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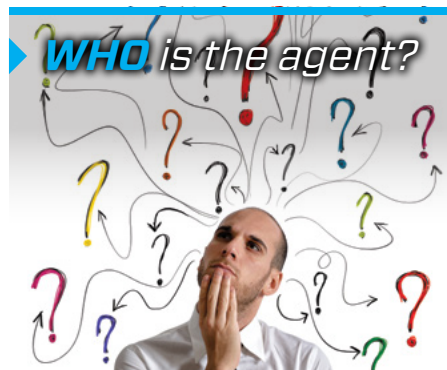
On October 3, 2015, the new CFPB regulations went into effect, and there has not been a dull moment since. Each month in 2015 we dedicated an article to the feature “CFPB Know Before You Close.” In this month’s edition we are publishing the “‘CFPB Know Before You Close’ poll results.” To our delight, most of you answered the questions correctly. We will continue to train and write articles related to this topic, to keep you abreast of how we are working through the challenges.

Superb title employees carefully review documents before recording them. Find out how one title employee noticed documents were not executed properly and how her diligent efforts helped to protect the new buyer from what could have been a complete failure of title. Read about it in “WHO is the agent?”

Scam artists are always coming up with new ways to defraud honest people. The article entitled “COSTLY area codes” warns readers about how a simple return call can add up to hundreds or even thousands of dollars on your next phone bill.

Each month in 2016, we will include a story describing solutions to the most common issues relating to 1099-S reporting. This month’s article illustrates the importance of following the IRS Regulations because non-compliance is very expensive. Read about what happened in “MILLION\$\$\$ in fines and penalties to the IRS.”

## IN THIS ISSUE



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# "CFPB Know Before You Close" poll results

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Last year in anticipation of the CFPB Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth-In-Lending Act (Regulation Z) rules taking effect, we published poll questions in order to determine the readiness of settlement agents nationwide. Here are the results:

**JANUARY:** Are loans originated prior to August 1, 2015 going to be closed using the Closing Disclosure?

- 8.96% of you selected *yes*
- 91.04% of you selected *no*

If you said **no**, you were correct. As you know the CFPB did delay the implementation date to October 3, 2015, but even then the new Loan Estimate and Closing Disclosure could not be used on any loan applications taken by lenders prior to that date.

**FEBRUARY:** True or False: After August 1, 2015 the HUD-1 Settlement Statement will be obsolete.

- 10.94% of you selected *true*
- 89.06% of you selected *false*

If you selected **false**, you were correct. The HUD-1 Settlement Statement will still be used for reverse mortgages and some HELOC's.

**MARCH:** Fill in the blank: \_\_\_\_\_ is the day the borrower becomes legally obligated under the loan.

Most respondents answered correctly with **consummation**. Consummation is the day the borrower becomes contractually obligated to the lender on the loan or the day the borrower signed their loan documents.

**APRIL:** Fill in the blank. The charges on the Loan Estimate and Closing Disclosure must be alphabetized in each section by the charge description. Title and Escrow charges must all be grouped together by the preceding word \_\_\_\_\_.

If you entered **Title**, you were correct. The charges must be preceded by the word title and then a hyphen, before describing the service or product.

**MAY:** True or false. The buyer and seller must accept all the charges on the Closing Disclosure by signing the last page.

- 42.97% of you selected *true*
- 57.03% of you selected *false*

Just over half of you were correct in selecting **false**. The seller's form does not ever have to be signed. The borrower's form can be signed, but the borrower is only acknowledging their receipt of the form and not their acceptance of the charges.

**JUNE:** The rule tightens the tolerances and does not allow changes to even more types of charges from the Loan Estimate to the date of consummation. Charges that cannot increase at closing now include (Select All that Apply).

- A.** Fees charged by an affiliate of the creditor or broker: 77.45% of you selected this option
- B.** Recording fees: 42.12% of you selected this option
- C.** Owners title premium: 63.86% of you selected this option
- D.** Creditor or broker charges: 79.08% of you selected this option
- E.** Escrow/closing fee: 70.92% of you selected this option
- F.** Charges for services the consumer shopped for using the creditor's provider list: 45.38% of you selected this option
- G.** Charges for services for which the borrower is not permitted to shop: 80.71% of you selected this option

A large percentage of you answered with the correct answers: **A, D and G.**

Fees paid to the creditor, mortgage broker, or an affiliate of either or fees paid to an unaffiliated third party providing a settlement service the lender did not permit the borrower to shop for or Transfer taxes cannot increase at closing.

