

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue, creating a modern, layered effect.

TRID and the Colorado Real Estate Contract

Effective Date - October 3, 2015

T-Truth in Lending Act (TILA)

R- Real Estate Settlement Procedures Act

ID-Integrated Disclosures

- ▶ This change is significant in that an impact to the Real Estate Broker community and the Buyers/Sellers has occurred
- ▶ 2010 changes to the HUD1 process had little or no issues that required Brokers to change how they did business
- ▶ Requires Lenders to provide Consumers with more disclosure as to costs, interest rates and down payment in an easier to understand format
- ▶ Sets timeframes for Buyer to have the opportunity to “shop” for comparable loans prior to selecting a Lender and review figures prior to becoming obligated on a mortgage
- ▶ Prevents the collection of any fees until Consumer has committed to a Lender

Goals of The New Rule

- ▶ Easier-to-use mortgage disclosure forms
- ▶ Improve consumer understanding
- ▶ Aid in comparison shopping
- ▶ Prevent surprises at and just prior to closing

Two New Forms

1. The Loan Estimate

- ▶ Provided to consumers within three business days after submission of loan application
- ▶ Replaces early TIL statement and GFE
- ▶ Provides summary of key loan terms and estimates of loan and closing costs
- ▶ Idea is to promote comparison shopping

2. The Closing Disclosure

- ▶ Received by consumers three business days before consummation
- ▶ Replaces final TIL statement and HUD-1 Settlement Statement
- ▶ Provides detailed accounting of transactions

Timing of the Disclosure Requirements

Definition of “Business Day”

Not one, but two definitions

- ▶ When providing **Loan Estimate** to consumer within three business days of application
 - ▶ Defined as day on which the creditor’s offices are open to the public to carry on substantially all functions
- ▶ Waiting period for **Loan Estimate** and consumer receipt of **Closing Disclosure**
 - ▶ Defined as all calendar days except Sunday and certain federal holidays

Loan Application Defined under TRID Rules

“Application” has 6 required elements:

- ▶ Borrower name
- ▶ Property address
- ▶ Income
- ▶ Estimated value of property
- ▶ Social Security Number
- ▶ Mortgage loan amount

Loan Application Rule Benefits

Intended Benefits:

- Earlier receipt of loan information
 - Will ensure Consumers have initial loan information within a narrow window of time
- Uniform standard for all creditors
 - Varied based on individual Lender policy prior to TRID
- Additional information still collectable
 - Divorce Decrees
 - Tax documents

Timing of Disclosure: Loan Estimate

“Application” trigger :

- ▶ Three business days after Application
- ▶ Seven business days prior to consummation
- ▶ Waiver of waiting period permitted in bona fide financial emergencies
 - Written statement by consumer
 - No printed forms
- ▶ Re-disclose within three business days of change

TRID Impacts to the Real Estate Process

These following slides are for general information to the Real Estate Broker community and do not represent legal advice nor relieve brokerage firms from developing their own response or practices to the changes required by the CFPB for TRID compliance

Impact to Contract to Buy and Sell

Under the TRID definition of Loan Application

Section 3 Dates and Deadlines: Item 11 Section § 5.1 Loan Application Deadline

| | | |
|----|-------|---------------------------|
| 11 | § 5.1 | Loan Application Deadline |
|----|-------|---------------------------|

- ▶ Based on the TRID definition, this may be either a actual date **OR**
MEC (Mutual Execution of Contract)+ 2 business days
- ▶ Avoid using “Done” or “Complete” since the definition requires an address
- ▶ Consider using Section 30 Additional Provisions to provide information about the Buyer’s pre-qualification process or have the Buyer’s lender give a status update on the Buyer’s behalf

Impact to the Contract to Buy and Sell

Under the TRID requirement for the Closing Disclosure

Section 3 Dates and Deadlines Item 12 § 5.2 Loan Objection Deadline

| | | |
|----|-------|-------------------------|
| 12 | § 5.2 | Loan Objection Deadline |
|----|-------|-------------------------|

- ▶ Consider the need to protect the Buyer's earnest money versus the situation
 - ▶ Multiple offers
 - ▶ Lenders commitment to the Buyer's approval process
 - ▶ Listing agent and Seller's understanding of the TRID rules
 - ▶ CFPB Rules focus on protecting the Buyer's ability to secure acceptable financing but the Broker is responsible to ensure the earnest money is addressed properly

Timing of the Closing Disclosure

Consumer must receive three business days before consummation/closing if sent electronically otherwise six business days for mailing

Unless there is a Bona fide personal financial emergency

- ▶ Written statement by consumer
- ▶ Printed forms prohibited
- ▶ Seller must receive no later than day of consummation/closing
- ▶ If **Closing Disclosure** becomes inaccurate before closing, provide corrected disclosure at or before consummation/closing
 - ▶ Still must be able to inspect one business day prior to consummation
 - ▶ Limited changes require a new three-business-day waiting period:
 - ▶ Changes above APR tolerance; 1/8% increase in rate
 - ▶ Change to loan product; Conventional to FHA, FHA to USDA, etc
 - ▶ Addition of prepayment penalty

Impact to the Contract to Buy and Sell (cont.)

