Junk Fees Unmasked

In this Chapter you will learn:

- How the RESPA regulations of 2010 affect you
- How to tell the difference between fees you should legitimately pay, and those that are really just lender junk fees.
- How to identify junk fees in escrow, and what to do to protect yourself.
- What to do if Junk Fees show up at the end
- Your responsibility for how you are treated.

Holly's Definition of "Junk Fees":

A "junk fee" is any fee with an official sounding name that either has no actual service associated with it, or the service it represents should be performed as a normal part of the job that is covered by their base fee. "Junk fees" are added by lenders and closing agents (escrow or attorney) to increase their bottom lines without being up front with you. It's as simple as that.

The Latest News on Junk Fees

When I first wrote this book, lenders and closing agents often added junk fees to what they charged borrowers. That was one of the reasons I was compelled to write the book. I wanted to expose those fees for what they really are. The most common practice was to add them at the end of the process, when the borrower was least likely to notice or to object.

Then regulators stepped in. I had to delay the publishing of this book because the RESPA regulations that took effect January 1, 2010, are a game-changer. I needed time to see how they truly affected borrowers before I rewrote a few key chapters.

My analysis, to date, is that HUD has done a wonderful job with the new regulations. As of April 2010, here are the pros and cons of the new regulation, as I see them:

✓ **If anyone intends to charge you junk fees, they better do it up front.**

This is awesome! HUD really got it right on this part. If a lender doesn't reveal a fee up front - any fee - the lender has to pay for it. So there will be no more last-minute adding of junk fees. This doesn't mean lenders won't add junk fees. Believe me, I have seen tons of junk fees on estimated closing statements since January 2010. The regulations didn't stop some people from overcharging borrowers. However, now borrowers have time to examine the fees, and to negotiate with the closing agent and lender *before* the end of the transaction when the pressure is on.

✓ **Lenders have to show you legitimate fees which sometimes come up later, but will most likely never affect you.**

Unfortunately, this regulation effectively scares the living daylights out of innocent borrowers. The RESPA regulations need to be amended, because they are forcing everyone to issue a "CYA, (cover your a@*) Estimate of Fees". Borrowers literally can't trust the official Good Faith Estimate (GFE), anymore. These regulations are so punitive that all lenders have to over-disclose fees to protect themselves. We need an even balance, so that honest people can offer borrowers a true estimate of fees they can actually expect to pay, and not have to add fees to the GFE simply for protection in case a legitimate fee needs to be added along the way.

Here's a brief history lesson:

Back "in the day," lenders offered estimates of fees that were honestly offered "in good faith," thus the name. Most honored their estimates and all was well. Then, somehow, some in our society chose different values. Rather than acting in good faith, some decided to do whatever they could get away with and make a buck. Some people actually feel proud when they "put one over" on an innocent, trusting client.

You can't even imagine how angry I become when I think of unscrupulous people like that littering the United States lending industry, preying on innocent homeowners. However, if you think about how a mama bear acts if someone threatens her cub, you'll have a good idea how I become when I hear about this. Thanks to these types of people, "good faith estimates" have gone the way of the dodo bird. So now we all have to deal with the "CYA Estimate of Fees," instead. I'm sad about that.

CYA Fees

Here are some of the fees you may have to pay, but probably won't have to pay. These fees have to be disclosed up front, in case they are necessary later in the process. I list them, here, so that you can more easily understand your initial estimate of fees, and not be frightened by excessive fees. Some of these only apply to purchase transactions.

