LAW ADVOCATE GROUP, LLP

9701 Wilshire Blvd. Suite 1000 Beverly Hills, CA 90212

Phone: 310-651-3065   Fax: 310-601-7110

www.LawAdvocateGroup.com

Doron F. Eghbali Real Estate Law

What Do Mortgages Encompass in Real Estate Transactions?

Thursday, April 7, 2011 by Doron F. Eghbali

Purchasing real estate, residential or commercial, most often requires large sums of money. While potential purchasers might borrow from family and friends to consummate the transaction, financial institutions such as banks, loan associations and credit unions are the common sources of such financing. Let us explore the mechanics and some intricacies of mortgages and further enlighten ourselves about them.

WHAT IS A MORTGAGE?

Borrowing money to buy real estate involves signing two documents, among other things: *Promissory Note* and *Mortgage.*

A. PROMISSORY NOTE

Promissory note is rather a formal IOU by which the borrower promises to pay the money back to the lender according to certain terms including payment of the interest for using the money and compliance with the time schedule for making payments on the loan, among other things.

B. MORTGAGE

Mortgage is just another document which secures the debt or provides collateral for the loan if the borrower defaults on it. In fact, if the borrower defaults on the loan or breaches the terms of the mortgage agreement can foreclose on the secured property.

- **PURCHASE-MONEY MORTGAGE:** Purchase money mortgage, in reality, is the money SELLER lends BUYER to purchase the property.

SOME OTHER IMPORTANT YET *RELATIVELY* BASIC TERMINOLOGY AND OBSERVATIONS

- ***Mortgage Not Always On Purchased Real Estate:*** This is noteworthy mortgages are not always made on the purchased real estate. It is conceivable and feasible for borrower, for instance, to purchase a vacation home but borrows against the already-purchased residence. In such scenario, if the borrower defaults, lender would generally have recourse against the residence, unless their agreement provides otherwise.

- ***First Mortgage OR Second Mortgage, Senior Mortgage OR Junior Mortgage:*** This ranking order establishes the priority (right) over proceeds of a sale. In fact, mortgages of a lower priority (second and third) are referred to as junior mortgages and mortgages of higher priority are called Senior Mortgages. Hence, if borrower has three mortgages, the second mortgage is Senior to the third mortgage and Junior to the first mortgage. Consequently, the lender having the first priority MAY use all proceeds from sale of real estate (foreclosure sale) if possible and necessary to satisfy the amount owed. Then, if any sales proceeds remain after satisfying the first mortgage, the money MAY be used to satisfy the second mortgage holder, and so on. Any proceeds remaining after satisfying all notes secured by the mortgages belong to the property owner, if any.

- ***Due-On-Sale Clauses:*** Due-on-sale clauses require the entire note be paid before seller can deed the property to a new purchaser. Nonetheless, some lenders MIGHT allow the new purchaser to ASSUME the loan and make payments on it. In such scenario, the new purchaser becomes wholly liable on the note. Generally, if the underlying property cannot be sold great enough to extinguish the secured indebtedness, then the lender might have RECOURSE to the subsequent purchaser's other assets for the deficiency. In addition, the first purchaser, generally, remains liable to the lender for any unpaid amounts.

DORON EGHBALI *is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. Doron Primarily Practices Business, Real Estate and Entertainment Law. Doron Can Be Reached at: 310-651-3065. For More Information, Please, Visit: HERE.*