RESPA ENFORCEMENT AT THE CFPB
A NEW SHERIFF IN TOWN

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RESPA Overview

In Every “Federally Related Mortgage Loan”…

• Requires Lender to Provide “Good Faith Estimate” Upfront and “HUD-1” before Closing
  (To be replaced by TRID on 8/1/15)

• Prohibits Seller Dictating Title Company

• Regulates Loan Transfers, Escrow Accounts, and Responses to Borrowers’ “Qualified Written Requests”

• Prohibits Referral Fees and Unearned Fees
Referral Fee Exemptions

• Payments to Attorneys for Services Rendered
• Payments by Title Insurers to Agents for Services Performed in Issuing Policy
• Payments by Lenders to Agents For Services in Making Loan
• Salaries or other Compensation for Goods and Services Provided
• Cooperative Real Estate Brokerage and Referral Arrangements
• “Normal Promotional and Educational Activities”
• Employer Payments to Employees
Affiliated Business Arrangement “Safe Harbor”

- At Time of Referral, Must Give Consumer Written Disclosure of ABA and its Estimated Charges
- Cannot Require Consumer to Use ABA (unless attorney’s title agency or lender’s attorney, credit reporting agency, or appraiser)
- ABA Owners Cannot Receive Anything of Value beyond Proportionate Returns on Ownership Interests (and payments for goods and services provided)
- ABA Cannot be a “Sham” (lacking, e.g., own office and employees)
RESPA’S Golden Oldies of Title

• Sharing Title Premiums with Agents Who Don’t Perform “Core Services” (exam and issuance)
• Paying Excessive Rents to Referral Sources
• Giving Below-cost Post Cards, Postage Meters, “Virtual Tours,” and Other Marketing Materials to Referral Sources
• Purchasing Reinsurance from Referral Sources
• Giving Trips, Gift Certificates, Tickets, and Other Things of Value for Referrals
• Sham ABAs
The New Sheriff in Town: CFPB

• Took Over RESPA Enforcement from HUD on 7/21/11
• Independent Agency within Federal Reserve
• Funded outside of Congressional Appropriations
• Can Levy Civil Penalties of up to $1 Million per Day in Addition to Injunctive Remedies like Disgorgement. See *PPH Corp.* (CFPB 6/4/15)(Ordering $109 Million Payment)
• Administrative Proceedings with No Statute of Limitations
Marketing Agreements (and Beyond)

• Paying Fair Market Value for Marketing Services is No Defense if Referral Agreement. *Lighthouse Title* (CFPB 9/25/14)
  – Contract as “Thing of Value”

• Paying Fair Market Value for Interest in Exclusive Agency is No Defense. CFPB brief in *Edwards v. First American* (9th Circuit)
  – Argued March 3, 2015
Affiliated Business Crackdown

• Disclosure at Time of Referral—not Closing
• Disclosure in Form Dictated by Regulation X
• “Sham ABA” Test: No Owner-Subsidized Employees, Office Space, Core Services
CFPB’S Unfair & Deceptive Practices Authority

- Failure to Disclose Affiliate Relationships
- Failure to Disclose Markups
- Failure to Disclose Payments from Providers You Recommend
Seven Easy Pieces (of the RESPA Puzzle)

1) No Referral Agreements outside of your ABA
2) ABA Disclosures before Referral & in Regulation X Form
3) No ABAs without Office Space, Management, Employees, and Core Services
4) No Investments in Independent Agencies in Exchange for Exclusivity
5) No Gift Certificates, Trips, Below-Cost Services, or Even Redskins Tickets for Agreements to Refer
6) Strong RESPA Compliance Program (Understand, Abide, Report)
7) Consult Counsel Early and Often!
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