

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing  
Production and Mortgage Credit—Federal  
Housing Commissioner

[Docket No. N-75-311]

### REAL ESTATE SETTLEMENT COSTS

#### Special Information Booklet

Notice is hereby given that HUD has prepared the booklet, "Settlement Costs" pursuant to Section 5(a) of the Real Estate Settlement Procedures Act of 1974. Section 5(a) requires HUD to prepare and distribute to lenders who make federally related mortgage loans a special information booklet to better inform persons borrowing money to finance the purchase of residential real estate concerning the settlement process. The booklet explains the purpose of each cost involved in a settlement, reproduces and explains the standard disclosure/settlement form required by sections 4 and 6 of the Act, discusses such abuses as unfair practices and unreasonable charges, and explains choices available to homebuyers in shopping for settlement services.

Section 5(c) of the Act requires each lender which makes federally related mortgage loans to provide the booklet to each person submitting an application to borrow money to finance the purchase of residential real estate. The lender is required to provide the booklet at the time it receives the application.

To insure that each federally related mortgage lender has a sufficient supply of booklets on hand on the effective date of the Act, June 20, 1975, the Department will provide an initial supply of booklets for lender use at each HUD Area and Insuring Office and expects that the booklets will be available in early June. Lenders may pick up a limited supply from these offices but no mail or telephone orders can be accommodated. After this initial distribution, additional supplies of the booklet will be on sale through the Government Printing Office and must be paid for by the lender.

This booklet (1) may be reproduced and distributed by lenders, using a cover of their own design (which may bear the name of the lender), without further approval by HUD; or (2) lenders may print and distribute booklets approved by the Secretary as to form and content. In the former case, it is not permissible to make any change, deletion, or addition in the content of the booklet as prepared by HUD. Lenders desiring to take advantage of the latter option should so request in writing and submit proposed booklets for review to the Office of General Counsel, Department of Housing and Urban Development, Room 2253, 451 7th Street, SW., Washington, D.C. 20410.

A copy of the contents of the booklet which may be reproduced by lenders is set forth as an appendix to this notice.

DAVID M. DE WILDE,  
Acting Assistant Secretary for  
Housing Production and  
Mortgage Credit, FHA Com-  
missioner.

### SETTLEMENT COSTS

#### A HUD GUIDE

The content of this booklet has been prepared, prescribed and approved by the U.S. Department of Housing and Urban Development, as required by section 5 of the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533), effective on June 20, 1975.

This publication may be reprinted. However, in no case may any change, deletion, or addition be made in its content.

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#### FOREWORD

You are planning to buy a home. When you do, you will probably make a downpayment and finance the balance of the purchase price with a loan secured by a mortgage on your home.

Before you take possession of your home, a closing or settlement will occur at which ownership of the property will be transferred to you, and your obligation to repay the mortgage loan will become effective. The terms and conditions of the loan—interest rate, monthly payment, and the repayment period—are specified in the documents signed by you. These include a note evidencing the loan for the unpaid purchase price, a mortgage placing a lien on your home, and other documents.

In some States, it is the custom for the buyer and seller to attend the settlement in person; in others it is handled automatically by an escrow agent when all papers and funds have been deposited with him.

At the closing or settlement, both you and the seller will have to pay certain charges incident to transferring title to real estate and obtaining the mortgage loan. These charges are called "settlement costs" or "closing costs".

This booklet has been prepared to inform you, the buyer, about the nature and costs of the settlement process. As required by law, this booklet is given to you by a lending institution at the time you apply for a mortgage loan to finance the purchase of a one- to four-family residential dwelling. At this stage, you have selected the home you want to buy. You may have already reached informal agreement with a seller or even signed a sales contract and made a deposit ("earnest money deposit") indicating your serious intention to buy—a deposit which could be forfeited should you fail to complete your purchase.

This booklet is intended to acquaint you with the appropriate procedures and charges for settlement services which you will encounter in closing your home purchase transaction.

For answers to specific questions or for information on mortgage lending and settlement practices in your locality, you may want to consult a State, or local consumer affairs agency, an attorney, a legal aid society, or the local real estate board.

#### HOME LOAN FINANCING

The home purchase loan is evidenced by your signature on a note or bond, and the loan (your debt) is secured by a mortgage (or

deed of trust) which you must sign, which pledges the home as security for repayment of the loan. If you fail to repay the loan or comply with the terms and conditions of the mortgage, the lender can initiate foreclosure of the loan which would lead to sale of your home at a public auction to satisfy the debt.

