



# SCHWARTZ *Report*

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## G MAN (COMING IN OCTOBER TO A SETTLEMENT TABLE NEAR YOU)

One of the oft quoted one liner's attributed to Ronald Reagan goes something like this: "The most feared words any American can hear nowadays are 'I'm from the Government and I'm here to help you'." There was a time when the term "G Man", short for Government Man, struck terror only in the hearts of criminals and other miscreants; think Elliott Ness and the Untouchables. Today, however, with the proliferation of alphabet soup lettered services, departments, agencies and bureaus all claiming to "help" in some way, one wonders if our 40<sup>th</sup> President might have been on to something with his quip.

When the Consumer Financial Protection Bureau (CFPB) was created in 2010 as a part of the byzantine Dodd-Frank Act, I thought to myself here's an opportunity for mischief. It seemed primed to violate two immutable laws: the law of unintended consequences (life) and first do no harm (medicine) once it got rolling. The wonder is that it has taken nearly five years to light upon the financing of a real estate transaction as one of its primary targets, although the CFPB, it is said, has additional plans in the works to monitor 95% of all credit card transactions by 2016. Think NSA spying without the terrorists.

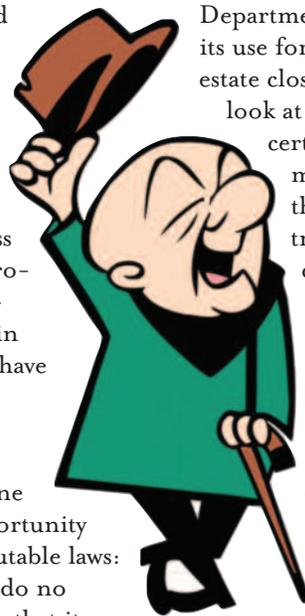
October 3, 2015 will be a big day for lenders, buyers, sellers, real estate and closing agents because that is the day (already postponed once from August 1<sup>st</sup>) when two new closing documents; the Loan Estimate and the Closing Disclosure, will replace three forms we've been used to working with for years. While it might seem a good thing that the HUD-1 Settlement Statement, Good Faith Estimate and Truth-in-Lending forms are no longer needed; when in recent memory have we ever gone from three forms to two? There is more to this helpfulness than meets the eye.

Many of us will miss the old HUD-1 Settlement Statement which for over 40 years has standardized the debits and credits part of a real estate closing. There was a time before the

Department of Housing and Urban Development mandated its use for residential closings, that if you attended ten real estate closings with ten law firms in Wilmington, you might look at ten different settlement sheets. It was a chore and certainly an opportunity for error to try to track the money in and the money out. We hope that with time these new documents will become as effective as the trusted HUD-1. The purpose of the new forms is to consolidate information and make it simpler for borrowers to compare how close their costs are to what was originally estimated by their lender. So far anyway, it appears that no real harm has been done here.

However, now we go from the paper to the procedure. Here the devil is in the details. First, the CFPB will require that the closing disclosure be given to the buyers three days prior to closing. That is supposed to allow the consumer time to look carefully at any deviations from the original estimates they were given rather than have to deal with them at the closing table. A Realtor Magazine editorial put it this way: "That's a positive change for consumers but it means if you're used to getting everything done at the last minute, you'll have to do a better job of planning ahead to accommodate the new rules."

These new rules mandate time lines which must be followed and cannot be waived except in rare or "emergency situations". Those rare or emergency situations do not include happenings like the fact that the moving van is at the door or the next settlement this afternoon is contingent on this one happening on time or other considerations of personal convenience for buyers and sellers. The present system of last minute scrambling frequently accommodates those occurrences. Violations trigger fines on lenders, an understandable no-no as far as they are concerned. For example, the closing disclosure must be delivered to the borrower at least three business days prior to closing if in electronic form or seven days for mail delivery and a change of one eight percent or more in the borrowers



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annual percentage rate will trigger another holding period. The National Association of Realtors recommends giving yourself a seven day cushion before closing in order to get everything done and you should assume an additional fifteen days to complete a closing. No more sell today and settle tomorrow. They say a normal thirty day closing will now take forty five.

In practical terms this means, be prepared for delays, lots of them initially. Amendments to contracts must be forwarded to the lender immediately upon receipt and the loan estimate must be re-disclosed within three business days of the change. Lenders and settlement agents will need all invoices relating to work on the subject property to be paid at settlement. Sellers

should do nothing at the last minute that could derail the transaction. For example, don't take the light fixture that you agreed in the sales contract you'd leave with the property. You won't be able to negotiate a credit with the buyers for it at the closing table. Consequently, buyers will be encouraged to do their walk-throughs well before the closing date. How this will be successfully accomplished with the sellers still in possession of the house is anybody's guess. Stay tuned.

All of this "help" gives us new possibilities of changes triggering another waiting period or a last-minute adjustment which requires a fine-adverse lender's approval. So for the time being anyway we should be thinking that this latest appearance of the G-Man is really Mr. Magoo.

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