



FAQS

**DISCLOSURES LAW**



It's **FINALLY** here.  
what **Brokers** need to know about California's  
small business truth-in-lending law

## Q: When does the law take effect?

December 9, 2022

## Q: What are the general requirements of the law?

(see California Code of Regulations 952)

- Providers/Financers of commercial financing (Lenders) must provide written disclosures to prospective Borrowers at or before the time of extending a “specific commercial financing offer,” which disclosure shall include, among other things, the total amount of funds provided, the total dollar cost of the financing, the term, the method, frequently and amounts of payments and the total cost of financing expressed in an annualized rate (the “TIL Disclosures”).
- The Law set forth specific requirements for how the TIL Disclosures must be transmitted and how they must look.
- The Borrower must sign the TIL Disclosures before the commercial financing can be consummated.
- The Law anticipates that Brokers will be transmitting the TIL Disclosures.

## Q: Is a Broker a "Provider" or "Financer"?

**No.**

- Brokers are defined separately in the Law include any person (other than a Lender or Borrower) who, **for compensation**, (i) participates in any financing negotiation; (ii) counsels or advises the Borrower about financing options; (iii) participates in the preparation of any financing documents, (iv) contacts the Lender on behalf of the Borrower other than to refer the Borrower; (v) gathers financing application documentation or delivers the documentation to the Lender; (vi) communicates financing decisions or inquiries from the Lender to the Borrower; or (vii) obtains the Borrower’s signature on financing documents.

## Q: Does a Broker have an independent obligation to prepare TIL Disclosures?

**No.**

- The Lender is responsible for the TIL Disclosures and must provide it to the Broker.
- The Broker’s obligation to provide TIL Disclosures to a Borrower only arises if the Lender provides the TIL Disclosure to the Broker to give to the Borrower.
- Brokers are to transmit the Disclosures with the specific commercial financing to a recipient by the financier unaltered.
- After the Broker transmits the Disclosures the Broker shall provide evidence of the transmission to the financier including the time of the transmission.

## Q: Are Broker's fees/commissions disclosed as part of the TIL Disclosures?

**Yes.**

- The Law requires a separate “Itemization of Amount Financed” where the amount finance exceed the funds provided to the recipient.
- The Itemization requires disclosure of the amounts paid to other persons (Brokers) as well as the identification of those other persons.

**Q: Can a Broker communicate a commercial financing offer to a Borrower?**

**Yes** – but NOT before the TIL Disclosures are provided to the Borrower – the Borrower must receive the TIL Disclosures first (or at the same time the commercial financing offer is transmitted).

**Q: Do Brokers have affirmative duties under the law?**

**Yes.**

- Brokers must timely provide **unaltered** TIL Disclosures to the Borrower (assuming the Lender does not provide them directly)

**Q: Does a Broker need to review the TIL Disclosures to make sure they are accurate?**

**No.**

The Law states that a Broker:

1. Is not required to evaluate the accuracy of the TIL Disclosures provided by the Lender; and
2. Brokers will not be liable if the TIL Disclosures that the Lender provides do not comply with Law.

**Q: So once the Broker sends the TIL Disclosures provided by the Lender, their job is done?**

**No.**

- The Law requires the Broker to “provide evidence” to the Lender of the transmission of the TIL Disclosures to the Borrower. The DFPI purposely kept this term vague so that the Lender’s could determine what evidence is sufficient.

**Q: Are Brokers going to be monitored for compliance?**

**Yes.**

While the DFPI can investigate based on complaints, the Law places a burden on Lenders to monitor Brokers. Specifically, Lenders are required to develop “procedures” reasonably designed to ensure that Borrower receives the TIL Disclosures at the time that a Broker provides a specific commercial financing offer to a the Borrow. These procedures may include:

1. **Contractual requirements** that Brokers timely provide to the Financier documentation of transmission of the disclosure (including timing of transmission) to the Borrower;
2. **Investigation** of facts that would give a Financier reasonable notice that a Broker has not provided TIL Disclosures to Borrower as required by the Law.
3. **Discontinuation of relationships** with any Broker who the Lender finds to engaged in a pattern of noncompliance with its duties under the Law.

### Q: Is there any liability for Brokers?

**Yes.**

- The Law specifically states that it must not be read to limit any liability that may arise when a Broker **makes representations** concerning the commercial financing.
- The Law does not address whether Brokers will be subject to fines or penalties if they do not timely or correctly transmit the TIL Disclosures, but the DFPI has broad enforcement powers and can expect to have similar liability as set forth in the California Financing Law.

### Q: Are there transactions that are exempt from the law?

**Yes.**

The Law does not apply to (among other transactions):

1. Commercial financings above \$500,000
2. True leases
3. Commercial financings where the borrowing company is NOT “principally directed or managed from California”
4. Transactions secured by real estate.
5. A depository institution.
6. Any person who makes more than one commercial transaction within 12 months or any person who does five or fewer transactions in California in a 12 month period incidental to the business of the person relying upon the exemption.

#### **Practice suggestion**

1. Present the Disclosures before the loan or transaction documents and not at the same time so there will be no question of compliance and also the financier will not have to prepare loan or transaction documents unless and until the Disclosures have been presented and signed.
2. Be prepared to sign a Broker Agreement with the financier which will make various representations and warranties that the Broker will comply with this Law.
3. Do not make any representations to the Recipient that a transaction is anything other than a suggestion of what transaction the Recipient wants to get, No proposal, no commitment letters, so suggestion or representation that the Broker has funding for the Recipient. The Disclosures should be the first time the Recipient has a commercial financing offer.

NEFA IS NOT GIVING ANY LEGAL ADVICE AND ANY BROKERS, FINANCIERS,  
PROVIDERS AND RECIPIENTS SHOULD CONTACT ITS OR THEIR COUNSEL  
AS TO HOW TO PROCEED WITH RESPECT TO THE DISCLOSURES