

# Litigation Update:

Developments in

RESPA, Fair Lending, and Fraud

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## RESPA

- Flat-fee Pricing: Does it violate RESPA?
  - » *Price v. Landsafe Credit, Inc.* holds “No,” permits recovery of overhead
    - Case on appeal to the Eleventh Circuit
- Affiliated Business Disclosures: What is Required to Satisfy RESPA Section 8(c)(4)?
  - » Captive Title Reinsurance
    - Issue: Whether the amount paid for the reinsurance exceeds the value of the reinsurance services
  - » Sham Affiliated Business Arrangements
    - Warning Signs: Affiliate has no employees, makes no decisions, or has a business relationship only with its parent company
    - Class Action case studies
- LLC Arrangement Cases
  - » Challenge the structure of the retail mortgage-broker business
  - » “Administrative support” LLCs are allegedly mere guises for unlawful fee-sharing agreements
  - » Claims arise under RESPA Sections 8(a) and 8(b), as well as consumer protection laws

- When is Compliance with RESPA not Enough?
  - » *Grady v. Burnet Realty Inc.*
    - Examines real estate broker's "fiduciary duty" to borrower
    - Purported Breach: RESPA-compliant affiliated business disclosure insufficient
      - › Did not educate borrower about lower-priced non-affiliate title insurance and closing service options
      - › Broker pressured its associates to steer clients to affiliate, offering financial incentives
    - Requested standard: "fully disclose all material facts known to [the broker] which might affect the clients' rights or interest, without ambiguity or reservation"
- Consumer Protection Laws as Vehicles for RESPA Claims
  - » Generally provide for treble damages and/or attorney's fees
  - » Limitations vary by state
  - » Example: YSP non-disclosure claims

### FAIR LENDING

- Examples of Claims:
  - » Section 1981 and Section 1982
  - » ECOA
  - » Fair Housing Act
  - » State Consumer Protection Laws
  - » State Predatory Lending Laws
- Upcoming Events:
  - » Federal legislation ahead?
  - » Are traditional disclosure forms sufficient to educate consumers about new loan products?
- Government/Non-Profit Actions
  - » NCRC HUD Complaints Examine Lending Policies for Rowhouses
  - » *United States v. Centier Bank*
  - » *McGlawn v. Pennsylvania Human Relations Commission*

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- ECOA Developments
  - » Counteroffers: Is closing-table notice adequate?
  - » How precise must denial-of-credit reasons be?
- Illinois Predatory Lending Database Pilot Program, HB 4050
  - » Governor Blamed for Predatory Effects of Prior Rule
  - » Revision Requires Referral for Financial Counseling for All First-Time Homebuyers in Cook County Receiving:
    - Loans that permit interest-only payments
    - Loans that allow negative amortization
    - Loans that cost, in points & fees, more than 5% of the loan
    - Stated-income loans
    - Loans with prepayment penalties
    - 80/20 Loans

## FRAUD

- Borrower Fraud
  - » Stated-Income/Stated-Asset and No-Doc Loans
    - Are borrowers really qualified for the loans they seek?
  - » Foreclosure Workout Schemes
    - Allegations of fraud on the part of the purchaser's lender
- Title Company/Settlement Agent Fraud
- Appraiser Fraud
  - » Pushed Values
  - » Identity Theft
  - » Lenders' Responsibility for Appraisals