**JULY:** True or false. The lender has to include a provider list reflecting at least one service provider for services they can and cannot shop for.

- 80.93% of you selected *true*
- 19.07% of you selected *false*

This was a trick question. The answer is **false**. The lender does have to provide a provider list of services the borrower may shop for, but the lender does not have to provide a list of services the borrower cannot shop for. They may provide a list of both, but are not required to.

**AUGUST:** Fill in the blank. If the borrower is paying for the Owner's Title Policy the charge on both the Loan Estimate and Closing Disclosure must be labeled as \_\_\_\_\_.

The answer is **optional**. The CFPB decided the Owner's Title Policy must be disclosed as optional if the buyer is paying any portion or all of the cost, since the product is not required in order to obtain the loan. Settlement agents asked to waive an Owner's Title Policy as part of a sale transaction must refer to Tech Memo 161-2014 for the steps which must be followed before proceeding.



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settlement@fnf.com or 949.622.4425

**SEPTEMBER:** In all instances, the charge for the lender's title policy must be disclosed at the full premium rate, with no discounts applied on the Loan Estimate and Closing Disclosure.

- 79.80% of you selected *yes*
- 20.20% of you selected *no*

Almost 80% of you were correct in answering **yes** when the transaction involves a sale. On a refinance, the actual charge for the lender's title policy will appear on the Loan Estimate and Closing Disclosure.

**OCTOBER:** If the Closing Disclosure is delivered by mail, email, courier or fax on a Monday it is assumed the delivery period expires:

- On Thursday at midnight: *25.62% of you selected this option*
- On Wednesday at midnight: *72.03% of you selected this option*
- The same day and the waiting period begins: *1.09% of you selected this option*
- I do not know what the delivery period is: *1.24% of you selected this option*

## WHO is the agent?

In a couple of areas of the country our offices work with independent escrow companies who are owned by individuals who have no affiliation to a title insurance company. They simply provide escrow services. As a result, our Companies regularly provide title services and work closely with the escrow company to successfully close a transaction. In Friday Harbor, Washington, our Chicago Title office regularly handles title-only transactions from independent escrow companies or law firms.

Chicago Title was being asked to insure title in a sale where an independent escrow company was acting as the settlement agent. The independent escrow company delivered to Chicago Title two original powers of attorney (POA), the deed and deed of trust for recordation. There were two sellers who appointed the same person to act as their attorney-in-fact.

Chicago Title's Debbie Sutliff received the documents to record. She carefully reviewed the documents to ensure legal descriptions were attached, they were fully executed and the POAs did authorize the attorney-in-fact to sell the property and execute the required documents at closing.

During her review, Debbie noticed the attorney-in-fact only signed the grantors' names on the deed instead of signing her name as the sellers' attorney-in-fact. Debbie brought the deed and her concerns to the manager's attention who agreed with her findings.

Debbie contacted the escrow officer and explained the deed needed to be corrected and re-executed. The escrow officer jumped in her car and drove to Chicago Title to pick up the deed. Thirty minutes later the escrow officer returned with a corrected and re-executed deed. However, the new signatures were nowhere near the same as the previous signatures.

Once again Debbie brought her finding to the manager's attention. The manager, Lori Ronhaar contacted the escrow officer in order to obtain the phone number for the attorney-in-fact. The escrow officer said she

The correct answer is the delivery period would expire **Wednesday at midnight**. The delivery and waiting periods start on the same day the action occurs and last for three business days.

**NOVEMBER:** The Waiting Period requires the lender to ensure the Closing Disclosure is delivered to the borrower how many days prior to consummation?

- The same day: *0.26% of you selected this option*
- Three business days: *81.10% of you selected this option*
- Three calendar days: *8.40% of you selected this option*
- Six business days: *10.24% of you selected this option*

The majority of you answered correctly with **three business days**.

At the time of this publication the results of the December issue were not available. Great job everyone, we know you are working hard on transactions subject to these new rules!

had to call her back. About ten minutes later the escrow officer called back with a phone number.

