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Association of Condominium, Townhouse, and Homeowners Associations

ACTHANEWS

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How Does the New Federal Mortgage Closing Rule Affect Associations?

By Damon M. Fisch of Keough & Moody, P.C.

The TILA/RESPA Integrated Disclosure (TRID) that became effective October 3, 2015, has nothing to do with associations - or does it?

TRID is governed by the Consumer Financial Protection Bureau (CFPB) created by the Dodd-Frank Act to combine disclosures under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). According to the CFPB, the purpose of TRID is "to help consumers understand their loan options, shop for mortgages that are best for them, and avoid costly surprises at the closing table." There is nothing in TRID that regulates the actions of a homeowner's association, but that does not mean the new changes will not affect how associations are doing business, particularly as it relates to the resale of a unit.

One of the biggest changes real estate professionals in general will experience is a change in the timeline that people have operated under. Most likely, the time line of a closing will now be extended by an additional two weeks. Prior to TRID, Sellers and their attorney could expect a 30 day closing to be standard. The new expectation is that the closing time line is more likely to last 45 days.

Formerly, a typical closing began with a 5 day attorney review and professional inspection period in which the parties' attorneys have the opportunity to review the contract and make changes if necessary. Commonly, the most negotiated issue is related to repairs requested by the Buyer to the Seller. Often times when an association is responsible for requested repairs, an inquiry is made to the association. This review period is supposed to be resolved within 10 business days of the date of the contract. The contract can be terminated during this period by either party if an agreement cannot be reached. As a result, the seller's attorney generally does not like to proceed with most closing processes until they are certain that there is a viable contract. One exception is that a title commitment could be ordered during this period, though some attorneys will hold off.

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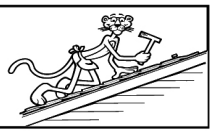

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TIP OF THE MONTH

Emotional Support Animals

The request for an emotional support animal in a "no pet" community or building is a common disability accommodation request. When a request for an emotional support animal is made in a no-pet community, the association must determine if the requested animal is 1) necessary to afford the resident an equal opportunity to use and enjoy their dwelling and 2) there is a relationship between the resident's disability and the assistance that the animal provides. If both of these are met, the association will generally be required to allow the emotional support animal unless the request is unreasonable.

A request would be considered unreasonable if it would impose an undue financial or administrative hardship on the association, fundamentally alter the community association's operations, pose a direct threat to the health and safety of the association's residents or cause significant damage to the property of others. Threats to the health and safety of residents may not be speculative or based on an individual's fears.

For example, an association may deny a request for an emotional support dog or breed that its insurance carrier either will not cover or will significantly increase the association's rate to cover. Additionally, some municipalities restrict the ownership of certain breeds of dogs and other animals, such as chickens, within its corporate limits. An association may deny a request for an emotional support animal banned by local laws.

An association can require that the animal not be a nuisance and require the owner to maintain good sanitary conditions with respect to the animal, follow all rules and regulations regarding animals and be financially responsible for any damage caused by the animal. Associations cannot impose fees or require security deposits from residents as a condition of having an emotional support animal. However, if an association imposes a pet deposit for pets of all residents, it can require such a deposit from a resident that has an emotional support animal.

Fullett Rosenlund Anderson

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After the attorney review period is agreed upon, the Seller's attorney will address issues on the title commitment. One of those issues is receiving a paid assessment letter (PAL) and a waiver of the right of first refusal. Sellers' attorneys are conscious of the cost of ordering a PAL, therefore many will try to wait until a buyer has provided a clear to close letter as the attorney wants to confirm that the Buyer will be able to go through with the purchase before the Seller's attorney spends the Seller's funds on the PAL. Ultimately, a Seller's attorney would like to accomplish this two weeks before closing, but often waits until the last week before closing to confirm the sale is clear to close.

What has caused the closing time period to change from 30 days to 45 days?

TRID requires a lender to deliver a copy of the TRID Closing Disclosure to a borrower three business days before the closing can occur. In order to make sure a disclosure is provided to the borrower three days before closing, the disclosure must be placed in the mail three business days before that - bringing the total number of days to six. Saturdays are included as business days for purposes of TRID, so, in six business days, there will always be a Sunday, meaning that closing cannot occur until seven days after the Closing Disclosure is mailed to the borrower.

