



LEGAL UPDATE

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A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

RESPA/TILA Integration Overview

Proposed effective date: October 3, 2015

The HUD-1 settlement statement and Good Faith Estimate forms are going away in most residential consumer mortgage transactions. The Truth in Lending Act disclosure is going away as well. In their place will be a new Closing Disclosure form and a new Loan Estimate form created by the Consumer Financial Protection Bureau (CFPB). There will be changes to the closing process and the closing timelines as well, with an emphasis on trying to have everything decided and in place a week or more before the closing date in the offer to purchase. Last-minute changes to the transaction with a monetary impact may result in closing delays. These new forms and closing changes go into effect in real estate transactions where the buyer first applies for a loan on or after October 3, 2015.

The Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure (TRID) rules blend the existing disclosure forms that buyers receive when they apply for a mortgage with new requirements from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This new, so-called integration or blending is designed to improve consumer understanding of the mortgage process, aid in comparison shopping, and help prevent consumers from being surprised at the closing table. A new Loan Estimate form replaces the initial Truth-in-Lending disclosure and the Good Faith Estimate consumers receive as part of the loan application process, while the new Closing Disclosure form replaces the closing Truth-in-Lending disclosure and the HUD-1.

The TRID rule, however, also creates new timing requirements for the lenders' delivery of these disclosures to consumers and a potential for closing delays. A premium will be placed on having all costs and expenses finalized a week or more before the closing; changes to buyer expenses or other Closing Disclosure numbers may delay a transaction if the changes occur near closing. Certain changes will require a reissuance of the Consumer Disclosure and trigger a mandatory waiting period of three business days or more prior to closing. Other changes may cause delays if the parties must wait for lender approval. In either case there is a potential closing delay.

The upcoming implementation of the integrated disclosure rules will surely be a learning experience for all involved and there will be nuances and glitches discovered as the new forms and procedures are implemented that were not previously contemplated. There has been no

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field or beta testing of the new forms and procedures with all the parties involved so this will be an on-the-job learning adventure as everyone learns what does and does not work for transactions. The brunt of the new system falls on the lenders and the title companies, but the impact will resonate in transaction timelines and the ability to close on a timely basis may be compromised.

There will be challenges and disruptions for lenders and title companies as they learn what types of changes require a new three-business-day waiting period after a revised Closing Disclosure is given to the consumer. The lenders will have to learn how to quickly evaluate whether a change requires a revised Closing Disclosure and a new waiting period. While in the past, the title companies often prepared the HUD-1, most lenders will prepare and deliver the Closing Disclosure themselves and can be expected to be far more strict about having closing information well in advance of closing because the lender can be liable if certain actual costs vary from the costs provided in the disclosures. Lenders will want to avoid multiple disclosures, closing delays and additional paperwork.

Real estate licensees must do their best to minimize the need for any last-minute changes and help ensure that offer conditions and contingencies are resolved well before closing. This will help avoid issues that may necessitate changes to the Closing Disclosure and trigger a new disclosure waiting period. This, in part, is an educational process whereby real estate professionals must educate clients and customers and set new expectations with regard to time frames in transactions.

This *Legal Update* is one in a series of three or more *Legal Updates* covering various aspects of the TRID changes. This *Update* will provide a general overview of the new TRID rules and the changes that can be expected. Another *Legal Update* will provide a detailed review of the new Loan Estimate and Closing Disclosure forms. While real estate licensees will not be the parties responsible to complete these forms, clients and

customers may ask questions, and it is best to have a general familiarity with the new forms. A further *Legal Update* will discuss the application of these federal law changes to Wisconsin real estate transactions and review a WRA consumer education handout and an optional WRA addendum containing contract language that Wisconsin REALTORS® may wish to consider including in their transactions involving residential consumer mortgage loans.

Overview of Changes to TILA/RESPA Disclosures

The Dodd-Frank Act requires the Consumer Financial Protection Bureau (CFPB) to issue the rules that integrate the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) disclosures and regulations. The Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure (TRID) rules blend the existing disclosure forms that buyers receive when they apply for a mortgage with new requirements from the Dodd-Frank Act. The goal is to improve consumer understanding of the mortgage process and avoid closing table surprises.

