

**BY LAWRENCE H. JACOBSON\***

The Real Estate Settlement Procedures Act, more commonly known as RESPA, has posed a continuing challenge to residential real estate brokers across the country. To many brokers and their service providers, the law, which prohibits referral fees, is a roadblock to conducting business.

Not so. The Congress when it passed the legislation in the 1970s had one primary objective in mind and this remains the major enforcement focus of the Housing and Urban Development Department: protect the buyer from excessive charges which beef up the purchase price of the home. By way of definition, RESPA designates a home as a building with one to four residential units.

As we're all aware, the residential real estate broker is viewed by buyers as their gatekeeper to those services required to close the transaction. Under RESPA, there is only one basic restriction on brokers in carrying out this mission. They are forbidden from accepting a referral fee from providers of such services -- title insurers, mortgage banks, escrow companies (in states where applicable) and others whom a broker may steer to the transaction.

Banks engaged in mortgage financing who have federal charters or facilitate FHA-backed home loans, are susceptible to HUD scrutiny as well. Also, private individuals or groups providing financing of more than \$1 million for home purchases come under the same radar prohibiting referral fees.

You may ask what constitutes a referral fee under RESPA. For starters, a cash payment. Not only is it illegal, but don't try to disguise it. HUD investigators know what to examine. But let's say the mortgage banker you refer (perhaps quite often) is inclined to express appreciation by delivering a case of wine to your home. It won't fly. A bottle maybe, as a token of friendship. But several bottles -- no. Or you and associates are invited to a round of golf and dinner at the banker's private club. Also a violation -- unless it can be clearly documented that the gathering was dominated by discussions over mutual business interests and the golf served only to bring the parties together. There are other examples: accepting free office space, equipment, services of value or advertising from a service provider.

It should be noted that the sharing of fees among brokers is permitted under RESPA, provided that actual work of value was rendered by each in connection with the home purchase.

Under no circumstance, however, can a fee paid to a broker or by a broker to a service provider which increases the established purchase price of a home.

Beyond the restrictions of RESPA, many states have laws governing payments to brokers that may be broader in scope and should be studied.

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