

## Rapid-fire Closing with No Chance to review documents before signing

HOT Communications Director Wayne Caswell describes the closing process from his personal perspective and suggests improvements.

*NEVER sign ANYTHING without reading and understanding it, or at least having your own attorney review it. That's what we were taught, but it's not always possible, as I personally learned while refinancing my home.*

*As I share my story, I can only imagine the plight of first-time home buyers or others who naively trust what they're told.*



### The Untrustworthy

The global financial crisis caused Americans to lose trust in their government and in large institutions that contributed to the collapse, including banks, mortgage companies, builders, Wall Street investment firms, and many other big corporations. The crisis changed the political climate, and politicians finally seem willing to highly regulate industries that are no longer trustworthy. So those industries may see strict rules forced upon them if they don't soon correct their ways and effectively regulate themselves.

Regulations that were relaxed over decades will likely be tightened again. One example is the Depression-era Glass-Steagall Act, which separated commercial banks from Wall Street. Texas Senator Phil Gramm led an effort to repeal it in 1999 and also inserted a key provision into the 2000 Commodity Futures Modernization Act that exempted over-the-counter derivatives like credit-default swaps from regulation by the Commodity Futures Trading Commission. While these actions contributed to the global recession, so did the intentional complexity of the mortgage lending process that puts consumers at an extreme disadvantage in completing the complex transaction of financing (or refinancing) their home. This is NOT the way the mortgage process should be, and it's not the way the home buying process should be.

### The Largest Investment

The home is the biggest investment most people will ever make, but new homes are technically complex and the loan process is financially complex, and few consumers have the industry knowledge or legal resources required to protect themselves from unscrupulous builders or lenders. That's why building and lending institutions need stronger regulations and consumers need better protection through legislation.

At closing you're presented with a mountain of documents to sign in rapid-fire succession, and it's nearly impossible to review them ahead of time. Rather than provide copies ahead of time, the mortgage industry has implemented a standard three-day Right of Rescission to give you time to back out if your subsequent review finds problems. This, however, seems like little more than a pressure tactic since any change to any form nullifies the entire agreement and causes the process to start again from scratch, possibly at a higher interest rate. That's what I was told at my closing and what I expect most people will find with theirs.

## My Story

I just finished closing on a refinanced home mortgage through Chase Bank and write this to capture my impressions from tonight's closing while they're still fresh. I share these personal thoughts in hopes of improving the process for others behind me, not as an attack on Chase individually but as a critique of the industry as a whole.

The closing was done at our home with just my wife and I and a notary signing agent. It was a rush job that took just 90 minutes (6pm – 7:30pm) to sign a very large pile of documents, many of which I had not seen before, even though I asked to see them a week or more earlier.

- I got a Good Faith Estimate from Chase about half way through the process. I got a phone call about a week before closing to ask when and where we'd like it done. And two days later (5 days before closing) I got a closing notice via email from the Title Company confirming the details.
- I wanted to read over the contracts and agreements before closing and run them by an attorney if necessary, and I called many times to ask for them ahead of time but was only able to leave voice messages. I never got a call back.
- I finally did get a call from the notary, who said he'd be the only one attending the closing and asked for directions. When I complained to him about not getting the documents ahead of time, he cited a new federal law giving me a 3-day Right to Rescind with no penalty. He said all mortgages are now on a standard Fannie Mae form, that closing is now just a formality, and that no changes would be allowed on any forms at closing since mortgages with strike-outs can't be sold. That only made me more nervous since it didn't seem to leave much time to resolve open issues, and any changes could be deal breakers rather than negotiating points.
- The notary made it sound like I was lucky to be approved at all, since refinancing now requires a 700+ credit score, which eliminates 85% of the country. (Might this be a tactic to diffuse any objection that could come up?)
- On the morning before closing I called the Case Bank and the Title Company again to demand copies of the documents before I signed any of them, but I only got voicemail. So I called the local Chase mortgage loan officer that I started the process with. I was in near panic and hoped he could help me. I later called him back to say I finally got an email with closing documents attached. That was mid-morning on the day of closing.
- I was able to skim the docs while waiting for my wife's doctor exam just prior to closing, but I didn't have time to read them thoroughly or have an attorney review them at all. At closing I discovered that I only received about half of the documents prior to closing.
- When the notary showed up for the closing, he said today was the last day to close this month and that any change (or delay) would cause the loan to be rewritten, possibly at a higher rate. (Was that a pressure tactic?) He said he had eight closings to do today, including two more after ours tonight. (more pressure)
- At the very end I refused to sign one form, which wanted me to indemnify and hold harmless the Title Company for any dispute between them and Chase, even though the information provided to them came from Chase and not me directly. The notary called this a **"potential deal breaker"** and telephoned the title company for advice. I talked with an Escrow Officer at the Title Company, but she was unable to reach her management to decide what to do, so we jointly decided to return the docs with the one form unsigned and resolve the issue later. (still more pressure) **[UPDATE: When I called the Title Company the following morning, they admitted that that form didn't need to be signed anyway. That made sense to me since part of the closing costs went to Mortgage Title Insurance.]**

