

**COMMENTS
to the
Consumer Financial Protection Bureau**

**In Response to
Request for Information Regarding the Mortgage Closing Process**

Docket No. CFPB-2013-0036

79 Fed. Reg. 386 (Jan. 3, 2014)

**by the
National Consumer Law Center¹
on behalf of its low income clients**

**and the
National Association of Consumer Advocates²**

February 7, 2014

INTRODUCTION

We compliment the Bureau for its continued interest in making the mortgage borrowing process safer and easier for homeowners. As the Bureau recognizes, a mortgage is the most expensive transaction a typical consumer will ever face. Currently, it is also the

¹ Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises including Truth in Lending, Mortgage Lending, and Foreclosures. These comments were written by Andrew Pizor, Carolyn Carter, and Diane Thompson.

² The National Association of Consumer Advocates (NACA) is a nonprofit association of more than 1,500 consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. www.naca.net

most complicated. Involving an array of federal, state, and local laws, multiple service providers, and dozens of documents that may go through multiple drafts totaling hundreds of pages, a mortgage transaction can make even a highly-educated consumer's head spin.

We appreciate the Bureau's interest in the closing process. The consequences of a closing can have profound impacts on the social and economic welfare of a family, sometimes for generations. But by the time of the closing, all the important decisions should be made and usually are in legitimate transactions. The Bureau is correct to be concerned about abuses occurring at closing; more must be done to protect homeowners from abusive closings. Nevertheless, we believe that the most effective way to prevent abuses at closings is to improve what happens before the closing.

A mortgage transaction is consummated at the closing, when the borrower signs the promissory note and security instrument, usually before a notary public. The closing is the culmination of a process. Ideally, a consumer comes to the closing having carefully shopped for a mortgage that will be suitable and affordable for the consumer's circumstances, relying on reasonable loan offers from multiple lenders using clear and comprehensible documentation. Due to the complexity of a mortgage transaction and the pressures confronting consumers, the closing is too late to address any problems with a transaction. There should be no surprises at the closing table and no need to discuss substance.

What happens before the closing is far more important. If the Bureau wants to protect homeowners from abusive lenders or other misconduct, the Bureau should focus its efforts on what happens before the closing. Gaps remain in consumer protection for the critical, pre-closing period during which consumers can and should shop for the most favorable mortgage terms.

Our comments, therefore, proceed by addressing the Bureau's request for information and conclude by discussing a number of recommendations for improving the closing process and other aspects of a consumer's quest for a mortgage. Specifically:

The Bureau should:

- Encourage or require creditors to develop less complex loan products
- Focus its regulatory efforts on practices that inflate the cost of credit, such as reverse competition in the insurance industry and the disaggregation of closing costs, which is encouraged by exceptions to the finance-charge definition
- Educate consumers to shop more and to focus on the big picture of affordability--the APR--or develop a better alternative to the APR

For the closing process, the Bureau should:

- Require creditors to make the complete closing packet available in advance
- Ban the use of pressure tactics and coercion at the closing

- Require creditors to make a knowledgeable representative available at the closing (by phone or in person)
- Highlight any changes in the documents at the closing
- Ban the practice of implying that changes can be made to a loan after consummation

We have also appended several responses we received to the Bureau’s questions from practicing attorneys. All of our responses are based on the extensive experience of our staff, our work with housing counselors, and the collective experience of the National Association of Consumer Advocates’ members.

Consumers and Closing (Questions 1-6)

1. What are common problems or issues consumers face at closing? What parts of the closing process do consumers find confusing or overwhelming?
2. Are there specific parts of the closing process that borrowers find particularly helpful?
3. What do consumers remember about closing as related to the overall mortgage/home-buying process? What do consumers remember about closing?
4. How long does the closing process usually take? Do borrowers feel that the time at the closing table was an appropriate amount of time? Is it too long? Too short? Just right?
5. How empowered do consumers seem to feel at closing? Did they come to closing with questions? Did they review the forms beforehand? Did they negotiate?
6. What, if anything, have you found helps consumers understand the terms of the loan?

From a legal perspective, the closing is the most important part of obtaining a mortgage. It is when the consumer becomes contractually bound to the terms of the promissory note and security instrument. But it is also when the consumer is most constrained. Despite the importance of the closing, consumers rarely ask questions, rarely read the documents, and often feel they have no choice but to sign what is put in front of them. Ask any consumer about their mortgage closing and the volume of paper will likely be the single most common memory.³ There are a number of ways to address this issue and to improve the consumer’s experience, which we describe at the end of these comments, but the ultimate reality that the closing is not a time of negotiation.

The people generating the stack of paper presented at the closing--the lender, seller, real estate agents, attorneys, insurers, governmental agencies, the surveyor, and others--all believe the pages they contribute are legally necessary. Not only will the consumer become

³ As the Federal Reserve Board once observed: Once consumers “have reached the settlement table, it is likely too late for them to use [a] disclosure to shop among mortgages or to inform themselves adequately of the terms of the loan. Consumers are presented at settlement with a large, often overwhelming, number of documents, and they may not reasonably be able to focus adequate attention on the mortgage loan disclosure. Moreover, by the time of loan consummation, consumers may feel committed to the loan because they are accessing their equity for an urgent need, or they have already paid substantial application fees.” 73 Fed. Reg. 1672 (Jan. 9, 2008).

obligated to repay a sum of money that likely dwarfs his or her annual income, but the consumer also makes numerous other affirmations, commitments, waivers, and obligations. Yet the homeowner likely understands none of it.

One of the greatest legal fictions in America is that homeowners are presumed to understand the contracts they sign. But when the homeowner arrives at a mortgage closing, she will be seeing all but a few of those documents for the first time and will be discouraged from reading them. Everybody at the table--including the homeowner--has a vested interest in completing the transaction smoothly. While the law may presume that the homeowner carefully reads and evaluates each document before signing it, that image exists only in fairy tales.

Homeowners have no right to receive the absolutely final version of any document until they arrive at the closing. This is an especially significant problem for homeowners who have difficulty reading English. While the CFPB's recent rule changes should eliminate some of the bigger problems with bait-and-switch, lenders may still make other last-minute changes that the homeowner will not see until closing. RESPA only gives homeowners the right to receive the final settlement statement one day in advance, upon request, and this right is not widely known. Homeowners who have requested documents in advance report being successful, but only after the lender or settlement agent expresses reluctance and implies that the homeowner is making a burdensome request. Often, even a persistent and educated consumer is only able to receive the final documents an hour or two before settlement, and not the full 24 hours mandated.

In 2009, a California advocate reported to us that a large national lender refused to supply her grandfather with any loan documents prior to closing. When she called directly to ask for the documents, so that she could review them before consummation, the banker confirmed that it was bank policy never to provide the loan documents, except when provision of the documents was mandated by law (and no TILA disclosures were required pre-closing in this case, as the transaction was an open-end loan). The banker said the policy was in place to prevent homeowners from shopping around.

