

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

TELEPHONE 949.253.5755
FACSIMILE 949.253.5756
www.altandassociates.com

March 28, 2012

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 (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

The Lenders Update is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States.

Only those persons who have personally requested this newsletter are on our distribution list.

SHOULD YOU NOT WISH TO CONTINUE TO RECEIVE THIS SERVICE,
PLEASE JUST SEND US AN EMAIL TO “OP-OUT” AT:

sherry.edwards@altandassociates.com

ALSO, SHOULD YOU HAVE COLLEAGUES WHO WISH TO BE ADDED TO THIS
COMPLIMENTARY SERVICE, PLEASE HAVE THEM E-MAIL US AT:

sherry.edwards@altandassociates.com

ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past two decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

If you have any questions please contact:

David J. Alt, Esq.

David.j.alt@altandassociates.com

You may view previous issues on our website at:

www.altandassociates.com

Who's Who in American Law

Martindale Hubble Pre-Eminent Attorney