



# **Best Practices and TRID Update**

Current Issues in a Real Estate Practice

# Keep in Mind

- There is still a lot of confusion out there
- Best Practices and TRID are entirely separate initiatives
- “Best Practices” is not a regulatory mandate, TRID is a regulatory mandate
- No fines and penalties for not complying with Best Practices, fines and penalties for not complying with TRID
- Lenders dictate Best Practices requirements and compliance, regulators dictate TRID requirements and compliance
- Best Practices is “optional”, TRID is required

# ALTA Best Practices

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- Licensing
- Escrow and Trust Accounts
- Privacy and Info Security
- Recording and Pricing
- Title Policy Procedures
- Professional Liability Insurance
- Resolving Consumer Complaints

# Says Who?

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Consumer Financial Protection Bureau (CFPB) and other regulators?

American Land Title Association (ATLA)?

**LENDERS?**

# The Players

## CFPB and other regulators

- Lenders are responsible for the actions of third party vendors – translation, whatever a lender needs to do for oversight is the lender's choice, but ensuring closing agents follow BP may provide some defense to a regulatory action

## ALTA

- Prepared the Best Practices standards based on input from regulators, lenders and real estate industry for use as a guide, not as a mandate

## Lenders

- Almost across the board, lenders have indicated that they want their closing agents to be compliant with Best Practices ... and
- **THEY WANT THEIR CLOSING AGENTS TO BE ABLE TO PROVE COMPLIANCE IF REQUESTED**

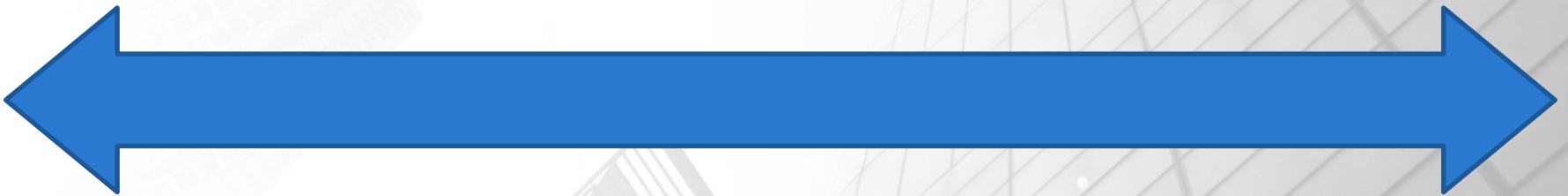
LENDERS WANT THEIR CLOSING AGENTS TO BE ABLE TO PROVE COMPLIANCE ... IF REQUESTED.

