

RESPA About Fee-splitting, NAR Says

In a case before the U.S. Supreme Court on whether Sec. 8(b) of the Real Estate Settlement Procedures Act (RESPA) is violated when a fee charged by a settlement service provider isn't split as a referral fee or "kickback" to another settlement service provider, NAR argued in an amicus brief it filed with the Court yesterday that the intent of the Sec. 8(b) of RESPA is to cover only circumstances where the fee is shared, and not where the settlement service provider retains the entire fee.

The plaintiff in the case before the Court claims that the fee charged and retained by a lender violated RESPA because no services were performed in exchange for the fee, but the lower court ruled against this view, saying Sec. 8(b) of RESPA is only intended to regulate fee-splitting arrangements, such as those in which companies receive money or other things of value in exchange for a referral. In its brief, NAR argues that the lower court decision is correct and it recommends the Supreme Court affirm this view. To hold otherwise, NAR argued, would be inconsistent with Congress' express directive that RESPA is not intended to regulate fees charged by settlement service providers.

This issue has great importance to real estate brokers who wish to charge and retain a flat "administrative fee" in addition to a percentage based commission. Several other lower courts have held that doing so violates RESPA, even if the fee is not shared with another, unless the broker can establish specific services were performed for the fee charged. The case is Freeman vs. Quicken Loans (Docket No. 10-1042). [Access the brief](#). For more info contact Ralph Holmen, rholmen@realtors.org, [312/329-8375](tel:3123298375).