History

For more than 30 years, federal law has required lenders to provide two different disclosure forms to consumers applying for a mortgage loan. The law also has generally required two different forms at or shortly before the loan closing. Two different federal agencies developed these forms separately, under two federal statutes: the TILA and RESPA. The information on these forms is overlapping, and the language is inconsistent. Not surprisingly, consumers often find the forms confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain. The TRID rules combine the prior disclosure forms.

Types of loans covered

The TRID rules and new forms apply to most closed-end consumer credit mortgage loan transactions. This means loans extended to a consumer primarily for personal, family or household purposes and that are secured by real property.

Covered loans include:

- Purchase money mortgages.
- Refinances.
- Mortgages on 25 acres or less.
- Mortgages on vacant land.
- Mortgages for construction purposes only.
- Mortgages on timeshares.

The TRID rules do not apply to:

- Home equity lines of credit (HELOCs).
- Reverse mortgages.
- Mortgages secured by mobile homes or by dwellings not attached to a property.
- Loans by persons that make five or fewer mortgage loans per calendar year (not a creditor under Reg. Z).
- Agricultural and business mortgage loans.

Lenders will continue to use the prior TILA disclosure and Good Faith Estimate (GFE), and closing agents will continue to use a 2010 HUD-1 Settlement Statement if the loan is not covered under TRID. Loans in progress, with loan applications submitted prior to October 3, 2015, are not subject to the new rules or the new forms.



REALTOR® Practice Tip

Real estate brokers and agents may see a mixture of old and new consumer disclosure forms depending upon the nature of their practice. Remember that the new TRID forms such as the new Loan Estimate and Closing Disclosure will be used primarily in consumer residential transactions. Other transactions will continue with the existing disclosure forms. There will be two sets of forms in use, depending upon the type and purpose of the mortgage loan.

Effective date

Beginning October 3, 2015, lenders will be required to use the new disclosure documents for any loan applications received for loans subject to the TRID rules. Loans in progress (applications submitted prior to October 3, 2015) are not subject to the new rules or the new forms. Accordingly, there will be several weeks or months after October 3 when the old forms will be used because it is the application date that triggers the use of the new forms. Early use of the Loan Estimate, Closing Disclosure and other new forms is not allowed. The new forms come into play for transactions where the buyer applies for a loan on or after October 3.



REALTOR® Practice Tip

Real estate brokers and agents will not see much evidence of the new TRID forms initially because issues, if there are to be any, will tend to arise with regard to closing and the Closing Disclosure. That does not mean that licensees do not need to be ready to work with consumers in setting their expectations and encouraging sufficient time frames when buyers draft offers to purchase as October 3, 2015, approaches.

Highlights of the New TRID Consumer Disclosure Forms

The new Loan Estimate and Closing Disclosure forms were designed to be easier to use for consumers and the other professionals involved in the loan and closing process. After 18 months of consumer testing and focus groups relative to numerous prototypes the new forms were created by the CFPB.

Whereas prior forms seemed to be more about the transaction and the real estate purchase, the focus has shifted in the new forms to the mortgage loan and the buyer, frequently referred to in the new forms as the consumer or the borrower. The transaction and the role of the seller have become almost secondary and incidental, so this represents a bit of a shift in perspective. The new forms, however, will most certainly work in all affected transactions, and real estate professionals and consumers, along with lenders, title companies and others involved in

transactions, will learn and adapt as transactions transition to the new forms and the new TRID rules.

The prior emphasis on bundling closing costs is gone. The goal of the new rules is to separately itemize each charge so that the consumer knows exactly what he or she is paying for. The forms use clear language and are designed to make it easier for consumers to locate key information, such as the interest rate, monthly payments, and costs to close the loan. The forms also provide more information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time.

① MORE INFORMATION

Samples of the TRID forms, including both blank forms and forms filled in with examples, may be found at www.consumerfinance.gov/regulatory-implementation/tila-respa and will be discussed in further detail in a later *Legal Update*.

New loan estimate

The new three-page Loan Estimate form replaces the Good Faith Estimate (GFE) form and the initial or early Truth-in-Lending (initial TIL) disclosure that are provided to the buyer as the buyer gathers and compares loan information and applies for one or more loans. The new form provides clearer information so that consumers can understand the loan terms and the estimates of loan and closing costs. The new Loan Estimate is also intended to facilitate comparison shopping for loans.

