

REAL PROPERTY LAW SECTION

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Newsletter

STATE BAR OF MICHIGAN

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Chairman

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Editor's Note

This month marks the publication of the second volume of a planned three volume series on Michigan Real Estate Transactions authored by the Editor of this Newsletter. Volume I had been published in March, 1973. Both volumes focus on the Black Letter Law of Michigan in Real Estate Transactions. Each volume is approximately six hundred pages.

Topics in Volume I cover but are not limited to who may acquire ownership, adverse possession, concurrent ownership, condominiums, cooperatives, estates, future interests, dower, landlord-tenant, acquiring title by estoppel, water rights, judicial sales of land, and tax sales.

Topics in Volume II cover but are not limited to subdividing, construction codes, warranties of fitness, buyer's remedies for defective work, mechanic's liens, fixtures including treatment of security interests of third parties under the UCC, easements, licenses, covenants running with the land, equitable servitudes, and zoning.

Copies of this study may be obtained from Specialized Legal Studies for inspection and purchase. Their offices are located at 5440 Cass Ave., Detroit, Michigan 48202, 831-7117. A set of the two volumes may be purchased for \$93.60, the pre-publication price, tax included.

Some More Thoughts on Proration

Dear Sir:

In handling a closing of Traverse City property recently, I was dismayed to encounter retrospective treatment of tax proration. I enquired of the attorney for Lawyers Title in that area and he confirmed that such was indeed the practice.

In their practice, a seller who has paid all taxes owing prior to the sale must pay to the buyer a pro-rated portion of the forthcoming (estimated) tax bill. The result is a very heavy penalty to the seller.

Sincerely yours,

ROBINSON & DUFAULT, P.C.
Paul E. Dufault

Dear Mr. Sengstock:

The most common method for pro-rating real property taxes in Berrien County by the Southwestern Michigan Board of Realtors is:

1. Taxes are considered to be in the arrears
2. Seller allows credit to buyer for his time of ownership using the calendar year
3. Total of city and county taxes are lumped into one sum for pro-rating

Yours truly,

Frank Yurcus
Executive Officer

Dear Mr. Sengstock:

Your postscript in the April 19, 1975 Real Property Law Section pointed out the issue of proliferation of fiscal year periods for various taxing units in the State of Michigan. It is difficult to find a justifiable government objective for such a proliferation. One possible conclusion is that it is a result of poor communication and a lack of guidelines for the taxing authorities of those units. The need for certainty and the streamlining of real estate transaction settlements and calculations creates a strong need to standardize the practice of prorating taxes.

This is an area in which the council can best serve the people of the State of Michigan and the government units. We should propose guidelines that are well thought out, clearly drafted, and on a practical transaction basis to speed up the conveyance and transfer of real property in the State of Michigan.

Very truly yours,

KAMMINGA AND ROODVOETS DEVELOPERS
Joel V. Soule
General Counsel

THE TAX TRIBUNAL

by

Richard J. Sullivan

I am reminded of the lawyer who said that when a client stated he was prepared to prosecute the litigation through to the United States Supreme Court, before undertaking the assignment he would first examine the mortality tables to ascertain whether or not he might ever get to spend any of the fee. Similarly, when I had a client who stated he was prepared to go to the Michigan Supreme Court, and that path was via the Board of Tax Appeals, I did not even examine the mortality tables, I was certain I wouldn't make it. In its defense, however, I think the delay resulted from the desire for thoroughness and the requirement that each property involved be personally reviewed and inspected.

Act 186 of Public Acts of 1973, effective July 1, 1974, MCLA 205.701 created the Tax Tribunal, and conferred power to promulgate rules governing practice and procedure before the Tribunal, and directed that all matters pending before the Board of Tax Appeals and the Corporation Tax Appeal Board not ruled on by December 1, 1976 be transferred to the Tribunal on which date Boards of Tax Appeals are abolished. Investigation discloses that the Tribunal has undertaken its assignment in a most creditable manner, with minimal organization and transitional amount of confusion, and immediately enacted an emergency set of rules, circulated them to interested parties in pending cases, furnished the necessary forms to accomplish transfer, and thereafter notified the parties of TTR 301 (Tax Tribunal Rules) requiring the petitioner to initiate a counsel conference, the personal attendance thereat and the discussion of the problem by the taxpayer and the assessor, or their respective representatives.

The writer considers this the most effective tool of the entire procedure, because it requires a summary of the conference to be reported to the Tribunal within ten days after conclusion. This summary should enable the Tribunal early in the proceedings to evaluate the respective claims and determine whether the controversy has substance or results from unreasonable obstinacy by one of the parties.

It is interesting to note the Board of Tax Appeals had the same right and power to refer the matter back to the parties for discussion and negotiation, but that little use was made of it. The writer had an appeal pending from a 1973 City Tax, which matter was dormant and nothing had been heard. A second appeal was taken on the 1974 City Taxes. The 1974 appeal was transferred to the Tribunal and the matter was settled in the counsel conference in January, 1975. Chapter 6 of the Act contains a provision governing residential property and small claims,

with a division for handling such claims. Residential property is defined as a homestead, or other residential or agricultural real estate including less than four rental units. Three thousand, five hundred and fifty-eight appeals were transferred to the Tribunal in September and as of May 15, 1975, the Small Claims Division has processed claims in all counties of the State.

Heretofore, the procedure was - assessors review period, then to the Board of Review, the third step was to the Board of Tax Appeals and thereafter to the Court of Appeals. The taxpayer had a choice of remedies; there also existed a provision for paying the tax under protest and initiating action in the Circuit Court for a refund. This alternative has been revoked by the new Act.

Under the new Act the first two steps are prerequisite. Step three, however, is to the Tribunal for direct review of a final decision, finding, ruling and determination for order of an agency relating to assessment, valuation, rates, special assessments, allocations or equalization under the property tax laws. The proceeding before the Tribunal is original, independent and considered to be de novo.

Under the Act the taxpayer has the burden of proof in establishing true cash value of the property, but the assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash value in the assessment district, and that the equalization factor was uniformly applied in the district for the year in question.

If an unlawful assessment is claimed and payment has been made to more than one governmental unit, all governmental units to which such taxes are paid may be joined in the same suit. If subsequent years are involved, the petition may be amended prior to the time of trial to include such subsequent payments, and if a refund is ordered on such unlawful assessments it shall bear interest at the rate of 6% from date of payment to date of judgment, and at the same rate from date of judgment to date of payment.

Payment of the tax is a prerequisite to a final decision by the Tribunal.

Appeal from the Tribunal is by leave to the Court of Appeals.

As heretofore mentioned, Chapter 6 of the Act creates a Residential and Small Claims Division, and property other than residential property may be included in this division, provided that the assessed value of such property after applying the state equalization factor shall not be increased or decreased by more than \$20,000.00. In the Small Claims Division the hearing and decision may be by one or more members of the Tribunal, and the appeal is taken on a short or simplified form prescribed by the Tribunal.

The rules of practice and procedure which have been enacted in general, conform to the statute and General Court Rules governing the commencement of a lawsuit. It is done by an application for review and by filing a petition with the Tribunal. Adverse parties are served by certified mail, and subsequent pleadings and documents may be served by first class mail, or in person, as permitted by GCR 1963, 197. Proof of service is required. The respondent is required to file his answer, or take other action, within thirty days after service. Attorneys or other authorized representatives of the respective parties may enter an appearance, and in the absence of such appearance, the party is deemed to appear in pro per. In the case of any change or transfer of interest, the proceeding may be continued by or against the original party in his original capacity, unless the Tribunal directs

that the person to whom the interest is transferred be joined with the original party or made a party in another capacity. The Tribunal may order a joint hearing of proceedings involving common questions of law or fact, or it may order proceedings consolidated, and make such other orders as tend to avoid unnecessary costs and delay. Parties may be added or dropped at any stage.

The Rules provide that all proceedings shall be governed by the general rules of pleading specified in the General Court Rules, including petitions, answers, defaults, dismissals, transfers, counsel conferences, pre-hearing valuation disclosures, and other evidence pertaining to value, interrogatories. A specific number of days have been established for the various steps in the proceeding which must be strictly adhered to, and failure to comply with the allotted time may result in automatic defaults and dismissals. (See check list attached). The target time set by the Tribunal calls for the pre-hearing within 180 days of the counsel conference. The counsel conference summary and pre-hearing statement is closely patterned after the pre-trial statements applicable to general litigation. (The forms are hereafter set forth).

As of May 1, 1975, there are no known actions pending in the Circuit Court challenging the validity of the Act. The Act was several years in the making, and as a result its evolution is beclouded. Since the effective date of the Act, the decisions of the Court of Appeals and the Supreme Court against the Tax Commission in which remands have been ordered, the Appellate Courts have remanded to the Tribunal as directed by MCLA 205.773, Section 73.

By elimination of the alternative methods of contesting assessments, and the employment of both by paying and suing for a refund while the matter is still pending before the Tax Commission, the Tax Tribunal Act should eliminate a great deal of confusion which has existed in connection therewith, and substantially diminish the great number of remands with instructions to conduct a hearing under the relevant provisions of the Administrative Procedures Act, including supporting evidence which will reflect a full and complete record of the questions of fact and law necessary to permit review by the Appellate Court.

Should the Act be tested, it might very well be based upon the apparent conflict between Section 71, which provides that pending matters be transferred to the Tribunal on October 1, 1974 and Section 79 which reads:

"A case filed under previous law before January 1, 1976 shall proceed under those laws, except proceedings before the Board of Tax Appeals and the Corporation Tax Appeal Board, which shall be transferred to the Tribunal if not ruled on by December 1, 1976."

There is one known decision of the Circuit Court which involved payment under protest in a suit for refund as authorized by MCLA 211.53, which action was instituted September 25, 1974, and which was thought to be timely in view of the wording of Section 74 of the Tribunal Act which reads in part:

"The right to sue any agency for refund of any taxes other than by proceedings before the Tribunal is abolished as of September 30, 1974."

A summary judgment of dismissal was entered by the Circuit Court predicated upon the caption of Chapter 7, which reads:

"PENDING MATTERS; EFFECTIVE AND OPERATIVE DATES."

The court reasoned that the action was not authorized for the reason that it was not pending on July 1, 1974, the effective date of the Act, totally disregarding the notation under the caption which reads:

"Caption editorially supplied."

CHECKLIST FOR PROCEEDING BEFORE MICHIGAN TAX TRIBUNAL

1. COMMENCEMENT OF PROCEEDING (TTR 201)
 - a. File Petition (TTR 210)
 - (1) Within 30 days after adjournment of Board of Review; any final decision, ruling, determination or order which you seek to review. (TTA Sec. 35(2))
 - (2) Within 30 days after receipt of Tax Bill. (TTA Sec. 35(2))
 - b. Remit Filing Fee with Petition. (TTR 105)
 - c. Service of Petition and other filings. (TTR 203)
2. MOTIONS (TTR 208)
 - a. All requests to Tribunal shall be by written motion.
 - b. Proceedings may be accelerated or extended by motion. (TTR 309)
3. RESPONDENT ANSWER (TTR 211)
 - a. File and serve within 30 days after service of petition.
4. DEFAULT, DISMISSAL, TRANSFER (TTR 212)
 - a. Failure to proceed in compliance with the rules may result in Default Judgments or dismissal of the appeal.
 - b. Transfer to the Small Claims Division requires Motion or Stipulation.
5. COUNSEL CONFERENCE (TTR 301)
 - a. Required meeting, initiated by petitioner, between parties (taxpayer and assessor) or their representatives.
 - b. Held within 30 days after the time for filing Answer.
 - c. The Tribunal is not a participant in the Counsel Conference.
6. SUMMARY OF COUNSEL CONFERENCE (TTR 301)
 - a. Prepared by Petitioner.
 - b. File and serve within 10 days after Counsel Conference.
 - c. Objections to Summary, file and serve within 5 days after service of Summary.
7. VALUATION DISCLOSURE (TTR 302)
 - a. File and serve on opposing party within 60 days after Counsel Conference.
 - (1) Written appraisal to be filed must be provided opposing party.
 - (2) Expert witness name, address and substance of testimony to opposing party.
 - b. CAVEAT: Failure of disclosure will result in denial of admission of such evidence or testimony. (TTR 302.2)

8. INTERROGATORIES (TTR 303)

- a. File and serve within 30 days after Valuation Disclosure or 90 days after Counsel Conference, whichever occurs first.
- b. Answers to interrogatories filed and served within 30 days after service of interrogatories.

9. OTHER DISCOVERY (TTR 304, 305)

10. ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS (TTR 306)

Requests under this rule are deemed admitted, unless a sworn statement of denial or objection is filed and served within 15 days of service of request.

11. PREHEARING CONFERENCE (TTR 308)

- a. To be held within 180 days after filing of petition or as soon thereafter as Tribunal's schedule permits. (TTR 308.4)
- b. Prehearing Statement of parties filed and served 10 days prior to Prehearing Conference. (TTR 308.3)
- c. Prehearing Summary (TTR 308.6)
 - (1) Prepared by person conducting Prehearing Conference.
 - (2) Filed and served at least 10 days prior to hearing.

12. HEARING (TTR 401)

- a. Notice of hearing shall be provided 30 days prior to hearing.
- b. Subpoenas available upon written request. (TTR 402)

CAVEAT: If tax due date has passed, the Tribunal cannot enter a decision until the taxes have been paid. (TTA Sec. 43)

13. REHEARINGS (TTR 505)

Motions for rehearing by parties must be filed within 20 days after entry of the order, judgment or decision.

STATE OF MICHIGAN
MICHIGAN TAX TRIBUNAL

)	
)	
Petitioner)	M.T.T. Docket No.
)	
vs.)	
)	
Respondent)	

COUNSEL CONFERENCE SUMMARY

_____, Attorney or Agent for Petitioner
(If none, leave blank)

_____, Attorney or Agent for Respondent

NOTICE: WITHIN 10 DAYS AFTER COUNSEL CONFERENCE, THE PETITIONER SHALL SERVE A COPY OF THIS SUMMARY ON THE RESPONDENT AND FILE THE ORIGINAL AND 3 COPIES WITH THE CHIEF CLERK OF THE TRIBUNAL.

- (1) Possibility of Settlement of dispute.
- (2) Stipulate evidence to which agreement can be reached, including all material facts that are not in dispute.
- (3) Other matters which may aid in disposition of the dispute.

Party, Attorney or Agent

Dated: _____

STATE OF MICHIGAN
MICHIGAN TAX TRIBUNAL

, Petitioner		
V		Docket No.
, Respondent		

PRE-HEARING STATEMENT

_____, Attorney or Agent for Petitioner

_____, Attorney or Agent for Respondent

NOTICE: AT LEAST 10 DAYS PRIOR TO THE PRE-HEARING, EACH PARTY SHALL EXCHANGE AND FILE WITH THE CHIEF CLERK AN ORIGINAL AND THREE COPIES.

- (1) FACTUAL STATEMENT OF PETITIONER'S OR RESPONDENT'S CLAIMS, INCLUDING COUNTERCLAIMS, CROSSCLAIMS AND AFFIRMATIVE DEFENSES (attach additional sheets if necessary)
- (2) WHAT, BRIEFLY, ARE THE FACTUAL AND LEGAL ISSUES TO BE LITIGATED?
- (3) ARE PLEADINGS SATISFACTORY AS FILED? _____ YES _____ NO
(If NO, state amendments necessary, to include additional parties)
- (4) PENDING MOTIONS OR DISCOVERY TO BE COMPLETED PRIOR TO HEARING
- (5) STATEMENT REGARDING POSSIBLE CONSOLIDATION OF PETITIONS, AND/OR SEPARATION OF ISSUES FOR HEARING, AND THE ORDER IN WHICH ISSUES SHOULD BE HEARD.
- (6) ADMISSIONS AND OBJECTIONS TO REQUESTS FOR ADMISSIONS (TTR 306.1)
 - (a) Level of assessment
 - (b) Authenticity of documents (statutes, charters, ordinances, regulations, etc.)
 - (c) Other

- (7) IDENTIFY WITNESSES (name and address)
- (8) SPECIFY AMOUNT IN CONTROVERSY
- (9) LIST AND BRING WITH YOU ALL EXHIBITS
- (10) ESTIMATE TIME REQUIRED FOR HEARING
- (11) DISCLOSURE AND TAXATION OF COSTS
- (12) POSSIBILITY OF SETTLEMENT

Party, Attorney or Agent

Dated: _____

Legal Rates of Interest

by

Dick Philleo
Executive Vice-President
Michigan Association of Realtors

The legal rate of interest in Michigan is 5%, right? Right. Then, how come mortgages and land contracts are being written today with higher rates of interest?

Simple. When that rate was established a decade before the turn of the century, lawmakers made two exceptions to it, and they've been making more exceptions ever since.

Originally, the law said that, although the legal rate was 5%, it was permissible for parties to agree in writing for the payment of any rate of interest not to exceed 7%, and it also exempted evidences of indebtedness, the issue and rate of interest of which had been expressly authorized by the public utilities commission or the securities commission.

In 1966 that exemption was enlarged to also exempt rates regulated by any other law of the state, or of the United States (as well as time price differentials charged on the sales of goods or services on credit).

The interest of money shall be at the rate of \$5.00 upon \$100.00 for a year, and at the same rate for a greater or less sum, and for a longer or shorter time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest, not exceeding 7% per annum. This act shall not apply to the rate of interest on any note, bond or other evidence

of indebtedness issued by any corporation, association or person, the issue and rate of interest of which have been expressly authorized by the public service commission or the securities bureau of the department of commerce, or is regulated by any other law of this state, or of the United States, nor shall it apply to any time price differential which may be charged upon sales of goods or services on credit. This act shall not be construed to repeal section 78 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.78 of the Compiled Laws of 1948. This act shall not render unlawful, the purchase of any note, bond or other evidence of indebtedness theretofore issued by any borrower not then domiciled in this state, which bear any rate of interest which is lawful under the law of the domicile of the borrower at the date of issue thereof, and in such case any such rate of interest may be charged and received by any person, firm, corporation or association in this state. MCLA 438.31

Then came the mortgage money credit crunch of 1969, and the Legislature temporarily took the lid off interest rates for "conventional home loan mortgages and land contracts" until December 31, 1970. In 1970 the Legislature extended the "no ceiling" language to the end of 1971, but changed the law to apply only to evidences of indebtedness, the primary security for which was a first lien against real property or a land contract.

For the period ending on December 31, 1977, it is lawful for the parties to any note, bond, or other evidence of indebtedness, executed after August 11, 1969, the bona fide primary security for which is a first lien against real property, or a land lease if the tenant owns a majority interest in the improvements thereon, or the parties to any land contract, to agree in writing for the payment of any rate of interest, but no such note, mortgage, contract, or other evidence of indebtedness shall provide that the rate of interest initially effective may be increased for any reason whatsoever. In connection with any such transaction, except a loan insured or guaranteed by the federal government or an agency thereof, when the security is a single family dwelling unit, the lender shall not:

(a) Directly or indirectly require as a condition of the making of the loan, any deposit to be maintained by the borrower, other than an escrow account.

(b) Directly or indirectly impose or collect, as a condition of the making of the loan, any payment from any seller or borrower in the nature of a discount, point, or similar system, except that a lender may impose and collect, as a condition of making a loan, all fees, discounts, points or other charges that lenders are permitted or required to impose, collect, or pay in order to qualify such loan for sale, in whole or in part, or in order to obtain a purchase commitment, under any program authorized by federal statute or regulation.

(c) Charge a prepayment fee or penalty in excess of 1% of the amount of any prepayment made within 3 years of the date of the loan, or any prepayment fee or penalty at all thereafter or prohibit prepayment at any time. MCLA 438.31(c)(2)

Then, as December 1971 neared, the Legislature extended the "no ceiling" language to the end of 1973 but tightened things up a bit more. It provided that mortgages and land contracts between natural persons "in excess of six per year" would be limited to the former ceiling of 7%. This caused a bit of consternation,

because nobody knew whether this meant six in the whole state, or six between the same two parties, or six for any one party; so the Legislature later that same year struck out that language and declared that first mortgages and land contracts written by regulated lenders (such as banks and S & L's) after August 11, 1969 could carry any rate of interest, but that all other mortgage loans and land contracts written by private lenders after August 16, 1971 could carry a maximum of 11% interest. (Be careful here; certain charges may also be considered "interest" under the federal Truth-in-Lending-Law.)

Notwithstanding the provisions of subsection (5), lenders or vendors not qualified to make loans under subsection (5) may make, or may have made mortgage loans and land contracts specified in subsection (2) on or after August 16, 1971, which mortgage loans and land contracts provide for a rate of interest not to exceed 11% per annum, which interest shall be inclusive of all amounts defined as the "finance charge" in the federal truth in lending act (Public Act 90-321), and the regulations promulgated thereunder. MCLA 438.31(c)(6)

That's how the matter has stood since then, except that the law has been extended to the end of 1977, certain land leases were also included in the law's provisions, and first mortgages and land contracts of \$100,000 or more on non-single-family-residential properties were also exempted from any usury ceiling (except, of course, the criminal usury ceiling of 25%, which applies to any loan). MCLA 438.31(c)(9)

Of particular interest is the treatment of second mortgages. The usury statute very clearly limits the interest rates on second mortgages when they are written by non-regulated lenders, by reference in subsection 6 to the types of mortgages exempt in subsection 2, by using the terms "primary security" and "first lien". By exclusion, second mortgage interest limits are set at 7% by section 1 of the law. MCLA 438.31

But when you get to second mortgages made by regulated lenders however, the picture gets a little more complicated. Some banks are in fact writing second mortgages at rates in excess of 7%, evidently on the strength of an interpretation that federal bank laws permit it for those federally chartered institutions, and by the state banking act which permits state banks to charge the same rates as national banks.

In conclusion, here is a quick reference on interest limits on real property instruments: (a) first mortgages, certain land leases, and land contracts as are authorized by law to be written by regulated lenders may carry any rate of interest; (b) first mortgages and land contracts written by non-regulated lenders may carry a maximum of 11% interest; (c) second mortgages are limited to a maximum of 7% interest, except as higher rates may be permitted by other banking and S & L laws and regulations; and (d) first mortgages and land contracts of \$100,000 or more on property other than single family residences may carry any rate of interest, no matter who writes them.

All of this applies until December 31, 1977, unless altered or extended by the Legislature in the meantime.

REPORT OF THE SUBCOMMITTEE
OF THE REAL PROPERTY SECTION
ON PROPOSED REVISIONS TO MICHIGAN
STATUTORY FORECLOSURE OF MORTGAGES LAW

On April 22, 1975 the Subcommittee met specifically for the purpose of considering a proposal of the Michigan Law Revision Commission for foreclosure of mortgages by summary proceedings and repeal of the foreclosure by advertisement statute. All members of the Subcommittee were present:

Michael K. Anspach
Robert S. Bolton
Warren D. Couger
Ronald D. Kregel
Thomas Leven
Marilyn Mosier
William Dunn

Each member of the Subcommittee had received a copy of the proposal prior to the meeting, and had had opportunity to review it in detail in preparation. The Subcommittee considered the proposal both in a general and a specific sense, and the report herein is the present consensus of all members of the Committee.

A. GENERAL CONSIDERATIONS

1. The Law Revision Commission, in its preface to the proposed amendment of the summary proceedings statute, recognizes that the validity of the foreclosure by advertisement statute has not been finally determined through court procedures. It also points out that title companies are withholding insurance of titles derived through foreclosure action. This basic premise is incorrect. Title insurance is available at the present time under certain ground rules, and it is generally felt that the great majority of titles obtained through foreclosure by advertisement proceedings is insurable even under those ground rules. It is recognized that there is a quantity of uninsurable titles because of the inability of the foreclosing mortgagee to meet the requirements for insurance, but this has not become, as of yet, a serious problem to mortgage lenders.

2. The preface further states that while the law in this field has not yet been firmly resolved by court decisions, the validity of public policy which sanctions foreclosure by advertisement must be questioned. Thus, regardless of how the courts might determine the validity of mortgage foreclosure by advertisement, Michigan is urged to adopt a totally new procedure presumably consistent with the basic tenets of due process. The Fourteenth Amendment to the Constitution of the United States has been effective for 107 years, and mortgage foreclosure by advertisement has been a statutory remedy in Michigan since 1827. It was not, however, until 1974, in Northrip v. Federal National Mortgage Association, that any court came to the conclusion that due process was not afforded by the procedures of the Michigan statute. While due process questions may have been considered by some over the years, it was not until Northrip that these questions were translated into action. It must be recognized that the proposal is, in large part, a reaction to Northrip, a decision of a federal district court which is in the appeal stages at the present time.