“Proof of compliance” - it’s a sliding scale

Copy of BPs

Self Certification

Third Party Certification



# Who Wants What?

## Proof of Compliance

### Copy of Best Practices

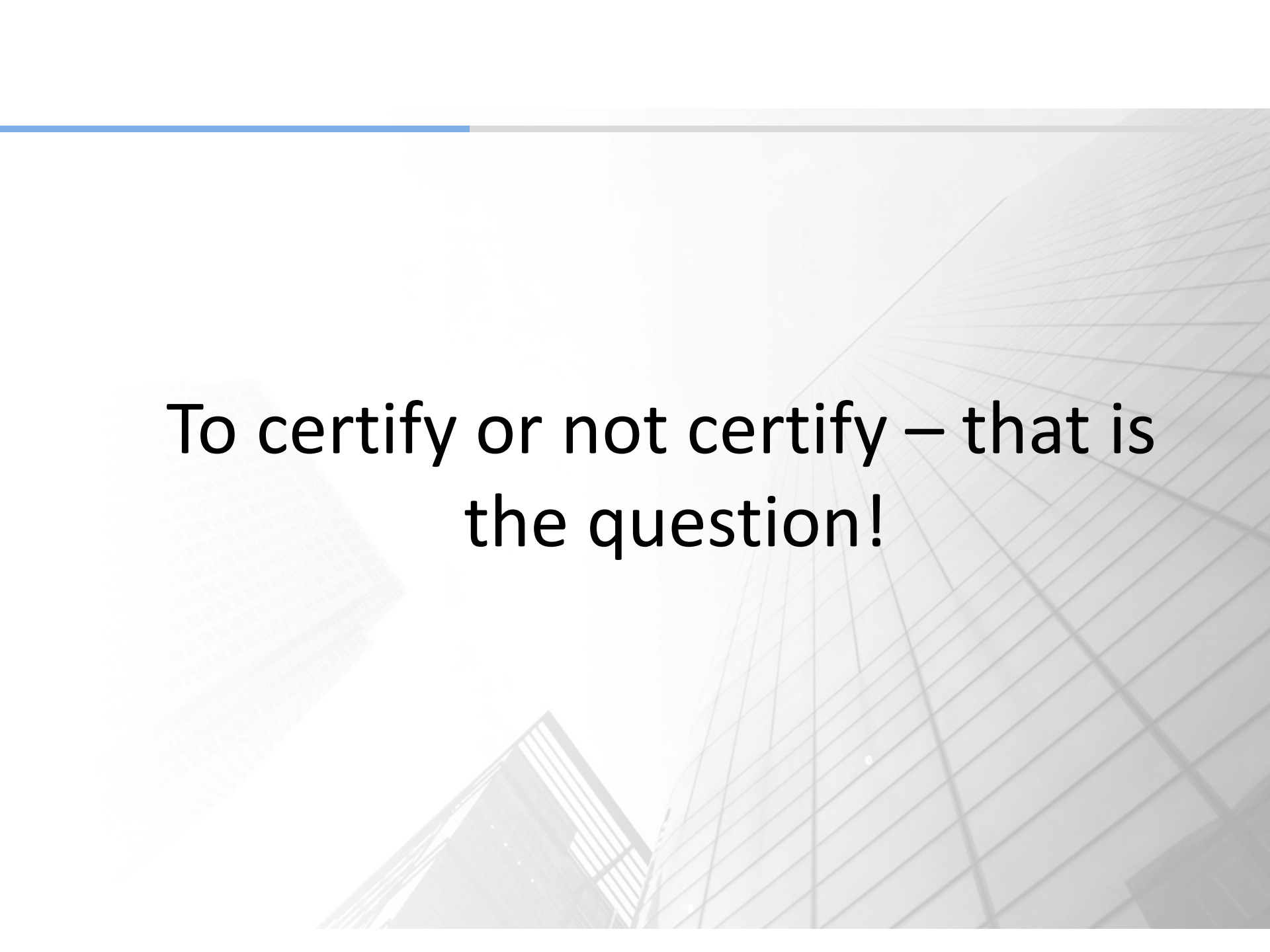
- Generally small lenders or community banks
- May simply ask “have you implemented Best Practices”
- May ask for a copy of your Best Practices
- May ask for proof of your following your Best Practices (i.e. copies of licenses, reconciliations etc.)
- May come look for themselves (i.e. clean desk, locked cabinets, locked doors, etc.)

### Self Certification

- Varies by lender
- Some lenders refer to it as self-assessment using the ALTA Assessment Procedures
- Some lenders create their own requirements and request documents from agents (i.e. proof of E & O, licenses, underwriter good standing letter, sample reconciliation, positive pay, etc.)
- Some lenders simply require “We certify we will adhere to Best Practices”

### Third Party Certification

- Six lenders to date
- Requirements vary by certifier
- Process can take from a week to several months depending on certifiers internal protocols and sample period
- Reported costs vary from \$1,750 to \$8,000 plus
- May incur costs to “come into compliance”
- Some lenders may verbally waive deadlines or grant exceptions



To certify or not certify – that is  
the question!



