



# **REAL ESTATE SETTLEMENT PROCEDURES ACT**

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# Residential Mortgage Lending: A conceptual framework for identifying applicable laws

## FEDERAL LAW

## STATE LAW

Licensing &  
Registration

Substantive  
Laws

# Residential Mortgage Lending

## FEDERAL LAW

- ✓ TILA
- ✓ RESPA
- ✓ ECOA
- ✓ FCRA
- ✓ Federal Regulators

## STATE LAW

### Licensing & Registration

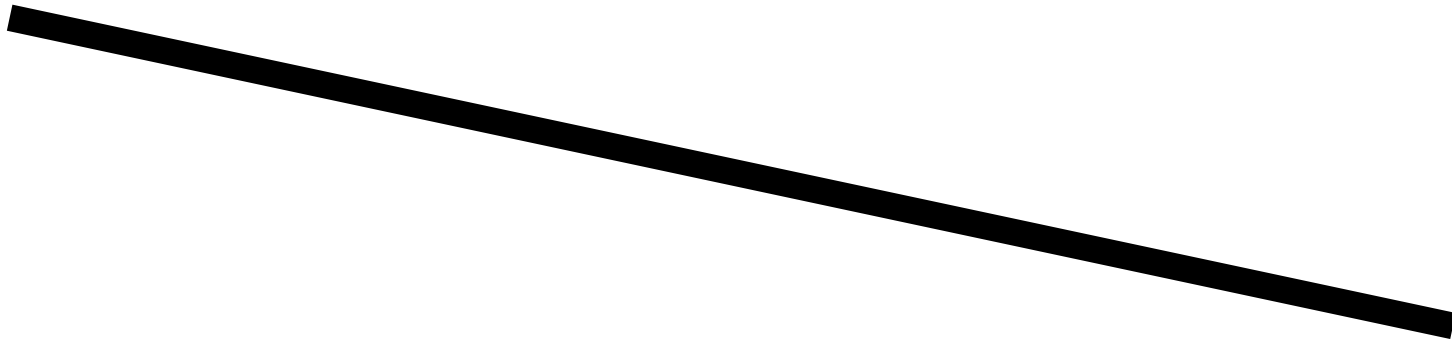
- ✓ Lending
- ✓ Corporate

### Substantive Laws

- ✓ Credit Laws
- ✓ Real Property
- ✓ Consumer Protection

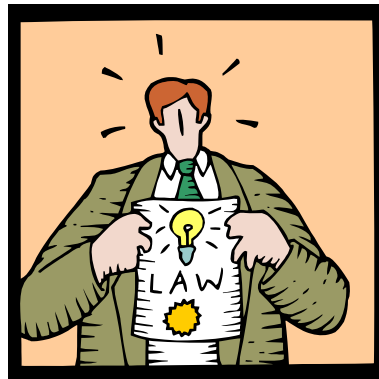
# **Legal Requirements v. Industry Requirements**

The line can be different.



# Today's Presentation

## Real Estate Settlement Procedures Act (12 USC 2601 *et seq.*)



## HUD Regulation X (24 CFR Part 3500)

# RESPA Regulations

- Major revisions to HUD Regulation X published November 17, 2008
- Most of the changes become effective January 1, 2010
- Some of the changes become effective January 16, 2009

# Regulation Changes

- ✓ Significant changes to Good Faith Estimate (including new required form)
- ✓ Changes to HUD-1 and HUD-1A Settlement Statements (form and information)
- ✓ Upfront Servicing Disclosure simplified
- ✓ “Tweaks” that make a difference to referral fee prohibitions

# RESPA: Today's Presentation

➤ **Overview and Key RESPA Terms**

➤ **Disclosure Requirements (Old and New)**

➤ **Referral Fee Prohibitions**

[Loan Servicing: not addressed today]

# LOANS COVERED BY RESPA

**RESPA applies to "federally related" mortgage loans.**

**Property must be improved residential real property designed principally for 1 to 4 families**



# LOANS EXEMPT FROM RESPA

**RESPA does not apply to (among others):**

- **Loans made primarily for a business, commercial, or agricultural purpose; or**
- **Temporary financing, including construction; or**
- **Loans on vacant land where loan proceeds will not be used to improve property; or**
- **Transfers of loan obligations in bona fide secondary market transactions.**

# RESPA Disclosures: Significant Terms

Until 1/1/2010, “application” means:

- submission of an applicant's financial information in anticipation of a credit decision; *along with*
- an identification of the specific real property involved.

