

TILA §131(g): Notices of Sale, Transfer, or Assignment of Mortgage Loans

Section 404 of the The Helping Families Save Their Homes Act of 2009, enacted May 20, 2009 as Public Law 111-22, amended §131 of TILA to add a new §131(g) [15 U.S.C. §1641(g)] which provides that, with respect to any mortgage secured by the borrower's principal dwelling, not later than 30 calendar days after the date on which the mortgage loan is "sold or otherwise transferred or assigned to a third party", the "creditor that is the new owner or assignee of the debt" shall notify the borrower** in writing of the transfer. The notice must include "the identity, address and telephone number of the new creditor; the date of the transfer; how to reach an agent or party having authority to act on behalf of the new creditor; the location of the place where transfer of ownership of the debt is recorded; and any other relevant information regarding the new creditor". Violations result in liability for statutory damages of \$4,000 per violation, plus actual damages and attorneys' fees under §130(a) of TILA.

Effective date: §131(g) is effective for sales, transfers, and assignments of principal dwelling-secured mortgages that occur after May 20, 2009.

Reg. Z Provisions: Exceptions to the Notice Requirement. The Federal Reserve Board has Reg. Z amendments implementing §131(g). Fed. Reg. Vol.74 No. 223, pg 60143, 11/20/2009. These amendments are codified at 12 C.F.R. 226.39, key provisions of which include:

- Ø Whenever the term "mortgage loan" is used in §131(g) or 12 C.F.R. 226.39 it means a mortgage secured by the borrower's principal dwelling. 12 C.F.R. 226.39(a)(2).
- Ø The notice requirement applies not only to "creditors", the word used by Congress in §131(g), which under TILA technically applies only to parties that actually extend credit directly to consumers. Instead, Reg Z extends the requirement to apply to any "Covered Person" and defines that term to mean. A "Covered Person" means any person or entity who becomes the owner of an existing mortgage loan by acquiring "legal title to the debt obligation" *and* who acquires more than one mortgage loan in any twelve-month period. 12 C.F.R. 226.39(a)(1).
- Ø Exception #1: "Administrative Convenience". The notice requirement does not apply to a servicer of a mortgage loan if the servicer "holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation". Such a servicer is not a "Covered Person". 12 C.F.R. 226.39(a)(1).
- Ø Exception #2: Holding for 30 or fewer days. A "Covered Person" is not required to provide the notice if such Covered Person, in turn, transfers ownership to another entity on or before the 30th calendar day after acquiring the mortgage loan. 12 C.F.R. 226.39(c)(1).

** If there is more than one borrower, notice to any one of the borrowers that is "primarily liable" is sufficient. 12 C.F.R. 226.39(b)(2).

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