# Factors to Consider

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- Are your lenders asking for it? If not now, will they later?
- Cost of certification (including “retrofit” - as required by certifier – encryption, escrow account changes, building structure, filing systems, information security, building security etc.) ...
- ... versus Revenue
- Will it help your efficiency and Best Practices compliance
- Market advantage or disadvantage

# What's the Certification Process?

- Memorialize your agency Best Practices – we have the tools to help (StarsLink, templates, MVT personnel)
- Talk to various “certifiers” to find a “fit” (regional CPA firm? non-CPA entity? local CPA?)
- Most do a preliminary assessment of your BPs and make recommendations (they want you to “pass”) via remote exchange of info (your policies, checklists, workbooks, interviews etc.)
- Back and forth to arrive “agreed upon” BPs
- Agreed upon BPs in place for a period of time (varies but up to 90 days “sample period”)
- Audit Time – remote exchange of info, in person or both
- Pass, fail or “we’ll come back in thirty days”

# A Few Parting Thoughts on BP

- It's Important to memorialize your agency Best Practices whether you are going to certify or not – we have the tools to help (StarsLink, templates, MVT personnel)
- When you get a request from a lender – talk to them and see what they REALLY want
- You probably are doing a lot of this already, you've just never written it down
- Whatever a lender is asking for, call us, we can help because we have heard it before
- A one or two person agency CAN do this – even certification
- “We only do commercial work” doesn't = ignore Best Practices
- Don't wait until the last minute

# So What is TRID?



T Truth In Lending Act

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R Real Estate Settlement Procedures Act

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I Integrated D Disclosure Rule

# Scope and Date

- Majority of closed end mortgages, EXCEPT: Reverse Mortgages, HELOC, mobile homes, commercial loans, creditors making 5 or fewer loans per year, certain no-interest, subordinate special purpose loans.
- Effective, now October 3, 2015 - determined by loan application date, but probably won't see one until early to mid November.

# We Can Help

- We have emailed out to all agents over the past few months a series called “TRIDBITS”
- As you will recall, TRIDBITS identifies and answers the more commonly asked questions surrounding the new TILA-RESPA Integrated Mortgage Disclosure Rule
- A copy of these 14 TRIDBITS are included in the seminar materials - we will cover materials contained in a few of them today
- Frequently Asked Questions on TRID – 25 pages also included in the seminar materials

# The Three-Day Rule

- The lender is responsible for the delivery of the Closing Disclosure (CD) but can designate the closing agent to handle the delivery
- The CD must be delivered three days in advance of the closing
- Because of strict definition and the severe penalties for lender most lenders will make the delivery
- A business day for CD purposes is all calendar days other than Sundays and the ten Federal holidays - Sundays and the ten federal holidays must be removed from the count
- If CD is not hand-delivered, the time period typically expands to seven days in advance of the closing (three in transit, three for review plus one Sunday)
- Certain charges trigger a new three-day review period (pre-payment penalty added, loan product changes, APR changes by 1/8)
- If the consumer says they never received the CD, call the lender and ask if the lender would like you to proceed
- Borrower can waive the three-day waiting period ONLY if the borrower has a Bonafide Personal Financial Emergency - the phrase is undefined but the example they provides shows this is a very high bar and lender must determine if a waiver is permitted



# The Graphic\*

(\*It's also in the seminar materials)

## 3 DAY CLOSING DISCLOSURE RULE:

Definition of *business day* for Closing Disclosure purposes: all days except Sunday and 10 Federal Holidays.

CLOSING  
DATE:

MONDAY

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

DISCLOSURE  
DUE:

PRECEDING  
THURSDAY

PRECEDING  
FRIDAY

PRECEDING  
SATURDAY

PRECEDING  
MONDAY

PRECEDING  
TUESDAY

PRECEDING  
WEDNESDAY

MAIL  
DISCLOSURES:

PRECEDING  
MONDAY

PRECEDING  
TUESDAY

PRECEDING  
WEDNESDAY

PRECEDING  
THURSDAY

PRECEDING  
FRIDAY

PRECEDING  
SATURDAY

{DELIVERY DEFINED}



HAND DELIVERY: IMMEDIATE



US MAIL: ASSUMED RECEIPT 3 DAYS AFTER PLACED IN MAIL



OVERNIGHT DELIVERY: WITH CONSUMER CONFIRMED RECEIPT



EMAIL: WITH RECEIPT CONFIRMED BY CONSUMER AFTER APPROVAL  
TO USE EMAIL METHOD OF DELIVERY (IF NOT, ASSUME 3 DAYS TO OPEN EMAIL)

