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\*\*\* CURRENT THROUGH P.L. 110-37, APPROVED 6/18/2007 \*\*\*  
\*\*\* WITH A GAP OF 110-35 \*\*\*

TITLE 12. BANKS AND BANKING  
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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*12 USCS § 2602*

§ 2602. Definitions

For purposes of this Act--

(1) the term "federally related mortgage loan" includes any loan (other than temporary financing such as a construction loan) which--

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) (i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. § 1602(f)), who makes or invests in residential real estate loans aggregating more than \$ 1,000,000 per year, except that for the purpose of this Act, the term "creditor" does not include any agency or instrumentality of any State;

(2) the term "thing of value" includes any payment, advance, funds, loan, service, or other consideration;

(3) the term "settlement services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing of settlement;

(4) the term "title company" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term "person" includes individuals, corporations, associations, partnerships, and trusts;

(6) the term "Secretary" means the Secretary of Housing and Urban Development;

(7) the term "affiliated business arrangement" means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider; and

(8) the term "associate" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that con-

trols, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

**HISTORY:**

(Dec. 22, 1974, P.L. 93-533, § 3, 88 Stat. 1724; Jan. 2, 1976, P.L. 94-205, § 2, 89 Stat. 1157; Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title IV, Part C, § 461(a), 97 Stat. 1230; Oct. 28, 1992, P.L. 102-550, Title IX, Subtitle A, § 908(a), (b), 106 Stat. 3873; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(c)(1), 110 Stat. 3009-400.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"This Act", referred to in this section, is Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1976. Act Jan. 2, 1976 (effective on enactment as provided by § 12 of such Act, which appears as a note to this section), in para (1), inserted "(other than temporary financing such as a construction loan)", in clause (A), inserted "a first lien on", in clause (B)(iii), substituted "is intended to be sold by the originating lender to" for "is eligible for purchase by", deleted "or" following "Mortgage Association", substituted "a" for "from any" and "is to" for "could", and in clause (B)(iv), inserted ", except that for the purpose of this Act, the term 'creditor' does not include any agency or instrumentality of any State".

1983. Act Nov. 30, 1983 (effective 1/1/84, as provided by § 461(f) of such Act, which appears as a note to this section), in para. (5), deleted "and" following the concluding semicolon; in para. (6), substituted a semicolon for a concluding period; and added paras. (7) and (8).

1992. Act Oct. 28, 1992 (effective on enactment and not applicable retroactively, as provided by § 908(d) of such Act), in para. (1)(A), inserted "or subordinate" and ", including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property" and, in para. (3), inserted "the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans)".

1996. Act Sept. 30, 1996, in para. (7), substituted "affiliated business arrangement" for "controlled business arrangement".

Other provisions:

**Effective date and suspension of application of Act Jan. 2, 1976.** Act Jan. 2, 1976, P.L. 94-205, § 12, 89 Stat. 1160, provided: "The provisions of this Act and the amendments made hereby [for full classification, consult USCS Tables volumes] shall become effective upon enactment. The Secretary may suspend for up to one hundred and eighty days from the date of enactment of this Act any provision of section 4 and section 5 of the Real Estate Settlement Procedures Act of 1974, as amended by this Act [*12 USCS §§ 2603, 2604*]."

**Effective date of amendments made by § 461 of Act Nov. 30, 1983.** Act Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title IV, Part C, § 461(f), 97 Stat. 1232, provides: "The amendments made by this section [amending this section, among other things; for full classification, consult USCS Tables volumes] shall become effective on January 1, 1984."

**Regulations implementing amendments made by § 908 of Act Oct. 28, 1992.** Act Oct. 28, 1992, P.L. 102-550, Title IX, Subtitle A, § 908(c), 106 Stat. 3874, provides: "The Secretary of Housing and Urban Development shall issue regulations to implement the amendments made by this section [amending paras. (1)(A) and (3) of this section] not later than the expiration of the 180-day period beginning on the date of the enactment of this Act. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of *section 553 of title 5, United States Code* (notwithstanding subsections (a)(2), (b)(B) and (d)(3) of such section)."

