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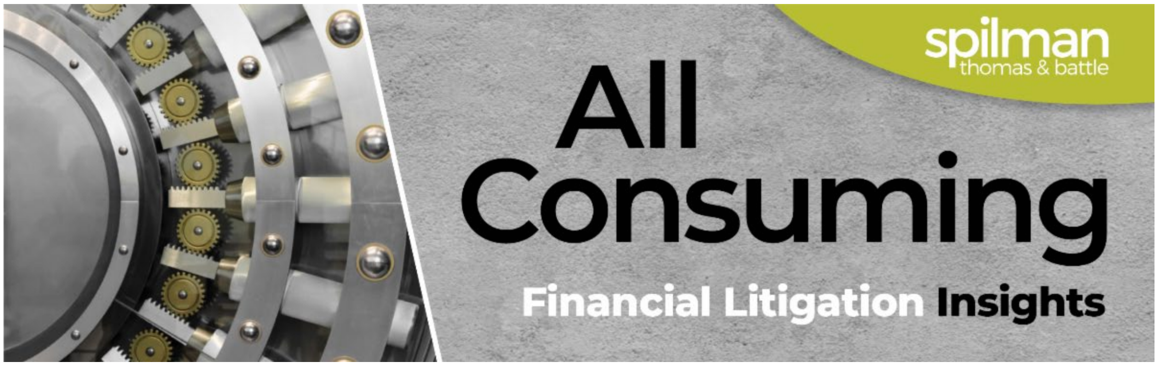

September 22, 2020

Morrisey, Other AGs Reach $330 Million Agreement with Student Loan Company

"West Virginia Attorney General Patrick Morrisey and 47 other attorneys general have reached a $330 million, multistate agreement with a student loan company accused of pressuring students into accepting loans they could not pay back."

Why this is important: ITT Technical Institute was a for-profit technical college that had 100+ locations across numerous states. PEAKS Trust 2009-1 provided a "temporary credit" in the form of a short-term loan payable nine months after issuance to allegedly meet the educational funding needs of ITT's students. The Attorneys General alleged this funding was provided even though PEAKS "knew or should have known the students would not be able to repay the loan when it became due." Students were then allegedly pressured into accepting PEAKS loans when their initial "credit" came due and they were unable to pay. Despite ITT's bankruptcy filing and various state and federal investigations into the school's alleged educational failings, former students were still responsible for repayment of the PEAKS loans. As part of a multistate settlement, Attorneys General from 47 states reached an agreement with PEAKS that requires PEAKS to cease all collection activities on the loans, cease accepting payments on the loans, and prohibits the sale, transfer or assignment of the loans. Further, specifically for West Virginia, 138 individuals will obtain debt relief in the amount of $1,085,726. In the changing landscape of student loans and regulatory enforcement, lenders and businesses should be mindful of the types of institutions for which student loans are issued. --- Angela L. Beblo

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Is It Legal for Stores to Charge Extra if You Pay With a Credit Card?

"Until recently, credit card surcharges had been illegal in 10 states and Puerto Rico."

Why this is important: This article summarizes the many issues involved in this one question. First, whether a merchant is authorized to add a surcharge depends on the state in which the merchant is operating. Generally speaking, merchants incur fees whenever a customer pays for an item with a credit card. These fees, sometimes called swipe fees or interchange fees, are charged to the merchant and intended to cover the costs of processing the payment through a credit card. Some states have completely outlawed a merchant passing these fees on to the customer. Other states permit them, but prohibit the merchant from charging a fee that is greater than the actual amount of the charge imposed on the merchant. In other words, the merchants can't make money on a swipe fee. The article also discusses the fact that merchants are free to give a discount to a customer paying with cash and the disclosures that must be posted if a merchant is charging a fee for the use of a credit card. Finally, in addition to the legal issues, the article touches on some of the business issues inherent in charging these fees to customers, such as damage to the merchant's business reputation. --- Nicholas P. Mooney II

What Rising Reverse Mortgage Refinances Could Mean for the Industry

"The reverse mortgage industry recorded approximately 31,500 Home Equity Conversion Mortgage originations in 2019, and the industry has had its eye toward expanding the base of reverse mortgage borrowers as a result of reduced volume stemming from 2017 product changes."

