

REAL ESTATE BULLETIN

CALIFORNIA DIVISION OF REAL ESTATE

EARL WARREN, Governor

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HUBERT B. SCUDDER, Commissioner

Real Estate Law Upheld

In a recent case heard by the Third District Court of Appeal, *Castleman and Kaplan v. Scudder*, a new section of the license law was upheld, namely, Section 10301-(f), which, in brief, permits the Real Estate Commissioner after a hearing to revoke or suspend the license of an agent who makes a practice of claiming or demanding commissions under any exclusive sales agreement involving a business opportunity, when the sales agreement or listing does not contain a definite, specified date of final and complete termination.

This section of the law became effective September 15, 1945. Castleman and Kaplan were licensed business opportunity brokers who listed a number of businesses for sale on an exclusive listing form which did not provide any definite termination date. These listings were taken prior to September 15, 1945. Subsequent to that date they brought a series of law suits against the owners of the businesses to recover commissions under the terms of the exclusive contracts. The commissioner called a hearing and as a result revoked the licenses of these brokers.

In their petition to the court, the point that the contracts in question were written prior to the effective date of the law was stressed. The commissioner contended that the respondents were in violation subsequent to the effective date, as they claimed the commissions on transactions after that date.

This amendment was designed to cure a very unfair practice engaged in by a few real estate and business opportunity brokers. They would use exclusive listing contracts which did not terminate unless the owner took steps to serve some written notice or perform some other act. The unsuspecting owner of the business would assume that the contract expired in 30 or 60 days or whatever term was boldly expressed in the contract. He would not notice the provisions that read "and thereafter until the agent is notified in writing and served with said notice in person or by registered mail" or some similar language.

In some isolated instances brokers would list all businesses possible on these indefinite listing forms and watch closely for someone else to make the sale, whereupon they would bring suit. The favorable interpretation of this section by the courts is gratifying to the commissioner as it will assist him in eliminating this unfair practice in the future.

Another interesting case was that of *Bell v. Scudder*. The commissioner charged Bell with taking a secret profit in a transaction in which he was acting as agent. When he applied for renewal of his real estate broker license for the year 1944-45, a hearing was held and the license was granted and immediately suspended for 60 days as a penalty. Bell sued in the superior court for a reversal of this decision, but he was denied relief on September 28, 1945. Later he was unsuccessful in an appeal to the appellate court, and was refused review by both the California and the United States Supreme Courts. The latter was denied October 20, 1947. It is interesting to note that this case took approximately three years for final determination by the courts.

Commissioner's Message

At the beginning of the new year, I believe that I can again safely predict that those who make their livelihood from sales and other operations involving real estate will experience a year of gratifying activity in 1948.

All statistics show that 1947 has been a peak year in the real estate and building fields and there is no sign of a tapering off in activity during the latter part of the year which might indicate a slackening of business in 1948. An abnormal scarcity still exists in nearly all types of improved real estate. This is always conducive to new building and more real estate transfers.

During the past year the division has issued a record number of licenses, totalling well over 70,000, and at present it appears a new record will be set in 1948. While more licensees means more competition, it also indicates faith in the immediate future of the real estate business.

Service to this number of licensees has offered a real problem to the division with a staff which has by no means increased proportionately. We have, however, through improved methods met the problem and are constantly striving to improve our service to you and to the California public.

Cordially,

HUBERT B. SCUDDER,
Real Estate Commissioner

Commissioners Meet

Real Estate Commissioners or their representatives from thirty-three states of the Union, the Territory of Hawaii and one Canadian Province held a meeting in San Francisco, November 8th-10th, for the purpose of discussing mutual problems. They are organized in a group known as the "National Association of License Law Officials," which has been in existence since about 1930.

The theme of this year's meeting was "Real Estate Education." Among the authorities who addressed their meetings were Dean E. T. Grether and Dr. Paul F. Wendt of the School of Business Administration of the University of California. They outlined the field of real estate education which is now being offered at the university. Other topics discussed were hearings, new laws affecting real estate licensees and general policies of administration.