The lender or mortgage broker must provide the Loan Estimate to consumers no later than three business days after submission of a loan application, which is consistent with current time frames. This means the lender must personally deliver or place the Loan Estimate in the mail not later than the third business day after the lender receives the loan application. If the Loan Estimate is not provided in person, the consumer is considered to have received it three business days after it is placed in the mail.

A lender cannot charge any fees, except for a credit report fee, until after the consumer has received a Loan Estimate from the lender and has communicated his or her decision to proceed with the loan to the lender. A consumer has 10 business days after he or she is deemed to have received the Loan Estimate in which to decide whether to proceed with the loan. In addition, the lender cannot require the consumer to submit documents verifying information relating to the application before the lender provides the Loan Estimate. A buyer may, however, provide verifying information voluntarily.

Lenders and other persons may provide consumers with written estimates prior to an actual loan application. Any such written estimates must contain a disclaimer to prevent confusion with the Loan Estimate form. The top of the page should state, "Your actual rate, payment and costs could be higher. Get a Loan Estimate before choosing a loan." These informal estimates given to buyers should also be formatted so they look different than the Loan Estimate form under TRID, again to avoid consumer confusion.

The lender must deliver the Loan Estimate to the consumer no later

than three business days after receiving the consumer's loan application, and the final Loan Estimate must be issued at least seven business days prior to closing. The cost estimates used by the lender in calculating the Loan Estimate must be made in "good faith." The lender may have to refund certain amounts to the consumer if the amounts vary between the Loan Estimate and the Closing Disclosure.

Narrowed definition of "loan application"

The consumer's loan application is considered to have been taken after the lender has six pieces of information from the consumer. The loan application has been made once the lender has received all of the following:

- Consumer's name.
- Property address.
- Consumer's income.
- Estimated value of the property.
- Consumer's Social Security number to obtain a credit report.
- Mortgage loan amount sought.

This is considered to be beneficial because there will be a uniform standard for all lenders. Lenders may collect the information gradually and may not receive all six pieces of information at once. They may strategically stage the information they request to establish a certain process and timeline for the loan application information flow. Lenders also may collect additional information beyond the listed items.

Definition of "business day"

There is not one, but two, definitions of "business days" at play in



TRID.

When providing the Loan Estimate or any revised Loan Estimate to the buyer within three business days of application, a business day is defined as those days when the lender's offices are open to the public for carrying out substantially all of its business functions.

For all other purposes, "business day" means all calendar days except Sundays and federal holidays specified in 5 U.S.C. § 6103(a) such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

In other words, the difference will come down to Saturdays. Saturdays are counted when the Loan Estimate is provided if the lender's offices are open and will always be counted for other time frames.

Provider lists

In addition to the Loan Estimate, if the buyer is permitted to shop for a settlement service, for example, a title company or a surveyor, the lender must provide the buyer with a written list of services for which the consumer can shop and suggest at least one service provider for each one. This written list of services and providers is separate from the Loan Estimate, but must also be provided to the buyer no later than three business days after the lender receives the buyer's loan application.

Your home loan toolkit

In addition to the Loan Estimate, lenders must provide a booklet entitled "Your Home Loan Toolkit: A Step-By-Step Guide" to the consumer/loan applicant no later than three business days after receiving the loan application. Lenders must provide the toolkit booklet to consumer applicants who apply for loans on or after October 3, 2015. Other industry participants, including real estate professionals, are also encouraged to provide the booklet to potential homebuyers.

MORE INFORMATION

For a copy of the Toolkit in various media, visit www.consumerfinance.gov/newsroom/cfpb-announces-new-know-before-you-owe-mortgage-shopping-toolkit.

REALTOR® Practice Tip

Brokers and agents would be wise to review this booklet for their own information as it gives a nice overview of the loan application process under TRID. They also may wish to review the Toolkit so they can be prepared to answer questions about the process and determine whether they also wish to make the Toolkit available to residential mortgage loan

New closing disclosure

The Closing Disclosure combines and replaces the familiar HUD-1 and the final Truth-in-Lending disclosures that go to the buyer. The new form provides clear details about loan charges and features so buyers can better understand the costs of the transaction. The five-page Closing Disclosure form contains new disclosures required by the Dodd-Frank Act and a detailed account of the closing of the transaction.

