CFPB & TRID

10/3/15 marked D Day for the CFPB "know before you owe" mortgage disclosure rule also known as the TILA-RESPA integrated Disclosure rule. We call it TRID. Why because the CFPB doesn't' want to call it that.

We have started a new era in residential real estate. It is one whether, like it or not, we are going to have to get along much better with our lender and real estate agent neighbors.

First let's be sure we are all on the same page. We have a new vocabulary to learn so that all of us are speaking about the same thing.

* TRID = Truth-in-lending/RESPA Integrated Disclosures
* Lender = Creditor
* Borrower = Consumer
* Early TIL and GFE = Loan Estimate
* HUD-1 and Final TIL = Closing Disclosure
* Closing/Settlement = Consummation

Many of you do all types of real estate, so just in case here are the exceptions under the new rules for TRID:

* Reverse Mortgages
* HELOCs
* Mobile Homes
* 5 or fewer/year [loans by lenders??]
* **Commercial**
* Certain low interest/improvement
* Cash Transactions

What this may result in the Creditor (lender) may rely more heavily on third parties to obtain information AS EARLY AS THE **Loan Estimate** . They may look to you or others for:

* Transfer taxes
* Seller credits
* Home warranties
* HO Association fees
* Home Owner's insurance
* Flood insurance
* Personal property purchases
* Your fees

The l**oan estimate = Early GFE & TIL which replaces the GFE,** booklets, servicing escrow and HUD explanations. The Creditors must have that out to the consumer within 3 days of completing the loan application process and 7 days prior to consummation.

Why, because the TRID must be final and into the hands of the consumer (buyer) at least 3 days prior to consummation. It must be acknowledged as such from the consumer. The creditors are going to push for at least that time frame so it is more likely that they will want it sent no later than 7 days before consummation.

BACK TO THE FUTURE

What does that mean for you as title attorney/agent? The CFPB estimated that the average time from loan submission to consummation is anywhere from 30 to 45 days. I think for now you can just figure on doubling that. That means several things for you.

The Good:	a)	longer time to complete title work;
	b)	more time to clear clouds on title.
The Bad:	a)	you may be dealing with a creditor who isn't ready for the change;
	b)	you may run into more complicated issues between buyer and seller .
The Ugly:	a)	you **may** not be able to accommodate buyers (flippers) who want domino settlements;
	b)	you **will** not be able to accommodate buyers who are pulling the moving van up to the door; and
	c)	**<u>you will not be able to make any adjustments at the table</u>!**

You are now asking "well what about traditionally last minute items such as water sewer and other utilities? Those items do not fall within the no change tolerances of TRID and remember that the TRID doesn't care about sellers upon whom most of that falls. It is however to your advantage to get every scrap of info you can, as ealy as you can in the process.

I am not going to get into the specifics of the TRID itself because that is another 3 hour seminar and I already see fear and loathing in the audience. Suffice it to say if you have a lender or realtor that you get a regular stream of business from and haven't worked out the details of this process (although it is already too late), take them to lunch or happy hour this week!!

ALTA BEST PRACTICES

As we now march past TRID and its application, I want to bring up an issue that has been somewhat dormant during this run up to TRID - Best Practices (never went away). The lenders have been so busy preparing for TRID that many have pushed aside vetting and verification of agents and attorneys. However, once they have gotten their systems and paperwork together it will again emerge as a hot button issue because some have figured out a way to tie the two together. .

How many of you already have BP manuals started?

How many have no idea what I am talking about?

Be aware some lenders such as Wells Fargo have already tied the whole preparation for TRID with BP. They are actually visiting underwriters and agents to inspect and verify that BP is being complied with.

