

# Affinity Marketing and After-the-Fact Referral Fee Limitations - By Jurisdiction

## Executive Summary

### REAL ESTATE AFFINITY MARKETING AND AFTER-THE-FACT REFERRAL FEES

#### ANNUAL REPORT EXECUTIVE SUMMARY

April 2020

#### Overview

Most of the surveyed jurisdictions have addressed general fee-sharing issues for many years, but few explicitly address affinity marketing and after-the-fact referral fees. Although a few states have recently enacted provisions related to affinity marketing or after-the-fact referral fees, a majority of the surveyed jurisdictions still do not mention client inducements or require reasonable cause for obtaining a referral fee.

#### Affinity Marketing

Approximately 98 percent of the surveyed jurisdictions address fee-sharing in some form, but most do not explicitly provide whether a licensee may share his or her fee with an unlicensed person or entity for activities that are not related to a real estate practice. In approximately one-fifth of the jurisdictions, a licensee may share his or her commission or compensation only with a person who has a real estate license. Slightly more than half of the jurisdictions restrict the payment of fees to a licensed person if the other person has provided real estate services. Other states restrict payments to unlicensed individuals in other manners, such as not permitting referral fees or payments that will result in a rebate.

Providing economic inducements to a client or customer is not specifically mentioned by 48 percent of the jurisdictions. Of the 52 percent that do address the issue, slightly less than half prohibit or severely restrict the practice, while the remaining jurisdictions permit inducements under certain, specified conditions.

Between December 2014 and February 2016, 19 jurisdictions amended their statutes addressing fee-sharing and inducements, but most of those amendments were minor, conforming, or not applicable to this survey. The most significant revisions during that period were as follows:

- Florida clarified prohibited and permitted inducements between a title insurance company and referrers of settlement service business, which explicitly include real estate licensees;
- New Hampshire addressed prohibited referrals between real estate licensees and lenders, escrow companies, or title companies; and
- Virginia added a regulation providing that a licensee may not attempt to divert a commission to a licensee or an unlicensed individual who is not a party to the transaction.

Between February 2016 and April 2018, approximately 10 jurisdictions amended their statutes or rules in this area, but all of those amendments were minor, conforming, or not applicable to this survey. No relevant amendments were made in between April 2018 and March 2019.

In the past year, New Hampshire enacted a provision governing the conditions under which a principal broker may pay part of the commissions, fees or other compensation to unlicensed business entities, and Utah increased the value of a gift that a licensee may give to an individual for an unsolicited referral of a prospect that resulted in a real estate transaction.

### **After-the-Fact Referral Fees**

Only approximately one-quarter of the surveyed jurisdictions require reasonable cause for a person to obtain a referral fee, and only slightly more otherwise restrict referral fee demands, frequently by requiring notice or regulating the request's timing. Although most of the remaining jurisdictions address referral fees in other contexts, they do not have provisions that relate to prohibiting unearned or after-the-fact referral fees.

Approximately 74 percent of the jurisdictions address a person or licensee inducing a client to change his relationship with his agent or otherwise interfering with a licensee's agency relationship with his principal. Fewer states specifically address relocation benefits. Only 13 percent provide that a person may not withhold or threaten to withhold relocation benefits pending payment of a referral fee, and only 15 percent specifically permit certain relocation communications as long as they do not interfere with the agency relationship. Twenty-six percent of the surveyed jurisdictions do not address interference of a contractual relationship in a real estate context.

Few significant changes have occurred during recent years to laws addressing after-the-fact referral fees. In the 13 jurisdictions that revised their provisions during the period from December 2014 to February 2016, most of the amendments were relatively minor, conforming, or not specifically applicable to this survey. The most significant changes were in Florida, which amended its title insurance regulations to provide that it is unlawful for a real estate licensee and a title insurance company to enter into an agreement to pay unearned compensation to a referrer of settlement service business, and in Hawaii, which added a provision that the commission may take disciplinary action if a real estate licensee acts so as to prohibit a prospective purchaser or seller from being able to retain a real estate broker or salesperson. Since February 2016, no significant changes in the statutes or regulations have occurred.

## Alabama

### Alabama, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

The Real Estate Commission may discipline a licensee for paying or dividing any profit, compensation, commission, or fee with anyone other than a licensee or a multiple listing service.

#### **INDUCEMENTS**

The Real Estate Commission may discipline a licensee for offering free lots or conducting lotteries to influence a party to purchase or lease real estate.

Section amended 2009.

[Ala. Code § 34-27-36 \(2019\)](#)

### Alabama, After-the-Fact Referral Fee Limitations

## **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensed real estate broker need not pay a referral fee or commission if reasonable cause for payment does not exist. A person has “reasonable cause for payment” when:

- an actual introduction has been made; and
- either a subagency relationship, a contractual referral fee agreement, or a contractual cooperative brokerage relationship exists.

An “actual introduction” occurs:

- when the person seeking the referral fee has referred the buyer, seller, landlord, or tenant to a licensee before the customer has executed a brokerage services disclosure form, form waiver, buyer's agency agreement, property listing agreement, or a transaction brokerage agreement; or
- if a brokerage services disclosure form is not required, when the person seeking the referral fee has referred the buyer, seller, landlord, or tenant to the licensee before any contact between the buyer, seller, landlord, or tenant and the licensee during which they have discussed their real estate business.

In this context, a “brokerage relationship” is a relationship “between a real estate broker or salesperson and a buyer, seller, landlord, or tenant under which the real estate broker or salesperson engages in any of the acts set forth in Alabama real estate license law, but the relationship does not exist prior to actual introduction of the relationship.”

## **INTERFERENCE**

A third party may not knowingly interfere with a licensee’s brokerage relationship. “Interference” includes:

- demanding a referral fee from a licensee when reasonable cause for payment does not exist;

- threatening to reduce, withhold, or eliminate relocation or other benefits; or
- reducing, withholding, or eliminating relocation or other benefits in order to generate a referral fee from a broker when reasonable cause does not exist.

The following do not constitute interference with a real estate brokerage relationship:

- communications between an employer and an employee concerning relocation policies and benefits; or
- advising a party of his or her right to allow a brokerage relationship to expire or not to renew the brokerage relationship upon expiration.

A licensee may be disciplined for inducing a party to a contract to break the contract in order to substitute a new contract, if the substitution is motivated by the licensee's personal gain.

Section 34-27-36 amended 2009; §§ 34-27-100 and -101 enacted 2000.

[Ala. Code §§ 34-27-36, -100, -101 \(2019\)](#)

## Alaska

### Alaska, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

A licensee may not knowingly pay any part of a fee, commission, or other compensation to:

- an unlicensed person, unless that person is licensed in another jurisdiction or the payments are part of the resolution of a dispute regarding a property transaction;
- another licensee, except through the licensee's broker; or

- another licensee, knowing that the other licensee intends to pay some of the compensation to an unlicensed person.

Generally, Alaska regulations address affinity programs in the insurance context. Sharing policy numbers or similar access numbers to participants in an affinity program is permitted if the program participants are identified to the customer at the time the customer enters into the program. In this context, "affinity program" means a relationship between a financial institution and an unaffiliated third party in which the unaffiliated third party:

- facilitates the financial institution's efforts to market the its products or services to the unaffiliated third party's customers or members; or
- endorses the financial institution's products or services.

## **INDUCEMENTS**

No specific provisions were located. However, generally, the Real Estate Commission may discipline a licensee who makes a false promise that is likely to "influence, persuade, or induce." Also, Alaska land-sale regulations provide that advertising intended to induce any attendance or participation in a land sales presentation must "unmistakably call attention to that fact."

Statutory sections amended 2012. Regulation 20.230 effective 1976; rr. 26.749 and 26.655 effective 2005.

[Alaska Stat. §§ 08.88.071, .401 \(2019\); Alaska Admin. Code tit. 3, §§ 20.230; 26.655, .749 \(2020\)](#)

## Alaska, After-the-Fact Referral Fee Limitations

Research located no state statutes or regulations explicitly prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## Arizona

### Arizona, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Arizona statutes or regulations specifically addressing sharing fees in an affinity-marketing situation. Arizona laws providing that a person may not pay or deliver compensation to an unlicensed person restrict compensation only to unlicensed persons performing real estate acts.

In a "Substantive Policy Statement," the state real estate department recommends that a licensee "who provides a premium, credit, or rebate in a real estate transaction" disclose it to all parties, including the lender and third-party service providers, in the purchase agreement and the HUD-1 statement.

## **INDUCEMENTS**

A licensee may not "describe a premium offered at no cost or reduced cost to promote sales or leasing as an 'award,' or 'prize,' or use a similar term." Also, unless otherwise provided, a person may not solicit, sell or offer to sell an interest in a development by conducting a lottery, drawing or game of chance. Generally, the commissioner may discipline a licensee who makes any false promises that are likely to influence, persuade or induce another.

Section 32-2155 amended 1997; § 32-2153 amended 2007. Regulation amended 2005. Policy statement issued 2008.

[Ariz. Admin. Code § R4-28-503 \(2020\)](#); [Ariz. Rev. Stat. Ann. §§ 32-2153; -2155 \(2019\)](#); [14 Ariz. Admin. Reg. 2788 \(July 11, 2008\) \(Notice of Substantive Policy Statement from Real Estate Department\)](#)

## **Arizona, After-the-Fact Referral Fee Limitations**

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

### **INTERFERENCE**

A licensee may not allow a controversy with another licensee “to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client.” Also, the commissioner may discipline a licensee who induces a party to a contract to break the contract for the purpose of substituting a new contract with the same or a different principal if the substitution is motivated by the licensee's personal gain.

Statutory section amended 2007; regulation amended 2005.

[Ariz. Admin. Code § R4-28-1101 \(2020\)](#); [Ariz. Rev. Stat. § 32-2153\(A\)\(11\) \(2019\)](#)

## Arkansas

### Arkansas, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

No Arkansas statutes or regulations were located that specifically address fee sharing in an affinity-marketing situation. Arkansas statutes provide only that a licensee may be disciplined for paying a commission or valuable consideration to a person for acts or services performed in violation of chapter 17-42, which requires real estate service providers to be licensed.

#### **INDUCEMENTS**

No relevant provisions were located.

Section amended 2019.

Ark. Code § 17-42-311 (LexisNexis 2020)

### Arkansas, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee is not liable for a referral fee if reasonable cause for payment does not exist. "Reasonable cause for payment" means the "creation of a cooperative or subagency



relationship between licensees or a representation agreement as the result of an actual introduction of business." "Actual introduction" means the referral of a "principal to a licensee by the person or entity seeking the referral fee before the principal and licensee have engaged in material discussions regarding a specific real estate transaction."

## **INTERFERENCE**

A person may not knowingly interfere with a licensee relationship between a licensee and a person or entity. "Interference with a licensee relationship" means:

- a licensee's demand for a referral fee when reasonable cause for payment does not exist;
- a threat to "reduce, withhold, or eliminate any relocation or other benefits or the actual reduction, withholding, or elimination of any relocation or other benefit for the purpose of obtaining a referral fee" when reasonable cause for payment does not exist; or
- an attempt to induce a principal to breach or terminate a representation agreement and replace it with another representation agreement in order to obtain a referral fee.

"Interference with a licensee relationship" does *not* mean:

- communications between an employer and an employee concerning relocation policies and benefits if the communications do not include advice about or encouragement to terminate or amend an existing representation agreement; and

- advice regarding the right to allow a licensee relationship to expire under its own terms or not to renew the licensee relationship upon its expiration.

Section 17-42-701 enacted 2005; § 17-42-702 amended 2019.

Ark. Code §§ 17-42-701, -702 (LexisNexis 2020)

## California

### California, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

No provisions were located specifically applicable to fee sharing in an affinity-marketing situation. California statutes restricting fee sharing provide only that a licensed real estate broker may not compensate, directly or indirectly:

- an unlicensed person for performing any real estate acts, unless the person is licensed in another state; or
- a licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, unless that licensee holds a mortgage loan originator license endorsement.

#### **INDUCEMENTS**

##### *Permitted inducements*

Under general California business and profession laws, a person may not offer an incentive to induce its recipient to visit a location, attend a sales presentation, or contact a sales agent, unless the offer clearly and conspicuously discloses the following in writing:

- the name and address of the property owner or the service provider that is the subject of the visit, sales presentation, or sales agent contact;
- a general description of the owner or provider’s business and the purpose of any requested visit, sales presentation, or sales agent contact;
- if the recipient is not assured of receiving a particular incentive, a statement of the odds of receiving each incentive offered;
- if applicable, a clear statement that the offer is subject to specific restrictions, qualifications, and conditions and their description, including any deadlines, minimum age qualifications, financial qualifications, or requirements that both spouses must be present;
- a statement that the owner or provider reserves the right to provide a rain-check or substitute incentive, if applicable;
- a statement that upon request, a recipient who may receive evidence that the “incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient”; and
- all other rules, terms, and conditions of the offer.

*Unlawful inducements*

It is unlawful for a person:

- to offer an inducement if he knows or should know that the offered item will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer;
- to fail to provide an offered incentive to a qualified recipient who has responded in the specified manner and who has performed the requirements, unless the incentive is not reasonably available and the offer reserves the right to provide a rain-check or substitute incentive under those conditions;

- to use any printing styles, graphics, or formats that would lead a reasonable person to believe that the offer originates from or on behalf of a government or public agency, public utility, public organization, insurance company, credit reporting agency, bill collecting company or law firm, unless true;
- to misrepresent the “size, quantity, identity, value, or qualities of any incentive”;
- to misrepresent the odds of receiving an incentive;
- to represent that the number of participants is significantly limited or that any person has been selected to receive a particular incentive, unless true;
- to label an offer a termination or cancellation notice; or
- to misrepresent the offer or the affiliation or relationship between the person making the offer and the owner or provider.

See Cal. Code Regs. tit. 10, § 2799.1 (2016) for additional provisions that apply to advertising and inducements related to the sale or lease of subdivision interests.

#### *Random drawings*

If the major incentives are awarded at random by assigning a number to the incentives, the party contractually responsible for assigning the number must actually assign the number.

#### *Inability to provide incentive*

If the person making the offer is unable to provide the offered incentive because of limitations that were not reasonably foreseeable, the person making the offer must inform the recipient of his right to receive a rain-check, unless the person making the offer knows or should know that the incentive will not be reasonably

available, in which case he must inform the recipient that the person making the offer will provide or give a rain-check for a similar or substitute incentive of equivalent or greater retail value. See § 17537.1(e) for detailed provisions regarding rain-checks and record-keeping requirements.

### *Unfair trade practices*

The following are unfair trade practices related to inducements:

- requesting the recipient to pay money to a person or entity named in the offer;
- requiring the recipient to purchase, rent, or otherwise pay for a product or service including a deposit, “whether returnable or not, whether payment is for an item, a service, shipping, handling, insurance or payment for anything” (see below for exceptions related to vacation coupons or certificates);
- stating or implying that the recipient is one of a selected group to receive a particular incentive, without disclosing the total number in that select group or the odds of receiving the incentive;
- stating or implying that the recipient is likely to receive an incentive because other named people have already received other named incentives, unless the offer discloses the recipient's odds of receiving the identified incentive;
- stating or implying that the recipient is likely to receive an incentive with a higher normal retail price than that of another incentive, unless true; or
- describing an incentive in a misleading manner.

### *Vacation certificates*

If the incentive is a certificate or coupon redeemable for transportation, accommodations, recreation, vacation, entertainment, or similar services, the offer may require the recipient to pay directly to the service provider a refundable deposit of not more than \$50 to reserve space. If the government-imposed taxes are not

included, the offer must disclose the approximate tax amount and state that they are the recipient's responsibility.

See Cal. Bus. & Prof. Code § 17537.2(f) for provisions and conditions that apply only to incentives that constitute an opportunity to stay at a hotel or other resort accommodations at a discount.

#### *Definition of "incentive"*

The term "incentive" means "any item or service of value, including, but not limited to, any prize, gift, money, or other tangible property."

Section 10137 amended 2018; § 17537.1 amended 2016; § 17537.2 amended 2019.

