

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, July, 1952

D. D. WATSON, Commissioner

Listings --- The Foundation of Real Estate Brokerage

Effort Can Be Wasted on Listings of Uncertain Effect; Attorney's Advice Important

A full discussion of the advantages and disadvantages of various types of listings would make a long story. A few comments, however, on the importance of securing a good, signed listing may not be amiss.

Some old-time brokers claim they are content to work on verbal listings. Sometimes they lose a commission as a result, but charge it up to the hazards of the business. They boast they "have never sued or been sued" in connection with listings, and have gotten along pretty well.

To operate in such a manner is their prerogative, since one of the good things about the real estate business is that you can formulate your own policies, as long as they do not run afoul of the law. One result of the industry's education conferences emphasizing the importance of properly prepared listings is that more brokers are making sure they have some assurance that compensation will be forthcoming before devoting time and expense to effecting a sale. There can be no such assurance unless an authorization signed by the party to be charged for the services is secured. The best safeguard, of course, is an exclusive right to sell authorization.

While most experienced brokers understand the difference between an *exclusive right to sell* and an *exclusive agency listing*, many brokers apparently do not. Generally, an ordinary *exclusive agency listing* does not bind the seller to pay a commission if the seller himself effects the sale during the listing contract period.

Occasionally, we run across a listing form which merely recites, "This is an *exclusive listing*." It does not specify whether it is an *exclusive right to sell* or merely an *exclusive agency listing*. Brokers who claim a commission under a mere *exclusive listing* may be rudely awakened when they learn that such a listing is construed to be an *exclusive agency listing* in the absence of a specific *exclusive right to sell* provision.

(Cont. on Page 54, Col. 3)

Needed Salesman Experience

Casual Part-time Selling Will Not Qualify for Broker License

The salesman who has worked on weekends for some broker, or in a "hit and miss fashion" while holding down some other job, will not qualify for real estate broker license examination until he has worked at the real estate business for a sufficient length of time to acquire the equivalent of two years full-time employment.

A broker applicant who bases his qualifying experience on employment as a real estate salesman is required to secure certified statements from his former employing broker or brokers, stating to what extent the salesman devoted time to the business. If the applicant worked as a salesman for only two years and claims full-time employment, certified statements from his employing broker or brokers must indicate that he put in a minimum of 40 hours per week on the job. If the average time devoted to working as a real estate salesman was 20 hours a week, for instance, then four years of licensing as a salesman would be needed to meet the minimum requirement.

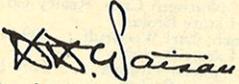
Brokers who furnish these employment certifications are cautioned to exercise care in describing the duration and extent of the salesman's employ-

(Cont. on Page 50, Col. 1)

YOUR AID APPRECIATED

Once again brokers and salesmen have helped to lighten the chore of renewing some 90,000 licenses. This annual task was performed very smoothly again this year due to the fact that applicants, for the most part, followed the instructions printed in the *May Bulletin*.

Again I want to thank you and assure you of my sincere appreciation for your splendid cooperation.


Real Estate Commissioner

KENTUCKY HAS LICENSE LAW

Climaxing several years of campaigning and work by realtors of that state, a new licensing law was recently adopted by the Kentucky legislature. Brokers must post a \$3,000 bond and newcomers to the business must pass a written examination.

REQUESTS FOR 1952-53 DIRECTORY MUST BE MADE IN ADVANCE

As soon as the current license lists have been completed, the printing of the 1952-53 Directory of Brokers and Salesmen licensed by the Division of Real Estate will get underway. If you want a copy of this new directory, please send in your request now so that the printing order can be adjusted to meet the demand.

Each licensed broker is entitled to a free copy of the directory upon his request therefor. Send a postcard or letter asking that a copy be reserved for you. Give your name, business address and license number. Address your request to the Division of Real Estate, 1021 O Street, Sacramento.

UNLESS YOUR REQUEST IS RECEIVED BY OCTOBER 1, 1952, WE CANNOT GUARANTEE A DIRECTORY WILL BE AVAILABLE FOR YOU.

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Sacramento, July, 1952

Published Bimonthly by the

DIVISION OF REAL ESTATE

STATE OF CALIFORNIA

EARL WARREN, Governor

D. D. WATSON

Real Estate Commissioner

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Experience Qualification

(Cont. from Page 49, Col. 3)

ment. In many cases, due probably to carelessness and ill-kept records, the broker's statement is at wide variance with our records. **The broker who is not truthful in his statement regarding the employment of the salesman might be considered to have attempted to fraudulently assist the applicant in procuring a license in violation of Section 10177(a) of the Real Estate Law.**

The question sometimes arises as to whether or not the salesman who is attempting to qualify for real estate broker license will be given additional credit if he has worked more than the normal 40 hours a week at selling real estate. Many a good salesman devotes far more than 40 hours per week to his work, and some have concluded that they accrue more qualification time as they exceed the prescribed minimum hours. This is not the case—the applicant must have been licensed for at least two full years regardless of how many hours over 40 per week he may have devoted to his work as salesman.

