



**Holiday
Issue 2015**

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Happy Holidays from MMB&M!

As the sun sets on 2015, we'd like to wish everyone a happy and healthy holiday season. Whether you celebrate Christmas, Hanukkah, Kwanzaa, Winter Solstice, etc., let this be a peaceful time spent with family and loved ones, enjoying the blessings we have and opening our hearts to the potential of 2016.

Our MMB&M family also wants to thank each of you for your friendship and business support during 2015. We've enjoyed seeing you in the community and providing assistance when we were able. Your vote of confidence remains our shining incentive to continue the work we do and it is our honor to be called upon when questions arise and troubles surface. We look forward to growing our relationships in the coming year.





TRID Tried. So What's the Impact?



By: Heidi Rib Brent
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TRID, part of the laws effectuating the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, went into effect on October 1st of this year, after being delayed another two months to accommodate the mortgage-lending industry. "TRID," already a conglomeration of two acronyms, stands for the "TILA RESPA Integrated Disclosure," with "TILA" being the "Truth in Lending Act" and "RESPA" being the "Real Estate Settlement Procedures Act." The Consumer Financial Protection Bureau has been touting TRID as "know before you owe." So, has it made any difference?

TRID, which applies to most home loans, requires the lender to provide an initial Loan Estimate within three business days of receiving a loan application and not later than four business days before the loan closes. Lenders must then provide the new Closing Disclosure form no later than three business days before closing the loan. This all relates to forms and timing, so what's the big deal?

The Loan Estimate must be in writing, on the new federal forms and provide a good faith estimate of all credit costs and terms of the transaction. The three days are triggered by the lender's receipt of six items of information: (1) borrower's name, (2) income, (3) social security number, (4) property address, (5) estimated property value, and (6) amount of loan requested. The waiting time between the Loan Estimate and closing cannot be waived in the absence of a "bona fide financial emergency."

The Closing Disclosure combines the closing statements required by TILA and RESPA, replacing the HUD-1 form to which all were accustomed. It also must be in writing and contain the actual terms and costs of the transaction. If the terms materially change, meaning a change in the APR (average percentage rate) by 1/8% or more, changes to the loan product such as to or from an ARM (adjustable rate mortgage) or adding a prepayment penalty, the Closing Disclosure form must be revised and the closing must be adjusted for the three business day waiting period. Again, the three business day waiting period only can be waived by the borrower for a bona fide financial emergency.

The real difference in TRID is that the HUD-1 came from the escrow agent, which is generally the title company in Arizona closings, while the Closing Disclosure must come from the lender. This shifts the control over the closing significantly. Furthermore, lenders are claiming privacy issues prevent them from sharing the Closing Disclosure with the real estate agents involved in the transaction, so the agents cannot monitor and facilitate the closing as they did previously. Some escrow agents are issuing an ALTA closing statement to share the information with the parties and their agents in supplement to the Closing Disclosure, but it cannot replace the new Closing Disclosure.

The long-term impact of TRID is yet to be determined; however houses are closing after TRID's effective date. There are some best practices to use as a guideline. Where agents used to anticipate approximately 30 days from contract to closing, now agents should be providing 45 to 60 days just to be safe. To expedite closings, the borrower should be pre-qualified for a loan amount before the purchase contract, initial property inspections should be performed prior to an appraisal to include any changes

that affect the property value, walk-throughs should be performed a week before closing to include any changes in the Closing Disclosure and the real estate purchase and sale contract should include a provision to extend the closing date to comply with the Closing Disclosure timeframe. "Mail-out closings," must include at least an extra three days for mailing and "stacked transactions," where one closing is dependent upon another should be spaced at least a day apart.

My personal experience has included a lender using TRID as an excuse to delay loan approval on a jumbo loan to the point of killing a deal. A mortgage broker should arrange for back-up lenders for such transactions. I also recommend adding a provision to the purchase and sales contract that provides the buyer/borrower another alternative on the financing contingency. Currently, the contract provides that no later than three days before closing the buyer must either: (1) sign all loan documents, (2) deliver loan approval without conditions and advise of date the Closing Disclosure was received from the lender so the closing can be adjusted to comply with TRID, or (3) deliver notice of inability to obtain loan approval and cancel the deal. A fourth alternative would be for buyer to deliver notice that loan approval still is pending and receive an automatic extension of closing for a week or ten days for the lender to complete its analysis. Whether this fourth alternative is accepted would depend on the sellers' need to close by a date certain as compared to their desire to sell the property to the contracted buyer. Particularly in cases involving jumbo loans, the buyer may be best advised to seek assistance from an experienced attorney.



