

NEW CFPB CLOSING DISCLOSURE: MORE THAN JUST A CHANGE IN FORMS

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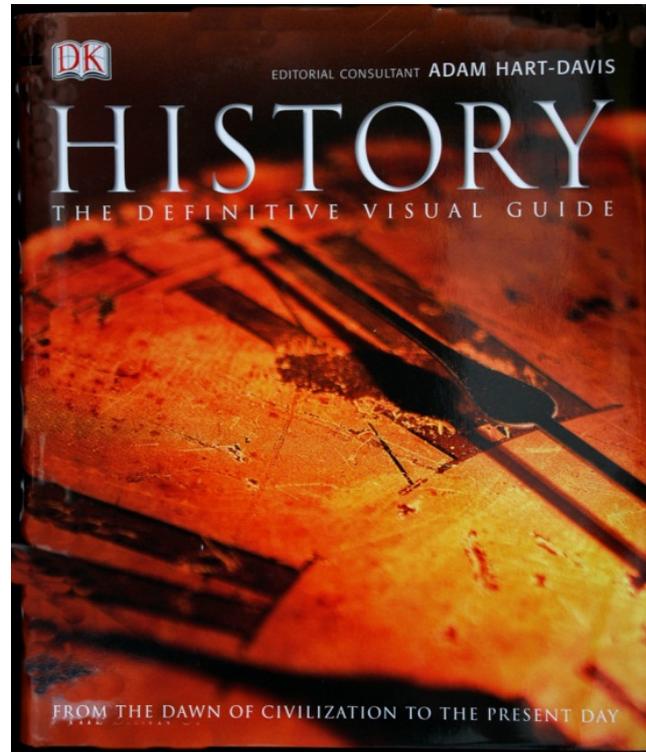
Three Reasons Why You Should Stay Awake

1. Will significantly alter how each escrow transaction is conducted
2. May lead to significant changes in who delivers escrow services
 - Lender vs. Title/Escrow Company
 - Large Title/Escrow Companies vs. Small Title/Escrow Companies
3. The changes are a marketing opportunity



