By Lisa A. Tyler  
National Escrow Administrator

Did the new consumer finance law implemented by the Consumer Financial Protection Bureau (CFPB) eliminate Regulation Z and the three day right of rescission on residential refinance transactions? You will have to read the moral of the story in the “GOOD Friday” article to discover if the rescission period has been replaced by the new delivery and waiting periods. The story is about an escrow officer who detected the back-dating of documents not once, but twice!

If you are a commissioned notary, you will want to read “FraudFighter™ UV Detector” to discover the security features contained in a driver’s license issued in other states. It is easy to detect a fake license in your home state, but detecting a fake license from another state is much more difficult. The UV Detector takes the guesswork out of discovering fake identification presented at document signings.

A tax deferred exchange does not exempt the seller from paying taxes, it defers the payment of taxes. Exchange transactions are still reportable on a Substitute 1099-S. Find out how to properly report exchanges by reading “1099-S reporting of tax deferred exchanges.”
Hello,

I have spoken to both the notary Vicky and the borrower, the borrower said he has only signed two times, once on Saturday (wrong documents) and then again last night (corrected documents), both times he signed with my assigned notary Vicky. He has not signed with any other notary.

Neither I nor the notary received the redrawn documents until Monday, the new set of documents were emailed to escrow at 4:15 p.m. on Friday and we were already gone for the day, we closed early due to Good Friday so we did not get the documents until Monday, we were not told that the loan was being redrawn so we were not expecting new documents. Vicky said she was not notified by anyone or sent a second set of documents until yesterday.

We will have the re-signed loan documents back tomorrow and will send them out tomorrow for funding review.

At which point the loan officer called Jill and said the borrower was confused — that he had met with another notary, Enrique, on Saturday to sign new documents. Jill asked him point blank if he was being honest. Why would the borrower tell her he signed twice with Vicky but not with any other notary?

The loan officer stuck to his story, so when Enrique came to the office on Tuesday to deliver the signed documents. Jill asked him flat out when the documents he handed her were signed and he indicated the borrower had “JUST” signed them.

Jill looked at the date of the documents and said if the documents were “just” signed then why were they dated Saturday, March 26, 2016? Enrique’s response was that he was instructed to back-date them by the loan officer and that Jill was aware of the back-dating of the documents — it had been already “arranged.”

Jill fired off another email to the loan officer as follows:

Tuesday, March 29, 2016

These documents are not good, the borrower just signed them today and they are back-dated for Saturday. I asked the notary when they were signed and he told me just now, he said he thought I was “AWARE” they were being back-dated, I told him back dating documents is fraud and he can lose his license and pay fines, and I now have knowledge so I cannot accept them.

We can only use the documents that were signed on Monday night by the borrower if the borrower wants to proceed with the loan.

Jill returned the documents notarized by Enrique to the lender on Tuesday night directly to their funding department in Los Angeles with a note on the top of the Lenders Instructions that read “Chicago Title is not able to issue a loan policy of title insurance for this loan due to the knowledge the notary back-dated these documents.” Jill then sent this email to the document drawer:

Tuesday, March 29, 2016

To whom it may concern:

I will be returning these loan documents at the request of the loan officer, Peter. These documents were signed TODAY but back-dated to Saturday by the notary hired by Peter. This specific notary will

[Continued on pg 3]
no longer be able to notarize documents for Chicago Title Company. Chicago Title is declining to issue a loan policy of title insurance using these documents. In order for Chicago Title to proceed with this transaction and insure the Lender we are able to accept the documents signed on Monday, dated Monday and notarized by a Chicago Title’s approved notary, these documents are expected to arrive in my office on Wednesday, March 30, 2016.

Please advise how you wish to proceed.

Please acknowledge receipt of my email and acknowledge that you are aware the documents you will receive tomorrow notarized by Enrique have been back-dated.

Jill wanted to be sure to cover all her bases and have a record in writing that she notified the lender of the back-dated documents. The loan officer called Jill and asked her NOT to send an email, she told him she had to be sure she had done everything in her power to protect the lender by notifying them of the back-dating and that she had to have a record of the notification and a simple note on top of the docs would not be sufficient.

