



# LEGAL UPDATE

A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

## Transaction Time Frame Recalibration

**Proposed effective date: October 3, 2015**

Under the Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure (TRID) rules, there are new disclosure forms to be used in the loan application and closing processes, along with new rules regarding the preparation and delivery of the new forms. There are concerns that implementation of the TRID rules will lead to situations ripe for closing delays. Commentators, lenders, title insurance companies and others have made recommendations for structuring residential real estate transactions to avoid last-minute changes and other high risk scenarios where a change could postpone the closing. This *Legal Update* reviews various strategies and discusses WRA forms that may be used in Wisconsin transactions to help avoid TRID closing delays.

## TRID Overview

The HUD-1 settlement statement and Good Faith Estimate forms are going away in most residential consumer mortgage transactions. The Truth in Lending Act disclosure for loan applicants is going away as well. In their place will be a new Closing Disclosure form and a new Loan Estimate form created by the Consumer Financial Protection Bureau (CFPB). There will be changes to the closing process as well, including new timing constraints putting a premium on having all closing issues, costs and credits decided a week to 10 days prior to closing. Last-minute changes may result in closing delays. These new forms and rules go into effect in real estate transactions where the buyer first applies for a loan on or after October 3, 2015.

The TRID rules blend the disclosure forms that consumers previously received when they applied for a mortgage with new requirements from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This new, so-called integration or blending is designed to improve consumer understanding of the mortgage process, aid in comparison shopping, and help prevent consumers being surprised regarding the terms of their mortgage at the closing table.

The TRID rule, however, also creates new timing requirements for the lenders' delivery of these disclosures to consumers and potential closing delays. Certain changes to the numbers right before closing may delay a transaction because they require a reissuance of the Consumer Disclosure and trigger additional mandatory delivery and waiting periods of three business days or more prior to closing. Other changes may

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cause lender delays while waiting for lender approval. In either case, TRID creates an enhanced potential for pushing the closing past the closing date on the accepted offer to purchase.

TRID applies to most closed-end consumer mortgage loans, including buyer loans in residential, vacant land, condominium unit, timeshare and other transactions where the buyer will take a loan primarily for personal, family, or household purposes that is secured by real property. The rule does not apply to home equity lines of credit (HELOCs), reverse mortgages, mortgages secured by mobile homes or by dwellings not attached to a property, or creditors that make five or fewer mortgage loans in one year.

### ① MORE INFORMATION

For background information regarding the Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure (TRID) rules and an overview of the changes made, see the April 2015 *Legal Update*, "RESPA/TILA Integration Overview," at [www.wra.org/LU15.04](http://www.wra.org/LU15.04). For a detailed run through of the Loan Estimate, Closing Disclosure and other related forms, see the May 2015 *Legal Update*, "New RESPA/TILA Disclosure Forms," at [www.wra.org/LU1505](http://www.wra.org/LU1505). Also see the resources at [www.wra.org/TRID](http://www.wra.org/TRID).

## Communication key to assist with consumer disclosure preparation

Lenders in many cases will prepare the Closing Disclosure, a departure from the familiar practice of title company closing agents preparing the HUD-1 closing statement. Because of the new waiting periods under the TRID rules, the lenders will begin preparing the Closing Disclosure at a time that may seem to be very early in some cases. The lenders are responsible for the accuracy of the Closing Disclosure and want to avoid having to make corrections at the last minute that might cause a delay in the closing. Accordingly real estate licensees would be wise to provide all needed information, costs and invoices to lenders and title companies as soon as possible to assist in these efforts to avoid closing delays.

Real estate agents should be prepared to keep all parties informed of any amendments, changes or updates, no matter how minor, since last-minute changes have the potential to cause significant delays. Continued communication between lenders and real estate agents during a transaction is important, as is making sure everyone – including the buyer and the seller – are on the same page throughout the transaction. Lenders, title companies and REALTORS® should work together on behalf of clients and customers to manage their expectations as they move forward with buying or selling a home.

