



Licensee Advisory

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How does the new TILA-RESPA Integrated Disclosure Rule affect the MLDS?

With the implementation of the new TILA-RESPA Integrated Disclosure Rule, brokers are reminded about the requirements regarding the Mortgage Loan Disclosure Statement (MLDS) under the Real Estate Law.

The MLDS is a disclosure required under section 10240 Business and Professions Code (B&P) from a mortgage broker to a borrower of the maximum costs and expenses associated with obtaining a loan. The MLDS is required when the broker is arranging a loan on any type of real property. It must be provided for loans on residential property, commercial property, raw land, etc. The items listed in B&P section 10241, including all broker compensation to be received, and the Bureau's licensing information telephone number, must be included in the disclosure. The MLDS must be provided within three days of the broker or agent receiving the borrower's completed, written loan application (or before the borrower becomes obligated on the note, whichever is earlier). Commissioner's Regulation 2842.5 defines when an application is considered complete, which is when the licensee receives or has prepared a written application form that is normally used by the lender for a federally related loan or normally used by the lender or licensee for a non-federally related loan.

If the broker is acting as a principal lender, then the MLDS is not required. If, however, the broker solicits the borrower representing that he or she will be arranging the loan as agent and then funds the loan as a principal lender, the MLDS is still required.

A broker must use Bureau forms RE 882 or RE 883 to comply with the MLDS requirements. For a nontraditional mortgage product, a broker should use the RE 885. Commissioner's Regulation 2842 defines a nontraditional mortgage product, for purposes of the MLDS, as a loan that allows borrowers to defer repayment of principal or interest (like interest only loans or payment option loans or negative amortization loans), but does not include reverse mortgages or home equity lines of credit (other than a simultaneous second lien loan).

If a broker would like to use a form other than the forms provided by the Bureau, he or she can submit the proposed form for the Bureau's review and possible approval, but it must include the disclosure items required in B&P section 10241, the broker's real estate license number, NMLS unique identifier number, and the Bureau's licensing information phone number and must allow for personal signature by the borrower and the broker (or his or her agent).

For federally regulated residential loans where the loan amount is \$30,000 or more for a first lien, or \$20,000 or more for a junior lien, a broker may not have to provide the MLDS if all of the requirements under B&P sections 10240(c) and 10236.4 are met, which include the borrower's receiving and acknowledging receipt of all of the following:

- a "good faith estimate" that satisfies the requirements of RESPA, includes the broker's real estate license number and NMLS unique identifier number, and includes a clear and conspicuous statement on its face that the estimate does not constitute a loan;
- all disclosures required under TILA;
- disclosure of a balloon payment, if applicable, that satisfies B&P section 10241(h), that is required by Fannie Mae or Freddie Mac, or that meets TILA requirements; and
- disclosure of the Bureau's license information phone number.

Effective October 3, 2015, a "Loan Estimate" that meets the requirements of and is compliant with the TILA-RESPA Integrated Disclosure Rule will fulfill the requirement under B&P section 10240(c) and 10236.4 as long as the borrowers sign the Loan Estimate and are provided with a separate disclosure – contemporaneously with the Loan Estimate – that includes a statement that the Loan Estimate does not constitute a loan commitment and that the borrower may check the license status of the broker and/or loan officer by calling the Bureau of Real Estate's license information telephone number at 1-877-373-4542 or by visiting CalBRE's Web site at www.calbre.ca.gov. If compensation that is paid by a source other than the borrower cannot be disclosed on the Loan Estimate, that compensation to be received by the real estate broker and/or loan originator may be disclosed on the separate disclosure. Otherwise, the real estate broker or loan originator should provide a Mortgage Loan Disclosure Statement.

If the borrowers do not sign the Loan Estimate and/or the separate disclosure is not provided, then the borrowers should have been provided a Mortgage Loan Disclosure Statement within the required three-day timeframe.

Questions about the Mortgage Loan Disclosure Statement can be directed to the Mortgage Loan Activities unit at (916) 263-8941.

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