

# No Perking

By: John Francis

Be careful when you offer incentives to close the deal.

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A title company pays a real estate agent \$100 for every client they bring in to close a sale. A broker offers a Hummer to a real estate agent who sells a high-end home. A bank executive treats a prospective client to a round of golf and an expensive meal. All are examples of perks that have been offered locally to help close a deal. Some are legal; some are not.

But it's not always easy to know where to draw the line. In some cases, offering incentives to close a sale might not be against the law, but it may be forbidden by company policy. And Florida has professional guidelines dictating the ethical conduct in various professions, including real estate. For example, it is illegal for a real estate agent to accept \$100 from a title company for each customer brought in for closing. Likewise, it's wrong for the title company to promote a real estate agent's properties.

"There was a lot of it going on. That is why I think they are clamping down on it," says Peggy Hummel, CEO of the Realtor Association of Greater Fort Myers and the Beach, noting that it is a nationwide problem and not limited to Southwest Florida.

But real estate agents and developers offering perks as an incentive to close a sale have a lot of flexibility. A perk is often legal if it is outlined in a real estate contract and doesn't violate any legal and agent's or broker's obligation to a client under Florida law.

In some circles, it's potentially criminal to offer someone an expensive car to get business. But in a real estate transaction, offering a car to a sales agent or the homebuyer as part of the deal can be perfectly legal, says Kevin F. Jursinski, a real estate lawyer in Fort Myers. It is important, however, to document the transaction in the sales contract.

"Say you're buying a house at Gulf Harbour and you're paying \$2 million. And in addition, you get a golf cart and Lexus," Jursinski says. "It sounds like it's a marketing ploy, but the reality is, it's just dollars. It's just added onto the sales price one way or another."

Still, because property in Southwest Florida sells so rapidly, such perks aren't offered very often. But that could change. "When interest rates kick up, people are going to have to use this type of marketing to start selling product," says Jursinski.

Other incentives in the development world can be legal if handled correctly. A developer can ask for a payment of gratitude from a builder for being picked as a "preferred builder" in the developer's community. The developer also can require the builder to buy up lots in the new community, which has happened in Southwest Florida. "I've never seen anything that would prohibit [that]," Jursinski says.

But real estate agents must be cognizant that each situation is different, and their ethical behavior is guided by Florida Statute 475, which notes they have to deal honestly and fairly with everyone in the transaction.

"If they are a transactional broker or agent, they have got to disclose certain facts," Jursinski says. "If you ask me to list your house, and then I pay someone to come and buy your house, that would seem somewhat problematic."

Aubuchon Homes, one of the preferred builders in communities such as Cape Harbour in Cape Coral, has no formal policy that forbids offering perks to prospective clients, who could be shelling out millions for a new home. People buying higher-end homes aren't likely to be swayed by incentives anyway.

"A lot [of the sale] has to do with the product, and the personality of the realtor they are working with, not so much as the dining and dining part," says Aubuchon spokeswoman Rebecca Enriquez. "A lot of our customers who come into town have a goal in mind. They don't really have the time to be entertained, so to speak."

One of the partners in Aubuchon's real estate company did work a deal with a local car dealership to offer new Hummers to the selling agent and buyer of one of its homes. But Enriquez says it doesn't happen very often. In another case, a real estate agent backed away from a promotion involving a cruise giveaway. "We had to go through the whole thing with the broker: Is that a problem? Is it this or is it that? She ended up not doing it, because it might be too confusing," Enriquez says. "You have to figure there are so many scenarios in a real estate transaction."

Banking, finance and other regulated industries must abide by state ethics rules; and some banks also have their own internal ethics policies. TIB Bank of the Keys has no formal policy, but "the bottom line is we just don't buy business," says executive vice president Ed Crann. "Do we take people out to lunch and dinner? Sure. Do we play golf with them once in a while? Sure. But we've never needed a policy, because we don't buy business. We get our business on competitive products and good rates and good customer service."