DISCIPLINARY ACTION—APRIL, MAY

NOTE: Any person whose license has been suspended or revoked, or whose license application has been denied, has the right to seek a court review. This must usually be done within 30 days after the effective date of the commissioner's decision.

Therefore a list of actions is not published in this *Bulletin* until the period allowed for court appeal has expired; or if an appeal is taken, until a final determination of the court action. A list of persons to whom licenses are denied upon application is not published.

LICENSES REVOKED DURING APRIL AND MAY, 1952

Name	Address	Effective date	Violation
Black, William Harold..... Db a William H. Black Realty Real Estate Broker	2096 W. 30th St., Los Angeles....	4/ 4/52	Sec. 10177.5
Harding, Emory Milton..... Real Estate Broker	1252 N. Virgil Ave., Los Angeles..	4/ 4/52	Sec. 10177.5
Nielsen, William E..... Real Estate Broker	324 W. Foothill Blvd., Azusa.....	4/17/52	Sec. 10177(b)
King, Charles Henry..... Db a C. King Realty Co. Real Estate Broker Business Opportunity Broker	605 Divisadero St., San Francisco	5/31/52 (Restricted licenses issued in lieu)	Secs. 10177 (b), (f) & 10302 (b), (e)

LICENSES SUSPENDED DURING APRIL AND MAY, 1952

Name	Address	Effective date and term	Violation
Wisner, Bryce Durwood..... Db a East-West Realty Real Estate Broker	2952 S. Western Ave., Los Angeles	4/ 4/52 90 days	Sec. 10177.5
Bequette, James Hubert..... Real Estate Salesman	918 Ninth St., Sacramento.....	4/ 7/52 30 days	Secs. 10176 (i) & 10177 (f)
Bistor, Zelma Gay..... Pres—Northern Calif. Realty Co. Real Estate Broker	141 Castro St., Hayward.....	4/ 8/52 180 days	Secs. 10176 (a), (b), (g) & 10177 (f)
Schellbach, Carl Woodruff .. Real Estate Broker	409 N. Mission Dr., San Gabriel ..	4/ 9/52 30 days	Sec. 10177 (b)
Powers, Amelia Virginia..... Real Estate Broker Business Opportunity Broker	5252 Huntington Dr., Los Angeles.	4/ 9/52 30 days	Secs. 10177 (b) & 10302 (b)
Reilly, Henry Anthony, Jr.... Db a Harry A. Reilly, Jr. Real Estate Broker	636 Hyde St., San Francisco.....	4/11/52 60 days	Secs. 10176 (e), (i) & 10177 (f)
Larkin, Wayne Stevens..... Db a W. S. Larkin & Co. Real Estate Broker	4056 Foothill Blvd., Oakland.....	4/18/52 30 days	Sec. 10177 (b) & (f)
Britton, Dan Clark..... Real Estate Salesman	1633 L St., Merced.....	5/10/52 6 months	Secs. 10142; 10176 (i) & 10177 (f)

University Schedules Real Estate Round Table Meeting

The University of California will hold a one-day university real estate round table on Saturday, October 4th, preliminary to the annual convention of the California Real Estate Association to be held in San Francisco October 6th to 9th. The purpose of the round table will be to bring to California realtors the results of recent university research in the real estate field. Attendance will be limited to one representative from each real estate board in the State.

Mr. Leland P. Reeder, Chairman of the Educational Committee of the California Real Estate Association and of the National Association of Real Estate Boards, will open the meeting with a

welcome to realtors in attendance. The program for the day will include a report on university progress in the professionalization of the real estate business, followed by a series of four round table discussions led by university faculty and others on the following subjects: California Housing Market Developments, Decentralization and Central Business Districts, City Planning and Highway Development, and Charting the Real Estate Market.

This round table meeting will provide an opportunity for a selected group to participate in a full day's discussion of research problems of interest to realtors.

Ruling Made on Encroachment of Improvements

Courts Will Decide Each Case Individually Considering All the Equities

If you find that your neighbor has built a structure so that it encroaches upon your land, can you be sure that a court would order him to remove that part of the structure which encroaches?

