

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, September, 1952

D. D. WATSON, Commissioner

Most Licenses Renewed for 1952-53

High Percentage of Cancellations Among Real Estate Brokers Significant Development

That interest in the real estate brokerage business has by no means diminished is demonstrated by the many thousands of real estate brokers and salesmen who have just renewed their licenses. During July, the first month of the current fiscal year, 89,786 licenses were issued, exceeding the number for the corresponding period last year by about 5,500, or by 6.6 percent.

During the previous year ending June 30, 1952, the Division issued a record breaking total of 98,361 licenses. It is noted that 94.1 percent of the eligible real estate brokers renewed their licenses this year, as compared to 93.4 percent last year, and that 84 percent of the eligible salesmen renewed their licenses, as compared with 78.5 percent the previous year.

Many Renew and Cancel

About two years ago, all licensees were put on notice that they must meet the requirements of the law in respect to maintaining offices and displaying signs and licenses properly, or else their licenses would be subject to disciplinary action. As a result, there has been a steadily growing tendency to cancel or "inactivate" licenses. Two years ago more than 14,400 turned in their licenses for cancellation or "inactivation," and during this past year more than 19,500 did likewise.

It is particularly interesting to note that of the 51,500 brokers who renewed their licenses this year, 11,747 or 22 percent requested that their licenses be immediately cancelled.

Renewal Figures Not Final

The above renewal figures are by no means final as the law provides for renewal at any time during the year upon application and the payment of a penalty fee. In other words, until June 30, 1953, anyone who held an unrevoked license for the year ending June 30, 1952, has a right to renew that license. Experience has shown that a considerable number who fail to renew currently do so before their license rights expire entirely, which is at the end of the so-called "one year's grace."

OCTOBER 1 DEADLINE FOR DIRECTORY REQUESTS

The 1952-53 Directory of Brokers and Salesmen will soon be ready for distribution. Any licensed broker may obtain a copy by writing the Division of Real Estate, 1021 O St., Sacramento, giving name, business address and license number. But your request must be received (as advised in our last Bulletin), not later than October 1st.

License Not Transferred

Burden Is Upon Broker to Determine That Salesman License Is Issued

In following up a recent complaint to the Division of Real Estate, it was determined that the salesman who had negotiated with the complainant had not actually reinstated a canceled license in the employ of the broker for whom he was working.

In this case the broker had signed the form agreeing to employ the salesman, but the salesman failed to submit it to the division with the proper fee. The broker presumed that the salesman had taken care of this detail and permitted him to operate, even though no license for the salesman was received by the broker and posted on the wall of his office as required.

In bringing charges against the salesman for operating without a license, charges were also brought against the broker for permitting an unlicensed

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Paying Delayed Commissions

Earnings Due Salesman May Be Paid to Him After Leaving Broker's Employ

Under most circumstances a broker may compensate a salesman for work completed while in his employ even though the salesman may have terminated his employment with the broker's firm and may even be employed by another broker at the time payment is made.

There are numerous instances where a salesman brings about a meeting of minds and the signing of the sales agreement by the buyer and seller, and then leaves the employ of the broker during the course of the escrow proceedings. As long as his negotiations were completed during the time of his employment, the broker may properly compensate him when the details of the transaction are closed in escrow and the commission is paid.

A similar condition exists when a salesman has an arrangement with his employing broker to the effect that he is to receive a "listing fee" in event any of the listings he obtains are sold by the broker's office. If the salesman has secured listings under this arrangement and leaves the broker's employ before they are sold, the Real Estate Commissioner is of the opinion that the salesman may be paid his earned compensation directly by the former employer even though he has become employed by another broker.

Licenses Issued as of July 31, 1952

Real Estate Broker.....	51,645
Real Estate Salesman.....	29,489
Provisional Salesman	62
Business Opportunity Broker	7,270
Business Opportunity	
Salesman	1,230
Mineral Oil and Gas Broker	89
Mineral Oil and Gas	
Salesman	1

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Sacramento, September, 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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DISCIPLINARY ACTION—JUNE, JULY

