



Legal Information Line: **Inducements in Advertising**

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The Nevada REALTORS® legal information line receives numerous calls from its members asking what they can and can't do with regards to offering inducements in their marketing efforts. This article shares those questions along with information identifying the legal parameters.

Q. Can I offer inducements in my advertising, if the inducements are provided from another company from which I have no interest?

A: While there is nothing directly prohibiting the offer of inducements, you should be mindful of the advertising laws which require all advertising to be truthful and not misleading, REALTORS® Code of Ethics and Standards of Practice, and also the Nevada Revised Statutes with regards to creating the appearance of a fee sharing relationship with an unlicensed person.

NRS 645.280 Association with or compensation of unlicensed broker, broker-salesperson or salesperson unlawful; payment of commission other than through broker or owner-developer unlawful.

1. It is unlawful for any licensed real estate broker, or broker-salesperson or salesperson to offer, promise, allow, give or pay, directly or indirectly, any part or share of his or her commission, compensation or finder's fee arising or accruing from any real estate transaction to any person who is not a licensed real estate broker, broker-salesperson or salesperson, in consideration of services performed or to be performed by the unlicensed person. A licensed real estate broker may pay a commission to a licensed broker of another state.
2. A real estate broker-salesperson or salesperson shall not be associated with or accept compensation from any person other than the broker or owner-developer under whom he or she is licensed at the time of the real estate transaction.
3. It is unlawful for any licensed real estate broker-salesperson or salesperson to pay a commission to any person except through the broker or owner-developer under whom he or she is licensed at the time of the real estate transaction. [26:150:1947; 1943 NCL § 6396.26] — (NRS A [1959, 394](#); [1975, 1542](#); [1979, 1538](#); [1985, 1263](#); [2005, 1286](#))

REALTORS Code of Ethics: Standard of Practice 12-3 The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. (Amended 1/95)

Additionally, it's worth reviewing the Nevada Division of Insurance's Bulletin 18-007 discussing NRS 686A.130 and the unlawful inducements in the title industry:
http://doi.nv.gov/uploadedFiles/doivgov/public-documents/News-Notices/Bulletins/Bulletin_2018_18-007.pdf



Q: Can I offer a rebate or credit to my client?

A: As long as the offer is not a false or misleading statement, nothing in NRS or NAC 645 prohibits this. The rebate/credit must be disclosed in writing within the transaction to all parties. There is an Attorney General Opinion that came out years ago that said it is probably lawful for a buyer's broker to rebate, gift or discount their client. *AGO 97-28 (12-31-1997)*.

Considering the AG opinion, gifts, refunds, or rebates are permissible if they are disclosed in writing to all parties involved in the transaction to include the lender(s) if there are lenders involved.

Things to consider when determining how the rebate is to be applied:

▶ If you are considering the option of applying the commission refund to the buyer's closing costs, the refund needs to be disclosed on the HUD and clearly stated as such, i.e., "commission rebate" or refund.

▶ If you are considering the option to receive the refund by check at closing followed by "this option is subject to lender approval". Again, the intent here is to disclose this to the lender most likely through disclosure on the HUD or other written disclosure.

It is very important to note that **a situation where monies are rebated or refunded outside of closing and not disclosed in writing would be considered unlawful and potentially fraudulent**. Doing the rebate outside of escrow puts you in a bad situation all around. If the buyer had financing and the agent paid the buyer outside of escrow, that could be considered mortgage fraud. And if the agent doesn't pay the buyer, then that could be a violation for a false promise to the buyer.

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