

7/27/11

Montana Board of Realty Regulation

POSITION STATEMENT RE REFERRAL COMPANIES

Adopted by the Board of Realty Regulation October 7, 2011

The Montana Board of Realty Regulation (Board) wishes to remind licensees that persons who make referrals for compensation must be licensed and that the licensee must not pay a referral fee to an unlicensed person.

The Board has discussed the subject of companies or persons who engage in the business of real estate lead generations and referrals. The companies have argued that they are not making referrals, they are merely providing 'leads' to real estate agents. The Board has determined that leads and referrals are the same thing and that lead generation companies are, in fact, making referrals to licensees in exchange for compensation. Paying referrals to unlicensed people is prohibited.

A "broker" includes:

- someone who charges an advance fee in connection with a contract to list property or for referral of information concerning real estate to brokers;

or

- receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property.

See MCA 37-51-102 (4)(a),(c),(f), &(g).

Brokers may not pay a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson. *MCA 37-51-321(1)(p)* and *ARM 24-210-641(5)(af)*.

In sum: Engaging in the business of selling real estate 'leads' for a fee IS within the definition of a 'broker' and is the practice of real estate. If an unlicensed person is receiving fees for referrals/leads, they are acting as an unlicensed broker and are in violation of MCA 37-51-301. A licensee who assists in the practice by paying for leads from unlicensed persons may also be violating the law. *MCA 37-51-321(1)(p)* and *ARM 24-210-641(5)(af)*.