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 JUNE AND JULY, 1952

Name	Address	Effective date	Violation
Michael Oaks Realty Co. I. Glenn McFarland, Vice. Pres. Real Estate Broker	2009 K St., Sacramento	6/ 2/52	Secs. 10176 (e), (f); 10177 (d), (f); 10162 & 10165
Stinsman, Jack Real Estate Salesman (Right to renew)	408 E. First St., Long Beach	6/ 2/52	Sec. 10177 (b)
Yost, Bert Real Estate Salesman (Right to renew)	3725 Marysville Rd., Del Paso Heights	6/10/52	Sec. 10177 (f)
Nusbaum, Ray Franklin Real Estate Salesman (Right to renew)	202 S. Laurel Ave., Ontario	6/19/52	Secs. 10176 (e), (f), & 10177 (f)
Martorana, Joseph Frank dba Joe Martin Real Estate Broker	4401 S. Western Ave., Los Angeles	6/25/52	Sec. 10177 (b) & (f)
Ohye, Manzo Real Estate Salesman Business Opportunity Salesman (Right to renew)	258 E. First St., Los Angeles	7/28/52	Secs. 10301 (e), 10302 (d) & 10258; Secs. 2830 & 2831, Commissioner's Rules & Regulations.

LICENSES SUSPENDED DURING JUNE AND JULY, 1952

Name	Address	Effective date and term	Violation
Curtis, Oren Real Estate Broker & Member Copartnership	16261 Hesperian Blvd., San Lorenzo	6/12/52 15 days	Secs. 11010, 11020 B. & P. Code & 2790, 2794 and 2795 of R. E. Comm. Rules and Regulations.
Henshaw, Clarence Morgan Real Estate Broker	13791 Cannery Ave., Garden Grove	6/19/52 60 days	Sec. 10176 (e)
Sullivan, James Cotter Real Estate Salesman	14416 Erwin St., Van Nuys	7/ 8/52	Sec. 10176 (a), (g), & (h)
Woods, Henry Alphonse Real Estate Broker	865 E. 47th St., Los Angeles	7/22/52 60 days	Sec. 10177 (b)
Shiffman, Louis Phillip dba Lou Shiffman Co. Real Estate Broker	459 S. Robertson Blvd., Beverly Hills	7/25/52 45 days	Secs. 10176 (i) & 10177 (f)
Jenkins, Erna Barrett Real Estate Salesman	239 E. Eighth St., National City	7/22/52 (Until competency restored)	Sec. 10176.6
Osborne, Kent Brown dba Helix Realty Real Estate Broker	8818 LaMesa Blvd., LaMesa	7/31/52 10 days	Secs. 10137 & 10177 (d)

Tips on Good Advertising

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

The largest single item of expense in operating a successful real estate office is the classified advertising bill, and yet it is surprising how often it is abused. *A national estimate has found that advertising expense averages about 11 percent of the gross income of the real estate business.* Advertising, properly used, can be the source of listings, prospective buyers, and institutional publicity.

Here are some timely tips on writing classified advertising that were advanced at one of the state-wide educational and sales conferences.

Don't wait until almost the deadline and then dash out something the last minute, and then wonder why the ad doesn't pull. Notice the number of classified ads that are abbreviated, devoid of description and have no appeal. Ask yourselves "Would you answer this advertisement?"

Avoid the use of trite words. Note how many ads repeat the word "beautiful," "attractive," etc. *Be original in your choice of adjectives.*

Don't try to write an ad without seeing the property first. At the time you list it, it is a good idea to sit down and rough out an ad stressing the best features. Doing this on the blank back of the listing form makes a permanent record.

Don't let everyone in your office write ads. You will find one particular person has a creative imagination and ability to express himself, and will do a better job than the others. Study well-written ads, and then study your own and compare them.

Don't be pennywise and pound foolish with brevity. It doesn't pay.

Inactive Salesman License Renewal

Henceforth the salesman who wishes to keep his license on a canceled or "inactive" basis need not secure the signature of a broker on his renewal application each year.

The signature of an "employing broker" can be waived on the salesman license renewal application if the application is marked "renew and cancel" or the salesman lets the division know his intention is to be on "inactive status."

This ruling in no way affects the renewal of active salesman licenses or the reinstatement of canceled or "inactive" licenses. In those cases, the signature of the employing broker is still required.

Commissioner Upheld on Revocation of License

Court Says Protection of the Public Basic Reason for Disciplinary Action

A broker who seeks to obtain a commission through a suit in which he fraudulently tries to enforce an open listing agreement as an exclusive agreement comes within the Real Estate Law, and the acts may constitute grounds for revocation of the brokers's license. The basic reason for disciplinary action against the real estate broker is protection of the public against unethical and dishonest conduct. So ruled the court in *Marks v. Watson*, 112 ACA 206.

