



# Title Topics



36.12

August 2009

## Taylor Bean & Whittaker shutdown sends shockwaves

The news on August 11, 2009 that Taylor, Bean & Whittaker Mortgage Corporation ceased all mortgage origination and servicing operations affects thousands of homeowners with FHA-insured loans.

We received information on August 12, 2009 stating that Bank of America will take over TBW's loan servicing functions for FHA-insured mortgages. The FHA has posted information at <http://www.hud.gov/news/consumer-guidance.pdf>.

In sum, mortgagors will receive a letter from BAC Home Loans Servicing, LP within two weeks of their loan being added to their system.

We have no verifiable information about the payoff of FHA mortgages nor have we received any information about other types of mortgages now serviced by TBW.

*(Continued on page 2)*

## Changes in the Works for Durable Powers of Attorney?

Following on the heels of changes in New York's law regarding powers of attorney, the **New Jersey Law Revision Commission** was scheduled to discuss at its July meeting a memorandum comparing New Jersey's existing law on durable powers of attorney with New York's changes to its law.

Among the changes adopted in New York and outlined in the memo-- the new form of power of attorney

"is not valid until it is signed by

*(Continued on page 2)*

## Mortgage Disclosure Improvement Act Amends Truth-in-Lending Act's

**Last July**, Congress enacted the Housing and Economic Recovery Act of 2008 which included provisions known as the Mortgage Disclosure Improvement Act (MDIA) which amends the Truth in Lending Act (TILA).

The purpose of the MDIA is to assure that borrowers under closed-end mortgages (as opposed to credit line or so-called revolving mortgages) secured by residential properties receive early disclosure of anticipated mortgage loan costs. Specifically, the MDIA requires lenders to give borrowers the good faith estimates of mortgage loan costs within three (3) business days after receiving a consumer's application for a mortgage loan and before any fees, other than a reasonable fee for obtaining credit history, are collected from the consumer.

**The disclosure requirements apply to loans secured by "dwellings" and are not limited to primary residences.**

The new regulatory guidelines will impact, and could even dictate the closing date. From a settlement agent's standpoint, the rules implementing the MDIA (which rules are found as amendments to Regulation Z) provide that any loan to which the MDIA applies cannot close sooner than seven (7) business days after the early disclosures are provided.

In addition, if changes in the loan cause the interest rate (APR) provided in the early disclosures to increase by more than 0.125%, new disclosures must be issued and an additional three (3) day waiting period must be observed before closing. These waiting periods may be waived by the borrower under emergent circumstances as provided in the Rule.

Taking into account that the contract closing date may be 30-45 days down the road, there are a number of things that could change during the course of the transaction and impact the homebuyer's APR. Therefore, it's critical that that the lender be provided with estimated fees that are as accurate as possible.

Wells Fargo, for instance, urges that a preliminary HUD with accurate fees be sent to the lender at least 10 business days prior to closing in order for a pre-closing disclosure statement to be issued to the borrower.

It is recommended that when your office is acting as settlement agent you include a statement concerning receipt of the Good Faith Estimate (such as the following) on the borrowers' affidavit of title:

*(Continued on page 2)*

**TBW***(Continued from page 1)*

We caution against sending funds to any lender for any purpose unless that lender and they can document, in writing, that they are servicing a specific loan.

The absence of reliable information regarding TBW-related payoffs may mean that closings may be delayed or canceled. We caution against sending any funds to TBW or any entity that has ceased operations unless you can be assured that you will receive a release or satisfaction in exchange.

The ultimate responsibility for obtaining a release/satisfaction rests with the closing agent. With respect to TBW, we strongly recommend that your office require a current payoff letter and, until the situation stabilizes, a fully-executed and acknowledged release or satisfaction to be sent to you in advance, to be held in es-

**POA***(Continued from page 1)*

both the principal and agent, whose signatures are duly acknowledged in the manner prescribed for the acknowledgement of a conveyance of real property."

"A grant of authority to make major gifts and other asset transfers must be set out in a separate rider which contains the principal's signature, duly notarized and witnessed by two persons not named in the instrument as permissible recipients of gifts or other transfers, in the same manner as a will. In the alternative, the principal may grant such authority to the agent in a nonstatutory power of attorney executed in the same manner as a major gifts rider."

"The agent must sign the power of attorney as an acknowledgment of the agent's fiduciary obligations if the agent intends to accept the appointment. In transactions on behalf of the principal, the agent's legal relationship to the principal must be disclosed where a handwritten signature is required."

The minutes of the Commission's July meeting have not yet been released and an inquiry seeking more information has not yet received a response. We'll keep you posted. If you would like a copy of the Memo, please let us know.

A tip of the hat to Nickolas Nasuta, Esq. for alerting us to this development.

---

**MDIA***(Continued from page 1)*

I/we received the Good Faith Estimate for this loan more than seven (7) business days before the date of this closing.

These rules apply to all loans for which an application is received by the lender after July 30, 2009.

Additional information may be viewed on the Federal Reserve System's website [www.federalreserve.gov/newsevents/press/bcreg/20090508a.htm](http://www.federalreserve.gov/newsevents/press/bcreg/20090508a.htm). The amendments to Regulation Z may be viewed at <http://edocket.access.gpo.gov/2009/pdf/E9-11567.pdf>.

---

*For 28 years, Vested Title has stood behind its clients. When it comes to resolving title problems with tax collectors, assessors, county clerks and registers, call upon us and we will do all we can to help you get that title closed.*

---

## **Vested Title Inc. — Our 28th Year**

**How to Contact Us:**

**Vested Title Inc.  
648 Newark Avenue  
P.O. Box 6453  
Jersey City, NJ 07306**

**201-656-9220 201-656-4506 Fax  
800-637-0251 in New Jersey**

**On the Web at [www.vestedtitle.com](http://www.vestedtitle.com)  
[vti@vested.com](mailto:vti@vested.com) [vestedtitle.blogspot.com](http://vestedtitle.blogspot.com)**

**Susan L. Kruger, President  
Stephen M. Flatow, Vice Pres. & Counsel  
Paul D. Kruger, Vice President & Manager  
Diane R. Menard, Vice President-Sales  
Vincent Bellucci, Vice President-Sales  
Jackie Bergman, Sales  
Monica Battagliola, Sales  
Christina Cavadas, Sales  
Paula Tamburo, Title Officer**