



Right of Way Agents and Referrals

Can you refer me to a good lawyer?

BY MICHAEL F. YOSHIBA, ESQ., PE, CE, MS



“re-fer·ral

[rə'fərəl]

NOUN

re-fer-rals (plural noun)

an act of referring someone or something for consultation, review, or further action”

* Source: LinkedIn Article, “Referrals or Recommendations — What’s the Difference?” by Michael Pollaci

The Situation

You’ve made your first written offer presentation to the property owner. During the presentation, under California law, you inform the property owner that they can get reimbursed for up to \$5,000 to commission their own appraisal. The owner is unfamiliar with the eminent domain process, and at the end of the presentation, they politely ask you for a referral to a “good” appraiser and the “best” lawyer to help them with this process.

Rules for Right of Way Agents and Referrals

You might be surprised to learn that there aren’t any specific laws that govern the provision of referrals by right of way agents. Acquisition, relocation agents and appraisers aren’t prohibited from providing clients or displacees with referrals. The actions of right of way agents are instead evaluated and managed primarily by codes of ethics established by

professional associations and practice groups. Whether, when and where it is appropriate to provide professional service referrals to displacees or anyone should be first reviewed under the auspices of professional codes of ethics and common sense. Codes of ethic provide a framework for good practice and encouraging common sense choices fills the void where specific rules and regulations don’t provide direction.

IRWA – Code of Ethics (relevant parts)

“Members of the International Right of Way Association recognize the responsibility of the right of way profession to the people and businesses we serve, and believe that we should encourage and foster high ethical standards in our profession ... predicated upon the basic principles of professional competence, character, integrity, fairness, commitment, and trustfulness ... all Members shall dedicate themselves to a course of conduct which manifests respect, confidence and trust on the part of the general public and all users of right of way services.”



Appraisal Referrals

Providing adequate and competent right of way advisory service is an integral part of the acquisition and relocation process under both federal and state regulations and laws. If the affected property owner is uncertain or wishes to obtain an appraisal to verify the validity of an agency’s offer of just compensation, the owners should be allowed sufficient time to obtain their own appraisal. Some states (see California Eminent Domain Code § 1263.025) require that the acquiring agency offer to pay reasonable costs for an independent appraisal ordered by the property owner. Most property owners subject to eminent domain are not familiar with the various appraisal requirement, types of appraisers (residential, commercial, industrial, goodwill, etc.), nor do they have a handy list of competent candidates for an eminent domain appraisal assignment.

When property owners ask the right of way agent for a referral to an appraiser, a potential for conflict is created. Referrals to appraisers who regularly perform appraisals only for agencies can be viewed as steering a client to someone who will value property in a very conservative manner, resulting in lower values and an “agency-friendly” result. By contrast, referrals to “property owner” appraisers that typically use less conservative valuation approaches and higher value conclusions may give the agency pause concerning the right of way agent’s appraiser referral and lead to questions of loyalty to the employing agency.

The same contrasting considerations apply when offering referrals to real estate agents, money lenders, moving companies, estimators and temporary storage facilities.

Attorney Referrals

Right of way agents might direct a displacee to an attorney with a reputation for aggressive combative representation. This referral would certainly present greater challenges for the employing agency making litigation of the matter much more difficult. This is a potential violation of Ethical Standard of Practice No. 6 — Disclosure and Conflicts of Interest that says, “A Member has a duty of loyalty and allegiance to [their] employer...” In addition, Ethical Rule No. 6 — Disclosure And Conflicts Of Interest states that “Members shall maintain a high professional relationship with [their] employer... [and] in a professional manner.” And finally, “A Member has a duty of loyalty and allegiance to [their] employer.” There may be no legal liability but a right of way agent’s referral to an attorney that results in an employer being subject to an unexpectedly large compensation award or where the project can’t go forward and must be abandoned will certainly have a negative effect on agent/ employer relations.

The opposite may also be true when a referral is made to legal counsel who has a reputation for never going to trial and only settling cases. The right of way agent has a corresponding duty of loyalty and allegiance to their clients under Ethical Standard of Practice No. 6 — Disclosure and Conflicts of Interest. Providing a referral that results in an, actual or perceived, lower amount of



just compensation than if the client would’ve retained another attorney may be a breach the duty of loyalty to clients.

What’s an Agent to Do?

When in doubt, check with your employer for a list of professional referrals that has been previously vetted and available to clients. This provides the right of way agent with assurances that the information they provide to clients will not deemed disloyal or adverse to the interests of their employer. Qualified appraisers can be found on state government websites that identify licensed and certified candidates. Indirect references can be made to well-known and accessible publications that identify eminent domain lawyer specialists (i.e., Super Lawyers and Martindale Hubbell). Finally, internet key term research can be a good resource to direct clients looking to find attorneys for legal representation.

With that said, in the end, some of the best referrals were the ones I never gave. 🌟



Michael F. Yoshiba is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.