[Cal. Bus. & Prof. Code §§ 10137; 17537.1, .2 \(2019\)](#)

## California, After-the-Fact Referral Fee Limitations

Research located no state statutes or regulations specifically prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## Colorado

### Colorado, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

##### *General provisions*

No provisions were located that specifically address referral fees in affinity-marketing situations. The Colorado statute providing that the Commission may discipline a licensee for paying a commission or valuable consideration to an unlicensed person applies only to unlicensed persons performing any functions of a real estate broker.

##### *Affiliated business arrangements*

An affiliated business arrangement is permitted if:

- the person referring business to the affiliated business arrangement "receives payment only in the form of a return on an investment"; and
- the arrangement does not violate Colo. Rev. Stat. § 12-10-217.

A licensee may not give or accept a fee, kickback, or other thing of value pursuant to an agreement that settlement service business involving an affiliated business arrangement must be referred to any settlement services provider. This provision does not prohibit the payment of a fee or compensation to certain, specified individuals or entities for services actually performed. See Colo. Rev. Stat. § 12-10-218 for relevant definitions regarding the affiliated business arrangement restrictions.

Colorado regulations provide that a broker must disclose "in writing the existence of an affiliated business arrangement to the party they are referring at the time the referral is made." The disclosure must be in a format consistent with the "affiliated business arrangement disclosure promulgated by HUD."

In addition, a broker must disclose to the Commission at the time the broker enters into or changes an affiliated business arrangement, the names of all affiliated business arrangements to which the broker is a party, including the physical location of the affiliated businesses. Annually, each employing broker must likewise disclose the names of all affiliated business arrangements to which the employing broker is a party.

The Commission has taken the following position regarding disclosure of affiliated business arrangements in connection with property management services: "It is the Commission's position that Rule E-25 Continuing duty to disclose conflict of interest and license status, applies to all licensees including real estate brokers who perform licensed property management services and are affiliated with businesses or vendors that provide services applicable to lease transactions. For example, a real estate broker acting on behalf of a landlord is required to disclose to the landlord that the real estate broker has partial ownership of the maintenance company that the real estate broker utilizes for the landlord's property repairs. The Commission strongly recommends that this type of information be disclosed to the principal early in the business relationship, i.e. at the time

brokerage relationships are disclosed or when the listing contract is negotiated. Additionally, this disclosure should be made in writing." [Colo. Dep't Reg. Servs., Div. Real Estate, CP-38 Commission Position on Disclosure of Affiliated Business Arrangements and Conflicts of Interest \(Apr. 5, 2011\)](#).

## **INDUCEMENTS**

No specifically relevant provisions were located. Generally, the Commission may discipline a licensee for making any promise that influences, persuades or induces another if the licensee did not intend to keep the promise.

The Commission has taken the following position on whether a broker may make payments from their earned commission to a buyer or a seller: "Payment to the unlicensed purchaser is often referred to as "rebating" and the intention to pay money to the purchaser is sometimes advertised and promoted as a sales inducement. The payment to the purchaser in itself is not a violation of the License Law because the broker is licensed to negotiate and the purchaser may negotiate on their own account. However, a broker representing the seller in a transaction should take care to insure that such payments do not conflict with fiduciary duties. For example, the "rebate" of a portion of a commission to a purchaser to be used by the purchaser as a down payment could distort the purchaser's financial qualifications and ultimately harm the seller. Additionally, a purchaser who does not receive a promised rebate of a partial commission may try to hold the seller liable for the wrongdoing of the broker on the theory of respondent superior. The Commission recommends that brokers disclose such payments to the seller and obtain the seller's consent prior to acceptance of any offer to purchase." [Colo. Dep't Reg. Servs., Div. Real Estate, CP-12 Commission Position on the Broker's Payment or Rebating a Portion of an Earned Commission](#).

Statutes renumbered and amended 2019. Regulatory section amended 2012.

Colo. Rev. Stat. §§ 12-10-217(1)(b), (l); -218 (LexisNexis 2019); [4 Colo. Code Regs. 725-1, § E-46 \(2020\)](#)

## Colorado, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee may not pay a referral fee unless reasonable cause for payment exists. "Reasonable cause" means that:

- an actual business introduction has been made;



- a contractual referral fee relationship exists; or
- a contractual cooperative brokerage relationship exists.

## **INTERFERENCE**

A person may not interfere with a licensee's brokerage relationship. In this context,

- “brokerage relationship” means “a relationship entered into between a broker and a buyer, seller, landlord, or tenant under which the broker engages in any of the acts set forth in section 12-10-201(6),” which relationship "is not established until a written brokerage agreement is entered into between the parties or is otherwise established by law;" and
- “interference with the brokerage relationship” means “demanding a referral fee from a licensee without reasonable cause.”

Section renumbered and amended 2019.

Colo. Rev. Stat. § 12-10-304 (LexisNexis 2019)

## **Connecticut**

### **Connecticut, Affinity Marketing Limitations**

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no provision specifically addressing fee restrictions in affinity-marketing situations. The Connecticut law providing that a licensee may not pay or rebate any share of his commission or compensation arising from a real estate transaction to an unlicensed person, applies only to unlicensed persons engaging in the real estate business.

## **INDUCEMENTS**

No relevant provisions were located.

Regulation amended 1995.

[Conn. Agencies Regs. § 20-328-8a \(2020\)](#)

## Connecticut, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee may not demand compensation unless reasonable cause for payment exists. A reasonable cause for payment means that:

- an actual introduction of business has been made;
- a subagency relationship exists;
- a contractual referral fee relationship exists; or
- a contractual cooperative brokerage relationship exists.

A real estate broker or salesperson, a person affiliated with such broker or salesperson, and a person engaging in the real estate business may not receive a fee, commission or other form of referral fee for the referral of any real property buyer to:

- an attorney-at-law admitted to practice in Connecticut or any person affiliated with such attorney; or
- any mortgage broker, any lender, or any person affiliated with such mortgage broker or lender.

## **INTERFERENCE IF FEE NOT PAID**

A licensee may not:

- engage in a practice or take an action that interferes with another licensee’s agency relationship;
- induce or attempt to induce a party to a sale or lease contract to breach or terminate the contract in order to substitute “a new contract with another principal of the licensee”;
- induce a property owner or lessor to breach or terminate an exclusive contract to sell or lease in order to substitute a new listing contract; or
- induce a prospective buyer or lessee to breach or terminate an exclusive representation agency agreement for the purpose of substituting a new exclusive representation agency agreement.

Regulations amended 1995; statute amended 2016.

[Conn. Agencies Regs. §§ 20-328-8a, -9a \(2020\)](#); [Conn. Gen. Stat. § 20-320a \(2019\)](#)

## Delaware

### Delaware, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

A real estate licensee may not use commissions (or income received from commissions) as a rebate or compensation paid or given to an unlicensed person or entity as an inducement to do or secure business or as a finder's fee, unless those fees are paid pursuant to a written cooperation or affiliation agreement signed by all parties, as permitted by 24 Delaware Code Regs. chapter 29.

A licensee may pay a referral fee to a person licensed as a real estate broker in another jurisdiction.

## **INDUCEMENTS**

Notwithstanding the above restriction, a real estate licensee may give a rebate, discount, or “other thing of value directly to the purchaser or seller of real estate.” A real estate licensee must make a timely written disclosure to his or her principal of any rebate or discount that may be made to the other party.

Regulations amended and renumbered 2015.

[24-2900 Del. Code Regs. §§ 8.7.1, .2, .3, .6 \(2020\)](#)

### Delaware, After-the-Fact Referral Fee Limitations

Research located no state statutes or regulations specifically prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## District of Columbia

### District Of Columbia, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no provisions specifically applicable to referral fees in an affinity-marketing situation. District of Columbia statutes addressing fee recipient restrictions provide only that a licensee may not pay a fee, commission, or compensation to an unlicensed person for performing real estate services. That restriction does not apply to the payment of a referral fee by a broker to a "nonresident cooperating real estate broker who is properly licensed in his or her own jurisdiction."

## **INDUCEMENTS**

A licensee may not offer, give, or promise:

- “free lots” in connection with the sale of any real estate, business, or interest for the purpose of attracting, inducing, or influencing a purchaser; or

- prizes to a person, including an owner of the real estate or business, for attending or participating in the sale of real estate or a business.

Section amended 2020.

[D.C. Code § 47-2853.197 \(2020\)](#)

## District Of Columbia, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located. However, generally, a licensee may not accept compensation from more than one party without the other parties' full knowledge and consent.

### **INTERFERENCE**

A licensee is subject to disciplinary action for inducing a party to a written sales agreement to break the agreement for the purpose of substituting a new contract if the substitution is motivated by the licensee's personal gain. Also, a licensee may not attempt to contact a real property owner directly for the purpose of inducing the owner to break a listing agreement if another licensee has a listing on the property.

Statutory section amended 2020. Regulation amended 2016.

[D.C. Code § 47-2853.197 \(2020\); D.C. Mun. Regs. tit. 17, § 2609.21 \(2020\)](#)

## Florida

### Florida, Affinity Marketing Limitations

### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

The Florida real estate commission may discipline a licensee for sharing a commission or paying a fee or other compensation with an unlicensed person for:

- referring real estate business, clients, prospects, or customers; or
- providing real estate services.

It is not material that the person to whom a payment or compensation is given made the referral or performed the service from within Florida or elsewhere. However, a licensed Florida broker may pay a referral fee or share a real estate commission with a broker licensed or registered under the laws of another state as long as the foreign broker does not violate any Florida law.

Additionally, the commission may discipline "a licensee who receives, or makes any arrangement or agreement to receive, directly or indirectly, any kickback or rebate, for the placement of, or favor in, any business transaction which forms a part of, or is incident to, any transaction(s) negotiated or handled by said licensee," unless prior to the time of the placement of, or favor in, said business transaction, the licensee has fully advised the principal, if any, and all affected parties in the transaction, which the licensee is handling, of all facts pertaining to the arrangement of kickbacks or rebates.

## **INDUCEMENTS**

No generally relevant provisions were located.

However, note that Fla. Admin. Code Ann. r. 69B-186.010, which has been amended effective February 9, 2016, addresses in great detail unlawful inducements related to title insurance transactions. The unlawful inducements include numerous activities performed "*for or by* any referrer of settlement service business" (emphasis added), and the term "referrer of settlement service business" includes real estate brokers, agents, and licensees. See Fla. Admin. Code Ann. r. 69B-186.010 for extensive lists of prohibited and permitted payments between title insurance companies and referrers of settlement service business.

Section amended 2012. Regulation 69B-186.010 promulgated 2016; regulation 61J2-10.028 amended 1997.

[Fla. Stat. Ann. § 475.25 \(2019\)](#); [Fla. Admin. Code Ann. r. 69B-186.010 \(2020\)](#); [Fla. Admin Code r. 61J2-10.028 \(2020\)](#)

## Florida, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Research located no state statutes or regulations generally prohibiting unearned referral fees.

However, effective February 9, 2016, in the context of payments between real estate licensees and title insurance agents or companies, it is unlawful for the parties to enter into any arrangement to provide unearned compensation to a "referrer of settlement service business," which term includes real estate licensees.

### **INTERFERENCE**

Research located no relevant provisions.

Regulation promulgated 2016.

[Fla. Admin. Code Ann. r. 69B-186.010\(3\), \(4\)\(q\) \(2020\)](#)

## Georgia

### Georgia, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

No provisions were located specifically addressing fee sharing in an affinity marketing situation.

Georgia statutes limiting fee sharing only explicitly permit a broker to share compensation with a licensed broker in another state if the nonresident licensed broker "is acting only as a referral agent which involves

only the mere referral of one person to another and such referring broker is not involved in the actual negotiations, execution of documents, collection of rent, management of property, or any other real estate brokerage activity.”

A licensee may be disciplined for paying a commission or compensation to a person for performing real estate licensee services if that person is not licensed or is not cooperating as a licensed nonresident, except that this requirement does not prohibit the payment of earned commissions to a citizen of another country acting as a referral agent if:

- that country does not license real estate brokers; and
- the Georgia licensee obtains and maintains "reasonable written evidence that the payee is a citizen of said other country, is not a resident of this country, and is in the business of brokering real estate in said other country."

A licensee may be disciplined for *failing to disclose* in writing to a real estate transaction principal any of the following:

- the receipt of a "fee, rebate, or other thing of value on expenditures made on" the principal's behalf "for which the principal is reimbursing the licensee";
- a payment to another broker for the referral of the principal for brokerage or relocation services; or
- the "receipt of anything of value for the referral of any service or product in a real estate transaction to a principal."

## **INDUCEMENTS**

No specifically relevant provisions were located. Generally, "no disclosure is required for gifts, products, services, or other things of value given to a principal by a licensee provided that they are not contingent upon the purchase, sale, lease or exchange of real estate for that transaction."



Statutory section 43-40-9 amended 2003; § 43-40-25 amended 2015. Regulation amended 2010, effective 2012.

Ga. Code Ann. §§ 43-40-9(e)(3), -25(b)(6), (9), (17) (LexisNexis 2019); Ga. Comp. R. & Regs. 520-1-.10 (2020)

## Georgia, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No provisions explicitly prohibiting unearned referral fees were located.

However, a licensee must obtain a person's written agreement to refer that person to another licensed broker for brokerage or relocation services and to inform the person whether the licensee will receive a consideration for the referral.

### **INTERFERENCE**

A licensee may not:

- induce a party to a sale contract, lease, or brokerage agreement to break the contract in order to substitute a contract with another principal;
- induce a person to modify another licensee's fee or commission without his or her prior written consent; or
- negotiate a real estate transaction directly with an owner, lessor, purchaser, or tenant if the licensee knows that the party has a written outstanding listing contract granting an exclusive agency or an exclusive right to sell to another broker, unless the outstanding listing or brokerage agreement provides that the licensee will not provide negotiation services to the client.

Section amended 2015.

Ga. Code Ann. § 43-40-25(b)(13), (14), (35), (36) (LexisNexis 2019)

## Guam

### Guam, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Guam statutes specifically addressing sharing fees in an affinity-marketing situation. Guam laws providing that a person may not pay or deliver compensation to an unlicensed person restrict compensation only to unlicensed persons performing real estate acts.

#### **INDUCEMENTS**

No relevant provisions were located.

Section 104110 enacted 1971; § 104111 amended 1975.

[Guam Code tit. 21, §§ 104110, 104111 \(2020\)](#)

### Guam, After-the-Fact Referral Fee Limitations

Research located no statutes explicitly prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## Hawaii

### Hawaii, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Hawaii statutes or regulations specifically addressing affinity marketing. However, the Commission generally may discipline a licensee for splitting fees with or compensating an unlicensed person for referring business, except that a broker may pay a commission to a licensed real estate broker of another state or a foreign country if that broker does not conduct any of the negotiations in Hawaii.

## **INDUCEMENTS**

No relevant provisions were located.

Statutory section amended 2017.

[Haw. Rev. Stat. § 467-14\(14\) \(2019\)](#)

## Hawaii, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Research located no state statutes or regulations explicitly prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees. However, at the time a listing brokerage firm obtains a listing, the firm must disclose whether the seller authorizes the listing brokerage firm:

- to appoint seller's subagents through a multiple listing service or otherwise; or
- to share commissions with seller's subagents or buyer's agents.

## **INTERFERENCE**

Effective November 2, 2015, the Commission may take disciplinary action if a real estate broker or salesperson for a real estate seller or purchaser acts in a manner that prohibits a prospective purchaser or seller from being able to retain a real estate broker or salesperson.

Statutory section amended 2017. Regulation amended 2016.

[Haw. Rev. Stat. § 467-14\(22\) \(2019\)](#); [Haw. Admin. Rules § 16-99-3.1 \(2020\)](#)

## Idaho

### Idaho, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Unless otherwise permitted, a real estate licensee generally may not pay any part or share of a commission, fee or compensation received in the licensee's capacity to any person not actively licensed as a real estate broker in Idaho or in another jurisdiction. However, an "Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction." An inactive licensee may receive a referral fee for any referral made during the period his or her license was active.

