SCR-22 — Mortgage Steering, Unlawful Kickbacks & RESPA Compliance Guide

A Complete Handbook and Web Resource for Consumers, Homebuyers, Mortgage Originators, and Real Estate Professionals

Published by Wounded Duck Studios LLC & SCAMREALESTATE.COM
Author: Mark Druckmiller, REALTOR®, Real Estate One (Saline / Washtenaw County, Michigan)

Consumer & Professional Compliance Defense: Understanding RESPA Section 8, Defeating Coercive Steering, and Auditing Settlement Fees

Executive Summary: The Illusion of "One-Stop Shopping"

When homebuyers purchase residential property, they rely heavily on their real estate agent's recommendations for secondary settlement services: mortgage lenders, title insurance companies, home inspectors, and homeowners insurance agents.

While professional recommendations are often helpful, an institutional conflict of interest frequently compromises consumer protection: Mortgage Steering, Unlawful Kickbacks, and Sham Affiliated Business Arrangements (AfBAs).

Under federal law—specifically the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 et seq., and Consumer Financial Protection Bureau (CFPB) Regulation X (12 C.F.R. Part 1024):

- **Section 8(a) strictly prohibits kickbacks:** No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding that business incident to or a part of a real estate settlement service shall be referred to any person.
- **Section 8(b) strictly prohibits unearned fees:** 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 actually performed.
- **Section 9 protects consumer choice:** Sellers are strictly prohibited from requiring, directly or indirectly, as a condition of selling the property, that title insurance covering the property be purchased by the buyer

from any particular title company. Violations carry statutory **treble damages** (three times all title charges).

Despite these federal prohibitions, regulatory enforcement actions by the CFPB and state insurance commissioners reveal that covert kickback schemes remain widespread. Operators disguise illegal referral fees through sham Marketing Services Agreements (MSAs), inflated "desk rental" leases paid by mortgage originators inside brokerage offices, co-op lead-generation subsidies, and coercive steering tactics that trick consumers into paying inflated interest rates and excessive settlement fees.

This handbook details the legal boundaries of RESPA Section 8, the red flags of unlawful steering, how to evaluate Affiliated Business Arrangement Disclosures, and how consumers can save thousands by auditing settlement fees.

Section 1: Anatomy of a RESPA Kickback & Steering Scheme

How do settlement providers bypass federal anti-kickback laws?

1. **The Sham Marketing Services Agreement (MSA):**
    - A title company or mortgage lender enters an MSA with a real estate brokerage, agreeing to pay $5,000 to $20,000 per month for "marketing, website placement, and banner ads."
    - In reality, the payments are directly tied to the volume of mortgage and title referrals generated by the brokerage's agents. If referral volume drops, the "marketing" contract is abruptly terminated.
2. **The Above-Market "Desk Rental" Lease:**
    - A mortgage originator leases a single small desk inside a real estate sales office for $3,500 a month—far exceeding commercial fair market rent. The excessive rent payment is a disguised referral kickback.
3. **Coercive In-House Steering:**
    - Agents pressure buyers: *"You must get pre-approved and close with our in-house mortgage partner, or the seller won't look at your offer,"* or *"Our brokerage requires that we use our affiliated title company."*
    - Buyers who comply are quietly steered into higher interest rates or inflated closing fees ($500+ administrative processing fees, digital archive fees, and settlement fees).
4. **The Concealed Affiliated Business Arrangement (AfBA):**
    - The brokerage owns a financial stake in a joint-venture title or mortgage entity.
    - While AfBAs are legal under strict statutory conditions, rogue brokerages fail to provide the mandatory written AfBA Disclosure at the time of referral, concealing their profit motives from the consumer.

Section 2: When Are Affiliated Business Arrangements (AfBAs) Legal?

