

IAR LEGAL HOTLINE



REBATES AND REFERRALS

On the IAR Legal Hotline, we find that many REALTORS® are hesitant to promote their business for fear of violating some licensing law or provision of the **NAR Code of Ethics**. There are a number of ways that you can promote yourself legally and ethically; it is simply a matter of knowing the restrictions on what you can say and do in the way of marketing yourself. For example, some REALTORS® think any type of “rebate” is strictly illegal, but nothing could be further from the truth.



The incompetent practice rule of the **Indiana Real Estate Commission, 876 IAC 8-2-7**, defines “incompetent practice” to include: (2) Accepting or offering any inducement or rebate for the purpose of obtaining a listing or inducing a sale, where full disclosure in writing has not been given to the parties to the transaction at the time of the offer or acceptance.

This rule means that a listing broker or a cooperating (selling) broker may legally pay rebates, make price concessions on commissions, and give inducements to either buyers or sellers, provided that written notice is given to all parties to the transaction at the time of the purchase agreement. On the IAR Legal Hotline, we have stated that the following acts are legal in Indiana:

- **Open houses:** Give-away items such as lottery tickets or door prizes.
- **Inducements and concessions to buyers:** Payment of moving expenses, gift certificates, a Florida vacation, payment of a part of closing costs, rebate of entire split commission, cash rebate by a franchise company, free microwave, payment of home warranty cost, payment toward new carpet.
- **Rebates and inducements to sellers:** Rebate part of commission to seller, rebate part of commission to sellers who participate in drawing, discount to union members, and purchase of a home warranty.
- **Inducement to obtain listings:** \$50 E bond, free day care, a free microwave, a free turkey.

REMEMBER: In order to be legal it is important that disclosure be made in writing to all parties at the time of the offer or acceptance.

Standard of Practice 12-3 of the NAR Code of Ethics permits the offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase or lease through the REALTOR® making the offer. However, REALTORS® must exercise caution in any such advertising or other public or private representations so that any party interested in participating in such an offer will have a clear, although advanced, understanding of all the terms and conditions of the offer. Of course, SOP 12-3 specifically requires adherence to state law and the ethical obligations established by any applicable Standard of Practice.

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Finally, keep in mind that any such legitimate price concessions or rebates made to sellers or buyers may be deducted by you as a necessary and reasonable business expense on your income tax returns. Please review such issues with your personal tax advisor. Of course, illegal rebates are not deductible.



REFERRALS

Based on questions we frequently address on the IAR Legal Hotline, there seems to be some confusion about when it is appropriate to pay a referral fee or “finder’s fee” or “bird dog” fee to someone who introduces them to a prospective seller or buyer. The short answer is that unless the person providing the prospective lead is a licensed real estate agent or an employee of a referral company, it is illegal for a licensee to compensate that person for a referral.

The incompetent practice rule of the **Indiana Real Estate Commission, 876 IAC 8-2-7** defines “incompetent practice” to include: (12) Paying a commission to or otherwise compensating a person who is not licensed for performing the services which by law require a license.

This rule means that a real estate licensee cannot pay a referral fee to or otherwise compensate a person who does not have an active real estate license. On the Legal Hotline, we have stated that the following acts are illegal in Indiana:

- Payment of a referral fee to a moving company;
- Payment of a referral fee to non-licensee (except out-of state licensees),
- Payment of referral fee directly to salesperson rather than broker;
- Referral fees paid to inactive salespersons;
- Sharing commission with an attorney who is not licensed; and
- Sharing commission with a salesperson whose license is held at the Indiana Real Estate Commission.

QUESTIONS & ANSWERS

Q: As a promotional program, can a REALTOR® offer a cash rebate to their clients? For example, I would like to offer a coupon for a \$200 cash rebate redeemable at closing, to a buyer or seller client.

A: Yes, 876 IAC 8-2-7(2) permits a licensee to offer an inducement or rebate for the purpose of obtaining a listing or inducing a sale, where full written disclosure is given to all parties to the transaction at the time of the offer or acceptance. Please keep in mind that although it is illegal to give a rebate, unless you comply with the Commission Rule, it is perfectly legal to give a price concession to a buyer or a seller and it is perfectly legal to split a commission with another licensee. Sometimes the distinctions between these situations are difficult to understand.

Q: May a REALTOR® split a commission with a REALTOR® or licensee who is buying the property?

A: Yes, of course, whether you call this a split commission or a cash rebate to the buyer. Such a concession to a licensee/purchaser is valid so long as there is full disclosure as required by the Commission Rules. It is legal to accommodate a licensee/purchaser in this fashion even though the licensee’s license is inactive.

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Q: My neighbor gave me the name and telephone number of a potential buyer. I contacted that person and they did eventually buy a home through my firm. Now every time I see my neighbor, he wants to know when I am going to pay him “a little something” for his lead. I’d like to pay this guy something just to stop him from bothering me; can I give him a cash referral fee?

A: No, you cannot pay a referral fee (whether cash, check, stock certificate or golden doubloons) to a non-licensee or inactive licensee who is not a party to the transaction as a seller or buyer.



NOTE: REALTORS® SHOULD REVIEW THEIR INDIVIDUAL COMPANY/FIRM POLICY REGARDING REBATES AND REFERRALS, AS WELL AS REVIEW ANY PROMOTIONAL MATERIALS WITH THEIR MANAGING BROKER PRIOR TO THE OFFERING OF ANY SUCH REBATE OR REFERRAL.

Other Questions?

The IAR Legal Hotline is open. We know new questions will develop as we navigate these uncharted waters. Ask your Managing Broker to call or authorize you to call the hotline.

1-800-444-5472

Monday – Friday | 9am – 5pm ET

Calls are answered in the order they are received, always by phone, and within 24 hours.

Reminder: IAR communications are intended for member use only.