

Para 201- You & the Law

Chapter 5- Home Ownership

Wednesday-9/23/09

V. Financial Issues

A. Mortgages:

- traditionally banks and savings & loan institutions
- currently securitized & sold to investors/insurance companies: big source of financial collapse last fall with the sub-prime mortgages
- (1) mortgage servicer: responsible for collecting monthly payments & handling escrow accounts
 - see consumer protections on p. 39
 - must address your written inquiries within 20 business days
- (2) escrow account: covers property taxes and homeowner's insurance
 - rolled into your monthly payment
 - there are limits to amount of escrow account balances
- (3) home equity: figure by subtracting unpaid mortgage balance from home's FMV (fair market value)
 - if value of home has fallen, you may have less equity than when you purchased home
 - falling home prices: for re-financing, lenders usually require 20 % equity in home
 - may have to take loss on home sale
- (4) homeowners get behind in mortgage payments because of illness, job loss, divorce, etc
 - contact your lender & explain problems
 - contact nearest housing agency for help in avoiding foreclosure
 - in some states, filing for bankruptcy could avert/halt foreclosure process
- (5) foreclosure:
 - once lender files foreclosure, you have certain number of days to make up back payments to re-instate mortgage (depends on state laws)
 - banks may want to avoid foreclosure if value of home has fallen below mortgage balance
- (6) re-financing & home loans
 - get amortization chart from lender to determine if re-financing makes sense
 - remember to add in all the costs
 - don't usually re-finance if you plan on selling home in near future
 - home equity -vs- second mortgage
 - second mortgage: usually fixed sum for fixed number of years
 - home equity: usually a line of credit you can draw against (adjustable rate interest)
 - if you have FHA or VA loan, you may qualify for FHA Streamline Refinancing
 - refinancing tips:
 - a) get copy of credit report
 - b) have minimum 20% equity in home
 - c) understand fee charges
 - d) consider shortening term of loan(30 to 15 years)

(7) tax considerations

- can deduct mortgage interest & real estate taxes paid each year on your 1040 form if you itemize your deductions
- can deduct interest paid on up to \$100,000 in home equity loan as long as total debt doesn't exceed FMV of home
- lowering property taxes on home: challenge assessment: you have to provide evidence that assessment is too high

(8) neighbor problems:

- check your municipal (city) code
 - see step-by-step guide on pp. 45 & 46
 - determine if zoning ordinance has been violated: may have to file complaint/contact city council or city attorney
 - if you live in a condo/co-op, check your association's bylaws & regulations
- a) nuisance: a person's unreasonable actions that interfere with your use/enjoyment of your property
 - check local ordinances: nuisances are usually misdemeanor crimes-could face jail time/fines
 - if city files, you'd be the complaining witness, and \$\$ would go to city
 - if you file nuisance suit, you'd get damages (\$\$); probably small claims court
 - see elements of typical nuisance claim on p. 47
 - b) boundary line disputes: boundaries are set by your original deed
 - hire surveyor
 - file quiet title action
 - come to agreement with neighbor & file quit claim deed
 - c) noise: municipal ordinances usually address decibel levels & limits
 - some have period of "quiet time"
 - d) neighbor doesn't keep up property
 - check local ordinances
 - help out with "clean-up day"
 - if no action, city could place lien on property to cover clean-up costs
 - e) neighbor's illegal activities
 - check ordinances, state & federal laws
 - f) pets: see California cat/dog problem example on p. 49: the parties reached compromise
 - check local ordinances under "animal control" topic; i.e. leash laws, pooper-scooper laws etc
 - authorities may issue citation (ticket)
 - g) trees: look at location; if tree is on one person's property, it's his responsibility; if straddling property lines, may be responsibility of both parties

- h) views: best way to protect your view may be to get easement from neighbor
--see material on Madonna on p. 51
- i) fences: governed by zoning ordinances
 - boundary fence: whose property is it on? straddle property ?
 - spite fence: one that is excessively high may be a private nuisance
 - remedies: injunction (remove fence) or damages (\$\$)

(9) home improvement/repairs:

- a) FTC covers “bait & switch” tactics: rain checks may be required
- b) cooling-off period: mandated by Truth in Lending Act: right to rescind (cancel) contract within 3 business days
- c) contractors: governed by state laws: contact your state’s Attorney General’s office or Office of Consumer Affairs
 - some states impose prison term/fines on unscrupulous contractors
- d) precautions: check contractor’s reputation; be wary of door-to-door solicitations; unsolicited “inspections”, etc

(10) hiring contractor

- a) get referrals/recommendations from customers, lenders, trade assn’s
- b) get 2 or more bids
- c) get contractor who is licensed & bonded (state Contractor’s Licensing Board)
 - check Better Business Bureau/Office of Consumer Affairs
- d) check for performance bond: insurance company insures contractor will finish job
 - contractor should also carry worker’s comp
- e) check for warranty on work & materials & time limits on warranties
 - check for lawsuits/judgments against contractor (local clerk of court)
- f) have written contract—see pp. 57-58 for usual terms

(11) building permit: check city/county requirements: inspectors to assure work is done to code

(12) schedule of work to be done: specific change orders should be written and signed by both parties

(13) violations of contract
--have written documentation & copies of all correspondence

(14) mechanic’s/contractor’s liens: are subordinate to prior mortgages
--hold back final payment until all work completed to your satisfaction
--release-of-lien forms should be signed and recorded

(15) shared ownership: condo, co-op, unit development managed through homeowners’ ass’n, property owners’ association

(16) legal rights & restrictions

- a) Fair Housing Amendments Act-can't discriminate based on familial status, disability
- b) state laws treat these associations as corporations, non-profit corporations
- c) Uniform Condominium Act: 23 states have adopted/adapted
- d) community's bylaws, declarations, etc govern operations
 - master regulations may be called covenants, conditions, & restrictions
 - articles of incorporation
 - bylaws: how managing board is elected, their duties & powers
- e) the community usually carries insurance to cover damages to building exteriors, common areas and liability for injuries