Under RESPA Section 8(c)(4), a real estate brokerage may refer clients to an affiliated settlement service provider (e.g., a title agency or mortgage company they partially own) **ONLY if all three statutory criteria are met**:

1. **Mandatory Timely Written Disclosure:**
    - The brokerage must provide an official, written **Affiliated Business Arrangement Disclosure Statement** to the consumer **at or before the time of the referral**.
    - The disclosure must clearly describe the business relationship, specify the ownership percentage, and provide a clear estimated range of charges for the service.
2. **No Coercion or Required Use:**
    - The consumer **cannot be required to use the affiliated provider** as a condition of buying, selling, or obtaining representation.
    - The disclosure must explicitly state: *"You are NOT required to use the listed provider as a condition for purchase, sale, or financing of the subject property."*
3. **Return on Equity Only (Zero Referral Fees):**
    - The only thing of value that the brokerage may receive from the arrangement is a bona fide return on an ownership interest or franchise relationship (dividends based strictly on corporate equity percentage, NEVER based on referral volume).

Section 3: The 4 Red Flags of Illegal Steering

Watch for these warning signs when settlement service providers are recommended:

Red Flag	Steering Indicator	Legitimate Professional Practice
1. Mandatory In-House Lenders	Agent states: "Your offer will not be accepted unless you use our preferred in-house lender."	Agent suggests multiple reputable lenders and welcomes independent pre-approvals.
2. Missing AfBA Disclosures	Recommended title/mortgage company is co-owned by the brokerage, but no written AfBA form is provided.	Fully executed, transparent AfBA Disclosure provided at first substantive contact.
3. Seller Mandating Title Company	Seller contractually forces the buyer to purchase title insurance from a specific agency.	Buyer freely chooses their own title insurance agency under RESPA Section 9 rights.
4. Padded "Junk" Fees on CD	Closing Disclosure lists $495 "Broker Admin Fees," $250 "Document Archiving Fees," or $300 "Processing."	Transparent, standard settlement charges reflecting actual services rendered.

Section 4: The Consumer Settlement Fee Audit Protocol

Save thousands of dollars on closing costs by following this three-step audit:

Step 1: Compare Loan Estimates Line-by-Line (Page 2)

- Under federal TILA-RESPA Integrated Disclosure (TRID) rules, all lenders must provide a standardized three-page **Loan Estimate (LE)** within three business days of application.
- Look at **Page 2, Section A (Origination Charges):**
    - Compare Origination Fees, Processing Fees, Underwriting Fees, and Points. These fees vary by thousands of dollars between competing lenders.
- Look at **Section C (Services You Can Shop For):**

    - This section includes Title - Settlement Agent Fees, Title - Lender's Policy, and Title - Closing Fees. You have the statutory right to shop for these services and select an independent provider.

Step 2: Exercise Your RESPA Section 9 Rights

- If a seller or builder demands that you use their specific title company, know your federal rights:
- Under **RESPA Section 9 (12 U.S.C. § 2608)**, a seller cannot force you to use a specific title company as a condition of sale. If they violate this statute, you can sue for **three times all title charges**.

Step 3: Demand Elimination of Duplicate Brokerage Administrative Fees

- Many brokerages add a $395 to $695 "Administrative Commission" or "Regulatory Compliance Fee" onto the buyer's Closing Disclosure.
- Ask your agent to waive or remove this fee. If they claim it is "mandatory by the state," remind them that regulatory compliance is an internal brokerage overhead cost, not a statutory state charge.

Section 5: Enforcement & Complaint Procedures

If you were subjected to coercive steering, undisclosed kickbacks, or denied settlement choice:

1. **File a Formal Complaint with the CFPB:** The Consumer Financial Protection Bureau is the primary federal enforcement agency for RESPA. Submit an online complaint at **consumerfinance.gov/complaint**.
2. **Contact Your State Insurance Commissioner:** Title insurance rates and anti-rebating statutes are enforced at the state level. In Michigan, file complaints with the **Department of Insurance and Financial Services (DIFS)** (michigan.gov/difs).
3. **Notify the State Real Estate Licensing Agency:** Report license violations to the Michigan Department of Licensing and Regulatory Affairs (LARA).
4. **Pursue Statutory Civil Remedies:** Retain a real estate litigation attorney to demand statutory treble damages under RESPA Section 9 or pursue private rights of action under Section 8.

© 2026 Wounded Duck Studios LLC & ScamRealEstate.com. General consumer education only — not legal or financial advice. Questions: irving@woundedduckstudios.com · Call or text 657-305-5210