

What the new CFPB Mortgage Disclosure Rule Means to You

By Gregg S. Weinberg

On December 1, Robert Realtor is approached by Bill Buyer who wants to buy a house located in a prime Houston neighborhood—Bill has always wanted to live in a big city. Bill made an offer for \$100K on a house but Sally Seller insists that the transaction close by January 1, as she is traveling the world. Luckily, Bill is able to get a closed-end consumer mortgage secured by his ranch property from trusty mortgage lender, Laura Lender. To everyone's delight, things move along easily and the final walk-through and closing are scheduled for December 30. On December 29, Bill receives a CFPB Closing Disclosure from Laura Lender which states he has three days to review it before closing can occur. Bill, Sally, and Robert are now upset because the closing cannot happen on December 30 as planned. This article discusses the new Know Before You Owe rule and provides some guidance for real estate professionals on how to have a successful real estate transaction with the upcoming changes.

What is the CFPB?

Following the housing market crash of 2008, and to prevent another financial crisis, The Consumer Financial Protection Bureau (“CFPB”) was created under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”). The Dodd-Frank Act imposes new requirements on real estate professionals.

For more than 30 years, federal law required lenders to provide two disclosure forms to mortgage applicants at or shortly before closing on the loan. Two different federal agencies developed these forms separately under two federal statutes: the Truth in Lending Act (“TILA”) and the Real Estate Settlement Practices Act (“RESPA”). Not surprisingly, this resulted in different, but overlapping and burdensome disclosure forms. They confused consumers and lenders alike.

Now, the Dodd-Frank Act requires the CFPB to integrate the existing mortgage disclosure forms to improve compliance and help consumers better understand their loans.

What is the Know Before You Owe mortgage disclosure rule?

The Know Before You Owe mortgage disclosure rule, also referred to as the TILA-RESPA Integrated Disclosure rule, creates new mortgage disclosure forms and deadline requirements to help consumers understand the mortgage terms and takes effect October 3, 2015.

What transactions do the Know Before You Owe rule apply to?

The Know Before You Owe rule applies to most closed-end consumer mortgages. Certain types of loans that are currently subject to the new regulations, include:

- Consumer mortgages secured by real property,
- Construction-only loans,



- Loans secured by vacant land or by 25 or more acres, and
- Credit extended to certain trusts for tax or estate planning purposes.

What transactions are exempt?

The rule doesn't apply to the following:

- Home-equity lines of credit,
- Loans made by a creditor who makes five or fewer mortgages in a year.
- Personal property loans,
- Reverse mortgages, and
- Mortgages secured by a mobile home or by a dwelling that is not attached to land.

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers.

What are the new mortgage disclosure forms and notification requirements?

The Know Before You Owe rule now combines the four previously required federal forms into two mortgage disclosure forms: the Loan Estimate and the Closing Disclosure. The forms supposedly use clear language, provide detailed instructions on how to complete each, and incorporate new disclosures required by the Dodd-Frank Act. The forms also clearly explain how much the buyer will pay in closing costs, loan fees, mortgage payments, interest and taxes.

The Loan Estimate form replaces two current federal forms: the Good Faith Estimate required under RESPA and the initial Truth-in-Lending disclosure required under TILA. The lender must give the Loan Estimate to the consumer within three business days after submitting a loan application.

The form replaces the HUD-1 Settlement Statement form required under RESPA and the revised Truth-in-Lending disclosure required under TILA. Now the lender must provide the Closing Disclosure to the consumer at least three business days before closing on the loan. If any changes occur after the disclosure and before closing, the consumer must be provided a new Closing Disclosure and given three additional business days to review the revised form before closing can occur. Some changes that will trigger a new Closing Disclosure include:

- APR change,
- Pre-payment penalty, and
- Change to the loan product.



However, the following changes are exempt:

- changes resulting from negotiations between the buyer and seller after the final walk-through, and
- minor changes which result in less than \$100 in increased costs.

How will the Know Before You Owe rule affect lenders?

The lender is responsible for the accuracy of the information and timely delivery of the Closing Disclosure to the buyer, while the settlement agent is responsible for delivering it to the seller. Lenders will now face greater financial penalties for errors. Accordingly, lenders may demand timely assurance that other parties involved in the real estate transaction have complied with the requirement and documented it properly. Lenders may even contract with settlement agents to provide the Closing Disclosure to the consumer on the lender's behalf to share responsibility for completing the form. If so, the settlement agent may also be subject to statutory penalties for untimely deliveries.

How will the Know Before You Owe rule affect real estate professionals?

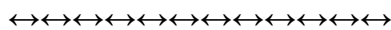
The new disclosure rules may delay closings by as much as 15 to 20 days. Real estate professionals may also be required to get information to the settlement agent approximately 10 to 14 days prior to the closing date to meet the Closing Disclosure notice requirement. Therefore, extending the common 30-day closing to 45 days will be more realistic and early communication with clients will be helpful for setting realistic expectations.

Real estate professionals should also make sure the buyer and seller understand it is imperative to get the proper documentation timely submitted to avoid further delays and that there cannot be a closing without documentation of the Closing Disclosure's three day notice. Additionally, because certain changes or adjustments can trigger a new notice period, real estate agents may want to consider an additional pre-settlement inspection or "walk through" 7 to 10 days in advance of closing.

It is important that real estate agents not give the consumer any legal advice and to advise early on that the borrower to speak to an attorney about their rights and to not wait until they receive the notice to do so.

Conclusion

Overall, the new CFPB mortgage disclosure rules will change how borrowers acquire mortgages and extend the timeline for closing. For real estate professionals, staying up-to-date on these changes will make the process easier for their clients.



Gregg Weinberg manages the professional liability and energy arbitration groups at Roberts Markel Weinberg Butler Hailey PC. For over 30 years Gregg has represented lawyers, accountants, doctors, architects, engineers, insurance agents, real estate brokers, financial consultants and many other people who are considered “professionals”. He is Board Certified by the Texas Board of Legal Specialization in both Civil Trial Law and Personal Injury Trial law. Mr. Weinberg was elected by his peers to be a member of ABOTA (the American Board of Trial Advocates), and has been listed by Thompson Reuters as a Super Lawyer for many years.

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