

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

GOODWIN J. KNIGHT, Governor

Sacramento, July, 1954

D. D. WATSON, Commissioner

Salesman's Fraud Costly to Broker

Arizona Case Illustrates Brokers' Responsibility for Acts of Employed Salesmen

A 1953 decision by the Arizona Supreme Court illustrates the great care a broker must take in employing salesmen. We have stressed the fact previously that the broker, who indiscriminately hires any salesman who comes along without investigating his background, may find himself financially liable for the salesman's misdeeds.

It emphasizes the importance of the fact that the salesman application which the broker signs carries a statement that the broker has investigated the salesman and recommends that the license be issued.

The Arizona case is *George E. Christensen et al. v. W. C. Pryor et al.*, reported in 255 P.(2d) 195, 75 Ariz. 260, which was decided on March 23, 1953.

The case involved a suit to recover damages against a broker and his licensed salesman. The claimant alleged that he was entitled to a refund of \$11,000, representing \$1,000 commission paid to the salesman and \$10,000 secret profit received by the salesman on the sale and not disclosed. The salesman absconded with the \$11,000 and, although he was named as a party defendant, no service was had upon him.

Salesman Defrauded Sellers

In substance, the salesman counseled the complainants to sell a trailer court for \$40,000. At the very moment, the salesman had a prospect willing to pay \$50,000, and the deal was consummated with the sellers believing the purchaser was paying \$40,000. After finding out the true facts, the claimants brought the aforementioned suit in the courts of Maricopa County, Arizona. The proof showed that the employing broker had no actual knowledge of any of the representations made by his salesman to the plaintiff-claimants. Even though conveyance of title was arranged through a fictitious person, the proof

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TO ALL LICENSEES THANK YOU!

I want to express my sincere thanks to all licensees for the fine cooperation which made it possible for us to handle the heavy volume of license renewal work with reasonable dispatch and accuracy.

It is believed (final figures are not available as we go to press) that about 90 percent of the more than 112,000 licenses of all types issued in 1953-54 were renewed for the current license year. Only the full cooperation of licensees, who followed renewal instructions carefully, made it possible for us to handle this volume on top of the regular workload.

Again my thanks and sincere appreciation.



1953-54 High Year for Subdivisions

Another new record in subdivision activity was set in California during the fiscal year ending June 30, 1954, when 2,542 new tracts were filed with the Division of Real Estate for inspection and Commissioner's Public Report. This was an increase of 5.1 percent over the 2,418 subdivisions filed in the previous peak year of 1952-53.

Subdivision filings have averaged 212 a month for the past year, but June, 1954, exceeded this average with 258 new filings, compared with 224 in the same month last year—an increase of 15 percent.

Wm. J. "Bill" Davis Appointed To State Real Estate Board By Gov. Goodwin J. Knight

Governor Knight last month appointed Wm. J. "Bill" Davis of San Francisco to fill the vacancy on the State Real Estate Board caused by the resignation of Mr. Chester MacPhee, member of the board for almost eight years, who was named San Francisco Collector of Customs by President Eisenhower.

In real estate since 1923, Mr. Davis was one of the founders and is a past president of the Real Estate Association of San Francisco, which merged with the San Francisco Real Estate Board in 1951 to form the fourth largest real estate board in the Nation.

One of the founders of the Multiple Listing Service of San Francisco, he was its president in 1951. Currently he is chairman of both the Professional Conduct Committee of Multiple Listing Service of San Francisco and of the Ethics and Professional Practices Committee of the San Francisco Real Estate Board.

"Bill" Davis entered military service from Colorado College in 1917, emerging from World War I as a Captain, Infantry. Presently owning and operating two offices in San Francisco, Mr. Davis still has managed to give liberally of his time throughout the years toward the betterment of the real estate industry and its service to the public.

Upon notification of his appointment to the State Real Estate Board, "Bill" Davis expressed his appreciation to the Governor for the "honor accorded him." He said, "I will give liberally of my time whenever needed by the Division of Real Estate, and I hope that my experience in many phases of the real estate industry will help me to contribute to the advancement of the interests of the public and of my chosen profession."

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Sacramento, July, 1954

Published Bimonthly by the
DIVISION OF REAL ESTATE

STATE OF CALIFORNIA
GOODWIN J. KNIGHT, Governor

D. D. WATSON
Real Estate Commissioner

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CHANGING YOUR LICENSE

When you mail in a license for cancellation, change of address, or for any other reason, be sure to accompany it by a signed memorandum stating exactly what you want done. Of course, if a fee is involved, it should be sent with the instructions.

If you personally visit the office to make a change, be sure to bring your present license and pocket card with you. If you send someone else to the office to attend to the matter, be sure to give them a signed memorandum instructing the division what to do.

The division will not change your license in any manner without your personal authorization. Many licensees send someone else to attend to the change without furnishing them written instructions. The division will not make the change upon someone else's say-so. You can see the reason for this. Someone might come in and cancel your license without your knowledge, either through error or maliciousness.

