

# PENN ATTORNEYS TITLE ALERT

**DATE: 08/04/09**

**RE: Title Alert 2009-11**

**HONA 267 – Truth in Lending Law (TILA)  
Changes effective July 30, 2009**

## **Preliminary note to Penn Attorneys Title Insurance Co.'s Approved Attorneys**

This is a courtesy notification about the new law and regulations. It is your responsibility to formulate your own settlement procedures for dealing with the MDIA and the changes to Regulation Z.

**Please see the below First American Home Office Underwriting Bulletin authored by Home Office's K. Gene Aalseth, Associate Senior Underwriter. If you have any questions, please contact us.**

**Purpose:** To alert you to the effect the Mortgage Disclosure Improvement Act (effective July 30, 2009) and changes to Regulation Z will have on the timing of real estate closings.

### **Background:**

#### **Mortgage Disclosure Improvement Act & Regulation Z**

On July 30, 2009 the Housing and Recovery Act of 2008 (HERA) goes into effect. A portion of HERA, known as the Mortgage Disclosure Improvement Act (MDIA), contains certain changes to the timing of Truth in Lending (TIL) disclosures that will affect when real estate closings can occur. Additionally, the Federal Reserve Board has made certain changes to Regulation Z, also effective July 30, 2009, to implement the MDIA. The MDIA applies to loans secured by the dwelling of a borrower provided the loan is also subject to the Real Estate Settlement Procedures Act and will apply to transactions for which lenders receive a loan application on or after July 30, 2009.

*Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>*

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### Initial TIL's – 7 Business Day Review Period

The initial TIL must be delivered or placed in the mail not later than three business days<sup>1</sup> after the lender receives the borrower's written application which shall be at least seven (7) business days<sup>2</sup> before closing. Thus, loans will generally not close until at least seven (7) business days after issuance of the initial TIL. The exception would be those loans for which the review period has been waived as discussed below.

### Revised TIL's – 3 Business Day Review Period

If the Annual Percentage Rate (APR) reflected in the initial TIL increases by more than an eighth of one percent (.125%), then a revised TIL must be furnished to the borrower not later than three (3) business days<sup>3</sup> before close.

Fees considered to be finance charges that are used in the APR calculation include but are not limited to discount points, lender and broker fees, Life of Loan flood certification coverage, and settlement agent or attorney fees. If the TIL is mailed the borrower is considered to have received it three (3) business days<sup>4</sup> after the TIL is mailed. Thus in order to close in a timely manner, lenders will typically want to produce an accurate TIL disclosure at least seven (7) business days before closing so that they can meet the 3 business day mailing period and the 3 business day review period.

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<sup>1</sup> Here "business day" is defined generally as a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. (See 12 CFR 226.2(a)(6)).

<sup>2</sup> Here "business day" is defined more specifically as all calendar days except Sundays and the legal public holidays specified in 5 USC 6103(a), such as New Year's Day the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See 12 CFR 226.2(a)(6)). Note that four Federal legal holidays are identified in 5 USC 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday. In cases where the more specific business day rule applies, the observed holiday (i.e. Friday) is a business day. (See Supplement I to Part 226 – Official Staff Interpretations, Subpart A – General, §226.2(a)(6)-2))

<sup>3</sup> See footnote 2.

### Waiver of TIL Disclosure Waiting Periods

The borrower may waive or modify the 7 business day or 3 business day waiting periods if the borrower determines that the loan is needed to meet a bona fide personal financial emergency, provided:

1. the borrower provides the lender a dated, written statement that describes the emergency, specifically modifies or waives the waiting period, and is signed by all borrowers; and
2. the lender provides the final TIL to the borrower at or before the time of waiver or modification. An example of a bona fide personal financial emergency would be the imminent sale of the borrower's home at foreclosure, where the foreclosure sale will proceed<sup>5</sup> unless loan proceeds are made available to the borrower during the waiting period. Waivers of the waiting period will most likely occur rarely, but a settlement agent should be aware that they might occur.

### Steps Settlement Agents Are Being Asked to Take to Avoid Closing Delays

While many factors may lead to the need to issue a revised TIL disclosure and it is not the responsibility of settlement agents to police a lender's compliance with the Truth in Lending Law, settlement agents are being asked by lenders to take the following steps to help avoid closing delays:

1. accurately communicating to the lender all fees that impact the APR as soon as those fees are identified;
2. providing a preliminary or estimated settlement statement with accurate fees to the lender in sufficient time for the lender to issue a revised TIL disclosure seven (7) business days prior to the closing date; and
3. scheduling signing/closing dates as accurately as possible in order to best estimate prepaid interest and to avoid TIL re-disclosures.

If you conduct settlements (close escrows) for a First American office you should make every effort to take the steps described above to help avoid closing delays.

#### References:

1. 15 USCA 1638 as amended by MDIA, PL 110-289 Title V, Section 2501-2503
2. 15 USCA 1606
3. Regulation Z, in particular 12 CFR 226.2(a)(6), 226.17(f), 226.19
4. Federal Reserve Board Press Release that can be found at:

[www.federalreserve.gov/newsevents/press/bcreg/20090508a.htm](http://www.federalreserve.gov/newsevents/press/bcreg/20090508a.htm)

<sup>4</sup> See footnote 2.

<sup>5</sup> (See Supplement I to Part 226 – Official Staff Interpretations, Subpart C – Closed-End Credit, §226.19 Certain Mortgage and Variable Rate Transactions, 19(a)(3)-1.