

REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

EARL WARREN, Governor

Sacramento, November, 1951

D. D. WATSON, Commissioner

Rule Rental Agencies Need License

So-called "rental agencies" are required to hold a real estate broker license, according to an Opinion of Edmund G. Brown, Attorney General, furnished to the Real Estate Commissioner under date of October 25, 1951.

Many so called "rental agencies" have operated under the theory that they are in the "advertising business" and are not required to hold a license.

The question propounded to the Attorney General by the commissioner was substantially as follows: "Whether rental agencies which solicit rental listings from prospective landlords and furnish them to prospective tenants in return for a fee are classifiable as real estate brokers under Section 10131 of the Business and Professions Code."

The Attorney General's conclusion is summarized as follows: "Rental agencies which engage in the above-described activities are real estate brokers within the meaning of Section 10131 of the Business and Professions Code."

The fact that these agencies *place for rent* certain properties for *compensation* is the basis of the opinion that a license is required. In a further discussion of the basis for his opinion, the Attorney General states: "These agencies solicit listings from landlords; the prospective tenant supplies the required element of compensation by paying what is termed a 'registration fee,' and in return therefor the agency 'places for rent' or sets before him a list of rentals. We therefore conclude that these rental agencies are real estate brokers within the meaning of Section 10006 and are accordingly subject to the jurisdiction of the commissioner under the Real Estate Act.

"The fact that no guarantee is made by these agencies as to the establishment of a rental does not affect our conclusion. The only act required by this particular portion of Section 10131 is a placing for rent. This latter term does not include activities occurring subsequently, such as a fruitful pursuit of the listings furnished by the agency.

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Recent Law Changes Affecting Real Estate

Comparatively few changes in the laws affecting real estate licensees and real property ownership were made in the last session of the Legislature. No changes affecting licensees were made in the real estate license law itself.

Some changes affecting laws related to real estate ownership which are of interest to real estate licensees are mentioned briefly as follows:

Community Property

A married woman is given more leeway in the management of community property under newly adopted Section 171c of the Civil Code. She is given the right to manage and control community property money earned by her or community property damages received by her for personal injury suffered by her, until it is commingled with other community property. This right is subject to certain restrictions and reservations imposed by law. This new provision does not make such money the separate property of the wife, nor does it change the respective interests of the husband and wife in such money as defined in Section 161a of the Civil Code.

Insurance Requirement

The law now prohibits persons who lend money to finance or purchase property from *demanding* that insurance covering the property be written through a particular insurance agent or broker. The lender may require that the insurance be written in approved companies, and may recommend a certain agent as long as there is no *demand* that the business be written through a certain agent. These provisions are included in Section 770 to 775 of the Insurance Code.

Joint Tenancy

A new requirement covering the dissolution of a joint tenancy following the death of one joint tenant was

(Continued on page 22, col. 1)

MANY THANKS

Many have responded to my request for suggested questions or articles which might be of interest to the majority of the licensees.

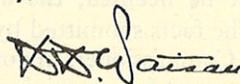
I appreciate your interest and with your continued cooperation, we hope to make our *Bulletin* service one of real value to those engaged in the business.

We are using those suggestions which definitely appear to be of general interest as space becomes available.

Many have suggested a "Question and Answer" column—others tell of the value the *Bulletin* has been in respect to clarifying some of the procedures that they had been "wondering about"—some say the *Bulletin* is clearing up many misunderstandings in reference to policies—a great many advise they are using the punched holes to start making a file for reference.

Your help is appreciated—keep your suggestions coming. We want to give you what YOU want. We want the *Bulletins* not only to be of interest, but of value to those interested in the real estate industry.

Sincerely,



Real Estate Commissioner

P. S.—As this is the last *Bulletin* until January—a happy holiday season to you, and much success for the New Year!

The Idaho License Law requires that every real estate listing have a definite termination date, regardless of whether it is an exclusive listing or an open listing.

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Sacramento, November, 1951

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

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Commission Agreements

Many questions are received at the division offices regarding the division of commissions between brokers. The provisions of the Statute of Frauds which require certain real estate contracts to be in writing do not require that agreements between real estate agents to cooperate in the transaction of business be in writing. However, this is highly desirable as it would eliminate many controversies and law suits.

