

A.G. Schneiderman Urges Brokers And Home Buyers In New York To Take Advantage Of Law Allowing Lower Commissions

 ag.ny.gov/press-release/ag-schneiderman-urges-brokers-and-home-buyers-new-york-take-advantage-law-allowing

NEW YORK — Attorney General Eric T. Schneiderman today issued an open letter urging participants in the New York residential real estate market to take advantage of a recent change to the State’s Real Property Law confirming that real estate agents may rebate a portion of their commissions to clients. Attorney General Schneiderman’s letter explains that this change, which his office helped initiate, has the potential to reinvigorate price competition among real estate brokers in New York. His letter also emphasizes that his office will investigate any allegations of discrimination against brokers engaged in rebating.

“Rebating by real estate brokers can greatly reduce the costs of buying and selling property and even facilitate new and innovative business models,” said **Attorney General Schneiderman**. “I urge the real estate community to embrace this opportunity to be more competitive, and improve the choices available to New York homeowners. I also encourage buyers and sellers alike to take advantage of your right to bargain with your broker for a lower commission.”

Last year, the Attorney General’s Office worked with members of New York’s real estate community to propose an amendment to Section 442 of the New York Real Property Law clarifying that it is lawful for a broker to pass through, or “rebate,” part of his or her commission to the client. In December, this amendment was signed into law. The legislation was sponsored by Senator Zeldin and Assembly Member Lavine.

In particular, the updated law makes it clear that when a buyer’s agent receives a portion of the transaction commission from the seller or the seller’s agent, he or she is permitted to rebate a portion of those funds to the buyer in the transaction. As Attorney General Schneiderman’s letter explains, because of the way that the real estate market works, this kind of rebating is often the only practical way for a buyer’s agent to offer a discount for his or her services.

The legislative change arose out of an investigation by the Attorney General’s Office into market factors that were preventing greater price competition among residential real estate brokers. Attorney General Schneiderman’s letter stresses that any complaints of boycotting or discrimination against brokers engaged in rebating will also be fully investigated by his office.

For the text of Section 442 highlighting the recent amendment and additional information about competition in New York’s real estate industry, real estate market participants can visit the Attorney General Office’s Antitrust Bureau [here](#).

A full copy of the letter is available below.

April 20, 2015

Dear participant in New York's real estate industry:

I am writing to alert you to a recent change in New York State's Real Property Law that was strongly supported by my office. This law has the potential to breathe new life into competition in the residential real estate brokerage industry, to the benefit of all New Yorkers. I urge you take advantage of this law and help reinvigorate price competition among real estate brokers in New York.

In December, a statute was signed into law amending Section 442 of the New York Real Property Law to make it completely clear that it is lawful for a broker to pass through, or "rebate," part of his or her commission to the client. This legislation arose out of an investigation by my office into competition in the residential real estate brokerage industry. My office worked together with the New York Department of State, the New York State Association of Realtors, and others in the industry to initiate the clarifying legislation.

As you know, for most residential real estate sales in New York State, including New York City, the seller's broker is usually compensated by receiving a contractually set commission from the seller. The buyer's broker, however, is not typically paid by the buyer; he or she instead receives a fraction (often half) of the seller's broker's commission. Due to this payment structure, often the best way for a buyer's broker to compete on price is to offer to rebate part of his or her commission to the buyer. Such buyer rebates are legal in most states, including New York. But until recently, some people in the industry may have read Section 442 to suggest that this type of rebating was not permitted in New York. As of December's legislative fix, there is no room for debate: commission rebating in New York State is legal.

Such rebating is also procompetitive and good for consumers. One reason my office helped initiate this legislative change was because we were concerned that confusion over the legality of rebating may be hindering efforts of real estate brokers to employ more innovative, consumer-friendly business models. For example, the widespread use of sophisticated real-estate search websites now allows buyer-side brokers to offer more limited-service, lower-fee models, under which clients do more of their own legwork when searching for properties. Brokers adopting such models can offer lower commissions (by rebating) and, in principle, may also be able to serve a larger number of clients.