DISCIPLINARY ACTION

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

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

LICENSES REVOKED FROM APRIL 1 THROUGH JUNE 20, 1954

Name	Address	Effective date	Violation
Wilderson, Lawrence..... Real Estate Salesman	2741 California St., Berkeley.....	4/ 5/54 (Granted right to restricted license)	Secs. 10141; 10176 (a), (g), (i); & 10177 (d), (f)
Winbourne, Tom Ballard..... dba M-I Realty Co. Real Estate Broker	11452 E. Thienes Ave., El Monte	4/ 6/54 (Granted right to restricted license)	Secs. 10176 (i) & 10177 (f)
Archie, Bennie Lee, Jr..... Real Estate Salesman	4244 Monroe St., Los Angeles...	4/ 6/54	Secs. 10176 (a), (i) & 10177 (d), (f)
Stephens, Arlie Preston..... Business Opportunity Broker	700 Oakford Dr., Los Angeles...	4/ 6/54	Secs. 10287; 10302 (d) & Sec. 2771 of R. E. Comm. Rules and Regulations
Bedford, Isabel Julia..... Real Estate Broker	3142 Horton St., San Diego.....	4/ 6/54	Secs. 10176 (a), (d), (i) & 10177 (f)
Donegan, James Joseph..... Real Estate Broker Business Opportunity Broker	3846 Wilshire Blvd., Los Angeles	4/ 6/54	Secs. 10177 (b), (f) & 10302 (b), (e)
Christensen, Charles Peter..... Real Estate Broker	Rm. 11, 715 12th St., Modesto...	4/13/54	Secs. 10160; 10162; 10164 & 10177 (d), (f)
Trudgeon, Ernest Lee..... Real Estate Broker	5200 W. Pico Blvd., Los Angeles	4/16/54	Secs. 10176 (a), (i) & 10177 (f)
MacLellan, George W..... Real Estate Broker	1741 Hillside Rd., Santa Barbara	4/16/54	Secs. 10176 (a), (i) & 10177 (f)
Hampton, Elmer Clarence..... Real Estate Salesman	7301 Atlantic Ave., Bell.....	4/16/54 (Granted right to restricted license)	Sec. 10137
Witcher, Charles Chester..... Real Estate Broker	18204 Osborne St., Northridge..	4/16/54	Sec. 10177 (b), (f)
Hakim, Joseph John..... Member, Hakim Investment Co. Real Estate Broker	4410 W. Pico Blvd., Los Angeles	4/16/54	Secs. 10176 (a), (i) & 10177 (f)
Sheppard, Hannibal T..... Real Estate Broker	1740 Post St., San Francisco....	4/27/54 (Granted right to restricted license)	Secs. 10176 (e), (i); 10177 (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
McEwen, Dana..... Real Estate Broker	Lyons Valley Rd., P.O. Box 33, Jamul.....	4/21/54	Sec. 10177 (b), (f)
Price, Howard Earl..... Real Estate Broker Business Opportunity Broker	147 W. Iowa St., Sunnyvale....	5/ 4/54 (Granted right to restricted license)	Secs. 10177 (b), (f) & 10302 (b), (e)
Turner, Glen Wilson..... Real Estate Salesman	3432 Atlantic Ave., Long Beach..	5/ 7/54 (Granted right to restricted license)	Sec. 10177 (b)
Cutbuth, Arthur Wayne..... Real Estate Salesman	8430 Sepulveda Blvd., Sepulveda	5/ 7/54 (Granted right to restricted license)	Sec. 10177 (a), (f)
Kanter, Albert..... Real Estate Salesman	2030 Allesandro St., Los Angeles	5/20/54	Sec. 10177 (a), (f)
Ashbaugh, Charles V..... Real Estate Broker	981 Monterey St., Box 48, San Luis Obispo	5/20/54	Secs. 10176 (e), (i); 10177 (d) (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Curley, Francis James..... Real Estate Broker Business Opportunity Broker	1815 1/2 S. Catalina, Redondo Beach	5/22/54	Secs. 10176 (a), (e), (i); 10177 (f) & 10302 (e)
Thompson, William Carvasso..... Real Estate Salesman	Galt.....	6/ 7/54	Sec. 10177 (b), (f)
Dunk, Thomas Henry..... Real Estate Broker	2212 10th Ave., Sacramento....	6/ 7/54	Secs. 10176 (e), (i); 10177 (b), (d), (f); 10250; 10260; Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Delmartini, Charles..... Real Estate Broker	1128 Garden St., San Luis Obispo	6/ 8/54	Secs. 10176 (e), (i); 10177 (f) & Sec. 2830 of R. E. Comm. Rules & Regulations
Escrow Guarantee Co..... Gratton J. Betts, Vice Pres. Real Estate Broker	13900 Ventura Blvd., Sherman Oaks	6/10/54	Sec. 10177 (f)
Hart, Louis Brandt..... Real Estate Broker	8808 La Mesa Blvd., La Mesa...	6/11/54	Secs. 10160; 10162; 10164; 10177 (d), (f)
Popke, Theodore Tom..... Real Estate Broker	116 10th St., Richmond.....	6/14/54 (Granted right to restricted license)	Secs. 10176 (a), (i) & 10177 (f)
Guinon, Grace..... Real Estate Broker	8 C St., Victorville.....	6/11/54	Secs. 10176 (a), (i); 10177 (d) (f); Secs. 2830, 2831 of R. E. Comm. Rules and Regulations
Littlefield, Douglas Ray..... Real Estate Salesman	225 26th St., San Diego.....	6/17/54	Secs. 10176 (a), (b), (i) & 10177 (e), (f)