While the Subcommittee does not take any present stand as to whether notice and hearing should or should not be required in order to preserve constitutional protections, the Subcommittee feels that it is unwise to anticipate the eventual

outcome of cases in this area, and recommends that these cases follow their legal course through the courts to a final determination, presumably at the level of the United States Supreme Court, before a specific change in the law should occur. There are several reasons which are independently offered for this position. First, there is the possibility that procedures under statutes such as the Michigan foreclosure by advertisement law may be found not to violate constitutional rights. If this is so, it does not necessarily follow that the Michigan law should not eventually be changed in some manner. However, it is felt that the proposal represents a "knee-jerk" reaction which is not thoroughly considered and may lead to more problems than presently exist. Second, even if the Northrip case is affirmed in whole or in part, the courts, through the decisional process, may provide certain standards and guidelines in connection with foreclosure procedures which may either be greater or lesser than the standards proposed by the Law Revisions Commission. These should be awaited. The Northrip case proceeds under the doctrines of Fuentes, which themselves have been limited in Mitchell v. W. T. Grant Co. (40 L. Ed. 2d, 406), and the courts should be allowed to speak on mortgage foreclosure procedures, as well. It should also be considered that there are cases on this subject, of recent vintage, which do not find similar foreclosure statutes unconstitutional. (Bryant v. Jefferson Federal Savings and Loan (CADC, 1974)). Third, a present legislative change in the foreclosure procedures would have an impact on the continuing litigation in the Northrip case. Such legislation would virtually constitute an acknowledgment that procedures in mortgage foreclosure by advertisement were improper, and there is no question that such legislative change could not be ignored by a court. Bear in mind that Northrip does not declare the law itself unconstitutional.

It is, therefore the feeling of the Subcommittee that the proposed change is premature, and represents change for change's sake at the present time. While it would be necessary to have specific legislation ready for submittal to the legislature in the event that Northrip or other cases dealing with similar statutes are ultimately decided in a manner which will effectively make the existing foreclosure by advertisement statute ineffectual, it is recommended that such proposals for legislation be held in abeyance until the outcome of these cases.

3. It is submitted that the proposal, while providing notice and prior hearing, fails to protect the interests of either the borrower or the lender. It should be pointed out that although the Subcommittee consists of persons representing a surprisingly broad viewpoint concerning mortgage foreclosures, it is the consensus of the Committee that the proposal is disadvantageous to both parties to a mortgage. The law indiscriminately requires a hearing in all cases, encourages a plethora of litigation, affords far greater risk and opportunity for less than totally scrupulous members of the Bar to engender lengthy harassment oriented litigation, and will serve to increase costs unnecessarily in connection with mortgage transactions. It will result in the delay in the transferability of property, which in turn will encourage the deterioration of housing, particularly in areas such as the city of Detroit; and will place in the private sector the burdens now borne by the public sector, namely the Department of Housing and Urban Development, in connection with disposition of rundown properties as to which a mortgage lender has been unable to pursue foreclosure. The ultimate result of any law which requires litigation in every mortgage foreclosure circumstance will be to tighten underwriting requirements, result in a reduction in mortgage funds availability for low equity transactions, and will ultimately increase lending rates or costs in order to defer the expenses of anticipated foreclosure proceedings. It is realized that the function of the Subcommittee at this point in time is to analyze this proposal; yet, in the course of such

analysis many recommendations for different legislation providing borrowers with notice and right to prior hearing have been developed. It is premature to consider the presentation of these ideas at this time, but there are many alternatives which must be considered before any legislation is introduced.

4. While new legislation may govern mortgages executed after the effective date of such legislation, there appears to have been no consideration given as to the impact of the repeal of the foreclosure by advertisement law and the substitution of the proposed legislation therefor upon existing mortgages. Under the Northrip case, the foreclosure by advertisement statute has not been declared unconstitutional. Only the procedures followed in connection with foreclosure pursuant thereto have been questioned. It is true that the plaintiff in that case on appeal has again brought up the entire constitutionality question, but as of this date, only the procedures are in doubt. To throw out the entire statute would leave considerable doubt as to the validity of foreclosure of any mortgage executed while that statute was in effect. Any legislative change must take this into consideration and some specific preservation of remedial rights must be provided. Legislation pursuant to this proposal may itself be unconstitutional in that it impairs contract rights.

B. SPECIFIC PROBLEMS IN THE PROPOSAL

1. In all cases provided for under the summary proceedings statute presently, the plaintiff is vested with legal title to the premises sought to be recovered. The foreclosure of a mortgage is not, of itself a possessory action. Under both the foreclosure by advertisement statute and the statute providing for foreclosure in Circuit courts, a public sale is held and a deed ultimately given to the bidding party which, after a period of redemption, then entitles the grantee in such deed to maintain a possessory action to recover the possession of the property. It is submitted that mortgage foreclosure proceedings do not belong in a statute which presumes that the plaintiff has a possessory right in the property. While both land contracts and mortgages are credit transactions, there are significant legal differences between them. It is submitted that this must be recognized in any legislation governing foreclosure of mortgages. If it is desired to combine procedures for forfeitures of land contracts and foreclosures of mortgages, such combination should be in a separate statute apart from that pertaining merely to recovery of possession, and separate sections of such law should cover each type of transaction. The Subcommittee is not at all convinced that the summary proceedings statute governing land contracts is a good statute in the first place. While it is outside of the purview of the Subcommittee's function, we recognize the possibility that the land contract forfeiture proceeding itself could be revised totally, rather than imposing its own weaknesses on mortgage foreclosures as well.

2. No distinction is made in the proposal between residential and commercial transactions. While parties to either transaction are afforded the same constitutional rights, there well may be different standards applicable to the satisfaction of those constitutional rights. The case of Garner v. Tri-State Development Corp., decided after Northrip, recognizes this. The Committee recommends that the proposal of the Law Revision Commission be applicable solely to one- to four-family residential properties.

3. (a) The majority of the Subcommittee feels that the proposal of the Law Revision Commission should not repeal the mortgage foreclosure by advertisement statute, but should allow that statute to remain on the books as a procedure to be applicable if a mortgagee decides to follow it. The risks of following it are

well known. However, they are risks that a lender may wish to assume based upon understandings it has with its borrowers. Certainly there should be no need to force all mortgage foreclosures through a litigation type proceeding, particularly if the borrower has waived his right to hearing. (b) A minority of the Subcommittee feels that the foreclosure by advertisement statute should not stand, unchanged, along with a law such as the Law Revision Commission's proposal. The minority viewpoint would say, however, that notice and hearing rights could be provided by amendment to the existing mortgage foreclosure by advertisement law, and that law could and should otherwise be preserved.

4. The hearings afforded by any law proposal should not be cast in terms so that it appears that a borrower must litigate, or be subject to some unknown penalty. Service of process from the district courts simply commands the defendant to appear and defend. Notice of any hearing procedure should offer the borrower an opportunity to be heard, but should not stress that he must. There are many instances, where the borrower does not care about a hearing, has nothing to say, no legitimate defense to raise. Under present service procedures, the borrower will be summoned to appear in court and will probably do so. The notice of hearing should explain the nature of hearing, that failure to appear will result in foreclosure, but no liability for a deficiency.

5. The proposal cavalierly suggests in paragraph 7(b) that the issuance of a writ of restitution shall vest ownership of and title to the premises in the foreclosing mortgagee. Overlooked is the fact that the courts having jurisdiction over summary proceedings, namely the Common Pleas or District Courts, do not have jurisdiction to try title to land. The statutes declare that the Circuit Courts have exclusive jurisdiction over questions of title. The Subcommittee questions whether the writ of restitution is a proper device for the passage of title and whether the courts having jurisdiction over the proceedings under the statute have the power to create a document which vests title. While this is no problem in the case of land contracts or tenancies, where legal title is vested in plaintiff, and an equity or possessory interest in the defendant is being terminated, title definitely has to pass in the case of a mortgage foreclosure.

6. The proposal contemplates that at the end of a redemption period, the mortgagee may become vested with title, yet the notice provisions of the statute, contained in section 5730 indicate that service of process is to be made only on the mortgagor or the person holding possession under the mortgagor. This fails to take into consideration that the mortgagor and all persons holding under, by, or through it have a right to redeem. The notice provisions do not cover junior lienors whose rights will be affected in the event of a foreclosure. There is no publication of notice, and thus there is less notification to parties interested in premises than under the foreclosure by advertisement laws. The Committee feels this is a substantial defect in the proposal. Can a junior lienor be cut off under this proceeding as it is cut off under foreclosure by advertisement proceedings? Does a junior lienor have a right to reinstate or redeem, and if it does, what are its rights, since the first lien is not cut off in the event of a redemption, but merely reinstated. Does the junior lienor become subrogated to the rights of the first lienor in such event?

7. The proposal seems to indicate that reinstatement redemption is available at any time during six months following the issuance of judgment upon the payment merely of the amount due at the time of judgment, and not at the time of redemption. Thus if a mortgagee follows the proposal, pursues this remedy after two months default in the mortgage, and obtains a judgment, at the end of six months, the borrower need only pay the two months in arrears at the time of judgment, and

not the balance which has accrued since the date of judgment. The mortgagee may then be forced to begin the foreclosure proceedings all over again in order to receive the five or six payments which have been also missed during the redemption period. The same situation can then occur after the second proceedings, and this can continue for the duration of the mortgage. What this statute does is create semi-annual payment obligations on any mortgagor. It is suggested that at some point in time, acceleration of the entire debt must be permitted to avoid this harrassment, and to avoid the necessity of every foreclosure eventually winding up in Circuit Court.

8. The situation described in the preceding paragraph provides an ideal existence for milkers of property, whose abuses were the very cause for the shortening of redemption period from one year to six months under the foreclosure by advertisement statute. Now these abuses are encouraged and continued for the duration of the mortgage contract.

9. It is an obvious consequence of the hearing procedures that mortgagees will be faced with the assertion of numerous "defenses" to foreclosure, which may or may not be germane to the mortgage contract and obligation. Careful consideration should be given as to whether in connection with any proceeding other than foreclosure in circuit court, the subject matter of pleading and defenses should be limited to a determination of the parties involved, possession of the property, the existence of the obligation, and the default thereof. We yet have seen only the tip of the iceberg in attacks on mortgage foreclosures. They are now limited to constitutional questions. Once hearings are afforded in every mortgage foreclosure case, it can be safely predicted that usury, fraud, forgery and other defenses will be automatically raised; affirmative defenses such as complaints about interest on escrow accounts and calculations thereof will be automatically encountered. Extraneous defenses such as the condition of the property or the inability of the mortgagor to pay will be raised, and there is no guideline offered in the legislation proposed to ascertain whether these defenses are to be heard or given credence in these proceedings. Will or should this court have jurisdiction to try meritorious defenses? Will or should removal be necessary to try all defenses? If matters such as interest on escrow accounts have been litigated and final determinations made as to the propriety thereof in other courts, will it be necessary to file motions for summary judgments and conduct hearings thereon? Any slightly imaginative mortgagor will be able to delay foreclosure proceedings for years once hearing rights are granted. This situation would be a crippling blow to the lending industry in this state and will ultimately lead to a reduction in the availability of home ownership potential. Therefore it is recommended that the types of defenses allowed in such hearings be defined in the law, and if other defenses are to be raised, that can be done on removal to Circuit Court. Otherwise these foreclosures and the District Courts would become a circus.

10. It is submitted that if legislation is adopted providing for reinstatement redemption, as the proposal suggests, the period of redemption of six months is far too long. A six-month period of redemption is provided both in circuit court action and in foreclosure by advertisement for the payment of the entire debt. Since the proceedings under the proposal require payment only of the amount of the judgment, there is no reason whatsoever to permit the same six month period to exist. It is suggested that thirty days may be ample for reinstatement redemption. The law could provide for acceleration at the end of thirty days and an additional six months for redemption of the entire indebtedness. It is the Committee's feeling that the redemption period for land contracts under the existing summary proceedings law is also too long, and would recommend a change in this period as well.

11. The present mortgage foreclosure by advertisement statute provides a shortened period of redemption for vacant or abandoned property. While there have not been many instances in which mortgagees could take advantage of this provision, there should continue to be some recognition that vacant or abandoned property does not stand on the same footing as someone's abode. Indeed, under land contract forfeiture procedures, a quandry has always been posed when there is no person in possession of the property. If there is no possession, there is no need to take action to recover possession. Of course, this lack of action would be obviously inconsistent with foreclosure in general, which requires that some proceedings be taken to establish the right to possession.

12. Any proposal should take into account and permit the assessment of reasonable attorneys' fees and taxed costs in connection with these proceedings. The proposal is utterly silent in this regard.

13. By implication, any mortgagee claiming default in a covenant of a mortgage other than a covenant to pay money must foreclose by circuit court proceeding rather than by advertisement or summary proceeding. The proposal applies only to money obligations.

14. Consideration must be given as to whether the amended statutes and foreclosure procedures will be satisfactory to various agencies and insurers involved in loan transactions including FHA, VA FNMA, GNMA, FHLMC, and MGIC.

15. Drafting problems are apparent in the fundamental summary proceedings law, which are, of course, preserved in the proposed amendment. In addition, the proposed amendment leaves out, at the end of the first sentence in section 5730, a provision for the mailing of notice of hearing. Is this omission intentional or unintentional? It is presumed that it is unintentional because the language then continues to discuss mailed notice.

C. SUMMARY

While notice and hearing may eventually be required as a constitutional matter in foreclosures of mortgages, the law is not clear at the present time as to what is required. To propose reactionary legislation is premature and unwise. The Law Revision Commission is not in a position to ascertain the public policy of the State of Michigan, and to do so is entirely presumptuous. The proposal ignores fundamental legal problems involving the law of mortgages. The repeal of the foreclosure by advertisement statute is entirely unnecessary. There are many legal defects in the proposition.

It must be pointed out that the Subcommittee has taken no position whatsoever with respect to the advisability or legality of notice and hearing in connection with foreclosures of mortgages. The comments above must be read only in conjunction with the specific proposal of the Law Revision Commission. The points raised do not purport to nor attempt to quibble with the possible constitutional requirements of notice and hearing. It is suggested that there are many better ways of accomplishing constitutional compliance other than those proposed by the Law Revision Commission, and in the interest of obtaining the intelligent output of the Bar, and the influence of advocates of borrowers and lenders rights, proposal for legislation should follow an orderly course. Legislation to accomplish the constitutionally guaranteed protections to borrowers must consider the economic need for prompt action against defaulting parties, and a minimization of costs to be incurred to lenders in pursuing such actions so that mortgage rates and mortgage availability will be as favorable as possible to borrowers.

PROPOSAL FOR FORECLOSURE OF A MORTGAGE BY
SUMMARY PROCEEDINGS IN LIEU OF ADVERTISEMENT

As a result of recent decisions of the United States Supreme Court a question has arisen as to the constitutionality of foreclosure of real estate mortgages by advertisement as provided under Mich. Comp. L. 1970 Secs. 600.3201 to 600.3280. See Snidiach v. Family Financial Corp., 395 U.S. 337 (1969) and Fuentes v. Shevin, 407 U.S. 67 (1972). Under these cases, the United States Supreme Court questions the constitutionality of actions whereby a person is deprived of property rights without a prior court hearing in which he has an opportunity to be heard.

In the past year at least 2 decisions have been rendered by the U.S. District Courts in Michigan questioning the constitutional validity of foreclosure by advertisement. See Northrip v. Federal National Mortgage Assn., F.Supp. (E.D. Mich. 1974) (Case #40074) and Garner v. Tri-State Development Co., F.Supp. (E.D. Mich. 1974) (Case #4-71428).

At this time it has not yet been determined by the Michigan Supreme Court or any other appellate court whether foreclosure of mortgages by advertisement is legally valid in the face of these constitutional objections. The question of the validity of foreclosures by advertisement creates a serious problem of the validity of real estate titles which result from foreclosure sale. Most title companies are withholding insurance of titles to property so derived.

While the law in this field has not yet been firmly resolved by court decisions, the validity of the public policy under which foreclosure by advertisement is sanctioned must also be questioned. When a person is to be deprived of his property by reason of foreclosure of a mortgage, it would seem that the basic tenets of due process should require reasonable notice to him with an opportunity to be heard in a court hearing as to any defenses he may claim.

Under present law a mortgage on real estate can be foreclosed either by advertisement (C.L. 70, Sec. 600.3201-3280), or by circuit court proceeding in chancery (C.L. 70, Sec. 600.3101-3180). In the latter event, the mortgagor receives a hearing in circuit court before foreclosure sale can be held. In such suit, judgment can be taken against the mortgagor for a deficiency if the proceeds of the sale do not pay off the full amount due under the mortgage. In the foreclosure by advertisement, the mortgagor is afforded no such opportunity to be heard in a court proceeding. Proceedings for foreclosure by advertisement shorten the time period for effectuation of the mortgage foreclosure and are less expensive than the circuit court actions. After foreclosure by advertisement, the mortgagor still has the right to bring court action to collect any deficiency from the mortgagor if the sale proceeds have not been sufficient to pay the mortgage debt in full.

In this state debts secured by real estate are typically in two forms. There is the mortgage instrument executed by the borrower as mortgagor giving security for his loan from the lender, the mortgagee. Then there is the land contract wherein the seller of the property on an installment payment basis is the vendor and the purchaser of the property who owes the unpaid balance is the vendee. Under land contract, the title to the property remains in the vendor. The vendee is, however, deemed the equitable owner while the vendor's interest is generally equated with that of a mortgagee. Thus proceedings to foreclose an executory contract may be brought in the circuit court, with the right to a deficiency judgment similar to that of a mortgage foreclosure. See C.L. 1970, Sec. 3101-3180 and 1963 GCR 745 which provide substantially the same procedure for foreclosure in the circuit court of a land contract or mortgage.

In the case of a land contract, however, there is presently afforded a summary proceeding in the district court for foreclosure of the land contract which is more expeditious in effectuating the foreclosure and is much less expensive by way of legal costs. In such proceedings, however, the right to deficiency judgment against the vendee is waived.

For the mortgagee who seeks merely to exercise his legal right to foreclose his mortgage for nonpayment of sums due under the mortgage, there would seem no sound policy objections to substantially preserving the shorter time period presently available by foreclosure by advertisement provided that the mortgagee is willing to waive any claim to a deficiency judgment against the mortgagor. It is our view that sound policy would dictate that foreclosure by advertisement should be eliminated but that there should be substituted therefor a foreclosure action by summary proceedings in the district courts similar to that available for foreclosure of land contracts. With this end in view, the proposed bill follows:

PROPOSED BILL

AN ACT to amend Act No. 236 of the Public Acts of 1961, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions, the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act, and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as amended, being sections 600.101 to 600.9930 of the Compiled Laws of 1970, by amending sections 5726, 5728, 5730, 5739, 5741, 5744 and 5750 thereof, and by repealing sections 3201 to 3280.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 5726, 5728, 5730, 5739, 5741, 5744 and 5750 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.5726, 600.5728, 600.5730, 600.5739, 600.5741, 600.5744 and 600.5750 of the Compiled Laws of 1970, are amended to read as follows:

Section 5726 (1) A person entitled to any premises may recover possession thereof by a proceeding under this chapter after forfeiture of an executory contract for the purchase of the premises but only if the terms of the contract expressly provide for termination or forfeiture, or give the vendor the right to declare a forfeiture, in consequence of the nonpayment of any moneys required to be paid under the contract or any other material breach of the contract. For purposes of this chapter, moneys required to be paid under the contract shall not include any accelerated indebtedness by reason of breach of the contract.

(2) A PERSON WHO IS A MORTGAGEE, OR HIS ASSIGNEE, WHO HOLDS A LIEN AGAINST PREMISES UNDER A MORTGAGE INSTRUMENT WHICH PROVIDES FOR SALE OF THE PREMISES IN THE EVENT OF DEFAULT THEREUNDER, MAY RECOVER POSSESSION THEREOF AND TITLE THERETO BY A PROCEEDING UNDER THIS CHAPTER AFTER GIVING NOTICE OF FORECLOSURE AS THEREIN PROVIDED. FOR PURPOSES OF THIS CHAPTER, MONEYS REQUIRED TO BE PAID UNDER THE COVENANTS OF A MORTGAGE SHALL NOT INCLUDE ANY ACCELERATED INDEBTEDNESS BY REASON OF THE BREACH THEREOF.

Sec. 5728. (1) Possession may be recovered under section 5726 only after the vendee OR MORTGAGOR or person holding possession under him has been served with a written notice of forfeiture IN THE CASE OF AN EXECUTORY PURCHASE CONTRACT OR WRITTEN NOTICE OF FORECLOSURE IN THE CASE OF A MORTGAGE and has failed in the required time to pay moneys required to be paid under the contract OR MORTGAGE or to cure any other material breach of the contract OR MORTGAGE. Unless the parties have agreed in writing to a longer time, the person served with a notice of forfeiture OR FORECLOSURE shall have 15 days thereafter before he is required to pay moneys required to be paid under the contract OR MORTGAGE and cure other material breaches of the contract OR MORTGAGE or to deliver possession of the premises.

(2) The notice of forfeiture OR FORECLOSURE shall state the names of the parties to the contract OR MORTGAGE and the date of its execution, give the address or legal description of the premises, specify the unpaid amount of moneys required to be paid under the contract OR MORTGAGE and the dates which payments thereof were due, specify any other material breaches of the contract OR MORTGAGE and shall declare forfeiture of the contract OR FORECLOSURE OF THE MORTGAGE effective in 15 days, or specified longer time, after service of the notice, unless the money required to be paid under the contract OR MORTGAGE is paid and any other material breaches of the contract OR MORTGAGE are cured within that time. The notice shall be dated and signed by the person entitled to possession, his attorney or agent.

Sec. 5730. The notice of forfeiture OR FORECLOSURE provided for in section 5728 may be served by delivering it personally to the vendee OR MORTGAGOR or person holding possession under him or by delivering it on the premises to a member of his family or household or an employee, of suitable age and discretion, with a request that it be delivered to the vendee OR MORTGAGOR or person holding possession under him. If the notice is mailed, the date of service for purposes of this chapter is the next regular day for delivery of mail after the day when it was mailed. If notice cannot be served by 1 of these methods, it may be served by publication under the provisions of Act No. 235 of the Public Acts of 1929, being sections 554.301 and 554.302 of the Compiled Laws of 1948 and the date of the third publication is the date of service.

Sec. 5739. Except as provided by court rules, a party to summary proceedings may join claims and counterclaims for money judgment for damages attributable to wrongful entry, detainer or possession, for breach of the lease or contract OR MORTGAGE under which the premises were held or for waste or malicious destruction to the premises, but the court may order separate summary disposition of the claim for possession, without prejudice to any other claims or counterclaims. A claim or counterclaim for money judgment shall not exceed the amount in controversy which otherwise limits the jurisdiction of the court.

Sec. 5741. If the jury or the judge finds that the plaintiff is entitled to possession of the premises, or any part thereof, judgment may be entered in accordance with the finding and may be enforced by a writ of restitution as provided in this chapter. If it is found that the plaintiff is entitled to possession of the premises, in consequence of the nonpayment of any money due under a tenancy, or the nonpayment of moneys required to be paid under an executory contract for purchase of the premises OR UNDER MORTGAGE, the jury or judge making the finding shall determine the amount due or in arrears at the time of trial which amount shall be stated in the judgment for possession. In determining the amount due under a tenancy the jury or judge shall deduct any portion of the rent which the jury or judge finds to be excused by the plaintiff's breach of the lease or by his breach of 1 or more statutory covenants imposed by section 39 of chapter 66 of the Revised Statutes of 1846, as added, being section 554.139 of the Compiled Laws of 1970. The statement in the judgment for possession shall be only for the

purpose of prescribing the amount which, together with taxed costs, shall be paid to preclude issuance of the writ of restitution. The judgment may include an award of costs, enforceable in the same manner as other civil judgments for money in the same court.

Sec. 5744. (1) Subject to the time restrictions of this section, the court entering a judgment for possession shall issue a writ commanding the sheriff, or any other officer authorized to serve the process, to cause the plaintiff to be restored and put in full possession of the premises.

(2) On conditions determined by the court, the writ of restitution may be issued forthwith upon the entry of judgment for possession when any of the following is pleaded and proved, with notice, to the satisfaction of the court.

(a) The premises are subject to inspection and certificate of compliance under Act No. 167 of the Public Acts of 1917, as amended, being sections 125.401 to 125.543 of the Compiled Laws of 1970 and the certificate or temporary certificate has not been issued and the premises have been ordered vacated.

(b) Forcible entry was made contrary to law.

(c) Entry was made peaceably but possession is unlawfully held by force.

(d) The defendant came into possession by trespass without color of title or other possessory interest.

(e) The tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.

(3) (a) When the judgment for possession is based upon the forfeiture of an executory contract for the purchase of the premises, the writ of restitution shall not be issued until the expiration of 90 days after the entry of judgment for possession if less than 50% of the purchase price has been paid or until the expiration of 6 months after the entry of judgment for possession if 50% or more of the purchase price has been paid.

(b) WHEN THE JUDGMENT FOR POSSESSION IS BASED UPON FORECLOSURE OF A MORTGAGE BY REASON OF THE DEFAULT IN THE COVENANTS THEREOF, THE WRIT OF RESTITUTION SHALL NOT BE ISSUED UNTIL EXPIRATION OF 6 MONTHS AFTER THE ENTRY OF JUDGMENT FOR POSSESSION.

(4) In all other cases, the writ of restitution shall not be issued until the expiration of 10 days after the entry of the judgment for possession.

(5) If an appeal is taken or a motion for new trial is filed before the expiration of the period during which the writ of restitution shall not be issued and if a bond to stay proceedings is filed, the period during which the writ shall not be issued shall be tolled until the disposition of the appeal or motion for new trial is final.

(6) When the judgment for possession is for nonpayment of money due under a tenancy or for nonpayment of moneys required to be paid under or any other material breach of an executory contract for purchase of the premises, OR OF A MORTGAGE ON THE PREMISES, the writ of restitution shall not issue if, within the time provided,

the amount as stated in the judgment, together with the taxed costs, is paid to the plaintiff and other material breaches of an executory contract for purchase of the premises OR OF A MORTGAGE ON THE PREMISES are cured.

