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QUOTE

"HUD's position regarding the failure to provide a GFE is intended to establish that not only is there a violation based on the failure to issue a GFE, the result is that there also is a tolerance violation for each of the applicable fees."

- Richard Andreano, partner
Patton Boggs LLP

Q&A

In deciding whether someone is an employee, what would be the most critical factors?

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SUPREME COURT DECIDES TO REVIEW RESPA CASE

The U.S. Supreme Court has decided to review a controversial RESPA case. This case has been closely watched by the industry, and many will find the Court's decision to grant certiorari surprising. Read on to learn more.

The U.S. Supreme Court has decided to review *First American v. Denise P. Edwards* (Case Nos. 08-56536, 08-56538), a controversial RESPA case. This case has been closely watched by the industry, and many will find the Court's decision to grant *certiorari* surprising.

The First American Financial Corp. filed a *writ of certiorari* with the Supreme Court on Nov. 23, 2010, requesting the Court answer two questions:

- Did the 9th Circuit err in holding that a private purchaser of real estate settlement services has standing under RESPA to maintain an action in federal court in the absence of any claim that the alleged violation affected the price, quality or other characteristics of the settlement services provided?
- Does such a purchaser have standing to sue under Article III, Section 2, of the United States Constitution, which provides that the federal judicial power is limited to "cases" and "controversies" and which this Court has interpreted to require the plaintiff to "have suffered an 'injury in fact'?"

On June 17, the Court granted review of the case. However, it limited its grant solely to the second question presented by First American. Thus, it will be restricting its review to the issue of whether the plaintiff, **Denise Edwards**, has Article III standing.

Under the U.S. Constitution, Article III, Section 2, plaintiffs must have standing to sue in federal court. The Constitution states that federal courts only have power to decide "cases" and "controversies," and the U.S. Supreme Court interprets this to mean the plaintiff must have suffered some sort of concrete injury (or "injury-in-fact") in order to sue.

First American argued in its petition for *certiorari* that the courts of appeals are divided as to whether an allegation of a statutory violation, such as a violation of RESPA, without actual injury, creates Article III standing. Basically, First American argued that Edwards had no right to file her suit.

First American claimed the 9th U.S. Circuit Court of Appeals was wrong when it held that RESPA confers a right of judicial relief to an individual and that the right supplies the required Article III 'injury-in-fact.' The 9th Circuit determined that Edwards suffered a sufficient Article III injury because RESPA granted a legal right and the invasion of that right creates standing.

According to First American, the 9th Circuit's holding conflicted with the 2nd and 10th Circuits, which decided that "a plaintiff who has not suffered a concrete injury-in-fact lacks standing under Article III, even if she has alleged a statutory violation for which Congress has created a private right of action."

Cover Story *(Continued from page 1)*

On May 19, Acting Solicitor General **Neal Katyal** filed a brief advising the Court to deny review of the case. He stated in his brief that the 9th Circuit made the correct decision and that the court’s determination was in accordance with decisions of other U.S. appeals courts. Thus, he advised the court that there was no split in the circuit courts that would give reason for the Supreme Court to review the case.

“RESPA provides a cause of action for a consumer who alleges a kickback in connection with a settlement service for which she was charged, whether or not the kickback demonstrably affected the price or quality of the relevant settlement service,” Katyal wrote. “Such a consumer has sufficient injury-in-fact to sue in federal court.”

“The court of appeals also correctly held that respondent has alleged sufficient injury to establish her standing under Article III. On [Edwards’s] theory, [First American’s] unlawful kickback arrangement caused her to pay for a settlement service based on a tainted referral,” Katyal wrote. “[First American] therefore infringed on her statutory rights under RESPA in a way that caused her a particularized, concrete injury.”

“The Court has long held that ‘Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute,’ he continued.

In addition, Katyal argued that review should be denied because the case came to the Court on interlocutory appeal from the district court’s denial of class certification, rather than the court’s decision upon the entire merits of the case. According to Katyal, the procedural posture was unsuitable for the Court’s review.