Wait a minute, why is it taking seven more days?

If the closing disclosure is sent on a Monday that means, the final closing figures for the sale must be completed that day. By choice of the lender, either the lender or title company will prepare the Closing Disclosure. Either way, they will be relying on the Seller's attorney to provide the Seller's figures at least one full business day (not counting Saturdays now) before the delivery day. The Seller's attorney will likely need a day or two get the figures compiled and approved by his client before sending the final figures. Which means that the goal of the office should be to have all final Seller's costs two weeks before closing.

Most important, adherence to this time table is vital because any major change to the Closing Disclosure requires that the three day delivery period and three day waiting period starts over!

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Question of the Month: Continued from page 6

ICPA Section 19(a)(8) gives every unit owner the right to examine and copy ballots (and related proxy forms) cast within the prior 12 months, subject to some significant limitations. First, the unit owner must make a written request to see those voting materials that specifies a "proper purpose" for the request. Proper purpose is determined on a case-by-case basis, but mere curiosity is not a proper purpose; however, an unsuccessful candidate seeking to audit the results of the election would have a proper purpose.

If the board determines that a proper purpose has been stated, the requesting unit owner may examine and copy the ballots and proxy forms, unless the association has adopted a rule that mandates use of a "secret ballot" that does not reveal the unit owner's name or unit number. When a secret ballot rule is in place, the requesting owner may examine and copy the secret ballots, but not the underlying proxy forms (which would disclose unit owner names and unit numbers and thereby defeat the purpose of the secret ballot rule).

ILLINOIS:
LEGISLATIVE UPDATE

Beginning with the 2016 Legislative Sessions all of the Committees in the Senate and House were completely restructured. More Committees were created and Sub-Committees within those committees were also established, presumably for an undetermined future. The number of Committees and Sub-Committees in the Senate is now 60, and in the House, 84. It would appear that the sub-committees would act to reduce the number of bills reaching the passage stage in each chamber, but we will have to see. Obviously, with more chairmanships to allocate, the status of many additional members will be enhanced. This is probably intended to help them in the 2016 elections, when many of the Democrats will be facing engaged and better financed Republican challengers. This is also a portent of the kind of campaigns we will see next year.

Forty of the 59 State Senators will be on the ballot next year, some with 2-year terms and some 4-year terms.

The Governor, and his friends, will be providing extraordinary amounts of campaign funds. Organized labor will be making similar efforts. It will be the most expensive legislative election ever held in Illinois.

MESSAGE:

Be encouraged to participate in those campaigns, as individuals, but ACTHA will and does not endorse any candidate.

Be prepared for very serious efforts to amend the State Constitution. (If so, this will become apparent sometime in early May.)

As to the 2016 legislative session, we predict a more politicized one. (Is that possible?) Perhaps both parties will try to reduce the volume of bills.

The Primary election in March will result in the defeat of some legislators, but they still vote on issues for the remainder of the year. (Once they were referred to as "lame ducks." My preferred revision, "disabled poultry.")

Keep cool, listen, learn, and maintain a bipartisan perspective with legislators, candidates and issues We do not burn bridges, we build and maintain them.

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Question of the Month

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Q. If an owner is on the ballot, is it acceptable/legal for that individual to have the ballots returned to her? Can they also be the named proxy holder? Finally, is an owner entitled to view the proxies along with the ballots after the election?

A. These questions are governed by sections of the Illinois Condominium Property Act ("ICPA") that apply to all Illinois condominium associations, regardless of contrary provisions in an association's Declaration of Condominium.

ICPA Section 18(b)(9)(A) provides that a unit owner may use a proxy to cast his or her votes for election of directors at the annual meeting, unless the association has adopted a direct voting rule (that is, a rule that requires use of a "mail-in ballot" to the express exclusion of proxy voting). ICPA Section 18 (a)(18) allows anyone to be designated as a unit owner's proxy, so a unit owner who is a candidate for election to the board can surely be designated as another owner's proxy.

In order to expedite the vote count at the annual meeting, associations generally request that completed proxy forms be deposited into a voting box or returned directly to the association. However, candidates and their supporters may lawfully request that completed proxy forms be delivered directly to them, rather than to the association, and those proxy forms may be accumulated for submission at the annual meeting.

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