

REAL ESTATE BULLETIN

CALIFORNIA DIVISION OF REAL ESTATE

EARL WARREN, GOVERNOR

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LICENSE RENEWALS PROCEED SMOOTHLY WITH MINOR EXCEPTIONS

With the cooperation of the great majority of license holders, the new system of handling renewals has worked out very well. In the early stages of the renewal period, 1948-49 licenses were mailed to the applicants within three to four days of the receipt of complete applications accompanied by the correct fees. With the tremendous deluge of last minute applications, however, this schedule could not be maintained throughout the entire renewal period. At the time this Bulletin goes to press, all licenses have been mailed with the exception of those where application or fee irregularities have necessitated further correspondence. It is believed that real estate license renewals, including some 2,500 branch offices, will reach a total of about 60,000, and that about 70,000 renewal licenses of all types will be issued by the division.

On September 19, 1947, by legislative enactment, a slightly revised schedule of fees for original and renewal licenses went into effect. This had its reflection at renewal time when a surprisingly large number of members of partnerships and licensed officers of corporations remitted a \$2 fee—standard for many years—rather than the correct fee of \$5 for their 1948-49 licenses.

If the licensee is a corporation, the renewal fee of \$5 entitles the president to act in the capacity of real estate broker. Other licensed officers must pay a renewal fee of \$5. If the licensee is a partnership, the member designated on the application is entitled to engage in the business upon payment of the \$5 renewal fee. Other active members are required to pay a \$5 renewal fee.

A great many licensed real estate brokers are not actively engaged in the business. Nevertheless, they wish to be in a position to engage in the business at some future time without exposure to the delay, expense, study, and examination necessary to gain an original license. The division in this past renewal period received several hundred requests from licensed brokers asking that their licenses be placed in an inactive file. For some reason, as yet unexplained, these almost identical requests were accompanied by a \$1 fee.

As the Real Estate Law stands at present, a licensed broker who wishes to be inactive, yet keep his status, may renew his license for the ensuing year upon payment of the \$5 renewal fee, accompanying his renewal application with a request that it be immediately canceled. He can then at any time during the license year have the license reinstated at a business address which he designates. The fee for such reinstatement is \$1. It is not necessary to reinstate during the year if he does not choose to do so. He may, prior to the opening of the next fiscal year, again apply for renewal requesting immediate cancellation as before. However, the renewal fee each year is \$5 just as it would be were he actively engaged in the real estate business.

EXCLUSIVE LISTING TERMINATION DATES

The District Court of Appeal in and for the Third Appellate District (Sacramento), in denying an appeal from a judgment of a trial court which upheld the Real Estate Commissioner's revocation of a business opportunity license, made an interesting and forthright statement concerning definite termination dates in exclusive listings.

The petitioner's business opportunity license had been revoked by the Real Estate Commissioner under Section 10301(f) of the Real Estate Law, which provides that a license may be suspended or revoked after a hearing when the licensee has been guilty of "The practice of claiming or demanding a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to sell * * * a business * * * for compensation or commission where such agreement does not contain a definite, specified date of final and complete termination."

The court in upholding the revocation said "Petitioner's further contention that in any event the clause in the above-mentioned contracts attacked by the commissioner 'contains a very definite method of final and complete termination of the agency' and therefore does not come within the statute, is likewise without merit. The statute does not refer to a *method* of computation of the termination date upon the happening of some future event, but rather to the failure to set forth a definite specified *date* of final and complete termination. The contracts in question were printed on small cards with the figures '30' typed in. The thirty days constituted a minimum period in which the owner could not terminate the agency, and in no event would the agency terminate except on the owner's compliance with the conditions of notice in the phrase which follows: 'and thereafter until three days have elapsed upon receipt of written notice * * *' *By its particular wording, Section 10301(f) can be construed only to denote a definite date of termination specifically set forth in a contract at the time of its execution by the owner. An interpretation such as is contended for by petitioners if adopted would only perpetuate the very indefinite feature which the legislature has said is contrary to the general public welfare.*" (Italics in last two sentences, ours.)

