5 Key Areas to Prime Your Operation for the New Closing Process

SPEAKERS

- **Cynthia Blair NTP**, Blair Cato Pickren Casterline
- **Shari Schneider**, Stewart Title of California
- **Sheila Strong**, AmeriFirst Home Mortgage
- **Leslie Wyatt**, SoftPro

Title Topics
Free Title Industry Education
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Agenda

- Closing Disclosure
- Collaboration is King
- Accuracy and Timing
- Formatting, Disclosure of Fees
- What to Expect at the Closing Table
- Q&A

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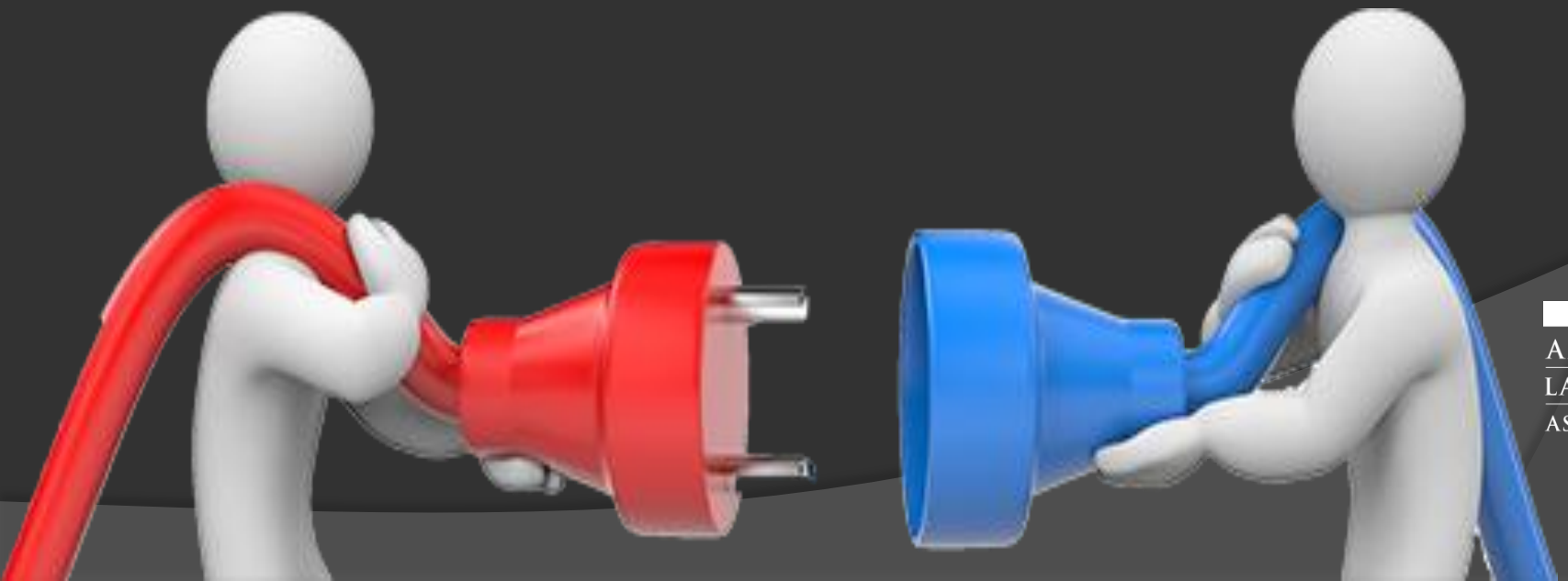
1 Closing Disclosure



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Closing Disclosure (CD)

- Two requirements placed on lender
  - Produce the CD and ensure accuracy of the information
  - Ensure the CD is received by the consumer at least three business days before consummation

While the lender can partner with the title/closing agent to perform these tasks, it is at lender's discretion and the **lender is ultimately responsible**

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Closing Disclosure (CD)

