



Issue: 2010-2

February 2010

Greetings!

- We are extremely excited to inform you that Geraci Law Firm's monthly newsletter will resume! First and foremost, we would like to introduce our newest addition to Geraci Law Firm, Sabine Wromar.
- In this month's issue, we touch upon the changes to RESPA and TILA that affect us? Mortgage brokers be aware of the changes that may put your business at risk. We will list factors to consider prior to filling out a RESPA form.
- Are you complying with the Federal Trade Commission's Red Flag Rule? If you're not, you could be fined up to \$3,500 for EACH INDIVIDUAL VIOLATION. We will prepare your Red Flags Rule plan for \$595 per branch office. See below for more details on the Red Flags Rule.
- Christina Geraci during a 3 week jury trial, won \$237,750 in actual and punitive damages, plus \$117,000 in attorney fees for an 88 year old victim of elder abuse. Read the full in article here as was published in the Daily Journal on our website.
- Anthony Geraci, Corporate Counsel for the National Hard Money Association, will be a featured speaker at their national event on March 10-12, 2010 in Las Vegas at Caesar's Palace. He will discuss the ever changing regulations that mortgage lenders need to know, including Truth-in-Lending Act, RESPA and SAFE Act.
- Geraci Law Firm would like to invite all readers and family and friends of readers to attend a free seminar on investing in private securities, self-directed IRA's, and forming trusts and LLC's to protect your assets!
- Remember our Corporation Formation department offers an entity formation package that ensures a 100% satisfaction guaranteed experience!

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Geraci Law Firm welcomes Sabine Wromar!

Sabine obtained her Bachelor of Arts degree at University of California, Santa Barbara and finished her Juris Doctor degree at Western State University College of Law. While at law school she received the American Jurisprudence Award.

Prior to joining Geraci Law Firm, Sabine Wromar served as in-house counsel for Ameriquest Mortgage Company, a residential mortgage lender that operated nationwide, from 1997 to 2007 where she specialized in regulatory compliance.

Sabine has extensive experience in state and Federal regulatory

compliance as it relates to retail and wholesale residential mortgage lending. In addition, she is knowledgeable in real estate law, settlement of claims and disputes, and loan modification.

RESPA FAQs

By Anthony F. Geraci

This is probably one of the most challenging times to lend money for mortgage lenders as newer laws come down the pipe every month. Below are some of the compliance questions we regularly answer and hope to provide you in an easy-to-read question and answer format.

TOP FIVE COMPLIANCE QUESTIONS ON RESPA

1. **Are my origination fees fixed?** Under the new RESPA changes, there is a "zero tolerance" policy for changes to the origination fees. In the past (pre-2010), origination fees used to mean just that, origination fees. Lenders used to be able to charge a separate processing fee, wire fee, etc. In today's regulatory landscape, that is not possible.

2. **You mean I can never change any fees once I give the GFE?** You can re-disclose a GFE only if there are "changed circumstances." What are those? I am glad you asked. Valid reasons for changed circumstances include: (a) information relied upon particular to the borrower was relied on in providing the GFE was inaccurate or changes in the Borrower's credit, the amount of the loan, the appraised value of the property, or other information used to provide the GFE; (b) discovered environmental problems, boundary disputes, litigation, or the need for flood insurance; or (c) acts of god, war, or disaster (such as hurricanes, flooding etc). "Changed circumstances" does not include the borrower's monthly income, property address, value of the property, mortgage loan amount, or market price fluctuations.

3. **When do I have to give the Good Faith Estimate?** The GFE has to be delivered to the consumer within 3 business days of receipt of an application. What is an application? I am sure you would respond by saying that the application is the 1003, or Universal Loan Application. It actually depends. An application is defined by RESPA as "the submission of a borrower's financial information in anticipation of a credit decision relating to a ... mortgage loan, which shall include: "(a) the borrower's name; (b) the borrower's monthly income; (c) the borrower's social security number to obtain a credit report; (d) the property address of the security for the loan; (e) an appraisal or other estimate of value for the security property, (f) the loan amount sought from the lender, and, of course, the catch-all of (f) any other information deemed necessary by the loan originator."

