

REAL ESTATE BULLETIN

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No. 1

Real Estate Law Amended by New Legislation

Experience Qualifications for Broker Licensing

Governor Warren on July 5th signed Senate Bills 726, 727, 729, and 730 amending the Real Estate Law. These amendments, which become law on October 1, 1949, were introduced by Senator Arthur H. Breed, Jr., of Alameda County, and were sponsored by the California Real Estate Association and approved by the Real Estate Commissioner.

The most important of these amendments provides that the commissioner shall not grant an original real estate broker license to any applicant unless that applicant had two years' prior experience as a licensed real estate salesman *and was actively engaged in that business*. If the applicant cannot qualify on the basis of having been an active real estate salesman for two years, he must be able to show at least two years' general real estate experience in some other capacity or graduation from a four-year college or university course which included specialization in real estate. In either of these latter cases, the applicant must file a written petition with the division setting forth his qualifications and experience. The applicant's petition will then be studied by a committee of not less than three members of the State Real Estate Board and if this committee approves the application, the commissioner may allow examination and licensing.

In the business opportunity chapter of the law, the same prerequisite requirements hold for the applicant for business opportunity broker except that any person holding a real estate broker license may apply for a business opportunity broker license without further experience qualification.

CITIZENSHIP REQUIRED FOR BROKERS

Other changes in the law incorporated in these bills provide that:

(1) An applicant for any original broker license must be a citizen of the United States. This amendment does

not affect noncitizens who are already licensed as brokers, nor does it apply in any way to salesmen licensees.

(2) If the licensee is a corporation, the license issued to it entitles any one officer to engage in the business of broker without the payment of any further fee beyond that paid by the corporation. This officer must of course qualify for broker's license by examination or have been already licensed as a real estate broker. Prior to

this change, only the president of the corporation enjoyed the privilege of broker activity under the corporation fee.

(3) Any person who gives up his license to assume an office in local, State or Federal Government may have the license reinstated on a renewal basis within six months of the termination of his service in office merely by payment of the appropriate renewal fee.

(4) The commissioner may suspend or revoke the license of any person who is convicted of a "crime involving moral turpitude," provided the commissioner had no knowledge of that crime at the time the

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REAL ESTATE'S REPRESENTATIVES LOOK ON AS GOVERNOR WARREN APPROVES AMENDMENTS TO CALIFORNIA REAL ESTATE LAW

Left to right: CURTIS M. ROBBINS, R. E. Board Member; W. ED WALLACE, Pres., C. R. E. A.; HERBERT U. NELSON, Executive Vice Pres., NAREB, Washington, D. C.; D. D. WATSON, R. E. Commissioner; CHESTER MacPHEE, R. E. Board Member; MAURICE READ, R. E. Board Member; HERBERT LAKEY, LELAND P. REEDER, R. E. Board Member. Seated: CALIFORNIA'S GOVERNOR EARL WARREN.

Law Amendments

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person was originally licensed. Previous to this change, the law allowed suspension or revocation under this section only when the crime committed could be classed as a felony. Moral turpitude has been defined as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

(5) The commissioner may revoke or suspend the license of any person who is adjudged insane or incompetent by proper authority, such suspension to remain in effect until the person has been judicially declared restored to capacity.

(6) Several sections relating to fees are clarified, but with no change in the fees presently charged.

(7) Words are changed in several sections for the purpose of clarification.

(8) In the subdivision section of the law, an action may be brought for violation of its provisions *any time within one year of the recordation of a deed* conveying property wrongfully subdivided. This will allow the division, when necessary, to take action against persons who might be engaged in unlawful subdividing and who are evading the provisions of the subdivision law by the use of contracts of sale.

Some further proposed slight changes in the Real Estate Law have not yet been approved by the Governor as we go to press. If these bills become law, they will be discussed in the October issue of this Bulletin, as will any changes in administrative procedure within the division necessitated by the new legislation.

A couple of instances of the resurgence of the "free lot deal" have been nipped in the bud by the division. Brokers should remember participation in these schemes does not only jeopardize their licenses, but can also place them in the position of violating the Penal Code with consequent penalties.

Percentage of Licensees to Population

During the fiscal year completed June 30th, the division issued about 90,000 licenses of all types. This constitutes an all-time record. This figure does not take into account a certain amount of overlapping of licenses; for instance, where a person obtains a salesman's and a broker's license in the same year, or where an individual holds both a business opportunity and a real estate license, or where a party is licensed as a corporation officer and as an individual broker, nor does it take into account the considerable number of cancellations which occurred during the year.

But even taking this figure of 90,000 licenses at its face value, there have been a number of years in the history of real estate licensing in California when the number of licensees in ratio to the total population was considerably higher than it has been this year. From 1923 to 1929, the number of licensees averaged between 60,000 and 65,000, during which time the population of the State ranged from 4,183,990 in 1923 to 5,448,650 in 1929.

