Denver Law Review

Volume 20 | Issue 3 Article 5

January 1943

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Some two years ago a situation was current in Denver in relation to real estate transactions which could properly be called fantastic. The primary causes of this condition were twofold.

First, titles to real property less than perfect were often rejected because of mere irregularities, and upon purely technical and often frivolous objections. One examiner felt compelled to reject a title for no other reason than that some subsequent examiner might do so. Even the most practical of lawyers felt the necessity of protecting themselves by rejecting titles on the ground of unimportant irregularities, for all practicability in this field had been removed.

Many parties to real estate transactions considered this situation scandalous and real estate brokers approached the consummation of such transactions with the fear of almost certain difficulties.

The Denver Bar Association, taking cognizance of this condition, appointed a committee which is undertaking to set up standards covering many of the common objections. The standards already submitted have been almost universally accepted by the Bar, and the entire approach to and consideration of real estate titles have been materially changed, not only in respect to the objections covered by the standards already set up by the committee, but in the circumspection and deliberation of lawyers before turning down titles on mere suspicion, or fear of criticism of subsequent examiners.

Based upon the success thus obtained it is reasonable to assume that the second cause of the condition mentioned may be remedied or alleviated by the use of a like application of sound judgment and cooperation. This second cause results from the real estate broker, and others, attempting to render their clients services in a real estate transaction which they are unqualified and unprepared to perform, and which services can only properly be rendered by skillful and trained lawyers. In most instances these services are not rendered by the broker for profit or gain but rather to limit as much as possible the costs and expenses of the transaction for his client. This situation is not just a local one, and in an endeavor to make real estate transactions simple, fair and equitable to all parties, both the American Bar Association and the National Association of Real Estate Boards have given consideration to the problem.

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*Of the Denver Bar. This paper was delivered before the Denver Bar Association on February 1, 1942.

Last year a committee of the American Bar Association, acting in conjunction with a like committee of the National Association of Real Estate Boards, organized a Joint Conference Committee, reciting in the preamble like resolutions establishing such a committee and the desirability of formulating a statement of principles, in the interest of lawyers, real estate brokers, and the general public.

Realizing that the attempt of lawyers to act in the capacity of real estate brokers, and of real estate brokers to act in the capacity of lawyers, can result only to the detriment of all interested in such transactions, the Conference Committee has set up specifications wherein the relative duties of lawyers and brokers are expressed.

Briefly and in part they are as follows:

1. The broker shall not practice law or give legal advice, directly or indirectly, nor act as a conveyancer, nor give advice or opinion as to the legal effect of legal instruments, nor offer opinion as to the validity of real estate titles, nor prevent nor discourage any party to a real estate transaction from engaging the services of a lawyer, nor undertake to draw or prepare documents fixing and defining the legal rights of parties to such transactions, except as to the original contract of sale and purchase, but provided, however, that such contract shall be in the form approved by the bar association.

2. The lawyer shall not express opinions concerning the business prudence of real estate transactions in which his legal services are used unless such opinions are sought by his client, and shall not seek to participate in the broker's compensation.

Consideration of these specifications, in the light of practices of both lawyers and brokers in our community and the results of such practices, will demonstrate their fairness, equity and validity.

Perhaps nothing now current in our methods of consummation of real estate transactions has wrought more disaster than that resulting from conveyancing carried on indiscriminately by brokers, notaries public and others.

In times past conveyancing has ever been held to be a highly specialized and important branch of the law, only to be engaged in by skilled draftsmen specially educated in that branch of the profession.

The lawyers have perhaps themselves to a considerable extent been the cause of the present situation, for in their attempt to simplify their work in conveyancing they have been guilty of great over-simplification. They have placed this important and difficult business of conveyancing on the basis of an automat, creating printed forms of every kind and character of instrument, from that of a simple promissory note to that

of the highly individualized instrument, a last will and testament. Whenever I run across the use of a printed form of will and give thought to all the difficulties, trouble and expense that have resulted from the indiscriminate use of printed forms, I have the feeling that that pious declaration found thereon, "In the name of God, amen," might well be made to appear on the top of all printed instruments, so handily prepared that seemingly all that is necessary is to dot the i's and cross the t's.

According to the Law Publisher's Catalogue in Denver there are six pages listing printed forms to be used by conveyancers. Of deeds alone there are 24 different kinds. The pseudo-conveyancer, by the simple expediency of not attempting to discriminate in selection of the proper form—and in all too many cases he is unable to do so—will make use of any printed form carrying a general designation of the instrument desired. So many joint tenancy deeds have appeared of record in which a single grantee is named that the Bar committee has felt compelled to set up a standard in regard thereto, and this is just one of many illustrations which might be cited.

