

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate—D. D. Watson, Commissioner

VOL. X

NOVEMBER, 1950, SACRAMENTO, CALIFORNIA

No. 3

Commissioner's "Industry Committee"

The commissioner has put into effect what he terms the "Commissioner's Industry Committee." This committee is made up of the presidents of the 130 real estate boards throughout the State and of representatives of other groups, both white and colored, not identified with "organized" real estate.

The commissioner plans that all 90,000 licensees shall be properly represented and given an opportunity to advise him in respect to real estate problems.

Two considerations, the war situation with possible deputy manpower shortages, and a desire to solve problems from a "grass roots" rather than a "swivel chair" approach, prompted the commissioner to ask the industry for its cooperation.

Signs and Licenses

Confusion and misunderstanding have existed for some time in respect to maintaining broker signs and licenses as required by law.

For several months the commissioner and his advisory board have been discussing this problem. As a result the Real Estate Commissioner's Rules and Regulations on the subject are in the process of being clarified.

Specific and understandable regulations will soon be issued. **Watch for them in the next issue of this Bulletin.**

- Comparatively few persons are entering the real estate business as brokers because of the experience qualifications now necessary. But, the division gave 3,458 real estate salesman (including provisional) examinations during the first four months of this license year—almost double the figure for the same months of 1949.

Warning About Subdivisions—No Early Offerings—Report Receipts to Be Kept

Subdividers in many instances appear to be offering subdivision property for sale before the commissioner has issued his public report on the subdivision.

The situation is so serious that the commissioner feels it necessary to point out that such subdividers are in violation of law, and that his duty requires that he take action against such violators.

The commissioner's deputies have been instructed to investigate those subdivision activities where possible violations may be occurring. When violations are indicated, the deputies have been instructed to "follow thru" with such formal hearings, injunctions, or criminal complaints as are appropriate.

This is not meant to be a "threat" in any way but it is a warning which is, unfortunately, necessary.

SUBDIVISION PUBLIC REPORT RECEIPTS

Receipts for copies of the Subdivision Public Report given to lot purchasers must be kept on file and are subject to inspection by the commissioner's deputies.

Spot checking has indicated that all subdividers have not been complying with this requirement.

Since the "intent" of the law is defeated unless copies of the public report are given, the commissioner has instructed all division offices to institute a system of checking such receipts regularly. **Subdividers are requested to cooperate by keeping these receipt files readily available.**

Educational Qualification for Broker License

Since the experience requirements for broker license became effective October 1, 1949, the Division of Real Estate has received many inquiries from college and university graduates as to whether they have taken sufficient work in real estate subjects to qualify for broker license.

The law now provides that the Real Estate Commissioner shall not grant a broker license to any person who has not had at least two years' active experience as a salesman, or at least the equivalent of two years' general real estate experience, **or graduation from a four-year college or university course which course included specialization in real estate.**

The board has adopted a minimum schedule of credits which it will entertain in considering the applications of college and university graduates. This schedule was arrived at after carefully considering the available courses at our

leading universities and what, in the opinion of the individual members, would constitute basic real estate education on a college level.

As a guide to approving experience claims of those who seek to qualify through accredited college or university work, the *board will require three units in the fundamentals of real estate, three units in real estate law, three units in the valuation of real property, and three units in related subjects in the general field of real estate.*

This statement of policy will give college graduates seeking broker licenses an opportunity to review their college credits and determine whether or not they have sufficient for approval of the board. The schedule will be somewhat flexible as it is realized that various institutions of learning offer different types of courses, but in general the schedule will be adhered to.

Published Bimonthly by the

DIVISION OF REAL ESTATE
STATE OF CALIFORNIA
EARL WARREN, Governor

D. D. WATSON

Real Estate Commissioner

M. R. GRIFFIN, Administrative Assistant

STATE REAL ESTATE BOARD

Leland P. Reeder Charles B. Shattuck
Beverly Hills Los Angeles
Maurice G. Read Chester MacPhee
Berkeley San Francisco
Frank Whitelock Curtis M. Robbins
San Bernardino Stockton

OFFICES AND AREA ADMINISTRATORS

GAYLORD K. NYE, Chief Deputy

Sacramento, Principal Office..... Fifth Floor, 1021 O Street
San Francisco, Room 204, 1182 Market St.

Saxon A. Lewis, Supervising Deputy

Oakland.....505 California Building
Fresno.....1842 McKinley Avenue

RAY D. WESTCOTT, Chief Deputy

Los Angeles.....Room 1101, Ninth and Hill Bldg.
Long Beach.....531 American Avenue
San Diego.....517 Bank of America Building

Deposit Money

In considering the question of who is entitled to the deposit money in a real estate transaction, much depends on the contracts involved, including the listing contract between the seller and the broker.

