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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 4. REAL ESTATE [10000 - 11506] (*Division 4 added by Stats. 1943, Ch. 127.*)

PART 1. LICENSING OF PERSONS [10000 - 10580] (*Part 1 added by Stats. 1943, Ch. 127.*)

CHAPTER 1. General Provisions [10000 - 10035] (*Chapter 1 added by Stats. 1943, Ch. 127.*)

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

(*Added by Stats. 1943, Ch. 127.*)

10001. Except as otherwise specified, the definitions in this chapter apply to the provisions of this part only and do not affect any other provisions of this code.

(*Amended by Stats. 2018, Ch. 285, Sec. 1. (AB 2884) Effective January 1, 2019.*)

10003. "Commissioner" means the Real Estate Commissioner.

(*Amended by Stats. 2016, Ch. 177, Sec. 2. (AB 685) Effective January 1, 2017.*)

10004. (a) "Department" means the Department of Real Estate in the Business, Consumer Services, and Housing Agency.

(b) This section shall become operative on July 1, 2018.

(*Repealed (in Sec. 5) and added by Stats. 2017, Ch. 828, Sec. 6. (SB 173) Effective January 1, 2018. Section operative July 1, 2018, by its own provisions.*)

10005. (a) Whenever the terms "bureau," "division," "Bureau of Real Estate," "State Real Estate Division," or "Real Estate Division" are used in this division, they mean the Department of Real Estate.

(b) Whenever the terms "Bureau of Real Estate," "State Real Estate Division," or "Real Estate Division" are used in any other law, they mean the Department of Real Estate.

(c) This section shall become operative on July 1, 2018.

(*Repealed (in Sec. 7) and added by Stats. 2017, Ch. 828, Sec. 8. (SB 173) Effective January 1, 2018. Section operative July 1, 2018, by its own provisions.*)

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

(*Amended by Stats. 1968, Ch. 75.*)

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

(*Amended by Stats. 2016, Ch. 177, Sec. 3. (AB 685) Effective January 1, 2017.*)

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

(*Amended by Stats. 2016, Ch. 177, Sec. 4. (AB 685) Effective January 1, 2017.*)

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.

(Added by Stats. 1989, Ch. 1116, Sec. 1. Effective September 30, 1989.)

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

(Amended by Stats. 2016, Ch. 177, Sec. 5. (AB 685) Effective January 1, 2017.)

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

(Amended by Stats. 2016, Ch. 177, Sec. 6. (AB 685) Effective January 1, 2017.)

10010.5. (a) Nothing in Assembly Bill 1289 of the 2017–18 Regular Session or Assembly Bill 2884 of the 2017–18 Regular Session shall be construed to affect any of the following:

(1) A real estate broker's duties under existing statutory or common law as an agent of a person who retains that broker to perform acts for which a license is required under this division.

(2) Any fiduciary duties owed by a real estate broker to a person who retains that broker to perform acts for which a license is required under this division.

(3) Any duty of disclosure or any other duties or obligations of a real estate broker that arise under this division or other existing applicable California law, including common law.

(4) Any duties or obligations of a salesperson or a broker associate that arise under this division or existing applicable California law, including common law, including duties and obligations to the salesperson's or broker associate's responsible broker.

(5) A responsible broker's duty of supervision and oversight for the acts of retained salespersons or broker associates that arise under this division or other existing applicable California law, including common law.

(b) (1) The Legislature finds and declares that a responsible broker, as defined in Section 10015.1, has the duty to supervise and oversee the licensed acts of each salesperson and broker associate affiliated with and working under his or her supervision, regardless of whether the retention contract with that salesperson or broker associate specifies an independent contractor relationship or an employment relationship.

(2) The Legislature finds and declares that, consistent with existing statutory and common law, a responsible broker is liable for the actions or negligence of a salesperson or broker associate retained by the responsible broker to perform acts for which a license is required under this division.

(c) For purposes of this section, references to "existing statutory law" and "existing applicable California law" refer to the law as it read immediately prior to enactment of Assembly Bill 1289 of the 2017–18 Regular Session and Assembly Bill 2884 of the 2017–18 Regular Session.

(Added by Stats. 2018, Ch. 285, Sec. 2. (AB 2884) Effective January 1, 2019.)

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

(Amended by Stats. 2016, Ch. 177, Sec. 7. (AB 685) Effective January 1, 2017.)

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

(Amended by Stats. 2016, Ch. 177, Sec. 8. (AB 685) Effective January 1, 2017.)

10013. "Salesperson," when used without modification, means a person licensed as a salesperson under any of the provisions of this part. Whenever the word salesman is used in this division, or in the rules and regulations of the commissioner, it means salesperson. Notwithstanding any other law, a licensee may elect to refer to his or her licensed status as real estate salesman, real estate saleswoman, or real estate salesperson.

(Amended by Stats. 2016, Ch. 177, Sec. 9. (AB 685) Effective January 1, 2017.)

10014. "Real estate licensee" means a person, whether broker or salesperson, licensed under Chapter 3 of this part.

