

**DEPARTMENT OF REAL ESTATE**

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March 3, 2005

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Dear Mr. Borglum:

This is in response to your fax dated February 14, 2005. In your fax, you have asked whether advertising for a buyer and consulting on the sale of a portion of a business opportunity is an act requiring a real estate license. We will assume, for purposes of this reply that the person doing the advertising and consulting is doing so on behalf of another or others and for compensation. The answer to your question is such persons may not do so without a California real estate broker license.

Section 10131 of the Business and Professions Code provides, in part:

"A real estate broker ... is a person who, for a compensation or in expectation of a compensation, ... does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity."

The term "business opportunity" is defined in Section 10030 of the Business and Professions Code as including "the sale or lease of the business and goodwill of an existing business enterprise or opportunity." A business opportunity may also include system technology including patents, designs, inventories, fixtures, trademarks, receivables, customer lists and the name or the goodwill of the business other assets. The form of the compensation is immaterial. It makes no difference if the person performing licensed acts is being paid on an hourly or commission basis.

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A real estate broker license is required when 1) acting on behalf of another or others, 2) for compensation and 3) soliciting prospective buyers, sellers, borrowers or lenders or negotiating the sale of real property or a business opportunity. While many persons think of "negotiation" as being specifically related to the terms and conditions upon which a sale will be made and similar to the bargaining which takes place in open markets where vendors offer their goods for sale, the Department, based on case law, does not so narrowly interpret this term.

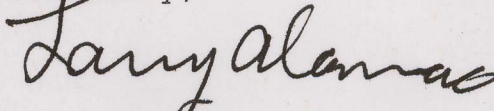
In fact, we have and do consider negotiations to include a much broader range of activities. Generally speaking, it includes all those things that occur between parties to a loan or sale and/or their agents in the course of or incidental to the making of the loan or sale. It includes all activities designed to bring the parties together "in an amicable frame of mind, with an attitude toward each other and toward the transaction in hand which permits their working out the terms of the agreement." Therefore, even though an agent is not involved in bargaining or haggling over actual loan or sale terms, the agent may nevertheless be participating in negotiations necessitating a real estate broker license. Hasekian v. Krotz (1968) 268 CA 2d 311; Preach v. Monter Rainbow (1993) 12 CA 4th 1441.

Reviewing or preparing offers for the sale of real property and advising the owner; participating in the negotiations and attending meetings where the sale of the property is negotiated fall within the coverage of Section 10131. (See, for example Preach v. Monter Rainbow.)

A recent Attorney General Opinion (78 Ops. Cal. Atty. Gen. 7) also reaches the conclusion that solicitation requires a real estate license and that the finders exemption does not apply where an unlicensed person is being compensated for soliciting prospective lenders or borrowers in a mortgage loan transaction.

We hope this information will be of assistance to you.

Sincerely,



Larry A. Alamao  
Chief Counsel

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