Legal Matters®

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U.S. Government announces new rules for home mortgages

A federal government agency has issued new rules for home mortgages that will rewrite the way that banks decide who gets a home loan. If you're thinking about buying a new home, you'll want to know about these rules, so you'll know what to expect when you apply for a mortgage and what you can do to increase your chances of getting the loan you want.

The rules officially take effect next January, but many lenders will begin following them as soon as possible.

For a long time, banks have been worried about being sued by homeowners if they make a loan that the homeowner can't reasonably be expected to pay off. The new rules say that banks can no longer be sued in this way if they make loans that follow certain requirements. These loans are called "qualified" mortgages.

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While it's possible that some lenders will continue to issue "unqualified" mortgages, this will be the exception rather than the rule, because lenders will be facing potential legal liability if they do so. It's expected that most lenders will try to issue only qualified mortgages.

So, what is a qualified mortgage, and how do you qualify to get one?

The most basic new rule is that a mortgage is "qualified" only if your total debt payments – including not just the mortgage, but also car loans, educational loans, etc. – are no more than 43% of your pre-tax income.

In addition, lenders are required to carefully scrutinize your employment status, income, and credit history to verify that you'll be likely to be able to repay the loan.

That's a pretty strict rule. To put it in perspective, of all the mortgage loans that were issued in the U.S. in 2011, only about three-quarters would have been "qualified" under these rules.

However, because today's real estate market is still in recovery mode, the Consumer Financial Protection Bureau – the agency that issued the rules – is providing a temporary alternative.

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That is, even if you don't qualify under the 43% test, you might still qualify if you would pass an automated mortgage-granting test used by Fannie Mae, Freddie Mac, or the Federal Housing Administration. It appears that most of the mortgages issued in 2011 that didn't pass the 43% test (but by no means all of them) would still have qualified under one of the automated tests.

Starting soon, the most important question in whether someone can get a mortgage will be whether their total debt payments – including house payments, car loans, educational loans, etc. – are no more than 43% of pre-tax income.

This alternative won't be around for long; it lasts only until the government's conservatorship of Fannie and Freddie ends, or in seven years, whichever comes first.

Also, the alternative test can't be used if you apply for a so-called "jumbo" mortgage. These are mortgages that are larger than the government's loan ceilings, which are $417,000 in most of the country (but can be as high as $729,750 in certain high-cost markets).

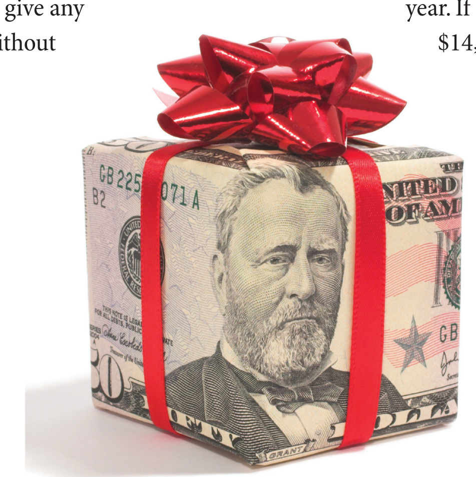
Here are some other important provisions of the new rules:

- There's no minimum down payment and no minimum credit score, as long as you meet one of the two tests. (Many people were afraid that the rules would require a high down payment to qualify.)
- In deciding whether you meet the 43% test, you can't use a "teaser" rate or low introductory adjustable rate. Instead, you must meet the 43% test based on the highest rate that will apply during the first five years of the loan. For this reason, it's expected that adjustable-rate mortgages will become more uncommon, and banks will focus much more heavily on traditional 30-year fixed-rate loans.
- Certain types of loans, such as those that allow interest-only payments and those in which the principal can increase over time, can't be "qualified" regardless of whether you meet the 43% test. These loans have largely disappeared anyway, but the new rules will probably make sure they never come back.
- Loan-origination fees will be capped at 3% of the loan amount, although there may be some exceptions for loans under $100,000.

Annual gift tax exemption has been increased to $14,000

The annual gift tax exemption has been increased to $14,000 in 2013, up from $13,000 last year. That's due to an adjustment for inflation.

This means that you can give any person $14,000 this year without any gift tax liability at all. Making annual gifts of the exemption amount is one of the best and easiest forms of estate planning, because it transfers assets from one generation to the next without any tax liability whatsoever.



If you have multiple heirs, the amount you can give away tax-free multiplies quickly. For instance, if you have two children, and each child is married and has two children, you can give $14,000 to each child, spouse and grandchild. That's eight recipients at $14,000 each, or a potential maximum gift of $112,000 a year. If your spouse gave an additional $14,000 to each recipient, that would be $224,000.