In a home mortgage transaction, you promise to repay the loan and interest in monthly installments at the interest rate and over the period of time specified in the mortgage contract. In the early years when your debt is largest, most of the monthly payment goes for interest. The amount applied to the outstanding debt gradually increases so that in the final years of the mortgage most of the payment goes to principal and less to interest. This is known as an amortized mortgage, and most mortgages are written this way.

In some States, the security instrument instead of being a mortgage is a deed of trust under which the borrower deeds the property to a trustee. Normally, the terms of a deed of trust are substantially the same as those of a mortgage.

Husband and wife often taken title to their home as joint tenants with right of survivorship. You may wish to seek legal advice on this and other matters. The manner in which you take title to the home you buy can have important income tax, estate planning, and other consequences.

#### DISCLOSURE/SETTLEMENT STATEMENT

The Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533) requires use of a standard form for advance disclosure of settlement costs and to record actual charges incurred at settlement in all mortgage transactions involving federally related loans.

The same form is used for both advance disclosure and settlement and is reproduced on the following pages to acquaint you with it. Settlement cost items are numbered to correspond with the accompanying explanation of each item. The listing of these items on the form does not imply that any particular charge listed is or should be made in a given geographic area. Even in a given geographic area, you may find that different lenders and providers of settlement services vary as to whether they make certain charges and as to the amount of the charge. You may wish to "shop around".

Some settlement costs typically are charged to the buyer. Others usually are the responsibility of the seller. Although local custom and practices often dictate which are the buyer's and which the seller's costs, there are no hard and fast rules that apply, and in most cases the buyer and seller can negotiate as to who will pay specific settlement charges. You can also negotiate with providers of settlement services as to whether each charge will be made and the amount. You should be charged only for services actually performed, as required by settlement practices in a particular locality.

1. *Contract Sales Price.* This is the price of the home agreed to in the sales contract between buyer and seller.

2. *Personal Property.* Those items, such as carpets, drapes, or appliances, which the seller transfers with the home, may be paid for by the buyer at settlement. When the sales contract is made, you should make sure that items to be transferred are described. The sales contract should state whether such items are included in the sales price.

3. *Settlement Charges.* This is the total amount of the settlement charges to be paid by the buyer. These charges are itemized on page 2 of the form.

4. *Adjustments or Pro-rations.* These amounts represent pro-rated adjustments of certain costs, such as real estate taxes, utilities, and fuel. Such adjustments are often

made in order to pro-rate such costs in order to charge the seller for the period he owned the property (up to settlement) and to charge the buyer for the period after settlement. Item 4 states amounts for which the buyer compensates the seller. Item 9 states amounts for which the seller compensates the buyer. As an example, where settlement occurs October 1, 1975, and the seller has paid the real estate taxes in advance for the entire year, a typical adjustment would be for the buyer to compensate the seller for one-fourth of the real estate taxes for 1975, that is, the period from October 1 through December 31. That amount would be shown at Item 4.

5. *Gross Amount Due from Borrower.* This is the total amount of all charges to the buyer included in items 1, 2, 3, and 4.

6. *Deposit or Earnest Money.* This is the amount of money deposited by the buyer under the contract of sale, usually at the time it was signed.

7. *Principal Amount of Loan(s).* This is the amount of mortgage money loaned to the buyer to purchase his home.

8. *Existing Loan(s) Taken Subject To.* This space is used for cases in which the buyer is assuming or taking title subject to an existing loan or other lien on which he is expected to make the payments.

10. *Total Amounts Paid By or In Behalf of Borrower.* This amount is the sum of items 6, 7, 8, and 9 above which will be applied to reduce the amount of charges to the buyer in item 5 above.

11. *Cash Required From (Payable To) Borrower.* This is the total amount of cash which the buyer will need at settlement (subtract item 10 from item 5). At time of advance disclosure this is the estimated amount.

12. *Real Estate Broker's Sales Compensation.* This charge compensates the real estate broker or brokers for services involved in listing and selling the property, and is normally the seller's obligation to pay. This commission or fee may be split among more than one broker if each performed services in connection with the transaction, but no person may accept any portion, split or percentage of such commission or fee other than for services actually performed.

13. *Loan Origination Fee.* This compensates the lender for expenses incurred in originating the loan, preparing documents, and related work. When such a fee is charged, it is usually a percentage of the face amount of the mortgage. In FHA-insured or VA-guaranteed mortgage transactions involving existing structures, the fee charged the borrower can be no more than one percent of the mortgage amount. For example, if you are approved for a VA-guaranteed loan of \$30,000, the origination fee charged to you may not exceed \$300. However, when the lender makes inspections and partial disbursements during construction of a new home, both FHA and VA permit a higher origination fee, but not more than 2½% for FHA-insured loans or 2% for VA-guaranteed loans. The Farmers Home Administration does not permit a loan origination fee.

