Consumer Issues

Mortgage Disclosure Improvement Act

By Julie Garton-Good

As a homebuyer, you eagerly await the closing when you'll sign on the many dotted lines and pick up the keys to your new home. Then it happens. The amount needed for closing is hundreds of dollars higher than the Good Faith estimate you received at loan application. What should you do? In the past, many consumers felt the time-pressure of the hurry-up-and-sign closing which often meant they'd sign now and ask questions (or not) later. After all, the rationale was that if the closing date comes and goes, the seller might back out and the buyer might lose the house.

Effective July 30, 2009, it's a whole new world of loan cost disclosure for consumers and real estate agents. The Truth in Lending Act (TILA) disclosure requirement in accordance with the Federal Reserve Board Truth in Lending Regulation, Reg Z, has become the Mortgage Disclosure Improvement Act (MDIA). The new rules are designed to help consumers better understand the loan they receive and the costs involved. Since, in the past, it was not uncommon for new fees/costs to be added after the initial loan application, MDIA provides stop-gap measures to alert the consumer of changes in borrowing costs prior to loan closing. Although the disclosure is ultimately beneficial to consumers and agents alike, not understanding the rules could slow the closing process and bring confusion at the closing table.

MDIA OVERVIEW

1.) The new requirements apply to all mortgages secured by the borrower's home, including primary and secondary residences and refinancing. Investor loans continue to be exempt from these regulations;

2.) The lender must give the consumer a Good Faith Estimate (GFE) of costs within three business days of applying for the loan, now termed "early disclosure." While this was true under the old law as well, the new law does not allow the lender to collect fees (other than a reasonable fee for a credit report) before this good faith estimate is provided to the consumer. This will show the annual percentage rate (APR), a figure which is different from the note rate, the rate of mortgage interest you're paying. The APR is the total amount of costs you'll pay, expressed as an annualized figure. If new closing costs are added to the loan during the mortgage loan process, the APR will increase;

3.) The closing may not take place until expiration of a 7-day waiting period after the consumer receives the early disclosure. This should not be a problem for most borrowers since most mortgages take weeks, not days, to close;

4.) If the final APR at loan closing varies more than 0.125% (1/8 of one percent) from the initial APR at early disclosure, the lender must provide the borrower with a new disclosure at least three business days before closing. Under this regulation, a business day is all calendar days except Sunday and legal holidays. The lender may not close the loan during this time. During that three-day period, the borrower has a right of rescission. In the past, consumers have felt pressured to sign closing documents even though the costs they were expected to pay increased, often dramatically, from the initial Good Faith Estimate. Under MDIA, the playing field will be more level;

5.) Consumers may shorten or waive the 3-day and/or 7-day waiting periods for a "bona fide personal financial emergency" but only after receiving an accurate TILA disclosure. This could occur in the case of a property facing foreclosure or other financial deadline, and must be authorized in writing by the consumer. In the final MDIA rule, the Fed stated that it "believes waivers should not be used routinely to expedite consummation for reasons of convenience." In fact, the Fed decided not to insulate lenders from liability even where a consumer modifies or waives the waiting periods.

BORROWER REVIEW

Unchanged from the previous TILA disclosure, a borrower can request to view all closing documents one business day before closing. For example, if a transaction was set to close on Monday, the documents would be provided to the consumer no later than the end of the business day on the previous Thursday. So even if the APR remains unchanged from the Good Faith Estimate, the borrower has an opportunity to review all documents prior to signing them. This allows the borrower to review figures, read the documents, and ask any questions prior to closing. It's also a great way for the agent to have a final interface with the consumer and answer any questions before the transaction closes.

The real estate agent and the consumer will work in tandem toward a successful and timely closing. The agent should query the closing agent as soon as practicable about the final APR. And should it exceed the 1/8th of one percent ceiling, the wheels will be in motion for the lender to provide the borrower with a new APR disclosure three business days before closing.

Not only will consumers have a better idea of exactly what they're paying for at closing, over time lenders should get in the habit of staying within the range of their upfront Good Faith Estimates. ■

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