RESPA News previously interviewed attorneys **Mitchel Kider**, a managing partner with Weiner Brodsky Sidman Kider PC, **Howard Lax**, a corporate law attorney with Lipson, Neilson, Cole, Seltzer & Garin PC, and **Jonathan Cannon**, an associate with Buckley Sandler, to get their opinions on the case. They believed it was unlikely the Court would review the case.

Cannon thought the case was not ripe for review. The fact that the 3rd, 6th and 9th circuits have all found in a similar manner made it less likely that the Court would grant certiorari, he said.

“Generally, what the Court looks for is unsettled questions of law, circuit splits and cases that are clearly ripe for review. The Supreme Court as the final arbiter on these [types of issues] doesn’t like to look at things until it’s really ready,” Cannon said. “But the *certiorari* process is mercurial. There is a certain amount of subjectivity that goes into it.”

Cannon said at that time that he wouldn’t be shocked if the Court

had taken the case, but he would be surprised.

“This is obviously a very important issue in the industry with the potential liability and the uncertainty that this issue can present,” Cannon said. “I know a lot of people are working hard to get it in front of the Court.”

Kider and Lax agreed that the Court would not likely grant review for reasons similar to those set forth by the solicitor general.

“I have been following the case of *First American v. Edwards*, and I understand what the solicitor general is saying,” Kider said. “This is a case that basically pertains to the issue of whether or not one must show actual damages in order to get statutory damages under RESPA — statutory damages for an individual is three times of the amount of the settlement services charge.”

“What the solicitor general is basically saying ... is that this case isn’t necessarily ripe for the Supreme Court. The Supreme Court generally does not review cases unless there are split circuits,” Kider continued. “And what the 9th circuit did in this case really follows the 3rd Circuit Court of Appeals and the 6th Circuit Court of Appeals. So there is no split. To date, all of these circuit courts that have looked at this issue have determined that damages are not necessary. There are some district courts that have determined that damages are necessary in order to prove a RESPA claim, but they haven’t made their way up to the court of appeals yet.”

Lax agreed with the 9th Circuit’s analysis and decision.

“If the Supreme Court did take this case — to resolve the standing issues raised by the law professors — I think that the Court would uphold the court of appeals decision on the grounds that RESPA impliedly gives a person the right to negotiate and consummate a loan transaction that is free from the influence of referral fees, whether or not referral fees coincidentally result in higher fees charged to the borrower in that transaction,” Lax said. “Congress made a value judgment that referral fees increase costs for everyone. Hence, an analysis that one person pays the same fee as another, irrespective of the existence of a referral fee, is an inadequate analysis.”

The Court’s grant of review comes at a bit of a surprise in that the acting solicitor generally had advised the court to deny review, and the attorneys *RESPA News* spoke to believed the Court would not review the case. However, as Cannon noted, the Court’s decision whether or not to take a case is subjective. One cannot foresee what the Court will decide in any given matter. *RESPA News* will continue to bring you updates on this case.



ARE MORE CHANGES COMING TO RESPA?

On April 14, Rep. **Maxine Waters** (D-Ca) introduced a bill in the U.S. House of Representatives that will amend RESPA.

HR 1567, titled “Foreclosure Prevention and Sound Mortgage Servicing Act of 2011,” would amend RESPA to “require mortgagees for mortgages in default, to engage in reasonable loss mitigation activities.”

If passed, the new bill would amend RESPA to require that mortgagees engage in reasonable loss mitigation that provides for: 1) long-term affordability of the loan; and 2) maximum retention of home equity.

According to the bill, senior lien holders will have the primary responsibility for loss mitigation and subordinate lien holders are prohibited from interfering with any modifications to the loan.

