

How to Rebate a Commission to a Buyer

Is that legal?

It is legal to rebate a commission to a buyer. It's not a referral fee. However, we recommend that you qualify your promise of a rebate in three ways. It should be:

- #1 Stated on the Closing Disclosure
- #2 Paid through escrow
- #3 Not disapproved by the lender

Does the rebate have to be stated on the purchase agreement?

Typically, no. However, the lender should be made aware of it. Additionally, under the TRID rules (the TILA RESPA Integration Disclosure), a rebate of an agent's commission to the buyer must be stated on the third page of the Closing Disclosure under "Other Credits."

Will the rebate affect the loan to value ratio?

It might. The rebate should be disclosed to the lender up front. Better yet, a buyer might ask a lender about their policies concerning rebates when getting a pre-qualification. Normally, a rebate will be viewed as a type of seller credit for closing costs. So, the lender might cap it and limit its use to costs, fees, impounds, and prepaids. Most lenders will not permit it to be used as borrower required funds for the down payment.

What happens if the lender disapproves it?

Since you offered to pay it only if not disapproved by the lender, then there will be no obligation to pay it. If you forgot to do that, then the buyer may very well have a claim against you for the full amount of the rebate even after closing.

Do I provide the buyer with a 1099?

No. The credit or rebate at closing is generally not includible in the buyer's gross income, and thus, isn't taxable to the buyer. Rather, it is an adjustment to the buyer's basis in the house by effectively lowering the home's purchase price.

What if I am part of a dual agency?

If the transaction is a dual agency, then as a fiduciary to the seller, you'll have a duty to disclose the offer of rebate to the seller at the first opportunity. The fact of the rebate could affect the seller's decisions on negotiating the sale.