

Few real estate attorneys in California understand the rules contained in what is commonly referred to as RESPA. In 1974, Congress enacted RESPA, the Real Estate Settlement Procedures Act primarily to address abusive practices, promote greater understanding to home buyers and to prohibit practices such as kickbacks or referral fees that result in higher costs.

If you have a real estate matter involving RESPA, visit our law firm website at <http://www.SebastianGibsonLaw.com> for more information and call us at any of the numbers easily found on our website.

Efforts began in earnest in 2008 to reform RESPA and on November 17, 2008, HUD published its new 341-page RESPA final rule. Though published in the Federal Register, there is a one year implementation period and mandatory compliance begins January 1, 2010.

RESPA was created in the first place partly because various types of entities involved in the purchase and sale of real estate such as Realtors, lenders, construction companies, and title insurance companies were often engaged in providing undisclosed kickbacks to each other, thereby causing the costs of real estate transactions to become inflated.

RESPA was designed to prevent kickbacks not just in California, one of the states with the greatest number of foreclosures in this current economic crisis, but throughout the U.S. But RESPA has been criticized for failing to prevent what it was meant to prevent. Lenders and others in the real estate industry in California, for instance, still see customers go with the default service providers associated with a lender or Realtor, even though the documents the home buyer signs explicitly state they can choose any service provider they wanted.

However, Section 8 of RESPA quite explicitly and forcefully prohibits a person from giving or accepting a fee, kickback or anything of value for referrals of settlement service businesses relating to a federally regulated mortgage loan. It also prohibits fee-splitting or a person from giving or accepting any part of a charge for services that are not performed.

Violations of Section 8's kickback, referral fee and unearned fee provisions subject a person who violates RESPA to criminal and civil penalties. In criminal cases, a person in violation of Section 8 can be fined up to \$10,000 and imprisoned for up to one year. In a civil lawsuit, a person in violation of Section 8 can be liable to the person who was charged for a settlement service an amount equal to three times the amount of the charge paid by the person for the service, and for the person's attorneys fees. Individuals have one year to file a complaint to enforce violations of Section 8 in federal court in the district the property is located or where the violation occurred.

Without oversimplifying Section 8, a real estate agent in California or anywhere in the U.S. may not offer nor may a real estate agent accept anything of value for referring business to a settlement provider such as a mortgage banker, mortgage lender or title company or to a friend who refers the agent business. Realtor to Realtor referrals are excluded and there is a contract for such referrals that is enforceable. It is probably still acceptable to take such contacts out to dinner, discuss business and thank them for their support, but that is about as far as one can go.

With all that has happened in the mortgage industry in California and throughout the U.S. that has led to the current economic recession (and some would call it a depression), anyone criticizing the kickback and fee-splitting prohibitions should remember the excesses in lending to unqualified home buyers that led us to the situation the financial industry now finds itself.

Entities who are found to have formed sham joint ventures for the purpose of evading the Section 8 prohibitions risk potentially millions of dollars in damages and attorney fees as well as criminal charges and imprisonment.

If you believe you have been the victim of a violation of RESPA in California and have been improperly charged as a result of such a violation, or if you are in the real estate industry and are facing RESPA litigation or need advice regarding RESPA, we recommend that you visit our law firm website at <http://www.SebastianGibsonLaw.com> and call us to set up a consultation with the law firm of R. Sebastian Gibson.