

CALIFORNIA DIVISION OF REAL ESTATE

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THE 1945 AMENDMENTS CALIFORNIA REAL ESTATE LAW

(Chapter 660 — Statutes of 1945)

As a result of numerous conferences throughout the State on various proposed amendments to the California Real Estate Law, a bill known as Senate Bill No. 179 was introduced by Senator Arthur H. Breed, Jr., of Alameda County, at the last session of the State Legislature.

This bill was sponsored by the California Division of Real Estate, the California Real Estate Association, various local real estate boards and numerous individuals. Wide publicity was given to the various proposed changes in the law and there was naturally some disagreement. Finally, however, the bill in its present form was approved by all factions, and was passed by both Assembly and Senate by unanimous vote. The Governor signed the bill on June 4, 1945, making the law effective September 15, 1945.

As the new provisions will affect nearly every licensee of the division in the conduct of his business, it is urged that all study the provisions carefully and adjust methods and procedures to comply in every respect.

As many of the amended sections are largely a repetition of the previous law with some additions, all of the sections will not be fully quoted in this article. In such cases, merely a mention of the important changes will be made.

SECTION 10137

This section provides that real estate brokers may pay a commission to brokers of other States. A similar Section 10238 permits the same act in connection with business opportunity brokers. Formerly the law made no provision for compensating a broker of another State who had cooperated from his home office in making a California transaction with a California broker.

SECTION 10141

This section reads:

"Within one month after the closing of a transaction in which title to real property is conveyed from a seller to a purchaser through a licensed real estate broker such broker shall inform or cause the information to be given to the seller and purchaser in writing of the selling price thereof and, in event an exchange of real property is involved, such information shall include a description of said property and amount of added money consideration, if any. If the transaction is closed through escrow and the escrow holder renders a closing statement which reveals such information, that shall be deemed compliance with this section on the part of the broker. The obligation of such broker, as provided in this section, to furnish such information shall cease one year after closing of such transaction unless the seller or purchaser has in the meantime served a written demand in the premises."

This section places the responsibility upon the broker to furnish the buyer and the seller, or the parties to an exchange, with a true statement of the actual sales price, or in the case of an exchange the description of property exchanged and the amount of any money consideration which enters into the transaction. The section is designed to stop secret profit-taking.

SECTION 10142

This section reads:

"When a licensee prepares or has prepared an agreement authorizing or employing such licensee to purchase or sell real

estate for 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 wording of the foregoing section is self-explanatory. In the future a copy of the listing agreement, when prepared by the licensee, must be furnished to the persons signing same.

SECTION 10176

To the foregoing section have been added subsections "F," "G" and "H" as additional reasons for suspending or revoking licenses. These subsections are further discussed as follows:

SUBSECTION "F"

"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."

This subsection is designed to discourage the use of exclusive listing forms which provide no definite termination date. Many forms are now in use containing such provisions as, "This listing shall continue for 30 days and thereafter until cancelled by ten days notice in writing." Others carry such indefinite termination dates as, "until served by registered mail," or, "until sold," etc. A licensee who makes a practice of using and claiming compensation under this type of employment agreement, which contains no definite termination date, subjects himself to revocation or suspension of his license. The written notice requirement may still properly be inserted in the listing, provided it affects a period within the total listing period. For example, a listing may state that it shall remain in effect for a given number of days and thereafter until cancelled in writing, provided, however, that the total listing period shall finally and conclusively terminate in a stated number of days or on a certain date.

SUBSECTION "G"

This section reads:

"The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit, or the failure of a licensee to reveal to the employer of such licensee the full amount of such licensee's compensation, commission or profit, under any agreement authorizing or employing such licensee to sell, buy or exchange real estate for compensation or commission prior to or coincident with the signing of such agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of such agreement, whether evidenced by documents in escrow or by any other or different procedure."

Under this subsection a licensee using a net listing does so at his peril. The subsection is designed to discourage the use of net listings; except in those very few instances where absolutely necessary. This section requires that, if a net listing is used, then the licensee must, prior to or at the time of signing up a buyer and seller, reveal to his employer the full amount of any compensation he intends to collect. No

secret or unrevealed amount of commission may be taken under any listing contract, regardless of its wording or form.

SUBSECTION "H"

This section reads:

"The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing such licensee to sell, buy or exchange real estate for compensation or commission, except when such licensee prior to or coincident with election to exercise such option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of such profit."

This subsection is designed to discourage the use of the combination listing and option contract which employs a licensee to sell the property and at the same time gives the licensee an option to purchase the property. Where any option is taken by a licensee in a listing contract employing the licensee to sell the property, a licensee can not now exercise such an option unless he reveals to his employer the full amount of his profit and likewise obtains the written consent of his employer to his making or taking the profit. Any option which a licensee desires to take should not be coupled with his employment as a broker or agent.

