
KAPIOLTAS & FORNI, P.L.L.C.

4514 Cole Avenue, Suite 600
Dallas, Texas 75205

Mike Forni
Attorney at Law

Thomas L. Kapioltas
Attorney at Law

Tel: (214) 764-9232
Fax: (214) 764-4041

website: <http://www.kflawpllc.com>

05.07.09

Legislative Update Report

State Issues – Pending Legislation of Interest

HB 3588 – This bill would impose a fiduciary duty on mortgage brokers. That duty would require a mortgage broker to verify an offered loan is “affordable and meets the mortgage applicant’s purposes”, verify the loan is “suitable to the mortgage applicant”, and the loan is on “the most favorable terms available to a person having the applicant’s qualifications.” The bill would also impose additional limitations on the types of loans they may be originated by mortgage brokers. A copy of the bill may be found at:

<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB3588>

HB 3776, SB 2214 – These bills propose an additional fee on foreclosure filings to fund civil legal services to indigent Texans. HB 3776 would provide for a \$150 fee in foreclosure filings, which would be used for civil legal services to the poor. A copy of the bills may be found at:

HB 3776: <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB3776>

SB 2214: <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB2214>

Federal Issues

SEC Reopens Comment Period for Optional Model Privacy Form - The Securities and Exchange Commission (SEC) reopened for comment amendments to privacy provisions of the Gramm-Leach-Bliley Act that would create a "safe harbor" model form that financial institutions may utilize to satisfy required disclosures in privacy notices. A copy of the *Federal Register* notice may be found at:

<http://www.sec.gov/rules/proposed/2009/34-59769.pdf>

Federal, State Partners Announce Multi Agency Crackdown Targeting Foreclosure Rescue Scams, & Loan Modification Fraud - As homeowners & communities throughout the country continue to face devastating consequences from the deep contraction in the economy & the housing market, the Obama Administration announced on 04/06/09 a new coordinated effort across federal & state government and the private sector to target mortgage loan modification fraud & foreclosure rescue scams that threaten to hurt American homeowners & prevent them from getting the help they need during these challenging times. HUD has promulgated an optional flyer for mortgage bankers and brokers to distribute to their clients to help educate

borrowers against mortgage scams. Links to the full news release and the flyer can be found below.

News release: <http://www.hud.gov/news/release.cfm?content=pr09-033.cfm>

Flyer: <http://www.hud.gov/offices/hsg/sfh/mha.pdf>

FTC Releases Guide on Red Flags Rule - On April 2, the Federal Trade Commission (FTC) issued a guide entitled "Fighting Fraud with the Red Flags Rule: A How-To Guide for Business." The guide aims to clarify the duties of entities covered by the Red Flags Rule, which was promulgated by the FTC and the federal banking regulatory agencies in November of 2007. Entities covered by the Red Flags Rule must establish an Identity Theft Prevention Program by May 1. A copy of the FTC guide may be found at:

<http://www.ftc.gov/bcp/edu/pubs/business/idtheft/bus23.pdf>

FTC Further Delays Enforcement of Red Flags Rule – On April 30, The Federal Trade Commission announced that it will delay enforcement of the new “Red Flags Rule” until August 1, 2009, to give creditors and financial institutions more time to develop and implement written identity theft prevention programs. A copy of the press release may be found at:

<http://www.ftc.gov/opa/2009/04/redflagsrule.shtm>

Congressional Amendment Calls on HUD to Withdraw RESPA Final Rule. Representatives Judy Biggert, R-Ill., and Rubén Hinojosa, D-Texas introduced an amendment that now becomes part of H.R. 1728, the Mortgage Reform and Predatory Lending Act of 2009. The amendment call on HUD to withdraw its final RESPA rule and work with the Federal Reserve Board to issue a new joint rule within 12 months. The U.S. House Committee on Financial Services approved H.R. 1728 on April 29, 2009. A copy of H.R. 1728 and a press release from the U.S. House Committee on Financial Services discussing the passing of H.R. 1728 can be found at the links below.

<http://www.thomas.gov/cgi-bin/query/z?c111:H.R.1728>:

http://www.house.gov/apps/list/press/financialsvcs_dem/prss042909.shtml

Other Industry News

Fannie Mae and Freddie Mac Modify Home Affordable Modification Program Guidelines.

On April 21, Fannie Mae amended Announcement 09-05 (now known as Announcement 09-05R) and Freddie Mac issued bulletin 2009-10 to all Freddie Mac servicers announcing changes to eligibility and underwriting requirements for the Home Affordable Modification Program (HMP). A copy of the revised guidelines may be found at:

<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2009/0905.pdf>.

<http://www.freddiemac.com/sell/guide/bulletins/pdf/bll0910.pdf>.

Alabama Federal Court Holds Realty Firm Violated §8(b) of RESPA by Charging Unearned Fees to More Than 30,000 Customers. § 8(b) of RESPA provides: “No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.” The U.S. District Court for the Northern District of Alabama entered a judgment on behalf of a class-

action plaintiff and more than 30,000 class members who were charged an ‘Administrative Brokerage Commission Fee (‘ABC Fee’) real-estate settlement fee for which no services were performed, in violation of RESPA. The case is *Busby v. JRHBW Realty, Inc.*, No. 2:04-CV-2799 (N.D. Ala. Apr. 20, 2009).

Texas Federal Court Holds Title Insurance Overcharge Actionable Under §8(b) of RESPA.

The U.S. District Court for the Northern District of Texas held that charging more than the mandated amount for title insurance premiums may violate §8(b) of RESPA if the plaintiff alleges that the excess amount was unearned and split with the title agent. The Plaintiff alleged that the title company did not provide a discount on the title insurance policy required by the Texas Department of Insurance on a refinance transaction and that the overcharge was an unearned fee that was split with the title agent. The case is *Hamilton v. First American Title Company*, No. 3:07-CV-1442, 2009 WL 1065165 (N.D. Tex. Apr. 21, 2009)

South Carolina Supreme Court Stops Foreclosures - South Carolina's Supreme Court issued a temporary restraining order freezing thousands of imminent foreclosure sales in the state. RealtyTrac Inc. says the ruling could affect 5,000 South Carolina homes. The question now is will other courts or legislatures follow South Carolina's lead? An article discussing the foreclosure freeze may be found at:

http://blogs.findlaw.com/law_and_life/2009/05/state-supreme-court-stops-foreclosures-gives-loan-modification-a-chance-what-next-and-will-other-sta.html