FEDERAL STANDARD ABSTRACT
TITLE NEWS

Issue #43 *May 2008*

Title News

The On-Going Mortgage Crisis

Our Newsletter has not written about the Credit Crunch since last March mainly because it has been unclear as to what the chief players (the President, the Congress, the Federal Housing Administration, the Federal Reserve, etc.) are going to do. Something big is probably about to happen, but before listing events to date, however, it will be instructive to follow how this messy situation developed in the first place.

We all remember the last housing boom that began in 1997-98. According to the New York Times, the cause of the boom was a shift in the IRS Code regarding *capital gains.* Under the new law, the first $500,000.00 in capital gains became exempt from taxation if it resulted from the sale of Real Estate. From then on Real Estate became a better investment than the Stock Market for the average person, since Real Estate meant lower taxes on *capital gains*.

In response to this tax law change, money flooded into the Real Estate market, and understandably so. Wall Street saw how money was leaving stocks and bonds, so it created something totally new -- securities based on home mortgages. The problem was that no one knew what kind of property the security exactly was or who in fact owned it. More importantly, the securities were based on loans made to borrowers who could not afford them. Marquis banks invested billions of dollars in these bad debts, leaving them without liquid resources to meet their financial obligations.

So where does that leave us now?

The Federal Reserve agreed to guarantee funds which J.P. Morgan Chase will use to buy the shares of Bear Stearns at a price of only $10.00 per share. (Bear Stearns stock was at $170.00 a share last summer.) If Bear Stearns went bankrupt, the Fed says, our entire economic system might fail. This transaction created a “firestorm” in the media and Congress, causing some to query, “To what extent will the Federal Government bail out banks or borrowers in the on-going mortgage crisis?”

The FHA has already taken some action. During the week of April seventh, according to www.realtytimes.com, the FHA announced a program for borrowers with serious delinquencies to refinance into an FHA fixed-rate loan.

A homeowner with an Adjustable Rate Mortgage who has made late payments for two consecutive months during a minimum one-year period may qualify if said homeowner has a minimum of 3% equity in the property. One who has been late for three consecutive months during the same one-year period may also qualify but must have at least 10% equity.

What about new legislation? The U.S. Senate has proposed tax breaks for home builders, tax incentives to those buying foreclosure properties, and a mortgage interest deduction even for those who do not itemize on their income tax. The House, on the other hand, is proposing reform of Fannie Mae and Freddie Mac, including $300 billion for Fannie Mae and Freddie Mac to buy delinquent mortgages. The President has expressed dissatisfaction with the Senate Bill and stated that the Federal Government will not bail out homeowners. Senator McCain favors the President's approach, while Senator Obama favors "cram-downs" for strapped borrowers, and Senator Clinton favors reform of Fannie Mae and Freddie Mac. Finally, some legislators are calling for reform of the IRS Code – to take away the exemption for *capital gain* on the first $500,000.00 mentioned above. Time, however, is fast running out, as the end of this session of Congress is at hand. According to the New York Times, ground-breaking legislation will probably not be passed this fall because it is an election year.

<u>New York State Transfer and Gains Tax</u>

New York State Real Property transfer tax is imposed at the rate of $2 for every $500 of consideration. According to Tax Law section 1401(c), the amount of gross consideration may be lowered on account of a mortgage or other lien or encumbrance by means of a deduction only if one of the following applies:

1. The conveyance was according to a contract of sale entered into before 5-1-83.
2. The consideration was less than $500,000.00
3. The subject property was a one-, two- or three-family house or an individual condominium unit.

If the property is conveyed other than by deed, New York State transfer tax must still be paid. This applies to the transfer of development rights; an interest in an entity that holds title to the property; a cooperative unit; or the grant of a leasehold to most of the premises for a period greater than 49 years.

New York State also collects a "mansion tax" if the consideration is at least $1 million and the property is residential. A one- to three- family house, an individual condo unit or a cooperative apartment used at least partially as a residence all qualify. Tax Law section 1402-1(a).

New York State and any of its agencies are exempt from the transfer tax, as are the United Nations, and the U.S.A. and any of its agencies. If the conveyance effects no change in beneficial interest in the property, such as where an individual transfers title to a corporation for which that individual is the lone stockholder, then no transfer tax need be paid, either.

Besides transfer tax, gains tax must also be paid on a conveyance. The TP-584 is the gains tax affidavit filed with the State. Both transfer tax and gains tax must be paid to the County Recorder no later than 15 days after the date of the conveyance.

If you have any questions or comments, contact us at fsa@federalstandardabstract.com