

## Selling Your Home? Important Laws You Need to Know About

Most homeowners looking to put their property on the market secure the services of a real estate broker, whom they entrust to handle the complex process of selling a home. Whether you are buying or selling, [finding a trustworthy agent](#) is a good first step in dealing with real estate matters, but you also need to contact a real estate attorney to review all of the details of the transaction. Why? Because brokers and agents are not experts in real estate law; in fact, they are prohibited from giving you any legal or tax advice. Language contained in the standard forms used by all real estate brokers in Arizona, such as the listing agreement, explicitly state that you acknowledge they are not providing legal advice and you will retain your own legal counsel. Unfortunately, most people do not involve an attorney when it comes to residential real estate transactions in Arizona – they do not realize the unnecessary risks they are taking on.

Here is a prime example: if you are selling your home and your real estate agent insists that the buyer uses "seller's" preferred title insurance agent, this could potentially be a violation of long-standing Federal regulations that carry serious penalties for you as the seller. That's right: you as the seller could be held liable for violations you had absolutely no idea you are making, and you will have no recourse against your realtor because you have waived any liability of the agent or brokerage firm when you signed the listing agreement.

The Real Estate Settlement Procedures Act (RESPA) is a federal consumer protection statute, first passed in 1974. The purposes of RESPA are to help consumers with options for settlement services and to eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services.

Even though RESPA has been part of the legal landscape for over three decades, the average consumer is not aware of the regulations it contains. It is important to note that RESPA applies to most real estate transactions, but not all. For example, it does not apply to cash purchases, owner-financed transactions or the sale of land and commercial property. RESPA does apply to most residential transactions in Arizona: any sale or refinance of residential real estate (1-4 family units) which is financed by any lender, such as a mortgage company, bank or credit union.

[Section 9](#) of RESPA (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. How could this affect you? A violation, whether intentional or not, could result in your being sued for an amount up to three times the charges for the title insurance, even if the buyer closes the deal!

It is important to note that if a seller pays for the buyer's title insurance policy, the seller does have the right to select the title company. RESPA Section 9 violations arise when the seller mandates which title company, and the buyer is required to pay for the title policy. However, if

the seller designates the title company to provide the buyer's title policy and the lender's title policy (for the buyer's lender), and the buyer must pay for the lender's policy, this would constitute a RESPA violation.

Sound complicated? It can be – which is why you need to have an attorney representing you. Ignorance of the law will not prevent you from being sued. If you are considering a real estate transaction, contact the Phoenix offices of Nagle Law Group at 602-595-3156 to protect yourself from unnecessary risks.