**Interpretive rule regarding application of amendments made by § 908 of Act Oct. 28, 1992, to subordinate or junior lien loans.** The Department of Housing and Urban Development issued the following interpretive rule (*58 F.R. 13706*, March 15, 1993):

"The Department hereby interprets section 908 of the Housing and Community Development Act of 1992, Pub. L. 102-550, Approved October 28, 1992 (the 1992 Act) [amending paras. (1)(A) and (3) of this section], as requiring the Department to first complete required rulemaking under the 1992 Act, which rulemaking will have its own effective date, before junior or subordinate lien loans are covered under RESPA [Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.*; for full classification, consult USCS Tables volumes]. The provisions respecting refinancings have previously been through rulemaking and are not affected by this interpretation.

"This interpretation is an 'interpretation' of RESPA [Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.*; for full classification, consult USCS Tables volumes] for the purpose of 19(a) of RESPA (*12 U.S.C. 2617*) (see also *24 CFR 3500.4(b)(ii)* of the Revised RESPA Rule, effective December 2, 1992, found at *57 FR 49600*). This interpretation is directed to all regulatory agencies and any other concerned persons."

## NOTES:

Research Guide:

Am Jur:

*17 Am Jur 2d, Consumer and Borrower Protection § 228.*

Forms:

*25 Rabkin & Johnson, Current Legal Forms, § 21.30, Sales and Exchanges.*

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.

Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Interpretive Notes and Decisions:

1. "Settlement service"
2. --Making mortgage loan
3. Miscellaneous

### 1. "Settlement service"

In determining whether state requirement that interest payments be made on certain real estate tax deposits is applicable to Federal savings and loan association under Real Estate Settlement Procedures Act (*12 USCS § 2616*), state law must relate to settlement practice; since interest payment on tax escrow accounts can continue long after closing of mortgage transaction, and even throughout entire life of mortgage, it is not settlement service within meaning of *12 USCS § 2602*. *Greenwald v First Federal Sav. & Loan Asso.* (1978, DC Mass) 446 F Supp 620.

Mortgagors' claim that they were charged fees for settlement services that were not provided was dismissed because alleged document preparation fees, facsimile fees, and recording fees related to actions occurring well after property transfers and therefore fell outside scope of *Real Estate Settlement Procedures Act*. *McAnaney v Astoria Fin. Corp.* (2005, ED NY) 357 F Supp 2d 578.

But for assistance in paying tax arrears, mortgage broker's tasks were normal settlement services under *12 USCS § 2602(3)*, arguably compensated by loan origination fee alone, and where yield spread premium (YSP), paid outside of closing, was 96% more than average and there had been no threat of foreclosure, and loan to debtor was insufficient to pay second mortgage, triable issue of fact existed as to whether YSP was earned and allowable under Real Estate Settlement Procedures Act, *12 USCS § 2601 et seq.* *Apgar v Homeside Lending, Inc. (In re Apgar)* (2003, BC ED Pa) 291 BR 665.

## **2. --Making mortgage loan**

Anti-kickback provision of Federal Real Estate Settlement Procedures Act, *12 USCS § 2607*, does not apply to portion of mortgage origination fee imposed by mortgage company for commission to mortgage originator, commission to branch manager, and company's overhead, because company did not receive a fee in return for referral of business to its bank owner, and making of mortgage loan is not "settlement service" under *12 USCS § 2602*. *Eisenberg v Comfed Mortg. Co.* (1986, DC Mass) 629 F Supp 1157.

## **3. Miscellaneous**

Where home buyers filed claims against title company, its subsidiary agent, and agent's subsidiary under Real Estate Settlement Procedures Act, alleging kickbacks and referral fees and buyers sought summary judgment on issue of disclosure under *12 USCS § 2607(c)(4)(A)*, title company, its subsidiary agent, and agent's subsidiary did not have to disclose realtors and realtors' limited partnerships' relationships with title company and its agent as those relationships were not affiliated business arrangements under *12 USCS § 2602(7)*. *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.