

Decoding the Real Estate Market

Real Estate Professionals

Provided by TCAOR P.R. Committee Chair-Sandra Hayes

When buying, selling or refinancing property, negotiating the maze of paperwork can be a daunting task. The language contained in those many pages can bog your brain like quicksand. It is vitally important that everyone engaging in real estate transactions of any kind understand what they are reading and signing. A qualified *real estate professional* will guide you through the labyrinth of paperwork and requirements.

But who are the real estate professionals? Agent, Broker, Realtor[®], Salesperson. What's the difference between them and are the terms interchangeable? Yes, no, sometimes.....Here is the definition of each term and how they relate to each other:

Agent- An agent is one who acts for and with authority from another, called the Principal. The Principal is the client who hires an agent to work for him or her. If the Principal is the Seller, the agent represents the Seller in the real estate transaction. If the Principal is the Buyer, the agent represents the Buyer. A *dual agent* is an agent who represents both the buyer and the seller in the same transaction. Agents owe a *fiduciary duty* to the parties of a real estate transaction. Fiduciary Duty is a position of trust wherein one person is entrusted to hold or manage money or property for another. Among the obligations a fiduciary owes to the Principal are full disclosure, care and diligence and accounting of all monies in the transaction. In a real estate transaction, the Broker and the Salesperson owe a fiduciary duty to the Principal.

Broker- In real estate, a Broker is a properly licensed individual (or corporation or partnership) who, for *valuable consideration*, serves as an agent to a Principal to facilitate the sale or lease of real property. Valuable consideration is the beneficial interest or profit in return for the performance of another in a contract. A Seller may enter a contract with a Broker to market a property for sale. Upon the close of the sale, the Seller will pay a percentage of the sale price (or a fixed price amount) to the Broker. The payment for the sale of the property is the valuable consideration from the Seller to the Broker for procuring the sale of the property. A Broker can be considered an Agent.

Salesperson- A Salesperson is a properly licensed individual who, for compensation or valuable consideration, is employed by a licensed real estate Broker to facilitate the sale or lease of real estate for a Principal. Salespersons must work under the supervision of a Broker. They can be employees of the Broker or they can be independent contractors. Salesperson may only work under one Broker's license at any time. A Salesperson can be considered an Agent.

When a Principal is working with a Salesperson, they are also directly or indirectly working with the Salesperson's Broker. Thus, both the Salesperson and the Broker can be considered the Agents of the Principal. And both owe a fiduciary duty to the Principal.

Realtor[®]: Realtor[®] is a registered trade name that may be used only by members of state and local real estate board affiliated with the National Association of Realtors[®]. Both Brokers and Salespersons can be Realtors[®]. The term Realtor[®] designates a professional who subscribes to a strict code of ethics. A Realtor[®] can be considered an Agent. Properly licensed Brokers and Salespersons do not have to be Realtors[®] in order to practice real estate in California; however, there are many benefits with regard to education and marketing for Agents who are Realtors[®].

The next installment of **Decoding the Real Estate Market** will discuss **Foreclosure**.