In a recent case decided by the Third District Appellate Court, a lot owner had built a small garage and carport which extended over onto the neighboring lot a few feet. The builder of the improvements, when purchasing his lot many years previously, had had this particular boundary line pointed out by the agent, and assumed it was correct. He built his improvements on the basis of this incorrect boundary. Many years later, the adjoining lot was sold, and when the new owner proposed to build, he discovered the discrepancy and brought suit to enjoin his neighbor from maintaining the improvements on his lot.

The trial court ruled that the defendant could pay the plaintiff the sum of \$250 within 20 days, and that on compliance therewith defendant would be declared to be the owner of the land in question; but in event of default in such payment, that plaintiff has judgment quieting his title, that the encroachments be removed from his property, and that defendant pay him the sum of \$1 as damages. *The court ruling was apparently on the basis that the removal of the improvements would cause defendant to suffer greater loss than the disputed land was worth.*

The appellate court reversed this decision, on the grounds that the loss of the disputed land to the plaintiff would cause him to suffer to a greater extent than would be suffered by the defendant if he removed the improvements.

The court stated: *"It is the general rule in this State that while the right to injunctive relief under proper circumstances is well established, its issuance is largely discretionary with the court and depends upon a consideration of all the equities between the parties. (1 Cal. Jur. 2d, 740.) In other words, no hard, fast rule can be adopted which will fit all cases, and hence each must be determined upon its own peculiar facts."* (Case reported: 111 A.C.A., 551.)

BROKER SUCCESSFULLY SUES PURCHASER FOR COMMISSION

The March 31st issue of NAREB *Headlines* reported that a real estate broker had successfully sued a purchaser for commission, *although the broker was employed by the seller.* The case has stirred up considerable interest in national real estate circles and, through the courtesy of Commissioner Roy C. Carpenter of the Ohio Board of Real Estate Examiners, a copy of a letter written to the Cleveland Real Estate Board by the attorneys for the plaintiff has been received. The letter gives the highlights of the case, but does not state whether appeal was taken from the decision.

The letter says in part that: "At trial, the broker testified that the defendant (the purchaser) secured from him certain pertinent information relative to the property; that after having secured such information and viewing the property on his own, he professed to be totally uninterested in said building and refused to enter into any discussion with the broker concerning its possible purchase. However, the broker learned

and so testified that even though denying any interest the defendant was actually, at the time, in direct negotiation with the seller and that he did eventually purchase the property circumventing the plaintiff broker.

"This suit, said to be one of the first of its kind in Ohio, is based upon the theory that a prospective purchaser who perpetrates a fraud upon a broker thereby preventing the broker from pursuing his lawful and legitimate rights under his contract of employment with the seller does commit an actionable wrong against the broker. It should be observed that this suit is not based upon contract, but is, in actuality, a tort action which arises from the interference of one party with the contractual rights of another party, the interference in this case being the preventing of the broker from perfecting his position as a procuring cause so as to earn a rightful commission."

[Case reported is *Shlesinger v. Zeilengold* (Ohio).]

REAL ESTATE APPRAISAL COURSES

The American Institute of Real Estate Appraisers has announced that its popular appraisal courses will be offered again this year at the University of Southern California.

Enrollment in Real Estate Appraisal I, which runs from August 4th through August 18th, is open to any mature person whose education is equivalent to graduation from high school. The course covers the fundamentals and principles of appraising urban and rural properties and is illustrated by demonstration case-studies.

Real Estate Appraisal II—Urban, given August 18th through August 30th, is an advanced case-study course and is open only to those who have completed Real Estate Appraisal I, or who have at least five years' real estate experience or who can pass an entrance examination.

Both courses are open to anyone who has the necessary qualifications regardless of affiliation with the American Institute of Real Estate Appraisers or the National Association of Real Estate Boards. Since their inception over 11,000 individuals have taken the courses, according to institute officials.

Address requests for information to the American Institute of Real Estate Appraisers, 22 W. Monroe Street, Chicago, Illinois, or inquire at the University of Southern California.

MAKING MONEY

"Money-making which has attracted the best American brains in the past, and which has made this Country the most powerful industrial nation in the world and which has provided its people with standards of living unsurpassed by any other parts of the earth, is under fire today—under fire from many quarters.

"There are those within our gates who would abolish the American system of free enterprise altogether. Profit-making is not a transgression of Divine law; it is not sinful; it is not something to be condoned; it is not a species of human conduct that leads to moral degradation. It is an undertaking that is essential to attainment of the good life." (Walter J. Matherly—Fla. U.)

