Lynne N. Clark, P.C.

A Virginia Professional Corporation
Attorney and Counselor at Law

7003 Backlick Court, #100
Springfield, VA 22151
e-mail: lynne@lynnenclark.com

Phone: (703) 256-7900
FAX: (703) 256-7902
Admitted in Virginia and D. C.

REPORT OF COUNSEL
AUGUST 2020

WHAT I WISH I KNEW BEFORE I APPLIED FOR A MORTGAGE LOAN.

Interest rates remain at historic lows and interest in refinancing and purchasing homes remains high. This month we consider important points that will ease your path to a successful closing on a new mortgage loan. Thanks to Dan Clark, Home Mortgage Consultant at Wells Fargo Home Mortgage, for his insights.

It is worthwhile to talk to a knowledgeable loan officer in advance of applying for a loan to avoid common pitfalls.

Issue #1 Using a "cash out" refinance of your current primary residence as a down payment for the purchase of a vacation home or rental property. Apply for the refinance with the stated reason of "investment" or "cash reserves" before taking any steps to contract for the purchase of another property. If the stated reason for the cash out refinance is the purchase of another property, you will have to document the mortgage payment, property taxes, insurance and homeowners fee on the property.

Issue #2 - Documenting Funds for Closing. Lenders require two months of bank statements to document the source of funds for closing, including down payment and closing costs. Accumulate these funds at least three months before applying for the loan. This will allow you to provide the lender two consecutive months of bank statements that show no large deposits.

Any bank statement which shows a large deposit into the account that will be used for a down payment or closing costs must be documented. A "large deposit" is one exceeding 25% of your monthly gross income or aggregate deposits. The following sources of funds are NOT acceptable for closing on a new loan: unsecured borrowed funds [e.g. credit card advances] and cash.

Secured loans, gifts, transfers from other accounts, sale proceeds from property, tax refunds, loan repayments to you are acceptable but must be documented.

Issue #3 - Business Losses. You told the IRS on your most recent tax return that you lost money in your business. While the business losses you claimed may be legitimate and reduce your tax liability, they will also reduce your ability to qualify for a mortgage loan. Losses from your business will be subtracted from other sources of income. This may impact your ability to qualify for the loan you seek because your income is lower. Depreciation of real property is added back to income by the lender, as it is considered a "paper loss."

Issue #4 Title to Your Home is in a Revocable Trust - Most loan programs allow the borrower to title the property in the name of his or her trust. If you have a revocable trust and your residence is in the trust you will be asked to certify that the trust exists and has not been revoked. Twenty Six states allow this type of self-certification. CAUTION: do not give the lender the entire trust document in lieu of the self-certification. If you do, you will be asked to provide an attorney's opinion letter that certifies that the trust exists, among other things. The attorney you select will charge for the opinion letter.

Issue #5 Your Home is titled in an LLC. Fannie Mae and Freddie Mac do not allow ownership of a property in an LLC, either at the origination of the loan or at any time thereafter. If you transfer a property with a Fannie or Freddie loan to an LLC, it is likely to trigger the "due on sale" provision of the deed of trust. The due on sale provision states that any transfer of the property subject to the deed of trust can result in the lender calling the loan.

Some portfolio loan programs do allow titling in an LLC. Consult with your mortgage lender for details.

I appreciate your business and your referrals!