

New Year – New Rules

The Upcoming Changes to RESPA

By Jennifer M. Monty, Esq.

In an effort to address the ongoing foreclosure situation, Washington continues to attempt to reform the mortgage closing process. To make the myriad of closing documents more accessible to the average homeowner, there will be several changes to the Real Estate Settlement Procedures Act (RESPA). RESPA is a consumer protection statute designed to help consumers shop around for the best loans and settlement costs.

If you originate and service loans, strict compliance with RESPA is required as of January 1, 2010. Servicers also need to be aware of the changes under RESPA, so that they can adequately address borrower's questions and concerns, particularly if they receive a Qualified Written Request. Servicers should also be careful when they service loans that may have RESPA violations, as a borrower will likely file an affirmative defense or request a set off. While specific defenses can be raised on behalf of servicers, it is one additional hurdle to complete a foreclosure.

Some highlights of the changes include:

- **Yield Spread Premiums**—The catch phrase of the past few years, yield spread premiums have been the subject of much debate in Washington. In basic terms, the yield spread premium is the commission paid to a mortgage broker from the lender. Many consumer lawyers argued that mortgage brokers routinely steered their clientele to lenders with the highest yield spread premium, even if that lender's mortgage offerings were not the best for the consumer. To avoid such steering, mortgage brokers will now be required to calculate their commission as part of the loan origination fee.
- **Application Charge**—To encourage homeowners to “shop around” for the best mortgage rate and not be required to pay hefty application fees, changes to RESPA provide that a consumer only needs to pay for his credit report at the time of the application. This is the only fee that can be charged prior the completion of a Good Faith Estimate (GFE) and before the borrower states his intent to proceed with the loan. Any other fees cannot be charged until the borrower receives a GFE and confirms his intent to proceed.
- **Good Faith Estimate**—The Good Faith Estimate (GFE) lists charges that the borrower will likely pay at closing. A GFE must be provided to the homeowner when the mortgage broker or originator receives the borrower's name, social security number, income, property address, estimated value and loan amount. Once these 6 pieces of information are provided, the GFE must be given.
- **Every homeowner will receive a Good Faith Estimate (GFE) when they first apply for the loan.** Previously mortgage brokers and lenders would provide the GFE to the consumer, and then when the terms changed, the consumer learned of the changes at closing. Concerned that the average consumer did not fully appreciate the difference in the changes, the new RESPA rules address changes to the GFE.

- Length: GFE's are currently two pages long; with the changes, the GFE will be expanded to three pages.
- The new GFE is supposed to make the form easier to read and understand. It clearly sets forth a summary of the terms of the loan (interest rate, balloon payment, etc) and settlement charges.
- Fees and Taxes: On the new GFE's, the origination fee and transfer taxes must be exactly the same as the fees and transfer taxes that will appear at closing on the homeowner's HUD-1 form. Fees that are outside the control of the lender (title company fees, inspection costs, etc) can change between the original GFE and the final HUD-1; however, any change cannot be greater than 10%. If there is a change that is greater than 10%, all discrepancies will need to be reconciled and corrected within 30 days of the original GFE.
- Several disclosures are required on the new GFE: the length of time for which the interest rate and origination charges will be effective, the length of time for which the stated settlement charges are valid, and the number of days in which the loan must go to settlement after the locking of the interest rate. Charges must be valid for 10 business days and are locked in if the borrower confirms his intent to proceed during that time.
- Change of Circumstances—if circumstances change after a GFE is issued, a new GFE can be re-issued within 3 days of receiving the changed information. Then, only charges relating to the new information can be changed.
- Settlement Statement—HUD-1: Between the time of providing of the GFE and the final closing, there must be a minimum 10 day waiting period during which time the homeowner will have the opportunity to shop-around for best rates, lowest fees, etc.

There are specific forms for both the GFE and revised HUD-1. All mortgage brokers and originators must begin using new forms and be in full compliance starting January 1, 2010. It is critical that mortgage brokers and originators understand the changes and work together for full compliance.

If you have any questions on this information, please contact Jennifer M. Monty, Esq. Jennifer is an associate focused on litigation & defense within the Real Estate Default Group of Weltman, Weinberg & Reis Co., L.P.A. and is located in the Cleveland office. She can be reached at 216.685.1136 or via e-mail at jmonty@weltman.com.