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Maylie & Grayson is a full service law firm providing representation to real estate brokerages, licensees, local Realtor® organizations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters.

RESPA: How to Save Money and Stay Out of Jail

Did you know that a simple violation of RESPA could lead to up to a year in jail? How about up to a \$10,000 fine? This article will outline key aspects of RESPA, and how to avoid being caught violating it. Understanding these principles can aid in preventing monetary and punitive sanctions resulting from RESPA violations.

What is RESPA?

RESPA is an acronym for the Real Estate Settlement Procedures Act. It was enacted in 1974 on the federal level in order to protect consumers from being charged excessive settlement service costs, and is enforced by HUD. In essence, RESPA prohibits referral fees and kickbacks between settlement service providers for federally related mortgage loans. However, RESPA does not govern cash, seller financed, or rental property transactions. Settlement services include those which appear on the HUD-1 form, including but not limited to the following: title searches, examinations, and insurance; services by an attorney; property surveys; credit reports or appraisals; inspections; real estate brokerage services; and mortgage loan origination and processing fees.

What are Kickbacks and Referral Fees?

You may wonder what, if anything, you do constitutes a prohibited referral fee or kickback under RESPA. Anything that has the appearance of impropriety, or may ultimately increase the cost of settlement services to a consumer, may violate RESPA. Have you ever jointly advertised with a title company or mortgage broker? If so, and you did not pay for your pro rata share of the advertisement, both you and the other party have violated RESPA. Has a mortgage broker ever paid for your dinner? If so, both you and the mortgage broker may have violated RESPA. Have you ever attended an educational "get away" sponsored by a title company? If the "getaway" was more vacation than education, you may have violated RESPA. Have you ever required a buyer to use a specific title company? Or accepted payment from a mortgage lender just for taking a loan application? If so, you have violated RESPA.

What *Can* I Do Under RESPA?

Despite the many actions prohibited by RESPA, there are also many that are allowed. Any settlement service provider may provide you with anything of value, as long as it is proportionate to the value of the advertising received by that individual. For instance, a home inspection company may provide you with pens, paper, mugs, and various other items containing its logo because of the value of marketing to that company. A title company or mortgage lender may provide food trays at your open house, provided they receive a marketing benefit in the form of a presentation or distributing marketing materials to attendees. In addition, you may jointly advertise with a settlement service provider in a home magazine, provided you pay your proportionate share of the advertisement. Furthermore, a settlement service provider may pay for your lunch or dinner when business is discussed, provided the meals are not a regular occurrence, and are not lavish.

Settlement service providers under common ownership may also refer business to one another under RESPA. However, the referring party must provide the consumer with an “Affiliated Business Arrangement Disclosure” which states that the two settlement service providers are affiliated and that one may benefit from the consumer’s use of another. In addition, the disclosure must outline estimated costs for the referred services, and the referred consumer must acknowledge receipt of the disclosure by signing it.

Tips to Avoid a RESPA Violation

If we could give you only one tip for avoiding a RESPA violation, it would be this: *use your common sense!* If it feels wrong, it may very well *be* wrong. If you would shy away from telling your client about a relationship you have with a title company or lender, then that relationship is likely improper under RESPA.

Several additional tips to keep in mind as a licensee: 1) always pay for your proportionate share of a joint advertisement; 2) maintain referral lists of multiple title companies, lenders, and other settlement service providers; 3) never accept gifts from settlement service providers, excepting marketing related items such as pens, paper and mugs; 4) never accept regular, lavish meals from settlement service providers; and 5) never accept payment for referrals.

Conclusion

You may wish to spend some time thinking about your daily professional activities, and whether any of these activities violate RESPA. If so, you should play it safe and change the relationship or arrangement. In addition, you may wish to consult with your principal broker as to your company’s policy about business relationships and arrangements. Avoiding RESPA violations may require you to think before you act, but in the end, the extra energy may save you from punitive action or significant fines.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at joelgrayson@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.

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