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## PAYMENTS TO UNLICENSED PERSONS

Under the real estate brokers and salespersons license law, it is illegal for an agent to pay any part of his or her commission or other compensation to any person, whether licensed or not, except through his or her broker, RCW 18.85.330, or to accept a commission or and valuable consideration for the performance of any brokerage services from any person, except his or her broker, RCW 18.85.230(22).

Thus, the payment of a "referral fee" to an unlicensed person constitutes a license law violation on the part of the broker or salesperson and a gross misdemeanor on the part of the unlicensed person who accepts the fee. RCW 18.85.330-.340. Likewise, the acceptance of a "selling agent bonus" directly from a seller constitutes a license law violation -- even if the bonus is in the form of a nonmonetary gift. RCW 18.85230(22).

However, it is permissible, at least as a matter of license law, to rebate part of the commission to a party to the transaction (with full disclosure to the client); this is viewed as simply an economic adjustment to the agreement between the parties. *Zoda v. Eckert, Inc.*, 36 Wn. App. 292 (1983). (Of course, the rebate must also be disclosed to the lender, if any, and the lender may not approve the loan with the purchaser receiving a part of the commission; in which case, the same result can usually be accomplished by reducing the commission paid by the seller and having the seller pay a like amount toward the purchaser's closing costs.)

It is also permissible to give an after-the-fact gift to an unlicensed person for a referral, provided that the gift was not promised as an inducement for the referral. If gifts are used to express appreciation for multiple referrals from the same person, a different gift should be given for each referral, so as to avoid an "implied agreement" to give the gift in exchange for future referrals.

Another possible practice is to offer a payment or something of value in exchange for any lead, regardless of whether a transaction results from the lead and regardless of whether a commission is ever received arising out of the lead. In other words, the payment or thing must be offered with "no strings attached." This is not viewed as a sharing of commission, and does not constitute a license law violation on the part of the broker or salesperson, but still may constitute a gross misdemeanor for the unlicensed person to accept such compensation.

Finally, it is permissible for a broker or salesperson to offer to contribute part of his or her commission to a bona fide non-profit organization in exchange for a referral from a member or supporter of the organization that results in a transaction. For example, a salesperson could offer to donate \$100.00 to a civic organization if any of its members gives the salesperson a referral that results in a sale and the receipt of a commission. Such a donation should be in the name of the salesperson, rather than the member who gave the referral, to avoid even arguably conferring a benefit on the member.

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