During the Fiscal Year 1943-44, the number of licensees dropped to 32,035, but the population of the State had increased to 8,000,000. However, the

war effort undoubtedly had its effect on the number of licensees during that period.

In 1923, for each 100 people in the State, there were 1.56 real estate licensees. This figure gradually dwindled to a low point of .45 in 1933, when only 27,000 persons were licensed. The percentage gradually rose to .53 in 1940, only to fall off to the record low of .41 in the mid-war years. Since the war, however, the number of licensees has more than doubled, and at the present time there are approximately .89 licensees for each 100 of population.

It must be kept in mind, however, that not until 1937 were business opportunity and cemetery brokers licensed, and that among the current licensees, approximately 10,500 persons would fall in those categories.

It is interesting to note that in 1923 there were 25,989 brokers and 39,293 salesmen licensed, whereas in the 1948-49 year, there were 53,436 brokers and only 24,006 salesmen. These figures exclude officers and members and provisional salesmen. Thus, today we have more than twice as many brokers as salesmen, in contrast to 1923 when we had over 40 percent more salesmen than brokers.

Experience Qualifications for Brokers Judged

The amendment to the Real Estate Law which requires an applicant for real estate or business opportunity broker license to have certain qualifications has been passed by the Legislature and signed by the Governor. This legislation is effective 90 days after adjournment of the Legislature.

This amendment provides that the broker applicant, in the case of a real estate license, must have had *two years' active experience as a real estate salesman*. The applicant may substitute certain educational qualifications, such as graduation from a full university course wherein he has majored in real estate subjects. Or the law provides that if the applicant shows "equivalent" real estate experience, his application may be accepted provided the equivalent experience is accepted by a committee composed of at least three members of the Real Estate Board.

At a recent meeting of the board in July, after passage of the law, a preliminary discussion of the board's policy was held. It was the attitude of the board that, in order to qualify under the "equivalent" experience provision, full and adequate experience in various phases of the real estate business must be shown, and not merely sketchy experience gained through the occasional handling of a real estate transaction.

The board expressed the opinion that broker applications would be accepted in most cases only where the applicant could show two full years' active experience in handling real estate transactions and related work. *This could be proved by the applicant's license record in this or other states, and through certification by qualified parties that he had been active in the work for two years and had engaged in it as his major occupation.*

No Listing Copy— to Commission

A recent ruling in the Los Angeles County Superior Court by Judge Henry M. Willis should be of extreme interest to real estate and business opportunity brokers.

In Judge Willis' memorandum for decision in Case No. 546242, he comments upon the provisions of Section 10142 of the Business and Professions Code, which provides that a real estate broker must deliver a true copy of the listing to the principal who signs it. Briefly, the case involved a suit brought by a real estate broker, Mary Helena Lederer, against Zazu Pitts Woodall for a commission in excess of \$5,000. According to the memorandum, Mrs. Lederer gave her principal a copy of an incomplete exclusive listing, but completed certain blank spaces on her own copy later, without the principal's authority or knowledge.

The court cited various cases having to do with similar legislation and in its decision stated "*Under the above decisions the failure to deliver a copy of an agreement for sale of real estate prepared by a licensed broker as positively required by Section 10142 of the Business and Professions Code is fatal to the validity of the agreement.*"

All licensed real estate brokers will do well to review the special provisions of the California Real Estate Law. Failure to comply with these provisions may result in the loss of commissions, as in the foregoing case. Section 10142 reads as follows:

When a licensee prepares or has prepared an agreement authorizing or employing such licensee to purchase or sell real estate for a compensation or commission, such licensee shall deliver a copy of such agreement to the person signing same. Receipt for said copy may be made on the face of said agreement.

The law elsewhere provides that failure to comply with this section is grounds for revocation or suspension of the license by the commissioner. The courts have also taken the view that when special statutes regulating a business prohibit certain practices on penalty of loss of license, the contracts connected with such violations may be voidable.

Probably the courts would take a similar view of other clauses in the Real Estate

Appraisal Courses

Two appraisal courses are announced by the American Institute of Real Estate Appraisers in cooperation with the University of Utah, at Salt Lake City. "*Real Estate Appraisal I*" (Fundamental Theories and Principles of Appraising Urban and Rural Properties) will be offered from August 29th to September 10th, and "*Real Estate Appraisal II*" (Advanced Case Study Course), from September 12th to September 24th. The faculty will consist of outstanding men in the appraisal field. The course is endorsed by the commissioner and his Advisory Board.

Those interested in courses, tuition, hotel accommodations, etc., are asked to correspond with the American Institute of Real Estate Appraisers, 22 W. Monroe Street, Chicago 3, Illinois.

The courses are approved by the Veterans' Administration.

