

Impending changes to the residential loan closing process



John T. Metzger | Tuesday, September 15, 2015

The “Know Before You Owe” mortgage rule, also known as the TILA-RESPA Integrated Disclosures rule, goes into effect on Oct. 3, 2015. The Consumer Financial Protection Bureau (CFPB) issued the final rule on Nov. 3, 2013, requiring easier-to-use mortgage disclosure forms that clearly lay out the terms of a mortgage for a homebuyer, among other things. Unless specifically exempted, any residential consumer loan originated on or after Oct. 3, 2015, will be subject to the new rules and forms promulgated by the CFPB. Though there are very few exceptions, those consumer loan transactions exempted from the new rules and forms include reverse mortgages, home equity lines of credit, mobile home loans, and creditors who originate less than five loans in a calendar year.

The new forms being introduced replace the previous “Good Faith Estimate” and “HUD-1 Settlement Statement.” Instead, closing agents and homebuyers will become familiar with the new “Loan Estimate” and “Closing Disclosure,” each prepared by the lender. One crucial requirement is that homebuyers will receive the Closing Disclosure three business days before the closing of the purchase and sale transaction. This period is intended to provide homeowners more time to understand the terms and costs of their mortgage financing and consult with legal and financial counsel to assist with their inquiries. The three day period starts tolling upon “receipt” of the form by the borrower. Unless the lender can evidence affirmative receipt of the disclosure, the disclosure is deemed received three days after the delivery process is started. Accordingly, this may result in up to six business days between mailing of the Closing Disclosure

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and loan closing. In addition, if certain changes are made to the Closing Disclosure (such as an increase in the APR by more than 1/8 percent or an addition of a pre-payment penalty), a new disclosure and waiting period may be triggered. These changes will require greater collaborative efforts amongst settlement agents, lenders, and other vendors well in advance of the projected closing date.

As a result of the CFPB rule, changes are being made to many form residential contracts for purchase and sale. In Florida, for example, the often used Florida Realtors/Florida Bar Form (commonly known as the FAR/BAR) will undergo several revisions, including the following:

- If the contract is contingent on financing, the closing date may be extended for up to 10 days to satisfy CFPB Closing Disclosure delivery requirements
- If the contract is not contingent on financing, yet the buyer elects to obtain a loan, the CFPB Closing Disclosure requirements will not affect the buyer's obligations to close
- The standard period to obtain a loan commitment has been extended from 30 days to 45 days (under the presumption that the financing process will take longer)
- If the contract is contingent on financing, title evidence and survey must be provided at least 15 days prior to closing, rather than the previous five days
- The contract acknowledges that, although allocation of the cost of title insurance premiums are not changing in accordance with Florida custom, those costs will be allocated differently on the Closing Disclosure
- The definition of "Force Majeure" will be amended to delete causes not reasonably within the control of buyer or seller

For more information, please contact one of the attorneys listed below.



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