Perhaps more ill feeling is caused among brokers over commission controversies than any other single thing. Some brokers have indicated that it is embarrassing to them to ask fellow-brokers for written memorandums covering agreements to cooperate in sales; nevertheless it is ordinary good business and will eventually develop far less ill feeling than controversies which might develop when the matter of dividing commissions comes up.

The commissioner, of course, cannot ordinarily enter into disputes among licensees over the division of commissions. Generally speaking, whenever there is any reasonable basis for one broker withholding another broker's share of the commission, the commissioner will consider it strictly a civil matter to be determined by a court.

DISCIPLINARY ACTION—SEPTEMBER

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 SEPTEMBER, 1951

Name	Address	Effective date	Violation
Wiley, Clarence Eugene..... Real Estate Broker	Cor. Santa Fe St. & Hwy., P.O. Box 621, Riverbank	9/ 1/51	Secs. 10177 (b) & (f)
Lowry, Herman Dale..... Real Estate Broker (Renewal Right)	1108 W. Glenoaks Blvd., Glendale.	9/ 5/51	Secs. 10176 (a), (b), (e), (i) & 10177 (b), (f)
Peterman, Russell George..... Real Estate Broker (Renewal Right)	630 N. Serrano Ave., Los Angeles	9/17/51	Sec. 10177 (b), (f)
Mardis, Frank Ellis..... (Dba The Fair Realty Co.) Real Estate Broker	191 Edinburgh St., San Francisco	9/20/51	Secs. 10176 (e), (i) & 10177 (f)

LICENSES SUSPENDED DURING SEPTEMBER, 1951

Name	Address	Effective date and term	Violation
Cheek, Leonard C..... Real Estate Salesman	9901 MacArthur Blvd., Oakland	9/17/51 60 days	Secs. 10176 (a), (b), (i) & 10177 (f)
Keoseyan, Jess A..... Real Estate Broker Business Opportunity Broker	7401 MacArthur Blvd., Oakland	9/17/51 60 days	Secs. 10177.5; 10177 (f) & 10302 (e)
Minks, Leroy Nelson..... Real Estate Broker Business Opportunity Broker	7828 E. 14th St., Oakland	9/17/51 60 days	Secs. 10177.5; 10177 (f) & 10302 (e)

Holds "Power of Attorney," But License Still Required

While the Real Estate Law exempts those persons from license requirement who act under power of attorney, the exemption does not apply to those who are engaged in the business of acting as real estate agents, according to formal opinion given by Attorney General Edmund G. Brown. The opinion was written by Deputy Attorney General Leonard M. Friedman.

If a person is in the business of selling subdivision lots for a compensation, as holder of a power of attorney, he is not within the exemption and must be licensed, the opinion states.

The facts submitted by the Real Estate Commissioner, in connection with his request for an opinion, were briefly these: the subdivider, as owner of the land, apparently gave three different persons a power of attorney, appointing each to act as "attorney-in-fact to act in our name and stead for the following purposes, to-wit: to exhibit, to contract for the sale of, to take deposits on and give receipts for deposits made, on all the lots, blocks, and structures located in the tract."

The Attorney General comments that the naked words of the exemption in the statute permit the argument that the holder of any such formalized delegation is exempt from real estate licensing requirements. If that were true, he states, any unlicensed agent or broker could assume to sell land of another merely by holding a document designating him as attorney-in-fact and carrying an acknowledgment and notarial seal. "In our view the law permits no such result," he comments.

Cases referred to by the Attorney General include *Riley v. Chambers*, 181 Cal. 589, wherein the court said that the term (power of attorney) does not embrace a written authority to act as a mere broker. The same problem arose in Louisiana, whose real estate law, like our own, exempts the holder of a duly executed power of attorney. In *Trentman v. Brown*, 147 So. 14, the Louisiana Supreme Court held that the exemption was not available to a firm engaged in the business of selling real estate and handling subdivisions.

Home Sellers May Benefit By Tax Change

Brokers will be aided by removal of a serious stumbling block in selling a family on the idea of disposing of their old home and purchasing a new one. Formerly such a home owner was obliged to pay income tax on the profit he had made on the old home, or at least half of it. This applied particularly to families who purchased their homes prior to the war, when prices were low as compared with today. These families in many cases continued to hold on to the old home rather than pay the high tax on the dollar profit.

