

110TH CONGRESS
1ST SESSION

S. 2343

To amend the Real Estate Settlement Procedures Act to require mortgage originators to make their fees more transparent.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2007

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Real Estate Settlement Procedures Act to require mortgage originators to make their fees more transparent.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Real Estate Trans-
5 parency Act of 2007”.

6 **SEC. 2. GREATER TRANSPARENCY OF SETTLEMENT FEES.**

7 (a) IN GENERAL.—Section 4 of the Real Estate Set-
8 tlement Procedures Act of 1974 (12 U.S.C. 2603) is
9 amended—

1 (1) in subsection (a), in the first sentence, by
2 striking “The Secretary,” and inserting “PROVISION
3 OF SETTLEMENT STATEMENT.—The Secretary,”;

4 (2) in subsection (b)—

5 (A) in the first sentence—

6 (i) by striking “The form” and insert-
7 ing “ADVANCE INSPECTION OF SETTLE-
8 MENT STATEMENT.—The form”; and

9 (ii) by striking “, except” and all that
10 follows through “available at such time”;
11 and

12 (B) in the second sentence—

13 (i) by striking “Upon the request of
14 the borrower to inspect the form prescribed
15 under this section during the” and insert-
16 ing “At least 1”;

17 (ii) by striking “shall permit the” and
18 inserting “shall provide a completed, writ-
19 ten copy of the settlement statement to
20 the”; and

21 (iii) by striking “to inspect those” and
22 all that follows through “preceding day”;
23 and

24 (3) by adding at the end the following:

25 “(c) AGREEMENT FOR ORIGINATOR FEES.—

1 “(1) NOTICE OF FEES.—Not later than 3 days
2 after a person applies for a federally related mort-
3 gage loan, the mortgage originator of such loan shall
4 provide to that person a written agreement itemizing
5 all of the fees that person may be charged by the
6 mortgage originator, including any origination fees,
7 underwriting fees, broker fees, and any other fees to
8 be charged at or before the settlement of such loan
9 to be paid to the mortgage originator. Bona fide dis-
10 count points payable by such person to reduce the
11 interest rate of such loan need not be included on
12 any originator fees agreement under this paragraph.

13 “(2) METHOD OF PAYMENT.—

14 “(A) IN GENERAL.—Each originator fee
15 agreement under paragraph (1) shall set out
16 the following 3 methods for the payment of the
17 fees described in any such agreement:

18 “(i) Payment in cash before or at set-
19 tlement.

20 “(ii) Adding such fees into the total
21 loan amount to be borrowed.

22 “(iii) Increasing the interest rate of
23 the loan.

24 “(B) BORROWER’S CHOICE OF PAYMENT
25 METHOD.—Each applicant for a federally re-

1 lated mortgage loan, in determining how to pay
2 any of the fees described in an originator fees
3 agreement under paragraph (1), shall choose
4 one of the payment methods described under
5 subparagraph (A), except that the applicant
6 may choose to combine the payment methods
7 described under clauses (i) and (ii) of subpara-
8 graph (A).

9 “(C) REQUIRED EXPLANATION.—

10 “(i) WRITTEN.—Each originator fee
11 agreement under paragraph (1) shall in-
12 clude a written explanation of each of the
13 payment options listed in subparagraph
14 (A), along with a clear and concise illustra-
15 tion of the effect of each option on the
16 amount borrowed, the interest rate, the
17 payments required on the loan, and any
18 other loan terms which might be affected
19 by such option.

20 “(ii) ORAL.—Each mortgage origi-
21 nator of a federally related mortgage loan
22 shall explain to each applicant for such a
23 loan each of the payment options listed in
24 subparagraph (A) before accepting any
25 payment from that person.

1 “(D) REQUIRED SIGNATURE.—Before any
2 applicant for a federally related mortgage loan
3 is obligated to pay any of the fees described in
4 the originator fees agreement under paragraph
5 (1), the person shall have—

6 “(i) agreed to and signed the origi-
7 nator fees agreement described under
8 paragraph (1); and

9 “(ii) exercised the option for deter-
10 mining the method of payment for such
11 fees.

12 “(d) EARLY SETTLEMENT STATEMENT.—

13 “(1) IN GENERAL.—Not later than 3 days after
14 a person applies for a federally related mortgage
15 loan, the mortgage originator of such loan shall pro-
16 vide to that person a written early settlement state-
17 ment of all of the settlement costs to be charged to
18 that person at or before settlement. The early settle-
19 ment statement shall be in the same or a similar
20 form as the statement of settlement costs provided
21 to the person pursuant to subsection (a).

22 “(2) REQUIRED INCLUSIONS.—Each early set-
23 tlement statement under this subsection shall in-
24 clude an itemization of the following:

1 “(A) All fees agreed to by the applicant of
2 a federally related mortgage loan pursuant to
3 the originator fees agreement described under
4 subsection (c)(1).

5 “(B) All fees to be charged to that appli-
6 cant by independent third parties, including
7 government agencies at or before settlement of
8 the loan, plus all escrows reserves which may be
9 required of that person.

10 “(e) BORROWER LIABILITY FOR FEES.—No bor-
11 rower shall be liable for any fees which are not disclosed
12 on an early settlement statement, except that the borrower
13 is liable for such fees if—

14 “(1) the total amount charged for fees imposed
15 by independent third parties is—

16 “(A) not more than 10 percent greater
17 than that stated in the early settlement state-
18 ment; or

19 “(B) greater than that allowed under sub-
20 paragraph (A) because bona fide and reason-
21 able expenses were incurred by such third par-
22 ties for unanticipated inspection, appraisal, sur-
23 vey, or flood certification of the home which
24 was the subject of such loan;

1 “(2) the mortgage originator provides a reason-
2 able explanation of the circumstances surrounding
3 the settlement of the loan of the borrower which
4 were different than anticipated by the mortgage
5 originator when the statement was provided; and

6 “(3) the mortgage originator does not engage in
7 a pattern or practice of providing early settlement
8 statements which disclose individual fees of inde-
9 pendent third parties in different amounts than ac-
10 tually charged at settlement.

11 “(f) LIABILITY FOR FAILURE TO COMPLY.—

12 “(1) IN GENERAL.—Whoever fails to comply
13 with any provision of this section shall be liable to
14 the borrower for an amount equal to the sum of—

15 “(A) any actual damages to the borrower
16 as a result of the failure; and

17 “(B) \$5,000 for each such instance of non-
18 compliance.

19 “(2) COURT COSTS.—In addition to any amount
20 under paragraph (1), in the case of any successful
21 action brought by a borrower under this subsection,
22 such borrower shall be reimbursed for the costs of
23 the action, together with any attorneys fees incurred
24 in connection with such action as the court may de-
25 termine to be reasonable under the circumstances.

1 “(g) DEFINITION.—As used in this section, the term
2 ‘mortgage originator’—

3 “(1) means any person who, for direct or indi-
4 rect compensation or gain, or in the expectation of
5 direct or indirect compensation or gain—

6 “(A) takes a residential mortgage loan ap-
7 plication; or

8 “(B) assists a consumer in obtaining or
9 applying to obtain a residential mortgage loan;
10 and

11 “(2) includes any person who makes loans di-
12 rectly or brokers loans for others.”.

13 (b) CONFORMING AMENDMENT.—Section 5(c) of the
14 Real Estate Settlement Procedures Act of 1974 (12
15 U.S.C. 2604(c)) is hereby repealed.

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