

Mortgage Questions

1. Q. Is it legal for a REALTOR® Association to solicit sponsorships from mortgage lenders for Association functions such as awards ceremonies and fundraisers?

A. Yes. While such events provide something of value to the association, the association is not in a position to refer business to the mortgage lender therefore, it is legal.

2. Q. If a mortgage company sponsors an educational seminar for brokers and agents (not providing CECs) at Westin La Paloma, is it a violation of RESPA?

A. No. Since it is not for credit hours, it is not a violation of RESPA. If it had provided free CECs then it would defray the expenses the agent would otherwise encounter and it would be a RESPA violation.

3. Q. Is it a RESPA violation for a mortgage company to cater the food to be offered at a broker's open house tour? The mortgage company will be at the lunch and provide a short presentation on loan programs. They will also distribute brochures during the open house.

A. No. This would be considered a permissible marketing cost because the mortgage company did a presentation at the lunch and stayed for the open house.

4. Q. A mortgage company collects a \$375 appraisal fee from the borrower but has not issued the good faith estimate (GFE) yet. Is this a RESPA violation?

A. Yes. The regulations provide that the only charge a lender may impose on a borrower before issuing a GFE is limited to the cost of a credit report.

5. Q. A REALTOR® and a lender decide to advertise together to the general public by placing an ad in the newspaper. The lender will pay for 75% of the ad in exchange for 75% of the space. Is this a RESPA violation?

A. No. But it would be a RESPA violation if the lender used less than 75%.

6. Q. A lender gives a \$50 Home Depot gift card to a homeowner upon the completion of a loan transaction. Is this a RESPA violation?

A. No. This is not a violation because the homeowner is not a settlement service provider.

7. Q. Can a real estate licensee be paid a portion of the origination fee if he or she completes the loan application for the borrower?

A. No. The person must not only be employed by a licensed mortgage broker, they must perform numerous other loan services aside from taking the loan application.

8. Q. After completing a successful transaction, a loan officer receives a card from the buyer's agent with \$100 in it and a note that says "thanks for all your hard work". Can the loan officer donate the money to a charity to avoid being in violation of RESPA?

A. No. The correct way to avoid the violation would be to return the money directly to the agent.

9. Q. Can a real estate licensee who is also a licensed mortgage broker earn a real estate commission and a loan fee in the same transaction?

A. Yes. The agent must be an employee of a licensed mortgage broker and perform actual work in originating the loan. Since the person would probably be receiving fees from both the buyer (borrower) and seller, both parties' written permission and written consent is needed.

10. Q. Can agents accept from lenders and distribute to prospective buyers flyers containing financing information? For instance, at an open house, may a lender provide flyers that offer closing cost calculations for various down payment scenarios, to be distributed by agents?

A. Yes. Distribution of such flyers provided by lenders does not violate RESPA. The information gathered is consistent with the real estate agent's responsibilities to the client to facilitate the sale of the property.

11. Q. Can an agent accept and distribute lender flyers which contain financing information and also promote the listed property?

A. No. That would result in the lender bearing a portion of the agent's advertising expenses, which are the agent's responsibility.

Home Warranty Questions

1. Q. Is a home warranty company a settlement service provider?

A. Yes. A settlement service provider is one who provides services in connection with the purchase/sale of a property that are paid for, directly or indirectly, out of the funds at settlement. Most home warranties are sold in connection with a property sale and therefore, the company selling the warranty would be a settlement service provider.

2. Q. A home warranty company offers a REALTOR® a \$20 restaurant gift certificate for every lead the company receives. Is this a RESPA violation?

A. Yes. Any “thing of value” received in the anticipation of business would be a violation.

3. Q. A home warranty company rents space within a REALTOR’S® office for \$45 per square foot per year while the market rent for similar space is \$20 per square foot. Is this a RESPA violation?

A. Yes. The home warranty company must pay market rent to avoid a RESPA violation.

4. Q. If a home warranty company has an interest in a real estate company and directs business to that real estate company are there any disclosures required?

