

*Avoid an explosive
situation with
KNOWLEDGE!*

RESPA Update

**from the
Iowa Association of REALTORS®**

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RESPA Update

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Suggested Time Frame

9:00 am

Introductory remarks to be read aloud to group:

Good Morning (Afternoon) !

The Iowa Association of REALTORS® is pleased to bring us this important legal update on RESPA. We will spend approximately the next 20 minutes reviewing aspects of RESPA and renewing our awareness of this federal law.

Our objective is to learn (or re-learn) the intention, enforcement and penalties of RESPA.

We will begin by taking a short quiz. You will each get your own copy and you will be able to write directly on the quiz. This will be yours to keep and no one else will be reviewing it.

So, sharpen your pencils and put on your thinking caps! We will take 5 minutes to answer these questions. Just circle the answer of your choice for each question. We will do this in silence and have our discussion immediately following the quiz.

When you are finished, please turn your paper over.

9:02 am

Distribute one quiz per person. (make copies from original)

Allow 5 minutes maximum to complete the quiz. Each person should be able to write on their own copy of the materials.

9:07 am

Review correct answers and discuss.

Read “Quiz Follow-up Remarks” on page 7.

Invite participation by the agents.

Ask for input and discussion.

Use the back-up information provided (next page).

9:20 am

Session concluded.

This time frame may be altered to meet your needs. This is only a *suggested format and timeframe*.

RESPA Quiz

1. RESPA stands for:
 - a) Real Estate & Securities Procurement Act
 - b) Real Estate Securities Property Agreement
 - c) Real Estate Settlement Procedures Act
 - d) Real Estate Signatory Property Agreement

2. RESPA was enacted by the US Congress to:
 - a) eliminate kickbacks that tend to increase the costs of buying a home
 - b) eliminate referral fees that tend to increase the costs of buying a home
 - c) eliminate kickbacks and referral fees that tend to increase the costs of settlement services without providing any benefits to the home buyer
 - d) all of the above

3. RESPA does the following:
 - a) does not allow a person to accept any fee, kickback or thing of value for a referral that involves a federally related mortgage loan
 - b) does not allow a person to accept any portion, split, or percentage of any charge in connection with federally related mortgage loan (other than for services actually performed)
 - c) allows payment for bona fide salary or compensation of payment for goods furnished or services actually performed.
 - d) all of the above

4. The Department of Housing and Urban Development has the responsibility to enforce RESPA against mortgage finance service providers who violate its provisions.
 - a) True
 - b) False

5. Penalties for individuals or companies found to be violating RESPA may:
 - a) result in criminal penalties punishable by imprisonment of up to one year
 - b) fines up to \$10,000
 - c) both a & b
 - d) none of the above

6. An established Real Estate Broker with monied “friends” is approached by those friends to help them “invest” in first deeds of trust. They will give the broker 1% of the total value of the loans they make to every buyer the Broker sends their way. **Is this a RESPA violation?**
 - a) yes
 - b) no



7. Golden Road mortgage Co. who offers FHA loans, and Broker John, jointly fund a new subsidiary. They set up a mortgage broker business (Golden John) with no staff and minimal funding. Golden John receives all its business by referral from Broker John, and sells all borrower leads to Golden Road Mortgage Co. who passes the costs on to the buyer/borrower. The “profits” generated by Golden John are then split by Broker John and Golden Road. **Is this a RESPA violation?**
- a) yes
 - b) no
8. You’re a dedicated REALTOR® and you want to provide the best service for your clients so you decide to assemble a “team” consisting of an escrow agent title company and mortgage broker to whom you steer all your clients because you know they’ll get good service. For each client you send to your team members, you received only \$350.00 irrespective of the value of the loan or title policy fee. **Is this a RESPA violation?**
- a) yes
 - b) no
9. You know a great mortgage broker who is a whiz at finding loans for even the most difficult buyers. You have a buyer who really wants that new home but has terrible credit. You refer your buyer to the mortgage broker who sends you a check for \$50.00 as a “Thank You” for your referral business. **Is this a RESPA violation?**
- a) yes
 - b) no
10. Under RESPA the Seller can pick the title company and require the buyer to use it when the Seller pays for the title insurance.
- a) True
 - b) False

