

MISCELLANEOUS TEXAS REAL PROPERTY
AND RELATED COMPLIANCE ISSUES
TIB CONFERENCE, OCTOBER 2010

I. TOPICS

- A. TEXAS HOMESTEAD: ROR AND MLC WAITING PERIODS RE INITIAL CONSTRUCTION VERSUS SUBSEQUENT IMPROVEMENTS.
- B. TEXAS HOMESTEAD AND PURCHASE OF CONTINGUOUS LOTS OF LAND – IS IT HOMESTEAD?
- C. RESPA EXEMPTIONS - VACANT LAND (LOT LOANS).
 - 1. LOT LOANS
 - 2. LOT LOANS WHEN IMPROVEMENTS WILL BE BUILT IN THE FUTURE.
 - 3. RESPA EXEMPTIONS WITH CHART (BUSINESS PURPOSE, 25 ACRE EXCEPTION)
- D. TEXAS SUBORDINATION AGREEMENT and REFINANCES

II. TEXAS HOMESTEAD:

A. NEW IMPROVEMENTS VS. SUBSEQUENT IMPROVEMENTS – HOW IS INITIAL CONSTRUCTION DEFINED? EXAMPLES FROM E-MAILS:

1. DEMOLITION OF EXISTING HOME:

QUESTION: Interim construction loan - construction contract includes **demolition of the existing house**. Do you think I can treat this loan as a true interim construction loan (initial construction even though the budget/contract includes demolition of house?). Or, would this be considered to be a home improvement?

ANSWER: Home Improvement because construction is for subsequent Improvements **and is subject to state rescission and Federal cancellation (ROR)**. Generally, “new improvements” involve the initial construction of the primary residence and related improvements, when no existing improvements are located on the homestead property. Since there is little guidance from Texas courts regarding what constitutes “new” improvements versus “subsequent” improvements or “repair and renovation”, I think a conservative approach would be to structure this loan as a home improvement loan.

When in doubt, view as subsequent improvements.

2. **ADDITIONAL STRUCTURE BEING BUILT: Home or structure already on property and new structure being built: New or Subsequent Improvements?**

QUESTION: If we have a customer who wants to build a house for his mother in law right next to his home, would we treat it as a home improvement loan?

ANSWER: Yes- subsequent improvements – Fed. ROR and state rescission required. (see explanation in answer to question number 1 above.

3. **BORROWERS LIVE IN A BARN:**

QUESTION: Borrowers live in a barn on the property where they are building their primary residence. Do they need an ROR?

ANSWER: Yes, the improvements would be “subsequent improvements” **subject to state rescission and federal cancellation.**

4. **BORROWER WANTS TO BUILD A SECOND STRUCTURE:**

QUESTION: Borrower owns 2 or more acres in Colleyville, Texas, and it is his homestead. He is currently living in a home already on the property and wants to build a new home (a second structure and is not tearing down the home he is living in). He will be moving into the new home. We are not selling this loan to FNMA. Should we structure this transaction as a home improvement?

ANSWER: Yes, this transaction should be structured as a home improvement loan because the improvements would be subsequent and not initial construction. Generally, “new improvements” involve the initial construction of the primary residence and related improvements, when no existing improvements are located on the homestead property. Since there is little guidance from Texas courts regarding what constitutes “new” improvements versus “subsequent” improvements or “repair and renovation.”

B. **ROR – NEW IMPROVEMENTS VERSUS SUBSEQUENT IMPROVEMENTS – Right of Rescission Matrix (see Handout):**

Right of Cancellation Matrix

General Scope of Right of Cancellation:

Credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling.

Save and except:

1. **Residential Mortgage Transaction.** Any transaction to construct (initial construction not subsequent improvement) or acquire a principal dwelling. The lien status of the mortgage is irrelevant for purposes of the exemption; the fact that a loan has junior lien status does not by itself preclude application of this exemption. For example, a homebuyer may assume the existing first mortgage and create a second mortgage to finance the balance of the purchase price. Such a transaction would not be rescindable. TILA § 103, § 125, Commentary 226.23(f)(1).

