

focus on: Legal Affairs

BY KELLY SHONBORN, IAR STAFF COUNSEL



On the Legal Hotline we regularly receive questions concerning many topics of concern to REALTORS®.

The following are based on recent actual questions received through the Hotline. By no means are these the only issues of concern to members, so please let us know if you have any questions. The Legal Hotline is available to assist principal or managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday.

Q I am a broker and have received an offer from an insurance company to get a \$25.00 gift card whenever a buyer that I refer to the insurance company uses that insurance company to obtain homeowner's insurance. Is that OK as long as I disclose the referral fee to my client?

A The Real Estate Settlement Procedures Act (RESPA) prohibits a broker or agent from receiving anything of value from a settlement service provider in exchange for a referral. Based upon NAR's interpretation of RESPA, a settlement service provider includes, but is not limited to: mortgage bankers and brokers, title companies and agents, home warranty companies, hazard insurance agents, appraisers, flood and tax service providers, and home and pest inspectors. Because a hazard insurance company may be considered a settlement provider, and because it appears the gift card is being given in exchange for the referral, we would suggest this practice not be followed as it may be a violation of RESPA.

Q As an agent, I am leaving the firm I am currently associated with and going to work under a new principal broker. I approached my current principal broker and they have indicated to me that they will not allow me to take my 15 listings with me to the new company. Those are clients that I secured and, in fact, one is even a relative of mine. I don't understand why my broker thinks they can keep my listings. Help!

A According to Indiana license law, all listings belong to the principal broker and



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“shall remain the property of the principal broker” once a licensee terminates his or her association with the principal broker. Unless there is a written agreement between the principal broker and the licensee to the contrary, the broker has every right to retain the listings.

Q I have someone who wants to list their home with me but, when I looked at the records at the courthouse, I learned they are not on the deed. Upon questioning the client, I learned they are buying the property pursuant to a Land Contract. Is it OK that they are the only ones who sign the Listing Contract?

A The person buying on Land Contract holds an equitable interest in the property, not legal title. In order to have a valid, enforceable Listing Contract, as well as other contracts which you will have during the course of the transaction, you should obtain the signature(s) of the title owners as well. Further, both the Indiana license laws and the Code of Ethics say a broker must have the permission of the property owner to advertise a property for sale. □

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