The situation has been relieved through amendments to the law permitting home owners under such circumstances to reinvest the capital secured from the sale of the home without penalties. Following is a brief statement of the new provisions:

The old law taxed as a capital gain any increase in value over the original purchase price of an owner-occupied home which was sold or traded by the owner for another home to be occupied by him.

The new law provides that when the sale of the taxpayer's principal residence is followed within a year by the purchase of a substitute, or when the substitute is bought within a year prior to the sale, gain is to be recognized only to the extent that the selling price of the old home exceeds the cost of the new.

Thus, if a dwelling purchased in 1940 for \$10,000 was sold or traded in 1951 for \$15,000, there would have been a taxable gain of \$5,000 under the old law. Under the new law, however, no portion of the gain is taxable provided a substitute "principal residence" is bought within the time limit for \$15,000 or more. If the replacement cost is less than \$15,000, say \$14,000, the amount taxable as gain is \$1,000. The provision applies where one residence is exchanged for another, where a replacement residence is constructed by the taxpayer rather than purchased, and where the replacement is a residence which had to be reconstructed in order to permit occupancy. In the case of construction of a new home, it must be used as the taxpayer's principal residence within 18 months after the sale of the former home, and this 18 months is allowed for reinvesting proceeds of the sale. In other cases, the new house must be used as the principal residence within a year after the sale.

REFERENCE BOOK REVISED

The 1952 edition of the Real Estate Reference Book will be available within a few days at all offices of the Division of Real Estate.

The newly revised publication covers much of the latest legislation relating to real estate. It also includes an expanded glossary of real estate words and phrases; up-to-date information on Veterans Administration, Federal Housing Administration and California Veterans home purchase financing; extensive changes in the examination question sections, etc.

The Real Estate Reference Book sells for \$1.55 including sales tax. Please address mail orders to Division of Real Estate, 1021 O St., Sacramento. Mail orders are sent postpaid. C. O. D. orders cannot be accepted.

The taxpayer is not required to have actually been occupying his old residence on the date of its sale. Relief is available even though he moved into his new home and rented the old one temporarily before its sale. Similarly, he may obtain relief even though he rents out his new residence temporarily before occupying it, if he moves in within a year or 18 months, as the case may be, after the sale of his old house. The special treatment is available only with respect to one sale or exchange per year, except when a new residence is involuntarily converted.

If the residence is part of business property, as in the case of an apartment over a store building or a home on a farm, and the entire property is sold, the provision applies only to that part used as a residence, including the environs and outbuildings relating to the dwelling, but not those relating to the business operations. **The benefits of the new law apply to the sale of an owner's home made after December 31, 1950.**

Brokers Holding Escrows

Escrow agents, with certain exceptions, are required to be licensed by the Commissioner of Corporations, as required by the Escrow Act. Real estate brokers are exempt if they hold escrows while performing acts in the course of, or incidental to, the real estate business.

This exemption has been interpreted as applying only to transactions in which the broker acted in his capacity as a real estate broker, and that he may not hold an escrow for compensation in connection with a transaction made by another broker.

The Real Estate Commissioner has advised all brokers who hold escrows without being licensed under the Escrow Act, that they should maintain all escrow funds in a trust account and keep proper records. He now is in the process of adopting a rule to make this practice mandatory. The rule will require all escrow funds to be kept in a trust fund account with some bank or recognized depository. The broker must keep complete records of all funds so deposited, which records shall be subject to inspection by the commissioner or his deputies. Failure to deposit trust funds promptly in a trust account may be construed as "commingling" of funds, subjecting the licensee to disciplinary action.

Misleading Advertising

The Texas Real Estate Commission has adopted a rule reading, "Any advertising tending to convey the thought to the reader that the writer of such advertisement is the owner of the property being advertised when in fact, he is the agent or dealer, shall be classified by the commission as misleading or tending to misrepresent, and such violation will lead to disciplinary action by the commission." California law also prohibits false and misleading advertising.

The commissioner recently made a survey of the real estate licensing laws of the 38 states of the Union having such laws. The survey showed that 33 of the states require a written examination for license and only five do not.

"FILLED GROUND" PROBLEM

Rapid expansion of population in areas surrounding some of our larger cities has resulted in the launching of new subdivisions in nearby hilly areas. As a result, a great amount of grading and filling is undertaken in the preparation of some of these tracts for residential building. In certain cases the resulting fill is as much as 50 feet in depth at certain points.

