

HUD Sets Out Details of Proposed RESPA Reform

■ *Scott Pierce, Southeast Region Manager*

On July 5th, HUD sent proposed revisions of its RESPA regulations to Congress and published them in the *Federal Register* for a 90-day comment period. These revisions advocate sweeping changes that have the potential to impose a significant impact on the residential real estate market. One of these changes would involve the creation of a new Good Faith Estimate (GFE). Lenders would also be encouraged to offer a "Guaranteed Mortgage Package Agreement" (GMPA) consisting of a loan at a specific interest rate and a single price for all settlement services related to the loan. HUD believes that both the GFE and GMPA, by encouraging lenders to negotiate for volume discounts from vendors, would not only allow borrowers to shop more effectively and compare costs for loans, but also realize savings in settlement services.

THE NEW GOOD FAITH ESTIMATE (GFE): Under this proposal, the GFE would be good for 30 days. Actual charges at closing would have a "tolerance level," depending on their category. Providers selected by the lender have a zero percent tolerance, meaning that the charges have to be exactly as set forth in the GFE. If the lender requires the borrower to choose from a list of service providers, the tolerance is ten percent. If the borrower chooses a more expensive provider, there is no tolerance. "Title services and title insurance" (the 1100 series of charges on the HUD-1) will come under these tolerance levels. Included will be charges for search, examination, the mortgagee policy, closing, doc prep, wire transfer, delivery and attorney fees. The lender may ask title agents for a quote on all series 1100 items, or just those services that they provide.

HUD proposes that any discounts offered by service providers, in order to receive business shall not be subject to Section 8's referral fee prohibition. Any discounts, however, must be passed on to the borrower; mark-ups are not allowed. A lender cannot require the use of an affiliated title company under the new GFE proposal. The proposal also includes a requirement that the title agent break out into separate subtotals the amount of premium paid to the underwriter and the amount the agent retains.

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THE NEW GUARANTEED MORTGAGE PACKAGE AGREEMENT (GMPA):

This alternative to the GFE is essentially the “bundled services” concept that has been discussed for the past three years. Of the two, the GMPA will most likely be more favored, although lenders can operate under both formats.

According to this proposal, the borrower is provided a loan amount at a specific interest rate and a lump sum of all closing costs. Any service provider can offer a guaranteed mortgage package; but the requirement that a loan at a guaranteed interest rate must be included would make it appear that only lenders will be offering the GMPA. There is no requirement that packagers itemize or disclose the services included in the GMPA. However, escrows for taxes and insurance, *per diem* interest and optional owner’s title insurance are not a part of the package.

Under the proposal, HUD presents further inducements, in addition to non-disclosure, to persuade lenders to offer the GMPA such as an exemption from Section 8 of RESPA for prices and services provided in the GMPA. However, unlike the alternative GFE format, lenders **can** offer the bundled package to the borrower at a price **higher than the costs of the individual services**, thus “marking up” the package. **In addition, a lender who requires a provider to pay a fee in order to be included in the package would not be subject to Section 8 sanctions.** HUD’s explanation as to why it is not troubled with payments to entities participating in the package as follows:

“HUD has examined this concern and concluded that

guaranteed packaging arrangements should be permitted in a carefully circumscribed safe harbor. Deregulation, transparency, and a free market will wring out kickbacks, referral fees, and other excesses more effectively than the current restrictions and, for this reason, the establishment of a safe harbor is warranted.

According to the GMPA proposal, a lender may use an affiliated business service provider for some or all of the packaged services and be exempt from the affiliated business disclosure requirement. Furthermore, all services of third party providers included in the package price are to be combined and shown as an origination fee on line 801 of the HUD statement. There are no separate line item charges shown for items such as search, exam, closing or the premium for the mortgagee policy!

