

2005-2007 RESPA SETTLEMENTS

REAL ESTATE SETTLEMENT PROCEDURES ACT

PREPARED FOR:

**TRIPLE PLAY CONVENTION
ATLANTIC CITY, NEW JERSEY**

DECEMBER 4, 2007

PREPARED BY:

PHILLIP L. SCHULMAN, ESQUIRE

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

1601 K STREET, NW

WASHINGTON, DC 20006

PHONE: 202.778.9027

FACSIMILE: 202.778.9100

PHIL.SCHULMAN@KLGATES.COM

WEBSITE: WWW.KLGATES.COM

©2007 KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

2005-2007 Recent RESPA Settlements

2005 marked the most active period in the U.S. Department of Housing and Urban Development's enforcement of the Real Estate Settlement Procedures Act (RESPA). Nearly one-third of all RESPA enforcement cases brought by HUD in its 32 year history, were investigated and settled in 2005. Thus far in 2006 and 2007, HUD has announced 16 additional settlements. These 30 settlements involve five main areas of concern: 1) affiliated business arrangements; 2) referral fees subject to Section 8 of the Act; 3) room rental arrangements; 4) captive title reinsurance; and 5) HUD-1 Settlement Statements. Below is a summary of these important cases and the guidance they provide for assuring compliance with RESPA.

I. Affiliated Business Arrangements¹

1. **Closings of Tulsa** – In two separate settlements, HUD alleged that owners of affiliated business arrangements received their share of the joint ventures' profit distributions and redistributed the shares to their members based on the sales price of the transactions referred to the joint ventures. Under the terms of the settlement agreements, the parties agreed to pay \$325,000 and \$125,000 and to modify certain business practices.
2. **First American Title Insurance Company** – On July 1, 2005, the Department entered into a settlement with First American Title Insurance Company for allegedly operating "sham" title insurance agencies in which the joint ventures performed little title work, leased employees from First American, and rented office space and computer services at First American's office. First American agreed to pay \$680,000 and withdraw from the affiliated businesses as a joint venture partner.
3. **Title Group Builders** – Following the settlement with First American, HUD announced two settlement agreements with eight Tennessee builders who owned, along with First American, a series of allegedly "sham" affiliated title insurance agencies. The builders agreed to pay a combined total of \$225,000 to the Department. We note that, in these settlements, HUD focused on those joint venture partners who were mere investors in the affiliated business arrangements.

¹ The following is a summary of all settlement agreements entered into in connection with the Real Estate Settlement Procedures Act ("RESPA") in 2005, 2006, and 2007 (as of October 29, 2007). Please be aware that these settlements generally resulted from RESPA investigations conducted by the U.S. Department of Housing and Urban Development ("HUD" or "Department") or joint investigations with other federal agencies involving numerous consumer credit laws. In each case, the government alleged that companies and/or individuals engaged in certain RESPA deficiencies. These companies and individuals, however, denied all allegations, admitted no liability, and fault was not attributed to the entities and persons involved. Instead, the parties sought settlement to avoid a lengthy procedure and the cost of litigation.

II. Referral Fees

1. **Prudential Locations LLC** – On August 22, 2005, the Department entered into a settlement agreement with Prudential Locations for allegedly offering its sales agents prizes and incentives, including automobile leases, all-expenses-paid trips, and restaurant gift certificates, based on the volume of business referred to Prudential Locations' affiliated business. The real estate broker agreed to pay \$48,000 to the Department.
2. **Coldwell Banker Residential Real Estate, Inc.** – Similar to the settlement reached with Prudential Locations, on August 25, 2005, HUD entered into a settlement agreement with Coldwell Banker Residential Real Estate, Inc. for allegedly paying referral fees, which included higher agent commission splits, commissions paid at closing, and other prizes and benefits. The real estate broker agreed to pay \$250,000 to settle the matter.
3. **1-800 East-West Mortgage Company** – Following a joint investigation by HUD and the Federal Deposit Insurance Corporation, the Department announced a settlement agreement in November 2005 with 1-800 East-West Mortgage Company. HUD alleged that the lender solicited gifts from other settlement service providers, such as premium tickets to professional baseball and football games, payments for galas, and restaurant gift certificates, in exchange for the referral of business. The mortgage company agreed to pay \$150,000 to the Department.
4. **R. Norman Peters** - Arising from the joint investigation of 1-800 East-West Mortgage Company ("EWMC"), on September 6, 2006, HUD announced a settlement agreement with R. Norman Peters and his law firm, Peters & Sowydra, for allegedly providing premium baseball and football tickets, restaurant gift certificates, and lunch for all EWMC employees in exchange for EWMC's referral of loan closing business. Peters agreed to make a \$7,500 payment to HUD and an additional \$7,500 payment to the FDIC.
5. **Grasso Appraisal Services, Inc.** - At the same time HUD announced its agreement with R. Norman Peters, the Department released a settlement agreement with Grasso Appraisal Services, Inc., alleging that Grasso provided restaurant gift certificates to EWMC in exchange for the referral of appraisal business. Grasso agreed to make a \$4,000 payment to HUD, as well as cooperate with HUD's ongoing investigation.
6. **Fidelity National Title Insurance Company** – In April 2007, HUD announced a settlement agreement with Fidelity National Title Insurance Company in which the Department alleged that Fidelity National's marketing arrangement with Longford Homes of New Mexico, Inc. did not

