

Time for Builders to Rethink Their Marketing

Recent changes in Georgia real estate brokerage law may cause home builders to rethink their marketing strategies for getting real estate agents to bring buyers into their communities. New regulations now require real estate licensees to fully disclose all commissions, bonuses, gifts and other things of value they receive that are tied to the buyer purchasing a home. If the gift is not tied to the sale of a home, no disclosure obligation exists.

Let's look at the following examples to better understand how this works. The new law went into effect July 1, 2009. Regulations interpreting the law went into effect in October 2009.

EXAMPLE #1

Home builder A establishes a bonus program where real estate licensees earn a \$5,000 bonus if the licensee's buyer purchases a home in the builder's subdivision during a particular month. Must this be disclosed under the changes in license law?

Some licensees may see a large bonus as less of an incentive (and more of a potential disclosure problem) than ever before.

The rules of the Georgia Real Estate Commission now require that this be disclosed in writing to the licensee's principal, either on the settlement statement or in a separate written document given to the licensee's principal at closing. The term principal is defined in the regulation to either mean the licensee's client or a buyer that is working exclusively with the licensee.

EXAMPLE #2

Home builder A establishes a bonus program where the real estate licensee receives a \$10,000 bonus for every three buyers the licensee brings into the community who purchase homes. If a licensee earns this bonus, to whom does the licensee have to make disclosure? The licensee must disclose this to all the buyers who purchased homes that resulted in the licensee receiving a bonus. If the disclosure is made after the closing, disclosure arguably has to be made to all the parties in all three transactions.

EXAMPLE #3

Home builder A develops a marketing program where the licensee

receives \$25 for every buyer the licensee brings into the community who takes a tour of the model home. Does the payment of the \$25 need to be disclosed to anyone?

Since the payment of this \$25 is not tied to the sale of a home, no disclosure needs to be made. While licensees may previously have been required to disclose the receipt of bonuses, this was not always done, particularly if the bonus was paid outside of closing. Now the obligation to disclose is crystal clear, and licensees are at risk of being sanctioned up to and including the revocation of their license if they fail to do so.

LESSONS TO BE LEARNED

In light of the changes, some licensees may see a large bonus as less of an incentive (and more of a potential disclosure problem) than ever before. So what are the lessons from these changes in license law? Three immediately come to mind.

1. Consider incentives that reward the buyer as well as the licensee. If real estate licensees have to disclose the gifts, bonuses and other things of value they receive, more of them may prefer

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such incentives go to the buyer (and not themselves) or be shared in some way with the buyer. In other words, let's say a builder has \$2,000 in marketing incentives for a given home. In such a situation, it may make more sense for the builder to either give the entire \$2,000 to the buyer or give \$1,000 to the buyer and \$1,000 to the licensee, rather than giving the entire \$2,000 to the licensee.

2. Consider incentives that are not tied to the sale of a home. Licensees may prefer receiving marketing and promotional items that are not tied to the sale of a home since no disclosure needs to be made. Examples might include gas cards, lunches, continuing education or other promotional items.

3. Consider incentives that can be easily disclosed. If a gift, rebate or bonus is going to be tied to the sale of a home, builders should consider relating the gift, rebate or bonus to one, rather than to multiple transactions. For example, a \$5,000 bonus tied to one sale in a community creates far fewer disclosure obligations than tying it to the sale of three homes. This does not mean that a home builder cannot give a larger bonus for a second home sale than a first, but from a disclosure perspective, there are fewer disclosure issues where, for example, the first home sold gets a licensee a \$1,000 bonus and the second home sale gets the broker \$2,000 than if the licensee gets \$3,000 upon selling two homes in

a subdivision. Home builders should avoid giving one bonus amount tied to the sale of multiple homes. This is because it will put the licensee in a position of having to disclose the bonus to multiple buyers well after the transaction has closed.

Home builders need to understand the new rules for giving things of value to real estate licensees beyond a normal commission. However, while the new rules are important, the focus of home builders must still be on how to focus marketing dollars on things that work. Once this broader question is answered, the new rules will hopefully serve as a useful guide in structuring a marketing campaign. 🏠

Marketing Strategies?

