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Come August, there will be a new roadblock to closing a deal on a house

New integrated disclosure forms will throw a wrench in the homebuying works

by **Bernice Ross**

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There's a shift coming that's about to wreak havoc at the closing table for agents and clients alike.

On Aug. 1, 2015, the new TRID (TILA-RESPA Integrated Disclosure) forms (//www.inman.com/2015/03/09/cfpb-director-to-real-estate-industry-take-august-tila-respa-rule-effective-date-seriously/) replace the HUD-1 Settlement and Good Faith Estimate. The Consumer Financial Protection Bureau's mission is to rebuild the mortgage banking landscape so that the industry will avoid the type of conditions that led to the Great Recession. The CFPB replaces the Department of Housing and Urban Development for oversight because HUD did not provide specific consumer protection.

Everyone agrees that increasing consumer protection is a desirable goal. Nevertheless, the unforeseen ripple effects from these changes could seriously disrupt how the closing process is conducted.

A recent Inman article (//www.inman.com/2015/03/17/nar-rallies-troops-with-trid-training/) outlined one of the most serious issues that will result from the new changes handed down by the CFPB: The new rules will require a new three-day waiting period when there are any changes in the TRID forms. The recommendation is to allow an extra 15 days to close your transactions. In other words, 30-day contracts will now require 45 days, and 60-day contracts will require 75 days.

Who will be hit the hardest?

The states that will be hardest-hit are those where the agents or principals must be physically present for the closing. "Escrow" states, where the documents and signatures are normally submitted a few days prior to closing, will be less likely to have issues.

In "closing table" states, clients, agents and attorneys are accustomed to routinely making changes at the closing table and still closing the sale on same day. The new three-day waiting period will severely limit this practice for items covered in the TRID documents.

The biggest headache: the moving van

When transactions don't close on time, it's common for one or more of the principals to be stuck with furniture on a moving van and nowhere to go. Any agent who has experienced an irate client in this situation knows how nasty this situation can be.

In most cases, these issues are resolved and the transaction closes the next day. Nevertheless, more than one agent has footed a hotel bill for their clients (especially those who are relocating). Moreover, if there are multiple properties involved, any delay on one home's closing could delay others from closing, too.

Now imagine how much more complicated this could become if there is an error that retriggers the three-day TRID waiting period. Everyone will be scrambling to handle late closings — not just for one day, but for at least three days or more.

If this happens, can you allow the buyers to move in early? If so, you must enter into a separate lease agreement, then collect the first month's rent plus a security deposit to protect both the buyer and the seller. Given how tight some buyers are on cash at closing time, this may not be an option.

Other potentially costly issues include situations where one of the principals must close by a certain date to take advantage of the tax breaks on the sale of their primary residence — or situations where one of the principals is involved in a 1031 tax-deferred exchange. The lost tax-benefit costs of a late closing could run into hundreds of thousands of dollars.

Interest rate games

If you have been in business for more than 10 years, you have probably experienced the shenanigans that some lenders pull when the interest rates increase. In fact, I have personally witnessed the scenario described below since the early 1980s. Here's what happens:

Your buyer locks in an interest rate for 60 days. There is an increase in the interest rates. This means that the lender can no longer sell the buyer's loan on the secondary market. As a result, the lender demands additional documentation. You submit the documents in a timely matter, but the underwriting department takes days to get to your changes. In the meantime, the buyers' interest rate lock expires, and the property doesn't close on time. At this point, the lender requires a higher interest rate in order to close the transaction.

It doesn't take much imagination to see how easily this could play out with the new TRID three-day waiting period.

The coming sea change

A change of this magnitude is going to create unexpected ripple effects across the industry, not only for agents and clients, but for mortgage and title professionals, too. What can you do to be prepared? First, make sure you attend a TRID training as soon as possible.

Second, if you're a broker-owner and you own a mortgage company or title company, take steps to change your documentation to the new system as soon as it becomes available.

Third, associations and other companies that provide contracts to the industry must have the new forms ready to go well before Aug. 1, 2015. This also means that agents and brokers will have to be trained on these new forms, over and above what is required by TRID.

A tough transition

What will be particularly thorny are transactions closing in late July. If they fail to close by Aug. 1, 2015, how will they be handled? Does entirely new documentation have to be drawn? How long will the delays be?

As we move closer to the Aug. 1 change date, advise your clients that there will be unexpected delays in obtaining loan approval, potential changes in the documentation during the transaction, and a host of problems we probably can't even begin to imagine. Start preparing now.

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