

# Surviving October 3 and Beyond

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# Hot Topics

- Delayed implementation/hold-harmless period
- FR/BAR Contract Revisions
- Communication with realtors
- Communication with lenders
- ALTA Settlement Statement Forms
- Best Practices
- Title Insurance/DFS Rule 69B-186.008

# CFPB Update

- Delayed implementation
  - Not likely
- Hold-harmless period – Feb. 1, 2016
  - H.R. 3192 – passed House Financial Services Committee
  - S. 1711 – Committee on Banking, Housing and Urban Affairs
  - Likelihood of passage?

# FR/BAR Contract Revisions

- Final version available mid-September
- Changes:
  - Extensions of Closing Date
  - Inspection Timing
  - Financing
  - Title Evidence, including survey
  - Riders
  - “Back to back” closings

# Extension of Closing Date

## 5. EXTENSION OF CLOSING DATE:

- (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available ~~at time of Closing due to Truth in Lending Act (TILA) notice requirements,~~ on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy ~~TILA notice requirements~~ CFPB Requirements, provided such period shall not exceed ~~7~~ 10 days.

**RATIONALE FOR CHANGE:** To recognize that requirements for delivery of TILA and RESPA notices and disclosures have now been combined under CFPB regulations, and provide for a limited one-time extension of the Closing Date to meet Closing Disclosure delivery requirements.

# Financing

## 8. FINANCING:

☐ (a) Buyer will pay cash ~~or may obtain a loan~~ for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

☐ (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA VA loan on the following terms within \_\_\_\_\_ (if blank, then 3045) days after Effective Date ("Loan Commitment Date") for: (**CHECK ONE**): ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate loan in the principal amount of \$ \_\_\_\_\_ or \_\_\_\_\_ %

of the Purchase Price, at an initial interest rate not to exceed \_\_\_\_\_ % (if blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of \_\_\_\_\_ years ("Financing").

Buyer shall make mortgage loan application for the Financing within \_\_\_\_\_ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:

(i.) Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or

(ii.) 7 days prior to the Closing Date specified in Paragraph 4, which date, for purposes of this 8.(b) (ii), shall not be modified by Paragraph 5(a).

If either party timely cancels this Contract pursuant to this Paragraph 8 and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

**RATIONALE FOR CHANGE:** To clarify that the closing of cash transactions will not be delayed by CFPB Requirements if Buyer elects to pursue a loan, to recognize new timelines for lenders' compliance with CFPB Requirements by providing a default of 45 days rather than 30 days for obtaining financing commitments; and to provide that period for either party to terminate for Buyer's failure to obtain financing is not extended by CFPB Requirements.

# Title Evidence & Insurance

(c) TITLE EVIDENCE AND INSURANCE: At least \_\_\_\_\_ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the Owner's Policy and any lender's policy will be calculated and allocated in accordance with Florida Law, but may be reported differently on certain federally mandated closing disclosures and other closing documents.

(CHECK ONE):

- ☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, ~~(but not including~~ and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the ~~Buyer's~~ lender's policy ~~and~~ endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as buyer may select); or

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# Survey

(d) **SURVEY:** ~~At least 5 days prior to Closing~~ On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

\* \* \* \* \*

**RATIONALE FOR CHANGE:** To facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the delivery and examination of title evidence and survey; to provide for proper calculation of owner's and lender's policies of title insurance; and to recognize that disclosure of such premiums on CFPB forms may differ from Contract provisions and Florida OIR promulgated rates and procedures.



# Property Inspection & Repair

## 12. PROPERTY INSPECTION AND REPAIR:

(a) **INSPECTION PERIOD:** ~~By the earlier of 15~~ Buyer shall have \_\_\_\_\_ (if left blank 15) days after Effective Date ~~or 5 days prior to Closing Date~~ ("Inspection Period") within which, Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

**RATIONALE FOR CHANGE:** To to facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the completion of inspections. This change will also make the default Inspection Period in the Standard form the same as the default provision in the "AS IS" form.

# Force Majeure

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligations under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. “Force Majeure” means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, ~~and any other cause not reasonably within control of Buyer or Seller, and~~ which, by: exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

# Seller Financing Rider

## II. SELLER FINANCING

Seller agrees to hold a note secured by (CHECK ONE): ☐ a first or ☐ a second purchase money mortgage, executed by Buyer in the principal amount of \$\_\_\_\_\_ at \_\_\_\_\_% interest per annum that will be (CHECK ONE\*):

