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October 27, 2011

Via Electronic Mail

Jim Bruggenschmidt
jamesbrugg@gmail.com

Re: Request for Legal Representation

Dear Mr. Bruggenschmidt:

Thank you for talking with us on October 14, 2011, and inviting us to represent you in any action you may have regarding your potential predatory lending matter. We now write to decline your offer of legal representation at this time.

At your request, we reviewed the Real Estate Settlement Procedures Act (RESPA) and conducted research on the following issues: (1) the practice of lenders paying mortgage brokers in the form of Yield Spread Premiums (YSPs), and (2) the issue of whether such fees may be unlawful. Section 2607 of RESPA prohibits the giving or receiving of "any portion, split or percentage of any charge made or received for the rendering of a settlement services in connection with a transaction involving a federally related mortgage loan other than for services performed." The regulations further state that, "a charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section."

Recently, the Seventh Circuit issued a decision holding that a fee for which no service was performed does not violate section 2607(b) unless the unearned fee is shared with a third party. *Echevarria v. Chicago Title & Trust Co.*, 256 F. 3d 623 (7th Cir. 2001). However, following the *Echevarria* decision, HUD issued a policy statement clarifying its interpretation of Section 2607(b) in which it stated, "HUD believes that Section 8(b) [12 U.S.C. § 2607(b)] of the statute and the legislative history make clear that no person is allowed to receive any portion of charges for settlement services, except for services actually performed." 66 Fed. Reg. 53052, 53058. Thus, if any payment by the lender to the broker is not for the reasonable value of services actually performed, the payment might be in violation of Section 2607 of RESPA.

While there is a private right of action for violation of section 2607 for illegal referral fees or kickback and fee splitting, all rights of action under RESPA are governed by strictly



enforced filing deadlines. According to Section 2614 of RESPA, any action pursuant to section 2607 may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years of the date of the alleged occurrence. During our phone conversation, you stated that your real estate transaction involving YSPs in excess of \$1,900.00 occurred in 2004. Because your transaction occurred over 3 years ago, the statute of limitations period has run and any claim under RESPA for your transaction in 2004 would be barred.

We would like to caution you that any credit or lending claims you may be contemplating are governed by very strictly enforced time deadlines. While we are unable to assist you in this matter, if you ever need our services in the future, please do not hesitate to call.

We appreciate you contacting our firm and wish you good luck.

Sincerely,

McNEELY, STEPHENSON,
THOPY & HARROLD

A handwritten signature in cursive script, appearing to read "Jody M. Butts".

Jody M. Butts