



February 7, 2014

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street NW.  
Washington, DC 20552.

re: Docket No. CFPB-2013-0036

Dear Ms. Jackson:

The American Land Title Association (ALTA)<sup>1</sup> appreciates the opportunity to comment on the Consumer Financial Protection Bureau's request for information regarding the mortgage closing process. We are encouraged by the Bureau's willingness to work with industry to improve the process to help address key consumer "pain points" in the closing process and look forward to working with the Bureau on this project.

Based on our member's unique vantage point working with all the parties at closing, we believe that the Bureau should not only focus its study on technological innovations but also on improving consumer education about the closing process and promoting greater uniformity and streamlining in the documentation to meet state disclosure requirements and sell loans on the secondary market. We believe that improved education and promoting uniformity have the potential to help consumers become better prepared for closing and allow them to focus on transaction critical documentation and decision useful information.

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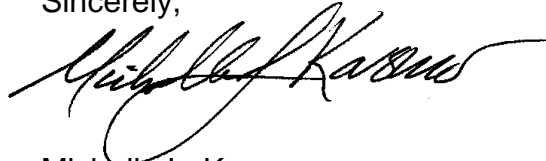
<sup>1</sup> The American Land Title Association, founded in 1907, is a national trade association and voice of the real estate settlement services, abstract and title insurance industry representing more than 4,700 member companies. With more than 8,000 offices throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstracters, title searchers and attorneys, ranging from small, one-county operations, to large national title insurers.

The closing<sup>2</sup> is the culmination of a number of state law requirements necessary to effectively complete the real estate and mortgage transaction. There are a number of legal formalities that are necessary to effectuate the transaction. While we believe that technology and greater uniformity has the potential to streamline the process and reduce consumer confusion at the end of the day the process will require a high level of formality simply because it is one of the largest obligations a homeowner will ever undertake.

Attached are ALTA's responses to the seventeen questions posed by the Bureau in its request. For each question that we had sufficient information to answer, we attempted to answer the question, provide helpful background information and suggest ways the Bureau could help improve the process.

ALTA appreciates this opportunity to comment on the Bureau's request for information on the closing process. We look forward to continuing to work with the Bureau to help promote ways to reduce consumer "pain points" at the closing. Should you have any questions about our response to your questions, please do not hesitate to contact Steve Gottheim, legislative & regulatory counsel at [steve@alta.org](mailto:steve@alta.org) or 202.261.2943.

Sincerely,



Michelle L. Korsmo  
Chief Executive Officer

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<sup>2</sup> Closing – or settlement as it is known in some parts of the country — is a term used to designate the point in time at which the contemplated transaction is consummated. While the process is slightly different across the country, the result is the same. For ease of reading, this letter uses the term closing to describe the process regardless of the form it takes.

For most residential purchase and sale transactions, closing generally designates the point at which title to the property is transferred from seller to buyer, a promissory note and mortgage (or "deed of trust") is given by the buyer/borrower to the lender and the funds from the buyer and lender are transferred to the seller.

**Question 1: What are common problems or issues consumers face at closing? What parts of the closing process do consumers find confusing or overwhelming?**

A main problem that consumers face at closing is a general lack of awareness of the closing process and a feeling of being overwhelmed with the amount of information and documents they must review at closing. In the face of this overload, many consumers become less active participants in the process. This is the opposite result of what is in the best interest of the consumer, settlement agent and lender.

A real estate and mortgage closing is one of the largest and most complex financial transactions consumers will face in their lifetime. At closing, consumers and settlement agents will face an 80-125 page stack of documents that must be executed to safely and legally complete the transaction. This package is intensive because it is the confluence of a number of moving parts required under federal, state and local law and investor requirements to legally complete the transaction.

As a general rule, the documents can be broken down into three groups. First are the transactional documents, which serve to legally affect the sale of the home and granting of the mortgage. These documents include, the deed, note, mortgage (or deed of trust), the settlement statement (HUD-1), escrow agreements and insurance policies. The second group of documents is the disclosures. Most of these disclosures are required by state law and there is little uniformity between different state requirements. The last group of documents is informational. These include the documents that are required to verify information, evidence disclosure and ensure the loan can be sold on the secondary market. Frequently, the loan package will include numerous (albeit slightly different) versions of the same document to provide the maximum flexibility when selling on the secondary market.

We believe the best way to reduce consumer confusion and prevent consumers from being overwhelmed at closing is through improved consumer education and a streamlining of the documents that consumers need to sign at closing. The goal of the Bureau's Know Before You Owe project should be to help consumers better understand the obligations associated with the transaction and be comfortable meeting the transaction demands.

Improved consumer education, combined with consumers' ability to review the documents prior to closing, should help consumers focus on more relevant questions at the closing. This will allow consumers to turn to a trusted advisor or their lenders about any questions they have with the loan documents.

