R. Bradford Jones

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PRACTICE AREAS

Real Estate Law
Title Insurance Law
Errors and Omissions Policies
Attorney Escrow Accounts
Real Estate Fraud

EDUCATION

LL.M., Taxation, New York University, 2001

J.D., University of Mississippi School of Law, 2000

Master of Taxation, University of Mississippi, 2000

Bachelor of Accountancy, 1996, University of Mississippi

Brad Jones is Vice President, Claims Counsel for Mississippi Valley Title Insurance Company, a member of the Old Republic Title Insurance Group. He is a frequent lecturer to attorneys on title insurance issues, attorney's errors and omissions policies, real estate fraud and escrow account fraud.

Brad has a broad and diversified legal background with more than 10 years of experience. As Claims Counsel, he reviews and analyzes claims on title insurance policies and makes insurance coverage decisions. Brad also reviews land titles and makes determinations on the best way to cure title defects.

In addition, Brad manages all aspects of litigation matters undertaken for the Company and its insureds. He also has experience advising the Company's policy issuing agents on land title and underwriting issues.

DISTINCTIONS

- MSCPA Bronze Medal for third highest score on May 1997 CPA Exam
- Certified Fraud Examiner

YOU MAY NOT KNOW

Brad has served as an Adjunct Professor at Holmes County Community College, teaching Real Estate Law and the Legal Environment of Business. Prior to joining Mississippi Valley Title Insurance Company, Brad worked for two large law firms in Jackson, Mississippi.

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
A MEMBER OF THE OLD REPUBLIC TITLE INSURANCE GROUP

Flying Under the Radar of Law Enforcement

Closing Loans Legally and Ethically

Lathan & Barbare
Attorneys at Law

MARTINDALE-HUBBELL Bio.

- 108 Edinburg Court, Greenville, SC
- Ronald Barbare – Born 1951, Admitted 1976
  - University of South Carolina, JD
  - BV Peer Review Rated
- Ray Lathan – Admitted 1970
  - University of South Carolina, JD

The “Practice”

- 1,400 to 1,600 Closings per Year
- Two Lawyers – Lathan and Barbare
- Busy Support Staff
- Well known, well liked

THE CRIME

- The Lawyers pled guilty to one count of violating 18 U.S.C. Section 1010 – a Felony
  - Criminalizes the publication of false HUD-1 Statements
- The lawyers falsely certified that they received cash from borrowers in amounts reported on HUD-1 Settlement Statements when they did not receive the cash.

Federal Plea Agreement

- **U.S. Attorney:** Strom Thurmond, Jr.
- **Indictment:** By Information – "False Certifications that the Defendants received cash at settlement from certain borrowers in amounts reported on HUD-1 Settlement Statements . . . as the Defendants well knew, the Defendants did not receive said cash from said borrowers."
- **Plea:** $5,000 fine and no Pin-Stripes

South Carolina Bar

- 6 Month Suspension for Lathan and Barbare after Guilty Plea to Federal Felony and admission to the Bar of ***numerous*** violations of Ethical Rules, including:
  - Rule 4.1(a)(in the course of representing a client, lawyer shall not knowingly make a false statement of material fact or law to a third person).
  - Rule 8.4(b)(lawyer shall not commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).

Firm's Procedure for Closing Loans

Parlegal Multi-Tasking

- Paralegal was the principal go-between
- Paralegal reviewed lender's closing instructions and Contract for Sale.
- Paralegal prepared HUD-1 and other closing documents.
- Paralegal prepared disbursement worksheet for incoming funds and disbursements.

Firm Procedures for Closing Loans Attorney's Role

- Reviewed closing documents
- Attended and supervised the closing
- Provided instructions for conclusion of transactions
- Generally, no communications with the seller prior to closing
- Generally, no direct communications between the firm and borrowers prior to closing

Cromer Company Transactions

- Cromer was a real estate developer selling mobile home and land packages to buyers.
- Paralegal would prepare the HUD-1 based on preliminary information and forward it to the lender.
  - Line 303 would reflect a certain amount of cash received from the Borrower.
- Subsequently, the Cromer employee would advise that these amounts had been paid directly to Cromer.
- HUD-1 would be revised deleting the “cash from borrower” on line 303 and reducing “cash to seller” by a like amount.

Cromer Deals – Bar finds Double Trouble

- Borrowers Cash to Close on Line 303 at variance with actual receipts and Sellers Proceeds on Line 603 at variance with actual disbursements.
  - The firm never received “Cash to Close”
- Seller delivers its’ own check to the firm for the amount of borrowers “Cash to Close” on Line 303.

The Bar's View of Cromer

". . . it now appears that the representations made by respondent concerning the information on lines 303 and 603 of the HUD-1 statements were incorrect. The inaccurate report had the tendency to cause lenders to believe that borrowers had invested money in the transactions when, in fact, the borrowers had not, and caused the price of the [mobile home and land] package to be inflated by the amounts shown on line 303 of the HUD-1 form."

Stegall's Gift Wrapped HUD-1

- Stegall "sold" Greene, a mobile home
- HUD-1 (Line 303) – Greene's cash to close was $18,147.43
- Stegall forgave $18,147.43, but the generosity was not reflected on the HUD-1 given to the Lender
- Stegall's kindness continued, the firm cut a trust account refund check for $3,000 to Greene that was not on the HUD-1.

Stegall Continues to Outwit Firm

- Lathan becomes concerned borrowers were not making “cash to close” payments to Stegall
- Lathan began requiring cashier’s checks for “cash to close”
- Stegall delivered cashiers checks to Lathan’s staff drawn on BB&T, Stegall’s bank.
- Lathan knew Stegall banked at BB&T

Stegall Deal – “Flip Transaction”

<u>Act One – “Cash Deal”</u>

- Seller Harper and Buyer Laster (ex-Stegall employee), close $55,000 sale.
- HUD-1 shows $55,531.12 as “Cash to Close”
- Barbare is notary and witness on deed

Stegall Deal – "Flip Transaction"

Act Two – Inflated "Flip Price"

- Later, the same day, Laster conveys to Greene for $80,000.
  - Barbare is notary and witness on deed
- Green's "cash to close" is $11,735.77; balance from unidentified Lender;
- Harper, Seller in Act One, receives $55,531.12.

Firm's "Flip" Accounting

" . . . Loan proceeds from the lender in the second transaction were the only funds received by [Lathan and Barbare] in both transactions"

"A Firm check in the amount of $55,531.12 – paid out of the second transaction – represented the "cash from borrower" due in the first transaction."

Firm's "Flip" Accounting

" The flip transaction allowed Greene to acquire the property only using proceeds from the loan notwithstanding the fact that the HUD-1 sent to the lender indicated Greene had contributed $11,735.77 to the transaction."

". . . Information furnished to the lender in the second transaction to be at variance with the disbursements actually made from the firm's trust account. . ."

200. Amount Paid by or in Behalf of Borrower		500. Reductions In Amount Due to seller	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Seller reduced buyer's cash to close to zero	$11,735.77	504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506. Seller reduction of Cash due from Borrower	$11,735.77
207.		507. Transfer to fund 1st half of Flip Transaction	$55,531.12
208.		508.	
209.		509.	
303. Cash [X] From [ ] To Borrower	$0.00	603. Cash [X] To [ ] From Seller	$11,987.24

Bar Finds Goodness in Firm, but not in its' Mobile Home Clients

- No receipt of special financial benefit
- All fees were reasonable and customary
- No allegation either lawyer "deliberately sought to assist [others] in a criminal undertakings or had knowledge of their criminal intent.
- With the advantage of "hindsight", attorneys recognize there were "red flags"

Accurate HUD-1 – A Crime Buster

"However, submitting HUD-1 Settlement Statements to lenders which were at variance with receipts and disbursements from the Firm's trust account enabled these people to break the law".

BAR'S CONCLUSION

- The court is troubled by the recent number of real estate transactions which have been the subject of misleading, fraudulent, and/or criminal schemes. Inaccurate HUD-1 Settlement Statements and other closing documents contribute to these deceptive activities.

- According to the parties in this matter, a large number of attorneys are not passing closing funds through their trust accounts and, at the same time**,** not identifying the funds as paid outside of closing on closing documents. Not only does this practice fail to accurately record the actual transaction for the buyer and seller, but it is misleading to lenders.

S. Carolina Lawyer – "Ethics Watch"

The biggest risk facing the good lawyer is the bad client. Even work as seemingly routine and mundane as residential real estate closings become tricky when clients are less than honest. Two Greenville law partners, Ray Lathan and Ronald Barbare, ended up with some bad clients and paid a ***fearsome*** price.

Professor John Freeman "HUD-1 Misery" in Ethics Watch)

HUD-1 COMPARED TO A CORAL SNAKE

Sometimes dangerous things come in small packages. The coral snake, for example, has a fearsome bite. HUD-1s are important because they travel from the closing room into the ***stream of commerce*** where, foreseeably, others, such as lenders, will rely upon them. Real estate specialists know a HUD-1 is probably the most important document in the closing package.

Professor John Freeman, J.D.

The "Fearsome Price"

- Pled Guilty to violation of Federal Felony - Paid $5,000 fine and walked.
- Civil settlement with Lender for $750,000; $575,000 paid by E&O and $175,000 out of their own pockets.
- Six Month Bar Suspension

"Fearsome" $750,000 Civil Suit Settlement

- Cendant Mortgage v. Greene, et. al.
- Allegations against Lathan and Barbare
  - Closing the loan with a HUD-1 statement that was inconsistent with the contract for the property, including the absence of any genuine down payment as required by the contract.
  - Making disbursements that were not consistent with the HUD-1 statement.

Appendix A to 24 CFR 3500 Instructions for Completing HUD-1

All Charges Must be on HUD-1

- "This form is to be used as a statement of ***actual*** charges and adjustments paid by the borrower and the seller . . ."
- "The settlement agent ***shall*** complete the HUD-1 to itemize ***all*** charges."
- "The settlement agent ***shall*** complete the HUD-1 to itemize ***all*** charges . . . whether to be paid at settlement ***or outside settlement*** . . ."
- Charges paid outside of settlement . . . ***must*** be included on the HUD-1 but marked "P.O.C." for "Paid Outside of Closing"

Appendix A to 24 CFR 3500 Instructions for Completing HUD-1

Items Paid by or on behalf of Borrower

- "Lines 204-209 are used for other items paid by or on behalf of the Borrower.
  - "Lines 204-209 should be used to indicate any financing arrangements or other new loan not listed on Line 202."
  - "Lines 204-209 should also be used where the Borrower receives a credit from the Seller for closing costs . . ."

200. Amount Paid by or in Behalf of Borrower	
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.	

Appendix A to 24 CFR 3500 Instructions for Completing HUD-1

Cash to Close

- "Line 303 ***must*** indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's cash obligations in the transaction or there is a cash-out refinance)."

