

RESPA REFRESHER FOR LENDERS

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It's a competitive market out there today. The market is shrinking, underwriting guidelines are getting tougher, and a lot of lenders are competing for the "good" customers that are looking for financing solutions.

In times like these good loan officers might consider doing things they wouldn't normally do, like make deals with agents or other sources of referral business to pay them "illegal referral fees" for sending valuable deals their way.

You don't want to do this for a few reasons: (1) it is illegal; (2) if you get caught you could be fined \$10,000 per incident and be sent to jail; and, (3) if you stay in the game just a little bit longer, there will be plenty of business for solid lending professionals who do business the right way.

The federal law that controls this undesired "kickback" behavior is RESPA, the Real Estate Settlement Procedures Act enacted in 1974.

Section 8 (a) of RESPA prohibits referral fees by making it illegal to "Give or receive any thing of value pursuant to an agreement or understanding to refer real estate settlement services to a particular entity in connection with a federally related mortgage loan as long as no RESPA exception is available."

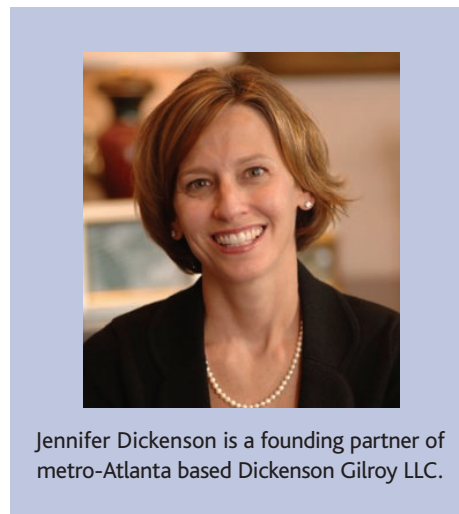
If a lender were to give something that has value (e.g., a \$100 gift certificate) pursuant to a pattern or practice (e.g., each time a realtor sends lender a referral, lender sends a \$100 gift certificate), or the lender receives something of value from settlement service providers that the lender refers business to (e.g. lender gets \$100 gift certificate each time lender sends the appraiser a referral) and lender originates loans for the purchase of 1-4 unit residential dwellings, lender is breaking the federal law governed by RESPA.

Whether a settlement service provider intends to violate the law or just accidentally does so because of a failure to understand RESPA, that party will be held to have violated the law. Also, the recipient of the illegal referral fee under this law is as responsible as the person who paid the illegal fee. Exposure is wide spread for all participants who might

be involved in an illegal referral scheme.

There are six activities that are exempt from RESPA which help provide guidance as to how this law applies.

1) PAYMENTS FOR SERVICES RENDERED OR GOODS ACTUALLY PROVIDED. If a lender were to pay a realtor, for example, for originating a loan, the realtor would have had to have actually performed many of the activities associated with originating loans such as filling out a loan application with the borrower and analyzing the borrower's income and



debt, to name a few required activities warranting the legitimate payment of a fee for services rendered.

2) CERTAIN PROMOTIONAL AND EDUCATIONAL ACTIVITIES. Promotional and educational activities are exempt from RESPA if they are normal, not conditioned based on the referral of business, and do not defray an expense that otherwise would have already have been incurred by those in a position to refer settlement business.

If you held an educational class, for example, but only invited agents who send you business, this would be a RESPA violation—a thing of value in exchange for the referral of settlement services. However, if you opened up the class to both agents who do and do not refer business to you, you would be in compliance and properly promoting and marketing yourself.

If you give every agent that refers you a loan a chance to win a trip through some kind of raffle, the chance to win is a "thing of value" and a violation of RESPA.

Advertising is another area in which lenders can get into trouble. Let's say a realtor has a billboard sign they maintain each month. The realtor asks the lender to contribute half the cost of the sign in order to continue being the "preferred lender of choice." This arrangement is illegal unless the lender's marketing information also appears on half of the sign as well.

3) COOPERATIVE BROKERAGE AGREEMENTS BETWEEN REAL ESTATE LICENSEES. Referral fees may be paid between or among real estate licensees without violating RESPA.

4) EMPLOYEE COMPENSATION for a "bona fide" employee referring business to affiliated settlement companies is an exception to RESPA.

5) CONSUMER REBATES, credits paid directly to the consumer, do not violate RESPA.

6) RETURNS ON OWNERSHIP AND FRANCHISE INTEREST. This exception allows Affiliated Business Arrangements (ABA's) to be legal under RESPA. It should be noted, however, that even with ABA's being permissible, the only benefit that the owners receive is their particular share of ownership under very strict regulatory guidelines. It would be a mistake for someone who is involved in an ABA to think they can pay or receive illegal referral fees just because of the affiliation. They can not.

We live in a time where federal and state governments are considering imposing additional laws upon the lending industry. It is wise for us to understand and follow the laws that already govern our behavior (RESPA) as well as learn about the new laws that are sure to come.

Self governance is the best line of defense as the industry continues to correct itself and its image. ■

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