I encourage all real estate brokers and salespersons in New York to consider enhancing the choices available to real estate buyers by offering lower commissions (by means of rebates) to some or all of your clients. I also emphasize that my office will investigate any allegations of boycotting or discrimination against brokers engaged in rebating or other lawful discounting practices. Finally, I urge consumers and other buyers of real estate in New York to take note of your right to bargain with your broker for a lower commission.

For the text of Section 442 highlighting the recent amendment, and additional information about competition in the real estate industry in New York, see my office's Antitrust Bureau webpage at [here](#).

Sincerely,

Eric T. Schneiderman
Attorney General
State of New York

NEW YORK STATE OFFICE
of the
ATTORNEY GENERAL

Antitrust Bureau

“Illegal anticompetitive practices hurt the real estate industry as well as the consumer. The Antitrust Bureau of the New York State Attorney General’s Office monitors competition in the real estate industry, working to ensure that real estate markets function freely.”



Attorney General
Eric T. Schneiderman

We want to hear from regular practitioners in the industry about whether the real estate market is operating fairly and competitively. We welcome your input.”

A handwritten signature in black ink that reads "Eric Schneiderman". The signature is fluid and cursive.

Contact The Antitrust Bureau

Participants in the real estate industry are closer to daily real estate activity and more likely to observe anticompetitive conduct. We rely on reports from real estate lawyers, brokers, purchasers, and others in the industry. Please feel free to contact us with your questions and concerns.

Antitrust Bureau
State of New York
Office of the Attorney General

120 Broadway, 26th Floor
New York, NY 10271
antitrust.realestate@ag.ny.gov
212-416-8262

What to Look for

Illegal anticompetitive practices in real estate transactions can include:

- Agreements among brokers not to charge commissions under a certain level;
- Agreements among brokers not to work with discount brokers;
- Refusals to deal with brokers who offer rebates to their clients;
- Refusals to show properties that are for sale by owner (FSBOs) or listed by a discount broker;
- Agreements among brokers or multiple listing services (MLSs) to prevent competition from real estate websites.

Agents and Fiduciary Responsibilities

Frequently, a real estate agent's fiduciary duties are not well understood by consumers, and even by some real estate professionals. Consumers should receive full disclosure of all the information they need for a fair real estate transaction. For example,

- Buyers must receive the required disclosure form listing the broker's fiduciary duties and disclosing whom the broker represents.
- Buyers should be informed if the agent representing them is going to be paid by the seller's broker.
- Buyers should feel free to inquire about how much commission their broker will earn on a transaction.
- Both buyers and brokers should know that rebating commissions is legal in New York.

Real Property Law

Article 12-A


§442. Splitting commissions

1. No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service, help or aid rendered in any place in which this article is applicable, by such person to the broker in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate including the resale of a condominium or cooperative apartment unless such a person be a duly licensed real estate salesperson regularly associated with such broker or a duly licensed real estate broker or a person regularly engaged in the real estate brokerage business in a state outside of New York; provided, however, that notwithstanding any other provision of this section, it shall be permissible for a real estate broker to pay any part of a fee, commission, or other compensation received to an unlicensed corporation or an unlicensed limited liability company if each of its shareholders or members, respectively, is associated as an individual with the broker as a duly licensed associate broker or salesman.

2. Furthermore, notwithstanding any other provision of law, it shall be permissible for a broker properly registered pursuant to the provisions of article 23-A of the General Business Law who earns a commission on the original sale of a cooperative or homeowners association interest in real estate, including condominium units to pay any part of a fee, commission or other compensation received for bringing about such sale to a person whose principal business is not the sale or offering of cooperatives or homeowners association interests in real property, including condominium units in this state but who is either: (i) a real estate salesperson duly licensed under this article who is regularly associated with such broker; (ii) a broker duly licensed under this article; or a person regularly engaged in the real estate brokerage business in a state outside of New York.

Except when permitted pursuant to the foregoing provisions of this section no real estate broker shall pay or agree to pay any part of a fee, commission, or other compensation received by the broker, or due, or to become due to the broker to any person, firm or corporation who or which is or is to be a party to the transaction in which such fee, commission or other compensation shall be or become due to the broker; provided, however, that nothing in this section shall prohibit a real estate broker from offering any part of a fee, commission, or other compensation received by the broker to the seller, buyer, landlord or tenant who is buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate including the resale of a condominium or cooperative apartment. Such fee, commission, or other compensation must not be made to the seller, buyer, landlord or tenant for performing any activity requiring a license under this article.


