

LEGAL NOTES

FROM THE DESK OF HAROLD CHU

Last month we had indicated that HARPTA withholding (the amount withheld from the seller's proceeds when the seller is a non-resident) would increase. Although legislation had been submitted, it was vetoed by Governor Lingle. Thus, there is no increase in the HARPTA withholding.

With the abundance of creative financing, many people may have recently purchased real property with less than the conventional 20% down payment. In those instances, private mortgage insurance is typically required to protect the lender in the event of default. Either now or in the future, you may be a candidate to have this additional insurance payment terminated. You may be interested in our article on private mortgage insurance.

Landlords who rent to tenants in condominiums need to exercise an additional degree of caution. Please see our article on specific concerns when renting a condominium.

TENANTS IN CONDOMINIUM

The Hawaii Residential Landlord/Tenant Code is applicable whether a tenant is renting a condominium or a house. There are, however, factors which the Landlord should take into consideration when leasing a condominium to a tenant.

Associations hold the owner responsible for the actions of the owner's tenants. Therefore, it is important for the landlord (1) to provide the tenant with a copy of the Association House Rules, and 2) to specifically provide in the Landlord/Tenant agreement that the tenant is liable for any and all costs due to a violation of a House Rules by the tenant.

Recent legislation now allow the Association to evict tenants in a condominium who are troublesome. This will be done at the owner's expense. To avoid problems and unexpected costs, such as the Association's legal fees, the landlord should thoroughly investigate and evaluate the tenant before renting a condominium to the tenant. This is true even for simple family dwellings. The Landlord should take prompt action, including eviction if warranted, to address any problems.

As condominiums age, we are seeing more instances of water leaks. These water leaks can cause the tenants or other condominium residents substantial damage. These damages are often many thousands of dollars. The affected parties typically look to the Landlord to pay for these damages. The landlord needs to be aware of this risk and should (1) maintain the condition of the condominium to minimize the possibility of paying for damage caused to others, and (2) attempt to secure insurance to further minimize such risks. The tenants should also be strongly encouraged to buy renter's insurance for protection of the renter's personal property.



THIRTY DAY RIGHT TO CANCEL

When purchasing a new condominium from the Developer, buyers must be given a 30 day right to cancel. The buyers can waive this right to cancel. Buyers also have the right to cancel if the project is not completed by the deadline described in the sales contract or if there are **material** changes in the project.



During the 30 day period, the buyer has an absolute right to cancel. No reason needs to be given. It can become much more difficult and expensive for the buyers to cancel after this 30 day right to attempt to cancel has expired. Thus, if a buyer has any second thoughts, the buyer should keep track of this 30 day period and timely exercise its option to minimize possible disappointment and costs.

CORRECTION

Under the Hawaii Real Property Tax Law (HARPTA), the State of Hawaii withholds from the sales proceeds for non-Hawaii residents an estimate of the seller's capital gains tax that may be due to the State of Hawaii. In our January, 2007 Newsletter, we had indicated that HARPTA withholding would increase from 5% to 8.25%. Although there was legislation submitted to increase the HARPTA withholding, it was vetoed by Governor Lingle. The HARPTA withholding remains at 5%.

Risk of Loss Defined

In the sale of real property, Hawaii Revised Statutes § 508-1 and the DROA both provide that risk of loss passes to buyer upon possession or title. This means if the property is destroyed or damaged and the buyer has either possession or title, the buyer must still pay the purchase price and the buyer is not entitled to recover any portion of the purchase price the buyer has paid. The risk of loss has been transferred to the buyer. Sellers should be careful if they haven't received the full amount of the purchase price.

HUMOR

A driver is pulled over by a police officer. The police officer approaches the driver's door.

"Is there a problem, officer?"

The police officer says, "Sir, you were speeding. Can I see your license please?" The driver responds, "I'd give it to you but I don't have one."

"You don't have one?"

The man responds, "I lost it four times for drunk driving."

The police officer is shocked. "I see. Can I see your vehicle registration papers please?"

"I'm sorry, I can't do that."

The police officer says, "Why not?"

"I stole this car."

The officer says, "Stole it?"

The man says, "Yes, and I bumped off the owner."

At this point the officer is getting irate. "You what!?"

"She's in the trunk if you want to see."

The Officer looks at the man and slowly backs away to his car and calls for back up.

Within minutes, five police cars show up, surrounding the car. A sergeant slowly approaches the car, clasp his half drawn gun. The sergeant says, "Sir, could you step out of your vehicle please!"

