



Consumer Federation of America

REAL ESTATE REFERRAL FEES: DO THEY HARM CONSUMERS?

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Introduction

Most real estate agents collect and pay fees to other agents for referrals of consumers who buy or sell a home.^{1 2} Some agents derive all of their income from these fees. These fees are typically 25 percent of the commission collected by the agent receiving the referral, yet sometimes are higher. Frequently these higher fees are charged to agents by referral agencies, “lead generators” that prominently advertise on the internet.

Referral fees are controversial within the real estate industry. Some agents refuse to collect the fees on ethical grounds. Moreover, some professions prohibit their members from paying fees to other professionals for referrals, and all require disclosure. There is also active discussion by other professionals and businesses about the appropriate level for these fees.

Most consumers are not aware of these referral fees. In a 2020 survey, 2,007 representative adult Americans were informed that “most real estate agents pay and collect fees for referring a homebuyer to another agent who then makes the sale,” then were asked if they were “aware that most agents pay and collect these referral fees.” Only two-fifths (40%) of the survey respondents said that they had been aware of this fact.³

This report addresses the issue as to whether current referral fees harm consumers. It discusses the following related issues:

- The types, incidence, and levels of referral fees.
- How these fees are regarded within the industry.
- How other professions and businesses regard referral fees.
- Whether real estate referral fees are harmful to consumers.
- How consumers could be better protected and informed about these fees.
- Advice to consumers.
- Summary of findings.

¹ Technically, the fees are paid from one broker to another though it is individual agents, some of whom are brokers or associate brokers, who usually initiate and act on the referrals.

² This report focuses solely on referral fees among real estate agents. There are two related fee issues – fees paid by service providers such as mortgage brokers and title companies to real estate agents, and fees paid by real estate agents to non-agents for referrals. In general, RESPA prohibits the former and the Realtor Code of Ethics discourages the latter. But there are exceptions to the former, and some states permit the latter under certain conditions. See: Bob Hunt, “Payment of Referral Fees to Unlicensed Persons Is A Tricky Subject,” Realty Times (June 27, 2016). Chuck Marunde, “Can I Pay You Referral Fees? Referral Fees in Washington (July 8, 2008).

³ CARAVAN survey undertaken by ENGINE INSIGHTS for the Consumer Federation of America on August 28-30 and September 2-3, 2020.

Referral Fees Within the Residential Real Estate Industry

Types of Referrals: Fees are collected by agents, by brokers, and by referral agencies (with a broker’s license) who refer a consumer, most often a home buyer, to another agent or broker who makes a sale.⁴ These referrals are made in various situations, including:

- An agent sells a house for a consumer who wishes to purchase a property in another geographic location.
- An agent retires from selling properties but continues to learn of consumers who are searching for an agent.
- An agent specializes in finding potential buyers and sellers but does not wish to service them.
- A referral agency, such as Referral Exchange or HomeLight, collects information about potential buyers and sellers then “sells” this information to agents.

Networking among agents frequently results in referrals. An individual agent agrees with another agent to exchange referrals. Real estate firms, often in different geographic areas, also may agree to exchange referrals, and this exchange is usually spelled out in a written agreement. Almost all referring agents and agencies require selling agents to sign an agreement requiring compensation on the closing of a sale.⁵

Incidence of Referrals: There is no definitive information about the extent of referrals and collection of related fees. One expert notes: “At some time or another, most professionals admit, almost every real estate agent in the business will agree to pay a referral fee in exchange for a client.”⁶ A 2018 survey of more than 1,200 agents also suggests that referrals are widespread.⁷ Nearly nine in ten agents surveyed (87%) reported that they received income in the previous year from referrals. Over half (55%) said that they received at least six paid referrals in the past year, with 11 percent indicating that they earned income from at least 25 referrals in this period. Nearly half of surveyed agents (45%) reported that they earned at least \$10,000 in the previous year from referrals, with eight percent saying that they received at least \$50,000 in the period. One real estate expert estimates that between 30 and 35 percent of all real estate transactions include at least one referral fee.⁸

⁴ A good introduction to referrals and related fees can be found in: Elizabeth Weintraub, “How Do Real Estate Agent Referrals Work?” *The Balance* (March 31, 2020). Teresa Boardman, “Real estate referral fees: The good, the bad and the ugly,” *Inman News* (July 1, 2017). Reuven Shechter, “7 FAQs About Real Estate Agent Referral Fees,” *Clever* (June 25, 2019).