LICENSES SUSPENDED FROM APRIL 1 THROUGH JUNE 20, 1954

Name	Address	Effective date and term	Violation
Hubner, Ione Coulson Real Estate Broker	4108 University Ave., San Diego	4/ 6/54 90 days	Sec. 10177 (b), (f)
Cagan, Sidney Lewis Real Estate Salesman	5300 Lakewood Blvd., Long Beach	4/27/54 45 days	Secs. 10176 (i) & 10177 (f)
Snow, Mary Jane Real Estate Salesman	1382 Hearst, Berkeley	4/30/54 90 days	Secs. 10142; 10176 (a), (i) & 10177 (d), (f)
Rossi, Anthony Louis Real Estate Broker	299 El Camino Real, Millbrae	5/ 8/54 1 day	Secs. 10176 (a), (b) & 10302 (d), (e)
Love, William Henry dba Love Investment Co. Real Estate Broker Business Opportunity Broker	1305 Polk St., San Francisco	5/10/54 1 year	Secs. 10141; 10176 (a), (b), (d), (e), (g), (i); 10177 (f); 10262; 10301 (a), (b), (d), (e), (g), (i); 10302 (e) & Sec. 2832 of R. E. Comm. Rules and Regulations
Bruton, Albert Ernest Real Estate Broker	4517 Maryland Ave., San Diego	5/10/54 6 months (Order stayed for 3 yrs. on terms and conditions)	Secs. 10160; 10164; 10165; 10176 (e); 10177 (d), (f); Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Langer, Louis Real Estate Broker	11518 Venice Blvd., Culver City	5/20/54 30 days	Secs. 10176 (a), (i) & 10177 (f)
Ingalls, Edmund Palmer Real Estate Salesman	8436 Lincoln Blvd., Los Angeles	5/22/54 3 months	Secs. 10176 (a), (i) & 10177 (f)
Armont, William Nestor Real Estate Broker	221 S. Pacific Ave., Redondo Beach	5/22/54 5 days	Secs. 10176 (a), (i) & 10177 (f)
Rogers, Chester Edgar Real Estate Broker Business Opportunity Broker	3526 Macdonald Ave., Richmond	5/31/54 90 days	Secs. 10176 (a), (i); 10177 (f) & 10302 (e)
Andes, Ivan Paul dba Andes Realty Real Estate Broker Business Opportunity Broker	16458 Sherman Way, Van Nuys	5/17/54 90 days	Secs. 10177 (b), (f) & 10302 (b), (e)
Ward, Ray S. dba Ray S. Ward & Associates Real Estate Broker	11011 S. Paramount Blvd., Downey	6/10/54 30 days	Sec. 10177 (f)
Nielsen, Will Osgood Real Estate Broker Business Opportunity Broker	1725 Republic, San Diego	6/11/54 90 days	Secs. 10176 (a), (i); 10177 (f); 10301 (a), (i) & 10302 (e)
Canta, Chris Real Estate Broker	2579 Market St., San Diego	6/17/54 120 days	Secs. 10176 (c) & 10177 (f)

Brokers Must Maintain Records of Trust Funds No Set Formula for Keeping Records; Suggestions Offered for Minimum Data

The Commissioner is concerned about the increasing number of reports of mishandling of trust funds. In many of these cases it appears to be a matter of not understanding what is necessary.

Every broker should be thoroughly familiar with the Commissioner's rules, particularly Sections 2830, 2831 and 2832 having to do with trust fund handling and records. **These rules require every broker to do one of three things with trust funds he receives: (1) place them in a neutral escrow depository or (2) place them in the hands of his principal or (3) place them in a trust fund account in some bank or other recognized depository.**

These rules also require the broker to keep records of such trust funds. The information that these records must contain can be listed as follows:

1. Amount of money received;
2. Date received;
3. Name of person paying the money;
4. Name of person for whom money was received;
5. Name of person or place where money was deposited (escrow, trust fund account or principal);
6. Date money so deposited;

7. Disposition of money if withdrawn from trust fund account or escrow;

8. Date of such withdrawal.

These records can, of course, be kept in a variety of ways. However, they should be kept according to some regular system. For instance, an accounting type of book with lines and columns can be used to make a regular record of each transaction; each transaction could be entered on a different line and the columns across the page could be used to enter the eight items mentioned above.

