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Working with Distressed and Other Residential Properties

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Tax Credit Can Be Used for Down Payment

As part of its plan to stimulate the U.S. housing market and address the economic challenges facing our nation, Congress has passed legislation that grants a tax credit of up to \$8,000 to first-time home buyers.

Who Qualifies?

First-time home buyers who purchase homes between January 1, 2009 and December 1, 2009. To qualify as a "first-time home buyer" the purchaser or his/her spouse may not have owned a residence during the three years prior to the purchase.

Which Properties Are Eligible?

The 2009 First-Time Home Buyer Tax Credit may be applied to primary residences, including: single-family homes, condos, townhomes, and co-ops.

How Much Will the Credit Be?

The maximum allowable credit for home buyers is \$8,000. Each home buyer's tax credit is determined by two factors:

1. The price of the home—the credit is equal to 10% of the purchase price of the home, up to \$8,000.
2. The buyer's income—single buyers with incomes up to \$75,000 and married couples with incomes up to \$150,000—may receive the maximum tax credit.

If the Buyer(s)' Income Exceeds

These Limits, Can He/She Still Get a Credit?

Yes. Some buyers may still be eligible for the credit. The credit decreases for buyers who earn between \$75,000 and \$95,000 for single buyers and between \$150,000 and \$170,000 for home buyers filing jointly. The amount of the tax credit decreases as his/her income approaches the maximum limit. Home buyers earning more than the maximum qualifying income—over \$95,000 for singles and over \$170,000 for couples are not eligible for the credit.

Will the Tax Credit Need to Be Repaid?

No. The buyer does not need to repay the tax credit, if he/she occupies the home for three years or more. However, if the property is sold during the three-year period, the credit will be recouped on the sale. Shaun Donovan, secretary of the U.S. Department of Housing and Urban Development, said recently that the Federal Housing Administration is going to permit its lenders to allow home buyers to use the \$8,000 tax credit as a down payment. Previously, most buyers wouldn't receive the funds until after they filed their tax return, and that deterred some people from using the credit. "We all want to enable FHA consumers to access the home buyer tax credit funds when they close on their home loans so that the cash can be used as a down payment," said Donovan. His remarks came in an address to several thousand REALTORS®, at "The Real Estate Summit: Advancing the U.S. Economy," at the 2009 REALTORS® Midyear Legislative Meetings & Trade Expo in Washington, D.C. Donovan said FHA approved lenders will be permitted to "monetize" the tax credit through short-term bridge loans. This will allow eligible home buyers to access the funds immediately at the closing table.

Watch for Legal Pitfalls When Working with Distressed Properties

Short sales and bank-owned properties can present fantastic opportunities for potential home owners, real estate investors, and REALTORS®. However, transactions in such properties can be the legal cause of harm to buyers and sellers, as well as result in civil liability for REALTORS®.

Be Wary Real Estate “Professionals” Who Call Themselves an “Expert.”

Almost overnight, companies have sprung up offering the opportunity to become “certified” as a specialist in short sales or REOs. Although some of the programs might provide good training, REALTORS® can invite trouble if they go overboard and market themselves as an expert.

Read the Fine Print

Some certification companies have an indemnification clause that puts legal costs on the REALTORS® shoulder if the certification company is included in any lawsuit against the REALTORS®. Read the disclaimers.

Don’t Engage in the Unauthorized Practice of Law

Other increasingly common practices, such as broker price opinions, negotiations with lenders in short sales, and giving advice to homeowners about seeking a loan modification before they try a short sale, are all practices that might be challenged as either unauthorized practice of law or otherwise outside the scope of activities authorized by a real estate license.

Check Your E&O Coverage

If you help homeowners navigate a loan modification, be aware that your E&O policy might not cover your actions if you’re sued. Similarly, if you handle REOs for a lender, be sure your E&O policy covers property management activity. Many tasks related to selling REO properties are property management functions: getting utilities turned on, keeping the property secure if it’s vacant, even evicting people.

Please contact Earle Law Offices today if you need assistance with a real estate or other matter.

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of business law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has also served as a Judge Pro Tempore for the Santa Clara Superior Court. In addition to practicing law, Mr. Earle is also a licensed Real Estate Broker.

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