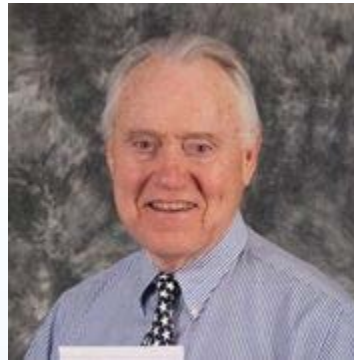


Seiler

School of Real Estate



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1

Financing and Mortgages

Chapter 17

2



Institutional Lenders:

- Commercial Banks
- Savings Banks
- Mutual Savings Banks
- Life Insurance Companies



Commercial Banks

- Demand Deposits (Checking Accounts)
- Savings Deposits
- Chartered by the State of Hawaii and controlled by state statutes; or
- National Banks which are required to be members of the Federal Reserve System which regulates according to federal law.



Savings Banks

- ➡ Formerly called Savings and Loans
- ➡ Individuals deposit money in savings accounts.
- ➡ Bank lends primarily in residential mortgages.
- ➡ Chartered by both federal and state governments.



Savings Banks

- Federal savings banks must be a member of Savings Association Insurance Fund (SAIF) and each account is insured for \$100,000.
- Federal Home Loan Bank (FHLB) was the regulator now it is Federal Deposit Insurance Corporation (FDIC)
- Major source of residential mortgage loans.
- Typical LTV of 80% unless PMI coverage.



Mutual Savings Banks

- Concentrated in Northeastern part of US.
- Use their depositors money to purchase mortgages from other lenders.
- Mutual savings banks are represented by:
 - Mortgage banker
 - Has its own funds to lend;
 - Mortgage broker
 - Brings together borrowers and lenders for a fee;

Life Insurance Companies

- ▶ Invest money from policy holders.
- ▶ Supply most of the loans on commercial properties, shopping centers, industrial properties and hotels.
- ▶ Ranked first among all lenders for total mortgage investments.



Non-Institutional Financing

- ➡ Mortgage Companies
- ➡ Purchase Money Mortgages
- ➡ Agreement of Sale (Land Contract)
- ➡ Sale and Leaseback
- ➡ Credit Unions
- ➡ Farmers Home Administration



Mortgage Companies

- Permits institutional lenders from one state to purchase mortgage loans in another, thereby creating a need for a financial servicing agent.
- They usually receive a percentage of the loan amount as their fee for taking care of loan application, closing of loan and collecting payments from the borrower.



Agreements of Sale

- Land Contract or Contract for Deed
- Buyer (**Vendee**) makes a down payment and makes payments to the Seller (**Vendor**).
- Vendee takes possession and assumes responsibilities and has equitable title.
- Seller retains legal title.
- Term is typically 3 to 5 years at which time Vendee receives deed from Vendor.



Advantages to Vendee

- Provides a means of financing when mortgage money may be hard to obtain.
- Allows vendee any appreciation in value.
- Flexibility in down payment requirements.
- Flexibility in loan to income ratio.
- Faster closing.



Advantages to Vendor

- ➡ Wider selection of buyers.
- ➡ Deferral of capital gains.
- ➡ Maintains reasonable control of the use of the property.
- ➡ Will often realize a higher sales price.
- ➡ Usually no appraisal required.
- ➡ Faster closing.



Disadvantages of Agreement of Sale

- ➡ Disadvantage to the seller would occur if the buyer defaults and the seller must incur costs to clear the title.
- ➡ Disadvantage to buyer is that seller does not have to deliver clear title until satisfaction of A/S; the seller's title may be not be marketable.



Sale and Leasebacks

- Popular with industrial & commercial.
- Seller-lessee deducts rent payments.
- Seller-lessee obtains maximum cash out.
- Frees up credit for seller-lessee.
- Buyer-lessor gets better net return.
- Buyer-lessor gets depreciation allowance.
- Buyer-lessor has advantage of appreciation.



"Fannie Mae"



- ➡ Federal National Mortgage Association
- ➡ Oldest secondary mortgage institution
- ➡ Former government corporation, now is a private organization.
- ➡ Money from sales of debentures, mortgage backed bonds, and discount notes.
- ➡ Purchases ARM, FHA, VA and FRM loans.



"Freddie Mac"



- Federal Home Loan Mortgage Corporation
 - "Freddie Mac" a government corporation.
- Controlled by Federal Home Loan Bank
- Buys FHA, VA and conventional loans from originating lenders.
- Freddie Mac sells its own securities to raise funds to purchase loans.
- Garn bill allows enforcement of due on sale.



