Divorce Lending

Stockton can help

Continuity of Obligation

Often in a divorce situation, only one of the parties is currently obligated on the mortgage for the marital home. When the party who is NOT obligated is awarded the marital home and is now required to refinance the current mortgage into their name as part of the divorce settlement agreement, the issue of “Continuity of Obligation” may arise.

Continuity of Obligation: Occurs on a refinance when at least one of the borrower(s) on the existing mortgage is also a borrower on the new refinance transaction secured by the subject property. Or, continuity of obligation is met when the borrower on the new refinance was added to title 24 months or more prior to the disbursement date of the new refinance mortgage.

Permissible Exceptions to Continuity of Obligation

When a refinance transaction does not meet the definition of Continuity of Obligation, a new refinance transaction will be eligible and not bound by the limited eligibility parameters when the lender can establish and document that the new borrower acquired the property through an inheritance or was legally awarded the property (for example, divorce, separation, or dissolution of a domestic partnership). There is no minimum waiting period regarding when the borrower acquired the property before completing a new refinance transaction.

Although Continuity of Obligation may be established through the divorce settlement agreement, determining the type of refinance transaction as to whether it is considered a “Cash Out” or “Limited Cash Out Refinance” refinance is of significance as well.

When refinancing an existing mortgage lien, the refinance purpose will generally dictate whether the transaction is considered a “Cash Out” refinance or a “Limited Cash Out Refinance” refinance. There may be adjustments to interest rate, limitations to loan-to-value, etc. depending upon the classification of the transaction which can restrict access to the amount of equity if any, the departing spouse is awarded.

The best scenario for divorcing clients is to qualify for a “Limited Cash Out Refinance” which typically offers better interest rates and less restrictions withregardstoloantovaluelimitations.Inorderfora refinancetransaction to be considered as a Limited Cash Out Refinance, the new transaction must be used to pay off an existing first mortgage, including the payoff of a subordinate lien used to purchase the property by obtaining a new first mortgage secured by the same property.

- Continuity of Obligation must be demonstrated.
- The subject property must not be currently listed for sale.
- Proceeds from new transaction may not be used to pay off a subordinate lien that was not used to purchase the property.

Refinances to Buy Out an Owner's Interest

In order for a new refinance in a divorce situation to be considered as a Limited Cash Out Refinance, the subject property must be jointly owned for at least 12 months preceding the date of the mortgage application.

- **All parties must sign a written agreement that states the terms of the property transfer and the proposed disposition of the proceeds from the refinance transaction (typically covered in the Divorce Settlement Agreement);**

- **Borrowers who acquire sole ownership of the property may not receive any of the proceeds from the refinancing.**

- **The party buying out the other party's interest must be able to qualify for the mortgage pursuant to underwriting guidelines.**

When the new borrowing spouse has not been on title for the preceding 12 months, the new refinance transaction will be considered a "Cash Out Refinance" and again may present both a higher interest rate as well as restrictions to the access of existing equity in the subject property.

What if the divorcing borrower does not currently live in the property?

Many times in a divorce situation, one of the parties may not be living in the marital home at the time of the divorce; however, is awarded the marital home through the divorce settlement agreement or perhaps one divorcing party is awarded an investment property that will now become their primary residence.

A borrower who is currently on title for the preceding 12 months does not have to also be living in the subject property and may qualify for a Limited Cash Out Refinance without a reduction in loan to value as long as they can show:

1. They have paid the mortgage for at least 12 months, or
2. They can demonstrate a relationship with the current obligor (relative, domestic partner as an example) and can document they were awarded the property through divorce or legal separation.

This opens up the Continuity of Obligation on investment loans at standard loan to values instead of the reduced loan to value of 50% and can be effective for divorcing clients intent on occupying a previously held investment property.

With so many questions and variables with mortgage financing in divorce situations, working with an experienced lending professional is always an advantage for divorcing clients.

Please don't hesitate to contact me if I can provide clarification and assistance to you and your divorcing clients.

Jeannette Farr

Loan Originator

NMLS: NMLS 357169

Phone: 000.000.0000
jeannette.farr@stockton.com
23190 Fashion Drive P205, Estero, FL 33928