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What Does RESPA Stand For?

- Real
- Estate
- Settlement
- Procedures
- Act

3

Background of RESPA



4

Purpose of RESPA



5

What Entities Are Subject To RESPA?



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RESPA Section 8(a)

• 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.

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What is a “Thing of Value”?

Thing of Value = Broadly defined to be virtually anything one receives in consideration for making a referral

▪ \$	▪ Trips	▪ Fax machines	▪ Free advertising
▪ Commissions	▪ Discounts	▪ Computer	▪ VIAGRA
▪ Property	▪ Low interest loans	▪ Ipods	▪ Football tickets

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What is a “Referral”?

- RESPA Regulation X defines a referral as:
 - 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 to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business." 24 CFR 3500.14(f)(1).

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What Transactions Are Covered Under RESPA?

- Transactions involving a federally related mortgage loan, which includes most loans secured by a lien (first or subordinate position) on residential property. This includes: home purchase loans, refinances, lender approved assumptions, property improvement loans, equity lines of credit, and reverse mortgages.
- Does include residential dwellings designed principally for 1-4 families.

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Definition of “Federally Related Mortgage

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What Types of Transactions Are Not Subject To RESPA?

- The following are kinds of transactions that are not covered:
 - an all cash sale,
 - a sale where the individual home seller takes back the mortgage,
 - a rental property transaction or other business purpose transaction.

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RESPA Section 8(b)

- No person shall give and no person shall accept 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 USC 2607(a) and (b).

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Freeman v. Quicken Loans

- Supreme Court holds two or more parties must split unearned fee to violate Section 8(b)
- Settlement service providers may mark up third party fees, so long as provider does not split mark-up with another party
- If mark-up is split with another party – split must be based upon services rendered

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Exceptions - Section 8(c)

Congress recognized certain exceptions where paying a referral fee is ok

- To an Attorney for services actually performed
- By a Title Company to its duly appointed Title Agent for services performed in issuance of a title policy
- By a Lender to its duly appointed Agent
- Cooperative Agreements between listing and selling agents

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Exceptions - Section 8(c) (cont'd)

Congress recognized certain exceptions where paying a referral fee is ok (cont'd)

- Payments by Employer to Employee
- Secondary Market Transactions
- Affiliated Business Arrangements
- Section 8(c)(2) payments for services rendered or goods/facilities actually provided

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RESPA Section 9

- **Section 9: Seller Required Title Insurance**

- Section 9 of RESPA prohibits a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance
- According to HUD, however, section 9 of RESPA does not apply if the seller pays all charges associated with insuring the title to the real property. This would include related title services as well.

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Criminal Penalties for Violation of RESPA



- Fines up \$10,000, per occurrence
- Minimum one year in prison

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Advertising, Marketing & Education



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RESPA Storm is Brewing.... Advertising with Settlement Service Provider Further Explained



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And More.....



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From NAR...

- RESPA does not prevent joint advertising between two settlement service providers, such as a mortgage banker and a real estate broker advertising their services on the same brochure or newspaper ad. However, each advertising party must pay for his share on a proportionate basis.
- So if a real estate broker equally shares ad space with a title company, each party must pay 50 percent of the ad cost. Paying more than the pro-rata share can be considered by the Department of Housing and Urban Development (HUD) as "accepting a thing of value" for the referral of business, which is a violation of RESPA's Section 8 anti-kickback provision.

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- Article 6

- REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.
- When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. *(Amended 1/99)*
 - Standard of Practice 6-1
 - REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

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From TAR – RF711

13 Furnishing of any names of Vendors provided by the Broker or Broker's Affiliated Licensee(s) is done as a ministerial act
14 and only at a courtesy to the undersigned and does not in any way constitute any warranty or representation as to the quality
15 or value of the Vendor's thesis, choice or subsequent reports. The undersigned acknowledges that it/hay not the option to select any
16 Vendor or its thesis, choice or any not listed above and that Broker or Broker's Affiliated Licensee(s) has the option to select any
17 for any representation, guarantees or warranties of the selected Vendors or their undersigned. For good and valuable
18 consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned herewith releases the Broker,
19 the Broker's Affiliated Licensee(s) and/or his employees from any liability or claim arising out of or in connection with the
services of the Vendor.

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From HUD...

- Can a mortgage banker and a real estate broker advertise their services together, for example, on the same brochure or newspaper advertisement?
 - Nothing in RESPA prevents joint advertising. However, if one party is paying less than a pro-rata share for the brochure or advertisement, there could be a RESPA violation.

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- Can a lender give a real estate agent note pads with the lender's name on it?

