



# TITLE TALK

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## NEW GFE AND NEW HUD BECAME MANDATORY JANUARY 1, 2010: ARE YOU READY?

Happy New Year! 2010 is here, and so are the new RESPA rules, as well as TILA changes. Are you ready?

Selected highlights:

1. Lenders have 3 business days to issue a GFE after borrower provides required information. This is important because lenders need accurate fees, title premiums and recording costs/transfer tax fees from you before they can issue a GFE.

*Are you accessible to your loan originators? Do you have an interactive website? Are you using <http://ortratecalculator.oldrepublictitle.com/RateCalc.aspx?CallingApp=PUBLIC&Location=45> as a link to help your loan originators with premiums? Since Loan Originators have zero tolerance for transfer taxes, do you have a means to help them get accurate 1200 series fees?*

2. Borrowers have 10 business days to shop for service providers and lenders after receiving a GFE.

*Do you have a way to communicate with prospective borrowers so they might choose your services?*

3. If a GFE is revised to address a tolerance violation the closing need not be delayed for this reason.

4. Under TILA there is a "3/7/3 day rule." APR has to be delivered not later than 3 business days after application. Settlement cannot occur until 7 business days after delivery or mailing of the initial APR. If there is a change of circumstances that increases or decreases the APR by more than 0.125 percent, an additional 3 business day waiting period is required. Only in cases of a borrower's "bona fide personal financial emergency" may the time periods be waived.

*Have you set up procedures to make sure closing dates comply with the TILA timing rules, regardless of what dates are in a real estate contract? Have you informed real estate agents with whom you work of the timing requirements? Have you drafted an informational letter for purchasers explaining potential delays in settlements due to federal rules?*

5. All credits, whether from lenders, sellers, or real estate agents will now be shown on the 200 series. If it is a seller credit it will be debited in the 500 series. No more will you shift items from the borrower's column into the seller's column—even on FHA loans.
6. An administrative fee charged to the borrower by a real estate agent should be shown on line 704 of the HUD-1. It was not contemplated by HUD when developing rules regarding settlement charges and is not included in the GFE provided by the loan originator.
7. Items 801, 802 and 803 may not be shown as P.O.C. These items should be charged to the borrower on page 2 of the new HUD, and an offsetting credit from the lender should be shown on page 1 of the new HUD. Items 804 and after in the 800 series may be shown as P.O.C.
8. In the 1100 series all relevant fees are rolled up into line 1101 EXCEPT for the Owner's title insurance premium, which is shown on line 1103. HUD's FAQs state that the settlement fee should be disclosed on line 1102 when the title agency and the settlement agent are separate entities. Lines 1109 and following may show amounts paid to third party service providers, except that fees HUD classifies as "administrative or processing" may not be itemized. Examples of these fees include delivery fees, notary fees, storage fees, etc.
9. Where the cost of a survey should be shown on the HUD-1 depends on several factors. If the lender requires it and chooses the

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service provider, the cost should be disclosed in the 800's. If the lender requires it and allows the borrower to choose the service provider, the cost is lumped into Line 1301 and itemized in Line 1302 or 1303. If a survey is required to issue a lender's or owner's title insurance policy, the cost is lumped into Line 1101, and if such survey is performed by a third party (not the settlement agent), the cost is further itemized on Line 1109 or thereafter. If neither the lender nor the title agent require a survey, but the borrower just wants one, the cost is included in the borrower's column on Line 1304 or thereafter.

10. The new GFE and HUD-1 must be used on transactions begun January 1, 2010 and later. They also apply to transactions that are closed-end, secured by a 1-4 family residence, made for a non-business purpose, involving an institutional lender. This would include sales and refinances of principal dwellings and second homes where the purpose of the proceeds is for a non-business purpose.
11. The new GFE and HUD-1 do not apply to loans involving commercial property, rental property, vacant land (no construction for personal dwelling), seller held take backs, cash purchases, and cash-out refinances of personal dwellings or second homes where the proceeds are designated for a business use.
12. As settlement agents we follow the instructions of the lender. If the lender requires the new HUD-1 use it. If the lender says to use the pre-2010 HUD-1, use the older version. The lender is responsible for determining which forms need to be used. You must have good communication with the lender to know whether it qualifies for the new HUD-1 or not.
13. Sellers only need to receive the first two pages of the new HUD-1 as the third page only affects the borrower/purchaser.
14. HUD has no requirement, and has never had a requirement, that the HUD-1 be signed. Lenders require signatures.

If you have questions do not hesitate to contact us.



*All of us at Old Republic Title join in wishing  
you a healthy and prosperous New Year!*

*Kevin, Bill, Maureen, Kay, Michelle, Megan, Yolanda,  
Chris, Rosemarie and Kevin H.*

#### Trust Me

(Virginia Code Section 55-550.13—Certification of Trust)

*William M. Amrhein, Virginia Agency Counsel*

Every now and then, the Virginia General Assembly enacts a piece of legislation that has some peripheral effect on real estate transactions and, for whatever reason, it somehow slips “under the radar” of legislative analysts and watchdogs. Such an event occurred in 2005 with the enactment of the Uniform Trust Code (hereinafter “UTC”).

