

STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES
ALFRED E. SMITH STATE OFFICE BUILDING
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ALBANY, NY 12201-2001

ELIOT SPITZER
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

February 6, 2008

Gregg Malawer, Esq.
U.S. Department of Justice
Antitrust Division
Liberty Place Building
325 Seventh Street NW, Suite 300
Washington, DC 20530

Dear Mr. Malawer:

Your correspondence to Secretary of State Cortes-Vazquez, dated December 5, 2007, has been referred to me for reply. You have inquired as to whether real estate brokers may offer and pay rebates to clients.

Real Property Law section 442 prohibits real estate brokers from sharing commissions obtained as a result of a real estate transaction with individuals or corporations who are unlicensed. The purpose of this prohibition is to prevent licensees from compensating unlicensed individuals for services rendered that would otherwise require a real estate license. Insofar as the statutory intent of Real Property Law section 442 is to discourage unlicensed activity, offering cash or promotional gifts, such as a cash rebate, in order to attract a new customer or client does not run afoul of the statute.

Thank you for your inquiry.

Very truly yours,
Whitney A. Clark
Associate Attorney
518-473-2728

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