

# Fidelity National's Florida Underwriting Newsletter



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This Newsletter should be retained for future reference. It includes practices and procedures with which you are to comply under the terms of your Issuing Agency Agreement with Fidelity National Title.

## HUD ISSUES FINAL RESPA RULE

By Karla Staker Gray, State Underwriting Counsel

On November 17, 2008, HUD published its final rule modifying the Real Estate Settlement and Procedures Act (RESPA). Unless Congress passes a resolution of disapproval within the 60-day congressional review period, the rule will become law on January 16, 2009. However, under the rule's bifurcated effective date, certain key provisions will not be effective until January 1, 2010.

Some of the revisions that will become effective January 16, 2009, are:

**AVERAGE CHARGES.** Any settlement service provider that obtains a service from a third party on behalf of a borrower or seller may use an "average charge" for any particular class of transactions. Examples of third party charges include recording fees and express delivery fees. A class of transaction may, at the discretion of the service provider, be defined by such factors as the period of time, type of loan and geographic area. However, the charge cannot be based on the loan amount or on the value of the property. Therefore, it cannot be used for transfer taxes, daily interest charges, reserves or escrows or any type of insurance, including title insurance. Further, the total amounts charged to borrowers for a service cannot exceed the total amounts paid to the providers of that service for that class of transactions. If an average charge is used, the provider must use the same average charge for every transaction in the class. The provider must recalculate the average charge at least every 6 months and must retain copies of documents used to calculate the average charge for at least 3 years after any settlement in which the average charge was used.

**REQUIRED USE.** The most controversial change was to the definition of "required use" affecting affiliated business arrangements. Home builders will not be permitted to offer any economic incentive or discount to a home buyer in exchange for using the builder's affiliated business, such as mortgage company or title company. However, HUD lifted the ban on linking incentives to use of affiliates for everyone except home builders. Therefore, for example, a mortgage broker or real estate broker could give the consumer a break on the broker's fee if the consumer uses the broker's affiliated lender or title company.

Some of the revisions that will become effective January 1, 2010, are:

**GOOD FAITH ESTIMATE (GFE).** A new three-page GFE is the signature piece of the rule. The rule contains many requirements and limitations pertaining to it. For example, the loan originator must provide a GFE within three business days of the borrower's application and cannot charge more for the GFE than the cost of the credit report. Generally, a revised GFE cannot be issued unless there are "changed circumstances." Changed circumstances include acts of God, war, disaster, other emergencies and situations where information particular

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## HUD ISSUES FINAL RESPA RULE

By Karla Staker Gray, State Underwriting Counsel  
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to the borrower or the transaction either changes or is later found to be different from what was known at the time the GFE was provided.

Of particular interest to title agents, the GFE sets forth three categories of settlement charges and states what changes will be tolerated on the HUD-1.

**Cannot Increase (Zero Tolerance).** The following charges cannot increase at settlement:

- Loan origination charge or adjusted origination charges (after interest rate locked)
- Borrower's credit or charge (points) for the interest rate chosen (after the interest rate locked)
- Transfer taxes

**Can Increase up to 10% at Settlement.** The total of the following charges can increase up to 10% at settlement:

- Required services that the lender selects
- Title services and lender's title insurance (if the lender selects them or the borrower uses companies the lender identifies)
- Owner's title insurance and required services that the borrower can shop for (if the borrower uses companies which the lender identifies)
- Government recording fees

**Can Change.** The following charges can change at settlement:

- Required services that the borrower can shop for, title services and title insurance (if the borrower does not use companies the lender identifies)
- Initial deposit for escrow account
- Daily interest charges
- Homeowner's insurance

A loan originator may cure a violation of the tolerances by reimbursing the borrower the amount by which the tolerances were exceeded.

**HUD-1.** A copy of the revised HUD-1 (without the instructions) is included in this newsletter. No significant changes were made to page 1. Lines on page 2 were revised to show the corresponding item from the GFE so the consumer can easily compare them. Additionally, the 1100 section has been revised. Line 1101 is for a single title services fee for all fees except the closing fee (Line 1102) and the premiums (Lines 1103 – 1108). The agent and underwriter portions of the title insurance premium are to be set out separately, on Lines 1107 and 1108 respectively. Additionally, a third page has been added which sets forth a comparison between the settlement charges listed on the GFE and the charges listed on the HUD-1 and the details of the loan terms. An inadvertent or technical error in completing the HUD-1 will not be a violation of section 4 of RESPA if a revised HUD-1 is provided to the borrower and/or seller within 30 calendar days of settlement.