⁵ “Why every real estate client should know about real estate referral fees” (article published on website of Investing in Communities, no date given).

⁶ Weintraub, loc. cit.

⁷ Survey by Referral Exchange. Findings reported in: Jim Dalrymple, “Referrals were a key income source for many agents in 2018,” *Inman News* (May 8, 2019).

⁸ Richard Montgomery, “Dear Monty: Are referral fees in real estate ethical?” *Times Herald-Record* (recordonline.com)(July 31, 2019).

Level of Fees: Some referral agencies generate all or most income by charging participating agents an initial fee, monthly fees, and/or a small fee for each referral regardless of sale.⁹ However, the most common type of fee, near universal among individual agents and brokers, is a percentage of the paid commission collected by the agent or broker receiving the referral.¹⁰

There is general agreement that the percentage referred to as “typical,” “common,” or “standard” is one-quarter. Here, a selling agent receiving three percent of a \$300,000 sale, \$9,000, would send one-quarter of this amount, \$2,250, to the referral agent. There is also general agreement that referral fees range from 10 percent to 50 percent, with a large majority falling in the range from 20 percent to 35 percent.¹¹ At the low end, the association of exclusive buyer brokers charges referral fees of only 15 percent to its members.¹² At the high end, relocation agencies sometimes charge a fee as much as 50 percent of the commission received by the buying agent.¹³

There is some evidence that the average percentage has increased over time. One long-time real estate practitioner recalls that in the early 1990s, the typical fee was only 15- 20 percent.¹⁴ Another veteran practitioner says that traditional firms have always expected 20-25 percent.¹⁵ Today, major referral companies rarely charge less than 25 percent and frequently an even higher percentage.¹⁶ One expert indicates that the compensation charged by referral networks ranges between 25 and 40 percent.¹⁷

Factors Affecting Fee Levels: The fact that more than 1.5 million licensed agents are competing for only 4-5 million home sales each year provides an incentive for agents to pay high fees to obtain clients. It has been suggested that, encouraged by the lack of fee transparency, some of those making referrals shop leads to selling agents with the goal of receiving the highest fee. Some referral agents “go strictly by the numbers: they recommend the agent who offers the highest referral fee.”¹⁸ In this scenario, reverse competition occurs. Consumers are steered to

⁹ For a discussion of fee levels, see: Mary Pope-Handy, “Why are real estate fees in real estate transactions,” popehandy.com (December 11, 2011). Chris Linsell, “Real Estate Referral Fees: How They Work & Best Practices for 2019,” The Close (May 23, 2019). Sam Glover, “Real Estate Referral Fees: The Ultimate Guide to a Truly Stellar Lead Source,” Follow Up Boss (November 14, 2019).

¹⁰ See: Weintraub, loc. cit. Boardman, loc. cit. Shechter, loc. cit.

¹¹ Weintraub, loc. cit. Glover, loc. cit. See also response (February 4, 2016) by broker Matthew Holder to a Quora inquiry.

¹² Private communication from broker Tom Wemett (August 23, 2020) about NAEBA, the National Association of Exclusive Buyer Agents, to which he belongs.

¹³ Mary Pope-Handy, loc. cit.

¹⁴ Private communication from Bill Wendel, Real Estate Café, on August 22, 2020.

¹⁵ Private communication from broker Tom Wemett, August 23, 2020.

¹⁶ White Stag Realty in Indiana advertises referral fees of up to 40 percent.

¹⁷ Dmitry Shkipin, “How real estate referral fees work,” Home Openly (March 29, 2020).

¹⁸ Weintraub, loc. cit.

those selling agents willing to provide the highest fees.¹⁹ The consumer implications of this practice will be discussed later.

Referral fees, then, can vary because of the determination of referral agents to obtain the highest fee. They can also vary depending on the extent to which referral agents provide information, advice, and assistance to the consumer being referred. And they can vary depending on the extent to which the consumer is prepared to make a sale, for example, whether buyers have been pre-qualified for a mortgage loan.²⁰

Industry Views of Referral Fees: A large majority of agents pay and collect referral fees. Given that the fees have not been a great source of public controversy, the industry has felt little need to justify these fees in terms of consumer benefits. The literature on the subject focuses most attention on the benefits to agents.

