

# REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

GOODWIN J. KNIGHT, *Governor*

Sacramento, November, 1954

D. D. WATSON, *Commissioner*

## Judgment for Broker in Unusual Commission Suit Deposit Check Is Stopped, But Terms of Deposit Receipt Upheld in Ruling

A broker has earned his commission when he has performed such services as constitute "proximate and efficient cause of sale."

So ruled an appellate court in a recent case wherein a broker had sued for a commission after he had produced a buyer ready, willing and able to buy, and the seller accepted the offer and executed a deposit receipt with the proposed buyer. The broker was awarded an amount equivalent to one-half of the amount of the check given as deposit. The seller had agreed to pay "\$4,500 to broker named herein, or one-half of buyer's deposit, if buyer shall be in default, but not to exceed a full amount of his commission."

The buyers in this case had signed an agreement to purchase and presented a check for \$5,000 to seller to apply on purchase price of \$100,000 for a 14-unit apartment property. **The buyers were ready, willing and able to buy at the time; seller accepted them as buyers and in writing agreed to sell on the terms offered and pay a commission to the broker, or one-half the deposit if the buyer should default, but not to exceed the full amount of the commission.**

### *Buyers Withdraw*

The buyers presented the down payment check for \$5,000 to the seller. Later, the buyers reconsidered, found themselves dissatisfied with the deal and stopped payment on the check. The broker demanded his commission from the seller, who refused to pay because buyers had backed out.

At the trial, the broker contended that he should receive the total agreed commission by reason of the fact that he had procured the buyers to sign the agreement of purchase, and the seller accepted them as purchasers and agreed to sell the property to them on the terms specified.

It was contended by the seller that the broker had presented no proof that the buyers were ready, willing and

(Cont. on Page 166, Col. 2)

## Lender Asked No Bonus, But Broker Dreamed One Up

Quite often persons who lend money on trust deeds demand a bonus over and above the regular interest, particularly if the security is not overly good.

When this happens, the broker should make it clear to the buyer of a property that the bonus is being charged. Of course, he should not attempt to procure a bonus, if the lender does not demand it.

A broker recently conceived the idea of getting an additional \$500 besides his commission, by telling the buyer that the lender on a trust deed demanded \$500 cash bonus. It so happened that this was pure fabrication.

Buyers, sellers, and lenders seem to have a way of getting together sooner or later and comparing notes. In this case, the buyer of the home eventually met the owner of the trust deed upon which he was making payments. The buyer complained of the high bonus he had been obliged to pay. The lender asked, "What bonus?"

The story goes on from there. Complaint was made to the Commissioner, a hearing held, and the broker is no longer getting extra bonuses.

### DIRECTORY OF LICENSEES CAN STILL BE ORDERED

Due to a delay in printing, you can still order a copy of the 1954-55 Directory of Licensed Brokers and Salesmen providing you place your order by November 27, 1954.

The directory costs the licensed broker \$1.03 (including sales tax), which is far less than the expense of printing. The charge for the directory to the nonbroker is \$3.61 (including sales tax).

Send your order with remittance—check, draft, or money order, not cash—direct to the Division of Real Estate, 1021 O Street, Sacramento.

Many brokers have already ordered the directory following notice in the last *Bulletin*, but deliveries cannot be made until sometime after December 15th.

## Watch Acceleration Clause, Brokers Advised

### "Alienation" Clause in Trust Deeds Should Be Understood by All Parties

### Attorney Discusses Use of T/D Terms Which Can Make Note Due Immediately

By E. G. MERRILL, JR., General Counsel, Union Title Insurance and Trust Co., San Diego  
(Reprinted with permission from Union Title-Trust Topics)

Recently we have heard a great deal about the so-called acceleration clause. What we have reference to is that clause contained in a deed of trust or mortgage in substantially the following language, to wit:

"This deed of trust is given and accepted upon the express provisions that should the property hereinbefore described, or any part thereof, be conveyed by trustors either voluntarily, or by operation of law, or is further encumbered, without the

written consent of the beneficiary, then and in that event all sums secured hereby shall, at the option of the beneficiary, become immediately due and payable."

(Cont. on Page 168, Col. 1)

[November 1954—Page 161

**REAL ESTATE BULLETIN**

Sacramento, November, 1954

Published Bimonthly by the  
**DIVISION OF REAL ESTATE**

STATE OF CALIFORNIA  
GOODWIN J. KNIGHT, Governor

D. D. WATSON  
Real Estate Commissioner

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**D. D. Watson Is New Head  
Of National Licensing Group**

California's Real Estate Commissioner, D. D. Watson, was elected President of the National Association of License Law Officials at its annual convention held this year in Cleveland, Ohio.

