
NYC real estate's "kickback economy": Buyer (and seller and renter) beware



You're all set to renovate your apartment. You've lined up a contractor and picked the fixtures you want. You've saved \$100,000, which should even cover emergencies. But what you may not know is that hundreds or thousands of dollars of your budget may be going straight to your super, just to make sure the job goes smoothly (and maybe bend a building rule or two).

Graft, payola, quid pro quo: Whatever you call it, money passes under the table all the time in New York. Often it's comparable to a tip, a way to say thanks to people who help out; sometimes it slides into illegal territory.

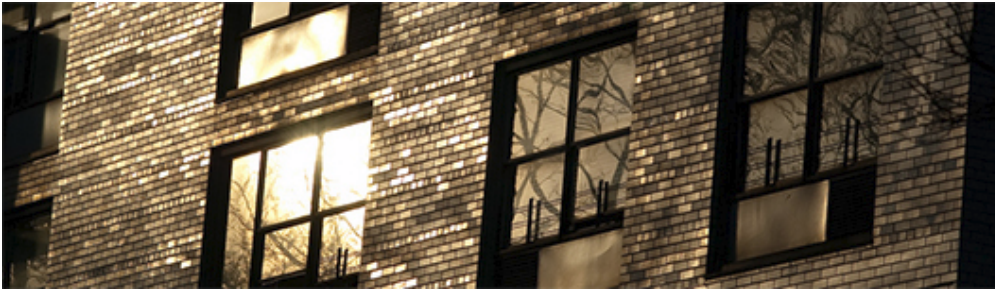
*****This story first ran in June 2014, and has been updated with new information.*****

Either way, these informal payments may not be in your best interest. If someone refers you to real estate professionals or other businesses with the goal of getting paid, you can't be sure you'll get the best person for the job, or pay the right price. And anyone relying solely on shady referral fees to get business is likely not at the top of their game.

“From the consumer standpoint, when somebody's paying a kickback, you can be virtually assured you're not getting the best service and the best protection,” says Daniel Price, CEO of OneTitle National Guaranty Company (<https://onetitle.com/>), who founded the title insurance firm with a focus on ethics and customer service, in part because he saw a troubling level of fraud in the title insurance industry.

Price adds that New Yorkers are particularly vulnerable to being taken advantage of—and losing money—when they're facing the kinds of transactions that don't come up often. “In general, the biggest opportunities for consumers to get hurt because of these types of kickbacks come in situations that they don't face everyday,” like buying, selling, and renovating a home, he explains.

So what kickbacks should you be looking out for, and how can you protect yourself during high-stakes real estate transactions? We spoke to several real estate brokers, building staff members, and other industry professionals to find out.



The good (okay, not good, but more like forgivable)

TIPS: One of the most common examples of money changing hands are tips from contractors to building staff like supers, doormen, elevator porters and handymen.

A contractor may throw a super some cash simply to get a referral, sources say. If you're renovating your apartment, be aware that the recommendation you received may have involved a cut of the action (more on that below). Nonetheless, you probably won't get a complete dud for a contractor, even if the person isn't the cheapest or the most qualified for the job, as it's unlikely a super will recommend someone solely based on a payoff. Still, consider this one of many reasons why it's best to get several bids.

“The one thing [supers] want generally more than anything is for their lives to be easy,” says one New York City residential construction consultant. “They learn quickly that if they take a kickback from a contractor that’s not a particularly good contractor, it’s not worth it.”

More commonly, building staff will get cash and gifts from contractors and construction workers—a few hundred to a few thousand dollars, depending on the scope of the job—for any extra work they take on during a renovation.

It’s so common that contractors factor it into the cost of the job—often part of the “general conditions” category on the bid, covering miscellaneous expenses, says the construction consultant. (The practice is especially common in tony co-op buildings, such

as on the Upper East Side, because it's so tough to navigate the scores of restrictions, sources say.)

Peter Grech, a superintendent and president of the New York Superintendents Technical Association (NYSTA), says that much of the blame rests with these buildings' co-op boards: Most do not have clear standards about kickbacks, and it's unfair to expect building staff to know what's acceptable and what isn't, he argues.

“There should be a clear-cut protocol on tipping, kickbacks, or finder's fees from contractors and brokers toward building staff. Either there's a zero tolerance, or there are standards about what's acceptable and what isn't,” Grech says. “Without that in place, no one knows.”

