



Legal & Regulatory Compliance Update – Current RESPA & TILA Compliance Issues

Loretta Salzano

Franzén and Salzano, P.C.

40 Technology Parkway South, Suite 202

Norcross, Georgia 30092

(770) 248-2881

(770) 248-2883

lsalzano@franzen-salzano.com

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What We Are Not Talking About:

- Proposed RESPA/Regulation X
- Proposed HOEPA/Regulation Z
- Subprime Litigation

RESPA §8

HUD has increased enforcement and investigative resources. Still, degree of enforcement is negligible.

RESPA §8

- Recent published HUD settlements have focused on title companies and builders.
- **Sham title agencies created to pay investor referral sources.**
- First American Title Insurance Company October 31, 2007.

RESPA §8

- Captive title insurance as a sham to circumvent §8(a). No legitimate need for insurance, premiums are not *bona fide* and are excessive, and claims are not paid.
 - Beazer Homes USA, Inc. October 29, 2007.
 - KB Home and KB Home Mortgage Company October 29, 2007.
 - Meritage Homes Corporation October 29, 2007.
 - Pulte Homes, Inc. October 29, 2007
 - The Ryland Group, Inc. October 29, 2007.
 - Technical Olympic USA, Inc. October 29, 2007.



Legal Actions and “Unofficial” Administrative Actions

- Affiliated business arrangements.

Must meet statutory criteria

- No required use
- Required disclosure
- Return on ownership interest only.

Must pass Policy Statement 10 Factor Test.

- Marketing agreements, work share agreements and leases.

Compensation must be reasonable in marketplace for services or facilities provided separate and distinct from referrals or business generated.

Other Hot Topics

Bona fide employees. Is meeting IRS test enough?

- Pricing.
 - Average cost pricing and charging only for closed loans is probably ok.
Krupa v. Landsafe, et al., 514 F. 3d 1153 (11th Cir. 2008)
 - Discounts for economies of scale: discount is ok if passed on to borrower. Cases indicate ok even if it is not.
 - Other consumer discounts: must be true discounts not made up for elsewhere in transaction.
 - Mark-ups and unearned fees.
 - HUD and many circuits are still divided.



State Enforcement Actions

States are working with HUD and bringing actions on their own, mainly regarding sham title arrangements.

States are also seeking to enforce § 8 and disclosure provisions – sometimes correctly and sometimes incorrectly.

TILA

Recent Cases

Equitable Mortgages. Foreclosure bailout schemes found to constitute equitable mortgage triggering application of HOEPA/TILA.

- *Jones v. Rees-Max, LLC*

514 F. Supp. 2d 1193 (D. Minn. 2007)

- *Clemens v. Home Savers, LLC*

No. 2:07cv244, 2007 U.S. Dist. LEXIS 70410 (E.D. Va. Sept. 21, 2007)

Right to cancel cases: Incorrect model form of Notice of Right to Cancel is sufficient.

- *Barrett v. Bank One, N.A.*

511 F. Supp. 2d 836 (E.D. Ky. 2007)

- *Vermurlen v. Ameriquest Mortgage Company*

No. 1:06-cv-828, 2007 U.S. Dist. LEXIS 78181 (W.D. Mich. October 22, 2007)

“Monthly” Cases:

- *Hamm v. Ameriquest Mortgage Company*

506 F.3d 525 (7th Cir. 2007), *remanded to* No. 05 C 227, 2008 U.S. Dist. LEXIS 12371 (N.D. Ill. Feb 20, 2008)

TILA

Hot Topics

- Modifications.
 - Do not require new disclosures.
 - What if modification results in a high cost loan?
- Errors and Cure.
 - How to cure.
 - Is loan rescindable?
 - Can you cure a high-cost loan?