Faced with specific criticisms about referral fees, however, agents cite several factors in defense of these fees:²¹

- Referral fees are widely accepted in other businesses and have been an integral part of the real estate brokerage system for many decades.
- Referral fees can be seen as marketing costs to acquire clients. In theory, these referral costs could be a more cost-effective way to recruit business than paying for advertising on traditional and social media.
- An agent who provides information, advice, and/or assistance to a consumer then refers them to another agent deserves some compensation for this service.
- An agent who refers a consumer to a trusted agent who gives clients good service provides value to that consumer. If the referring agent wants the consumer to have a good experience with the selling agent – if for no other reason than to enhance or maintain their reputation -- that concern can influence the behavior of the latter to the benefit of the consumer.

Some agents, though, are critical of referral fees. Some view these fees as unnecessary and distasteful. In an article titled “Don’t pay referral fees,” one agent wrote that “people who care about you will refer you to a great agent and expect nothing in return.”²² Another agent, for the same reasons, said: “I don’t pay or take referrals, never have.”²³

¹⁹ Shkipin, loc. cit.

²⁰ Glover, loc. cit. Tyler Nicely, “How Much Do Real Estate Agents Make?” Zillow Premier Agent (November 21, 2019).

²¹ The potential benefits of conscientious referrals are described by agent Mary-Pope Handy in her blog, loc. cit. These benefits are also described in a private communication from real estate agent Lindy Chapman dated August 23, 2020. “There is a LOT of value to receiving a trusted recommendation over hoping you, the consumer, make the right choice when trusting the purchase or sale of a property.” Chapman then provides several examples of referrals beneficial to individual consumers.

²² Jim Porter, “Solano Real Estate Scene: Don’t pay referral fees,” Daily Republic (February 8, 2020).

²³ James Kimmons, “Referral Fees in Real Estate Brokerage,” The Balance (November 14, 2019).

Other agents think these fees can be pernicious:

- As one put it: “Referral fees are also territory for abuse... Referring agents can become middlemen that come between middlemen without adding value.”²⁴
- Another agent has suggested that many agents have reservations about referrals and contempt for referral agencies: “Most [agents] feel it [referrals] can be a bit despicable at time... the whole process has the whiff of kickback to it.... Many real estate professionals see referral agents as simply parasites.”²⁵
- In a private communication, one agent who pays and receives referral fees wrote: “No doubt there are referral fees that do damage. For example, when they are purely LEAD GENERATION such as HOMELIGHT. Or when they are fees an agent pays to acquire leads. Or broker to broker fees that offer no value or strategy especially as they are required to stay within a brokerage network and to keep an agent’s favorable commission split.”²⁶
- A longtime critic of the industry, who is both a real estate broker and an attorney, argues that “secret referral fees” result in “Realtors...stealing billions of dollars from consumers.”²⁷

How Referral Fees Are Regarded by Other Professions and Businesses

Other professions and businesses regard referral fees paid to members of the same profession or business in different ways. Professions tend to restrict payment of referral fees to a greater extent than businesses. However, all professions and most businesses that permit these fees require or expect their disclosure. Typical fee levels, when representing a percentage of earned income, are usually below, often well below, the 25 percent fee typically paid by residential real estate agents.

Physicians: The American Medical Association’s Code of Medical Ethics prohibits referral fees paid to other physicians. “Payment by or to a physician or health care institution solely for referral of a patient is fee splitting and is unethical.”²⁸

Attorneys: The American Bar Association’s Code, which has been adopted by most states, prohibits lawyers from paying others for recommending the lawyer’s services unless:

²⁴ Boardman, loc. cit.

²⁵ Weintraub, loc. cit.

²⁶ Private communication from Lindy Chapman, August 23, 2020.

²⁷ Doug Miller, Realtor Referral Fees, Consumer Advocates in American Real Estate (CAARE)(<https://www.caare.org/2018/04/24/secret-referral-fees/>).

²⁸ American Medical Association, Code of Medical Ethics Opinion 11.3.4.

