



## Is it ethical to offer incentives to prospective buyer and seller clients?

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**QUESTION:** We recently came across a flyer where another REALTOR® is offering an incentive that reads as follows: "In representing you as a seller's agent or your buyer's agent, I'm offering a \$500 cash gift at closing." I have an agent who is interested in making a similar offer to prospective buyer and seller clients, but we want to make sure it's permitted. Is this sort of thing ethical?

**ANSWER:** Standard of Practice 12-3 of the REALTOR® Code of Ethics provides that "[t]he 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." So, the short answer to your question is that it is ethical for a REALTOR® to offer incentives to prospects as an inducement for them to become clients. However, it is very important that any advertisement or other representation containing any such offer is carefully worded so that, in the words of Standard of Practice 12-3, "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.*"

Does the incentive in the flyer meet the requirements of Standard of Practice 12-3? We think there is at least one condition of the offer that is missing. A sticky issue sometimes arises when a buyer client has been promised an incentive, but the buyer's lender won't permit the incentive to be shown on the closing disclosure. Whether the incentive is in the form of cash or something other than cash, the buyer's agent cannot lawfully pay the incentive to the buyer outside closing. Oftentimes, it's too late in the transaction to address the payment in some other manner (such as a reduction in the sales price of the property and a corresponding reduction in the compensation payable to the buyer agent's firm). In our view, the possibility that this could occur should be addressed in an ad through the addition of wording indicating that receipt of the rebate, gift or other incentive is subject to lender approval. And, to be compliant with Standard of Practice 12-3, any REALTOR® offering an incentive should "exercise care and candor" to identify any other "strings" that may be attached to the offer and describe them in any advertisement or other representation in which the offer may be made.

How about the real estate license law? It doesn't expressly prohibit the offering of prizes or gifts by real estate agents to prospective clients. However, G.S. §93A-6(a)(3) provides that the Real Estate Commission can discipline a licensee if the licensee is guilty of "pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise." All the more reason for a REALTOR® to take great care to offer inducements to prospects that are well-conceived and well-executed.

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