The license of Joseph Morris Marks was revoked by the Real Estate Commissioner after hearing on the grounds that the broker acted dishonestly in endeavoring to force payment of a commission on a listing which he claimed was exclusive, whereas in truth and in fact it was generally agreed to be an "open listing."

The court found that the broker negotiated by telephone for an "open listing" with the owner, well knowing what that term meant. Then he changed parts of an exclusive listing form and represented it in his note to the owner to be an open listing, while he fully intended to enforce it as an exclusive listing in the event someone else sold the property.

Suit Damages Owner

The court found that the broker later tried to carry out his fraudulent intent by court action against the owner, as he had previously done against another owner. This constituted the overt act, and resulted in damage to the owner, since it was necessary for him to employ counsel to handle his case both in the trial court and on appeal. The commissioner's action was upheld.

The broker maintained in court that no fraud was involved in attempting to collect the commission because it was merely a civil action, and further charged his client with negligence for failure to make certain that the exclusive listing was properly altered to make it an open listing. The broker claimed the owner had suffered no harm as a result of his attempt to collect a commission.

The court disagreed, pointing out that the client was required to spend considerable time and money on the various phases of the litigation.

Brokers Holding Escrows Must Segregate Funds

Because there was some question as to the proper handling of escrow funds by licensed brokers who are not licensed by the Commissioner of Corporations as escrow agents, the Real Estate Commissioner adopted an official regulation setting forth how such funds must be treated.

Brokers must now definitely comply with Sections 2830, 2831, and 2832 of the commissioner's rules and regulations in regard to funds entrusted to them as escrow holders. This means that escrow funds must be placed in a trust fund account with some bank or recognized depository immediately upon receipt. The trust fund account must designate the broker as trustee and the account must be set up so as to provide for withdrawal of the funds without previous notice.

The broker holding an escrow is also required to keep complete records concerning all transactions, which records and funds are subject to inspection by the commissioner or his deputies. Failure to maintain a trust fund account for escrows handled by the broker or failure to deposit escrow funds promptly in such account is construed as commingling of funds, subject to disciplinary action.

Penalty in Washington Realty Case

John E. Slater, Administrator, Washington Department of Licenses, reported to the National Association of License Law Officials that his department had revoked the license of a broker who was short in his accounts some \$30,000. The broker was able to make full restitution without any claim being filed against the bond which is compulsory for brokers in the State of Washington.

Operations of Licensed Escrow Agents Analyzed

(From the Corporation Commissioner's July Report to Governor's Council)

Currently, there are 242 businesses licensed by the Commissioner of Corporations to conduct an escrow business in California. This figure of course is exclusive of that business handled by banks, trust companies, title companies, abstract companies, etc. Most of the licensed escrow businesses are located in Southern California.

Reports of employees of the Division of Corporations making periodic examinations indicate that these companies transact a comparatively large amount of business. Most of this business has to do with escrows connected with real estate transactions.

In the last few months several persons patronizing certain particular escrow companies have lodged formal complaints with the Commissioner of Corporations concerning the manner and method that these particular companies use in handling the escrows.

Complaints of Delays

Some of the complaints were based upon alleged unnecessary delays in settling and terminating escrows. The personnel of the Division of Corporations has found it a rather simple matter to deal with this type of complaint as most escrow companies complained of have been willing to cooperate in revising their internal operations to facilitate the final settlements.

Other complaints seem to indicate that there has been alleged discrimination in the allocation of funds entrusted to these particular escrow agents for distribution to the several parties to an escrow. In a few instances the division's personnel has found it essential to conduct lengthy hearings.

The Division of Corporations has begun a general inquiry to determine whether or not it should recommend a revision of the Escrow Law.

"However," reported Mr. Slater, "the judge took a dim view of using trust funds even though they could be replaced and sentenced him to 15 years in the state penitentiary at Walla Walla."

Widow's Position on Death of Broker Husband

Experience Essential for Broker License and Operation of Business

Every so often a real estate broker dies leaving a widow and family in a position where it is highly desirable for the widow to continue her husband's real estate brokerage business.

In some cases the greatest potential asset in the estate of the deceased broker is the advertising value and goodwill of his name and office location.