comply with Section 8(a) of RESPA. Notably, HUD alleged that Fidelity National provided prepaid “just sold” and “just listed” postal cards and listing agreements at no cost or below market cost, and gave Longford Homes, in exchange for the referral of business, a prepaid postage meter, a periodic subsidy to cover marketing expenses, retail store gift certificates, event tickets, and funds to cover the costs of dinners for Longford Homes’ employees. Fidelity National agreed to pay \$68,635 to resolve the matter, as well as charge fair market value for future printing and other communication services.

7. **Longford Homes of New Mexico, Inc.** - At the same time HUD announced its agreement with Fidelity National Title Insurance Company, the Department released a settlement agreement with Longford Homes of New Mexico, Inc., alleging that Longford Homes received periodic payments, in exchange for the referral of title insurance business, to cover the expenses of a prepaid postage meter, retail store gift certificates, event tickets, dinners for Longford Homes employees, and seminars. Longford Homes agreed to make a \$20,700 payment to HUD and cease from participating in such future arrangements.

III. Room Rental Arrangements

1. **Metropolitan Title Company** – In July 2005, HUD released a settlement agreement with Metropolitan Title Company in which the Department alleged that Metropolitan paid real estate brokers conference room rental fees in excess of the alleged fair market value for comparable conference rooms. Under the agreement, the title agency agreed to pay \$150,000 to HUD, as well as pay all future rental rates at the minimum level of fair market value for equivalent conference room space and additional services.
2. **Schweitzer Real Estate, Inc.; Hometown One Associates, Inc.; RE/MAX in the Hills; RE/MAX Masters, Inc.** – Following its settlement with Metropolitan, the Department announced four additional settlement agreements with real estate brokers who rented conference room space to Metropolitan and allegedly received fees in excess of fair market value for the space provided. The real estate brokers agreed to pay a combined total of \$80,000 to the Department, as well as rent conference room space in the future for one-hour blocks of time with 15-minute grace periods. We note that these four settlements focus on HUD’s present intent to pursue not only those who give alleged referral fees, but those who receive the payments or things of value.

IV. Captive Title Reinsurance

1. **M.D.C. Holdings, Inc./Richmond American Homes** – On July 18, 2006, HUD announced a settlement with M.D.C. Holdings, Inc./Richmond

American Homes (“Richmond American”) in connection with Richmond American’s captive title reinsurance company, AHT Reinsurance, Inc. and its reinsurance of certain title insurance policies. HUD alleged that captive title reinsurance arrangements in which payments are not bona fide and exceed the value of the reinsurance are a violation of Section 8 of RESPA. Richmond American agreed to make a \$675,000 payment to settle the matter, as well as cease any future involvement in reinsurance arrangements.