- Factors to consider who handles production and delivery
  - Process, workflow and staffing
  - Evidence of compliance
    - The creditor must retain or have available to them each completed disclosure and all documents related to such disclosures, for five years after consummation
  - Liability
    - RESPA and TILA disclosures combined in Reg Z rules

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CD is Dynamic: Variations for Pages 1 & 2

Page 1

Sale/Purchase

- Shows Sale Price
- Includes Seller information

Closing Information		Transaction Information	
Date Issued	4/15/2013	Borrower	Michael Jones and Mary Stone
Closing Date	4/15/2013		123 Anywhere Street
Disbursement Date	4/15/2013		Anytown, ST 12345
Settlement Agent	Epsilon Title Co.	Seller	Steve Cole and Amy Doe
File #	12-3456		321 Somewhere Drive
Property	456 Somewhere Ave		Anytown, ST 12345
	Anytown, ST 12345	Lender	Ficus Bank
Sale Price	$180,000		

Refinance

- Shows Appraised Prop. Value
- Seller information removed and Lender information moved up

Closing Information		Transaction Information	
Date Issued	4/15/2013	Borrower	Michael Jones and Mary Stone
Closing Date	4/15/2013		123 Anywhere Street
Disbursement Date	4/15/2013		Anytown, ST 12345
Settlement Agent	Zeta Title	Lender	Fir Bank
File #	12-3456		
Property	123 Anywhere Street		
	Anytown, ST 12345		
Appraised Prop. Value	$180,000		

Page 2

	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
Sale/Purchase Seller-Paid columns included					
Refinance Seller-Paid columns removed					

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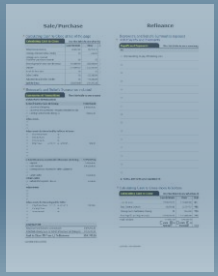
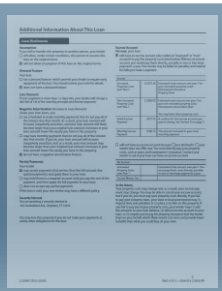
Variations for Pages 3 & 4

Page 3

Sale/Purchase	Refinance
• **Calculating Cash to Close at top** • **Includes Borrower's and Seller's Summaries**	• Calculating Cash to Close moved to bottom • Borrower's and Seller's Summaries replaced with Payoffs and Payments



Page 4

Sale/ Purchase and Refinance	Adjustable Payment Table and Adjustable Interest Rate Table appear if loan includes adjustable payments or adjustable interest	

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Variations for Page 5

Sale/Purchase

- Real Estate Broker columns included

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
Address	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
NMLS ID					
ST License ID			Z765416	Z61456	Z61616
Contact	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
Contact NMLS ID	12345				
Contact ST License ID			P16415	P51461	PT1234
Email	joesmith@ ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@ epsilontitle.com
Phone	123-456-7890		123-555-1717	321-555-7171	987-555-4321

Refinance

- Real Estate Broker columns removed and other columns made wider

Contact Information

	Lender	Mortgage Broker	Settlement Agent
Name	Ficus Bank		Zeta Title
Address	4321 Random Blvd. Somecity, ST 12340		321 Uptown Dr. Anytown, ST 12345
NMLS ID			
ST License ID			P76821
Contact	Joe Smith		Joan Taylor
Contact NMLS ID	12345		
Contact __ License ID			
Email	joesmith@ficusbank.com		joan@zt.biz
Phone	123-456-7890		555-321-9876

- Signature statement optional
  - If not required, disclosure added to Other Disclosures section at top of page

