



Community Bankers Workshop



Consumer Compliance Supervisory Highlights



Scope of Discussion



Flood Insurance



RESPA Section 8



Recent Examination Issues



Flood Insurance



Flood Insurance: Final Rule

- **Effective July 1, 2019**
- **Key Provisions**

**Mandatory
acceptance of
private flood
insurance**

**Compliance aid
for mandatory
acceptance**

**Discretionary
acceptance**

**Coverage
provided by
mutual aid
societies**



Flood Insurance: Mandatory Acceptance

- **MUST accept if satisfies statutory definition of “private flood insurance”**

Insurer is licensed, admitted, or otherwise approved

Provides coverage “at least as broad” as Standard Flood Insurance Policy

Contains certain information and conditions



Flood Insurance: Surplus Lines

Nonresidential commercial property

- “recognized, or not disapproved”

Residential property

- “otherwise approved”

How to determine:

- Insurance regulator’s website
- NAIC’s Consumer Insurance Search
- NAIC’s Quarterly Listing of Alien Insurers



Flood Insurance: “At least as broad as”

Determination guidance

- Final rule
- Interagency examination procedures
 - (updates in process)

Comparison to SFIP

- Same type of property
- Version in effect as of date borrower provided private policy to lender



Flood Insurance: Compliance Aid

Assurance statement clause:

“This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”



Flood Insurance: Compliance Aid Scenario #1

A lender receives a policy that includes the assurance clause. However, the lender noticed that the policy has an unusually high deductible.



Flood Insurance: Compliance Aid Scenario #2

A bank establishes a policy of only accepting policies that include the assurance clause.

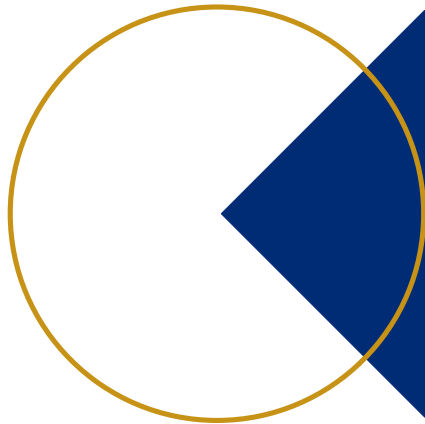


Flood Insurance: Compliance Aid Scenario #3

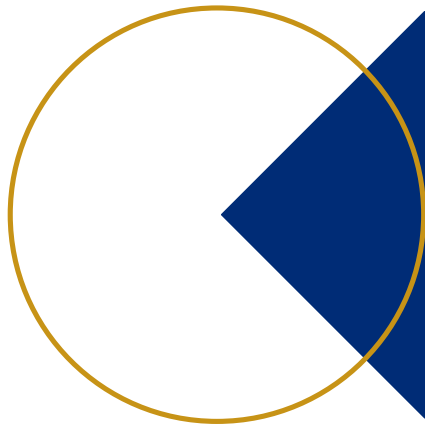
A lender receives a policy with an assurance clause that has language that is similar to, but not exactly the same, as the language in the regulation.



Flood Insurance: Discretionary Acceptance



MAY (but not required to) accept policies that do not meet the mandatory criteria, if certain conditions are met



“Sufficient protection” determination

- Factors to consider
- Documentation requirement



Flood Insurance: Compliance Aid Scenario #4

The lender receives a policy that does not contain the assurance clause and decides to review using the discretionary acceptance criteria instead of the mandatory acceptance criteria.



Flood Insurance: Mutual Aid Societies

MAY (but not required to) accept plans provided by mutual aid societies meeting certain requirements

Primary Federal Regulator must determine that plans qualify as flood insurance*

**FDIC is still evaluating how to implement this provision of the final rule*



Flood Insurance: Existing Policies

Review policies when they come up for renewal

If policy does not meet mandatory or discretionary criteria, notify borrower of insufficient insurance



Flood Insurance: Mitigating Risk

Update applicable policies, procedures, and systems

- Third-party providers

Training

Designate staff responsible for reviewing policies

Incorporate into monitoring and audit programs



Flood Insurance: Effective Date

- **“Closing” date = day ownership transfers**
- **“Wet funding” vs. “dry funding” states**
- **Nine “dry funding” states:**