Rebates Make Buying A Home Less Expensive

 [justice.gov/atr/rebates-make-buying-home-less-expensive](https://www.justice.gov/atr/rebates-make-buying-home-less-expensive)

In purchases where buyer's brokers are offered half of a 5% commission, they may compete on price by refunding a portion of their commission to the homebuyer. A 1% rebate on the median-priced home would save the homebuyer \$1,843.



[Consumers can save thousands of dollars in commissions](#) 

[Calculate how much you can save](#) 

Certain States Ban Rebates

In most states brokers compete on price for consumers' business. However, ten states have enacted laws that forbid brokers from offering refunds, denying consumers the benefits of price competition and driving prices higher than they would be in a more competitive market.

[States that ban brokers from offering rebates](#) 

[Department of Justice efforts to lift rebate bans](#)

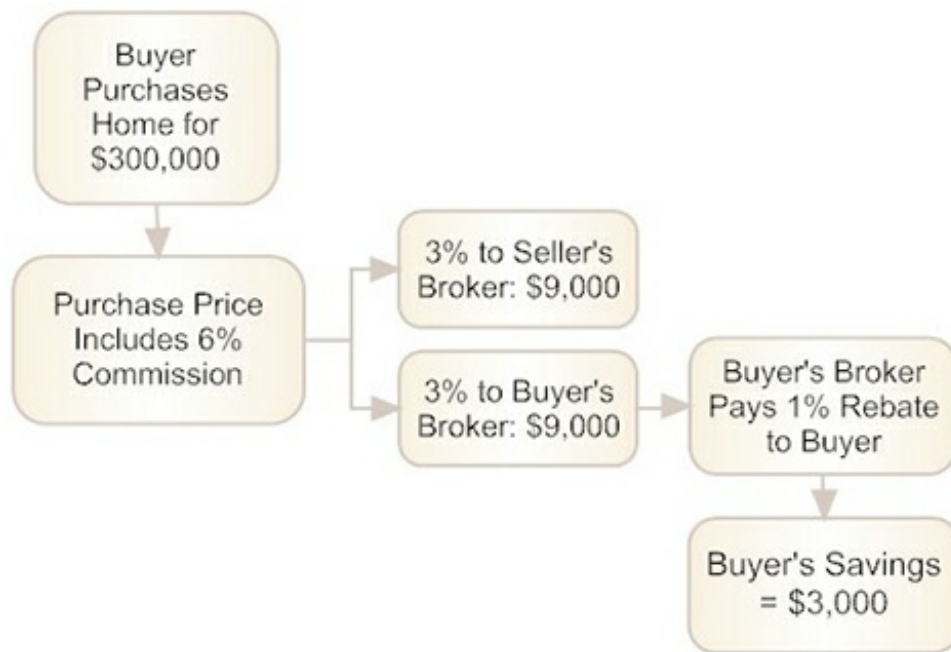
How do rebates work?

Some real estate brokers offer consumers cash refunds or non-cash incentives to encourage them to use that broker's services. Rebates are typically cash payments from the real estate broker to his or her client after closing. Incentives may include gift certificates, closing-cost payments, or free ancillary services such as home inspections or moving services.

Learn more: [Full-Service Discount Brokers](#)

How do rebates benefit consumers?

Rebates can save consumers several thousand dollars in a single transaction. For example, if a broker offers to refund one-third of its commission to the homebuyer, the average buyer of a \$300,000 home could save \$2,500 to \$3,000 (based on the 2.5% to 3% commission rates typically earned by the buyer's broker).



[D]

Incentives, such as gift certificates for a home inspection, merchandise at a nearby hardware store, or moving services, give consumers monetary benefits from the transaction that they otherwise would not have obtained.

Offering rebates and incentives is one way that real estate brokers can compete for consumers' business, leading to lower prices to consumers.

Do refunds and incentives pose any risk to consumers?

Some have argued that refunds and incentives can tempt consumers into closing on real estate transactions against their best interests. The Antitrust Division has found no evidence that refunds and incentives harm consumers. On the contrary, they can dramatically lower the price that consumers pay for brokerage services.