2. **Combined-Purpose Transaction.** A loan to acquire a principal dwelling and make improvements to that dwelling is exempt if treated as one transaction. If, on the other hand, the loan for the acquisition of the principal dwelling and the subsequent advances for improvements are treated as more than one transaction, then only the transaction that finances the acquisition of that dwelling is exempt. Commentary 226.23(f)(3).

3. **Multiple Purpose Transactions.** If any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built. Commentary 226.2(a)(24)(6).

4. **Same/Original Lender Refinance.** "Original Lender" means the lender on the original note or the lender who acquired the note thru merger, consolidation or acquisition of the original lender. In a refinancing or consolidation by the "original" creditor of an extension of credit already secured by the consumer's principal dwelling, the right of rescission shall apply, however, to the extent the new amount financed exceeds the sum of (1) the unpaid principal balance plus (2) any earned unpaid finance charge on the existing debt, plus (3) any amounts attributed solely to the costs of the refinancing or consolidation. TILA § 125(e), Commentary 226.23(f)(4).

5. **Construction to Perm.** If the initial loan is a construction loan that meets the definition of a residential mortgage transaction (i.e. for initial improvements), the permanent financing, even from a different lender, is also exempt as a residential mortgage transaction. Commentary 226.2(a)(24)(4).

6. **Other.** There are additional exemptions regarding New Advances, State Creditors, Multiple Advances, Spreader Clauses and Conversion of Open-End to Close-End credit. See PeirsonPatterson for details.

Principal Residence Transactions	Description	Give Right to Cancel	Authority	Form
Pure purchase (land & existing improvements)	All proceeds of loan used to "acquire". (A "Residential Mortgage Transaction")	No	TILA § 103, § 125, & Commentary 226.23(f)(1)	N/A
Purchase Land & Existing Improvements Plus Make Additional Improvements	Part of proceeds used to "acquire" existing improvements and remainder used for improvements. (A "Combined Purpose Transaction".)	No - Non-Texas Yes - Texas	Commentary 226.23(f)(3)	N/A RR - Mech. Lien
Purchase Land and Make Initial Improvements	Part of proceeds used to "acquire" lot and remainder used for improvements. (A "Multiple Purpose Transaction".)	No	Commentary 226.2(a)(24)(6)	N/A
Subsequent Improvements	Part of proceeds of loan used to make subsequent home improvement.	Yes	Sect. 226.23(a) and TILA § 103	RR- Regular

C. TEXAS HOMESTEAD MLC WAITING PERIODS:

Texas Administrative Code

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[TITLE 7](#) BANKING AND SECURITIES

[PART 8](#) JOINT FINANCIAL REGULATORY AGENCIES

[CHAPTER 152](#) REPAIR, RENOVATION, AND NEW CONSTRUCTION ON HOMESTEAD PROPERTY

RULE §152.9 Five Day Waiting Period for a Contract Before Executing Work and Materials for Repairs or Renovation: Section 50(a)(5)(C)

The contract for work and materials may not be executed before the fifth calendar day after the owner makes written application for any extension of credit for the work and materials except as provided in §152.13. **To count the five days, the day after the application for extension of credit is made is day one. If the fifth calendar day falls on a Sunday or federal legal public holiday, then the contract for work and materials may not be executed until the next calendar day that is not a Sunday or federal legal public holiday.**

Source Note: The provisions of this §152.9 adopted to be effective March 3, 2005, 30 TexReg 1065

Texas Administrative Code

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[PART 8](#) JOINT FINANCIAL REGULATORY AGENCIES

[CHAPTER 152](#) REPAIR, RENOVATION, AND NEW CONSTRUCTION
ON HOMESTEAD PROPERTY

RULE §152.11 **Three Day Right to Rescind Contract for Work and Materials
for Repairs or Renovation: Section 50(a)(5)(C)**

