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Ms. Kim Sheppard
Law Offices of Kimberly M. Sheppard
1234 Stable Crossing
Delta Springs, CA 99876

Re: Commission to Unlicensed Broker

Dear Ms. Sheppard:

As requested, we have researched whether, under California law, a general partner of a limited liability partnership can receive a commission from the sale of real property sold by the partnership and facilitated by the general manager without possessing a valid real estate broker license.

The following authorities are instructive:

- Cal. Bus. & Prof. Code § 10130 (establishing when a real estate broker license is required);
- Cal. Bus. & Prof. Code § 10131 (defining who acts as a real estate broker);
- Cal. Bus. & Prof. Code § 10133 (“A . . . general partner of a partnership with respect to real property owned or leased by the . . . partnership, . . . or in connection with the proposed purchase or leasing of real property by the . . . partnership, . . . if the acts are not performed by the . . . partner in expectation of special compensation” is excluded from the real estate license requirement.);
- Park Terrace Ltd. v. Teasdale, 100 Cal. App. 4th 802 (2002);
- Stickel v. Harris, 196 Cal. App. 3d 575 (1987);
- Broffman v. Newman, 213 Cal. App. 3d 252 (1989);
- Froid v. Fox, 132 Cal. App. 3d 832 (1982).

The “special compensation” language used in Cal. Bus. & Prof. Code § 10133 is more commonly found throughout the country in states’ securities laws. See, e.g., Cal. Corp. Code § 25009. In that context, the following authorities offer some guidance toward its meaning:

- S.C. Code § 35-1-102 cmt. 17 (“[This clause] amounts to a recognition that brokers and dealers commonly give a certain amount of advice to their customers in the course of their regular business, and that it would be inappropriate to bring them within the scope of the

Investment Advisers Act merely because of this aspect of their business. On the other hand, that portion of clause [(C)], which refers to ‘special compensation’, amounts to an equally clear recognition that a broker or dealer who is specially compensated for the rendition of advice should be considered an investment adviser and not be excluded from the purview of the chapter merely because he is also engaged in effecting market transactions in securities... The essential distinction to be borne in mind in considering borderline cases ... is the distinction between compensation for advice itself and compensation for services of another character to which advice is merely incidental. Similarly, other broker-dealer employees such as research analysts who receive no special compensation from third parties for investment advice would not be required to register as investment advisers.”);

- Idaho Code § 30-14-102 cmt. 17 (same);
- Dorosh v. Waddell & Reed, Inc., 2013 Minn. Dist. LEXIS 115 (D. Minn. Sept. 20, 2013) (“The compensation received by a broker-dealer is considered ‘special’ only when (1) the compensation is received specifically in exchange for giving advice, as opposed to some other service, and (2) the compensation takes a form other than a commission or transaction-based compensation received for the sale of a product.”).
- Thomas v. Metropolitan Life Ins. Co., 631 F.3d 1153 (10th Cir. 2011) (discussing what makes compensation “special”).

Yours truly,

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Lee D. Trevis
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