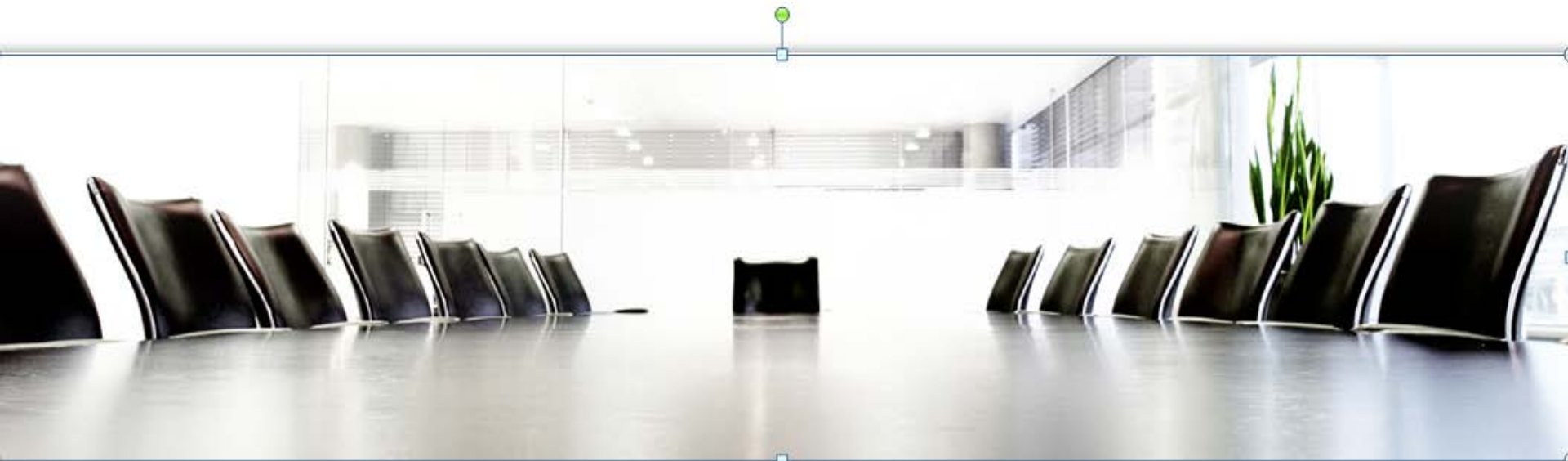
# Forms, Data Exchange, Who Gets What and Other Miscellaneous

- TRID does not permit the use of the new forms for any loans where the loan application was taken prior to October 3, 2015, so continue to use the HUD-1 for settlements on loans where the loan application was taken prior to October 3, 2015
- Acreage, construction-only loans and vacant land may be included under TRID depending on the primary purpose of the loan - if property is used primarily for personal, family or household purposes and the debt is secured by a closed-end transaction secured by real property
- Many lenders are requiring new levels of security and data privacy for exchange of information – talk to your lenders NOW to make sure you can comply
- Options being utilized by lenders for data exchange include: third-party integrations, web portals and manual entry (similar to the current process - agent and lender exchange information via emails, fax etc., but lenders may require encryption or other data security measures)
- Since the CD is considered a loan document, whether or not the real estate agent gets a copy is up to the lender. Most lenders have indicated the lender will give a copy of the completed CD to the closing agent and the borrower and if the borrower wants their real estate agent to have it, the borrower will have to supply it

# So What's the New Role for Agents?

- Many lenders realize that TRID will likely require more, not less, work by closing agents
- Even though the lender is going to issue the CD (in most cases), agents will need to input the same information into their systems so that the transaction can be balanced and disbursed
- Most settlement agents will have the additional role of creating the Settlement Statement or other disbursement form to obtain signatures approving the figures and authorizing disbursement - most lenders want this for their files
- Agents will be asked to assist the lenders in gathering fees and other information from real estate agents earlier in the process so the lender's CD delivery requirements can be met
- Agents are still responsible for gathering the figures and the creating and delivering of the seller's side of the CD
- Agent may more frequently need to update title searches due to delays related to moving closing dates because of new triggering events or last minute changes that were formerly permitted
- Because the borrower will receive the CD three to seven days in advance of consummation, the agent may have to spend more time responding to pre-closing questions from the consumer

# Questions & Answers



# Thank You!

## Contact

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