The Closing Disclosure must be received by buyers at least three business days before they consummate the loan, in other words, the closing.

Three changes will require a new Closing Disclosure and will require a new three-day waiting period:

1. Increase of the APR by more than 1/8 percent (for most loans).
2. Change in the loan program, for example, the buyer changes from a fixed-rate loan to an adjustable-rate loan.
3. Addition of a pre-payment penalty to the loan.



REALTOR® Practice Tip

The ability to make last-minute adjustments on the Closing Disclosure may require the presence of a local representative of the lender authorized to approve any Closing Disclosure adjustments. Closing table adjustments may still cause delays if approval of the lender requires communication with and document delivery to an out-of-state representative.

The lender is responsible for the timely provision of the Closing Disclosure and its accuracy, so many lenders may prepare this disclosure rather than the title company or closing agent as was customary in the past.

Timing of TRID disclosures

Part of the focus in the TRID rules is the three-business-day time frames. At the beginning of the loan process, the Loan Estimate must be given to consumers no later than three business days after the lender receives the consumer's loan application. At the end of the loan process, the Closing Disclosure must be received by the consumer three business days before consummation. Consummation means when the buyer/consumer becomes contractually obligated on the mortgage loan transaction, which in Wisconsin would usually mean at closing when the buyer/consumer signs the mortgage note.

Loan estimate timing

The loan application is the trigger for the Loan Estimate: the initial Loan Estimate must be given no later than three business days after the lender receives the six pieces of information comprising the loan application. The buyer does not have to decide whether to proceed with the loan for 10 days, which provides an opportunity for the buyer to take the Loan Estimate out and shop for other loans. The buyer can then compare Loan Estimates from various lenders and see what terms and conditions are the most favorable.

The buyer may expect to receive additional revised Loan Estimates as various details are revised and later finalized for the loan the buyer chooses. Buyers can expect to receive a revised Loan Estimate within three business days of a change and must receive the final Loan Estimate at least seven business days prior to closing.

**REALTOR® Practice Tip**

These time frames point to the wisdom of real estate brokers and agents and the parties to the real estate transaction being generous with the time periods allowed for the transaction to come together and for the financing contingency. The buyer will have an accepted offer and then will begin the process of securing financing. The lender cannot begin any serious processing until the buyer has the Loan Estimate and has given the lender the go ahead because they cannot charge the buyer for anything except for a credit report until that time. If the buyer is comparison shopping or does not make up his or her mind immediately, this may add to the time needed for the financing contingency.

Buyers may modify or waive the waiting period of the Loan Estimate if they have a “bona fide financial emergency.” Consumers should work directly with their lender to determine if they are eligible for this limited waiver. This will require a serious emergency. The consumer would need to personally write a request to waive the waiting period and an explanation of the emergency in his or her own words and handwriting — no preprinted forms are allowed. Even then any waiver will have to be approved by the lender. An approval from a distant bank official may take some time, if it comes at all. These financial emergency waiting period waivers are expected to be quite rare.

Closing disclosure timing

When it comes to the Closing Disclosure, the theory is that buyers must have three business days after receipt of the Closing Disclosure to review it and ask questions. The three-business-day review starts on the buyer's receipt of the form. Absent some positive confirmation of receipt such as hand delivery or delivery by courier, the form is “deemed received” three business days after the delivery process is started, such as mailing or even emailing unless there is a receipt sent back by the consumer. Although some delivery methods such as emailing are acceptable provided the consumer has given electronic consent as required under federal law, the issue for the lenders is whether there is a reliable way to confirm when the consumer received the disclosure, for example, when they opened and read their email. The lenders are sensitive to finding systematic approaches that can be counted on in all cases such that the delivery methods under discussion with most lenders seems to be limited to personal delivery, courier with signed receipt and mailing.

As a result, the combination of the delivery time period and the review time period results in six business days from mailing to closing. This translates into one week because Sunday is not a business day. If the Closing Disclosure is mailed to the buyer, it must be mailed at least one week before closing. If a federal holiday falls within the time period, another day must be added for disclosure delivery, making the time frame eight days.

