

HUD IMPLEMENTS NEW PROCEDURES TO PROTECT BORROWERS

As a direct result of the recent abuses in the home lending market, the Department of Housing and Urban Development (HUD) is looking for ways to protect the public-at-large from unscrupulous lenders taking advantage of borrowers by increasing fees and costs at closing or, in the alternative, not disclosing fees or costs at all. As more fully discussed below, HUD has implemented “plain-English” disclosure rules to ensure that borrowers will now have the advantage of knowing up-front, all of the relevant costs, fees and terms of their loans.

During the past year, HUD announced these new rules updating the longstanding requirements of the Real Estate Settlement Procedures Act (RESPA). The changes came into effect as of January 1, 2010 and affect not only new home buyers who are borrowing money to pay for their purchase, but also those existing homeowners who are looking to refinance a higher interest rate loan to obtain a more manageable monthly payment.

One of the changes requires a new, easy-to-read Good Faith Estimate (GFE) which clearly discloses the key loan terms and closing costs consumers pay when buying or refinancing a residence. The GFE must be provided within three (3) business days after the lender receives the loan application from the prospective borrower. The GFE details estimated loan interest rates, bank fees (*i.e.* origination fee, loan discount fees), escrow reserves (*i.e.* property taxes and mortgage insurance), and any prepayment penalties. All settlement costs on the new GFE are broken down into three categories. The first category includes charges which are not allowed to change, such as the origination charge and transfer taxes. The second category consists of services selected or identified by the loan provider such as title services, lender's title insurance if selected by the lender, or if the borrower uses companies identified by the lender, and recording charges. These charges can increase up to 10% at settlement. The practical aspect of the 10% tolerance on these fees is that lenders will now be required to provide accurate estimation by of government recording charges and other fees to be paid by borrowers. The third and final category is for services the borrower can shop for, such as homeowner's insurance. These charges are not subject to limits on price increases.

In furtherance of the RESPA disclosure requirements, a streamlined, revised standard statement of settlement costs, referred to as the HUD-1 Uniform Settlement Statement, shall be used in all transactions in the United States involving federally-related mortgage loans originated on or after January 1, 2010. This form is completed at the closing by the person conducting settlement (usually the lender's attorney). For transactions in which there is a borrower but no seller, such as refinancing loans and subordinate lien loans, the HUD-1 may be utilized by using the borrower's side of the statement. Alternatively, the form HUD-1A may be used for these transactions. Copies of both of these forms can found on the HUD website by clicking here:

<http://www.hud.gov/utilities/intercept.cfm?/offices/adm/hudclips/forms/files/1.pdf>; or
<http://www.hud.gov/utilities/intercept.cfm?/offices/hsg/ramh/res/hud1-a.pdf>

The HUD-1 and HUD-1A Settlement Statements must clearly itemize all charges imposed on the buyer and seller (or just the borrower in a refinance) in connection with the settlement. The statement must also contain specified information about the amount of the title insurance

premiums and whether or not such insurance insures the lender's interest in the property, the borrower's interest, or both. Additionally, there is a new page on the HUD-1 which allows consumers to easily compare their final loan terms and closing costs with those listed on their GFE. To facilitate comparison between the HUD-1 and the GFE, each designated line on the HUD-1 will now include a reference to the relevant line from the GFE. Other changes include shortening the GFE form from four to three pages and adding an instructional section to help borrowers understand their loan terms.

Aaron concentrates his practice in all aspects of commercial and residential real estate transactions from contract to closing, representing buyers, sellers and lenders. He may be reached at aboyajian@goetzfitz.com to discuss any questions regarding this topic or any other real estate questions you may have.