At the conclusion of the session on November 11th, officers for 1948 were elected including Commissioner Hubert B. Scudder of California, President; John Harkins of New Jersey, First Vice President; Irving W. Luecke of Nebraska, Second Vice President; and Robert W. Semenow of Pennsylvania, Secretary-Treasurer.

Escrow License

We commented briefly in the last Bulletin regarding the law which requires escrow holders to secure a license from the Corporation Commissioner. The law regulating the business of escrow agencies and providing for their licensing, examination and regulation by the Commissioner of Corporations is known as the "Escrow Act." It became effective in September, 1947. Licensees are required to post a \$5,000 bond and their records are subject to inspection by the Corporation Commissioner. They are also required to furnish him each year an audit of their books. All escrow funds handled by these licensees must be kept in trust accounts. The license law makes exceptions in connection with certain groups, such as real estate brokers, attorneys, banks, etc.

The question, which naturally arose in connection with real estate brokers, was whether or not they were entitled to conduct an escrow business without benefit of this license, or whether they were restricted to certain types of escrows. It now appears that the Division of Corporations takes the position that a real estate broker is exempt from the necessity of having an escrow holder's license only in cases where he holds an escrow in connection with some real estate transaction in which he acted as agent and which required a real estate broker license. This would preclude a real estate broker from engaging generally in the escrow business and taking business from other real estate brokers or individuals for a compensation. The same general ruling seems to apply to attorneys who are permitted to handle escrows without the license provided the escrow is incidental to some legal service they are rendering.

In making certain exceptions to the persons subject to the Escrow Act, the Legislature considered the fact that they were under the supervision of some state agency. Because real estate brokers are licensed by the Division of Real Estate, it was no doubt felt that their actions would be controlled in handling their own escrows and, therefore, they were not required to have the special escrow license for this purpose.

Commissioner Scudder points out that any complaint against real estate brokers who handle their own escrows will be vigorously investigated and that he will expect those brokers to make their records in connection with escrows available to his deputies. Any dishonest practice will be made the basis of a formal hearing.

Representative realtors from various sections of the country predict higher prices for new homes for two more years and also that farm lands will be higher next year. These predictions were made before the Convention of the National Association of Real Estate Boards in San Francisco last month.

New subdivisions filed with the division in November totalled 104, compared with 96 for November a year ago. There were 68,176 real estate licensees on November 30, 1947 compared with 59,199 on November 30, 1946.

License fees accounted for 47 percent of the division's income last year, examination fees 36 percent, subdivision filing fees 13 percent, and miscellaneous 4 percent. The miscellaneous category includes sale of Reference Books.

Examinations

Particular attention has been given recently by the State Real Estate Board to the license examination procedure of the Division of Real Estate. It is the opinion of the board members that examinations for the various licenses should be further strengthened and that more time and effort should otherwise be given to the qualification of new licensees. It has been suggested that, in addition to the written examination, an oral examination might be given to the applicants and also that a period of instruction be conducted on examination days during which qualified persons would discuss the ethics and established practices of the business. While it may be some time before a new program along these lines will be put into effect, there seems to be a general agreement that some such plan should be adopted. Commissioner Scudder has indicated his willingness to cooperate in bringing about any constructive program for the better qualification of licensees.

The commissioner has adopted a plan whereby license examinations are changed at short intervals. Currently a new real estate broker examination is being used every month.

Over the State as a whole, the valuation of taxable property reached \$10,994,622,625 for the 1947-48 tax year, an increase of about 50 percent from the pre-war valuation of 1941-42. This 1947-48 valuation is 21 percent greater than that for 1946-47. These figures have been published by the California Taxpayers' Association in an analysis of trends of property valuation in California counties. It is probable, however, that these increases are not as great as the increase in actual market prices.

Northern California builders at a recent meeting in San Francisco held out little hope for a decline in construction costs within the next few years. One of the association officials maintained that building costs are up only 70 percent over 1941, whereas food costs are up 88 percent. One speaker stated that more rental units must be built if housing costs are to be brought in line.

In our last Bulletin we published an article relative to residential rent increases by means of a lease arrangement, sanctioned by the Office of Rent Controls. The article indicated that this was the only means of securing rent increases, whereas the Regional Rent Attorney at San Francisco points out that the Housing and Rent Act of 1947 provides 15 separate and distinct grounds available to landlords for rent increases. It was not our intent to lead landlords to believe that they were barred from applying for rent increases under these other provisions.