Concerning the effective date, prior to January 1, 2010, any settlement service provider may choose to proceed under either the current GFE and HUD-1 requirements or under the new GFE and HUD-1 requirements. However, any settlement service provider who delivers the new GFE prior to January 1, 2010, will be subject to all of the requirements related to the new GFE, including compliance with the tolerance provisions and use of the new HUD-1.

Note also that the final rule does not require settlement agents to read a closing script to the borrower detailing the loan terms and related settlement information, as proposed earlier by HUD. The rule is codified in 24 CFR Parts 203 and 3500 and can be accessed at <http://edocket.access.gpo.gov/2008/pdf/E8-27070.pdf>.



## **MIAMI-DADE REOs REQUIRE CERTIFICATE**

Section 33-8 of the Miami-Dade County Code was recently amended to provide that no single family residence, condominium unit, townhouse or duplex shall be sold, transferred or otherwise alienated after issuance of a foreclosure certificate of title unless a certificate of use (CU) is obtained from the Department of Planning and Zoning. The CU will only be issued after an inspection is made and the residence is found to comply with all building and zoning codes. County departments are authorized to collect fees for the inspection and the issuance of the CU.

Therefore, prior to insuring a sale or mortgage from a lender or other person or entity that has acquired a residence in unincorporated Miami-Dade County by a foreclosure certificate of title, the title agent must require issuance of a CU. The CU should be recorded. If it is not in recordable form, recordation may be accomplished by attaching it as an exhibit to an affidavit.

## **TITLE INSURANCE COUNCIL HELD 1<sup>ST</sup> MEETING**

Florida's 2008 Title Insurance Study Advisory Council held its first meeting on October 21, 2008, in Tallahassee. Created by the Florida Legislature last year, the 21-member council is studying Florida's title insurance system in order to make recommendations to the Governor and Legislature by December 31, 2009. The recommendations of the Council could have a major impact on title insurance rates and regulations. Therefore, the work of the Council this year in 2009 will warrant close attention.

To assist the Council, the Office of Program Policy Analysis and Government Accountability (OPPAGA) submitted a written report and gave a presentation at the meeting on the past and present regulatory framework of title insurance in Florida. Until January 2003, the Department of Insurance regulated the industry. As part of the 2002 Cabinet reorganization, the Legislature made the Department of Financial Services (DFS) responsible for regulating agents and agencies and made the Office of Insurance Regulation (OIR) responsible for regulating title insurers and their direct operation employees. According to the OPPAGA, this divided oversight has made it difficult to gather comprehensive data needed for rate setting and has resulted in inconsistencies in oversight and enforcement.

Of particular importance, OPPAGA noted that the OIR supports eliminating promulgated rates, largely because it has had difficulty obtaining data necessary to set promulgated rates. The OIR would like Florida to adopt a "file and use" method. Most of the other states use a variation of a "file and use" method whereby insurers submit rates to a state authority for review and approval. Florida, Texas and New Mexico are the only states with promulgated title insurance rates. Additionally, all other lines of insurance in Florida use a file and use method.

OPPAGA also identified the uncertainty about the amount of premium taxes owed to the state as an area that should be studied. Insurers pay a premium tax based on the total amount of the premium, even though they typically receive only 30% of the premium. They generally estimate what premium was charged by the agent and base premium tax on the estimate. The Department of Revenue has found instances where premium tax paid did not match the financial documents submitted to the OIR.

Additional information can be obtained at the Council's website:  
[flgov.com/2008titleinsurancestudyadvisorycouncil](http://flgov.com/2008titleinsurancestudyadvisorycouncil).



## CASES OF INTEREST

By Dave Morgan, Associate Underwriting Counsel

### You really do need those corporate resolutions

Let's say you are examining a title for a sale from one individual to another. You notice that the deed into your seller was from a dissolved corporation and was signed by your seller himself in his capacity as "officer/administrator." You find no corporate resolution authorizing the conveyance. What do you do?

Someone apparently did nothing and closed on that sale to a third party. The result was the case of DGG Development Corporation v. Estate of Capponi, 983 So. 2d 1232 (Fla. 5<sup>th</sup> DCA 2008). In that case, the corporation, DGG, sued the individual, Capponi, and the third party grantee for quiet title.