The owner and owner's spouse may rescind the contract for work and materials within three calendar days after execution by all parties of the contract for work and materials. **To count the three days, the day after the contract is executed is day one. The rescission period ends at midnight of the third calendar day following the execution of the contract. If the third calendar day falls on a Sunday or federal legal public holiday, then the right of rescission is extended to midnight of the next calendar day that is not a Sunday or federal legal public holiday.**

Source Note: The provisions of this §152.11 adopted to be effective March 3, 2005, 30 TexReg 1065

Texas Administrative Code

[TITLE 7](#) BANKING AND SECURITIES

[PART 8](#) JOINT FINANCIAL REGULATORY AGENCIES

[CHAPTER 152](#) REPAIR, RENOVATION, AND NEW CONSTRUCTION
ON HOMESTEAD PROPERTY

RULE §152.15 **Place for Execution of Contract for Work and Material:
Section 50(a)(5)(D)**

(a) The persons granting or acknowledging the encumbrance of their homestead interest must execute the contract for work and material used to repair or renovate existing improvements at the permanent physical address of:

(1) the office or branch office of a third-party lender making an extension of credit for the work and

material;

(2) an attorney at law; or

(3) a title company.

(b) Execution of the contract may not occur at a mobile office located at:

(1) the homestead; or

(2) any other place not permitted by subsection (a) of this section.

Source Note: The provisions of this §152.15 adopted to be effective July 7, 2005, 30 TexReg 3863

III. **PURCHASE OF A CONTIGUOUS LOT TO HOMESTEAD PROPERTY– IS IT PART OF THE HOMESTEAD?:**

A. **URBAN – ADJACENT/CONTIGUOUS VACANT LOT NEXT TO THE HOMESTEAD - URBAN:**

1. **Adjacent Property/Contiguous Lot:**

QUESTION: Purchase of the adjacent property **next door to an urban homestead**. This loan is not being sold to FNMA. Would this property be subject to any homestead restrictions?

ANSWER: Yes, this transaction would be subject to Texas Homestead laws/requirements and would also fall under **TILA and RESPA**. An urban homestead, consists of "one or more **contiguous lots** amounting to not more than 10 acres in a city, town, or village and used for the purposes of a home or both as an urban home and a place to exercise a business or calling of the claimant together with the improvements. Please see regs below.

2. **PURCHASE OF VACANT LAND ADJACENT TO HOMESTEAD:**

QUESTION: As we discussed, you have a potential borrower who wants to purchase a 2 acre vacant tract of land which is adjacent to his 2 acre homestead. The property is an urban homestead. You wanted to know if 1) the adjacent tract of land would be considered part of the current homestead and, therefore, subject to Texas homestead requirements, and 2) if the transaction falls under RESPA and TILA.

ANSWER: This transaction would be subject to Texas Homestead laws/requirements and would also fall under TILA and RESPA.

B. RURAL PROPERTY – ACQUIRING NON-CONTIGUOUS LOTS:

With regard to the vacant lot exemption (RESPA), rural homestead is not viewed in the same way as urban. The vacant lot exception under RESPA is not applicable in urban property when a property owner is buying the adjacent piece of property to his homestead when there is already a 1-4 family home on the previously owned lot.

But, with rural, this doesn't apply if the land is not contiguous. **It would be a vacant lot. (although it may still be homestead) but federal disclosures (RESPA and TILA do not apply).** Only a final HUD-1 is necessary.

IV: RESPA EXEMPTIONS (SEE CHART):

A. VACANT LAND:

RULE: RESPA Exceptions: Vacant land, 25 acres or more (even if home is on property), business purpose (commercial or ag loans), temporary financing (with some exceptions)

(4) *Vacant land.* Any loan secured by vacant or unimproved property, **unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds.** If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

EXCEPTION TO THE VACANT LOT EXCEPTION (MEANING LOAN IS SUBJECT TO RESPA):

If loan proceeds are going to be used to construct improvements on the property in less than 2 yrs, then an initial TIL and new GFE are required.

