

LEGAL NOTES

FROM THE DESK OF HAROLD CHU

We advise our landlord clients to not discriminate. Although landlords may have no intention to discriminate, they could fall into the trap of making comments, which unknowingly can be argued to be discriminatory practices. We have had clients who made well meaning remarks and then found themselves the subject of claims of discrimination.

Federal law provides that one cannot discriminate on the basis of race, color, religion, sex or national origin. This has been expanded to include discrimination based upon disability or familial status. You may wish to take our quiz for landlords and see how you fare.



Subprime mortgages have been in the news recently. A subprime loan is a loan given to someone who would not qualify for a traditional loan and is a high loan risk. Christine Daleiden, an attorney employed by the State of Hawaii, Department of Commerce and Consumer Affairs, Division of Financial Institutions, was gracious enough to give us permission to reprint her article, which was recently published in the Hawaii Bar Journal. It will be printed in two parts. If you have any concerns about subprime mortgages, you may wish to contact Ms. Daleiden.

There are estimates that approximately two million adjustable rate mortgages will be reset to higher interest rates in 2008. In Ms. Daleiden's article, she indicated there may be a million properties lost in foreclosure. This equates to approximately 3 million people losing their homes.

Even though you may be a person who is not a subprime borrower, you are still affected. Lenders have tighten their credit standards and the days of easy money are a thing of the past.

Concerns About Buying Property with Family Members or Friends

Real Property in Hawaii is expensive. In Hawaii, it is common for parents to help their children buy real property or for family members to buy property together. Since it involves relatives, people often fall into the trap of being informal in their agreements. The following are some problem areas to avoid:

▶ Parents want to help their children, but they need to be realistic as to whether this is something that they can afford. Parents need to consider whether they will need the money later and whether it is prudent to say "no" to their children.

▶ Co-owners need to discuss what happens if someone cannot pay their share or if someone wants to sell the real property.

▶ Sometimes parents are asked by the bank to do a "gift letter" to allow the children to qualify for a loan. An issue that can arise is whether the monies that was given was truly a loan and is expected to be repaid or was it truly a gift? If it was a gift, it does not need to be repaid. Children have latter claimed that all moneys advanced by the parent was a gift and does not need to be repaid.

▶ Putting someone on title gives them the right to assert a measure of control over the property, such as the ability to force the property to be sold. You should ask yourself whether you are willing to allow this control.

▶ Failure to put the agreement in writing. It is not uncommon for recollections to later differ.

▶ People who know each other often are not clear in their communications. We don't want to hurt someone's feeling, especially a relative, and we often don't say what we want to say. It is important to communicate in a frank and clear manner.

A Common Abuse of Reverse Mortgages

One of the concerns about reverse mortgage is the prospect for abuse after the proceeds of the reverse mortgage have been paid to the homeowner. The homeowner should be wary of approaches to them to buy annuities and other financial investments sold by the people associated with the reverse mortgage. Such situations are a source of complaints involving reverse mortgages.

Understanding Subprime Mortgages (Part I)

by Christine Daleiden

"Subprime mortgage meltdown" and "housing finance breakdown" are the terms coined for the lending crisis that has become mainstream media. The crisis is said to have erupted when mortgage lenders crafted creative loans to provide money to high-risk borrowers to purchase homes during the housing boom in 2004. The crisis is predicted to peak in 2008, when two million adjustable-rate mortgages will reset to higher interest rates. It is expected a substantial portion of these borrowers will not be able to afford the higher payments, and there will be at least a million properties lost in foreclosure, which will equate to approximately three million people losing their homes.

Subprime Lending

Subprime mortgage loans are loans that are provided to people who have a higher level of risk than borrowers who qualify for traditional loans from banking institutions. Subprime loans have higher costs associated with them than traditional prime loans. Upfront costs, including appraisal fees and application fees are higher than traditional loans, and the costs associated with maintaining the mortgage such as mortgage insurance payments and late fees are higher. Lenders increase such fees due to the higher risk associated with these loans.

Subprime Loan Products

In terms of repayment of these loans, subprime borrowers rarely choose to amortize the loan for fifteen or thirty years with a typical twenty percent down payment, as lenders of traditional mortgages would require. Subprime borrowers are looking for loans that have low or no down payments and low monthly payments, at least for a period of time.

Lenders have been particularly creative in constructing such products that would be attractive to consumers and profitable to the lenders, sometimes without regard to the long-range consequences. The two most popular products, which vary immensely in their terms, are the interest-only loan and the payment option adjustable rate mortgage (ARM) loan. With the interest-only mortgage loan, the borrower pays only the interest on the loan for a specified period of time. During this time, the loan balance is not reduced because none of the payments go towards principal. The monthly payments on the loan increase substantially when the interest-only period ends.

