

Frequently Asked RESPA Questions Answers Provided by NAR's Legal Counsel¹

1. Q. RESPA prohibits service providers from giving anything of value in exchange for referrals of business. Does that prohibition apply only to certain types of service providers (i.e. lenders, title companies) from providing food at open houses or does it apply to all service providers (i.e. home inspectors, pest control companies, advertising companies and others)?

A. RESPA applies to settlement service providers and does not distinguish among different types of settlement providers. A settlement service includes 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, services rendered by a real estate broker or agent, the origination of a federally related mortgage loan and the handling of the processing and closing or settlement. This list is broad but not all-inclusive. Anything listed on a HUD-1 form could be a settlement service and the company providing it a settlement service provider.

2. Q. Is a home warranty company a settlement service provider?

A. As noted above a settlement service provider is one who provides services in connection with the purchase/sale of a property that are paid for, directly or indirectly, out of the funds at settlement. Most home warranties are sold in connection with a property sale and therefore the company selling the warranty would be a settlement service provider.

3. Q. If a title/mortgage company sponsors a "get-away" at a resort property for brokers and agent and offers education, is it a violation of RESPA?

A. A title company or mortgage company paying for an educational event, so long as the costs associated with the event do not defray the expenses that the real estate agent would otherwise encounter, would be permissible. Note, however, that a rule of reason should be applied. An educational event hosted by a mortgage lender that was held at a local hotel and provided a lunch would be quite different from an educational event held in Hawaii in which one hour was dedicated to education and the remainder of the event was directed toward recreation.

4. Q. When a title company hosts an agent luncheon at an open house, they are providing food in hopes of meeting agents - just as Realtors hold open houses. Doesn't this need to be looked at in a much more practical way and allowed under RESPA?

A. If a real estate agent requested that a title company pay for a lunch that the real estate agent was hosting, and the title company agreed, the payment would be a thing of value for, or in the hopes of, the referral of settlement service business. If, however, the title company paid for the lunch, but attended the open house and gave a brief presentation, or prominently displayed a sign indicating the title company's name and distributed brochures about the title company during the open house, there is a reasonable argument that this activity is a form of advertising and therefore acceptable under Section 8(c)(2). Again, real estate agents should apply a rule of reason. If these activities and materials are present, a casual lunch of sandwiches for \$200 likely would be acceptable. A catered lunch by an expensive restaurant at a cost of \$800, however, would more likely be viewed as a referral fee.

¹ The answers provided here are based on interpretations of RESPA. Real estate brokers and agents should also check any bulletins issued on these subjects by state regulators.

5. Q. Is it legal for a REALTOR® Association to solicit sponsorships from affiliate members who provide settlement services for Association functions that are not education-related such as awards and recognition ceremonies and association fundraisers?

A. While such events provide something of value to the association, the association is not in a position to refer business to the settlement service provider. Since real estate agents do not receive anything of value from the affiliate member by their attendance at these events, such sponsorships would not violate the law. In addition, it would be helpful if some sign or brochures are posted so that the affiliate member can claim this activity as an advertising cost.

6. Q. Does RESPA bar local boards or associations of REALTORS® or NAR affiliates of their local chapters from accepting from settlement service providers donations or sponsorships of meetings, awards and fundraisers?

A. Sponsorship of an association event is not prohibited by RESPA unless, as noted above, such sponsorship means that the association does not charge brokers and agents attending the fee that they would normally be obligated to pay. The association is not in the real estate business and therefore not in a position to refer buyers or sellers to the party sponsoring the event.

7. Q. Is it legal for Affiliate Members who are settlement service providers to sponsor continuing education or new-member orientation classes?

A. It depends on whether some of the expenses an agent would otherwise bear are defrayed by the affiliate member. In the case of an orientation course there is probably no problem because new members pay an application fee which is the same whether an affiliate sponsors the course or not. If the affiliate is simply recognized as a sponsor it is similar to an affiliate running an ad in the association paper and would be considered normal marketing activity. Sponsorship of continuing education is more likely to be a 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.

8. Q. Is it legal for Affiliate Members to put on education courses about the services the affiliate member provides for REALTORS®?

A. Yes, Affiliate Members may put on classes about their business, since such informational programs are consistent with the marketing of an affiliate's business.

9. Q. Can an Affiliate Member donate items to the Association's Political Action Committee auctions?

A. RESPA does not prohibit such donations, but the association should check with a campaign finance expert.

10. Q. May a mortgage company cater the food to be offered at a broker's open house tour?

A. Again, if the mortgage company came to the lunch and provided a short presentation regarding interest rates and loan programs, the payment would likely be permissible under Section 8(c)(2). Furthermore, if the mortgage company prominently displayed a sign indicating its sponsorship of the lunch and distributed brochures during the open house, the payment would likely be permissible. A rule of reason should be applied. If these activities or materials are present, a casual lunch of sandwiches for brokers could reasonably be a permissible marketing cost.

11. Q. Can brokers and agents accept from lenders and distribute to prospective buyers flyers containing financing information? For instance, at an open house, may a lender provide flyers that offer closing cost calculations for various down payment scenarios, to be distributed by brokers and agents?

A. Distribution of such flyers provided by lenders does not violate RESPA. The information gathered is consistent with the real estate agent's responsibilities to his or her client to facilitate the sale of the property and no separate benefit flows to the agent from the lender. The agent may not, however, accept from lenders flyers which also promote the listed property, since that would result in the lender bearing a portion of the agent's advertising expenses, which are the agent's responsibility.