SECTIONS 10150.5 AND 10275.5

These sections provide that the commissioner shall not grant a real estate broker's license, or a business opportunity broker's license, to any person who is neither a citizen of the United States nor an applicant for such citizenship who has received his first citizenship papers, unless such person has been licensed in this State as a real estate broker at any time prior to January 1, 1942. Should a new licensee who has obtained only his first citizenship papers fail to pursue his application with diligence, the commissioner may revoke the license.

SECTIONS 10156.6 AND 10279.6

These sections create a new type of license designated "restricted license" that may be issued to a real estate broker, or a business opportunity broker, whose license has been previously revoked after a hearing. The license may be restricted as to term and does not confer any property right. If the restricted license is issued to a salesman, it may be restricted to a particular broker. The license may be revoked either with or without a hearing by the Commissioner at any time. If the latter believes it advisable, he may require that surety bonds be furnished to guarantee faithful performance of the restricted licensee.

There are instances in which the commissioner may feel that a person whose license has been revoked has learned his lesson and is entitled to another opportunity to prove his worth. The licenses of this type will be issued sparingly.

SECTIONS 10162 AND 10285

These sections are designed to further establish a type of office to be maintained by the broker. They provide that the broker must have a definite place of business where his license is displayed and where personal consultations with clients are held.

SECTIONS 10200 AND 10320

These sections provide that license fees for real estate and business opportunity applicants shall be paid at the time of filing the application. While this has been the practice, it was not definitely provided by law.

SECTIONS 10213 AND 10432

These sections provide for the real estate and the cemetery salesman examination fees to be \$5. The commissioner may use \$2 of each examination fee to secure a credit report in connection with his investigation of the applicant. The raise in salesman examination fee is to provide this additional amount. No increase is made in the broker examination fees, as the amount is deemed sufficient.

SECTION 11011.6

"Any owner, agent or subdivider who fails to pay the filing fees required by Sections 11011 or 11011.5 shall be liable civilly in an action brought by the Real Estate Division for a penalty in an amount equal to treble the amount of unpaid fees."

This section is designed to impose a penalty upon those subdividers who fail to comply with the subdivision provisions of the Real Estate Law before offering parcels in their subdivision for sale. The normal filing fee on residential subdivisions is \$50, but the penalty would raise this to \$150. It is suggested that licensees call attention to this provision of the law to their clients and friends who are interested in the subdivision of land.

SECTIONS 10460, 10461 AND 10462

The provisions in the Real Estate Law which permit persons who have served in the military forces of the United States to maintain their license status without penalties have been revised and generally liberalized. These sections are more or less self-explanatory, and are printed herewith as they appear in the new law.

Section 10460

"(a) 'Military licensee' refers to any person who, while licensed under the Real Estate Law, or any of the statutes codified therein, entered the military service of the United States and notifies the commissioner of that fact upon resuming business or within one year following termination of military service, whichever is earlier.

"(b) 'Persons in the Military Service of the United States' includes the following persons and no others: All members of the United States Army, the United States Navy, the Marine Corps, the Merchant Marine in time of war, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

"(c) 'Military Service' signifies Federal service after October 1, 1940, on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms 'active service' or 'active duty' include the period during which a person in military service is absent from duty on account of sickness, wounds, leave or other lawful cause."

Section 10461

"A military licensee shall not be required to renew his license under this part until the beginning of the license period which first commences (a) after his again engaging in business, or (b) after one year following termination of military service, whichever is the earlier."

Section 10462

"A military licensee shall not be entitled to the privilege of this article if he receives a dishonorable discharge from the Military Service of the United States or if he voluntarily, by affirmative act, remains in the military service for more than six months following termination of all wars in which the Nation is now engaged."

SECTION 10455 REPEALED

The provision heretofore requiring surplus in excess of \$100,000 in the Real Estate Fund to be transferred to the General Treasury has been repealed. This will permit a building up of the Real Estate Fund to meet administrative demands during periods of temporary decrease in revenue.

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SUPPLEMENTARY NOTE—Section 10176, Subsections "F," "G" and "H," have corresponding provisions in the licensing provisions governing business opportunity, cemetery and mineral, oil and gas brokers and salesmen. These are covered in Sections 10301, 10401 and 10561.

Section 10263-B of the new law definitely prohibits anyone securing an authorization to sell, rent, buy or lease a business opportunity from including an option provision which authorizes the broker to purchase such business opportunity or interest therein. In the case of real estate listings, the inclusion of an option provision is not prohibited, but certain obligations are placed upon the broker if he uses such a form. (See comments under Section 10176-H.)

