

**WEINER
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**MBA Regulatory Compliance
Conference – September 2007**

**Federal Regulators & Alphabet
Soup**

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RESPA Reform

Déjà vu all over again?

- President Bush: This Fall HUD will propose RESPA reforms to:
 - Promote comparative shopping
 - Provide for clearer disclosures
 - Limit cost increases
 - Require fee disclosure

RESPA Reform

MBA 2006 Proposal

- Threshold issue of whether reform is needed
- Three options proposed if HUD decides to pursue reform
- Option 1:
 - Revise GFE & HUD-1
 - Disclose charges in 9 main categories

RESPA Reform

MBA 2006 Proposal

- Option 2 – Option 1 Plus:
 - 2% caps on lender and broker charges, other than discount points
 - Limited Section 8 exceptions for average cost pricing and mark-ups

RESPA Reform

MBA 2006 Proposal

- Option 3 – Options 1 & 2
Plus:
 - 10% cap on third party and title charges, other than government charges and prepaid items
 - Limited Sec. 8 exception for volume discounts

RESPA Enforcement

Parties Who Can Enforce:

- HUD
- State Attorneys General and Insurance Commissioners
- Private Parties

RESPA Enforcement

Numbers:

- HUD: 1
- State Attorneys General and Ins. Commissioners: 100
- Law Firms: Over 47,500
- Lawyers: Over 1.1 million

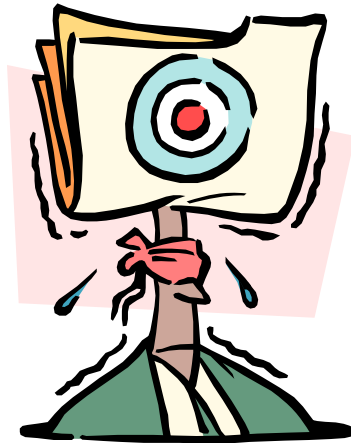
RESPA Enforcement

Trend:

- 2001 to 2006: 46 public HUD settlements
- 2007: 2, so far
- States are now joining with HUD and acting on their own
- Plaintiffs' lawyers have found and fallen in love with the settlement service industry

RESPA Enforcement

Trend:



- Private lawsuits now assert claims that traditionally were raised by HUD:

- Sham affiliated business arrangements
- Sham marketing arrangements

RESPA Enforcement

Trend:

- Jackson, Secretary of HUD v. Property I.D. Corp., filed May 2007
 - HUD alleges sham affiliated business arrangements
 - HUD disgorgement theory

TILA Right to Rescind

A Class Action Remedy? Yes:

- Andrews v. Chevy Chase, Wisc. Dist. Ct. Jan. 2007
 - Certifies class on declaration of right to rescind claim
 - On appeal to 7th Circuit; hearing set for Sept. 27
 - Interim Dist. Ct. decision on 3 year rescission period

TILA Right to Rescind

A Class Action Remedy? No:

- McKenna v. First Horizon, 1st Cir. Jan. 2007
 - Reverses district court by denying claim for declaration of right to rescind as a class
- LaLiberte v. Pacific Merc., Cal. App. Jan. 2007
 - Rejects district court decision in McKenna

TILA Right to Rescind

A Class Action Remedy? Yes:

- In re Ameriquest Mortgage Lending Practices, N.D. Ill. Apr. 2007
 - Disagrees with 1st Circuit in McKenna
 - Denies motion to dismiss claim for declaration of right to rescind on a class basis

TILA Right to Rescind Exercise After Pay off?

- Trend: Yes
 - Barrett v. JP Morgan Chase Bank, 6th Cir. Apr. 2006
 - Handy v. Anchor Mortgage, 7th Cir. Sept. 2006
 - Pacific Shore Funding v. Lozo, Cal. App. Apr. 2006

TILA Right to Rescind

Automatic Effect?

- Trend: No
 - American Mortgage Network v. Shelton, 4th Cir. May 2007
 - In re Groat, 8th Cir. Bankr. May 2007

TILA Tidbits

- CHARM Booklet
 - New version, Dec. 2006
 - Mandatory use, Oct. 2007
- HOEPA points & fees
 - 2008 trigger is \$561
- Open-end proposal, June 2007
 - Comments due Oct. 12
- Electronic disclosure proposal, Apr. 2007

TILA HOEPA Rules Issue

- Use of Board's Section 129(I) authority
- If rules cover non-HOEPA loans, do HOEPA remedies follow?
- MBA recommends use of Board's Section 105(a) authority

TILA FTC Ad Warnings

- Sept. 11 announcement
- June 2007 nationwide review
- 200 companies and media outlets notified of potentially deceptive ads
- Touting of low rates without explaining it's an initial payment rate or short term interest rate

Thank You