- (a) ☐ fully amortized for a term of \_\_\_\_\_ (if left blank, then 30) years; or
- (b) ☐ an interest-only mortgage loan that complies with the requirements of Dodd-Frank set forth above for a term of \_\_\_\_\_ (if left blank, then 60) months, and requires monthly, quarterly, annual or other periodic interest payments (Permitted for the one property exclusion only); or
- (c) ☐ balloon mortgage that complies with the requirements of Dodd-Frank, set forth above, and initially amortized for a term of \_\_\_\_\_ (if left blank, then 30) years (Permitted for the one property exclusion only); or
- (d) ☐ an adjustable rate mortgage loan for a minimum term of \_\_\_\_\_ (if left blank, then 30) years, with interest rate adjustments as follows:
  - (i) The initial annual interest rate may change after \_\_\_\_\_ (but no less than 5, which shall be the number if left blank) years, and thereafter every \_\_\_\_\_ (if left blank, then 1 year(s)). Each date on which the interest rate changes is called a "Change Date."
  - (ii) The interest rate adjustments shall be based on a widely available index identified in (c)(iii) below. As of each Change Date, the new interest rate will be calculated by adding \_\_\_\_\_ percentage points (if left blank, then 1) to the then current index; however, the difference between the interest rate paid during the preceding twelve months and the new interest rate shall be limited to a change in the interest rate of \_\_\_\_\_ percentage points (but no more than 2, which shall be the number if left blank), and the lifetime interest rate change from the initial annual interest rate shall be limited to \_\_\_\_\_ percentage points (but no more than 6, which shall be the number if left blank).
  - (iii) The widely available index to be used to calculate interest rate adjustments shall be the \_\_\_\_\_ (if left blank, then the index shall be the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board on a date 45 days before each Change Date.)

**\*PURSUANT TO DODD-FRANK NO OTHER OPTIONS ARE PERMITTED.**

Principal plus interest shall be payable (in the event of an adjustable rate mortgage loan, initially) in equal (CHECK ONE): ☐ monthly ☐ quarterly or ☐ annual payments of \$\_\_\_\_\_ each, including interest, with the first payment due \_\_\_\_\_ month(s) after Closing. If a balloon mortgage, the final payment will exceed the periodic payments thereon, and the entire unpaid principal balance plus accrued interest shall be due and payable in \_\_\_\_\_ (not less than 5, which shall be the number if left blank) years if left blank, then 60) months from date of Closing.

# Appraisal Contingency Rider

## F. APPRAISAL CONTINGENCY RIDER

This Contract is contingent upon Buyer obtaining, at Buyer's expense, a written appraisal from a licensed Florida appraiser on or before \_\_\_\_\_ (if blank, then at least ten (10) days prior to Closing), stating that the appraised value of the Property is at least \$ \_\_\_\_\_ (if left blank, the Purchase Price), on or before \_\_\_\_\_. If the appraisal states that the appraised value of the Property is less than the above value, Buyer shall deliver a copy of such appraisal to Seller within 3 days after the above date and deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit paid shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property, except as provided in Paragraph 8(b) if it is checked.

If Buyer fails to timely obtain an appraisal, or having timely obtained such appraisal fails to timely deliver notice of Buyer's exercise of the right to terminate granted above, this contingency shall be waived and removed, and Buyer shall continue with this Contract, without waiving any of Buyer's rights in Paragraph 8(b) if it is checked.

**RATIONALE FOR CHANGE:** To facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the Buyer to obtain an acceptable appraisal and elect to terminate.



# Homeowner's / Flood Insurance Rider

## H. HOMEOWNER'S/FLOOD INSURANCE RIDER

### (CHECK IF APPLICABLE)

(a) **Homeowner's Insurance:** If Buyer is unable to obtain homeowner's insurance coverage (including windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium(s) not to exceed \$ \_\_\_\_\_ or \_\_\_\_\_ % of the Purchase Price by \_\_\_\_\_, 20 \_\_\_\_\_ (if left blank, then the earlier of 30 days after Effective Date or 10 ~~5~~ days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(b) **Flood Insurance:** In addition to the right of termination provided to Buyer in Paragraph 10(d), if Buyer is unable to obtain flood insurance coverage through the National Flood Insurance Program at a first year premium not to exceed \$ \_\_\_\_\_ or \_\_\_\_\_ % of the purchase price by \_\_\_\_\_, 20 \_\_\_\_\_ (if left blank, then the earlier of 30 days after Effective Date or 10 ~~5~~ days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

\*

**RATIONALE FOR CHANGE:** To to facilitate lender's compliance with new CFPB timelines by providing for an earlier default date for the determination by Buyer of acceptable HOA and flood insurance coverages.

# Communication with Realtors

- Effective date of new rules – Oct. 3
- When will buyer be applying for loan – before or after Oct. 3?
  - Use new FR/Bar if after, use current FR/Bar if before

# Communication with Realtors

- Most lenders, not settlement agents, will prepare CD
  - Realtors should have all information to you 12 – 15 days before closing, including:
    - Commissions
    - Administrative/processing fees
    - License numbers (agent & broker)
- Patience is key! There will likely be delays at first. Realtors should prepare buyers and sellers.



# Resources

- The Fund's Top 10 for Realtors
  - [www.thefund.com/infocenter](http://www.thefund.com/infocenter)
- CFPB's Realtor Information Center
  - [www.consumerfinance.gov/know-before-you-owe/real-estate-professionals](http://www.consumerfinance.gov/know-before-you-owe/real-estate-professionals)

# Communication with Lenders

- Who is preparing and sending buyer's CD?
- When does lender need figures from you?
- How are you exchanging information / documents?
- How will changes to CD be handled?
- When will you get revised loan instructions?
- Will funding procedures be different?