- Somewhere during the closing process I told the notary about the standard homebuilder practice of saving a “gifted” home warranty agreement until the end, after getting buyers used to signing dozens of documents, and knowing they wouldn’t have seen it before or have time to read it, and would rely instead on what was told to them verbally. That home warranty often absolves the builder from all responsibility but, with its many exclusions, isn’t worth the paper it’s written on.
- CAUTION: One of the most important documents in the closing package was one that says the entire agreement is what’s in writing and NOT what is said verbally. That’s a critical point since ALL of the documents were written by attorneys of the lender or title company to protect their interests and not by my attorney to protect mine. I only had time to skim half of the documents and had no time to read the others, relying instead on what the notary told me.
- After signing so many forms tonight and signing them so quickly with no time to review them, I came away from the closing extremely nervous and distrustful. I think the mortgage industry would do well and improve consumer confidence by GREATLY simplifying the process. If the industry does not do this on its own, then I think lawmakers should force them to.
- From what I could tell, the entire mortgage lending process, from application through the dozens of forms to sign, is designed to protect the lender and title company, NOT the consumer. This must change.
- [UPDATE: The next day I called a private Closing Attorney that I was referred to. The attorney wasn’t worried about doing a re-finance through a reputable lender like Chase and advised against hiring him to review the standard set of documents. His comments made me feel better, along with the fact that the Title Company agreed not to make an issue of the Hold Harmless form that I refused to sign. I can only wonder what other consumers would do if they had to start finding an attorney from scratch or, worse, if they ignore that step entirely. If I sensed any problem, I surely would have cancelled the entire deal, and I recommend that other consumers consider the same under such circumstances.

## **SUGGESTIONS**

I shared this suggestion with Chase Bank in hopes that they will take a leadership role in fixing the process.

- The ideal fix is to greatly simplify the closing forms (e.g. just 5 pages instead of 50+ pages) and write them in plain English. One way to do that would be with a standard form for transaction details and a federally-approved companion booklet with all of consumer guidance and the legal language (in English) to protect all parties. The ideal fix, however, would likely take a very long time to implement and might require an Act of Congress.
- A short term fix, however, is to make the whole process more transparent by posting all boilerplate forms online (without details filled in) for review by customers, attorneys, policymakers, anyone. Since I’m told that all mortgage closings, from all mortgage companies, use the same boilerplate forms, there should be no legitimate reason to hide them from public view.
- If you’re about to close on a home sale or mortgage refinance, get all documents well ahead of time and don’t buy the argument that they aren’t ready yet. Demand to see the blank versions without the transaction details inserted.
- Identify a closing attorney ahead of time in case you need legal representation during the 3-day Right to Rescind period. He may not need to review all of documents that truly are industry-standard boilerplate, but if there’s any question ask.

## **COMPARISON SHOPPING**

Good luck with this. I tried to do due diligence by comparing the Chase mortgage proposal with others found online, but I discovered that it was nearly impossible to do an apples-to-apples comparison. To me, the choices were just too confusing with too many tradeoffs in selecting interest rate, points, and differing time periods, loan origination costs, closing costs, and tax implications. Because I couldn't find a logical way to determine which loan option was best, I based my decision solely on trust. I had little confidence in my own ability to choose a mortgage option among different lenders, so how could I possibly trust someone I had no prior relationship with? As I told the competing lenders, my final decision was based solely on our established Chase relationship.

What this means is there's no effective competition without the ability to compare options. That's another area for regulators to look at.

## **BACKGROUND**

Our mortgage refinancing process started more than 2 months ago, in early December when my wife and I met with Chase Bank to explore refinancing. Even though I'm more familiar with pitfalls in the home buying process than most, I found the process excruciatingly difficult, even though:

- This was just a refinance of an **existing** Chase mortgage where Chase already knew our payment history and high credit rating (800+).
- Our home is mostly paid for already, and we had to add points to raise the principal amount to the \$100K minimum for the rate we got.
- Chase has all of our banking relationships (2 checking accounts, 1 savings account, 1 investment account, 1 safe deposit box, and our current home loan through Chase Home Finance).
- Contributing to the extremely low risk of this loan is the fact that my IBM pension income is more secure than an employer's salary, since there's no risk of being laid off.
- The info we provided included:
  - 2007 & 2008 W2s, pension statements and tax returns
  - Last 2 months pay stubs and pension statements
  - Home survey, even though Chase owns the **original** mortgage
  - Home Insurance policy
  - Proof of date of birth (passports) and social security number (W2 & 1099-R)
- Additional info collected included:
  - Real Estate Appraisal
  - Home Inspection