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Proposal: 1417 (RIN 7100-AD75) Reg Z - Mortgage Repayment Standards

Subject: Reg. Z

Comments:

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LAW OFFICES OF KENNEDY & MINSHEW, P.C. P. O. BOX 758 320 N. TRAVIS STREET, SUITE 207 SHERMAN, TEXAS 75091-0758 July 18, 2011 Via E-mail: snipurl.com/t2cfg Snipurl.com/AbilityToRepay Federal Reserve Gentlemen: I just received information concerning a proposed new rule for Dodd-Franks Act which essentially prohibits sellers from taking back a mortgage on the sale of property unless the buyer essentially can quality for conventional financing. It does not take a genius to figure out the problems that are going to be created by such a rule, problems some of which are as follows: 1. You are going to make renters out of a major portion of our population that could otherwise get seller financing. For example, people with questionable credit, a bankruptcy or someone who has gone through a divorce. None of those people can qualify for conventional financing. However, they can shop for seller financing and they can rebuild their credit over time by being a homeowner with payments in good
standing. These people will be perpetual renters in the future, if this law passes. 2. Because of the difficulty of obtaining mortgages at the present time only a select few can qualify. In my 48 years of law practice, primarily involving real estate, I have never seen the difficulties I am seeing daily with people qualifying for new loans on a conventional basis. In the 70's I used to close two (2) or three (3) transactions a day with people qualifying for new loans. In the last six (6) months I have closed one (1) transaction with a person qualifying with a new loan. All of the transactions have been essentially seller finance transactions. Even builders are having to finance their properties in order to move inventory. Certainly elderly people who need to move to a retirement home, nursing home or smaller quarters and will have no opportunity to enjoy the income from a seller financed sale of their primary residence. The tax law exempting profits up to $500,000.00 if they have lived in the home two (2) of the last five (5) years will become essentially meaningless, because there will be no selling of the property. They would have to rent it out and all of the income then would essentially be taxable and they would have the headaches of property management which the sale could avoid. 3. I do not know how an unsophisticated seller can qualify someone like a bank officer or mortgage lender could. The lack of proper qualification giving a buyer a three (3) year right of rescission is ridiculous. The issue then becomes, what is proper qualification? This would seem to give unscrupulous buyers the leverage to buy and cancel almost at will by simply claiming inadequate proper qualification and I am sure there are going to be some sanctions or penalties imposed on sellers under such circumstances, which does

not make economic sense. 4. I question the constitutionality of any provision which impairs the right of two (2) people to enter into a contract, since the constitution says there shall be no impairment of contract. If this is not an impairment of contract I don't know what it is. A willing seller who wants to sell to a willing buyer, both of whom are competent, legal adults, should have the right to make any transaction they deem appropriate for them and I cannot see the reason for "big brother" to step in and tell them what they can and cannot do. 5. The mortgage meltdown in 2007 was not in any way caused by seller financed transactions. It was caused by Barney Franks and others who directed Fannie Mae and Freddie Mac to make certain loans to people of questionable qualification in red lined areas. This gave way to what is known as the stated income loan or more commonly known as liar loans. These liar loans allowed an individual to simply tell a mortgage broker what he or she made in income without having any proof of a job at all and that person qualified for a loan. These loans were then packaged into these crazy derivative security transactions and sold all over the world and the meltdown could have been predicted very easily. I do not know of one (1) single seller financed transaction that was involved in these transactions. The crackdown should be on liar loans and unscrupulous mortgage brokers who made their percentage fee for simply processing worthless transactions with the complicity of our elected representatives who told them to not be so strict on loan applicants who would otherwise probably not qualify if they had to prove their net income and credit qualifications. 6. A further problem has to do with the wisdom of having a buyer divulge their income and assets to the very people they are trying to negotiate a transaction with. This would never be required where a third party lender is involved. Only the buyer and the third party lender would know the confidential information on the part of the buyer. This opens a door for unscrupulous sellers to make the buyer disclose a lt of confidential information which is going to compound the identity theft and fraud issues in monumental proportions. I hope common sense is used in the drafting of any regulations dealing with seller financing. Very truly yours, Robert W. Minshew Attorney at Law