In those cases where the wife has been actively associated with her husband in the business and has had two or more years experience working with him as a licensed salesman, no problem ordinarily exists.

But, on the other hand, there are many cases where the wife has had no office or real estate experience whatsoever and, as a matter of fact, has rarely discussed her husband's business problems with him. In these cases the widow usually lacks any experience which would allow her to secure a broker license.

Under the present law where the broker applicant must have two years active salesman experience or its equivalent, it would seem to be logical for the widow to secure the services of a licensed broker to conduct the business for her until such time as she has been able to acquire the experience which would qualify her for her own broker license.

Board Charged With Responsibility

The Real Estate Commissioner and the members of the State Real Estate Board are very sympathetic in such cases, but they are charged with the responsibility to ascertain that all applicants for broker licenses have the necessary qualifications.

A further consideration from the practical side is the question of whether it is in the widow's best interest for her to attempt to run a business with which she is only faintly acquainted.

Most brokers agree that it takes experience to operate and maintain a successful brokerage firm. Even if she could get a license, the bereaved widow, lacking experience, would be taking a terrific chance with a valuable asset if she herself attempted to operate the going organization left to her.

ATTORNEYS WANTED

Three qualified attorneys will be appointed as special deputies in the Division of Real Estate in the near future. These attorneys will prepare and present actions involving denials, suspensions, or revocations of licenses. The State Personnel Board announces that applications for these positions must be received before November 29th and that the civil service examinations will be conducted on December 20th.

The salaries for the jobs start at \$458 per month, rising to \$556. Minimum qualifications include active membership in the State Bar of California, and applicants must have had either two years' full-time experience in the practice of law specializing in real estate matters, or two years' experience in preparing and presenting cases relating to violations of the real estate law before administrative bodies or courts.

UNDUE INFLUENCE MUST BE PROVED

When a person secures a gift deed to property and occupies a relation of trust and confidence toward the grantor, is active in preparing the deed, and stands to profit unduly, he has the burden to show that the grantor acted with full knowledge of the facts and complete understanding of the transaction, and not on reliance or confidence placed in the grantee.

In a case reported, 109 A. C. A. 216, an elderly woman deeded her property to the grantee subject to a life estate. Based on a claim of fraud, she thereafter brought an action to cancel the deed and to quiet title.

The grantee was successful in maintaining his position and keeping title. There was evidence the elderly woman had clearly stated that, because the grantee had been so good to her, she wanted him to have the property, and

"Open Listing" Rights Clarified by Court Decision

An important point concerning the rights of brokers who hold open listings, a question which has brought many inquiries to the Division of Real Estate, has been the subject of a recent court case.

"The court found that an 'open listing' has, by usage and custom between the general public and the members of the real estate business, been accepted as a listing wherein the commission is considered to be earned by the broker who first finds a buyer who meets the terms of the listing or whose offer is accepted by the seller, and that there is no obligation on the part of the seller to notify any of the brokers of the sale of the property, and that the seller is not obligated to pay a commission to any broker except the broker who secured the buyer for the property." This ruling is set forth in the report of the appellate court case, *Marks v. Watson*, 112 ACA, 206. The appellate court found no fault with this interpretation.

The ruling would indicate that those brokers, who have worked on open listings and have even found a suitable purchaser, cannot successfully claim a commission if another broker has previously found a buyer who meets the terms of the listing or whose offer is accepted by the seller.

While the ruling states there is no obligation for the seller to notify any of the brokers holding open listings that the property has been sold, sellers can recognize their moral responsibility to notify the brokers so they will not continue to waste their time and efforts.

that the deed was handed to her and its effect explained and that she handed it back to him. This was sufficient to overcome any presumption of fraud and undue influence.

The fact that the elderly woman lacked independent advice was not alone sufficient to vitiate the deed under the circumstances.

Considering all of the facts, the court held that the woman was not unduly influenced and the evidence indicated that it was a voluntary act which she understood at the time.

Conveyance by Gift Deed Deed Delivery Must Be Unconditional

The act of delivery of a deed must be accompanied with the intent that it shall become presently operative as such and presently pass title. To make the transfer binding, there should be no conditions or secret understandings concerning the transfer.

