



September 1, 2010

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW.
Room 10276
Washington, DC 20410-0500

***Re: Real Estate Settlement Procedures Act (RESPA): Strengthening and Clarifying
RESPA's "Required Use" Prohibition Advance Notice of Proposed Rulemaking
(Docket Number FR-5352-A-01)***

Dear Sir or Madam:

The American Land Title Association ("ALTA") appreciates this opportunity to comment on the above referenced Advanced Notice of Proposed Rulemaking. We support the U.S. Department of Housing and Urban Development's (HUD) efforts to strengthen and clarify the Real Estate Settlement Procedures Act's (RESPA) "Required Use" prohibition. Consumers and industry stakeholders benefit from a level playing field and we congratulate HUD for studying how to create clearer guidance and enforcement on this subject.

I write today on behalf of the more than 3,700 member companies of the American Land Title Association (ALTA). Founded in 1907, ALTA is the national trade association and voice of the real estate settlement services, abstract and title insurance industry. With more than 8,000 offices throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstracters, title searchers and attorneys, ranging from small, one-county operations, to large, national title insurers.

Questions and legal challenges over the "required use" prohibition are a direct result of unclear definitions and enforcement, which have prevented HUD from ensuring there is a competitive marketplace and that consumers have the information necessary to make informed settlement services choices.

Our experience in implementing the new RESPA rule shows the value of clear guidance and strong enforcement. Implementation of the new RESPA rule has revealed a number of gaps in guidance resulting in conflicting interpretations of "acceptable" practices. Conflicting interpretations have made it difficult for market participants to determine if they were in

compliance or to achieve an accepted uniformity of process. If conflicting interpretations of the “required use” prohibition are not prevented, market variations will erode the efficacy and intent of improvements to the rule.

Any rulemaking HUD conducts should offer clear guidance to market participants so that the intent of rulemakings is fully understood and not misinterpreted. We encourage HUD to draft “required use” guidance which ensures that 1) consumers benefit, 2) industry participants receive clear guidance on prohibited practices, 3) timely enforcement is in place to protect consumers and provide the market certainty that practices are acceptable, and 4) regulation provides a level, competitive playing field for all settlement service providers.

Ensuring consumers benefit

As noted in the ANPR, beneficial incentives can be offered, and it will be important for HUD’s revised “required use” prohibition to prevent any abusive incentive schemes, but not prevent any beneficial discounts or packages, which otherwise comply with state law, from reaching consumers. Incentives that are consistent with state law, genuinely lower costs for consumers and provide a tangible net benefit to the consumer should not be prohibited. At the same time, opaque “deals” which make it difficult for consumers to choose a better value and that hide increased settlement services and mortgage costs behind lower-valued benefits, should be prohibited.

Finally, consumers should have access to information that accurately represents the value of any incentives they are offered, as well as any offsetting cost. This allows consumers to effectively shop for settlement services by helping them make informed decisions, and prohibits any benefit, financial or otherwise, from reaching those in the position to advise or steer the consumer’s choice.

Providing market certainty through clear guidance

It is especially important that any changes to the “required use” prohibition include clear, understandable direction about what are and are not acceptable market practices. We encourage HUD to definitively explain which practices, affiliations, and incentives are prohibited through written, formal guidance and by maintaining open lines of communication throughout implementation of a new rule. Market participants can properly design their practices only when they have the information necessary to comply with the regulation and understand what is expected of them.

Providing market certainty through swift enforcement

In addition to educating market participants about any new or revised rule, HUD can also guide the marketplace through swift enforcement proceedings. These actions provide certainty to the market, assuring participants that they are acting in accordance with the regulation. By justly punishing bad actors, HUD can broadcast expectations to industry participants to encourage proper compliance with the regulation. This will enhance consumer protection and prevent problematic practices from being introduced to the marketplace.

Creating a level playing field

RESPA's purpose is to provide consumers with timely information regarding settlement costs, and to provide consumers with the costs and benefits of incentives they are offered in order to allow them to make informed settlement service choices. At the same time, non-affiliated market participants can effectively offer a variety of services to consumers only when they are provided a level playing field in which to compete, including prohibition of efforts by affiliate participants to prevent or restrict consumer access to such choices.

It is our sincere hope that HUD actively supports the objectives we have laid out. By adopting the measures outlined above, a revised "required use" rule can benefit consumers and the industry participants. ALTA and its members appreciate the opportunity to comment on the Advanced Notice of Proposed Rulemaking, and would welcome the opportunity to further work with HUD to address these important public policy concerns. Please feel free to contact me with any questions at (202) 296-3671.

Sincerely,

A handwritten signature in blue ink that reads "Kurt Pfothauer" followed by a horizontal line.

Kurt Pfothauer
Chief Executive Officer