



**NEW MEXICO ASSOCIATION OF REALTORS® – 2024
INFORMATION SHEET
SELLER FINANCING UNDER THE TRUTH IN LENDING ACT**

This form is NOT a disclosure and does NOT provide property-specific information. The general information contained herein is not an exhaustive analysis of the subject matter. Brokers are not experts in the subject matter. If you have additional questions or concerns, you are encouraged to conduct further research and to contact a subject-matter expert.

DETERMINING IF THE RESTRICTIONS ON SELLER FINANCING APPLY TO YOUR TRANSACTION

Regulation Z was issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act (TILA). Generally, Regulation Z applies to consumer credit transactions secured by a dwelling; however there are exemptions to this general rule (see below). A "dwelling" is defined as a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

The following transactions are **EXEMPT** from Regulation Z:

- 1) Vacant Land
- 2) The purchase of properties acquired strictly for business purposes, such as commercial and investment properties that will NOT be owner-occupied, even if such properties include a dwelling;
- 3) Owner-occupied rental property containing more than two housing units;
- 4) A home purchased for use as a second or vacation home if the buyer intends to spend 14 or fewer days in the home in the coming year;
- 5) Land bought *primarily* for agriculture purposes, even if it includes a dwelling;
- 6) Homes purchased by an estate, trust (with the exception of a land trust), corporation, partnership, association, church, union or fraternal organization.

HOW THE NEW LOAN ORIGINATOR DEFINITION UNDER TILA IMPACTS SELLER FINANCING

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) was signed into law on July 21, 2010. The Act amended TILA by adding provisions that define and govern loan originators. The term "loan originator" is defined as person who, for or in expectation of direct or indirect compensation or other monetary gain performs any of the following activities related to a residential mortgage loan: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term does *not* include seller financiers who provide seller financing on three or less dwellings in a 12-month period provided that certain criteria are met. A "seller financier" is defined as a person who extends credit through his/her own resources. The set of criteria that applies depends on the number of dwellings for which the seller is providing seller financing in a 12-month period. There are specific requirements for a seller providing seller financing for no more than one dwelling in a 12-month period (1-in-12 Exclusion) and additional requirements for those sellers providing seller financing for two or three dwellings in a 12-month period (3-in-12 Exclusion). These new provisions are effective as of January 10, 2014.

The exclusionary provisions further discussed apply equally to all types of seller financing: 1) real estate contracts in which equitable title is transferred at the time of sale and legal title is transferred at some future date when the buyer has satisfied all conditions of the real estate contract, and; 2) mortgages and deeds of trust in which both equitable and legal title is transferred at the time of sale and the buyer's agreement to pay the seller as set forth in a promissory note is secured by a lien on the real property.

This form and all New Mexico Association of REALTORS® (NMAR) forms are for the sole use of NMAR members and those New Mexico Real Estate Licensees to whom NMAR has granted prior written authorization. Distribution of NMAR forms to non-NMAR members or unauthorized Real Estate Licensees is strictly prohibited. NMAR makes no warranty of the legal effectiveness or validity of this form and disclaims any liability for damages resulting from its use. By use of this form, the parties agree to the limitations set forth in this paragraph. The parties hereby release NMAR, the Real Estate Brokers, their Agents and employees from any liability arising out of the use of this form. You should consult your attorney with regards to the effectiveness, validity or consequences of any use of this form. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to the Association's strict Code of Ethics.

NMAR FORM 2405 (2023 JAN) ©2022 NEW MEXICO ASSOCIATION OF REALTORS® REC'D BY BUYER(S) OR SELLER(S) _____

INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS INFORMATION SHEET.

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com Phone: _____ Fax: _____



**NEW MEXICO ASSOCIATION OF REALTORS® – 2024
INFORMATION SHEET
SELLER FINANCING UNDER THE TRUTH IN LENDING ACT**



1-IN-12 EXCLUSION

The 1-in-12 Exclusion is only available to natural persons, estates and trusts. Corporations, including limited liability corporations, may not utilize the 1-in-12 Exclusion. Under the 1-in-12 Exclusion, the following criteria apply: 1) the person providing the seller financing must not have constructed or acted as a contractor for the construction of the dwelling in the ordinary course of business of the person; 2) the payment schedule must not result in negative amortization (however, balloon payments ARE permitted under the 1-in-12 exclusion), and; 3) the interest rate may be a fixed or adjustable rate, but if the rate adjusts, it must not adjust any sooner than five years, must be determined by the addition of a margin to an index that is widely available, such as indices for U.S. Treasury securities or the London Interbank Offered Rate (LIBOR) and must be subject to reasonable adjustment limitations. Safe harbors under TILA allow an annual rate increase of up to two percentage points with a lifetime limitation of an increase of six percentage points, subject to a minimum floor as negotiated by the Buyer and Seller and a maximum ceiling that does not exceed the usury limit applicable to the transaction.

3-IN-12 EXCLUSION

The 3-in-12 Exclusion is available to natural persons, estates, trust and corporations. It has the same restrictions as the 1-in-12 Exclusion as set forth above with two additional criteria. Under the 3-in-12 Exclusion, the financing must be fully amortizing, meaning there can be **NO** balloon payments. A "balloon payment" is defined as a payment that is more than two times the amount of a regular periodic payment. In addition, the seller must make a good-faith determination of the buyer's ability to make the required payments. A Seller may opt to generally review the buyer's current or expected income from employment, government benefits and entitlements and incoming earning assets and the buyer's monthly financial obligations **OR** may utilize the specific ability-to-repay criteria set forth in Regulation Z of TILA which includes the following criteria:

- 1) The buyer's current or reasonably expected income or assets, other than the value of the dwelling that secures the loan;
- 2) The buyer's current employment status;
- 3) The new monthly loan payment;
- 4) The monthly payment on any simultaneous loan;
- 5) The buyer's monthly payment for loan-related obligations;
- 6) The buyer's current debt obligations;
- 7) The buyer's monthly debt-to-income ratio, or residual income; and
- 8) The buyer's credit history.

Under the new regulations, sellers are **NOT** required to retain evidence that they conducted an ability-to-repay analysis; however, it is highly recommended that they do so.

FEDERAL AND STATE LAW GOVERNING LOAN ORIGINATORS

Mortgage Loan Originator Licensing: Mortgage Loan Originators in New Mexico are licensed through the New Mexico Regulation and Licensing Department's Financial Institutions Division. For more information, visit: http://www.rld.state.nm.us/financialinstitutions/Mortgage_Industry.aspx

Loan Originator Compensation Requirements under the TILA and Regulation Z: The Consumer Financial Protection Bureau administers and enforces the Truth in Lending Act and Regulation Z. For more information, visit: <http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/>

CONSULT A REAL ESTATE ATTORNEY

For additional information regarding these requirements and/or the applicability to a given transaction, sellers and buyers should consult a licensed New Mexico real estate attorney.

NMAR FORM 2405 (2023 JAN) ©2022 NEW MEXICO ASSOCIATION OF REALTORS® REC'D BY BUYER(S) OR SELLER(S) _____

INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS
INFORMATION SHEET.