

ALTA TRID Townhall Provides Answers to Industry Questions

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More than 500 title professionals, lenders and real estate agents attended ALTA's first-ever Facebook TRID Townhall to hear what companies should be doing now to be prepared for implementation of the integrated disclosures. The CFPB's TILA-RESPA Integrated Disclosures (TRID) rule goes into effect Oct. 3 for most consumer mortgages.

Participants in the townhall included:

Diane Evans NTP

ALTA President; Vice President, Land Title Guarantee Co.

Dan Mennenoh

ALTA Board Member; President, H.B. Wilkinson Title Co.

Bill Burding

ALTA Board member; EVP/General Counsel, Orange Coast Title Co.

Michelle Korsmo

ALTA Chief Executive Officer

How should companies best prepare to disclose title insurance premiums in states with simultaneous issue rates?

Through regulation or rate filing, title companies in about half the states offer discounts on the loan policy when an owner's policy is simultaneously purchased. Despite the common practice, the CFPB's TRID rule prohibits settlement agents or lenders from disclosing the discounted simultaneous issue price for the lender's title insurance policy on the Loan Estimate and Closing Disclosure forms.

To address the problem, Burding said ALTA created model Settlement Statements.

"Hopefully, someday, this issue can be fixed on the Closing Disclosure, but for now, ALTA's Settlement Statement will be

an addendum to agreements and make corrections so the consumer knows exactly what discounts they will receive," Burding said.

How are you providing fees to lenders?

It's important for the fees that lenders disclose on the Loan Estimate to be as accurate as possible to the fees disclosed on the Closing Disclosure. This makes it important for title professionals to provide accurate fee estimates.

Evans pointed out that the rule says companies should make a good effort to provide the best information available.

"We will give lenders the best information that we possibly can give them," Burding said. "When the actual documentation comes in regarding the specific transaction, fees will be modified. The best we can do is provide the full amount

for lender's and owner's title policies and all the fees we would include in a typical closing."

For title fees, Mennenoh said it's best to provide lenders with the full costs of policies that the rule requires to be disclosed and then also provide the correct information, which shows what the discount will be when policies are issued simultaneously. "You need to provide the calculation for them," he added.

There are three main models for sharing data needed for the integrated disclosures. The first is the traditional method in which orders are transmitted via phone, fax, email or delivered in person. The other two main methods are through a third-party online portal or integration with the lender origination software (LOS) and title production system (TPS). Several technology vendors have developed solutions to share and combine loan-centric information stored in lenders' loan

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origination systems and property-centric data found in title/settlement agents' systems.

Additionally, Burding pointed out that title companies must make sure they quote fees for the appropriate underwriter that will issue the policy.

How should we work with lenders to standardize fee names?

In addition to preparing for new timing requirements and tighter fee tolerances, settlement agents and lenders must develop standardized fee names or descriptions for the Loan Estimate and Closing Disclosure. Because the CFPB wants consumers to be able to compare fee estimates with what's actually charged at consummation, the rule requires fee terminology to be consistent between the two forms.

Evans said title professionals need to have conversations with their lenders and agree on common fee naming. It's also important for companies to ensure their software recognizes the fee names and can populate the disclosures appropriately.

Burding said that in western states, the nomenclature of the information will be different.

"You may be used to the term escrow fee but may now see settlement fee. Closing is consummation. Buyer is borrower," he said. "There are other terms, so you need to train your staff about the new nomenclature under TRID."

Who sets expectations for how the Closing Disclosure is prepared?

All the panelists agreed that it's the lenders' role to determine which entity will produce and deliver the Closing Disclosure.

"The lender is driving the bus," Evans said.

Burding said it's important to communicate

with lenders to understand how each one will handle the Closing Disclosure.

"Each lender will be slightly different," he said. "We have lenders that will control every aspect to those who are not prepared and need us to help them through. Talk with your lending partners—including Realtors—is vital during this period to determine expectations."

What are lenders' plans to comply with the three-day rule?