## Six things real estate agents need to know about TRID

- 1. Explanations for consumers:** Be able to generally explain the new Loan Estimate and Closing Disclosure. See the May 2015 Legal Update, “New RESPA/TILA Disclosure Forms,” at [www.wra.org/LU1505](http://www.wra.org/LU1505) and the Consumer Financial Protection Bureau filled-in sample forms at [www.consumerfinance.gov/regulatory-implementation/tila-respa](http://www.consumerfinance.gov/regulatory-implementation/tila-respa).
- 2. Closing disclosure delivery timelines:** The timing of closings is impacted by the disclosure delivery rules. As part of the TRID rules, the CFPB determined that borrowers would be better served by having a short time to review the new Closing Disclosure prior to signing their loan documents and closing. As a result, buyers must have three business days after receipt of the Closing Disclosure to review the form and its contents. The three-day review period starts upon the buyer’s “receipt” of the form. Unless some positive confirmation of the buyer’s receipt of the form, such as hand delivery or signed receipt, is obtained, the form is deemed “received” three days after the delivery process is started (i.e. mailing). As a result, the combination of the “delivery time period” and the “review time period” results in six business days from mailing to loan signing. Sundays are not counted, with the result that if a Closing Disclosure is going to be mailed, it must be mailed a week before closing. See the Closing Disclosure deadlines chart on page 9 of this *Update*.
- 3. Extra transaction time:** Allow ample time when drafting offers. Build extra time into offers and contingencies to protect against experiencing closing delays and all of the extra time and expense required to engineer alternate living, moving and storage arrangements for the parties. NAR has suggested adding 30 days into the transaction. Use your judgment – but lengthening the transactions timeline by at least 15 days, at least at first, may be wise.
- 4. Avoid deadlines set right before closing:** Avoid running contingency deadlines right up to or concurrent with the closing date, particularly with any financing contingency or appraisal contingency. Don’t extend or set deadlines for provisions or contingencies less than 10 days before closing and finalize all details well in advance of closing. It is prudent to make sure there is ample time for the lender and the appraiser to accomplish their tasks before closing so that if loan underwriting or the appraised value triggers changes in the loan terms and expenses, those items can be captured in the first Closing Disclosure. Ask your area lenders and appraisers for suggestions as to reasonable time frames.
- 5. Multiple closing disclosures:** A buyer may receive more than one Closing Disclosure. Since the buyer will receive a Closing Disclosure several days before the closing and likely a few days before a walk-through on the property, buyers may receive a new, adjusted Closing Disclosure one business day before closing showing any changes that occurred since the initial disclosure. But changes may not end there, and the CFPB mandates that changes in financial disclosure numbers, such as changes in a recording fee, in any amount must be re-disclosed, even after closing.
- 6. Sellers and brokers left out in the cold:** Be aware that sellers and brokers may not be able to obtain a copy of the Closing Disclosure, at least not without buyer permission, due to the high level of private and confidential buyer information contained in that form. Never fear, there are alternatives in the works. Sellers and brokers may receive a redacted version of the Closing Disclosure, but better solutions are the Closing Disclosure “page 6” that may be created by the title company in the transaction or the new settlement (closing) statements crafted by the American Land Title Association (ALTA). See the information on page 7 of this *Update*.

## How might the timing of a closing be impacted by closing disclosure delivery?

The TRID rules require that buyers have three business days after receipt of the Closing Disclosure to review the form and its contents prior to signing loan documents. If the Closing Disclosure is mailed, it must be mailed a week in advance as shown in the deadlines chart on page 9 of this *Update*. If there is a federal holiday within that week, add another day making the time frame eight days.

After delivery of the initial Closing Disclosure, certain changes may require a re-disclosure and a new waiting period:

- Increase of APR by greater than 1/8% (.125%).
- Change in the loan program such as a fixed rate loan changed to an adjustable rate mortgage.
- Addition of pre-payment penalty after the initial disclosure.

NAR analysts say the new procedures could prove challenging for two reasons. First, the CFPB is requiring the Closing Disclosure to be given to the buyer three days before closing. That’s to allow consumers time to look carefully at any deviations from the original estimates rather than make them consider the changes while the closing is underway. That’s a positive change for consumers, but it means those who are used to getting everything done at the last minute will have to do a better job of

planning ahead to accommodate the new rules.

Any changes to the loan product or the interest rate once the Closing Disclosure has been given to the buyer could trigger a new three-day waiting period. Other changes requiring lender approval could also add time to the waiting period.

NAR recommends a cushion of seven to 10 days before closing to get everything done. To that end, make sure that sellers do nothing at the last minute that could derail a transaction, like removing a light fixture that they agreed in the sales contract to leave in the house. See "The Pain of Fixture Feuds," in the May 2015 *REALTOR® Magazine* at [realtormag.realtor.org/home-and-design/feature/article/2015/05/pain-fixture-feuds](http://realtormag.realtor.org/home-and-design/feature/article/2015/05/pain-fixture-feuds).

The CFPB is of the mind that the triggering of a new Closing Disclosure and another waiting period will be a rare occurrence. The CFPB advises that while many things can change in the days leading up to closing, most changes will not require the lender to give the buyer three more business days to review the new Closing Disclosure terms before closing. The new rule allows for ordinary changes that do not alter the basic terms of the deal. For example, the CFPB has indicated the following circumstances do not require a new three-day review:

- Unexpected discoveries on a walk-through such as a broken refrigerator or a missing stove, even if they require seller credits to the buyer.
- Most changes to payments made at closing, including the amount of the real estate commission, taxes and utilities proration, and the amount paid into escrow.
- Typos found at the closing table.

## What types of changes will require a revised closing disclosure?

While the addition of a prepayment penalty to the buyer's loan or a buyer's decision to change the type of loan seem essentially self-evident and likely will be rare, the mystery seems to be what kind of changes will increase the APR by 1/8 percent or more? That is the big question, and various professionals involved in the TRID process are reluctant to speculate. Instead they say that it will be a case-by-case basis depending on the details of the buyer's loan transaction. Those who offer possible examples do not all seem to agree.



Some professionals have speculated that items that have the potential to trigger a new closing disclosure and an additional waiting period may be items that buyers sometimes pay for at the last minute. This might include shared expenses with the seller, a home warranty plan a buyer decides to purchase at the last minute, or the buyer's assumption or entry into a split payment arrangement regarding just-discovered special assessments (could affect their escrows with the lender). If the seller must provide an additional credit to the buyer because the seller failed to complete inspection contingency repairs, this may alter the APR enough to require re-disclosure with a new Closing Disclosure and another three-business-day waiting period or one week if mailed. A change that reduces the amount of the downpayment or changes the purchase price also has the potential to alter the APR.

Lenders are the best equipped to provide a good answer, especially with regard to a particular transaction. In general terms, APR's are typically affected by changes to origination/discount fees; lender fees for delivery, processing, underwriting, administrative, flood, tax service; closing title fees; title courier fees; home counseling fees; recording fees; and daily interest calculations (prepaid fee).

What is clear is that nobody knows for sure what will happen in transactions to trigger closing delays as we venture into the world of TRID.

