

Federally Related Transactions

Summary

Each of the Federal financial institutions regulatory agencies have prescribed regulations which contain thirteen categories of real estate related financial transactions that do not require the services of an appraiser. A transaction is not a “federally related transaction” if it does not require the services of an appraiser. The following types of transactions make up the majority of transactions that do not require the services of an appraiser, and thus do not satisfy the definition of a “federally related transaction”: 1) Loans with a transaction value less than \$250,000; 2) Business loans less than \$1 million that are not dependent on rental income as the source of repayment; 3) Refinances at the same institution with no advancement of new money and no material change in market conditions; 4) Loans insured by the FHA or VA; or 5) Loans that qualify for sale to Fannie Mae or Freddie Mac.

Explanation

Federal banking law (12 U.S.C.A. § 3350) defines a “federally related transaction” as:

*“Any real estate-related financial transaction which: (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; **and** (B) requires the services of an appraiser.”*

The same section defines a “Real estate related financial transaction” as:

“Any transaction involving: (A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (B) the refinancing of real property or interests in real property; and (C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.”

Lastly, the term “Federal financial institutions regulatory agencies” means:

“The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.”

In determining whether or not a transaction is a “federally related transaction”, you must determine three things.

- 1) Is it a “real estate related financial transaction”;
- 2) Is it engaged in, contracted for, or regulated by one of the five “federal financial institutions regulatory agency”; **and**

3) Does the transaction “require the services of an appraiser?”

And #3 above is where it gets tricky.

Title 12, Section 3341 of the federal banking law states that:

“Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe...which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser under this chapter.”

Pursuant to this statutory authority, each of the Federal financial institutions regulatory agencies have prescribed regulations that outline the categories of transactions that require a state-licensed appraiser and those categories of transactions that require a state-certified appraiser. In addition, each of the agencies has outlined which transactions do not require “An appraisal performed by a State certified or licensed appraiser” at all. Some, but not all, transactions that don’t require the services of an appraiser require an evaluation.

The thirteen categories of “real estate related financial transactions that don’t require “An appraisal performed by a State certified or licensed appraiser” are:

(1) The transaction value is \$250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of \$1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged- backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OCC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

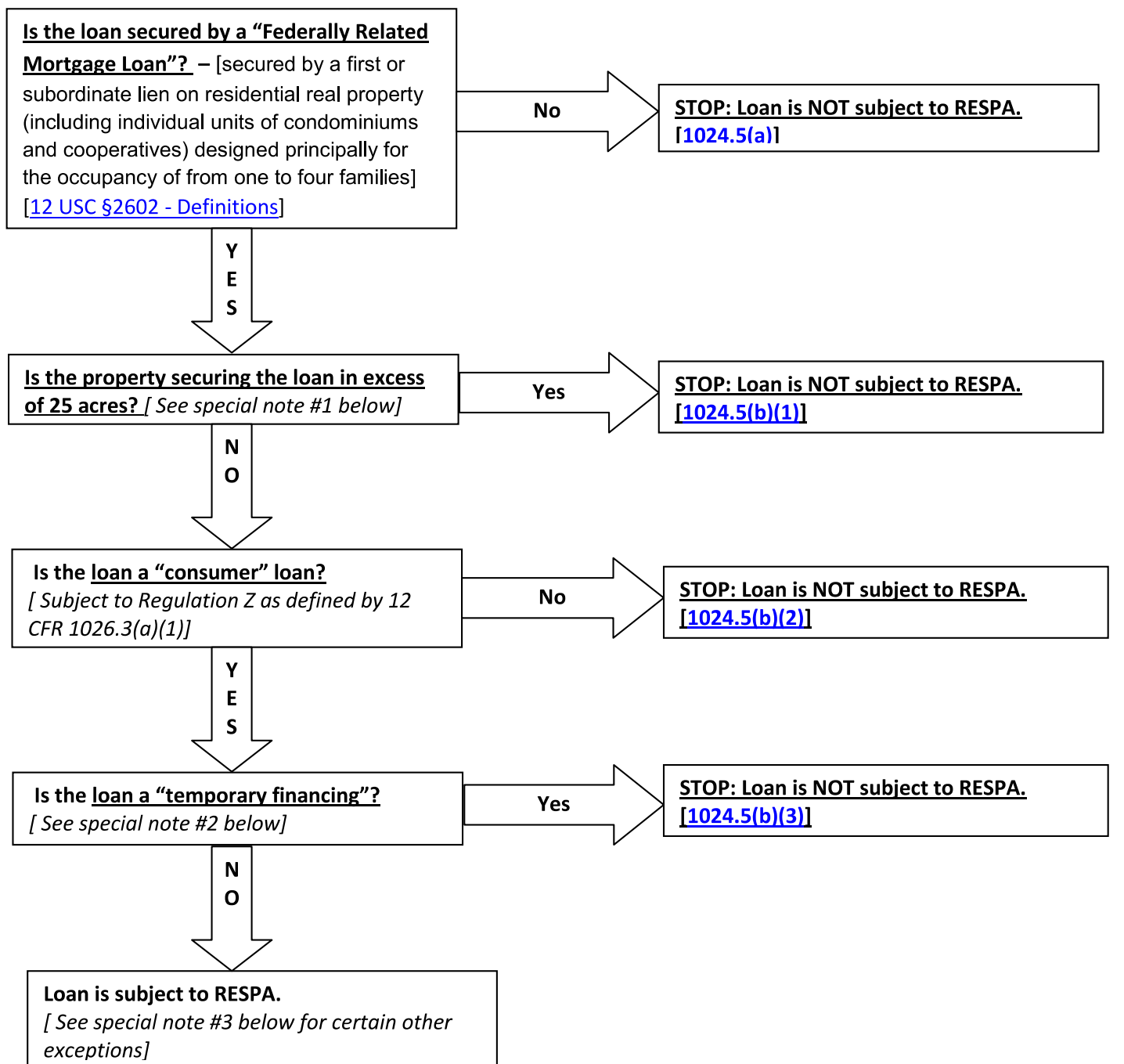
(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The federal bank regulatory agency determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate- related financial transactions or to protect the safety and soundness of the institution.

This document provided via email to the sponsor's staff 2/6/18 by Dave Derry, Chair of the Alaska Board of Certified Real Estate Appraisers.



Special Notes to Consider

- #1 - Acreage exception.** The acreage needs to be in the same parcel as the “dwelling” – for example a five acre parcel with the dwelling and an adjacent twenty five acre parcel doesn’t qualify for the exemption.
- #2 - Temporary financings.** A loan with a term of less than two years is considered temporary financing. Thus, the typical residential construction loan is exempt from RESPA. However, if the lender has committed to also make the permanent loan, even though the construction loan has a term of less than two years, the term of the overall relationship governs and the temporary financing exemption does not apply. Furthermore, the temporary financing exemption does not apply, regardless of the term of the loan, if the loan proceeds are used in whole or part to finance the transfer of title to the first user.
- #3 – Other exceptions.** a) Any **assumption** in which the lender does not have the right expressly to approve a subsequent person as the borrower is exempt from RESPA; b) Loan **conversions** are exempt from RESPA as long as a new note is not required; c) A *bona fide transfer* of a loan obligation in the secondary market is not covered by RESPA.