

Unfair Lender Fees in an FHA/VA Loan Process

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Subject: How about a little HUD/FHA chat... :o)
Date: Mon, 03 Apr 2000 00:20:26 -0700
From: G-II Varrato II G-II@realestateinphoenix.net, Residential-sales@dealmakers.net
Reply-To: G-II G-II@homesinphoenix.net
Organization: Coldwell Banker Success Realty, Inc.
To: Residential-sales@dealmakers.net

*By George "G-II" Varrato II
Coldwell Banker Success Realtor® and Mentor*

Hello my friends,

Not too long ago we encountered a situation, not uncommon to most of us who have been in the business for any length of time; Lori & I are entering our eleventh year. The situation has to do with FHA/HUD fees and the story goes like this:

One of our protégés had encountered an offer, on a listing he was representing, that started out very poorly and had the earmarks of getting even worse. The offer was heavily front-loaded with an inordinate number of lender fees, disallowable under the FHA/HUD rules, for the buyer to pay. The buyer of the listing our protégés was representing had secured the services of a loan officer, a mortgage broker, who had lender fees that amounted to over \$1,300. The unconscionable figure posed a huge obstacle to the transaction. Our protégé asked for our intervention, and we were successful in getting the buyers agent to approach his buyers lender to get some relief from these fees.

We thanked the buyer's agent for taking time to speak with us and our protégé about the transaction his client and our protégé's client were negotiating. We provided the buyer's agent with the URL to HUD in Santa Ana, California wherein he found information about allowable and non-allowable costs in a HUD transaction... <http://www.hud.gov/hoc/sna/snap2-20.html>. If you visit this URL you will see, there are a number of terms, words and phrases that are not allowed to be paid by the buyer when in an FHA/HUD lending platform. If these fees must remain part of the transaction, the government does not care who pays them, only that the Buyer will not be the responsible party to those fees.

That being said, there are a few options that present themselves as solutions to this issue; one is that the lender can opt to not inject extraordinary costs into his/her loan package. Another is that the seller could opt to pay all of those extra costs that the mortgage broker tossed into the loan package. Even another scenario is that the mortgage broker can opt to pay those fees from his proceeds of the transaction.

Traditionally, the real estate industry has referred to these costs, associated with FHA/VA transactions, as FHA/VA seller's costs. That is absolutely incorrect. The federal government does not now nor has it ever mandated who IS responsible for those "junk fees". However the federal government has always had a mandate in place wherein the Buyer is protected and prohibited from being assigned those costs so identified.

Ponder these two scenarios;

Scenario A)

Buyer's lender produces a loan package wherein the lender charges the following Non-Allowable fees to the transaction:

1. Bring-down Fee: \$25.00 (traditionally charged by title agencies or lawyers)
3. Document preparation fee: \$375.00
4. Documentary Transfer Stamp Tax: \$100.00

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For a total of \$500.00... These are traditionally what the real estate industry has experienced over the years and across the nation. On occasion, an additional fee perhaps called an "Underwriting Fee" has manifested itself in the transaction but on many of those occasions, if that additional fee posed the potential of tearing the transaction apart, the lender withdrew that fee. In our 11 years as Realtors, Lori & I have been very successful in representing both buyers and sellers in FHA/VA transactions wherein extraordinary costs have emerged only to pose a real threat to the successful completion of the transaction. We successfully negotiate, with the lender, the complete evaporation of fees over our clients ceiling, usually set at \$500.00 or \$600.00.

The second scenario that could find its way into the transaction is:

Scenario B)

Buyer's lender produces a loan package wherein the lender charges the following Non-Allowable fees to the transaction:

1. Bring-down Fee: \$25.00 (traditionally charged by title agencies or lawyers)
2. Data Processing Fee: \$125.00
3. Document preparation fee: \$200.00
4. Documentary Transfer Stamp Tax: \$80.00
5. Inspection Fee: \$100.00
7. Packaging Fee: \$50.00
8. Photo Fee: \$50.00
9. Processing Fee \$400.00
10. Satisfaction, Re-conveyance, Termination: \$35.00
15. Underwriting fee (Automated underwriting fee is also not allowable): \$250.00

For a Total of \$1,315.00... there is a lot of fluff here. It is truly appropriate that a buyer should have their negotiations hampered and interfered with, by lenders who try to inflate the "junk fee" window just to line their own pockets? Conversely, is it any more appropriate that the seller should be asked to support these unrealistic fees just to close an FHA/VA transaction? We think not!