(7) (a) Issuance of the writ of restitution, based on a judgment for possession in consequence of the forfeiture of an executory contract for the purchase of the premises, shall foreclose any equitable right of redemption which the purchaser might have or claim in the premises.

(b) ISSUANCE OF THE WRIT OF RESTITUTION BASED ON A JUDGMENT FOR POSSESSION IN CONSEQUENCE OF THE FORECLOSURE OF A MORTGAGE SHALL VEST OWNERSHIP OF AND TITLE TO THE PREMISES IN THE PLAINTIFF AND SHALL FORECLOSE ANY LEGAL OR EQUITABLE RIGHT OF REDEMPTION WHICH THE DEFENDANT MAY HAVE OR CLAIM IN THE PREMISES.

Sec. 5750. The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory. A judgment for possession under this chapter does not merge or bar any other claim for relief, except that a judgment for possession after forfeiture of an executory contract for the purchase of premises OR UPON FORECLOSURE OF A MORTGAGE ON THE PREMISES shall merge and bar any claim for money payments due or in arrears under the contract OR MORTGAGE at the time of trial and that a judgment for possession after forfeiture of such an executory contract OR FORECLOSURE OF A MORTGAGE which results in the issuance of a writ of restitution shall also bar any claim for money payments which would have become due under the contract OR MORTGAGE subsequent to the time of issuance of the writ. The plaintiff obtaining a judgment for possession of any premises under this chapter is entitled to a civil action against the defendant for damages from the time of forcible entry or detainer, or trespass, or of the notice of forfeiture, notice to quit or demand for possession, as the case may be; PROVIDED, HOWEVER, THAT UPON FORECLOSURE OF A MORTGAGE HEREUNDER, THE PLAINTIFF SHALL BE ENTITLED TO A CIVIL ACTION AGAINST THE DEFENDANT ONLY FOR DAMAGE CAUSED BY MALICIOUS DESTRUCTION OF THE PREMISES.

Section 2. Sections 3201 to 3280 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.3201 to 600.3280 of the Compiled Laws of 1970, are repealed.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974--UPDATED

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This Article is a supplement to that which appeared in the April 1975 Newsletter (Number 6). That Article was prepared prior to the middle of March 1975 when the Department of Housing and Urban Development was in the throes of developing its Uniform Settlement/Disclosure Statement and Regulations pursuant to the Real Estate Settlement Procedures Act of 1974 (RESPA). P.L. 93-533, 88 Stat. 1724, 12 USCA § 2601 et seq (February, 1975 Supplement). This supplementary article (prepared May 23, 1975) is necessary, as many of the "issues" raised in the earlier article have been resolved or at least addressed in the final Regulations and forms issued by HUD, to have been published May 22, 1975 in the Federal Register. The Regulations relate only to the Disclosure/Settlement form and procedures of Sections 4 and 6 of the Act.

The final form and Regulations indicate that HUD was responsive to the many requests and comments it received for clarity, definition and business considerations in the ultimate implementation of the purposes of the law. A copy of the

Regulations of the Department of Housing and Urban Development, the HUD form 1, being the Uniform Settlement/Disclosure Statement together with the Federal Reserve Board's formal truth-in-lending statement, together with instructions for completion of these forms are appended to this Article. Careful review of the Regulations, forms and instructions is essential, but several specific areas are worth noting.

TRANSACTIONS SUBJECT TO DISCLOSURE UNDER RESPA

The Act governs settlement procedures in transactions involving federally regulated mortgage loans, which are loans secured by residential real property, and made by certain defined lenders, or on mortgage forms eligible for purchase by certain agencies. Initially, neither the Act nor the regulations of HUD defined "residential real property"; however, the final regulations do state clearly that only transactions involving a "home mortgage" are subject to the disclosure provisions of the Act. A home mortgage, as defined in the Regulations, (Sec. 82.2(e)) means a loan, the proceeds of which are to be used in whole or in part to finance the purchase or other transfer of title of the mortgaged property or a loan which is in existence but as to which the lender makes certain agreements relative to the assumption of that loan in connection with the purchase or transfer of title of the mortgaged premises; and which is secured by a lien or other security interest on the real estate upon which there is located or to be located a structure for the occupancy of from one to four families. In understanding the scope of transactions subject to disclosure, several specific items are to be observed:

(a) The one to four family structure located on the real estate includes a mobile home owned or to be owned by the borrower and covered or to be covered by the mortgage. If a lender makes a mobile home loan without taking a security interest in "real estate", the mobile home loan is not a "home mortgage". On the other hand, if a lender makes a loan secured by the underlying real estate upon which the borrower will place or has placed a mobile home, and if the loan of the lender covers the mobile home also, that is a "home mortgage". The loan must be secured by real estate and the mobile home also in order to come within the purview of the disclosure requirements of RESPA.

(b) Mortgage assumption transactions are not within the disclosure requirements of the Act unless the approval for assumption of that mortgage by the lender is conditioned or based upon a change in the interest rate or other terms and conditions of the promissory note or document creating the mortgage lien, or unless the mortgage assumption fee required to be paid to the lender or other servicing agent exceeds \$50.00. (Sec. 82.2(a).) Thus, where neither the interest rate or other terms or conditions of the loan document are changed, nor an assumption fee charged in excess of \$50.00, no disclosures are required. It is not clear in the regulation as to whether disclosure is required in the event of a "formal assumption", where the original borrower is released from liability and the assuming buyer becomes directly liable to the lender, and where in the course of that transaction, the interest rate and other terms and conditions of the note or mortgage instrument are not changed. Whether the release of the original borrower and the execution of the assumption agreement by the assuming buyer constitutes a change in the "other terms and conditions" of the "promissory note or document creating the mortgage lien" is open for speculation.

(c) No disclosure need be made in the case of a refinancing, unless there is a transfer of title involved. (Section 82.4(a))

(d) Home improvement loans or any other loans secured by a lien upon one to four family residential properties do not require disclosure under the Act if the proceeds of the loan are not used to finance the purchase or transfer of the property itself. (Section 82.4(a))

(e) No disclosure is required in connection with "purchases of property for resale in the ordinary course of business". (Section 82.4(b)) Hence, it may be concluded that the Act does not cover loans to developers of one to four family residential properties, including spec builders, condominium developers, cooperative unit developers, subdivision builders, or loans made to developers for rehabilitation and resale of existing property. This specific exemption from the Act is somewhat unfortunately worded. The word "purchases" is the key word in the sentence. In the definition of a "Home Mortgage" in Section 82.2(e), the proceeds of a loan must be used to finance the purchase or other transfer of title. Two uses of funds are provided for in that definition, but only the first of those two is used in the statement of exemption of transactions involving property for resale in the ordinary course of business. It is presumed that if there can be any "other transfer of title" other than by purchase, the transaction involving such other transfer of title of property for resale in the ordinary course of business may not be exempt. This is probably nit-picking, but it does appear from a reading of the Regulations as a whole, that in all other sections the concept of purchase or other transfer of property is used, and the exclusion of the second part of the phrase could be meaningful.

It is to be cautioned that there has been no relaxation of Regulation Z of the Consumer Credit Protection Act (Truth-in-Lending) even though truth-in-lending disclosures are required to be given in conjunction with RESPA disclosures. Some of the transactions specifically not covered by the disclosure requirements under RESPA remain subject to truth-in-lending disclosures notwithstanding. Do not rely upon RESPA relief to determine the applicability of your client's need to comply with the truth-in-lending law.

DISCLOSURE REQUIRED: CONTENT

(a) As expected, the Buyer and Seller phase of a real estate transaction is included in the Uniform Settlement/Disclosure Statement. The sections for the purchase and sale phase of the transaction are segregated, for the most part, from the other disclosures pertaining to the loan transaction. The regulations permit preparation of separate forms for the buyer and the seller, excluding the buyer's information from the seller's form, and the seller's information from the buyer's form. It is submitted that this division may be more cumbersome than the use of a single form in which all disclosures are made to all parties. However, the opportunity for such "private" disclosures is available.

(b) The Settlement/Disclosure Statement is to be completed to contain all of the charges in connection with a real estate transaction. It is not complete as printed by HUD, and the blank lines will have to be filled in to encompass all matters which are normally part of a real estate settlement.

(c) At the time of advance disclosure, estimates of information may be used when they are the best available data. Any estimates must be designated with either a lower case or upper case "e" in parenthesis after the figure which is the estimate.

(d) In estimating the tax prorations in the advance disclosure of costs, the disclosing party may rely upon an assumption that taxes and assessments are not

delinquent. However, if the disclosing party does in fact so rely upon that assumption, that reliance must be specifically stated in the form, in Block C after the paragraph beginning "ADVANCE DISCLOSURE OF COSTS". If that assumption is not relied upon, and the preprinted forms for disclosure does contain language indicating such reliance, the regulations specifically require that the language of reliance be stricken.

(e) Three specific items are permitted not to be disclosed:

(i) Hazard insurance premiums need not be disclosed where the borrower independently obtains his own hazard insurance policy, regardless of whether the lender requires such policy as a condition for the loan. However, if the insurance policy is obtained by or selected for the borrower by the lender, its agents or independent contractors, the party conducting the settlement of the transaction or the real estate agent or broker, disclosure of the premium must be made in advance and at the time of settlement. Careful inquiry should be made by any party responsible for the preparation of the Disclosure/Settlement Statement as to whether the insurance policy will be obtained or selected by any of the "tainted" persons.

(ii) Fees to be paid by the borrower to the borrower's attorney or by the seller to the seller's attorney are not required to be stated in the advance disclosure or the settlement disclosure if the attorney is not retained to perform title search or other services required by the lender, and the borrower or the seller, as the case may be, independently elects to be represented by an attorney and independently selects the attorney involved. If any of the parties to the transaction (the lender, the borrower, the seller or any other person involved) pays the attorney's fee for any of the other parties; or, if the lender or his agent or representative or independent contractor originating the home mortgage in the name of the lender requires the borrower or the seller to be represented by counsel; or if the lender selects the attorney for either the borrower or the seller, regardless of who pays the fees, the fees must be disclosed.

An interesting situation occurs when a broker or another party playing an active role in setting up the mortgage transaction for the buyer/borrower "strongly recommends" to the buyer/borrower that it be represented by counsel in the transaction. Some purchase and sale contracts in use by brokers contain language urging the parties to obtain the advice of counsel. Title agents who may have a role in the mortgage transaction will also frequently recommend that the buyer examining a title insurance commitment or an abstract of title seek legal counsel for title opinions. Without delving into the law of agency, representation or independent contracting, I simply point out that the relationships of brokers, attorneys and title agencies with lenders should be considered in this regard.

(iii) Charges for services not required by the lender, or its agent or representative or independent contractor originating the home mortgage for the lender are not required to be stated either in the advance disclosure or the settlement disclosure statement, where the borrower or the seller independently elect to obtain any such services and independently select the provider of such services. For example, if an independent appraisal of the real estate is to be made as a condition to the purchaser's agreement to buy the residential property, the charges therefor need not be disclosed unless one of the "tainted" persons has a hand in requiring such appraisal to be obtained and in selecting the appraiser. Again, the relationships of the persons involved in the transaction should be carefully considered.

(f) The form of truth-in-lending disclosure is not as absolute and mandatory in format and content as is the Disclosure/Settlement Statement. The Federal Reserve Board instructions clearly provide for additions, deletions, and changes in the form, provided that the basic content of disclosure as set forth in the prescribed form is disclosed. In addition, the FRB instructions indicate that although the truth-in-lending disclosure must be given both in advance and at the time of settlement, if there is no "material" change in the disclosure between the time of advance disclosure and the time of settlement, the form given for advance disclosure may be used at the time of closing. There is no definition of the term "material". It has been suggested to the staff at the Federal Reserve System that if the total amount of disclosures required in the truth-in-lending form are less at the time of closing than at the time of advance disclosure, the changes would be deemed to be immaterial. It is thought that this will be an acceptable interpretation, since no adverse effect upon the borrower is caused thereby. This is not, of course, an opinion, but merely a viewpoint.

DISCLOSURE REQUIRED: FORM

HUD takes the position that the Disclosure/Settlement Statement as published may not under any circumstances except those specified in the regulations be changed. This includes a prohibition against the insertion of additional lines, notwithstanding that the lines provided in the form may not be sufficient in number to list all of the charges in connection with a given real estate transaction. In the event additional disclosures are to be made, they must appear on a separate page entirely, supplementing the Disclosure/Settlement Statement.

Certain specific changes in the form are permitted in the Regulation, and these are described in Section 82.6(b). Of specific note is subsection (7) of this part of the Regulation which states that additional charges which are to be listed in the Disclosure Statement other than the pre-printed items may be inserted in the blank spaces, but the print or type used for the insertion of these items must be different than the style and type of print used in the form itself.

Subsection (13) provides a procedure for deviation from the Uniform form, upon official application therefor.

Signatures are not required on the form, but may be added at the option of the disclosing party.

As noted above, the truth-in-lending form is not mandatory in form, but is a requirement of the minimum standards of content.

DISCLOSURE REQUIRED: TIMING

(a) Advance disclosure. Where the date of settlement is anticipated to occur within sixty days or less after loan commitment (which means the promise by a lender to a borrower, either oral or written, to make a home mortgage or assumption approval, whether or not that promise is subject to any conditions and whether or not the borrower is obligated to accept the commitment), the disclosure must be made not later than seven calendar days after the date of the loan commitment. In this event, the settlement may not occur in less than fifteen calendar days after the mailing of such disclosures or less than twelve calendar days after the delivery of such disclosures. The lapse period is measured from the date of the latest delivery or mailing, if the borrower's and seller's disclosure forms are not mailed or delivered on the same day.

When the closing of the loan is anticipated to occur more than sixty days after loan commitment, the advance disclosures must be given not later than sixty days prior to the anticipated date of settlement. If the date of settlement in such case is changed to earlier than previously anticipated, the lender must mail or deliver the advance disclosure statement not later than seven calendar days after being advised of the revised date of settlement. The lapse period of fifteen days from mailing or twelve days from delivery applies also in this event.

(b) Waiver. The lapse period from the time of loan commitment to the time of closing may be shortened to three business days from the actual receipt of the advance disclosures, if the loan settlement occurs within twenty-one days from the date of loan application. Loan application is defined as being an oral or written application for a home mortgage or assumption approval received by the lender, or his agent or representative or independent contractor originating the home mortgage in the name of the lender or servicing the home mortgage for the lender. It is submitted that this data will be sometimes difficult to ascertain. It is clear, however, that a "rush" closing must be anticipated from the very beginning of the transaction. It cannot be decided upon later if more than twenty-one days would elapse from loan application to the date of closing.

The form of the waiver is prescribed in the Regulations. Since the waiver form recites that advance disclosures have been received "at least 3 days . . . prior to settlement," it seems impossible to obtain a waiver at the time of execution of the purchase and sale agreement. The execution of the waiver must await the giving of disclosure. Note, however, that the waiver may be revoked by either party at any time prior to actual settlement of the transaction.

An executed waiver must be attached to the Settlement Statement at time of loan settlement. As a matter of practice, it would be advisable to have the waiver form acknowledged before a notary public if it is independently obtained by a person other than the lender.

Although the waiver form itself says that advance disclosure has been given to the waiving parties, the content of the regulation governing waiver (Sec. 82.7(d)) contradicts the form, providing that a reduction in time for closing can be made only when the waiver form is signed by each borrower and seller who has not been given advance disclosures within the seven day period after loan commitment. It is submitted that the word "not" is a mistake, but until that mistake is corrected, there appears to be no way at all to have a valid waiver of the full waiting period.

(c) Settlement Disclosure. At the time of the loan settlement, the Uniform Settlement/Disclosure Statement and truth-in-lending disclosure must again be given. The information contained upon the form at the time of settlement should be as accurate as possible. No provision is made in the Regulation for the use of estimated items at the time of settlement.

The Settlement Statement may be delivered to the parties on the date of settlement or within three business days thereafter.

RECORD KEEPING REQUIREMENTS

The Regulations provide for the retention of Settlement Statements and advance disclosures by a lender for two years. If the lender disposes of its interest in the loan and does not service the loan, its copies of the advance disclosure statement and Settlement Statement may be delivered to the owner or servicer of the loan as a part of the transfer of the loan file.

A copy of the Settlement Statement may be required to be submitted to HUD and other Federal agencies. It is anticipated that HUD will collect these disclosure forms, and will engage in the process of analyzing closing costs in various geographical areas. It is not known what other federal agencies may be involved in requesting copies of the forms.

SCOPE OF REGULATIONS

The Regulations cover only the disclosure requirements of section 4 and section 6 of the Act. No regulations have yet been promulgated as to any other section, leaving unanswered many questions concerning escrow, title insurance and other matters.

SUMMARY

It is again to be noted that the Settlement Statement is to include a summary of all charges made in connection with a covered real estate transaction. The preprinted items in the Statement are not intended to be all-inclusive, and insertions are necessary to provide complete disclosure. There would appear to be nothing wrong with the use of traditional closing statements between buyer and seller and between lender and borrower, provided there is no conflict between those statements and the information which appears on the Uniform Form, and all information which is disclosed on such other statements is in fact disclosed identically on the Uniform Settlement/Disclosure Statement. It appears that the use of the Uniform Settlement/Disclosure Statement as the sole closing statement for a transaction is possible without need for duplication.

Attorneys and brokers will be called upon by lenders to provide an extensive amount of information at the inception of a real estate transaction for which these disclosures must be made, and it is necessary that attorneys and brokers be prepared to provide such information in order to facilitate the meeting of mortgage conditions in a purchase and sale agreement. Each lender will undoubtedly have its own way of seeking the information which it will need for disclosure purposes.

Note also that the form of disclosure required under Section 7 of the Act, relating to information which pertains to a residence completed more than twelve months prior to the date of commitment, will have to be prepared by brokers or attorneys in most instances. The lender is not required to make the disclosures required by Section 7 of the Act but is required to supervise that the disclosure is made. Brokers or attorneys should be prepared to furnish evidence of such disclosure to the lender at the time of mortgage loan application.

It is concluded that the form of the Uniform Settlement/Disclosure Statement and the content of the Regulations governing it represent a substantial improvement over the earlier proposals, and the implementation of the disclosure phases of RESPA, except in certain very limited instances, should not pose any overwhelming problems to the efficient handling of residential real estate transactions.

RULES AND REGULATIONS
Title 24--Department of Housing and Urban Development

SUBTITLE A--OFFICE OF THE SECRETARY
(Docket No. R75-318)

PART 82--REAL ESTATE SETTLEMENT PROCEDURES

On February 18, 1975, 40 FR 7072, the Department published a notice of proposed rulemaking which would amend Subtitle A by adding a new Part 82. This part implements sections 4, 5 and 6 of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, which provide for a settlement cost statement form, a special information booklet to be distributed at time of loan application, and an itemized disclosure of each charge arising in connection with each settlement that involves a federally related mortgage loan transaction. A general notice prescribing the text of the special information booklet is being published concurrently with the regulations. The final versions of the uniform disclosure settlement statement, and the Truth in Lending statement which is a part of it, are included as Appendices A and B of the regulations. The uniform disclosure settlement statement is required by section 4 of the Act to include the information and data required for relevant transactions under the Federal Truth in Lending Act and the regulations issued thereunder by the Federal Reserve Board. On March 24, 1975, (40 FR 13008) the Board published a proposed standard Truth in Lending Statement to satisfy the requirements of the Act. The Board's final revision of the form and instructions are included in these regulations as Appendix B. As a result of the invitation for public comment contained in the notice for rulemaking, more than 500 responses have been received. The Department has considered each comment carefully and as a result has adopted certain changes in both the regulations and the accompanying form, as they were proposed. The principal changes are as follows:

GENERAL COMMENTS

A number of comments objected to the overall concept of the Act, arguing that the conduct of real estate transactions was essentially a local matter, that uniformity in forms was impractical, that advance disclosure would not be of assistance to consumers, and that the procedures required by the Act would add to paperwork and costs of lenders and providers of settlement services.

COVERAGE

Numberous comments requested that the scope of coverage be defined. The final regulations provide that they apply to cases involving a purchase or transfer of property. Refinancings, junior mortgages, consumer borrowings, and other cases in which there is no transfer of title to the real estate are not covered. Transfers in which an existing loan is assumed or taken subject to are covered only if the loan terms are modified or the lender imposes charges exceeding \$50.

The geographical coverage of the proposed regulation was unclear, as several comments pointed out. The final regulations apply to all territories and possessions of the United States in addition to the continental United States and Puerto Rico.

Several comments requested that exclusions be made for agriculture property and for builders or developers. In response to these comments, the final regulations do not apply to real estate purchased for the purpose of resale to a customer in the ordinary course of business. The final regulations apply to mortgages covering agricultural properties. Although numerous comments requested

that the regulations not apply to corporations, partnerships, and other business entities, such an exclusion was not made and does not appear to be permissible.

Several comments asked that sales of vacant land be exempted from the regulations. The final regulations exempt such land unless the proceeds of the loan involved in the transaction are to be used, in whole or in part, to finance the construction of a dwelling. Several comments requested clarification of the coverage of mobile homes. The final regulations cover mobile homes and mobile home lots only if both the mobile home and the lot on which it is to be located are being purchased with the proceeds of the loan in question.

It was suggested that the effective date of the regulations be extended beyond June 20, 1975, in order to permit more time for the persons who must implement the Act to study it, prepare forms, and train their personnel. Section 19 of the Act does not give the Department discretion in this regard.

In response to numerous requests, the final regulations provide that lenders may, without special approval, place their own covers on the special information booklets which must be given to loan applicants. Other limited changes are permitted, as set forth in the final regulations or as approved by the Secretary.

Lenders may translate the booklet into other languages for the benefit of their customers, with the approval of the Secretary.

ADVANCE DISCLOSURE

The advance disclosure required by the Act must be made at least 12 days prior to settlement unless the 12-day period is waived. Many comments requested that a period shorter than 12 days be made standard, but section 6(a) of the Act does not leave this matter to the Department's discretion.

In general, advance disclosure must be given not later than 7 days after the date of the loan commitment. In cases in which a loan commitment is made more than 60 days before the anticipated date of settlement, the disclosure may be given later than the loan commitment, but not less than 60 days prior to settlement.

Many comments asked for a clarification of the term "loan commitment". The final regulations clarify the term, so that general advertising would not be regarded as a loan commitment. On the other hand, suggestions that the term be confined to written commitments were not adopted, since under such a rule, lenders might in some cases forgo giving written commitments.

Numerous commentators believed that the lender or its employees were required to prepare and transmit the advance disclosure. The final regulations have been clarified to permit the lender either to do such work itself or to cause it to be done by some other party, such as a title, settlement, or escrow company or a lawyer. However, under the Act (section 6(b)) the lender remains responsible.

Some comments raised questions concerning the degree of efforts which the lender or other person preparing the advance disclosure must exert to determine the charges to be made for various services. If no provider of a particular service has been selected for the transaction at the time of disclosure, the lender may make an estimate based on its knowledge of general practices in the area. If a provider has been selected, that provider should be contacted and asked what his fee will be, unless the lender already knows the provider's schedule of fees and reasonably expects that schedule to be followed in the present case.

Advance disclosure of prorations of taxes and assessments may be based on estimates if exact figures are not available. Such advance disclosure may be based on the assumption that no taxes or assessments are delinquent.

A number of comments asked if the advance disclosure must be reissued if more information about settlement charges become available to the lender after the initial disclosure but prior to settlement. Under the final regulations, reissuance of the advance disclosure is not required.

Some comments pointed out that the retention-of-records requirements in the proposed regulations were not clear and were not identical to the requirements for Truth in Lending statements. Under the final regulations, copies of the advance disclosure and the settlement statement must be retained by the lender for two years, except where the loan file is transferred, and copies must be submitted to the Department upon request. This requirement will enable the Department to fulfill its statutory duty under section 14 of the Act to study and investigate settlement costs and to report to Congress thereon.

The proposed regulations required the signatures of the borrower and the seller on the advance disclosure statement, and several comments objected to this procedure or requested clarification. In the final regulations all requirements for signature on either the advance disclosure or the settlement statement have been dropped.

Mailing of the advance disclosure is permitted by the final regulations, but in certain cases the applicable time limits are 3 days earlier where advance disclosure is mailed.

WAIVER OF ADVANCE DISCLOSURE

Several comments requested clarification whether a seller or borrower can bind the other by a waiver. The final regulations specify that each party who has not received timely advance disclosure waives this right, so that one party cannot waive for the other.

Numerous comments objected to the shortness of the 18-day period processing rule. The final regulations extend this period to 21 days. The final regulations provide that advance disclosure may be made prior to commitment. This will enable lenders, by making advance disclosure before commitment as to loans requiring speedy settlements, to be able to hold settlement on such loans as soon as the commitment is issued.

Some comments objected to the 3-day advance disclosure requirement in the proposed regulations. The provisions in the final regulations as to waiver take into account the express directions in the Act that, in its prescribing of the waiver regulations and form, the Secretary should take into account the need to protect the borrower's and seller's right to timely disclosure.

In keeping with the Act, the final regulations require that the advance disclosure be received by the parties on or before the time of the loan commitment but not less than 3 days prior to settlement in any waiver situation.

A number of comments pointed out that the execution of the waiver by the lender served no purpose and this requirement was omitted in the final regulations. Similarly, the witness lines are omitted from the waiver form.