## Information for Consumers about Transaction Timing and Closings

While real estate professionals do not have any direct responsibilities under the TRID rules, and TRID will not generally impact the day-to-day processing of real estate transactions, their clients and customers may look to them for information about the new rules and forms, as well as the impact on both the loan process and the closing of the transaction. Thus, real estate brokers and agents still have a role in the process. Real estate professionals need to educate their clients about what has changed and help them understand that the transaction may take longer. In addition, clients also need to be educated about the possibility for closing delays and should be wary of scheduling back-to-back closings, as there is risk that one of the transactions may be delayed. Finally, real estate professionals need to help their clients understand that attempts at last-minute negotiations could derail the closing, so the parties should try to have all issues resolved well in advance of closing. In particular, changes made within the three-business-day waiting could cause a delay to the closing.

To that end, the WRA has created an educational handout for the parties to residential transactions called Information for Consumers about Transaction Timing and Closings. See the copy of this form on pages 10-11 of this *Update*. This consumer handout can be used to help inform and educate the parties to transactions subject to the TRID rules. Changing the timelines and consumer expectations in residential loan transactions will help guard against the risk of having the closing delayed.

The consumer education handout explains that changes are coming in the consumer forms used to disclose the costs and terms of the buyer's loan and the real estate transaction closing costs. These changes first go into effect starting with loans buyers apply for on or after October 3,

2015. The handout explains the types of residential transactions where TRID applies, and stresses the need to avoid closing delays and the upheaval to moving arrangements that this can cause. The parties are alerted that certain changes made in the transaction at the last minute may cause closing delays.

The buyer learns that he or she will receive a new three-page Loan Estimate form and a “Your Home Loan Toolkit” booklet within three business days after the loan application, and at the end of the real estate transaction, he or she will see a new five-page Closing Disclosure form that discloses the loan and transaction terms and costs. The lender must deliver the Closing Disclosure to the buyer either by personal delivery at least three business days before closing, or by mailing or via other delivery methods at least seven days before closing. Certain last-minute changes in the transaction that increase amounts the buyer must pay or change some of the closing numbers may mean that the lender must provide a new Closing Disclosure that, once again, must be personally delivered to the buyer at least three business days before closing, or mailed at least seven days before closing. This may delay the closing beyond the closing day in the offer to purchase.

The parties are advised that the way that the title insurance costs are reported on these disclosure forms may seem odd and that they should ask the title insurance company closing agent for an explanation. They are told that the new forms say that an owner’s title insurance policy is optional, but Wisconsin offers to purchase indicate the seller will provide and pay for the owner’s title insurance policy, while the buyer provides and pays for the lender’s title insurance policy.

The avoidance of domino transaction and the importance of free-flowing communication is emphasized. The end of the handout lists considerations for the drafting of an offer, including the use of the WRA Addendum TR or other closing extension language, setting deadlines at least 10 days before closing, ordering title insurance 30 days before closing, using a local or broker-recommended lender, obtaining a financing pre-approval, asking the lender about reasonable loan timelines, settling all issues well before closing and avoiding last minute changes or disputes.



#### REALTOR® Practice Tip

This Information for Consumers about Transaction Timing and Closings handout is available on the WRA website at [www.wra.org/TRID](http://www.wra.org/TRID) and will be available on zipForm. It will also appear in zipForm layered over the top/immediately before all offers where the transaction will likely be under TRID as the effective date approaches, thus requiring the drafter to consider presenting and reviewing the handout with the buyer and the seller.

## Addendum TR to the Offer to Purchase – Timelines and Closing

The WRA has created an optional addendum that brokers and agents can use when they draft offers to purchase in transactions covered by TRID. A sample copy of the WRA Addendum TR to the Offer to Purchase

– Timelines and Closing appears on pages 12-13 of this *Update*. This is an optional addendum and it has no optional or mandatory use date because it is not an REEB, state-required form. It is intended to assist members when drafting offers to try to help avoid creating any situations where a TRID delay might occur. The provisions in the Addendum are all optional, and thus the drafter should carefully select those provisions needed in the specific transaction. Unless there is already a similar provision in the contract or another addendum, it may be wise to include them all to be on the safe side.

### Transactions affected by TRID

Since the transactions covered by TRID are consumer transactions where there is a loan primarily for personal, family, or household purposes that is secured by real property, it is anticipated that the Addendum TR would potentially be used with the WB-11 Residential Offer to Purchase, the WB-13 Vacant Land Offer to Purchase (depending upon the purpose of the purchase), the WB-14 Residential Condominium Offer to Purchase, the WB-26 Timeshare Contract (Sale by Developer) or the WB-27 Time Share Contract (Resale by Non-Developer). It may be used with other contracts as appropriate.

### Closing date extension

One important issue is how should an offer to purchase or other purchase contract address delays in closings caused by the TRID requirements, particularly an additional waiting period for a revised Closing Disclosure. Most purchase contracts, including the REEB offers to purchase, require the buyer to close on or before a certain date. Since TRID may cause delays in the transaction through no fault of the buyer, purchase contracts need to be adjusted so that the buyer is not in breach of the agreement for not closing on a certain date. Otherwise the buyer will be in breach of contract unless a last-minute extension can be negotiated.

While TRID will cause a reset in the three-business-day waiting period in certain instances, the lender may also cause delays due to the new tolerance limitations. For example, a problem with the home’s plumbing could potentially require the lender to seek a new valuation of the property, which in turn could require new disclosures and a delay in the transaction. Thus, the buyer’s obligation to close on a certain date raises a risk of default since the potential for delays can cause this date to move.

