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NEW REAL ESTATE SETTLEMENT PRACTICES ACT (“RESPA”) REGULATIONS

CHANGES TO THE REGULATIONS:

Effective January 1, 2010, new and significant changes to the regulations that determine how lenders, closing attorneys and title companies disclose certain loan and transaction costs were adopted by the Department of Housing and Urban Development (HUD). The new regulations are a part of the long awaited reform to the 30 year old Real Estate Settlement Practices Act (better known as, RESPA). The purpose of the new RESPA regulations are to provide greater transparency to the buyer, and to encourage greater consumer choice in the loan and closing process. The new RESPA regulations are so significant that HUD took the unusual step of giving lenders and others an additional 120 days, after the January 1st deadline, to implement the new procedures required by the Act.

The most significant changes to the new RESPA regulations relate to the required disclosures and information contained within the Good Faith Estimate (GFE) and the HUD-1 Settlement Statement (HUD Statement). The GFE is the document in which lenders disclose the anticipated loan and closing expenses that will be incurred by the borrower at the time of closing. The HUD Statement is the summary of the actual transaction costs incurred by the parties at closing.

A summary of some of the new RESPA regulations are as follows:

- Borrowers must receive a standard GFE that discloses, among other things: (1) the anticipated closing costs that will be incurred by the borrower as a result of the loan and transaction, (2) the significant loan terms, (3) whether the interest rate is fixed or

adjustable, (4) whether the loan includes a prepayment penalty, and (5) if there is a balloon mortgage provision.

- Lenders are required to provide borrowers with one standard origination charge for the loan which must include all: (1) points, (2) appraisal fees, (3) credit and application fees, (4) administrative fees, (5) lender inspection fees, (6) wire transfer fees, and (7) document preparation fees.
- Lenders are now permitted to provide borrowers with a list of approved service providers, such as closing attorneys and title insurance companies, and may disclose the cost associated with any such services.
- A tolerance range has been specified for various categories of the loan and closing costs to prevent unnecessary escalation of the charges identified in the GFE. Specifically, the fee quoted in the GFE for the lender origination charge cannot be different from that shown on the final HUD Statement at the time of closing. Further, the fee quoted in the GFE for title insurance and closing costs (if the lender selects the provider, or where the borrower selects the provider from the lender's approved list) cannot increase by more than 10% on the final HUD Statement.
- The GFE now contains a worksheet that can be used by the borrower to compare different loan products and terms.
- The controversial lender payments to mortgage brokers, known as yield-spread premiums, must now be disclosed in a standard manner on the GFE and final HUD Statement.
- The closing agent is required to compare the estimated charges disclosed in the GFE against the final charges contained in the HUD Statement at the time of closing to ensure that the prescribed tolerances are not exceeded.

You can view the new GFE form [here](#), and the new HUD Statement form [here](#). The most recent frequently asked questions from HUD (last updated January 28, 2010) can be found [here](#).

The Department of Housing and Urban Development has been clear that its intent is to provide greater disclosure and transparency to the loan and closing process, and believes that the new RESPA regulations will create a more comprehensible and competitive marketplace that will benefit consumers. Our firm is well equipped to implement the new procedures required by the Act, and can assist you and your clients with all of your closing needs. Please do not hesitate to contact us if we can assist you with the preparation of the new GFE, HUD Statements or answer any questions that you have about the new regulations.

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