Upon arriving at the closing, homeowners are normally overwhelmed by the volume of paper and do not have time to read it. A brief review of closing packets in our files suggests that a typical packet for a single mortgage includes sixty to seventy pages and often more. Even an attorney needs at least an hour to read the closing packet for a standard, fixed-rate loan. A more complex loan takes more time. And even more additional time would be necessary to verify the numbers and math on the settlement statement. Despite this, the typical closing takes between thirty minutes and an hour, with some closings taking far less time and few taking longer. This is far less than homeowners need to read each document before signing.

Even if there was enough time, the typical homeowner does not have the ability to understand them. A mortgage closing is the quintessential example of “information overload.”

As one homeowner--who has far greater financial literacy than most--said of his own mortgage closing:

The documents are literally impenetrable Here I was--former general counsel of the Treasury, former general counsel of a Fortune 100 financial services company--asking my lawyer to help me through 100 pages of incomprehensible, turgid gobbledegook.

–Neal S. Wolin, Deputy Treasury Secretary (Apr. 2010)⁴

The physical circumstances of a closing are likely to compound these problems. When a homeowner visits an attorney to discuss a problem related to the origination of a mortgage, attorneys usually interview the homeowner about the closing process. According to advocates, homeowners often describe closings conducted in locations ill-suited to reading important documents carefully. . . . Among the more extreme examples we have heard are closings on car hoods, at the consumer’s place of employment, and in a room with a barking dog barely restrained by a chain. For many low-income consumers, closings conducted at fast food restaurants, such as Dunkin’ Donuts or Arby’s, are standard. Many homeowners have reported that the person conducting the closing arrived late and then announced that he was late for another meeting--a tactic calculated to make the homeowner feel rushed. Borrowers often describe a settlement agent who kept a tight grip on the stack of documents, flipping only to the pages with signature lines while intoning “Sign here. Sign here.” This may be accompanied by a helpful finger pointing at the signature line--while the rest of the hand obscures the top 90% of the page.

In response to question #5 in the Bureau’s request for information,⁵ one attorney who has handled numerous closings concisely summarized how homeowners feel at the closing table: homeowners “have no power whatsoever” at the closing.⁶

The rare homeowner bold enough to resist this pressure and to try reading the documents before signing them usually faces other forms of discouragement. Homeowners have reported being told that the documents were all in order, that they can read them later,

⁴ As quoted in Sewell Chan, *Trench Warfare: Send In the Deputies*, N.Y. Times (Apr. 16, 2010).

⁵ “How empowered do consumers seem to feel at closing? Did they come to closing with questions? Did they review the forms beforehand? Did they negotiate?”

⁶ E-mail from Daci Jett to National Consumer Law Center (Jan. 29, 2014), attached in Appx. *Accord* e-mail from Philip Vacco to National Consumer Law Center (Feb. 3, 2014), attached in Appx. (“My experience is that most consumers are not empowered.”).

or that the documents are only required by the government (implying that they are unimportant).

If the homeowner has a question, there is almost never anyone available to answer it. The person conducting the closing is often no more than a notary. Even if the closer is an attorney, the closer usually represents the lender so the homeowner is unlikely to get impartial answers.

We are not aware of any documents or disclosures that are adequate to fully explain all the terms and conditions of a mortgage transaction. The promissory note and security instrument include far more than the interest rate and monthly payment. They address the extent of the security interest, the timing and amount of late fees, notice requirements, contingencies for default, the parties' rights to transfer the obligation, and other obscure legal points that the borrower knows nothing about. Lawmakers and economists who assume borrowers understand these terms, negotiate them on a level playing field, and knowingly agree to them are profoundly mistaken.

The two primary disclosures mandated by TILA and RESPA are useful, but they are inadequate by themselves. Only an impartial adviser such as an attorney or housing counselor can successfully explain the terms of a loan, how the loan works, the borrower's rights and responsibilities, and whether the loan is advisable. The process takes time and patience.

In the final section of these comments, we make recommendations on disclosures and practices that can help homeowners understand the most important aspects of a mortgage transaction and protect themselves from some of the worst abuses. But innovation and education will never be an adequate substitute for substantive rules that address the legal and economic complexities that a typical homeowner will not understand. The Bureau can educate consumers about the risk of flaming toasters, but it is unreasonable to expect consumers to identify the components that make a toaster defective.

In general, homeowners make few attempts to negotiate at closings, and such attempts are generally rebuffed.. Homeowners are presented with a completed transaction at closing. The homeowner is expected to sign where told and do nothing else at the closing. Requests for changes are not tolerated under almost any circumstances. In extreme circumstances, homeowners who express reluctance to sign the proffered documents are coerced to do so. We have represented homeowners who were physically restrained from leaving a closing or whose armed settlement agent more subtly dissuaded the homeowner from leaving. The closing is not even a "take-it-or-leave-it" option, because that implies the homeowner may "leave it."

Errors and Changes at Closing (Questions 7 and 8)

7. What are some common errors you have seen at closing? How are these errors detected, if at all? Tell us about errors that were detected after closing.

8. What changes, diverging from what was originally presented at closing, often surprise consumers at closing? How do consumers react to changes at closing?

As explained above, most borrowers do not notice any errors, changes or other problems at closing because they do not have an opportunity to carefully read the documents or because they lack the knowledge required to recognize the error.

The rare homeowners who discover an error or the need to have something changed often report being upset but feeling they have no choice but to go forward and sign. The homeowner is almost universally discouraged from insisting on corrections.

Sometimes the homeowner is misled to believe that the "error" can be fixed later. But these promises almost always prove false. The closing agent may emphasize how any change will delay the transaction, how changes and delay will cost the borrower more money, and how the homeowner can just call the lender afterward and get it fixed. If the transaction includes a right to cancel, the closing agent may now emphasize how the homeowner can just cancel later if he or she is not happy. Most homeowners respond by acquiescing and signing the documents unchanged.

Despite the legal fiction that homeowners are free to walk away from a closing without signing, almost nobody does. As the Federal Reserve Board has observed, "by the time of loan consummation, consumers may feel committed to the loan because they are accessing their equity for an urgent need, or they have already paid substantial application fees."⁷ Homebuyers may risk losing their new home and their deposit if they do not complete the transaction. They may have already sold their former home or terminated their lease. Or a loan officer or broker may have told the borrower to skip the last payment on the old mortgage, in anticipation that the new mortgage will satisfy the old one. In such circumstances, the borrower will be in default and risk foreclosure if the borrower does not complete the transaction. Sometimes closing agents and mortgage brokers pressure borrowers into signing despite their misgivings. While the law recognizes duress as grounds for voiding a contract, most states do not recognize economic duress, and the legal standard for duress is often far higher than what is sufficient to convince the typical homeowner to sign a contract.