There is uncertainty, however, with regard when and how frequently new Closing Disclosures will result in closing delays and how this should be addressed in real estate transaction forms. NAR reports that some states are drafting new contract language to extend the closing as may be needed to comply with the TRID mandatory disclosure requirements, while some states already have closing language in their contracts that is believed to be sufficiently flexible to account for the TRID issues. Others are taking a wait-and-see approach to see how this plays out before making any changes to the purchase contract. NAR does not have a recommendation in this regard.

In Wisconsin, the approach will be a bit of a combination: the WRA is providing an optional addendum that contains closing date extension language and will watch to see the impact on transactions. Going forward, such language potentially may be incorporated into the REEB-approved offer to purchase forms should this be necessary.

In the Closing Date Extension provision in Addendum TR, the buyer

may deliver written notice to the seller if the closing cannot be held by the closing date specified in the offer due to TRID requirements or resulting lender issues. Delivery of buyer's notice will extend the closing date for the period necessary to account for the TRID delay. The maximum extension allowance will be for the number of business days stated in the blank, with the default being seven business days.



#### **REALTOR® Practice Tip**

Since the buyer will have no notion about how long a potential delay might be when the offer is drafted, the buyer may wish to consider that if the Closing Disclosure is mailed, that would be seven days and it might take a couple of days to prepare the revised Closing Disclosure, depending upon who and where the information is coming from and where the lender is located.

#### **Additional closing date extension**

One consideration that is frequently heard is to avoid back-to-back or domino closings. In a string of interconnected closings, it is easy to see if one closing is delayed three business days or maybe even only one business day, the delay will trickle on down the line.

Despite diligent planning and scheduling, if the buyer in the transaction needs the proceeds of another transaction in order to purchase a new residential property and that transaction is postponed due to TRID issues, the Additional Closing Date Extension provision allows the buyer to deliver written notice to the seller if the other transaction is delayed due to TRID requirements and, in turn, extend the closing date to account for the delay in the other transaction. Delivery of the buyer's notice will extend the closing date for up to the number of business days stated in the blank, with the default being seven business days.

Since the buyer will have no idea how long a potential delay might be when the offer is drafted, the buyer may wish to consider the circumstances as known at that point and make his or her best guess. It is a bit of a difficult call because it will be unfortunate to set an overly long potential delay that is not favorably viewed — and perhaps not accepted by the seller — but to not allow enough time for the correction of the TRID delay would also defeat the purpose of the provision.

#### **Buyer's financing pre-approval**

The Addendum TR contains a Buyer's Financing Pre-Approval provision.

#### ***What's the difference between being pre-qualified and pre-approved for a mortgage?***

According to the CFPB, pre-qualification is a lender's estimate of how much a buyer could be eligible to borrow based on the information he or she supplies. Pre-qualification does not mean that a buyer will get the loan. Pre-qualifications are usually free.

Pre-approval, on the other hand, usually means that the lender is ready to make a mortgage loan to the buyer based on the information and documentation he or she provided at the time the pre-approval was requested. The pre-approval will say how long it is valid for and may contain some other conditions that must be met before for the buyer can get the loan. The lender may not require that the buyer pay any fees except the cost of a credit report at this time. If the information received at the time of the pre-approval request is the six pieces of information constituting a loan application under the TRID rules, the buyer may receive a Loan Estimate.

While having a pre-qualification is surely better than nothing at all, it is far more informative for the buyer to obtain a pre-approval. The provision in the Addendum TR requires the buyer to deliver a loan pre-approval to the seller within seven days of acceptance of the offer. The pre-approval is to be from a lending institution or mortgage broker and based on factors such as satisfactory credit history, employment verification, accepted offer terms, buyer income and debt ratios. If the buyer does not deliver a loan pre-approval within the seven days, the seller may deliver a written notice of termination to the buyer. This must occur before the seller's actual receipt of the buyer's pre-approval, but no later than 15 days after acceptance of the offer.

**“Since TRID may cause delays in the transaction through no fault of the buyer, purchase contracts need to be adjusted so that the buyer is not in breach of the agreement for not closing on a certain date.”**

The time frames in this provision are similar to those in the Seller Termination Rights subsection of the Financing Contingency in the offers. A buyer has a grace period past the seven-day deadline stated for the delivery of a loan pre-approval. The buyer can still submit a financing pre-approval that will be considered timely as long as the seller does not first deliver a notice of termination to the buyer. The seller's ability to deliver a notice of termination, however, is capped in the Buyer Financing Pre-Approval provision at 15 days after acceptance. If the seller believes that the absence of the pre-approval is a significant shortcoming and wishes to end the deal on that basis, this decision will need to be made early on. The seller is not allowed to keep this in reserve as a “pull the plug” card in his or her back pocket in the event the seller later decides that he or she wants out of the transaction.

#### **Contact information for closing disclosure**

The real estate company and agent names, the brokerage company address, the state license numbers of the company and the agent, as well as an email address and telephone number appear on the last page of the Closing Disclosure for the broker working with the seller and the broker working with the buyer. REALTORS® should be prepared to provide this information to the buyer's lender and/or the settlement agent. The lender is responsible to include this on the Closing Disclosure.

Rather than risking a situation where an agent forgets to provide this information, Addendum TR proactively supplies the needed details. It is far better to include this contact information from the beginning than to be in the position where the lender is late with delivery of the Closing Disclosure and points to a broker's failure to provide a license number as a reason for a tardy Closing Disclosure delivery and a delayed closing.