However, the deposit money belongs to either the seller or the buyer—not to the broker. It usually belongs to the seller after an offer is accepted; but before the acceptance, it still belongs to the proposed purchaser. Courts have ruled differently from these general rules in some cases because of varying circumstances and in consideration of the wording of the contract itself. But the important thing to remember is that the money does not belong to the broker.

For this reason, a broker must not commingle deposit money with his own funds. If he does, he jeopardizes his license status.

It has been suggested that an escrow holder of the money protects the buyer, the owner and the broker and eliminates most of the broker's "head-aches" regarding the holding of deposit money. In any case, according to the Real Estate Commissioner's Rules and Regulations, such money must be placed in escrow or in a trust fund account.

LICENSES SUSPENDED OR REVOKED IN SEPTEMBER AND OCTOBER

NOTE: Any person whose license has been suspended or revoked, or whose license application has been denied, has the right to file a petition for writ of mandate. Generally, this must be done within 30 days after the effective date of the decision.

LICENSES REVOKED DURING SEPTEMBER AND OCTOBER, 1950

Name	Address	Effective date and term	Violation
VanSteenwyk, Cornelis K.W. Real Estate Broker	11016 S. Main St., Los Angeles	8/17/50	Sec. 10177 (f)
Langdon, James J. Real Estate Broker	124 Throckmorton Ave., Mill Valley	8/31/50	Secs. 10176, subdivs. (a), (e), (i) and Sec. 10177, subdiv. (f)
Miller, Warren M. Real Estate Broker	3523 El Cajon Blvd., San Diego	8/31/50	Secs. 10176 (e), (i) and 10177 (f)
Underhill, Charles H. Real Estate Broker	1440 Broadway, Oakland	9/11/50	Sec. 10176, subdivs. (a), (i) & Sec. 10177 subdiv. (f)
Hill, Dorothy Rhea Real Estate Broker	130 E. 36th St., Los Angeles	9/14/50	Sec. 10176 (e), (i), & 10177 (f)
Aron, Myron Real Estate Broker, Business Opportunity Broker	1561 N. Western Ave., Los Angeles	9/28/50	Sec. 10301, subdivs. (a) & (b), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
Bland, Maxwell H. Real Estate Broker, Business Opportunity Broker	404 E. Broadway, Glendale	9/28/50	Sec. 10301, subdivs. (a) & (b), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
Davis, Michael Real Estate Broker, Business Opportunity Broker	11933 Ventura Blvd., Studio City	9/28/50	Sec. 10301, subdivs. (a) & (b), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
Guyer, Paul Meyer Real Estate Broker, Business Opportunity Broker, Real Estate, President of Pacific Business Exchange, Business Opportunity, President of Pacific Business Exchange, Real Estate, Secretary-Treasurer of Timely Investment Company, Business Opportunity, Secretary-Treasurer of Timely Investment Company	9 Sutter St., San Francisco	9/28/50	Sec. 10301, subdivs. (a) & (b), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
Haagen, Alexander Real Estate Broker, Business Opportunity Broker, Real Estate, President of Alexander Haagen, Inc., Dba Central Listing Plan, Business Opportunity, President of Alexander Haagen, Inc., Dba Central Listing Plan	4101 W. Third St., Los Angeles	9/28/50	Sec. 10301, subdivs. (a), (b), (c), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
O'Brien, Daniel Vincent Real Estate Broker, Business Opportunity Broker	3908 W. Sixth St., Los Angeles	9/28/50	Sec. 10301, subdivs. (a) & (b), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
Ranthum, Hans Charles Real Estate Broker, Business Opportunity Broker	4101 W. Third St., Los Angeles	9/28/50	Sec. 10301, subdivs. (a) & (b), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
Steinberger, Louis Joseph Real Estate Broker, Business Opportunity Salesman	5256 Cleon Ave., N. Hollywood	9/28/50	Sec. 10301, subdivs. (a) & (b), Sec. 10302, subdiv. (e), Sec. 10177, subdiv. (f)
Kimbro, Carl Davis Real Estate Broker	1768 W. 36th Pl., Los Angeles	9/29/50	Sec. 10177 (a) & (f)
Lamb, Rose Margaret Real Estate Salesman	4962 Olive Dr., Concord	10/16/50	Sec. 10176, subdiv. (i) and Sec. 10177, subdiv. (f)
Ferguson, Thomas Moir Real Estate Broker	10269 Santa Monica Blvd., Los Angeles	10/19/50	Sec. 10177 (b) & (f)

