



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

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OPINION 21-0030

Arlene C. Edwards
9247 Bluebonnet Blvd.
Suite C
Baton Rouge, LA 70810

63-B LICENSING

La. R.S. 37:1445
La. R.S. 37:1446
La. R.S. 37:1455

Neither La. R.S. 37:1445, 1446, nor 1455(A)(7) prohibit a licensee of the Louisiana Real Estate Commission from rebating a portion of the licensee's commission to a real estate consumer.

Dear Ms. Edwards:

As the attorney for the Louisiana Real Estate Commission ("LREC"), you have requested an opinion of this office concerning the legality of consumer commission rebates in light of three particular provisions of the Louisiana Real Estate License Law. In particular, you ask whether La. R.S. 37:1445, 1446, and 1455 prohibit licensees from giving commission rebates to real estate consumers. We conclude that these provisions do not prohibit consumer commission rebates.

The starting point of statutory interpretation is the language of the statute.¹ "The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."² Thus, "when the law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."³

Louisiana Revised Statutes 37:1445 provides in pertinent part:

No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provision of this Chapter to other licensed brokers or licensed salespersons unless such person was duly licensed under this Chapter as a broker or salesperson prior to the time of offering to perform any such act or service or procuring any promise to contract for *the payment of compensation* for any such contemplated act of service.

(Emphasis added.)

¹ La. C. C. art. 9; *Neeb Service, LLC v. Foster*, 2017-0860 (La App. 1 Cir. 1/29/18), 242 So.3d 586, 590-91.

² La. C. C. art. 11. Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 56 (Thompson/West) (2012).

³ La. C. C. art. 9.

Additionally, Louisiana Revised Statute 37:1446(A) provides:

No payment of a commission or compensation shall be made by any licensee or registrant to any person who has not first secured a license or registration under the provisions of this Chapter. This Subsection shall not apply to a nonresident broker who is currently licensed in his state of residence.

The practice to which these provisions refer, as relevant herein, is that of sharing commissions with unlicensed persons, as consideration for services rendered. This interpretation is consistent with Louisiana jurisprudence. Louisiana Courts have opined that the Louisiana Real Estate Law is "clear and unambiguous" that unlicensed persons are prohibited from engaging in any aspect of *real estate activities*.⁴ As a means of enforcing these prohibitions, La. R.S. 37:1445 denies the violator access to Louisiana courts to recover compensation for services for real estate activities. Under La. R.S. 37:1446, a violator is prohibited from receiving any form remuneration for engaging in *real estate activity*.⁵

As acknowledged in the request, real estate consumers, *i.e.*, the parties to a real estate transaction, do not engage in *real estate activity*. Actions constituting *real estate activity* are delineated in La. R.S. 37:1431(24). Notably, before an individual can be deemed to have engaged in *real estate activity*, the activity must have been performed *on behalf of another and for compensation*.⁶ Thus, any action performed by a consumer as a principal party to the transaction does not meet the definition of *real estate activity*, as the action is not taken on behalf of another. Additionally, a *rebate* is not compensation. *Compensation* is remuneration in return for services rendered, while a *rebate* represents the part of a payment that is returned to the payor, thereby serving as a discount or reduction.⁷ Thus, in the absence of rendered services on behalf of another, a rebate cannot be deemed compensation.⁸

⁴ La. R.S. 37:1434 and 1459; *Matter of BCL Investments, L.L.C.*, 52,387, (La.App. 2 Cir. 1/16/19), 264 So.3d 675, 681, *writ denied*, 2019-0276 (La. 4/22/19), 268 So.3d 296; *Gulf Coast Facilities Mgmt., LLC v. BG LNG Servs., LLC*, 730 F.Supp.2d 552, 563 (E.D. La. 2010); *Brown v. Williams*, No. 22716-A (La.App. 2 Cir. 1991), 587 So.2d 732, 735; *Brumfield v. Brumfield*, 450 So.2d 1019 (La. App. 1 Cir. 1984).

⁵ See, *Ravenel Co. v. Abraham*, 275 F.Supp.797, 798 (E.D. La.1967), *aff'd*, 441 F.2d 268 (5th Cir.1971).

⁶ La. R.S. 37:1431(24), "*Real estate activity* means any activity relating to any portion of a real estate transaction performed for another by any person, partnership, limited liability company, association, or corporation, foreign or domestic, whether pursuant to a power of attorney or otherwise, who for a fee, commission, or other valuable consideration or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration"

⁷ COMPENSATION, Black's Law Dictionary (11th ed. 2019). REBATE, Black's Law Dictionary (11th ed. 2019).

⁸ See, *Hudler v. Anderson*, 125 Nev. 1045; 281 P.3d 1183 (2009)(Unlicensed persons engaging in activity for which a real estate license was required, as a principle for the buyer, was not "acting for another and for compensation."). *Stout v. Edmonds*, 225 Cal. Rptr. 345, 347 (Ct. App.1986)(Because the unlicensed person did not engage in transaction for the benefit of another, receipt of the \$2,600 payment was not "compensation." The commission sharing was likely structured to reduce the sales price by crediting the individual with \$2,600 against the purchase price.); 21 Or. Op. Atty. Gen 464 (1944).