THE RETURNING GI AND HIS MONEY

A complaint was issued by the office of the district attorney in San Diego County, in July, charging Thomas F. Kew with subdividing a mining claim in the Descanso mining district without complying with the provisions of the Real Estate Law. Kew advertised in the classified columns of the newspapers that he would sell lots in this mining claim for \$99.50 each. The advertising particularly appealed to returning GI's.

Kew went to trial in San Diego Municipal Court on July 25, and was found guilty by a jury of all seven counts with which he was charged.

This is probably typical of many such schemes which will develop to take advantage of returning veterans, and the office of the district attorney in San Diego is to be commended for its vigilance. Thomas Whelan is District Attorney, and Harry Baugh, Supervising Investigator, conducted the investigation.

REFERENCE BOOK

Demand for the Reference Book and Guide published by the Division of Real Estate has continued to be active during the summer months. There have been several printings of the present edition and it appears that a new printing will be necessary to take care of current demand pending its revision to conform with the new laws passed at the last session of the Legislature. This work is now in progress.

It is planned to completely bring the present material up to date for the 1946 edition, and add certain new features. The new volume, however, will probably not be off the press until late this year.

Sales of the book at the Los Angeles Office have run about 400 copies per month, not counting large orders from schools and other groups which are referred to the Sacramento Office.

YEAR SUMMARY

Statistics are now available on the operation of the Division of Real Estate for the license year 1944-45, which ended June 30th. A few of the highlights are listed here for the information of licensees. In general, a substantial increase in business is indicated over the previous year of 1943-44.

During the last license year, 36,047 real estate licenses of all types were issued. This figure includes 22,391 broker licenses, 12,049 salesman licenses, 710 officers and members of corporations and copartnerships, and 897 provisional salesman licenses. The total for the previous year was 29,552 licenses of all types, showing an increase of approximately 6500 licenses. In addition to the total given for the past year, 9,311 transfers, branch licenses, etc., were issued.

Real estate broker applicants passing the examination last year totaled 5,173, with 690 failing. Salesmen who passed totaled 3,041, with 692 failures.

About twice the number of examinations for real estate license applicants were given last year over the previous year. Real estate examinations of all kinds totaled 10,544 as compared to 5,618 the year before.

Business opportunity license applicants increased somewhat over the previous year. A total of 2,093 business opportunity licenses were issued last year as compared to 1,720 the year previous. In addition the division issued a total of 344 cemetery licenses and 72 mineral, oil and gas licenses last year.

The grand total of licenses issued for the year 1944-45 was 39,094.

During the past year the commissioner, after a hearing, denied 25 licenses, suspended 28, and revoked 10 licenses.

A total of 332 new subdivisions were filed throughout the State last year as compared to 201 the year previous.

The division last year received 54,736 pieces of mail, and mailed out 93,681.

CHECK YOUR OFFICE FORMS

Real estate brokers are urged to check the forms used by their offices to determine that they comply with the new amendments to the Real Estate Law which are effective September 15, 1945. Particularly important are the provisions in the listing form. These should be so drawn as to provide for a definite termination date. If the forms contain such provisions as "effective for _____ days and thereafter until canceled in writing," etc., the necessary changes should be made to comply with the law. The forms should also be in such shape that a duplicate can be easily prepared for delivery to the person signing the listing. The simplest way to do this, of course, is to provide for an exact carbon copy for the seller or whoever lists the property.

In order to comply with that provision of the law which requires delivery of a copy of the listing agreement to the person signing same, it is well to make provision for a signed receipt for said copy on the face of the agreement. Added protection is given to the broker if the carbon copy carries a duplicate of this receipt.

It is incumbent upon the broker to determine that his forms comply with the law, and if there is any doubt an attorney should be consulted. The office of the Division of Real Estate can not undertake to approve or disapprove individual forms.

WAR LOANS

Our congratulations to the real estate fraternity for meeting the various War Bond quotas is getting to be an old story, but they are nevertheless just as sincere in connection with the last Seventh War Loan Drive. The quota of \$30,000,000 in bonds was over-sold by the real estate group by several millions of dollars. No doubt the Eighth War Loan Drive will be launched toward the end of the year, and we trust that we may again express our appreciation for the results obtained.

The commissioner particularly extends his thanks to those who made several sales of the small "E" bonds. These are sales that cause the little fellow to invest, and require the greatest amount of consistent effort. Many of our licensees made a dozen or more such sales, and to them we say "well done."

EXAMINATION PROCEDURE CHANGE

At a meeting in Los Angeles on August 10, 1945, the Real Estate Board approved of the adoption of a rule by the Commissioner whereby all applicants for license as a real estate broker will be required to wait a period of 60 days between the time that their application is filed in the Sacramento office of the division and the date of their taking the required qualifying examination. This rule to be effective on and after September 16, 1945. The broker applicant will be designated to take the first regularly set examination following the termination of this 60-day waiting period.

