

REAL ESTATE BULLETIN

CALIFORNIA DIVISION OF REAL ESTATE

EARL WARREN, GOVERNOR

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LICENSEES DIRECTORY AVAILABLE SOON

Division Activities Discussed

The index of licensees has been rearranged to facilitate work such as the issuance of the directory. The copy for that volume was sent to the printer at an early date this year and we expect to receive the printing shortly after you receive this bulletin. We are pleased that it will be ready for distribution at least two months earlier than in previous years.

A quantity sufficient to supply the normal demand has been ordered. If an unusual demand develops, it will be a case of "first come, first served."

Licensed real estate brokers may secure a copy by requesting one from our Sacramento office. A limited supply will also be available at our branch offices. To other than licensed real estate brokers, the charge is \$1.75 per copy.

With the announcement that the annual Directory of Licensees will be available about two months earlier than usual, we have established a precedent. You, as licensees, are interested in the service offered by the division and in our efforts to simplify and expedite all of its work.

We, like you, sometimes have difficulty in meeting deadlines, replying to correspondence and performing all of the other multitude of details. At times we are unable to hold to our desired standard of service due to the seasonal changes in our workload. However, this year all renewal licenses were in the mail by July 15th, except those that were incomplete, incorrect, or required correspondence for various reasons. Simultaneously, with the issuance of each license, a record was sent to the appropriate office of the division for convenient reference in connection with escrows and similar service information. This record was established at least 60 days earlier than in the previous year.

Correspondence is normally up to date, and allowing for delays in reviewing records, etc., replies are usually made within 48 hours. It will always be difficult, however, to maintain uniform handling throughout the year due to the great fluctuation in volume of work.

We are constantly endeavoring to further simplify and expedite the work and such innovations as the new form of application, license, and indexing of licensees have aided materially the achievement of these aims.

Our examinations have been strengthened and improved. We have endeavored to stress the practical knowledge required of the licensee in his every-day operations, eliminating anything in the nature of "trick" questions. The applicant is expected to answer in his own language questions relating to the ethics and practice of the business. This type of examination has resulted in a much larger percentage of failures among broker applicants, but those interested in the welfare of the business approve the requirement of more thorough preparation by the applicant.

Nothing can be more harmful to any organization than an absence of criticism of its work and we count as friends those, who in a constructive manner, call our attention to conditions subject to correction or improvement. We welcome your helpful criticism and suggestions which enable us to better our service to you. There will be a better mutual understanding of our problems if we discuss with you anything that does not yield to correction. We are here to give service to you and to the public, and within the prescribed limits of our legal duties, we will continue to improve that service with your constructive help.

NIRAB BULLETIN

The August Bulletin entitled "Operating Procedures of a Small Real Estate Office" by Joseph A. Thorsen, published by the National Institute of Real Estate Brokers has been received.

The booklet is well written, attractively made up and illustrated. It presents useful information for the real estate man—large operator or small. Among the subjects treated are policy, personnel, equipment, business forms, merchandise and maintenance of merchandise, mechanics of advertising, salesman-broker relationship, financial set-up, prospects, closing deals, and office morale.

CALIFORNIA CENTENNIALS

All California is engaged in the celebration of the Gold Discovery Centennial to be followed by the Gold Rush and Statehood Centennials. At this time it is interesting and fitting for us in real estate to reflect that John Sutter, whose name with that of James Marshall is most closely associated with the stirring story of gold discovery, based his hopes of wealth, power and security not on gold but on the land.

John Sutter was the first great real estate developer in California. It is said that he regarded gold discovery and the gold rush as only a temporary diversionary phenomenon. True, he attempted to harness the gold developments to the chariot which carried his own dreams. In this he was unsuccessful.

Fundamentally, of course, John Sutter was right—nowhere in the world perhaps has the basic real estate tenet been better demonstrated than in our State: The basis of all wealth is in the land. John Sutter's personal dream was never realized. The great gold days have long since vanished. But the values John Sutter saw in the land have grown far beyond his greatest dreams and pale into insignificance the most dazzling of the gold strikes.

SPECIFIC PERFORMANCE IN REAL ESTATE CONTRACTS

Mr. Herbert L. Breed, Oakland attorney, and general counsel for the California Real Estate Association delivered an address on "Specific Performance as It Relates to Real Estate Contracts" at the recent CREA convention. The address was outstanding and contained so much information of value to every real estate man that we asked and received Mr. Breed's consent to print portions of his paper in this publication. Unfortunately, we are limited by lack of space to excerpts only and they follow:

"My talks on law and my articles * * * are not planned to make lawyers out of brokers. They do not justify (brokers) giving advice to clients on their legal problems. They are designed to give you a background, including and supplementing what applicants should know to pass the examination, but more especially to better enable licensees to fill in blanks fully and correctly * * *.

