

SB 197 Three Question Clarification
Banks Most Asked Questions on New California Law
by Tom McCurnin, Leasing News Legal Editor

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ISSUE ONE: Is an operating commercial leasing subsidiary of a National Bank exempt from licensing under the Department of Business Oversight's California Finance Lender's law?

BRIEF ANSWER: Yes, subsidiaries of regulated entities, especially banks, are exempt from licensing under the DBO CFL license program. This has been the law for years, and although changes were proposed, those proposed changes have not taken effect and do not presently affect commercial equipment lessors.

LONG ANSWER:

No license is required for those companies doing business under any law of this state or the United States as a bank, trust company, savings and loan association, industrial loan company, credit unions, or pawnbrokers. Financial Code § 22050(a). See also Financial Code § 22101 which says if the parent is licensed, the subsidiary does not have to be licensed, so that same might be true for an exemption, e.g., if the parent is exempt, so is the subsidiary. Under an opinion of the predecessor statute, a wholly-owned subsidiary of a national bank would be exempt from licensing requirements under the exemption applicable to "any person doing business under any law . . . of the United States . . . relating to banks." Op. Comm'r, Cal. Dept. Corp., OP 5792CM (Dec. 1, 1988).

A 2014 proposal by the DBO sought to remove that exemption. See attached 03-13 document. That brought so much criticism that the proposed rule was modified to remove the exemption only for consumer transactions; See 03-13 Modifications. Even that proposal has not been adopted by the DBO, and its status is uncertain.

ISSUE TWO: Can an operating subsidiary of a national bank pay commissions to an unlicensed broker in contravention of SB197?

BRIEF ANSWER: Yes.

LONG ANSWER:

To me, it follows if the leasing subsidiary is exempt, then it can pay any type of broker it wants to and is not subject to the CFL, and does not have to report the commissions.

ISSUE THREE: Are unlicensed brokers at risk if they do not procure a CFL license?

BRIEF ANSWER: Yes, but that's not the Bank's problem.

LONG ANSWER: Obviously, best practices would dictate using brokers which follow the law and any broker that brokers more than five California deals is required to be licensed under California Financial Code § 22050. The CFL license insures that the brokers meet certain financial net worth requirements and have no criminal record. So it might be a good practice to insist upon brokers being licensed. That said, if a leasing subsidiary of a national bank, which is what we are talking about, is exempt, it can pay it can pay a commission to anyone it wants to, whether they be convicted felons or unlicensed brokers.

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