



TO: State and Local Association Executives/Government Affairs Directors, and Communications Directors

FROM: David Lereah, Senior Vice President, Chief Economist
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RE: DOs and DON'Ts for Complying with RESPA

DATE: March 23, 2005

Issue:

Recent articles in the press indicate that some of those involved in real estate settlements may not fully understand their obligations under the Real Estate Settlement Procedures Act (RESPA). Moreover, HUD has stepped up its RESPA enforcement in the past 18 months. Attached are some RESPA DOs and DON'Ts for real estate brokers and agents.

Background:

In 1974, Congress enacted RESPA to protect consumers during the home purchase process. The purposes of RESPA include (a) giving consumers better advance disclosures of settlement costs, and (b) eliminating kickbacks or referral fees that unnecessarily increase certain settlement costs.

RESPA requires lenders to give prospective borrowers a booklet on "the nature and costs of real estate settlement services" and a good faith estimate of likely settlement costs. Then, at closing, the borrower and seller receive a settlement sheet (the "HUD-1"), which itemizes the costs paid in connection with the purchase of the home. RESPA also prohibits both giving and receiving anything between providers of settlement for the referral of business.

Even though the law has been in place for 30 years, there still exists a great deal of uncertainty over which fees are permitted and which are prohibited. Uncertainty is especially troubling since the anti-kick-back provisions in section 8 of RESPA may result in criminal penalties and substantial civil penalties.

HUD is responsible for administering this regulatory program and enforcing its provisions. Its implementing regulations are at 24 CFR Part 3500.

REALTOR[®] Awareness Campaign

By sending you the attached RESPA DOs and DON'Ts and posting them on REALTOR.org, NAR is launching a REALTOR[®] Awareness Campaign to help educate REALTORS[®] about RESPA requirements. The attachment:

- Describes the types of entities that RESPA covers.
- Summarizes RESPA's prohibitions affecting REALTORS[®].
- Explains three exceptions to the rule prohibiting payments between settlement providers.
- Gives examples of permissible and impermissible activities and payments.

HUD is beefing up its enforcement of RESPA, so it is important that all REALTORS[®] focus on RESPA and assure that their activities comply with its requirements.

Before a REALTOR[®] undertakes any activity with a settlement service provider or accepts any payments, goods, or services from a provider, NAR recommends that the REALTOR[®] speak with an attorney familiar with RESPA and also makes sure that the activity complies with state and local laws. Some of these laws prohibit activities that are otherwise permissible under RESPA.

For more information, please contact Mike Thiel (NAR's Legal Department) at 312-329-8373 or MThiel@realtors.org.