

# “Inducements and the Fine Print”

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Recently, the North Dakota Real Estate Commission was asked to comment on the use of inducements by real estate licensees. Examples of the inducements used in advertising are “\$500 Says We Can Sell Your Home in 90 Days!”; “Purchase your next home with me and receive a 42 inch plasma TV . . . call for complete details.”; and “I can sell your home in 60 days guaranteed or get \$1,000.”

The Commission has previously determined that inducements paid to the **client** do not violate the statute prohibiting the payment of compensation or commissions in connection with a real estate sale to persons not licensed as salespersons or brokers at N.D.C.C. § 43-23-11.1(1)(l), because the client is not acting as a salesperson or broker and there is no need to protect the public from inducements paid to clients. However, it is important to **fully disclose** to potential clients the **details** of inducements, so as to not deceive the consumer. In order to “fully disclose,” businesses should include the details of the inducements with every mention of the inducement, and make sure that the information is easily accessible.

Failure to fully disclose inducements is potentially misleading to the public and could constitute a violation of N.D.C.C. § 43-23-11.1(1)(b),(c), or (w). An inducement without the details listed could also be misleading in violation of N.D.C.C. § 51-12-08 which prohibits inducing the public into the sale of real estate with statements that are untrue or misleading.

A simple “call for details” does not constitute full disclosure. In order to not mislead consumers, it is important to fully disclose the terms of such inducements which would require the full disclosure of the applicable terms and restrictions of such an inducement.

Another concern with the use of inducements, is that an inducement slogan printed on business cards left at properties after showings, as well as at open houses, could be deemed targeted solicitations that interfere with the listing agent’s relationship with the seller and the exclusive agency agreement. For example, a slogan that states “I can sell your home in 60 days guaranteed or get \$1000” on a business card left in a seller’s house,

is directed at specific sellers who already have a real estate agent. This practice could constitute targeted solicitation to the seller of a listed property.

Targeted solicitation could violate North Dakota Administrative Code § 70-02-03-11 which prohibits a real estate licensee from negotiating with an owner if the licensee knows that the owner has a written unexpired contract in connection with the property which grants an exclusive right to sell to another broker.

In summary, any inducements should be fully disclosed so as not to deceive or mislead consumers. Also, licensees should be careful about the use of certain forms of advertising materials with inducement slogans because these slogans can constitute targeted solicitations if directed at represented sellers.

## Legal Advice

The North Dakota Real Estate Commission receives numerous telephone calls from licensees and the public requesting legal advice on real estate matters. The staff at the commission are not attorneys and cannot give legal advice either to licensees or the public. The staff may be able to cite statutory provisions or regulations which may be applicable to licensing questions, but they cannot determine ultimate legal conclusions or give any direction in non licensing matters.

Licensees who have questions regarding interpretation of contracts, rental agreements, commission disputes and closings are advised to speak initially with their broker in charge, and if legal advice is needed, to then consult an attorney for appropriate action.