The bill would prohibit a foreclosure if the mortgagee or servicer failed to first take loss mitigation procedures. In determining which procedures the mortgagee or servicer will take, it should consider the nature of the financial hardship. The bill mandates temporary hardships are treated differently than long-term hardships. Foreclosure proceedings may not be initiated while the mortgagee or servicer is simultaneously providing loss mitigation procedures, and fees may not be assessed for loss mitigation procedures.

Loss mitigation procedures are broken up into priority, secondary and last-resort mitigation activities. They include:

- ▶ Alteration of loan terms;
- ▶ Short refinancing of loan;
- ▶ Waiver of fees;
- ▶ Establishment of a repayment plan;
- ▶ Forbearance;
- ▶ Short sale of the property;
- ▶ Assumption of the loan obligation by a third party;
- ▶ Cancellation or postponement of foreclosure proceedings; and
- ▶ Acquisition of the property by the mortgagee or servicer by “deed in lieu of foreclosure.”

The long-term affordability of the loan is an item that will be reviewed when determining if a servicer or mortgagee provided adequate loss mitigation procedures. Factors such as, the affordability of scheduled payments and whether the loss mitigation procedures are in the best financial interest of the borrower will be taken into consideration.

Mortgagees and servicers may deny loss mitigation services to borrowers. However, the bill mandates that an explanation of denial must be sent to the borrower.

The bill makes the borrower’s access to the mortgagee or servicer a priority. Under the proposed bill, mortgagees or servicers will be required to provide the borrower with a toll-free telephone number that provides direct access to a person who can access account information, answer the borrower’s questions and resolve issues.

Waiver of rights is not allowed under the bill. Mortgagees or servicers will be prohibited from requiring a borrower to waive his or her rights as a condition of accepting an offer to provide loss mitigation services.

The proposed bill mandates federal oversight.

The servicer or mortgagee will be required to forward the borrower’s contact information to a housing counseling agency approved by the U.S. Department of Housing and Urban Development, if the borrower is more than 60 days late on a payment.

They will also be required to report loss mitigation activities monthly to the Comptroller of the Currency and the Federal Reserve Board.

The bill was referred to the House Committee on Financial Services on April 14. *RESPA News* will monitor the bill’s movement and provide regular updates.

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CFPB

PRESIDENT CHOOSES CONSUMER FINANCIAL PROTECTION BUREAU DIRECTOR

The Consumer Financial Protection Bureau (CFPB) is open for business, and **President Obama** has finally chosen **Richard Cordray** as the CFPB's new director.

There has been much speculation in the last couple of months about who President Obama would tap as the CFPB director. Some thought **Elizabeth Warren**, special advisory to the Secretary of the Treasury for the CFPB was a good choice. But others said she would not make it through Senate confirmation. More recently, **Raj Date**, the associate director for Research, Markets and Regulation at the CFPB, was being talked about as a possible candidate.

In a release sent out July 17, President Obama commented on his choice to tap Cordray for the director position.

"American families and consumers bore the brunt of the financial crisis and are still struggling in its aftermath to find jobs, stay in their homes and make ends meet," Obama said. "That is why I fought so hard to pass reforms to fix the financial system and put in place the strongest consumer protections in our nation's history. Richard Cordray has spent his career advocating for middle class families, from his tenure as Ohio's attorney general, to his most recent role as heading up the enforcement division at the CFPB and looking out for ordinary people in our financial system."

"I also want to thank Elizabeth Warren not only for her extraordinary work standing up the new agency over the past year, but also for her many years of impassioned leadership, and her fierce defense of a simple idea: ordinary people deserve to be treated fairly and honestly in their financial dealings. This agency was Elizabeth's idea, and through sheer force of will, intelligence, and a bottomless well of energy, she has made, and will continue to make, a profound and positive difference for our country."

Title X, Section 1011 of the Dodd-Frank Wall Street Reform and Consumer Protection Act mandates the leadership structure of the CFPB. According to that section, the bureau will be headed by a director who is appointed by the President with the advice and consent of the Senate.

