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## **Preparing You Now!**

### **The New Loan Estimate and Integrated Closing Disclosure**



### **What Buyers (and Sellers) Need to Know**

Contained is general information about the New Rules and Forms effective August 2015 and how these changes will impact Loan Consummation and the historical process of Settlement for Real Estate Transactions in Colorado. This Primer will tell you what-you-need-to-know before you get to The Closing Table starting in the Fall of 2015.

#### **How will the New CFPB Rules and Forms Impact Me?**

The central mission of the Consumer Financial Protection Bureau (CFPB) is to make markets for consumer financial products and services work better for Americans. The CFPB is now the primary regulator of ‘federal consumer financial laws.’ The consumer financial protection functions of at least seven Federal Regulatory Agencies including the Federal Reserve, HUD, Office of Thrift Supervision, FTC, FDIC, Office of the Comptroller of the Currency and NCUA all now roll up under the CFPB. The CFPB has the exclusive authority to issue regulations and enforce myriad of federal consumer protection laws including but not limited to the Truth in Lending Act, Fair Debt Collection Practices Act, Electronic Fund Transfers Act, Equal Credit Opportunity Act, Home Owners Protection Act, Real Estate Settlement Procedures Act, etc.

Though the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), rulemaking responsibility for the Real Estate Settlement Procedures Act (RESPA) and for most of the Truth in Lending Act (TILA), which are the federal laws that required the disclosure forms (Truth in Lending Statement, Good Faith Estimate, and the HUD-1 Settlement Statement), was transferred to the CFPB. In doing so, Congress also directed the CFPB to combine the TILA and RESPA forms. Consumer feedback was that the historical forms can be confusing and make it hard to comparison shop for those affiliated products and services. Accordingly, the TIL, GFE, HUD-1, and HUD-1A forms will be replaced by the new [Loan Estimate Form](#) and an integrated [Closing Disclosure Form](#).

#### **What are the most important things I should know about the new Closing Disclosure?**

The new Closing Disclosure (CD) will be prepared and delivered by either the Lender or the Settlement Agent, depending on your Lender. The CD will delineate the terms and provisions of the loan along with the integrated financial elements of the underlying transaction. It will contain non-public information applicable solely to the Borrower – Buyer and therefore will be a confidential document. The CFPB has mandated that Borrowers must now be given at least three business days (upon their *receipt* of the CD) to review the new form before loan consummation can occur for the transaction.



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Receipt will be obtained through rules established by the Lender depending on how the CD is delivered (e.g., US Mail, overnight mail, electronic delivery, personal delivery). In Colorado loan consummation and settlement are normally done simultaneously at the closing.

## **Reviewing the new Closing Disclosure . . .**

The CD has seven sections (1) Origination Charges (2) Services Borrower did not Shop for (3) Services Borrower did Shop for (4) Taxes and other Governmental fees (5) Pre-Paid items (6) Earnest Money application, and (7) All other matters. Each item listed under these sections will be displayed alphabetically. Separate columns will show charges for Buyers, Sellers, and others that will delineate payments made and also due at closing. The Borrower-Buyer will likely receive more than one CD. Some revisions are permitted to be made before, at, or even after closing (i.e., last minute Buyer-Seller negotiations, recording fees, non-numerical clerical errors). Depending on the number of disclosures the Lender delineates in the CD (need for appraisal, prepayment penalties, liability after foreclosure, need for homeowner's insurance, servicing transfer notices, and so on); the page length of the CD may vary by Creditor.

The CD is signed by the Borrower. Sellers (and Buyers) will receive an affiliated "state" Settlement Statement for Colorado real estate transactions. A waiver of the three day waiting period might be available for a "bona fide personal emergency," but the rule discourages that practice. The only instance that Lenders know can apply is a waiver for the prevention of an "imminent foreclosure sale." Consult with your Lender under such circumstances.

## **A "Do Over" Required!?!**

If the CD contains terms or condition that significantly differ from the Loan Estimate previously issued by the Creditor (e.g., APR increases by more than 1/8%, adjustable loan not fixed, prepayment penalty clause added, etc.), a new Loan Estimate and a new CD must be delivered and (re)received before the loan consummation and settlement can occur. Those events could result in up to a ten day delay from the initial, estimated closing date, and the Creditor will solely determine if a "Do Over" shall apply.

## **What Types of Transactions will require the new CD and the new integrated Closing Process?**

- Purchase money
- Refinance
- Most vacant land
- Construction loans
- Timeshares

Transactions such as Reverse Mortgages, HELOCs, Mobile Homes, Private Lenders (e.g., a seller-carry) who do less than five loans per calendar year are excluded from the new rules. Seek legal advice for the specifics on any excluded transaction or transaction type.

## **Other Important Information**

The initial disclosures required by the CFPB will delineate that an Owner's Title Insurance Policy is "optional" to the real estate transaction. Our title agency strongly urges Buyers obtain an Owner's Policy for their property purchase. A Lender's Title Insurance Policy does not provide coverage to the owner of the property. See our affiliated Primer on title insurance coverage.



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Lastly, in Colorado a simultaneous issue discount applies when an Owner's policy and Lender's policy are being issued on the same transaction. Also, the terms of the purchase-sale contract will control what aspects of the title insurance premiums and closing costs will be paid between the Buyer and Seller. That pricing information will likely be overstated in the initial Loan Estimate Form obtained by a Buyer-Borrower for a Colorado real estate transaction per the disclosure rules mandated by the CFPB. Actual, itemized costs will be expressed in the affiliated "state" settlement statements and (hopefully) in the CD as well at settlement.

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