The NALLO's membership is made up of real estate licensing administrators from 41 states, the Territory of Hawaii and several Canadian provinces. The association studies the problems of qualifying and regulating licensees, and makes available for the benefit of the various states the opinions, ideas and experience of officials from all parts of the Nation.

Accepting the presidency, Commissioner Watson called his unanimous election an honor to his state, and said that one of his principal objectives would be "eliminating those who lack the qualifications to handle real estate transactions properly."

**DISCIPLINARY ACTION**

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 FROM AUGUST 21 THROUGH SEPTEMBER 30, 1954**

Name	Address	Effective date	Violation
Stanley, Robert..... Real Estate Salesman	713 S. Chester Ave., Bakersfield..	8/24/54	Secs. 10176 (a), (b), (g), (i); 10177 (d), (f) & 10137
Osborne, Kent Brown..... dba Helix Realty Real Estate Broker	8808 La Mesa Blvd., La Mesa..	8/26/54	Secs. 10176 (a), (g), (i) & 10177 (f)
Boyd, Marshall Gordon..... Real Estate Salesman	Rt. 3, Box 1244, Sacramento....	8/30/54	Sec. 10177 (b), (f)
Del Secco, George Milton..... dba Del Secco Real Estate dba Del Secco Realty Co. dba Del Secco Real Estate Co. dba College Hill Real Estate Co. dba Del Secco Real Estate Broker	3435 Mission St., San Francisco..	9/ 1/54 (Granted right to restricted licenses)	Secs. 10176 (a), (b), (i) & 10177 (f)
Linane, Lawrence Leo..... Real Estate Broker Business Opportunity Broker	1100 S. El Camino Real, San Mateo	9/ 1/54	Secs. 10176 (c), (i); 10177 (f); 10302 (c); Secs. 2830, 2831 & 2832 of R.E. Comm. Rules and Regulations
Hamilton, James Dale..... Real Estate Broker	562 Pala Ave., San Leandro....	9/ 2/54	Secs. 10176 (a), (i); 10177 (f); 10160; 10162; 10164; Secs. 2723 & 2771 of R.E. Comm. Rules and Regulations
Dahlberg, Gladys Sylvia..... dba Beverley Realty Company Real Estate Broker	509 E. Balboa Blvd., Balboa....	9/10/54	Secs. 10176 (a), (c), (i) & 10177 (d), (f)
Bower, Agnes Elizabeth..... Real Estate Broker	2214 E. Colorado St., Pasadena..	9/22/54	Secs. 10176 (a), (b), (c), (i) & 10177 (f)

**LICENSES SUSPENDED FROM AUGUST 21 THROUGH SEPTEMBER 30, 1954**

Name	Address	Effective date and term	Violation
Lopez, Alexander Portillo..... Real Estate Broker	5223 E. Beverly Blvd., Los Angeles	8/31/54 10 days	Secs. 10176 (i) & 10177 (f)
DesBiens, Aime Tarcisius..... Real Estate Salesman	453 S. Spring St., Los Angeles...	9/1/54 5 days	Secs. 10142 & 10177 (d)
Hanson, Chalmers Joseph..... dba Hanson Realty Real Estate Broker Business Opportunity Broker	Pacheco Blvd., Rt. 1, Box 206, Martinez	9/ 2/54 1 day	Secs. 10164; 10287; 10177 (d); 10302 (d) & Sec. 2771 of R.E. Comm. Rules and Regu- lations
Thomason, Crawford Ulysses..... dba New Area Real Estate Co. Real Estate Broker	2900 San Pablo Ave., Oakland....	9/13/54 15 days	Secs. 10176 (a), (b), (i) & 10177 (f)
Hollowell, Harrison Hanable..... Real Estate Salesman	2900 San Pablo Ave., Oakland..	9/13/54 15 days	Secs. 10176 (a), (b), (i) & 10177 (f)
McLean, Alexander Beverley..... member of McLean and Holland Real Estate Broker	3008 Lakeshore Ave., Oakland..	9/17/54 20 days	Secs. 10176 (a), (i) & 10177 (f)
Holland, Kent Bridgman..... member of McLean and Holland Real Estate Broker	3008 Lakeshore Ave., Oakland..	9/17/54 20 days	Sec. 10177 (f)
McLean, Alexander Beverley..... Real Estate Broker	3008 Lakeshore Ave., Oakland..	9/17/54 20 days	Secs. 10176 (a), (i) & 10177 (f)

**Corporations—Partnerships  
Is Your Firm Properly Licensed?**

The Real Estate Law requires that a partnership or a corporation engaging in the real estate business as a broker must be licensed. The members of the partnership engaging actively in the real estate business for the partnership and the active officers of the corporation engaging in the real estate brokerage business on behalf of the corporation must be qualified brokers.

