

MEMORANDUM

To: Subscribers to *The Mortgage Industry Guide to RESPA: Compliance, Disclosures, and Procedures*

From: Sheshunoff Information Services

Subject: Highlights

Enclosed you will find your second 2008 update to *The Mortgage Industry Guide to RESPA: Compliance, Disclosures, and Procedures*. This update brings your manual current by incorporating significant developments that have occurred in the past several months and enhances the manual by including additional materials.

Recent developments include the following. Where a topic is discussed further in the text, the chapter reference is given.

Regulatory Developments

- ***Mortgage Broker Compensation.*** HUD issued Mortgagee Letter 2008-14 on May 16, 2008, to describe the ways in which a non-FHA-approved mortgage broker (nonapproved entity or third party) may support the origination of FHA-insured Home Equity Conversion Mortgages (HECMs) and the limited circumstances under which they may be compensated, consistent with both applicable FHA policy and applicable RESPA requirements. See Chapter 12.

Court Decisions

- ***Exempt Loan.*** A federal district court in Pennsylvania examined the borrower's use of loan proceeds and concluded the loan was exempt from RESPA because it was primarily for the purpose of paying off business debts and to obtain cash for ongoing business endeavors. *Sherlock v. Herdelin*, 2008 U.S. Dist. LEXIS 21794 (ED Pa. Mar. 19, 2008) (primary purpose was to pay off business debts and obtain cash for ongoing business endeavors). A federal district court in Florida held that a loan to purchase rental property was not subject to RESPA. *Amaral v. Crown Mortgage Group*, 2008 U.S. Dist. LEXIS 36644 (SD Fla. May 5, 2008) (loan to purchase rental property was exempt from RESPA).
- ***Excessive Fees.*** The U.S. Court of Appeals for the Eleventh Circuit held that Section 8(b) did not prohibit an allegedly excessive escrow waiver fee because Section 8(b) is not a price control provision. *Friedman v. Market Street Mortgage Corp.*, 520 F3d 1289 (11th Cir. 2008). The same court reversed a district court's denial of class certification to a group of plaintiffs who alleged that a real estate firm had charged a fee for which it had provided no services. *Busby v. JRHBW Realty, Inc.*, 513 F3d 1314 (11th Cir. 2008). A federal district court in Maryland held that a title company's charging of a full title insurance premium instead of a reduced refinance premium did not violate Section 8. *Arthur v. Ticor Title Ins. Co.*, 2008 U.S. Dist. LEXIS 23485 (D. Md. Mar. 11, 2008). The *Friedman* case is discussed further in Chapter 8.
- ***Yield Spread Premiums.*** A federal district court in California applied the two-part test from HUD Statement of Policy 2001-1 to hold that yield spread premiums were paid in exchange for actual

services rendered. *Stetler v. Greenpoint Mortgage Funding Inc.*, 2008 U.S. Dist. LEXIS 4880 (ED Ca. Jan. 23, 2008) and 2008 U.S. Dist. LEXIS 20129 (Mar. 7, 2008).

- **Flat-Pricing.** The U.S. Court of Appeals for the Eleventh Circuit affirmed summary judgment for a lender and credit reporting agency who had implemented a flat-pricing arrangement. *Krupa v. Landsafe, Inc.*, 514 F3d 1153 (11th Cir. 2008). See Chapter 8.
- **Builder Discounts.** A federal district court in Pennsylvania dismissed a class action asserting that builder incentives, such as closing cost credits, to encourage buyers to use affiliated entities for settlement services, violated Section 8. *Capell v. Pulte Mortgage*, 2008 U.S. Dist. LEXIS 10181 (Jan. 14, 2008). A federal district court in Georgia held similarly. *Yeatman v. D.R. Horton, Inc.*, 2008 U.S. Dist. LEXIS 33446 (SD Ga. Apr. 23, 2008).
- **Required Title Company.** A federal district court in South Carolina held that a real estate seller did not require the buyer to use a particular title insurance company in violation of Section 9. *Hopkins v. Horizon Management Services, Inc.*, 515 F. Supp. 2d 649 (DSC 2007). See Chapter 15.
- **State Statutory Interpretation.** A federal district court in Maryland used RESPA to help interpret Maryland's Secondary Mortgage Loan Law. *Hafford v. Equity One, Inc.*, 2008 U.S. Dist. LEXIS 31964 (D. Md. Mar. 31, 2008). See Chapter 16.
- **Violation of RESPA Basis for State Violation.** A federal district court in California considered a complaint alleging that a mortgage lender had charged marked-up fees for tax service and flood certification by engaging third-party vendors to perform these services and then charging the plaintiffs a much higher rate. The plaintiff alleged this violated RESPA and could serve as the basis for a damages claim under California's Unfair Competition Law. *Morales v. Countrywide Home Loans, Inc.*, 531 F. Supp. 2d 1225 (CD Cal. 2008). See Chapter 16.