

BUYING A NEW HOUSE

By Attorney Michael H. Wald

Buying a new house is one of the most important financial decisions you will make in your lifetime. It is important that you are aware of your rights as a potential homebuyer. The Real Estate Settlement Procedures Act, RESPA, is one of several federal statutes that protects home buyers. The RESPA protects consumers from "unnecessary high settlement charges caused by certain abusive practices that have developed in some areas of the country."

When you find the home you want to purchase, it is important to remember that the time to negotiate any fees, commissions, or closing costs is when you are making the contract to buy the home, not when you are closing on the sale of the home. RESPA does not set forth prices, but it allows the buyer to negotiate purchase price as well as who is to pay any or all of the closing costs.

In forming a contract, make sure that the document correctly states your agreement with the seller. Important details to note are the sales price of the house, method of payment, the time set for your taking possession, what fixtures, appliances, and personal property are to be sold with the home, and any other additions or modifications you want to make to the contract. You can negotiate with the seller on any point which may benefit you. If the seller agrees, these modifications may become part of the contract.

After you have a signed contract for the purchase of your new house, you now must find a bank or mortgage company. The lender will require a number of different closing costs be paid. Again, if your contract was negotiated that the seller pays all of the closing costs, you as the buyer will not be responsible for these fees. It is customary that the buyer pay for some of these fees. In any event, the lender has an obligation, under RESPA to give you a "good faith" estimate of the charges involved at closing. Under RESPA the lender must also give you a copy of the "HUD Guide - Settlement Costs" booklet at the time you submit your application for a loan, or it must be put in the mail no later than three business days after your application is filed. You then have time to shop and compare these prices with other financial institutions so that you can obtain the best deal.

One business day before your closing, you have the right to inspect the Uniform Settlement Statement. This form itemizes the services provided and fees charged to you, but is not used if the seller assumes all closing expenses or if the borrower is required to pay a fixed amount. In the latter case, the lender must still provide an itemized list of services rendered to the borrower within three business days of application.

Under the law, the seller may not require as a condition of sale, that title insurance be purchased by the buyer from a particular title company. RESPA also prohibits kickbacks.

There are criminal penalties as well as damages you may recover in a private lawsuit (three times the amount of the kickback, plus, perhaps your attorney's fees) for violations of RESPA. If you feel that you have suffered any damages under RESPA and have not received any satisfaction after contacting the lender, closing agent, broker, etc., you must take legal action if you intend to do so within one year from the date of the alleged violation.

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