The Commission offers the following advice regarding payment of finder's fees: "If there is an 'intent' by the licensee to compensate the unlicensed person for referring customers, or the unlicensed person expects to be compensated for referring customers (either buyers or sellers), then one or both parties may be in violation of the License Law: the licensee for fee-splitting; and the unlicensed person for unlicensed practice." [Idaho Real Estate Comm'n, Guidance #10: \*Splitting Fees with Unauthorized Persons – Finder's Fees, Donating to Charities\* \(rev'd Mar. 2019\).](#)

#### **INDUCEMENTS**

Despite the general restrictions set forth in Idaho Code § 54-2054, an Idaho licensee may pay any part of his compensation directly to the buyer or seller in the real estate transaction.

Statutory sections amended 2015.

[Idaho Code §§ 54-2054\(2\); -2018 \(2019\)](#)

### Idaho, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

Idaho explicitly prohibits after-the-fact referral fees, so that a person may not solicit or request a referral fee from an Idaho licensee for the referral of a buyer or seller unless the person seeking the referral fee has reasonable cause. "Reasonable cause" exists only if:

- the person seeking the referral fee has “a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment”; and
- the “contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction.”

## **INTERFERENCE**

A person, whether licensed or unlicensed, may not interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer is permitted, as long as the communication does not involve advice or encouragement regarding how to terminate or amend an existing contract between a broker and a client.

Also, a person, including a relocation company or a company with a relocation policy or benefits, may not threaten to or actually reduce or withhold employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon the broker's payment of a referral fee.

Section amended 2015.

[Idaho Code § 54-2054\(4\), \(8\) \(2019\)](#)

## Illinois

### Illinois, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Illinois regulations, which explicitly address affinity relationships, provide that a licensee may not pay a referral fee to an unlicensed person who is not a principal to the transaction. In order to meet the licensing requirement, the person generally must be a licensed real estate broker or managing broker in either Illinois or the person's state or country of domicile. If the person's country does not have a real estate licensing statute, he or she must comply with his or her country's laws regarding the "practice of real estate brokerage business."

A licensee may not pay compensation to an unlicensed person who is not or will not become a party to a real estate transaction in exchange for a referral of real estate services.

## **INDUCEMENTS**

A licensee may offer compensation, including prizes, merchandise, services, rebates, discounts, or other consideration, to an unlicensed person who is a party to a contract to buy, sell, or lease real estate, as long as the offer complies with 225 Ill. Comp. Stat. 454/20-20(a)(35), which provides that a licensee may not advertise or offer merchandise or services as free if any conditions or obligations required for receiving the merchandise or services are not disclosed in the same advertisement or offer, including the requirement that the recipient attend a promotional activity or visit a real estate site.

A licensee may also offer cash, gifts, prizes, awards, coupons, merchandise, rebates or chances to win to a consumer to induce him to use the licensee's services, even if the licensee and the consumer do not ultimately enter into a broker-client relationship.

Section 454/10-15 amended 2019; § 454/20-20 amended 2019. Regulation amended 2016.

[225 Ill. Comp. Stat. 454/10-15, /20-20 \(2019\); Ill. Admin. Code tit. 68, § 1450.780 \(2020\)](#)

## Illinois, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee may not request a referral fee unless reasonable cause for payment exists. "Reasonable cause" means that:

- an actual introduction of a client has been made to a licensee; or
- a contractual referral fee relationship exists with the licensee.

The fact that reasonable cause exists to demand a referral fee does not necessarily mean that a legal right to the fee exists.

## **INTERFERENCE**

A licensee may be disciplined for inducing any party to a sale or lease contract or a brokerage agreement to break the contract in order to substitute a new contract with a third party. More specifically, a licensee may not interfere with another licensee's agency relationship or attempt to induce a client to break a listing or an exclusive representation agreement with another licensee for the purpose of replacing that agreement with a new agreement in order to obtain a referral fee. In this context, "interfering with the agency relationship of another licensee" includes, but is not limited to:

- demanding a referral fee from another licensee without reasonable cause;
- threatening to take harmful action against the another licensee's client because of the existing agency relationship and in order to obtain a referral fee; or
- counseling another licensee's client on how to terminate or amend an existing agency contract in order to obtain a referral fee.

Communicating corporate relocation policies or benefits to a transferring employee is not considered interference, as long as the communication does not involve "advice or encouragement" on how to terminate or amend an existing agency contract.

Statutory section amended 2019. Regulation amended 2016.

[225 Ill. Comp. Stat. 454/20-20 \(2019\); Ill. Admin. Code tit. 68, § 1450.780 \(2020\)](#)

Indiana

Indiana, Affinity Marketing Limitations

**RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Indiana statutes or regulations specifically addressing sharing fees in an affinity-marketing situation. The Indiana statute providing that a licensee is guilty of “incompetent practice” if he or she pays a commission to or otherwise compensates an unlicensed person, applies only to compensation for performing services that require a license.

## **INDUCEMENTS**

No specifically relevant provisions were located. "Incompetent practice of real estate" explicitly includes "inducing any party to a written agency agreement or a contract of sale to breach such agreement or contract for the purpose of substituting a new contract with another person."

Regulation amended and renumbered 2014.

[876 Ind. Admin. Code 8-2-7 \(2020\)](#)

## Indiana, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

The Indiana statute of frauds, as related to real property transactions, generally provides that a contract for a payment as a commission or reward for finding or procuring a real estate purchaser, is not valid unless the contract is in writing, and signed by the real estate’s owner or his representative. Indiana regulations provide that a principal broker may participate in a referral service or a franchise that provides a referral service if the participating broker company has a written agreement with the client and with the cooperating broker regarding the fees to be paid.

## **INTERFERENCE**

"Incompetent practice" includes "inducing a party to a written agency agreement or a contract of sale to breach the agreement or contract for the purpose of substituting a new contract with another person."

Statutory section enacted 2002. Regulations amended and renumbered 2014.

[876 Ind. Admin. Code 8-1-10, 2-7 \(2020\)](#); [Ind. Code § 32-21-1-10 \(2019\)](#)



## Iowa

### Iowa, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Iowa statutes or regulations specifically addressing affinity marketing. Generally, a licensee may not pay a commission or consideration to an unlicensed third party for activities that require a real estate license. Referral fees or finder's fees paid to unlicensed third parties for performing brokerage activities, or engaging in any activity that requires a real estate license, are prohibited.

An Iowa licensee may not participate in any arrangement prohibited by Iowa Code § 543B.60A with a person who is licensed in another state or foreign country.

#### **INDUCEMENTS**

A licensee may give a “gratuitous gift,” to a buyer or tenant after a closing, provided it is not promised or offered as an inducement to buy or lease. The permission and disclosure requirements of rule 193E-11.3(543B) do not apply to gifts as long as the client relationship has terminated.

A licensee may also present a free gift, such as prizes or money, to a potential party to a transaction or lease, before the party signs a purchase contract or lease, as long as it is “not promised or offered as an inducement to buy or lease.” The licensee must ensure that the promotion complies with other Iowa laws, such as gaming regulations, and the permission and disclosure requirements of rule 193E-11.3(543B) do not apply as long as no client relationship has been established.

A licensee may not engage in lotteries and sales schemes involving the sale of certificates, chances or other devices, whereby:

- the "purchaser is to receive property to be selected in an order to be determined by chance or by some means other than the order of prior sale";
- property "more or less valuable will be secured according to chance or the amount of sales made";

- the price will depend on chance or the sales amount; or
- the "buyer or tenant may or may not receive, rent, or lease any property."

An offer by a licensee of a free gift, prize, money, or other consideration as an inducement must:

- be "free from deception"; and
- not distort the true value of the real estate service being promoted.

Subject to the conditions listed below, a licensee may also make donations to a not-for-profit organization for each listing or closing that the licensee has during a specific time period. The organization may be selected by the licensee or by a party to the transaction and may be made in the name of the licensee or the party. The following conditions apply:

- no restrictions may be placed on the payment;
- the donation must be for a specific amount;
- the receiving entity may not act in a manner that would require a license;
- the licensee must ensure that the organization is a bona fide nonprofit;
- the licensee must ensure that the promotional materials clearly explain the terms under which the donation will be made; and
- the licensee must make all required disclosures.

A licensee may not participate in any marketing plan that requires a consumer to receive brokerage services, including referral services, from two or more licensees in a single real estate transaction, as a required condition for the consumer to receive either:

- brokerage services from one or more of such licensees; or
- a rebate, prize, or other inducement from one or more of the licensees.

An Iowa licensee may not participate in any arrangement prohibited by § 543B.60A with a person who is licensed in another state or foreign country.

Statutory section 543B.34 amended 2017; § 543.60A amended 2008. Regulation 193E-11.6 adopted 2002 (2011 amendment to chapter 193E-11 did not revise cited sections); rr. 193E-7.4 and 193E-7.6 amended 2009 (2010 amendment did not revise cited sections).

[Iowa Code §§ 543B.60A\(2\), .34 \(2019\); Iowa Admin. Code r. 193E-11.6, -7.4, -7.6 \(2020\)](#)

## Iowa, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee may not request a referral fee after:

- a bona fide purchase offer is accepted; or
- a bona fide listing agreement has been signed.

An Iowa licensee may not participate in any arrangement prohibited by § 543B.60A with a person who is licensed in another state or foreign country.

## INTERFERENCE

A licensee may not induce another to alter, modify, or change another licensee's fee or commission for brokerage services without that licensee's prior written consent. Also, a customer's agent or representative may not negotiate directly or indirectly with a party to a transaction, if the agent knows or should know that the party has an exclusive agreement with another licensee. However, if the owner initiates the discussion, the licensee may:

- negotiate and enter into a listing or brokerage agreement that will take effect after the current listing expires; or
- inform the owner that he must allow the current listing to expire or obtain a mutually acceptable cancellation from the listing broker before any further discussion can occur.

A licensee may not give or pay an undisclosed commission to any other licensee for a transaction, except "payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service." A licensee may not pay any undisclosed rebate to any party to a transaction or give any undisclosed credit against commission due from a client or licensee to any party to a transaction.

A commission-split agreement between brokers must be a separate document and not included in the purchase agreement.

Furthermore, § 543B.60A, as rewritten in 2005, explicitly provides that the purpose of the section is, in part, to prohibit "licensee practices that interfere with contractual arrangements."

Statutory section 543B.60A amended 2008; § 543B.30 reenacted 1993. Regulations 193E-11.1 and 193E-11.3 adopted 2002 (2011 amendment to chapter 193E-11 did not revise cited sections); rr. 193E-7.4 and 193E-7.15 amended 2009 (2010 amendment to chapter 193E-7 did not revise cited sections).

[Iowa Code §§ 543B.30, .60A \(2019\)](#); [Iowa Admin Code r. 193E-7.4, .15; -11.1, .3 \(2020\)](#)

**Kansas**

**Kansas, Affinity Marketing Limitations**

## RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS

Research located no Kansas statutes or regulations specifically addressing sharing fees in an affinity-marketing situation. However, generally, a licensee may *not*:

- "accept, give or charge any rebate or undisclosed commission";
- pay a referral fee to a person licensed in Kansas or another jurisdiction "if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the Kansas or out-of-state licensee";
- pay a commission or compensation to any unlicensed person for performing any real estate activity for which Kansas statutes require a license, unless an exception applies; or
- except as provided by Kan. Stat. Ann. § 40-2404, "knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof."

A branch broker or supervising broker may cooperate with and share commissions or compensation for services related to *commercial* real estate with a foreign licensee and the foreign licensee may perform services requiring a license even if the foreign licensee does not have a Kansas license if:

- the real estate is not improved with a single family residence;
- the foreign licensee agrees to cooperate with a Kansas branch or supervising broker, as evidenced by execution of and compliance with a broker cooperation agreement which must require;
- the foreign licensee agrees to comply with all applicable Kansas laws and regulations;

- the foreign licensee agrees to submit to the jurisdiction of Kansas courts and the Kansas real estate commission;
- the foreign licensee agrees to give its written irrevocable written consent to service of process by valid service upon the Kansas secretary of state and the foreign licensee's secretary of state;
- all escrow funds concerning the commercial real estate are held in Kansas in the branch or supervising broker's trust account;
- a description of how any and all compensation earned will be shared;
- the foreign licensee and the branch or supervising broker agree to each keep the other informed of all showings and negotiations for commercial real estate; and
- the foreign licensee and the branch or supervising broker agree to furnish to the other copies of all documents required to be retained by Kansas law.

## **INDUCEMENTS**

The Kansas statute that formerly addressed prizes, gifts and gratuities was deleted in 2004. See [Kan. Real Estate Comm'n, Guidelines for Permissible Gifts and Gratuities \(rev. Aug. 2016\)](#)

Statutory section 58-3077 amended 2006; § 58-3062 amended 2015.

[Kan. Stat. §§ 58-3062, -3077 \(2019\)](#)

[Kansas, After-the-Fact Referral Fee Limitations](#)

## **PROHIBITION OF UNEARNED REFERRAL FEES**

Neither a licensee nor a person on behalf of a licensee or a firm, whether licensed in Kansas or in another state, may solicit a referral fee without reasonable cause. "Reasonable cause" exists only if one of the following conditions exists:

- an actual business introduction was made;
- a contractual referral fee relationship exists; or
- a contractual cooperative brokerage relationship exists.

Also, a licensee may not accept, give or charge any rebate or undisclosed commission.

A licensee may pay a referral fee to a person who is licensed as a broker under Kansas law or under the law of another jurisdiction, provided that written disclosure is made to the client of any financial interest that the broker has in the brokerage firm receiving the referral fee.

## **INTERFERENCE**

Neither a licensee nor anyone on behalf of a licensee may:

- threaten to reduce or withhold employee relocation benefits or take other action adverse to a licensee's client's or customer's interests; or
- counsel another licensee's client or customer on how to terminate or amend an existing agency agreement or sales contract.

Communicating a corporate relocation policy or benefits to a transferring employee does not violate the above restriction, provided the communication does not involve advice or encouragement on how to terminate or amend an existing agency contract.

Also, a licensee generally may not solicit an agency agreement or written transaction brokerage agreement from a seller or landlord if the licensee knows that the seller or landlord has an agency agreement or written transaction brokerage agreement granting an exclusive right or exclusive agency to another broker. Similarly, a licensee may not solicit an agency agreement or written transaction brokerage agreement from a buyer or tenant if the licensee knows that the buyer or tenant has a written agency agreement or written transaction brokerage agreement granting an exclusive brokerage relationship to another broker.

A licensee may not induce a party to break any agency agreement or written transaction brokerage agreement.

Statutory section 58-3076 enacted 2000; §§ 58-3062 and 58-30,103 amended 2015; § 58-30,105 amended 1997.

[Kan. Stat. §§ 58-3062, -3076, -30,103, -30,105 \(2019\)](#)

## Kentucky

### Kentucky, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Generally, a broker may not split fees with or compensate a person who is not a real estate licensee, except that a broker may:

- pay a referral fee to a broker licensed outside of Kentucky for referring a client to the Kentucky broker;
- pay a commission or other compensation to a broker licensed outside of Kentucky with respect to commercial real estate if the requirements set forth in Ky. Rev. Stat. Ann §§ 324.235–.238 are satisfied; or
- pay a licensed auctioneer for services rendered in cases where an auctioneer and a real estate broker collaborate in a real estate sale at auction.

Also, a licensed agent may not accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on a purchase contract or a lease, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or



financing related to a real estate transaction. However, this provision does not affect paying or receiving referral fees between licensed agents for brokerage services.

## **INDUCEMENT RESTRICTIONS**

A licensee may offer rebates, discounts, or other inducements to consumers, prospective clients, or clients to use the licensee's services or truthfully advertise the same.

As of May 2, 2008, regulation 11:121, which previously defined certain marketing and advertising practices as "improper conduct," no longer prohibits a licensee from offering to the general public a prize, money, free gift, rebate or other thing of value as an inducement.

Also, 2009 Ky. Acts ch. 58 deleted "[o]ffering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate" from the list of acts for which the commission may impose sanctions against a licensee.

Statutory section 324.160 amended 2009; § 324.020 amended 2015. Regulation amended 2019.