The director will serve a term of five years and may continue to serve after that term has expired until a successor has been named. The President may remove the director for certain reasons such as neglect of duty and malfeasance in office.

The one-person directorship has been a point of controversy for legislators with some arguing that there should be a board of directors, rather than leaving one person in charge.

RESPA News spoke to attorneys **Howard Lax**, a corporate law attorney with Lipson, Neilson, Cole, Seltzer & Garin PC,

Jeffrey Arouh, a partner with Holland and Knight LLP and **Christine Edwards**, a partner with Winson & Strawn LLP about Obama's pick.

"I think that he is potentially confirmable — if the Republicans in the Senate ever give up on the idea of stripping the agency of money and authority," Lax said. "He is also in enforcement, which is going to be a significant responsibility of the CFPB. We had too little enforcement in past years against criminals who infiltrated this industry. Hopefully, CFPB will spend a

significant amount of time going after those who disregard the rules, and help those who try to follow the rules."

Edwards said Cordray was a logical choice, but that his focus on enforcement may have a negative impact on what the CFPB has set out to do.

"Richard Cordray was not only a logical choice, but the timing of the announcement was fairly predictable," Edwards said. "Cordray has national prominence with experience running an organization — setting direction, pursuing a strategy and executing goals. He is a good political choice for the President since Cordray reflects the party's base of support. Unfortunately for the industry, Cordray's selection is akin to jumping from the frying pan into the guillotine. Unless he substantially changes his stripes, his focus on enforcement, enforcement, enforcement will change the bureau's course — from consumer advocacy and protection into another 'after the fact' federal enforcement agency. The industry will need to work with the CFPB to try to

"Richard Cordray has spent his career advocating for middle class families, from his tenure as Ohio's attorney general, to his most recent role as heading up the enforcement division at the CFPB and looking out for ordinary people in our financial system."
 —President Barack Obama



make sure that does not happen.”

Arouh agreed that Cordray is a good choice. He also commented that Cordray will likely be a tough enforcer.

“Mr. Cordray is known to be extremely intelligent. He is, based on his history, very pro-consumer,” Arouh said. “He leaves open the question of how he is going to approach the office. I think that he will be a strict enforcer of the law, consistent with the manner in which he functioned as the attorney general of the state of Ohio. I think that the real issue is whether he is going to fairly balance the issues and interests of the consumers with those of the businesses that are serving the consumers. I think that it’s still an open question, and it is one that we will presumably, with the passage of time, get an answer to.”

No one can say for sure at this moment if Cordray will make it through Senate confirmation or how easily the process will go. Arouh believes Cordray’s background should help him get through the confirmation process.

“He’s got all the credentials and one would think that’s the kind of person that Congress would want in a position like this,” Arouh commented.

Currently, Cordray is serving as chief of enforcement at the

CFPB. Immediately prior, Cordray served as attorney general of Ohio from January 2009 to January 2011. As attorney general, Cordray recovered more than \$2 billion for Ohio’s retirees, investors and business owners and took major steps to help protect its consumers from fraudulent foreclosures and financial predators. Prior to his tenure as Ohio’s attorney general, Cordray spent two years as Ohio’s state treasurer and four as the treasurer of Franklin County, Ohio. In 2008, he received a Financial Services Champion award from the U.S. Small Business Administration and a Government Service Award from NeighborWorks America. In 2005, he was named “County Leader of the Year” by *American City & County Magazine*.

Earlier in his career, Cordray was an adjunct professor at the Ohio State University College of Law (1989-2002), served as a state representative for the 33rd Ohio House District (1991-1993), was the first solicitor general in Ohio’s history (1993-1994), and was a sole practitioner and of counsel to Kirkland & Ellis (1995-2007). Cordray has argued seven cases before the U.S. Supreme Court, including by special appointment of both the Clinton and Bush Justice Departments. Cordray is a graduate of Michigan State University, Oxford University, and the University of Chicago Law School. He was editor-in-chief of the University of Chicago Law Review and later clerked for U.S. Supreme Court Justices **Byron White** and **Anthony Kennedy**.