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Co-Applicant Signature Date

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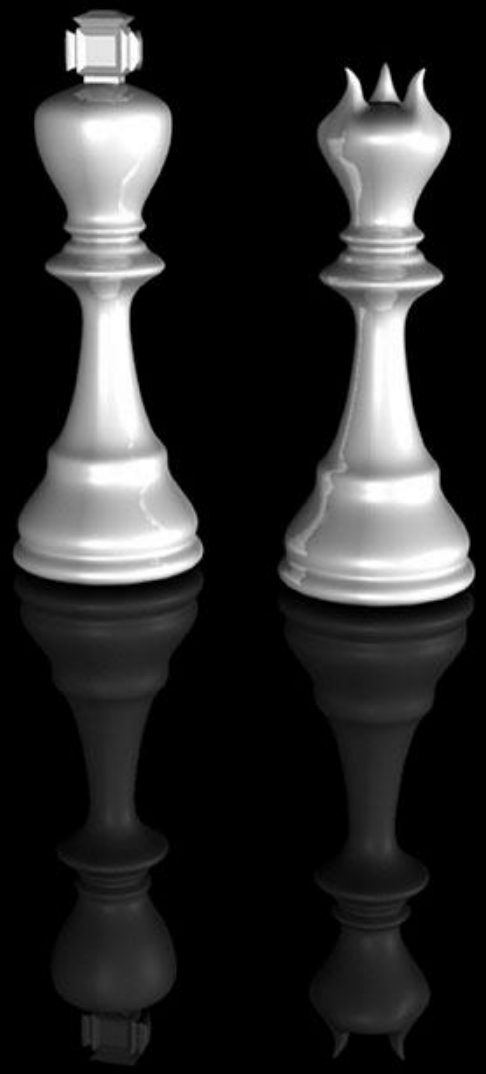
2 Collaboration is King



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Collaboration is King

- What ever decision is made …
  - Title/settlement agents and lenders must work closely
    - Managing and sharing transaction info
  - Some lenders will not want to/be able to create and deliver CD
    - How will title/settlement agent handle different lender requirements?
  - What about the seller side of the transaction?

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Collaboration is King

- Why will collaboration be necessary to prepare the CD?
  - Underlying information is located in two separate systems
    - Loan-centric info in lenders' loan origination systems
    - Property-centric info in title/settlement agent's system
  - Nature of CD requires final preparation and publication in one system

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Collaboration is King

- Electronic
  - Goal: Allow LOS and settlement systems to communicate with each other
    - Move information electronically and eliminate rekeying
      - Lender fees, calculations, etc. populated by lender
      - Title fees, prorations, property related information by settlement agent
      - End product: collaborated CD
      - Examples in progress: RealEC's Closing Insight
  - Challenges?

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Collaboration is King

- Manual
  - How will information move?
  - Pro forma CD
  - Closing Statement
  - Other
- Challenges
  - Establishing final numbers/versions
  - Non-standard communications
  - Other
  - Division of Responsibility/Liability
  - Obtaining Loan Estimate Data
  - Obtaining calculating tolerance/cures

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Collaboration is King

- Questions
  - The timing and movement of information between systems will likely be the most difficult implementation challenge
    - When will data be moved?
    - How will data be moved?
    - Who decides when data is “final”?
    - Pre-closing vs. Post-closing collaboration

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3 Accuracy, Timing

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Accuracy and Timing

- When must Closing Disclosure be provided?
  - Must be **received** by the consumer no later than **three business** days before **consummation**
  - Combines TIL three-day timing requirements under MIDA and RESPA
    - Recommended by HUD-Board Joint Report to Congress in 1998
  - Business days is the specific definition of business day
    - Includes Saturdays
    - Excludes Sunday and legal holidays

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Accuracy and Timing

Legal Public Holidays	
New Year's Day	Labor Day
Birthday of MLK, Jr.	Columbus Day
Washington's Birthday	Veterans Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

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Accuracy and Timing

- Consummation vs. Closing
  - Consummation: “the time that a consumer becomes contractually obligated on a credit transaction.”
  - State contract law controls
  - When is the borrower legally obligated to accept the loan?
    - Signing of note?
    - Funding?
    - Commitment letter?
  - Focus is on borrowers obligations not lenders