Do real estate brokers support rebate bans?

Some brokers support rebate bans as a means of reducing price competition. For example, when the Kentucky Real Estate Commission surveyed brokers about lifting that state's rebate ban, here is what some of them said:

"If we give rebates and inducements, it would get out of control and all clients would be wanting something. The present law keeps it under control."

"This would turn into a bidding war, lessen our profits and cheapen our 'so-called' profession."

"If inducements were allowed, they could lead to competitive behavior, which would make us look unprofessional in the eyes of the public."

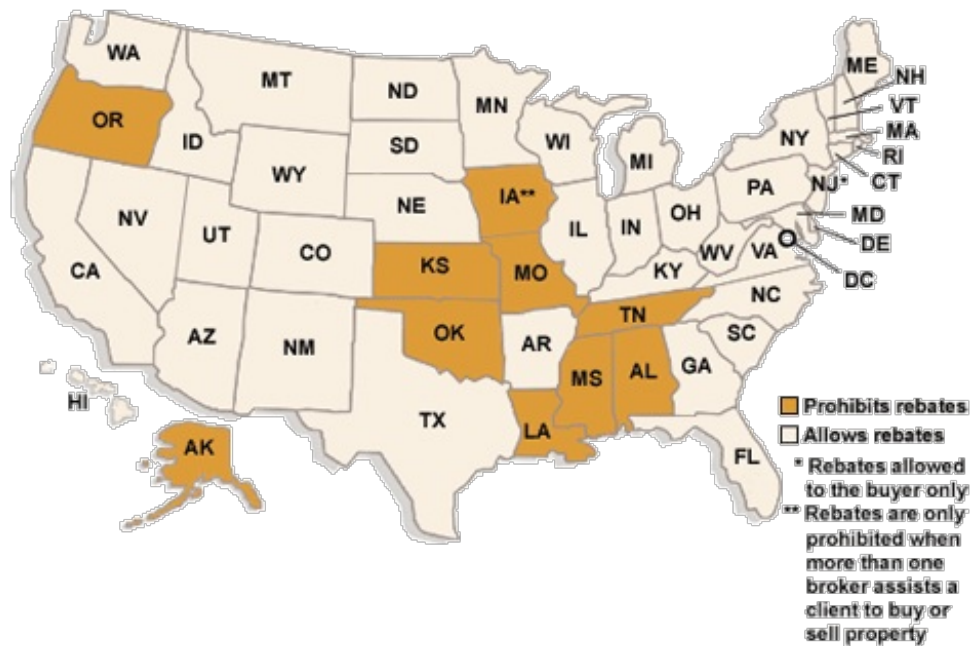
“I think this would just take money right out of our pocket.”

Which states currently ban rebates and/or inducements?

Ten states currently have laws that ban rebates. Nine states have a full ban on broker rebates: Alabama, Alaska, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Oregon, and Tennessee. In addition, Iowa prohibits rebates when the consumers use the services of two or more real estate brokers during a transaction.

Rebates

 justice.gov/atr/rebates



*** Indicates states that prohibit rebates.

For a complete listing, see [Guide to State Real Estate Laws and Regulations](#).

Department of Justice Efforts to Lift Rebate Bans

The Division investigates state commissions and other bodies that regulate real estate brokers in ways that restrict licensed brokers from offering rebates. The Division also informs states about the competitive effects of real estate legislation. This section provides details on the Antitrust Division's efforts in selected states:

Kentucky

[U.S. v. Kentucky Real Estate Commission](#)

Montana

April 1, 2008

[Montana Board of Realty Regulation Permits Real Estate Brokers to Offer Rebates to Consumers](#)

New Jersey

November 12, 2009

[Letter to New Jersey Senate Re: Senate Bill 139](#)

South Dakota

August 17, 2005

Press release: [South Dakota Real Estate Commission Permits Real Estate Brokers to Offer Rebates and Inducements](#)

Tennessee

May 14, 2007

Press Release: [Justice Department Expresses Concerns to Tennessee State Legislature on Bill That Would Deny Consumers Cash Rebates in Real Estate Transactions](#)

May 12, 2007

[Letter to Tennessee House of Representatives](#) Re: Comments on Tennessee House Bill 2095