14. *Loan Discount Points.* Discounts or "points" are a one-time charge made by the lender to increase its yield (the effective interest return or income) on the mortgage loan. Each "point" is one percent of the mortgage amount.

In FHA and VA transactions, the buyer may not be charged a discount by the lender, but the seller may volunteer to pay points in order to help the buyer obtain financing. For example, if a lender charges 4 points on an FHA-insured loan of \$30,000, this amounts to a discount of \$1,200. You, the buyer, may pay only the loan origination fee described in note 13 if it is a VA or FHA

transaction. Discounts are not permitted on Farmers Home Administration loans.

15. *Appraisal Fee.* This charge compensates the lender for a property appraisal made by an independent appraiser or by a member of the lender's staff.

16. *Credit Report.* The buyer's credit history is often obtained by the lender and a charge paid to a credit bureau for ascertaining the status of the buyer's credit may be collected, usually from the buyer.

17. *Lender's Inspection Fee.* This charge covers only inspections made by personnel of the lending institution at its discretion. Pest or other inspections made by companies other than the lender are described in note 31.

18. *Mortgage Insurance Application Fee.* This covers the cost of an FHA or VA appraisal, which in an FHA loan is included in a mortgage insurance application fee. For conventional loans it may cover application fees when charged by private mortgage insurers. In the case of an FHA-insured mortgage, the amount of this charge is set by HUD Regulations and may be charged to the buyer. The buyer in a VA-guaranteed loan may not be charged an appraisal fee unless identified by name in the request for VA's appraisal.

19. *Assumption Fee.* In a case where the buyer assumes the seller's existing mortgage on the property, the lender's charges for processing the assumption are entered here.

20. *Prepaid Interest.* This charge covers interest which will accrue from the date of settlement to the beginning of the period covered by your first monthly payment. For example, if your mortgage payment is due on the 1st of each month, but settlement occurs on April 20, the prepaid interest at settlement will cover the period from April 20 to April 30 if your first monthly mortgage payment is due on June 1st. Thus your June 1 payment will not have to include an extra amount of interest for the period before May 1.

21. *Prepaid Mortgage Insurance Premium.* This is the portion of the premium prepaid by the buyer at settlement for mortgage insurance. This type of insurance is required when FHA or a private mortgage insurance company covers the lender against loss if the buyer fails to meet the mortgage obligation. Mortgage insurance premiums are required for all FHA-insured loans (but not for VA loan guarantees), and may be required on a conventional loan.

This type of insurance should not be confused with mortgage life, credit life, or disability insurance designed to pay off a mortgage in the event of physical disability or death of the borrower. Such insurance is available but usually not required by lenders.

22. *Prepaid Hazard Insurance Premium.* This is the portion of the premium prepaid by the buyer at settlement for purchase from a private company of insurance against loss due to fire, windstorm, and natural hazards. This coverage may be included in a Homeowners Policy which insures against possible additional risks, such as personal liability and theft.

A hazard insurance or homeowner's policy does not protect you against loss caused by flooding. In special flood-prone areas identified by HUD, you must carry flood insurance on your home. Such insurance may be purchased at low federally subsidized rates in communities eligible under the National Flood Insurance Act. Contact a local hazard insurance agent concerning eligibility in your case.

23. *Reserves Deposited with Lender.* These funds are placed by the buyer in an "escrow" or "impound" account maintained by the lender to assure an adequate accumulation of funds to meet charges for real estate taxes and hazard insurance when they become due; and also, if applicable, for mortgage insurance, annual assessments, homeowners' association fees, or flood insurance.

(These reserves are explained in more detail later.)

These reserves may be held in non-interest bearing accounts. However, certain States now require lenders to pay interest on this money, and lenders in other States may be willing to do this voluntarily.

24. *Settlement, Closing, or Escrow Fee.* This charge may be made for handling and supervising the settlement transaction. The settlement may be conducted by the lender, a real estate broker, a title company in some States, an escrow agent in some States, or an attorney. The seller and buyer may negotiate regarding who pays or whether the charge is shared between them. The amount of the charge may be negotiated with the provider of the service. In a VA-guaranteed loan, this fee cannot be charged to the buyer when the buyer is assessed the 1% origination fee.