Errors not discovered during the closing are normally not detected until the homeowner has problems with the loan and takes the closing packet to an attorney for review.

⁷ 73 Fed. Reg. 1672 (Jan. 9, 2008).

The errors and changes most often found in closing documents range from relatively minor to dangerously significant. Issues we have found and that have been described to us by other attorneys and homeowners include:

a) The tax escrow is too low. This is usually discovered when the homeowner receives her first property tax bill after closing. This bill is also automatically provided to the loan servicer, which will increase the homeowner's monthly escrow payment. For some homeowners, the increased monthly payments can be unaffordable, leading to default and foreclosure (either by the mortgage holder or tax authorities).

b) The notary is either not present at the closing or does not notarize in presence of borrower (in violation of state law).

c) The income or employment information shown on the loan application is not what the homeowner provided when applying for the loan.

d) The settlement date on the settlement statement or Truth in Lending disclosure statement is incorrect.

e) The dates on the Notice of Right to Cancel are missing or incorrect.

f) The government recording fees are too high. Settlement agents tend to estimate on the high side and then retain the difference.

g) Important loan terms have changed or the closing costs have increased significantly (though these problems should be less common due to the Bureau's new disclosure requirements and have presumably already been reduced somewhat by HUD's already effective reduced tolerances for variation between the GFE and final settlement statement).

h) Loan proceeds are diverted to closing costs rather than paying off debts that were to be consolidated.

i) Loan proceeds are used (without the homeowner's permission) to pay off debts the creditor discovered on the homeowner's credit report, rather than being paid to the borrower as cash-out.

j) Loan proceeds are used to pay illegal kickbacks to various parties to the transaction.

Other Parties at Closing (Questions 9 and 10)

9. How, if at all, do consumers typically seek advice during closing? In person? By phone? Online?

10. Where and to whom do consumers turn for advice during closing? Whom do they typically trust?

Prior to the closing, homeowners typically depend on their friends, family, a real estate agent, a mortgage broker, or a loan officer for advice. While a limited number of buyers attend first-time homebuyer or similar classes, those only provide general information and are not designed to address the specific terms of the loan a borrower is actually offered. It is very rare for homeowners to seek help from an attorney or housing counselor until trouble arises. Communication may be by phone, email, or text.

At the closing, in the rare event that a homeowner seeks advice, the homeowner will usually turn to whoever is at the table with them. This is problematic because the most knowledgeable people there are likely to be representatives of the lender or otherwise biased toward encouraging the homeowner to consummate the transaction. Homeowners who have difficulty understanding English are at a greater disadvantage. Some states require the closing to be conducted by an attorney, but not that the attorney represent the borrower. As a result, when there is an attorney at the closing, she has usually been selected by and represents the lender. Less sophisticated and poorer consumers too often rely on referrals from the seller or lender for a “helpful” attorney, who fails to provide any effective representation for the homeowner.

Closing Documents (Questions 11 through 13)

11. What documents do borrowers usually remember seeing? What documents do they remember signing?

12. What documents do consumers find particularly confusing?

13. What resources do borrowers use to define unfamiliar terms of the loan?

According to attorneys who have interviewed borrowers about their mortgage closings, most homeowners do not remember any specific documents--only the volume of paper. If pressed, homeowners sometimes remember the Truth in Lending disclosures or the settlement statement, but not necessarily their contents. (Homeowners are primarily able to recall these documents because of their distinctive appearance, and so can usually testify whether or not they received them, but not what their contents were).

Homeowners seem to find all of the documents confusing. It is particularly problematic that homeowners cannot understand the promissory note and security instrument. Of all the documents at the closing, these two have the greatest legal significance once signed. Even though Fannie Mae and Freddie Mac have made an attempt to use plain English in their uniform documents, the subject matter is too complex for a non-attorney to understand.⁸

⁸ The language of disclosures and contracts is often tested using “readability” formulae (ex. ATOS, Flesch-Kincaid, and SMOG). But these tests do not always produce a reliable result when used with

Improving Closing (Questions 14 through 17)

14. What, if anything, would you change about the closing process to make it a better experience for consumers?
15. What questions should consumers ask at closing? What are the most important pieces of information/documents for them to review?
16. What is the single most important question a consumer should ask at closing?
17. What is the single most important thing a consumer should do before coming to the closing table?

The single most important thing a homeowner can do before the closing is to ask a lawyer or housing counselor to read everything, explain it in advance, and advise on whether the loan is suitable and affordable. As explained in more detail in our recommendations, this will only be feasible if the Bureau requires creditors to make the closing packet available in advance.

The single most important thing a homeowner should do at the closing is to ask, “What has changed?” If anything has changed, the homeowner should demand the opportunity to consult an advisor privately, with adequate time offered to review the changes.

Our Recommendations

Encourage Simplicity

Research and the broad experience of our consumer-advocacy network show that homeowners do not shop widely enough, do not have the mathematical skills to compare loan offers, and do not negotiate over the loan terms they are ultimately offered. Addressing these three problems will do far more for homeowners than developing “a more streamlined, efficient, and educational closing process.”⁹

While other factors are relevant, the complexity of loan terms severely limits consumers’ ability to safeguard their own interests effectively. Homeowners have difficulty negotiating, shopping, and comparing loans because mortgages today include so many variables. This factor could be addressed by regulations or initiatives that encourage lenders to simplify their loan terms and by banning terms that pose an unreasonable risk to consumers and the economy at large. A satirist coined the term “confusopoly” to describe

complex legal concepts. For example, this two-sentence phrase: “I will sell you the land in fee simple. Or I can quit claim it to you for free.” scores between the 2nd and 5th grade level for readability. But it is doubtful that anyone without specialized training in law or real estate would understand this phrase.

⁹ 79 Fed. Reg. 386 (Jan. 3, 2014).

businesses that “intentionally confuse customers instead of competing on price.”¹⁰ Mortgage lenders fall into this category. Many loan terms are unduly risky for the average homeowner and are not counterbalanced by an equivalent benefit. These terms are too confusing to evaluate and are only accepted based on marketing and deceptive sales tactics that mislead consumers into believing they are getting a good deal. Instead, these terms transfer risk from sophisticated bankers and investors to the people least able to bear the consequences of economic uncertainty.

The Bureau could address these problems through a combination of substantive regulations, incentives, and improved educational initiatives. The Bureau could ban abusive loan terms and could design regulations that ease disclosure or compensation rules for loan products that are beneficial to homeowners and simple to understand. When homeowners can articulate in one sentence the loan they want, the marketplace will vastly improve. Fixed-rate loans with no closing costs, for example, are much easier to compare than loans with any other terms. Educating the public on what to shop for and on the value of comparison shopping based on the APR would also greatly assist consumers. Or, given the Bureau’s dissatisfaction with the APR, the Bureau could sponsor research to develop a better metric for simplified comparison shopping and loan evaluation. Sophisticated consumers may be able to resolve the nuances of future interest rates, shifting home values, and the borrower’s uncertain timeline for refinancing or selling. But few other consumers can.