Our belief is that the sale and purchase of real estate is not now nor was it ever designed to produce Winners and Losers. The sale and purchase of real estate should produce Winners on all fronts. The seller receives a fair and marketable price for their house and the buyer pays a fair and marketable price for their new home. The Realtors, if there any involved with the transaction, make a fair and equitable fee for bring their expertise, knowledge of the market and negotiating skills to the negotiating table. All parties should walk away winners, including the mortgage brokers and mortgage bankers.

As Realtors, it is one of our primary responsibilities in any real estate transaction to protect the rights and bottom lines of our respective clients. As a seller's agent, we must do all we can to assure that our client is not damaged in the transaction, is not taken advantage of and that he/she represent their property truthfully with complete disclosure of all material facts to the sellers agent and to the buyer's agent and buyer. We are to help the seller obtain the absolute top value for his/her property that the market will support.

As a buyer's agent, we must do all we can to assure that our client too, is not damaged in the transaction; That the buyer is not taken advantage of, not only by a short sighted or narrow-minded seller, (i.e. not all material facts disclosed), but also to help insure that the buyer is represented properly by his/her lender, if a lender is involved. Is it really fair to allow our buyer to immerse himself/herself in a loan scenario wherein the buyer is set up for failure right from the beginning. That is to say, if the lender's proposed loan package is packed full of untraditional "junk fees", do we not have a moral obligation to point out other alternative financing to our client; alternatives that are available, assuming our buyer has fair to excellent credit? Or... do we let our buyer plod through the process of loan preparation and make an offer on a property, only to have the seller turn down the offer because of the extraordinary "junk fees" prohibited to be paid by a buyer via Federal HUD mandate?

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Keep in mind, when sellers are presented FHA/VA offers, most of them have been, unjustly, pre-conditioned to believe that they MUST pay those Non-Allowable fees. If the offer is front-loaded with non-traditional Non-Allowable FHA/VA fees of an exorbitant figure, the seller could get spooked and not even want to negotiate the transaction, simply rejecting the offer with instruction to the selling agent to not present an offer from that particular buyer again. Even worse, the seller could refuse to entertain any future offers from FHA or VA buyers. Such a knee jerk response from the seller is certainly not in their best interest; nevertheless one can see how these issues can mushroom into an atomic blast.

How about this scenario; the seller counters with an increase to the sale price to offset the additional "junk fees", thus thrusting the buyer into having those "junk fees" paid for in a translation of added cost of their new home and their mortgage payment not to mention the added interest costs.

For example, buyer finds a home listed at \$103,000 and offers the seller, \$103,000 but wants the seller to pay \$1,300 in Non-Allowable buyer costs. The seller counters the buyer with a revised purchase price of \$104,300 and at that price agrees to sell the house to the buyer. If the buyer has secured a fixed rate loan at 8.5% and is putting 3% of the purchase price down on the home, approximately \$3,000, his payment has increased from \$768.92 to \$778.92, principal & interest only. Now... we need to be fare about this scenario... if we assume traditional fees to be in the range of \$500 that means that the buyer and seller are dealing with an additional non-traditional fee increase to the transaction of \$800.00. The actual translation of this increase to the seller is \$6.61 per month over the course of the 30-year loan, \$2,217.60.

Are we to truly believe that a total additional cost of over \$3,000 is fare for the buyer to pay just to finance their new home? I pose that question given the reality that there are plenty of lenders in the market who will not charge these extraordinary fees. Do we not owe it to our clients to advise them of the alternatives available to them and then let them draw their own conclusions? I think that is exactly what we, as their Realtors, should do. Understand what I am proposing. The Realtor's charter has never been nor will it ever be, to make up our clients mind for them. But our charter is clearly one that mandates we bring to bear all of our professional skills, knowledge and experience and to supply our clients with as much information as we can, allowing them to draw an informed decision from that information.

Lori & I are senior Realtors in the Coldwell Banker Success Metro office and from time to time share different situations we encounter. The transaction that our protégé encountered produced a perfect opportunity for one such instance of sharing.

Thanks for you time and remember, our negotiating skills are not solely for the purpose of assisting our clients in the sale and acquisition of real estate. These skills are also useful in helping our clients through the maze of financing the transaction. When we apply our skills to all aspects of the transaction, we make the world of real estate an enjoyable environment and the addition of the Realtor to the transaction truly, a valuable commodity.

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