# RESPA Disclosures: Significant Terms

On 1/1/2010, “application” means:

- submission of borrower’s financial information in anticipation of a credit decision, which shall include
  - name, monthly income, social security number
  - property address and estimate of property value
  - loan amount sought, and
  - any other information deemed necessary by the “loan originator”

# Disclosure Requirements

**The definition of “application” is important because it triggers the requirement to give the good faith estimate disclosure.**



# Disclosure Requirements

**Until 1/1/2010, give Good Faith Estimate, including Required Service Providers**

- At or within 3 business days of application
- It should be as good an estimate as possible
- No obligation to redisclose
- Required service providers are on separate form

# Disclosure Requirements

## On 1/1/2010, Good Faith Estimate **significantly** changes, including:

- New and expanded disclosures (charges and loan terms)
- Must use standard form
- Disclosed charges and terms must be available for at least 10 days and will be binding except under certain “changed circumstances”
- Restrictions on if, and how much, charges may change (“tolerances”)

# Disclosure Requirements

## Until 1/16/2009, Servicing Disclosure Statement

- At or within 3 business days of application
- Use model form
- Needs to be signed



# Disclosure Requirements

## On 1/16/2009, Servicing Disclosure Statement

Same timing but much simpler and no acknowledgment needed



# Disclosure Requirements

## Notice of Servicing Transfer

By Transferor: not less than 15 days before date of transfer

By Transferee: not more than 15 days after date of transfer

Combined Notice: not less than 15 days before date of transfer

# Disclosure Requirements

## Until 1/1/2010, HUD Settlement Statements

- At closing
- Amounts need to be correct
- Responsibility of person closing loan

**A. Settlement Statement** U.S. Department of Housing and Urban Development OMB No. 2502-0265

<b>B. Type of Loan</b> <input type="checkbox"/> FHA <input type="checkbox"/> FedHA <input type="checkbox"/> Cono. Utins. <input type="checkbox"/> VA <input type="checkbox"/> Cono. Ins.		6. File Number XXXXXXXX	7. Loan Number	8. Mortgage Insurance Case Number
<b>C. Note:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "to or by" were paid outside the district; they are shown here for information purposes and are not included in the totals.				
<b>D. Name and Address of Borrower</b> BUYER BUYER 1234 MAIN STREET USA		<b>E. Name and Address of Seller</b> SELLER SELLER 12345 MAIN STREET USA		<b>F. Name and Address of Lender</b> THE MORTGAGE COMPANY
<b>G. Property Location</b> 12345 MAIN STREET USA		<b>H. Settlement Agent</b> CAPYCO, TITLE INSURANCE AGENCY, INC. Place of Settlement 1100 ROCKVILLE PIKE, SUITE 502 ROCKVILLE, MD 20852		<b>I. Settlement Date</b> 06/01/04
<b>J. SUMMARY OF BORROWER'S TRANSACTION:</b>			<b>K. SUMMARY OF SELLER'S TRANSACTION:</b>	
<b>100. GROSS AMOUNT DUE FROM BORROWER</b>			<b>400. GROSS AMOUNT DUE TO SELLER</b>	
101. Contract sales price	375,000.00	401. Contract sales price	375,000.00	
102. Personal property		402. Personal property		
103. Settlement charges to borrower (line 1400)		403. Settlement charges to seller (line 1400)		
104.		404.		
105.		405.		
<b>Adjustments for items paid by seller in advance</b>		<b>Adjustments for items paid by seller in advance</b>		
106. City/town taxes	to	406. City/town taxes	to	
107. County taxes	to	407. County taxes	to	
108. Assessments	to	408. Assessments	to	
109.		409.		
110.		410.		
111.		411.		
112.		412.		
<b>120. GROSS AMOUNT DUE FROM BORROWER</b>	<b>375,000.00</b>	<b>420. GROSS AMOUNT DUE TO SELLER</b>	<b>375,000.00</b>	
<b>200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER</b>		<b>500. REDUCTIONS IN AMOUNT TO SELLER</b>		
201. Deposit or earnest money		501. Seller's Deposit (see instructions)		
202. Principal amount of new loan(s)	300,000.00	502. Settlement charges to seller (line 1400)		
203. Existing loans taken subject to		503. Existing loans taken subject to		
204.		504. Profit of first mortgage loan		
205.		505. Profit of second mortgage loan		
206.		506.		
207.		507.		
208.		508.		
209.		509.		
<b>Adjustments for items unpaid by seller</b>		<b>Adjustments for items unpaid by seller</b>		
210. City/town taxes	to	510. City/town taxes	to	
211. County taxes	to	511. County taxes	to	
212. Assessments	to	512. Assessments	to	
213.		513.		
214.		514.		
215.		515.		
216.		516.		
217.		517.		
218.		518.		
219.		519.		
<b>220. TOTAL PAID BY / FOR BORROWER</b>	<b>300,000.00</b>	<b>520. TOTAL REDUCTION AMOUNT DUE SELLER</b>		
<b>300. CASH AT SETTLEMENT FROM OR TO BORROWER</b>		<b>600. CASH AT SETTLEMENT TO OR FROM SELLER</b>		
301. Gross amount due from borrower (line 120)	375,000.00	601. Gross amount due to seller (line 420)	375,000.00	
302. Less amounts paid by/for borrower (line 220)	300,000.00	602. Less reduction amount due to seller (line 520)		
<b>303. CASH</b>	<b>FROM BORROWER</b>	<b>75,000.00</b>	<b>603. CASH</b>	<b>TO SELLER</b>
				375,000.00