- Yes. Such note pads with the lender's name on it would be allowable as normal promotional items.
- However, if the lender gives the real estate agent note pads with the real estate agent's name on it for the agent to use to market clients for its real estate business, then the note pads could be a thing of value given for referral of loan business, because it defrays a marketing expense that the real estate agent would otherwise incur.

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- Can a lender set up a contest for real estate agents under which the agent who provides the lender with the most business will win a trip or other prize?
 - No. Under RESPA, the trip/prize itself, and even the opportunity to win the trip/prize, would be a thing of value given in exchange for the referral of business.

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Education

- Sponsorship of continuing education is more likely to be a RESPA violation because members normally have to pay a fee to attend such programs. If the cost of the course is underwritten by the affiliate so that the agents need not pay fees that they otherwise would have to pay, such sponsorship could be interpreted as a thing of value received by the agent for RESPA purposes.

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Affiliated Business Arrangement (AfBA)

- An "affiliated business arrangement" that meets the statutory criteria does not violate RESPA's anti-kickback rule.
- An AfBA exists when:
 - Person in position to refer settlement service business, or associate of that person has affiliate relationship with, or direct or beneficial ownership interest of more than 1% in, settlement service provider and
 - Person or associate refers settlement service business to the provider or influences a borrower's selection of the provider.

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AfBA, cont.

- AfBA does not violate RESPA if:

- Person making referral provides an AfBA Disclosure to each person whose business is referred
- Person making referral does not require use of any particular provider of services, *except* that lender may require borrower to pay for attorney, credit reporting agency, or real estate appraiser chosen by lender and
- Only thing of value received from arrangement by person making referral, other than payments otherwise permitted by RESPA, is legitimate return on person's ownership interest in the affiliated service provider.

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AfBA, cont.

- **AfBA Disclosure must be made:**

- At signature or within 3 business days
- Must be a separate paper
- Must be signed by borrower

- Person making referral cannot require use of any particular provider of services.

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RESPA & Home Warranties

June 29, 2010

REAL ESTATE SETTLEMENT PROCEDURES ACT: RESPA ISSUES INTERPRETIVE RULE ON HOME WARRANTY MARKETING AGREEMENTS

The Department of Housing and Urban Development (HUD) issued an interpretive rule on June 26, 2010 in the Federal Register on the issue of how home warranty companies can pay real estate agents and real estate brokers under the Real Estate Settlement Procedures Act (RESPA) without violating Section 8(a) and 8(b).

The interpretive rule was released in response to a Feb. 21, 2008 unofficial staff interpretation letter that Paul Ceja of HUD's Office of General Counsel issued that caused a great deal of confusion in the real estate industry. Since the letter was issued The National Association of Realtors (NAR), Real Estate Settlement Providers Council (RESPRO), National Home Service Contract Association (NHSC), and others pressed HUD to clarify the rule on the subject of home warranty compensation.

HUD's new clarification breaks down the issue into three distinct categories:

1. **Unlawful Compensation for Referrals:** RESPA does not prohibit a real estate broker or real estate agent from referring business to a home warranty company. But RESPA does prohibit a real estate broker or agent from receiving a fee for merely referring or "marketing" a buyer or seller to purchase an insurance policy from the home warranty company. A referral by itself is not a compensable service for which compensation can be given and would be a violation of Section 8(a) illegal kickback and Section 8(b) unearned fees under RESPA.

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Allowed versus Not Allowed

- A title company hosts a monthly dinner and reception for real estate agents. **NA**
- A mortgage broker pays for a lock-box without including any information identifying the mortgage broker on the lock-box. **NA**
- 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**
- A mortgage lender provides lunch at an open house, but does not distribute brochures or display any marketing materials. **NA**

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- 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 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**
- A hazard insurance company hosts a "happy hour" and dinner outing for real estate agents. **NA**
- A home inspector pays for a real estate agent to go to dinner, but does not attend the dinner. **NA**
- A hazard insurance company provides notepads, pens, or other office materials reflecting the hazard insurance company's name. **A**

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- 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. **NA**
- 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. **NA**
- 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. **NA**
- 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. **NA**

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- 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**
- 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**

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- 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. **A**
- A lender pays a real estate agent fair market value to rent a desk, copy machine, and phone line in the real estate agent's office for a loan officer to pre-qualify applicants. **A**
- A real estate broker tells his agents that for each buyer they send to its affiliated title company, it will include their name in a monthly drawing for a weekend hotel package. **NA**

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Additional – Not Allowed Examples.