The validity of a gift deed given by a father to his son, with the request that it be not recorded until after his death, is considered in a recent appellate court case, *Kelly v. Bank of America*, 112 ACA 419. The deed was given to the son by the father just before the latter entered a hospital for a serious operation from which he thought he might not recover. He did recover, however, and lived a few years thereafter. Before his death, he made a will disposing of this particular property as though he had not previously conveyed it. The testimony indicated that the son at no time asserted ownership of the property prior to his father's death.

J. IRA COURTNEY IS REGISTRAR

We inadvertently gave the mistaken impression that Mr. J. F. Graham was still Registrar of the Structural Pest Control Board in an article appearing in the *July Bulletin*. The article quoted from a talk given by Mr. Graham in January, 1952.

As a matter of fact, Mr. Graham resigned as Registrar in February and has been succeeded in the position by Mr. J. Ira Courtney.

The court ruled that in determining the validity of the deed, consideration must be given not only to the intent of the grantor, but also whether the deed was delivered to, and accepted by, the grantee as an unequivocal transfer of title to him. The facts of this case, as determined by the court, did not indicate that the conveyance was unconditional, and the son failed to maintain his position.

The trial court had found that at the time of the purported delivery of the deed it was the mutual intent, understanding and agreement of father and son that said deed did not pass title.

Real Estate Certificate Program

The Extension Division of the University of California is again presenting a state-wide program of real estate classes. Upon successful completion of eight of these courses, a Real Estate Certificate will be awarded by University Extension.

It is possible to complete the essential real estate subjects leading to the certificate award in two years if enrollment is made in two courses each semester. These courses have been made possible by moneys made available to the university from the Division of Real Estate Licensee Fund.

The courses being presented have undergone considerable revision since inception of the program a couple of years ago. The courses are not designed to fulfill the wants of those who hope to get into the real estate business and want to pass the license examination, but rather for those already licensed and desirous of increasing their knowledge of the real estate business. In other words, the courses are designed for real estate brokers and salesmen who want to broaden their knowledge of real estate in general and

acquire special knowledge of particular phases of the business.

As the program develops, numerous brokers and salesmen who look to a career and livelihood in real estate are taking advantage of the opportunities offered by these courses and the Real Estate Certificate program so they may render better service to their clients and increase their earnings.

It is felt that eventually the public as well as the industry will appreciate the significance of the Real Estate Certificate and recognize the high professional standing of a licensee who holds one. As time goes on, the value of the certificates will be enhanced.

Following is the fall schedule:

U. C. EXTENSION DIVISION FALL REAL ESTATE COURSE SCHEDULE

SOUTHERN AREA

- Long Beach: John Dewey School**
Real Estate Management—Sept. 15, 7-9.30 p.m.
Real Estate Finance (this course will be offered in the Spring semester of 1953)
- Los Angeles: Hill Street Building**
Elements of Real Estate and Urban Land Economics—Sept. 16, 7-9.30 p.m.
Real Estate Practice—Oct. 2, 7-9.30 p.m.
Real Estate Law—Oct. 1, 7-9.30 p.m.
Real Estate Finance—Sept. 30, 7-9.30 p.m.
Valuation of Real Property—Sept. 29, 7-9.30 p.m.
Real Estate Appraisal and Valuation—Oct. 1, 7-9.30 p.m.
Real Estate Management—Oct. 2, 7-9.30 p.m.
- Pasadena: Pasadena City College**
Real Estate Practice—Sept. 30, 7-9.30 p.m.
Real Estate Finance—Oct. 1, 7-9.30 p.m.
Valuation of Real Property—Sept. 29, 7-9.30 p.m.
Real Estate Appraisal and Valuation—Sept. 29, 7-9.30 p.m.
- San Diego: San Diego High School; Roosevelt Junior High**
Real Estate Practice—Sept. 25, 7-9.30 p.m.
Valuation of Real Property—Sept. 24, 7-9.30 p.m.
Real Estate Management—Sept. 15, 7-9.30 p.m.
- San Fernando Valley: John Burroughs High School**
Real Estate Practice—Sept. 24, 7-9.30 p.m.
Real Estate Finance—Sept. 23, 7-9.30 p.m.
- Santa Monica: Santa Monica City College**
Valuation of Real Property—Sept. 24, 7-9.30 p.m.
- U.C.L.A. Campus, Westwood:**
Real Estate Practice—Sept. 23, 7-9.30 p.m.
Real Estate Law—Sept. 25, 7-9.30 p.m.
Real Estate Finance—Sept. 25, 7-9.30 p.m.
Real Estate Appraisal and Valuation—Sept. 22, 7-9.30 p.m.
Real Estate Management—Sept. 23, 7-9.30 p.m.

