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INHERIT A HOME WITH A MORTGAGE?

HERE'S WHAT YOU NEED TO KNOW

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You'd think that news of having inherited a home would be welcomed by most anyone. Usually, it is, until someone realizes they may face a tough crowd when it comes to securing the mortgage. It happens more than you might realize, too. After the 2008 mortgage bust that led to the recession that many are still struggling to overcome, there were new laws and rules put into place.

THE HISTORY

To better understand how we got to this point, let's take a look at the history. Several years ago, lenders began offering subprime mortgages to borrowers who had less than ideal credit. While that alone isn't necessarily

unheard of, it's the absence of qualifying for these mortgages that still has many in the financial sector reeling. Many of these subprime loans were "stated" loans, meaning the borrower stated on his application his income, his bank balance, his employer information – and the loan officer was not

required to verify it past using his or her common sense. As a result, many borrowers were qualifying for huge mortgages that their salaries could never cover. If a borrower stated he earned $300,000 a year, the application moved through the process with no one making a phone call or even demanding to see income tax returns. The lenders who allowed these loans are names you probably recognize: Countrywide, Washington Mutual and Chase Home Finance, to name a few.

Soon, the bottom fell out and those massive foreclosures began, which triggered huge job losses and so the cycle began.

NEW LAWS WERE REQUIRED

As result of these vicious cycles, President Obama passed an impressive new series of financial laws that including the formation of the Consumer Financial Protection Bureau and, of course, the Dodd-Frank law. Approval guidelines got far more restrictive, resulting in many Americans having no way to purchase a home if their credit scores took a hit in the recession due to a foreclosure or job loss.

That brings us to today. Inheriting a home should be an amazing gift for someone, but for many, they're scared that they won't be able to move forward with that if the home has a mortgage. They fear they won't

qualify. This week, though, the CFPB issued new rules designed to clarify that when a borrower dies, the name of the borrower's heir generally may be added to the mortgage without triggering the Bureau's Ability-to-Repay rule. It's designed to assist survivors who are now proud homeowners the option of being considered for a mortgage or a refinance so that they're able to keep that home.

ABILITY TO REPAY

The Ability-to-Repay rule includes the new guidelines CFPB put into place in response to all of the stated mortgages. The way CFPB sees it, an heir has already acquired the title to the home, and therefore, adding the heir as a borrower on the mortgage shouldn't kick in the ability to repay requirements.

The creditor doesn't have to take any steps to determine that person's ability to repay before acknowledging that heir as a rightful owner. Not only does this help with financing, but it also goes a long way in terms of privacy laws. The heir should now find it easier to obtain account information, pay off the loan, or seek a refinance plan.

Also, keep in mind, this isn't applicable only to homes. It applies across the board to include transfers from divorces, living trusts and other traditional

transfers that come with death or divorce. Lenders and other mortgage servicers must have policies and procedures in place to ensure that they are able to quickly assess, identify and communicate with surviving family members and others who have a legal interest in the home.

TAKING PRIDE AND LOSING FEAR

CFPB Director Richard Cordray explained, "Losing a loved one should not mean also losing your home. Today's interpretive rule makes it clear that when family members inherit property, they can take over the mortgage without jumping through unnecessary hoops." He concluded by saying, "This gives heirs an opportunity to work with the lender to pay off the loan or seek a loan modification."

For many of our clients and their loved ones, it's not only a big worry off of their shoulders, but for many, it's an opportunity for them to become homeowners – just the way their deceased loved one wanted it. We never want to leave to our loved ones anything that feel is a burden and few things are more worrisome than inheriting a house, buying the necessary insurance, paying the taxes and then not being able to enjoy it fully due to financial problems.

To learn more about leaving considerable assets to loved ones or if you have questions about any mortgages attached to a home you inherit, contact our office to learn more about what it means for you.

About the Author

Stephen A. Unsworth has over 30 years of experience in estate planning and business law. His misson is to provide quality estate planning services, including assistance with Living Trusts, Wills, Medicaid Planning, Probate, Trust Administration, Powers of Attorney, Special Needs Planning, and Family Limited Partnerships.

Stephen is admitted to practice law in both Vermont and Maine. He is a member of the Vermont Bar Association, the Chittenden County Bar Association, the American Academy of Estate Planning Attorneys, the National Academy of Elder Law Attorneys, and the Vermont Bar Association's Elder Law and Probate & Trust Sections.

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