The rule requires that the borrower receive the Closing Disclosure at least three days before consummation. Mennenoh said that he's heard that some local lenders will require the borrowers to physically come into the bank to pick up the Closing Disclosure. Others will use the mailbox rule and send via regular mail while others will overnight the form.

"And then we have some lenders that are not sure their software will be ready and will want us to deliver the Closing Disclosure," Mennenoh said. "So it's all over the board."

Mennenoh said title professionals may need to provide lenders the needed information for the Closing Disclosure a minimum seven days in order to meet the mail box rule, but that this can vary by lender. The mailbox rule assumes the consumer received the Closing Disclosure three days after it was mailed.

How do we provide proof of delivery of the Closing Disclosure?

This will vary from lender to lender, according to the panelists, but could range from sending electronically to hand delivering the documents to the consumer.

"I think an electronic receipt is probably the best way," Burding said. He pointed out, however, that if email with electronic receipt is used and the consumer fails to click the received box, then the mailbox rule goes into effect. "Checking the box is critical," he added.

Also, if the Closing Disclosure is sent

via FedEx and the package is delivered without obtaining a signature, Burding said the three-day delivery requirement would default back to the mailbox rule.

"It's not going to surprise me—at least at the outset—to see redundant delivery where the Closing Disclosure will be mailed and sent electronically," Burding said.

Korsmo said title companies should consider keeping a log of when and how the Closing Disclosure was delivered.

"We need to recognize that the lender is driving the bus and look to the instruction they give us," Evans said. "Whether it's in the closing instructions early on or if it's through the collaboration as to what the process will be."

Can fees be aggregated together on the Loan Estimate and then itemized on the Closing Disclosure?

Burding said that fees can be lumped together, but that state law dictates fees must be broken out on the Closing Disclosure. Evans added that some states have bundled rate filing and that title professionals must use the rates "appropriate and filed in their state."

It should be noted that if the number of fees exceed the number of available lines, the TRID rule provides flexibility for cost buckets to expand and contract as needed. It also allows for the use of additional pages to ensure all itemized cost items are disclosed. See 1026.38(t)(5)(iv). One of the underlying principles around TRID is the forms are meant to be dynamic and flexible to fit the specific transaction. In the instance where one cost bucket will exceed the default number of lines, lenders can delete unused lines from other sections and add those extra lines to the section needing more space. If after borrowing lines from other sections, there is still the need for more line items, the rule allows the lender to split the closing cost details into two pages, a "loan costs" page and an "other costs" page.

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What are the most important questions I should ask lenders?

- How do you want data? Delivered through a portal, by email, walking across the street?
- If the settlement agent is preparing the Closing Disclosure, how will you get information from the lender?
- How do you plan to deliver the Closing Disclosure to the consumer?
- How soon do you need information for the Closing Disclosure in order to meet the three-day delivery requirements?
- What is your process to send the completed Closing Disclosure to the closing/escrow company for approval before delivery to the consumer?
- How will changes be made to the Closing Disclosure after its provided to the borrower?

What should I be talking about with real estate agents?

Mennenoh said the key message to real estate agents is that there's a much different timeline to comply with TRID. Once contracts are signed, he said Realtors "need to share that information with us as quickly as possible."

Evans said that it's important for Realtors to build longer timeframes into contracts and set the stage early on with their clients.

"When a Realtor is listing a property and then walking the seller through the transaction, they need to understand that after Oct. 3 things change dramatically," Evans said. "We are finding that many states are taking a look at whether real estate contracts need to be modified to make sure there isn't increased liability for the buyer if their loan gets delayed and they can't close by the contract date."

Burding advised that real estate agents build extra time into their contracts. As opposed to setting a 30-day escrow requirement, he recommends having a "do not exceed 60-day escrow."

"You will see expanded rate locks and transactions taking longer," he added. "Build extra time into the transaction.

Because if you don't, you could have contracts expire and rate locks expire, which could have a detrimental impact on the closing. Realtors that understand this will be the ones setting the expectation level with the consumer. If you put in a 30-day escrow and it takes 35 days, then it turns into a negative escrow. But if you put in not to exceed 60 days and you close in 35 days, you are a hero."

