

Is Lease-Option An Alternative for Your In-Community Seller-Financing?

By Spencer Roane 12/15/13

With all the talk these days about new financing regulations taking effect next month, is it time for you to re-consider Lease-Option (L-O) as a means of selling homes in your communities? If so, here are a few things to think about.

The bad news is that the S.A.F.E. Act, which requires licensing for mortgage origination and servicing, is Federal law which is interpreted and enforced somewhat differently by different states. So what's acceptable in one state may not be acceptable in another. Unfortunately, some regulators have taken positions against L-O without recognizing that it differs from lease-purchase, rent-to-own, etc., which many agree are credit transactions which could result in the origination of mortgages (requiring S.A.F.E. Act licenses). The good news deserves your attention:

- Almost five years have passed since the S.A.F.E. Act was enacted. Chicken Little arguments against L-O (eg – disguised credit transactions, walks-like-a-duck- quacks-like-a-duck, etc.) have been (appropriately) dismissed. Anyone who thinks law is that simple might wonder why it takes over 70,000 pages to document the U.S. tax code.
- Some very bright attorneys agree that mortgages are not created/originated by L-O transactions and, therefore, that S.A.F.E. Act licenses are not required with L-O transactions. If you missed the SECO meeting earlier this fall, you missed a great presentation by one. It's posted on their website www.SECO13.org
- Many larger community owners have used L-O contracts to sell homes for years. Unfortunately, they also dominate our national organization and discourage MHI from disseminating information about L-O to other (smaller) members.

If you're interested in L-O transactions (arguments as to why S.A.F.E. Act licenses are not required, structure of the transactions, and a copy of one community owner's L-O contract, etc.), you may wish to review the free information posted at www.LeaseOptionMHSales.com, particularly the links below:

"Lease Option Sales Transactions Gaining in Popularity"

"Allen Letter" 04/2011, revised & reprinted 08/2012.

"Everything you've ever wanted to know about lease purchases, and then some" and
"Consumer Leasing Act: Regulation M"

by D.J. Pendleton, Executive Director, Texas Manufactured Housing Association, on SAFE and Dodd-Frank Acts, MH seller financing, and Reg M in "TMHA Today", Winter 2012

"Characteristics of a L-O transaction that differentiate it from an installment sale"
07/2013

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