

Hello Michigan Realtors® and welcome back to a new installment of the Letter of the Law. A number of you have asked whether the NAR settlement agreement prohibits a Realtor from paying a referral fee in exchange for the referral of a buyer.

The answer is that it depends on the context.

Before we discuss this question in detail, recall that Michigan law specifically prohibits the payment of a referral fee to an unlicensed person. There is no gray area –if the person to whom the Realtor wishes to pay a referral fee is unlicensed, then the fee cannot be paid.

(As an aside, a Michigan broker can pay an out of state licensee a referral fee so long as the out of state agent does not represent the buyer in a Michigan real estate transaction.)

Let's discuss a couple of scenarios involving the referral of a buyer to another licensee.

In the first scenario, assume that Realtor X has shown Buyer X several homes. Buyer X has signed a few home touring agreements, but is unwilling to sign an agreement to pay Realtor X. If Buyer X now wants to put in an offer on a home, can Realtor X refer Buyer X to the listing agent for that home and ask for a referral fee from the listing broker?

The answer to that question is “no.”

Under the NAR settlement agreement, a Realtor working with a buyer may not receive *any compensation from any source* that exceeds the amount that the buyer has agreed to pay its Realtor. This limitation applies whether or not the Realtor working with the buyer is a buyer's agent. In other words, if the only agreement the buyer has signed is a home touring agreement, and that agreement does not require the buyer to pay the buyer's Realtor, then the Realtor working with the buyer cannot receive *any form of payment* from the listing Realtor. This prohibition would include referral fees.

In the second scenario, assume that Realtor A receives a call from a former client who is looking to buy a home in another part of the state. Can Realtor A refer that former client to Realtor B and ask for a referral fee from Realtor B? The answer to that question is “yes.”

The settlement agreement's prohibition only applies to those Realtors who are working with the buyer. Here it is Realtor B that will be working with the buyer. Under the settlement agreement, it is Realtor B who will need to enter into a written agreement with the buyer that sets for the compensation amount to be paid to be paid by that buyer. Of course, Realtor A and Realtor B should agree in writing as to how and when Realtor A will receive a referral fee from Realtor B.

In an earlier installment of LOTL, we discussed the fact that it is not possible to use a subagency relationship in order to get paid when working with a buyer who is not willing to sign a contract agreeing to pay the buyer's broker. The same is true with referral fees. If the

buyer has not agreed to pay the buyer's broker, the listing broker cannot pay the buyer's broker a referral fee. The bottom line is that if the buyer chooses not to sign a contract agreeing to pay their broker, then the Realtor who is working with that buyer will not, and cannot, be paid. Realtors should allocate their time accordingly.

That's all for today. Please keep sending us your questions and comments to the email in the video description. Your input puts us in the best position to thoughtfully address new legal questions or any confusion that might emerge in the marketplace. Until next time, thanks for watching!