(Amended by Stats. 2016, Ch. 177, Sec. 10. (AB 685) Effective January 1, 2017.)

10015. “Real estate broker” means a person licensed as a broker under Chapter 3 of this part.

(Amended by Stats. 2016, Ch. 177, Sec. 11. (AB 685) Effective January 1, 2017.)

10015.1. “Responsible broker” means the real estate broker responsible for the exercise of control and supervision of real estate salespersons under Section 10159.2, or a licensee subject to discipline under subdivision (h) of Section 10177 for failure to supervise activity requiring a real estate license. The supervision of a salesperson required under this part or any other law is limited to regulatory compliance and consumer protection.

(Added by Stats. 2018, Ch. 285, Sec. 3. (AB 2884) Effective January 1, 2019.)

10015.2. “Manager” means a real estate licensee authorized to perform supervisory services for a responsible broker.

(Added by Stats. 2018, Ch. 285, Sec. 4. (AB 2884) Effective January 1, 2019.)

10015.3. “Broker associate” means a broker retained by a responsible broker who has authority to provide services requiring a real estate license on behalf of the responsible broker.

(Added by Stats. 2018, Ch. 285, Sec. 5. (AB 2884) Effective January 1, 2019.)

10015.4. “Responsible broker’s identity” means the name under which the responsible broker is currently licensed by the department and conducts business in general or is a substantial division of the real estate firm, or both the name and the associated license identification number. “Responsible broker’s identity” does not include a fictitious business name obtained pursuant to paragraph (2) of subdivision (a) of Section 10159.5 or the use of a team name pursuant to Section 10159.6.

(Added by Stats. 2018, Ch. 285, Sec. 6. (AB 2884) Effective January 1, 2019.)

10015.5. “Professional identity” includes “responsible broker’s identity” and the identity under which the licensee is authorized to do business.

(Added by Stats. 2018, Ch. 285, Sec. 7. (AB 2884) Effective January 1, 2019.)

10016. “Real estate salesperson” means a natural person licensed as a salesperson under Chapter 3 of this part and who, for a compensation or in expectation of a compensation, is retained by a real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

(Amended by Stats. 2018, Ch. 285, Sec. 8. (AB 2884) Effective January 1, 2019.)

10018.01. “Retained” means the relationship between a broker and a licensee who is either an independent contractor affiliated with, or an employee of, a broker to perform activities that require a license and are performed under a broker’s supervision.

(Added by Stats. 2018, Ch. 285, Sec. 9. (AB 2884) Effective January 1, 2019.)

10018.02. “Seller” means a transferor in a real property transaction, and includes an owner who lists real property with a licensee, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from a licensee on behalf of another. “Seller” includes both a vendor and lessor of real property.

(Added by Stats. 2018, Ch. 285, Sec. 10. (AB 2884) Effective January 1, 2019.)

10018.03. “Listing agent” means a licensee who provides services requiring a real estate license for or on behalf of a seller pursuant to a listing agreement. Listing agent includes a seller’s agent.

(Added by Stats. 2018, Ch. 285, Sec. 11. (AB 2884) Effective January 1, 2019.)

10018.04. “Seller’s agent” means a licensee who provides services requiring a real estate license for or on behalf of a seller. A seller’s agent may or may not be a listing agent.

(Added by Stats. 2018, Ch. 285, Sec. 12. (AB 2884) Effective January 1, 2019.)

10018.05. “Buyer” means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through a licensee, whether or not a transfer results, or who seeks the services of a licensee in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. “Buyer” includes a purchaser, vendee, or lessee of real property.

(Added by Stats. 2018, Ch. 285, Sec. 13. (AB 2884) Effective January 1, 2019.)

10018.06. “Buyer’s agent” means a licensee who provides services requiring a real estate license for or on behalf of a buyer.

(Added by Stats. 2018, Ch. 285, Sec. 14. (AB 2884) Effective January 1, 2019.)

10018.07. “Real property” means any estate specified in (1) or (2) of Section 761 of the Civil Code in property, and includes (a) single-family residential property, (b) multiunit residential property with more than four dwelling units, (c) commercial real property, (d) vacant land, (e) a ground lease coupled with improvements, or (f) a manufactured home as defined in Section 18007 of the Health and Safety Code or a mobilehome as defined in Section 18008 of the Health and Safety Code.

(Added by Stats. 2018, Ch. 285, Sec. 15. (AB 2884) Effective January 1, 2019.)

10018.08. “Single-family residential property” or “Single-family residential real property” means: (a) real property improved with one to four dwelling units, including any leasehold exceeding one year’s duration of such, (b) a unit in a residential stock cooperative, condominium, or planned unit development, or (c) a mobilehome or manufactured home when offered for sale or sold through a real estate broker pursuant to Section 10131.6.

(Added by Stats. 2018, Ch. 285, Sec. 16. (AB 2884) Effective January 1, 2019.)