25. *Title Charges.* These charges cover the costs of title search and examination of public records of previous ownership and sales to establish the right of the seller to convey the property to the buyer. A search and examination are performed to determine whether the seller has good title to the property that he can transfer to the buyer, and to disclose any matters on record that could adversely affect the buyer, the lender, or others with an interest in the property. Examples of these problems are unpaid mortgages, judgment of tax liens, a power line easement or a road right-of-way that could limit use and enjoyment of the real estate by the buyer.

In some parts of the nation, a title search customarily takes the form of an "abstract", which is a compilation including copies of pertinent documents that provides a condensed history of property ownership and related matters. In other places, title searches are performed by extracting related information from the public record without assembling abstracts. Either way, it then is necessary for an expert examination to be made of the evidence accumulated in the search in order to determine status of title as shown by the public record.

Depending on local custom, title examinations normally are made by attorneys or title company employees. Through a title search and examination, land title problems of record are disclosed in advance so they can be cleared up, when possible, before a transaction is completed.

26. *Notary Fees.* This charge may be made for the services of a notary in authenticating signatures to the various documents in the transaction. In a VA-guaranteed loan, this fee cannot be charged to a buyer in the event the buyer is charged a 1% origination fee.

27. *Attorney's Fees.* These include charges which the lender may require the buyer to pay for legal services to the lender in connection with the transaction. The buyer should not assume that he is represented by an attorney hired by the lender who prepares the documents and handles the settlement. In a VA-guaranteed loan, this lender's attorney fee cannot be charged if the buyer is charged the 1% origination fee.

The buyer and seller may each retain attorneys to represent them and may pay the fees at the settlement, in which case these fees also appear on this part of the form.

In some States, attorneys provide bar-related title insurance as part of their services to the buyer for transfer of title. The attorney's fee in this case may include the title insurance premium.

28. *Title Insurance.* A one-time premium may be charged at settlement for a policy which protects the lender's interest in the property against land title problems including those that might not be disclosed by a title search and examination. Whether the buyer or seller pays for this varies with local custom.

The buyer must request and pay for an additional owner's policy if he wants this protection for his interest in the property. There are many areas where an owner's policy can be obtained at a modest additional charge if issued simultaneously with a lender's policy. In some areas, the seller pays for the owner's title insurance policy.

29. **Government Transfer Taxes and Charges.** The fees and taxes in this section are generally levied by State and/or local governments when property changes hands or when a mortgage loan is made. Depending on local custom, these charges may be paid by the buyer, seller, or otherwise split between them.

30. **Survey.** The lender or a party to the

transaction may require a survey showing the precise location of the house and lot lines.

31. **Inspections.** This part of the form records charges for various inspections required by the lender or a party to the transaction, such as those for termites and other pest infestation. In a VA-guaranteed loan, the buyer may not be charged for the pest inspection.

There may also be pre-sale inspections for the buyer's benefit to evaluate heating, plumbing, and electrical equipment and overall structural soundness. The charge for such an inspection may include a fee for insurance or warranty services to back-up the inspection.

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		B. TYPE OF LOAN	
DISCLOSURE/SETTLEMENT STATEMENT		1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FHA
		3. <input type="checkbox"/> VA	4. <input type="checkbox"/> CONV. DML
		5. FILE NUMBER	6. LOAN NUMBER
If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form.		8. MORTG. INS. CASE NO.	
C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is:			
<input type="checkbox"/> ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others.			
<input type="checkbox"/> STATEMENT OF ACTUAL COSTS. Amounts paid to and by the settlement agent are shown. Items marked "(p.s.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in totals.			
D. NAME OF BORROWER	E. SELLER	F. LENDER	
G. PROPERTY LOCATION	H. SETTLEMENT AGENT	I. DATES	
	J. PLACE OF SETTLEMENT	K. LOAN COMMITMENT	L. ADVANCE DISCLOSURE
		SETTLEMENT	DATE OF PROVISIONS IF DIFFERENT FROM SETTLEMENT
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price (1)		401. Contract sales price	
102. Personal property (2)		402. Personal property	
103. Settlement charges to borrower (from line 1120, Section I.) (3)		403.	
104.		404.	
105. Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106. City/town taxes to		405. City/town taxes to	
107. County taxes to		406. County taxes to	
108. Assessments to (4)		407. Assessments to	
109. to		408. to	
110. to		409. to	
111. to		410. to	
112. to		411. to	
120. GROSS AMOUNT DUE FROM BORROWER (5)		420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement.	
201. Deposit or earnest money (6)		500. REDUCTIONS IN AMOUNT DUE TO SELLER	
202. Principal amount of new loan(s) (7)		501. Payoff of first mortgage loan	
203. Existing loan(s) taken subject to (8)		502. Payoff of second mortgage loan	
204.		503. Settlement charges to seller (from line 1120, Section I.)	
205.		504. Existing loan(s) taken subject to	
Credits to borrower for items unpaid by seller:		505.	
206. City/town taxes to		506.	
207. County taxes to		507.	
208. Assessments to (9)		508.	
209. to		509.	
210. to		Credits to borrower for items unpaid by seller:	
211. to		510. City/town taxes to	
212. to		511. County taxes to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER (10)		512. Assessments to	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER		513. to	
301. Gross amount due from borrower (from line 120)		514. to	
302. Less amounts paid by or in behalf of borrower (from line 220)		515. to	
303. CASH (REQUIRED FROM) OR (PAYABLE TO) BORROWER (11)		520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER	
		600. CASH TO SELLER FROM SETTLEMENT	
		601. Gross amount due to seller (from line 420)	
		602. Less total reductions in amount due to seller (from line 520)	
		603. CASH TO SELLER FROM SETTLEMENT	