[Ky. Rev. Stat. §§ 324.020\(4\), .160 \(2019\); see 201 Ky. Admin. Regs. 11:121 \(2020\)](#)

## Kentucky, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A person may not:

- solicit or request a referral fee from a real estate licensee, unless the person introduced the business to the licensee and a contractual referral fee relationship exists between the person and the licensee; or
- threaten to reduce or withhold employee relocation benefits or to take other actions that are adverse to the licensee's client's interests because of an agency relationship.

## **INTERFERENCE**

A licensee, relocation firm, or firm with a corporate relocation policy or benefits may not counsel another licensee's client regarding terminating or amending an existing listing contract, buyer agency agreement, or other agency relationship. However, communicating a corporate relocation policy or benefits to a transferring employee is permitted, as long as the communication does not involve advice regarding terminating or amending an existing agency relationship.

A real estate broker may not induce a party to a sales contract or lease to break the contract for the purpose of substituting a new contract.

Statutory section amended 2009. Regulation amended 1982.

[Ky. Rev. Stat. § 324.165 \(2019\)](#); [201 Ky. Admin. Regs. 11:121 \(2020\)](#)

## Louisiana

### Louisiana, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

A licensee may not pay compensation to an unlicensed person, unless the person is a broker currently licensed in his state of residence. Also, a broker may not pay a commission or other compensation to any licensee if he knows that the receiving licensee has agreed or intends to pay a portion of the commission or compensation to an unlicensed person or entity.

A Louisiana-licensed broker "may divide or share a real estate commission with a licensed broker in another jurisdiction whenever the licensed broker in the other jurisdiction acts only as a referral agent who is not involved in the actual negotiations, execution of documents, collections of rent, management of property, or other real estate brokerage activity in a real estate transaction which involves more than the mere referral of a client or customer" to the Louisiana broker.

## **INDUCEMENTS**

No relevant provisions were located.

Section amended 2016; regulation re-promulgated 2011.

[La. Rev. Stat. § 37:1446 \(2019\)](#); [La. Admin. Code tit. 46:LXVII, § 5103 \(2020\)](#)

## Louisiana, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A person, including a relocation company, may not directly or indirectly solicit or request a referral fee or similar payment for the referral of a buyer or seller unless the person seeking the referral fee has reasonable cause. Requesting a referral fee does not create a legal right to the fee. “Reasonable cause” exists only if:

- the person seeking the referral fee introduced the client to the licensee or registrant from whom the fee is being sought; or
- the person seeking the referral fee has a written contractual relationship with the licensee or registrant for a referral fee or similar payment; and
- the licensee or registrant has received the client referral prior to the client contracting to buy or list real estate with the licensee or registrant.

### **INTERFERENCE**

The following constitute interference with a real estate brokerage relationship:

- demanding a referral fee from a licensee when reasonable cause for payment does not exist; and
- a threat “by a third party to reduce, withhold, or eliminate any relocation benefits in order to generate a referral fee from a licensee or registrant when reasonable cause for payment does not exist.”

Communications between an employer and an employee concerning relocation policies and benefits does not constitute “interference with a real estate brokerage relationship.”

A licensed or unlicensed person may not interfere with the contractual relationship between a licensee and a client by counseling a client or another licensee regarding how to terminate or amend an existing contract between a licensee and a client. Communicating a company's relocation policy or benefits to an employee or consumer does not violate this provision as long as the communication does not involve advising or encouraging a person to terminate or amend an existing contractual relationship between a licensee and a client.

The Commission may discipline a licensee for offering “any inducement to or in any way encouraging a party to a written contract involving the sale, lease, or management of real estate to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal or licensee.”

Section 37:1447 enacted 2001; § 37:1455 amended 2014.

[La. Rev. Stat. §§ 37:1447, :1455\(13\) \(2019\)](#)

## Maine

### Maine, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

The Real Estate Commission may discipline a licensee who offers, gives, or pays any part of his or her compensation to a person who is not licensed to perform the service for which a license is required, except that an agency may share its compensation with a nonresident licensee if the nonresident’s service is performed outside of Maine.

#### **INDUCEMENTS**

A brokerage agency's or affiliated licensee's offer of a free gift, prize, money or other valuable consideration as an inducement must:

- be free from deception; and

- not distort the true value of the real estate or the service being promoted.

Any limitations or conditions must be prominently displayed or presented.

Statutory section enacted 2017. Regulatory chapter amended 2013.

[Me. Rev. Stat. tit. 32, § 13067-A \(2019\); 02-039-410 Me. Code R. § 11 \(2020\)](#)

## Maine, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

### **INTERFERENCE**

A licensee may not solicit a written brokerage agreement from a seller or buyer if the licensee knows or reasonably should have known that the party has an exclusive contract with another agency for the same real estate brokerage services. However, the agency may enter into a contract with a seller or buyer if:

- the seller or buyer initiates the initial contact; and
- the contract is not effective until the previous contract expires.

Regulatory chapter amended 2013.

[02-039-410 Me. Code R. § 10 \(2020\)](#)

## Maryland

### Maryland, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Maryland statutes or regulations specifically addressing sharing fees in an affinity marketing situation. Maryland law that generally provides that a real estate licensee may not pay compensation to an unlicensed person applies only to compensation for providing brokerage services.

A real estate broker, associate broker, or salesperson may not pay or offer to pay a commission to a lawyer simply for the referral of a person as a possible party to a residential real estate transaction nor solicit referral business from lawyers by a mass solicitation that offers to pay fees or commissions to the lawyers. These prohibitions do not apply to payments or offers of payments to lawyers who hold a Maryland real estate broker license or are otherwise entitled to a commission and do not prohibit the payment or the offer of a payment of a commission to a lawyer for any service that relates to a real estate transaction.

#### **INDUCEMENTS**

The Real Estate Commission may discipline a licensee for influencing or attempting to influence a prospective party to a real property sale by:

- offering a prize or free lot;
- conducting a lottery;
- conducting a contest; or
- advertising “free appraisals,” unless the advertiser will appraise real estate free of charge for any person, regardless of the purpose.

[Md. Code, Bus. Occ. & Prof. §§ 17-322, -604, -605 \(2019\)](#)

## Maryland, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

Maryland regulations provide that commissions must be shared “on a previously agreed basis.”

### **INTERFERENCE**

A licensee’s exclusive listing agency must “be respected.” Also, a licensee must cooperate with other brokers on property exclusively listed by the licensee if it is in the client’s interest and must share commissions on a previously agreed basis. The Real Estate Commission may discipline a licensee for:

- knowingly soliciting a party to an exclusive listing contract to terminate that contract and enter a new contract with the soliciting licensee; or
- soliciting a party to breach a sales contract, lease, or agreement in order to substitute a new contract, lease, or agreement for which the soliciting licensee is the broker or the affiliated salesperson.

Statutory section amended 2016. Regulation amended 1981.

[Md. Code, Bus. Occ. & Prof. § 17-322 \(2019\); Md. Regs. Code tit. 9, § 09.11.02.03 \(2019\)](#)

## Massachusetts

### Massachusetts, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Massachusetts statutes or regulations that specifically address sharing fees in an affinity-marketing situation. However, generally, the Real Estate Board may discipline a licensee who has shared commissions or fees with any unlicensed person who is required to be licensed in Massachusetts or any other state. A licensee may also be disciplined if he or she has accepted, given or charged any undisclosed commission, rebate or profit on expenditures for a principal

## **INDUCEMENTS**

No relevant provisions were located.

Section amended 1973.

[Mass. Gen. Laws ch. 112, § 87AAA \(2019\)](#)

[Massachusetts, After-the-Fact Referral Fee Limitations](#)

## **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

## **INTERFERENCE**

The Real Estate Board may discipline a licensee who has induced any party to a real estate contract or lease to break the contract for the licensee's personal gain.

Section amended 1973.

[Mass. Gen. Laws ch. 112, § 87AAA \(2019\)](#)



## Michigan

### Michigan, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

A licensee may be disciplined for sharing a fee with an unlicensed person, including payments for the names of or information regarding potential real estate buyers or sellers (except for payment for commercially prepared name lists). However, a licensed real estate broker may pay a commission to a broker licensed in another state if the nonresident broker does not conduct negotiations in Michigan for which he or she is paid a commission.

A licensee who is entitled to receive, either directly or indirectly, a real estate commission as a result of the sale of property, may not also receive a referral fee or other valuable consideration:

- for placing a loan in connection with that transaction unless the licensee obtains the prior written consent of the buyer and seller in that transaction and the fee is not otherwise prohibited by the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 *et seq.*, or other applicable law; or
- from an abstract, home warranty, title insurance, or other settlement service provider in connection with that transaction unless the licensee obtains the prior written consent of the party or parties with whom the licensee has an agency relationship and the fee is not otherwise prohibited by RESPA or other applicable law.

Also, the following actions involving tenants do not constitute payment of a real estate commission:

- as an owner or an owner's agent, offering an existing tenant consideration with a value of one-half of one month's rent or less for referring a prospective tenant; and
- as an existing tenant of rental property, accepting a consideration with a value of one-half of one month's rent or less for the referral of prospective tenants.

#### **INDUCEMENTS**

A licensee may not use a scheme involving a lottery, contest, game, prize, or drawing to sell or promote a real estate sale. However, a licensee may use a game promotion that complies with § 372a of the Michigan penal code for any purpose other than the direct promotion of a specific piece of real estate.

Section 339.2511 amended 2010; § 339.2512 amended 2016; § 339.2512b enacted 1981; rule amended 2002.

[Mich. Comp. Laws §§ 339.2511, .2512, .2512b \(2019\)](#); Mich. Admin. Code § 339.22321 (2020)

## Michigan, After-the-Fact Referral Fee Limitations

Research located no state statutes or regulations specifically prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## Minnesota

### Minnesota, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

No provisions were located specifically addressing fee sharing in affinity-marketing situations. Generally, a real estate licensee may not offer, pay, or give compensation or other value, whether by commission-splitting, rebates, referral fees, finder's fees, or otherwise, in connection with a real estate transaction, except fees:

- between a licensee and the parties to the transaction;
- among licensed persons;
- between a licensee and licensed persons from other jurisdictions;
- in certain transactions involving timeshares or other recreational lands; or

- involving a person who receives a referral fee from a licensee, “provided that in any 12-month period, no recipient may earn more than the value of one month's rent, that the recipient is a resident of the property or has lived there within 60 days of the payment of the fee, and that the person paying the fee is bound by any representations made by the recipient of the fee.”

Also, a licensee may assign or direct that commissions or other compensation earned in connection with a real estate transaction be paid to an entity of which the licensee is the sole owner. In this context, "sole owner" means the licensed real estate broker or salesperson and may include the licensee's spouse.

## **INDUCEMENTS**

It is a fraudulent, deceptive, or dishonest practice for a licensee to pay or give money or goods to an unlicensed person for any assistance or information relating to the licensee's procurement of a property listing or of a prospective property buyer, except for money or goods paid or given to the transaction's parties.

Sections amended 2014.

[Minn. Stat. §§ 82.81, subd. 12\(a\)\(14\); .70, subds. 2, 5 \(2019\)](#)

## Minnesota, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Research located no state statutes or regulations explicitly prohibiting unearned referral fees. However, a licensee may bring an action for any commission, fee or compensation with respect to the purchase, sale, lease or other disposition or conveyance of real property, or with respect to the negotiation or attempt to negotiate any sale, lease or other disposition or conveyance of real property, only if:

- a written agreement exists; and
- in residential transactions, the person has disclosed his or her agency relationships to the transaction's parties.

Also, it is a fraudulent, deceptive, or dishonest practice for a licensee to demand from a seller a commission to which the licensee is not entitled, knowing that he is not entitled to it.

If an owner fails to consummate a real estate transaction through no fault of the purchaser, the listing broker may not claim any portion of trust funds the purchaser deposited with the broker unless he or she has a separate agreement with the purchaser.

### **INTERFERENCE**

A licensee may not:

- negotiate the sale, lease, or listing of any real property directly with an owner or lessor knowing that the owner or lessor has a written contract granting exclusive representation for the same service to another real estate broker, buyer, or lessee;
- negotiate the purchase, lease, or exchange of real property knowing that the buyer or lessee has executed a written contract granting exclusive representation for the same service with another real estate broker; or
- induce any party to a sale, purchase, lease, or option contract or exclusive listing or buyer's agreement, to breach the contract.

However, a licensee may discuss the terms upon which the parties may enter into a contract after any existing exclusive contract expires, if the owner, lessor, buyer, or lessee initiates the inquiry or discussion.

A licensee must ask whether an exclusive contract exists.

Section 82.85 amended 2004 and renumbered 2010; § 82.81 amended 2014.

[Minn. Stat. §§ 82.85, subds. 2, 3; .81, subds. 3, 9, 12\(a\)\(13\) \(2019\)](#)

## Mississippi

### Mississippi, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

The Mississippi Real Estate Commission may discipline a licensee for paying a rebate, profit or commission to any person other than a licensed real estate broker or salesperson. Also, Mississippi regulations provide that a licensee may not “knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is received to a person who does not hold a real estate license.”

#### **INDUCEMENTS**

No generally relevant provisions were located. (Note that state regulations place restrictions on sweepstakes, gift awards, and prizes in connection with an offer to sell a timeshare interest.)

Statutory section 73-35-21 amended 2016. Regulatory history unknown.

[Miss. Code § 73-35-21\(1\)\(j\) \(2019\)](#); [30-1601 Miss. Code R. §§ 3.1, 8.11 \(2019\)](#)

### Mississippi, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

#### **INTERFERENCE**

The Real Estate Commission may discipline a licensee for inducing any party to a contract to break it for the purpose of substituting a new contract if the substitution is motivated by the licensee’s personal gain.

Section amended 2016.

[Miss. Code § 73-35-21\(1\)\(k\) \(2019\)](#)

## Missouri

### Missouri, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Missouri statutes restricting fee sharing provide only that a licensee may not pay any part of a fee, commission or other compensation to an unlicensed person for any real estate services, unless the person is licensed or regularly engaged in the real estate brokerage business outside of Missouri. However, Missouri statutes clarify that such restriction does not prohibit a consumer from joining an organization in which one of the membership benefits is that the organization may negotiate a reduced rate for real estate costs for its members.

#### **INDUCEMENTS**

A property *owner* may directly pay and supply an inducement to the buyer or lessee of his property.

Section 339.150 amended 2008; § 339.151 enacted 2001.

[Mo. Stat. §§ 339.150, .151 \(2019\)](#)

### Missouri, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee may not pay a commission or other consideration unless there is:

- reasonable cause for payment; or
- a contractual relationship with the licensee.

Also, a person may not solicit or request compensation from a licensee without reasonable cause.

“Reasonable cause” exists only if the party seeking the compensation actually introduces the business to the licensee before a relationship is established between the licensee and a principal to the transaction, including a subagency, transaction brokerage, or cooperative brokerage relationship.

## **INTERFERENCE**

A licensee may not:

- interfere with another licensee’s written representation relationship; or
- attempt to induce a customer or client to break another licensee’s written representation agreement in order to replace the agreement with a new agreement in order to obtain a commission or other valuable consideration.

Interfering with another licensee’s written representation agreement includes:

- threatening to reduce or withhold employee relocation benefits or to take other action adverse to a licensee’s customer’s or client’s interests because of an existing representation agreement in order to receive compensation; or
- counseling another licensee’s customer or client on how to terminate or amend an existing agreement in order to obtain a commission or other consideration.

Communicating corporate relocation policy or benefits to a transferring employee is not “interference,” provided it does not involve advice or encouragement regarding how to terminate or amend an existing relationship agreement.

A licensee may not negotiate or enter into a brokerage service agreement with an owner, buyer or tenant if the licensee knows or should know that the party has an unexpired and written exclusive service agreement with another broker, unless:

- the party initiates the discussion; and
- the licensee has not solicited the discussion, in which case the licensee may negotiate and enter into an agreement that will be effective after the current agreement expires.

Statutory section enacted 2001. Regulation amended 2009.

