



Do referral fees have to be disclosed to a customer?

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QUESTION: I'm referring a customer to a REALTOR® located in another part of North Carolina where the customer is moving. I have just gotten into the business and this is the first referral I've made. I'm filling out the Referral Agreement (form 730) and I have a question. There are checkboxes on the form to indicate whether or not the Prospect is aware of the referral. I have disclosed the referral to my customer but I am not sure if that's all I have to disclose. I reviewed the REALTOR® Code of Ethics and Article 6 says that although REALTORS® have an ethical duty to disclose to a client or customer any financial benefit or fees the REALTOR® or REALTOR®'s firm may receive as a result of a recommendation for a real estate product or service, real estate referral fees are specifically exempt from the disclosure requirement. Am I correct that I do not have to disclose to my customer that I expect to receive a referral fee?

ANSWER: Your interpretation of Article 6 is correct, and high fives to you for reviewing the Code of Ethics. However, your conclusion is incorrect. This is one of a handful of instances where the real estate license law imposes a greater duty on a broker than does the Code of Ethics. Specifically, the Real Estate Commission's Rule on brokerage fees and compensation ([Rule 58A.0109](#)) prohibits real estate licensees from receiving any compensation for services which the licensee recommends to a party relating to a real estate transaction without "full and timely disclosure" to the party. There is no exception for referral fees from other brokers.

According to the Rule, full disclosure includes a description of the compensation, including its value. Also, a disclosure is timely according to the Rule "when it is made in sufficient time to aid a reasonable person's decision-making." That means you should disclose to your customer the amount you expect to be paid for a successful referral before she makes decision to hire the agent to whom you referred her. Although you don't know the exact amount you will receive for a successful referral, it would be sufficient to disclose the manner in which the referral fee will be calculated (for example, a specified percentage of the selling agent compensation received by the firm to which you are making the referral).

Although the Rule doesn't require the disclosure to be in writing, it would be very wise for you to make disclosure in writing in case a question arises later about whether you complied with the Rule. This could be accomplished by a simple email confirming the disclosure or by providing the customer a copy of the Referral Agreement itself.

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