It should be pointed out that if the corporation or partnership is not properly licensed, there is the danger earned commissions cannot be collected.

Although all licensees are presumed to be familiar with the provisions of the Real Estate Law, there may be some who are actually operating on a partnership basis, but who are not properly licensed. A person having the status of a real estate broker may become a member of a partnership without further examination by submitting the proper application and fee.

## Subdivision Definitions Often Cause Confusion

### Commissioner May Have Jurisdiction Over Subdivision When Map Act Does Not Apply

The definition of a "subdivision" in the Subdivision Map Act differs from the definition of "subdivision" in the statutes which impose certain responsibilities upon the Real Estate Commissioner in the matter of subdivisions.

Because of this fact, a number of licensees and persons interested in disposing of their land, particularly when the land is being sold off a piece at a time, have difficulty in determining the application of the laws and regulations relating to subdivisions. This is an attempt to clarify the situation.

#### *Subdivision Map Act*

The Subdivision Map Act (Sections 11500 et seq., B. and P. Code) defines a subdivision as land divided into five or more parcels for the purpose of sale, whether immediate or future, within any one-year period. It provides and defines certain regulatory powers and procedures to be administered by local authorities—city councils, county boards of supervisors and city and county planning commissions.

Generally speaking, the local authority has control over the general layout, streets, lot size and improvements required, such as type of road surfacing, gutters, sidewalks, drainage, water mains and sewage disposal facilities.

#### *Subdivision Laws Administered by Real Estate Commissioner*

Sections 11000 et seq. of the Business and Professions Code invest the Real Estate Commissioner with certain powers and responsibilities in connection with the sale of subdivided properties in the State of California. (These are discussed fully in the *Real Estate Bulletin* for May, 1953, copies of which are available upon request.)

In this article, we merely wish to point out that the definition of a "subdivision" in the statutes relating to the Real Estate Commissioner's jurisdiction over subdivisions differs in one important detail from the definition of "subdivision" as contained in the Map Act. So far as the Real Estate Commissioner's jurisdiction is concerned, a "subdivision" consists of land divided into five or more parcels for the purpose of sale or lease, and there is no provision that this division must take place in a 12 months' period, as there is in the Map Act.

#### *Result of Differing Definitions*

Because of the differing definitions, it is apparent that the Real Estate Commissioner may have to consider a dividing of land a "subdivision" under some circumstances where a "subdivision" would not have been created according to the terms of the Map Act.

Let us take a common example. Mr. A., who owns some acreage, cuts out three parcels from that acreage and sells them in 1954. In 1955, he carves out three more parcels and sells them, and so on. Now, in many counties and cities in the State, he could go ahead doing this indefinitely without coming under the subdivision jurisdiction of the local authorities as defined in the Map Act.

#### *Filing Must Be Made With Real Estate Commissioner*

However, the same circumstances would have brought him under the jurisdiction of the Real Estate Commissioner the moment he had cut his property into five parcels—that is, when he had sold off four parcels and had a parcel remaining—a division into five pieces. As a matter of fact, at that point, he would have been in violation of the law and subject to the penalties imposed by law.

Prior to that point, and preferably when he first contemplated dividing his land, he should have filed a notice of intention to sell with the Real Estate Commissioner.

CAUTION: In giving the example above, you will note the statement, "In many counties and cities." Some cities and counties have local ordinances governing any division of land, and before dividing any land into parcels—no matter how few in number—one should be sure of the local ordinances in this regard.

#### JOB OPENING FOR ATTORNEY IN DIVISION OF REAL ESTATE

Following a civil service examination, a prosecuting deputy will be appointed to the staff of the Division. Duties will include preparation and presentation of cases concerning denials, suspensions or revocations of licenses and handling of other legal details.

The job starts at \$481 per month with yearly raises up to a maximum of \$584. Applicants for the position must be active members of the California State Bar with either two years of full-time practice in work requiring a wide knowledge of real estate transactions, or two years of experience in preparing and presenting cases relating to violations of the Real Estate Law.