SETTLEMENT STATEMENT

Many of the comments indicated a lack of understanding of the relationship between the advance disclosure form and the settlement statement. Although the same basic format is used for both, it is permissible for lenders to print such forms separately and to place titles on them accordingly. The official version published in these final regulations can be used for both purposes by checking the appropriate square near the top of the form. Ordinarily some of the entries on the settlement statement will differ from those on the advance disclosure (because some charges are different than estimated, or because the date of actual settlement is different from the date estimated). The final regulations specify that copies of the settlement statement must be provided to the buyer and seller as soon after settlement as practicable, and in no case later than three days after settlement.

When charges are paid directly by the borrower or seller, rather than paid through the settlement agent, some comments asked whether it would be necessary to show them on the forms. The final regulations provide special rules for hazard insurance charges, attorney's fees and charges for certain other services independently procured by the borrower or seller.

FORM DESIGN

Many comments requested flexibility in the design of the form. The final regulations allow some degree of flexibility. Additional items describing common local charges may be inserted in blank spaces on the form. The spacing between lines may be increased for computer printing, and the lender or settlement agent may add a firm name or logotype to the title block. Signature lines may be added.

Numerous comments objected to the number of subtotals which the proposed form required. These have been largely eliminated in the final version. The "disbursements" column has also been eliminated, since nearly all comments which discussed it thought that it would confuse consumers.

A large number of comments requested that separate forms be provided for borrower and seller. The form was redesigned so that separate summaries of the borrower's and seller's transactions appear on page 1, but the information on page 2 must be provided to both borrower and seller, as required by the Act. The instructions permit the lender or settlement agent to send a copy of the form to the borrower with the seller's summary left blank, and similarly to send a copy to the seller with the borrower's summary left blank.

A large number of comments objected to inclusion in the advance disclosure of the liens and charges against the seller's land; these comments asserted that such information would not be available until a title search was completed and payoff letters from existing lenders were obtained, and that the amounts could not theretofore be estimated in any meaningful way. The Department believes that this view is correct, and the final instructions to the form permit the portions dealing with these matters to be left blank when the form is used for advance disclosure. This means that in most cases the advance disclosure will not indicate to the seller the amount of cash he can expect to realize from the transaction. However, the portions of the form summarizing the buyer's transaction must be completed when the form is used for advance disclosure, thus indicating to the buyer the amount of cash he will need to complete settlement.

The Department has determined this rule does not have significant impact on the environment and a finding of inapplicability has been prepared pursuant to HUD Handbook 1390.1. A copy of this finding is available during regular business hours for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10245. Department of Housing and Urban Development, 451 7th Street SW., Washington, D. C. 20410.

Accordingly, Subtitle A of Title 24 is amended by adopting a new Part 82-- Real Estate Settlement Procedures to read as follows:

PART 82--REAL ESTATE SETTLEMENT PROCEDURES

- Sec.
- 82.1 Authority, scope and purpose.
- 82.2 Definitions.
- 82.3 Reliance upon rule, regulations or interpretation by HUD of RESPA.
- 82.4 Applicability.
- 82.5 Information booklet for persons applying for loans to purchase residential real property.
- 82.6 Uniform Disclosure/Settlement Statement Form.
- 82.7 Advance disclosure of settlement costs by lender.
- 82.8 Uniform Settlement Statement.
- 82.9 Mailing.
- 82.10 No fee.
- 82.11 Relation to State laws.

AUTHORITY: Real Estate Settlement Procedures Act of 1974, Pub. L. 93-533 (12 U.S.C. 2601).

REGULATION X

§ 82.1 Authority, scope and purpose.

This part, which may be referred to as Regulation X, comprises the regulations issued by the Secretary of Housing and Urban Development pursuant to the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533), 12 U.S.C. 2601, herein "RESPA". This part applies to certain 1 to 4 family mortgages, defined as "Home Mortgages" in this part. RESPA Section 4 (Uniform Settlement Statement) authorizes and directs the Secretary to prescribe a uniform settlement statement to be used in the settlement of Home Mortgages, RESPA Section 5 authorizes and directs the Secretary to prescribe special information booklets to be provided by the Lender to each person borrowing money to finance the purchase of certain residential real estate transactions so that he or she may better understand the nature and costs of real estate settlement services. RESPA Section 6 authorizes and directs the Secretary to prescribe the form and implementing regulations by which every Lender, with respect to a Home Mortgage subject to Section 6, shall disclose in advance of settlement every charge arising in connection with the settlement. RESPA Section 12 prohibits imposition by a lender of a fee for or on account of preparing and submitting the statements required by Sections 4 and 6 or by the Truth in Lending Act, 15 U.S.C. 1601 et seq. RESPA section 18(a) authorizes the Secretary to determine whether state laws with respect to settlement practices are inconsistent with any provision of RESPA. Section 18(b) provides that no provision of RESPA or of the laws of a state shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary.

§ 82.2 Definitions.

For purposes of this part, the following definitions apply, unless the context indicates otherwise.

(a) "Assumption Approval" means the approval by the Lender or his duly authorized agent or representative of an assumption of, or a sale subject to, a Home Mortgage where such approval is conditioned or based upon a change in the interest rate or other terms and conditions of the promissory note or document creating the mortgage lien, or is made in consideration of the payment of a fee in excess of fifty dollars (\$50) paid to the Lender or his agent, representative or servicer.

(b) "Date of Settlement" means, in the case of a sale or transfer financed by a new mortgage, the date on which the documents creating the mortgage become effective as between the borrower and the Lender, and in the case of a purchase of a property subject to an existing mortgage, whether or not the buyer assumes personal liability, the date on which title is transferred as between seller and buyer not subject to revocation by seller or buyer.

(c) "Days" are computed as follows: All time periods in this part are expressed in days. Periods do not include the day from which they are measured. Where the last day on which an act or event is permitted to occur is a Saturday, Sunday or Federal or State holiday, such act or event may occur on the next succeeding day which is not a Saturday, Sunday or Federal or State holiday. Where a period is 7 days or more, it is measured in calendar days. Where a period is less than 7 days and not specified as calendar days, it is measured in business days, excluding Saturdays, Sundays and Federal or State holidays.

(d) "Federal Lender" means: (1) A lending institution, the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation (FSLIC), the Federal Deposit Insurance Corporation (FDIC) or any other agency of the Federal Government, or (2) a lending institution which is regulated by the Federal Home Loan Bank Board or any other agency of the Federal Government, or (3) a "creditor," as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), who makes or made new investments in residential real estate loans aggregating more than \$1,000,000 in either the calendar year in which the Date of Settlement of the Home Mortgage in question occurs or the calendar year prior thereto. Section 103(f) defines "creditor" as follows:

(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this title apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

(e) "Home Mortgage" means a loan which is not made to finance an exempt transaction under section 82.4(b) and which meets all of the following four requirements:

(1) The proceeds of the loan are used in whole or in part to finance the purchase by the borrower, or other transfer of title, of the mortgaged property or the loan was previously made and the lender makes an assumption approval in connection with the purchase of or transfer of title to the mortgaged property;

(2) The loan is secured by a lien on or other security interest in real estate, including a fee simple, life estate, remainder interest, or leasehold estate, upon which there is located a structure, including a mobile home owned

or to be owned by the borrower and covered or to be covered by the mortgage, designed principally for the occupancy of from 1 to 4 families or upon which such a structure is to be constructed, or purchased in the case of a mobile home, using part or all of the proceeds of the loan, or the loan is secured by a lien or other security interest covering a 1 to 4 family residential condominium unit, or the loan is secured by a pledge of cooperative stock or interest corresponding to a 1 to 4 family residential cooperative unit;

(3) The Mortgaged Property is located in a State; and

(4) The loan is made by a Federal Lender, or 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 is made in connection with a housing or urban development program administered by the Secretary or other agency of the Federal Government, or is eligible for purchase by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association, (GNMA), or the Federal Home Loan Mortgage Corporation (FHLMC). Note that GNMA's authority to purchase mortgages includes broad authority under 12 U.S.C. 1720(a) "to purchase such types, classes, or categories of home mortgages" as the President shall determine to carry out the purposes of 12 U.S.C. 301(b).

(f) "Lender" means, in the case of a new loan, the secured creditor or creditors named as such in the debt obligation and document creating the lien or other security interest, and in the case of an Assumption Approval with respect to a preexisting loan, the current owner or owners of the Home Mortgage at the time of the Assumption Approval.

(g) "Loan Application" means an oral or written application for a Home Mortgage or Assumption Approval received by the Lender or his agent or representative or independent contractor originating the Home Mortgage in the name of the Lender or servicing the Home Mortgage for the Lender. The date of Loan Application is the date of actual receipt.

(h) "Loan Commitment" means a promise by a Lender to a borrower, oral or written, to make a Home Mortgage or Assumption Approval, with respect to a specified property, whether or not such promise is subject to any conditions and whether or not the borrower is obligated to accept such Home Mortgage or Assumption Approval.

(i) "Mortgaged Property" means the real property covered by the Home Mortgage, or the cooperative unit with respect to which stock is pledged to secure the Home Mortgage loan.

(j) "Person" means any individual, corporation, partnership, trust, association or other entity.

(k) "RESPA". The Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533), 12 U.S.C. 2601, as amended.

(l) "Secretary." The Secretary of Housing and Urban Development or any official delegated the authority of the Secretary with respect to RESPA.

(m) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 82.3 Reliance upon rule, regulation or Interpretation by HUD of RESPA.

(a) Section 18(b) of RESPA provides:

No provision of this Act or of the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(b) For purposes of section 18(b), only the following constitute a "rule, regulation, or interpretation thereof by the Secretary":

(1) The Uniform Disclosure/Settlement Statement, HUD Form 1, and HUD instructions set forth in Appendix A, but not including page 3 of the form and the Federal Reserve Board instructions thereto, set forth in Appendix B;

(2) All other provisions and Appendices contained in this part, but not including any document referred to in this part except to the extent such document is set forth in this part; and

(3) Each formal legal opinion regarding RESPA, designated as a "RESPA Legal Opinion," numbered and dated, by the General Counsel of the Department.

(c) A "rule, regulation, or interpretation thereof by the Secretary" for purposes of RESPA section 18(b) shall not include the Special Information Booklet prescribed by the Secretary or any other statement or issuance, whether oral or written, by an officer or representative of HUD, letter or memorandum by the Secretary, General Counsel, any Assistant Secretary or other officer or employee of HUD, preamble to a regulation or other issuance of HUD, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (b) of this section.

§ 82.4 Applicability.

(a) TRANSACTIONS COVERED. This part applies to loans which constitute Home Mortgages as defined in § 82.2(e). As defined therein, Home Mortgage does not include a home improvement loan or other loan secured by a lien on a 1 to 4 family residential property where the proceeds of the loan are not used to finance the purchase or transfer of the property. Nor does Home Mortgage include refinancing of a mortgage loan secured by a lien on a 1 to 4 family residential property where there is no transfer of title.

(b) EXEMPT TRANSACTIONS. This part shall not apply to purchases of property for resale in the ordinary course of business.

(c) COMMENCEMENT OF APPLICABILITY-- (1) INFORMATION BOOKLET. The Special Information Booklet must be distributed with respect to every Loan Application received on or after June 20, 1975.

(2) ADVANCE DISCLOSURE. After June 20, 1975, advance disclosure, as required by § 82.7 of this Part, must be provided with respect to every Home Mortgage except a Home Mortgage (i) which is made pursuant to a Loan Commitment evidenced by a letter or written agreement signed by the Lender prior to June 20,

1975, and (ii) as to which the Date of Settlement occurs on or before October 20, 1975. Where advance disclosure is required, it may be made prior to June 20, 1975.

(3) SETTLEMENT STATEMENT. The Uniform Disclosure/Settlement Statement shall be used as the settlement statement with respect to every Home Mortgage subject to the advance disclosure requirements pursuant to paragraph (c) (2) of this section.

§ 82.5 Information booklet for persons applying for loans to purchase residential real property.

(a) LENDER TO PROVIDE INFORMATION BOOKLET. Every lender shall provide a copy of the Special Information Booklet currently prescribed by the Secretary to every person who makes a loan application. Where more than one individual makes a loan application, the lender is required to supply a copy of the Special Information Booklet to at least one of the individuals applying. The lender shall supply the Special Information Booklet by delivering it to or placing it in the mail to the applicant not later than the third business day of the lender following the day on which the application is received.

(b) PRINTING AND DUPLICATION. The Special Information Booklet may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. The Secretary may from time to time revise the Special Information Booklet. The Special Information Booklet may be printed or reproduced in any form, provided that no change is made, other than as permitted under paragraph (c) of this section. The Special Information Booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible and easily readable.

(c) PERMISSIBLE CHANGES. No change to, deletion from or addition to the Foreword and text of the Special Information Booklet currently prescribed by the Secretary shall be made other than those specified below or any others approved in writing by the Secretary:

(1) The cover of the booklet may be in any form and may contain any drawings, pictures, or artwork, provided that the words "settlement costs" are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear.

(2) The Special Information Booklet may be translated into other languages.

(3) The wording may be deleted which precedes the foreword, authorizing the reprinting of the booklet and referring to sale by the Superintendent of Documents, but not the first paragraph, referring to preparation of the booklet by the Secretary.

(4) In the last sentence of the foreword, "a lending institution" may be added after "local consumer affairs agency."

(5) In the "Advance disclosure" section, the third sentence of the second paragraph may be deleted.

(6) In the section, "2. Settlement attorneys, escrow and closing agents," the second paragraph and first sentence of the third paragraph may be deleted.

(7) In section B6, in the paragraph entitled "c. Settlement Agent," the words "and location" may be deleted from the last sentence.

§ 82.6 Uniform Disclosure/Settlement Statement Form.

(a) USE OF FORM. HUD Form 1, "Disclosure/Settlement Statement," pages 1 and 2 of which, with instructions, are set forth in Appendix A to this part, and the third page of which, with instructions, is set forth in Appendix B to this part, shall be used as the advance disclosure statement under RESPA section 6 and § 82.7 of this Part, and as the settlement statement under RESPA section 4 and § 82.8 of this Part.

(b) PRINTING AND DUPLICATION OF FORM. The Uniform Disclosure/Settlement Statement Form may be reproduced by lenders or others. Lenders are required to use the form, with the first two pages as prescribed by the Secretary and the third page as prescribed by the Federal Reserve Board. Only the following permissible changes and insertions may be made:

(1) In Block A, the lender or other company reproducing the form may insert its business name and/or logotype and may rearrange, but not delete, the other information which appears in Block A.

(2) In Block F, the name, address and other information regarding the lender may be printed, and a space or spaces may be printed for lender's loan number or similar information.

(3) The form may be printed separately to be used only as an advance disclosure form or to be used only as a form for settlement, in which cases the paragraph entitled "STATEMENT OF ACTUAL COSTS" and items 500 through 603 may be deleted from the form used for advance disclosure, and the paragraph entitled "ADVANCE DISCLOSURE OF COSTS" may be deleted from the form used for settlement.

(4) A statement may be printed at the end of the paragraph "ADVANCE DISCLOSURE OF COSTS", in any style or type of print, that advance disclosure of pro-rations of taxes and assessments is based upon the assumption that taxes and assessments are not delinquent. Such statement if printed on the form will then be stricken where advance disclosure is not based upon such assumption. See § 82.7(k).

(5) No changes in the size or type style of print or the layout of the first two pages of the form shall be made, except as follows: (A) The layout of the form may only be reset in type if such type style is approximately the same size and appearance, is easily readable, and the entire form layout is identical to the form as prescribed by HUD; and (B) where necessary to accommodate computer equipment, the first two pages of the form may be printed in a larger size of print and different type style and the distance between lines may be increased, but not decreased, but there shall be no other change in the layout and placement of information on the form. As to the third page, see Regulation Z, 12 CFR Part 226, and the Federal Reserve Board instructions in Appendix B.

(6) In the first two pages, items listed in the form not used locally or not used in connection with mortgages by the lender may be lined out in a manner so that they may still be read.

(7) In the first two pages, charges not listed which are made locally may be inserted in blank spaces in any style or type of print of similar size, but which

is different from the style and type of print used in the balance of the form (to indicate items not listed nationwide).

(8) Signature lines and customary local recitals prior to signature lines may be added at the end of the second page or at the end of the third page.

(9) Additional blank space may be added above and/or below each page and the form may be printed on rolls, which may have sprocket holes e.g. for computer purposes. The pages may be printed on separate sheets or placed on the front and back of a single sheet, or one above the other on a single, continuous sheet.

(10) The form may be printed on light shades of tinted paper and may be printed in one or more colors of clearly legible inks.

(11) The form may be printed in multi-copy tear-out sets. Such sets or any other method for making copies may delete Block J, lines 100 through 303, from the seller's copy and Block K, lines 400 through 603, from the Borrower's copy.

(12) The form may be translated into any other language with the approval of the Secretary, but items of the Truth in Lending Statement required by law to be stated in English must be so stated.

(13) Any other deviation in pages 1 and 2 of the form is only permissible upon receipt of written approval of the Secretary. Any other deviation in the page 3 Truth in Lending disclosure must be in accordance with requirements of the Board of Governors of the Federal Reserve System. See Regulation Z, 12 CFR 226.102 and form instructions in Appendix B to this Part. A request to the Secretary for approval must be submitted in writing to the Assistant Secretary for Housing Production and Mortgage Credit--Federal Housing Commissioner, Room 6100, 451 7th Street, S.W., Washington, D. C. 20410, stating the reasons why the applicant believes such deviation is needed. Prior to receiving such approval, the prescribed form must be used.

(c) HUD-PRESCRIBED ADDITIONS OF ITEMS TO FORM. HUD reserves the right to direct the order and the manner in which additional items are added to the first two pages of the form or in which any other changes are made in the first two pages of the form for any locality, jurisdiction or area.

(d) ADDITIONAL SHEET. Where there is an unusually large number of insertions for which blank spaces in the first two pages of the form are not sufficient, an additional sheet for such items may be added to the form and referenced at the appropriate place or places in the form. Such additional sheets may be printed. The reverse side of the form may be used instead of an additional sheet.

§ 82.7 Advance disclosure of settlement costs by lender.

(a) LENDER TO PROVIDE. As required by RESPA section 6, each lender making a home mortgage or assumption approval of a home mortgage shall make or cause to be made advance disclosure of settlement costs on HUD Form 1 in accordance with this section.

(b) TIMING OF ADVANCE DISCLOSURE. Except as provided in paragraphs (c) and (d) of this section, the lender shall place in the mail to or deliver to the borrower and the seller the advance disclosure statement (on HUD Form 1) at any time not later than 7 calendar days after the date of loan commitment. Advance disclosure may be made prior to loan commitment. Settlement shall not occur less

than 15 calendar days after such mailing or 12 calendar days after such delivery. Where advance disclosure statements to different parties are mailed or delivered on different dates, the minimum period to settlement provided above shall be the latest date required with respect to any one disclosure statement. See paragraph (p) of this section regarding Truth in Lending disclosure.

Example 1. Loan Commitment is made July 2. Settlement is anticipated to occur with 60 days. Advance disclosure statement is delivered to one seller on July 5, mailed to a second seller on July 7 and mailed to borrower on July 9. Settlement may not be held prior to July 24 (15 days from, and not including, July 9). Advance disclosure is timely because it is made not later than July 9 (7 days from, and not including, July 2).

(c) TIMING WHERE SETTLEMENT IS ANTICIPATED MORE THAN 60 DAYS AFTER LOAN COMMITMENT. Where as of the date of loan commitment, the date of settlement is anticipated by the lender, based upon information given to the lender, to occur more than 60 calendar days after the date of loan commitment, the lender may in its discretion mail or deliver the advance disclosure statement subsequent to the time prescribed in paragraph (b), but not later than 60 days prior to the anticipated date of settlement. Thereafter, if the lender is advised that the date of settlement is expected to occur still later, the lender may in its discretion mail or deliver the advance disclosure statement at any time not later than 60 calendar days prior to such revised anticipated date of settlement. If at any time subsequent to the date of loan commitment the lender is advised that the date of settlement is anticipated earlier than previously anticipated, lender shall mail or deliver the advance disclosure statement on or before 60 days prior to such revised anticipated date of settlement or, if such revised date is within 67 days of the date lender is advised of the revised anticipated date of settlement, lender shall mail or deliver the advance disclosure statement not later than 7 calendar days after being advised of such revised date of settlement. Nothing in this subsection (c) shall alter or affect the minimum periods between disclosure and settlement set forth in the third sentence of paragraph (b) of this section. See paragraph (p) of this section regarding Truth in Lending disclosure.

Example 2. Loan Commitment is made July 1 and settlement is anticipated to occur October 15. Lender may mail or deliver advance disclosure at any time on or before August 14 (60 days before, and not including, October 15). As of August 1, Lender has not yet made advance disclosure and is advised that settlement is anticipated November 15. Lender may mail or deliver advance disclosure statement any time on or before September 14. On September 1, Lender is advised that settlement is anticipated to occur November 1. Lender must mail or deliver advance disclosure statement on or before September 8.

(d) WAIVER OF MINIMUM PERIOD BETWEEN ADVANCE DISCLOSURE AND SETTLEMENT. The minimum period between advance disclosure and settlement provided in paragraph (b) may be reduced to 3 days from actual receipt of the advance disclosure statement by the borrower and the seller where settlement is held not later than 21 days after the date the loan application was made. Such reduction shall only be made where a copy of the following waiver form is voluntarily executed by each borrower and seller who has not been mailed or delivered the advance disclosure statement on or before the time limit specified in paragraph (b) of this section and is attached to the settlement statement. Such waiver does not waive any applicable right of rescission under the Truth in Lending Act; see Regulation Z, 12 CFR Part 226, for requirements applicable to waiver of right of rescission.

the seller shall set forth in the Uniform Disclosure/Settlement Statement (HUD Form 1) lines 700 through 1400 and all similar charges to be paid by borrower and seller which are not listed in said lines 700 through 1400, except as provided in paragraph (h) of this section regarding hazard insurance, paragraph (i) of this section regarding attorney's fees, and paragraph (j) of this section regarding inspection charges and other charges. Blocks J and K shall be completed; adjustments may be made in accordance with paragraph (k) of this section. At the lender's option, lender may delete Block J from the disclosure to the seller. At the lender's option, lender may omit Block K from the disclosure statement to the borrower.

(h) EXCEPTION TO ADVANCE DISCLOSURE OF HAZARD INSURANCE CHARGES. The charges for hazard insurance binder or policy covering the mortgaged property are not required to be stated in the advance disclosure statement where the borrower independently obtains his own hazard insurance binder or policy, whether or not the lender requires such binder or policy to be obtained for settlement, provided that the binder or policy has not been obtained by, and the carrier or insurance broker or agent has not been selected for the borrower by, any of the following persons: The lender; an agent or representative of the lender or independent contractor originating the home mortgage in the name of the lender; the real estate agent or broker; or the person selected to conduct the settlement.

(i) EXCEPTION TO ADVANCE DISCLOSURE OF ATTORNEY'S FEES. Fees or estimated fees to be paid by borrower to borrower's attorney or by seller to seller's attorney are not required to be stated in the advance disclosure statement where such attorney is not retained to perform the title search or other services required by the lender and the borrower or seller, as the case may be, independently elects to be represented by an attorney and independently selects the particular attorney. Attorney's fees or estimates thereof are, however, required to be stated in the following cases:

(1) Fees to be paid by the borrower for an attorney representing the lender, the seller or any other person;

(2) Fees to be paid by the seller for an attorney representing the lender, the borrower or any other person;

(3) Fees to be paid by the borrower or the seller for an attorney representing the borrower or seller, respectively, if the borrower or seller is required by the lender or his agent or representative or independent contractor originating the home mortgage in the name of the lender to be represented by counsel;

(4) Fees to be paid by the borrower or the seller for an attorney representing the borrower or seller, respectively, if the lender or his agent or representative or independent contractor originating the home mortgage in the name of the lender selects the attorney. For purposes of this paragraph (i)(4), the lender or such other person is not considered to select the attorney if he merely recommends a list of at least three attorneys and does not require the borrower to select an attorney from such list.

(j) EXCEPTION TO ADVANCE DISCLOSURE FOR CHARGES FOR CERTAIN OTHER SERVICES INDEPENDENTLY PROCURED BY BORROWER OR SELLER. Charges or estimates thereof for services not required by the lender or his agent or representative or independent contractor originating the home mortgage for the lender are not required to be stated in the advance disclosure statement where the borrower or seller independently elects to obtain such services and independently selects the provider of such services.

(k) DISCLOSURE OF ADJUSTMENTS FOR TAXES AND ASSESSMENTS. Lender may make the disclosure of adjustments for taxes and assessments based upon the assumption that no taxes and assessments are delinquent, in lieu of determining from the appropriate records whether delinquencies exist. Where lender makes disclosure based upon such assumption, lender shall place in Block C a statement that advance disclosure of prorations of taxes and assessments is based upon the assumption that taxes and assessments are not delinquent. See § 82.6(b)(4) regarding the printing of such a statement.

(1) SINGLE DISCLOSURE. Where subsequent to mailing or delivering the advance disclosure statement, changes in anticipated charges come to the attention of the lender no additional or revised advance disclosure statement is required to be provided. The lender may in its discretion, but is not required to, provide updated or corrected amounts to a party the lender understands will pay the charges in question or all parties by letter or otherwise.

