

## Legal Questions & Answers

March 2015

Question: Can a licensed real estate agent receive a referral fee from a private money lender on a transaction in which the agent is acting as the buyer's agent?

Answer: If you are receiving a commission or fee from a lender, we assume that you disclosed this in advance to your client and obtained their written consent. Failure to disclose and obtain consent represents a conflict of interest and a breach of the duties owed to your client. Additionally, there may be consequences under RESPA. As the matter presents serious issues, you may wish to consult with experienced real estate legal counsel.

Question: If a property manager distributes a security deposit to a tenant and it is either returned to the property manager or the check is never cashed, how long does the property manager have to hold onto the check, and what should they do with the money? In a related scenario, what should be done with funds that have been sitting in a client trust account and no one no longer knows who owns the funds?

Answer: Typically, unclaimed funds must be turned over to the State of Oregon under the unclaimed property statutes. The property manager may incur liability if he or she turns the money over to the property owner, who is not entitled to the money.