

TRID MYTH BUSTERS

What You Need to Know When Sharing Closing Documents

The implementation of the CFPB's Know Before You Owe regulation has brought up a number of questions regarding who is permitted to receive copies of closing documents, including the Closing Disclosure and alternate settlement statements, such as the ALTA Settlement Statements. It is important to note that the Know Before You Owe regulation did not implement any changes on data privacy; however, ALTA encourages title insurance and settlement companies to take this opportunity to review your company's privacy policies to ensure they match your data-sharing practices.

REFRESHER ON GOVERNING LAW

The Gramm-Leach-Bliley Act (GLBA) was passed in 1999 and remains the predominant authority on how to protect data. GLBA requires financial institutions, including title insurance companies and agents, to disclose their data-sharing practices to their customers and to safeguard private and sensitive customer information. To meet these new requirements, GLBA imposed three basic obligations:

1. a privacy notice requirement
2. a requirement that all consumers be provided the opportunity to opt-out of certain information disclosures
3. a requirement that measures be instituted to maintain the "security and integrity" of all nonpublic information.

The GLBA tasked the Federal Trade Commission (FTC) and other government agencies that regulate financial institutions to implement regulations to carry out the Act's financial privacy provisions. The CFPB is not included in the list of government agencies that regulate data privacy, and thus the implementation of the Know Before You Owe regulation did not affect the longstanding data-security requirements that title insurance companies and agents have been subject to.

With the implementation of GLBA, the FTC released guidance regarding the type of information companies should be safeguarding. The FTC is responsible for enforcing its Privacy of Consumer Financial Information Rule, which protects a consumer's "nonpublic personal information" (NPI). NPI is any "personally identifiable financial information" that a financial institution collects about an individual in connection with providing a financial product or service, unless that information is otherwise "publicly available". The Privacy Rule applies to ALTA members that provide real estate settlement services.

ALTA members should note that the FTC considers NPI to be any information obtained about an individual from a transaction involving a company's services. This could include a person's name, address, income, Social Security number or other information on an application. This also includes any information from court records or from a consumer report. The FTC said NPI does not include information that is believed to be lawfully made "publicly available." In other words, information is not NPI when steps have been taken to determine: (1) that the information is generally made lawfully available to the public; and (2) that the individual can direct that it not be made public and has not done so.

APPLYING STANDARDS TO TODAY'S REAL ESTATE TRANSACTIONS

The implementation of the CFPB's Know Before You Owe regulation has required lenders, real estate settlement agents, and title insurance professionals to radically change the way they conduct business. The new regulation's disclosure requirements have also generated a greater need to use additional settlement statements, such as ALTA's model Settlement Statements, to ensure that settlement agents can continue to meet their state disclosure requirements. With the use of these new forms comes the question, "Who is allowed to receive a copy of the Closing Disclosure and settlement statement?"

The basic answer is that the Know Before You Owe regulation does not address who may or may not receive a copy of closing documents. Many lenders, however, are refusing to share a copy of the Closing Disclosure with real estate agents or other third parties. Additionally, some lenders are including provisions within their closing instructions that prohibit settlement agents from sharing the Closing Disclosure with third parties. These lenders are stating that the consumer may provide a copy of Closing Disclosure to real estate agents if he or she chooses.

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Community Title Agency

9211 Forest Hill Avenue, Suite 100
Richmond, VA 23235
O: 804-320-4185 | F: 804-320-2200



Community
Title Agency

A concern remains about how to get necessary information about the transaction to outside parties, including real estate agents, who need certain information to document their involvement in the transaction. One of the primary reasons real estate agents are interested in receiving the Closing Disclosure is because they have to report certain data fields to MLS to close the listing. These requirements vary by state, and there is not a uniform set of data fields that will satisfy MLS. Reporting these data fields is a requirement for participating in the MLS system, so it is crucial that real estate agents receive this information.

WHAT NOW?

Settlement agents and title insurance professionals should contemplate the requirements and limitations of their privacy policies and contemplate whether any of these policies need to be revisited. The GLBA continues to set a strong standard for protecting NPI, despite going into effect 16 years ago. The ALTA Title Insurance and Settlement Company Best Practices reiterate the importance of privacy policies and include guidelines for companies to protect against data theft to help meet GLBA requirements. Pillar 3 of the ALTA Best Practices provides procedures on physical and network security of NPI, how to properly dispose of NPI, developing a disaster management plan, employee training to ensure compliance, and oversight of service providers.

When revisiting your privacy policies, consider the following questions:

1. Why did you initially implement this policy?
2. What was your rationale in implementing this policy?
3. Does that rationale still apply?
4. Does this policy continue to provide adequate protection to sensitive data in today's marketplace?

5. What information do you need to share with your real estate partners?
6. How are you sharing this information?

After re-examining your privacy policies, you should compare these policies with your company's data-sharing practices to ensure that you are only sharing information in conformity with your policies.

If your lender prohibits you from sharing the Closing Disclosure with third parties, you may consider using an alternative settlement statement, such as ALTA's Settlement Statements, to document the transaction. The ALTA Settlement Statements were designed to be model forms based on the settlement statements that have been in use prior to the implementation of Know Before You Owe. These statements may be modified as appropriate to reflect the terms of the transaction and to prevent any disclosure of the buyer's or seller's NPI. Four versions of the ALTA Settlement Statement are available: the buyer statement, the seller statement, the combined statement, and a statement for cash transactions.

Lastly, if you plan on sharing a closing document, such as a settlement statement, to a third party, consider whether you are sharing any information that would be considered NPI under the FTC's guidelines and whether you have met the GLBA's requirements for sharing such data. Also consider why you feel the need to share this information and how you would anticipate your customer would feel about you sharing that information. By keeping GLBA requirements and ALTA Best Practices in mind as you adapt to the Know Before You Owe regulation, you can ensure that your customer remains protected and that you continue to have compliant real estate closings. ■

COMMON "SETTLEMENT" DOCUMENTS CONTAINING NPI

Uniform Residential Loan Application (Form 1003)

(NPI includes: SSN, bank account numbers, loan numbers, work addresses, etc.)

Borrower Tax Returns

(NPI includes: SSN, financial information, address)

Lender Engagement Letter

(NPI includes: SSN, address, loan numbers)

Identification (Driver's License, passport, etc.)

(NPI includes: address, birth date, ID number, Passport number)

Closing Disclosure, HUD-1, Company or ALTA Settlement Statement

(NPI includes: loan number, address)

IRS Form 4506-T, Request for Transcript of Tax Returns

(NPI includes: SSN, address)

IRS Form W-9, Request for Taxpayer Identification Number and Certification

(NPI includes: SSN, address)

Payoff Letter

(NPI includes: Bank account numbers, loan number, address)

COMMON "TITLE" DOCUMENTS CONTAINING NPI

Identification (Driver's License, passport, etc.)

(NPI includes: address, birth date, ID number, Passport number)

Title Order Form

(NPI includes: SSN, address, loan number)

Payoff Letter

(NPI includes: Bank account numbers, loan number, address)

Escrow Agreements with Tax Searches

(NPI includes: SSN, address)

Real Estate Transfer Tax Forms

(NPI includes: SSN, financial information)

Affidavits

(NPI includes: SSN, address)

Recordable Docs

(NPI includes: loan numbers, address)

Title Bill

(NPI includes: address)

See more at: <http://blog.alta.org/2015/12/trid-myth-busters-what-you-need-to-know-when-sharing-closing-documents.html#sthash.RfIXhnTJ.dpuf>



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