1. **A 442** – If the appraiser goes out to the property and notices something is substandard, he will disclose that fact to the lender on the appraisal. The lender will not want to lend on substandard property. So the lender will require the owner to fix the problem before she will fund the loan. After the problem is resolved, the lender requires the appraiser to return to the property and confirm that the issue is resolved. The appraiser submits a form called a "442" to the lender, giving her the "all clear" signal. It usually costs about $150 for the appraiser to return to the property and create the necessary paperwork. If you have no substandard issues with your property, this fee will not be necessary.
2. **An Appraisal Review** – If the underwriter looks at the initial appraisal, and believes it may be inaccurate on any level - specifically the appraised value - an appraisal review will be ordered. Appraisal reviews range from a simple desk review to a full field review. An appraisal review is often ordered even when the initial appraisal is accurate and well-prepared. Some properties are just difficult to appraise, so underwriters want a second opinion. Which brings us to the next "possible, but not likely" fee:
3. **A Second Appraisal** – Sometimes, the underwriter orders a complete second appraisal. This is most common on purchase transactions. It is most often ordered on transactions where the seller "flipped" the property. That is, the seller purchased it at a discount (usually at a foreclosure auction), then fixed it up, and is prepared to sell it to people who want to live in the home. It also comes into play sometimes when the borrower puts very little money down (i.e. in FHA or CalSTRS loans).
4. **Some honest fees will be overestimated** – The credit report fee is one in this category. It is necessary to overestimate the cost because there is no way to know up front how many times the lender will need to run your credit during the process. Additionally, the lender has to account for small fees charged by automated underwriting systems. The appraisal fee is another that will be overestimated. The appraiser may charge more than expected after researching the property if the appraisal turns out to be more difficult than expected. Lenders have to account for these possibilities.

✓ **In purchase transactions, some seller-paid costs are included on the *borrower's* estimate of fees.**

If you read the official HUD instructions for lenders, you will see that if it is customary for a buyer to pay a fee, then it has to be disclosed on the GFE (even if the purchase contract states that someone else pays it). However, many lenders have misinterpreted this regulation, and include some seller-paid costs on the buyer's GFE that are *always* paid by the seller. These lenders may be adopting that policy in case it is customary in their area for the buyer and seller to share a cost (using the "better safe than sorry" approach). Therefore, you may see some items on your GFE which represent costs the seller will pay. It is best to ask your loan officer to help you distinguish between fees *you* will pay, and those the seller will pay. Here are some examples:

1. **Transfer tax** – The seller usually pays all, or half of this cost, depending on the standards of the city and county where the property is located. Lenders have never even had to pay attention to this fee in the past, because closing agents calculated it and the proper party paid it. Now, if the lender miscalculates the fee at all, he has to pay the entire fee in full. That's silly! The people who know how to properly calculate transfer tax are the closing agents. They should be responsible for calculating it and properly disclosing the portions buyer and seller will actually pay. Why complicate an already stressful process for the buyer by telling him about fees he won't pay? It doesn't make sense. It also doesn't make sense to punish honest lenders by asking them to be responsible for something they have never before needed to calculate.
2. **The Owner's Title Policy** – The buyer pays the lender's title policy costs, which are lower than the owner's title policy. The buyer does not pay the owner's policy costs. So why do buyers have to know about those costs up front? Who cares? The costs don't affect them, and listing the costs only serves to confuse borrowers.

I am grateful that regulators have stepped in and made it difficult (if not impossible) for dishonest lenders to thrive in the mortgage industry, but they have also made it difficult for honest lenders to survive. I suspect that wasn't the goal. My hope is that regulators will admit the regulations need to be "tweaked" for optimal effectiveness; listen to the advice of good loan officers who act with integrity and are in the trenches trying to support homebuyers and homeowners; and then make changes that support both borrowers and honest loan officers.

The old "Good Faith Estimate of Fess" was better than the new estimate in one respect: it was easier for the borrowers to understand. In fact, the new estimate is so complicated that HUD published a 49-page booklet to help borrowers understand the new 3-page estimate of fees. The old estimate was flawed because it didn't have any "legal teeth." It was too easy for the bad guys to cheat borrowers. So now the estimate of fees has "teeth," but the teeth are like a snarling tiger frightening many borrowers. I (and many other honest loan officers) designed a simple, unofficial estimate which helps our borrowers digest the complexities of the official one. It lists the fess the borrower can reasonably expect to pay in an easy-to-understand format. I think this is a superior solution to a booklet. Few people will read the HUD booklet. Who wants to curl up by the fireplace with that? However, they *will* read a one-page summary of fees. The goal is to help people understand the fees they can actually expect to pay. It is not to make sure they understand tons of fees they will probably never see on the closing statement.

HUD did something else right with the new regulations: the new 3-page estimate of fees clearly defines key aspects of each loan. One of the worst abuses by dishonest loan officers was passing off an adjustable rate mortgage (or negative-amortization mortgage) as a fixed rate loan. Some unsuspecting borrowers got loans vastly different from the loans they were told they were getting. This practice is another reason that compelled me to write the book.