Alaska

Arizona

California

Hawaii

Idaho

Nevada

New Mexico

Oregon

Washington



Flood Insurance: Contents Coverage

Contents coverage required:

- Security interest in building and contents
- Located in special flood hazard area
- Personal property/contents have insurable value

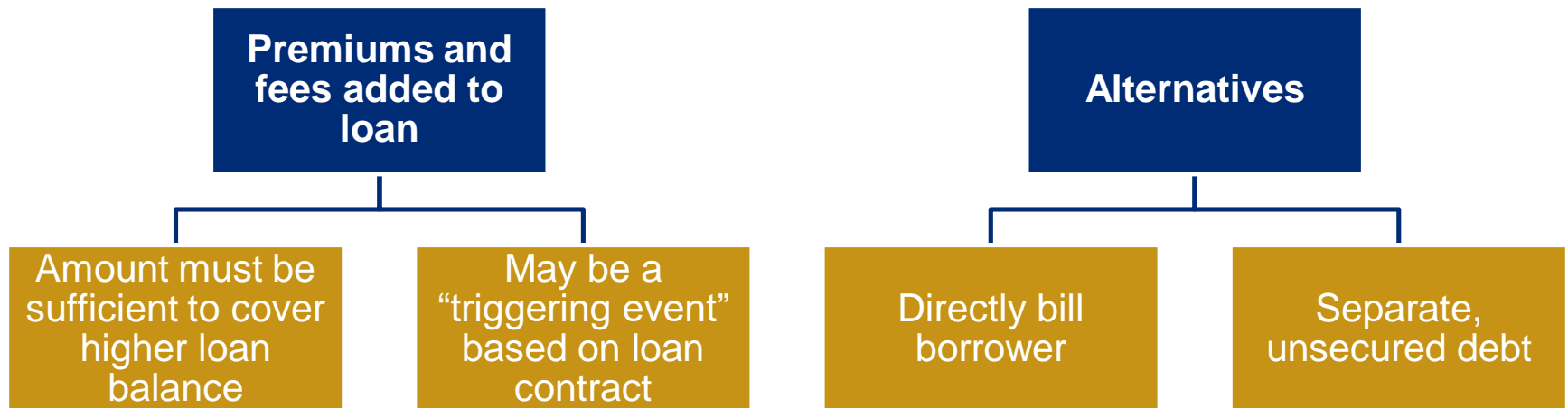
May be triggered based on:

- Language in mortgage instruments
- Cross-collateralization

Trigger is not based on whether security interest is perfected



Flood Insurance: Force Placed Premiums



RESPA Section 8



RESPA: Core Principles

Section 8(a)

- Thing of value
- Referral
- Agreement

Must involve a “federally related mortgage”