Although this language was used in support of a decision on a business opportunity license, the parallel section of the Real Estate Law concerning real estate brokers, Section 10176(f), reads exactly as does Section 10301(f) except that it refers to "real estate" rather than to "business or business opportunity." It would appear then that the courts' attitude toward the wider field of real estate licensees and any violation of the appropriate section applying to them would be exactly the same.

In view of this decision, it appears that real estate as well as business opportunity brokers should be most careful in their provisions for a date of termination in their exclusive listing contracts, and that some listing contract forms should be discarded without delay.

SELLING CEMETERY LOTS

A real estate broker recently inquired if he would be permitted to sell a group of six cemetery lots belonging to a client. As this client expected to move back to the midwest and all of his family had left California, he desired to dispose of six cemetery lots which he had acquired. The real estate broker asked if his license would legally permit him to sell these lots and charge a commission.

The cemetery brokerage regulations, Sections 10350 through 10462 of the Business and Professions Code, define a cemetery broker as a person who, among other things, negotiates the sale of cemetery property or interest therein for another for compensation. Therefore, a licensed real estate broker is not entitled to act as an agent in the sale of cemetery lots for a compensation without first securing the necessary cemetery broker or salesman license.

There is one exception, namely: If the sale of the cemetery lots is incidental to the sale, lease or exchange of other real estate. As an example, if a person desires to exchange a house and lot, together with some cemetery lots, for a business building, and the value of the cemetery lots is minor compared to the entire value of the exchanged property, the real estate broker could make such a transaction and charge a commission on the value of all property exchanged. This exception is covered by Section 10357 (f) of the Business and Professions Code.

PRACTICE OF LAW

The law of this State specifically prohibits the practice of law by persons who are not members of the State Bar. Just what constitutes the practice of law is perhaps a too lengthy subject to discuss in this item, but generally speaking the giving of legal advice, preparation of legal instruments such as contracts by which legal rights are secured, wills, powers of attorney, etc., may constitute unlawful practice of law.

In the past there has been no objection to real estate brokers completing the necessary standard forms incident to the conduct of their business. It is important, however, that real estate agents guard against the practice of law in the preparation of documents relative to the purchase, sale, exchange or lease of property, particularly if these papers incorporate special provisions. These are matters which require legal training and particular skill.

In the experience of this division, we have encountered numerous instances where the faulty or ambiguous preparation of real property contracts has resulted in severe inconvenience, expense, and litigation involving the buyer or seller.

Brokers and salesmen should also consider the penalties to which they may be subject for unlawful practice of law even though a fee is not charged for the service.

The division still has on hand a limited supply of the Directory of Real Estate Brokers and Salesmen for the license year of 1947-48. Any licensed broker may receive a copy postpaid upon written request to the Sacramento office or by calling in person at any of the branch offices. The Directory for each year is compiled as of October 1st and a new issue will probably not be off the presses until late this year.

ATTEMPTED SUBDIVISION OF BUNGALOW COURTS

A recent superior court decision by Judge W. Turney Fox is interesting to those engaged in the enforcement of city planning ordinances.

The City of Los Angeles has an ordinance limiting the subdivision of single family residence lots to an area of not less than five thousand square feet. Judge Fox upheld the constitutionality of this ordinance, thereby halting the effort of an owner of a bungalow court to subdivide the court into nine different parcels and sell off each bungalow separately.

The owner had argued that the city ordinance interfered with his right to alienate his property as he saw fit. At the same time the court held void, as in indirect effort to circumvent the ordinance, a deal in which the owner had leased single bungalows for a period of 99 years.

Subdivision of bungalow court units during this period of housing shortage has looked attractive to many owners, as the sale by individual units would usually result in a greater total sales price than could be realized by selling the entire property as a unit. Over a year ago the Real Estate Commissioner endeavored to halt this practice by bringing an action to enjoin Embassy Realty Associates from selling individual bungalows from a bungalow court on the ground that they were violating the subdivision provisions of the Real Estate Law. The appellate court in that case reversed the superior court's finding, and held that the subdivision provisions did not apply to improved property. The law has since been amended to include improved property in the definition of a subdivision.

In the Los Angeles case, Judge Fox pointed out that subdividing a bungalow court would result in each owner maintaining his property in a nonuniform state of repair and would generally result in a lessening of property values.