If the Closing Disclosure becomes inaccurate before closing, the lender or the party responsible for preparation and delivery of the Closing Disclosure must provide a corrected disclosure at or before consummation, and the buyer still must be able to inspect the revised Closing Disclosure for at least one business day prior to closing. This will

be of concern if the change must be approved by a distant lender not readily accessible.

The biggest concern when it comes to potential delays of a closing result from those changes that require a revised Closing Disclosure and another three-business-day waiting period (seven days if mailed). After delivery of the initial Closing Disclosure, the following changes would require a re-disclosure and a new waiting period:

- Increase of the APR by more than 1/8 percent (for most loans).
- Change in the loan program, for example, the buyer changes from a fixed rate loan to an ARM.
- Addition of a pre-payment penalty.

**REALTOR® Practice Tips**

These scenarios may increase the APR by more than 1/8 percent:

- Any changes adding costs the buyer must pay, such as deciding to have a home warranty at the last minute.
- Increasing the costs the buyer must already pay, such as a misquoted appraisal fee.
- Newly discovered special assessment payments that affect the lender's escrow.

In those instances, the closing will not be able to be held for another three business days at minimum and not for another week if the lender is mailing the Closing Disclosure. If this happens a few days before the scheduled closing date, it is likely that closing will be delayed.

If the need to deliver a revised Closing Disclosure arises and as a result the parties will not be able to close by the closing date in the offer, the buyer will be in breach of contract unless the parties agree to amend the offer to extend the closing date or unless the parties have added a provision to the offer providing that the closing date will be extended in such circumstances until lender compliance with TRID has been satisfied.

It is this potential week long delay in the closing that leads various experts to advise that an additional 15-30 days should be added to the closing, that everything should be resolved and settled 10-15 days before the closing date and that no provisions or contingencies should have deadlines that run right up to or within a week of closing — all because last minute changes that have not been processed by the lender and included on a timely delivered Closing Disclosure may cause the closing to be postponed.

Consumers may modify or waive the waiting period of the Closing Disclosure if they have a “bona fide financial emergency.” Buyers should work directly with their lenders to determine if they are eligible for this limited waiver. This will require a serious emergency. Losing a locked-in interest rate will not qualify, while needing to close to avoid bankruptcy would likely be sufficiently serious. In that event the buyer would need to personally write a request to waive the waiting period and an explanation of the emergency in his or her own words and handwriting — no preprinted forms are allowed. Even then it will have to be approved by

the lender. The ultimate lender may not be present at the closing table, so this approval from some distant bank official may take some time, if it comes at all. Such waiting period waivers are expected to be rare.

The seller must receive the Closing Disclosure no later than the day of consummation or closing.

Even changes after closing require revised Closing Disclosures. When an event related to closing causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the buyer and/or the seller, a corrected Closing Disclosure must be provided to the buyer within 30 days after closing or 30 days after learning the event occurred. Other non-numeric clerical errors trigger a new Closing Disclosure within 60 days after closing.

If there is a variation (tolerance) violation where the actual costs exceed the amounts disclosed on the TRID disclosures, the lender must, within 60 days of closing, refund the overage to the consumer and deliver or place a corrected Closing Disclosure in the mail. Lenders may be intent on avoiding this because it requires additional costs, time and resources for them plus there is the potential of other CFPB penalties resulting from inaccurate Closing Disclosures.

Closing disclosure preparation

While title companies in the past often prepared the HUD-1, many lenders will prepare and deliver the Closing Disclosure themselves because the lender has a large liability risk if this is not done properly. Lenders will need accurate estimates of title and closing figures. Preparation of the Closing Disclosure may require documents, information and numbers to be submitted as early as 10-14 days prior to closing. Several lenders will use electronic portals to send and receive information, eliminating the use of mail, email and faxes between lenders and closing attorneys. In any event, information will have to be exchanged earlier by all involved to accommodate the delivery requirements of the Closing Disclosure.

Variations ... the new tolerances

Lenders will be held accountable for the charges disclosed on the Loan Estimate and the actual costs and expenses cannot deviate by more than 10 percent from the figures provided on the Loan Estimate.

