

Important DRE Regulations Regarding Referral Fees & Loan

Q: How does California law regulate referral arrangements made by real estate agents?

A: California law is generally less restrictive than federal law (see, for example, Question 20). However, under California law, a real estate agent may not claim or demand “a commission, fee, or other consideration, as compensation or inducement, for referral of customers” to any of the following:

- Title insurer or underwritten title company;
- Escrow agent;
- Controlled escrow company
- Structural pest control firm; and
- Home protection company.

Q: Does a real estate agent have a duty to disclose the receipt of a referral fee?

A: Yes. If a referral arrangement is legal under both federal and state law, a real estate agent who receives a referral fee should disclose that fee to his or her principal. California licensing laws prohibits a real estate agent from claiming or taking “any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of such licensee the full amount of such licensee’s compensation, commission or profit under any agreement authorizing or employing such licensee to do” licensed acts. Furthermore, a real estate agent owes his or her client a fiduciary duty of utmost care, integrity, honest, and loyalty in their dealings.

Q: Can a real estate licensee pay a referral fee or finder’s fee to an unlicensed person?

A: No, if the resulting transaction falls under RESPA. RESPA generally prohibits a real estate agent from paying a referral fee to anyone. However, a real estate agent may give someone a token of appreciation after receiving a referral. Furthermore, a real estate agent may give a commission rebate to his or her client.

Q: Can a real estate licensee pay a referral fee to another real estate salesperson?

A: No. Although RESPA allows a referral arrangement between real estate agents, California law requires any compensation for a salesperson’ licensed activities to be paid to that salesperson’s employing broker.

Civil Code 10137

DRE allows licensees accept loan compensation from employing broker only

No real estate salesman shall be employed by or accept compensation from any person other than the broker under whom he is at the time licensed. For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee.