

## Contracts updated today, TRID rules change Sat.

ORLANDO, Fla. – Sept. 28, 2015 – The rules change for buyers who need a mortgage if they apply this Saturday, Oct. 3, or later.

To prepare for that change, Florida Realtors forms have been updated, with the new version effective today. This pre-Oct. 3 release provides time for Realtors to begin using the new contracts and forms for buyers who won't apply for a loan until Saturday or later.

"By now, most of you have read materials and attended presentations regarding the upcoming changes to the financing and closing process," says Margy Grant, Florida Realtors vice president and general counsel. "As the implementation date of the new "Truth-in-Lending RESPA Integrated Disclosure" Rule ("TRID") approaches, here are some reminders for real estate practitioners."

### TRID regulation

#### Effective Date: Oct. 3

The new rules affect transactions in which applications for loans are made on or after Oct. 3. (The new rules don't apply to cash transactions.) The new rules do not affect contracts pending as of Oct. 3 or that close after Oct. 3, unless the loan application by the borrower is made Oct. 3 or later.

#### Lender and closing form changes

The old forms (GFE, TILA forms, HUD-1) will still be used if the new TRID rules don't apply. The new forms – the Loan Estimate and the Closing Disclosure – apply to transactions in which a loan application will be made after Oct. 3.

Licensees won't typically be provided copies of the Loan Estimate and Closing Disclosure unless given a copy by your buyer or seller. However, it's likely that you'll receive a different document for review: a supplemental form – a closing and disbursement statement – created by the closing agent on a form created by the American Land Title Association.

#### Loans covered

The new rules apply to loans where the property is primarily for personal, family or household purposes (i.e., applies to residential and could apply to other types of properties, depending on the purpose of the loan, as determined by the lender.)

### LOAN PROCESS

#### Loan estimate

If TRID rules apply: Once a lender receives specific information defined by the TRID rules, that lender has a maximum amount of time to provide the buyer with a Loan Estimate. The Loan Estimate summarizes the loan the buyer requested, including costs, so the buyer can use it as a comparison tool as he shops other lenders for a loan. If a buyer has a question about the Loan Estimate, he should speak directly to the lender.

#### Buyer expenses for loan application

When buyers apply for loans, they need to inform lenders of all known expenses relating to the transaction in order for lenders to prepare the Loan Estimate. The expenses could *include a transaction fee the buyer is willing to pay*, as well as the cost of any inspections.

#### Buyer information needed to process loan

If the buyer wants the lender to start evaluating the application immediately, he should gather all the documentation the lender needs and provide the documents early in the process. Under TRID rule, the lender cannot ask for this documentation if a buyer has only made a loan application and not proceeded further.

#### Status of loan

Lenders are unable to start charging buyers fees for processing loans (except for a credit report fee), until the buyer has advised the lender of buyer's intent to proceed. Therefore, it's advisable to monitor whether a buyer has given a lender an intent to proceed with a loan, so you will know when the lender has begun to process the loan.

### CONTRACTS

#### Revised Florida Realtors sale and purchase contracts

Both the CRSP and FloridaRealtors/FloridaBar purchase and sales contracts have been updated with revisions regarding new TRID rules. The new forms replaced the former forms on September 28. The redlines reflecting the changes on the forms and the summaries are [available online at Floridarealtors.org](http://www.floridarealtors.org).

#### What information should the parties be given about TRID?

All parties in a real transaction must adapt to these changes. As soon as practical, the fact that the loan process will take more time and probably be more cumbersome, at least at first, should be communicated to the parties.

The Mortgage Banker's Association has created a document, [Changes to the Mortgage Disclosures and Closing Process](#), that's designed for consumers and can be provided by you to help familiarize them with the "new normal" loan process.

Additionally, buyers should be advised that requested changes or underwriting decisions made late in the transaction could delay the closing.

### **Negotiate longer periods of time for transactions**

Experts are advising real estate licensees to build more time into the contract for buyers to obtain loan approval and longer periods of time to close the transaction when TRID applies. The lenders must follow a lot of new rules, and new loan processing could take more time than it did in the past, at least at first.

### **Negotiate shorter periods of time for contract details**

Because closing agents need information earlier than they did before in order for lenders to prepare and deliver the Closing Disclosure, consider requiring inspections, repairs, evidence of title and surveys to be completed and delivered earlier in the process.

### **Communicate earlier in the process**

Talk with the closing agent as early as possible about costs, expenses, credits, etc., needed to prepare the Closing Disclosure. The closing agent must provide the closing numbers to the lenders at least two weeks before closing in order for the lenders to prepare the buyer's Closing Disclosure on time. This also holds true for any contract amendments. Get them to the lender as soon as they're fully executed.

### **Using an older version of the contract where loan application is made Oct 3 or later?**

If you have an existing contract on the older purchase and sale contract form that is contingent on financing, and the buyer doesn't apply for a mortgage loan until Oct. 3 or later, it may be advisable to amend the existing contract. If preparing a contract the week of Sept. 28, consider the following options:

1. Insert in the blanks for loan commitment date and closing, a date that's farther out than usual
2. Require that evidence of title be delivered, and repairs and survey completed at least two weeks prior to closing
3. Provide for an extension of the closing date for an agreed amount of time in the event the closing is delayed due to a failure to timely deliver the Closing Disclosure
4. If you do extend the closing date and parties are using Florida Realtors/Florida Bar contract, determine if you want the parties to have more time to terminate the contract under Paragraph 8(b)(ii), or specify that the extension will not affect this contract provision

### **Earlier walk-throughs**

Many people have suggested that the parties would benefit from providing an earlier walk-through of the property to confirm needed repairs have been made. This could theoretically avoid last-minute repairs or contract amendments, credits, etc.

However, a later walk-through wasn't included in the current contract revision as it presented the likelihood of requiring two walk-throughs, with the second one still occurring the day before closing to confirm the condition of the property. Licensees may want to discuss this with their buyer and add this to a contract, depending upon the particulars in the transaction.

### **Avoid simultaneous closings, at least initially**

The concern: This will involve multiplying by two the anticipated complexities TRID will likely cause, and the second transaction may fail if the first closing does not occur.

## **CLOSING**

### **Preparation and delivery of buyer's Closing Disclosure**

When a buyer is using a lender, the lender prepares the buyer's side of the new Closing Disclosure. The buyer *must* receive this document three business days before the scheduled consummation of the transaction (before the buyer becomes obligated on the loan).

For purposes of providing the Closing Disclosure, a business day is any day except Sundays and federal holidays. Where the lender is either emailing or mailing the Closing Disclosure to the buyer, it must be done 7 days in advance of the closing to meet TRID's delivery requirements.

### **Last minute changes that require a new 3-day waiting period**

Under TRID, if the loan product changes, a prepayment penalty is added or the APR changes (as defined by TRID) after a Closing Disclosure has been delivered to a buyer, then the Closing Disclosure must be corrected and a second (new) three day re-disclosure period must pass prior to the buyer becoming obligated to the loan.

### **Last-minute changes that should not require a new waiting period**

Other changes, such as last minute contributions by the licensees to cover an unexpected repair, can be made to the Closing Disclosure without creating a new three-day waiting period if the lender is willing to fund the loan

### **Seller's Closing Disclosure**

The closing agent prepares the seller's Closing Disclosure, submits it to the lender for review, and the lender ultimately gives it to the seller.

Reminder: It's more likely you'll review a closing statement (probably not the Closing Disclosure) the closing agent prepares for the parties to sign at closing, and from which the closing agent actually disburses. You are encouraged to speak to the closing agents you work with in your markets to confirm their plan on using a closing statement – and their intent to share them with you.

### **The closing agent needs your license number**

Make sure all sales associate, broker and brokerage licenses are current. Verify this by [checking the DPBR website now](#) and again after Sept 30 (C.E. renewal cycle ends Sept. 30) to insure all licenses are active.

This is important because agents' and brokers' license numbers involved in each transaction will be included on the new Closing Disclosure. Closing agents may ask licensees for this information, or they may check that licenses are listed as active themselves.

© 2015 Florida Realtors®