Considerations for Residential Real Estate Transactions

Post August 1, 2015
TILA-RESPA Integrated Disclosure Rule

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Where Did This Come From?

In response to the Great Recession, Congress passed a law known as the ***Dodd-Frank Wall Street Reform and Consumer Protection Act*** that changed our financial regulatory environment, affecting all federal financial regulatory agencies and almost every part of the nation's financial services industry.

Dodd-Frank Act directs the **Consumer Financial Protection Bureau (CFPB)** to integrate mortgage disclosures under TILA and RESPA Sections 4 and 5.

To lenders and title companies, this is known as the ***TILA-RESPA Integrated Disclosure (TRID) Rule*** or ***Integrated Mortgage Disclosure Rule.*** It affects loan applications received on or after **August 1, 2015.**

How Does This Change The Game?

1. GFE and initial TIL combined to create **Loan Estimate (LE)**.
   HUD-1 and final TIL combined to create **Closing Disclosure (CD).**
2. New **timing requirements** and **cost tolerances** for these new forms. Of particular interest; a transaction cannot close unless the LE has been delivered to the borrower no later than 7 days prior to consummation and borrower has received the CD 3 days prior to consummation.
3. **Lender is responsible for generating and delivering the CD** to borrower(s), not the closing/settlement agent. The lender is liable for certain incorrect fee and timing tolerances, and **may be sued for statutory violations, as well as punitive damages,** by consumers.

The new Rule places new penalties on the lender for TRID noncompliance

Questions Impacting Your Business

1. As a real estate agent, are you prepared to vet the lenders and the closing/settlement agents you typically recommend to ensure they are ready for transaction changes?
   - TRID is a significant change to how residential transactions are closed. Lenders will be much more involved before and after closing.
2. Initially, as lenders and closing/settlement agents learn to work in this new environment, is your buyer’s mortgage rate lock long enough to carry them through a closing delay?
3. Have you coached your buyers to avoid making any major changes to their financing within 10 days of closing that could change their APR?
4. Will the buyer or seller be able to select a closing/settlement agent or will the lender have to approve the closing/settlement agent?
5. What about listing agents? How will the new Rule impact them?

Are the Mortgage and Closing/Settlement Agents You Refer Business To Ready to Handle These Transactions?

Is your closing/settlement agent ready to begin closing loans under the new Rule?

- Have they migrated to software that enables them to work collaboratively with the lenders?
- Have their employees gone through training on the new forms?
- Will the closing/settlement agent issue a separate settlement statement (not a HUD-1), at or after closing, in addition to the lender Closing Disclosure?
- Is the closing/settlement agent you typically use following, or well under way toward implementing, ALTA Best Practices.
  - Some lenders will be asking that same question and some may opt to not allow a company to close their mortgage transactions. Each lender will be different.

Is Your Buyer's Mortgage Rate Lock Long Enough to Carry Them Through A Closing Delay?

This new Rule is a big change for the lending and settlement industry. Initially, the new Rule will have a learning curve which may cause closing delays. If the closing is delayed, can the transaction (buyer and seller) tolerate the delay and allow the transaction to proceed? Expect frustration and plan for it to continue your success.

- For example, in a rising interest rate environment, if a transaction is delayed past the rate lock expiration, the buyer's new interest rate may increase. This could cause a buyer to back out of a transaction, or worse; an increased interest rate could impact the buyer's ability to be approved for the mortgage.
- The probability of closing delays is high, don't jeopardize your transaction with a short rate lock of 30 – 45 days.
- Do your closings occur back-to-back? Consider adding several days between closings as a cushion.
- Are you working on or have you considered revising your standard purchase contracts?

Have You Coached Your Buyers to Avoid Making Any Major Changes to Their Financing within 5-7 Days of Closing that Could Change their APR and Delay Closing?

The TRID Rule states a corrected Closing Disclosure must be issued and a new 3 business day waiting period applies if:

1. Annual Percentage Rate (APR) changes beyond allowable limits
2. The Loan Product changes
3. A Pre-payment penalty is added

Items that may change the APR:

- Adding or removing origination points or discount points
- Changing the loan amount
- Special credits paid outside of closing (POC)
- Changes to the property type

Suggested Practice - Set your buyer's expectation up-front.

"If Aunt Sally wants to give you money to buy more points so you can get a near-zero interest rate 3 days prior to closing, you will need a new CD and it will extend the closing date."

When Your Buyer Uses a Lender You Are Unfamiliar With, Will That Lender Have Documentation Requirements For The Closing/Settlement Agent You Are Accustomed To Using?

Ask the closing/settlement agent if they have ever closed loans for the lender your buyer has selected.

Ask the lender's mortgage processor if they are able to work with your closing/settlement agent and, if not, what is required to make it possible.

What About The Listing Side?

Is there anything the seller should be concerned about that might affect the buyer or the transaction?

Listing agent may want to:

1. Advise the seller to accept offers only if the buyer has a 90-day rate lock.
2. Advise the seller to allow several days between closings and avoid back-to-back transactions.
3. Reinforce what items are to be removed from the property, if all inspection items have been addressed. Last minute POC (paid outside of closing) items could impact the need for a corrected Closing Disclosure to be issued and a new 3 day waiting period to start.

Questions

Thank you