REAL ESTATE BULLETIN

Official Publication of the Division of Real Estate

GOODWIN J. KNIGHT, *Governor* Sacramento, November, 1953 D. D. WATSON, *Commissioner*

All Licensees Welcome to Two Great Conventions

CREA and NAREB Meetings Scheduled on Consecutive Days in Los Angeles; Real Estate Commissioner Urges California Licensees to Attend Both Sessions

If real estate is your business, you cannot afford to miss these two great conventions of the California Real Estate Association and the National Association of Real Estate Boards. The latest trends, ideas and techniques in real estate selling, advertising, exchanging, appraising and other phases of this complex industry will be discussed by outstanding speakers, carefully selected for the quality of their accomplishments in their specialized fields.

CONVENTION DATES

CALIFORNIA REAL ESTATE ASSOCIATION
Friday and Saturday, November 6th and 7th

NATIONAL ASSOCIATION OF REAL ESTATE BOARDS
November 8th to November 13th

CONVENTION HEADQUARTERS
Biltmore and Statler Hotels

As a real estate licensee—if you are interested in any phase of real estate—if your career is to be in real estate—you should by all means attend these two conventions. **Registration is open to all licensees and is not restricted just to those affiliated with organized real estate.**

The Real Estate Commissioner urges all licensees to attend. It is an opportunity offered to Californians only once every few years, since the national organization holds its annual meetings in different states each year and comes to this State only at infrequent intervals.

This year, the most highly regarded specialists in real estate are coming from all over the Nation to offer inspiration and knowledge on all phases of real estate, all of which is available to you if you will make the effort to be there. The knowledge you will be able to gain by attending these meetings in Los Angeles will cost only a fraction of what it usually costs those who ordinarily have to travel east in order to take advantage of these annual real estate forums.

In urging all licensees to attend these conventions, the Real Estate Commissioner wants you to under-

(Cont. on Page 115, Col. 3)

License Law Officials Hold Annual Conference

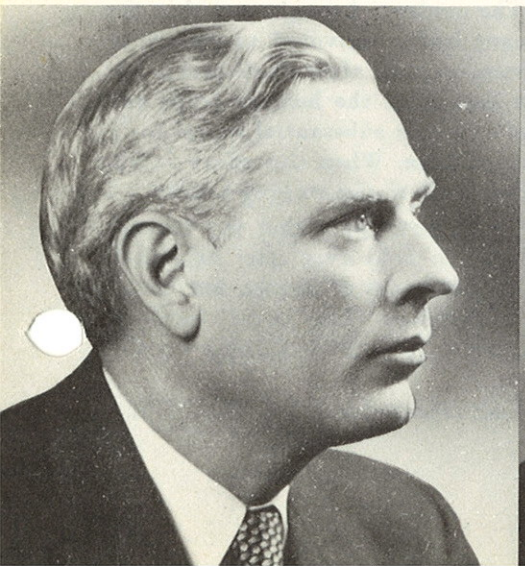
License law officials from 40 states of the Union, four Canadian provinces, the Territory of Hawaii and the District of Columbia, will converge upon Los Angeles for conferences from November 2d through November 7th. They comprise the membership of the National Association of License Law Officials, and are charged with the enforcement of real estate license laws in their respective jurisdictions. Headquarters for the business conferences will be the Statler Hotel.

NALLO, as this national association is designated, has done much to encourage and improve real estate license law legislation over the years. Through its efforts, these laws in the 46 states, provinces, and territories where they are enforced have gradually approached greater uniformity and effectiveness.

(Cont. on Page 114, Col. 1)

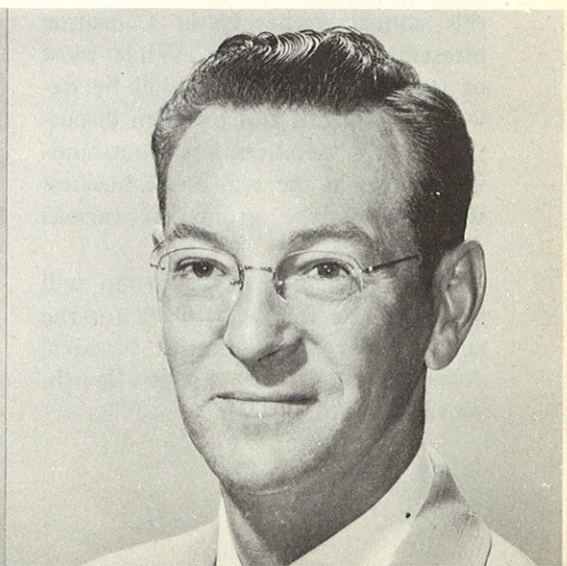
Country's Real Estate Leaders Gather at Los Angeles for Conventions