Be Poundwise, Not Penny Foolish

We are concerned that the Bureau’s previously released disclosures and the educational goals described in the request for information are unduly focused on individual closing costs. Individual closing costs are a very small portion of the cost of a mortgage. Rather than focusing on individual items from the settlement statement, homeowners would be better served by negotiating items that will have a greater impact on affordability. We recommend that the Bureau re-orient its educational and disclosure goals toward focusing homeowners on the best use of their mental bandwidth.

The best way to do this is to minimize the number of factors a borrower must evaluate. The two biggest cost components of a mortgage are interest and the *total* closing costs. These factors are best simplified by focusing on the APR. As we have previously explained, homeowners will be best served by disclosures and educational programs that focus their attention on the APR, instead of individual closing costs or the interest rate.¹¹

¹⁰ Attributed to Scott Adams, *The Dilbert Future* by www.perilocity.com/2008/12/confusopoly-or-scott-adams-prophet-of-finance.html and <http://www.dilbert.com/blog/entry/confusopolies> (last viewed Feb. 5, 2014).

¹¹ See generally Comments of National Consumer Law Center, et al. dated Nov. 6, 2012, available at http://www.nclc.org/images/pdf/foreclosure_mortgage/predatory_mortgage_lending/comments-to-cfpb-tila-respa-integration.pdf.

Researchers have shown that the APR helps consumers choose the lowest cost loan. In a recent study, participants were given two loans with different APRs and closing costs.¹² One group used the Bureau's recently issued TILA/RESPA disclosure (with the APR in the fine print), and the other used a modified version that prominently displayed the APR on the first page and explained how to use it. The study found that the odds of choosing the lower-cost loan using the Bureau's forms were about the same as flipping a coin. In contrast, borrowers using the modified form had approximately a 74% chance of choosing the lower-cost loan. The benefits of using the APR for shopping and negotiating would be further enhanced by eliminating the irrational exemptions to the finance-charge definition.

While other loan terms are important, Congress has already done much to limit the most complex and dangerous terms, such as prepayment penalties and loans with negative amortization. The Bureau's rules on ability-to-repay have furthered the limits on when complex products can be extended. This welcome simplification of complexity, coupled with the significant improvements in recent years, both by HUD and the Bureau, in the disclosure of loan terms on the settlement statement, should allow the Bureau to focus on helping consumers pick the lowest-cost loan. If the Bureau believes the APR is not an effective vehicle for that, we beseech the Bureau to conduct the research necessary to find a better metric that actually allows consumers to pick the cheaper loan.

Require Creditors to Provide All Closing Documents in Advance

The Bureau should require creditors to make the complete closing packet available to consumers upon request at least a week in advance. Creditors should clearly notify consumers of this right far enough in advance so that a consumer can request the documents and schedule an appointment with an impartial advisor in time to request any changes necessary or to cancel the transaction. While the Bureau's recent disclosure rules, coupled with HUD's pre-existing limits on tolerances for variation between the GFE and final settlement statement, provide greater clarity for consumers, they are not enough. Consumers do not have a reasonable opportunity to read and evaluate the huge stack of paper presented at the closing table. It is simply unfair to hold consumers responsible for digesting the information provided at the closing while under emotional and economic pressure to sign everything quickly and without dissent.

This problem is particularly acute for consumers with limited English reading skills. The notice regarding the right to receive documents in advance should be provided in the same language that the parties use to orally communicate during the loan application process.

Highlight Changes In the Closing Documents

¹² Debra P. Stark, Jessica M. Choplin, Mark A. LeBoeuf, and Andrew G. Pizor, When is Consumer Understanding Necessary to Make Wise Home Loan Decisions? Testing Enhanced APR Disclosure And General Financial Literacy (July 16, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2294590. Publication is anticipated in 2014.

We acknowledge that some last-minute changes are inevitable and should perhaps even be permissible. But these changes should be clearly brought to the homeowner's attention. This can easily be done with color highlighting, or with a separate "change sheet." This will save time and protect homeowners. Documents can easily be compared or "redlined" with readily available software. This requirement should not pose a burden on creditors or closing agents and can be easily addressed by technological innovation.

The Creditor Should Make an Authorized Representative Available During the Closing

The creditor should be required to make available during the closing a person with the authority to provide binding answers to the consumer's questions and to authorize the correction of any errors on the documents. This could easily be accomplished by telephone. Creditors already delegate this type of authority to loan officers in the loan origination process; there is no excuse for refusing to do so at closing. For the protection of consumers and creditors, the Bureau should require all such conversations to be recorded and preserved.

Ban the Use of Pressure Tactics and Coercion from the Closing

The Bureau should issue a rule declaring the following to be an unfair and abusive act or practice: engaging in conduct during a closing or otherwise conducting a closing under circumstances that can reasonably be anticipated to deter the homeowner from asking questions, reading documents before signing them, exercising their right to refuse to sign, or in any way interfering with the homeowner's ability to understand the documents and freely decide whether to consummate the transaction. Interfering with the homeowner's ability to leave the closing should be prohibited. If the closing is conducted in the homeowner's home, the closing personnel should be required to leave immediately if the homeowner terminates the closing.

Ban closing agents from implying that changes can be made after consummation

According to consumer advocates, many of the homeowners who reported discovering problems at their closing explain that they, nevertheless, signed the loan documents because someone at the closing stated that any problems could be fixed later or that the homeowner could obtain the promised loan by refinancing. Afterwards, however, these homeowners report that they were unable to get a responsible party to return their calls or were simply told that no changes were possible. The Truth in Lending Act's three-day cancellation period is ineffective in these circumstances, because a consumer who has been assured that a correction is forthcoming will have no reason to cancel.

If creditors are required to have an authorized representative available to the consumer during the closing, this representative could authorize manual correction of errors on the loan documents, could make a binding promise to fix specific errors later (if the

promise is memorialized in writing or recorded), or could clearly explain to the consumer that the documents were final and no correction would be forthcoming.¹³

¹³ One of the authors of these comments, an attorney, convinced a closing agent to call his lender (a small bank) during his closing. The lender resolved a problem by phone and waived the signing of a minor document that the consumer had refused to sign. Our collective experience with thousands of borrowers, however, indicates that this experience is extremely rare.

