

REFERRALS AND RESPA

When It Does (And Doesn't)
Pay To Refer A Client



C.A.R.
LEGAL
TOOLS

QUESTIONS WE'LL ANSWER



What is the federal real estate settlement procedures act (RESPA)?



What are some examples of how RESPA is applied?



Under what circumstances can a real estate licensee pay someone for referring a client?



What does California law say about referral fees?



Are there penalties for violating RESPA? If so, what are they?

WHEN MAY A LICENSEE PAY SOMEONE FOR REFERRING A CLIENT?

Generally speaking, there are two scenarios that permit payment of a referral fee:

- One broker pays another broker
- A broker pays a fee to a current client

In all other scenarios, check with your broker and legal counsel before you accept or pay a referral fee.

WHAT DOES THE REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA) COVER?

- ❑ RESPA prohibits a real estate licensee from paying – or providing anything of value – to a non-licensee for the referral of business if the referral was done with the expectation of compensation
- ❑ RESPA also prohibits one licensee from paying another licensee for the referral of business if the second licensee is a loan or mortgage broker
- ❑ RESPA only applies to sales of buyer-occupied residential property with 1-4 units if that property is being acquired with a “federally related” loan
- ❑ RESPA does not apply to commercial property, vacant land, apartments with 5 or more units or all-cash transactions



WARNING

Important Caveat

Be careful: You may not know at the outset of the transaction (when the referral fee is agreed upon) how the buyer eventually will be paying.

WHAT DOES CALIFORNIA LAW SAY ABOUT REFERRAL FEES?

- ❑ State law prohibits a licensee from paying a non-licensee for performing licensed activities. This rule pertains to all types of real estate, regardless of the method of financing
- ❑ Although a finder's fee for a raw referral is not prohibited, if the non-licensee performs any functions other than a raw referral, the payment could be construed as a payment for licensed activity

Examples of prohibited activities

- ❑ Conducting negotiations
- ❑ Soliciting prospective clients

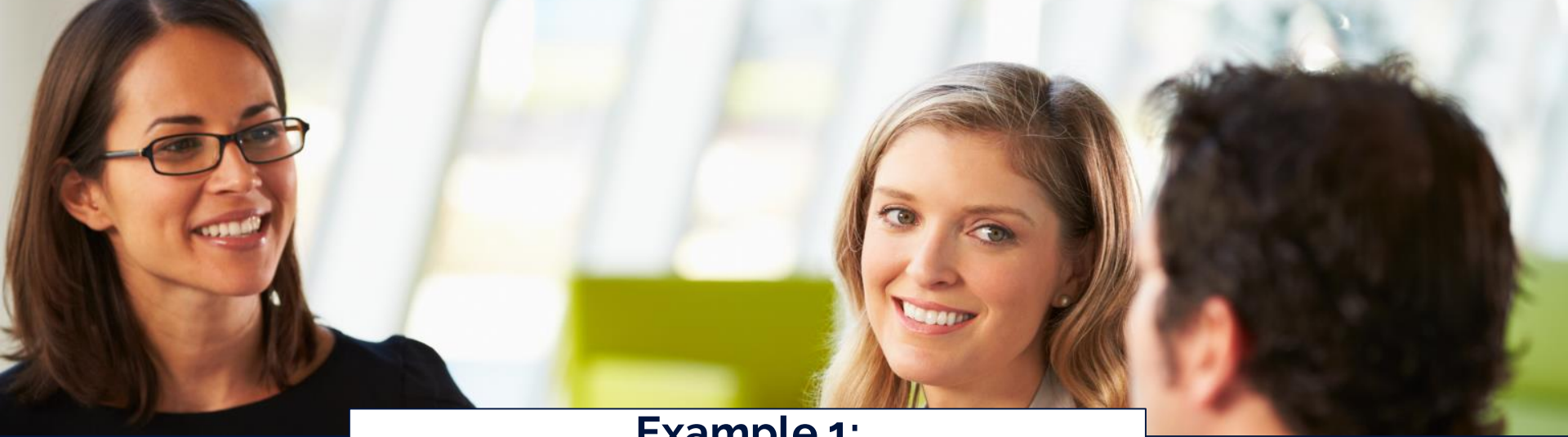
NOTE:

Payment must always go through the broker and not direct to a salesperson





**SOME EXAMPLES OF
HOW THESE LAWS
ARE APPLIED...**



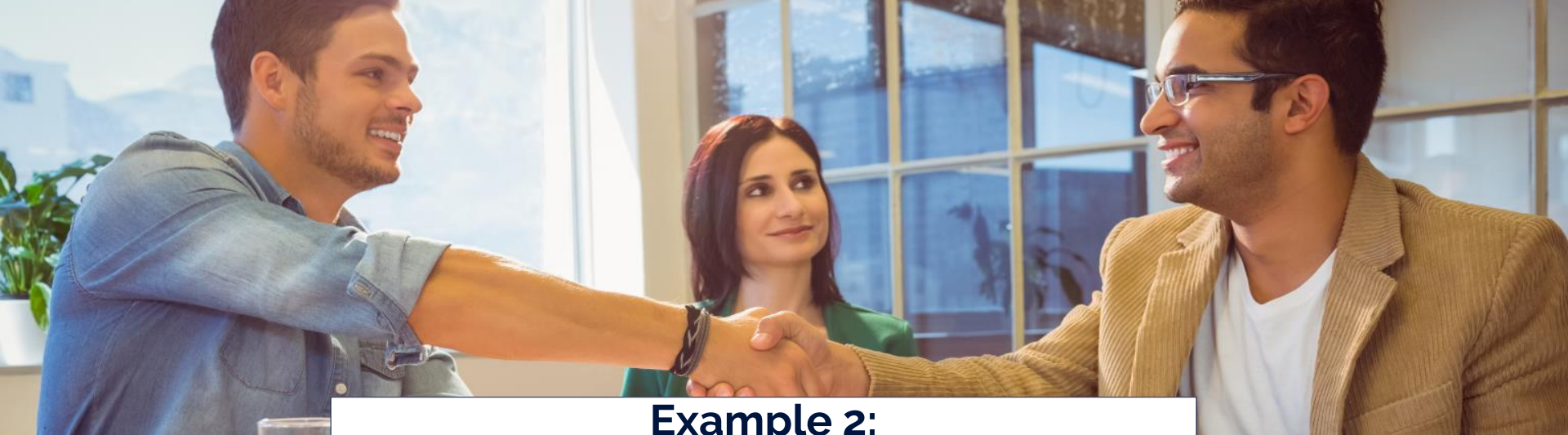
Example 1:
The 'Goodness of My Heart' Referral

Scenario:

A former client is “so happy” with the agent’s service that they refer a new client who also wants to buy/sell a home.

Outcome:

Under RESPA, the agent can show appreciation by giving flowers, a bottle of wine, a hotel stay or gift certificate. The gift’s value is not determinative, but the higher it is, the more there may be suspicion that the referral was made in expectation of compensation. This is **generally okay**, but if the former client performs licensed activity by conducting negotiations, for example, it probably violates California law.



Example 2: The 'Give It to Me One More Time' Referral

Scenario:

A former client who previously referred a new client to the agent refers another client who wants to buy/sell a home because the former client was so pleased with the agent's service and prior referral gift.

Outcome:

This is a **potential violation** of RESPA, since the former client likely gave the referral in expectation of receiving another gift.

A woman with dark hair and a shocked expression is shown from the chest up. She is surrounded by numerous US dollar bills (mostly \$20 and \$100 bills) that appear to be falling or flying through the air around her. The background is a plain, light-colored wall.

Example 3:

'Let's Make the Regulator's Job Easy' Referral

Scenario:

Agent who specializes in residential property advertises in the local newspaper, school newsletter, agent's website or elsewhere: "Refer a client to me and I will pay you \$\$\$" (or anything else of value).

Outcome:

If the property is financed, the agent's offer **violates RESPA**.

REBATE

Example 4:

The 'Kickback or Rebate to My Client' Referral

Scenario:

An agent advertises or promises to rebate a portion of the agent's commission to the agent's client at the end of a closed transaction.

