

focus on: Legal Affairs

By: Richelle Cohen Mossler, Esq., General Counsel

Are You Aware of the New Closing Forms and Closing Procedures?



Did you know that the HUD-1 settlement statement and Good Faith Estimate forms are going away on August 1, 2015? The Truth in Lending Act disclosure is going away as well. In their place will be a new closing disclosure and a new loan estimate. There will be changes to the closing process additionally, including a new rule requiring everything to be in place three days prior to closing. Last minute changes will face new hurdles.

Background: The Dodd-Frank Act directed the Consumer Financial Protection Bureau (CFPB) to create an integrated disclosure form. The impetus of combining these forms was to improve disclosures to consumers and make the closing process more consumer-friendly.

Overview of the new requirements:

There is a new integrated “Loan Estimate” disclosure form, which combines the former Good Faith Estimate and the initial Truth-in-Lending (TILA) disclosure into one form.

There is a new integrated Closing Disclosure, combining the HUD-1 and Final TILA disclosure.

There are new timing requirements.

There are new tolerance levels for variances in disclosed estimates.

There are new pre-disclosure requirements.

There is a 5 year record retention requirement.

Exemptions:

This does not apply to home equity loans, reverse mortgages, land contracts or mortgages secured by a mobile dwelling not attached to real property. This does not apply to cash buyers.

Do not use the new forms prior to August 1. The old forms will still need to be used for all applications received prior to this date.

LOAN ESTIMATE FORM

- Must be provided within 3 business days of receipt of application and at least 7 days prior to closing.
- Must contain good faith estimate of credit costs and transaction terms.
- Must be in writing and contain required information.
- Can only change estimates in certain instances.
- Cannot revise Loan Estimate after Closing Disclosure has been provided.
- Required to be delivered or put in the mail not later than three days after receiving application; even if additional information is needed later, the application still triggers the disclosure requirement.
- Application is the submission of a consumer's financial information for the purposes of receiving a loan. (Six required pieces of information from consumer: name, income, social security number, property address, estimate of property value, and amount of loan sought).

The Lender cannot charge a fee until the Loan Estimate is received by the consumer and the consumer has evidenced an intent to proceed with the transaction.

Lender can estimate costs before providing an official Loan Estimate, but must make clear with conspicuous disclaimers set forth by the CFPB that these estimates are not the official Loan Estimate.

Tolerance Limitations or Variations:

Generally the lender is not acting in good faith if the final charges exceed the estimate; if less, lender is considered to be acting in good faith, regardless of tolerance limitations.

Certain charges are not subject to tolerance limitation: prepaid interest; property insurance; services required by the lender, if the consumer is allowed to shop for those services, the consumer selects a provider not on the lender's list; changes in third party charges not required by lender. These variations are permitted.

10% cumulative tolerance (limited increases) allowed on the following charges: recording fees, third party services not paid to lender or where consumer is allowed to shop for services and chooses a provider listed by lender.

Zero Tolerance (no variation) for the following charges: fees to lender; fees paid to third party if consumer is not allowed to shop for services; and transfer taxes. Examples: Origination fee, processing fee, underwriter fee.

Tolerance limits are cumulative, meaning one permitted charge could exceed 10%.

If amounts exceed the tolerance limitations, the lender must refund excess amounts to consumer within 60 days after closing.

The general rule is that the lender is bound by the Loan Estimate, and can only increase charges if justified; a change in circumstance is extraordinary event not contemplated by either party or new information about the consumer (title company goes out of business; natural disaster; or new information about the property becomes known).

Loan Estimate can be increased in the following instances: consumer requests revisions; interest rate was not locked; consumer indicates intent to proceed more than 10 business days after Loan Estimate provided; or loan is for new construction and construction is delayed.

CLOSING DISCLOSURE (replaces TIL and HUD)

- Must be provided no later than three (3) business days before closing. Lender is on the hook not the title company anymore.
- Must contain actual terms and costs of the transaction; any estimates must be in “good faith”.
- If certain terms change between Closing Disclosure and closing, three day waiting period is reset and new Closing Disclosure to be provided. Terms requiring new disclosure are: APR becomes inaccurate; loan product changes (30 to 15 yr. or adjustable to fixed rate); or prepayment penalty is added. ONLY in limited circumstances will closings be delayed.
- Disclosure can be delivered in person; email, if consumer consents; or mail. Mail is presumed received three business days after mailing.
- Consumer may be able to waive the three business day waiting period in a bona fide personal emergency and provides a written waiver that describes the emergency (such as going into foreclosure, etc., to demonstrate extreme hardship). (Don’t count on this ever!)
- Post-closing, a revised Closing Disclosure may be required if an event occurs within 30 days of the closing that causes the Closing Disclosure to become inaccurate, such as non-numerical clerical errors (i.e., wrong address) or refunds for tolerance violations.

WHAT DO REALTORS® NEED TO KNOW:

Although these changes are directed at lenders, members must be proactive and become knowledgeable about these new forms and changes to the closing process. The most common concern to our members will be the changes to the closing process, not the changes to the forms. The 3 day waiting period before closing (starting after a consumer is given the Closing Disclosure) could turn into an additional 3 day waiting period if a change occurs to the interest rate, mortgage product or a prepayment penalty is added. Other changes to the Closing Disclosure may not add to the original 3 day waiting period, but they may require lender approval causing some additional delay in closing the transaction.

TIPS:

- Discuss this with your lender and title business partners in your market before 8/1.
- Discuss timing and deadlines with your buyers and sellers at the beginning of negotiations, and, consider disclosure of such in writing as you finalize the contract. (Prepare consumers!)
- Write flexibility into the contract for last-minute changes if required.
- Avoid closing dates less than 30 days from contract.
- Plan to bring NOTHING to closing that would impact the numbers on the Closing Disclosure.
- Order title early.
- Back-up offers are more important than before.

- Begin scheduling closings well in advance of what is customary today.
- Provide any and all seller invoices ASAP to ensure timely completion of Closing Disclosure.
- Changes to walkthrough—do it early to avoid a problem at closing.
- Pay extra attention to back-to-back closings and out of town buyers and sellers.

If your closing is to occur on June 30, then 7 days prior make sure all your ducks are in a row. Make sure the seller abides by the purchase agreement to prevent delays. A safe bet is to add fifteen (15) days to the closing time in your purchase agreement. Depending on your market and particular circumstances, if you generally request 30 days to close then make it 45 days. If you generally request 60 days to close, request 75 days. This will avoid going outside of the contract deadline and/or having to request extensions from the other party.

END RESULT:

Closings will take longer as a result of these new procedures and fewer closings may occur each day. The costs of implementation, i.e., employee training, will likely be passed along to the consumer. Although this was an effort to simplify the form, the Closing Document is now five (5) pages in length. Now might be a good time to reach out to your respective lenders and title business partners for further clarification and specifics as to their interpretation with regard to the new closing process requirements.

Links:

<http://www.consumerfinance.gov/regulatory-implementation/tila-respa/#disclosures>

www.consumerfinance.gov/regulatory-implementation/tila-respa/

www.realtor.org/topics/respa-tila-harmonization

Please contact the IAR Legal Hotline if you have any questions or concerns regarding the above. The IAR Legal Hotline is available to managing brokers and designated agents from 9am—5pm, Monday-Friday at 1-800-444-5472.