

Taking the Mystery Out of Marketing Service Agreements

A Marketing Service Agreement (MSA) “can be a useful tool for expanding your marketing reach, providing a business partner a preferred service relationship, and, most importantly, creating a convenient and predictable home buying and financing process for the benefit of all parties to a settlement service transaction”, MLinc Mortgage Solutions Founder and CEO Mark Meyer told attendees of a RESPRO® Annual Conference Workshop in Orlando, Florida on March 27.

Meyer defined an MSA as “a contract under which general marketing services are performed by a business partner on behalf of a settlement service provider for a fee”. He emphasized the word “general” since the Department of Housing and Urban Development (HUD) made clear in a 2010 Policy Statement that paying fees for direct sales pitches to specific customers is not allowed under RESPA. Meyer also distinguished MSAs from other services agreements, including leads, mortgage origination, desk rental, and coop advertising agreements, all of which have different bases for determining fees and so are best kept separate.

Mark L. Meyer is Founder and CEO of MLinc Mortgage Solutions (MLinc), which advocates the engineering of strategic relationships (Strategic Relationeering) for growing companies and promoting better results. MLinc distinguished itself by developing a comprehensive, turn-key set of tools that allow its lender clients to establish strategic relationships and ventures with partners in a business savvy and RESPA attentive manner. Now, the Firm's ComplyMSATM Valuation Model has become a standard in the industry for providing independent assessment of fees for marketing services. For more information, visit www.mlincsolutions.com.



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“There is currently lots of activity in the purchase market around the establishment of strategic relationships”, Meyer said, displaying a flow chart illustrating the point (see Marketer / Provider Relationships Diagram on opposite page). “Purchase business is in high demand. There’s plenty of business and opportunity, but regulatory scrutiny as well.” Because of this scrutiny, he emphasized that both parties to the MSA need to assure that:

- ▶ The MSA has properly structured fees, terms and conditions.
- ▶ Only legitimate, non-duplicative general marketing services are contracted.
- ▶ The settlement service provider does not pay for direct sales pitches to particular customers.
- ▶ The fees have no relationship to the referral of business.
- ▶ The fees paid do not exceed the reasonable, fair market value for contracted services performed.

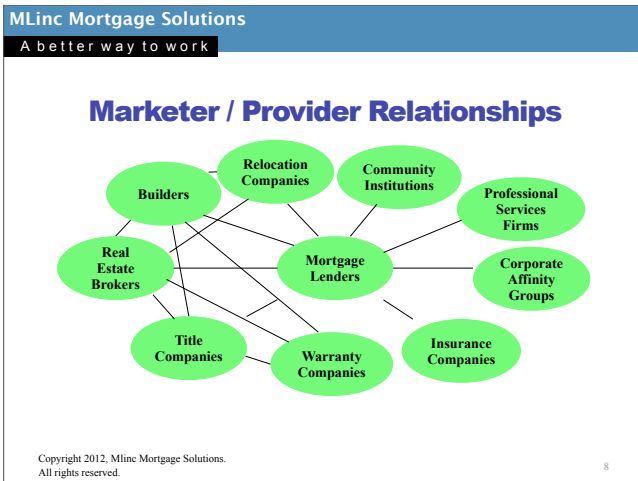
- ▶ The contracted services are performed and verified.

Meyer also offered the following “best practice” suggestions regarding the establishment of a reasonable value for marketing services:

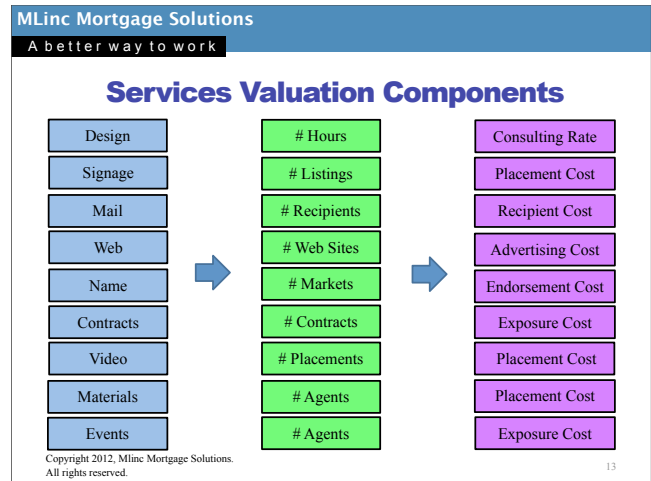
- ▶ Use the cost of marketing impressions (not expected results).
- ▶ Employ a flat fee per time period.
- ▶ Rely on an independent valuation of services to reduce conflicts of interest.
- ▶ Set fees below fair market value to be conservative and mitigate risk of potential variation in actual services performed.
- ▶ Use expected marketing services fee as an input to your financial pro forma (not an output of the analysis).
- ▶ Adjust fees only periodically based upon material changes in services.

The following are a few examples of marketing services that may be performed by a Marketer on behalf of a Mortgage Company, the scope of services information that may be collected, and data benchmarks that may be applied (using analogues from various industries), to illustrate ways to establish a reasonable value for an MSA (see Services Valuation Components Diagram on opposite page):

- ▶ **Signage:** Display Mortgage Company marketing materials and signage at Marketer sales offices, listings and other locations.



Marketer / Provider Relationship Diagram



Services Valuation Components Diagram

Scope of Services: Collect # of listings, sales offices and other locations at which Marketer expects signage and marketing materials to be displayed (both inside and outside).

Data Benchmarks: Apply \$ signage placement cost per impression, from signage companies, based upon both residential and commercial predisposed customer exposure assumptions.

- ▶ **Mail:** Conduct email and/or direct mail marketing campaigns, including Mortgage Company marketing materials, to Marketer's customers and prospective customers.

Scope of Services: Collect # of expected recipients of mail and the percentage of the mail that applies to the Mortgage Company.

Data Benchmarks: Apply \$ cost per recipient, from a published media source or trend report, and adjust by the percentage applicable to Mortgage Company content.

- ▶ **Web:** Include Mortgage Company banner advertisement or marketing information and / or link to the Mortgage Company web site on Marketer's web site(s):

Scope of Services: Collect # of expected web sites or unique monthly visitors.

Data Benchmarks: Apply \$ advertising cost per month or \$ cost per unique monthly visitor for sites focused on both generally interested and targeted customer sites, from online media sources.

- ▶ **Materials:** Distribute Mortgage Company's brochures, fliers, business cards and other printed materials to Marketer's employees and agents.

Scope of Services: Collect expected # of agents to whom materials will be distributed by Marketer per month.

Data Benchmarks: Apply \$ cost per placement by a trusted source where customers are available, from trade group promotional firms.

- ▶ **Events:** Allow Mortgage Company sales professionals to participate with Marketer's employees and agents in Marketer's internal sales meetings, award ceremonies and celebrations, and training of Marketer's employees and agents regarding Mortgage Company's products and services.

Scope of Services: Collect expected # of agents who will participate in such meetings and events per month,

Data Benchmarks: Apply \$ cost of exposure to attendees at such meetings and events by a knowledgeable source, from trade show or coop firms.

Finally, Meyer provided "best practice" suggestions regarding the execution of an MSA:

- ▶ Implement a system that promotes ease and accessibility in managing MSA relationships and execution.
- ▶ Obtain a regular report from business partner regarding services performed.
- ▶ Require the report from business partner to trigger payment of fees.
- ▶ Use business partner assistance in providing proof of services.
- ▶ Collect data to verify that services are being performed.
- ▶ Conduct periodic review of individual MSAs and an annual review of your overall program.

"The valuation of an MSA is not magic," Meyer concluded. "There is a definite science to it. If you mix science, a little art, and some conservative assumptions, coming up with a fair market value is a very reasonable proposition."

To order a CD of Mark Meyer's Annual Conference Workshop with an accompanying Power Point presentation, visit <http://www.respro.org/index.aspx?sectionid=346>, or visit RESPRO's home page at www.respro.org, under RESPRO® News. ■