**RESPA**

Overview: The Real Estate Settlement Procedures Act (RESPA) was enacted in 1974 to provide consumers with disclosure about closing costs and to prohibit unearned fees (kickbacks/referral fees). Subsequent amendments to RESPA pertain to Controlled Business Arrangements (CBA) and Computerized Loan Originations (CLO). Ignorance is not a defense to a RESPA violation. Education is required to ensure complete compliance with all RESPA requirements. An example of a RESPA offense would be if a real estate broker or sales associate accepted money from mortgage lenders for steering homebuyers to the lenders. Insufficient disclosure to consumers by firms involved in CBAs is another common violation. RESPA is a difficult federal law. Violations can be a serious federal crime. REALTORS ® are urged to secure particular, current, legal advice applicable to their specific situation before they act.

**Relevant Law:** The Real Estate Settlement Act (RESPA), P.L. 93-533.

24 CFR Part 3500 (1993)

**Important Issues:**

*Kickbacks and referral fees prohibited* -- Generally, the paying or receiving of any fee or thing of value for the referral of business related to the settlement without rendering a service is a RESPA violation. It is key that any payment is in return for a service provided. Settlement services are broadly defined to include more than just the traditional services performed by a lender, mortgage broker or title company, such as origination, processing, or funding a loan. Rendering credit reports, termite inspections, and home inspections are all considered settlement services. RESPA does permit (1) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers; (2) payment of any person of a bona fide salary or compensation or other payments of goods or facilities actually furnished or for services actually performed; (3) an employer’s payment to its own employees for any referral activities; and (4) any payment by a borrower for CLO services, so long as the disclosure set forth by HUD is provided to the borrower (see below). Fees that are not permitted to be paid or received under RESPA are not legalized by disclosure or consent.

*Computerized Loan Originations (CLO)* -- The new RESPA rule implementing a part of the act was effective on December 2, 1992, and promotes one-stop shopping in homebuying as in the best interest of consumers. These regulations allow real estate firms to legally provide certain real estate settlement services (e.g. rendering of services by a mortgage broker, processing or funding of a federally-related mortgage loan, etc.) or to be affiliated with other real estate settlement service providers. CLOs are computerized systems for delivering residential mortgages loan offerings of one or more lenders to customers at a real estate office. Specific written disclosure to consumers is required with CLOs.

*Controlled Business Arrangement (CBA)* -- A controlled business arrangement (CBA) is a diversified company created to "package" together related real estate services. In a CBA, a person in a position to refer settlement service business has either an affiliate relationship or ownership interest of over one percent in another business which provides settlement services, and directly or indirectly refers business to that provider. An example of such a person would be a licensed real estate broker who is also part owner of a mortgage lending company. CBAs are permitted under RESPA if no payment is made based on the number of referrals (the referring party may only receive return on the investment). If the controlled-business arrangement exists, the person making the referral must meet the following three conditions in order to comply with RESPA: (1) the person making the referral gives an appropriate Controlled-Business Arrangement Disclosure Statement to each person to whom the referral is made; (2) with certain exceptions, the person to whom the referral is made is not required to use the referred settlement service provider; and (3) the only thing of value received from the arrangement is a return on interest or franchise relationship.

*Important things to remember about RESPA* --

There can be no referral fee between settlement service providers. This means a lender may not give a REALTOR ® a referral fee. The REALTOR must perform a settlement service, such as the mortgage origination. Your fee must be based on providing a tangible service.

Do not accept anything of value from mortgage brokers/lenders for loan referrals.

**Frequently Asked Questions:**

**Q: What are the penalties for a RESPA violation?**

**A:** Any person who violates RESPA’s provisions may be fined up to $10,000 or imprisoned for up to one year, or both. Additionally, the person violating RESPA is liable to the person charged for the settlement service for three times the amount paid for the settlement service. In addition to criminal penalties, RESPA violations are being combined with other private lawsuit claims such as antitrust violations, exposing violators to additional civil liability.

**Q: Can a real estate licensee require a client to use a settlement service provider with which the licensee has a CBA?**

**A:** No. A person making such a referral may not require the use of a particular settlement service provider.

**Q: May a broker or salesman rent space to (and collect rent from) a lender for the lender’s use in making loans to the broker’s or salesman’s customers?**

**A:** Yes. However, the rent must reflect the fair market value of the space, without regard to the value or number of loans made through the use of that space. Affiliated licensees and lenders also may need to follow the CBA rules. FHA mortgagees also need to comply with special rules.

**Q: Are promotional and educational activities not conditional on the referral of business permissible?**

**A:** Yes. Promotional and educational activities that are not conditional on the referral of business and do not involve defraying expenses that otherwise would be incurred by a person in a position to refer business are permissible.

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