

The Nuts & Bolts of *Compliance by Disclosures*

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Generally

Why Are Disclosures Required??

- A mortgage transaction is a complex transaction;
- Informs borrower of the terms and costs of the loan;
- Advises borrower of his or her legal rights and obligations associated with the mortgage.

Generally

The Dreaded Federal Disclosure Laws...

- Truth-in-Lending Act (TILA)/Regulation Z
- Real Estate Settlement Procedures Act (RESPA)/ Regulation X
- Equal Credit Opportunity Act/ (ECOA)/Regulation B
- Gramm Leach Bliley Act (Privacy)

Generally

When are disclosures required?

- At the time of “Application” (or shortly thereafter)
- Midway through the loan process
- At Loan Closing
- After Loan Closing

Truth-in-Lending/Regulation Z



TILA/Regulation Z - Disclosures

- Early Truth in Lending Statement
- Final Truth in Lending Statement
- Itemization of Amount Financed
- ARM Program Disclosure & CHARM Booklet
- Section 32, “High Cost Loan” Disclosure
- Notice of Right to Cancel

Truth-In-Lending Statement

DISCLOSES:

- The Finance Charge,
- The Annual Percentage Rate (APR)
- The Amount Financed
- Total of Payments
- Other loan-related info

Truth-In-Lending Statement

TIMING:

Early disclosure – 3 Days of application
(estimates OK)

Final - At or before closing (must be
accurate)

Itemization of Amount Financed

DISCLOSES: Individual costs and fees associated with the loan.

TIMING: Basically, to be included with the Early (3 days of app) and Final (at or before closing) TIL.

Program Disclosure/CHARM Booklet

DISCLOSES: Provides borrower
Specific/General Information about ARM
loans

TIMING Must be provided within 3 business
days of receiving application or upon
consumer request.

Section 32 Notice

DISCLOSES:

- Specific cautionary verbiage
- The APR
- The monthly payment.

TIMING - Borrower must receive this disclosure at least 3 days ***prior*** to signing loan documents.

Rescission

DISCLOSES:

- Cautionary and instructional verbiage
- Transaction Date
- Date the rescission period ends

TIMING: At Closing; then borrower gets 3 Business Day (excludes Sunday and Holidays) after “consummation.”

Real Estate Settlement Procedures Act




RESPA

- Good Faith Estimate
- Settlement Service Providers
- Special Information Booklet
- Notice of Possible Transfer
- Affiliate Business Arrangement Disclosure
- HUD-1 Settlement Statement
- Escrow Account Statement Escrow Accounting
- Mortgage Servicing Transfer Notice

Good Faith Estimate

DISCLOSES: *All* anticipated costs, including YSP; Estimates should be reasonably based on what is usual and customary for the area.

TIMING: Mailed out within 3 business days of application

 3 Business Days excludes Sunday, Holidays and Saturdays (if not open for business)

Settlement Service Providers

DISCLOSES:

- The list of required service providers
- Estimates are based on charges by these providers
- Name, Address and Phone Number
- Relationship to lender

TIMING: Same as Good Faith Estimate

Settlement Costs Booklet

DISCLOSES:

- Informs borrower of the settlement process
- Outlines Consumer's rights under RESPA
- Explains costs and forms
- Provides worksheets

TIMING: Same as Good Faith Estimate

Notice of Possible Transfer of Servicing

DISCLOSES:

- The lender's transferring practices
- Complaint Resolution
- Servicing Transfer Estimates by Original Lender

TIMING: Same as Good Faith Estimate

This must be signed by borrower prior to loan funding

Affiliated Business Arrangement

DISCLOSES: Cautionary verbiage regarding joint-ownership/affiliated relationship between lender and service provider

TIMING: Mailed within 3 days of application (or within 3 days of realizing “affiliate” may be used)

HUD-1 Settlement Statement

DISCLOSES: *Must Clearly and Conspicuously* itemize ALL individual charges imposed in connection with settlement.

TIMING: Must be available 24 hours before closing (otherwise provided at time of loan closing)

Initial Escrow Account Statement

DISCLOSES: Anticipated accounting of escrow/impound account transactions

TIMING: At closing or w/in 45 days of establishing account (if established after closing)

Servicing Transfer Notice

DISCLOSES: Pertinent information regarding timing of change, phone numbers for inquiries, and cautionary verbiage

TIMING: Transferor must provide 15 days prior; Transferee must provide within 15 days after

Escrow Account Statement

DISCLOSES: Provides annual accounting of impound account

TIMING: Annually

Equal Credit Opportunity Act



Right To Copy of Appraisal

DISCLOSES: Notify borrowers they have right to request copy of appraisal.

