

RESPA Glossary

In 1974, Congress enacted the Real Estate Settlement Procedures Act (RESPA) to address problems in the real estate settlement process including:

- * abusive practices that increased costs to homebuyers
- * lack of understanding about the settlement process and its costs

RESPA's purpose is twofold:

- * to provide consumers with information about the real estate mortgage transaction and the costs associated with it
- * to prohibit certain practices, such as referral fees between settlement service providers, that result in higher costs and reduced quality to consumers

Affiliated Business Arrangement

An arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

Affiliate Relationship

The relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

Agreement or Understanding

An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by practice, pattern, or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

Associate

One who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

Federally Related Mortgage Loan

Any loan (other than temporary financing such as a construction loan) which:

- (A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and
- (B) (i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or
- (ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary [of HUD] or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary [of HUD] or a housing or related program administered by any other such officer or agency; or
- (iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or
- (iv) is made in whole or in part by any "creditor," as defined in section 1602(f) of title 15 [Truth in Lending Act], who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year, except that for the purpose of this chapter, the term "creditor" does not include any agency or instrumentality of any State.

Referral

A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business. A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use a particular provider of a settlement service or business incident thereto.

Required Use

A situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

Safe Harbor Test

Generally, a safe harbor test means that if you meet certain standards or requirements, you can qualify for specific exemptions from rules or regulations. In the case of RESPA, HUD has established an exemption from the statute's anti-kickback provision when real estate practitioners and lenders establish joint ventures called affiliated business arrangements (AfBA). To take advantage of the AfBA exemption, partners must satisfy a safe-harbor test under Section 8(c)(4) of RESPA.

Section 8

Generally, Section 8 refers to the section of the RESPA statute which prohibits kickbacks and unearned fees. Specifically, RESPA's Section 8(a) states, "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."

RESPA's Section 8(b) states, "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."

Settlement Services

Any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement.

Thing of Value

Any payment, advance, funds, loan, service, or other consideration. It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of 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 in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation.

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