

PUBLICATION

RESPA Following Freeman v. Quicken Loans, Inc.

July 14, 2011

The Real Estate Settlement Procedures Act (RESPA) prohibits "a fee for which no correlative service is performed."¹ In a recent suit against Quicken Loans, Inc., the United States Fifth Circuit recently joined those circuits that require any unearned fees must be split with another party in order to violate RESPA.

Plaintiffs sued Quicken Loans, Inc., their mortgage lender, claiming it charged discount/origination fees that were unearned and therefore illegal under §2607(b). Quicken argued in a motion for summary judgment that the fees were not split with another party and as a consequence, no RESPA violation was possible whether or not these fees were unearned. While HUD's position as the RESPA enforcement agency has been that unearned fees are prohibited by RESPA regardless of whether or not split with another party, the District Court agreed with Quicken and dismissed plaintiffs' claims.

Affirming the lower court, the Fifth Circuit held that §2607 is an "anti-kickback" statute, as opposed to an "anti-gouging" statute, that undivided unearned fees are not kickbacks, and that RESPA does not cover them. The court studied the explicit words of §2607(b) and found the statute unambiguously "does not cover undivided unearned fees." Accordingly, the contradicting HUD policy was given no deference.

1. 12 U.S.C. §2607(b)