

CAPITOL ♦ TITLE

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MARYLAND LEGAL BULLETIN

(“Incentives and Rebates”)

Questions frequently arise about incentives and the payment of rebates to a party to the transaction or the use of incentives to induce a consumer to deal with a particular real estate agent or broker.

Incentives

The licensing provisions of the Annotated Code of Maryland prohibit a real estate agent or broker from offering a price or conducting a contest to influence a party in the sale of real property. The Office of the Attorney General in Maryland has interpreted this to mean that if a licensee uses such inducements to obtain a listing or a buyer/broker agreement, the inducements must be offered to all consumers on the same basis. In other words, there cannot be a contest where only a seller or buyer is offered a chance to receive a price – if the offer is made it must be made to everyone, without regard to whether they ultimately become a buyer or seller. The law has been interpreted, however, to allow inducements related to price (e. g. a rebate as a percentage of the price) as long as it is made to all those who purchase or list within the specified price set forth in the offer.

Rebates

The licensing provisions of the Annotated Code prohibit payment of compensation in any form for the provision of real estate brokerage services to a non-licensed individual. A person who is simply a party to the transaction is not providing real estate brokerage services (as defined in the Code) and therefore may receive monies from a licensee even though they are not licensed. If the monies are used to pay settlement charges, that should be reflected on the HUD-1 form. Any agreement to pay compensation to a buyer in the form of a rebate of commission or to compensate the seller through either a cash payment or a reduction in the commission must be in writing as required by the Code of Ethics. Further, the Real Estate Commission has taken the position that rebates or other financial payments by a licensee to a party should be disclosed to the other party to the transaction, even if they are not required to be on the HUD-1 form.

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