

ASSEMBLY BILL

No. 1762

Introduced by Assembly Member Hayashi

February 9, 2010

An act to amend Section 10026 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 1762, as introduced, Hayashi. Real estate.

The Real Estate Law provides for the regulation and licensure of real estate brokers and salespersons by the Real Estate Commissioner. As used in the Real Estate Law, the term "advance fee" is defined as a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed, with certain exceptions.

This bill would redefine the term "advance fee" to mean a fee for services requiring a real estate license, regardless of the form of compensation, that is claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing the service the licensee contracted to perform, with certain exceptions. The bill would, in addition to the existing exceptions, also exempt from the definition of advance fee moneys charged or collected for advertising or promotion that are paid to other service providers, or for referral to other real estate brokers or salespersons, or in connection with mortgage loan origination activity. The bill would also exempt from that definition fees associated with prepaid rental listing services.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10026 of the Business and Professions
2 Code is amended to read:

3 10026. (a) The term “advance fee” as used in this part is a fee
4 *for services requiring a real estate license*, regardless of the form
5 *of compensation, that is* claimed, demanded, charged, received,
6 or collected by a licensee from a principal before fully completing
7 ~~each and every the~~ service the licensee contracted to perform, ~~or~~
8 ~~represented would be performed~~. Neither an advance fee nor the
9 ~~services to be performed a fee, nor the services contracted for,~~
10 shall be separated or divided into components for the purpose of
11 avoiding the application of this section. ~~The term applies to a fee~~
12 ~~for a listing, advertisement or offer to sell or lease property, other~~
13 ~~than in a newspaper of general circulation, issued primarily for~~
14 ~~the purpose of promoting the sale or lease of business opportunities~~
15 ~~or real estate or for referral to real estate brokers or salesmen, or~~
16 ~~soliciting borrowers or lenders for, or to negotiate loans on,~~
17 ~~business opportunities or real estate. As used in this section,~~
18 ~~“advance fee” does not include “security” as that term is used in~~
19 ~~Section 1950.5 of the Civil Code, or a “screening fee” as that term~~
20 ~~is used in Section 1950.6 of the Civil Code. This section does not~~
21 ~~exempt from regulation the charging or collecting of a fee under~~
22 ~~Section 1950.5 or 1950.6 of the Civil Code, but instead regulates~~
23 ~~fees that are not subject to those sections.~~

24 (b) *The term “advance fee” does not include moneys charged*
25 *or collected for advertising or promotion that are paid to other*
26 *service providers, or for referral to other real estate brokers or*
27 *salespersons, or in connection with mortgage loan origination*
28 *activity subject to this part, and does not include fees described*
29 *in Article 2.3 (commencing with Section 10167) of Chapter 3, or*
30 *Section 1950.5 or 1950.6 of the Civil Code.*