

Handling A Successful Assignment Of Mortgage

By Eric P. Gonchar

WHEN A HOMEOWNER IS REFINANCING his or her mortgage, it is prudent for a mortgage broker to suggest to a borrower that the existing mortgage be assigned to the new lender to reduce or avoid the New York State mortgage recording tax. The new lender, the assignee, would then complete the transaction using a Consolidation, Extension and Modification Agreement (CEM) which would be recorded as part of the refinance transaction.

The New York State legislature enacted Tax Law Section 253-a which authorizes the collection of a tax based upon the amount of the mortgage. This tax, which is collected at the time of recording the mortgage, known as "mortgage recording tax", can be very costly to a borrower. For example, in the five boroughs of New York City, the tax imposed on the borrower is equal to 1.75% of the loan amount less a \$25.00 exemption. Outside the five boroughs, the tax is usually .75% (or less) of the loan amount less a \$25.00 exemption.

New York State mortgage recording tax can be avoided or greatly reduced if the existing lender agrees to assign its mortgage to the new lender. The mortgage recording tax will be based on the "new money" only (i.e., the difference between the new amount and the principal balance on his existing loan is \$235,000.00. The mortgage tax will be imposed on the "new money" of \$15,000.00. If the mortgage is assigned, the tax to the borrower on the "new money" will be \$237.50 (1.75% of the \$15,000.00 less the \$25.00 exemption).

The key to a successful assignment of mortgage is an early start. The borrower's existing lending is not required to assign mortgages but does so as an accommodation to their borrowers. If the current lender refuses to assign the mortgage, it will be impossible to save on these taxes. If a mortgage broker desires to assist the borrower in an assignment of mortgage, the process will require additional time to obtain and coordinate the documentation. In order to expedite this process, the following steps should be taken:

1. Contact the new lender to confirm that they will agree to accept an assignment of mortgage. Contact the existing lender to determine if they will agree to assign the mortgage. This process should be started as soon as the mortgage broker has received confirmation that the borrower has been approved for the new loan. If the new lender and old lender are the same, the processing time shall be greatly reduced.

2. If the existing lender will agree to assign the mortgage, a letter should be mailed to the existing lender requesting the following documents: (i) a copy of the recorded mortgage and any previously recorded assignments of mortgage; (ii) a copy of the signed promissory note; and (iii) the proposed assignment of mortgage (a sample request letter appears

at the end of this article).

3. The mortgage, not and assignment should be forwarded to counsel representing the new lender for review to determine whether the documents will be acceptable to the new lender.

4. If the documents are acceptable to the new lender's attorney, the new loan commitment has been issued and the title report is cleared, the mortgage broker can order a payoff letter from the existing lender and have the existing lender send the original mortgage, not assignment and payoff letter to its counsel.

5. The existing lender must be advised that the existing note must contain an endorsement as follows:

"pay to the order of (lender name), its successors and assigns (name of existing lender) (signature) (typed name) (title)"

Please be aware that there are limitations involved in handling an assignment of mortgage:

(a) If there are any errors in the original loan documents, the new lender is not required to accept an assignment of mortgage.

(b) Many lenders will not take an assignment of equity lines or loans with negative amortization.

(c) Expect additional legal costs from counsel of the assigning lender and from counsel to the new lender. The fee to the existing lender's counsel can amount to \$250 to \$350 for delivery of the existing note, mortgage and assignment at the closing. The fee to the new lender's counsel can range between \$100 to \$250 more than the normal closing fee for review of the existing documents and preparation of the CEM. Finally, expect between \$100 to \$200 in additional charges for recording the assignment of mortgage and CEM. Borrowers may wish to consult with their attorney to determine if an assignment of mortgage can offer them reasonable tax savings since this procedure will require expending up to \$500.00 or more in close costs.

(d) The new lender may not agree to take a mortgage by assignment unless the original endorsed note and original recorded mortgage are available and can be delivered at closing. If the note has been lost, most new lenders will not accept a lost note affidavit. If a recorded mortgage has been lost, the new lender may, but is not obligated to accept a copy of the recorded mortgage certified by the municipality in which the premises are located. The certified copy of the mortgage can be ordered for the title company insuring the transaction.

In conclusion, your client will be most impressed that you took the initiative to save the borrower money. If you are successful in arranging for an assignment, your client should be most grateful. If you are unsuccessful, your client will know you tried.

SAMPLE ASSIGNMENT REQUEST LETTER

(Date) _____

Mr./Ms. _____ Bank

Re: Borrower: _____

Address: _____

Loan # _____

Dear _____:

This office is working with _____ in connection with the captioned matter.

_____ is refinancing his loan with _____ Bank and in order to save New York State Mortgage Recording Tax, request is hereby made to have his existing loan assigned to _____ Bank.

Accordingly, please provide photocopies of the recorded mortgage and executed note to my attention with a draft of the Assignment of Mortgage and payoff letter. The assignee's name and address is _____

The closing date is scheduled for _____

You immediate attention to this matter is appreciated. Please do not hesitate to call me at _____ if you have any questions.

Very truly yours,

Allegheny	\$.75	Tompkins	\$.75
Broome	\$.75	Ulster	\$.75
Cattaraugus	\$.75	Warren	\$.75
Chautauqua	\$.75	Washington	\$.75
Chemung	\$.75	Wyoming	\$.75
Chenango	\$.75	Yates	\$.75
Clinton	\$.75	Albany	\$1.00
Columbia	\$.75	Dutchess	\$1.00
Cortland	\$.75	Eric	\$1.00
Delaware	\$.75	Genesee	\$1.00
Essex	\$.75	Kings*	\$1.00
Franklin	\$.75	Livingston	\$1.00
Fulton	\$.75	Monroe	\$1.00
Greene	\$.75	Nassau	\$1.00
Hamilton	\$.75	New York*	\$1.00
Herkimer	\$.75	Niagara	\$1.00
Jefferson	\$.75	Onondaga	\$1.00
Lewis	\$.75	Orange	\$1.00
Madison	\$.75	Oswego	\$1.00
Montgomery	\$.75	Putnam	\$1.00
Oneida	\$.75	Queens*	\$1.00
Ontario	\$.75	Rensselaer	\$1.00
Orleans	\$.75	Richmond*	\$1.00
Otsego	\$.75	Rockland	\$1.00
St. Lawrence	\$.75	Saratoga	\$1.00
Schoharie	\$.75	Schenectady	\$1.00
Schuyler	\$.75	Suffolk	\$1.00
Seneca	\$.75	Westchester	\$1.00
Steuben	\$.75	Wayne	\$1.00
Sullivan	\$.75		

*Mortgage Recording Tax Rate In New York City Counties Of Bronx, Kings, New York, Queens And Richmond

Rate For Each \$100, Or Debt Secured By A Mortgage

All Mortgagees Securing Less Than \$500,000
Mortgages of 1, 2 or 3 Family Dwelling,
Individual Condominium Units And Individual Cooperative Apartments
Securing \$500,000 Or More

All Other Mortgages Securing
\$500,000 Or More

NEW YORK CITY	BASIC	ADDITIONAL	SPECIAL ADDITIONAL	TOTAL
1.00	50¢	25¢	25¢	\$2.00
1.125	50¢	25¢	25¢	\$2.125
1.27	50¢	25¢	25¢	\$2.75

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