Case Law

COURT REVERSES DECISION THAT ATTORNEY’S FEES CONSTITUTE DAMAGES IN RESPA CASE

A borrower sued his loan servicer under RESPA for failing to adequately reply to his qualified written request (QWR). The servicer requested the court dismiss the RESPA claims because it claimed it did reply to the QWR and that the borrower could not allege actual or statutory damages. The court originally denied the servicer’s motion to dismiss, because it found the borrower might be entitled to the attorney’s fees he paid while attempting to contact Countrywide regarding his account. However, the court later determined that the attorney’s fees were collected before the alleged RESPA violation had occurred. Thus, the court granted the servicer’s motion to dismiss because the borrower failed to claim actual damages as a result of a RESPA violation.

Heard in the U.S. District Court, Northern District of California, the case is *Norlito Soriano v. Countrywide Home Loans Inc., Solidhomes Funding, Manuel Chavez, Mark Flores, Solidhomes Entrepreneurs Inc., Bank of America Corp., and Does 5-100* (No. 09-CV-02415-LHK).

Norlito Soriano executed a promissory note from Alliance Bancorp in November 2006 in order to refinance his residential property. He alleged that he did not read his loan documents before signing them, but rather, relied on representations made by the real estate agents.

In March 2007, Soriano noticed issues with his account. He contacted Countrywide Home Loans Inc. by writing questions to Countrywide on his payment coupon. He inquired as to why his account number had changed and why his account showed no activity for that month. Countrywide responded to his inquiry in a letter and answered each of his questions.

On Sept. 20, 2007, Soriano’s attorney sent a letter to Countrywide stating that Soriano believed there had been an error in the servicing of his account. Countrywide allegedly failed to respond substantively to the letter. However, it did reply to Soriano’s attorney requesting proof that Soriano had consented for Countrywide to speak to the attorney. Soriano’s

Continued on page 8



Case Law

PLAINTIFF BASES ACTUAL DAMAGES ON LAWSUIT FEES

A borrower alleged that her mortgage loan servicers failed to respond to her qualified written request (QWR) in violation of RESPA. She based her actual damages on the cost of filing a lawsuit against her servicers. The defendants argued that the borrower failed to show actual damages. The court agreed with the defendants, finding that lawsuit filing fees cannot be the basis for actual damages for a RESPA claim.

Heard in the U.S. District Court, Eastern District of Michigan, the case is *Tracey Kevelighan, Kevin Kevelighan, Jamie Leigh Compton, Jamie Lynn Compton and Kevin Kleinhans v. Trott and Trott PC; Orlans Associates PC; America's Servicing Co.; Deutsche Bank National Trust Co.; Mortgage Electronic Registration Systems Inc.; Webster Bank N.A.; Fannie Mae; First Horizon Home Loans, aka First Tennessee Bank N.A., aka Metlife Home Loans, aka First Horizon Asset Securities Inc.; Bank of New York; U.S. Bank Home Mortgage; Wells Fargo Home Mortgage, and HSBC Mortgage Corp.*, (No. 09-12543-CV).

This case was filed on June 29, 2009. A 145 page amended complaint was filed on Oct. 27, 2009, which named 40 plaintiff and defendant sub-classes. The plaintiffs alleged multiple facts and allegations.

The facts concerning the plaintiffs' allegation of a RESPA violation pertain to plaintiff **Tracey Kevelighan's** purchase of a residential home in March 2006. Kevelighan obtained a mortgage loan from WMC Mortgage Corp. Wells Fargo and America's Servicing Co. (ASC) were the purported servicers of the mortgage loan.

