

FAR/BAR Changes Resulting from the New CFPB Rules

**What you Need to Know If Your Real Estate Deal MAY Close
After October 3, 2015**

By

Melissa Jay Murphy, Esq.
General Counsel

Attorneys' Title Fund Services, LLC

And

G. Thomas Ball, Esq.
Baker Hostetler

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The Dodd Frank Act directed the Consumer Financial Protection Bureau to combine the disclosures under TILA and RESPA. The intent was to reduce confusion from the number of disclosures given to a consumer.

Result: new regulations that significantly change the **FORM** of the disclosures and the **PROCESS** by which these disclosures are delivered to the buyer/consumer.

Effective Date: October 3, 2015*

***yes, that's a Saturday!**

Transactions not covered:

- **Cash transactions**
- **Commercial transactions/loans**
- **HELOCs**
- **Reverse mortgages**

New Forms:

GFE and initial TILA:

Combined into the new **Loan Estimate (LE)**

Final TILA and HUD-1:

Combined into the new **Closing Disclosure (CD)**

Timing issues under new rules

- **Date of loan APPLICATION**
- **Loan approval process**
- **Closing date: Borrower must receive the Closing Disclosure 3 business days prior to closing.**
- **Changes to the CD after initial delivery – what triggers a new 3 day waiting period?**

Who Will Prepare and deliver the CD?

Lender?

- CFPB rules put the responsibility for the preparation and delivery of the CD on the LENDER. Therefore.....
- Most major lenders have indicated that THEY will prepare the CD and deliver it to their borrower.

Settlement Agent?

- CFPB rules allow lenders to delegate this responsibility to Settlement Agent but it is not clear at this time if any lenders will do this.

Delivery of the Closing Disclosure:

TRID rules require that the CD be delivered to the Buyer/consumer at least 3 business days prior to closing. CONSUMMATION CANNOT OCCUR IF THIS REQUIREMENT NOT MET!

***CD can be delivered by any method where a receipt is obtained (e.g., hand delivery, courier).**

Caution: the consumer must sign the receipt.

***Methods without a receipt, (e.g., first class mail) require that you add 3 more days to allow the CD to get to the consumer.**

“3 days is really 6 days”

***Email is allowed. Follow the same rule as first class mail, i.e.,**

“3 days is really 6 days.”

How Will This Work?

It will be critical for the closing agent to gather all of the closing cost and proration information to send to the lender for preparation of the CD. Information will have to be gathered to complete the buyer side of the CD at least 7 days ahead of time in order to meet the 3 day notice provision.

Some lenders have indicated that they want the information TWO WEEKS prior to the scheduled closing date.

If closing cannot occur as per contract, whose “fault” is this?

If CD not timely delivered, can the Buyer extend the closing?

Three types of changes to the CD require a new 3 day waiting period:

1. Changes that result in a change in the APR of 1/8% or more.
2. Changes in the loan product
3. Addition of a pre payment penalty to the loan

Other changes will need to be approved by the lender but will not require a new 3 day notice.

Loan Contingency issues

- **Date of loan APPLICATION is what governs during this transition period between TILA and RESPA and then TRID**
 - **Loan apps dated BEFORE October 3 – “old” rules**
 - **Loan apps dated ON OR AFTER October 3 – TRID rules**

Loan Contingency Issues (continued)

Loan Approval:

An application is deemed to be complete when borrower provides these six items to a lender: 1) Borrower's name, 2) Borrower's monthly income, 3) Social Security Number, 4) Property Address, 5) Estimated value of property, 6) Loan Amount Sought.

Once these items of information are received, lender must deliver a Loan Estimate within three business days. Once LE is issued, it is binding on the lender for 10 days.

Loan Contingency Issues (continued)

The loan approval process has changed under the new rules because lenders are not “allowed” to collect any verification documentation before the requirement to deliver an LE is triggered, i.e., when the application is received. Therefore none of the verification documentation will be received by the Lender until the buyer tells the lender they intend to proceed with the loan. Loan approvals may take longer because of this.

Loan Contingency Issues (last one!)

Pre approvals are still possible prior to the issuance of a Loan Estimate and the CFPB has a sample form that lenders can use.

Appraisal issues

If the walk through reveals deficiencies with the property (appliances removed or damage to the property), this may trigger a requirement that the appraisal be updated.

The updated appraisal must be delivered to the buyer 3 days prior to closing.

So if the CD is “just fine” but the walkthrough 2 days before closing revealed an issue the appraiser must evaluate, the closing may be delayed even if the CD is unchanged.

Contractual issues:

During “transition period,” which form to use?

Terms of agreed upon extensions to the Closing Date

Restrictions on buyer’s ability to change “loan product”

“Back to back” closings

2015 FAR BAR CONTRACT CHANGES

5. EXTENSION OF CLOSING DATE:

(a) If Paragraph 8. (b) is checked and Closing funds from Buyer's lender are not available ~~at time of Closing due to Truth in Lending Act (TILA) notice requirements~~, on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then

Closing Date shall be extended for such period necessary to satisfy ~~TILA notice requirements~~ CFPB Requirements, provided such period shall not ~~to~~ exceed ~~7~~ 10 days.

8. FINANCING

(a) Buyer will pay cash ~~or may obtain a loan~~ for the purchase of the Property **at Closing**. There is no financing contingency to Buyer's obligation to close. **If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.**

8. FINANCING - continued:

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- * (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA VA loan on the following terms within _____ (if blank, then ~~30~~ 45) days after Effective Date (“Loan Commitment Date”) for: (**CHECK ONE**): fixed, adjustable, fixed or adjustable rate loan in the principal amount of \$ _____ or _____ % of the Purchase Price, at an initial interest rate not to exceed _____ % (if blank, then prevailing rate based upon Buyer’s creditworthiness), and for a term of _____ years (“Financing”).

8. FINANCING - continued:

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:

(i.) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or

(ii.) 7 days prior to the Closing Date **specified in Paragraph 4, which date, for purposes of this 8.(b) (ii), shall not be modified by Paragraph 5(a).**

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(c) TITLE EVIDENCE AND INSURANCE: At least _____ (if left blank, then 15, or if Paragraph 8 (a) is checked, then 5) days prior to Closing Date (“**Title Evidence Deadline**”), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto (“**Title Commitment**”) and, after Closing, an owner’s policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner’s policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner’s title policy premium, title search, municipal lien search and closing services (collectively, “**Owner’s Policy and Charges**”) shall be paid, as set forth below. **The title insurance premium charges for the Owner’s Policy and any lender’s policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents.**

9. CLOSING COSTS; TITLE INSURANCE; SURVEY..... continued

(CHECK ONE):

- (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, ~~(but not including~~ and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the Buyer's lender's policy, and endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select); or
- (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements, and loan closing; or

9. CLOSING COSTS; TITLE INSURANCE; SURVEY..... continued

- * (d) **SURVEY:** ~~At least 5 days prior to Closing~~ **On or before Title Evidence Deadline**, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

18. STANDARDS.

G. FORCE MAJEURE:

- * Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. “Force Majeure” means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, ~~and any other cause not reasonably within control of Buyer or Seller, and~~ which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

F. APPRAISAL CONTINGENCY RIDER

- * This Contract is contingent upon Buyer obtaining, at Buyer's expense, a written appraisal from a licensed Florida appraiser **on or before** _____ **(if blank, then at least ten (10) days prior to Closing)**, stating that the appraised value of the Property is at least \$ _____ (if left blank, the Purchase Price), ~~on or before~~ _____. If the appraisal states that the appraised value of the Property is less than the above value, Buyer shall deliver a copy of such appraisal to Seller within 3 days after the above date and deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit paid shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property, except as provided in Paragraph 8(b) if it is checked.

H. HOMEOWNER'S/FLOOD INSURANCE RIDER

- * (a) **Homeowner's Insurance:** If Buyer is unable to obtain homeowner's insurance coverage (including windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium(s) not to exceed \$ _____ or _____% of the Purchase Price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 10 ~~5~~ days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

H. HOMEOWNER'S/FLOOD INSURANCE RIDER

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- * (b) **Flood Insurance:** In addition to the right of termination provided to Buyer in Paragraph 10(d), if Buyer is unable to obtain flood insurance coverage through the National Flood Insurance Program at a first year premium not to exceed \$ _____ or _____ % of the purchase price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 10 5 days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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C. SELLER FINANCING RIDER (PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER)

* II. SELLER FINANCING

- * Seller agrees to hold a note secured by **(CHECK ONE)**: a first or a second purchase money mortgage, executed by Buyer in the principal amount of \$ _____ at _____ % interest per annum that will be **(CHECK ONE*)**:
 - * (a) fully amortized for a term of _____ (if left blank, then 30) years; or
 - * (b) an interest-only mortgage loan that complies with the requirements of Dodd-Frank set forth above **for a term of _____ (if left blank, then 60) months**, and requires monthly, quarterly, annual or other periodic interest payments (**Permitted for the one property exclusion only**); or

C. SELLER FINANCING RIDER (PURCHASE MONEY MORTGAGE.... continued

- * **PURSUANT TO DODD-FRANK NO OTHER OPTIONS ARE PERMITTED.**
- * Principal plus interest shall be payable (in the event of an adjustable rate mortgage loan, initially) in equal **(CHECK ONE):** monthly quarterly or annual payments of \$ _____ each, including interest, with the first payment due _____ month(s) after Closing. If a balloon mortgage, the final payment will exceed the periodic payments thereon, and the entire unpaid principal balance plus accrued interest shall be due and payable in _____ (~~not less than 60, which shall be the number~~ if left blank, then 60) months or _____ (~~not less than 5, which shall be the number if left blank~~) years from date of Closing.

CFPB REQUIREMENTS

- * PROCESSES:

- * 1. LOAN APPLICATION
- * 2. LOAN ESTIMATE
- * 3. NOTICE TO PROCEED
- * 4. CLOSING DISCLOSURE

- * BUSINESS DAYS:

- * Only Sundays and national holidays are excluded.

