



POLICY STATEMENT AND IMPLEMENTATION PLAN AFFINITY PROGRAMS/ARELLO

BACKGROUND:

There is concern that relocation companies are charging after the fact referral fees for business that has been previously established between brokers and the public. In such a situation, there is not a referral of business and no agreement between the broker and relocation company that the broker will pay a fee. Therefore, the broker is under no legal obligation to pay the relocation company a referral fee. However, some brokers have felt pressured to pay these fees or face withholding of future benefits from the broker's clients and the loss of future referrals.

Many complaints stem from the real estate licensee being unaware of after the fact referral fee requirements at the beginning of the relationship with the transferring employee or affinity member. Similar situations also occur on the departure side when the licensee has not inquired, nor has the seller informed the licensee, that a referral fee is required in order for the transferee to be eligible for certain company-provided benefits.

PAR's Board of Directors adopted a policy statement and implementation plan on the collection of real estate referral fees during the May 1999 business meetings, mirroring a similar statement and plan adopted by the Association of Real Estate License Law Officials (ARELLO). This statement and plan are intended to provide guidance to licensees on the issues of referral fees, after the fact referral fees and interference with brokerage relationships.

KEY POINTS OF THE POLICY STATEMENT AND PLAN:

In all situations in which a referral fee is requested:

- Payment of a referral fee to an unlicensed person is prohibited unless permitted in that jurisdiction.
- A licensee should not demand a referral, unless a legal basis for payment of the referral fee exists.
- A licensee should not interfere with the brokerage relationship of another licensee.

Education and Communication Strategy – The goal of education and communication is to assure that all parties are aware of, and agree to, the payment of a real estate referral fee, at the inception of any business relationship. A successful education and communication strategy should be founded upon the following precepts:

- Existing “first contact” or “reserved client” agreements between the referrer and the broker must be effectively communicated in writing to all potentially impacted parties (relocation

departments and licensees to whom they refer business, as well as office managers and all licensees working in that office).

- Brokers should create “service level agreements,” written agreements regarding the service parameters associated with managing a successful relocation. These agreements define the broker’s policy regarding the payment of relocation referral fees. These must be communicated and explained to all potentially impacted parties (see above).
- Referrers (employers and relocation service firms) must develop and implement similar communication programs for the transferring employee to use when engaging the services of a real estate firm. All employees engaged in counseling transferees should be trained and made aware of the company policy. Similar communications must be developed for department managers and others who notify or otherwise advise the transferring employee at the first discussion of the transfer.

Trigger Mechanisms – Consist of procedures necessary to create the basis for a “reasonable cause for payment” to ethically and legally support the collection of both departure and destination area relocation referral fees. Examples include the following, when incorporated into both the relocation policy and a broker’s business practices:

- Service orders establishing the referral via phone, fax or e-commerce, which are confirmed in writing to the referring parties.
- Initial (verbal or written) notification by the transferee to relocation directors and/or licensees upon the first contact between the employee and the licensee or broker initiating the service.
- Signature by a licensee on a broker’s form in which the licensee acknowledges the broker’s blanket referral fee agreement, if any.
- A broker’s office policy should include the following requirements:
 - That the licensee makes actual inquiry of potential customers concerning the specifics of the transaction before accepting the engagement, including inquiries as to “who is the customer’s employer,” “is the move at the request of the employer” and “is the move covered by the employer’s relocation policy” where appropriate.
 - That the licensee notifies the broker of the requirement of a referral fee in the transaction.
 - That all parties act accordingly.
 - This policy should be coupled with a written representation by the broker that all broker-employees are aware of the referral fee policy and procedures.

IMPACT ON REALTORS®:

The rapid spread of affinity programs has impacted broker fees and REALTOR® commissions in all segments of the real estate industry. The interests of REALTORS® are best served approaching affinity programs with an emphasis on education and disclosure to all parties involved in the transaction.

PAR POSITION:

PAR adopted ARELLO’s Policy Statement and Implementation Plan during the May 1999 business meetings. PAR supports the ARELLO efforts and the need for education and communication between all parties to address issues related to after the fact referral fees. PAR’s concern over this issue is reflected in its assignment of a Priority Level II for the issue of affinity relationships during the January 1999 business meetings.

TALKING POINTS:

- A successful referral policy should be based upon the assumption that certain business procedures have been followed which create an enforceable obligation for the payment of referral fees. Once the obligation is created, acknowledged and performed by all the parties to the transaction, the policy provides a firm yet fair framework for addressing abuses.
- A referral-training program must be structured to include those procedural elements that legally and ethically bind the parties to the payment of referral fees.
- A successful training program must include principles laid out in the education/communication and trigger mechanism sections of this paper (see above).
- Education and early disclosure are vital elements to the solution to the difficulties faced by licensees when confronted with referral fees.

*Approved by the PAR Board of Directors
January 2011*