I. Licenses up to date

II. Adopt & Maintain written procedures for escrow accounts

  a) Separate operating and escrow accounts

  b) 3 way reconciliations

  c) Background check on users

III. Adopt and maintain written privacy and security measures to protect NPPI

  a) Physical and cyber security

    i. passwords

    ii. clean desks

    iii. locks

  b) Disaster plan - "exit strategy"

c) EMAIL security

IV. Adopt and maintain standard training and policies to comply with settlement process

a) recording protocols

V. Adopt and maintain written procedures related to title policy production, delivery reporting and premium remittance

a) lenders are going to expect policies quicker (w/in 30 days by BP)

b) underwriting (w/in 60 days by BP)

VI. Maintain professional liability and fidelity coverage

a) See Hidden Exclusions in your policy

VII. Adopt and maintain procedures for resolving consumer complaints

a) Lenders are concerned for reputational risks (why?)

i. complaint tracking log

HAVE A MANUAL AND OR A PDF VERSION DONE AND READY TO SEND IF REQUESTED.

Not only will it save a lot of head and heart ache but can be effective marketing tools with the regional lenders and Realtors!

WHAT TO EXPECT NEXT

Assuming that Congress can't find a way to declaw or dissolve the CFPB; in my humble opinion we have approximately 6 months (April 2016) before they start enforcement visits etc. to the big 5 lenders. At that point as you know all waste flows downhill. We can expect reminders and in extreme cases loans being withheld or defunded due to BP or TRID infractions. Know the rules on timing, changes and pricing to avoid any problems.

Expect BP enforcement to ramp up and the lenders will start tying it to the TRID. Again be prepared with some form of a manual when called upon. Some of the smaller lenders will have forms to fill in, start that dialog now.

The challenge of both the TRID and BP going forward is going to be two fold, first the cyber and physical security for attorneys and agents. The second challenge is going to be trying to convince owners that even though the gov't doesn't say so (optional) you really should have a policy.

CONCLUSION

So like those crab fisherman off the coast of Alaska right now we are in very stormy waters. My best advice is the same I used to give my kids, do your homework and be prepared to be called on in class regardless of who may be asking the questions. Together, we will get through CFPB, TRID and Best Practices. To finish with another Ben quote: if we do not hang together, we will all surely hang separately.

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FEDERAL UPDATE

Ben Franklin = "we are about to brave the storm in a skiff made of paper"

I wonder if ole ben had this year in mind when he uttered those words. Right now, we are sailing on a ship made of paper. The Federal Budget is operating on continuing resolutions - nothing more than IOU's for a budget.

Legislatively, the budget show down is postponed until November, but it remains to be seen what agencies are reduced or shut in the meantime. The CFPB is currently funded mostly by the collected fines and therefore not likely to be affected. Congress hates this and a Congressional Committee has already introduced two bills to attempt to change and limit the CFPB. The White House fired back that the committee was essentially just a shill for banks and not consumer oriented.

The Chairman of the House Finance Services Committee [Jeb Hensarling R-Texas] said "The CFPB undoubtedly remains the single most powerful and least accountable Federal agency in all of Washington." Richard Cordray, director of the CFPB answered that it was only through the continuation of their work that the consumer financial markets are showing signs of increasing health.

The House on Wednesday afternoon passed bipartisan legislation by a bipartisan vote of 303-121 that would formally extend the grace period or TRID until February 1, 2016. The move though not directly aimed at the CFPB was clearly a shot across the bow of the administration. The measure now goes to the Senate for consideration. The White House has said that if presented with that bill POTUS would veto it.

The CFPB for its part announced Wednesday that its next “review and rule” adventure is going to take aim at standard arbitration clauses …Now understand that these clauses have been have been used in contracts for 90 years in most financial contract. ! This is also interesting to this group for the CFPB’s reasoning. Mr. Cordray indicates that “Companies are using these clauses to limit the trial lawyer’s ability to bring class action suits. My only comment here is that one, TILA has banned these clauses in certain mortgages for a long time and since when does the CFPB care about Trial Lawyers?

Judicially, the Supreme Court made lots of history this year with rulings but the ruling that most affected the title industry was *Obergefell v. Hodges* recognizing same sex marriage licenses. From a title standpoint we (and every other title underwriter) are now treating same sex marriages as T by E with all rights and privileges thereof. While we take no other position on that subject, it remains to be seen if defining those rights and privileges will be the next legal battle ground. Again my gut tells me that it will be some kind of challenge through either the family law or the estates and trusts branch of our brotherhood.