Why this is important: Fueled by low interest rates and the effects of the COVID-19 pandemic, borrowers are increasingly refinancing reverse mortgages. During the second quarter of 2020, reverse mortgage refinances accounted for 19 percent of all endorsements. The figure rose to 27 percent of all endorsements by July 2020. The increase in refinances has left some concerned, but others see this trend as an evolution in the reverse mortgage industry, with viable paths forward. For example, John Lunde, president of Reverse Market Insight, explained that he previously had concerns because refinancing does not add new customers, but now "I believe that refis are becoming a normal part of the industry at this point similarly to forward." Lunde reminded that continuing to work to reach new customers, however, will leave originators and companies in a better place when the market is less favorable for reverse mortgage refinances. Steven Sless, reverse mortgage division manager with Primary Residential Mortgage, Inc., and branch manager with Steven J. Sless Group, explained that reverse mortgage refinances currently make up more than half of their total volume. Sless is not worried by these numbers, however, "as long as we remain committed to our mission of prospecting for new business in a variety of ways." Sless has used the increased reverse mortgage refinance volume to fund new borrower education and outreach initiatives. Thus, while the increase in reverse mortgage refinances has left many concerned, others believe there are viable paths forward. --- Wesley A. Shumway

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Blockchain in Mortgages – Adopting the New Kid on the Block

"The world is fast progressing within the technology domain and digital services have penetrated to the unexplored corners of life."

Why this is important: There are various ways that blockchain technology can be implemented to streamline the mortgage process. And, the use of blockchain technology is growing. India's 11 largest banks have formed a coalition to study implementing blockchain technology in the mortgage process. If you're not familiar with blockchain technology, from a high level overview, it generally is a ledger that records transactions. The ledger can be publicly available or available only to certain participating members with credentials to access its contents. One of the features is that a blockchain can keep records permanently and immutably. Blockchain technology can be used in the mortgage process to keep records of things such as a borrower's credit profile and the land records showing the prior transactions of the property. --- Nicholas P. Mooney II

Mortgage Modifications are on the Rise, MBA Says

"About 9.48% of forbearance exits were due to loans being modified by servicers."

Why this is important: The CARES Act, passed by Congress in March in response to COVID-19, provided borrowers with up to 12 months of forbearance on their mortgages without suffering adverse credit reporting. As of September 2020, nearly 3.5 million homeowners were in forbearance plans. According to a recent report from the Mortgage Bankers Association, about 10 percent of borrowers who had been under a forbearance plan recently modified their loans. Loan modifications mean that the terms of a loan are permanently altered and the borrower is brought current. Thus, while the rise of loan modifications could indicate that borrowers are in a better financial situation to pay their mortgages, it also suggests that borrowers have not yet returned to their pre-COVID financial health. --- Tai Shadrick Kluemper

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Maxwell Adds New Services to Digital Mortgage Platform

"Digital mortgage platform Maxwell has added underwriting and closing services to its digital mortgage platform."

Why this is important: Lenders and others in the financial area have traditionally been leveraging technology to offer better services. Earlier this year, the lockdowns associated with the COVID-19 pandemic sped up this process and one of the areas that is experiencing digitalization is the mortgage origination process. Maxwell is one company that offers a digital mortgage platform for lenders. Maxwell now is adding underwriting and mortgage closing services to its digital mortgage platform in an effort to offer an end-to-end digital mortgage origination product. Maxwell is focusing on providing digital mortgage solutions to small and medium lenders who don't already have their own digital solutions in place. This growing trend and Maxwell's inclusion of these new services suggest that digital lending is poised to take on a greater role in overall mortgage originations now and in the future. --- Nicholas P. Mooney II

New Google Ad Policy Could Impact Reverse Mortgage Business

"Google will be implementing new targeting restrictions for its ads, preventing customers on its platform from targeting based on certain demographic factors including age."

Why this is important: Incorporating laws or rules without carefully analyzing how they may affect legitimate actions can lead to unintended results. Google announced that on October 19, 2020, it will be updating its policies to prohibit advertisements regarding housing, employment, and credit that target audiences based on factors such as age. While this might sound like a great idea, it will result in unintended restrictions on legitimate advertising. One instance of this is the fact that the new policy will make it harder for reverse mortgage lenders to advertise to qualified borrowers. Age is a qualifying factor to obtain a reverse mortgage. Several lenders and the Federal Housing Administration's Home Equity Conversion Mortgage program require borrowers to be a certain age to qualify. Accordingly, lenders target age, as the article says, not for discrimination but for compliance. This new prohibition will result in reverse mortgage advertising becoming more expensive to lenders, and those costs will be passed on to borrowers. **---** Nicholas P. Mooney II

Featured Attorney Spilman Profile

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