- The division of fees is proportionate to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation.
- The client agrees to the arrangement, including each lawyer’s share, and the agreement is confirmed in writing.
- The total fee is reasonable.²⁹

Accountants: The Association of International Certified Professional Accountants (AICPA) prohibits the receipt of third party commissions and referral fees unless the commission or fee is disclosed to the client.³⁰

Investment Professionals: The Chartered Financial Analyst (CFA) Institute requires investment professionals to disclose “any compensation, consideration or benefit received from or paid to others for the recommendation of products or services.” According to the Institute, failure to make this disclosure “raises the question of potential lack of objectivity in the recommendation.”³¹

Businesses: One business consultant suggests that referral fees are justified “only when the customer is receiving something of greater value as a result of the referral being made.” Moreover, the fees should be disclosed. “If they are not disclosed, they have the great potential of violating trust between the referrer and the individual being referred.” When not disclosed, “the referral fee, psychologically seems almost like an illegal act – kind of like a bribe.”

Referral fees, however, are common in business. One agency consultant reports that “agencies typically pay referral fees of 5 to 10 percent of the revenue they receive” during the first year.³² This percentage range – 5 to 10 percent of revenues in year one – is what one advertiser pays.³³ In the software business, one consultant recommends 10 percent for a lead, but 15-20 percent if the referrer does the marketing.³⁴ One travel agent reports that she receives less than 10 percent of the cost of the total trip.³⁵

²⁹ Roy S. Ginsburg, “Is It OK to Pay Referral Fees?” Attorney at Work (no date). See also: Wendy Wen Yun Chang, “Must I Really Turn Down That Referral Fee?” American Bar Association publication (July 31, 2011).

³⁰ Association of International Certified Professional Accountants, AICPA Code of Professional Conduct, Commissions and Referral Fees.

³¹ CFA Institute, Standard VI(C) Referral Fees.

³² Karl Sakas, Referral fees: How much should agencies pay for sales referrals?” saksandcompany.com (July 8, 2020).

³³ Response from Marcelo Salup (September 1, 2016) to query -- What is a fair price to pay for a referral? – on the alignable.com forum.

³⁴ Jessica Huhn, “Referral Fees: Best Practices for Success,” Business 2 Community (August 26, 2019).

³⁵ Response from Tobi Tuttobene, TAW Travel (September 4, 2016) to the query – What is a fair price to pay for a referral? – on the alignable.com forum.

Realtors: The National Association of Realtors Code of Ethics, Article 6, permits referral fees between agents and brokers without requiring disclosure to clients. “Realtors shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate fees, the Realtor or Realtor’s firm may receive as a direct result of such recommendation.”³⁶ Some states – including North Carolina, Minnesota, California, and Idaho – require a disclosure but not always in writing or in a timely way. We have seen no evidence that these requirements are enforced.³⁷

Are Referral Fees Harmful to Consumers?

Are referral fees harmful to consumers? That depends whether these fees tend to increase commission levels or reinforce their current high levels. It also depends on whether the referring agent provides substantial value to the consumer in terms of useful information/advice and referral to an agent who provides good value.

Fees: As seen above, residential real estate fees are relatively high compared to referral fees in other professions and businesses. In the medical profession they are prohibited. And in the legal profession the fees are permitted only when services are rendered, and the fees must be proportionate to the level of these services.

The question of whether these referral fees increase consumer costs is more complicated. For consumers, real estate commissions are relatively fixed. Much research has shown that most listing agents seek a six percent commission with half going to the buyer’s agent. In some areas this percentage is somewhat less (e.g., 5.7%), but a large majority of agents in an area still try to charge the same level of commission. Moreover, despite industry claims, research has shown that most real estate agents are unwilling or reluctant to negotiate these commissions. Agents tend to be most willing to lower commissions when the property involved is expensive.³⁸ Pressed by a consumer who wishes to sell a million dollar home, a listing agent may well have difficulty maintaining that a \$60,000 commission is reasonable compensation for this sale.

While some agents try to charge more than six percent, there is little evidence that their attempts are widespread, which raises the question: If real estate commissions are relatively

³⁶ National Association of Realtors, REALTOR Code of Ethics, Article 6.

³⁷ For example, the North Carolina Real Estate Commission Rule on brokerage fees and compensation (Rule 58A.0109) prohibits real estate agents from receiving any compensation for services related to a referral without “full and timely disclosure” but does not require that this disclosure be in writing. Will Martin, Martin & Gifford, PLLC in NC REALTORS (November 22, 2018).