HUD added a section to the estimate of fees that clearly states whether or not the loan's rate can adjust, and if you will have a pre-payment penalty. I love it!

I created a form which clearly outlines the terms of any loan. It also does something the HUD form doesn't do, but you may like: for adjustable rate mortgages, it calculates the best- and worst-case payments you can expect to pay at key points in the loan term:

- ✓ Upon first rate adjustment
- ✓ At subsequent rate adjustments
- ✓ Over the life of the loan.

To be fair, it isn't easy for most loan officers to perform these calculations. I included an explanation in this book, to make it easy for either you or your loan officer to get these numbers, but it would be better if loan origination software systems integrated something like this into their forms. I think it is important for borrowers to be aware of the potential risks and rewards inherent in adjustable rate mortgages. Let's hope the software people read this book and integrate the "Best and Worst Payments" worksheet into the software.

How to Spot a "Junk Fee"

The lists below describe legitimate fees you can expect to pay, "gray area" fees that are on the borderline, and possible—or definite—"junk fees'" You may not see all these fees in every transaction. The fee description is followed by an estimate of the amount normally charged for that service. Estimates are from my personal experience, and may vary from one company to another.

It is best to negotiate fees up front with your loan officer, especially during a purchase transaction. For more information about negotiating fees, please see the agreements described in the previous chapter on Bait-and-Switch Protection. When possible, for purchase loans, negotiate closing agent fees early on, as well.

Legitimate Fees

Fees Received by the Loan Officer

- ✓ Origination Fee, a.k.a. "Broker Fee" - 0 to 2 Points
- ✓ Processing Fee - $295 to $995

Lender Fees

- ✓ Underwriting Fee - $250 to $1,000

  Note: Some lenders call this an "Administration fee"
- ✓ Document Fee, a.k.a. "Doc Prep" Fee - $45 to $400
- ✓ Flood Cert - $15 to $35
- ✓ Tax Service - $65 to $90

- ✓ Loan Discount Fee - (Charged if you are buying the rate down below "par." Please see the chapter on Points for an understanding of "par" pricing)
- ✓ Funding Fee – Some lenders charge a funding fee instead of some of the other fees. That fee should be in line with those listed above. It is often a conglomeration of all fees (underwriting, docs, etc.), sometimes it replaces just one fee.
- ✓ Compliance Fee – This covers the lender's cost of running a IRS form 4506 and other costs they incur to comply with regulations. It should be under $100.

The lender fees listed above may seem confusing. To make it simple, expect that all lender fees in the list above should add up to somewhere between $600 and $1,400. If they do that, you are okay.

Third Party Fees in the "Lender Fee" Section

- ✓ Credit Report Fee - $9 to $50
- ✓ Appraisal Fee - $350 to $1,000 for a Single Family Residence

Title Fees

- ✓ Title Insurance - $425 and up, dependent on loan amount or purchase price
- ✓ Endorsements - Negotiable, usually $45 to $125
- ✓ Sub-escrow Fee - $25 to $100
- ✓ Recording Fee - $75 to $150
- ✓ Reconveyance Fee - $50 to $150

Closing Agent Fees

- ✓ **Escrow Fee for refinance** - $450 to $600 and up depending on the loan amount
- ✓ **Escrow Fee for a purchase** - typically $200 + $1 to $2 per $1,000 of purchase price; some charge more, others don't charge the base fee
- ✓ Loan Tie-in Fee – charged only if you have a 1st & 2nd loan, $100 or so (Note: this is the most commonly abused legitimate fee. I have seen escrows charge $500 for this fee. Don't let them overcharge you. $250 is the maximum I believe you should pay for a loan-tie-in fee.)
- ✓ Processing Demands - $100
- ✓ Document Fee - $100
- ✓ Wire Fee - $50 to $75
- ✓ Courier - $50 to $100
- ✓ Notary - $10 to $50
- ✓ Mobile Notary - $125 to $250

"Gray Area" Fees

- ✓ **Application Fee** – This is okay if the total fees are within the range of lender fees described above. It used to be common practice among less-than-reputable lenders to charge a fee up front. They would take your money, whether or not they did the loan for you. The new RESPA regulations limit up front fees. So this is no longer an issue.
- ✓ **Review Fee** - an "appraisal review" fee is okay, any other is not
- ✓ **Administration Fee**, a.k.a. "Admin Fee" - An Admin fee is sometimes legitimate, if it replaces a normal fee. For example, as I mentioned above, some lenders call their Underwriting Fee an Administration Fee. However, if you are paying an Origination fee to the broker, and he also charges an Admin fee, he may be charging a junk fee, unless he offers a good explanation for it.