J. W. HOBBS, Jefferson City, Mo.
President, National Association of License Law Officials



CHARLES B. SHATTUCK, Los Angeles, Cal.
President, National Association of Real Estate Boards

FRANK MacBRIDE, Sacramento, Cal.
President, California Real Estate Association



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Sacramento, November, 1953

Published Bimonthly by the
DIVISION OF REAL ESTATE
STATE OF CALIFORNIA
GOODWIN J. KNIGHT, *Governor*

D. D. WATSON
Real Estate Commissioner

License Law Officials Meet

(Cont. from Page 113, Col. 3)

Education Encouraged

Encouragement of real estate education is another goal of NALLO members. Great strides have been taken in this direction over the past few years. In a number of states, the state university has undertaken to develop a real estate curriculum. The Universities of Florida, California, Michigan, and Wisconsin have made particular progress in this respect, as well as a number of leading privately endowed universities throughout the Country.

Every effort is being made to make this annual gathering in California pleasant and profitable. While most of the business program will be devoted to forums and problem discussions by the members, a few outstanding leaders in the real estate business will address the group on various days.

Many members of the group will stay over the following week for the annual convention of the National Association of Real Estate Boards, November 8th to 13th.

DISCIPLINARY ACTION—AUGUST, 1953

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 AUGUST, 1953

Name	Address	Effective date	Violation
Wells, David Walter..... Real Estate Broker Business Opportunity Broker	3567½ Dalbergia St., San Diego..	8/ 4/53	Secs. 10162; 10176 (e), (i); 10177 (b), (d), (f); 10285; 10302 (b), (e) & Secs. 2830 & 2831 of R. E. Comm. Rules and Regulations
Thornton, Walter Lloyd..... dba Imperial Beach Realty Real Estate Broker	757 Palm Ave., Palm City.....	8/ 7/53	Secs. 10176 (e), (i); 10177 (f) & Secs. 2830 & 2831 of R. E. Comm. Rules and Regulations
McNeil Mortgage Co., Inc.... Robert Allard McNeil, Pres. Real Estate Broker (Corporation)	136 Hamilton Ave., Palo Alto.....	8/12/53	Secs. 10176 (a), (i) & 10177 (f) (Appeal taken. Stay not granted)
Barnard, William Leland.... Real Estate Broker (Right to reinstate or renew)	407 Mills Bldg., San Francisco....	8/28/53	Sec. 10177 (f)
Barnard, William Leland..... Real Estate Broker Member, Cleveland Investments Company (Right to reinstate or renew)	Rms. 4 & 5, 505 Emerson St., Palo Alto	8/28/53	Sec. 10177 (f)
McCormick, G. E..... dba San Jose Realty Co. Real Estate Broker Business Opportunity Broker	492 S. Bascom Ave., San Jose.....	8/28/53	Secs. 10176 (e), (i); 10177 (f); 10302 (e) & Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
McCormick, G. E..... dba Wesley L. Pieper Co. Real Estate Broker Business Opportunity Broker	478 S. First St., San Jose.....	8/28/53	Secs. 10176 (e), (i); 10177 (f); 10302 (e) & Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations

LICENSES SUSPENDED DURING AUGUST, 1953

Name	Address	Effective date and term	Violation
Miller, Marvel Lange..... dba Marvel Miller Realty Co. Real Estate Broker	915 S. Glendale Ave., Glendale....	8/ 5/53 30 days	Secs. 10176 (a), (e), (i); 10177 (f) & Secs. 2830, 2831 & 2832 of R. E. Comm. Rules and Regulations
Goughnour, Gerard J..... dba Melrose Realty Real Estate Broker	4574 E. 14th St., Oakland.....	8/25/53 90 days	Secs. 10176 (a), (b), (g), (i) & 10177 (d), (f)
Frederick, Ruth Gladys..... Member, L. B. Frederick Co. Real Estate Broker	4712 E. 14th St., Oakland.....	8/25/53 180 days	Secs. 10176 (a), (b), (g), (i) & 10177 (d), (f)

Lessee Must Vacate Promptly

Refusal to Surrender Premises at Expiration of Lease May Mean Penalty

Under certain conditions, the courts may award a landlord treble damages if the tenant refuses to vacate the rented premises when his lease expires.

