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TOPIC: CAN REAL ESTATE AGENTS GIVE GIFTS TO CLIENTS?
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This office has been asked about the following rumor:

“A real estate agent cannot legally give a gift to a client.” A variation of the rumor is that an agent cannot give a gift valued in excess of \$25.

As with most rumors, it is followed with, “I heard about a guy ...(insert tragic ending)”

And as with most rumors, there is a kernel of truth within it, so I will examine this from three (3) relevant perspectives.

The Real Estate Settlement Procedures Act (RESPA). RESPA does forbid certain unilateral giving as well as exchanges. To begin, RESPA Section 8(a) provides as follows:

“No person shall give and no person shall accept any fee, kickback or thing of value** pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person”

**“Thing of value” is defined in RESPA Section 3 as including “any payment, advance, funds, loan, service or other consideration.”

RESPA Section 8(b) provides as follows:

“No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.”

These sections forbid many things – some obvious and some not – but within the topic of “agents giving gifts to clients,” the proscriptions of 8(a) and 8(b) might be effectively paraphrased as follows: An agent may not give or transfer a fee, kickback, payment, gift, tangible item, special privilege or any other thing of value to any other person in exchange for a referral of business.

What is forbidden: An agent can ask an existing client to refer other clients to the agent, but the agent cannot reward the referring client with a “thing of value” for the referral. For example, promising the referring client a \$500 gift certificate upon the closing of a referred client’s transaction is a clear RESPA violation.

What is permitted: An agent comes to closing with a \$500 gift certificate and presents it to his client as an expression of the agent’s appreciation for the client. There are no strings attached.

What invites trouble: An agent has an ongoing relationship with a client. The client influences his friends to use the agent. The agent and the client have an unspoken understanding that the agent will reward the client in various ways (ex. discounted commission, gifts, etc.) and the client will use his (the client's) influence to refer business to the agent.

The civil penalties for RESPA violations are imposed by the Consumer Protection Financial Bureau (CFPB) and go beyond the intended scope of this article.

Mortgage Fraud. The FBI defines mortgage fraud as “any material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan.” Obviously, mortgage fraud only applies to buyers and only applies where a loan is involved. Within the topic of “agents giving gifts to clients,” here is a set of examples to demonstrate what is allowed and what is not:

Allowed: An agent addresses a \$500 buyer-seller contract dispute by conceding \$500 of his/her commission to one of the parties. This concession is shown on the Closing Disclosure.

Disallowed: An agent addresses a \$500 buyer-seller dispute by promising to give the buyer a \$500 gift certificate after closing.

The Internal Revenue Service (IRS). From an ethical standpoint, the IRS does not exercise control over real estate transactions, but its rules are a possible source of the rumor that agents cannot give gifts to clients. In truth, the IRS does not care at all whether or not an agent gives gifts to his/her clients, so long as the IRS gets paid what it is supposed to be paid. The basic rule as of the date of this article is that an agent can deduct up to \$25 for business gifts given to each person. Gifts given with an agent's name on them are not subject to the \$25 cap because they are seen as advertising and promotion as opposed to gifts. In the past, tickets to a sporting event would be classified as “entertainment” as opposed to a gift, but beginning in 2018, “entertainment” is no longer deductible.

In sum, an agent who gives a gift solely out of kindness or with the hope the client will think fondly of him/her will always be safe.

Hopefully, this short article helps to lay the rumor to rest and helps, as well, to illuminate possible sources of the rumor.