Common Names for Lender Junk Fees

- ✓ **Administration Fee**, a.k.a. Admin Fee - discussed above
- ✓ **Sign Up Fee**
- ✓ **E-mail Fee** - That's one of the most creative ones I've seen! It is usually charged by escrow, not brokers

Junk fees are not necessarily bad, if the total of all the fees received by the loan officer is reasonable. However, remember that points are tax deductible and fees are not. So it is best to be straightforward about it and pay the loan officer through points, rather than fees.

Closing Agent Junk Fees

Closing Agents (i.e. escrow or attorneys) are notorious for adding creative fees to purchase transactions. It is rare during refinances because, in these situations, the agents are chosen by your loan officer. The loan officer who chooses them is on your team (I hope). A purchase escrow company is loyal to the realtor who referred them, which is typically the seller's agent. They do not have much reason to care about the borrower.

If you read the first chapter, you know that if I could change anything about how purchase transactions operate, it would be that someone in the borrower's camp should choose the closing agent, either the lender or the buyer's realtor. If that were the case, we would have substantially less abuse of borrowers by the closing agents. But, since the world isn't the way I would make it, I'll have to try to protect you as best I can given the way it is.

I really can't keep up with the junk fee creativity and list *all* the variations on junk fees Closing Agents add. The next page shows some of the creative junk fees I have seen in my practice, just to give you the gist of it. You should question any fee that isn't on the standard list I give you in this chapter and on the "Closing Agent Fee Agreement Form" that I provide with this book and on our web site.

It is important to establish the escrow fees in writing early in the process. If the Closing Agent adds junk fees, it is easier to negotiate with them up front when you could easily cancel the deal, than it is later in the process. If it looks like they will overcharge you, you have more leverage at the beginning of the escrow period than you do at the end when they have done most of the work and you have signed off all contingencies.

The Closing Agent charges a base fee that should cover most of her services. There are some standard fees that are legitimately charged above the base fee. However, if she charges any fees not on the list above, ask her to provide you with a good explanation. Each fee should be a fee for a service that is above and beyond her normal duties.

Often my clients' real estate agents have been able to negotiate with the sellers' agents, or the escrow company, and get rid of junk fees for them. If you are in the driver's seat when making an offer on a house (in a "buyer's market"), you may want to consider requesting that your realtor's escrow or loan officer's escrow company be used, rather than the selling agent's company. If you are able to use an escrow company referred by your loan officer or realtor, that company will be in a position to ensure you are treated fairly because it has an ongoing business relationship with your loan officer or realtor.

Common Names for Escrow Junk Fees

- ✓ The "E-mail Fee" – This one really chaps my hide. Charging a fee to receive email is *absurd,* in my opinion. Who are they kidding? Receiving an email costs nothing. I saw one email fee for $200 on the closing statement for one of my clients. When I protested, the escrow representative said they have to pay for paper and toner to print the loan documents. *Pahleeeese!* $200 for toner and paper for a 1 to 2 inch stack of paper? Come on!
- ✓ Doc Prep fee – This is related to the "E-mail Fee." Printing loan docs is part of the job, and should be covered in the base fee. It has been explained to me that this fee is also intended to cover the cost of toner and paper. If the fee is greater than $50, you may want to question it. However, if the doc prep fee is small, it may be okay.
- ✓ Archive Fee – See the story box, below, for the lame excuse I once received about that one.
- ✓ EDOC Auth Fee – What is that? I suspect it is a fancy name for an email fee.
- ✓ E-commerce Fee – Huh?

My escrow officer stopped by one day at precisely the moment I was questioning some escrow fees for one of my clients who was buying a home. I took that opportunity to ask his opinion about some of the fees. He went ballistic, as I often do. He went on and on about abuses he sees in his industry. He added information I didn't know. For example, some fees used to be legitimate because a human being had to type them up. Now computers do the work, so an additional fee is not justified. I asked him to add his knowledge of escrow junk fees to this book.

