



SPOTLIGHT

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Got Exact Closing Fees, Title Fees and Recordation Fees for your Good Faith Estimates? You're Going to Need Them!

By Gary F. Weltmann, Esquire

All around the country mortgage lenders are paying out huge amounts in consumer restitution and penalties as a direct result of consumer complaints, which are being submitted to state regulators in record numbers. Complaints concerning errors made in connection with the issuance by a Lender of the Good Faith Estimate (GFE) have consistently been among the top ten consumer complaints made to state regulators. While many of the complaints arise out of actions taken by individual loan officers without the knowledge of the company's owners or compliance officers, as a result of the license being in the name of the owners, *those owners are ultimately responsible for the wrongdoings of their employees.*

Kenneth W. Harney, who writes an award-winning, nationally-syndicated column on housing and real estate from Washington, DC, in his January 30, 2006 column entitled *Guaranteed 'Good Faith Estimates' on Real Estate Settlement Costs? Yes!*, states: "Good faith estimate (GFE) disclosures have been widely criticized by consumers for being notoriously inaccurate. In thousands of complaints to HUD during the past six years, borrowers have charged that lenders' and brokers' up-front cost estimates too often turn out to be inaccurate or low-balled by settlement day. Title insurance costs estimated in GFEs at \$1,800 balloon into \$2,800 fees at final closing with no warning. Loan origination and "processing" fees estimated at \$250 mysteriously turn out be \$500 on the HUD-1 settlement sheet. GFEs can be hundreds of dollars or thousands of dollars off the mark — pushing consumers beyond their anticipated budgets for their real estate transactions."

GFEs are off the mark for a multitude of reasons. While it could be that the loan officer has low-balled them intentionally because she is competing with another loan officer for the borrower's business, this is oftentimes not the case. More likely, the loan officer does not understand or appreciate the fact that GFE numbers are supposed to be accurate and not fudged in any way. Even more specifically, they are often off because the loan officer does not know or understand the title fees to be entered into in the 1100 series of the Settlement Statement. The loan officer simply makes up numbers that she "feels" are right in order to submit the loan more quickly without having to make phone calls to third parties.

What are the practical consequences of these inaccurate GFEs? Lose- lose- lose. When borrowers get less money back than they originally expected as a result of their reliance on the GFE, borrowers, loan officers and owners all lose. When borrowers have to bring more money to the closing table than they originally expected as a result of their reliance on the GFE, they all lose again. When borrowers get upset because the product they see at the table differs from that which they thought they were getting pursuant to their reliance on the GFE, loan officers frequently have to reduce discount or loan origination points. The result? You guessed it. Everyone loses.

What are the legal consequences of these inaccurate GFEs? Right now, it's just complaints, and lost repeat business. Under the current regulations there really is no penalty for inaccuracy because bad faith is so difficult to prove — which is one reason why loan officers have become so sloppy. But that is all certain to change as HUD has identified the GFE as the area it is most likely to address in most of its reform proposals. There are certain to be significant penalties associated with a failure to provide substantially accurate numbers on the GFE. With all of the recent negative sub-prime press, RESPA Reform, HUD Deputy Secretary Roy Bernard, in his remarks before the National Mortgage Banker's Association National Policy Conference in Washington, DC on April 27, 2007 said, "in my view, we need to be smart and visionary, and responsible. We must implement a solid set of reforms, a coherent plan that



addresses several levels of the sub-prime problem simultaneously." This renewed look at RESPA reform will almost certainly put GFE rule reform back in the forefront.

First Title & Escrow, Inc. (www.firsttitleservices.com), a Rockville Maryland based title and closing services company ("First Title") has the solution. It has teamed up with Ellie Mae and created an integration which transmits exact title and closing fees right into the Encompass LOS in seconds. Stephen Papermaster, President of First Title states, "Partnering with the mortgage industry's leading LOS provider advances our goal of supplying originators with accurate title fee data instantly at origination. With HUD's push to mandate precisely accurate cost disclosures in connection with its proposed 'GFE Model,' our clients' utilization of the data will not simply be a value-add, but an absolute necessity within their procedures when making disclosures. The Encompass LOS will now return a GFE with perfect and exact closing fees, title fees and recordation fees."

With the First Title solution, there will no longer be any anxiety, from either a loan officer, owner or compliance officer standpoint, associated with making a GFE quote. Loan officers will be able to provide consumers with GFEs containing exact closing fees, title fees, and recordation fees at the time of application which will remain completely accurate all the way through the loan process. Superior Mortgage Group, LLC President, Gloria Freifeld, one of the largest Encompass users over the last three years, has signed on to be the first mega user of the First Title GFE Fee system. She stated, "This product is an absolute necessity in order to comply properly with RESPA and GFE regulations. We are using the product and it does exactly what First Title and Encompass said it would. I and my compliance officers love it because we now know that our loan officers are submitting completely accurate title and closing fees on their GFEs, thus greatly reducing the possibility of the loss of a loan due to inaccuracies; or, worse, making a loan that is not compliant with state or federal regulations, exposing me to substantial liability. My loan officers love it because they no longer have to go to multiple sites and make multiple telephone calls to get their title ordered and obtain all the data associated with their loan. Everything is right there at their fingertips in Encompass."

Because First Title and Ellie Mae will now offer electronically transmitted instant exact closing fees, title fees and recording fees to Ellie Mae's Encompass users, loan officers and processors will never get a call about inaccurate GFEs from their Compliance Officers again. Additionally, they will never have to leave the Encompass Platform or call, e-mail or fax their title provider to place a title order. Everything, including generating an accurate GFE, can be done directly from their desktop. Borrowers may once again have good faith in the "Good Faith."

Gary F. Weltmann is a Principal and Corporate Vice President of First Title & Escrow, Inc. (www.firsttitleservices.com). Mr. Weltmann oversees the Contractual Arrangements division of First Title and also participates in the Sales and Marketing, Operations and Technology Departments. Mr. Weltmann has been with First Title since 1997, having entered the title industry after having been exposed to it through his law practice. He has been a principal in several law firms since 1994.

Mr. Weltmann received his juris doctor degree in 1989 from the Washington College of Law at The American University; and his bachelor of science degree in finance and business and economics in 1986 from Lehigh University. Mr. Weltmann is admitted to several bars as follows: Admitted to Bar, 1989, Maryland and U.S. District Court, District of Maryland; 1990, District of Columbia and U.S. Court of Appeals, DC Circuit; 1992, Virginia and U.S. District Court, Eastern District of Virginia; 2006, The Supreme Court of Oklahoma. Mr. Weltmann is a member of many trade associations relating both to real estate and law.