The owner of a store building had leased it for a five-year term, and the lessee had in turn sublet the space. Just prior to the expiration of the lease in the summer of 1951, the owner notified both the lessee and the subtenant that he would not renew the lease and would expect possession on the date of expiration. When the sublessee refused to vacate, the owner brought an unlawful detainer suit, and the tenant hired an attorney and tried to stall the suit. When the tenant's lawyer wanted to settle the suit, the tenant dismissed him and hired another attorney.

The evidence brought out that the tenant had endeavored to remain in possession until after Christmas to get the benefit of the holiday trade and had offered a substantial rental for a limited lease. When this effort failed, he resorted to the stalling tactics.

The court found that the tenant's scheme to hold over after expiration of the lease was deliberate, intentional and obstinate. The court rendered judgment for treble damages on this basis.

Case reported in 114 A. C. A. 577.

Reinstatement of Revoked License Discussed

Applicant for Reinstatement Must Show Clear and Convincing Proof of Reform

The commissioner is constantly being petitioned to reinstate the license of some broker or salesman who was formerly in the business and whose license had been revoked for dishonest practices or other violations of the license law. The law provides that a person who has had his license revoked may petition for reinstatement after a full year has elapsed from the effective date of the revocation. Some seem to feel that this is a routine matter, and that a revocation is, in effect, a one-year suspension.

That is far from being the case. The burden is upon the revoked licensee to show that, without question, he has become fully rehabilitated and deserves another chance to operate in the business.

A recent court case involving a disbarred attorney who petitioned the State Bar for reinstatement is interesting from this standpoint. Upon being denied reinstatement, he brought a court action to secure reinstatement. He contended that the evidence of his past misconduct was irrelevant and did not constitute a ground for denying reinstatement. He contended that the relevant evidence showed without dispute that he had both moral and mental qualifications to practice law. The State Bar argued that his prior misconduct was properly considered and that he failed to meet the burden of proving, by clear and convincing evidence, that he was entitled to reinstatement.

The court made some interesting observations. It stated, **"The person seeking reinstatement, after disbarment, should be required to present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question. In other words, in an application for reinstatement, although treated by the court as a proceeding for admission, the proof presented must be sufficient to overcome the court's former adverse judgment of the applicant's character."**

The disbarred attorney argued he was entitled to reinstatement because the evidence which he produced of his present good moral character was undisputed. The court stated, "The question is not whether any evidence was presented to controvert his showing of present good character, but rather whether his proof is clear and convincing, nay, . . . overwhelming, proof of reform."

The Real Estate Commissioner will undoubtedly be guided by the expressions of the court, namely that a petitioner for reinstatement must present even more convincing evidence of his fitness to hold license than an applicant for an original license whose character has never been in question.

(*In re: Roth*, 40 A.C. No. 13, P. 310.)

Promise to Finance Should Be in Writing for Safety

The following story published in "*Headlines*," under the heading "*Legal Lines, by George F. Anderson*," makes an interesting point, namely that it is unsafe to proceed with a purchase you must finance without getting a written commitment from the lender covering the specific property and terms.

"A man negotiating to buy a building needed a $50,000 mortgage to go through with the deal. He applied to a mortgage company, and they told him they would look at the building and let him know. A few days later he got a letter stating: 'We are prepared to make the loan requested by you, and, when you are ready, you will kindly call at our office and sign the papers.'

"The man signed the contract to buy the building, putting up $1,000 deposit. When he called to sign the mortgage papers, the company had changed its mind and would not make the loan. He couldn't do anything about it for three reasons:

"To say that you are 'prepared' to do something, does not mean that you 'will' do it.

"A promise to make a mortgage must be in writing, and the writing must state the nature of the transaction. The letter did not state the amount or terms of the mortgage, nor the address of the property.