³⁸ Stephen Brobeck, Hidden Real Estate Commissions: Consumer Costs and Improved Transparency (Consumer Federation of America, October 2019). This report includes research showing that a large majority of agents are not prepared to negotiate commission levels. See also: Ann B. Schnare et al, “Do Real Estate Agents Compete on Price? Evidence from Seven Metropolitan Areas,” in Edward Glaeser and John M. Quigley, Housing Markets and the Economy: Risk, Regulation, and Policy (Lincoln Institute of Land Policy, 2009).

fixed, have referral fees raised them? The answer in general is no. However, referral fees clearly have supported, perhaps substantially, the current compensation system of high and relatively fixed commissions. Because listing and buyer agents may have to pay 25 percent of their commission split to a referring agent or agency, these selling agents are likely to support current commission levels even more vigorously.³⁹ The impact on consumers is twofold: Individual consumers find it less likely that they can negotiate a lower commission level. Moreover, all future home buyers and sellers are potentially harmed because it is less likely that the industry will ever accept truly competitive pricing that would lower commission levels.

Quality of Service: These costs, though, would be mitigated somewhat if referrals and related fees improved the quality of service received by home sellers and buyers. Do they? There is a range of possibilities here. At one extreme, referral fees can encourage a referring agent to provide useful information and advice to a potential home buyer or seller, then ensure that the referral was to an agent who provided good service. At the other extreme, variable referral fees can encourage agents and referral agencies to seek the highest possible compensation from selling agents who would be willing to pay these fees because they had difficulty finding clients, often because of inexperience, or because they were willing to reduce their level of service, for example, by limiting their marketing efforts.

The link between referral fees and inferior service is recognized by some industry leaders and experts:

- “Real estate professionals who need to outbid each other to get referrers’ nods, surrendering a portion of their precious commission, may not be your best bet for representation. Some could be new to the profession or new in town and need referrals to get their careers going. But some agents seek out referrals because they have no other way to get business. Does a rep who either has little experience or isn’t good at the game sound like a great pick for you?”⁴⁰
- “In order to work for a really low amount of pay, to make a decent living these same agents absolutely must increase their volume and lower what is offered to their customers or clients in terms of time and attention.”⁴¹
- “Is the customer going to get an experienced and effective agent [from a referral agency]? Unlikely. The best will be busy and definitely not wanting to give up 25% or 30% of their commission for a lead. Usually it’s going to be a starving newbie or

³⁹ The imbalance between number of active agents and number of active sales also acts to reinforce high, uniform commissions. Most years, some 1.5 million active agents compete for sides in about five million home sales (fewer in this Covid year). Six percent commissions allow more of these agents to continue to practice. Nevertheless, according to the Bureau of Labor Statistics, the median income of real estate agents in 2017 was a little less than \$46,000.

⁴⁰ Weintraub, loc. cit.

⁴¹ Mary Pope-Handy, loc. cit.

an agent who takes all referrals and isn't really going to be 'all-in' service-wise for any of them. The customer may get 75% of excellent service but they want 100%.”⁴²

Referral Agencies: In general, other than relocation services, referral companies are the most controversial referrers.⁴³ They refer consumers only to a small minority of agents practicing in an area – those agreeing to pay referral fees – and the fees they charge frequently exceed the 25 percent level most common in the industry.⁴⁴ Moreover, the referrers often do not adequately vet agents receiving referrals. As one expert put it: “The bulk of referrals are not well-informed, which means the referrer knows nothing about the new agent.”⁴⁵ Another agent explained the referral process: “The referring agent isn't really doing much of anything for the client. They are simply tossing them into a hopper with no idea who they'll get in many cases. It's a few minutes effort to fill out an online form and a check later.”⁴⁶

From the perspective of other agents, these fees reduce the compensation of agents. Yet, there are so few sales on average per agent, some agents feel financial pressure to accept referrals from these agencies.⁴⁷

As indicated above, some industry leaders say that these participating agents tend to be new to the industry, or to a local market, or not successful in selling in this market. Is this the case? We googled “agents in (name of city)” in four smaller cities in different parts of the country – Portland, ME; Gainesville, FL; Midland, TX; Spokane, WA – to see which referral agencies advertised their services. From each service, we then requested recommendations for agents to help us purchase a house costing \$300,000.

