

Seller Financing Passes Legislature

What was the problem?

The Legislature amended Hawaii's SAFE Act in 2014 by removing the exemption that allowed ordinary property owners to provide owner financing of their primary residence. The Hawai'i Association of REALTORS® (HAR) introduced legislation to restore seller financing as one of our priority issues. This was a concern because sellers were not able to provide seller financing, and it was unclear whether real estate licensees would be able to assist the seller without jeopardizing their real estate license, even if they were still exempt as a licensee.

What is the bill that passed the Legislature?

[Senate Bill 756, CD1](#) establishes a mortgage license exemption for seller-financed mortgage loans under Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), if certain conditions are met. Requires the seller to provide to the buyer the terms of the financing. Requires the seller to provide a disclaimer, to be initialed by the buyer, regarding the financing.

What conditions does the seller have to meet to qualify for seller financing?

1. Seller is a person, estate, or trust that transacts three or fewer residential mortgage loans in one calendar year;
2. Seller is not a loan originator; and
3. Seller has not constructed as the construction contractor for the residence on the property in the ordinary course of the seller's business.

Please note: these provisions are consistent with existing federal law.

How will this affect our Standard Forms, such as the Purchase Money Mortgage Addendum and Agreement of Sale?

1. The interest rate for the loan must not exceed the State's usury limit, which is 12% a year.
2. The residential mortgage loan must be recorded with the Land Court or Bureau of Conveyances, as applicable.
3. The seller must provide to the buyer the following financing terms:
 - i. A current title search, including any liens against the property;
 - ii. Interest rate;
 - iii. Monthly principal and interest payments;
 - iv. Any late payment charges;
 - v. The payment schedule;
 - vi. Total amount of interest that the mortgagor will pay over the term of the loan expressed as a percentage of the loan amount;
 - vii. Calculation of projected aggregate monthly payments including principal and interest;
 - viii. Estimated closing costs if closing costs are included in loan costs and estimated cash to close if closing costs are not included in loan costs. For purposes of this paragraph, closing costs shall include recording fees, transfer taxes, prepaid costs such as homeowner's insurance premiums or property taxes, and appraisal costs charged to the mortgagor;
 - ix. Seller's contact information including name, address, phone number, e-mail, and alternative contact information to the extent available; and
 - x. A statement that the seller will acquire a security interest in the buyer's dwelling and that the buyer may lose the dwelling in the event of a loan default.

4. The seller must provide a disclaimer to be initialed by the buyer, which states the following, all caps:

“BUYER ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER IN THIS TRANSACTION AND GRANTING THE SELLER A MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF BUYER’S PROPERTY. THEREFORE, IT IS IMPORTANT THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS FULL ADVISED IN THIS MATTER.”

What will the Standard Forms Committee do to make the pertinent changes?

Legal counsel will be reviewing the Standard Forms and making the appropriate changes where needed. We will inform members when the finalized version is available.

When does this law take effect?

This law takes effect upon the approval (Governor signs the bill into law.) Until then, please be advised that this is still not law yet.