[Mo. Stat. § 339.151 \(2019\)](#); [Mo. Code Regs. tit. 20, § 2250-8.090 \(2020\)](#)

## Montana

### Montana, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Montana statutes or regulations specifically addressing fee sharing in affinity-marketing situations. Montana law regarding whether a licensed broker may compensate an unlicensed person prohibits compensation to an unlicensed person for acts regulated by chapter 37-51, except that a licensed broker may pay a broker licensed in another jurisdiction if the nonresident broker does not conduct real estate services in Montana. The Real Estate Board may discipline a licensee who has paid an unlicensed person a commission in connection with a real estate transaction.

Note that a licensee commits unprofessional conduct if he or she engages or recommends "the services of an attorney, title company, appraiser, escrow agent, maintenance service, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended."

#### **INDUCEMENTS**

No provisions were located explicitly addressing whether a licensee may provide inducements, but the Real Estate Board may discipline a licensee for "soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser . . ." Similarly, Montana regulations provide that a licensee may not solicit, sell, or offer for sale real property by conducting lotteries,



raffles or contests for the purpose of influencing a real property purchaser. However, a licensee may offer door prizes as long as the participant is not required to pay consideration or enter into a contract in order to participate.

Statutory section 37-51-321 amended 2019; § 37-51-306 amended 2015. Regulation amended 2018.

[Mont. Code §§ 37-51-306, -321 \(2017\); Mont. Admin. R. 24.210.641 \(2020\)](#)

## Montana, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located. However, a "broker" is defined to include a person who receives a fee for referring to a licensee the name of a prospective real estate buyer or seller, and a broker must be licensed.

### **INTERFERENCE**

The board may discipline a licensee for:

- inducing a party to a sale or lease contract to break the contract for the purpose of substituting a new contract with another principal; or
- negotiating a sale, exchange, or lease of real property directly with a party if the licensee knows that the party has an exclusive listing agreement or buyer broker agreement with another broker.

Section 37-51-321 amended 2019; § 37-51-102 amended 2019; § 37-51-301 amended 2015.

[Mont. Code §§ 37-51-102, -301, -321 \(2019\)](#)

## Nebraska

### Nebraska, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no statutes or regulations specifically addressing fee sharing in affinity-marketing situations. Nebraska law regarding whether a licensee may compensate an unlicensed person prohibits compensation to an unlicensed person for *real estate acts* unless the person is:

- a nonresident licensed in his or her regulatory jurisdiction; or
- a citizen and resident of a foreign country that does not license persons conducting the activities of a broker, if that person "provides reasonable written evidence to the Nebraska broker that he or she is a resident citizen of that foreign country, is not a resident of this country, and conducts the activities of a broker in that foreign country."

## **INDUCEMENTS**

A licensee may be punished for:

- "soliciting, selling, or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser"; or
- inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal.

Section amended 2017.

[Neb. Rev. Stat. § 81-885.24 \(2019\)](#)

Nebraska, After-the-Fact Referral Fee Limitations

## **PROHIBITION OF UNEARNED REFERRAL FEES**

A buyer or tenant is not obligated to compensate a licensee unless the buyer or tenant has entered into a written agreement with the designated broker specifying compensation.

A licensee may not accept, give, or charge any form of undisclosed compensation on "expenditures made for a principal." Also, an associate broker or salesperson may not accept any form of compensation or consideration from anyone other than his or her employing broker without that broker's consent.

A license may be punished for charging or collecting, as part or all of his or her compensation money paid to him or her in connection with any real estate transaction until the transaction has been consummated or terminated, provided a payment for goods or services rendered by a third party on behalf of the client is not deemed compensation "if such payment does not include any profit, compensation, or payment for services rendered by the broker and the broker retains a record of the payment to the third party for such goods or services."

## **INTERFERENCE**

A licensee may be disciplined for:

- negotiating a sale directly with an owner or lessor if the licensee knows that the owner has a written outstanding listing contract granting an exclusive agency or an exclusive right to sell to another broker;
- negotiating directly with an owner to withdraw from or break a listing contract in order to substitute a new listing contract; or
- discussing with an owner of a property exclusively listed with another broker the terms upon which the broker would accept a future listing upon the present listing's expiration, unless the owner initiates the discussion.

Section 76-2416 amended 2011; § 81-885.24 amended 2017.

[Neb. Rev. Stat. §§ 76-2416; 81-885.24 \(2019\)](#)

## Nevada

### Nevada, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Nevada statutes addressing fee sharing in an affinity-marketing situation. Nevada statutes generally provide that a licensee may not offer, allow, give or pay any share of his or her commission, compensation or finder's fee to an unlicensed person (except to a licensed broker of another state), but the restriction applies only to consideration for real estate services performed by the unlicensed person.

The Commission may discipline a person who pays a commission, compensation or finder's fee to an unlicensed person for performing real estate services, unless the person is a licensed broker in his or her state of residence.

#### **INDUCEMENTS**

No provisions were located explicitly applicable to inducements. However, generally, the Real Estate Commission may discipline a licensee who accepts, gives or charges an "undisclosed commission, rebate or direct profit on expenditures made for a client."

Section 645.280 amended 2005; § 645.633 amended 2015.

[Nev. Rev. Stat. §§ 645.280, .633\(1\)\(c\), \(g\) \(2017\)](#)

### Nevada, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

In determining whether a licensee has been guilty of gross negligence or incompetence or conduct which constitutes deceitful, fraudulent or dishonest dealing, the Commission will consider, among other things, whether the licensee has disclosed, in writing, his or her interest or contemplated interest in any property or time share with which the licensee is dealing, which disclosure must include, but is not limited to, a statement of:

- whether the licensee "expects to receive any direct or indirect compensation, dividend or profit from any person or company that will perform services related to the property and, if so, the identity of the person or company;"
- the "licensee's affiliation with or financial interest in any person or company that furnishes services related to the property;"
- if the licensee is managing the property, "his or her interest in or financial arrangement with any person or company that provides maintenance or other services to the property;" and
- "[i]f the licensee refers one of his or her clients or customers to another person or company, such as a contractor, title company, attorney, engineer or mortgage banker, the licensee's expectation of a referral fee from that person or company."

## **INTERFERENCE**

The Real Estate Commission may discipline a licensee for:

- inducing a party to a brokerage, property management, sale or lease agreement to break it in order to substitute a new agreement with the same or another party if the inducement is offered for the licensee's personal gain; or
- negotiating a real estate sale, exchange or lease, or communicating after negotiations but before closing, directly with a client if the licensee knows that the client has an exclusive brokerage agreement, including an exclusive right to sell with another broker, unless the licensee has obtained permission in writing from the other broker.

Section 645.630 amended 2007; § 645.635 amended 2017; rule amended 2004.

[Nev. Rev. Stat. §§ 645.630, .635 \(2017\); Nev. Admin. Code § 645.605 \(2019\)](#)

## New Hampshire

### New Hampshire, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

A licensee may be disciplined for paying valuable consideration to an unlicensed person, unless that person is a licensed broker of another jurisdiction who is regularly doing business in his or her own jurisdiction. Also, a licensee may not knowingly pay a commission or valuable consideration to a licensed person knowing that the licensee will pay a portion of it to an unlicensed person.

A principal broker may pay all or part of a fee, commission, or other compensation earned by his or her firm, broker, associate broker, or salesperson to a partnership, association, limited liability company, limited liability partnership, or corporation only if:

- all of the partners, members, officers, or shareholders of any unlicensed business entity hold a valid and active license;
- at least one of the partners, members, officers, or shareholders of the unlicensed business entity is the licensee who earned the fee, commission, or other compensation; and
- the unlicensed entity does not engage in any of the prohibited acts specified in § 331-A:26 and is registered to do business in New Hampshire.

Effective September 11, 2015, a real estate licensee may not direct a transaction to a lending institution, escrow company, or title company in a manner prohibited by the federal Real Estate Settlement Procedures Act. (In addition, if a principal engages a licensee to serve as its agent to solicit extensions of credit or other services related to a loan, the lender may not pay the agency fee.)

#### **INDUCEMENTS**

No relevant provisions were located.

Section 331-A:26 amended 2019; § 331-A:6-b.

[N.H. Rev. Stat. §§ 331-A:6-b, :26 \(XXI\), \(XXIV\) \(2019\)](#)

## New Hampshire, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No specifically relevant provisions were located. However, generally, a salesperson or broker may be disciplined for accepting a commission or consideration for performing any acts specified in the state real estate licensing laws from any person other than the licensed principal broker with whom the salesperson or broker is licensed.

### **INTERFERENCE**

A licensee may be disciplined for inducing a party to a sale or lease contract to break the contract in order to substitute a new contract with another principal.

Section amended 2019.

[N.H. Rev. Stat. § 331-A:26 \(XX\), \(XXXII\) \(2019\)](#)

## New Jersey

### New Jersey, Affinity Marketing Limitations

### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

#### *General referral fees*

No provisions were located explicitly addressing fee sharing in affinity-marketing situations. New Jersey statutes regarding referral fees provide only that a licensed broker may pay a referral fee to an unlicensed person only if the person is a licensed real estate broker of another jurisdiction in which he maintains a bona fide office. For such purposes, "referral" means "the introduction, assisting, or directing of a person by one broker to another broker for real estate brokerage services, aid, or information."

Additionally, a licensee may not knowingly pay a commission or other valuable consideration to a licensed person knowing that the licensee will pay a portion or all of that which is received to a person who does not hold a real estate license.

#### *Affiliation with mortgage lender or mortgage broker*

If a licensee refers a buyer/borrower to a mortgage lender or mortgage broker with whom the licensee is affiliated, the licensee must provide written disclosure of the affiliation to the buyer, which must be made "even though the licensee will receive no fees or compensation for the referral and even though the licensee also refers the buyer to other, unaffiliated sources of mortgage financing." If "an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate."

#### *Organization restrictions*

Also, generally, a licensee may not "become a member of or otherwise participate in the activities or operation of any trade association or organization or of any multiple listing service operation" that engages in the following policies and practices:

- places "requirements, obligations, or standards" on licensees or participants that conflict with the state's real estate laws;
- interferes with the licensee's obligations of fidelity, fair-dealing, or full cooperation with another New Jersey licensee; or
- "imposes or attempts to impose prescribed or predetermined fees or commission rates or commission amounts, or prescribed or predetermined commission splits, between the listing broker and the selling broker."

#### *Referral agents*



No person may engage as a real estate salesperson licensed with a real estate referral company without a license. A real estate salesperson licensed with a real estate referral company is a "natural person employed or contracted by and operating under the supervision of a licensed real estate broker through a real estate referral company whose real estate brokerage-related activities are limited to referring prospects for the sale, purchase, exchange, leasing or rental of real estate or an interest therein." A real estate salesperson licensed with a real estate referral company may refer prospects only to the real estate broker who supervises the real estate referral company through whom he or she is licensed and may accept compensation for his or her activity as a referral agent only from that broker.

## **INDUCEMENTS**

### *Prohibited inducements*

The Commission may discipline a licensee who uses a plan, scheme or method for selling or promoting the sale of real estate that involves:

- a lottery;
  
- a contest;
  
- a game;
  
- a prize;
  
- a drawing; or
  
- the offering of a lot or parcel.

"No offering of free, discounted or other services or products, including the offering of a free appraisal, shall be made by a real estate licensee in any advertisement or promotional material or otherwise where the promotion or offering involves a lottery, a contest, a game or a drawing, or the offering of a lot or parcel or lots or parcels, or where the consumer is required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer." The prohibition on licensees offering free, discounted or other services or products applies to all offerings that confer a monetary benefit, including:

- free or subsidized homeowners warranties;
- property, radon and pest inspections;
- surveys;
- mortgage fees;
- offers to pay other costs typically incurred in real estate transactions; and
- coupons offering discounts on brokerage firm commissions.

#### *Permitted inducements*

A promotion or offer of free or discounted services or products that does not require the recipient to enter into a sale, listing or other real estate contract is permitted if it does not involve a lottery, contest, game, drawing or the offering of a lot or parcel. A broker must disclose in writing any compensation received for the promotion or offer no later than the time the broker extends the promotion or offer to the consumer.

New Jersey Regulations elaborate that except as provided by regulation, licensees may include offers of free, discounted or other services or products in advertisements or promotional material. Also, if a licensee promotes or offers free, discounted, or other services or products that confer

upon the recipient a monetary benefit of greater than token value (which means a value of more than \$5.00 retail), the licensee must provide written disclosure to the recipient, which must clearly and conspicuously state:

- that a consumer is not required to enter into any sale, listing or other real estate contract as a condition of their receipt and use of the free or discounted services or products included in the promotion or offer;
- whether the consumer must perform any action to qualify to receive the free or discounted services, and, if so, what specific action the consumer must perform (including attendance at any listing presentation, informational session or other meeting); and
- if the delivery of the offered services or products does not occur at the time that the disclosure is provided to the consumer, the date by which the services or products will be delivered to the consumer.

If a licensee receives compensation for participating in a promotion or offering of free or discounted services or products, the disclosure must also state the compensation. The written disclosure must be provided to consumers no later than when the licensee extends the promotion or offer to the consumer.

#### *Registered property advertisements*

See N.J. Admin. Code tit. 11, § 5-9.14(h) for provisions that apply to *registered property* advertisements that contain offers of premiums or travel expense reimbursements in cash or merchandise.

#### *Rebates*

The Commission may discipline a licensee for paying any rebate, profit, compensation or commission to anyone not possessed of a real estate license, except that free, discounted or other services or products provided for in § 45:15-17(g) are permitted. Also, a real estate broker may

provide a purchaser of residential real property, but no other third party, a rebate of a portion of the commission paid to the broker, as long as:

- the broker and the purchaser contract for the rebate at the onset of the broker relationship in a written document, an electronic document or a buyer agency agreement;
- the broker complies with any state or federal disclosure requirements related to the rebate; and
- the broker recommends to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving the rebate.

A rebate paid to the purchaser must be in the form of a credit that reduces the commission payable to the broker or a check paid by the closing agent and made at closing.

Any rebate paid by a broker to a purchaser of residential real property must be:

- calculated after the purchaser negotiates the rebate commission rate;
- memorialized in a written/electronic document or a buyer agency agreement provided by the broker to the purchaser at the outset of the broker relationship, which document or agreement must provide the terms of any rebate credited or paid by the broker to the purchaser; and
- disclosed to all parties involved in the transaction, including, but not limited to, any mortgage lender.

A rebate may not be:

- paid to a person not licensed as a real estate broker for any act that requires licensure;

- contingent upon the use of other services or products being offered by a broker or an affiliate of a broker; or
- based on the use of a lottery, contest or game.

Statutory section 45:15-3.1 amended 1993; §§ 45:15-1, 45:15-3, and 45:15-17 amended 2018. Regulation 5-6.1 amended 2012; r. 5-9.14 amended 2009; r. 11:5-6.6 amended 1998; r. 11:5-6.8 amended 2012.

[N.J. Stat. §§ 45:15-1, -3, -3.1, -16a, -17 \(2020\)](#); N.J. Admin. Code tit. 11, §§ 5-6.1(m), -6.6, -6.8, -9.14(h) (LexisNexis 2020)

## New Jersey, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, is subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty.

The Commission by rule has addressed unearned referral fees in detail as follows:

"Any compensation paid by a real estate broker to a referral agent shall be limited to compensation for referring prospective consumers of real estate brokerage services to the broker. Real estate brokers are prohibited from offering incentives to the referral agents, salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson or broker-salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral to a mortgage lender, mortgage broker or other provider of related services. For example, a real estate broker who provides in-house mortgage services may compensate a salesperson licensed with that broker who performs actual mortgage services. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to licensees of his or her firm for merely referring

buyers to the in-house mortgage service or any particular lender or mortgage broker. For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender."

New Jersey statutes permitting a licensed real estate broker to pay a referral fee to a broker of another jurisdiction in which the licensed broker maintains a bona fide office, defines a "referral" as "the introduction, assisting, or directing of a person by one broker to another broker for real estate brokerage services, aid, or information." Also, generally:

- unless an owner directs a licensee in writing not to do so, a licensee must cooperate with other New Jersey licensees using cooperation arrangements, which must protect and promote the interests of the licensee's client or principal; and
- all written listing agreements must include a provision specifying the complete formula for determining a commission split.