B. LOT LOAN WITH EXISTING HOME (APPRAISAL GIVES NO VALUE):

QUESTION: The bank wants to do a lot loan on property that has home located on it. The home has not been given a value by the appraiser on his appraisal. The borrowers want this property to eventually become their homestead and build a new home. **The loan proceeds will not be for the construction of a new home.** I am concerned that this loan is subject to RESPA, and that we should do the loan as a purchase transaction since a home is currently located on the property even though the appraiser has not given it a value.

ANSWER: this loan **may be done as a lot loan if the title company will insure it as a lot loan.** However, please note that it **IS subject to RESPA** because it is a federally related

mortgage loan that is secured by "real property upon which there is located . . . a **structure designed principally for the occupancy of 1-4 families", etc.** In addition, **because a 1-4 family structure is situated on the property, the transaction would NOT fall under the vacant lot exemption (even if the home has no value) under RESPA.**

When determining whether this loan is subject to RESPA it is **NOT necessary to consider the appraisal at all.** It doesn't matter that the appraiser noted in his/her appraisal that the home has no value.

Again, if a 1-4 family structure is on the property, it can be done as a lot loan, but it is subject to RESPA, and all required disclosures must be sent.

C. **BUSINESS PURPOSE LOANS:**

TRUST IS NOT A NATURAL PERSON: A trust is not a natural person and is, therefore, exempt under the business purpose exemption under RESPA.

§226.3: Exempt Transactions

⁴ ^Th
^h The provisions in [§26.12\(a\) and \(b\)](#) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.
ⁱ
^S regulation does not apply to the following:⁴

(a) *Business, commercial, agricultural, or organizational credit.*

(1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) **An extension of credit to other than a natural person**, including credit to government agencies or instrumentalities.

D. **25 ACRE EXEMPTION:**

ADDITIONAL STRUCTURE ON RURAL HOMESTEAD (HOME IMPROVEMENT LOAN):

QUESTION: My borrowers own 50 acres of rural homestead property. They want to carve out 29 acres from their homestead and build a new home on it. We are going to do a home improvement loan. Would RESPA and Truth-in-Lending apply? Later, the

borrowers are going to sell the home to their daughter (we don't know how much acreage would be involved upon the sale of the property).

ANSWER: For the current transaction (the home improvement), if the property is **25 acres or more** (RESPA has a 25 acre exemption), then RESPA would not apply. In addition, MDIA (under REG Z) would not apply (because it has the same 25 acre exemption). This means a GFE, ROR, Initial TIL, etc. would NOT be required. However, a final TIL would be necessary.

If (in the current transaction), the acreage (for any reason) is decreased from the 29 acres to less than 25 acres, then RESPA and TILA would apply. Please note, however, construction loans that involve temporary financing are exempt unless the construction is 1) a construction to perm (same lender for permanent financing, 2) transfer of title is involved (title is transferred to the first user of the residential property), and 3) construction loans with a term of two years or more.

In addition, as we discussed, a Mechanic's lien contract would be required and those waiting periods would apply also since the property is the homestead of the borrower.

E. **SHORT TERM VERSUS TEMPORARY LOANS. SHORT TERM LOANS ARE EXEMPT UNDER RESPA:**

1. **SHORT TERM PURCHASE OF HOMESTEAD:**

QUESTION: He is purchasing a new home, has existing home for sale. Parents are giving him \$100,000.00 (CD Pledged) and with that and his proceeds from his existing home he will pay the loan in full.

ANSWER: Short term loans stand alone. There is no specific time period. They are not replaced by another loan.

The loan referenced does not appear to be a bridge loan – but seems to be a short term loan re purchase money transaction.

Bridge loans and temporary financing are exempt from RESPA and TILA with certain exceptions (with regard to temporary financing those exceptions are same lender for permanent financing, transfer of title to first user, and a construction loan with a term of two or more years). Short term loans are not exempt.

To be on the safe side, I would suggest giving the borrower a GFE and Initial TIL on this transaction – unless the lender determines this is truly a temporary loan.