Under the TRID requirement for the **Closing Disclosure** delivery requirements may result in longer Contract timeframes

Section 3: Item 31

12.3 Closing Date

| | | |
|----|--------|---------------------|
| 31 | § 12.3 | Closing Date |
|----|--------|---------------------|

- ▶ Communicate with Buyers the extended closing date requirement. Closing dates may be as much as 45 days out from Contract acceptance
- ▶ Deliver of the **Closing Disclosure** may not indicate a Cleat to Close
- ▶ Brokers should ensure Lender provides a realistic consummation/closing date
- ▶ Avoid same day closings on stacked transactions
 - ▶ With 3 day **Closing Disclosure** requirement in mind, any transaction down in the chain could impact the other transactions up the line adversely
- ▶ Advise Buyer that possession date could change and to avoid having tight move-out/move-in dates
- ▶ Use of the **Post Occupancy Closing Agreement** (PC070-10-11) is strongly encouraged especially in stacked transactions

Best Practices For Real Estate Brokers

- ▶ Establish specific policies and procedures affected by TRID.
- ▶ Brokers should have advance training on the TRID process and understand the impact to their clients, both Buyer and Sellers.
- ▶ Buyers should select Lender(s) that are knowledgeable on the TRID changes.
- ▶ Brokers should communicate with their respective Buyer and Seller regarding the impact of TRID on the Real Estate timelines that can be expected especially during the implementation process. The potential closing time frame can be as much as 45 days compared to the current 30 days.

Best Practices For Real Estate Brokers(cont.)

- ▶ Buyers/borrowers should obtain credit approval (not just prequalified) **prior** to writing a contract. If the buyer/borrower's credit is pre-approved, do not write "Done" or "N/A" in Section 3 ("Dates and Deadlines"), item 11 ("Loan Application") of the Contract to Buy and Sell Real Estate. Instead the recommended best practice is to specify a date two business days later than the date both buyers and sellers have mutually executed the contract.
- ▶ A critical first step before engaging in the offer and acceptance process is to coordinate with the lender in the setting of the milestones. This early, proactive engagement not only helps prevent, or minimize the need for subsequent contract amend/extends, it serves to set realistic timelines and expectations for all parties.

Best Practices For Real Estate Brokers(cont.)

- ▶ Develop guidelines for communicating expectations between Buyers and their selected Lenders. This should include discussions on the timing of the **Loan Estimate**, and **Closing Disclosure** documents. Additionally, Real Estate Brokers should understand the effect of the **Intent to Proceed**. Real Estate Brokers should communicate with their Buyer with regard to the Buyer's receipt, acceptance and return to the Lender, while questions from the Buyer regarding the loan itself should be referred to the Lender to ensure Real Estate Brokers are not practicing Loan Origination.
- ▶ Set an expectation that Real Estate Brokers will contact the Buyer's Lender for guidance on a reasonable closing date under TRID.
- ▶ Buyers should be aware of the Lender's preferred method of contact during the purchase process. E-mailing or uploading to the Lender's secure portal can significantly reduce the time required compared to (snail) mailing documents.

Best Practices For Real Estate Brokers(cont.)

- ▶ Real Estate Brokers should have their Buyer notify them when the following steps in the mortgage process have happened:
 - ▶ Buyer has completed and submitted the loan application to the Lender;
 - ▶ Buyer has received the **Loan Estimate** document;
 - ▶ Buyer has communicated to the Lender to proceed with the loan; typically an **Intent to Proceed** is submitted by the Buyer to the Lender. The lender cannot collect any fees for appraisals, etc. until the Lender receives the Buyer's Intent to Proceed;
 - ▶ A **Clear to Close** has been received from the lender, indicating that the **Closing Disclosure** may be finalized;
 - ▶ Buyer has received the Closing Disclosure, is in agreement with the figures presented and has returned to the signed Closing Disclosure to the lender. (Currently, Real Estate Brokers may receive this type of information from the Title Company).
- ▶ From the Buyer's perspective, the Loan Objection Deadline should be set to ensure Buyer's earnest money is protected for as reasonable a time frame as the situation allows. Negotiation and circumstances could create situations where the Loan Objection Deadline will be prior to the release of the **Closing Disclosure** especially in the event of multiple offers.

Best Practices For Real Estate Brokers(cont.)

- ▶ Final walkthroughs may result in changes to the **Closing Disclosure**, in the event, of a change in property condition, Seller credits and appraisal conditions. The final walkthrough should be scheduled at least 7 days prior to closing. Any changes resulting from the walkthrough should be immediately communicated to the lender and the title company. An additional walkthrough may be required to ensure any needed repairs have been satisfactorily completed.
- ▶ Possession dates should be discussed with the Buyer and that the TRID process may necessitate a change in the date of Possession. The Colorado Real Estate Commission has an approved form, **Post Closing Occupancy Agreement**, if the Seller is to remain in possession following Closing. This will be crucial in the event of “stacked” or concurrent closings involving either Buyer or Seller affected by a related purchase (Seller) or sale (Buyer) or their buyer or seller.