APPENDIX to COMMENTS

by the
National Consumer Law Center
on behalf of its low income clients

and the

National Association of Consumer Advocates

**E-mail Messages Submitted to NCLC in Response to CFPB's Request for
Information Regarding the Mortgage Closing Process**

**Responses to CFPB's Questions About the Mortgage Closing Process
Submitted by
Beth S. Brush, Attorney at Law
Goodfield, Illinois**

(see next page)

I have been in the title insurance business for over 30 years and have been involved with thousands of closings, both residential and commercial, sales and refinances.

My experience has been that consumers in residential sales closings are confused by the new HUD format; and they not receiving the HUD in advance of the closing to review the figures and ask questions if necessary. I also work in an area where attorneys are not typically involved in residential sales so there is no one working with sellers and buyers who does not have a conflict of interest. I.E. the realtor, lender and closing agent do not get paid unless the transaction closes.

A typical scenario is that figures are sent from both the lender and realtor. The HUD is prepared by the closing agent and returned to the lender for approval. It is common for the HUD to be revised more than once resulting in purchasers not receiving the HUD until right before or at closing. While the closing agent or in some instances, the realtor, reviews the HUD with the buyers – most consumers understand that the closing is not the place to ask questions or put a monkey wrench in the transaction. Both parties have packed their belongings, moving vans are waiting and there may be an element of pride causing the buyer to avoid the appearance of not understanding the transaction or not being able to perform. I have been in closings where the buyers have indicated that they could not afford the payment but proceeded to complete the closings anyway.

Since many lenders loan money nationwide, there are LOTS of documents to sign at closing. Either a brief description of a document is provided to the buyer by the closing agent or lender or the buyer is simply shown the signature line on the document and told where to sign. The consumer is worried about time constraints, engaged in chit chat with their realtor or the other party, or otherwise has their attention diverted from the documents themselves.

I practice in Illinois where the seller pays for the title insurance and transfer stamps/taxes. Due to the requirements of the most recent HUD format – these figures have to be shown as a charge to the buyer on the second page and as a credit to the buyer on the first page. This is a very difficult concept for most consumers to understand. In fact, several parties have mentioned that this is very confusing and have asked why it has to be shown this way. All too often they are told that it is a government form, it has been prepared correctly and they don't need to worry about signing it even if they don't fully understand it.

Another document that is confusing to seller consumers is the 1099-S. The questions are phrased in the negative and again, the seller will ask why the questions can't be asked in a more understandable manner. A common answer is that it is a government form and everyone understands what is meant by that – since the government is involved it will be difficult to understand and that you should simply sign even if you don't understand it.

Since I am an attorney and experience these transactions at a separate level I have long been dismayed at the "legal advice" given by non-attorneys in these transactions. As a manager of a title company I have provided training to the closing agents I managed how to answers posed by them so that they don't cross the line from imparting information to giving advice. However, that does not prevent all instances of over-reaching. Title objections are routinely cleared by title companies in conjunction with

realtors since there are no attorneys involved. An explanation of the mortgage is reduced to the following phrase “If you pay, you stay and if you don’t, you won’t.” This is usually followed by laughter and even more reliance on the closing agent by the parties. A not uncommon explanation of the APR on the TIL is that this figure is supposed to help you understand the terms of your loan followed by the question “Is that working yet?” When asked why there are so many documents to sign – and in fact, duplicates of some documents – the response is that the lender requires it. Most borrowers, especially first-time borrowers, don’t understand the difference between the note and the mortgage. They don’t understand that there are documents required by the lender which are different than those required by the title company. They have an hour to see, understand and sign a stack of documents and they feel the pressure not to disrupt the schedule.

Double charging of recording fees (once by the seller’s lender being paid off and once by the title company) has resulted in lawsuits and settlements by the big title companies. But smaller title companies don’t always have systems in place to ensure that money is returned to the proper consumer. Sellers don’t often understand if their escrow account is being credited on the payoff statement at closing or if they should follow up after closing if the check is not forthcoming. The result is that funds are not claimed by consumers.

I recognize that my recommendation of having an attorney involved in a sales transaction may appear self-serving. I also understand that some attorneys delegate much of their client contact to paralegals in their practice. But the attorney is the only person involved whose sole responsibility is to represent and protect the consumer. The attorney is paid even if the transaction falls apart – no one else is.

If you have any questions or seek clarification of a statement please do not hesitate to contact me.

Beth S. Brush
Attorney at Law
319 Hickory Turn
Goodfield, IL 61742
309-964-4005

----- Original Message -----

Subject: closings

Date: Thu, 23 Jan 2014 08:50:48 -0500

From: Barbara Goolsby <REDACTED>

To: [REDACTED]

1. The biggest problem is the rush and the inability to read anything that is signed.
3. That it was a big rush, rush, rush.
4. 20 minutes max. way too short.
5. They do not know they can request docs in advance. Those who do ask for docs in advance are treated as though they are being unreasonable.
6. When they are in foreclosure and consult an attorney, that's when they first understand the terms of the loan. The disclosures on ARMs are particularly absurd.
7. The biggest most egregious error is the failure to have a notary present when the borrower signs the note and mortgage--and then the addition of a notary stamp after the signing, which is a violation of Florida law and renders the mortgage unenforceable and ineligible to be filed in the public records.

The second biggest error is the inclusion of false information in the copy of the loan application that is signed at the closing and which the borrower doesn't get to read because of the rush.
8. The borrowers may question changes at the closing, but the implication is that they should sign and discuss the changes after the closing which, of course, is useless because the documents are already signed.
9. The clients I see are unrepresented at closings. They may ask questions, but they never get answers. They don't realize they can just refuse to go forward or rescind.
10. They don't know whom to trust--and rightly so--because there is no one at the typical borrower's closing table who has the interest of the borrower at heart.
11. They may remember the note and mortgage--but that's about it.
12. They haven't a clue that line 800 or thereabouts on the closing statement, and the disclosure of the yield spread premium paid outside of closing to the broker by the lender may be a clue as to how badly the broker has oversold them the loan.
13. They don't have any resources for the most part.
14. I would require lenders to provide borrowers with copies of each and every document to be signed at the closing at least 24 hours in advance with a separate disclosure which says:

Consumers are protected by federal and state law during a closing. To find out your rights as a consumer under federal and state law you should have your closing documents reviewed BEFORE YOU SIGN THEM AT CLOSING by a housing counselor or attorney familiar with these laws.

You may consult a housing counselor about these closing documents
at: _____.

15. The most important document for the borrower to review is the loan app which he will be signing to see if contains any false information. The second most important document is the closing statement to check on the yield spread premium to see if he is paying a rate above par based on the broker's amount of kickback.
16. Does the package of documents I am about to sign today include any documents which I have not had an opportunity to review 24 hours prior to the closing?

17. Review the complete packet of documents to be signed with a housing counselor or attorney 24 hours prior to the closing.