"Whether or not knowledge of the doctrines of specific performance is beyond knowledge required to pass an examination, you and your salesmen can do a better job by knowing them. Be it known to you that specific performance is an equitable remedy as distinguished from a legal one * * *. In California, most of these principles are codified as a part of our statutory law.

"So far as applicable to real estate contracts, the rules of specific performance are well established and should be known to anyone drawing contracts or even filling in the ordinary and standard forms, as for example, a deposit receipt * * *.

"It is essential to the existence of any contract in law or equity that there should be, (1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) sufficient consideration * * *. The contract of purchase and sale must contain all the material elements * * *.

"How often have you seen in some contract that something is to be done, or that terms are to be mutually agreed upon by the parties hereto. Such a statement amounts to nothing * * *.

"Contracts must be complete, certain and definite * * *. It is the broker's duty in filling in the blanks to see that the above principles are complied with.

Adjudicated Cases

"One recent deposit receipt drawn by a broker, after receipting for a down payment, provided that there was to be a first deed of trust in a fixed amount to a bank and a second to the seller for the balance. Interest in each case was fixed. Then the contract stated 'Total monthly payments, including interest, to be \$40.' Specific performance was denied because the deposit receipt was silent as to what portion of the \$40 was to be paid to the bank and what to the seller.

"Another agreement was drawn which was certain in all particulars except it was provided that the balance of the purchase price was to be evidenced by a first and second mortgage. Since the agreement was silent as to the amounts of each mortgage the uncertainty was fatal, the parties disagreeing as to the amounts of each taken separately * * *.

"A contract of sale signed by both owner and buyer was made subject to a bank loan, and added, 'net cash to be paid to seller.' The buyer claimed it meant net cash above the loan. The owner said net cash for the full amount, as those

words appeared after the selling price. The court denied specific performance in a suit brought by the buyer, one reason being the uncertainty as to the true intentions of the parties * * *.

"It is true that sometimes testimony is admitted to explain facts in connection with the contract. That means litigation. Both brokers, in filling blanks and lawyers in drafting contracts, should avoid uncertainties and ambiguities * * *.

"Specific performance is always refused on the ground of lack of mutuality where one party is required to perform and has not performed a personal service, as the care and management of plaintiff's property * * *.

"A party who has signed a written contract must perform it, though the other party has not signed it, if the latter has performed or offers to perform, and the case is otherwise proper for enforcing specific performance * * *.

Minors

"If your client, the owner, desires to deal with a minor and take that chance (the right of a minor to disaffirm a real estate contract during minority and within a reasonable time after reaching majority), it is his affair. It would be the broker's obligation to ascertain if the buyer is a minor, and then to inform the seller * * *.

Community Property

"Since an agreement to procure the consent of a wife or any third person cannot be specifically enforced, it is exceedingly important to get the signature of the wife. In fact the signatures of both spouses to any contract relating to community real property should be secured. Always inquire if the party is married * * *.

Consideration

"Specific performance cannot be enforced against a party to a contract if he has not received an adequate consideration therefor. This doctrine does not require that the highest price obtainable must be procured. It means that a price that is fair and reasonable under the circumstance must be obtained. If a higher price be offered during the negotiation, it must be presented * * *.

"To entitle plaintiff to use the equitable remedy of specific performance, he must show that the contract as to the defendant is just and reasonable. Such a remedy was denied in one case because the seller was not given adequate security to insure the payment of the balance of the price.

"The knowledge * * * (of the equitable remedy of specific performance) will aid the broker in preparing his documents. The fuller the knowledge and the more thoughtful and careful the broker is, the greater will be his satisfaction, his profits and his prestige."

The fee for an original real estate, business opportunity, cemetery or mineral, oil and gas salesman's license, including the first examination, is \$5. We continue to receive a number of applications accompanied by a fee of \$7 for original real estate salesman license and \$9.50 for original business opportunity license, and in some cases, an additional \$2 fee after the applicant has been notified that he has successfully passed the real estate salesman's examination. Our payments increase our work materially as they must be recorded and refunded.

