



Is a referral fee based on the total commission if the receiving firm is a dual agent?

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QUESTION: I referred an acquaintance who wanted to sell her beach vacation property to an agent who does business in that marketplace. The receiving agent and I entered into a referral agreement using the NC REALTORS® Referral Agreement (Form 730), and I disclosed to my acquaintance that I expected to be paid a referral fee and how it would be calculated. The property sold and I received a check in the mail for the referral fee along with a copy of the closing disclosure that confirms the amount of brokerage commissions paid. I noticed that the receiving firm represented both the seller and the buyer and thus was paid the entire commission. However, my referral fee was calculated only on the listing side of the commission. Shouldn't the referral fee have been based on the total commission received by the other firm?

ANSWER: You didn't indicate how you filled out the "Compensation" section of the Referral Agreement. However, if you checked the first box, the answer to your question is "no." That's because the wording in the first box clearly indicates that the referral fee is based on an agreed-upon percentage of the commission paid to the receiving firm *as listing agent* for a closing on the sale of the prospect's property.

The Forms Committee previously considered a request to change Form 730 to include a referral fee based on the total commission paid to a receiving firm acting as a dual agent. However, the idea was rejected, in part because (i) a firm who lists and sells a referred prospect's property to a buyer client may possibly be obligated to pay a referral fee to a third party out of the selling side of the commission, and (ii) a firm who assists a referred prospect in purchasing a property listed with the firm may have an obligation to pay a referral fee a third party out of the listing side of the commission.

If the referring and receiving firms are in agreement, the "Other" check box in Form 730 may be used to describe a referral fee that's different from that provided for in the two pre-printed check boxes.

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