Agenda

1



Agenda

2

New Closing
Disclosure Rule



What is disclosed

Who does the
disclosure

When the disclosure
must be made

Agenda

3 How the new rules may alter how escrow is done



SECTION ONE

HISTORY OF CLOSING DISCLOSURES



History of Disclosures

1968 Truth in Lending Act
(disclosure of credit terms)

1974 Real Estate Settlement
Procedures Act
(disclosure of settlement costs)

TIL
Disclosure

Provided by Lender

Within 3 days of applying for loan

Good
Faith
Estimate

Provided by Lender

At Closing

Final
TIL
Disclosure

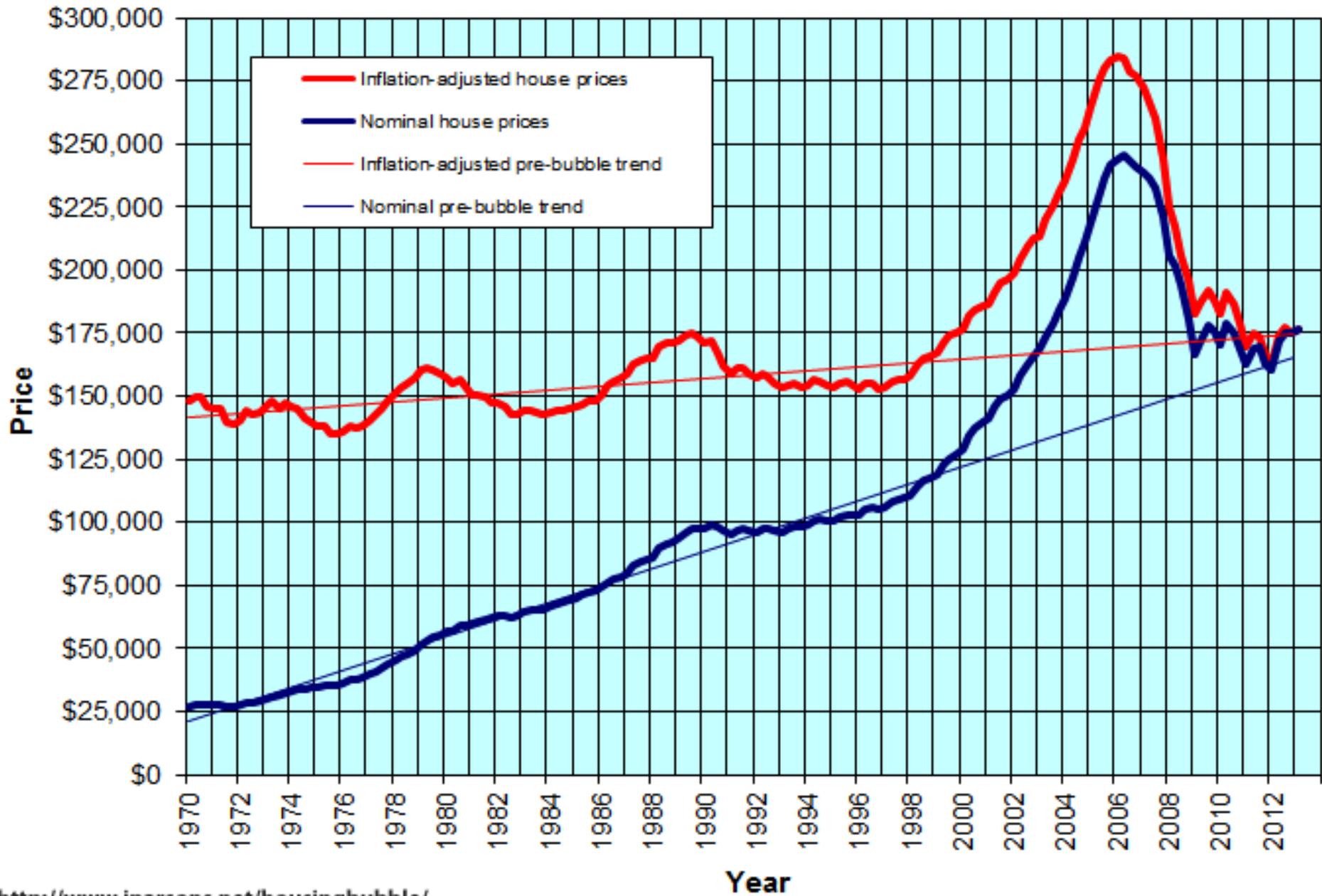
Provided by Lender

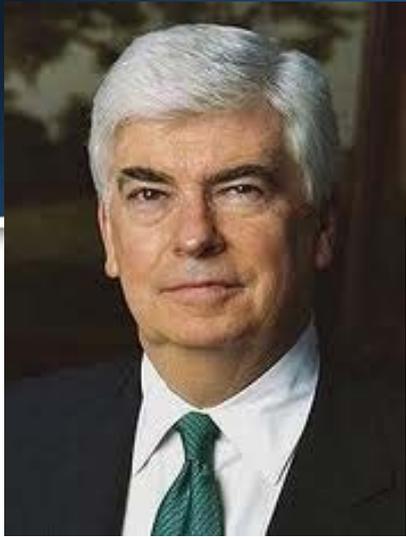
HUD-1
Disclosure

Provided by Settlement Agent



United States House Prices





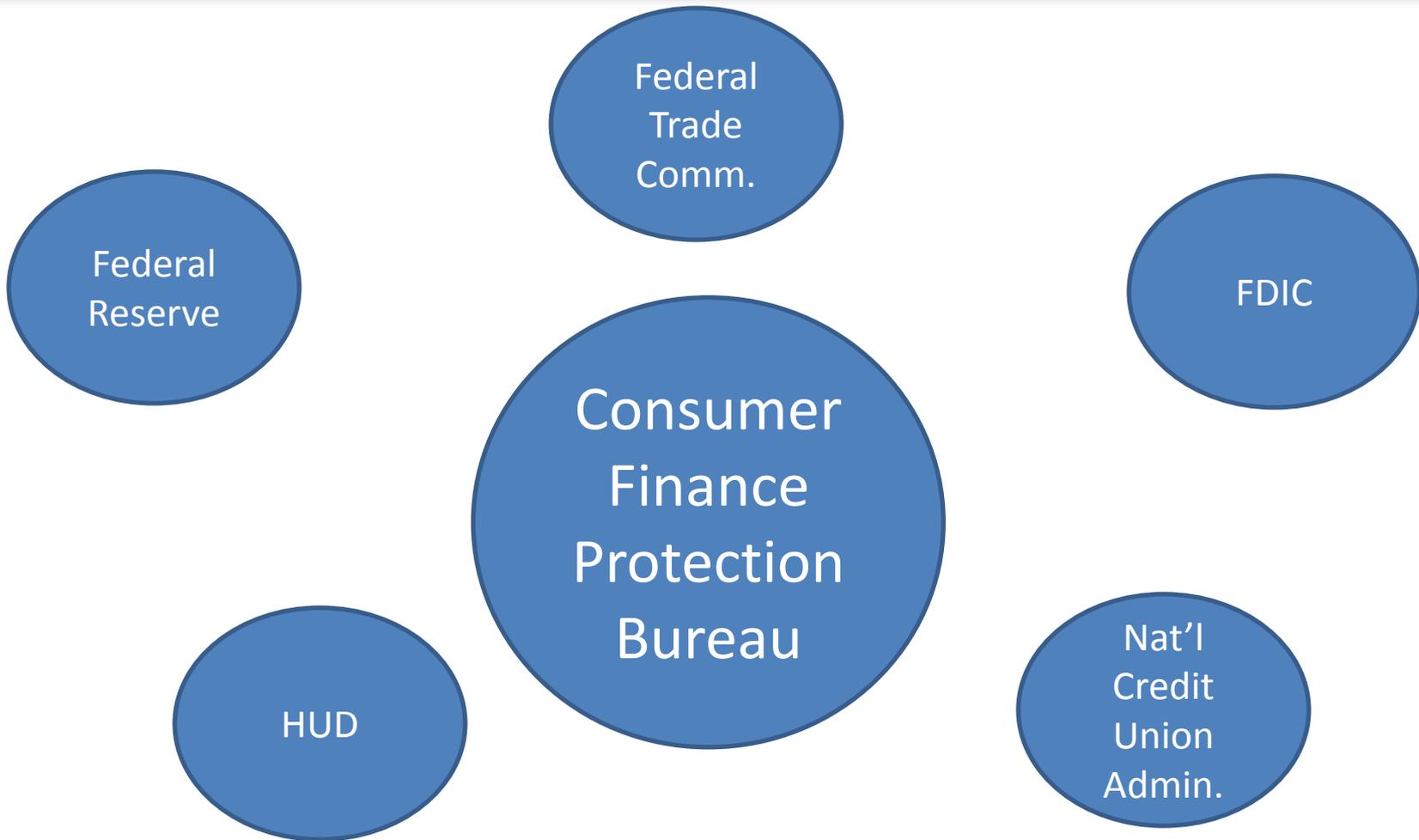
Dodd - Frank



Wall Street Reform and Consumer Protection Act

- Passed in 2010 in response to financial meltdown
- 2,300 pages long
- Deals with many different aspects of financial services
- Creates the Consumer Financial Protection Bureau

Consumer Finance Protection Bureau





*“The CFPB consolidates most Federal consumer financial protection authority in one place. The **consumer bureau is focused on one goal: watching out for American consumers in the market for consumer financial products and services.**” (CFPB Website)*

CFPB's Regulatory Approach

- Big fines = attention & compliance

Capital One

- Call center vendor went “off script” in marketing credit monitoring services
- Capital One didn't know
- \$60 million in fines
- \$140 million rebate to customers