According to the court, Kevelighan failed to pay property taxes in July 2006, December 2006 and July 2007. ASC allegedly sent Kevelighan multiple notices indicating that the taxes had not been paid. The court said Kevelighan stopped making payments on the loan in April 2008, and ASC's foreclosure counsel, Orlans Associates PC sent her a letter indicating that ASC was accelerating the loan and foreclosure proceedings would commence soon.

Trott and Trott then replaced Orlans as ACS's foreclosure counsel, and the firm sent Kevelighan a letter in April 2009 indicating ASC asked it to commence foreclosure proceedings.

Through her counsel, Kevelighan sent a letter to ASC, Trott and Wells Fargo. The letter allegedly included a QWR. In her letter Kevelighan requested copies of: 1) the original signed note; 2) the pooling and servicing agreement; 3) any sub-servicing agreements; 4) an itemization of all advances made in connection with the loan; and 5) the initial escrow disclosure

that her lender alleged she was provided with.

On May 8, 2009, Trott sent a reinstatement quote to Kevelighan indicating that she could reinstate her loan by paying \$65,953.10.

Kevelighan claimed ASC and Wells Fargo failed to adequately respond to her QWR in violation of RESPA Section 6. She did not indicate that there had been a pattern or practice of noncompliance with the requirements of RESPA Section 6, which would allow for statutory damages. "Where, as here, the plaintiff has not alleged a pattern or practice of noncompliance, the remedy is limited to 'actual damages suffered by the borrower as a result of the failure,'" said District Judge Patrick Duggan in the court's opinion on May 26.

ASC and Wells Fargo argued Kevelighan did not have a valid RESPA claim because she failed to show actual damages.

"At the hearing, Kevelighan's counsel argued that because this litigation arose from the lenders' failure to respond to her written request, the costs of filing this action constitute actual damages," Duggan said. "Courts applying 12 U.S.C. Section 2605(f) have rejected this argument. Allowing the costs of filing suit to satisfy the actual damages requirement of Section 2605(f) would render the phrase 'as a result of the failure' superfluous, as a borrower would incur such damages simply by filing her action. Because the costs of this action do not constitute damages under Section 2605(f), Kevelighan's claim fails. A plaintiff asserting a claim under Section 2605(f) must allege that she was actually harmed by the RESPA violation."

Duggan also noted that even if such damages were adequate, he did not believe it was clear that the costs of the suit were attributable to the alleged RESPA violation.

"A review of the amended complaint demonstrates that [the] plaintiffs filed this suit in response to actions taken by their lenders, including the payment of property taxes and the initiation of foreclosure proceedings," Duggan said. "These actions appear to be unrelated to Kevelighan's request, which sought copies of loan agreements, an itemization of advances, and a copy of an escrow disclosure statement. Thus, any portion of the costs of this suit attributable to Kevelighan's RESPA claim appears to be immaterial."

Duggan granted the Wells Fargo, ASC and First Horizon's motion for summary judgment.



RESPA TRANSITION TO THE CFPB

The Consumer Financial Protection Bureau (CFPB) has taken over the U.S. Department of Housing and Urban Development’s (HUD) RESPA regulatory power.

Teresa Payne, associate deputy assistant secretary for Regulatory Affairs at HUD, recently testified before the House Committee on Financial Services Subcommittee on Insurance, Housing and Community Opportunity about the status of RESPA regulation at HUD and the transfer of powers.

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act set up the CFPB. The bureau, which will be housed in the Federal Reserve System, will oversee RESPA, the Truth in Lending Act (TILA) and numerous other statutes, placing the regulatory authority of all of the consumer financial statutes under one roof.

Current status of RESPA at HUD

Payne spoke to the subcommittee about HUD’s current RESPA investigations and regulatory actions over the past year.

“During 2010 and 2011, the RESPA complaint caseload has been extremely heavy,” Payne said. “More than 1,500 cases were opened in the last 18 months. Moreover, the office’s increased caseload led to increased enforcement activity, which has in turn involved greater coordination with state regulators to share information about real estate settlement practices and regulatory compliance.”