Best Practices For Real Estate Brokers(cont.)

- ▶ **Avoid scheduling of same day closing** on stacked transactions. The multiple working components will make same day stacked closings extremely difficult to ensure they occur timely and successfully.
- ▶ Submit amended or extended contracts to the Lender and the title company in a timely manner

Top Issues Affecting Real Estate Brokers

▶ Delays

- Intent to Proceed may slow process
- Multiple versions of Closing Disclosures likely

▶ Walk throughs more challenging

- Could be more than one
- Change in property condition- Damage, etc.

▶ Need to obtain **Closing Disclosure** from Buyer, not closing agent

▶ Simultaneous closing will be a challenge

▶ Longer more complicated closings

TRID Calendar

| October 2015 - TRID TIMELINES | | | | | | |
|---|--|---|--|--|--|---|
| REALTOR LENDER TITLE / SETTLEMENT | Saturday = non-business day | LE = Loan Estimate CD = Closing Disclosure | Please refer to the Glossary within this TRID Best Practices document for a definition of other abbreviations used. | Revised 7-23-15 | | Saturday 10/3/15 TRID EFFECTIVE DATE FOR ALL NEW APPLICATIONS |
| Sunday 10/4/15 Offer submitted | Monday 10/5/15 Contract accepted Loan application made Contract delivered to Title | Tuesday 10/6/15 Inspection ordered LE / disclosures delivered via eDelivery Loan processing begins | Wednesday 10/7/15 Earnest money delivered | Thursday 10/8/15 Seller's disclosure delivered LE / disclosures delivered via mail, if necessary (1) (1) last day to mail | Friday 10/9/15 | Saturday 10/10/15 |
| Sunday 10/11/15 | Monday 10/12/15 Columbus Day | Tuesday 10/13/15 | Wednesday 10/14/15 LE - receipt assumed Intent to proceed received, allowing money to be collected for appraisal | Thursday 10/15/15 CIC done / inspection done Title commitment due | Friday 10/16/15 | Saturday 10/17/15 |
| Sunday 10/18/15 | Monday 10/19/15 Title objections delivered Intent to Proceed received (latest day), allowing money to be collected for appraisal Off record title | Tuesday 10/20/15 Inspection resolution / off record objections made Appraisal ordered (2) (2) Appraisal may be ordered earlier, upon receipt of Intent to Proceed and payment | Wednesday 10/21/15 | Thursday 10/22/15 Title and off record objections resolved Survey due | Friday 10/23/15 | Saturday 10/24/15 |
| Sunday 10/25/15 | Monday 10/26/15 Survey objection | Tuesday 10/27/15 Survey resolution | Wednesday 10/28/15 | Thursday 10/29/15 | Friday 10/30/15 Appraisal received Submit loan file to Underwriting (3) (3) Credit package may have been submitted for approval prior to receipt of the appraisal | Saturday 10/31/15 |
| November 2015 | | | | | | |
| REALTOR LENDER TITLE / SETTLEMENT | Saturday = non-business day | LE = Loan Estimate CD = Closing Disclosure | Please refer to the Glossary within this TRID Best Practices document for a definition of other abbreviations used. | | | Saturday 10/3/15 TRID EFFECTIVE DATE FOR ALL NEW APPLICATIONS |
| Sunday 11/1/15 | Monday 11/2/15 | Tuesday 11/3/15 | Wednesday 11/4/15 Appraisal objection deadline Conditional underwriting approval rendered | Thursday 11/5/15 | Friday 11/6/15 Conditions received | Saturday 11/7/15 |
| Sunday 11/8/15 | Monday 11/9/15 Conditions submitted to underwriting | Tuesday 11/10/15 | Wednesday 11/11/15 Veterans Day | Thursday 11/12/15 Loan approved (4) File sent to closing (4) aka Loan Commitment | Friday 11/13/15 Loan objection date (5) CD sent by mail delivery Collaborate with lender (5) Negotiated between buyer and seller | Saturday 11/14/15 SATURDAY COUNTS FOR THE CD |
| Sunday 11/15/15 | Monday 11/16/15 | Tuesday 11/17/15 | Wednesday 11/18/15 | Thursday 11/19/15 | Friday 11/20/15 Contract closing date Contract closing date Contract closing date | Saturday 11/21/15 |
| Sunday 11/22/15 | Monday 11/23/15 | Tuesday 11/24/15 | Wednesday 11/25/15 | Thursday 11/26/15 | Friday 11/27/15 | Saturday 11/28/15 |
| Sunday 11/29/15 | Monday 11/30/15 | Scenario: This calendar equates to a 45 day contract, which includes a potential 10 day cushion. If the inspection and appraisal can be completed sooner, the timeline will result in a 35 day contract. Note that this scenario does not include any potential change of circumstance issues or other unforeseen delays. | | | | |

Additional Resources on TRID Contract Closing

- ▶ NAR projects that TRID will require a 45 day closing timeline effectively adding 15 days to the current process

(<https://www.youtube.com/watch?v=CLjFLD4LsnE>)

- ▶ American Land Title Association

<https://www.youtube.com/watch?v=gtueKdISgUI>