303. Cash ☐ From ☐ To Borrower	

HUD-1 Prohibitions

Assistant US Attorney Gale McKenzie

- Do not list yourself as the Settlement Agent and your office as the Place of Settlement if someone else is closing the loan at another location.
- Do not substitute dates for the true settlement and disbursement dates on either the HUD-1 or your disbursement sheet.
- Do not enter payoff amounts and parties on HUD-1s different from amounts actually paid and the parties to whom your checks are payable or wire transfers directed.
- Do not pay for “repairs” or “improvements” out of loan proceeds without advance written permission from the lender.

Do Not Launder Scheme Proceeds

Assistant US Attorney Gale McKenzie

- Do not disburse closing proceeds other than to the seller and prior lien holders, to pay closing costs listed on the HUD-1 and to pay back taxes and similar items to clear title.
- In other words, do not launder scheme proceeds by making other payments on behalf of any party even if such payments are disclosed on the HUD-1, requested by both the seller and borrower and supported by invoices.

Sample Closing Instructions

- "In accordance with the Real Estate Settlement Procedures Act (RESPA), you must comply with all provisions of RESPA to complete the HUD-1/1A."
- "Do not show any credits from seller to buyer without consulting our office."
- "Down payment in cash from borrower must go through settlement. We require documentation of ALL funds received by the settlement agent."
- "All fees and charges on the HUD-1/1A must be correct . . . Additionally, the HUD-1 must reflect an itemization of all disbursements from the Seller's Proceeds."

Sample Closing Instructions

- You Are Not Authorized to Close This Loan if:
  - We have not received and approved an estimated closing statement.
  - There is any change to the original sales contract which have not been approved in writing.
  - A transaction becomes known to you on or before the date of closing that involves the borrower(s) or if you have knowledge of a transaction involving the subject property in the last 180 days. Notify the lender, in writing, of the additional transaction to verify that it has been considered in our loan approval decision.

Signing Certificates of Title for Other Attorneys

USA v. Thomas D. Keenum, Sr.

- **The Crime:**
  - Kennum had unsuspecting attorneys sign false title opinions that were used to obtain loans from banks.
- **The Plea:**
  - Guilty to felony bank fraud 18 U.S.C. 1344
  - Imprisonment: 22 months
  - Restitution: $1,083,121.41

Forged Cancellation of Mortgage

USA v. Dwayne G. Deer et. al.

- Dwayne Deer was an attorney from McComb, MS
- $14.5 Million Mortgage Fraud Scheme
- **The Crime:** Prepared and filed forged cancellations of Deeds of Trust which were filed in the land records with various Chancery Clerks as evidence that previous loans had been paid and the collateral had been released free and clear.

Forged Cancellation of Mortgage

USA v. Dwayne G. Deer et. al.

- **The Guilty Plea:**
  - Dwayne Deer – Attorney - Conspiracy to Commit Bank Fraud – 37 months imprisonment.
  - Todd Phillips – Real Estate Investor - Conspiracy to Commit Bank Fraud – 51 months imprisonment.
  - Dawn Stinson – Legal Secretary – Misprision of Felony – 2 Years Probation.
- **Law Enforcement**
  - Federal Deposit Insurance Corporation – Office of Inspector General
  - Federal Bureau of Investigation
  - State District Attorney Dee Bates, McComb, MS

Fraudulently Conveying Property

USA v. Michael E. Earwood

- Michael E. Earwood was an attorney from Madison, MS
- **The Crime:**
  - Earwood was a minority member of Kinwood Capital Group, LLC.
  - He fraudulently transferred real property owned by Kinwood to Northlake Development, LLC (wholly owned by Earwood).
- **The Plea:**
  - Guilty to Bankruptcy Fraud
  - Bank Fraud Charge Dismissed

Fraudulently Conveying Property

USA v. Michael E. Earwood

- **The Sentence:**
  - 46 months imprisonment
  - $792,228.53 Restitution
- **Law Enforcement**:
  - Federal Bureau of Investigations
  - Federal Deposit Insurance Corporation – Office of Inspector General

Escrow Account Fraud

Choice Escrow and Land Title, LLC v. BancorpSouth Bank, 2013 WL 1121339.

- Choice Escrow and Land Title kept its escrow account at BancorpSouth Bank.
- Choice utilized BancorpSouth's website to initiate wire transfers.
- When setting up the account, BancorpSouth offered "Dual Controls"
- Choice refused the "dual control" option because it was a small office and both of the approved people were not always in the office.

Escrow Account Fraud

Choice Escrow and Land Title, LLC v. BancorpSouth Bank, 2013 WL 1121339.

- In November 2009, Choice received an Underwriting Bulletin from its title insurer warning of cyber fraud on attorney escrow accounts.
- Choice contacted BancorpSouth about protection for this sort of fraud.
- BancorpSouth again offered dual controls. Choice again refused dual controls.
- In 2010 a hacker obtains access to Choice's computer and initiates a $440,000 wire to the Republic of Cypress.

Short Sale Fraud

- **Undisclosed Payments**
  - Payments made "outside of escrow" or "off the settlement statement"
    - Junior Lienholders
    - Short Sale Negotiators
- **Flopping**
  - Fraudulent low appraisal, other interested buyers not disclosed to the short sale lender.
  - Property is flipped for a higher price shortly after closing.
- **Forged Short Sale Estoppel Letters**
  - Never accept a payoff letter from anyone other than the lender being paid off.

Thank you!

Contact

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MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
A MEMBER OF THE OLD REPUBLIC TITLE INSURANCE GROUP

Exhibit "1"

H

Supreme Court of South Carolina.
In the Matter of Ray D. LATHAN, Respondent.

No. 25842.
Submitted June 10, 2004.
Decided July 20, 2004.
Order Reinstating Respondent July 27, 2004.

Background: In attorney disciplinary proceeding, attorney involved in real estate transactions and Office of Disciplinary Counsel (ODC) entered into agreement for discipline by consent.

Holding: The Supreme Court held that six-month definite suspension was warranted as discipline by consent for attorney who admitted knowingly making false statements of material fact or law to a third person and failure to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

Definite suspension ordered.

West Headnotes

[1] Attorney and Client 45 ⚿59.13(3)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.13 Suspension
45k59.13(2) Definite Suspension
45k59.13(3) k. In General. Most Cited Cases
(Formerly 45k58)

Supreme Court would impose six-month definite suspension as discipline by consent for attorney involved in the closing of real estate transactions who admitted violating various rules of professional conduct, including those regarding failure to provide competent representation, knowingly making false statements of material fact or law to a third person, and failure to disclose a material fact to a third person when disclosure was necessary to avoid assisting a criminal or fraudulent act by a client. Appellate Court Rule 407, Rules of Prof.Conduct, Rules 1.1, 4.1(a, b).

[2] Attorney and Client 45 ⚿44(2)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k44 Misconduct as to Client
45k44(2) k. Misappropriation and Failure to Account. Most Cited Cases

To ensure their compliance with rules of professional conduct, attorneys must ensure that costs and credits in connection with a real estate transaction be shown on settlement statement and that settlement statement reflect all amounts paid, by whom paid, and to whom paid.

[3] Attorney and Client 45 ⚿44(2)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k44 Misconduct as to Client
45k44(2) k. Misappropriation and Failure to Account. Most Cited Cases

To ensure their compliance with rules of professional conduct, attorneys involved in real estate transactions must ensure that any charges or amounts paid outside of closing be reflected as such on settlement statement.

[4] Attorney and Client 45 ⚿44(2)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k44 Misconduct as to Client

45k44(2) k. Misappropriation and Failure to Account. Most Cited Cases

To ensure their compliance with rules of professional conduct, attorneys involved in real estate transactions must have, for all funds exchanged during closing, a record of method of payment by parties to transaction, as well as an accounting of all receipts and disbursements by attorney; attorney's records must accurately reflect transaction as evidenced by settlement statement unless there is written documentation signed by all parties to the transaction, including any lender, indicating that funds were disbursed otherwise.

****903 *327** Henry B. Richardson, Jr., of Columbia, for the Office of Disciplinary Counsel.

Elizabeth Van Doren Gray, of Sowell, Gray, Stepp & Laffitte, L.L.C., of Columbia, for respondent.

PER CURIAM:

In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to a definite suspension from the practice of law for a period of not less than four nor more than twelve months. We accept the agreement and definitely ***328** suspend respondent from the practice of law in this state for a six month period, retroactive to his interim suspension. The facts, as set forth in the agreement, are as follows.

FACTS

Respondent was admitted to practice law in South Carolina on September 1, 1970. He is a partner in the law firm of Lathan and Barbare (Firm) with his partner Ronald F. Barbare (Partner). Respondent and partner are the only two attorneys employed by the Firm.

The Firm's primary practice is the closing of real estate transactions. The Firm handles approximately 1400 to 1600 real estate closings per year.

On or about November 19, 2003, respondent and his partner pled guilty before the United States District Court for the District of South Carolina to one count of violation 18 U.S.C. § 1010, a felony. The information to which respondent pled guilty provided that he falsely certified that he had received cash from borrowers in amounts reported on HUD-1 Settlement Statements he prepared and submitted to the United States Department of Housing and Urban Development when respondent did not receive the cash.

Because of cooperation with federal authorities into matters related to the information and to other investigations, the United States Attorney made a motion for downward departure. Both respondent and his partner received favorable recommendations in the pre-sentencing report submitted by the United States Probation Department. Both respondent and his partner were sentenced to pay a fine of $5,000 as final disposition of their pleas; both have paid those fines.

Firm's General Procedure for Closing Real Estate Transactions

The Firm's paralegal was the principal point of contact between the Firm and the seller. The paralegal reviewed the lender's instructions and the contract of sale and prepared****904** closing documents and a balance sheet showing incoming funds and disbursements. Changes to the transaction were conveyed by the seller to the paralegal who would then make ***329** pen and ink changes on the Firm's in-house balance sheet reflecting the changes directed by the seller.

Another Firm employee then prepared checks for disbursement in accordance with the balance sheet, including any pen and ink changes prepared by the paralegal. Thereafter, the paralegal prepared a class report showing the disbursements made out of the Firm's trust account in connection with each transaction.

Respondent or his partner reviewed the various closing documents, attended the closing with the

seller and borrower, and gave instructions to the Firm staff for the conclusion of transactions. Respondent or his partner attended and supervised all closings.

Generally, there were no direct communications between the Firm and the borrowers prior to closing. In general, neither respondent nor his partner had any communications with the seller concerning an individual transaction prior to closing.

Cromer Company Transactions

Respondent and his partner served as closing attorneys in a number of real estate transactions where the Cromer Company was the seller of mobile home and land packages. The principal owner of the Cromer Company was A. Eugene Cromer (Cromer). Melissa Caldwell (Caldwell) was an employee of the Cromer Company and was often the principal point of contact between the Cromer Company and the Firm.