# Disclosure Requirements

## On 1/1/2010, HUD Settlement Statements

- New forms (modifies and adds to existing forms)
- Requires lender or broker to provide information input into forms
- Lender/broker has 30-day ability to cure if GFE tolerances are exceeded

# Disclosure Requirements

## On 1/16/2009, HUD Settlement Statements

- Requires lender or broker to provide information input into forms
- Lender/broker fees must be aggregated and disclosed as one charge
- Lender/broker may show “average charges” for third-party fees

# PENALTIES FOR DISCLOSURE VIOLATIONS

***Special Information Booklet, Good Faith Estimate, Required Service Providers, or HUD Settlement Statement disclosures:***

- F** Administrative action is possible.
- F** RESPA does not impose penalties for failure to provide these required disclosures
- F** Consider possible “unfair practices” claims

# PENALTIES FOR DISCLOSURE VIOLATIONS

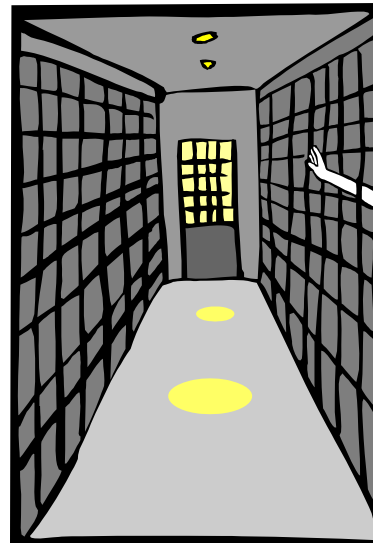
## *Failure to provide Servicing Disclosures:*

- F** Administrative action is possible.
- F** RESPA imposes penalties for failure to provide servicing disclosures:
  - ✓ Individuals may bring a private case and recover actual damages plus additional damages up to \$1,000 plus attorney fees.
  - ✓ Class action is available.



# PENALTIES FOR RESPA REFERRAL FEE VIOLATIONS

- \* Criminal Penalties. Each violation of RESPA Section 8 is punishable by imprisonment for up to one year, a fine of \$10,000, or both.



# PENALTIES FOR RESPA REFERRAL FEE VIOLATIONS

- \* **Civil Liability.** Private action, including class actions, for 3 times the amount of any charge paid for settlement service involved in the violation. The court may award court costs and reasonable attorneys fees.



# RESPA Referral Fee Prohibitions

Simply stated . . .

No person may give or receive any thing of value for the referral of settlement service business.



# RESPA Referral Fee Prohibitions

Stated simply . . .

No person may give or receive a part of any charge for settlement services except for services actually performed.





# RESPA Referral Fee Prohibitions

3 basic elements to a Section 8 violation:

- A fee or thing of value
- In exchange for referral of settlement service business
- Pursuant to an agreement or understanding between the referring party and the settlement service provider



# RESPA Referral Fee Prohibitions

What is a “thing of value”?