The commissioner, with justification, has been concerned over the manner in which these fills have been made and has instructed his deputies who inspect subdivisions to go carefully into the matter of proper preparation and drainage.

As a general policy, the commissioner will hereafter require the subdivider to present definite evidence that any filled ground has been undertaken in accordance with approved engineering standards, and that the degree of compaction of the soil during the filling process is satisfactory. Ordinarily compaction tests during the progress of the filling operation must be made and the results submitted.

Filled ground at best presents certain hazards for any type of building. In addition to the possibility of settling and slides, filled ground is particularly susceptible to erosion by running water. It is for this reason that close attention will be given to provisions for drainage. Furthermore many fills are made in depressions which have formed natural drainage courses in the past. These present a particularly serious problem.

Recently a hearing was called in connection with a subdivision containing extensive filled ground, as the subdivider had failed to present evidence that the "fill" was properly made. At the hearing he presented engineering testimony which satisfied the commissioner that no unusual hazard existed, and that the "fill" appeared to be properly made.

Subdividers are cautioned that wherever it appears that filled ground may constitute a hazard to the safety of buildings and/or occupants, a hearing will be called and a Stop

Real Estate Advisory Committee Meeting

The Real Estate Advisory Committee to President Robert Gordon Sproul met at Berkeley recently to review progress thus far in the University of California real estate programs and to consider future plans.

It was reported that there has been a growing attendance in courses of the Real Estate Certificate Program conducted by the Extension Division. Outlines for the courses on real estate management, principles, law, and finance are now in the hands of prominent members of the real estate business for comments and suggestions. These outlines have been prepared by authorities in the field under the direction of the university faculty.

In addition to regular course offerings in the San Francisco, San Diego, and Los Angeles areas, courses have been started this fall in Sacramento, Fresno, Monterey, and Santa Cruz. The program has proved most successful in communities in which the local real estate groups and the University of California have cooperated fully.

YOUR SALESMAN

When a salesman leaves your employ, you must immediately notify the commissioner and send in the salesman license for cancellation. The law requires it.

When the salesman is discharged for a violation of any of the provisions of the license law, you are required to make a certified, written statement of the facts to the commissioner; otherwise your own license may be revoked or suspended.

For your protection, the commissioner notifies you if your salesman applies for a broker license or requests reinstatement of an inactivated broker license.

Order issued unless the evidence presented establishes that no unusual hazard to property and person exists. For this reason subdividers are advised to have proper engineering supervision and tests made during the process of the fill and make such information available to the commissioner with their subdivision filings.

PRELIMINARY REPORTS

Again we stress the point that preliminary subdivision reports will be issued by the commissioner only in those cases where the subdivision filing and data are substantially complete, and the completion of all required matters is delayed due only to some unusual circumstance beyond the control of the subdivider. There must also be reason to believe that these incomplete matters are capable of being completed within a certain reasonable time.

Since the previous announcement concerning preliminary subdivision reports, a number of requests have been made for their issuance based upon filings which were inadequate, as they were not substantially complete. Required documents and instruments affecting subdivisions which are available to the subdivider must all be furnished. In all cases an approved preliminary map must be submitted, together with a title report, flood hazard report (if required) and various other routine documents.

Examples of instances when preliminary reports might be issued were given in our previous announcement. If a filing is complete in all other respects, preliminary reports may be issued permitting the taking of reservations in the following examples: (1) Where there is delay in connection with annexation proceedings; (2) In cases where the recording of the final map is delayed due to technical changes; (3) Where there is delay in securing final certificate from the Public Utilities Commission due to required procedures. In brief, these preliminary reports will not be issued in a loose manner. There must be a showing that delay in completion of the filing is caused by circumstances beyond the subdivider's control, and that they may reasonably be expected to be overcome in the near future.

Sale to Agent's Wife Held "Secret Profit"

An agent cannot profit at the expense of his principal, even when that profit does not accrue directly to himself, and the principal is entitled to know all the material facts which may be known to the agent.

The appellant in a recent appellate court case sought to recover a profit resulting when a broker sold the listed property to his wife without disclosing this fact to the seller. The property sold at the asking price to the broker's wife who soon resold at a \$1,000 profit. A lower court had held that recovery could not be made, but the judgment was reversed by the appellate court which found in favor of the broker's principal.