These proposed regulations represent a significant change for the title industry. Although lenders could use either the GFE or the GMPA format, it would appear that the GMPA concept would be the predominant format for lenders. However, there are a number of concerns regarding such a structure:

- Does this mean that the only way a title agent can expect to obtain a reasonable volume of residential closings is to participate in a Guaranteed Mortgage Package?
- Who will direct the placement of title orders in predominately “seller-

controlled” areas?

- How much pressure will be placed on title agents to reduce prices so they may be included in a GMP?
- Will agents have to absorb the cost overruns for other’s services that they must incorporate in a package, such as recording fees?
- Will large underwriter direct operations benefit from the GMPA format by offering discounted closing fees in return for the business?

Please keep in mind that these proposed regulations are just that, “proposed.” Any concerns raised during the 90-day comment period in the *Federal Register* will be taken into consideration.

A copy of the proposed regulations is available at the American Land Title Association’s website: www.alta.org.

COMMENTS:

We invite your feedback and welcome your suggestions regarding “*In The Title Corner*” and the publication of future articles. Address correspondence to:

In The Title Corner
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100 S. Ashley Drive, Suite 700
Tampa, FL 33602
800-342-5957
Fax: 813-223-3401



New Plant Telephone Numbers

We have installed direct phone lines into our Title Plant. The new numbers are as follows:

LOCAL CALLS IN THE (813) AREA CODE:	(813) 865-0149
TOLL FREE	(866) 94-TITLE or (866) 948-4853
FAX NUMBER (THIS NUMBER DID NOT CHANGE)	(813) 228-0452

To expedite your inquiries, you can ask for the staff specialist listed below:

- | | |
|---|---|
| <ul style="list-style-type: none"> • STATUS INQUIRIES ON YOUR FILE • ORDER CONFIRMATION • ORDER CHANGE
Ask for: Katrina Morris (ext. 229)
or Pat McCullars (ext. 230) • INFORMATION TECHNOLOGY QUESTIONS • E-MAIL ORDERS • E-MAILING TITLE WORK • FILE TRACKING • ANY OTHER OPERATIONAL ISSUES
Ask for: Cynthia Morris,
Ass't Operations Mgr. (ext. 260) | <ul style="list-style-type: none"> • CLOSING UPDATE INQUIRIES
Ask for: Daphne Paul (ext. 227)
or Carmen Flores (ext. 241) • POLICY UPDATE INQUIRIES
Ask for: Gary Wynn (ext. 249)
or Debbie Lail (ext. 250) • COPY REQUESTS
Ask for: Debbie Kuhlman (ext. 228)
or Lynn Jones (ext. 228) |
|---|---|

Title Plant Manager – **Brenda Waldecker** (ext. 226)
 Mid-Florida Operations Manager – **Robin Cardella** (ext. 202)
 (813) 228-0555 or toll free (800) 342-5957

Underwriting Department Hours, Extensions & Phone Numbers

In our continuing effort to provide our agents with excellent service, we take this opportunity to remind you that your Old Republic National Title Insurance Company Underwriters are in the office and available to answer your questions and address your concerns from 8:30 A.M. to 5:00 P.M. We may be reached through our receptionist or, after hours, through the voice-mail system at 1-800-342-5957 or 813-228-0555. Our extension numbers are provided here for your convenience:

Carolyn Broadwater	Ext. 203
Jim Russick	Ext. 222
Linda Hernandez	Ext. 224
Mike Davis	Ext. 219

Below, you will find our cell phone numbers; however please try calling us at the office before calling us direct. If we are not available by cell phone for some reason, our personal voice-mail messages will inform you of that. Otherwise, our cell phones are on from 8:00 A.M. until 6:00 P.M., Monday through Friday, and often at other times as well. If we are not able to answer your call, please leave a message and we will return the call as quickly as possible. Old Republic recognizes that you may have a need for underwriting services at times other than during the usual business hours. We will make ourselves available during those off-peak times as much as possible.

