

Compliance Reference Guide

Policy Summary & Employee Attestation

REAL ESTATE SETTLEMENT PROCEDURES ACT (“RESPA”)

Section 8: Prohibition on Kickbacks, Unearned Fees, and Referral Fees

EXAMPLES OF PERMISSIBLE AND NON-PERMISSIBLE ACTIVITIES

Examples of Permissible Activities and Payments
Normal promotional activities.
Procuring leads from a third-party source.
Desk rental at true market rental rate.
A real estate broker and a mortgage lender agree to jointly place a full-page advertisement in a local newspaper. Each company gets exactly one-half of the page to advertise its services. Each company pays one-half of the cost of the advertisement.
A Loan Officer meets the owner of a real estate brokerage firm for dinner at a local restaurant. The purpose of the dinner is for the two individuals to discuss future marketing opportunities. After the discussion has ended, the owner of the title agency pays for the real estate broker’s dinner.
A mortgage company sponsors a luncheon for real estate professionals and offer CLE. The price for admission is commensurate with other CLE offerings in the area.
A title agent provides a food tray for an open house, posts a sign in a prominent location indicating that the event was sponsored by the title agent, and distributes brochures about its services.
A mortgage lender sponsors an educational lunch for real estate agents where employees of the lender are invited to speak. If, however, the mortgage lender subsidizes the costs of continuing legal education credits, this activity may be seen as defraying costs the agent would otherwise incur, and may be characterized as an unallowable referral fee.
A title company hosts an event that various individuals, including real estate agents, will attend and posts a sign identifying the title company’s contribution to the event in a prominent location for all attending to see and distributes brochures regarding the title company’s services.
A hazard insurance company provides notepads, pens, or other office materials reflecting the hazard insurance company’s name.
A mortgage brokerage sponsors the hole-in-one contest at a golf tournament and prominently displays a sign reflecting the brokerage’s name and involvement in the tournament.
A real estate agent and mortgage broker jointly advertise their services in a real estate magazine, provided that each individual pays a share of the costs in proportion with his or her prominence in the advertisement.
Incentives paid by loan officers (paying for Realtors’ advertising or something else, like a gift certificate, free training on TRID, or tickets to sporting events, theater productions, or other prizes) in exchange for

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referrals.

Incentives paid among other parties, like Realtors and title companies (accepting free services or benefits, like free virtual home tours; advertising with parties such as real estate brokers, and making payments related to these agreements based on the “volume or value of business referred” rather than a flat fee) in exchange for referrals.

Example of Prohibited Activities and Payments

A mortgage lender devises a contest among local real estate agents where the real estate agent who refers the most customers to the lender will receive a vacation cruise to Alaska.

A mortgage lender pays real estate agents \$20 for each referral the agents make to the real estate broker’s affiliated mortgage company.

A mortgage lender occupies an office in a real estate broker’s business in order to prequalify customers for mortgage financing. Occasionally, real estate agents take loan applications from their customers and receive \$40 in return for each application.

A title company hosts a monthly dinner and reception for real estate agents.

A mortgage broker pays for a lock-box without including any information identifying the mortgage broker on the lock-box.

A mortgage lender provides lunch at an open house, but does not distribute brochures or display any marketing materials.

A hazard insurance company hosts a “happy hour” and dinner outing for real estate agents.

A home inspector pays for a real estate agent to go to dinner, but does not attend the dinner.

A title company makes a lump-sum payment toward a function hosted by the real estate agent, but does not provide advertising materials or make a presentation at the function.

A mortgage broker buys tickets to a sporting event for a real estate agent, or pays for the real estate agent to play a round of golf.

A title company sponsors a “get away” in a tropical location, during which only an hour or two is dedicated to education and the remainder of the event is directed toward recreation.

A mortgage lender only pays a real estate agent for taking the loan application and collecting credit documents if the activity results in a loan.

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ATTESTATION

Your commission will be reduced by 100% of the cost paid by [NAME OF COMPANY] for any invoices paid on your behalf, unless otherwise exempt per other agreements approved of by your reporting Executive.

In the case of termination of employment by the Company or the employee, the Company will pay 100% of commissions due on any loans that fund within the time period specified in your compensation addendum. If the employee voluntarily resigns any monies owed the company including outstanding draws will be paid back to the Company. This will be re-paid by payment from the employee directly and/or deducted from wages.

I have read, understand and accept the foregoing terms and conditions of this Addendum. I further understand that the above represents a clarification of my compensation package and is not an employment contract. Employment with [NAME OF COMPANY] is "at-will", which means that it is not for any specified period of time and may be terminated by me or [NAME OF COMPANY], for any or no particular reason or cause and at any time, with or without advance notice.

The Company reserves the right to amend or withdraw the possibility of this amount, in its sole discretion.

Employee

Date