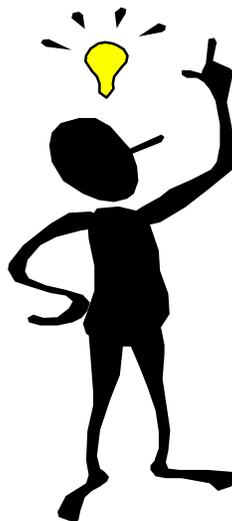


RESPA Information

This information is provided for use by the person administering the RESPA Update. It is suggested that you read the introductory remarks, then ask for volunteers to read and answer the questions. Take one question at a time, allowing ample time for discussion and clarification. Further information about each question is provided.

“Quiz Follow-up Remarks” to be read by leader:

Congress enacted RESPA in 1974 to eliminate kickbacks or referral fees that tend to increase unnecessarily the costs of settlement services without providing any benefits to the home buyer. To achieve this, Section 8 of the RESPA prohibits the payment and receipt of a fee or thing of value in return for the mere referral of business related to a settlement service.



QUIZ Answers & Back-up

- 1) **c)** RESPA stands for Real Estate Settlement Procedures Act and is most often referred to as RESPA.
- 2) **d)** As I mentioned before, Congress enacted RESPA to achieve all of the items mentioned. RESPA is intended to eliminate kickbacks or referral fees that tend to increase unnecessarily the costs of settlement services without providing any benefits to the home buyer.

- 3) **d)** RESPA specifically states (in Section 8):
No person shall give and no person shall accept any fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

Nothing in (Section 8) shall be construed as prohibiting... the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

In summary, no referral fee or kickback may be added to any federal mortgage package, unless it is directly tied to a specific benefit to the homebuyer.

- 4) **a)** The Department of Housing and Urban Development has the responsibility to enforce RESPA against mortgage finance service providers who violate its provisions.
- 5) **c)** This federal law provides for penalties for individuals or companies found to be giving or accepting a fee for the referral of business related to a settlement service. Criminal penalties are punishable by imprisonment of up to one year or fines of up to \$10,000 or BOTH...for EACH violation of RESPA.

RESPA also provides for private actions brought by consumers or their class action attorneys and damages can be sought in an amount equal to three times the charge paid for the settlement service.

6) a) Probably. If the lenders and the final disposition of the loan qualify under a “federally related mortgage loan”, and then the referral fee is in violation of RESPA. The conditions for what constitutes as a “federally related mortgage loan” and who qualify as suspect lenders, are very broad, therefore, it is best to assume that the loans and lenders will be regulated by RESPA.

7) a) This arrangement falls under a “controlled business arrangement” sham.

Federal Register: June 7, 1996 (volume 61, number 111)
pp. 29258-29264.

8) a) “No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.”

12 U.S.C. §2607 (a)

U.S.C. = United States Code, volume 12, section 2607(a)

9) a) RESPA doesn't set a minimum value for “a thing of value.”
Therefore ANY money received from a non-licensee, would be a violation and **illegal**.

10) b) “Section 9 of RESPA prohibits a seller of a property to be purchased with assistance of a federally related mortgage loan to require, either directly or indirectly, as a condition to the sale of the property, the ‘title insurance covering the property be purchased by the buyer from any particular title company.’”

Platt, Laurence E. *et al*, A Practical Guide to the Real Estate Settlement Procedures Act, Warren, Gorham & Lamont, Washington, D.C., (1996), pp. 6-1, 6-2.

12 U.S.C. §2608(a).

What is a Referral Fee or Kickback for RESPA?

It is **NOT** legal referral fees between real estate licensees, but fees received by real estate agents from non-licensees (such as an attorney, title company, loan officer) for your referral of business to them.

What is a “Thing of Value”?

Under Section 8 of RESPA ... a thing of value can take many forms including, but not limited to, monies, things, discounts, salaries, commissions, fees, duplicate payments of a change, stock, dividends, distributions of a partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation.

24 C.F.R. §3500.14(d).

C.F.R. = Code of Federal Regulations, vol. 24, section 3500.14(d).

