

CHAOS IN THE MORTGAGE WORLD

INTRODUCTION

If you plan to purchase or refinance a house this year, do not wait until August 1, 2015. That is the day that the new Disclosure requirements and forms promulgated by the Consumer Financial Protection Bureau (the “CFPB”) go into effect and many participants in the world of mortgage lending are expecting chaos. The current forms have been in use for 30 years and the new forms require an entire industry to be completely re-trained.

The CFPB was created by the Dodd–Frank Wall Street Reform and Consumer Protection Act, whose passage in 2010 was a legislative response to the financial crisis of 2007–08 and the subsequent recession. The CFPB is an independent agency of the United States government charged with the protection of consumers in the financial sector. Its jurisdiction extends to banks, mortgage-servicing operations, credit unions, securities firms, foreclosure relief services, debt collectors, payday lenders, and other financial companies operating in the United States.

The intent of the new disclosure requirements is to make mortgage transaction more transparent to a consumer and help them understand what they are purchasing. Time will tell if the CFPB will be successful in achieving this goal. In the meantime, the financial institutions that make loans secured by a consumer’s homestead are scrambling to implement a complex new procedure which goes into effect on August 1, 2015- virtually at the height of the summer home buying season! It is anticipated that many closing will be delayed, possibly multiple times, during this implementation out of fear by lenders of a failure to comply with the new rules.

What does this mean to you as a consumer? Let’s walk through the steps that lenders will have to comply with on the purchase or refinance of your home.

OVERVIEW

LOAN APPLICATION IS MADE

WITHIN 3 BUSINESS DAYS (A DAY WHEN YOUR LENDER IS OPEN FOR SUBSTANTIALLY ALL BUSINESS FUNCTIONS), LOAN ESTIMATE MUST BE DELIVERED

LOAN ESTIMATE MUST BE RE-DELIVERED WHEN INTEREST RATE IS LOCKED

CLOSING CAN OCCUR NO SOONER THAN 7 BUSINESS DAYS (A DAY WHEN YOUR LENDER IS OPEN FOR SUBSTANTIALLY ALL BUSINESS FUNCTIONS) AFTER THE MOST RECENT LOAN ESTIMATE

AT LEAST 3 BUSINESS DAYS (ANY DAY THAT IS NOT A SUNDAY OF FEDERAL HOLIDAY) BEFORE CLOSING, CLOSING DISCLOSURE MUST BE DELIVERED

SOME CHANGES TO LOAN REQUIRE RE-DELIVERY OF CLOSING DISCLOSURE

LOAN ESTIMATE

TIMING

1. You make a Loan Application. It must contain the following information:
 - a. Your name
 - b. Your income
 - c. Your social security number
 - d. The address of your home or home to be
 - e. An estimate of the value of that home
 - f. The loan amount you want to borrow
2. Within 3 business days of lender receiving all of this information, it is required to give you a "Loan Estimate" which is a "good faith estimate" of the cost and terms of your loan.
3. The only fee the lender can charge you before it gives you the Loan Estimate is a fee for a credit report.
4. If the Loan Estimate is not delivered within 3 "business days", the loan application process has to start again. For this purpose, a "business day" is a day when your lender is open for substantially all business functions.
5. Your loan cannot close for at least 7 business days after you receive the Loan Estimate.
6. You must decide to move forward with your loan within 10 calendar days of receiving your Loan Estimate or it expires.

TOLERANCE RULES FOR LOAN ESTIMATE

A Loan Estimate is considered in good faith if the fees paid by you do not exceed the amount originally disclosed except as follows:

1. An estimate for a third-party fee for servicing or recording is in good faith if the aggregate of such fees do not exceed the estimate by more than 10%, the third party is not an affiliate of the lender and you had the ability to shop for the provider of those services.
2. The following charges may be estimated and considered in good faith if they are consistent with the best information available to your lender when the estimate is provided, regardless of the amount you actually end up paying:
 - a. Prepaid interest
 - b. Property insurance premiums
 - c. Amounts paid into an escrow at closing
 - d. Charges paid to a third party provider chosen by you and not recommended by your lender; and
 - e. Charges for third parties services not required by your lender.
3. Charges by your lender, such as your origination fee, and charges paid to an affiliate of your lender cannot vary at all from the Loan Estimate unless there is:
 - a. An extraordinary event beyond the control of you or your lender
 - b. You provided inaccurate information to your lender that effected the estimate
 - c. Your lender discovers new information specific to you or your loan that your lender did not rely on when making the disclosure.

RATE LOCK RE-DISCLOSURE

Your lender must re-disclose the Loan Estimate within 3 business days of you locking in your interest rate.

DELAY OF CLOSING

A Loan Estimate re-disclosure may not occur on or after the date of the Closing Disclosure so if your lender has given you a Closing Disclosure and then needs to deliver a Loan Estimate re-disclosure, your closing will be delayed by 4 business days.

CLOSING DISCLOSURE

TIMING

The Closing Disclosure must be RECEIVED by you at least 3 “business days” before closing. For this purpose, “business day” is defined as any day that is not a Sunday or Federal holiday. If your lender does not give it to you in person, you are presumed to receive it 3 business days after the lender mails it to you unless there is evidence you received it sooner, such as a signed receipt of delivery.

CONTENT

This document combines the HUD-1 Settlement Statement and Truth in Lending Disclosure in use for the past 30 years. It will be used for any loan applied for after August 1, 2015. It closely mirrors the Loan Estimate so that you can easily compare the two documents. It also gives you the following information:

1. Is your loan assumable by a buyer if you sell your home?
2. Does your loan have a demand feature, such that your lender can ask you to pay the loan before maturity for no reason?
3. Does your loan have negative amortization, such that the principal amount can increase over time?
4. What is the fee if you make a payment late?
5. Can you refinance your loan or is there a prepayment penalty?
6. Can your lender sell the servicing of your loan to a third party?
7. Discloses that the lender must deliver a copy of the appraisal of your home to you.
8. What are your escrow requirements for taxes and insurance?
9. Will your lender accept a partial payment?
10. Are your mortgage payments tax deductible?
11. Includes any other details about your loan terms.
12. What is your liability if the lender forecloses, i.e., is your loan recourse or non-recourse?

CHANGES TO CLOSING DISCLOSURE

Originally, the new rules required the 3 business day waiting period to re-start if any changes were made to the Closing Disclosure. Fortunately, the CFPB decided that as long as the change is made prior to your loan closing, your closing is not delayed unless:

1. Your Annual Percentage Rate or APR changes by more than 1/8th of 1 percent, up or down, on a normal loan.
2. Your APR changes by more than 1/4th of 1 percent, up or down, on an irregular transaction, i.e., one with multiple advances or irregular payment periods.
3. The type of loan changes, such as fixed rate to adjustable rate.
4. Your lender adds a pre-payment penalty.

WAIVER OF WAITING PERIOD

The 3 business day waiting period can be waived in the event of a bona fide financial emergency. Loss of earnest money is not a bona fide financial emergency. The industry expects such waivers to be granted rarely.

CONCLUSION

Until the industry is comfortable that they are complying with the new rules, they will err on the side of caution- which means they will postpone your closing. So if you know you need a loan this summer, make sure to apply for it before August 1, 2015!