The final date for filing applications with the California State Personnel Board is November 19, 1954. The examination will be held on December 11th. For further facts and application forms, inquire of the State Personnel Board, or any office of the State Department of Employment.

## Reports of Duplicate Keys Of Concern to R. E. Industry

Occasionally reports have come to the division that a broker has duplicate keys made to facilitate the showing of a property he has listed.

Complaints have been made that brokers have been known to retain these duplicate keys in their possession and have entered the premises without authority after the listings have expired and their agencies have ceased to exist.

It should hardly be necessary to point out to these licensees that entering a home without authority and permission is a misdemeanor and may prove of most serious consequence to the offender.

Obviously when the broker's agency ceases to exist, all rights under that agency expire. Property owners are entitled to know that only authorized persons have keys to their homes or other premises they own.

## Licensees' Rights Are Protected in Formal Hearings

### Imposition of Disciplinary Action Is Governed by Administrative Procedure Act

A formal hearing involving a license right or the privilege of obtaining a license is not, as some seem to think, a haphazard procedure dictated by the Commissioner or his deputies.

On the contrary, a formal hearing must be conducted in accordance with the provisions of the Administrative Procedure Act, which is the California law governing agencies, such as the Division of Real Estate, in disciplinary actions against licensees or in actions to deny licenses to persons believed not qualified to hold them. The Administrative Procedure Act has been carefully drawn to guard the rights of all parties concerned in a license action.

Essentially there are two different kinds of formal hearings, those initiated with an "accusation" and those which result from a "statement of issues." The "accusation" starts the proceeding against one who is already a licensee. The "statement of issues" is used when the Real Estate Commissioner is not satisfied of the honesty, truthfulness and good reputation of the applicant for license.

#### *Hearing on Accusation Preceded by Thorough Investigation*

**An accusation is not issued lightly, it is only drawn and served after a careful preliminary investigation indicates evidence of a violation of the Real Estate Law. The investigation is as thorough as possible and the results are carefully screened and reviewed before a hearing is authorized.**

In drawing the accusation, which the Commissioner is required to do by law, the charges against the licensee must be detailed specifically enough so that he, the respondent, will know just what his alleged violation consists of. For instance, it is not enough to say that the licensee is alleged to have materially misrepresented in a certain transaction; the nature and circumstances of the alleged misrepresentation must be set forth.

**The issuance of the accusation does not condemn the licensee; the charges against him must be proved.**

When an accusation is filed, a copy is served on the licensee who becomes the respondent in the accusa-

tion. Under the law, service of the accusation must be made in a specified manner and with the accusation goes a form entitled "notice of defense," which the licensee uses to request a hearing.

#### *Notice of Defense*

The respondent is entitled to a hearing if he files notice of defense within 15 days after service upon him of the accusation. Failure to file the notice of defense within the 15-day period constitutes a waiver of the respondent's right to a hearing and action against him may be entered by default.

When, as happens most times, the licensee-respondent files a notice of defense, a time and place of hearing are set. All parties must be notified at least 10 days prior to the hearing. **The respondent is advised that he may be present at the hearing, may be represented by counsel, present any relevant evidence and will be given an opportunity to cross-examine witnesses. The respondent is entitled to the issuance of subpoenas, if he deems it necessary.**

At the hearing itself, a hearing deputy presents the case against the licensee. As to each offense charged in an accusation, the burden is upon the hearing deputy to prove by competent evidence that: (1) an act properly the subject of disciplinary action was committed; (2) the respondent committed it; (3) he had requisite intent at the time, and (4) respondent was within the jurisdiction of the Commissioner.

The hearing deputy presents his evidence—documents and testimony—and the respondent, or his counsel, is entitled to do likewise. The rules of evidence in administrative proceedings may be broader than in judicial trials, but the evidence must be such as will stand up on judicial review.

#### *Impartial Hearing Officer*

A hearing officer conducts the hearing, as would a judge in judicial proceedings. **To assure impartial and unbiased procedure, the hearing officer, a member of the Division of Administrative Procedure's Hearing Panel, is in no way associated with the agency prosecuting the hearing.**

After the hearing is concluded, the hearing officer presents a proposed decision to the Commissioner who has the choice of adopting the decision as recommended or issuing an order calling for a lesser penalty than that recommended by the hearing officer. If the Commissioner feels a more severe penalty should be imposed, than he may reject the proposed decision, in which event he must rehear the case himself.