The agencies that recommended agents and had an ad for at least one city were:⁴⁸

- Agent Pronto
- Effective Agent

⁴² Kimmons, loc. cit.

⁴³ A comprehensive critique of referral companies has been written by Dmitry Shkipin and published on the Home Openly website, loc. cit.

⁴⁴ A range from 25 to 40 percent according to Shkipin, loc. cit. Most referral agencies disclose fees on their websites only to licensed real estate agents. Exceptions are: Agent Pronto, 25-35 percent; HomeLight, 25 percent; Sold.com, 30 percent.

⁴⁵ Montgomery, loc. cit.

⁴⁶ Kimmons, loc. cit.

⁴⁷ See note 39.

⁴⁸ Zillow and Realtor.com also list individual agents by geographic area but are not included because they did not separately recommend a limited number of agents. The websites of both companies list a large number of agents for each area. The Zillow website allows viewers to see agents listed by “most active,” “most recent sales,” “best local reviews,” and “most listings.” The Realtor.com website allows viewers to see agents listed by “most recent activity,” “highest ratings,” “most recommendations,” “most for sale listings,” and “most sold listings.” On the page where the lists of agents begin, Zillow includes three “featured agents.”

- Ramsey solutions (ELP)
- HomeLight
- Fast Expert
- UpNest (offer \$500 commission refunds)
- Rocket Homes
- Clever
- Referral Exchange (listed as Top Agents Ranked)
- Yelp
- MyAgentFinder
- Front Agents
- Thumbtack
- Expertise
- Real Estate Referral Place

Most referral agencies provided names of agents either immediately or in a later email. Some agencies said they would provide names but failed to do so (MyAgentFinder and Front Agents in all four cities), and some agencies did not offer services in all four cities. Nevertheless, we received the names of 100 agents in the four areas. We then consulted Zillow's Agent Finder to learn whether each agent practiced in the area and, if so, the number of their sales in the past year and the total number of customer reviews. In a few instances, the same agent was listed by more than one referral agency. Here's what we found:

- Eighteen of the referrals (18%) were to agencies located in other geographic areas while two referrals (2%), both from Thumbtack, were to companies that were not engaged in residential real estate sales. Ten of the out-of-town referrals were from Clever.
- Of the remaining 80 referrals, 18 (18% of total referrals) were to agents with no or only one sale in the previous year. Most referrals from Referral Exchange (listed as Top Agents Ranked) were agents with no or one recent sale. All agencies supplying names included at least one out-of-town agent with five or fewer sales in the past year.
- Of the 80 referrals, 15 had no or only one customer review. Not unexpectedly, those agents with no or one review were highly correlated with agents with no or one sale in the previous year.

This analysis of a sample of referrals suggests the following:

- Consumers cannot rely on agencies for referrals to experienced agents located in the geographic area of the home search. Nearly two in five (38%) referred agents either were based outside the area of home search or had no or one sale in this area in the previous year.

- A significant minority of referred agents, including all or most out-of-town agents, apparently operate as referral agents. That further divides a commission among agents, strengthening upward pressure on rates.

Implications for Public Policy and Consumer Search

Decoupling of Commissions: Referral fees are relatively high and apparently rising. The most effective way to curb these fees would be to decouple listing and buying agent commissions. Over time this decoupling would subject commissions, paid separately to listing agents by sellers and to buying agents by buyers, to much greater competitive price pressures. These price pressures currently exist but are weak because:

- Sellers know, or are told if asked, that lowering the commission split paid to the buyer broker could well limit the interest of buyer brokers in showing the listing.⁴⁹
- Buyer agents often do not take the initiative to inform buyers of the commission split, and if buyers inquire, usually are informed that the seller covers the expense of this split. The result is that buyers rarely negotiate commissions.⁵⁰

This decoupling may eventually occur, most likely instigated by litigation, but does not appear imminent.

Investigation of Reverse Competition: Government can, however, play two more limited roles. They should investigate the practice of reverse competition, focusing most of their attention on referral agencies. These agencies are charging some of the highest referral fees and do not prioritize referring consumers to the best agents in an area. These agencies make referrals only to those agents, representing a small minority in one geographic area, that will provide compensation.