Management should also be more watchful about what staff is up to, he adds: “If the boss isn't looking, the temptation is there and we're all human.” So when you're thinking of buying a co-op, make sure you have a sense of how the board interacts with building employees.

Supers usually get the biggest share of tips—anywhere from \$200 to \$400, says one building staffer—since they have the power to shut down an entire job, at least temporarily. But sometimes a contractor will slip the doorman \$50 or pay for lunch, says one Upper East Side doorman.

“During the holidays, it would be very typical that you would go to a building and every person that helped you on your job would receive a Christmas present,” the consultant says. “You are kind of a pain in the ass to the building.”

Jason Haber, a broker at Warburg Realty

(<http://www.warburgrealty.com/agent/AGENT-3cce20780a09233f75fa8565b19bfc48/>), says that there's nothing untoward about holiday gifts. “That's just tipping people for

service, and saying thanks for all the help during the year. There's no quid pro quo on that," he explains. "If you say, 'Here's \$50 and now I want three clients by Tuesday,' that's a big difference."

For staffers, construction means more calls from peeved residents, more dust to clean up, more annoying jobs like shutting off the water in a line of apartments—so there's a reason why you'd want your contractor to get on their good side. And if you're already shelling out thousands for the reno, it may not be the worst investment to drop a few hundred bucks on the men and women who work in your building.

And on the bright side, Grech points out that the situation was much worse in the 80s and 90s, before the New York State attorney general cracked down on kickbacks. "It did get cleaned up, but it's still there," he acknowledges.

When it comes to movers, some pay referral fees, though for the most part, they seem to be more formal—a company referral program versus a fistful of cash at the door.

For example, FlatRate Moving (<http://www.flatrate.com/>) has a website where industry pros—the majority of whom are brokers—can sign up and submit referrals in exchange for a percentage of the cost of the move, says Ryan Benz, the company's business development manager. Fees vary based on the type of job, such as whether the move is local, cross-country or international.

Benz says this is "industry standard practice" and doesn't affect pricing for customers, who pay the same rate whether a referral fee is involved or not. In some cases, "the referrer gives [the fee] back to the client to apply to his or her overall move, which is a common, customer relationship-building practice," Benz says. Brokers can also use the website to donate the fee to a charity, which Benz estimates happens about 10 percent of the time.

Bottom line: this practice could benefit the average New Yorker, and brokers aren't breaking the law if they take the fees. But if you have any reason to think your broker is recommending a mover out of greed, rather than customer feedback or personal experience, you may want to go elsewhere

(http://brickunderground.com/blog/2012/04/3_common_moving_scams_and_10_ways

REFERRALS: Brokers sometimes refer business—in other words, you—to other brokers if they're not the right person for the job, say if they mostly work with Upper East Side sellers but know someone looking for a rental in Bushwick. It's perfectly legal (though it may affect your broker's willingness to negotiate their fee).

The standard referral fee is 20 to 25 percent of the commission on a sale and 10 percent of a broker's fee on a rental, says Jason Haber, a broker at Warburg Realty

(<http://www.warburgrealty.com/agent/JH3>), with the cost coming out of the paycheck of the broker who makes the deal.

“There's a big difference between a referral fee and an illegal kickback,” he points out. With the former, you have “two people who are licensed, and documentation governing how much they get paid. There's nothing wrong or tawdry about it. Actually, it's a good thing to have brokers using their license to refer the professional services of someone else, if it's done in a proper way.”

Property managers also get in on the referral game. Since they must be licensed as brokers to collect rent on behalf of landlords, they're legally allowed to collect this. If they know a tenant is moving, they may tip off a broker and collect 10 to 20 percent of the fee in return, says one source.

Naturally, whether you take a broker's recommendation will depend on your relationship and level of trust.



The bad

BRIBES: It's one thing to tip a building employee who's doing extra work because you're renovating; it's another to pay the super cash to get around a building's rules, like painting after hours or working on a Sunday. But, according to sources, this is not uncommon.

In one instance, a contractor who needed to do after-hours work to finish a job on time bought the super "a very, very nice watch that probably was \$5,000 or \$6,000," according to the construction consultant.

Though the contractor paid for the watch, the ultimate cost was passed on to the apartment owner. Not to mention, other building residents suffered the weekend work.

