

Section 9

- In covered transactions, “no seller of property... shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property to be purchased by the buyer from any particular title company.” (12 USC 2608(a)).
 - Seller-pay transactions?
 - Read §3500.16



Section 8 (§3500.14)



Section 8

- Most “controversial legal provision” in mortgage lending.
- Reason for difficulties--
 - Rather inexact language
 - Counterintuitive to business
 - Serves as industry “turf referee”
 - Criminal provisions give provision “teeth”
 - Has made HUD both “shy” and “aggressive”

Section 8

- Section 8(a)-- prohibits kickbacks or referral fees by making it unlawful to give or accept any thing of value pursuant to an agreement or understanding that real estate settlement service business involving a federally related mortgage loan be referred to any person. 12 U.S.C. § 2607(a).

Section 8

- Section 8(b)-- provides that “[n]o person shall give and no person shall accept any portion, split, or percentage, of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed [and the other exemptions provided in § 8(c)].” 12 U.S.C. § 2607(2).

Section 8(a)

- Section 8(a) makes it unlawful to—
 - give or accept...
 - any thing of value...
 - Broadly defined in §3500.14(d)
 - pursuant to an agreement or understanding...
 - Oral understanding is sufficient
 - May be established by “pattern or practice”

Section 8(b)

- that settlement service business be referred to any person.
 - Referral means oral or written action directed to a person which has the effect of affirmatively influencing the selection of a settlement service provider.

Section 8(b)

- Section 8(b) provides that—
 - No person shall give and no person shall accept...
 - any portion, split, or percentage, of any charge made or received...
 - for the rendering of a real estate settlement service...
 - other than for services performed [and the other exemptions provided in § 8(c)].

Section 8(c)

- Section 8(c) then clarifies that, notwithstanding any of the above, entities can always pay for services rendered, or for goods or facilities actually provided.
- Regulation, at §3500.14(g) clarifies this section.

Section 8(c)

- §3500.14(g)– Section 8 of RESPA permits:
 - Payments to attorneys, agents, contractors, for services actually performed;
 - Normal promotional and educational activities;
 - An employer’s payments to its own employees for any referral activities.
 - Concept: Entity as a “person”

Section 8

- Note:
 - Courts have stated that §8(b) “is an anti-kickback statute,” and does not apply “to every overcharge for a real estate settlement service.” Rather, it applies only when there is a referral fee or when a “portion” or “percentage” of the overcharge “is kicked back to or split with a third party.”

Section 8

- Note
 - RESPA is not a “rate-setting” statute.
 - Congress, in 1974, specifically rejected the approach “to regulate closing costs directly; that is to provide for the legal maxima on the charges which may be imposed for services incident to real estate settlements.”

Section 8 -- Implementation

- Clear Scenarios:
 - Marked envelope
 - Rental of “office” space
 - Free “Open Houses”
 - Advertising Arrangements
 - Charity donations on behalf of referring entity

Section 8

- Section 8(a) -- Issues

- Situation: Entity refers business AND also performs services in transaction:

- Realtors
 - Title Agents
 - Mortgage Brokers



Section 8

- Bogus Brokering Services:
 - When a person in a position to refer “receives a payment for providing additional settlement services... such payment must be for services that are actual necessary and distinct from the primary service provided for such service.”
 - Example: Realtor collecting fee for “filling out of a loan application”

Section 8

- Looking Forward:
 - Does it protect consumers?
 - Is it workable and/or enforceable
 - Provides “turf walls” to industry players
 - Mortgage reform “stands on” Section 8