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Accuracy and Timing

- Consummation vs. Closing Cont.
  - Closing/Settlement: the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan."
    - Different in each state
  - In a table state, these two dates are likely to be the same
    - consider impact of remote closers, mobile notaries, signing services

Practice tip: Creditors should review their loan agreements and commitment letters

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Accuracy and Timing

- Delivery Method
  - Hand delivery
  - Courier/Express Mail
  - Electronic – must comply with E-Sign
  - Postal Service
- What does evidence of delivery look like?
  - Confirm receipt line on CD
  - Audit trail
  - Mailbox Rule: Presumption of receipt three business days after they are delivered or placed in the mail
    - This presumption can be rebutted by specific evidence

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Accuracy and Timing

- What if final numbers aren't known?
  - Closing disclosure must be completed to the best information reasonably available
  - Requires due diligence
    - Must try contacting provider
    - Use of available calculation tools
- What about multiple borrowers/obligors?
  - Different rules for spouses/tenants in common vs. guarantors/obligors
  - Who is the primary borrower

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Accuracy and Timing

- How to count the three days
  - For a closing scheduled for Thursday:
    - Hand deliver on Monday with confirm receipt
    - Courier/Fed Ex with signed receipt showing delivery to consumer on Monday
    - Place in U.S. mail Thursday of the previous week

- Electronic documents
  - Same timing/evidence of receipt rules above
  - E-sign requirements
    - Consumer consent
    - Notice of right to get disclosures in paper
    - Notice of software compatibility information
    - Notice of procedures to withdraw consent

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Accuracy and Timing

www.alta.org/cfpb/

Three-Day Closing Disclosure Rule

American Land Title Association
Protecting the American Dream Since 1907

Closing Date	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Disclosures Due • Hand deliver • Deliver by courier with signed receipt	Preceding Thursday	Preceding Friday	Preceding Saturday	Preceding Monday	Preceding Tuesday	Preceding Wednesday
Mail Disclosures	Preceding Monday	Preceding Tuesday	Preceding Wednesday	Preceding Thursday	Preceding Friday	Preceding Saturday

Note: If a federal holiday falls in the three-day period, add a day for disclosure delivery.

The three-day period is measured by days, not hours. Thus, disclosures must be delivered three days before closing, and not 72 hours prior to closing.

Disclosures may also be delivered electronically on the disclosures due date in compliance with E-Sign requirements.

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Accuracy and Timing

- Waiver to three-day waiting period
  - Only for bona fide personal financial emergency
- What about corrections?
  - Three-day clock starts again when:
    - Changes to the loans APR outside of tolerances, making it inaccurate (generally 1/8 of a percent or 1/4 of a percent for irregular loans)
    - Changes to the loan product
    - Addition of a prepayment penalty
  - All other changes require borrower to receive revised CD at or before consummation

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Finance Charge Chart

FINANCE CHARGE = DOLLAR COST OF CONSUMER CREDIT: It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as a condition of or incident to the extension of credit.

CHARGES ALWAYS INCLUDED

- Interest
- Transaction fees
- Loan origination fees Consumer points
- Credit guarantee insurance premiums
- Charges imposed on the creditor for purchasing the loan, which are passed on to the consumer
- Discounts for inducing payment by means other than credit
- Mortgage broker fees
- Other examples: Fee for preparing TILA disclosures; real estate construction loan inspection fees; fees for post-consummation tax or flood service policy, required credit life insurance charges

CHARGES INCLUDED UNLESS CONDITIONS ARE MET

CONDITIONS (Any loan)

