

CONTINENTAL REALTY SERVICES, INC.
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FILED	
Department of Business and Professional Regulation	
AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	3/3/2016
File #	2016-01769

March 2, 2016

Florida Real Estate Commission, Division of Real Estate
Executive Director
400 West Robinson Street N801
Orlando, FL 32801

DS 2016-013

Via Email and Certified Mail 70122210000230573452

Petition for Declaratory Statement Before the Florida Real Estate Commission

Petitioner: Robert D. Ross, Licensed Real Estate Broker, Number BK158407
Address, phone, email, fax number are all listed above.

The statutory provision(s), and agency rule(s) on which the declaratory statement is sought are listed below:

Florida Statute 475.25 (1) (H)

"Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s.475.01(1)(a). For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state.

Florida Administrative Code Rule 61.J2-10.028 Kickbacks or Rebates.

(1)Any real estate licensee who receives, or makes any arrangement or agreement to receive, directly or indirectly, any kickback or rebate, for the placement of, or favor in, any business transaction which forms a part of, or is incidental to, any transaction(s) negotiated or handled by said licensee, is a violation of Section 475.25(1)(b) or (d), Florida Statutes, or both of said subsections of the Florida Statutes, unless prior to the time of the placement of, or favor in, said business transaction, the licensee shall have fully advised the principal is any and all affected parties in the transaction(s), which the licensee is handling, of all facts pertaining to the arrangement of kickbacks or rebates.
(2)The sharing of brokerage compensation by a licensee with a party to the real estate transaction with full disclosure to all interested parties is not considered a violation of Chapter 475, Part I, Florida Statutes.

A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances:

I am considering paying a homeowner for a listing upon signing of the listing agreement. This transaction may or may not result in any commission since the property may not sell. The payment is in no way a kickback or rebate of any kind to a non-licensed person or to anyone for a commission, or for any return of compensation, since there may be no commission or any money earned, and the homeowner will not owe the money back if the property doesn't sell. Whether the listing sells or not is not in any way a contingent on the paying solely for the listing at the execution of the listing agreement. In fact, the payment for the listing will be totally my risk, and there will be no assurances I will ever receive any commission, or compensation as a result. There is no sharing of any commission or any referral of business to another person. The above referenced statute and codes do not condemn any such payment as any violation.

I therefore request the division's official opinion in a Declaratory Statement so that I may proceed in such a manner knowing that I have an assurance in writing of the legality of paying a homeowner for the listing given the circumstances enumerated above. I do not request a hearing with regard to this request.

Please forward the Declaratory Statement at your earliest convenience to me at the above address. If you would like any further details regarding what I'm considering doing, don't hesitate to call or write me at the above address.

Thanks for your assistance in this matter.

Sincerely,

Robert D. Ross, President

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