## **INTERFERENCE**

Generally, a licensee may not directly or indirectly take any punitive or retaliatory action against any other licensee for the failure or refusal "to adhere or to adopt any commission."

Statutory section amended 1993. Regulation 5-6.4 amended 2009; r. 5-7.6 promulgated 1981; r. 5-7.2 amended 2012.

N.J. Stat. § 45:15-3.1 (2020); N.J. Admin. Code tit. 11, §§ 5-6.4, -7.2, -7.6 (LexisNexis 2020)

## **New Mexico**

### **New Mexico, Affinity Marketing Limitations**

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

The commission may discipline a licensee who has paid a rebate, profit, compensation or commission to any unlicensed person, "except the licensee's principal or other party to the transaction, and then only with that principal's written consent."

"When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or any other consideration, the qualifying broker of the New Mexico brokerage and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral."

Although not specifically applicable to affinity marketing limitations, New Mexico's regulations also provide that a qualifying broker must "assure that when the brokerage cooperates with or makes a referral to, or receives a referral" from a *broker*, it must sign a "transaction specific written co-brokerage or referral agreement."

An associate broker may not receive commissions or fees for real estate activities from anyone other than the qualifying broker with whom he or she was affiliated at the "time the transaction went under contract" (or persons authorized in writing to disburse those commissions or fees).

## **INDUCEMENTS**

No relevant provisions were located.

Statutory section amended 2011. Regulation 16.61.17.9 amended effective 2017; reg. 16.61.16.9 amended effective 2018.

[N.M. Stat. § 61-29-12, -16.1 \(2020\)](#); [N.M. Code R. 16.61.16.9, .17.9 \(2020\)](#)

## **New Mexico, After-the-Fact Referral Fee Limitations**

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Research located no state statutes or regulations specifically prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## **INTERFERENCE**

Brokers owe a professional obligation to other brokers of "[n]on-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant."

Amended 2019.

[N.M. Code R. § 16.61.16.8\(D\)\(7\) \(2020\)](#)

### **New York**

#### **New York, Affinity Marketing Limitations**

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

New York law does not explicitly address affinity-marketing situations. However, a real estate broker may not pay any part of a fee, commission or compensation to a person for any service rendered in buying, selling, or leasing real estate (including the resale of a condominium or cooperative apartment) unless the person is:

- a duly licensed real estate salesman regularly associated with a licensed broker; or
- a person regularly engaged in the real estate brokerage business outside of New York.

A broker may pay any part of a fee, commission or compensation to an unlicensed corporation or limited liability company if each of its shareholders or members is a duly licensed associate broker or salesman of the broker.

#### **INDUCEMENTS**



Unless permitted under the above provisions, a real estate broker may not pay any part of a fee to a person who is or will be a party to the transaction. However, as of December 17, 2014, a real estate broker may offer a portion of the commission to a non-licensed buyer, seller, landlord, tenant, or party to a secured loan, provided the offer is not compensation for services that require a license.

Section amended 2014.

[N.Y. Real Prop. Law § 442 \(2020\)](#)

## New York, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Unless reasonable cause for payment exists, a real estate broker or salesperson may not demand or receive a fee for a referral from any person related to finding:

- a seller after a bona fide listing agreement has been signed;
- a buyer after a bona fide offer to purchase has been accepted; or
- a property after a bona fide buyer agency agreement has been signed.

Violating the above provision constitutes a deceptive act or practice pursuant to § 349 of the N.Y. General Business law.

### **INTERFERENCE**

A real estate broker may not induce a party to a sale or lease contract to break the contract in order to substitute a new contract with another principal.

Statutory section enacted 2002. Regulatory history unknown.

[N.Y. Real Prop. Law § 442-l \(2019\); N.Y. Comp. Codes R. & Regs. tit. 19, § 175.9 \(West 2019\)](#)

## North Carolina

### North Carolina, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no North Carolina statutes or regulations addressing fee sharing in affinity-marketing situations. The regulatory provision prohibiting a licensee from sharing compensation with unlicensed persons addresses only acts performed in North Carolina for which licensure is required. Similarly, North Carolina's statutes explicitly prohibit only:

- paying consideration to a person for acts or services performed in violation chapter 93A; or
- accepting consideration for real estate acts from any person except the person's broker-in-charge or licensed broker that employs him or her.

#### **INDUCEMENTS**

No relevant provisions were located.

Statutory section amended 2011. Regulation amended 2008.

[N.C. Gen. Stat. § 93A-6 \(2019\); N.C. Admin. Code tit. 21, r. 58A.0109 \(2020\)](#)

### North Carolina, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee may not receive a commission, rebate or other valuable consideration with more than a nominal value for services that the licensee recommends, procures, or arranges relating to a real estate transaction for any party, without full and timely disclosure to that party. Also, a licensee may not accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act of 1974.

A broker may pay consideration to a travel agent in return for procuring a tenant for a vacation rental if:

- the travel agent only introduces the tenant to the broker, but does not otherwise engage in an activity requiring a real estate license;
- the travel agent's introduction is made in the regular course of the travel agent's business; and
- the travel agent has not solicited, handled or received any funds in connection with the vacation rental.

## **INTERFERENCE**

No relevant provisions were located.

Regulation amended 2008.

[N.C. Admin. Code tit. 21, r. 58A.0109 \(2020\)](#)

## North Dakota

### North Dakota, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

The Real Estate Commission may discipline a licensee who has paid compensation or a commission to an unlicensed person in connection with a real estate sale or lease.

A North Dakota-licensed broker may divide or share a real estate commission with a licensed broker in another state if the out-of-state broker does not carry on any of the negotiations in North Dakota either by physically entering North Dakota or by communicating with the broker electronically or through other media.

## **INDUCEMENTS**

No relevant provisions were located.

Section amended 2007.

[N.D. Cent. Code § 43-23-11.1 \(2019\);](#)

North Dakota, After-the-Fact Referral Fee Limitations

## **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

## **INTERFERENCE**

A real estate licensee may not negotiate a real property sale, exchange, lease, or listing contract directly with an owner for compensation from the owner or a purchase, exchange, lease, or exclusive right to buy contract with a buyer, if the licensee knows that the owner or buyer has a written unexpired contract that grants to another broker an exclusive right to sell, an exclusive agency, or an exclusive right to buy. This requirement does not preclude a licensee from entering into an agency contract with an owner or a buyer who is a party to an existing agency contract if:

- the owner or buyer (and not the licensee) initiates the contact; and
- the agency contract does not become effective until after the existing agency contract's expiration or release.

Regulation 70-02-03-11 amended 2002; reg. 70-02-03-03 amended 2015.

## Ohio

### Ohio, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

No provisions were located specifically applicable to fee sharing in affinity marketing situations. However, unless permitted by § 4735.20, the Ohio Real Estate Commission may discipline a licensee for dividing commissions or fees with an unlicensed person, unless the person is commercial real estate broker or salesperson licensed in another state or country. Section 4735.20 generally provides that a licensee may not pay a commission, fee, or other compensation for performing real estate services to an unlicensed person who is not a foreign real estate licensee.

Ohio regulations provide that an Ohio real estate broker may pay a commission or referral fee to a licensed real estate broker of another state or another country who refers clients or prospects to the Ohio real estate broker. Except as provided in Ohio Rev. Stat. § 4735.022 (regarding commercial real estate), the out-of-state broker who refers clients or prospects to an Ohio real estate broker may not perform any other real estate acts with regard to Ohio property unless he or she first obtains an Ohio real estate license. A licensed Ohio real estate broker may receive a commission or referral fee from a licensed real estate broker of another state or another country for referring clients or prospects to the out-of-state licensed real estate broker.

An affiliated licensee may share a fee or other compensation with an unlicensed entity provided that certain conditions are satisfied, including the requirement that at least one individual associated with the entity is licensed.

#### **INDUCEMENTS**

The Ohio Real Estate Commission may discipline a licensee for offering:

- anything of value other than the consideration set forth in the sales contract to induce a person to enter into a purchase or sale contract; or

- real estate or improvements as a prize in "a lottery or scheme of chance."

Section 4735.18 amended 2019; § 4735.20 amended 2011. Regulation 1301:5-5-06 amended 2012.

[Ohio Rev. Code §§ 4735.18\(A\), 20 \(2019\); Ohio Admin. Code 1301:5-5-06 \(2020\)](#)

## Ohio, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Ohio laws do not address unearned referral fees in detail. However, the Ohio Real Estate Commission generally may discipline a licensee who:

- as a real estate broker, demands without reasonable cause, other than from a licensed broker, a commission to which the licensee is not entitled; or
- as a real estate salesperson, demands without reasonable cause, a commission to which the licensee is not entitled.

### **INTERFERENCE**

The Ohio Real Estate Commission may discipline a licensee for:

- inducing a party to a sale or lease contract to break the contract for the purpose of substituting a new contract with another principal; or
- negotiating the sale, exchange, or lease of any real property directly with a seller, purchaser, lessor, or tenant, knowing that the person has an outstanding exclusive contract with another real estate broker, except as provided in § 4735.75. Section 4735.75 provides that a broker with a written exclusive agreement may authorize other licensees to negotiate directly with his or her client, provided the authorization is in writing and the broker complies with § 4735.621. Negotiations conducted by a licensee pursuant to an authorization do not create or imply an agency relationship between the licensee and the exclusive broker's client.

Section 4735.18 amended 2019; § 4735.75 enacted 2006.

[Ohio Rev. Code §§ 4735.18, .75 \(2019\)](#)

## Oklahoma

### Oklahoma, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

The Oklahoma Real Estate Commission may discipline a licensee for paying part of a fee, commission, or other consideration to an unlicensed person. Pursuant to regulation 605:10-11-3, a broker's payment of a commission to an associate's corporation or association does not constitute the payment of a fee to an unlicensed person provided:

- the associate's corporation or association does not perform (or hold itself out as engaged in) any act requiring a real estate license;
- the associate must have an active individual real estate license;
- the broker must provide the Commission with a written statement "approving of the associate's corporation or association";
- the associate must be the corporation's majority stockholder and president or the association's majority member;
- ownership must be limited to spouses and blood relatives;
- the associate's corporation or association may not advertise nor receive referral fees except from the associate's broker; and

- the broker and associate must complete and sign a Commission-approved form containing the provisions required by regulation.

Regulation 605:10-7-8.4 contains a similar provision that applies to a managing broker, broker proprietor, or branch broker's corporation or association formed to receive compensation.

Pursuant to regulation 605:10-15-1, no licensee may, without disclosing such fact in writing to all parties on both sides of the transaction, either:

- accept "any fee, commission, salary, rebate, kickback or other compensation or consideration allowed by law in connection with the recommendation, referral or procurement of any product or service, including financial services;" or
- "[o]wn any beneficial interest in any entity which provides any product or service, including financial services to home owners, home buyers or tenants, in connection with the sale, lease, rental or listing of any real estate."

Activities or interests of associates must ordinarily be disclosed to his or her broker who has the primary responsibility to make written disclosures to the parties. If any associate owns any beneficial interest in any entity which provides any product or service, including financial services, to home owners, home buyers, or tenants, the associate has a continuing obligation to disclose the nature and extent of such interest to his or her broker.

All required disclosures must be made:

- either prior to or at the time that any recommendation, referral or procurement of any product or service is made in instances in which the licensee may receive any compensation or consideration in connection therewith; or



- at or before the time that it becomes apparent to the licensee that any entity in which he or she owns any beneficial interest may provide any product or service in instances in which the disclosure of any such ownership is required.

## **INDUCEMENTS**

The Oklahoma Real Estate Commission may discipline a licensee for soliciting, selling, or offering real estate for sale by:

- offering free lots;
- conducting lotteries or contests; or
- offering prizes to influence a purchaser or prospective purchaser.

However, a broker may, or authorize an associate to, promote a seller incentive with the seller's consent. The publicity must clearly indicate the incentive is being offered by the seller, not the licensee, and that the promotion applies only to the seller's property.

Statutory section amended 2019. Regulation 605:10-11-3 amended 2012; r. 605:10-7-8.4 adopted 2012; r. 605:10-9-4 amended 2018; r. 605:10-15-1 amended 1999.

[Okla. Stat. Ann. tit. 59, § 858-312 \(2018\); Okla. Admin. Code §§ 605:10-7-8.4, -9-4\(a\)\(9\), -11-3, -15-1 \(2020\)](#)

## Oklahoma, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No provisions were located explicitly applicable to unearned referral fees.

## INTERFERENCE

No relevant provisions were located.

## Oregon

### Oregon, Affinity Marketing Limitations

#### RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS

A licensee may not give, pay or rebate, directly or indirectly, any part of his or her compensation or pay a finder's fee to an unlicensed person, except in the case of certain cooperative sales if the payment is to a broker licensed in another state or country. In that case:

- the other state or country must have a law permitting real estate brokers to cooperate with real estate brokers or principal real estate brokers in Oregon; and
- the nonresident broker may not conduct in Oregon any "acts constituting professional real estate activity and for which compensation is paid."

A property manager licensee may not pay or accept a referral fee from or share in a commission paid to a real estate broker for any activity involving the sale, purchase, lease-option, appraisal, or exchange of real estate. However, the "licensee may charge, pay, receive, or accept a referral fee or finder's fee from *or to* a real estate broker or another real estate property manager for finding or referring an owner, renter, or lessee in real estate property management activity." (Emphasis added.)

#### INDUCEMENTS

*"Free" items*

Regulations regarding general unlawful trade practices provide that a person engages in unfair or deceptive conduct if he or she makes a free offer in conjunction with the purchase or lease of real estate, and:

- the "price, size, quantity, or quality" of the item is "normally arrived at through bargaining with potential purchasers, unless the 'free' item is offered by a manufacturer or another party that is not the seller and there is no direct cost to the seller";
- the "item to be purchased or leased can be purchased or leased for a lesser price without the 'free' item";
- the purchased item's price is higher than its regular price;
- the offer is deceptive or misleading; or
- the offer is made during a home solicitation, unless the offer meets certain requirements.

Also, a person engages in unfair or deceptive conduct if he or she:

- "makes a free offer and in order to qualify for the offer, the recipient will be given a presentation intended to result in the . . . sale or lease of real estate . . . unless the offer contains a clear and conspicuous disclosure" containing specified provisions;
- makes a free offer in conjunction with the purchase or lease of real estate, and, in order to receive the "free" offer, the recipient must pay money (in addition to real estate's cost) in order to accept or use the "free" offer, including postage, shipping, storage, handling, processing, registration, or verification;
- offers free goods or services on a random basis and fails to retain for at least one year a list of the names and addresses of all persons receiving free goods or services with a retail value of \$10 or more; or
- makes a free offer in conjunction with the purchase or lease of real estate, the offer is subject to any terms, conditions or limitations in order to accept or use the "free" offer, and the person fails

- to "clearly and conspicuously display in an advertisement of the 'free' offer all material terms, conditions, and limitations of accepting the 'free' offer,"
- to disclose "clearly and conspicuously . . . all terms, conditions, and limitations of accepting the 'free' offer" before consummating the transaction, and
- to give the consumer a "meaningful opportunity to reject the offer."

### *Rebates*

A person engages in unfair or deceptive conduct if he or she makes a rebate offer in conjunction with a real estate purchase or lease, if:

- the rebate offer is "deceptive or misleading";
- the "price, size, quantity, or quality of [the rebated item] . . . is normally arrived at through bargaining with potential purchasers, unless the rebate is offered by a manufacturer or another party that is not also the seller, independent of the seller and without the seller's participation"; or
- the rebate advertisement or solicitation "fails to clearly and conspicuously display in close proximity to the rebate offer all material terms, conditions, limitations and costs of receiving the rebate."

Statutory section 696.301 amended 2017; § 696.290 amended 2017. Regulation 137-020-0015 amended 2007; r. 863-024-0045 amended 2017.

[Or. Rev. Stat. §§ 696.290\(1\), .301 \(2019\); Or. Admin. R. 137-020-0015, 863-024-0045 \(2020\)](#)

## Oregon, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

### **INTERFERENCE**

The real estate commissioner may discipline a licensee for intentionally interfering with:

- others' contractual relationships involving real estate or real estate activities; or
- another licensee's exclusive brokerage relationship.

