

## August 1, 2015 Close of Escrow Changes - FAQs

The Consumer Financial Protection Bureau has published revised final rules and forms that combine disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).

The new forms include a Loan Estimate and a Closing Disclosure. The Loan Estimate replaces the Truth in Lending statement and Good Faith Estimate, and it must be provided within three business days of a lender's receipt of a mortgage loan application. The three-page document includes terms and estimated costs that consumers can use to comparison shop. The new five-page Closing Disclosure provides detailed information on all costs associated with the loan. This form must be given to borrowers three business days before loan consummation, and it replaces the HUD-1 Settlement Statement.

The effective date for the new TILA-RESPA Integrated Disclosure rules is now just months away. As REALTORS® begin preparations for implementation of the new rules, a number of excellent questions have been posed to Arizona Association of REALTORS® staff. Below are some the most frequently asked questions, along with answers and pertinent analysis.

**QUESTION ONE** – I heard that the effective date for the new closing procedures is August 1, 2015. If my clients are closing escrow after August 1<sup>st</sup>, does that mean they will use the new Closing Disclosure form and not the HUD-1 Settlement Statement?

**ANSWER ONE** – Not necessarily. For transactions in which the lender receives a loan application prior to August 1<sup>st</sup>, the HUD-1 Settlement Statement will still be used at close of escrow, even if the closing takes place after August 1<sup>st</sup>. Stated differently, the Closing Disclosure form will be used only for those transaction in which the lender receives the loan application after August 1<sup>st</sup>.

**QUESTION TWO** – Will my buyer be able to submit a completed loan application to their lender before identifying a specific property?

**ANSWER TWO** – No. As of August 1, 2015, a loan application must contain all of the following six pieces of information: 1. The consumer's name; 2. The consumer's income; 3. The consumer's social security number; 4. The property address; 5. An estimate of the value of the property; and 6. the mortgage loan amount sought. Therefore, a loan application cannot be complete without the identification of a property address.

**QUESTION THREE** – What does the lender have to do after receiving a loan application?

**ANSWER THREE** - The lender is responsible for ensuring that it delivers or places in the mail the Loan Estimate form no later than the third business day after receiving the consumer's application for a mortgage loan.

**QUESTION FOUR** – What is the Loan Estimate?

**ANSWER FOUR** - The Loan Estimate, which replaces the current Good Faith Estimate and the current Truth in Lending Disclosure, presents the costs and risks of the potential loan using plain language and in a simplified format. The interest rates, monthly payment, loan amount and closing costs are clearly spelled out on the first page. On the remaining two pages, the form offers information about taxes, insurance, and other costs. The form also clearly identifies loan features some consumers might want to avoid such as a prepayment penalty, a balloon payment, or a potential increase in the loan balance after close of escrow.

**QUESTION FIVE** – If the Loan Estimate meets with the buyer’s approval and they want to continue with the loan transaction, what do they need to do?

**ANSWER FIVE** – Under such circumstances, the buyer must affirmatively indicate an “intent to proceed” with the loan transaction. Unless a particular manner of communication is required by the lender, this may include: 1. Oral communication in person; 2. Oral communication over the phone; 3. Written communication via email; or 4. Signing a pre-printed form. The buyer’s silence is not indicative of intent to proceed, which can only be conveyed after the buyer’s receipt of the Loan Estimate.

**QUESTION SIX** – Does the buyer’s execution of the Loan Estimate qualify as their “intent to proceed” with the loan transaction?

**ANSWER SIX** – No. When the buyer signs page three of the Loan Estimate, they are only confirming receipt of the form. The buyer’s signature on the form does not evidence their “intent to proceed.”

**QUESTION SEVEN** – What does “consummation” mean? Is it the same as close of escrow? Why is this term important?

**ANSWER SEVEN** – Consummation is defined as the time that a consumer becomes contractually obligated to the lender on the loan, *i.e.* – execution of the promissory note and deed of trust. Consummation is not the same as close of escrow, which the Residential Resale Real Estate Purchase Contract defines as the time when the deed is recorded at the appropriate county recorder’s office. The reason this term is important is because the buyer must receive the Closing Disclosure form no later than three business days before they can consummate the loan.

**QUESTION EIGHT** – I know that the loan cannot be consummated less than three business days after the Closing Disclosure form is received by the buyer. But can’t the borrower just waive this three-day waiting period?

**ANSWER EIGHT** – Although the technical answer to this question is “yes,” obtaining such a waiver will likely prove exceptionally difficult. In order to waive or modify the three-day waiting period, the consumer must establish a “bona fide personal emergency.” Under these circumstances, the consumer must provide the lender with a dated written statement that describes the emergency, requests a waiver of the waiting period, and is signed by all of the consumers who are primarily liable for the loan payments. The creditor is prohibited from providing the buyer with a pre-printed waiver form and it is expected that lenders will be extremely reluctant to approve any waiver of the three-day waiting period.

For more information on what to expect come August 1<sup>st</sup>, go to:

[http://files.consumerfinance.gov/f/201311\\_cfpb\\_tila-respa\\_detailed-summary.pdf](http://files.consumerfinance.gov/f/201311_cfpb_tila-respa_detailed-summary.pdf)

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