

## Insurance Referral Fees FAQs

**Q. Under North Carolina's commission statute, may an unlicensed person receive valuable consideration, such as a referral fee, from a licensed insurance producer or insurance company for the referral of insurance business?**

**A.** Whether or not a referral fee or other valuable consideration may be paid to an unlicensed person by a licensed insurance producer or insurance company for the referral of insurance business depends on the facts of each specific situation. Therefore, a licensed insurance producer or insurance company will always have a duty to assess whether or not a referral fee can be paid to an unlicensed person based on the facts of their specific situation\*. North Carolina General Statute § 58-33-82(a) states "an insurance company or insurance producer shall not pay a commission, service fee or other valuable consideration to a person for selling, soliciting or negotiating insurance in this State if that person is required to be licensed under this Article and is not so licensed."

North Carolina General Statute § 58-33-10 provides the following definitions for sell, solicit, and negotiate:

- "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, only if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers. *"Negotiate" does not mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.*
- "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company. *"Sell" does not mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.*
- "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company. *"Solicit" does not mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.*

North Carolina General Statute § 58-33-82(e) provides that commissions, fees, or other valuable consideration may be assigned or directed to be paid in the following circumstances:

1. To a business entity by a person who is an owner, shareholder, member, partner, director, employee, or agent of that business entity.
2. To a producer in connection with renewals of insurance business originally sold by or through the licensed person or for deferred commissions.
3. In connection with the indirect receipt of commissions in circumstances where licensure is not required under G.S. § 58-33-26(n).

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- Q. If a licensed insurance producer or insurance company reviews the facts of their specific situation and determines that a referral fee is permissible to be paid to an unlicensed person, does North Carolina's commission statute provide specific limitations on the referral fee amount?**
- A.** No, North Carolina General Statute § 58-33-82 does not provide specific limitations on the amount of the referral fee.
- Q. Can a licensed producer or insurer pay a referral fee to a potential or existing customer for the referral of insurance business that does not include a discussion of specific insurance policy terms and conditions?**
- A.** Whether or not a referral fee or other valuable consideration may be paid to a potential or existing customer by a licensed insurance producer or insurer for the referral of insurance business depends on the facts of each specific situation and any applicable laws. As an example, whereas a referral fee might be permissible under the commission statute, a licensed producer or insurer should also review the rebating statutes when considering payment of a referral fee to a potential or existing client. Therefore, a licensed insurance producer or insurer will always have a duty to assess whether or not a referral fee can be paid to a potential or existing customer based on the facts of their specific situation\*.
- North Carolina General Statute § 58-33-85(a) states that no insurer, agent, broker or limited representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance.
  - North Carolina General Statute § 58-63-15(8) states:
    - a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

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- b. Nothing in subdivision (7) or paragraph a of subdivision (8) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:
  - 1. In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided, that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;
  - 2. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
  - 3. Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.
- c. No insurer or employee thereof, and no broker or agent shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance.

**Q. Is it permissible for an agent, adjuster, appraiser, or insurance company to receive a referral fee from a repair service or restoration service for recommending that repair service to a claimant?**

- A.** No, it is not permissible. North Carolina General Statute § 58-33-76 (a)(b)(c) reads as follows concerning referral of business to repair source; prohibitions: “ (a) No insurance company, agent, adjuster or appraiser or any person employed to perform their service shall recommend the use of a particular service or source for the repair of property damage without clearly informing the claimant that the claimant is under no obligation to use the recommended repair service. (b) No insurance company, agent, adjuster or appraiser or any person employed to perform their service shall accept any gratuity or other form of remuneration from a repair service for recommending that repair service to a claimant. Provided, however, discounts agreed to by repair services shall not violate this section. (c) Any person who violates this section is subject to the provisions of G.S. 58-2-70 and G.S. 58-33-46.

*\*Please note that the North Carolina Department of Insurance cannot provide legal advice, you may wish to consult with your attorney on the facts of your specific situation.*