**REALTOR® Practice Tip**

License number information is available at from the Wisconsin Department of Safety and Professional Services on the Credentialing/Licensing Search page at <https://app.wi.gov/licensesearch>.

**Other drafting considerations**

The second page of Addendum TR includes two standard provisions: Reading/Understanding and Conflicting Provisions. After the lines for party initials and dates, the Addendum also provides some Other Drafting considerations.

**1. Transaction timeline**

The Addendum TR suggests adding an additional 15 days to the transaction timeline. If the transaction ordinarily would have been 45 days from acceptance to closing, this suggestion is to make it 60 days. Various commentators have suggested different timelines, ranging from adding a week to 15 days to 30 days. One title company attorney suggests planning to close 10 days before the closing date in the offer so that if the lender has to revise the Closing Disclosure and wait out the three (3) business days again, the parties will not be in violation of the offer.

Given the possibility of changes triggering another waiting period or a last-minute change requiring lender approval, the parties will be wise to give themselves an additional 15 days to complete a closing. That means if closings in the local market area typically take 30 days, allow 45 days. Over time, as the industry adjusts to the changes, those additional days might no longer be necessary. But for now, it is best to plan for a longer process and see what impacts are experienced during the first several months.

**2. Provision and contingency deadlines**

The suggestion here is to avoid running contingency and provision deadlines right up to just before the closing date and instead have them conclude at least 10 days before closing. If the lenders are going to want all information from both sides of the transaction at least 10 days before closing, it is best that these provisions have run to completion. Allowing contingencies to hang unresolved would seem to be inviting possible problems and last-minute changes.

**3. Financing and appraisal contingency time frames**

Because it is the lenders who are centrally involved with the Financing Contingency and the Appraisal Contingency it stands to reason that leaving the result of the appraisal to the last minute and not allowing time for the loan processing may create difficulties for lenders who are trying to have everything squared away well in advance of the closing date.

**4. Walk-throughs**

NAR has been advising brokers to schedule the buyer's walk-through well before the closing date so if anything is amiss, issues can be worked out well before the closing. NAR has also suggested that purchase contracts include more than one walk-through: one to look at the seller's repairs and another to reassure the buyer that the property has not been damaged since the date of the offer.

The WRA chose to include a drafting consideration regarding this recommendation so that brokers can consider whether this would be helpful. While many commentators have expressed concern that viewing of the seller's repairs just before closing may create issues that result in Closing Disclosure changes, the CFPB Director Richard Cordray has indicated that, "The timing of the closing date is not going to change based on the final walk-through." Also many Wisconsin brokers have in the past expressed misgivings about creating opportunities for the buyer to find additional "defects" or other conditions that require repairs, or simply provide reasons for the buyer to back out of the transaction. Although the creation of an alternate inspection contingency that had its own separate opportunity to look at the seller's repairs was contemplated, it was decided that it was better to let each broker make its own independent decision of whether that is a beneficial approach.

While some may believe that the answer would be to modify the existing walk-through provision in the REEB offers, the Buyer's Pre-Closing Walk-Through provision, such as on lines 202-205 of the WB-11 Residential Offer to Purchase, is not an optional provision. The modification of a non-optional provision in a preprinted addendum would need to comply with Wis. Admin. Code § REEB 16.06(5). To supplant or alter the preprinted provisions of an approved form in a pre-prepared addendum, the addendum can have no blank lines or multiple choice provisions. Those who may wish to pursue modification of the walk-through provision to change the timing of the final walk-through would need to use a separate, attorney-drafted addendum in order to be in compliance with the forms rules.

**REALTOR® Practice Tip**

The Addendum TR to the Offer to Purchase – Timelines and Closings is available on the WRA website at [www.wra.org/TRID](http://www.wra.org/TRID) and will be available on zipForm.

## Contingency Planning

Other considerations when planning for TRID transactions may include the following.

**Time is of the essence**

A possible consideration for brokers may be to line out the closing date in the Time is of the Essence provision, particularly if a Closing Date Extension provision is not added to the offer. If time is not of the essence for the closing date, then the parties need only to close within a reasonable time, depending upon the circumstances. This would serve to allow wiggle room should there be a TRID delay in closing.

**Working with delays**

Should the worst case scenario come about and the closing is delayed past the date in the offer, the buyer can take advantage of the Closing Date Extension provision in the Addendum TR or other similar closing extension provision. A written notice would need to be prepared and delivered to the seller under the Addendum TR provision.

That means the closing can be extended but that leaves the logistics of accommodations for the parties and storage of their belongings. Having a list of possible hotels and storage facilities may be useful.

In some cases the better solution might be to use an Addendum O if permitted by the lender to allow the parties and property to move as scheduled, with the buyer taking advantage of a pre-closing occupancy.



#### REALTOR® Practice Tip

Addendum O is available from the WRA in hard copy and on zipForm. See the January 2010 *Legal Update*, “Updating Addendum A, Addendum O and Property Condition Reports,” at [www.wra.org/LU1001](http://www.wra.org/LU1001) for information regarding Addendum O.

### Closing statements

Lenders are taking the position that privacy laws restrict their ability to share the Closing Disclosure with sellers and real estate professionals and will only share the Closing Disclosure after consent is obtained from the buyer. Alternatively there has been conversation about providing a redacted Closing Disclosure with all private buyer information blacked out.

