

**KANSAS REAL ESTATE COMMISSION'S
GUIDELINES FOR PERMISSIBLE GIFTS AND GRATUITIES**

Effective July 1, 2004, the prohibition on a licensee offering or giving gifts and gratuities was repealed. (See 2004 SB 404, § 3). However, other laws prohibit certain types of gifts and gratuities from being offered. Real estate licensees should be cognizant of the following statutes:

K.S.A. 58-3086(a)(1)—prohibits advertising that is misleading or inaccurate in any material fact.

K.S.A. 58-3062(a)(3)—prohibits rebates to principals to the transaction.

K.S.A. 58-3062(a)(4)—prohibits the payment of a referral fee to a person licensed as a salesperson or broker in Kansas or another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the Kansas or out-of-state licensee.

K.S.A. 58-3062(a)(10)—prohibits payment of commissions or compensation to unlicensed persons for performing activities that require a real estate license.

K.S.A. 58-3062(a)(11)—prohibits a licensee from failing to include in the contract the exact agreement of the parties, which includes the purchase price and any discounts.

K.S.A. 58-3062(a)(13)—prohibits a licensee from engaging in fraud or substantial misrepresentation.

K.S.A. 58-3062(a)(14)—prohibits a licensee from providing false writings to a lender or any other interested party that represent an amount in excess of the true and actual sale price, or terms differing from those actually agreed upon.

In Kansas, it is unlawful to accept, give or charge any rebate or undisclosed commission. K.S.A. 58-3062(a)(3).

The law does not define “rebate,” but the term generally means “a return of part of a payment, serving as a discount or reduction.” Whether a gift or gratuity is actually a prohibited rebate depends on the facts, but licensees are cautioned that the following may be considered unlawful rebates:

1. Payment of cash or cash equivalent on behalf of the buyer for the buyer’s earnest money deposit, down payment, loan origination fees or any other cost associated with the loan;
2. Payment of cash or cash equivalent to a principal in the transaction, *unless* the principal has a real estate license, provided licensed activity and the gift and/or commission is paid directly to the broker;
3. Return of all or part of a payment in cash or cash equivalent to a principal in the transaction;
4. Offering to a principal in the transaction any payment or item, the value of which is based on the purchase price of the property.

“Cash equivalent” includes prepaid credit cards that may be used in the same manner as cash.

The following gifts may be permissible, so long as they are not intended to rebate, discount or reduce the amount paid for a property or the amount of commission paid:

1. Gift cards/coupons for specific vendors, except for cash-equivalent prepaid credit cards;
2. Appliances, electronics, trips, meals, sporting events, free or reduced lodging;
3. Payment for a survey, homeowners warranty policy, inspections, repairs, title search, taxes, insurance, and filing fees;
4. Use of a moving van;
5. Contribution of monies to charity;

6. A seller offering a monetary allowance to the buyer to update finishes, such as a carpet allowance, so long as the allowance is offered by the *seller*, not the licensee.

Comments:

1. Reduction of commission that would be due from the client or customer is not a gift, because the commission is a negotiable item. The actual amount of commission paid must be reflected on the closing statement and included in the agency agreement or written transaction broker agreement, if applicable
2. An unlawful rebate does not become permissible because the licensee pays or provides the gift outside of the closing.
3. The guidelines are based on Kansas law. Federal laws may also apply.
4. Licensees are encouraged to contact their own attorney for advice in specific circumstances.

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