



Effective March 31, 2006

## Bird Dog Fees

The question has been posed as to the acceptability of paying a "bird dog fee" and it is hoped that the following may provide some guidance and/or cautions in respect to the subject.

For the purposes of this discussion a "**bird dog fee**" is defined as: *"some form of compensation paid to a 3rd party to a real estate transaction in recognition of that person's referral of a lead resulting in a customer, be it buyer or seller dealing with either the Brokerage firm and/or a specific broker or salesperson"*.

As far as the type of compensation it would not appear to matter the "*coin of the realm*". That is, a bottle of liquor or a cash payment of \$1,000.00.

The Real Estate and Business Brokers Act, 2002 (the "Act") contains some sections that have an obvious bearing on this subject, including the following definitions under Subsection 1(1) of the Act:

**"brokerage"** means a corporation, partnership, sole proprietor, association or other organization or entity that, on behalf of others and for compensation or reward or the expectation of such, trades in real estate or holds himself, herself or itself out as such;

**"broker"** means an individual who has the prescribed qualifications to be registered as a broker under this Act and who is employed by a brokerage to trade in real estate;

**"salesperson"** means an individual who has the prescribed qualifications to be registered as a salesperson under this Act and who is employed by a brokerage to trade in real estate;

**"real estate"** includes leasehold interests and businesses, whether with or without premises, and fixtures, stock-in-trade and goods connected with the operation of a business;

**"trade"** includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for purchase and sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition, acquisition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, and the verb "trade" has a corresponding meaning;

- 4.(1)** No person shall,
- (a) trade in real estate as a brokerage unless the person is registered as a brokerage;
  - (b) trade in real estate as a broker unless he or she is registered as a broker of a brokerage;
  - (c) trade in real estate as a salesperson unless he or she is registered as a salesperson of a brokerage; or
  - (d) trade in real estate unless registered under this Act. 2002, c. 30, Sched. C, s. 4 (1).

- 10.(1)** An applicant that meets the prescribed requirements is entitled to registration or

- renewal of registration by the registrar unless,
- (a) the applicant is not a corporation and,
    - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,
    - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty,
  - (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 50;
- 30.** No brokerage shall,
- (a) employ another brokerage's broker or salesperson to trade in real estate or permit such broker or salesperson to act on the brokerage's behalf;
  - (b) employ an unregistered person to perform a function for which registration is required; or
  - (c) pay any commission or other remuneration to a person referred to in clause (a) or (b).
- 2002, c. 30, Sched. C, s. 30.
- From the foregoing, it is determined that paying any form of compensation to an unregistered person for activities that would be defined as "*in furtherance of a trade*" is prohibited. However, the payment of rebates or other remuneration to a party to the real estate transaction (seller or buyer) is not prohibited. Registrants should review the Code of Ethics (CODE, Sec. 25) for necessary disclosure requirements. As well, where a brokerage is aware of, or more obviously where the brokerage were to use an employee/salesperson as a conduit to pay some form of compensation, in an attempt to avoid the appropriate sections of the Act, this activity would be construed to be a violation.

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