LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612
David.j.alt@altandassociates.com
www.altandassociates.com

DAVID JEROME ALT
Attorney at Law

January 22, 2014

DESK RENTALS AND RESPA

It seems that one of the most frequently asked questions concerning RESPA and illegal referral/kickback fees, involves the "rental" of a desk by a lender within the office of a real estate broker.

Is this allowed by the RESPA's Section 8 which bans the payment of referral fees or kickbacks? The practice is not prohibited but care is advised. The recent CFPB enforcement action, "In the Matter of Fidelity Mortgage Corporation, et al." (Fidelity and its predecessors and owners are referred to as "Fidelity") is a cautionary tale.

In 2010 Fidelity's predecessor approached a Missouri bank to enter into a joint venture to outsource it's mortgage lending through referrals of customers to Fidelity. In return, Fidelity would lease an office in the bank. The entities negotiated an exclusive daily rental rate for the space. However, during the time in question, rents were apparently not paid according to the rental agreement but in varying rates from $800 to $2000 per month.

While RESPA allows payment of compensation for goods or facilities actually furnished (such as rent) or services actually performed, what the parties did here was not permissible.

When does the rent become a disguised referral fee? The answer is, if the rental amount is not the general market value of the property, that is, the rent that a non settlement service provider would pay for the same amount of space and services in a comparable building.

The price tag to Fidelity for the error is about $81,000 dollars.

Two practice pointers:

- The rent varied, apparently with the volume of business referred.
- There were no comparables to point to or other records to show what similar space would have cost in a comparable building.

Marketing arrangements or agreements are dangerous and provide fertile ground for regulatory action.

The Lenders Update is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States.

Only those persons who have personally requested this newsletter are on our distribution list.

SHOULD YOU NOT WISH TO CONTINUE TO RECEIVE THIS SERVICE, PLEASE JUST SEND US AN EMAIL TO "OP-OUT" AT:

special@altandassociates.com

ALSO, SHOULD YOU HAVE COLLEAGUES WHO WISH TO BE ADDED TO THIS COMPLIMENTARY SERVICE, PLEASE HAVE THEM E-MAIL US AT:

special@altandassociates.com

ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past three decades, members of the firm have represented

Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

If you have any questions please contact:

David J. Alt, Esq.
David.j.alt@altandassociates.com

You may view previous issues on our website at:
www.altandassociates.com

Who's Who in American Law ***Martindale Hubble Pre-Eminent Attorney***