On one occasion, respondent closed loans for the Cromer Company where the HUD-1 Settlement Statement reflected that certain sums of money on line 303 "cash from borrower" had been paid by borrowers at closing when the balance sheet (in-house schedule of incoming funds and disbursements) and the Firm's class report (trust account ledger) showed no money had been received into the Firm's trust account. On this occasion, no money was received by the Firm from borrowers.

Respondent represents that Cromer or a representative of his company advised the Firm staff, probably to the paralegal, that this amount had been paid by borrowers directly to the ***330** Cromer Company. Thereafter, the paralegal made pen and ink changes to the balance sheet to reflect that no "cash from borrowers" was received at closing and reduced the "cash to seller" on line 603 of the HUD-1 statement by the amount of the "cash from borrower" shown on line 303.[FN1] However, the HUD-1 form submitted to the lenders were not amended and continued to show an amount of "cash from borrower" on line 303 and no notation of "POC" (a standard abbreviation for "paid outside of closing"). The HUD-1 form contained the standard statement signed by respondent to the effect "the HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement."

FN1. In the lending business, this technique is referred to as "shorting the seller."

On another occasion, respondent served as the closing attorney for a transaction between the Cromer Company as seller and Ms. Z as buyer. On line 303, the HUD-1 statement showed "cash from borrower" to be $5,211.50. However, on instructions from the seller, pen and ink changes were made to the balance sheet, deleting the amount of "cash from borrower" on line 303 and reducing "cash to seller" on line 603 by a like amount. No corresponding change was made to the HUD-1 form which was sent to the lender and no "POC" notation was made on line 303. The Firm's class report did not show "cash from borrower" deposited into the Firm's trust account and, instead, showed the amount of the "cash to seller" reduced by the amount the HUD-1 form showed as "cash to borrower." This caused a variance in the information given the lender in the HUD-1 form and the actual disbursements from the Firm's trust account. The HUD-1 form contained the standard attorney certification as set forth above.

On two other occasions, respondent closed transactions wherein the Firm's class report ****905** showed the line 303 "cash from borrower" was paid at closing by a check drawn on the Cromer Company account rather than by cash or a check from the borrowers. This fact was not disclosed to the lender. Respondent represents that a representative of the Cromer Company told a Firm employee that the "cash from borrowers" ***331** in these two transactions had been paid directly by borrowers to the Cromer Company.

Respondent is now informed and believes that

the representations from the Cromer Company that the amount "due from borrower" on these last three occasions had been paid directly by borrowers to the Cromer Company were false, that there was (at least in most instances) no money paid from the borrowers as represented on line 303 of the HUD-1 form and that Cromer's misrepresentations were in furtherance of his scheme to sell mobile home and land packages to borrowers without the borrowers having to contribute any money to the transactions. As a result, it now appears that the representations made by respondent concerning the information on lines 303 and 603 of the HUD-1 statements were incorrect. The inaccurate report had the tendency to cause lenders to believe that borrowers had invested money in the transactions when, in fact, the borrowers had not, and caused the price of the package to be inflated by the amounts shown on line 303 of the HUD-1 form.

Cromer and Caldwell were indicted in the United States District Court in connection with one or more transactions closed by the Firm where the Cromer Company was the seller. An allegation in Cromer's indictment states Cromer made false statements concerning down payments (information on line 202 of HUD-1 forms) and "cash from borrowers" (information on line 303 of HUD-1 forms). Cromer pled guilty to one count of mail and wire fraud in connection with these transactions and was sentenced to eighteen months in prison. In his plea agreement, Cromer admitted he had derived between $5,000,000 and $10,000,000 in benefits from his scheme.

ODC does not contend that either respondent or his partner were aware of Cromer and Caldwell's criminal activities or of the amount of the money involved. Instead, ODC contends respondent's failure to either amend line 303 and line 603 to reflect "no cash from borrower" received by the Firm or to place the notation "POC" by the line 303 data made it possible for Cromer to engage in the criminal activity stated in the Cromer indictment.

***332** In approximately twelve transactions in which the Cromer Company was the seller and the Firm served as closing agent, borrowers made claims or, in some cases, initiated litigation, against the Firm. The Firm and/or respondent and his partner and their insurance carrier paid $2,500 per case to settle the claims.

Stegall Entities Transactions

For many years, the Firm handled numerous real estate transactions for several entities owned and managed by Donald L. Stegall (Stegall). Respondent served as closing attorney in approximately fourteen transactions where Stegall entities were the sellers of mobile home and land packages.

In each of these fourteen transactions, the HUD-1 statements and Firm balance sheets were prepared by the Firm's paralegal based on information from contracts of sale, information in the lender's loan closing instructions, and/or instructions from Stegall employees, usually Teresa Ashmore (Ashmore). In each of the transactions, both line 303 on the HUD-1 statement and the balance sheet would initially reflect amounts of money to be paid by the borrower at closing. Prior to closing, Ashmore would instruct the paralegal to make changes, primarily reducing the amount of "cash from borrower" to zero and making corresponding reductions in "cash to seller" on line 603 and, in other cases, directing other changes in disbursements to Stegall entities to cause the disbursements to balance.

The changes made by the paralegal at Ashmore's directions were not reflected on the HUD-1 forms which were sent to the lenders. In each of these transactions, the HUD-1 statement contained a certification signed by respondent, as settlement agent, to the effect "the HUD-1 Settlement Statement ****906** which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement." None of the fourteen settlement statements contained the notation "POC" beside line 303 "cash from borrower" even though this amount was not received by the Firm. Accordingly, there was a

variance in the information furnished to the lenders on the HUD-1 statements and the actual disbursements made out of the Firm's ***333** trust account in connections with these transactions. Accordingly, there was a variance in the information furnished to the lenders on the HUD-1 statements and the actual disbursements made out of the Firm's trust account in connection with these transactions.

In six of the Stegall closings, addendums to the HUD-1 statements were prepared by the Firm's staff and executed by the parties. The effect of the addendums was to reduce to writing the changes which had been directed by Stegall employees, usually Ashmore, and made to the balance sheet by the paralegal. The addendums were not sent to the lenders.

In one Stegall transaction, respondent closed loans for Borrowers Y and Z. Because the transaction was insured by the Federal Housing Administration (FHA), an FHA Addendum was required. The borrowers and seller signed certifications on the FHA Addendum prepared by respondent stating that there had not been any reimbursement for cash down payments or closing costs not disclosed to the lender. Respondent signed the certification on the FHA required addendum that the HUD was "... a true and accurate account of the funds that were (i) received or (ii) paid outside of closing, and the funds received have been or will be disbursed by [respondent] as part of the settlement of this transaction."

The HUD-1 statement sent by respondent to the lender also contained the standard certification signed by respondent as the settlement agent. The HUD-1 statement sent to the lender showed $2,987.86 "cash from borrower," however no cash from the borrowers was received by respondent or the Firm in connection with the transaction and the amount actually paid to the seller was reduced by the amount "due from borrower." As a result, there was a variance in the information furnished the lender on the HUD-1 statement and the FHA required addendum and the actual disbursements made from the Firm's trust account and this, in turn, caused respondent's certifications to be incorrect. Similar transactions occurred in other FHA insured loans closed by respondent where a Stegall entity was the seller.

Many of the transactions handled by the Firm for the Stegall entities were funded by Cendant Mortgage Corporation (Cendant). Jeffrey L. Greene (Greene) was Cendant's ***334** local representative and was the usual point of contact between the Firm and Cendant. Respondent was aware that Greene was also the principal point of contact between the Stegall entities and Cendant. Respondent knew Greene approved financing for borrowers of mobile home and land package sales made by Stegall entities.

On or about June 4, 2001, respondent closed a transaction where Greene was the borrower.[FN2] The transaction was not financed by Cendant. The transaction was modified, not only to cause Greene to be forgiven of "cash from borrower" as shown on line 303 of the HUD-1 statement in the amount of $18,147.43, but also to cause Greene to leave the transaction with a check drawn on the Firm's trust account as a "refund" in the amount of $3,000. This change was directed by a Stegall representative to the Firm's paralegal. The paralegal made pen and ink notations on the balance sheet to reflect these changes. An addendum to the HUD-1 statement was prepared to reflect these changes and was presented by respondent to the parties for their signatures at closing. The HUD-1 statement sent to the lender does not mention a "refund" to Greene and does not reflect the $18,147.83 "gift" from a Stegall entity to Greene negating the "cash from borrower" information on line 303. The addendum was not furnished to the lender.

FN2. This was one of the fourteen transactions mentioned above.

****907** In another transaction,[FN3] the HUD-1 statement sent to the lender shows "cash from borrower" in the amount of $2,038.12. There is no in-

dication of a corresponding deposit in the Firm's trust account. The HUD-1 statement sent to the lender reflects a $43,750 deposit, but there is no record of a deposit in that amount to the Firm's trust account.

> FN3. This was one of the fourteen transactions mentioned above.

In connection with this transaction, the Firm's trust account reveals the deposit of loan proceeds of $76,830.40 and deposit of a check "from buyer" (drawn on a BB & T account) in the amount of $37,500. Respondent knew the Stegall entities banked with BB & T. There is a disbursement from respondent's trust account to a Stegall entity in the exact amount of $37,500 and a refund to Stegall individually of $1,389. ***335** Amounts due to the Stegall entity are reduced on the balance sheet to reflect the foregoing and to cause the balance sheet and the corresponding disbursements from the trust account to be in balance. The HUD-1 statement sent to the lender was not amended to correspond to the actual disbursements made out of the Firm's trust account at the direction and/or approval of respondent. The HUD-1 statement contains no mention of either the $37,500 (either coming into or going out of the Firm's trust account) or Stegall, individually, receiving a refund or even being involved in the transaction.

At some point, respondent became concerned whether borrowers were making the "cash from borrower" payments directly to the Stegall entities. According, respondent began requiring presentation of a cashier's check for the "cash for borrowers" at the closing. In approximately thirteen transactions, the cashier's checks were prepared by BB & T and delivered by Stegall employees to respondent's staff. Respondent is now informed and believes the Stegall entities furnished most, if not all, of the money to purchase the cashier's checks, but this was not known by respondent until it came to light during discovery in the Cendant case. *See infra.*

Greene was indicted. He pled guilty in the United States District Court to one count of wire fraud and was sentenced to five years probation and restitution in connection with fraudulent dealings with Stegall and Ashmore to the detriment of Cendant and other lenders who purchased loans with inflated property values. In his plea agreement, Greene admitted deriving between $1,500,000 and $2,500,000 from his scheme with Stegall and Ashmore.

With information available from criminal proceedings and related civil litigation after the closings, it now appears that the accommodations in the foregoing transactions by Stegall entities to Greene were in return for Greene inducing Cendant to make loans on inflated mobile home and/or land packages to borrowers who were buying from Stegall entities. Respondent was unaware of Stegall and Greene's arrangement concerning the Cendant loans.

Stegall and Ashmore were also indicted in the United States District Court in connection with defrauding lenders in conspiracy with Greene. Stegall pled guilty to one count of wire ***336** fraud and was sentenced to eighteen months in prison. In his plea agreement, Stegall admitted deriving $3,075,000 from the real estate transactions related to his plea. One or more of the transactions mentioned in the information to which Stegall pled guilty were closed by the Firm.

