

CFPB AND SELLER FINANCING

SELLER/PRIVATE FINANCING IN RESIDENTIAL TRANSACTIONS

IF YOU ARE INVOLVED IN A RESIDENTIAL REAL ESTATE TRANSACTION (AS A PARTY, AS CLOSING AGENT OR REPRESENTING A PARTY IN THE TRANSACTION) IN WHICH SELLER FINANCING OR PRIVATE FINANCING IS CONTEMPLATED, YOU SHOULD DETERMINE THAT THE FINANCING AND PARTIES THERETO COMPLY WITH THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (DODD-FRANK) WHICH BECAME EFFECTIVE JANUARY 10, 2014, AS WELL AS ANY OTHER RELEVANT FEDERAL AND STATE REQUIREMENTS.

DODD-FRANK HAS IMPLEMENTED NEW RULES AND PENALTIES REGARDING SELLER FINANCING AS WELL AS REGARDING PRIVATE LOANS MADE TO A CONSUMER ON RESIDENTIAL PROPERTIES NOT OWNED BY THE FINANCER.

A summary of the new Seller Financing regulations contained in Dodd-Frank is set out below for your quick reference; however, you are advised that this is just a "summary" and not a complete treatise of the subject and you should refer to the Dodd-Frank Act for further information or edification on Seller Financing or Private Financing in residential real estate transactions and enforcement/penalty provisions.

SUMMARY

SELLER FINANCING UNDER DODD-FRANK

The Dodd-Frank Act adopted new laws that expanded previous regulations issued by the Board of Governors of the Federal Reserve System concerning the licensing and regulation, training, screening and compensation practices of loan originators such as mortgage brokers and bank loan officers in consumer loan transactions. The Consumer Financial Protection Bureau (CFPB) issued its Loan Originator Rule in January, 2013, to implement the new Dodd Frank Act requirements. This new rule also applies to sellers of residential dwellings to consumers in which the seller provides financing to the consumer secured by a mortgage on the dwelling, unless the seller is entitled to certain exclusions.

There are two special exclusions from the requirements of the Loan Originator Rule:

1. The one property exclusion, in which a natural person, estate or trust provides seller financing for only one property in any 12-month period.
2. The three property exclusion in which any type of seller financing entity finances the sales of three or fewer properties in any 12-month period.

Certain other requirements must be met to qualify for either exclusion. They are:

3. You owned the property securing the loan.
4. You were not the contractor or builder of the residence on the property in the ordinary course of business.

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The financing must meet certain requirements, which are different for each exclusion.

5. Under the one property exclusion, the financing requirements are:

- a. No negative amortization (but balloon mortgages are permitted).
- b. Have a fixed rate or an adjustable rate that resets after five or more years, subject to reasonable annual and lifetime limits.

6. Under the three property exclusion, the financing requirements are:

- c. Be fully amortizing.
- d. Have a fixed rate or an adjustable rate that resets after five or more years, subject to reasonable annual and lifetime limits.
- e. FURTHER, you must determine in good faith that the consumer has a reasonable ability to repay the loan. Criteria for making that determination are found in Regulation Z §1026.43(c) or alternatively, comment 36(a)(4)-1.

7. For both special exclusions, where adjustable rate financing is used, an annual rate increase of two percentage points or less and a lifetime limitation of an increase of six percentage points or less are deemed reasonable. The index you use must be widely available.

8. Please note the following important points:

- f. Even if in providing seller financing you are not a loan originator or creditor under Regulation Z because you fit within an exception or exclusion, the buyer remains a consumer receiving consumer credit, and other compliance issues remain, such as (i) mandatory arbitration is prohibited, and (ii) requiring the consumer to waive federal claims is prohibited.
- g. Regulation Z and the Loan Originator Rule do not apply to business, commercial, agricultural or organizational credit, or credit extended to other than a natural person.
- h. A person who is excluded from the definition of creditor under Regulation Z because the person extends consumer credit secured by a dwelling five or fewer times in the preceding calendar year is not thereby excluded from being a loan originator unless the transaction fits under either the one property or the three property exclusion under the Loan Originator Rule.
- i. There are no exclusions from the Loan Originator Rule for private loans made on residential properties not owned by the private lender.

ESCROW TIP

In most instances escrow can process seller financing as usual. All parties are encouraged to seek legal counsel. Old Republic does not provide legal advice.

Effective 4.21.15

Old Republic is providing this information as a free customer service and makes no warranties or representations as to its accuracy.

Old Republic strongly recommends that consumers confer with their title insurer as underwriting requirements vary among companies and further, obtain guidance and advice from qualified professionals, including attorneys specializing in Real Property, Trusts and/or Title Insurance to get more detailed, and current, information as to any particular situation affecting them.