RESPA: Exam Considerations



Banks that originate mortgages

- Third-party relationships
- Marketing relationships
- Lead relationships

Banks that do not originate mortgages

- Referral relationships



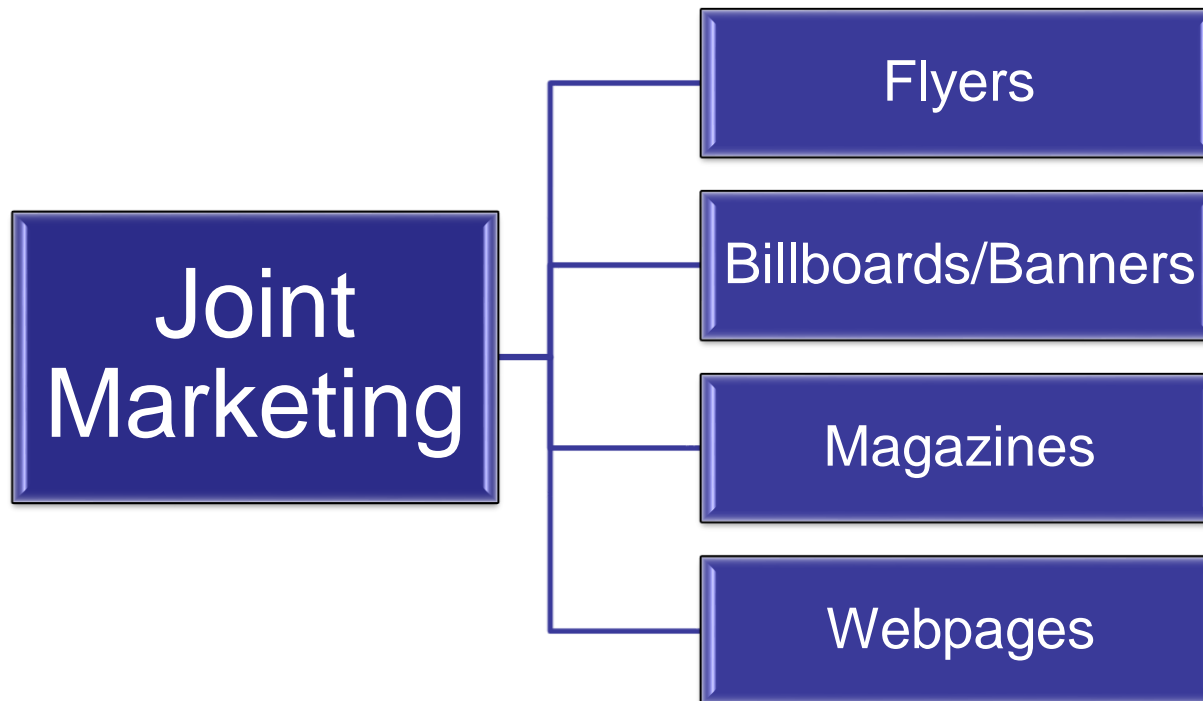
RESPA: Marketing