In any case, the information in the above list must be kept. Of course, it is the minimum necessary. Most brokers will keep records of much more information as well, such as addresses or descriptions of the property, commissions, etc.

Some Valuable Tips Offered On Use of Deposit Receipt Important Document Used by Agent

Some interesting comments of value to our readers are included in a bulletin issued by the California Real Estate Association in connection with its deposit receipt form. We are taking the liberty of quoting some of the comments, with slight amendments to make them applicable for this story.

The association, in referring to the deposit receipt, states, "**This is the most important document used by the California broker and his sales people. . . . Every word in it has some meaning.**"

Some words of caution are also given, applicable to all brokers who use deposit receipt forms. In broad language they are as follows:

1. When a property is being sold which is known to have recorded restrictions, covenants, conditions or easements, the broker or sales person either should write or rubber stamp that fact on the face of the deposit receipt. For example: "Title subject to restrictions, covenants, conditions, easements and set-back lines now of record" is commonly used. If such a clause is rubber-stamped or written in, thereby calling special attention of the buyer to the condition of the title, the broker maintains the transaction on a high ethical plane.
2. In some sections of California it is customary for the buyer to pay for title insurance; in other sections, the seller pays; in some areas they share the cost. It would be wise for the broker to have a rubber stamp made and fill in the space indicating who is to pay.
3. Please note a space to be used in the event there are bonds or assessments against the property.
4. Careful attention should be given to the matter of possession. Space is provided in which to state any special arrangement.
5. It will simplify office and escrow work if the broker and sales people will insert mention of how the buyer wishes to take title.

More on Broker's Rights in Commission Case

Follow-up on May Bulletin Article; Broker Is Not Without Protection

Matter Was Set for Retrial, But Out of Court Settlement Reported Made

Considerable comment resulted from an article entitled "Broker Must Follow Through" appearing in the May issue of the *Bulletin*.

Apparently the story was misunderstood or misleading to some extent, perhaps because of incomplete presentation. One attorney wrote in connection with the article: "My understanding is that many brokers reading the article referred to above believe the import of the appellate decision to be that even if they bring buyer and seller together they may not collect a commission if the prospective purchaser surreptitiously returns to the seller and makes a deal behind the broker's back. This, of course, is not the law."

Case First Heard in Los Angeles Municipal Court

The case in question (See page 144, *May Real Estate Bulletin*) was *Elliott v. Giardinieri*, first heard in the Municipal Court for the Los Angeles Judicial District. Whether or not the seller was aware of the broker's efforts to sell the property to a specific purchaser was a question at issue on which there was conflicting testimony.

At the time our article was prepared the Appellate Court had reversed the decision of the lower court, which had held in favor of the broker suing for commission. We understand that a retrial was set, but plaintiff and defendant arrived at an amicable settlement out of court prior to the retrial.

Commissioner's Bulletin Policy

It is the Real Estate Commissioner's policy to publish articles in the *Bulletin* which will be helpful and informative to licensees. Licensees have evinced an interest in reports of court cases touching upon problems which they meet every day in their business, and such stories are frequently published. However, they must be reported rather factually, often in the language of the court, and any speculation or personal interpretation on the part of the Commissioner would not only be improper, but probably would lead to misunderstandings and controversy.

Counsel New Residents on California License Law

Among the many newcomers to California are a substantial number of persons who have engaged in the real estate business in other states which may or may not have real estate licensing laws. This is not news—our application files disclose many such instances, and undoubtedly licensee-readers know of many others.

MANY NEWCOMERS ATTRACTED TO REAL ESTATE BUSINESS

A recent departmental survey showed that almost 20 percent of the applicants for salesman license have resided in California for less than two years. The check also indicated that about 9 percent of the applicants for original broker license have resided in the State for less than six months.

But there have been reports of new arrivals in California—particularly former residents of nonlicense states—who attempt to begin operations as real estate agents in this State without the formality of becoming properly licensed. Any such cases should be reported promptly to your Division of Real Estate for investigation.

Ignorance of California real estate licensing law probably is the root of the trouble most times. Licensees can perform a friendly service by explaining licensing requirements to the newcomer and offering a word of caution against violation. The unlicensed person operating as an agent in a real estate transaction not only opens himself to prosecution, but the person who pays him a commission also commits a misdemeanor. Should the person who pays the unlawful commission be a licensee, his license, too, is subject to disciplinary action.

Broker Held Liable

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showed that the broker was not aware of the fraud practiced by his salesman.

The lower court held, in substance, that the employing broker was not liable for the admitted misconduct of his salesman because (1) the salesman was employed in this transaction by the authority of the plaintiffs, the owners of the property, either expressly or impliedly; that the salesman or subagent was the agent of the sellers and directly responsible to them for his conduct; (2) that the employing broker was not liable for his salesman's misconduct because such acts were not authorized or within the powers of the agent; and (3) that the salesman had no authority from the employing broker to commit any acts constituting the alleged fraud. As a result of such conclusions of law, the court denied the claim of the sellers against the employing broker.

