LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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GOOD FAITH REQUIREMENTS AND TOLERANCES
Part 4 in a series

Over the first three articles of this series we have addressed the new disclosures required under the Consumer Finance Protection Bureau's ("CFPB") new TILA-RESPA Integrated Disclosure Rule. We have talked about the nature of the two new disclosures, the Loan Estimate ("LE") and the Closing Disclosure ("CD"), the requirements and timing for their delivery and the requirements for modification to these disclosures. You may read these articles on our website at www.altandassociates.com .

In this Part 4, we are discussing how accurate these forms have to be. What does Good Faith mean and how much tolerance there is for error?

So let's start with "Good Faith" which has a definition your grandparents probably would not have recognized. An LE is determined to be made in Good Faith by calculating the difference between the estimates and the actual charges listed in the CD. If the actual charge exceeds the estimate in the LE it is generally not considered to be made in Good Faith. This is true even though the difference can be blamed on a technical error, a miscalculation or an underestimation.

However, there are specific situations in which the creditor may charge more than the original estimate:

- Certain costs or terms can be charged at a greater rate than the estimate; 1) prepaid interest, 2) escrow account deposits, 3) charges for 3rd party services such as recording fees and 3rd party services not paid to the creditor or its affiliate which the customer is allowed to shop for and pick, (assuming the consumer picks a provider not on the creditor's list) are grouped together and subject to a 10% cumulative tolerance. This means that the creditor may charge more for these services as long as the total cumulative charges do not exceed 10% over the original estimate, or 4) charges paid to 3rd party service providers for services not required by the creditor. These changes are allowed if the original estimate was based on the best information available at the time the disclosure was provided.
- The amount charged falls within the explicit tolerance thresholds.
- Changed circumstances permit a revised disclosure, either the LE or the CD.

As we mentioned above, where a consumer chooses a service provider not on the creditor's list of providers, the charge is not limited. It is not subject to a tolerance. If this occurs, that charge is removed from inclusion in the 10% cumulative tolerance. Also, if a service is estimated but not performed, it too should be removed from the total amount of estimated charges.

In situations where no estimate is given for a service that is later charged, that cost may be charged so long as the sum of all the charges does not exceed the original estimated charges by more than 10%.

As mentioned, there are fees charged which are subject to a zero tolerance. They are:

- Fees paid to the creditor, a broker or an affiliate and retained by that party. It is not paid to that party if the party receives money but passes it on to a non-affiliated 3rd party.
- Fees paid to a non-affiliated 3rd party if the consumer is not allowed to shop for the service.
- Transfer taxes.

When amounts paid exceed the amounts disclosed on the loan estimate beyond any applicable tolerances, the creditor must refund the excess to the consumer no later than 60 days after consummation.

Our next and final article in this series will address a number of questions, as to the <u>implications and implementation</u> of the provisions of this new TILA-RESPA Integrated Disclosure Rule.

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