Newsletter

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FIDELITY® NATIONAL TITLE COMPANY


# Changing Process – Adjusting Behavior and Practice

In the October Newsletter, we sketched out in broad terms the details of the Tila-Respa Integrated Disclosure Rule. [See: CFPB and Closing Time Frames, October 2014]. At that time, we suggested real estate brokers attend one of our many continuing education classes on the topic.

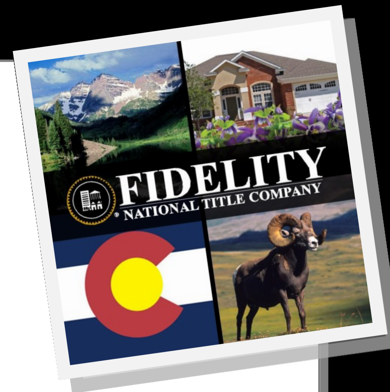
As this Newsletter goes to print, Fidelity National Title Company has hosted at least 15 classroom presentations for the Denver Metro area real estate broker community. A common theme has emerged from those classes: It is clear that many brokers are completely unfamiliar with the changes coming in August and/or have given little or no thought as to how they will address those changes to protect the interests of their clients. One of the very challenging conditions that the informed broker will face is the difficulty encountered when attempting to negotiate with another agent who is not familiar with the Tila-Respa Rule's requirements.

For example, practitioners have seen and continue to see contracts with loan objection deadlines set just three or four days ahead of a closing date. They have become accustomed to closing figures coming out right on the eve of closing, if not virtually at the time of closing. Under the new requirements, the buyer must have received the Closing Disclosure at least three business days before closing or the loan cannot close on the contract closing date. ***It does not matter that the contract is 'time of the essence' nor that the buyer will forfeit a substantial earnest money deposit. If the Closing Disclosure is not timely delivered and received, the borrower cannot waive the required time frame.***

In this author's view, this new paradigm is manageable. However, in order to avoid pitfalls to their clients, brokers will need to adjust their behaviors and approach their contract provisions, including dates and deadlines in a much different fashion than they have in the past. Instead of having loan objection a few days before closing, they may wish to consider having it seven days in advance to assure that if figures have not gone out, the buyer is still able to protect earnest money, should the seller be unwilling to extend closing.

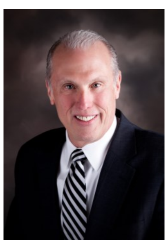
In those transactions where the seller is selling their personal residence, care should be taken so that they have sufficient time to react if the buyer proves unable to perform according to the Rule's time constraints. Failure to do so, could easily subject the seller to a default on the next transaction, if the expectation was to move from the sale to their dependent purchase, as in the so-called 'stacked' or 'domino' transactions.

In some markets, and especially so in Colorado, there is ever-increasing pressure to close transactions in relatively short time frames. Some brokers and their clients have fallen for the belief that a contract calling for a twenty day time frame is somehow better or more competitive than one calling for a thirty or thirty-five day time frame. Everyone connected to the transaction might do well to ask themselves questions, such as: "Whose interests are served by continually shrinking time frames to accomplish closings? Are the sellers' interests advanced in some significant way? Are the buyers' interests bettered in any real, measurable way, beyond assuring an accepted offer on a home which might not be a good choice for them?




The Colorado Real Estate Commission's standard contract has a blueprint designed to be followed to address the consumers' interests. Starting with inspection, inspection objection and resolution, appraisal, title, off-record matters, insurance, loan objection, etc., leading ultimately to closing. The more brokers and their clients attempt to compress those time frames, the less time any party in interest has the opportunity for due and thoughtful diligence. The outcome is the clients' interests may be put in jeopardy and ultimately compromised.

There is no doubt that the changes in August will force a new process upon buyers, sellers, agents, lenders and title companies, whenever a mortgage loan is associated with the transaction. If these participants thoughtfully engage with one another, adjust their behaviors and keep their clients' interests in the forefront, there is no reason that we cannot have a favorable, seamless outcome for all involved. Those who resist; those who want to 'game the system,' will make their transactions unnecessarily difficult and stressful for the people they have been called upon to represent.



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