Supreme Court Fixes Responsibility

In reversing the decision of the lower court, and in holding that the employing broker was liable individually, the Supreme Court of Arizona ruled that a confidential relation existed between the employing broker and the sellers; that the broker owes the utmost good faith and loyalty to his principal; that a salesman could be employed by and receive compensation from only his duly and regularly licensed broker; that if any type of fraud is worked upon the broker's principal in connection with the handling of the transaction through the broker, directly due to one of his salesmen, the broker must answer in general damages to his principal for any damages resulting therefrom, especially a secret profit, and this is true even though the broker was not personally aware of the circumstances of such transaction.

Thus another hedge of protection was afforded the public by this ruling to the effect that the broker is liable to his principal for the fraud of his salesman, even though the broker is not aware of or does not approve such fraudulent activities.

Fall Real Estate Certificate Program

University of California Extension Division Announces New Realty Courses

Professional level real estate courses will be offered again this fall in many areas of the State by the University Extension of the University of California. The courses, which lead to the award of the Certificate in Real Estate, are presented by the University Extension in cooperation with the California Division of Real Estate; the Educational Committee of the National Association of Real Estate Boards; and the California Real Estate Association.

The certificate program is part of a continuing effort to help those individuals already licensed, who wish to gain specialized knowledge in their chosen field.

Registration for the courses is limited to those persons who are already licensed real estate brokers or salesmen, or who are engaged in work in closely associated fields, or who have already started on the program. The courses are not intended for those hoping to enter the real estate business or those preparing to pass an examination.

New courses have been added to the curriculum as need and demand for them are apparent. "Real Estate Exchanges and Taxation" is the newest course available.

Real Estate Certificate Gains Recognition

Upon successful completion of eight courses in the established curriculum, a Certificate in Real Estate will be awarded by University Extension. The candidate for the certificate who enrolls in two courses each term can establish eligibility for the certificate within two years. The significance of the Certificate in Real Estate is steadily gaining wider recognition within the industry and in the eyes of the public. With the development of the certificate program, more and more licensees have availed themselves of the opportunities offered to increase their knowledge, service to their customers and clients, and their money-making potential.

This is a state-wide program and courses will be offered by University Extension in any area where the demand for them is great enough. If you want the courses given in your locality, contact your nearest real estate board or get in touch with Uni-

versity Extension at 540 Powell Street, San Francisco or 813 South Hill Street, Los Angeles.

All courses are offered in the evening and the usual meeting lasts 2½ hours. Following is the Fall schedule, giving place, starting date and class hours of the courses.

Northern Area

Berkeley Campus: Dwinelle Hall

Economics of Real Estate 886AB—Sept. 16, 7-9 p.m.

Real Estate Practice 804AB—Sept. 15, 7-9:30 p.m.

Hayward: Hayward High School, Science Building, Room 105

Legal Aspects of Real Estate 824AB—Sept. 15, 7-9:30 p.m.

Oakland: 1730 Franklin Street

Legal Aspects of Real Estate 824AB—Sept. 14, 8-10 p.m.

Principles of Real Estate Appraisal 860-ABC—Sept. 13, 7-9:30 p.m.

Real Estate Finance 806AB—Sept. 15, 7-9:30 p.m.

Fresno: Fresno Realty Board Auditorium, 2123 Amador Street

Principles of Real Estate Appraisal 860-ABC—Sept. 13, 7-9:30 p.m.

Marin County: San Rafael High School, Room 61

Real Estate Practice 804AB—Sept. 16, 7-9:30 p.m.

Modesto: Modesto Junior College, North Hall

Economics of Real Estate 886AB—Sept. 13, 7-9:30 p.m.

Napa: Napa Junior College, Room 34

Economics of Real Estate 886—Sept. 13, 7-9:30 p.m.

Palo Alto: Palo Alto High School

Economics of Real Estate 886AB—Sept. 13, 7-9:30 p.m.

Sacramento: 1020 N Street, Room 102

Economics of Real Estate 886AB—Sept. 14, 7-9 p.m.

Advanced Real Estate Appraisal 887ABC—Sept. 13, 7-9:30 p.m.

Salinas: Hartnell College, Room 2

Real Estate Practice 804AB—Sept. 15, 7-9:30 p.m.

San Francisco: 140 Montgomery Street; 540 Powell Street

Real Estate Practice 804AB—Sept. 30, 7-9 p.m.

Legal Aspects of Real Estate 824AB—Sept. 14, 7-9:30 p.m.

Principles of Real Estate Appraisal 860-ABC—Sept. 13, 7-9:30 p.m.

Real Estate Finance 806AB—Sept. 15, 7-9 p.m.

Property Management 842AB—Sept. 13, 7-9 p.m.

Commercial and Investment Properties 880AB—Sept. 14, 7-9:30 p.m.

San Mateo: San Mateo Junior College, Coyote Point Campus, Room 15A

Real Estate Finance 806AB—Sept. 15, 7-9:30 p.m.

Property Management 842AB—Sept. 13, 7-9 p.m.