(m) RECORD-KEEPING. Lender shall retain a copy of the advance disclosure statement required to be prepared pursuant to RESPA section 6 for 2 years, except that in the event lender disposes of its interest in the Home Mortgage and does not service the home mortgage, lender may permit its copy of the advance disclosure statement to be delivered to the owner or servicer of the home mortgage as part of the transfer of the loan file. A copy of the advance disclosure statement may be required to be submitted to the Secretary and/or to other Federal agencies. Nothing in this Part alters, amends or in any way reduces the separate record keeping requirements of Regulation Z of the Federal Reserve Board. See 12 CFR 226.6(i).

(n) DAMAGES. As provided in RESPA section 6(b), a lender which fails to provide the prospective borrower(s) or seller(s) with the required advance disclosure shall be liable to such borrower(s) or to such seller(s), as the case may be, in an amount equal to actual damages or \$500 to all borrowers and \$500 to all sellers, whichever is greater, and in the event a court action is filed and judgment is obtained against the lender, court costs and a reasonable attorney's fee as determined by the court, provided that: (1) A lender shall not be liable under RESPA for mailing or delivering the disclosure statement later than the time limits established in this section, if within the time limits established by the third sentence of paragraph (b).

(2) A lender shall not be liable under RESPA for a violation which was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures adopted to avoid such an error.

(3) In order to show actual damages under RESPA, the borrower(s) or the seller(s) seeking damages above \$500 must establish on the particular facts of the case that had the required disclosure been made, the borrower(s) or the seller(s) would have obtained settlement services costing at least \$500 less than those he or she actually paid.

(4) Loss based upon seller's claimed loss of a sale, borrower's claim that he was unable to purchase due to lender's failure to make proper disclosure, borrower's claim that he would have purchased a different property, or damages other than described in paragraph (M)(3) of this section may not be the basis for a claim under RESPA for actual damages in excess of \$500.

(o) NO FEE FOR PREPARATION OF ADVANCE DISCLOSURE STATEMENT. See § 82.10.

(p) TRUTH IN LENDING DISCLOSURE. The third page of the Uniform Disclosure/Settlement Statement, Appendix B to this part, setting forth the Truth in Lending disclosure, shall be completed and provided in accordance with the Truth in Lending Act, Regulation Z of the Federal Reserve Board, 12 CFR Part 226, and any other Federal Reserve Board requirements. Where Regulation Z establishes a time limit for the making of such Truth in Lending disclosure which is earlier than the applicable time limit under paragraphs (b), (c) and (d) of this section for the making of advance disclosure, the Truth in Lending disclosure must be made at the time required by Regulation Z. In such cases, the first two pages of the Uniform Disclosure/Settlement Statement, HUD Form 1, may be mailed or delivered subsequently, but within the applicable time limits established in this part, and the third page Truth in Lending disclosure is not required to be given a second time when pages 1 and 2 are mailed or delivered.

§ 82.8 Uniform Settlement Statement.

(a) USE OF HUD FORM 1. As required by RESPA section 4, the Uniform Settlement/Disclosure Statement, HUD Form 1, shall be used as the settlement statement for every Home Mortgage settlement transaction involving a purchase or transfer of a mortgaged property for every home mortgage settlement pursuant to an assumption approval.

(b) CHARGES TO BE STATED. The Uniform Disclosure/Settlement Statement, HUD Form 1, shall be completed to itemize all charges imposed upon the borrower and the seller in connection with the settlement, other than charges exempted from advance disclosure under § 82.7 (h), (i) and (j) and which borrower or seller contract to pay for separately outside of the settlement. The person preparing the settlement statement is not required to supply the information in Block J in the copy supplied to the seller, nor to supply the information in Block K to the borrower.

(c) DELIVERY. The settlement statement shall be delivered or mailed to the borrower and the seller on the date of settlement or as soon thereafter as practicable, and in any case not later than 3 days after the date of settlement.

(d) RECORDKEEPING. Lender shall retain a copy of each settlement statement required to be prepared pursuant to RESPA section 4 for 2 years, except that in the event lender disposes of its interest in the home mortgage and does not service the home mortgage, lender may permit its copy of the settlement statement to be delivered to the owner or servicer of the home mortgage as part of the transfer of the loan file. Nothing in this part alters, amends or in any way reduces the separate recordkeeping requirements of Regulation Z of the Federal Reserve Board. See 12 CFR 226.6(i). A copy of the settlement statement may be required to be submitted to the Secretary and/or other Federal agencies.

§ 82.9 Mailing.

The provisions of this part requiring or permitting mailing of advance disclosure statements, Special Information Booklets or settlement statements shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the address stated in the loan application or in other information submitted to or obtained by lender at the time of loan application, or submitted to or obtained by the person conducting the settlement, except that a revised address shall be used where the lender or such other person has been expressly informed in writing of a change of address.

§ 82.10 No fee.

As provided in RESPA section 12, no fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with or on account of the preparation and distribution required by RESPA of the statement or statements required by RESPA section 4 (Settlement Statement), RESPA section 6 (Advance Disclosure) or by the Truth in Lending Act.

§ 82.11 Relation to State laws.

RESPA section 18(a) provides:

This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The Secretary is authorized to determine whether such inconsistencies exist. The Secretary may not determine that any State law is inconsistent with any provision of this Act if the Secretary determines that such law gives greater protection to the consumer. In making these determinations the Secretary shall consult with the appropriate Federal agencies.

A determination by the Secretary that such an inconsistency exists shall be made, after consultation with appropriate Federal agencies, by publication of a notice in the FEDERAL REGISTER.

EFFECTIVE DATE. These regulations are effective as of June 20, 1975.

Carla H. Hills,
Secretary of Housing and Urban Development.

INSTRUCTIONS FOR COMPLETING UNIFORM DISCLOSURE/
SETTLEMENT STATEMENT (HUD FORM 1)

The following are instructions for completing the first 2 pages of the Uniform Disclosure/Settlement Statement, HUD Form 1, required under Sections 4 and 6 of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533) and the Regulations thereto issued by the U. S. Department of Housing and Urban Development called Regulation X (24 CFR Part 82). This form is to be used to provide an advance disclosure of costs prior to settlement, and as a uniform statement of actual costs and adjustments to be given to the parties in connection with the settlement. The Instructions for completion are primarily for the benefit of the persons who prepare the statements and need not be transmitted to the parties as an integral part of the form. To determine if the Uniform Disclosure/Settlement Statement is legally required to be used in a particular mortgage loan transaction, refer to Regulation X of the Department of Housing and Urban Development (24 CFR Part 82). There is no objection to the use of the form in transactions in which its use is not legally required.

The Truth-in-Lending Statement prepared by the Federal Reserve Board for real estate transactions is a part of the Uniform Disclosure/Settlement Statement. It is the third page of the Uniform Disclosure/Settlement Form and must be completed in all cases in which the Truth in Lending Act applies to the transaction. For specific instructions on Truth-in-Lending disclosure requirements under the Real Estate Settlement Procedures Act, refer to the Instructions of the Federal Reserve Board, which appear in Appendix B to HUD's Regulation X (24 CFR Part 82).

RULES AND REGULATIONS

Form Approved
OME No. 63 - R1501

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DISCLOSURE SETTLEMENT STATEMENT		B. TYPE OF LOAN 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FMHA 3. <input type="checkbox"/> Conv. Unins. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. File Number 7. Loan Number 8. Mortg. Ins. Case No.	
If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form			
C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is: <input type="checkbox"/> ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others. <input type="checkbox"/> STATEMENT OF ACTUAL 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 totals.			
D. NAME OF BORROWER	E. SELLER	F. LENDER	
G. PROPERTY LOCATION	H. SETTLEMENT AGENT	I. DATES	
	PLACE OF SETTLEMENT	SETTLEMENT	Date of Proration If different from settlement
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 <i>(from line 1100, Section L)</i>		403.	
104.		404.	
105.		Adjustments for items paid by seller in advance	
Adjustments for items paid by seller in advance:		405. City/town taxes to	
106. City/town taxes to		406. County taxes to	
107. County taxes to		407. Assessments to	
108. Assessments to		408. to	
109. to		409. to	
110. to		410. to	
111. to		411. to	
112. to		420. GROSS AMOUNT DUE TO SELLER	
120. GROSS AMOUNT DUE FROM BORROWER:		<i>NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement</i>	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Payoff of first mortgage loan	
202. Principal amount of new loan(s)		502. Payoff of second mortgage loan	
203. Existing loan(s) taken subject to		503. Settlement charges to seller <i>(from line 1400, Section L)</i>	
204.		504. Existing loan(s) taken subject to	
205.		505.	
Credits to borrower for items unpaid by seller:		506.	
206. City/town taxes to		507.	
207. County taxes to		508.	
208. Assessments to		509.	
209. to		Credits to borrower for items unpaid by seller:	
210. to		510. City/town taxes to	
211. to		511. County taxes to	
212. to		512. Assessments to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER		513. to	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:		514. to	
301. Gross amount due from borrower <i>(from line 120)</i>		515. to	
302. Less amounts paid by or in behalf of borrower <i>(from line 220)</i>		520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER	
()		600. CASH TO SELLER FROM SETTLEMENT:	
303. CASH <input type="checkbox"/> REQUIRED FROM OR <input type="checkbox"/> PAYABLE TO BORROWER		601. Gross amount due to seller <i>(from line 420)</i>	
		602. Less total reductions in amount due to seller <i>(from line 520)</i>	
		603. CASH TO SELLER FROM SETTLEMENT	
		()	

RULES AND REGULATIONS

L. SETTLEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES' BROKER'S COMMISSION Based on price \$ _____ %		
701. Total commission paid by seller _____ (12) . Division of commission as follows:		
702. \$ _____ to _____		
703. \$ _____ to _____		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN.		
801. Loan Origination Fee _____ % (13)		
802. Loan Discount _____ % (14)		
803. Appraisal Fee to _____ (15)		
804. Credit Report to _____ (16)		
805. Lender's inspection fee _____ (17)		
806. Mortgage Insurance application fee to _____ (18)		
807. Assumption/refinancing fee _____ (19)		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE.		
901. Interest from _____ to _____ \$ _____ /day (20)		
902. Mortgage insurance premium for _____ mo. to _____ (21)		
903. Hazard insurance premium for _____ yrs. to _____ (22)		
904. _____ yrs. to _____		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR: (23)		
1001. Hazard insurance _____ mo. \$ _____ /mo.		
1002. Mortgage insurance _____ mo. \$ _____ /mo.		
1003. City property taxes _____ mo. \$ _____ /mo.		
1004. County property taxes _____ mo. \$ _____ /mo.		
1005. Annual assessments _____ mo. \$ _____ /mo.		
1006. _____ mo. \$ _____ /mo.		
1007. _____ mo. \$ _____ /mo.		
1008. _____ mo. \$ _____ /mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to _____ (24)		
1102. Abstract or title search to _____		
1103. Title examination to _____ (25)		
1104. Title insurance binder to _____		
1105. Document preparation to _____		
1106. Notary fees to _____ (26)		
1107. Attorney's Fees to _____ (27) (includes above items No.:		
1108. Title insurance to _____ (28) (includes above items No.:		
1109. Lender's coverage \$ _____		
1110. Owner's coverage \$ _____		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES (29)		
1201. Recording fees: Deed \$ _____ ; Mortgage \$ _____ Releases \$ _____		
1202. City/county tax/stamps: Deed \$ _____ ; Mortgage \$ _____		
1203. State tax/stamps: Deed \$ _____ ; Mortgage \$ _____		
1204.		
1300. ADDITIONAL SETTLEMENT CHARGES		
1301. Survey to _____ (30)		
1302. Pest inspection to _____ (31)		
1303.		
1304.		
1305.		
1400. TOTAL SETTLEMENT CHARGES (centered on lines 103 and 503, Sections I and K)		

NOTE: Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally occur between advance disclosure and settlement. In the event such a waiver is made, copies of the statements of waiver, executed as provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement.

The disclosure in advance of settlement is the responsibility of the lender. The Act recognizes that the precise amount of every individual charge to be assessed at settlement will not always be known at the time of advance disclosure. The Act provides: "In the event the exact amount of any such charge is not available, a good faith estimate of such charge may be provided." As provided in Regulation X, the advance disclosure statement shall state an "(e)" after each figure which is an estimate. Each estimate must be stated as a specific figure, and not as a range of possible figures.

GENERAL INSTRUCTIONS

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Copies of the form sent to the borrower and the seller may be carbon copies, electrostatic copier copies, or other clearly legible copies. Refer to Regulation X regarding rules applicable to printing of the form.

Where there is an unusually large number of insertions for which blank spaces in the first two pages of the form are not sufficient, an additional sheet for such items may be added to the form and referenced at the appropriate place or places in the form. Such additional sheets may be printed. The reverse side of the form may be used instead of an additional sheet.

LINE ITEM INSTRUCTIONS

Instructions for completing the individual items on the form follow. Where no instructions are given, the item is thought to be self-explanatory.

SECTION A. The lender, title company, or other firm preparing the form may insert its name and/or logotype in Section A.

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

SECTION C. Check the appropriate box indicating whether the particular copy of the form being completed is for advance disclosure purposes or is a statement of actual costs and disbursements at or after settlement. As provided in Regulation X, in preparing the advance disclosure statement, the Lender may make the disclosure of adjustments for taxes and assessments based upon the assumption that no taxes and assessments are delinquent, in lieu of determining from the appropriate records whether delinquencies exist. Where Lender makes disclosure based upon such assumption, Lender shall place in Block C a statement that advance disclosure of proration of taxes and assessments is based upon the assumption that taxes and assessments are not delinquent. Under Regulation X, Lender is permitted to print such a statement in Block C; where the statement is printed in the form, it is to be stricken where not applicable.

SECTIONS D AND E. Fill in the names and current mailing addresses of the borrower and the seller. Where there is more than one buyer or seller, the name and address of one is sufficient.

SECTIONS F AND H. Fill in the name and address of the lender and the settlement agent. If, at the time of advance disclosure, the settlement agent has not yet been selected, the advance disclosure form should have "not known" entered in Section H.

SECTION G. The street address of the security property, if any, should be given. 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 I. Fill in these dates to the extent they are known. If advance disclosure is made before commitment, an estimated commitment date should be inserted and marked "(e)". If the settlement date is not firm at the time of advance disclosure, an estimated settlement date should be inserted and marked "(e)". If the prorations of taxes, insurance, etc. are to be made as of a date different than the settlement date, indicate the date of prorations on the last line in this section.

SECTION J. SUMMARY OF BORROWER'S TRANSACTION. The Borrower may be given a copy of the form (in case of both advance disclosure and settlement) which does not contain the information filled in under "Summary of Seller's Transaction" (Block K, Series 400, 500 and 600 items).

Lines 104 and 105 are for additional amounts owed by the buyer. For example, the balance in the seller's reserve account held by the lender, if assigned to the buyer in a loan assumption case, would be entered here.

Lines 106 through 112 are for items which the seller had paid in advance, and for which the buyer must therefore reimburse the seller. On the advance disclosure statement the exact date for prorations will not usually be known, and these amounts will therefore be estimates. Examples of items for which adjustments are 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. See Instruction for Block C above regarding advance disclosure of taxes and assessments on the assumption that no taxes and assessments are delinquent. Additional examples include flood and hazard insurance premiums if the buyer is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; HUD or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the seller, which the buyer will use when buyer takes possession of the property; and ground rent paid in advance.

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

Lines 204 and 205 may be used in cases in which the seller has taken a trade-in or other property from the buyer in part payment for the property being sold, or when a tenant in the property has not yet paid his rent for a period of time prior to the settlement, and which the buyer will collect. They may also be used in cases in which a seller (typically a builder) is making an "allowance" to the buyer for carpets or drapes which the buyer is to purchase on his own. Such an allowance should also be entered on lines 505-509.

Lines 206 through 212 are for items which have not yet been paid, and which the buyer 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. See Instruction to Block C above regarding advance disclosure of taxes and assessments on the assumption that no taxes and assessments are delinquent. 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. As with lines 106 to 112, these amounts will normally be only estimates on the advance disclosure statement.

Line 303 may 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 buyer's earnest money deposit exceeded his cash obligations in the transaction). The appropriate box should be checked.

SECTION K. SUMMARY OF SELLER'S TRANSACTION. The Seller may be given a copy of the form (in case of both advance disclosure and settlement) which does not contain the information filled in under "Summary of Borrower's Transaction" (Block J, Series 100, 200, and 300 items).

Instructions for the use of lines 106-112, above, apply also to lines 405 to 411.

As the note on the form indicates, it is not necessary to complete lines 500 through 603 when the form is used for advance disclosure. The reason is that information about payoff figures on existing liens must normally come from a title search and payoff letters from other lenders, and is therefore often not available at the time of advance disclosure. There is, however, no objection to the completion of these sections at the time of advance disclosure if the lender so desires.

Line 504 is used if the purchaser is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 505 through 509 may be used to list additional liens which must be paid off through settlement to clear title to the property. They may also be used to indicate funds to be held by the settlement agent for the payment of repairs the seller is obligated to make or payment of water, fuel, or other utility bills which cannot be prorated between the parties at settlement because the amounts used by the seller prior to settlement are not yet known.

If the seller's real estate broker has received and held an earnest money deposit which exceeds the commission owed to him, and if he will tender the excess deposit directly to the seller rather than through the settlement agent, the amount of excess deposit should be entered on one of lines 505-509, thus reducing the amount to be paid to the seller by the settlement agent by that amount.

Instructions for the use of lines 510 through 515 are the same as those for lines 206 to 212, above.

SECTION L. SETTLEMENT CHARGES. General: For all items except those paid to and retained by the lender, the name of the person or firm receiving the payment should be shown.

Line 700. If the sales commission paid by the seller is based on a percentage of the purchase price, enter the purchase price and the percentage here.

Line 701. The dollar amount of the total commission paid by the seller is entered here. A single entry is made, regardless of whether compensation will be paid to one agent or split among several agents.

Lines 702-703 are to be used to state the split of the commission where the person conducting the settlement disburses portions of the commission to two or more agents. Only the total commission is to be shown in the borrower's or seller's columns.

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

Line 801. Enter the fee charged by the lender for processing or originating the loan. If this fee is computed as a percentage of the loan amount, enter the percentage in the blank indicated.

Line 802. Enter the loan discount charged by the lender, and if it is computed as a percentage of the loan amount, enter the percentage in the blank indicated.

Line 803. Enter appraisal fees, if there is a charge separate from the origination fee.

Line 805 is used only for inspections by the Lender or his personnel. Charges for other pest or structural inspections required by Regulation X to be stated should be entered in lines 1302-1305.

Line 806 should be used for a VA appraisal fee. FHA application fee (which covers the cost of appraisal by the agency as well), or a fee required by a private mortgage insurance company.

Line 807 is provided for convenience in using the form for loan assumption transactions if a fee is charged by the Lender for agreeing to an assumption or transfer subject to an existing indebtedness.

Line 901. 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. If such interest is not collected until the first regular monthly payment, no entry should be made on line 901.

Line 1000. This section is used for amounts collected by the Lender and held in an account for the future payment of the obligations listed as they fall due. In many jurisdictions this is referred to as an "escrow", "impound" or "trust" account. In addition to the items listed, some Lenders may require reserves for flood insurance, condominium owners association assessments, etc.

Line 1100. In many jurisdictions the same person (e.g. an attorney or a title insurance company) performs several of the services listed in this section, and makes a single undifferentiated charge for so doing. In such cases, enter the overall fee on line 1107, (for attorneys) or line 1108 (for title companies), and enter on the line provided the item numbers of the services listed which are covered in the overall fee. In such cases no amounts should be entered for the individual items which are covered by overall fees.

Line 1101. Enter here the fee of the person or firm conducting the settlement. In some jurisdictions this is termed a closing or escrow fee. If two or more persons or firms make charges in connection with the same transaction, enter total charges in the appropriate columns, and indicate the breakdown of charges on the line after the word "to".

Lines 1102 and 1103. In some jurisdictions the same person (e.g. an attorney) both searches the title (that is, performs the necessary research in the records)

and examines title (that is, makes a determination as to what matters affect title, and provides a title report or opinion.) If such a person charges only one fee for both services, it should be entered on line 1103. If separate persons perform these tasks, or if separate charges are made for searching and examination, they should be listed separately.

Line 1105. Enter charges for preparation of deeds, mortgages, notes, etc. If more than one person receives a fee for such work in the same transaction, show the total paid in the appropriate column and the individual charges on the line following the word "to".

Lines 1108-1110. Enter the total charge for title insurance (except the cost of the title binder) on line 1108. Enter on lines 1109 and 1110 the individual charges for the Lender's and owner's policies. Note that these charges are not carried over into the borrower's and seller's columns, since to do so would result in a duplication of the amount in line 1108.

Lines 1111-1113. These lines are for entry of other title charges not already itemized. Examples in some jurisdictions would include a fee to a private tax service, a fee to a county tax collector for a tax certificate, and a fee to a public title registrar for a certificate of title under a Torrens Act. Show the lender's attorney's fee, if any, on line 1107 and other attorneys' fees, if required to be stated under Regulation X, on lines 1111-1113.

Lines 1303-1305. Enter on these lines any other settlement charges not referable to the categories listed above on the form which are required by Regulation X to be stated. Examples may include structural inspections or pre-sale inspection of heating, plumbing, or electrical equipment. These inspection charges may include a fee for insurance or warranty coverage.

Line 1400. Enter the total settlement charges paid from borrower's funds and seller's funds. These totals are also entered on lines 103 and 503, respectively, in Sections J and K.

ATTACHMENT OF WAIVER FORM

The waiver or waivers reducing the period between disclosure and settlement (if any are executed by the parties) are a part of the form when it is used as a settlement statement, and should be attached to the form.

INSTRUCTIONS FOR FEDERAL TRUTH IN LENDING STATEMENT¹

This form is the Federal Truth in Lending disclosure portion of the Disclosure/Settlement Statement to be provided by the Department of Housing and Urban Development in connection with the Real Estate Settlement Procedures Act (Pub. L. 93-533).

This form is intended to provide a flexible, minimum disclosure standard in satisfaction of the Truth in Lending (Regulation Z) requirements of the Real Estate Settlement Procedures Act. This form is designed to accommodate those Truth in Lending disclosures which are most common to real estate purchase transactions. However, the form is not comprehensive of all credit charges or terms that may be incident to any particular federally related mortgage loan. When a given transaction includes less common terms, such as balloon payments, for which no specific provision is made on the form, these terms will also need to be disclosed and identified on the form.

EXHIBIT 9

Federal Truth-in-Lending Statement
(As part of Disclosure/Settlement Statement)

I.	A.	Cash price (contract sales price)		\$	_____
	1.	Less any cash downpayment	\$	_____	
	2.	Less any trade-in	\$	_____	
	3.	Total downpayment		\$	_____
	B.	Equals unpaid balance of cash price		\$	_____
	C.	Plus any other amounts financed:			
	1.	Property insurance premiums	\$	_____	
	2.	_____	\$	_____	
	3.	Total other amounts financed		\$	_____
	D.	Equals unpaid balance		\$	_____
	E.	Less any prepaid finance charges:			
	1.	Origination fee or points paid by borrower	\$	_____	
	2.	Loan discount or points paid by seller	\$	_____	
	3.	Interest from (specify date) to (specify date)	\$	_____	
	4.	Mortgage guaranty insurance	\$	_____	
	5.	_____	\$	_____	
	6.	Total prepaid finance charge		\$	_____
	F.	Equals amount financed		\$	_____
II.	A.	The FINANCE CHARGE consists of			
	B.	Interest (simple annual rate of _____%)	\$	_____	
	C.	Total prepaid finance charge (I, E, 6.)	\$	_____	
	D.	Total FINANCE CHARGE		\$	_____
III.	A.	The ANNUAL PERCENTAGE RATE on the amount financed is _____%			
	B.	If the contract includes a provision for variation in the interest rate, describe _____			
IV.		The repayment terms are: _____			
V.		The finance charge begins to accrue on _____ (specify date)			
VI.		In the event of late payments, charges may be assessed as follows: _____			
VII.		(Use either A or B as appropriate)			
	A.	Conditions and penalties for prepaying this obligation are _____			
	B.	Identification of method of rebate of unearned finance charge is _____			
VIII.		Insurance taken in connection with this obligation: _____			
IX.		The security for this obligation is _____			

* Indicates a date, rate or amount that is estimated and may be subject to change.

To maintain the form as a standardized disclosure mechanism while still providing creditors with flexibility, certain changes to the form may be necessary. As long as the applicable Truth in Lending disclosure requirements are met:

(a) Disclosures provided on the form which are not applicable to a given transaction may be deleted. For example, the finance charge disclosures (Item II) need not be made in the case of a purchase money first mortgage on a dwelling.

(b) Disclosures and language more pertinent to a specific charge or term may be substituted for those presently included. For example, in Item VIIA., if no charge will be assessed in the event of prepayment of a loan on which interest is computed on the unpaid principal balance, a statement to that effect may be substituted.

(c) Additional space and/or disclosures may be provided where necessary to satisfy the requirements of Regulation Z. For example, additional space may be provided for disclosures in Item IV; other charges, such as continuing premiums for mortgage guaranty insurance, may be added under Item II.