No title examiner of average experience but can testify to the countless difficulties that have been inflicted upon an unwary and unsuspecting public from the unqualified and unskilled conveyancer.

Real estate has two characteristics which set it apart from all other species of property. It is indestructible and has an unchangeable situs. As our social and economic system becomes more and more intricate and complex, land must serve more and more ends. Its peculiar characteristic of indestructibility makes it possible for real estate to be used concurrently by many people for different purposes and thus it becomes the object of innumerable rights. By reason of the countless centuries in which it has remained immovable, real property has gathered unto itself burdens, restrictions and conditions without end—general taxes, special taxes, local improvement assessments, federal estate taxes, rights-of-way, building restrictions, mechanics' liens, homestead rights, judgments, mortgages, party-wall agreements, vacation of streets and alleys, zoning, and other ordinances, and, within the last few weeks, the very highly and important extension of rights of occupants, to mention only a few. All these restrictions, burdens and conditions must be considered insofar as any of them may concern the real estate in a given transaction. Thus it is quite apparent that much could be accomplished with great benefit to all concerned through a limitation that only those qualified to do so should engage in conveyancing.

The most important instrument in connection with a real estate transaction is that initial instrument which is called a "contract of sale and purchase" by the lawyer, and a "receipt for deposit" by the broker, and in these two designations lie their respective viewpoints. Nothing.

however, can change the conclusion that the contract is the basis and the foundation of the transaction. While under ordinary circumstances such an instrument should be prepared only by the skillful and experienced lawyer, yet when it is considered that all too often a broker must close his deal at that moment when the minds of the seller and purchaser have met, or else lose the deal, realism demands that he be permitted to prepare and have executed the contract of sale and purchase, but nonetheless he should be bound to observe certain regulations, among which briefly I submit the following:

1. If a printed form is used it should be such as has the approval of the bar association. If no printed form is used the contract should contain such standard provisions as have the approval of the association.

2. Before attempting to make the sale the broker should have a complete legal description of the property being sold, the abstract of title if possible, the opinion of the lawyer who examined it for the seller, and should take steps to determine what burdens, conditions and restrictions are imposed upon the property. Otherwise he is creating difficulties and disputes for his clients.

3. The broker, through consultation, should be advised what type of contract is to be executed, whether it is an outright contract to sell or merely an option, and beyond this he should in every case inform both the buyer and seller of the legal effect of such contract.

4. A minimum as to the amount of the deposit should be established. Few sellers are aware of the difficulties and dangers of signing contracts in which the deposit in no way insures that it is a real or genuine deal.

5. The broker should examine the property being sold and determine if there is necessity of a survey or possibility of mechanics' liens, or other conditions not otherwise apparent.

6. The utmost care should be taken in specifying in the contract the precise terms upon which the transaction is to be consummated—such as whether encumbrances are to be assumed, and the exceptions, which the seller should eliminate from his warranty.

While the foregoing may place exacting burdens upon the brokers it yet must be remembered that the real estate broker occupies a position unique in the business world. He represents both the purchaser and the seller and at the same time he, himself, has a financial interest in the transaction. Upon no other class serving the general public has a comparable trust been imposed, and upon no other class should there be a greater or higher sense of responsibility. In all too many cases the broker, through carelessness, haste in making the deal, or anxiety to do so, or some lack of proper understanding of his duties, fails to give opportunity

to both the buyer and seller to know the exact terms of the deal and to be appraised of the legal effect thereof, nor does he always seek to guard the rights of both. Thus, when the deal does come to the lawyer and he begins to make inquiries because of these omissions, doubt and hesitation are engendered in his client, and the deal often falls through. The broker feels that the lawyer has unnecessarily inter-meddled where it was not his duty to do so; and the lawyer feels that the broker is one whom he should guard his client against. Thus is intensified the feeling upon the part of the broker that it is good business for him to keep his client from his lawyer, and on the part of the lawyer that so far as possible his client should be kept away from the broker.

Resulting from this attitude, it all too often happens that the broker suggests to his client that there is no necessity to have a title examined, perhaps because of some previous examinations, or other reasons, and undertakes to prepare the legal instruments necessary to carry into effect the terms of the deal, and performs all of the duties of both broker and lawyer; while the lawyer in all too many cases, when his client is seeking to make a sale of his property, voluntarily undertakes to carry on the business of a real estate broker and dispose of the property himself.

The broker is not a skillful lawyer, and the lawyer is not a capable broker, and common sense must dictate that the client through such procedure is placed at an unwarranted disadvantage.

