

## Be Careful When Making a Referral

From time to time, your clients may ask you to refer or recommend another professional either incident to or completely unrelated to the service you provide. For those in the real estate industry this might be a request related to repairs or services incident to closing. For consultants this might be a request related to services you explicitly exclude. Unfortunately, the referred professional does not always do the best job for your client, or worse, they make a large mistake that warrants its own negligence claim. Professionals need to be careful of the potential liability associated with making a referral. This type of legal action – a claim or lawsuit for negligent referral – is becoming increasingly common.

When a client asks if you can refer someone, you should *always be prepared* for them to act on that referral. In the client's eyes, even a casual referral carries weight – if they had a ready solution, chances are they would not actively seek your input. When you already have firsthand knowledge of their situation, you are simply directing them to an efficient and accurate way of solving their problems. In other situations, it is the combination of your prior demonstration of competence plus experience in areas where the client lacks familiarity that gives your referral added *gravitas*. When your referred service provider does not perform as you anticipated (or your client requires), then that service failure combined with your referral could potentially form the basis of a negligent referral claim against you.

Because you cannot control the client or the referred service provider (or predict when they will have a bad day), here are some suggestions for communicating a referral to your client. First, avoid providing a referral orally or “in passing.” If a client asks, let them know if you have someone in mind and that you can provide specifics later via email or other writing. Second, date, address and keep a copy of whatever version you send to clients for future reference. A saved copy of an email of the referral should suffice.

When you put something in writing, the format of what you send to the client matters. To help you in this endeavor, consider the following on how to protect yourself from any potential liability for the referral.

- Only refer those individuals or entities with which you have **direct or firsthand** knowledge or experience, and with whom you have no negative information about (past claim, incident and/or disciplinary grievance). Avoid “secondhand” recommendations (“I have heard X does great work”) or recommendations of providers you would not use personally or professionally.
  
- Consider providing multiple referred vendors and list them in conspicuous alphabetical order to avoid any appearance of preference.

- Add conspicuous language that your referral is not an endorsement, the **client** is required to do their own diligence before hiring any professional (including whether the referral is sufficient based on the **client's** specific needs and requests) and that the referring professional makes no guarantees as to the quality of any work performed by that other provider.
- Add conspicuous language that your services are not conditioned on or require client acceptance of the referral, and that client is free to use any provider of their choosing.
- Add conspicuous language that you receive **no** compensation or other benefit from any referred provider and that you have no contractual relationship or shared ownership with any referred provider.
- If you **do** receive compensation or some other benefit from any referred provider or have a contractual relationship or shared ownership with any referred provider, be sure to comply with all rules and regulations of your respective profession regarding such relationships. For example, real estate professionals should understand the broad restrictions set out under RESPA. Note, in some professions, referrals for compensation or other benefits may not be permitted or must be disclosed in a specific manner pursuant to the rules of the respective profession.

## Contact information

For questions about the content of this article,  
please contact the following:

Gawain Charlton-Perrin  
Architects & Engineers and Attorneys  
Phone: 630-379-6068  
Email: [GCharltonPe@Hanover.com](mailto:GCharltonPe@Hanover.com)

J. Michael Reese  
Accountants & Miscellaneous Professionals  
Phone: 630-760-3026  
Email: [MReese@Hanover.com](mailto:MReese@Hanover.com)



The Hanover Insurance Company  
440 Lincoln Street, Worcester, MA 01653

hanover.com

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