"Even if the letter was adequate, it was without consideration, except in a few states that recognize detrimental reliance as a substitute for consideration."

Convention Opportunities

(Cont. from Page 113, Col. 2)

stand that he is not just trying to build up registrations for these meetings. He sincerely feels that it is an opportunity of which every licensee in this State should take advantage, an opportunity to acquire more knowledge and gain ideas that will not only help you to render better service to your clients, but also to help you make more money. In his opinion there is no substitute for thorough knowledge, professional skill and "know-how" if one intends to be outstanding in the real estate field. Usually the one who is best equipped to handle real estate transactions succeeds best financially and is most favorably recognized in his community.

Remember, all real estate licensees are welcome to register at these conventions. You owe it to yourself and to your clients and customers to partake of the opportunity which is offered to those in this State so rarely.

It is not too late to make your plans to attend these conventions. For further information and for details of the programs, you may call the secretary or president of the real estate board in your community. Or, just make it a point to be in Los Angeles for the period of November 6th through November 13th. You do not have to make prior arrangements; just register and attend the meetings.

Be sure to take your wife with you, because a most elaborate entertainment program has been arranged, free to all those who register. **Plan now to attend the CREA Convention November 6th and 7th, and the NAREB Convention, November 8th to 13th, at the Statler and Biltmore Hotels in Los Angeles,** where outstanding men from all over the Nation will tell you how they, as individuals, have been able to acquire the necessary knowledge and make money in real estate.

FHA and Home Builders Conduct Trade-in Residence Experiment

Application of Used Car Technique to Housing Industry Studied in Key Cities

FHA experiments in the trade-in house field may make it easier for families who already own a house to trade the old one in on a new house better suited to their needs, according to Commissioner Guy T. O. Hollyday of the Federal Housing Administration. Four out of every 10 prospective home purchasers already own a house and it is for this segment of the housing market that the FHA is testing out the possible effective use of the insured mortgage plan in connection with trade-ins.

"We are giving special attention to the trade-in housing program in six selected cities," Mr. Hollyday said, "so that we can see whether or not it is feasible to apply the used car technique to the housing industry. It is our hope that later on in the fall the FHA experiment, which is being conducted in conjunction with the National Home Builders Association, may produce practical information we can disseminate to all FHA insuring offices to focus attention on the many improvements that can and should be made to older houses in the communities which are eligible for mortgage insurance by the FHA.

"Modernization of well-built houses can provide satisfactory living accommodations to many families but the average individual is usually reluctant to undertake such a venture and fearful of the cost that may be involved."

Industry Contacted in Test Cities

Several meetings have been held with the industry in the six test cities in order to work out a plan of intelligent teamwork on the part of the broker, builder, architect, designer and kindred trades in producing results that will be beneficial to the homeowner and the community in general.

To illustrate the possibilities of the trade-in process today, Mr. Hollyday pointed out that when the Veterans' Emergency Housing Program was put into effect in 1946 there was a desperate need for homes, and at the same time a shortage of labor and building materials. The program endeavored to provide the greatest number of dwellings at prices that young families of limited means could buy or rent. Limitations of $5,400 and 90 percent of estimated necessary current cost were placed on the maximum mortgage that the FHA could insure under the program. All this meant that the houses built were small and plain, with little variation in layout or appearance, stripped of nonessential features, and incorporating numerous substitute materials.

Close to half a million homes were built under the VEH program. Many are still occupied by their original purchasers. **The family may have outgrown the dwelling but be unable to finance a larger house while making payments on the one in which it is living.** If the owner's equity is sufficient, however, to provide a down payment on a new house, and if he can make a satisfactory trade-in arrangement with a builder who can see possibilities in repairing and improving the older house, the result is that the original owner is adequately housed, another family is settled in the remodeled house, and the value of the used house and of its neighborhood is increased rather than diminished.

Widens Trade Field

The trade-in program is not limited, of course, to the exchange of a small house for a larger one, or an old house for a new one. A growing family may be happy to exchange a small, relatively new house for a large older house, or a husband and wife whose children are no longer living at home may need a house smaller than the one they now occupy. There are firms that make a profitable business of taking over large old houses and remodeling them into apartments, thus extending their usefulness and preserving the residential character of the neighborhood.