2. **SHORT TERM OR TEMPORARY FINANCING WHEN ONE DIVISION OF THE SAME BANK REFINANCES?**

QUESTION: Does RESPA apply when one division of the bank is providing temporary financing, and the other division (mortgage division) of the bank is providing the permanent portion of the loan?

ANSWER: Yes, this would **not** fall under the temporary financing exemption under RESPA. Instead, the transaction would be a temporary loan converted to permanent financing by the same lender and would, therefore, not be exempt.

RESPA APPLIES TO:

Federal Compliance
Real Estate Settlement Procedures Act (12 USC 2601)
Analysis and Commentary
II.: Applicability (04/2008)
II.A: Applicability (04/2008)

Title: II.A: Applicability (04/2008) Copy To Clipboard

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RESPA applies to all transactions involving a "federally related mortgage loan," which includes most loans secured by a first or subordinate lien on residential property. Home purchase loans, refinances, lender-approved assumptions, property improvement loans, equity lines of credit, and reverse mortgages all fall under the purview of RESPA. 24 C.F.R. §3500.5(a); <http://www.hud.gov/offices/hsg/sfh/res/resindus.cfm>.

RESPA defines a "federally related mortgage loan" as any loan which is secured by a first or subordinate lien on residential real property upon which there is located, or will be constructed using the proceeds of the loan, a structure designed principally for the occupancy of 1 to 4 families and that:

- (1) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the federal government, or is made in whole or in part by any lender which is regulated by any agency of the federal government;

- (2) 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 under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency;
- (3) is intended to be sold by the originating lender to Fannie Mae, Ginnie Mae, Freddie Mac, or a financial institution from which it is to be purchased by Freddie Mac;
- (4) is made in whole or in part by any "creditor," as defined in [15 U.S.C. §1602\(f\)](#), who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year;
- (5) is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in items (1) through (4), by a mortgage broker; or
- (6) is the subject of a home equity conversion mortgage, also frequently called a "reverse mortgage," issued by any maker of mortgage loans specified in items (1) through (4).

12 U.S.C. [§2602\(1\)](#); 24 C.F.R. [§3500.2\(b\)](#).

RESPA EXEMPTIONS (RESPA DOES NOT APPLY TO THE FOLLOWING):

Federal Compliance

Real Estate Settlement Procedures Act (12 USC 2601)

Analysis and Commentary

III.: Exemptions (04/2008)

Title: III.: Exemptions (04/2008)

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RESPA and [Regulation X](#) do not apply to:

- (1) a loan on property of 25 acres or more (This exemption applies even if there are 2 homes on the property so long as the property is a single parcel.);
- (2) an extension of credit primarily for a business, commercial, or agricultural purpose or an extension of credit to government or governmental agencies or instrumentalities;
- (3) temporary financing, such as a construction loan (see below for exception);
- (4) any loan secured by vacant or unimproved property, unless within 2 years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds;
- (5) any assumption in which the lender does not have the express right to approve a subsequent person as the borrower on an existing mortgage loan;
- (6) any conversion of a mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, and even if the lender charges an additional fee for the conversion; or

- (7) a bona fide transfer of a loan obligation in the secondary market; however, any transfer of servicing will be subject to RESPA's transfer of servicing provisions (For purposes of this exemption, mortgage broker transactions that are table-funded are not considered secondary market transactions. In addition, neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is considered a secondary market transaction.).

12 U.S.C. [§2606\(a\)](#); 24 C.F.R. [§3500.5\(b\)](#).

Temporary financing, such as construction loans, are not generally subject to RESPA. However, if a loan **may be converted to permanent financing by the same lender or used to finance transfer of title to the first user, the loan is subject to RESPA.** In addition, any construction loan (for new or rehabilitated property) exceeding a term of 2 years is subject to RESPA, unless made to a bona fide builder. A bona fide builder is a person who regularly constructs 1- to 4-family residential structures for sale or lease. 24 C.F.R. [§3500.5\(b\)\(3\)](#).