Suppose that the Commissioner orders the respondent's license revoked. The respondent now has a limited time in which to seek reconsideration of the penalty by the Real Estate Commissioner.

#### *Judicial Review*

If the respondent is not satisfied with the results of his petition for reconsideration, he has recourse to the courts as provided in Section 1094.5, Code of Civil Procedure. The appropriate court may stay the operation of the administrative order of the Commissioner pending the judgment of the court.

If the superior court holds against the disciplined licensee, he can, of course, carry his case to an appeals court and even up to the Supreme Court of the State.

**From the foregoing, it is apparent that accusations against licensees are not undertaken lightly or merely instituted to harass or embarrass him. The law is designed to protect the licensee's vested right in his license every step of the way.**

#### *Statement of Issues*

When a statement of issues is served upon the applicant for license whose "honesty, truthfulness and good reputation" are in doubt, the hearing officer may be provided either by the Administrative Procedure Division's Panel or by the Division of Real

(Cont. Next Page, Col. 1)

## Another Commission Case Same Old Story—Broker Made Deal No Listing—No Commission

A broker brought suit for a commission on the grounds that, after he had introduced a prospective buyer to the seller, the buyer and seller conspired to make the deal without compensating the broker. The broker had no written and signed authorization to sell.

The appellate court stated that a complaint to recover a broker's commission, which contended that the owner of the property and the customer allegedly produced by the broker entered into a conspiracy whereby his customer should buy the property from the owner without knowledge of the broker for the purpose of defrauding the broker of a commission, did not state a cause of action since the defendants had the legal right to sell and buy the property directly.

In other words, to recover on the grounds of a conspiracy, the acts must result in the perpetration of an unlawful or injurious act by unlawful means.

While the seller and buyer may have been unethical, it was their legal right to make the transaction. Furthermore, it was their legal right to make it without compensating the broker, as he did not have a signed listing as required by law.

Case reported in 47 C. A. 2d, 385.

## Hearing Procedure Explained

(Cont. from Page 164)

Estate. At the hearing, the hearing deputy introduces any evidence of criminal convictions or other documentary evidence tending to reflect upon the applicant's worthiness for license. It is then up to the applicant to present his own evidence or statements or witnesses which will prove his reputation is such as to entitle him to license.

After the hearing is concluded, the hearing officer makes his recommendation to the Real Estate Commissioner. The procedure then is the same as in an "accusation" case and the applicant for license, if denied, has the same right of appeal to the courts.

## Unemployment Benefits and Disability Insurance

A real estate broker has informed us of a case where one of his employees, who thought he was covered for disability insurance under the California Unemployment Insurance Code, found that he was not entitled to the benefits of the code. This broker suggested that other broker-employers and salesman-employees could be in similar circumstances and that an article in the *Bulletin* might serve to clarify the question.

Readers of the *Bulletin* will remember that the Unemployment Insurance Code was amended September 22, 1951, exempting from the terms of the code services performed by a real estate salesman who is remunerated solely by way of commission. In September, 1953, this exemption was extended to business opportunity, mineral, oil and gas, and cemetery salesmen.

These exemptions were extended because a real estate salesman rarely meets the qualifying condition of being "unemployed." As long as he retains his license, he can usually work out of some broker's office, even though earned commissions might be scarce. However, when covered by unemployment insurance, he was entitled to disability insurance when unemployed as a result of a nonoccupational disability caused by mental or physical injury, or illness, which prevented him from performing his usual or customary work.

Provision is made in the Unemployment Insurance Code for an employing unit—for example, a broker, not otherwise subject to the code—to become subject through exercise of elective coverage. Furthermore, an employing unit which is subject to the code but also has employees who are specifically exempt from coverage may elect coverage for the exempt employees.

Affirmative action on the part of the employing unit is a required part of the elective coverage provision. This is pointed up by the experience of the broker who suggested this article. After real estate salesmen were exempted from compulsory coverage under the code, it seems the broker mentioned above went on making contributions to the Unemployment Insurance Fund on his own account and also continued to deduct the employees' contributions and transmit

them to the Department of Employment. (Maximum 2.7 percent of his taxable payroll. Employee contribution is 1 percent of first \$3,000 of annual wages.)

However, he did not take the proper action to insure coverage, and when one of his salesmen filed for disability insurance payments as a result of a nonoccupational disability the broker was informed that the salesman was not covered.

Any broker-employer desirous of covering his real estate salesmen remunerated solely by way of commission must file a written election to become subject to the code or to include any excluded employment for not less than two calendar years.

