To refer, or not to refer –
That is the question!

Referral of settlement service providers; the Rule of Threes; Commission Position Statement CP-34 and the rest of it... How does the professional sort out all of this and determine a practical, reasonable course of action?

There are several issues to consider here. Is it a good idea to refer a client to anyone, or should we just let them choose on their own? If they choose on their own, and they have no prior experience with the subject matter, what will be the basis upon which the client makes a decision? Will it be the lowest price or the niftiest appearing website? Experience tells us that lowest price and neat websites are strewn all along the road to disappointing outcomes.

In CP-34, the Colorado Real Estate Commission states that, “A common standard of practice amongst brokers is to provide the names of three settlement service providers in a specific area of practice and allow the consumer to choose... It is imperative that final selection of the settlement service provider be left to the consumer, not the broker.” Now, let’s take that statement and see how it should be applied in practice by a knowledgeable, competent, real estate broker when referring a home inspector, a lender or a title company. To analyze the issues, let’s assume that we have a first time home buyer or seller with no prior experience with any settlement service of any kind. The client asks the broker his/her opinion about whom to select. Which of the following options makes the most sense and is the most responsible?

- The broker offers three names of service providers and says, “Go ahead, pick one”
- The broker allows the client to go off and select a provider completely left to their own devices without any guidance whatsoever;
- The broker, as an advocate or advisor to the client offers his/her opinion as to quality, kind and level of service of a particular provider based upon years of experience in multiple transactions with that provider.

At the end of the day, the broker and his/her client share an interest in seeing a transaction is handled well, timely and at reasonable cost. If the objective is to reach the closing table in a professional fashion, should not the person who has the most experience in the discipline have a hand in recommending a responsible provider based upon repeated transactions with that provider? Alternatively, if the consumer comes up with a name of a provider, say a home inspector who the broker knows has a reputation for ‘killing deals” out of incompetence and predisposition for making a big deal out of minor issues, shouldn’t the broker share that experience with his/her client? More importantly, shouldn’t the broker actually advise against the use of the inspector? If not, isn’t the broker failing in his/her duties to advocate for that client using standard levels of competency expected of him/her as a licensee?

We are not unaware, as professionals, that errors and omissions carriers are prone to suggest the so-called “Rule of Three’s” to avoid a claim of negligent referral. Let’s be practical about this recommendation: Offering your client three names of providers of questionable repute does nothing to mitigate a claim of negligent referral. It also does nothing to advance the quality of the transaction for the client. Certainly, it makes sense to check with your E & O carrier to see what their policy is, or more importantly, what exceptions they may have to coverage on the subject of “three” names. However, let’s remember insurance carriers are in the business of collecting premiums and mitigating the claims they pay out. If the broker offers a responsible, reasonable referral based upon years of experience, what’s the level of risk that is really incurred?
...And back to the question with which we started: “To refer or not to refer”...
Experience tells us the most successful real estate professionals surround themselves with settlement service providers who have demonstrated an ability to support their clients well; provide excellent timely services at competitive rates and who appreciate and respect the business relationship existing with that broker. If the reader believes, as does the author, that this makes sense, then go ahead and let the client choose, but do not under any circumstances, allow them to choose unaided by your input, your experience and your guidance. There are many reasons clients seek out experienced professionals to guide them, and offering sound recommendations on settlement service providers is important among them.