10018.09. “Commercial real property” means all real property except (a) single-family residential real property, (b) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code, (c) a mobilehome as defined in Section 798.3 of the Civil Code, (d) vacant land, or (e) a recreational vehicle as defined in Section 799.29 of the Civil Code.

(Added by Stats. 2018, Ch. 285, Sec. 17. (AB 2884) Effective January 1, 2019.)

10018.10. Except as provided in Section 10239.2, “sell,” “sale,” or “sold” means a transaction for the transfer of real property from a seller to a buyer, and includes (a) an exchange of real property between a seller and a buyer, (b) a real property sales contract within the meaning of Section 2985 of the Civil Code, and (c) a leasehold exceeding one year’s duration.

(Added by Stats. 2018, Ch. 285, Sec. 18. (AB 2884) Effective January 1, 2019.)

10018.11. “Dual agent” means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction.

(Added by Stats. 2018, Ch. 285, Sec. 19. (AB 2884) Effective January 1, 2019.)

10018.13. “Appraiser” means a person licensed or certified under Part 3 (commencing with Section 11300).

(Added by Stats. 2018, Ch. 285, Sec. 20. (AB 2884) Effective January 1, 2019.)

10018.14. “Listing agreement” means a written contract between a seller of real property or a business opportunity and a real estate broker by which the broker has been authorized to sell the real property or find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. A “listing agreement” includes an “exclusive right to sell listing agreement,” “seller reserved listing agreement,” and “open listing agreement.”

(Added by Stats. 2018, Ch. 285, Sec. 21. (AB 2884) Effective January 1, 2019.)

10018.15. “Exclusive right to sell listing agreement” means a listing agreement whereby the owner grants to a seller’s agent, for a specified period of time, the exclusive right to sell, find, or obtain a buyer for the real property, and the seller’s agent is entitled to the agreed compensation if, during that period of time, the real property is sold, no matter who effected the sale, or when the seller’s agent receives and presents to the owner any enforceable offer from a ready, able, and willing buyer on terms that are authorized by the listing agreement or accepted by the owner. An “exclusive right to sell listing agreement” may provide for compensation to the seller’s agent if the property is sold within a specified period after termination of the listing agreement.

(Added by Stats. 2018, Ch. 285, Sec. 22. (AB 2884) Effective January 1, 2019.)

10018.16. “Seller reserved listing agreement” means a listing agreement whereby the owner grants to a seller’s agent, for a specified period of time, the exclusive right to sell, find, or obtain a buyer for the real property, and the seller’s agent is entitled to the agreed compensation if, during that period of time, the real property is sold, no matter who effected the sale, or when the seller’s agent receives and presents to the owner any enforceable offer from a ready, able, and willing buyer on terms that are authorized by the listing agreement or accepted by the owner. Compensation is not owed to the seller’s agent if the owner sells the property

directly and not through any other broker. A "seller reserved listing agreement" may provide for compensation to the seller's agent if the property is sold, other than directly by the seller, within a specified period after termination of the listing agreement.

(Added by Stats. 2018, Ch. 285, Sec. 23. (AB 2884) Effective January 1, 2019.)

10018.17. "Open listing agreement" means a listing agreement which grants no exclusive rights or priorities to the seller's agent, and the agreed commission is payable to the seller's agent only if that agent obtains and presents to the owner an enforceable offer from a ready, able, and willing buyer on the terms authorized by the listing agreement, which is accepted by the owner, before the property is otherwise sold either through another licensee or by the owner directly and before the listing agreement expires by its terms or is revoked by the seller's agent or the owner.

(Added by Stats. 2018, Ch. 285, Sec. 24. (AB 2884) Effective January 1, 2019.)

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

(Amended by Stats. 2016, Ch. 177, Sec. 14. (AB 685) Effective January 1, 2017.)

10024. "Mineral, oil, and gas broker" means a person licensed as a broker under Chapter 7 of this part.

(Amended by Stats. 2016, Ch. 177, Sec. 15. (AB 685) Effective January 1, 2017.)

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.

(Repealed and added by Stats. 2010, Ch. 85, Sec. 2. (AB 1762) Effective January 1, 2011.)

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, which may include a listing agreement.

(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, which may include a listing agreement.

(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 the property any services, to promote the sale or lease of that 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 salespersons to the property that is offered for sale or lease.

(Amended by Stats. 2018, Ch. 285, Sec. 25. (AB 2884) Effective January 1, 2019.)

10028. “Trust deed” or “deed of trust” as used in this part includes “mortgage.”

(Added by Stats. 1961, Ch. 886.)

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.

(Added by Stats. 1961, Ch. 886.)

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.

(Amended by Stats. 1969, Ch. 216.)

10032. (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.

(Added by Stats. 1991, Ch. 679, Sec. 1.)

10035. Neither Section 10185 nor any other provision of this part which makes violation of this part a crime shall be construed to preclude application of any other criminal provision of the law of this state to an act or omission which constitutes a violation of this part.

(Added by Stats. 1985, Ch. 57, Sec. 1.)