Federal Law Prohibits Most Payment of Referral Fees to Unlicensed Persons

by Bob Hunt

These days there is a dearth of buyers in most markets around the country. In such conditions, real estate agents must use a variety of resources and strategies in order to get connected with buyers. One such strategy is to offer the payment of a referral fee to anyone who might refer a bona fide buyer to the agent.



More than a few real estate agents are confused about the laws governing referral fees. Some don't even know that there are any laws governing referral fees. Some know, but don't care.

Particularly problematic is the issue of paying referral fees to people who do not have a real estate license. An agent's unlicensed brother in-law might ask for a sum of money in return for referring to him a person who intends to buy a house; and the agent very well might agree. Indeed, agents will sometimes solicit referrals from unlicensed persons. They may even advertise that will pay a certain fee for the referral of buyers or sellers.

Real estate transactions and the activities of real estate agents are subject to a variety of both state and federal laws. The fact that there are these two different authorities provides some explanation for the common confusion about referral fees.

For example, California [real estate law](http://realtytimes.com/rtpages/20070821_prohibitfee.htm) permits the payment of referral fees to unlicensed persons. Other states may prohibit that. In California, the only restriction is that the recipient of the referral fee must not have any involvement in the transaction itself. Their sole role can only be to introduce the buyer or seller to the agent.

Federal law is different from California law in this regard. It allows the payment of referral fees from licensee to licensee; but it prohibits, in most cases, the payment of referral fees to unlicensed persons.

The relevant federal law is contained in RESPA (Real Estate Settlement and Procedures Act). RESPA rules govern real estate transactions in which the financing is done by a government entity such as FHA, or by a financial institution that is insured or regulated by the federal government.

Practically every residential real estate transaction is covered under RESPA. Exceptions would be cash transactions, those with seller financing, or ones in which the loan comes from a non-bank entity such as an insurance company.

The bottom line, then, is that, in the vast majority of residential real estate transactions, the payment of a referral fee to an unlicensed person is a violation of federal law.

Nor is this just a matter of interest for real estate agents. It is also of concern to those unlicensed persons who want to receive referral fees.

12 USC Section 2607 (a) says, "No person shall give and no person shall receive any fee … [pursuant to a referral agreement]." (My emphasis.) Subsequently, Section (c)(3) goes on to exempt referral fee arrangements between licensees. But it does not exempt referral fee arrangements between licensed and unlicensed persons. In short, if a referral fee is paid to an unlicensed person in a transaction covered by RESPA (i.e. the vast majority of transactions), both the agent and the recipient will be guilty of a violation.

Violations of Section 2607 are punishable by fines of up to $10,000 and a maximum of one year in prison. It's something to think about.