

2015 REALTOR® BROKER SUMMIT



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Legal and Risk Management Issues

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ISSUES

❖ TRID

❖ RESPA/MSA Issues

❖ Independent Contractor Status of Agents

❖ Patent Trolls



TRID - Know Before You Owe

- ❖ New disclosure and timing requirements imposed on lenders.
- ❖ No new obligations imposed on real estate professionals.
- ❖ Delayed effective date: October 3.
- ❖ Be familiar with new procedures so you can assist clients.



TRID

- ❖ Loan application simplified; lenders must offer Loan Estimate within 3 business days; lender largely bound by Loan Estimate.
- ❖ Closing disclosure must be received by borrower at least 3 business days before closing; changes to Closing Disclosure limited.
- ❖ Brokers should become familiar with lender practices.
- ❖ Resources for more information:
 - REALTOR[®].org
 - Consumerfinance.gov



RESPA Challenges/ Marketing Service Agreements

- ❖ CFPB aggressively enforcing RESPA.
- ❖ Section 8(a) – May not provide anything of value in exchange for referrals to settlement service provider.
- ❖ Affiliated business arrangements permitted:
 - Disclose and provide estimate of charges.
 - No required use.



RESPA Challenges/ Marketing Service Agreements

- ❖ Section 8(c) – Permits payments to any person for goods or facilities actually furnished or for services actually performed.
- ❖ CFPB enforcement actions in *Lighthouse Title*; *PHH* raise concerns about MSAs.
- ❖ Use MSAs with care, caution.



Independent Contractor Status of Agents

- ❖ Recent challenges to employment classification in other industries.
- ❖ Real estate agents acknowledged to be independent contractors.
- ❖ Common law employment - I/C distinction key factors:
 - Control by principal over worker.
 - Worker may not be in same field as principal.
 - Worker available to work for others.



Independent Contractor Status

- ❖ Federal tax, employment law largely settled.
- ❖ State law may treat agents differently for various state law purposes.
- ❖ Some states explicitly address by legislation or regulation.
- ❖ Recent litigation: *Monell, Barasani; Redfin.*
- ❖ Treat independent contractors properly: use a written agreement; not “staff” or “employees”; no “employment manuals”; careful attention to language.



Patent Trolls (“NPEs”)

- ❖ Anyone can be targeted.
- ❖ Trolls primarily sue to settle; real estate firms in troll “sweet spot”.
- ❖ Good news – America Invents Act; *Alice Corp.*; patent reform legislation pending.
- ❖ Litigation: DDT; PDT; POI; REAL.
- ❖ Contact local, state, or National association if targeted or contacted by a troll.



Summary

- ❖ TRID – become familiar with new requirements, lender procedures.
- ❖ RESPA/MSA Issues – use HUD/CFPB form for AfA disclosure; review MSAs.
- ❖ Independent Contractor Status of Agents – review state law; treat agents as I/C's in all regards.
- ❖ Patent Trolls – be alert to troll contacts; notify NAR.