A much better solution has come from the American Land Title Association (ALTA) which has developed standardized ALTA Settlement Statements for title insurance and settlement companies to use to itemize all the fees and charges that both the homebuyer and seller must pay during the settlement process of a housing transaction. The ALTA Settlement Statement is not meant to replace the Closing Disclosure, which goes into effect on October 3, 2015. Four versions of the ALTA Settlement Statement are available at [www.alta.org/cfpb/documents.cfm](http://www.alta.org/cfpb/documents.cfm)



#### REALTOR® Practice Tip

The good news is that there will be meaningful closing statements available from many title companies for brokers and sellers that itemize the information that they need to have. Unfortunately it does mean there will be another new form or forms for real estate professionals to become familiar with.

### Impact on appraisers

Appraisers are involved with TRID because they provide a price quote for the appraisal fee and a due date very early in the loan application process. That information will be included on the Loan Estimate given to the buyer. There is a mandatory three-business-day waiting period to allow the buyer to review loan costs.

Appraisal fees will not be able to be charged prior to the buyer's confirmation of the intent to proceed with the loan after issuance of the Loan Estimate. Because the appraiser's service is not one the consumer can shop around for, appraisal fees are included in the CFPB's zero tolerance section, which means they cannot be increased unless there is a valid change of circumstance. For example, an appraisal ordered for a condominium unit when the property is a single family residence or another property type with a different schedule of appraisal fees is a valid changed circumstance. But such situations would be unusual and not the norm.

After providing the initial fee quote, if the appraiser discovers

challenging aspects of the property or other factors that justify an increased fee, the appraiser must contact the client (lender) immediately because the lender will likely then need to provide a revised Loan Estimate and retrigger the three-business-day waiting period. This may impact mortgage interest rate loan lock dates as well, and these are stated on the Loan Estimate. That may also be the case if the appraisal report due date changes.

There is an expectation that appraiser fee estimates be consistent with the best information available at the time of disclosure. The CFPB has said that deliberately padding or over-disclosing is not disclosing the best information reasonably available. Instead, the appraiser should provide a good faith estimate. Deliberately overestimating or overstating fees could put the appraiser and the lender out of compliance with TRID.



#### REALTOR® Practice Tip

Appraisers would do well to research properties before providing a fee quotation or a due date to a lender/client which will include this information on a Loan Estimate so as to not disrupt or add unnecessary time to the new TRID process.

The Closing Disclosure will show all costs related to the loan, who charged what, and who pays what at the time of loan closing. Unfortunately, despite much lobbying by appraiser associations, the Closing Disclosure form will show only one fee for the appraisal and will not divide out the management fee paid to an AMC if an AMC is involved, and a separate amount paid to the appraiser as had at one time been contemplated. All appraisal costs will be lumped into one amount on the new Closing Disclosure form.

## Summary

It is clear that the TRID integration is going to be a learning experience for everyone. To paraphrase one commentator – “there are things we still don't know that we don't know.” There is a difference of opinion regarding how significant this new process and the new forms will be in terms of impacting the real estate transaction. However, there are some things that can be anticipated. If changes are needed within the 3 business day waiting period after the Closing Disclosure has been delivered to the buyer and before the closing, the closing will likely be delayed. There is potential for disruption as lenders figure out what will and will not require a new 3-day waiting period for the new Closing Disclosure.

Real estate professionals should ensure that the need for last minute changes is minimized and prepare their clients accordingly. In the event last minute changes are unavoidable, it is hoped that lenders will be prepared and that they will be able to quickly discern whether a change requires a new waiting period or is clearly within the exception laid out by the Consumer Financial Protection Bureau (CFPB), if there will be a delay simply in getting the lender's approval, or whether it can be handled expeditiously without holding up the closing.

## Consumer Financial Protection Bureau Resources for Consumers:

### Your Home Loan Toolkit: Effective October 3, 2015, "Your Home Loan Toolkit"

This replaces the Settlement Cost Booklet that previously was given to consumer loan applicants.

- Designed for Web posting and interactivity: [files.consumerfinance.gov/f/201503\\_cfpb\\_your-home-loan-toolkit-web.pdf](http://files.consumerfinance.gov/f/201503_cfpb_your-home-loan-toolkit-web.pdf).
- Print-ready PDF (large version): [files.consumerfinance.gov/f/201505\\_cfpb\\_your-home-loan-toolkit-print-large.pdf](http://files.consumerfinance.gov/f/201505_cfpb_your-home-loan-toolkit-print-large.pdf).
- Print-ready PDF (small version): [files.consumerfinance.gov/f/201505\\_cfpb\\_your-home-loan-toolkit-print-small.pdf](http://files.consumerfinance.gov/f/201505_cfpb_your-home-loan-toolkit-print-small.pdf).
- Pre-order printed copies, large or small, from the U.S. Government Printing Office: [bookstore.gpo.gov/products/sku/048-013-00009-1](http://bookstore.gpo.gov/products/sku/048-013-00009-1).
- If you wish to use your own logo with the "Your Home Loan Toolkit," visit [files.consumerfinance.gov/f/201505\\_cfpb\\_using-your-logo-with-your-home-loan-toolkit-instructions.pdf](http://files.consumerfinance.gov/f/201505_cfpb_using-your-logo-with-your-home-loan-toolkit-instructions.pdf) for download instructions and a required disclaimer if you'd like to add your organization's logo.

