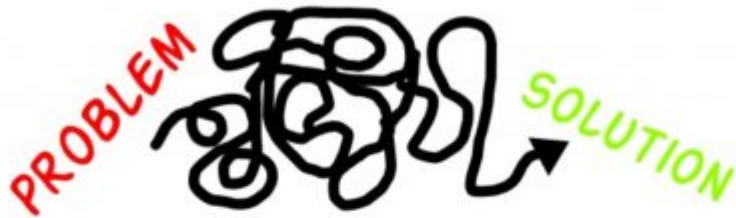


Evaluating Complex Problems in Real Estate Loan Transactions Examples (7 and 8) as Part of a Series



In other previous articles, we discussed mutual conversations between the borrower's mortgage broker and the lender/broker who will fund the loan with a private party lender/investor.

Below is a continuation of examining case studies while identifying the problems and solutions to complete loan transactions. The funding lender/broker has relationships with individual investors who wish to invest their capital into trust deed investments. They will become beneficiaries on the recorded deed of trust. Below are examples 7 and 8:

7. The borrower's mortgage broker informs the funding broker/lender:

"My client needs a second trust deed and I am sure it is ok to do it."

The funding broker/lender responds:

"I have reviewed your file. In the recorded first trust deed document there is a provision called 'due-on-transfer of the property or a beneficial interest of the borrower.' It states that if the beneficial interest I transferred in a grant deed, installment sales contract, and

if the transferee is not a natural person, without lender consent the lender may require immediate due. The borrower transferred the property from his individual name as widower to a revocable family trust, with he and his daughter as trustees. A family trust is not a natural person. However, the deed also states that this option shall not be exercised if such act is prohibited by applicable law. Garn-St Germain Depository Institutions Act of 1982 provides for federal preemption of due-on-sale clauses. Under 1701j-3(d) of the act. (d)(7) provides and exemption for a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property. Under this circumstance the first trust deed lender may not be able to call the loan due. We will need clarification of the fact-set.”

8. The borrower’s mortgage broker says to the funding broker/lender:

“My client has a weekly rental used as an Airbnb, the property is zoned for that use.”

The funding lender/broker responds:

“We have preliminary underwritten your file to see if we can make the requested loan. The actual property is zoned for multi-tenant apartments. Short term rentals are not allowed. Your client has taken the time to get a ‘conditional use permit’ from the city building department. which allows the owner to deviate from zoning and usage regulations. Understand that a ‘conditional use permit’ is a temporary condition the does not run with the land. It can be revoked for any reason. The property would be required to revert back to its prior use. The loan may be made but as far as underwriting is concerned, we will rely on market sales comparable and month-to-month rental comparable for a single-family dwelling to determine the value conclusion.” (See my article on “Conforming vs. Non-conforming” if you have questions regarding the two.)

Mortgage brokers on both sides of the transaction are licensed professionals. The borrower’s broker works on behalf of the borrower to obtain the required information, verify facts, and overcome obstacles. Full disclosure is assumed, not hidden and treated as an avoidance game.

Understanding complex underwriting issues can make or break a transaction. Make sure you

work with knowledgeable mortgage brokers to assist you through the process. In most cases, you may need to engage the services of third-party specialists such as attorneys, accountants, appraisers, property inspectors, environmental engineers, escrows holders, and title insurers.

The examples presented provide limited information for readability. Each transaction comes with a more complex set of facts that may alter the outcome of a transaction.

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