The latest of the attractively printed and designed bulletins issued by the National Institute of Real Estate Brokers of the National Association of Real Estate Boards reached this office recently. During 1947 the institute sponsored a contest for best sales stimulating ideas, and the effectively illustrated June bulletin names the best entries and presents the winning ideas. Several California brokers are on the list.

The Veterans Administration announced that the downward trend in applications for veteran loan guarantees in evidence since last September was reversed for the first time in May when applications exceeded the total of the previous month by 7 percent. However, in May of 1947, 51,000 applications were filed, while in May, 1948, the figure declined to 34,000.

A reprint of the 1948 edition of the Division of Real Estate Reference Book and Guide has just been received from the printer. The popularity of this publication is attested by the necessity for this early reprinting. The publication was completely revised in 1947, revised for 1948 to include law changes, and reprinted with minor changes again at this time.

The latest printing of the Reference Book and Guide is available at \$1.55 (\$1.50 plus 5¢ sales tax) in any office of the division—postage prepaid if a mail order.

NEW HOUSING BILL

The Congress passed, late in its recent regular session, a housing bill expected to promote residential housing in at least two ways:

It will (1) permit the government to buy mortgages guaranteed by the Veterans Administration and the Federal Housing Administration from banks and other lenders, so these lenders will not become overloaded and shut down on credit, and (2) will permit the FHA to insure up to 95 percent loans for nonprofit veterans cooperative housing projects.

Title VI mortgage insurance instituted as a wartime measure expired April 30th and was not renewed by the Congress. It is estimated that about one-third of all housing commenced during its life was financed under Title VI.

According to the Federal Housing and Home Finance Agency, an important difference between Title VI and Title II guarantees is that under Title VI, FHA insured mortgages on dwellings and rental projects up to 90 percent of the "current" cost of construction, which phrasing allows a reflection of contemporary building costs. Title II also provides 90 percent insurance, "but only on the long term economic value" which might be construed to mean smaller commitments. Then too, under Title II the 90 percent insured loan applies only on the first \$6,000 of value; the remainder can be insured to 80 percent of its value.

For the present, it is difficult to perceive what effect, if any, this change in financing will have on large scale builders of residential housing. Some have indicated confident expectations that Title II guaranteed loans will take care of any needful sales financing.

ANTI-TRUST CONSPIRACY CASE DROPPED

A federal district court judge recently sustained a defense motion for directed verdicts of acquittal in the Federal Government's anti-trust suit against the National Association of Real Estate Boards and the Washington (D. C.) Real Estate Board. All those interested in the real estate brokerage business have awaited with considerable concern the outcome of this case since it involved what has come to be a broadly accepted practice. The board schedules are usually followed by nonmembers as well as members. The Justice Department contended that adoption of a schedule of commissions was in effect a conspiracy in unreasonable restraint of trade when the boards agreed to abide by the Code of Ethics of the National Association calling for the observance of a recognized schedule of fees.

The court ruled that an agreement to conform to a commission schedule for brokers, in itself, cannot be held to be an agreement in restraint of trade. It said that charges for personal services in selling real estate are merely charges for aid to clients.

The American Institute of Architects assembled in convention at Denver predicted that the housing shortage will prevail throughout most of the country until at least 1975. This opinion is based on an estimated 30,000,000 population gain in the United States during the next 30 years with resultant demand superimposed on the present general shortage.

HEARTENING FIGURES FOR REAL ESTATE BUSINESS

The California State Chamber of Commerce in a 1948 supplement to its Economic Survey of California released estimates which promise well for the owner of California real estate and for the real estate brokerage business.

Population, currently estimated to be well over 10,000,000, has increased steadily since the war's end despite many predictions of a contrary trend.

An average of 3,660,000 persons were engaged in civilian employment during 1947—3.2 percent more than in 1946 and 46.6 percent more than in 1940. The greatest gain was registered in manufacturing employment, up 80 percent from 1940.

Five thousand two hundred seventy-eight new factories or major expansion of existing facilities were developed from the end of the war through 1947.