# Resources

- The Fund's Top 10 for Lenders
- The Fund's CFPB Bank Communications Chart
  - [www.thefund.com/infocenter](http://www.thefund.com/infocenter)

# ALTA Settlement Statement Forms

- “Simple” settlement statement and disbursement forms
- Combined, buyer, seller, and cash versions
- Included in DoubleTime 7.0.1
- Posted on [www.thefund.com](http://www.thefund.com)
  - PDF, Word, Excel
- Not required, but appears to be preferred by lenders

# Best Practices

- You need to do it!!
- Use The Fund's templates to get started
- Designate a staff member to take ownership

# Best Practices “Levels”

- SSI
  - Still used by some lenders, usually national
- Self-certification
  - Some national and regional
  - Does lender have form language?
  - Can you draft your own?
  - Must it be ALTA's Self-Assessment

# Best Practices “Levels”

- Third-party certification
  - Will lender accept your provider?
  - Do you do enough business with lender to justify cost?
- Thinking ahead:
  - Certification good for 2 years
  - 3-months of data before certification completed
  - Will it become industry standard?



# Title Insurance Disclosures

- Title insurance premiums will be stated *incorrectly* on all purchase transactions
- Loan premium will be too high; owner's premium too low
- Fixes?
  - Lender may allow credits on pages 2 or 3 of CD
  - ALTA Settlement Statement
  - DFS Rule 69B-186.008

# DFS Rule 69B-186.008

- ALL TRANSACTIONS!!!
  - Settlement agent disbursement certification
  - Disclosure of names and license numbers of title agents holding escrow
  - Written disbursement approval from buyer, borrower, seller
- CFPB transactions
  - Comparison of F.A.C. title insurance rates and CD title insurance rates
- Form DFS-H1-2146
- Effective date

## Florida Insurance Premium Disclosure & Settlement Agent Certification

Agency File # \_\_\_\_\_

Closing Date: \_\_\_\_\_

You are being given this form and certification to explain differences between Federal and Florida law. Federal law requires the costs of the policies to be calculated using the full premium for the lender policy. Florida law allows the premium for the lender's policy to be calculated using a lower rate when purchased along with an owner's policy.

If both an owner's policy and a lender's policy are being purchased, the title insurance premiums on this form might differ from the premiums on the Closing Disclosure. The owner's policy premium listed on the Closing Disclosure will probably be lower than on this form, and the lender policy premium will probably be higher.

The chart below lists the amounts disclosed by the lender and the premium for the policies being purchased. These amounts include the charges for endorsements to the policies:

|                               |                        | Closing Disclosure Amount |        | Florida Premium |        |
|-------------------------------|------------------------|---------------------------|--------|-----------------|--------|
|                               |                        | Buyer                     | Seller | Buyer           | Seller |
| (a)                           | Lender's policy:       |                           |        |                 |        |
| (b)                           | Lender's Endorsements: |                           |        |                 |        |
| (c)                           | Lender's Policy Total: |                           |        |                 |        |
| (d)                           | Owner's policy:        |                           |        |                 |        |
| (e)                           | Owner's Endorsements:  |                           |        |                 |        |
| (f)                           | Owner's Policy Total:  |                           |        |                 |        |
| Total All Policies ( c + f ): |                        |                           |        |                 |        |



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The total dollar amount for the policies as disclosed on this form should be equal to the total premium calculated using the Florida Insurance Code. The Florida Premium amounts listed above will be used to disburse the funds from the title agency's escrow account to (Name of Insurer) and (Name of Title Agency).

The undersigned hereby certify that they have carefully reviewed the Closing Disclosure or other settlement statement form and they approve and agree to the payment of all fees, costs, expenses and disbursement as reflected on the Closing Disclosure or other settlement statement form to be paid on their behalf. We further certify that we have received a copy of the Closing Disclosure or other settlement statement.

|                     |             |                             |             |
|---------------------|-------------|-----------------------------|-------------|
| _____               | _____       | _____                       | _____       |
| Seller Signature    | Date Signed | Buyer/Borrower Signature    | Date Signed |
| _____               |             | _____                       |             |
| Seller Printed Name |             | Buyer/Borrower Printed Name |             |
| _____               | _____       | _____                       | _____       |
| Seller Signature    | Date Signed | Buyer/Borrower Signature    | Date Signed |
| _____               |             | _____                       |             |
| Seller Printed Name |             | Buyer/Borrower Printed Name |             |

#### Settlement Agent Certification

I have reviewed the Closing Disclosure, and to the best of my knowledge, it is a true and accurate account of the funds which were (i) received, or (ii) paid outside closing, and the funds received have been or will be disbursed by the undersigned as part of the settlement of this transaction. I further certify that I have obtained the above certifications which were executed by the buyer(s)/borrower(s) and seller(s) as indicated.

|                            |                        |
|----------------------------|------------------------|
| _____                      | _____                  |
| Settlement Agent Signature | Date Signed            |
| _____                      | _____                  |
| Settlement Agent Name      | Florida License Number |
| _____                      | _____                  |
| Title Agency Holding Funds | Florida License Number |