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L. SETTLEMENT CHARGES		PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES/BROKER'S COMMISSION based on price \$			
701 Total commission paid by seller			
Division of commission as follows:			
702. \$	to		
703. \$	to		
704.			
899. ITEMS PAYABLE IN CONNECTION WITH LOAN			
901. Loan Origination fee	\$		
902. Loan Discount	\$		
903. Appraisal Fee to			
904. Credit Report to			
905. Lender's Inspection fee			
906. Mortgage Insurance application fee to			
907. Assumption/refinancing fee			
908.			
909.			
910.			
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest from	to \$ /day		
902. Mortgage Insurance premium for	mo. to		
903. Hazard Insurance premium for	hrs. to		
904.	hrs. to		
905.			
1000. RESERVES DEPOSITED WITH LENDER FOR:			
1001. Hazard insurance	mo. \$ /mo.		
1002. Mortgage insurance	mo. \$ /mo.		
1003. City property taxes	mo. \$ /mo.		
1004. County property taxes	mo. \$ /mo.		
1005. Annual assessments	mo. \$ /mo.		
1006.	mo. \$ /mo.		
1007.	mo. \$ /mo.		
1008.	mo. \$ /mo.		
1100. TITLE CHARGES:			
1101. Settlement or closing fee to			
1102. Abstract or title search to			
1103. Title examination to			
1104. Title insurance binder to			
1105. Document preparation to			
1106. Notary fees to			
1107. Attorney's Fees to			
(includes above items No. 1)			
1108. Title Insurance to			
(includes above items No. 1)			
1109. Lender's coverage \$			
1110. Owner's coverage \$			
1111.			
1112.			
1113.			
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording fees: Deed \$ ; Mortgage \$ Releases \$			
1202. City/county tax/stamps: Deed \$ ; Mortgage \$			
1203. State tax/stamps: Deed \$ ; Mortgage \$			
1204.			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Survey to			
1302. Pest inspection to			
1303.			
1304.			
1305.			
1400. TOTAL SETTLEMENT CHARGES (entered on lines 103 and 593, Section I and K)			

NOTE: Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally occur between advance disclosure and settlement. In the event such a waiver is made, copies of the statements of waiver, executed as provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement.

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#### ADVANCE DISCLOSURE

The Settlement/Disclosure Statement itemizes each settlement cost charged to the buyer and each charged to the seller. Advance disclosure serves a two-fold purpose: (1) To provide notice of the cash you will need at settlement and (2) to make possible "comparison shopping" of settlement charges so that you can arrange terms most favorable to you. If you don't "shop around" you will not save money if the same services are offered elsewhere for less.

It is important to realize that advance disclosure provides for earlier and more systematic information about the costs of the set-

tlement transactions but does not affect any contractual agreement which may already have been made between buyer and seller. Try to obtain as much of this information as possible prior to signing a sales contract for the house you intend to buy. Or, if the seller is agreeable, you may want to make the sales contract contingent upon your approval of the advance disclosure statement. Once you have signed, you may not be able to rescind the contract in the event that you are dissatisfied with some aspect of the transaction revealed by disclosure. It is in your interest to condition your purchase contract on your ability to obtain a mortgage loan on specified terms.