Combination Sale Requires License

Commission Claim Denied on Sale of Personal Property Coupled With Realty

A person who acts as agent for the sale of personal property, which sale is contingent upon the sale or leasing of real property, cannot recover a commission through court action unless he is properly licensed. The district court of appeals so ruled in the case *Abrams v. Guston*, 110 A.C.A. 691.

In this case, the claimant of the commission undertook to negotiate with various persons the sale of mining equipment together with a 20-year lease on the land upon which the equipment was located. He held no broker or salesman license, but claimed he was promised a commission if the sale of the property was made. He drew and negotiated an option which was exercised, and the lease and mining equipment were sold for \$35,000. The claimant maintained that he was not acting as a broker, but merely as a "middleman and adviser." The lower court gave him judgment for a commission, but the appellate court reversed the judgment, stating:

"There is no merit in the contention that plaintiff was not a broker but merely a middle-

man and adviser to defendant, for it is conceded that he participated in the preparation of an option which was given to Mr. Carder. The law is established that if a broker takes any part in the negotiations, no matter how slight, he is not a middleman but is a broker [*Rhode v. Bartholomew*, 94 Cal. App. 2d 272, 280 (210 P. 2d 768)]. Likewise, without merit is plaintiff's claim that he was entitled to a commission for the sale of the personal property even though he might not be entitled to a commission for the sale of the realty. In the present case the sale of the realty and the personal property located thereon constituted one complete and entire transaction, it being evident that the mill and machinery located on the leased property were of value to the purchaser only if he obtained the lease upon the property too. Therefore, the transaction was not a severable one as in *Marks v. Walter G. McCarty Corp.*, 33 Cal. 2d 814, 824 (205 P. 2d 1025) in which case the real estate and the personal property were each given a separate sales price in the escrow." JUDGMENT WAS REVERSED.

Careless Use of Forms Breeds Complaints and Lawsuits

(From C. R. E. A. Educational and Sales Conference Discussions)

One of the principal causes for complaints to the Real Estate Commissioner, as well as loss of deals and lawsuits, is the careless completion of standard forms used in the business, particularly listing agreements, sales agreements, and exchange agreements.

Unfortunately, some of the completed forms which have been called to the commissioner's attention in connection with complaints indicate gross ignorance and carelessness on the part of the agent who prepared them. When principals are induced by the broker or salesman to sign such agreements, trouble and dissension are invited.

A good contract is one that is definite and certain and not subject to contingencies.

When you draw a listing agreement, which is nothing but an employment contract, the liability of the owner of the property is imposed and measured by the contract. *If the conditions under which he is to pay a commission are not provided for definitely and certainly, his liability is not definite and*

certain. The same is true of a deposit receipt, a contract of sale, lease or any other agreement.

A deposit receipt or contract of sale which leaves wide open provisions usually results in further work and worry for the agent; such contingencies as "subject to further inspection of the property," "obtaining a satisfactory loan," or "subject to approval of the books by buyer" definitely offer the buyer or seller an "out."

The deposit receipt should be drawn in such a manner that it may be handed to an escrow agent and the entire instruction drawn from it without any further information. For the agent's protection, the deposit receipt should show whether the deposit was received as cash, a check or a note. In receipting for a check, it would be well to note the kind of check it is and the bank on which it is drawn.

Remember a good contract is one that is definite and certain, one not subject to contingencies. Anything less is not a contract but is the basis for future negotiation.

Listing Racket Condemned Commissioner Orders Check of "Send-out Slip" Practice

Complaints are received from time to time claiming unfair practices engaged in by some business opportunity brokers in the use of "send-out slips."

These forms ordinarily are contracts which the broker requires the prospective purchaser of a business to sign before giving him listings. The usual form provides that the prospective purchaser agrees to pay the broker a commission if he buys any of the businesses set forth on the form, except through that particular broker's office. They are designed to protect the broker against the prospect dealing direct with the owner or through some competitor's office. In some respects, the use of such forms may be justified, as many prospective purchasers of small businesses connive with the owners to avoid payment of a commission, after they have been brought together through the broker's efforts.

On the other hand, these forms provide a means of engaging in unfair and even dishonest practice. They have been used in connection with businesses which the broker had no authority to offer for sale. In at least one case, the court decided a broker had added the name of a business after the prospect had signed the form. Suits have been brought by brokers to recover commissions on the sales of businesses which they were never authorized to sell and which may have been sold two or three times between the time of the "send-out slip" contract and the final purchase.

Fortunately, the courts have taken a dim view of such suits, but, regardless of the outcome, some purchasers have been put to unwarranted trouble and expense to defend their positions.