Santa Cruz: Santa Cruz High School, Science Bldg., Room 3

Real Estate Practice 804AB—Sept. 30, 7-9:30 p.m.

Stockton: Stockton College, Library, Room 211

Real Estate Practice 804AB—Sept. 15, 7-9:30 p.m.

Vallejo: Vallejo Junior College, Science Bldg., Room 42

Real Estate Practice 804AB—Sept. 15, 7-9:30 p.m.

Southern Area

Downey:

Valuation of Real Property XL181—Sept. 13, 7-9:30 p.m.

Real Estate Practice 804AB—Sept. 15, 7-9:30 p.m.

Los Angeles: Hill Street Building

Real Estate Practice 804AB—Sept. 16, 7-9:30 p.m.

Real Estate Law 824AB—Sept. 13, 7-9:30 p.m.

Real Estate Finance 841-AB—Sept. 14, 7-9:30 p.m.

Valuation of Real Property XL181—Sept. 15, 7-9:30 p.m.

Real Estate Management 842AB—Sept. 16, 7-9:30 p.m.

Real Estate Exchanges and Taxation 822-AB—Sept. 28, 7-9:30 p.m.

Salesmanship X465AB—Sept. 16, 7-9:30 p.m.

Ontario:

Real Estate Practice 804AB—Sept. 15, 7-9:30 p.m.

Valuation of Real Property XL181—Sept. 13, 7-9:30 p.m.

Pasadena:

Real Estate Practice 804AB—Sept. 13, 7-9:30 p.m.

Real Estate Finance 841AB—Sept. 16, 7-9:30 p.m.

Valuation of Real Property XL181—Sept. 15, 7-9:30 p.m.

San Diego:

Real Estate Finance 841AB—Sept. 21, 7-9:30 p.m.

Real Estate Management 842AB—Sept. 20, 7-9:30 p.m.

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Court Upholds Exclusive Right To Sell Contract

Broker Wins Commission Suit; Definite Termination Date Is Point at Issue

"Where a real estate broker has the exclusive right to contract for the sale of realty during a specified period * * * and the owner of the property breaches the contract by trading the property before the expiration of the agency and so rendering performance by the broker impossible, such broker may recover the amount of the agreed commission in an action on the agency contract, whether it be considered an action for wrongful prevention of performance or for the payment of the commission under the contract."

This principle was established in a case, *Lowe v. Loyd* 93 C.A. 2d, 684.

The broker and the owners entered into a written contract giving the broker an exclusive agency to sell a motel for the sum of \$185,000, cash and terms to be arranged. The listing recited, "Should said agent or their authorized agent or agents be instrumental in procuring a person or persons ready, able and willing to purchase the property described herein, in accordance with this agreement, I agree to pay the said undersigned agent 5 percent of the selling price or exchange value as commission."

"This authorization to sell is to continue in full force and effect for a period of 90 days from date hereof, and thereafter until revoked by me in writing, but to terminate automatically six months after end of listing period."

Did Not Find a Buyer

The broker did not find a buyer for the premises in accordance with the terms of the contract. After the expiration of the 90-day period mentioned in the agreement, but within six months immediately following this period, the owners consummated an exchange of the property through another broker and did not pay the first broker any commission. No written notice of termination of the exclusive agency was given to the broker by the owners.

The court ruled that the broker was entitled to the exclusive agency right to contract for the sale of the property during the period specified, and the exchange made by the owners before the expiration of the agency destroyed that right and made performance by the broker impossible.

Upon breach by the owners, the broker was entitled to sue for the agreed commission.

The owners contended that the contract was void and against public policy on the grounds that it violated the provisions of Section 10176 of the Business and Professions Code, which provides, among other things, that the commissioner may revoke or suspend a license where the licensee has been guilty of "the practice of claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to sell, buy or exchange real estate for compensation or commission where such agreement does not contain a definite, specified date of final and complete termination."

Contract Found to Have Definite Termination Date

The court held that the contract in question had a definite date of final and complete termination in the provision that it terminates automatically six months after the end of the listing period.

The court pointed out that this case was different from that in *Castleman v. Scudder*, 81 Cal. App. 2d, 737. In that case the listing which was used read in part: "This agency shall continue 30 days from date hereof and thereafter until three days have elapsed after receipt of written notice from the owner, terminating the agency, sent by registered mail, or delivered in person through said agent." The court stated, "Obviously such a provision fails to set forth a definite date, and the contract continued indefinitely, subject to a notice of revocation, a situation which does not exist in the contract in the present case."

The appellate court upheld the judgment of the lower court awarding a commission to the broker.

Second Trust Deed May Be Purchase Money Mortgage

A recent Supreme Court decision prevented the holder of a second trust deed from recovering on his note, after the security had become exhausted.

Mrs. B. owned some real estate which in 1950 she sold to Mrs. C. and Mrs. D. As part of the purchase price and on the same day, the buyers executed a first trust deed in favor of a savings and loan association for \$11,300. At the same time, and also as a part of the purchase price, a second note was executed in favor of the seller for \$7,200, secured by a second trust deed on the property. Hence, both trust deeds were purchase money trust deeds.