Carolyn Broadwater	813/503-4087
Jim Russick	813/335-0306
Linda Hernandez	813/220-7585
Mike Davis	813/765-7331



More Continuing Ed Hours

Some new classes, great locations!

If you need hours before the end of the year, or just want some useful information, please join us at any one of the following presentations.

Invitations will be mailed to agents in the surrounding area for each Seminar, but if those times are not convenient, you are welcome to attend any presentation.

Old Republic National Title Insurance Company –
Your partners in education.



UPCOMING SEMINARS - FALL 2002

<u>Date</u>	<u>Location</u>	<u>Hours</u>	<u>Classes</u>
09/19/02	Sarasota	1	<i>"Basic Water Rights & Title Insurance (Is Your Duck in My Pond?)"</i> – Mike Davis
		1 (1 hr. ethics)	<i>"Fraud & How to Avoid It"</i> – Jim Russick
		1 (1 hr. ethics)	<i>"Ethics & The Real Estate Lawyer or Title Office"</i> – Mike Davis
10/02/02	Coral Gables	2 (2.5 CLER)	<i>"Internal Revenue Reporting Requirements: FIRPTA, 1099/Cash Reporting"</i> – Linda Hernandez
		1	<i>"Examining Court Files"</i> – Carolyn Broadwater
		1	<i>"Foreclosures: Problems & Solutions"</i> – Carolyn Broadwater
10/03/02	Lakeland	1	<i>"A Cure For What Ails You"</i> – Mike Davis
		1 (1 hr. ethics)	<i>"Fraud & How to Avoid It"</i> – Jim Russick
		1	<i>"Business Entities: A Guide to Conveyances to and from Corporations, Partnerships & Limited Liability Companies"</i> – Mike Davis
10/10/02	Tampa	1	<i>"Short Form Policy & Related Issues"</i> – Mike Davis
		1	<i>"Notary Issues for the Title Agent"</i> – Linda Hernandez
		1 (1 hr. ethics)	<i>"Ethics & The Real Estate Lawyer or Title Office"</i> – Mike Davis
10/17/02	Jacksonville	1	<i>"Short Form Policy & Related Issues"</i> – Mike Davis
		1	<i>"Liens – An In-Depth Examination"</i> – Mike Davis
		1 (1 hr. ethics)	<i>"Ethics & The Real Estate Lawyer or Title Office"</i> – Mike Davis

Old Republic All-Star

■ *Linda M. Hernandez, Florida State Underwriter*

Old Republic's auditors and underwriters devote a lot of time to alerting and educating our agents about the latest scams and capers emerging in our industry. Judging from what we are learning about the experiences of some of our agents, such as the one that appears below, it appears our emphasis on increasing awareness and sensitivities to different kinds of schemes and the many faces of fraud is proving to be of benefit to us all.

Today's recognition goes to **Becky Pierce**, an employee of Central Florida Title's North Tampa Office, as she becomes the third inductee to the Old Republic Title ALL-STARS. Even though Becky is an experienced escrow closer, she had never before encountered the type of sting she brought to our attention and successfully averted a few months ago.

The situation began routinely enough. Becky received an order for title insurance on a sale of \$68,000.00 with a simultaneous purchase money mortgage. A week before the closing, the loan officer called to tell her that the sales price had changed to \$87,000.00 and that she would have to change her commitment.

As all of you know, an increase in sales price is highly unusual! Sensing that something was not quite right, Becky requested a copy of the amended contract and inquired about the reason for the increase. The loan officer responded that there was an unrecorded contract for deed between the parties dated 1999 for \$87,000.00. He then proceeded to tell her that this transaction was, in reality, "a cash-out refinance" rather than a sale.

Becky recalled reading something in an ORNTIC Bulletin about a prohibition against treating the consummation of an agreement for deed as a refinance. Wisely, she requested the loan officer to fax her a copy of the contract for deed so that her underwriters could review it.