The court in its decision said: "The relationship of principal and agent is, of course, a fiduciary one. In any transaction on behalf of his principal, the agent is bound to exercise the utmost good faith and honesty. He must be in a position to show that he made a full disclosure prior to the transaction of all the facts relating to the transaction under attack.

"If the agent makes a secret profit from the agency, the principal may recover such profit. The fact that the agent may have paid a fair price for the property or that the property could not have been sold for a greater price are false factors if a full disclosure, prior to the sale, is not made."

The defense did not argue with this statement of the law but it was contended that the evidence did not show the broker as having made a secret profit, nor did it show him as having had any interest in his wife's funds. It was further contended that the sale to his wife should be classed the same as a sale made to a stranger.

Remarking on these arguments, the court said: "These arguments are all predicated on the erroneous premise that an agent may sell his principal's property to his wife, without disclosing that fact to the principal, and that she may then resell at a profit, and that the principal cannot recover the profit unless he can prove that the husband retained or secured some interest in the property. That is not and should not be the law. If that were the law, an agent

could, with practical impunity, defraud his principal by selling his principal's property to his wife, as long as the agent is careful enough to give the appearance that he retains no interest in the property.

"The proper rule, supported by authorities from many states, is stated as follows in 2 American Jurisprudence, Page 208, Section 257: 'The general principle which denies the agent the right, without the knowledge and consent of the principal, to become the purchaser of property which he is employed to sell for the principal is aimed at an indirect or collusive sale or transfer, as well as a direct sale or transfer to the agent. It precludes the agent from selling or conveying to the agent's spouse, to a corporation in which the agent has a large concealed interest, indirectly to himself in the name of a third person, and even to a clerk of the agent who is engaged in the affairs of the vendor relating to the sale of the land.'"

Realtors, Professors Confer

Realtors and university professors got together for a conference at the University of Michigan in Ann Arbor on November 8th and 9th, at which faculty members of the University of California were present. Faculty members from leading universities discussed the objectives of the real estate curriculum at the university level and developed a series of suggestions on courses on real estate which should be included in a university curriculum. Delegates also discussed real estate courses through adult education.

The City of New York spent \$5,000,000 helping the United Nations get established in its new Manhattan headquarters. The city now reports that land valuations in the vicinity of the building have risen nearly \$60,000,000 in about five years.

Social Security for Brokers

Formerly the Federal Social Security Laws applied to *employees* only, placing a tax of 1½ percent on the employer and a contribution of 1½ percent from employees' wages, to the extent of the first \$3,000 of wages paid in any calendar year.

Last year Congress amended the Federal Social Security Act extending the coverage of the act to self-employed persons. Those engaged in the real estate business are ruled to be included within the terms of the act. Certain groups are exempted, such as attorneys, doctors, architects, etc.

While employees and employers at the present time pay 1½ percent, respectively, into the fund, "self-employed persons" will pay at the rate of 2¼ percent on the net income they earn from a trade or business (if it is more than \$400 per year) up to and including the first \$3,600 of annual income. Income from investments is not subject to the tax. Thus, the maximum annual tax on "self-employed persons" is \$81. The tax is payable with income tax returns for the year 1951 (payable in 1952) and there will be a space on the tax return for this purpose. Beginning in 1954 under existing law, the rate of tax on earnings from trade or business increases over the next few years.

Benefits—Persons paying into the fund become eligible for old-age retirement payments at age 65, after paying into the fund for a minimum of one and one-half years. The minimum retirement "benefit" is \$20 per month. These "benefit payments" increase in proportion to the amount of tax paid and the number of years payments are made to a maximum of \$80.

Fictitious Names Limited

Occasionally a broker who operates under a fictitious name makes request for a branch office license to be operated under a different fictitious name. Only one fictitious name will be issued in connection with any broker license. However, the broker can apply for a second license to do business under a second fictitious name.

Legislation Affecting Real Estate; Map Act; Veterans

(Continued from page 1, col. 3)

provided by amending Section 1170 of the Probate Code. The surviving joint tenant is now required to file a petition and obtain a decree of the Superior Court to establish the fact of death of a deceased joint tenant in real property. The provision became effective September 22, 1951. The former practice of recording an affidavit and death certificate to dissolve the joint tenancy is no longer permitted. This new provision is controversial, and certain groups have indicated they will attempt to again amend the law to permit the former practice.