It so happened the buyer did not keep up the payments, and the savings and loan association foreclosed its trust deed through the power of sale, and bid in the property. The owners of the second trust deed did not bid at the sale.

The holders of the second paper then sued the purchaser on the trust deed note, on the theory that inasmuch as the security had been exhausted, they should be able to collect on the note. The Supreme Court said "no." The court stated: "The question is, therefore, did plaintiff take a purchase money trust deed on the property when it was purchased? If she did, then Section 580b (Code of Civil Procedure) is applicable and she may look only to the security. That is the clear import of the wording of Section 580b. One taking such a trust deed knows the value of his security and assumes the risk that it may become inadequate. Especially does he know the risk where he takes, as was done here, a second trust deed."

The court further stated that with purchase money trust deeds, the character of the transaction must necessarily be determined at the time the trust deed is executed. The nature of the trust deed is then fixed for all time and as so fixed no deficiency judgment may be obtained regardless of whether the security later becomes valueless.

In brief, if you have a purchase money trust deed, you are limited to the security of the property pledged. (*Brown v. Jensen*, 41 Cal. (2) 193.)

Insurance on Real Estate

Some time ago the Insurance Commissioner warned insurance licensees against forcing short-rate cancellations of insurance policies on real estate. He said that an insurance licensee who causes a loss to a member of the public by forcing a short-rate cancellation faces disciplinary action under Section 1731 (e) of the Insurance Code. The Insurance Commissioner went on to say:

"The only exception which the department feels should be made to this situation is one where the party who by the terms of the escrow, contract of sale, or other document evidencing the transfer would suffer the loss caused by the short-rate cancellation is fully informed of the following:

- (1) *The fact that the existing insurance can be transferred;*
- (2) *The fact that a cancellation will be short-rate; and*
- (3) *The exact amount of the difference between a short-rate and a pro rata cancellation;*

and where he still desires that the cancellation be effected and new insurance written."

Inasmuch as a great many real estate licensees are also engaged in the insurance business, this is called to their attention so that there may be no misunderstanding about the situation.

More on U. C. Extension Program

(Cont. from Page 149, Col. 3)

Advertising Principles XL163—Sept. 22, 7-9:30 p.m.

Salesmanship X465AB—Sept. 23, 7-9:30 p.m.

Westwood: U. C. L. A. (B. A. E.)

Elements of Real Estate and Urban Land Economics XL180—Sept. 13, 7-9:30 p.m.

Real Estate Practice 804AB—Sept. 14, 7-9:30 p.m.

Real Estate Law 824AB—Sept. 15, 7-9:30 p.m.

Real Estate Finance 841AB—Sept. 15, 7-9:30 p.m.

Valuation of Real Property XL181—Sept. 14, 7-9:30 p.m.

Real Estate Management 842AB—Sept. 13, 7-9:30 p.m.

Advertising Principles XL163—Sept. 22, 6:50-10 p.m.

NOTE: The two courses, Advertising Principles XL163 and Salesmanship X465AB are Business Administration courses, but are applicable toward the Real Estate Certificate.

More Case Histories of Lost Licenses

Below are brief accounts of fairly recent cases in which the Real Estate Commissioner has imposed disciplinary action. These are not necessarily connected with the names of disciplined licensees published in this issue of the *Bulletin*.

Held Buyer's Money After Deal Was Canceled

The broker had received a \$500 deposit and the offer was accepted by the seller. The buyer was unable to go through with the transaction and seller agreed to cancel, instructing broker to return the deposit. The broker decided that he had earned the money and did not make any return of the deposit to the buyer until after complaint had been filed with the division. The broker's license was suspended rather than revoked, because he did return the money eventually and because his previous record had been so good.

Parties Canceled Deal But Broker Kept Money

Buyers and sellers cancelled out the transaction but the broker felt that he had earned the deposit under the forfeiture provisions. He failed to consider the fact that the deposit receipt is an agreement solely between the buyer and seller. The eventual return of the money saved him from revocation but did result in a suspension.

Failed to Give Notice When Address Changed

A broker abandoned his principal place of business and the division was unable to communicate with him. Deputies investigated, trying to learn his whereabouts. The license was revoked for failing to notify the Real Estate Commissioner in writing of either a change or abandonment of office location.

Broker Must Account to His Principal

Broker persuaded the owner of property to execute a grant deed to him as an instrument to be used supposedly to convey the seller's title to a purchaser. The broker had promised the seller a net sum of \$850 as payment. The broker refused to account for money received by him and failed to inform the seller, in writing, of the selling price of the property. License was revoked.

Gave Bad Check on Personal Account

Respondent broker was authorized to make collection of rentals for an apartment owner. He collected the rents which were deposited into his personal bank account instead of a trust account, and then issued a personal check which was returned marked, "Not Sufficient Funds." His explanations were not satisfactory and his license was revoked.