What does all that mean? Basically, if you have all of the above and enough information to quote the borrower a loan, you have 3 business days from that date to provide the good faith estimate.

4. **What if the Borrower just gave me their information and I wrote it down, but they have not executed the 1003?** The execution of the loan

application by the borrower is not a trigger. As soon as they have provided you the information, you must provide the good faith estimate.

Staying on top of the lending laws can be a full time job. If you have any questions regarding these laws, give us a call.

Red Flag Rule in Effect June 1, 2010. Are you prepared?

By Anthony F. Geraci

The Red Flags Rule was created by the Federal Trade Commission (FTC) to protect consumers from identity theft. After multiple postponements, the FTC has implemented the Red Flag Rule to be in effect June 1, 2010.

The Red Flags Rule makes it mandatory for all businesses which regularly participate in the decision to extend, renew, or continue credit (that means YOU!), including setting the terms of credit to develop and implement a written Identity Theft Prevention Program designed to prevent, detect and mitigate identity theft with regards to existing and new accounts. The Red Flag Rule also pertains to anyone who renders services for a consumer and then bills the consumer for the service at a later date, which includes, but is not limited to: attorneys, doctors, mortgage lenders and servicers.

In order to avoid regulatory enforcement actions (which include civil fines up to \$3,500.00 for each individual violation), a business must:

1. Identify the red flags which include, but is not limited to: credit report notices; addresses that are not consistent with other information; social security numbers which are on the death notice list; mail to a person that keeps getting returned to your business; and other things that are specific to the industry of your business
2. Create procedures for detecting the identified red flags in the day to day operations of your business
3. Create guidelines for the steps that need to be taken once a red flag is identified.
4. Create a policy on how and when the above steps will be revised.
5. Once a program is created in the previous steps, the Plan must be approved by the board of directors or appropriate committee of the board. If the business does not have a board of directors, then someone in senior management must approve the plan.

It is not enough to make sure that the policy is created. The business must appoint someone to oversee and ensure that the business is taking the appropriate steps in the Plan. **Each branch office** will need its own plan and accountable person.

The business must identify its potential red flags, create a plan, have the plan approved, have someone accountable for ensuring the plan is complied with and implement the plan by **June 1, 2010**.

We will prepare a Red Flags Rule package for \$595 per branch office and includes a powerpoint presentation on

how to train your employees regarding identifying potential red flags.

Free Seminar on Investing in Private Securities, Self- Directed IRA's, and Forming Trusts & LLC's to Protect Your Assets

Anthony and Christina Geraci will be hosting a seminar in conjunction with The Sun Group of Smith Barney Morgan Stanley, LLC. Come learn about the benefits of having an LLC, how private securities can make you money and the rules to investing with self-directed IRAs. This seminar is approved for CPE Credit and we are currently working to ensure DRE CE credit as well. This event is free of charge - lunch and parking will be provided. E-mail Jeanie Nguyen (jeanie.nguyen@geracilawfirm.com) or call her at (949) 379-2600 to reserve your seat today!

Need an Entity Formed or Registered Agent Services in 50 States? We Can Help You For as Little as \$300!

Geraci Law Firm has been providing corporate services since its inception. However, we recognize that corporate formation itself is a costly service that does not always require an attorney's input. Most people already know what type of entity they would like to form and do not need an attorney's advice. It is for those people that we have created the entity formation package for a mere **\$300 flat fee** plus filing fees!

Our entity formation package includes the following:

1. Articles of Organization / Incorporation in all 50 states
2. Ensure that the name you want to use is not taken in your state.
3. Resolution of the board of directors regarding your first minutes as a corporation
4. Custom Operating Agreement for your LLC or Limited Partnership Agreement for your LP
5. Employment Identification Number from the IRS
6. S-Corporation election or other applicable initial tax form filings with the IRS

Each package is backed by a 100% satisfaction guarantee and you have unlimited support by our Corporation Formation department. Should you need to speak with an attorney, attorneys are on staff to help you with your legal needs.

If you have any questions, contact Jeanie Nguyen, Geraci Law Firm's Director of Corporate Formation, at 949-379-2600, extension 1008 or email her at jeanie.nguyen@geracilawfirm.com.

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