

Appraisers and lending institutions - Maybe the best way to explain the “Customary and Reasonable” appraisal fee **problem** is to provide excerpts from one of many class action lawsuits that have been filed against the lenders.

Understand, the text I’ve listed below is not my opinion but is part of the claims by plaintiffs against lenders.

### **Why is this important?**

If you, as a lender or AMC, are doing any of the following, maybe you should reconsider your policies and procedures if you’d like to avoid lawsuits.

### **The Inflated Appraisal Fee Scheme**

47. Not content to increase profits solely from the widespread abuse of good lending practices, and confident in their market power to force their will upon most appraisers, Countrywide and LandSafe set out to use their combined market power to **illegally squeeze additional monies out of home buyers, and have implemented the Inflated Appraisal Fee Scheme.**

48. Pursuant to the Scheme, Countrywide sends to prospective borrowers a Good Faith Estimate (“GFE”) detailing an offered loan. In the GFE, Countrywide tells the borrower that it requires “an appraisal from an appraiser we select from our approved list.” Countrywide then designates the specified appraiser as LandSafe.

49. For most real estate settlement service providers, RESPA forbids one company from requiring the use of another company as this would inherently invite pricing abuse by the required provider to the benefit of itself and the requiring provider C all at the expense of the home buyer. However, RESPA has an exception for lenders, such as Countrywide, to permit them to require a specific appraiser, ostensibly because the purpose of the appraisal is supposed to be to protect the lender and thus the lender should be incentivized to get a fair and accurate appraisal. Yet, as set forth above, Countrywide’s interest is closing loans irrespective of actual value of the secured property. So for Countrywide, the required use exception in RESPA became merely a loophole in the regulation through which it could squeeze extra profits from unknowing and unsuspecting home buyers.

**50. As part of the Scheme, LandSafe then contacts independent appraisers to perform the appraisal and insists that the appraisals be performed at a very low rate.**

51. Due to its economic clout, and as part of the Scheme, LandSafe informs appraisers that if they wish to perform appraisals for Countrywide loans, they must agree to a reduced fee that is far below the market rates that the appraiser had been charging. If the appraiser does not agree he or she is removed from the approved appraiser list and/or placed on an Exclusionary List. In addition, appraisers who have already been placed on an Exclusionary List are told that they

can only be removed from the Exclusionary List if they agree to become a LandSafe approved appraiser, which in turn requires them to perform appraisals for LandSafe and Countrywide at much lower than market rates.

52. When the loan is closed however **LandSafe does not pass on the reduced appraisal fees to the home buyer. Instead, it inflates the appraisal fee and represents to borrowers that the appraisal cost is far in excess of the actual cost of the appraisal.** There is no disclosure of this markup to the borrower and LandSafe performs no additional appraisal services beyond merely forwarding the appraisal to Countrywide or the escrow provider for the transaction.

53. While the exception to RESPA's required use prohibition allows Countrywide to require the use of LandSafe, under other RESPA provisions, due to the relationship between Countrywide and LandSafe, Countrywide is required to provide an "Affiliated Business Arrangement" ("ABA") disclosure to its customers. The ABA disclosure must note the existence of such an arrangement to the person being referred and, in connection with such referral, [the customer must be] provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred...at or before the time of the referral...@ 12 U.S.C. ' 2607.

While some Countrywide customers are told of the affiliated relationship between Countrywide and LandSafe, none know - or have any reason to suspect - **that the appraisal fee set forth on the HUD-1 Settlement Statement is actually far in excess of the actual charge the appraiser made for his appraisal.** For many borrowers, however, Countrywide fails to provide the required ABA disclosures. As a result, these borrowers are not aware that LandSafe is even an affiliate of Countrywide.

55. As a quid-pro quo exchange for the referral from Countrywide to LandSafe, LandSafe gives Countrywide visibility into the appraisal process and substantial control over the outcome of the appraisal. **This benefit is a "thing of value" as defined in RESPA and is utilized by Countrywide to control and maximize its ability to control the mortgage lending process. Even when Countrywide makes the RESPA required ABA Disclosures, it nonetheless violates RESPA's prohibition on referral fees because it gets a thing of value** - i.e., control of the appraisal process and outcome - beyond merely the return on its ownership interest in LandSafe.

[emphasis added ]

#### **Hagar's Solution:**

It's simple, what the borrower pays for an "Appraisal Fee" as shown on the HUD-1, Line 804, is the fee that should be paid to the appraiser. Any fees paid to the AMC should be shown on a separate line.

It doesn't get any simpler than that.