The law requires the lender to give you a copy of the completed advance disclosure statement at the time of loan commitment. In most circumstances this should be not later than 12 calendar days before the settlement date. Normally, the loan commitment and advance disclosure occur several weeks prior to settlement. In the case of a long-term commitment, such as that obtained by a buyer of a new home under construction, disclosure should be made shortly after signing the contract to buy the house. Typically, this might be in the range of 60 to 90 days before settlement.

If the exact cost of any settlement service is not known in time to meet the deadline, the lender must provide a good faith estimate of the charge.

Lenders are prohibited from charging a specific fee for the preparation and submission of disclosure and settlement costs statements or for the information they must provide under the Truth in Lending Act.

If your circumstances are such that you want to settle and take title to your new home before the lender can meet his 12-day advance disclosure deadline, you may sign a waiver of that requirement. Advance disclosure is intended to protect your interests, not hamper or delay your plans, so you should carefully consider before signing a waiver. Even if you agree to waive, HUD Regulations require the lender to provide the disclosure statement to you at least three days prior to the date of settlement.

Except in the case of a waiver, the lender must meet the advance disclosure requirement or be liable to you for actual damages or \$500, whichever is greater. If court action is necessary to enforce this liability, the lender may be ordered to pay court costs and your attorney's fees as set by the court if the lender loses the case. You would pay attorney's fees in the event that you lose the case. A lender will not be held liable for a violation if he can show that it was not intentional and resulted from a bona fide error in spite of maintenance by the lender of procedures adopted to avoid such error.

#### UNFAIR PRACTICES AND UNREASONABLE OR UNNECESSARY CHARGES TO AVOID

A principal finding of Congress in the Real Estate Settlement Procedures Act of 1974 is that consumers need protection from "unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country." The potential problems discussed below may not be applicable to most loan settlements, and the discussion is not intended to deter you from buying a home. Most professionals in the settlement service businesses will give you good service. Nevertheless, you may save yourself money or worry by keeping the following considerations in mind.

A. *Illegal Practices.* Practices specifically prohibited by this Act fall into two categories:

1. *Kickbacks.* Kickbacks and referral of business for gain most often are tied together, so the law prohibits anyone from giving or taking a fee, kickback, or anything of value under an agreement that business related to real estate settlements will be referred to a specific person or organization.

This requirement does not, of course, prevent agents for lenders and title companies, attorneys, or others actually performing a service in connection with the mortgage loan or settlement transactions, from receiving compensation for their work.

The prohibition is aimed primarily at eliminating the kind of arrangement in which one party agrees to return part of his fee in order to obtain a volume of business from the referring party. The danger is that some settlement fees can be inflated to cover this additional party, resulting in a higher

total cost to you. For example, a title company might pay a fee to another party for bringing it title insurance business even though the other party performs no work and provides no service in connection with issuance of the title insurance policy. As another example, a lawyer might give a part of his fee to another party to the transaction in exchange for the referral of business.

It is also illegal to charge or accept a fee or portion thereof other than for services actually performed.

There are criminal penalties of both fine and imprisonment for any violation of these provisions of law. There are also provisions for you to recover three times the amount of the fee involved or a portion thereof. In any successful action to enforce your right, the court may award you court costs together with a fee for your attorney.

**2. Title Companies.** Another abuse prohibited by law is any requirement by the home seller that title insurance be purchased from a particular company. Under the law, sellers may not require, as a condition of sale, that title insurance be purchased by the buyer from any particular title company. A violation would make the seller liable to you in an amount equal to three times all charges made for the title insurance.

**B. Choices Open to the Buyer and Other Points to Remember.** Because the various parties to the settlement transaction have different interests, there will be many steps in the process of buying a home which call for caution on your part. As a home buyer, you have a number of choices open to you concerning settlement costs and services. Some points to keep in mind are:

**1. Understand The Role of the Real Estate Broker.** Although the real estate agent or broker usually provides helpful advice to you on many aspects of home buying and may in some areas supervise the settlement, he normally serves as agent of the seller. While the real estate licensing laws of most States require that the broker treat both buyer and seller fairly, you should not expect the broker to represent your interests to the exclusion of those of the seller.

The broker's basic objectives are to obtain a signed contract of sale which properly expresses the agreement of the parties and to complete the sale and earn a commission or fee. Before you sign, make sure that the sales contract correctly expresses your agreement with the seller on such important details as method of paying the sales price of the home, the time set for your move-in, and the status of fixtures and other personal property in the home.

A broker may recommend that you deal with a particular lender, title company, attorney, or provider of settlement services. Although this recommendation may be based on the broker's up-to-date knowledge of rates and quality of service, you should feel completely free to consider alternatives, compare rates and fees, and make your own decision on these matters.