What's Happening in Tucson?

Christmas with the Celts- The Rialto Theatre - December 18

21st Annual Downtown Parade of Lights - 17th Street/Stone Avenue - December 19th, 2015

Tohono Chul Park Holiday Lights- Tohono Chul Park - December 18 & 19

Winterhaven Festival of Lights - December 12 through 26

New Year's Eve - Hotel Congress - December 31

Riverdance - Centennial Hall - January 5 through 10

Tucson Jazz Festival - Downtown Tucson - January 18

2016 Annual Dillinger Days - Downtown Tucson - January 22 & 23



‘TIS THE SEASON OF GIVING*



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As a whole Americans are generous. In fact, total charitable giving in the United States for 2014 rose 7.1% over 2013 to an estimated \$358.38 billion. The vast majority (72%) of that amount was given by individuals, followed by foundations (15%), bequests (8%) and finally corporations (5%). A large percentage (34%) of those donations (according to Steven MacLauglin of Blackbaud Index, an organization that tracks U.S. based charitable giving) is made in the last three months of the year.** This truly is the season of giving.

America's spirit of giving is reinforced by the federal tax deduction available to taxpayers who make donations to entities that have been designated as tax-exempt under the Internal Revenue Code. The process of creating such a tax exempt entity is governed by both state and federal law. The first step is to create an Arizona corporation whose purpose and mission fit within both the Arizona and federal requirements. Under the Internal Revenue Code, the Articles of Incorporation must state that the entity is "organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code." In addition, the Code requires that the Articles specifically prohibit any private benefit to the directors, members, trustees or any other private persons and provide that upon dissolution all of the entity's assets will be distributed to another tax-exempt organization. Since these provisions are not in the nonprofit forms found on the Arizona Corporation Commission webpage, we don't recommend using those forms.

Once the Arizona non-profit corporation has been formed, the next step is to complete and file Internal Revenue Service Form 1023 – Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. Depending upon the nature of the entity, various addendums and supplements to the Application must be filed. The wording used on the Application, addendums and supplements is critical, particularly as it relates to the proposed activities, fundraising, staffing, policies and finances of the entity. In order to make the approval process proceed smoothly and avoid unnecessary delay and frustration, it is advisable to have someone who has experience assist you with the process. When the Application has been approved, the entity will receive a "Determination Letter" from the Internal Revenue Service. Thereafter, donations will be deductible by the donor and tax-exempt to the entity for federal and Arizona income tax purposes. The entity then will be able to tap into the spirit of giving at the holidays and throughout the year.

*Unless otherwise noted, statistics cited herein are taken from: *Giving USA 2015: The annual Report on Philanthropy for the Year 2014*, a publication of Giving USA Foundation, 2015, researched and written by the Indiana University Lilly Family School of Philanthropy. Available online at <http://www.givingusa.org>.

***Charitable Giving Increases as Holiday Season Ramps Up*, Eleanor Mueller, USA TODAY Network, November 11, 2014, <http://usat.ly/1qCO6Hr>.



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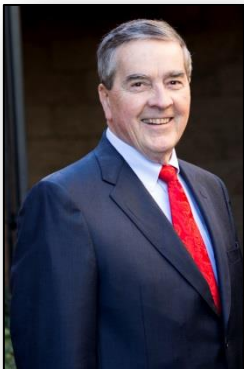
*Heidi enjoys a day of sunshine at the Tucson REALTORS®
Charitable Foundation Golf Fundraiser held at the OMNI
Tucson National Golf Resort & Spa on October 23, 2015.*



What Happens to Your Mortgaged Home When You or Your Spouse Die?

Chapter One

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This is a question that many will face at some time, whether we are a surviving spouse or heirs to a surviving spouse who recently died. The surviving spouse will ordinarily expect to go on living in the home and the surviving heirs might also expect to continue living in the home or want to move into the home. The elephant in this room is the mortgage company expecting that its mortgage loan will remain secure and that the mortgage payments will continue to be paid on time until the mortgage has been paid off.*

Can the surviving spouse or the heirs to the surviving spouse afford to keep or take over the home? Can they afford to make the mortgage payments in addition to property taxes and insurance? Almost all mortgage loan agreements contain a due on sale clause that requires that the loan be paid off upon the transfer of the home to a third party. Many mortgage loan agreements today contain a clause that defaults the loan upon the death of the person who signed the mortgage loan papers. Federal law prohibits the lender from enforcing the due on sale clause on the death of an owner when the title is transferred by operation of law to a co-owner of the property and also transfers to the spouse or children or other relative of the decedent. However in any case, the mortgage payments must be timely made in order to prevent the lender from foreclosing its loan and selling the property to third parties.

