

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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CFPB MAKES MAJOR **MARKETING BUST**

On Wednesday, the CFPB took major Action against Prospect Mortgage of Sherman Oaks California for paying illegal kickbacks for referral of business. Actions were also taken against ReMax Gold Coast and Keller Williams Mid-Willamette who were also named as participants in the scheme. Prospect will pay a \$3.5 million dollar penalty and the other two companies will pay a combined \$495,000.

The summary of the matter may be found along with the actual consent orders, at; <http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-prospect-mortgage-pay-35-million-fine-illegal-kickback-scheme/>.

Allegedly, a variety of schemes were used to pay kickbacks for referrals of mortgage business. Among them were:

1) Prospect maintained various agreements with over 100 real estate brokers, including ReMax Gold Coast and Keller Williams Mid-Willamette, which served primarily as vehicles to deliver payments for referrals of mortgage business. Prospect tracked the number of referrals made by each broker and adjusted the amounts paid accordingly. Prospect also had other, more informal, co-marketing arrangements that operated as vehicles to make payments for referrals.

2) One particular method Prospect used to obtain referrals under their lead agreements was to have brokers engage in a practice of “writing in” Prospect into their real estate listings. “Writing in” meant that brokers and their agents required anyone seeking to purchase a listed property to obtain prequalification with Prospect, even consumers who had prequalified for a mortgage with another lender.

3) Prospect and Planet Home Lending had an agreement under which Planet worked to identify and persuade eligible consumers to refinance with Prospect for their Home Affordable Refinance Program (HARP) mortgages. Prospect compensated Planet for the referrals by splitting the proceeds of the sale of such loans evenly with Planet. Prospect also sent the resulting mortgage servicing rights back to Planet.

4) Under their arrangement, Planet Home Lending took half the proceeds earned by Prospect for the sale of each mortgage loan originated as a result of a referral from Planet. Planet also accepted the return of the mortgage servicing rights of that consumer’s new mortgage loan.

5) Planet ordered “trigger leads” from one of the major consumer reporting agencies to identify which of its consumers were seeking to refinance so it could market Prospect to them. This was a prohibited use of credit reports under the Fair Credit Reporting Act because Planet was not a lender and could not make a firm offer of credit to those consumers. [This means that these consumers were treated

as if they were prescreened for a “firm offer of credit” but the requirements for prescreening were never met and no offer made.]

As we have been saying, be careful of those marketing agreements!

ABOUT ALT & ASSOCIATES

Alt & Associates publishes the Lenders Update via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their business operations. Legal counsel provided to the mortgage industry includes, but is not limited to:

- Regulatory assistance, both state and federal**
- Compliance work**
- Operational advice**
- Transactional work Agreements such as Loan Officer**
- Compensation Agreements etc.**
- Various forms of employee, officer, and/or manager contracts**
- Litigation representation**

You may direct any questions or comments directly to:

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