What are some tips when communicating with real estate agents?

Burding said real estate agents will want to do walkthroughs with their customers earlier in the process and may want to consider doing two walkthroughs.

"The walkthrough is going to have a measurable effect on what the final Closing Disclosure will look like," Burding said. "This will be a change in how Realtors do business, but being able to do the walkthrough earlier will make transaction much more easier when it gets down to the signing.

"A second walkthrough will change what the Realtor is used to doing and adds more to the Realtor's plate, but if you're not looking at this as an opportunity to grow your business, you are looking at it incorrectly. Real estate agents that do an initial walkthrough and then do a secondary walkthrough are going to be the ones who grow their business because they close on time," Burding added.

What happens if a transaction does not close due a lender delay and a rate lock expires? Is the lender obligated to extend?

Burding said lenders are not obligated to extend, so it's important to talk with the lender early on to determine the rate lock. If that's an issue, it's important to inform the consumer. Burding said the seller is not obligated to extend the contract because the buyer's rate lock expired.

"Over time, this runway will get shorter," Burding said. "Once everyone gets the hang of this, the time for the closing will get better over time. But we are in a one

or two quarter learning process. As we get into next year's buying season, many issues will be resolved and systems will be standardized."

What should you do if a lending client does not use the required TRID forms?

Evans said title companies should establish policies on how to handle these situations.

"This is a discussion you need to have internally because this is an issue that will come up," she said.

Burding said his company will not handle transactions where the lender is using incorrect forms because "I have no desire to be a defendant. This comes down to educating the lender about liability for not using the required forms."

Will there be a line item for the Closing Protection Letter charge as well as the lender and owner policy charges?

In states where it's a requirement, the CPL must be disclosed according to Mennenoh. State rule dictates whether fees must be itemized or aggregated.

How should settlement provider get the settlement statement to the consumer to clarify cost of title insurance premiums?

The goal of the new forms is to allow consumers to compare fees with what they were quoted to what they are actually paying at closing. Korsmo said this is a great opportunity for settlement providers to engage the consumer and explain the important role that's provided.

"This is a great touch point to talk to the consumer earlier in the process," Korsmo said.

If the settlement agent prepares and delivers the Closing Disclosure to the consumer, are they subject to the fines and penalties for non compliance?

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Burding said that more than likely settlement agents would be liable to meet the rule's requirements. Korsmo said that this is why it's important for settlement agents to read the lender's closing instructions. Evans added that a few of her company's lending clients have provided a list of process changes and expectations of the title company.

"This has been helpful because we can understand what their expectations will be of us," Evans said.

What is ALTA doing to help the industry explain the use of "optional" to describe owner's title insurance?

ALTA is developing a robust homebuyer outreach program to give members tools and specific language to describe and explain the benefits of owner's title insurance. It's important to communicate with consumers earlier in the process to explain the benefits, avoid using industry jargon and be specific about the benefits they receive. Title professionals should also refer consumers to ALTA's consumer website, www.homeclosing101.org.

Evans added that it's important for title companies to train staff on how to explain the importance of title insurance.

What tips do you have for quoting transactions?

There are many options for providing fee quotes, including rate calculators and rate cards. Lenders and consumers should be able to easily understand the information. Burding said companies should remember to update fees if a common platform to is used to provide quotes.

"One of the problems which common platforms is that companies will add information, but then let it go stale," he said. "That's a huge problem."

If the lender allows the consumer to shop for a service, they must provide a written provider list. What tips do you have for a title agent to get on this list?

Communication with lenders is important here as well. Providing accurate and clear information about fees and how

you will exchange data will give lenders confidence in using a particular company, according to Mennenoh. One of the goals of TRID is to promote consumer shopping. However, many of the requirements, such as tolerances and the shopping-list concept, may create hindrances to shopping or require settlement agents to market themselves differently. After 2010, many agents wanted to be on the lender's shopping list because it was crucial to getting business, but, under TRID, it may be advantageous to be off the list. Korsmo said this is another opportunity to communicate with lenders and determine what it means to be on the list or not.