CALIFORNIA BOARD OF ACCOUNTANCY

California Board of Accountancy
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Commissions and Contingent Fees

Information For Consumers

Commissions.

A California Board of Accountancy (CBA) licensee may accept commissions in limited situations. Pursuant to section 5061 of the California Accountancy Act, a licensee may accept commission-based compensation for defined services, as long as the fees are disclosed in writing and various prohibited services are not performed.

However, a licensee still is prohibited from accepting any fee or commission solely for referral of a client to a third party.

This provision is similar to the American Institute of Certified Public Accountants' (AICPA) Rule 503, but has significant exceptions. The CBA's disclosure rules are more stringent for consumer protection and must be in detailed written form.
The disclosure must:

- Be in writing and be clear and conspicuous.
- Be signed by the recipient of the product of service.
- State the amount of the commission or the basis on which it is computed.
- Identify the source of the payment.
- Identify the relationship between the source and the person receiving the payment.

Contingent Fees.

A contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specific finding or result is attained.

As specified in section 62 of the CBA Regulations, a licensee shall not:

- Perform for a contingent fee any professional services for a client for whom the licensee or his or her firm performs:
    - An audit or review of a financial statement; or

    - A compilation of a financial statement when the licensee expects or reasonably should expect that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
    - An examination of prospective financial information; or
    - Any other attest engagement when the licensee expects or reasonably should expect that a third party will use the related attestation report; or
    - Any other services requiring independence.
- Prepare an original tax return for a contingent fee.
- Prepare an amended tax return, claim for tax refund, or perform other similar tax services for a contingent fee.
- Perform an engagement as a testifying expert for a contingent fee.

Fees are not regarded as being contingent if fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based upon the results of judicial proceedings or the findings of governmental agencies in a judicial or regulatory capacity or there is a reasonable expectation of substantive review by a taxing authority.