Marketing Services Agreements

Marketing done on behalf of another party

Joint Marketing

Collaborative marketing with another party



Market value for services/cannot defray costs

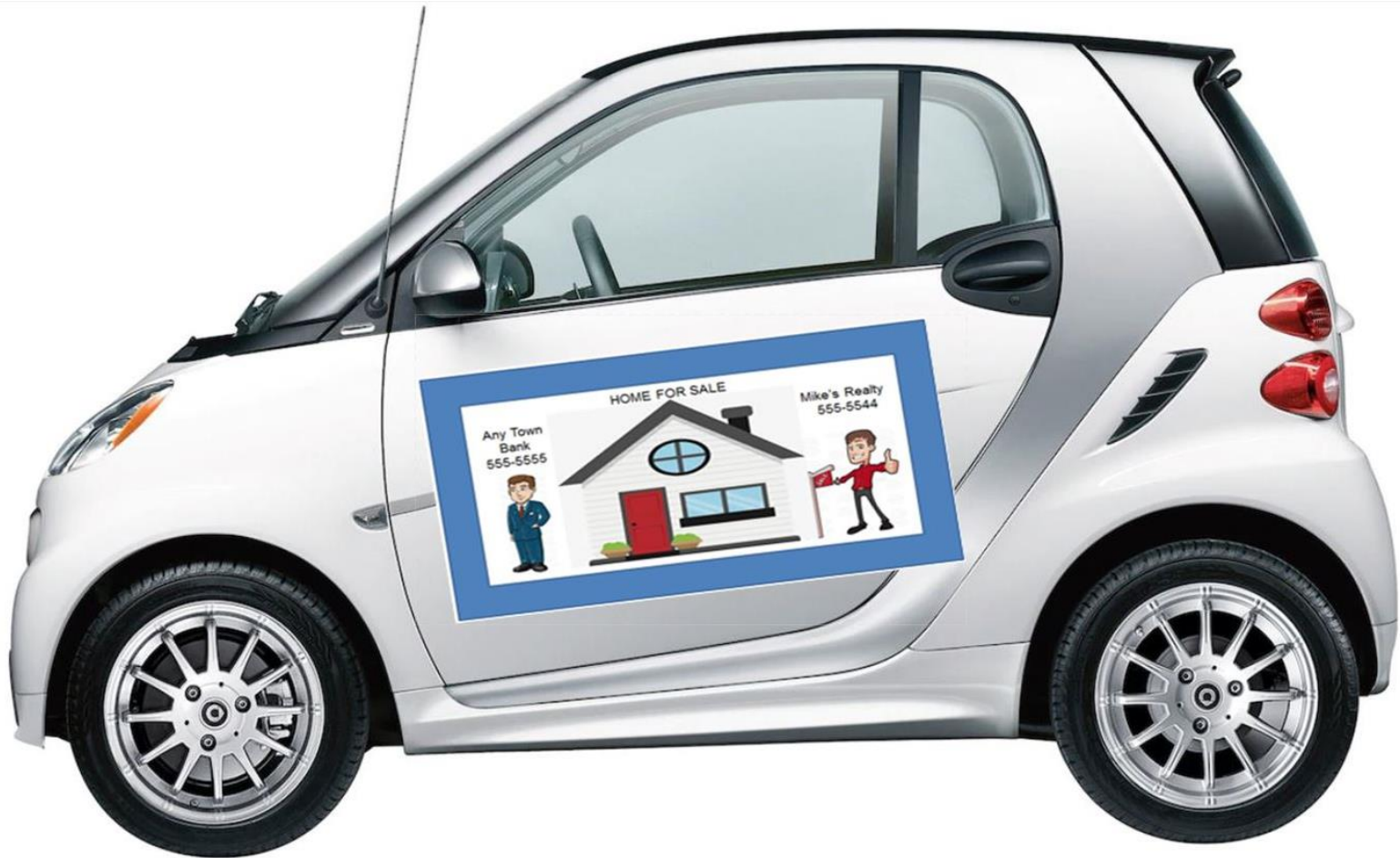


RESPA: What is the appropriate split?