A "bridge loan" or "swing loan" in which a lender takes a security interest is not covered by RESPA or [Regulation X](#). [Id.](#)

V. TEXAS SUBORDINATION AGREEMENTS AND REFINANCES:

Our firm generally advises that a title company must determine whether or not a subordination agreement is necessary. In general, our advice with regard to this issue is to rely upon the title company to make the decision since it is insuring the priority of the lender's lien.

The following case addresses this issue.

Example (see handout): The Shepard case involved first and second lien mortgages on real property. The liens were held by two separate lenders. The secondary mortgage deed of trust contained subordination language which stated that the lien would remain subordinate regardless of renewals, extensions, or modifications. Later in time, the borrower renewed and extended the first lien. The lender who was in first position brought action seeking a declaratory judgment confirming its lien status.

The Court in [Shepard v. Interbay Funding, LLC.](#), held that "the primary lender retained its status as the senior lien holder after the borrower refinanced the loan **as to the replacement mortgage . . . except to the extent of the increase in principal.**" It reasoned that "if a senior mortgage is released of record and, as part of the same transaction is replaced with a new mortgage, the later mortgage retains the same priority as its predecessor." **The Exception to this rule is "when any change in the terms of the mortgage or the obligation it secures is materially prejudicial to the holder of a junior interest in the real estate (increase in principal).**

Please see the following excerpts from Sheppard v. Interbay Funding, LLC.

Sheppard v. Interbay Funding, LLC, 305 S.W.3d 102, 107-09 (Tex. App.--Hous. [1st Dist.] 2009)

Restatement (Third) of Property (Mortgages) § 7.3 (1997). The comments to section 7.3 explain that “a senior mortgagee that discharges its mortgage of record and records a replacement mortgage does not lose its priority as against the holder of an intervening interest unless that holder suffers material prejudice.” Restatement (Third) of Property (Mortgages) § 7.6 cmt. b (1997). **While the “increase in the principal amount will prejudice the holders of junior interests,” a replacement mortgage under section 7.3 retains seniority “except to the extent of” the increase in principal.** See *id.* Section 7.3 “aims at resolving those problems in a manner that protects the legitimate expectations of the holders of junior interests, while at the same time denying them the ability to veto workouts or other flexible restructuring arrangements between mortgagors and senior lenders.” Restatement (Third) of Property (Mortgages) § 7.6 cmt. a (1997).

We conclude that the summary judgment record before us defeats any claim of prejudice as a matter of law. See *Providence Inst. for Sav. v. Sims*, 441 S.W.2d 516, 520 (Tex.1969) (noting that “there [was] no contention” that intervening mechanic's lienholder “was placed in a worse position” by lender who sought equitable subrogation after furnishing funds to retire portion of debt secured by first lien on property); see also *Murray v. Cadle*, 257 S.W.3d 291, 300 (Tex.App.-Dallas 2008, pet. denied) (**stating that “[a] junior lienholder does not suffer prejudice merely because it is not elevated in priority”**); ***108 Farm Credit Bank of Tex. v. Ogden**, 886 S.W.2d 305, 311 (Tex.App.-Houston [1st Dist.] 1994, no pet.) (**stating that equitable subrogation does not prejudice junior lienholder if it leaves him in same position on date lienholder recorded its interest**).

Based upon the contractual documents, and applying the principles set forth in section 7.3, **we hold that Interbay was entitled to maintain a first lien on the real property in the amount of \$407,210.52, which represents the balance of the first lien prior to the refinance.**⁶

Finally, we note that section 7.3 expressly contemplates that the first mortgage at ***109** issue will be released of record and, as part of the same transaction, will be replaced with a new mortgage. Restatement (Third) of Property (Mortgages) § 7.3 (1997). Thus, Sheppard's assertions that the two Interbay loans had different loan numbers and different principal amounts, the original Interbay note was paid off in its entirety, Interbay charged a prepayment penalty on the original Interbay loan, Kimble was issued a new title policy in conjunction with the Interbay refinanced deed, and Interbay released the original Interbay lien are **unavailing**. We sustain Interbay's first cross-issue.