"Ginnie Mae"



- Government National Mortgage Association
- An agency of HUD.
- Implements housing subsidy programs.
- Purchases special assistance mortgages authorized by congress, as well as low yield mortgages made to low to moderate income borrowers.



Mortgages



- Parties to the mortgage:
 - Mortgagor is the Borrower
 - Mortgagee is the Lender
- The Promissory Note makes the borrower personally liable for the debt.
- A mortgage loan is commonly repaid in installments amortized over a period of years.



Lien Theory (Hawaii)

- ➡ Lender makes a loan to borrower.
- ➡ Borrower retains legal title and gives a promissory note and mortgage.
- ➡ Lender has a lien on the property.
- ➡ When loan is paid, lender will record a release or satisfaction of mortgage.
- ➡ If the buyer defaults, the lender will have to foreclose to sell the property.



Title Theory

- ➡ Title is conveyed to a trustee to be held in trust until the note is paid in full.
- ➡ The instrument used is called a trust deed.
- ➡ Parties to a trust deed:
 - ➡ Borrower is the Trustor
 - ➡ Lender is the Beneficiary
 - ➡ Neutral 3rd Party is the Trustee



Title Theory

- ▶ Trustor retains equitable title including the right to possess, use and sell.
- ▶ Trustee holds “naked title”; as long as the borrower is not in default, the trustee's title lies dormant.
- ▶ When borrower pays in full, trustee cancels the note and issues a reconveyance or release deed.



Mortgage Instruments

- ➡ Written instrument
- ➡ Competent parties
- ➡ Description of the property
- ➡ Statement and term of the debt
- ➡ Mortgageable estate
- ➡ Foreclosure provisions
- ➡ Mortgagor's signature
- ➡ Voluntary delivery and acceptance
- ➡ Acknowledgement and recording



Mortgage Instruments

- ➡ No lien unless mortgage is recorded.
- ➡ Contract between the parties unless recorded.
- ➡ Unrecorded mortgage is void as to subsequent purchasers.
- ➡ Lien priority is determined by time of recordation.
- ➡ Mortgages inferior to real estate taxes and special assessments.



Factors Affecting Mortgages

- ➡ Acceleration Clause
- ➡ Alienation or Due on Sale Clause
- ➡ Escalation Clause
- ➡ Defeasance Clause
- ➡ Subordination Clause
- ➡ Covenant to Pay Taxes, Insurance, Repair



Assignment of Mortgage

- The sale of rights and interest in the mortgage to a third party is called an assignment of mortgage.
- The assignee may request:
 - Estoppel Certificate or
 - Certificate of No Defense.



Assumption of Mortgage

- ➡ Buyer assumes both payment and responsibility for the existing mortgage.
- ➡ Costs are less in mortgage assumption.
- ➡ Buyer should request a reduction certificate from the lender.
- ➡ Seller remains secondarily liable.
- ➡ Assume "subject to" mortgage.



Prepayment



- ➡ Many lenders have a prepayment penalty.
- ➡ No automatic right to prepay the loan.
- ➡ Mortgage should include an “or more” clause giving the mortgagor the right to pay the loan off early without penalty.



Release of Mortgage

- ➡ Upon full payment of a mortgage debt, a release or satisfaction of mortgage, is given to the mortgagor.
- ➡ Mortgagor should make sure the release is recorded.
- ➡ Death or bankruptcy of the mortgagor does not discharge a mortgage.



Private Mortgage Insurance (PMI)

- Allows lender to increase LTV.
- Lowers down payment for borrowers.
- Insures 20% of the loan balance.
- Borrower pays premium:
 - ½ of one percent the first year.
 - ¼ of one percent each year thereafter.
- Lender must remove once LTV under 80%.



Usury

- ▶ Hawaii state law; 1% month or 12% year.
- ▶ Charging more is usury and carries criminal penalties.
- ▶ If usury, borrower only has to pay principal.
- ▶ Most lenders now exempted.
- ▶ Only applies to 2nd mortgages carried by private individuals other than a seller.



Points

- ➡ Service charge points. Processing fee paid by borrower in conventional loan.
 - ➡ One point is equal to 1% of loan amount.
- ➡ Discount points are charges by a lender in FHA and VA loans when the interest rate is lower than a conventional rate.
 - ➡ One point is equal to 1% of loan amount.
 - ➡ One point affects the yield by 1/8 of a percent.



