Client Alert

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CFPB Ups the Ante in RESPA Crackdowns

By Sarah Nicole Davis and Angela Kleine

On April 29, 2015, the CFPB, in conjunction with the Maryland Attorney General, filed six proposed consent orders—five of which are against individual defendants—in its latest RESPA enforcement action. The Bureau alleges that a title company, two of its executives, and four loan officers concocted and carried out a mortgage-kickback scheme. These consent orders follow related proceedings against two national banks, which settled via consent orders requiring over $24 million in civil monetary penalties.

This newest complaint, filed concurrently with the consent orders, alleges that two individual executives at the now-defunct Maryland-based title company Genuine Title gave cash and marketing services in exchange for mortgage referrals from the named loan officer defendants, in violation of Section 8 of RESPA. Under the proposed consent orders, the individual defendants will be temporarily banned from the mortgage industry and required to pay between $30,000 and $400,000 (for a total of $662,500) in redress and penalties. The action is still pending against one of the loan officers.

Under Section 8, a person is prohibited from accepting "any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise" in exchange for referring any real estate settlement business. According to the complaint, the "kickback" provided was that the title company offices provided valuable marketing services, such as purchasing and analyzing consumer leads, and paying for marketing letters to be printed, folded, stuffed, and mailed to those leads in exchange for mortgage referrals. The complaint further alleges that the executives funneled cash payments to the named loan officers through sham entities owned by those loan officers, with each named officer receiving between $130,000 and $500,000.

These orders confirm that RESPA is going to continue to be a hot button issue for the CFPB.[1] Moreover, they demonstrate that no party, no matter how low on the totem pole, or which side of the alleged "kickback scheme" they're on, is immune from prosecution in RESPA matters. The CFPB has now levied harsh penalties against the lender and the title company, as well as the individual loan officers and title company executives. By going after individual executives and loan officers, and holding them personally liable, the Bureau is keeping the heat on in these types of enforcement actions.

While the alleged wrongdoing here may be different than in some prior orders, these consent orders nonetheless put the public on notice that the CFPB and its state regulatory partners will not shy away from holding individual actors, as well as lenders and service providers, responsible for alleged RESPA violations.

[1] For more information, see our alerts, "CFPB as HUD: Another Section 8 Consent Order Displays CFPB's RESPA Approach," "The CFPB Targets Mortgage Reinsurance Yet Again," and "The RESPA Respite Is Over."

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