FAR BAR CONTRACT TIME CALCULATIONS

- * **18. STANDARD F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

CFPB REQUIREMENTS

- * **LOAN APPLICATION:**

- * a. Borrower's name;
- * b. Borrower's monthly income;
- * c. Borrower's social security number to obtain a credit report;
- * d. Property address;
- * e. Estimate of property's value; and
- * f. Mortgage loan amount sought.

CFPB REQUIREMENTS

- * **LOAN ESTIMATE:**

- * Within 3 business days after receiving a completed Application, the originator must deliver or place in the mail to the buyer a **Loan Estimate**. The mailing of the Loan Estimate must be made at least seven days prior to consummation of the Loan.

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CFPB REQUIREMENTS

- * **NOTICE TO PROCEED:**
- * Buyer *MAY* within 10 days after receipt of Loan Estimate provide notice that buyer intends to proceed with the Loan.
- * The originator must make the terms of the Loan Estimate available for this 10 business day period.

CFPB REQUIREMENTS

- * **Closing Disclosure.**
- * Replaces TILA Disclosure and RESPA HUD-1 statement.
- * Must be delivered at least 3 days prior to “consummation” of the Loan. Earlier delivery is not regulated.
- * For timely delivery by mail, must be placed in the mail 7 days prior to the date of consummation:
 - * (i) the date of mailing is not counted;
 - * (ii) delivery presumed on 3rd business day after mailing,
 - * (iii) day of presumed delivery counted as one of the three required business days prior to closing.

CONTRACT TIMELINE: Wednesday, August 26 – Contract signed
 (“Effective Date”) with Closing set for 64 days – Friday, October 23
 (“Closing Date”).

- * **Monday, August 31** – default deadline for Buyer to make “Loan Application”.
- * **Thursday, September 3** – deadline for lender to mail/deliver “Loan Estimate”.
- * **Monday, September 15** – Buyer MAY provide “Notice to Proceed”.
- * **Thursday, September 10** – default deadline for completion of Inspections.
- * **Friday, September 25** – default deadline for Buyer to obtain appraisal and to terminate for lack of HOA or flood insurance.
- * **Monday, September 28** – deadline for Buyer to terminate due to appraisal deficiency.
- *

CONTRACT TIMELINE: Wednesday, August 26 – Contract signed
 (“Effective Date”) with Closing set for 64 days – Friday, October 23
 (“Closing Date”).

- * **Wednesday, October 7 – default deadline for delivery of Title Evidence (including survey).**

- * **Monday, October 12 – default deadline for Buyer to examine Title Evidence and Survey, and to notify Seller of defects.**

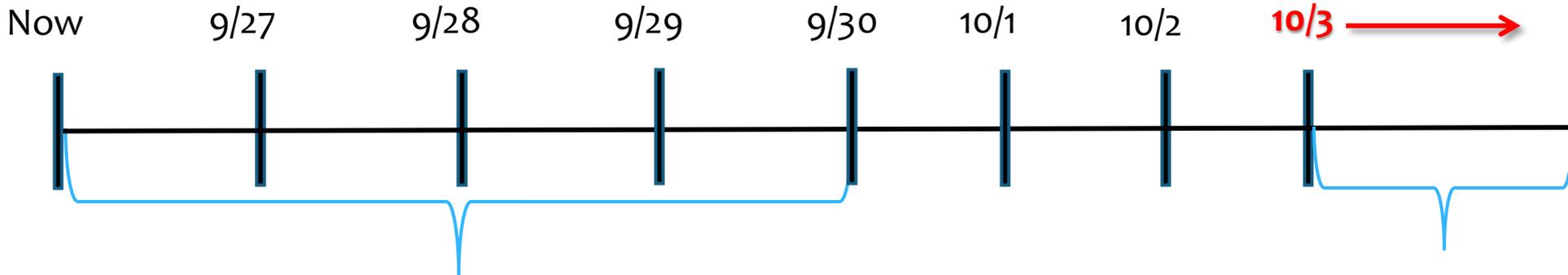
- * **Monday, October 12 – default deadline for Buyer to obtain Loan Approval**

- * **Thursday, October 15 – deadline for either party to terminate Contract due to Buyer’s failure to obtain Loan Approval**

CONTRACT TIMELINE: Wednesday, August 26 – Contract signed (“Effective Date”) with Closing set for 64 days – Friday, October 23 (“Closing Date”).

- * **Friday, October 16** – deadline for lender to mail Closing Disclosure to Buyer.
- * **Tuesday, October 20** – deadline for Buyer’s receipt of Closing Disclosure.
- * **Friday, October 23** – deadline for Buyer’s walk-through
- * **Friday, October 23** – Closing Date
- * **Monday, October 26** – deadline for mailing amended Closing Disclosure.
- * **Monday, November 2** – default deadline for extended Closing Date.

Effective Date of Contract



Use current FR/BAR with caution. Options to consider:

- Altering paragraph 8(b) to require buyer to apply for loan **before** 10/3 (with consequences)
- An addendum to adopt CFPB changes **if** loan falls under TRID

TRID implementation

Use new FR/BAR

Use new form of FR/BAR as the loan app is likely to be on or after 10/3