The Loan Estimate figures must be provided in good faith and consistent with the best information reasonably available to the lender at the time of disclosure. Good faith is determined by looking at the difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the consumer. Generally if the charge paid by or imposed on the buyer exceeds the amount originally disclosed on the Loan Estimate, it is not in good faith. This is true even if a lender later discovers a technical error, miscalculation or underestimation of a charge. In other words, the challenge to the lender or other party issuing the Loan Estimate is to provide the buyer, at the time the buyer is applying for the loan, with a disclosure of what the actual amounts charged to the buyer at closing will be and to have this be spot on.

Not subject to variation limitations

Certain charges are not subject to a tolerance or variation limitation, meaning that the amount charged may exceed the amount disclosed on the Loan Estimate by any amount. This may include charges such as prepaid interest, property insurance premiums, and amounts placed



into escrow. It also includes services required by the lender if the lender allows the consumer to shop for a provider and the consumer selects a service provider not on the lender's written list of service providers. Another example is charges paid to a third party for services not required by the lender (may be paid to an affiliate of the lender). This would include title insurance. However, lenders may only charge more than the amount disclosed when the original estimate, or lack thereof, was based on the best information reasonably available at the time of the disclosure. Thus lenders cannot get off scot-free if they intentionally understate or low-ball prepaid amounts, escrow amounts or other amounts within this category.

10 percent cumulative variation limit

Another group of charges are limited to an aggregate total variance of 10 percent. This means that the charges in this group when taken together may exceed the Loan Estimate for those charges by up to 10 percent. Charges in this category include recording fees, and charges for third-party services where the charge is not paid to the lender or the lender's affiliate, the consumer is permitted to shop for a provider and the consumer selects a third-party service provider that is on the lender's written list of service providers.

Zero variation or tolerance

For all charges in this category, the lender may never charge more than the estimated amount provided on the Loan Estimate unless there is a changed circumstance. Charges in this category include fees paid to the lender, mortgage broker or an affiliate of either, fees paid to an unaffiliated third-party provider if the consumer was not allowed to shop for the service provider, and transfer taxes.

If the actual charges at closing exceed the amounts provided in the Loan Estimate by the applicable limit, the lender must credit back or refund the overage to the consumer at or after closing. This is sometimes referred to as the "tolerance cure."

As a general rule, lenders are bound by the Loan Estimate and may not issue revisions because they later discover technical errors, miscalculations or underestimates of charges. Revised Loan Estimates are permitted in instances of "changed circumstances" that occur after the Loan Estimate is provided to the consumer that cause settlement

service charges to increase more than permitted under the variances (tolerances). This may include a change that affects the consumer's eligibility for the loan terms for which the consumer applied or a change that affects the value of the property (the security for the loan). Other changed circumstances may include revisions requested by the consumer, or locking in the interest rate if it was not locked in when the Loan Estimate was provided when locking in the rate causes the points or lender credits on the Loan Estimate to change. Another Loan Estimate is triggered when the consumer indicates the intent to proceed with the loan, which must occur no more than 10 business days after the Loan Estimate was originally provided. The same is true if the loan is a new construction loan and the closing is delayed. Changed circumstances may also include war, natural disaster or an unexpected event specific to the transaction or consumer, such as the loss of employment.

Don't forget that the Loan Estimate is given when it is personally delivered or placed in the mail, but it is not received until the consumer receives it. In the case of mailing, the mailbox rules applies and the consumer is deemed to have received it three business days after it is placed in the mail. Once received, the three-business-day waiting period starts again.



REALTOR® Practice Tip

Changed circumstances will permit revisions to Loan Estimate fees and the consumer will likely receive more than one as the buyer/consumer chooses a lender and loan product. This is important because although it may not be evident to the parties or brokers, the Loan Estimate process and the revisions and reissuances, along with the delivery requirements and associated timelines, may add more time to the loan processing timeline such that the lender may not be ready to close when hoped or expected. This is another consideration to contemplate when making sure the offer gives ample time for the financing contingency and for the offer in general.

