

**THE OFFERING OF INDUCEMENTS
AND PAYMENT OF REFERRAL FEES -
WHAT'S A REAL ESTATE LICENSEE TO DO?**

By: Alvin C. Monshower, Jr., Esq.

In the current economic climate, real estate licensees are taking extraordinary efforts to increase their business, including offering inducements to buyers and sellers and even advertising the payment of a referral fee for the referral of buyers and sellers.

This article examines the legal issues involved with respect to both the payment of referral fees and the offering of inducements. This is not a simple matter and, as this article and analysis will demonstrate, the rules with respect to referral fees are substantially different than the issue of offering inducements.

Section 17-604(a) of the Maryland Real Estate Brokers Act (“the Act”) provides that a real estate broker, an associate real estate broker, or a real estate salesperson may not pay compensation in any form for the provision of real estate brokerage services to any person who is not licensed as a real estate licensee in Maryland.

The key phrase in the above quoted language is “... the provision of real estate brokerage services.”

Section 17-101 of the Act states that providing real estate brokerage services includes, for consideration, providing services for another person in the selling, buying, exchange, or leasing of any real estate or for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate. [Emphasis added]. The operative word in the immediate language quoted above is “... providing any services **for another person.**”

Inducements, per se, are not illegal under Maryland law, with one exception. Pursuant to Section 17-322(b)(9) of the Act, a real estate licensee may not solicit, sell or offer to sell real property, so as to influence or attempt to influence a prospective party to the sale of real property by offering a prize or free lot or by conducting a lottery or contest.

In other words, a licensee may advertise, as an inducement for the use of their services, a free home warranty or even the rebate of a commission to a buyer in exchange for the purchase or lease of residential real property. Similarly, a licensee could offer a reduced discount - from the agent's dollars and not from the company dollars - to obtain a listing.

It is permissible for a real estate licensee to advertise a rebate of part of a licensee's commission - again, not the company dollar commission - to a prospective buyer or tenant who actually purchases or leases property by and through the agent.

In connection with the offering of rebates, the Maryland Real Estate Commission posted on its website the following:

“Rebates/cash payments. Section 17-604 provides that a licensee may not pay compensation in any form for the provision of real estate brokerage services to an individual who is not licensed. A person who is simply a party to a real estate transaction is not providing real estate brokerage services within the definition of Section 17-101 and, therefore, may receive monies from a licensee. If the money is used to pay settlement charges, that should be reflected on the HUD-1 Settlement Statement.” [Emphasis added].

The Commission further states on its website the following:

“The agreement to pay compensation to a buyer in the form of a rebate of commission, or to compensate the seller either through a cash payment or reduction of the commission rate, must be in writing as required by the Code of Ethics of the Maryland Real Estate Commission.”

Finally, with respect to inducements or incentives, in general, the Maryland Real Estate Commission’s website states:

“Incentives. Section 17-322(b)(9) provides that a real estate licensee may not offer a prize or conduct a contest in order to influence a party to the sale of real property. This provision has been interpreted by the Attorney General’s Office to mean that if a licensee uses inducements to obtain a listing or a buyer/broker agreement, those inducements must be offered to all consumers on the same basis. There cannot be a contest where a seller or buyer is offered a chance to receive a prize or a cash payment. If an offer is made, it must be available to all. The law will allow that licensees offering inducement related to price, that is, the offer can be for a rebate/payment as a percentage of price. In this way, the offer would be the same for all those who purchase or list price within a certain price range.” [Emphasis added].

To summarize the above provisions of the Act:

1. A real estate licensee may not advertise or offer to pay a referral fee, either in writing or by verbal communication, to any person who does not hold a valid Maryland real estate license.

2. Inducements are not illegal, per se, as long as they do not involve a prize or the conduct of a lottery or contest. Any such advertisement, directly or indirectly, where the licensee agrees to pay something of value to a person based upon the luck of the draw or by chance, is illegal under Maryland law. Any advertisement for an inducement must be offered to all individuals who meet the basic requirements for the payment of money or something of value as advertised by the licensee.
3. Since a buyer or seller are not acting for another person in a real estate transaction, but are acting as principals in the transaction, the licensee is permitted to pay a rebate to the buyer of a portion of their commission or to reduce the commission owed by a seller provided the agreement is reduced to writing and, in the case of a buyer, where the payment is a contribution to closing costs, appears on the HUD-1 Settlement Statement.

The payment of referral fees, except to duly licensed real estate licensees, by and through their broker of course, is a very serious matter. The offering of inducements, while authorized, is subject to the limitations as set forth in this article. Licensees should be extremely careful in the offering of inducements and, when in doubt, should discuss the issues fully with their broker or branch office manager.

(By Alvin C. Monshower, Jr., Esq., Monshower, Miller & Magrogan, LLP. This article is intended to be a general discussion of the topic. As with all legal matters, the reader should consult with competent legal counsel regarding any actual situations or questions.)

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