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Member of National Association of Consumer Advocates
Member of National Association of Consumer Bankruptcy Attorneys

BarbaraGoolsbyEsq.com

----- Original Message -----

Subject:Fwd: [REDACTED] Questions about mortgage closings

Date:Wed, 29 Jan 2014 18:22:44 -0600

From:Daci L. Jett <[REDACTED]>

To:[REDACTED]

The CFPB wants to know what lawyers, consumers, and everyone else thinks about mortgage closings (by 2/7). Below is a short list of questions.

- * You can answer one or more.
- * You can respond on-line <http://www.regulations.gov/#!docketDetail;D=CFPB-2013-0036>
- * Or send your responses to me apizor@nclc.org (advocates only please).
- * For more info, go here: <https://federalregister.gov/a/2013-31436>

Complete sentences not required!!

Please forward this to anyone you think might be interested. The more the CFPB hears, the better their rules will be.

QUESTIONS:

1. What are common problems or issues consumers face at closing? The money not showing up for several hours or never.

What parts of the closing process do consumers find confusing or overwhelming? The mountain of papers, every single document. But I don't know how to solve that problem; they are legal documents and most people find those confusing and overwhelming.

2. Are there specific parts of the closing process that borrowers find particularly helpful? Having their own lawyer to explain what is going on and what the papers mean.

3. What do consumers remember about closing as related to the overall mortgage/home-buying process? What do consumers remember about closing?

4. How long does the closing process usually take? Do borrowers feel that the time at the closing table was an appropriate amount of time? Is it too long? Too short? Just right? When I was doing them several years ago (I stopped in 2007), they took at least two hours, sometimes they wouldn't finish closing until the next day when the lender finally got the money there. I've heard they take longer now. It's too long when the delay is caused by waiting for the money. If the time is spent explaining things to the purchaser/borrower, that's time well spent and well worth it.

5. How empowered do consumers seem to feel at closing? Did they come to closing with questions? Did they review the forms beforehand? Did they know that they can request their documents in advance? Did they negotiate? They have no power whatsoever. They are not able to review the forms ahead of time. The lender doesn't even prepare the docs until a few moments before the closing. I once had a borrower insist receiving the docs several days ahead of the closing to review them and the lender mocked and disparaged her, and couldn't even produce her actual docs. He gave her blank forms. And even then it was past the mortgage contingency period, so there's nothing she could have done short of breaching her contract to purchase if she didn't like the forms. There is no negotiating on the lender's forms, outside of interest rate, points, and prepayment penalty. They have a take it or leave it attitude. I once had a borrower come to a closing and the mortgage broker showed up with a loan that was completely different than the loan he committed to give, and it was a terrible loan. The borrower had a commitment for a fixed-rate, 30 year loan and at the closing the note was for an adjustable rate loan that adjusted frequently, with a high cap. The borrower didn't even realize it. When I saw it and jumped on the mortgage broker (who was supposed to be the borrower's friend!), the seller's attorney started yelling threats about suing for breach if we didn't close so his client could get the proceeds and go buy her new home later in the day. No power whatsoever.

6. What, if anything, have you found helps consumers understand the terms of the loan? A lawyer or honest mortgage broker explaining it to them.

7. What are some common errors you have seen at closing? How are these errors detected, if at all? Tell us about errors that were detected after closing.

8. What changes, diverging from what was originally presented at closing, often surprise consumers at closing? How do consumers react to changes at closing?

9. How, if at all, do consumers typically seek advice during closing? In person? By phone? Online?

10. Where and to whom do consumers turn for advice during closing? Whom do they typically trust?

11. What documents do borrowers usually remember seeing? What documents they remember

signing? Honestly, nothing but a lot of paper.

12. What documents do consumers find particularly confusing?

13. What resources do borrowers use to define unfamiliar terms of the loan?

14. What, if anything, would you change about the closing process to make it a better experience for consumers?

15. What questions should consumers ask at closing? What are the most important pieces of information/documents for them to review?

16. What is the single most important question a consumer should ask at closing?

17. What is the single most important thing a consumer should do before coming to the closing table?

Get the actual documents he will sign, not blanks, and read them review them with his lawyer to make sure he understands them, and this should happen when he can still cancel the deal without breaching.

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www.DaciJettLaw.com

1603 Orrington Avenue, Ste. 600

Evanston, IL 60201

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----- Original Message -----

Subject: Questions about closing process

Date: Thu, 23 Jan 2014 11:40:27 -0800

From: Pamela Simmons <REDACTED>

Reply-To: [REDACTED]

Organization: Law Office of Simmons & Purdy

To: Andrew Pizor <REDACTED>

QUESTIONS:

1. What are common problems or issues consumers face at closing? What parts of the closing process do consumers find confusing or overwhelming? **The most common complaint here in CA is that when the borrower(s) sit down for the closing it is generally the first time they have seen the documents they are being asked to sign. As such there is not really any time for them to review them, ask pertinent questions, or object if something is wrong. There is great pressure placed on the borrower(s) to sign them as is - usually a discussion of the cost of a "re-draw" and/or the expiration of a rate lock is enough for most timid borrower(s) to just shut up and sign.**

I strongly believe that the borrower(s) should be provided with a full copy of the documents at least 3 days before the closing so they can actually review them, if they have a mind to.

2. Are there specific parts of the closing process that borrowers find particularly helpful? **When the closing is done in an escrow office with an escrow officer present most borrower(s) feel more comfortable because there is someone there to ask questions about what they are signing.**

3. What do consumers remember about closing as related to the overall mortgage/home-buying process? **A lot of my clients consider this a very stressful time because of the lack of understanding about what they are signing. Also the "rush" through the documents signing is quite stressful as well.** What do consumers remember about closing?

4. How long does the closing process usually take? Do borrowers feel that the time at the closing table was an appropriate amount of time? Is it too long? Too short? Just right?

5. How empowered do consumers seem to feel at closing? **Very few feel empowered. I have met a person or two who stopped the process because it was not what they were told but generally those people dealt with contracts a lot in their work and had very strong backbones. Most people just sign where they are told to. Did they come to closing with questions? Did they review the forms beforehand? It has been extremely rare for borrower(s) to get the docs before hand. Some come to me to review the documents and discuss and so they have pushed hard to get them ahead of time. A few were told "no" can't be done. Most did get the docs with a day or two lead time. Did they know that they can request their documents in advance? Did they negotiate? Most never negotiate at the closing. by then the contract is usually worked out. Problems do arise when there is a material change in a term. Clients do not feel like they have the power to stop the signing and get the problem fixed.**

6. What, if anything, have you found helps consumers understand the terms of the loan? **Most understood the terms when the terms were clear. 30 years at 6%. Once the lenders starting getting creative - Amount of payment is different then the interest and principal most consumers had no idea what the terms of their loan were - I have found that even CPAs couldn't understand such loan documents.**

7. What are some common errors you have seen at closing? How are these errors detected, if at all? Tell us about errors that were detected after closing. **Documents that do not reflect borrower(s) understanding of the terms of the agreement.**

8. What changes, diverging from what was originally presented at closing, often surprise consumers at closing? How do consumers react to changes at closing? **Higher costs for the transaction are often problems. Also different interest rate, different terms.**

9. How, if at all, do consumers typically seek advice during closing? In person? By phone? Online? **Most consumers**

ask the escrow officer. Sometimes the broker attends and then questions are asked of the loan broker. Most clients do not have an attorney or advisor to call at the closing.

