



MEMORANDUM	
FROM:	Phil Adleson
TO:	Clients, CMA members and friends
DATE:	Thursday, December 31, 2009
SUBJECT:	DRE MLDS/GFE forms become outdated on and after 1-1-2010

Many of the new Real Estate Settlement Procedures Act (“RESPA”) and Regulation X (24 CFR § 3500.1 et seq.) changes take effect on January 1, 2010. One major change is that on and after 1-1-2010, a new form of RESPA Good Faith Estimate (“GFE”) must be used and the old GFE forms are no longer acceptable. Prior to January 1, 2010, lenders could use forms other than the HUD-recommended GFE as long as it contained the same disclosures. After January 1, 2010, lenders and brokers **MUST USE** the HUD proscribed form. (Reg. X, 24 CFR § 3500.7(d) and Appendix C.)

Two out of three California Department of Real Estate (“DRE”) approved Mortgage Loan Disclosure Statement (“MLDS”) forms include a HUD-approved version of the old RESPA GFE (i.e., combined all-in-one MLDS/GFE forms). These combined MLDS/GFE forms are the DRE RE 883 and the RE 885 (for nontraditional mortgages). The DRE has not, as yet, been able to get approval from HUD to combine the new GFE form with the RE 883 and RE 885 forms. Therefore, the GFE portion of the RE 883 and RE 885 forms will not be compliant with RESPA on or after 1-1-2010.

For brokers making or arranging loans not covered by RESPA (e.g., nonconsumer, business purpose loans or commercial loans), they may continue to use the RE 882 which does not include a GFE. As noted above, for RESPA covered loans, on or after January 1, 2010, the new GFE form must be used. Therefore, commencing on January 1, 2010, licensees should consider no longer using **the GFE portion** of the RE 883 and RE 885.

Based upon informal discussions with DRE staff, the DRE takes the position that after January 1, 2010, brokers should continue to use the RE 883 and RE 885, where

applicable, and attach a properly completed new HUD-approved GFE. The broker should cross out the old GFE provisions on the RE 883 or RE 885 and add “See attached Good Faith Estimate.”

A more thorough discussion of when a broker is subject to RESPA is set forth on the California Mortgage Association’s website <http://www.californiamortgageassociation.com/> in the member’s only section under Legal Q & A. All regular CMA members (as opposed to educational members) can access that portion of the website.

If you have further questions, call your compliance counsel. For our clients, follow-up questions will be billed at our normal rates.

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