

# REFERRALS – PAYMENT TO UNLICENSED PERSONS

**Purpose:** This bulletin outlines the obligations when an industry professional pays an unlicensed person.

**This bulletin applies to real estate brokers, property managers and mortgage brokers.**

A brokerage can pay a referral fee to an unlicensed person if the activities of that person did not require a real estate broker, property management or mortgage broker licence under the *Real Estate Act* (Act).

A brokerage must not pay a referral fee to an unlicensed person if the services they render to a trade in real estate, property management services or deal in mortgages, requires a licence under the Act.

## Referral fee to unlicensed persons and restriction

A referral is the act to recommend or direct a person for service, assistance, or business to another person or business. If the services of the unlicensed person fall under the definition of a trade in real estate, property management or a deal in mortgages, the brokerage must not pay a referral fee to the person.

## Referrals to lending institutions

Part of the definition of a mortgage broker under the Act includes soliciting someone to borrow money from a lending institution. The court case *Toronto Dominion Bank v. Real Estate Council of Alberta* (2002), 316 A.R. 280 (Alta Q.B.) addresses this issue. The court decision was if a real estate broker refers clients to a specific lending institution and obtains a fee from the institution it is "soliciting" people to borrow money. In this instance, the real estate broker must obtain the necessary mortgage broker licence prior to engaging in this activity.

## Referrals to a single lending institution

When a mortgage broker represents a specific lending institution, the mortgage professional must not pay referral fees to unlicensed persons. As the mortgage broker has access to only one lender, this would be the same as the unlicensed person making the referral directly to the lending institution and receiving a fee. The unlicensed person is "soliciting" people to borrow money.

## Referrals to mortgage brokers not affiliated with a lending institution

The court further contemplates that if the referral is to a mortgage broker that deals with many lending institutions, the person who makes the

referral is not persuading or soliciting a person to borrow money. The referral is simply to put a potential borrower in touch with a mortgage broker, who may solicit a lending institution on the borrower's behalf.

When a mortgage broker does not affiliate with a specific lender, they can pay referral fees to unlicensed persons. In this instance, the referral is simply to put a potential borrower in touch with a mortgage broker. The mortgage broker reviews the borrower's information and then solicits various lending institutions on the borrower's behalf. The unlicensed person is not "soliciting" people to borrow money, as they have no influence on the final lender chosen for the mortgage.

### Related information

#### Legislation

- *Real Estate Act* – sections 1(1)(j)(q)(r)(s.1)(v)(x)
- *Real Estate Act Rules* – sections 1(1)(bb), s.50(d), s.66(d)

#### Information bulletins

- Mortgage – When Licence Required
- Referrals – Industry Member Requirement