Section 12 – Part 3

SLIDE 6 – Essential Elements of the Mortgage (Cover Page)

SLIDE 7

Important Mortgage Provisions

Payment of principal and interest: prepayment and late charges – The borrower must make timely payments according to the terms of the note.

Funds for taxes and insurance – Unless waived by the lender or prohibited by law, the borrower must make monthly payments to cover taxes and hazard insurance. If applicable, the borrower must also pay flood insurance and mortgage insurance installments.

Periodic payments of taxes and insurance are held in a reserve fund called the escrow account. The Real Estate Settlement Procedures Act (RESPA) limits the amount of funds the lender can require and hold for this purpose.

The borrower's monthly payment to the lender for principal and interest is called the P&I payment (principal and interest). The amount which also includes the escrow payment is called PITI (principal, interest, taxes, insurance).

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Application of payments – The amount of each payment is applied to various items in order of priority. Unless local law provides otherwise, this order is: 1) prepayment charges; 2) escrow; 3) interest; 4) principal; 5) late charges.

Charges and liens – The borrower is liable for paying any charges, liens, or other expenses that may have priority over the mortgage or trust instrument.

Hazard or property insurance – The borrower must keep the property insured as the lender requires.

Insurance proceeds, in case of a claim, are applied first to restoring the property, or, if that is not feasible, to payment of the debt.

SLIDE 9

Occupancy, preservation, maintenance and protection of the property – The borrower must take and maintain occupancy of the property as the borrower's principal residence according to the lender's requirements.

The borrower must not use or neglect the property in such a way as to impair the lender's lien on the property. This could include using the property for illegal purposes, creating hazardous waste on the property, or destroying the improvements.

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Protection of lender's rights in the property – The lender may take actions it believes are necessary to protect its rights in the property if the borrower's actions threaten them. The costs of these actions would be charged to the borrower, and become part of the monthly payment.

Mortgage insurance – The lender may require the borrower to obtain *private mortgage insurance, or PMI*. Mortgage insurance protects the lender against loss of a portion of the loan (typically 20-25%) in case of borrower default.

Private mortgage insurance generally applies to loans that are not backed by the Federal Housing Administration (FHA) or Veterans Administration (VA) and that have a down payment of less than 20% of the property value.

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Inspection – With proper notice, the lender may inspect the property if there is reasonable cause to fear damage to its lien.

Condemnation – If the property is condemned or taken by eminent domain, the lender declares a claim on any resulting proceeds.

Borrower not released; forbearance by lender not a waiver – The lender reserves the right to take future action against the borrower for default, even if the lender decides not to take immediate action. If the lender agrees to change the terms of the loan, it does not release the borrower from the original liability.

SLIDE 12

Other Mortgage Provisions

Prepayment Clause – The borrower has the right to pay off the loan at any time without penalty, provided the lender is given prior notice.

A prepayment penalty may be imposed if the borrower pays more than a certain amount of principal in advance; most home loans do not contain such penalties

An acceleration clause states that if the borrower defaults, the lender has the right to declare the entire loan balance due immediately (calling the loan)

SLIDE 13

Borrower's right to reinstate – If the lender holds the borrower in default under the terms of the mortgage and proceeds to enforce its rights under the document, such as by foreclosing, the borrower has the right to reinstate his or her interest by performing certain actions. This usually means paying overdue mortgage payments and any other expenses the lender may have incurred in protecting its rights.

The clause, also known as a redemption clause, gives the borrower a period of time to satisfy obligations and prevent the lender from forcing a sale of the property.

SLIDE 14

Transfer of the property or a beneficial interest in borrower – If the borrower sells or transfers its interest in the property without the lender's approval, the lender may demand immediate and full repayment of the loan balance. This is an alienation clause, also known as a due-on-sale clause and a call clause. It allows the lender to prevent the assumption of the mortgage by a buyer if the borrower sells the property. The requirement to repay the loan before the scheduled date is called acceleration.

SLIDE 15

Release – The lender agrees to release the mortgage or trust document to the borrower when the borrower has paid off the loan and all other sums secured by the document. The release clause, also known as a defeasance clause, may specify that the mortgagee will execute a satisfaction of mortgage (also known as release of mortgage and mortgage discharge) to the mortgagor. In the case of a deed of trust, the lender as beneficiary requests the trustee to execute a release deed or deed of reconveyance to the borrower as trustor.

The release deed or satisfaction should be recorded as necessary in county records to show that the mortgagee/trustee has extinguished all liens against the property.