

CAN YOU CLOSE A MORTGAGE ON A FEDERAL HOLIDAY?

By David Pederson, Sandler Law Group May 22, 2020

The upcoming Memorial Day holiday offers an opportunity to revisit a topic that seems to be of interest to mortgage lenders around every federal holiday – Can we close a loan on a holiday? If a closing does take place on a federal holiday, how does that affect the counting of “business days” for rescission and disclosure purposes? Is there a resource that I can refer to whenever these questions come up?

You’ve come to the right place.

MORTGAGE CLOSINGS ON FEDERAL HOLIDAYS

There is nothing in federal law that would prevent a lender from closing a mortgage loan on a federal holiday, assuming that the lender can arrange for a settlement agent or other appropriate closer to be available for the loan closing on that day. Nor is there any federal law provision providing that consummation on a holiday does not become effective until the following business day.

WHAT DAYS MAY BE COUNTED IN THE RESCISSION PERIOD?

The consumer can enter into a loan transaction on a federal holiday and the first business day after the holiday will then be Day 1 of the rescission period. In the case of Memorial Day, which is always a Monday, that Day 1 is the following day (Tuesday). Regulation Z only prohibits you from counting the holiday in the rescission period, it does not prohibit you from closing or funding a loan on the holiday. Note also that disclosures that start a countdown starting with the day of receipt can be received on a holiday, but the countdown does not start until the following business day – for example, a Closing Disclosure may be received electronically by a consumer on Memorial Day (a Monday), but the first day in the three day waiting period will be Tuesday.



David Pederson

WHAT DAYS ARE INCLUDED IN OTHER FEDERAL DISCLOSURE PERIODS?

“Specific” business days (all days but Sunday and federal holidays) applies to:

- Delivery of LE before closing (7 days)
- The “Mailbox Rule” which counts days from mailing disclosures to borrower receipt (+3 days)
- Delivery of change-of-circumstance LE before closing (4 days)
- Delivery of CD before closing (3 days)
- Right of rescission after closing for refinances (3 days)

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“General” business days (all days where lender is open to the public for carrying on substantially all business functions) applies to:

- Delivery of LE and HUD ‘special information booklet’ and CHARM booklet (adjustable-rate products) after receipt of ‘application’ (3 days)
- Charging fees (other than a credit report) before receipt of LE (3 days)
- Delivery of change-of-circumstance LE (3 days)
- Delivery of rate-lock change-of-circumstance LE (1 day)
- Delivery of LE with new estimates where borrower does not indicate an intent to proceed (10 days)
- Borrower right to ‘inspect’ revised CD that does not require a new waiting period before closing (i.e., not an APR tolerance, loan product change or addition of a prepayment penalty) (1 day)

CURRENTLY, FEDERAL LEGAL HOLIDAYS ARE:

- New Year’s Day** January 1st
- Martin Luther King, Jr.’s Birthday** Third Monday in January
- Washington’s Birthday (Presidents’ Day)** Third Monday in February
- Memorial Day** Last Monday in May
- Independence Day** July 4th
- Labor Day** First Monday in September
- Columbus Day** Second Monday in October
- Veterans Day** November 11th
- Thanksgiving Day** Fourth Thursday in November
- Christmas Day** December 25th

Note that when a federal holiday (excluded from the definition of “Specific” business day) falls on a weekend and the “Observed” holiday is recognized on a Friday or Monday, that Friday or Monday is not considered a federal holiday. Section 1026.2(a)(6) of Reg Z and its commentary are clear that when one of these holidays (July 4, for example) falls on a Saturday, federal offices and even some businesses might observe the holiday on the preceding Friday (July 3), but that observed holiday will be a “specific” business day. However, if the lender is not open for business on that day, it will not be a “general” business day.