

不動產仲介的法律關係 與斡旋金的法律效力

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本文探討不動產仲介的法律關係與斡旋金的法律效力。第二部份從不動產和仲介的意義出發，說明不動產仲介的意義，並肯定不動產仲介的經濟作用，第三部分探討不動產仲介的法律性質及關係人的權利義務，第四部分說明斡旋金的意義及其經濟作用，第五部份澄清斡旋金的性質，並解釋其對關係人等的法律效力，第六部份就斡旋金發生糾紛的態樣，評析其法律效果，並提出交付斡旋金應行注意事項，第七部份將斡旋金與內政部提出的要約書相比較。本文結論認為斡旋金制度對買方、賣方和仲介業者均有益處，可加速交易完成，節省交易成本。因此，應承認其效力，加以規範，但不應禁止。

關鍵詞：不動產仲介，斡旋金，要約書

壹、引言

國內不動產仲介業自民國七十四年開始發展，至今已有十多年，早期仲介業或從業人員賺取差價或哄抬售價的陋習，隨著部分業者的自律及公會的倡導改善之下，已漸漸走向制度化，惟因目前不動產交易資料未能透明化，

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Legal Implications of Real Estate Brokerages and the Legal Effect of Negotiation Deposits

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ABSTRACT

This paper explores the legal implications of real estate brokerages and the legal effect of negotiation deposits. Beginning with the meanings of “real estate” and “brokerage”, part two states the definition of a real estate brokerage and argues that it has a valuable economic function. Part three explores the legal nature of real estate brokerages concerning people’s rights and obligations. Part four restates the meaning and economic function of negotiation deposits, and part five makes clear the nature of such deposits and explains their legal effect concerning people. Part six analyzes the legal effect of the various cases concerning negotiation deposits and presents the guidelines of delivering negotiation deposits. The seventh part compares negotiation deposits with a “certificate of offer” suggested by the Ministry of the Interior. Finally, this paper reaches the conclusion that negotiation deposits accelerate real estate transactions, reduce transaction costs, and are beneficial to buyers, sellers, and real estate brokers. For this reason, this paper argues that they should not be prohibited, but rather should be valid and regulated.

Key Words: Real Estate Brokerage, Negotiation Deposit,
Certificate of Offer