A. Yes. RESPA requires disclosure of:

The relationship

The range of costs for the real estate company’s services

The fact that the consumer is not required to use the real estate company’s services

Similar disclosures are required whenever there is an affiliated business relationship – AfBA – between any settlement service providers.

5. Q. Are home warranty companies held to the same RESPA rules as other settlement service providers?

A. Yes. Home warranty companies have specifically been covered by RESPA since the 1992 RESPA Rule revisions.

6. Q. According to RESPA, can a REALTOR® get a commission from a home warranty company for encouraging a buyer or seller to purchase a home warranty?

A. No. RESPA clearly prohibits these fees if they are paid as a condition of referring business.

7. Q. A home warranty company has a website that offers personalized marketing materials for the real estate agent. The material also promotes the home warranty company and does not charge for this service. Is it a RESPA violation?

A. No. Because the home warranty company is not printing the material and it also promotes their company as the provider of the information. Therefore, it is not a violation. If the home warranty company were to print the materials for the agent, it would be an item of value and would be a violation of Section 8.

8. Q. A home warranty company is sponsoring a CE credit class by providing refreshments and paying for the instructor with no cost to the REALTOR®. Is this a RESPA violation?

A. Yes. A CE class is an item of value and the REALTOR® should pay for that class. If it were simply a “lunch and learn” without CE credit, then it would not be a RESPA violation.

Title/Escrow Questions

1. Q. If a title company sponsors an educational class for agents at Westin La Paloma that does not offer CE credit, is it a violation of RESPA?

A. No. Since there is no CE credit being given for the class, it is not offsetting expenses the real estate agent would otherwise encounter so it is not a violation.

2. Q. If a title company provides lunch at an agent's open house but they do not attend would this be considered a RESPA violation?

A. Yes. This payment of lunch would be a thing of value for, or in the hopes of, the referral of business.

3. Q. Is it legal for Affiliate members of the Association who are settlement service providers to sponsor (by providing food) continuing education classes offered by the Association?

A. Yes. The Association is not a settlement service provider and not in a position to refer business.

4. Q. Three real estate companies form a legally licensed title agency to which they all refer business with appropriate disclosures to the consumers. If the title agency refers out the title work to another title company and receives a referral fee solely for the referral is RESPA being violated?

A. Yes. RESPA requires that actual work be performed. If fees are paid when no work is performed the arrangement is considered to be a sham and RESPA is violated.

5. Q. When selling a bank owned property is it a RESPA violation for the bank to require the buyer to obtain title insurance from a particular title company if the bank is paying for the owner's policy?

A. No. It is not a violation if the bank is paying for the owner's policy. However, if the buyer is willing to pay the owner's title policy then they are free to choose any title company. If the bank were still requiring a certain title company then that would be a RESPA violation.

6. Q. If a HUD-1 closing statement is used to close on an all cash real estate transaction do the RESPA rules and requirements apply?

A. No. The following are kinds of transactions that are not covered under RESPA: an all cash sale, a sale where the individual home seller takes back the mortgage, a rental property transaction or other business purpose transaction.

RESPA ROUND TABLE EVENT QUESTIONS

APPRAISER QUESTIONS

1. Can an appraisal company give vouchers to mortgage lenders for required continuing education classes for each appraisal that is ordered?

No, the vouchers are things of value

2. Can an appraiser and a real estate licensee share expenses for a booth at a trade show?

Yes, Appraisers and real estate agents may share these expenses so long as each pays their proportionate cost~must be 50/50.

3. If a real estate licensee provides tickets to sporting events to appraisers who have done appraisals on the agent's transactions is this a RESPA violation?

Yes, the tickets constitute a thing of value and may be considered in exchange for business.

4. To try and get a steady flow of business an appraiser rents space in a real estate office at the fair market value. Is this a RESPA violation?

No, because the appraiser is paying fair market value and receives no discounted rent for the space.

5. If an appraiser has performed over 60 appraisals for a mortgage lender may the lender reimburse the appraiser for the appraiser's continuing education costs.

No, this would defray a cost the appraiser would normally incur in the ordinary course of business and is prohibited by RESPA.