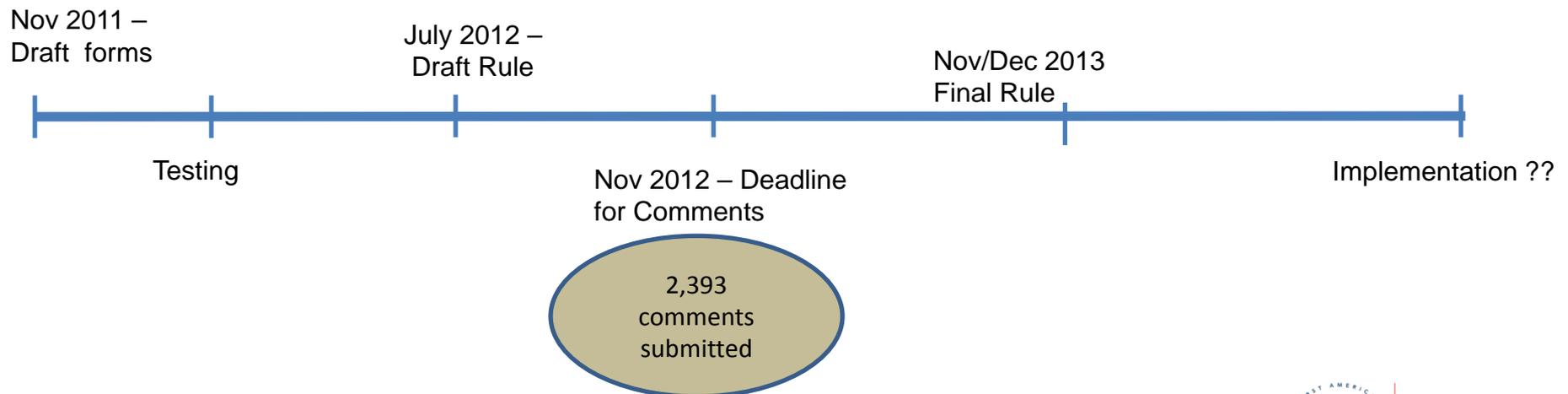
Discover

- Vendor used deceptive marketing practices to sell payment protection services
- \$14 million fine
- \$200 million rebate to customers



CFPB and Disclosures

- Dodd – Frank gave CFPB authority over RESPA and TILA and mandated that the loan & settlement cost disclosures to consumers be improved





Section Two:

CLOSING DISCLOSURE RULES

Closing Disclosure Rules

- What has to be disclosed
- When it has to be disclosed
- How it can be disclosed (and how that impacts when it has to be disclosed)
- Liability for the accuracy and timeliness of the disclosure



What is Disclosed: Early Disclosures

1968 Truth in Lending Act
(disclosure of credit terms)

CFPB

1974 Real Estate Settlement
Procedures Act
(disclosure of settlement costs)

- Interest rate
- Loan amount
- Monthly payment
- Prepayment penalty

Provided by Lender



Within 3 days of applying for loan

When Delivered?

Who Prepares
& Delivers?
Who is Liable?



Loan Estimate
(combines early TIL and GFE)

Good
Faith
Estimate

Provided by Lender

w/in 3 days of application



What is Disclosed: Closing Disclosure

1968 Truth in Lending Act
(disclosure of credit terms)

CFPB

1974 Real Estate Settlement
Procedures Act
(disclosure of settlement costs)

- Interest rate
- Loan amount
- Monthly payment
- P & I
- Prepayment penalty
- Balloon
- Actual loan costs
- Actual cash to close
- Typical HUD-1 items

Final
TIL
Disclosure

Provided by Lender



Closing Disclosure
(combines Final TIL and HUD-1)

At Closing

When Delivered?

Who Prepares
and Delivers?
Who is Liable?

HUD-1
Disclosure

Provided by Settlement Agent

3 days **PRIOR** to closing



OR



Who Prepares and Delivers the Closing Disclosure?

Option 1

Assume you are the lender:

Loan Info



BUT: You have 100% of the liability for the accuracy of the closing disclosure and for compliance with delivery requirements



Title/Escrow

HUD1 Info



Consumer

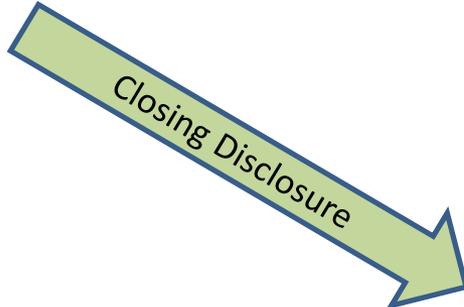


Who Prepares and Delivers the Closing Disclosure?

Option 2

Assume you are the lender:

Loan Info



Is loan or HUD1 Info more likely to change?

Does that make lender delivery impractical?