- Providing virtual tours or placing their information on your website in exchange for referral business.
- Charging homebuyers a percentage or flat fee of the purchase price to cover fees without regard to what the "actual" fees really are.
- Imposing an additional fee on homebuyers who elect not to use an affiliated company.
- Setting up "sham" employment arrangements with real estate agents for the purpose of paying fees for referrals under HUD's employer-employee exception.
- Failing to disclose affiliated business arrangements to consumers.
- Providing ANYTHING of value for the referral of business; including money, discounts, free rent, sharing fees, reduction in credit, gifts, vacations, use of office space or office equipment of anything of value.

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Builder Example

• **ARVIDA:** HUD negotiated a settlement with ARVIDA/JMB Partners, a large builder and realty services company in Florida. The settlement resolved allegations of violations of RESPA Sections 8(b) and 9, in the Weston Community in Broward County, Florida. The Section 8(b) allegation addressed ARVIDA's practice of charging a percentage of the house sales price for closing costs, a portion of which was paid for certain closing costs and a portion of which was retained by ARVIDA and not specifically accounted for. The Section 9 allegation involved an added \$300 fee to buyers who opted to use their own title agent rather than ARVIDA's affiliate. The Settlement Agreement provides for the cessation of these practices and for the refund of \$45,750, most of the additional fee that ARVIDA charged for buyers' using their own title agents.

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Standing up for you

We hold companies accountable for illegal practices

\$12.4
billion in
relief

to consumers from our
enforcement actions

31 million+
consumers

will receive relief because
of our actions

We listen to consumers and make their voices heard

1.5 million+
complaints

we've handled from
consumers

97% of
consumers

get timely replies when
we send their complaints to
companies

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http://www.libtitle.com/images/CFPB_and_Real_Estate_Agents.pdf

<http://www.consumerfinance.gov/policy-compliance/know-you-owe-mortgages/real-estate-professionals/>

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Enforcement - CFPB

CFPB Orders Prospect Mortgage to Pay \$3.5 Million Fine for Illegal Kickback Scheme

Real Estate Brokers and Mortgage Servicer That Took Kickbacks from Prospect Also Ordered to Pay \$495,000

JAN 31, 2017

SHARE THIS    

WASHINGTON, D.C. - The Consumer Financial Protection Bureau (CFPB) today took action against Prospect Mortgage, LLC, a major mortgage lender, for paying illegal kickbacks for mortgage business referrals. The CFPB also took action against two real estate brokers and a mortgage servicer that took illegal kickbacks from Prospect. Under the terms of the action announced today, Prospect will pay a \$3.5 million civil penalty for its illegal conduct, and the real estate brokers and servicer will pay a combined \$495,000 in consumer relief, repayment of ill-gotten gains, and penalties.

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CFPB Orders Citi Subsidiaries to Pay \$28.8 Million for Giving the Runaround to Borrowers Trying to Save Their Homes

Mortgage Servicers Kept Borrowers in the Dark About Options, Demanded Excessive Paperwork

JAN 23, 2017

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RESPA: HUD ANNOUNCES SETTLEMENT WITH FIDELITY NATIONAL TITLE OVER USE OF TRANSACTIONPOINT KICKBACKS AND ILLEGAL REFERRAL FEES

The United States Department of Housing and Urban Development "HUD" announced a settlement with Fidelity National Financial (NYSE: FNF) in the amount of \$4.5 million dollars for HUD's contention that Fidelity violated the Real Estate Settlement Procedures Act "RESPA" when it paid real estate brokers and other settlement service providers illegal kickbacks and improper referral fees for referring business through an "Application Service Provider Agreement." The Application Service Provider Agreement provided real estate brokers and other settlement service providers with access to Fidelity's TransactionPoint closing software. TransactionPoint allowed real estate brokers and others to select real estate settlement service providers for a particular real estate transaction. The real estate brokerages would then enter into Sub-License Agreements with subsidiaries of Fidelity to enable Fidelity's subsidiaries to be listed in TransactionPoint as a provider of settlement services.

The settlement said Fidelity's subsidiaries would then in turn compensate the real estate brokerages a fee for each referral of real estate. Re-insider.com was the first to break this story and has extensive coverage on the topic for those who wish to learn more. It is important to note that HUD's Settlement Agreement only applies to Fidelity and not to the real estate brokerages who received the kickbacks and illegal referrals fees so it is possible that more settlements will be announced as it pertains to those companies who received the kickbacks and improper referral fees.

The settlement can be viewed by clicking this link: [FIDELITY SECTION 8 RESPA SETTLEMENT](#)

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RESPA Settlements

- **Prospect Mortgage** will pay the **Department of Housing and Urban Development** \$3.1 million to settle claims of kickbacks to mortgage professionals from the company's alleged "sham joint ventures."
- **Fidelity National Financial** agreed to pay HUD \$4.5 million to settle kickback claims. The title company paid real estate brokers kickbacks and referral fees in violation of the Real Estate Settlement Procedures Act.

