

Enforcing the New Consumer Financial Protection Bureau Rules

New rules became effective January 10, 2014

A. RESPA -Five Duties for servicers

1. Provide requested information and correct account errors

- i. In addition to “**qualified written request**” - for which you need borrower’s name, account, and “reason for the belief of the borrower, to the extent applicable, that the account is in error” or “sufficient detail to the servicer regarding other information sought by the borrower” but such “other information” must be “information related to the servicing of the loan”
- ii. new “**request for information**” Reg X §1024.36 – which just has to relate to the loan, can be request for origination documents (ie, Note, DOT, HUD, TILA disclosures, etc) – may ask for “servicing file” which will include notes regarding contact with borrower and “life of loan payment history” and may ask for identification of who owns the mortgage – they must respond with identity, address and contact information within 10 business days, must be in writing
- iii. new “**notice of error**” Reg X §1024.35 – which must be an “error” which falls within one of ten categories or “any other error related to the servicing of borrower’s mortgage loan” – an improper loan mod may be a sufficient “error”; two of the “errors” deal with dual tracking; loss mitigation is not a specified error, but it is also not an excluded item; asking for a “payoff statement” is a demand under TILA, but, after you receive it, to challenge something on it as wrong, it’s under RESPA
- iv. Timing:
 1. Lender must acknowledge request and take action within 5 business days; and, within 30 business days they must correct the account or after conducting *reasonable* investigation, provide written explanation why nothing was wrong or provide requested information or explain why information is unavailable or overbroad
 2. Except – 7 business days for NOE re inaccurate payoff statement; 10 business days for RFI seeking identity of owner of the mortgage; and other limits when close to a foreclosure
 3. Extension - Lender may extend deadlines by 15 days if lender notifies borrower of extension and reason for delay before 30 days expires
 4. If they think your request is “overbroad, duplicative, confidential or unduly burdensome” they must tell you that in a written response within 5 days,
 - a. If you get a notice that overbroad, narrow request and ask again
 - b. If you get notice that nothing wrong, within 5 days ask for documents they used to support that determination (see if it proves they conducted a “reasonable investigation”); then lender has 15 business days to provide documents upon which it relied in reaching its conclusions
- v. Request can only be from borrower or his/her agent or his attorney
- vi. Address to which the requests should be sent *must* be on the “regular billing notice” and the lender’s website; and, if they designate such address as exclusive address, your request must be sent to such address
- vii. Can make the request anytime, and for 1 year after loan transferred or paid off
- viii. Lender may NOT charge fees for RESPA requests
- ix. Appeals process in Reg X §1024.41(h)

2. Provide servicing transfer notices (same)

3. Maintain escrow accounts (same)
4. Comply with force-place insurance procedures (new)
 - i. Flood insurance is not covered by these rules
 - ii. They may ONLY impose insurance if there is a “reasonable belief that the borrower failed to pay for insurance” and they must send 45 day and 15 day notices to the borrower before imposing such insurance;
 - iii. Servicer must terminate insurance within 15 days after receiving proof of insurance and refund premiums for overlap period
 - iv. Their expense for insurance must be “reasonable” so no more inflated insurance
 - v. Lender has a duty to timely disburse payment of taxes and insurance if it is an escrow loan (even if no money for such expenses because loan is delinquent) per 12 U.S.C. §2605(g) and see Reg X § 1024.17(k)
5. Comply with loss mitigation procedures (new)
 - i. For borrower’s principal residence only
 - ii. Lender must establish “live contact” once loan is 36 days in default; Lender must provide written notice of delinquency once loan is 45 days in default with information about loss mitigation; this provision is *suspended* during a bankruptcy
 - iii. Lender must process any request for loan modification at least 45 days before a scheduled foreclosure, and lender *must* send notice within 5 days thereafter stating if application is complete, what docs are needed, and “reasonable date” to provide more documents
 - iv. If complete package at least 37 days before foreclosure lender must evaluate and respond within 30 days
 - v. Must be 120 days default before foreclosure notices may be sent, and they cannot send such notice if they have a complete loss mitigation package at that time, and this trumps state law limits if shorter, Reg X § 1024.41(f)(1)
6. Damages: to recover for violations you must prove actual damages – or - a pattern and practice which would trigger statutory damages (\$2,000 per violation)

B. TILA – Five Duties related to consumer’s dwellings

1. Promptly credit “periodic” payments – upon receipt if correct amount, no pyramiding late fees
2. Provide periodic mortgage statements – amount due, fees explained, past payment breakdown, transaction activity, partial payment info, contact and account info, delinquency information if >45 days late (exemption for bankruptcy); Lender may charge fees for information request
3. Provide payment change notices – between 60 and 120 days before change if caused by rate adjustment; for ARMs between 210 and 240 days before first payment after rate adjustment
4. Provide payoff statements – within 7 days of request
5. Provide transfer of ownership notices – no later than 30 days after loan is transferred
6. Damages: easier to recover damages under TILA; actual damages, costs, attorney’s fees and statutory damages (2x finance charge, up to \$4,000)

C. John Rao said you can get sample request forms from National Consumer Law Center www.nclc.org