Nearly 40 percent (over 1.3 million) of all home mortgages insured by the FHA have represented loans on existing dwellings. Most of these loans have been issued under Section 203 of the National Housing Act, which limits the maximum mortgage eligible for insurance on an existing property to 80 percent of appraised value and to a term of 20 years unless the property was approved for FHA mortgage insurance prior to beginning of construction, in which event more liberal terms are provided. FHA administrative policy further limits the maximum mortgage amount on a refinancing transaction to the amount of the existing mortgage and other liens against the property plus the cost of the proposed improvements, up to 80 percent of value. Firm commitments to builders on existing properties are authorized only when the properties are to be held for rent, and are limited to 80 percent of appraised value.

How Plans Work

When an owner and a builder wish to arrange a trade-in transaction with FHA financing, the FHA valuation of the property and the extent and cost of the improvements needed to increase the marketability and prolong the useful life of the property can be determined in pre-application conferences between the builder and his architect, and the local FHA staff. The builder can then file an application for a conditional commitment of insurance on a loan in the "highest insurable amount." This commitment can be converted to a firm commitment when an acceptable purchaser is found. **The proposed improvements may be financed with the proceeds of a Title I insured property improvement loan (up to $2,500 on a single-family home), which can be paid off when the house is sold. The owner's equity available for down payment on the new house is determined by deducting from the value of the existing home with the proposed improvements, as determined by FHA appraisal, the estimated cost of the improvements and the amount of the outstanding mortgage.**

An existing dwelling that was previously financed under the FHA program has certain advantages for trade-in purposes, in that the property and the neighborhood have been determined to be acceptable for mortgage insurance.

Material Misrepresentation

Sale of Business Rescinded by Court

A single material misrepresentation knowingly made with intent to influence another into entering into a contract will, if believed and relied upon by the other, afford a complete ground for rescission; it is not necessary that there be a multitude of misrepresentations. This finding was made by the Second District Appellate Court in the case of *Leary* v. *Baker*, et al. (119-ACA-159).

The owner of a beauty parlor in Beverly Hills sold it to a buyer for part cash and a note for the balance. The buyer took over the business and closed it in less than three months. Two weeks after closing the business, the buyer served the seller with a Notice of Rescission on the ground of alleged fraud. The seller then sued to collect the balance due on the note given as part of the purchase price. The buyers filed a cross-complaint seeking cancellation of the note on the grounds of fraud and damages, it being alleged that the defendants had entered into the contract to purchase the business in reliance upon the fraudulent representation of the seller.

The alleged representations were that the business was a going, profitable and terrific business, and that two operators employed in the business would stay and work on the same basis they had worked when they were employed by the seller. **The buyer stated they would not have purchased the business and executed the promissory note in question had they not believed the representations were true and relied upon them. The appellate court found that the representations were statements of existing facts and were not merely statements of opinion.**

The seller contended that any misrepresentations were waived by the buyers because they made an independent investigation of the business. The court found the record was to the contrary, as the books of the business had not been made available to the buyers upon request to see them.

The court found that the alleged misrepresentations were sustained by the buyer's testimony that the seller made such representations to them.

"Settling" a Complaint May Not Stop Holding of Hearing

Request of Complainant to Quash Formal Action Can Be Refused

The main objective of the Real Estate Commissioner in revoking or suspending licenses is to protect the public against further dishonest or illegal acts on the part of the brokers or salesmen involved. Therefore, even if a complainant is satisfied by a settlement after the commissioner has undertaken an investigation, proceedings will continue if the commissioner believes a violation of the license law has occurred.

In the past complainants have requested the commissioner to quash proceedings when they have received a refund or other settlement from the licensee, after the licensee has become concerned by the investigation. In these cases the commissioner makes it clear to the complainant that his office is not merely interested in securing an adjustment of the grievance in cases where a dishonest act occurred or was attempted, but rather in seeing that it does not happen again.

In years gone by, certain high-pressure sales organizations have gone so far as to set up a "squawk" fund, placing therein a certain percentage of their gross receipts. The fund would be used to pay off an irate complainant who could not be pacified with conversation and who complained to the commissioner's office. The operators looked upon such a "pay-off" as part of the business overhead. The less aggressive victim was talked out of pursuing his complaint, and lost his money.