The court stated that since the signatory was not the president, vice president or CEO of the corporation, a corporate resolution authorizing the sale should have been obtained and recorded. Such a resolution should be required any time the signatory is not in one of the above positions, but especially when the conveyance is to the corporate officer individually.

The grantees' argument that they were bona fide purchasers was rejected because they were on notice of the defective deed being recorded without the resolution. Some title insurer may have had to pay policy limits on this one.

### To quiet title or not to quiet title...

Ms. Barclay purchased property from Robert C. Malt & Co and that entity took back a first and second mortgage. Ms. Barclay abandoned the property and Malt & Co. took it over and rented it out to tenants over a number of years. Malt & Co. never foreclosed or got a deed in lieu.

The trial court allowed Malt to quiet title. However, this decision was reversed on appeal. The court said in Barclay v. Robert C. Malt & Co., 985 So.2d 53 (Fla. 4<sup>th</sup> DCA 2008) that in order to quiet title, you must first have title. Malt's mortgages were only liens.

### Death, Partition and Joint Tenancy with Right of Survivorship

Mr. Headrick and Ms. Mercurio held title as joint tenants with rights of survivorship. Mr. Headrick filed a partition action and Ms. Mercurio filed an answer consenting to partition. However, Mr. Headrick died while the suit was pending. Mercurio v. Headrick, 983 So. 2d 773 (Fla. 1<sup>st</sup> DCA 2008) held that Ms. Mercurio became the sole owner upon the death of Mr. Headrick. Neither the filing of the partition suit nor the filing of an answer consenting to partition severed the survivorship.

### STATUTORY INTEREST RATE

Alex Sink, Florida's Chief Financial Officer, has set the 2009 rate of interest payable on Florida judgments at 8% per year or .0002192 per day. The interest rate in effect at the time a judgment is obtained remains the same until the judgment is paid. § 55.03.03(3), F.S. For additional information please view [www.fldfs.com/aadir/interest.htm](http://www.fldfs.com/aadir/interest.htm)

#### INTEREST RATE TABLE

YEAR	PER ANNUM	DAILY RATE
2009	8%	.0002192
2008 – 2007	11%	.0003014
2006	9%	.0002466
2005 - 2004	7%	.0001918
2003	6%	.0001644
2002	9%	.0002466
2001	11%	.0003014
2000 - 1996	10%	.0002740
1995	8%	.0002192
10/01/81 through 12/31/94:	12%	.0003333



## **UPCOMING HOLIDAY CLOSINGS**

**The offices of Fidelity National Title will be closed:**



**Thursday, January 1  
New Year's Day**



**Monday, January 19  
Martin Luther King Jr. Day**



**Monday, February 16  
President's Day**

## **Fidelity National Welcomes**

Association Title Services, LLC—Ft. Lauderdale, Florida

Ryan and Marks, Attorneys, LLP—Jacksonville, Florida

Alvarez, Almazan & Barbara, LLP—Miami, Florida

American Government Services Corporation—Tampa, Florida

First National Title Company—Boca Raton, Florida





# A. Settlement Statement (HUD-1)

## B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

**C. Note:** 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 "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent:	I. Settlement Date:
	Place of Settlement:	

## J. Summary of Borrower's Transaction

<b>100. Gross Amount Due from Borrower</b>	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
<b>Adjustment for items paid by seller in advance</b>	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
<b>120. Gross Amount Due from Borrower</b>	
<b>200. Amounts Paid by or in Behalf of Borrower</b>	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
<b>Adjustments for items unpaid by seller</b>	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
<b>220. Total Paid by/for Seller</b>	
<b>300. Cash at Settlement from/to Borrower</b>	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220) ( )	
<b>303. Cash</b> <input type="checkbox"/> <b>From</b> <input type="checkbox"/> <b>To Borrower</b>	

## K. Summary of Seller's Transaction

<b>400. Gross Amount Due to Seller</b>	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
<b>Adjustments for items paid by seller in advance</b>	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
<b>420. Gross Amount Due to Seller</b>	
<b>500. Reductions In Amount Due to Seller</b>	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
<b>Adjustments for items unpaid by seller</b>	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
<b>520. Total Reduction Amount Due Seller</b>	
<b>600. Cash at Settlement to/from Seller</b>	
601. Gross amount due to seller (line 420)	
602. Less reductions in amount due seller (line 520) ( )	
<b>603. Cash</b> <input type="checkbox"/> <b>To</b> <input type="checkbox"/> <b>From Seller</b>	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

**L. Settlement Charges**

<b>700. Total Real Estate Broker Fees</b>			Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows:				
701. \$	to			
702. \$	to			
703. Commission paid at settlement				
704.				