A CUT OF THE ACTION AND A DISCOUNT: Locksmiths, dry cleaners and other area businesses often approach doormen to drop off a few business card. "Everyone uses the same words," says the Upper East Side doorman we spoke to. "We'll take care of you." The meaning is clear.

Locksmiths, for example—who are often called by the doorman, sometimes late at night—sometimes kick back \$70 to \$150, depending on the job, which could cost as much as \$400, our doorman source says.

Residents usually aren't even aware, and there aren't necessarily red flags to watch out for. To protect yourself from higher prices, you may want to ask the building super or handyman to do the job for you if it's simple enough. Otherwise, only use the doorman's recommendation if you trust him.

In other instances, nearby restaurants will offer "incentive" menus (http://brickunderground.com/blog/2011/05/a_doorman_speaks_front_line_in_the_res coupons for doormen, promising them a discount or free food in exchange for looking the other way while they drop a few menus in the lobby.

Dry cleaners also offer discounts or gifts (like chocolates) in exchange for referrals. To be sure where the business came from, they may ask you how you heard about them, or alternatively, a doorman will let the cleaner know who sent them the business when they're dropping off clothes at the building.

Remember those companies that use dogs to sniff out bed bugs? They get referral fees, too, if they send business to a pest control company. While we've heard of dishonest canine inspectors lying about false positives and getting a 10 to 15 percent cut of subsequent "extermination" jobs, this doesn't appear to be a widespread practice, according to the sources we spoke with.

A canine inspector certified by NESDCA, a licensing body for the industry, for example, will "get the same rate whether they find bedbugs or not, and that's the way to run a program in my opinion," says Gil Bloom, president of Standard Pest Management (<http://www.standardpest.com/>).

So while you won't necessarily protect yourself against referral fees being part of the job, at least you can be more confident the inspector doesn't have an incentive to find bedbugs that don't exist.

However, some building managers also hire pest control firms for a piece of the action, though this is rare, says Bloom.

"I have heard of a few instances where building managers have had their hand out especially when [the manager is] new to an established location," he says. "Many management companies send out notices and agreements to avoid the practice, which has

declined, but alas there are always a few bad apples.”

Aside from the straight exchange of cash, there’s also a “semi-legitimate” economy of payola, wherein property managers hit up pest control professionals for donations to their favorite non-profits or attendance at charity dinners.

“It’s not that some are not good charities,” says Bloom, “it’s that [the pest control professionals] don’t have a choice.”



The ugly

Some kickbacks are just plain illegal.

New York State real estate law (<http://www.dos.ny.gov/licensing/lawbooks/RE-Law.pdf>) forbids anyone who’s not a licensed real estate agent from collecting a fee from a real estate transaction.

“If you have a license you can get paid a referral fee,” says Warburg’s Haber. “If you don’t, you can be paid nothing, and that’s it.”

He adds that there’s nothing shady about a licensed broker who discloses to you that they were paid a referral fee for your business. “The problem comes in when people who aren’t licensed want a referral fee for sending you a client. That’s a kickback, and that’s prohibited in the state of New York,” he says.

But that doesn't stop contractors, locksmiths, designers and others from offering to refer clients to agents in exchange for a slice of the payout, says Jeffrey Schleider, senior vice president of business development at Citi Habitats

(<https://www.citihabitats.com/manhattan-real-estate-agents/jeffrey-schleider/7133/about>), adding that he cuts them short and thus wasn't able to discuss specifics.

"It's bad business to seek compensation of that sort, and for new agents, I'd highly recommend against that," he says. "Good agents care about their reputation and the quality of service they deliver, and are more than happy with the commissions they already get on transactions."

Accepting kickbacks, he continues, is illegal, unethical, and just not a good way of doing business, so consider the brokers chasing that kind of money to be highly unscrupulous.

"It's illegal and it's unethical and, frankly, it's just not a very good way of doing business," says Schleider. "The brokers who are chasing these things are not the quality agents."

The best way to protect yourself is—yes, it's obvious, but it deserves repeating—to find a good broker.

"If you start by looking for a broker—asking friends and family for recommendations, looking for reviews—and you find quality agents, you're not going to have an issue with this," Schleider says.

Another smart tactic is to also consider the agency your potential broker represents: Aim to find a company with a stellar reputation, and do a little research if you're not familiar with it.