As for 2015-2016 there is a class action case on the docket which could have an effect on privacy rights (*Spokeo v. Robins*) that could spill over into the debt collection and title lien area. In that case the Plaintiff alleges that Defendant Spokeo published false data in its database. He alleges that info harmed him and also violated the FCRA.

The other issue on the radar is a real estate case although being currently decided on First Amendment grounds are the cases involving gov't restriction on signage. Hopefully those rulings on "speech regulations" do not have long term ramifications for the real estate upon which the signage resides.

MEANWHILE BACK HERE IN THE COMMONWEALTH…

We ~~do~~/do not have either a continuing resolution or a state budget at this moment. We are NOW AT DAY **100** and counting of the budget stalemate and the long term effects are starting to be felt. There is currently a hiring and travel freeze (except for Dept. of Revenue agents). Some school districts are already scrambling to borrow funds to cover normal state funding.

On Wednesday Governor Wolfe presented his spending budget plan in an effort to move things forward. The general assembly, along mostly party lines (9 Dems voted against) rejected it by a 127-73 viote. The vote was unusual because there was no accompanying (and usually agreed upon beforehand) spending plan. This made it difficult for some legislators to vote without knowing what their constituents were going to get out of it.

No matter whether you blame R or D or Dr. Terry Madonna for predicting it, rhetoric on both sides of the aisle suggests that they are not far from either a breakthrough or a total gov't meltdown. I also sit on PLTA's legislative committee and honestly neither they nor PBA are sure what's next. If I had that kind of info I would be first in line at the Powerball machine

I bring this up because of the small or not so small effect it has on real estate and title. What If new or more substantial taxes are imposed on?

1. Marcellus shale production
2. or retail taxes upon attorney fees
3. or rates charged by elder care communities
4. Transfer and or inheritance taxes.

How will that affect real estate? Will that stifle the economy?

On the other side of the ledger, the Republicans are now making noises about expanding gambling to increase state income. But questions remain for both sides:

Will privatization of liquor sales or will the demand for pension reform?

1. stimulate real estate or revive reverse mortgages
2. affect senior citizens ability to continue in their homes
3. or be able to purchase retirement homes

I don't know whether the market here for senior housing is great but in many parts of the Commonwealth it is the fastest recovering areas of the real estate market. As for other legislation…**SEE ATTACHED**

STATE JUDICIARY

Eastern District of PA - CGL, LLC v. William G. Schwab Esq, Chpt 7 Trustee v. various individuals - Case No. 11-4593 - In a case that CTIC was involved, the Third Circuit upheld (with decline of rehearing) the ability and right of a BK trustee to dissolve restrictions on a planned community (w/Twp. approval) over the individual attempt by 1 lot owner to enforce the dissolved restriction. Original restriction for a senior community declared that the individual owners could not sell or purchase the lot. The developer went under after selling about 30 of the 45 lots INCLUDING one lot that had a building to be used as a nursing facility.

In a 2014 Lackawanna County case [tell ticking time bomb story] the news wasn't quite so good. In **April of this year** the Superior Court of Pa upheld Judge Minora's rulling against Fidelity in a title insurance bad faith case. In a case involving a disputed title to 1.86 acres of land that was holding up a 15 acre subdivision, t**he Judge awarded $393,227.31 in**

compensatory damages AND $1,572,909.24 (or FOUR TIMES Compensatory) in punitive BF damages. As the order points out it was pretty clear that the judge was appalled by fidelity's conduct;

1. Claim was filed in 10/2007, it took 20 months to acknowledge and accept the claim
2. 3 months more to hire counsel to clear issue
3. Declined to do a QTA against disputed owner but threatened him w/one anyway
4. 8/2010 Fidelity counsel warned of BF, and Fidelity said they would resolve
5. Fall 2010 disputed owner demanded $40K to settle
6. Fidelity finally purchased the property from the disputed owner for $50K in 2012.

So I think you can see that although he is known for his temper this Judge had a pretty strong case for Punitive damages. It was however a stern wake up call to title claim counsel everywhere to keep claims moving along.

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