

## RESPA (Real Estate Settlement Procedures Act)

### Introduction

**The Real Estate Settlement Procedures Act (RESPA)** is a consumer protection statute, first passed in 1974. The purposes of RESPA are:

1. To help consumers become better shoppers for settlement services and
2. To eliminate kickbacks and referral fees that, unnecessarily increase the costs of certain settlement services.

### Details about RESPA

Corresponding with the above purposes:

1. RESPA requires that borrowers receive disclosures at various times. Some disclosures spell out the costs associated with the settlement outline lender servicing and escrow account practices, and describe business relationships between settlement service providers.
2. RESPA also prohibits certain practices that increase the cost of settlement services. **Section 8** of RESPA (see below) prohibits a person from giving or accepting any thing of value for referrals of settlement service business related to a federally related mortgage loan. It also prohibits a person from giving or accepting any part of a charge for services that are not performed. **Section 9** of RESPA (see below) prohibits home sellers from requiring homebuyers to purchase title insurance from a particular company.

### RESPA in general

RESPA covers loans secured with a mortgage placed on a one-to-four family residential property. These 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.

### RESPA required disclosures:

#### At the time of loan application

When borrowers apply for a mortgage loan, mortgage brokers and/or lenders must give the borrowers:

- A Special Information Booklet, which contains consumer information regarding various real estate settlement services. (Required for purchase transactions only) and
- A Good Faith Estimate (GFE) of settlement costs, which lists the charges the buyer is likely to pay at settlement. This is only an estimate and the actual charges may differ. If a lender requires the borrower to use a particular settlement provider, then the lender must disclose this requirement on the GFE.
- A Mortgage Servicing Disclosure Statement, which discloses to the borrower whether the lender intends to service the loan or transfer it to another lender. It also provides information about complaint resolution.

**If the borrowers don't get these documents at the time of application**, the lender must mail them within three business days of receiving the loan application.

**If the lender turns down the loan within three days**, however, then RESPA does not require the lender to provide these documents.

The RESPA statute does **not** provide an explicit penalty for the failure to provide the Special Information Booklet, Good Faith Estimate or Mortgage Servicing Statement. However, bank regulators may choose to impose penalties on lenders who fail to comply with federal law. Please read the section on RESPA enforcement for more information.

### Disclosures before settlement/closing occurs

The terms "settlement" and "closing" can be and are used interchangeably.

An **Affiliated Business Arrangement (AfBA) Disclosure** is required whenever a settlement service provider involved in a RESPA covered transaction refers the consumer to a provider with whom the referring party has an ownership or other beneficial interest.

The referring party must give the AfBA disclosure to the consumer at or prior to the time of referral. The disclosure must describe the business arrangement that exists between the two providers and give the borrower an estimate of the second provider's charges.

Except in cases where a lender refers a borrower to an attorney, credit reporting agency or real estate appraiser to represent the lender's interest in the transaction, the referring party may not require the consumer to use the particular provider being referred.

The **HUD-1 Settlement Statement** is a standard form that clearly shows all charges imposed on borrowers and sellers in connection with the settlement. RESPA allows the borrower to request to see the HUD-1 Settlement Statement one day before the actual settlement. The settlement agent must then provide the borrowers with a completed HUD-1 Settlement Statement based on information known to the agent at that time.

### Disclosures at settlement

The HUD-1 Settlement Statement shows the actual settlement costs of the loan transaction. Separate forms may be prepared for the borrower and the seller. Where it is not the practice that the borrower and the seller both attend the settlement, the HUD-1 should be mailed or delivered as soon as practicable after settlement.

The **Initial Escrow Statement** itemizes the estimated taxes, insurance premiums and other charges, which are anticipated to be paid from the Escrow Account during the first twelve months of the loan. It lists the Escrow payment amount and any required cushion. Although the statement is usually given at settlement, the lender has 45 days from settlement to deliver it.

### Disclosures after settlement

Loan servicers must deliver to borrowers an **Annual Escrow Statement** once a year. The annual Escrow account statement summarizes all escrow account deposits and payments during the servicer's twelve-month computation year. It also notifies the borrower of any shortages or surpluses in the account and advises the borrower about the course of action being taken.

A **Servicing Transfer Statement** is required if the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer. Generally, the loan servicer must notify the borrower 15 days before the effective date of the loan transfer. As long as the borrower makes a timely payment to the old servicer within 60 days of the loan transfer, the borrower cannot be

penalized. The notice must include the name and address of the new servicer, toll-free telephone numbers, and the date the new servicer will begin accepting payments.

## **RESPA'S statutes explained: consumer protections and prohibited practices**

### **Section 8: kickbacks, fee-splitting, unearned fees**

Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback or any thing of value in exchange for referrals of settlement service business involving a federally related mortgage loan. In addition, RESPA prohibits fee splitting and receiving unearned fees for services not actually performed.

**Violations** of Section 8's anti-kickback, referral fees and unearned fees provisions of RESPA **are subject to criminal and civil penalties.** In a criminal case a person who violates Section 8 may be fined up to \$10,000 and imprisoned up to one year. In a private law suit a person who violates Section 8 may be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service.

### **Section 9: Seller required title insurance**

Section 9 of RESPA prohibits a seller from requiring the homebuyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.

### **Section 10: Limits on escrow accounts**

Section 10 of RESPA sets limits on the amounts that a lender may require a borrower to put into an escrow account for purposes of paying taxes, hazard insurance and other charges related to the property. RESPA does not require lenders to impose an escrow account on borrowers; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan.

During the course of the loan, RESPA prohibits a lender from charging excessive amounts for the escrow account. Each month the lender may require a borrower to pay into the escrow account no more than 1/12 of the total of all disbursements payable during the year, plus an amount necessary to pay for any shortage in the account. In addition, the lender may require a cushion, not to exceed an amount equal to 1/6 of the total disbursements for the year.

The lender must perform an escrow account analysis once during the year and notify borrowers of any shortage. Any excess of \$50 or more must be returned to the borrower.

## **RESPA enforcement**

### **Civil law suits**

Individuals have one (1) year to bring a private law suit to enforce violations of Section 8 or 9. A person may bring an action for violations of Section 6 within three years. Lawsuits for violations of Section 6, 8, or 9 may be brought in any federal district court in the district in which the property is located or where the violation is alleged to have occurred.

HUD, a State Attorney General or State insurance commissioner may bring an injunctive action to enforce violations of Section 6, 8 or 9 of RESPA within three (3) years.

### **Loan servicing complaints**

Section 6 provides borrowers with important consumer protections relating to the servicing of their loans. Under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions) should contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer's required payment.

A borrower may bring a private law suit, or a group of borrowers may bring a class action suit, within three years, against a servicer who fails to comply with Section 6's provisions. Borrowers may obtain actual damages, as well as additional damages if there is a pattern of noncompliance.

### **Other enforcement actions**

Under Section 10, HUD has authority to impose a civil penalty on loan servicers who do not submit initial or annual escrow account statements to borrowers. Borrowers should contact HUD's Office of RESPA and Interstate Land Sales to report servicers who fail to provide the required escrow account statements.

### **Filing a RESPA complaint**

Persons who believe a settlement service provider has violated RESPA in an area in which the Department has enforcement authority (primarily sections 6, 8 and 9), may wish to file a complaint. The complaint should outline the violation and identify the violators by name, address and phone number. Complainants should also provide their own name and phone number for follow up questions from HUD. Requests for confidentiality will be honored. Complaints should be sent to:

Director, Office of RESPA and Interstate Land Sales  
US Department of Housing and Urban Development  
Room 9154  
451 7th Street, SW  
Washington, DC 20410