NORTHERN AREA

- Berkeley Campus: Wheeler Hall**
Real Estate Law—Sept. 16, 7-9 p.m.
Real Estate Appraisal and Valuation—Sept. 16, 7-9 p.m.
- Fresno: Auditorium, 2123 Amador**
Real Estate Appraisal and Valuation—Sept. 22, 7-9.30 p.m.
- Menlo Park: Menlo School and College**
Real Estate Law—Sept. 18, 7-9.30 p.m.
- Marin County: San Rafael City Hall**
Real Estate Practice—Sept. 16, 7-9.30 p.m.
- Oakland: 1730 Franklin Street**
Real Estate Finance—Sept. 15, 7-9 p.m.
Real Estate Fundamentals—Sept. 18, 7-9 p.m.
- Sacramento: Sacramento Evening College**
Real Estate Appraisal and Valuation (for complete information please call or visit the Sacramento Real Estate Board)
- Salinas: Salinas Union High School**
Real Estate Practice—Sept. 15, 7-9.30 p.m.
- San Francisco: 140 Montgomery, 540 Powell**
Real Estate Practice—Sept. 15, 7-9 p.m.
Real Estate Law—Sept. 17, 7-9.30 p.m.
Real Estate Management—Sept. 15, 7-9 p.m.
Real Estate Appraisal and Valuation—Sept. 18, 7-9 p.m.
Real Estate Valuation—Sept. 15, 7-9 p.m.
- San Jose: Civic Auditorium**
Real Estate Practice—Sept. 15, 7-9.30 p.m.
- San Mateo: San Mateo Junior College**
Real Estate Practice—Sept. 17, 7-9.30 p.m.
- Santa Cruz: Santa Cruz High School**
Real Estate Appraisal and Valuation—Sept. 23, 7-9.30 p.m.

Joint Tenancy Deals Need Special Care

Commission Suit Where Only One Party Signed Sales Agreement Is Unsuccessful

Attempts of brokers to collect commissions on grounds that one joint tenant has signed a sales agreement, particularly in cases where the broker knows of the joint tenancy ownership, appear to be getting a dim view by the courts.

In the May *Bulletin* we discussed a Los Angeles municipal court case in which the broker was unsuccessful in recovering a commission. Now an appellate court case comes to light, *Spake v. Crossett*, 110 A. C. A., 991.

The facts of this case are very similar to those of the previous case reported. The broker induced the wife to sign a deposit receipt which provided for payment of the commission to the broker, but before she signed she asked if it would hold good if her husband refused to sign. The broker is claimed to have assured her it would not. It so happened that the husband refused to consent to the deal, and the broker brought suit to recover the commission.

At the trial the broker objected to introduction of evidence regarding the

"Land Division" Ordinances City and County Regulations

Ordinances enacted by cities and counties throughout the State must be considered in determining whether or not a division of land requires a subdivision filing with the city or county. It is not sufficient to consider only the definition of a subdivision in the Subdivision Map Act, because the Map Act does not prohibit the cities or counties from making further regulations.

For example, the commissioner's attention has been recently called to a new ordinance by the City of Riverside in which a division of land into four or less parcels is described as a "land division" rather than a "subdivision" and such a "land division" is made subject to certain requirements. Other cities and counties have passed laws with similar effect.

Advice: Consult with the planning commission of the city or county in which the land is located regarding any division of land; consult with the Division of Real Estate regarding any division into five or more parcels over any period of time.

verbal understanding at the time the wife signed the sales agreement, on the grounds that it was not competent and varied the terms of the written agreement.

The court held, in effect, that the oral testimony could be considered under the circumstances, and held that it did not vary the terms of the written agreement, but was used only to show that the writing never took effect as the embodiment of an obligation.

The court further held that the delivery of the contract in this case was conditional, and did not become a binding obligation until the condition upon which its delivery depended had been fulfilled.

CLEAR-CUT STATEMENTS HELP SOLVE PROBLEMS

Complaints in respect to service rendered by the Division of Real Estate to licensees or subdividers should be addressed to the personal attention of the Real Estate Commissioner. This applies also to those who question or disagree with policies, procedures, regulations, or with the Real Estate Law as presently written.