The second popular product of subprime lenders is a payment option ARM. As the name implies, this loan has terms that allow flexibility to the borrower. In order to better manage the borrower's cash flow, there are several possible payments on the mortgage each month: (1) the borrower may make a minimum payment based on a very low, introductory interest rate, (2) the borrower may make an interest-only payment, or (3) the borrower can make a fully amortizing payment as if it were a traditional fifteen or thirty year loan. With the minimum payment option using the low introductory or "teaser" rate, the monthly payment for the first through three or six months sets the interest due at the teaser rate. After this period is over, the interest rate increases, and is reset according to a fixed time, and although there is no interest rate cap other than that set by law, there is a cap for the amount the monthly payment may increase. With this option, if only the minimum monthly payment is made, it will not be enough to pay off all of the interest charged on that loan for that time period and the unpaid interest will be added to the principal balance owed. This results



in the borrower owing more on the loan at the time the payment option period expires than they originally borrowed. The other cost to borrowers is that the interest rate significantly increases to the current market rate after the payment option period.

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Partition

If you are married to someone and you wish to terminate the relationship, the law provides you can get a divorce. If you own property with other people and for some reason, continued ownership is not desired, the law provides a means by which you can terminate the relationship. This is done by way of a partition action.

A partition action is a lawsuit in which the parties sell the property and then ultimately divide the proceeds of the sale among the owners. It is our suggestion that when one owns real property with someone else, they should document the co-ownership with an agreement. The agreement should address issues such as who contributes what amounts of money and what would happen if there is a sale of the property or if one of the owners dies.

The cost to have such an agreement drafted is quite modest, especially when compared to the amount one has invested in the property. The best time to draft such agreement is **before** the parties acquire the property. If the parties acquire the property and problems arise, it is more difficult to amicably work out an agreement later and resolve the differences.

A Test for Landlords

Which of the following are appropriate statements for a landlord to make?

1. Are you Jewish?
2. Are your kids always that loud?
3. You're taking care of your dad? How nice.
4. Where are you employed?
5. Your dad is 92. Do you think he can walk up these stairs?
6. Are you gentlemen more than friends?
7. What are the names and telephone numbers of your past landlords?
8. Wouldn't your family more comfortable in a larger place than this?
9. I'm sorry you can't apply. I ran out of application forms.
10. Are you two married?

Answers:

1. This question should not be asked. This question suggests religious bias.
2. This question should not be asked. This question suggests familial discrimination.
3. This question should not be asked. This question suggests age and/or familial discrimination.
4. This question is an appropriate question. This deals with employment and the ability to pay.
5. This question should not be asked. This question suggests age and/or disability discrimination.

6. This question should not be asked. This question suggests a concern about sexual orientation.
7. This question is an appropriate question.
8. This question should not be asked. This question suggests familial discrimination.
9. This question suggests a screening process that may be inappropriate. You should provide application forms to everyone who is interested.
10. This question should not be asked. This question suggests a concern about familial discrimination or discrimination against sexual orientation.

"I noticed you haven't responded to my e-mail."

Last month, on a particular day, I received seven different e-mails advising me I had won a million + dollars or had been designated as a trustworthy person to distribute someone's money to others. All I had to do was contact the sender and make further arrangements with them. Although I consider myself a fortunate person, imagine how lucky I was to receive 7 different e-mails from 7 different people who I did not know advising me I had won a million dollars. While we like to believe in our good fortune, these are scams.

We have written on many occasions advising our clients to be careful about identity theft and phishing activities. Phishing is a form of internet fraud that aims to steal valuable information such as credit cards, social security numbers, user IDs and passwords. Your credit is crucial for your real estate investments. We continue to advise our clients to be extremely cautious about responding to e-mails from unknown sources, especially e-mails from Nigeria and China.

SOME SUGGESTIONS FOR DEALING DIRECTLY WITH THE LENDER REGARDING A MORTGAGE DEFAULT

It is a natural tendency to want to avoid contact with the lender when there is a problem. No one wants to deal with an awkward situation. The right course of action is to contact the lender and explain your circumstances and ask them what alternatives and arrangements are possible. It may be necessary to provide financial information to your lender to determine what options would be appropriate for your situation.

Resources for People Facing Foreclosure

National foreclosure prevention hotline: 888-995-HOPE

NeighborWorks America:
www.nw.org/network/home.asp

Homeownership Preservation Foundation:
www.995hope.org

MyMoneyManagement:
www.MyMoneyManagement.net

Tips for Dealing Directly With a Mortgage Default

- Step 1. Call your lender as soon as you miss a mortgage payment or if you expect to miss a payment.
- Step 2. Tell your lender that you want to keep your home and are willing to seek counseling, if necessary.
- Step 3. Provide up-to-date financial information so the lender can explore appropriate options.

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HUMOR

Wife: "What are you doing?"

Husband: "Nothing."

Wife: "Nothing...? You've been reading our marriage certificate for an hour."

Husband: "I was looking for the expiration date."

Wife: "Do you want dinner?"

Husband: "Sure! What are my choices?"

Wife: "Yes and no."

Wife: "You always carry my photo in your wallet. Why?"

Husband: "When there is a problem, no matter how impossible, I look at your picture and the problem disappears."

Wife: "You see how miraculous and powerful I am for you?"

Husband: "Yes! I see your picture and ask myself what other problem can there be greater than this one?"

A newly married man asked his wife, "Would you have married me if my father hadn't left me a fortune?"

"Honey," the woman replied sweetly, "I'd have married you, NO MATTER WHO LEFT YOU A FORTUNE!"

A wife asked her husband: "What do you like most in me, my pretty face or my sexy body?"

He looked at her from head to toe and replied: "I like your sense of humor."

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