

Alerts and Updates

NEW RESPA RULES FOR CONSUMER PROTECTION IN REAL ESTATE SETTLEMENTS AND LOANS

January 27, 2010

The U.S. Department of Housing and Urban Development (HUD) recently issued new rules that modify the Real Estate Settlement Procedures Act (RESPA). RESPA is a consumer-protection statute that was enacted to (1) help consumers become better shoppers for settlement services and (2) eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services. Loans secured with a mortgage placed on a one-to-four-family residential property are governed by RESPA. These loans include most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit. HUD's Office of RESPA and Interstate Land Sales is responsible for enforcing RESPA.

The following new RESPA rules became effective on January 1, 2010. First, the [Good Faith Estimate](#) (GFE), which is an estimation of closing costs provided by lenders to prospective borrowers, was revised to provide greater disclosures of estimated costs. As of January 1, 2010, loan originators, including mortgage lenders and mortgage brokers, must provide to qualified borrowers the new standardized GFE—which is now a three-page document—within three business days of the borrower's application. The GFE form includes a summary of key loan terms as well as an estimated cost of a list of mandatory settlement charges. The key loan terms that must now be included on the GFE include: (1) the initial loan amount; (2) the loan term; (3) the initial interest rate; (4) the initial monthly mortgage amount owed for the principal, interest and mortgage insurance; (5) whether the interest rate, loan balance and monthly payment may rise and (6) whether the loan has a prepayment penalty or balloon payment.

The new GFE also provides limits or "tolerances" on how much a charge can change from the issuance of the GFE to the actual closing of the loan. Depending on the type of settlement charge, the estimation of a settlement charge may either (1) not be changed from the issuance of the GFE to closing (the "First Bucket"), (2) increase up to 10 percent of the listed amount from the GFE to closing (the "Second Bucket") or (3) change without regard to the amount originally stated on the GFE (the "Third Bucket"). Examples of charges in the First Bucket include a lender's origination fee or a charge for an interest rate selected. Examples of charges in the Second Bucket include title administrative charges and lender's title insurance policy and appraisals. Examples of charges in the Third Bucket include daily interest charges, costs of homeowner's insurance and lender-required services where borrowers shop for and select their own third-party providers.

The intent of the new GFE is to disclose to consumers all settlement charges and the costs for settlement services. The new GFE charges must be good for 10 business days, to allow the consumer to comparison-shop. The new GFE must be used by all loan originators as of January 1, 2010.

In addition, the new RESPA rules establish a new [HUD-1 Settlement Statement](#) (HUD-1). All settlement charges on the GFE must be reflected on the new HUD-1. The purpose of the new HUD-1 is to allow consumers to directly compare the fees identified on the GFE to those fees charged at the closing of such loans. The new HUD-1 consists of three pages. Compared to the earlier version of the HUD-1, there are no significant changes on the first page of the new HUD-1. However, numerous changes were made in the second page of the new HUD-1 to reconcile the changes enacted in connection with the new GFE. For example, a lender's loan-origination charges are bundled on line 801—listed as "our origination charge"—and are no longer itemized separately. The charge to the buyer for "title services" and "lender's title insurance" is disclosed concurrently on line item 1101 of the new HUD-1; however, any title fees paid to third-party providers must be itemized. The new HUD-1 now also requires the title-insurance premium split between the title agent and the title underwriter to be disclosed on line items 1107 and 1108. The third page of the new HUD-1 consists of a GFE-HUD-1 chart that compares the GFE estimated charges to the actual charges on the HUD-1, as well as a loan-term table. The charges must be within the tolerances, as explained above. As of January 1, 2010, all closing agents must use the new HUD-1.

Finally, HUD issued a revised [Settlement Cost Booklet](#) that loan originators-including mortgage lenders and mortgage borrowers-are required to provide consumers within three days of their applying for a mortgage loan.

For Further Information

If you have any questions about the new RESPA rules, including specific requirements of the new forms, please contact [Jeffrey R. Marqolis](#), [Barry D. Lapidis](#), any other [member](#) of the [Real Estate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.