RESPA ROUND TABLE EVENT QUESTIONS

HOME INSPECTION QUESTIONS

1. A home inspector offers a REALTOR® \$15.00 for every lead the home inspector receives. Is this a RESPA violation?

Yes, ANY "thing of value" received in the anticipation of business would be a violation.

2. Is it acceptable for your home inspection company to provide your office with pens and/or note pads that reflect the inspection company's name?

Yes, it is allowable if these are normal marketing tools and there is no mention or promise of referral fees or opportunities to receive compensation for referrals.

3. Is it a RESPA violation for a home inspection company to supply an agent with marketing materials with the agent's name on them?

Yes, as this would benefit the agent in marketing their business at no cost to the REALTOR®, thus offering something of value in exchange for referrals.

4. Is it a RESPA violation to have a home inspection company to come to your weekly company meetings, at no charge, to explain the home inspection process to your agents?

No, affiliate members may put on classes about their business since such informational programs are consistent with the marketing of an affiliate's business and no promise/mention or discussions for referrals occur.

5. Is it a RESPA violation for a home inspection company to offer the opportunity to win a prize in return for using their service?

Yes, this is considered a "thing of value" in exchange for referrals.

6. Is it a RESPA violation if a home inspector provides a template for a discount coupon on his/her company's web site to the public if an agent gives it to a buyer/seller client?

No, this is a public web site available to everyone. The agent may want direct the client directly to the web site and have the client print off the coupon so as to not be part of "promoting" the inspectors business as a referral "kick back".

RESPA ROUND TABLE EVENT QUESTIONS

TERMITE INSPECTOR QUESTIONS

1. A termite company offers a REALTOR® a gift certificate for \$7.50 at a local movie theater for every lead the company receives. Is this a RESPA violation?

Yes, Any "thing of value" received in the anticipation of business would be a violation.

2. May a termite company provide your real estate office with magnets & small gifts that reflect it's company's name?

Yes, it is allowable if these are normal marketing tools and there is no mention or promise of referral fees or opportunities to receive compensation for referrals.

3. Is it a RESPA violation for a termite company to supply an agent with marketing materials with the agent's name & the real estate company the agent works at on them?

Yes, as this would benefit the agent in marketing their business at no cost to them, thus offering something of value in exchange for referrals.

4. Should you allow a termite company to come to your weekly company meeting to teach agents the termite inspection process at no charge to the agents or Broker?

Yes, Settlement service providers may put on classes about their businesses since such informational programs are consistent with the marketing of the business.

5. If a real estate company has interest in a termite company and "directs" business to that real estate company are there any disclosures required under the RESPA rules?

Yes, RESPA requires disclosure of:

The relationship

The range of costs for the real estate company's services

The fact that the consumer is not required to use the real estate company's affiliate services

****Remember similar disclosures are required whenever there is an affiliated business relationship—**

AfBA –between any settlement service providers.

RESPA ROUND TABLE EVENT QUESTIONS

BROKER TABLE #1 QUESTIONS

1. You work for a real estate company that has in-house Mortgage & Title/Escrow services. You just sold a home and wrote the name of your company's in-house Title/Escrow on the purchase contract agreement. You turned in the paperwork later that day to the office and the sales manager asks you where the required disclosure forms are. You say you forgot to get them signed & will contact your client(s) immediately and have them sign all required disclosures. Are you and your company in violation of any RESPA laws?

YES! Section 8 of RESPA requires timely, full disclosure of company owned affiliates. Since you did not get the required disclosure forms signed in advance of the buyers signing the offer to purchase, you and your company are in violation and could be sanctioned.

2. You held an Open House and a Mortgage Broker gave you a plate of cookies to give out at the Open House. The Broker stayed at the Open House as long as you did and talked to people as they came in and gave them their business card & marketing items. Are either of you guilty of violating Section 8 of RESPA?

