

Legal Issues in Mortgage Technology

ePackaging and Other Applications of Technology

November 18, 2004

Richard Andreano, Jr.

Weiner Brodsky Sidman Kider PC

Washington, DC

andreano@wbsk.com

RESPA

- Scope—federally related mortgage loans
- Internet—no special status
- Section 8 prohibits certain payments
 - 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

- HUD's reform proposal
 - Included a guaranteed mortgage package arrangement
 - Proposed July 2002
 - Withdrawn March 2004
- HUD promises to re-propose

RESPA

- HUD's guaranteed mortgage package elements, as originally proposed:
 - Would have included most services
 - One, fixed price
 - Package arrangements excepted from referral fee and fee split prohibitions
 - No need for a Good Faith Estimate
 - No itemization of charges

RESPA

- Packaging without reform
 - Disclosure requirements
 - Referral fee and fee split issues
 - Packager and participant arrangements
 - Mark-up issue

STATE LAW

- Fees
 - Allowable fees
 - Mark-ups
 - Disclosures
- Borrower right to select provider
- Prohibition on services
 - Unauthorized practice of law
- Affiliate restrictions