

# RESPA FAQ's: Referral Arrangements

(RESPA: Real Estate Settlement Procedures Act)

Referrals are generally considered a mainstay of a REALTOR®'s business. Yet, **as soon as a real estate agent gives or receives some sort of payment in exchange for a referral, that agent could run afoul of the law.** To exacerbate matters, the laws surrounding referrals are complicated and confusing.

This legal article provides REALTORS® with general guidance on referral arrangements. The first part sets forth the federal and state laws involving referral arrangements. The second part discusses specific referral arrangements commonly contemplated by REALTORS®.

You are highly encouraged to familiarize yourself with the laws surrounding referrals. By doing so, you can confidently use referrals and referral arrangements to optimize your business opportunities, without exposing yourself or your company to potential legal jeopardy.

## Q1 . Can a REALTOR® pay or receive a referral fee?

It depends. Whether a real estate agent may pay or receive a referral fee depends on the specific circumstances surrounding that particular referral arrangement. **A real estate agent engaged in the residential real estate business will generally not be allowed to pay or receive referral fees,** but there are some important exceptions as discussed below.

## Q2. What is RESPA?

RESPA is federal consumer-protection legislation enacted by the U.S. Congress in 1974. RESPA aims to, among other things, protect consumers from paying unnecessarily high settlement costs, such as by eliminating kickbacks and referral fees that increase the cost of settlement services. RESPA is administered by the United States Department of Housing and Urban Development (HUD).

## Q3. What transactions fall under RESPA?

**RESPA generally applies to most residential transactions.** More specifically, RESPA applies to transactions involving residential real property (including condominiums and cooperatives) with one to four units, and a “federally related mortgage loan.”

## Q4. How does RESPA regulate referral arrangements made by real estate agents?

For a transaction involving one-to-four residential units with a federally related mortgage loan, a real estate agent cannot either give or receive referral fees. More specifically, **the statutory language provides that “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) also commonly known as Section 8(a)). Some of the key terms used in this rule are defined below.

RESPA also prohibits anyone from giving or accepting “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” (12 U.S.C. § 2607(b) also commonly known as Section 8(b)).

#### Q5. What is a “referral” under RESPA?

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” thereto (24 C.F.R. § 3400.14(f)(1)). 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” (24 C.F.R. § 3400(f)(2)).

#### Q6. What is a “thing of value” under RESPA?

A “**thing of value**” is broadly defined to include “**any payment, advance, funds, loan, service, or other consideration**” (12 U.S.C. § 2602(2)). It also includes, without limitation, monies, things, salaries, commissions, credits, stock, dividends, the opportunity to participate in a money-making program, **discounts, sales, rentals, or services at special or free rates, trips, and payments of another person’s expenses** (24 C.F.R. § 3500.14(d)).

Thus, **even if you pay or receive something of value other than money, you still fall within the purview of RESPA.** You also do not avoid RESPA by merely labeling a referral fee as something else, such as a “finder’s fee.”

#### Q7. What is a “settlement service” under RESPA?

A “settlement service” is defined as “any service provided in connection with a real estate settlement.” **Settlement service providers include, but are not limited to, the following:**

- Real estate agent or broker;
- Escrow agent;
- Title insurer;
- Lender;
- Credit reporting agency;
- Appraiser;
- Pest inspector;
- Property surveyor; and
- Attorney.

(12 U.S.C. § 2602(3).)

Hence, as a settlement service provider, a real estate agent is prohibited under RESPA from giving or accepting a referral fee incident to the real estate business, whether the other party to the referral arrangement is a settlement service provider or not.

For example, under RESPA, a real estate agent cannot receive a referral fee for real estate service from a credit repair service, because the real estate agent is a settlement service provider. It does not matter whether the credit repair service is considered a settlement service provider or not.

#### Q8. What is the “normal promotional or educational activity” exemption to RESPA?

A thing of value falls under this exemption to RESPA if it meets the following three requirements:

- It is a normal promotional or educational activity;
- It is not directly conditioned on the referral of business; and
- It does not defray expenses that otherwise would be incurred by the referring party in the real estate transaction.

(24 C.F.R. § 3500.14(g)(vi).)

Let’s say, for example, a mortgage broker offers to provide refreshments at a real estate agent’s open house. Even if this offer is not conditioned on the referral of business, it may violate RESPA if it defrays an expense that the real estate agent would otherwise have incurred. This arrangement is less likely to violate RESPA if the mortgage broker and the real estate agent equally share the cost of some light refreshments, as well as put forth their own distinct marketing and promotional efforts at the open house.

#### Q9. What happens if someone violates RESPA?

Failure to comply with RESPA's prohibitions against referral fees and kickbacks could result in, among other things, a fine up to \$10,000 for each violation, and imprisonment up to one year. Furthermore, HUD, state Attorney Generals, and state insurance commissioners may bring an action to enjoin RESPA violations. Aside from governmental enforcement, an individual consumer may file a civil lawsuit to recover an amount equal to three times the amount of any charge paid for a settlement service that violates RESPA, plus attorneys' fees and court costs. (12 U.S.C. § 2607(d).)

For more information about RESPA, you may go to HUD's website at [http://www.hud.gov/offices/hsg/rmra/res/respa\\_hm.cfm](http://www.hud.gov/offices/hsg/rmra/res/respa_hm.cfm)

This information courtesy of the Santa Barbara Board Of Realtors Website  
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