The man steps out of his vehicle. "Is there a problem, officer?"

"One of my officers told me that you have stolen this car and bumped off the owner."

"I murdered the owner?"

The officer responds, "Yes, could you please open the trunk of your car please?"

The man opens the trunk, revealing nothing but an empty trunk.

The officer says, "Is this your car sir?"

The man says, "Yes," and hands over the registration papers.

The sergeant, understandably, is quite stunned. "One of my officers claims that you do not have a driving license."

The man digs in his pocket revealing a wallet and hands it to the officer. The officer opens the wallet and examines the license. He looks quite puzzled.

"Thank you sir, one of my officers told me you didn't have a license, stole this car, and bumped off the owner."

The man replies, "I bet you the lying buggah told you I was speeding, too!"



YOU MIGHT BE ABLE TO TERMINATE PRIVATE MORTGAGE INSURANCE AND SAVE MONEY EVERY MONTH

If you purchased a personal residential property with a mortgage that was more than 80% of the home's value, the lender probably required you to pay private mortgage insurance. Private mortgage insurance (PMI) is extra insurance that the lenders require from home buyers for loans that are more than 80% of the home's value. The private mortgage insurance protects the lender against a loss if a buyer defaults. The premium for the PMI is an additional ongoing costs for your mortgage.



Under the appropriate circumstances, it is possible to cancel or

terminate the private mortgage insurance and its attendant cost. These circumstances are typically:

1. The ratio of the unpaid amount of your loan to the market value of the property should be less than 80%. For example, if your unpaid mortgage balance is \$300,000 and the market value of your home is 400,000, the ratio of your loan to the market value of your home is \$300,000/\$400,000 or 75%. You could possibly qualify to terminate the private mortgage insurance.
2. You must also be current on your loan. Typically, you will be considered current if you have not been more than 30

days late with your mortgage payments within a year of your request to terminate PMI, or more than 60 days late within two years of your payments.

3. The lender may also require proof of the value of your property. An appraisal may be required. This would be at your cost so you should be fairly confident of the value of your home before incurring such costs.

The terms and conditions to cancel the PMI will vary from lender to lender. If you believe that you might be a candidate to terminate the PMI, you should at least ask your lender whether the PMI can be terminated for your loan.

SUGGESTIONS ON HOW WE CAN SERVE YOU BETTER

The following are some suggestions on how we might be able to serve you better:

1. Anticipate the problem.

Most people bring us problems after something has occurred. While we do work on rushes and emergencies and you cannot always control the circumstances, if you anticipate a possible problem and advise us beforehand, you might get a better product/result and avoid the mad scramble that sometimes ensues. This may also reduce both cost and stress for you.

2. If you have a concern about something, ask.

We are not mind readers. Your concerns may be minimal or something that can be easily ad-

dressed. By asking, you could possibly save yourself considerable worry and stress. There are occasions when the concerns are real. By asking, you may eliminate some of the uncertainty and possibly feel less stressful if there is a game plan in place to address your concerns. It may not be possible to avoid all problems, but the approach should be to attempt to address the problems, resolve them and move on.

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3. Procrastination is rarely your friend.

There are many entities and people involved in a real estate

transaction. It often takes a certain amount of time and coordination to get everyone working towards the same goal. Lawsuits have time limitations by which they must be brought. Even if a lawsuit is brought in a timely fashion, the passage of time often creates problems with the availability of records, of witnesses and the extent of witnesses' recollection. The bottom line is that if there is a problem, it is usually best to address it immediately rather than wait.

4. Protect yourself.

In my line of work, I often see the worse in people. You should hope for the best, but be prepared for the worst. Good clear written documentation may minimize later disputes. The bottom line: get it in writing and signed by all parties.

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HUMOR

Two officers stop a speeding car on the corner of Kalakaua Avenue and Paokalani Avenue in Waikiki. One officer gets out, obtains the license, no fault, and registration information and returns to the patrol car.

The officer asks his beat partner, "Eh, how you spell Kalakaua?"

The partner responds: "Ahhhh, ka, I think Kale, wait, Kalako...I don't know."

The first officer responds: "That's ok. How do you spell Paokalani?"

The partner responds: "Pow, now wait paw, no wait puwo.. Wait, let the guy go...I get one plan."

The first officer replies: "I not going to let him go. He was going 45 mph. I gotta give him the ticket!"

The partner says: "No worry! We going to give him the ticket, but let's catch him on KING STREET!!"

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