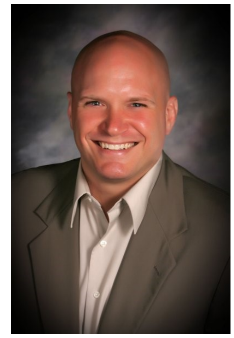
Todd Guidry

Divorcing Your Mortgage



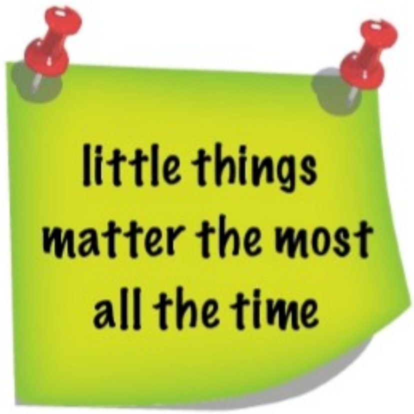
July 2017 Issue

Did you know??

This Month in History

July 1, 1862 - President Abraham Lincoln signed the first income tax bill, levying a 3% income tax on annual incomes of $600-$10,000 and a 5% tax on incomes over $10,000. Also on this day, the Bureau of Internal Revenue was established by an Act of Congress.
July 1, 1863 - Beginning of the Battle of Gettysburg during the American Civil War.
July 2, 1788 - Congress announced the United States Constitution had been ratified by the required nine states and that a committee had been appointed to make preparations for the new American government.
July 3, 1775 - During the American Revolution, George Washington took command of the Continental Army at Cambridge, Massachusetts.
July 4, 1776 - The Declaration of Independence was approved by the Continental Congress.
July 7, 1898 - President William McKinley signed a resolution annexing Hawaii. In 1900, Congress made Hawaii an incorporated territory of the U.S., which it remained until becoming a state in 1959.

Todd Guidry NMLS# 114581
Preferred Lending Solutions
104 Albertsons Pkwy Ste. 1
Broussard, LA 70518
Direct: 337.280.3163
www.donedealnow.com
tguidry@donedealnow.com



Divorcing Your Mortgage newsletter is a great resource for our strategic partners. Even though we might only be able to touch on a specific topic due to space, that doesn't negate the need to follow up with some very useful details on previous newsletter issues.

We want to follow up with you on a couple of recent topics we have addressed. 1.) Contingent Liability and Ownership and 2.) The Housing Assistance Tax Act of 2008.

Contingent Liabilities: Contingent liabilities are debts that a court orders one party the responsibility of paying yet does not relinquish the legal obligation of paying the liability to the creditor. In a divorce situation, often times a mortgage cannot be refinanced and the marital home is not being sold. When the final divorce decree states that one party shall be responsible for making the mortgage payment, it is considered a court ordered contingent liability that can be looked at in various ways when the non-responsible party is looking to obtain new mortgage financing.

Fannie Mae: As long as the final documents state who the responsible party shall be in the orders, the contingent liability will not be considered in the other party's debt to income ratio.

Freddie Mac: As long as the non-responsible party has been removed from title/ownership, the contingent liability will not be considered in the debt to income ratio.

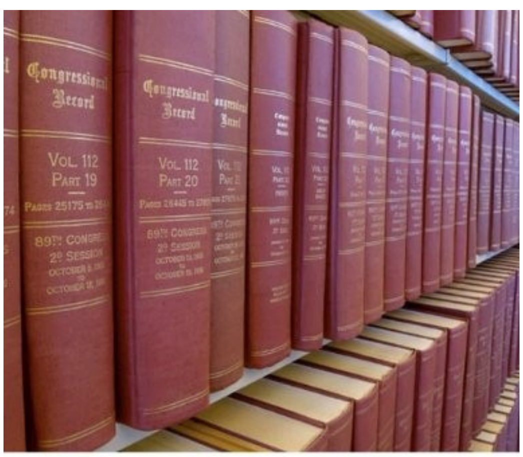
FHA: As long as it can be documented that the responsible party has made twelve (12) consecutive payments after the orders, the contingent liability will not be considered in the debt to income ratio for the other party.