In the specifications of the Joint Conference Committee it is contended that the lawyer should not attempt to participate in the broker's commission. This is self evident. If such practice exists in Denver—and if it does I am entirely unaware of it—it probably stems from the fact that all too often, through the omission of the broker, neither the seller nor the buyer has a full and complete understanding of the terms of the deal, and this even though the contract has already been executed. Thus when it reaches the lawyer for closing the deal has not been completed and often the lawyer must spend his time and effort in aid of finishing what the broker has only initiated. If, on the other hand, care and attention and proper efforts are used by the broker so that a full and complete understanding of the terms and conditions of the transaction are known to all parties, the lawyer has no other duty save to prepare the necessary papers to carry out the contract already executed, and under no circumstances should he attempt to participate in the commission.

It is also contended that lawyers all too often volunteer their personal opinion as to the business prudence of real estate transactions, and there is perhaps considerable warrant for such contention. Just as the broker, through lack of academic or special training, has no fitness to engage in conveyancing, so the lawyer, for like reasons, has no reason to

indulge in the expression of real estate values, and he should not do so unless upon direct request of his client. And if he has profited by experience he will not do so, for if his advice is acted upon by his client and proves profitable, the client takes credit only to himself for having followed the advice, whereas if it proves unprofitable he remembers only the unsound advice given by the lawyer.

The interests of the lawyer and the real estate broker are so closely integrated that any effort on the part of either resulting in an improvement in relationship to the efficiency or fairness in the conduct of real estate transfers, or in the enlightenment of the public on matters of general interest affecting real estate, resolves to the benefit of all. Therefore, it logically appears that a close union should be established in these matters so that through cooperation and liaison the efforts and energy of both can be better applied to the accomplishment of these ends.

Especially is such action pertinent in these days when the most substantial property rights are subject to constantly changing regulations, not through public legislative enactment, but by direction of purely administrative officers.

What has been herewith presented is not intended as a criticism or blue-print setting forth with nicety the relative duties of the lawyer and the broker in a real estate transaction, but as a challenge to the sense of public responsibility of both the legal and real estate fraternities.

American Bar to Stress War Winning Projects

The request of the Office of Defense Transportation, to confine meetings to war-winning projects, will furnish the keynote of the mid-year meeting of the American Bar Association's House of Delegates at Chicago, on March 29 and 30.

George Maurice Morris of Washington, D. C., president of the association, said a few days ago that the program will be focused directly upon those activities of the organized Bar which "contribute in an important way to winning the war." He also announced the association is discontinuing its program for regional meetings in various parts of the country because such programs do not lend themselves to complete concentration on shortening the war.

Mr. Morris pointed out that since September, 1940, the Bar has been devoting itself to the solution of the procedural problems concerned with the selection of personnel, both enlisted and commissioned, for the armed forces and with assisting men in the forces and persons dependent upon them with their individual legal problems. New procedures are in prospect with the possible formal development of "legal clinics" in

each army camp, post or station. The part that state and local bar associations may play in such a plan will be worked out in part by the representatives of those associations who sit in the House of Delegates.

Requiring immediate attention is the organizing of the lawyers in each state to promote adequate state laws to control venereal disease among soldiers and sailors. The association's committee on courts and wartime social protection, of which John Marshall Goldsmith of Radford, Virginia, is chairman, has pointed out that in World War I the number of new cases of venereal disease was greater by 1,000,000 than the number of wounds incurred in battle and that of the first million men examined for the current selective service, over 60,000 were found to be infected. An organized attack upon prostitution, the root of this devastating enemy of the armed forces, through improved techniques in police and court procedure, is an objective of the Bar.

Setting up a machinery to look after the legal needs of war plant workers flooding into new communities is another project which the association has undertaken at the request of the Manpower Commission. The work of the Office of Civilian Defense and the operations of the Office of Price Administration require voluntary service by lawyers on a large scale. Cooperative plans for this work will be considered by the House of Delegates.

It is inevitable, Mr. Morris said, that the increasing demand for a definition of war aims and the consideration of post-war problems will call for consideration by the House of Delegates. He pointed out that the progress toward winning the war will be accelerated by a clarification of objectives which are sought and lawyers have many ideas on this subject. The House of Delegates, as the representative assembly of the Bar, offers a medium, its members believe, for effectively focusing these ideas for public consideration.

Regulation

In these days when the government tells us what we can and cannot eat, wear and do, and bearing particularly upon the stories and poems which have been going around lately as to some things which were not rationed, we quote the following, taken by Carle Whitehead from an order of one of our county courts:

"IT IS FURTHER ORDERED by the court that respondent be, and is hereby, restrained from molesting, quarreling with, or in any manner bothering the petitioner until further orders of this court."