

The Real Estate Settlement Procedures Act was passed by the U.S. Congress in 2008 to govern certain aspects of closing most residential transactions in the United States. RESPA had a giant impact on how business is conducted in certain segments of the real estate industry, especially in title/escrow companies and mortgage lending companies.

The [Housing and Urban Development Agency](#) is the regulator of the Act, as it is the closing statements used in most residential transactions, such as the use of the uniform "HUD" Settlement Statement that is standard across most transactions across the country. Linked above is HUD's homepage to the RESPA act. (I don't find it very helpful.)

For myriad reasons, sellers - especially new home builders and relocation companies - of real estate like for buyers to use title & escrow companies (in Texas, title and escrow are usually handled by the same company) of their own choosing, but that can be in conflict with the requirements of RESPA as set forth in [the following article, which I find helpful, so I wanted to highlight it here](#). I do not and cannot give legal advice, but I can share advice from others.

Posted On: **April 30, 2009** by [Marx Sterbcow](#)

RESPA: SECTION 9 WHY WAS I REQUIRED TO BUY TITLE INSURANCE FROM SPECIFIC TITLE COMPANY BY SELLER?

The Real Estate Settlement Procedures Act's (RESPA) [Section 9](#) (12 U.S.C. §2608) and Regulation X (§ 3500.16) prohibits, either directly or indirectly, a seller from requiring a purchaser to buy title insurance from a specific title company in any transaction as a condition of the sale.

Section 9 of

RESPA (12 U.S.C. §2608) states that:

1. 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.

2. 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.

The only way a Seller can mandate that purchaser use a particular title company is if the seller paid 100% of all title insurance and related title costs. HUD's RESPA Division has stated on numerous occasions that unless the seller pays 100% of the title related costs then the seller has violated RESPA. REO companies need to pay particular attention to Section 9 because required use practices by REO companies are on the HUD's radar right now.

Additionally there are several local real estate purchase agreements that are in use in parts of the United States where the language in the purchase contract states that Seller picks the title company but purchaser pays for title costs. It should be clearly noted that you cannot contract

out of a RESPA Section 9 violation. Just because the purchase agreement is signed by the borrower doesn't prohibit the borrower from coming back and suing the seller for required use if the borrower is stuck with any of the title related fees.

Here is the FDIC Regulation X 3500.16 (& .2) mention above but not quoted: <http://www.fdic.gov/regulations/laws/rules/6500-2520.html#fdic6500res3500.2>

Buyers can make of it what they will and I can't advise legally. But I can pass on that Texas Association of REALTORS(r) Legal department has advised me in the past that comfort of the buyer with the title company is paramount in any deal.

And remember also that RESPA is the federal Real Estate Settlement Procedures Act, the citations above are still current as of January of this year (I checked with the Cornell database which checks with the U.S. Library of Congress that does the codifying of all U.S. law, a long process), so this is not just a "Texas" thing, and this part is regulated and enforced as I understand it by the Department of HUD, just like the HUD settlement statement is. That doesn't mean, though, I guess, that Texas regulators might not have overlapping jurisdictions - that may be possible as well - no regulator or organization likes anyone to break or skirt the law. One would need to consult an attorney on these issues. I am not a lawyer and cannot and do not give legal advice.

Bottom line is that *buyers should be comfortable with the title company that they use. Period.*
That's the bottom line. Buyers
deserve
that. And they
deserve
our unending help with that
as agents and brokers who represent them.