*NO, As long as the Mortgage Broker stayed & marketed him/herself to people who came and went neither of you is in violation of any RESPA rules. **But**, you would be in violation of RESPA rules if the Mortgage Broker simply dropped off cookies/snacks and marketing tools for you to hand out.*

3. You just came into your office to pick up your commission check on an escrow you just closed. Left in the office is a vase of flowers for you with a note from the escrow officer you used in the transaction. The note says, "Just a note to say thanks for the business and let's do more!" You leave the flowers at the office for everyone to enjoy. Are you and the loan officer in violation of Section 8 of RESPA?

Yes, your action is considered accepting the gift. To avoid being guilty of violating RESPA Rules & Regulations and remain guilt free, you must dispose of the flowers in some manner and document doing so in writing or contact the escrow officer and tell him/her you appreciate the gesture but this action is in direct violation of RESPA rules & how can you return the flowers or would he/her want to give them to the buyer in the escrow officers name, which would not be a violation for either of you.

4. To attract more traffic to your Open House, you sent out flyers to the entire neighborhood telling everyone you will be having a drawing for a free weekend at Rocky Point! All they have to do is come to your Open House, fill out a card & put it in the bucket for a chance to win. Are you in violation of Section 8 of RESPA?

No, not a RESPA violation. But since your offering a lottery, you are in violation of the Arizona Department of Real Estate Rules & Regulations and have placed your real estate license in jeopardy. ADRE Rules & Regulations prohibit any type of incentive offering that may be considered a lottery.

5. If a listing agent sends a gift to the agent who represented the buyer in a purchase transaction has RESPA been violated by either agent?

No, gifts between real estate licensees is not covered by RESPA rules.

RESPA ROUND TABLE EVENT QUESTIONS

BROKER TABLE #2 QUESTIONS

1. On the back of your business cards you have a statement that says, "For every sale I make in 2012, I will donate \$100.00 to the charity of your choice in your name". Is this a violation of Section 8 of RESPA?

NO, it is not a violation of Section 8 & since you have a definite expiration date, it is not an Arizona Dept. of Real Estate Rules & Regulations either. If your offer had no expiration date it would be a violation of the ADRE Rules & Regs.

2. If a real estate salesperson works for a company that has an Affiliated Business Arrangement with a mortgage company may the salesperson receive a fee for referring business to the Mortgage Company?

NO, RESPA prohibits the payment of fees by companies with affiliated business arrangements for the referral of business. No referral fees may be paid or received by individuals, companies or the owner of the companies. The only compensation this is permitted is through the declaration of a dividend or gains from the sale of company stock.

3. When selling properties that a bank owns is it a RESPA violation if the bank demands the buyer obtain title insurance from a particular title company and requires the buyer to pay for all of the buyer's title insurance fees & closing costs.

Yes, if the bank is requiring the buyer use "their" title company the bank must pay all title insurance fees.

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RESPA ROUND TABLE EVENT QUESTIONS

BUILDER QUESTIONS

1. **Can a home builder create a program that hosts a real estate agent's websites & virtual tours free of charge?**

No, hosting would be considered a thing of value.

2. **If a real estate agent or builder gives cash back to a home purchaser after the close of escrow has RESPA been violated?**

Yes, any cash back to buyer paid after closing would be a violation. If cash or other concessions are given to the buyer they must be disclosed on the HUD-1 closing statement.

3. **Is it a RESPA violation if the builder/seller requires the buyer to use a specific title company when the builder/seller is paying for the buyer's title insurance?**

No, the Department of Housing and Urban Development (HUD) has indicated that it "will not enforce Section 9 of RESPA against a builder/seller who selects the title insurance company if the builder/seller is paying for the owner's title insurance policy, and does not require the buyer to use the title insurance company for the simultaneously issued lenders policy."

4. **If a custom home builder pays a referral fee to a real estate agent who represented a buyer has RESPA been violated?**

No, but Arizona Commissioner's Rules & the REALTOR® Code of Ethics require that the licensee obtain the client's permission and disclose to client any compensation received that was related to or resulted from the transaction.

5. **Is it a RESPA violation for Builders to give REALTORS® gift cards for visiting their home sites?**

No, Builders are not settlement service providers and therefore are not held to