### Know Before You Owe

An introduction for consumers to the new disclosure forms: [www.consumerfinance.gov/knowbeforeyouowe/#more](http://www.consumerfinance.gov/knowbeforeyouowe/#more)

### Factsheet: Will the New Mortgage Disclosures Delay My Closing

[files.consumerfinance.gov/f/201506\\_cfpb\\_factsheet\\_will-the-new-mortgage-disclosures-delay-my-closing.pdf](http://files.consumerfinance.gov/f/201506_cfpb_factsheet_will-the-new-mortgage-disclosures-delay-my-closing.pdf)

### Attachments

- Fidelity Closing Disclosure Timing: page 9 of this *Update*.
- WRA Information for Consumers about Transaction Timing and Closings: pages 10-11 of this *Update*.
- WRA Addendum to the Offer to Purchase Regarding Timelines and Closing: pages 12-13 of this *Update*.

### Thank you

Thank you to the following industry professionals who contributed information and

insight into the information presented in this *Update*:

- Linda T. Grahovec, ITP, IEP, NTP, Fidelity National Title Group.
- Ron Cockle, SVP director of Mortgage Banking Services, Johnson Bank.
- Barbara J. Schlieve, President, Assurance Title Services, Inc.
- Jonathan M. Sayas, Wisconsin Underwriting Counsel, Stewart Title Guaranty Company.

### Watch the Legal Update Video Online:



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# Know before you close.

## Changes to the Closing Disclosure Timing

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
	<b>Three-day delivery period</b> Non-hand Delivery of Closing Disclosure (i.e. mail)			<b>Three-day waiting period</b> Delivery of Closing Disclosure Occurs		
8	9	10	11	12	13	14
waiting cont. Sunday not counted	First day signing / closing may occur First day disbursements may occur for purchase and some refinances	<b>Three-day right of rescission</b> (Applicable to most refinances)			First day disbursement may occur on most refinances	

## Timing References by Day

Signing	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
↓	↓	↓	↓	↓	↓	↓
Waiting Period 	Preceding Thursday	Preceding Friday	Preceding Saturday	Preceding Monday	Preceding Tuesday	Preceding Wednesday
↓	↓	↓	↓	↓	↓	↓
Delivery Period 	Preceding Monday	Preceding Tuesday	Preceding Wednesday	Preceding Thursday	Preceding Friday	Preceding Saturday

**NOTE:**

- If a federal holiday falls within the Delivery and/or Waiting Periods, add an additional business day.
- The three-day period is measured by days, not hours. Thus, disclosure must be delivered three days before closing, and not 72 hours prior to closing.
- Disclosures may also be delivered electronically to start the Delivery Period and may be signed in compliance with E-Sign requirements.



Know before you close.

Your CFPB readiness partner - every step of the way.

## Information for Consumers about Transaction Timing and Closings

- ◆ Changes are coming in the consumer forms used to disclose the costs and terms of the buyer's loan and the real estate transaction closing costs. These changes first go into effect starting with loans buyers apply for on or after October 3, 2015.
- ◆ These changes may also impact the real estate transaction timeline and the timing of the closing because of the required timeframes for the disclosures. Certain changes made in the transaction at the last minute may cause closing delays.
- ◆ These changes affect transactions where the buyer is applying for a mortgage loan to purchase a residential property such as a house, condominium unit or a time share, or is buying a lot and building a new home.
- ◆ Learning about these changes is important because closing delays can be disruptive with regard to financing availability, and the parties' moving schedule, having a place to stay, and storage of personal belongings.
- ◆ For loan applications taken on or after October 3, 2015, the buyer's lender will provide/mail to the buyer a new three-page Loan Estimate form and a "Your Home Loan Toolkit" booklet, both within three (3) business days after the loan application.
- ◆ At the end of the real estate transaction, the parties will see a new five-page Closing Disclosure form that discloses the loan and transaction terms and costs. The lender must deliver the Closing Disclosure to the buyer either by personal delivery at least three (3) business days before closing, or by mailing it at least seven (7) days before closing. Certain last-minute changes in the transaction that increase amounts the buyer must pay or change some of the closing numbers may mean that the lender must provide a new Closing Disclosure that, once again, must be personally delivered to the buyer at least three (3) business days before closing, or mailed at least seven (7) days before closing. This may delay the closing beyond the closing day in the offer to purchase.
- ◆ The parties will have to be understanding with the way that the title insurance costs are reported on these disclosure forms. The new federal forms say that an owner's title insurance policy is optional, but Wisconsin offer to purchase contracts indicate the seller will provide and pay for the

owner’s title insurance policy. The buyer will be required by the lender to provide and pay for the lender’s title insurance policy. The title insurance costs on the disclosure forms may be confusing. Please ask the closing settlement agent to explain this section if you have questions.

- ◆ Because there may be uncertainty about whether transactions will close on schedule or how long each closing session may take, it may be best to be careful when scheduling related or stacked closings (also known as domino closings).
- ◆ Communication will be key so buyers and sellers should talk frequently and honestly with their real estate agents who, in turn, should kept the lenders and title agents up to date on any changes to the transactions and charges, costs and expenses incurred.

The real estate company \_\_\_\_\_ and its agent have recommended that you consider the following measures to try to avoid delays in your residential transaction:

1. Include a provision in the Offer to Purchase to protect the buyer from being in default for not closing on time if the closing is delayed due to Closing Disclosure revisions or other lender issues. (For an example of such a provision see the WRA Addendum TR.)
2. Avoid any deadlines in the Offer to Purchase provisions or contingencies that conclude less than ten (10) days before closing.
3. Order the title insurance at least 30 days before closing.
4. Avoid last minute changes and strive to settle all issues two weeks before closing.
5. Consider using a local lender or a lender from your broker’s list of reputable loan officers and other service providers.
6. When obtaining a loan pre-approval or pre-qualification, ask the lender about realistic timeframes for obtaining a loan commitment and closing and use those when the offer to purchase is written.
7. Strive to cooperate and communicate and resolve any concerns amicably.

