

Notes from the MAR Legal Hotline

Michael McDonagh, MAR General Counsel
Justin Davidson, MAR Legislative & Regulatory Counsel
Claire Crowley, MAR Staff Attorney

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Q. A local oil company is offering \$200 gift cards to REALTORS® in my office in exchange for referrals. Is this a RESPA violation?

A. No. The Real Estate Settlement Procedures Act (RESPA) prohibits real estate professions from accepting things of value in exchange for referring clients to a settlement service provider. Because the oil company is not a settlement service provider, RESPA does not apply in this situation. Generally, services that occur after closing are not considered settlement services. For example, moving companies, gardeners, painters, decorating companies and home improvement contractors are typically not considered settlement service providers.

So, what is a settlement service provider? The National Association of REALTORS® defines a settlement service to include any service provided in connection with a real estate settlement including, but not limited to, title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, home warranty companies, services rendered by a real estate professional, the origination of a federally related mortgage loan, and the handling of the processing and closing or settlement.

Before you undertake any activity with a settlement service provider or accept any payments, goods, or services from a settlement service provider, you should speak with an attorney familiar with RESPA and make sure the activity is compliant with state and federal laws.

Q: Do I have to tell my clients that I will receive a gift card in exchange for referring them to the oil company?

A. Yes, under Article 6 of the Code of Ethics. The Article states that REALTORS® “shall not accept any commission, rebate, or profit on expenditures made for their client, without the client’s knowledge and consent.”

Q. I’ve heard a lot about Zillow and RESPA lately. Is Zillow violating RESPA with their co-marketing agreements?

A: Zillow’s co-marketing plan allows a real estate agent to share the cost of an ad on its website with a preferred lender. From this, leads generated through the website can be shared between lender and real estate agents. Although questions have been raised on how this practice comports with RESPA, to date, the Consumer Financial Protection Bureau (CFPB) has not issued any guidance in regards to whether Zillow’s co-marketing program is a RESPA violation. Generally, lead forwarding between agents and lenders can be legal but the more specific the information is that is contained in the lead, the more likely it is to be a payment for a referral, a practice that is prohibited by RESPA. Selling a lead to a lender for a buyer who is about to make an offer on a property is not recommended. Best practice is to buy or sell leads that are simple lists of contact information. Anything beyond simple contact information could be considered a referral and thus a RESPA violation.