

Thinking About Selling Your Home? New Regulations Mean You Shouldn't Expect it to Close on Time

July 16, 2015 – At the beginning of October, new Truth in Lending Act (TILA) regulations are set to go into effect for real estate transactions. While the purpose of the rules is to provide certain protections to borrowers, their effect will likely be to slow down the transaction process. In fact, they have the potential to significantly lengthen the amount of time properties are in escrow and could cause substantial harm to sellers and buyers alike. This is especially true for anyone involved in a short sale or facing foreclosure.

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The new lending rule is referred to as TILA-RESPA. TILA as previously mentioned stands for the Truth in Lending Act. RESPA stands for the Real Estate Settlement Procedures Act.

TILA RESPA places a variety of disclosure requirements on creditors and escrow companies. It also sets notification time frames. The time frames associated with closing disclosures are going to be the real issue.

Under TILA-RESPA, a "closing notice" must be delivered to the borrower three business days before the close of escrow. This notice includes a wide variety of information but will include an itemization of costs to the borrower. Three business days may not sound like it could cause significant issues, but that changes when you begin looking more closely at the way the notices are drawn up and delivered.

If the notice is mailed to you, the lender must add another four days. That's because the government allows the lender to

assume that you will receive any snail mail sent to you, three days after it is sent. Of course, that excludes "Sunday" since there is no mail delivery on that day. That means that the lender actually has to have the notice prepared a full week before closing. Alternatives are to have the notice sent to you via overnight delivery or in person, but that isn't always possible. And if the notice is sent via overnight, you should expect the cost of that overnight package to be passed on to you.

Once you receive the notice, if it includes any inaccuracies or if some other change needs to be made, the notice period begins all over again. This virtually guarantees that a large percentage of real estate transactions will be held up by a week or more. Anyone involved with real estate transactions can tell you that it is quite common for lenders, escrow companies and agents to work on last minute changes in real estate transactions. The new rule could make that impossible; much to the detriment of everyone involved.

These time frames become even more important when dealing with short sales or foreclosures. Let's use an example. Let's say that you have been unable to make your mortgage payments and that your bank has notified you that they will foreclose on your home on a specific date. You put your house up for sale and find a buyer. An agreement is negotiated that will allow the buyer to close on your property three days before the foreclosure is set to take place. But when your buyer receives their closing notice, he notices that address of the home he is buying is listed as being on "First Ave." when it is really on "First St." So the buyer asks for a corrected closing notice. Even if the notice is mailed, there isn't enough time for the correction to be issued and you lose your home in the foreclosure rather than being able to complete the sale.

A similar problem could come up in short sales. That's because when banks issue short sale approval letters, they specify a date by which the sale must be completed. If you are unable to complete the transaction within the dates provided, then you have to start the process all over again—a process that can take weeks—and you run the risk of foreclosure.

TILA-RESPA is also likely to mess up coordinated transactions. That's when someone has to sell their existing home to purchase a new home, and both transactions must be completed simultaneously or within a short time frame (usually three days).

The rule does allow the parties to waive the three day notice rule under certain conditions but doing so will require all of the parties to be aware of the fact that an exception can be requested and then to act on that information.

Everyone involved in the sale or purchase of a home needs to be aware of TILA-RESPA and to plan accordingly. If you are selling your home and want to be reasonably sure of the date your transaction will close, you will need to stay in close contact with your escrow company. Don't rely on your real estate agent to do that. You are the customer and you have the right to be in close contact with them.

by Jim Malmberg

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