

Kimball, Tirey & St. John LLP

Undisclosed Compensation, i.e., “Hidden Profit” and California Real Estate Licensees

Jozef Magyar, Esq.

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A violation seen during California Department of Real Estate (“DRE”) audits is undisclosed compensation, also referred to as “hidden profit.” California real estate licensees are required to fully disclose to their clients all compensation received or expected to be received by the licensee from the clients, vendors, tenants, buyers, and other third parties relating to the licensed activity.

Examples of compensation or benefits received may include:

- Rebates paid to a property management company by a maintenance company;
- Analyzed trust account benefits and company credit card rewards;
- If prospective tenants pay application fees, and if those application fees include compensation for processing the application (in addition to the hard costs for credit or background checks), and if the property manager retains those fees;
- Property management company markups on vendor costs.

Real estate licensees who fail to comply may be exposed to disciplinary action by the DRE. They may also find themselves defending against a claim made by their client. To add to the importance this is the recent case of Center for Healthcare Education and Research, Inc. v. International Congress for Joint Reconstruction, Inc., (2020) 57 Cal. App. 5th 1108, where the Fourth District Court of Appeal found disgorgement of secret profits appropriate when a fiduciary fails to properly disclose, even if the principal suffered no monetary harm.

Thus, it is crucial to always disclose all earnings or benefits. KTS can assist with language disclosing compensation for your property management agreements to ensure compliance.

Additional Resources:

- KTS offers Proactive Audit Services for DRE compliance. A description of the services is available at [KTS Proactive Audit Services](#).

For additional information or assistance, contact Jozef Magyar at (800) 864-6611 or jozef.magyar@kts-law.com.

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