However, there is another mortgage guideline that may throw a glitch into this mortgage planning. *Continued on next page.*

DETAILS

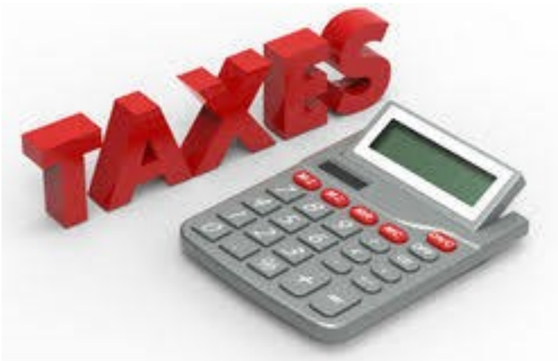
Contingent Liabilities Continued: What happens to the contingent liability when there has been a property settlement buyout other than refinancing the other spouse off of the current mortgage? Fannie Mae Guidelines state that "When a borrower's interest in a property is bought out by another co-owner of the property, as often happens in a divorce settlement, but the lienholder/lender does not release the borrower from liability under the mortgage, the borrower has a contingent liability. If the lender obtains documentation to confirm the transfer of title to the property, this liability does not have to be considered as part of the borrower's recurring monthly obligations."

Occasionally, one spouse may have the cash available to buy out the other party's ownership in the marital home. Rather than refinancing the current mortgage to avoid unnecessary fees or higher interest rates, the spouses may agree to leave the current mortgage in place. However, some spouses will not agree to take their name off of title because their name is still on the current mortgage. Keep in mind that if the equity is bought out in cash or some other form, the vacating spouse may need to come off of title to qualify for future mortgage financing.



HOUSING ASSISTANCE TAX ACT OF 2008

The Housing Assistance Tax Act of 2008 is the tax act that potentially creates a capital gain tax when a property owner moves into a rental property as their primary residence and sells at a later date. One of the most disadvantageous provisions in the Housing Act is the restriction on the exclusion of gain from home sales. Under current law, a taxpayer can exclude up to $250,000 in gain ($500,000 for married couples) from the sale of a residence if the taxpayer has both owned and used the home as the taxpayer's principal residence for at least two of the five years before the sale. Thus, a taxpayer could move into a non-qualifying property (in other words, a vacation or rental property) and, after meeting the two-year residence requirement, sell the property and take advantage of the entire exclusion. The new restriction is intended to substantially restrict tax-free home sale gains for any taxpayer who benefits from the exclusion *after* he or she has converted a vacation home or rental property to his or her principal residence. *Continued on next page.*



Calculating the Potential Tax Liability:

After December 31, 2008, gain from the sale of a principal residence will *not* be excluded from income to the extent the property was used for a nonqualified use, as defined under Code § 121(b)(4), as amended by Housing Act § 3092. This new restriction only applies to nonqualified uses occurring after December 31, 2008. A nonqualifed use consists of any period, beginning after December 31, 2008, in which the property is not used as the principal residence of the taxpayer.

To calculate the amount of gain that is allocated to periods of nonqualified use, the total amount of gain is multiplied by the following fraction: the aggregate periods of nonqualified use while the property was owned by the taxpayer divided by the period the taxpayer owned the property. Nonqualified use, however, does not include any portion of the five-year period that occurs *after* the last date the property is used as the principal residence of the taxpayer. For example, suppose John buys a home on January 1, 2009, for $400,000 and uses it as rental property for two years, claiming $20,000 of depreciation. On January 1, 2011, John begins using the property as his principal residence. On January 1, 2013, John moves out of the house and sells it for $700,000 on January 1, 2014. John used the property for a non-qualifying use for the first two years he owned it. The year after John moved out, however, is treated as a qualifying use. Therefore, 40% (two out of five years owned), or $120,000, of John's $300,000 gain is not eligible for the exclusion. The balance of the gain, $180,000, may be excluded. In addition, John must include $20,000 of the gain attributable to depreciation as ordinary income (unrecaptured Code § 1250 gain).