2. **CitiMortgage, Inc.** – At the same time HUD announced its settlement with Richmond American, HUD also announced a settlement with CitiMortgage and its captive title reinsurance company, Chesapeake Title Reinsurance Company, Inc. HUD alleged that there is almost never any bona fide need or business purpose for title reinsurance on a single family residence and asserted that title reinsurance payments that exceed the value of the reinsurance are a violation of Section 8 of RESPA. CitiMortgage agreed to pay \$650,000 to the United States Treasury and cease any future involvement with title reinsurance.
3. **WL Homes d/b/a John Laing Homes** – HUD also announced a settlement with WL Homes LLC d/b/a John Laing Homes (“WL”), which joined as a participant in Fidelity National Financial Title Reinsurance Company and in First American Homebuilders Reinsurance Company. HUD made similar allegations as those made in both the Richmond American and CitiMortgage settlements. WL agreed to \$305,000 settlement, \$77,000 of which has already been refunded to Colorado consumers. WL, therefore, agreed to pay the United States Treasury \$228,000 and cease any future involvement in captive title reinsurance arrangements.
4. **Shea Homes, Inc.** - On October 12, 2006, HUD announced a second round of captive title reinsurance settlements, including a settlement with Shea Homes, Inc., Shea Financial Services, Inc., Shea Mortgage, Inc., and Shea Insurance Services, Inc. (“Shea”). Shea joined as a participant in Fidelity National Financial Title Reinsurance Company and in First American Homebuilders Reinsurance Company, two separate title reinsurance companies. Like the allegations made against Richmond American, CitiMortgage, and WL in July 2006, HUD alleged that Shea’s reinsurance arrangements violated Section 8 of RESPA. In response, Shea agreed to pay \$950,000 to HUD and cease any future involvement in captive title reinsurance arrangements.
5. **William Lyon Homes** - HUD also announced a settlement with William Lyon Homes, on October 16, 2006, and its captive title reinsurance company, Duxford Title Reinsurance, Inc. Like all other reinsurance settlements announced as of this date, HUD alleged that captive title reinsurance arrangements in which payments are not bona fide and exceed the value of the reinsurance are a violation of Section 8 of RESPA.

William Lyon Homes, therefore, agreed to make an \$850,000 payment to HUD and cease any future involvement in captive title reinsurance arrangements.

6. **Fulton Homes Corporation** – At the same time HUD announced settlements with Shea Homes and William Lyon Homes, HUD announced a third title reinsurance settlement with Fulton Homes Corporation and Fulton Homes Sales Corporation (“Fulton Homes”), which joined as a participant in First American Homebuilders Reinsurance Company by creating Fulton Homes Sales Corporation, Cell #6. HUD made similar allegations as those made in all prior reinsurance settlements, including the allegation that there is almost never any bona fide need or business purpose for title reinsurance on a single family residence. Fulton Homes agreed to pay \$150,000 to HUD and cease any future involvement in captive title reinsurance arrangements.
7. **Pulte Homes, Inc.** – On October 29, 2007, HUD announced a third round of captive title reinsurance settlements, including a settlement with Pulte Homes, Inc. (“Pulte”) and its captive reinsurance company Marquette Title Insurance Company. Like each of the six prior reinsurance settlement agreements, the Department alleged in this case that captive title reinsurance arrangements in which payments are not bona fide and exceed the value of the reinsurance are a violation of Section 8 of RESPA. Pulte agreed to pay \$466,000 to HUD and cease any future involvement in captive title reinsurance arrangements.
8. **KB Home** – On October 29, 2007, HUD announced a settlement agreement with KB Home, KB Home Mortgage Company, and its captive reinsurance company, Westview Company. HUD alleged that there is almost never any bona fide need or business purpose for title reinsurance on a single family residence and asserted that title reinsurance payments that exceed the value of the reinsurance are a violation of Section 8 of RESPA. KB Home, therefore, agreed to make a \$456,000 payment to HUD and cease any future involvement in captive title reinsurance arrangements.
9. **Beazer Homes USA, Inc.** – HUD announced a third title reinsurance settlement, on October 29, 2007, with Beazer Homes USA, Inc. (“Beazer Homes”) and its reinsurance company, Security Title Insurance Company. The Department made similar allegations with regard to its view of captive title reinsurance as a violation of Section 8 of RESPA. In return, Beazer Homes agreed to a \$261,000 settlement and to cease any future involvement in captive title reinsurance arrangements.
10. **Meritage Homes Corporation** – At the same time the Department announced settlement agreements with Pulte, KB Home, and Beazer Homes, HUD announced a fourth settlement agreement

with Meritage Homes Corporation (“Meritage Homes”), certain of its affiliate companies, and Meritage Paseo Crossing, LLC, an entity that served as a reinsurance company. HUD alleged that Meritage Homes’ reinsurance arrangements violated Section 8 of RESPA, as HUD alleged that there is strong evidence that title reinsurance arrangements are designed to generate referral fees when there is a history of few or no claims paid. In response, Meritage Homes agreed to pay \$66,000 to HUD and cease any future involvement in captive title reinsurance arrangements.

