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PRE-PAID LEGAL PLAN

March, 2014

**GETTING A MORTGAGE AFTER THE
MELTDOWN**

Getting a mortgage and/or refinancing in today's economic climate can be a challenging and exasperating experience for many people. In the days before the mortgage crisis, mortgage money was plentiful, and many people were able to obtain a mortgage with less than stellar credit and with little or no documentation to justify their ability to pay the mortgage. This practice was a major contributing factor in creating the mortgage meltdown, since many of those same people were not actually financially able to pay those loans.

Today, the process of obtaining a mortgage has become much more difficult. Mortgage companies frequently ask for extensive documentation in order to qualify a mortgagor. They will likely require W-2 statements, several months' worth of paystubs, tax returns and bank statements. The mortgage company may verify employment and check references from landlords. If your planned move seems unusual or you already own a home, and are moving to a new home, you may be asked to write a statement explaining your reasons for moving. While some of these requests may seem highly invasive or unnecessary, mortgage companies have become much more cautious about extending credit in order to prevent past mistakes.



Finally, the appraisal process is different than it used to be. Under new regulations, a mortgage company cannot select an appraiser or try to influence the appraiser. While this tends to give

the appraisal process a bit more integrity, appraisers under pressure not to inflate values tend to be very conservative, and a low appraisal can affect your transaction.

A large percentage of loans being issued today are FHA loans. FHA loans are insured by the government. FHA rules stipulate that the property must appraise for the purchase price otherwise the Buyer may terminate the deal. This could result in the parties agreeing to reduce the sale price to match the appraisal or it could end in the termination of the deal. If you are not getting an FHA loan it may be advisable to ask your agent to include a provision in the Agreement of Sale stating that the agreement is contingent upon the property appraisal.

Before getting started: Check your credit rating to make sure that there are no surprises on the report that may lower your credit rating. Your credit rating is essential to your loan approval and will affect the rate you will obtain.

Make sure your agent presents you with several comparable sales completed within the last six months. This will give you a fair idea if your offer price will be supported by your appraisal.

Make sure that your bank statements appear ordinary, with no unusual entries. The mortgage company may ask for an explanation of any unusual deposits made in your account and will want to see that you have the necessary funds on deposit to close. The mortgage company will want to make sure that you did not borrow money in order to purchase the home. This is different than an outright gift which does not require repayment.

Get prequalified by a bank or mortgage company if possible if you are buying a home. Keep in mind that a prequalification letter is not a Mortgage Commitment. The Mortgage Commitment is generally issued by the mortgage company after you are under contract and after the appraisal of the property has been performed.

Provide all documentation to the mortgage company in a prompt manner, even if your processor seems to have asked for the same paperwork before.

Before you finally obtain the mortgage the loan will be submitted to the underwriting department of the mortgage company. This is often where deals fall apart since the underwriter may require more documentation than may be in your file. There is nothing you can do except to be patient and cooperative.

Despite all of these hurdles many people are successfully obtaining mortgages and purchasing new homes despite what you may hear in the news. It just may require a little more time, effort and perseverance on your part.

For more information on real estate issues please contact the Real Estate Department at Willig, Williams & Davidson at 215-814-9200.

THE RIGHTS OF GRANDPARENTS IN PENNSYLVANIA

Grandparents Have Custody Rights

In recent years many States have enacted laws to protect the rights of grandparents. In 2009, Pennsylvania enacted legislation specifying when grandparents can file for custody of a minor child. Any person has the right to file for custody of a child if they stand *in loco parentis* (in place of a parent) to that child. But the statute also contains two provisions that specifically address the rights of grandparents. A grandparent has the right to file for any type of



physical and legal custody (primary, shared, or partial) when the following criteria are all met:

- (1) The grandparent's relationship with the child began with the consent of a parent or by court order;
- (2) The grandparent is willing to assume responsibility for the child; and
- (3) One of the following is true:
 - a. The child was determined by the court to be "dependent";
 - b. The child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse, or incapacity; or
 - c. The child has, for a period of at least 12 consecutive months, resided with the grandparent (excluding brief temporary absences) and is removed from the home by the parents, provided that the grandparent files for custody within six months of the removal.

In addition, the statute gives a grandparent the right to file for partial custody of a grandchild when:

- (1) A parent of the child is deceased; or
- (2) The parents of the child have been separated for a period of at least six months or are married but have commenced and continue a proceeding to dissolve their marriage; or
- (3) The child has, for a period of at least 12 consecutive months, resided with the grandparent (excluding brief temporary absences) and is removed from the home by the parents, provided that the grandparent files for custody within six months of the removal.