This recommendation to the commissioner was decided upon by the board after some period of consideration during which the advisability of such a rule was discussed by the commissioner and members of the board with various different groups of real estate brokers throughout the State. At these conferences, the brokers attending generally gave their approval to the adoption of a rule to that effect by the commissioner. This waiting period will afford the commissioner time within which to secure the credit report authorized by Section 10208, as amended by the Legislature at its recent session (Senate Bill No. 179, Chapter 660, Statutes of 1945), secure the applicant's fingerprints, and complete the customary investigation. This 60-day waiting period would affect only applicants for broker license and will not apply to applicants for salesman license. These latter applications will continue to be processed just as heretofore.

PRICE TRENDS

This item will probably not be news to those brokers and salesmen actively engaged in the business. This division has observed that in many California communities homes which sold for \$3,500 about four years ago are now bringing \$7,000 to \$8,000. Prices of vacant lots in settled communities are up between 200 and 300 per cent. Building lots in high-grade subdivisions are bringing as much as \$4,000 to \$5,000. Offerings at those prices four years ago would have probably brought jeers and laughter.

FORMAL HEARINGS

Formal hearings were held by the Division during the months of May, June, and July which resulted in the suspensions of 10 licenses; the revocation of 6 licenses; the denial of 11 applications, and the withdrawal of 3 applications.

The following is a brief summary of the cases in which action was taken by the commissioner:

1. Los Angeles County. Real estate salesman license was suspended for holding himself out to be, and acting as a real estate broker, as well as a copartner and unlawfully using the word "Realtor."
2. Los Angeles County. Real estate broker license was suspended for operating under a fictitious name without erecting and maintaining proper sign at the place of business and for endorsing a check made to the order of another person without the payee's consent.
3. San Diego County. Real estate broker license suspended for making a secret commission without disclosing the facts to the owner of the property.
4. Los Angeles County. Application for real estate salesman license was withdrawn when it appeared at the hearing that the applicant's broker withdrew the recommendation for issuance of the license when it was learned that full disclosure as to criminal record of this applicant had not been made.
5. Los Angeles County. Application for real estate broker license was denied because of previous criminal record.
6. Los Angeles County. License of real estate broker was revoked because of conviction of a felony.
7. Los Angeles County. Application for real estate broker license was withdrawn because applicant did not wish the matter submitted to the commissioner showing his previous criminal record.
8. Los Angeles County. Real estate broker license was suspended for failure to return a deposit on a real estate deal which was made contingent on the purchaser securing a GI loan, and the loan was not secured.
9. Los Angeles County. Application for real estate salesman license was denied because of previous criminal record.
10. Los Angeles County. Real estate broker license was revoked because of transaction which occurred in the State of Washington which resulted in the revocation of broker license in that State.
11. San Diego County. Real estate broker license was revoked for making promises to prospective purchasers that he could secure title to real property within a specific time when he knew such representations to be false, and for the further fact that he sold lots in a subdivision without forwarding to this division notice of intention to subdivide said property.
12. Los Angeles County. Real estate broker license was suspended because broker failed to return a deposit which he accepted contingent upon securing certain financing, when the financing was not obtained.
13. San Bernardino County. Real estate broker license was suspended for representing to the purchaser that the purchase price of the property did not include the household furnishings, when such representation was false.
14. San Bernardino County. The license of real estate salesman employed by the broker in the above case was suspended for the same reason as indicated.
15. Los Angeles County. Real estate broker license was suspended for misrepresenting the zoning restrictions.
16. Los Angeles County. Real estate broker license was revoked for misrepresentation and dishonest dealing in the sale of oil lands.
17. Los Angeles County. Real estate broker license was revoked for failure to return deposits on two transactions when it appeared he could not make delivery of the properties in accordance with representations made by said broker.
18. Los Angeles County. The applications of three individuals for real estate broker license were denied because of previous criminal records and an application for real estate salesman license was also denied for the same reason.
19. San Diego County. The sale of a subdivision was prohibited because adequate arrangements had not been made for furnishing water.
20. San Francisco City and County. Application for real estate salesman license was denied because applicant did not meet requirements as to truthfulness, honesty, and good reputation.
21. San Francisco City and County. Application for real estate salesman license withdrawn because prospective employing broker withdrew his recommendation.
22. San Francisco City and County. Real Estate salesman license suspended for making false answers in his application for license.
23. Alameda County. Application for real estate broker license denied because he did not meet requirements as to truthfulness and honesty.
24. Contra Costa County. Real estate broker license suspended for misrepresentation and dishonesty.
25. Alameda County. Real estate broker license revoked for not maintaining principal place of business and not displaying proper sign, and also for misrepresentation and dishonest dealing in connection with a real estate transaction.



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