In order to improve the service of the division in the San Diego area, the commissioner has assigned Deputy John S. McVay to the San Diego office. Heretofore that office has not had the services of a deputy except on a part-time basis. At other times the affairs of the office were conducted largely by Mrs. Gladys Bradley. For some time the commissioner has recognized the need of additional help at San Diego, but because of the shortage of qualified deputies, the assignment could not be made.

Residential Leases

In a letter to Commissioner Scudder, the attorney for the Owners and Lessees Apartment House Association, Inc. of San Francisco, points out the dangers which surround improperly prepared leases which provide for increases over former rent ceilings. He points out a particular instance wherein a lease was prepared which was not in full compliance with provisions of the Housing and Rent Acts of 1947, and the owner now faces heavy damages in an action brought by the tenant. He suggests to the Real Estate Commissioner "that in your official capacity you notify members of the real estate profession that these leases should be prepared by attorneys at law as a protection to the public."

It is surprising how many veteran real estate brokers neglect to renew their licenses through oversight or because they rely upon some clerk or secretary who fails to take care of the matter. This oversight may prove costly and not only result in loss of commissions, but, if neglected too long, may result in another license examination being necessary. We suggest a double check at this time to make sure you have renewed your license. It should be displayed in a prominent place in your office.

Los Angeles Mayor Bowron's Housing Committee discloses that in the first nine months of 1947, 39,000 new houses have been erected in Southern California at a cost of over \$860,000,000. It is stated that the houses, placed side by side on 50-foot lots, would cover both sides of a street 200 miles long and could provide housing for the populations of Sacramento; Albany, N. Y.; or El Paso, Texas.

The San Francisco-Oakland metropolitan area will need 44,180 new dwelling units next year if it is to satisfy current replacement needs in temporary war housing and substandard dwellings, according to a report by the San Francisco Chamber of Commerce.

Termites

Brokers could often eliminate complaints which arise from termite disputes if they would be more explicit in covering this subject in the purchase contract. Too often they merely write in a clause such as "subject to termite clearance" and consider that satisfactory.

Frequently when termite operators quote estimates on termite repair work, they include a certain amount of preventative work. Often the cost of this preventative work, while necessary, greatly exceeds the charge for destroying the present visible signs of termites and dry rot.

Because of these misunderstandings, the Berkeley Real Estate Board has adopted a standard termite clause in their contracts which they claim has practically eliminated termite disputes. This clause provides that the seller shall pay for all corrective work, whereas the buyer will stand the cost of preventative work. This seems to be a fair arrangement and is reported that very little opposition is encountered. Under this arrangement the pest control contractors must segregate the cost of the two operations.

Real Estate Directory

A directory of all licensees of the division must be published in the fall of each year in accordance with a provision of the Real Estate Law. At this writing the volume is in preparation and should be available for distribution in January. The law provides that every real estate broker shall be entitled to this volume without charge, provided he requests a copy. This request may be made in writing to the Sacramento office of the division. It should be signed and the broker license number given. As soon as the directories are available at branch offices, they may be applied for in person.

Real Estate Notes

The increase in residential subdivision activity is indicated by the fact that 623 subdivision maps were submitted to the Los Angeles County Engineer's office in the 1946-47 fiscal year, as compared with 371 maps the previous year. The total number of lots shown on the maps, most of which were residential, was 32,472 as compared with 17,426 the previous year.

A. F. of L. Building & Metal Trades Unions have withdrawn their opposition to fabricated housing and contracts have been signed between the unions and seventeen manufacturers of prefabricated dwellings.

Wider distribution of farm land ownership appears to be taking place gradually. Farms in Tulare County, in which all of the land was rented, fell from 20 percent in 1930 to 11.9 percent in 1945.

C. R. E. A. Inaugural

Fred Mitchell, Past President of the San Diego Realty Board, will be installed as new President of the California Real Estate Association at ceremonies to be held in San Diego on January 10, 1948, 2.30 p.m. at the San Diego Hotel. It is expected that realtors throughout the State will attend this meeting.

