

You are a closing entity and the transaction is structured as follows: The buyer has contracted with seller to purchase Lot 12 of Dismal Estates. After the contract has been executed, it becomes apparent to the buyer that they will not have enough funds to pay all of the closing costs, and the parties agree to an addendum that provides that there will be a “gross-up” of the sales price by 3% on the HUD. Additionally, the 3% will be shown as a debit on the seller’s side of the HUD as “seller’s payment of closing costs.” You have never been asked to do this, but the realtor advises that “we do it all the time, and it is perfectly OK because everything is disclosed on the HUD, there are no hidden costs, the seller is paying 3% to cover closing costs, and escrow checks are all cut accordingly.” Although this sounds reasonable, you decide to call your friendly Fidelity counsel and ask if this is permissible. What is the answer?