Section amended 2017.

[Or. Rev. Stat. § 696.301 \(2019\)](#)

## Pennsylvania

### Pennsylvania, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Pennsylvania statutes and regulations do not address fee sharing in affinity-marketing situations. However, Pennsylvania statutes generally provide that the Commission may discipline a licensed broker for paying a commission or other consideration to anyone other than his licensed employees or another real estate broker for performing real estate services.

A licensee who provides financial services, title transfer and preparation, insurance, construction, repair or inspection services, may not require a consumer to use any of these services. If a consumer

elects to any such services, the licensee must "provide the consumer with a written disclosure of any financial interest, including, a referral fee or commission, that the licensee has in the service. This disclosure shall be made at the time the licensee first advises the consumer that an ancillary service is available or when the licensee first learns that the consumer will be using the service."

## **INDUCEMENTS**

The Commission may discipline a licensed broker for soliciting, selling or offering for sale real property by offering free lots, conducting lotteries or contests, or offering prizes to influence by deceptive conduct any real property purchaser or prospective purchaser. Any offering by mail or by telephone of any prize, gift, award or bonus must be accompanied by the following:

- a statement of the fair market value, not the suggested retail price, of all prizes offered;
- a clear statement of the odds of receiving a prize;
- if the prize is a rebate, coupon or discount certificate, a statement of that fact; and
- if the offering is by mail, a statement of any fees and their maximum amount, including any dealer preparation, shipping, handling, redemption and shipping insurance.

An offering by mail must be clear and coherent, using common usages of words and terms. The offering must include:

- a concise description of the real property or interest being promoted;
- if applicable, a statement that the interest is a time share; and

- if applicable, the fact that the prospective prizewinner must personally visit and inspect the real property or interest being promoted and listen to a sales presentation in order to win a prize.

An offering may include instructions for a recipient to contact a certain telephone number within a specified time period or by a specified date, if the offeror identifies the business entity and its relationship to the offeror and complies with the above requirements.

The offeror may substitute prizes having equal or greater fair market value if he or she complies with the above requirements. In this context, "prize" includes, but is not limited to, money, personal property, vacations, travel certificates, motor vehicles and appliances.

Effective February 4, 2008, if a prospective purchaser must attend a timeshare sales presentation, the offering must include the additional disclosures set forth in 63 Pa. Cons. Stat. Ann. § 455.604(a)(18)(v).

Pennsylvania regulations require a licensee's advertisement soliciting, selling or offering for sale real estate by using lotteries or contests or that offers prizes, certificates, gifts or free lots must contain:

- a description of the prize, certificate, gift or lot;
- the prerequisites for receiving each inducement;
- a limitation on the number of items offered;
- the fair market value of each item; and
- the odds of winning or receiving each offered prize, certificate, gift or lot.

A licensee who offers prizes, certificates, gifts or lots must maintain records that contain:

- the number and description of each item awarded;
- the name and address of each person who received an item; and
- the name and address of each person who responded to the advertisement but did not receive a prize, certificate, gift or lot.

It is deceptive conduct for a licensee:

- not to disclose the possibility that a particular prize, certificate, gift or lot may not be distributed or awarded;
- to advertise the availability of an item that is not available for distribution; or
- to give a misleading description of a prize, certificate, gift or lot.

Statutory section amended 2009. Regulations adopted 1989; reg. 35.283 amended 2002.

[63 Pa. Stat. § 455.604\(a\)\(18\) \(West 2020\); 39 Pa. Code §§ 35.283, .306 \(2020\)](#)

## Pennsylvania, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

### **INTERFERENCE**



The Commission may discipline a licensee that induces a party to a contract, sale or lease to break the contract in order to substitute a new contract, if the substitution is motivated by the licensee's personal gain.

Section amended 2009.

[63 Pa. Stat. § 455.604\(a\)\(11\) \(West 2020\)](#)

## Puerto Rico

### Puerto Rico, Affinity Marketing Limitations

No relevant provisions were located.

### Puerto Rico, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

#### **INTERFERENCE**

A licensee may not induce a party in a real estate transaction to rescind a valid contract to make a new one in order to benefit the broker, salesperson, or a real estate enterprise.

Section amended 2006.

P.R. Laws tit. 20, § 3054 (LexisNexis 2019)

## Rhode Island

### Rhode Island, Affinity Marketing Limitations

#### **REFERRAL FEE RECIPIENT RESTRICTIONS**

No provisions were located explicitly restricting referral fees in affinity-marketing situations. Rhode Island statutes provide only that a licensee may be disciplined for paying a part of his compensation to a person who is not licensed as a real estate broker if the recipient should be licensed or is not a salesperson employed by the licensee.

Note that a title insurer or other person may not give or receive consideration for the referral of title insurance business or escrow or other service provided by a title insurer. This restriction does not affect a title insurer's ability to pay persons or entities who provide core services.

## **INDUCEMENTS**

A licensee may be disciplined for soliciting, selling, or offering for sale real property by offering free lots, conducting lotteries or contests, or offering prizes to influence a purchaser or prospective purchaser.

Also, a licensee may not advertise or distribute promotional materials offering rebates or discounts, such as discount plans or coupons redeemable for discounted goods or services, if the advertisement or promotional material “creates a likelihood of confusion or misunderstanding or is false, deceptive or misleading to the reasonable person.” The advertisement or promotional material must clearly disclose all material terms and conditions of the offering.

A licensee may not pay the seller's costs or make any payments to reduce interest costs.

Section 5-20.5-14 amended 2019; § 27-2.6-14 enacted 2010. Regulation amended 2017.

[R.I. Gen. Laws §§ 5-20.5-14, 27-2.6-14 \(2019\); 230 R.I. Code R. 30-20-2.25\(M\), \(N\) \(2020\)](#)

## Rhode Island, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No specifically relevant provisions were located. Generally, a director may discipline a licensee for paying, accepting, giving, or charging an undisclosed commission, rebate, compensation, profit or expenditure for a principal.

## INTERFERENCE

A licensee may be disciplined for:

- inducing a party to a contract, sale, or lease to break the contract in order to substitute a new contract, if the substitution is motivated by the licensee's personal gain; or
- negotiating the sale, exchange or lease of real property directly with an owner or lessor knowing that the party has an exclusive listing contract with another licensee, unless another broker's client contacts the licensee and the licensee does not initiate the discussions, in which case the parties may either (a) discuss the terms under which they may enter into a future agency agreement, (b) enter into an agency agreement to become effective upon terminating an existing exclusive agreement, or (c) enter into an agreement for services not covered by the existing agency relationship.

Section amended 2019.

[R.I. Gen. Laws § 5-20.5-14 \(2019\)](#)

## South Carolina

### South Carolina, Affinity Marketing Limitations

#### RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS

No provisions were located explicitly addressing referral fees in affinity-marketing situations. However, the South Carolina Real Estate Commission may take disciplinary action against a licensee who pays a commission or compensation to an unlicensed individual for activities requiring a license. A licensee "may not pay or offer to pay a referral fee or finder's fee to an unlicensed individual that is not a party in the real estate transaction."

An unlicensed employee of the owner or an unlicensed individual working for a licensee may not negotiate or agree to compensation or commission on behalf of a licensee, including referral fees.

However, a South Carolina licensee may pay a part of his or her commission as a referral fee on a cooperative basis to a brokerage of another state or jurisdiction if that brokerage's licensee does not conduct, in South Carolina, a real estate brokerage service for which a fee, compensation, or commission is paid.

## **INDUCEMENTS**

No relevant provisions were located.

Sections amended 2017.

[S.C. Code Ann. §§ 40-57-120, -135\(K\)\(9\), -710\(A\)\(12\) \(2019\)](#)

South Carolina, After-the-Fact Referral Fee Limitations

## **PROHIBITION OF UNEARNED REFERRAL FEES**

No relevant provisions were located.

## **INTERFERENCE**

The South Carolina Real Estate Commission may take disciplinary action against a licensee who takes actions inconsistent with the agency relationship that other real estate licensees have established with their clients.

Section amended 2017.

[S.C. Code § 40-57-710\(A\)\(24\) \(2019\)](#)

South Dakota

South Dakota, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no South Dakota statutes or regulations specifically addressing affinity marketing. However, it is unprofessional conduct for a licensee to pay compensation or a commission to any unlicensed person in connection with a real estate transaction.

## **INDUCEMENTS**

No relevant provisions were located.

Section amended 2013.

[S.D. Codified Laws § 36-21A-71\(12\) \(2019\)](#)

## South Dakota, After-the-Fact Referral Fee Limitations

Research located no state statutes or regulations specifically applicable to after-the-fact referral fees.

## Tennessee

### Tennessee, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Tennessee law prohibiting a licensed broker from compensating a person who is not a licensed broker or affiliate broker, addresses only compensation for performing the acts regulated by chapter 62-13.

## **INDUCEMENTS**

A licensee may offer a gift, prize, or other valuable consideration as an inducement to the purchase, listing, or lease of real estate only if the offer:

- is made “under the sponsorship and with the approval of the firm with whom the licensee is affiliated”; and

- is in writing, is signed by the licensee, and discloses all pertinent details, including accurate specifications of the offered item, its fair market value, the delivery time and place, and any requirements the prospective purchaser or lessor must satisfy.

A licensee may not pay cash rebates, cash gifts, or cash prizes in conjunction with a real estate transaction. The Tennessee Real Estate Commission may regulate the "practices of real estate licensees in regard to gifts, prizes or rebates that are not otherwise prohibited by law."

An offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must:

- be in writing; and
- disclose all pertinent details on the face of the offer or advertisement.

Statutory section amended 2007. Regulation 1260-02-.33 amended 2008; r. 1260-02-.12 amended 2017.

Tenn. Code § 62-13-302 (LexisNexis 2020); [Tenn. Comp. R. & Regs. 1260-02-.12, .33 \(2019\)](#)

## Tennessee, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A person or entity may not solicit or request a referral fee from a licensee without reasonable cause. "Reasonable cause" exists for a party seeking a referral fee only if the party actually introduced the business to the real estate licensee from whom the referral fee is requested and at least one of the following other relationships also exists:

- a sub-agency;
- a contractual referral fee; or

- a contractual cooperative brokerage.

Although reasonable cause allows a licensee to solicit or request a referral fee, it does not necessarily mean that the licensee has a legal right to the fee.

## **INTERFERENCE**

A person may not threaten to reduce or withhold employee relocation benefits or to take other action adverse to a licensee's client's interests because of an agency relationship.

A real estate licensee, a relocation firm, or a firm with a corporate relocation policy or benefits may not counsel a client of another real estate licensee on how to terminate or amend an existing agency contract. However, communicating corporate relocation policy or benefits to a transferring employee is permitted, as long as the communication does not involve advice or encouragement on how to terminate or amend an existing agency contract. The Commission may discipline a licensee who is guilty of inducing a party to a sale or lease contract to break the contract in order to substitute a new contract, if the substitution is malicious or motivated by the licensee's personal gain.

Tennessee regulations address a licensee's responsibilities regarding a *buyer's* contact with other licensees if the parties enter into an exclusive buyer representation agreement. Pursuant to the regulation, a licensee that enters into a buyer representation agreement must advise and confirm the following to the buyer in writing:

- that the buyer should view or inspect property through the licensee and should not directly contact other licensees;
- that the buyer should immediately inform any other licensee the buyer may come into contact with that he or she is represented by the licensee; and
- whether the buyer will owe a commission if the buyer purchases property through another licensee and without the licensee's assistance or directly from an owner.

Sections 62-13-602, 62-13-603, and 62-13-604 enacted 1999; § 62-13-312 amended 1994; § 62-13-105 amended 1989. Regulation adopted 2006.

Tenn. Code §§ 62-13-105, -312(b)(10), -602, -603, -604 (LexisNexis 2020); [Tenn. Comp. R. & Regs. 1260-02-.36 \(2020\)](#)

## Texas

### Texas, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Texas law generally provides that a licensed broker may not pay a commission to or otherwise compensate an unlicensed person directly or indirectly for performing the acts of a broker. The Commission may discipline a licensee who pays or shares a commission or a fee with an unlicensed person, other than a person licensed in another state, for providing real estate agent services.

However, a person need not be licensed as a real estate broker or salesperson if all of the following are met:

- the person is in the business of selling goods or services to the public;
- the person sells goods or services to a real estate license holder who intends to offer them as an inducement to potential buyers, sellers, landlords or tenants;
- after selling the goods or services to the real estate license holder, the person refers the person's customers to the real estate license holder; and
- the payment to the person for the goods or services is not contingent upon the person's customers consummating a real estate transaction.

#### **INDUCEMENTS**

The above provision regarding sharing fees with persons in the business of selling goods and services presupposes that certain inducements are acceptable. Also, giving gifts as an inducement for prospective



clients does not violate Tex. Admin. Code tit. 22, § 535.149 or Tex. Occ. Code §1101.652(b)(14), but license holders procuring prospects must otherwise comply with the provisions of regulation 535.20.

The commission may suspend or revoke a license or discipline a licensee if the licensee "solicits, sells, or offers for sale real property by means of a lottery."

Sections 1101.651 amended 2015; § 1101.652 amended 2019. Regulations 535.20 and 535.149 amended 2014.

[Tex. Occ. Code §§ 1101.651, .652 \(2019\); Tex. Admin. Code tit. 22, §§ 535.20, .149 \(2020\)](#)

## Texas, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES AND RELEVANT LICENSING REQUIREMENTS**

Generally, a person may not maintain an action to recover a commission for the sale or purchase of real estate unless the agreement on which the action is based is in writing and signed by the party against whom the action is brought.

Also, Texas regulations explicitly require a person referring a prospective buyer, seller, landlord, or tenant to another person in connection with a proposed real estate transaction to be licensed if the person making the referral expects to receive valuable consideration. "Valuable consideration" includes money or gifts with a retail value greater than \$50, rent bonuses and discounts.

A license holder may not receive a commission, rebate, or fee from a person other than the person the license holder represents without:

- first disclosing to the license holder's client that the license holder intends to receive the amount; and
- obtaining the client's consent.

This restriction does not apply to referral fees paid by one real estate licensee to another real estate licensee.

If a party the license holder does not represent agrees to pay a service provider, the license holder must also obtain that party's consent to accept a fee, commission, or rebate from the service provider.

A license holder may not "accept a fee or payment for services provided for or on behalf of a service provider to a real estate transaction the payment of which is contingent upon a party to the real estate transaction purchasing a contract or services from the service provider." A license holder must use specified disclosure forms to disclose payments received from a resident service company.

## **INTERFERENCE**

The Commission may discipline a licensee who negotiates or attempts to negotiate the sale, exchange, or lease of property with an owner, landlord, buyer, or tenant that he knows is a party to an exclusive agency contract with another broker.

Although a license holder may not attempt to negotiate a sale, exchange, lease, or rental of property under an exclusive listing with another broker, a license holder may solicit a listing from the owner while the owner's property is subject to an exclusive listing with another broker.

Sections 1101.652 amended 2019; § 1101.806 amended 2015. Regulations 535.20 and 535.153 amended 2014; 535.148 amended 2015.

[Tex. Occ. Code §§ 1101.652\(b\), .806\(b\) \(2019\); Tex. Admin. Code tit. 22, §§ 535.20, .148, .153 \(2020\)](#)

## Utah

### Utah, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

No specifically applicable provisions were located.

Generally, a licensee may not pay a finder's fee or give valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction. However, a licensee may give a gift valued at \$250 or less to an individual for an unsolicited referral of a prospect that resulted in a real estate transaction.

Although not specifically applicable, note that a real estate school's owner or director may not:

- give valuable consideration to a real estate brokerage or licensee for referring students to the school; or
- accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage.

Also, a person transacting residential mortgage loan business in Utah may violate the referral fee provisions of section 8 of RESPA.

### **INDUCEMENTS**

An inducement gift is permitted and is not illegal commission-sharing "if the principal broker or affiliated licensee offering the inducement gift to a buyer or a seller complies with the underwriting guidelines that apply to any loan in the transaction for which the inducement has been offered." A closing gift is also permissible.

