

You have a license for that?

The SAFE Act requires one for most seller financing.

by Edra Anderson



Once upon a time, in a land far away, there lived real-live people who had liquid assets available to lend to purchasers of their real estate ...

Sounds like a fairy tale, doesn't it? Well, it's not fiction at all. Contrary to popular belief, there are property owners in Texas who have assets available to provide seller financing for their real estate transactions. The question is, are they able to seller-finance those properties under the current law?

Playing it SAFE ... new licensing requirements

On July 30, 2008, President George W. Bush signed into law the Secure and Fair Enforcement for Mortgage Licensing Act, commonly referred to as the SAFE Act. Contained within the federal statute was a requirement that all states enact uniform legislation implementing the SAFE Act within one year. In Texas, this was done during the 2009 legislative session.

The primary purpose of the SAFE Act is to place minimum licensure requirements on all mortgage-loan originators, and it requires state agencies to participate in the Nationwide Mortgage Licensing System and Registry. However, the SAFE Act also contains a small provision that expands licensing requirements to a larger segment of the population. To seller-finance a one-to-four-family residential transaction involving property other than the seller's primary residence, the seller must now be licensed as a residential mortgage loan originator (RMLO).

The five-transaction exemption is extinct

Under the previous statutory framework, there was something called the *de minimus exemption*. This allowed sellers of one-to-four-family residential properties to seller-finance up to five transactions in a single year without having to be licensed. The new statute does away with that exemption.

Now, the only licensing exemptions in this context are for the sale of the seller's primary homestead or if the seller is extending financing to a family member.

To be clear, seller financing is still allowed in Texas. However, now you must be licensed unless you meet one of the exemptions described above. According to Texas Savings and Mortgage Lending Department Commissioner Douglas Foster, people who intend to continue seller-financing properties other than their homesteads must complete the licensure process prior to May 31, 2010. Seller-financing these transactions without the appropriate license is a misdemeanor offense in Texas.

You will need an RMLO license, too, if you provide seller financing

Becoming licensed as an RMLO entails a process similar to obtaining a real estate license. Applicants must complete education, submit fingerprints for background checks, pay associated fees, sit for an exam, etc. An additional requirement is that applicants must demonstrate some level of creditworthiness. At this time, there is no reciprocity or exemption for other professional licenses, so real estate licensees must also obtain an RMLO license to conduct seller financing.

If you, as a real estate licensee, are representing a seller intent on seller financing, be sure to share this article with your client and refer her to the Texas Savings and Mortgage Lending Department for further information. Otherwise, that seller's hope for a fairy-tale ending could turn into a nightmare. ☆

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