

THE TRID RULE

Materials - State Bar of Arizona - Real Property Section

Luncheon - May 19, 2016

Learn what the TRID Rule is and the real estate transactions to which it applies. The TRID Rule was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act and became effective on October 3, 2015. It was promulgated by the Consumer Financial Protection Bureau (CFPB). Hear how it has changed real estate transactions and the roles of title companies, real estate licensees and lenders in closings. Learn about pitfalls and problems with the TRID Rule and the CFPB's plans to potentially revise the rule.

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I. Rationale for the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and Goals of the Statute.

- A. Creation of the Consumer Financial Protection Bureau ("CFPB").
- B. Purpose of Integration of Disclosures.
 - 1. Amendments and Additions to Regulation Z ("Reg. Z") promulgated pursuant to the Truth and Lending Act and amendments thereto and related laws. Reg. Z §§ 1026.19, 1026.37 and 1026.38. Copies attached.
- C. Summary of Covered and Non-Covered Transactions.
- D. The Replacement of the Good Faith Estimate (GFE) with the Loan Estimate (LE) and the Replacement of the HUD-1 Settlement Statement (HUD) with the the Closing Disclosure (CD). Copies of the model and sample LE and CD are attached.
- E. Changes to the Timing of Steps in Transactions under TRID.
 - 1. Comparison to the timeline under the Arizona Association of Realtors®' new Residential Purchase Contract and the time limits imposed from the loan application to the Loan Estimate and to the "intent to proceed." The Residential Purchase Contract is attached.
 - 2. What now constitutes a "loan application" under TRID.
 - 3. Why a loan application is now submitted after the Residential Purchase Contract is executed and why the timing is different after TRID.

II. Mortgage Banker's Perspective

- A. Changes to the Operations of a Mortgage Lender Caused by TRID.
- B. The Mortgage Lender, Rather than the Settlement Agent, Preparing the Closing Disclosure Due to Liability Provisions of TRID.
- C. Various Issues Involving Preparation and Delivering of the LE and CD.

- 1. Required Time Frames for Disclosure, Including After Receipt of Loan Application and Prior to Consummation.
- 2. "Good Faith" Standard and "Best Information Reasonably Available" Standard.
- 3. What Happens if Fees Increase after the LE Is Provided?

Redisclosure of the LE.

Can the LE be used after the CD is provided?

When can fees be increased after the LE is provided?
Fee tolerances, "changed circumstances."

When is a "waiting period" required?

If a waiting period is required, and a delay in closing is caused, what are the ramifications.

- D. *Some* of the Problems with the TRID Rule

- 1. Negative Number Issue
- 2. Instances When Compliance with the TRID Rule Is Not Possible

III. Title Company's Perspective

- A. How Closings Have Changed.
- B. The Closing Disclosure Does Not Fulfill the Place of a Settlement Statement as Did the HUD-1 Form.
 - 1. The CD does not contain information which the HUD-1 Settlement Statement contained.
 - 2. Issues involving Seller's closing costs and where they should be disclosed.
 - 3. Title companies using alternative and additional settlement statements
 - (a) The ALTA Model form.
 - (b) The Security Title Agency form.
- C. Are Title Companies in Arizona Preparing the Closing Disclosure as They Prepared the HUD-1 Settlement Statement?
 - 1. Liability Provisions under TRID for Preparing the CD.
 - 2. Less Sophisticated, Often Small Lenders Versus More Sophisticated Lenders.
- D. Simultaneous Issuance of Policies to Lender and Borrower.
 - 1. Difference Between Required Disclosures and What Borrower Actually Pays.
 - 2. Confusion Caused to the Borrower.
- E. "Title Hyphen" Issue.

IV. Real Estate Broker and Salesperson's Perspective

- A. The Requirement of the Arizona Department of Real Estate ("ADRE") that a Settlement Statement be Included in the Real Estate Broker's File at Examination Pursuant to A.R.S. Sec.32-2151.01(A) and the New TRID Forms. See attached Commissioner's Advisory.
- B. Changes to the Role of the Real Estate Licensee as the Result of TRID.
- C. Can the Real Estate Licensee be Provided with the CD?
 - 1. Discussions Between the Arizona Association of Realtors and the National Association of Realtors and the CFPB.
 - (a) The CFPB's oral guidance.
 - (b) Problems with the CFPB's oral guidance and the resulting position of many lenders regarding the CD.

V. Additional Issues for Discussion if Time Permits

- A. Are Investors and Bond Aggregators "Driving the Bus" in Connection with Interpretations of TRID? "Those Who Have the Gold Make the Rules."
- B. Liability of Creditors and Assignees, or Purchasers of Loans, under the TRID Rule.
 - 1. Do TRID Violations Force a Lender to Repurchase Loans from the GSEs -- Fannie Mae and Freddie Mac and Other Private Investors?
 - 2. How Do These Violations Affect the Ability to Pool and Securitize Loans?

- (a) How are violations viewed by ratings agencies such as Fitch or the GSEs -- Fannie Mae and Freddie Mac?
 - (b) Does it matter if the TRID violations are "material" and how many there are?
- C. Calculation of the "Cost to Close" and Attendant Issues.
- D. Allowance of "Non-Numerical" Changes.
- E. How Do TRID Violations Affect the Entire Mortgage Industry and the Availability of Housing Credit to Consumers?
- F. What if the Title Company or the Real Estate Salesperson Provides Drafts of the CD in the Same Manner Drafts of the HUD-1 Settlement Statement Were Provided?
- G. If a Real Estate Salesperson Accepts a CD Then it Must be Stored Securely.
- H. Does an ALTA settlement statement, or other title company settlement statement, require a three day advance delivery under TRID, as if it were the equivalent of a CD, or is it just a settlement statement?
- I. The Closing Instructions Quandary - The Lender Attempting to Impose Liability upon the Title Company Pursuant to Closing Instructions.
- J. Technology Issues -- Many Small, Unsophisticated Lenders Do Not the Ability to Sync Their Software So the Title Company Has the LE to Use to Prepare the CD.
- K. The CFPB's indications that it may amend the TRID Rule.

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