

19 Brokerage

Brokerage as a Part of the Real Estate Business

Overall, the real estate business consists of the production, marketing and financing of real property.

Real estate brokerage involves *agency* directed, *for compensation*, primarily toward the sale, exchange, lease, rental, financing, or managing of real property or a business opportunity.

Other Specialists

Real estate brokers deal frequently with other specialists in the real estate business: appraisers, surveyors, engineers, financial institutions, title companies, escrow agents, architects, contractors, pest control inspectors, credit reporting agencies, attorneys, and accountants. A broker should establish and maintain good working relationships with these fellow professionals.

Operations

With regard to the sale of real property, brokerage operations may be divided into several elements:

1. securing listings (developing an inventory) through leads, referrals, and direct canvassing;
2. prospecting for buyers through various forms of advertising;
3. negotiating or bringing together a “meeting of the minds” of buyer and seller;
4. assisting in whatever manner necessary with closing (transfer of the property by the required instruments).

Typically, brokerage firms compete for listings and cooperate with other brokers who desire to find buyers for the listings.

Office Size - Management

A small office will conduct its operations successfully only if the broker is a good salesperson *and* manager. The medium-sized firm is customarily manned by a “sales manager broker.” In a large office, the broker generally has only executive and administrative duties. This broker-owner employs one or more sales managers and an office staff. Whatever the office size, a broker must maintain proper records and documents and be certain that the office is well organized.

Career Building

A person considering a career in real estate brokerage should be aware of the following:

1. Other selling experience is valuable, but selling real estate is different because:
 - a. The product is more complex and individualized.
 - b. The sales period is longer and more tedious, requiring patience and effort.
 - c. A broker must exercise reasonable supervision over the activities of salespersons associated with the brokerage. Reasonable supervision includes the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage the salespersons activities. In addition the broker must be familiar with and fulfill many other legal requirements. These requirements are outlined on the Department of Real Estate web site: <http://www.dre.ca.gov>.
 - d. Providing a professional service is substantially different than selling tangible products. As real estate is usually the largest single purchase a buyer will ever make, the licensee must be prepared to educate, coach and counsel the client.
2. The broker’s staff must have in-depth knowledge of the geography in which the brokerage seeks to operate.
3. The licensee must be knowledgeable of the product being marketed: its value; its neighborhood and the typical buyer.

The Broker and the New Salesperson

Office and personal characteristics crucial to the success of a new salesperson are:

- The broker or designated manager or mentor is available for consultation and makes certain that the salesperson is trained, informed and up-to-date.
- The broker has an organizational chart and plan. The salesperson's position and duties are clear. The broker must constantly evaluate the salesperson's attitude, knowledge, transaction documents, and production.
- The broker should have a process in place to insure that the salesperson is kept informed and knowledgeable of the broker's Policy and Procedures and any changes implemented.

Specialization

Residential selling accounts for the majority of sales made by the typical realty office. After making a good start in general home selling, the licensee may wish to specialize and become an expert in another area of brokerage, such as:

1. homes of a defined district of the city;
2. homes within a certain price range;
3. residential rentals; and
4. Specific types of property: new home sales, land acquisition for new home builders or developers, farms or ranches, commercial, industrial, multiple units, motels, business opportunities, franchising, or mobile homes.

If a licensee wishes to leave general brokerage after acquiring extended experience, consideration may be given to becoming one of the following:

- Licensed appraiser;
- Real estate investment counselor;
- Subdivider;
- Builder;
- Property manager;
- Mortgage loan broker;
- Syndicator;
- Franchise investment specialist;
- Commercial/industrial property leasing agent; or
- Business opportunities specialist.

A Broker's Related Pursuits

A broker may engage in other pursuits as long as these pursuits do not create a conflict of interest with the broker's fiduciary duty to the client. For example, the broker may, upon full disclosure: broker loans, be licensed to appraise property on a fee basis; act as an adviser or consultant in real estate investment; operate a property insurance business; offer notary public services or other products and services related to the sale of real property.

Subdividing/developing. A real estate broker might select the production function of real estate and become a producer or manufacturer by taking "raw" land and converting it into higher priced land to suit the needs of the community. The broker-developer may construct dwellings or commercial buildings upon the subdivided land or even develop an entire community. Once these products have been completed, the broker-developer may then proceed to market them through other agents or through the broker's own organization. For this specialization in real estate, the broker must have a suitable contractor's license or work with or for a licensed contractor and comply with subdivision laws.

Notary functions. Often a broker provides notary services as a convenience to clients and as a service intended for the general public.

A notary must keep a sequential journal of notarial acts and be certain that the person whose signature on a document is to be acknowledged personally appears before the notary and provides acceptable forms of identification. An acknowledged signature is supposed to provide protection for individuals who rely on the

notary's act. This protection will not be considered trivial by an individual who must rely on it while enforcing a contract in court.

Effective January 1, 1996, Government Code Section 8206 requires that a notary public's journal include the right thumb print of a person signing a deed, quitclaim deed, or deed of trust affecting real property. (The statute specifies alternatives if the right thumb print is not available.) Government Code Section 8211 sets forth maximum fees for various notarial functions.

Insurance. Most property insurance is sold through specialized insurance agencies. It is common, nevertheless, for the larger real estate brokerage offices to represent insurance companies in placing policies. Insurance is a natural feeder business or extra source of income for the real estate broker who taps the lead at its source: sales transactions originating in the broker's office.

A real estate broker who also acts in the capacity of an insurance agent is acting as the agent of the insurance underwriter and is governed by the carrier's instructions. It is incumbent upon the broker acting in this capacity to eliminate any conflicts of interest and comply with all fiduciary duties owed the client. Then the broker acting as an insurance agent must secure competitive rates and charge the client no more than the latter could obtain in the open market. Of course, the client should always have the opportunity of selecting his or her own source of insurance.

PROFESSIONALISM

The term REALTOR[®] can only be used by licensees associated with the National Association of REALTORS.[®] The REALTOR[®] designation has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. The National Association, California Association, Local Associations and its members have adopted a code of ethics and professional standards of practice, which establish obligations that may be higher than those mandated by law. In any instance where the Code of Ethics and the law conflict, the obligations of the law take precedence. The REALTORS[®] code of ethics can be read in full by following this Internet link: <http://www.realtor.org/mempolweb.nsf/pages/code>.

Staying Informed

Regardless of the real estate licensee's professional association, membership or status, licensees must keep current with changing real estate laws, technological changes, and trends impacting the broad field of real estate. As one of many examples, The Uniform Electronic Transaction Act (UETA) and the Electronic Signatures in Global and National Commerce Act, commonly known as E-sign, impact the real estate brokerage business. The Internet and e-mail are becoming a common means for conducting the real estate transaction itself. With the passage of the UETA and E-sign, transaction processes that were once considered legally or technically beyond reach are now possible.

The Department of Real Estate's web site <http://www.dre.ca.gov> is a good source of current information. For members of the California Association of REALTORS[®] the web site <http://car.org> is another source of current information and interpretation.

