



Bankers Advisory

COMPLIANCE MONITOR

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California Updates Mortgage Loan Disclosure Statement Requirements

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The implementation of the TILA-RESPA Integrated Disclosure rule is now in effect as of October 3, 2015. Brokers and licensees should take notice of the requirements of Mortgage Loan Disclosure Statement (MLDS) under Real Estate Laws in California.

MLDS is a disclosure required under Business and Professions Code (B&P) section 10240 and informs the mortgage applicant about the costs incurred. Subdivision (b) of the code provides that licensees are entitled to cost and expenses, in addition to commissions contracted for services performed in obtaining loans. MLDS is required when broker is arranging a loan on any type of real property, regardless of residential or commercial. Subdivision (i) further provides that the disclosure must include a statement containing the name of the real estate broker negotiating the loan, license number, and the address of the licensed place of business.

The MLDS must be provided within the three days of the broker or agent receiving the borrower's completed written loan application. An application is complete once a licensee received or prepared the application on forms normally used by the lender for a Federally Related Mortgage Loan, or as to non-federally related mortgage loans the licensee received or prepared an application on forms normally used by a lender or the licensee. See Regulations of the Real Estate Commissioner 2842.5. The only time the MLDS is not required is if the broker acts as the principal lender.

In order to continue compliance within MLDS, brokers must use Bureau forms RE 882 or RE 883. For nontraditional mortgage product circumstance, brokers are permitted to use RE 885. The regulation defines "nontraditional mortgage product" as loans that allows the borrower to defer repayment of principal or interests, such as interest only loans. See Regulations of the Real Estate Commissioner 2842 (c).

In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels, the real estate broker requirement and borrower acknowledgement is satisfied if: 1) a "good faith estimate (GFE)" is provided with the broker's real estate license number and a statement that on its face informs the borrower that the GFE is not a loan commitment; 2) all applicable disclosures required by the Truth in Lending Act are provided; and 3) if loan contains a balloon payment provision, then disclosure described is provided as required by Fannie Mae or Freddie Mac.

The “Loan Estimate (LE)” disclosure is compliant with the TILA-RESPA Integrated Disclosure Rule, as long as the borrower signed and is provided with a separate disclosure. If compensation that is paid by a source other than the borrower cannot be disclosed on the LE, then the compensation can be disclosed on a separate disclosure. If borrowers do not sign the LE and/or the separate disclosure is not provided, then the borrowers should have been provided a Mortgage Loan Disclosure Statement within the required three-days.

