

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D.C.

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In the Matter of:

**HOMESIDE LENDING  
COMPANY, INC.**

Respondent.

RESPA No. R-97-0116

Docket No. 99-989MR

**SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into between the U.S. Department of Housing and Urban Development ("Department" or "HUD") and HomeSide Lending, Inc. ("HomeSide").

**WHEREAS**, Section 10(c) of the Real Estate Settlement Procedures Act ("RESPA" or the "Act"), 12 U.S.C. § 2609(c), requires a servicer that has established or continued an escrow account in connection with a federally related mortgage loan to submit to the borrower a statement clearly itemizing certain amounts and charges paid from the escrow account; and

**WHEREAS**, HUD's Office of Consumer and Regulatory Affairs conducted a review of HomeSide's escrow practices relating to the payment of certain class action attorney fees from mortgagors' escrow accounts and its disclosure of the disbursement of those fees in the 1994 annual escrow account statement;

**WHEREAS**, as a result of that inquiry, HUD was informed that in certain cases HomeSide disclosed the disbursement of the class action attorney fees by combining those fees along with "other charges" and designating the aggregate disbursed fees as a "MISC DISBURSE" on the 1994 annual escrow account statement;

**WHEREAS**, because a specific transactional code for every disbursement that may be made from a borrower's escrow account may not exist, HomeSide uses the term "miscellaneous disbursement" to describe disbursements not otherwise covered by a specific transactional code;

**WHEREAS**, the Department did not question the accuracy of the information contained in the Annual Escrow Account Statements, but did raise concerns with the level of specificity used to describe certain disbursements pertaining to the payment of attorneys' fees;

**WHEREAS**, it is the Department's position that each Annual Escrow Account Statement must provide an account history reflecting the activity in the escrow account during the escrow account computation year, and the Statement must include the itemized information set forth in 24 CFR § 3500.17;

**WHEREAS**, HomeSide was sent a 30-day notice dated November 30, 1999, ("Notice") advising it that the HUD Mortgagee Review Board ("Board") was considering taking an administrative action and imposing a civil money penalty against HomeSide for alleged violations of the Real Estate Settlement Procedures Act ("RESPA");

**WHEREAS**, HomeSide was provided an opportunity to respond to the Notice and did so on December 30, 1999, in which it denied the allegations and maintained that its escrow practices were in full compliance with RESPA and its regulations;

**WHEREAS**, both HUD and HomeSide mutually desire to avoid further expense and administrative proceedings and to reach a mutually satisfactory resolution of this matter; and

**WHEREAS**, this Settlement Agreement shall not constitute an admission of liability or fault on the part of any party.

NOW THEREFORE, HUD and HomeSide agree as follows:

1. HomeSide agrees, when issuing Annual Escrow Account Statements to borrowers, to clearly itemize and separately identify all amounts paid out of the borrowers' escrow accounts for taxes, insurance premiums, and other charges, as required by RESPA and Regulation X. HomeSide further agrees that each Annual Escrow Account Statement will contain sufficient information and differentiation to identify the use of the funds from each payment from the escrow account and to give meaningful disclosure to the borrowers.

2. HomeSide agrees to disclose miscellaneous disbursements from the borrowers' escrow accounts through a two-phase disclosure process, as follows:

a. Phase I will begin upon the execution of a settlement agreement with HUD, and will continue until implementation of Phase II. In Phase I, within 15 days after a miscellaneous disbursement has occurred, HomeSide will send the borrower a customized letter which describes the nature and amount of the disbursement. The letter will also contain language in bold print requesting that the borrower retain this letter for year-end tax purposes and informing the borrower that this disbursement will appear as a "miscellaneous disbursement" on the borrower's IRS Form 1098 year-end statement. In addition, the letter will provide a toll-free telephone number the borrower may call if the borrower has questions about the disbursement. Finally, an asterisk will appear next to the phrase "miscellaneous disbursement" on the IRS Form 1098. Next to the asterisk will be a reference to the explanation letter the borrower previously received and HomeSide's toll-free telephone number.

b. Phase II will begin no later than January 1, 2002, but HomeSide agrees to use its best efforts to implement Phase II on or before January 1, 2001. In the interim, HomeSide will, upon request, provide HUD with a written update on the progress of its system enhancements relating to this matter. Under Phase II, when HomeSide sends the borrowers a Quarterly Mortgage Statement, it will include a specific description of the nature and amount of the miscellaneous disbursement on the

Statement itself; therefore a customized letter will not be needed. The same specific description will appear on the face of the Annual Escrow Account Statement. In the event a unique charge is incurred for which HomeSide could not anticipate or create a transactional code, the Phase I disclosures will be used, except that under Phase II, the asterisk and reference will appear on the Annual Escrow Account Statement.

HUD agrees that the Phase II disclosure process described herein complies with the Act.

3. HomeSide agrees to pay HUD a lump-sum payment of \$20,000 to cover costs associated with the Department's review of this matter.

4. In consideration for the efforts of HomeSide set forth in Paragraphs 2 and 3 above, the Department agrees to unconditionally release and will have no further claims or causes of action against HomeSide, its current and former officers, directors, employees, attorneys, agents and successors, parents and affiliates for violation of 12 U.S.C. 2609(c) based on the use of the terms "miscellaneous disbursement" in Annual Escrow Account Statement disclosures made by HomeSide up to and including the Annual Escrow Account Statements for year-end 1999. Further, the Department acknowledges that it has no present intention to investigate the manner in which HomeSide discloses its disbursements from escrow accounts. The Department reserves the right to make inquiries however, based on an individual complaint, pattern of complaints or a request from State or Federal agencies.

5. HomeSide agrees to waive, release and remit any and all claims directly or indirectly against HUD or HUD employees with respect to this administrative action, the issuance by the Board to HomeSide of the Notice, or the RESPA review.

6. This Settlement Agreement is for the purpose of settling this administrative action and any previous Departmental review of HomeSide's escrow practices and shall be used for no other purpose.

7. Upon final execution of this Settlement Agreement, the Board and the Department shall consider this matter closed consistent with the faithful performance by HomeSide of the obligations imposed herein. Failure to comply with the terms of this Settlement Agreement may result in the Board or the Department taking action against HomeSide pursuant to 24 *Code of Federal Regulations*, Parts 25, 30 and 3500, and 12 U.S.C. § 2609(d).

8. Each party to bear its own costs and legal fees.

**WHEREFORE**, the parties hereto have duly executed this Settlement Agreement, effective when executed by HUD.

Date: 1/11/00

**HOMESIDE LENDING, INC.**

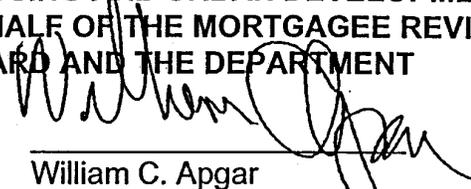
By:   
(Signature)

Name: HUGH R. HARRIS  
(Print or Type Name)

Title: C.E.O.  
(Print or Type Title)

Date: JAN 12 2000

**UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT ON  
BEHALF OF THE MORTGAGEE REVIEW  
BOARD AND THE DEPARTMENT**

By:   
William C. Apgar  
Assistant Secretary for Housing --  
Federal Housing Commissioner  
Chairman, Mortgagee Review Board