



Truth-in-Lending Revisions May Delay Closings

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The Truth-in-Lending Act (“TILA”) has always required lenders to disclose certain information about the loan, including annual percentage rate (APR), prior to the transaction closing and no later than three business days after the borrower submitted a loan application. In 2009, TILA and associated regulations were amended to include the following requirements:

- TILA disclosures must be given before the borrower pays any fee other than a bona fide credit report fee.
- TILA disclosures are now required for second homes such as vacation homes, not just the borrower’s principal residence; and for refinances.
- TILA disclosures must be given at least seven business days (every day except Sunday and Federal holidays) prior to the closing of a transaction.
- If any disclosed information becomes inaccurate before closing, the borrower must receive a revised TILA disclosure at least three business days (every day except Sunday and Federal holidays) prior to closing. This requirement is invoked if the APR increases or **decreases** more than .125% on a fixed rate mortgage or more than .250% on an adjustable rate mortgage (ARM).

This last change is the one most likely to delay closings. Although the borrower can waive the seven and three day waiting periods for a bona fide “personal financial emergency”, lenders almost invariably resist funding a loan without providing the necessary waiting period since the lender could be found to be in violation of TILA in the event the situation was not deemed a bona fide “financial emergency”.

The 2009 revisions do not provide a borrower with a right to rescind or cancel an existing contract with a seller in the event a revised TILA is provided to a borrower. In essence, the requirement for a revised TILA is nothing more than a waiting period to ensure a borrower has sufficient time to review a revised TILA disclosure.

Sale agreement forms published by many multiple listing services now include an automatic extension of closing in the event the APR changes enough to invoke the requirement for a revised TILA disclosure that requires an extended closing. If forms are being used that do not include an automatic extension that would accommodate such an APR change, the sale may fail unless the seller and buyer agree to extend closing. Consider consulting legal counsel to come up with automatic extension language so that sales do not fail because of the TILA requirements.