



TITLE COMPANY
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Primer on Owner Financed Residential Real Estate Transactions in Colorado for Sellers, Brokers, and Settlement Agents

Or, put another way . . .

What did Dodd-Frank and the new CFPB Regulations do to Seller Carries in Colorado? – be warned!

Dodd-Frank and the Consumer Financial Protection Bureau (CFPB)

The Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, H.R. 4173; commonly referred to as Dodd-Frank) was signed into federal law by President Barack Obama on July 21, 2010. It made changes in the American financial regulatory environment that affect all federal financial regulatory agencies and almost every part of the nation's financial services industry (right, wrong or indifferent) in response to the mortgage meltdown and recent Great Recession.

The CFPB's creation was authorized by the Dodd–Frank Wall Street Reform and Consumer Protection Act. The CFPB is a new independent agency of the United States government responsible for consumer protection in the financial sector. Its jurisdiction includes banks, credit unions, securities firms, payday lenders, mortgage-servicing operations, foreclosure relief services, debt collectors and other financial companies operating in the United States (also including title companies).

Since its inception, the CFPB has issued a myriad of new regulations affecting multiple industries; including lenders, servicers, and their affiliate providers like title companies. For more of these specifics, see a progressive history at: <http://www.titlecorockies.com/ToolsResources/CFPBRules/tabid/2042/Default.aspx>, on our website.

What's the Brouhaha about Seller Financing?

Under Dodd-Frank a "mortgage originator" includes anyone who performs activities related to the origination of residential mortgage loans, including offering or negotiating terms of a residential mortgage loan. The term "residential mortgage loan" means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling. A "dwelling" is a residential structure that contains 1-4 units. Under the definitions, a "consumer" is a natural person and a "credit transaction" is where the money, property, or services extended are primarily for personal, family, or household purposes. Unless otherwise exempt, mortgage originators for consumer credit transactions secured by a dwelling must be registered and licensed and the loan must meet various ability-to-repay rules. Some exceptions to the above were applied to individual Sellers financing a limited amount of transactions on an annual basis. * It is believed the new regulations do not apply to loans secured by unimproved land, commercial properties, or investment properties. However, consult legal counsel to confirm that is the case for such a transaction.

When is an individual Seller financier a loan "originator"? And, why should I care?

Reference 2013 Loan Originator Rule published by the CFPB at http://files.consumerfinance.gov/f/201311_cfpb_updated-sticker_lo-comp-implementation-guide.pdf, pages 22-23. Please carefully review the Three Property and One Property Exclusions for a 12 month timeframe. Many real estate attorneys are now cautioning their Seller clients to carefully consider their role as a Lender



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given these new regulations. New liability exposures are prevalent in the Dodd-Frank legislation that could expose Sellers concurrently acting as Lenders to unforeseen damages and cost recovery from their Borrower(s). Some examples include forfeiture of down payments and finance charges, recovery of attorney fees and costs, statutory damages, and a Borrower maintaining an affirmative defense to a Seller-Lender's attempt to foreclose. Also, Colorado maintains state driven requirement for certain disclosures and related forms that must be complied with notwithstanding the Dodd-Frank regulations. Sellers considering financing a real estate transaction should immediately seek the advice of legal counsel who understands these important new issues for Seller-Lenders.

I am a Real Estate Broker in Colorado, so why should I care?

On April 11, 2014 the Colorado Division of Real Estate issued a cautionary Bulletin to its broker-licensees. See, <http://cdn.colorado.gov/cs/Satellite/DORA-DRE/CBON/DORA/1251652702605>, for the Bulletin "SELLER-FINANCED RESIDENTIAL REAL ESTATE TRANSACTIONS." Due to the sweeping regulations that have been passed at the federal level, and the complex rules that have been promulgated since the passage of the Dodd-Frank Act, the Real Estate Commission removed the seller financing provisions from the Contract to Buy and Sell Real Estate in 2013. Instead, section 4.7 of the contract now provides the following warning: WARNING: Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics of financing, including whether or not a party is exempt from the law.

Real estate brokers are prohibited by Colorado law from taking a residential mortgage loan application or offering or negotiating the terms of a residential mortgage loan, including a seller-financed loan. A real estate broker should not even assist a seller or buyer in any way with the application process or related documentation or engage in any loan term discussions if the seller-financed loan involves residential property. This caution would include not giving a seller advice, including as to whether or not the seller might be "exempt." If a real estate broker wishes to perform these duties, the real estate broker must obtain a mortgage loan originator's license. Failure to comply with the state law may result in fines and an injunction being sought by the Board. The broker may also be subject to license discipline by the Commission for practicing beyond the broker's level of competency. The Commission has the authority to impose an administrative fine up to \$2,500.00 for each separate offense and to censure a licensee, to place a licensee on probation and set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has violated the Real Estate Broker Practice Act.

If a real estate broker gets involved in negotiating a seller-financed mortgage in any way, and the seller is found in violation of necessary federal or state law requirements, it is the Commission's understanding that the real estate broker's errors & omissions coverage would not cover any resulting claims because the duties performed were not associated with the practice of real estate brokerage. DORA strongly encourages any real estate brokers who are asked to assist with or conduct negotiations for a seller-financed mortgage loan on a property with residential real estate to refer the party to a licensed mortgage loan originator or a licensed attorney.

Given the above, a Colorado Settlement Agent (like Title Company of the Rockies), acting as a broker's scrivener or otherwise, is equally prohibited from providing a Seller-Lender any such advice or direct or similar support as outlined above. We also recommend the Seller retain a licensed mortgage loan originator or engage a licensed attorney familiar with Dodd-Frank, CFBP regulations, and Colorado law.



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At Title Company of the Rockies we are very proud to represent seven nationally renowned Title Insurance Underwriters. We will work hard finding the “right fit” for your particular transaction or project. No other title company in our region maintains an equivalent stable of underwriters that yield the national strength, underwriting support, and preferred pricing we can apply to your overall real estate efforts. To learn more about our title agency dedicated to the Colorado High Country for over 30 years and our growing family of title companies, see [About Us](#).

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Grand County

Project work for adjoining counties is available on a pre-approved basis. Title insurance is available on a statewide basis. Closing services can be provided throughout the State of Colorado and Nationally.

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