



LEGAL TIP OF THE WEEK

When Agents Kick Back Their Commissions to HomeBuyers

Real estate agents who credit their commissions are a somewhat controversial subject, but some agents *will* kick back all or part of their commissions to buyers to help sales along. Not all agents are willing to part with what they see as their hard-earned money, and not all state laws are on board with the concept, but it does happen...

How Does It Work?

Let's say that an agent has signed a listing agreement with a seller. The seller agrees to pay the agent a 5 percent commission. The agent then agrees to split that commission with a buyer's agent. The listing broker would get 2.5 percent and the buyer's broker would get 2.5 percent.

If a buyer's agent has decided to provide a commission credit to her client, the buyer, that credit is limited to her own commission percentage. She can credit part or all of it, but she can't exceed that 2.5 percent, at least if she doesn't want to come out of pocket to make up the difference.

Agents can't actually pay a commission to an unlicensed person, but they *can* rebate a portion of their commission to a buyer, sometimes as a closing cost credit, or to pay part of the down payment if the buyer's lender will allow it. Sometimes these credits take the form of gift certificates or even "free" services provided during the purchase process, such as home inspections that the agent pays for. An agent might foot the bill for moving costs.

Some lenders will limit what these credits can end up paying for. You might not be able to accept the money at closing or as part of the closing transaction.

What Does UTAH allow?

Utah Administrative Code R162-2f-4011, which deals with gifts and inducements, allows gifting your client(s) your commission so long as it complies with the underwriting guidelines that apply to the loan in the transaction. In other words, **IT MUST BE DISCLOSED.**

Commission credits or rebates are legal in most states—40 in all—and they've even been championed by the U.S. Department of Justice. The DOJ has taken the position that providing these credits promotes a healthy competition among agents.

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