As a result of the foregoing, Cendant initiated litigation against the Firm. Cendant was paid $750,000 as settlement on behalf of the Firm. Five hundred and seventy five thousand dollars of this amount was paid by the Firm's insurance carrier and the remainder was paid by the Firm or respondent and his partner.

Additional Facts

ODC's investigation reveals respondent did not receive any special financial benefit from the closings investigated by ODC. All fees received are shown on the Firm's class report; the fees appear to be reasonable and customary for work of this type

in Greenville.

ODC does not allege respondent deliberately sought to assist Cromer, Caldwell, Stegall,**908 Ashmore, or Greene in criminal undertakings or had knowledge of their criminal intent. However, submitting HUD-1 Settlement Statements to lenders which were at variance with receipts and disbursements from the Firm's trust account enabled these people to break the law. With the advantage of hindsight and discovery of criminal activity, respondent now recognizes there were "red flags" which should have alerted him that the Cromer Company and the Stegall entities were seeking to mislead lenders, particularly in closing transactions where Stegall entities effectively gave money to Greene who was originating loans from Cendant to borrowers purchasing mobile home and land packages from Stegall entities.

It now appears that in many of the mobile home and land package transactions respondent closed for the Cromer Company and the Stegall entities, borrowers paid no money into the transactions. Instead, these sellers were seeking to close the transactions without the borrowers contributing their own money as an inducement for borrowers to close the transactions with their businesses. This information was not known to respondent until after the closing of all of these transactions.*337 Respondent represents that he was unaware of the Stegall entities' duplicity concerning the use of cashier's checks in thirteen closings.

LAW

[1] Respondent admits that by his misconduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.2(e) (when lawyer knows client expects assistance not permitted by the Rules of Professional Conduct or other law, lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct); Rule 4.1(a) (in the course of representing a client, lawyer shall not knowingly make a false statement of material fact or law to a third person); Rule 4.1(b) (in the course of representing a client, lawyer not fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6); Rule 5.1(a) (partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct); Rule 5.3(b) (with respect to a nonlawyer employee, lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with professional obligations of the lawyer); Rule 8.4(a) (lawyer shall not violate Rules of Professional Conduct); Rule 8.4(b) (lawyer shall not commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); Rule 8.4(d) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (lawyer shall not engage in conduct that is prejudicial to administration of justice). In addition, respondent admits his misconduct constitutes a violation of Rule 7, RLDE, of Rule 413, SCACR, specifically Rule 7(a)(1) (lawyer shall not violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers), Rule 7(a)(4) (lawyer shall not be convicted of crime of moral turpitude or serious crime); and Rule 7(a)(5) (lawyer shall not engage in conduct tending to pollute the administration of justice or to bring the courts or the legal *338 profession into disrepute or conduct demonstrating an unfitness to practice law).

CONCLUSION

We accept the Agreement for Discipline by Consent and definitely suspend respondent from the practice of law for a six month period, retroactive to the date of his interim suspension. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

The Court is troubled by the recent number of real estate transactions which have been the subject of misleading, fraudulent, and/or criminal schemes. Inaccurate HUD-1 Settlement Statements and other closing documents contribute to these deceptive activities.**909 Respondent's misconduct derives principally from his inaccurate representations on HUD-1 Settlement Statements. These misrepresentations have subjected respondent to both federal criminal penalties and the current disciplinary action by this Court.

In addition to completing HUD-1 Settlement Statements, attorneys prepare their own settlement statements. These documents, too, must also correctly reflect the underlying financial transaction by the parties in order for the buyer, seller, and others to have an accurate record of the transaction.

[2][3][4] According to the parties in this matter, a large number of attorneys are not passing closing funds through their trust accounts and, at the same time, not identifying the funds as paid outside of closing on closing documents. Not only does this practice fail to accurately record the actual transaction for the buyer and seller, but it is misleading to lenders. In an attempt to eliminate this and other deceptive practices, we emphasize that costs and credits in connection with a real estate transaction must be shown on the settlement statement and that the settlement statement must reflect all amounts paid, by whom paid, and to whom paid. Any charges or amounts paid outside of the closing must be reflected as such on the settlement statement (i.e., "POC"). For all funds exchanged during the closing, the attorney must have a record of the method of payment by the parties to the transaction, as *339 well as an accounting of all receipts and disbursements by the attorney. The attorney's records must accurately reflect the transaction as evidenced by the settlement statement unless there is written documentation signed by all parties to the transaction (including any lender) indicating that funds were disbursed otherwise. Failure to comply with these standards may subject attorneys to disciplinary action.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

ORDER

Respondent was suspended on July 20, 2004, for a period of six months, retroactive to December 4, 2003. He has now filed an affidavit requesting reinstatement pursuant to Rule 32, of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The request is granted and he is hereby reinstated to the practice of law in this state.

JEAN H. TOAL, CHIEF JUSTICE.

BY /s/ Daniel E. Shearouse

Clerk

S.C.,2004.
In re Lathan
360 S.C. 326, 600 S.E.2d 902

END OF DOCUMENT

Exhibit "2"

C

Supreme Court of South Carolina.
In the Matter of Ronald F. BARBARE, Respondent.

No. 25843.
Submitted June 10, 2004.
Decided July 20, 2004.
Order Granting Reinstatement July 27, 2004.

Background: In attorney disciplinary proceeding, attorney and the Office of Disciplinary Counsel entered into agreement for discipline by consent, in which attorney admitted misconduct and consented to a definite suspension for a period of not less than four months nor more than 12 months.

Holdings: The Supreme Court held that:
(1) attorney's misconduct in submitting incorrect settlement statements to lenders warranted suspension from the practice of law for a six month period;
(2) failure of attorney to reflect any charges or amounts paid outside of the closing on settlement statement may subject attorney to disciplinary action;
(3) failure of attorney to have an accounting of all receipts and disbursements by attorney may subject attorney to disciplinary action; and
(4) failure of attorney's records to accurately reflect a real estate transaction as evidenced by the settlement statement may subject attorney to disciplinary action.

Definite suspension.

West Headnotes

[1] Attorney and Client 45 ⚿44(2)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k44 Misconduct as to Client
45k44(2) k. Misappropriation and Failure to Account. Most Cited Cases

Attorney and Client 45 ⚿59.13(3)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.13 Suspension
45k59.13(2) Definite Suspension
45k59.13(3) k. In General. Most Cited Cases
(Formerly 45k58)

Attorney's misconduct in connection with real estate transactions, in submitting HUD-1 settlement statements to lenders which were at variance with receipts and disbursements from firm's trust account, warranted suspension from the practice of law for a six month period. Appellate Court Rule 407, Rules of Prof.Conduct, Rules 1.1, 1.2(e), 4.1(a, b), 5.1(a), 5.3(b), 8.4(a, b, d, e); Appellate Court Rule 413, Lawyer Disciplinary Enforcement Rule 7(a)(1, 4, 5).

[2] Attorney and Client 45 ⚿44(2)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k44 Misconduct as to Client
45k44(2) k. Misappropriation and Failure to Account. Most Cited Cases

Failure of attorney, in connection with real estate transaction, to show costs and credits, to reflect all amounts paid, by whom paid, and to whom paid, and to reflect any charges or amounts paid outside of the closing, on the settlement statement, may subject attorney to disciplinary action.

[3] Attorney and Client 45 ⚿44(2)

45 Attorney and Client

45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k44 Misconduct as to Client
45k44(2) k. Misappropriation and Failure to Account. Most Cited Cases

Failure of attorney, in connection with real estate transaction, to have a record of the method of payment for all funds exchanged by the parties to the transaction during the closing or to have an accounting of all receipts and disbursements by the attorney may subject attorney to disciplinary action.

[4] Attorney and Client 45 ⚿44(2)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k37 Grounds for Discipline
45k44 Misconduct as to Client
45k44(2) k. Misappropriation and Failure to Account. Most Cited Cases

Failure of attorney's records to accurately reflect a real estate transaction as evidenced by the settlement statement, unless there is written documentation signed by all parties to the transaction (including any lender) indicating that funds were disbursed otherwise, may subject attorney to disciplinary action.

****382 *561** Henry B. Richardson, Jr., of Columbia, for the Office of Disciplinary Counsel.

Elizabeth Van Doren Gray, of Sowell, Gray, Stepp & Laffitte, L.L.C., of Columbia, for respondent.

***562** PER CURIAM:

In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to a definite suspension from the practice of law for a period of not less than four nor more than twelve months. We accept the agreement and definitely suspend respondent from the practice of law in this state for a six month period, retroactive to ****383** his interim suspension. The facts, as set forth in the agreement, are as follows.

FACTS

Respondent was admitted to practice law in South Carolina on November 5, 1976. He is a partner in the law firm of Lathan and Barbare (Firm) with his partner Ray D. Lathan (Partner). Respondent and partner are the only two attorneys employed by the Firm.

The Firm's primary practice is the closing of real estate transactions. The Firm handles approximately 1400 to 1600 real estate closings per year.

On or about November 19, 2003, respondent and his partner pled guilty before the United States District Court for the District of South Carolina to one count of violation 18 U.S.C. § 1010, a felony. The information to which respondent pled guilty provided that he falsely certified that he had received cash from borrowers in amounts reported on HUD-1 Settlement Statements he prepared and submitted to the United States Department of Housing and Urban Development when respondent did not receive the cash.

Because of cooperation with federal authorities into matters related to the information and to other investigations, the United States Attorney made a motion for downward departure. Both respondent and his partner received favorable recommendations in the pre-sentencing report submitted by the United States Probation Department. Both respondent and his partner were sentenced to pay a fine of $5,000 as final disposition of their pleas; both have paid those fines.

**563 Firm's General Procedure for Closing Real Estate Transactions*

The Firm's paralegal was the principal point of contact between the Firm and the seller. The paralegal reviewed the lender's instructions and the contract of sale and prepared closing documents

and a balance sheet showing incoming funds and disbursements. Changes to the transaction were conveyed by the seller to the paralegal who would then make pen and ink changes on the Firm's in-house balance sheet reflecting the changes directed by the seller.

Another Firm employee then prepared checks for disbursement in accordance with the balance sheet, including any pen and ink changes prepared by the paralegal. Thereafter, the employee prepared a class report showing the disbursements made out of the Firm's trust account in connection with each transaction.

Respondent or his partner reviewed the various closing documents, attended the closing with the seller and borrower, and gave instructions to the Firm staff for the conclusion of transactions. Respondent or his partner attended and supervised all closings.

Generally, there were no direct communications between the Firm and the borrowers prior to closing. In general, neither respondent nor his partner had any communications with the seller concerning an individual transaction prior to closing.