Recording Laws

When an instrument to be recorded is not in the English language, the recorder must permanently file the foreign language instrument with a certified translation attached to it, provided he does not use a photostatic or photographic method of recording. In the latter case, the whole instrument, including the foreign language instrument and the translation thereof, may be recorded and the original instrument may be returned to the party leaving it for record.

Subdivisions

Two changes were made in the provisions of the Subdivision Map Act. The time limit for the approval of a final map may be extended by mutual consent of the subdivider and the governing body. If no action is taken within such time limit or within the time to which it has been extended by mutual consent, the map, if it conforms to all requirements, shall be deemed to be approved and it shall be the duty of the clerk of the governing body thereupon to certify the approval. This provision is covered by amendment to Section 11611 of the Business and Professions Code. Section 11616 was amended to provide that if an offer of dedication of streets has never been accepted, the right to accept the offer as to all or any of the streets shown on the map may be terminated and abandoned in the same manner as is prescribed for the abandonment or vacation of city streets and county highways. Formerly, a rejected offer of dedication of streets could only be ter-

minated by a resubdivision or a reversion to acreage of the tract.

Delinquent Tax Date

The delinquent tax date for the first installment of real estate taxes shall hereafter be December 10 instead of December 5. Furthermore, if the delinquency date for either the first or second installment of taxes (December 10 or April 20) falls on Saturday, the time of delinquency is 5 p.m. on the next business day. The new provision affects only those tax payments affecting taxes which become a lien on property on or after January 1, 1952.

Veterans' Benefits

The Veterans Farm and Home Purchase Act of 1943 is now amended to give the benefits of the act to any veteran who served in the military or naval service of the United States during the period June 27, 1950 to a future date to be established by proclamation of the Governor, and who was at the time of going into service a bona fide resident of California. This means that Korean veterans may participate in the benefits of this law. Furthermore, the maximum allowable value of a farm that a veteran may acquire under the law is increased from \$15,000 to \$16,500 and the maximum allowable value of the home that may be acquired is increased from \$10,000 to \$11,500. Maximum loan limit on a farm is increased from \$13,500 to \$15,000 and on a home from \$7,500 to \$8,500.

Veteran's Exemption

The veteran's exemption of \$1,000 assessed valuation under certain conditions now applies to veterans of the Korean conflict, the Nicaraguan campaigns, the Yangtze River campaign and all other campaigns for service in which a medal has been issued by Congress. The change was made by amendment to Section 205 of the Revenue and Taxation Code.

Homesteads

Formerly a homestead declared for the benefit of husband and wife was required to be conveyed, encumbered or abandoned by a single instrument. Under a new amendment to sections of the Civil Code and Probate Code

COMMISSION CASE

The old saying that "nothing is certain but death or taxes" seems to be borne out by a recent case decided by the district court of appeals in *Baker v. Curtis*, 105-ACA-803, in which the court upheld the right of a broker to collect a commission on a listing which had been expired for more than a year.

The particular circumstances were that when the listing expired, the owner told the broker to keep the property on the market, and with the owner's knowledge, consent and encouragement the broker continued to use his efforts to find a purchaser. At no time did the owner state he wanted the listing withdrawn.

When a sale was made, the owner claimed there was no valid agreement to pay the broker a commission at the time of the sale. The superior court awarded the commission under the circumstances, and the district court upheld the judgment, holding that where it appears that the principal accepted and retained the benefit of the broker's efforts and the broker was encouraged to continue to use his efforts to find a purchaser, the termination of the contract will be considered waived.

A word of caution, however, is probably justified. It is only under this particular set of facts that such a decision might be expected, and failure to have an effective written authorization signed by the party to be charged would undoubtedly result in failure to recover a commission through court action.

this may be done by a separately recorded instrument personally executed and acknowledged by each of the spouses, provided that the conveyance or encumbrance is made in favor of the same party or his successor in interest. This will be a convenience in cases where both man and wife are not immediately available.

CREDIT NOTE: Much of the foregoing information was secured from a legislative report by Floyd B. Cerini, Esq., legislative counsel for California Land Title Association. Several other law changes will be covered in the next *Bulletin*.

