



LEGAL HOTLINE Q&A

FROM GET THE FACTS, March 19, 2024

Question:

In broker remarks can we say "This property qualifies for a lender credit of 1% of the buyer's loan amount using Sellers preferred lender John Doe at ABC Lending" or is any of that a violation?

Answer:

The Hotline lawyer cannot review or approve advertising. Broker should work with the firm's DB or legal counsel for assistance in drafting this advertisement. One issue that seems to be an immediate concern, however, is both the specificity and the vagueness of the statement. The language is specific as to 1% of the loan amount. However, the advertisement references a credit. What is a "lender's credit" and how can it be used? Does it mean cash at closing? If not, what are the limitations? Can it be used only against buyer's closing costs? Could it be used to make upgrades to the property before or after closing? Could it be used to pay buyer's credit card debt? When is it payable? Additionally, there is vagueness as to what "using" means. Is it enough that buyer "uses" seller's lender to demonstrate buyer's qualification to purchase? What if buyer applies with seller's lender but fails to qualify for lender's loan product but can close the transaction nevertheless? Is buyer still entitled to the credit? What if buyer applies with lender, but lender cannot offer the loan program or down payment assistance program buyer requires? Is buyer disqualified from the "lender credit" that another buyer may be entitled to, even though buyer could complete the purchase utilizing some other source?

There is likely nothing wrong with the general concept set forth in the advertisement but the advertisement is specific as to the "1%" but ambiguous as to all the remaining details. It is likely that broker's statement needs to be either more general in nature or provide all the criteria underlying buyer's ability to access the "credit". Additionally, broker and seller need to consider the underlying motivation for this offer to a buyer. Why does it matter to seller that buyer uses seller's preferred lender? Are seller and lender related? Does seller benefit financially from buyer's use of seller's lender? If so, is all of this properly disclosed to buyer in the form of an "affiliated business disclosure" or in some other way? Broker should work with broker's DB and if broker is the DB, then with the firm's legal counsel to ensure that this advertising statement is lawful and appropriate before broker proceeds.

The Legal Hotline Lawyer does not represent Washington REALTORS® or its members. The advice contained herein does not constitute legal counsel. To browse through our database of past Q & A's, visit warealtor.org/legal-hotline. Attorney Annie Fitzsimmons writes the Legal Hotline Question and Answer of the Week. This is a WR members-only benefit so you will be prompted to log in with your MI number and password. Your Designated Broker is cc'd on Legal Hotline inquiries.