

Advertising and Incentives

By definition, someone who actively solicits listings of real property for sale is trading in real estate (**section 2(bb) of *The Real Estate Act (Act)***) and must be registered (**section 18 of the Act**). Registrants may not pay commission or other remuneration to someone who is required to be registered and is not registered (**section 62 of the Act**). If a casual acquaintance passes on a prospect's name to a registrant with no further goal in mind, that acquaintance is not trading in real estate and need not be registered. After the fact, the registrant may legally gift something to the acquaintance. Again, if the original actions are not by definition a trade in real estate, the registrant remains free to spend his/her earnings as he/she sees fit. Once the conditions of trust are met and commissions are paid from the brokerage's real estate trust account to the operating account and eventually to the salesperson, the monies become earnings. Keep in mind, this advice only applies where the acquaintance is not a registrant.

Registrants should consider the possible tax implications of making such a gift and whether or not such a gift can be treated as a business expense. Registrants are advised to address the question with their accountant, lawyer or other tax professional.

Issues arise where the non-registrant engages in a persistent pattern of conduct that is intended to generate business for a registrant and the registrant pays the non-registrant for this service.

If a gift for a referral is to be advertised, registrants must be very careful, as the ads raise the perception that registrants are paying remuneration to people who are required to be registered, but who are not registered. All advertising must comply with **Bylaw 726**, and the details of the gift must be in writing (who is eligible, what they must do, when the gift is triggered, how it will be given, etc.). The advertising must also make clear that it is a one-time gift, not to be repeated.

Bylaw 726 - Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be:

- (a) false;
- (b) inaccurate;
- (c) reasonably capable of misleading the recipient or intended recipient;
- (d) in bad taste or offensive;
- (e) harmful to the best interests of the public; or
- (f) prohibited by law.

Representations

Act s.60

(1) Where a registrant, as an inducement to a person to trade in real estate, makes any representation or promise described in subsection (2), the registrant shall sign and deliver to the person to whom the representation or promise is made a statement clearly setting out all the details of the representation or promise, prior to the person executing any document with respect to the trade.

(2) Subsection (1) applies to a representation or promise that a registrant or any other person will:

- (a) trade or guarantee or promise to trade any of that person's real estate;
- (b) procure a loan, mortgage, extension of a mortgage, lease or extension of a lease; or
- (c) purchase or sell a mortgage or an agreement for sale.

(3) Any advertising with respect to a representation or promise mentioned in this section is to be in accordance with any requirements that may be set out in the bylaws.

Bylaw 721 - In addition to subsection 60(1) of *The Real Estate Act*, any registrant who makes any promises, guarantees or undertakings to a buyer or seller must do so in writing.