

One Minute Memo[®]



The Fifth Circuit Holds That Lenders Cannot Be Held Vicariously Liable Under RESPA

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In a matter of first impression, the Fifth Circuit upheld a dismissal by the Northern District of Texas holding that a lender cannot be held vicariously liable for a loan servicer's purported violation of the Real Estate Settlement Procedures Act ("RESPA"). In upholding the decision, the Court held that the borrower failed to plead an agency relationship, and that, even if an agency relationship existed, the lender could not be held vicariously liable as a matter of law for the servicer's alleged failure to comply with RESPA. In reaching its decision, the Fifth Circuit relied upon a plain reading of RESPA, which imposes duties only on loan servicers and restricts liability to those who fail "to comply with any provision" of RESPA.

There is presently a split of authority nationally at the district court level as to the viability of the vicarious liability theory under RESPA. As always, we will continue to monitor and report on key developments in this area.

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