NEW RESPA RULES: HELP FOR BORROWERS SHOPPING FOR LOANS

On or before January 1, 2010, the residential real estate financing industry will be making some huge changes. The Federal Government has adopted new rules for the implementation of the Real Estate Settlement Procedures Act ("RESPA"). RESPA is a HUD consumer protection statute designed to help homebuyers be better shoppers in the home buying process. The changes, some of which are already in effect, are the biggest reforms to RESPA in more than 30 years.

The "Final Rule" was adopted on November 17, 2008, and parts of it went into effect on January 16, 2009. However, the most noticeable changes for the consumer will not be required until January 1, 2010, when all residential lenders and mortgage brokers will be required to use a new Good Faith Estimate ("GFE") that clearly discloses loan terms and closing costs. Settlement agents will be using a new settlement statement for all residential loan closings. The statement will mirror the GFE and disclose any variances from the original figures. Lenders may start using the new GFE prior to the January 1 deadline. If the new GFE is used by the lender, the new settlement statement must also be used by the settlement agent.

While GFEs have been around for years, the new GFE is a whole new ballgame. Will it help the consumer? HUD projects that the new rules will save consumers an average of $700 at the closing table!

The main differences between the new and old GFEs are (1) standardization of the form, (2) grouping of fees, and (3) tolerance for variations from the GFE amounts at settlement. The following is an overview of these differences:

1. **THE FORM**: The new GFE has been formatted by HUD. It is a three page standardized document that gives loan terms and an estimate of settlement charges. The consumer should easily be able to compare GFEs from various lenders when shopping for loans.

2. **THE FEES**: On the new GFE, certain fees have been grouped together. This allows the consumer to see a total cost for each category, rather than a random list of fees.

   A. The "<u>Origination Charge</u>" is the total of all fees incurred for originating the loan. This would include old cost breakdowns, such as "underwriting fees" "loan handling fees" "commitment fees" and "document preparation fees" which were payable to the Lender or Broker.

   B. "<u>Required Services Selected by the Lender</u>", such as appraisals, credit reports, and flood certifications and tax service fees are grouped, but each charge is listed separately.

   C. "<u>Title Services</u>" includes the settlement agent's charges for lender's title insurance, the settlement fee, title searches, title examinations, commitments, and ALL other charges payable to the settlement agent. There is a separate line item for Owner's title insurance, since this is an optional purchase.

   D. "<u>Required Services that You Can Shop For</u>", which includes surveys, home warranties, pest reports, etc.

(For "Title Services" and "Required Services that You Can Shop For", the borrower can shop for and choose his own providers but the fees will not be controlled by the RESPA tolerances from the GFE as described below.)

In addition to these groupings, there are separate line items for "Government Recording Charges", "Transfer Taxes", "Initial Escrow Deposit", "Daily Interest" and "Homeowner's Insurance".

3. **THE TOLERANCES**: The new rules mandate that the final charges on the settlement statement can vary from those on the GFE only as follows:

For the Origination Charge and Transfer Taxes: Zero Tolerance. The GFE and settlement statement must match exactly.

For Required Services selected by the Lender, Title Services, Owner Title Insurance, Required Services That You Can Shop For (if you use companies identified by the lender) and Government recording charges: There is a tolerance for a 10% increase for the total of these charges.

For the Initial Escrow Deposit, Daily Interest and Homeowner's Insurance: There is an unlimited tolerance for increases from the GFE.

Other items with unlimited tolerances for increases from the GFE include any Service provider selected by the Borrower rather than the Lender. There is no restriction on decreases.

The new settlement statement mirrors the GFE, with similar line items and groupings. On a new third page, there is a comparison of the original GFE figures and the settlement statement figures, with an explanation of the tolerances. There is also a summary of the loan, including amount, term, rates, initial monthly payment, prepayment penalties and other loan terms.

With these changes, the consumer can be a better shopper. He can truly compare the cost of loan products offered by various lenders, and he is protected from any unexpected additions at closing. There will also be more straightforward disclosures of prices by settlement companies, since most charges will be grouped into one amount. The consumer can easily compare the total "Title Services" charges for his loan from several title companies.

There are still many questions about the implementation and enforcement of the New Rules. Hopefully the consumer benefits will meet HUD's expectations.