While most of the documents at closing have a specific purpose under state and federal law, consumers would benefit if there was less duplication in the documentation (especially the informational documents discussed above). Greater uniformity of informational documents, like name and signature affidavits, can help reduce the stack of documents and make it easier for consumers to review documents before closing and governmental entities to provide consumer

education. It will also reduce consumer confusion, because settlement agents report that consumers are frequently appear confused about signing multiple variations of the same document.

**Question 2: Are there specific parts of the closing process that borrowers find particularly helpful?**

According to settlement agents, the most helpful part of the closing process for consumers is when the consumer has the time to review the closing documents (especially the settlement statement and loan documents) and ask questions. At closing, consumers are most engaged when the settlement agent reviews the key terms of the transaction. Typically, consumers ask the most questions about the loan terms and appreciate when the settlement agent reviews the payment schedule to show them how much they can save by paying down the loan early. By providing the consumer with the time to get an explanation of the key transaction documents, consumers are better able to grasp the transaction process and understand what the transaction requires of them financially.

**Question 3: What do consumers remember about closing as related to the overall mortgage/homebuying process? What do consumers remember about closing?**

We do not have adequate knowledge about what consumers remember about the closing process.

**Question 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?**

The typical residential closing takes between 45-75 minutes, though the process to prepare for the closing can take 10 or more hours. However, the time consumer spends at closing is irrelevant if the consumer does not have adequate knowledge about the transaction and what it accomplishes. Thus, the closing process should not be assessed by the time it takes to complete the transaction, but rather on how well the consumer understands this complex and demanding financial transaction.

Across the country, closing or settlement takes on different forms. Each form provides a different experience for the borrower and the seller; however, the common thread is that at the end of the process, a complex legal transaction will be completed.

On the east coast, table closings are more common. Table closings involve bringing all the parties together at one time to execute documents and exchange monies. This process typically occurs at the settlement agent's office. The settlement agent will do significant work beforehand to get the documents ready for the signing ceremony, but the formal execution takes

place at one point in time. Following the closing, the settlement agent will record the appropriate documents.

On the west coast, escrow closings are more common. In an escrow closing, each party executes their documents and exchanges their monies at a time and place convenient for them. These documents are then entrusted to a third party escrow agent. Once the transaction is complete, the final documents are recorded and monies given to the appropriate parties. In this scenario, the closing process can take place over days, but the transaction is not consummated until all the documents are signed, acknowledged and recorded.

Oftentimes, borrowers are seeing the closing documents for the first time at the closing table. These documents are not uniform and are fairly legal in nature. Thus, if borrowers have questions about the documents, their first chance to ask them is at the closing. Encouraging consumers to become more educated about the transaction prior to the closing will enable consumers to have many of their questions answered before they need to sign their closing documents and will ensure that consumers are more comfortable with the obligations arising out of the transaction.

While consumers need to have time to review their documents and understand their transaction, it does add time to the closing. By promoting more uniform documents, reducing document duplication and providing documents to consumers earlier in the transaction (as the new integrated mortgage disclosures rule requires), we hope closings will become more streamlined and consumers will become more informed at the closing.

**Question 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?**

Educated consumers and repeat buyers are the most empowered at closing. They come to closing armed with appropriate expectations and questions. They are also knowledgeable about the steps necessary to complete the transaction. However, most consumers are not in this group and require a level of education at the closing table to empower them.

The main reason most consumers do not feel empowered when they arrive at the closing is that they do not have the appropriate expectations about the process. Most consumers are not familiar with the closing process and the documents they will sign. Consumers are generally unaware that they may request documents before closing, such as their HUD-1 settlement statement and some disclosures as required by state or federal law. The result is that settlement agents spend a lot of time at closing working with consumers to help them feel less powerless and lost.

Additionally, consumers feel empowered when the transaction process meets their expectations and they are not faced with surprises along the way. There are a lot of things that

can change between loan application and closing. Informed consumers are aware of these changes and understand the impact of the change before coming to closing. If the consumer is not made aware of a change until the closing, they typically feel like they are no longer in a position to negotiate their transaction because of the imminence of closing. Since most closings are pushing up against the expiration of rate locks or real estate sales contracts, consumers are wary of doing anything that puts the closing at risk. Furthermore, it is difficult for consumers to negotiate changes to the loan terms that do not arise until closing because lender representatives are not always present for closings.

**Question 6: What, if anything, have you found helps consumers understand the terms of the loan?**

Consumers find it helpful to discuss the key loan terms, such as the interest rate, amortization schedule, the amount financed and presence of a prepayment penalty. In addition, consumers find it helpful to go through the settlement statement so that they can easily see where all the money is going. In most transactions, consumers are not given this information until the closing. We hope that the Bureau's new integrated mortgage disclosures rule will lead to consumers and settlement agents getting loan packages earlier in the transaction so that consumers can have a chance to review the documents and get educated before the closing.

