

New RESPA Rules 2010: Disclosure of Settlement Services, Closing Attorneys' Fees, And Title Insurance



This is my second post in a series on the new Real Estate Settlement Practices Act (RESPA) rules which went into effect on January 1. My first post was [Are You Ready For Some RESPA Reform? An Overview Of The New Regulations](#). Click [here for a listing of the entire RESPA series](#).

In this post, I'll discuss a very important issue to lenders, closing attorneys and borrowers alike: how the new rules handle the disclosure of closing attorney fees/costs and title insurance. The new RESPA rules significantly change the way lenders must disclose settlement services, in particular closing attorneys' fees, and title insurance. Generally, under the new rules, loan costs are divided into one of three "buckets":

- (1) those that cannot change from initial [Good Faith Estimate](#) (GFE) disclosure
- (2) those subject to a 10% tolerance—that is, those which cannot increase by more than 10% from the GFE to the closing, and
- (3) those that can change, *i.e.*, increase without limitation.

Here is how the GFE (page 3) shows the 3 buckets:

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> ■ Our origination charge ■ Your credit or charge (points) for the specific interest rate chosen <i>(after you lock in your interest rate)</i> ■ Your adjusted origination charges <i>(after you lock in your interest rate)</i> ■ Transfer taxes 	<ul style="list-style-type: none"> ■ Required services that we select ■ Title services and lender's title insurance <i>(if we select them or you use companies we identify)</i> ■ Owner's title insurance <i>(if you use companies we identify)</i> ■ Required services that you can shop for <i>(if you use companies we identify)</i> ■ Government recording charges 	<ul style="list-style-type: none"> ■ Required services that you can shop for <i>(if you do not use companies we identify)</i> ■ Title services and lender's title insurance <i>(if you do not use companies we identify)</i> ■ Owner's title insurance <i>(if you do not use companies we identify)</i> ■ Initial deposit for your escrow account ■ Daily interest charges ■ Homeowner's insurance

For closing attorney fees (which HUD now calls “title services”) and title insurance, bucket #1 does not apply, and whether the cost belongs in bucket #2 or #3 will depend on whether the lender recommended the service provider on a written list of preferred providers. If the borrower selects a provider from the list, such as a closing attorney, their charges cannot increase by more than 10% from the GFE to the closing.

Thus, lenders have an incentive to recommend trusted providers whose charges are standard and predictable. If the borrower wants a particular attorney or title insurance provider *not* on the preferred list, their charges are not subject to the 10% tolerance and can go up (or down) by any amount.

Also remember that lender’s title insurance is universally required by virtually every mortgage lender and paid by the borrower (except for no closing cost loans). Owner’s title insurance is optional, but highly recommended by HUD (and me)! (See [HUD’s Shopping For Your Home Loan Booklet](#) and my post, [Title Insurance Demystified](#) for some horror stories about what happens when you don’t purchase an owner’s title insurance policy).

Here is how the new GFE (page 2) discloses closing attorney fees/title services and title insurance:

Your Charges for All Other Settlement Services									
<p>3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services.</p> <table border="1"> <thead> <tr> <th><i>Service</i></th> <th><i>Charge</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	<i>Service</i>	<i>Charge</i>							
<i>Service</i>	<i>Charge</i>								
<p>4. Title services and lender’s title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.</p>									
<p>5. Owner’s title insurance You may purchase an owner’s title insurance policy to protect your interest in the property.</p>									
<p>6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below.</p> <table border="1"> <thead> <tr> <th><i>Service</i></th> <th><i>Charge</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	<i>Service</i>	<i>Charge</i>							
<i>Service</i>	<i>Charge</i>								

Note that lines 3 and 4 represent a huge change from prior practice for closing attorneys. Now closing attorney fees must be disclosed as a single, lump sum charge, plus the cost of the required lender’s title insurance policy. The old HUD itemized such closing costs as courier fees, discharge tracking fees, and the like, but HUD wanted to simplify the disclosure of attorney closing costs in favor of one standard charge that consumers could compare across the board.

From the GFE, these fees and costs are ultimately carried over on the [new HUD-1 Settlement Statement](#), with reference to the new GFE lines:

1100. Title Charges			
1101. Title services and lender's title insurance		(from GFE #4)	
1102. Settlement or closing fee	\$		
1103. Owner's title insurance		(from GFE #5)	
1104. Lender's title insurance	\$		
1105. Lender's title policy limit	\$		
1106. Owner's title policy limit	\$		
1107. Agent's portion of the total title insurance premium	\$		
1108. Underwriter's portion of the total title insurance premium	\$		

At the closing, the borrower can now simply compare the GFE with the new HUD to ensure that the quoted charges have carried over to the closing table. Remember though that selected costs from a “preferred provider” may deviate up to 10% under the tolerance rules. Also, for the first time the new HUD mandates disclosure of the closing attorney’s share, or split, of the title insurance premium.