The UTC is an extensive piece of legislation that makes up the last chapter in Title 55 of the Virginia Code. Specifically, it is found in Sections 541 through 551. Each of those numbered sections contains a number of decimated subsections. As one might imagine, the UTC contains just about anything imaginable in relation to the creation, amendment, management and termination of trusts, as well as the powers and limitations upon trustees.

This article will focus on only one section of the UTC, entitled “Certification of Trust” and identified as Section 55-550.13. It provides that the trustee may deliver to a third party—not a beneficiary—a certification as to certain terms of the trust (as opposed to delivering a copy of the full trust agreement to such third party).

Let's talk for a minute about a situation you all encounter: your current owner is a trust. There are several issues that you need to address (I hope). Now that the law has been changed so that title can be conveyed to the trust instead of the trustee, how do you know who the trustee is? Does the trustee have the power to sell or to encumber the property? Are there any limitations or qualifications upon the exercise of that power? Does the trustee have the power to make a gift of the real estate or to grant a power of attorney? If there are multiple trustees, do all need to join, or any specified number, or may any single trustee act? Since the trustees have neither statutory nor case law grant of power, one must look to the trust agreement itself.

Now, in lieu of sending a copy of the trust, along comes this “Certification of Trust.” So you say (and rightly so), What is this beast? What does it look like? What does it do? For openers, it consists of nine lettered subsections. The first four subsections deal with information, which “may” be contained in the certification. The last five deal with the actions (or reactions) of recipients

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of the certification or persons who act in reliance thereupon.

The most important of the first four subsections is Subsection A. It contains eight statements about the terms of the trust that “may” be included in the certification. Seven of these you need to know; one (#8) you already know. They are as follows:

- 1) That the trust exists, and its date of execution;
- 2) The identity of the settlor (maker);
- 3) The identity and address of the current trustee;
- 4) The power of the trustee;
- 5) The revocability or irrevocability of the trust, and the identity of any person who can revoke it;
- 6) The authority of co-trustees to sign and whether all or less than all are required to act;
- 7) The trust taxpayer’s identification number; and
- 8) The manner of taking title to trust property.

Subsection B provides that the certification may be signed or authenticated by any trustee. Subsection C requires a statement that the trust has not been revoked, modified or amended to the extent that it would cause the representations to be incorrect. Subsection D provides that the certification need not contain the dispositive terms of the trust.

Subsection E is a bit confusing when read with Subsections A3 and A4. It provides that the recipient may “require” the trustee to furnish copies of those excerpts from the original trust agreement and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction. More about this in Subsection H comments.

Subsection F is the “crème de la crème.” It provides that a person who acts in reliance upon a certification “without knowledge” that the representations are incorrect is not liable to “any” person for so acting and may assume without inquiry the existence of facts contained in the certification. It further provides that knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying thereon.

Subsection G adds to the good news. It provides that a person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained therein were correct.

Caution is the byword as to Subsection H. It provides that a person making a demand for the “trust instrument,” in addition to a certification of trust or excerpts, is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

Subsection I does not really affect us. It allows a person to obtain a copy of the instrument in a judicial proceeding concerning the trust.

A few overall comments seem to be appropriate. You will note in Subsection A that I included quotation marks around the word “may”. I am a bit surprised the word “shall” was not used. Suppose the trustee does not wish to include some of the information described in statements (1) through (7) above. Subsection E gives a bit of help as to numbers (3) and (4). Other than that, I do not have an answer.

Now, for the good news. Subsections F and G provide protection for you to accept the certification unless you know any statement (or all statements) to be incorrect. I deem this to dovetail in with the “good faith” requisite set forth in Subsection G. All in all, I believe the certification is a document upon which we can all rely.

But beware of Subsection H. Be careful how far you push your demands. One would think that the “damages” in court would be de minimis, but there is no standard set for what such damages might be or any idea or yardstick as to a measurement thereof.

So that’s if, folks! The Uniform Trust Code Certification! Is it perfect? No! Does it entail any risk? A little! Is it helpful? Likely, in most cases! Is it better than what we had? No questions about it! Do I recommend that you use it? Absolutely! Trust me – I’m a lawyer!

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Here is just a sampling of the feedback we have received:

*“It was a pleasure attending your RESPA session again the other day. I was so impressed in October that I not only returned for more but brought as many from my company as I could influence. They all agreed that the two hours were well worth it. I learned more and had more fun than any other RESPA training that I have attended. Thank you.”*  
- Philip Gockenbach, ACACIA Federal Savings Bank

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