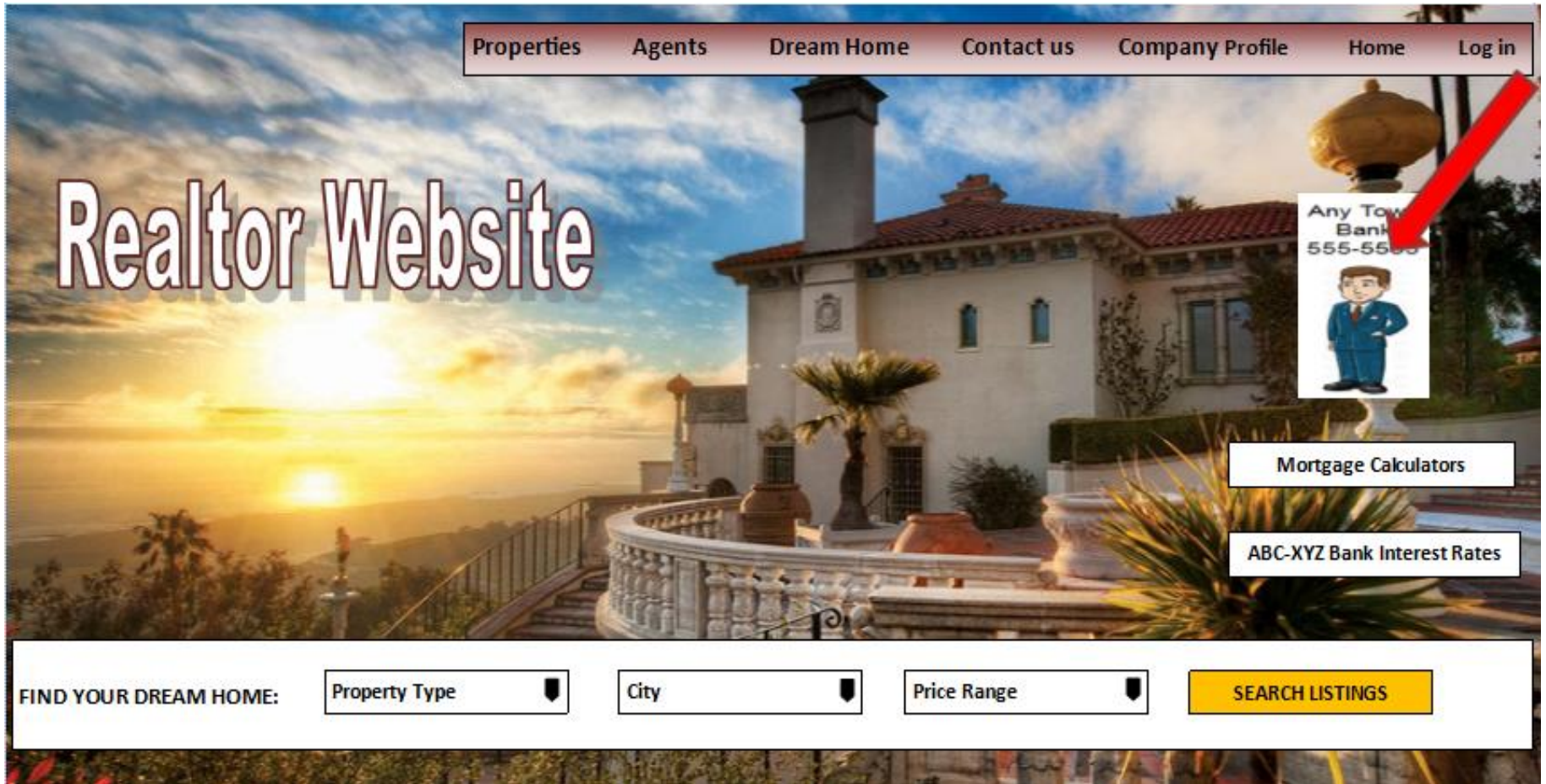


RESPA: What is the appropriate split?