Of course, very few people can't afford to make gifts of this magnitude. But if you're thinking about making gifts to children and grandchildren, regardless of the size, you might want to consider setting up a trust for your beneficiaries – especially if they are young. There are many practical as well as tax benefits to making gifts by means of a trust, and doing so can further increase the value of your gifts.

Ex-wife loses alimony as a result of hiding assets

When marriages get unhappy and divorce is on the horizon, there can be a real temptation to hide assets to keep them from the other spouse. But tempting as this may be, it's morally wrong, and it can also get you into legal trouble.

Take the case of a New Jersey woman who took $350,000 from the business she owned jointly with her husband and secreted it away. Clever as she was, during divorce proceedings a forensic accountant discovered the secret stash.

The woman thought she'd be okay in the end, since the divorce judge simply ordered her to repay half the amount, and proceeded to award her $600 a week in alimony.

But husband appealed, arguing that the woman's actions were so terrible that she should be disqualified from receiving alimony payments.

An appeals court agreed with the husband. In general, it said, the right to alimony isn't affected by who was at fault for the marital breakdown. But this was a rare case where a spouse "kicked" the couple's economic security "in the teeth" through embezzlement, and the fault was so blatant that the woman shouldn't be allowed to get away with it.

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Medicare expands coverage for chronic conditions

In a major change, the federal government has agreed to provide seniors who have chronic illnesses and disabilities with Medicare coverage for many services … even if those services will simply maintain the person's present health status and aren't likely to improve their condition.

This is very important news for people who have diabetes, heart disease, Alzheimer's disease, multiple sclerosis, Parkinson's disease, Lou Gehrig's disease, arthritis, or the effects of a stroke, among other medical conditions.

Soon, these seniors may be able to obtain Medicare coverage for care in a skilled nursing facility, as well as home health care and outpatient therapy.

For decades, Medicare had a "rule of thumb" that coverage for these services was available only if they were likely to lead to an improvement in the patient's condition. This resulted in many people with chronic illnesses being unable to obtain coverage for treatments that were critical to maintaining their health, but that didn't promise a cure or improvement.

According to the government, treatments that weren't likely to lead to improvement were considered "custodial care," which Medicare doesn't cover.

But in January 2011, a group of seniors and some elder advocacy groups brought a nationwide class action lawsuit against the government. They argued that this policy violated their rights, because the "rule of thumb" against covering such services never actually appeared anywhere in the Medicare laws.

The government tried to have the case thrown out, but a federal judge rejected that request and allowed it to proceed. Shortly afterward, the government agreed to settle the case by expanding Medicare coverage.

The settlement is being reviewed by the court, and it's still unclear exactly when the policy change will go into effect. It's also unclear whether the change will apply just to future claims or to claims going all the way back to January 2011.

Under the terms of the settlement, seniors who are enrolled in Medicare Part A, which covers hospitalizations, may be eligible for up to 100 days in a skilled nursing facility (as long as it follows a three-day hospitalization), as well as up to 100 home visits following a hospitalization. Seniors who are enrolled in Part B, which covers doctor visits and other outpatient services, may be eligible for potentially unlimited home visits.

Here's important news for people who have diabetes, heart disease, Alzheimer's disease, multiple sclerosis, Parkinson's disease, Lou Gehrig's disease, arthritis, or the effects of a stroke.

Have you been injured? Here's why you need to act quickly

If you, a loved one, or a friend has suffered an injury, it's important to speak to an attorney quickly to determine your rights. That's because the law contains a "statute of limitations" which says that if you wait too long to pursue justice, you might be out of luck.

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The limitations period for injuries is often very short – much shorter than that for other types of lawsuits, such as contract disputes. (That's unfortunate, because many injured people don't think to talk to a lawyer right away simply because they're dealing with the effects of the injury.)

An additional problem is that it's not always clear when the limitations period starts to run. That is, sometimes people aren't aware immediately that they've suffered harm, or that the harm might be due to someone else's carelessness.

For instance, in a recent case in Utah, a woman's doctor treated her for a perforated colon. When her condition worsened, her husband moved her to another hospital where she was treated by different doctors and recovered.

A little more than two years after switching doctors, the woman sued her original physician for failing to treat her properly. The doctor argued that she had no right to sue, because the limitations period in Utah was two years, and she should have known she had a medical malpractice claim at the time she first switched physicians.

Fortunately for the woman, the Utah Supreme Court ultimately decided that the woman's mere "suspicion" that the doctor had done something wrong wasn't enough to start the two-year clock ticking.

However, the case is an important reminder that if you've been injured, you should speak with an attorney right away. Waiting too long to see what happens could mean that by the time you're sure you deserve compensation, it's too late to obtain it.

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