The commissioner cannot of course do much about "crank" communications but will appreciate receiving frank, constructive suggestions.

Often anonymous post cards and letters are received hinting of certain violations of the license law or suggesting that the division is not giving proper service in some respects. While the commissioner can and does take heed of even anonymous rumors in correspondence, investigations based on such correspondence are a great deal more difficult and results are harder to get.

About Those Higher Offers

Broker's Position As Agent Is Clear

If, as agent for the sale of property, an offer is received for less than the listed price, and then a higher offer is received before the first is accepted, what should the agent do?

From time to time, the commissioner receives such inquiries. The problem has legal aspects, and the broker should consult his attorney for guidance since the conditions attaching to each problem may be different.

Generally speaking, however, the agent owes loyalty to the person who employs him and agrees to pay him a commission. He should never fail to disclose any material information to his principal. If a higher offer is received by the broker before the acceptance of the first offer, the agent should immediately communicate that fact to his principal. As a matter of fact, failure to do so might subject the broker to disciplinary action.

One broker writes that his prospective purchaser became very belligerent and abusive when the broker insisted that he should present a higher offer before the owner had decided whether or not to accept the first offer.

Such things cannot be helped. The broker should determine where his legal as well as moral obligation lies, and act accordingly.

Net Listing Use Restricted

Many persons, including some licensees, seem to have the idea that the use of net listings is prohibited by the Real Estate Law. Net listings, as such, can be used by the broker—but subsequent to the amendments of 1945, the law has specified that when a net listing is used, the broker must notify his client of the total amount of the broker's profit or commission in the transaction.

Sometimes this has its disadvantages. If the profit accruing to the broker is more than the usual commission, the seller of the property is often inclined to be quite unhappy about the transaction and feel that the broker may be taking advantage of him in some way.

Nature of Deposit Taken Must be Revealed

Failure to Disclose Acceptance of Promissory Note Results in Suspension

The importance of the broker's disclosing to his principal every material fact during the course of a transaction has often been stressed. Many commissions are lost and licenses suspended or revoked for failure to comply with this important principle. It is an obligation which the law imposes upon an agent.

For instance, take the matter of a deposit. If a broker accepts as a deposit anything other than "coin of the realm" to bind the transaction, he should make the fact known to his principal. Some time ago the Real Estate Commissioner suspended the license of a broker who took a note from the purchaser in lieu of cash, and failed to disclose the fact to the seller who assumed that the deposit was in cash. This case came into court, as the broker contested the suspension.

The broker had accepted a note for a deposit without previous approval or knowledge on the part of the seller. Thereafter when the seller learned about the note's existence, he indicated willingness to go through with the deal, even though the note was involved. The buyer defaulted and failed to make good the note.

On appeal, the court held that, even though the broker may have acted in good faith, he violated the spirit and letter of the Real Estate Law. It commented, "The possibilities of fraud and of injury to the seller by the undisclosed acceptance of the promissory note are unlimited." The court further stated, "For us to hold that a broker may accept a promissory note as payment to his principal, without disclosure, is not a violation of the law, would be to countenance a practice which is equally as dangerous as the commingling of money."

The latter case is reported in 95 Cal. App. 2d, 862.

"Time" Is Most Valuable Asset

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

The most valuable asset of anyone in the real estate business is time. The broker or salesman who puts it to best use will accomplish the most. Even so, the successful broker or salesman usually complains there are not enough hours in the day to accomplish all that he should do.

COMPENSATION INSURANCE

Numerous inquiries are made by brokers and salesmen concerning the significance of a statement appearing on license application forms concerning Section 3700 of the Labor Code of this State.

The Division of Real Estate, while it takes no part in the enforcement of compensation insurance laws, is required by law to make reference to this section of the code on its application forms. The statement appearing on the form reads as follows:

"I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workmen's compensation."

The broker is then requested to name the compensation insurance carrier, if any.

The Division of Real Estate takes no further action in the matter after calling the attention of the broker to this section. Those who request further information are referred to the State Compensation Insurance Fund.

Keeping a daily diary is a big help in keeping check on your activities and making the most of them. This need not be burdensome. This may be a combination diary, appointment book, and record of expenses.

In these days of high income taxes, the broker or salesman must keep record of every expense connected with his business—expenses which are deductible for tax purposes. If a systematic daily record is not kept, many dollars spent on which tax deduction could be claimed might be overlooked. Such things as lunches or dinners you buy for clients, or an odd purchase of gasoline or a small car repair, may escape your memory if not jotted down.