Outcome:

Not likely a violation of federal or California law. The purpose of RESPA is to reduce settlement costs for principals. Because the principal will be getting money back, the rebate is consistent with RESPA. This action also may be viewed as a reduction in commission. Since the person receiving the money is the principal, he or she is not acting as a licensee, so there is no violation of California law.



Example 5:
The 'We're in This Business Together' Referral

Scenario:

An agent receives a referral from another real estate licensee whose client is moving to the agent's market area. The agent pays a referral fee to the other licensee.

Outcome:

Not a violation of RESPA or California law – provided the payment goes through both licensees' brokers.

A cardboard box with a handle cutout is the central focus. The words "FHA Loan" are printed in a large, bold, black, serif font on the side of the box. To the right of the box, a silver compass with a black face and white markings is visible. The compass face shows cardinal and intercardinal directions (N, NE, E, SE, S, SW, W, NW) and degree markings from 0 to 360. The background is a dark blue gradient with faint, overlapping text and graphics, including the words "OFFER", "RISK", and "PROPERTY".

FHA Loan

Example 6:

The 'There is No Separate Loan/Mortgage' Referral

Scenario:

An agent receives a referral of a new client from another real estate licensee who is a loan broker. The agent agrees to pay the loan broker for the referral.

Outcome:

If the property in question is a buyer-occupied residential property with 1-4 units and a federally related loan, then the fee **violates RESPA**.

A close-up photograph of a person's hands in a dark suit jacket, holding a thick stack of US dollar bills. The bills are fanned out, showing various denominations including \$100 and \$50 bills. The background is blurred, suggesting an office or business setting.

Example 7:

'You Scratch My Back, I'll Scratch Yours' Referral

Scenario:

An agent refers his client, who is purchasing residential property, to a loan broker. The loan broker gives a payment to the agent.

Outcome:

This **violates RESPA**. No payment should ever be made to a loan broker. Further, even if allowed, which it's not in this case, no payment should ever be made directly to an agent. All payments must be made to agents through their brokers.

SERVICE PROVIDER

Example 8:

The 'Service Provider You Scratch My Back, I'll Scratch Yours' Referral

Scenario:

An escrow, title, pest control or home protection company offers to pay an agent to refer clients to the service provider.

Outcome:

This **violates RESPA** if it involves buyer-occupied residential property with 1-4 units and a federally related loan. It also violates California law, which specifically addresses these named service provider categories.



Penalties for RESPA Violations

- ❑ \$10,000 fine for each violation, AND...
- ❑ Potential imprisonment for up to 1 year
- ❑ Disciplinary action for violation of CalBRE laws and regulations

KEY TAKEAWAYS



Two lawful ways to pay referral fees:



Broker pays another broker



Broker pays a current client
(Example: rebate)



RESPA prohibits one licensee from paying or providing anything of value to a non-licensee if the referral was done with the expectation of compensation



RESPA also prohibits one licensee from paying another licensee a referral if the second licensee is a loan/mortgage broker

KEY TAKEAWAYS

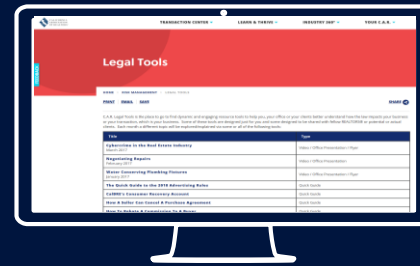
\$ California law prohibits a licensee from paying a referral to a non-licensee for performing licensed activities. A referral paid to a non-licensee for performing any functions other than a raw referral may be construed as a payment for licensed activity.

\$ RESPA only applies to the sale of buyer-occupied residential properties with 1-4 units if the property is to be acquired with a federally related loan.

\$ Any concerns? Check with your broker or legal counsel before you take action.

\$ Penalties: \$10,000 fine per violation, up to one year in prison and disciplinary action.

ADDITIONAL RESOURCES



C.A.R. Legal Q & A [Referral Fees](#)

C.A.R. Brochure:
It's The Law: Referral
Fees and You

C.A.R. Video Short
Referral Fees

All available on www.car.org in the Risk
Management section