

Paying and Receiving Referral Fees— The Role of the Managing Broker

In August 2007 and June 2008, the Council published two articles about the payment and receipt of referral fees, as well as when and to whom disclosure of these referral fees is required. That information has been amalgamated and may be found in the *Professional Standards Manual* at www.recbc.ca/licensee/PSM/PSM2-1.htm#jump256 on the Council's website.

This article reviews some of that information and then provides managing brokers with guidelines in relation to

1. their responsibilities to ensure appropriate disclosure of referral fees, and
2. ensuring that referral fees are not paid to unlicensed individuals who are not allowed under the legislation to receive them.

Review of disclosure obligations related to referral fees

Licensees are required to disclose to their clients the receipt, or anticipated receipt, of any remuneration that is not to be paid directly by their clients (see section 5-11 of the Council Rules). They are also required to disclose to their clients any material information respecting the real estate services they provide (see section 3-3(1)(f) of the Council Rules)—in this context, the fact that they are intending to pay a referral fee to someone who has generated a client lead. In simplest terms, this means that a licensee must disclose to their clients when they are going to receive a referral fee and when they are intending to pay a referral fee. These disclosures must be made when they are relevant; that is, at a time when the information is relevant to the person to whom the disclosure is being made. For example, if a licensee



is showing a buyer two similar suites and is going to receive a \$5,000 selling bonus if the buyer buys one of the suites rather than the other, the licensee must disclose that fact to the buyer before any purchase agreement has been entered into.

The payment of referral fees to an unlicensed person

Referral fees may be paid to an unlicensed person as long as

- the unlicensed person does not solicit, for the purposes of making a referral, the names of persons who may want to acquire or dispose of real estate;
- the practice of making referrals is not the main business of the unlicensed person making the referral; and
- the unlicensed person making the referral does nothing else that would require them to be licensed.

Subject to the foregoing, section 6-1 of the Council Rules prohibits the payment of any remuneration to an unlicensed person in relation to real estate services. Note that soliciting the names of persons who may want to acquire or dispose of real estate, for the purpose of making a referral and getting paid for that referral, is an activity which requires licensing.

It is important that a brokerage has clear policies, and advises its licensees accordingly, with respect to the payment of referral fees.

The payment of remuneration, including referral fees, to a former licensee

One issue which occasionally arises is the payment of remuneration, including referral fees, to a person who has surrendered their licence. That person may re-

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ceive remuneration for the services that were provided when they were licensed. For example, if trades complete after the licensee surrenders their licence, that person may still be paid after their licence is surrendered for those services that were provided when still licensed. However, it must be understood that the person cannot continue to provide services that require licensing after they have surrendered their licence. As noted above, this would include soliciting the names of persons for the purposes of making referrals, as this is an activity that requires licensing.

Guidelines for managing brokers related to paying referral fees

Managing brokers are responsible for ensuring that the business of their related brokerage is carried out in accordance with the requirements of the legislation. Before paying out a referral fee, a managing broker should ensure that

- if the person who is to receive the referral fee is unlicensed, they satisfy the

conditions bulleted in *The payment of referral fees to an unlicensed person* section above,

- any required disclosure has been made and a copy of the disclosure has been retained in the deal file, and
- details of the referral fee paid, and the person to whom it has been paid, are recorded in the trade record sheet.

Receipt of referral fees

In addition to the disclosure of remuneration requirements detailed above, it should be noted that all referral fees received in relation to real estate services, being a form of remuneration, must be received through the brokerage with which the licensee is engaged. They cannot be paid directly to the licensee.

Guidelines for managing brokers related to receiving referral fees

Whenever a brokerage receives a referral fee in relation to real estate services, the brokerage should prepare and main-

tain a record that includes the following information:

- (a) the amount of the referral fee;
- (b) the date on which the brokerage received the referral fee;
- (c) a description sufficient to identify the referral made by the brokerage or related licensee for which the referral fee was received;
- (d) the name of the person who paid the referral fee;
- (e) the name of every person to whom any amount of the referral fee is paid or payable;
- (f) the amount of the referral fee that is paid or payable to each person in paragraph (e), and the date on which it is paid to that person.

Licensees with questions can contact the Council at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■

Brokerage Financial Reporting Reminder

In 2009, the Council approved amendments to the Council Rules and Bylaws related to two brokerage financial reporting issues. The amendments allow certain brokerages that have proven their ability to maintain proper books and records and a positive financial position for at least three fiscal years, to file a Notice to Reader report, instead of a review engagement report, with respect to their financial statements. The amendments also allow brokerages that do not hold or receive public trust money during the course of a fiscal year to file a

solemn declaration, rather than an Accountant's Report.

The Council encourages brokerages that do not hold public trust funds to submit a statutory declaration (available on the Council's website) attesting to this fact. In addition, the Council also encourages brokerages to file a Notice to Reader report with their financial statements when the brokerage is eligible to do so.

The following is a link to the Council's



Policy Statement on financial reporting requirements: www.recbc.ca/pdf/Policy/FinancialReportingPS1.pdf

Brokerages with questions may contact the Council's Audit Department at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca. ■