The income of California civilians exceeded sixteen billion dollars in 1947—10 percent more than 1946 and a rousing 188.5 percent over 1940.

Per capita income of California was \$1,642—well over the national average.

Farm income in 1947 was approximately \$2,035,000,000.

California, with about 7 percent of the national population, had within its borders approximately 18 percent of the new national residential building in 1946-47.

BUSINESS OPPORTUNITIES

During the past year the number of business opportunity licenses in effect increased in a greater ratio than did real estate licenses. The State Office of the Director of Planning and Research and the State Board of Equalization have released statistics which would indicate a fertile field for the specialist in business opportunity brokerage.

These figures indicate that in Southern California in 1947, 44 percent of all trade outlets underwent a change in legal ownership. This does not mean that 44 out of 100 retail outlets were sold. Changes in legal ownership other than through sale occurred through changes in partnership or corporation makeup, liquidation and failure, although this last accounted for a very small percentage of the total. In Los Angeles County, the highest ratio of turnover was reported in the "meals and drink" business, while the smallest, appropriately enough, was in the "casket and tombstone" business.

Those brokers and salesmen engaged in the sale of business opportunities should exercise care in selling a business which requires that the operator be examined for technical qualifications and licensed by the State. He should make certain that the prospective buyer is aware of the licensing requirements which he will have to meet in order to operate. Among the more common businesses where the purchasers might be ignorant of the licensing requirements are dry-cleaning establishments and beauty shops.

The Attorney General of California announced that his office had dismissed all actions concerning property bought with funds of alien Japanese by persons born in this country of Japanese ancestry. He said that this action on the part of his office was due to a recent Supreme Court decision affecting California's alien land laws.

LICENSING LAWS OF OTHER STATES

The division has had occasion to review the real estate licensing laws of some 34 states, the District of Columbia and the Territory of Hawaii. Most of the codes examined show the strong influence of the California Real Estate Law. This is only to be expected since California was the first state to attempt to regulate by a licensing law the activities of real estate agents, and its law has obviously served as a model for similar legislation elsewhere.

There are a good many differences, however, in the extent of regulation obtaining in the various states and some examples that may be of general interest are mentioned or quoted below.

A number of states require that the applicant for a broker's license must have served as a real estate salesman for periods ranging from six months to two years or have other equivalent experience or special educational qualifications. To quote from Section 6373-30 of the Ohio Real Estate Law:

"If the State Board of Real Estate Examiners is satisfied that the applicant for broker's license * * * has had at least one year's experience full time in real estate business or service, or has been associated as a real estate salesman with a licensed real estate broker for one year, or in lieu of such experience or service, furnishes a certificate that he has passed a real estate course at a recognized educational institution, or has had other real estate experience equivalent thereto at the discretion of the Board of Real Estate Examiners, and evidences such experience by detailed, explanatory affidavit to establish the nature of such real estate experience, it shall admit the applicant * * * to an examination * * *."

Many states require that real estate brokers be bonded and in some cases the requirement extends to the real estate salesman as well. The amount of the bond is usually \$1,000, although in the District of Columbia a broker must be bonded in the amount of \$2,500, and a salesman for \$1,000. In Louisiana a sliding scale is used—\$100 for each 1,000 population in the parish (county) in which the broker is located up to a maximum bond of \$10,000.

Fees charged for original and annual or renewal licenses differ widely in the various states. In Texas, for instance, which state seems to have no examination requirement, the original fee for real estate dealer (broker) or real estate salesman is \$3, and the same amount is charged for renewal of either type of license. On the other hand, Maryland sets a fee of \$25 for the original broker license and for the annual renewal. In Arizona the examination fee for brokers is \$25 in addition to \$25 for the original license and the same amount for annual renewal.

NEW BROKERS

In the near future the newly licensed real estate broker will receive with his license a letter from the California Real Estate Board congratulating him on his attainment and offering him some advice concerning his responsibilities to the public and his relations to his fellow licensees in his new status.

He will be reminded of the ethical and legal implications of the fiduciary position he can assume by virtue of his license as a real estate broker. This letter will be accompanied by a folder containing pertinent excerpts from the Code of Ethics adopted by the National Association of Real Estate Boards.