

CONSUMER COMPLIANCE HINTS

FOR

REALTOR ORIGINATORS

THE REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA) (REGULATION X)

The US Department of Housing and Urban Development's letter of interpretation on February 14, 1995 to the mortgage lending industry and the regulators of the financial community addressed RESPA's prohibition on compensated referrals to financial institution. The opinion issued by HUD was communicated to the banking regulators seeking the agencies' comments on the unofficial interpretation.

HUD restated in the letter the interpretations of Section 8 of RESPA and Regulation X that the act of taking an application is not sufficient work to justify a fee.

The Real Estate Settlement Procedures Act ("RESPA") was enacted in 1974 and revised in 1990, 1992 and amended in 1994. RESPA is enforced by The Department of Housing And Urban Development (HUD), but it is part of the routine Consumer Compliance examination process of all regulated financial institutions and may be included in safety and soundness examinations conducted by the banking regulators. Therefore, it is important that the RO's recognize the impact of this consumer protection regulation when negotiating partnership agreements with the financial community.

Although RESPA covers almost the entire process of mortgage loan origination and mortgage servicing, there are two major segments of RESPA that affect the RO related to lender agreements. They are:

- *Section 3500.14 (Section 14)-Prohibition against kickbacks and unearned fees
- *Section 3500.15 (Section 15)-Controlled Business Arrangement

Criminal penalties and monetary fines for non-compliance are outlined in Section 8 of RESPA.

The RO should become familiar with this regulation as it pertains to their particular role in customer loan preparation, loan counseling and referral to lenders in order for the RO to design the partnership to ensure that the customer is given the widest range of financial products and services, while generating adequate income to the RO that offsets the cost of providing the service to the customer. Bear in mind that this regulation covers first mortgage purchase-money and home improvement subordinate lien activity.

Three primary objectives that must be met in any customer financial counseling role for the RO are:

- *The customer must be able to choose from at least three different lenders
- *The RO will receive the same compensation regardless of which lender is chosen
- *The RO receives compensation for counseling-type activities reasonably related to the services performed and not based on the amount of the loan business referred to the lender.

With these guiding principles, the RO needs to ensure that their loan origination activities incorporate protections for themselves and United Brokers Mortgage Company, LLC against violation of these regulations.

Special loan programs provided by partnership lenders, such as FHA 203 (k), that are not offered by other lenders and are unique to the customer's need, still should be compared to other lenders' programs with similar characteristics when the RO refers customers to lenders. This will help the lender and the RO avoid any inference that the RO is "steering" customers to favored lenders because of a financial relationship.

In order for the RO to "charge a fee" for referring a customer to a lender, the RO must perform at least five of the following activities in addition to TAKING INFORMATION FROM THE BORROWER AND FILLING OUT AN APPLICATION:

1. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford.
2. Educating the prospective borrower in the home buying and finance process, advising the borrower about different types of loan products available and demonstrating how closing costs and monthly payments would vary under each product.
3. Collecting financial information (tax returns, bank statements, etc.) and other related documents that are part of the application process.
4. Initiating/ordering verifications of employment (VOE) and verifications of deposit (VOD).
5. Initiating/ordering requests for mortgage and other loan verifications and credit reports.
6. Initiating/ordering appraisals.
7. Initiating/ordering inspections or engineering reports.
8. Providing disclosures (good faith estimates, truth-in-lending, etc.) to the prospective borrower.
9. Assisting the borrower in understanding and clearing credit problems.
10. Maintaining regular and routine contact with the borrower, Realtors, lender, between the time of application and closing to apprise them of the status of the application and to gather any additional information as needed.
11. Ordering legal documents
12. Determining whether the property was located in a special Flood Hazard area or ordering such service.
13. Participating in the loan closing.

If the RO took an application from a prospective borrower and performed at least five of the 13 items listed above, and recovered a fee that is reasonably related to the market value for the service, the RO and the lender partner would have no problem.

On December 12, 1995 the banking regulatory agencies issued a joint letter which represents an interagency perspective on RESPA compliance. The regulatory agencies and HUD in their letters emphasize two parts of Section 8 of RESPA. They are:

*The organization must actually perform the services required for the compensation

*The compensation must be commensurate with the work actually performed

In other words, there can be no down payments for merely referring mortgage loan customers. The RO fee must be negotiated to reflect the requirements of RESPA and recognize the need to be compensated for the work performed.