

## Where to Close

*from the desk of David M. Touchstone*

In 1974, the U.S. Congress passed the Real Estate Settlement Procedures Act (RESPA). The purpose of RESPA was to provide:

- More effective advance disclosure to home buyers and sellers of settlement costs;
- Elimination of kickbacks and referral fees ;
- and Prevention of abuse regarding mortgage company escrow accounts (property taxes and homeowners insurance).

One section of the act provides:

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company. 12 USC 2608

“Title Company” is defined under RESPA as follows:

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. 12 USC 2602



DAVID M. TOUCHSTONE  
*First Commerce Title, President*

Bottom line: RESPA makes a flat out prohibition against sellers requiring buyers to close at any particular title company. Sellers who regularly require buyers to close at particular title companies expose themselves to the possibility of a class action lawsuit.

This statute will apply in nearly all financed residential sales. About the only exceptions will be most owner financed transactions, most bond for deed transactions, and some assumption transactions. RESPA does not cover cash sales, sales of business property, investment property, nor agricultural property.

Please note that the statute makes no distinction as to who is paying closing costs. As we read the statute, the buyer in every RESPA covered sale is entitled to choose the

closing agent, and the seller is *never* entitled under any circumstances to dictate to the buyer where the closing shall take place. Even if the purchase agreement specifies a title agent, the buyer is entitled to override such a provision, for contractual provisions which violate public policy are not legally enforceable.

#### SOME OBSERVATIONS

The next time you represent a buyer in a relocation transaction or in a “repo” sale, and the seller gets bossy about using its New Orleans located title company, you might wish to bring this little jewel to the seller’s atten-

tion. As we all know, geographically distant service providers are, on average, insensitive to our local buyers. Page 3 of this newsletter is a suggested sample letter in the event you face the above described scenario.

#### ADDITIONAL OBSERVATIONS

The local custom has been to allow the party paying the closing costs to choose the closing agent. This is a good custom and there is nothing wrong with it. *However*, in the event that the buyer expresses the desire to close with a particular title agent, the wise practice will be to observe the buyer’s wish.

[DATE]

XYZ Relocation Company

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[ADDRESS LINE 3]

Certified Mail # \*\*\*\*\*

RE: Sale of 1234 America St., Shreveport, LA

Gentlemen:

We have been advised that with respect to the above referenced sale, you have taken the position that ABC Title Company shall provide or direct the closing.

As you no doubt are aware, the proposed sale of the referenced property is subject to the provisions of The Real Estate Settlement Procedures Act (RESPA). Section 2608 of RESPA states the following:

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

Section 2602 (4) defines "title company" as follows:

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.

As you can see, RESPA makes a flat out prohibition against the seller or you as the agent of the seller dictating to the buyer which title agent will process this sale.

Accordingly, you are hereby advised that the buyer has empowered me as his agent to inform you that he has selected ABC&D Title Company as the agent to handle the closing. Please take all necessary steps to cooperate with ABC&D Title Company to effectuate completion of the sale.

A copy of this letter is being forwarded to the Department of Housing and Urban Development, the agency which enforces RESPA, to create a record in the event that you persist in violating RESPA.

Sincerely,

Real Estate Agent