This form is designed as a disclosure for both loan and credit sale transactions and should be used regardless of whether a given transaction may be characterized as a loan or credit sale (§§ 226.6(d), 226.8(c) and 226.8(d)). The form contains certain disclosure provisions which are required in credit sales disclosures under Truth in Lending but not required in loan disclosures. Lenders who choose to make only those disclosures required in connection with loans under Regulation Z may delete the additional disclosures related to the credit sales. Also a certain amount of deviation may be necessary in more complicated transactions, such as in the case of permanent financing following the maturity of a home construction loan.

This form is intended to be used solely for the disclosures required under the Federal Truth in Lending Act. Except with respect to rescindable transactions, as noted below, all Truth in Lending disclosures made in compliance with the Real Estate Settlement Procedures Act shall be made on one side of a single sheet regardless of any differing Regulation Z requirements. For example, in spite of the provisions of § 226.8(a)(1), for the purposes of satisfying the requirements of the Real Estate Settlement Procedures Act, promissory notes or other contractual obligations shall not be included on the Truth in Lending disclosure form. Similarly, in spite of § 226.6(c)(2), the Truth in Lending form to be used in connection with the Real Estate Settlement Procedures Act may not include inconsistent State disclosure requirements.

Charges under § 226.4(b) need not be itemized on this form, provided they are itemized and disclosed on the settlement cost portion of the combined form.

In the event that a given transaction subject to the Real Estate Settlement Procedures Act is rescindable under provisions of § 226.9 of Regulation Z, two copies of a notice of the right of rescission (§ 226.9(b)) shall be given separately from the prescribed form to each borrower who has the right to rescind.

¹NOTE: These instructions are intended to assist in the completion of the Truth in Lending Statement, and except to the extent to which Regulation Z is interpreted to accommodate the Real Estate Settlement Procedures Act, the instructions are in no way intended to supersede or supplement the provisions of Regulation Z. All sectional references in the instructions are to Regulation Z (12 CFR 226).

Bona fide estimates may be made in connection with dates or charges for which exact dollar amounts or rates are unknown at the time of advance disclosure (§ 226.6(f)). When estimates are used, they should be suitably designated as such, for example, by asterisks placed next to the estimated information.

The Real Estate Settlement Procedures Act requires that Truth in Lending disclosures be made at least 12 days before settlement and again on the day of settlement. While two separate disclosures are required, in those instances where no material change occurs in the information required to be disclosed, a copy of the initial disclosure form may be used in satisfaction of the disclosure requirement on the day of settlement.

Creditors in using the prescribed form may delete the numbering system provided: the numbers used on the form are included solely to aid in relating pertinent instructions. However, in deleting the numbers or in making any other adjustments to the form, creditors should be guided by the requirements of § 226.6(a) to the effect that Truth in Lending disclosures be made clearly, conspicuously, and in meaningful sequence. Creditors may also add signatures, dates, and acknowledgements to the form.

ITEM I

Item I.A. is provided to show the cash price (contract sales price) which should equate to the amount shown on line 101 of the settlement cost disclosure portion of the combined form (§ 226.8(c)(1)).

Items I.A.1. and I.A.2. are provided to show any cash downpayment or trade-in. Item I.A.3. is provided to show the total amount of any downpayments (§ 226.8(c)(2)).

Item I.B. is provided to show the unpaid balance of the cash price which should equal I.A. minus I.A.3. (§ 226.8(c)(3)).

Item I.C. is provided to show other items which are financed as part of the credit transaction. For example, property damage insurance premiums under I.C.1. are included in the amount financed, if they are financed as part of the credit transaction and the other conditions of § 226.4(a)(6) are met. The blank line I.C.2. is intended to include similar items, which are financed, such as those listed in § 226.4(b) or (e). Item I.C.3 is provided to show a total of other amounts financed (§ 226.8(c)(4)).

Item I.D. is provided to show the unpaid balance (the sum of Item I.B. and I.C.) (§ 226.8(c)(5)).

Item I.E. is intended to show prepaid finance charges and the total prepaid finance charges. (§§ 226.4(a)/226.8(d)(2)/226.8(e)(1)).

Item I.E.1. is provided to show the origination fee or points paid directly by the borrower, such as the one point permitted in VA transactions.

Item I.E.2. is provided to show those loan discounts or points paid by the seller when they are part of the finance charge (§ 226.-406).

Item I.E.3. is provided to show the prepayment of any accruing interest charge on the contract until the first payment is due. The blank spaces are provided to show the dates for which such interest accrues. (The dates and amounts disclosed may frequently need to be estimated.)

Item I.E.4. is provided to show the payment of mortgage guaranty insurance premiums, such as for FHA or private mortgage guaranty insurers, accruing prior to the first regular payment.

Item I.F. is provided to show the amount financed: the difference between item I.D. and I.E. (§§ 226.8(c)(7)/226.8(d)(1)).

ITEM II

This item is provided to show the components of the finance charge, such as prepaid finance charges, and continuing premiums for mortgage guaranty insurance, as well as to show the total amount of the finance charge (§§ 226.4(a)/226.8(d)(3)). Item II.A. provides the optional disclosure of the contract rate of interest as an additional item where such interest is computed by the application of a simple annual rate.

ITEM III

Item III.A. is provided to show the annual percentage rate as determined in accordance with § 226.5(b). Item III.B. is provided to show any variable interest rate provisions (§ 226.810).

ITEM IV

This item is provided to show the repayment terms (§ 226.8(b)(3)).

ITEM V

This item is provided to show the date on which the finance charge begins to accrue only if that date differs from the date of the transaction (§ 226.8(b)(1)).

ITEM VI

This item is provided for the disclosure of any amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments (§§ 226.4(c)/226.8(b)(4)).

ITEM VII

This item is provided for the disclosure of the consequences of prepayment of the mortgage obligation; either (A) or (B) should be used, as applicable.

Item VII.A. is provided for the disclosure of conditions or penalties charged in the event of prepayment of a loan on which interest is computed on the unpaid principal balance (§ 226.8(b)(6)). Should there be no penalty for prepayment, a statement to that effect may be substituted.

Item VII.B. is provided to identify the method of rebate of unearned finance charges in the event of prepayment in full of instalment obligations which include precomputed finance charges. If no rebate will be made, a statement to that effect must be included (§ 226.8(b)(7)).

ITEM VIII

This item is provided for the disclosure of insurance written in connection with the obligation, such as property damage insurance (to be disclosed in

accordance with § 226.4(a)(6)), credit life, accident, or disability insurance (to be disclosed in accordance with § 226.4(a)(5)), and vendor's single interest insurance (to be disclosed in accordance with § 226.404).

ITEM IX

This item is provided to show any security interests taken in connection with the transaction (§ 226.2(z) and § 226.8(b)(5)).

(FR Doc.75-13260 Filed 5-19-75; 8:45 am)

NOTICES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing Production and Mortgage Credit--
Federal Housing Commissioner

(Docket No. N-75-311)

REAL ESTATE SETTLEMENT COSTS

Special Information Booklet

Notice is hereby given that HUD has prepared the booklet. "Settlement Costs" pursuant to Section 5(a) of the Real Estate Settlement Procedures Act of 1974. Section 5(a) requires HUD to prepare and distribute to lenders who make federally related mortgage loans a special information booklet to better inform persons borrowing money to finance the purchase of residential real estate concerning the settlement process. The booklet explains the purpose of each cost involved in a settlement, reproduces and explains the standard disclosure/settlement form required by sections 4 and 6 of the Act, discusses such abuses as unfair practices and unreasonable charges, and explains choices available to homebuyers in shopping for settlement services.

Section 5(c) of the Act requires each lender which makes federally related mortgage loans to provide the booklet to each person submitting an application to borrow money to finance the purchase of residential real estate. The lender is required to provide the booklet at the time it receives the application.

To insure that each federally related mortgage lender has a sufficient supply of booklets on hand on the effective date of the Act, June 20, 1975, the Department will provide an initial supply of booklets for lender use at each HUD Area and Insuring Office and expects that the booklets will be available in early June. Lenders may pick up a limited supply from these offices but no mail or telephone orders can be accommodated. After this initial distribution, additional supplies of the booklet will be on sale through the Government Printing Office and must be paid for by the lender.

This booklet (1) may be reproduced and distributed by lenders, using a cover of their own design (which may bear the name of the lender), without further approval by HUD; or (2) lenders may print and distribute booklets approved by the Secretary as to form and content. In the former case, it is not permissible to make any change, deletion, or addition in the content of the booklet as prepared by HUD. Lenders desiring to take advantage of the latter option should so request in writing and submit proposed booklets for review to the Office of General Counsel, Department of Housing and Urban Development, Room 2253, 451 7th Street, SW., Washington, D. C. 20410.

A copy of the contents of the booklet which may be reproduced by lenders is set forth as an appendix to this notice.

David M. De Wilde,
Acting Assistant Secretary for
Housing Production and
Mortgage Credit, FHA Commissioner

SETTLEMENT COSTS

A HUD GUIDE

The content of this booklet has been prepared, prescribed and approved by the U. S. Department of Housing and Urban Development, as required by section 5 of the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533), effective on June 20, 1975.

This publication may be reprinted. However, in no case may any change, deletion, or addition be made in its content.

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402.

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FOREWORD

You are planning to buy a home. When you do, you will probably make a down-payment and finance the balance of the purchase price with a loan secured by a mortgage on your home.

Before you take possession of your home, a closing or settlement will occur at which ownership of the property will be transferred to you, and your obligation to repay the mortgage loan will become effective. The terms and conditions of the loan--interest rate, monthly payment, and the repayment period--are specified in the documents signed by you. These include a note evidencing the loan for the unpaid purchase price, a mortgage placing a lien on your home, and other documents.

In some States, it is the custom for the buyer and seller to attend the settlement in person; in others it is handled automatically by an escrow agent when all papers and funds have been deposited with him.

At the closing or settlement, both you and the seller will have to pay certain charges incident to transferring title to real estate and obtaining the mortgage loan. These charges are called "settlement costs" or "closing costs".

This booklet has been prepared to inform you, the buyer, about the nature and costs of the settlement process. As required by law, this booklet is given to you by a lending institution at the time you apply for a mortgage loan to finance the purchase of a one-to-four family residential dwelling. At this stage, you have selected the home you want to buy. You may have already reached informal agreement with a seller or even signed a sales contract and made a deposit ("earnest money deposit") indicating your serious intention to buy--a deposit which could be forfeited should you fail to complete your purchase.

This booklet is intended to acquaint you with the appropriate procedures and charges for settlement services which you will encounter in closing your home purchase transaction.

For answers to specific questions or for information on mortgage lending and settlement practices in your locality, you may want to consult a State or local consumer affairs agency, an attorney, a legal aid society, or the local real estate board.

HOME LOAN FINANCING

The home purchase loan is evidenced by your signature on a note or bond, and the loan (your debt) is secured by a mortgage (or deed of trust) which you must sign, which pledges the home as security for repayment of the loan. If you fail to repay the loan or comply with the terms and conditions of the mortgage, the lender can initiate foreclosure of the loan which would lead to sale of your home at a public auction to satisfy the debt.

In a home mortgage transaction, you promise to repay the loan and interest in monthly installments at the interest rate and over the period of time specified in the mortgage contract. In the early years when your debt is largest, most of the monthly payment goes for interest. The amount applied to the outstanding debt gradually increases so that in the final years of the mortgage most of the payment goes to principal and less to interest. This is known as an amortized mortgage, and most mortgages are written this way.

In some States, the security instrument instead of being a mortgage is a deed of trust under which the borrower deeds the property to a trustee. Normally, the terms of a deed of trust are substantially the same as those of a mortgage.

Husband and wife often take title to their home as joint tenants with right of survivorship. You may wish to seek legal advice on this and other matters. The manner in which you take title to the home you buy can have important income tax, estate planning, and other consequences.

DISCLOSURE/SETTLEMENT STATEMENT

The Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533) requires use of a standard form for advance disclosure of settlement costs and to record actual charges incurred at settlement in all mortgage transactions involving federally related loans.

The same form is used for both advance disclosure and settlement and is reproduced on the following pages to acquaint you with it. Settlement cost items are numbered to correspond with the accompanying explanation of each item. The listing of these items on the form does not imply that any particular charge listed is or

should be made in a given geographic area. Even in a given geographic area, you may find that different lenders and providers of settlement services vary as to whether they make certain charges and as to the amount of the charge. You may wish to "shop around".

Some settlement costs typically are charged to the buyer. Others usually are the responsibility of the seller. Although local custom and practices often dictate which are the buyer's and which the seller's costs, there are no hard and fast rules that apply, and in most cases the buyer and seller can negotiate as to who will pay specific settlement charges. You can also negotiate with providers of settlement services as to whether each charge will be made and the amount. You should be charged only for services actually performed, as required by settlement practices in a particular locality.

1. CONTRACT SALES PRICE. This is the price of the home agreed to in the sales contract between buyer and seller.
2. PERSONAL PROPERTY. Those items, such as carpets, drapes, or appliances, which the seller transfers with the home, may be paid for by the buyer at settlement. When the sales contract is made, you should make sure that items to be transferred are described. The sales contract should state whether such items are included in the sales price.
3. SETTLEMENT CHARGES. This is the total amount of the settlement charges to be paid by the buyer. These charges are itemized on page 2 of the form.
- 4.9. ADJUSTMENTS OR PRO-RATIONS. These amounts represent pro-rated adjustments of certain costs, such as real estate taxes, utilities, and fuel. Such adjustments are often made in order to pro-rate such costs in order to charge the seller for the period he owned the property (up to settlement) and to charge the buyer for the period after settlement. Item 4 states amounts for which the buyer compensates the seller. Item 9 states amounts for which the seller compensates the buyer. As an example, where settlement occurs October 1, 1975, and the seller has paid the real estate taxes in advance for the entire year, a typical adjustment would be for the buyer to compensate the seller for one-fourth of the real estate taxes for 1975, that is, the period from October 1 through December 31. That amount would be shown at Item 4.
5. GROSS AMOUNT DUE FROM BORROWER. This is the total amount of all charges to the buyer included in items 1, 2, 3, and 4.
6. DEPOSIT OR EARNEST MONEY. This is the amount of money deposited by the buyer under the contract of sale, usually at the time it was signed.
7. PRINCIPAL AMOUNT OF LOAN(s). This is the amount of mortgage money loaned to the buyer to purchase his home.
8. EXISTING LOAN(s) TAKEN SUBJECT TO. This space is used for cases in which the buyer is assuming or taking title subject to an existing loan or other lien on which he is expected to make the payments.
10. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER. This amount is the sum of items 6, 7, 8, and 9 above which will be applied to reduce the amount of charges to the buyer in item 5 above.

11. CASH REQUIRED FROM (PAYABLE TO) BORROWER. This is the total amount of cash which the buyer will need at settlement (subtract item 10 from item 5). At time of advance disclosure this is the estimated amount.

12. REAL ESTATE BROKER'S SALES COMPENSATION. This charge compensates the real estate broker or brokers for services involved in listing and selling the property, and is normally the seller's obligation to pay. This commission or fee may be split among more than one broker if each performed services in connection with the transaction, but no person may accept any portion, split or percentage of such commission or fee other than for services actually performed.

13. LOAN ORIGINATION FEE. This compensates the lender for expenses incurred in originating the loan, preparing documents, and related work. When such a fee is charged, it is usually a percentage of the face amount of the mortgage. In FHA-insured or VA-guaranteed mortgage transactions involving existing structures, the fee charged the borrower can be no more than one percent of the mortgage amount. For example, if you are approved for a VA-guaranteed loan of \$30,000, the origination fee charged to you may not exceed \$300. However, when the lender makes inspections and partial disbursements during construction of a new home, both FHA and VA permit a higher origination fee, but not more than 2½% for FHA-insured loans or 2% for VA-guaranteed loans. The Farmers Home Administration does not permit a loan origination fee.

14. LOAN DISCOUNT POINTS. Discounts or "points" are a one-time charge made by the lender to increase its yield (the effective interest return or income) on the mortgage loan. Each "point" is one percent of the mortgage amount.

In FHA and VA transactions, the buyer may not be charged a discount by the lender, but the seller may volunteer to pay points in order to help the buyer obtain financing. For example, if a lender charges 4 points on an FHA-insured loan of \$30,000, this amounts to a discount of \$1,200. You, the buyer, may pay only the loan origination fee described in note 13 if it is a VA or FHA transaction. Discounts are not permitted on Farmers Home Administration loans.

15. APPRAISAL FEE. This charge compensates the lender for a property appraisal made by an independent appraiser or by a member of the lender's staff.

16. CREDIT REPORT. The buyer's credit history is often obtained by the lender and a charge paid to a credit bureau for ascertaining the status of the buyer's credit may be collected, usually from the buyer.

17. LENDER'S INSPECTION FEE. This charge covers only inspections made by personnel of the lending institution at its discretion. Pest or other inspections made by companies other than the lender are described in note 31.

18. MORTGAGE INSURANCE APPLICATION FEE. This covers the cost of an FHA or VA appraisal, which in an FHA loan is included in a mortgage insurance application fee. For conventional loans it may cover application fees when charged by private mortgage insurers. In the case of an FHA-insured mortgage, the amount of this charge is set by HUD Regulations and may be charged to the buyer. The buyer in a VA-guaranteed loan may not be charged an appraisal fee unless identified by name in the request for VA's appraisal.

19. ASSUMPTION FEE. In a case where the buyer assumes the seller's existing mortgage on the property, the lender's charges for processing the assumption are entered here.

20. PREPAID INTEREST. This charge covers interest which will accrue from the date of settlement to the beginning of the period covered by your first monthly payment. For example, if your mortgage payment is due on the 1st of each month, but settlement occurs on April 20, the prepaid interest at settlement will cover the period from April 20 to April 30 if your first monthly mortgage payment is due on June 1st. Thus your June 1 payment will not have to include an extra amount of interest for the period before May 1.

21 PREPAID MORTGAGE INSURANCE PREMIUM. This is the portion of the premium prepaid by the buyer at settlement for mortgage insurance. This type of insurance is required when FHA or a private mortgage insurance company covers the lender against loss if the buyer fails to meet the mortgage obligation. Mortgage insurance premiums are required for all FHA-insured loans (but not for VA loan guarantees), and may be required on a conventional loan.

This type of insurance should not be confused with mortgage life, credit life, or disability insurance designed to pay off a mortgage in the event of physical disability or death of the borrower. Such insurance is available but usually not required by lenders.

22. PREPAID HAZARD INSURANCE PREMIUM. This is the portion of the premium prepaid by the buyer at settlement for purchase from a private company of insurance against loss due to fire, windstorm, and natural hazards. This coverage may be included in a Homeowners Policy which insures against possible additional risks, such as personal liability and theft.

A hazard insurance or homeowner's policy does not protect you against loss caused by flooding. In special flood-prone areas identified by HUD, you must carry flood insurance on your home. Such insurance may be purchased at low federally subsidized rates in communities eligible under the National Flood Insurance Act. Contact a local hazard insurance agent concerning eligibility in your case.

23. RESERVES DEPOSITED WITH LENDER. These funds are placed by the buyer in an "escrow" or "impound" account maintained by the lender to assure an adequate accumulation of funds to meet charges for real estate taxes and hazard insurance when they become due; and also, if applicable, for mortgage insurance, annual assessments, homeowners' association fees, or flood insurance. (These reserves are explained in more detail later.)

These reserves may be held in non-interest bearing accounts. However, certain States now require lenders to pay interest on this money, and lenders in other States may be willing to do this voluntarily.

24. SETTLEMENT, CLOSING OR ESCROW FEE. This charge may be made for handling and supervising the settlement transaction. The settlement may be conducted by the lender, a real estate broker, a title company in some States, an escrow agent in some States, or an attorney. The seller and buyer may negotiate regarding who pays or whether the charge is shared between them. The amount of the charge may be negotiated with the provider of the service. In a VA-guaranteed loan, this fee cannot be charged to the buyer when the buyer is assessed the 1% origination fee.

25. TITLE CHARGES. These charges cover the costs of title search and examination of public records of previous ownership and sales to establish the right of the seller to convey the property to the buyer. A search and examination are performed to determine whether the seller has good title to the property that he can transfer to the buyer, and to disclose any matters on record that could adversely

affect the buyer, the lender, or others with an interest in the property. Examples of these problems are unpaid mortgages, judgment of tax liens, a power line easement or a road right-of-way that could limit use and enjoyment of the real estate by the buyer.

In some parts of the nation, a title search customarily takes the form of an "abstract", which is a compilation including copies of pertinent documents that provides a condensed history of property ownership and related matters. In other places, title searches are performed by extracting related information from the public record without assembling abstracts. Either way, it then is necessary for an expert examination to be made of the evidence accumulated in the search in order to determine status of title as shown by the public record.

Depending on local custom, title examinations normally are made by attorneys or title company employees. Through a title search and examination, land title problems of record are disclosed in advance so they can be cleared up, when possible, before a transaction is completed.

26. NOTARY FEES. This charge may be made for the services of a notary in authenticating signatures to the various documents in the transaction. In a VA-guaranteed loan, this fee cannot be charged to a buyer in the event the buyer is charged a 1% origination fee.

27. ATTORNEY'S FEES. These include charges which the lender may require the buyer to pay for legal services to the lender in connection with the transaction. The buyer should not assume that he is represented by an attorney hired by the lender who prepares the documents and handles the settlement. In a VA-guaranteed loan, this lender's attorney fee cannot be charged if the buyer is charged the 1% origination fee.

The buyer and seller may each retain attorneys to represent them and may pay the fees at the settlement, in which case these fees also appear on this part of the form.

In some States, attorneys provide bar-related title insurance as part of their services to the buyer for transfer of title. The attorney's fee in this case may include the title insurance premium.

28. TITLE INSURANCE. A one-time premium may be charged at settlement for a policy which protects the lender's interest in the property against land title problems including those that might not be disclosed by a title search and examination. Whether the buyer or seller pays for this varies with local custom.

The buyer must request and pay for an additional owner's policy if he wants this protection for his interest in the property. There are many areas where an owner's policy can be obtained at a modest additional charge if issued simultaneously with a lender's policy. In some areas, the seller pays for the owner's title insurance policy.

29. GOVERNMENT TRANSFER TAXES AND CHARGES. The fees and taxes in this section are generally levied by State and/or local governments when property changes hands or when a mortgage loan is made. Depending on local custom, these charges may be paid by the buyer, seller, or otherwise split between them.

30. SURVEY. The lender or a party to the transaction may require a survey showing the precise location of the house and lot lines.

NOTICES

Form Approved
OME No. 63 - R1501

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DISCLOSURE SETTLEMENT STATEMENT		B. TYPE OF LOAN 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FMHA 3. <input type="checkbox"/> Conv. Unins. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. File Number 7. Loan Number 8. Mortg. Ins. Case No.	
If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form			
C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is: <input type="checkbox"/> ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others. <input type="checkbox"/> STATEMENT OF ACTUAL 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 totals.			
D. NAME OF BORROWER		E. SELLER	
G. PROPERTY LOCATION		H. SETTLEMENT AGENT	
		I. DATES	
		Loan Commitment	Advance Disclosure
		PLACE OF SETTLEMENT	SETTLEMENT
		Date of Proration if different from settlement	
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 (1)		401. Contract sales price	
102. Personal property (2)		402. Personal property	
103. Settlement charges to borrower (3) <i>(from line 1100, Section L)</i>		403.	
104.		404.	
105.		Adjustments for items paid by seller in advance	
Adjustments for items paid by seller in advance:		405. City/town taxes to	
106. City/town taxes to		406. County taxes to	
107. County taxes to		407. Assessments to	
108. Assessments to		408. to	
109. to		409. to	
110. to		410. to	
111. to		411. to	
112. to			
120. GROSS AMOUNT DUE FROM BORROWER (5)		420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement	
201. Deposit or earnest money (6)		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
202. Principal amount of new loan(s) (7)		501. Payoff of first mortgage loan	
203. Existing loan(s) taken subject to (8)		502. Payoff of second mortgage loan	
204.		503. Settlement charges to seller <i>(from line 1400, Section L)</i>	
205.		504. Existing loan(s) taken subject to	
Credits to borrower for items unpaid by seller:		505.	
206. City/town taxes to		506.	
207. County taxes to		507.	
208. Assessments to		508.	
209. to		509.	
210. to		Credits to borrower for items unpaid by seller:	
211. to		510. City/town taxes to	
212. to		511. County taxes to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER (10)		512. Assessments to	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:		513. to	
301. Gross amount due from borrower (from line 120)		514. to	
302. Less amounts paid by or in behalf of borrower (from line 220)		515. to	
303. CASH <input type="checkbox"/> REQUIRED FROM OR (11)		520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER	
<input type="checkbox"/> PAYABLE TO BORROWER		600. CASH TO SELLER FROM SETTLEMENT:	
		601. Gross amount due to seller (from line 420)	
		602. Less total reductions in amount due to seller (from line 520)	
		603. CASH TO SELLER FROM SETTLEMENT	

31. INSPECTIONS. This part of the form records charges for various inspections required by the lender or a party to the transaction, such as those for termite and other pest infestation. In a VA-guaranteed loan, the buyer may not be charged for the pest inspection.

There may also be pre-sale inspections for the buyer's benefit to evaluate heating, plumbing, and electrical equipment and overall structural soundness. The charge for such an inspection may include a fee for insurance or warranty services to back-up the inspection.

ADVANCE DISCLOSURE

The Settlement/Disclosure Statement itemizes each settlement cost charged to the buyer and each charged to the seller. Advance disclosure serves a two-fold purpose: (1) To provide notice of the cash you will need at settlement and (2) to make possible "comparison shopping" of settlement charges so that you can arrange terms most favorable to you. If you don't "shop around" you will not save money if the same services are offered elsewhere for less.