10. Where and to whom do consumers turn for advice during closing? Whom do they typically trust? Most consumers ask the escrow officer. Sometimes the broker attends and then questions are asked of the loan broker. Most clients do not have an attorney or advisor to call at the closing. They usually trust the escrow officer which may or may not be well placed. They usually trust their loan broker which again may not be well placed.

11. What documents do borrowers usually remember seeing? What documents they remember signing? In my experience they usually remember the TIL Disclosure (if you ask about the "3 box" document they remember it. They will usually remember if they sign the right to rescind on a refinance. They remember the Deed of Trust and they remember the Note but not the specifics of it. The number one document they remember is the Closing Statement - which shows the money. It is important to note that the generally did not see the HUD-1 until after the closing and they do find that document quite confusing.

12. What documents do consumers find particularly confusing? The TIL disclosure confuses them. The note they have a lot of trouble understanding. The closing statement is easy for them to understand. The Right to Cancel is easy to understand but most borrowers did not receive properly filled out RTC forms. **From 2002-2008 every single RTC I reviewed (which was more than 1k) were defective because of the way the escrows were closed here. The copies the clients received were made before signing so since the dates to the RTC were filled out at the closing the borrowers never received that copy. Essentially the RTC's were blank where the dates are concerned.**

13. What resources do borrowers use to define unfamiliar terms of the loan?

14. What, if anything, would you change about the closing process to make it a better experience for consumers?

- 1) I would make sure that borrower's receive the closing documents in advance with enough time to review - and ask questions.
- 2) I would make available to borrower(s) some 3rd party to ask questions or review documents.
- 3) I would make sure that borrower(s) leave with a signed copy.
- 4) I would outlaw closings by mail or at home. The pressures on the client are too great and there is usually nobody to explain or answer questions.

15. What questions should consumers ask at closing? What are the most important pieces of information/documents for them to review? Note and Addendum to Note. Prepayment penalty paperwork. Any balloon payment. RTC documents. TIL Disclosure. Also loan application to confirm it is accurate.

16. What is the single most important question a consumer should ask at closing? There is no such question. There are several questions. What is my interest rate? Will it Change? How much am I borrowing and why? What are the costs of this transaction? Is there a prepayment penalty? If so why? Any balloon? What properties are secured by this loan and why? Is this loan non-recourse? If not why not.

17. What is the single most important thing a consumer should do before coming to the closing table? Read the documents and understand them. If there is something that is "off," call and get it resolved before coming to the closing table.

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From: **Philip Vacco** <philvacco@gmail.com>
Date: Mon, Feb 3, 2014 at 12:18 PM
Subject: Closing Questionnaire
To: [REDACTED]

[REDACTED]

In responding to Mr. Pizor's questionnaire regarding issues that can arise at the "closing" please keep in mind that 90% of a real estate transactional lawyer's work involved with a real estate closing (i.e. consulting with the client, review and modification of the sales agreement, resolving issues with financing as well as the results of any property inspection, review of the property's title and survey, etc.) is all completed prior to attending the actual "closing." Thus from the attorney's vantage point, there should be no real surprises at the closing; however, this being said, my 30 plus years of experience has demonstrated that unexpected problems and can do arise.

While in my opinion most of the issues that arise at the closing are the result of a lack of knowledge on the part of one of the parties involved, there have been occasions where issues have arisen due to the intentional actions (misconduct) of one of the parties. Thus, while I cannot say that I have seen it all, I have seen quite enough to provide some answers to the questions Mr. Pizor posed.

1) Common problems consumers face at closing are:

(a) Buyers: Buyers can face situations where the seller has failed to vacate the property as called for in the agreement. Although this is happening less frequently today, where seller's proceed to sell a home without the assistance of an attorney, there can be a mistaken belief that that have a period of 24 to 48 hours AFTER the closing to vacate the property. When a seller has not vacated the property as agreed, this places the buyer at a disadvantage (buyer may have already vacated his current property in anticipation of moving in; buyer may or may not wish to proceed to sign the mortgage documents and assume the legal obligation to make payments with the seller in effect becoming a tenant. In addition to possession issues, seller's sometimes fail to deliver the property in "broom clean" condition; opting instead to leave the buyer several half empty paint cans ("in the event the buyer wants to touch up a wall") or piles of lumber or other debris that the seller saw little or no value in but didn't want to go through the trouble of disposing of it properly. One time I had a client purchase a home and found that in the crawl space the seller intended on leaving a 350 cubic in car engine. When the seller was informed that he would have to make arrangements to have the block of iron removed he said he didn't understand why it was such a problem; after all he was leaving the buyer a perfectly good engine.

In addition to possession and property condition issues, occasionally I will have a seller that switches appliances (i.e. swap out the nice refrigerator in the kitchen and replace it with the beat up one in the basement or garage.) This type of action falls under the heading of dishonesty and not ignorance on the part of the seller.

Finally, there are a whole array of unknown issues that arise when a buyer is purchasing a short sale or REO property. These properties are sold without any warranty and "as-is", so the purchaser MUST perform their due diligence thoroughly; even then, the seller's lender(s) may have last minute concerns that will derail the entire closing. If the buyer is unable to close on the closing date, many REO contracts impose a per diem financial penalty on the buyers as well; not to mention the issue of unpaid assessments with condominiums or HOAs; under IL law a buyer, purchasing a property from a bank, may be liable to pay up to six months of unpaid assessments that could be outstanding on the property.

(b) Sellers: Sellers can go into a closing with their own concerns. As they say "it isn't over until the fat lady sings." Until the buyer's lender approves of the disbursement (in the case of a short sale you need to add the seller's lender(s)) there is always the possibility that the closing may not happen. Fortunately, my experience has been that only a minor fraction of transactions don't close when they are scheduled and the parties must look at doing a "dry closing;" (a closing in which both parties complete their obligations except that there is no money released because the lender is still waiting to approve or sign off on something.)

On rare occasions I have had a buyer simply refuse to close because they perceived that there were problems with the home that they did not notice upon their initial inspection. For example, I had a buyer refuse to close because he could not open a window upon his final walk through and he believed that the seller failed to disclose that the windows were defective. Turned out that the property had been sitting vacant for some time and the window track had become dirty which caused the window to stick. A quick wipe with a damp rag and squirt of WD-40 and the problem was solved.