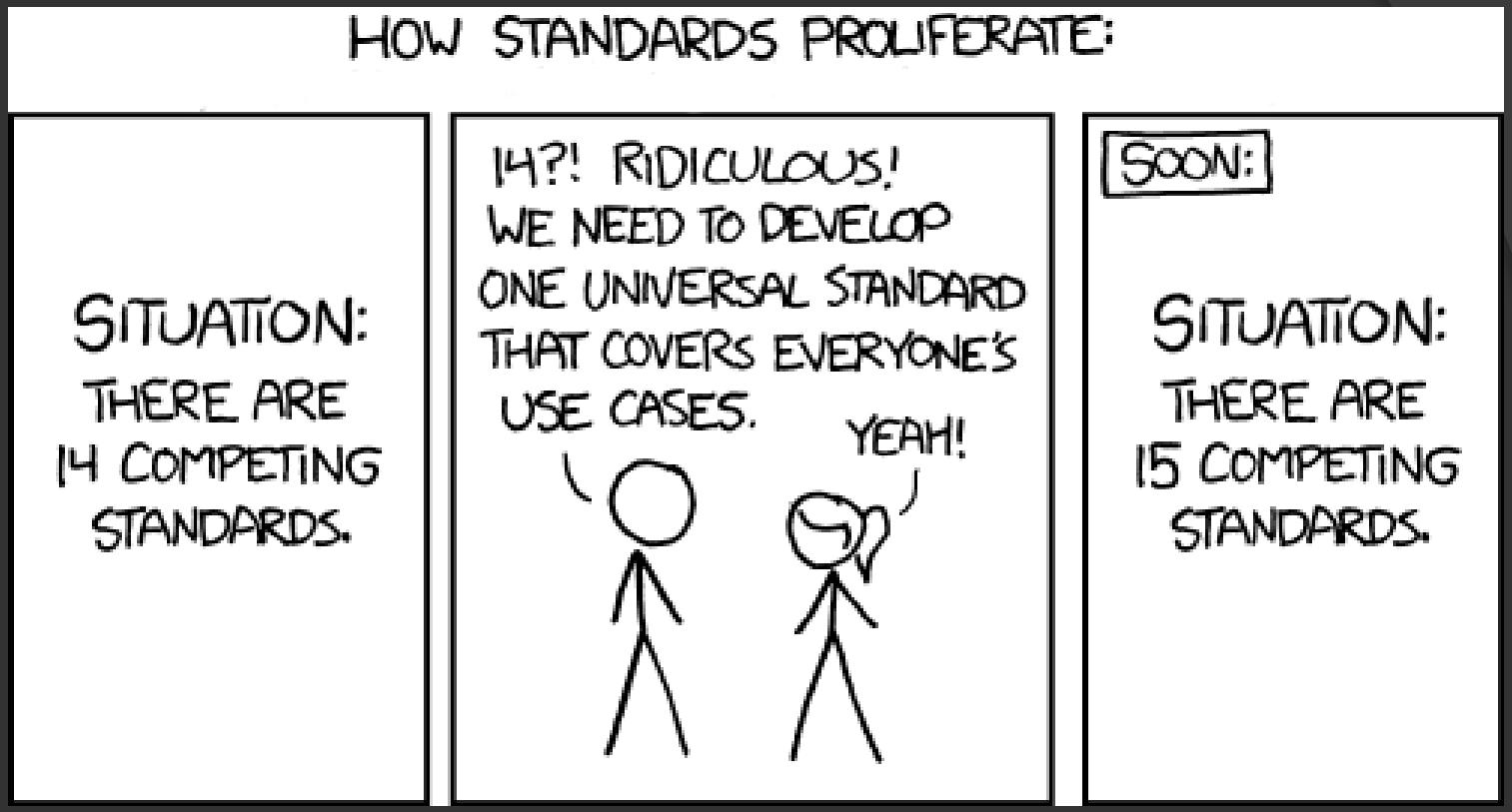
Premiums for credit life, A&H, or loss of income insurance	Insurance not required, disclosures are made, and consumer authorizes
Debt cancellation fees	Coverage not required, disclosures are made, and consumer authorizes
Premiums for property or liability insurance	Consumer selects insurance company and disclosures are made
Premiums for vendor's single interest (VSI) insurance	Insurer waives right of subrogation, consumer selects insurance company, and disclosures are made
Security interest charges (filing fees), insurance in lieu of filing fees and certain notary fees	The fee is for lien purposes, prescribed by law, payable to a third public official and is itemized and disclosed
Charges imposed by third parties	Use of the third party is not required to obtain loan and creditor does not retain the charge
Charges imposed by third-party closing agents	Creditor does not require and does not retain the fee for the particular service
Appraisal and credit report fees	Application fees, if charged to all applicants, are not finance charges. Application fees may include appraisal or credit report fees.