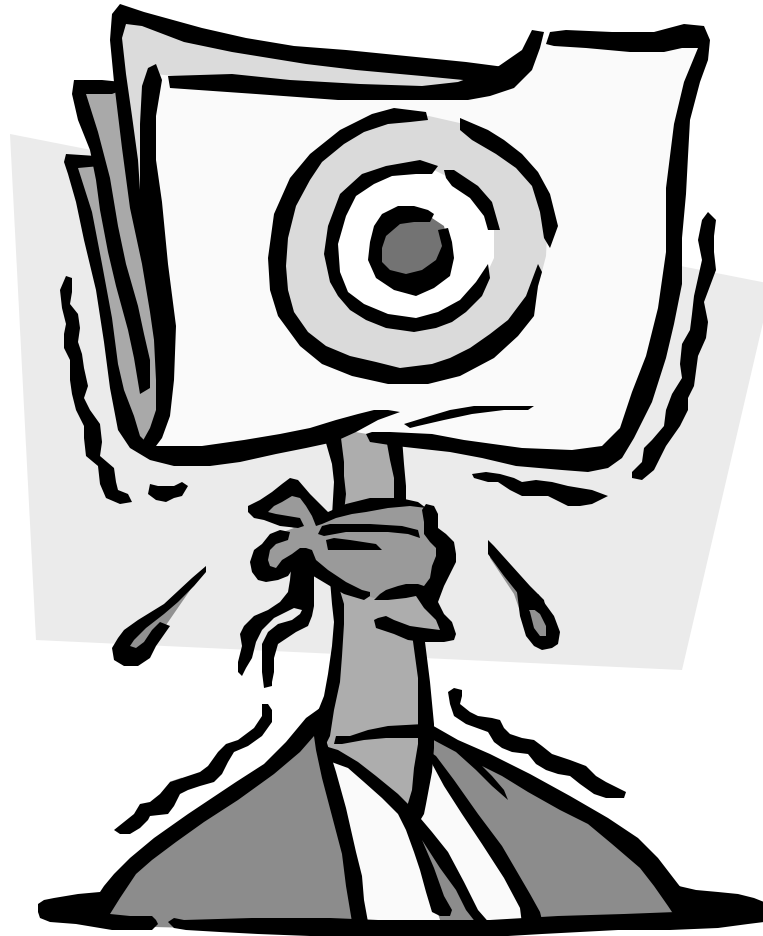
TIMING: Prior to final loan disposition

Notice of Action Taken

DISCLOSES: Informs borrower of final loan disposition (via adverse action, incomplete app., counter-offer, etc.) and borrower's rights concerning unlawful discrimination.

TIMING: Must be provided within 30 days of receiving a "completed" application.

Gramm-Leach-Bliley, *Privacy*



Consumer “Opt Out” Notice

DISCLOSES - That non-public information may be disclosed to third parties; the lender’s “privacy policy”; consumer’s right to opt out; and method to opt out.

TIMING: Prior to sharing non-public information with non-affiliated third parties.

Customer “Opt Out” Notice

DISCLOSES - That non-public information may be disclosed to third parties; the lender’s “privacy policy”; consumer’s right to opt out; and method to opt out.










TIMING: At the time of establishing the customer relationship.

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Nailing it all together!!

EARLY DISCLOSURES

-  Truth In Lending Statement
-  ARM Program Disclosure
-  CHARM Booklet
-  Good Faith Estimate
-  Settlement Service Providers
-  Notice of Possible Transfer of Servicing
-  Settlement Cost Booklet
-  Affiliated Business Relationship
-  Consumer Privacy Notice

IN THE PROCESS

- Right to a Copy of the Appraisal
- Section 32 Notice
- Adverse Action Letter
- Notice of:
 -  Incomplete Application, or
 -  Counter Offer