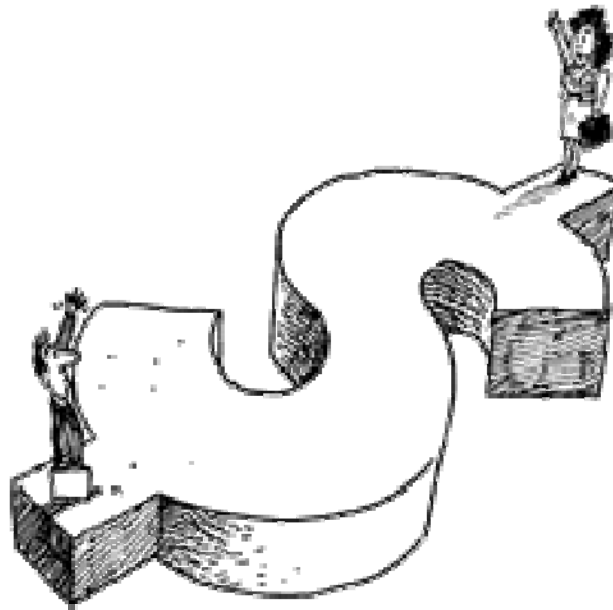
HUD considered but declined to redefine it as a part of recent rulemaking.

HUD clarified that negotiated discounts that are ultimately passed on to the borrower ***in full*** likely do not violate RESPA Section 8.

# RESPA Referral Fee:

## Not Prohibited

- ✓ An employer's payment to its own employees for any referral activities.



# RESPA Referral Fee:

## Not Prohibited

- ✓ Payments, including bona fide salaries and other compensation, to any person for goods or facilities actually furnished or for services actually performed.



# RESPA Referral Fee Prohibitions

HUD has provided a framework to determine whether fees for loan origination (broker) services are justified under RESPA.



# RESPA Referral Fee Framework

- HUD Policy Statement 2001-1 addresses 3 basic subjects:
  - ✓ Payment by Lender of “Back-End” Fees (“YSP”)
  - ✓ Treatment of Unearned Fees
  - ✓ Increased Disclosure and Explanation

# RESPA Referral Fee Framework

- Disclosures concerning broker fees
- Must be meaningful, provided in writing, and acknowledged by the consumer



# RESPA Referral Fee:

## Not Prohibited

- ✓ An "affiliated business arrangement" that meets the statutory criteria does not violate RESPA's anti-kickback rule.



# Affiliated Business Arrangements ("AfBAs")

An AfBA exists when:

- Person in position to refer settlement service business, or associate of that person
- Has affiliate relationship with, or direct or beneficial ownership interest of more than 1% in, settlement service provider and
- Person or associate refers settlement service business to the provider or influences a borrower's selection of the provider.

# Affiliated Business Arrangements

AfBA does not violate RESPA if:

1. Person making referral provides an AfBA Disclosure to each person whose business is referred



# Affiliated Business Arrangements

2. Person making referral does not **require use** of any particular provider of services, *except* that lender may require borrower to pay for attorney, credit reporting agency, or real estate appraiser chosen by lender and



# Affiliated Business Arrangements

3. Only thing of value received from arrangement by person making referral, other than payments otherwise permitted by RESPA, is legitimate return on person's ownership interest in the affiliated service provider.



# Disclosure Requirements

## AfBA Disclosure

- At or within 3 business days of application
- Must be a separate paper
- Must be signed by borrower
- Use model form!

# Affiliated Business Arrangements

- Person making referral cannot **require use** of any particular provider of services.
- Regulations include new definition of “**required use.**” Allow **settlement service provider** to offer combination of services at a total price (net of discount, rebate, or other economic incentive) lower than sum of market prices of individual services as long as: (1) use of combination is optional; and (2) lower price for combination is not made up by higher costs elsewhere.

# Affiliated Business Arrangements

- Person making referral cannot **require use** of any particular provider of services.
- Regulations include new definition of “**required use.**” Allow **settlement service provider** to offer combination of services at a total price (net of discount, rebate or other financial incentive) lower than sum of market rates of individual services and (1) use of combination is optional and (2) lower price for combination is not made up by higher costs elsewhere.

**Controversy**

# HUD Statement of Policy 1996-2

## Sham Affiliated\* Business Arrangements

\*Formerly called Controlled Business Arrangements



# Thank you!

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