This type of purchaser-broker contract has never been employed generally in the real estate business, but has been confined largely to business opportunity sales. The Real Estate Commissioner has ordered intensive investigation of complaints concerning these contracts and, where dishonest practices concerning their use are revealed, he will invoke the dishonesty and misrepresentation provisions of the license law.

REAL ESTATE PROGRAM—UNIVERSITY OF CALIFORNIA

Background of the Program

The University of California is proving to be a recognized leader in the real estate educational field. This work has been greatly accelerated as a result of moneys granted by the State Legislature from the Division of Real Estate License Fund. The program is entering its third year of activities. It has been divided into two major parts—the on-campus program which is conducted at Berkeley and Los Angeles and the off-campus program conducted through university extension courses throughout the State.

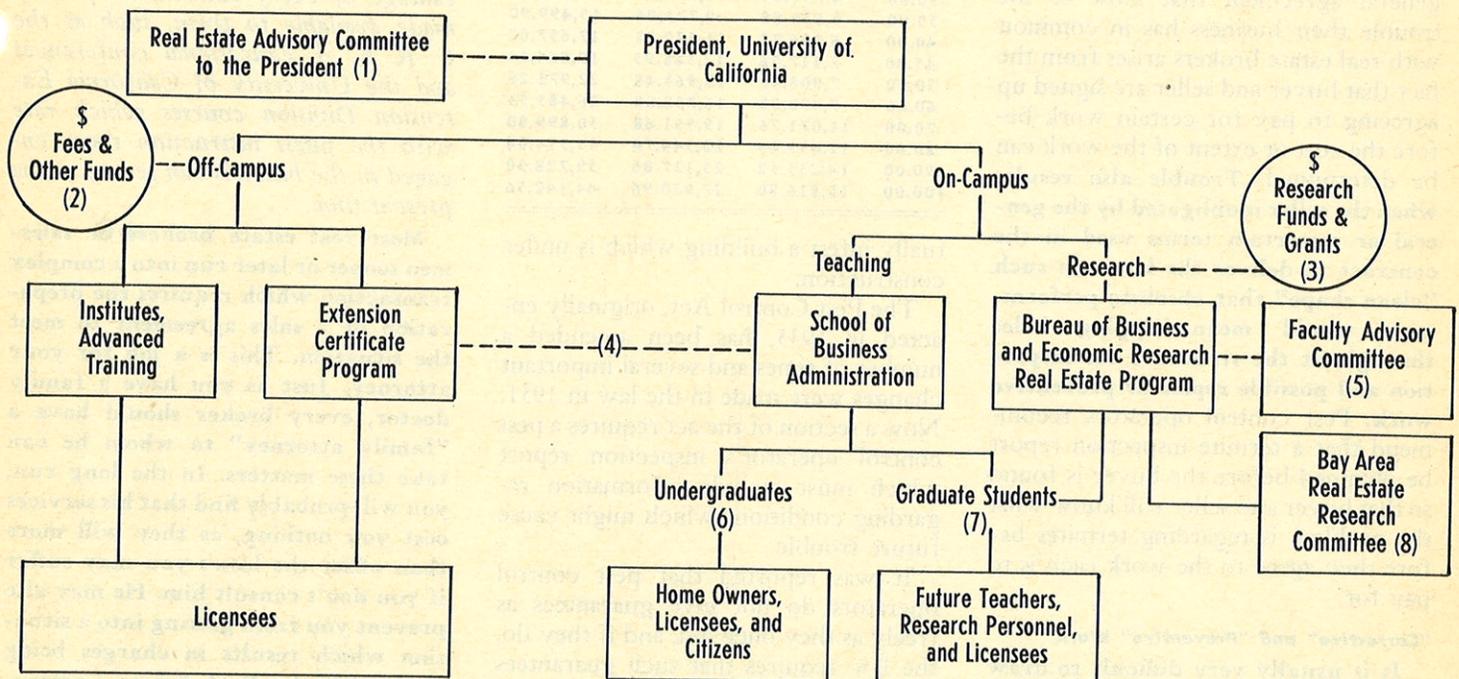
The on-campus real estate program is devoted mainly to teaching and research. Progress in the on-campus real estate curricula on the two campuses has been considerable. Five years ago no real estate courses were taught at Berkeley and there was only one part-time real estate lecturer at the Los Angeles campus. Little basic material for the teaching of real estate at the university level was available at the time. Now there are five courses in real estate offered at Berkeley and four at U. C. L. A. The curricula include about 20 other courses in related fields which provide students majoring in real estate with a rounded background.

In addition, the research portion of the program has become well established and is contributing to the necessary teaching materials and is providing further knowledge relating to the subject of real estate. Research work is conducted under the auspices of the existing Bureau of Business and Economic Research which makes possible minimum administrative costs and allows integration with projects in other related fields.