The following is from Kyle Barnes of Summit Point Escrow:

Common Names for Escrow Junk Fees:

Admin fee – This is a catch-all phrase used to cover a variety of services. Some are legitimate, some are not.

Document storage fee – This is charged because escrow companies are required to keep the escrow for a period of 5 years. (Tell them you will keep the documents and see what they say.)

HUD Preparation Fee - This is to prepare the closing statement, which is a main purpose of escrow, and it should not be an extra charge.

Document Fee - Only pay a document fee if the escrow company prepared special documents, which were *not already required* by the escrow.

A Personal Story:

I would like to tell you a story from the first year of my career as a mortgage broker. It demonstrates how some people rationalize junk fees.

Within a month or so of working for a particular broker, I realized that he and I had different values, and that it would be best if I worked for someone whose values more closely mirror mine. I had already begun distributing my consumer protection brochure that exposes junk fees and explains how points really work.

When I interviewed with potential employers, I gave them a copy of my brochure. I figured that doing so would quickly weed out people whose values are different from mine. I was referred to a broker through my church. At the end of the interview, I gave him my brochure. He did not call me back.

A week later, I called him to follow up. He was very defensive about a $600 Admin Fee he charges every client. He had a full week to cook up a rationalization, so it was a *doosey*. He said that the law requires him to keep a file for 7 years, and that he has to pay for storage. He said it costs him $7 per month to store the file, and his Admin Fee covers storage costs.

I'm thinking, "What does he store his files in, gilded boxes?" Everyone else buys cheap cardboard boxes at an office supply, throws 15 or 20 files in each box, and puts them in storage. What does he do, I wondered, hire an armed guard?

I would like to point out that storage is a cost of doing business, as are phones, rent, etc. It is not a service provided to the client above and beyond the standard services that are expected to be provided. It is required by law. Therefore, storage does *not* justify a separate fee.

What to Do if Junk Fees Show Up at the End

The best part of the new regulations is that consumers have the law behind them in a big way if anyone adds illegitimate fees at the end of the process. They simply can't do that. Compare your original estimate of fees to the estimate provided when you sign your loan docs. If any fees magically show up, you do not have to pay them. Period.

If you choose an ethical lender and closing agent up front, you will never have to worry about being overcharged. Please see Chapter 5 "Choosing a Lender" for more tips to protect you.

PITA Fee:

A PITA Fee is a "Pain In The Ass" fee . In all fairness to service professionals of all types—including loan officers—some clients deserve to be charged more because they take more time and energy, and are generally difficult to work with. Most service providers in *all professions* have had situations where they thought the job would be worth a certain amount, up front, but after dealing with the client realized they grossly underbid. Since lenders cannot charge any fees they didn't disclose up front, I suspect that they will evaluate a client better in the beginning and charge fairly. Some will overbid in the beginning to cover themselves if they suspect the client will turn out to be a nightmare.

Let's be honest with ourselves. Most (if not all) of us have been someone's "PITA" at some point in our lives. None of us is perfect, myself emphatically included. I am making this point because I have come to the realization that the fact that my attitude makes a *big* difference in how I am treated by others is a very important part of creating the life I want to create.

I am grateful that Mark McCormick made a point of teaching me this important fact of life in his book *What They Do not Teach You at Harvard Business School.* I consider his book to be the single best business book I have ever read. If you haven't read it, you have missed out on some wonderful, down-to-Earth advice about business and about life. Another good book that is exclusively about this topic is *The Likeability Factor* by Tim Sanders and Stephen Hoye

Chapter Summary:

"Junk Fees" are legitimate sounding fees that do not cover bona fide services. These are separate from the services normally covered by the base fee. Their purpose is to add profit for the lender or closing agent without being up front with the client. They simply obscure the truth.

Knowing what fees to expect, and identifying those that are not legitimate, puts you ahead of the crowd when you are getting a home loan. Your first line of defense is to choose a loan officer and closing agent who care more about acting with integrity than they do about making a quick buck off of you. Your second line of defense is to know what "junk fees " look like and bring them out into the open. The lender and escrow fee agreement forms provided with this book will help you negotiate and clarify all fees in the beginning of the transaction, which is the best time to handle the subject of fees.