The manager called the attorney-in-fact to discuss the circumstances under which she signed the deed. The attorney-in-fact said she signed the deed only once – the day before. However, when asked, the attorney-in-fact also told Lori that she had not signed the corrected deed. In fact, the attorney-in-fact proceeded to complain to Lori about all the problems she had with this file. Turns out, the attorney-in-fact was not even in town anymore.

Lori explained the original deed was not executed properly and it must be corrected. The attorney-in-fact was very frustrated. She stated she would have signed the document properly if only the escrow officer had told her how.

Lori notified the owner of the independent escrow company. Eventually, a corrected deed was executed by the appropriate parties and recorded by Chicago Title.

### MORAL OF THE STORY

**Forgery is never acceptable. It turns out the independent escrow company's escrow officer, in an attempt to cover her tracks, called the attorney-in-fact 10 minutes before the title officer to ask her if she could sign the new deed on her behalf. The attorney-in-fact, being inexperienced, said, "Yes," because she was trying to help out her friends who were trying to sell their house.**

**The escrow officer made this call in the 10 minutes it took her to call Lori back to give her the attorney-in-fact's phone number.**

**Debbie performed her due diligence before blindly recording a deed which could have been challenged and considered invalid resulting in a total failure of title. As a result, she has been rewarded \$1,500 along with a letter of recognition from the Company. Great job Debbie!**

## **COSTLY** area codes

The June 2014 issue featured an article entitled “**DO not call me!**” The article described three telephone scams, in which fraudsters deceived innocent businesses and people, resulting in large phone bills. Recently we received reports of another telephone scam rearing its ugly head. It is referred to as the “One Ring” scam:

Scammers call your cell phone but only allow the phone to ring one time. They hang up in hopes you will call the number back assuming the call was cut off. If the phone number starts with one of these area codes: 268, 284, 473, 649, 664, 767, 809, 829, 849 or 876, you will find yourself being charged international rates if you call back.

Although the numbers appear to be from a U.S. area code, they are not. These are country codes. If you call the number back someone will answer, then place you on hold or have you listen to a lengthy message, all while charging you a large per-minute fee plus international rates for the call.

If you happen to receive a call like this, do not call the number back. There is no danger in getting the call: the danger is in calling back and racking up a whopping bill. If you are tempted to call back, first check the number online to find out if it is a U.S. area code or an international country code.

The schemers do not just target cell phones. They also call businesses. They leave messages urging consumers to call to collect a prize or find out about a sick relative. Ignore the message. Do not call the number back.

If you do, the charges afterward can become a real nightmare because you did actually make the call. If you complain, both your local phone company and your long distance carrier will not want to get involved and will most likely tell you they are simply providing the billing for the foreign company. You will end up dealing with a foreign company who argues they have done nothing wrong.

Before calling an unfamiliar number back keep these three things in mind:

1. Check any unfamiliar area codes before returning calls.
2. Be aware many 3-digit area codes connect callers to international telephone numbers.
3. If you do not otherwise make international calls, ask your local or wireless phone company to block outgoing international calls on your line.

If you become a victim, you can file a complaint with the Federal Communications Commission using an FCC online complaint form found at [www.fcc.gov/complaints](http://www.fcc.gov/complaints). You can also file your complaint with the FCC's Consumer Center by contacting:

- 1.888.CALL.FCC (1.888.225.5322) voice
- 1.888.TELL.FCC (1.888.835.5322) TTY
- 1.866.418.0232 fax, or
- The Federal Communications Commission (in writing)

## **MILLION\$\$\$** in fines and penalties to the IRS

IRS regulations require the settlement agent to report all sales of a U.S. Real Property interest to the IRS using form **1099-S Proceeds from Real Estate Transactions**. **1099-S reporting is nothing new, yet the Company has seen an increase in the amount of fines incurred for improper filing.**

Please be aware that a fine for each incorrect 1099-S form is \$250 per occurrence. These fines can quickly add up.

In an effort to reduce the errors look for this feature each month with tips on properly reporting sales in order to avoid penalties. The most common errors are:

- Failing to obtain a completed, signed and dated 1099-S Solicitation
- Failing to obtain and enter into the system the forwarding address of the seller
- Failing to obtain the seller's TIN
- Typographical errors
- Failing to indicate in your production system when a transaction is exempt
- Failing to report the sale all together
- Not ensuring the taxpayer and taxpayer identification number match

- 1099-S Forms returned undeliverable
- Seller never receives their 1099-S
- Not processing corrections properly

