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Maylie & Grayson is a full service law firm providing representation to real estate brokerages, licensees, Realtor® associations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters throughout Oregon and Washington.

American Housing Rescue and Foreclosure Prevention Act of 2008

Many of us involved in the real estate industry have been following the federal government's attempt to resolve the "mortgage crisis." After passage by Congress, President Bush signed the American Housing Rescue and Foreclosure Prevention Act of 2008 (the "Act") on July 30, 2008. This Act provides assistance to individuals, veterans and communities impacted by foreclosures, and imposes new regulations on Government Sponsored Enterprises such as Fannie Mae and Freddie Mac. As the Act is complex and contains many provisions impacting both individuals and financial institutions, this article will address some of the major highlights.

New Homebuyer Tax Credit

The Act includes a provision which grants first time homebuyers a refundable tax credit for qualifying home purchases after April 11, 2008 and before July 1, 2009. The credit is essentially an interest free loan that will require repayment within 15 years. The credit is equal to the lesser of 10% of the purchase price or \$7,500 for joint or single filers. Homebuyers are eligible for the full credit if their modified adjusted gross income is less than \$75,000; however, the credit phases out for those who have a modified adjusted gross income between \$75,000 and \$95,000 for the year of the purchase. In order to qualify as a "first time" homebuyer, the individual or his or her spouse, if married, must have had no ownership interest in a principal residence during the 3 years prior to the purchase of the home for which the homebuyer is seeking the credit. This tax credit may be helpful in encouraging home ownership, thereby contributing to the health of the real estate market.

Reform of Government Sponsored Enterprises

The Act also provides for a new independent regulator who will be in charge of overseeing housing Government Sponsored Enterprises (GSEs), including Fannie Mae, Freddie Mac, and Federal Home Loan Banks. This regulator will be charged with ensuring that the GSEs fulfill their missions and duties.

In addition, GSE loan limits are increased under the Act to mirror limits imposed in the Economic Stimulus Act of 2008, including limits that relate to local markets rather than the national market. Such conforming loan limits are equal to 125% of the local area median home price, with a cap of 175% of the national median home price. The increased loan limits will apply to loans originated after December 31, 2008.

Reform of Federal Housing Administration

Limits for Federal Housing Administration (FHA) loans have also been permanently set to mirror limits imposed in the Economic Stimulus Act of 2008, with a limit of the lesser of 125% of the local area median home price or 175% of the national median home price. As with GSE loans, the increased loan limits will apply to loans originated after December 31, 2008.

The Act also expands the FHA reverse mortgage program, adding consumer protections and capping and reducing loan origination fees, and extends the maximum FHA loan term from 35 years to 40 years.

FHA Foreclosure Rescue

In addition to assisting individuals who wish to purchase homes, the Act also assists those who may be at risk of losing their homes through foreclosure. Specifically, the Act creates a voluntary refinance program for homeowners who have subprime loans. In the event a homeowner cannot afford his or her subprime loan, the current lender may agree to take a writedown on the loan in exchange for the FHA lender agreeing to pay off the loan and refinance the property at that lower loan amount with a reduced interest rate on behalf of the homeowner. This program will only be available to homeowners who have not previously committed mortgage fraud, and will solely be applied to owner-occupied properties. In addition, a homeowner who participates in the program will be required to share a significant portion of any profits made upon sale or refinance of the property with the federal government. This profit sharing will undoubtedly discourage property flippers from taking advantage of the program, and will also help defray the costs of the program to the federal government. In addition, it will give homeowners an additional option when faced with foreclosure of a subprime loan, assuming the subprime lender is willing to participate. This program is scheduled to last 2 years; however, the Act provides for a series of extensions of the program.

Assistance to Veterans

Another important highlight of the Act relates to protection of veterans who have been serving away from home. First, the Act temporarily increases loan limits of VA home loan guarantees so that they mirror those limits included in the Economic Stimulus Act of 2008. This increase will allow more opportunities for veterans to purchase homes throughout the nation, regardless of market. Second, the Act will provide one year of relief to returning soldiers from any increases in mortgage interest rates. And finally, the Act will increase the time limit a lender must wait in order to foreclose on a returning soldier's home, from three months to nine months after the soldier returns.

Requirements for Loan Originators

The Act will impose new requirements for loan originators, including establishing a national licensing and registration system that will ensure all loan originators meet minimum standards. In addition, the Act requires loan originators to provide improved mortgage disclosures to borrowers regarding mortgage terms. Such requirements will assist borrowers in better understanding their financial obligations in the hope that borrowers will borrow at rates and in amounts that are affordable to them in order to prevent future foreclosure on their homes.

Conclusion

Although provisions of the Act have not been tested over time, it is hoped by many that they will help resolve the mortgage crisis our country is currently facing. Although brokers are not specifically impacted by the Act, their clients will be. It is important for brokers to know the ways in which their clients may be impacted, as brokers are in many cases the first contact for buyers and sellers facing problems with their homes. Brokers would be prudent to provide only general information on the Act to their clients, advising them to seek professional advice on tax and/or legal matters.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at joelgrayson@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.