Off-campus the university extension Real Estate Certificate Program is about to enter its third year. Large and increasing enrollment in 22 areas throughout the State has demonstrated the enthusiasm with which licensees and others have received the program.

Chart of Program

The accompanying chart has been designed to provide a clear picture of the structural setup of the University of California's real estate program and its relationship to licensees and to the general public.



(1) Established 1949 with three-year grant from State Legislature of \$150,000, the use of the funds subject to the approval of an Advisory Committee to the President of the University. Members of the committee include prominent realtors and mortgage bankers, deans of the two University Schools of Business Administration, the Director of University Extension, other members of the faculty, the Commissioner of Real Estate, members of the State Legislature, and the President of the California Real Estate Association.

(2) Tuition fees and funds allotted by the Real Estate Advisory Committee.

(3) Portion of the budget earmarked for research and in addition funds supplied by contract research and special grants.

(4) Business Administration faculty teach in extension, advise on curriculum, and aid in preparation of syllabi.

(5) Subcommittee of the bureau composed of faculty members from other departments for the purpose of approving research projects and guiding the Real Estate Research Program.

(6) Students receiving the B.S. degree with specialization in real estate are eligible to take brokers

examination without the two years general real estate experience on approval of a committee of the State Real Estate Board.

(7) Graduate students participate in the Bureau's Research Program as research assistants to faculty members. Thesis topics contribute to solutions of basic problems in the field and provide instruction materials.

(8) Jointly sponsored by the University and the San Francisco Bay Area Council for the purpose of developing and distributing factual information on conditions affecting real estate, mortgage lending, and related problems in the nine bay area counties.

The Termite Problem in Real Estate Contracts

Real Estate Brokers and Pest Control Operators Face Common Difficulties

The broker is rarely, except in the case of new construction, justified in writing into a deposit receipt a clause such as "free and clear of termites, dry rot and fungus growth," said Mr. J. F. Graham, Registrar of the Structural Pest Control Board in a recent talk to the Deputy Real Estate Commissioners in Los Angeles. He said that under the best of conditions the licensed pest control operator can only inspect the accessible portions of the building and termites might be found later in areas which were not inspected and could not be inspected.

The damage done by termites is much overestimated according to a well-known pest control operator who also spoke at the same meeting. He stated that 95 percent of damage to houses is due to dry rot and that subterranean termites usually go along with dry rot, but they themselves cause comparatively little damage. He added that dry wood termites which infest attics rarely cause structural damage.

Common Causes of Misunderstandings

Pest control operators seem to be in general agreement that most of the trouble their business has in common with real estate brokers arises from the fact that buyer and seller are signed up agreeing to pay for certain work before the cost or extent of the work can be determined. Trouble also results when the seller is obligated by the general or uncertain terms used in the contract to deliver the house in such "clean shape" that absolute performance would mean ripping holes throughout the structure for inspection and possible repair or preventive work. Pest control operators recommend that a termite inspection report be obtained before the buyer is found so that buyer and seller will know what the problem is regarding termites before they agree to the work each is to pay for.

"Corrective" and "Preventive" Work

It is usually very difficult to draw a sharp line between "corrective" and "preventive" work. Even after competent "preventive" work is done, new trouble can develop in from two to six months. A leaking roof, or fungus and dry rot growth inside a wall can cause trouble quickly. Experts say that in the fall of the year, dry wood termites migrate by flying and can ac-

COST OF RENTING

(The following "Table for Renters" has been published by the Union Title Insurance and Trust Company of San Diego, and by the Realty Escrow Review, Los Angeles.)

It is said that nearly one-half the families of the United States spend enough money on rent in a lifetime to pay for four good, substantial homes for each renter. The following table shows what monthly rent checks total in 10, 15, and 20 years, with compound interest at 6 percent per annum:

Monthly rent	10 Years	15 Years	20 Years
\$20.00	\$3,163.36	\$5,586.19	\$8,838.51
25.00	3,954.20	6,982.74	11,035.64
30.00	4,754.04	8,379.29	13,242.77
35.00	5,535.88	9,775.84	15,499.90
40.00	6,326.72	11,172.33	17,657.02
45.00	7,117.56	12,568.93	19,864.15
50.00	7,908.40	13,963.48	22,971.28
60.00	9,490.08	16,758.58	26,485.53
70.00	11,071.76	19,551.68	30,899.80
80.00	12,653.44	22,344.76	35,314.04
90.00	14,235.12	25,137.86	39,728.30
100.00	15,816.80	27,930.96	44,142.56

tually infest a building which is under construction.