**Question 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.**

The most common errors across the country involve inconsistencies between the loan documentation and the title documentation. These errors include having a different name and legal description on the loan documents than on the deed, the absence of a non-borrowing spouse on the title documents when necessary, having incorrect recording fees or transfer taxes on the closing instructions. Another common error is the incorrect calculation of future real estate taxes leaving the initial escrow deposit insufficient. Many times these errors are not discovered until closing, requiring the settlement agent to work with the lender to fix the problem on the fly (or after closing). The result can either be delays to the closing or additional work for the settlement agent and consumer afterwards.

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

Consumers are surprised by changes at closing when they are not aware of the changes and their cause prior to closing. Closings costs will frequently change between when the consumer receives their first Good Faith Estimate and the final Settlement Statement. However, if the consumer is being kept up to date with the transaction and told why costs are going up or down, they are typically not surprised at closing.

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

Prior to closing, consumers will ask questions of the settlement agent through phone and online communications. During the actual closing (whether a table or escrow closing), the consumer will ask their questions of the settlement agent in person.

Some consumers rely on the advice of a trusted advisor, usually a friend or family member familiar with real estate transactions, a real estate agent, loan officer or attorney. This advice usually occurs outside of the closing.

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

Frequently, consumers turn to the settlement agent with questions they have during the closing. Prior to the closing, the consumer will typically ask questions of their realtor, lender or attorney.

**Question 11: What documents do borrowers usually remember seeing? What documents do they remember signing?**

We do not have adequate knowledge about the documents the borrowers recall seeing or signing.

**Question 12: What documents do consumers find particularly confusing?**

Consumers frequently find the current Truth in Lending disclosure, some state based disclosures, and repetitive affidavits confusing. There is also significant confusion when the consumer is asked to sign multiple versions of the same document, such as affidavits and hold harmless forms without sufficient information about why these forms are necessary. By streamlining some of the forms and providing consumers with more knowledge about the purpose of these forms, consumer confusion would be lessened.

**Question 13: What resources do borrowers use to define unfamiliar terms of the loan?**

Settlement agents typically review the note and mortgage/deed of trust with the consumer. The lender or the borrower's attorney might define terms for the consumer at closing. Additionally, some borrowers use the HUD Settlement Costs Booklet, as required under RESPA, to define terms.

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

The consumer experience could be improved by educating consumers and providing them with access to their loan documents earlier in the process. An educated or experienced

consumer is usually more empowered at closing. Providing consumers with a better understanding of the transaction and closing process at the time of application would help set the appropriate expectations for the consumer. Loan processors could contribute to the consumer experience by having a pre-closing conversation with the consumer, discussing the details of the closing process.

Greater uniformity in loan and transaction documentation would help consumers. Promoting greater uniformity of affidavits could shrink the stack of paper that consumers face at closing. If consumers only needed to sign one name affidavit instead of five, it would save them time and alleviate confusion. States could adopt single disclosure documents for greater disclosure uniformity within the state. The more uniform the documents are, the more predictable they will be for consumers, allowing for consumer education to be more effective.

Lastly, many of the disclosures that are signed at closing could just as easily be signed beforehand. Providing consumers with an easy way to review and sign these documents pre-closing will allow settlement agents to focus on the key terms and documents at the closing.

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

The consumer should focus their questions on the loan terms at closing. A mortgage is one of the most significant obligations most Americans will take on in their lifetime. Before doing so, they should ask:

- How much will I be paying every month? Can it change?
- What is my interest rate? Can it change?
- Can I prepay my mortgage without penalty?
- What happens if I am late on a payment or miss a payment?
- Who will I be paying every month?
- How much cash do I need to bring to closing?

Most of this information should be known before the closing. At closing, the consumer should be confirming this information and then executing the documents instead of learning their loan terms for the first time.

**Question 16: What is the single most important question a consumer should ask at closing?**

There is no one single question that a consumer should ask at closing. Rather, consumers should ask questions pertaining to their loan obligations. Consumers should ask:

- How much will I be paying every month? Can it change?



- Can I prepay my mortgage without penalty?

When consumers do not have the time to review the documents prior to closing, they oftentimes have to ask basic questions about the transaction at closing. However, if they have information prior to closing, they can and should focus their questions on minute transaction details and changes in expectations, such as increases in interest rates.

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

The two most important things for consumers to do before coming to closing are to (1) get educated about the process, and (2) verify how much cash they need to bring to closing. These two things will help ensure that the closing goes smoothly. If they have access to their loan documents, consumers should review them prior to closing and address any concerns they have about the loan prior to reaching the closing table. Many consumers are unaware that they may request their HUD-1 settlement statement a day before closing, which would allow them to review their loan terms and address any concerns they have. The consumer should also compare their HUD-1 to the GFE and ask a trusted advisor or their lender about any discrepancies between the GFE and the figure included on the final HUD-1 settlement statement. Consumers should also refer to the HUD Settlement Booklet for information about the steps of the transaction and about how the closing process unfolds so they are better acquainted and have more knowledge about what the transaction entails and requires.