Examination of escrow transactions covering the sale of real estate is being made by the Internal Revenue Collector to uncover failures to report profits on real estate transactions.

Corlett Wagner, Executive-Secretary of the Los Angeles Realty Board, died while attending the National Real Estate Convention in San Francisco last month. He had served the board for over 24 years, during which it became the largest real estate board in the Nation.

Examination Change

The time allowed for salesman applicants to write a regular salesman examination will hereafter be two hours instead of three hours. The writing time for broker applicants will remain at three hours. Applicants for provisional salesman licenses were formerly given two hours to complete the test, but this has been reduced to one hour.

Subdivision Laws

There are two separate and distinct laws relating to the preparation and sale of subdivided land. Our brokers and salesmen are inclined to confuse the provisions of these laws, and therefore we have commented upon them from time to time in this Bulletin in order to clarify the situation.

The first law, which was originally a part of the old California Real Estate Act, requires that all subdivisions must be filed with the Real Estate Commissioner, who prepares his public report before any sales may be made. Any division of land into five or more parcels for the purpose of sale now or at any time in the future constitutes a subdivision under this law. The subdivider is *not* exempt if he confines his sale to any certain number of parcels a year. A subdivision, for instance, containing five lots which may be sold out over a period of 10 years must be filed with the Real Estate Commissioner and his report secured.

On the other hand, the second law provides that certain maps must be filed with the city or county agencies who have control of subdivisions. Usually a tentative map is submitted to the planning commission, and after it is approved by that body it is approved by the city council or board of supervisors, as the case may be. It may then be recorded.

This latter law, and not the one under which the Real Estate Commissioner operates, makes the exemption that if not more than four parcels are sold in any one year, a regular subdivision map need not be filed. This apparently causes the confusion among our brokers. There is no such exception in filing with the Real Estate Commissioner.

While there are other differences and exceptions in the two laws, this particular one seems to cause the most misunderstanding. As landowners consult real estate brokers in these matters, it is important that they be informed on this point.

Three men were arrested recently in Long Beach for investigation of grand theft charges in connection with an alleged bunco deal involving Palm Springs Indian Lands. The trio, working under the name of Cal-Mission Development Company, are John S. Madill, 60, Walter G. Klopping, 50, and Albert Chollette, 49, all of Long Beach. They are charged with accepting sums of \$1,000 to \$5,000 from clients to purchase valuable land near Palm Springs which was deeded to the Indians by the Government in 1870. Information indicates there is no possibility of anyone acquiring the land at this time.

Fictitious Names

In the public interest and to avoid conflict and confusion, the commissioner has found it necessary to regulate the use of fictitious names and has ruled that the Division of Real Estate shall not issue a license under any particular fictitious name to more than one licensee in this State.

The rule defines a fictitious name as one which does sufficiently show the name of the firm members or parties.

Before adoption of this rule, many controversies arose among brokers over the use of certain names. The main purpose of the rule, however, is for protection of members of the public and to permit them to know more definitely with whom they are dealing. Bear in mind that a broker may not use any fictitious name unless he is licensed to do business under that name.

The commissioner reserves the right to determine if a license shall be issued under a particular fictitious name, even though the exact name is not in use by another licensee. In some cases the name will be refused if it is too similar to one already in use or where the proposed name may be misleading to the public in some respects. No exact rule can be applied in these cases, and each situation must be judged upon its own merits.

A fictitious name will not be permitted when it indicates that a salesman is a member of the firm. If a broker proposes to use a particular fictitious name, we advise him to secure a license to do business under that name before he spends money on signs, stationery, etc., as the commissioner must frequently reject applications for the reasons herein set forth.

License Laws Advocated

The National Association of Real Estate Boards at its November convention in San Francisco went on record as favoring the adoption and enforcement of license laws in all states. At present there are still 12 states which have not adopted some license law provisions for real estate agents.

The statement of policy was expressed as follows: "Experience has demonstrated that the operation of license laws governing the qualifications and operations of real estate brokers have proved to be in the public interest. It is recommended that states having license laws seek to improve them and that states not having license laws take action to adopt them."