Cromer Company Transactions

Respondent and his partner served as closing attorneys in a number of real estate transactions where the Cromer Company was the seller of mobile home and land packages. The principal owner of the Cromer Company was A. Eugene Cromer (Cromer). Melissa Caldwell (Caldwell) was an employee of the Cromer Company and was often the principal point of contact between the Cromer Company and the Firm.

On approximately four occasions, respondent closed loans for the Cromer Company where the HUD-1 Settlement Statements reflected that certain sums of money on line 303 "cash from borrower" had been paid by borrowers at closing when ***564** the balance sheet (in-house schedule of incoming funds and disbursements) and the Firm's class report (trust account ledger) showed no money had been received into the Firm's trust account. On these occasions, no money was received by the Firm from borrowers.

Respondent represents that Cromer or a representative of his company advised the Firm staff, probably the paralegal, that this amount had been paid by borrowers directly to the Cromer Company. Thereafter, the ****384** paralegal made pen and ink changes to the balance sheet to reflect that no "cash from borrowers" was received at closing and reduced the "cash to seller" on line 603 of the HUD-1 statements by the amount of the "cash from borrower" shown on line 303.[FN1] However, the HUD-1 forms submitted to the lenders were not amended and continued to show an amount of "cash from borrower" on line 303 and no notation of "POC" (a standard abbreviation for "paid outside of closing"). The HUD-1 forms contained the standard statement signed by respondent to the effect "the HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement." The HUD-1 forms were forwarded to the lenders as originally drafted, without the pen and ink changes noted on the balance sheets.

> FN1. In the lending business, this technique is referred to as "shorting the seller."

Respondent is now informed and believes that the representations from the Cromer Company that the amount "due from borrower" in these transactions occasions had been paid directly by borrowers to the Cromer Company were false, that there was (at least in most instances) no money paid from the borrowers as represented on line 303 of the HUD-1 forms and that Cromer's misrepresentations were in furtherance of his scheme to sell mobile home and land packages to borrowers without the borrowers having to contribute any money to the transactions. As a result, it now appears that the representations made by respondent concerning the information on lines 303 and 603 of the HUD-1 statements were

incorrect. The inaccurate report had the tendency to cause lenders to believe that borrowers had invested money in the transactions when, ***565** in fact, the borrowers had not, and caused the price of the package to be inflated by the amounts shown on line 303 of the HUD-1 forms.

Cromer and Caldwell were indicted in the United States District Court in connection with one or more transactions closed by the Firm where the Cromer Company was the seller. An allegation in Cromer's indictment states Cromer made false statements concerning down payments (information on line 202 of HUD-1 forms) and "cash from borrowers" (information on line 303 of HUD-1 forms). Cromer pled guilty to one count of mail and wire fraud in connection with these transactions and was sentenced to eighteen months in prison. In his plea agreement, Cromer admitted he had derived between $5,000,000 and $10,000,000 in benefits from his scheme.

ODC does not contend that either respondent or his partner were aware of Cromer and Caldwell's criminal activities or of the amount of the money involved. Instead, ODC contends respondent's failure to either amend line 303 and line 603 to reflect "no cash from borrower" received by the Firm or to place the notation "POC" by the line 303 data made it possible for Cromer to engage in the criminal activity stated in the Cromer indictment.

In approximately twelve transactions in which the Cromer Company was the seller and the Firm served as closing agent, borrowers made claims or, in some cases, initiated litigation, against the Firm. The Firm and/or respondent and his partner and their insurance carrier paid $2,500 per case to settle the claims.

Stegall Entities Transactions

For many years, the Firm handled numerous real estate transactions for several entities owned and managed by Donald L. Stegall (Stegall). Respondent served as closing attorney in approximately nineteen transactions where Stegall entities were the sellers of mobile home and land packages.

In each of these nineteen transactions, the HUD-1 statements and Firm balance sheets were prepared by the Firm's paralegal based on information from contracts of sale, information in the lender's loan closing instructions, and/or instructions***566** from Stegall employees, usually Teresa Ashmore (Ashmore). In each of the transactions, both line 303 on the HUD-1 statement and the balance sheet would initially reflect amounts of money to be paid by the borrower at closing. Prior to closing, Ashmore would instruct the paralegal to make changes, primarily reducing the ****385** amount of "cash from borrower" to zero and making corresponding reductions in "cash to seller" on line 603 and, in other cases, directing other changes in disbursements to Stegall entities to cause the disbursements to balance.

The changes made by the paralegal at Ashmore's directions were not reflected on the HUD-1 forms which were sent to the lenders. In each of these transactions, the HUD-1 statement contained a certification signed by respondent, as settlement agent, to the effect "the HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement." None of the nineteen settlement statements contained the notation "POC" beside line 303 "cash from borrower" even though this amount was not received by the Firm. Accordingly, there was a variance in the information furnished to the lenders on the HUD-1 statements and the actual disbursements made out of the Firm's trust account in connection with these transactions.

In thirteen of the Stegall closings, addendums to the HUD-1 statements were prepared by the Firm's staff and executed by the parties. The effect of the addendums was to reduce to writing the changes which had been directed by Stegall employees, usually Ashmore, and made to the balance sheet by the paralegal. The addendums were not sent to the lenders.

In one Stegall transaction, respondent closed loans for Borrower F. Because the transaction was insured by the Federal Housing Administration (FHA), an FHA Addendum was required. The borrower and seller signed certifications on the FHA Addendum presented by respondent stating that there had not been any reimbursement for any cash down payment or closing costs not disclosed to the lender. Respondent signed the certification on the FHA required addendum that the HUD was "... a true and accurate account of the funds that were (i) received or (ii) paid outside of closing, and ***567** the funds received have been or will be disbursed by [respondent] as part of the settlement of this transaction."

The HUD-1 statement sent by respondent to the lender also contained the standard certification signed by respondent as the settlement agent. The HUD-1 statement sent to the lender showed $6,955.67 "cash from borrower," however no cash from borrower was received by respondent or the Firm in connection with the transaction and the amount actually paid to the seller was reduced by the amount "due from borrower." As a result, there was a variance in the information furnished the lender on the HUD-1 statement and the FHA required addendum and the actual disbursements, made from the Firm's trust account and this, in turn, caused respondents' certifications to be incorrect.

Many of the transactions handled by the Firm for the Stegall entities were funded by Cendant Mortgage Corporation (Cendant). Jeffrey L. Greene (Greene) was Cendant's local representative and was the usual point of contact between the Firm and Cendant. Respondent was aware that Greene was also the principal point of contact between the Stegall entities and Cendant. Respondent knew Greene approved financing for borrowers of mobile home and land package sales made by Stegall entities.

Flip Transaction

On May 17, 2000, respondent closed a real estate transaction for Seller H to Buyer L involving real property at 13 Hillside Circle in Greenville. Respondent knew that Buyer L was a former employee of Stegall or a Stegall entity. The HUD-1 statement reflected the sales price as $55,000 and the "cash from borrower" being $55,531.12.

The same day, respondent closed another transaction where Buyer L sold the same property to Greene. This second transaction was funded by a lender other than Cendant. The HUD-1 statement in this transaction reflected a sales price of $80,000 and "cash from borrower" (Greene) as $11,735.77. An addendum to the settlement statement, signed by respondent, stated "cash to seller" was reduced by the exact amount of "cash from borrower."

According to the class report, the loan proceeds from the lender in the second transaction were the only funds received by respondent****386** for both transactions. A Firm check in the ***568** amount of $55,531,12-paid out of the second transaction-represented the "cash from borrower" due in the first transaction.

The above activities on May 17, 2000, are known as a "flip transaction" where proceeds from the second transaction are used to fund the initial transaction. For the HUD-1 statement in the first transaction to have been accurate, the "cash from borrower" should have been $0 and the $55,531.12 should have been shown under "amounts paid by or on behalf of borrower" under a line in the 200 column of the HUD form.

For the HUD-1 statement in the second transaction to have been accurate, the $55,531.12 and the $11,735.77 (the amount the seller gave Greene) should have been shown under "reduction in amount due seller" under a line in the 500 column of the HUD and the "cash to seller" reduced to $11,987.24 which was the amount disbursed to seller. On this HUD-1 form, the "cash from borrower" should have been shown as $0 because Greene paid no cash at the closing.

The flip transaction allowed Greene to acquire the property using only the proceeds from the loan

notwithstanding the fact that the HUD-1 sent to the lender indicated Greene had contributed $11,735.77 to the transaction. In effect, the seller (original Buyer L) simply gave Greene $11,735.77.

All of the foregoing resulted in the information furnished to the lender in the second transaction to be at variance with the disbursements actually made from the Firm's trust account as reflected on the class report. In addition, the lender was not provided with a copy of the addendum to the settlement statement.

On January 5, 2001, respondent served as the closing attorney in a transaction whereby Greene purchased real property at 109 Pine Ridge Lane in Greenville from a Stegall entity. The transaction was financed by a lender other than Cendant.

The HUD-1 form reflects earnest money or a deposit of $6,616.03 on line 201 and "cash from borrower" of $5,954.13. Line 603 reflects "cash to seller" of $79,683.97. However, respondent had the parties sign an addendum showing "credit to buyer" of $13,300, and a corresponding reduction of the amount due seller, resulting in "cash due to buyer" of ***569** $7,345.87. The Firm's class report reflects that the only deposit into the Firm's trust account in connection with this transaction were the loan proceeds. The class report shows a refund to Greene of $7,345,87 (paid by a check in the amount of $6,345.87 and the withholding of a $1,000 judgment lien). Consequently, Greene, the buyer, (who is shown on the HUD-1 form as contributing $5,954.13 to the transaction) received $7,345.87. The HUD-1 form was submitted to the lender without being amended to conform to the balance sheet and actual disbursements. The addendum was not submitted to the lender.

On January 30, 2001, Greene purchased real property at 116 Blackbird Lane in Greenville. The mobile home was purchased from LUV Homes and the land from a Stegall entity. Respondent served as the closing attorney. A lender other than Cendant financed the transaction.

The HUD-1 furnished to the lender reflects "cash from borrower" on line 303 as $13,268.56 and "cash to seller" on line 603 as $84,700. The sales price of the lot is shown on the HUD-1 form.

However, LUV Homes and respondent signed an addendum that shows a credit to Greene as "funds from seller" of $25,031.44, reducing the "due seller" by a like amount, resulting in the "due to borrower" to be $11,762.44. A second addendum for the lot sale shows the sales price of the lot reduced by a release fee, payoff, and closing costs. The Firm's balance sheet and class report show a disbursement to Greene of $11,762.44 and reflect that the only deposit was for the loan proceeds. The class report reflects a disbursement of $9,312.00 to Twin Lakes, a Stegall entity, notwithstanding the fact that this entity is not mentioned anywhere on the HUD-1 form. This amount was shown on the second addendum which accounted for the funds on the lot sale.

