

Definitions contained in: Real Estate Law and Subdivided Lands Law (California Business and Professions Code Sections 10000 and 11288)

Definitions 10000. This part may be cited as the Real Estate Law.

10001. The definitions in this chapter apply to the provisions of this part only and do not affect any other provisions of this code.

10003. "Commissioner" refers to the Real Estate Commissioner.

10004. "Department" means the Department of Real Estate in the Business, Transportation and Housing Agency.

10005. Whenever the terms "division," "State Real Estate Division," or "Real Estate Division" are used in this division, they mean the Department of Real Estate. Whenever the terms "State Real Estate Division" or "Real Estate Division" are used in any other law, they mean the Department of Real Estate.

10006. "Person" includes corporation, company and firm.

10007. "Provisions of this part relating to real estate" refers to the provisions of Chapters 1, 2, 3 and 6 of Part 1.

10008. "Provisions of this part relating to business opportunity regulation" refers to the provisions of Chapters 1, 2, and 6 of Part 1.

10008.5. Solely with regard to any transaction involving the sale, lease, or exchange of a business opportunity occurring before, on, or after the effective date of this section, this division shall not apply to any person licensed at the time of the transaction as a securities broker or securities dealer under any law of this state or of the United States, or by any employee, officer, or agent of that person while acting under the direction of, and within the scope of, his or her employment with that person in connection with the transaction. As used in this section, "any transaction involving the sale, lease, or exchange of a business opportunity" does not include any of the acts described in Section 10131 or Section 10131.2 if the substance of the transaction is to transfer, sell, lease, or exchange an interest in real property for the purpose of evading this part.

10009.5. "Provisions of this part relating to mineral, oil and gas brokerage" refers to the provisions of Chapters 1, 2, 6 and 7, of Part 1.

10010. "Provisions of this part relating to hearings" refers to the provisions of Article 3 of Chapter 2 of Part 1.

10011. "Licensee," when used without modification, refers to a person, whether broker or salesman, licensed under any of the provisions of this part.

10012. "Broker," when used without modification, refers to a person licensed as a broker under any of the provisions of this part.

10013. "Salesman," when used without modification, refers to a person licensed as a salesman under any of the provisions of this part.

10014. "Real estate licensee" refers to a person, whether broker or salesman, licensed under Chapter 3 of this part.

10015. "Real estate broker" refers to a person licensed as a broker under Chapter 3 of this part.

10016. "Real estate salesman" refers to a person licensed as a salesman under Chapter 3 of this part.

10017. Whenever the word salesman is used in this division, or in the rules and regulations of the commissioner, it means salesperson. A licensee, however, may elect to refer to the licensed status as real estate salesman, real estate saleswoman, or real estate salesperson.

10023. "Mineral, oil and gas licensee" refers to a person licensed under Chapter 7 (commencing with Section 10500) of this part.

10024. "Mineral, oil and gas broker" refers to a person licensed as a broker under Chapter 7 of this part. "*Advance Fee*"

10026. (a) The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

(b) For the purposes of this section, the term "advance fee" does not include:

(1) "Security" as that term is used in Section 1950.5 of the Civil Code.

(2) A "screening fee" as that term is used in Section 1950.6 of the Civil Code.

(3) A fee that is claimed, demanded, charged, received, or collected for the purpose of advertising the sale, lease, or exchange of real estate, or of a business opportunity, in a newspaper of general circulation, any other written publication, or through electronic media comparable to any type of written publication, provided that the electronic media or the publication is not under the control or ownership of the broker.

(4) A fee earned for a specific service under a "limited service" contract. For purposes of this section, a "limited service" contract is a written agreement for real estate services described in subdivision (a), (b), or (c) of Section 10131, and pursuant to which such services are promoted, advertised, or presented as stand-alone services, to be performed on a task-by-task basis, and for which compensation is received as each separate, contracted-for task is completed. To qualify for this exclusion, all services performed pursuant to the contract must be described in subdivision (a), (b), or (c) of Section 10131.

(c) A contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed does not represent an agreement for an advance fee.

(d) This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections.

10027. The term "listing" as used in this part includes, but is not limited to: (a) The name or a list of the names, of the owners, landlords, exchangers, or lessors, or the location or locations, of property, or of an interest in property, offered for rent, sale, lease, or exchange. (b) The name, or a list of the names, or the location or locations at which prospective or potential purchasers,

buyers, lessees, tenants or exchangers of property may be found or contacted. (c) An agreement by which a person who is engaged in the business of promoting the sale or lease of business opportunities or real estate agrees to render to an owner or lessee of such property any services, to promote the sale or lease of said property.

(d) An agreement by which a person who is engaged in the business of finding, locating or promoting the sale or lease of business opportunities or real estate, agrees to circularize, notify or refer real estate brokers or salesmen to said property which is offered for sale or lease.

10028. "Trust deed" or "deed of trust" as used in this part includes "mortgage." *"Real Property Sales Contract"*

10029. "Real property sales contract" as used in this part is an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of formation of the contract.

10030. As used in this part, the words "business opportunity" shall include the sale or lease of the business and goodwill of an existing business enterprise or opportunity.

10032. *Broker-Salesperson Relationship – Independent Contractor or Employee – No Effect on Obligations to Public*

(a) All obligations created under Section 10000, and following, all regulations issued by the commissioner relating to real estate salespersons, and all other obligations of brokers and real estate salespersons to members of the public shall apply regardless of whether the real estate salesperson and the broker to whom he or she is licensed have characterized their relationship as one of "independent contractor" or of "employer and employee." (b) A real estate broker and a real estate salesperson licensed under that broker may contract between themselves as independent contractors or as employer and employee, for purposes of their legal relationship with and obligations to each other. Characterization of a relationship as either "employer and employee" or "independent contractor" for statutory purposes, including, but not limited to, withholding taxes on wages and for purposes of unemployment compensation, shall be governed by Section 650 and Sections 13000 to 13054, inclusive, of the Unemployment Insurance Code. For purposes of workers compensation the characterization of the relationship shall be governed by Section 3200, and following, of the Labor Code.

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