Accusation Brought by Commissioner

Private settlement of serious complaints, therefore, usually will not deter the commissioner from proceeding to formal hearing and taking punitive action, if the facts seem to warrant. Actually, when a complaint is brought to the attention of the Division of Real Estate and appears to be of a serious nature, the commissioner makes it his own complaint. It is he who brings the accusation against the offender, and the person or persons who brought the matter to his attention become witnesses.

Where a bad situation comes to the commissioner's attention without an actual complaint being filed, he often undertakes an investigation on his own initiative and develops evidence to present at a formal hearing.

Some of the most flagrant rackets have been stopped after investigations have been made in accordance with this policy. It frequently happens that the victims of dishonest schemes are unaware of their losses until it is too late to do anything about it. For this reason, it is necessary for the commissioner to adopt an agressive investigation program and be on the alert to detect new rackets as they develop.

Complaining Witnesses Subpenaed

In a number of cases involving the revocation of licenses in the past, the commissioner has had to subpena the original complaining witnesses to testify at formal hearings because they had been "paid off" and did not wish to bother further with the matter.

It was necessary in one case to secure a superior court order to force attendance of a witness who testified very reluctantly, but whose testimony was sufficient to revoke the licenses of two brokers who had defrauded her. They had settled the complaint after exacting a promise that the complainant would not testify against them.

Last Minute Payments

A new law (Chapter 1213 of the Statutes of 1953) helps a person who must comply with the terms of a contract on or before a certain date. As most banks now close Saturdays, the law permits a person who must by his contract make a payment at or to a bank on Saturday, or an optional bank holiday, to make the payment, or otherwise meet the requirements of the contract, on the next succeeding business day which is not a Saturday.

This means if you must make a payment on a trust deed note at the bank on a certain date which falls on Saturday, you may make it the following Monday and not be in default.

"Trick" Contracts Often Defeat the Purpose Intended

Experience Shows Use of Standard Forms Is Advantageous in Most Cases

This item is inspired by a recent inquiry we received from a real estate broker who had "dreamed up" some new provisions to incorporate in an open listing form, apparently with the purpose of preventing the owner from giving another broker an exclusive listing after signing the open listing. He asked for an interpretation of the effect of this listing contract.

The Division of Real Estate, of course, cannot undertake to interpret the legal effect of any contract; that would be deemed the giving of legal advice. Attention of the broker can be called to certain provisions of the license law which might possibly be violated by certain types of contracts, but the broker should consult his attorney for advice regarding the contracts he uses.

To comment generally, however, after many years of experience, it is generally conceded that unusual provisions in listing forms, designed to give the broker some particular advantage, do not stand the test of time.

In the first place, the more unusual the provisions contained in a listing, the more difficult it may be to get it signed. Some of the same brokers who decry the reluctance of the public to give signed listings, will attempt to use forms which contain paragraph after paragraph of special provisions in fine print. Those forms which are brief and straightforward in their provisions appear to be more satisfactory in the long run.

Even though the broker is successful in getting a property owner to sign a listing containing numerous "protective provisions," the chances of winding up by having to sue for a commission, if earned, may be increased.

"STAKEHOLDER" MAY DODGE SUIT

When there is a suit to recover a sum of money such as a deposit, on the ground that it is being wrongfully withheld, anyone who is named as a defendant in the suit may make an affidavit that he has no interest and is a mere "stakeholder," and apply to a court for an order dismissing him from the suit. He must, however, deposit an amount of money equal to the disputed amount with the court.

Often a real estate broker or an escrow-holder will be named as a defendant when he is holding a deposit at the insistence of some party. As a result he is named a defendant in a suit to recover the money. This procedure permits him to be relieved from defending the suit. *(New 1953 statute.)*

Additional 1953 Law Change

Plea of Nolo Contendere: Previously we have reported technicalities of the law which prevented the commissioner from revoking or suspending a license, even though the licensee had entered a plea of guilty to a serious crime. In the past the same also applied to a plea of "nolo contendere," which is a plea sometimes made in federal courts. It means "I do not contend." In other words, the accused neither admits nor denies the charges, but places the decision entirely in the hands of the court. It has been contended that the commissioner could not use such a plea as basis for attacking a license *even though the accused might be sent to prison or fined heavily*. The law has been amended to take care of this.