Mortgages Classified by Purpose

- ➡ Second Mortgages
- ➡ Purchase Money Mortgages
- ➡ Construction Loan Mortgages
- ➡ Blanket Mortgages
- ➡ Package Mortgages
- ➡ Wraparound Mortgages



Mortgages & Manner Repayment

- Amortized
 - (self-liquidating)
- Budget
- Balloon
- Open End
- ARM
 - Margin
 - Index
 - Caps
- GPM:
 - Graduated Payment i.e.. FHA 245
- RAM:
 - Reverse Annuity
- GEM:
 - Growing Equity
- Swing or Bridge
- SAM:
 - Shared Appreciation



FHA Insured Loans



- FHA established in 1934 and designed to:
 - Encourage improvement in housing standards.
 - Provide an adequate home financing system.
 - Exert a stabilizing influence on mortgage market and residential real estate.
- FHA was in response to lack of housing, excessive foreclosures and a collapsed building industry during the depression.



FHA Operates under HUD

- ▶ FHA does not:
 - ▶ Build homes.
 - ▶ Lend money itself.
- ▶ A loan is made by an approved FHA lender to a qualified buyer and repayment is merely **insured** by FHA.
- ▶ FHA repays 100% of loss suffered by lender in foreclosure.



Distinguishing Features of FHA:

- ▶ Low down payment; High LTV
- ▶ Available for building, buying, improving or refinancing owner occupied homes.
- ▶ Assumable only to qualified buyer with a release of liability to seller.
- ▶ Secondary financing for down payment is permitted within guidelines.
- ▶ HUD no longer fixes the rate or points.



More Features of FHA Loans:

- ➡ No prepayment penalty.
- ➡ Interest rate is usually fixed rate.
- ➡ Usual term is thirty years.
- ➡ Borrower pays mutual mortgage insurance:
 - ➡ Home: paid up front or financed in loan.
 - ➡ Condo: paid in monthly installments.



Veterans Administration Guaranteed

- ▶ VA or GI loans are made for similar purposes as FHA loans and are backed the U.S. government.
- ▶ Loan is made by a lender and the VA guarantees 25% of the balance.



Features of a VA Loan

- ➡ Most veterans with 90 days active duty.
- ➡ Unmarried widows of those who died from service connected causes.
- ➡ Interest rates no longer set by law.
- ➡ 100% loan up to VA maximum.
- ➡ 2nd mortgage for purchase is OK.
- ➡ Appraisal is called CRV



More Features of VA Loan

- What happens when CRV comes in low?
- Veteran certifies owner occupancy twice.
- No prepayment penalty.
- VA loan assumption and **novation**.
- VA has limited direct loans available.
- VA buyer or the seller can pay VA points.
- 1% origination fee
- VA Funding Fee



Hula Mae Loans



- Funds raised from tax-exempt bonds.
- Below market rates for 1st time buyers.
- Loans made by Hula Mae approved lenders.
- Hawaii and US Citizen at least 18 years old.
- No previous Hula Mae loan.
- Hasn't owned residence within 3 years.
- Adjusted household income limits



More About Hula Mae Loans

- 30 Year maximum term; 1 point to buyer.
- No maximum down payment.
- Owner occupant home or condo.
- If leasehold must have 35 years remaining.
- Not available for:
 - Refinance
 - Converting agreement of sale
 - Purchasing fee title to leasehold property.



Employee's Retirement System

- ➡ ERS loans are for state & county employees and retirees.
- ➡ ERS loans can be used for the:
 - ➡ purchase,
 - ➡ construction,
 - ➡ improvement,
 - ➡ refinancing,
 - ➡ purchase of leasehold property in fee.



Conditions for ERS Loan:

- Owner occupant home, condo, townhouse.
- Conventional loan max points 1% to buyer.
- Income after debts must be 3½ times the monthly mortgage payment.
- Sign affidavit of owner occupancy.
- Term of lease must exceed term of the loan by 10 years.



More on ERS Loans

- Refinancing an ERS loan only if making home improvements or buying the fee.
- Prepayment penalty the first year.
- Construction started within 4 or 6 months.
- ERS loans assumable by qualified persons.
- Agreement of Sale to anyone, but rate and terms may change.



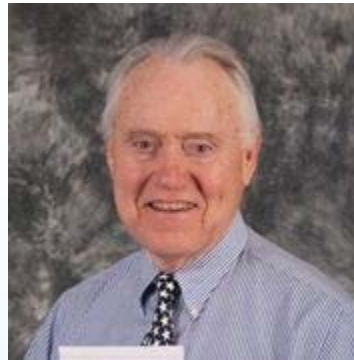
Review

- ➡ FHA and VA Comparison
- ➡ Agreement of Sale Addendum
- ➡ Purchase Money Mortgage Addendum



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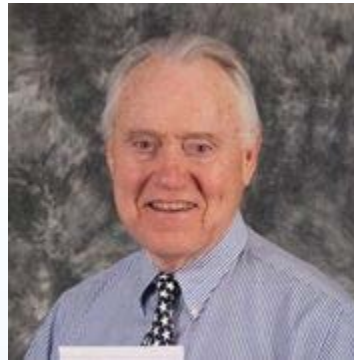
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Liens and Foreclosure

Chapter 18

2



Liens

- Encumbrances that affect the title.
- A right given to the creditor, lienor to have the debt satisfied out of the sale proceeds of the debtor, lienee.
- Lis Pendens is a public notice to a prospective purchaser or lender.



