



Kirkpatrick & Lockhart Nicholson Graham LLP

2005-2006 RESPA SETTLEMENTS

REAL ESTATE SETTLEMENT PROCEDURES ACT

PREPARED FOR:

**MORTGAGE BANKERS ASSOCIATION
LEGAL ISSUES/REGULATORY COMPLIANCE CONFERENCE**

**PALM DESERT, CALIFORNIA
May 1, 2006**

PREPARED BY:

**PHILLIP L. SCHULMAN, ESQUIRE
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
1601 K STREET, NW
WASHINGTON, DC 20006
PHONE: 202.778.9027
FACSIMILE: 202.778.9100
PSCHULMAN@KLNG.COM
WEBSITE: WWW.KLNG.COM**

©2005 KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP

2005-2006 Recent RESPA Settlements

2005 marked the most active period in the U.S. Department of Housing and Urban Development's enforcement of the Real Estate Settlement Procedures Act (RESPA). Nearly one-third of all RESPA enforcement cases brought by HUD in its 32 year history, were investigated and settled in 2005. Thus far in 2006, HUD has announced three additional settlements. These seventeen settlements involve five main areas of concern: 1) affiliated business arrangements; 2) referral fees subject to Section 8 of the Act; 3) room rental arrangements; 4) captive title reinsurance; and 5) HUD-1 Settlement Statements. Below is a summary of these important cases and the guidance they provide for assuring compliance with RESPA.

I. Affiliated Business Arrangements¹

1. **Closings of Tulsa** – In two separate settlements, HUD alleged that owners of affiliated business arrangements received their share of the joint ventures' profit distributions and redistributed the shares to their members based on the sales price of the transactions referred to the joint ventures. Under the terms of the settlement agreements, the parties agreed to pay \$325,000 and \$125,000 and to modify certain business practices.
2. **First American Title Insurance Company** – On July 1, 2005, the Department entered into a settlement with First American Title Insurance Company for allegedly operating "sham" title insurance agencies in which the joint ventures performed little title work, leased employees from First American, and rented office space and computer services at First American's office. First American agreed to pay \$680,000 and withdraw from the affiliated businesses as a joint venture partner.
3. **Title Group Builders** – Following the settlement with First American, HUD announced two settlement agreements with eight Tennessee builders who owned, along with First American, a series of allegedly "sham" affiliated title insurance agencies. The builders agreed to pay a combined total of \$225,000 to the Department. We note that, in these

¹ The following is a summary of all settlement agreements entered into in connection with the Real Estate Settlement Procedures Act ("RESPA") in 2005 and 2006 (as of August 14, 2006). Please be aware that these settlements generally resulted from RESPA investigations conducted by the U.S. Department of Housing and Urban Development ("HUD" or "Department") or joint investigations with other federal agencies involving numerous consumer credit laws. In each case, the government alleged that companies and/or individuals engaged in certain RESPA deficiencies. These companies and individuals, however, denied all allegations, admitted no liability, and fault was not attributed to the entities and persons involved. Instead, the parties sought settlement to avoid a lengthy procedure and the cost of litigation.

settlements, HUD focused on those joint venture partners who were mere investors in the affiliated business arrangements.

II. Referral Fees

1. **Prudential Locations LLC** – On August 22, 2005, the Department entered into a settlement agreement with Prudential Locations for allegedly offering its sales agents prizes and incentives, including automobile leases, all-expenses-paid trips, and restaurant gift certificates, based on the volume of business referred to Prudential Locations' affiliated business. The real estate broker agreed to pay \$48,000 to the Department.
2. **Coldwell Banker Residential Real Estate, Inc.** – Similar to the settlement reached with Prudential Locations, on August 25, 2005, HUD entered into a settlement agreement with Coldwell Banker Residential Real Estate, Inc. for allegedly paying referral fees, which included higher agent commission splits, commissions paid at closing, and other prizes and benefits. The real estate broker agreed to pay \$250,000 to settle the matter.
3. **1-800 East-West Mortgage Company** – Following a joint investigation by HUD and the Federal Deposit Insurance Corporation, the Department announced a settlement agreement in November 2005 with 1-800 East-West Mortgage Company. HUD alleged that the lender solicited gifts from other settlement service providers, such as premium tickets to professional baseball and football games, payments for galas, and restaurant gift certificates, in exchange for the referral of business. The mortgage company agreed to pay \$150,000 to the Department.