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- Officials at the **Dept. of Housing and Urban Development** said Friday that they had agreed to a \$35 million settlement to a federal lawsuit centering on alleged kickbacks paid to real estate brokerages by hazard reporting company **Property I.D. Corporation**. The government had accused **Realogy Corporation** and related brokerage entities Cendant Corp., and Coldwell Banker Residential Brokerage Corp. with accepting kick-backs from Property I.D. in exchange for orders of hazard disclosure reports.

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- First American recently — and very quietly — agreed to pay more than \$10 million in fines to settle charges that it had engaged in illegal kickbacks in exchange for referral of business.

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Sovereign Lending Group, Inc.

On July 24, 2020, the Consumer Financial Protection Bureau (Bureau) issued a consent order against Sovereign Lending Group, Inc. (Sovereign), a California corporation that is licensed as a mortgage broker or lender in about 44 states and the District of Columbia. Sovereign offers and provides mortgage loans guaranteed by the United States Department of Veterans Affairs (VA). Sovereign's principal means of advertising is through direct-mail campaigns targeted primarily at United States military servicemembers and veterans. The Bureau found that Sovereign sent consumers hundreds of thousands of mailers for VA-guaranteed mortgages that contained false, misleading, and inaccurate statements or that lacked required disclosures, in violation of the Consumer Financial Protection Act's (CFPA) prohibition against deceptive acts and practices, the Mortgage Acts and Practices-Advertising Rule (MAP Rule), and Regulation Z. Specifically, Sovereign sent consumers numerous advertisements for VA-guaranteed mortgages that, among other things, misrepresented the credit terms of the advertised mortgage, misleadingly described an adjustable-rate mortgage as having a "fixed" rate, falsely stated that the consumer had been prequalified for the advertised mortgage, created the false impression that Sovereign was affiliated with the government, used the name of the consumer's current lender in a misleading way, and failed to include multiple disclosures required by Regulation Z. The consent order requires Sovereign to pay a \$460,000 civil money penalty and imposes requirements to prevent future violations.

This action stems from a Bureau sweep of investigations of multiple mortgage companies that use deceptive mailers to advertise VA-guaranteed mortgages.

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Did You Know?



51

- <http://thenationalrealestatepost.com/the-demise-of-the-msa-is-here/>



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- To combat higher costs in real estate transactions, Section 8 of RESPA makes it a criminal act for settlement service providers to pay fees for the referral of business. One exception to this rule allows real estate professionals to pay a referral fee to:
 - A mortgage broker who refers a buyer who has been pre-approved
 - A previous customer who refers a neighbor
 - Another licensed real estate broker who refers a buyer from another part of the country
 - A relative who overhears a customer saying he or she is moving

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- To provide consumers with cost information about the mortgage process, RESPA created the good faith estimate (GFE) and the HUD-1 closing document. RESPA requires that the HUD-1 form be provided to the:

- Tax assessor
- Next door neighbor
- Real estate licensee
- Buyer

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- RESPA allows title companies, mortgage companies, termite companies, insurance companies, etc. to provide real estate professionals:

- \$50 for every client referred to the company by the real estate professional
- An entry in a contest to win a car for every client referred by the real estate professional
- Tickets to a sporting event
- Notepads that have been imprinted with the company's name and phone number

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- Two companies that provide settlement services and have some degree of common ownership are considered affiliated businesses under RESPA. When there is a referral from one of these companies to the other, RESPA requires the customer receive an affiliated business disclosure that contains specific information including:

- A statement that use of referred service is not required
- Names of other providers of the same service
- A statement that the property is pest free
- The commission being paid by the property seller

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• The affiliated business provision, which is an exception to the general RESPA rule regarding compensation for referrals allows:

- The real estate professional making the referral to receive a small referral fee
- The party making the referral to receive a return on its ownership interest in the company receiving the referral
- The buyer to avoid having to pay real property transfer tax
- The seller to require buyers to use the seller's attorney

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• The penalty for illegally giving or receiving a kickback, which is covered in Section 8 of RESPA, is:

- Up to 90 hours of community service
- Loss of real estate license
- Requirement to attend a RESPA education program
- A fine of up to \$10,000 or up to one year in prison or both

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• A real estate licensee can have their required continuing education hours sponsored by or given for free by a SSP?

- True
- False

60

- A builder or seller can require a buyer to close at a particular title company?

- True
- False

61

- An SSP can provide lunch for you at your brokers open house?

- True
- False

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Let's Review...



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