Also there is a section of the Penal Code which allows a person to withdraw a plea of guilty and enter a plea of not guilty, whereupon the court may dismiss or set aside the verdict of guilty. This is so, even though the person may have served a prison term. Under the amended law, the commissioner may act despite such "legal maneuvers."

Over Two Million Veterans Now Reside in California

Of interest to real estate brokers, builders and developers is the recent announcement made by the State Department of Veterans Affairs that more than 2,000,000 veterans live in California today. This figure, arrived at by a sampling survey conducted by the state agency, exceeds recent estimates made by the Veterans Administration of the number of veterans in California and would make the veteran population of this State the highest in the Union.

As of July 1, 1952, an estimated 2,015,000 veterans resided in this State out of a total of slightly more than 20,000,000 veterans in the entire Country. The large proportion of veteran population in California is accounted for by the heavy influx of veterans, both young and old, from other states.

As a result of its survey, the California Department of Veterans Affairs concluded that 46 percent of the veterans surveyed had immigrated to California at some time since the end of their military service.

Filled Ground Creates Hazard

Subdividers Who Moved Earth Must Pay For Damage to Neighboring Property

Subdividers of lands in hilly areas who cut and fill their ground, may have to pay for damages to the land of their neighbors if slides or washes occur.

Recently, a decision was handed down by the Superior Court in Los Angeles County awarding substantial damages to owners of lots which were damaged by mud and silt from land above, where a subdivider had cut and filled the land. In March, 1952, heavy rains developed, and two large sections of loose fill became mud and moved down a small canyon, covering the lots of the neighbors. Substantial damages were awarded by the court.

One of the lots was improved with an expensive home. The owner demanded $110,000 in the suit, and was awarded over $30,000 by a jury. The judgment was against seven realty firms, builders, subdividers, and property owners responsible for the damage. Adjoining vacant lot owners were awarded $1,000 each in damages.

Another suit involving $185,000, brought by a prominent movie director, was still pending.

Town Lot Drilling Upheld

"Spacing Act" Held Unconstitutional

Close spacing of oil wells in subdivided and built up areas, known as "town lot drilling," has long been a controversial subject. Oil experts claim that it is a wasteful practice and hurts chances of reasonable recovery from the field but, on the other hand, property rights are involved.

Recently, the District Court of Appeal in a decision lifted the restrictions as to spacing and location of oil wells, excepting where controlled by county and city ordinances. It held the Town Lot Drilling Act unconstitutional. This law prohibited drilling on less than an acre of land, and spaced wells 100 feet away from thoroughfares.

Richard E. Wotton and his wife owned a parcel of land less than one acre in size, which they contended lay within the boundaries of the Rosecrans Oil Field in Los Angeles County, and that since the Rosecrans Oil Field was a field producing oil and gas on August 14, 1931, the effective date of the law, they were entitled to drill for oil or gas without complying with the spacing provisions of the state law; and furthermore, that the law was unconstitutional, namely the Spacing Act, Chapter 3, Public Resources Code. They were denied the exemption by the lower court, on the grounds that their land is located in a new field known as the Howard Townsite Field, the discovery of which was completed in 1947.

The appellate court opinion points out that the Legislature has laid down no rules determining "what an oil field is," nor has it defined one.

It is not known whether an appeal has been taken to the Supreme Court.

Connecticut License Law

Connecticut passed a real estate agents' license law and became the thirty-ninth license law state. The new act is administered by the State's Director of Licenses and Claims.

The new law contains an examination requirement and provides for surety bonds—$2,500 for brokers and $1,000 for salesmen.

"Subject to Financing" Weakens Agreement

Court Denies Agent Commission Because of Failure to Tell Seller of Contingency

Previous *Bulletin* articles have stressed the importance of avoiding contingencies; that is, making the offer subject to the happening of some future event. Such an offer puts a broker in a very weak position, and may even cause him to suffer loss, as happened in a recent case.

Briefly, the broker, acting as agent for the seller, took a deposit and signed offer subject to the buyer getting certain financing. The broker failed to advise the seller about the financing provision, and secured his acceptance.

