FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Title News

MORTGAGE INSURANCE TAX DEDUCTIBLE

Congress has already passed legislation making mortgage insurance tax deductible. It only remains for the President to sign the legislation into law, and it is expected that he will sign the Bill some time during this year.

Mortgage insurance is available to home owners in the form of private mortgage insurance (PMI) or through the Federal Housing Administration, the Veteran's Department or the Rural Housing Administration. A lender generally requires a borrower to purchase mortgage insurance if that borrower puts less than 20% down on the purchase of a new home. Oftentimes, PMI is included in the borrower's monthly payment to the bank, together with principal and interest.

The new law will treat mortgage insurance much the same way as the IRS Code treats interest, namely, as tax deductible, but there are some provisos. For example, the deduction will not be available to refinancing above the outstanding acquisition debt used to purchase the property. Also, there are some income limitations. A full deduction for mortgage insurance is available to a couple with a combined Adjusted Gross Income of $100,000.00 or less. But for every $1,000.00 over $100,000.00 which the couple earns, they will lose 10% of the deduction. Thus, if the couple earns $101,000.00 in 2007, and pays $1,000.00 in PMI during 2007, they will only be allowed to deduct $900.00 of their PMI, not the full $1,000.00. If they earn $102,000.00 for 2007, they can only deduct $800.00, and so on…

The deduction is good news for home buyers because it makes it home ownership more affordable. To find out more, do a web search for "Mortgage Insurance." And if you know someone planning to buy, put him or her in touch with a tax professional who can provide detailed advice regarding the tax-deductibility of mortgage insurance.

DEFAULTS ON SUBPRIME LOANS ARE UP

It is probably a topic many in the Real Estate industry would not like to discuss, but defaults on subprime loans have been increasing. The New York Times recently ran an article on the topic, stating that for the 3-month period ending on September 30, 2006, delinquency on subprime loans increased from 11.7 to 12.6 percent. On subprime adjustable rate mortgages for the same period, the delinquency rate rose to 13.22 percent.

Subprime loans are made by Lenders to Borrowers with bad credit. Just as Lenders have loan packages for Borrowers with good credit, they also have products and packages for those with bad credit as well. Such loans are called "subprime loans" in the industry.

People in the industry are saying on line that defaults on subprime loans are going to reach pandemic levels. Some forecast millions of Americans will lose their homes in foreclosure as property values fall and Borrowers are not able to refinance out of trouble. Further, Federal Reserve Chairman Ben Bernanke recently issued warnings regarding the

increasing rates of default on subprime loans and "predatory lending practices." (See the Fed's website at www.federalreserve.gov for Bernanke's press release.)

The numbers given are for the nation as a whole, not for the New York State region, where some home prices continue to rise, particularly in New York City. Nevertheless, one should keep an eye out for any increase in the rate of defaults in our area and for litigation commenced by Borrowers against "predatory" Lenders.

ESTATES AND TITLE

Title to property is transferred immediately upon the death of the person in title. It is not clear at that point, however, just who is the new person or people in title at that point. The identity of the new person or people in title will not be clear until the decedent's will is probated or, if there was no will, the decedent's distributees are identified. In either case, the transfer of ownership is considered to have occurred on the death of the decedent.

One must also bear in mind that the executor or administrator of the estate (if there is no will) has authority to sell, lease or mortgage the property if it is not specifically devised to someone. Further, the will may create one or more trusts to which the property may be devised. Upon qualifying, the trust's trustee will then be the legal owner of the property, with all the powers set forth in E.P.T.L. section 11-1.1, such as the power to sell or lease.

The following possible exceptions must be considered with regard to every title taken from a decedent:

1. New York Estate Tax;
2. Federal Estate Tax;
3. Decedent's debts;
4. Posthumous or afterborn children;
5. Spousal right or election to take against a will;
6. Testamentary legacies; and
7. Renunciation.

New York Estate Tax is a lien for 15 years from the date of death and can be removed by obtaining an Order of Exemption, an official or duplicate receipt of payment of the tax, a copy of the return showing the property listed, a copy of a determination of the Tax Commission that no tax is payable, or a release of the lien from the Tax Commission.

Federal Estate Tax is a lien for ten years from the date of death, but is not a lien on the part of the estate that is to be used to pay for the administration costs of the estate. The lien can be removed by obtaining a release of lien (I.R.C. section 6325), a copy of the IRS Estate Tax Closing Letter or Letter of Transmittal, a letter from the local district off of the IRS, or an acceptable affidavit showing that the gross estate is less than the amount for which the estate is exempt.

Distributees and beneficiaries under the will are liable for the debts of the estate which have not been recovered from the executor or administrator. Such debts must be recovered within 18 months from the issuance of Letters Testamentary (S.C.P.A. section 1903), and proof of payment must be shown before the property will be treated as clear of debts.

A proceeding to charge a legacy must be brought within 10 years from the date of death. After that point, if no proceeding has been commenced, all legacies may be ignored.

If the decedent has a child born after the execution of a will, and if the will does not provide for that child, the child must be taken into consideration. The same applies to a child born outside the decedent's marriage, so long as paternity is established.

Under the law, a spouse has the right to opt for an intestate share of the estate, as opposed to merely taking what the will gives. If this happens, the E.P.T.L. prescribes formulas for what the spouse may get, but it may complicate removing liens from the estate.

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