

# Energy Audits and Retrofits: Some Legalities and Pitfalls

By

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Not Legal Advice  
For Discussion Only  
Questions? See an Attorney

# Sample of related issues with home inspector/real estate agent tie-in

Need we worry?

# Two Specific Legal Issues:

RESPA Violations

Negligence

# Criminal Liability - RESPA

Real Estate Settlement

Procedures Act

Any federally related mortgage

Exchange of “value”

Different standard for liability

# Criminal Liability - RESPA

Examples:

Kickback

Payment from the real estate agent, not the client

Guaranteeing won't kill any deals if agent continues to refer

Favors to the agent or relatives

# Criminal Liability - RESPA

Can be assumed from behavior-  
no written or verbal agreement  
required



# Criminal Liability - RESPA

Analogy to Home Inspectors  
Stats - at least some have tie-ins  
with real estate agents

# RESPA

Austin Status - Audit done during  
“option” period at the suggestion  
of the Austin Real Estate Board  
although could be done right up  
until recorded by County  
Recorder

# RESPA

Austin - Audit stays on file for 10 years and can be used for subsequent buyers or by subsequent sellers.

This looks like the “Seller’s Audit”

# RESPA

Austin - Auditors are already complaining about attempts at undue influence by real estate agents.

# RESPA

Austin - What is the real estate agency obligation in the state and/or with this transaction?

# RESPA

Berkeley Status - Audit done by non-profit organization selected by and on contract with the City of Berkeley. Not chosen by seller, buyer, or any real estate agent. 10 point visual audit only.

How do we protect ourselves?

Avoid real estate agent tie-ins

Avoid pre-purchase audits?

Avoid seller audits?

Auditor selected by 3rd party?

Selected from list by  
municipality?

Prohibit real estate agent from  
referral

# How do we protect ourselves?

Who pays?

At closing?

Set it the audit after the house  
has closed to try to  
“loophole” RESPA?



# Negligence (Civil):

Mistake.

Error.

Unintentional omission.

Negligence (Civil):

Not Intentional (e.g. Fraud)

Negligence (Civil):

The Reasonable Auditor

Standard-roughly equal to the

“Average” Auditor,

Graded on a curve

Negligence (Civil):

Blind Audit vs. Prepped Audit

BPI Certified vs. CEA (AEE)

# Negligence (Civil):

## Local Standard

Rural vs. Metropolitan

One person standard

Items peculiar to an area

Negligence (Civil):

On the date and the time of the  
inspection

# Negligence (Civil):

National Organization Standards

Contractually obligated?

Implied?

BPI compared with Wx standard

# Negligence (Civil):

State Limitation of Liability for  
Non-Profits-  
Weatherization entities



# Negligence (Civil):

Retrofitters/Contractors

May have product liability as well.

How do we protect ourselves?

No holds barred, above average  
quality audit

Guard against unreasonable  
expectations - inform your client

Good customer service - respect

Quality control - “use the form

Luke”

How do we protect ourselves?

(Cont'd)

Use qualifiers

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