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Devil is in details on loan reform

Getting mortgage industry on board with changes will be tricky

By Mary Ellen Podmolik
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CHICAGO, Ill.
The process of buying a home, and understanding the fees involved, is supposed to get easier Jan. 1, thanks to revamped Real Estate Settlement and Procedures Act regulations.

If that's the goal, then why does the mortgage lending industry view RESPA, a five-letter acronym, as a four letter word?

The answer lies in the details.

The new rules from the U.S. Department of Housing and Urban Development require that borrowers receive an easy-to-read, standardized good faith estimate from loan originators that clearly spells out key loan terms and closing costs. The document has to detail the loan's term and whether the interest is fixed or can change, if there's a pre-payment penalty and if there's a balloon payment.

Separately, closing agents must provide borrowers with a new HUD-1 settlement statement that allows consumers to make an apples-to-apples comparison between the costs as they were first estimated and the final tally. Items on the HUD-1 will now refer back to a specific line on the good faith estimate.

HUD also mandated which type of charges to the consumer can, and cannot, change and by how much. The agency also said that a loan originator that lets a consumer shop for settlement services must provide consumers a list that includes the name of at least one provider for each kind of service.

The department has estimated that RESPA reform will make it easier for consumers to comparison-shop and as a result, should save them an average of $700 on a home closing.

"The bottom line for consumers is that it's going to be a lot harder to bait and switch and pile on junk fees. Consumers win," said Kurt Pfotenhauer, chief executive of the American Land Title Association, a trade group. "The pieces of paper talk to one another now, whereas before you had to be an industry insider or a very aggressive consumer."

But not all industry professionals agree that all the changes are in the consumers' best interests. Some fees, like the underwriting and processing fees that are part of the loan origination process, are now grouped together instead of being itemized. In yet another change, the HUD-1 form no longer will confirm the commission percentages being paid to the real estate agents involved in a transaction.

Also, while a consumer gets certain price-change guarantees when using service providers arranged by the loan originators, there are none for consumers who decide to go it alone with no guidance, a fact that some say will dissuade comparison-shopping.

"I think the net result is that it will cost consumers more because it will discourage shopping," said Hank Shulroff, senior vice president at Attorneys' Title Guaranty Fund. "The early disclosures are more transparent, but in the end the consumer is going to have less information about what it is they actually purchased, especially as it relates to title services."

"It's exceedingly confusing," added Jeri Lynn Fox, president of the Illinois Association of Mortgage Professionals. "Whenever you have confused consumers, isn't that when the opportunity for them to be taken advantage of comes up?"

RESPA was enacted in 1974 to provide consumers with more information about costs associated with purchasing a home. New rules designed to further simplify the process were published by HUD in November 2008 but the agency said companies would not have to start using the new forms until Jan. 1, 2010.

The mortgage lending industry fought the changes, although its efforts to delay implementation failed. Many companies are now scrambling to get their back-office systems up to speed on the changes.

HUD recently said it would show "restraint" in enforcing the rules for the first 120 days and that's good news, according to Shulroff. "We've heard from many in the lending community that they're just not prepared," he said.

Neither RESPA reform, nor the grace period for compliance should be interpreted to mean that consumers can figure the government is doing all the due diligence work for them in securing a mortgage. As Pfotenhauer noted, "A borrower is still going to have to become educated. The borrower has to exert some effort. A mortgage is never something that is going to be able to be spoon-fed to a consumer."