An individual licensee, when offering an inducement to a buyer who will not pay a real estate commission in a transaction, must:

- be authorized from the licensee's principal broker to offer the inducement;
- comply with all underwriting guidelines that apply to the borrower's loan; and

- provide notice of the inducement by any method to the seller's agent's principal broker, if the seller is represented, or to the seller, if the seller is not represented.

Sections 61-2c-102 amended 2020; § 61-2c-301 amended 2020. Regulatory chapter R162-2f amended 2019.

[Utah Code §§ 61-2c-102, -301](#) (both as amended by [2020 Utah Laws ch. 72 \(H.B. 147\)](#)); [Utah Admin. Code R162-2f-401a, -401b\(12\), -401d\(2\), -401\(i\) \(2020\)](#)

## Utah, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

A licensee generally may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction. However, a licensee may give a gift valued at \$150 or less to an individual for an unsolicited referral of a prospect that resulted in a real estate transaction.

Also, a licensee may not:

- subject a principal to paying a double commission without the principal's informed consent; or
- accept a referral fee from a lender or a mortgage broker.

### **INTERFERENCE**

A licensee may not enter or attempt to enter into a concurrent agency representation agreement if the licensee knows or should know that the party has an existing agency representation agreement with another licensee.

Regulatory chapter R162-2f amended 2019.

[Utah Admin. Code R162-2f-401b\(10\)–\(13\) \(2020\)](#)

## Vermont

### Vermont, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

A licensee may not compensate an unlicensed person, either directly or indirectly, for performing brokerage services. However, a licensee may reduce or share a portion of his or her commission “to the benefit of the seller or buyer, so long as it is not compensation for the performance of brokerage services.”

Generally, a referral fee may be paid or received for referring a prospect to another brokerage firm licensed in Vermont or another jurisdiction, so long as the referral-fee agreement is in writing.

#### **INDUCEMENTS**

No relevant provisions were located.

Regulatory chapter amended 2015.

[04-030-290 Vt. Code R. § 4.13 \(2020\)](#)

### Vermont, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

No specifically relevant provisions were located. However, a brokerage firm may receive only the compensation set forth in:

- a written agreement signed by the firm and its client; or
- an agency agreement with a firm that has such a written agreement.

## **INTERFERENCE**

No relevant provisions were located.

Regulatory chapter amended 2015.

[04-030-290 Vt. Code R. § 4.13 \(2020\)](#)

## Virgin Islands

### Virgin Islands, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

A licensee's license may be revoked or suspended if he or she divides a commission or other valuable consideration with "any person who is not authorized to engage in the real estate business."

#### **INDUCEMENTS**

No relevant provisions were located.

Statute amended 1986.

27 V.I. Code Ann. § 429(b)(9) (LexisNexis 2019)

### Virgin Islands, After-the-Fact Referral Fee Limitations

#### **PROHIBITION OF UNEARNED REFERRAL FEES**

Research located no statutes explicitly prohibiting unearned referral fees.

## **INTERFERENCE**

No broker or salesman may attempt to obtain an exclusive listing or sales contract from an owner if the licensee knows or has reason to believe that another broker has an exclusive listing on the property, unless the licensee has written permission from the broker with the first exclusive listing.

Also, Virgin Islands' regulations provide that the agency of a broker with an exclusive listing must be respected. A broker cooperating with a listing broker may not invite a third broker's cooperation without the listing broker's consent.

Regulations effective 1972.

27-015-000 V.I. Code R. §§ 422-1, -51 (2020)

## Virginia

### Virginia, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Virginia statutes or regulations specifically addressing affinity marketing. However, a licensee is paying an "improper brokerage commission" if he or she pays a transaction-based fee or other consideration to a person not licensed in Virginia or any jurisdiction for services that require a real estate license.

An attorney referring a client to a licensee may not receive compensation from a listing firm or offered by a common source information company to cooperating brokers, unless the attorney is also licensed as a real estate broker or salesperson.

A controlled subsidiary corporation (or a state bank that owns a controlled subsidiary corporation) that engages in real estate brokerage may not pay its employees for referrals of real estate brokerage business. A state bank that makes a referral to its affiliated real estate brokerage firm must "clearly and conspicuously disclose in writing, in a separate document, to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval

for credit related to a real estate transaction, that the person is not required to consult with, contract for, or enter into an arrangement for real estate brokerage services with its affiliated real estate brokerage firm."

No person performing services as a "real estate agent, attorney, lay settlement agent or lender incident to any real estate settlement or sale," may pay or receive a "kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to services required to complete a settlement be referred to any person." This provision does not prohibit:

- expenditures for advertising and marketing promotions permitted by the federal Real Estate Settlement Procedures Act;
- payments for certain educational materials or classes;
- payment for services actually performed "for the business of the settlement service provider"; or
- an employer's qualified payment to its employees for referrals of mortgage loan or insurance business.

A person does not violate this requirement solely because he or she has an ownership interest in a settlement service provider if specified conditions, including disclosure, are met. A person making a referral to an affiliated settlement service provider must disclose the affiliation as required by the federal Real Estate Settlement Procedures Act. The referring person must make that disclosure regardless of the amount of the person's actual ownership interest in the affiliated provider, unless the person's ownership interest is one percent or less.

## **INDUCEMENTS**

No generally relevant provisions were located. However, the Virginia Banking Act addresses inducements by a real estate brokerage business of a controlled subsidiary of a state bank. A controlled subsidiary corporation may own and transact business as a real estate brokerage firm only if it, among other things, does not:



- offer more favorable consideration, terms, or conditions for any financial products or services to induce a person to enter into an arrangement for real estate brokerage services with any particular real estate brokerage firm; or
- offer or provide more favorable terms or conditions for any real estate brokerage services to induce a person to apply for a loan or obtain any other services from a particular bank or any of its subsidiaries, affiliates, or service entities.

Actions constituting engaging in improper, fraudulent, or dishonest conduct, include a licensee "attempting to divert commission from the firm or sole proprietorship and direct payment to a licensee or an unlicensed individual who is not a party to the transaction."

Statutory section 6.2-888 amended 2019; §§ 55.1-904 and 55.1-905 renumbered and recodified 2019; § 55.1-904 renumbered as § 55.1-1009.1 effective July 1, 2020 pursuant to [2020 Va. Laws ch. 700](#)); § 54.1-2103 amended 2019. Regulations amended 2015.

[Va. Code §§ 6.2-888; 54.1-2103; 55.1-904](#) (to be renumbered as § 55.1-1009.1, effective July 1, 2020), [-905 \(2019\)](#); [18 Va. Admin. Code § 135-20-260, -280 \(2020\)](#)

## Virginia, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Research located no provisions specifically prohibiting unearned referral fees, but a licensee may not "receive financial benefit from the use of any information about the property, the transaction, or the parties to the transaction, when the information is gained as a result of the performance of acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia" without the licensee's principal broker's prior written consent. An action resulting in an improper brokerage commission includes "receiving financial benefit or other valuable consideration for any work or service related to a transaction without the prior written acknowledgment of the person paying for such work or service."

### **INTERFERENCE**

No relevant provisions were located.

Regulation amended 2015.

[18 Va. Admin. Code § 135-20-280 \(2020\)](#)

## Washington

### Washington, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Except in certain situations involving a manufactured housing retailer, a licensed firm, broker, or managing broker may not pay any part of the licensee's commission or compensation to a person who performs "real estate brokerage services," but is not a licensed real estate firm, broker, or managing broker in any state or foreign jurisdiction with a real estate regulatory program.

Also, chapter 18.85 (which addresses real estate licensing) does not apply to a "person providing referrals to licensees who is not involved in the negotiation, execution of documents, or related real estate brokerage services, and [whose] compensation is not contingent upon receipt of compensation by the licensee or the real estate firm."

A "real estate licensee or person who has a controlling interest in a real estate business" may not give a "fee, kickback, payment, or other thing of value to any other real estate licensee as an inducement, reward for placing title insurance business, referring title insurance business, or causing title insurance business to be given to a title insurance agent in which the real estate licensee or person having a controlling interest in a real estate business also has a financial interest."

Regulation 308-124C-050 (which previously provided that if a licensee refers a home inspector to a buyer or seller with whom they have or have had a relationship, the licensee must provide full disclosure of the relationship in writing before the buyer or seller uses the home inspector's services) was repealed effective July 1, 2010. However, state regulations still require brokers to regulate referrals to home inspectors.

#### **INDUCEMENTS**

No specifically relevant provisions were located. However, generally, a licensee may be disciplined if he or she makes, prints, publishes, or distributes, "false statements, descriptions or promises of such character as to reasonably induce any person to act thereon," if:

- the statements, descriptions, or promises "purport to be made or to be performed by either the licensee or his or her principal"; and
- the licensee knew or reasonably could have known the statements, descriptions, or promises were false.

Sections 18.85.301 and 18.85.361 amended and recodified 2008; § 18.85.053 enacted 2008; § 18.85.151 amended 2012. Formerly applicable regulation 308-124C-050 repealed 2010; r. 308-124C-125 amended 2010.

[Wash. Rev. Code Ann. §§ 18.85.151, .301, .361, .053 \(2019\); Wash. Admin. Code 308-124C-125 \(2020\)](#)

## Washington, After-the-Fact Referral Fee Limitations

Research located no state statutes or regulations specifically prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## West Virginia

### West Virginia, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no West Virginia statutes or regulations specifically addressing affinity marketing. However, the Real Estate Commission may discipline a licensee who:

- pays or receives a rebate, profit, compensation, commission or other consideration, resulting from a real estate transaction, to or from any person other than the licensee's principal, except that licensed brokers may share compensation; or

- pays compensation to any person knowing they will pay a portion or all of it in a manner that would violate article 30-40 if the licensee paid it directly.

## **INDUCEMENTS**

A licensee may offer to clients or consumers commission fee rebates, inducements, or other discounts, if the licensee:

- discloses clearly and conspicuously in writing the terms of any rebate, inducement, or other discount;
- discloses clearly and conspicuously in writing the fair market value of any rebate, inducement or other discount; and
- offers the rebates, inducements, or other discounts only under the employing broker's direct supervision and in his or her name.

A licensee may not accept, give, or charge any form of undisclosed compensation, consideration, rebate, inducement or other discount to a client or consumer.

An advertisement that employs lotteries or contests or that offers prizes, certificates, gifts, or free lots must be under the employing broker's direct supervision and in his or her name. The advertisement must contain:

- a description of each prize, certificate, gift, lot, or other consideration offered;
- the prerequisites for receiving a prize, certificate, gift, lot, or other consideration offered;
- the limitation on the number of prizes, certificates, gifts, lots, or other valuable consideration offered;
- the fair market value of each prize, certificate, gift, or lot; and

- the odds of winning or receiving each prize, certificate, gift, or lot.

A licensee who offers prizes, certificates, gifts, or lots must maintain the required records on each offering for five years.

Notwithstanding the above restrictions, a licensee may:

- provide a closing gift of nominal value to a party without the employing broker's approval;
- discuss or negotiate the compensation the licensee agrees to charge for his or her services; or
- disseminate "information about special terms, conditions or other offers which are bona fide offers made by a principal to a real estate transaction."

Statutory section enacted 2002. Regulation amended 2018.

[W. Va. Code § 30-40-19 \(2019\)](#); [W. Va. Code R. § 174-1-18 \(2020\)](#)

## West Virginia, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

Research located no provisions specifically prohibiting unearned referral fees or limiting after-the-fact referral fees. However, a licensee generally may not insert in any contract for representation a provision obligating the person signing the contract to pay a fee, commission or other consideration to the broker after the contract's expiration date, if the person subsequently enters into a contract for representation with a different broker.

### **INTERFERENCE**

The Real Estate Commission may discipline licensee who:

- induces a person to break a contract in order to substitute a new contract with a third party;
- induces a person “to alter, modify or change another licensee's fee or commission for brokerage services, without that licensee's prior written consent”; or
- negotiates a real estate transaction directly with a person represented exclusively by another broker, unless specifically authorized by the other broker.

Sections enacted 2002.

[W. Va. Code §§ 30-40-19, -26 \(2019\)](#)

## Wisconsin

### Wisconsin, Affinity Marketing Limitations

#### **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no provision specifically addressing fee restrictions in affinity-marketing situations. However, a licensed broker may not pay a fee or commission for performing an act specified in chapter 452 or as a referral or finder's fee to any person who is not licensed in Wisconsin or not regularly and lawfully engaged in the real estate brokerage business in another state or foreign country. Also, a broker providing brokerage services may not:

- accept a fee or compensation related to the transaction from any person other than the broker's client, unless the broker has the written consent of all parties; or
- except as permitted by § 452.19, refer or recommend the services of an individual or entity from which the broker may receive compensation for a referral or in which the broker has an interest, unless the broker has disclosed that he or she may receive compensation or has disclosed his or her interest.

If a licensee is associated with a firm, all fees or commission and any part thereof for performing any act specified in chapter 452 and all compensation for a referral or as a finder's fee must be paid to the firm.

## **INDUCEMENTS**

No relevant provisions were located.

Section 452.19 amended 2017; § 452.133 amended 2017.

[Wis. Stat. Ann. §§ 452.19, .133 \(2020\)](#)

## Wisconsin, After-the-Fact Referral Fee Limitations

Research located no state statutes or regulations specifically prohibiting unearned referral fees or otherwise limiting or addressing after-the-fact referral fees.

## Wyoming

### Wyoming, Affinity Marketing Limitations

## **RELEVANT REFERRAL FEE RECIPIENT RESTRICTIONS**

Research located no Wyoming statutes or regulations specifically applicable to affinity marketing. Wyoming law prohibiting a responsible broker from compensating a person who is not either (a) a licensee associated with his or her real estate company or (b) a responsible broker for another real estate company, restricts payments only to those performing the real estate activities. (Payments to a licensed broker of another state are permitted if the nonresident broker does not conduct any real estate activity in Wyoming for compensation.) Accordingly, the Commission may discipline a licensee for compensating an unlicensed person who performs real estate activity.

## **INDUCEMENTS**

No specifically relevant provisions were located. However, the Commission may discipline a licensee for making a false promise that "influences, persuades, or induces."

Section 33-28-110(a) "does not apply to incentives offered or paid to persons, who on their own behalf, engage the services of a licensee to assist them with the sale or purchase of real estate, provided those persons do not perform any real estate activity." Advertising and/or paying such incentives does not violate any provision of the licensing act or Commission rule.

Section 33-28-110 amended 2017; § 33-28-111 amended 2018. Regulatory chapter amended 2015.

[Wyo. Stat. §§ 33-28-110, -111 \(2019\); Wyo. Rules & Regs., Dept. of Admin. & Info., Real Estate Comm'n, ch. 6, §§ 1\(a\)\(vi\), 3\(c\) \(2019\)](#)

## Wyoming, After-the-Fact Referral Fee Limitations

### **PROHIBITION OF UNEARNED REFERRAL FEES**

No specifically relevant provisions were located. Generally, the seller, the buyer, a third party, or the sharing of compensation between brokers may pay a broker's compensation. Also, a seller may agree that an intermediary, a buyer's agent, a subagent, or a licensee working with a buyer as a customer may share with another broker compensation paid by the seller. Similarly, a buyer may agree that a seller's agent, an intermediary, a subagent, or a licensee working with a seller as a customer may share with another broker the compensation paid by the buyer. However, a licensee may act as an agent only pursuant to a written agreement with the seller or buyer that discloses his duties and responsibilities. A licensee may act as a subagent only pursuant to a written agreement between the seller and the seller's agent authorizing the subagency offer to other responsible brokers or as an intermediary with the seller or buyer. The written agreement must disclose the licensee's statutory duties and responsibilities.

### **INTERFERENCE**

The Real Estate Commission may discipline a licensee for:

- soliciting the breach of a listing or a property management contract; or
- conducting real estate activity directly with a buyer or seller if the licensee knows the buyer or seller has an outstanding written contract with another broker in connection with the real estate.



Section 33-28-308 amended 2017; § 33-28-111 amended 2018; § 33-28-302 amended 2017.

[Wyo. Stat. §§ 33-28-111, -302, -308 \(2019\)](#)