Maryland AG and CFPB Announce Action Against Alleged Mortgage Kickback Scheme

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Section 1042(a) of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (CFPA) empowers state Attorneys General (AGs) to bring civil actions to enforce federal consumer law against any person offering consumer financial products or services, defined as ?covered persons? under 12 U.S.C. § 5481(6), as well as depository institutions whose assets fall below the Consumer Financial Protection Bureau?s (CFPB?s) $10 billion direct supervision threshold, previously referenced in two Williams Mullen alerts, **State AGs and Regulators Step Up UDAAP Enforcement** and **CFPB, Virginia Attorney General Target Payday and Auto Title Lenders**.

On April 29, 2015, the Maryland AG exercised this authority by joining with the CFPB to file a complaint against now defunct Genuine Title, LLC, along with several individual executives and loan officers, for violating the federal Real Estate Settlement Procedures Act?s (RESPA?s) prohibition against giving or accepting a ?fee, kickback, or thing of value? in exchange for a referral of real estate settlement business. 12 U.S.C. § 2607(a).

The action is noteworthy for a number of reasons. First, while RESPA?s statute of limitations for an enforcement action by a state AG is three years from the date of the alleged violation, 12 U.S.C. § 2614, the Complaint seeks an injunction, damages, and other penalties based on alleged violations occurring between 2009 and 2013. Second, the Complaint defines ?financial services? as including Genuine Title?s provision of real estate settlement services to consumers. Third, the Complaint defines ?covered persons? to include individual executives of Genuine Title, along with loan officers involved in the alleged kickback scheme.

According to the Complaint, Genuine Title created a ?pay to play scheme? by providing marketing services, including customer leads and direct mail, along with cash payments ranging from $175 to $800, to loan officers who then referred their refinance customers back to Genuine Title for closings.

On the same day as the Complaint, five of the six individual defendants filed proposed consent orders which, if entered, would require a total payment of $662,500 and prohibit them from participating in the mortgage industry in any capacity for time periods ranging from 2 to 5 years. Given recent enforcement activities by the Virginia and North Carolina AGs, referenced in a Williams Mullen alert **here**, relationships between settlement companies and loan officers in these states could face increased scrutiny.

Copies of the April 29, 2015, Maryland AG complaint and consent orders are available **here**.

Related People

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