Unfortunately it meant that the closing was delayed for several days while the lender prepared a new set of documents for signature.

As for what the parties can find confusing. There is a lot of misconception with buyer's about their earnest money and their ability to have it refunded. Many buyers think that if they don't close (for what ever reason) that they are entitled to a full refund of their earnest money deposit and they don't understand that they have certain performance obligations under the contract that need to be met in order to be entitled to refund. Likewise, taxes can be confusing, especially for a first time buyer that is not accustomed to the fact that Illinois bills taxes one year in arrears. This in turn can lead to confusion over the settlement (closing) statement. Buyer's are often surprised that the amount of money they need at closing is significantly less then what they expected generally because they did not understand or take into consideration that the seller was providing a tax credit to them. Of course there are the title insurance fees which can also cause confusion. Try to explain to an Illinois consumer why the HUD Settlement statement reflects that the cost of the Owner's Title Insurance Policy (customarily a seller's charge in IL) is listed on the settlement statement as a buyer's expense, only to be cancelled out by a matching seller's credit; it truly makes no sense.

2) If there is any one part of the closing process that my buyers find particularly helpful is that I am there to review their mortgage documents and explain exactly what their responsibilities are. This is often the first time that the borrowers see these documents. Having someone in their corner (aside from their Realtor) who can insure that the seller honors the terms of the agreement, is looking out for their best interests and can deal with unexpected issues with the title or survey is, in my opinion, invaluable.

3) Consumers sign so many documents at the closing that I wouldn't at all be surprised if they don't remember too much of what took place. Typically what can stand out is that the lender used or didn't use their middle initial in drafting the documents. If the buyer's typically don't use their middle initial, but it is used by the bank on their documents, the buyer's wind up concentrating on how to sign their name. Thus they really miss the big picture. So between the volume of material the buyer must sign, and the need to sign their names correctly as they appear, use a particular color of ink, dating all the documents, etc. ask a buyer what they recall of their closing and they are most likely tell you that they just signed a bunch of documents.

4) When I first started out practicing closings could be completed in about 45 minutes; 15 if it was a cash deal. Today unfortunately a closing involving a lender typically takes one and a half to two hours to complete. This has been the result of lenders adding additional documents to the transaction process, many of which are duplicate in nature; a buyer may be asked to sign up to 4 to 5 different documents outlining the fact that as long as the property is secured by a mortgage the buyer must maintain property insurance. This redundancy is most likely a reaction to the collapse of the housing market and the foreclosure crisis and the need by the banks to reflect that they gave the buyer complete disclosure. I've even seen a document that points out to the buyer that the loan is something that then need to pay back and their failure to do so in a timely fashion can lead to negative reporting on their credit record.

5) My experience is that most consumers are not empowered. In fact, once they agree to a lender, the closing process is pretty much a take it or leave it proposition. This fact has lead may buyer's attorneys to tell their client's if you don't sign the banks documents you won't get the loan and you don't close. The closing is often the first time that the buyer will see the documents. This is due in part to the fact that many lenders do not draft the documents up much before a day or two before the closing. Whether or not the buyer negotiated any of the terms is typically unknown to the attorney. We are not involved in the process of the buyer selecting a lender. The buyer is typically happy to lean that the interest rate quoted by the lender is the same one that appears on the promissory note.

6) The one thing, in my opinion, that helps a consumer understand the terms of their loan is having their attorney (a non interested third party) review the document with then and explain in layman's terms what their obligations are.

7) Most errors I have seen at closing are either clerical (i.e. typographical) in nature or mathematical. These errors are detected by a careful examination of t he closing documents and settlement statement. Legal descriptions need to be matched with the title commitment and survey; tax credits need to be recalculated for accuracy. Occasionally a document is recorded in the wrong sequence which requires the documents to be re-recorded in the proper sequence to avoid a issue with the chain of title. Sometimes math errors are not detected until after the closing. This can be a troublesome matter since the closing itself is evidence that the parties had agreed to the final calculations. Unless the parties are willing to resolve the discrepancy after the closing, the attorney may be looking at a potential malpractice claim.

8) Change to the closing statement are inevitable. In fact I inform my clients that the numbers provided by the title company are likely to change and advise them to bring in more money to the closing than what we anticipate will be necessary. (The title company will gladly refund the buyer any overage, however, if the buyer has too little money to complete the closing the lender may request that the buyer obtain an additional cashiers or certified check which will delay the process.)

9) If consumers were wise enough to hire an attorney to represent them, then that attorney will be there to go through the documents, insure that the seller performs his contractual obligations and answer any questions that they may have.

Consumers who seek advice during the closing and are not represented by an attorney are most likely on their own or SOL. I have seen title companies display notices that they do not provide legal advice and that the title agent is not allowed to explain the documents to them. Sometimes I have witnessed the buyer's Realtor or Loan Office go through the documents with the buyer. Considering that these individuals are not authorized to provide legal advice and that they are both interested parties (i.e. they only get paid if the deal closes), they are most likely not the best candidates for the buyer to get his information from.

10) Consumers may turn to their Real Estate Agent whom they have been working with for advice. This is unfortunate, not because the advice will not be good for often times it is, but that a Realtor is not trained to provide legal advice. I have had to correct a buyer's or seller's Realtor on more than one occasion when they attempted to provide closing advice to their client that was not appropriate.

11) Can't really answer this.

12) Perhaps the mortgage. It has so many provisions that their eyes tend to glaze over.

13) The only resource I know of would be their attorney unless their Broker has provided them with a print out of real estate terms and definitions.

14) Making the process faster with less duplicate documentation would be wonderful but not likely to happen. I mean if there is one document that requires the buyer to maintain insurance on the property during the course of the mortgage there must be four similar documents presented for signature.

15) Consumers should make sure that the loan terms are what their lender promised. They should go over the closing charges and make sure they know what they are paying for. At the closing the consumer should ask ANY question that they may have. It's the only way to get an answer before they sign and commit themselves.

16) "Are you representing me?" If the consumer knows that his/her attorney is there for them (not for the Realtor, lender or title company) the consumer will be better off. The consumer should hire someone to protect them and that person should not be concerned or interested in the deal closing or not. (An attorney who only charges a client IF the deal closes may be tempted to downplay a particular item or issue if he/she feels that it may cause the buyer not to proceed.)

17) Hire an attorney that will give them the time of day. Too many attorneys use real estate as a loss leader and charge well below a market fee. Paying an attorney \$175.00 who you don't see or talk to much before the actual closing is no bargain; likewise hiring an attorney that will only charge you a fee IF you close may not be doing you any services either..

Hope this helps you and Andrew out.

--

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