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FIDELITY NATIONAL TITLE COMPANY

Feds Create Conflicts for Colorado

Since the Consumer Financial Protection Bureau announced the implementation of Tila-Respa Integrated Disclosures (TRID), there has been a lot of discussion in the industry about changes coming to financed real estate transactions. Fidelity National Title Company has issued several newsletters addressing different aspects of these changes [See, October 2014; June 2015 & August 2015].

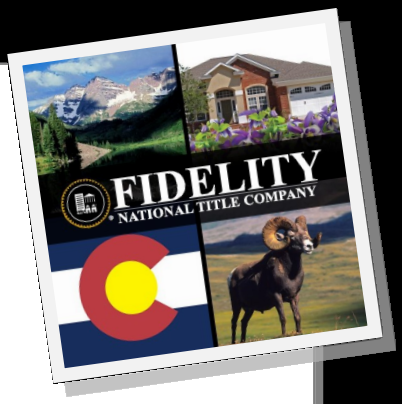
Less prominent than the industry-wide discussion has been the efforts of the Colorado Board of Mortgage Originators to reconcile the new TRID requirements with the provisions of existing Colorado statutes and Board Rules governing the conduct of state licensed Mortgage Loan Originators. Similar to the oversight exercised by the Colorado Real Estate Commission over licensed real estate brokers, the Board of Mortgage Loan Originators (MLO Board) has like-kind authority over Mortgage Loan Originators.

In anticipation of the coming implementation of TRID, the MLO Board began 2015 with the goal of addressing the coming changes to be imposed by the Federal government, with the expectation that those changes might somehow be integrated with our state regulations, making adjustments when necessary or appropriate through the rule making process.

On July 30, 2015 at a rule making hearing conducted by the MLO Board, it became very clear that the differences existing between Federal rules (TRID), Colorado statutes and Rules of the MLO Board have created a complicated maze of conflicts, and obstacles, such that any reconciliation of those varied requirements will be anything but seamless. For example:·

- Colorado law provides for disclosure within three (3) business days of receipt of any moneys from the borrower; Federal rules prohibit imposing any fees on the borrower (other than for a credit report) until the borrower has indicated an intent to proceed, *after having received* disclosures;·
- State law requires a disclosure of compensation for mortgage loan originators within three (3) business days after receipt of the application; Federal rules do not address the compensation issue until the amount of *compensation* appears in the Closing Disclosure, three (3) business days before consummation – not at time of *application*;
- Colorado law requires a disclosure of the total number of payments, the total sum of all payments, and several requirements as to variable interest rate loans, some or all of which are *not included* in the early TRID forms. That is, following TRID would not be compliant with the existing State requirements that such information be disclosed within three (3) business days of loan application; and
- State law has very specific provisions as to the detail required by the Colorado lock in agreement, many of which are nowhere to be found in the new TRID forms.

These are just a few of the black and white conflicts which exist between the State and Federal regulatory schemes, and there are a number of others. The difficulty in reconciling



these differences, however, lies in the fact the State law requirements are contained in the statutes enacted by the legislature. What will be required is that the legislature entertain new and very specific bills aimed at reconciling or eliminating the conflicts between the Federal and state requirements. In the absence of such legislation, the industry could easily be faced with the unduly heavy burden of trying to satisfy both regulatory jurisdictions, using State forms on the one hand, and Federal forms on the other, which are in conflict with each other. The outcome of such an effort would undoubtedly lead to even further confusion and misunderstanding for Colorado consumers.

When addressing these issues, the MLO Board was faced with the realization that because it has no power over the legislature, it certainly has no power to resolve the conflicts that clearly exist in the State statutes. The MLO Board had a difficult choice to make: (1) It could do nothing, leaving everything as it is, relegating the industry to struggle with the conflicts and confusion that has been created by the coming TRID rules; or (2) It could attempt to bring some order and clarity to the process, by deferring to the coming Federal regulations. As it happens, the Board chose the latter approach in adopting changes to Chapter 1 "Definitions" and Chapter 5 "Professional Standards", both of which are available on the Division of Real Estate's website.

While certain industry stakeholders present at the rule making hearing criticized the path chosen by the Board, the Board nonetheless decided to allow the industry to embrace the new changes required by TRID. In essence, if the MLO complies with the new TRID rules, using the required forms, issuing them within the required time frames, etc., that will be deemed compliance with our existing statutory framework, conflicts notwithstanding, until such time as the legislature has an opportunity to draft, consider and approve curative legislation. Some might argue that this is an awkward and imperfect solution, and others could as easily come to the conclusion that this approach is the only one that makes sense. Time and experience will tell as we go forward.

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