

KEY POINT REVIEW

All 50 states, Canadian provinces, and the District of Columbia have real estate license laws and rules with the force and effect of law that establish basic requirements for obtaining a real estate license, define which activities require licensing, and enforce standards through a disciplinary system.

A real estate **broker** is licensed to buy, sell, exchange, or lease real property for others for a fee and may operate as a sole proprietorship, partnership, corporation, or limited liability company.

The real estate **brokerage** may be independent or part of a regional or national franchise.

A real estate **sales associate** is a salesperson or broker who is licensed to perform real estate activities **only** on behalf of a licensed real estate broker. The **broker-employer** is liable for the actions of the **sales associate** within the scope of the **employment agreement** or as provided by state law.

An **independent contractor** is an employee who usually receives a commission, with no withholding for Social Security, income tax, and other purposes and has the freedom to set hours and accomplish goals. A real estate broker always has liability and supervisory responsibilities for the real estate related work activities of a sales associate.

An **employee** may receive salary in lieu of or in addition to commission; may receive benefits, such as health insurance, profit-sharing, and workers' compensation; and has an employer who is required to withhold Social Security, income taxes, and other applicable federal and state taxes from earnings. The employer sets hours, duties, and other specifics of the employee's day-to-day work and remains liable for related work activities of the employee.

There are Internal Revenue Service (IRS) requirements for a **qualified real estate agent** to be treated as a **nonemployee** for tax purposes.

A real estate **assistant** may be a licensed employee of the employing broker who is compensated by the broker, or, if unlicensed, is paid by either the sales associate or broker and is limited in the activities that can be undertaken.

A broker's **compensation** can be a **commission** based on a property's sales price, a **flat fee**, or an **hourly rate**.

A broker's **commission** is earned when the seller accepts an offer from a **ready, willing, and able buyer** prepared to buy on the seller's terms and ready to take positive steps toward consummation of the transaction.

A sales associate's compensation is set by mutual agreement of the employing broker and the sales associate.

Fee for services means that a broker's compensation is based on charges for separate activities that the client desires (unbundling of services). Some states now require **minimum services** to be offered by the broker.

Antitrust laws are both state and federal (**Sherman Antitrust Act**) and prohibit **monopolies**, and contracts, combinations, and conspiracies that unreasonably restrain trade, including

- **price-fixing**,
- **group boycott**,

- **allocation of customers or markets**, and
- **tie-in agreements** (tying agreements) that force customers to purchase a product when only another was wanted.

Professional organizations can assist in setting a high level of conduct among real estate professionals by establishing and enforcing a code of ethics.

The **Internet Data Exchange (IDX) policy** of the National Association of REALTORS® allows members to limit the internet distribution of listing information. Overall, the **internet** is invaluable for communication, research, marketing, and advertising of a brokerage and includes the use of email, websites, and social networking, all of which must be conducted in compliance with applicable federal and state laws.

Electronic contracting must take into account the **Uniform Electronic Transactions Act (UETA)**, which has been adopted in most states and the **Electronic Signatures in Global and National Commerce Act (E-Sign)**, which functions as the **electronic transactions** law in states that have not enacted UETA and makes contracts (including signatures) and records legally enforceable, regardless of the medium in which they are created.

Do-not-call legislation is found at federal and state levels. The **National Do Not Call Registry** (regulated by the **Federal Trade Commission**) lists telephone numbers of consumers who have asked to be registered and prohibits interstate calls to those numbers to sell goods or services.

Many states provide their own do-not-call legislation for in-state calls. Other prohibited communications include those defined in the laws regulating junk faxes, as well as the **CAN-SPAM Act**.

Restrictions on collection of information from children younger than 13 by means of the internet, including mobile apps, are specified in **COPPA**, the **Children's Online Privacy Protection Act**.