In recent months the Division of Real Estate has held a number of hearings resulting in suspension or revocation of licenses. In addition, hearings were held on license applicants who appeared to have made false statements on their applications or whose reputations and records of truthfulness and honesty were questionable. Licenses were denied when the applicants were unable to prove proper qualification.

A study of hearings over a 12-month period revealed the following facts: Of licensees suffering a penalty of suspension or revocation 55 percent had been licensed less than four years; 20 percent had been licensed over four years and less than ten years; and 25 percent had been licensed over ten years.

Licenses have evinced interest in the hearing activities of the division. In attempting to brief the cases as we do in this article, it must be borne in mind that only the central facts of the individual cases can be given. In arriving at decisions, we take into account not only the bare facts, but also give consideration to any mitigating circumstances. The degree of severity of the final decision may be influenced by such factors as the licensee's past record, his efforts to compensate for loss he may have caused, the circumstances surrounding the transaction or the revealed motives of the complainant.

Some of the more interesting cases involving orders of suspension or revocation are outlined briefly below:

Licensee misrepresented his authority to negotiate the sale of several pieces of property. He made false statements concerning his interest in the properties. Further, he diverted the funds received from his client to his own use and was unable to make a satisfactory accounting. License revoked.

Business opportunity licensee was active in securing listings which purported to be for a maximum period of 30 or 60 days. However, the listing contract contained another provision which stated that the contract was to be in force for an additional six months, if it were not terminated by registered letter from the owner of the business. Some owners relying on the obvious termination date of 30 or 60 days from inception of the contract after inquiry proceeded to sell their businesses or have other agents sell them after the supposed termination. Upon seeing the notice of sale the original listing broker then followed the practice of bringing suit for commission or tied up the escrows. License revoked.

Real estate broker accepted several deposits which, instead of applying to the proposed purchases, he converted to his own use. License revoked. Felony warrants issued by district attorney's office.

Licensed partnership commingled funds of clients' trust account with its own. Although after considerable delay, deficiency was corrected, license was revoked.

A real estate broker meeting the citizenship requirement for such license by virtue of his application for citizenship of the United States, failed to become a citizen in due course. He was found in violation of Section 10150.5 and his license was revoked.

Broker received two payments for rental on a lease which payments he failed to remit to his principal. Eventually he paid in full, but in the meantime he had claimed the money was in his trustee account. The balance in the account was proved to have been much lower than the amounts paid on the lease. For commingling funds his license was suspended.

Licensee guilty of misrepresenting his position in consummating a sale. License suspended.

A real estate broker licensee made a false and unwarranted claim for commission on the sale of property on which he held no listing and which he had not shown to the buyers, nor had he interested them in any way. License suspended.

Licensee convicted of a felony and, although placed on probation, other matters reflecting on his honesty and good reputation came to light. License revoked.

The last special session of the Congress passed housing legislation which, through its financing provisions, is intended to encourage four specific types of homebuilding, (1) low cost—\$6,000 to \$7,000, (2) volume, (3) rental, and (4) prefabricated.

It is too early to determine the resulting effect of this legislation. Of general interest is the provision empowering FHA to insure blanket mortgage loans to builders of projects of 25 or more houses. The houses so built cannot be sold carrying a loan of more than \$6,000. Building economy is expected because the builder can obtain his working capital in a lump sum. With firm orders, prefabricators are granted FHA insurance on their working capital loans. Time is allowed for manufacture, sale, and negotiation of a conventional type loan.

Pointed toward encouragement of rental construction for families of moderate income, the housing bill provides something new called Yield Insurance which, if the rents charged are approved by FHA for moderate income families, will (a) guarantee 90 percent of an investment in rental housing, (b) take over the project if the operating loss exceeds 5 percent of the total investment, or (c) pay a subsidy when income drops below a given minimum percentage. But on the other hand, yield on the insured investments is limited to 5 percent and if earnings exceed this figure, they must be applied to speedier amortization.

The rental building loan guaranty provisions of Title VI are extended to March, 1949. This provides FHA coverage up to 90 percent of loans on rental projects and changes the previous loan limit of \$1,800 per room to \$8,100 per family unit. The change in application of loan limits will possibly encourage small apartment building rather than units required by larger families.

The previously enacted secondary market provisions for FHA insured or Veterans Administration guaranteed loans are expanded by the new housing law. A lender may now sell to the Federal National Mortgage Association 50 percent of his holdings in such loans, and all mortgages insured or guaranteed before April 30, 1948 are now eligible for such sale.