Conditional Delivery Vital

Placing Contract in Escrow for Completion Not Binding on Parties

A buyer brought suit against a seller for failure to convey property as called for by a contract which seller signed, but which seller's wife refused to sign.

Seller had delivered the contract to a broker, to be delivered to the buyer only if seller's wife signed it, with the proviso that it was not to be a binding contract without such signature. The broker put the contract in escrow for such signature.

The court gave judgment to the seller. The findings contained the following:

"A written contract, signed by the parties, takes effect only on delivery. C. C. 1054, 1626. Its deposit with a third party, for use only on occurrence of a specified condition, is not a delivery if the condition does not occur. C. C. 1054, 1057. When an agreement is signed and handed over with the understanding that it will not be used or become operative until signed by another, it does not become a contract until the other signature is obtained."

Unemployment Insurance Release Important in Sale of Business

It is important for business opportunity brokers and salesmen to know and understand that the purchaser of a business may be liable for any unpaid contributions, penalties and interest owed by the seller for unemployment insurance unless a "certificate of release of buyer" has been issued by the Department of Employment.

The Department of Employment makes it clear that agreements between buyer and seller to waive the tax clearance are not binding on it. Mere publication of a "notice of intention to sell" does not act as a release of unemployment tax liability.

The certificate of release may be requested by either the buyer or the seller and is issued only after the seller has paid his account with the Department of Employment. The department is required to issue the "certificate" within 30 days after it is requested.

Unlicensed Salesman Works

(Cont. from Page 57, Col. 2)

salesman to operate. The broker, according to reports, was indignant that he should be included in the accusation, as he had signed the application form and he maintained it was not his fault that the salesman neglected to forward it to the division.

This instance emphasizes that brokers must make sure that salesmen are properly transferred to their employ before allowing them to operate. If a salesman license is issued, it is sent to the broker's office and the broker is required to display it prominently. No salesman should be permitted to operate until this is done, or at least until the salesman has produced a receipt showing that the transfer application has been filed with the division and the fee paid.

Perhaps in this case the broker was not guilty of any wilful violation, but he either did not realize his responsibility as the broker or was extremely careless. He could have found himself guilty of contributing to a loss suffered by a client who dealt with the unlicensed representative of his office.

We commented in a recent *Bulletin* on the danger of being careless in the employment of salesmen, and upon the loose manner in which some brokers employ them without any knowledge of their background.

Qualification for Business Opportunity Broker License

Under the law, anyone who is licensed as a real estate broker is considered eligible, so far as experience is concerned, for examination for business opportunity broker license. However, if the applicant for business opportunity broker license is not already a licensed real estate broker, he must be able to show that he has been licensed as a business opportunity salesman for at least two years, actively engaged during that time in business opportunity or real estate salesman work in order to qualify.

In lieu of experience as a salesman, the applicant can substitute the equivalent of two years general real estate or business opportunity experience or graduation from a four-year college or university course, which course included specialization in real estate.

In line with the general policy of higher standards the examination for business opportunity broker license has been stiffened considerably. The examination is designed to test the applicant's knowledge of the business opportunity field in a practical fashion. It includes work on forms common to the business; problems on business worth; questions on the Bulk Sales Law, sales tax procedure, alcoholic beverage control, etc.

CREA Convention in Bay City

The forty-eighth annual convention of the California Real Estate Association will be held in San Francisco October 6-9. The convention will maintain headquarters in the Nob Hill hotels, and advance reservations indicate that registrations will number about 3,500.

The San Francisco Real Estate Board will play host for the convention, and Mr. James Udall, CREA president, will preside at all sessions. The four-day program will include nationally prominent speakers, discussions on all phases of real estate investment, home ownership, committee meetings and contests.

A highlight of the meeting is expected to be the annual Hometown Speech Contest. Many local boards are grooming entries for this popular and stimulating competition.

Fingerprint Clearance Required Before New License Issued

No original license of any kind will be issued by the Real Estate Commissioner until the applicant's fingerprints have been taken and processed. This applies to regular and provisional real estate license applicants. If the fingerprint record indicates law violations, these are carefully investigated.

Some time may be saved to applicants if they submit their applications in person at a division office, and have their fingerprints taken at that time.

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