Payne said the RESPA office has been working with the Department of Justice and HUD’s Office of Inspector General in its investigations and enforcement actions.

She noted HUD issued a regulation in November 2008 that established a standard Good Faith Estimate (GFE) along with a revised HUD-1 Settlement Statement. The regulation, which was implemented on Jan. 1, 2010, established tolerance ranges that were required for RESPA compliance. HUD also established a new compliance guidance regimen, RESPA educational videos and a settlement cost booklet that must be delivered to the borrower.

According to Payne, the RESPA office “answered more than 15,000 emails and handled more than 4,700 phone inquiries in 2010 and 2011.”

Transition to CFPB

Payne said she will be moving to the CFPB along with other

HUD employees. “The transition of personnel currently has 37 HUD staff slated to become CFPB employees by July 31,” she said.

She explained the process of regulating RESPA within the CFPB will be different than the current process in HUD’s RESPA office.

“I would note that under the terms of Dodd-Frank, RESPA is merely one of 18 statutory authorities that will transfer to the CFPB,” Payne said. “This point is significant. Although the Office of RESPA at HUD currently handles all aspects of the statute — consumer in-take, industry questions, investigations and enforcement actions, [Freedom of Information Act] requests and Congressional inquiries — these functions and related HUD personnel will be dispersed throughout the CFPB. Specifically, HUD staff members will be placed in CFPB’s Office of Consumer Response, the Office of Enforcement, Rulemaking, the Office of General Counsel, Consumer Education and External Affairs. Thus, there will be a shift from a subject matter-based approach to RESPA at HUD, to a more functionally defined approach to RESPA at the CFPB.”

There have been complaints in the past that HUD and the Federal Reserve have not worked together when issuing RESPA and TILA regulations. This caused confusion for both consumers and those in the industry. Payne’s testimony made it seem as though that confusion could be a thing of the past because the CFPB will be making regulations based on an understanding of multiple statutes.

“For instance, mortgage loans may require the simultaneous understand of RESPA, TILA and the Fair Credit Reporting Act (FCRA) for a rulemaking, an enforcement action or simply an inquiry from a stakeholder,” Payne explained.

With the transition only days away, the fluidity of the transfer of power and the changes in regulatory action remain to be seen.

R E S P A ★ tips

“If a borrower requests a change to the mortgage loan identified in a GFE and that request will change the terms of the loan, the loan originator may provide a revised GFE to the borrower.” — From the Department of Housing and Urban Development’s RESPA final rule FAQs



Case Law (Continued from page 5)

attorney again sent a letter to Countrywide requesting a response to the original QWR and providing an authorization from Soriano for the attorney to discuss the loan account with Countrywide.

Countrywide responded with a letter providing a phone number for Soriano to call with his questions.

Soriano filed a lawsuit against multiple defendants including Countrywide for violations of RESPA, California's Unfair Competition Law and the Truth in Lending Act (TILA).

Countrywide filed a motion to dismiss Soriano's claims. The company argued that his RESPA claims should be dismissed because it did respond to his QWR. Furthermore, Countrywide argued that Soriano is not entitled to actual or statutory damages.

Under RESPA, a loan servicer must acknowledge a QWR within 20 days and provide a substantive response within 60 days.

On April 11, District Judge Lucy Koh found that the letter Soriano's attorney sent to Countrywide was a QWR and that

Countrywide failed to adequately respond.

According to Koh, an adequate response includes: 1) correcting the account and providing the borrower with a written response; 2) providing the borrower with a written explanation as to why the servicer believes the account to be correct; and 3) providing the borrower with the information requested or an explanation why it cannot do so.

"The evidence of record shows that no such explanation or clarification was provided to the plaintiff. Instead, the defendants' final response, upon receiving authorization to release the loan documents, merely provided a phone number for the plaintiff to call," said Koh. "This response is insufficient under RESPA."

Koh then reviewed Countrywide's claim that Soriano had not proven actual or statutory damages.

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