III. Room Rental Arrangements

1. **Metropolitan Title Company** – In July 2005, HUD released a settlement agreement with Metropolitan Title Company in which the Department alleged that Metropolitan paid real estate brokers conference room rental fees in excess of the alleged fair market value for comparable conference rooms. Under the agreement, the title agency agreed to pay \$150,000 to HUD, as well as pay all future rental rates at the minimum level of fair market value for equivalent conference room space and additional services.
2. **Schweitzer Real Estate, Inc.; Hometown One Associates, Inc.; RE/MAX in the Hills; RE/MAX Masters, Inc.** – Following its settlement with Metropolitan, the Department announced four additional settlement agreements with real estate brokers who rented conference room space to Metropolitan and allegedly received fees in excess of fair market value for the space provided. The real estate brokers agreed to pay a combined

total of \$80,000 to the Department, as well as rent conference room space in the future for one-hour blocks of time with 15-minute grace periods. We note that these four settlements focus on HUD's present intent to pursue not only those who give alleged referral fees, but those who receive the payments or things of value.

IV. Captive Title Reinsurance

1. **M.D.C. Holdings, Inc./Richmond American Homes** – On July 18, 2006, HUD announced a settlement with M.D.C. Holdings, Inc./Richmond American Homes (“Richmond American”) in connection with Richmond American’s captive title reinsurance company, AHT Reinsurance, Inc. and its reinsurance of certain title insurance policies. HUD alleged that captive title reinsurance arrangements in which payments are not bona fide and exceed the value of the reinsurance are a violation of Section 8 of RESPA. Richmond American agreed to make a \$675,000 payment to settle the matter, as well as cease any future involvement in reinsurance arrangements.
2. **CitiMortgage, Inc.** – At the same time HUD announced its settlement with Richmond American, HUD also announced a settlement with CitiMortgage and its captive title reinsurance company, Chesapeake Title Reinsurance Company, Inc. HUD alleged that there is almost never any bona fide need or business purpose for title reinsurance on a single family residence and asserted that title reinsurance payments that exceed the value of the reinsurance are a violation of Section 8 of RESPA. CitiMortgage agreed to pay \$650,000 to the United States Treasury and cease any future involvement with title reinsurance.
3. **WL Homes d/b/a John Laing Homes** – HUD also announced a settlement with WL Homes LLC d/b/a John Laing Homes (“WL”), which joined as a participant in Fidelity National Financial Title Reinsurance Company and in First American Homebuilders Reinsurance Company. HUD made similar allegations as those made in both the Richmond American and CitiMortgage settlements. WL agreed to \$305,000 settlement, \$77,000 of which has already been refunded to Colorado consumers. WL, therefore, agreed to pay the United States Treasury \$228,000 and cease any future involvement in captive title reinsurance arrangements.

V. HUD-1 Settlement Statements

1. **Chicago Title Insurance Company** – In February 2005, HUD, in conjunction with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, announced a settlement agreement with Chicago Title Insurance Company. The Department alleged that Chicago Title provided inaccurate HUD-1 Settlement Statements to certain lenders and their borrowers that did not reflect all actual charges and adjustments in connection with loan closings. HUD alleged that these inaccuracies

resulted from an agreement for the referral of business. Under the terms of the settlement, the title company agreed to pay a \$5 million civil money penalty, as well as to prepare accurate HUD-1s.