Specific Liens

- ➡ Mortgages
- ➡ Real Property Taxes and Assessments
 - ➡ One year right of redemption in Hawaii for tax sale only.
- ➡ Mechanics & Materialman's Liens
- ➡ Attachment (know the sequence)



Mechanics Liens

- ▶ Two stipulations for filing the lien:
 - ▶ Person must have furnished labor or materials.
 - ▶ Labor or material was used on property where lien is placed.
- ▶ Notice must be filed within 45 days of completion
- ▶ Lien expires 3 months after entry of court order unless lienor files suit.
- ▶ Liens relate back to date of commencement of work.



General Liens

- ▶ Judgment liens can continue for 10 years or until paid.
- ▶ Federal and State Estate Tax Liens
- ▶ Federal and State Tax Liens
- ▶ Decedent's Debts



Foreclosure

- Why foreclose on mortgagor?
- Judicial (Foreclosure by Suit)
 - Slow
 - Expensive
- Non-Judicial (Power of Sale Clause)
 - Based on advertisement and sale



More Foreclosure Rules:

- Deficiency Judgments possible
- Excess proceeds are paid to mortgagor
- What is non-recourse financing?
- Equity of Redemption Rules
 - Lender cannot determine the length of the redemption period.
 - Lender cannot ask mortgagor to waive this right in the mortgage document.



Truth-in-Lending and Real Estate Settlement Procedures Act RESPA TRID

Chapter 19

9



Truth-in-Lending

- ➡ What is the purpose for Regulation Z ?
- ➡ Creditors: one who regularly extends consumer credit 25 times in a calendar year. Included is a seller who does owner financing more than 5 times a year.
- ➡ Arrangers: one who is paid to arrange a consumer loan.



Disclosure Statement

- The most important items:
 - The finance charge
 - The annual percentage rate
 - The total of payments



Complete Disclosure Statement

- Total dollar amount of finance charge.
- Annual percentage rate.
- Number, amounts, timing of payments.
- Total of payments.
- Late payment fees
- Security interest
- Prepayment penalty.
- Method of computing rebates.
- Amount financed.
- Points or tax reserves.
- Agreement of sale disclosures.



Right of Rescission

- What is the intention of this law?
- If creditor extends credit and receives a security interest in the property, borrower has a **3 day** right of rescission.
- If disclosures are not given, borrower has **3 years** to rescind.
- Does not apply to residential mortgages.
- Does apply to refinance or 2nd mortgage.



Advertising

Column A

- Down payment
- Payment amount
- Finance charge
- Number of payments
- Period of repayment

Column B

- Amount or percentage of down payment
- Term of repayment
- Annual percentage rate and if increase is possible



Regulation Z Compliance

- Penalty is twice the amount of the finance charge with a maximum of \$1,000.
- Willful violation is misdemeanor punishable by a fine up to \$5,000, or 1 year in jail, or both.
- Enforced by Federal Trade Commission



RESPA Requirements

- ▶ Loan Estimate from the lender within **3** days of loan application.
- ▶ Use of Closing Disclosure
- ▶ Homebuyer's Guide to Settlement Costs



Further RESPA Requirements

- No kickbacks or payments of unearned fees.
- Lender must disclose business relationships with attorney, escrow, title etc. and give an estimate of their charges.
- Impound account cannot exceed current month plus 1/6 annual for taxes & insurance.
- Lender can't charge for preparation of RESPA forms.
- Violators subject to criminal penalties & triple damages.



Equal Credit Opportunity Act

- Prohibits discrimination in lending on the basis of sex, marital status, **old age**, race, color, religion, national origin, or receipt of welfare.
- Can't question applicants about their plans to have children.
- Can't require additional co-signors for single female applicants.



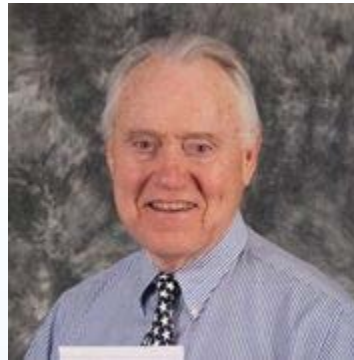
Review

- ▶ Truth-In-Lending Disclosure Statement
- ▶ Loan Estimate



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