While she waited for the fax from the loan officer, she called the selling agent and asked for a copy of the amended contract. The agent told her it was not possible to obtain a signed amendment because the seller was elderly, in a nursing home, and would not understand. This raised another cloud of suspicion in Becky's mind, so she called us immediately about this file.

Becky is the first one to tell you that when she is in doubt, or even if she only wants reassurance about something she is feeling about a file, she will not hesitate to call her ORT Underwriters. In this case, her knowledge and suspicions were right. There is an Old Republic Bulletin (# 99-5) prohibiting the treatment of "a cash-out" contract for deed as a refinance. As Becky went on to discuss the other details surrounding this transaction she was, once again, reassured that she should listen to her instincts - there was probably some kind of deception going on - and she did not want to be involved in this deal! The president of her company agreed and Becky proceeded to advise the Realtors and the loan officer. The Realtors were grateful. If this actually happened to be a fraudulent transaction, at least they would not be involved! The loan officer, on the other hand, laughed and belittled Becky, telling her that she just did not want to admit to not



knowing how to close this transaction.

The next day, the listing Realtor's office manager called Becky to relate some important news. It seems that when the manager questioned the elderly seller, the seller denied having signed the contract for deed and what is even more curious, the buyer, when questioned, also denied ever signing it either! These revelations did not come as much of a surprise to Becky or her ORT underwriter. Earlier, they had compared the seller's signature against her signatures on other documents now appearing in the public records. The conclusion they drew from this examination was that the seller might not, indeed, have executed the contract.

Later, we received word that the loan officer had, in fact, admitted to the listing Realtor that he had "manufactured the document for the benefit of the buyer so that she could qualify for a loan." Yeah! Right! He only had the buyer's interest at heart!

To Becky Pierce of Central Florida Title, Old Republic National Title extends congratulations and thanks for being alert and following her good instincts in responding quickly to expose a situation that had the potential to negatively impact many people.

Check It Out!!!

Do you need loan pay-off figures? Are you an ALTA member? MERS, America's mortgage loan registry, is offering their service for a reduced introductory fee to ALTA members. Their service enables settlement agents to obtain timely, accurate and reliable pay-off amounts and terms without playing telephone "tag" with mortgage companies, or worse yet, going into recording machine limbo. MERS has registered more than 8,000,000 loans and is registering more than 12,000 additional loans per day. Go to the ALTA website at www.alta.org to obtain more information about this valuable service.



Ask Your Underwriter

■ *Linda M. Hernandez, Florida State Underwriter*

Question

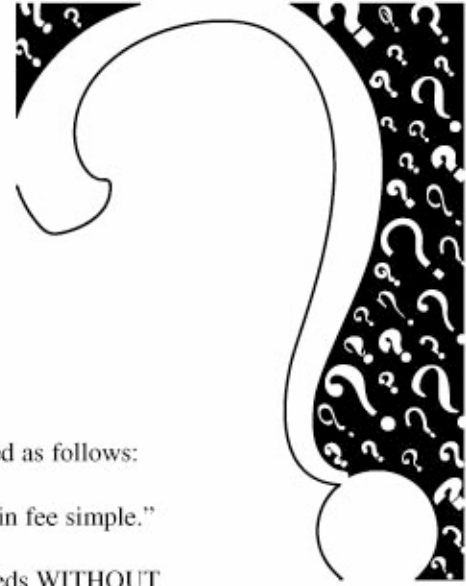
Our buyers want title conveyed to Buyer "A" for life, and then to Buyer "B." Can we insure such a conveyance and, if so, how do we show the interests to be insured on the deed and policy?

Answer

Yes, we can insure such a conveyance. You show the Grantees in the deed as follows:

"____'A'____, as to a life estate and ____'B'____, as to the remainder in fee simple."

On your policy, however, both individuals are shown as the named insureds WITHOUT reciting their respective interests. (This avoids a possible claim should a dispute arise between the parties as to their interests.)



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