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November 2015

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New Residential Mortgage Disclosures

By Howard A. Lax, Bodman PLC

The Dodd-Frank Act mandated that the Consumer Financial Protection Bureau (CFPB) combine disclosures for residential mortgage loans required by the Truth in Lending Act and the Real Estate Settlement Procedures Act. Consumers who submit applications on or after October 3, 2015, will receive new and improved loan term and closing cost disclosure forms promulgated by the CFPB. The CFPB posted educational materials for consumers, real estate professionals, housing counselors, and mortgage originators here.

Below the surface, however, mortgage brokers and lenders are struggling with issues not addressed in the rules. In particular, the rules at 12 CFR §§1026.19, 1026.37, and 1026.38 don't adequately address disclosure requirements for construction, bridge, or cooperative share loans. Difficulties in disclosing split-rate title insurance premiums led the title underwriters to file new (and higher) premium rates. The American Land Title Association promulgated its own settlement statements to satisfy state law requirements (e.g. MCL 438.31b) since the HUD-1 settlement statement is no longer required. Disagreements exist

Condominium Anti-Lawsuit Provisions

By Kevin Hirzel, Cummings, McClorey, Davis & Acho, PLC

Condominium documents often contain provisions requiring two-thirds co-owner approval or other preconditions before a condominium association can sue or spend legal fees. Prior to June 2014, at least four circuit courts held such anti-lawsuit provisions were unenforceable, arguing that other provisions in the Nonprofit Corporation Act and the Condominium Act gave boards of directors discretion to file or defend lawsuits. Additionally, it was held that anti-lawsuit provisions were "unreasonable" and corporate bylaws must be reasonable.

The court of appeals has recently upheld anti-lawsuit provisions. In *Tuscany Grove Ass'n v. Gasperoni* (Mich App No. 314663, June 24, 2014, unpublished), the court held that a condominium association could not sue to force a co-owner to remove a prohibited fence, fireplace, and pizza oven, reasoning the anti-lawsuit provision was enforceable on contractual grounds. The court further argued that if an association could not garner the two-thirds majority necessary to defend itself in a

between mortgage loan investors over disclosures of hazard and title insurance premiums, inspection fees, gifts of equity, lender credits, prorated expenses, and other items on the initial loan estimate and the settlement service provider list given to consumers. Confusion also exists regarding which discrepancies between the closing disclosure and the loan estimate will require a redo of the closing disclosure or the entire application process. State disclosures (e.g. disclosures required by MCL 445.1636) conflict with federal disclosures.

The National Association of Realtors advises that it may take an additional 15 days to complete a residential transaction under the new rule. Attorneys representing parties to a residential transaction should likewise anticipate delays due to inexplicable changes in disclosures and loan processes. Hopefully, the mortgage industry will become comfortable with the rule and the CFPB will provide better guidance in the coming year.

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lawsuit, the co-owners were choosing to be defaulted. In *Nottingham Village Condo. Ass'n v. Pensom* (Mich App No. 319552, March 24, 2015, unpublished, Supreme Court appeal pending), the court held that the provision requiring co-owner approval of a lawsuit was enforceable, but ruled that the requirement that association counsel detail all prior experience with similar litigation was unreasonable and unenforceable. In *Tuscany Grove Ass'n v. Peraino* (Mich App No. 320685, July 14, 2015, published) the court again held the super-majority requirement was enforceable.

On September 29, 2015, three state representatives introduced House Bill 4919, which would amend the Condominium Act to give a condominium association's board of directors the sole power to authorize or defend litigation. The amendment would also void any bylaw requiring a co-owner vote on litigation matters. Attorneys representing condominium associations should carefully review the condominium documents before becoming involved in litigation, as anti-lawsuit provisions appear in various forms.

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