It so happened that the woman who made the offer had a husband in the service, and the financing companies would not make the necessary loan without his signature. She did not have his power of attorney, and he could not be reached.

After some time had elapsed, the broker suggested to the seller that he release the buyer, but the seller refused to do so. Later on, the broker took it upon himself to return the deposit money, which amounted to $3,500.

The seller sued the broker and secured judgment and the decision was upheld by the appellate court.

The broker, of course, offered the defense that the offer was conditional upon the buyer securing a certain loan, which she failed to secure. Until the loan was obtained, the broker contended he held the deposit as the buyer's agent. **However, the broker made the mistake of securing the seller's approval to the sale without advising him of the arrangement concerning the loan, and it was not mentioned in the deposit receipt signed by the seller.** It therefore appears that the broker will be out $3,500.

In brief, the case sets forth that where an agreement for sale of real estate indicates that a deposit with the broker is to become a part of the down payment when the seller has put a deed in escrow evidencing good title, when such deed is put in escrow the deposit becomes the seller's property and the broker cannot, except at his own risk, return it to the buyer.

The court pointed out that in this case the agent undertook to adjudicate the rights between his principal and the buyer. This he did at his peril.

(Case reported in 116 A.C.A. 96.)

LOS ANGELES OFFICE MOVES

On Monday morning, November 2d, the Los Angeles office of the Division of Real Estate will open for business in new quarters.

The new location is Room 310, 541 South Spring Street, in the Spring-Arcade Building; new telephone number is MAdison 6-9601.

The offices will include the entire third floor of the Spring-Arcade Building with examination room, hearing room and executive offices adjoining on the arcade.

Being in the heart of the city's downtown district, the Spring-Arcade Building is close to interurban bus and rail terminals. Visitors to the division's office, who use these services, will find it very convenient.

Encroaching on Property

It has been the law in the past that if a person builds on another person's property, even through an honest mistake, the building belongs to the landowner. The Legislature realized the unfairness of this situation in such cases, and has adopted a law (Chapter 1176 of Statutes of 1953) correcting it.

It has provided that when a person, in good faith and because of mistake of law or fact, affixes improvements to the land of another, he, or his successor in interest, may remove such improvements upon payment to the owner or other interested persons of all damages resulting from such affixing or removal.

Licenses for Tract Offices

Branch Office License Required When Selling Is Done on the Subdivision

When model homes in subdivisions are used as tract offices by the selling broker, a branch office license is required if transactions are actually consummated in the model homes; that is if deposits are received, contracts are entered into or sales made.

Often it happens that the model home will be sold and another opened in the same tract, the new one to serve as the new office. Under these conditions, the broker may designate the location of the branch office simply as the subdivision and its location; for example, "Tract Office, Golden Gate Subdivision, San Bruno." This would permit the branch office license to be used any place in the tract without having to change addresses.

If, on the other hand, a tract office is built on the subdivision, then the specific address – street and number – should be used to appear on the license. A branch office of any type requires a sign carrying the words "Real Estate Broker" and giving his name.

Where the model home is used for display purposes only and transactions are consummated in the regularly established office of the broker, the branch office license is not necessary. **Section 10163 of the Real Estate Law empowers the commissioner to determine whether or not a branch office license is required in any particular set of circumstances and, in case of question, a ruling should be requested.**

New Location for Oakland Office

The Oakland office of the Division of Real Estate moved October 12th to Room 304, 1744 Broadway. The new telephone number is GLencourt 2-4787.

It is believed the new location will prove convenient for the needs of the public and licensees alike.

Marvin H. Wiegman, Senior Deputy, is in charge of the Oakland office, succeeding Harold H. Wells, who has become Supervising Deputy of the Sacramento office.

Property Title Complicated By Mining Patent Rights

Real estate brokers who operate in areas in California where mining and oil and gas activities are prevalent can expect to find some titles complicated by reservations of mineral, oil and gas rights and United States mining patents. Brokers in these localities should be on the lookout for this possibility and seek the advice of competent authorities as to the implications of reservations or patents.

It has come to the commissioner's attention that real estate brokers who have not dealt with property in those areas are often unfamiliar with this subject, and may get themselves and their clients into difficulties because of innocent misrepresentations regarding the condition of encumbered properties.

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