

SPLITTING FEES WITH UNLICENSED PERSONS PROHIBITED – FINDER’S FEES, DONATING TO CHARITIES

The Real Estate License Law prohibits Idaho licensees from “splitting fees” with unlicensed persons. This prohibition means that a licensee may not pay any part of his commission, fee or other compensation to any individual or entity that does not have an active real estate license.

Paying Finder’s Fees.

The Commission routinely receives calls asking whether a licensee is permitted to pay or reward an unlicensed person for the referral of customers. Under Idaho law, the answer is “no.” The law specifies that paying or offering to pay a “finder’s fee” or referral fee to an unlicensed person is considered fee splitting and is prohibited. Moreover, any person who engages in “procuring of prospects” is required to hold an active real estate license; an unlicensed person who engages in this activity is in violation of the law’s licensing requirement.

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.

Note: Presentation of a relatively inexpensive gift to an unlicensed person in a gesture of gratitude is not prohibited if the gift has not been promised to (and is not expected by) the unlicensed person.

Making Charitable Donations.

The Idaho Real Estate Commission often receives calls from licensees asking whether the law permits them to donate a portion of their sales commissions to charity, and whether they may advertise their charitable giving to the public. IREC is not against charitable efforts, but IREC is concerned that a licensee’s charitable-giving program does not violate the law’s fee-splitting prohibitions, or that its advertisement not mislead the public.

It is the Commission’s position that a licensee may, consistent with the license law, advertise that he or she will donate a portion of earned commissions to charity, even a specific charity, provided the following conditions are met:

1. The designated broker is made aware in advance, and condones this activity.
2. The receiving charity does not act or participate in any manner that could be considered the procuring of prospects, or in any other activities that would require a license.
3. The licensee must exercise reasonable care to ensure that any charity advertised is a bona fide nonprofit.
4. All advertising of any charitable giving arrangement must clearly disclose the terms under which the donation will be made and must otherwise comply with all laws regarding advertising.

This guideline is not a new law but is an agency interpretation of existing law.

For more information on this guideline, please contact:

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5. A full written disclosure must be made to all principals, lien holders, and new mortgage underwriters if one of the parties or licensees controls or benefits from the charity involved.

An arrangement whereby a charity makes referrals to a licensee in anticipation of a contribution is not permissible. Making referrals is considered the procuring of prospects and constitutes unlicensed practice by the charity. Paying for such referrals constitutes illegal fee splitting by the licensee.

In considering whether an advertised charitable giving program violates the license law, the Commission will assess the following factors:

- Does the charity only receive a contribution if they provided one of the principals?
- Do only charities that provide principals receive contributions?
- Does the charity advertise an affiliation with a specific brokerage that contributes to it?

Licensees are also cautioned to keep abreast of HUD laws regarding discriminatory practices. This falls under Federal jurisdiction, and IREC does not enforce these laws. Conviction by HUD could lead to a disciplinary action by the Commission.