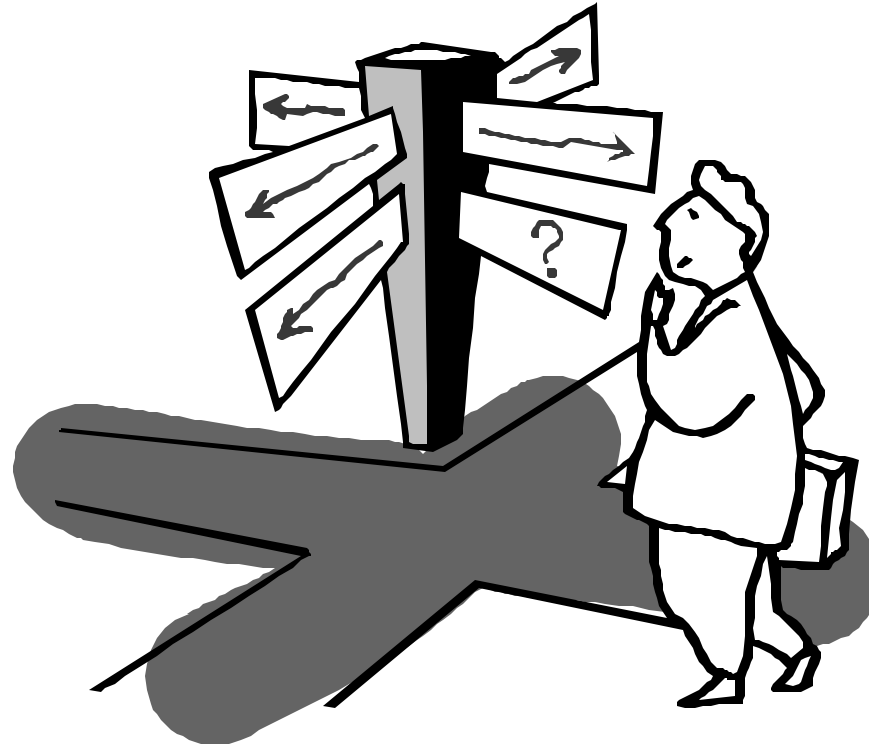
AT CLOSING

- Final Truth In Lending Statement
- Itemization of Amount Financed
- Notice of Right to Cancel
- HUD-1 Settlement Statement
- Initial Escrow Statement
- Customer Privacy Notice

AFTER CLOSING

- Transfer of Servicing Notice (Hello/Good-bye letter)
- Section 32 Assignee Liability Notice
- Aggregate Escrow Account Statement

The Complications!!



Complication - *Varying Timing Requirements*

- At Application
- Within 3 days of receiving application
- Before or at final loan disposition
- Within 30 days of having a “complete” application
- 3 business days before signing of loan documents (but after rate is locked!)

Complication - *Varying Timing Requirements*

- 24 Hours before loan closing
- At Closing (sometimes subject to 3 business days thereafter).
- 15 days before loan is assigned
- At assignment (to investor)
- 15 days after loan is assigned
- Annually

Complication - *Other Triggers*

- Owner vs. Non-owner occupied
- Purchase-money vs. Refinance transaction
- “High-Cost” vs. “Not-so-High Cost”
- Lien Position
- “Pre-Approval” vs. Full Loan App Request

Complication - *What's An App?*

*“So, like, if many of the disclosures
are triggered at ‘Application,’
then, like, what’s an Application?”*

Complication - *What's An App?*

Could be:

Submission of borrower's financial information in anticipation of a credit decision, whether written or computer generated.

Complication - *What's An App?*

Could be:

An oral or written request for an extension of credit that is made in accordance with procedures established by the creditor

Complication - *What's An App?*

Could be that:

*In a single instance you have an
“Application” under one Federal
law, but not under the other!*

More Complications...

Yet other things to worry about:

- Federal regulatory issues not related to disclosures (Fair Lending; Section 8 of RESPA).
- State-level disclosure requirements
- Investor Requirements (like borrower signatures, where law does not require this...)

Risk Exposure for Non-Compliance

- No legal exposure
- \$2,000 for violation
- Class Action exposure
- Rescission of the debt; lender must refund interests, fees charged yada yada...
- Someone's goin' to jail

So You See...

- The mortgage industry is highly regulated
- The laws and regulations are not “lender friendly”
- Compliance is not an exact science
- Overall objective - Ensure substantial efforts were made to comply
- General appearance of compliance is critical

THANK YOU!!