If the survivor(s) cannot comfortably pay the mortgage and other required payments, there will be a few months during which the house can be sold before the lender will seriously complain about delinquent mortgage payments. If a successful sale (meaning quick enough and for enough money to pay the mortgage) can be arranged within that period of time, the mortgage can be paid out of the sale proceeds and the balance distributed

*While most homes in Arizona have a Deed of Trust rather than a mortgage, for this article the term "mortgage" is used throughout

to the seller. If the house cannot be sold for enough money to pay the mortgage, it should be abandoned to allow the mortgage lender to foreclose and take it over. The ordinary foreclosure process takes at least 120 days to complete, so there won't be a rush to vacate the house. In almost all cases, there can be no claim against the deceased owner for any delinquency.

Planning ahead makes a lot of sense. The proceeds of mortgage insurance or ordinary life insurance can be used to pay off the mortgage if purchased ahead of time. With such advance planning, the surviving spouse and other family members can continue their life without worrying about a roof over their heads.



It Is a Time For Happy Holidays!



December is a time of celebration around the world when many different cultures observe special holidays. We know that Christians celebrate the birth of Jesus on December 25, but what about other religions and countries? Here is a quick primer of holidays celebrated during and around this joyous time.

Chalica is celebrated by Unitarian Universalists on the first Monday in December and lasts 7 days. Each day a chalice is lit and the day is spent reflecting and doing good deeds based on a specific principle.

Children in Europe celebrate St. Nicholas Day on December 6 by leaving their shoes outside of bedroom doors to receive presents. Beware of Krampus who will leave twigs and coal for naughty kids.

On December 8, Buddhists celebrate Bodhi Day which is the day that Buddha, while sitting under a Bodhi tree, achieved pure and divine enlightenment.

December 13, on St. Lucia's Day, people in Scandinavian countries honor Lucia of Syracuse with a Festival of Lights.

In Mexico, Las Posadas begins between December 16 and 24 where believers honor the journey of Mary and Joseph to Bethlehem.

Hanukkah is observed by our Judaic community according to the lunar calendar and lasts 8 days to commemorate the re-dedication of the Holy Temple in Jerusalem. A candle is lit each night in a menorah to symbolize the tiny amount of oil that lasted 8 days after a small group of Maccabees held back the Assyrian Army.

Numerous celebrations center on the Winter Solstice which, in the Western hemisphere, marks the arrival of the shortest day and longest night. Since this is calculated by lunar position, the date changes each year, but generally occurs December 20 through 23



Pagans celebrate Yule, a solstice tribute where they bid farewell to the shorter days of less sunlight and welcome back the longer days of sunshine. Many varieties of illumination are displayed such as candles, shiny ornaments and bright lights.

Iranian's celebrate Yalda on December 21 to honor the arrival of winter, the renewal of the sun and the victory of light over darkness.

Hindus celebrate Pancha Ganapati which is a 5-day festival to honor Lord Ganesha, who they believe to be the remover of obstacles and creator of bright beginnings.

Native Americans of the Hopi, Zuni and Pueblo descent keep the tradition of Soyal with a Great Feast of the Winter Solstice and ritual to bring the sun back from a long winter slumber.

The Chinese hold Dongzhi Festivals on December 22 as the longer daylight hours mean an increase of positive energy flow that is traced back to the yin and yang philosophy of balance and harmony in the universe.

Kwanzaa begins on December 26 and runs through January 1 as a way to honor the African culture and re-connect with its heritage.

More secular holidays include Boxing Day on December 26 in Canada and Great Britain where employers would give their workers boxes of gifts. Human Rights Day is observed on December 10 to commemorate the day the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948. For atheists and religious skeptics, Newtonmas happens December 25 and celebrates the birth of Sir Isaac Newton by focusing on achievements of science and knowledge and gifting boxes of apples.

Since so many different holidays are celebrated in December it is quite appropriate to wish someone "Happy Holidays" which welcomes and accepts all groups and beliefs.



The articles contained in this newsletter are of a general nature and reflect only the opinion of the author at the time it was drafted. They are not intended as definitive legal advice, and you should not act upon it without seeking independent legal counsel.
