



New Law on Inspector Referrals

By the Demco Law Firm, P.S.

Effective January 31, 2009, a new regulation from the Department of Licensing requires that designated brokers have in place a written office policy that establishes a procedure for the referral of home inspectors to buyers and sellers. The policy must address the right of every buyer and seller to freely pick their own home inspector. The intent of this new regulation is to prevent any collusion between real estate licensees and home inspectors.

The regulation (WAC 308-124C-050) further requires full disclosure in writing by the licensee of any current or previous relationship with a home inspector that is being referred to a client. This written disclosure must be made prior to the time the home inspector performs any services. The regulation does not define the terms “relationship” or “full disclosure.”

While the term “full disclosure” could mean disclosure of any and all details, it would seem here that the disclosure being required is simply the nature of the relationship between the home inspector and the licensee. For instance, it would likely be sufficient for an agent to disclose that the home inspector is a brother, a neighbor, or a past girlfriend. However, even if the extent of the relationship between the licensee and the inspector is that the licensee has referred one or more past clients to that inspector (or that the inspector has referred clients to the licensee), that fact should be disclosed to ensure compliance with the regulation. The licensee should not disclose the names of each of those clients necessarily, but simply that past referrals with this inspector have been given and/or received.

Of course, if the nature of the relationship is financially driven, then there may be RESPA issues at hand, which would require further legal analysis. For instance, if the “relationship” with the home inspector is one where referrals are given in exchange for something of value, then the relationship is in violation of RESPA. If the home inspector works for a company in which the licensee has an ownership or other financial interest, that relationship would be subject to the rules for an Affiliated Business Arrangement.

Attached to this Legal Bulletin is a sample office policy as well as a sample form for the written disclosure. Of course, each agent must use his or her best judgment in evaluating the relationship with the inspector being referred. As is the case with nearly all matters of disclosure, it is better to over-disclose than to under-disclose.

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