11. **The Ryland Group, Inc.** – On October 29, 2007, HUD announced a settlement agreement with The Ryland Group, Inc. (“Ryland”) and its captive reinsurance company, Cornerstone Title Insurance Company. HUD alleged that there is almost never any bona fide need or business purpose for title reinsurance on a single family residence and asserted that title reinsurance payments that exceed the value of the reinsurance are a violation of Section 8 of RESPA. Ryland, therefore, agreed to make an \$84,000 payment to HUD and cease any future involvement in captive title reinsurance arrangements.
12. **Technical Olympic USA, Inc.** – HUD announced a sixth and final reinsurance settlement agreement, on October 29, 2007, with Technical Olympic USA, Inc. and Universal Land Title, Inc. (collectively, “TOUSA”), which joined as a participant in First American Homebuilders Reinsurance Company by creating Universal Land Title Investment #3. Like all other prior reinsurance settlement agreements, the Department alleged that captive title reinsurance arrangements in which payments are not bona fide and exceed the value of the reinsurance are a violation of Section 8 of RESPA. TOUSA agreed to pay \$52,000 to HUD and cease any future involvement in captive title reinsurance arrangements.

V. **HUD-1 Settlement Statements**

1. **Chicago Title Insurance Company** – In February 2005, HUD, in conjunction with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, announced a settlement agreement with Chicago Title Insurance Company. The Department alleged that Chicago Title provided inaccurate HUD-1 Settlement Statements to certain lenders and their borrowers that did not reflect all actual charges and adjustments in connection with loan closings. HUD alleged that these inaccuracies resulted from an agreement for the referral of business. Under the terms of the settlement, the title company agreed to pay a \$5 million civil money penalty, as well as to prepare accurate HUD-1s.

An Overview of K&L Gates

Kirkpatrick & Lockhart Preston Gates Ellis, LLP (“K&L Gates”) practices law on an integrated and firm-wide basis. Our multi-office corporate and transactional practice is one of the most substantial in the profession. We have completed hundreds of M&A transactions and public debt and equity offerings over the last few years. We have substantial experience in the United States, Europe and Asia in cross-border transactions of all varieties. The *American Lawyer’s* 2005 “Corporate Scorecard” ranked the firm as the leader among all firms in representation of fund clients in the mutual fund industry, and we are a leader in municipal finance, PIPE, private equity and venture capital transactions.

The firm’s regulatory and policy practice cuts across the many disciplines that require highly specialized knowledge and experience to address governmental regulation of the private markets. Our premier regulatory practice is in the diversified financial services area. We represent a large majority of the major financial institutions and securities firms in a variety of disciplines, and our investment management and mortgage banking practices are perennial leaders. Many of our practice leaders as well as more junior lawyers have governmental experience that enhances their ability to serve K&L Gates’ clients in regulatory fields, while others have held prominent positions in regulated industries. At the same time, our public policy practice is one of the largest in the United States, and affords our clients the opportunity to shape regulatory and legislative initiatives affecting their businesses.

Our litigation engagements – including, among other substantive areas, insurance coverage, intellectual property, real estate, white-collar criminal, construction, professional liability, environmental, toxic tort, products liability, franchise, tax, bankruptcy and insolvency, antitrust and competition, employment, benefits, government contracts, constitutional and election law, and securities - are among the largest and most attractive enjoyed by any law firm. Our litigation practice includes international arbitrations, civil and criminal trials, class actions and appellate work. We have been rated a leading practice in the representation of corporate policyholders in the insurance coverage area and as a leading litigation firm for the financial services sector, and our litigation engagements have helped to shape intellectual property law in the fast-moving technology sector. Our acclaimed DATG practice continues to pave the way nationally and internationally in the exploding field of e-discovery.

Our lawyers practice at the peak of our profession. They serve as leaders of various professional organizations and render public service through *pro bono* representations and service to their communities. Our Boston partner, Mike Greco, served as President of the American Bar Association

in 2005-06, while our Seattle partner, Bill Neukom, will serve as President of the American Bar Association in 2007-08. K&L Gates lawyers participate vigorously in the intellectual debate that is so fundamental to the advanced practice of law, routinely address professional colloquia, and author leading treatises and articles in their fields.

For additional information, please visit our website at www.klgates.com.