Disclosure of Referral Fees: Government should also insist on the disclosure of referral fees that is required by other professions, by many other businesses, and by some states.⁵¹ For sellers, the disclosure could be in the listing contract. For buyers, the disclosure could be in the

⁴⁹ Brobeck, loc. cit., pp. 4-5, 8. See also: Mark S. Nadel, “A Critical Assessment of the Traditional Residential Real Estate Broker Commission Rate Structure,” *Cornell Real Estate Review*, 5 (2007). Panle Jia Barwick et al, “Conflicts of Interest and Steering in Residential Brokerage,” *American Economic Journal: Applied Economics*, v. 9, n. 3 (July 2017).

⁵⁰ Brobeck, loc. cit., p. 7. Zillow calls this buyer agent response one of the five lies brokers most frequently tell home buyers (Brian Brady blog dated June 18 2009 on Zillow’s website).

⁵¹ On the “realtor referral fees” page on its website, Consumer Advocates in American Real Estate (CAARE), headed by an attorney who is also a real estate agent, argues that any agent serving as a fiduciary has an obligation not only to disclose the fee but also to obtain informed consent. Other critics of these fees also think good disclosures would have value. See Boardman, loc. cit.: “The system could be improved by requiring the person making the referral to disclose the fee (and who knows who and how they know each other) to all parties.” One long-time practitioner and commentator says that he always discloses referral fees he is paid. Richard Montgomery, loc. cit.

home purchase agreement. While many consumers may not read this disclosure, the fact that some would, and the disclosure's very existence, would raise questions about the appropriateness of these fees (and their level) and should exercise some restraint on the willingness of agents to pay high fees. Some consumers may agree with the agent who said that "the whole process [referrals] has the whiff of kickback to it." So in all likelihood, the more consumers are aware of these fees, the less likely agents would be to pay fees or, at least, high ones.

Over half of consumers think that it is "unfair" for agents not to disclose referral fees to their home-buying clients. When a representative sample of 2,007 adult Americans were asked whether "you think these referral fees are fair if they are NOT disclosed to the home buyer," 51 percent said that they thought the non-disclosure was "somewhat unfair" or "very unfair." Less than one-third (29%) responded that they thought this non-disclosure to be somewhat or very fair.⁵²

Advice to Consumers: Given the current lack of effective disclosures about referral fees, what options are available to home buyers and sellers?

- Consumers should be aware that any referral from an individual agent or referral firm is likely to generate a fee that will make it more difficult to negotiate a lower commission charged by the referred agent.
- Consumers should be especially wary of utilizing the services of referral agencies. The home buyer or seller could well be referred to an inexperienced agent or to one based outside their area. Even if the referred agent is experienced and local, given the relatively high fees they are charged, they will be less likely to be willing to accept a lower commission.
- Consumers now have the ability to search effectively and efficiently for their own agent. They can check out any agents suggested by friends and associates using information sources such as Zillow's Agent Finder, which provides extensive information about a large majority of active agents. They can then interview several of these agents, asking a range of questions about representation, commission, and quality of service.

Summary of Findings

The most important findings of our research on referral fees are:

- A large majority of residential real estate agents pay and collect referral fees.
- These fees are typically 25 percent of the commission collected by the agent receiving the referral but are often higher than this amount, especially when charged by referral agencies.

⁵² ENGINE INSIGHTS 2020 survey, loc. cit.

- While most agents defend these fees as facilitating good customer service, some agents view the fees as kickbacks that tempt agents to seek the highest fee, not best customer service, in their referrals. This reverse competition harms consumers.
- According to professional codes of conduct, physicians are prohibited from paying referral fees to other physicians, and attorneys can only receive fees that are proportionate to the services they render. Regardless, attorneys and other professionals are required to disclose these fees to their clients.
- In business generally, the most typical referral fee level appears to be 10 percent.
- In the residential real estate industry, while referral fees usually do not increase commissions, these fees do support relatively high and uniform commission levels.
- The referral fees can encourage good quality of consumer service, yet they also can encourage referrals to agents with little experience and few or no customer reviews, especially when made by referral agencies. Nearly two-fifths (38%) of referrals made by these agencies in four cities were to inexperienced or out-of-town agents.
- Effective disclosures of referral fees would likely discourage some agents from paying these fees and encourage other agents to insist on lower fee levels. These disclosures would also encourage agents to make referrals to agents providing good customer service. The disclosures are supported by most consumers.