

**193E—7.9(543B) Financial interest disclosure needed.** A licensee who has any affiliated business arrangement or relationship with any provider of settlement services, as defined below, and directly or indirectly refers business to that provider or affirmatively influences the selection of that provider discloses the arrangement and any financial interest to the person whose business is being referred or influenced. The obligated disclosure is acknowledged by the separate signatures of the person or persons whose business is being referred or influenced. The disclosure is given and signed before or at substantially the same time that the business is referred or the provider is selected. If the disclosure is made on a separate form, the licensee retains a copy of the signed disclosure in the transaction file for a period of five years after the execution.

**7.9(1)** An affiliated business arrangement means an arrangement in which a real estate licensee, or an associate of a real estate licensee, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in the business entity providing the service or product.

*a.* An associate means one who has one or more of the following relationships with a real estate licensee:

- (1) A spouse, parent, or child of a real estate licensee;
- (2) A corporation or business entity that controls, is controlled by, or is under common control with a real estate licensee;
- (3) An employee, officer, director, partner, franchiser or franchisee of a real estate licensee; or
- (4) Anyone who has an agreement, arrangement or understanding with a real estate licensee or brokerage, the purpose or substantial effect of which is to enable the real estate licensee to refer for any service, settlement service, or business or product related to the transaction and to benefit financially from the referral of that business.

*b.* Settlement services include services in connection with a real estate transaction including, but not limited to, the following: mortgage or other financing; title searches; title examinations; the provisions of title certificates, title insurance, hazard insurance; services rendered by an attorney; the preparation of documents; property surveys; the rendering of credit reports or appraisals; pest, fungus, mechanical or other inspections; services rendered by a real estate agent or broker; and the handling of the processing and closing of settlement.

*c.* An affiliated business arrangement does not include an arrangement in which a real estate licensee, or an associate of a real estate licensee, gives or pays an undisclosed commission in a transaction to any other licensee for a referral to provide real estate brokerage services, including franchise affiliates, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service. Referral fees or commissions paid by a licensee to another licensee under these conditions are exempted from the disclosure criteria.

**7.9(2)** No particular language is needed for the disclosure. To assist real estate licensees and the public, the commission recommends the following sample language:

<b>DISCLOSURE OF REFERRAL OF BUSINESS</b>	
<p>I understand that _____ (name of real estate licensee) _____ has an affiliate relationship with or owns an interest in _____ (name of company to which business is being referred) _____ and is also recommending that I employ this company for _____ (type of service) _____.</p>	
<p>I understand that _____ (name of real estate licensee) _____ may earn financial benefits from my use of this company. I understand that I am not obligated to use this company, and may select a different company if I wish to do so. This form has been fully explained to me and I have received a copy.</p>	
<p>_____</p> <p>(Date)</p>	<p>_____</p> <p>(Signature of person whose business is being referred)</p>

**7.9(3)** The term “franchise” has the same meaning as set forth in 24 CFR Chapter XX, Section 3500.15(c) as of April 1995.

**7.9(4)** The term “affiliate relationship” means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

**7.9(5)** The term “beneficial ownership” means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person’s name.

**7.9(6)** The term “direct ownership” means the holding of legal title to an interest in a provider of settlement services except where title is being held for the beneficial owner.

**7.9(7)** The term “control” as used in the definition of “affiliate relationship” means that a person:

- a.* Is a general partner, officer, director, or employer of another person;
- b.* Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of another person;
- c.* Affirmatively influences in any manner the election of a majority of the directors of another person; or
- d.* Has contributed more than 20 percent of the capital of the other person.

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