Nonqualified use also does not include any period during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (not to exceed an aggregate period of 10 years), nor does it include any other period of temporary absence because of change of employment, health conditions, or other unforeseen circumstances as may be specified by the IRS (not to exceed an aggregate period of two years).

The Housing Act is intended to restrict gain exclusion when property is transferred from a non-qualifying use *to* a principal residence, so the new provisions do not restrict gain exclusion when property is transferred *from* a principal residence to a non-qualifying use. Again, this provision only applies to nonqualified uses beginning January 1, 2009.

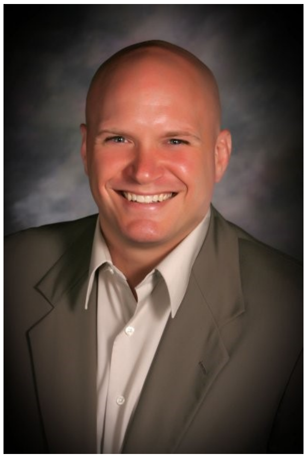
Todd Guidry NMLS 114581

Preferred Lending Solutions
104 Albertsons Pkwy Ste. 1
Broussard, LA 70518

Direct: 337.280.3163

tguidry@donedealnow.com

www.donedealnow.com
Corp. NMLS 1018326



PREFERRED
LENDING SOLUTIONS
Done Deal.

Divorce Lending & Real Estate Association

Why you Need a Certified Divorce Lending Professional (CDLP) on Your Professional Divorce Team.

A professional divorce team has a range of team players including the attorney, financial planner, accountant, appraiser, mediator and yes, a divorce lending professional. Every team member has a significant role ensuring the divorcing client is set to succeed post decree.

A Certified Divorce Lending Professional brings the financial knowledge and expertise of a solid understanding of the connection between Divorce and Family Law, IRS Tax Rules and mortgage financing strategies as they all relate to real estate and divorce. Having a CDLP® on your professional divorce team can provide you the benefit of:

- A CDLP is trained to recognize potential legal and tax implications with regards to mortgage financing in divorce situations.
- A CDLP is skilled in specific mortgage guidelines as they pertain to divorcing clients.
- A CDLP is able to identify potential concerns with support/maintenance structures that may conflict with mortgage financing opportunities.
- A CDLP is able to recommend financing strategies helping divorcing clients identify mortgage financing opportunities for retaining the marital home while helping to ensure the ability to achieve future financing for the departing spouse.
- A CDLP is qualified to work with divorce professionals in a collaborative setting.
- A CDLP can provide opportunities in restructuring a real estate portfolio to increase available cash flow when needed.
- A CDLP maintains a commitment to remaining educated and up to date in the ever changing industry guidelines and tax rules as they pertain to divorce situations.
- A CDLP is committed to providing a higher level of service to you and your divorcing clients.

The role of the CDLP is to help not only the divorcing client but the attorney and financial planner understand the opportunities available as well as the challenges divorce can bring to mortgage financing during and after the divorce. When the CDLP is involved during the divorce process and not after the fact, many potential financing struggles can be avoided with valuable and educated input from the Certified Divorce Lending Professional.

"Nothing matters more in winning than getting the right people on the field. All the clever strategies and advanced technologies in the world are nowhere near as effective without great people to put them to work." - Jack Welch, *Winning*

CDLP Certified

Certified Divorce Lending Professional

This is for informational purposes only and not for the purpose of providing legal or tax advice. You should contact an attorney or tax professional to obtain legal and tax advice. Interest rates and fees are estimates provided for informational purposes only, and are subject to market changes. This is not a commitment to lend. Rates change daily - call for current quotations.

EQUAL HOUSING LENDER

The information contained in this newsletter has been prepared by, or purchased from, an independent third party and is distributed for consumer education purposes.