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RESPA - APPLICABILITY:	TRUTH IN-LENDING APPLICABILITY:	TRUTH-IN-LENDING: MDIA (Initial TIL) - APPLICABILITY:
Federally Related Mortgage loan – means:	Applies to each individual or business that offers or extends credit <u>when four conditions are met:</u>	226.19 – Mortgage transactions subject to RESPA secured by a consumer’s dwelling . Mortgage transactions are defined in RESPA as “federally related mortgage loans”! See RESPA in first column.
(not apply to residential property for more than 1-4 families) ---		
1) 1st and 2nd liens on res property	1) the credit is offered or extended to consumers;	1) a consumer’s dwelling, AND 1ST and 2nd liens on res property; ****No longer consumer’s principal dwelling – can be a second home (not he line of credit)
2) 1-4 family properties (includes condos, coop units, man homes) and loan proceeds used to construct 1-4 family on property; AND	2) The offering/extension is done regularly;	Same as RESPA
3) Made (whole/part) lender regulated by deposits insured by fed. Gov. OR	3) The credit is subject to a finance charge or is payable by a written agreement in 5 or more installments (not including a down payment); and	Same as RESPA
4) Made (whole/part) lender – insured, guaranteed or assisted by fed gov.; OR	4) The credit is primarily for personal, family or household purposes.	Same as RESPA
5) Made (whole/part) lender – insured, guaranteed or assisted in connection to housing or urban dev program; OR		Same as RESPA
6) Intended to be sold to FNMA; FREDDIE; OR GINNIE MAE; OR		Same as RESPA



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7) Made (whole/part) lender - (not state agency) that makes more than \$1 mil in res real estate loans in a calendar year (includes temporary financing and loans secured by multifamily dwellings); OR		Same as RESPA
8) Originated by Dealer or mortgage broker assigning the loan to the lender described above; OR		Same as RESPA
9) Reverse or HE conversion mortgage made by lender above		
EXEMPTIONS:	EXEMPTIONS:	EXEMPTIONS
1) 25 acres or more even if a home is on the property	1) Business , commercial, ag, or organizational credit	Same as RESPA
2) Business purpose, commercial, or ag loans	2) An extension of credit to other than a natural person including credit to Gov. agencies.	Same as RESPA
3) Temporary Financing: Construction loans and bridges. But, the following 1-4 family res property loans ARE COVERED by RESPA:	3) Credit over \$25,000 not secured by real property or a dwelling of the consumer.	Same as RESPA
a) Construction to perm – same lender	5) An extension of credit that involves public utility services, etc.	Same as RESPA
b) const loan – transfer of title to the first user of the residential property, AND	6) Securities or commodities accounts	Same as RESPA
c) const loan for a new or rehabilitated residential property w/ term of 2 or more years.	7) Home Fuel Budget Plans	Same as RESPA
4) Vacant or Unimproved Property -- - Unless loan proceeds are used to	8) Home fuel budget plans	Same as RESPA
a) construct a structure; OR b) place a man home on	9) Student loan programs	Same as RESPA



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property AND structure/Man Home is placed on property within 2 years after closing;		
5) Loan Assumption: only if lender has no right to prevent the assumptor from becoming a borrower;		Same as RESPA
6) A conversion (MOD) different terms that are consistent with original loan if a new note is not required [not include change in loan product]		Same as RESPA
7) A bona fide transfer of a loan in the secondary market.		Same as RESPA

Notes:

LOANS COVERED: (first and second liens) on 1-4 family homes (residential) property are: 1) home purchase loans, 2) lender approved assumptions refinances, loans for property improvement, HELOC and home equity lines of credit (unless appropriate disclosures are given under reg z) and reverses.

HELOCS: RESPA does not apply (therefore, GFE is not required) to HELOCS **as long as the appropriate disclosures are given under REG Z.**

RESPA APPLIES TO SECOND HOMES BUT MUST BE 1-4 PROPERTY. Even if Equity Out.

REFI PLUS – RESPA APPLIES

Short Term loans are NOT exempt under RESPA and TILA. Short Term Loans are not Temporary loans – see above.