



LEGAL HOTLINE Q&A

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Question: Is there any restriction on a buyer broker giving buyer a rebate on compensation earned by broker as part of the transaction? The rebate may be given in the form of broker participating in payment of buyer's closing costs or may be given to buyer, in cash, after closing. Other brokers are reacting to this offer, arguing that buyer broker should not be offering rebates to buyer.

Answer: Neither Washington State nor federal law impose any restrictions on a broker giving any or all of their compensation to either of the principals in the transaction. Ultimately, the "rebate" is seen as nothing more than a reduction in compensation charged by the broker/firm to the consumer and the law allows a broker/firm to charge as little as the broker and firm want to charge. There can, however, be a problem with buyer's lender. If buyer is financing the transaction, buyer's lender may prohibit buyer from receiving cash incentives from anyone, including buyer's broker. Some lenders will allow broker participation in the form of paying some buyer closing costs, but prohibit cash-back after closing. If buyer's purchase is financed and if broker intends to rebate commission funds to buyer's benefit, before or after closing, buyer should disclose that to buyer's lender, in writing, so that buyer's lender can process that information as part of buyer's loan approval or declination process. It is not clear why other brokers are reacting but it may be from the standpoint of competition. If broker is offering to rebate some commission back to a buyer, other brokers may feel like they need to make a similar offer to buyers but are resistant to do so. No brokers should be engaging in conversations like this with one another except for a broker and the broker's designated broker. Any such discussion between two competing brokers, even if licensed to the same firm, risks violation of antitrust laws. Instead, the practice of rebating commissions from a buyer's broker back to the buyer is lawful and, if approved by buyer's lender, there is no reason it cannot or should not be offered. Buyer's broker should not discuss the practice with other brokers but should, instead, offer whatever commission structure is chosen by broker and approved by broker's designated broker, without regard to the concerns of competing brokers.

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