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New mortgage rules force everyone onto same page earlier

By Catherine Lackner

New federal mortgage requirements have created some delays for buyers and sellers, observers say. But there is also an unintended consequence that could have serious ramifications for the industry.

The law, TILA-RESPA, marries two previous forms of disclosure: the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974. It requires that a loan estimate be delivered or mailed no later than three business days after a consumer submits an application, and that a closing statement be provided at least three business days prior to the deal's consummation.

"It's definitely resulted in some delays in closings," said Richard DeNapoli, managing director and chief trust officer for Coral Gables Trust. "All of the parties – adjustors, title insurance companies, real estate agents, lenders – have had to adjust, and it's now taking more time, just because it's new."

The new regulations have advantages for consumers; they make it easier to compare loans and other costs before the deal is done, and provide more disclosure than previous regulations did. "But it means all parties to the closing have to come together earlier in the process," Mr. DeNapoli said. "They all have to be on the same page to get the details right before the expected closing date."

Some buyers forego the mortgage route entirely, he added. "I've seen some deals in which clients, if they have ability, decide to buy with cash. Cash deals are always a large part of the South Florida market." According to the research website RealtyTrac, cash deals last November comprised 59.7% of total residential sales, whereas in November 2014 they were 57.1%.

"That doesn't seem like a lot, but the percentage of cash deals hasn't been that high since May 2012, so it's significant," Mr. DeNapoli said. "That may be a result of the new disclosure laws."

"I would agree that there have been delays, but not as much as we all anticipated," said Isabel Lacambra, senior vice president and mortgage production manager at Gibraltar Private Bank & Trust. "In our case, we added two more days to the process in order to meet the deadline." Some closings have had to be extended, she added, but on the whole, things are going smoothly and there has been no slowdown in demand for mortgages.

"This new rule has created a closer relationship with attorneys" and others involved in the closing process, she said. "That means more communication. It was always important, but now it's No 1."

It has fallen on banks and mortgage lenders to get the word about the new regulations out to consumers, she said. "You have to be proactive in helping them understand and setting expectations from the beginning as to what needs to happen."

For instance, it has been common for buyers to shop for homeowners insurance at the last minute, hoping for the best deal. But now the insurance estimate must be included in the closing package, "so you can't wait until the last day before closing," Ms. Lacambra said. "You need those figures. Itemization of fees is very important.

'It means all parties to the closing have to come together earlier...'

Richard DeNapoli

The consumer needs to know what their responsibilities are, because the way they apply for a mortgage has changed. It has had a huge and permanent impact on the industry."

The new regulations aren't the only change that affects the mortgage industry, said Louis Archambault, a partner in the Pathman Lewis law firm, who is board-certified in real estate. Some banks, including BankUnited locally, have decided or will decide not to originate any new home loans, observers say.

"More people are shopping online for mortgages, but you can't discount the impact the guidelines have had," Mr. Archambault said. "Closings have been delayed by about a week on average due to compliance. People are still adjusting, so I don't think there's a full impact yet."

But a larger – and potentially more threatening – effect has rippled through the secondary mortgage markets, those companies that buy mortgages that originated elsewhere, he said.

'This new rule has created a closer relationship with attorneys.'

Isabel Lacambra

"The secondary markets have been reluctant to purchase packaged mortgages, and that is related to compliance regulations," he said. While attorneys are trying to reassure secondary buyers that the possibility of lawsuits related to the disclosures is remote, "I understand their reluctance," Mr. Archambault said. "A primary lender puts a mortgage package together and sells it to a different institution," which then becomes responsible for any mistakes that were made. "The secondary market is nervous; it's now their problem if a lawsuit arises."

The US government has signaled that there will be a period of forbearance as the industry gets used to the new rules, but that won't protect secondary lenders from private lawsuits, he said.

"It's still a little early, but if secondary markets are shying from these packaged loans, that will be a big deal," Mr. Archambault said. A crucial advantage for lenders that don't want to hold their notes is their ability to sell them to other lenders, he explained. "If they don't have that ability, they won't have the money to continue to lend. I'm sure the industry will work through it, but that's one that has to be resolved."