

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

David Jerome Alt
Attorney at Law
David.j.alt@altandassociates.com
www.altandassociates.com

Main Office:
2102 BUSINESS CENTER DRIVE
SUITE 130
IRVINE, CA 92612

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CFPB SANCTIONS MARKETING AGREEMENT

One of the most frequent issues referred to our firm is the regulatory compliance of Marketing Services Agreements (“MSAs”), usually entered into between a lender and a real estate brokerage. The question presented: are these agreements compliant with CFPB requirements which usually means compliant with Section 8 of RESPA which prohibits payment of referral fee or kickbacks for the referral of settlement services such as loans? We find that these agreements are frequently not compliant, which causes our clients a great deal of weeping and gnashing of teeth to say nothing of disbelief.

There has been very little in writing laying down a bright line test. There has however, been some HUD guidance and conversations and informal guidance about what we should or shouldn't do. Yesterday, we were given some concrete guidance from CFPB in the form of a \$200,000 fine based on an improper MSA.

In an action against Lighthouse Title (“LT”) the Bureau sent a “clear and simple message, that quid pro quo agreements for real estate referrals are illegal”. LT offers title insurance and other mortgage related services to consumers. The Company entered into MSAs with other companies, usually real estate brokers, with the understanding that these other companies would refer settlement service business to LT such as title insurance or closings. In return the company would receive certain marketing services from LT. Beyond this, the amount LT would “pay” was based on the number of referrals it had or was expecting to receive. This structure is in clear violation of law and was found to be so by the CFPB.

You may find the Consent Order on the CFPB website at www.conduemrfinance.gov under “Inside the CFPB” and then under “Newsroom”.

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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

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Martindale Hubble Pre-Eminent Attorney