

REFERRAL FEES REVISITED

By Sam K. Abdulaziz
Abdulaziz, Grossbart & Rudman

We have been **bombarded** with questions about referral fees, kickbacks, inducements, whatever you would like to call them. There is a great deal of miscommunication. Accordingly, I thought it would be wise to not only include my prior analytical article but also the statutory code section regarding referral fees. This may be very helpful to those who do not know all there is to know regarding referral fees.

Following is the current code section that applies to referral fees/inducements:

“Business and Professions Code §7157.

(a) Except as otherwise provided in subdivision (b), as a part of or in connection with the inducement to enter into any home improvement contract or other contract, which may be performed by a contractor, no person may promise or offer to pay, credit, or allow to any owner, compensation or reward for the procurement or placing of home improvement business with others.

(b) A contractor or his or her agent or salesperson may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work if the gift does not exceed a value of five dollars (\$5) and only one such gift is given in connection with any one transaction.

(c) No salesperson or contractor's agent may accept any compensation of any kind, for or on account of a home improvement transaction, or any other transaction involving a work of improvement, from any person other than the contractor whom he or she represents with respect to the transaction, nor shall the salesperson or agent make any payment to any person other than his or her employer on account of the sales transaction.

(d) No contractor shall pay, credit, or allow any consideration or compensation of any kind to any other contractor or salesperson other than a licensee for or on account of the performance of any work of improvement or services, including, but not limited to, home improvement work or services, except: (1) where the person to or from whom the consideration is to be paid is not subject to or is exempted from the licensing requirements of this chapter, or (2) where the transaction is not subject to the requirements of this chapter.

As used in this section "owners" shall also mean "tenant."

Commission of any act prohibited by this section is a misdemeanor and constitutes a cause for disciplinary action.”

There has been a lot of talk about referral fees and whether they are acceptable, not acceptable, or hurting the economy. There have been a number of people complaining about contractors and unlicensed contractors with respect to the referral fee issue.

I have met with a number of people and specifically with members of the Contractors' State License Board. Each of the people that this matter has been discussed with, including members of the Board, agree with the following:

For quite some time now, there has been some question as to whether one contractor can provide another contractor with a referral fee. We have been receiving many phone calls and emails about this very issue. Although the consensus believes (I use the word “believes” because I do not know if it would be accurate to say exactly what the law says) that the answer should be No, we thought it best to actually spell it out.

The portion of the law that was discussed among several people was Business & Professions Code section 7157. After various discussions back and forth, it was unanimously agreed among us that the answer to this questions is that no referral fees should be allowed between contractors - ever. Of course, contractors can be compensated for work that they do. However, they should not benefit from this work in the form of an inducement or referral fee.

Please note that this analysis does not include anything having to do with non-contractors.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for over 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. This document is of a general nature and is intended to highlight areas of the subject matter being discussed and may not contain all of the information; it should not be used as a substitute for legal advice in that some items discussed may be used as examples only. This document does not create an attorney-client relationship, or protect any confidential information until a written agreement is signed. You should seek the aid and advice of a competent attorney, accountant and/or other professional instead of relying on the presentation and/or documents. Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at info@agrlaw.net. On the Internet, visit our Website at www.agrlaw.net

W:\Emergency Service Restoration\Referral Fees\Analysis and code.doc