Finally, La. R.S. 37:1455(A)(7) specifically addresses rebates, providing as a ground for a licensee's disciplinary action "accepting, giving, or charging any *undisclosed* commission, rebate, or direct profit *on expenditures made for a principal*." (Emphasis added.) The plain language of La. R.S. 37:1455(A)(7) is both clear and unambiguous and does not lead to absurd consequences; the prohibition is on undisclosed rebates related to the expenditures a licensee makes on behalf of a principal.

Under the "Series–Qualifier" canon of statutory construction, "[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series."⁹ The adjective *undisclosed* is a prepositive (pre-positioned) modifier that qualifies the series of nouns that it precedes, i.e., commission, rebate, and direct profit. Although there is no hard and fast grammatical rule stating so, under the generally accepted rules of syntax, an initial modifier tends to govern all terms in a series.¹⁰ Similarly, the prepositional phrase *on expenditures made for a principal* is a postpositive (positioned after) modifier that modifies the same series of nouns. Additionally, the series is separated only by comma without any interrupting words or punctuation. The absence of determiners between terms indicates that modifiers apply to each term.¹¹

Consequently, licensees are only subject to disciplinary action for accepting, giving, or charging either undisclosed commissions on expenditures made for a principal, undisclosed rebates on expenditures made for a principal, or undisclosed direct profits on expenditures made for a principal.¹² This interpretation conforms with the duties incumbent upon a licensee due to the agency relationship between a Real Estate Commission *licensee* and his/her *client*.¹³

When a licensee represents a client in a real estate transaction, an agency relationship exists between the two, whether express or implied.¹⁴ Accordingly, the licensee owes the client a duty to not profit at the client's expense.¹⁵ Louisiana agency laws dictate that an agent is bound to deliver to the principle everything received by virtue of the agency, even those things unduly received.¹⁶ We are further persuaded that our conclusion is correct by Article 6 of the Code of Ethics and Standards of Practice of the

⁹ Scalia & Garner, *supra* at 147-151.

¹⁰ *Neeb Service, LLC*, 242 So.3d at 590, quoting The American Heritage Guide to Contemporary Usage and Style, p. 343 (Houghton Mifflin Company 2005).

¹¹ "The typical way in which syntax would suggest no carryover modification is that a determiner (a, the, some, etc.) will be repeated before the second element[.]" Scalia & Garner, *supra* at 148–49 (noting that "[w]ith postpositive modifiers, the insertion of a determiner before the second item tends to cut off the modifying phrase so that its backward reach is limited—but that effect is not entirely clear").

¹² *Alpern v. Ferebee*, 949 F.3d 546, 550 (10 Cir. 2020).

¹³ "Licensee" means any person who has been issued a license by the commission as a real estate salesperson or a real estate broker. La. R.S. 9:3891(11). "Client" means one who engages the professional advice and services of a licensee as his agent. La. R.S. 9:3891(4).

¹⁴ La. R.S. 9:3891(1).

¹⁵ *Tahoe Corp. v. P & G Gathering Sys., Inc.*, 18686 (La.App. 2 Cir. 1987), 506 So.2d 1336, 1344 (a licensee is liable to his principle for any hidden profit received).

¹⁶ La. C.C. 3004, La. R.S. 9:3892.

National Association of Realtors and other state's interpretations of similar statutes.¹⁷ Article 6 provides, "Realtors® shall not accept any commission, rebate, or profit on expenditures made for their clients, without the client's knowledge and consent." Article 6 cuts in favor of an interpretation of La. R.S. 37:1455(A)(7) that mandates disclosure of any profit made at the client's expense.¹⁸

Therefore, applying the foregoing tenants to your inquiry, it is the opinion of this office that the Louisiana Real Estate Licensing Law does not prohibit a licensee from rebating a portion of his/her commission to a consumer in a real estate transaction.

Having opined that the LRELL does not prohibit consumer commission rebates, we decline to offer an opinion on the remaining question, finding the question moot.¹⁹

We hope that this opinion has adequately addresses the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 

Alicia Edmond Wheeler
Assistant Attorney General

JL:AEW

¹⁷ Effective January 1, 2021.

¹⁸ See also *Bolinger v. First Multiple Listing Serv., Inc.*, 2:10-CV-211-RWS, 2014 WL 4803155, at *11 (N.D. Ga. Sept. 26, 2014) ("the duty to disclose any fee or rebate the Broker would earn, . . . applies only to "receipt of a fee, rebate, or other thing of value on expenditures made on behalf of the principal for which the principal is reimbursing the licensee.").

¹⁹ La. Atty. Gen. Op. No. 20-0111.