LICENSES SUSPENDED DURING SEPTEMBER AND OCTOBER, 1950

Name	Address	Effective date	Violation
Baker, Ralph W. Real Estate Salesman	4608 E. Rosecrans St., Compton	9/6/50 10 days	Sec. 10177, (a) & (f)
Sickel, Jack Harrington Real Estate Salesman	2433 Belmont Ave., Long Beach	9/ 6/50 30 days	Sec. 10177, (a) & (f)
Centonze, Frank S. Real Estate Salesman	2280 Mountain Blvd., Oakland	9/11/50 15 days	Sec. 10177, subdiv. (f)
Associated Brokers Real Estate partnership	7726 S. Western Ave., Los Angeles	10/ 2/50 60 days	Sec. 10177.5
Brim, Carl Frederick Real Estate Broker member			
Dorval, Alfred George Real Estate Salesman	420 Los Alamos Dr., Valencia Park	10/31/50 30 days	Sec. 10177, (a) & (f)

Sale of Subdivision Lots Declared Void

A recent decision of the California District Court of Appeal will be of interest to all subdividers. Failure to comply with the subdivision requirements of the law may give a dissatisfied purchaser the basis for rescinding his transaction.

Section 11012 of the Business and Professions Code, enforced by the Real Estate Commissioner, makes it unlawful for a subdivider to materially change the setup of an offer of sale of subdivided land without first notifying the Real Estate Division. The requirement of the law is mandatory and is for the protection of the buying public.

In the case of *Peter J. Murphy, et al, v. San Gabriel Manufacturing Company, Los Angeles County Civil Case No. 17589*, it appeared plaintiffs agreed to purchase lots in a real estate subdivision from the company. After making a substantial down payment and further payments, they gave notice of rescission, returned their agreement and demanded the return of their money.

A subdivision filing had been made by the owners of the property with the Real Estate Commissioner, and among the documents submitted was a copy of the proposed sales contract as required. Thereafter the subdivider conveyed the property to the San Gabriel Manufacturing Company, but remained as the selling agent of the property and made numerous sales of lots. The evidence in the case showed that the sales agreement between the plaintiffs and the San Gabriel Manufacturing Company was not in the form

of the contract previously filed with the Real Estate Commissioner. No information had been given to the Division of Real Estate of a proposed change from the contract form submitted originally.

The court held that the effect of the change was "to materially change the setup of such offering," and that to use the substituted contract without notice was a violation of the Real Estate Law. The court therefore held the contract void and ordered the return of the money which the purchasers had paid. The case is cited in the Advance California Appellate Reports and appears in the advance sheets under "99 A. C. A. No. 5, page 407."

It is important that subdividers refrain from materially changing the setup of their offering of lots after they have made their filing and declaration to the Real Estate Commissioner, unless they give the notice required by law. **Any carelessness in this respect may seriously affect the legality of their sales in event rescission is sought by purchasers.**

Offer to Purchase or Deposit Receipt Forms

It has been called to the commissioner's attention that some subdivision owners, selling through agents, insist on an offer to purchase, or deposit form, which requires that the deposit received by the broker be turned over to the seller at the time the seller accepts the offer.

There appears to be nothing illegal in the practice itself, but many brokers are hesitant to work on such a basis. If for any reason the transaction is not consummated and the deposit is to be returned to the purchaser, these brokers fear that they will be liable for the return of the deposit if the seller does not have the funds available.

Each broker should understand thoroughly the duties and obligations imposed upon him by his principal when he is employed under a listing agreement contract and that he must abide by the terms of that employment contract when he accepts it.

If the basis of the employment is not acceptable to him, the broker is at perfect liberty to refuse to be the agent for the principal. If a broker is uncertain as to his liability in working on the above described basis, he is advised to consult an attorney for clarification of his position.

Even though a broker may not be held accountable by a court for the return of a deposit in certain cases, he may be risking the expense of attorney fees and involvement in litigation. This can happen even though he is entirely innocent of wrongful intent and had no idea of assuming the burden of liability for the default of another.

Supreme Court Decision on Zoning Ordinance

A case was recently decided in the California Supreme Court which upheld the validity of the Los Angeles Municipal Zoning Ordinance and brought out the relation of this ordinance to the Subdivision Map Act. Its effect is important to subdividers and others who divide lots contrary to local zoning ordinances.

The case is cited as *Charles L. Clemons v. City of Los Angeles* in 36 A. C. R., No. 3 on page 31. The decision is dated September 28, 1950.