Indefinite Exclusive Listings

The imposition by statute of a penalty implies a prohibition of the act to which the penalty is attached, and a contract founded on such act is void. This was one of the conclusions arrived at by the Third District Court of Appeal in considering the case *Dale v. Palmer*, 106 ACA No. 8, Page 761.

The court found that the broker was not entitled to a commission on an exclusive listing because it failed to contain a "definite, specified date of final and complete termination" as required by Section 10176(f) of the Real Estate Law. This section permits the Real Estate Commissioner to suspend or revoke the license of an agent who claims or demands a commission on such an exclusive listing. The court held that even though the statute does not expressly prohibit it or make the act void, a contract founded on such an act is void.

The period of the employment agreement which was judged to be indefinite was expressed as follows: "said listing to automatically start when construction begins and continue exclusively and irrevocably with said agent until 30 days after notice of completion has been filed."

Various recent court decisions have held that inasmuch as exclusive listings with indefinite termination dates are cause for punitive action by the commissioner, the broker is barred from securing his commission through court action. An exclusive listing which runs for a period to be determined by the occurrence of some future event, is not a listing with a definite termination date.

The commissioner on many occasions has advocated the use of a definite date and hour for expiration of exclusive listing contracts.

Vets Allowed Treble Damages

Veterans may recover treble damages in cases involving over-payments or "side payments" on the purchase of homes where a ceiling has been established. Unlisted fees or bonuses are no excuse for over-ceiling prices. If the veteran does not elect to sue for damages, the Government itself can do so. A bill containing the foregoing provisions was signed in September by the President.

Why They Lose Their Licenses

In the last issue of the *Real Estate Bulletin* we briefly told the story of complaints to the Real Estate Commissioner which resulted in penalties. Due to apparent interest in them by our readers, we are setting forth a few more cases in this issue, to illustrate the types of violations encountered.

Broker Does Not Reveal His Position

Licensed real estate broker, approaching the owners of a business, represented himself as the agent for a set of undisclosed principals who proposed to buy the business and real property. Broker induced owners to execute an agreement for the sale of their real and personal property, but it was discovered that broker was actually buying the property for his own account. Charged with material misrepresentation and false and fraudulent promises, broker's license was revoked.

Fraud in Real Estate Transaction

Just about the time he was to be sued as the result of a real estate transaction, real estate broker of many years standing canceled (inactivated) his license. A final judgment was obtained against him on the grounds of fraud in a real estate transaction. His real estate broker license "right" was revoked.

Cancellation of License Does Not Save It

Licensed real estate salesman canceled (inactivated) that license and shortly thereafter was haled into court on a charge of grand theft. Pleading guilty, he was convicted, placed on probation for five years, sentenced to pay a fine and make restitution of the amount stolen and was also required to cease all drinking of alcoholic beverages. His salesman license "right" was revoked.

Fictitious Closing Statement

Licensee, upon closing the sale of a business, presented a fictitious closing statement purporting to be that of a well known title company. Actually, this broker conducted the escrow himself and charged fees for the preparation of certain documents in connection with the transaction. It was also shown that he did not maintain a "trustee account" or use a neutral escrow depository. Licensee plead ignorance of this requirement, but his real estate and business opportunity broker licenses were revoked.

Misrepresents Septic Tanks and Foundation

Licensed real estate salesman, while selling house, represented to the prospective buyers that it was served by two separate, redwood-lined septic tanks, and that there was a concrete foundation under the full exterior border of the dwelling. The purchasers discovered later that there was but a single septic tank, located under the house and that the foundation of the house consisted of scattered concrete piers. Salesman's license was suspended.

Conspiracy to Defraud

A real estate broker of many years experience had his license revoked in 1947, but was granted a restricted license. Then he was charged with conspiracy to cheat and defraud and obtain money by false pretenses and false promises. Restricted broker license revoked immediately.

Contributing to Delinquency

Licensed real estate broker plead guilty to two counts of contributing to the delinquency of a minor. For conviction of a crime involving moral turpitude, his real estate broker license was revoked.

Tries for Secret Profit

Licensed real estate broker worked on a listing for some time; then told owners of the property that he could not sell it at the listing price but did have a buyer who would pay \$2,500 less—offered price net. Sellers accepted. Then occurred a double escrow with full knowledge of real estate broker and without the knowledge of the sellers. Title was transferred to second buyer who was prepared to pay the original full asking price. Real estate and business opportunity broker licenses revoked.