The undersigned party acknowledges receipt of the above information.

\_\_\_\_\_  
Signature ▲ Print name ►

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature ▲ Print name ►

\_\_\_\_\_  
Date

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No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific transaction.

**ADDENDUM TR TO THE OFFER TO PURCHASE - TIMELINES AND CLOSING**

Addendum TR may be used with any Offers to Purchase or other contracts for the acquisition of property where the buyer is a consumer seeking a consumer credit loan primarily for personal, family, or household purposes and the loan is secured by real property. This may include, without limitation, the WB-11 Residential Offer to Purchase, the WB-13 Vacant Land Offer to Purchase (depending upon the purpose of the purchase), the WB-14 Residential Condominium Offer to Purchase, the WB-26 Timeshare Contract (Sale by Developer) or the WB-27 Time Share Contract (Resale by Non-Developer).

1 This Addendum is made part of the Offer to Purchase/Contract dated \_\_\_\_\_, made by \_\_\_\_\_  
2 \_\_\_\_\_ (Buyer), with respect to the Property at  
3 \_\_\_\_\_.

4 **OPTIONAL PROVISIONS** Terms preceded by an open box () are part of this addendum only if marked, such as  
5 with an "x." They are not part of this Addendum if marked "n/a" or are left blank.

6  **CLOSING DATE EXTENSION:** If closing cannot occur by the closing date specified in the Offer/Contract due to  
7 any government lender regulations or disclosure requirements, including those based on the Truth in Lending Act/Real  
8 Estate Settlement Procedures Act Integrated Disclosure (TRID) rules, Buyer shall deliver written notice to Seller and the  
9 date of closing shall be extended for the period necessary to satisfy those requirements, not to exceed  
0 \_\_\_\_\_ business days ("7" if left blank).

1  **ADDITIONAL CLOSING DATE EXTENSION:** If the funding Buyer will use to purchase the Property is coming from  
2 the sale of another property owned by Buyer, and if that funding is not available to Buyer on the closing date because  
3 the closing date in that transaction has been extended due to government lender regulations or disclosure  
4 requirements, including those based on the TRID rules, Buyer shall deliver written notice to Seller and the date of  
5 closing shall be extended for the period necessary to accommodate the closing of the other transaction, not to exceed  
6 \_\_\_\_\_ business days ("7" if left blank).

7  **BUYER'S FINANCING PRE-APPROVAL:** Within seven (7) days of acceptance of this Offer/Contract, Buyer shall  
8 deliver to Seller a written financing pre-approval from a financial institution or mortgage broker based on criteria such as  
9 satisfactory credit history, employment verification, accepted offer terms and Buyer income and debt ratios. If Buyer  
0 does not make timely delivery of said pre-approval, Seller may terminate this Offer/Contract if Seller delivers a written  
1 notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written financing pre-approval, but in  
2 no event later than 15 days after acceptance.

3 **NOTE: Pre-approval is not considered a loan commitment.**

4 **CONTACT INFORMATION FOR CLOSING DISCLOSURE:** To facilitate lender preparation of the Closing Disclosure,  
5 please provide the following broker contact information that is required on that form:

CONTACT INFORMATION	Real Estate Broker for Buyer	Real Estate Broker for Seller
Name of Broker/Company		
Company Address		
Broker/Company License No.		
Contact/Name of Agent		
Agent's License No.		
Email Address		
Telephone Number		

26 ■ **READING/UNDERSTANDING:** By initialing and dating below, each Party acknowledges they have received and  
27 carefully read this Addendum. (Initialing below does not signify acceptance or agreement with the terms of this  
28 Addendum.)

29 **CONFLICTING PROVISIONS:** Should any provision of this Addendum be in conflict with any provision of the Offer to  
30 Purchase/Contract or any other addenda to this Offer /Contract, the provisions of this Addendum shall prevail.

31 BUYER AND SELLER ARE ADVISED THAT THIS ADDENDUM CONTAINS PROVISIONS THAT MAY NOT BE  
32 APPROPRIATE IN ALL TRANSACTIONS. NO REPRESENTATION IS MADE THAT THE PROVISIONS OF THIS  
33 ADDENDUM ARE APPROPRIATE, ADEQUATE OR LEGALLY SUFFICIENT FOR ANY SPECIFIC TRANSACTION.  
34 BUYER AND SELLER ARE ENCOURAGED TO CONSULT WITH THEIR OWN LEGAL COUNSEL REGARDING THE  
35 PROVISIONS OF THE OFFER/CONTRACT AND THIS ADDENDUM.

36 (X) \_\_\_\_\_ (X) \_\_\_\_\_ (X) \_\_\_\_\_ (X) \_\_\_\_\_  
Buyer's Initials ▲ Date ▲ Buyer's Initials ▲ Date ▲ Seller's Initials ▲ Date ▲ Seller's Initials ▲ Date ▲

37 **OTHER DRAFTING CONSIDERATIONS**

- 38 1. Add an additional 15 days to the transaction timeline.
- 39 2. Avoid extending or setting deadlines for provisions or contingencies less than 10 days before closing and  
40 finalize all details well in advance of closing
- 41 3. Allow ample time for any Financing Contingency or Appraisal Contingency.
- 42 4. Include other walk-throughs earlier in the process to confirm completion of repairs and resolve any  
43 discrepancies. Save the final walk through to view the property for the sole purpose of ensuring it has not been  
44 damaged since the day of the offer.

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