



Seller-Financed Residential Real Estate Transaction Bulletin

Seller Financing

The Colorado Board of Mortgage Loan Originators (the “Board”) and the Colorado Real Estate Commission (the “Commission”) are issuing this bulletin to clarify some of the issues that have been circulating about seller-financed residential real estate transactions. The Commission has heard concerns from the real estate broker community that there is a lack of clarity as to whether seller-financed residential real estate transactions are permitted. Additionally, it appears that inaccurate information has been disseminated within the real estate community that the seller exemption to licensure as a mortgage loan originator somehow extends to the seller’s real estate broker. We are issuing this bulletin to clarify the issues that surround seller financing in the residential sales market. The following are just brief summaries of the applicable laws, to demonstrate the very complex issues now facing sellers who may be considering seller financing and to underscore for brokers the extreme caution which should be used when working with sellers who may be considering the same.

State Law

Under existing state law, an individual who takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan, must be licensed as a mortgage loan originator. A residential mortgage loan is defined as a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

A seller, whether it is a person, estate or trust, may provide mortgage financing on a property that is owned by the seller, without the need to obtain a mortgage loan originator’s license, if the transaction meets certain criteria. First, the property must be used as security for the seller-financed mortgage loan. Second, a seller may only finance three properties within a 12-month period for the exemption to apply. A seller is required to comply with all provisions of §12-61-911, C.R.S.



Federal Law

The federal Dodd-Frank Act modified the Truth in Lending Act (TILA), and now places additional requirements on seller-financed transactions that do not exist in the state laws. In addition to state laws, these additional federal requirements must be followed. These new federal requirements are extremely complicated, but do permit seller-financed residential real estate transactions, as long as certain requirements are followed.

Colorado Real Estate Transactions and Real Estate Brokers

Due to the sweeping regulations that have been passed at the federal level, and the complex rules that have been promulgated since the passage of the Dodd-Frank Act, the Real Estate Commission removed the seller financing provisions from the Contract to Buy and Sell Real Estate in 2013. Instead, section 4.7 of the contract now provides the following warning:

WARNING: Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics of financing, including whether or not a party is exempt from the law.

Real estate brokers are prohibited by Colorado law from taking a residential mortgage loan application or offering or negotiating the terms of a residential mortgage loan, including a seller-financed loan. A real estate broker should not even assist a seller or buyer in any way with the application process or related documentation or engage in any loan term discussions if the seller-financed loan involves residential property. This caution would include not giving a seller advice, including as to whether or not the seller might be “exempt”.

Potential Liabilities

If a real estate broker wishes to perform these duties, the real estate broker must obtain a mortgage loan originator’s license. Failure to comply with the state law may result in fines and an injunction being sought by the Board. The broker may also be subject to license discipline by the Commission for practicing beyond the broker’s level of competency. The Commission has the authority to impose an administrative fine up to \$2,500.00 for each separate offense and to censure a



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licensee, to place a licensee on probation and set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has violated the Real Estate Broker Practice Act.

Finally, there are some very significant and severe civil penalties that may be imposed upon the seller, if the seller fails to comply with federal law requirements surrounding a seller-financed transaction. The borrower may be entitled to recover special statutory damages equal to the sum of all finance charges and fees paid by the borrower, including actual damages (which may include the borrower's down payment), statutory damages, court costs and attorney's fees for a period of up to three years from the date of the violation.

If a real estate broker gets involved in negotiating a seller-financed mortgage in any way, and the seller is found in violation of necessary federal or state law requirements, it is the Commission's understanding that the real estate broker's errors & omissions coverage would not cover any resulting claims because the duties performed were not associated with the practice of real estate brokerage. We strongly encourage any real estate brokers who are asked to assist with or conduct negotiations for a seller-financed mortgage loan on a property with residential real estate to refer the party to a licensed mortgage loan originator or a licensed attorney.