The Pest Control Act, originally enacted in 1935, has been amended a number of times and several important changes were made in the law in 1951. Now a section of the act requires a pest control operator's inspection report which must include information regarding conditions which might cause future trouble.

It was reported that pest control operators do not give guarantees as freely as they once did, and if they do, the law requires that such guarantees be in specific terms. The Pest Control Act now also defines and outlines what is meant by "controlled service." This service consists of regular checks after an original report is made and, if the reinspection discloses conditions different from those outlined in the original report, a new report must be made to the owner.

WHAT IS THE ZONING?

Recently, a buyer sued and was successful in rescinding a real estate transaction on the grounds that the broker had misrepresented that the property was unrestricted and could be used for business.

Not only were the broker's principal and the broker himself out of pocket, but the representation may be basis for action against the broker's license.

Great care should be taken by brokers and salesmen when making definite assurances that property is zoned to permit a particular use. General judgment and knowledge of the community cannot always be relied upon, and specific information from the city or county authorities should be sought. This is not an isolated instance, as such complaints are by no means uncommon.

Types of Listings

(Cont. from Page 49, Col. 1)

All of which leads us to suggest that brokers and salesmen should take advantage of every educational facility made available to them, such as the C. R. E. A. educational conferences and the University of California Extension Division courses which rate with the finest instruction those engaged in the business can secure at the present time.

Most real estate brokers or salesmen sooner or later run into a complex transaction which requires the preparation of a sales agreement to meet the situation. This is a job for your attorney. Just as you have a family doctor, every broker should have a "family attorney" to whom he can take these matters. In the long run, you will probably find that his services cost you nothing, as they will more than offset the losses you may suffer if you don't consult him. He may also prevent you from getting into a situation which results in charges being filed with the Real Estate Commissioner.

Attorneys quite often employ real estate people to assist them when their clients have a real estate problem, realizing real estate is a specialized business and that the real estate broker's advice and counsel can be invaluable. It works both ways.

Full Disclosure Advantageous

Questionable Practices in Securing Listing May Result in Formal Hearing

If a real estate broker can convince the court that he made full disclosure to his principal before he purchased property listed with him by the principal, and the price he paid was adequate, he may be successful in contesting an action to set the transaction aside, or he may be successful in obtaining specific performance.

In *Fisher v. Losey*, 78 C. A. 2d, 121, a real estate broker was successful in enforcing his contract under substantially the following conditions. The broker falsely represented to the seller that he had a purchaser in order to obtain a listing. Later, he revealed to the seller that he himself was the purchaser he referred to, and induced the seller to sign a sales contract. Shortly thereafter, the seller made an investigation and came to the conclusion that the land was worth more than the broker had offered, so he refused to deliver.

The court held in this case that the broker was entitled to delivery of the land, although he might have been guilty of questionable practice, because he had made full disclosure that he in truth and fact was the purchaser before the contract was signed, and because the price was adequate in this case.

Civil aspects of such cases are one thing, and the commissioner's viewpoint another. The commissioner might consider such practice on the part of the broker as being in violation of Sections 10176(a), 10176(i) and 10177(f) of the license law.

TAXES AND INTEREST

The prospective home buyer should be interested to know that the amount he pays for real estate taxes and the amount of his mortgage interest payments will be deductible when he figures his federal and state income taxes. At a 5 percent rate, the interest payments on a 25-year term \$8,000 trust deed amount to about \$400 a year during the first few years. These interest payments may be deducted from gross income by the homeowner.

Ruling Aids Enforcement of Real Estate Law

Court Sustains License Revocations in Test of Important Disciplinary Provisions

An important superior court decision in Los Angeles County, handed down by Judge Frank G. Swain, was announced recently. It involved a writ action by a man and wife team of real estate brokers against D. D. Watson, Real Estate Commissioner, to set aside the latter's ruling to revoke their licenses. At this writing, the case has not been heard on appeal but a petition to stay the revocation has been denied.

At the hearing on their licenses, the brokers were alleged to have defrauded an elderly woman whose understanding of English was limited. In buying her property on their own account, they represented to her that she was receiving a first trust deed as part payment, whereas it turned out that second and third trust deeds were given. For some time, they succeeded in concealing the fact that the notes were not secured by first trust deeds and, in the court action, raised the point that the three-year statute of limitations had expired, which would bar the Real Estate Commissioner from taking action.

The court ruled, however, that the three years did not start to run until the fraud was discovered by the victim. The court further found that the filing of the accusation by the commissioner suspended the running of the statute of limitations.