Employees in the employ of any employing unit, filing such a voluntary election, are given reasonable opportunity to file objections to coverage. If no objections appear, the State Department of Employment will probably approve the elective coverage of the employing unit desiring it, and then the employees are entitled to the same privileges and must meet the same requirements as all employees whose coverage by the law is mandatory.

The Department of Employment emphasizes, however, that elective coverage will be refused if the department has previously ruled that the salesmen involved are independent contractors and not employees. Inasmuch as elective coverage is not available to independent contractors, a petition for elective coverage will be rejected unless it can be shown that the salesmen are actually employees.

For answers to your specific questions on this subject, please contact your local California Department of Employment office.

## Distinction Between Real and Personal Property

By H. L. BREED, Attorney at Law and Counsel for CREA

(Reprinted with permission from California Real Estate Association Magazine)

**Q. What is real and personal property, and what distinguishes one from the other?**

**A. The chief distinction is that real property is immovable and personal property is movable.**

Real property consists of land, that which is affixed thereto, or incidental or appurtenant to it. One exception is that industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale shall be treated as goods which are personal property.

The code says that every kind of property that is not real is personal.

Personal property includes money, goods, chattels, things in action, evidences of debt, ships, trademarks, good will, products of the mind, like books or music. Certificates of stock are personal property, as are evidences of debt, the right to recover money by suit by right of action, for personal injury or fraud, or on accounts.

**Instruments essential to the title of real property are personal property.**

Although water is movable it has been held that water used for irrigation is not personal property. Keys to buildings are deemed real property, although movable. They are needed in and belong to the building.

**You will see, therefore, that primarily though not exclusively, the distinguishing feature is the movability of that property which is tangible.**

Personal property has been held to include a building which has been sold and is being removed, an electric power line located on a highway, water mains when laid in streets or on the property of others, structures constructed on the land of another with the agreement that they are to be removed, nursery trees, shrubs and stock planted and raised by a tenant, potted plants on the surface of the soil or porch, all of which would be personalty.

The question and answer indicates that the wide-awake broker or salesman, when getting his listing and par-

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## Broker Awarded Commission

(Cont. from Page 161, Col. 1)

able to purchase the property on the prescribed terms. The court held that the seller was in no position to urge such a contention, and that having accepted the buyers procured by his broker, he is estopped to deny their ability or willingness to complete the contract, in the absence of the exercise of fraud or other oppression to prevent him from satisfying himself in relation to the matter.

### Acceptance Voids General Rule

The seller also contended that the delivery of a \$5,000 check to the broker did not constitute payment of a deposit. The court pointed out that while ordinarily deposit of a check is not payment, an agreement to accept a check as payment obviates the rule. **The court further held that the broker's commission is not dependent upon whether payment is stopped on the buyer's deposit check.**

It was further stated, "If the commission is earned at the moment the buyer and seller have executed an enforceable agreement to convey the property, failure of performance by either party can have no effect either upon right of the other to enforce performance or upon the right of the broker to his commission from the party who promised to pay it."

Judgment was given to the broker for commission in accordance with the terms of the contract. (*Bezell v. Kane*, 127 A. C. A. 739.)

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ticularly when making his sale, should observe any fixtures or movable articles, and have it strictly understood whether they do or do not go with the sale. He then and there removes issues that might have to go to lawyers and the court.

## Lowe Named President of Real Estate Association

Floyd Lowe, Palo Alto Realtor, was elected President of the California Real Estate Association at its Fiftieth Annual Convention held in San Francisco. He succeeds L. I. McLellan of Pasadena. Treasurer Charles H. Brown of Pasadena and Secretary Eugene P. Conser of Los Angeles were re-elected to their posts.

Mr. Lowe has served two terms as regional vice president of the association, is also an honorary director, and was general chairman of this year's Golden Anniversary Convention.

Mr. Lowe has operated his own real estate business in Palo Alto since 1935, employing a large number of salesmen at his main and branch offices. He is Past President of the Palo Alto Real Estate Board, honorary Director of the Los Altos Board, a charter member of the Menlo Park-Ather-ton Board, and a nonresident member of the San Francisco Board.

For his active contributions to civic welfare, education progress and the Boy Scout movement, Mr. Lowe was named "citizen of the year" by the Palo Alto Junior Chamber of Commerce in 1951.