CHARGES NOT INCLUDED IF BONA FIDE AND REASONABLE IN AMOUNT (Residential mortgage transactions and loans secured by real estate)

- Fees for title insurance, title examination, property survey, etc.
- Fees for preparing loan documents, mortgages, and other settlement documents
- Amounts required to be paid into escrow, if not otherwise included in the finance charge
- Notary fees
- Pre-consummation flood and pest inspection fees
- Appraisal and credit report fees

CHARGES NEVER INCLUDED

- Charges payable in a comparable cash transaction.
- Fees for unanticipated late payments
- Overdraft fees not agreed to in writing
- Seller's points
- Participation or membership fees
- Discount offered by the seller to induce payment by cash or other means not involving the use of a credit card
- Interest forfeited as a result of interest reduction required by law
- Charges absorbed by the creditor as a cost of doing business



4 Formatting, Disclosure of Fees

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Formatting, Disclosure of Fees

- Itemization
- Clear language
- Consistent terminology
- Abbreviations may be used
- Items must be in alpha order
- Some limits in number of items under certain subheadings
- Use of addenda

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Formatting, Disclosure of Fees

- Title fees
  - All title insurance charges (including closing fee) must be designated by "Title – [description of fee]"
- Lenders policy
  - Services you can shop for category
  - How to calculate: Full premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy
  - Can use enhanced policy or endorsements if the lender knows that these products will be purchased

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Formatting, Disclosure of Fees

- Owner's policy
  - Services you can shop for category
  - Other category
  - Must be listed as "optional"
  - How to calculate
    - Full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage

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Formatting, Disclosure of Fees

- What does this mean to me?
  - Items likely to appear in different places within a subheading for each transaction
  - Lenders may name similar items differently
  - All parties must collaborate to establish communication of accurate data and responsibilities and expectations

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Formatting, Disclosure of Fees

- Simultaneous issue
  - The problem
    - When both a loan and owner's title insurance policies will be purchased in a transaction (called "simultaneous issuance") the TRID requires the lender or settlement agent to inaccurately disclose the title premiums on the Closing Disclosure
  - Why is this a problem?
    - In roughly half the states, a consumer is entitled to discount on loan title insurance policy when an owner's policy will be simultaneously issued
  - How does the Rule handle:
    - Regardless of lower, actual simultaneous issue rate for Lender's Policy (LTP), pricing to be shown at full rate (even on CD)
    - If an Owner's Policy (OTP) is also purchased, rate shown for OP is in accordance with CFPB formula – again, not the actual rate charged

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The Rule vs. Reality

The Rule	Reality
OTP Disclosure = OTP Premium + LTP Simultaneous Premium – Full LTP Premium	OTP Actual Charged = Full OTP Premium
LTP Disclosure = Full LTP Premium (with no discounts for Simultaneous Issue)	LTP Actual = LTP Simultaneous Premium
OTP Disclosure = $368 $1,237 (OTP Premium) + $350 (LTP Simultaneous Premium) – $1,219 (Full LTP Premium	OTP Actual Charged = $1,237
LTP Disclosure = $1,219	LTP Actual = $350

Numbers from Colorado using $200,000 sales price and $190,000 loan

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Where the rubber meets the road!