A summary of the court's opinion is as follows:

"A property owner's purported sales in violation of a city ordinance prohibiting the reduction of residential lots below the specified minimum of 5,000 square feet in area and 50 foot frontage were voidable at the option of the other parties to such transactions, where the Subdivision Map Act empowered cities to impose the same sanctions for violation of supplementary municipal ordinances as those found in the Subdivision Map Act, and the city intended by enactment of the ordinance in question to exercise such power."

The facts in the case appear to be as follows:

On December 1, 1946, the plaintiff purchased a 20-year old bungalow court located in a C-2 Zone in the City of Los Angeles. This property was subject to a Los Angeles Municipal Ordinance which limits lots held under separate ownership to a minimum average width of 50 feet and a minimum area of 5,000 square feet.

Thereafter the plaintiff subdivided and either sold, or leased on a 99-year

(Continued on Page 4, Col. 3)

Requests for License Changes

When a broker wants his license changed in any respect, he must personally sign the request. This applies to requests for change of address, name, entity, and requests for cancellation, reinstatement, etc. This requirement is for the broker's own protection; to guard against the possibility of some unauthorized person tampering with the broker's license status.

California Has No Reciprocal Real Estate Licensing Arrangement With Any Other State

Some states have real estate license laws which provide for reciprocity of licenses between states. One state will issue a license to a person who is licensed in another state based upon the fact that he has met the requirements of the state in which he was first and originally licensed. In certain cases, and under specified conditions, a broker's license in one state allows its holder to operate in neighboring states. Questions have arisen as to the position of California in this matter.

The California Real Estate Law does not contain any license reciprocity provisions. All applicants for licenses in California, even though licensed in other states, must be treated as original applicants, and comply with all of the California requirements as to experience, character, written examination, etc.

Right to Use of Fictitious Name

Complicated problems sometimes arise in connection with the right to use a particular fictitious name. For example—recently “John Doe” requested to be licensed doing business under the fictitious name “Blank Realty Company,” and his license was issued as requested, since the records did not show any other broker was licensed under this name.

However, it developed that there was in existence a “Blank Realty Company, Inc.,” a real estate holding company which held no broker license. The attorneys for this corporation served notice upon the broker who was licensed to do business as “Blank Realty Company,” that he must cease and desist from using this fictitious name, because the corporation had prior right to the use of the name. Unfortunately, the real estate broker had spent a considerable sum of money in the preparation of signs, printed stationery, etc. The commissioner could not enter into such a controversy, and is obliged in such cases to advise the licensee to follow the advice of his attorney in protecting any rights he may have.

Although the Real Estate Commissioner affords certain protection to

However, the California law does permit its licensees to cooperate with and pay commissions to those licensed in other states. Licensees from other states cannot come within the borders of California and operate as real estate brokers without a California license. Such a broker would have to obtain a California license, maintain a place of business and properly display his license and sign.

licensees in connection with the use of fictitious names, **it must be borne in mind that the final determination of the rights of a licensee to the use of a particular fictitious name, in case of a dispute, rests with our courts of law.**

Subdivision Filings

The pace at which new subdivisions are being launched in California has shown no pronounced letup. During July, August and September, 1950, a total of 509 subdivisions were filed with the division as compared with 307 in those same months in 1949. Well over 150 subdivision filings were received in October, 1950.

Zoning Ordinance

(Continued from Page 3, Col. 2)

basis, eight of the nine parcels comprising the bungalow court. The average area of the parcels was approximately 925 feet and the dimensions of the lots were 25 by 37 feet.

When threatened with arrest or prosecution, the plaintiff sued for injunctive and declaratory relief, stating that the ordinance was beyond the police power and that it interfered with his constitutional rights regarding disposition of property. He appealed from an adverse judgment in the superior court, but the judgment was upheld by the California Supreme Court and affirmed.

The California Supreme Court held that the municipal zoning ordinance supplemented the Subdivision Map Act, because it prevented lots sold pursuant to such act from being further subdivided and thus prevented or diminished the possibility of circumvention of the map act.

The zoning ordinance and the comprehensive master plan looked toward the future, according to the court, and was applicable in this case even though the property in question had been built and was in existence long before the ordinance was passed. The court further held that the ordinance was a legitimate exercise of police power, did not impair constitutional rights of property, and the plaintiff could still dispose of the bungalow court as a unit. It should be noted that the decision of the Supreme Court in this case was not unanimous as a strong dissenting opinion was filed by Justice Carter in which Justice Shower concurred.

(The above court decision, like all others commented on in this *Bulletin*, is cited as a matter of interest to readers of the *Bulletin*, but is not intended as an authoritative review. With reference to the applicability of this case to other matters, the opinion of an attorney should always be secured.)