“Real estate professionals and the other settlement service providers, especially the lender and title agent, will be under the gun to get everything squared away earlier than was done in past practice.”

proceedings, except for punitive damages, plus its attorney's fees if it is the prevailing party. Civil penalties can be recovered in enforcement actions under a three-tier system. The first tier penalty, for violations of a law, rule or order of the CFPB, is up to \$5,000 for each day of the violation. The second tier penalty, for a reckless violation, is up to \$25,000 per day. The third tier penalty, for a knowing violation, is up to a \$1 million fine per day. There is also a list of mitigating factors, including the gravity of the violation and “the severity of the risks to or losses of the consumer.” The CFPB can refer criminal violations to the Attorney General for prosecution. In other words, nothing good will happen if a lender is in violation of TRID.

Lenders will be intent on avoiding any variance violations or penalties imposed by the CFPB. As they accordingly take more control over the closing and disclosure process, this will potentially slow down the process, at least at first.

Closing delays

It is clear that the TRID integration is going to be a learning experience for everyone. To paraphrase one commentator — “there are things we still don't know that we don't know.” However, there are some things that can be anticipated. If changes are needed within the three-business-day waiting period after the Closing Disclosure has been delivered to the buyer and before the closing, the closing will likely be delayed.

Real estate professionals should ensure that the need for last-minute changes is minimized and prepare their clients accordingly. In the event last-minute changes are unavoidable, it is hoped that lenders will be prepared and that they will be able to quickly discern whether a change requires a new Closing Disclosure and three-business-day waiting period, if there will be a delay simply in getting the lender's approval, or whether it can be handled expeditiously without holding up the closing.

Longer closings

Because the new Closing Disclosure is five pages whereas the HUD-1 was much shorter, additional time may be needed at closing to explain the form to the buyer. Given the fact that the buyer will have the Closing Disclosure for at least three business days in advance of the closing, it is not clear whether this means the consumer will have fewer questions at closing or whether the consumer will now ask about more items on the form and thus lengthen the time needed for closings.

Some experts advise to expect longer closings. If this is true, then fewer closings will be able to be scheduled each day. Fewer closings per day may mean more expensive closings if the title companies raise their fees to accommodate for the change. The potential for a long closing and closing delays also calls into question the wisdom of scheduling back-to-back, interconnected or domino closings until the marketplace can see how the closing process will be impacted by all things TRID.

Pointers for REALTORS®

1. Avoid last-minute negotiations and finalize all details well in advance of closing.

2. Delay should be contemplated. Having contingency plans for a postponed closing may be wise, at least at first.
3. Walk-throughs may be more challenging. It may be wise to include other walk-throughs to confirm repairs or for purposes other than viewing the property to ensure it has not been damaged since the day of the offer.
4. Brokers may need to obtain a copy of the Closing Disclosure from the buyer, not the closing agent.
5. Be aware that there may be closing delays and avoid back-to-back or simultaneous closing.
6. Transactions will take longer.

Conclusion

While real estate professionals do not have any direct responsibilities under the TRID, they still have a role in the process. Real estate professionals need to educate their clients and customers about what has changed and help them understand that the transaction will take longer. In addition, clients and customers also need to be educated about the possibility for closing delays and should be wary of scheduling back-to-back closings as there is risk that one of the transactions may be delayed. Finally, real estate professionals need to help clients understand that attempts at last-minute negotiations could derail the closing, and so the parties should try to have all issues resolved well in advance of closing. In particular, certain changes made within the three-day waiting period will cause a delay to the closing.

NAR and other commentators are recommending practitioners have everything ready well in advance. Some say 30 days, others recommend 15 days, and some say that seven days prior to closing will be sufficient. Whatever it takes so when the transaction goes into the three-day period after delivery of the Closing Disclosure additional changes are not needed.

Making changes as the clock winds down will come with a set of potential obstacles. Real estate professionals and the other settlement service providers, especially the lender and title agent, will be under the gun to get everything squared away earlier than was done in past practice. Buyers and sellers will have to try to be cooperative and avoid those last-minute changes that may trigger a new three-day waiting period.

Resources

- TILA-RESPA Integrated Disclosure rule implementation resources: www.consumerfinance.gov/regulatory-implementation/tila-respa.
- NAR Resources including webinars, videos and articles: www.realtor.org/topics/real-estate-settlement-procedures-act-respa.
- NAR Field Guide to RESPA: www.realtor.org/topics/real-estate-settlement-procedures-act-respa.
- Additional WRA TRID resources at www.wra.org/TRID. (Coming soon.)

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