

NOV 25 1996

Mr. Ty Strout
Executive Vice President
Arizona Association of Realtors
Suite R
4414 North 19th Avenue
Phoenix, AZ 85015-4198

Dear Mr. Strout:

Thank you for your letter of July 26, 1996, concerning Section 9 of the Real Estate Settlement Procedures Act regarding "seller-pay" jurisdictions where the seller of the property pays for the owner's title insurance policy. The Department has reviewed the July 5, 1996, correspondence and realizes that it was not fully responsive to your specific questions.

Section 9(a) of RESPA has been a part of RESPA since its enactment in 1974. It reads as follows:

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

An early 1980 HUD informal opinion stated that HUD "had consistently interpreted the statute to exclude [seller pay] transactions from the coverage of Section 9." A more recent 1990 opinion, however, reflected a reluctance to endorse the early views without providing a reason. However, all of these informal advisory opinions were withdrawn by regulations issued on November 2, 1992.

HUD has reviewed the plain language of the statute, as well as the legislative history, and various commenters' views on what HUD's interpretations should be on this issue. The Department has seriously considered various interpretations which would be legal under the statute. Because HUD believes that it is in the interest of consumers and the real estate industry for HUD to provide clear guidance on this matter, the Department intends to do so within the parameters of the Administrative Procedures Act. Thus, rather than provide you with an interpretation in this letter, HUD intends to propose a rule within the next 6 months

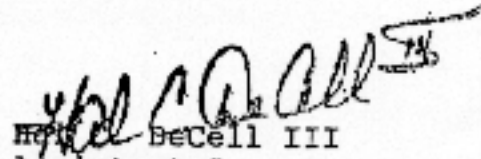
that would clearly set forth the Department's interpretation of Section 9. This way, the Department will provide the public with appropriate notice and an opportunity to comment on this serious issue.

Until such a rule becomes final, however, the Office of Consumer and Regulatory Affairs intends to take the following stance with respect to "seller-pay" title insurance jurisdictions. The Department will not enforce Section 9 of RESPA against a seller who selects the title insurance company if the seller is paying for the title insurance policy. In cases where a seller, or a seller's agent, such as a real estate agent, requires the buyer to purchase title insurance from a particular title company, however, HUD will take appropriate enforcement action.

By taking this stance, HUD intends for buyers to continue to avail themselves of lower prices for simultaneously issued policies. As the Department understands it, in seller-pay jurisdictions where the seller pays for the owner's policy, the buyer often has an option to purchase a lender's policy at a lower rate due to the simultaneous issuance of policies. Pending the rule making process, HUD's Office of Consumer and Regulatory Affairs will take no action against any seller who selects and pays for the owner's title insurance policy from a title insurance company which is also providing the buyer with a simultaneously issued policy. HUD will not enforce Section 9 against such a seller so long as the seller does not require the buyer, as a condition of sale, to purchase the simultaneous issuance policy from the title insurance company.

If you have any further questions concerning this matter, you may call David R. Williamson, Director, Office of Consumer and Regulatory Affairs, at 202-708-6401. Mr. Williamson or his staff will be pleased to assist you.

Sincerely,


 Robert McCell III
 Assistant Secretary

cc: Senator Jon Kyl