5 What to Expect at the Closing Table

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Closing Table

- Will be governed by four main documents
  - Borrower's Closing Disclosure (updated at or before consummation)
  - Seller's Closing Disclosure (provided at or before consummation
  - Final Closing Statement (prepared by the settlement agent)
  - Lender's Closing Instructions

- All documents have different purposes but should match on bottom line

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Closing Table

- What is a Closing Statement?
  - A statement showing the actual disbursement of funds in the transaction
  - Groups charges into certain categories
  - Can show both seller and buyer amounts or limit to one side

Date: April 14, 2015
Escrow No.: 12-3456

Page 1 of 2

EPSILON TITLE COMPANY
123 Commerce Place, Somecity, ST 12344
987-555-4321 • FAX xxx-xxx-xxxx

DATE: 04/15/2013 **TIME:** 1:25 PM
ESCROW NO.: 12-3456
ESCROW OFFICER: Sarah Arnold **SETTLEMENT DATE:** 04/15/2013

MASTER CLOSING STATEMENT

SELLER: Steve Cole and Amy Doe
BUYER: Michael Jones and Mary Stone
PROPERTY: 456 Somewhere Ave., Anytown, ST 12345

SELLER			BUYER	
$ DEBITS	$ CREDITS		$ DEBITS	$ CREDITS
		FINANCIAL:		
	180,000.00	Total Consideration	180,000.00	
		Deposit- Michael Jones		10,000.00
		New 1st Trust Deed to Ficus Bank		162,000.00
		PRORATIONS/ADJUSTMENTS:		
365.04		County Taxes from 01/01/13 to 04/14/13		365.04
	80.00	HOA Dues from 04/15/13 to 04/30/13	80.00	
2,500.00		Seller Credit		2,500.00

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Closing Table

- Why is a Closing Statement Used?
  - Settlement agents regulatory compliance
  - Additional Information not shown on Closing Disclosure
  - Clarification of (Conflicting) Information shown on the Closing Disclosure
  - Closing (Settlement) Date vs. Closing (Consummation) Date
  - Itemization of Aggregated Fees
  - Special CFPB rule – disclosure of certain title insurance premiums

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Closing Table

- Two Potential Forms
  - Combined Disclosure – Form H-25(A)
  - Separate Seller's Disclosure – Form H-25(I)
- Who prepares and delivers the Seller's Disclosure?
  - Delivery by the settlement agent
    - Three-day delivery rule applicable?
  - At or before the consummation
  - Copy to the buyer's lender; timing

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Bonus: Post-closing Issues

- General rules
  - CD must show the actual charges imposed on or paid by the consumer
    - except for title insurance charges and items for which average charge conditions were satisfied
  - If CD becomes inaccurate before consummation, the creditor shall send corrected disclosures so that the consumer receives the corrected disclosures at or before consummation.
  - These changes are still subject to good faith requirements (tolerances)
  - Once the initial CD is issued, all changes should be made via an update CD (no more LE)

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Post-closing

- If changes occur post-closing
  - If, within 30 days after closing, an event changes that results in a change to borrower-paid charge from final disclosure, the creditor must provide corrected disclosure within 30 days of receiving that information.
  - “Non-numeric” clerical error
    - Must correct within 60 days of closing.
  - Seller Paid Items
    - settlement agent to correct 30 days after receipt of changed information.
  - Refunds
    - Must provide refunds for tolerance cures and corrected disclosures within 60 days of closing

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ALTA Conferences/Training

- Business Strategies Conference
  - March18-20, Philadelphia

  meetings.alta.org/bsc

- RESPA/TILA Integration Forums
  - March 5, Dallas
  - March 26, Chicago
  - April 16, Washington, D.C.

  meetings.alta.org/respa-tila

- TILA-RESPA Integrated Disclosure Rule Training DVD
  - 90+ minutes to get staff, customers up to speed
  - Lunch and Learn material

  alta.org/lti/tridtraining

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