****387** On January 2, 2001, respondent served as the closing attorney in a transaction whereby Sellers H and W sold property at 4008 Shady Grove in Honea Path to Buyer B. The HUD furnished to the lender, Cendant, shows $4,000 in earnest money on line 201, "cash from borrowers" of $960.55, and "cash to seller" of $11,261.53. However, the Firm's file contains two letters addressed to respondent. One of these ***570** letters, signed by Sellers H and W, states "... disburse all the net proceeds ... to ... Buyer B omitting our names." The second letter addressed to respondent is from Buyer B instructing respondent "... disburse the net proceeds in the approximate amount to [Greene] omitting my name." Respondent did not furnish either of these letters to Cendant. Contrary to the information on the HUD-1 furnished to Cendant as lender, the class report shows respondent did not receive the $960.55 from the borrower. The class report also shows a disbursement to Greene, notwithstanding the fact that Greene's name appears nowhere on the HUD-1 form and that he has no apparent relationship to the transaction.

At some point, respondent became concerned whether borrowers were making the "cash from borrower" payments directly to the Stegall entities. Accordingly, respondent began requiring presentation of a cashier's check for the "cash for borrowers" at closings. Respondent handled approximately five transactions in which he required cashier's checks. The cashier's checks were usually prepared by BB & T (where respondent knew the Stegall entities banked) and delivered by Stegall employees to respondent's staff. Respondent is now informed and believes the Stegall entities furnished the money to purchase the cashier's checks, but this was not known by respondent until it came to light during discovery in the Cendant case. *See infra.*

Greene was indicted. He pled guilty in the United States District Court to one count of wire fraud and was sentenced to five years probation and restitution in connection with fraudulent dealings with Stegall and Ashmore to the detriment of Cendant and other lenders who purchased loans with inflated property values. In his plea agreement, Greene admitted deriving between $1,500,000 and $2,500,000 from his scheme with Stegall and Ashmore.

With information available from criminal proceedings and related civil litigation after the closings, it now appears that the accommodations in the foregoing transactions by Stegall entities to Greene were in return for Greene inducing Cendant to make loans on inflated mobile home and/or land packages to borrowers who were buying from Stegall entities. Respondent***571** was unaware of Stegall and Greene's arrangement concerning the Cendant loans.

Stegall and Ashmore were also indicted in the United States District Court in connection with defrauding lenders in conspiracy with Greene. Stegall pled guilty to one count of wire fraud and was sentenced to eighteen months in prison. In his plea agreement, Stegall admitted deriving $3,075,000 from the real estate transactions related to his plea. One or more of the transactions mentioned in the information to which Stegall pled guilty were closed by the Firm.

As a result of the foregoing, Cendant initiated litigation against the Firm. Cendant was paid $750,000 as settlement on behalf of the Firm. Five hundred and seventy five thousand dollars of this amount was paid by the Firm's insurance carrier and the remainder was paid by the Firm or respondent and his partner.

Additional Facts

ODC's investigation reveals respondent did not receive any special financial benefit from the closings investigated by ODC. All fees received are shown on the Firm's class report; the fees appear to be reasonable and customary for work of this type in Greenville.

ODC does not allege respondent deliberately sought to assist Cromer, Caldwell, Stegall, Ashmore, or Greene in criminal undertakings or had knowledge of their criminal intent. However, submitting HUD-1 Settlement Statements to lenders which were at variance with receipts and disbursements from the Firm's trust account enabled these people to break the law. With the advantage ****388** of hindsight and discovery of criminal activity, respondent now recognizes there were "red flags" which should have alerted him that the Cromer Company and the Stegall entities were seeking to mislead lenders, particularly in closing transactions where Stegall entities effectively gave money to Greene who was originating loans from Cendant to borrowers purchasing mobile home and land packages from Stegall entities.

It now appears that in many of the mobile home and land package transactions respondent closed for the Cromer Company and the Stegall entities, borrowers paid no money into ***572** the transactions. Instead, these sellers were seeking to close the transactions without the borrowers contributing their own money as an inducement for borrowers to close the transactions with their businesses. This information was not known to respondent until after

the closing of all of these transactions.

LAW

Respondent admits that by his misconduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.2(e) (when lawyer knows client expects assistance not permitted by the Rules of Professional Conduct or other law, lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct); Rule 4.1(a) (in the course of representing a client, lawyer shall not knowingly make a false statement of material fact or law to a third person); Rule 4.1(b) (in the course of representing a client, lawyer not fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6); Rule 5.1(a) (partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct); Rule 5.3(b) (with respect to a nonlawyer employee, lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with professional obligations of the lawyer); Rule 8.4(a) (lawyer shall not violate Rules of Professional Conduct); Rule 8.4(b) (lawyer shall not commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); Rule 8.4(d) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (lawyer shall not engage in conduct that is prejudicial to administration of justice). In addition, respondent admits his misconduct constitutes a violation of Rule 7, RLDE, of Rule 413, SCACR, specifically Rule 7(a)(1) (lawyer shall not violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers), Rule 7(a)(4) (lawyer shall not be convicted of ***573** crime of moral turpitude or serious crime); and Rule 7(a)(5) (lawyer shall not engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law).

CONCLUSION

[1] We accept the Agreement for Discipline by Consent and definitely suspend respondent from the practice of law for a six month period, retroactive to the date of his interim suspension. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

The Court is troubled by the recent number of real estate transactions which have been the subject of misleading, fraudulent, and/or criminal schemes. Inaccurate HUD-1 Settlement Statements and other closing documents contribute to these deceptive activities. Respondent's misconduct derives principally from his inaccurate representations on HUD-1 Settlement Statements. These misrepresentations have subjected respondent to both federal criminal penalties and the current disciplinary action by this Court.

In addition to completing HUD-1 Settlement Statements, attorneys prepare their own settlement statements. These documents, too, must also correctly reflect the ****389** underlying financial transaction by the parties in order for the buyer, seller, and others to have an accurate record of the transaction.

[2][3][4] According to the parties in this matter, a large number of attorneys are not passing closing funds through their trust accounts and, at the same time, not identifying the funds as paid outside of closing on closing documents. Not only does this practice fail to accurately record the actual transaction for the buyer and seller, but it is misleading to lenders. In an attempt to eliminate this and other deceptive practices, we emphasize that costs and credits in connection with a real estate transaction must be shown on the settlement state-

ment and that the settlement statement must reflect all amounts paid, by whom paid, and to whom paid. Any charges ***574** or amounts paid outside of the closing must be reflected as such on the settlement statement (i.e., "POC"). For all funds exchanged during the closing, the attorney must have a record of the method of payment by the parties to the transaction, as well as an accounting of all receipts and disbursements by the attorney. The attorney's records must accurately reflect the transaction as evidenced by the settlement statement unless there is written documentation signed by all parties to the transaction (including any lender) indicating that funds were disbursed otherwise. Failure to comply with these standards may subject attorneys to disciplinary action.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

ORDER

Respondent was suspended on July 20, 2004, for a period of six months, retroactive to December 4, 2003. He has now filed an affidavit requesting reinstatement pursuant to Rule 32, of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The request is granted and he is hereby reinstated to the practice of law in this state.

/s/ Jean H. Toal, Chief Justice

/s/ Daniel E. Shearouse

Clerk

S.C.,2004.
In re Barbare
360 S.C. 560, 602 S.E.2d 382

END OF DOCUMENT

Exhibit "3"

c

South Carolina Lawyer
November, 2004

Column

Ethic Watch

*7 HUD-1 MISERY

John Freeman

The biggest risk facing the good lawyer is the bad client. Even work as seemingly routine and mundane as residential real estate closings becomes tricky when clients are less than honest. Two Greenville law partners, Ray Lathan and Ronald Barbare, ended up with some bad clients and paid a fearsome price: federal criminal prosecution, license suspension and the temporary dismemberment of their law partnership, not to mention the need to fork out large sums to settle civil claims. *See Matter of Lathan*, 360 S.C. 326, 600 S.E.2d 902 (2004); *Matter of Barbare*, 2004 WL 1661038 (S.C. 2004).

Lawyers Lathan and Barbare were law partners in a law firm handling 1,400 to 1,600 real estate closings per year, around six every business day. Lawyers willing to handle so many loan closings run foreseeable risks, among them paperwork glitches that leave mortgages unsatisfied, slipshod title work that leaves the lender without the bargained-for lien protection and improper use of lay staff to do lawyer work, leading to unauthorized practice issues. None of these standard types of closing problems bit the two Greenville lawyers. What got them were crooked clients.

As chronicled in the Court's decisions, both lawyers ended up being played for patsies by greedy property sellers and a lender's crooked employee. Interfacing principally with the lawyers' paralegal, the bad guys worked relentlessly as a criminal ring to cheat lenders out of cash. Crime paid well for the law firm's crooked clients, at least temporarily. One, a real estate property seller, "admitted he had derived between $5,000,000 and $10,000,000 in benefits from his scheme." *Matter of Lathan*, 600 S.E.2d at 905. Another property seller who used the lawyers' legal services "admitted deriving $3,075,000 from the real estate transactions related to his plea." *Id.* at 907. Another defendant, a dishonest employee for a lender, "admitted deriving between $1,500,000 and $2,500,000 from his scheme." *Id.*

Lawyers Lathan and Barbare missed out on the lush financial returns enjoyed by beneficiaries of the loan closings they processed. Said the Court: "ODC's investigation reveals respondent did not receive any special financial benefit from the closings investigated by ODC. All fees received are shown on the Firm's class report [trust account ledger]; the fees appear to be reasonable and customary for work of this type in Greenville." *Id.* Further, there was no allegation either lawyer "deliberately sought to assist [others] in criminal undertakings or had knowledge of their criminal intent." *Id.* at 907-08. Not only did the lawyers not make excessive fees for their efforts, they ended up paying hundreds of thousands of dollars to settle claims brought by bilked buyers

and lenders. What led to the lawyers' criminal, civil and disciplinary woes was crooked real estate deals memorialized with bad paperwork and, particularly, inaccurate HUD-1s.

Sometimes dangerous things come in small packages. The coral snake, for example, has a fearsome bite. So it is with HUD-1 Settlement Statements. Real estate lawyers fill out a humble, little (two-page) Form HUD-1 for virtually every residential real estate closing. HUD-1s are important because they travel from the closing room into the stream of commerce where, foreseeably, others, such as lenders, will rely on them. Real estate specialists know a HUD-1 is probably the *most* important document in the closing package.

Because they are ubiquitous and seemingly simple and straight-for-ward, it has perhaps been easy for closing lawyers to overlook the crucial role HUD-1s play in the modern real estate financing market. After the *Lathan* and *Barbare* cases, any South Carolina lawyer who views HUD-1 completion as a minor matter is begging for trouble. The HUD-1 hits nerve centers in every direction. It is relied on by borrowers, lenders, sellers and participants in the secondary financing marketplace.

Today mortgages are bundled together and sold in the secondary market. It is critically important to those who invest in that market that they be able to tell what it is that they are buying. HUD-1s are supposed to tell anyone looking at them the true facts about the underlying real estate loan transaction, with a key item being the money put into the transaction that came out of the borrower's pocket.