Shortly thereafter Vicky called and said she was notified via text by the loan officer to give him the documents signed on Monday. Little did the loan officer know but Vicky had just delivered the documents to Jill to return for funding. Jill let the lender know this set of documents “ARE VALID” if they want to proceed and close with the correct signed and dated documents. Jill called the national escrow administration department to report the incident and to ensure Enrique and his signing service company were no longer approved to conduct signing appointments on transactions closed and insured by our Company.

This is not the first time Jill has caught the back-dating of documents. She was featured in the October 2009 edition in a story entitled “There is No Right Way to do the Wrong Thing!” where a notary agreed to back-date loan documents to cut the rescission period short for an additional $30!

Jill was rewarded in 2009 and again in 2016 for her ongoing efforts to detect and prevent fraud in every transaction assigned her. Her manager was ecstatic to present her with the $1,500 reward along with a letter of recognition from the Company. Jill’s latest reward brings the total amount paid by the Company to its heroic employees and agents to $155,500!

### MORAL OF THE STORY

The Truth in Lending Act (TILA) of 1968 is a federal law designed to protect consumers who take part in credit transactions. The law protects consumers by requiring clear disclosure of key terms. It also provides consumers, in certain instances, with the right to rescind, or cancel, the credit transaction. This portion of TILA was not repealed or replaced by the new consumer finance law.

It is the lender who must ensure the requirements of Regulation Z are met and adhered to. If that is true, how does the settlement agent fit in? The settlement agent regularly oversees the signing and delivery of the notices pursuant to the lender’s written instructions. The lender is relying on the settlement agent to have a clear understanding of the disclosure requirements and how the rescission works as specified under Regulation Z.

Failure to provide the proper disclosures and follow the rescission requirements could provide a borrower with the ability to claim their loan is invalid. If a lender suffers a loss due to the borrower’s claim and they feel the loss was the responsibility of the settlement agent pursuant to their instructions the settlement agent may have to share in any losses incurred by the lender.

Our lender customers expect the settlement agent to ensure the documents are delivered and executed by the borrower in accordance with Regulation Z. If we select an outside notary to conduct the loan signing that liability does not go away. It is never acceptable to allow documents to be back-dated.

---

**FraudFighter™ UV Detector**

Do you know the security features contained in out-of-state driver licenses? Likely not for every state.

These hidden security features are only present under UV light. The hidden security features should not be confused with the laminated images on the front of some IDs that can be seen when the ID is held at an angle.

You are now able to put a FraudFighter™ UV Detector directly in the signing room to deter any fraudsters from attempting to present a fake identification card during a document signing appointment. In addition, mobile signing agents may also purchase a portable detector to carry with them on signing appointments conducted outside our offices.

Fidelity direct operations and agents can order the detector at a discounted rate by calling 800.883.8822. UVeritech ([www.fraudfighter.com](http://www.fraudfighter.com)) offers the UV-16 to FNF and associates at $63 and the UV pro penlight professional at $36. The following are a few examples of what should appear when a license is examined under the FraudFighter UV Detector:

[Continued on pg 4]
A 1031 Exchange is a great tool for selling and buying a home. It helps avoid capital gains on proceeds and limits the immediate tax liability of the seller. The common notion is a 1031 Exchange “exempts” a seller from any payment of tax and thus reporting is not necessary.

However, an exchange really only defers the taxes owed. Per the IRS, “Gain deferred in a like-kind exchange under IRC Section 1031 is tax-deferred, but it is not tax-free.” More importantly for a settlement agent, an exchange transaction is not exempt from IRS reporting. A 1099-S must still be filed, reporting the transfer to the IRS.

In order to report the transfer be sure to have the seller complete the Substitute 1099-S form. The seller should mark the “Exchange” box and enter “$0” for the gross proceeds unless the seller is receiving “boot.”

A “boot” occurs when a seller receives part of the proceeds from the relinquished property and does not reinvest in the exchange to purchase the replacement property. The seller should reflect the amount of “boot” in the gross proceeds box while still checking the exchange box.

Reporting a sale to the IRS only alerts the IRS a transfer occurred. Whether taxes are due or not due is between the seller and the IRS when the seller files their tax return. Failing to report a non-exempt sale is subject to an IRS penalty of up to $10,000 per instance for intentional disregard.

In next month’s edition, we will provide an up-to-date list of the UV security features visible when using a UV detector for forty-eight states. The two states currently without any UV features on a license are Maine and North Carolina.