Contingent Clause Forgotten

Holding a listing contract which was contingent upon the seller being able to purchase another house within 90 days, broker took an offer and a down payment on the property without notifying prospective purchaser that listing contract contained this contingency clause. The 90 days ran without the seller being able to purchase another satisfactory place and the broker attempted to make a refund with a check from his "trustee account," which check was not honored by the bank. Broker's license was revoked.

Collects Commission Twice

Broker licensee took deposit of \$500 on property listed with him, but did not place this deposit in a trust fund or neutral escrow depository. Succeeding in selling the property, he was awarded from escrow \$650 as his commission in full. Demand was made upon him for payment of the original \$500 but he did not produce this amount until some time later. Real estate broker and business opportunity broker licenses revoked.

Abandonment Without Notification

Licensed real estate broker abandoned his place of business without giving written notice to the Real Estate Commissioner as required by Section 10162 of the Real Estate Law. License revoked.

VA Guaranteed Loans

Through courtesy of the Veterans Administration some interesting figures have been furnished on the volume of home loans approved by that agency for guaranty. These were furnished by L. J. Toomey, Assistant Loan Guaranty Officer, of the Los Angeles Office, who recently addressed a round-table meeting of deputies of the Division of Real Estate on VA matters.

The following statistics give the number of loans processed and the dollar volume:

	Number of applications	Amount loans guaranteed
United States	2,540,932	\$15,512,000,000
California	334,950	2,266,000,000
Los Angeles	185,205	1,339,000,000
San Francisco	135,173	826,000,000
San Diego	14,572	102,000,000

The figures furnished also show that 1950 was an unusual year of activity for VA which in all likelihood will not be duplicated. In June, 1950, 18,753 units were submitted to the Los Angeles Office. Several months in that year ran over 10,000 units. By contrast, in 1951 the volume of units submitted has been reduced to an average of less than 1,000.

PROVISIONAL SALESMAN LICENSE

Provisional real estate salesman licenses are not issued without examination. Furthermore, such applicants must be fingerprinted and their records cleared before issuance of a license. No kind of temporary permit to operate is provided for by the Real Estate Law.

The provisional real estate license examination is comparatively simple and consists largely of questions on the Real Estate License Law, ethics and some simple arithmetic. The license is designed to tide over a salesman while he is preparing himself for the regular salesman examination. These provisional salesman licenses are good for 120 days, but in no case extend beyond June 30th into a new license year.

Business Opportunity Examination Strengthened

The examination for business opportunity broker license has been revised to include more practical problems. As a result, the examination will be considered more difficult by many applicants.

Particular stress has been laid on the use of various forms common to the business. The facts and figures concerning a typical business opportunity brokerage transaction are given, and a series of forms are set forth which must be completed, using the given data.

Also, there are problems involving computation of net earnings from a business, computation of rent under a percentage lease, and questions concerning sales tax, alcoholic beverage control, the bulk sales law, and personal property transfers.

It is felt that a rather broad field of knowledge should be acquired by those expecting to enter the business opportunity field and that former examinations did not properly develop this information.

License Required for Rental Agencies

(Continued from page 1, col. 1)

"We do not agree with the contention that these rental agencies are essentially or exclusively in the advertising business. While it is true that advertising is undoubtedly an integral part of their operations, nevertheless the activities of these rental agencies go beyond the scope of mere advertising. Almost every commercial enterprise today engages in advertising and it would be paradoxical to classify them solely by this activity. Advertising is merely a means to an end for these rental agencies to achieve a de-

sired result, viz., to attract applicants who will pay a 'registration' fee so that the agency may perform the service advertised, namely, of placing before the applicants a list of rentals.

"The foregoing interpretation of Section 10131 also appears consonant with the general intentment of the Real Estate Act which is designed for the protection of the public (See 23 Cal. Jur. 725; *Firpo v. Murphy*, 72 Cal. App. 249, 253, 236 Pac. 968; *Riley v. Chambers*, 181 Cal. 589, 593, 185 Pac. 855)."

Brings Notes to Test

From time to time, persons taking license examinations are caught referring to notes. Just recently an applicant was found engaged in this act, and a hearing called on the matter. This person, as a result, was denied the privilege of taking another written examination on the grounds that the requirements for "honesty, truthfulness and good reputation" were not met.

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