It is up to you to review the documents carefully. Although the broker may offer helpful advice, keep in mind that you are the one who is spending the money to buy a home and are entitled to a full understanding of the costs. The broker's principal interest at settlement is to get the transaction closed and his fee or commission disbursed.

**2. Settlement attorneys, escrow and closing agents.** In some parts of the country, settlements are often conducted by attorneys who specialize in real estate transactions. In other parts of the country, the settlement may be conducted by an escrow or closing agent or by the lender or broker. Their primary concern is orderly completion of all the details called for in the sales contract and in the mortgage commitment.

Because mortgage lenders, unlike borrowers, go through settlement often, they often will not be present at the settlement, preferring to spell out in detail in a letter of instruction to the person conducting the closing that which they expect to be done before loan funds can be released.

You, the buyer, will not have a letter of instructions. You will be asked at settlement to make a number of decisions in areas with which you may have had little previous experience.

Before settlement, you should ask the broker, the settlement attorney, or an attorney retained by you what questions will probably come up. Write them down so that you may have time to think about decisions that are important to you.

Settlement attorneys do not mind answering your questions—that is a part of their job—but at the same time they may not invite questions. If you have doubts, ask questions. Don't let anyone rush you. There are likely to be lengthy documents to sign at settlement. If you or your attorney asks, you can usually get copies of the forms in advance.

**3. Legal representation.** If you feel unfamiliar or unsure with real estate settlements, and many people do, consider hiring your own attorney to represent you. If you hire an attorney, be certain that there is a clear understanding in advance about what services he is to perform and what his fee will be for those services. Some will quote a flat fee, others an hourly rate or one based on a percentage of the sales price. The important point is that you should know in advance how much you should expect to pay for his services. If you do not know an attorney who is well versed in real estate transactions, many local bar associations may be able to refer you to one who is.

**4. Discuss with lenders their requirements for settlement services.** The lender's legitimate business interest is in making a loan on terms which will provide a good yield with little risk. In selecting a lending institution, ask about requirements for property surveys, appraisals, escrows for taxes and insurance, and other settlement services. You may compare these requirements with those of other lenders.

Some lenders will give you the discretion to shop among different providers of settlement services. But, most lenders deal regularly with certain title companies, attorneys, appraisers, surveyors or others in whom they have confidence, and usually want to arrange for provision of all settlement services through these parties as a convenience to the buyer and lender. If you wish to bargain directly to reduce rates for settlement services, discuss this with various lenders.

Remember to compare also the mortgage interest rates and other mortgage terms quoted by different lenders. A lender may gain through higher mortgage interest over the repayment term what it gives up at the "front end" in reducing requirements for loan origination fees, discount points and other one-time charges which must be paid in cash at settlement. Other features of available loans should also be compared as you shop.

Feel free to select a lender other than the one recommended by the broker or seller. It is entirely possible that you may find financing which is more advantageous to you.

**5. Title insurance required by the lender protects the lenders.** You may buy a separate owner's title insurance policy for your own protection. Title insurance is often required to protect the lender against loss if a flaw in title is not found by the title search made when a home is purchased. The lender's title insurance policy will be paid for by you or by the seller according to local custom or the sales contract.

You and the lender have different interests in the property you are buying, and there are many kinds of title defects that can trouble you without creating problems for the lender. You may buy a separate owner's title insurance policy for your own protection in areas where this policy is not furnished by the seller as a matter of custom.

**6. Try to minimize the performance and cost of repetitive or excessive settlement requirements.** Some settlement costs are beyond your control, such as government transfer charges. Other items may be negotiable, however, such as certain services which the lender requires but which you pay for.

**a. Title search.** There may be no need for a full historical title search "back to the year one" each time title to a home is transferred. If you are buying a home which had recently changed hands, inquire at title companies about a "reissue rate." If the policy of the previous owner is available, take it to a title insurer before settlement. It may help you obtain a "reissue rate." Generally this rate, when permitted by State law or regulations, allows a reduction of the usual charge for a new policy if the previous policy was issued by the same title insurer or by another reputable company within a recent period.

Title search requirements are sometimes set by agencies which insure or guarantee the loan, or by investors who purchase mortgages originated by other lending institutions. The lender you deal with may not have discretion on eliminating or reducing these requirements.

**b. Survey.** The survey of the property may be simplified and the cost reduced if a full professional survey was performed recently. A new survey may not be needed to show that no recent changes have occurred which affect the validity of the last survey. A surveyor may be able to avoid the cost of a repetitive complete survey of the property if he has access to a recent survey which he can "update." Here again, the requirements of investors who buy loans originated by your lender may limit the lender's discretion to negotiate this point.

