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Thursday, 01/17/08 10:32 PM

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## Selecting a title agency

### How RESPA and the CBR Purchase Contract address Selecting a Title Agency

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One of today's hot topics is the selection of the title insurance agency. RESPA, the [Real Estate Settlement Procedures Act](#), addresses title agencies, settlement services, and real estate professionals. The full text of RESPA can be found at 12 USC 2601-2617.

12 USC 2607 deals with the prohibition against kickbacks and unearned fees. To summarize, a real estate professional is prohibited from receiving anything of value for the referral of settlement services. However, a real estate professional is permitted to receive a return on the ownership interest in a settlement services provider so long as the relationship is disclosed and the parties are not required to use said provider.

It is permissible under Ohio Licensing law for a real estate professional to have an ownership interest in a title agency or settlement services provider, "affiliated business." The licensee should only suggest the services of the affiliated business when it is in the client's best interest. The suggestion of the use of an affiliated business when it is clear that the client's best interest would be better served by utilizing another title agency or settlement services provider may result in a breach of fiduciary duty.

Paragraph 7 of the Real Estate Purchase Contract created by the Columbus Board of REALTORS® and the Columbus Bar Association states, "The Seller shall furnish and pay for an owner's title insurance commitment and policy in the amount of the purchase price..." As long as this provision is utilized, the seller has the right to select where the title insurance will be purchased.

Unfortunately, the HUD website, in an effort to paraphrase 12 USC 2608, commonly referred to as RESPA Section 9, has caused some confusion. It states "Section 9 of RESPA prohibits a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance."

The actual text of 12 USC 2608 is, "(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company. (b) Any seller who violates the provisions of subsection (a) of this section shall be liable to the buyer in an amount equal to three times all charges made for such title insurance."

Those using the CBR/CBA Real Estate Purchase Contract Paragraph 7 as written will not be in violation of RESPA Section 9 when the seller selects a title agency to handle the closing. As long as the buyer is not required to purchase title insurance from a particular company as a condition of the sale, the seller can select the title agency.

Some argue that since the buyer's lender requires a lender's title insurance policy, the buyer is being required to purchase that title insurance policy from the company of the seller's choosing. In fact, the buyer may purchase the lender's policy from any title insurance agency, however, the simultaneous issuance of the owner's policy and the lender's policy usually results in a nominal charge of \$100 to the buyer compared with the full issuance rate.

An article in the [Summer 2004 Newsletter from the Division of Real Estate and Professional Licensing](#) discussing RESPA also reviewed the law governing commissions. The law is very clear: salespeople may only receive commissions, fee, or other compensation through their affiliated broker. Checks may only be made payable to the broker and cannot be made payable jointly to the broker and the salesperson. Salespeople are not permitted to receive any commissions, fees, or anything of value directly from the title agency. There is no permissible way around the law.

The Division of Real Estate encourages real estate professionals to report any suspected violations as it is the real estate professionals who are the best enforcement against illegal activity.

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