



How do I document a referral fee agreement with a builder?

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QUESTION: I am working with a buyer client under the Exclusive Buyer Agency Agreement (Form 201). She is interested in purchasing a lot in a development and hiring a builder to construct a house on the lot. I have helped her identify the lot on which she wants to make an offer and a builder she would like to hire to build the house after she closes on the lot. If she buys the lot and hires the builder, I will be paid a commission on the lot sale by the listing agent and a referral fee by the builder. My question is, do I need any forms other than the Buyer Agency Agreement to cover this situation?

ANSWER: Yes, you do. The Buyer Agency Agreement addresses the compensation you will be paid if your client buys real property of the type described in the Agreement. The Buyer Agency Agreement does not address compensation that a builder will pay you for referring the buyer. For that, you should obtain a written referral agreement with the builder that describes the services you are providing (i.e., the referral of business), as well as how much and when will you be paid. You may use the Broker-to-Builder Referral Agreement (Form 731) to memorialize the referral agreement with the builder.

In addition, you should fully and timely disclose to your client the fact that you expect to be paid a referral fee by the builder. Disclosure must take place before the buyer enters into a construction contract with the builder and should include how much you expect to be paid (flat dollar amount, percentage of purchase price of improvements, etc.). Although not required, it is important that the disclosure be made in writing. NCR's Confirmation of Compensation (Form 770) could be used for this purpose, but no particular form is necessary.

Note that paragraph 4(e) specifically addresses a situation like the one you described in your question. It includes the buyer's consent to the receipt of a referral fee from a builder and will serve as a reminder to the buyer agent to fully and timely disclose the fee to the buyer.

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