

Legal Overview and Updates

Wednesday, November 15, 2:30 pm to 3:45 pm

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Legal Issues in Mortgage Technology

Arizona Biltmore Resort & Spa

Phoenix, Arizona

TOPICS

- RESPA
- State Law
- Sarbanes-Oxley Act
- Regulation AB

RESPA

- What is RESPA?
 - » Federal law applicable to most mortgage loans
 - » Disclosure requirements
 - » Prohibited payments

RESPA – Disclosures

- Affiliated business arrangement notice (if applicable)
- Application disclosures
 - » Good Faith Estimate
 - » Special Information Booklet
 - » Servicing Disclosure Statement

RESPA – Disclosures

- What is an application?
 - » Broad definition that does not work well with modern industry practices
 - Limited express exception
 - » Website functions must be assessed

RESPA – Disclosures

- Closing disclosures
 - » HUD or HUD-1A Settlement Statement
 - » Initial Escrow Statement
 - » Servicing Transfer Notice (if applicable)

RESPA – Disclosures

- Systems linkage:
 - » GFE and initial TILA disclosures
 - » HUD-1 and final TILA disclosures
- HUD-1 prepared by closing agent, but key for lender

RESPA – Disclosures

- Electronic issuance
- With one exception, no RESPA recognition of electronic world
 - » ABA notice requirements—
reference to electronic media
- Look to E-SIGN and UETA

RESPA – Prohibited Payments

- Section 8
 - » Referral fee prohibition
 - » Fee split prohibition

RESPA – Prohibited Payments

- Common Internet practices
- No Internet version of Section 8
- Must conform practices to Section 8 standards

RESPA – Prohibited Payments

- Lead sale arrangements
 - » Traditional approach
 - » Internet – click through arrangements

RESPA – Prohibited Payments

- Marketing arrangements
 - » Banner ads
 - » Co-branded websites

RESPA – Reform (Round 2)

- MBA proposals if reform is a go
 - » Option 1 – Revise GFE and HUD-1
 - » Option 2 – Option 1 plus tolerances and limited Section 8 exemptions
 - » Option 3 – Options 1 and 2 plus an additional tolerance and Section 8 exemption
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State Law—Licensing

- Mortgage lender/broker licensing
- Internet reach vs. license requirements
- Individual loan officer and solicitor licensing
 - » Who is a loan officer?

State Law—Licensing

- Advertisements
 - » States require certain disclosures in advertisements published by licensees
 - License Number
 - Certain phrases

State Law—Licensing

- Advertisements
 - » Websites subject to these requirements
 - » State regulator pre-approval
 - Nevada requires website prior approval for licensed Mortgage Brokers

State Law—Consumer Protection

- Disclosure requirements
- Rate and fee restrictions
- Terms restrictions
- Use of loan origination system to aid compliance

State Law—Consumer Protection

- Computer systems helpful in production of loan documents
- But, unauthorized practice of law
 - » Document preparation
 - » Closings

SOX

- What is it?
 - » Sarbanes-Oxley Act of 2002
 - » Response to concerns over accounting/reporting practices sparked by Enron/Arthur Anderson
 - » Applies to public companies

SOX

- What does it require?
 - » Enhanced financial disclosures and accountability
 - » Certifications
 - » Internal controls over financial reporting

SOX

- Why is it important?
 - » Information systems and management are key
 - » SEC plans to issue guidance on internal control and information technology

Regulation AB

- What is it?
 - » Rule adopted by SEC in January 2005 for asset-backed securities
 - » Covers mortgage-backed securities, but not securities issued or guaranteed by FNMA, FHLMC or GNMA

Regulation AB

- What does it require?
 - » Detailed disclosures, including
 - Pool assets
 - Servicing compliance
 - » SOX certification for asset-backed securities

Regulation AB

- Why is it important?
 - » Information technology
 - Your information
 - Integration of data from and with third parties
 - » Servicing system assessments

