



GENERAL COUNSEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

January 22, 2010

Jay N. Varon
Foley & Lardner LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, DC 20007-5143

Dear Mr. Varon:

This is to provide clarification on how real estate broker and real estate agent commission fees are to be disclosed under RESPA.

All charges to sellers and buyers by real estate brokers and agents for their services in listing and selling the home ("commission") must be disclosed on Line 700 of the HUD-1 settlement statement. Although RESPA regulates how the commission is disclosed, RESPA does not prescribe how a real estate broker or real estate agent determines the charge for his or her services in any contract with a seller or buyer. The commission may be determined using a flat fee, a percentage of the sales price, or a combination of those methods. The new HUD-1 has made it easier to report the charges of real estate brokers and agents in the 700-series because the commission is now reported as dollar amounts rather than percentages.

If, however, the total charges required to be disclosed in the 700-series exceed the amount of the commission for listing and selling the home that are reflected in the real estate broker's or agent's listing agreement and, if applicable, the buyer's broker agreement, then the excess amount could be reviewed under section 8 of RESPA to determine whether additional services were provided for the excess amount charged. Any charge for which no or nominal services are performed or for which duplicative fees are charged would violate RESPA. 24 CFR § 3500.14(c). In reviewing excess amounts, HUD would likely consider whether there was any separate service contract or agreement between the party charging the fee and the party paying the fee. For example, it might be evidence of a RESPA violation if the listing broker charged the buyer an administrative fee when there was no contractual relationship between the listing broker and the buyer. Similarly, charges by a real estate broker or agent that are in addition to the commission may be found to be a violation of RESPA if those charges are for no or nominal services or are duplicative.

RESPA also does not prescribe how these commission fees would be distributed between the real estate brokers and real estate agents. Therefore, the division of the compensation for their services in listing and selling the home is appropriately a matter for negotiation and agreement between the real estate brokers and real estate agents.

On the HUD-1, the fees charged to sellers and buyers by real estate brokers and agents would be disclosed as follows:

Line 700: State the total amount of the commission for listing and selling the home (whether determined using a flat fee, a percentage of the sales price, or a combination of those methods).

Lines 701-702: State the division, if any, of the amount in Line 700 between the real estate brokers (or real estate agents, as applicable, when a real estate broker is not the party receiving the divided portion), and identify each receiving party.

Please note that, pursuant to 24 CFR 3500.4, this letter does not constitute a rule, regulation, or interpretation of the Secretary of HUD for purposes of section 19 of RESPA, and no person may rely on it to provide protection from liability under RESPA or HUD's implementing regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Helen R. Kanovsky", with a long, sweeping horizontal stroke extending to the right.

Helen R. Kanovsky

Cc: Joseph M. Ventrone
Susan E. Johnson