It is important to realize that advance disclosure provides for earlier and more systematic information about the costs of the settlement transactions but does not affect any contractual agreement which may already have been made between buyer and seller. Try to obtain as much of this information as possible prior to signing a sales contract for the house you intend to buy. Or, if the seller is agreeable, you may want to make the sales contract contingent upon your approval of the advance disclosure statement. Once you have signed, you may not be able to rescind the contract in the event that you are dissatisfied with some aspect of the transaction revealed by disclosure. It is in your interest to condition your purchase contract on your ability to obtain a mortgage loan on specified terms.

The law requires the lender to give you a copy of the completed advance disclosure statement at the time of loan commitment. In most circumstances this should be not later than 12 calendar days before the settlement date. Normally, the loan commitment and advance disclosure occur several weeks prior to settlement. In the case of a long-term commitment, such as that obtained by a buyer of a new home under construction, disclosure should be made shortly after signing the contract to buy the house. Typically, this might be in the range of 60 to 90 days before settlement.

If the exact cost of any settlement service is not known in time to meet the deadline, the lender must provide a good faith estimate of the charge.

Lenders are prohibited from charging a specific fee for the preparation and submission of disclosure and settlement costs statements or for the information they must provide under the Truth in Lending Act.

If your circumstances are such that you want to settle and take title to your new home before the lender can meet his 12-day advance disclosure deadline, you may sign a waiver of that requirement. Advance disclosure is intended to protect your interests, not hamper or delay your plans, so you should carefully consider before signing a waiver. Even if you agree to waive, HUD Regulations require the lender to provide the disclosure statement to you at least three days prior to the date of settlement.

Except in the case of a waiver, the lender must meet the advance disclosure requirement or be liable to you for actual damages or \$500, whichever is greater.

NOTICES

L. SETTLEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES' BROKER'S COMMISSION Based on price \$ _____ %		
701. Total commission paid by seller Division of commission as follows:		
702. \$ _____ to _____		
703. \$ _____ to _____		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN.		
801. Loan Origination Fee _____ %		
802. Loan Discount _____ %		
803. Appraisal Fee to _____		
804. Credit Report to _____		
805. Lender's inspection fee _____		
806. Mortgage insurance application fee to _____		
807. Assumption/refinancing fee _____		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE.		
901. Interest from _____ to _____ \$ _____ /day		
902. Mortgage insurance premium for _____ mo. to _____		
903. Hazard insurance premium for _____ yrs. to _____		
904. _____ yrs. to _____		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR:		
1001. Hazard insurance mo. \$ _____ /mo.		
1002. Mortgage insurance mo. \$ _____ /mo.		
1003. City property taxes mo. \$ _____ /mo.		
1004. County property taxes mo. \$ _____ /mo.		
1005. Annual assessments mo. \$ _____ /mo.		
1006. _____ mo. \$ _____ /mo.		
1007. _____ mo. \$ _____ /mo.		
1008. _____ mo. \$ _____ /mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to _____		
1102. Abstract or title search to _____		
1103. Title examination to _____		
1104. Title insurance binder to _____		
1105. Document preparation to _____		
1106. Notary fees to _____		
1107. Attorney's Fees to _____ (includes above items No.:)		
1108. Title insurance to _____ (includes above items No.:)		
1109. Lender's coverage \$ _____		
1110. Owner's coverage \$ _____		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201. Recording fees: Deed \$ _____ ; Mortgage \$ _____ Releases \$ _____		
1202. City/county tax/stamps: Deed \$ _____ ; Mortgage \$ _____		
1203. State tax/stamps: Deed \$ _____ ; Mortgage \$ _____		
1204.		
1300. ADDITIONAL SETTLEMENT CHARGES		
1301. Survey to _____		
1302. Pest inspection to _____		
1303.		
1304.		
1305.		
1400. TOTAL SETTLEMENT CHARGES (centered on lines 103 and 503, Sections I and K)		

NOTE: Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally occur between advance disclosure and settlement. In the event such a waiver is made, copies of the statements of waiver, executed as provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement.

If court action is necessary to enforce this liability, the lender may be ordered to pay court costs and your attorney's fees as set by the court if the lender loses the case. You would pay attorney's fees in the event that you lose the case. A lender will not be held liable for a violation if he can show that it was not intentional and resulted from a bona fide error in spite of maintenance by the lender of procedures adopted to avoid such error.

UNFAIR PRACTICES AND UNREASONABLE OR
UNNECESSARY CHARGES TO AVOID

A principal finding of Congress in the Real Estate Settlement Procedures Act of 1974 is that consumers need protection from "* * * unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country." The potential problems discussed below may not be applicable to most loan settlements, and the discussion is not intended to deter you from buying a home. Most professionals in the settlement service businesses will give you good service. Nevertheless, you may save yourself money or worry by keeping the following considerations in mind.

A. ILLEGAL PRACTICES. Practices specifically prohibited by this Act fall into two categories:

1. KICKBACKS. Kickbacks and referral of business for gain most often are tied together, so the law prohibits anyone from giving or taking a fee, kickback, or anything of value under an agreement that business related to real estate settlements will be referred to a specific person or organization.

This requirement does not, of course, prevent agents for lenders and title companies, attorneys, or others actually performing a service in connection with the mortgage loan or settlement transactions, from receiving compensation for their work.

The prohibition is aimed primarily at eliminating the kind of arrangement in which one party agrees to return part of his fee in order to obtain a volume of business from the referring party. The danger is that some settlement fees can be inflated to cover this additional party, resulting in a higher total cost to you. For example, a title company might pay a fee to another party for bringing it title insurance business even though the other party performs no work and provides no service in connection with issuance of the title insurance policy. As another example, a lawyer might give a part of his fee to another party to the transaction in exchange for the referral of business.

It is also illegal to charge or accept a fee or portion thereof other than for services actually performed.

There are criminal penalties of both fine and imprisonment for any violation of these provisions of law. There are also provisions for you to recover three times the amount of the fee involved or a portion thereof. In any successful action to enforce your right, the court may award you court costs together with a fee for your attorney.

2. TITLE COMPANIES. Another abuse prohibited by law is any requirement by the home seller that title insurance be purchased from a particular company. Under the law, sellers may not require, as a condition of sale, that title insurance be purchased by the buyer from any particular title company. A violation would make the seller liable to you in an amount equal to three times all charges made for the title insurance.

B. CHOICES OPEN TO THE BUYER AND OTHER POINTS TO REMEMBER. Because the various parties to the settlement transaction have different interests, there will be many steps in the process of buying a home which call for caution on your part. As a home buyer, you have a number of choices open to you concerning settlement costs and services. Some points to keep in mind are:

1. UNDERSTAND THE ROLE OF THE REAL ESTATE BROKER. Although the real estate agent or broker usually provides helpful advice to you on many aspects of home buying and may in some areas supervise the settlement, he normally serves as agent of the seller. While the real estate licensing laws of most States require that the broker treat both buyer and seller fairly, you should not expect the broker to represent your interests to the exclusion of those of the seller.

The broker's basic objectives are to obtain a signed contract of sale which properly expresses the agreement of the parties and to complete the sale and earn a commission or fee. Before you sign, make sure that the sales contract correctly expresses your agreement with the seller on such important details as method of paying the sales price of the home, the time set for your move-in, and the status of fixtures and other personal property in the home.

A broker may recommend that you deal with a particular lender, title company, attorney, or provider of settlement services. Although this recommendation may be based on the broker's up-to-date knowledge of rates and quality of service, you should feel completely free to consider alternatives, compare rates and fees, and make your own decision on these matters.

It is up to you to review the documents carefully. Although the broker may offer helpful advice, keep in mind that you are the one who is spending the money to buy a home and are entitled to a full understanding of the costs. The broker's principal interest at settlement is to get the transaction closed and his fee or commission disbursed.

2. SETTLEMENT ATTORNEYS, ESCROW AND CLOSING AGENTS. In some parts of the country, settlements are often conducted by attorneys who specialize in real estate transactions. In other parts of the country, the settlement may be conducted by an escrow or closing agent or by the lender or broker. Their primary concern is orderly completion of all the details called for in the sales contract and in the mortgage commitment.

Because mortgage lenders, unlike borrowers, go through settlement often, they often will not be present at the settlement, preferring to spell out in detail in a letter of instruction to the person conducting the closing that which they expect to be done before loan funds can be released.

You, the buyer, will not have a letter of instructions. You will be asked at settlement to make a number of decisions in areas with which you may have had little previous experience.

Before settlement, you should ask the broker, the settlement attorney, or an attorney retained by you what questions will probably come up. Write them down so that you may have time to think about decisions that are important to you.

Settlement attorneys do not mind answering your questions--that is a part of their job--but at the same time they may not invite questions. If you have doubts, ask questions. Don't let anyone rush you. There are likely to be lengthy documents to sign at settlement. If you or your attorney asks, you can usually get copies of the forms in advance.

3. LEGAL REPRESENTATION. If you feel unfamiliar or unsure with real estate settlements, and many people do, consider hiring your own attorney to represent you. If you hire an attorney, be certain that there is a clear understanding in advance about what services he is to perform and what his fee will be for those services. Some will quote a flat fee, others an hourly rate or one based on a percentage of the sales price. The important point is that you should know in advance how much you should expect to pay for his services. If you do not know an attorney who is well versed in real estate transactions, many local bar associations may be able to refer you to one who is.

4. DISCUSS WITH LENDERS THEIR REQUIREMENTS FOR SETTLEMENT SERVICES. The lender's legitimate business interest is in making a loan on terms which will provide a good yield with little risk. In selecting a lending institution, ask about requirements for property surveys, appraisals, escrows for taxes and insurance, and other settlement services. You may compare these requirements with those of other lenders.

Some lenders will give you the discretion to shop among different providers of settlement services. But, most lenders deal regularly with certain title companies, attorneys, appraisers, surveyors or others in whom they have confidence, and usually want to arrange for provision of all settlement services through these parties as a convenience to the buyer and lender. If you wish to bargain directly to reduce rates for settlement services, discuss this with various lenders.

Remember to compare also the mortgage interest rates and other mortgage terms quoted by different lenders. A lender may gain through higher mortgage interest over the repayment term what it gives up at the "front end" in reducing requirements for loan origination fees, discount points and other one-time charges which must be paid in cash at settlement. Other features of available loans should also be compared as you shop.

Feel free to select a lender other than the one recommended by the broker or seller. It is entirely possible that you may find financing which is more advantageous to you.

5. TITLE INSURANCE REQUIRED BY THE LENDER PROTECTS THE LENDERS. YOU MAY BUY A SEPARATE OWNER'S TITLE INSURANCE POLICY FOR YOUR OWN PROTECTION. Title insurance is often required to protect the lender against loss if a flaw in title is not found by the title search made when a home is purchased. The lender's title insurance policy will be paid for by you or by the seller according to local custom or the sales contract.

You and the lender have different interests in the property you are buying, and there are many kinds of title defects that can trouble you without creating problems for the lender. You may buy a separate owner's title insurance policy for your own protection in areas where this policy is not furnished by the seller as a matter of custom.

6. TRY TO MINIMIZE THE PERFORMANCE AND COST OF REPETITIVE OR EXCESSIVE SETTLEMENT REQUIREMENTS. Some settlement costs are beyond your control, such as government transfer charges. Other items may be negotiable, however, such as certain services which the lender requires but which you pay for.

a. TITLE SEARCH. There may be no need for a full historical title search "back to the year one" each time title to a home is transferred. If you are buying a home which had recently changed hands, inquire at title companies about a "reissue

rate." If the policy of the previous owner is available, take it to a title insurer before settlement. It may help you obtain a "reissue rate." Generally this rate, when permitted by State law or regulations, allows a reduction of the usual charge for a new policy if the previous policy was issued by the same title insurer or by another reputable company within a recent period.

Title search requirements are sometimes set by agencies which insure or guarantee the loan, or by investors who purchase mortgages originated by other lending institutions. The lender you deal with may not have discretion on eliminating or reducing these requirements.

b. SURVEY. The survey of the property may be simplified and the cost reduced if a full professional survey was performed recently. A new survey may not be needed to show that no recent changes have occurred which affect the validity of the last survey. A surveyor may be able to avoid the cost of a repetitive complete survey of the property if he has access to a recent survey which he can "update." Here again, the requirements of investors who buy loans originated by your lender may limit the lender's discretion to negotiate this point.

c. SETTLEMENT AGENT. Settlement practices vary from locality to locality, and even within the same county or city. In various areas settlements are conducted by the lending institutions, title insurance companies, escrow companies, real estate brokers, and attorneys for the buyer or seller. By investigating and comparing practices and rates, you may find that the first suggested settlement agent may not be the least expensive. You might save money by taking the initiative in arranging for settlement and selecting the firm and location which best meets your needs.

d. ESCROWS. The Real Estate Settlement Procedures Act of 1974 has placed limits on the amount of money which the lender can require you to place in escrow at settlement for later payment of property taxes and insurance.

Know your rights under this new Section 10 provision of the Act, as explained in the next Chapter.

ESCROW ACCOUNTS

Item 23 on the enclosed sample settlement statement form covers payments your lender may require you to make to an "escrow," "reserve," or "impound" account for insurance premiums, real estate taxes, and unpaid assessments.

Many lenders require that each monthly payment on the mortgage include amounts for taxes, and hazard insurance. When applicable, lenders will also collect mortgage insurance premiums and assessments payable to homeowner and other associations as well as to special assessment districts. These funds are set aside each month in escrow accounts and are accumulated to pay the taxes and other bills when they are due.

By law, the amount you pay into an escrow at settlement may not exceed your share of taxes and insurance accrued prior to settlement, plus 1/12th of the estimated amount which will come due for taxes and insurance in the 12-month period beginning at settlement. If taxes or insurance costs go up periodically over the life of your mortgage, the lender will need to collect more money for the escrow accounts to cover these increased costs, resulting in a larger monthly housing payment for you. Should these costs decline periodically, the lender should reduce the monthly escrow collection accordingly.

The escrow service provided by your lender is designed to meet ongoing expenses of homeownership. By spreading payments over the year it eliminates the prospect of being faced with large annual bills, perhaps at an inopportune time. On the other hand, you may want to manage your own payment of taxes and/or insurance, instead of paying into an escrow held by the lender. Discuss this point when shopping among lenders. Be aware, however, that certain escrow accounts are required by Federal regulation, and in some States by laws affecting State-chartered savings and loan associations.

PREVIOUS SELLING PRICE DISCLOSURE

The lender is required by law before making a commitment to finance a mortgage on a house, which was completed more than 12 months prior to settlement, to confirm that the seller or his agent has disclosed in writing to the buyer the following information:

- (1) The name and address of the present owner;
- (2) The date the property was acquired by the present owner (the year only of acquisition need be given if the property was acquired more than two years previously); and
- (3) If the seller has not owned the property for at least two years prior to the date of your loan application and has not used the property as a place of residence, the date and purchase price of the last "arm's length transfer" of the property, a list of subsequent improvements other than maintenance, and the cost of the improvements.

The purpose of this requirement is to inform you whether the house is being sold by an owner-occupant or by someone who has acquired the house and prepared it for resale. Many investors make a livelihood by investing in existing housing, making repairs and improvements, and reselling at a fair profit. However, abuses have occurred in which only superficial repairs have been made and homes have been sold at prices greatly in excess of their values. As a buyer, your knowledge of the previous selling price may help you determine the present value of the property.

The lender's obligation is considered met if he receives a copy of the written statement from the seller to you giving the information described above. At that time, the lender may make the mortgage loan commitment.

To back up your right to full disclosure concerning existing property, any person (or persons) who knowingly and willingly provides false information or fails to comply with disclosure requirements may be subject to criminal penalties of fine and imprisonment, and civil damages.

JURISDICTION OF COURTS

If you have suffered damages through violations of the Real Estate Settlement Procedures Act of 1974 as described in the preceding pages, action may be brought in the United States District Court for the district in which the property involved is located, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. You may also have rights under other Federal or State laws.

TRUTH IN LENDING DISCLOSURE

At the time of advance disclosure, you will receive a Truth in Lending statement as part of the standard settlement cost disclosure form. This Truth in Lending information will also appear on the standard settlement statement given to you upon completion of the settlement. The Truth in Lending statement discloses the Annual Percentage Rate ("APR") which you will pay on your mortgage loan. This rate may be higher than the contract interest rate quoted on your mortgage. This is because the contract rate includes only interest, but the APR expresses the total finance charge including certain credit costs besides interest on the loan.

The Truth in Lending statement will also disclose any additional charges for "prepayment" should you pay off the balance of the mortgage in full before it is due.

(FR Doc. 75-13261 Filed 5-19-75; 8:45 am)

Interpretation Rules Implementing from Home Purchase Credit

Prentice Hall - Federal Taxes

NEWS RELEASE

(1975,312)IR-1486. CREDITS AGAINST TAX--Credit for purchase of new principal residence. IRS issues questions and answers to clarify its position regarding tax credit for purchase of new principal residence. Ref: 195918; Sec. 44.

Questions and answers on the recently enacted tax credit for the purchase of a new principal residence were issued today (5-15-75) by the Internal Revenue Service.

Under the Tax Reduction Act of 1975, the credit is five percent of the adjusted basis of a new principal residence constructed or acquired and occupied by the taxpayer within specified periods. The maximum credit is \$2,000 (\$1,000 in the case of a married taxpayer filing a separate return) and may not exceed the taxpayer's tax liability.

On April 9, 1975, the IRS published Technical Information Release 1360 (1955,194) providing guidelines interpreting the new provision. However, many questions have since been asked and pending the issuance of regulations the Service is issuing the attached questions and answers to clarify its position.

Q. I live in an apartment and am buying a residence for the first time. My new residence will qualify for the housing credit. How do I compute the credit?

A. You are entitled to a credit equal to 5 percent of the adjusted basis (generally your cost of acquisition) of your new principal residence up to a maximum credit of \$2,000.

Q. Can the credit be greater than my tax liability?

A. No, the credit cannot exceed your tax liability for the year in which the credit is taken and cannot be carried back or carried over to a subsequent year.

Q. I have purchased a condominium for \$40,000 (including closing costs) and received a new car with a fair market value of \$3,000 as a "bonus" for purchasing the condominium. How much of a credit am I entitled to?

A. Assuming the residence otherwise qualifies, you are entitled to a credit of \$1,850 based on an adjusted basis of \$37,000 since the cost of the residence must be reduced by the fair market value of the car you received. You cannot claim this credit, however, to the extent it exceeds your tax liability.

Q. I have just sold for \$40,000 an old residence that cost me \$25,000 and am reinvesting the proceeds in a new principal residence qualifying for the credit for a total cost (including closing costs) of \$50,000. Does the sale of my old residence affect the amount of the credit I am entitled to?

A. Yes. If the gain on the sale of your old residence was unrecognized as gain under the law, the cost of your new residence is reduced in determining the adjusted basis on which the credit is calculated. Therefore, the adjusted basis is \$35,000 (\$50,000 minus the unrecognized gain of \$15,000) and the credit allowed is \$1,750.

Q. My wife and I are purchasing a house that qualifies for the housing credit. We are taking title as tenants by the entirety. What is the maximum credit we can claim?

A. If you file a joint return you are entitled to a credit on your joint return equal to 5 percent of the adjusted basis of your new principal residence up to a maximum credit of \$2,000. If you file separately each of you may take one-half of the credit on your separate return up to a maximum credit of \$1,000.

Q. My sister and I are purchasing as joint tenants, with right of survivorship, a house which otherwise qualifies, and are making unequal contributions. What is the maximum credit we can claim?

A. You are entitled to a combined credit equal to 5 percent of the adjusted basis of your new principal residence for you and your sister up to \$2,000. That amount is allocated between the two of you in proportion to your ownership interests. Since you are joint tenants, with right of survivorship, you are each entitled to one-half of the combined credit.

Q. I have just purchased a completely renovated townhouse; does it qualify?

A. No, townhouses and condominiums or cooperative apartments can qualify, but they must be new. A renovated building does not qualify as a new principal residence regardless of the extent of the renovation.

Q. Can a houseboat qualify as a new principal residence?

A. Yes, provided it is, in fact, used as your new principal residence.

Q. I am purchasing stock as a tenant-shareholder in a cooperative housing development; can such a residence qualify for the credit?

A. Yes, the credit can apply to a tenant-shareholder in a cooperative housing project provided he uses as his principal residence the house or apartment he is entitled as a shareholder to occupy.

Q. I plan to purchase a townhouse and rent it out; does it qualify?

A. No, the property purchased must be your new principal residence (generally the place where you live most of the year).

Q. I have been living in a house for the last two months as a renter and plan to buy the house under a written option in my original lease agreement. The house was new when I moved in. Can the house qualify?

A. Yes, the house can qualify. It would not qualify if you were not the original occupant.

Q. Who can I purchase from? Are there any limitations?

A. You cannot claim the credit for a purchase from your spouse, ancestors or lineal descendants or from a related corporation, partnership or trust.

Q. Do only existing residences qualify for the credit?

A. Yes, only residences on which construction was begun before March 26, 1975.

Q. What is the test for determining when construction has commenced?

A. For this purpose, construction is considered to commence when actual physical work of a significant amount has occurred on the building site of the residence.

Q. Do substantial improvements such as roads, sidewalks, sewers, and utilities constitute commencement of construction?

A. No, such improvements are not considered to constitute actual physical work of a significant amount on the building site of the residence. On the other hand, digging of the footings, excavation of the building site for the foundation or similar work constitutes commencement of construction.

Q. What do you mean by "similar work"?

A. Similar work includes driving pilings for the foundation and pouring of the floor slabs. It does not include work relating to preparation of the land, such as clearing and grading, regardless of the expense involved.

Q. By what date must I acquire and occupy the new residence?

A. The residence must be acquired and occupied after March 12, 1975, and before January 1, 1977. Unless you build it yourself you must have entered into a binding contract for its purchase before January 1, 1976.

Q. I have a binding contract for the purchase of a house otherwise qualifying for the credit that was entered into prior to March 13, 1975. Can I receive the credit?

A. Yes, if you acquire and occupy the house as your principal residence before January 1, 1977. You have not acquired the house until legal title is conveyed to you at settlement, or you have possession of it pursuant to a binding purchase contract under which you make periodic payments until you become entitled under the contract to demand conveyance of title.

Q. I have heard that I cannot claim the housing credit unless I have a certificate from the seller. Please explain.

A. You are correct. Unless you build your own house, you must attach to your return, with new IRS Form 5405 on which the credit is computed, a certification by

the seller that the purchase price is the lowest price at which the residence was ever offered for sale.

Q. What do you mean by an offer to sell?

A. An offer to sell is limited to a listing, a written private offer or an offer by means of advertisement to sell a specified residence at a specified purchase price.

Q. With regard to an offer to sell, what do you mean by an advertisement?

A. An advertisement includes an offer to sell published by billboards, flyers, brochures, price lists, mailings, newspapers, periodicals, radio or television.

Q. In many housing developments purchasers are offered a choice of model homes. Under these circumstances how do you determine whether a specified residence has been offered for sale at a specified purchase price?

A. In the case of a housing development, an offer to sell a specified residence at a specified purchase price includes an offer to sell a house of substantially the same design or model as that purchased by the taxpayer at a specified base price on the same lot as that on which the taxpayer's new principal residence was constructed. It does not include an offer to sell the same model home on a different lot.

Q. I have added landscaping, garages, and dishwashers to houses I have previously offered for sale. Can I increase the price to cover the cost of these items and still have the houses qualify?

A. Yes, you may increase your lowest previous price by the fair market value of these items on the date of execution of the purchase contract. However, if these items were not a part of the residence on the date of execution of the purchase contract, you must give the purchaser the option as to whether to include these items.

Q. I lowered the price of homes I sold to "\$30,000 for November only". Will such offer be treated as a prior offer in determining the lowest price?

A. Yes.

Q. I have not raised my selling price but previously I paid the mortgage points. Now the purchaser is paying the points. Is the residence sold at the lowest price?

A. No, since both the purchaser's actual costs and your net proceeds have increased, a residence sold under such terms would not qualify.

Q. Will a different price quoted that merely reflects what I must pay to obtain financing for a buyer wanting to make a minimal down payment as opposed to a buyer putting down a substantial amount disqualify the unit?

A. No, provided that the price otherwise qualifies as the lowest price.

Q. Will a different price that merely reflects inflation and my costs in holding a residence in inventory since the prior offer disqualify the unit?

A. Yes, this is an increase in purchase price.

Q. If I am constructing my own residence do I still qualify for the credit?

A. Yes, provided that construction commenced prior to March 26, 1975. In the case of self-construction, however, only the portion of the basis of the property allocable to construction after March 12, 1975, and before January 1, 1977, is taken into consideration in determining the amount of the credit allowable.

Q. If I sell my house after receiving the credit must I pay back the credit?

A. Not necessarily. If you sell the residence within 36 months after acquisition (after occupancy in the case of self-construction) you are liable for recapture of the credits in the year in which the replacement period terminates unless you reinvest all the proceeds (i.e., the adjusted sales price of your old residence) in another new principal residence within 18 months after the sale (or commence construction of a new principal residence within 18 months and occupy the residence within 2 years). If, however, less than the adjusted sales price of your old residence is reinvested then there will be a partial recapture of the credit.

Q. If the certification falsely states that construction commenced before March 26, 1975, can I still qualify for the credit?

