held in the community in which he resides. 'Character' comprises the attributes, qualities, or traits indicating the intrinsic nature of a person. 'Reputation' is what one is supposed to be and 'character' is what he actually is. If the letters be deemed to aid in satisfying the statute as to the good reputation of plaintiff, the evidence concerning the manner of their dealings with the public indicated a character for honesty, truthfulness and fair dealing far different from their reputation so shown. For example, after the commissioner gave plaintiff the opportunity to cease selling certain lands for agricultural purposes, and plaintiff agreed to do so, the same property was represented by some of the plaintiff's salesmen to prospective purchasers as good farming land.

To reverse the order in question, the court must be able to say that the evidence was sufficient to satisfy defendant of the honesty, truthfulness and good reputation of plaintiff. The court does not so conclude from the record. In fact, if the hearing had been before the court instead of the commissioner the result would have been the same. * * * The statute does not require findings of fact, the order of the commissioner implies findings to support it.

The commissioner was not required to await the filing of complaints against plaintiff by third persons. He is empowered by Section 10176 of the Business and Professions Code to investigate, on his own motion, the actions of any real estate broker or salesman and to suspend temporarily or to revoke permanently the license of any person who has committed any of the acts enumerated in said section, including the making of substantial misrepresentations, false promises, and conduct constituting fraud and dishonest dealing. The term 'dishonesty' means fraud, deception, betrayal, faithlessness, absence of integrity."

LICENSE RENEWALS

When licenses were mailed last year, there was attached a form to be used in applying for renewal of 1944-45 licenses. Brokers and salesmen were requested to preserve this form and use it.

Unfortunately many licensees are telephoning and writing to the various offices of the division stating that they

Sec. 562, P. L. & R.
 U. S. POSTAGE
PAID
 Sacramento, California
 Permit No. 207

have lost or mislaid this renewal form and are requesting that additional forms be mailed to them. The division is complying with these requests. Your new license will also carry a renewal application for the 1945-46 license, which you are again requested to preserve for use a year from now.

Do not wait until just before the dead-line before forwarding your application. Like most other offices, the Division of Real Estate is confronted with the problem of securing enough experienced clerks to issue some 30,000 licenses promptly. A great last minute rush impairs our efficiency and delays the issuance of your license.

The Real Estate Law provides that a penalty must be paid for renewal of licenses in cases where the application is not filed or mailed before midnight June 30th. Avoid the danger of paying a double fee by renewing early.

The law now provides that applications which are mailed to the Division of Real Estate may be accepted without penalty if the envelope is postmarked June 30th or prior to that time, even though the application is not received until July 1st or later. This is an advantage to persons who delay until the last minute, but we urge you not to delay the filing in this manner.

For the benefit of licensees who have lost or mislaid the renewal application sent to them a year ago, we reprint herewith an application form which may be used by real estate brokers. Cut it out neatly with scissors along the dotted line. This renewal application is for *real estate brokers only*.

If real estate salesmen, business opportunity licensees, cemetery licensees and mineral oil and gas licensees have misplaced their renewal application they may secure special application forms from any office of the division.

REALTY ACTIVITY INCREASING

A Nationwide survey of the Real Estate Market which gathered reports of local activity in the principal cities of the Nation reveals that the market is more active than it was a year ago in 83 per cent of the cities. The prices in 88 per cent of these cities for local real estate are higher than they were a year ago, and in 99 per cent they are higher or at least equal to the prices obtained a year ago.

Price rise has been largely confined to residential property. The average rise in price in all cities surveyed is reported at 12½ per cent. While this latter figure may seem to be a small over-all raise, it must be considered that cities in some sections of the Country have been little affected by war conditions. Some communities have actually suffered a population loss.

It has been announced that Mr. Kelvin Z. Vanderlip has been appointed as assistant to Mr. Paul S. Williams, principal War Housing Center Manager of Los Angeles County. This agency has 16 offices scattered throughout the county and has provided over 50,000 homes and rooms for war workers and the families of military personnel through their "Share Your Home" plan, and through the conversion of existing buildings into apartments.

ABOUT WAR HOUSING

Our Industrial Defense Program started in midsummer 1940, causing a severe shortage of housing facilities for defense workers in the key war industry centers. Since that time, approximately 550,000 privately financed dwelling units have been erected in those centers with the financing assistance of the Federal Housing Administration. The loans insured in connection with this construction total over \$2,275,000,000.

At the beginning all of the insured financing handled by FHA for defense housing was handled under Titles I and II. Title VI was added to the National Housing Act in March, 1941.

All Title VI housing is for the immediate purpose of providing quarters for the families of war workers. This housing, however, is of permanent construction, whether single family dwellings, duplexes or apartment buildings.

When Title VI was first enacted in March, 1941, it was designed to supplement the regular mortgage insurance under Title II, with the purpose of increasing the construction of private homes in areas which had gained in War Industry Population. The scope of Title VI was broadened in May, 1942, and since that time has been the principal means of financing private war housing of substantial construction for long term use.

CALIFORNIA
 DIVISION OF REAL ESTATE
 SACRAMENTO

I hereby apply for renewal of my
 REAL ESTATE BROKER
 license for fiscal year 1944-1945.
 FEE HEREWITH

DATE

Signature X

Residence
 address

BROKER
 MUST LIST BRANCH
 OFFICES ON REVERSE

RENEWAL FEE \$5.00

PENALTY OF \$5.00 ADDITIONAL
 CHARGED AFTER JUNE 30, 1944

PRESENT LICENSE NO.

RENEWAL APPLICATION

USE FOR LICENSE RENEWAL—MAY 15-JUNE 30, 1944

NAME

BUSINESS ADDRESS

BRANCH OFFICES