### LAW AND RULES AND REGULATIONS AVAILABLE

Although the Real Estate Law and the Commissioner's Rules and Regulations have been published in their entirety in the Directory of Licensees and also in the Reference Book issued by the division, they are also available in handy pamphlet form.

The pamphlet, which contains the indexed Real Estate Law and the Rules and Regulations, costs 26 cents and is on sale at any office of the division.

Licensees, title companies, attorneys, and any others interested in obtaining copies by mail will please address their orders to Division of Real Estate, 1021 O Street, Sacramento, California.

Please do not send stamps to cover the purchase price.

## Use of "FHA" in Advertising

The Federal Housing Administration has called attention to a federal statute prohibiting the misleading use of the letters "FHA" or the term Federal Housing Administration in advertising. The statute is rather stringent in effect and violations are punishable by fine or imprisonment.

The federal agency has found that violations are continuing primarily due to a lack of knowledge on the part of builders and dealers. **It has been found that many firms having no intention to misrepresent the facts are in technical violation of the statute.**

According to Norman P. Mason, FHA Commissioner, "The statute was not designed to prevent the use of accurate and truthful statements in advertising, such as statements by lending institutions that they are FHA approved lenders, but it was designed to prohibit false advertising of any nature, including any statement that a particular subdivision, dwelling, item or product is 'FHA approved,' since this administration (FHA) has no authority or function to approve or endorse any product, material or equipment."

**The fact that property has been appraised and inspected by the FHA does not authorize advertising statements such as "FHA subdivision," "FHA approved," or "FHA accepted."**

## Judicial Review Procedure

The Legislature in 1953 amended the Judicial Review section of the Government Code (Gov. Code, Sec. 1094.5) to provide that the time for appeal of an administrative decision, which ordinarily expires 30 days after the effective date of the order, can be extended by respondent's request for a transcript of the record of the hearing.

This request must be filed within 10 days after the last day on which reconsideration can be ordered by the agency. The extension of time for the appeal terminates five days after delivery of the transcript to the respondent. The estimated cost of the transcript must be paid in advance by the respondent.

# More Case Histories of Lost Licenses

Continued below is the series of brief accounts of licensees' actions which cost them the revocation or suspension of their licenses. It must be remembered that these cases, as recounted here, have been trimmed of all detail. In many of them, there were circumstances which altered the degree of violation. These cases are picked from the files covering the past year or more and do not attach to the names listed under "Disciplinary Action" elsewhere in this issue.

### Lets Bookkeeping Slide

Broker arranged a loan on real property, the proceeds of which were used to purchase other rental property. The liens on both properties were now to be retired from rentals which the broker, as agent, undertook to collect and disburse. After repeated requests from his principals for an accounting of funds, a complaint was filed and a hearing was held. The Commissioner concluded that the broker had failed to properly discharge his duties as an agent by failing to diligently apply himself to collection of rents, by failing to deposit all moneys received, by failing to keep proper books and records of accounts and by failing to make proper statements of account to his principals. At the broker's expense, books were straightened out, and he paid off such amounts as he owed. It appeared that the broker had relied upon his office staff to do the work properly and that the broker himself was preoccupied with other interests. License was suspended.

### Lease Conditions Misrepresented

Real estate brokers made misrepresentations about the conditions of a lease encumbering a property whose sale they negotiated. The buyer was informed that the property was subject to a lease which would expire at a certain date, but that lessees were delinquent in rentals, that lease was in the process of cancellation, and that purchasers could have practically immediate occupancy. These representations were contrary to the facts and brokers' licenses were suspended.

### Spent Money Too Soon

A real estate broker accepted a \$1,000 check as deposit on a ranch property purchase. Broker's office manager cashed the check and the money was not deposited in a trust account nor in escrow account. The transaction fell through and the broker and his office manager were unable to produce the money and return it to the purchaser for a considerable time. License revoked.

### Alters Commission Agreement

Broker altered a commission agreement and order in writing and was convicted of the crime of forgery by a superior court. Licensee was fined and prison sentence suspended. License revoked.

### Broker Made Use of "Dummy"

Real estate broker received an offer for certain rental property, which offer was accompanied by a substantial deposit. Broker told owner of the property that he had an offer, but represented offer as considerably less than it actually was. Broker's version of the offer was accepted by the seller. The broker then arranged a conveyance of owner's interest to another party and a second agreement transferring interest from dummy or nominee to party making offer. Broker obtained a secret profit besides commission. License revoked.

