

TRUTH-IN-LENDING ACT

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I. Introduction and Overview

The Truth-In-Lending Act (“TILA”), Title I of the Consumer Credit Protection Act was initially signed into law on May 28th, 1968. It has been amended numerous times with a major revision occurring in 1980 with the passage of the Truth-in-Lending Simplification and Reform Act. See 15 U.S.C. 1601, et seq. The purpose of TILA can be summarized as the intent to promote competition among financial institutions engaged in the extension of credit by ensuring meaningful disclosure of credit terms so as to permit the consumer to compare the terms offered by each firm. The Federal Reserve Board of Governors has been charged with the duty to promulgate and implement regulations for TILA, and the two primary implementing regulations are Regulation X for RESPA issues and Regulation Z for Truth-In-Lending issues. This section will contain a brief overview of the TILA implications with respect to the most common mortgage loan transactions.

II. Federal Truth-In-Lending Disclosure Statement

Most all mortgage loan closings will contain a “Truth-in-Lending Disclosure Statement” which is included in the seminar materials for your review. Although somewhat self-explanatory as to the nature of the information disclosed, it may be summarized, as follows:

1. The name of the creditor;
2. The “amount financed” or amount of credit extended to the borrower;
3. A notice of a right to receive or an accompanying “Itemization of Amount Financed”;
4. The total “finance charge” or dollar amount the credit will cost the consumer;
5. The “finance charge” expressed as an annual percentage rate (APR);
6. The number, amount, and due dates or periods of payment;
7. The “total of payments” or total of all payments made by the consumer under the payment schedule;

8. A description or address of the property used as the security interest for the transaction;
9. Whether the loan has a demand feature;
10. Whether the loan has a variable rate feature;
11. Whether the loan has an assumption option;
12. Whether the loan has a prepayment penalty;
13. Whether the consumer may recoup part of the finance charges upon payoff of the loan;

The following definitions are usually, but not always, included with the TIL Disclosure:

ANNUAL PERCENTAGE RATE

This is not the Note rate for which the borrower applied. The Annual Percentage Rate (APR) is the cost of the loan in percentage terms taking into account various loan charges of which interest is only one such charge. Other charges which are used in calculation of the Annual Percentage Rate are Private Mortgage Insurance or FHA Mortgage Insurance Premium (when applicable) and Prepaid Finance Charges (loan discount, origination fees, prepaid interest and other credit costs). The APR is calculated by spreading these charges over the life of the loan which results in a rate generally higher than the interest rate shown on your Mortgage/Deed of Trust Note. If interest was the only Finance Charge, then the interest rate and the Annual Percentage Rate would be the same.

PREPAID FINANCE CHARGES

Prepaid Finance Charges are certain charges made in connection with the loan and which must be paid upon the close of the loan. These charges are defined by the Federal Reserve Board in Regulation Z and the charges must be paid by the borrower. Non-Inclusive examples of such charges are: Loan Origination fee, "Points", Discount, Private Mortgage Insurance or FHA Mortgage Insurance, Tax Service Fee. Some loans charges are specifically excluded from the Prepaid Finance Charge such as appraisal fee and credit report fees.

Prepaid Finance Charges are totaled and then subtracted from the Loan Amount (the face amount of the Deed of Trust/Mortgage Note). The net figure is the Amount Financed as explained below.

FINANCE CHARGE

The amount of interest, prepaid finance charge and certain insurance premiums (if any) which the borrower will be expected to pay over the life of the loan.

AMOUNT FINANCED

The Amount Financed is the loan amount applied for less the prepaid finance charges. Prepaid finance charges can be found on the Good Faith Estimate/Settlement Statement (HUD-1 or 1A). For example if the borrower's note is for \$100,000 and the Prepaid Finance Charges total \$5,000, the Amount Financed would be \$95,000. The Amount Financed is the figure on which the Annual Percentage Rate is based.

TOTAL OF PAYMENT

This figure represents the total of all payments made toward principal, interest and mortgage insurance (if applicable).

PAYMENT SCHEDULE

The dollar figures in the Payment Schedule represent principal, interest, plus Private Mortgage Insurance (if applicable). These figures will not reflect taxes and insurance escrows or any temporary buydown payments contributed by the seller.

III. Right of Rescission and Disclosure

The provisions of TILA also provide a "right of rescission" to consumers who obtain an open- or closed-ended mortgage loan involving a security interest in their principal residence. A standard "Right to Cancel" is included with this packet. There are two exceptions to this rescission period: (1) A loan used to finance the acquisition or initial construction of the consumer's principal residence, and in fact secured by a mortgage on the new property, or (2) A consumer may waive or modify the right of rescission only when the proceeds are required to meet a genuine personal financial emergency, and the consumer so notifies the lender in their own words with a brief description of the emergency.

The right of rescission has many rules that should be studied, but the most important are summarized, as follows:

1. The right of rescission notice must be provided in duplicate to every person who has an ownership interest in the principal residence securing the loan.
2. The right of rescission applies to individuals regardless of whether they are a "borrower".
3. The right of rescission may be exercised by any one person whose ownership interest in the principal residence is covered by the lender's security interest (deed of trust or mortgage).
4. The exercise of the right of rescission by any one person will be effective as to all borrowers or owners.
5. In order to rescind, the individual must notify the lender in writing by midnight of the third business day following the start of the rescission period.

6. Generally, this rescission period begins on the day after the loan closing, but the period may toll for up to three years in certain circumstances where the customer's TILA disclosures or the rescission notices fail to adhere to the requirements of the federal laws discussed.
7. "Business Day" means Monday through Saturday except legal federal holidays as listed in 5 U.S.C. 6103(a).

As a practical matter, lenders will not disburse funds until after expiration of the rescission period. However, it is common for closing agents to record the security instrument during this three days but the lender or closing agent must bear the costs of removing the lien if the loan is properly rescinded. Failure to provide a legally sufficient notice of rescission and other "material disclosures" as defined by TILA can have devastating consequences for the lender. Such failure provides the consumer a right to rescind the transaction for three years after the date of the transaction or until the consumer conveys or no longer owns the residence, whichever first occurs. In addition, the lender must forfeit its security interest and return any money or property given to anyone in connection with the transaction. This includes all lender or third party fees incurred during the loan process, finance charges, and accrued interest paid by the consumer at any time during the loan's existence.