These two latter findings of the court are particularly important in proceeding against real estate brokers

and salesmen who have engaged in fraudulent practices, as it indicates that the date of discovery starts the three-year period in which the commissioner may act and, furthermore, if his accusation is issued within the three-year period, it prevents the expiration of the time limit in which he must make a finding after hearing.

The decision is also interesting in that it rules on Section 10177(f) of the Real Estate Law, which provides that the Real Estate Commissioner can revoke or suspend a license for the same reasons that he could deny issuance of the license originally. In other words, this section provides for a penalty for acts which were not done as an agent. In the case here discussed the brokers acted as principals and personally engaged in the transaction as buyers; while they started out as agents, they ended up as the purchasers of the property.

(The case is No. 590095, Los Angeles Superior Court.)

PROFESSIONAL ASPECTS OF REAL ESTATE BUSINESS

(Excerpt from Florida Supreme Court Decision, as Published in the Minneapolis Realtor)

"The real estate business is not an avenue by which one may practice the tricks of his trade or prey upon the innocent and unsuspecting purchaser, nor is it a cloak to cover fraud and deception, or a means for designing persons to short-cut those who would deal squarely and in good faith. It is indeed a highly respectable business or profession; its ethics are well defined and presumed to be known to those who patronize or engage in that business.

"No business known to modern society has a longer or more respectable history. Real estate is a primary security for credit in all the civilized countries of the earth, and the real estate broker in our times, and long has been, the medium through which, annually, many millions of dollars in earnings and savings are secured or invested.

"He is the agent of his principal in every sense, and when that relation is undertaken, a fiduciary relation is created which bars the agent from becoming interested in the business or property antagonistic to his principal without his knowledge or consent. Every man, in other words, to whom a business is entrusted by another, has a trust to perform; and every man is a trustee whose business is to advise concerning or to operate the business for another."

ABOUT CLASSIFIED ADS

Neither the law nor the rules of the division specifically require an advertiser to use the words "licensed real estate broker" in classified ads. However, if the broker or salesman misrepresents his position when contacted by a prospect, that is another matter. This same point was discussed in a recent issue of the *Bulletin* under the heading of "Blind Advertising."

In certain ads submitted to us, we note that some brokers used the term "real estate service" or some other wording such as "property loans and investments" in connection with their names. Such phraseology would appear to indicate that the advertisers were engaged in the real estate business, and that no deception was intended.

If the broker misrepresents his position to those answering blind ads, the division will definitely be concerned.

On the whole question, if the real estate industry feels that blind advertising should be stopped, then the industry should initiate legislation prohibiting the practice.

Subdivider Pleads Guilty

Lot Sales Without Filing Subdivision Results in Prosecution

Changing his plea from not guilty to guilty, John H. Blair, subdivider of a tract in Nichols Canyon in the Hollywood Hills, appeared in Division 7, Los Angeles Municipal Court, on July 2d, before Judge Leroy Dawson. Hearing on probation and sentence was set for a later date in July.

According to the complaint, Blair sold lots to nine different purchasers on the representation that his map was approved and that he would install street improvements.

According to the complaint, Blair was not successful in getting his map approved, for the reason that the health department, planning commission, and city council refused to permit the installation of cesspools or septic tanks in the canyon, where the steep slopes would cause unhealthy seepage. Blair would not agree to install public sewers.

Because of his previous experience, the subdivider could hardly plead ignorance of the legal requirements to file a map and submit the project to the Real Estate Commissioner.

The criminal complaint against Blair was filed by a deputy real estate commissioner after the nine buyers, who had paid from \$6,000 to \$14,000 each for their lots, were unable to secure building permits.

NEW WATER DISTRICTS

A word of caution was issued by Commissioner D. D. Watson recently, based upon reports that certain brokers were making careless predictions concerning the availability of water in the new El Cajon Irrigation District of San Diego County. As a matter of fact, investigation indicates that no claim for immediate service is warranted. The district at present does not have water allocated by the Water Authority, and has not at this date completed arrangements for any temporary supplies.

"I can understand the enthusiasm of brokers and property owners over the completion of arrangements for the formation of a new district such as this," the commissioner stated. "However, careless promises not based upon accurate information, could result in charges of misrepresentation against brokers and possible suits against property owners who give definite assurances."

Division Opens New Fresno Office

The Division of Real Estate has established a full-time branch office at 629 Rowell Bldg., Fresno, with Senior Deputy John S. McVay in charge. This new branch office is expected to provide more efficient service to licensees and the public in the Southern San Joaquin Valley. Formerly the area was served by a part-time office and a deputy out of the Sacramento office.

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