TAKING THE MYSTERY OUT OF MARKETING SERVICES FEES

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By Mark L. Meyer

THE DILEMMA AND OPPORTUNITY

For a real estate broker ("Broker") who is currently marketing the use of a preferred residential mortgage lender, title company or other settlement-service provider ("Preferred Partner"), there are several simple questions to consider:

- "Do you know how the marketing fee you are being paid was derived?"
- "Are you aware that you are at risk of a RESPA violation if the fee is in excess of the reasonable value of marketing services actually performed?"
- "Are you comfortable with your current arrangement or could you use a dose of risk mitigation as well as a pathway to a higher marketing fee?"

Allow me to explain:

If a fee from a Preferred Partner is established based upon anything other than the value of actual marketing services performed and you can't adequately justify the fee paid to you for the work done, then you may have a RESPA Section 8 headache to contend with. In more technical terms, a Broker may not receive a thing of value for a referral. However, a Broker can be paid for the reasonable value of non-settlement-related marketing services performed on a Preferred Partner's behalf, provided the fee is in no way related to verbal sales pitches, actual referrals made or transactions closed by the Preferred Partner.

On the other hand, you may well be performing tasks that support the current marketing fee, or even suggest an increase in the fee received. There may be additional marketing services you could be doing to significantly grow your associated revenue stream.

The prescription? Speak to your Preferred Partner about obtaining an independent valuation of fees to be paid for marketing services you are performing, and then provide them with the ongoing information to support it. Getting it right will ease your mind and may even increase the fee.

CURRENT ENVIRONMENT

Marketing Services Agreements or Alliances ("MSAs") are prevalent across the residential real estate and settlement-services industries. An MSA, involving the marketing of a Preferred Partner by a Broker, may include the following services, among others:

- **Signage placed inside and/or outside of Broker sales offices** and homes listed for sale. The location and size of the signage can affect the value of the fee to be paid.
- **E-mail and direct mail campaigns.** The number of recipients helps dictate how much the fee can be.
- **Banner ads and/or Preferred Partner links** on Broker and agent websites. The type of site or number of visitors can determine the appropriate fee.
- **Endorsement of Preferred Partner** by allowing use of Broker's name, logo, etc., in Preferred Partner marketing. The size and name recognition of the Broker helps establish a reasonable fee for this service.
- **Disclosure of Preferred Partner relationship** in Broker's buyer representation agreement, purchase contract, etc. The number of impressions will assist in setting the value here.

Unfortunately, in many cases, a marketing fee is established without regard to which services are actually performed, activity levels or the cost of comparable marketing impressions. And related data may not be captured in a routine way to help justify the payment or fee adjustments. Such backup support is extremely valuable in the event of a HUD audit.

LIKE A SLEEPING PILL AND A VITAMIN

Avoid the pain of a RESPA Section 8 violation by insisting that your Preferred Partner value the marketing fee through an independent marketing expert or system, and that service and activity level data be captured on a regular basis. If your Preferred Partner has not done so, then encourage them to do it. You will sleep better at night and you may discover that your work warrants more revenue to you for your efforts. A good third-party valuation will take the mystery out of setting a marketing fee, and collecting supporting data on an ongoing basis can help assure RESPA compliance. **RE**

Mark L. Meyer is founder and chief executive officer of MLinc Mortgage Solutions in Dallas. MLinc is a nationwide provider of expertise, insight and innovative solutions to the mortgage, real estate, home building, and community banking industries. For more information, visit www.mlincsolutions.com.