



## Real Estate Settlement Procedures Act

“No man is above the law, and no man is below it; nor do we ask any man’s permission when we require him to obey it.” T. Roosevelt

This law protects you, the consumer from abuses during the residential real estate purchase and loan process and enables you to be a better informed shopper by requiring disclosure of costs of settlement services.

The U.S. Department of Housing and Urban Development’s (HUD) Federal Housing Administration (FHA) administers several regulatory programs to ensure equity and efficiency in the sale of housing. One of these programs, under the Real Estate Settlement Procedures Act (RESPA), applies to almost all mortgage loans and mortgage companies, not just FHA-insured mortgages. RESPA’s purposes are (1) to help consumers get fair settlement services by requiring that key service costs be disclosed in advance, (2) to protect consumers by eliminating kickbacks and referral fees that would unnecessarily increase the costs of settlement services, and (3) to further protect consumers by prohibiting certain practices that increase the cost of settlement services.

RESPA protects consumers by mandating a series of disclosures that prevent unethical practices by mortgage companies and that provide consumers with the information to choose the real estate settlement services most suited to their needs. The disclosures must take place at various times throughout the settlement process:

- Disclosures at the time of loan application. When a potential homebuyer applies for a mortgage loan, the buyer must receive (1) a Special Information Booklet, which contains consumer information on various real estate settlement services; (2) a Good Faith Estimate of settlement costs, which lists the charges the buyer is likely to pay at settlement and states whether the buyer is required to use a particular settlement service; and (3) a Mortgage Servicing Disclosure Statement, which tells the buyer whether the loan will be kept or transferred for servicing, and also gives information about how the buyer can resolve complaints. RESPA does not specify penalties when these three items are not provided, but bank regulators can impose penalties.
- Disclosures before settlement (closing) occurs. (1) An Affiliated Business Arrangement Disclosure is required whenever a settlement service refers a buyer

- to a firm with which the service has any kind of business connection, such as common ownership. The service usually cannot require the buyer to use a connected firm. (2) A preliminary copy of a HUD-1 Settlement Statement is required if the borrower requests it 24 hours before closing. This form gives estimates of all settlement charges that will need to be paid, both by buyer and seller.
- Disclosures at settlement. (1) The HUD-1 Settlement Statement is required to show the actual charges at settlement. (2) An Initial Escrow Statement is required at closing or within 45 days of closing. This itemizes the estimated taxes, insurance premiums, and other charges that will need to be paid from the escrow account during the first year of the loan.
  - Disclosures after settlement. (1) An Annual Escrow Loan Statement must be delivered by the servicer to the borrower. This statement summarizes all escrow account deposits and payments during the past year. It also notifies the borrower of any shortages or surpluses in the account and tells the borrower how these can be paid or refunded. (2) A Servicing Transfer Statement is required if the servicer transfers the servicing rights for a loan to another servicer.

Along with these disclosures, RESPA protects consumers by prohibiting several other practices: (1) Kickbacks, fee-splitting, and unearned fees: Anyone is prohibited 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, which covers almost every loan made for residential property. RESPA also prohibits fee-splitting and receiving unearned fees for services not actually performed. Violations of these RESPA provisions can be punished with criminal and civil penalties. (2) Seller-required title insurance: A seller is prohibited from requiring a homebuyer to use a particular title insurance company. A buyer can sue a seller who violates this provision. (3) Limits on escrow accounts: A limit is set on the amount that a borrower is required to put into an escrow account to pay taxes, hazard insurance, and other property charges. RESPA does not require an escrow account on borrowers, but some government loan programs or mortgage companies may require an escrow account. During the course of the loan, RESPA prohibits charging excessive amounts for the escrow account. And each year, the borrower must be notified of any escrow account shortage and return any excess of \$50 or more.