Naturally, lenders and purchasers of mortgage paper like seeing that the borrower has made a substantial out-of-pocket contribution to the purchase. They know that the more money the borrower has in the property, the lower the risk of default. They see the borrower's money as an equity cushion. A lawyer who passes on a HUD-1 showing an illusory or inflated equity cushion has generated a fraudulent document. A federal statute, 18 U.S.C. § 1010, criminalizes publication of false HUD-1s. The HUD-1 Settlement Statements delivered to lenders by Lathan and ***8** Barbare showed such inflated cushions. The HUD-1s were false, and materially so.

Lathan and Barbare's woes stemmed from recording closings using two sets of books. One set, the HUD-1s, showed substantial investments in property by the buyers. Line 303 of the HUD-1, reflecting the sum of money provided from borrowers' pockets, was repeatedly pumped up and false. In each instance cited by the Court, the line 303 disclosure was bogus because the borrower's contribution to the deal was either nonexistent or fraudulently inflated. This was a huge error. It translated into criminal prosecutions.

Missing from the HUD-1s was the notation POC ("paid outside closing") across from line 303, to flag for anyone reading the HUD-1 that the buyer's alleged payment had not passed through the closing lawyer's hands. Absent the POC notation, anyone looking at the lenders' HUD-1s would have been misled into believing that, at closing, all the funds had passed through the lawyer's trust account. Worse, the lawyers' internal financial reports on the transactions not only presented facts different from those shown on the HUD-1s delivered to lenders, in two cases the internal reports, but not the lenders' HUD-1s, reflected cash paid outside the closing supposedly by the borrowers, but coming in the form of checks drawn on the seller's account. This set of facts obviously cast doubt on the legitimacy of the selling price for the piece of property against which the lender was making the loan.

The lawyers' two sets of books thus each showed a materially different picture about the subject transactions' substance. The more rosy, more upbeat picture was presented in the HUD-1s released into the stream of commerce post-closing. This deception led to the temporary destruction of Lathan and Barbare's thriving real estate practice.

The Supreme Court did not mince words. It was dismayed by the respondent lawyers' conduct and, worse, by evidence before it suggesting the respondent lawyers' behavior was not unusual for lawyers handling residential real estate closings in South Carolina. In the mini-CLE lecture it delivered to all South Carolina real estate lawyers, the Court scolded:

> According to the parties in this matter, a large number of attorneys are not passing closing funds through their trust accounts and, at the same time, not identifying the funds as paid outside of closing on closing documents. Not only does this practice fail to accurately record the actual transaction for the buyer and seller, but it is misleading to lenders. In an attempt to eliminate this and other deceptive practices, we emphasize that costs and credits in connection with a real estate transaction must be shown on the [HUD-1] settlement statement and that the settlement statement must reflect all amounts paid, by whom paid, and to whom paid. Any charges or amounts paid outside of the closing must be reflected as such on the settlement statement (i.e., APOC"). For all funds exchanged during the closing, the attorney must have a record of the method of payment by the parties to the transaction, as well as an accounting of all receipts and disbursements by the attorney. The attorney's records must accurately reflect the transaction as evidenced by the settlement statement unless there is written documentation signed by all parties to the transaction (including any lender) indicating that funds were disbursed otherwise. Failure to comply with these standards may subject attorneys to disciplinary action.

Matter of Lathan, 600 S.E.2d at 909.

In the foregoing paragraph, which appears verbatim in *both* the *Lathan* and *Barbare* opinions, the court uses the word "must" five times. Any time our Supreme Court uses the word "must" five times in one paragraph in a lawyer discipline case, there is some teaching going on. There was here.

> • Payments by the borrower outside of closing, whether covered by line 303, or line 201 (which covers "deposit or earnest money" payments) must either be received and disbursed by the settlement agent (i.e., the lawyer handling the closing), or retained by the real estate agent and disclosed appropriately on the HUD-1 or marked POC on the HUD-1.
>
> • If an internal addendum is used to reflect special facts modifying a transaction, then copies of the modifying addendum need to be delivered to the lender.
>
> • If property is being "flipped," that is, bought and immediately resold with the proceeds of the second transaction being used to fund the first transaction, then the true facts concerning the second transaction need to be disclosed so that the lender in the second transaction can see that the proceeds of the loan are being used to fund the first transaction. One way of making this disclosure is by using the blank lines from 204 to 209 and from 513 to 519 to make the economic reality of the transaction obvious to the lender (and possibly, the purchaser) who gets the HUD-1 on the second transaction.
>
> • The HUD-1 needs to reflect the material dealings between the ***9** borrower and the lender. Funds listed on the HUD-1 which do not pass through the lawyer's hands must be marked POC. However, a *variance* between amounts shown on lines 303 and 603 and the cash amounts disbursed from the lawyer's trust account can be indicative of deception.

An important consequence of the two disciplinary orders is the implicit instruction to the Bar that accurate reporting in real estate transactions requires lawyers to ascertain the financial reality of the transaction, and to accurately and *consistently* report it externally (via the HUD-1) and internally (in the law firm's own records of the transaction).

The Court expressed particular concern over the need for lawyers to keep their eyes open to the ever-present

risk their services are being perverted or used abusively. In particular, Lathan and Barbare each were faulted for ignoring "red flags which should have alerted him that the [clients] were seeking to mislead lenders."

Implicit in the Court's ruling is a call for lawyers always to take into account that their actions in a matter (such as preparing a HUD-1 or a title opinion) may have on third parties with whom the client is dealing. Explicit in the opinion was the Court's expression of genuine concern that, in its words, "a large number of attorneys" may be handling real estate closings in a way similar to that leading to the downfall of attorneys Lathan and Barbare. Any lawyer with a substantial real estate practice needs to study, learn and apply the lessons to be drawn from those two closing lawyers' wrenching experiences.

16-NOV S.C. Law. 7

END OF DOCUMENT

Exhibit "4"

OMB Approval No. 2502-0265

A. Settlement Statement (HUD-1)

B. Type of Loan

1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

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: Place of Settlement:	I. Settlement Date:

J. Summary of Borrower's Transaction

100. Gross Amount Due from Borrower	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	
200. Amount Paid by or in Behalf of Borrower	
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.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Borrower	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	( )
303. Cash ☐ From ☐ To Borrower	

K. Summary of Seller's Transaction

400. Gross Amount Due to Seller	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustment for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	
500. Reductions in Amount Due to seller	
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.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 420)	
602. Less reductions in amounts due seller (line 520)	( )
603. Cash ☐ To ☐ From Seller	

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

700. Total Real Estate Broker Fees	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.		

800. Items Payable in Connection with Loan				
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 to		(from GFE #3)		
808.				
809.				
810.				
811.				

900. Items Required by Lender to be Paid in Advance				
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.				

1000. Reserves Deposited with Lender				
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		-$		

1100. Title Charges				
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 to	$			
1108. Underwriter's portion of the total title insurance premium to	$			
1109.				
1110.				
1111.				

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

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

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

Comparison of Good Faith Estimate (GFE) and HUD-1 Charrges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
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		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	Total		
	Increase between GFE and HUD-1 Charges	$ or	%

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	# 1001		
Daily interest charges $ /day	# 901		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be **lower** than % or **higher** than %.
Even if you make payments on time, can your loan balance rise?	☐ No ☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No ☐ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No ☐ Yes, your maximum prepayment penalty is $
Does your loan have a balloon payment?	☐ No ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ 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. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortagage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's insurance ☐ Flood insurance ☐ ☐ ☐

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

Exhibit "5"

C

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 47. Fraud and False Statements (Refs & Annos)
→→ § 1010. Department of Housing and Urban Development and Federal Housing Administration transactions

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Department of Housing and Urban Development for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by such Department, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Department, makes, passes, utters, or publishes any statement, knowing the same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be fined under this title or imprisoned not more than two years, or both.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 751; May 25, 1967, Pub.L. 90-19, § 24(c), 81 Stat. 28; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(K), 108 Stat. 2147.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on § 1731(a) of Title 12, U.S.C., 1940 ed., Banks and Banking (June 27, 1934, c. 847, § 512(a), 48 Stat. 1265; Feb. 3, 1938, c. 13, § 9, 52 Stat. 24).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in § 2 of this title.

"$5,000" was substituted for "$3,000" to make this section more consistent in its punishment provisions with comparable sections. (See § 1008 of this title.)

Minor changes in phraseology were made.

Exhibit "6"

C

Effective: August 10, 2011

Code of Federal Regulations Currentness
Title 24. Housing and Urban Development
Subtitle B. Regulations Relating to Housing and Urban Development
Chapter XX. Office of Assistant Secretary for Housing--Federal Housing Commissioner, Department of Housing and Urban Development
Part 3500. Real Estate Settlement Procedures Act (Refs & Annos)
§ 3500.8 Use of HUD-1 or HUD-1A settlement statements.

(a) Use by settlement agent. The settlement agent shall use the HUD-1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD-1 may be utilized by using the borrower's side of the HUD-1 statement. Alternatively, the form HUD-1A may be used for these transactions. The HUD-1 or HUD-1A may be modified as permitted under this part. Either the HUD-1 or the HUD-1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD-1 or HUD-1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) Charges to be stated. The settlement agent shall complete the HUD-1 or HUD-1A, in accordance with the instructions set forth in appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD-1 or HUD-1A.

(1) In general. The settlement agent shall state the actual charges paid by the borrower and seller on the HUD-1, or by the borrower on the HUD-1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) Use of average charge.

(i) The average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the

settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.

(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.

(v) The settlement service provider must retain all documentation used to calculate the average charge for a particular class of transactions for at least 3 years after any settlement for which that average charge was used.

(c) Violations of section 4 of RESPA (12 U.S.C. 2603). A violation of any of the requirements of this section will be deemed to be a violation of section 4 of RESPA. An inadvertent or technical error in completing the HUD–1 or HUD–1A shall not be deemed a violation of section 4 of RESPA if a revised HUD–1 or HUD–1A is provided in accordance with the requirements of this section within 30 calendar days after settlement.

[59 FR 6514, Feb. 10, 1994; 59 FR 14749, March 30, 1994; 59 FR 53901, Oct. 26, 1994; 60 FR 8816, Feb. 15, 1995; 60 FR 24734, May 9, 1995; 61 FR 13233, March 26, 1996; 61 FR 29252, June 7, 1996; 61 FR 51782, Oct. 4, 1996; 61 FR 58476, Nov. 15, 1996; 73 FR 68241, Nov. 17, 2008; 76 FR 40616, July 11, 2011]

SOURCE: 57 FR 49607, Nov. 2, 1992; 60 FR 8816, Feb. 15, 1995; 61 FR 10442, March 13, 1996; 61 FR 46510, Sept. 3, 1996; 61 FR 50219, Sept. 24, 1996; 61 FR 58475, Nov. 15, 1996; 63 FR 3236, Jan. 21, 1998, unless otherwise noted.