It is important to remember that, despite the statute, the rights of parents are still given greater weight than the rights of grandparents when determining custody.

The Courts have said: "In a custody contest between two biological parents, the burden of proof is shared equally by the contestants. Yet, where the custody dispute is between a biological parent and a third party, the burden of proof is not evenly balanced. In such instances, the parents have a *prima facie* right to custody, which will be forfeited only if convincing reasons appear that the child's best interest will be served by an award to the third party. Thus, even before the proceedings start, the evidentiary scale is tipped, and tipped hard, to the biological parents' side."

How Do Grandparents Exercise Their Custody Rights

Just like a parent seeking to establish a custody arrangement, a grandparent seeking custody must file a Complaint in the Family Court of the appropriate jurisdiction. That Complaint will be scheduled for a hearing. If there is already an open case, it will be scheduled to be heard with other open Complaints and Petitions. At the initial hearing on a grandparent's Complaint the first thing the Court will do is confirm that the grandparent meets the requirements of the 2009 statute. If the requirements are not met the grandparent has no right to proceed. Once that threshold question is answered, the case proceeds like any other custody matter, and the Court will make a custody determination based on the best interests of the child involved.

For grandparents seeking custody, things get more complex when the Department of Human Services is involved ("DHS"). DHS generally gets involved with a family when there has been an allegation of abuse or neglect of a child. If there is cause, DHS will file a Complaint with the Court asking that the child be declared "dependent" and that custody be transferred to DHS. A grandparent's right to file for custody is not eliminated if a grandchild is determined to be "dependent," or if DHS places a grandchild with a foster parent. A hearing must still be held on any Complaint for Custody filed by a grandparent. Unfortunately, most Judges are

unwilling to allow grandparents to participate in the "dependency hearings" themselves (the hearings involving the allegations of abuse or neglect), even though the results of those hearings can be a transfer of custody.

There are two important things that a grandparent seeking custody can do if DHS is involved: (1) File a Complaint for Custody/Petition to Intervene in the Dependency Matter, and (2) foster a relationship with the grandchild's DHS worker so that DHS knows you are a strong serious placement option for the grandchild.

For more information on grandparents rights and all other things family law please contact the Litigation Department at Willig, Williams & Davidson at 215-814-9200.

THE PA HOME IMPROVEMENT ACT THREE DAY RIGHT OF RESCISSION

In 2009 the Pennsylvania Home Improvement Consumer Protection Act (HICPA), took effect. This consumer friendly piece of legislation provided new requirements by which contractors doing business in PA must abide. One of the more important aspects of the law mandates that every home improvement contract covered under HICPA include a notice alerting the consumer to his/her three day right of rescission.

HICPA states that an individual signing a home improvement contract shall be permitted to rescind the contract without penalty regardless of where the contract was signed, within three business days of the date of signing. Each contract must contain language similar to the following:



"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

This cooling off period can be an important aspect when hiring a contractor. Sometimes, a consumer feels rushed, and picks a contractor without properly vetting the contractor. Or, you sign the contract without fully reading the contents. It is important to remember that once you sign your name to most contracts, the contract becomes fully binding. However, because of HICPA, consumers have three days from the date they sign to reconsider and make sure that they feel comfortable with the contractor they just hired and the terms of the contract.

If you decide within three business days that you do not want to go through with the contract, you must alert the contractor in writing within this period of time. The notice of rescission is effective upon mailing a properly addressed letter or personally delivering a letter to the contractor advising that you are exercising your right of rescission and canceling the contract.

To protect your interests, it is always advisable to send any correspondence by certified mail, and request a return receipt. That way you can track when the letter is delivered and receive confirmation of delivery when the contractor signs the return receipt.

If you cancel the contract, any payments made by you under the contract must be returned within ten business days following receipt by the contractor of your cancellation.

The right of rescission is just one important component of HICPA. You can find a full copy of the law by going to the Pennsylvania Attorney General's website at:

www.attorneygeneral.gov

The website also allows consumers to check to see if a contractor is registered with the state, check complaints filed with the Better Business Bureau and has information on many other related items.

If you have any other questions regarding HICPA, call one of the litigation attorneys at Willig, Williams & Davidson at 215-814-9200.

CAUTION:

These articles are not a substitute for individual legal advice from a lawyer. The information presented here is believed to be accurate, but laws vary between states and every legal situation is different.

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