### Salesman Didn't Wait for Commission

Licensed real estate and business opportunity salesman received \$1,000 as deposit and part payment on the purchase price of a hotel business. Salesman failed to turn in the deposit to his employing broker and converted the money to his own use. Licenses revoked.

### Forgot License Was "Inactive"

An "inactive" real estate salesman attempted to negotiate sale of a lot, under the purported employment of a real estate broker. He took a deposit and the transaction could not be completed for failure of loan. Salesman could not return the deposit. Broker had no knowledge of transaction, but when facts became known he refunded the amount of the deposit at the time of hearing. Salesman license revoked.

### Should Have Been Out of Business But Wasn't

Licensee, while his real estate and business opportunity broker licenses were under suspension, was discovered to be still acting as an agent. It was also discovered that certain moneys he had collected and was collecting as ostensible agent had not been placed in a trust fund in the case of rentals or in escrows in the case of deposits. Although the licensee was able to clear his accounts and make restitution of the sums owing, his real estate and business opportunity broker licenses were revoked.

### Employed Unlicensed Agent

Real estate broker employed an unlicensed person to list, rent or place for rent residential properties, for another or others, for a compensation. License suspended.

## Acceleration Clauses; Their Hazards Discussed

(Cont. from Page 161, Col. 3)

This clause is sometimes referred to by brokers as the "4c" clause.

### *Effect of Acceleration Clause*

In brief, an "acceleration" clause gives the right to a lender to call all sums owing him to be immediately due and payable upon the happening of a certain event. There are a number of such events as, for example, the failure on the part of the borrower to pay taxes, or to satisfy other prior liens, or to provide satisfactory fire insurance, or to prevent waste, and others.

However, the certain acceleration clause we have reference to, and particularly set out above, includes as such events the conveyance of the encumbered property or its further encumbrance by the borrower, all without the consent of the lender. To distinguish this particular acceleration clause from the many others, it is often referred to as the "alienation" clause.

I find no decisions of our courts construing the effect of this alienation clause, but there are many decisions upholding acceleration for nonpayment of principal, interest, taxes or insurance. We can be reasonably sure that our courts will uphold the alienation clause.

### *Owner's Position Can Be Difficult*

Where an owner is not aware that such an alienation clause is contained in a deed of trust executed by him on his property, he may find himself in a difficult position should he agree to sell that property *subject* to this deed

of trust. The holder of the note secured by it may elect to call all sums owing him immediately due and payable if such a sale is consummated.

**Also, when one buys a piece of real estate, one will want to make sure that the deeds of trust which are to remain on the property do not contain an acceleration clause, as otherwise one may complete one's purchase only to find these lenders demanding their loans paid because of the conveyance to him.**

This alienation clause has a useful place in lending and real estate transactions. A loan may be "heavy" or a sale consummated on a very small down payment. In these cases, the parties may properly agree to adjust their financing in the event of a subsequent sale. This is for the protection of the lender in one case and for the protection of the seller in the other.

As I have mentioned above, it is my opinion that this alienation clause would be upheld by our courts. If I were to entertain any doubts in this regard, it would be over the possible abuse in the use of this clause and a case going before our courts as a result. By "abuse" I mean the inclusion of the clause in a deed of trust without the actual knowledge of that fact on the part of the borrower or purchaser of the property and its enforcement in an arbitrary manner and under circumstances not agreed upon.

### *"OK" If Clearly Understood*

The inclusion of this clause in deeds of trust by lending institutions for

many years has caused no hardship upon the borrower, for he was advised clearly of the circumstances under which it would be enforced. Recent instances of lenders readily agreeing to waive enforcement of the clause upon payment of another loan fee might indicate an abuse of its use where the borrower was not even aware of its presence in the deed of trust. The same would be true in the case of a purchase price trust deed where the purchaser was not made aware of this clause in the deed of trust and he subsequently found it necessary to sell by reason of illness or transfer to another community.

### *Attitude of Courts*

Our courts are growing more and more inclined to relieve a party from losses and hardships growing out of defaults as evidenced by recent decisions permitting defaulting purchasers to recover some or all of the amount they had paid on the purchase price. The court might well prevent the enforcement of an alienation clause where it appeared the owner was not aware of it and its enforcement was arbitrary and not necessary for the protection of the party seeking it.

**All parties interested in sound real estate practices should resolve to use this alienation clause only where necessary to protect the parties involved and only with their express knowledge and consent.** It behooves all property owners and brokers to make certain in the sale and purchase that such sale and purchase will not be adversely affected by the presence of any such alienation clause.