Consumer



HUD1 Info

Title/Escrow

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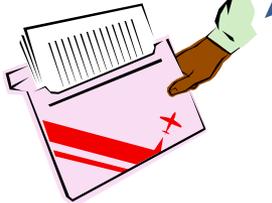


How Disclosure is Made

Send Closing Disclosure



Presumed 3 days



Receipt of Closing Disclosure

3 days

2
Waiting
Periods

Consummation of Transaction

Signing?

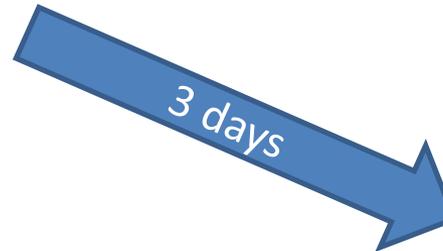
Recording?

How Disclosure is Made

Send Closing Disclosure



Receipt of Closing Disclosure



Consummation of Transaction

What if a change needs to be made to the Closing Disclosure?

3 Day Rule: Example 1

Mon	Tue	Wed	Thu	Fri	Sat	Sun
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Sundays and
Federal Holidays
Don't Count

- Mail (US mail) Closing Disclosure on Monday the 1st
- Receipt presumed on Thursday the 4th
- Close on Monday the 8th

3 Day Rule: Example 2

Mon	Tue	Wed	Thu	Fri	Sat	Sun
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

- Mail (FedEx) Closing Disclosure on Monday the 1st
- Signed receipt obtained on Tuesday the 2nd
- Close on Friday the 5th

3 Day Rule: Example 3

Mon	Tue	Wed	Thu	Fri	Sat	Sun
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

* Assumes customer consented to received disclosure by electronic means

- Email Closing Disclosure on Monday the 1st
- Delivery confirmation received via Outlook on Tuesday the 2nd
- Read receipt received from Outlook on Wednesday the 3rd
- Can close as early as Saturday the 6th*

3 Day Rule: Example 4

Mon	Tue	Wed	Thu	Fri	Sat	Sun
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Monday the 1st:
Closing Disclosure
Mailed (US Mail)

Thursday the 4th: Receipt
of Closing Disclosure
presumed (close Monday)

Friday the 5th: Pest
inspection comes back
inconclusive and
additional inspection
required – additional
inspection fee to be
incurred (likely over \$200)

Tuesday the 9th: get \$250 re-inspection bill.
Email new closing disclosure. Customer
gets new disclosure, signs and dates it to
prove receipt, and emails it back.

Friday the 12th: Closing

3 Day Rule: Exceptions to 3-Day Wait on Re-Disclosure

- Changes, which in the aggregate, are less than \$100
- Changes due to a walk through inspection
- Waiver of the 3-day requirement by the consumer because of a “bona fide personal financial emergency”
 - Waiver must be in writing
 - Can only be done AFTER receipt of the closing disclosure
 - Must be signed by all who will be liable for the loan
 - Will be rare

Disclosure received on Monday and buyer sees a problem with the dishwasher. Buyer and seller agree to split the \$500 replacement cost.

Foreclosure sale on buyer's house is set for Friday and she doesn't get closing disclosure until Wednesday. She can waive the 3-day period and close on Thursday to avoid foreclosure

Section Three:

HOW THE NEW RULES MAY ALTER HOW ESCROW IS DONE



How will Lender's Protect Themselves?

- Capital One & Discover:

If title and escrow companies are “contractors” for the lenders, and lenders have responsibility for our actions, how will that change how they do business and which of us they do business with?

How will Lender's Protect Themselves?

- Take closings in house
- Reduce their stable of closing agents so they can better monitor performance
 - This is already occurring
- Choose agents that utilize “best practices”
- Indemnity agreements shifting liability
 - Closing agent must have financial ability to live up to the indemnity



Section Four

FINAL THOUGHTS



Points to Remember

- The Closing Disclosure will replace the HUD-1
 - Must be **received** 3 days prior to consummation
 - Re-disclosure and another 3 day wait may be required
- Lenders can choose who prepares and delivers the Closing Disclosure
- Lenders have significant liability for errors on the Closing Disclosure and for failure to follow 3 day rule