The Veterans Administration is authorized to allow a maximum rate of interest on its guaranteed loans of 4½ percent instead of the 4 percent heretofore allowable. The housing law also directs the Public Housing Administration to accelerate its program of removing higher income families from public housing projects.

Observers believe that achievement of the objectives of this housing legislation is dependent mainly on two factors. Will lenders be attracted under these conditions and will builders be able to produce homes in the \$6,000 to \$7,000 bracket which offer the most favorable credit and selling terms?

Broker licensee accepted a deposit on an offer to purchase a certain property which he had listed. The deposit receipt included certain conditions which the broker later crossed out on the instrument with the apparent intention of claiming a forfeiture. License suspended.

Licensee offered property for sale when he had no authority to do so and accepted a deposit on an offer for the property. He was unable or unwilling to account for the deposit. License revoked.

Corporation license was revoked upon the showing that it had failed to file notice of intention to subdivide with the Commissioner as required by the subdivision provisions of the Real Estate Law.

Some instances have been reported of the use of listing contract forms authorizing licensees to act as agents for property owners where the forms contain a provision which might result in the claiming of two commissions for the sale of a single property. In one example the provision, which probably does not affect the legality of the whole instrument, reads as follows:

“Should this property be conveyed, sold, exchanged or in any manner disposed of, within a period of three months after the expiration of this contract to any party with whom aforesaid agent negotiated during the lifetime of this contract, I agree to pay said agent the commission as specified herein.”

There was no provision included whereby the agent was bound to put his principal on notice of the parties with whom he might have negotiated during the life of the listing. An occasional variation in the provision eliminates the specification of 90 days and leaves the claiming period indeterminate.

If a broker uses such a listing and fails to complete a sale within the period of his contract, the owner often contracts with a second broker after the normal term of the first contract. If this second broker then happens to sell the property to an individual who was originally shown the property by the first broker, the contracts are overlapping and appear to entitle both brokers to a commission.

Despite the damaging public relations of instituting suits or filing claims against the escrow in such instances, this has been done in isolated cases. The normal and obvious solution would be for the brokers to get together and work out some compromise solution for a split of one commission.

In one instance, a broker using a listing agreement including the above-cited paragraph, failed to close a deal during the 30-day life of his contract. After the expiration date, the seller listed with a new broker who was successful in selling the property and thereupon received his commission.

The first broker then instituted suit for payment of a like commission to him, claiming that he had negotiated with the eventual buyer during the life of his contract and that the sale had been consummated before the 90 days extension had run.

The seller claimed he knew nothing of such negotiations. Before the case came to trial, the buyer died and in the absence of his corroborative testimony, judgment was denied. However, it is the defending attorney's opinion that his client would have probably been obliged to pay the extra commission had the buyer lived to substantiate the claim

The Veterans Administration has revised its appraisal system so that the veteran is now advised in writing of any major deficiencies in a home property he may wish to purchase with a GI loan. VA assigns appraisers directly for houses to be appraised as completed dwellings.

Appraisal for reasonable value can be requested by the prospective veteran purchaser, by the owner, by the real estate broker, or by the lending agency, and a written report of any deficiencies is submitted to the party requesting such appraisal.

The Veterans Administration upon request will have appraisals made before the property is placed in the open market and such appraisal is good for 60 days.

Whether the property is on the market or not, if the appraisal discloses conditions requiring repair to preserve the structure, the appraiser will detail and estimate the required repair work in his report for the veteran, owner or broker.

In the case of most builders, VA will inspect as the building project goes on. Three compliance inspections are made at various stages in the progress of construction. Having taken advantage of this plan, the builder avoids any delay in approval of his houses for loans within the limits of the appraisal at the completion of construction.

of the suing broker that he, the broker, had negotiated with the eventual buyer in the first place.

The broker is entitled to a legitimate commission but unnecessary involvement of the innocent seller is detrimental to the best interests of the business.

It has not been the policy of the Division of Real Estate to attempt to construe contracts or determine earned commissions, but it has discouraged the use of instruments which are not clear in all their implications. We base this attitude upon the fact that such use, however limited, tears down the sound public relations of the real estate profession and is harmful to the general public. It often results in bitter and vindictive criticism. With rare exceptions licensees are careful that they do not establish the ground work for possible inequities, and are zealous to maintain the public's good will. In the interest of all licensees, the State Real Estate Board has suggested an amendment to the Real Estate Law relating to termination dates of exclusive listings. It is designed to prohibit such harmful practices and has been approved by the Board of Directors of the California Real Estate Association.

The next bulletin of the division will carry an outline of all proposed legislation.

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