QUERIN LAW LLC

Why Oregon Homebuyers Should Shop Their Loans *Before* Going Under Contract

A few years ago, before the real estate market got crazy hot (and before we changed the OREF Sale Agreement form), it was not unusual for a buyer to submit their preapproval letter to their seller, go under contract, and then try to find other lenders who might offer better rates or terms.

But in 2015, **TRID**[1] was enacted as a part of the government's response to the 2007/8 Financial Crisis; Dodd Frank, the massive 2010 2,300 page rewrite of financial regulations (containing another 22,000 pages of administrative rules) was created, and the Consumer Finance Protection Agency, or "CFPB", became its most prominent offspring.

The result was that the Truth in Lending Act ("TILA") of 1968, and the Real Estate Settlement Procedures Act ("RESPA") of 1975, were replaced with a set of regulations that introduced new terms, new procedures, and a great deal of angst within the entire real estate services industry, from brokers, to escrows, to lenders.[2]

Without drilling down into the minutiae, suffice it to say that TRID had a direct effect on the OREF Sale Agreement form. It is best to look at the changes as creating a "lock-step" set of protocols that are triggered the moment the seller and buyer go under contract. Section 5.3 of the Residential Sale Agreement requires that the following steps occur i**n sequence**:

1. Within a pre-agreed number of business days (three if the parties don't agree otherwise), the buyer is required to submit a "completed loan application" to their lender;

2. This lender *must* be the same one that signed the buyer's preapproval letter that was included with the offer of purchase (i.e. the Residential Sale Agreement);

3. Under TRID, the term "completed loan application" is defined to include the following information:
   (i) Buyer's name(s);
   (ii) Buyer's income(s);
   (iii) Buyer's social security number;
   (iv) Property address;

[1] TILA RESPA Integrated Disclosure. See, NAR explanation here.

[2] "Sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) direct us to publish rules and forms that combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (Regulation Z) and the Real Estate Settlement Procedures Act (Regulation X). Consistent with this requirement, we are amending Regulations X and Z to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property. In addition to combining the existing disclosure requirements and implementing new requirements imposed by the Dodd-Frank Act, the final rule provides extensive guidance regarding compliance with those requirements." (See link here.)

(v) An estimate of the value of the Property (i.e. agreed-upon sale price); and
(vi) The loan amount sought.

4. Upon receipt of the completed loan application,[3] the lender has three business days to respond by providing the buyer with a "Loan Estimate" (formerly known as the "Good Faith Estimate"), which contains certain information, including the estimated interest rate, monthly payment, and total closing costs for the loan.

5. Upon receipt of the Loan Estimate, the buyer then has a fixed period of time - not exceeding ten business days - to notify their lender whether they will proceed with the offered loan, as summarized in the Loan Estimate.

   - *It is important to note that the Sale Agreement does <u>not</u> give the buyer ten business days to respond to the lender – even though this is the maximum time permitted under TRID. This is far too long, as sellers should not have to wait essentially two weeks for their buyer to decide whether to accept the terms of the Loan Estimate. After all, the Loan Estimate should closely resemble the terms of the initial preapproval letter, so it should come as no surprise.*

   - *Accordingly, although the Sale Agreement leaves a blank line for the amount of time the parties have to reach agreement, if that line is not filled in, the default period is three business days (but not to exceed ten) following buyer's receipt of lender's Loan Estimate.*

6. Upon request, the buyer is expected to promptly notify seller of the date of buyer's signed notice of intent to proceed with the offered loan.

7. The buyer is thereafter required to complete all paperwork requested by their lender in a timely manner, and exercise best efforts (including payment of all application, appraisal and processing fees, where applicable) to obtain the loan.

8. Note: There are two significant limitations some buyers, and perhaps their brokers, may not fully appreciate:

   - *Per the terms of Section 5.3 of the Sale Agreement, they may <u>not</u> replace their original lender (i.e. the one that signed the preapproval letter) without the seller's consent; and*
   - *They may <u>not</u> change their "Loan Program" (i.e. conventional loan vs. FHA, DVA, or USDA) without the seller's consent.*

[3] Note to sellers, buyers and their brokers: If a buyer submits a loan application to their lender or mortgage broker that fails to include any one of these six pieces of information, e.g. the address, it is not a "completed loan application" and the lender is no longer required to issue the Loan Estimate within the following three business days.

The reason for these time constrains is clear; we have been in a seller's market for several years. Sellers frequently receive multiple offers, and acceptance is usually based upon many factors, including the reputation of the buyer's lender and the type of loan sought, e.g. conventional vs. government insured or guaranteed loans. A buyer's unauthorized change of the lender or loan program risks delay in loan approval, and could jeopardize a timely closing. Accordingly, in today's market, sellers are not normally inclined to permit their buyers to "shop the loan" after going under contract, hunting for better rates or lower closing costs.

9. Lastly, per the terms of Section 5.3, following submission of their completed loan application, buyers commit to keeping their sellers promptly informed of all material non-confidential developments regarding their financing and the timing of closing.

The Take-Away. So to the extent these "lock-step" rules are followed, buyers and lenders are required to respond within fixed time frames that sellers can track.

The upshot is that when interest rates are falling, or are volatile, buyers are encouraged to take as much time as they want to get the best loan possible ***before*** submitting their offer of purchase. But, after the transaction goes under contract, buyers are contractually limited in how much latitude they have to shop the loan.

An unauthorized change of lenders or loan programs could result in the seller declaring a default under the Sale Agreement, and moving on to their back-up buyer. Moreover, such a default could also result in the buyer's loss of their earnest money deposit. ***~PCQ***