

Pennsylvania's Mortgage Licensing Act: Private Residential Mortgages Limited to Just Immediate Family Members Unless You're Licensed

PUBLISHED ON
June 27, 2011

In 2008, the Pennsylvania legislature passed the Mortgage Licensing Act (the "Act"), which was subsequently amended in 2009 and 2010. The Act prohibits individuals and entities from engaging in the residential mortgage loan business without being licensed under the Act. This means that individuals or entities cannot make loans and take back mortgages on residential real estate (real property upon which is constructed or intended to be constructed as a dwelling), unless the lender obtains a mortgage lender license. Violations of the Act may result in fines up to \$10,000 for each offense.

The Act includes certain limited exceptions to this general prohibition, most notably, an exception permitting an individual to lend money to a member of the lender's immediate family and take back a residential mortgage. "Immediate Family" is defined under the Act as a parent, spouse, child, brother or sister (but does not include other family members, including grandparents and grandchildren). It is important to note that the Act does not apply to loans for business or commercial purposes or properties.

A common practice, particularly in the current real estate market, is for a seller of a residential property to finance a portion of the purchase price and take back a residential mortgage on the property. The Act has been interpreted by the Pennsylvania Department of Banking to prohibit these "private money mortgages," unless the borrower and lender are "immediate family members" as defined under the Act.

A seller or builder of residential property has other options available to assist a buyer in the purchase of their property. For example, the seller/builder and buyer may enter into a lease-purchase agreement or an installment sale agreement arrangement. The primary difference between these arrangements and the private money mortgage (to take them outside of the purview of the Act) is that title to the residential property does not transfer to the buyer and the seller does not take back the residential property as collateral during the term of the lease or installment sale agreement.

We will continue to monitor legislative developments in this area. If you have questions, feel free to contact Sarah or any other member of the Real Estate or Construction Law Groups.

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