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UNITED STATES SUPREME COURT RULES ON RESPA CLAIMS INVOLVING (1) SPLITTING OF TITLE FEES AND (2) MARKING UP FEES

It is not that often that we get a decision from the United States Supreme Court that involves real estate or the real estate industry.

In May, the Court issued its opinion in a case involving fees that a lender charges to several of its borrowers. The borrowers contended that the lender had not provided the services to earn the fees it had charged. In one instance, the borrower was charged fees that were supposed to result in a lower interest rate (which apparently did not happen), and in another, the borrower contended they were charged fees that were excessive in relation to the amount of the loan.

The Court was asked to interpret USC section 2607 (b) which provides that "no person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service...other than for services actually performed." The borrowers relied on this statute and a HUD policy statement regarding this statue, in which HUD had stated that "a settlement provider may not mark-up the cost of another provider's services without providing additional settlement services; such payment must be for services that are actual, necessary and distinct."

A unanimous Court found in favor of the lender holding that the statute did not apply as the fees charged were not split with anyone, and that HUD's policy statement did not apply, because the statute did not relate to questions of excessive fees. Freeman v. Quicken Loans, 566 U.S. __ (2012) If you would like to read a copy of this decision, please send an email to fkrause@natic.com

Our next Chat will discuss the proposed rule filed by the Consumer Financial Protection Bureau relating to mortgage disclosures.