

Par 201- You & the Law

Chapter 4 continued

Wednesday 9/16/09

XII. Applying for Home Loan:

A. Lender looks at:

- (1) Employment history, salary: have W-2's & tax returns and proof of income from other sources (like investments, child support)
- (2) Credit history: have account numbers of all credit cards
- (3) Outstanding debts: car loans, credit-card debt, alimony, child support obligations, etc
- (4) Assets: anything of value you own : real estate, cars, checking & savings accounts, IRA's, 401K-s etc
- (5) Source of down payment: to make sure you aren't borrowing \$\$ for down payment

B. Length of Process: can vary greatly; pre-qualifying for loan can speed things up

C. Lender's disclosures: required to tell you:

- (1) All costs of loan: appraisal fee, escrow fees, lender's atty fees, service charges, interest rate (presented as annual percentage rate-APR)
- (2) If lender rejects your loan, you are entitled to specific reason in writing (prohibited from discrimination by Equal Credit Opportunity Act)
--can file complaint with HUD or with Federal Reserve—see p. 29 and handouts

D. Documents to Secure Loan:

- (1) Promissory note-agreement to re-pay lender
- (2) Mortgage-giving lender a security interest in the property

E. Key Provisions of Mortgage:

- most lenders no longer allow assumable mortgages (step into other borrower's shoes)
- insurance for payment: usually term insurance is cheapest; may consider disability insurance to ensure payments continue if you become disabled

- due-on-sale clause: requires seller to pay off his/her loans at closing
- late payment charges are expensive

- prepayment penalty: illegal in some states: imposed if buyer pays off loan ahead of schedule

XIII. Buying Home from Builder:

A. Special considerations:

- work with attorney and inspector
- note difference between standard features and optional features (upgrades)
- check planned development, landscaping
- check whether any warranty (preferred is one guaranteed by insurance company rather than by builder)
- check that there are no sub-contractors/suppliers/mechanics liens filed

XIV. Title= ownership and right to use/occupancy of property

A. Title search & abstract: traces everything that happened to property from day of first land grant to present day: deeds, estates, mortgages, liens, easements, judgments

--some title defects can be cured quite easily; others require a “quiet title” action

--attys & abstract companies can do title searches and attys can do title opinions

--may be zoning & occupancy laws to comply with; could be subdivision covenants; common ownership by-laws etc.

--seller is responsible for remedying title defects

--buyer may want title insurance in addition to lender’s title insurance

XV. Title Insurance:

A. Agreement that title insurance company will defend against & pay losses involved in any claim

B. Two types of coverage:

(1) If someone contests buyer’s title in legal action, insurer will defend at no expense to buyer

(2) If defect in title can’t be eliminated, provides financial indemnity to protect buyer for loss due to defect (up to policy amount)

--available from title companies and buyer’s atty can determine if coverage is adequate

XVI. Closing: all parties to real estate transaction attend: seller delivers deed/title; buyer pays \$\$\$

- A. Closing statement/ settlement sheet: line by line listing of all financial aspects of closing
- B. Buyers sign: promissory note, mortgage, truth-in-lending form, loan application, payment letter, private mortgage insurance application, inspection forms
- C. Sellers sign: deed, bill of sale, affidavit of title, occupancy certificate
- D. Financial aspects: buyer & seller receive various credits as stated on p. 34 & settlement sheets state who is specifically responsible for payment of various expenses
- E. Closing costs usually include:
 - (1) Appraisal fees
 - (2) Attorney fees
 - (3) Survey fee
 - (4) Loan discount fee (points)
 - (5) Inspection fee
 - (6) Title fees
 - (7) Title insurance
 - (8) Recording fees

XVII. Ownership options

- A. Single
- B. Tenants in common
- C. Joint tenants with right of survivorship (JTWROS)
- D. Community property

** most married couples own JTWROS (except in 2nd marriages where both H & W have children from prior marriage and none together)

XVIII. Tax Considerations

- A. State could have transfer tax, document tax, intangible tax

B. Property tax: real estate taxes due annually based on assessed value of home

- (1) Deductible on income tax return
- (2) To find out tax assessment for particular home, contact local tax assessor's office
- (3) Home purchase may affect assessed value (taxes may dramatically increase)

** Assessed value –vs- Appraised value:

--assessed value determined by tax assessor –tax rate is usually stated in “mills” on each \$100,000 in assessed valuation
i.e. tax rate of 10 mills on a home assessed at \$100,000 would be \$1,000

--appraised value: determined by qualified real estate appraiser (usually employed by lender)

--if assessed value exceeds purchase price, you could appeal assessment (see Chap 5 for more detail on lowering property taxes)

C. Deductions against federal income tax:

- interest paid on mortgage yearly
- loan fees or points paid on purchase (point = 1% of loan)
- real estate taxes

D. Tax consequences of home sale:

- (1) Can exclude gain of \$250,000 on sale of your main home (\$500,000 for married couple)
- (2) Determine profit on home sale by subtracting adjusted basis from sales price:
i.e. Sally sold her home for \$300,000. She originally paid \$100,000 for the home and added \$75,000 in capital improvements. The costs of the sale were \$35,000. Basis of the home would be:

\$100,000	original cost
75,000	capital improvements
35,000	costs of sale
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\$ 210,000	basis of home

Sales price:	\$ 300,000
Less basis:	(210,000)
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	\$ 90,000 gain on sale

- (3) Cannot deduct losses on sale of home
- (4) Cannot exclude gains on investment properties or vacation homes
--but see p. 39 on converting a vacation home into main residence
- (5) See Pub 523-IRS pub on “ Selling Your Home”

XIX. Buying Multi-unit Dwelling:

- Real estate owned in common-interest community: condo, cooperative
 - A. Condo: individual units separately owned but commons areas have shared ownership; owner has title to her unit
 - B. Cooperative: buyer buys shares in corporation which owns building
--can be evicted if don't pay fees or break rules
- ** each type of association can assess maintenance fees which may increase greatly over time and multi-unit ownership is subject to more rules and regulations than single-family ownership
- ** see materials on p. 42 regarding factors to consider when buying condo or co-op

XX. Fair Housing Act of 1968: prohibits discrimination in housing based on race, religion, gender, color, national origin

- this is federal law; some state laws prohibit discrimination in housing based on sexual orientation
- can discriminate based on economic reasons
- See p. 43 regarding complaints about discrimination in housing:

Correct address is: www.hud.gov/complaints/housediscrim.cfm