<b>800. Items Payable in Connection with Loan</b>				
801. Our origination charge	\$		(from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen	\$		(from GFE #2)	
803. Your adjusted origination charges			(from GFE A)	
804. Appraisal fee to			(from GFE #3)	
805. Credit report to			(from GFE #3)	
806. Tax service to			(from GFE #3)	
807. Flood certification			(from GFE #3)	
808.				

<b>900. Items Required by Lender to Be Paid in Advance</b>				
901. Daily interest charges from	to	@ \$	/day	(from GFE #10)
902. Mortgage insurance premium	for	months to		(from GFE #3)
903. Homeowner's insurance	for	years to		(from GFE #11)
904.				

<b>1000. Reserves Deposited with Lender</b>				
1001. Initial deposit for your escrow account			(from GFE #9)	
1002. Homeowner's insurance	months @ \$	per month	\$	
1003. Mortgage insurance	months @ \$	per month	\$	
1004. Property taxes	months @ \$	per month	\$	
1005.	months @ \$	per month	\$	
1006.	months @ \$	per month	\$	
1007. Aggregate Adjustment			-\$	

<b>1100. Title Charges</b>				
1101. Title services and lender's title insurance			(from GFE #4)	
1102. Settlement or closing fee			\$	
1103. Owner's title insurance			(from GFE #5)	
1104. Lender's title insurance			\$	
1105. Lender's title policy limit \$				
1106. Owner's title policy limit \$				
1107. Agent's portion of the total title insurance premium			\$	
1108. Underwriter's portion of the total title insurance premium			\$	

<b>1200. Government Recording and Transfer Charges</b>				
1201. Government recording charges			(from GFE #7)	
1202. Deed \$	Mortgage \$	Releases \$		
1203. Transfer taxes			(from GFE #8)	
1204. City/County tax/stamps	Deed \$	Mortgage \$		
1205. State tax/stamps	Deed \$	Mortgage \$		
1206.				

<b>1300. Additional Settlement Charges</b>				
1301. Required services that you can shop for			(from GFE #6)	
1302.			\$	
1303.			\$	
1304.				
1305.				

<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>				



Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
<b>Charges That Cannot Increase</b>	<b>HUD-1 Line Number</b>		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		

Charges That in Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
<input type="text"/>	#		
<input type="text"/>	#		
<input type="text"/>	#		
<input type="text"/>	#		
<input type="text"/>	#		
<input type="text"/>	#		
<input type="text"/>	#		
<b>Total</b>			
<b>Increase between GFE and HUD-1 Charges</b>		<b>\$</b>	<b>or %</b>

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 \$ /day		
Homeowner's insurance	# 903		
<input type="text"/>	#		
<input type="text"/>	#		
<input type="text"/>	#		

### Loan Terms

Your initial loan amount is	\$ <input type="text"/>
Your loan term is	<input type="text"/> years
Your initial interest rate is	<input type="text"/> %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ <input type="text"/> includes <input type="checkbox"/> Principal <input type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of <input type="text"/> %. The first change will be on <input type="text"/> and can change again every <input type="text"/> after <input type="text"/> . Every change date, your interest rate can increase or decrease by <input type="text"/> %. Over the life of the loan, your interest rate is guaranteed to never be <b>lower</b> than <input type="text"/> % or <b>higher</b> than <input type="text"/> %.
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ <input type="text"/> .
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, the first increase can be on <input type="text"/> and the monthly amount owed can rise to \$ <input type="text"/> . The maximum it can ever rise to is \$ <input type="text"/> .
Does your loan have a prepayment penalty?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ <input type="text"/> .
Does your loan have a balloon payment?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ <input type="text"/> due in <input type="text"/> years on <input type="text"/> .
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input type="checkbox"/> You have an additional monthly escrow payment of \$ <input type="text"/> that results in a total initial monthly amount owed of \$ <input type="text"/> . This includes principal, interest, any mortgage insurance and any items checked below: <input type="checkbox"/> Property taxes <input type="checkbox"/> Homeowner's insurance <input type="checkbox"/> Flood insurance <input type="checkbox"/> <input type="text"/> <input type="checkbox"/> <input type="text"/> <input type="checkbox"/> <input type="text"/>

**Note:** If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.