**c. Settlement agent.** Settlement practices vary from locality to locality, and even within the same county or city. In various areas settlements are conducted by the lending institutions, title insurance companies, escrow companies, real estate brokers, and attorneys for the buyer or seller. By investigating and comparing practices and rates, you may find that the first suggested settlement agent may not be the least expensive. You might save money by taking the initiative in arranging for settlement and selecting the firm and location which best meets your needs.

**d. Escrows.** The Real Estate Settlement Procedures Act of 1974 has placed limits on the amount of money which the lender can require you to place in escrow at settlement for later payment of property taxes and insurance.

Know your rights under this new Section 10 provision of the Act, as explained in the next Chapter.

#### ESCROW ACCOUNTS

Item 23 on the enclosed sample settlement statement form covers payments your lender may require you to make to an "escrow," "reserve," or "impound" account for insurance premiums, real estate taxes, and unpaid assessments.

Many lenders require that each monthly payment on the mortgage include amounts for taxes, and hazard insurance. When applicable, lenders will also collect mortgage insurance premiums and assessments payable to homeowner and other associations as well as to special assessment districts. These

funds are set aside each month in escrow accounts and are accumulated to pay the taxes and other bills when they are due.

By law, the amount you pay into an escrow at settlement may not exceed your share of taxes and insurance accrued prior to settlement, plus  $\frac{1}{2}$ th of the estimated amount which will come due for taxes and insurance in the 12-month period beginning at settlement. If taxes or insurance costs go up periodically over the life of your mortgage, the lender will need to collect more money for the escrow accounts to cover these increased costs, resulting in a larger monthly housing payment for you. Should these costs decline periodically, the lender should reduce the monthly escrow collection accordingly.

The escrow service provided by your lender is designed to meet ongoing expenses of homeownership. By spreading payments over the year it eliminates the prospect of being faced with large annual bills, perhaps at an inopportune time. On the other hand, you may want to manage your own payment of taxes and/or insurance, instead of paying into an escrow held by the lender. Discuss this point when shopping among lenders. Be aware, however, that certain escrow accounts are required by Federal regulation, and in some States by laws affecting State-chartered savings and loan associations.

#### PREVIOUS SELLING PRICE DISCLOSURE

The lender is required by law before making a commitment to finance a mortgage on a house, which was completed more than 12 months prior to settlement, to confirm that the seller or his agent has disclosed in writing to the buyer the following information:

(1) The name and address of the present owner;

(2) The date the property was acquired by the present owner (the year only of acquisition need be given if the property was acquired more than two years previously); and

(3) If the seller has not owned the property for at least two years prior to the date of your loan application and has not used the property as a place of residence, the date and purchase price of the last "arm's length transfer" of the property, a list of subsequent improvements other than maintenance, and the cost of the improvements.

The purpose of this requirement is to inform you whether the house is being sold by an owner-occupant or by someone who has acquired the house and prepared it for resale. Many investors make a livelihood by investing in existing housing, making repairs and improvements, and reselling at a fair profit. However, abuses have occurred in which only superficial repairs have been made and homes have been sold at prices greatly in excess of their values. As a buyer, your knowledge of the previous selling price may help you determine the present value of the property.

The lender's obligation is considered met if he receives a copy of the written statement from the seller to you giving the information described above. At that time, the lender may make the mortgage loan commitment.

To back-up your right to full disclosure concerning existing property, any person (or persons) who knowingly and willingly pro-

vides false information or fails to comply with disclosure requirements may be subject to criminal penalties of fine and imprisonment, and civil damages.

#### JURISDICTION OF COURTS

If you have suffered damages through violations of the Real Estate Settlement Procedures Act of 1974 as described in the preceding pages, action may be brought in the United States District Court for the district in which the property involved is located, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. You may also have rights under other Federal or State laws.

#### TRUTH IN LENDING DISCLOSURE

At the time of advance disclosure, you will receive a Truth in Lending statement as part of the standard settlement cost disclosure form. This Truth in Lending information will also appear on the standard settlement statement given to you upon completion of the settlement. The Truth in Lending statement discloses the Annual Percentage Rate ("APR") which you will pay on your mortgage loan. This rate may be higher than the contract interest rate quoted on your mortgage. This is because the contract rate includes only interest, but the APR expresses the total finance charge including certain credit costs besides interest on the loan.

The Truth in Lending statement will also disclose any additional charges for "prepayment" should you pay off the balance of the mortgage in full before it is due.

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