AUTHORITY: 12 U.S.C. 2601 et seq.; 42 U.S.C. 3535(d).

24 C. F. R. § 3500.8, 24 CFR § 3500.8

Current through October 3, 2013; 78 FR 61761

END OF DOCUMENT

Exhibit "7"

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Effective: August 10, 2011

Code of Federal Regulations Currentness
Title 24. Housing and Urban Development
Subtitle B. Regulations Relating to Housing and Urban Development
Chapter XX. Office of Assistant Secretary for Housing--Federal Housing Commissioner, Department of Housing and Urban Development
Part 3500. Real Estate Settlement Procedures Act (Refs & Annos)

APPENDIX A TO PART 3500--INSTRUCTIONS FOR COMPLETING HUD-1 AND HUD-1a SETTLEMENT STATEMENTS; SAMPLE HUD-1 AND HUD-1a STATEMENTS

The following are instructions for completing the HUD-1 settlement statement, required under section 4 of RESPA and 24 CFR part 3500 (Regulation X) of the Department of Housing and Urban Development regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD-1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD-1. There is no objection to the use of the HUD-1 in transactions in which its use is not legally required. Refer to the definitions section of HUD's regulations (24 CFR 3500.2) for specific definitions of many of the terms that are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to HUD's regulations (Regulation X) regarding rules applicable to reproduction of the HUD-1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD-1 (and for per diem interest, in the 900-series of the HUD-1).

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD-1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD-1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204-209 on page 1 of the HUD-1, and by a charge to the seller in lines 506-509 on page 1 of the

HUD–1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1, with an offsetting credit reported on page 1 of the HUD–1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD–1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as "P.O.C." with the party making the payment identified in parentheses, such as "P.O.C. (borrower)" or "P.O.C. (seller)".

In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the "no cost" provisions must be itemized and listed in the borrower's column on the HUD–1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be listed. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of "place of settlement."

Section I. Fill in date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. What constitutes personal property varies from state to state. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in Section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 24 CFR part 3500 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Lines 204–209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204–209. Lines 204–209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for items that the Borrower is to purchase separately.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period

of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked "P.O.C. (Borrower)", and must not be included in computing totals.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506–509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 601. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a "P.O.C." item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record "Our origination charge," which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record "Your credit or charge (points) for the specific interest rate chosen," which states the charge or credit adjustment as applied to "Our origination charge," if applicable. This number must not be listed in either column or shown on page one of the HUD–1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record "Your adjusted origination charges," which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate

shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of "no cost" loans, where "no cost" refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where "no cost" includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804–808 may be used to record each of the "Required services that we select." Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing ("P.O.C."), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901–904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (e.g., FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000–series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000–series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000–series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000–series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an "escrow", "impound", or "trust" account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc. The amount in line 1001 must be listed in the

columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in 24 CFR § 3500.17(d). The adjustment will always be a negative number or zero (-0-), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD-1 or HUD-1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100-1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of "Title services and lender's title insurance." This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200-1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total "Government recording charges," and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for State transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

Page 3

Comparison of Good Faith Estimate (GFE) and HUD-1/1A Charges

The HUD-1/1-A is a statement of actual charges and adjustments. The comparison chart on page 3 of the HUD-1 must be prepared using the exact information and amounts for the services that were purchased or provided as part of the transaction, as that information and those amounts are shown on the GFE and in the HUD-1. If a service that was listed on the GFE was not obtained in connection with the transaction, pages 1 and 2 of the HUD-1 should not include any amount for that service, and the estimate on the GFE of the charge for the service should not be included in any amounts shown on the comparison chart on Page 3 of the HUD-1. The comparison chart is comprised of three sections: "Charges That Cannot Increase", "Charges That Cannot Increase More Than 10%", and "Charges That Can Change".

"Charges That Cannot Increase". The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD-1/1A must be entered in the corresponding line in the HUD-1/1A column. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD-1/1A, the credit should be entered as a negative number. [FN1]

[FN1] The official CFR appears to have inadvertently deleted this paragraph. See 73 FR 68204, 76 FR 40612.

"Charges That Cannot Increase More Than 10%". A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD-1/1A for each line must be entered in the HUD-1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD-1/1A line number. The HUD-1/1A column

must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD-1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD-1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

"Charges That Can Change". The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section. The amounts shown on the HUD-1/1A for each charge in this section must be entered in the corresponding line in the HUD-1/1A column, along with the appropriate HUD-1/1A line number. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

Loan Terms

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

Instructions for Completing HUD-1A

Note: The HUD-1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD-1 form may also be used for such transactions, by utilizing the borrower's side of the HUD-1 and following the relevant parts of the instructions as set forth above. The use of either the HUD-1 or HUD-1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

Background

The HUD-1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD-1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD-1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD-1 in any transaction that has a seller.

Refer to the "definitions" section (§ 3500.2) of 24 CFR part 3500 (Regulation X) for specific definitions of terms used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 24 CFR 3500.9 regarding rules for reproduction of the HUD-1A. Additional pages may be attached to the HUD-1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD-1A. The settlement agent shall complete the HUD-1A in accordance with the instructions for the HUD-1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided in Section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in Section L and the names of the recipients of the loan proceeds in Section M should be set forth on the blank lines.

Line–Item Instructions

Page 1

The identification information at the top of the HUD–1A should be completed as follows:

The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 24 CFR 3500.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

Section L. Settlement Charges. This section of the HUD–1A is similar to Section L of the HUD–1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for Section L in the HUD–1, should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD–1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include Section L amounts from additional pages, if any are attached to this HUD–1A.

Section M. Disbursement to Others. This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in Section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in Section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in Section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in Section M.

Section N. Net Settlement. Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

Page 2

This section of the HUD-1A is similar to page 3 of the HUD-1. The instructions for page 3 of the HUD-1, should be followed insofar as possible. The HUD-1/1A Column should include any amounts shown on page 1 of the HUD-1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

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A. Settlement Statement (HUD-1)

B. Type of Loan			
1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

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: Place of Settlement:	I. Settlement Date:

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		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustment for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower		**420. Gross Amount Due to Seller**	
200. Amounts Paid by or in Behalf of Borrower		**500. Reductions in Amount Due to Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash at Settlement from/to Borrower		**600. Cash at Settlement to/from Seller**	
301. Gross amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	( )	602. Less reductions in amount due seller (line 520)	( )
303. Cash ☐ From ☐ To Borrower		603. Cash ☐ To ☐ From Seller	

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			
700. Total Real Estate Broker Fees		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.			
800. Items Payable in Connection with Loan			
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.			
900. Items Required by Lender to Be Paid in Advance			
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.			
1000. Reserves Deposited with Lender			
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	-$		
1100. Title Charges			
1101 Title services and lender's title insurance	(from GFE #6)		
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	$		
1200. Government Recording and Transfer Charges			
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.			
1300. Additional Settlement Charges			
1301. Required services that you can shop for	(from GFE #6)		
1302.	$		
1303.	$		
1304.			
1305.			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1200		

Charges That in Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
Total			
Increase between GFE and HUD-1 Charges		$ or	%

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		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $ The maximum it can ever rise to is $
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on
Total monthly amount owed including escrow account payments	☐ 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. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's Insurance ☐ Flood Insurance ☐ ☐ ☐

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

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Settlement Statement (HUD-1A)

Optional Form for Transactions without Sellers

Name and Address of Borrower:	Name and Address of Lender:
Property Location: (if different from above)	Settlement Agent:
	Place of Settlement:
Loan Number:	Settlement Date:

L. Settlement Charges					M. Disbursements to Others	
900. Items Payable in Connection with Loan					1501.	
901. Origination charge				from GFE #1) $		
902. Your credit or charge (points) for the specific interest rate chosen				from GFE #2) $	1502.	
903. Your adjusted origination charges				(from GFE A)		
904. Appraisal fee to				(from GFE #3)	1503.	
905. Credit report to				(from GFE #3)		
906. Tax service to				(from GFE #3)	1504.	
907. Flood certification				(from GFE #3)		
908.					1505.	
909. Items Required by Lender to Be Paid in Advance						
901. Daily interest charges from	to	@ $	/day	(from GFE #10)	1506.	
902. Mortgage insurance premium	for	months to		(from GFE #3)		
903. Homeowner's insurance	for	years to		(from GFE #11)	1507.	
904.						
1000. Reserves Deposited with Lender					1508.	
1001. Initial deposit for your escrow account				(from GFE #9)		
1002. Homeowner's insurance	months @ $		per month	$	1509.	
1003. Mortgage insurance	months @ $		per month	$		
1004. Property taxes	months @ $		per month	$	1510.	
1005.	months @ $		per month	$		
1006.	months @ $		per month	$	1511.	
1007. Aggregate Adjustment				-$		
1100. Title Charges					1512.	
1101. Title services and lender's title insurance				(from GFE #4)		
1102. Settlement or closing fee				$	1513.	
1103. Owner's title insurance				(from GFE #5)		
1104. Lender's title insurance				$	1514.	
1105. Lender's title policy limit $						
1106. Owner's title policy limit $					1515.	
1107. Agent's portion of the total title insurance premium				$		
1108. Underwriter's portion of the total title insurance premium				$	1520. Total Disbursed (enter on line 1603)	
1200. Government Recording and Transfer Charges						
1201. Government recording charges				(from GFE #7)	N. Net Settlement	
1202. Deed $	Mortgage $		Releases $		1600. Loan Amount	$
1203. Transfer taxes				(from GFE #8)	1601. Plus Cash/Check from Borrower	$
1204. City/County tax/stamps	Deed $		Mortgage $		1602. Minus Total Settlement Charges (line 1400)	$
1205. State tax/stamps	Deed $		Mortgage $		1603. Minus Total Disbursements to Others (line 1520)	$
1206.					1604. Equals Total Disbursements to Borrower (after separation of any applicable rescission period required by law)	$
1300. Additional Settlement Charges						
1301. Required services that you can shop for				(from GFE #6)		
1302.				$		
1303.				$		
1304.						
1305.						
1400. Total Settlement Charges (enter on line 1602, Section N)						

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.

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
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		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	Total		
	Increase between GFE and HUD-1 Charges	$ or	%

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		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by % Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $ The maximum it can ever rise to is $
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ 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 ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below. ☐ Property taxes ☐ Homeowner's insurance ☐ Flood insurance ☐ ☐ ☐

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

[57 FR 56857, Dec. 1, 1992; 59 FR 6515, Feb. 10, 1994; 59 FR 53908, Oct. 26, 1994; 60 FR 8816, Feb. 15, 1995; 60 FR 24735, May 9, 1995; 61 FR 13251, March 26, 1996; 63 FR 3237, Jan. 21, 1998; 73 FR 68243, Nov. 17, 2008; 76 FR 40616, July 11, 2011]

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24 C. F. R. Pt. 3500, App. A, 24 CFR Pt. 3500, App. A

Current through October 3, 2013; 78 FR 61761

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