West Virginia

May 4, 2006

Press release: [West Virginia Real Estate Commission Permits Real Estate Brokers to Offer Rebates and Other Discounts](#)

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200721013**

Release Date: 5/25/2007

Index Number: 61.00-00, 6041.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-157111-06
Date:
February 09, 2007

Taxpayer =
State A =
Y =
Amount 1 =

Dear _____ :

This responds to your letter dated November 30, 2006, requesting a ruling that Taxpayer does not have an information reporting obligation under section 6041 for amounts paid to its customers, purchasers of real property. Specifically, you request a ruling that the amounts are not reportable under section 6041 because the amounts are not taxable income to the purchasers.

FACTS

Taxpayer is a real estate broker located in State A. Taxpayer represents customers who purchase homes offered for sale on Y. Y is a database that allows real estate brokers representing sellers under a listing contract to share information about properties with real estate brokers who may represent potential purchasers or wish to cooperate with a seller’s broker in finding a purchaser for the property.

A seller is required by law to pay a commission when a seller offers a home for sale on Y. Part of the commission is paid to the seller’s agent, a broker that lists the home for sale; and part of the commission is paid to the buyer’s agent, a broker that produces a ready, willing, and able purchaser. Taxpayer receives commissions from the seller when it acts as a buyer’s agent in connection with real estate transactions.

Taxpayer enters into written and signed buyer's agency agreements with each purchaser that it represents. In its buyer's agency agreement, Taxpayer agrees to pay the purchaser Amount 1 of any commission that it receives from the seller in a completed sales transaction. Taxpayer pays the purchaser in one of two ways: (1) after closing, the cash and loan proceeds are distributed to the seller and the agents, and after Taxpayer receives its share of the commission, Taxpayer writes a check to the purchaser pursuant to the agreement; or (2) the purchaser receives a credit at closing in an amount equal to Amount 1 of the commission owed to Taxpayer. The buyer's agency agreement permits the purchaser to use the payment towards the purchaser's down payment, closing costs, and/or a reduction in purchase price as directed by the purchaser and allowed by law.

LAW AND ANALYSIS

Issue 1 – Payments or Credits are Not Taxable Income

Section 61 of the Internal Revenue Code (Code) provides that, except as otherwise provided, gross income means all income from whatever source derived.

Situation 2 of Rev. Rul. 2006-27, 2006-21 I.R.B. 915, involves a nonprofit corporation that provides down payment assistance towards the purchase of homes to low-income individuals and families. The ruling holds that down payment assistance received by a home purchaser represents a rebate or an adjustment to the purchase price, and, as such, is not included in a purchaser's gross income.

Rev. Rul. 76-96, 1976-1 C.B. 23, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997, involves a manufacturer of automobiles that paid rebates to its retail customers who purchased or leased new automobiles. The ruling holds that a rebate is not includible in a customer's gross income; but rather, represents an adjustment to the purchase price of the automobile.

In the present case, a payment or credit at closing from Taxpayer represents an adjustment to the purchase price of the home and generally is not includible in a purchaser's gross income.

Issue 2 – Information Reporting Obligations

Section 6041 of the Code requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, to file an information return with the Internal Revenue Service and to furnish an information statement to the payee.

Section 1.6041-1(a)(2) of the Income Tax Regulations provides that the return required by section 6041(a) of the Code is made on Forms 1096 and 1099. Section 1.6041-1(c) provides that payments are fixed when they are paid in amounts definitely pre-determined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

A payor generally is not required to make a return under section 6041 of the Code for payments that are not includible in the recipient's income, nor is a payor required to make a return if the payor does not have a basis to determine the amount of a payment that is required to be included in the recipient's income.

In the present case, Taxpayer does not have an information reporting obligation under section 6041 of the Code because, as concluded above, a payment or credit at closing represents an adjustment to the purchase price of the home and generally is not includible in a purchaser's gross income. Nor does Taxpayer have an information reporting obligation for those amounts under any other section of the Code.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made to the letter when it is disclosed under section 6110 of the Code.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Donna Welch
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures

Buyer's rebate information packet curated from information found on US government agency and local agency websites.

Request for a buyer's rebate on a home purchase at BILLYE.COM

info@billye.com