A. No, in such a case the residence does not qualify and no credit can be allowed.

Q. If the certification is false as to the lowest price ever offered for sale can I still receive the credit?

A. Yes, provided the residence otherwise qualifies and you did not participate in the false certification or know that it was false.

Q. I am a seller of new residences, I purchased a number of them in a bulk sale. Since the total price I paid was allocated to the individual houses, am I bound by these allocated prices in determining the lowest price at which such residences were ever offered for sale?

A. No, a seller is not bound by prices at which residences were previously offered as part of a bulk sale.

Q. I have purchased a number of new residences at a foreclosure sale (or received deeds in lieu of foreclosure with respect to such residences). Prior to the foreclosure sale each of these residences had been offered for sale by the foreclosure seller at specified prices. Am I bound by the prices I paid or by the offers made by the foreclosure seller?

A. You are not bound by prices paid to the foreclosure seller since these prices do not represent voluntary offers. With regard to offers made by the foreclosure seller if the foreclosure seller and foreclosure purchaser are unrelated parties (for this purpose business entities will not be considered as related unless 50 percent or more of the stock is owned by the same or related shareholders with ownership to be determined by applying the attribution rules of section 318), the foreclosure purchaser must request and try to obtain from the foreclosure seller a certificate specifying the date of commencement of construction and the lowest price at which each of the foreclosed residences was offered for sale by such seller. Upon a subsequent sale of a particular residence by the

foreclosure purchaser, he must certify that the price is the lowest price the particular residence was ever offered for sale based on the certification of the foreclosure seller, a copy of which must be attached to the certification of the foreclosure purchaser. If the foreclosure seller refuses to so certify, the foreclosure purchaser must make a reasonable effort to determine the date construction commenced and the lowest price at which the residences were ever offered for sale by the foreclosure seller and certify based on this effort. For this purpose, reasonable effort includes the effort to locate and examine advertising and listings published or used by the foreclosure seller.

Q. If the certification of the foreclosure seller is false, is he liable for the civil penalties and criminal fines and/or imprisonment prescribed by the Act? Is the foreclosure purchaser?

A. The foreclosure seller is not liable because no certification is required of him by the Act. The foreclosure purchaser is liable upon his subsequent certification based on the certification of the foreclosure seller only if he knew it was false. (News Release, IR-1486, 5-15-75.)

STATE OF MICHIGAN

COURT OF APPEALS DIGEST

(MICHIGAN SUPREME COURT CASES INCLUDED)

BENESH v TOWNSHIP OF FRENCHTOWN (Aff'd) February 12, 1975 19552

ZONING - REZONING - PARCEL - NOTICE - POSTING - NECESSITY It is only when an individual parcel of land is to be rezoned that the parcel must be posted. It is not necessary to post each individual parcel when an entire revision of the zoning ordinance is to be reenacted.

STATUTE: MCLA 125.284

ZONING - REZONING - NOTICE - SUFFICIENCY The legislature attempted to simplify the publication required to give notice of a proposed zoning amendment and did not require the entire ordinance to be published. In the present case the publication gave fair to adequate notice to the public that a new ordinance affecting the entire township was to be discussed. The notice was sufficient.

STATUTE: MCLA 125.284

MUNICIPALITIES - ORDINANCE - REZONING - NOTICE - MAILING While the township ordinance requires that notices of a public hearing regarding a zoning amendment be mailed to owners of each parcel of land "any part of which is within 300 feet of the perimeter of the parcel to be affected by the proposed amendment," the ordinance speaks of "parcel" in the singular and the ordinance is thus applicable only when an individual parcel is being rezoned and not when a township is rezoning the entire township.

STATUTE: FRENCHTOWN ORDINANCE NO. 14 Sec. 17.1.

PANEL: R. B. BURNS, Bronson, Cavanagh

FALKNER v FALKNER (Vac'd & Rem'd) February 12, 1975

PROPERTY - COTENANTS - ACCOUNTING - CREDIT - EXPENDITURES - MAINTENANCE Where a cotenant must account for rents, profits or the value of occupancy and use, he is entitled to a credit with respect to reasonable expenditures incurred incident to protection or maintenance of the property. In the present case, a remand is necessary as the trial judge permitted plaintiff to subtract only one-half of his preparatory expenses in connection with the crop while defendant was not required to contribute.

PANEL: T. M. Burns, Quinn, O'HARA

LINDHOUT v INGERSOLL (Aff'd) February 11, 1975.

LICENSES - BUILDER - UNLICENSED - RECOVERY FOR WORK PERFORMED Where defendant was an unlicensed builder at the time he did remodeling work on plaintiffs' home, he could not recover for work done on the project whether he brought an independent action or the claim was made in the form of a counterclaim or setoff. In either situation, defendant contractor was trying to recover for his own performance.

STATUTE: MCLA 338.1516.

TRIAL COURT'S CONDUCT - WITNESSES - EXAMINATION Where a trial judge, sitting as trier of fact, engages in extensive questioning of witness, this alone does not constitute error.

TRIAL COURT'S REMARKS - BENCH TRIAL - GREATER FREEDOM In a non-jury case the trial judge is allowed more freedom in his comments.

DAMAGES - HOME REMODELING - ORIGINAL BLUEPRINT The trial judge did not err in awarding damages based on the original blueprint where the homeowners did not agree to substantial changes from that plan and such deviations as did take place resulted from the contractor's poor plans and subsequent malperformance.

CONTRACTS - BUILDING - SUBSTANTIAL NON-COMPLIANCE Defendant did not substantially perform a building contract where the second floor of the house had a 9 inch height deficiency, an adult could not use the upstairs bathroom and the defect could only be cured by installation of a dormer.

TRIAL - REFEREE - COMPULSORY - AVAILABILITY Compulsory references may be had in actions at law only where specific statutory authority exists therefor.

APPEAL AND ERROR - HARMLESS - TRIAL - REFEREE - APPOINTMENT Though it otherwise would have been reversible error for the trial judge to appoint over objection a referee to inspect a home which was the subject of a repair contract and to report on its condition, the unauthorized reference is rendered harmless as the trial judge personally visited the premises, made an inspection of the alleged defects and ample competent evidence existed to support the trial court's conclusion as to the alleged defects in the premises.

TRIAL - COSTS - ATTORNEY FEES - PROPRIETY As a general rule, courts have refused to allow attorneys fees to be taxed as costs unless authorized by statute or court rule.

TRIAL - COSTS - ATTORNEY FEES - DENIED Where there were very few unwarranted denials, if any, by a defendant, and there was no evidence of any bad faith, the trial judge properly refused to award plaintiffs' attorney's fees.

STATUTE: GCR 1963, 111.6

PANEL: T. M. Burns, Quinn, O'HARA

KAHN-REISS, INC v DETROIT & NORTHERN SAVINGS & LOAN ASSOCIATION (Aff'd February 24, 1975 17255.

PROPERTY - EASEMENT - OPTION AGREEMENT - DEED - MERGER An easement contained in an option agreement which was to be effective "after delivery of a warranty deed" was not merged in the deed upon its delivery and thus was not extinguished by it.

PROPERTY - EASEMENT - DEFINITENESS NECESSITY In order to be enforceable, plaintiff must prove that the easement contained in the option agreement was definite enough by way of description of the right of passage, the shape and dimensions of the property and passage involved, and exactly where the passage was located with reference to specific lot lines and permanent structures.

PROPERTY - EASEMENT - DEFINITENESS PROOF If the description of the easement in the option agreement is insufficient the Court may examine other extrinsic evidence to determine the specific property which was allegedly subject to the parties' transaction. Such factors as the circumstances of possession and ownership, the relation of the parties and their relationship to the property, as well as the negotiations involved, may be examined to determine the description of the interest at issue.

PROPERTY - EASEMENT - DEFINITENESS The trial court's finding that the easement reserved in the option agreement was too uncertain and indefinite to be enforceable was not clearly erroneous. The drafter of the agreement admitted he used ambiguous language and drafted the document without benefit of all the legal descriptions involved; the location of the lots was erroneously described; testimony as to the purpose of the easement was conflicting; and there was no specific recital, in either the testimony or the option agreement, of the specific shape or dimensions of the claimed passageway, nor any reference to lot lines or other specific structures.

APPEAL AND ERROR - ISSUE - FIRST RAISED ON APPEAL Generally, an issue not raised below is precluded from appellate review. However, this Court may review a claim if the question is one of law and all of the facts necessary for its resolution have been presented.

PROPERTY - EASEMENT - IMPLIED - BURDEN OF PROOF One asserting the reservation of an implied easement has the burden of proving that the reservation was clearly the manifest intention of the parties by a preponderance of the evidence.

PROPERTY - EASEMENT - IMPLIED - REQUIREMENTS An easement by implication arises out of strict necessity rather than "mere convenience," and the presence of an alternate route will persuade a court to find an absence of strict necessity.

PROPERTY - EASEMENT - IMPLIED - NECESSITY Plaintiff has failed to prove by a preponderance of the evidence the strict necessity required for a finding of an

implied easement. Plaintiff's claim is based on nothing more than mere convenience. A driveway seven feet wide provides sufficient access to the lots which are the subject of plaintiff's concern and precludes a finding of an easement by implication.

APPEAL AND ERROR - EQUITY - REVIEW - SCOPE Cases involving equity jurisdiction are reviewed de novo, but ordinarily the Court will not reverse the lower court where there is evidence and testimony to support the finding of the lower court unless justice demands, or the evidence clearly preponderates the other way. Primarily, this is because the trial court is in a better position to determine the credibility of witnesses by observing their conduct and demeanor in court, an opportunity which the reviewing court on appeal obviously does not have.

PROPERTY - BOUNDARIES - TRIAL COURT - REVIEW - STANDARD Where the finding of the trial court in a boundary and survey dispute is clearly contrary to the overwhelming weight of the evidence, the finding will be reversed.

PROPERTY - MONUMENTS - DISAPPEARANCE - LOT LINES - VALIDITY Practical and long-established lot lines do not necessarily prevail over new survey lines where original monuments of title have disappeared. Such lines are merely part of the evidence which the trier of fact should consider.

PROPERTY - SURVEYS - CONFLICT Having examined the record, the Court is convinced that the evidence supports the trial court's determination that plaintiff's survey is the one to be followed in determining the parties' respective lot lines. Plaintiff's survey was more accurate than that offered by defendant, it was conducted by a registered land surveyor while defendant's was not, and it was closed upon the ground by actual ground measurement. Finally, plaintiff's survey resulted in a de minimis seven inch encroachment upon defendant's lot.

PANEL: ALLEN, Gillis, McGregor

MICHAELS v VILLAGE OF FRANKLIN (Aff'd) February 13, 1975.

ZONING - ORDINANCE - REASONABLENESS - PROFITABILITY A defect does not appear on the face of a zoning ordinance merely because it classified certain property for use as single residences only, nor is an ordinance arbitrary or unreasonable merely because the land can be more profitably developed if zoned commercial.

APPEAL AND ERROR - EQUITY - REVIEW - STANDARD The findings of a trial judge in an equity case are not ordinarily disturbed unless after an examination of the entire record, the appellate court reaches the conclusion that it would have arrived at a different result had it been in the position of the trial judge.

ZONING - ORDINANCE - REASONABLENESS If, after allowing for the fact that some of the area in question could not be used for home sites because of the admitted flood plain, the necessary utilities and road could be built and homes still sold at a profit, then the zoning would not amount to so arbitrary a classification as to prevent plaintiff from using the land for the only purpose for which it was zoned.

ZONING - PROPERTY VALUES - DEPRESSION - IMPERMISSIBLE PURPOSE Where the Village Counsel itself had reservations about the practicality of developing the property for single residential purposes and it also indicated a forthright intention to work toward a long range master plan which designated the property as a public

park area, zoning may not be used as a method to depress property values so that at a future date property may be acquired for public purpose.

PANEL: Danhof, Bashara, ALLEN

MICHIGAN STATE HIGHWAY COMMISSION v COUSINEAU GRAVEL, INC. (Aff'd as modified)
February 11, 1975 18295

TRIAL - COSTS - COURT - REDUCTION The trial judge did not abuse his discretion in disallowing or reducing certain costs and expenses which respondent property owner sought to recover as incident to a condemnation proceeding.

STATUTE: MCLA 213.383: MCLA 600.2164.

CONDEMNATION - TRIAL - COSTS - SOIL TEST In a condemnation action the trial court erred by disallowing expenses incurred by the property owner for testing of the soil where the only basis for the judge's decision was the fact that the state had previously made a similar study of the same property which was unchallenged as to accuracy and because the respondent's report was not introduced in evidence. The fact that the independent study came to the same conclusions as the earlier state survey does not per se preclude a property owner from recovering the costs incurred, particularly when the private tests cost less than the comparable state survey.

STATUTE: MCLA 213.383

CONDEMNATION - TRIAL - COSTS - AERIAL SURVEY In a condemnation proceeding the trial judge should have allowed a property owner to recover the costs of an aerial survey of the involved property. The state itself uses topographical maps made from aerial surveys by the same survey company. Moreover, in an adversary proceeding, parties are not bound to rely on their adversaries to furnish them with the evidence to support their claims. The defendant was not obligated to limit its search for evidence to support its claim to such evidence as the plaintiff was willing to furnish.

STATUTE: MCLA 213.383

NEBOSHONE ASSOCIATION, INC. v STATE TAX COMMISSION (Rev'd & Rem'd) February 10, 1975 17717-17728.

TAXATION - PROPERTY ASSESSMENT - FRAUDULENT - TEST In determining the ad valorem property tax, a valuation which is of such proportion as to contradict the judgment of all reasonable men, which shocks their minds, is presumptively fraudulent. The courts also recognize that a valuation at odds with all of the evidence of value is constructive fraud or an error of law.

STATUTE: Const 1963, Art 9, Sec. 3; Const 1963, Art 6, Sec. 28.

RIVERS - NAVIGABLE - PUBLIC FISHING RIGHTS As the river running through plaintiff's land has been determined to be a navigable river, plaintiff, although owning the land to the thread or center of the river and the entire soil under the water as owner of both sides does not, as such riparian owner, own the water or the fish in the water and the general public who have access to the river without trespassing on the upland of the riparian owner may fish in the river.

TAXATION - PROPERTY - CORPORATIONS - SAME AS INDIVIDUALS The property of corporations is subject to taxation the same as that of individuals, and generally speaking, is taxed under the same principles as govern the taxation of the property of individuals.

TAXATION - PROPERTY ASSESSMENT - VALIDITY - WITNESS - QUALIFICATIONS A witness to testify as to value need not qualify as an expert belonging to any recognized association of the fraternity of appraisers, any person who has the testamentary qualification of knowledge of the question about which he attempts to testify may testify as to the value of the land.

TAXATION - PROPERTY ASSESSMENT - DEPRECIATION SCHEDULE - CHALLENGE Where plaintiffs were dissatisfied with the appraisal of their property because of the use of a claimed erroneous depreciation schedule in making the assessment, they should have presented another appraisal of the personal property showing what they deemed a proper depreciation schedule should be in appraising the personal property.

TAXATION - PROPERTY ASSESSMENT - EQUALIZATION Unequal assessments must be reduced to the average level assessment of all property, real and personal, in the taxing district. Separation of real and personal property for equalization purposes does not change that rule, nor does MCLA 211.34(1). When the State Tax Commission has not followed this rule, a remand is necessary in order that it may perform this required function.

STATUTE: MCLA 211.34(1)

TAXATION - COMMISSION - REVIEW - STANDARD The findings of the State Tax Commission, in order to be valid, must be supported by competent evidence on the record.

TAXATION - COMMISSION - TRIBUNAL - JURISDICTION - REMAND This Court recognizes that the new Tax Tribunal Act transferred jurisdiction over appeals from the State Tax Commission to the Tax Tribunal. Accordingly, as remand is necessary from an appeal to the State Tax Commission, this Court will remand such to the Tax Tribunal.

STATUTE: MCLA 205.701 et seq.

APPEAL AND ERROR - TAX COMMISSION - RECORD - CONSIDERATION LIMITED TO This Court in appeals from the State Tax Commission is governed by the record and will not allow an attempt to supply what may be designated as needed evidence in an affidavit. When on such a record, the Commission's findings are not supported by competent evidence, this Court must remand the matter to the Tax Tribunal.

PANEL: HOLBROOK, SR: T. M. Burns, Smith

REITER v KUHLMAN (Aff'd) February 24, 1975 18345

BUILDING CONTRACT FUND ACT - PURPOSE The Building Contract Fund Act was enacted to provide more effective remedy for private project subcontractors against their principal contractors.

STATUTE: MCLA 570.151 et seq.

CONTRACTS - CONSTRUCTION - SUBCONTRACTOR - BUILDING FUND - TRUST Where the deceased collected a sum of money as subcontractor on an unfinished building contract in

which plaintiff was a subcontractor under him, the deceased held this amount in trust for the benefit of plaintiff and other subcontractors, laborers or materialmen.

STATUTES - BUILDING CONTRACT FUND ACT - "SUBCONTRACTOR" When defendant, whether as administrator of deceased's estate or in his individual capacity, collected a further sum in payment for completing the contract, he thereby received this amount as a "subcontractor" within the meaning of the Building Contract Fund Act.

WILLS AND ESTATES - CONSTRUCTION - SUBCONTRACTOR - BUILDING FUND Funds for building construction purposes, received by a subcontractor as a trustee under the Act do not become part of his estate when he dies nor do they become a part of his estate because such funds are paid to the administrator of his estate.

SUMMARY JUDGMENT - DECEDENT'S ESTATE - SUBCONTRACTOR - BUILDING FUND Summary judgment was properly granted for plaintiff in this case because it is undisputed that defendant collected money which included charges for plaintiff's work and he placed these funds in the estate of his father before the payment by him of monies due subcontractor-plaintiff.

PANEL: Quinn, Bashara, MAHER

SIEKIEWICZ v LEONARD MORTGAGE CO. (Aff'd) February 25, 1975 20215

USURY - INTEREST - RECOVERY - VOLUNTARILY PAID A borrower may not recover usurious interest if it has already been voluntarily paid.

STATUTES: MCLA 438.32

SUMMARY JUDGMENT - ISSUE OF MATERIAL FACT - EVIDENCE BEYOND PLEADINGS On motion for summary judgment, in order to determine if there is a genuine issue as to any material fact, a court must consider all pleadings, depositions, affidavits, admissions and documentary evidence.

STATUTE: GCR 1963, 117.2(3).

SUMMARY JUDGMENT - FAILURE TO STATE A DEFENSE - PLEADINGS ONLY A motion for summary judgment based upon GCR 1963, 117.2(1), failure to state a claim, or GCR 1963, 117.2(2), failure to state a defense, is to be tested by the pleadings alone.

STATUTE: GCR 1963, 117.2(1); GCR 1963 117.2(2).

PANEL: R. B. Burns, Bronson, CAVANAGH

KETTUNEN v TORREANO (Aff'd) March 13, 1975 20953

PROPERTY - ADVERSE POSSESSION - REQUIREMENTS Where possession is up to a fixed boundary under a mistake as to the true line and the intention of the parties is to hold only to the true line, such possession is not hostile, and will not ripen into title. Where the element of hostility is absent, there can be no adverse title acquired. The possession must be actual, visible, open, notorious, exclusive, continuous, uninterrupted for the statutory period, hostile, and under cover of claim of right.

PANEL: Bronson, Cavanagh, Walsh (P.C.)

CITY OF LANSING v JURY ROWE REALTY (Aff'd) March 10, 1975

CONDEMNATION - EVIDENCE RULES - LIBERATION Strict rules as to the admissibility of testimony are not and should not be enforced in condemnation cases. A party whose property is being taken by eminent domain is entitled to the utmost protection of the courts since the exercise of the power of domain is a drastic one.

CONDEMNATION - MOTION TO REVIEW - ADDITIONAL EVIDENCE Trial courts liberally allow property owners in cases in which their land is being condemned for an urban renewal project to present evidence relevant to the issue of necessity in determining fraud or abuse of discretion; therefore, the trial court did not err when it admitted new evidence at a hearing on a property owner's motion to review the necessity for taking his property.

APPEAL AND ERROR - FINDINGS OF FACT - CLEARLY ERRONEOUS Findings of fact will not be set aside by appellate courts unless found to be clearly erroneous.

STATUTE: GCR 1963, 517

APPEAL AND ERROR - CONSTITUTIONAL ISSUES - OTHER GROUNDS DISPOSITIVE Appellate courts will not reach constitutional questions when the case under consideration can be disposed of on other grounds.

PANEL: T. M. BURNS, Holbrook, Sr., Kelly

CITY OF MUSKEGON v DE VRIES (Aff'd) March 11, 1975 19207-09

EMINENT DOMAIN - JUST COMPENSATION RENTALS The just compensation required by Article 10, Section 2 of the Michigan Constitution does include lost rentals provided a taking is established.

STATUTE: Const 1963, Art 10 Sec. 2

EMINENT DOMAIN - TAKING URBAN RENEWAL PROJECT - PUBLICATION The promulgation and publication of plans for an urban renewal project does not constitute a taking although it may hinder a sale of the property.

STATUTE: Const 1963, Art 10 Sec. 2

EMINENT DOMAIN - TAKING - CITY - OMISSION - PROPERTY VALUE - REDUCTION A city may not by deliberate acts reduce the value of private property and thereby deprive the owner of just compensation. Therefore, if a party seeking recovery for lost rentals can show lost rentals resulting from wrongful or deliberate action or inaction on the part of the condemning authority, he can recover. However, it is not sufficient for recovery to show that the acts of the city were a substantial cause or one cause of the loss. To constitute a taking it must be shown that the city's conduct was the cause of the loss.

APPEAL AND ERROR - FINDINGS OF FACT - CLEARLY ERRONEOUS This Court has repeatedly held that it will not substitute its judgment for that of the trial court sitting without a jury unless the findings of fact are clearly erroneous.

STATUTE: GCR 1963, 517.1

EMINENT DOMAIN - RENTALS LOST - CITY - CONDEMNATION - DELAY The trial judge's finding that plaintiff's loss of rentals was not caused by the city's oppressive conduct and unreasonable delay was not clearly erroneous. The city did not represent to plaintiff that his property was subject to immediate condemnation but advised plaintiff that it did not know when the property would be taken; the city's delay was not unreasonable as the urban renewal project was the subject of litigation; the plaintiff's failure, to secure tenants was caused solely by plaintiff's inability to guarantee possession for a minimum of five years; and plaintiff's property required extensive rehabilitation before it would be ready for occupancy.

DAMAGES - EMINENT DOMAIN - RENTALS LOST Under the circumstances of the present case, the claim for lost rentals was too speculative to justify recovery.

PANEL: Brennan, Gillis, HOLBROOK, JR.

ROOSE v PARKLANE HOMES CORP. (Rev'd & Rem'd) March 12, 1975 19961

PROPERTY - SUBDIVISION CONTROL ACT - VIOLATION - CONTRACT - RESCISSION The defendant did not violate the Subdivision Control Act and therefore plaintiff is not entitled to rescind the purchase agreement. Although the land being sold was described as numbered lots according to a proposed plat, a subdivision had not occurred at the time the land contract was executed. Under the terms of a rider to the purchase agreement, no partition into lots was contemplated by the parties until after platting and recording.

STATUTE: MCLA 560.102(d)

STATUTES - SUBDIVISION CONTROL ACT - PURPOSE One intended purpose of both the present and preceding Subdivision Control Acts was to protect persons who purchased lots on proposed but unplatted parcels of land. The danger was that an innocent purchaser could purchase land without having any access to it.

STATUTE: MCLA 560.102(d); MCLA 560.267

PROPERTY - SUBDIVISION CONTROL ACT - VIOLATION - CURE - EFFECT Assuming arguendo, that a subdivision existed in the instant case at the moment of execution of the contract, this Court would hold that the contract is voidable only upon the time that the defect is cured. Once the plat is recorded, the statutory violation ceased to exist. By providing the word "voidable" instead of "void" in section 267 of the Act, the Legislature could not have intended that the option to void a contract remains after a defect is cured where no harm has accrued to the purchaser.

STATUTE: MCLA 560.267

PANEL: Quinn, BASHARA, Maher

ROSSI v TOWNSHIP OF RICHFIELD (Aff'd) March 25, 1975 19621

ZONING - REZONING - NOTICE - SUFFICIENCY The township was not required to publish the zoning map with the ordinance. The township complied with MCLA 125.279 which requires the township to publish a notice in a local newspaper, giving notice that the zoning commission will have a hearing concerning rezoning of the township.

The statute requires that the public be notified as to the location where the proposed ordinance and map may be viewed. Here the public and the plaintiffs were informed of the proposed ordinance and given the opportunity to study the zoning map.

STATUTE: MCLA 125.279; MCLA 125.285.

ZONING - ORDINANCE - REASONABLENESS Michigan has adopted the view that to sustain an attack on a zoning ordinance, an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions on his property preclude its use for any purpose to which it is reasonably adapted.

ZONING - ORDINANCE - REASONABLENESS REVIEW - STANDARD In reviewing the decision of the trial court in a suit challenging the constitutionality of a zoning ordinance, this Court does not ordinarily disturb the findings of the trial judge unless, after an examination of the entire record, we reach the conclusion that we would have arrived at a different result had we been in the position of the trial judge. In the present case, there was sufficient testimony in the record to sustain the trial judge.

PANEL: Bashara, R. B. BURNS, Kelly