Law which were designed to prevent fraud and dealing contrary to public policy. For instance, the provisions requiring a definite termination date in exclusive listings, furnishing a financial statement within 30 days following the close of the transaction, limiting the use of combination net listing and option forms, failure to reveal the amount of commission secured under a net listing agreement, etc. Violation might be considered basis for denying judgment for a commission.

All of these practices are expressly prohibited by the license law, and licensees found guilty of these practices may have their licenses revoked or suspended. These several sections were inserted in the law by the Legislature after it was shown that the practices they were designed to prevent were highly unfair and permitted the agent to take undue advantage of his principal.

In arriving at his decision, Judge Willis considered the following cases: *Levinson v. Boas*, 150 Cal. 185; *Firpo v. Murphy*, 72 Cal. App. 249; *Castleman v. Scudder*, 81 Cal. App. 2d. 737, and others.

Don't Commingle Funds

The dangers involved in the commingling of clients' funds with those of the real estate broker are again called to the attention of all licensees by the commissioner and his advisory board.

Section 10176 (e) of the Real Estate Law makes commingling of money, or other property, of a principal with the licensee's own money or property, a cause for the revocation or suspension of a real estate license. A companion provision under the business opportunity chapter imposes the same penalties.

By commingling is meant the mixing or confusing of the money or property of a principal with the broker's own. The intent of the law is to require that brokers keep the money and property of clients entirely separate and apart from their own.

This, of course, is not accomplished if the broker places the deposit moneys, rent collections and other money entrusted to him in his own personal bank account. The danger of such a practice is obvious. In event the funds should be attached in connection with a civil suit, or if the licensee should suddenly die, the funds might be tied up for an indefinite period and cause the principal unnecessary hardship and expense. It might even result in the principal being unable to meet his contractual obligations, thereby suffering a penalty or forfeiture.

The commissioner and his board emphatically urge all licensees to establish trust accounts into which they deposit all trust funds of clients. From a practical standpoint, it would seem that every real estate and business opportunity broker must do this in order to comply with the provisions of the law, unless he immediately places all trust funds in some neutral depository, such as an escrow.

Should it come to the commissioner's attention through a complaint, or otherwise, that a principal's funds are deposited in a broker's personal bank account, it will be incumbent upon the commissioner to investigate and possibly call a hearing to take punitive action against the licensee.

To date the commissioner has not adopted a hard and fast rule that a

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Notes as Deposits

When a broker accepts a note in lieu of cash as a deposit, he must notify the seller of the nature of the binder before acceptance. The practice of accepting notes as deposits seems to be spreading. Of course, a broker is justified in doing this if he explains the circumstances to his principal and makes no guarantees concerning the collectibility of the instrument.

Several licenses have been suspended because the brokers had failed to inform their principals of all the details surrounding the acceptance of notes as deposits.

Commingling

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principal's funds must be placed in a trust account; however, that seems clearly the intent of the law and the commissioner is now considering the adoption of a rule that this must be done by all brokers. It is felt that such a rule would be valid, inasmuch as it follows the intent of the law.

The matter of commingling has been brought to the attention of the commissioner and his board through various complaints received by the division. Cases have been encountered where a broker has returned a deposit by writing a check upon his personal account, which check was returned marked "Insufficient Funds." Such a situation presents the strongest evidence that the broker has commingled or confused the funds with his own. A broker who does not maintain a trust account is unnecessarily placing himself in a precarious position so far as his license is concerned.

KEEP CALIFORNIA GREEN AND GOLDEN

Prevent Forest Fires

- Extinguish your matches and cigarettes
- Douse your campfires

Brokers have inquired as to whether it is a legitimate practice for them to take office quarters and pay a percentage of their gross commissions as rental. They wondered whether this might be construed as payment of commission to unlicensed persons. The commissioner sees no objection to this practice if it is a legitimate percentage lease arrangement.

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Effect of New Legislation on Broker Applicants

The new legislation demanding certain prerequisite experience qualifications for broker license applicants goes into effect October 1st, and after that date, according to the Attorney General's Office, the commissioner cannot issue a license to any person lacking the necessary experience or education regardless of the date of the application and examination.

To eliminate, so far as possible, hardships and disappointments on the part of applicants who had spent time and money preparing for examination or reexamination for broker license, the following time schedule was adopted for those applicants lacking the necessary experience requirements:

1. Broker applications could not be accepted after August 1, 1949.

2. Broker applicants must take and pass an examination no later than August 31, 1949.

3. Upon application and payment of the proper fee, all applicants who have taken and failed one or more examinations for broker license are allowed one more opportunity for examination before September 1, 1949, provided they filed their reexamination applications prior to August 1, 1949.

When a broker changes his place of business, he must *immediately notify the Real Estate Division* and also make arrangements for the change of business address on the licenses of all his salesmen. The fee for each change of address—broker or salesman—is \$1.

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