

CAPITOL ♦ TITLE

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LEGAL BULLETIN

NEW GOVERNMENT REGULATIONS MAY IMPACT YOUR CLOSING DATES

The Housing and Economic Recovery Act (“HERA”) was passed by Congress in 2008 and the Federal Reserve Board published regulations that amend provisions in the Truth in Lending Act which are designed to protect and educate consumers in connection with their home financing transactions. Certain provisions in the amended Act and Regulations, which **become effective July 30, 2009** regulate when the closing of a transaction can occur and the “upfront fees” that a lender can charge a borrower. A summary of the key points and how they can affect your transactions follows.

1. **CLOSING DATE.** Real estate sales agreements customarily specify when closing will occur. The Act and Regulations, however, now provide that **the earliest any home purchase transaction can occur is seven (7) business days after the homebuyer is issued his or her initial mortgage disclosures from the lender.** (Note that Saturdays, with the exception of federal holidays, do count as a business day for purposes of this provision.)
2. **UPFRONT FEES.** Upfront fees can not be charged by the lender (except for a credit report fee) until the initial disclosures are received by the borrower.
3. **COPY OF APPRAISAL.** **The homebuyer must be provided with a copy of his or her appraisal a minimum of three (3) business days prior to closing.** The borrower has the right to waive this advance disclosure requirement if he or she feels that the 3 business day review period is not necessary for whatever reason.
4. **INCREASES IN APR PRIOR TO CLOSING.** An increase in the Annual Percentage Rate (“APR”) of more than .125% (one-eighth of one percent) from that which was disclosed on the initial Truth in Lending Disclosure (“TIL”) issued to the borrower requires that the TIL be revised and reissued to the borrower AND **the borrower must receive a revised TIL at least three (3) business days prior to closing.** If mailed, the revised “TIL” is considered “received” 3 days after the mailing. The APR can change based on many factors including a change in interest rate (or lock expiration of rate), loan product/type change, change in closing date and/or a change in fees associated with the loan or closing.

What can you do to ensure timely closings?

- **Set realistic expectations upfront with all parties in regards to potential closing dates and plan for at least a 30 day closing period**
- **Make sure that homebuyers understand that last-minute selections of or changes in their lender or loan terms may cause a delay in the closing date and that locking in a rate and fees as early as possible will help to avoid delays**
- **Make sure that homebuyers understand that the importance of selecting an experienced settlement agent that understands these new regulations and the importance of advance planning and early communication with the lender**
- **Capitol Title is prepared to deal with these new requirements and provide all necessary information to the lender well in advance of closing to avoid unnecessary delays**

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