

Legal Issues in Mortgage Technology

Legal Foundations
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RESPA

- Scope—federally related mortgage loans
- Internet—no special status
- Two key elements:
 - Disclosures
 - Prohibited payments

RESPA

- Section 8:
 - Referral fee prohibition
 - Fee split prohibition
- Exception:
 - Payments that reflect the reasonable value of services, goods and facilities provided

RESPA

- HUD's view of the fee split prohibition
- Intended to prohibit unearned fees, thus it prohibits:
 - Fee splits between two or more parties
 - Marking-up a third party's fee
 - Overcharging for your own services

RESPA

- HUD's view in the courts—mixed results
- 2nd Circuit recent case—*Kruse*
 - Mark-ups vs. overcharges
- 4th, 7th and 8th Circuits
- 11th Circuit
- 7th Circuit distinction

RESPA

- No HUD guidance regarding Internet arrangements
- Follow existing guidance for traditional arrangements
 - Pay for services, goods and facilities
- Lead sale arrangements
- Marketing arrangements
- Mortgage broker arrangements

STATE LAW

- Licensing
 - Mortgage broker/lender and other
 - Some states-very broad views
- Unfair and deceptive act and practice and related laws
 - Mark-ups
 - Advertising and offers