

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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August 12, 2014

TILA-RESPA INTEGRATED **DISCLOSURE RULE** **Part 2 in a series**

Last week we started our series on the new CFPB TILA-RESPA Integrated Disclosure Rule to take effect August of 2015. As we discussed in our general summary, the initial TIL statement and GFE will no longer be used in closed end mortgage transactions. Instead a Loan Estimate will be provided. The final TIL Disclosure and the HUD-1 will also no longer be used. In their place will be the Closing Disclosure.

This week's article will focus on when and how these documents should be delivered. Next week we will focus on how to handle revisions and corrections to these documents.

Delivery of the Loan Estimate:

The creditor is responsible to ensure that the Loan Estimate ("LE") is delivered or mailed no later than the third business day after receiving the application from the borrower. An application triggers the responsibility to provide an LE. The application consists of basically the same elements as triggered the requirements to provide the soon to be obsolete GFE, that is:

- Name,
- Income,
- Social security number,
- Property address
- estimate of value, and
- Loan amount.

However, the seventh element of the current definition of application “any other information deemed necessary by the loan originator” has been dropped.

A loan broker may deliver the LE on the creditor’s behalf. Where this occurs, the creditor’s obligation to deliver the disclosure is satisfied. That said, the creditor is still responsible for the correct delivery and content of the LE.

Of course the creditor can and will continue to collect information from the borrower. However, once these original 6 pieces of information which constitute an application, have been received, the creditor’s responsibility to provide an LE has been triggered.

If the creditor determines that the loan applicant cannot be approved or the borrower withdraws the application within this initial three day period there is no need to provide the LE.

For purposes of counting days under this requirement, a business day is a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions. This definition of business days is different than for counting business days for other purposes, such as providing Closing Disclosures (“CD”). In these instances business day means all calendar days except for Sunday and legal holidays.

Finally, a creditor has the duty to act in good faith and exercise due diligence in completing the LE. Where there is information that is unknown (not reasonably available) the creditor may use estimates and label them as such. However, a new disclosure may be required later when the exact information is ascertained. We will discuss this in greater detail next time.

Delivery of the Closings Disclosure:

As with the LE, the delivery of the Closing Disclosure (“CD”) is the responsibility of the creditor who must assure that the CD is received in proper form and content by the consumer. It can be delivered to the consumer in person, by mailing or other delivery

methods such as email (comply with E-signing requirements) at least three days prior to consummation. If the CD is delivered in person, it is considered received on the day it is provided. If it is delivered by mail or electronically, it is considered received three business days after it is delivered or placed in the mail.

Just to make things a little more difficult, consummation is the time that a consumer becomes contractually obligated on the loan. This may not coincide with the settlement date or the closing date. This is also a determination made under State law. So the state in which you make the loan could change this date.

In this same category remember as we said above, that business days are counted differently than for the LEs. Business days for the CD calculation means all calendar days except Sundays and all legal holidays

Creditors may contract with the settlement agent to deliver the CD. A creditor may also contract to share responsibility with regard to the completion of the CD. However, the creditor is still responsible.

In a purchase transaction, the settlement agent is responsible to provide the seller with the actual terms of the transactions and this can be done utilizing the CD if it contains information relating to the seller's transaction. The settlement agent may also provide the seller with a separate disclosure, including only the information applicable to the seller. A copy of this disclosure must be provided to the creditor.

The terms of the delivery requirements impose a mandatory 3 day waiting period. This may only be waived for a bona fide personal emergency. As with the seven day waiting period after receiving the LE consumers may also waive this three day period too when:

- The loan is needed to meet a bona fide financial emergency.
- The consumer has received the CD.
- The consumer gives the creditor a dated written statement that describes the emergency, modifies or waives the waiting period and is signed by all consumers who are primarily liable on the loan.

This cannot be accomplished with a preprinted form.

In our next article, we will discuss revisions and corrections to both the CD and the LE.

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