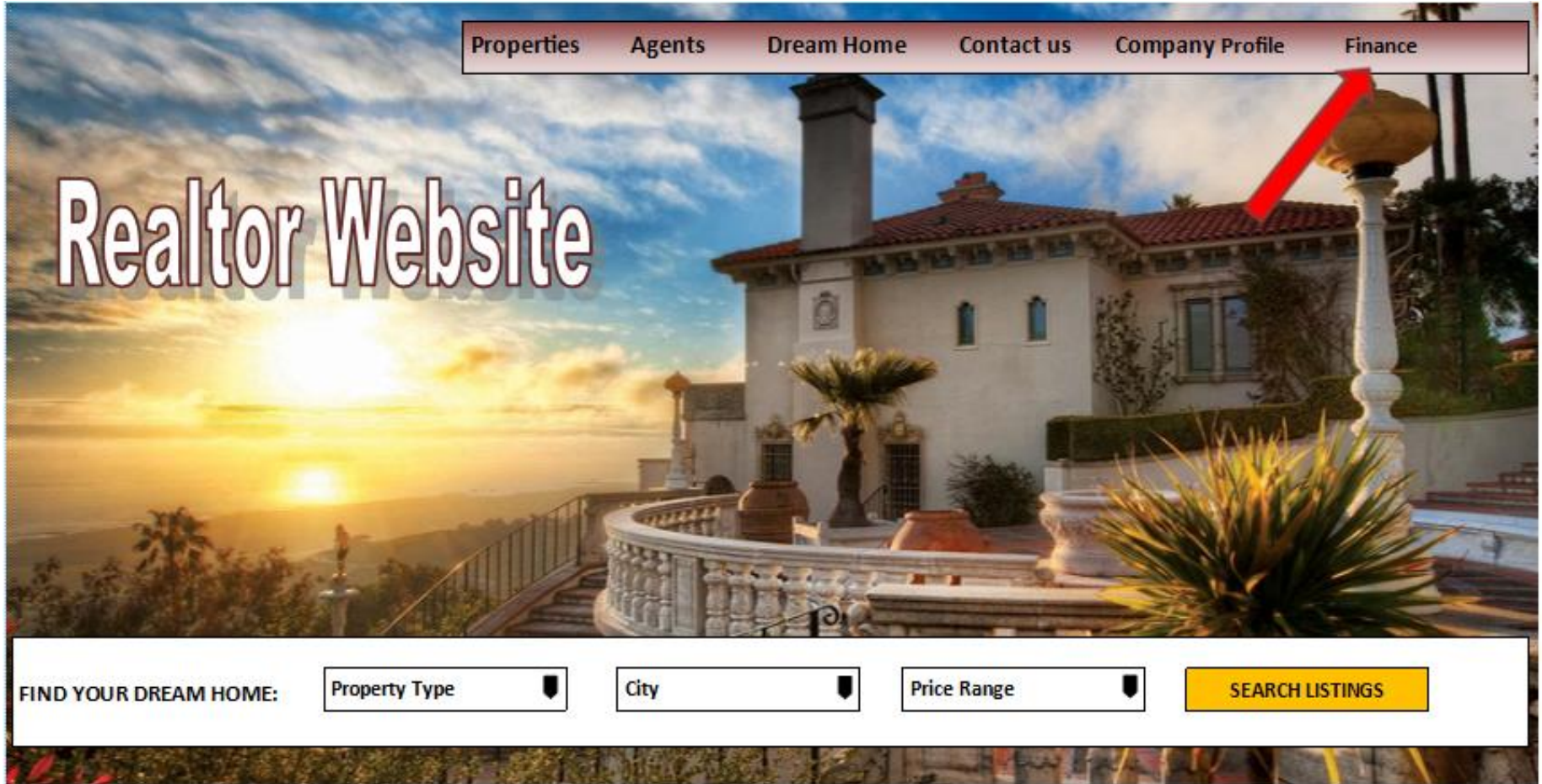


RESPA: What is the appropriate split?





RESPA: What is the appropriate split?





RESPA: Marketing Valuation

Advertisement
Size

Advertisement
Placement

Webpage Unique
Visitors

Advertisement
Impressions



RESPA: Broker Compensation

- **Broker compensation must be earned**

Two-part broker compensation test

Were sufficient services provided?

Is the compensation reasonably related to the services provided?



RESPA: Rental Arrangements

Reflects “general market value”

Not based on volume

**Standards apply both as the tenant
and as the landlord**



RESPA: Mitigating Risk

**Due
diligence**

Training

**Marketing/
advertising
reviews**

**Periodic
reviews of
arrangements**

Recent Examination Issues



Lines of Credit – Finance Charge Issues

Monthly vs. daily
periodic rate

Balance used to
calculate finance charge

Start-up fees



Linked Account Transfers

Linked deposit accounts to avoid overdraft and NSF fees

Transfer fee usually lower than OD/NSF fees

Deposit account with insufficient funds to cover OD

Still transferred funds

Consumer charged both transfer and OD fee



Deposit Account Benefits

Reduced loan
fees

Free or
discounted
money orders

Reduced loan
interest rates

Free or
discounted
cashier's checks

Bonus interest
rates on deposit
products

Free or
discounted safe
deposit boxes



Change-in-Terms Notifications

Advance notice of adverse changes

Providing revised account disclosures

- Changed terms highlighted

Merger/acquisition considerations

- Keep account type vs. transfer to new type



FDIC's Consumer Compliance Supervisory Highlights

■ Articles:

- ◆ *Overdraft Programs: Debit Card Holds and Transaction Processing*
- ◆ *RESPA Section 8 Violations*
- ◆ *Regulation E – Mistakes Made in the Consumer Liability/Error Resolution Process*
- ◆ *Skip-a-Payment Loan Programs*
- ◆ *Lines of Credit – Finance Charge Calculation and Disclosure*



- **FDIC's Consumer Compliance Supervisory Highlights**

<https://www.fdic.gov/regulations/examinations/consumercomplsupervisoryhighlights.pdf>

- **San Francisco Region's Quarterly Newsletter**

Send email to SFConsumerProtection@fdic.gov to subscribe



Resources

- **Interagency Flood Insurance Update on Private Flood Insurance Rule**
<https://consumercomplianceoutlook.org/outlook-live/2019/interagency-flood-insurance-regulation-update/>
- **FDIC Financial Institution Letter 44-2008**
Third Party Risk, Guidance for Managing Third-Party Risk
- **CFPB Compliance Bulletin 2015-05**
RESPA Compliance and Marketing Services Agreements
- **HUD RESPA Statements of Policy**
1993-3, 1996-1, 1999-1, 2001-1

Questions