

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

Main Office:  
2102 BUSINESS CENTER DRIVE  
SUITE 130  
IRVINE, CA 92612

Mailing Address:  
P.O. BOX 4125  
IDY, CA 92549-4125

**DAVID JEROME ALT**  
*Attorney at Law*  
[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)

TELEPHONE 949.253.5755  
FACSIMILE 949.253.5756  
[www.altandassociates.com](http://www.altandassociates.com)

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### **CALIFORNIA DEPARTMENT OF REAL ESTATE REAFFIRMS UNLAWFUL EMPLOYMENT AND COMPENSATION ISSUES**

The California Department of Real Estate (DRE) has just published its Spring Real Estate Bulletin. Among other subjects, it has an excellent article devoted to employment and employment compensation issues. The bulletin can be found in its entirety at:

[www.dre.ca.gov](http://www.dre.ca.gov) (see News Flashes).

Some of the issues raised are as follows:

1. ***Broker paid commission to third party.*** A sales person is allowed to instruct a broker under whom he/she is licensed, to pay the sales person's commission to a third party, such as a corporation owned by the sales person. However, DRE's position is that a broker must be involved with commissions earned under its broker's license. The broker must actually direct and control the manner of payment of a salesperson's share of an earned commission. That said, a share can be paid to an unlicensed entity or individual as long as that party is not engaged in licensed activity. The intent is to prevent a broker from compensating an unlicensed person from performing licensed acts. [Please note that throughout this article, the opinions stated are only as they relate to California Real Estate Law. Other laws or regulations may apply that would alter these interpretations.]
2. ***Commission earned by a formerly employed salesperson.*** The DRE states that compliance with Business and Professions Code, Section 10137, requires that a check for a commission, earned by a formerly employed salesperson be sent to the salesperson's new employing broker. The new broker can either pass on the check or cut a new check depending on circumstances. Where there is no new employing broker for one reason or another, DRE's policy has been to tell brokers that it is permissible to directly pay a commission that had already been earned to the previously employed salesperson.
3. ***Dual Employment.*** DRE reaffirms a commonly known principle which is that real estate salesperson may only be employed or accept compensation by/from one real estate broker. The DRE will not license a real estate salesperson for employment with more than one broker. However, this "one broker" restriction does not apply to real estate brokers who act as a salesperson or broker associate for another broker. The example cited is a broker, working for another broker in a real estate sales company while simultaneously working at a property management company.
4. ***Commission Sharings/Splitting.*** Before addressing this issue, please again remember that other laws may significantly impact or change the conclusion



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If you have any questions please contact:

David J. Alt, Esq.

[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)

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