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How Will TRID Impact Real Estate Transactions?

Frequently Asked Questions and Answers Regarding New CFPB Rules

The Consumer Financial Protection Bureau's ("CFPB") new disclosure rules will cause bumps in the road, but are intended to streamline disclosures that will help the consumers better understand their options, chose the mortgage deal that is best for them, and avoid any costly surprises at the time of their closing. The "Know Before You Owe" Mortgage Rule, effective October 3, 2015, consolidates disclosures under the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA") into two new forms to ensure compliance: the Loan Estimate and the Closing Disclosure. The new rules dramatically change the loan transaction process and the timeline lenders must follow for providing disclosures to borrowers. Much confusion still exists over these new timelines and the CFPB changes even though the required compliance date starts on October 3, 2015.

Recently, the CFPB released its long-awaited procedures for examining compliance entitled the "Supervision and Examination Manual." This can be found on the CFPB website and dictates how auditors shall examine compliance with the CFPB rules. The update spells out the procedures for reviewing compliance with the TILA-RESPA Integrated Disclosures, also known as "TRID," but still leaves many unanswered questions. While the CFPB has promised to be "sensitive" to lenders making "good-faith efforts," what remains unclear is whether enforcement actions will occur for non-compliance as of October 3, 2015.

The following are some of the frequently asked questions about these new CFPB rules.

Questions and Answers

Question: Is there concern over the fact that CFPB is offering a "hold harmless" period, but it is not formal or defined?

Answer: While a period of restrained enforcement and liability for the TILA-RESPA Integrated Disclosure Rules is advocated by lenders and vendors, no further "hold harmless" period has been identified by the CFPB. To overcome this uncertainty, all mortgage lenders, title companies, escrow companies, realtors, etc., should be able to demonstrate a good faith attempt of compliance with the implementation of new procedures and rules by October 3, 2015. The CFPB may take a softer approach to violations if the companies can demonstrate that they attempted to comply "in good faith."

Question: Will these new rules delay the transactions for the consumers?

Answer: In the initial stages of implementation, consumers should expect to see the loan origination process lengthened beyond even the new time frame (approximately 45 days to close rather than the previous 30). To address the potential delays, realtors are changing the purchase agreements to extend the time for closing to allow full compliance. The California Association of Realtors has developed a new California Residential Purchase Agreement and Joint Escrow Instructions with the extended time frames. Managing the expectations of the consumers will go a long way in the reduction of disputes over the delays caused by the uncertainty of TRID.

Question: How are realtors affected by the new disclosure rules?

Answer: Realtors should ensure that they are updating the purchase contracts to reflect the new mortgage disclosure rules. The updated contracts are officially available so there would be no lag in using them for purchase offers.

Question: Does the integrated mortgage disclosures apply to cash transactions?

Answer: Currently, they do not.

Question: Do the integrated mortgage disclosures apply to seller financing and/or land contracts?

Answer: The TRID rules do not apply to a person or entity that makes five or fewer mortgages in the calendar year, and therefore is not considered a creditor under the rules.

Question: What happens if the consumer goes on an extended vacation and the Loan Estimate expires?

Answer: The rule permits a revised Loan Estimate only in certain limited "changed circumstances." The expiration of the Loan Estimate is an example of a "changed circumstance" under the rule and the lender should instruct the settlement agent to start the process over.

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