Broker Doesn't Get Paid for Trying

This is another case in which the broker accepted a deposit from prospective purchasers, an oral condition being that it should be refunded in the event the buyers were unable to sell their own property. When the buyers were not able to sell, the escrow was canceled by mutual consent between buyer and the seller. For failure to return the money, license revoked.

Secret Profits Sure Way To Lose License

This broker placed his signs upon lots not listed with him. When ascertaining the price of the lot to be sold he would accept an offer, and then either procured a listing or purchased the property himself. In practically every instance, a double escrow resulted from seller to broker to purchaser, the broker making a secret profit on the transactions. The broker's license was revoked.

Contingent Offer Was Broker's Downfall

Buyers made an offer through broker to purchase real property, the deposit receipt providing that the sale was subject to the ability of the purchasers to obtain financing within a period of 30 days sufficient to build a hotel. The purchasers tried but were unable to secure the necessary financing. The broker contended that they had not made a diligent effort and for that reason refused to comply with the demand for return of the deposit. Of course the fact that he had failed to deposit this money into a trust account may also have contributed. The buyers had to file suit. The broker's license was revoked.

"Either a Broker or a Salesman Be"

Respondent placed several salesmen in charge of several rental offices and paid no attention to their activities. The salesmen conducted their respective office activities, receiving income and maintaining their accounts without any control or supervision on the part of the broker. His license was revoked.

Forgot About Convictions

Applicant for a salesman license forgot to answer "Yes" to the question as to whether or not he had ever been convicted of any crime and the record revealed that he had had a disorderly conduct charge, a petty theft charge, and a drunkenness charge. License was denied.

Court Decides Lease Case Four Classes of Lease Deposits Cited

A tenant leased a motel in Salinas for a period of 10 years. At the time the lease was executed the tenant paid \$12,988. The lease recited that \$1,000 of this money was for the first month's rent, and the remainder was "part consideration for the making of this lease." It further provided that if the lessee kept and performed all of the conditions of the lease, the rent for the last year would be \$1 per month.

Among other things the lease prohibited assignment without consent of the owner of the property, and provided the lease might be terminated upon breach by the tenant of any condition or covenant. When the tenant assigned without the property owner's consent, the latter took action to evict the tenant prior to the last year.

The tenant, who was assignee of the lease, sued to recover the deposit. He was unsuccessful in the lower court and the upper court affirmed the judgment denying recovery of the deposit.

The appellate court said there was little or no dispute over the law applicable to deposits made under a lease, the difficulty being in applying the law to the terms of a particular lease.

The court pointed out that deposits paid in connection with leases fall into four classes: (1) advance payment of rent; (2) as a bonus or consideration for the execution of the lease; (3) as liquidated damages; and (4) as a deposit to secure faithful performance of the terms of the lease.

The court went on to state that if the lease deposit falls within the first

Interest in GI Home Loans

During the month of April the Veterans Administration said it received 72,900 requests for GI home loan appraisals on proposed and existing dwellings—a 76 percent increase over April one year ago.

In February and March approval requests in Northern California averaged more than 5,000 per month, about four times the normal volume.

In the face of unprecedented workloads, the Veterans Administration has asked the cooperation of veterans, brokers, builders and lenders in keeping telephone and personal inquiries concerning appraisal status and loan applications to a minimum.

two classes described above, it may be retained by the landlord; if in the third category, it is a penalty, results in forfeiture, is invalid as such and may be recovered by the tenant. If the lease deposit falls in the fourth class, it is retainable by the landlord only to the extent of the amount of damage actually suffered by him.

The court pointed out that under the terms of this lease, the original lessor contracted and agreed to pay the money as part consideration for the execution of the lease and as prepayment of part of the rent for the last year. The court found that the payment was a bonus consideration for the execution of the lease, and stated that if the payment was made as a bonus consideration alone, or was also made as an absolute prepayment of rent, the tenant or his assignee could not recover.

(Case reported in 118-ACA-70.)

Handbook for Real Estate Traders Is Now Available

The publication of the Real Estate Trader's Handbook, described as a complete, up-to-date manual on exchanges of real property has been announced by the National Institute of Real Estate Brokers of NAREB.

According to the publishers, the text tells the "why's" and "how's" of exchanges and explains the techniques used by successful traders from coast to coast. The authors give special attention to the operation of the Internal Revenue laws which are creating broad opportunities in the field of real estate exchanges. Many owners of real estate find themselves in a disadvantageous position if they sell their properties for money. A well-considered exchange often is the solution.

The handbook contains ready reference tables on depreciation, amortization and capitalization. To members of the Brokers Institute the price of a single copy of the Real Estate Trader's Handbook is \$2.50, to non-members \$5. Those interested may get in touch with the National Institute of Real Estate Brokers, 22 West Monroe St., Chicago, Illinois.

License Examinations Show Increase

During 1953-54 the Division of Real Estate gave an average of 1,570 examinations per month compared to 1,500 per month in the previous year. The increase was about evenly divided for all types of licenses, except for mineral, oil and gas broker license examinations which were down slightly.

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