Changes in Government Guidelines May Affect Your Closing Dates

HERA At-A-Glance

What happened?
Going into effect on July 30, 2009, the Housing Economic Recovery Act (HERA), contains an amendment to the Truth-In-Lending Act (TILA), named the Mortgage Disclosure Improvement Act (MDIA)

What is the purpose of HERA?
The legislation was designed for three main purposes:

1. To include extra steps in the home loan process to help prevent deceptive lending practices
2. To outline more direct and clear guidelines and governing structure for the real estate industry
3. To provide more information directly to the homebuyer for their own protection

HVCC At-A-Glance

What happened?
Effective as of May 1, 2009, the Home Valuation Code of Conduct (HVCC) has been adopted by Fannie Mae and Freddie Mac.

What is the purpose of HVCC?
This legislation is intended to reinforce the precision and autonomy in the appraisal process. Under HVCC, appraisers are protected from outside pressures in order to provide better and more accurate appraisals. Additionally through HVCC, it is required that homebuyers receive enough time to thoroughly review information in their appraisal by providing borrowers a copy of their appraisal report no less than three (3) days prior to the closing of their home loan transaction.

4 Changes to Expect

#1 Required Waiting Period Before Closing Date
A closing date traditionally has been set by the homebuyer and seller. Under the new legislation, a closing date still can be included in purchase contracts; however, a home purchase cannot close any sooner than seven business days after the lender has issued initial mortgage disclosures to the borrower which must be delivered or placed in the mail no later than three business days after an application is received. If the required disclosures are mailed, they are considered officially received three business days after they are mailed. In cases when disclosures are sent via overnight mail, they are not documented as "received" until the following business day; it is at that time fees may be collected.

#2 Lenders Cannot Collect Upfront Fees
In the past, lenders have been able to collect upfront fees once an application has been submitted. With the new guidelines, fees may not be collected by the lender until the homebuyer has received the initial loan disclosures. The credit report fee is the only exception to this rule; it may be collected at the time of application.

#3 Additional Waiting Period Required if APR Changes 1/8 Point
Re-disclosure is required if the APR, at the time of consummation, increases from the APR disclosed earlier by more than: 1⁄8 of 1 percentage point in a regular transaction; or 1⁄4 of 1 percentage point in an irregular transaction (ie. ARM loan). This point change will trigger the three business day waiting period. If a change in terms does not make the APR out of tolerance, then you must re-disclose all of the changed terms but this does not trigger the three business day waiting period prior to consummation. The APR is subject to a number of influences including: a change in the loan amount, a change in the product, an unlocked rate, a rate re-lock, a change in the closing date or changes in fees. Because of these various determining factors, it is vital that the estimated fees are documented accurately.

#4 Copy of Appraisal Must be Provided 3 Days Before Closing
Under the new legislation, a copy of the appraisal must be provided to the homebuyer a minimum of three business days before closing. The homebuyer may relinquish the requirement to receive the appraisal within three business days.

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Frequently Asked Questions (FAQ)

1. Does the new legislation change home loan applications taken before these guidelines go into effect?
If the purchase property was documented before May 1, 2009, the application is not subject to HVCC. Likewise, if the purchase property was documented before July 30, 2009, the application is not subject to HERA.

2. Are purchases of investment properties covered under the same requirements?
Purchases of primary residence and second homes are the only transactions to which these regulations apply at this time.

3. If submitting your loan application in person, can fees be collected at that time?
Yes. In fact, your loan could close faster if you submit your loan application in person.

4. Is it possible for the lender to hold credit card information, a post-dated check, or another form of payment until it is permissible to collect upfront fees if the application is taken over the phone?
It is not permitted for payment information for upfront fees to be collected before the appointed collection date. Upfront fees are allowed to be collected on the next business day after initial disclosures are obtained. Disclosures can be issued and upfront fees can be collected on the same day as an in person application.

5. Is it possible to collect fees paid by the seller before established collection time (the next business day after initial disclosures are received by the homebuyer)?
No fees (except for the credit report) may be collected by the lender on behalf of the homebuyer until the initial disclosures are received by the homebuyer. Any fee commonly covered by the seller (such as the appraisal fee) or any other party may not be collected until that time.

6. Are disclosures affected if after the initial application the homebuyer adds a home equity loan or a line of credit?
There is not an affect if the homebuyer adds a home equity line of credit. However, if the homebuyer adds a home equity loan, the initial disclosure time period begins again, and it is required that the same disclosure requirements be followed for the home equity loan.

7. How will the loan process be affected if there is a delay in collecting the homebuyer's upfront fees?
The loan process more than likely will be delayed if the lender is unable to collect the upfront fees as soon as they are permitted to do so. Required services such as the appraisal can be put on hold until those fees are collected.

8. What triggers the re-disclosures of the initial APR?
Re-disclosure is required if the APR at the time of consummation increases from the last disclosed APR by more than: 1⁄8 of 1 percentage point in a regular transaction; or 1⁄4 of 1 percentage point in an irregular transaction (ie. ARM loan).

9. If still in the seven (7) business day period of the initial Truth-In-Lending disclosure, can a TIL re-disclosure still be issued?
If the APR at the time of consummation increases from the APR disclosed earlier by more than: 1⁄8 of 1 percentage point in a regular transaction; or 1⁄4 of 1 percentage point in an irregular transaction (ie. ARM loan) and a re-disclosure of the Pre-Closing TIL is required, it can be released and sent out within the first seven (7) business day time frame. The three (3) business day rule would still apply as well.

10. Are rush transactions still possible?
In the loan process, especially now more than ever, it's best to have time on your side. Still, the most that can be asked for, in the perfect scenario, is for a loan transaction to close in a minimum of seven (7) business days after the initial disclosures are mailed.

11. How soon may the closing happen after the final Truth-In-Lending disclosure is received?
Three (3) business days must be allowed for the mailing of the TIL; an additional three (3) business days must be provided for the homebuyer to approve their loan scenario. The closing may be held on the third business day after receipt of the TIL.

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