

Texas Insurance Code Requirements and the New RESPA Rule

The Statute that outlines settlement statement requirements in Texas is *Texas Insurance Code* Section 2702.053 – which states:

Section 2702.053 - CONTENT OF CLOSING AND SETTLEMENT STATEMENT.

- (a) Each closing and settlement statement provided to a party to a transaction described by Section 2702.052(a) must state the name of any person receiving any amount from that party.
- (b) Notwithstanding Subsection (a), the title insurance company or title insurance agent is required to include in the closing and settlement statement only those items of disbursement that are actually disbursed by the company or agent.
- (c) If an attorney, other than a full-time employee of the title insurance company or title insurance agent, examines a title or provides any closing or settlement services, the closing and settlement statement must include:
 - (1) the amount of the fee for the services, shown as included in the premium; and
 - (2) the name of the attorney or, if applicable, the name of the firm to which the fee was paid.
- (d) The closing and settlement statement must conspicuously and clearly itemize the charges imposed on the party in connection with the closing and settlement.

Issue:

The statute above requires full disclosure. Every party receiving any funds from the borrower, buyer or seller must be shown on the settlement statement provided to that borrower, buyer or seller.

Problem:

The new HUD rule appears to indicate that all title charges should be lumped into one amount, so that consumers can shop around and compare the lump sum amounts without having to add up a bunch of different items first.

Solution:

Many of the charges that used to be itemized on the settlement statement and will now be lumped together can be shown “outside the column” on the new HUD settlement statement. This allows the payees and the amounts to be identified on the settlement statement, as required by Texas law, but also allows the lump sum amount to appear.

Another issue is that it is not clear yet how many lines on the new HUD can be used to show the “outside the column” charges. If there is not enough room to show all of the charges on additional added lines, then an additional sheet may be attached as an addendum. Items such as premium splits and guaranty fees will need to be shown.

It appears there are five main fees that need to be addressed: escrow fees, attorney fees, pass through fees, guaranty fees, and premium splits.

Escrow fees

The new RESPA regulations appear to require the title agent to show all fees related to handling the escrow funds and issuing the loan policy in one lump sum on line 1101. If the escrow fee charged to the buyer or borrower is retained by the title agency, the amount of the fee is not required to be disclosed on the HUD-1.

TDI auditors must be provided with information about exactly how much was charged for the title policy and how much was charged for the escrow fee so they can verify that the rate rules were applied correctly.

If an escrow fee is charged to the seller, the fee should be shown in the Seller's column on line 1102. If an escrow fee is charged to the borrower, the fee should be shown outside the column on line 1102 (and also shown inside the column as part of the lump sum on line 1101).

Attorney fees (frequently listed as document preparation fees)

When a consumer is billed for attorney fees, however, that charge needs to be identified, so that TDI auditors can compare the charged amount with the amount shown on the supporting invoice to check for overcharges. Attorney fees for document preparation charged to a borrower should be disclosed outside the column on a blank line in the 1100 series (1109 or higher). Attorney fees for document preparation charged to a seller should be charged in the seller's column on a blank line in the 1100 series (1109 or higher).

Pass through fees

Since overcharging is not allowed on pass through expenses, all fees charged for pass through items must be clearly identified. As mentioned above, the new RESPA regulations appear to require the title agent to show all fees related to handling the settlement in one lump sum on line 1101. As with the escrow fee, TDI auditors must be provided with information about exactly how much was charged for each pass through item, so they can verify that there was no overcharging. Title agents should remember that the Basic Manual has the following instruction regarding pass-through expenses: "...it should be determined that these charges are actual expenses or reasonable estimates of charges that must be made prior to closing and not arbitrary or uniformly charged amounts for these items on all closing statements."

Guaranty Fees

The policy guaranty fee for the loan policy will also have to be included in the lump sum total shown on 1101. The policy guaranty fee on a loan policy should also be shown outside the column on a blank line in the 1100 series (1109 or higher). The policy guaranty fee for an owner's policy is shown as part of the cost of the policy on line 1103. A separate disclosure, outside the column, must be made on line 1109 or higher (as required by Administrative Rule G-1), so TDI auditors can verify proper fee collection.

Premium splits

If a title agent is sharing a portion of the title insurance premium with an attorney or another title agency to pay for title services rendered, only the portion of the premium retained by the agent is shown outside the column on line 1107. The portion paid to the attorney or other title agent should be shown outside the column on a blank line in the 1100 series (1109 or higher).